

NSW FISH HABITAT PARTNERSHIP
WORKING TOGETHER FOR HEALTHY FISH HABITAT

3 September 2014

Dr Neil Bryon
Chair
Biodiversity Legislation Review Panel
PO Box A290
Sydney South NSW 1232
Via email biodiversity.legislationreview@environment.nsw.gov.au

Dear Dr Bryon

SUBMISSION: INDEPENDENT BIODIVERSITY LEGISLATION REVIEW

Thank you for the opportunity to provide comment to the Independent Biodiversity Legislation Review Panel on this important review.

The NSW Fish Habitat Partnership (FHP) is an alliance of twelve stakeholder groups¹, representing around 1.1 million people, that seeks to protect, restore and enhance the state's fisheries via the better management of fish habitat. We do this through coordinating efforts by multiple interest groups to promote, protect and enhance NSW fish habitat and to deliver improvements to fish habitat that achieve sustainable environmental, economic and social benefits to NSW.

The existing biodiversity and conservation framework in NSW under the *Native Vegetation Act 2003* (NVA) and the *Threatened Species Conservation Act 1995* (TSCA) does relate to the protection and conservation of key fish habitats – in particular wetlands, riparian zones, freshwater, estuarine and marine fauna and their habitats, excluding fish and aquatic invertebrates and marine vegetation. All other aquatic habitat and biodiversity conservation is managed through Parts 7 and 7A of the *Fisheries Management Act 1994*, the *Marine Parks Act 1997* and the related *Policy and guidelines for fish habitat conservation and management (update 2013)* (P&G), the majority of which fall outside the scope of this Review. We note that the management of the marine estate, including estuarine and marine biota is being reviewed under the marine estate reforms and trust that the outcomes of this review will inform this review as well, via the development of the proposed Marine Estate Management Strategy.

We also note that aquatic (marine and freshwater) ecosystems and species generally require different conservation and management approaches and that a 'one size fits all approach' will be ineffective. We therefore emphasize that it is imperative that any new legislation or policy framework recommended via this Review are mindful of the implications for related aquatic ecosystems and that any implications for aquatic ecosystems are adequately discussed with Fisheries NSW, the NSW Marine Estate Management Authority and fisheries stakeholders prior to them being made.

¹ The founding members of the NSW Fish Habitat Partnership are Australian Fishing Trade Association, Australian National Sportsfishing Association, Nature Conservation Council of NSW, NSW Aboriginal Land Council, NSW Council of Freshwater Anglers, NSW Farmers, NSW Farmers Oyster Committee, OceanWatch Australia, Recreational Fishing Alliance of NSW, Professional Fishermen's Association, Sea Life Conservation Fund, Sydney Fish Market.

While we welcome any Review that seeks to streamline, simplify and improve the effectiveness of legislation, we are cautious of the impact that these types of changes may make on the ground and the “spill over” effect to other related legislation, in particular any implications this may have on threatened species conservation of fish and marine vegetation and their habitat under Parts 7 and 7A of the *Fisheries Management Act 1994* and marine biodiversity conservation under the proposed new Marine Estate Management Act. In that light, we make the following comments for consideration by the Panel.

Overall comments

Elements of the current framework working or not working? Where are the gaps?

We are supportive of the current legislative and policy framework in place for the management of interactions between terrestrial and freshwater fish habitat, wetlands and related aquatic species, as the measures in place, when adhered to, work effectively to ensure the conservation and protection of these important ecosystems and the species they support. It is important that any changes arising from this Review do not weaken the current controls and management mechanisms in place for these aquatic ecosystems and related ecosystem services they provide and that adequate funding and support is directed towards ensuring onground implementation of these controls and measures. We would however suggest that in the light of this Review and the marine estate reforms, that some species and ecosystems currently managed under the TSCA, namely coastal dependent wader birds, marine fauna, coastal wetlands, including coastal saltmarsh and those listed as RAMSAR wetlands are considered for integrated management within the broader marine estate reforms. This will allow for a more holistic and integrated approach to management of estuarine and marine ecosystems at the landscape scale.

Of note is the importance of ensuring an integrated, landscape or systems approach is taken to managing all threatened species and native vegetation to ensure connectivity, particularly to ecosystems and species downstream and cumulative impacts are recognised and adequately considered. Often, the importance of fish habitat and the species supported by these ecosystems, whether they be marine or terrestrial systems, are not understood and certainly not valued appropriately in terms of the social, cultural and economic values within the planning stage of developments. Better appreciation and incorporation of the social, cultural and economic importance of fish habitat through education remains an ongoing requirement. So while we are supportive of the continued separation of frameworks for fish and fish habitat, it is important to ensure that adequate processes and systems are in place to allow for this to occur and that there are open and transparent processes and communication channels between departments to ensure effectiveness.

Duplication of legislative and regulatory requirements and dealing with trade offs

While we are supportive of the current framework, we note with concern that historically any changes to the TSCA have automatically been made to Part 7A of the FMA, with little, if any consultation with the Fisheries NSW or relevant fish stakeholders. Going forward, we would recommend that any changes arising from this Review relating to the TSCA do not automatically carry across to the FMA without adequate consultation to ensure these changes are effective for freshwater, estuarine and marine environments and for the fish species, marine vegetation and aquatic reserves managed under the FMA.

The current framework as it relates to tradeoffs for fish habitat is well structured and effective, provided the offsets are genuine and are of value. Offsets related to fish habitat fall outside the scope of this Review as they are undertaken in accordance with the P&G. The P&G has

only recently been reviewed in 2013 and is an effective mechanism that leads to improved outcomes for fish habitat and fish that works well. Again, ensuring adequate consideration is given to the significant social, cultural and economic values (ecosystem services) provided by these ecosystems remains an ongoing challenge.

Theme 1: Objects and principles for biodiversity conservation

We are supportive of the objects of the current laws as they are at present and we would not want to see any changes that weaken the current level of protection to aquatic habitats. In fact the objects of the TSCA are very similar to the objects of Part 7A of the FMA. We would suggest strengthening the current objects through inclusion of the following:

- Given the current global direction in understanding, recognising and ensuring adequate management of the ecosystem services provided by native vegetation, in particular freshwater, estuarine and riverine vegetation that support fish habitat, that the objects be extended to also include “ecosystems services”. Going forward it will be important for developers and the Department of Planning and Environment to recognise the true economic, social, cultural and environmental values provided by these ecosystems and to factor in the associated costs, for example the significant carbon emissions that occur when coastal and marine ecosystems are disturbed, into offsets where these systems will be impacted – so that the “real” cost of development is reflected in decision making.
- Including “cumulative impacts” so as to strengthen the ability of landscape/systems level management, conservation and planning decisions.

Theme 2: Conservation action

The framework in place for wetlands and freshwater fish habitats works well.

The NSW Saving our Species (SOS) programme provides an effective approach to managing threatened species, provided it is adequately resourced and supported politically in planning decision-making. Threatened species currently managed under the FMA however, do not fall under the SOS and to date there has been little funding and support provided to invest in conservation efforts related to these species. While aquatic species are uniquely different to terrestrial species in terms of conservation efforts, consistency in support provided is warranted and we would like to see the same level of support and funding be extended to threatened species under the FMA so that we have a “Saving our Aquatic Species” programme that is as well resourced and supported as the SOS.

In addition, there is an ongoing need for improved inter-agency cooperation between OEH and Fisheries NSW to better coordinate and work more effectively together on threatened species matters. We understand that steps have been taken recently to improve this cooperation and we welcome and encourage this to continue.

We would like to raise your attention to a number of effective case studies relating to encouraging landowners to generate public benefits from their land and rewarding them as environmental stewards. Of most interest may be the good work undertaken by Fisheries NSW and others in 2002² in the Clarence Estuary, and particularly at Little Broadwater where stewardship payments were made to landholders to improve fish habitat by removing cattle from high value fish habitat (the first scheme of its kind in Australia). A key part of the success of this scheme was having a simple monitoring process for the community and landholders to engage in (using photo points) to measure programme effectiveness.

² Refer http://www.dpi.nsw.gov.au/_data/assets/pdf_file/0013/211702/CLARENCE---FIXING-FRESHWATER-FISH-HABITAT.pdf

Theme 3: Conservation in land use planning

We reiterate our point made above that we do not want to see a weakening of the current management framework from this Review for fish habitat in land use planning decisions.

As noted above, ensuring a landscape approach is adopted that incorporates aquatic habitat and biodiversity is important. We suggest that this, along with consideration of cumulative impacts and connectivity issues as they relate to the aquatic environment, and recognising the true cost of impacting on aquatic ecosystem services are weaknesses in the current land use planning system. Political will to address these shortcomings is needed to ensure effective conservation of fish habitat into the future and that impacts are fully reflected in development decisions made.

Theme 4: Conservation in development approval processes

We are supportive of the current offset arrangements through the P&G as they relate to fish habitat. The P&G provides clear guidance and direction that in our opinion works well and should continue to be supported.

The current biodiversity assessment methodologies however, whether they are for terrestrial or aquatic biodiversity, do not adequately accommodate social, cultural and economic values, particularly the recreational and indigenous values provided through related ecosystem services. The true cost of this natural capital is not reflected in decision-making when it relates to aquatic ecosystems and should be.

Theme 5: Wildlife management

Provisions for marine mammals and reptiles are currently not effective and we would encourage the shortcomings to be addressed in the marine estate review.

Theme 6: Information provisions

Having an independent scientific committee to consider and make listing decisions is important and we are supportive of this continuing to ensure decisions are made based on independent evidence-based science rather than politics. It is important that the threatened species listing process is consistent for all threatened species, whether they are under the TSCA or the FMA.

We suggest that additional information relating to the social, cultural, economic and environmental values relating to the ecosystem services provided by fish habitat are required. For example, the recreational fishing values, not just commercial values should be factored into economic costings used for offset calculations. Recreational fishing brings significant economic value into NSW and regional communities. In addition, coastal ecosystems such as mangroves, saltmarsh and seagrass, also known as blue carbon ecosystems are very effective at sequestering and storing significant amounts of carbon (several times more effective than terrestrial systems) from the atmosphere for millennia. The costs associated with carbon emissions through their disturbance from development are not factored into offset methodologies. We refer you to a recent report, *Optimising and managing coastal carbon: Comparative sequestration and mitigation opportunities across Australia's landscapes and land uses (2012)*³ that provided the first assessment of Australia's blue carbon stocks and their related economic value from disturbance. We note there is substantially more data available in NSW on this than in other states.

³ Available from http://frdc.com.au/research/Documents/Final_reports/2011-084-DLD.pdf

In relation to critical habitat being an effective tool, we note that on private land it is difficult to enforce control and therefore we are supportive of more collaborative approaches for the agencies to work collaboratively with landholders.

General

Please do not hesitate to contact me should you require further information on 0419 903 800 or eo@fishhabitat.org.au.

Yours sincerely



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