

## Governance, environmental policy and the way forward

- 6.1 Australia's enormous coastline and the vast oceans in its exclusive economic zone create considerable governance challenges, above and beyond the challenges to fisheries management posed by our federal system. Australia's governance arrangements have various historical origins, including pre-federation responsibilities, constitutional reform over many decades, the elaboration of international law, and the progress of scientific discovery.
- 6.2 The preceding chapters discussed the role of science for fisheries management and aquaculture in considerable depth. The way that science is integrated into government policy and the administration of policy is complex, especially as sustainability concerns have grown in relative importance in recent decades. Although governance arrangements are chiefly a matter of legislation and policy, their structure and operation are profoundly influenced by our knowledge of the natural world. This chapter will consider how governance arrangements can best serve the appropriate integration of science into managing Australia's fisheries and aquaculture industry.
- 6.3 Numerous ongoing shortcomings in Australia's fisheries governance arrangements were identified throughout the inquiry. Whilst many of these shortcomings have neither easy nor obvious solutions, reform can be advanced in an evolutionary way.
- 6.4 This chapter will discuss issues highlighted to the Committee in the following order:
- multi-jurisdiction management of single fisheries;

- the interactions between fisheries management policy and environmental policy; and
  - the separate administration of fisheries management and environment protection, both within the federal bureaucracy and between jurisdictions.
- 6.5 Governance specific to the aquaculture sector is discussed in Chapter 4.
- 6.6 Additionally, towards the end of the inquiry, the Minister for Agriculture, Fisheries and Forestry, Senator the Hon Joe Ludwig, announced a review of the Australia's fisheries management system. This review will also be discussed.
- 6.7 Lastly the chapter contemplates a possible way forward for fisheries management, aquaculture and recreational fishing in Australia.

## Multi-jurisdiction management

- 6.8 Whilst the Australian Government has effective jurisdiction over most of its waters, the majority of fisheries production value comes from State-managed fisheries. As pointed out the *Fishery status reports 2010*:

The gross value of production of Commonwealth fisheries has been stable over the last five years, estimated at \$316.7 million in 2009-10. This represents 15 per cent of the total value of Australian fishery production.<sup>1</sup>

- 6.9 Within the Commonwealth fisheries, most of the value comes from four fisheries:

The Northern Prawn Fishery, Southern and Eastern Scalefish and Shark Fishery, Southern Bluefin Tuna Fishery and the Eastern Tuna and Billfish Fishery were the four most valuable fisheries, contributing 77.7 per cent of the value of Commonwealth fisheries production.<sup>2</sup>

- 6.10 Evidence to the inquiry frequently pointed out the artificiality of Australia's internal borders. Whilst Australia has a social need for jurisdictional boundaries, these lines are often irrelevant – or unrelated to – the natural world. Hence, Australia's constitutional arrangements give authority over a single 'natural' fishery to numerous governments. As
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1 ABARES, 'Fisheries Status Reports 2010', October 2011, p.v.

2 ABARES, 'Fisheries Status Reports 2010', October 2011, p.v.

noted by the Hon Harry Woods (FRDC), this arrangement is 'not always [a] good thing, because the fish do not know the borders.'<sup>3</sup>

- 6.11 In general, State, Territory and Commonwealth fisheries are managed through a mixture of input controls (such permits and licences) and output controls (such as size, catch and possession limits). Rules and regulations vary among jurisdictions and for particular species or locations, with fishing operators obliged to comply accordingly. Complexities can arise when a target species has a habitat crossing jurisdictional lines.
- 6.12 The Department of Agriculture, Fisheries and Forestry submitted that multi-jurisdiction fisheries are generally avoided by the use of Offshore Constitutional Settlement arrangements:
- When a fishery falls within two or more jurisdictions, an Offshore Constitutional Settlement (OCS) arrangement is generally developed and responsibility is passed to one jurisdiction. OCS arrangements are usually defined in terms of species, fishing method and area and form the basis for ongoing cooperation between governments who share the management responsibilities. Alternatively, a Joint Authority may be formed whereby a fishery is co-managed through the legislation of one jurisdiction.
- Currently there are 59 fisheries OCS arrangements in place between the Commonwealth, states and the Northern Territory. Under the terms of these arrangements, the states and Northern Territory generally manage coastal, slow moving or inshore species such as rock lobster and abalone, while the Australian Government manages deepwater or migratory species subject to international agreements such as orange roughy, tuna and billfish throughout their range.<sup>4</sup>
- 6.13 However, this is not always possible, particularly where a fishery is large and when numerous states are involved. A prominent example is the southern rock lobster fishery, which comes under the jurisdiction of three states (Victoria, South Australia and Tasmania).<sup>5</sup>
- 6.14 Evidence from Mr Richard Stevens, of the Western Australian Fishing Industry Council, highlighted the interconnectedness of fisheries even

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3 Hon Harry Woods, *Committee Hansard*, 20 June 2012, p.6.

4 DAFF, Submission 24, p.8.

5 Victorian Government, *Rock Lobster Fishery Management Plan*, June 2003, p.5.

with Western Australia's considerable isolation from other parts of Australia:

Yes, across the Great Australian Bight there is a southern rock lobster fishery, a small one from Esperance to the bight. There are obviously the migratory species, which tend to be managed by the Commonwealth – the jack mackerel, the blue mackerel, the southern bluefin tuna, the other tuna. Between us and the Territory you have the Spanish mackerel. There is an argument that some of the deepwater snapper go right through the tropics and into Indonesia as well. There is the shark fishery in the north, which again crosses state and international boundaries.<sup>6</sup>

6.15 AFMA explicitly submitted that it 'is of the view that the current suite of OCS arrangements do not deliver efficient and cost effective management of fish stocks.'<sup>7</sup> Further, AFMA noted, 'too often a commercial fisher has to hold a fishing concession from more than one jurisdiction to fish the same fish stock.'<sup>8</sup>

6.16 The World Wildlife Fund agreed that the current system of fisheries management is impacting on the fishing industry and also the sustainability of fisheries that cross borders:

Fisheries science and management in Australia is typically fishery or jurisdiction-centric. However, increasingly, science is being asked to answer questions on a regional or ecosystem basis that involve overlapping fisheries and jurisdictions. Existing science and management structures and legislation, which generally operate in 'silos', are not well-equipped to deal with this, and there is no efficient and effective mechanism for dispute resolution or negotiation among jurisdictions and stakeholders interacting in the same ecosystem.

[...]

To deliver more sustainable outcomes, the adoption of a cumulative approach to scientific research in fisheries would necessarily entail greater cooperation at all stages in the science and management frameworks.<sup>9</sup>

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6 Mr Richard Stevens, *Committee Hansard*, 9 July 2012, p.11.

7 AFMA Submission 29, p.2.

8 AFMA, Submission 29, p.2.

9 WWF, Submission 11, pp.7-8.

- 6.17 The following section will detail the evidence collected about potential simplification and standardisation of fisheries management in Australia, including current efforts by various governments. Environmental policy interactions with fisheries management are then considered.

## Simplification and standardisation of fisheries management

- 6.18 A number of witnesses drew attention to the amount of effort and expense required to meet legislative and other requirements demanded of fisheries management in Australia. By simplifying fisheries management some witnesses argued that this could make available more funds for scientific research to progress the industry.

- 6.19 The FRDC cited a report it commissioned in 2009 to assess the impact of current management arrangements on the economic performance of Australian fisheries. According to the FRDC submission:

The report concluded that Australia's commercial wild-catch fisheries across all jurisdictions were under-performing compared to their potential. The value of this under-performance gap across all fishery users was in the order of \$416 million per year, or more than \$1 million forgone per day.<sup>10</sup>

- 6.20 Mr Ian Thompson (DAFF) said that fisheries are recognised as having a 'high level' of regulation.<sup>11</sup>

- 6.21 He said Council of Australian Government's Primary Industries Standing Committee:

...will look at deregulation, regulation streamlining, consistency or institutional frameworks which may make fisheries regulation more streamlined and more efficient.<sup>12</sup>

- 6.22 The Commonwealth Fisheries Association (CFA) expressed its displeasure with the contemporary tendency for AFMA's funding going towards 'overheads... rather than science.'<sup>13</sup>

- 6.23 Dr Nick Rayns (AFMA) explained arrangement's for the Authority's funding:

The fishing industry does pay levies to the government which the authority receives through its appropriation. They constitute

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10 FRDC, Submission 9, p.29.

11 Mr Ian Thompson, *Committee Hansard*, 30 May 2012, p.9.

12 Mr Ian Thompson, *Committee Hansard*, 30 May 2012, p.9.

13 Mr Brian Jeffriess, *Committee Hansard*, 20 August 2012, p.21.

about half of the costs of managing domestic fisheries, and currently that is running at about \$13 million a year. In terms of research, though, they pay disproportionately. Probably 75 per cent of our research budget is industry funded.<sup>14</sup>

- 6.24 Emeritus Professor Bob Kearney (retired, private capacity) said that Australian fisheries are 'very close to the best managed' in terms of protecting biodiversity and sustainability. However, he was concerned that the industry had not been able to expand:

...unfortunately, they are not well managed at all when it comes to the economics of ensuring the viability of the industries themselves. In fact, the problem there is that most of our fisheries are overcapitalised and Australia does not have a strategic approach to the management of our total fishery. As such, there has been virtually no development of new fisheries in Australia for the last 15 or 20 years, and the strategic issues, the big-picture issues, of how we manage our fisheries and the level of the industry's involvement in that have been totally neglected.<sup>15</sup>

- 6.25 Professor Kearney commented that 'there is no Australian fishing industry', but instead 'a collection of different fisheries' and 'not even a national fishing industry body'.<sup>16</sup>

- 6.26 Other witnesses argued that development of fisheries management cannot be progressed with current constitutional arrangements demarcating responsibility without regard for the permeation of ecosystems.

- 6.27 Dr Nick Rayns (AFMA) described the Offshore Constitutional Settlement (OCS) as being 'highly complex' and causing 'a lot of difficulty for industry' as this necessitates holding 'multiple concessions to fish the same fish stock.' He said there are almost 60 agreements between the Commonwealth and the States.<sup>17</sup>

- 6.28 Professor Euan Harvey (UWA Oceans Institute) said:

One of the big problems... is that ecosystems based fisheries management needs to transcend both state and federal boundaries. A fish does not really care that there is a 200-metre mark; it just happens to swim across; it does not know it has gone from federal to state waters. ...you need to look at a way of

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14 Dr Nick Rayns, *Committee Hansard*, 12 September 2012, p.10.

15 Prof Bob Kearney, *Committee Hansard*, 29 June 2012, p.17.

16 Prof Bob Kearney, *Committee Hansard*, 29 June 2012, p.17.

17 Dr Nick Rayns, *Committee Hansard*, 30 May 2012, p.11.

integrating the management concepts across federal and state waters.<sup>18</sup>

6.29 Two submissions from private individuals with fisheries backgrounds suggested that Australia should have a single fisheries science and management department, based on models in New Zealand, Norway, the United States and Canada.<sup>19</sup>

6.30 According to the CSIRO:

No arrangements currently exist to provide a forum for identifying integrated strategic marine management or for setting spatial management across multiple sectors.<sup>20</sup>

6.31 Dr James Findlay (AFMA) cited the Australian Fisheries Managers Forum as an example of cooperation, though the case remains that fishers 'might require four or five different licences to use the same boat in the same place catching the same things.'<sup>21</sup>

6.32 Mr Brian Jeffriess (CFA) agreed that a more uniform approach to rules and regulations among jurisdictions would be 'easier' and 'makes sense'. He said: 'We as an industry cannot understand why that issue is not being addressed.'<sup>22</sup>

6.33 Not all witnesses were supportive of having uniform and standardised legislation. 'There will be specific species on which it may be appropriate to head in that direction in specific fisheries and others probably not,'<sup>23</sup> said Mr Robert Gott (Tasmanian Department of Primary Industries, Parks, Water and the Environment). Mr Gott said he could understand the industry's position in relation to dealing with multiple jurisdictions, but believed such a move would be costly:

The caution that I urge my colleagues is that this is not simple and is not something where one size fits all, and the complexity and the resources required to head off down a path to achieve it are significant. That needs to be considered in the case of Tasmania where our resources are shrinking to the point where our capacity to engage in significant policy development work involving changes to legislation, changes to business rules, changes to

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18 Prof Euan Harvey, *Committee Hansard*, 9 July 2012, p.23.

19 Mr Joshua Aldrige, Submission 15, p.1; Mr Dennis Reid, Submission 16, p.2.

20 CSIRO, Submission 23, p.3.

21 Dr James Findlay, *Committee Hansard*, 30 May 2012, p.12.

22 Mr Brian Jeffriess, *Committee Hansard*, 20 August 2012, p.20.

23 Mr Robert Gott, *Committee Hansard*, 12 July 2012, p.52.

information technology systems comes against that significant cost.<sup>24</sup>

6.34 Mr Neil Stump (Tasmanian Seafood Industry Council) agreed: 'be careful what you wish for because you might get it,' he said. Mr Stump said there has been 'enough trouble trying to do that at a regional level', such as with abalone, where size limits vary locally depending on growth rates. Standardisation would 'probably not' improve management outcomes, he said.<sup>25</sup>

6.35 Mr Warwick Nash (Queensland Department of Agriculture, Fisheries and Forestry) said any decision on standardisation of rules and catch limits for fish species 'needs to be based around their biology.'<sup>26</sup>

6.36 He said:

I used to work in the abalone fishery in Tasmania. One of the striking things about that fishery is that you have abalone growing to different sizes in different parts of the state and reaching sexual maturity at different sizes.<sup>27</sup>

6.37 He continued:

So a single size limit for the different areas of the state just did not make sense because, for a given size limit, you had populations that were not protected at all – they had not had a chance to reproduce at all before they entered the fishery – and in other areas they would have been reproducing for many years before they entered the fishery. I think the same pattern applies to some of our fisheries along the eastern coast of Australia.<sup>28</sup>

6.38 Mr Nash said there may be merit in other aspects of standardisation, such as for registering boats and improving the exchange of fisheries data between jurisdictions and institutions.<sup>29</sup>

6.39 However, evidence from a number of governments highlighted the work currently being done to improve regulatory efficiency across all jurisdictions. Evidence from AFMA highlighted the progress that it and the NSW Government are making:

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24 Mr Robert Gott, *Committee Hansard*, 12 July 2012, p.52.

25 Mr Neil Stump, *Committee Hansard*, 12 July 2012, p.56.

26 Mr Warwick Nash, *Committee Hansard*, 20 August 2012, p.5.

27 Mr Warwick Nash, *Committee Hansard*, 20 August 2012, p.5.

28 Mr Warwick Nash, *Committee Hansard*, 20 August 2012, p.5.

29 Mr Warwick Nash, *Committee Hansard*, 20 August 2012, p.5.



In New South Wales we are committed to a set of principles about stock based management and we are even undertaking a single stock assessment at the moment for a number of the species. New South Wales used to do a stock assessment and we used to do one and then compare scientists at 10 paces. We are actually getting over all of that now, but there is still a long way to go.<sup>30</sup>

- 6.40 A specific example of collaboration was provided by the South Australian Government. In the case of the southern rock lobster fishery, the governments of South Australia and Victoria are working together to reduce inefficiencies:

...South Australia is undertaking rock lobster assessments for the Victorian rock lobster fishery, with additional fisheries likely to be assessed under similar contractual arrangements in the future.<sup>31</sup>

- 6.41 A high-level focus on productivity, through the Council of Australian Governments (COAG), is also seeking to improve fisheries regulation:

Under the Primary Industries Standing Committee, we are pursuing a fisheries productivity agenda with the states which will look at deregulation, regulation streamlining, consistency or institutional frameworks which may make fisheries regulation more streamlined and more efficient. We have also been speaking to colleagues in the environment department about how we can better align fisheries management arrangements and environmental protection arrangements, and similar agendas occur at the state level. ABARES is also commencing a study relating to fisheries regulation, looking at the costs of the current regulatory framework, compliance with it and the extent to which it could be improved. It is very early days. The work has barely started, but we see it fitting into the work that we are doing with the states.<sup>32</sup>

## Committee Comment

- 6.42 It is considerably difficult to understand the relationships and hierarchies between governments, research institutes and industry in the fisheries and aquaculture sector. There is also a lack of clarity about the strategic direction of scientific research priorities and the scientific principles behind fisheries management practices.

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30 Dr James Findlay, *Committee Hansard*, 30 May 2012, p.14.

31 Primary Industries and Regions South Australia, Submission 22, p.10.

32 Mr Ian Thompson, *Committee Hansard*, 30 May 2012, p.9.

- 6.43 Whilst the Committee received varying evidence about the complexity of Australia's fisheries management arrangements, there is an obvious lack of data about the inefficiencies of the current system. The Committee is supportive of ongoing efforts to harmonise fisheries management across multiple jurisdictions, but acknowledges that no single jurisdiction has a monopoly on good management.
- 6.44 As discussed in Chapter 2, there is also a need to assess the efficiency of the industry and to investigate whether its current structure and size is ideal.
- 6.45 In order to properly understand the size of these problems, the Committee believes that a review should be undertaken into the current structure of the industry across Australia and the efficiency and effectiveness of the inter-jurisdictional governance arrangements for Australian fisheries (particularly as they relate to fisheries that exist in multiple jurisdictions). Such a review could be led by the Productivity Commission. The review could also look at existing Offshore Constitutional Settlement arrangements, and assess their contribution and suitability for encouraging efficient fisheries management in Australian waters.

### **Recommendation 18**

- 6.46 **The Committee recommends that the Treasurer refer to the Productivity Commission an inquiry into the efficiency of the fisheries industry across Australia and the efficiency and effectiveness of the inter-jurisdictional governance arrangements for Australian fisheries.**

## **Fisheries management and environmental policy interactions in Australia**

- 6.47 This section summarises the objectives of fisheries management and related environmental legislation in Australia and then outlines its historical development. Stakeholder's views are then given on the separate administration of fisheries management and environmental approvals.

### **The objectives of environmental and fisheries legislation**

- 6.48 In Australia, fisheries are managed towards multiple economic, social and environmental objectives. This requires a balance to be struck between

maximising net economic returns, improving accountability, and ensuring environmental protection and conservation. Despite the need to balance multiple aims and the different focuses of each Act, there is a common thread between *FM Act*, the *FA Act* and the *EPBC Act* in terms of the need to adhere to the principles of ecologically sustainable development (ESD) and ecosystems-based management (EBM).

6.49 The objectives within the *FM Act* require the Minister and AFMA to be:

- (a) implementing efficient and cost-effective fisheries management on behalf of the Commonwealth; and
- (b) ensuring that the exploitation of fisheries resources and the carrying on of any related activities are conducted in a manner consistent with the principles of ecologically sustainable development (which include the exercise of the precautionary principle), in particular the need to have regard to the impact of fishing activities on non-target species and the long term sustainability of the marine environment; and
- (c) maximising the net economic returns to the Australian community from the management of Australian fisheries; and
- (d) ensuring accountability to the fishing industry and to the Australian community in AFMA's management of fisheries resources; and
- (e) achieving government targets in relation to the recovery of the costs of AFMA.<sup>33</sup>

6.50 The *FM Act* also requires the Fisheries Minister, AFMA and Joint Authorities to 'have regard' to the additional objectives of:

- (a) ensuring, through proper conservation and management measures, that the living resources of the AFZ [Australian Fishing Zone] are not endangered by over-exploitation; and
- (b) achieving the optimum utilisation of the living resources of the AFZ; and
- (c) ensuring that conservation and management measures in the AFZ and the high seas implement Australia's obligations under international agreements that deal with fish stocks; and
- (d) to the extent that Australia has obligations -
  - (i) under international law; or

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33 *Fisheries Management Act 1991*, s.3.

(ii) under the Compliance Agreement or any other international agreement; in relation to fishing activities by Australian-flagged boats on the high seas that are additional to the obligations referred to in paragraph (c) – ensuring that Australia implements those first-mentioned obligations; – but must ensure, as far as practicable, that measures adopted in pursuit of those objectives must not be inconsistent with the preservation, conservation and protection of all species of whales.<sup>34</sup>

- 6.51 The FM Act requires AFMA to ‘determine plans of management for all fisheries.’ Once in place, following consultative and other processes: ‘AFMA must perform its functions, and exercise its powers, under this Act in relation to the fishery in accordance with the plan of management.’<sup>35</sup>
- 6.52 As well as fisheries management focused legislation, approval of fisheries management plans are subject to separate environmental assessments in accordance with the EPBC Act.<sup>36</sup>
- 6.53 The first three objectives of the EPBC Act are:
- (a) to provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance; and
  - (b) to promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources; and
  - (c) to promote the conservation of biodiversity; ...<sup>37</sup>
- 6.54 Within the three related Acts – the *FM Act*, the *FA Act* and the *EPBC Act* - common thread between them of ESD is replicated and defined in the same terms, as:
- (a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equitable considerations;
  - (b) 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;

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34 *Fisheries Management Act 1991*, s.3.

35 *Fisheries Management Act 1991*, s.17(1) and 17(10).

36 AFMA, ‘Annual Report 2010-11’, p.10.

37 *Environment Protection and Biodiversity Conservation Act 1999*, s.3.

- (c) 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;
- (d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;
- (e) improved valuation, pricing and incentive mechanisms should be promoted.<sup>38</sup>

## Historical development

- 6.55 The objectives listed above and the related fisheries and environmental policy have a long history. The key historical documents include the:
- 1989 Fisheries 'New Directions' Policy Statement;
  - 1991 *FM Act and FA Act*;
  - 1995 International Code of Conduct for Responsible Fishing
  - 1997 Managing Commonwealth Fisheries committee report;
  - 1998 Oceans Policy;
  - 1999 *EPBC Act*;
  - 2000 Commonwealth Policy on Fisheries Bycatch
  - 2003 'Looking to the Future: A Review of Commonwealth Fisheries Policy'
  - 2007 'Harvest Strategy Policy';
  - 2007 'Guidelines for the Ecologically Sustainable Management of Fisheries';
- 6.56 In 1995, Australia agreed to the *Code of Conduct for Responsible Fishing*, a voluntary international instrument adopted at the UN Food and Agriculture Organisation (FAO) Conference by 170 member governments. The Code outlines standards for fisheries management, conservation, trade and aquaculture, amongst others; Article 6.1 states: 'The right to fish carries with it the obligation to do so in a responsible manner so as to

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38 *Fisheries Management Act 1991, s.3A; Fisheries Administration Act 1991, s.6A; Environment Protection and Biodiversity Conservation Act 1999, s.3A.*

ensure effective conservation and management of the living aquatic resources.’<sup>39</sup>

- 6.57 The Australian Government’s 1989 Fisheries Policy Statement - *New Directions for Commonwealth Fisheries Management* – recognised the relationship between environmental protection and fisheries by stating:

The full range of marine ecosystems must be protected so as to maintain biological food chains and associated habitats and to ensure continued biodiversity.<sup>40</sup>

- 6.58 The 1989 Statement also recognised the need to create the Australian Fisheries Management Authority. This was achieved with passage of the *FM Act* and *FA Act* in 1991. The Statement advocated that the creation of this new body was necessary to ‘streamline the administration of management programs’ and also to ‘enable the Government to effect its responsibilities in a flexible open and less bureaucratic way’.<sup>41</sup>

- 6.59 Notwithstanding acknowledgement in the 1989 statement of the need to balance protecting the environment and maximising the fishing industry’s economic efficiency, tensions persisted. These tensions were a major theme in this Committee’s 1997 report entitled ‘Managing Commonwealth Fisheries’.<sup>42</sup>

- 6.60 The 1998 Oceans Policy pronounced the need for bioregional planning to achieve environmental outcomes:

At the core of the Oceans Policy is the development of Regional Marine Plans, based on large marine ecosystems, which will be binding on all Commonwealth agencies.<sup>43</sup>

- 6.61 In 1999, the *EPBC Act* was a major reform of how Australia approached environmental regulation. It also added a new dimension to fisheries management by widening responsibility to include the environment

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39 FAO, *Code of Conduct for Responsible Fisheries* (FAO, Rome, 1995); see also DAFF, ‘Code of Conduct for Responsible Fishing’, at <http://www.daff.gov.au/fisheries/legal-arrangements/code-conduct>

40 Department of Primary Industries and Energy, ‘New Directions for Commonwealth Fisheries Management in the 1990s’, December 1989, p.75.

41 Department of Primary Industries and Energy, ‘New Directions for Commonwealth Fisheries Management in the 1990s’, December 1989, p xiv.

42 House of Representatives Standing Committee on Primary Industries, Resources and Rural and Regional Affairs, ‘Managing Commonwealth Fisheries: the Last Frontier’, June 1997.

43 Australian Government, ‘Australia’s Oceans Policy: Vol. 1’, 1998, p.2.

portfolio (currently SEWPaC), whereas historically fisheries agencies had had sole responsibility.<sup>44</sup>

6.62 All of AFMA's fisheries management plans are subject to the requirements of the *EPBC Act* and are accredited under Part 10 (strategic assessment), Part 13 (wildlife interactions) and Part 13A (export approval).<sup>45</sup>

6.63 This also extends to fisheries in State and Territory waters: fisheries in all Australian jurisdictions must undergo an initial assessment; thereafter agencies may supply annual assessments, starting with a simplified report and, if changes occur, graduating to additional comprehensive reports.<sup>46</sup>

6.64 The Commonwealth Policy on Fisheries Bycatch was released in 2000, which aimed to achieve 'bycatch reduction, improved protection for vulnerable and threatened species and minimising adverse impacts of fishing on the marine environment'<sup>47</sup>. The primary reason behind the policy was to 'ensure that direct and indirect impacts on marine systems are taken into account and managed accordingly'<sup>48</sup>.

6.65 The last major review of Commonwealth fisheries policy occurred in 2003 with the release of the 'Looking to the Future' report. This review confirmed commitment to the concept of ecosystem-based fisheries management. The report stated that DAFF and AFMA:

...will continue to contribute towards the integration of Commonwealth fisheries policy arrangements with new and emerging national policy initiatives relevant to marine resources management, including ecosystem-based fisheries management, bycatch, regional marine planning, marine protected areas and the development of an updated National Coastal Policy.<sup>49</sup>

6.66 However, management of Commonwealth fisheries reached a low point during the mid-2000s. AFMA's 2003-04 Annual Report stated:

Stock assessments and scientific analysis increasingly confirm the view of the AFMA Board – that Australia's fish resources have now reached the limit of their sustainable exploitation in most

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44 AFMA, Submission 29, p.4.

45 AFMA, Annual Report 2010-11', p.10.

46 SEWPaC, 'Guidelines for the Ecologically Sustainable Management of Fisheries', (Edition 2), p.4.

47 DAFF, 'Fisheries Bycatch', at <http://www.daff.gov.au/fisheries/environment/bycatch>

48 DAFF, 'Fisheries Bycatch', at <http://www.daff.gov.au/fisheries/environment/bycatch>

49 DAFF, 'Looking to the Future: A Review of Commonwealth Fisheries Policy', July 2003, p.48.

Commonwealth fisheries. In general, catches cannot be increased in the short term, and for some stocks, must be further reduced.<sup>50</sup>

- 6.67 In the same report, AFMA recognised the need to increase its efforts and introduced the concept of the ecological risk management (ERM) framework:

AFMA is also advancing 'ecosystem based' approaches to fisheries management. This means managing the impacts of fishing on target species, non-target species and the broader marine environment. Underpinning this approach are ecological risk assessments (ERAs) for fisheries to identify management priorities.<sup>51</sup>

- 6.68 In November 2005, a structural adjustment package totalling \$220 million, mostly comprising exit assistance, was offered to businesses and communities affected by the impact of reduced access to certain fisheries at risk of overfishing. At the same time, AFMA was issued with a Ministerial Direction pursuant to s.91 of the *FA Act* to recover the overfished stocks and develop a best practice harvest policy. A later evaluation of this approach in 2010 found that in general, 'net economic returns have improved in the post-buyback period', which was linked to 'fishery level cost decreases associated with reductions in vessel numbers as well as other factors including positive impacts from environmental and stock variation and previous management changes.'<sup>52</sup>
- 6.69 The 'Guidelines for the Ecologically Sustainable Management of Fisheries' were released by SEWPaC in 2007 to assist with the process of compliance with aspects of the *EPBC Act*.<sup>53</sup>
- 6.70 The Harvest Strategy Policy (HSP) was also released in 2007. It states that harvest strategies should 'control the fishing intensity in order to achieve defined biological and economic objectives' to achieve 'the sustainable and profitable utilisation of Australia's Commonwealth fisheries in perpetuity'. A qualification in the HSP noted that it is one mechanism among others to achieve ecologically sustainable and profitable fisheries.<sup>54</sup>

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50 AFMA, 'Annual Report 2003-04', p.4.

51 AFMA, 'Annual Report 2003-04', p.5.

52 ABARES, 'Impact of the Structural Adjustment Package on the Profitability of Commonwealth Fisheries', February 2010, pp.11-13.

53 SEWPaC, 'Guidelines for the Ecologically Sustainable Management of Fisheries', (Edition 2), p.2.

54 DAFF, 'Commonwealth Fisheries Harvest Strategy: Policy and Guidelines', September 2007, p.2 and p.4.



- 6.71 The design of the harvest strategy is based around a calculation of:
- maximum economic yield (MEY) and
  - maximum sustainable yield (MSY)
- 6.72 When there is excessive fishing effort, fish stocks decrease, dollar returns decline and costs rise. This is illustrated by the figure below (the abbreviations are prefixed with 'R' for 'return' and 'E' for 'effort'):

Figure 3 Harvest Strategy Policy yield model

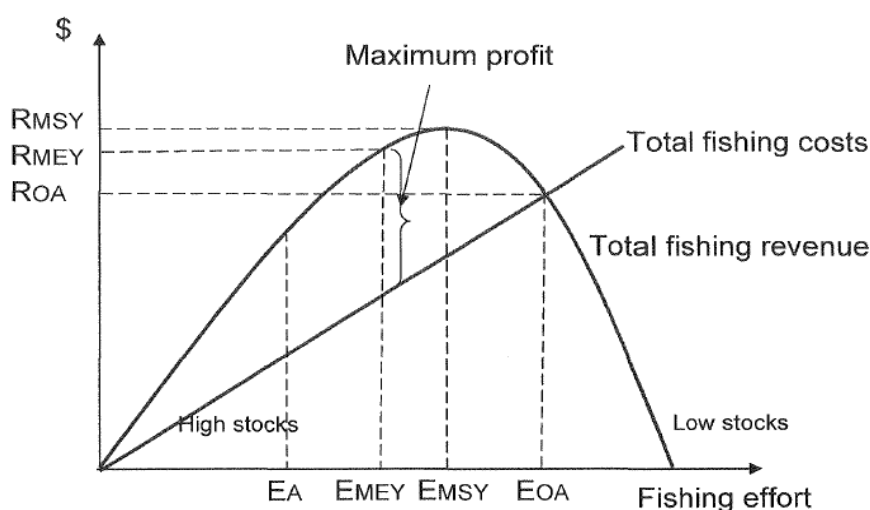


Figure 6: Maximum economic yield (see text for explanation).

Source DAFF, 'Commonwealth Fisheries Harvest Strategy: Policy and Guidelines', September 2007, p.28

- 6.73 Regarding the 2007 Harvest Strategy Policy, Dr James Finlay (AFMA) said it, 'sets some very tight rules about what we are trying to achieve'.<sup>55</sup>
- 6.74 The Harvest Strategy Policy and the Commonwealth Policy on Fisheries Bycatch were currently under review at the time this inquiry was conducted.
- 6.75 In 2010 the result of this long history of developing in fisheries management and related environmental legalisation was that 13 fisheries were regarded as overfished or subject to overfishing (compared to 24 in 2005) and the number of uncertain status fisheries also reduced to 27 (down from a peak of 52 in 2007).<sup>56</sup>

55 Dr James Findlay, *Committee Hansard*, 30 May 2012, p.13.

56 ABARES, 'Fisheries Status Reports 2010', October 2011, p.9.

- 6.76 The Australian Bureau of Agricultural and Resource Economics Sciences' (ABARES) 2010 Fisheries Status Report attributed these improvements to the: 2005 Fishing Future buyback; AFMA's imposition of stricter management measures (catch reductions, area and depth closures); and DAFF's 2007 Harvest Strategy Policy, amongst other actions.<sup>57</sup>
- 6.77 The CSIRO's submission agreed that there has been progress:
- Australia's fisheries jurisdictions have adopted ecosystem-based fisheries management as a policy goal. This is consistent with demand for environmentally friendly produced products. Spatial management and participatory or co-management are also key features of the fishery management system. Our fisheries are well managed by global standards.<sup>58</sup>

## **Separate administration of fisheries management and environment protection**

- 6.78 The administration of fisheries management and environmental protection activities is separated within the federal administration itself, and also between state and federal governments. These divisions have been the focus of significant public comment and also in evidence presented during this inquiry.
- 6.79 The Australian Government administers its fisheries management and marine environment protection responsibilities separately: the former through the Australian Fisheries Management Authority, the latter through the Department of Sustainability, Environment, Water, Population and Communities (SEWPaC). As noted above, these responsibilities are legislated, respectively, through the *Fisheries Administration Act 1991*, the *Fisheries Management Act 1991* and the *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)*.
- 6.80 In 2009, the Hawke Review of the *EPBC Act* found that:
- The Act has made a major contribution to shifting fisheries management from a target species-based management approach towards ecologically sustainable practices... Following application

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57 ABARES, 'Fisheries Status Reports 2010', October 2011, p.8.

58 CSIRO, Submission 23, p.3.

of the Act, the environmental performance of Commonwealth-managed fisheries improved significantly.<sup>59</sup>

- 6.81 The Hawke review addressed the issue of overlap between fisheries management and national environmental protection (both State and Commonwealth). The review noted the concerns of industry, as well as State and Territory governments, that the separate administration of the *EPBC Act* can cause additional assessments and potential 'double jeopardy'.
- 6.82 However, the Review did not accept that a case for major change had been made, stating that:
- fisheries assessments under the *EPBC Act* should continue to be conducted independently of fisheries management agencies. However, with the knowledge gained from several rounds of fishery assessments, improvements could be made to streamline and refine the assessment process without compromising environmental outcomes.<sup>60</sup>
- 6.83 The report stated that if duplication were to be reduced, this should not be at the expense of the *EPBC Act's* standards.<sup>61</sup>
- 6.84 However, the Review did recommend that the *EPBC Act*:
- Be amended so that the fishery provisions under Parts 10, 13 and 13A are streamlined into a single strategic assessment framework for Commonwealth and State and Territory-managed fisheries to deliver a single assessment and approval process.<sup>62</sup>
- 6.85 The Government has formally responded to the recommendations of the Hawke Review, and has also engaged with the Council of Australian Governments to progress a streamlining agenda for environmental approvals. The Government's position and progress of the COAG initiative are discussed below, following consideration of evidence to the inquiry.
- 6.86 The debate over the separate administration of fisheries management and environmental legalisation, as well as measures available to minimise
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59 Dr Allan Hawke, *Report of the Independent Review of the Environment Protection and Biodiversity Conservation (EPBC) Act 1999*, October 2009, p.206.

60 *Report of the Independent Review of the Environment Protection and Biodiversity Conservation (EPBC) Act 1999*, October 2009, p.208.

61 *Report of the Independent Review of the Environment Protection and Biodiversity Conservation (EPBC) Act 1999*, October 2009, p.206.

62 *Report of the Independent Review of the Environment Protection and Biodiversity Conservation (EPBC) Act 1999*, October 2009, p.209 – Recommendation 40.

unnecessary regulatory burden, were a prominent theme of this inquiry. Much of the evidence to the inquiry contested the view that the separation of environment protection and fisheries management continued to provide benefits.

6.87 AFMA, in its submission, remained concerned that 'the duplication of process and poor specification of the *EPBC Act* in relation to fisheries remains.' AFMA argued that while the *EPBC Act* 'adds an additional layer of bureaucracy', it 'does not fill any gaps in fisheries legislation regarding the objectives relating to resource sustainability.'<sup>63</sup>

6.88 AFMA submitted that:

arguments for the application of the *EPBC Act* to fisheries have been around transparency of process and decision making, involvement of conservation stakeholders, preventing marine species from going extinct and providing a 'level playing field' for all native species being exported from Australia. In AFMA's case in the 1990s and early 2000s there was a perception from some stakeholders that the Authority's Board was industry dominated and therefore biased in its decision making.

In 2008, following the Uhrig Review, AFMA moved from being a *Commonwealth Authorities and Companies Act 1997* agency to a *Financial Management and Accountability Act 1997* agency. In doing so the AFMA Board became a Commission and its membership changed to reflect these new arrangements including that industry office bearers cannot serve as Commissioners.<sup>64</sup>

6.89 Dr Nick Rayns (AMFA) told the Committee:

We would like to see the change go a bit deeper than the Hawke review has done... We are almost both doing the same thing in quite a few areas. Sustainable fisheries is our business and we would like to see our agency placed in a position of leading that business, with support from the environment agency – perhaps more in an audit role, if that is appropriate, but certainly not in a direct fisheries management role.<sup>65</sup>

6.90 Dr Rayns also stated that AFMA is using money and time to satisfy the requirements of environmental legislation, which, given 'that AFMA is a

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63 AFMA, Submission 29, p.4.

64 AFMA, Submission 29, p.5.

65 Dr Nick Rayns, *Committee Hansard*, 30 May 2012, p.11.

cost-recovery agency... a lot of the time we are also talking about the fishing industry's money.'<sup>66</sup>

6.91 AFMA elaborated on this issue in a supplementary submission to the Committee:

...AFMA is currently assessed under three parts of the *EPBC Act*. ... Although these assessments have been completed for all Commonwealth-managed fisheries, there is a requirement for further assessments when management arrangements change substantially. Removing this requirement and relying on the management plan public comment process and other environmental assessments under Parts 13 and 13A of the *EPBC Act* would significantly streamline the process for introducing or amending management plans.<sup>67</sup>

6.92 Ms Trixi Madon (CFA) said that the Hawke Review of the *EPBC Act* had made a recommendation 'about streamlining the two Acts... but still not at the priority level we would like to see'.<sup>68</sup>

6.93 Mr Brian Jeffriess (CFA) said that although the *EPBC Act* has 'some real benefits to fisheries', there should be legislative reform. He identified two areas that are 'taking money away from scientific research':<sup>69</sup>

- overlapping obligations for assessments. There is a need for 'internal rationalisation' of the *EPBC Act* to reduce overlapping obligations to routinely conduct similar assessments of the same fisheries (such as tuna, which Mr Jeffriess said is covered by four individual assessments). He said there should be 'internal rationalisation' and;<sup>70</sup>
- 'duplication between the *FM Act* and the *EPBC Act*'. Mr Jeffriess argued that Fisheries Management Act should be the primary point of accountability and the *EPBC Act*'s provisions should be a 'last resort'.<sup>71</sup>

6.94 IMAS was also not convinced that fisheries legislative and policy objectives work in unison. IMAS stated in its submission:

The management of fisheries harvests in all Australian jurisdictions involves a hierarchy of decision-making with

66 Dr Nick Rayns, *Committee Hansard*, 30 May 2012, p.11.

67 AFMA, Supplementary Submission 29.1, p.1.

68 Ms Trixi Madon, *Committee Hansard*, 20 August 2012, p.22.

69 Mr Brian Jeffriess, *Committee Hansard*, 20 August 2012, pp.21-22.

70 Mr Brian Jeffriess, *Committee Hansard*, 20 August 2012, pp.21-22.

71 Mr Brian Jeffriess, *Committee Hansard*, 20 August 2012, pp.21-22.

protection of [the] ecosystem and biodiversity placed above [the] sustainable economic performance of fisheries.<sup>72</sup>

- 6.95 Professor Harvey (UWA Oceans Institute) expanded these ideas further, recommending:

There is a need for a greater integration of fisheries and environmental legislation between all levels of government and within the levels of government. One of the biggest challenges that we are facing over here is the disconnect between some of the environmental legislation and some of the fisheries legislation. They do not align, they do not work together, they work in opposition and they do not create certainty. In fact, people spent a lot of time and wasted a lot of money.<sup>73</sup>

- 6.96 Mr Ian Thompson (DAFF) told the Committee there are no plans to dispense with the *FM Act* or the *EPBC Act*; however, he said there is an idea of having a process of mutual recognition of assessments.<sup>74</sup>

- 6.97 He said he did not believe that present legislative arrangements are 'wholly inefficient', although:

The industry have drawn to our attention opportunities for improvements where they see similar activities being regulated under different pieces of legislation that could be more streamlined.<sup>75</sup>

- 6.98 Mr Thompson added:

We have also been speaking to colleagues in the environment department about how we can better align fisheries management arrangements and environmental protection arrangements, and similar agendas occur at the state level.<sup>76</sup>

- 6.99 Mr Stephen Oxley (SEWPaC) informed the Committee that the Australian Government is hopeful of moving to an audit role, rather than continuing with active assessment, through building capacity and confidence in management systems. Mr Oxley said that the Australian Government is considering whether 'we can get to the point where fisheries management

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72 IMAS, Submission 27, p.5.

73 Prof Euan Harvey, *Committee Hansard*, 9 July 2012, p.26.

74 Mr Ian Thompson, *Committee Hansard*, 12 September 2012, p.4.

75 Mr Ian Thompson, *Committee Hansard*, 12 September 2012, p.10.

76 Mr Ian Thompson, *Committee Hansard*, 30 May 2012, p.9.

regimes in toto are assessed or accredited... so we do not have this continuing system of the assessment of individual fisheries one by one'.<sup>77</sup>

- 6.100 Mr Oxley noted that the Australian Government has made a full response to the Hawke Review, and agreed in principle to the streamlining recommendation.<sup>78</sup> However, as detailed in the Government's response:

The government agrees with the intent of this recommendation, but notes that the fisheries assessment provisions under the EPBC Act serve different functions – for example, ecological communities and listed migratory species in a Commonwealth area (Part 13), strategically assessing impacts on matters of national environmental significance (Part 10), and ecologically sustainable management of commercial export fisheries (Part 13A).

[...]

The government supports reducing the administrative and regulatory process involved in fishery assessments, including through less frequent assessments of well-managed fisheries.

In streamlining these provisions, it will be essential to preserve the above functions. In doing this, the government recognises that any legislative changes will need to be consistent with the extent of Commonwealth constitutional power, as well as with Australia's Offshore Constitutional Settlement on provisions governing fisheries operating in Commonwealth or state/territory waters.

Consistent with Recommendations 4 and 6 [relating to strategic assessments and the accreditation of state approvals processes], the government supports in principle a progressive shift under the amended Act from individual assessments of fisheries to accreditation of fisheries management arrangements. The government will ensure that the amended Act provides the appropriate legislative capabilities for this to occur.<sup>79</sup>

- 6.101 In addition to better coordination between fisheries management and environmental administration at the Commonwealth level, there have been advances by COAG towards streamlining environmental approvals.

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77 Mr Stephen Oxley, *Committee Hansard*, 19 September 2012, p.2.

78 Mr Stephen Oxley, *Committee Hansard*, 19 September 2012, p.2.

79 Australian Government, 'Australian Government Response to the Report of the Independent Review of the *Environment Protection and Biodiversity Conservation Act 1999*', August 2011, p.73.

6.102 In April 2012, 'COAG agreed to prioritise the development of assessment and approval bilateral agreements under the *EPBC Act*.'<sup>80</sup> Towards this end, in November 2012 Australian Government released a draft *Framework of Standards for Accreditation* of state assessment processes. The framework is expected to be finalised by December 2012.<sup>81</sup>

## Committee Comment

6.103 The Committee notes the evidence calling for fisheries management and environment protection to be undertaken by a single agency within the Australian Government. The Committee also notes the view of the Hawke Review that these responsibilities continue to be administered separately.

6.104 Whilst a single administrative body would likely provide administrative efficiencies, the Committee is aware of the considerable improvements to fisheries sustainability that have occurred as a result of the separate administration of the *EPBC Act* from the *FM Act*. The Committee does not believe that, at this time, there is enough evidence to support a move to abolish the separate administration of the *EPBC Act* requirements from the *FM Act* requirements.

6.105 However, the Committee believes that progress can be made at an administrative level to provide the industry with a more streamlined process. This should include working towards a single application process and potentially a single point of contact with the Australian Government for fisheries approvals. Ideally the aim should be towards a 'one-stop-shop' arrangement from an applicant's perspective; with any necessary co-ordination between government agencies happening behind the scenes as much as possible.

6.106 The Committee also notes the broader recommendation to allow greater accreditation of State environmental assessment processes, and looks forward to seeing this advance through the Council of Australian Governments, noting the Minister's release of a draft *Framework of Standards for Accreditation* of state assessment processes on 2 November 2012.

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80 SEWPaC, 'Reform of the EPBC Act', at <http://www.environment.gov.au/epbc/reform/index.html>

81 SEWPaC, 'Reform of the EPBC Act', at <http://www.environment.gov.au/epbc/reform/index.html>



**Recommendation 19**

- 6.107 **The Committee recommends that the fisheries management and environment protection responsibilities of the Australian Government continue to be administered by separate agencies, but that these agencies work towards a single application process (and potentially a single point of contact) for fisheries approvals, with the aim of providing a 'one-stop-shop' from the applicant's perspective.**

**Stakeholder engagement**

- 6.108 During the inquiry the absence of a peak national body for fishing (across all sectors) that could provide central representation became evident. This proved a challenge for the Committee in terms of identifying a cohesive national position from fishing stakeholders. It may also be part of the difficulty with communication between government and fishing stakeholders. There are some representative bodies at a national level and peak bodies within the States, but these groups are relatively fragmented and appear to lack the resources to coherently address high-level strategic policy relevant to fisheries. If a peak fishing body could be established it may be well-placed to participate in discussions to set national research and development priorities.

**Recommendation 20**

- 6.109 **The Committee recommends that commercial fishing organisations in Australia form a national peak body. This process could be initially assisted by the Department of Agriculture, Fisheries and Forestry through facilitating contact and coordination.**

**Review of Australia's fisheries management system and amendments to the *EPBC Act***

- 6.110 The Minister for Agriculture, Fisheries and Forestry Senator the Hon Joe Ludwig announced a review of Australia's fisheries management system on 13 September 2012.

- 6.111 The review was announced in the context of recent amendments to the *EPBC Act*, and the national debate on the arrival of the 'super trawler' in Australian waters.<sup>82</sup>
- 6.112 In order to properly understand the circumstances of the fisheries management system review, the *EPBC Act* amendments will firstly be outlined below, followed by a description of the fisheries review's terms of reference.

### Amendments to the *EPBC Act*

- 6.113 Amendments were made to the *EPBC Act*, by the passage of the *Environment Protection and Biodiversity Conservation Amendment (Declared Commercial Fishing Activities) Bill 2012 (the Amendment Bill)*. The amendment Bill was passed by Parliament, and entered into force on 19 September 2012.<sup>83</sup>

- 6.114 The amended *EPBC Act* provides for the Environment Minister and Fisheries Minister jointly:

to declare a commercial fishing activity, to be a 'declared commercial fishing activity' on an interim basis (interim declaration) if both Ministers agree that:

- there is uncertainty about the environmental impacts of the commercial fishing activity;
- it is appropriate to consult with fishing concession holders who consider themselves to be detrimentally affected by the making of a final declaration for the same fishing activity (declaration affected person); and
- the declared commercial fishing activity should be prohibited while consultation occurs.<sup>84</sup>

- 6.115 The amended Act also enables:

the Minister, with the agreement of the Fisheries Minister, to declare a commercial fishing activity to be a declared commercial fishing activity for a period of no longer than 24 months (final declaration) if both Ministers agree that:

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82 The Hon. Tony Burke, Media Release, September 11 2012, at <http://www.environment.gov.au/minister/burke/2012/mr20120911.html>

83 At the time of writing, the *Amendment Act* had received Royal Assent, but an amended version of the *EPBC Act* had not yet been placed on the Australian Government's legislation website, [www.comlaw.gov.au](http://www.comlaw.gov.au). References to sections of the updated *EPBC Act* have been made on the assumption that the *EPBC Act* is updated to include amendments from the *Amendment Act*.

84 *Environment Protection and Biodiversity Conservation Amendment (Declared Commercial Fishing Activities) Bill 2012*, Revised Explanatory Memorandum, p.3.

- there is uncertainty about the environmental impacts of the commercial fishing activity;
  - it is appropriate to establish an expert panel to conduct an assessment of the commercial fishing activity; and
  - the declared commercial fishing activity should be prohibited while the expert panel conducts its assessment of the commercial fishing activity.<sup>85</sup>
- 6.116 Other provisions of the *Amendment Bill* provide for a 12-month sunset clause on the declaration provisions<sup>86</sup>, create civil penalties for engaging in a declared fishing activity, and provide for the establishment of the expert panel, as well as the publication and tabling of its report.<sup>87</sup>

### Terms of reference for the fisheries management review

- 6.117 The terms of reference provide for a review of the principle legislation that governs the Australian Government's fisheries management, being the *Fisheries Management Act 1991* and *Fisheries Administration Act 1991*.
- 6.118 The terms of reference note that the advice from AFMA to the Minister is limited, particularly in relation to the operation of the 'precautionary principle'. The terms of reference further note that:
- As a consequence, the powers of the Minister to make decisions based on the precautionary principle are therefore equally limited in their scope, and the community is exposed to a less than sustainable model of fisheries management.<sup>88</sup>

- 6.119 In detail, the terms of reference direct the review to:
- Recommend changes to the Acts that clearly establish the *Fisheries Management Act 1991* as the lead document in fisheries management, and that all aspects of environmental, economic, and social consideration, and the relevant planning processes required be incorporated into the Acts, in a co-ordinated way;
  - Recommend any necessary changes to the Acts that affirm the powers of a Minister to take advice, and make decisions, with the full scope of the precautionary principle available within the *Fisheries Management Act 1991*, and that same definition of the precautionary principle apply in both the *Fisheries*

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85 *Environment Protection and Biodiversity Conservation Amendment (Declared Commercial Fishing Activities) Bill 2012*, Revised Explanatory Memorandum, p.3.

86 *Environment Protection and Biodiversity Conservation Act 1999*, s. 390SM.

87 *EPBC Act 1999*, s. 390SB, s. 390SH and s. 390SL.

88 Senator the Hon Joe Ludwig, *Review of Fisheries Management Act 1991 and Fisheries Administration Act 1991 Terms of Reference*, 13 September 2012.

*Management Act 1991 and the Environment Protection and Biodiversity Conservation Act 1999; and*

- Consider the need for modernising Commonwealth fisheries resource management legislation and approaches including penalty provisions, licence cancellations, the use of modern technology and co-management. Consideration of cost recovery arrangements will include consideration of the degree to which cost recovery might impact on the management of fisheries including investment in research and stock assessment.

6.120 The review is due to be completed by 13 December 2012, with any necessary legislative changes presumably to be introduced into Parliament early in 2013. The review notes that subsequent changes to the *EPBC Act* may also be necessary.

## Committee Comment

6.121 The Committee notes that the review of the fisheries management system will consider the interaction of the fisheries legislation with the *EPBC Act*, itself the subject of the recent Hawke Review.

6.122 Without pre-empting the outcomes of the review, the Committee looks forward to seeing improvements in the coordination of fisheries management and environment protection responsibilities between AFMA and SEWPaC and for greater clarity about the division of these responsibilities between ministers and departments.

6.123 The Committee notes the points made leading up to the establishment of AFMA as an independent statutory authority in the 1989 *New Directions for Commonwealth Fisheries Management* policy statement. The Statement argued that one of the strengths of setting up a statutory authority was 'less need for the Minister to become involved in day-to-day decision making'.<sup>89</sup>

6.124 The Committee believes that fisheries management should not be subject to political direction, except as provided by law. The Committee has every confidence that AFMA has the capability to fulfil its responsibilities according to its legislative objectives. Fisheries should not be managed by making exceptions to the rules depending on the weight of interests at stake.

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89 Department of Primary Industries and Energy, 'New Directions for Commonwealth Fisheries Management in the 1990s', December 1989, p.89.

## Recommendation 21

- 6.125 **The Committee recommends that fisheries management should not be subject to political direction, except as explicitly provided for in legislation.**

## The way forward

- 6.126 Fisheries management, aquaculture development and the pursuit of higher environmental standards have a long history in Australia - as detailed throughout this report.
- 6.127 There have been numerous policy statements, legislative changes and reviews conducted over the last two decades.
- 6.128 However, throughout this inquiry the Committee heard of the ongoing complexity and confusion surrounding the overarching national policy objectives for how we manage our fish.
- 6.129 The Committee is heartened that this problem may be partially remedied by the current review of Australia's fisheries management system and by the work under COAG to streamline environmental assessment processes. The Harvest Strategy Policy and Bycatch policies are also currently under review. However, the Committee notes that all of these activities remain focused on individual parts of the puzzle.
- 6.130 The Committee has made a number of recommendations throughout this report that would contribute in part to overcoming the challenges of developing good policy, including:
- that a dedicated and detailed national aquaculture plan be developed to guide the future of the sector and help it reach its full potential;
  - that the Productivity Commission be asked to review efficiency of the fisheries industry across Australia and the efficiency and effectiveness of the inter-jurisdictional governance arrangements for Australian fisheries; and
  - that several regular publications are compiled to improve the data available for good policy development, including reporting on:
    - ⇒ the total national investment in fisheries and aquaculture RD&E;
    - ⇒ recreational fishing impacts;
    - ⇒ comprehensive national stock information reporting; and

⇒ fisheries and aquaculture industry statistics.

- 6.131 Even if fully implemented, however, the Committee believes that these initiatives and those already underway by governments would not overcome the current stakeholder confusion or the absence of an overarching national policy statement.
- 6.132 Therefore, the Committee feels that a comprehensive national regional policy statement needs to be developed that covers fisheries, aquaculture and recreational fishing in one place. The statement also needs to work across jurisdictional boundaries, between Federal and State/Territory approaches. The policy statement needs to encourage and have actions to support the highest quality science, capitalising on Australia's already strong and internationally recognised capacity for research.
- 6.133 Despite the complexities faced within these sectors, a comprehensive national regional policy statement needs to pull the threads together and present a national vision for the future. Together these sectors are vital to our economy and our communities - and untapped potential remains. But this potential will only be achieved if all stakeholders come together to get the statement right and then work together to make the statement a reality.

## **Recommendation 22**

- 6.134 **The Committee recommends that the Australian Government, through the Council of Australian Governments, lead the development of a comprehensive national regional policy statement for fisheries, aquaculture and recreational fishing, which includes:**
- **an overall statement of strategic intent to drive future direction;**
  - **a new guideline on precaution; and**
  - **a research, development and extension work program.**



