

# **PRODUCTIVITY COMMISSION DRAFT REPORT**

## **MARINE FISHERIES AND AQUACULTURE**

### **SUBMISSION BY THE WESTERN AUSTRALIAN GOVERNMENT**

The Western Australian Government supports the thrust of the recommendations made in the Draft Report with many already implemented in whole or part in this State.

Western Australia notes that while the nature of fisheries resources requires Governments to intervene in their management, this should seek to deliver optimum ecological, economic and social outcomes for the community at an acceptable cost. The management outcomes, reported annually in *Status reports of the fisheries and aquatic resources of Western Australia* show that most fisheries in the state are performing at acceptable levels and that, where there are risks to a stock, they are usually attributable to adverse environmental conditions.

The Western Australian Department of Fisheries Annual Report for 2015-2016, tabled on 22 September 2016, indicates that:

- 86% of the community is satisfied that the Department is achieving its aquatic resource management objectives; and
- 95% of fish stocks in Western Australia are not at risk from fishing.

The State's aquatic resource management regime is being further enhanced through:

- the proposed Aquatic Resources Management Act (ARMA), currently before the Western Australian Parliament, which will support the development of improved approaches to allocating and managing aquatic resources.
- the State Government's significant investment in Marine Stewardship Council (MSC) certification (i.e. third party certification) of the state's fisheries to ensure they continue to enjoy their social licence to operate. MSC certification, which is well supported by the fishing industry, is resulting in world recognition of the standard of fisheries management employed in Western Australia and leading to changes to the MSC certification process to recognise the management approaches used in this State.

The Western Australian Government has a well-developed red tape reduction regime, recently augmented by a Department of Finance red tape 'flying squad' that is conducting 90 day reviews of key areas of regulation, including aquaculture. The outcome of the

aquaculture review will be published in coming weeks. The Department of Fisheries has also initiated its own campaign, “Project Barracuda”, to simplify and streamline regulation. The red tape reduction initiatives for this year will be the subject of a report to the Western Australian Parliament this month.

The Western Australian Government requests the Productivity Commission to strengthen and expand its recommendations with regard to the cumulative effect of separate Commonwealth *Environmental Protection and Biodiversity Conservation Act* decisions and policy settings on the viability of commercial fisheries. In particular, the Western Australian Government would like to see:

- greater Commonwealth investment in the science underpinning Matters of National Environmental Significance, including better understanding of the population, range, distribution, habitat dependencies and hierarchy of threats to particular species;
- more frequent and systematic review of the status of listed MNES and updating of public databases;
- greater Commonwealth investment in recovery plans for key species (targeting the primary threats);
- an institutional practice of hindsight reviews to ensure decisions by delegates are practical, reasonable and proportionate to the risk; and
- consideration of a compensation or adjustment scheme for demonstrated economic loss as a result of Commonwealth policy decisions.

Responses on specific recommendations are provided below:

## **Specific Responses**

### **Draft Recommendation 2.1**

**The New South Wales, Victorian, Tasmanian and Queensland Governments should develop and implement a harvest strategy policy. Harvest strategy policies should be developed with regard to the *National Guidelines to Develop Fishery Harvest Strategies*.**

The thrust of the recommendation is supported.

Note that WA has a Harvest Strategy Policy and has developed harvest strategies for a number of fisheries. It is continuing to develop harvest strategies for other fisheries on a prioritised basis.

## **Draft Recommendation 2.2**

**The Australian, Victorian, Tasmanian and Queensland Governments should develop a policy to guide the allocation of access to fisheries stocks between different sectors.**

**The allocation policies of all governments should seek to promote the best use of fishery resources and provide certainty in relation to the processes involved in determining resource shares. At a minimum these policies should outline:**

- **triggers for review of existing allocations between sectors**
- **the review process, including how consultation will occur**
- **key considerations that will guide decisions.**

**These policies should be publicly available.**

The thrust of this recommendation is supported.

Allocation processes in Western Australia operate in accordance with the WA Government's Integrated Fisheries Management (IFM) policy. The proposed new Aquatic Resources Management Act (ARMA) will provide an enhanced framework for the allocation and reallocation of fisheries resources, on a transparent basis.

## **Draft Recommendation 3.1**

**The Northern Territory and all state Governments should move each of their fisheries to an individual transferable quota management system unless it is demonstrated that this is technically impractical or not cost effective. If individual transferable quotas are not used, fisheries should be managed using individual transferable effort systems.**

**The Australian Government should complete the move of its fisheries to either individual transferable quota or individual transferable effort systems.**

**Governments should publicly release reasons for the approach taken to each fishery.**

Recommendation supported in part. The Department of Fisheries has a number of Individual Transferable Quota (ITQ) and Individual Transferable Effort (ITE) fisheries. The most appropriate management system is best determined on a case by case basis and in some fisheries (in particular low value fisheries) the cost of administering an ITQ or ITE system may not be warranted although, in such cases, the access authorisation should be tradeable.

Tradability (transfer of authorisations or the entitlement held on an authorisation [held as ITQ, ITE or time/gear units depending on the fishery]) is provided for under existing WA fisheries legislation (subject to a number of caveats) and will continue to be provided for under the planned ARMA. The Department of Fisheries supports the tradeability of commercial fisheries access authorisations and entitlement as this allows the market to operate efficiently.

Controls on fishing methods are essential in any effective management regime. Fishing methods, such as fishing gear, can have impacts on other parts of the ecosystem that also need to be managed.

### **Draft Recommendation 3.2**

**The Australian, state and Northern Territory Governments should ensure that commercial fishing regulations are reviewed regularly to ensure they remain ‘fit for purpose’ against clearly articulated policy objectives. At minimum, reviews should occur when harvest strategies are revised.**

Supported in part.

Regular review of fishing regulations for both the commercial and recreational sectors to ensure that they remain ‘fit for purpose’ is supported.

The part of the recommendation related to harvest strategies appears to distort their function. The role of a harvest strategy is to provide clear statements about the measure or measures that will be used to determine the status of a stock (or, if social or economic status are being considered, measures of the status of those matters) and the actions that will be taken should the measure or measures move outside a threshold or a limit. They are not necessarily designed or intended to be a process by which a more general review of management arrangements for a fishery is conducted.

### **Draft Recommendation 3.3**

**State and territory governments should take into account any impacts of proposed planning and land/marine use developments on the commercial fishing sector.**

Supported, noting that in WA the impact of coastal development proposals on the marine environment is required to be considered in the environmental approval process.

Marine reserve planning decisions in WA, are subject to an extensive consultation process in accordance with the *Conservation and Land Management (CALM) Act*, with the final decision on the reservation of an area as a marine reserve, and its zoning scheme (if relevant), requiring the concurrence of the Ministers for Environment; Fisheries; and Mines and Petroleum. If the establishment of a marine reserve results in a reduction in the market value of a commercial fishing authorisation, compensation may be payable under the *Fishing and Related Industries Compensation (Marine Reserves) [FRICMR] Act*.

### **Draft Recommendation 4.1**

**Within the next three years:**

- **the Queensland, South Australian and Northern Territory Governments should introduce licensing for independent recreational marine fishing, and the Victorian and Tasmanian Governments licensing for marine fishing charter boat operators**
- **governments should minimise license exemptions.**

The thrust of the recommendation is supported.

WA has various recreational fishing licences (including a recreational fishing from boat licence) and also licenses the charter (fishing tour) sector but does not have comprehensive licensing of all recreational fishing activity.

The part recommendation related to exemptions is noted.

#### **Draft Recommendation 4.2**

**Governments should consider implementing harvest tagging management systems for valuable at-risk species when conventional management controls (such as bag and size limits) are ineffective in achieving sustainability goals.**

Not supported.

As noted in the Draft Report, WA successfully operated a tag system for pink snapper in the Freycinet Estuary area of Shark Bay. While geographical and other local circumstances were favourable to the use of this approach for this species in this area, any proposed general use of tag systems to limit the take of recreationally-caught fish would require careful consideration. In particular, tag systems may not be desirable in situations where there may be significant capture mortality (e.g. from barotrauma, scale loss or hook damage). Using a tag system does not prevent incidental mortality of captured fish and, while it may limit landings, it may not achieve the aim of averting fishing mortality. In such circumstances, more appropriate management tools may be area and/or time closures.

The use of tag methods also requires a relatively high level of at-landing compliance inspection (and therefore high cost) to ensure that fishers consider that there is a reasonable likelihood of being detected if they attempt to land an untagged fish.

#### **Draft Recommendation 4.3**

**The Australian, state and Northern Territory Governments should sponsor more research on the survival rates of catch and release methods in deep water fisheries.**

This recommendation is noted and of interest for management purposes, but is not presently a priority research matter for WA.

#### **Draft Recommendation 4.4**

**State and territory governments should review and strengthen penalty regimes for recreational fishing to deter regulatory non-compliance.**

**Penalties should be proportional to the level of risk posed.**

Supported. This recommendation is consistent with WA's approach to penalties for recreational fishing offences.

## **Draft Recommendation 4.5**

**The Australian Government should conduct a national survey of recreational fishing in 2017-18, using a comparable approach to the 2000-01 national survey. The cost of the survey should be shared by all governments.**

**From 2022-23 all governments should undertake five yearly surveys of recreational fishers, whether at the national level or on a coordinated basis. Surveys should be consistent across jurisdictions and focus on participation, catch and effort, identification of species important to recreational fishers and information on the value of recreational fishing.**

WA already funds regular, dedicated recreational fishing surveys. The Department of Fisheries supports a nationally coordinated approach to survey design and methodology but is not in a position to make a direct financial contribution to a five-yearly national survey given its current level of investment in WA surveys.

Stock assessments based on age/size structures include the impact of recreational catch, even if the level of recreational fishing is not directly measured.

## **Recommendation 5.1**

**Customary fishing by Indigenous Australians should be recognised as a sector in its own right in fisheries management regimes.**

**The definition of Indigenous customary fishing should be consistent with native title.**

The Recommendation is supported and in line with the approach taken under the FRMA (and the proposed ARMA) and is consistent with WA's Customary Fishing Policy

## **Recommendation 5.2**

**The Indigenous customary fishing sector should be afforded a priority share of resources in fisheries where catch or effort is limited. This allocation should be sufficient to cover cultural use by the local Indigenous community in accordance with proven traditional laws and customs.**

**Customary fishing rights should not be tradeable or transferrable, recognising the unique characteristics of the associated cultural benefits and that these benefits are exclusive to the community concerned.**

**Customary allocations and any controls over customary fishing activities should be developed in consultation with Indigenous communities.**

***Priority share:*** This part of the Recommendation is supported and in line with the policy approach under the FRMA and the planned approach under the proposed ARMA.

***Customary rights not tradeable:*** Supported

***Customary allocations and controls:*** Supported and consistent with WA's Customary Fishing Policy.

### **Recommendation 5.3**

**The definition of customary fishing in fisheries laws should provide for fishing for commercial purposes, but only where consistent with traditional laws and customs.**

This recommendation appears to confuse the matters of “commercial” (i.e. exchange for money) and “barter and exchange” and is also not consistent with the Department of Fisheries understanding of s.211 of the *Native Title Act* (NTA) for Aboriginal persons holding Native Title. Indeed, the NTA and WA’s customary fishing policy specifically excludes commercial fishing from native title rights and customary fishing rights (although the recent decision in *Akiba vs Commonwealth* may have relevance here).

WA’s customary fishing policy includes the notion of “barter and exchange” subject to it being consistent with the traditional practice of the relevant community and of a non-commercial nature.

Aboriginal people who hold commercial fishing licences are regarded as holding a commercial fishing right, not a customary fishing right. The Department of Fisheries supports Aboriginal Economic Development by providing for the creation of commercial fishing arrangements for Trochus, mud crab and beche de mer. A number of aquaculture licences have also been granted to Aboriginal communities to foster economic independence.

### **Recommendation 6.1**

**In reforming cross-jurisdictional fisheries, Australian, state and Northern Territory Governments should:**

- **focus on fish stocks that are of higher value/risk and subject to inconsistent management arrangements**
- **consider whether transfer of management responsibility to a single government or better aligning management arrangements would produce the greatest net benefits.**

Supported.

### **Recommendation 6.2**

**The Australian Government should set allowable catch limits of southern bluefin tuna for all fishing sectors (including the recreational sector). Sectoral allowances should be in place in advance of the southern bluefin tuna fishing season commencing on 1 December 2018.**

**In consultation with fishers, the Australian Government and state governments should negotiate the nature of, and responsibility for, the day-to-day management of recreational fishers targeting southern bluefin tuna.**

Recommendation noted. There is a zero catch limit of southern bluefin tuna (SBT) for WA-licensed commercial fishers and a very small take by recreational fishers.

## **Recommendation 6.2**

**The New South Wales Southern Fish Trawl Fishery should be absorbed into the Commonwealth Trawl Sector of the Southern and Eastern Scalefish and Shark Fishery by the end of 2018.**

No comment.

## **Recommendation 6.3**

**The New South Wales, Victorian and Queensland Governments should make the joint stock assessment process for the east coast biological snapper stock a reform priority and provide the resources necessary to ensure the timely completion of the assessment.**

No comment

## **Recommendation 6.4**

**Australian, state and Northern Territory Governments should make the reform of cross-jurisdictional fisheries a collective priority and issue a joint reform strategy within 12 months of the release of the Commission's final report. Progress against the strategy should be reported annually over its term.**

Noted. Management of cross-jurisdictional fisheries is less applicable in WA, noting that most stocks fished in WA are separated from other jurisdictions. Several stocks of possible relevance to this recommendation are under Joint Authority (JA) jurisdiction, with the Commonwealth being a member of the JA. Reform is supported where the benefits would outweigh the costs.

## **Recommendation 6.5**

**The management arrangements for cross-jurisdictional fisheries and supporting memoranda of understanding should be reviewed regularly by governments to ensure they remain fit for purpose. At a minimum, they should be reviewed as part of any revision of the harvest strategy for the relevant species.**

**The task of reviewing and developing reforms to reduce the costs of cross-jurisdictional fisheries should be the subject of a joint Ministerial direction to agencies.**

**The *Principles Guiding Revision of the OCS Fisheries Arrangements* should be amended to include an intention to limit the extent of shared jurisdiction over expanses of water wherever possible.**

Recommendation noted.



### **Recommendation 7.1**

**The Australian Government should publish online the annual reports that fisheries produce as part of their accreditation requirements under the *Environment Protection and Biodiversity Conservation Act 1999 (Cwlth)*.**

No comment.

### **Recommendation 7.2**

**The Australian, state and Northern Territory Governments should expand the use of explicit mortality limits for fisheries that have a high risk of interaction with threatened, endangered and protected species.**

**Limits should be used in conjunction with controls on fishing methods and equipment that have proven effective in minimising the impact of fishing activity on protected species.**

WA uses a 'continuous improvement' approach to the matter of interactions with threatened, endangered and protected (TEP) species, but considers that it is unrealistic to expect zero levels of TEP interactions. The use of explicit mortality limits would better reflect the actual sustainability risks involved in the bycatch of TEP species. The resourcing requirements of the response to TEP interactions should also be subject to a 'reasonableness' test which takes into account realistic assessments of the interactions on TEP populations as opposed to a desire for zero interactions.

The adoption of bycatch reduction gear and techniques can greatly assist in limiting the impacts of fishing on TEP species. However, the proposed creation of a number of Commonwealth Marine Protected Areas (MPAs), in which commercial fishing is banned or particular gear types are prohibited, also appears to be likely to reduce the risk to at least some TEP species. Currently, Commonwealth assessments of fishery sustainability under the *Environment Protection and Biodiversity Conservation (EPBC) Act*, where conditions related to TEP interactions are articulated in Wildlife Trade Operation (WTO) approvals, appear not to be taking account of the reduced risk to TEP species likely to occur as a result of the Commonwealth's MPA process.

With regard to Commonwealth MPAs and TEP interaction reduction requirements set out in WTOs, it should be noted that these factors are not being considered in an integrated way by the Commonwealth with regard to their impact on individual fisheries. The cumulative effect of these two policy and regulatory approaches emanating from the same Commonwealth Department can result in significant economic impacts on a fishery, without there being any recognition of that impact or any offers of compensation.

### **Recommendation 7.3**

**Governments that do not already do so should make summaries of information on interactions with protected species publically available (online).**

**Summaries should be provided on a fishery by fishery basis and at a minimum include:**

- **the species with which there was an interaction**

- the gear type used
- whether the specimen survived, was injured or died as a result of the interaction
- the total number of fishing days undertaken in the fishery across the duration of the reporting period.

Noted. WA provides reports on a fishery-basis of TEP interactions within its annual Status Reports of the Fisheries and Aquatic Resources of Western Australia in fisheries where the take of TEP species has been identified in WTO assessments as a potential issue. A uniform approach by all jurisdictions to the reporting of TEP interactions would ensure that there was appropriate and standardised information available on a national basis.

#### **Recommendation 7.4**

**The Australian Government should clarify the purpose of the List of Marine Species established in Part 13, Division 4 of the *Environment Protection and Biodiversity Conservation Act 1999 (Cwlth)* and provide further information on the criteria against which species are added to or removed from this list.**

In addition to clarifying the purpose of the List of Marine Species, it would be useful if the appropriateness of the species included in the list was reviewed and justified periodically, including taking more account of the changing status of a species nationally or regionally.

#### **Recommendation 9.1**

**Governments should not extend mandatory country of origin labelling to seafood sold for immediate consumption.**

Noted.

#### **Recommendation 9.2**

**The Australian Fish Names standard should continue to be used on a voluntary basis. Further development of the Standard by Fisheries Research and Development Corporation should continue to reflect the needs of industry and the preferences of consumers.**

Supported.

#### **Recommendation 8.3**

**Australian, state and Northern Territory Governments should ensure that licence and accreditation fees for seafood processors reflect the efficiently-incurred costs of regulating these facilities.**

Supported.

### **Recommendation 10.1**

**Australian, state and Northern Territory Governments should ensure that operational decisions are delegated to the relevant fishery management authorities to the extent possible**

Supported.

### **Recommendation 10.2**

**The governance arrangements of advisory groups formed under fisheries laws should include: clear terms of reference; a conflict of interest policy; clear role descriptions for members; fixed membership terms; performance assessment regimes; and reporting arrangements.**

**Members of advisory groups dealing with technical matters should be appointed based on their expertise.**

**Ministers or departments should have the power to dismiss advisory group members who breach the terms of their engagement.**

Supported. WA has two formal advisory committees, both of which have appointment and operational arrangements consistent with the recommendation.

### **Recommendation 10.3**

**Australian, state and Northern Territory Governments should have clear policies on co-management in fisheries. These policies should provide practical guidance to stakeholders on the types of activities where governments are willing to collaborate or delegate responsibilities. The policies should include details of the capability and governance standards that are expected of stakeholders seeking to enter into a co-management arrangement.**

WA's approach to co-management is set out in Ministerial Policy Guideline 21. Further developments in co-management will best be progressed as part of implementation of the proposed new ARMA. A key ingredient in any co-management is the stability and longevity of the co-management partner. As a step towards improved co-management arrangements, WA has ensured that its key peak bodies have stable and secure funding, which has allowed them to engage in a constructive manner on fisheries management issues.

### **Recommendation 10.4**

**Fisheries agencies should provide easily accessible channels through which the public can share information on illegal fishing. Governments should ensure their fisheries agencies are sufficiently resourced to enable timely and proportionate follow-up action on information supplied by the public.**

Supported. The Fishwatch (Illegal Fishing reporting) system operates in WA and members of the public can report illegal fishing (and other matters such as fish kills) by a freecall 1800 number. See weblink for details.

## **Recommendation 10.5**

**State and the Northern Territory Governments should implement best practice cost recovery arrangements where cost-effective. Where indirect methods of obtaining sectoral contributions towards costs are used, governments should set fees with reference to efficiently-incurred costs for essential services.**

**Governments should transparently disclose the services or regulatory activities for which costs are recovered, and the amount and extent of costs recovered.**

Cost recovery is not Government policy in WA. Fees are set on an access-fee model, based on 5.75% of the GVP. The Department of Fisheries uses a risk-prioritised approach in determining how best to make efficient use of the funds provided by the sectors and Government in delivering its services.