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**HUMANE SOCIETY
INTERNATIONAL**

Review of the Fisheries Management Act 1991 and the Fisheries Administration Act 1991

**A submission from WWF-Australia, TRAFFIC, the Australian Marine
Conservation Society and Humane Society International**

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1. INTRODUCTION

WWF-Australia, TRAFFIC, the Australian Marine Conservation Society and Humane Society International welcome the opportunity to contribute to the review of the *Fisheries Management Act 1991* (the FMA) and the *Fisheries Administration Act 1991* (the FAA). The review presents a rare opportunity to consider the performance of the current arrangements for management of Commonwealth fisheries and to explore alternative approaches where required. While we remain generally supportive of the principles and objectives of the existing legislation, our submission proposes a range of measures that may improve the efficiency and effectiveness of fisheries management. In arriving at those options we have considered whether the current objectives are appropriate and clearly articulated, whether aspects of the existing arrangements are impeding, or providing less than optimal incentives to the achievement of those objectives, and what changes may be required at the legislative, policy and operational levels to address this. Our submission seeks to ensure that the framework for management of Commonwealth fisheries is sufficiently effective, efficient, proactive and innovative to meet current and future challenges in the global context in which Commonwealth fisheries operate.

2. THE TERMS OF REFERENCE

After careful consideration of the terms of reference we believe that they are based on the following central propositions:

1. the FMA should be the primary instrument under which Commonwealth fisheries are managed (ToR 1);
2. the way in which environmental, economic and social considerations are to be dealt with in applying the FMA and the FAA should be clearly articulated in those Acts (ToR 1);
3. there is a need for consistency in the definition of the precautionary principle across those Acts and the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act)(ToR 2);
4. changes to the FMA are required in order to provide the Commonwealth Minister responsible for fisheries with the authority to ensure that actions taken under the FMA are fully consistent with the precautionary principle and reflect the government's and the community's expectation on the appropriate level of precaution; and
5. the FMA and FAA, and associated policies, may no longer fully reflect contemporary, best practice approaches to fisheries management (ToR 3).

Our submission addresses each of those propositions.

3. THE FMA SHOULD BE THE PRIMARY INSTRUMENT UNDER WHICH COMMONWEALTH FISHERIES ARE MANAGED (TOR 1)

It is our view that the FMA is the primary instrument under which Commonwealth fisheries are managed and that this Act, amended as necessary, should remain so. Further, we believe that the FMA and the FAA should be regarded as a package of legislation that together represents the “primary instruments” under which Commonwealth fisheries are managed. We do not believe that the primary role of these pieces of legislation is compromised by the application of some sections of the EPBC Act to Commonwealth fisheries. We expand on these thoughts below.

The Fisheries Administration Act 1991

The importance of the FAA in management of Commonwealth fisheries arises from its provisions relating to the operation of the Australian Fisheries Management Authority (AFMA) and to the specific roles of the Minister in the operation of AFMA. In particular, the FAA specifies:

- the role, function and composition of AFMA’s management advisory committees (MACs);
- the role of the Minister in:
 - appointment of the AFMA Commissioners, including the Chief Executive Officer;
 - the approval of AFMA’s annual corporate and operational plans;
 - the consideration of AFMA’s annual report; and
 - giving directions to AFMA in exceptional circumstances (as was done by the Minister in 2005) and in relation to foreign compliance.

We consider that these provisions are fundamental to the effective implementation of the FMA and that both the FMA and FAA should, together, be seen as the “primary instruments” under which Commonwealth fisheries are managed.

The EPBC Act

The Department of Sustainability, Environment, Water, Population and Communities’ (DSEWPaC) website states that “The implementation of the EPBC Act means that the Australian Government can now play a stronger role in promoting ecologically sustainable management of fisheries and assessing their environmental performance. An independent assessment of all export and all Australian Government managed fisheries is required. These assessments ensure that, over time, fisheries are managed in an ecologically sustainable way” (DSEWPaC, 2012). Given that AFMA had been in operation for nearly a decade when the EPBC Act was introduced it seems that the Government of the day was not confident that the existing mechanisms under the FMA/FAA were adequate to ensure that Commonwealth fisheries are managed in an ecologically sustainable way.

Commonwealth fisheries are subject to the strategic assessment provisions of Part 10 of the EPBC Act (against the *Guidelines for the Ecologically Sustainable Management of Fisheries* (the Guidelines)) (Department of the Environment and Water Resources, 2007), assessments relating to their impacts on protected marine species and communities under Part 13 of the EPBC Act and to assessments for the purposes of export approval under Part 13A of the EPBC Act.

We believe that it is entirely appropriate that DSEWPaC is responsible, under the EPBC Act, for ensuring that any Australian fishery does not adversely affect the survival or recovery of protected species or the survival and recovery of listed threatened species since the status of those species is determined under the EPBC Act. Similarly, we believe that it is appropriate that DSEWPaC assesses Australian export fisheries. We believe that, as well as providing confidence that the impacts of fisheries are acceptable, these assessments have been particularly valuable in driving change in both Commonwealth and State-managed fisheries. This is welcome since fisheries management at the State level generally lags behind that for Commonwealth-managed fisheries in respect of implementation of best practice.

We understand that the Government's response to the review of the EPBC Act proposes a shift towards accreditation of fisheries management arrangements rather than individual fishery assessment. We are not aware of how this is to be achieved; however, we strongly oppose such a move.

We believe that strategic assessments of Commonwealth fisheries under Part 10 of the EPBC Act have acted as a significant incentive for change in how AFMA deals with non-target and bycatch species in particular. AFMA's investment in the development by the CSIRO of the Ecological Risk Assessment for the Effects of Fishing (ERAEF) methodology (Hobday *et al.*, 2009) was a direct response to the additional oversight provided by Part 10 of the EPBC Act. We are of the view that this investment, and the subsequent adoption of AFMA's Ecological Risk Assessment (ERA)/Ecological Risk Management (ERM) approach, would not have occurred in the absence of the EPBC Act requirements.

It is worth noting that AFMA itself uses the independent EPBC Act assessments to support its claim that it manages fisheries resources in a manner consistent with the principles of ecologically sustainable development and the exercise of the precautionary principle. For example, in its annual Report AFMA states "All AFMA-managed fisheries are accredited under Part 10 (strategic assessment), Part 13 (wildlife interactions) and Part 13A (export approval) of the *Environment Protection and Biodiversity Conservation Act 1999*. This means that: each fishery has been assessed for its impact on matters of

national environmental significance, in particular, the Commonwealth marine environment; interactions with protected species do not constitute an offence provided they are in accordance with the accredited management arrangements; and exports from the fishery are permitted to continue for the period of the accreditation” (AFMA, 2011). AFMA appears to value the affirmation provided by the EPBC Act assessments rather than regarding the process as a burden.

It is our view that the provisions of the EPBC Act have complemented, rather than compromised, the primacy of the FMA/FAA in management of Commonwealth fisheries. However, in recent years, we believe that inadequate resourcing and lack of appropriate expertise in DSEWPac has resulted in a significant decline in the quality and transparency of the assessments and the enforcement of and monitoring of recommendations and conditions.

Unless resources are made available to improve the quality of DEWPac’s fishery assessments and monitoring of conditions and greater transparency of DSEWPac’s assessment process is required by government, it is our view that the ongoing contribution to improved fisheries management through Part 10 assessments is likely to be marginal.

We acknowledge that some parts of the fishing industry find the need to comply with the requirements of both the FMA and the EPBC Acts a significant burden. We are of the view that if AFMA is pursuing the objectives in the FMA in an appropriate manner that the requirements of both Acts should be met with the only additional burden being that of reporting, in most cases, every 3 to 5 years. We see no conflict between the requirements of the FMA and those of the Guidelines. Conditions placed on Wildlife Trade Operations by DSEWPac are, in our view, actions that AFMA’s own legislation would require if implemented fully.

4. THE WAY IN WHICH ENVIRONMENTAL, ECONOMIC AND SOCIAL CONSIDERATIONS ARE TO BE DEALT WITH IN APPLYING THE FMA AND THE FAA SHOULD BE CLEARLY ARTICULATED IN THOSE ACTS (TOR 1)

We agree with this proposition. We note that the articulation of the objectives that AFMA must “pursue” vary between the FMA and FAA. While the FAA requires that AFMA pursue each of the five objectives set out in the FMA, it also includes two other issues that the FMA requires only that AFMA “have regard to” rather than “pursue”. We see no reason why the objectives should be articulated differently in the two Acts and if the opportunity arises we believe this should be corrected. The discussion below relates to the articulation of the objectives in the FMA.

We believe that the above proposition raises two issues:

1. Is sufficient guidance provided in relation to the interpretation of the objectives in the FMA?
2. Is there a need for additional guidance on the weighting to be attributed to objectives in taking decisions on management of Commonwealth fisheries?

Interpretation of the Objectives

The objectives of the FMA (see Box 1) that must be “pursued” by AFMA and the Minister can be summarised as follows:

1. Efficient and cost-effective management
2. Application of the principles of ecological sustainable development, including exercising the precautionary principle (the ESD objective)
3. Maximising net economic returns to the Australian community (the economic objective)
4. Accountability to the fishing industry and Australian community
5. Cost-recovery

We are of the view that objectives 1, 4 and 5 are self-explanatory. Attempts have been made to clarify the meaning of objectives 2 and 3. In 2005 the *Fisheries Legislation Amendment (Cooperative Fisheries Arrangements and other Matters) Bill 2005* incorporated the principles of ESD into the FMA and FAA and reworded the economic objective. These changes made clear the principles that AFMA must apply in pursuing Objective 2. In addition, the second reading speech for the *Fisheries Legislation Amendment (Cooperative Fisheries Arrangements and other Matters) Bill 2005* clearly states the government’s interpretation of the economic objective: “The underlying meaning of the economic efficiency objective will not change. That is, AFMA will still be obliged to manage the effort and catch of a fishery to maximise the difference, at a fishery level, between total revenue and total costs, taking into account the impact of current catches on future stock levels”. This interpretation of the economic objective is consistent with case law¹.

We believe that the ‘environmental and economic’ considerations to be taken into account in fisheries management decision making are sufficiently clear. However, how “social” considerations should be taken into account is less clear.

¹ See *Bannister Quest V AFMA* at <http://www.austlii.edu.au/cgi-bin/sinodisp/au/cases/cth/FCA/1997/819.html?stem=0&synonyms=0&query=bannister%20quest>

BOX 1 Fisheries Management Act 1991 Objectives

Section 3 Objectives

- (1) *The following objectives must be pursued by the Minister in the administration of this Act and by AFMA in the performance of its functions:*
- (a) *implementing efficient and cost-effective fisheries management on behalf of the Commonwealth; and*
 - (b) *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 (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; and*
 - (c) *maximising the net economic returns to the Australian community from the management of Australian fisheries; and*
 - (d) *ensuring accountability to the fishing industry and to the Australian community in AFMA's management of fisheries resources; and*
 - (e) *achieving government targets in relation to the recovery of the costs of AFMA.*
- (2) *In addition to the objectives mentioned in subsection (1), or in section 78 of this Act, the Minister, AFMA and Joint Authorities are to have regard to the objectives of:*
- (a) *ensuring, through proper conservation and management measures, that the living resources of the AFZ are not endangered by over-exploitation; and*
 - (b) *achieving the optimum utilisation of the living resources of the AFZ; and*
 - (c) *ensuring that conservation and management measures in the AFZ and the high seas implement Australia's obligations under international agreements that deal with fish stocks; and*
 - (d) *to the extent that Australia has obligations:*
 - (i) *under international law; or*
 - (ii) *under the Compliance Agreement or any other international agreement; in relation to fishing activities by Australian-flagged boats on the high seas that are additional to the obligations referred to in paragraph (c)—ensuring that Australia implements those first-mentioned obligations;**but must ensure, as far as practicable, that measures adopted in pursuit of those objectives must not be inconsistent with the preservation, conservation and protection of all species of whales.*

The principles of ecologically sustainable development referred to in Section 3(1)(b) are defined in the Act as:

- (a) *decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equity considerations;*
- (b) *if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;*
- (c) *the principle of inter-generational equity—that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;*
- (d) *the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;*
- (e) *improved valuation, pricing and incentive mechanisms should be promoted.*

The precautionary principle referred to in Section 3(1)(b) is defined in the FMA as: *precautionary principle has the same meaning as in clause 3.5.1 of the Intergovernmental Agreement on the Environment, a copy of which is set out in the Schedule to the National Environment Protection Council Act 1994.*

Clause 3.5.1 of the Intergovernmental Agreement on the Environment in turn defines the precautionary principle as: *Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In the application of the precautionary principle, public and private decisions should be guided by:*

- (i) *careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment; and*
- (ii) *an assessment of the risk-weighted consequences of various options.*

The 2003 review of Commonwealth fisheries policy (AFFA, 2003) identified concern on the part of some stakeholders that Commonwealth fisheries management policy did not address the social aspects of ESD in the same way it tackles the biological and economic aspects. The Government's response was to incorporate the ESD principles into the FMA and FAA. The only explicit reference to "social" in the FMA and FAA occurs in the articulation of these principles "*decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equity considerations*". This means that, prior to these principles being included in the objectives in 2005, there was no explicit reference to the need for AFMA or the Minister to take social considerations into account in fisheries management decision making. Further, we have seen no discernible difference in the way that AFMA takes decisions since that time. That is, there is nothing to suggest that AFMA has taken "social" considerations into account in its decisions since 2005. Bills Digest no 86 2005-06 (Parliament of Australia 2005), noted at the time of the debate of the *Fisheries Legislation Amendment (Cooperative Fisheries Arrangements and other Matters) Bill 2005* that it was unclear whether the insertion of the ESD principles into the Act would have any "practical impact on AFMA's and the Minister's decision-making under the FAA/FMA".

We note that the Government specifically identifies ecological and economic considerations in its Harvest Strategy Policy (DAFF, 2007), but makes no allowance for the impact of social factors. We are not aware that the Government has provided AFMA with advice as to its expectations in relation to explicit inclusion of "social" considerations in decisions made under the FMA/FAA. Is AFMA, for example, required to apply the same amount of rigour to researching these factors as it applies to ecological and economic considerations? Such clarification will enhance the certainty and transparency associated with AFMA's decision making processes.

We believe therefore that there is a need for clarification of the government's expectations with respect to the nature and extent of the social considerations that AFMA is to take into account when integrating social considerations in its decision-making processes, as required by the ESD principles.

We believe that it is appropriate that AFMA should be aware of the likely social impacts of its decisions, we believe that dealing with the short term social ramifications of long term resource management decisions is a matter that requires a whole of government response. In this regard, we note that the Government's Office of Best Practice Regulation requires AFMA to assess social impacts when developing Regulatory Impact Statements (RIS) for any major changes to legislation, including to

management plans. A RIS requires, among other things, AFMA to “identify the groups in the community likely to be affected by each option and specify significant economic, social and environmental impacts on them” (Australian Government, 2010). We consider that this remains the appropriate mechanism for and represents the appropriate extent of consideration of social issues in AFMA’s decision-making processes. We believe that this approach is consistent with that put forward in the 2003 policy statement.

We are of the view that AFMA’s decision making should not be compromised by social considerations such as employment implications or social dislocation arising from sound fisheries management decisions that are taken in order to deliver sustainable marine resources and economically efficient fisheries.

Weighting of objectives

The Government’s 2003 fisheries policy statement (Department of Agriculture, Fisheries and Forestry – Australia (AFFA), 2003) noted that some of the statutory objectives “may be given an additional emphasis, if such a focus will ensure the long-term ecological sustainability of Commonwealth fisheries resources”. However, there remains confusion, apparently even within AFMA, as to what this actually means. AFMA’s website states that “In pursuing all of these objectives under both the FMA and the FAA, AFMA must place equal emphasis on all of the objectives and not pursue some at the expense of others. However, varying degrees of weight and emphasis may be given to a particular objective depending on the circumstances. This position has been confirmed where AFMA’s approach to pursuing these objectives has been tested before the courts” (AFMA, 2012). This statement concerns us for two reasons. The first sentence is inconsistent with the remainder of the statement, suggesting lack of clarity within AFMA and the second sentence suggests that any of the objectives may be given extra weight or emphasis ‘depending on the circumstances’. This is clearly at odds with the policy statement which is explicit that these “circumstances” relate only to ensuring the long-term ecological sustainability of Commonwealth fisheries resources. The policy statement does not, for example, mean that extra weight can be given to maximising net economic returns while compromising achievement of the ESD objective. However, at times, AFMA’s actions could be interpreted as focusing on delivering management at least cost, rather than in the most cost-effective manner and this suggests a primary focus on the economic objective. A focus that compromises achievement of the ESD objective.

We believe that additional guidance is required to clarify the weighting and priority of the objectives. In particular, we are of the view that the primacy of the ESD objective must be confirmed, in line with the intent of the 2003 policy statement. Without sustainable fisheries resources, the pursuit of the other objectives is meaningless in the long term. We believe that confirming the primacy of the ESD objective does not preclude AFMA and the minister pursuing the other objectives as required by the FMA.

5. THERE IS A NEED FOR CONSISTENCY IN THE DEFINITION OF THE PRECAUTIONARY PRINCIPLE ACROSS THOSE ACTS AND THE ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999 (TOR 2).

Definitions

The definition of the precautionary principle in the EPBC Act differs from those in the FMA and FAA. The definition of the precautionary principle used in the FMA/FAA is that of Clause 3.5.1 of the Intergovernmental Agreement on the Environment (IGAE) which reads as follows:

3.5.1 precautionary principle—

Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In the application of the precautionary principle, public and private decisions should be guided by:

- (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment; and*
- (ii) an assessment of the risk-weighted consequences of various options.*

The EPBC Act defines the precautionary principle as follows:

lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage.

We note that the Guidelines used to assess fisheries under the EPBC Act define the precautionary principle in same terms as the EPBC Act, but go on to define the precautionary approach as follows:

Precautionary approach - used to implement the precautionary principle. In the application of the precautionary principle, public and private decisions should be guided by: 1) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment; and 2) an assessment of the risk-weighted consequences of the various options. (Department of the Environment and Water Resources, 2007)

Taken together, the definitions of the precautionary principle and the precautionary approach in the Guidelines effectively equate to the definition of the precautionary principle in the FMA and FAA. However, the precautionary approach is not defined in the EPBC Act.

The definitions in the EPBC Act and the FMA/FAA differ in two ways. First, in their articulation of the overarching principle. We do not believe, however, that there is any difference in the intent of the two statements. Second, the EPBC Act definition does not provide the additional guidance relating to application of the precautionary principle that is provided by the IGAE definition. We consider that this guidance is valuable, as evidenced by its inclusion in the Guidelines, and that for consistency across the Acts, and to guide the application of the principle under the EPBC Act, the definition in the EPBC Act should be amended accordingly. The current review of the EPBC Act provides the ideal opportunity to incorporate this amendment.

Application of the precautionary principle

The lack of consistency across the Acts is not our major concern in relation to the application of the precautionary principle in Commonwealth fisheries. We do not believe that it is the lack of definitional consistency that has impeded the effective application of the principle to Commonwealth fisheries. There are, however, a number of other factors that have impeded the effective application of the precautionary principle.

We have repeatedly, over an extended period, expressed our concerns about the failure to reflect the precautionary principle adequately in fisheries management decisions. These concerns have been raised through: our participation in bodies including MACs, resource assessment groups (RAGs) and AFMA's Environment Committee; in submissions nominating, and in response to nominations for listing of, marine species under the EPBC Act (e.g. school shark, orange roughy, southern bluefin tuna, blue warehou, eastern gemfish, upper slope dogfish); in comments on the effectiveness of rebuilding strategies for overfished species (eastern gemfish, school shark, orange roughy); in relation to DSEWPaC assessments of Commonwealth fisheries; and in numerous other submissions to Government including, most recently, a WWF-Australia submission to the House of Representative's Inquiry into the Role of Science for Fisheries and Aquaculture (WWF-Australia, 2012).

We believe that successive Governments have shared our concerns as evidenced by:

- The decision to require strategic assessments of Commonwealth fisheries under the EPBC Act when it was introduced in 1999;
- The findings of the fisheries policy review in 2003 which noted that:

- “Assessment of the management of Commonwealth fisheries shows that AFMA needs to decide on more cautious measures (consistent with the precautionary approach) to secure the future of commercial fisheries in Commonwealth waters”;
- “... Commonwealth fisheries management policy has received increasing criticism on two fronts: firstly, for not addressing the social aspects of ESD in the same way it tackles the biological and economic aspects; and secondly, for not adopting sufficiently precautionary measures in managing Commonwealth fisheries resources.”
- “The biological assessment of Commonwealth-managed fisheries shows an increase in the number of overfished fisheries. The Government and AFMA must seriously consider the implications of this increase in overfished fisheries and, in particular, consider the application of a precautionary approach.”(Department of Agriculture, Fisheries and Forestry – Australia, 2003)
- The need for the then Government, in 2005, to invoke the exceptional circumstances provisions of Section 91 of the FAA, based on the “poor biological and economic status of a number of the fisheries”, and issue a direction to AFMA to “put an end to overfishing and to limit the risk of future overfishing” (Macdonald, 2005).

We believe that AFMA clearly understands the meaning of the precautionary principle and we do not believe that the current legislation impedes either that understanding or its application. Rather, we believe that the ongoing problems related to overfishing, and in particular, failure to rebuild overfished stocks, reflect:

1. a lack of certainty about the Government’s and the community’s expectations about the appropriate level of precaution that should be applied;
2. an unwillingness, on the part of AFMA, to respond to uncertainty relating to the impacts of fishing in the way prescribed by the precautionary principle; and
3. lack of effective oversight of AFMA’s management responses against its objectives.

The appropriate level of precaution

Neither of the above definitions of the precautionary principle specifies the level of precaution appropriate or acceptable to the community or government. It was not until 2007 that the Government provided AFMA with a clear statement of the level of precaution that it required in the management of target stocks. This was achieved through the development of the *Commonwealth Fisheries Harvest Strategy Policy and Guidelines* (the HSP) (Department of Agriculture, Fisheries and Forestry (DAFF),

2007). The HSP prescribes standards for harvest strategies and requires that harvest strategies are to be established for each fishery.

Under the current governance structures in place for Commonwealth fisheries, DAFF is responsible for the development of fisheries policy and AFMA for implementation of that policy. The failure of DAFF to provide this guidance to AFMA until 16 years after AFMA was established points to a failure in these governance arrangements.

In addition, the recent Government reaction to the proposed operation of a large mid-water trawl vessel in the Small Pelagic Fishery suggests either that the level of precaution currently set out in the HSP does not adequately reflect the Government's and the community's expectations and/or that AFMA is not implementing the requirements of the HSP appropriately. The former would reflect a failure in consultation on the appropriate settings of the HSP and the latter a failure in the oversight of AFMA by DAFF.

Further, to date, the HSP relates only to some parts of the catch taken in Commonwealth fisheries. The HSP relates to so-called "commercial" species which are effectively the main target species of these fisheries. There remains no guidance from the Government on the level of precaution that is required in the management of by-product species (species taken incidentally to targeted fishing for other species, but retained for sale) and other discarded species (bycatch). There remains, therefore, a significant gap in the Government's articulation of the level of precaution that AFMA should apply. We are pursuing this issue through the reviews of the HSP and Commonwealth Policy on Fisheries Bycatch that are currently underway.

We believe that certainty and confidence in management of Commonwealth fisheries would be enhanced through the incorporation in subordinate legislation of the underlying standards of the HSP, and any standards developed under the bycatch policy.

We also consider that there is a serious inconsistency in the approach that the Government takes to management of those domestic fisheries for highly migratory species, such as tunas, that are subject to management by regional fishery management organizations (RFMOs) (referred to as 'international' fisheries), and to management of all other Commonwealth fisheries. Currently, the HSP settings are not applied to international fisheries. Government policy has effectively abrogated responsibilities for management of Australia's tuna fisheries to largely ineffective RFMOs, by exempting them from the requirements of the HSP. RFMOs are generally subject to consensus decision making and, as a result,

usually fail to deliver effective management that reflects anything like the level of precaution set out in the HSP. This situation effectively requires AFMA to run two models of management – one under the HSP and one where it accepts the outcomes of RFMO meetings, over which neither it nor DAFF have control.

We believe that the application of different standards for ‘domestic’ and ‘international’ fisheries is unacceptable. We will continue to pursue this issue through the review of the HSP, but we believe that a whole of government position on this issue is required in order to effect the changes required.

Response to uncertainty

The precautionary principle clearly specifies that uncertainty should not delay management action where there is a risk of serious or irreversible harm. We believe that AFMA’s adoption of an ERA approach to management has been a major step forward in ensuring that species at high risk from fishing are the focus of management. The ERA approach includes a precautionary approach to determining risk by ascribing high risk profiles to species for which there is a lack of data or uncertainty in information. ERM reports have been developed to respond to the risks. However, management that has been implemented under these reports has not necessarily been effective. A prime example of this is AFMA’s management strategy for upper-slope dogfish, a species which ERAs found to be at high risk from fishing in the Auto-longline and Otter-trawl sectors of the Southern and Eastern Scalefish and Shark Fishery (SESSF). The management strategy is relied upon in the ERM reports for these sectors. This strategy was subsequently found, by an independent expert, to be ineffective. Specifically the review of the strategy noted that “The Strategy does not meet the requirements of the HSP because there are no limits, targets, or timeframes included. Section 391 (2) of the EPBC Act (The Precautionary Principle) essentially says that lack of information should not be a reason to postpone conservation initiatives if species are found to be at risk. However, the Strategy cites lack of information as a reason for not designating targets or a timeframe, so it is not in compliance with that part of the Act” (Musick, 2011). The Strategy was in fact in direct contradiction to the requirements of the precautionary principle. AFMA is now strengthening the strategy.

Our involvement with AFMA over an extended period has demonstrated that the organisation is often reluctant to take sufficiently precautionary measures, without external pressure from sources such as EPBC Act assessments, EPBC Act listing processes or the ministerial direction of 2005. Hard management measures that may result, for example, in large areas of a fishery being closed, significant reductions in TACs or higher levels of observer coverage, are likely to increase the costs associated with fishing and/or

reduce revenue. Inevitably and understandably such decisions elicit strong protests from some fishers. It is also understandable, and consistent with AFMA's objectives, that AFMA seeks to implement measures that minimise this impost but that are also capable of achieving ecological sustainability. However, the development of such measures can mean significant delays in responding to management issues and does not necessarily ensure that the measure adopted are sufficiently rigorous and, where required, precautionary.

We believe that the need to recover costs from industry is also a source of significant pressure on AFMA to defer additional management measures and or to introduce insufficiently rigorous measures. Pursuit of the cost recovery objective has, in our view, had some perverse outcomes. We strongly support the principle of cost recovery and support the minimisation of management costs in line with the need to maximise net economic returns (the economic objective). However, experience shows, these two objectives have been pursued at the expense of the ESD objective.

Lack of effective oversight

There are a range of mechanisms in place to oversight AFMA's achievements against its objectives, including the application of the precautionary approach. They include annual assessments by ABARES of the status of stocks, a requirement to report against objectives in its Annual Report and regular reviews of Commonwealth fisheries under the EPBC Act. However, these processes have failed to either detect, or to ensure appropriate management responses to, serious underlying issues. For example:

- the level of interactions of the Gillnet sector of the SESSF with Australian sea lions and dolphins, both protected species under the EPBC Act, went undetected until very recently in part due to the removal of independent observer programs as a result of cost recovery pressures;
- rebuilding strategies for overfished stocks of school shark and eastern gemfish, both of which are listed as Conservation Dependent under the EPBC Act, have failed to deliver any signs of stock recovery and it is acknowledged by AFMA that targeting of these species continues despite the introduction of so called 'bycatch' total allowable catches (TACs) for these species;
- new species have continued to become overfished e.g. blue warehou, which is now the subject of a rebuilding strategy and has been nominated for listing under the EPBC Act;
- there remains little or no species-specific management of non-target shark species despite acknowledgement that such species are particularly vulnerable to overfishing due to the fact they are long lived, have low fecundity and are late to mature.

6. CHANGES TO THE FMA ARE REQUIRED IN ORDER TO PROVIDE THE COMMONWEALTH MINISTER RESPONSIBLE FOR FISHERIES WITH THE AUTHORITY TO ENSURE THAT ACTIONS TAKEN UNDER THE FMA ARE FULLY CONSISTENT WITH THE PRECAUTIONARY PRINCIPLE AND REFLECT THE GOVERNMENT'S AND THE COMMUNITY'S EXPECTATION ON THE APPROPRIATE LEVEL OF PRECAUTION.

We remain generally supportive of the central elements of the AFMA model:

- day to day fisheries management decisions at arm's length from government;
- key decisions subject to parliamentary scrutiny (statutory management plans and a number of other disallowable instruments);
- commission structure that removes industry from the direct decision making role;
- partnership approach to management that allows for participation of a broad range of interests (fishing industry, conservation representatives, scientists, managers, recreational fishers, other government agencies); and
- the granting of long-term statutory fishing rights (SFRs) that engender stewardship of the resource by industry.

While these foundations of the current management system remain appropriate, confidence in the system's ability to deliver a sustainable marine environment is waning. There remains a strong perception in some sectors that AFMA serves the interests of the fishing industry rather than the interests of the community that owns the resource. Failure to be proactive about taking hard resource management decisions that are consistent with a precautionary approach feeds this perception. Hard decisions are taken by AFMA only in response to external influences such as the assessments under the EPBC Act, nominations for listing of species, external reviews or public opposition to specific decisions. The need for a Ministerial Direction to AFMA in 2005 was a strong indication that AFMA was failing to meet its objectives. Unfortunately the response to that Direction has not yet delivered the outcomes that were sought.

We note that one of the advantages of the AFMA model was seen by the government of the day to be "increased independence in day to day decision making, with ministerial involvement at a strategic level rather than ongoing involvement in operational matters" (Hansard, 1990). We believe that this remains an advantage that should not be lost in an attempt to ensure sufficient ministerial oversight. As noted earlier, the current legislation provides the Minister for fisheries with considerable powers in relation to the composition of the Commission and the Chief Executive Officer, approval of AFMA's corporate and operational plans and the issue of directions to AFMA in exceptional circumstances and in relation to

foreign compliance. The Parliament also retains final approval of AFMA's management plans and a number of other management instruments available to AFMA.

We believe that these powers are appropriate. We are concerned to ensure that any additional ministerial oversight needs to be balanced by mechanisms that preserve the current approach of arm's length decision making from government on fisheries management matters. While it is important to ensure that all stakeholders have confidence that the legislative objectives are being pursued in an appropriate manner, via ministerial oversight, it is equally important that industry has confidence that decisions will be taken on the best available advice rather than for political expediency. This confidence is central to the effective operation of SFRs in pursuit of AFMA's objectives. The allocation of these rights under statutory management plans is a central plank of the management framework of Commonwealth fisheries. It is these rights, and the security that they provide fishers, which seek to overcome the problems associated with common property resources. If fishers believe that "additional ministerial oversight" will entail ad hoc decisions that affect the value of those rights, this will significantly undermine the entire management system. While we acknowledge that the Minister is bound by the same objectives as AFMA (Section 3 of the FMA) we believe that it will be important to ensure that any additional oversight powers provide industry with appropriate assurances. We do not believe that a change to the legislation is necessarily required in order to provide the Minister with the oversight that is required. It is our view that appropriately revised HSP and Bycatch policies together with the development of explicit, regular and independent assessment of AFMA against its legislative objectives could provide the Government and the community with the necessary confidence in the fisheries management system without compromising the security of SFRs.

7. THAT THE FMA AND FAA AND ASSOCIATED POLICIES MAY NO LONGER FULLY REFLECT CONTEMPORARY, BEST PRACTICE APPROACHES TO FISHERIES MANAGEMENT (TOR 3)

In addressing the first four elements of the terms of reference we have attempted to respond to the issues raised within the context of the current legislation, policies and administrative structures that comprise the Commonwealth fisheries management framework. That analysis points to a number of systemic failures that bring into question the effectiveness of the framework as a whole. While there have been some incremental changes to that framework over the last 20 years, these failures may point to a need to reconsider the effectiveness and appropriateness of the framework in a holistic way in the context of contemporary approaches to management of the marine environment and the specific issues that face the Australian fisheries sector.

It is our view that the model in which fisheries management is delivered over the next 20 years will need to:

- be less focused on fisheries and more focused on the marine environment in which they operate;
- be more responsive, in a timely manner, to changing community attitudes about the marine environment;
- be more accountable;
- be more inclusive of the broad spectrum of interests in the marine environment;
- be open to the adoption of alternative and innovative approaches to delivery of fisheries management;
- ensure that the assessment of benefits and costs of management accurately reflect community and industry interests and that these are reflected in cost-recovery arrangements;
- be more cost-effective in recognition of the cost-price pressures facing industry and government budgetary constraints; and
- acknowledge the global context in which our fisheries operate.

Each of these characteristics and the current impediments to delivery of a model that reflects them, are considered below.

Focus on the marine environment

We wholeheartedly support the adoption of an ecosystem-based approach to management of the marine environment (see, for example, Ward *et al.*, 2002). Many of the concerns expressed by both the community and the fishing industry about the current model of management reflect the broadening of the scope of fisheries management. Fisheries management is no longer about management of target stocks. Increasingly, impacts of fishing on non-target species and marine communities and habitats are of concern to stakeholders. Further, as evidenced by the bioregional marine planning process initiated by DSEWPaC, there is a growing demand for long term protection of conservation values in the marine environment. Commercial fisheries are only one of a wide range of impacts on that environment, which is increasingly subject to subject to competition from a range of users including for recreational purposes, for oil and gas exploration and for coastal development. The impact of fishing on the marine environment must be considered in this context.

Across DAFF, AFMA and DSEWPaC we see actions taken in the name of “ecosystem-based management” of the marine environment. For example, AFMA has been moving, incrementally, down the path of what it calls ecosystem-based management without any real explanation of what this means or its role in pursuit of AFMA’s objectives. However, there is no overarching government policy statement about what ecosystem-based management means in relation to the marine environment and how it should be pursued. The current approach to ecosystem-based management by these three agencies is piecemeal and lacks guidance. This situation creates confusion amongst all stakeholders and creates an environment in which it is easy to oppose measures seeking to achieve ecosystem-based management.

Ecosystem-based management requires, among other things, that the cumulative impacts on fish species, habitats and communities are taken into account when developing management arrangements. In the case of fisheries this requires input from the relevant States/Northern Territory and all fishing sectors (commercial, recreational, charter and indigenous). The key mechanism for cooperation between the Commonwealth and the States/Northern Territory on commercial fisheries matters is through the Offshore Constitutional Settlement (OCS). Negotiations under the OCS to improve the management of individual species by bringing them under single jurisdiction management have been protracted and in many cases unproductive. This has resulted in the persistence of nonsensical arrangements whereby the same species/stock taken in different jurisdictions and/or by different gears is subject to different management arrangements.

A major source of uncertainty in fisheries management arises from limited data availability and the quality of that data. In many fisheries, science and management relies largely on catch and fishing effort data collected through logbooks completed by fishers. This is an invaluable source of information. However, across the jurisdictions there remains considerable variability in the nature of the data collected in logbooks and much of those data remains un-validated, i.e. the accuracy of the data supplied by fishers has not been checked. Reliance on assessment of stocks based on catch-per-unit effort (CPUE) data sourced from un-validated logbook data is a significant risk. Further, CPUE data is influenced by commercial fishing decisions based on the most productive areas to fish. It is not, therefore, always reflective of the abundance of a stock across the whole of the fishery. These uncertainties are amplified in relation to logbook data on non-target stocks including discarded species and interactions with threatened, endangered and protected species (TEPS). Traditionally, less emphasis has been given to collection of data on these parts of the catch and experience has shown that, even

where there is a requirement to report interactions with TEPS, interactions have been significantly under-reported.

To improve the certainty in the data underlying stock assessments and management of broader ecosystem impacts there is a need for consistency of data collection across fisheries and jurisdictions, validation of logbook data and the conduct of fishery-independent surveys that will reduce the reliance on CPUE data. However, the collection of reliable and consistent data on all impacts on species across jurisdictions and fishing sectors is a significant challenge. For example, State/Northern Territory commitment to observer programs to validate data provided by fishers is questionable, and vulnerable to tight budgetary constraints in some jurisdictions that do not take a cost-recovery approach to fisheries management. We believe that, in part, this reflects a lack of alignment between Commonwealth and State fisheries management objectives, priorities and processes.

Marine resources are not only affected by commercial fisheries. Recreational fishers and Indigenous fishers also place pressure on fish stocks. In fact, for some species the recreational take far exceeds the commercial take. As well as being responsible for commercial fisheries in their waters, the States/Northern Territory are also responsible for management of recreational and charter fishing. However data on the catch by these fishing sectors is very poorly monitored and subject only to periodic surveys at best. Fisheries science needs to take into account all sources of removals from the stock. Currently, the lack of reliable estimates of catch by the recreational and, to a much lesser extent, Indigenous people, constitutes a significant source of uncertainty in the scientific understanding of stock status of some species. This is an important shortcoming that must be addressed if the cumulative impacts of fishing are to be assessed.

Greater alignment of Commonwealth and State/Northern Territory objectives and data collection mechanisms would support achievement of the objectives of the FMA. There is a need for a national, consistent approach to monitoring and management of all fishing sectors across Australia. We believe that the appropriate mechanism to pursue such alignment is through the Council of Australian Governments' Standing Committee on Primary Industries, chaired by the Commonwealth Minister for Fisheries, and its supporting committee, the Primary Industries Standing Committee, chaired by the Secretary of DAFF.

Respond to community expectations

Community expectations about outcomes from management of the marine environment have changed since 1991. The community is now much better informed about the nature of potential threats to that environment and is better placed to make its concerns, whether they be well-informed or not, known in a forceful way through the use of social media.

We see a dual role for government and its agencies in this respect. The first is to ensure that government legislation and policies are in step with current community expectations. We believe this review, together with the reviews of the HSP and bycatch policy, will go a long way to informing that. However, there is also a need to ensure that Government processes provide opportunities for ongoing engagement of the broader community to ensure that policies remain in step with public expectations. The second role is to ensure that the community is well informed so that those expectations are well founded. We believe that government needs to be more proactive about educating the public about why and how it is taking certain actions in relation to fisheries and initiatives such as bioregional marine planning. Building an understanding of the rationale for decisions and decision making processes will help to avoid the need for 'political' responses. We recognise that the adoption of this approach requires the Minister to have confidence in the decisions and decision making processes, which is why we have also proposed the strengthening of the current oversight mechanisms.

Be inclusive

Related to the above need for responsiveness is the need for inclusion of the community in development of approaches to management of the marine environment and in decision making process. It is our view that in recent years the opportunities for meaningful engagement of stakeholder groups in such processes have diminished. A number of changes have occurred.

- AFMA has begun to regard its MAC and RAG processes as constituting consultation rather than respecting the advisory role that these bodies are expected to play.
- This situation has been exacerbated by the adoption of the rationalized MAC/RAG structures. While we support this rationalized approach, it has, under the existing legislation, inevitably limited participation in the MAC process by all stakeholder groups. We believe that this review should seek to have section 60(1)(c) of the FAA amended to remove the upper limit on the number of members. Currently this impediment is being addressed by the appointment of permanent observer positions which we feel is inappropriate and, in the long run, leaves the MAC process open to criticism.

- Part 3 of the FAA provides for the establishment of a Fishing Industry Policy Council (FIPC) with the following functions:

98 Functions of Council

- (a) *to inquire into, and to report to the Minister on, matters affecting the well-being of the industry; and*
- (b) *to inquire into, and to report to the Minister on, matters referred to it by the Minister in relation to the industry; and*
- (c) *to develop, and to submit to the Minister, recommendations, guidelines and plans for measures consistent with the principles of ecologically sustainable development designed to safeguard or further the interests of the industry; and*
- (d) *to consult, and co-operate, with other persons and organisations in matters affecting the industry; and*
- (e) *such other functions (if any) as are conferred upon the Council by the regulations.*

Membership of the FIPC was to be broad-based including representatives from AFMA, the Fisheries Research and Development Corporation (FRDC), the peak industry body (now the Commonwealth Fisheries Association (CFA)), recreational fishers, conservation groups and consumer bodies. However, to our knowledge, the FIPC was never constituted. We consider this most unfortunate since this body was obviously envisaged as a central part of the overall fisheries management framework established in 1991. In its absence the Minister responsible for fisheries has been left with no direct and single avenue of advice from stakeholders with an interest in fisheries management. We believe that recent events in Commonwealth fisheries management in Australia are symptomatic of this gap.

- Two important and effective mechanisms for direct consultation between ministers and stakeholders have been disbanded in recent years. Previously, the Department responsible for the environment funded the operation of the National Environment Consultative Forum (NECF) and, following the 2003 fisheries policy review, the Fisheries Minister established an annual Seafood Forum. Neither of these bodies is now in operation. The loss of these mechanisms has reduced the opportunities for stakeholders to raise concerns directly with the relevant ministers rather than through their Departments. We are of the view, that these consultation mechanisms, provided an 'early warning' to Ministers of emerging issues that were likely to be contentious and with the opportunity to deal with those issues in a proactive way.
- The AFMA Environment Committee provides advice on strategies to address environmental issues, including ecologically sustainable development, the precautionary principle and minimising the impact on non-target species to the AFMA Commission. The Committee

comprises five AFMA commissioners and individual representatives from an environmental NGO, the CFA, AFMA management, DAFF and DSEWPaC. The Committee has not met since March 2011 and we have been advised that its operations are on hold to allow AFMA to dedicate its resources to reinvigorating the ERA/ERM process.

Clearly, avenues for consultation between AFMA and its stakeholders and Ministers and stakeholders are now inadequate. This has left the Fisheries Minister, in particular, reliant on DAFF and AFMA for advice and views on issues affecting fisheries management, without the benefit of broader stakeholder input. We do not believe that this is what the AFMA model envisaged nor do we believe that it is an appropriate or effective way to manage fisheries in the 21st century. We believe that there would be merit in reconsidering the provisions of the FAA in relation to the FIPC with a view to establishing a body with similar functions reporting directly to the Minister.

The need for a better understanding by government and fisheries management agencies of what the community is prepared to accept, in relation to exploitation of Australian fisheries, and the marine environment more broadly, is clear. The changes in consultation mechanisms identified above have diminished rather than expanded the opportunities for the community to be heard in discussions on development of fisheries management arrangements. It is imperative that this situation is addressed so the boundaries of the 'social licence' for fishing operations are clear and can be reflected in the legislative, policy and operational environment in which fisheries are conducted.

The AFMA Commission is an expertise-based body comprising an independent chair, the AFMA CEO and seven other members. Of these seven current members, four have had a longstanding involvement with AFMA as, variously, managing director and/or members of the Commission's predecessor, the AFMA Board. We note that the term of the current membership runs for another 18 months. By that time, three members will have been on the AFMA Board/Commission for a consecutive period of nearly eleven years (since 2003/04) and one member for eight years (since 2006/07). We respect the contribution that these four members have made, individually, to AFMA, but consider that this length of appointment is not consistent with best practice governance arrangements. Further, the FAA provides for five-year terms for Commissioners and it is our understanding that there is nothing in the Act to preclude re-appointment for a further five-year term. We believe that the term of membership should be reduced to three years and the maximum number of terms be set at two. Consideration might also be given to staggering Commission appointments so that the appointment process provides for both continuity and renewal.

In addition, we believe that the current requirements for the composition of the AFMA Commission under Section 12(3) of the FAA do not adequately provide for expertise and input from the conservation sector and the broader community. Currently, the Act requires that expertise related to fisheries management, fishing industry operations, science, natural resource management, economics, business or financial management, law, public sector administration or governance and such other fields (if any) as are prescribed by the regulations, is reflected in the Commission membership.

We believe that in the interests of inclusivity, and in order to reinvigorate thinking on Commonwealth fisheries management, it would be appropriate to review the membership of the AFMA Commission with a view to providing opportunities for new approaches and new thinking. In addition, we believe that the FAA should be amended to require the inclusion of conservation (environmental NGO and broader community representation) expertise on the AFMA Commission and to provide for regular renewal of the membership of the Commission.

Be accountable

We have discussed above the various avenues through which AFMA is currently accountable to Government and the community. We believe that the major flaw in the current arrangements lies in the failure of DAFF to fulfil the performance monitoring role envisaged when AFMA was established. The second reading speech of the *Fisheries Administration Bill 1990* outlines this role as follows:

.... The fisheries policy branch will also be required to monitor the overall performance of the Australian Fisheries Management Authority in regard to its implementation of the Government's fisheries management objectives and the general performance and profitability of the fishing industry. (Hansard, 1990)

It is our view that this role is not being fulfilled adequately. DAFF relies on the annual ABARES' *Fishery Status Reports* to meet this responsibility. While these reports consider the biological, ecological and, in recent years, the economic circumstances of individual fisheries, no explicit assessment is made of AFMA's overall performance against its ESD or economic objectives and there is no consideration of the extent to which management is efficient and cost-effective, whether cost recovery is in line with government policy, or whether AFMA is accountable to the Australian public. In short, DAFF does not fulfil the role that was envisaged by government. We believe that, if this role was being filled conscientiously, the Minister would have direct access to information which would, for example, have prompted the need for guidance to AFMA on the government's expectations on the implementation of the precautionary principle much earlier than 2005 when the need was finally established.

It should however, also be pointed out, that even without such explicit advice from the Department, the biological status of fisheries as presented in the ABARES status reports should in itself have raised sufficient concern in the minds of successive fisheries ministers to prompt serious questions to its Department about AFMA's performance.

We believe that:

- there is a need to review, in particular, the role that DAFF plays in scrutinising AFMA's compliance with its statutory objectives as prescribed by the 1989 fisheries policy statement (DPIE, 1989) to ensure greater oversight;
- there is a need for a more explicit, independent and holistic assessment of AFMA's performance against its objectives to be provided to the Minister. This will provide the Government and the community with confidence that AFMA is fulfilling the objectives of the FAA and FMA, and related supporting policies; and
- there is scope for improving the performance assessment of AFMA within existing budgets. For example, we note that ABARES produces its status reports of each Commonwealth fishery on an annual basis. We believe that, while the status reports are a valuable source of information, annual reports provide only marginal value since significant changes in the status of fisheries are rarely detectable on an annual basis. We propose that a rolling program of assessments be adopted whereby each fishery is assessed by ABARES perhaps every three years, when significant changes in management occur or when new research findings identify a significant change in the status of the fishery become available. The cost savings derived could then be applied to the more explicit performance assessment against AFMA's objectives.

AFMA needs to be more directly accountable for and transparent about its decisions. Our experience is that information is provided to conservation representatives with short deadlines or in-confidence reducing the ability to consult with those organisations and viewpoints they represent. Currently, MACs and RAGs are expected to provide advice to AFMA in the context of AFMA's legislative objectives. However, when that advice reaches AFMA for decision no publicly available information is available as to how AFMA has considered its objectives in making a decision.

We believe that, following Commission meetings a public record of decisions taken and their justification against the objectives should be available. This requirement would promote transparency and discipline in decision making and provide stakeholders with confidence.

Be flexible

We note that the FMA has been amended in recent years to provide for the devolution of some of AFMA's powers under co-management arrangements. We believe that, given the imperative for cost-effective management and the potential long term benefits available from providing industry with responsibility for its own future, there is merit in remaining open to approaches to management other than the traditional, centralized government approach. Such alternatives should, however, be subject to appropriate checks and balances and should require the presence of a mature and organised industry organisation that can guarantee the delivery of agreed measures in the timeframes consistent with the management needs of the fishery and the resource. Such approaches are unlikely to be suitable for all fisheries. However, where they are appropriate, their empowerment of industry may promote the development of innovative approaches to management that may be unlikely to emerge under more bureaucratic models of fisheries management.

The Government should resist any suggestions to further entrench bureaucratic approaches to fisheries management in favour of remaining open to more flexible, innovative approaches where these can be justified.

Recover costs appropriately

AFMA currently recovers costs from industry in line with the Cost Recovery Impact Statement 2010 (AFMA, 2010) in accordance with the government's Cost Recovery Guidelines. We support cost recovery for fisheries management. However, we are keen to ensure that the attribution of costs between the community (the tax-payer) and the fishing industry is appropriate. As discussed above, there is a growing demand by the community for protection of the environmental services associated with the marine environment. That protection is not costless. Costs arise from the extra imposts on industries that may once have had an impact on those services and from the research and management to underpin such protection. We believe that the community must be prepared to contribute appropriately. If community expectations are changing it may well be appropriate to reconsider the relative apportionment of benefits and costs associated with delivery of those expectations.

We believe that it may be appropriate to review the current allocation of the burden of funding of fisheries management, and in particular, research, to re-assess the public good component arising from effective, science-based fisheries management that delivers the ecosystem wide outcomes demanded by the community and governments. Such a review could, for example, examine the appropriateness of

the existing level of public good funding contributed by the Government to the FRDC.

Further, it is our view that commercial, recreational and charter fishers all derive a benefit from good fisheries management. Resource allocation across these sectors remains a key issue in respect of some fisheries/species. With resource allocation come rights and responsibilities. Those responsibilities include a contribution to data collection, monitoring and research.

There is a need to ensure that each fishing sector makes an appropriate contribution to management of marine resources and that the commercial sector does not continue to bear the full responsibility.

Be cost-effective

There are a number of factors affecting the cost-effectiveness of Commonwealth fisheries management. We consider that the current allocation of responsibilities across Commonwealth agencies, namely DAFF, AFMA and DSEWPaC, promotes duplication of effort and spreads too thinly the available expertise on fisheries management and the marine environment.

The second reading speech of the *Fisheries Administration Bill 1990* outlines the role of the Department responsible for fisheries as follows:

The policy branch within the Department of Primary Industries and Energy will retain its responsibility for advising the Government on broad strategic fisheries policy matters. These will include the development of resource use and environmental policies, advising on policy matters concerning foreign access to the Australian fishing zone, developing policy on fisheries access rights and the collection of community returns from the fishing industry, monitoring the effect of taxation rulings on fisheries management and developing policy that will reduce domestic and international marketing impediments for Australian fish products. The fisheries policy branch will also be required to monitor the overall performance of the Australian Fisheries Management Authority in regard to its implementation of the Government's fisheries management objectives and the general performance and profitability of the fishing industry.

.....in keeping with the principle that formal inter-government negotiations are led by Ministers and their officials, the Department will generally take the leading role in delegations to inter-governmental negotiations on fisheries matters and will represent the Government on multilateral fisheries fora. The Authority will also have a role in inter-governmental negotiations where these relate to fisheries management.” (Hansard, 1990)

AFMA's role was spelt out as follows:

The Authority's principal responsibilities will be: to develop and implement fishery-specific management plans; to set sustainable catch quotas for our fish stocks; to grant ongoing or temporary access to fish resources; to effectively monitor the activities of Australian and foreign fishermen licensed to exploit our fish resources; and to monitor the general performance of each fishery and introduce, where necessary, appropriate restructuring programs. (Hansard, 1990)

AFMA is responsible for day to day management of Commonwealth fisheries in line with the FMA and FAA and government policies. The main instruments of government policy are:

- the 1989 policy statement (DPIE, 1989)
- the 2003 review of Commonwealth Fisheries Policy (DAFFA, 2003)
- the Commonwealth Fisheries Harvest Strategy Policy (DAFF, 2007); and
- the Commonwealth Policy on Fisheries Bycatch (DAFFA, 2000)

AFMA also develops internal policy documents to guide its activities. These take the form of a series of Fisheries Management Papers (see <http://www.afma.gov.au/resource-centre/publications-and-forms/fisheries/>). As far as we are aware DAFF does not review these papers to ensure their consistency with overarching government policy and legislation.

As discussed above, DSEWPaC assesses Commonwealth fisheries periodically against the Guidelines. The outcomes of these assessments can involve the imposition of conditions on fisheries that require changed management arrangements or additional monitoring or research. We have indicated earlier our support for an ongoing role for DSEWPaC under the existing fisheries management delivery model. In particular, we note the need for the export approval required under the EPBC Act to continue to apply to State fisheries in order to raise the standards of fishery management at the State level.

We also believe that there is scope for increased cost-effectiveness in the identification of research priorities and delivery of research outcomes. As noted above, we believe that to deliver more sustainable outcomes requires management to consider cumulative impacts. This will require a significant shift in research frameworks and thinking and will necessarily entail greater cooperation at all stages in the science and management frameworks.

Cost-effective monitoring of fishing operations, practices and catch is central to sound fisheries management. We note the major impact that the implementation of vessels monitoring systems across Commonwealth fisheries in the last decade has had in terms of both compliance and the opening up of management options that would otherwise not be feasible to enforce. We believe that the increased use of electronic observer coverage through the use of on-board camera technology and widespread adoption of electronic logbooks has the potential to deliver similar gains. We note, however that we consider it unlikely that technology will ever completely replace the role that the physical presence of observers play on board vessels. Further, it is essential that work is undertaken to compare the results of onboard observer coverage with electronic monitoring to ensure stakeholder trust in e-monitoring.

We strongly support the use of new technology to reduce costs of monitoring fisheries where this technology can deliver the required results.

We have noted above AFMA's reluctance to take sufficiently precautionary or sufficiently rigorous measures in the first instance. We believe that, ultimately, this not only compromises ESD but also compromises the delivery of cost-effective management. It would be far more efficient to develop and implement an effective set of measures rather than devote management, industry and other stakeholder resources, to ongoing adjustment of those measures in order to meet the necessary standards.

A key component of cost-effective management is the delivery of compliance programs that preserve the integrity of statutory fishing rights. Deterrence is an important and cost-effective component of such programs. We note that there has been a longstanding government commitment to review the penalty provisions of the FMA while retaining the provisions for cancellation of fishing concessions. We support, in principle, amendments to the legislation that seek to ensure that the penalty provisions of the FMA provide a sufficient deterrence to non-compliance. However, as noted earlier, the security associated with SFRs is central to Commonwealth fisheries management.

We would support changes to the penalty provisions of the FMA that balance the need for adequate deterrence with the maintenance of secure property rights in the form of SFRs.

Global context

While we have identified, in this submission, a number of deficiencies in the governance structures in place for Commonwealth fisheries and in the implementation of legislation and policies, we acknowledge that our Commonwealth fisheries are, generally speaking, held to higher standards than many others around the world. Many fish producing countries around the world lack the political will, the financial resources and/or the human capacity to manage fisheries in accordance with contemporary best practice. In some countries fishing operations are subsidised. We believe Australia's standards are entirely appropriate and our organisations are active globally in seeking improvements in the standards of management elsewhere. However, we recognise that, in the interim, Australian fishers must compete internationally and on the domestic market with product that is caught illegally and/or unsustainably. In many cases this product can be marketed profitably at a much lower cost than Australian product that meets domestic management requirements. We are concerned about the impact that this has on the profitability of sustainable fishing enterprises in Australia.

We note that measures aimed at precluding the entry of product that has been taken illegally and/or has unacceptable impacts on the marine environment have been introduced in the European Union and the United States. We would support consideration of the feasibility of introducing similar regulations in Australia.

8. CONCLUDING COMMENTS

We believe that the principles and objectives of the existing legislation remain generally appropriate. Further, we support the FMA and FAA as the primary legislative instruments underpinning Commonwealth fisheries management and acknowledge the important complementary role played by the EPBC Act in management of Commonwealth fisheries and by DAFF as a source of policy development and performance monitoring.

We have identified a number of failures in the governance system for Commonwealth fisheries and we consider that it is the system overall, rather than a specific agency, that is responsible for those failures. We are of the view that roles and responsibilities across that system have become blurred over time and that there is a lack of shared vision across the three central agencies (AFMA, DAFF and DSEWPaC). The result is a complex and sometimes unwieldy system that is not adequately supported by clear, efficient and effective processes.

We have identified a series of amendments to the fisheries legislation that will clarify the intent of the legislation and update it to better reflect the current context in which commonwealth fisheries are managed. We have also identified a series of issues that we believe warrant further consideration by the Government, including the current arrangements for delivery of fisheries management services and a range of policy matters that we believe will deliver better outcomes for the marine environment, administrative efficiencies, enhanced certainty for all stakeholders and equity in access to consultation and decision making processes. We believe that these issues should be considered in the context of a broader consideration of the efficiency and effectiveness of the current overarching governance structures in place for Commonwealth fisheries management.

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