

Productivity Commission Inquiry – Regulation of Australian Marine Fisheries and Aquaculture

Submission from the Department of the Environment

The Australian Government Department of the Environment welcomes the opportunity to make a submission to the Productivity Commission's inquiry into the regulation of Australian marine fisheries and aquaculture. The submission provides information to assist the Commission prepare its report on how fisheries regulations can be improved while meeting Australia's fishery and environmental objectives.

The submission outlines:

1. why regulation is required for marine fisheries and aquaculture.
2. Australia's environmental objectives for fisheries.
3. Australia's requirements for the independent environmental assessment of fisheries.
4. recent improvements to the administration of Commonwealth environmental regulation.
5. opportunities to further improve regulation while still achieving environmental objectives
6. Australia's marine reserve estate.

1. Why regulation is required for marine fisheries and aquaculture

Marine Fisheries

Australia has a vast marine estate that supports a complex array of fishing and aquaculture activities. The Department supports the Productivity Commission's assessment that:

Unmanaged (or 'open access') fisheries result in adverse impacts on the longer term sustainability and viability of wild fish stocks. In an open access environment, the incentive facing each fisher is to maximise their catch – often at the expense of other fishers.... The result can be significant environmental damage, depletion of the fish stock and even the collapse of the fishery, as individual fishers are not incentivised to undertake activities that will maintain the fishery ecosystem or reverse any environmental degradation. (Productivity Commission Issues paper 2016).

In addition to depleting target fish stocks, fishing can also result in the incidental capture (bycatch) of non-target species including threatened, endangered and protected (TEP) species such as marine mammals, reptiles and seabirds, and adverse impacts to marine habitats and ecological communities.

Left unmanaged, bycatch may have a negative impact on the status of some marine species, the populations of which may not be sustained when subject to additional mortality from fishing and other sources (DAWR, 2016a). Many bycatch species are recognised in Australia and internationally as being at risk of extinction in the wild, with commercial fishing identified as being a pressure of concern (Lewison et al. 2004).

Governments are well placed to intervene to address these issues. Regulation can be used to restrict fishing operations to sustainable harvest levels, or to change fishing behaviour and gear to reduce the bycatch of endangered marine species and lessen impacts on marine habitats.

Aquaculture

Aquaculture contributes significantly to the Australian economy. The industry is diverse and each aquaculture development has different potential environmental impacts with varying degrees of significance. Aquaculture developments are primarily regulated under state and territory legislation to prevent adverse environmental impacts. The Department supports the development of an ecologically sustainable aquaculture industry that can operate within the framework of the EPBC Act.

The Department undertakes regulatory and policy implementation activities, including under the EPBC Act, including assessment and approval of aquaculture projects likely to have a significant impact on nationally protected matters. The Department also undertakes assessments of aquaculture operations that seek approval to export Australian native species. Further detail on the Department's role in relation to aquaculture is outlined in its submission to the Senate Standing Committees on Environment and Communications inquiry into Tasmanian aquaculture.¹

Regulating marine fisheries and aquaculture

Good environmental regulations and standards create certainty for business, confidence within the community and sustain natural resources for future generations (Australian Government, The Treasury, 2012). Members of the fishing and aquaculture industry recognise that conserving biodiversity is a shared responsibility which is critically important to the long-term commercial viability of their sectors (NSIA, 2016).

In this vein, Australia's national environmental legislation, the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), was designed to:

1. focus Commonwealth involvement on matters of national environmental significance and on Commonwealth actions and Commonwealth areas.
2. provide for intergovernmental accreditation of environmental assessment and approval processes, and ensure efficient, timely and effective assessment of activities that are likely to have significant impacts on the environment.
3. enhance Australia's capacity to ensure the conservation of its biodiversity, including by:
 - preventing extinction and promoting recovery of threatened species.
 - ensuring conservation of migratory species.
 - protecting ecosystems through establishment and management of reserves.
 - identifying processes that threaten all levels of biodiversity and implementing plans to address these processes.

The Department works to ensure that national environmental regulation is administered efficiently and effectively, and works with stakeholders to identify ways to better administer environmental regulation.

¹ <http://www.aph.gov.au/DocumentStore.ashx?id=c9c69d61-14d1-4d9a-8b77-1fc076d8aefa&subId=352748>

2. Australia's environmental objectives for fisheries

The EPBC Act sets out Australia's environmental objectives for fisheries. Some of these objectives derive directly from Australia's obligations under international agreements² to protect and conserve the environment. Regulation is an effective and efficient means of giving effect to Australia's obligations under these agreements.

Australia's environmental objectives for fisheries contained within the EPBC Act include:

1. *to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance.*
2. *to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources.*
3. *to promote the conservation of biodiversity.*
4. *to assist in the co-operative implementation of Australia's international environmental responsibilities.*

These objectives are collectively given effect through the Department's administration of Part 10, 13 and 13A of the EPBC Act, with a single fishery assessment informing approvals under these parts. To assist the assessment process the Australian Government developed in 2001, after extensive consultation with industry, state/territory and Commonwealth fishery management agencies, and environmental groups, *The Guidelines for the Ecologically Sustainable Management of Fisheries*. These Guidelines, updated and agreed with stakeholders in 2007 following extensive consultation, help ensure assessments are rigorous, transparent, consistent and conducted in close cooperation with fisheries agencies, the fishing industry and the wider community.

Part 10, 13 and 13A of the EPBC Act are discussed further below.

Part 10

Part 10 of the EPBC Act seeks to ensure that Commonwealth-managed fisheries do not have significant impacts on matters of national environmental significance. The EPBC Act requires that before a new management plan for a Commonwealth-managed fishery can be introduced into law, the plan must be strategically assessed under Part 10 for its potential impacts on matters of national environmental significance. Matters of national environmental significance related to fisheries include:

- wetlands of international importance declared under the Ramsar Convention.
- listed threatened species and communities.
- listed migratory species.
- actions in Commonwealth marine areas affecting the environment.
- activities in the Great Barrier Reef Marine Park.
- world heritage values associated with world heritage properties.
- national heritage values associated with national heritage places.

² Some of these agreements include Commission for the Conservation of Antarctic Marine Living Resources, Convention on International Trade in Endangered Species of Wild Fauna and Flora, Convention on the Conservation of Migratory Species of Wild Animals, Convention on Biological Diversity, Agreement on the Conservation of Albatrosses and Petrels, Commission for the Conservation of Southern Bluefin Tuna, regional fisheries management organisations, China Australia Migratory Bird Agreement, Japan Australia Migratory Bird Agreement, Republic of Korea–Australia Migratory Bird Agreement, Ramsar Convention on Sustainable Use of Wetlands.

The Environment Minister may not issue approvals under Part 10 to Commonwealth-managed fisheries that have management arrangements which are inconsistent with any of the following:

- Australia's obligations under the World Heritage Convention.
- the Australian World Heritage and National Heritage management principles.
- Australia's obligations under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).
- Australia's obligations under the Ramsar Convention on Sustainable Use of Wetlands, the Convention on Biological Diversity, and the Convention on Conservation of Nature in the South Pacific.

The requirement for strategic assessments does not extend to state and territory managed fisheries.

Part 13

Part 13 of the EPBC Act seeks to identify and provide protection for Australia's biodiversity through:

- protecting and recovering species and ecological communities threatened with extinction.
- the abatement of threats to Australia's biodiversity.

Protection and recovery of threatened species: The EPBC Act provides for the assessment of the conservation status of species which rates the level of extinction risk using criteria set out in the EPBC Regulations. These criteria mirror the criteria used by the International Union for the Conservation of Nature (IUCN) to develop their global 'Red List' of threatened species. Assessments are conducted by the independent statutory Threatened Species Scientific Committee, which is responsible for advising the Environment Minister on the eligibility of species for listing. If found eligible against the criteria, the Minister includes a species in the EPBC Act Part 13 list of threatened species and it then receives statutory protection [in one of the following categories: extinct, extinct in the wild, critically endangered, endangered, vulnerable or conservation dependent].

Under the EPBC Act it is an offence to harm species listed under Part 13 (that is, listed threatened species (other than those listed as conservation dependent), listed migratory species, whales and other cetaceans, and listed marine species) in Commonwealth waters. Fishers may be exempted from these offence provisions if they have a Part 13 permit, or if the fishery's management arrangements have been accredited under Part 13 by the Environment Minister.

In general, fishery management agencies seek Part 13 accreditation on behalf of fishers. A fishery's management arrangements can be accredited under Part 13 if the Environment Minister is satisfied that the management arrangements for the fishery require individual fishers to take all reasonable steps to avoid harming listed species, and that the fishery as a whole would not adversely affect the survival, recovery or conservation status of EPBC Act listed species.

The Environment Minister may also make, or adopt and implement, recovery plans for threatened fauna, threatened flora and threatened ecological communities listed under the EPBC Act. Recovery plans set out the research and management actions necessary *'to stop the decline of, and support the recovery of'*, listed threatened species or threatened ecological communities. The aim of a recovery plan is to maximise the long term survival in the wild of a threatened species or ecological community.

At present there are recovery plans in place for a number of marine species³ which are at risk from and impacted by commercial fishing. Recovery plans are binding on the Australian Government — once a recovery plan is in place, an Australian Government agency must not take an action that is inconsistent with a recovery plan. The *Guidelines for the Ecologically Sustainable Management of Fisheries – 2nd Edition*⁴, also outlines an expectation that state and territory fisheries management agencies will abide by all Commonwealth recovery plans.

Abatement of key threatening processes to Australia’s biodiversity: The EPBC Act provides for the identification and listing of key threatening processes and the making of threat abatement plans to address them. A threatening process is defined as a key threatening process if it threatens or may threaten the survival, abundance or evolutionary development of a native species or ecological community. For example, ‘*the incidental catch (or bycatch) of seabirds during oceanic longline fishing operations*’ is listed as a key threatening process as it threatens albatross, petrels and shearwaters in Australian waters where the fishing practice is undertaken.

A Threat Abatement Plan for the *Incidental Catch (or By-catch) of Seabirds During Oceanic Longline Fishing Operations* was prepared and is currently in operation. The plan is considered to be a feasible, effective and efficient approach to abating the threat to Australia’s biodiversity from the incidental catch (or bycatch) of seabirds during oceanic longline fishing operations. The goal of the plan is to achieve zero bycatch of seabirds, especially threatened albatross and petrel species, in all longline fisheries. The plan, as with all threat abatement plans, binds the Commonwealth and its agencies in responding to the key threatening process, and identifies the research, management and other actions needed to reduce the impacts of the key threatening process, in this case on affected seabird species. The *Guidelines for the Ecologically Sustainable Management of Fisheries – 2nd Edition* also outlines an expectation that state and territory fisheries management agencies will abide by all Commonwealth threat abatement plans.

Part 13A

The EPBC Act gives effect to the Australian Government’s commitment to protect and conserve Australian native wildlife that could otherwise be at risk from international trade. In addition to promoting the humane treatment of wildlife, the EPBC Act requires any commercial utilisation of Australian native wildlife for the purposes of export to be managed in an ecologically sustainable way. The application of ecologically sustainable development under the EPBC Act is detailed in Attachment A.

Australia supports the efforts of other nations to protect their native wildlife by implementing the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES). CITES is an international agreement that helps to ensure that international trade does not threaten species with extinction, protecting about 5,000 species of animals and 30,000 species of plants. Australia is one of 181 parties to CITES. The EPBC Act includes requirements for international trade in species that are listed on the appendices to CITES to ensure that trade is legal, well managed and sustainable. CITES listed species that are particularly threatened by trade may only be traded under limited circumstances, such as for scientific or educational purposes.

³ Including grey nurse shark, Australian sea lions, albatrosses and giant petrels, marine turtles, sawfish and river sharks, and great white sharks. The Conservation Management Plan for Southern Right Whale also identifies commercial fisheries and aquaculture as a threat, and reducing commercial fishing entanglement as a very high priority. These threats are also identified in the Humpback Whale Conservation Advice.

⁴ The guidelines are described in section 3 of this submission.

Under Part 13A of the EPBC Act it is an offence to export *regulated native specimens* (such as fish) unless: fishers have a permit under Part 13A; the product comes from an 'approved source' as described in Part 13A (such as a fishery declared as an approved wildlife trade operation); or the product is declared as exempt through its inclusion in the List of Exempt Native Specimens (LENS) under Part 13A. Following an assessment against the Guidelines, the Department determines whether a fishery has low environmental risk (and can be added to the LENS) or if it has high environmental risk (and should be declared an approved wildlife trade operation subject to conditions to manage the environmental risk). More information on these arrangements is included in Attachment B.

When considering fisheries for export approval under Part 13A, regard is also had to:

- whether the operation would threaten the target species or any relevant ecosystem (including habitat and biodiversity).
- the effectiveness of the management arrangements for the operation (including monitoring procedures).
- whether legislation relating to the protection, conservation or management of the specimens to which the operation relates is in force and is likely to be effective.

3. Australia's requirements for the independent environmental assessment of fisheries

In administering the EPBC Act, the Department conducts environmental assessments of fisheries under:

- Part 10 – For Commonwealth fisheries, for impacts on matters of national environmental significance.
- Part 13 – For fisheries operating in Commonwealth waters (which includes state/territory managed fisheries⁵, in addition to Commonwealth-managed fisheries), for interactions with EPBC Act listed species.
- Part 13A – for fisheries seeking to trade their product internationally.

The assessment process

As previously outlined, a single assessment using the Guidelines informs Part 10, 13 and 13A EPBC Act fisheries approvals. Following receipt of an application seeking EPBC Act approval, the Department seeks public comment on the application for a minimum period of 20 working days before undertaking its assessment against the Guidelines. The Department also reviews any relevant

⁵ Under international law, Australia has sovereignty over a band of waters called the 'territorial sea', which at present extends up to 12 nautical miles from the territorial sea baseline (normally the low water mark). The Commonwealth has sovereignty over waters to the edge of the territorial sea, including the seabed beneath these waters. The Commonwealth and states have negotiated the 'Offshore Constitutional Settlement', which deals with Commonwealth and state jurisdiction in the waters to the edge of the territorial sea. In general, the states have responsibility for areas up to three nautical miles from the territorial sea baseline, which are termed 'coastal waters' (Australian Government Attorney General's Department, 2016). As a matter of Australian domestic law, the Offshore Constitutional Settlement provides for the Australian states and the Northern Territory to manage fisheries out to three nautical miles from the coast, and for the Australian Government to manage fisheries from three to 200 nautical miles. However, these default arrangements are frequently varied through instruments known as offshore constitutional settlement agreements. OCS agreements provide a sound legal and administrative basis for particular fisheries to be regulated by one authority under one set of laws, without being limited by default jurisdictional lines (DAWR, 2016b).

publicly available scientific advice or reports available in relation to the fishery, including all relevant Commonwealth Marine Bioregional Plans.

To satisfy the Australian Government requirements for a demonstrably ecologically sustainable fishery, a fishery must operate under a management regime that meets Principles 1 and 2 of the Guidelines.

Principle 1 is: A fishery must be conducted in a manner that does not lead to over-fishing, or for those stocks that are overfished, the fishery must be conducted such that there is a high degree of probability the stock(s) will recover.

Principle 2 is: Fishing operations should be managed to minimise their impact on the structure, productivity, function and biological diversity of the ecosystem.

In addition, the management arrangements must take into account arrangements in other jurisdictions, and adhere to arrangements established under Australian laws and international agreements. The management regime should:

- be documented, publicly available and transparent.
- be developed through a consultative process providing opportunity to all interested and affected parties, including the general public.
- ensure that a range of expertise and community interests are involved in individual fishery management committees and during the stock assessment process.
- be strategic, containing objectives and performance criteria by which the effectiveness of the management arrangements are measured.
- be capable of controlling the level of harvest in the fishery using input and/or output controls.
- contain the means of enforcing critical aspects of the management arrangements.
- provide for the periodic review of the performance of the fishery management arrangements and the management strategies, objectives and criteria.
- be capable of assessing, monitoring and avoiding, remedying or mitigating any adverse impacts on the wider marine ecosystem in which the target species lives and the fishery operates.
- require compliance with relevant threat abatement plans, recovery plans, the national Policy on Fisheries Bycatch, and bycatch action strategies developed under that policy.

It is important to note that the Guidelines, and the EPBC Act requirements regarding the ecological sustainability of fisheries, do not outline how resource sharing issues between stakeholders (such as commercial fishers, recreational fishers, and Indigenous fishers) should be resolved. Rather, the Guidelines and EPBC Act requirements maintain an expectation that these resource sharing issues are managed such that the collective impact of these sectors on the marine environment ensures ecological sustainability.

A more detailed description of the Department's role and legislative responsibilities concerning Australian fisheries is provided at Attachment B. A description of other EPBC Act processes that may affect fisheries is provided at Attachment C.

Conditions on approvals

Environmental approvals under Part 13 and 13A of the EPBC Act can be made subject to conditions. The Department works with fishery management agencies and stakeholders to ensure conditions are targeted, achievable and reasonable.

Since 2012, the Department has endeavoured to ensure that conditions on fisheries approvals are outcome focussed and not overly prescriptive in defining the pathway to meet those outcomes. This recognises that fishery management agencies are often in a better position to adjust fishery management settings to most efficiently and effectively achieve desired environmental outcomes. Having overly prescriptive conditions could potentially result in fishery managers being forced to adopt sub-optimal pathways to achieving desired ecological improvements.

When considering conditions on Part 13 approvals, the Department is conscious that fishery management actions to avoid EPBC Act protected species can vary within, and between jurisdictions. This can be influenced by the fish species being targeted, the volume of catch allowed or the use of gear restrictions and bycatch mitigation devices. In dealing with these different approaches, the Department considers the fisheries management agency's assessment, any public comments received on the assessment, and any best practice mitigation measures, when assessing whether all reasonable steps are being taken to avoid harm to listed species.

4. Recent improvements to the administration of Commonwealth environmental regulation

Up until 2015, fisheries assessed as having low environmental risk under the fisheries provisions of the EPBC Act were provided approvals for a maximum period of 5 years. Following extensive consultation and broad stakeholder support, the Environment Minister agreed on 25 March 2015 that fisheries assessed as low risk could potentially have their approvals extended to a maximum period of 10 years.

This change rewards those fisheries which are already well managed and provides a greater incentive for fisheries which have high environmental risks to improve their management. It also frees up Departmental resources to focus on those fisheries which pose the greatest risk to the environment.

The Department is currently half way through assessing and extending the maximum duration of environmental approvals for low risk fisheries under the EPBC Act from five to ten years. Approximately half of Australia's fisheries are expected to be eligible for the longer approval period.

The Department has so far implemented 10-year export approvals for 20 Western Australian, five Queensland and five South Australian fisheries. Assessment of the remaining fisheries will be completed in the coming months, with the implementation of extended export approvals expected to be completed for all jurisdictions during 2016.

5. Opportunities to improve fisheries regulation while still achieving environmental objectives

Use of market ecolabels to underpin national environmental approvals

Increasingly, Australian fishing businesses are seeking market ecolabels, or environmental ticks of approval, from internationally recognised bodies such as the Marine Stewardship Council (MSC).

In Australia, Coles has full MSC-certification and traceability in place for its fresh and packaged seafood, while Woolworths, IGA and ALDI all sell MSC-certified frozen and canned seafood (Cormack, 2016).

Australia's major super market chains, Coles⁶, Woolworths⁷ and Aldi⁸ have publicly committed to supplying seafood that is certified as being from 'sustainable' sources. The supermarket group IGA has given similar commitments to sourcing sustainable seafood⁹ and the Western Australian Government has committed to supporting most of its fisheries through the MSC certification process.

Businesses are seeking market ecolabels to help secure access to domestic and international¹⁰ markets and business partners, price premiums, and in the case of supermarkets, to 'encourage people through the door'. At present, even when a fishery or fishing business has been assessed and granted an ecolabel, that business still needs to be assessed and approved under the EPBC Act.

The Department is working on a project with the Western Australian Department of Fisheries to assess the extent to which market ecolabels could be used to underpin national environmental approvals under the EPBC Act. If the assessment criteria and robustness of the assessment approach are deemed at least as robust as EPBC Act requirements, then EPBC Act fisheries decisions could potentially recognise and rely on the assessments undertaken by other certification bodies. This could also reduce costs for fishing businesses, state government agencies, and the Australian Government, by removing the need for multiple environmental assessments of the same activity. The work with the Western Australian government is expected to be finalised during 2016.

EPBC Act accreditation of fishery management agencies – opportunities and challenges

The Department has been considering the proposition that the Australian Fisheries Management Authority (AFMA) be strategically assessed and 'accredited' under the EPBC Act in a similar manner to the National Offshore Petroleum Safety and Environmental Management Agency (NOPSEMA).

While accreditation of AFMA under the EPBC Act appears possible, the current legislation does not allow for the benefits from accreditation to flow to AFMA in the same way as they do for NOPSEMA. Given the inherent need to demonstrate environmental sustainability, it is also unclear whether any resource savings would flow to Australian Government departments and fishing businesses.

NOPSEMA is a Commonwealth statutory authority with extensive expertise, skills and knowledge in environmental management and regulation. NOPSEMA's mandate for environmental management extends to matters of National Environmental Significance. It does not make resource allocation decisions, issue property rights over resources, or develop plans of management to maximise the economic utilisation of natural resources. This enables NOPSEMA to undertake independent environmental assessments of development proposals it receives. A comparison of the respective roles of NOPSEMA and AFMA is provided at Attachment D.

A strategic assessment was undertaken of the environmental management authorisation process for petroleum and greenhouse gas activities administered by NOPSEMA. Following completion of the strategic assessment, in 2014 the Environment Minister agreed to new arrangements such that environmental protection for these activities would be examined through NOPSEMA's decision-

⁶ <https://www.coles.com.au/corporate-responsibility/responsible-sourcing/responsible-sourcing/responsibly-sourced-seafood>, and <http://sustainability.wesfarmers.com.au/case-studies/sourcing/coles-committed-to-sustainable-seafood/>

⁷ http://www.woolworthslimited.com.au/page/A_Trusted_Company/Responsibile_Sourcing/Sustainable_Fish_and_Seafood/

⁸ <https://corporate.aldi.com.au/en/corporate-responsibility/resources/sustainable-seafood/>

⁹ <http://www.iga.com.au/sustainability/>

¹⁰ <https://www.austrade.gov.au/Australian/Export/Export-markets/Countries/Hong-Kong/Industries/seafood>

making processes. The Minister's approval means entities seeking to undertake offshore petroleum or greenhouse gas activities in Commonwealth waters in accordance with NOPSEMA's approval processes will no longer need to refer those actions for separate assessment under the EPBC Act.

While NOPSEMA's accreditation under Division 1 of Part 10 of the EPBC Act allows it to issue independent environmental approvals for the actions and management arrangements developed by other entities, it does not empower NOPSEMA to issue protected species accreditations under Part 13 or export approvals under Part 13A.

The only theoretical effect of AFMA being accredited under Division 1 of Part 10 would be that individual fishers operating in accordance with AFMA's fishery management regime would not be required to refer their activities to the Department for assessment, should those activities have potential impacts on matters of national environmental significance. As the Department has already assessed each of AFMA's fisheries under Division 2 of Part 10, fishers are already covered and do not need to refer their individual actions.

Further, under the EPBC Act, a strategic assessment of AFMA at the agency level under Division 1 of Part 10 does not obviate the legislative requirement for strategic assessments of individual fisheries under Division 2 of Part 10 each time a fishery management plan is determined by AFMA. A strategic assessment of AFMA at the agency level under Division 1 of Part 10 would therefore appear to be duplicative, yield no benefit to AFMA or fishers (or the Department in terms of administrative efficiency), especially as Part 10 accreditation cannot replace the legislative requirement for Part 13 (protected species), Part 13A (export), or Division 2 of Part 10 approvals.

Were the EPBC Act to be amended to address these limitations (such as by amending Part 10), accrediting AFMA at an agency level for an extended period would be difficult until all of its fisheries posed low environmental risk.

Any reform involving an expansion of AFMA's role would require significant facilitating amendments to the EPBC Act. It would also require the allocation of significant resources to undertake the strategic assessment, and development of an independent auditing arrangement. The *Fisheries Management Act 1991* and *Fisheries Administration Act 1991* may also need to be amended to provide an appropriately strong governance framework, consistent with the recommendations of the Uhrig review (2003), to ensure that AFMA was *required* to meet the environmental standards and objectives of the EPBC Act.

The EPBC Act does place an additional assessment and approval process on Commonwealth managed fisheries through Division 2 of Part 10. It is not clear that the Part 10 assessment process results in any additional outcomes over those that flow from Part 13 and 13A assessments.

With the existing Part 13 and 13A provisions already providing an effective basis for ongoing environmental assessment of fisheries there could be merit in considering whether any additional benefits to meeting environmental objectives result from the Division 2 of Part 10 process.

6. Australia's marine reserve estate

Commonwealth marine reserves and intersections with fisheries management

The system of Commonwealth Marine Reserves (CMRs) has been established as part of the National Representative System of Marine Protected Areas (NRSMPA). The system's primary objective is biodiversity conservation and the protection of representative examples of Australia's marine ecosystems.

The NRSMPA policy was adopted by all Australian Governments in 1998 and delivers on Australia's international commitment to institute a system of representative marine reserves by 2012, made at the World Summit on Sustainable Development in 2002. All nations signatory to the Convention on Biological Diversity also have a shared commitment to establish by 2020 effectively managed representative systems of MPAs within their waters.

Representative MPAs are based on a strong and increasing body of sound scientific evidence that setting aside areas where the levels of disturbance—in particular extraction of living resources and physical disturbance to habitat— are reduced relative to surrounding areas, leads to a range of benefits, including increased resilience, ecosystem health and productivity.

In Australia, the Commonwealth marine reserves system complements sector-specific environmental management regimes that operate in the marine environment. CMRs are established for the conservation of marine biodiversity while the management of environmental performance of specific types of activity remains the responsibility of sectoral management agencies. The location of reserves reflects the known distribution of the different types of ecosystems. They have been designed consistent with international and national standards and guidance. Attachment E sets out relevant design considerations for the NRSMPA.

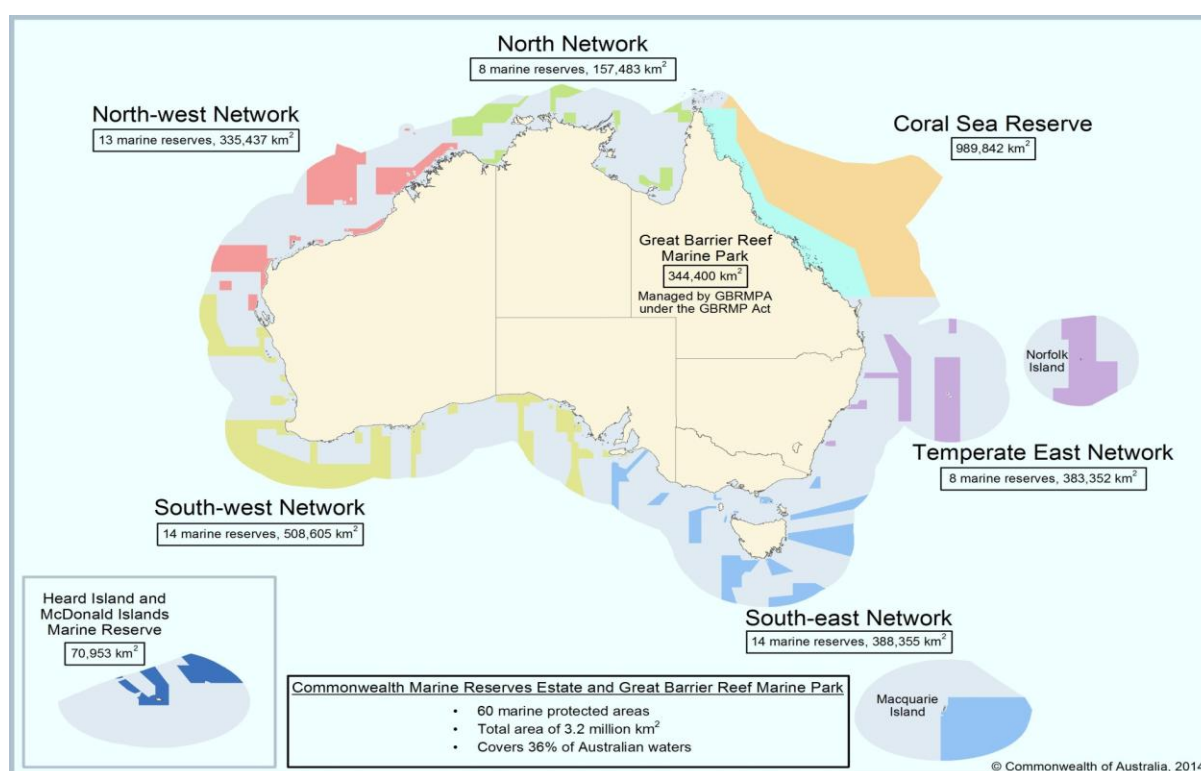


Figure 1: Australia's Commonwealth Marine Reserves and the Great Barrier Reef Marine Park.

The Director of National Parks is a statutory entity with responsibility to manage CMRs under the EPBC Act. The Director manages 58 CMRs in Commonwealth waters around Australia, totalling some 2.8 million square kilometres (Figure 1).¹¹

CMRs are 'regulated areas' in that most activities, including all commercial activities, are not allowed unless done in accordance with a management plan (Box 1). Management plans therefore perform an 'enabling' role. Under ss. 354 and 354A of the EPBC Act, commercial fishing operations (being

¹¹ Heard Island and McDonald Islands Marine Reserve is not included in the 58 reserves, as it is managed by the Australian Antarctic Division on behalf of the Director of National Parks. The Great Barrier Reef Marine Park is not a Commonwealth reserve under the EPBC Act and is managed under its own legislation by the Great Barrier Reef Marine Park Authority.

actions for commercial purposes and also actions that involve the killing, injuring, taking, trading, keeping or moving native species) and recreational fishing (being actions that involve the killing, injuring, taking, trading, keeping or moving native species) are prohibited in a CMR, unless done in accordance with a management plan (or a s359B approval when a management plan is not in operation). Regulation 12.35 of the EPBC Regulations also provides for the Director to make determinations about the manner in which recreational fishing operations may be undertaken.

To assist in meeting its objectives for the NRSMPA, the Australian Government has a zoning policy for CMRs. Within a network and within a reserve, different types of management zones exist, which provide varying levels of protection and uses. Zones are classified under an internationally recognised system established by the IUCN and vary from general use zones that allow a broad range of extractive and non-extractive activities to highly protected zones, which prohibit entry except for scientific research.

Box 1 – Management Plans

Management plans are legislative instruments prepared under the EPBC Act. They have 10-year duration, and they cannot be modified unless through preparation of a new management plan.

Management plans seek to:

- provide for the protection and conservation of biodiversity and other natural and cultural values of the CMRs networks.
- provide for ecologically sustainable use of the natural resources within the network where this is consistent with the objective above.

Management plans are implemented through:

- zoning – each reserve is assigned to a management zone that has specific management objectives and broadly determines what activities are prohibited, allowed or allowable under approval. Management zones may differ from, and override, the zones assigned at proclamation.
- regulatory prescriptions – these are the rules that set out what activities can be done in the different zones and what conditions apply.
- management programs – these include ongoing activities or project-based measures that will be pursue during the life of the plan and outside its strictly regulatory functions to achieve the plan's objectives.

The South-east Commonwealth Marine Reserves Network (proclaimed in 2007) is managed under the *South-east Commonwealth Marine Reserves Network Management Plan 2013-23* (SE Management Plan), which came into effect on 1 July 2013.

The South-west, North-west, North and Temperate East Commonwealth Marine Reserves Networks and the Coral Sea Commonwealth Marine Reserve, were established under the EPBC Act in 2012. These reserves are managed under 'transitional management arrangements', which will continue to apply until management plans for these reserves come into effect (see Box 2). New management plans are being prepared and will be informed by the findings—currently under government consideration—of an independent review conducted between September 2014 and December 2015.

Box 2 - Transitional Management Arrangements

Transitional management arrangements have been in place for the South-west, North-west, North and Temperate East Commonwealth Marine Reserve Networks and the Coral Sea Commonwealth Marine Reserve since their proclamation in November 2012. Transitional management arrangements will cease to apply once management plans for those networks and the Coral Sea Commonwealth Marine Reserve come into effect. Under transitional management arrangements:

- in reserves, or areas of reserves, that pre-dated the 2012 proclamation, management is undertaken consistent with the management arrangements that were in place prior to November 2012.
- in reserves, or areas of reserves, that were newly proclaimed in 2012, activities such as commercial fishing and aquaculture are allowed to continue with no additional limits or conditions other than those imposed by the relevant sectoral regulation. These arrangements are put in place through general approvals issued by the Director under section 359B of the EPBC Act.

While there is widespread spatial overlap between CMRs and commercial fishing areas, the Director has no involvement in the day-to-day management of commercial fishing in CMRs. AFMA (for Commonwealth-managed fisheries) and/or state/Northern Territory fisheries management agencies, manage all aspects of commercial fishing — both inside and outside CMRs.

The Director takes a ‘streamlined’ approach to activities already subject to sectoral management and regulation, and specifically aims to ensure consistency and avoid duplication wherever possible. Consistent with this approach, the South-east Management Plan provides for a ‘class approval’ of commercial fishing operations conducted under and in compliance with the relevant fisheries management regulatory regime (DoE, 2015). The class approval means there is no need for fishers to seek individual approval.

Additional conditions, however, may be put in place when necessary to ensure the objectives of the management plan are met. For example, the class approval requires that fishing gear must be stowed and secured when a commercial fishing vessel transits a management zone in which the use of that particular gear is not authorised.¹²

The *South-east Commonwealth Marine Reserve Network Management Plan 2013-23* sets out six types of zones with different access restrictions on commercial fishing activities. These are outlined in Table 1.

¹² This is done under Regulation 12.34 of the EPBC Regulations, which operates subject to a management plan and provides for the Director to make determinations about the manner in which commercial fishing operations may be conducted.

Table 1 Summary of management arrangements for commercial fishing activities in the South-east Commonwealth Marine Reserves Network (DoE, 2013, p.41)

| Activity | Sanctuary Zone (IUCN Ia) | Marine National Park Zone (IUCN II) | Habitat Protection Zone (IUCN IV) | Recreational Use Zone (IUCN IV) | Special Purpose Zone (IUCN VI) | Multiple Use Zone (IUCN VI) |
|---|--------------------------|-------------------------------------|-----------------------------------|---------------------------------|--------------------------------|-----------------------------|
| Commercial fishing (except as indicated below) | ✗ | ✗ | CA | ✗ | ✗ | CA |
| Demersal trawl | ✗ | ✗ | ✗ | ✗ | ✗ | ✗ |
| Danish seine | ✗ | ✗ | ✗ | ✗ | ✗ | ✗ |
| Scallop dredge | ✗ | ✗ | ✗ | ✗ | ✗ | ✗ |
| Vessel transiting | ✓ | ✓ | ✓ | ✓ | ✓ | ✓ |
| <p>✓ Activity is allowed in accordance with plan prescriptions (without the need for a permit or class approval).</p> <p>✗ Activity is not allowed at all (i.e. totally prohibited).</p> <p>CA Activity is allowable in accordance with a class approval from the Director of National Parks.</p> <p>Note: Gear types not specified in a class approval as gear that may be used will require assessment before use may be approved.</p> | | | | | | |

Recreational fishing activities

The Director has no involvement in the day-to-day management of recreational fishing in Commonwealth Marine Reserves, and individual approval is not required. Recreational fishing, both inside and outside Commonwealth marine reserves, is managed by the relevant state or the Northern Territory. Where recreational fishing is allowed in a reserve, it must be carried out in accordance with the relevant state recreational fishing laws.

In the SE Management Plan, recreational fishing is allowed in all zones, excluding those designated as IUCN 1a (Sanctuary Zones) and IUCN II (Marine National Park Zones). Similar to conditions placed on commercial fishers, there is a further requirement in the SE Management Plan that recreational fishing gear must be “stowed and secured at all times during transit through network management zones in which recreational fishing is not allowed”. This is to ensure that management plan objectives are met.

The Department notes that better integration of marine reserves into ‘day-to-day’ fishery management could lead to efficiencies in areas such as compliance and enforcement and in ongoing fishing industry communication about Commonwealth marine reserves. In implementing management plans for the full CMR network, the Department considers that considerable potential exists to further develop the cooperative administrative framework between Commonwealth and State authorities and marine users, including in the areas of compliance, enforcement and research and monitoring. Greater take-up of remote vessel monitoring technologies and the sharing of such information between relevant agencies is one prospective area where efficiencies in management could be achieved.

Conclusion

Well designed and effectively administered regulation is important in maintaining Australia's unique marine ecosystems together with the Indigenous, commercial and recreational fisheries activities that rely upon them.

The Department continues to look for ways to improve its administration of Commonwealth environmental regulation and welcomes the Productivity Commission's Inquiry into how fisheries regulations can be improved while delivering Australia's environmental and fisheries objectives.

Increasing the duration of environmental approvals for low risk and well managed fisheries will continue to be implemented by the Department during 2016, together with examining whether independent certification schemes can reduce the need for separate environmental assessments of fisheries under the EPBC Act.

While the Department will continue to pursue and implement these administrative reforms, amending environmental and fisheries legislation to reduce duplication and streamline fisheries management could yield benefits and efficiencies for governments, communities and businesses. Any legislative amendments would need to ensure that Australia's environmental objectives for demonstrably ecologically sustainable fisheries were maintained. This is important given the current patchwork of Commonwealth, state and territory fisheries management legislation does not match the EPBC Act's national perspective to ensure the protection, and where necessary recovery, of the natural environment.

The Department looks forward to the release of the Productivity Commission's draft report.

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Attachment A

Ecologically Sustainable Development (ESD) and the precautionary principle

An objective of the EPBC Act is "to promote ecologically sustainable development through the conservation and sustainable use of natural resources". Australia's *National Strategy for Ecologically Sustainable Development* defines ESD as:

'using, conserving and enhancing the community's resources so that ecological processes, on which life depends, are maintained, and the total quality of life, now and in the future, can be increased' (DoE, 2016).

The three key objectives of ESD are: (i) to enhance individual and community well-being and welfare by following a path of economic development that safeguards the welfare of future generations; (ii) to provide for equity within and between generations; and (iii) to protect biological diversity and maintain essential ecological processes and life-support systems (FAO, 2003). This approach emphasises the importance of the environment to long-term human well-being, and to ensure that there is a balanced approach in dealing with environmental, social and economic issues.

The precautionary principle is a fundamental component of ESD and is defined in the EPBC Act as meaning that 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. In decision-making involving ESD, the precautionary principle provides a means of addressing uncertainty concerning environmental threats or risks.

In the case of commercial fisheries, the requirement to take account of the precautionary principle applies under the EPBC Act when making decisions on whether to amend the list of exempt native specimens or declare a fishery to be an approved wildlife trade operation under Part 13A. The *Fisheries Administration Act 1991* and the *Fisheries Management Act 1991* also outline that ESD, including the precautionary principle, is one of the objectives that the Australian Fisheries Management Authority (AFMA) must pursue in the performance of its functions.

The Precautionary principle

The Rio Declaration on Environment and Development, which set out 27 principles of sustainable development, included the principle that in "order to protect the environment, the precautionary approach shall be ...applied by (member) states". The precautionary approach was described as "Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation".

In Australia, this concept was embodied in Australia's National Ecologically Sustainable Development Strategy in 1992 and in the EPBC Act as the 'precautionary principle' - "that 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".

The United Nations Food and Agriculture Organisation (FAO) International Code of Conduct for Responsible Fisheries adopted by the FAO Conference in 1995, prescribed a precautionary approach to fisheries somewhat similar to that in the Rio Declaration. The code provided some guidelines for member states, mainly concerning measures for target fish stock. The United Nations Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks (Fish Stocks Agreement) adopted in 1995 and now referenced by the *Fisheries Management Act 1991*, also describes in some detail the measures that should be included in a precautionary approach.

In general usage, confusion arises from time to time as the terms 'being precautionary', 'precautionary approach' and 'precautionary principle' are often used interchangeably. In addition, the FAO and Fish Stocks Agreement wording refers to 'a lack of scientific information' as compared to 'a lack of full scientific certainty'.

In applying the EPBC Act, the precautionary principle is taken to be an operational principle about taking decisions where there is a lack of full scientific certainty. The principle is interpreted as being applicable to decision-making where there is both a threat of serious or irreversible environmental damage and a lack of full scientific certainty.

The EPBC Act provides guidance in relation to decisions in which a decision maker is to take account of the precautionary principle.

Attachment B

The EPBC Act and fisheries

The enactment of the EPBC Act in July 2000 introduced a requirement for Commonwealth-managed fisheries to undergo strategic assessment of the impacts on 'matters of national environmental significance'. In January 2002, repeal of the *Wildlife Protection (Regulation of Exports and Imports) Act 1982* and incorporation of an enhanced wildlife protection regime into the EPBC Act came into effect. Native wildlife specimens, including fish, were to be exported only if derived from an approved source, such as an operation declared to be an approved wildlife trade operation, or included in a 'list of exempt native specimens'. At the same time as the 2002 wildlife trade amendments, provisions to assess fishery management arrangements in relation to interactions with EPBC Act listed species in Commonwealth waters were introduced.

For Commonwealth-managed fisheries, export and protected species assessments were combined with strategic assessments, using the first edition (2001) of the Australian Government *Guidelines for the Ecologically Sustainable Management of Fisheries* (revised in 2007). The guidelines outlined specific principles and objectives designed to ensure a strategic and transparent way of evaluating the ecological sustainability of fishery management arrangements.

Decisions relating to the operation of Commonwealth-managed fisheries are most commonly made under:

- Part 13 - species and ecological communities - in relation to interactions with listed species and ecological communities in Commonwealth waters.
- Part 13A - international wildlife trade.
- Part 10 - that provides for endorsement of a plan, policy or program following a strategic assessment of the impacts of actions under the plan, policy or program of matters of national environmental significance. Where a Part 10 strategic assessment has been undertaken for a Commonwealth-managed fishery or fisheries, the outcomes of the strategic assessment inform other decisions under the EPBC Act for the relevant fisheries.

Decisions relevant to commercial fisheries are in many cases limited by the EPBC Act to specified time periods and must be remade on a periodic basis. Following the completion of the first round of fishery assessments under the EPBC Act, the *Guidelines for the Ecologically Sustainable Management of Fisheries* were extensively reviewed in consultation with all jurisdictions to streamline the information requirements for subsequent decision-making. The *Guidelines for the Ecologically Sustainable Management of Fisheries - 2nd Edition*, published in 2007, provide a common framework to inform both the provision of submissions for assessment and decision-making under all relevant parts of the EPBC Act, in relation to commercial fisheries.

The following sections expand on the legislative requirements for decision-making for each type of decision, the Department's integrated assessment processes and the guidelines.

Potential EPBC Act decisions

Part 13 - Interactions with EPBC Act listed species, in Commonwealth waters

It is an offence to harm species listed under Part 13 of the EPBC Act, other than 'conservation dependent' species¹³, in Commonwealth waters unless fishers have a permit or the management arrangements for the fishery are accredited by the Environment Minister under Part 13 of the EPBC Act. A plan of management within the meaning of the *Fisheries Management Act 1991*, or a regime determined under the *Fisheries Administration Act 1991* (for a fishery for which a plan of management is not in force) can be accredited if the minister is satisfied that:

- the plan or regime requires individual fishers to take all reasonable steps to avoid harming protected species.
- the fishery does not, or is not likely to, adversely affect the conservation status of protected species or affect the survival and recovery of listed threatened species.

In making this decision the Environment Minister considers the impact of fishery operations in Commonwealth waters on species protected under Part 13 of the EPBC Act, including cetaceans, listed threatened species and ecological communities, listed migratory species and listed marine species. Typically, Part 13 accreditation is considered in conjunction with either a strategic assessment or an application for export approval (Part 13A).

The assessment can have two possible outcomes:

- *Part 13 accreditation*

The fishery management arrangements are found to require fishers to take all reasonable steps to avoid killing or injuring listed species and the fishery does not, or is not likely to, adversely affect the conservation status of listed migratory species, cetaceans or listed marine species or affect the survival and recovery of listed threatened species. The Environment Minister accredits the management arrangements and operators are thereby exempt from requiring permits under Part 13 for interactions with protected species. Accreditation can be restricted to apply only during a particular period, while certain circumstances exist or while a certain condition is complied with.

- *No Part 13 accreditation*

The management arrangements are found not to require fishers to take all reasonable steps to minimise impacts on protected species and/or the ability of the management arrangements to control unacceptable impacts on protected species is uncertain. In the absence of Part 13 accreditation, fishers are liable for prosecution under the EPBC Act should they interact with protected species in Commonwealth waters without a permit.

¹³

Refer to page 8 for a discussion of the conservation dependent listing category.

Part 13A - International movement of wildlife specimens

For product derived from commercial fisheries, it is an offence under the EPBC Act to export native specimens (such as fish) without a relevant permit, unless they are included in the list of exempt native specimens established under section 303DC (Part 13A) of the EPBC Act.

For specimens derived from a commercial fishery to be included in the list, the management arrangements for the fishery need to be consistent with the objects of Part 13A of the EPBC Act. Fisheries are not required to have Part 13A approval if they do not plan to export their product.

The objects of Part 13A are:

- a) to ensure that Australia complies with its obligations under CITES¹⁴ and the Biodiversity Convention.¹⁵
- b) to protect wildlife that may be adversely affected by trade.
- c) to promote the conservation of biodiversity in Australia and other countries.
- d) to ensure that any commercial utilisation of Australian native wildlife for the purposes of export is managed in an ecologically sustainable way.
- e) to promote the humane treatment of wildlife.
- f) to ensure ethical conduct during any research associated with the utilisation of wildlife.
- h) to ensure the precautionary principle is taken into account in making decisions relating to the utilisation of wildlife.

The Environment Minister may, by instrument published in the *Gazette*, declare a commercial fishery to be an 'approved wildlife trade operation' if satisfied about the matters listed in section 303FN of the EPBC Act, including that the fishery is consistent with the objects of Part 13A of the EPBC Act. The declaration takes effect upon gazettal.

The Environment Minister may amend the list of exempt native specimens under section 303DC of the EPBC Act to include product from the fishery while the fishery is subject to declaration as an approved wildlife trade operation, or impose other conditions or restrictions on the inclusion. The instrument to amend the list of exempt native specimens is a disallowable instrument.

The minister may decide to:

- include product sourced from the fishery in the list of exempt native specimens, thereby making the product exempt from the export controls prescribed by the EPBC Act.
- declare the fishery to be an approved wildlife trade operation. A fishery can be declared an approved wildlife trade operation for up to three years.¹⁶ A declaration may be made subject to conditions, as provided for in section 303FT of the EPBC Act.

¹⁴ Convention on International Trade in Endangered Species of Wild Fauna and Flora

¹⁵ Convention on Biological Diversity: <http://www.cbd.int/>

- prohibit export from the fishery by choosing not to agree to either of the above options.

In deciding whether to declare a commercial fishery to be an approved wildlife trade operation or to amend the list of exempt native specimens, the EPBC Act provides that the Environment Minister must rely primarily on the outcomes of any strategic assessment of the fishery carried out under Part 10 (discussed in more detail on page 4).

Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES)

Australia's obligations under CITES are met through the EPBC Act. Under the convention, export of CITES specimens¹⁷ may only occur where the CITES Scientific Authority of the country of export has found that the export will not be detrimental to the survival of the species (a non-detriment finding), and a CITES export permit has been issued by the exporting country's CITES Management Authority. The legislative basis for meeting Australia's responsibilities under CITES is provided by Part 13A of the EPBC Act. As such, specimens of species listed in Appendix II and Appendix III of CITES may be exported commercially, under an EPBC Act CITES export permit, if sourced from an approved wildlife trade operation.

The Department's assessment process for Part 13A applications

Part 13A export decisions are made subject to time limits. If export is to continue beyond the stated limit, a fresh decision must be made. To seek export approval under Part 13A of the EPBC Act in the absence of a strategic assessment (see page 6 for a discussion of strategic assessments), a fishery management agency provides the Department with an application that describes:

- the management arrangements for the fishery.
- progress against conditions from any previous export approval and/or any recommendations made in association with a previous decision.

Using the *Guidelines for the Ecologically Sustainable Management of Fisheries - 2nd Edition* and any other relevant available information, the Department prepares advice on matters about which the Environment Minister must be satisfied before making the required decisions about a fishery. The assessment process includes a public comment period to provide stakeholders with the opportunity to express their views on the proposed decision. When making a decision to declare a commercial fishery an approved wildlife trade operation, the minister must consider any written comments received in response to a published invitation to comment. The EPBC Act specifies that this public comment period must be at least 20 business days.

Part 10 - Strategic assessments

Under Part 10 of the EPBC Act, Commonwealth-managed fisheries must be assessed for impacts of actions permitted under the fishery's plans or policies, on matters protected by a provision of Part 3 of the EPBC Act (matters of national environmental significance).

A strategic assessment must be undertaken whenever a new management plan is developed. As a first step, AFMA must seek agreement under section 146 (Part 10) of the EPBC Act from the

¹⁶ The EPBC Act stipulates that the maximum length of time for an approved wildlife trade operation is three years.

¹⁷ A CITES specimen is a specimen of a species included in Appendix I, II or III to CITES.

Environment Minister to undertake a strategic assessment of the impact of actions under the plan on matters of national environmental significance.

The EPBC Act requires that the agreement under section 146 must provide for:

- the agreement to terms of reference for a report on the impacts to which the agreement relates, in accordance with paragraph 146(1B)(a). The standard terms of reference for strategic assessment of Commonwealth-managed fisheries are drawn primarily from the *Guidelines for the Ecologically Sustainable Management of Fisheries - 2nd Edition*.
- the preparation by AFMA of a draft strategic assessment report addressing the terms of reference.
- the opportunity for public comment on the draft strategic assessment report for no less than 28 days.
- the provision of a final strategic assessment report, taking account of the comments received, from AFMA to the Environment Minister.
- following the provision of a strategic assessment report to the Environment Minister and in accordance with paragraph 148(2)(b) (Part 10) of the EPBC Act, AFMA is required to consider any recommendations, including recommendations for the modification of the plan or policy, made by the Environment Minister under the section 146 agreement.
- once the plan or policy is finalised, taking into account the recommended modifications, the Environment Minister may then endorse the plan or policy under the section 146 agreement - paragraph 146(2) (f) (Part 10), if the minister is satisfied that the management arrangements adequately address the impacts to which the agreement relates and that the recommended modifications of the plan or policy (if any) have been addressed.

Attachment C

Other EPBC Act decisions relevant to Commonwealth fisheries

Listing threatened species, threatened ecological communities and key threatening processes under Part 13

Any person may nominate a native species or ecological community for listing as threatened, or a process for listing as a key threatening process under the EPBC Act. An invitation to nominate is extended by the Environment Minister each year ahead of a new assessment cycle. Nominations that are submitted within the advertised invitation period and satisfy the *Environment Protection and Biodiversity Conservation Regulations 2000* (EPBC Regulations) are forwarded to the Threatened Species Scientific Committee. These nominations are then prioritised for assessment by the Committee to form the proposed priority assessment list (PPAL), which is provided to the minister as the recommended assessment list. To balance its workload, nominations not included on the PPAL may be considered by the Committee for prioritisation in the subsequent year's development of an assessment list. The minister then considers the PPAL, makes any changes they see fit, and finalises the list as the finalised priority assessment list (FPAL). The FPAL is subsequently published on the Department's website and nominators are notified of the outcome.

Nominations included in the FPAL are assessed by the Committee within a timeframe set by the minister. During the assessment period, the Committee invites public comment and seeks expert advice on each nomination. The Committee then subsequently provides its assessment (or advice) to the minister which contains within a recommendation whether the species, ecological community or a process is eligible for listing under the EPBC Act. This advice must be considered by the minister in their decision-making.

Other matters that the minister may consider when deciding whether to list a species or ecological community as threatened are:

- matters relating to whether the species is eligible to be included in that category.
- the effect that listing could have on the survival of the species.

Other matters that the minister may consider when deciding whether to list a process as a key threatening process are those that do any of the following:

- cause a native species or ecological community to become eligible for inclusion in a threatened list (other than the Conservation Dependent category).
- cause an already listed threatened species or threatened ecological community to become more endangered.
- adversely affect two or more listed threatened species or threatened ecological communities.

The Committee uses its "Guidelines" for its assessment of nominations to list species¹⁸, ecological communities¹⁹ and key threatening processes.²⁰ The Guidelines for assessing species are closely

¹⁸ <http://www.environment.gov.au/biodiversity/threatened/pubs/guidelines-species.pdf>

¹⁹ <http://www.environment.gov.au/biodiversity/threatened/pubs/guidelines-ecological-communities.pdf>

aligned with the International Union for Conservation of Nature's (IUCN's) criteria. The Committee is informed by, but not bound by, indicative thresholds in its Guidelines. Section 179 of the EPBC Act provides the categories to which threatened species may be assigned and the EPBC Regulations describe the criteria for eligibility for those categories.

Assessing eligibility of commercially harvested marine fish for listing

When interpreting the indicative thresholds in its Guidelines for assessing species, the Committee judges their appropriateness to characteristics of the species in question. The Committee exercises judgement in determining the application of the indicative thresholds to take account of species specific biology, for example life history strategies (i.e. short life span, early maturation, high fecundity, versus long life span, late maturation and low fecundity).

The Guidelines for assessing species were revised in November 2010 to include specific guidance (see Part F of the Guidelines) relevant to commercially harvested marine fish and to provide a link between the threatened species listing assessments and what is considered 'good fisheries management' under the Commonwealth Fisheries Harvest Strategy Policy and Guidelines (harvest strategy policy). When considering thresholds for assessing commercially harvested marine fish for listing, the Committee refers to the harvest strategy policy. This policy defines declines of up to 60 per cent (from pre-fishing biomass levels) as acceptable for commercially harvested fish species where depletion is a managed outcome. Variations in the extent of acceptable decline depend on the biology of the individual species. The committee is informed, but not bound, by the series of biological reference trigger points in the harvest strategy policy, for management intervention for species that decline below 60 per cent of their pre-fishing biomass. These interventions include listing assessments.

The Conservation Dependent listing category

Under paragraph 179(6)(b) of the EPBC Act, a fish²¹ species can be listed in the Conservation Dependent category if:

- it is the focus of a plan of management (i.e. a rebuilding strategy) that provides for management actions necessary to stop its decline and support its recovery.
- the plan of management is in force under law.
- cessation of the plan of management would adversely affect the conservation status of the species.

When a species is listed as Conservation Dependent, it does not necessarily impose further restrictions or limitations on fishing beyond those provided in the plan of management (rebuilding strategy), as opposed to if a fish species was to be listed in the Vulnerable, Endangered or Critically Endangered categories.

It is important to note that listing a species as Conservation Dependent allows for the continuation of commercial fishing activities which may interact with that species, conditional on there being a

²⁰ <http://www.environment.gov.au/biodiversity/threatened/pubs/ktp-guidelines.pdf>

²¹ Fish includes all species of bony fish, sharks, rays, crustaceans, molluscs and other marine organisms, but does not include marine mammals or marine reptiles.

plan of management in force under law which provides for halting decline and supporting recovery. Species listed as Conservation Dependent are not considered Matters of National Environmental Significance under Part 3 of the EPBC Act, therefore do not trigger the offence or civil penalty provisions when fishers interact with them.

Seven species are currently listed as Conservation Dependent under the EPBC Act: blue warehou, eastern gemfish, Harrison's dogfish, orange roughy, school shark, southern bluefin tuna and southern dogfish. All these species were well below B_{TARG} when listed as Conservation Dependent, consistent with what is stated under Part F in the Committee's Guidelines for assessing species.

Recovery plans and threat abatement plans

The Environment Minister may make or adopt and implement recovery plans for listed threatened species (other than Conservation Dependent species) and threatened ecological communities listed under the EPBC Act. Recovery plans set out the research and management actions necessary to stop the decline of, and support the recovery of, listed threatened species or threatened ecological communities. The aim of a recovery plan is to maximise the long term survival in the wild of a threatened species or ecological community.

Recovery plan guidelines have been developed to provide information on how to go about preparing a recovery plan and explaining the content requirements for a recovery plan. Before making a recovery plan for a listed threatened species or listed threatened ecological community, the minister must:

- consult with the appropriate minister of each state and territory in which the species or ecological community occurs.
- consider advice from the Threatened Species Scientific Committee.
- invite public comment on the proposed plan.
- consider all comments received.

Within 90 days of listing a key threatening process, the Environment Minister must decide if a threat abatement plan should be made or adopted. This decision is based on whether having and implementing a plan is the most 'feasible, effective and efficient way to abate the process'. The minister consults with the Threatened Species Scientific Committee and interested government agencies before making this decision.

Threat abatement plans provide for the research, management, and any other actions necessary to reduce the impact of a listed key threatening process on native species and ecological communities. Implementing the plan should assist the long term survival in the wild of affected native species or ecological communities. Before making or adopting a plan the minister must consult widely. This includes advertising and inviting comment on the plan during a specified period.

The EPBC Act requires the Australian Government to implement a recovery plan or threat abatement plan to the extent that it applies in Commonwealth areas. This requirement applies to all Australian Government agencies.

Attachment D

Comparison of NOPSEMA and AFMA

| | Offshore Oil and Gas | Fisheries Management |
|--|---|--|
| Governing legislation | <i>Offshore Petroleum and Greenhouse Gas Storage Act 2006</i> | <i>Fisheries Management Act 1991</i> <i>Fisheries Administration Act 1991</i> |
| Resource allocation decisions | Commonwealth Minister | AFMA |
| Resource allocation management, administration and advice | National Offshore Petroleum Titles Administrator (NOPTA), a function provided by the Department of Industry. NOPTA is fully cost recovered from industry. NOPTA administers titles, undertakes data and resource management, and provides technical advice to the Joint Authority. Was established 1 January 2012 | AFMA |
| Regulator - environmental | NOPSEMA – National Offshore Petroleum Safety and Environmental Management Authority. NOPSEMA is fully cost recovered. NOPSEMA's role includes regulation of occupational health and safety, wells and well operations, together with regulation of the structural integrity of facilities and environmental management within Commonwealth waters. | Department of the Environment |

| ACTIVITY | NOPSEMA | AFMA |
|--|------------------------------|-----------------------|
| Makes resource allocation decisions (issues property rights over the resource) | No | Yes |
| Establishes management arrangements for utilisation of the resource | No | Yes |
| Assesses management arrangements for utilisation of the resource | Yes – independent assessment | Yes - self assessment |
| Assesses the environmental compliance of management arrangements against EPBC Act requirements | Yes | No |
| Has an objective to maximise the utilisation of the resource | No | Yes |

Attachment E

Design considerations for the Commonwealth's representative system of marine protected areas

To assist the Commonwealth in the design of its component of the NRSMPA the Commonwealth Government established the *Goals and Principles for the Establishment of the National Representative System of Marine Protected Areas in Commonwealth waters* (DOE, 2011). This document sets out the design considerations comprising of four primary goals and 20 location principles. For instance, principle 18 requires the inclusion of some highly protected areas (i.e. IUCN Categories I and II) in each provincial bioregion in order to provide baselines and conserve representative samples of each provincial bioregion.

An important consideration in the design of the NRSMPA was the principle that socio-economic costs should be minimised (Selection Principle 9). Given that the NRSMPA is a representative system this allowed options to be considered for reserves that were sensitive to social and economic impacts.

In 2010, as part of assisting the design of the NRSMPA, the Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) produced an analysis of the social and economic design considerations for the NRSMPA on the final agreed network and compared this with alternative design considerations. This analysis showed that despite increasing the cover of the NRSMPA in Commonwealth waters, the impact on sectors was minimal. For the commercial fishing sector, a reduction in income of less than 1 per cent of average annual income was calculated. The ABARES analysis involved extensive surveys of potential impacts on fishers and related sectors and communities, as well as modelling of the flow of impacts into the wider economy.

Approximately two thirds of the network remains open to recreational fishing under the November 2012 proclamation with areas closed to recreational fishing generally some distance from the coast or population centres.