

Agreement with France on Cooperative Enforcement of Fisheries Laws

Background

- 4.1 The purpose of the *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* is to tackle illegal, unreported and unregulated (IUU) fishing in an area known as the Area of Cooperation. This comprises the territorial seas and exclusive economic zones surrounding the Australian territory of Heard Island and the McDonald Islands and the French Southern and Antarctic Territories.¹
- 4.2 The agreement builds upon the existing Cooperative Fisheries Surveillance Treaty² between Australia and France, which entered into force in 2005.³ Article 2 of Annex III of that treaty provides that the Parties may conclude agreements or arrangements on law enforcement operations. This agreement will formalise previous ad hoc enforcement activities undertaken with France.⁴

1 National Interest Analysis (NIA), para 4.

2 The full title of the treaty is Treaty between the Government of Australia and the Government of the French Republic on Cooperation in the Maritime Areas Adjacent to the French South and Antarctic Territories (TAAF), Heard Island and the McDonald Islands.

3 Mr Roland Pittar, *Transcript of Evidence*, 15 March 2010, p. 16.

4 NIA, para 8.

Reasons to take treaty action

- 4.3 Close cooperation with other countries is considered by the Government to be one of the most effective ways to enforce Australia's fisheries laws in the remote Southern Ocean.⁵ The Committee has also previously noted the importance of cooperative surveillance and enforcement activity to address IUU fishing in its consideration of the Cooperative Fisheries Surveillance Treaty in 2004.⁶
- 4.4 IUU fishing in the Area of Cooperation is a serious threat to the marine environment and the sustainability of valuable fish stocks that are legitimately harvested by fishing operators.⁷ Australia and France, with neighbouring exclusive economic zones, have a common interest in protecting the fisheries resources within these zones. Australia is also committed to ensuring these resources are managed in a sustainable manner.⁸
- 4.5 Mr Roland Pittar of the Department of Agriculture, Fisheries and Forestry told the Committee that the cooperative enforcement activities envisaged by this agreement will greatly improve efforts by both countries to prevent, deter and eliminate IUU fishing in the Southern Ocean.⁹ Indeed, it appears that patrols since the treaty's signing have already deterred illegal activity in Australian and French waters.¹⁰
- 4.6 In addition to protecting fisheries resources, the agreement will also contribute to protecting the world heritage area of Heard Island and the McDonald Islands, which is significant as an intact ecosystem free from introduced species. Accordingly, Australia has implemented strict fisheries management laws, designed to help protect the area's world heritage values.
- 4.7 According to Mr Paul Murphy of the Australian Fisheries Management Authority, the threat posed by IUU fishing to the values of this area:
- ...is very serious. The licensed operations that Australian vessels carry out in the [Heard Island and McDonald Islands] region are probably the strictest licenses that we have for any Australian fishery. All processing must be done on board. The fishermen are
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5 NIA, para 7.

6 JSCOT Report 63.

7 NIA, para 5.

8 NIA, para 6.

9 Mr Roland Pittar, *Transcript of Evidence*, 15 March 2010, p. 17.

10 Mr Paul Murphy, *Transcript of Evidence*, 15 March 2010, p. 17.

not allowed to release offal into the ocean. They cannot release vegetable matter such as brassicas in case the island becomes seeded with exotic pests. It is very serious, and the thing about unregulated or illegal fishing is that they are not bound by any license conditions.¹¹

The treaty

- 4.8 The treaty defines ‘cooperative enforcement’ as fisheries enforcement activities such as the boarding, inspection, hot pursuit, apprehension, seizure and investigation of fishing vessels that are believed to have violated applicable fisheries laws, undertaken by one Party in cooperation with the other Party.¹²
- 4.9 Such activities may only be undertaken when there is a ‘Controller’ on board an authorised vessel. A Controller is an officer of one Party who is authorised to exercise cooperative enforcement activities on the authorised vessel of the other Party.¹³
- 4.10 A practical example of cooperative enforcement would be a patrol undertaken by a French vessel in Australian waters around Heard Island and the McDonald Islands with an Australian fisheries officer on board. If a vessel was sighted and suspected of undertaking IUU fishing activities, the Australian officer would undertake action to enforce Australian fisheries laws with the assistance of French officers. The same would also occur in a situation where an Australian vessel was undertaking patrols in French waters with a French officer on board.¹⁴
- 4.11 The other provisions of the agreement include requirements that:
- enforcement activities be undertaken in conformity with the applicable law in the maritime zone in which the activities are undertaken;¹⁵
 - Controllers cannot be required to conduct activities contrary to laws of the Controller’s country;¹⁶

11 Mr Paul Murphy, *Transcript of Evidence*, 15 March 2010, p. 18.

12 NIA, para 9.

13 NIA, para 10.

14 Mr Roland Pittar, *Transcript of Evidence*, 15 March 2010, p. 17.

15 NIA, para 10.

16 NIA, para 11.

- Parties must hand over vessels, persons, equipment and any documents seized by one party in the maritime zone of the other Party as soon as possible; and
- Parties must also use best efforts to ensure that fishing vessels considered to be fishing illegally are apprehended and that illegal catches are seized or denied transshipment.¹⁷

4.12 The seizure of a vessel is considered the biggest deterrent to illegal activities.¹⁸ The Committee was informed that no illegal activities have been sighted in either Australian or French waters since the agreement was signed. The most recent seizure of vessels was in 2004, when two vessels were seized, one in Australian waters and the other in French waters.¹⁹

Hot pursuit

4.13 Both Parties, as Parties to the United Nations Convention on the Law of the Sea (UNCLOS), may conduct a hot pursuit beyond the boundaries of their exclusive economic zone of vessels suspected of illegal activity. The proposed treaty also allows the authorised vessel of one party to take over a hot pursuit commenced by an authorised vessel of the other Party.²⁰

4.14 Dr Greg French of the Department of Foreign Affairs and Trade informed the Committee of the importance of the hot pursuit provisions in this agreement:

...to develop what we sometimes call a 21st century definition of hot pursuit whereby, critically, it allows the possibility of using remote-sensing types of surveillance-that is, satellites or pilotless aerial vehicles-to commence and continue hot pursuit.²¹

4.15 This extends the provisions of UNCLOS, which are taken to require that a direct sighting be made in order to commence and continue hot pursuit. Dr French suggested that this aspect of the treaty is contributing to the progressive development of international law:

...in a way which helps to tip the balance in favour of conservation over the criminals...²²

17 NIA, paras 13, 15.

18 Mr Paul Murphy, *Transcript of Evidence*, 15 March 2010, p. 17.

19 Mr Paul Murphy, *Transcript of Evidence*, 15 March 2010, p. 17.

20 NIA, para 16.

21 Dr Greg French, *Transcript of Evidence*, 15 March 2010, p. 18.

22 Dr Greg French, *Transcript of Evidence*, 15 March 2010, p. 18.

Costs

- 4.16 The agreement provides that the costs incurred during cooperative enforcement activities shall be borne by the country undertaking them. Further, any proceeds from the sale of vessels, fishing equipment, fuel and lubricant, or catch which has been forfeited following cooperative enforcement activities shall belong to the party whose laws are believed to have been violated.
- 4.17 The National Interest Analysis indicates that the treaty may result in savings for Australia over the long term by providing it with an opportunity to extend its presence in the Southern Ocean.²³

Implementation

- 4.18 The *Fisheries Management Act 1991* will be amended to give effect to parts of the treaty.
- 4.19 The Committee appreciates that, consistent with long-standing practice, the Minister for Agriculture, Fisheries and Forestry indicated his intention to delay introduction of amendments to give effect to this treaty until after the Committee had reported its findings.

Conclusion and recommendation

- 4.20 The Committee recognises the difficulties associated with enforcing fisheries laws in the remote Southern Ocean and the advantages arising from cooperative action with other countries to address IUU fishing. It appears to the Committee that the benefits of a greater presence by both Australian and French vessels in this region are already being observed. The Committee therefore supports binding treaty action being taken.

²³ NIA, para 19.

Recommendation 3

The Committee supports the *Agreement on Cooperative Enforcement of Fisheries Laws between the Government of Australia and the Government of the French Republic in the Maritime Area Adjacent to the French Southern and Antarctic Territories, Heard Island and the McDonald Islands* and recommends that binding treaty action be taken.