

Review of Commonwealth fisheries management legislation

The Australian Government commissioned an independent review into the legislation governing the Commonwealth's fisheries management system.

The fisheries review examined a range of issues set out in the **Terms of Reference** to identify if any improvements are needed to ensure community and industry expectations can be met into the future.

Mr David Borthwick AO PSM (<http://www.daff.gov.au/fisheries/review-of-fisheries-management-act-1991-and-fisheries-administration-act-1991/about-the-reviewer>) was appointed to undertake the review and has provided his final report to the Minister for Agriculture, Fisheries and Forestry, Senator the Hon. Joe Ludwig.

Public submissions were sought from interested parties between Friday 28 September and Friday 26 October 2012.

The Department of Agriculture, Fisheries and Forestry provided secretariat support for the review.

Context, objectives and scope of the review

The approach to Commonwealth fisheries management is based around legislation that was enacted in 1991. Whilst there have been ongoing improvements and updates and policy has continuously evolved, a major review taking into account community views and wider resource management issues has not occurred during that time. Additionally, it has become apparent that community views about fisheries management, the use of fisheries and marine resources as both a food source but also for other extractive uses, and the balance of trade in seafood and high dependence on imported seafood, are changing and are likely to continue changing.

The relevant legislation for fisheries management in Australia today is the *Fisheries Management Act 1991* and *Fisheries Administration Act 1991*. The precautionary principle is an objective of the Fisheries Management Act. An independent authority, the Australian Fisheries Management Authority (AFMA) established under the Fisheries Administration Act is responsible for the efficient management and sustainable use of commercial fishing in Commonwealth fisheries on behalf of the Australian community. The *Environment Protection and Biodiversity Conservation Act 1999* is the primary mechanism to protect both marine species and the broader Commonwealth marine environment.

The review was asked to consider the broad fisheries management policy and legislation framework to test whether it is in line with Government, industry and community expectations. It was also asked to identify whether there is a need to adjust Australia's Commonwealth fisheries management objectives and the underlying policy, research, legislative and regulatory framework.

Within this context, the review was specifically asked 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 to 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 Management Act 1991* and the *Environment Protection and Biodiversity Conservation Amendment 1999*.
- 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.

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However, the ability of the Minister for Fisheries to enact the precautionary principle is limited due to gaps in scientific knowledge, limits on the scope of the precautionary principle considerations, limits on how quotas are determined, limits on the considerations that apply in quota management, cross-agency considerations such as

the relationship with the Department of Sustainability, Environment, Water, Population and Communities, and interactions with other legislation such as the *Environment Protection and Biodiversity Conservation Amendment Act 1999*.

It is therefore considered that the advice from the lead agency, the Australian Fisheries Management Authority to the Minister for Fisheries is limited in delivering on the expectations sought from the precautionary principle objective of the *Fisheries Management Act 1991*. 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.

In light of new challenges within Australian fisheries management, the full objectives of the precautionary principle are now sought.

The review of the *Fisheries Management Act 1991* and *Fisheries Administration Act 1991* will:

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This review starts immediately and will be completed within the next three months. Once completed, and once passage of the *Fisheries Management (Amendment) Act 2012* occurs, changes to the Environment Protection and Biodiversity Conservation Amendment that provide environmental discretionary powers to the Minister will be revoked, with any new *Environment Protection and Biodiversity Conservation Amendment 1999* to only be made to make clear the relationship between the *Fisheries Management Act 1991* and the *Environment Protection and Biodiversity Conservation Amendment Act 1999* itself.
