



Secretariat  
Independent review of the EPBC Act 1999  
GPO Box 787  
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Australia

Dear Dr Hawke

## Background

Thank you for the opportunity to provide comment on the review of the *Environment Protection and Biodiversity Conservation Act 1999*. As you have indicated, it is one of the most powerful pieces of federal legislation with regards to the sustainable use of natural resources. As such, the legislation has particular impact on recreational and commercial fisheries through a range of strategies including ecological assessments and fisheries approvals, key threatening process listings and closures to historical fishing areas through the declaration of no fishing zones within Commonwealth protected areas.

The Australian Recreational and Sportfishing Industry Confederation (Recfish Australia) is the peak representative body for recreational fishers at a national level. Our members include state and territory peak representative bodies who collectively speak for the more than 3.5 million Australians that go recreational fishing each year as well as the businesses and services that are associated with this multi-billion dollar community.

Recfish Australia has been at the forefront of fishing education, conservation and promotion since 1983. We are the gazetted representative body to which the Fisheries Research and Development Corporation reports on Research, Development and Extension related to recreational fishing and we represent recreational fishers on no fewer than 13 national committees.

Recfish Australia has developed many significant initiatives including the National Code of Practice for Recreational Fishing (which was recently reviewed and also forms the basis for an international code recently endorsed by Fisheries and Agricultural Organisation); a toolbox to assist recreational fishers for engaging in the creation of Marine Protected Areas; a National Environmental Assessment of Tournament Fishing (NEATFish); Recfishing

Recfish Australia is the peak national body for recreational and sport fishing in Australia. Members: Amateur Fishermen's Association of the NT (AFANT); Australian National Sportfishing Association (ANSA); Australian Underwater Federation –Spearfishing (AUF); New South Wales Advisory Council on Recreational Fishing (NSW ACoRF); Western Australian Recreational & Sportfishing Council Inc (Recfishwest); Tasmanian Association for Recreational Fishing (TARFish); Victoria's Recreational Fishing Peak Body (VRFish)

**Our mission – One voice promoting sustainable fishing and representing recreational fishers at a national level**

Research which sets national priorities for investment, research and extension for recreational fishing as well as specific policies on a range of issues including marine protected areas and threatened and protected fish species.

Recfish Australia is supportive of measures to conserve biodiversity but believe that the environment is not exclusive of the people that live within it. In aiming to minimise our impacts, there is the danger of placing so many restrictions that we risk detaching people from the environment and that would be the worst possible outcome for our wildlife heritage.

## Our Comments

### Guiding Principles of the Review

We are supportive of the guiding policy objectives, in particular:

(a) to promote the sustainability of Australia's economic development to enhance individual and community well-being while protecting biological diversity and maintaining essential ecological processes and systems;

which to date seems to have been neglected with respect to recreational and commercial fishing in pursuit of protecting biodiversity, particularly through the establishment of no fishing zones.

(b) to work in partnership with the states and territories within an effective federal arrangement;

Again, this is an area with respect to fishing, where Commonwealth fisheries regulations (through EPBC) are not consistent with state and territory legislation and creates confusion for recreational fishers and an added layer of complexity for compliance.

(d) the Australian Government's deregulation agenda to reduce and simplify the regulatory burden on people, businesses and organisations, while maintaining appropriate and efficient environmental standards; and

We fully support this but to date can find no evidence of this occurring and the complexity contained within the *Great Barrier Reef Marine Park and Other Legislation Amendment Bill 2008* is a clear example of the failing of this principle.

### Objects of the Act

While we consider the objects of the Act to be sound, we believe that there are significant areas which have not been adequately addressed to date. In particular, we refer to

(b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources;

The terms "ecologically sustainable development" and "ecologically sustainable use" are defined in the Act in Section 3A and I refer to the fact box in the discussion document which in fact lists the principles of "ecologically sustainable use" rather than ESD per se.

Section 3A of the Act defines the principles of ESD:

■ decision making processes should effectively integrate both long term and short term economic, environmental, social and equitable considerations;

While environmental considerations feature strongly in actions required under the direction of the EPBC Act, the short and long term economic and social considerations have not been

adequately addressed. Basic information about the social and economic impact of loss of access to traditional fishing locations has not been collected in Australia. Lessons from the business restructure packages associated with the rezoning of the Great Barrier Reef Marine Park in 2003 indicate that the impact, especially the economic impact is grossly underestimated. This is evidenced by the considerable blow out in spending on the adjustment package which was far in excess of what DEWHA predicted. Likewise, studies which examine the social and economic benefits associated with sanctuary zones and the “spillover effect” have similarly not been conducted.

- if 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;

This section alludes to the concept of the Precautionary Principle. While we believe that the principle is sound, the application of the principle should not serve as an excuse not to conduct scientific research. When marine reserves are established, there should be a requirement to conduct and publish the results of ongoing monitoring of the reserve in achieving its stated objectives. There should be a commitment to fund research into the impact of recreational fisheries on biodiversity and there should be a commitment to fund research into social and economic impacts of decisions made under the EPBC.

- the principle of inter generational equity—that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;

Intergenerational equity is of particular concern to recreational anglers. We see an almost zealous intent to close large sections of coastal and inland waters to recreational fishing in the interest of preserving biodiversity and heritage, yet the valuable angling heritage which offers so much to future generations is being eroded away. There is no mistaking the positive mental and physical health attributes that recreational fishing offers and these are well documented in international literature<sup>1</sup>.

The key role of anglers as conservationists is also undermined by the deliberate targeting of our sector through unreasonable and unsubstantiated claims of “significant detrimental effect”. Many programs around the nation focus on training the next generation of anglers with particular focus on sustainable use, ethical fishing practices and humane handling of fish but these activities will amount to nothing if there is no place for Australian families to go fishing.

- the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision making; and
- improved valuation, pricing and incentive mechanisms should be promoted.

We take this statement to mean that there will be a commitment to evaluate the economic and social impact caused by loss of access to fishing opportunities as well as investment in understanding the value of a healthy, sustainable recreational fishery to the local community.

(c) to promote the conservation of biodiversity;

Recreational anglers are committed to this principle and many of the conservation actions that have shaped Australia’s approach to environmental protection were initiated and led by recreational anglers.

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<sup>1</sup> [A Countryside for Health and Wellbeing: The Physical and Mental Health Benefits of Green Exercise \(2005\)](http://www.projecthealingwaters.org/) , Countryside Recreation Network; Project Healing Waters Flyfishing <http://www.projecthealingwaters.org/>

Recreational anglers were involved in the Lake Pedder (1966-1973) and Franklin River (1976 – 1983) campaigns in Tasmania and responsible recreational fishing groups have been at the forefront of protection for species and habitats. Examples include the listing of no-take species such as sawfish and Queensland grouper which were largely brought about through the actions of recreational anglers. Also, in NSW, one of the

first Grey Nurse Shark protection sites at Julian Rocks was established some 20 years ago through the efforts of many including the Australian National Sportfishing Association. It is therefore, ironic that the local ecological knowledge of recreational anglers is so often disregarded in any debate about biodiversity conservation.

(ca) to provide for the protection and conservation of heritage;

If the EPBC Act is genuinely committed to the protection and conservation of heritage, then it is essential that our fishing heritage is also considered. It is as much a part of coastal and inland communities as bushwalking, snorkeling and boating. The fact that a quarter of the Australian population go fishing at least once a year indicates its relevance to our culture and in fact many Australians adapt their lifestyle to take advantage of fishing opportunities. Rural areas are particularly attractive as fishing locations and many rural economies depend on recreational and commercial fishing to survive. Without our fishing culture, these communities may disappear. It is worth remembering that approximately one quarter of all Australians go fishing at least once a year. This figure is amongst the highest participation rates throughout the world – we are truly a nation of recreational anglers.

(d) to promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous people;

While we acknowledge the unique links that Indigenous people have to the environment, we would suggest that forging a co-operative approach with the fishing community is equally as important. Experience from Australia and overseas has shown that effective co-management arrangements can be achieved with both commercial and recreational fishers. Recent projects funded by the Fisheries Research and Development Corporation (FRDC 2006/068) have looked at co-management options that can work to the benefit of the community and fisheries managers.

(e) to assist in the co-operative implementation of Australia's international environmental responsibilities;

Again, this point is fully supported by recreational anglers and we regularly provide feedback on fishing practices which we believe are unsustainable. Our member bodies regularly provide feedback on fisheries assessments. Further, we are involved in management advisory committees that deal with management of both domestic and international fisheries.

(f) to recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity;  
and

(g) to promote the use of indigenous peoples' knowledge of biodiversity with the involvement of, and in co-operation with, the owners of the knowledge.

As with our comments on d) above, with no disrespect intended, we believe that recreational and commercial fishers also have an incredible store of environmental

knowledge which we are willing to share, provided that we are treated with respect. Our role as custodians of the environment also needs to be recognised.

## Questions

Key questions interspersed throughout this discussion paper, which are posed primarily as ‘thought starters’ and are not intended to limit comments or submissions on the Act, are consolidated here for convenience.

### Scope of the Act

Q1 What are your views on the following aspects of the Act:

(a) Are the objects of the Act appropriate to the Commonwealth’s role in environment protection and management?

The objects of the Act are reasonable and appropriate but the application and interpretation of the objects as they pertain to recreational fishing and the perceived threat to biodiversity from our activities are not appropriate.

(b) Are the principles of Ecological Sustainable Development (ESD) appropriate to the Commonwealth’s role in environment protection and management? Does the legislation provide an adequate framework to guide ESD decisions made under the Act?

We have no objection to the principles of ESD but feel that the principles are not being applied to their full extent. While environmental considerations feature strongly in activities and management plans undertaken under the direction of the EPBC Act, the short and long term economic and social considerations have not been adequately addressed. Basic information about the social and economic impact of loss of access to traditional fishing locations has not been collected in Australia. Lessons from the business restructure packages associated with the rezoning of the Great Barrier Reef Marine Park in 2003 indicate that the impact, especially the economic impact is grossly underestimated. This is evidenced by the considerable blow out in spending on the adjustment package (\$50 - \$100 million) which was far in excess of what was predicted (\$0.52 million - \$2.59 million).

There is documented and anecdotal evidence that the creation of large green zones where all fishing is excluded has a major impact on crowding anglers and commercial fishers into available fishing areas (National Academies Press, 2002<sup>2</sup>). As a result, there is localized increase in fishing pressure which can have detrimental impacts on biodiversity.

In terms of equity, we do not consider it equitable that boating and scuba diving are allowed to continue in areas from which anglers have been banned. If these areas are to function as true sanctuary areas, it should be a case of one out, all out.

(f) Does the test of significance, in the context of actions having a ‘significant’ impact on a matter of NES, operate effectively in practice? If you think that there should be another test, what should it be?

Recreational fishing is often quoted as having a significant impact on biodiversity yet the data to prove this claim are often lacking, biased or inaccurate. When we are able to present data that challenge the assumption of “significant” impact, our data are often ignored. While we do not object to a “significance” test, the process needs to be transparent and fair and take all sources of data into consideration.

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<sup>2</sup> Effects of Trawling and Dredging on Seafloor Habitat: Phase 1- Effects of Bottom Trawling on Seafloor Habitats By National Research Council (U.S.).

### Assessment and Approvals

Q5 Does the Act provide appropriate scope for public participation and transparency in the assessment and approval process under the Act?

We do not feel that the current process provides for informed public participation and we believe that government agencies including DEWHA have not done enough to effectively consult with stakeholders. While information about assessments and referrals are published on the department's website, this does not constitute the appropriate level of consultation that is needed. Away from cities, communities tend to be less reliant on electronic media and more reliant on word-of-mouth communication. Most recreational anglers obtain their primary source of information from fishing tackle shops where they purchase bait and fishing tackle and licenses. Others rely on fishing clubs to provide information. It is ironic that often the greatest impacts on recreational fishers occur in these regional areas yet these communities are often the last to know about them.

Where a different approach to consultation has been adopted, there has been significant success. An example includes the Recreational Fishing Liaison Project between Recfish Australia and the then Department of the Environment and Heritage (DEH). This project was a contract between the dept and Recfish Australia for Recfish Australia to conduct public meetings and collect recreational fishing stakeholder feedback on proposed Commonwealth marine parks. The project worked extremely well in Tasmania and resulted in positive outcomes for all parties. Due to the delay in the roll out of additional Marine Bioregion Plans, the contract expired and has not been renewed.

Q8 Does the use of strategic approaches, such as strategic assessments and bioregional plans, provide opportunities for streamlining Commonwealth involvement in environmental issues? Do such approaches provide an appropriate means for dealing with cumulative impacts?

Our comments above apply equally to this question. Although the process may be streamlined, the methods of encouraging and facilitating public consultation are inadequate.

### Biodiversity

Q10 What are your views on the process for nominating threatened species, ecological communities and key threatening processes?

The process allows for any individual or organisation with enough resources to nominate just about any activity as a key threatening process or any species or community as threatened. What the process does not allow for is adequate time and resources for groups, such as recreational anglers, which come under attack to prepare a defence. Often the nominations are based on biased data or perceptions but are presented in such a persuasive manner as to make them appear as fact. The current proposal from the Australian Conservation Council and Pew Charitable Trusts to remove all forms of commercial and recreational fishing from the Coral Sea area is just one example. There is absolutely no evidence that over-fishing is occurring in the area or that the limited commercial and charter fishing operations are having a "significant" impact on biodiversity, yet the proposal is being seriously considered by the Australian Government.

Some initiatives such as development of the Eastern Freshwater Cod and the Trout Cod Recovery Plans that involve extensive consultation with recreational fishers are more likely to be successful and supported by recreational anglers. We would like to see a mechanism

in place, where as a matter of course, recreational anglers are consulted through Recfish Australia particularly where there is likely to be considerable impact on recreational anglers.

Our membership of the National Shark Recovery Working Group is one such opportunity to be meaningfully engaged but our ability to participate is limited by a lack of funding. We believe that service agreements to provide effective consultation with our recreational fishing community should be considered by DEWHA and other agencies.

Q12 What matters should the Minister consider when deciding whether to list a threatened species or ecological community?

The minister needs to be guided by the objects of the Act. The advice on which the minister bases his/her decision needs to be grounded in fact and must be the best available information. While the Precautionary Principle is useful, it should not be used as an excuse not to collect information to make a better informed decision.

Q14 Are there opportunities to reduce duplication between the Commonwealth and State and Territory listing regimes or do overlaps between the regimes provide significant protection for threatened species and ecological communities?

Different listings of species between the State/Territory and Australian Government as well as with international lists create confusion and hampers effective conservation measures. There needs to be the adoption of a single national list.

Q18 Are the provisions of the Act for the protection and recovery of threatened species and ecological communities, migratory species, listed marine species and cetaceans effective? What alternative approaches might be available?

The recovery plans are hampered by being too ambitious, too detailed and too expensive. Most recovery plans suffer from lack of resources to implement them. Government needs to consider more cost effective ways of implementing recovery plans and this may include working closer with communities. When it comes to communication and education, most government agencies are ill-equipped to produce community specific communication material. This task is best outsourced to community groups and organisations that best understand their community and how they obtain information. Likewise, community-based monitoring is more cost effective than government initiatives. Examples include the Great Australia Shark Count which is providing fantastic information but struggles to find funding to continue. Likewise community monitoring of recreational fishing is being conducted by CapReef in Central Queensland yet they struggle to gain recognition from government despite the data being subject to peer-review.

Q19 Does the Act provide an appropriate legislative framework for addressing climate change and other emerging pressures in the context of environmental protection and biodiversity conservation? If not, how can such matters be considered when making decisions under the Act?

The impact of climate change on the marine environment is subject to considerable debate. While it is accepted that there will be changes to species distribution and to the biochemical nature of the marine environment, modeling the impact is difficult. The threat of climate change should not be used as an excuse to further restrict recreational fisheries either through extension of no fishing zones or through listing of recreational fishing as a key threatening process until such time as the scientific evidence proves this. Proactive

measures that can be taken by recreational fishers include the adoption of low emission outboard engines, making greener choices about their fishing activities and avoiding the catching of species with particular sensitivities to climate change impacts. All of these activities have a better chance of success if they are initiated by the industry rather than being forced on anglers through legislation.

#### Protected Areas

Q25 What factors should the Minister have regard to when making a decision on heritage listing?

The minister needs to be guided by the objects of the Act and base any decisions on scientific evidence and fact. The Precautionary Principle should not be used as an excuse for not collecting baseline data on which to base a decision. In terms of Ecologically Sustainable Use, equal consideration should be given to the environment as well as to the social and economic impacts resulting from the minister's decision. The heritage value of recreational fishing itself should also inform the Minister's decision. As previously indicated, Australia has a rich cultural history of fishing for food, relaxation and sport and as a means of communicating with the natural environment. These values should have some consideration and steps taken to protect this heritage.

Q28 Given that the protection and conservation of Australia's heritage is shared between the different levels of government, are there any improvements in the current legislative arrangements that would be of benefit?

Regulations pertaining to fishing in Commonwealth marine parks are not complimentary to state legislation and in some cases are unnecessarily restrictive. Regulation 12.35 of the EPBC Regulations in our mind provides unnecessary restrictions on regulation of recreational fishing that have no conceivable benefit to protection of biodiversity. It is difficult to imagine how the use of livebait as opposed to using the same fish dead can have a greater impact on fish resources. This restriction seems to be more related to animal ethics considerations rather than sustainability issues. Likewise gear restrictions and limits on filleting and cleaning fish have absolutely no benefit to the conservation of biodiversity.

We also find it objectionable that the prescriptions on recreational fishing are excessively detailed yet there are no corresponding restrictions on commercial fishing (in zones open to commercial fishing). A trawler could conceivably, be trawling past a recreational fisher, discarding undersize and non target catch (dead, dying and alive) including finfish, crustaceans and molluscs but a recreational fisher cannot use anything but dead local fish (no squid or shellfish) or purchased product brought into the marine park.

Likewise restrictions on competitions within marine parks and the banning of spearfishing from many Commonwealth marine parks represent unnecessary discrimination with little or no scientific basis of threat. In fact, Recfish Australia has established a National Environmental Assessment for Tournament Fishing (Neatfish) with which we measure the environmental impact and economic and social benefits of fishing tournaments. With this system in place, marine park managers can be confident that tournaments are conducted according to sound environmental practices.

Recfish Australia suggests that any regulations on recreational fishing within Commonwealth parks and reserves should reflect the regulations outside the park as enforced by State/Territory fisheries legislation. We further feel that Regulation 12.35 should be reviewed as a matter of urgency.

Such an approach would result in less confusion for anglers and greater compliance with fisheries regulations. Additionally, through the existing consultation processes, all stakeholders could be engaged in deciding appropriate restrictions including bag and size limits, closed seasons and no-take species.

There is no reason why park management could not be involved in this process. It would also lead to significant efficiencies for the management of recreational fishing within marine parks.

Q30 What are your views on the effectiveness of the operation of the provisions for Commonwealth Reserves and the utility of management plans for those reserves?

We have serious concerns about management plans that fail to consider methods other than a complete lock out of recreational fishers to protect biodiversity. Alternatives that have been offered by peak representative groups include catch and release only fishing zones and slot limits for species of concern. Up until now, these alternatives have not been considered and recreational fishing is still subject to discrimination on the perceived "significant" threat to biodiversity that remains to be proven. Similarly, restrictions on access of the public to areas perceived to be unsafe is simply an additional form of locking recreational fishers out of locations that they historically fished. This has resulted in some incredibly dangerous actions on the part of Commonwealth park managers which included the forced removal of an angler from a rock ledge by making him jump into the ocean and be "rescued" by a boat and the removal of "angel ring" life preservers to discourage people from accessing rock ledges in Booderee National Park near Jervis Bay in NSW. This is simply not acceptable and while the Australian Government has an obligation to warn people of the dangers of accessing certain areas, they do not have the right to make judgments for the public.

#### Decision-Making Under the Act

Q39 Are the roles of the various Committees established under the Act appropriate for meeting the objects of the Act?

The committees may provide appropriate advice but we are interested in the nomination process for committee members. We would like to see an open and transparent system in place whereby stakeholder representative groups can have input to the process.

Q40 Does the Act provide sufficient guidance for decision makers in their consideration of uncertainty when making decision under the Act? If not, how should the Act deal with uncertainty?

We reiterate our comments that use of the Precautionary Principle in the face of uncertainty does not remove the need for scientific study and monitoring to quantify impacts.

Q41 Does the Act provide the appropriate opportunity for external input and scrutiny of decisions made under the Act? Is there sufficient transparency? Are the periods for public consultation adequate?

We believe that there are significant improvements to be made in the area of communication, consultation and engagement of affected communities and sectors.

Rightly or wrongly, there is a perception that the concerns of recreational anglers are not considered in actions undertaken under guidance of the Act. In particular, it seems as if significant areas of no fishing zones are a prerequisite for every marine park – state or federal whether there is scientific evidence to prove their need or not. The periods set aside

for public comment are also insufficient for the recreational fishing sector. Currently, Recfish Australia operates with a full time CEO and a part time office and project manager.

In the absence of funding to conduct meaningful consultation with our 3.5 million stakeholders, we rely on our member organisations – many of which are similarly constrained by budget and reliant on volunteers. To consult, consolidate and then provide

feedback takes a long time. With an ever increasing number of issues to respond to, it is difficult to give due consideration to each matter.

Q44 What is an appropriate framework for assessing the performance of the Act? Do you have particular issues that should be considered during the review?

We believe that an independent review is probably the best way of reviewing the performance of the Act but we would like to see a report card with facts and figures on how well the Act has performed against its Objects. This would have to be beyond “motherhood” statements and would have to be a critical assessment which could include mention of comments made during the submission process. We would like to see an action plan identified to tackle the shortcomings of the Act and we would like to see recommendations to change parts of the Act and the Regulations if required.

Once again, we would like to thank you for the opportunity to comment on this important review. We would be very interested in receiving feedback on the progress of the review. If there is any further information that I can provide, please don't hesitate to contact me.

Yours sincerely



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Supported by



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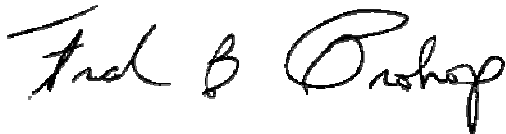
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