

Proposed framework for the assessment of fishing methods in Commonwealth marine reserves

(received from SEWPAC, 21 December 2012)

Preliminary Response by the National Seafood Industry Alliance

14 February 2013

Overview

This initial response to the draft SEWPAC document “Proposed framework for the assessment of fishing methods in Commonwealth marine reserves” is preliminary in nature, provided on a without prejudice basis, and on the assumption that further work between Government and the fishing and aquaculture industry is essential to discuss, resolve and finalise this necessary framework, prior to management plans being finalised.

As the primary instigator, we strongly support the acknowledged need for a framework for the assessment of fishing methods as part of managing the Commonwealth Marine Reserves Network (CMRN). We note earlier departmental advice that the original FGRAs would only a ‘tool’ for the development of the CMRN. The CMRN is now in place and an appropriate framework addressing the issues raised by industry should now be the basis of these discussions.

A framework needs to be referred to explicitly in the management plans, as detailed in the industry draft management plan submissions.

A transparent and accountable assessment framework is essential for finding a balance between biodiversity conservation and sustainable, compatible use of appropriate marine reserve zones (IUCN categories IV and VI) and resources in conjunction with social and economic considerations as required by the management principles. This is not adequately recognised in the “Context” section of the draft framework document.

It is self-evident that compatibility of fishing gears were not assessed in a consistent, rigorous or appropriate way, as part of the process to establish the Commonwealth marine reserves network. The industry has strongly put the case in our earlier FBRA concerns expressed to Government that the outcomes reflected in the draft network Management Plans and the (yet to be seen) Class Approvals for Commercial Fishing Operations are not acceptable and certainly are not based on sound science or due process in all cases. However, we do recognize the potential of a framework based on fishing methods which aligns more closely from the industry position that the impact of fishing on a case-by-case basis should be the basis of assessing risk for this sector.

The industry does not fully agree with the proposed framework section that states:

“...as fishing practices and management evolve, new fisheries commence operations and new data is gathered on the interactions of fishing methods with the environment, the need may arise in the future to assess fishing methods with respect to their compatibility with the objectives of Commonwealth marine reserves.”

We note that the need will (not may) arise over a ten year period, and that considerations must include the management principles of individual reserves and/or zones, not just the high level reserve objectives.

Further, industry agrees in principle with the statement from the proposed framework, and has consistently argued that:

“Whether a fishing method is allowed to operate in multiple use (IUCN VI) and/or habitat protection (IUCN IV) zones, depends upon an assessment of whether the method is compatible with the objectives of the reserve in the context of the specific biodiversity and other natural values protected in the reserve.”

We have been advised informally by the Department that changes to the current (what we see as initial) “compatible gears” decisions in each zone are unlikely to be made between now and when the Management Plans are finalized. As such, our focus must now be on ensuring that the assessment framework process is soundly based in policy, including essential independent review and appeal processes.

Key issues of concern

The key issues of concern in relation to the proposed framework are:

10 year “lock out” of methods currently deemed “not compatible”

Despite acknowledging that the assessment framework must, potentially at the individual reserve level, involve consideration of fishing practices and management evolving, new fisheries commencing operations, and new data being gathered on the interactions of fishing methods (and operations) with the environment [read “conservation values of the reserve(s)”], both the draft management plans and proposed assessment framework propose that methods currently deemed “not compatible” will be locked out of the reserves for 10 years.

This is because those methods are proposed to be listed explicitly in the Management Plans themselves (which is inconsistent with the management approach taken for all other marine users), rather than simply being listed as part of the proposed Class Approvals.

We consider it is essential that an opportunity for review be available for methods currently deemed “not compatible”. We contend that fishing methods being prevented from use through the Class Approvals’ process is equally effective from a management and compliance point of view. In contrast, explicitly listing methods “not compatible” in the Management Plans eliminates any possibility for review based on the principles already outlined by SEWPAC and is inequitable and inconsistent with other proposed aspects of the framework (discussed below) .

We understand that there is a responsibility to manage the CMRN with social, economic, regional and national development considerations. It must be also recognised that ongoing fishing activities are not exclusively carried out either within or outside marine reserve boundaries. There are potential implications on the whole fishery/fishing operations, including economic, where developments may be stifled in part of a fishery where there could in fact be minimal impact on the conservation values. We also recognize that the current EPBC Act and management requirements

are for the long term outcomes and of necessity, need to ensure flexibility exists in the arrangements to cope with changes none of us can predict at this time.

Unnecessary limitation of an “industry initiated” assessment trigger

Providing the potential for a review process to being only “...*methods not prohibited under the relevant management Plan..*” and “..*not listed as allowed in the relevant Class Approval...*” unfairly and inappropriately limits the framework to only “new methods”. The proposed framework itself acknowledges that the framework, on principle, should be designed to provide the opportunity for consideration of:

- fishing practices and management evolving over time (e.g. refined existing methods with reduced environmental impact/footprint etc)
- new fisheries commencing operations (covered by framework as proposed); and
- new data on the interactions of fishing methods with the environment (this may be generically applied across a zone in a network, or at the reserve/fishery level)

In any of these cases, an equal opportunity for consideration and review should be afforded to operators (and fisheries managers) and be accessible in any framework for assessment of fishing methods.

It is also inconsistent with the proposed Director’s ability to initiate a review (see below). Both positive and negative potential impacts should be able to be reconsidered.

Director’s ability to initiate a review of “compatible” methods during the 10 year life of a management plan

The proposed framework is a “one way street” and as such, lacks credibility as a transparent, accountable and unbiased framework for assessment of fishing methods in Commonwealth marine reserves. This is because, on the one hand, decisions have been made to prohibit certain fishing methods from certain zones, and are proposed to be locked out for 10 years under the Plans. On the other hand, presumably using the same FGRA advice and other considerations, those (additional) methods found to be “compatible” can be reviewed at any time during the life of the Plan and could potentially be prohibited, under the “initiated by the Director” assessment trigger.

This is not acceptable to the industry and lacks equity, transparency, science, or even an applied risk based approach to management of the reserves. Also, this proposal introduces a range of questions and uncertainty about how, when, and if the Fisheries Adjustment Policy would be applied, if at all.

If a Director has the power to initiate a review on the ground of potential unacceptable impacts then there appear no logical reasons why he/she should not also be able to do so in relation to initiating a review on the ground of potentially acceptable impacts.

Lack of certainty provided as to the Director’s commitment to due process

The framework provides very limited comfort to industry that a rigorous decision making process will be followed, including appropriate consultation, opportunity to provide comments, transparency of decision making, rationale for decisions taken, and rights of response and appeal. Words such as “...as far as practicable” in relation to these key elements are concerning, and could be against

principles of natural justice to those whose interests (including rights) will potentially be impacted by a decision.

Uncertainty introduced by new and undefined terminology

The proposed framework requires significant discussion and agreement about a range of concepts and terms, that at present cloud the framework in uncertainty. Concepts such as the Director becoming concerned that a fishing method “is having, or is likely to have, an unacceptable impact on the values of the area in which it operates...” and the attempted definition of “compatible fishing methods” demonstrate the amount of work that is necessary to be undertaken by the industry and Government to finalise a framework. On current management plan finalization timing, we do not see how this essential process is possible. Definitely there should be a process agreed to evaluate the many areas of uncertainty and definitions within the FGRA framework before it is finalized.

The need for further in-depth discussion on “process steps”

We welcome these first steps in the development of a framework, however there are particular concerns which require more discussion and clarification from the Department including:

- What is the FGRA’s legal standing and status in relation to the Management Plans?
- The concept of “compatible, subject to conditions” is concerning, particularly in the context of the proposed definition of compatible fishing methods (implies specific fisheries management type focus which has clearly been stated by the Minister is not the case)
- What Fisheries Adjustment Assistance Programs will apply should the Director decide to exclude methods in future
- What legal avenues of appeal and consideration do operators have under any of the processes?

Over-arching concerns consistently raised by industry in many previous submissions

FGRA concerns about “compatible methods” never resolved

FGRA concerns have been expressed by industry for over a year, including consistent calls for review of the issues and proposed actions for further consideration/resolution. Despite these concerns, raised not only by industry but in the attached independent review (Knuckey et al), and reassurances that a review process would be carried out (that did not eventuate), Government has inconsistently used the outcomes of the (flawed) FGRA to justify methods “not compatible” with IUCN zones IV and VI. To rub salt into those wounds, these decisions on incompatible methods are now proposed to be locked in for 10 years in the draft Management Plans.

We, again, call for a working group and technical group to be convened as soon as possible to resolve issues, and particularly to develop appropriate guidelines for decision-making that provide clarity of process and expectations regarding the process.

Risk assessment process and framework not applied uniformly

The industry, including through the results of an independent review into the risk assessment process undertaken by SEWPAC, has consistently raised concerns about the apparent lack of rigorous risk assessment process for other marine users and the disproportionate focus on the fishing industry.

Other specific issues (in relation to the draft proposed framework provided by SEWPAC)

3. Underpinning policy principles

We do not agree with the presentation of the management principles – which appear to have been selectively edited. In any event the full range of management principles apply, including those with social and economic considerations.

Re:

- e. *With reference to the principles above, in general, compatible fishing methods are those that:*
 - i. *do not physically damage benthic habitats*
 - ii. *are selective with respect to the managed stock*
 - iii. *do not interact adversely with species protected under the EPBC Act or with species or species groups of conservation concern.*

We do not accept this proposed definition and call for further consideration and discussion. The above clearly strays delves into fisheries resources management in section (ii) and sets new criteria in relation to protected species in section (iii).

Other policy principles need to be more specific. For example, the statement that assessments will “consider reserve-specific biological and physical values based on best available information” (3.f.) begs the simple question: what is “best available information”?

This observation is also potentially demonstrated in clause 3.g.:

Assessment of fishing methods:

- i. *will be based on fishery-independent evidence and advice.*
- ii. *will be transparent with respect to expert input and reasons for decisions*
- iii. *must be robust to changes in the level of fishing effort within reserves*
- iv. *should be undertaken in a timely way.*

These concepts will need to be spelled out to some extent, to provide some certainty to SEWPAC/DNP and industry.

3.h. Ongoing engagement with industry should support early discussions on and consideration of new fishing methods.

We obviously support ongoing engagement, and as per our submission on the Management Plans, propose that Government establish formal consultative frameworks, which are adequately funded.

4. Process steps

1) Assessment ‘triggers’

More detail would be required in order to assess the proposed triggers. We need to know:

- What “detailed information” would be required to trigger an assessment? (A list of example/sample documents would be useful.)
- At what point, precisely, in the lead-up to a new management plan would the Director “consult with industry”? (A timeline would be useful, and establishment of formal consultative frameworks.)
- What types or sources of information would the Director consider in reaching a decision that a fishing method “is having, or is likely to have, an unacceptable impact” in a reserve?

2) Rapid assessment

Any assessment process must articulate the guidelines (methodology) that will be used in the assessment process. We do not consider the proposal appropriate particularly given the issues raised previously by industry on the FRGA.

3) Independent expert assessment

The composition of any expert panel is important (and, potentially, controversial) and any reference to a panel should elaborate on the following details:

- The number of panel members
- The affiliation/expertise of each panel member (or areas of expertise/affiliation that may be considered for participation on a panel)
- The ability of panels to seek external advice
- The length of the assessment process.

We support the proposal for the Director’s decisions, and statements of reason, to be published online.