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using the law to protect the natural and built environment

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Foreign Affairs, Defence and Trade Committee
Department of the Senate
PO Box 6100
Parliament House
Canberra ACT 2600

By email: fadt.sen@aph.gov.au

Dear Madam / Sir,

Australia's future activities and responsibilities in the Southern Ocean and Antarctic waters

EDO Tasmania is a community legal service specialising in environmental and planning law. Given our location in Hobart, where a range of invaluable scientific research is undertaken in relation to ocean management, fisheries and climate change, we welcome the opportunity to comment on the future activities of the Australian government in the Southern and Antarctic Oceans.

We note that the Australian government's submissions to the 2012 United Nations Conference on Sustainable Development advocated for the development of 'a framework for action to mobilise efforts towards a "blue economy"', including improved information about the ecological, economic and social values of the oceans. EDO Tasmania strongly supports efforts to better understand and promote the values of best practice ocean research and management. We encourage the government to continue to advocate for an international framework reflecting this.

Our brief submission makes the following key recommendations:

- In recognition of the significant contribution of research undertaken in the Southern and Antarctic Oceans to global understanding of climate change, fisheries and ecosystem management, adequate resources must be allocated to support these activities. Budget priorities for research, monitoring and surveillance activities should be re-visited when the 20 Year Australian Antarctic Strategic Plan is finalised in the coming months.
- Australia should immediately ratify the *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*.
- As part of negotiations within the Commission for the Conservation of Antarctic Marine Living Resources (**CCAMLR**), Australia should continue to advocate strongly for the adoption of Marine Protected Areas in the East Antarctic region of the Southern Ocean.
- The government should provide resources to facilitate active and effective surveillance programmes in the Southern Ocean to deter illegal, unregulated and unreported (**IUU**) fishing activities. If whaling activities re-commence in the region, surveillance should also be dedicated to monitoring such activities, consistent with previous commitments.
- All fisheries in the Southern and Antarctic Oceans should be managed in accordance with a precautionary, ecosystem-based approach.

These recommendations are discussed in greater detail below.

Research funding

Article 61 of the United Nations Convention on the Law of the Sea (**UNCLOS**) requires signatories to undertake management actions informed by the best available scientific evidence:

61(2). The coastal State, taking into account the best scientific evidence available to it, shall ensure through proper conservation and management measures that the maintenance of the living resources in the exclusive economic zone is not endangered by over-exploitation. As appropriate, the coastal State and competent international organizations, whether subregional, regional or global, shall cooperate to this end.

Australia has historically played a commendable leadership role in Antarctic science. However, recent budget cuts threaten to compromise our capacity to continue to play this role.

Southern and Antarctic Oceans are threatened by overfishing, climate change and acidification. Changes to these ocean ecosystems will have global consequences in terms of carbon cycles and abundance of marine species. We strongly support ongoing research efforts to understand and manage these impacts. Such research will enable the government to better provide for the conservation of the Southern Ocean EEZ, consistent with its obligations under the UNCLOS.

As a general comment, EDO Tasmania notes with concern that funding cuts to Antarctic research agencies and programmes announced in the Federal Budget¹ have pre-empted the completion of the *20 Year Australian Antarctic Strategic Plan*, currently under development and expected to be delivered in the second half of 2014. We strongly recommend that budget priorities be reviewed in light of the final Strategic Plan.

Southern Ocean Research Partnership

The Southern Ocean Research Partnership (**SORP**), a collaborative research initiative between 10 nations, has been a significant source of research towards cetacean conservation and understanding of whale populations since it was established in 2009. Australia has played a critical role in the SORP, providing secretariat services, research expertise and resources to support the important work being done by partner nations.

The work of the SORP was key to the evidence presented in support of the Australian challenge to the Japanese government's whaling programme (JARPA II), and to the decision made by the International Court of Justice in that case. In particular, the demonstration by SORP of the value and viability of non-lethal research methods supported arguments that lethal research methods are unjustified.

EDO Tasmania urges the government to ensure that funding and technical support continues to be available to facilitate the work of SORP and Australia's participation in this important partnership.

Technical and logistical resources

Research funding for scientific programmes (including those conducted collaboratively with private or international bodies) must be sufficient to cover transport and other logistical requirements necessary to undertake the research. EDO Tasmania notes the concerns raised by Australian Antarctic Division (**AAD**) scientists regarding lack of resources to support these activities.²

EDO Tasmania commends the Australian government for its commitment to delivering a new research vessel, the *RV Investigator*, and new ice breaker to support work in the Southern and Antarctic Oceans. However, it is imperative that additional funding be allocated to ensure the vessels are actually deployed, operated at capacity and undertake the tasks they are intended for. Without support to undertake regular field work, scientific research programmes may be undermined.

¹ The budget for the Department of Environment's Antarctic programme has been cut by 15 per cent to \$157 million, and by 26 per cent in subsequent years.

² See, for example, comments from Professor Matt King quoted in Mounster, B. "Antarctic Science on Thin Ice". *The Mercury*, 21 June 2014. Available at <http://www.themercury.com.au/news/tasmania/antarctic-science-on-thin-ice/story-fnj4f7k1-1226961787373>

Sustainability of fisheries

In addition to monitoring IUU fishing (discussed below), EDO Tasmania urges the Commonwealth government to ensure adequate resources are allocated to research programmes to provide for the sustainable management of fisheries in the Southern Ocean, and to cooperate with international monitoring efforts.

Sub-Antarctic toothfish fishery

The Heard Island and McDonald Islands toothfish fishery achieved Marine Stewardship Council certification as a sustainable fishery in March 2012, supported by the AAD and CCAMLR. The Macquarie Island fishery was also certified in May 2012.

A number of concerns have been expressed by interest groups regarding the veracity of sustainable catch limits set for the fishery. Significant research and development efforts by the AAD are being used to collect and analyse information to assist with sustainable management.

Without efforts to monitor the sustainability of fishing activities and to adapt management in response to monitoring results, the integrity of the accreditation process will be undermined. It is important to consumers, industry and ecosystem managers that accreditation processes have credibility.

EDO Tasmania encourages the government to ensure adequate resources are dedicated to continue and expand research and monitoring efforts to maintain the integrity of the fishery, review catch limits and ensure that the fishery is managed sustainably.

Krill fishery

In response to questions asked during Senate Estimates, the Australian Fisheries Management Authority confirmed that it had not undertaken or commissioned any study into the sustainability of the Antarctic Krill Fishery.³ EDO Tasmania encourages the government to allocate resources to undertaking research to establish sustainable catch limits and management practices to protect the integrity of this fishery.

Ratifying the Agreement on Port State Measures

Illegal, unregulated and unreported fishing is recognised globally as a threat to the sustainable management of fisheries and the conservation of marine ecosystems. It is in Australia's strategic interests to engage in efforts to deter unlawful fishing in the Southern and Antarctic Oceans. Deterring these activities will result in greater security for the Australian fishing industry and will also strengthen international efforts to protect marine resources. The certification of the sub-Antarctic toothfish fishery (discussed above), a fishery historically plagued by IUU fishing, demonstrates the benefits of efforts to address IUU fishing.

The first global agreement aimed at addressing IUU fishing was finalised by the United Nations' Food and Agriculture Organisation in 2009. The *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* (the **Agreement**) sets out a range of measures for port states to deal with IUU fishing, including denying entry and requiring inspections.

Australia signed the Agreement on 27 April 2010, but is yet to take steps to formally ratify its commitment. We note that the US Senate unanimously approved the Agreement on 3 April 2014, and President Obama emphasised at the recent *Our Oceans* conference US's commitment to strengthening and harmonising measures to deter IUU fishing internationally.⁴

³ Rural and Regional Affairs and Transport Legislation Committee, *Answers to Questions on Notice* Supplementary Budget Estimates November 2013, Question 346, Available:

http://www.apf.gov.au/-/media/Estimates/Live/rrat_ctte/estimates/sup_1314/ag/AFMA.ashx

⁴ See, for example, PEW Trust media release 17 June 2014. "Pew applauds Obama Administration's new focus on illegal fishing." <http://www.pewtrusts.org/en/about/news-room/news/2014/06/pew-applauds-obama-administrations-new-focus-on-illegal-fishing>

EDO Tasmania considers that the obligations under the Agreement are consistent with Australia's existing obligations under UNCLOS to cooperate to conserve living marine resources (Articles 61 and 62). We support the recent recommendation of the Joint Standing Committee on Treaties that the Agreement be ratified.⁵ Ratification will facilitate better cooperation between Australia and other state parties regarding illegal activities and be a strong statement of Australia's commitment to sustainable fishing.

As the Joint Standing Committee noted in its report:

The value of this Treaty lies in its international application. As this Agreement builds momentum, IUU fishing vessels will be increasingly excluded from utilising port facilities and their products will not have ready access to world markets. The enactment of the Agreement will send a clear message to the international fishing industry, that compliance is a necessary part of doing business.⁶

EDO Tasmania strongly supports this view and urges Australia to immediately take action to ratify the Agreement.

Marine Protected Areas in the East Antarctic region

EDO Tasmania strongly supports the 2010 proposal, developed by Australia, France, and the European Union, to declare a group of seven marine protected areas (**MPAs**) within the East Antarctic region of the Southern Ocean. The proposal recognises the unique biodiversity and important values of these ecosystems, and the research opportunities presented by comparative conservation.⁷ The scientific rigour and biodiversity significance of the East Antarctic MPAs proposal has been endorsed by CCAMLR at the 2011 annual meeting and the Special Meeting of the Scientific Committee in 2013⁸.

Despite this recognition, and ongoing efforts by the Australian delegates to promote the proposal, consensus was not reached at the November 2013 meeting.⁹

EDO Tasmania acknowledges the ongoing advocacy by the Australian delegation to try to achieve the consensus. We urge the government to maintain its commitment to the East Antarctic MPA proposal and to continue in its efforts to secure a binding legal agreement at CCAMLR's next meeting in October 2014.

Surveillance

As outlined above, EDO Tasmania strongly supports efforts to address IUU fishing activities in the Southern Ocean. Consistent with the *Australian National Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*¹⁰, we consider that active surveillance efforts are invaluable for deterring IUU fishing. We are disappointed by the apparent reduction in surveillance activity, compared proactive surveillance efforts between 2003 and 2009.¹¹

EDO Tasmania urges the Commonwealth Government to resume active surveillance and to work cooperatively with INTERPOL to establish reporting mechanisms and facilitate investigations of IUU fishing under Project SCALE.¹²

EDO Tasmania commends the previous Australian government for its commitment to combatting commercial whaling, including through prosecuting the case against Japan's whaling programme

⁵ Joint Standing Committee on Treaties, *Report 139 – Chapter 4* at 4.37

⁶ Commonwealth Government Joint Standing Committee on Treaties. *Report 139 – Chapter 4*, p33. Available at www.aph.gov.au/Parliamentary_Business/Committees/Joint/Treaties/Treaties_tabled_11_December_2013/Report_139, accessed 20 June 2014.

⁷ See for instance: <http://www.antarctica.gov.au/law-and-treaty/ccamlr/marine-protected-areas>

⁸ Commission for the Conservation of Antarctic Marine Living Resources, *Report of the Thirty-Second Meeting of the Commission*, November 2013 at 7.34. Available: <http://www.ccamlr.org/en/system/files/e-cc-xxxii.pdf>.

⁹ *Ibid* at 7.32.

¹⁰ Department of Agriculture, Fisheries and Forestry, *Australian National Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* July 2005 at p 49. Available: <http://www.daff.gov.au/fisheries/iuu/plans-of-action>.

¹¹ See for instance: The Auditor-General, Audit Report No 6 2008-09 Performance Report, *Illegal, Unreported and Unregulated Fishing in the Southern Ocean*. Available at:

http://www.anao.gov.au/~media/Uploads/Documents/2008%2009_audit_report_06.pdf.

¹² <http://www.interpol.int/Crime-areas/Environmental-crime/Projects/Project-Scale>

(JARPA II) in the International Court of Justice. We note that the current government has also indicated its support for this position.

We understand that the Japanese government intends to resume whaling activities in future seasons. We consider that surveillance is essential to ensure that the International Court of Justice's ruling is complied with.

EDO Tasmania notes with concern that the principal vessel dedicated to surveillance efforts in the Southern Ocean, the *ADV Ocean Shield*, did not conduct any patrols in the Southern Ocean in 2013.¹³ To facilitate more effective oversight of whaling and IUU activities, EDO Tasmania urges the government to commit resources to implement a more active surveillance programme for the Southern Ocean. Without appropriate surveillance of whaling activity, our international reputation in upholding the Whaling Convention is at risk.

Ecosystem-based marine management

The Australian Committee of the International Union for the Conservation of Nature (ACIUCN) has recommended that the Australian government "embrace and encourage a broader adoption of the ecosystem-based marine management approach of the Antarctic Treaty System as a mechanism to shift away from sector-based management." EDO Tasmania strongly supports this recommendation and believes that an ecosystem-based management approach is consistent with our obligations under both the Antarctic Treaty and the Convention on Biological Diversity.¹⁴

EDO Tasmania understands that the Australian government intends to present a comprehensive overview of its precautionary ecosystem-based approach to the management of the marine environment at Heard Island and the McDonald Islands to the CCAMLR Scientific Committee in 2014.¹⁵

EDO Tasmania strongly supports efforts to adopt an ecosystem-based precautionary management approach to all fisheries in the Southern Ocean.

We appreciate the opportunity to make these brief comments. If the Committee would like any further information regarding these comments, please contact me on

Kind regards,
Environmental Defenders Office (Tas) Inc

Jess Feehely
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***EDO Tasmania gratefully acknowledges the assistance of Rafael Szumer,
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¹³ *Australian Customs Annual Report*, p2. Footnote 11 notes that the 229 patrol days logged by the vessel were all in northern waters. Available at <http://www.customs.gov.au/aboutus/annualreports/2013/p2e.html>

¹⁴ Convention on Biological Diversity, COP 5 Decision V/6. Available: <http://www.cbd.int/decision/cop/?id=7148>

¹⁵ Scientific Committee for the Conservation of Antarctic Marine Living Resources, *Report of the Thirty-Second Meeting of the Commission*, November 2013 at 3.120. Available: https://www.ccamlr.org/en/system/files/e-sc-xxxii_1.pdf