

Australian Fisheries Management Forum



Dr Allan Hawke
Independent review of the EPBC Act 1999
GPO Box 787
CANBERRA ACT 2601

Dear Dr Hawke

I write to seek your consideration of several key issues raised by the Australian Fisheries Management Forum (AFMF), on behalf of Australian fisheries management agencies, regarding your review of the *Environment Protection & Biodiversity Conservation Act 1999* (EPBC Act) as it relates to fisheries. I also note that you are currently moving your way around the country to discuss issues relating to the operation of the Act with each of the jurisdictions.

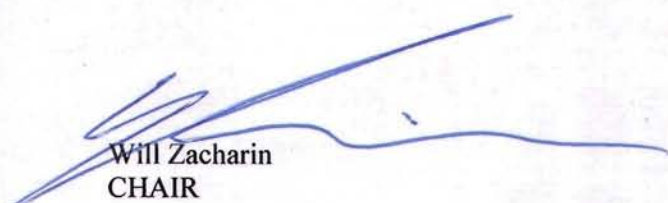
Fisheries agencies Australia-wide have played an integral role in assisting the Department of Environment, Water, Heritage and Arts (DEWHA) to implement the Commonwealth's provisions relating to seafood export approval, since the inception of the Act. Such assistance has come at a significant direct cost to the relevant agencies and, in many cases, to the fishers that are required to fund additional projects or comply with the additional requirements arising from the approval process. It is timely to reconsider the cost burden resulting from the implementation of the EPBC Act, given the broader financial challenges impacting on industry and fisheries agencies.

The EPBC Act has now been operating for 10 years and many fisheries have been through both an initial assessment and reassessment process. Your review provides a timely opportunity to resolve a number of outstanding issues relating to the operation of the Act. AFMF has raised some of these issues directly with DEWHA in the past and the Sustainable Fisheries Section has previously indicated its willingness to explore alternative approaches.

It is AFMF's intention to work collaboratively with the DEWHA on resolving the outstanding issues and developing an alternate model, which could be presented to you for inclusion in, or as a supplement to, your current Act review. Our overall aims are to minimise the administrative burden on fishery management agencies and industry, whilst maintaining the current high standards for sustainable fishing and correctly reflect the responsibilities of the respective governments, harvest and post-harvest sectors. I attach a summary of the key issues and a suggested alternative model for your consideration.

Please don't hesitate to contact Mr Anthony Hurst, A/Executive Director, Fisheries Victoria, or [REDACTED] if you wish to discuss these issues in further detail.

Yours sincerely


Will Zacharin
CHAIR

cc [REDACTED] – Assistant Secretary, DEWHA

AFMF issues relating to the operation of the *Environment Protection and Biodiversity Conservation Act 1999* for consideration in that Act's review

- May 2009 -

Issue 1	The Commonwealth Act and imposition of conditions and requirements under that Act replicates provisions and requirements of State/Territory law in many key aspects, thereby creating undue regulatory complexity and administrative burden. In particular, the Act duplicates the threatened, endangered, migratory and protected species legislation managed by State/Territory environment and/or conservation agencies.
Proposed solution	<p>Preferably the Act would be amended to enable the Commonwealth Minister to grant an approval in recognition of relevant prevailing legislation for managing fisheries without requiring assessment of individual fisheries. This arrangement would be similar to other arrangements under the Act such as accreditation of State/Territory environmental assessment processes under <u>bilateral agreements</u>.</p> <p>If the Act was amended as proposed here, the remaining issues listed below would be largely dealt with. If not, those issues will need to be addressed in their own right.</p>

Issue 2	<p>In making decisions relating to export approval, the Act requires the Minister (or his delegate) to take account of environmental factors, but does not require the consideration of economic and social issues (refer s.303FN)¹. This could result in potentially unbalanced decisions and undue legal challenges.</p> <p>Economic and social considerations are essential in decision making regarding management of commercial fishing activities. It is noted that other parts of the Act require the Minister to consider economic and social matters when making decisions about whether to approve activities (eg. s.37A, s.136, s.146F, etc).</p>
Proposed solution	<p>The Act should be amended to require the Commonwealth Minister (or delegate) to take economic and social matters into account (in addition to environmental factors) when making decisions relating to export approvals.</p> <p>Such an amendment would rectify the apparent inconsistency between the legal requirements applying to fisheries approvals versus approval of other activities, and is consistent with the principles of Ecologically Sustainable Development (ESD) as defined in the Act.</p>

Issue 3	The intense frequency of the re-assessment process diverts significant resources from implementing actual reforms and gives little business certainty to industry, particularly the post-harvest sector. Approval periods can be as short as a few months to a maximum of three years for Wildlife Trade Operations (WTOs) and every five years for 'exemptions'. The reassessment process is highly resource intensive for management agencies, and costly for government and industry.
Proposed	The Act should be amended to better align the frequency of the assessment and

¹ The Minister does have the 'discretionary' power to take those matters into account – refer s.303FN(10B).

solution	<p>approval process with the assessed risks associated with a specific fishery. For example:</p> <ul style="list-style-type: none"> • Enable one-off assessments and resultant perpetual ‘exemptions’ for species taken using fishing methods assessed as presenting negligible to low risks (such as dive fisheries). If necessary, this could be supplemented with a provision to enable the Commonwealth Minister to review an exemption, subject to reasonable notification being given to the relevant fishery participants and exporters, if it is considered the risks associated with the fishery may have substantially increased; • Enable ‘exemptions’ and ‘Wildlife Trade Operations’ (WTO) to be granted for significantly longer periods (eg 10 – 15 years) for fisheries assessed as medium risk, subject to the relevant risk reduction actions being implemented according to approved fisheries management plans. Once again, a “call in” option may be appropriate for the longer term WTOs; • Shorter term WTOs (eg. 3 years) could still be appropriate for high risk fisheries.
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Issue 4	<p>DEWHA has, with few exceptions, insisted on the preparation of assessments and the issue of export approvals that bind all commercial fishers engaged in a particular type of fishery (typically defined by method, species and/or region), regardless of whether only a small number of fishers within the fishery use export markets. As a result, fishers relying only on domestic markets are often forced to adopt additional or different fishing practices and associated costs (direct costs to finance operational changes or indirect costs through potential reductions in catch), in order to enable those who target export markets to continue to do so.</p>
Proposed solution	<p>Amend the Act to enable individual or defined groups of fishers or post-harvest exporters to seek export approval for their specific operations, rather than requiring assessments and approvals to be issued at the ‘fishery’ level. For fisheries where the clear bulk of the market is export based, a mechanism is needed for the fishery participants as a group – rather than the State Government on industry’s behalf – to make a collective decision whether or not to pursue export approval for the entire fishery (along with the associated costs and responsibilities).</p>

Issue 5	<p>The need for a new approach for <u>applying</u> the Act that better reflects the respective responsibilities of industry, the Commonwealth and the States/Territory, driven by the following range of issues:</p> <ul style="list-style-type: none"> • State/Territory fisheries agencies have been undertaking a substantial body of work for the initial and recurring re-assessments (on behalf of commercial fishers), including undertaking the detailed assessments, negotiating with fishers and other stakeholders about changes to fishing practices (and dealing with associated political angst and sometimes legal challenges), imposing resultant Commonwealth obligations on
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	<p>State/Territory fishers, and incurring substantial costs (some of which may be recovered from industry). There is no overarching agreement in place that reflects the current assignment of responsibilities and costs, with the exception of incidental correspondence exchanges between the Commonwealth and some State/Territory Ministers (or their delegates).</p> <ul style="list-style-type: none"> • The export approval instruments typically purport to impose conditions regarding fisheries management activities that are binding on State/Territory Ministers (or their agencies). However, the legal status of these conditions is questionable - eg. whether the Commonwealth has the lawful authority to impose binding conditions on States/Territory; the State's/Territory's liability to industry if conditions are not met and export approval is consequently revoked. It is noted that DEWHA has recently indicated (to Fisheries Victoria at a recent meeting on 18 May 2009) that it will look to revise the wording conditions and recommendations to avoid this problem in the future. • The current arrangements provide limited opportunity for commercial fisheries (whether at a fishery level or, as suggested in the issue above, groups within fisheries) to decide whether or not they wish to seek export approval, including the opportunity to weigh up the costs and benefits of accepting any additional or more intensive (rigorous or faster) rules in order to access export markets. The States/Territory appear to be making those decisions on industry's behalf, which is generally beyond the statutory role of fishery management agencies. • In the past, DEWHA has had limited direct engagement with industry operators, which has limited its understanding of the actual operation of fishing practices and associated risks, fishers' views, industry's capacity to adopt changes, and broader socio-economic considerations. It is encouraging that DEWHA has indicated a willingness to attend (on request) meetings of industry advisory bodies during the assessment phase.
<p>Proposed solution</p>	<p>The proposed three-way approach (Table 1 below) shows the roles and tasks that each group should be responsible for in a model that:</p> <ol style="list-style-type: none"> a. reflects mutually beneficial roles and outcomes for fisheries management agencies and DEWHA in sustainable fisheries outcomes; b. represents respective legislative roles of the Commonwealth and States/Territory; c. represents the responsibilities of industry (or industry members/groups) in making market and export decisions; d. provides reporting requirements that have the flexibility to cater for potential differences (timing and extent) between jurisdictional fisheries legislation and EPBC Act reporting; e. reflects contemporary approaches regarding devolved decision making; and f. apportions costs to the parties in accordance with agreed pricing and cost recovery principles.

Table 1. Proposed three way model.

DEWHA	INDUSTRY	MANAGEMENT AGENCY
<ul style="list-style-type: none"> • Assessment against EPBC Act. • Applies conditions on export (not fisheries management agencies). • Interview industry applicants & management agency to determine level of information for assessment. • Compliance audit, including any additional rules through post-harvest to export. • Foster industry leadership & capacity building. • Prepare assessment. • Enter a cost sharing arrangement, including taking account of any public benefits. 	<ul style="list-style-type: none"> • Decision to seek export approval (as individuals, groups, or a whole fishery). • Provision of information, including 'improvement plan'. • Report against conditions & recommendation annually & responds to audits. • Pay for preparation of the application for assessment (e.g. consultant). 	<ul style="list-style-type: none"> • Manages fishery as per jurisdictional law. • Reports on status of fisheries etc with regard to State/Territory requirements. • Assists with data/information requests. • Party to negotiations on any additional enhanced management arrangements requested by industry. • Foster industry leadership & capacity building.
<p>Option for the three parties to agree on arrangements for the management agency to prepare applications for assessment on behalf of industry in cases where industry does not have the capacity or capability to effectively and efficiently undertake this function, subject to cost sharing arrangements being determined by the parties for specific circumstances.</p>		