



# **Australian Government**

Australian Government response to the Productivity  
Commission report: Inquiry into regulation of the Australian  
marine fisheries and aquaculture sectors

May 2017

## Introduction

The Australian Government welcomes the findings of the Productivity Commission's Inquiry into the regulation of Marine Fisheries and Aquaculture.

On 23 December 2015, the Australian Government asked the Commission to undertake an inquiry to identify opportunities to increase productivity and cut unnecessary and costly regulation, including streamlining arrangements across multiple jurisdictions, alternative more efficient regulatory models, the practices of the various regulators and removing unnecessary restrictions on competition.

Regulatory responsibilities for Australian Fisheries are shared between the Commonwealth and the state/Northern Territory (NT) governments based on agreements made under the Offshore Constitutional Settlement (OCS). The OCS is an agreement between the Commonwealth and the states/NT governments that determines the jurisdictional responsibility for managing the seas and seabeds within Australia coastal waters, territorial sea and exclusive economic zone (EEZ).

The OCS provides for the states/NT to exercise jurisdiction over fish stocks from the coast to the 3 nautical mile (nm) limit, while the Australian Government exercises jurisdiction from 3 nm to 200 nm at the edge of the Australia's EEZ, and for Australian flagged vessels operating in high seas areas. Accordingly, The Australian Government has direct jurisdictional responsibility for a number of fisheries which are referred to as '*Commonwealth-managed fisheries*' in general, and within this submission.

Day-to-day management of Commonwealth-managed fisheries is the responsibility of the Australian Fisheries Management Authority (AFMA). The Department of Agriculture and Water Resources (DAWR) is responsible for fisheries policy development that seeks to ensure more sustainable, productive, internationally competitive and profitable Australian fishing and aquaculture industries. DAWR develops policies and initiatives that promote better resource management practices, innovation, self-reliance and improved access to international markets. DAWR is also involved in biosecurity measures to safeguard Australia's animal and plant health status to maintain overseas markets and protect the economy and environment.

Australia's fishing industry is small by international and regional standards. The Australian Fishing Zone (AFZ) is the third largest EEZ in the world, covering approximately nine million square kilometres. Despite this large EEZ, limited nutrient runoff and lack of large river flows, combined with the absence of substantial upwellings of cold nutrient-rich water mean that Australia's commercial catch tonnage ranks 60th in the world and represents 0.2 per cent of the world's total wild capture fisheries of 90 million tonnes. At the same time, Australian waters support a highly diverse array of over 4000 marine species, many of which are endemic and are part of globally significant marine ecosystems, such as the Great Barrier Reef. This marine resource is shared between commercial fisheries (wild catch and aquaculture), recreational fishing and Indigenous fishing.

As wild capture fisheries are using a public resource, fisheries management is under environmental scrutiny. All Commonwealth-managed fisheries and state/NT fisheries, where the commercial wild catch fishery is engaged in export, are subject to environmental assessment and approval under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC

Act). This Act is administered by the Australian Government Department of the Environment and Energy. Australian fisheries are also subject to various international treaties, including the United Nations Convention on the Law of the Sea and the United Nations Fish Stocks Agreement, as well as a range of internationally recognised voluntary arrangements. Several fisheries managed by the Commonwealth target species that migrate or straddle international waters. These fisheries are oversighted by the relevant treaty-based regional fisheries management organisations which establish member-agreed regulations for the sustainable management of fish stocks and protection of the environment in specified regional fisheries. Australia gives effect to its international obligations via domestic fisheries management arrangements -for example, through quotas or gear restrictions for environmental reasons.

In 2014-15 the gross value of production of Australia commercial fisheries and aquaculture was \$2.6 billion, with Commonwealth-managed fisheries accounting for \$350 million. Australia's commercial fishing and aquaculture industry employs around 14 000 people.

## Detailed response to the recommendations

The Australian Government is aware that numerous recommendations in the Productivity Commission report into Marine Fisheries and Aquaculture relate to Commonwealth, state and Northern Territory fisheries. As such, the Australian Government is working with state and Northern Territory governments at the ministerial and senior official levels on further opportunities for a collaborative, cross-jurisdictional approach to improve fisheries management arrangements and progress relevant recommendations.

### Access to fisheries resource

#### RECOMMENDATION 2.1

The State and Northern Territory Governments should amend relevant planning instruments so that planning and land/marine use proposals take into account their potential impacts on marine fishing activities.

**The Australian Government notes the recommendation**, recognising that it is a matter for state and territory governments and local councils.

The EPBC Act requires that a person must not take an action unless approval is given under the EPBC Act for action that has, will or is likely to have a significant impact on the environment in a Commonwealth marine area.

#### RECOMMENDATION 2.2

The New South Wales, Victorian, Queensland and Tasmanian Governments should adopt the practice of other jurisdictions and develop and implement a harvest strategy policy. Harvest strategy policies should be developed with regard to the National Guidelines to Develop Fishery Harvest Strategies.

**The Australian Government supports the recommendation**, recognising that it is a matter for the New South Wales, Victorian, Queensland and Tasmanian governments.

As outlined in its submissions of 28 April 2016 and 25 October 2016, Commonwealth-managed fisheries have operated under harvest strategies since the introduction of the *Commonwealth Harvest Strategy Policy 2007*.

The Australian Government considers it important that individual harvest strategies allow for compatible management approaches between jurisdictions in order to improve cross-jurisdictional management of shared fish stocks. Cooperation between jurisdictions to implement harvest strategy approaches will improve the consistency of management approaches such as output controls based on stock assessment, quantitative decision rules and nationally consistent harvest strategies.

#### RECOMMENDATION 2.3

The Australian, Victorian, Queensland and Tasmanian Governments should adopt the practice of other jurisdictions and develop a policy to guide the allocation of access to fisheries stocks between different sectors.

The allocation policies of all governments should seek to promote the best use of fishery resources and provide confidence in relation to the processes involved in determining resource shares. At a minimum these policies should outline:

- triggers for review of existing allocations between sectors
- the review process, including how consultation will occur
- key considerations that will guide decisions.

These policies should be publicly available.

#### **The Australian Government supports the recommendation.**

The Australian Government is currently developing a resource sharing policy and will work collaboratively with state and Northern Territory governments to ensure a consistent cross-jurisdictional approach to resource sharing. As noted in its submissions of 28 April 2016 and 25 October 2016, the Australian Government supports comparable resource sharing policies based on a national policy or national guidelines to enable more compatible cross jurisdictional cooperation on resource sharing issues.

The Productivity Commission also recommends that allocation policies should 'promote the best use of fishery resources'. The *Fisheries Management Act 1991* (Cth) (FMA), under which Commonwealth fisheries are managed, includes in its objective of maximising the net economic returns to the Australian community from the management of Australian fisheries. However, the Australian Government notes that the net economic return may be affected by other sectors, such as the recreational and Indigenous sectors. To account for these effects requires adequate data and the use of appropriate methods to value the national economic contribution of the individual sectors.

#### RECOMMENDATION 2.4

All governments should consider a move to trading of access rights between the commercial and recreation sectors in the longer term for suitable, higher value fisheries. Policy makers should observe the performance of overseas inter-sectoral trading models, with a view to understanding how similar models can be applied in Australia.

#### **The Australian Government supports the recommendation.**

The Australian Government is currently developing a resource sharing policy. The policy will consider the practicalities of inter-sectoral trading.

The Australian Government will work with state and Northern Territory governments to encourage consistency in resource sharing policies, including on inter-sectoral trading, as appropriate.

### **Commercial fishing**

#### RECOMMENDATION 3.1

The State and Northern Territory Governments should establish individual transferable quota as the default management system for each of their fisheries.

If it is not technically feasible or would not be cost effective, governments should adopt individual transferable effort systems, or otherwise a management approach that permits as much flexibility as practicable in the trading of fishing rights.

The Australian Government should complete the move of its fisheries to either individual transferable quota or individual transferable effort systems.

Governments should publicly release reasons for the management approach taken for each fishery.

#### **The Australian Government supports the recommendation.**

The Australian Government has implemented this recommendation at the Commonwealth level. A 2005 Ministerial Direction required AFMA to take immediate action to cease overfishing, and to take a more strategic, science-based approach to setting total allowable catch and/or effort levels in Commonwealth-managed fisheries, consistent with a world's best practice *Commonwealth Harvest Strategy Policy 2007* that has the objectives of managing fish stocks sustainably and profitably. This included having regard for long-standing Commonwealth policy to implement output controls in the form of individual transferable quotas for all fisheries. The *Commonwealth Harvest Strategy Policy 2007* notes that individual transferable quotas within a total allowable catch framework remain the government's preferred management approach, nonetheless many other potential fishery management tools or levers may be utilised as appropriate. The case for implementing individual transferable quotas could be set aside where there was a strong case, on a fishery by fishery basis, that this would not be cost effective or would be otherwise detrimental. All Commonwealth fisheries deemed to be suitable for individual transferable quotas have now had them implemented.

AFMA has determined that certain fisheries including the Coral Sea Fishery, North West Slope Fishery, Western Deepwater Trawl Fishery and Skipjack Fishery are managed via input controls. Noting that the Northern Prawn Fishery is managed under individual transferable

effort quotas in accordance with the *Commonwealth Harvest Strategy Policy 2007*. DAWR will, in cooperation with the AFMA, ensure that the reasons for the chosen management approach in each Commonwealth-managed fishery are released publicly.

The Australian Government, in its submission to the Productivity Commission of 28 April 2016, recognised that valid arguments existed for using either input or output controls in a particular fishery. However, having different jurisdictions using different approaches on a single stock is not optimal for the economic or environmental performance of the fishery involving shared fish stocks.

The Australian Government will seek to collaborate further with state and Northern Territory governments toward resolving potentially conflicting management approaches of shared fish stocks including the implementation of output controls.

#### RECOMMENDATION 3.2

All governments should regularly review commercial fishing regulations and fishery-specific controls to ensure that they only impose the minimum restrictions necessary to meet policy objectives.

#### **The Australian Government supports the recommendation.**

The Australian Government committed in 2013 to reduce the regulatory burden on recreational fishers, commercial fishers and downstream processors, including harmonising regulations and implementing more effective outcomes across agencies. The *White Paper on Developing Northern Australia* committed the government to streamline fisheries regulation, including by shifting to single jurisdiction fisheries management; devolve aquaculture management to the states and territories; share licensing and compliance services; and extend export approvals to 10 years for low risk fisheries. The *White Paper on Developing Northern Australia* and the *Agricultural Competitiveness White Paper* recommended the Productivity Commission Inquiry to identify duplicative or poorly implemented regulations that are harming investment in Australia's fisheries and aquaculture industries.

In accordance with the commitment to reducing red tape for businesses, AFMA has embarked on a continuous improvement program to identify and eliminate red tape on Commonwealth-managed commercial fishers. To date AFMA has implemented over thirty initiatives to directly reduce unnecessary regulatory burden on fishers. AFMA is continuing to deliver further initiatives and is working with stakeholders to identify additional areas to reduce red tape across Commonwealth-managed fisheries.

The Australian Government will work with state and Northern Territory governments to ensure fishery-specific controls across jurisdictions only impose the minimum restrictions necessary to meet policy objectives.

## Recreational fishing

### RECOMMENDATION 4.1

Within the next three years all jurisdictions should require recreational fishers to obtain licences to fish in marine waters.

- The Queensland, South Australian and Northern Territory Governments should introduce licensing for independent recreational marine fishing.
- The New South Wales and Victorian Governments should improve the comprehensiveness of existing schemes by removing exemptions.
- The Western Australian and Tasmanian Governments should broaden the scope of licensing to include all recreational fishing activity.
- The Victorian and Tasmanian Governments should introduce licensing for marine fishing charter boat operators.
- The Australian Government should consider licensing of recreational fishers if it takes on greater responsibility for the management of recreational catch.

**The Australian Government supports the recommendation in principle**, but recognises the varying licence programs implemented by states and the Northern Territory and the differing reasons for and roles these programs play.

The Australian Government does not manage recreational fishing activity. However, the Australian Government notes the value of a low-cost licence in providing data to assist better management of the resource for all users.

### RECOMMENDATION 4.2

Governments should consider implementing harvest tagging or restricted licences to manage valuable at-risk species when conventional management controls (such as bag and size limits) are ineffective in achieving sustainability goals or meeting harvest allocations.

**The Australian Government supports the recommendation.**

The Australian Government is considering possible approaches to managing the recreational catch of valuable, quota managed species. Such approaches include the potential application of harvest tagging or restricted licensing regimes.

The Australian Government currently has no regulatory role in managing recreational fishers. The Australian Government is working with state and Northern Territory fisheries managers on options for shared fisheries management arrangements for recreational fisheries including, in limited circumstances, a direct role for the Australian Government in managing specific stocks.

#### RECOMMENDATION 4.3

The State and Northern Territory Governments should review penalty regimes for marine recreational fishing to ensure that penalties support deterrence and are proportional to the level of harm posed to the fishery.

**The Australian Government supports the recommendation**, recognising that it is a matter for state and territory governments.

Fishing penalty regimes should be commensurate with achieving the objectives they are designed to achieve, i.e. deterring illegal activity.

#### RECOMMENDATION 4.4

The Australian Government should conduct a national survey of recreational fishing in 2018-19, using a comparable approach to the 2000-01 national survey. The cost of the survey should be shared by all governments.

From 2023-24 all governments should undertake five yearly surveys of recreational fishers, whether at the national level or on a coordinated jurisdictional basis.

Surveys should be consistent across jurisdictions and focus on participation, catch and effort, identification of species important to recreational fishers and information on the value of recreational fishing. The information should be made publicly available.

**The Australian Government supports the recommendation in principle.**

The Australian Government supports the need for regular comprehensive recreational fishing surveys. This needs to be undertaken with the support of state and Northern Territory governments, particularly in respect of catch and effort data.

Fisheries Ministers from Commonwealth, states and the Northern Territory at their meeting on 29 April 2016 recognised the benefits of a coordinated approach to surveying the Australian recreational fishing sector. Ministers agreed to task a working group under the Australian Fisheries Management Forum to explore opportunities to harmonise and share recreational fishing information across jurisdictions, identifying management priorities and developing long-term data collection approaches.

The Australian Government intends to commence a national survey of recreational fishers in 2017, focussing on social and economic information. Prospective data and information requirements will dictate the nature of future surveys. These are likely to evolve as fisheries management arrangements improve with time.

Recent work within DAWR estimated the cost of a national survey of recreational fishing including estimated catches of the main recreational species to be in excess of \$6 million.



## Indigenous fishing

### RECOMMENDATION 5.1

Fisheries management regimes should recognise Indigenous customary fishing as a sector in its own right.

This recognition should provide for fishing by Indigenous Australians in accordance with the laws and customs of their community (including fishing for commercial purposes, where provided for by these laws and customs).

Customary fishing rights should not be limited to native title holders.

**The Australian Government supports the recommendation**, but notes that the state and Northern Territory governments will need to consider implementing recognition of Indigenous customary fishing in their own legislation (where they have not already done so).

The Australian Government is strengthening mechanisms for engagement with Indigenous communities and fishers in the FMA and the *Fisheries Administration Act 1991* (Cth) (FAA). The rights of Indigenous fishers are already recognised in the *Torres Strait Fisheries Act 1984* (Cth) and central to the management of fisheries in the Torres Strait, under the Protected Zone Joint Authority (PZJA). The Queensland government also has a role in the management of fisheries under the PZJA.

### RECOMMENDATION 5.2

Indigenous customary fishing for commercial purposes that is: i) significant in terms the quantity and/or value of fish sold, bartered or exchanged, and/or ii) sold into conventional supply or processing chains should be regulated by the commercial fishing laws applying to all other citizens.

The specific thresholds at which the trade of fish is deemed to be significant should be set by governments in collaboration with the relevant Indigenous communities and other stakeholders.

**The Australian Government supports the recommendation.**

The Australian Government supports the management of customary fishing for commercial purposes to ensure the sustainability of the fishery. The rights of Indigenous fishers for traditional and commercial purposes in the Torres Strait region are managed in accordance with the *Torres Strait Fisheries Act 1984* (Cth). The Act seeks to provide for the traditional way of life and livelihood of traditional inhabitants of the region, while allowing commercial fishing in such a manner as to promote economic development in the Torres Strait area and provide employment opportunities for traditional inhabitants.

### RECOMMENDATION 5.3

Where there is a need for resource sharing arrangements, governments should set aside a level of catch for local Indigenous communities that is sufficient to maintain their customs before allocating access to other sectors.

The level of catch should be agreed between Indigenous customary fishers and fisheries managers, but should be subject to overarching fishery management goals, including the sustainable utilisation of fish stocks.

#### **The Australian Government supports the recommendation.**

The rights of Indigenous fishers for traditional and commercial purposes in the Torres Strait region are managed in accordance with the *Torres Strait Fisheries Act 1984* (Cth). The Act seeks to provide for the traditional way of life and livelihood of traditional inhabitants of the region, while protecting and preserving the marine environment.

The Australian Government is developing a resource sharing policy, which may consider approaches to allocating fisheries resources to individual sectors, such as the Indigenous sector.

### RECOMMENDATION 5.4

In designing laws consistent with the recommendations in this report, any controls over Indigenous customary fishing activities should be developed, implemented and enforced in collaboration with Indigenous communities.

#### **The Australian Government supports the recommendation.**

The Australian Government supports appropriate and proportional consultation strategies for consulting with Indigenous fishers on relevant fisheries management matters.

The *Torres Strait Fisheries Act 1984* (Cth) provides for consultation with traditional inhabitants on any matter relating to the administration of this Act that may affect the interests of traditional inhabitants. The Commonwealth also consults with Indigenous fishers on Indigenous issues more broadly through the Fisheries Research and Development Corporation Indigenous Reference Group. The Indigenous Reference Group provides expertise-based advice on a range of matters dealing with aspects of Australia's Aboriginal and Torres Strait Islanders fishing and seafood industry focused research, development and extension. The Group includes Indigenous members representing a diversity in geographic location, gender and age and must act on behalf of the interests of Australian Aboriginal and Torres Strait Islanders as a whole.

The Torres Strait Regional Authority (TSRA) aims to improve the lifestyle and well-being of Torres Strait Islander and Aboriginal people living in the region through the implementation of programs that address their poor socio-economic and health status, including participating as a member of the Protected Zone Joint Authority, which is responsible for the management of all fisheries in the Torres Strait. The TSRA undertakes community meetings for specific policy or programmatic issues or initiatives as well as providing information on issues and seeks feedback through a range of media formats.

## Fisheries spanning jurisdictions

### RECOMMENDATION 6.1

In reforming cross-jurisdictional fisheries, all governments should:

- focus first on higher value and at-risk fish stocks that are subject to inconsistent management arrangements
- consider whether the transfer of management responsibility to one jurisdiction or shared management with a better alignment of management arrangements would produce the greater net benefits.

#### **The Australian Government supports the recommendation.**

The Australian Government will continue to work with jurisdictions to resolve all shared fisheries and fish stocks subject to inconsistent management arrangements through reforms to Offshore Constitutional Settlement (OCS) arrangements. The Australian Government, in consultation with the state and Northern Territory governments, has identified priority issues that need addressing and will continue to consider inconsistent management arrangements between jurisdictions on a case-by-case basis, taking into account the costs and the net benefits of potential reforms.

Cross-jurisdictional cooperation is hampered by differing management approaches. The Australian Government will seek to work more closely with jurisdictions on OCS reforms. Without significant efforts to harmonise or implement consistent harvest strategy regimes, including the use of output controls (such as individual transferable quota and individual transferable effort regimes) and resource allocation policies, efforts for greater cross-jurisdictional cooperation may have limited effectiveness.

### RECOMMENDATION 6.2

The Australian Government should set allowable catch limits of southern bluefin tuna for all fishing sectors. Sectoral allowances should be in place in advance of the southern bluefin tuna fishing season commencing on 1 December 2018.

In consultation with fishers, the Australian and State Governments should negotiate the nature of, and responsibility for, day-to-day management of recreational fishers catching southern bluefin tuna.

**The Australian Government supports the recommendation**, noting that cooperation of relevant states is required.

The Australian Government is seeking to ensure all fishing mortality of southern bluefin tuna (SBT), including commercial and recreational catch, is managed within Australia's national allocation from the Commission for the Conservation of Southern Bluefin Tuna.

The Australian Government is working to develop possible approaches to resource sharing of SBT with relevant state governments, and in particular, a more active management approach to recreational fishing of SBT. Options may include cooperative models for monitoring and managing recreational catch, single jurisdiction management approaches or the Australian Government taking an active role in managing the recreational catch of SBT.

#### RECOMMENDATION 6.3

The New South Wales Southern Fish Trawl Restricted Fishery should be absorbed into the Commonwealth Trawl Sector of the Southern and Eastern Scalefish and Shark Fishery by the end of 2018.

#### **The Australian Government supports the recommendation.**

The Australian Government is negotiating with the New South Wales government on options for the absorption of the NSW Southern Fish Trawl Restricted Fishery into the Commonwealth Trawl Sector of the Southern and Eastern Scalefish and Shark Fishery.

#### RECOMMENDATION 6.4

The New South Wales, Victorian and Queensland Governments should ensure the joint stock assessment project for the east coast biological snapper stock proceeds as an immediate priority.

**The Australian Government supports the recommendation**, noting that the Commonwealth Southern and Eastern Scalefish and Shark Fishery has a minor bycatch of snapper.

The Australian Government recognising that it is primarily a matter for the New South Wales, Victorian and Queensland governments, but is committed to supporting the work of the stock assessment project.

#### RECOMMENDATION 6.5

The management arrangements for cross-jurisdictional fisheries and supporting memoranda of understanding should be reviewed regularly by governments to ensure they remain fit for purpose.

The *Principles Guiding Revision of the OCS Fisheries Arrangements* should be amended to include an intention to limit the extent of shared jurisdiction over expanses of water and fishing methods wherever possible.

#### **The Australian Government supports the recommendation.**

The Australian Government supports reviewing cross-jurisdictional arrangements and supporting memoranda of understanding to ensure they remain fit for purpose. However, the Australian Government notes that many OCS arrangements for shared fish stocks are functioning well and that the cost of reforming some OCS arrangements may outweigh the potential benefit to the fishery. As recommended by the Productivity Commission, the Australian Government will focus reform work on high value and at-risk stocks that are subject to inconsistent management arrangements’.

The Australian Government also supports amending the *Principles Guiding Revision of the OCS Fisheries Arrangements* to limit the extent of fish stocks managed by more than one jurisdiction. In considering jurisdictional responsibilities the Principles should also consider the impact of other forms of fishing mortality, including recreational and Indigenous customary fishing, where these have a significant impact on the sustainability of the stock and/or the maximisation of net economic returns to the Australian community.

#### RECOMMENDATION 6.6

The task of reviewing and developing reforms to reduce the costs of cross-jurisdictional fisheries should be the subject of a joint Ministerial direction to agencies.

All governments should make the reform of cross-jurisdictional fisheries a collective priority and issue a joint reform strategy within 12 months of the release of the Commission's final report. Progress against the strategy should be reported annually over its term.

#### **The Australian Government supports the recommendation in part.**

The Australian Government will continue to work with jurisdictions to develop a joint reform strategy to improve cross-jurisdictional management of shared fish stocks. A joint cross-jurisdictional reform strategy should take account of the potential net benefits of proposed reforms, not just the how costs can be reduced.

The Australian Government considers there is no need to add an additional layer of complication to cross-jurisdictional reform by seeking ministerial direction on a reform strategy. Reform strategies will need flexibility to deal with changes in fishing management approaches and respond to changing scientific advice.

Cross-jurisdictional cooperation is hampered by differing management approaches. The Australian Government is seeking the views of jurisdictions on undertaking more focused work on OCS reforms. Without significant efforts to harmonise or implement consistent harvest strategy regimes, including the use of output controls (such as individual transferable quota and individual transferable effort regimes), and resource allocation policies, any efforts will have limited effectiveness.

### **Managing the environmental impact of fisheries**

#### RECOMMENDATION 7.1

The Australian Government should publish online the annual reports that fisheries produce as part of their accreditation requirements under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth).

#### **The Australian Government supports this recommendation.**

The Commonwealth supports the requirement for publication of online annual reports and notes that many jurisdictions already publish their annual reports on their own websites. The Commonwealth will encourage all jurisdictions to adopt this practice.

#### RECOMMENDATION 7.2

The Australian Government should reduce the regulatory burden involved in environmental approvals by:

- continuing to move fisheries that represent lower environmental risk to 10-yearly approvals under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth)
- not requiring fisheries to be accredited or their accreditation to be periodically renewed if satisfied that they present low environmental risk.

#### **The Australian Government supports this recommendation in principle.**

The Australian Government supports the first part of the recommendation and has already moved 49 fisheries that represent lower environmental risk to a 10-yearly approval cycle under the EPBC Act.

The EPBC Act provides for the export of regulated native Australian wildlife where there is an assessment and approval that the operation is ecologically sustainable.

Under the EPBC Act, an assessment enables a determination by the Minister for the Environment and Energy of whether a fishery remains low risk. This is informed by annual reports referred to in Recommendation 7.1 and a ten yearly assessment to ensure fisheries continue to present a low risk to the environment.

#### RECOMMENDATION 7.3

All governments should expand the use of explicit mortality limits for fisheries that have a high risk of interaction with threatened, endangered and protected species.

Explicit mortality limits should be used in conjunction with cost-effective and reasonable controls on fishing to minimise interactions with threatened, endangered and protected species in the first place.

#### **The Australian Government supports this recommendation.**

Under the EPBC Act, it is an offence to harm threatened species, migratory species, listed marine species, whales or other cetaceans in Commonwealth waters. These species are listed under Part 13 of the EPBC Act.

To be exempted from the offence provisions of the EPBC Act, fishers must operate consistent with the accredited fishery management arrangements.

Before accrediting management arrangements, the Minister for the Environment and Energy must be satisfied that:

- the arrangements require fishers to take all reasonable steps to ensure members of listed species (other than conservation dependent species) are not killed or injured as a result of the fishing; and
- the fishery does not, or is not likely to, adversely affect the survival, recovery in nature, or conservation status of the species or a population of that species.

Management to explicit mortality limits is not considered in the EPBC Act, but certain limits and trigger points are used in fisheries management, are considered by DoEE in its assessments, and can be supported where they are consistent with the provisions of the EPBC Act.

The Australian Government will work with state and Northern Territory governments to consider the use of bycatch mortality limits or potential biological removal (PBRs) on a case-by-case basis.

There could be significant costs associated with implementing PBRs as population assessments would require a national approach. Cross-jurisdictional cooperation (including on funding arrangements) would be required to capture populations and fishing mortality that cross Commonwealth, state and Northern Territory jurisdictional boundaries.

#### RECOMMENDATION 7.4

Governments that do not already do so should make summaries of information on interactions with protected species publically available (online).

Summaries should be provided on a fishery by fishery basis and at a minimum include the:

- species with which there was an interaction
- gear type used
- consequences of the interaction
- total number of fishing days undertaken in the fishery across the duration of the reporting period.

#### **The Australian Government supports this recommendation.**

The EPBC Act protects species in Commonwealth waters and more broadly where actions may have an unacceptable or unsustainable impact on matters of national environmental significance. These matters include listed threatened and listed migratory species. Management of protected species is generally the responsibility of state and territory governments within their respective jurisdictions.

DoEE's assessments (under Parts 10, 13, and for Convention on the International Trade of Endangered Species (CITES) listed species, under Part 13A of the EPBC Act) rely on access to accurate and up to date information on fishery interactions with protected species.

The information collected and published varies considerably across state, territory and Commonwealth jurisdictions. Having access to a more standardised set of high quality data would assist the work of DoEE in pursuit of its objectives.

AFMA reports all fishery interactions with protected species in Commonwealth-managed fisheries quarterly to the DoEE. These reports are available on AFMA's website and aggregate relevant data from more than 300 vessels fishing in Commonwealth waters.

Commonwealth-managed fisheries are subject to assessment under the EPBC Act to ensure their management arrangements minimise impacts on protected species and requires fishers to take all reasonable steps to avoid interactions with protected species. AFMA monitors the effectiveness of bycatch mitigation measures through its observer program, e-monitoring and analysis of reported interactions. This assists AFMA in verifying that fisher reports provide an accurate representation of all interactions with protected species.

#### RECOMMENDATION 7.5

The Australian Government should clarify the purpose of the List of Marine Species established in Part 13, Division 4 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) and provide further information on the criteria against which species are added to or removed from this list.

#### **The Australian Government supports this recommendation.**

The list of marine species, established in August 2000, is declared under Section 248 of the EPBC Act. This list is maintained and updated online at <https://www.legislation.gov.au/Details/F2008B00465>.

The EPBC Act provides for it to be an offence to kill, injure, take, trade, keep or move a listed marine species in Commonwealth areas. However, permits can be issued for activities that may affect a listed marine species. This protection reflects the level of protection provided to marine species in state waters. As much of the marine environment is under Commonwealth jurisdiction, marine species were listed under the now defunct National Parks and Wildlife Conservation Act, and subsequently under the EPBC Act, to give them comparable protection in Commonwealth waters.

Under section 249, the Minister for the Environment and Energy can amend the list by including or deleting items from the list, or correcting an inaccuracy/updating the name of a marine species.

To add or delete a species from the list, the Minister for the Environment and Energy is required to consult the Threatened Species Scientific Committee on the scientific aspects of the species to be added or removed, and also to table an instrument in Parliament.

The criteria for inclusion on the marine list as set out in section 250 of the EPBC Act:

- The Minister must be satisfied that it is necessary to include the species in the list in order to ensure the long-term conservation of the species; and
- The species occurs naturally in a Commonwealth marine area.

Section 250(2) also requires the Minister to consult with each Minister who has an interest in a Commonwealth Marine area where the species occurs naturally. This process does not apply to amendments that correct inaccuracies or update species names.



#### RECOMMENDATION 7.6

Consistent with recommendation 17 of the Hawke Review (2009), the Australian Government should modify Part 13 of the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) to allow the take of species listed in Appendix II of the Convention on the Conservation of Migratory Species of Wild Animals subject to the management arrangements demonstrating that the take would not be detrimental to the survival of the species.

#### **The Australian Government supports this recommendation.**

The intent of the Convention on the Conservation of Migratory Species of Wild Animals (CMS), to which Australia is a Party, is to conserve migratory species. The Convention contains two appendices of identified migratory species and imposes different obligations on parties for the treatment of species listed on Appendix I and II. Under the Convention, Appendix I species are categorised as endangered and parties are obliged to prohibit their take. Appendix II species are categorised as having an unfavourable conservation status and require international agreements for their conservation and management, or species with a conservation status that would significantly benefit from international cooperation.

The EPBC Act currently does not differentiate between Appendix I and Appendix II species in its level of protection. In some cases, this means that the level of protection provided to Appendix II listed species may be higher than appropriate. The EPBC Act could be amended to clearly delineate between the different international obligations arising from Appendix I and II listings. Differentiation between Appendix I and II CMS listed species would allow Australia to meet its international obligations, and continue to manage and protect migratory species domestically.

The Australian Government will address this recommendation through the statutory review of the EPBC Act, due in 2019.

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#### **Downstream processes**

#### RECOMMENDATION 9.1

Governments should not extend mandatory country-of-origin labelling to seafood sold for immediate consumption.

Any country-of-origin labelling scheme for seafood sold for immediate consumption should be a voluntary, industry-initiated arrangement.

#### **The Australian Government notes the recommendation.**

On 31 March 2016, jurisdictions agreed to reforms to country of origin labelling for food focused on improving the current system for food products in retail establishments only. Foods currently exempt from country of origin labelling requirements, such as seafood sold for direct consumption in the food service sector, remain exempt under the new Country of Origin Food Labelling Information Standard 2016.

On 28 November 2016, during debate on the Competition and Consumer Amendment (Country of Origin) Bill 2016, the Hon. Greg Hunt MP, undertook to establish a working group of stakeholders to consider options for improving country of origin labelling for seafood in the food services sector. Stakeholders include state and territory governments, fishing industry,

seafood importers, the restaurant, catering, hospitality, small business sectors and the Opposition.

The Hon. Craig Laundry MP, Assistant Minister for Industry, Innovation and Science, is leading this work and is expected to report to Parliament within 12 months.

#### RECOMMENDATION 9.2

The Australian Fish Names Standard (AS 5300-2015) should continue to be used on a voluntary basis. The Fisheries Research and Development Corporation should continue to develop the standard in accordance with the needs of industry and the preferences of consumers.

#### **The Australian Government supports the recommendation.**

Consumers should be provided accurate and relevant information about their food. The Australian Government considers that a uniform list of fish species names is a positive step toward providing this information. As such, the Commonwealth encourages actions, such as the industry-led voluntary Australian Fish Names Standard. Voluntary schemes can be more effective and reduce costs and regulatory burden to business in compliance and enforcement.

#### RECOMMENDATION 9.3

All governments should ensure that licence and accreditation fees for seafood processors reflect the efficiently-incurred costs of regulating these facilities.

#### **The Australian Government supports the recommendation.**

The Australian Government supports appropriate cost recovery approaches to regulating seafood processing facilities. The Australian Government's cost recovery activity, including in relation to licence fees, is consistent with the *Australian Government Cost Recovery Guidelines – 2014* (Resource Management Guide No. 304) which promote consistent, transparent and accountable charging, and support the proper use of public resources.

### **Other areas for improvement**

#### RECOMMENDATION 10.1

All governments should ensure that operational decisions are delegated to the relevant fishery management authorities to the extent possible.

#### **The Australian Government supports the recommendation.**

The Australian Government has delegated Commonwealth fisheries management arrangements to the AFMA, a statutory body, which operates under the FMA and the FAA.

In relation to Torres Strait fisheries, the Australian Government also cooperates with the Queensland government and the Torres Strait Regional Authority under the PZJA to implement operational fisheries management arrangements under the *Torres Strait Fisheries Act 1984* (the Act) and the *Torres Strait Fisheries Regulations 1985* (the Regulations). The PZJA has recently agreed to seek appropriate approval for drafting amendments to the Act and the Regulations to enable a suite of improvements to the efficiency and effectiveness of fisheries administration in the Torres Strait. This includes enhanced measures for managing compliance, the simplification

of administrative processes, efficiencies through the use of improved technologies and the ability to delegate decision making to allow for more streamlined and cost effective administration.

In addition, a range of policies, such as the *Commonwealth Fisheries Harvest Strategy Policy – 2007* and the *Commonwealth Policy on Fisheries Bycatch – June 2000*, guide fisheries management decisions on a day-to-day basis.

#### RECOMMENDATION 10.2

The governance arrangements of advisory groups formed under fisheries laws should include: clear terms of reference; a conflict of interest policy; clear role descriptions and requirements for members; fixed membership terms; performance assessment regimes; and reporting arrangements.

Ministers or departments should have the power to dismiss advisory group members who breach the terms of their engagement.

#### **The Australian Government supports the recommendation.**

The Australian Government notes that the Productivity Commission highlights the governance framework for management advisory committees in Commonwealth-managed fisheries as an example of a better practice model.

In Commonwealth-managed fisheries, management advisory committee members are appointed by the AFMA Commission under Division 5 of the FAA. Appointments are statutory, so members are considered AFMA officers under Division 5 of that Act. The operation of management advisory committees is further outlined in AFMA's policy paper, *Fisheries Management Paper 1 – Management Advisory Committees*.

#### RECOMMENDATION 10.3

All governments should have clear policies on co-management in marine fisheries. These policies should provide practical guidance to stakeholders on where governments are willing to collaborate or delegate responsibilities. The policies should include details of the capability and governance standards that are expected of stakeholders seeking to enter into a co-management arrangement.

#### **The Australian Government supports the recommendation in part.**

The Australian Government notes that many of the benefits of co-management can be obtained through, for example, outsourcing or e-business initiatives that are currently being pursued by the AFMA under the existing decision-making structure.

Although the Australian Government does not consider the need for a dedicated co-management policy, it remains committed to pursuing greater use of co-management arrangements as provided for in the FAA and in accordance with the *AFMA Corporate Plan 2015-2018*, where appropriate. The longer term goal is to see industry and government working together in the most cost-effective way to manage commercial fisheries.

#### RECOMMENDATION 10.4

The State and Northern Territory Governments should implement best practice cost recovery arrangements for the commercial fisheries sector. Cost recovery charges should be linked as closely as possible to the efficiently-incurred costs of essential regulatory services.

All governments should transparently disclose the services or regulatory activities for which costs are recovered, and the amount and extent of costs recovered.

#### **The Australian Government supports the recommendation.**

The Australian Government implements best practice cost recovery arrangements for the Commonwealth commercial fisheries sector in accordance with the *Australian Government Cost Recovery Guidelines – 2014* (Resource Management Guide No. 304).

Commonwealth-managed fisheries are operate under a Cost Recovery Implementation Statement (CRIS), in accordance with the Guidelines. The Commonwealth commercial fishing industry pays for costs directly attributed to, and recoverable from, the fishing industry in accordance with the AFMA CRIS, which is published on the AFMA website. Proposed annual budgets for each Commonwealth-managed fishery are published in management advisory papers and are available on the AFMA website.