

Revised Commonwealth Fisheries Bycatch Policy

Submission No.: 09

Submission by: WWF
TRAFFIC
Australian Marine Conservation Society
Human Society International

Submission:

INTRODUCTION

WWF-Australia, TRAFFIC, the Australian Marine Conservation Society and Humane Society International welcome the opportunity to provide a submission in response to the Commonwealth Fisheries Bycatch Policy (BP) DRAFT for Consultation: March 2017.

GENERAL COMMENTS

Our organisations collectively engaged significantly in the 2012/13 HSP and BP Reviews and express our alarm at the proposed weakening of the HSP and the BP both against the original 2007 version and against Review outcomes. The proposed draft BP does not represent a further advance and in fact represents a step backwards in the progress that had been made around discard management.

Implementation of the new Policy must be accompanied by an agreed monitoring program which includes the establishment of a baseline on discards on a fishery basis to provide for the ongoing assessment of progress against the objectives of the Policy. To that end, our references to 'bycatch' throughout the document are used for ease of comparison to the current draft, but should be considered in that context that they are actually 'discards'.

In relation to the proposed objectives of the revised BP there is an inherent tension between the overall objective of avoiding bycatch and the adoption of a risk based approach. We support the adoption of a risk-based approach, but inevitably that means that, for low risk discard/bycatch species, attempts to minimise discards/bycatch may not be considered so necessary. We recommend that a risk-based approach should not be at the expense of an overarching objective to avoid and reduce all discards/bycatch – mitigation and avoidance are paramount. This must be made quite explicit in the revised policy and the objective of the revised policy must reflect this clearly and align with the HSP with respect to minimising discards. As currently presented, the objective/sub-objectives lack clarity on this point.

The objective/sub-objectives must reinforce obligations under the EPBC Act to avoid capture of all protected species which includes listed marine and migratory species, as well as threatened species. We also note that risk is not solely a function of the abundance of the species. Principles 2 of the EPBC Act Guidelines for Sustainable Fisheries states that "Fishing operations should be managed to minimise their impact on the structure, productivity, function and biological diversity of the ecosystem."

AFMA also needs to be mindful of reputational risks to industry and its social licence to operate. There should also be an objective to minimise animal suffering that is reflective of community ethics and concern, clearly seen from the community response to the Geelong Star and its recent bycatch issues.

Our organisations remain very concerned with the consistent thread throughout the document of the need to temper the management of discards/bycatch to meet the capacity of the fishing

industry to pay (reflecting the Government's commitment to also cut red tape). While we fully support the need for management of all aspects of the catch to be cost-effective and efficient, we cannot support an approach that allows commercially unimportant species to be subject to higher levels of risk, simply because of the costs involved.

We note with significant concern that the supporting guidelines to the BP were not available for consideration in the development of this submission. We understand they will be subject to a separate consultation process. The separation of these two parts to the management framework makes the consultation and review process extremely inefficient. To that end, we request that our submission to the BP be considered an interim position only. This interim position could be used to refine the draft BP and also inform the revision of the guidelines. Importantly, we would suggest that both the BP and guidelines document be formally referred to us again for full review of the entire discard/bycatch management framework. In addition, for all parts of the BP that are to be further articulated in the guidelines, we suggest that the BP should say that – i.e. “in accordance with the guidelines” to ensure clarity over whether further prescription is expected from the guidelines.

As we have stated in previous submissions, we believe that in fact the policy should be called the ‘Commonwealth Fisheries Discard Policy’, and deal with everything not retained, including TEP species. That nomenclature would overcome any confusion about which part of the catch the policy deals with (assuming that the HSP covers retained species, which it appears to be). Further, we believe, such terminology more is a more honest and transparent acknowledgement of the problem that the policy is addressing.

INDUSTRY AND COMMUNITY CONFIDENCE

The BP as currently proposed will not provide assurance in delivering the requirements of the HSP which clearly states in Section 1 para 2 ‘Harvest strategies consistent with this Policy provide industry and the Australian community with confidence that Commonwealth commercial fish stocks are being managed for long-term ecological sustainability and economic viability’. This confidence can only be delivered if the process for setting and implementing the harvest strategies and managing the impacts from fishing (bycatch/discards), and measuring their success or otherwise is transparent, and that there are appropriate channels for engagement. There are a number of instances in the draft BP where the intent will not deliver this confidence, and to that end the following changes are recommended to strengthen the BP:

- Under Australia's Fisheries Management Act 1991, AFMA's responsibilities include: “ensuring that the exploitation of fisheries resources and the carrying on of any related activities are conducted in a manner consistent with the principles of ecologically sustainable development and the exercise of the precautionary principle, in particular the need to have regard to the impact of fishing activities on non-target species and the long term sustainability of the marine environment”. While the precautionary principle is mentioned in the context of applying a risk based framework (Section 3.2 paragraph 2), it is a fundamental principle and should be included in Section 1 in the context of the objectives of the BP and tangibly applied in the BP settings. At the moment it is not and we highlight the areas where additional work is required to do this in our detailed comments against each section of the BP.
- As noted in our HSP submission, the capacity of any ecosystem to deliver long-term positive economic and social outcomes depends first and foremost on its ecological integrity. While it may be politically or financially expedient to compromise ecological integrity for the sake of economic and social gains in the short term, such benefits will not be sustainable over the longer term. In order to protect marine resources and provide confidence to the industries and communities that depend on them, EBFM objectives should be a cornerstone of all fisheries legislation. Moreover, because of the fundamental importance of ecological integrity to economic productivity, we believe that ecological objectives should be paramount, and that it is inappropriate for political, social or economic considerations to

outweigh ecological requirements. It is our strong view that the environmental objective in the HSP and BP must be prioritised over the economic objective. The alternate approach being proposed in the draft HSP flows through to the approach being proposed in the BP – which prioritises management based on the cost to industry in adopting measures more than addressing legislative obligations and building industry and community confidence. This view is supported by the statement in the latest Commonwealth statement on Fisheries Policy (DAFF, 2003) that reads “..some objectives may be given an additional emphasis, if such a focus will ensure the long-term ecological sustainability of Commonwealth fisheries resources”. Net economic returns can only be maximised in the long term by ensuring that all fisheries resources are managed sustainably and this includes how discards/bycatch and TEP interactions are managed.

- We support annual reporting against the BP in general from the outset (Section 4.4 relating to review and reporting). This must be done through the establishment of KPIs set prior to the endorsement of the BP, together with agreed units of measurement and identification of thresholds (e.g. what will be measured, what is good and what is bad). A strategic review of implementation at the 3 year mark would be appropriate. Five years is too long for a strategic review of policy settings of this fundamental importance. There should be consistency across both the HSP and BP with respect to reporting timeframes.

As fisheries are a public resource, it is realistic to acknowledge that the public will form opinions and make decisions as to how fish resources and the impacts of fishing should be managed. Under the Fisheries Administration Act 1991, Section 6 Objective (d) states that an objective of AFMA is “ensuring accountability to the fishing industry and to the Australian community in the Authority’s management of fisheries resources.” This objective refers to the social license responsibilities of AFMA to the Australian community and should not be ignored in the BP. We would argue that in some cases, the public has a right to be concerned and that it is the reality rather than the perception that the revised bycatch policy must address. Recent events with the Geelong Star and the Small Pelagic Fishery have shown a growing level of interest and understanding of how fisheries and its environmental impacts are managed in Australia. What this situation clearly showed was that the community does not tolerate impacts and harm on threatened, endangered and protected species. The community’s intolerance of impacts and harm to marine wildlife also relate to ethics and welfare and will not be limited to TEP species. It is unclear how the BP seeks to address the issue and manage the risks associated with social licence. We would encourage the Australian Government to work with us to incorporate this important factor into the BP.

SPECIFIC COMMENTS

Introduction (Section 1)

There is inconsistency between the HSP and the BP in Paragraph 1, sentence 2 which states that “For commercial fishing, one of the most direct and visible impacts from the harvest of commercial species is the unintentional catch of species not retained—known as ‘bycatch’.” The HSP has a definition of bycatch in Table 1 as “A species that is not usually retained.” That would imply that it is not usually, but maybe sometimes. The sentence needs to be amended to ensure consistency between the HSP and the BP definition.

Paragraph 1, sentence 2 makes the comment that bycatch “is in many cases unavoidable”. Bycatch can be avoided by not fishing and we would suggest the words be changed to ‘some level of bycatch is an unavoidable consequence of many, but not all, forms of fishing’. Where the situation for a bycatch species is critical and bycatch of that species is unavoidable, fishing should cease.

We find the second paragraph somewhat concerning. The focus of any discard/bycatch policy should first and foremost be on reducing discards/bycatch. Paragraph 2 focuses instead on assessment, management, monitoring and reporting and cost effectiveness. In building industry

and community confidence, we believe it is important that this paragraph be reworded to clarify the overall focus of the BP is on minimising discards/bycatch first and foremost.

The final sentence in paragraph 5 states “Where appropriate, the Commonwealth may look to engage with these sectors on bycatch management.” We are supportive of this approach however would also expect consideration of the cumulative impact of all forms of fishing mortality, including cryptic mortality of discards/bycatch species to be included and stated as such in the Policy here.

What is bycatch (Section 1.1)

The HSP requires minimising of discards which contradicts the bycatch definition provided in paragraph 1. How in practice should this work? For example, if a fisher lands a gurnard which costs as much to retain as he can sell it for, effectively making no profit from it, yet is required to minimise discards how does the BP apply in this instance? The definition provided in the HSP glossary states that bycatch are “Species that physically interact with fishing vessels and/or fishing gear which are not usually kept by commercial fishers and do not make a contribution to the economic value of the fishery.” It would appear that the two policy documents need to be reviewed together to ensure consistency in definitions as well as application.

Under the definition statement relating to bycatch and interaction it states that this is “based on catch history and landing data”. Clarity is required in the guidelines as to how this data will be used. For example – will it require validated logbook data through observers or only fisher logbooks? As AFMA would be aware there remain ongoing issues with fishers not recording interactions with TEP species, as those now using e-monitoring are revealing for dolphin interactions between GHAT fishers and dolphins in Bass Strait. To that end, the reasons provided for inconsistency in reporting of bycatch in sentence 3 should be extended to also include “because fishers do not report it”.

Scope (Section 1.2)

Paragraph 1 states “The government (including the Australian Fisheries Management Authority) must implement decisions taken by all relevant regional fisheries management organisations and other international arrangements that Australia is a party to, except where Australia has made a permissible reservation in relation to the decision. Through these forums, Australia will continue to pursue the adoption of bycatch measures that are consistent with this Policy and domestic management.” We note with much concern that the reservations that Australia has entered into to date for the Convention of Migratory Species (CMS) are inconsistent with the EPBC Act and how it deals with CMS listed species, and undermine international cooperation to conserve shark species. We provide more guidance on international fisheries obligations in the HSP submission. It needs to be made clear however in the BP that “domestic management” includes compliance with legislative obligations under the EPBC Act.

Paragraph 4 of this section discusses the public accountability of recreational fishing, implying that the national code of practice for recreational fishers provides them with public accountability. We disagree with this statement, as most recreational fishers would not even know that this code exists. Recreational fishers would only be accountable where the State/Territory has a regulation in place which applies to discards/bycatch or TEP species, such as great white sharks, grey nurse sharks, whales etc.

Paragraph 5 of this section states that byproduct is managed under the HSP. This is incorrect according to Table 1 in the HSP which states it is “Not managed to a target as by definition byproduct species make a minor contribution to the fishery.” We disagree with this statement and have noted so in our submission on the HSP. All species fished should be managed consistently to minimise ecological impacts [on the basis of risk and vulnerability] and not be exposed to the threat of recruitment failure.

Objectives and key principles (Section 2)

It is concerning that the objective of the BP is “to minimise fishing-related impacts on bycatch species” only. We would expect that the objective should be to not just minimise impacts but also to minimise interactions with bycatch species, taking a more holistic view and considering the obligations of AFMA under the Fisheries Administration Act 1991 and the fishing industry under the EPBC Act 1999. This will also directly relate to less discarding.

The first bullet states that AFMA will “draw on best-practice approaches to avoid or minimise bycatch, and minimise the mortality of bycatch that cannot be avoided.” Aspirationally, the goal should be to reduce discards/bycatch to as close to zero as possible for ALL discards/bycatch. As this bullet is written now it encourages a culture of complacency over discards/bycatch that is difficult to mitigate for, instead of encouraging innovation to keep improving discard/bycatch mitigation. We suggest it be reworded. Discards/bycatch should be managed to at least the same level as retained species - that is, at least to BMSY. While it is appropriate that proxies would be required and discards/bycatch potentially classified as low risk under the ERA, it means that the ERA must direct appropriate data collection etc so that species vulnerability and risk is effectively considered. It is also important to recognise in the BP that discards are an intolerable waste and therefore need to be either retained or further minimised by ensuring that fishers MUST have a program of adopting best practice mitigating measures.

The second bullet point which states “*manage fishing-related impacts on bycatch species to ensure that populations (i.e. discrete biological stocks) are not depleted below a level where the risk of recruitment failure is regarded as unacceptably high*” is not suitable for discards/bycatch, particularly TEP species. It is inappropriate to have a threshold for the discards/bycatch of TEP species. Management of TEP discards/bycatch should aim for zero mortality and impact and certainly seek to ensure risks are mitigated well before we get into the realm of recruitment failure for TEP populations. It is important to note that not all TEP populations are discrete biologically - applying that as a threshold is not precautionary. TEP populations should not be referred to as stocks. We recommend that a separate bullet be developed relating specifically to TEP interactions/discards/bycatch.

The third bullet states that “*where fishing-related impacts have caused a bycatch population to fall below this limit, management arrangements must be implemented to support those populations to rebuild to biomass levels above that limit.*” Again this is an inappropriate limit for TEP species and the ecological, management and legislative differences with TEP species must be acknowledged. The goal should always be to avoid TEP species discards/bycatch and to minimise impacts so as to maintain or improve the conservation status (and reduce suffering). This bullet also highlights a substantial difference between the HSP and BP. Here, it refers to having a stock at such a low level it is “*...below a level where the risk of recruitment failure is regarded as unacceptably high*” and requires rebuilding to above BLIM. This does not appear to be consistent with being maintained 90% of the time above BLim.

Paragraph 3 discusses key principles to which this BP applies, however does not refer to the precautionary principle. Under the *Fisheries Management Act 1991*, AFMA has a responsibility to “*ensuring that the exploitation of fisheries resources and the carrying on of any related activities are conducted in a manner consistent with the principles of ecologically sustainable development and the exercise of the precautionary principle, in particular the need to have regard to the impact of fishing activities on non-target species and the long term sustainability of the marine environment*”. Likewise, an ecosystem based approach is also required and again we refer to the EPBC Guidelines for Sustainable Fisheries which require a precautionary approach. This paragraph should be amended to also refer to these fundamental principles as they relate to discards/bycatch.

The first sentence in paragraph 3 refers to ‘unacceptable risk’. This phrase has not been defined and requires clarification in its meaning, and as to how it is determined and under whose judgement? The second sentence refers to consideration of ‘available science, evidence and

information'. This statement ignores the precautionary approach and the sentience of animals and animal welfare considerations. Under objective (d) of the Fisheries Administration Act 1991, AFMA has an obligation to the Australian community and therefore public concern to reduce suffering. Ethics and public expectations (social license) should not be ignored. The last sentence of paragraph 3 states *"The risk of long-term recruitment failure for bycatch species (as a consequence of fishing mortalities) must not be greater than that for commercial species as prescribed in the Harvest Strategy Policy"*. We do not believe the qualification 'as a consequence of fishing mortality' should be included. ALL impacts need to be considered when determining management responses. Again the intent of this sentence is inappropriate for TEP species.

In paragraph 4 it states *"Bycatch management should be practicable and cost-effective, while reporting, monitoring and performance evaluation should be central considerations."* We agree that this is definitely desirable because mitigation needs to be workable and if it is cost effective it is more likely to have compliance. There will also however, be times when discards/bycatch is so damaging that fishing closures (spatial or temporal) are necessary, for example Australian Sea Lions and dolphins and the GHAT fishery in South Australia. This approach will be effective and necessary to fulfil legislative obligations to protect listed species, but is not necessarily going to be cost effective for fishers in the short term. We believe that effectiveness also needs firstly to be determined in terms of protection and conservation in a way that is independent of cost considerations. The BP should be amended to incorporate this intent. Likewise, reporting in this instance should be mandatory, not purely a central consideration.

Species categorisation (Section 3.1)

We refer to our comments raised under the HSP relating to the categorisation of species for the HSP and BP.

The *Fisheries Management Act 1991* requires, among other things, that *"the exploitation of fisheries resources and the carrying on of any related activities are conducted in a manner consistent with the principles of ecologically sustainable development (which include the exercise of the precautionary principle), in particular the need to have regard to the impact of fishing activities on non-target species and the long term sustainability of the marine environment"*. There is no legislative basis, therefore, for applying lower management standards to byproduct or discard/bycatch species. Management of these species must be subject to the same standards and approaches applied to target species under the HSP and to that end managed based on vulnerability and risk, rather than by commercial value.

Having the categorisation (based on some notion of level of harvest) as the basis for most of the management is flawed. The level of management should be based on factors of vulnerability related to the biology of the species and risks based on the proportion of take of the population. A species that is not caught often and therefore classed as discards/bycatch may have extremely vulnerable life history traits meaning that it should be managed at a higher level. Also regarding the harvest level, a species that is caught in high numbers may actually be part of a large population so the high harvest is not a significant risk. Conversely a species maybe caught in low numbers and from a small population (notwithstanding that population size is not the only consideration in judging risk). Under the proposed BP these more vulnerable species could have no target level offered to them and presumably no monitoring and/or other management. This is inconsistent with the Ministerial statement of 2005 which requires AFMA to *"avoid further species' from becoming overfished in the short and long term"*.

Paragraph 3 in the BP (and paragraph 3 of the HSP in the same section) discusses the factors that would cause a fish stock to transition between the suggested categories. While it is understood how these factors impact on the economic performance of a fishery, it is unclear how these change the environmental decisions made around a species. It is overfished whether it is in demand or not and management should react appropriately. Environmental factors should also be included in the BP and further clarification provided in the guidelines to both policies.

It is unclear why 'value' rather than 'volume' of the catch is being used to determine categories. This is not precautionary as it sets it up for species of low value to be afforded low management, even if the volumes of catch are higher, thereby creating the high risk. From a risk and vulnerability perspective, this is not appropriate. It appears that the economic objectives are being prioritised over the more important and underlying basis of the fishery – environmental objectives. We have also commented on this in our HSP submission.

General bycatch (Section 3.1.1)

The last sentence of paragraph 1 states "*General bycatch are not managed to a target reference but above a limit reference point with management seeking to achieve the objectives of this policy.*" It is unclear how this would be done where there is no or insufficient data about the population levels to start with. The precautionary principle must come into play in determining the management response in data deficient instances and should be reflected in this paragraph. It is our understanding that ALL species are afforded the protection of the Ministerial Statement and to that end the ERA process should be aiming for all species to be at low risk.

Protected (Section 3.1.2)

The last sentence of this paragraph states "*Noting there are a range of levels of threatened listings for species (including vulnerable, endangered, critically endangered, or conservation dependent) management responses should be in proportion to the risk fishing poses to the species, taking into consideration its conservation status and subject to the legislative requirements listed above.*" We disagree with the intent of this statement. The BP should require all reasonable steps to be taken to avoid harming ALL bycatch species and particularly TEP species. For example, persistent capture of a marine mammal species that is not listed as threatened should still require urgent management. In addition, the precautionary principle and an overall ethical imperative to minimise suffering should also be taken into account.

Please refer to Annex A for our marked up comments relating to **Table 1 Species categorisation – Policy and management settings** relating to discards/bycatch and TEP species.

Applying a risk based framework (Section 3.2)

As noted previously, tempering the management response according to conservation status should not be at expense of the overall imperative to minimise discards/bycatch and avoid all TEPs. To that end, the use of the word 'proportionate' in paragraph 2 while perhaps appropriate for general discards/bycatch, is not appropriate for TEP species. Paragraph 2 should be reworded to reflect the different approach required for TEP species.

Risk equivalency (Section 3.3)

Paragraph 1, sentence 4 states "*Populations should be maintained above a limit where they are not depleted to a level that results in long-term recruitment failure.*" Clarification is required as to how this intent aligns to the requirement to not to put species at risk of deteriorating conservation status.

The BP here makes reference to the use of limit reference points for managing discards/bycatch but gives no indication of how these will be developed or whether they exist – which for most species they do not. It will be important for the guidelines to provide detail as to how this will be done.

Balancing risk, cost and catch (Section 3.4)

The first sentence of paragraph 1 states "*Bycatch management should seek to ensure the risk to a bycatch species remains acceptable while minimising management costs related to fishing mortality.*" We have significant concerns with the language used here and the intent provided, referring to 'acceptable levels of bycatch'. In accordance with the objectives of the Fisheries Administration Act 1991 and the EPBC Act, the BP should not be encouraging a culture where

some discards/bycatch is tolerable. The Dolphin Management Strategy is a case in point where some discards/bycatch of dolphins is projected as acceptable. We question acceptable to whom? A large swathe of the general public will not 'accept' any discards/bycatch of some species on ethical and animal welfare grounds, nor accept any level of discarding and allowing such a position for industry only contributes to a poor opinion of industry in the community. It is here that social license considerations need to be accounted for and factored into the intent of the policy in consultation with industry and other targeted stakeholders. We welcome the opportunity to work with the Australian Government on this.

The second sentence in paragraph 1 goes on to state *"The management decision to be taken in this context is whether investment of more resources in bycatch mitigation, data collection and analyses will provide confidence in the sustainability of a higher level of commercial fishing pressure. This concept is often referred to as the risk, cost, catch trade-off. The decision to continue fishing in its current form should be weighed against the benefits from implementing additional or improved management arrangements and mitigation measures"*. This language is very disturbing and is in conflict with the intent of this paragraph and obligations of AFMA under the *Fisheries Administration Act 1991* as well as obligations of industry under the *EPBC Act 1999* to avoid catching protected species.

The final sentence in paragraph 1 states *"Where there is evidence of an adverse impact on a population but there is little data about the species and its resilience to fishing pressure, fishing mortality through fishing effort should be constrained to levels at which expert advice and technical assessment supports a conclusion that the species is not exposed to unacceptable risk."* Again the language is unacceptable in the context of discards/bycatch and reflects a focus only on the economic objective (under the HSP) and gives little regard to the international and legislative obligations and environmental objectives under the HSP. Again consideration of social license issues (industry and community confidence) has not been factored in. It is imperative that AFMA consider this under their obligations under the *Fisheries Administration Act 1991* (Objective (d)).

Sentence 2 in paragraph 2 states *"Balancing commercial considerations against the risk to bycatch populations does not change the legislative requirements for managing fishing interactions with protected species."* Again the intent of this sentence detracts from the obligations of AFMA and industry. We suggest strengthening the language here to highlight that management decisions should abide by the *EPBC Act* obligations.

Addressing cumulative impacts (Section 3.5)

In line with our comments above relating to the objectives of the BP, the first sentence should be extended to include 'interactions' as well as 'mortality'.

The second paragraph does not make sense and we suggest it be reworded. We assume the intent here is that this is not a whole of government approach so only what AFMA is responsible for needs to be accounted for and managed. Paragraph 3 should then focus on the need to consider cumulative impacts - in its current form it is confusing.

Management toolbox (Section 3.6)

The third sentence in paragraph 1 states *"Bycatch management should consider opportunities for applying quantitative approaches, such as decision rules based on indicators such as catch rates and trigger limits."* It would be useful to include additional commentary here, with further explanation in the guidelines about the need for those limits to actually constrain the catch and to be continually revised to encourage innovation in discards/bycatch minimisation towards meeting the goal to avoid all discards/bycatch, particularly TEP species.

The final sentence of paragraph 2 states *"Improving the capacity of industry to self-regulate for changed fisher behaviour is important for the sustainable management of fisheries resources and reducing unintended detrimental impacts on the marine."* We support this approach however

there needs to be checks and balances in place through e-monitoring and observer programs to ensure industry actually do it and it is not simply 'lip service'. The intent here should be extended to be clear that regulation will be used when self-regulation fails as it so frequently does. Industry's ability to self-regulate should not be used as a measure alone to determine whether the BP has been a success or otherwise.

Data collection, reporting and monitoring (Section 3.7)

As we have noted in our HSP submission, first and foremost, the HSP should require mandatory monitoring of all catch including quota species as well as other secondary retained species - and particularly important for the BP should require mandatory monitoring of all discards/bycatch. This expectation should be set clearly and explicitly in the Bycatch Policy i.e. that commercial fishers must record discards and that this data will be compiled with observer data to commence the development of a robust set of data which will allow status and risks to be understood and management to be targeted. The BP guidelines should provide further guidance on what and how data will be collected and the role of fisheries based data and observer data.

The BP should also include the requirement to establish a process to provide regular reporting on trends in discards/bycatch, including TEP species at a fishery level. The data published must be capable of reflecting changes in the rate of discards/bycatch as well as the quantum so as to understand emerging risks or issues requiring proactive management response.

The final sentence in paragraph 1 states "*Data collection, reporting and monitoring requirements for interactions with protected species should meet and be guided by legislative requirements in the first instance.*" The wording in this sentence is confusing and detracts from the intent. These are requirements under the EPBC Act so it should not be a case of 'should meet' but 'will meet' legislative requirements. In addition, there should be clear intent provided that if a fisher is found not to be reporting interactions with TEP species there will be additional independent oversight at their cost (as a part of individual accountability).

The fourth sentence of paragraph 1 states "*Information collected should be commensurate with risk, available data quality and identified priority populations.*" Again, we emphasise that 'risk' in this context should also include social license risks. Clarification is also required as to whether this includes fisheries with a high risk of low compliance. It should do.

Performance monitoring and evaluation (Section 3.8)

Without the guidelines it is difficult to understand what is being proposed for performance monitoring and evaluation. The first sentence refers to "*performance of bycatch management*", however the intent of this section should be about measuring discards/bycatch policy performance. The guidelines will need to outline what indicators, reference points etc will be used for minimising discards, which will be an important leverage point for mitigation.

There is a need for an independent, expertise-based body to oversee the implementation of the revised BP and to monitor progress against its objectives in a transparent manner.

Bycatch strategies (Section 4.2)

Of concern is the lack of reference to the results of the ERA's and therefore risk management in this section. This section reflects the old Bycatch Action Plans and does not reflect the current ERA/ERM approach. It needs to be updated to reflect this.

The last sentence of paragraph 1 states "*They will be developed in consultation with relevant stakeholders, be publicly available and regularly reviewed in response to fishing intensity changes or new knowledge of impacts on bycatch species emerges.*" Any review should reflect the ongoing objective of reducing interactions with discard/bycatch species and report on whether it is meeting that BP objective. For example, current Dolphin Bycatch Strategies are commencing with generous triggers, irrespective of effort and conservation status. When these strategies are reviewed these triggers need be revised downward to encourage innovation to continually

improve the bycatch rates, towards zero. If they stay at the current triggers the discards/bycatch of dolphins will not be constrained – much less improve.

In paragraph 2 we would welcome discard/bycatch strategies acknowledging social licence and ethical considerations about reducing suffering. We also suggest that the last two bullets in this paragraph should actually be one bullet (a typo perhaps?).

Roles and responsibilities (Section 4.3)

Under paragraph 3, the final sentence states “*Advisory bodies administered by the Australian Fisheries Management Authority, may include dedicated consideration of bycatch matters.*” The word ‘may’ should be changed to ‘should where they have been identified in eg. ERAs/ERMs.....’.

In paragraph 4 it should also be referenced that the Department of Environment and Energy’s responsibilities also relate to considering the precautionary principle.

The last paragraph captures a major weakness in that only here, right at the very end is the fishing industry encouraged to play an active role. Industry has a significant role to play in addressing discards/bycatch issues, particularly with the introduction of individual accountability, and the policy document should be developed to reflect this upfront as a part of the introduction (Section 1).

CONCLUDING COMMENTS

The BP, along with the HSP released in 2007 were a major step forward in management of Commonwealth fisheries. Implementation of the BP has demonstrated some deficiencies in the Policy and highlighted areas where additional clarification and guidance is required. The proposed draft BP does not represent a further advance and in fact represents a step backwards. We have identified a number of matters that we feel must be addressed in the revised BP in order to ensure that it represents a best-practice approach. Further, we note the linkages between the BP, the HSP and the review of Commonwealth fisheries legislation. We have been actively engaged in each of these three review processes and believe that there are some overarching issues that need to be considered to inform and ensure consistency between the responses to these three processes:

1. The objectives across the BP and HSP must be complementary and together reflect all of the legislative objectives and in particular the ESD and economic efficiency objective in relation to all species.
2. There should be greater weight placed on addressing environmental objectives in accordance with legislative obligations compared to economic objectives.
3. The expectations of the Government and the community in relation to the application of ‘ecosystem-based management’ in Commonwealth fisheries management must be articulated clearly and this guidance provided in a timeframe that allows for its incorporation in the revised HSP and BP.
4. The BP should be replaced with a Commonwealth Fisheries Discard Policy, which deals with everything not retained, including TEP species. This nomenclature overcomes any confusion about which part of the catch the policy deals with (assuming that the HSP covers retained species). This provides a more honest and transparent acknowledgement of the problem that the Policy is addressing.
5. An overarching objective to reduce and avoid discards/bycatch to minimise the overall ecological impacts of fishing needs stronger expression.
6. A clearer separation of objectives and management responses in relation to threatened, endangered and protected species is needed, but not at the expense of addressing obligations relating to all discards/bycatch.

7. More consideration needs to be given to AFMA's obligations to the Australian community and public values.

Annex A Comments on Table 1: Species categorisation – policy and management settings from the draft HSP

Annex A Comments on Table 1: Species categorisation – policy and management settings from the draft HSP

| Category | Harvest Strategy Policy (Commercial) | | | Bycatch Policy (Non-commercial) | |
|-----------------------|---|---|---|--|---|
| | Key commercial | Secondary commercial | Byproduct | General bycatch | Protected |
| Definition | A species that is targeted and is usually retained. | A species that is usually retained. | A species that is occasionally retained. May include species that are rare and usually retained through to species that are frequently encountered but rarely retained. | A species that is not usually retained. | A species listed under Part 13 of the EPBC Act (excluding listing as conservation dependent). |
| | Significant contribution to value of the fishery. | Some contribution to the value of the fishery. | Minor contribution to the value of the fishery. | No contribution to the economic value of the fishery. | |
| Policy objective | Sustainable and profitable use of Australia's Commonwealth commercial fisheries resources through the implementation of harvest strategies that both maintain commercial fisheries at ecologically sustainable levels and maximise economic returns to the Australian community from the use of the resource. | | | Minimise fishing-related impacts on bycatch species—in a manner consistent with the principles of ecologically sustainable development and with regard to the structure, productivity, function and biological diversity of the ecosystem. | |
| Target | B_{MSY} | B_{MSY} , or an alternative target to achieve B_{MSY} for the fishery | Not managed to a target as by definition byproduct species make a minor contribution to the fishery. | Draw on best-practice approaches to avoid or minimise bycatch, and minimise the mortality of bycatch that cannot be avoided. | Ensure fishing operations take all reasonable steps to avoid the mortality of, or injury to, protected species recognising that there may be a need to recover populations of species listed in these categories. |
| Limit reference point | Remain above a biomass level where the ecological risk to the stock is regarded as unacceptable at least 90 per cent of the time or 'with a high degree of confidence'. | | | Manage fishing-related impacts on bycatch species to ensure that populations (i.e. discrete biological stocks) are not depleted below a level where the risk of recruitment failure is regarded as unacceptably high. | Consistent with the requirements of the EPBC Act a limit reference point is not set. |
| Discarding | minimise discarding | minimise discarding | minimise discarding | By definition these categories are discarded however the overriding objective of the bycatch policy is to minimise impacts on bycatch populations. | |

Comment [A1]: This statement ignores public expectations on waste and animal suffering relating to social license and the obligations of AFMA under objective (d) of the Fisheries Administration Act 1991

Comment [A2]: "discrete" is most likely too high a threshold even for general bycatch.

Comment [A4]: Goal should be to avoid all bycatch of protected species

Comment [A3]: How is this consistent with the requirement under the HSP of above B_{lim} 90% of the time?

Comment [A5]: An additional objective should be added to "minimise interaction" and hence should aim for zero interaction and therefore zero discards.