

GOVERNMENT RESPONSE TO 3RD REPORT OF THE JOINT STANDING COMMITTEE ON TREATIES TWO INTERNATIONAL AGREEMENTS ON TUNA

Preamble

The Government has considered the report of the Joint Standing Committee on Treaties into the Subsidiary Agreement between the Government of Australia and the Government of Japan concerning Japanese Tuna Long-line Fishing 1996 and is pleased to provide the following response. The Government would like to acknowledge the Committee for preparing a concise and clear report which seeks to address the range of complex issues that arise when considering the Bilateral Agreement. The Committee's recommendations are addressed in turn below.

Bilateral Arrangements

1) *The Joint Standing Committee on Treaties recommends that the Commonwealth Government, in consultation with the relevant States, ensures that restrictions placed on either Bilateral vessels or Joint Venture vessels cannot be circumvented by interchange between such arrangements.*

Under the Bilateral Agreement restrictions are placed on the number of vessels that can operate off the west and east coasts of Australia. For example, in the 1996 Bilateral Agreement up to 20 Japanese longline vessels were permitted to operate north of 34° South off the west coast. The Australian Fisheries Management Authority (AFMA) ensures that this number is not exceeded.

When the joint venture commenced in 1991, joint venture vessels were permitted to operate north of 34° South (S) off the west coast. This was additional to the 40 bilateral vessels which, at that time, were permitted to operate under the Bilateral Agreement. This was raised as a concern, particularly by the Western Australian fishing sector, as potentially all licensed joint venture vessels and the 40 bilateral longline vessels could have operated off the west coast.

To address this, from November 1994 joint venture vessels were excluded from operations north of 34° S off the west coast. This restriction will remain if a southern bluefin tuna joint venture proceeds in future.

AFMA has indicated that it has no difficulty in providing scope for any future joint venture vessels to change to a bilateral licence provided the vessel cap negotiated as part of the Bilateral Agreement is not exceeded. This has been the situation since the joint venture was amended in November 1994.

2) *The Joint Standing Committee on Treaties recommends that the Commonwealth Government reviews the existing arrangements for potential foreign ownership of fishing licences within the Exclusive Economic Zone or Joint Venture arrangements which may jeopardise the potential to manage fish stocks in the Exclusive Economic Zone.*

The issue of foreign ownership is a matter of broad Government policy and may, in specific circumstances be referred to the Foreign Investment Review Board. All proposals above certain thresholds need prior approval and therefore need to be notified to the Government. Notification thresholds are: over \$5 million for acquisitions of substantial interests in existing businesses; \$10 million or more for the establishment of new businesses; and \$20 million or more for offshore take-overs. The Government normally raises no objections to proposals above the notification thresholds where the relevant total assets/total investments is below \$50 million.

However, in this instance the Commonwealth Government has reviewed the existing arrangements for foreign ownership or joint venture arrangements within the Exclusive Economic Zone (EEZ) and considers that they do not provide for any arrangements which may jeopardise the potential to manage fish stocks in the EEZ.

There is no provision in fisheries legislation providing specific control on foreign ownership of fishing rights. All tuna longline operations within the EEZ are subject to management arrangements administered by AFMA in accordance with the *Fisheries Management Act 1991*. Domestic longline arrangements apply to Australian boats, and these are developed by AFMA in conjunction with the appropriate fisheries Management Advisory Committee (MAC). This means that operators, including foreigners, who may own Australian boats and licences are subject to the same management arrangements.

Japanese vessels are the only foreign flag operators which have been permitted in recent years to longline for tuna in the EEZ either under a Government to Government agreement (Bilateral Agreement) or through the joint venture (which requires an agreement with the Commonwealth, through AFMA).

Both the Bilateral and joint venture agreements specify stringent terms and conditions under which Japanese longline vessels can operate. The terms and conditions are more restrictive than those applying to domestic operators. All foreign operators are licensed and are subject to conditions such as inspections, observer coverage, vessel monitoring systems and are generally restricted to waters where there is limited domestic activity.

The Government believes the arrangements outlined above support and strengthen AFMA's ability to sustainably manage Australia's fish stocks.

3) *The Joint Standing Committee on Treaties recommends that the subsidiary agreement on long-line tuna fishing with Japan be for a timeframe of at least two years.*

The Commonwealth Government agrees that there would be benefits in moving towards a longer term agreement, including administrative savings, a better planning environment and a more appropriate timeframe within which to address complex issues. However, the Government believes that important external issues such as the setting of annual national catch allocations by the Commission for the Conservation of Southern Bluefin Tuna (CCSBT), domestic management arrangements, environmental perturbations and economic changes may erode the extent of such benefits. These issues are dynamic and a flexible approach is required in order that the Government is able to respond in a timely manner to the needs of the fishery and to secure the best benefits for Australia (external issues such as those mentioned above may lead to considerable pressure for an annual review of the terms of any multi year agreement, from either Australian or Japanese interests, depending on the circumstances).

In giving in principle support to multi-year agreements, it will be important to develop a clear framework and schedule to deal with these pressures, including an elaboration of the mechanisms provided for in the current negotiation process, or there may be frequent *ad hoc* demands to implement mid-term changes to the Agreement. Should any changes to the Agreement be negotiated during a mid-term review process, these changes would be subject to the treaties procedure and be tabled in Parliament. It will be in Australia's interest to minimise the potential for mid-term changes to the Agreement, otherwise it will be unlikely that there would result any decrease in the workload incurred or in the frequency with which matters relating to the Agreement would need to be subject to scrutiny.

The Commonwealth agrees that a properly constructed multi-year agreement, which takes into account fisheries management needs and recognises that it is essentially a negotiated commercial arrangement, would be beneficial.

This is particularly the case if multiple year quotas can be agreed in the CCSBT, which would strengthen the case for a multiple year Bilateral Agreement. However, the Commonwealth Government notes that the adoption of such an approach would need whole of Government support, including a revision of the way fishing and port access are dealt with, and may also necessitate consideration of alterations to the fee structure and access arrangements.

SBT Certification

4) *The Joint Standing Committee on Treaties recommends that the Commonwealth Government raises the issue of the introduction of a certificate system for southern bluefin tuna within the Convention for the Conservation of Southern Bluefin Tuna and the Indian Ocean Tuna Commission.*

Convention for the Conservation of Southern Bluefin Tuna

Australia has already sought consideration of a certificate of origin scheme for SBT within the CCSBT regime and within the annual meetings of the tripartite management discussions held prior to the formation of the CCSBT. In 1993, Australia formally proposed a certification system similar to that implemented within the International Commission for the Conservation of Atlantic Tunas (ICCAT) to be introduced into the SBT fishery. Japan did not support adoption of such a scheme. After being pressed on the issue again in 1994, Japan opposed any attempt to require documentation of SBT trade. Japanese concern reputedly centres on the administrative burden that such a scheme would impose, a concern that Australia shares.

It should also be noted that a certification scheme, although useful for tracking fish in transit, only achieves its full value if monitored and enforced at the market for the fish. In the case of SBT, the main markets are in Japan. In such a system Japan would carry responsibility for the administration and integrity of the system for imports from all countries. Further, as Japan is not technically importing product from its own vessels' high seas activities, such Japanese catch may fall outside any certification scheme. Also, catches by Korea and Taiwan are increasingly being directed towards their home markets. Within these contexts, Australia will continue to consider ways of introducing a practicable certification scheme.

Indian Ocean Tuna Commission

The first meeting of the Indian Ocean Tuna Commission (IOTC) was held in December 1996. This new organisation has many complex administrative and scientific issues to resolve in developing a strong tuna management regime in the Indian Ocean. Certification schemes are important tools that will need to be examined as part of that management regime. For tunas other than SBT, Australia sees the first step as being the establishment of basic fishery management measures. For SBT, Australia has pressed within the IOTC that the CCSBT has precedence over SBT management wherever the fish occurs. Australia will continue to argue strongly in the IOTC and other relevant forums that a SBT management scheme should be developed and managed within the CCSBT.

Indian Ocean Tuna Commission

- 5) *The Joint Standing Committee on Treaties recommends that the Commonwealth Government:*
- a) *notes Western Australia's particular interest in the Indian Ocean Tuna Commission;*
 - b) *facilitates their participation in the delegation to and any consultations relating to the Indian Ocean Tuna Commission where possible.*

The Commonwealth Government has fully consulted with the Government of Western Australia on IOTC issues and has extended an invitation for the Western Australian Government to participate in Australian delegations to IOTC meetings. The Western Australian Government has declined to participate in meetings to date, but has expressed its interest to take part in future IOTC meetings.

- 6) *The Joint Standing Committee on Treaties recommends that Australia deposits an Instrument of Acceptance for the Agreement to Establish the Indian Ocean Tuna Commission on or before 2 December 1996.*

Australia deposited an Instrument of Acceptance of and then became party to the Agreement to Establish the Indian Ocean Tuna Commission with the Food and Agriculture Organisation of the United Nations (FAO) in November 1996. Australia attended the first meeting in December 1996 and the leader of the Delegation was elected interim Chair.

Commonwealth Government Response to the Parliamentary Joint Standing Committee on Treaties report "The International Agreements on Tuna: maintaining and the Substantive tuna longline fishing agreement between Australia and Japan"

Tasmanian Waters

7) *The Joint Standing Committee on Treaties recommends that the Commonwealth Government undertakes discussions with the Government of Japan to resolve the communication difficulties between the two fleets.*

The communication difficulties that the Committee has identified arise principally where the domestic and foreign operators are seeking to fish in the same waters and the differing fishing techniques of both cause fishing gear interaction, a situation that arises periodically as the domestic fishery expands its areas of fishing.

Conflict of fishing gear belonging to different vessels fishing in the same area can result in losses in effective fishing time and damage to and losses of gear. Where possible AFMA attempts to facilitate communication between fishermen to minimise these incidents. Instances of gear conflict in waters adjacent to Tasmania occurred several years ago, when there were 40 joint venture licensed Japanese vessels operating in addition to the 10 vessels licensed through the Bilateral Agreement. The large numbers of Japanese vessels fished co-operatively by allocation of lanes in which to set their longlines. The Australian Tuna Boat Owners Association (ATBOA) prepared guidelines advocating sharing of details of line setting location and time between the Japanese and local domestic. The number of Japanese longliners operating off Tasmania is now markedly reduced and the incidence of gear conflict has been negligible.

In the period of the last Agreement (1996) there was only one reported instance of gear conflict which was off the NSW coast. In response to this report AFMA immediately notified the Japanese industry indicating that it should maintain a radio watch and communicate with domestic operators to resolve issues. The observers present on the boats operating in the area were advised to facilitate any dialogue. Even though it was only one isolated instance the issue was subsequently raised at the negotiations with the Government of Japan when reporting on compliance in the past season. If there was a failure to co-operate, the area of access may be changed, excluding foreign vessels from the areas where gear conflict occurs.

Japan has complained of alleged gear theft in the east coast fishery, presumably by domestic fishers. AFMA has again attempted to facilitate communications with the Japanese fleet to ensure subsequent investigations are timely and effective, though to date there has been insufficient evidence on which to base conclusive investigations of the allegations.

8) The Joint Standing Committee on Treaties recommends that the Commonwealth Government creates, as a matter of national consistency, an exclusion zone for the Bilateral and Joint Venture Japanese long-line fishing vessels around Tasmania of 50 nautical miles.

The Government supports the progressive Australianisation of tuna fisheries. However, it believes that an exclusion to 50 nautical miles (nm) around Tasmania at this time would be premature, especially given current reduced levels of Japanese activity.

Japanese fishing adjacent to Tasmania brings considerable economic benefit to the State and Commonwealth. The port of Hobart benefits from Japanese access to the AFZ through the use of port facilities, victualling and recreation. Japan has stated previously it cannot accept a 50 nm exclusion adjacent to Tasmania since some high catch rate areas for SBT which attract its vessels to the AFZ are between 20 to 50 nm off Tasmania. A substantial further restriction off Tasmania would jeopardise general bilateral activity and the potential for a future joint venture adjacent to Tasmania, because it is likely that Japanese vessels would choose not to fish the Tasmanian area at all if the 50 nm limit were applied.

The Commonwealth received \$425,000 from Japan in 1997 as a component of the bilateral access fee for enabling a specified number of its vessels to fish for Japanese SBT quota in the AFZ adjacent to Tasmania. In negotiating the 1997 bilateral access arrangements the Commonwealth's approach was, cognisant of the Inquiry's recommendation, to increase the exclusion zone from 12 to 17 nm from the coast. There are important other benefits associated with Japanese access off Tasmania, including data collection on both SBT and seabirds through the AFZ observer programme. The Commonwealth regards this information as vital to its management of SBT and obtaining information on the incidental capture of seabirds including albatross. It also maintains an important link with the high seas activities of the Japanese fleet.

Japanese activity peaks adjacent to Tasmania during May to July. In 1996 only 10 Japanese boats operated in the area. This is substantially less than previous years due to the cessation of the joint venture and is likely to decrease further in 1997. During the May to July period a maximum of six domestic boats operated in any one month. With such small numbers of vessels the potential for gear conflict appears slight.

On balance, the Government believes its approach in reducing Japanese access from 12 nm to outside 17 nm is appropriate, given the benefits Australia derives from this arrangement, but that this be regularly reviewed in light of the level of Australian activity in waters adjacent to Tasmania.

Recreational and Game fisheries

9) *The Joint Standing Committee on Treaties recommends that the Commonwealth Government undertake a review of the Fisheries Management Act 1991 to determine if amendments are necessary to facilitate the management of all Australian fisheries to enable the recreational and game fishing industry to be treated as a commercial activity with particular reference to achieving optimum utilisation of the resource.*

The *Fisheries Management Act 1991* provides for the management of commercial, charter boat and recreational fishers, noting that the recreational sector can only be managed by the Commonwealth when under a formal management plan.

AFMA is currently considering the jurisdictional issue of charter boat and recreational fishing and the Commonwealth's role in managing these sectors. A paper on the issue was discussed at the July 1997 meeting of the Ministerial Council on Forestry, Fisheries and Aquaculture (MCFFA). The Ministerial Council agreed to give its 'in principle' support for day-to-day management of the recreational and charter sectors of Commonwealth-managed fisheries by the States and Northern Territory, noting Queensland's position that jurisdiction for recreational and charter fishing for tunas and billfish should remain under Commonwealth jurisdiction. A revised policy paper concerning recreational and charter fishing will be released by Commonwealth and State agencies for public comment in the first half of 1998.

The views of the Treaties Committee on recreational and charter boat fishing, along with the concept of optimal utilisation, will be considered in developing the Commonwealth's position on recreational and charter fishing management.

10) *The Joint Standing Committee on Treaties recommends that the Commonwealth Government undertakes a full assessment of the relative values of the recreational, game and long-line fisheries and their compatibility as a basis for determining the most appropriate management arrangements for the fishery and the degree of access to be allocated to each sector.*

The Commonwealth agrees that an assessment of the relative values to the different user groups of the fish resource provides important information to underpin consideration of how to allocate access to the resource in the most efficient and equitable manner. Both the Department of Primary Industries and Energy (through the Fisheries Resources Research Fund (FRRF)) and AFMA have commissioned studies on options for valuing recreational and commercial fishing. These initial studies indicate there are many complex issues which would need to be addressed in a full assessment of practical

methods for valuing and allocating access among users. Furthermore, any outcome will likely be contested by one or more of the affected groups.

One issue relates to the many claims that have been made by the gamefish/recreational sector that the value (in dollar terms) of a billfish to it is far greater than to the commercial fishing sector. There are a range of techniques which could be used to establish values for the different sectors using the bill fish resource, though estimating values is difficult for the charter boat and recreational sectors, and comparing "like with like" presents major challenges. For the longline sector it is relatively simple to establish value through the use of standard production approaches, although an important requirement of establishing values for this sector is that there is provision of accurate information by operators.

For the charter boat industry, values would be more difficult to establish. Prices for boat charter and capture rates of game fish could be used to calculate a value for this sector. However, the problem with such a calculation is that it would be difficult to separate the proportion of the charter price which is associated with the fish resource, as opposed to a number of other factors. These include the quality of the charter service, whether the operator is charging a fair price and the actual importance of capturing fish to the charterer.

Establishing values for recreational fishing is probably the most difficult task. If there is market information associated with recreational fishing then this should be identified and considered in the context of the characteristics of the particular type of recreational fishing for which a management decision is to be made. A range of non-market valuation techniques could be used to estimate dollar values for recreational fishing.

The application of these techniques is usually complicated and there is no assurance that the estimates will be reliable. Further, the Commonwealth notes that, even if dollar values at a given time can be estimated, allocation on the basis of relative value is complicated by the fact that values change over time.

Finally, the Commonwealth recognises that while relative values in dollar terms are of importance in considering allocation of access, the range of impacts, costs and benefits which cannot be expressed in dollar terms should be taken into account when developing fishery management strategies. For example, relative and cumulative impacts on the status of the marine resource must be considered, in conjunction with estimates of the relative values of fishing by various groups.

11) *The Joint Standing Committee on Treaties recommends that the Commonwealth Government require all Japanese longline vessels fishing in the Exclusive Economic Zone to cut free all marlin (alive or dead), without removal from the ocean.*

The Commonwealth has agreed to ban the take of blue and black marlin by commercial fishing operators. The ban will apply to both domestic operators and Japanese tuna longlining vessels operating in the Australian fishing zone under the Subsidiary Agreement. The ban will be effected by the introduction of legislation in early 1998 which requires commercial fishermen to return blue and black marlin to the sea whether dead or alive.

The Commonwealth recognises the high value placed on blue and black marlin by game fishers in comparison with the commercial catching sector, which regards blue and black marlin as an unintended bycatch. The introduction of the legislation aims to acknowledge these values by establishing an appropriate allocation of resources between the two sectors.

Under the new legislation, domestic operators may retain as part of the commercial fishery, striped marlin. Japanese vessels will be required to cut free all marlin species caught in the AFZ (alive or dead) without removal from the ocean. In addition, under the bilateral agreement, Japan has agreed that its vessels will not target any billfish (except broadbill swordfish).

A difficulty with the legislation, particularly in relation to Japanese vessels, is the issue of compliance. Japanese longline boats will have on board in freezer holds high seas' caught marlin from the same stocks which can not be distinguished from 'in-zone' catch. These marlin will have been caught outside the AFZ, both from the high seas and neighbouring countries' EEZ's, in areas where there are no restrictions on their retention.

This problem may be overcome by arranging for the Japanese longline vessels to inform Australian authorities of the amount of marlin on a vessel at the time at which it enters the AFZ. Through random inspections either at sea or during victualling at an Australian port, such information could then be verified.

Partly in recognition of concerns over Japanese catch of important recreational / charter marlin species, a range of area closures and restrictions on fishing methods have been applied to the Japanese, including exclusion from the East Coast Tuna and Billfish Fishery management area off Cairns, known as Area E, and 50 nm closures off the east and west coasts.

12. The Joint Standing Committee on Treaties recommends that the Commonwealth Government undertakes a review of the existing tuna fishing technology to determine if modifications could be made to reduce the bycatch of non-target species.

The minimisation of the impact of fishing operations on the environment, including non-target species, is a requirement under Objective 3(1)(b) of the Fisheries Management Act 1991.

From industry's viewpoint, there is a financial interest in maximising the catch of high value target species and avoiding bycatch of non commercial species. A range of collaborative work with industry has been carried out and is planned for the future, including research into fishing practices, development of more selective fishing gear and improved mitigation devices. Environment Australia is also preparing a consultative Threat Abatement Plan which aims to minimise seabird bycatch.

Research into the reduction of seabird bycatch in tuna longline operations is on-going. The development of tori poles, or bird scaring devices, is a major step forward and an example of what can be developed through co-operative research involving industry operators. Regulations have been put in place to require the use of tori poles by domestic and foreign longline operators south of 30° South latitude. Furthermore the Commonwealth continues to work with industry and researchers on ways to improve bycatch mitigation measures, whether for seabirds or other incidental bycatch.

In the case of billfish, specifically blue and black marlin, research is under way to determine where in the longline hauling process these species are taken. Preliminary research indicates that blue and black marlin are taken at a shallower depth than the target tuna species (generally bigeye and yellowfin tuna), i.e. during the deployment or hauling of the longline.

However, to accurately determine longline performance sophisticated electronic equipment (such as hook monitors which measure depth and water temperature) and longline deployment gear (line shooters) are required. The former is not yet commercially available and the latter is quite costly and generally only carried by large vessels dedicated exclusively to tuna fishing. It is anticipated that as the domestic fishery continues to expand, the technology employed by industry to accurately position their longline in the thermocline will be refined and result in cleaner catches of target species.

Port Access

15) *The Joint Standing Committee on Treaties recommends the separation of port access from the subsidiary agreement but making port access subject to the continuation of Japan's membership of the Convention for the Conservation of Southern Bluefin Tuna and participation in Commission for the Conservation of Southern Bluefin Tuna.*

The Commonwealth is supportive of a reconsideration of the structure for the Bilateral Agreement, including the option of separating port and fishing access, but in doing so recognises the need to fully assess the implications of any changes proposed.

In developing any alternative arrangement careful consideration needs to be given to ways of securing the management and research funding derived from the current arrangements, as well as the important issues of the longer term financial and other benefits gained by providing Japan with privileged access to our fishing zone. The provision of port access, without effective means to secure Japan's collaboration in effective international monitoring regimes, could work quickly to erode the integrity of the CCSBT and put the full range of benefits we seek to secure for our domestic industry (both fishing and port servicing sectors) at considerable risk.

The Committee's recommendation recognises the risks that giving unfettered port access to Japanese fishing vessels may lead to adverse impacts on the sustainability of the fish stocks if these vessels fish on the high seas without effective management and regulation. The recent identification of forty Japanese vessels fishing in breach of Japan's domestic fisheries management regulations on the high seas off the south western AFZ has highlighted the realities of this risk.

To address the risk, the Committee has suggested that any separate port access arrangement must be linked to responsible participation in regional management regimes, such as the CCSBT. The Commonwealth strongly supports this approach, but believes it should go further and deal with a range of related issues not directly addressed in the Committee's report. These include implications for access fees, the incentive to fish in the AFZ, links with the CCSBT and the potential impacts on local fishing and port economies around Australia.

Notwithstanding these issues, as Australia's domestic tuna fisheries expand, a reduction in Japanese fishing activity in the AFZ is considered likely in the mid to longer term. Under such a scenario, a progressive restructuring of the access arrangement to provide a greater separation of fishing and port access, with strong obligations imposed for co-operation on data and monitoring needs, may suit both countries in the medium term.

Commonwealth Government Response to the Parliamentary Joint Standing Committee on Treaties report: *The International Agreements on Tuna, including into the Subsidiary tuna longline fishing agreement between Australia and Japan*

Based on the Committee's recommendation and the additional issues identified above, the Government is at present evaluating alternate approaches to providing for both fishing and port access in an administratively simple and effective way while securing the wider range of benefits and realistic returns to Australia.

Any approach must seek to meet Australia's interests in securing effective co-operation and compliance with responsible regional fisheries management regimes. Matters of importance include the implications for access fees, need to provide for effective monitoring of fishing effort adjacent to the AFZ through surveillance and electronic vessel monitoring systems, high seas observer coverage and in port inspection of fishing vessels entering our ports.

Environmental

14) *The Joint Standing Committee on Treaties recommends that the Commonwealth Government formalises a process in which management plans relating to international fishing agreements require a specific written clearance from the Environment Protection Group if they have significant potential environmental impacts.*

The Commonwealth Government accepts this recommendation and DPIE, AFMA and the Environment Protection Group have held discussions to clarify the way in which the *Environment Protection (Impact of Proposals) Act 1974* may apply to the Subsidiary Agreement and to reach clear understandings on how to deal with potential environmental impacts that may arise from the Subsidiary Agreement.

15) *The Joint Standing Committee on Treaties recommends that the Minister responsible for fisheries requests the Department of Primary Industries and Energy to provide all relevant information to the appropriate Commonwealth environment agencies for consideration of issues pertaining to the marine ecosystem.*

The Government is committed to ensuring that relevant data collected by, and accessible to, Commonwealth agencies is used in the most productive way, including as a basis for research on the impact of fishing on marine ecosystems in general and on seabirds in particular. In this respect, DPIE and AFMA have an open approach to providing data to other Commonwealth Departments or agencies which have a need for that data in the performance of their functions, subject to legislated confidentiality requirements.

In order to address the specific concerns of the Committee, an informal working group of officers from AFMA and Environment Australia has been established to examine protocols on data exchange and related issues. This group will develop protocols for information exchange and use, as well as

Communications Government Response to the Parliamentary Joint Standing Committee on Treaties report "The International Agreements on Tuna: Integrating into the Subsidiary tuna longline fishing agreement between Australia and Japan"

investigate processes for evaluating the information needed, the methods of collection and the development of co-operative approaches on issues of common interest.

16) *The Joint Standing Committee on Treaties recommends that the Commonwealth Government reviews, as a matter of urgency, Commonwealth legislation to ensure that the nomination for the listing of fish as endangered or threatened is based on merit and not impeded by anomalies in the wording of legislative or administrative procedures.*

As a result of observations made by the Committee, relevant Commonwealth legislation has been reviewed. The Government believes that there are no legal impediments to appropriately protecting fish in either the *Fisheries Management Act 1991* (s14) (FMA Act) or the *Endangered Species Protection Act 1992* (ESP Act). The current procedure is that nominations are interpreted in light of the ESP Act and based on merit. The Government is not of the opinion there are anomalies in the wording of the FMA Act, but notes that the Act is due for revision in five years.

17) *The Joint Standing Committee on Treaties recommends that the Commonwealth Government requests that State and Territory governments review, as a matter of urgency, their legislation to ensure that the nominations for the listing of fish as endangered or threatened is based on merit and not impeded by anomalies in the wording of legislative or administrative procedures.*

The Commonwealth notes the Committee's recommendation and will invite the State and Territory Governments to review their legislation with regard to the Committee's concerns.

18) *The Joint Standing Committee on Treaties recommends that a specialist observer training scheme be introduced with additional emphasis on seabird research, the collection of data on seabird bycatch and the effectiveness of seabird bycatch mitigation methods.*

The Commonwealth supports committing a proportion of observer time to seabirds, however, the primary focus of their work will remain collection of data on tunas and associated fishes. Observers document and sample seabirds taken during the fishing operation and tori pole use as part of their core tasks. They also undertake discard monitoring and completion of a seabird diary, as time permits.

Given the already substantial training given to observers on these matters, AFMA does not see a need to provide additional training. Further specialist seabird observers would not be cost-effective since many foreign vessels encounter few, if any, seabirds on a per trip basis. AFMA prefers, and has

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frequently done so in the past, to use specialist ornithologists where there is a particular need for expert advice on such things as seabird age, reproductive status, heavy metal content and DNA/ race research.

Where seabird research programmes are developed and approved, AFMA will maintain the flexibility within the observer programme to assist in the collection of necessary data to support this research.

AFMA recognises that the issue will be considered in the process of developing the Commonwealth Threat Abatement Plan for oceanic longline fishing and depending on the outcome of this process that there may be need to review observer training arrangements.

19) The Joint Standing Committee on Treaties recommends that the Commonwealth Government produces an "easy to use" guide to assist the identification of seabirds which is to be issued to Japanese vessels, including Joint Venture vessels, at the time of pre fishing inspections.

The Government agrees that an "easy to use" guide to the identification of seabirds would be a useful tool for long-line fishers. A number of seabird-related books are available specifically for longline operators. These commonly contain a brief seabird guide.

One highly regarded publication prepared by Australians is the book entitled "Catching Fish Not Birds" which was published in Japanese in 1994 and widely distributed by observers to the Japanese longline fleet. AFMA is investigating whether reprints of this book can be made for distribution at the time of pre-fishing inspection. The CCSBT has also agreed to more widely promote the distribution of this book amongst vessel owners and masters.

Another excellent guide was produced by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) and the Government is seeking the agreement of the Commission for the reproduction of the seabird identification illustrations from that guide as a single laminated card suitable for use on board tuna longline vessels.

This is an issue that will also be raised in the context of the development of a Threat Abatement Plan and at the Ecologically Related Species Working Group of the CCSBT.

20) *The Joint Standing Committee on Treaties recommends that the Commonwealth Government expedites research into eliminating seabird bycatch as a matter of priority.*

Since 1990, the Government has funded research into seabird bycatch mitigation measures which have resulted in changes to existing tuna longline technology. These changes include the development of tori poles and bait casting machines. The Government will continue to examine research opportunities to develop and enhance current technology.

The Government views the Threat Abatement Plan being developed under the *Endangered Species Protection Act 1992* as a major opportunity to identify and direct key action on seabird bycatch reduction.

The Government is currently funding the following Environment Australia programs relevant to the reduction of seabird incidental capture in fishing operations.

- status and conservation of albatross and their interactions with fisheries.
- oceanic biology of wandering albatross using satellite telemetry
- Antarctic Ocean Research Fund monitoring program on Macquarie Island.

The Government is aware of relevant research programs funded by other Australian organisations. These include albatross foraging studies, research on bait sink rates, preparation of global reviews of albatross populations, population studies of birds incidentally killed and albatross banding programs.

The Government will be seeking the co-operation of southern ocean fishing nations in research into seabird interactions through a number of international fora. In particular the Government will be pressing for identification of research priorities by future meetings of the Ecologically Related Species Working Group of the CCSBT and the relevant working groups of CCAMLR.

21) *The Joint Standing Committee on Treaties recommends that the Commonwealth Government formally invites representatives from Japan and New Zealand to participate in the development of the Threat Abatement Plan.*

The Government has invited observers from Japan and New Zealand to participate in the development of the Threat Abatement Plan. It is hoped that this will encourage international co-operation and collaboration in research programmes to develop effective solutions to seabird bycatch.