



## Commonwealth Fisheries Association

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# Policy Position Paper No.14: CFA Submission to Productivity Commission Review of Regulatory Burden 2007

## 1. Executive Summary

Fishing enterprises active in Commonwealth fisheries are subject to both the *Fisheries Management 1991* (the *FM Act*) and the *Environment Protection and Biodiversity Conservation Act 1999* (the *EPBC Act*). Together these acts provide the basis for the ecologically sustainable management of commercial species and the conservation of Australia's marine resources.

Unless the interactions of these Acts are harmonised the fishing industry is exposed to the risk of being excluded from export markets by an unfavourable strategic assessment under the *EPBC Act*, or worse still have the fishery closed through the listing of a key target or by-catch species under the provisions of the *EPBC Act*, despite fulfilling all the fisheries management requirements of the *FM Act*.

The current level of "double jeopardy" thus exposes industry to higher cost structures and more complex processes than are necessary. More importantly it creates an environment of uncertainty in terms of their future access to commercial fish stocks and ultimately brings into question the value of statutory fishing rights as an asset and financial security. In this regard it is important to recall that statutory fishing rights were introduced to "give greater security" and "establish the rights as an asset against which they [fishing right holders] can borrow<sup>1</sup>".

To address these concerns the CFA proposes a comprehensive, transparent and independent review and rationalization of the interaction of the *EPBC Act* and the *FM Act* as well as the respective roles and responsibilities of the Department of Agriculture, Fisheries and Forestry (DAFF), the Department of Environment and Water Resources (DEW) and Australian Fisheries Management Authority (AFMA) in the management of commercial fisheries.

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<sup>1</sup> Second Reading Speech – Fisheries Management Bill 1991 (6 June 1991) – Page 10

## **2. Background to the CFA**

The CFA was established in 2003 to represent the broad interests of fishers operating in Commonwealth managed fisheries<sup>2</sup>. Since September 2006 it has been the legislated peak industry body for the purposes of the *Fisheries Administration Act 1991* and the *Fisheries Management Act 1991*. This means that the CFA has a unique standing with AFMA in representing the interests of the commercial fishing industry in Commonwealth managed fisheries. This status carries with it rights and responsibilities such as the legislated requirement for the AFMA Chair to report annually to the CFA on AFMA's activities and to for the CFA to be consulted in the preparation of AFMA's Corporate Plan.

The CFA's membership includes each of the associations representing fishers operating in the major Commonwealth fisheries. Most of the major corporate fishing entities as well as individual companies operating vessels in fisheries that do not have well-established industry associations are also members of the CFA.

The role of the CFA in relation to individual associations and a peak seafood industry council are often confused. Individual associations, such as the South East Trawl Fishing Industry Association, the Great Australian Bight Industry Association and the Australian Southern Bluefin Tuna Industry Association (which are members of the CFA), continue to represent the interests of their members on issues that directly affect their particular fisheries. The CFA complements the work of these associations by focusing on broad, cross-cutting issues that affect all Commonwealth managed fisheries.

The CFA almost exclusively focuses on fisheries management and conservation issues affecting Commonwealth operators. It does not involve itself in state managed fisheries or issues affecting the marketing or processing of seafood.

## **3. CFA Submission**

Fishing enterprises active in Commonwealth fisheries are subject to both the *FM Act*<sup>3</sup> and the *EPBC Act*. Together these acts provide the basis for the ecologically sustainable management of commercial species and the conservation of Australia's marine resources.

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<sup>2</sup> Further information on which fisheries are managed by the Commonwealth is available from the AFMA web site ([www.afma.gov.au](http://www.afma.gov.au)).

<sup>3</sup> Further details on the manner in which Commonwealth fisheries are managed are available from the AFMA web site ([www.afma.gov.au](http://www.afma.gov.au)).

While the CFA and its members support the broad intent of these Acts, there is a high degree of interaction and overlap in their administration that has the potential to expose the fishing industry to a significant degree of “double jeopardy” in terms of the management of commercial marine species. This inevitably involves additional processes and costs than would be the case in a more rational operating environment. It also introduces a degree of uncertainty concerning the status of fishing access rights (administered by AFMA) has the potential to undermine their status as an asset and as a financial security.

Specific areas where the *EPBC Act* interacts with the *FM Act* include:

1. the *EPBC Act* requirement that all Commonwealth managed fisheries undergo strategic environmental impact assessment before new management arrangements are brought into effect;
2. the *EPBC Act* requirement that all fisheries, from which wild caught product is exported, undergo assessment to ensure the fishery is managed in an ecologically sustainable way;
3. establishing *EPBC Act* standards in relation to the management of interaction with threatened, endangered or protected species;
4. the capacity of the Minister for the Environment to determine that specific fishing methods or practices are “threatening processes”;
5. the capacity of the Minister for the Environment to list fish species as “threatened” and therefore prohibit the commercial take of that fish species; and
6. the capacity of the Minister for the Environment to impose spatial and/or gear restrictions following the development and implementation of Marine Protected Area Networks.

Recent changes to the *EPBC Act* have provided for the accreditation of fisheries plans regimes or policies developed under the *FM Act* in terms of managing the impact of fishing activities in relation to conservation of listed migratory species and/or cetaceans. The DEW has also been working with AFMA to harmonise the requirements of the *EPBC Act* and the *FM Act*. However, as indicated below there are several areas where further action is required to achieve a more rational and cost-effective fisheries management regime.

Further detail on the areas of interaction as well as the CFA’s suggestions as to how its concerns might be addressed follow.

## **Interactions 1 and 2: Pre-management Strategic Assessments and Wildlife Export Assessments**

### *CFA Position:*

The *EPBC Act* fisheries strategic assessment process has the potential to perform a valuable function in the sustainable management of Australia's commercial fisheries by reassuring the community that Australia's marine resources are being competently and responsibly managed. However, as things stand the assessments are widely regarded as yet another burden on the commercial fishers, focused on a relatively narrow set of conservation-orientated objectives.

To realise their full potential and reduce their burden on industry, it is essential that strategic assessments are undertaken as an integrated component of the broad spectrum of management arrangements designed to deliver the two key tenets of fisheries management: biological sustainability and economic viability.

From an industry perspective, the worst possible outcome is to have different assessment standards and processes imposed by the relevant Commonwealth environmental and fisheries management agencies. For this reason it is essential that any strategic assessment regime is effectively integrated and harmonised with existing fisheries management, monitoring and compliance regimes.

In particular, it is essential that DEW and AFMA are fully committed to ensuring that the Environmental Risk Assessment and Environmental Risk Management processes (currently underdevelopment by AFMA) and the strategic and export assessment processes (being undertaken by DEW) will be fully harmonised and integrated.

The strategic assessment processes required under the *EPBC Act* are resource intensive and potentially disruptive processes. Accordingly, it is essential that within DEW, assessments undertaken as part of issuing a permit to export wild caught product are fully harmonised and accredit with strategic assessments undertaken to conform to the requirement that all fisheries undergo strategic environmental impact assessment before new management arrangements are brought into effect.

### *CFA Proposal:*

The strategic assessment processes required under the *EPBC Act* and the environment risk assessment processes initiated by AFMA as well as any necessary remedial action should be explicitly integrated, harmonised and accredited. To achieve this, DEW and AFMA should be required to jointly review their respective requirements and processes and develop an agreed and transparent process to integrate and harmonise these assessment activities.

### **Interaction 3: Interaction with Threatened, Endangered or Protected Species (TEP's)**

*CFA Position*

The CFA accepts the need for EPBC Act requirements to manage and minimise interaction with TEP's and is generally satisfied with the arrangements developed to monitor and regulate these requirements

*CFA Proposal:*

Nil at this stage.

### **Interaction 4: Nominating fishing methods as threatening processes**

*CFA Position:*

The CFA accepts the need for the Minister for the Environment to have the capacity to nominate fishing methods as threatening processes when circumstances based on objective and transparent criteria justify such an action.

*CFA Proposal:*

Nil at this stage.

### **Interaction 5: Listing of commercial species as Threatened**

*CFA Position:*

The CFA is concerned that despite fully complying with all the provisions of the *FM Act* and associated management arrangements, fisheries could effectively be closed as a result of unilateral action by the Minister for the Environment by the listing of target or by-catch fish species as threatened, endangered or protected under the *EPBC Act*.

At the heart of the CFA's concerns is that the *EPBC Act* listing criteria adopted for marine species is derived from criteria developed for terrestrial flora and fauna and are thus in the main inappropriate for marine species. We are also concerned that the *EPBC Act* listing criteria is yet to be explicitly harmonised with standards set under the *FM Act*. Our concerns are compounded by an absence of clarity about how species listed under the *EPBC Act* get de-listed.

The CFA maintains that the *FM Act* provides an effective vehicle to manage Commonwealth fisheries and should be the sole legislative mechanism by which commercial species are managed. Accordingly, any species managed in accordance with the Commonwealth Harvest Strategy Policy (HSP), currently under development by the DAFF should not be subject to listing

under the *EPBC Act* (noting that the Draft HSP provides for the Minister for Environment to approve actions to rebuild stocks that are considered to be at risk).

The CFA understands that it is the intention of the Commonwealth Government to incorporate a statement in the HSP in an attempt to address the concerns identified above within the limitations of the current legislation. However, the CFA does not expect that this statement will fully and effectively address its concerns because of the limited power of a policy statement of this type to qualify legislation.

*CFA Proposal:*

The CFA proposes that the *EPBC Act* to be amended to acknowledge the clear primacy of the *FM Act* in terms of managing commercial marine species.

In the absence of such a legislative change, the CFA proposes that:

- the criteria under which the Minister for the Environment lists species as threatened and the criteria by which DAFF and AFMA in conjunction with the Bureau of Rural Sciences (BRS) determine fish stocks to be “over fished” should be fully harmonised;
- the Minister for the Environment amend such legislation as is necessary to confirm that the listing of fish species as threatened, endangered or protected under the *EPBC Act* would not be contemplated when the stock is above the level that would be considered “overfished” according to the criteria determined by DAFF and AFMA in conjunction with the BRS; and
- the HSP (currently in development) should clearly set out all of the consequences of fishing beyond limit reference points defining when a fish stock is overfished and the actions that need to be taken to have any potential *EPBC Act* listing removed.

### **Interaction 6: Restrictions imposed following the development and implementation of Marine Protected Area Networks.**

*CFA Position:*

The CFA accepts the need for conservation motivated Marine Protected Areas (MPA’s) under the *EPBC Act* provided they are soundly based in science, impacts on industry are minimised and industry is compensated for any unavoidable impacts. The CFA also supports the development and implementation of spatial fisheries management arrangements under the *FM Act* designed to address specific fisheries management concerns that are best addressed via spatial closures.

However, the CFA is concerned that DEW and AFMA initiated spatial closures have the potential to either compound the adverse impacts on industry and/or to miss the opportunity to achieve complementary and mutually advantageous outcomes unless they are well coordinated. From our

perspective there has been little evidence of DEW and AFMA jointly considering the opportunity to achieve such an outcome.

Having recently developed a network of MPA's for the South eastern component of the Australian Fishing Zone, DEW has initiated a process to develop a complementary network of Commonwealth MPA's around the remainder of the Australian coast.

*CFA Proposal:*

Before proceeding further with the development of the Commonwealth MPA network DEW should be required to formally engage with AFMA to consider their joint spatial management programs with a view to identifying areas of potential synergies and avoid undue and/or unintended consequences for the fishing industry.

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3 July 2007