Australian Government

Department of the Environment and Water Resources

Mike Woods
Commissioner
Productivity Commission
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Response to the *Annual Review of Regulatory Burdens on Business: Primary Sector* by the Department of the Environment and Water Resources

Dear Professor Woods

The Department of the Environment and Water Resources welcomes the opportunity to respond to the Productivity Commission's draft research report, *Annual Review of Regulatory Burdens on Business: Primary Sector*, released on 12 September 2007. The Department's response brings together comments and suggestions from across the organisation, and represents the accumulated input of a wide cross-section of environmental expertise.

To maintain relevance and ease of use, the Department has restricted its comments and suggestions to the substantive material presented in the Draft Report. Wherever possible, individual responses speak directly to particular passages in the Draft Report – the aim is to improve on, or add to, an already substantial collection of data and insights.

The Department hopes that our contribution will assist in making this year's report a document of high quality. We look forward to working with the Commission on subsequent reviews in future years.

Yours sincerely,

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A/g Assistant Secretary
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Australian Government

Department of the Environment and Water Resources

Chapter 3 Agriculture [p. 23]

Section 3.2 Environment Protection and Biodiversity Conservation Act (EPBC Act) [p. 29]

Draft Response 3.1: The Department of Environment and Water Resources should take a greater role in determining who undertakes environmental risk assessments for the importation of live animals under the EPBC Act [p. 33].

DEW questions whether a perceived inadequacy in live import list risk assessment could be considered a regulatory burden on the primary sector and therefore whether this issue is within the scope of the review. Notwithstanding that consideration, the Department offers several comments.

DEW does not believe that the current risk assessment procedures are inadequate. The Draft Report does not reflect three steps in the Department's process of assessing an application to amend the live import list which largely address the concerns raised in the Productivity Commission's assessment.

Specifically noting ***DEW's process to amend the live import list for animals involves the following steps [p. 31]***, DEW suggests that the following dot points be included in the procedural list on page 32:

- [insert following dot point 4] The Department reviews the draft assessment report and if necessary seeks revisions to the report from the applicant to address any inadequacies.

- [insert following dot point 6] The Department conducts a risk assessment using computer models developed specifically for this purpose by the Bureau of Rural Sciences in the Department of Agriculture, Fisheries and Forestry (Bomford, 2006). The models examine the potential for the species concerned to become established in Australia, using variables including the extent to which the climate in the overseas range of the species matches the Australian climate, the extent to which the species has established exotic populations overseas, the taxonomy of the species, its migratory behaviour, diet and ability to live in disturbed habitat. The models have been independently peer reviewed. (Reference: Bomford, M. 1996. 'Risk assessment for the establishment of exotic vertebrates in Australia: recalibration and refinement of models,' Bureau of Rural Sciences, Canberra)

- [insert following the new dot point above] The Department may also engage expert consultants to advise on the likely risk posed by the species.

That the applicant prepares risk assessment reports is a model that is generally applied by environmental protection agencies [p. 32].

DEW concurs with this statement. The approach is consistent with environmental risk assessments required under other provisions of the EPBC Act. DEW considers that such reports, in combination with the Department's own internal and commissioned assessments provide appropriate information on which to base decisions on amendments to the live import list. Consequently there is no significant risk of bias in the material used to make these decisions. To direct applicants to have independent risk assessments prepared would impose an unreasonable financial burden on the applicant.

Draft Response 3.2: The Department of Environment and Water Resources should assess whether there is further scope for accrediting Biosecurity Australia's risk assessment process in relation to the importation of live animals under the EPBC Act [p. 33].

DEW is currently working with Biosecurity Australia (BA) to update the Memorandum of Understanding on Import Risk Analyses. The updated MOU will reflect the recent (2007) amendments to the EPBC Act providing for situations where the Minister can accept BA reports as a basis for decisions about amending the live import list. As part of the process DEW and BA will also consider other possible improvements in cooperation on the live import process.

Draft Response 3.3: Actions to clarify the definition of significant impact under the EPBC Act for business in the agriculture sector are progressing [p. 36].

DEW concurs with this statement.

Section 3.3 National Pollutant Inventory [p.36]

In addition, the draft variation to the NPI National Environment Protection Measure (NEPC 2006a) incorporates some changes that might help ease the burden for individual farmers. These are to extend the publication date by two months to enable corrections to be made by jurisdictions and industry before public release (p. 61) and to enable jurisdictions to approve alternative reporting periods to meet the reporting 'efficiency needs' of facilities (p. 64) [p. 38].

DEW advises that the text should reflect that the NPI National Environment Protection Measure (NEPM) Variation has been finalised and is available at http://www.ephc.gov.au/pdf/npi/NEPM_as_varied__Aug07.pdf.

The Commission, however, notes that the Council's decision is inconsistent with a recommendation of the 2005 review. It also notes that the impact statement prepared in 2006 found that there was a strong 'equity case' for requiring aquaculture operations to report given its similarities with current reporting sectors, especially intensive livestock facilities, and the impacts of their emissions on water quality. The impact statement estimated reporting costs for industry of $36 000 per annum, affecting around 60 facilities (NEPC 2006b, pp. 52–4) [p. 42].

DEW advises that the cost referred to in the text was for the aquaculture industry as a whole. It would be more accurate to note that the estimated reporting costs were in the order of $600 per facility.

Section 3.4 Climate Change Policies [p. 43]

Specifically noting: ***Concerns were raised about the Environmental Protection and Heritage Council's proposal for greenhouse gas emissions and energy reporting through the NPI until a specific-purpose reporting system is developed [p. 43].***

DEW advises that the proposal to use the NPI as an interim reporting measure is no longer legally binding due to the introduction of the National Greenhouse and Energy Reporting Act. The NGER Act passed through both houses of Parliament on 20 September 2007 and was given royal assent on 28 September.

Further, DEW considers that Section 3.4 makes insufficient mention of the Australian Government's policy of streamlining corporate greenhouse and energy reporting – see http://www.greenhouse.gov.au/reporting/ for details.

Of particular relevance to the agriculture sector is the initial exclusion of agriculture and land use emission… However the Government envisages that the sector will be drawn into the scheme, where practicable at a later point [p. 45].

DEW advises that reporting of agricultural and land-use greenhouse emissions will be excluded under the NGER Act in the first instance because robust methodologies are not yet available. For similar reasons, agricultural and land-use emissions will be excluded from the Australian Government's planned Emissions Trading Scheme. This said, energy consumption in the agricultural sector will still be reportable under the NGER Act if facility or corporate thresholds are exceeded and is likely to be included in the Emissions Trading Scheme if thresholds are exceeded.

Section 3.21 Water Issues [p. 110]

Draft Response 3.31: Development of the national framework for water has the capacity to address concerns and avoid unnecessary burdens provided that best practice policy design is applied. In particular, the new national framework for water should facilitate market transactions so that scarce resources go to their highest value uses and any exemptions from the framework should be fully justified. Ongoing monitoring and evaluation of progress will be important [p. 115].

DEW acknowledges the water issues section of the Draft Report and concurs with the conclusions.

The concerns raised by industry are well addressed by the Draft Report, including an outline of the national reforms that are currently being progressed for national water reform. The Australian Government with the States and Territories are continuing to work towards full implementation of the National Water Initiative (NWI). Implementation of the NWI will streamline over time, reduce fragmentation across and within jurisdictions and remove impediments that are currently faced by the primary sector in managing their water resources.

The recent adoption of the *Water Act 2007* (the Act) further enhances the existing mechanisms for national water reform.

The Act gives legal effect to the Commonwealth Government's National Plan for Water Security (the National Plan), announced by the Prime Minister on 25 January 2007. The Act establishes a national water information service and provides for water resources in the Murray-Darling Basin (the Basin) to be managed in the national interest, optimising environmental, economic and social outcomes.

Chapter 4 Mining, Oil and Gas [p. 117]

Section 4.2 Uranium-specific Regulation [p. 129]

Draft Response 4.2: There should be a science-based assessment of the risks involved in uranium mining. This should form the basis for evaluating whether uranium should continue to be an automatic trigger for national environmental assessments under the EPBC Act. This review should be conducted by the Chief Scientist of Australia, with the involvement of the Chief Medical Officer [p. 132].

DEW advises that there is no automatic trigger for uranium. The current trigger for nuclear actions (including mining uranium) requires that the nuclear activity have a significant impact on the environment. In the Council of Australian Governments (COAG) Heads of Agreement on Commonwealth/State Roles and Responsibilities for the Environment all States and Territories agreed that the Commonwealth has a responsibility and a interest in relation to the assessment and approval of mining, milling, storage and transport of uranium.

The current offences in the EPBC Act for nuclear activities which have a significant impact on the environment reflect this responsibility. Any changes to the Commonwealth's responsibility for nuclear activities would require consultation with COAG.

Draft Response 4.3: The assessment of environmental conditions for export permits should be consolidated into approvals under the EPBC Act, ensuring that approval from the Department of Environment and Water Resources is sufficient to satisfy any environmental requirements for export permits [p. 134].

DEW considers that the Draft Report's suggestion that this situation may eventually resolve over time is correct. The use of environmental conditions in Export Permits is a result of the legislative mechanism in place prior to the introduction of the EPBC Act. The Draft Report correctly notes that the EPBC Act assessment process will only apply to new mines, or to significant changes to existing mines. When assessing significant changes to existing mines, DEW will consider the whole of the operation of the mine.

Section 4.5 Environmental and Biodiversity Conservation Act [p. 153]

Draft Response 4.10: Reforms which harmonise environmental assessments through bilateral agreements are progressing. Governments should give high priority to completing all assessment and approvals bilateral agreements [p. 155].

As the Draft Report observes, COAG has recognised the central role of bilateral agreements in removing regulatory duplication and has agreed that finalising outstanding bilateral agreements is a high priority.

DEW advises that there are currently assessment bilateral agreements with all States and Territories except for South Australia, the ACT and Victoria. Agreement has been reached with South Australia and a draft assessment bilateral agreement was released for public comment in July 2007. DEW is working closely with the ACT and Victoria to finalise their bilateral agreements, with the ACT committed to signing an agreement by the end of 2007.

DEW disagrees with the Draft Report's listing the achievement of bilateral agreements on environmental approvals under the EPBC Act as a reform ***that is taking too long [p. xxiv].*** There is currently an approval bilateral agreement in force with New South Wales in relation to the Sydney Opera House and negotiations are progressing with Western Australia for the development of a further agreement for industrial development on the Burrup Peninsula.

Given that approvals bilateral agreements effectively delegate all aspects of the approvals process under the EPBC Act to States and Territories for actions likely to have a significant impact on matters of national environmental significance, the standards to be met are necessarily rigorous. Because of this, DEW considers places such as heritage sites or listed wetlands with rigorous management plans or arrangements offer the best opportunity for accreditation under the EPBC Act through an approvals agreement. Development of such place-based agreements may assist with the development of agreements which apply more widely by informing parties about the requirements for an approvals bilateral agreement.

In addition to the progression of bilateral agreements, DEW is exploring options with the States and Territories to streamline their processes and improve effectiveness. DEW considers that it has provided national leadership on this matter through the amendments to the EPBC Act in 2006, which have significantly reduced the regulatory burden of the Act while increasing flexibility and certainty.

Section 4.6 National Pollutant Inventory (NPI) [p. 156]

The Environment Protection and Heritage Council decided at its June 2007 meeting that the NPI include transfers, among other things (EPHC 2007a). A 'transfer' is the transport or movement, on-site or off-site, of substances contained in waste for containment, destruction, treatment or energy recovery (NEPC 2006a, p. 5) [p. 157].

DEW advises that the definition of transfer used in the report is incorrect. The correct definition is: the transport or movement, on-site or off-site, of substances to a mandatory reporting transfer destination or a voluntary reporting transfer destination; but does not include the transport or movement of substances contained in overburden, waste rock, uncontaminated soil, uncontaminated sediment, rock removed in construction or road building, or soil used for the capping of landfills.

The inclusion of transfers in the NPI flows from a recommendation of a 2005 review (Environment Link 2005, p. 18). The Regulation Taskforce, however, recommended that the inclusion of transfers be deferred and reconsidered when the capacity of the NPI to deliver existing requirements has been improved (Regulation Taskforce 2006, p. 77) [p. 157]

DEW advises that the official response by the Australian Government to this report was to "support[s] the inclusion of waste transfers in the NPI as this data will enable a more accurate evaluation of environmental performance and provide for a consistent national regime for compliance and reporting on waste transfers."

The impact statement supporting the inclusion of transfers in the NPI found that information on transfers would be 'an important public good that would not otherwise be publicly available in a comprehensive and integrated fashion' (NEPC 2006b, p. 27). The inclusion of transfers would also align the Australian NPI with international pollution and transfers registers. The estimated cost for industry would be an initial average increase of $2800 per facility with ongoing average costs of $1400 per facility per annum. The estimated cost for government would be a one off implementation cost of around $800 000 plus on-going costs of $400 000 per annum [p. 157].

DEW advises that the transfer costs highlighted are incorrect; these are figures from the Impact Statement, not the revised figures that were produced after the transfer definition was revised. These reporting costs should therefore be $1800 per facility with ongoing average costs of $630 per facility per annum (see http://www.ephc.gov.au/pdf/npi/Cost_analysis_varied_NEPM.pdf).

Draft Response 4.12: The Department of Environment and Water Resources should give high priority to monitoring public awareness of the NPI and to take action to increase its profile as appropriate [p. 158].

DEW advises that as part of the implementation of the NPI NEPM Variation of June 2007, a detailed communication and awareness plan is in progress. The first stage of this plan is to be developed in October 2007 and some of the key elements proposed are listed below:

- improved public website that includes updated search functions and fact sheets;
- extensive and ongoing consultation with industry and focus groups, and concept and prototype testing;
- the website be updated regularly with profiles of pollution projects, including case-studies of industries making improvements to their production processes,

improved information on the use of NPI data and additional information on reducing pollution.

Draft Response 4.13: The Department of Environment and Water Resources should give high priority to monitoring the quality and use of data reported to the NPI [p. 159].

DEW advises that in 2005 a review of the NPI was undertaken to assess whether the NPI was delivering against its goals and objectives. It identified areas where the NPI could be improved to increase the use of the NPI by community, industry and government. In response to this review, and subsequent changes made to the NPI NEPM in June 2007, the next 2-3 years will see DEW working in partnership with state and territory governments to enhance and improve the NPI. These changes will make reporting easier for industry and enhance data quality and accuracy. They include:

- web-based system to streamline reporting - simplifying the process for industry and reducing reporting costs;
- improved and updated industry reporting materials, reflecting changes in industrial processes and emission factors; and
- improved and updated emission factors; including emission factor calculators.

Section 4.8 Climate Change Policies [p. 161]

At its June 2007 meeting, the Environmental Protection and Heritage Council agreed to a variation to the NPI National Environmental Protection Measure to include greenhouse gas emissions pending the establishment of a national purpose-built system. The Council noted that this would be an interim measure only and would not change the commitment by parties to a purpose-built system' [p. 164].

DEW advises that the proposal to use the NPI as an interim reporting measure is no longer legally binding given the introduction of the National Greenhouse and Energy Reporting Act (NGER Act). The NGER Act has passed through both houses of Parliament and has been given royal assent. As such, the discussion of the NPI in Section 4.8 – i.e. in the context of greenhouse and energy data reporting – may be misleading. DEW suggests that the information pertaining to the NPI in this section be updated to reflect the changed circumstances or removed entirely.

Draft Response 4.16: Reform is progressing to harmonise multiple greenhouse gas and energy reporting requirements through national purpose-built legislation [p. 166].

DEW concurs with this draft response, but notes that the circumstances have changed since the Draft Report was produced. The National Greenhouse and Energy Reporting Act was given royal assent on 28 September and consultation is underway on detailed regulations to underpin the Act. The first reporting period will commence on 1 July 2008.

Draft Response 4.17: Development of the Australian greenhouse gas emissions trading scheme has the capacity to address red tape and reduce unnecessary burdens provided that best practice policy design is applied. In particular, the new scheme should facilitate market transactions so that rights to emit greenhouse gases go to their highest value uses and any exemptions should be fully justified. Ongoing monitoring and evaluation of progress is important [p. 166].

DEW advises that the emissions trading scheme will dovetail with several established abatement programmes the Department already has in place, and which are notable for their minimal impact on business. Minimum efficiency performance standards (MEPS) for equipment and appliances were not raised in the Draft Report, but are part of the regulatory environment for Australian business and deliver net energy and cost savings to business energy users.

MEPS programs are made mandatory in Australia by state government legislation and regulations which give force to the relevant Australian Standards. Regulations specify the general requirements for MEPS for appliances, including offences and penalties if a party does not comply with the requirements. Technical requirements for MEPS are set out in the relevant appliance standard, which is referenced in state regulations. State-based legislation is necessary because the Australian constitution gives Australian States clear responsibility for resource management issues, including energy.

Of particular relevance to the primary industry sector are MEPS on three-phase electric motors and electricity distribution transformers. MEPS on other equipment and appliances such as chillers, commercial refrigeration and lighting are also relevant.

Chapter 5 Forestry, Fishing and Aquaculture [p. 189]

Section 5.1 Forestry [p. 189]

The Australian Government provisions were reviewed by the Mandatory Renewable Energy Target (MRET) Review Panel, which reported in January 2004 [p. 194].

DEW advises that the MRET Review Panel reported in September 2003. The Draft Report confuses this with the date the Government released the report, which was January 2004.

Section 5.2 Fishing [p. 195]

Two Australian Government Acts provide for the ecologically sustainable management of commercial species and the conservation of Australia's marine resources [p. 197].

DEW does not consider that this statement accurately reflects the EPBC Act's authority to accredit Commonwealth fisheries for impacts in the marine environment under strategic assessments or that Part 13A of the EPBC Act applies only to fisheries that export. Fishery assessments and accreditations under the EPBC Act do not apply

to those fisheries which do not export or operate in the Commonwealth marine area. The statement in the Draft Report infers that the EBPC Act has authority for the ecological sustainable management of all commercial species, which it does not. It applies only to fisheries that export or operate in the Commonwealth marine area.

Commonwealth fisheries legislation does not cover state and territory managed fisheries. Nor does it implement Australia's obligations under the range of international agreements that the EPBC Act covers.

The EPBC Act authorises the Minister for Environment and Water Resources to set specific fisheries management requirements and to list threatened species, including marine species, and ecological communities. (Section 6 of the EPBC Act details its interaction with the Fisheries Management Act) The list can determine any 'by-catches' of these marine species to be a criminal offence [p. 198].

The Draft Report suggests that the Minister for the Environment and Water Resources can set specific fisheries management requirements. DEW advises that this sentence would be more accurate should it read 'The EPBC Act provides for the Minister of the Environment and Water Resources to set conditions and recommendations of export approvals and protected species accreditation.' This reflects that the Minister has the authority to set requirements for export fisheries and for fisheries operating in the Commonwealth marine area in relation to protected species.

Additionally the Draft Report states that Section 6 of the EPBC Act details its interactions with the Australian Fisheries Management Authority (AFMA) which is not correct. Section 6 of the EPBC Act is titled 'Extended Application of Act' to match extended management of fisheries under the Fisheries Management Act 1991 and provides for the EPBC Act to apply to those fishing activities under FMA management plans which are not wholly within the Australian jurisdiction. As provided in the example in the EPBC Act, fishing outside Commonwealth areas would generally not contravene Part 13 (protected species interactions), however Section 6 means that Part 13 will apply to those fishing activities outside the Commonwealth marine area.

Section 6 allows for the EPBC Act and FMA to be aligned regarding this extended application.

[The Commonwealth Fisheries Association emphasized] that the 'worst possible outcome' is to have different assessment standards and processes imposed by different agencies, adding that any strategic assessment regime should be effectively integrated and harmonised with existing fisheries management, monitoring and compliance regimes… It proposed that DEW and AFMA should be required to jointly review their respective requirements and processes and develop an agreed and transparent process to integrate and harmonise these assessment activities [p. 198-199].

DEW understands that the Draft Report is suggesting here that different standards and processes imposed by different agencies should be harmonised with existing fisheries management. In particular, the Commonwealth Fisheries Association calls for DEW to harmonise the export assessments with the strategic assessments. DEW considers

that this already occurs as part of the assessment process for Commonwealth fisheries under the EPBC Act. In particular, strategic assessments, export assessment and protected species accreditations are generally undertaken at the same time to ensure a streamlined process.

[The Commonwealth Fisheries Association] argued that any species managed under the Commonwealth Fisheries Harvest Policy being developed by DAFF should be subject to listing under the EPBC ACT [p. 199].

DEW advises Commonwealth Harvest Strategy Policy and Guidelines were finalised and released in September 2007 and outline the linkages between the FMA and EPBC Act regarding the status of key commercial species.

As both the Fisheries Management Act and the EPBC Act have powers to determine limits to catching species of fish, this can result in conflicting targets on allowable catches [p. 200]

DEW does not consider this statement is an accurate interpretation of the application of the EPBC Act. The Minister for the Environment and Water Resources does have authority to set conditions in respect to fishery export declarations and protected species accreditations. The approach taken by the Minister and Department in imposing conditions is to ensure the conditions are drafted broadly with a focus on overall outcomes to be achieved and are consistent with the overall legislative and policy framework for regulating the fishery. It is left to fisheries managers to determine the best way to achieve these outcomes.

Additionally, the assessment process for all Commonwealth and State/Territory fisheries is based on a strong communication flow between the Department and relevant fishery agencies and stakeholders to ensure that duplication of processes is avoided.

One issue appears to be the degree to which ecological risk assessments can be harmonised between the two Acts, in the view of the different responsibilities of AFMA and the Department of Environment and Water Resources [p. 200-201]

DEW considers the ecological risk assessments (ERA) being undertaken by AFMA for Commonwealth managed fisheries is an important process for identifying and managing risks associated with fishing activities. The comprehensive ERA and ecological risk management process has the capacity to contribute to the outcomes that the EPBC Act was designed to achieve. While the ERA identifies the level of risk, in and of itself it does not take any action to mitigate the identified risk. The Department looks forward to the Authority developing and ultimately implementing an ecological risk management framework/process to mitigate unacceptable risks. Once such a system is developed and implemented there may well be opportunity for further harmonisation of processes to meet the objectives of both Acts.

Draft Response 5.3: There appears to be scope for rationalising requirements under the Fisheries Management Act and the EPBC Act. The Commission seeks views on this matter [p. 201].

DEW does not consider there is a need to rationalise requirements under the *Fisheries Management Act 1991* and the *Environment Protection and Biodiversity Conservation Act 1999* insofar as it pertains to fisheries and fishing.

The focus of the EPBC Act broadly involves, but is not limited to, the protection of matters of national environmental significance, international movement of wildlife and protected areas.

In relation to Australian fisheries, the Minister for the Environment and Water Resources considers fishery management arrangements in the following circumstances:

(1) Matters of national environmental significance (NES).

- Under Part 10 of the EPBC Act, Commonwealth fisheries must undergo strategic assessments to determine whether the fishery has a significant impact on the marine environment (a matter of NES).

- Under Part 13 of the EPBC Act any fishery which operates in the Commonwealth marine area must undergo an assessment so that the Minister can be satisfied that the management arrangements require the persons engaged in fishing take all reasonable steps to ensure that listed threatened species, listed migratory species, cetaceans and listed marine species are not killed or injured as a result of fishing. Where management arrangements for a fishery are accredited, the offense provisions of the EPBC Act do not apply if the fisher is fishing in accordance with the management arrangements.

(2) International movement of wildlife.

- Under Part 13A of the EPBC Act, any fishery which exports product must undergo an assessment in order to determine if the operation can be declared a Wildlife Trade Operation (WTO) or declared exempt from the export provisions of the EPBC Act. In declaring the fishery a WTO or exempt, product from the fishery is included on the List of Exempt Native Specimens (LENS) and the relevant offence provisions for exporting specimens is not applicable to the export of such product.

The Government's Harvest Strategy Policy sets out the framework with which AFMA's harvest strategies must comply. It also describes how the current EPBC Act criteria for listing threatened species are to be interpreted for harvested fish species. Further, the EPBC Act has been amended so that the listing of a harvested fish species as conservation dependent can occur so long as it was the subject of a suitable plan of management. Thus, compliance with the Harvest Strategy Policy should avoid the need for consideration of harvested fish species in the long-term, and probably conservation dependent in the short-to-medium-term. If, in the long-term, a harvested fish species is listed in a category higher than conservation dependent, DEW considers that it remains appropriate for the risk of irreversible impact to be managed under the EPBC Act until such time as the species has recovered to a point of sustainable harvest, at which time the listing could be amended and fisheries management resumed.

In this light, DEW does not consider that there is a need to revisit the criteria by which harvested fish species are judged. Should a review be called for, however, DEW considers it appropriate first to determine if there is a real need to review the criteria (noting the above), as opposed to a philosophical one. Only after doing this should any detailed consideration of the criteria be undertaken. DEW considers that the extent to which the listing provisions of the EPBC Act apply in the future will be dependent on successful fisheries management by AFMA and the industry.