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

A joint submission from Austral Fisheries Pty Ltd and WWF-Australia

October 2012

Introduction

Austral Fisheries Pty Ltd and WWF-Australia are pleased to be able to provide a joint submission to the review of the Commonwealth fisheries legislation. We have identified a number of key issues, raised by the terms of reference, which are of common concern to our organizations. Those issues relate to:

1. the primacy of the *Fisheries Management Act 1991* (FMA) and the *Fisheries Administration Act 1991* (FAA) in the management of Commonwealth fisheries;
2. the performance of the AFMA model and Commonwealth fisheries governance;
3. the central role of secure fishing rights in contemporary, best practice fisheries management;
4. the role of penalties in fisheries management; and
5. the need for effective management of species/stocks that overlap Commonwealth/State fisheries management jurisdictions.

Primacy of fisheries legislation

We believe that it remains appropriate that the package of legislation provide by the FMA and FAA is the primary legislation under which Commonwealth fisheries are managed. In our view this legislation, which has been amended regularly since its introduction in 1991, facilitates rather than impedes the effective management of Commonwealth fisheries in line with the objectives established by government.

We acknowledge that the additional oversight of Commonwealth fisheries provided through the strategic assessment provisions (Part 10) of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) was initially of real value in hastening reform of attitudes and practices in many sectors of the industry and management, particularly in regard to non-target species. However, it is our view that the marginal benefit of these assessments in Commonwealth fisheries, undertaken by a second layer of administration, is very small. Opportunities for substantial gains in these fisheries are now much fewer given the significant improvements made in the last decade in response to a range of factors including not only the EPBC Act assessments themselves but also the adoption of the ecological risk assessment approach and implementation of harvest strategies by AFMA.

In terms of cost-effectiveness, from both an industry and a government perspective, the time would seem right to reconsider the application of the EPBC Act assessment process to Commonwealth fisheries. In our view, the outcomes of the review of the fisheries legislation should be considered in finalising the Government's proposed 'streamlining' of the fisheries assessment process in response to the review of the EPBC Act.

We note, in particular, that an increasing number of Australian fisheries are seeking independent third party certification of sustainability under schemes such as the Marine Stewardship Council (MSC). Both the Patagonian toothfish and mackerel icefish fisheries in which Austral Fisheries participates have successfully gained MSC certification and a third fishery, the Northern Prawn fishery, is currently undergoing assessment. We believe that consideration should be given to a process that recognises successful third party certification for the purposes of the EPBC Act assessment process, where that independent certification is based on criteria at least equivalent to the requirements of the EPBC Act assessment process.

The AFMA model and fisheries governance

It is our view that the AFMA model has served both the fishing industry and the Australian community well over the last 20 years. The model itself, as well as the approach to fisheries management that it applies, has continued to evolve over that period and we believe that it reflects most aspects of contemporary best practice fisheries management. That is not to say that there is no room for improvement in both AFMA and in the broader fisheries governance structures in which commonwealth fisheries management is conducted.

While AFMA is an independent body, it does not operate in isolation from government. The legislation and the policy under which AFMA was established provide key powers for the Minister and the Parliament in respect of some fisheries management matters and a central role for the Department of Agriculture, Fisheries and Forestry (DAFF) in policy development and performance monitoring. For the last decade, Commonwealth fisheries have also been subject to a number of assessment processes under the EPBC Act. It is our view that, the roles and responsibilities across the three central agencies (AFMA, DAFF, DSEWPaC) have become blurred over time and that there is significant overlap and duplication in the current processes. This facilitates neither a shared vision nor efficient and cost-effective delivery of fishery management outcomes. It is these broader governance arrangements that we believe provide the most opportunities for improvement in management of Commonwealth fisheries management.

While we do not believe that there is a need for any significant alteration to the AFMA operating model we accept that there is a strong perception that industry participation in AFMA's advisory processes represents a conflict of interest. While we do not accept that this is the reality, we recognise the need to ensure that the processes in place are sufficiently robust and transparent to provide government, stakeholders and the broader community with confidence that community-owned resources are being managed sustainably. The challenge for us, and for government, is to establish processes that provide:

- for a broad range of stakeholder engagement in consideration of fisheries management issues;
- clarity about the decision-making role of the AFMA Commission and the legislative context in which those decisions must be made;
- flexibility to apply the most cost-effective management approaches, including co-management;
- the security required to realise the potential of a management system based on statutory fishing rights (SFRs); and
- confidence that the checks and balances in place will deliver ecologically sustainable and economically viable fisheries in the long term.

In meeting this challenge we consider that there is a need for:

- clear articulation of practical procedural requirements for stakeholder engagement in AFMA's management advisory committee (MACs) and resource assessment groups (RAGs). These requirements must acknowledge and deal with the reality that it is not only industry participants on these bodies that potentially have a conflict of interest.
- re-affirmation of the respective roles and responsibilities of MACs/RAGS and the AFMA Commission and CEO in relation to the provision of advice and the taking of management decisions. In this respect we note that the FAA requires that the Commission membership reflects, among other things, expertise on 'fishing industry operations' and we consider that future Commission appointments should ensure that this expertise is adequately reflected. In addition, we believe that it is important that the Commission has access to expertise available from conservation non-government organisations.
- greater transparency in the decision-making processes of the Commission, particular in relation to justification of decisions against the legislative objectives;

- certainty and stability in the government processes so as to provide an operating environment for industry that is conducive to maximising economic returns as well as providing confidence to other stakeholders;
- ensuring that cost-effective, inclusive and transparent approaches to monitoring the performance of Commonwealth fisheries against the legislative objectives are in place. This provides confidence for the government and the community and a backdrop for the acceptance of co-management approaches to management.

Statutory fishing rights

A central component of the FMA/FAA is the allocation of SFRs under statutory management plans. The security of access provided by SFRs overcomes the problems associated with common property resources, provides for rational, long-term decision making by industry and promotes stewardship of the resource. The AFMA model, with arm's length decision making from government, is central to ensuring that these benefits are realised. Certainty in the decision making processes is critical. We acknowledge the responsibility that government has to ensuring the long term sustainable management of Australian marine resources and to reflecting community attitudes. However, it is imperative that attempts to ensure sufficient government oversight of Commonwealth fisheries management do not undermine the security of SFRs. Amending legislation so as to increase the capacity of the minister responsible for fisheries to intervene in day to day fisheries management decision making would, regardless of whether that capacity was actually utilised, seriously compromise the foundations of the current legislation and AFMA model. In the long term, we consider that it would be detrimental to the sustainable management of Commonwealth fisheries.

Thus, we support extreme caution in preparation of any amendments that reduce the clarity of process, and certainty of decision-making, that is essential to the security of fisheries access rights.

Penalties

Appropriate sanctions for non-compliance with fisheries arrangements are also an important part of maintaining the value of SFRs. Non-compliance by some fishers undermines the rights of others and, ultimately, can compromise the status of the resource. It is important that the penalty provisions in the legislation provide a sufficient deterrent to non-compliance.

In this regard, we support strong measures being taken by AFMA to ensure adherence to regulations and requirements, proportionate to the actions being breached. For example, bycatch reporting breaches, where some sectors of industry may misreport accidental captures of threatened,

endangered or protected (TEP) species, require significant and effective compliance responses from AFMA. Aside from the possible negative impacts on those TEP species directly, the community perception of these (generally isolated) incidents when they become apparent is significantly negative towards fishing industry members more broadly.

Currently, the FMA provides for the cancellation of fishing rights as the ultimate deterrent. We are of the view that the cancellation provisions of the Act unnecessarily compromise the long-term security of SFRs and the associated benefits, as discussed above. We believe that there are alternative mechanisms that could be adopted including longer periods of suspension of fishing concessions together with increased penalties, along with a clearer specification of the relative severity of the offence and the appropriate level of penalty. We have already devoted considerable time to consideration, with government, of alternative approaches, however, momentum on the issue appears to have been lost. We believe that the consultation process should be revitalised with a view to resolving the issue as soon as possible.

Cross-jurisdictional management

Fisheries management in Australia is complicated by the existence of Commonwealth and State/Northern Territory jurisdictions. Responsibility for different fish species/stocks and the various fishing sectors (commercial, recreational, charter, Indigenous) is spread across those jurisdictions. This environment impedes the effective adoption of ecosystem-based management by complicating or precluding the assessment and management of cumulative impacts on fish species, habitats and communities. The key mechanism for dealing with these issues is the Offshore Constitutional Settlement (OCS). However, negotiations under the OCS to improve the management of individual species by bringing them under single jurisdiction management have been protracted and, in many cases, unproductive. Examples persist of incongruous arrangements whereby the same species/stock taken in different jurisdictions, and/or by different gears or different sectors is subject to inconsistent management.

The failure of the OCS to deliver meaningful outcomes imposes unnecessary operational and cost imposts on the fishing industry and compromises the achievement of the legislative objectives for Commonwealth fisheries.

Concluding Comments

The current legislation and the current AFMA management model remain in our view appropriate and generally very effective. We are keen to work with government to address identified problems

in the operation of that model and to ensure that the legislation reflects contemporary best practice fisheries management. We recognise that the Government and the community must have confidence in the management system. We believe that this confidence can be provided through changes and improvements to the existing institutional processes, rather than through wholesale changes to the legislation or the governance structure. We do not believe that amending the legislation to provide for the Minister to intervene on an ad hoc basis in fisheries management is necessary. Rather, we believe such a response, unless restricted in scope and function such that it does not undermine confidence in the decision-making processes, security of access rights, and surety of ecologically sound management outcomes, would be an unnecessary and counterproductive response.