

## Chapter 3

### Combating crime in the Southern Ocean

3.1 While the committee received no evidence indicating threats from terrorism, people smuggling or other transnational crime in the Southern Ocean, the vast and scarcely monitored waters to Australia's south remain open to threats which would be hard to detect and even harder to respond to. Australia's large proximate border and maritime sovereign jurisdiction creates a unique need to monitor activities and protect our interests there.

3.2 Meanwhile there are crimes taking place about which Australia is well aware. The scourge of illegal, unreported and unregulated (IUU) fishing in southern waters was a prominent theme in the submissions made, as was the need for Australia to maintain a deterrent and monitoring presence in response to future lethal whaling.

#### Illegal fishing

3.3 The Southern Ocean and Antarctic waters offer a unique and lucrative source of fish for both legal and illegal operators. Australian fisheries lie in the Exclusive Economic Zones (EEZ) around Macquarie Island and around the territory of Heard Island and McDonald Islands (HIMI), which generate some \$50-\$80 million annually from Patagonian toothfish and mackerel icefish, presently harvested by two licensed Australian companies.<sup>1</sup> The Australian Fisheries Management Authority (AFMA) advised that one Australian company had also applied to CCAMLR for permission to fish for Antarctic toothfish in the Ross Sea area of the Antarctic high seas, commencing in December 2014.<sup>2</sup>

3.4 The Southern Ocean also supports an enormous population of Antarctic krill, which is not presently fished by Australian companies but is an area of existing and increasing interest among others who fish for krill on the high seas. In their submission Dr Sam Bateman and Dr Anthony Bergin described the Antarctic krill fishery as 'the largest underexploited fishery in the world' and one that was most likely to become the major focus of increased illegal exploitation in the Southern Ocean.<sup>3</sup>

3.5 In their submissions, the Department of Agriculture and AFMA noted that portions of the Southern Ocean off the coast of South Australia and around Macquarie Island and HIMI also formed part of Australia's southern bluefin tuna fishery, one of Australia's most valuable fisheries, with exports valued at over \$150 million in 2011-12. Parts of the Southern Ocean were in addition encompassed within the high seas fisheries managed by a number of other regional fisheries management organisations.<sup>4</sup>

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1 Mr Martin Exel, *Committee Hansard*, 16 September 2014, p. 22.

2 Australian Fisheries Management Authority, *Submission 11*, p. 3.

3 Dr Sam Bateman and Dr Anthony Bergin, *Submission 2*, p. 2.

4 Australian Fisheries Management Authority, *Submission 17*, p. 2.

3.6 The issues raised during the inquiry were, however, generally focused on the Australian Macquarie Island and HIMI fisheries, and Antarctic waters under the CCAMLR area of competence.

3.7 The fisheries regime in Antarctic waters is unique, being governed under the CAMLR Convention. Unlike other regional fisheries arrangements, the CAMLR Convention is first and foremost a conservation agreement, but it is one which also operates as a fisheries management treaty, providing for 'rational use' of Antarctic marine living resources under an ecosystem-based approach to the protection of all marine life in the Southern Ocean. Australia's priorities within CCAMLR therefore marry environmental objectives, such as the establishment and maintenance of marine protected areas, with continued sustainable access for Australian fishers to the resources of the HIMI fishery, and action to prevent, deter and eliminate IUU fishing.<sup>5</sup> The Department of the Environment explained that 'Australia is a fishing country with a strong conservation agenda, and is focused on maintaining an appropriate balance with regard to CCAMLR's objectives'.<sup>6</sup>

3.8 Mr Martin Exel from Austral Fisheries, one of the Australian companies operating in the southern toothfish and mackerel fisheries, provided a positive assessment of the state of legal fishing in Australia's southern maritime jurisdiction: 'We are very confident that stocks are healthy and things are going right'.<sup>7</sup> This was confirmed by AFMA, who verified that the fisheries were well-managed and not overfished.<sup>8</sup> Australia's Macquarie Island and HIMI fisheries are independently certified as sustainable and well-managed by the international Marine Stewardship Council.<sup>9</sup>

3.9 Submissions and evidence welcomed Australia's efforts to eradicate illegal fishing in Australian waters, notably in the HIMI EEZ. AFMA advised that between 1997 and 2005, Australia apprehended nine large industrial foreign fishing vessels in the Southern Ocean.<sup>10</sup> Australia also played a leading role during this period in the development by CCAMLR of a comprehensive suite of measures against IUU fishing in its area of responsibility.<sup>11</sup> Since 2005 no IUU fishing had been detected in the Macquarie Island or HIMI EEZs.<sup>12</sup> Speaking on behalf of the fishing industry, Mr

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5 Department of Agriculture, *Submission 17*, p. 3.

6 Department of the Environment, *Submission 15*, p. 7.

7 Mr Martin Exel, *Committee Hansard*, 16 September 2014, p. 22.

8 Australian Fisheries Management Authority, *Submission 11*, pp 2-3.

9 Department of the Environment, *Submission 15*, p. 3; Austral Fisheries, *Submission 13*, p. 2.

10 Australian Fisheries Management Authority, *Submission 11*, p. 3.

11 AJ Press, *20 Year Australian Antarctic Strategic Plan*, July 2014, p. 58; Department of the Environment, *Submission 15*, pp 5-6.

12 Australian Fisheries Management Authority, *Submission 11*, p. 3.

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Exel affirmed this outcome and commended Australia's 'exceptional' efforts to combat IUU fishing.<sup>13</sup>

3.10 At the same time both Australian fishing companies emphasised to the committee the importance of continued vigilance against IUU fishing, to protect the previous investment made in that regard.<sup>14</sup> The industry noted its own efforts to collectively respond to the threat of IUU fishing, originally through the ISOFISH grouping and more recently through establishment of the Coalition of Legal Toothfish Operators (COLTO), which worked with CCAMLR and relevant governments toward eliminating IUU fishing and ensuring the continued sustainability of the legal industry.<sup>15</sup>

3.11 The government agreed that continued IUU fishing activity on the high seas remained a concern.<sup>16</sup> Ms Gillian Slocum from the Australian Antarctic Division (AAD) confirmed that the Australian government was aware of the 'continuing, persistent problem' of IUU vessels operating in adjacent waters.<sup>17</sup> CCAMLR maintains a list of IUU vessels which currently numbers 18, at least eight of which have been recently observed operating in the CCAMLR area close to the HIMI EEZ.<sup>18</sup> Other witnesses concurred with the assessment that IUU fishing remained a significant concern on the southern high seas, and was potentially increasing.

3.12 In addition to the economic cost of IUU fishing, the Department of the Environment and AFMA both expressed concern that IUU vessels in the Southern Ocean tended to use demersal gillnets to catch Patagonian toothfish, a method particularly destructive to other marine and bird life, and therefore prohibited by CCAMLR.<sup>19</sup> The Department of the Environment noted that Australia's extended continental shelf off its HIMI territory was an important toothfish habitat and an area in which large-scale IUU fishing took place. The department assessed that

It is likely that fishing practices employed by IUU fishers are having an impact on benthic species on the Continental Shelf and possibly long term impacts on Australia's interests including benthic habitats. It is in Australia's interests to better exercise control over the extended continental shelf.<sup>20</sup>

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13 Austral Fisheries, *Submission 13*, pp 2-3; Mr Martin Exel, *Committee Hansard*, 16 September 2014, p. 22.

14 Australian Longline Pty Ltd, *Submission 21*, p. 2; Mr Martin Exel, *Committee Hansard*, 16 September 2014, p. 22.

15 Austral Fisheries, *Submission 13*, p. 2.

16 Australian Fisheries Management Authority, *Submission 11*, p. 3.

17 Ms Gillian Slocum, *Committee Hansard*, 16 September 2014, p. 52.9

18 Department of the Environment, *Submission 15*, p. 4.

19 Australian Fisheries Management Authority, *Submission 11*, p. 4; Department of the Environment, *Submission 15*, p. 4.

20 Department of the Environment, *Submission 15*, p. 11.

3.13 Australia's response to IUU fishing is a multifaceted one, encompassing on-water surveillance and enforcement, regional and international cooperation, diplomatic representations, in-country education and capacity building. AFMA asserted that its Southern Ocean program had evolved over many years and each component was integral to its success.<sup>21</sup>

### ***Surveillance and patrolling***

3.14 Much of the evidence placed great importance on surveillance and patrolling within Australia's Macquarie Island and HIMI fisheries to continue to protect them from IUU fishing.

3.15 Beyond Australia's EEZ, the committee was advised that Australia held certain obligations and powers to act against IUU fishing on the high seas, within the terms of the United Nations Fish Stocks Agreement<sup>22</sup> and regional fisheries agreements such as the CAMLR Convention,<sup>23</sup> although AFMA conceded that the conditions on these arrangements made high seas interception more challenging.<sup>24</sup>

### ***On the water***

3.16 From 2006-10, the Australian Customs and Border Protection Service (ACBPS) patrol vessel *Ocean Protector* conducted between three and five patrols each year in the Southern Ocean. In the 2010-11 and 2011-12 financial years, this was reduced to two patrols per year, due mainly to diversion of the ship to duties in Australia's northern waters, principally the transport of illegal maritime arrivals. The ship was also tasked to support other law enforcement and humanitarian missions in Australian waters during those years. The *Ocean Protector* last patrolled the Southern Ocean in February 2012, and since then has undertaken all of its patrol days in Australia's northern waters.<sup>25</sup>

3.17 Several submissions expressed grave concern that there had been no maritime patrols conducted by Australia in the Southern Ocean in over two years, and that Australia's only maritime vessel suited for Southern Ocean operations now spent all its time elsewhere.

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21 Australian Fisheries Management Authority, *Submission 11*, p. 4.

22 *United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks*, done at New York 4 December 1995, entered into force for Australia 11 December 2001, [2001] ATS 8.

23 Dr Greg French, *Committee Hansard*, 26 September 2014, p. 23; Department of Foreign Affairs and Trade, answer to question on notice following the 26 September public hearing, received 9 October 2014.

24 Mr Peter Venslovas, *Committee Hansard*, 26 September 2014, p. 26.

25 Immigration and Border Protection portfolio, answer to question taken on notice (Question 29) at Additional Budget Estimates hearing of the Legal and Constitutional Affairs Legislation Committee, 25 February 2014.

3.18 Mr Eldene O'Shea, a student at the University of Tasmania, was motivated to make a submission expressing his concerns about what he saw as a weakening Australian response to IUU fishing in the Southern Ocean. Mr O'Shea believed it was important for Australia, as one of the few CCAMLR members with territorial waters within the Convention area, to maintain a strong physical presence to prevent and deter IUU fishing. He noted that an independent study had assessed Australian agencies as among the most important organisations in the world for preventing IUU fishing in the Southern Ocean. Mr O'Shea assessed that in light of the absence of border protection assets in recent years, however, Australia was 'effectively opening the Southern Ocean back up for exploitation by IUU fishing vessels'.<sup>26</sup>

3.19 Indeed, Mr O'Shea questioned the validity of CCAMLR and ACBPS reporting that there were no IUU vessels presently operating in Australia's HIMI fishery:

ACBPS reporting that no vessels were spotted during the previous year does not mean that there are no vessels operating, what it does show is that Australia is not finding them.<sup>27</sup>

3.20 Austral Fisheries expressed concern that dedicated funding previously provided to AFMA for its patrol program had been directed elsewhere, with a potential loss of \$2 million per annum earmarked for patrolling against IUU fishing in the Southern Ocean and Antarctic region.<sup>28</sup>

3.21 In its submissions, Australian government agencies acknowledged that competing priorities had prevented on-water surveillance by Australian border protection assets in recent years. However, they noted that maritime patrolling of Australia's HIMI EEZ continued to take place during that time under the terms of bilateral arrangements between Australia and France.

3.22 In 2005, a bilateral agreement entered into force between Australia and France which established a framework for cooperation in the surveillance of fishing vessels and in fisheries-related scientific research within the adjoining waters of Australia's HIMI fishery and the French territories on the Kerguelen Plateau.<sup>29</sup> A subsequent agreement which took effect in 2011 enhanced these arrangements by enabling enforcement personnel from each party to deploy on the other's vessel patrols, and to

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26 Mr Eldene O'Shea, *Submission 7*, p. 2.

27 Mr Eldene O'Shea, *Submission 7*, pp 2.

28 Austral Fisheries, *Submission 13*, p. 3.

29 *Treaty between the Government of Australia and the Government of the French Republic on Cooperation in the Maritime Areas Adjacent to the French Southern and Antarctic Territories (TAAF), Heard Island and the McDonald Islands*, done at Canberra 24 November 2003, entered into force 1 February 2005, [2005] ATS 6.

undertake cooperative enforcement activities such as apprehension, boarding and hot pursuit.<sup>30</sup>

3.23 AFMA indicated that since these agreements entered into force, AFMA and ACBPS officers had been routinely deployed on French patrols, which took place on average four times per year. This had enabled cooperative enforcement to be undertaken including the apprehension of an IUU vessel from the Republic of Korea fishing in France's EEZ in 2013.<sup>31</sup>

3.24 The Department of Foreign Affairs and Trade (DFAT) described these agreements as 'a very innovative and useful legal basis for engaging in cooperative surveillance and enforcement activities'.<sup>32</sup> Mr Roman Quadvlieg from ACBPS offered the view that 'the collaboration between the French and us in terms of identification of potential fishing threats and agreements and discussions around responses has been very good.'<sup>33</sup>

3.25 On the other hand, others were critical that Australia's maritime patrolling now relied entirely on Australia's participation in vessel patrols by France under the bilateral arrangement. This delegated the timing and frequency of Australian patrolling of its waters to another nation's control, and limited Australian maritime surveillance to the geographic area around the adjacent HIMI and Kerguelen Plateau jurisdictions.<sup>34</sup> Dr Bateman went so far as to describe Australia as 'freeloading' on the French over the past two and a half years.<sup>35</sup>

3.26 DFAT advised, however, that France had not expressed any concerns to Australia in that regard.<sup>36</sup> The ACBPS was also at pains to dispel the concerns expressed:

it is a long-term relationship that we have with the French; it is 10 years or more. Also, the relationship has multi elements. It is satellite coverage. I guess its crown jewel is surface assets and cross-secondments of our officers onto our respective vessels. There is other work that we share in the intelligence space. There is other cooperative work that we do in terms of our own aerial surveillance flights. Let me come back to the issue that has been touched upon a couple of times around cooperative patrols. Yes, we

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30 *Agreement on Cooperative Enforcement of Fisheries Laws between the Government of Australia and the Government of the French Republic in the Maritime Areas Adjacent to the French Southern and Antarctic Territories, Heard Island and the McDonald Islands*, done at Paris 8 January 2007, entered into force 7 January 2011, [2011] ATS 1; Department of the Environment, *Submission 15*, pp 4-5.

31 Australian Fisheries Management Authority, *Submission 11*, p. 5.

32 Dr Greg French, *Committee Hansard*, 26 September 2014, p. 20.

33 Mr Roman Quadvlieg, *Committee Hansard*, 26 September 2014, p. 31.

34 Dr Sam Bateman and Dr Anthony Bergin, *Submission 2*, p. 3, Austral Fisheries, *Submission 13*, p. 4.

35 Dr Sam Bateman, *Committee Hansard*, 26 September 2014, p. 4.

36 Dr Greg French, *Committee Hansard*, 26 September 2014, pp 19-20.

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have not had a large vessel in the Southern Ocean since January-February 2012. Prior to that, the French and us both had assets in the Southern Ocean at various times and there were cross-secondments of officers on those vessels. In the last couple of years, we have had officers embarked on French vessels. We have not been able to conduct our own patrols to embark French officers onto; however—and I need to emphasise this point—we have had very intimate and regular discussions with the French over the last couple of years in relation to this issue. They fully appreciate and are sympathetic to the priorities that we have in terms of our north-western corridors and dealing with our maritime people-smuggling threats. They have shown much grace and tolerance in allowing us to focus our assets towards that particular threat. They are now heartened by the fact that Operation Sovereign Borders has reduced that to almost zero trickle, and they are very much looking forward to the two 40 day patrols that we have planned upon which they will embark officers. It is a very mature, very longstanding and very collaborative relationship with the French.<sup>37</sup>

3.27 Austral Fisheries acknowledged that scientific assistance from Australia to France had been 'significant', in return for increased dependence on French patrol resources, while emphasising the importance of ensuring an appropriate balance in the cooperative arrangement.<sup>38</sup>

3.28 In its submission, AFMA mentioned that in 2011 Australian officers participated in a New Zealand patrol in the high seas area of the Ross Sea, within the CCAMLR area of competence.<sup>39</sup> Noting the importance of an on-sea presence, AFMA recommended that Australia should consider putting in place more collaborative surveillance and enforcement arrangements with like-minded states in the Southern Ocean, such as New Zealand and South Africa.<sup>40</sup>

3.29 The ACBPS is in the process of acquiring eight new Cape class patrol boats, which will replace and improve upon the Bay class fleet they are replacing.<sup>41</sup> While these vessels are not suited for operations in the Southern Ocean and Antarctic waters, the ACBPS advised the committee that it was hoped they would assist in freeing up the *Ocean Shield* to undertake patrolling duties in the Southern Ocean. Mr Roman Quaedvlieg from ACBPS advised the committee that ACBPS planned to conduct two 40-day patrols of the Southern Ocean on the *Ocean Shield* this financial year, subject to other demands.<sup>42</sup>

3.30 During the inquiry some discussion was held about the possibility of deepening cooperation with the commercial fishing sector for collaborative use of its

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37 Mr Roman Quaedvlieg, *Committee Hansard*, 26 September 2014, p. 32.

38 Austral Fisheries, *Submission* 13, p. 4.

39 Australian Fisheries Management Authority, *Submission* 11, p. 5.

40 Australian Fisheries Management Authority, *Submission* 11, p. 6.

41 Australian Customs and Border Protection Service, 'Customs and Border Protection *Cape Class Patrol Boats*', information sheet, October 2013.

42 Mr Roman Quaedvlieg, *Committee Hansard*, 26 September 2014, p. 31.

vessels to increase Australia's presence in the Southern Ocean for other purposes, including surveillance and patrolling. While this was already taking place and potentially able to be further explored for scientific research (see chapter 4), the idea of utilising fishing vessels for security monitoring and law enforcement was met with more caution. In fact, Australian fishing vessels already carry official observers who monitor their voyages for IUU fishing. While such monitoring and reporting roles were feasible:

...you would encounter some difficulties if it were to be law enforcement as well. For a start, vessels can only undertake law enforcement at sea if they are a warship or a vessel that is clearly marked as being on government service. I think you could start running into some conflicts of interest between the commercial side of things and the government side of things if you were to go as far as to expect the vessel to undertake any law enforcement other than, of course, a reporting role. A reporting role could be important in itself.<sup>43</sup>

3.31 Possible cooperation with non-government organisations was also canvassed. The Department of the Environment advised that environmental and industry organisations including the World Wildlife Fund, the Antarctic and Southern Ocean Coalition and COLTO had played a 'significant role' in awareness-raising, information sharing and interdiction of IUU activities in port or at sea. The department said that the government collaborated closely with both non-government and industry organisations in that regard.<sup>44</sup>

3.32 Mr Jeff Hansen from Sea Shepherd Australia provided examples from elsewhere in the world in which his organisation worked in cooperation with local authorities, to the extent of providing vessels and volunteer crew to local enforcement officers to allow them to act against illegal fishing.<sup>45</sup>

*In the air*

3.33 Above the water, the committee heard that other forms of surveillance such as satellite monitoring and aerial patrols had been increasingly utilised in recent years to detect illegal fishing and enable tracking and response. Mr Peter Venslovas from AFMA advised that aerial surveillance had become very useful in identifying IUU vessels in order to approach partners in port or market states for further action. Mr Venslovas stated that since February 2012, 35 such representations had been made to regional partners in South-East Asia, with resulting action taken against six vessels.<sup>46</sup>

3.34 AFMA also highlighted the importance of satellite surveillance both within the Southern Ocean and to trace IUU vessel movements in transit,<sup>47</sup> and ACBPS

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43 Dr Sam Bateman, *Committee Hansard*, 26 September 2014, p. 4.

44 Department of the Environment, *Submission* 15, p. 5.

45 Mr Jeff Hansen, *Committee Hansard*, 16 September 2014, p. 15.

46 Mr Peter Venslovas, *Committee Hansard*, 26 September 2014, p. 26.

47 Australian Fisheries Management Authority, *Submission* 11, p. 5.



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advised of a contract between Australia and France on satellite monitoring, under which Australia obtained access to 'almost live' data covering nine million nautical square miles per year in the Southern Ocean.<sup>48</sup>

3.35 The committee noted that the planned acquisition by the Australian Defence Force of a number of Triton unmanned aerial vehicles (UAV) was another example of an aerial asset that may be useful in monitoring illegal activity in the southern waters. Air Vice-Marshal Gavin Davies, Deputy Chief of the Air Force, confirmed that the Triton UAV would have the range and capacity to operate in the Southern Ocean and Antarctica.<sup>49</sup>

3.36 DFAT explained to the committee that an expanded understanding of the legal concept of 'hot pursuit' was being introduced, including in the Australia-France agreements, which would enable pursuit of vessels for law enforcement:

by so-called technical means, which could be pilotless aerial vehicles or satellites. As technology is evolving and becoming cheaper it opens up the possibility for commencement of surveillance and enforcement activities at vastly lower cost than is currently the case without necessarily having on-the-water presence in our EEZ around Heard Island and McDonald Island... We see that as an important and useful development, which may into the future render less significance to the extent to which a state may have an on-the-water presence in a particular EEZ.<sup>50</sup>

3.37 The committee heard that there were nonetheless legal and practical limits on the utility of non-vessel methods of surveillance and law enforcement in the region. Mr Venslovas explained to the committee that with regard to IUU fishers within Australia's EEZ:

In order to get the evidence necessary to undertake prosecution, you first of all have to identify who that person is, and to do that from an aircraft is very, very challenging, almost impossible, because you cannot identify the person through a radio interrogation, for example. You cannot be sure that they are who they say they are. So, essentially, you need to physically apprehend the person on the boat to identify who they are and also to be able to take action in court based on the proofs of evidence that we have to utilise—to prove those or apply to prove those proofs of the offence.<sup>51</sup>

3.38 Mr Venslovas further noted that Australian law makes provision for forfeiture of IUU vessels in certain circumstances, but this required physical apprehension of the vessel and its crew and its escort to the Australian mainland.<sup>52</sup> The committee was also advised that in the most recent port interception of an IUU vessel in Malaysia, the

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48 Mr Roman Quadvlieg, *Committee Hansard*, 26 September 2014, p. 31.

49 *Committee Hansard*, 26 September 2014, pp 24-25.

50 Dr Greg French, *Committee Hansard*, 26 September 2014, p. 20.

51 Mr Peter Venslovas, *Committee Hansard*, 26 September 2014, p. 26.

52 Mr Peter Venslovas, *Committee Hansard*, 26 September 2014, p. 26.

FV *Thunder*, the vessel operator was fined but the illegally poached toothfish were never recovered.<sup>53</sup>

### ***Market and Port State Measures***

3.39 As noted above, submissions recognised that actions against port and market states constituted an important element in the suite of responses to IUU fishing in the region. In its submission, AFMA stated that:

Recognising IUU fishing is highly organised, mobile and elusive, AFMA sees regional cooperation by port and market states as central to combating the problem by disrupting IUU operations at port and blocking the flow of IUU catch into national and international markets.<sup>54</sup>

3.40 AFMA advised the committee that surveillance had yielded 'clear evidence' that IUU fishing vessels were primarily using ports in the South-East Asian region to unload catch and resupply.<sup>55</sup> In recent years, Australia had worked with South-East Asian countries to develop and implement the *Regional Plan of Action to Promote Responsible Fishing Practices including Combating Illegal, Unreported and Unregulated Fishing in the Region* (RPOA-IUU). The RPOA-IUU provided a framework under which Australia could cooperate with participating states to take action against IUU vessels tracked from the Southern Ocean fisheries to their ports and markets.<sup>56</sup>

3.41 Mr Ian Thompson from the Department of Agriculture advised that:

Vessels that are identified going to and from Antarctica have to go into a port somewhere, and using powers at port we have had some success in recent years in having countries like Malaysia or others in South-East Asia that have been traditional ports of unloading either deny port entry or undertake vessel inspections, which is making the operations of illegal fishers on the high seas a lot more difficult, and that clearly is a far more cost-effective means of interdicting illegal fishers than sending boats out looking for them in the Southern Ocean. You wait for them to come in closer to your waters and take them there. That cooperative arrangement, which has been developing over the last probably 10 years, has started to bear fruit in the last 12 months.<sup>57</sup>

3.42 In its submission, AFMA referred to 35 sightings of IUU vessels by Australian surveillance and enforcement operations, leading to six actions under the RPOA-IUU to intercept vessels in South-East Asian ports for inspection and/or denial

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53 *Committee Hansard*, 26 September 2014, p. 34.

54 Australian Fisheries Management Authority, *Submission 11*, p. 6.

55 Australian Fisheries Management Authority, *Submission 11*, p. 4.

56 The RPOA-IUU was established as a joint initiative of Australia and Indonesia, and the other participants are Brunei Darussalam, Cambodia, Malaysia, Papua New Guinea, the Philippines, Singapore, Thailand, Timor-Leste and Vietnam. Australian Fisheries Management Authority, *Submission 11*, p. 7.

57 Mr Ian Thompson, *Committee Hansard*, 26 September 2014, pp 20-21.

of entry since early 2012.<sup>58</sup> AFMA emphasised the value and importance of Australia's continued active involvement in the RPOA-IUU and its ongoing work to strengthen compliance activities. AFMA also raised the possibility of extending such arrangements to other port and market states, noting that evidence had also indicated IUU vessels unloading catch from the Southern Ocean in African ports.<sup>59</sup>

3.43 Several submissions noted that a critical element in strengthening international cooperation to combat IUU fishing was the *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* (Port State Measures Agreement). The Port State Measures Agreement was adopted under the auspices of the United Nations Food and Agriculture Organisation (FAO) in 2009, and is presently awaiting the 25 ratifications necessary to enter into force.<sup>60</sup>

3.44 Under the Agreement, states parties undertake to apply minimum harmonised standards against IUU fishing vessels in their ports, including the refusal of entry to ships identified as IUU vessels by regional organisations. The Agreement also provides a platform for states parties to share information and to cooperate in various ways to block the flow of illegally caught fish to markets.

3.45 Australia signed the agreement on 27 April 2010, but is yet to ratify it. The agreement was examined by parliament's Joint Standing Committee on Treaties in May 2014, and the committee recommended ratification of the Agreement.<sup>61</sup>

3.46 In its submission and its evidence to the committee, EDO Tasmania called for Australia to ratify the Port State Measures Agreement without further delay. Ms Jess Feehely said ratification 'would be a significant statement by the Australian government of its commitment to deter illegal fishing'.<sup>62</sup> The Law Council of Australia likewise urged Australia to ratify the agreement, stating that it would enhance Australia's international reputation as a responsible fishing nation, as well as providing a basis for greater cooperation with other states to reduce IUU fishing.<sup>63</sup> AFMA also cited encouragement of other states to join the treaty as an opportunity Australia should take to enhance the effectiveness of Australia's activities against IUU fishing.<sup>64</sup>

3.47 Several submissions highlighted the work undertaken against IUU fishing under the auspices of CCAMLR. The 20 Year Strategic Plan also did so, noting the

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58 Australian Fisheries Management Authority, *Submission 11*, p. 7.

59 Australian Fisheries Management Authority, *Submission 11*, pp 4, 8.

60 <http://www.fao.org/fishery/topic/166283/en>

61 Joint Standing Committee on Treaties, *Report 139*, 13 May 2014, pp 23-33.

62 EDO Tasmania, *Submission 8*, pp 3-4; Ms Jess Feehely, *Committee Hansard*, 16 September 2014, p. 11.

63 Law Council of Australia, *Submission 19*, pp 4-5.

64 Australian Fisheries Management Authority, *Submission 11*, p. 12.

successes of the program and Australia's leading role in that regard. Dr Press stated that:

Continued action by the Commission as a collective voice against illegal, unreported and unregulated fishing will need to continue to avoid any resurgence as global market demand for fish increases. Australia's continuing role as a champion in combating illegal, unreported and unregulated fishing will be critical for the Commission and the sustainable management of marine living resources of the Antarctic.<sup>65</sup>

3.48 The committee was advised of broader diplomatic initiatives undertaken to encourage action by other states against IUU fishing, notably in relation to the flag states of vessels involved, and to support countries in the implementation of international standards and processes through education and capacity building. Action through INTERPOL to identify and respond to illegal fisheries operations was another element in the suite of actions taking place.<sup>66</sup>

### *Committee View*

3.49 The committee welcomes advice from ACBPS that with the acquisition of new patrol vessels, it anticipates the re-commencement of patrolling in the Southern Ocean, using the *Ocean Shield*. The committee strongly urges that priority be given to patrolling the Southern Ocean to monitor, deter and respond to transnational crime, particularly IUU fishing.

### **Recommendation 3**

**3.50 The committee recommends that Australia commits to re-commencing maritime patrolling in the Southern Ocean, including a minimum of two 40-day patrols by the *Ocean Shield* in the 2014-15 and 2015-16 financial years.**

3.51 The committee recognises that resourcing for surveillance and patrol is part of the overall question of the nature and management of Australia's maritime assets in the Southern Ocean, which is addressed further in chapter 5.

3.52 Given the apparent constraints on Australia's ability to mobilise vessels for adequate patrolling in the Southern Ocean, in response to both illegal fishing and whaling, the committee believes that exploration of enhanced partnerships for surveillance and patrol is well worthwhile. Principally, the committee endorses the proposal for the pursuit of further international arrangements for joint surveillance and enforcement building on the success of the Australia-France model. New Zealand, South Africa and the United States may represent priority countries for initial consideration in that regard.

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65 AJ Press, *20 Year Australian Antarctic Strategic Plan*, July 2014, p. 58.

66 Australian Fisheries Management Authority, *Submission 11*, pp 8-10.

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#### **Recommendation 4**

**3.53 The committee recommends that Australia explores the possibility of concluding new agreements with neighbouring and like-minded countries to cooperate in patrol and deterrence in the Southern Ocean, based upon the example of the arrangements presently in place with France.**

3.54 The committee notes in that regard, however, that Australia must be prepared to contribute its fair share to any bilateral arrangements, including the extant agreements with France, by allocating appropriate resources to meet this party's commitments to scientific, surveillance and operational collaboration.

3.55 In addition, while the committee recognises that there are limits on feasible cooperation with commercial and non-government entities for law enforcement purposes, the government should continue to identify and maximise any opportunities that may arise for such mutual support.

3.56 The committee was encouraged by the evidence it received regarding the potential of aerial technology to support Australia's security and law enforcement objectives in the southern region. The committee believes that the quality and affordability of technology in this field is likely to experience rapid advancement in coming years. Air and satellite resources, including unmanned aerial vehicles, may prove particularly well placed to support demands such as those faced by Australia to surveil a vast area with limited resources.

#### **Recommendation 5**

**3.57 The committee recommends that the government actively investigates the potential for further use of non-vessel technologies, including consideration of the potential application of new Defence assets, to support law enforcement and border patrolling in the Southern Ocean.**

#### **Whaling**

3.58 Evidence given to the committee on the issue of Southern Ocean whaling repeatedly noted the long-held majority public opinion in Australia against killing whales, and the importance of preservation and conservation of certain whale species which had become endangered due to the proliferation of commercial whaling in the early twentieth century. The committee was also educated about the importance of whale populations to the overall functioning of the Southern Ocean ecosystem, including the continued prosperity of Antarctic fisheries.<sup>67</sup>

#### ***Monitoring and deterrence***

3.59 The position of successive Australian governments against lethal whaling in the Southern Ocean has been clear for many years. In 2008, the Federal Court of Australia affirmed the legal validity of the ban on lethal whaling in the Australian

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<sup>67</sup> See, for example, Ms Sharon Livermore, *Committee Hansard*, 16 September 2014, p. 17.

Antarctic whale sanctuary declared within Australia's Antarctic territory.<sup>68</sup> The 2014 International Court of Justice (ICJ) decision provided further legal ballast to the efforts of this country and others to combat lethal whaling in the broader Southern Ocean.

3.60 However, Australia does not exercise powers of enforcement over non-Australian nationals within its Antarctic EEZ, under a long-established understanding between Antarctic Treaty parties.<sup>69</sup> Dr Greg French from DFAT explained Australia's continued commitment to this approach:

while at times it may appear useful or it would seem opportune to be able to enforce our laws in the Australian Antarctic Territory, including maritime areas adjacent to it, against foreign nationals for particular specific policy purposes, looked at in the broad in terms of the abiding and deep strategic interests Australia has in maintaining the Antarctic Treaty System and through that maintaining our sovereignty over the Australian Antarctic Territory, we believe that it remains the wisest and most prudent course to maintain the current setting of not enforcing our laws against foreign nationals in that area. So it is a very important overlay in the whaling context.<sup>70</sup>

3.61 Mr Jeff Hansen, Managing Director of Sea Shepherd Australia, expressed concern that Australia's concrete activity to monitor and deter whaling within its southern waters had decreased. There had been no vessel patrols in the Southern Ocean during the 2013-14 whaling season, and Mr Hansen said Sea Shepherd's observations suggested that surveillance flights were sporadic and ineffective:

Sending a Customs plane is pretty much like having a helicopter go over a bank to watch the bank robbers pulling money out of a bank; you are just watching a crime taking place...

So it was very disappointing when surveillance flights were sent, because that was \$300,000 spent. That could have been better spent to fuel our fuel tanks, if they were not going to send a vessel.<sup>71</sup>

3.62 Mr Hansen advised the committee that in recent seasons Sea Shepherd vessels had sighted at least one whale killing within Australia's Antarctic EEZ, as well as incidents of Japanese whaling ships transiting Australia's maritime jurisdiction.<sup>72</sup>

3.63 The government has expressed some apparent concern about the direct anti-whaling activities of activist groups such as the Sea Shepherd. In December 2013 the Australian government issued a joint statement with the governments of the

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68 *Humane Society International Inc v Kyodo Senpaku Kaisha Ltd* [2008] FCA 3 (15 January 2008).

69 Department of Foreign Affairs and Trade, response to question on notice following the 26 September public hearing, received 10 October 2014.

70 Dr Greg French, *Committee Hansard*, 26 September 2014, p. 22.

71 Mr Jeff Hansen, *Committee Hansard*, 16 September 2014, p. 12.

72 Mr Jeff Hansen, *Committee Hansard*, 16 September 2014, p. 20.

Netherlands, New Zealand and the United States condemning 'dangerous, reckless or unlawful behaviour' by all parties at sea during the Southern Ocean whaling season, highlighting the risks incurred both to whaling and protest vessels and their crews, and to rescuers sent to assist them. The statement reaffirmed that the respective governments remained 'resolutely opposed' to commercial whaling and would 'continue to engage on this matter'.<sup>73</sup>

3.64 Mr Hansen told the committee that:

our position is that if the government were to do a lot of the work that *Sea Shepherd* is doing in the Southern Ocean we would be happy not to send our vessels down there.<sup>74</sup>

### ***Non-lethal research: making the case***

3.65 Submissions from both government agencies and non-government organisations emphasised the importance of non-lethal whale research both for its inherent value, and also for rebutting the case put forward by Japan and others for lethal 'scientific' whaling. In this respect, the committee's attention was drawn in particular to the valuable work of the Southern Ocean Research Partnership (SORP). SORP is a collaborative effort between 11 countries, launched by Australia in 2008.

3.66 Dr Nick Gales, Chief Scientist in the AAD, described the evolution of the initiative:

In essence, the International Whaling Commission would talk about priorities but it was left in a relatively ad hoc way for members to come back and provide research against those priorities. The notion of the partnership that Australia took to the IWC was to get collective groups of countries in regions together to go quite rigorously through the IWC's processes to ask: what are the actual priorities and how can they be best addressed? We went through that whole process and developed a range of priorities.<sup>75</sup>

3.67 The Australian government invested approximately \$14 million in SORP over five years from 2008-2013, as part of a broader package of funding for non-lethal whale research and related diplomacy totalling \$32 million.<sup>76</sup>

3.68 SORP's research was described as crucial in demonstrating that non-lethal methods were able to obtain all the research information which had been previously cited by Japan and others to justify the 'scientific' slaughter of whales. In doing so, SORP provided the key evidence which resulted in Australia's success against Japan's lethal whaling program in the ICJ. Dr Gales told the committee that:

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73 Department of Foreign Affairs and Trade, 'Joint statement on whaling and safety at sea', Media Release, 20 December 2013.

74 Mr Jeff Hansen, *Committee Hansard*, 16 September 2014, p. 10.

75 Dr Nick Gales, *Committee Hansard*, 16 September 2014, p. 51.

76 International Fund for Animal Welfare, response to question on notice following the 16 September public hearing, received 9 October 2014, p. 3.

We have certainly demonstrated in the development of the techniques we have used that all of the questions the International Whaling Commission has come up with, that it has said are important to be answered for a whole range of issues, even driven by other countries who wish to utilise whales in a different way than Australia or other countries, can be addressed using nonlethal techniques. None of them are value added with the use of lethally acquired data.<sup>77</sup>

3.69 Government funding for future whale research, including SORP, is presently under review, with no confirmed funding beyond 2015. Funding of \$6 million for a major blue whale research voyage planned for 2014 was placed on hold following the 2013 election, and the government stated at that time that future operations would be considered in light of the ICJ decision and the outcomes of the 2014 IWC meeting.<sup>78</sup>

3.70 Ms Sharon Livermore from the International Fund for Animal Welfare (IFAW) told the committee that:

SORP is delivering valuable, best practice, non-lethal research, which demonstrates that whales do not need to be killed in the name of science...

On the back of that success in the world court, it is important that Australia continue to support that non-lethal research. Japan have made their intentions clear to go back. There is funding and there are resources from the Australian government to lead SORP non-lethal whale research in Antarctica, and Japan needs an invitation to join SORP. It is not less of a priority now that the ICJ decision has been made.<sup>79</sup>

3.71 IFAW and other witnesses noted the importance of engaging Japan in the wake of the ICJ decision to positively influence its future decision making in relation to whaling. While diplomatic sensitivities were acknowledged, others noted that a time when diplomatic relations are very strong provides an excellent opportunity for 'some friendly conversation among best friends'.<sup>80</sup>

3.72 One possibility mentioned in relation to encouraging Japan away from lethal scientific research was inviting Japan to join SORP. The Department of the Environment advised the committee that the matter had been raised with Japan (and other countries) by Australian ministers in the past, and such an invitation was most recently made by the Minister for the Environment, the Hon Greg Hunt MP, to Japan's Commissioner at the IWC meeting on 15 September 2014.<sup>81</sup>

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77 Dr Nick Gales, *Committee Hansard*, 16 September 2014, p. 57.

78 Andrew Darby, 'Whale research takes budget hits', *The Age*, 15 May 2014; *Committee Hansard*, 16 September 2014, p. 55.

79 Ms Sharon Livermore, *Committee Hansard*, 16 September 2014, p. 10; p. 13.

80 Ms Sharon Livermore, *Committee Hansard*, 16 September 2014, p. 17.

81 Department of the Environment, response to question on notice following the 16 September public hearing, received 13 October 2014.



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**Committee view**

3.73 The committee welcomes the constructive approach taken historically by Australia to pursue its opposition to lethal whaling through diplomatic, legal and scientific means. The ICJ decision was an important stepping stone toward the abolition of so-called 'scientific' whaling, and the product of significant effort and investment.

3.74 With a partial victory in place, and Japan's active interest in forging its future whaling intentions, now is not the time for Australia to lose sight of the issue or abandon its courage and commitment.

3.75 The committee recognises the legal and practical limits on Australia's ability to prevent lethal whaling through direct intervention in the Southern Ocean. Nonetheless, the physical presence of Australian assets in the Southern Ocean provides a powerful symbol of deterrence as well as a facility for active monitoring of whaling activities. It may also contribute to ensuring the safe and measured behaviour of all other stakeholders who may be present.

3.76 As such, the committee encourages the judicious use of Australia's maritime resources, including the *Ocean Shield*, to undertake monitoring and deterrence as appropriate, should Japan re-commence its 'scientific' whaling program in future seasons.

3.77 Meanwhile, Australia's scientific and diplomatic investment to date should be further exploited, in appropriate ways, to influence Japan toward a more acceptable position on this issue. Australia should continue to play a leading role in internationally collaborative non-lethal whale research, and should encourage Japan's positive engagement in that work.

**Recommendation 6**

**3.78 The committee recommends that the government commits to continued funding of the Southern Ocean Research Partnership for at least a further five years beyond the completion of the current funding in 2015.**

**Recommendation 7**

**3.79 The committee recommends that Australia prioritises the active pursuit of further diplomatic discussions with Japan about its future whale research plans, including extending a formal invitation to Japan to join the Southern Ocean Research Partnership.**

