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

Australian Fisheries Management Authority

Summary of Key Points from the Submission

Seven Key Areas for Improvement in Australia's Fisheries Management

1) ***Government should develop and implement practical national marine environmental standards and policies and accredit fisheries management systems against them. This would promote efficient, consistent and predictable legislative approaches to managing the environmental impacts of fishing in Commonwealth waters.***

2) ***AFMA and the Commonwealth and State and Territory governments should address many of the current jurisdictional and inconsistency issues within fisheries management arrangements to improve the cost effectiveness of management and make the Australian fishing industry more resilient to future changes.***

3) ***The* Fisheries Management Act 1991 *should be amended to increase the range and magnitude of penalties available to AFMA to deter illegal fishing. This will improve public confidence and increase the value of access rights. AFMA should have an "in house" prosecutions capability to reduce delays and increase consistency in approach across legal jurisdictions.***

4) ***Government should develop and implement a national policy on the application of the precautionary principle in fisheries management.***

5) ***Australian governments and credible third parties should improve public information systems on fisheries management and science. In addition, AFMA's public consultation on fisheries management decision making should be expanded through use of multi-media tools including social media. Both actions will require significant additional investment and expertise.***

6) ***AFMA should collect and utilise more data on the economic performance of fisheries and the likely economic impact of various management alternatives. This will require additional investment and specialist resources.***

7) ***The* Fisheries Administration Act 1991 *and* Fisheries Management Act 1991 *should be amended to better protect the confidentiality/integrity of fishery-dependent data collected by AFMA with the cooperation of industry.***

Other Important Matters

- ***Core components of the current management system have performed well and some components cannot be readily altered.***

- ***Demands on fisheries management are quickly outstripping resources. Meeting future demands will require changes in the delivery of fisheries management services and a different funding model.***

- ***The existing policy role and legislative powers (e.g. s91 Ministerial Direction powers) provide for a high level of Ministerial input and oversight of AFMA's fisheries management and administration. Key gaps remain in the policies guiding fisheries management decision making.***

Introduction

On 13 September 2012 the Minister for Agriculture, Fisheries and Forestry, Senator the Hon. Joe Ludwig, announced a major review of Australia's fisheries management system including the *Fisheries Management Act 1991* and *Fisheries Administration Act 1991* and appointed Mr David Borthwick AO PSM to undertake the review. This submission is provided by the Australian Fisheries Management Authority (AFMA) including the AFMA Commission.

Fisheries management regulates fishing activity to ensure sustainable and profitable fisheries that can deliver community benefits (e.g. food supply, recreation and employment) while maintaining environmental impacts of fishing within acceptable levels. The regulator's role in the management of fisheries differs markedly from regulation of many terrestrial industries such as agriculture, forestry and mining. Fisheries managers are dealing with higher levels of uncertainty due to the inherent challenges in measuring and understanding the marine environment and the fact that fish resources are a public resource utilised and valued in different ways by different sectors of the community.

The benefits of well-managed fisheries to the community, both in terms of food supply and recreational resource, are immeasurable. However, quantifying the 'desirable state' for marine ecosystems and making decisions based on uncertain information about a constantly changing environment is very challenging and often highly technical. Fisheries management is ultimately about managing the impact of people and businesses to deliver maximum returns or services to the community within generally acceptable tolerances for change (and corresponding risk) within the ecosystems that support these returns/services. This makes for a challenging operating environment for fisheries managers and governments more broadly.

International reviews suggest that Australia's fisheries management (including that undertaken by AFMA) is among the world's best fisheries management. Nevertheless there are a number of areas for improvement and some changes to the legislation and broader management framework are discussed below.

AFMA considers that there are seven key areas for improvement and a number of other specific matters that should be considered as part of the review. AFMA would be pleased to provide further information on the matters raised in our submission or any other matters raised during the review if requested.

Discussion

1) ***Government should develop and implement practical national marine environmental standards and policies and accredit fisheries management systems against them. This would promote efficient, consistent and predictable legislative approaches to managing the environmental impacts of fishing in Commonwealth waters.***

AFMA's current management arrangements for Commonwealth fisheries at least meet, and often exceed, all environmental management conditions imposed under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

However, the overlap between fisheries management (both Commonwealth and state/territory) legislation and the EPBC Act creates considerable inefficiency and uncertainty for both governments and fisheries stakeholders. Inefficiency and uncertainty is exacerbated by significant duplication of activity between several EPBC Act approval requirements for each individual fishery.

For example, all Commonwealth-managed fisheries are covered by separate assessments and approvals under Part 10, Part 13 and Part 13A. All of these consider the effect of fisheries on the marine environment, protected species and communities and the ability of fisheries management to minimise the risk of unacceptable impacts. Moreover, individual species within those fisheries are separately assessed through nomination as threatened species or the method of fishing as a Key Threatening Process. The potential for duplication and/or inconsistency in decision making is obvious and evidenced by Part 13 approvals

having no conditions while various conditions are placed on Part 13A approvals. The inefficiency of the current multilayered approval processes against the EPBC Act needs to be addressed by replacing it with a single environmental approval process for each fishery.

While the EPBC Act clearly provides for the development of specific assessment criteria to direct the nomination and assessment process for the listing of marine fish this has not occurred in the 13 years since the legislation was enacted. These criteria need to be developed and implemented to ensure the appropriate, effective and efficient application of the listing process to marine fish.

Amendment of the EPBC Act is also required to avoid unintended and unnecessary protection of marine migratory species. This would better reflect the intentions of the Bonn Convention within the EPBC Act.

The key changes proposed directly above are discussed further at Attachment 1.

Following the Hawke Review, some relevant amendments to the EPBC Act are currently being considered by government. However, it is unclear if these amendments will go far enough. It is also concerning that most amendments relevant to fisheries management appear to have been given a lower priority than other amendments. Furthermore, practical operational policies will still be required to support the implementation of the amended EPBC Act within ecosystem based fisheries management frameworks.

Moving to a one step, five-yearly accreditation of AFMA and state/territory management systems under the EPBC Act would remove the current inefficiency, inconsistency and uncertainty for Australia's fisheries stakeholders and reduce cost and red tape for both government and stakeholders. The development and implementation of national marine environmental standards and national fisheries assessment criteria will ensure adequate environmental protection is being provided under the EPBC Act and fisheries legislation. These policies should specify the practical environmental outcomes sought under the EPBC Act and set common timeframes for achievement of actions/outcomes and reporting in all jurisdictions. This approach should allow the Department of Sustainability, Environment, Water, Population and Communities (DSEWPaC) to shift its focus away from day-to-day fisheries management wherein different and often unique conditions are placed on individual fisheries. It should be noted that it is the activity that is subject to the EPBC Act and not the government regulator (e.g. AFMA). However, EPBC Act conditions are often written so as to place conditions on the regulator rather than on the activity.

In the shorter term, there is an immediate need to address the current inconsistencies in the application of the EPBC Act between different fisheries management jurisdictions operating in applicable waters. Attachment 2 provides a case study outlining the differing management approaches taken by DSEWPaC to minimise gillnet fishing impacts on Australian Sea Lions in different jurisdictions.

Inconsistent application of the EPBC Act undermines rights-based fisheries management and compromises the credibility of both environmental and fisheries management. It also distorts markets by imposing different costs on different fishers, both within and between jurisdictions, who are harvesting and selling the same fish species. Urgent action is required to level the playing field for all Australian fishing businesses and ensure holistic protection of the marine environment and especially threatened, endangered and protected species.

Given that national environmental standards and conditions will take some time to develop and implement, in the shorter term, AFMA proposes the establishment of a joint Science Advisory Group to provide advice to both AFMA and DSEWPaC on the ecological risks from fishing including bycatch of threatened, endangered and protected species. A joint approach provides a forum for coordinated expert consideration and ensures multi-disciplinary resolution of complex natural resource management issues. Draft Terms of Reference for such a group are provided at Attachment 3.

2) AFMA and the Commonwealth and state and territory governments should address many of the current jurisdictional and inconsistency issues within fisheries management arrangements to improve the cost effectiveness of management and make the Australian fishing industry more resilient to future changes.

Harmonised management of key commercial species
Individual fisheries in Australia are currently defined by a combination of species caught, area fished and method/s used. There are often overlaps between different 'fisheries' on one or more of these components (e.g. the same species may be caught in multiple fisheries and/or many fisheries may operate in the same area using different methods). This is true both within and between jurisdictions.

Rights held by Commonwealth-managed fishers are undermined by increasing catches in a wide range of species that are also taken in state-managed fisheries (see School Whiting example at Attachment 4). In many cases increased catches of key Commonwealth-managed species by state-managed commercial or recreational fishers directly reduce the total allowable catch limits that will be established by AFMA for commercial fishers in Commonwealth-managed fisheries. This problem is a two way street. Increasing catches of some key state-managed species by Commonwealth-managed fishers (in the absence of direct limits on catch) can undermine the rights held in state-managed fisheries. Harmonising the science and management processes that underpin the various fisheries utilising shared stocks will significantly improve outcomes for fishers, the environment and the Australian community.

Achieving such consistency and effectiveness was an objective of the arrangements established between jurisdictions under the Offshore Constitutional Settlement and associated memoranda of understanding. However, the reality has fallen short of the original objectives in some cases and there have been significant changes in the operating environment for both fishers and regulators since many of these arrangements were originally established. To re-invigorate the process toward harmonising national management of shared stocks and seek agreement to a process and timetable to revise all Offshore Constitutional Settlement agreements, the Commonwealth Minister for Agriculture, Fisheries and Forestry could host a meeting of state and territory counterparts.

There is also overlap between fisheries within jurisdictions. Within the various Commonwealth-managed fisheries, AFMA has taken steps to amalgamate fisheries management systems to increase the consistency and overall effectiveness of management and performance of fisheries. However significant opportunities remain to further improve cost-efficient and effective management of fisheries that share resources.

Moving further toward a system which places stock- or species-based quota or catch limits at the centre of management for key commercial species and allows fishers to flexibly choose any approved method of fishing would significantly improve cost-effective management and improve net economic returns in future. Under this approach, environmental impacts can be effectively managed and implemented by placing conditions on fishing methods. Such a system is has been successfully used in New Zealand for many years.

The discrete rights-based systems defined by the current Fisheries Management Plans (both within and between jurisdictions) create impediments to the changes required to implement a harmonised rights-based system for key commercial species. Instead of holding different access rights for the same stock (or species where it's appropriate to manage multiple populations under the same quota arrangement) when caught by different methods and/or in adjoining fisheries, all commercial users of the resource should hold the same form of access rights. Any changes to the total level of catch should affect all rights holders equally. There are also obvious benefits from extending this approach across the current jurisdictional boundaries for some key species.

Transition to a single quota-based system for each stock or species regardless of the fishery in which it is caught would require further allocations of rights. These allocations should be based on fair and equitable allocation principles such as those already established by AFMA

and other jurisdictions. These criteria should not seek to discriminate between fishers based on their 'Fishery/State of Origin' given fisheries resources are owned by the Australian community.

Increasing business certainty around fishing rights and responsibilities
AFMA's current Management Plans that use Individual Transferable Quotas (ITQs) do not operationally distinguish between the two key attributes of ITQs - the ongoing percentage share of the rights held under the Plan and the weight of a given fish species allowed to be caught under this share in any given season/year. Under AFMA's current system, significant legal responsibility rests with the ITQ holder even if the rights are leased and many of the penalties available to AFMA or the courts affect the ITQ right either temporarily or permanently. This system actively connects 'rights' with 'responsibilities' and this link needs to be maintained to encourage compliance under all business models. However, there have been significant changes in the operating environment since 1991 and the current system may not be the most effective for contemporary fishing businesses and/or AFMA as the regulator. Adopting New Zealand's 'two-part' system for administration of ITQs or a similar approach may provide for greater business certainty regarding rights and responsibilities.

AFMA and the Australian Government should actively explore the potential costs and benefits of introducing an alternate ITQ management system that better meets modern regulatory and business needs. Any changes to the current system will require changes to the statutory Fishery Management Plans and may require changes to the *Fisheries Management Act 1991*.

Better outcomes for both the environment and fishers from output- based approaches to bycatch
Increasingly, it is AFMA's experience that bycatch species (especially threatened, endangered and protected species (TEP)) are often better managed through individual or total mortality limits instead of relying solely on differential, fishery-based arrangements wherein indirect and often complex gear restrictions, area closures and/or limits on interaction rates per unit of effort are imposed to effectively manage bycatch.

Approaches based on individual or total mortality limits provide fishers with the most direct incentive and the necessary flexibility to choose the best means of minimising the risk their fishing poses to bycatch species and better addresses cumulative risks to bycatch species from a number of fisheries.

As an alternative, or in addition, to mortality limits, it may be more effective to fine, tax or otherwise penalise for certain levels of bycatch interaction and/or mortality to provide a direct financial incentive to modify practices to minimise fishing bycatch.

While zero fishing mortality of TEP species has been, and would always remain, AFMA's ultimate goal, interim goals that anticipate some TEP mortality will remain necessary with current and foreseeable fishing technology. These interim goals should continue to be set based on a precautionary, risk-based approach. This is the same approach that is taken in terrestrial environmental to deal with most low-level chronic risks to native fauna from humans.

3) The* Fisheries Management Act 1991 *should be amended to increase the range and magnitude of penalties available to AFMA to deter illegal fishing. This will improve public confidence and increase the value of access rights. AFMA should have an "in house" prosecutions capability to reduce delays and increase consistency in approach across legal jurisdictions.

The current penalty regime within the *Fisheries Management Act 1991* for domestic fisheries matters primarily consists of two tiers of fines - low-level "on the spot fines" and larger fines requiring a successful criminal prosecution. Courts do have the power under the *Fisheries Management Act 1991* to impose forfeitures and/or cancel fishing rights but these have very rarely been used as part of penalties.

Whilst suspension powers do exist they can only be utilised in a supervisory manner as opposed to being used as a penalty in itself. For example, suspensions are used to minimise further harm and coerce fishers to cover previous over catch in a quota managed fishery.

In addition to strengthening existing penalty provisions, AFMA considers that incorporating alternative compliance approaches to broaden the suite of measures available to it would lead to the more efficient and cost effective delivery of timely enforcement. Alternative compliance approaches could include civil and administrative penalty provisions (including suspensions for penalty purposes), enforceable undertakings, automatic forfeiture and injunction.

AFMA also recommends that the maximum level of fines be increased and terms of imprisonment be introduced for a wider range of offences to ensure that the penalties for more serious offences or repeat offenders act as a sufficient deterrent to illegal behaviour.

Further discussion of legislative amendments regarding AFMA's penalty provisions is provided at Attachment 5.

There would also be benefit in centralising the domestic prosecutions capability from the various Commonwealth Director of Public Prosecutions (CDPP) offices around Australia to AFMA. An "in house" prosecution resource familiar with the intricacies of the Act and its interaction with fisheries administrative arrangements would produce efficiencies with respect to reduced briefing time that currently exists with CDPP officers and result in a consistent approach to fisheries prosecutions across the various jurisdictions in respect to cases which progressed through the courts and court outcomes (i.e. fines, forfeitures etc).

4) Government should develop and implement a national policy on the application of the precautionary principle in fisheries management.

The *Fisheries Management Act 1991* and *Fisheries Administration Act 1991* both require that AFMA apply the precautionary principle when taking fisheries management decisions.

While there are numerous definitions of the precautionary principle and the corresponding precautionary approach in the literature, the *Fisheries Management Act 1991* and *Fisheries Administration Act 1991* both define the precautionary principle by reference to the definition contained in the Intergovernmental Agreement on the Environment.

Section 3.5.1 of the Intergovernmental Agreement on the Environment defines the precautionary principle as follows:

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

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

In accordance with this definition, AFMA regulates fishing to prevent serious or irreversible environmental damage in the absence of scientific certainty about the likelihood or scale of such impacts. Also in keeping with the broader literature on this issue AFMA incorporates a margin of safety within its decision making and uses the best available technology as part of its precautionary approach to fisheries management.

AFMA does not, as a default, use a prohibitory approach (as defined by Stewart 2002)[1] in its application of the precautionary principle. However, AFMA is aware that some stakeholders

[1] Stewart, R.B., (2002), Environmental Regulatory Decision Making Under Uncertainty, *Research in Law and Economics* **20**: 76

believe that we should. A prohibitory approach in the application of the precautionary principle essentially requires that no activity be undertaken unless there is no appreciable risk of harm to the environment and a very high level of scientific certainty around the corresponding risk assessment. It is well understood within marine management and science that such an approach is impractical for most fisheries management decisions. Recognised best practice for fishery management provides for a structured approach that appropriately restricts fishing activities so as to maintain a high probability of environmental safety for the level of understanding available and to incentivise improved understanding.

Fisheries management and the ensuing public debate would benefit from clarification of the application of the precautionary principle under both the fisheries acts and the EPBC Act through a national policy and/or legislative amendments. AFMA notes that decision of Justice Preston on 24 April 2006 in the matter of Telstra Corporation Limited v Hornsby Shire Council in the New South Wales Land and Environment Court provides a very useful summary of the application of the precautionary principle and this could form a basis for the development of policy and/or legislative amendments with respect to fisheries.

5) Australian governments and credible third parties should improve public information systems on fisheries management and science. In addition, AFMA's public consultation on fisheries management decision making should be expanded through use of multi-media tools including social media. Both actions will require significant additional investment and expertise.

AFMA has strong legislative frameworks for stakeholder consultation, including through Management Advisory Committees. These arrangements are closely aligned with the consultation expectations set out in the relevant sections of the 1976 report of the Coombs Royal Commission into Australian Government Administration and more recently *Ahead of the Game: Blueprint for the Reform of Australian Government Administration* released by the Prime Minister in 2010.

AFMA has recently expanded its engagement with key stakeholders through re-development of the website, increased media engagement and establishment of new consultative committees with environmental non-government organisations. However, the general awareness of AFMA's role and actions is limited and negative perspectives regarding the performance of global fisheries management readily dominate public perceptions of Australian fisheries including AFMA-managed fisheries.

Recent communication initiatives by AFMA are unlikely to deliver any measurable public change beyond AFMA's key stakeholders and there is clearly a need to rebuild trust and confidence in AFMA after recent media and political events. Increasing the level of publicly available information on fisheries management and science would assist in increasing public understanding of AFMA's activities.

AFMA, in collaboration with other areas of government and credible third party sources (e.g. Marine Stewardship Council) needs to increase public awareness of the strength of its fisheries management. The independent and expert role of the AFMA Commission and the ability of its members is a key strength.

AFMA currently finds itself acting as both a regulator and service provider in its own right as well as an interlocutor between DSEWPaC and the fishing industry. This is confusing for stakeholders and government and AFMA believes this interlocutor role on behalf of DSEWPaC has significantly contributed to negative perceptions. AFMA has not received any additional government resources to deliver a range of functions under the EPBC Act and this has reduced resources available to deliver *Fisheries Management Act 1991* and *Fisheries Administration Act 1991* functions. If AFMA was to stop delivering EPBC Act functions then both industry and DSEWPaC would need to take up them up.

The *Fisheries Administration Act* (FAA) currently provides for the possibility of individual MACs being delegated considerable decision making powers. Depending on the extent to which the AFMA Commission chose to delegate decision making power to MACs, MACs

could operate anywhere along a spectrum from strictly liaison bodies to decision making bodies with high levels of delegation.

However, the conflict of interest provisions under the legislation do not distinguish between the potential for the different roles MACs can play and so imposes a high conflict of interest test suited to a decision making body. It should be noted that neither the AFMA Commission nor its predecessor, the AFMA Board, has ever delegated a decision making power to a MAC. AFMA is of the view that the *Fisheries Administration Act 1991* should be amended to apply the s.64 conflict of interest requirements only to a MAC which is delegated decision making powers and not to those that only provide advice. Conflict of interest within MAC processes that are purely advisory could be covered by a lower policy-based test, which worked successfully for more than 16 years using s.65. This would be more consistent with other elements of the *Fisheries Administration Act 1991* that require AFMA to establish MACs with membership drawn from stakeholder groups who, by default, have an interest in the fishery.

6) AFMA should collect and utilise more data on the economic performance of fisheries and the likely economic impact of various management alternatives. This will require additional investment and specialist resources.

AFMA is required to pursue maximum net economic returns to the Australian community from fisheries. While AFMA has access to large amount of biological and ecological information, there are large gaps in the economic information base on which to base ecologically sustainable development decisions.

Experience has shown that fisheries that are profitable are more resilient to change and better able to deal with emerging environmental management requirements (i.e. fisheries have to be 'in the black' to be 'green').

At present AFMA routinely accesses gross value of production estimates and economic survey data from ABARES but this information is often one to two years in arrears. Some fisheries/species have bioeconomic models but these are the exception rather than the rule and there is uncertainty about the representativeness of the economic data inputs in these models. The data available to ABARES is also limited in that fishers can decide not to provide some economic data. By way of example, the Southern Bluefin Tuna fishery does not provide economic data to ABARES. This severely limits the extent to which AFMA can obtain a picture of economic performance in fisheries.

Despite this, AFMA does endeavour to estimate the economic costs and benefits of different management options and actively seeks stakeholder input to better inform these decisions however detailed quantitative analysis is only rarely available.

Increased collection and analysis of economic data including access right values and business incomes and costs would improve AFMA ability to deliver against the objectives of the *Fisheries Management Act 1991* and *Fisheries Administration Act 1991*. Additional resources are required to collect and analyse more economic data.

7) The* Fisheries Administration Act 1991 *and* Fisheries Management Act 1991 *should be amended to better protect the confidentiality / integrity of fishery-dependent data collected by AFMA with the cooperation of industry.

In order to undertake its functions, AFMA collects and holds a large amount of data from fishing businesses and their vessels. This includes catch and effort logbook data, GPS-based vessel tracking data, photographic and video files, observer data and fish landing and sales information as well other company information.

AFMA actively ensures that it uses the various legislative and policy requirements to both ensure public accountability about fishing activities and at the same time provide suitable privacy and confidentiality to the fishers and companies that provide the data. In recent years there has been declining confidence within the industry that fisheries legislation can provide the necessary safeguards to minimise the risk of public misuse of fisheries data by

government (e.g. breaching privacy expectations or inadvertently releasing data that is commercially valuable to other fishers).

Based on comments to AFMA, it appears that industry's concern has been heightened since the 2008 legislative amendments which brought AFMA under the *Financial Management and Accountability Act 1997.* AFMA's increasing use of video monitoring on fishing boats and the heightened consequences arising from the possible misuse of such data has further increased industry concerns about data management by AFMA.

Experience has shown that such concerns can result in increasing levels of illegal misreporting by fishers and/or resistance to adopting new cost-effective monitoring techniques (e.g. automatic video monitoring). These impacts undermine AFMA's ability to make sound evidence-based decisions and deliver cost-effective management to meet government and public expectations. This in turn increases the cost to fishers and reduces returns thereby reducing net economic returns to Australian community from fishing.

There would be benefit in amending the *Fisheries Management Act 1991* and *Fisheries Administration Act 1991* to provide greater assurance to industry that data from fishers will only be used for the purposes for which it was collected and will be appropriately protected from potential misuse. This of course must be balanced with appropriate levels of public reporting.

This approach has been very successfully used in other regulatory environments, including anti-money laundering and anti-terrorist financing, where the *Financial Transaction Reports Act 1988* provides that reports of suspicious and other financial transactions from the financial services and other relevant industries can only be disseminated to named law enforcement, regulatory and national security agencies for the purposes for which they were collected with strong legislative prohibitions on wider distribution and usage. This protection was a very significant factor in obtaining industry cooperation and support for the introduction of such reporting.

Other Important Matters

Core components of the current management system have performed well and some components cannot be readily altered

Fisheries management in Australia is considered by international experts to be among the best in the world. In large part this outcome is based on the high quality and significant investment in science to underpin fisheries and the independence and quality of regulatory bodies.

AFMA is an independent regulator responsible for administering the *Fisheries Administration Act 1991* and the *Fisheries Management Act 1991*.

The objectives set out in the fisheries Acts (*Fisheries Management Act 1991* and *Fisheries Administration Act 1991*) are designed to support the sustainability and profitability of the fishing industry and to generate a return for the community from Australia's common fisheries resource.

AFMA delivers day-to-day fisheries management at 'arms length' from departmental and ministerial structures through the expertise-based, independent AFMA Commission. External scientific and economic advice is a key component of the approach and avoids the risk of technical advice being 'internalised' by political interests, which was one of the causes of the Canadian cod fishery collapse[2]. Stakeholder consultation is central to AFMA decision making and includes a broad range of stakeholder groups.

Ongoing access rights have been granted for all major fisheries. These provide certainty as to the proportional share of the fishing access and engender a long term interest in the health

[2] Walters, C.J. & Maguire, J-J., (1996), Lessons for stock assessment from the northern cod collapse, *Reviews in Fish Biology and Fisheries,* 6, 25-137.

of the natural capital that underpins the rights. The total value of fishing rights in Commonwealth fisheries is estimated to be in the order of $1-2 billion. These rights are closely linked to the responsibilities of fishers when operating in the fishery.

The independent and expert role of the AFMA Commission and the ability of its members is a key strength of the AFMA model and current Commission. The AFMA Commission applies a high-level of critical review to the advice it receives from RAGs, MACs, AFMA staff and stakeholders. As evidence of this, over the last two years, one quarter of all decisions of the AFMA Commission were not in-line with the MAC recommendation and it is not unusual for the AFMA Commission decisions to deviate from the recommendations it received from AFMA staff. In order to perform its functions, it is vital that AFMA and the AFMA Commission continues to have an independent public voice when fisheries matters are under discussion in the media or other public processes.

AFMA has strong stakeholder consultation processes in line with the requirements of the *Fisheries Management Act 1991* and *Fisheries Administration Act 1991*. Resource assessment groups (RAGs) and management advisory committees (MACs) are central to these processes and the advice delivered by them is essential to the ongoing performance of Commonwealth fisheries management.

RAGs provide scientific and economic advice to the AFMA Commission as well as the AFMA staff and the relevant MACs. In recognition of their technical role, these groups are predominantly composed of scientists and economists with input from commercial and recreational fishers as well as environment/conservation members. The AFMA Commission places a great deal of weight on the scientific advice underpinning fisheries management decision and there is a very high degree of alignment between the scientific advice of RAGs and final decisions taken by the AFMA Commission. RAGs provide advice in relation to stock assessments for key commercial species and risk assessments dealing with the broader impacts of fishing on marine ecosystems. Independent peer-review is a regular feature of the RAG assessment cycle.

In providing advice on sustainable harvest level of key commercial species, RAGs reference the formal harvest strategies in place for all Commonwealth fisheries. Most of those strategies explicitly establish maximising economic yield as the goal. This is very important because pursuing maximum economic yields will provide both greater returns to the Australian community and provide higher levels of environmental protection than the classical goal of maximum sustainable yield (i.e. maximum economic yield requires higher fish stock levels that those that generate maximum sustainable yield).

MACs provide expert advice on fisheries management and are variously compromised of commercial and recreational fishers, environment/conservation members, scientists, AFMA and state/territory fisheries managers. Each MAC has an independent chair and an executive officer who assist in the running of the meetings and communication between AFMA and the MAC. MAC advice is highly valued during the decision making process within the AFMA Commission.

Given the diversity within the MAC membership it is to be expected that there will be a wide range of views regarding fisheries management advice. As evidence of this, over the last two years, only two-thirds (36 of 54) of MAC advice to the AFMA Commission has been unanimous. The diversity of membership and individual accountability of members are key strengths of the MAC process that avoids the risk that MACs become ‘club-like’ in the delivery of management advice to AFMA.

The key policy that guides the MACs in undertaking their work, as well as other fisheries management policies, can be found at http://www.afma.gov.au/resource-centre/publications-and-forms/fisheries/fisheries-management-papers/

One of the key tasks for MACs was to assist AFMA prepare fishery management plans (FMPs). Over the last 20 years, FMPs have evolved from documents that contain highly specified, individual fishery management objectives and very detailed procedures to

documents which are more general and provide more of a tool box approach to facilitate the delivery of management. FMPs are an overarching framework within which the various more detailed regulatory mechanisms arise such as Statutory Directions, Statutory Fishing Right Conditions and Fishery Regulations. FMPs still contain the specific details that establish and maintain the allocation of Statutory Fishing Rights.

The current 'regulatory tool box and allocation' approach to the form of statutory FMPs arose because of the need for AFMA to respond more quickly and efficiently in the delivery of day-to-day fisheries management than the legislated process for amending FMPs allowed. To get a full understanding of the management goals and regulations for a fishery, it is currently necessary to refer to a number of documents in additional to the Fishery Management Plan. In more complex fisheries, AFMA compiles fisheries management guides which combine the relevant documents and legislative instruments to assist fishers and other stakeholders to better understand the full set of requirements in a fishery.

The time and cost involved with amending FMPs remains a significant impediment to using FMPs as the core day-to-day fishery management tool. It is impractical to simply move back to using FMPs as the central tool which containing the detailed and specific regulations for each fishery.

Attachment 6 provides more detail on AFMA's management systems and governance arrangements.

Demands on fisheries management are quickly outstripping resources. Meeting future demands will require changes in the delivery of fisheries management services and a different funding model.

AFMA's total operating expenses for 2012-13 are budgeted at $42.469M of which just over $14M will be collected from the fishing industry on a cost-recovery basis. The proportion of AFMA's budget which is cost-recovered from the industry represents 4.5 per cent of the gross value of production by the sector.

AFMA remains very focussed on ensuring that fisheries management is cost-effective and cost-recovery levels are appropriate. AFMA has actively managed to keep cost recovery at or below Consumer Price Index (CPI) increases over the last two years and since 2005-06 there has been more than a 10 per cent decrease (in real terms) in AFMA cost recovery from industry. However, increasing public expectations under both fisheries and environmental legislation continue to increase cost pressures. AFMA's ability to keep costs at or around current levels plus CPI has largely been exhausted.

Despite increasing profitability in many sectors, feedback and evidence from industry is that the ability of some individual fishers and some small fisheries to pay current AFMA levies is proving difficult.

Most Commonwealth fisheries have high levels of management intervention and the information required to support high level management comes at significant, ongoing cost. Just maintaining the base level of information required to support ecologically sustainable development of even small, low risk fisheries comes at significant cost and assessing the risks of any significant expansion adds considerably to these costs. As an example, the implementation of fisheries independent surveys to collect information on the health of fish stock is a major ongoing cost. Such surveys provide high quality data to support management decisions but this comes at significant cost. A summary of fisheries independent surveys, including their current costs, is at Attachment 7.

AFMA has proposed significant changes in service delivery to industry to further improve the cost-effectiveness of future management but most of these require uptake by most fisheries to deliver expected benefits (e.g. electronic monitoring and quota management). Some of these changes will also incur higher costs in the short term before delivering net savings in the longer term. In the short term such increases may be higher than some fishers can bear.

Transitional government funding would accelerate these changes and may even be required for some fishers or fisheries to continue if all changes were to be implemented.

The existing policy role and legislative powers (e.g. s91 Ministerial Direction powers) provide for a high level of Ministerial input and oversight of AFMA's fisheries management and administration. Key gaps remain in the policies guiding fisheries management decision making.

High Level of Ministerial Input and Oversight
Fisheries management decisions require a long-term focus that balances competing objectives based on often uncertain information within a highly contested operating environment.

Australian and global experience is that it is normal for fisheries management decisions to be unpopular with some or even all stakeholders (often for opposing reasons) in the immediate term. It is very rare for key fisheries management decisions to have broad or even majority stakeholder support in the short term. This makes for a challenging operating environment for both AFMA and Ministers.

International reviews of fisheries governance arrangements suggest that arrangements wherein there is a high level of political involvement in day-to-day fisheries management tend to result in a short term focus and lead to poorer outcomes. Good fisheries outcomes require short-, medium- and long-term priorities to be effectively balanced in the decision making process. This often involves decisions that would be less than optimal within any given political cycle. As a result there is considerable interest in many parts of the world in the AFMA governance model as a potential alternate to current political systems which are failing.

In creating AFMA more than 20 years ago, the then Minister, the Hon. John Kerin MP, removed the role of the Minister in day-to-day decision making in fisheries management. The legislation charges AFMA with day-to-day decision making and sets out extensive performance reporting requirements. The Minister retained the role of developing and implementing key government policies on fisheries and the legislative power to accept or reject statutory Fishery Management Plans prepared by AFMA. Policy development and implementation by the Minister and their Department can and does occur very quickly to deal with changing circumstances. In accordance with the legislation, AFMA has established Fisheries Management Plans at the centre of management arrangements in the vast majority of Commonwealth fisheries. These current Ministerial functions provide a high level of oversight and the means to quickly and clearly set the course to be followed by AFMA in undertaking day-to-day fisheries management.

Legislative amendments introduced in March 2008 by the Hon. Tony Burke MP, then Minister for Agriculture, Fisheries and Forestry, made changes to AFMA to better align the authority with the *Governance Arrangements for Australian Government Bodies* but reinforced the independent AFMA model for day-to-day decision making on fisheries. The amendments included important reform to minimise the potential for AFMA Commissioners to have conflicts of interests in decisions of the AFMA Commission. Those amendments also removed the government member from the future AFMA Commission (the previous AFMA Board had a government member from the Department of Agriculture, Fisheries and Forestry) and made the AFMA CEO directly responsible to the Minister for Agriculture, Fisheries and Forestry in respect of AFMA's role in combating illegal foreign fishing.

Since the establishment of AFMA in 1991 there have been a considerable number of reviews and inquiries into Commonwealth fisheries management and AFMA. A list of the major reviews, inquiries, audits and Ministerial Directions is provided at Attachment 8. All of these processes supported the continuation of the AFMA model and/or its key elements where these were relevant. The *Fisheries Management Act 1991* and *Fisheries Administration Act 1991* have both been regularly amended. A schedule of legislative amendments to each of these acts is provided at Attachments 9 and 10 respectively.

If AFMA was to perform in a way that is (or would be) in conflict with major government policy, s91 of the *Fisheries Administration Act 1991* provides the Minister with the power to direct AFMA. This is a strong power to deal with what would be exceptional circumstances. This power has only been used once in AFMA's 20 year history.

A Resource Sharing Policy is Urgently Required for Commonwealth Fisheries
The Minister and their department are responsible for the development of fisheries policy. In the absence of policy, AFMA is still required to make fisheries management decisions in order to undertake its legislative functions. Commonwealth and Australian fisheries management is currently made more difficult by the lack of a national or Commonwealth policy on resource sharing between recreational, indigenous and commercial users of fisheries resources in Commonwealth waters.

At present, recreational fishing in Commonwealth waters is controlled by state and territory fisheries legislation and the EPBC Act. While the s17(6)h of the *Fisheries Management Act 1991* provides that AFMA may "prohibit or regulate recreational fishing" under a Fisheries Management Plan, this is the only operational reference to regulate or otherwise manage recreational fishing in either the *Fisheries Management Act 1991* or the *Fisheries Administration Act 1991*.

While AFMA consults with recreational fishers and takes recreational interests and catches into account in the setting of commercial fisheries management arrangements, AFMA currently exerts no control over recreational fishing nor does it have the resources to do so. Increasing competition for fish resources between user groups in Commonwealth-managed commercial fisheries (e.g. Southern Bluefin Tuna Fishery, Eastern and Western Tuna and Billfish Fisheries and even demersal fisheries taking species such as flathead and blue eye trevalla) demands increased management attention including effective limits on total catch in all sectors and mechanisms to adjust these limits in future if required. The state and territory government remain best place to deliver day-to-day management of recreational and charter fishing in Commonwealth waters.

A resource sharing policy to effectively guide managers in dealing with multiple use of publicly-owned fish resources in Commonwealth waters (including species that straddle state/territory and Commonwealth water) is urgently required. Further delays will increase the difficultly and potential cost of implementing this policy.

International and Domestic Fisheries Management Policy Needs to be Better Aligned
Australian fishers (both commercial and recreational) share straddling or highly migratory fish resources with fishers from other countries. The Australian Government is actively engaged in international negotiations within organisations established to pursue international management of these species.

Given the intricacies of international negotiations, it is often difficult to judge how much weight decision-makers should give to various elements of the legislative objectives when the Australian negotiating position might appear to be odds with one or more of these objectives.

For example, fisheries managers are currently required to make difficult judgements on whether Australian fishers should be allowed to increase the risk of overfishing of highly migratory species in order to pursue Australia's goal of maintaining or increasing its share of any future multi-national allocation of shared resources.

Further policy guidance is required to underpin amendments to the Commonwealth legislation regarding domestic management in internationally-managed fisheries.

DAFF Needs Strong Technical Support in the Development of Fisheries Policy
The information about fisheries and the broader marine environment is often highly technical and inevitably incomplete. The development of sound policy requires an appropriate evidence base.

In parallel with the legislation which established AFMA, Minister Kerin also created the Fisheries Resources Research Fund (FRRF) within his department in 1991. FRRF funding is and has always been separate from the funding provided to the Fisheries Research and Development Corporation. The FRRF was established to:

- supplement industry research levies paid to AFMA in order to conduct essential research which the industry was unable to fund; and
- fund research by what is now ABARES to produce annual fisheries status assessments and other scientific and economic advice on the performance of AFMA and health of the marine environment to underpin the development of policies to support ecologically sustainable development.

Significant reductions in FRRF funding have reduced the evidence base available to support the Minister and their Department in the development of fisheries policy. Future fisheries policy development would benefit from increased FRRF funding.

Integration of the various sections of the EPBC Act

Commonwealth-managed fisheries are covered by separate assessments under Part 10, Part 13 and Part 13A. All of these assessments consider the effect of fisheries on the marine environment, protected species and communities and the ability of fisheries management to minimise the risk of unacceptable impacts. Moreover, individual species within those fisheries are separately assessed through nomination as threatened species or the method of fishing as a Key Threatening Process (KTP). The potential for duplication and/or inconsistency in decision making is obvious.

The subsequent listings of Southern Bluefin Tuna and Patagonian Toothfish under the EPBC Act when they are the sole or predominant species in fisheries that had previously passed strategic assessment under a different part of the EPBC Act are examples of the perceived inconsistencies of the EPBC Act processes.

AFMA welcomed the EPBC Act changes which introduced the proposed priority assessment list, in an attempt to better focus and streamline the process for considering nominations for protection of species and communities. However, AFMA is concerned that this opportunity has not been fully realised because the process still includes potential listing nominations that do not meet the criteria for being considered. Inclusion on the priority list of nominations that clearly do not meet the criteria involves unnecessary use of AFMA and Department of Sustainability, Environment, Water, Population and Communities (DSEWPaC) resources that could more usefully be employed to address real conservation and management issues. For example, the nomination of trawling in the SESSF as a KTP clearly fails to satisfy the EPBC Act criteria for listing as a KTP. The inclusion of this nomination on the proposed priority assessment list has caused AFMA, other organisations and industry to expend considerable resources in preparing submissions. AFMA has also commissioned research to further address these issues. While this research may be useful in the longer term it is being carried out at the expense of more pressing research.

Unwarranted nominations also have an effect on the operations of DSEWPaC. The DSEWPaC website lists over 450 recovery plans in preparation (106 fauna, 337 flora and 18 ecological communities). The use of resources currently dedicated to responding to unjustified nominations could help alleviate this situation.

The EPBC Act originally provided for recovery plans to be developed for all threatened species. While this may have seemed like a good idea when establishing the EPBC Act, it hasn't proved useful in practice. The 2006 amendments allowed for the Minister to determine whether a recovery plan was required. There are now hundreds of species listed under the EPBC Act - of which only a very small proportion has recovery plans in place. There simply isn't the government support in terms of funding to give effect to what the EPBC Act was originally designed to do. Clearly the costs of doing this are prohibitive and the Act should be amended to prescribe more cost effective solutions for dealing with threatened species. One solution is to develop formal and transparent risk-based approaches to species status and priority. AFMA has done this for its fisheries over the past five years, starting with almost 2,000 species it is now focused on less than 70. Another approach AFMA has used is to take mitigating action immediately rather than wait years for a species to have a recovery plan developed.

There are several procedural issues which need to be addressed when considering the listing of marine finfish species. Firstly, the criteria for classifying a species as endangered under the EPBC Act are subjective. The provisions of the EPBC Act reflect the historic focus on threats to high order terrestrial species such as mammals, and are not appropriate for marine fish. This weakness is acknowledged in the EPBC Act itself under s180, which provides for the making of regulations that specify criteria for native species of marine fish. However, such regulations have not yet been drafted, leaving the Threatened Species Scientific Committee to determine whether a nominated species has "... undergone, is suspected to

have undergone or is likely to undergo in the immediate future, a severe reduction in numbers". Such criteria do not provide confidence that nominations will be assessed objectively on a scientifically rigorous and biologically relevant basis.

The EPBC Act does not necessarily require amendment as the use of regulations may be the appropriate mechanism if the criteria are likely to change over time. For example, in the absence of regulations under s180 AFMA has relied on the Commonwealth Fisheries Harvest Strategy Policy (HSP) released in 2007 jointly by the Minister for Sustainability, Environment, Water, Population and Communities and the Minister for Agriculture, Fisheries and Forestry. The HSP states that if a stock biomass is at or below a biomass limit (B_{LIM}), the default for which is 20 per cent of the unfished biomass, the risk to that stock is considered unacceptably high, and targeted fishing ceases. While a stock is above B_{LIM} there is no expectation that the species would be added to the list of threatened species. It would be appropriate to build this policy into regulation rather than legislation to allow for modifications if the HSP is further developed.

Part 13 of the EPBC Act

A recent development with the proposed listing under the Convention on the Conservation of Migratory Species of Wild Animals (Bonn Convention) of a number of commercially harvested marine species (long-finned and short-finned makos, porbeagles and spiny dogfish) has highlighted a difficulty with the EPBC Act. Under s209(3) the list of migratory species must include all migratory species that are (i) native species and (ii) from time to time included in the appendices to the Bonn Convention. There are two possibilities for listing species on the Bonn Convention, either

- Appendix I , which means strict protection; or
- Appendix II, which means international cooperation would benefit the species.

When this Section was introduced it was intended to automatically pick up migratory species as they were listed and provide the appropriate level of protection for these species.

However, the scope of listing under Appendix II of the Bonn Convention is such that a large number of commercially harvested marine species would qualify. All our fisheries have part 13 accreditations under the EPBC Act allowing for interactions with migratory species. However, this accreditation does not allow for transport or sale of these species. Australia is thus imposing a higher level of protection for these species than is required under the Bonn Convention and disadvantaging Australian fishers.

There are a number of ways of dealing with this anomaly. The most direct and preferable is to amend the EPBC Act to require only native species included in Appendix I of the Bonn Convention to be included on the list of migratory species.

For many years there has been considerable debate within the IUCN and other fora about the applicability of the current suite of IUCN criteria in the assessment of the conservation risks to commercially-harvested fish species especially bony fish This debate has been fuelled by widespread concern among fisheries scientists about the suitability of the criteria for assessing biological risk to fishes from commercial fisheries.

While fish species have a wide variety of life-history strategies, the majority of bony fish species have what ecologists refer to as 'R-selected' strategies. These strategies are characterised by short life spans, early maturation, low parental investment in offspring (e.g. broadcast spawning of millions of relatively small gametes) and high compensation to mortality. Species with such strategies are also likely to show marked fluctuations in population size in response to changes in the environment. Such species typically show sustained recruitment down to relatively low levels of parental biomass and stock – recruitment curves with high steepness (i.e. high compensation). This means that most bony fish species are strongly resilient to relatively high levels of perturbation including fishing mortality.

The IUCN criteria were initially developed for assessing species with 'K-selected' life strategies such as large terrestrial mammals. Such species are typically long-lived, late maturing and produce relatively few offspring with high parental investment. Populations of such species show far less compensation to significant mortality and are far slower to recover from perturbation. While many sharks and rays have life-history strategies closer to those of mammals, applying the IUCN criteria to most species of bony fish would be highly questionable given their markedly different strategies.

To expand further on this point, for a wide range of commercially harvested fish species, the biomass level capable of producing maximum sustainable yield has been shown to fall in the range of 40-60 per cent of the 'unfished' level (i.e. carrying capacity). As a result, a 50 per cent depletion could be a very appropriate fisheries management target for sustainable exploitation. However, a 50 per cent depletion occurring over a 10 year period (or three generations) would mean that the population now satisfies Criterion A(1) of the IUCN Vulnerable Taxa Criteria. This IUCN classification signifies a population to be "….*considered to be facing a high risk of extinction in the wild*". For most species of bony fish this conclusion just does not stand scrutiny and cannot be justified.

The FAO Committee on Fisheries (COFI), has regularly identified these problems with the IUCN criteria, and has set up two Technical Consultations seeking to find alternative approaches when assessing biological risks from commercial fisheries under the *Convention on International Trade in Endangered Species of Wild Fauna and Flora* 1973 (CITES). The last such consultation, in Namibia 2-25 October 2001, addressed the issue of listing criteria in detail, and provided a report setting out some important principles:

- The best scientific advice available shall be used
- Current stock sizes should be compared with appropriate previous baselines
- Listing proposals shall be evaluated on a case by case basis in a transparent and neutral scientific process

A key recommendation in the report of the second Technical Consultation stated the listing criteria *must be designed to take account of the natural dynamics of fish stocks, such as the rapid natural fluctuations of many fish stocks*.

The drafters of the EPBC Act obviously appreciated the difficulties in applying the IUCN criteria to marine fish. The EPBC Act provides under Section 179 for the making of regulations to prescribe criteria for the critically endangered, endangered and vulnerable categories. Regulation 7.01 of the *Environment Protection and Biodiversity Conservation Regulations 2000* specifies criteria for each category. Section 180 provides for the making of regulations that specify criteria for native species of marine fish. At this stage, DSEWPaC has not drafted regulations under this Section.

The American Fisheries Society has developed separate criteria for assessing extinction risks for fish species. These criteria endeavour to take resilience of different fish species into account when assessing the risk posed by different levels/rates of depletion. Previously the Australian Society for Fish Biology had developed its own criteria but it has now, surprisingly, adopted the IUCN criteria.

In support of the views above the need to re-consider extinction risk assessment in marine fisheries management, it should be noted that there is a distinct lack of precedent for the biological extinction of marine, bony fish as a direct result of commercial fishing. For target species, fish populations will reach a point where further fishing is no longer economically viable, and this point will usually be observed well before biological extinction occurs or becomes a significant likelihood. This is not the case for species taken as bycatch.

Different Approaches to Managing the Risks of Gillnet Fishing to Australian Sea Lions under the EPBC Act

- Australian sea lion populations were listed as threatened (vulnerable) under the *Environment Protection and Biodiversity Act 1999* (EPBC Act) in 2005.
- AFMA and the governments of Western Australia and South Australia manage gillnet fisheries that pose a risk to Australian sea lions through entanglement with the gear that results in injury or death.
- In response to concerns from AFMA and scientists that gillnet fishing posed a potentially significant but unknown risk to Australian sea lions, Commonwealth gillnet fishers operating in Commonwealth waters off South Australia agreed to participate in a scientific study to collect specific data on the risk their gillnet operations may pose to Australian sea lions.
- The scientific report from the Fisheries Research and Development Corporation funded research project 2007/041 *'The impact and mitigation of Australian sea lion bycatch in the Commonwealth managed shark gillnet fishery off South Australia'* was publicly released in April 2010. The report estimated that the mortality of sea lions taken as bycatch in these gillnets could constitute a threat of extinction for some discrete sub-populations and identified gillnet fishing as a key threat to Australian sea lion populations.
- In 2010, AFMA and the Commonwealth-managed gillnet fishing industry took immediate steps to reduce interactions through large area closures around sea lion colonies and developed a formal sea lion management strategy to manage ongoing risks.
- Initially AFMA more than doubled the onboard monitoring of the vessels by observers and promoted research to assist in the development of long-term mitigation arrangements. Based on this additional data collection AFMA then moved to require 100 per cent observer coverage or equivalent independent monitoring using cameras.
- In addition, in 2010 AFMA formed a Australian Sea Lion Working Group consisting of marine mammal experts, state and Commonwealth agencies, environmental representatives and the Commonwealth fishing industry to provide advice on further management requirements to monitor and manage the risks to Australian sea lions and other threatened, endangered and protected species from Commonwealth gillnet fishing.
- On 21 June 2010 the then Minister for Agriculture, Fisheries and Forestry, Minister Burke, approved funding of $300 000 to support electronic monitoring of sea lion interactions with shark gillnets. Electronic monitoring systems were installed on 12 Commonwealth-managed vessels in the seal lion management area.
- Following further advice from marine mammal experts who recommended that female sea lion bycatch mortality should be as close to zero as possible, AFMA implemented further spatial closures in May 2011. Observer requirements for the South Australian component of the fishery were raised to 100 per cent and trigger limits for further area closures in the sea lion management zones were reduced from 52 to 15 over the seven management zones in January 2012.
- After further marine mammal interactions in the fishery in 2011 and 2012 over 70 per cent of the South Australian component of the SESSF is presently closed to gillnet fishing. Catches of target species in the fishery for the 2010-11 season have dropped by over 60 per cent. The mean annual value of production for this component of the fishery was valued at $6.8 million for the previous five fishing seasons.
- In order to alleviate the financial impacts on Commonwealth-managed gillnet fishers affected by closures AFMA has issued temporary permits which allow for fishers to use hook fishing methods. Hook fishing methods are known to have a much lower interaction rate with marine mammals than gillnets.
- Conditions imposed by the Minister for Sustainability, Environment, Water, Population and Communities on the Commonwealth gillnet fishery are, appropriately, very stringent

and the entire Southern and Eastern Scalefish and Shark Fishery has been warned by DSEWPaC that failure to meet these conditions could result in the removal of approvals under the EPBC Act necessary to legally operate in the fishery and/or export fish taken.

- By contrast, gillnet fisheries managed by both the South Australian and Western Australian governments have much lower levels of information about the potential risks to Australian sea lions and other marine mammals. Levels of independent monitoring are low and these state-managed gillnet fisheries are permitted to use gillnets immediately adjacent to Australian sea lion colonies.
- Despite the apparent uncertainty about the risks posed to Australian sea lions in these state-managed gill net fisheries, the conditions imposed on these fisheries by the Minister for Sustainability, Environment, Water, Population and Communities do not approach the stringent requirements imposed on the Commonwealth-managed fisheries.

Attachment 3

Proposed Terms of Reference for Scientific Advisory Group

A shared Scientific Advisory Group (SAG) would assist both AFMA and DSEWPaC to ensure greater consistency in the advice both agency receives on bycatch issues and provide greater separation between bycatch policy formulation and the scientific inputs to this process.

Bycatch is defined that part of the fisher's catch which is returned to the sea either because it has no commercial value or because regulations preclude it from being retained; and that part of the catch that does not reach the deck of the fishing vessel but is affected by interaction with the fishing gear.

AFMA and DSEWPAC are committed to addressing bycatch issues under both the Fisheries Management Act and the Environment Protection and Biodiversity Conservation Act. This commitment is reinforced by the Commonwealth Bycatch Policy and the 2005 Ministerial Direction to AFMA.

Advice to DSEWPAC and AFMA

The role of the SAG will be to provide scientific advice to AFMA and DSEWPAC on specific bycatch issues as requested. Specifically, when requested, to advise on:

- quantitative operational objectives that are consistent with agreed policy objectives for identified bycatch species or issue of concern; and/or
- the probability of the achievement of the quantitative objectives through implementation of management strategies proposed by AFMA.

Membership

The chair of the SAG would be an independent and credible scientist. Standing members of the SAG would have the following skill sets:

- marine ecosystem science;
- marine fisheries science;
- numeric (population and ecosystem) modelling;
- statistics; and
- ecological risk assessment.

The SAG would have a maximum of six standing members including the Chair.

In addition to standing members, two additional temporary members may be co-opted for specific issues where particular expertise is required on the ecology of the species or issue under consideration. Such members would be identified by the Chair of the SAG.

Meetings

Meetings would be held as required.

Term of appointment

Members would be appointed for two years. The SAG would only be formed if guidelines for policy development are agreed by DSEWPaC, DAFF and AFMA.

Remuneration
Non-government members would be offered remuneration for time and all travel and meeting costs would be paid by AFMA and DSEWPaC.

Attachment 4

Jurisdictional issues with the management of School Whiting (*Sillago flindersi)* in the Commonwealth Trawl Sector of the Southern and Eastern Scalefish and Shark Fishery as they relate to NSW

Overview of the whiting fishery management arrangements off NSW

The arrangement between the Commonwealth and New South Wales in relation to the whiting catches is described in the Offshore Constitutional Settlement signed 25 July 1990.
In summary the NSW State fishery includes all waters south of a line staring at Coolangatta and running about 80 miles to seaward to the New South Wales and Victorian border. The overlapping Commonwealth waters south of Barrenjoey Point (just north of Sydney) are part of the Trawl Sector Commonwealth-managed South East Scalefish and Shark Fishery.

The issue
Eastern School Whiting (also known as Red Spot Whiting) occur from southern Queensland to western Victoria and are considered to be one stock. School Whiting are caught by both Commonwealth and State licensed boats. School whiting is managed as a quota species in Commonwealth waters however the NSW government does not have any catch restrictions on State-managed fishers. There has been an increasing catch of School Whiting taken by State fishers working waters off NSW and it now makes up about 60 per cent of the total School Whiting catch.

The School Whiting stock assessment is funded by Commonwealth-managed fishers and the Australian Government, with levies accounting for 80 per cent of these costs. The stock assessment recommends a biological catch for the total stock and from this the Commonwealth Total Allowable Catch (TAC) is calculated. Catches of School Whiting by state operators is deducted during these calculations therefore reducing the TAC for Commonwealth operators and reducing the value of their statutory fishing rights.

AFMA has been negotiating with officers from the NSW Department of Primary Industries for many years to develop arrangements for shared fish stocks between NSW fisheries and the Southern and Eastern Scalefish and Shark Fishery (SESSF). These negotiations continue.

There are two elements to the negotiations between AFMA and NSW to develop complementary management arrangements for shared SESSF fish stocks:

- Developing a catch sharing agreement and single stock assessment process; and
- Developing long-term arrangements for fish trawling in southern NSW waters (state waters south of Barrenjoey Point).

A recent independent review of NSW Fisheries may expedite the development of these arrangements. AFMA is leading the development of a catch sharing agreement while NSW has taken the lead to develop future arrangements for trawling in southern NSW waters. Changes to the management of fishing trawling in southern NSW waters may require new fishing access rights to be granted. Any new allocation will seek to minimise a redistribution of wealth amongst fishing concession holders. Industry has raised concerns about how any new arrangements may impact the nature of fishing access rights.

Attachment 5

Improving Compliance in Commonwealth Fisheries

It is self-evident that if there is no compliance with the rules set by fisheries regulators then there is effectively no management. Non-compliance with fisheries management rules damages the marine environment and the value of fishing rights (i.e. the marine ecosystem is the natural 'capital' that sustains fishing businesses). While compliance levels are thought to be generally high in Commonwealth fisheries, there remain significant challenges in some fisheries and some regions.

AFMA seeks to provide a cost-effective compliance program that ensures all fishing undertaken in the Australian Fishing Zone, under Commonwealth jurisdiction, is conducted in a manner which maintains the integrity of Commonwealth fisheries management arrangements. AFMA seeks to achieve a level of compliance such that industry and the community at large can be confident that fishers are operating within the rules of each fishery management regime. Fishing concession holders are granted access to a community-owned resource and are expected to comply with fisheries law and regulation. Further community expectations dictate that when non compliant fishing activity is detected, expedient and forceful sanctions are applied to ensure non-compliant behaviour discontinues and the deterrent effect influences future behaviour of those within the industry.

The current domestic fisheries penalty regime within the *Fisheries Management Act 1991* (the Act) consists of predominately low-level "on the spot fines" or, at the extreme, involve fines requiring a successful criminal prosecution. Forfeiture of vessels, catch and fishing equipment can also apply, however forfeitures are contingent on both a successful prosecution and then an order by a court to forfeit. Because of these thresholds they have rarely been applied. Cancellation and suspension powers also exist under the Act. Whilst the cancellation power should remain unchanged, the current suspension power should be amended to clarify that is can be used as a penalty measure in its own right. Currently it can only be utilised in a supervisory manner for a 30 day period to coerce operators to comply with the law, for example, to cover over catch in a quota-managed fishery.

The polarised nature of existing penalty provisions creates significant constraints on AFMA's ability to impose penalties commensurate with the offences and/or deal effectively with repeat offenders. In this situation, the penalties either have low deterrence effect or may lead to unduly heavy consequences, such as a criminal conviction. Further, in the latter, the result or outcomes achieved can result in relative low penalties being imposed by the judiciary and can involve a significant lapse in time from the initial detection which in itself fails to achieve timely changes in non compliant behaviour.

AFMA considers that incorporating alternative compliance approaches to broaden the suite of measures available to it, such as civil and administrative penalty provisions including suspensions, enforceable undertakings and injunctions, along with the strengthening of existing penalty provisions, would lead to the more efficient and cost effective delivery of timely enforcement. To this end the following initiatives should be considered.

Legislative changes

Increasing penalties in general and creating serious offences

Increasing the penalty units for offences currently specified under the Act and introducing a new class of offences which carry much higher maximum penalties such as terms of imprisonment greater than 12 months (indictable) for serious matters would act as a significant deterrent to non compliant behaviour. The increased penalties for serious offences would raise their status to "serious indictable offences" as defined under the Proceeds of Crime (POC) legislation. This would enable AFMA to access POC legislation in respect to asset seizures and confiscation under the POC to restrain and avoid asset stripping prior to successful prosecution outcomes being handed down.

Increasing the maximum fines may also result in the courts imposing larger fines. For example, if the maximum fine for an offence is 500 penalty units and the court deems the offence warrants a midrange penalty then they may impose a fine of 250 penalty units. If the maximum fine for the same offence was increased to 1000 penalty units and the same offence was committed it gives the courts more scope to impose a larger fine.

Offences for the trafficking of fish

Many state jurisdictions have implemented fish trafficking type offences. In NSW, for example, Section 21B(2) of the *Fisheries Management Act 1994* (NSW) makes it an offence to "traffic in an indictable species of fish". The offence establishes a regime whereby persons are not permitted to possess certain quantities of fish, as specified by regulation, unless they have proof as to the origin of the fish in their possession. The introduction of a similar offence regime would introduce an offence which is considered very serious and would lead to greater consistency in approaches across jurisdictions.

Increase the penalty for infringement notices

AFMA currently has the ability to issue an administrative penalty for minor types of offences through the issuance of an "infringement notice". Penalty units are defined under s4AA of the *Crimes Act 1914* as being $110. Whilst the current penalty for "on the spot fines" infringement notices stands at two units ($220) AFMA would recommend reviewing the current penalty unit as defined for infringement notices, Regulation 46 of the *Fisheries Management Regulations 1992* from two units to a higher level, possibly on a sliding scale for offence types. Further refinements to the infringement notice system, such as being able to suspend a fishing concession for non-payment of the fine, would also be useful. Currently, if an offender chose not to pay the infringement notice, the onus is on AFMA to launch prosecution action in relation to the original offence, which involves investing resources into prosecuting a relative minor matter.

The introduction of a civil offence regime

Currently there are no provisions in the Act which allow AFMA to pursue a person for a civil offence. Civil offences are subject to court proceedings, however require only proof based on the balance of probabilities and not proof beyond reasonable doubt. Civil penalties differ from criminal penalties in that they only carry a financial fine, not an imprisonment penalty and the imposition of a civil penalty does not constitute a criminal offence. The inclusion of a civil penalty provision in the Act would be effective where criminal punishment is not merited, or where lower level fines are not appropriate. Civil penalties are present in other Commonwealth legislation such as the *Environment Protection and Biodiversity Conservation Act 1999*. The inclusion of a similar class of offence provisions in the Act would provide another response mechanism to certain types of non-compliant behaviour.

Utilisation of enforceable undertakings

Enforceable undertakings are increasingly being used by agencies as a means of achieving flexibility in encouraging compliance with the law. Enforceable undertakings are essentially the entering into a legal undertaking or contract on behalf of an offender in lieu of being prosecuted for an offence. A person that commits an offence under the Act may agree to pay a fine or enter into an administrative arrangement instead of being taken to court and risk receiving a criminal conviction and/or associated penalty for the offence. The inclusion of enforceable undertakings in the Act would allow for AFMA to secure an appropriate penalty for certain types of non-compliant behaviour without the financial costs involved in prosecuting an offender in a court of law

Injunctions

AFMA sees benefit in introducing provisions to enable it to seek injunctions. Injunctions are not penalties in themselves, but they may be sought to support other actions involving civil of

criminal penalties. Under such a regime AFMA would be able to obtain a court injunction to compel a person to comply with a provision, or prevent or restrain non compliant conduct.

Enhancing suspension powers

Whilst suspension powers currently exist in the Act, legal opinion is that the suspension powers can only be utilised in a "supervisory" capacity rather than a direct "sanction". For example, suspending an operator's fishing concession until they take corrective action to comply with law, such as obtaining more quota to cover over caught fish in a quota-managed fishery. AFMA would see benefit in broadening the application of the existing suspension powers to incorporate its use as a "penalty" provision in its own right and enabling AFMA to extend the period of the application of suspensions beyond the existing one month period (i.e. suspension for periods of up to one year duration).

Automatic forfeiture provisions for illicit catch

Currently, forfeiture provisions for domestic matters apply upon the securing of a criminal conviction and a subsequent order by a court. Whilst the forfeiture of vessels is considered to be a strong measure which should only be applied by a court in the most serious cases, the forfeiture of the fish taken as a result of the illegal activity, or proceeds equal to their value, should be subject to automatic forfeiture provisions, whether on conviction of the offender or in circumstances where an operator has openly declared over-catch on their catch returns to AFMA and has not taken action to lease or transfer quota in to cover the declared over-catch, (i.e. without the need for a prosecution and conviction). It would be desirable if such forfeitures were not left to the discretion of the courts because where no order of forfeiture, or orders on partial forfeiture, of catch are made they do not provide a sufficient deterrent and can result in the profits from illegal over-catch outweighing the penalty. Section 106A of the Act relating to the automatic forfeiture of foreign fishing boats provides an example where the automatic forfeiture regime has worked quite effectively.

Other areas for improvement

Expansion of powers beyond the first receiver

Considering that most of the fisheries AFMA manages are subject to catch quota arrangements it is important to have confidence that catch landings are duly reported so they can be counted against quota entitlements. Quota evasion has been identified by AFMA as a major risk which, if gone unchecked, has the potential to undermine the integrity of the quota managing arrangement and potentially, the long term sustainability of fish stocks and the value of fishing rights. Currently, the powers of fisheries officers are limited to entering the premises of licensed fish receivers for the purpose of checking the origin of catch. As there is scope for illicit catch to be disposed of to persons and establishments which are not part of the fish receiver regime it would be desirable to expand the powers of fisheries officers to enter premises more broadly to make enquires of persons (including retail outlets) as to the origin of the fish they sell. This would include but not limited to officers having the power to ask questions about the origin of fish and to carry out searches and inspections where appropriate, preferably without warrants. The goal of this regime would be to more accurately determine whether fish unloaded by operators was accounted for in the notification process to enable AFMA to determine whether the fish were taken lawfully and reported for the purpose of counting against quota.

Extension of limitation period

The statute of limitation for most of the existing fisheries offences in the Act stands at two years with some limited to twelve months. These timeframes are considered by AFMA to be restrictive and limits its ability to adequately investigate systemic quota misreporting/evasion incidents which may involve a serious of covert surveillance operations over time, the execution of search warrants and subsequent investigation. Indeed it has been AFMA's experience that analysis of seized business records sometimes reveals serious offences which occurred more than two years in the past but cannot be acted upon because of the

limitation period. Whilst fish receivers are required to keep records for 5 years (under the existing *Fisheries Management Regulations 1992* (the Regulations), Regulation 10AA) AFMA sees benefits in aligning the statute of limitation periods associated with offences in line with the current provision for the requirement to maintain records as stipulated in the Regulations and in line with existing Commonwealth corporation law requirements, that is, five years. It should be noted that if a class of serious offences, as discussed previously, are classed as indictable, there would be no limitation period by virtue of the *Crimes Act 1914*.

Seizure/forfeiture of proceeds of sale of catch

Currently the Act specifies that an officer may seize fish and the court may order forfeiture of the fish or the proceeds of the sale of that fish. In some instances it may not be practical to seize the actual fish, as it may have been disposed of prior to the illegal activity being detected. It would be desirable to have the ability to seize the proceeds of the sale of the fish.

Remove the requirement for officers to show identification

Since moving to a 'centralised compliance model' in July 2009, AFMA officers conduct all compliance and enforcement activity in uniform. The existing provision under section 84 (4), (5), (6) and (6A) of the Act should be amended to remove the requirement for an AFMA officer in uniform to produce identity card when exercising powers. The current requirements relate to a time when field activities were carried out by state-employed fisheries officers wearing their own uniforms and it was not apparent they were acting under Commonwealth fisheries legislation. AFMA officers in uniform are clearly identifiable with AFMA and as such there should be no need to show identity cards. This would be consistent with the provisions which apply to defence personnel and police officers, who are in uniform when they are exercising powers under the Act.

Specific offences for destructive fishing practices

Recent events in waters to Australia's north have revealed foreign fishers utilising materials to construct Improvised Explosive Devices (IEDs) to undertake fishing activities. Currently, there are no specific offences in the Act which prohibit the use of such devices and it would be beneficial to introduce an offence provision with strong penalties, possibly terms of imprisonment, for using substances (chemicals) and explosives which are harmful or destructive to the environment and endanger human life.

Enhancements to catch monitoring

AFMA sees benefit in rationalising the catch landing monitoring regime by moving to a more automated system utilising modern technologies. The current fish receiver regime has inherent problems in that many companies are vertically integrated and the independence of the verified catch weights provided by the fish receiver are compromised. An alternative regime focussed on monitoring catches at the point of unload (at the wharf) would minimise the risk of illicit catch finding its way through the marketing chain. Such a regime would require limiting unloads to key ports whereby modern technology such as closed circuit television (CCTV), electronic scales, electronic catch disposal records, or a combination thereof could be used monitor and record catch as it is unloaded and with the records being forwarded to AFMA prior to the fish product leaving the point of landing.

Catch landing data for 2011-12 for all fisheries except the Northern Prawn Fishery indicates that the top 20 ports by landed weight account for 92 per cent of all landings by quantity of catch. If these ports were designated as ports for unloading and port-based monitoring was enhanced there would be considerable benefits in minimising the risk of undeclared catch leaking from the system. Because all Commonwealth fishing vessels and their movements are monitored by AFMA through its satellite based tracking system, vessels attempting to undertake covert landings at undesignated ports would be detected. Alternate arrangements would need to be developed to deal with landings outside the designated ports. Under this regime fishers would still be able to land fish at other ports but these unloads would be inspected on risk assessed basis and could be subject to some cost recovery.

In-house prosecution capability

The current construct of fisheries management arrangements associated with Commonwealth fisheries and the enforcement of these arrangements are by their nature complex. The structure of the *Fisheries Management Act 1991* delineates offences committed by foreign fishers as opposed to domestic fishers. In the former case the offences are relatively straight forward from a prosecution sense being indictable strict liability or higher level offences involving fault elements with automatic forfeiture provisions. The same however, cannot be said with respect to domestic type offences. The nature of these offences and the interaction between offences under the Act and the various AFMA administrative arrangements under the various Commonwealth Fishery Management Plans makes conducting prosecution action very complex and inherently high-risk. The stark contrast with respect to the timeframes involved in investigating and prosecuting a foreign verses domestic matter highlights the polarisation between the two. On average a foreign matter is finalised within 21 days of detection whereas domestic matters can take several years before the matters are finalised.

With regard to foreign matters, all cases are channelled through the Commonwealth Director of Public Prosecutions (CDPP) office in Darwin. This delivers efficiencies, both in understanding of the fisheries legislation and timeliness in dealing with cases referred to them. The same cannot be said in the domestic context. These matters are referred to various CDPP offices around Australia and on average take in excess of 120 days to be evaluated before consideration is given as to launching a prosecution. In some jurisdictions the reviewing CDPP officer can experience difficulty in understanding the complex interaction between the legislation and AFMA administrative management arrangements. This results in reluctance by the CDPP to proceed with a prosecution. This, coupled with resource limitations, creates an environment whereby domestic fisheries offences are viewed by the CDPP as a relatively low priority. To ensure that prosecutions are handled quickly and efficiently, AFMA sees benefits in engaging its own fisheries prosecutor to conduct fisheries prosecutions. This would provide a number of benefits.

Having a committed prosecution resource familiar with the intricacies of the Act and its interaction with fisheries administrative arrangements would produce efficiencies with respect to reduce briefing time that currently exists with CDPP officers, (noting that in some instances due to staff movements within the CDPP, AFMA has had to brief different CDPP officers three or four times on the same matter over a number of months). In addition, having a consistent approach to fisheries prosecutions (through the use of a dedicated prosecutor) would in itself deliver greater consistency in the outcomes between the various jurisdictions and assist in educating the judiciary on the risks that serious illegal fishing activities poses to Australia's marine ecosystems and the services they provide to the community.

Management of Commonwealth fisheries

The Australian Fisheries Management Authority (AFMA) is the Australian Government agency responsible for the efficient management and sustainable use of Commonwealth fish resources on behalf of the Australian community.

AFMA was established under the *Fisheries Administration Act 1991* to manage Australia's Commonwealth fisheries using provisions of the *Fisheries Management Act 1991*. This legislation sets out AFMA's objectives, powers and functions, as well as the specific responsibilities of the AFMA Commission and the CEO.

The expert and Independent Commissioners collectively make decisions about domestic fisheries management, including catch levels, fishing methods, the timing of fishing seasons, fishery closures and other fisheries management decisions.

When developing and implementing fisheries management arrangements, AFMA works in partnership with key stakeholders who include indigenous interests, commercial fishing operators, recreational/charter fishing operators, researchers, environment/conservation organisations and where appropriate others who have an interest in Australia's Commonwealth fisheries management.

AFMA's main method of engagement with stakeholder groups is through management advisory committees (MACs) established for each major fishery. These committees play a vital role in helping AFMA fulfil its legislative functions and effectively pursue its objectives by providing advice to the AFMA Commission (MACs do not make decisions).

AFMA also conducts public consultations advertised by public notice in order to fulfil the requirements under its legislation. The Commission reports to the Minister through the Chairman and the CEO reports to the Commissioners on fisheries management issues.

The CEO is responsible for the management of AFMA and is not subject to direction by the Commission in relation to the performance of his or her functions or exercise of powers under the *Financial Management and Accountability Act 1997* or the *Public Service Act 1999*.

Responsibility for fisheries policy sits with the Australian Government. The Department of Agriculture, Fisheries and Forestry is responsible for the development of advice on all domestic and international fisheries policy issues with assistance from AFMA through the provision of operational advice and fisheries management.

The Minister is able to issue AFMA an annual statement of expectations, outlining the government's strategic policy objectives for, and expectations of, the Authority. Such a statement is not a formal Ministerial Direction. AFMA will respond to a statement of expectations with a statement of intent.

The Minister is also able to issue formal directions to AFMA under the legislation in exceptional circumstances to ensure AFMA is not in conflict with major government policies.

While AFMA is responsible for compliance and enforcement in relation to illegal foreign fishing in the Australian Fishing Zone, the CEO reports directly to the Minister - and not the Commission – on the performance of these responsibilities. The Commission is not able to direct the CEO on such matters. This recognises the need for direct ministerial oversight of activities that have foreign policy implications. The Minister has no involvement in day-to-day management or decision-making in relation to fisheries management (other than foreign fisheries compliance).

Commonwealth fisheries are considered some of the best managed fisheries in the world with extensive use of output quota management systems for target species with catch levels based on strong science and the government's Harvest Strategy Policy – the framework that sets out management actions to achieve pre-defined biological and economic objectives for a fishery. Australia's fisheries management has been consistently ranked among the world's best in independent reports by international experts. One of the world's best known critics of fisheries management, Dr Daniel Pauly of the University of British Columbia ranked Australian

fisheries second out of 53 countries for environmental sustainability in his comparative assessment report.

A report by the United Nation's Food Agriculture Organization also highlighted Australia's effective fisheries management including actions to rebuild overfished stocks. An article in The Economist (May 2012) highlights the world perception of Australia's Fisheries management, "America's fisheries are probably now managed almost as well as the world's best, in Norway, Iceland, New Zealand and Australia."

In addition to strong fisheries legislation which pursues ecosystems-based management for target stocks and related protected and endangered species and ecosystems, the environmental impact and sustainability of Commonwealth fisheries is strategically assessed under a separate piece of Commonwealth Environmental legislation, the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) which provides approvals and accreditations to allow fisheries to export their product.

Focus of AFMA's work

The objectives set out in the fisheries Acts (*Fisheries Management Act 1991* and *Fisheries Administration Act 1991*) are designed to support the sustainability and profitability of the fishing industry and to generate a return for the community from Australia's common fisheries resource. In support of its objectives AFMA's work concentrates on:

- Developing fisheries management arrangements to meet government policy
- Implementing fisheries management arrangements
- Monitoring and compliance of commercial fishing in AFMA managed fisheries
- Setting research priorities and arranging research related to AFMA managed fisheries
- Deterring non compliance in domestic fisheries
- Deterring illegal foreign fishing
- Registering commercial fishing entitlements and licensing fishers
- Developing management policies and regulations
- Providing technical input to government policies.

Key mechanisms AFMA uses in meeting its objectives

The arrangements AFMA uses to manage Commonwealth fisheries include regulatory fisheries management plans, formal harvest strategies for each fishery, an ecological risk assessment and management regime and instruments such as national plans of action (under international agreements). To ensure these arrangements are also meeting environmental protection objectives the *Environment Protection and Biodiversity Conservation Act 1999* has several sections and parts which, in essence, provide a means by which the Minister responsible for the environment can be satisfied that the fisheries management arrangements are consistent with the objectives of the EPBC Act.

The key mechanisms used by AFMA are:

Management Plans – statutory instruments that must be determined by AFMA, accepted by the Minister and enacted by gazettal. The plans describes key attributes of each fishery (location, species, season etc), the method used to control the level of extraction (input or output controls), gear restrictions, fishery wide bycatch mitigation measures, a statutory fishing rights system including how rights are to be allocated for the fishery and any other obligations that may be required of fishing rights holders.

Harvest Strategies – The Commonwealth Harvest Strategy Policy sets out formal decision making rules to guide the development of individual Commonwealth fisheries Harvest

Strategies. These individual Harvest Strategies then supply a set of rules, based on the best available science, which must be adhered to when setting TACs.

Specifically, harvest strategies seek to:

- maintain fish stocks, on average, at a target biomass point equal to the stock size required to produce maximum economic yield; and
- ensure fish stocks will remain above a biomass level where the risk to the sustainability of the stock is regarded as too high.

Ecological Risk Assessment and Ecological Risk Management – All AFMA fisheries have been assessed to determine and identify the risk they pose to threatened, endangered and protected species, habitats and communities. Ecological risk management plans have been put in place to respond to identified species at risk.

Summary of governance arrangements

Guiding Commonwealth legislation:

- *Fisheries Management Act 1991;*
- *Fisheries Administration Act 1991;*
- *Torres Strait Fisheries Act 1984;*
- *Environment Protection & Biodiversity Conservation Act 1999;*
- *Financial Management and Accountability Act 1997;* and
- *Fishing Levy Act 1991.*

Minister responsible for fisheries:

- can issue a Direction to AFMA consistent with Commonwealth fisheries legislation;
- accepts plans of management for Commonwealth fisheries once determined by the AFMA Commission; and
- appoints Commissioners and the CEO.

Minister responsible for the environment decides on:

- fishery based strategic assessments;
- wildlife interaction accreditation;
- wildlife export approvals for fisheries; and
- listing of threatened, endangered and protected species.

Executive Council, Governor General and Parliament:

- approve fishing levy regulations;
- approve fishery regulations; and
- approve amendments to fisheries legislation.

AFMA Commission:

- is responsible for all domestic fishery management decisions, except those vested in the Minister;
- has delegated some decisions to the CEO (who is a Commissioner) and AFMA staff;
- must make decisions and implement its own policies (for example, fishery administration and management papers or operational policies) consistent with Australian government legislation and be guided by government policy; and
- receives formal advice and recommendations from its committees, working groups, management advisory committees, resource assessment groups, AFMA staff and other experts as appropriate.

The AFMA CEO

- is responsible for all human resources and financial matters;
- has delegated some decisions to AFMA staff;
- is responsible for the Torres Strait Fisheries Act through the Protected Zone Joint Authority and Minister for fisheries; and
- must make decisions and implement own policies (for example, Chief Executive Instructions) consistent with Australian government legislation and policy.

AFMA is required to work closely with other Australian Government agencies with responsibilities divided as follows:

- The Department of Agriculture, Fisheries and Forestry (DAFF) leads on international fisheries matters, with AFMA implementing the Australian Government policy provided it does not breach Australian laws;
- AFMA leads in relation to bi-lateral fisheries matters with Papua New Guinea;
- AFMA advises and makes recommendations to the government in relation to matters under the Torres Strait Fisheries Act;
- AFMA's decisions must comply with the EPBC Act administered by the Department of Sustainability, Environment, Water, Population and Communities; and
- AFMA & DAFF have shared responsibility for Offshore Constitutional Settlements – decisions are by the Minister for fisheries or delegate.

Summary of AFMA's management tools

Management instruments (force of law)

- Fishery management plans
- Fishery regulations
- Fishing concession conditions (statutory fishing rights and fishing permits)
- Scientific permits
- Foreign fishing licences
- Directions
- Determinations
- Temporary orders (CEO)
- Levy regulations & fees (CEO only)
- Management advisory committees.

Management instruments (policy/expert advice)

- ERA/ERM framework
- Compliance risk assessment
- Harvest strategy
- Management advisory committees
- Resource assessment groups
- Committees and working groups of the Commission
- Co-management
- Risk – catch – cost framework.

Management types

- Output controls, for example, total allowable catches and individually transferable quotas
- Input controls, for example, fishing gear and spatial and temporal closures.

Information sources
Primary

- Log books
- Observers (incl scientific monitoring)
- Electronic monitoring – cameras and satellite vessel monitoring systems
- Contracted research (for example, by AFMA or the Fisheries Research and Development Corporation)
- Fishery Independent Surveys
- Compliance intelligence.

Secondary

- Published material
- Consultants/experts
- Management advisory committees
- Resource assessment groups
- Stakeholders & public.

Summary - AFMA's design of the fisheries management system

General

- Provisions of the fisheries Acts apply
- All fisheries have a current strategic assessment (EPBC Act Part 10)
- All major fisheries have a fishery management plan which grants fishing concessions
- All minor fisheries have limited access through fishing permits
- All fisheries have a harvest strategy consistent with the Commonwealth Harvest Strategy Policy
- Scientific permits are granted to support fisheries research
- Resources are allocated to match priorities and risks
- The best available information and advice is used to inform decisions
- Risk-catch-cost trade-off model is applied.

Commercial fishing impacts are assessed in relation to:

- Key commercial species
- By-product species
- Threatened, endangered and protected species
- Communities
- Habitats
- Other bycatch (including discards)
- Cumulative impacts (across sectors).

Management of key commercial species

- Total allowable catches apply
- Gear-specific quota statutory fishing rights are allocated in most fisheries
- Fishing gear restrictions may apply
- Spatial or temporal management may apply
- Subject to MAC and RAG, expert & research advice
- Ecological risk assessments and management apply to identify and target high risk species at risk from the fishing method
- Compliance risk assessment applies.

Management of by-product species

- By-product policy applies
- Boat statutory fishing rights or fishing permits are allocated
- Total allowable catches may apply
- Fishing gear restrictions may apply
- Spatial management may apply
- Subject to MAC, RAG and research advice
- Ecological risk assessments and management apply.

Management of threatened, endangered and protected species

- EPBC Act provisions for threatened, endangered and protected species (parts 13 & 13A) and Threat Abatement Plan apply at a fishery or gear specific level
- Recovery plans for conservation dependent species
- Mortality limits or interaction rates may apply
- Spatial closures or gear restrictions may apply
- Subject to MAC, RAG, expert and research advice
- Ecological risk assessments and management apply
- Compliance risk assessment applies.

Management of habitats, communities and other bycatch

- Spatial closures (generally linked to threatened, endangered and protected species and conservation dependent species and may be fishing-gear specific)
- Commonwealth Bycatch Policy applies
- Fishing concession move-on conditions (not all fisheries)
- Gear limits and limited entry may apply
- Subject to MAC, RAG, expert and research advice
- compliance risk assessment applies.

Attachment 8

Summary of fishery independent surveys (FISs) for AFMA-managed fisheries

Purpose
FISs are used to complement or replace commercial catch per unit effort (CPUE) as indices of abundance of commercial, and potentially, bycatch species. These are now widely used in commercial fisheries globally and in Commonwealth fisheries, but not necessarily for every fishery, to address the problems with using catch and effort data from commercial fishing logbooks.

2005 Ministerial Direction
The Ministerial Direction (December 2005) was part of the Australian Government's $220M *Securing our Fishing Future Initiative* announced in November 2005 requiring AFMA undertake fishery independent surveys of major Commonwealth fisheries to gather comprehensive data on quota managed and other species.

FIS arrangements
Appendix A provides an outline of fishery independent survey arrangements in place for major Commonwealth fisheries, the costs associated with funding these and their contributions to stock assessment. FISs are usually part of a more comprehensive monitoring programme in place for each fishery.

Not every fishery however, has a fishery independent survey and not every fishery independent survey is undertaken every year. Rather the need for a survey, its design and timing is subject to regular needs analysis by AFMA and its RAGs and MACs. These identify fishery-specific research priorities on an annual basis, in line with individual fishery research plans. The AFMA Research Committee (ARC) assesses and approves applications for FISs for final consideration by the AFMA Commission.

FIS costs and sources of funds
FISs were initially funded through special funds, deriving from various decisions associated with the Ministerial Direction. However, over time FISs have come to be funded largely by industry levies. Under the 2010 Cost Recovery Impact Statement (CRIS) FISs are identified as industry funded, with the capacity for a public good component of government funding, provided a cogent case is made and AFMA accepts it.

Contribution to stock assessment
FISs contribute towards providing a fishery-independent time series index of abundance of fish stocks for incorporation into each fishery's species stock assessment. For many species CPUE data is of limited use particularly for quota species with constraining TACs.

Challenges for AFMA in continuing to fund FISs
The high cost of undertaking a FIS has resulted in a number of fisheries looking for more cost effective options, e.g. the SESSF proposal was modified to allow the summer and winter surveys in 2011-12 to be conducted biennially in place of annually.

An important aspect of reducing the cost of FISs is the need for industry to view this type of survey as a business investment in the fishery resources in accordance with the risk catch cost framework.

A related aspect is the need for a united industry association with clear goals in terms of research priorities for the fishery and recognition of the benefits of a FIS which would potentially allow for a greater level of cooperation by industry to fund an independent survey. There would potentially be more incentive to fund the FIS outside the levy base thereby reducing the cost through the removal of overheads. Further savings could be achieved through the sale of fish from the surveys. This however, requires a high level of cooperation by all members of the industry association which is difficult to achieve for a fishery with a large number of operators such as the SESSF.

Appendix A

Northern Prawn Fishery

Year	Funding/Provider	Arrangement	Key Deliverables
2002-03	$508,555 FRDC:AFMA funded	Industry and management agreed in 2002 that a long-term program of annual fishery-independent surveys should be established, substantially funded by the industry itself, and the first monitoring project, funded by MIRF, AFMA, CSIRO and FRDC was carried out in 2002-03. Three consecutive monitoring projects were completed.	Key output – fishery-independent index of abundance of spawning stock for incorporation in the species stock assessment
2005-08	2006/07 - $671,708 2007/08 - $710,442 Levied 80% industry	The MAC agreed to continue fishery independent surveys (three annual series of surveys) to support the stock assessment	An updated design for long-term monitoring surveys of spawning stock abundance
2008-10	$508,555	Continuation of the Integrated Monitoring Program (IMP)	
2010-12	$796,661 for all three components of the project Data collection levied 80% industry, 20% government Vessel charter levied 100% industry Data analysis levied 80% industry, 20% government	NORMAC 73 agreed to put all three components of the IMP (vessel charter; at sea data collection; and data analysis) out for tender in 2011-12 for a three year contract. This was a joint decision by NORMAC and NPFI to ensure that the NPF was receiving the best value for money for the provision of the three components. Competitive tender processes were conducted for the vessel charter and at sea data collection components, however not for the data analysis component as it was decided it should remain with CSIRO.	

Southern and Eastern Scalefish & Shark Fishery (SESSF)

In the past doubts by industry about the practicalities and cost-effectiveness of fishery independent surveys in a multi-species fishery such as the SESSF prevented FIS implementation. Following a project on the feasibility of industry based fishery independent surveys for the SESSF (FRDC 2002/072) random stratified surveys were successfully implemented for Bight Redfish and Deepwater Flathead in the Great Australian Bight Trawl sector and for Blue Warehou in the SESSF.

In 2005 a fishery independent survey was highlighted as the top priority research project for the SESSF and a five year project was agreed to by the RAG, MAC and ARC, funded largely by FRDC with additional funding by AFMA. The first 18 months of the project was dedicated to the design of the survey and developing the methods for its operation and funding with a preliminary trial of the survey on the water undertaken in 2008. The results of the preliminary survey (operational and scientific) was reviewed in 2009 and modified. A revised survey was designed and implemented during 2010 with the results considered in early 2011 and the proposal was modified to allow the summer and winter surveys in 2011/12 to be conducted biennially in place of annually. During early 2012, however, SESSFRAG considered the Confidence Variables (CVs) achieved during just the winter survey and agreed that it would be better, given the cost restrictions, to conduct annual Winter surveys, thereby achieving a good time-series of abundance estimates that could be used in stock assessments in a much shortened time period. While the time-series of abundance estimates

obtained has the potential to reduce the stock assessment cost, it is unlikely that the FIS will replace the stock assessment project altogether due to the fact that acceptable CVs have not been achieved for all species.

SESSF Fishery Independent Surveys

Year	Funding/Provider	Funding Arrangement	Key deliverables
2006/07	Overall cost $290,000 80:20 FRDC:AFMA (split 80:20 industry: govt under the CRIS)	Implementation of the SESS FIS following full support by the RAG, MAC and ARC as was deemed the highest research priority. Project was largely funded by FRDC with a 20% AFMA (industry) contribution, scientific funding as part of the "Future Directions" package allocated for FISs, and using research quota to offset the cost of the project. AFMA to contribute to any shortfall with any variation in net cost to AFMA to be shared 80/20 between industry and government consistent with the project's funding as 'fisheries management research'.	More reliable stock assessments as a result of data from a time-series of abundance indices from the surveys that could be used in addition to, or instead of commercial catch rate data.
2007/08	$346,411 total: $90,000 AFMA Science, Data & Compliance Fund; $205,192 (Industry); $51,282 (Govt)	Revenue from sale of fish caught during the surveys, expected to be $595,059 for 2007/08 & 2008/09 – 10% of the revenue would be retained by the operators' crew with the remaining 90% to offset the cost of the survey.	
2008/09	$384,617 total: $307,693 (Industry); $76,924 (Govt)		
2009/10	$437,921 (Industry)	AFMA contribution to FRDC project for the Summer and Winter surveys Proceeds from the sale of fish were used to offset the cost of the surveys.	Ongoing time-series of abundance indices
2010/11	$813,281 (Industry)		
2011/12	$511,634 (Summer Survey) (Industry 100%)	The project costs were offset by revenue from the sale of fish returned to industry via the project (not AFMA) – estimated to be $153,000 by the research provider. This was dealt with by the Principal Investigator and had no impact on AFMA, although fish catches were required to be reported to AFMA in all progress reports.	Ongoing time-series of abundance indices
2012/13	$568,229 (100% Industry)		Ongoing time-series of abundance indices

Heard Island and McDonald Island Fishery (HIMI)

The HIMI Fishery Assessment Plan identifies the need for an adequate program of monitoring to ensure that reliable fisheries stock estimates can be made for each target species. Each year the monitoring responsibilities are determined in consultation with the RAG and MAC. The main activity is a random stratified trawl survey (RSTS) the data from which

is a key component of the annual stock assessment carried out by scientists from the AAD and reviewed annually by scientists from Member countries of the Commissions for the Conservation of Antarctic Marine Living Resources (CCAMLR). These have been conducted since the start of the fishery in 1997.

The high cost of undertaking a FIS has resulted in a number of fisheries looking for more cost effective options. An important aspect of reducing the cost of FISs is the need for industry to view this type of surveys as a business investment in the fishery resources in accordance with the risk catch sot framework. The Heard Island & Macquarie Island Fishery (HIMIF) is a good example of where this has occurred partly due to the number of concession holders (two). This allowed the two parties to enter into an arrangement for the 2010-2012 FIS where the associated costs are outside the levy base thereby avoiding project overhead costs involved with administering the contract.

HIMI Fishery Independent Surveys

Year	Funding	Funding Arrangement	Key deliverables
2007/08	$600,520 (80% Industry; 20% government)	Under CRIS 2004 the previous RSTS projects fell under Fisheries Management Research, under the category 'fixed station surveys, including surveys that are used for stock assessment', and was 80% cost recovered from industry	The FIS is an important input to the stock assessment process that helps determine a total allowable catch (TAC) for Patagonian Toothfish and Mackerel Icefish in the HIMI fishery.
2009-10	$673,173 (80% Industry; 20% Government)		Data collected from the annual Random stratified trawl survey is a key component of the annual stock assessment carried out by scientists from the Australian Antarctic Division (AAD) and reviewed annually by scientists from Member countries of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR). This process is used to set total allowable catches for the season.
2010-2012	$1,683,000 (90% industry; 10% Government contribution)	Under the CRIS 2010 the 10% government contribution being offered recognises the public benefits of this research, including the input to a stock assessment under international obligations and the collection of data other than that related to commercial fishing. A government contribution of 20% is required for it to be cost effective for operators in the sub-Antarctic to fund the FIS through the levy base due to the attribution of overheads to the cost of the research. With the offer of 10%, operators are funding the FIS outside the levy base	As above

Great Australian Bight Trawl Fishery

Industry investigated the feasibility of conducting a fishery- independent survey to provide a time-series of relative abundance indices for deepwater flathead and Bight redfish that could be used as an input to the stock assessment models (FRDC Project 2002/072). Further, by conducting a random stratified survey, ball-park estimates of absolute abundance of Bight Redfish and Deepwater Flathead would be obtained that can be used as additional information to help support the setting of appropriate TACs for 2006. Industry initiated a fishery independent survey of shelf resources during 2005 to gain an independent index of abundance.

A five year time series of abundance estimates for both Bight Redfish and Deepwater Flathead (as well as other key byproduct and bycatch species) has now been collected during 2005-2009. No survey was conducted in 2010 and

GABIA, the RAG and MAC while committed to continuing the FIS into the future, agreed to conduct a costs/benefits analysis to determine whether the survey should be conducted on an annual or biennial basis. Aspects considered in the cost-benefit analysis included the cost of the surveys and certainty that the indices bring to the assessment.

At this stage indications are that another GAB FIS will not be undertaken until February/March 2014 at the earliest.

GABT Fishery Independent Surveys

Year	Funding	Funding Arrangement	Key deliverables
2012-14	$424,803 (100% industry funded)	AFMA offered GABIA 7.5% Government funding contribution for the FIS	5 year time series of abundance estimates for Bight redfish and deepwater flathead as well as other key byproduct and bycatch species was collected between 2005 and 2009.

Southern Bluefin Tuna Fishery

Scientific and commercial aerial spotting operations have been used to develop a fishery-independent index of relative abundance of juvenile SBT in the Great Australian Bight, which has been used as an indicator for determining trends in recruitment of the species. This information is then fed into the CCSBT stock assessment process as part of Australia's commitment to CCSBT.

The total cost of the project is $575,034.54 in 2011/12 and $63,892.72 in 2012/13**.** ComFRAB recommended that AFMA and DAFF fund the project, with a 50/50 funding split. DAFF have budgeted 50% of funding for the project. On this basis, AFMA contributed $287,517.27 in 2011/12 and $31,946.36 in 2012/13.

Eastern Tuna and Billfish Fishery

The rapid increase in catches in the East Coast longline fishery over the 1990s prompted calls for more research into the stocks of Yellowfin Tuna, Bigeye Tuna and Broadbill Swordfish, particularly the latter two species. A basic requirement of stocks assessment is a good understanding of the size/age structure of the catch.

Hence, the Eastern Tuna and Billfish Fishery Size Monitoring Program was initiated in 1997/98 with the primary objective being the collection of size data for a representative sample of the ETBF fishery catch of tunas and billfish. The first year of operations involved a pilot study to determine effective methods of collecting, storing and validating the data. The first year of the project demonstrated that with careful liaison with key processors it was possible to collect data on the weight frequency of a large proportion of the ETBF fishery catch through gaining access to processor records. With the fishery developing rapidly (both in catch and the number of ports at which fish were being landed) the following years focused on consolidating and improving the methods established in year one.

ETBF Fishery Independent Surveys

Year	Funding	Funding Arrangement	Key deliverables
2009-12	$150,000 (80% industry, 20% Government contribution)	While this arrangement is not a FIS as such, the program contributes to stock assessment and is consequently	Supply of scientifically acceptable and comprehensive size/age data for the main species in the ETBF essential to following cohorts from year to year and to assess the relative abundances of various year classes, essential inputs into any stock assessment.
2012-15	$160,000		As above

Attachment 9

List of Major Commonwealth Fisheries Reviews, Inquiries, Performance Audits and Ministerial Directions since 1991

1992 - *Cost recovery for Managing Fisheries*, Industry Commission

1993 - *'Fisheries Reviewed'*, Senate Standing Committee on Industry, Science, Technology, Transport, Communications and Infrastructure

1994 - *Cost Recovery for Managing Fisheries*, Industry Commission

1994 - *'Collection of Fisheries Statistics in Australia'*, Standing Committee on Fisheries and Aquaculture

1996 - Commonwealth Fisheries Management (ANAO Performance Audit)

1997 - *'Managing Commonwealth Fisheries: The last frontier*', House or Representatives Standing Committee on Primary Industries, Resources and Rural and Regional Affairs

2001 - Commonwealth Fisheries Management (Follow-up ANAO Performance Audit)

2003 - *'Looking to the future - A Review of Commonwealth Fisheries Policy*'

2005 - Ministerial Direction to AFMA to cease overfishing and rebuild overfished stocks

2009 - Management of Domestic Fishing Compliance (ANAO Performance Audit)

2012 - Management of Domestic Fishing Compliance (Follow up ANAO Performance Audit) - ongoing

2012 - Inquiry into the Role of Science in Fisheries and Aquaculture, House Standing Committee on Agriculture, Resources, Fisheries and Forestry - ongoing

2012 - Review of AFMA Fees and Charges, DAFF – ongoing

2012 - Investigation on the Performance of the Australian Fisheries Management Authority (AFMA) and AFMA Commission in the Administration of its Statutory Responsibilities, DAFF - ongoing

Attachment 10

Amendments to *Fisheries Management Act 1991*

Title	ComlawId	Number
Acts Interpretation Amendment Act 2011	C2011A00046	No. 46, 2011
Fisheries Legislation Amendment Act (No. 2) 2010	C2010A00137	No. 137, 2010
Fisheries Legislation Amendment (New Governance Arrangements for the Australian Fisheries Management Authority and Other Matters) Act 2008	C2008A00036	No. 36, 2008
Fisheries Legislation Amendment Act 2007	C2007A00104	No. 104, 2007
Fisheries Legislation Amendment (Cooperative Fisheries Arrangements and Other Matters) Act 2006	C2006A00008	No. 8, 2006
Fisheries Legislation Amendment (International Obligations and Other Matters) Act 2005	C2005A00099	No. 99, 2005
Financial Framework Legislation Amendment Act 2005	C2005A00008	No. 8, 2005
Fisheries Legislation Amendment (High Seas Fishing Activities and Other Matters) Act 2004	C2004A01265	No. 29, 2004
Fisheries Legislation Amendment (Compliance and Deterrence Measures and Other Matters) Act 2004	C2004A01264	No. 28, 2004
Fisheries Legislation Amendment Act (No. 1) 2000	C2004A00642	No. 50, 2000
Corporate Law Economic Reform Program Act 1999	C2004A00547	No. 156, 1999
Fisheries Legislation Amendment Act (No. 1) 1999	C2004A00532	No. 143, 1999
Primary Industries and Energy Legislation Amendment Act (No. 1) 1998	C2004A00359	No. 102, 1998
Audit (Transitional and Miscellaneous) Amendment Act 1997	C2004A05249	No. 152, 1997
Fisheries Legislation Amendment Act 1997	C2004A05215	No. 120, 1997
Primary Industries and Energy Legislation Amendment Act (No. 2) 1994	C2004A04802	No. 129, 1994

Amendments to *Fisheries Administration Act 1991*

Acts Interpretation Amendment Act 2011	C2011A00046	No. 46, 2011
 Fisheries Legislation Amendment Act (No. 2) 2010	C2010A00137	No. 137, 2010
 Personal Property Securities (Corporations and Other Amendments) Act 2010	C2010A00096	No. 96, 2010
 Freedom of Information Amendment (Reform) Act 2010	C2010A00051	No. 51, 2010
 Fisheries Legislation Amendment Act 2010	C2010A00039	No. 39, 2010
Personal Property Securities (Consequential Amendments) Act 2009	C2009A00131	No. 131, 2009
Customs Legislation Amendment (Name Change) Act 2009	C2009A00033	No. 33, 2009
 Fisheries Legislation Amendment (New Governance Arrangements for the Australian Fisheries Management Authority and Other Matters) Act 2008	C2008A00036	No. 36, 2008
Fisheries Legislation Amendment Act 2007	C2007A00104	No. 104, 2007
Migration Legislation Amendment (Information and Other Measures) Act 2007	C2007A00063	No. 63, 2007
Fisheries Legislation Amendment (Foreign Fishing Offences) Act 2006	C2006A00061	No. 61, 2006
Fisheries Legislation Amendment (Cooperative Fisheries Arrangements and Other Matters) Act 2006	C2006A00008	No. 8, 2006
Border Protection Legislation Amendment (Deterrence of Illegal Foreign Fishing) Act 2005	C2005A00103	No. 103, 2005
Statute Law Revision Act 2005	C2005A00100	No. 100, 2005
Fisheries Legislation Amendment (International Obligations and Other Matters) Act 2005	C2005A00099	No. 99, 2005
Fisheries Legislation Amendment (High Seas Fishing Activities and Other Matters) Act 2004	C2004A01265	No. 29, 2004
Fisheries Legislation Amendment (Compliance and Deterrence Measures and Other Matters) Act 2004	C2004A01264	No. 28, 2004
Border Security Legislation Amendment Act 2002	C2004A00977	No. 64, 2002
Measures to Combat Serious and Organised Crime Act 2001	C2004A00908	No. 136, 2001