



Australian Network of Environmental  
Defender's Offices Inc

## Submission – Review of Commonwealth Fisheries Management Legislation

**02 November 2012**

The Australian Network of Environmental Defender's Offices (ANEDO) consists of nine independently constituted and managed community environmental law centres located in each State and Territory of Australia.

Each EDO is dedicated to protecting the environment in the public interest. EDOs provide legal representation and advice, take an active role in environmental law reform and policy formulation, and offer a significant education program designed to facilitate public participation in environmental decision making.

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## Introduction

The Australian Network of Environmental Defender's Offices Inc. (ANEDO) is a network of 9 community legal centres in each state and territory, specialising in public interest environmental law and policy. ANEDO welcomes the opportunity to provide comment on the Review of Commonwealth fisheries management legislation (**Review**).

ANEDO is concerned by the haste with which the Review is being undertaken. Based on our extensive experience of law reform processes, three months is an insufficient period in which to properly consult and assess the strengths and weaknesses of the current legislative and policy framework, and to develop robust, evidence-based amendments. This is particularly true given the inherent complexity of fisheries management in Australia.

### Terms of Reference

We note that the terms of reference (**TOR**) discuss in general terms the Minister's inability to properly implement the precautionary principle under the current regulatory framework, thereby exposing the community to a 'less than sustainable model of fisheries management.' The terms of reference go on to specify four review 'outcomes' intended to remedy this deficiency:

- Recommend changes to the Acts that clearly establish the *Fisheries Management Act 1991* (**FM Act**) 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 (**First TOR**).
- 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 FM Act, and that same definition of the precautionary principle apply in both the FM Act and the *Environment Protection and Biodiversity Conservation Act 1999* (**EPBC Act**) (**Second TOR**).
- 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 investment (**Third TOR**).
- Amend the EPBC Act to revoke the environmental discretionary powers of the Minister (paraphrased). (**Fourth TOR**). As the scope of the Fourth TOR is not entirely clear, we have interpreted it broadly to mean *all* environmental discretionary powers under the EPBC Act in respect of fisheries management.

ANEDO agrees that overfishing,<sup>1</sup> use of inappropriate fishing gear and methods (causing by-catch and incidental kill),<sup>2</sup> gaps in research and monitoring,<sup>3</sup> and failure to properly

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<sup>1</sup> See: Australian Bureau of Agricultural and Research Economics and Science, *Fishery status reports 2010: Status of Fish Stocks and Fisheries managed by the Australian Government*, p. 1.

implement an ecosystem-based approach<sup>4</sup> undermine the sustainability of Commonwealth fisheries. As such, we strongly support amendments to the FM Act, FA Act and EPBC Act designed to improve the application of the precautionary principle in respect of these fisheries.

**We are concerned, however, at the suggested revocation of EPBC Act provisions that currently apply to fisheries management. To that end, and given the relatively short consultation period, this submission will focus on the role of the EPBC Act in ensuring sustainable fishing practices in Australian waters. Our primary recommendation is that the EPBC Act provisions be retained and strengthened to provide critical oversight of the environmental impacts of Commonwealth fisheries management.**

We make six key recommendations to strengthen and enhance the application of Parts 10, 13 and 13A of the EPBC Act. While these recommendations respond to the **first, second and fourth TOR**, ANEDO has also taken into account the ‘Australian Government response to the report of the independent review of the EPBC Act’ (**Hawke Review Response**), in particular those sections which pertain to fisheries management.<sup>5</sup>

In light of the circumscribed nature of this submission, ANEDO would welcome the opportunity to provide further comments regarding mechanisms to improve environmental performance under the FM Act and FA Act. We submit that a second round of consultation driven by more specific TOR is necessary if stakeholders are to meaningfully contribute to the reform of fisheries management in Australia.

## **Executive Summary**

ANEDO submits that the FM Act is currently the principal piece of legislation governing fisheries management in Australia and no specific amendment is required to reinforce its centrality. We further submit that it is appropriate to maintain complementary legislation to regulate the Australian Fisheries Management Authority (**AFMA**), and to advance biodiversity conservation in accordance with Australia’s international obligations. A legislative and administrative separation is appropriate given the potentially conflicting mandates of resource use and biodiversity conservation. To that end, we strongly recommend maintaining the FA Act and relevant provisions in the EPBC Act, respectively.

However, while we support maintenance of the current suite of legislation, it is overwhelmingly clear that the relevant law and policy must be amended with a view to improving implementation of the precautionary principle and enhancing environmental outcomes more generally in respect of Commonwealth fisheries. The recent furore over the

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<sup>2</sup> See for example Bache, Sali Jayne, *Current Australian Policy on marine wildlife bycatch*, (2005) EPLJ 212, p. 212; Baker, B, *The impact of pelagic longline fishing on the flesh-footed shearwater Puffinus carneipus in Eastern Australia*, 126 (2005), 306-316.

<sup>3</sup> Australian Government (former Department of the Environment and Water Resources), *Guidelines for the Ecologically Sustainable Management of Fisheries*, 2007, p. i.

<sup>4</sup> Nevill, J. (2012), *Australian fisheries management: opportunities for reform* in JR Barker & R Walters (eds) *New Zealand and Australia in focus: economics, the environment and issues in health care*. Chapter 5, Nova Publishers, New York.

<sup>5</sup> Department of Sustainability, Environment, Water, Population and Communities, *Australian Government response to the report of the independent review of the Environment Protection and Biodiversity Conservation Act 1999*, (Recommendations 40, 41, 42), 2011.

mid-water ‘super trawler’ FV Margiris and subsequent ad-hoc reform of the EPBC Act reinforces this claim.

### **Summary of recommendations**

As noted, our primary recommendation is that the EPBC Act provisions be retained and strengthened to provide critical oversight of the environmental impacts of Commonwealth fisheries management. Our specific recommendations are:

- a) The EPBC Act should be amended to explicitly require the Minister to be satisfied that any approval granted under Parts 10, 13 or 13A (or their equivalents under amended legislation) in respect of a fishery will implement ecosystem-based management.
- b) The EPBC Act should be amended to specify that where the Minister is not satisfied that a proposed management plan for a fishery has adequately considered ecosystem-based principles, they may seek review of the proposed plan by an independent third party such as the CSIRO.
- c) The EPBC Act should be amended to empower the Minister to revoke accreditation where certain conditions imposed on a fishery under that Act have not been met. By way of example, failure to comply with the management actions imposed under a Part 10, 13 or 13A assessment (or their equivalents under amended legislation) within a stipulated timeframe should, in the absence of reasonable excuse, result in revocation of accreditation. This is necessary to ensure that conditions designed to improve the sustainability of a fishery are adhered to.
- d) Given current management arrangements, individual assessments of fisheries under the EPBC Act should be maintained but they should be done given full consideration to the requirements of ecosystem-based management.
- e) The EPBC Act should be amended to require the Minister to more effectively implement the precautionary principle when assessing a management plan under Parts 10, 13 or 13A (or their equivalents under amended legislation). We note that this would require the Minister to do more than ‘take into account’ the principles of ESD (as is currently required under Part 10, for example).
- f) The EPBC Act should be amended to require the Minister to be satisfied that the management plan for a given fishery reflects best available science, or where necessary applies the precautionary principle, particularly in respect of known (listed or unlisted) threatening processes for listed species.

### **EPBC Act: role in biodiversity conservation**

ANEDO acknowledges the important role played by natural resource management (NRM) legislation such as the FM Act. We also strongly support improving implementation of the precautionary principle and more generally ecologically sustainable development (ESD) under NRM laws. However, ANEDO has consistently argued that robust, stand-alone environmental legislation administered by a specialist agency such as SEWPAC is the most effective means of protecting and enhancing biodiversity. Our argument is based on the fundamentally different roles played by NRM and environmental legislation, respectively. While the former views the environment as a ‘resource’, the latter recognises the core value

of biodiversity and incorporates environmental checks and balances into decision-making processes. ANEDO agrees that both branches of legislation are important, however is adamant that while ESD should be integrated and implemented in all NRM legislation, it is essential to retain the oversight of specialist environmental laws.

ANEDO further notes that the EPBC Act is responsible for implementing Australia's international legal obligations under a range of treaties that are relevant to management of the marine environment including the Convention on Biological Diversity, the World Heritage Convention and various migratory species agreements.<sup>6</sup> It is arguable that the Minister for the Environment, under the auspices of the EPBC Act, is the most appropriate person to ensure that Australia honours its international legal commitments. Removing the Minister's oversight of fisheries under the EPBC Act may therefore expose Australia to breaches of international law.

### **EPBC Act: role in fisheries management**

The EPBC interacts with fisheries management through three separate 'Parts'. These Parts provide crucial oversight of Commonwealth fisheries. Indeed, AFMA claims on their website that their work with SEWPAC (under the EPBC Act) enables them to 'better manage the marine environment...'.<sup>7</sup> It also states that complying with the listed species requirements of the EPBC Act is part of their 'commitment to promoting sustainable use of fisheries resources'.<sup>8</sup>

While ANEDO has consistently argued in favour of maintaining the EPBC Act for the purposes of protecting matters of national environmental significance, we acknowledge that there is considerable scope to improve implementation of the precautionary principle under Parts 10, 13 and 13A. To that end, our analysis of these Parts will include recommendations intended to improve application of this principle in respect of fisheries management.

#### **1) Part 10**

Part 10 empowers the Minister for the Environment to strategically assess the impacts of actions under a proposed management plan for a fishery on matters of national environmental significance.<sup>9</sup> Under this Part, the Minister may accredit a management plan, thereby removing the need for individual assessment of 'controlled actions' in the fishery under Part 9 of the EPBC Act.<sup>10</sup> In approving a management plan for a fishery, the Minister must not act inconsistently with a range of environmental treaties.<sup>11</sup> That is, they must be satisfied that the management plan is consistent with Australia's international legal obligations under these treaties.<sup>12</sup> They must also take into account the principles of ESD.<sup>13</sup>

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<sup>6</sup> EPBC Act, s. 1 (e).

<sup>7</sup> <http://www.afma.gov.au/managing-our-fisheries/environment-and-sustainability/>

<sup>8</sup> <http://www.afma.gov.au/managing-our-fisheries/environment-and-sustainability/protected-species/>

<sup>9</sup> EPBC Act, Part 10, divisions 1 and 2.

<sup>10</sup> EPBC Act, ss. 32, 33.

<sup>11</sup> EPBC Act, Part 10, Division 1, subdivision C.

<sup>12</sup> EPBC Act, Part 10, Division 1, Subdivision C.

<sup>13</sup> EPBC Act, s. 146F.

### *How does Part 10 improve the sustainability of fisheries?*

Part 10 provides for assessment of management plans for individual fisheries against the requirements of the environmental treaties to which Australia is signatory. As previously noted, ensuring compliance with these treaties is arguably the responsibility of the Minister for the Environment and SEWPAC.

Broadly speaking, these obligations include a requirement to protect and restore biodiversity,<sup>14</sup> to protect migratory marine species<sup>15</sup> and to protect declared World Heritage areas.<sup>16</sup>

In order to determine whether a management plan is likely to be consistent the aforementioned obligations, it is assessed against Guidelines for the Ecologically Sustainable Management of Fisheries (**Guidelines**). ANEDO submits that assessment of this nature is vital given the well-documented impacts of unsustainable fishing practices on fish stocks and marine biodiversity more generally.

According to these Guidelines, the fishery or fisheries must operate under a management regime that meets two key principles:<sup>17</sup>

- Principle 1: A fishery must be conducted in a manner that does not lead to over-fishing, or for those stocks that are over-fished, the fishery must be conducted such that there is a high degree of probability the stock(s) will recover.
- Principle 2: Fishing operations should be managed to minimise their impact on the structure, productivity, function and biological diversity of the ecosystem.<sup>18</sup>

The Guidelines note that since the inception of assessment under the EPBC Act,

*...a broad range of recommendations have been agreed between the Australian Government Department of the Environment and Water Resources and fishery management agencies. These recommendations require fishery management agencies to demonstrate improved environmental performance, and actively enhance the ecologically sustainable management of fisheries in the short to medium term.*<sup>19</sup>

In light of this statement, ANEDO submits that removing Ministerial oversight of individual fisheries under the EPBC Act would undermine the achievements of the last decade, including reduced by-catch in certain fisheries.<sup>20</sup> While the EPBC Act could certainly be amended with a view to enhancing application of the precautionary principle, it is preferable to improve the operation of Part 10, rather than to delete it from the Act.

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<sup>14</sup> Under the Convention on Biological Diversity.

<sup>15</sup> Under the Bonn Convention, JAMBA and CAMBA.

<sup>16</sup> Under the Convention for the Protection of the World Cultural and Natural Heritage (World Heritage Convention).

<sup>17</sup> Australian Government (former Department of the Environment and Water Resources), *Guidelines for the Ecologically Sustainable Management of Fisheries*, 2007, p 4.

<sup>18</sup> Australian Government (former Department of the Environment and Water Resources), *Guidelines for the Ecologically Sustainable Management of Fisheries*, 2007, pp. 6-9.

<sup>19</sup> <sup>19</sup> Australian Government (former Department of the Environment and Water Resources), *Guidelines for the Ecologically Sustainable Management of Fisheries*, 2007, pp. 2-3.

<sup>20</sup> <http://www.afma.gov.au/2012/08/northern-prawn-fishery-bycatch-reduction-device-assessment-report/>

## 2) Part 13

Part 13 further empowers the Minister for the Environment to accredit a management plan for a fishery if they are satisfied that all reasonable steps have been taken under the plan to ensure that:

- Listed threatened species are not killed or injured as a result of fishing, and the fishery does not, or is not likely to, adversely affect the survival or recovery in nature of the species;<sup>21</sup>
- Members of listed migratory species are not killed or injured as a result of fishing, and the fishery does not, or is not likely to, adversely affect the conservation status of a listed migratory species or a population of that species;<sup>22</sup>
- Cetaceans are not killed or injured as a result of fishing, and the fishery does not, or is not likely to, adversely affect the conservation status of a species of cetacean or a population of that species;<sup>23</sup>
- Members of listed marine species are not killed or injured as a result of fishing, and the fishery does not, or is not likely to, adversely affect the conservation status of a listed marine species or a population of that species.<sup>24</sup>

### *How does Part 13 improve the sustainability of fisheries?*

ANEDO has analysed the Part 13 Assessment of the Commonwealth Small Pelagic Fishery (SPF), published in August 2012 by SEWPAC with a view to understanding how this Part contributes to the sustainable management of a given fishery.

We note, for example, that SEWPAC considered it appropriate to introduce ‘further gear restrictions, spatial closures, independent monitoring and reporting’ in order to protect Australian sea lions, the foraging areas of which overlap with the SPF.<sup>25</sup> Additional gear restrictions and independent reporting and monitoring were also indicated for the purposes of protecting listed migratory species and cetaceans in accordance with the EPBC Act.<sup>26</sup>

SEWPAC also imposed conditions on the management plan regarding specific gear restrictions, closures to protect Australian sea lions, on-board observation and reporting requirements.<sup>27</sup>

This case study demonstrates the important safety net role the EPBC Act plays in minimising impacts on marine biodiversity.

## 3) Part 13A

Under this Part, the commercial export of Australian native specimens, or specimens listed under the Convention on the International Trade in Endangered Species (CITES), requires accreditation. A commercial fishery that proposes to fish one or more species so defined

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<sup>21</sup> EPBC Act, s. 208A.

<sup>22</sup> EPBC Act, s. 222A.

<sup>23</sup> EPBC Act, s. 245.

<sup>24</sup> EPBC Act, s. 265.

<sup>25</sup> SEWPAC, *Part 13 Assessment of the Commonwealth Small Pelagic Fishery*, August 2013, p. 5.

<sup>26</sup> SEWPAC, *Part 13 Assessment of the Commonwealth Small Pelagic Fishery*, August 2013, pp. 6, 7.

<sup>27</sup> SEWPAC, *Part 13 Assessment of the Commonwealth Small Pelagic Fishery*, August 2013, Table 3.

must be accredited as part of a ‘wildlife trade operation’ (**WTO**).<sup>28</sup> Accreditation occurs by way of a Ministerial declaration,<sup>29</sup> which may only be made if the Minister is satisfied that the operation will meet a number of criteria. These include being satisfied that:

- It is consistent with the objects of Part 13A. These are:
  - (a) to ensure that Australia complies with its obligations under CITES and the Biodiversity Convention;
  - (b) to protect wildlife that may be adversely affected by trade;
  - (c) to promote the conservation of biodiversity in Australia and other countries;
  - (d) to ensure that any commercial utilisation of Australian native wildlife for the purposes of export is managed in an ecologically sustainable way;
  - (e) to promote the humane treatment of wildlife;
  - (f) to ensure ethical conduct during any research associated with the utilisation of wildlife;
  - (g) to ensure that the precautionary principle is taken into account in making decisions relating to the utilisation of wildlife.<sup>30</sup>
- It will not be detrimental to the survival or conservation status of a taxon to which the operation relates;
- The operation will not be likely to threaten any relevant ecosystem including (but not limited to) any habitat or biodiversity.<sup>31</sup>

In deciding whether to declare a fishery a WTO, the Minister must also have regard to a range of matters including the significance of the impact of the operation on an ecosystem, and the effectiveness of the management arrangements for the operation (including monitoring procedures).<sup>32</sup>

### ***How does Part 13A improve the sustainability of fisheries?***

As noted in a recent academic article examining Part 13A of the EPBC Act,

*[t]he significance of Part 13A should not be underestimated. It provides one of the only avenues through which the Commonwealth can improve the sustainability of the commercial fishing industry around Australia.*<sup>33</sup>

We note a number of tangible improvements to the management of certain fisheries following their assessment under Part 13A. The NSW Ocean Trap and Line Fishery (**OTLF**) which overlaps with the primary habitat of the east coast population of the critically-endangered grey nurse shark,<sup>34</sup> is a pertinent example. After being assessed under Part 13A, and the complementary state government legislation – the NSW Fisheries Management Act, the NSW Government introduced additional fishing closures in grey nurse shark aggregation sites and imposed additional restrictions on the type and use of fishing gear for the purposes

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<sup>28</sup> EPBC Act, s. 303FN

<sup>29</sup> EPBC Act, s. 303FN (2).

<sup>30</sup> EPBC Act, s. 303BA.

<sup>31</sup> EPBC Act, s. 303FN (3).

<sup>32</sup> EPBC Act, s. 303FN (4).

<sup>33</sup> De Hosson, Rachael, *The limits of merits review and the EPBC Act: Grey nurse sharks, fisheries and the AAT* (2010)

27 EPLJ, p. 223.

<sup>34</sup> The grey nurse shark is listed under s. 178 of the EPBC Act.

of reducing by-catch and injury of this species.<sup>35</sup> We further note that an on-board observer programme was introduced to improve knowledge regarding fishery as a whole. While additional safeguards need to be introduced in order to improve protection of grey nurse sharks, the aforementioned measures constitute a notable improvement to previous management arrangements.

ANEDO notes that this is but one example of the role that Part 13A plays in improving the sustainability of fisheries.

<b>Improving implementation of the precautionary principle and enhancing environmental outcomes more generally under Parts 10, 13 and 13A</b>
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While the EPBC Act has arguably improved the environmental performance of Australian fisheries, unsustainable fishing practices persist.<sup>36</sup> Of these, ANEDO is particularly concerned about by-catch, management of non-target species (and its impact on overall ecosystem functioning) and overfishing. We are further concerned that conditions, and particularly the timelines for conditions, imposed on a fishery under a Part 10, 13 or 13A assessment are not being adhered to, thereby undermining efforts to improve the sustainability of Commonwealth fisheries. Accordingly, there is scope to improve the performance of these Parts. The following part of our submission will discuss this matter in more detail, and recommend specific amendments to the Act.

### 1) Ecosystem-based approach

ANEDO submits that the EPBC Act should be amended to ensure that fisheries are managed in accordance with an ecosystem-based approach. We submit that proper implementation of the Convention on Biological Diversity (to which Australia is a signatory and which underpins the EPBC Act) requires fisheries and other natural resources to be managed in accordance with this approach.<sup>37</sup> The ecosystem approach has been roundly endorsed by the scientific community as the most effective means of ensuring the long-term sustainability of fisheries and more generally the marine environment.<sup>38</sup>

Broadly speaking, an ecosystem-based approach to fisheries management would seek to conserve ecosystem biodiversity, structure and functioning. It would also strive to avoid irreversible ecosystem impacts and reduce undesirable ecosystem impacts (such as unexpected changes to trophic systems) to a possible minimum. Aligning fisheries with ecosystem boundaries (or biospheres) is also vital, while conservation and management decisions for fisheries should be based on best available scientific knowledge and be consistent with the precautionary principle.<sup>39</sup>

ANEDO notes that the Hawke Review Response endorses streamlining of Part 10, 13 and 13A approvals. While we are not in theory opposed to the introduction of a more efficient assessment process that maintains all necessary environmental safeguards, we are concerned

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<sup>35</sup> De Hosson, Rachael, *The limits of merits review and the EPBC Act: Grey nurse sharks, fisheries and the AAT* (2010) 27 EPLJ, p. 240.

<sup>36</sup> See for example Neville, J, *Overfishing under regulation: the application of the precautionary principle and the ecosystem approach in Australian fisheries management*, VDM Verlag, 2011.

<sup>37</sup> Convention on Biological Diversity, COP 5 Decision V/6.

<sup>38</sup> See for example See for example Neville, J, *Overfishing under regulation: the application of the precautionary principle and the ecosystem approach in Australian fisheries management*, VDM Verlag, 2011.

<sup>39</sup> <http://www.fao.org/fishery/topic/13261/en>

by the Government's proposal to support 'a progressive shift under the amended Act from individual assessments of fisheries to accreditation of fisheries management arrangements.'<sup>40</sup> Similarly, we are concerned by the Government's proposal to 'shift the focus from the individual permitting system to assessment and accreditation of management arrangements for whole sectors...'.<sup>41</sup> ANEDO strongly opposes these recommendations. As noted, we submit that the EPBC Act provisions should be strengthened to implement an ecosystem approach rather than a sectoral approach. To that end, accreditation of management arrangements cannot replace oversight of individual fisheries, each of which is unique in its ecological complexity and involves specific forms of fishing which cause particular environmental impacts.

In this context, we do support the Australian Government Response regarding Fisheries Harvest Strategy Policy (**HSP**) biological reference points. Specifically, the Government agrees that these reference points 'should reflect the biology of the species and its role in ecosystem function rather than standard default settings such as reduction of population.'<sup>42</sup>

### ***Recommendations***

- a) The EPBC Act should be amended to explicitly require the Minister to be satisfied that any approval granted under Parts 10, 13 or 13A (or their equivalents under amended legislation) in respect of a fishery will implement ecosystem-based management.
- b) The EPBC Act should be amended to specify that where the Minister is not satisfied that a proposed management plan for a fishery has adequately considered ecosystem-based principles, they may seek review of the proposed plan by an independent third party such as the CSIRO.
- c) The EPBC Act should be amended to empower the Minister to revoke accreditation where certain conditions imposed on a fishery under that Act have not been met. By way of example, failure to comply with a certain percentage of the management actions imposed under a Part 10, 13 or 13A assessment (or their equivalents under amended legislation) within a stipulated timeframe should, in the absence of reasonable excuse, result in revocation of accreditation. This is necessary to ensure that conditions designed to improve the sustainability of a fishery are adhered to.
- d) Given current management arrangements, individual assessments of fisheries under the EPBC Act should be maintained but they should be done given full consideration to the requirements of ecosystem based management.

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<sup>40</sup> Department of Sustainability, Environment, Water, Population and Communities, *Australian Government response to the report of the independent review of the Environment Protection and Biodiversity Conservation Act 1999*, (Recommendation 40).

<sup>41</sup> Department of Sustainability, Environment, Water, Population and Communities, *Australian Government response to the report of the independent review of the Environment Protection and Biodiversity Conservation Act 1999*, (Recommendation 42).

<sup>42</sup> Department of Sustainability, Environment, Water, Population and Communities, *Australian Government response to the report of the independent review of the Environment Protection and Biodiversity Conservation Act 1999*, (Recommendation 41).

## 2) Precautionary Principle

ANEDO notes that the precautionary principle is an integral part of ecosystem-based management. Nevertheless, we submit that there is value in clarifying its application under the EPBC Act in respect of fisheries management. To that end, we support recent amendments introduced under the *Environment Protection Conservation Amendment (Declared Commercial Fishing Activities) Bill 2012*. However, as the recent ‘super trawler’ incident indicated, a management plan can be accredited under the EPBC Act and yet ultimately permit unassessed fishing techniques to be used in the fishery. To that end, we are of the opinion that the notion of ‘uncertainty regarding impacts’<sup>43</sup> (which is essentially the precautionary principle) should be extended to the assessment of management plans for fisheries.

### ***Recommendations***

- e) The EPBC Act should be amended to require the Minister to more effectively implement the precautionary principle when assessing a management plan under Parts 10, 13 or 13A (or their equivalents under amended legislation). We note that this would require the Minister to do more than ‘take into account’ the principles of ESD (as is currently required under Part 10, for example).
- f) The EPBC Act should be amended to require the Minister to be satisfied that the management plan for a given fishery reflects best available science, or where necessary applies the precautionary principle, in respect of known (listed or unlisted) threatening processes for listed species.

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<sup>43</sup> The recently introduced s. 390SD (EPBC Act) provides that the Minister may make an interim declaration regarding a commercial fishing vessel where there is ‘uncertainty about the environmental impacts of the commercial fishing activity.’