

17 December 2018

Ms Karen Avery
Executive Director, Environment Policy and Support
Department of Environment and Natural Resources
GPO Box 3675
Darwin NT 0801

Via email: Karen.Avery@nt.gov.au and environment.policy@nt.gov.au

Dear Ms Avery

RE: NTSC Submission on Draft Environment Protection Bill and Regulations

As the peak representative body for the wild catch, aquaculture and trader/processor seafood sectors in the Northern Territory, the Northern Territory Seafood Council welcomes the opportunity to comment on the draft environment protection Bill and draft environmental protection Regulations.

We were pleased to see the amendments announced by Minister Moss on 31 October 2018 advising the Government will seek to implement a judicial review process for environmental decision-making on projects other than fracking projects. Rather than have every environmental approval decision open for a merits review, from anyone in the community.

Unfortunately, due to competing priorities and the short time frame for consultation, our feedback is limited. We would welcome an extension to the consultation process to ensure this important draft Bill and draft Regulations is properly understood. A concern exists that this legislation is being rushed through without some of the key areas and their impacts being understood. Capacity and resources for legal advice, from a business perspective, would greatly aid ensuring this legislation does deliver on its goal to achieve investment certainty.

It is disheartening that the concerns Northern Territory Seafood Council raised through the consultation process in June 2017 were not responded to. It appears many of these concerns remain unaddressed in the draft legislation, including:

- How the new legislation will reduce regulatory burden and remove duplication;
- Definition of 'significant' remains broad and provides no guidance on whether it will trigger processes in the seafood industry which are already managed and assessed with regards to environmental impact;
- A clear articulation of what triggers assessment;
- What (if any) processes are excluded from the assessment process;
- Communication around what businesses and activities the legislation applies or does not apply to.

Resourcing

It is unclear what resources will be in place to aid the proposed legislation, and to date it appears that the Department has advised the Government's resourcing intentions are not yet

known. There are two key areas which would indicate a very high level of resourcing will be needed. First is the set timeframes for decisions and turnaround which the Department must comply with. Second is the broad nature of definitions to deliberately capture any proposal.

In addition to the resourcing required to administer the legislation, there also needs to be provisions and support for proponents/potential proponents to understand and navigate this legislation. As part of the broader communication, having an efficient and user friendly system in place (as suggested in our correspondence in June 2017) should also be factored in.

Duplication of existing legislation and processes

NT Seafood businesses are already managed under a range of both Northern Territory and Commonwealth legislation, policy and processes with respect to environmental impacts. This includes, but is not limited to:

Aboriginal Land Act (Northern Territory)
Aboriginal Land Rights Act (Commonwealth)
Animal Welfare Act (Northern Territory)
Barramundi Fishery Management Plan (Northern Territory)
Cobourg Peninsula Aboriginal Land, Sanctuary and Marine Park Act (Northern Territory)
Darwin Port Corporation Act (Northern Territory)
Doctors Gully Aquatic Life Reserve Management Plan (Northern Territory)
East Point Aquatic Life Reserve Management Plan (Northern Territory)
Environment Protection Biodiversity Conservation Act 1999 (Commonwealth)
Fisheries Act (Northern Territory)
Fisheries Regulations (Northern Territory)
Heritage Act (Northern Territory)
Historic Shipwreck Act 1976 (Commonwealth)
Kakadu Plan of Management
North Network Management Plan (Commonwealth)
Marine Act (Northern Territory)
Marine Pollution Act (Northern Territory)
Marine Pollution Regulations (Northern Territory)
Mud Crab Management Plan (Northern Territory)
Northern Territory Aboriginal Sacred Sites Act (Northern Territory)
Pearl Oyster Culture Industry Management Plan (Northern Territory)
Protection from the Sea (Prevention of pollution from ships) 1983 (Commonwealth)
Spanish Mackerel Fishery Management Plan (Northern Territory)
Territory Parks and Wildlife Conservation Act (Northern Territory)
Territory Wildlife Regulations (Northern Territory)
Waste Management and Pollution Control Act (Northern Territory)
Water Act (Northern Territory)
Work Health and Safety (National Uniform Legislation) Act (Northern Territory)

In addition to this legislation ecological risk assessment processes are in place, environmental management systems, codes of practice, Harvest Strategies being developed and third party accreditation programs available.

The Department has advised that the proposed new legislation will apply to both aquaculture and fisheries to ensure ‘significant environmental impacts are appropriately avoided, managed or mitigated to protect the environmental values’. In addition, the new proposed legislation is ‘not a duplication of existing legislation’, we disagree.

Due to the broad definition of ‘action’, ‘significant’ and ‘impact’ the existing frameworks the proposed Bill and Regulations will result in duplication of processes. This duplication must be avoided and efforts to streamline and understand existing processes undertaken prior to finalising the legislation.

Objectives

It is noted that one of the Objectives of the Bill is 'investor certainty'. However with such broad definition of key words in the legislation such as 'action', 'significant' and 'impact' are to be treated, it creates much uncertainty for investors.

Having broad definitions, using 'action' as an example, to capture any proposal that may have a 'significant impact' on the environment does not aid investor certainty.

Objects

It is unclear how the objects of the act will be achieved, in particular object (b) with regard to 'human life both now and in the future', 'all life depends', 'equitable between current and future generations':

- (b) to promote ecologically sustainable development that improves the total quality of human life, both now and in the future, in a way that:
 - (i) maintains the ecological processes on which all life depends; and
 - (ii) recognises the need for development to be equitable between current and future generations.

Meaning of action

Under the Bill an action is any of the following 'a project', 'a development', 'an undertaking', 'an activity or series of activities', 'works' and/or a material alteration of any of these things mentioned. Essentially the definition of action is so broad it includes every possible action.

This is important because the meaning of impact includes 'action' and the meaning of significant environmental harm is based on a significant impact, for which reliant on the word 'impact' is critical.:

8 Meaning of significant environmental harm

Significant environmental harm means environmental harm that:

- (a) would cost more than the monetary amount prescribed by the regulations to remediate; or
- (b) has a significant impact on the environment.

9 Meaning of impact

- (1) An **impact** of an action taken by a person is:

- (a) an event or circumstance that is a direct consequence of the action; or
- (b) an event or circumstance that is an indirect consequence of the action and the action is a substantial cause of that event or circumstance.

- (2) An impact may be a cumulative impact and may occur over time.

10 Meaning of significant impact

A **significant impact** is an impact of major consequence having regard to:

- (a) the context and intensity of the impact; and
- (b) the sensitivity, value and quality of the environment impacted on and the intensity, duration, magnitude and geographic extent of the impact.

Ministers Responsibility

The Minister's responsibilities fails to include reference to Ecological Sustainable Development and instead focusses on protecting the environment. This appears to be inconsistent with the objects of the Bill. It is a concern also that the Minister has extraordinary powers to veto not only projects, but also industry activities; create environment protection areas and triggers with little review/input or consultation.

Territory Environmental Values and Objectives

In June 2017 our submission flagged the importance of early and appropriate engagement with industry on developing Territory Environmental Values and Objectives. Unfortunately the next contact made with us is in mid October 2018, a narrow window for a discussion with a consultant which were unable to take up, followed by a single workshop in November, after which a final report on stakeholder feedback is developed and advice to the Minister. This is

not in our view early and appropriate engagement. The importance of getting the Territory Environmental Values and Objectives warrants a far more thorough consultation process to develop the advice for the Minister.

Triggers

The setting of locality-based and activity-based triggers is an additional mechanism that may result in the loss of access to seafood operations, and/or additional costs to business due to being referred to the EPA to seek environmental approval.

There is a broad and undefined nature of what constitutes a ‘nature or cultural environment feature’ or how thresholds for ‘activities’ would be set. The consultation on the declaration of an environmental objective or trigger only involves consultation with the EPA and a published notice with a 30 day response time for the public.

Given the significant impact a trigger can have on investment certainty it is suggested that more certainty around these triggers and how they are developed is completed. It would be appropriate to improve consultation, input and finalisation of the Territory Environmental Values and Objectives prior to finalising legislation. Without having these finalised, it leaves too much uncertainty in place for industry.

Regulatory Impact Statement

The Northern Territory Seafood Council believes a full Regulatory Impact Statement (RIS) needs to be completed and provided to the public for comment prior to the legislation being progressed further.

In closing, we thank you for the opportunity to comment and would welcome an industry specific briefing to better understand the impacts/implications for this legislation on the NT seafood industry.

Kind Regards

DANIEL KIMBERLEY
Chairman
Northern Territory Seafood Council Inc