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Committee Secretary  
State Development, Natural Resources and  
Agricultural Industry Development Committee  
Parliament House  
George Street  
Brisbane Qld 4000

By email: [sdnraidc@parliament.qld.gov.au](mailto:sdnraidc@parliament.qld.gov.au)

Dear Committee Secretary,

**RE: Submission to Fisheries (Sustainable Fisheries Strategy)  
Amendment Bill 2018**

Thank you for the opportunity to make a submission to the State Development, Natural Resources and Agricultural Industry Development Committee in relation to the Fisheries (Sustainable Fisheries Strategy) Amendment Bill 2018.

The Environmental Defenders Office of Northern Queensland Inc. (EDONQ) is a not-for-profit, non-government, community legal centre specialising in public interest environmental law. For over 20 years, we have provided legal representation, advice and information to individuals and communities, in both urban and rural areas, regarding environmental law matters of public interest. We also deliver community legal education and undertake law reform activities. We provide services to communities in northern and far northern Queensland.

EDONQ largely welcomes the amendments to the *Fisheries Act* (the Act) contained in the Bill. In particular we applaud the transparent and consultative approach to develop the sustainable fisheries strategy implemented by the Bill.

**Summary of recommendations**

EDONQ supports the amendments of the Act regarding the clarification of the powers of the Minister and Chief Executive, the use of harvest strategies, the increase to compliance powers and penalties, and the strengthening of the administrative review system.

However, EDONQ has concerns about some elements of the Bill; specifically, the ability of the Minister to ignore harvest strategies, the erosion of the right to silence, and the lack of review rights to public submitters.

**Powers of the Minister and Chief Executive**

The Bill clearly outlines the respective powers of the Minister and Chief Executive. The assignment of responsibility for day-to-day operations and development of draft harvest strategies to the Chief Executive ensures that the operations of the department remain independent. Further, the Bill provides for the delegation of power, allowing for technical decisions to be made by those with appropriate expertise.

The use of declarations is an important power for the Chief Executive to provide flexibility in management as more information is obtained or as unexpected events occur. EDONQ supports the requirement for declarations to be consistent with harvest strategies.

While flexibility is important to ensure our fish stocks are appropriately managed in a changing environment, the ability for the Minister to direct the Chief Executive or other persons to make decisions inconsistent harvest strategies goes beyond the need for flexibility. Although the power is restricted to being 'consistent with the main purpose of this Act', the purpose of the Act refers to a balance of principles. The reference to 'balance' means that there is no strict interpretation of the purpose, allowing the Minister to personally determine what the appropriate balance is. Further, Clause 27 of the Bill emphasises the balance is to 'maximise potential economic, social and cultural benefit'. Harvest strategies are created with the informed input of the community in accordance with the Act's purpose, therefore there is no need for the Minister to have the power to ignore harvest strategies for a purpose which those harvest strategies are specifically created to meet.

**Harvest strategies**

Harvest strategies are being successfully used in other jurisdictions. They allow for certainty and guidance in decision-making. For a harvest strategy to be successful, it must be underpinned by informed science throughout its creation, implementation and review. The success of harvest strategies are fundamentally tied to access to informed data. As such, funding for continued research must be increased alongside the implementation of harvest strategies.

EDONQ supports the inclusion of Traditional Owners in the management of the fisheries sector. EDONQ also encourage the express recognition of Traditional Owners as important stakeholders in the fishery sector, who must be included in consultation. Likewise, EDONQ considers public submission rights to be a fundamental aspect to developing effective harvest strategies. Public submission rights allows for decision makers to access the expertise and guidance of the public, while also providing a transparent process.

**Compliance powers and penalties**

In our submission to the Green Paper in 2016, EDONQ recommended that the first step in achieving compliance was education. We continue to maintain that recommendation, especially in light of the new offences and increased penalties.

EDONQ supports the requirement for vessel-monitoring systems, which should eliminate breaches of zoning rules and assist in targeting vessels for further inspection.

EDONQ supports the increased powers of the fishery officers relating to searches, warrants, non-identification, and electronic records. We do however, have some concerns relating to s150B which removes the general right to silence. While a right against self-incrimination remains, this addition marks a concerning trend to erode the right to silence in Queensland. The compulsion to answer questions was specifically included in the *Environmental Protection Act 1994* (Qld) and the *Nature Conservation Act 1992* (Qld) to target corporate breaches, the same justification cannot be said to apply here. It is EDONQ's recommendation that s150B be removed from the Bill or be constrained to an express purpose.

Similarly, EDONQ is concerned with s149B, validating defective warrants as long as the defect does not affect the warrant's substance. Case law regarding warrants in Australia has justifiably set a strict standard for compliance. Warrants are highly invasive in nature and as such must be held to a strict standard. If it is deemed appropriate to take such invasive actions, proper care must be taken when drafting and exercising warrants.

#### **Administrative review**

Revising the review process in the *Fisheries Act 1994* (Qld) to mandate internal review in the first instance will reduce the cost burden and increase accessibility. However, the Bill restricts the right to review to 'affected parties', essentially those whose licence/authority is affected by a decision. Drafting of harvest strategies requires public notification and the opportunity for public submissions. This recognises the public's rights to be involved in the decision-making process.

Harvest strategies will be the foundation for future decisions by the Chief Executive for up to 5 years before they are reviewed. However, submitters to harvest strategies are not provided review or appeal rights. This critically reduces the public accountability of the Minister and the Chief Executive. An open and transparent process, reviewable by an external body is required to ensure community expectations are met, particularly for important decisions such as the approval of harvest strategies.

We recommend that the public who have made a proper submission be afforded the right to seek a review of the decision.

We look forward to making further submissions during the planned review of the Fisheries Regulations in 2019, where a number of concerns raised here, and in our previous submission to the Green Paper, may be addressed.

Thank you for considering our recommendations.

Kirstiana Ward  
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