Australian fisheries jurisdiction and *Fishery Status Reports*

Under the Australian Constitution, jurisdiction over Australia's fisheries resources is a complex mix of Australian Government, State-government and Territory-government responsibilities. Following a challenge by the states to the validity of the *Seas and Submerged Lands Act 1973*, the High Court in 1975 ruled that the sovereignty of the states ended at low-water mark. It effectively deprived the states of the jurisdiction they had exercised since before Federation over fisheries in the first three nautical miles from shore. To restore the previous position, the Fraser Government negotiated the Offshore Constitutional Settlement (OCS), a package of uniform federal-government and state/territory government laws. It does not reverse the High Court decision; rather it provides a basis for the Australian Government and the states and territories to agree on management of particular fisheries under a single law. This can be either Australian Government law, State law, Territory law; or one of these exercised by a joint authority of the Australian Government Minister and the State or Territory Minister concerned. However, other fisheries are managed cooperatively by these governments. State or Territory governments manage freshwater fisheries, aquaculture, and recreational and charter fisheries.

The *Fisheries Act 1952* had given the Australian Government power to regulate the activities of the Australian fishing industry in 'proclaimed waters', which in many areas extended well beyond those currently encompassed by the Australian 200-nautical mile fishing zone (AFZ). Initially, day-to-day management functions were undertaken by the states on behalf of, and with reimbursement from, the Australian Government. Progressive international recognition of coastal-nation rights and obligations to control and manage access to fisheries resources out to 200 nautical miles culminated in Australia's declaration of its AFZ in the late 1970s. The new requirement to set foreign-vessel operating conditions and catch levels resulted in a need for more direct Australian Government involvement in management.

Implementation of the policy outlined in the 1989 *New Directions for Commonwealth Fisheries Management in the 1990s*[12] resulted in the replacement of the *Fisheries Act 1952*

[12] *New Directions for Commonwealth Fisheries Management in the 1990s: a Government Policy Statement December 1989.* Department of Primary Industries and Energy, Canberra. 114 pp

by the *Fisheries Administration Act 1991* and the *Fisheries Management Act 1991*.

The legislation established the Australian Fisheries Management Authority—AFMA—as the Australian Government statutory body empowered to manage fisheries. In February 1992, AFMA took responsibility for 'hands-on' day-to-day management of fisheries under Australian Government control. Its management is accountable to both the Australian Government Minister with portfolio responsibility for fisheries matters and to Parliament. The Minister has a responsibility to oversee the Authority's activities, but at 'arm's length', and only in exceptional circumstances is the Minister empowered to give AFMA directions on the performance of its functions and the exercise of its powers. The legislation under which AFMA was created makes it the Australian Government body responsible for the sustainable use and efficient management of fishery resources on behalf of the Australian community and stakeholders. The complex marine environment, community expectations and social, economic and political considerations create a significant challenge for fisheries management. AFMA needs timely scientific, economic, industry and management advice on which to base sound fisheries management. Where there are gaps in the information, AFMA is required to apply a precautionary approach when making decisions. In practice, this means that AFMA must act on the best available information to protect the resource and takes steps to reduce any uncertainty about, or risk to, that resource.

It is a role of government (on behalf of the community, which 'owns' the fisheries resources) to ensure that AFMA meets its statutory objective in relation to ecologically sustainable development and other requirements of the *Fisheries Administration Act* and *Fisheries Management Act*. The Bureau of Rural Sciences—BRS—produces these fishery status reports to provide governments, industry and the community with an independent overview of the status of fish stocks in fisheries managed by the Australian Government. The reports are based on the most recent assessments carried out by research agencies, including State and Territory agencies, CSIRO and BRS. The reports provide input to the assessment of the Australian Government's management performance in relation to resource status.

The determination of management arrangements for several of the fisheries that are subject to AFMA legislation involves other entities:

- As identified in the 2003 Government policy statement, *Looking to the Future: A Review of Commonwealth Fisheries Policy*, the Commonwealth, state and territory governments should ensure that future management arrangements provide for total stock management for fisheries. In general, where fish stocks cross jurisdictional boundaries, OCS arrangements are negotiated to this end. However, there remains a number of fish stocks, e.g., silver trevally and southern scallop, for which rational arrangements have not been reached
- Torres Strait fisheries management arrangements are determined by the Torres Strait Protected Zone Joint Authority. The Torres Strait Treaty, ratified in 1985 between Australia and Papua New Guinea, defines an area known as the Torres Strait Protected Zone. The marine resources within this zone are managed by the joint authority, which comprises the Federal and State (Queensland) Ministers responsible for fisheries, as well as the Chair of the Torres Strait Regional Authority having responsibility for traditional species
- Arrangements for highly-migratory tunas and billfishes that range far beyond the AFZ are developed under international conventions or agreements to which Australia is party. They are: the

Convention for the Conservation of Southern Bluefin Tuna; the Agreement for the Establishment of the Indian Ocean Tuna Commission (an intergovernmental organisation established under the auspices of the United Nations Food and Agriculture Organisation); and the *Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean* Arrangements for demersal species in the AFZ of Australia's sub-Antarctic islands and Antarctica are developed under the international *Convention for the Conservation of Antarctic Marine Living Resources*, to which Australia is party.

Management arrangements for straddling stocks such as South Tasman Rise orange roughy require international negotiation.