



Reference: F2006/1152

22 September 2008

The Secretary
Senate Standing Committee on Environment, Communications and the Arts
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Parliament House
CANBERRA ACT 2600

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Dear Sir/Madam

Inquiry into the operation of the *Environment Protection and Biodiversity Conservation Act 1999*

Thank you for providing the opportunity to comment on the operation of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

The Australian Fisheries Management Authority (AFMA) is heavily impacted by the operation of the EPBC Act and welcomes this opportunity to provide input based on that experience.

AFMA has met the requirements of the EPBC Act since its inception. However, there are some inconsistencies in the EPBC Act and its application by the Department of the Environment, Water, Heritage and the Arts (DEWHA) that have introduced inefficiencies into our and DEWHA's operations. As a cost recovered agency AFMA welcomes the opportunity to address inefficiency.

The terms of reference for the inquiry into the operation of the EPBC Act and other natural resource protection programmes makes particular reference to six items. I have commented on each item.

a. the findings of the National Audit Office Audit 38 Referrals, Assessments and Approvals under the Environment Protection and Biodiversity Conservation Act 1999;

AFMA has no comment as the findings of the National Audit Office were not relevant to AFMA's operations.

b. lessons learnt from the first 10 years of operation of the EPBC Act in relation to the protection of critical habitats of threatened species and ecological communities, and potential for measures to improve their recovery;

In terms of the marine environment and fisheries in particular – we think that there are various provisions under the EPBC act, which combined are adequate to cover off these interests – including Bioregional Marine Planning, MPAs, Strategic assessments, in addition to the Threatened species listing process. However, the manner in which these elements have come together has been less than optimal.

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AFMA welcomed the recent EPBC Act changes which introduced the proposed priority assessment list, in an attempt to better focus and streamline the process for considering nominations for protection of species and communities. However, AFMA is concerned that this opportunity has not been fully realized because the process still includes potential listing nominations which do not meet the criteria for being considered. Inclusion on the priority list of nominations that clearly do not meet the criteria involves unnecessary use of AFMA and DEWHA resources that could more usefully be employed to address real conservation and management issues. For example, the nomination of trawling in the SESSF as a Key Threatening Process (KTP) clearly fails to satisfy the EPBC Act criteria for listing as a KTP. The inclusion of this nomination on the proposed priority assessment list has caused AFMA and a number of other organizations to expend considerable resources in preparing submissions. AFMA has also commissioned research to further address these issues. While this research may be useful in the longer term it is being carried out at the expense of more pressing research.

Unwarranted nominations also have an effect on the operations of DEWHA. The DEWHA website lists over 450 recovery plans in preparation (106 fauna, 337 flora and 18 ecological communities). The use of resources currently dedicated to responding to unjustified nominations could help alleviate this situation.

AFMA is also concerned at the failure to fully integrate the various sections of the EPBC Act. AFMA's fisheries are covered by assessments under Part 10, Part 13 and part 13A which assess the effect of fisheries on the marine environment, protected species and communities and provide for approval of exports. To have the individual species within those fisheries separately assessed brings into question the value of these other assessments. Two particular examples highlight this anomaly. The Southern Bluefin Tuna Fishery was assessed under Part 10, Part 13 and Part 13A of the EPBC Act in 2004 and its impacts considered acceptable. The Minister for the Environment, Heritage and the Arts, Peter Garrett reassessed the fishery under Part 13 and Part 13A of the EPBC Act and reaffirmed the sustainability of the fishery in granting a Wildlife Trade Operation on 21 February 2008. Despite this assessment southern bluefin tuna was included on the 2007 proposed priority assessment list. As this is a single species fishery it is difficult to understand how these two conflicting decisions could be made. The result is additional work involving AFMA, DEWHA and the fishing industry which could have been avoided and efforts refocused on other species which are not taken in fisheries which already have Part 10, Part 13 and Part 13A accreditation under the EPBC Act.

The situation with Patagonian toothfish is even more perplexing. Patagonian toothfish was included on the 2008 proposed priority assessment list despite the two fisheries in which it is taken within the Australian fishing zone being accredited for five years under Part 13A of the EPBC Act. This is the highest level of exemption available under Part 13A. In both fisheries (the Heard and McDonald Islands Fisheries and the Macquarie Island Toothfish Fishery) Patagonian toothfish is the main target species. The other target species is the Heard and McDonald Islands Fisheries is mackerel icefish which has Marine Stewardship Council (MSC) certification. Once again it is difficult to understand how these two conflicting decisions could be made. The net result is duplication of effort for these species which have already been accredited as sustainable under other parts of the EPBC Act, and a loss of focus away from those species that do not have alternative sustainability approvals in place.

There are several procedural issues which need to be addressed when considering the listing of marine finfish species. Firstly, the criteria for classifying a species as endangered under the EPBC Act are subjective. The provisions of the EPBC Act reflect the historic focus on threats to high order terrestrial species such as mammals, and are not appropriate for marine fish. This weakness is acknowledged in the EPBC Act itself under s180, which provides for the making of regulations that specify criteria for native species of marine fish. However, such regulations have not yet been drafted, leaving the TSSC to determine whether a nominated species has "... undergone, is suspected to have undergone or is likely to undergo in the immediate future, a severe reduction in numbers". Such criteria do not provide confidence that nominations will be assessed objectively on a scientifically rigorous and biologically relevant basis.

In the absence of such regulation AFMA has relied on the Commonwealth Fisheries Harvest Strategy Policy (HSP) released in 2007 jointly by the Minister for the Environment and Water Resources and the Minister for Agriculture, Forestry and Fisheries. The HSP states that if a stock biomass is at or below a biomass limit (B_{LIM}), the default for which is 20% of the unfished biomass, the risk to that stock is considered unacceptably high, and targeted fishing ceases. While a stock is above B_{LIM} there is no expectation that the species would be added to the list of threatened species. In this context the nomination of Patagonian toothfish where the biomass is estimated at over 50% of the unfished biomass is surprising and undermines the credibility of the listing process with all stakeholders.

However, having noted these issues AFMA must comment on the increasing openness displayed by the Threatened Species Scientific Committee (TSSC) in considering nominations. Recently AFMA has been able to explain its concerns direct to the TSSC and provide additional information to assist the TSSC in making better recommendations to the Minister. This is a positive step forward.

c. the cumulative impacts of EPBC Act approvals on threatened species and ecological communities, for example on Cumberland Plain Woodland, Cassowary habitat, Grassy White Box Woodlands and the Paradise Dam;

Our Ecological Risk Assessment (ERA) process has provided a comprehensive risk based approach to all AFMA managed fisheries, which when combined with the strategic assessment process, on top of potential threatened species nomination processes under the EPBC act, is probably adequate to cover these issues. The Commonwealth Fisheries Research Advisory Body is currently considering a proposal (*Ecological Risk Assessment for fishing future impacts on habitats, ecosystems and cumulative effects on species*) to extend the ERA process beyond target, byproduct and bycatch species. The project will provide a framework for the habitat assessment approach, provide a framework to assess cumulative impacts on species and complete the development of the communities (ecosystems) approach. Marine bioregional planning is also intended to consider cumulative impacts.

d. the effectiveness of responses to key threats identified within the EPBC Act, including land-clearing, climate change and invasive species, and potential for future measures to build environmental resilience and facilitate adaptation within a changing climate;

It is early days in terms of climate change adaptation but flexibility will be important. The conservation based approach for threatened species may need to be reviewed in future, particularly in the context of climate change, where an alternative risk based approach may be more appropriate. For example, there is no point in being focused on saving every last individual of a species from demise caused by fishing, when climate change and other cumulative impacts may be causing the species into decline regardless of efforts to prevent fishing mortality. A risk based approach, rather than a strict conservation approach, will be needed. This may require some fundamental changes to the EPBC Act and the way it is currently implemented. AFMA is currently working with Chris Wilcox from CSIRO on environmental offsets as a possible alternative approach.

- e. **the effectiveness of Regional Forest Agreements, in protecting forest species and forest habitats where the EPBC Act does not directly apply;**

AFMA has no comment as Regional Forest Agreements are not relevant to AFMA's operations.

- f. **the impacts of other environmental programmes, eg EnviroFund, GreenCorps, Caring for our Country, Environmental Stewardship Programme and Landcare in dealing with the decline and extinction of certain flora and fauna; and**

AFMA considers that the failure of the Caring for our Country programme to specifically include the marine environment is a major policy shortfall. However, such programmes can provide funding to achieve significant environmental outcomes. An example is funding of ranger programmes in the Torres Strait as part of the development of community-based management plans for turtle and dugong.

- g. **the impact of programme changes and cuts in funding on the decline or extinction of flora and fauna.**

The Natural Heritage Trust (NHT) was very useful for fisheries and allowed some significant improvements in relation to threatened species management in fisheries. Unfortunately NHT has been terminated and there are no dedicated funds available for the marine environment under Caring for our Country.

If you would like to discuss our comments on the EPBC Act review please contact Paul Ryan, AFMA's Environmental Assessments Manager on 02-6225 5366 or 0412-552 395.

Yours sincerely

Glenn Hurry
Chief Executive Officer
22/9/08