



Commonwealth Fisheries Association

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# Submission to Review of Commonwealth fisheries management legislation

26 October 2012

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Mr David Borthwick AO PSM  
Review of Commonwealth fisheries management legislation  
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Dear Mr Borthwick

## **CFA submission to Review of Commonwealth fisheries management legislation**

### ***Executive summary***

Our conclusion is that the legislation has worked well in general. However, some changes are required to make the legislation more consistent with providing greater certainty, and with best current public sector practice. These include clearer Ministerial reserve powers, more cost-effectiveness, and inter-Agency accreditation instead of duplication.

Our main conclusions are:

- (1) To give the Minister for Fisheries the reserve power to override an AFMA decision, but only after safeguards are followed, possibly equivalent to those in the Water Act 2007. This package might also include Minister-appointed Scientific Panels to advise the Minister on the risk-weighted scientific issues of an AFMA decision. Panels of this nature would need to be cost effective and operate under strict guidelines to avoid creating unnecessary delays in fisheries management processes.
- (2) To ensure the Review outcomes follow the Terms of Reference (TOR) to give the fisheries legislation primacy in fisheries management – the EPBC and Fisheries Acts would be amended so that a rationalised EPBC Act accredits the AFMA process, rather than duplicating it. This is consistent with the terrestrial accreditation in the EPBC Act.
- (3) Reinforcement of the core roles of both the Harvest Strategy Policy (HSP), and the Ecological Risk Assessments (ERA's) for bycatch species (within a broader Bycatch Policy). In application of the Precautionary Principle, governments need to be consistent across all users of the marine environment.
- (4) MAC's and RAG's remain an important part of the advice to the AFMA Commission. It is important to recognise that ENGO's are already represented on almost all MAC's and SEWPaC has a standing invitation to contribute to MAC's. The advisory bodies already have strong process documented through Fisheries Management Paper No. 1. However, transparency, particularly on administration of potential conflict of interest, could be further strengthened.

- (5) The total administration and decision-making chain needs to be more cost-effective. This means eliminating duplication between Acts; ending bodies no longer required; E-monitoring where it is appropriate; contestability of AFMA services (eg observers); and a Productivity Commission enquiry and COAG action on rationalising the large number of fishery jurisdictions in Australia.
- (6) On the cost recovery system – the current system is consistent with the DOF guidelines, and has the advantages of being accountable and bringing discipline to both industry and government. Any shortfall in areas in particular fisheries, such as research, needs to be considered by government in the same way as it would consider one-off assistance in other areas of the economy.
- (7) The importance of maintaining the integrity of Statutory Fishing Rights (SFR's) is widely agreed. Any provision in the fisheries legislation for cancellation of SFR's must only be for extreme breaches. Other provisions on suspension and financial penalties should be used as much as possible, before cancellation is ever considered.

### ***Background to CFA***

Commonwealth fisheries contribute \$317m of Australia's \$1.3 billion of wild-catch seafood production.

The Commonwealth Fisheries Association (CFA) is the peak industry body representing the interests of fishers operating in Commonwealth managed fisheries. All the Associations in these fisheries belong to CFA – eg the Northern Prawn, Southern Shark, Sub-Antarctic, Great Australian Bight, Southern Bluefin Tuna, South East Trawl, Coral Sea, and Western Tuna. Some fisheries without an Association have individual licence holders from that fishery belonging to CFA.

All major corporates in Commonwealth fisheries belong through their fishery Associations, and a number also contribute separately to CFA.

Therefore CFA represents the whole Commonwealth industry. CFA also belongs to the National Seafood Industry Alliance (NSIA) – which includes the National Aquaculture Council and State seafood industry bodies, which in turn often cover aquaculture.

### ***Has the Commonwealth legislation (and AFMA) been effective?***

CFA recognises that the Review is not explicitly for an assessment of AFMA and DAFF. However, to best assess what should be changed, it is necessary to outline where the legislation and the major Agencies have been successful or unsuccessful.

The Commonwealth fishing industry has a very robust but co-operative relationship with AFMA and other Commonwealth Agencies. Regarding AFMA – in the last 12 months, the Commissioners have overturned unanimous MAC decisions seven (7) times. Despite our concerns with AFMA on individual issues, and with the remoteness of the Commissioners,

any objective performance assessment (see below) would conclude it has been a good natural resource manager.

We note that DAFF has played a core role in the performance of Commonwealth fisheries, and that the 2005 Ministerial Direction to AFMA has proved to be very effective. The EPBC Act has also assisted the performance of Commonwealth fisheries, but it is now time to move to the EPBC Act being used to accredit the AFMA process, rather than duplicate it.

The current legislation and management approach have resulted in:

- (1) The latest Fisheries Status Reports will be released by ABARES late November/early December 2012. It is likely that there is now almost no overfishing in any Commonwealth fishery, except possibly some bycatch species or where the stock is managed internationally. We doubt whether this has been achieved in any other country. There are still some stocks in recovery which were over-fished in the past. However, as noted in the FAQ's for this Review – "from 2005 to 2010, the management of Commonwealth fisheries had reduced the percentage of fish species overfished or subject to overfishing from 29% of species to 14%."(see [www.daff.gov.au](http://www.daff.gov.au)).
- (2) Commonwealth quotas are now often increasing, as calculated under the HSP which requires the quotas be within sustainable fishing levels. Even in the international Southern Bluefin Tuna (SBT) fishery, the catch is now well below replacement yield, and scientifically-driven quotas are increasing.
- (3) No Commonwealth fishery has failed to meet the EPBC sustainability legislation, despite some fisheries being tested for sustainability accreditation up to five times in the last ten years under various parts of the EPBC Act.
- (4) Fisheries management has always been controversial and politically sensitive – a good candidate for an independent management authority with clear legislative targets. Up until the recent Small Pelagic Fishery (SPF) issue – fisheries management issues had been relatively low-key because of the improved performance.
- (5) Related to (4) – since the current legislation took effect in 1991, only once has the Minister issued an FAA Section 91 Direction to AFMA. Even this was largely so that the conditions imposed by the Government for the \$220 million "Securing our Future" program could be clear in a total package. This approach worked.
- (6) The Commonwealth fisheries legislation, including the HSP, ERA's, Management Plans, and MAC system, are now being copied around the world, and by Australian States.
- (7) The result is that Australia was rated number two in the world for sustainable management of its fisheries by the independent University of British Columbia in 2009 (see UBC 2009). Another study published in 2009 by fisheries academics and WWF (Pitcher & al, 2009) ranked Australia as fourth best in the world in meeting the disciplines of the FAO Code of Conduct for Responsible Fisheries. We note that this

was before the major further gains made in the last three years (see ABARES Status Report 2011).

(8) Commonwealth fisheries have full recovery of attributable costs. To our knowledge, this is unique to Australia and NZ.

(9) Australian fisheries have no tariff protection – again, to our knowledge, this is unique to Australia and NZ

Despite all this progress, made jointly between AFMA and DAFF, there are still some improvements necessary – particularly in areas with less than optimum data. These challenges are well described in ABARES Status Reports 2011 (page 8) – and apply substantially to bycatch. There is a case for special Commonwealth funding in these cases to collect that data.

### ***The reserve powers of the Minister for Fisheries***

Our view is that FAA Section 91 (2) (a) possibly already gives the Minister full powers to override an AFMA decision. That Section states:

“(2) The Minister must not give a direction to the Authority unless:

(a) the Minister is satisfied that, because of the existence of exceptional circumstances, it is necessary to give the direction to the Authority to ensure that the performance of its functions, or the exercise of the powers, of the Authority does not conflict with major government policies;”

The Minister for Fisheries may not have been inclined to use this power and/or felt legally constrained because of the absence of a major government policy and/or the legal precedent of the 1997 Bannister Quest vs AFMA Federal Court case.

Clearly if the intent of the Review is to provide more flexible and/or clearer powers to the Minister for Fisheries, then we agree that the elected representative should have these greater powers provided that they come with the type of safeguards and accountability included in more modern natural resource legislation.

To achieve this effective reserve power would mean that the Minister have wider discretion on directing AFMA. In other words, the Minister would not be bound to justify their decision by the current constraints in Section 91 (2) (a) of the FAA 1991 – see above.

One possible model to achieve this might be the Water Act 2007. Under that Act the Minister for the Environment can direct the Murray Darling Basin Authority (MDBA) to amend a Management Plan submitted by the MDBA.

The advantages of using the Water Act model include:

(1) It is a more current Act than the FAA/FMA 1991 and reflects more recent practice on reserve powers in natural resource management

- (2) The safeguards in the Water Act appear to suit modern scientific fisheries management. For example, Section 44 (5) (a) of the water Act 2007 states that the Minister must not give any direction on “any aspect of the Plan which is of a factual or scientific nature.”

In rejecting a draft Plan, the Minister must notify the MDBA what alternative Plan should be re-submitted

The Minister for Fisheries decision would not have to meet the requirements under Section 91 of the FAA that the direction be based on a major government policy. However, if the Water Act 2007 model was adopted then it would bind the Minister to not give a direction on a factual or scientific issue.

As well, neither the FMA nor the Water Act 2007 appears to give the Minister the authority to request an amendment to a Plan during the life of a Plan. Our view is that this power is needed, in addition to the direction power. This would have the same safeguards as apply to Ministerial powers for a new Plan.

The next question is whether an amended FMA should mirror the Water Act 2007, and preclude the Minister from giving a direction on a factual or scientific issue. We believe the Water Act safeguard is the appropriate one. However, in that case the amended FMA needs to make it clear that:

- (1) The Minister for Fisheries can take into account economic and social considerations. Our view is that this is already implied in FAA Section 91. However, it may be that in recent events the Minister was advised he was constrained by the Federal Court judgement in Bannister Quest Pty Ltd vs AFMA (1997) and other issues. If so then it needs to be made clearer in both the EPBC and FMA legislation that economic and social considerations need to be recognised in applying the ESD Objective.
- (2) The Minister can appoint their own scientific panel to review the AFMA action, and require AFMA, if appropriate, to re-consider AFMA’ s decision, including a period of public consultation. However, the Minister would not be able to **direct** AFMA on the scientific or factual grounds, only on economic and social considerations.

We suggest that any review panel system:

- (1) Not include a standing panel (ie a panel be appointed as required)
- (2) Be required to report within say 28 working days.

The risks with such a panel are that any type of resistance to application of a scientific decision by anyone would be referred to a panel; these panels are very expensive, particularly where overseas consultants are used; and that referrals might mean delaying the setting of a TAC or other important decision requiring timeliness.

In our view, it is critical to ensure stringent limits are imposed on the situations where such panels could be convened, to exclude it becoming a regular (and thus both duplicative and expensive) part of the process of fisheries management.

***Recommendations that clearly establish the FMA as the lead document in fisheries management***

To achieve this core aim in the TOR requires:

- (1) Amendment of both the EPBC and FMA Acts. We do not see that the TOR can be met without these amendments. The lapsing of the 2012 amendment to the EPBC Act only goes part of the way to meeting the TOR.
- (2) The best course appears to be:
  - (a) Amend the EPBC Act to allow the Minister for the Environment to accredit the AFMA process used for the Strategic Assessment and WTO decisions, and;
  - (b) The approach recommended by the Senate Committee and Hawke Reviews - that Parts 10, 13, and 13A of the EPBC Act be amended to require one assessment.

Our view is that the accreditation process is more consistent with modern public sector process, and much more efficient – eg it is used in the EPBC Act and Water Act for terrestrial accreditation. The current FMA/EPBC system involves a resource-intensive process of reports and negotiations on individual conditions. It is based on two Acts with deliberately similar ESD Objectives, and intent. AFMA fisheries are now largely bound by explicit sustainability targets in the Harvest Strategy Policy, the Ecological Risk Assessments, Threat Abatement Plans, and other regulations with tight sustainability criteria. It is a transparent system.

The Government already announced in its September 2011 Response to the Senate Standing Committee on Environment, Communications and the Arts:

“The Australian Government (in principle) agrees to amend the EPBC Act to streamline the interaction between the fisheries assessment provisions in Parts 10, 13 and 13A. The government will also improve the interaction between the EPBC Act and the Fisheries Management Act by linking the Commonwealth Fisheries Harvest Strategy Policy framework with the threatened species listing process for marine fish under the EPBC Act. The Government will be undertaking a further review of the Fisheries Management Act 1991 to address potential duplication with the EPBC Act.”

This current Review is presumably the one referred to in the announcement by the Government in September 2011. It has been given the mandate to address the duplication.

Note that we recommend that the Parts 10, 13, and 13A be rationalised into a single assessment, and AFMA would be accredited against a single assessment.

We also note that an increasing number of Australian fisheries are achieving planning for third party accreditation. This is another reason for less duplication in the various Commonwealth legislation.

### ***Importance of the Harvest strategy Policy (HSP) and the By-catch Policy***

We note that these two underpinning Policies are currently being reviewed, with completion by March 2013. They are expected to complement this current Review of fisheries legislation, and we note that the Government's response to the legislative Review will take those Policy Reviews into account.

We request that the legislative review recommends that any Commonwealth fishery operating under the agreed HSP not be considered for listing under the EPBC Act. This is consistent with Recommendation 41 of the Hawke Review.

### ***Existing management measures in Commonwealth fisheries***

It is important that the Review recognises that the way that Commonwealth fisheries are now managed provides a very solid foundation for the precautionary approach (see next section).

For example:

- (1) All Commonwealth fisheries are now managed by strict Total Allowable Catch (TAC) or Total Allowable Effort (TAE) controls. In turn these fisheries are mostly managed by Individual Transferable Quotas (ITQ's) which have been found to be the best way to control excess capacity and manage the fisheries.
- (2) The TAC's and TAE's in almost all Commonwealth fisheries are set by the Harvest Strategy Policy (HSP). Note: The quotas in two international fisheries - Antarctic and SBT – are largely set by the RFMO's involved, but with harvest control rules equivalent to the HSP.
- (3) Note that the HSP rules, including the Reference Points, are very precautionary in themselves. For example, in a data-poor fishery where the Maximum Sustainable Yield (MSY) is difficult to calculate, the default position is the general MEY Reference Point of 48% of virgin SSB rather than the normal 40% MSY point.
- (4) The TAC approach also allows the TAC to be set at a more conservative level to take into account that a fishery may not be able to afford annual stock assessments – as is the case with the Commonwealth Small Pelagic Fishery. Australia's largest tonnage fishery – the SA sardine fishery – is managed this way. The TAC/SSB ratio is set lower than in other countries – because the SA fishery



can't afford the cost of the annual egg survey which would be required to set a less precautionary TAC.

- (5) Commonwealth fisheries are managed holistically through a Management Plan which covers all the target and ecosystem requirements in a single integrated Plan. This approach is now being adopted by countries such as NZ and the US.
- (6) An increasing number of fisheries are being certified by third party accreditation groups. This includes the AFMA-managed Northern Prawn Fishery.

### ***Exercise of the ESD Principles and the Precautionary Principle***

The Review TOR asks how to incorporate the full range of environmental, social and economic parameters in a decision.

The current situation is:

- (1) Both the EPBC and FMA have the same ESD Objectives
- (2) In 2005, the definition of the Precautionary Principle in the EPBC Act was incorporated in the FMA.
- (3) The ESD Objective in the FMA specifically requires focus on bycatch and ecosystem management.

In implementing its ESD Objective, AFMA has clearly put the environmental impact before any social or economic impact. This may be partly due to being bound by the Harvest Strategy Policy (HSP) for target species, by the Ecological Risk Assessments (ERA's) for bycatch species, and possibly by the implications of the Bannister Quest case.

We note that these legal requirements on AFMA already include the risk-weighted consequences of certain levels of fishing. This includes the trophic impact and the impacts on bycatch species.

The problem with changing the FMA and not the EPBC Act is that it would risk considerably broadening the relatively narrow way that AFMA currently interprets its ESD Objective. Again, it is difficult to see how AFMA could reconcile its legal obligations to follow the HSP and ERA's with placing any greater emphasis on social and economic considerations. It appears to us that the way the EPBC Act is interpreted is that it sometimes places considerable weight on economic considerations in exercising even the precautionary principle. The decisions allowing seismic surveys during periods of fish migration is a good example of this. There is a real need for consistency in the application of the Precautionary Principle between Acts and within Acts.

Therefore, our view is that rather than change the ESD provisions of the FMA Act, it is reasonable to assume that any use of the recommended reserve power of the Minister to direct AFMA would be based on social and/or economic impacts. This is particularly if, as we recommend, the FMA reserve power follows that in the Water Act – which states that the

Minister must not give any direction on “any aspect of the Plan which is of a factual or scientific nature.” Note: The Minister may still request AFMA to re-consider the science, but not direct them to a decision based on that science.

### ***Role of MAC's and RAG's***

The current situation is:

- (1) The MAC's are advisory only, and there are numerous examples of the Commissioners rejecting MAC recommendations. An example was the rejection of the unanimous recommendation by Tropical Tuna MAC on the 2011 total allowable catch for Yellowfin Tuna on the East Coast of Australia. That unanimous MAC decision included the scientific Member (CSIRO), the ENGO Member, the Charter/Recreational Member, and the commercial industry Members. The Commissioners noted that they took further advice and rejected the MAC advice.
- (2) The RAG's report to the Commission, not to the MAC's.
- (3) The major RAG's all have high-level independent scientific membership and advice. The scientists include CSIRO, ABARES, AAD, Universities, State Government Research Institutions, and private researchers. The AFMA Commission itself has high-level scientists on staff and among the Commissioners. We note that Commonwealth fisheries management has very cost-effective use of this expertise.
- (4) The MAC's are an important forum for interaction between key stakeholders such as charter/recreational fishers, ENGO's, scientists, commercial fishers and State Governments. This not only increases understanding between stakeholders, but also leads to interaction outside the MAC's.
- (5) The formal requirements for MAC's are set out in Division 5 of the FAA. . The role and procedures for MAC's are set out in AFMA's Fisheries Management Paper No. 1 – Management Advisory Committees.
- (6) The formal requirements for declaration of interests under Section 64C of the FAA apply only to MAC's, not to RAG's. In our experience, the Section 64C requirements are generally applied informally in RAG's. This needs to be formalised.

Given all these advantages, we would not recommend any change to the MAC/RAG concept and structures. The debate is about the whether the formal processes are adequate and/or are followed, and whether there is full transparency.

However, we suggest that the Review:

- (1) Notes that Section 64C of the FAA requires declaration of all interests, not just pecuniary interests. This may need to be reinforced in that Section.
- (2) Reminds the Commission that the Commissioners themselves should attend **key** MAC meetings. Our experience is that it is reasonably predictable when MAC's will make major decisions – and an actual Commissioner reporting to the Board, rather than an AFMA staffer, would possibly lead to the most informed decision.
- (3) Considers requiring the Commission to publish Minutes of the meetings of Commissioners, and what advice was considered in reaching a decision.

### ***Scientific input to RAG's, MAC's and the Commission***

As covered above, Commonwealth fisheries management is supported by:

- (1) Formal harvest control rules – part of the global leading-edge Commonwealth Harvest Strategy. This is legally binding, and there is no doubt that it has substantially improved Australian fisheries management.
- (2) High-level scientists and institutions – often including ABARES in tandem with any of CSIRO, SARDI, UTAS, AAD, etc. CFA believes that the quality of fisheries science in Australia gives Australia an international competitive advantage.
- (3) An AFMA Commission itself which currently contains scientific expertise which is recognised globally.

We note that these are the same scientists and institutions which developed the HSP, the ERA's and now the Management Procedure approach to stock assessment. The scientific input to the Commission decisions is already effectively peer-reviewed because the science behind the HSP and ERA's has been published in scientific journals. As well, the Government's own scientific advisors, ABARES and AAD, already actively participate in the MAC's and RAG's.

Therefore we do not see any reason to establish an extra layer of a **standing** committee of scientists to review the recommendations of the existing scientific community which assist the Commission process. However, as noted earlier, there should be provision for the Minister to appoint ad hoc scientific panels to consider specific issues, and within a certain time scale. The Minister could request AFMA to review its decision on the science, including public consultation. However, as in the Water Act 2007, the Minister would not be able to direct AFMA on a scientific or factual issue

### ***Cost recovery***

AFMA is required under its legislation to recover all attributable costs for each fishery. The CFA supports this legislation because:

- (1) It introduces transparency, accountability and discipline into the financial management of fisheries.
- (2) Further, we support fee-for-service where it is economic to collect and where the beneficiary can be clearly identified.
- (3) It is consistent with the Department of Finance (DOF) guidelines which are applied to a range of Commonwealth Agencies, and which are increasingly applied to State natural resource management. This has the advantage of benchmarking between the cost of similar services from government.
- (4) It disciplines, in many cases, other Agencies requesting data and services from AFMA

We note that there may be some interest in the cost recovery system recently introduced in WA. The WA system is to charge 6% of the Gross Value of Production (GVP) of individual fisheries, and use this as a pool to manage all fisheries.

The WA model is effectively a resource rent or resource access fee, not cost recovery. CFA strongly opposes this approach:

- (1) It is not consistent with the DOF guidelines which have been developed over a long period as the most efficient and equitable for Commonwealth Agencies.
- (2) The % of GVP is a system which was used in SA in the 1990's and failed because:
  - (a) The SA Governments used it as a general revenue source – rather than for fisheries management.
  - (b) The GVP is not a precise figure and can be easily manipulated.
  - (c) There was no discipline on government or industry to be efficient.

Some of the same problems are already evident in WA.

- (3) One of the attractions of introducing the resource rent system in WA is that one fishery, Rock Lobster, dominates the total GVP in WA. In Commonwealth fisheries, the total GVP is spread across a range of major fisheries.

The problem for cost recovery in Commonwealth fisheries management is that there are a significant number of smaller fisheries where attributable costs and levies are a high proportion of the GVP. Fisheries in this position include Scallops, Skipjack, Coral Sea, GHAT, Small Pelagic, Western Deepwater, and Western Tuna.

This means that it is extremely difficult to fund basic research. This situation is reinforced by the decline in government research funds to AFMA and DAFF, and by FRDC not being able to fund stock assessments. In the case of these fisheries, the limits on fishing activity are most often set at a lower level to take account of the lack of research.

CFA believes that the Commonwealth Government needs to restore its previous contribution to DAFF and AFMA for basic research, particularly given the public good nature of fisheries. These Agencies can then better target areas of critical research funding.

***Other cost-effectiveness issues, including a Productivity Commission Enquiry***

We note that the SFRARP has now served its purpose with the rights in almost all Commonwealth fisheries allocated. It is expensive and should be abolished.

It is essential that, where feasible, AFMA services be contestable to ensure cost-efficient service delivery – eg observer services, data collection and storage, and human resources management.

E-monitoring would sometimes enhance more cost-effective management, and the FMA has been amended to allow for it where suitable.

Greater use of co-management, now authorised under FAA Section 88, also provides scope for cost savings. These need to be genuine savings rather than just cost-shifting.

It also appears to us that the number of AFMA Commissioners is too high – and this can be rationalised. It appears anomalous that the number of Commissioners has increased when all major AFMA fisheries now have full Management Plans in place, and there are many less operating boats. We also note that the term of Commissioners has been extended to up to five years, without any restriction on the number of terms. Aside from other issues, this longer term appointment makes cost management less flexible.

We also recommend that the Productivity Commission be given a Reference on the structure of Australian fisheries management, specifically the existence of six (6) separate State and Commonwealth management agencies. In NZ, one Agency manages all their fisheries, The Reference might include the gains to be made in the quality and cost of fisheries management in Australia. It might also be a catalyst for resolving the remaining Offshore Constitutional Settlement (OCS) issues.

***Strengthening access rights***

Secure access rights have long been recognised as the foundation of effective fisheries management. It is a core part of the fisheries legislation in the Commonwealth and States, and is increasingly being adopted around the world. In the FMA, the secure access rights are in the form of Statutory Fishing Rights (SFR's) as detailed in Divisions 3, 4 and 4A of the FMA.

These access rights have been strengthened since the FMA was legislated in 1991. Examples are the registration of third party interests in the FMA (Section 31F) and the rights of an SFR holder when a Management Plan is revoked (Division 4A).

The result is that SFR's are widely used in Commonwealth fisheries as collateral for borrowing from financial institutions for funding capital equipment and purchasing further

quota. ITQ's are seen as a further strengthening of the SFR in that they guarantee a certain share of the TAC. This is one of the reasons that successive Commonwealth Governments have adopted ITQ's as the preferred policy.

It is very important that any changes to the legislation do not erode the status of SFR's. One of the current difficulties with this status is the Section 39 provision for cancellation of SFR's. This gives AFMA the right to cancel SFR's for a range of reasons, including non-payment of fees.

We request that the Review more narrowly defines the cancellation provisions. For example, the penalty for non-payment of fees more properly rests under Section 38, which provides for suspension of SFR's. There should also be the normal financial penalties.

### ***Role of Charter/Recreational Fishing***

The current situation is that:

- (1) Charter/recreational fishing is managed by State Governments. It is not included in the FMA.
- (2) DAFF has the responsibility for resource sharing, and for direct interaction with charter/recreational peak bodies and local groups.
- (3) As a result of (2) above, it was the Minister for Fisheries who made the decisions to declare Black Marlin and Longtail Tuna as charter/recreational species only.
- (4) Charter/recreational groups have membership of all the MAC's where they have significant catch – eg SBTMAC, Tropical Tuna MAC. They make a full input to these MAC's, and sometimes to their RAG's.
- (5) Charter/recreational groups have membership of MAC's where the catch has potentially a significant trophic impact.
- (6) Charter/recreational groups do strongly exercise their right to make separate submissions to the Commission and to the Minister on any issue. Often this is independent of the recommendation of the MAC.

We do not see where the formal role of the charter/recreational sector in the FMA could be enhanced beyond the above, unless AFMA formally takes responsibility for the sector. The Review might consider whether this should be part of any reference to the Productivity Commission on regulation of fisheries in Australia.

It is important to remind all MAC participants that FAA Section 64C on disclosure and participation specifically applies to all interests, not only pecuniary interests.

### ***Role of environmental non-government organisations (ENGO's)***

ENGO's are a member of all the MAC's, and also participate in RAG's where they choose to do so.

It is unclear to us how ENGO's choose their nominee(s) for MAC appointment. In our experience the ENGO Members endeavor to make a constructive contribution to the MAC's. However, often other ENGO's express a very different view to that of the MAC Member, and this even occurs within the same ENGO.

We do not recommend any particular change in the role of ENGO's under the FMA and FAA, apart from a full disclosure of personal interest and the interests and objectives of their organisations. Everyone on a MAC needs to be fully aware that FAA Section 64C on disclosure and participation specifically applies to all interests, not only pecuniary interests.

***The Commonwealth role in aquaculture***

Currently, all aquaculture management is the responsibility of the States because all of it is in State waters. This is unlikely to change in the foreseeable future.

However, the Commonwealth might consider a basic type of OCS for aquaculture which cedes management of aquaculture in Commonwealth waters to the States. This would need to have provisions to manage any spatial interaction between aquaculture and Commonwealth fisheries.

Note: The Southern Bluefin Tuna (SBT) is largely capture of live wild fish under Commonwealth management, and then State (SA) management when the SBT are transferred into growout pontoons. A CFA Member, the Australian SBT Industry Association (ASBTIA) will make a separate submission on the issues which arise from this split administration.

Yours sincerely

Martin Exel

Chair