

**Submission  
No 929**

## **INQUIRY INTO RECREATIONAL FISHING**

**Organisation:** Canberra Fisherman's Club Inc  
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**Date received:** 22/03/2010

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19 March 2010

The Director  
Select Committee on Recreational Fishing  
Parliament House  
Macquarie Street  
SYDNEY NSW 2000

Dear Director and Committee Members

**Inquiry into recreational fishing**

Thank you for your invitation to provide a written submission to your inquiry. This submission is made on behalf of the members of the Canberra Fisherman's Club Inc (CFC). Some CFC members may also be lodging personal submissions. If it pleases the Committee, the CFC Committee and its members will welcome an opportunity to appear at public hearings to elaborate further on its submission or other matters of interest to the Committee.

The inquiry and its outcome are of interest to the CFC's members. Most, if not all, of the CFC's members hold New South Wales fishing licences and regularly fish in New South Wales inland and coastal waters. Eleven of the CFC's monthly fishing outings are held in New South Wales waters, with about three or four being held in marine parks.

Of the issues covered in the inquiry's terms of reference, the CFC considers it is important to:

- enhance the inclusiveness and transparency of the consultation and decision making processes to ensure enhanced outcomes for recreational fisheries and ensure that all stakeholders have confidence that those processes are fair and equitable, and
- establish an independent peak body that is adequately resourced to represent the interests of recreational anglers in New South Wales.

I attach the CFC's submission together with background information for the Committee's consideration. The CFC looks forward to discussing the issues raised in its submission, or any other issue that is of interest to the Committee.

Yours sincerely,



Greg Davis  
President  
Canberra Fisherman's Club Inc

## Submission

### The Canberra Fisherman's Club makes the following submissions to the Select Committee on Recreational Fishing

1. The Canberra Fisherman's Club Inc (CFC) recommends that there be increased consultation and greater transparency in the creation and management of marine parks. To achieve this, it is proposed that the New South Wales Parliament amend the *Marine Parks Act 1997* to require that:
  - (a) the relevant Ministers consult peak bodies representing the interests of recreational anglers before appointing a person to represent those interests on the Marine Park Advisory Council and the marine park advisory committees for each of the marine parks
  - (b) the Marine Park Authority provides greater transparency in the creation of marine parks and development of zoning plans by publishing the details of people consulted and submissions received, publishing a full risk assessment for each marine park and zone to identify threats to management, and by publishing conservation objectives for each Sanctuary Zone with ongoing monitoring and reporting on the effectiveness of those zones
  - (c) the Marine Park Authority publish the minutes of meetings of the Park Advisory Council and the marine park advisory committees for each of the marine parks
  - (d) the Marine Park Authority makes publicly available on its website all research conducted in relation to New South Wales marine parks (including the outcome of scientific evaluation and monitoring research), and
  - (e) the Marine Park Authority publishes an annual report for each marine park outlining, among other things, the activities of the Marine Park Advisory Council and marine park advisory committees for each marine park, public and private consultation undertaken, status reports of fisheries and aquatic life overall and in each of marine park zones, and scientific and other research completed or in progress within the marine parks.
2. Until the Marine Parks Act is amended, the CFC requests members of the Committee to submit questions on notice to the relevant Ministers inquiring about the matters set out in recommendations 1(a) to (e) on an annual basis.

3. The Marine Park Authority should make more use of angler-based research and monitoring, including log-books and tagging programs. The Marine Park Authority should provide incentives to anglers to participate in this research and it should publish the outcomes of this research on its website.
4. The CFC supports research by the Department of Primary Industries to ensure the sustainability of recreational species (including mulloway) and to continue to ensure that its website maintains its informative level of scientific and other evidence concerning the sustainability of fisheries.
5. The CFC recommends that consideration be given to amending the *Fisheries Management Act 1994* and the *Marine Park Act 1997* to expressly state that the provisions of those Acts and the regulations made under them do not extinguish the public right of fishing.
6. The CFC recommends the Advisory Council of Recreational Fishers (ACORF) takes steps to make itself more accessible to recreational anglers by raising its profile through a series of public forums and by hosting a submission form on the DPI website so that issues or concerns can be raised with ACORF.
7. To improve the transparency of the nomination and selection process of ACORF and all other fishing trust and other advisory council positions, the Department of Primary Industries website should publish selection or suitability criteria for the positions, the list of nominations received, and the short list recommended to the Minister.
8. The New South Wales Council of Freshwater Anglers and Australian National Sportfishing Association should be represented on both ACORF and all other fishing trust and other advisory council positions.
9. That ACORF and all other fishing trust and other advisory councils consider ways it can publish the minutes of their meetings on the Department of Primary Industries website in a more timely manner.
10. The New South Wales Government provides ongoing funding to establish an independent peak group or body to represent the interests of recreational anglers.
11. That the New South Wales Government funds an independent study into the social and economic benefits of recreational fishing in New South Wales every five years.
12. That New South Wales Fisheries make additional funding available to enable local fishing clubs to run Kids Clinics in regional areas.

13. That the New South Wales Government considers starting a fishing program to assist kids with drug problems.
14. The New South Wales Government provide an ongoing commitment to the ANSA Angel Ring Program.
15. That there be an increase in the number of Recreational Fishing Havens, and studies be carried out to identify suitable estuaries. Unlike the previous establishments of Recreational Fishing Havens, the CFC would strongly recommend that the Recreational Fishing Trusts are not used in the buy-back of commercial licenses.
16. A new recreational fishing haven should be established between the southernmost boundaries of the Batemans Marine Park to the New South Wales – Victorian Border.
17. That the New South Wales continues the stocking of native fish in dams, impoundments and weirs.
18. The Recreational Fishing Trust and New South Wales Government must commit to future ongoing funding of the Gaden Trout Hatchery.
19. That the New South Wales Government addresses the impact of landbased pollution and the pressures on aquatic environment by development and industrial activities before imposing further restrictions on recreational fishing.

## Background

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## 1. About the Canberra Fisherman's Club Inc

The inquiry and its outcome are of interest to the CFC's members. Most, if not all, of the CFC's members hold New South Wales fishing licences and regularly fish in New South Wales inland and coastal waters. Eleven of the CFC's monthly fishing outings are held in New South Wales waters, with about three or four being held in marine parks.

The objects of the CFC are to:

- foster the art of angling
  - promote the study and conservation of fish and fisheries, and
  - co-operate with and to support other bodies whose aims are similar to those of The CFC.
- Where deemed appropriate by the committee this support may take the form of affiliation with such bodies.

The CFC is affiliated with the Australian National Sportfishing Association (ANSA). This gives members the opportunity to fish for State, National and International Records, attain Master Angler Awards and compete in ANSA Conventions. The CFC supports and promotes the Recfish Australia National Code of Practice for Recreational and Sport Fishing.

Regardless of their background, fishing is an important way of life for many of the CFC's members. The CFC currently has about 90 to 100 members who mostly live in Canberra and Queanbeyan with some living in other towns outside the Australian Capital Territory. Approximately 25% of the CFC's members are Junior Members who are under the age of 16 years. The members include singles and families, with a variety of occupations including students, trades persons, professionals and public servants. Some members are relatively new to fishing while others have grown up in families who have been fishing for generations. The membership has a mix of those who like to fish socially and those who compete in ANSA Conventions and have attained State and National records.

Eleven of the CFC's monthly fishing outings are held in New South Wales waters, with about three or four being held in marine parks. In addition to holding monthly fishing outings, the CFC hosts the annual ANSA Burrinjuck Convention and the Canberra Carp Out at Lake Burley Griffin. Both events have each seen almost one ton of carp removed from those waterways. In addition, 50% of the proceeds of the Canberra Carp Out are donated to the Eden Monaro Cancer Support Group and the other 50% is used to fund stocking of native fish in the Canberra local lakes.

Given that a significant proportion of the CFC's members reside in New South Wales and that most members regularly fish in New South Wales waterways, the CFC's members have a strong interest in

the management of New South Wales's fisheries. The consultation and decision making processes in the management of New South Wales recreational fisheries is of interest to the members of the CFC. Accordingly, the CFC submits that it is important to enhance the inclusiveness and transparency of the consultation and decision making processes in New South Wales fisheries management.



**2. The current suite of existing regulatory, policy, and decision-making processes in relation to the management of recreational fisheries in New South Wales, including the process for the creation of Marine Protected Areas and Marine Parks and the efficacy of existing Marine Protected Areas and Marine Parks.**

The CFC submits that improvements can be made to enhance the inclusiveness and transparency of consultation and decision making processes. This will help regain the confidence of the anglers and the recreational fishing industry that these processes will lead to fair and equitable outcomes. Of immediate concern to the CFC's members is the regulatory, policy and decision making processes covering marine parks.

*Marine Parks*

The CFC is not opposed in principle to the creation of marine parks provided that the creation of marine parks and zoning plans are based on fair, inclusive and impartial consultation, followed by transparent and evidence based decision-making processes. There must also be genuine representation of recreational fishing interests on the Marine Parks Advisory Committee and the advisory committee for the marine park in question. Otherwise, the perception by some anglers and some in the recreational fishing industry that marine parks are 'anti-fishing' will remain difficult to address.

The anti-fishing perception among some anglers has arisen from the collective experience shared by recreational fishing industry and anglers during the consultation process for the Batemans Marine Park. Until the anti-fishing perception among those anglers can be addressed, fishing clubs such as the CFC have a difficult task of promoting responsible management of marine environments while addressing anglers' concerns that they are being 'locked out of all the good fishing spots'.

To address these concerns, the CFC would like to see greater consultation and transparency by the Marine Park Authority, the Marine Parks Advisory Council and the marine parks advisory committees for each marine park.

At present, the Marine Parks Advisory Council and the various advisory committees do not actively consult with the recreational fishing community on a regular basis, the Council and the committees do not publish minutes of their meetings on the Marine Park Authority's website to allow public scrutiny, and only a limited amount of information concerning outcomes of scientific and other research on New South Wales marine parks is published. While the *Marine Parks Act 1997* requires the relevant Ministers to publicly call for nominations to the positions on the Council and the advisory committees, the appointments are entirely within the discretion of the Ministers. The

extent to which the Council's and advisory committees' advice to the relevant Ministers is made public is unclear.

While the CFC acknowledges that there is an evidence base in a range of scientific journals regarding the efficacy of marine parks, the Marine Park Authority and the New South Wales Government are still obliged to present its case for the creation of a marine park and demonstrate the benefits of the marine park on an ongoing basis. Given that anglers are being told to either curtail or give up fishing at their favourite spots, they are entitled to be given the scientific and other evidence to demonstrate the need for the marine park or to the benefits of the marine park (such as increased numbers and mass of targeted species or the spill over of targeted species from sanctuary zones).

However, it appears that the research relied on by the Marine Parks Authority mostly refer to interstate or overseas marine environments. There appears to be very limited scientific evidence accessible to anglers in relation to what is happening in existing or proposed marine parks in New South Wales. For example, despite the Jervis Bay and Solitary Islands Marine Parks being established in 1998, only limited scientific evidence has been disclosed as to the benefits of those marine parks (see Marine Parks Authority 2008, *A review of benefits of marine protected areas and related zoning considerations*).

While it is true that scientific literature is available to members of the public at most academic institutions, it is the role of open government to ensure that all evidence bases (or lack of) relied on for decision making processes are publicly available and accessible for scrutiny. This includes all scientific and other research carried out in marine parks.

While accepting the role of scientific evidence, the CFC considers that knowledge and expertise of experienced and seasoned anglers must also be accorded with sufficient weight by the Marine Park Authority and scientists. It can be too easy to dismiss the years of knowledge acquired by people who do not otherwise hold relevant qualifications. The same goes for the collective experience of anglers as a whole. Possible gaps in scientific knowledge need to be investigated where the existing scientific opinion appears at odds with the knowledge of experienced anglers or the collective experience of all anglers.

As anglers become more acquainted with the scientific and other evidence concerning existing and proposed marine parks in New South Wales, anglers will be able to make up their own mind about the benefits or otherwise of marine parks. Anglers will make their support known to fishing clubs if they are convinced by the evidence presented to them. For this reason, the CFC makes the following recommendations in relation to marine parks.

#### **Recommendations**

**1. The Canberra Fisherman's Club Inc (CFC) recommends that there be increased consultation and greater transparency in the creation and management of marine parks. To achieve this, it is proposed that the New South Wales Parliament amend the Marine Parks Act 1997 to require that:**

- (a) the relevant Ministers consult peak bodies representing the interests of recreational anglers before appointing a person to represent those interests on the Marine Park Advisory Council and the marine park advisory committees for each of the marine parks**
- (b) the Marine Park Authority provides greater transparency in the creation of marine parks and development of zoning plans by publishing the details of people consulted and submissions received, publishing a full risk assessment for each marine park and zone to identify threats to management, and by publishing conservation objectives for each Sanctuary Zone with ongoing monitoring and reporting on the effectiveness of those zones**
- (c) the Marine Park Authority publish the minutes of meetings of the Park Advisory Council and the marine park advisory committees for each of the marine parks**
- (d) the Marine Park Authority makes publicly available on its website all research conducted in relation to New South Wales marine parks (including the outcome of scientific evaluation and monitoring research), and**
- (e) the Marine Park Authority publishes an annual report for each marine park outlining, among other things, the activities of the Marine Park Advisory Council and marine park advisory committees for each marine park, public and private consultation undertaken, status reports of fisheries and aquatic life overall and in each of marine park zones, and scientific and other research completed or in progress within the marine parks.**

2. ***Until the Marine Parks Act is amended, the CFC requests members of the Committee to submit questions on notice to the relevant Ministers inquiring about the matters set out in recommendations 1(a) to (e) on an annual basis.***
3. ***The Marine Park Authority should make more use of angler-based research and monitoring, including log-books and tagging programs. The Marine Park Authority should provide incentives to anglers to participate in this research and it should publish the outcomes of this research on its website.***

#### *Size and bag limits*

The CFC supports the use of size and bag limits based on scientific evidence. The CFC has previously supported the introduction of minimum and maximum size limits and the introduction of reduced bag limits for key species. The CFC notes that the New South Wales Department of Primary Industries' (DPI) website is very informative on the available scientific and other evidence concerning fisheries. The CFC encourages the DPI to continue its example of openness and transparency in the management of fisheries regulations.

The CFC notes that the use of size and bag limits has had a beneficial impact on the recovery of Murray Cod. The CFC also encourages its members to practice catch and release for both Murray Cod and Yellow Belly.

The CFC notes there is scientific evidence that female Mulloway do not reach sexual maturity until 70 cm. Yet New South Wales has a legal limit of 45 cm and bag limit of five fish with no more than two fish over 75 cm. Queensland, on the other hand, has a minimum legal length of 75 cm. While the CFC notes that commercial catches of Mulloway have declined, there are different opinions among CFC members regarding Mulloway captures by recreational anglers. Mulloway is an important species for recreational anglers. Accordingly, the CFC supports research by the DPI to ensure the sustainability of Mulloway as a recreational species.

While noting the differences in size and bag limits for Mulloway between Queensland and New South Wales, the CFC does not consider it necessary to adopt uniform size limits and bag limits in all States and Territories. Size and bag limits should be based on available scientific data and other information regarding the sustainability of each species in each State and Territory.

#### ***Recommendation***

4. ***The CFC supports research by the Department of Primary Industries to ensure the sustainability of recreational species (including Mulloway) and to continue to ensure that***

*its website maintains the informative level of scientific and other evidence concerning the sustainability of fisheries.*

#### *Enforcement*

Unfortunately, there are still a small but significant number of people who engage in illegal fishing practices. Just about all members of the CFC have witnessed illegal fishing practices or come across evidence of it in the past. These include undersized fish, set lines or using more than the permitted number of fishing lines per person. Members find these experiences detract from their enjoyment of fishing and would like to see greater enforcement of these rules.

#### *Education*

The DPI has good resources on its website about fishing rules and regulations. However, it is important to note the multicultural nature of the New South Wales community. Education campaigns need to be targeted appropriately at different demographics.

#### *The public right of fishing*

The public right of fishing can only be extinguished by express words in an Act of Parliament or by implied implication by virtue of the operation of that Act. The public right of fishing has existed in Australia, albeit in a heavily regulated manner. The note to section 3 of the *Fisheries Management Act 1994* (NSW) suggests that this is the case in New South Wales. The CFC notes that the High Court held that the *Fisheries Act* (NT) extinguished the public right of fishing in the Northern Territory<sup>1</sup>. Most anglers (and probably the Northern Territory Government as well) were probably unaware of the *Fisheries Act* (NT)'s full impact when it was passed by the Legislative Assembly. While this finding does not apply to New South Wales waters, it is important to put the matter beyond doubt to ensure that the High Court does not make a similar finding in the future in New South Wales. Accordingly, the CFC recommends that consideration be given to amending the *Fisheries Management Act 1994* and the *Marine Park Act 1997* to expressly state that the provisions of those Acts and the regulations made under them do not extinguish the public right of fishing.

An overview of the public right of fishing is set out in **Attachment A**.

#### *Recommendation*

- 5. *The CFC recommends that consideration be given to amending the Fisheries Management Act 1994 and the Marine Park Act 1997 to expressly state that the provisions of those Acts and the regulations made under them do not extinguish the public right of fishing.***

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<sup>1</sup> *Northern Territory of Australia v Arnhem Land Aboriginal Land Trust* [2008] HCA 29 (30 July 2008)

**3. The effectiveness and efficiency of the current representational system of trusts and advisory committees that advise government departments and statutory authorities.**

The CFC considers that the current representational system of trusts and advisory committees works well. The CFC was involved in the consultation process that led to the creation of fishing licences whereby the fees were used for the creation of fishing havens and other enforcement and conservation measures. Most CFC members support fishing licences provided the funds are used to enhance recreational fishing opportunities in New South Wales. The use of trusts and advisory committees is an important part of that role.

The CFC considers that, overall, the advisory committees have adopted a far more open and transparent approach in comparison to the Marine Park Advisory Council and the advisory committees for the marine parks. For example, the committees publish their proposed meeting dates, publishes minutes of their meetings, and details of how revenue generated from fishing licence fees were used. In addition, the outcomes of some (it is not clear if all) research funded under fishing licences have been published. For example, there has been some good research done on Striped Marlin, breeding of Mulloway, and catch and release techniques.

*Advisory Council of Recreational Fishers (ACORF)*

The comments in relation to the advisory committees above apply to ACORF. In addition, the CFC's experience has been that it has had no problems getting issues raised or information in and out of ACORF. The CFC's assessment is that ACORF does a good job for people who can get access to the committee members. However, the lines of communication for the average angler could be enhanced by hosting a submission form on the DPI website or running public forums. ACORF needs to raise its profile as the CFC suspects that a majority of recreational anglers are unaware of the existence or purpose of ACORF.

***Recommendation***

- 6. That the Advisory Council of Recreational Fishers (ACORF) takes steps to make itself more accessible to recreational anglers by raising its profile through a series of public forums and by hosting a submission form on the Department of Primary Industries website so that issues or concerns can be raised with ACORF.***
- 7. To improve the transparency of the nomination and selection process of ACORF and all other fishing trust and other advisory council positions, the Department of Primary Industries website should publish selection or suitability criteria for the positions, the list of nominations received, and the short list recommended to the Minister.***

8. ***The New South Wales Council of Freshwater Anglers and Australian National Sportsfishing Association should be represented on both ACORF and all other fishing trust and other advisory council positions.***
9. ***That ACORF and all other fishing trust and advisory councils consider ways it can publish the minutes of their meetings on the Department of Primary Industries website in a more timely manner.***

While the CFC supports the work of ACORF, it is still an advisory committee for the Minister and not a lobby group. ACORF has been perceived by some recreational anglers as being a lobby group to represent their interests. This has sometimes resulted in criticism by anglers who appear to have misunderstood ACORF's function<sup>2</sup>.

Given the functions of ACORF under the Fisheries Management Act, it is not appropriate for ACORF to act as a peak group to represent the interests of recreational anglers.

*The need for a peak body to represent the interests of anglers*

At present, there is no peak group to represent the interests of recreational anglers in New South Wales. In addition, there are few existing bodies that can undertake this task within their existing resources. This task is certainly beyond the capacity of the CFC, given its membership of 90 to 100 people. Accordingly, recreational anglers do not get adequate representation in comparison to other interest groups.

The CFC would like to peak body or group set up and adequately resourced to represent Recreational Fishing across New South Wales. This would need to be at no additional drain on the Recreational Fishing Trusts, as the CFC is of the opinion that recreational anglers already pay enough. Currently, New South Wales fishing licence holders pay the wages for the staff at Gaden Trout Hatchery, six New South Wales Fisheries Compliance Officers, one Access Officer and two Conservation Managers. Licence holders also pay for other positions within New South Wales Fisheries, with an all up total of approximately 30 positions being funded by the New South Wales fishing licence holders.

***Recommendation***

10. ***The New South Wales Government provides ongoing funding to establish an independent peak group or body to represent the interests of recreational anglers.***

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<sup>2</sup> An example of such criticism can be found Harnwell, J., 'Shame, ACORF, shame, Fishing World website, 14 January 2010 (<http://www.fishingworld.com.au/news/comment-shame-acorf-shame>, viewed 16 March 2010).

#### 4. The value of recreational fisheries to New South Wales economy.

##### *Economic benefits*

There have been a number of studies both in Australia and overseas<sup>3</sup> about economic benefits of recreational fisheries. Recreational anglers contributed in the vicinity of \$500 million in New South Wales alone<sup>4</sup> in 2000-01. In 2001, the Snowy Mountain study on economic benefits for the Snowy region estimated that \$46.5 million per annum was injected into that area through anglers targeting Trout<sup>5</sup>. In Victoria, an estimated 721,000 people (almost 9% of Victoria's population) contributed \$825 million to the Victorian economy in 2008-09<sup>6</sup>. Anglers in Victoria spent an average of \$250 per fishing trip. Recfish, the peak national body representing anglers on commonwealth issues state on their website that the value to the national economy is estimated to be around \$2 billion. This represents a significant contribution to the Australian economy.

While there are various economic and regional expenditure reports on recreational fisheries in New South Wales either by region or species, there has not been a comprehensive survey on recreational fishing since 2001. There needs to be a new study done on the social and economic benefits of recreational fishing in New South Wales. Only after this is done can the New South Wales Government make properly informed decisions regarding recreational fisheries management. An incoming Government will then be in a position to fully recognise the significant economic and social benefits provided by recreational fishing. The CFC hopes that the New South Wales Government will

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<sup>3</sup> Recreational fishing is estimated to contribute \$US305 million to \$US1.83 billion per year in California (Pendleton and Rooke, *Understanding the Potential Impact of Marine Recreational Fishing: California*, 2006). Fishing contributed \$35 million to \$56 million in the Pantanal wetlands, Brazil (Shrestha, Seidl, and Moraes, Value of Recreational Fishing in the Brazilian Pantanal: a travel cost analysis using count data models, *Ecological Economics*, Volume 42, Issues 1-2, August 2002, pages 289-299). A 1985 study estimated that steelhead fisherman in Idaho had potential to contribute up to \$6.9 million to the economy (Donnelly, Loomis, Sorg and Nelson, *Net Economic Value of Recreational Steelhead Fishing in Idaho*, United States Department of Agriculture, 1985). The following statistics were published in *Evaluating the Benefits of Recreational Fisheries, Fisheries Centre Research Reports*, 1999, volume 7, number 2: The estimated expenditure of recreational anglers in ten western European countries was estimated at \$US10 billion per annum (Cowx, Aquatic Resource Management Planning for Resolution of Fisheries Management Issues, in P Hickey and H Tomkins (eds) (1996) *Recreational Fisheries: social, economic and management aspects*, Fishing News Book, Blackwell Science, Oxford, pp495-506. Freshwater anglers contributed \$US 38 billion in the United States of America in 1996 (US Fish and Wildlife Service, 1997). Anglers contributed \$US 5.1 billion in Canada in 1995 (Department of Fisheries and Oceans Canada, 1998).

<sup>4</sup> Survey of Recreational Fishing in New South Wales, a survey by the Department of Primary Industries, New South Wales in 2000-01.

<sup>5</sup> Dominion Consulting Pty Ltd and NSW Fisheries, *An Economic Survey of the Snowy Mountains Recreational Trout Fisheries*, 2001.

<sup>6</sup> Ernst & Young, *Economic Study of Recreational Fishing in Victoria*, 2009 (<http://www.vrfish.com.au/images/stories/pdfs/vr%20fish%20report%20-%20final%20201109%20with%20dpi%20logos.pdf>, viewed 17 March 2010.). Ernst and Young were engaged by VRFish to assess the economic contribution of recreational anglers in Victoria.



invest more resources in Fisheries positions and fund those positions from consolidated revenue rather than from funds from the Recreation Fishing Trusts. This will ensure more funding from Recreation Fishing Trusts can be directed to research and monitoring to ensure the ongoing sustainability of recreational fishing.

***Recommendation***

- 11. That the New South Wales Government funds an independent study into the social and economic benefits of recreational fishing in New South Wales every five years.***

***Social benefits***

The benefit of getting people outdoors cannot be over stated. Fishing gets people from all walks of life out and about together and breaks down social barriers between people of a range of backgrounds (for example a solicitor, a brick layer, unemployed person or a university student). Fishing knows no boundaries. In recent years there have been some excellent programs set up to provide alternatives to drugs for kids. Hooked on Fishing – Not on Drugs (HOFNOD) and Reel Expectations are a couple of programs in the United States, where fishing is used in youth diversion activities to provide an alternative to drugs and provides a friendly non-judgmental environment to discuss drugs and violence.

The CFC has held Kids Fishing Clinic to introduce kids to the wonderful world of recreational fishing. Each time the CFC has held this activity, the CFC has had a overwhelming response and needed to turn people away. It is obvious that recreational fishing is viewed as a healthy activity by a large number of the community. In addition to the "Get Hooked.... It's fun to Fish" program currently run by the New South Wales Government, it would be great if regional areas had access to funding to run separate clinics for kids in their area.

There are many sayings about fishing, and most of them are true. 'Give a man a fish and he will eat for a day. Teach a man to fish and he will eat for a lifetime' is a very practical saying, and 'a family that fishes together stays together' is another good one. Fishing is a great past-time and should be promoted.

***Recommendation.***

- 12. That New South Wales Government make additional funding available to enable local fishing clubs to run Kids Clinics in regional areas.***
- 13. That the New South Wales Government considers starting a fishing program to assist kids with drug problems.***

**5. The gaps in existing recreational fishery programs, including the number and location of Recreational Fishing Havens.**

The CFC is a strong supporter of Recreation Fishing Havens (RFHs). Anecdotal evidence points to a dramatic improvement in catch rates in the area where commercial fishing has been removed.

There has been significant improvement to fishing in the RFHs established in rivers on the Far South Coast, and also in the Tabourie and Burrill Lakes.

The CFC contends that more RFHs should be established along the New South Wales coastline. An immediate area of concern is the New South Wales coast from the southern end of the Batemans Marine Park to the New South Wales - Victorian border. This area should be made a RFH as a matter of priority. However, unlike previous RFHs, the CFC believes that it should be at government expense.

Many members of the CFC participate in Rock Fishing. This can be a very productive form of fishing, however in certain conditions can also be very dangerous. Rock Fishing is considered to be one of, if not the most dangerous of sports that people in New South Wales participate in, and there are many deaths associated with Rock Fishing. Insurance companies often rate rock fishing as being the most dangerous sport.

Being a member of ANSA, the CFC is well aware of the ANSA Angel Rings program, and many CFC members take comfort knowing that the Angel Rings are there if required.

***Recommendations***

- 14. The New South Wales Fisheries provide an ongoing commitment to the ANSA Angel Ring Program.***
- 15. That there be an increase in the number of Recreational Fishing Havens, and studies be carried out to identify suitable estuaries. Unlike the previous establishments of Recreational Fishing Havens, the CFC would strongly recommend that the Recreational Fishing Trusts are not used in the buy-back of commercial licenses.***
- 16. A new recreational fishing haven should be established between the southern most boundary of the Batemans Marine Park to the New South Wales Border- Victorian.***

**6. Ecological sustainable development issues related to improving recreational fisheries.**

*Fish stocking*

The CFC raises money through its annual Canberra Carp Out to stock native fish in Canberra's local lakes. Fifty percent of the funds raised from the carp out go towards fish stocking while the other 50% is donated to the Eden Monaro Cancer Support Group. The funds raised in the 2009 Canberra Carp Out contributed to the stocking of Murray Cod fingerlings in Gungahlin Lake and Yellow Belly fingerlings in Lake Ginninderra this year. In addition, the Canberra Carp out removed one ton of carp and redfin in 2009 and over one ton of carp and redfin in 2010 from Lake Burley Griffin.

The CFC argues that fish stocking is an essential tool to ensuring the sustainability of fisheries and to assist in the recovery of fisheries. It is not a 'tool of last resort'. Stocking in impoundments is essential where native fish do not naturally breed. The stocking of such areas will also significantly reduce the fishing pressure on nearby 'wild' populations. In addition, stocking of native fish has a significant effect in reducing introduced species, notably carp and redfin.

***Recommendation***

- 17. That the New South Wales continues the stocking of native fish in dams, impoundments and weirs.**

*Gaden Trout Hatchery*

Trout and Atlantic salmon are now a part of the Australian fishing environment and contribute to the economic value of fisheries. As noted earlier, trout fisheries in the Snowy Mountains area contributes approximately \$46.5 million each year to the region. Stocking of trout and salmon in alpine lakes and artificial dams and weirs must continue.

***Recommendation***

- 18. The Recreational Fishing Trust and New South Wales Government must commit to future ongoing funding of the Gaden Trout Hatchery.**

*Other issues*

The CFC supports and promotes the Recfish Australia National Code of Practice for Recreational and Sport Fishing. The Code addresses four main areas of fishing responsibility. These include looking after our fisheries, protecting the environment, treating fish humanely and respecting the rights of others. The four objectives are a framework for 14 more specific principles which are promoted in the CFC's monthly newsletter. A copy of the CFC endorsement on the newsletter is at **Attachment B**.

The CFC believes that the focus by environmental lobby groups on impact of recreational fishing is out of proportion to other impacts. However, recreational fishing has been an easier target, and, as a result, CFC members and anglers continue to see their fishing activities restricted each year.

More serious issues are pollution runoff (for example, over 50% of the ocean's oil pollution comes from land based run off), urban development, dredging and removal of bank side vegetation.

Anglers in Sydney Harbour are only too aware of the impact local pollution has had on the value of their fishery.

***Recommendation***

- 19. That the New South Wales Government addresses the impact of landbased pollution and the pressures on aquatic environment by development and industrial activities before imposing further restrictions on recreational fishing.***

## Attachment A – an overview of the public right of fishing

Clause 23 of the Magna Carta of 1297 reads as follows:

‘All kiddles for the future shall be removed altogether from Thames and Medway, and throughout all England, except upon the seashore.’

That clause was originally contained in clause 33 of the Magna Carta of 1215. A kydele (or kiddle or fish weir) is a series of stakes driven into the ground some 700 feet in length and connected by a series of nets designed to catch fish. It is said that this clause in the Magna Carta gave rise to the public right of fishing.

Fishery laws probably originated in the pre-Norman era when England was divided into small kingdoms and each king claimed ownership to all game and fish within his kingdom<sup>7</sup>. As the owner of ‘the narrow seas, creeks and arms thereof’, fishing rights were vested in the King and the King exercised his right to grant exclusive fishing rights to his subjects<sup>8</sup>. By 1215, the English Barons revolted against King John and sought to legally restrain the King’s powers. King John was forced to agree to the Magna Carta in return for the barons’ renewed oath of allegiance.

The Magna Carta prevented the King from granting new private fisheries except by Act of Parliament. While the ‘sea, navigable rivers and the arms of the seas’ were vested in the Crown, this was held for the benefit of the King’s subjects who now enjoyed the public rights of fishing and navigation<sup>9</sup>. The Magna Carta did not affect existing private fisheries and some private fisheries still exist in England.

The nature of the public right has been expounded from the writings of Henry of Bracton (1210-1268), Sir Edward Coke (1552 – 1634) and Sir Matthew Hale (1609 – 1676) as well as a number of English court decisions from the 17<sup>th</sup> century onwards. The public right of fishing became part of the law of Wales when it became part of the England under the Act of Union of 1536. However, Scotland retained much of its fishing laws when the United Kingdom was formed under the Act of Union of 1707.

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<sup>7</sup> Millichamp, *A Guide to Angling Laws*, Shaw & Sons Ltd, Kent, 1990, at 8.

<sup>88</sup> *Malcolmson v O’Dea* (1863) 10 HLC 593 at 618; 11 ER 1155 at 1165-1166; *Millichamp* (1990) at 12 and 16; Lord Hale, *De Jure Maris*, reproduced in Moore, *A History of the foreshore and the laws relating thereto*, Stevens and Haynes, London, 1888, at 1-2.

<sup>9</sup> *Gann v Free Fishers of Whitstable* (1865) 11 HLC 192 at 207-208; 11 ER 1305 at 1312; *Murphy v Brown* 2 Ir Rep C.L 143 at 149; *Malcolmson v O’Dea* (1863) 10 HLC 593 at 618; 11 ER 1155 at 1165-1166; affirmed in *Harper v Minister for Sea Fisheries* (1989) 168 CLR 314 at 340; Hull, *Oke’s Fishery Laws*, 4<sup>th</sup> edition, Butterworths, London, 1924, at 7; *Millichamp* (1990) at 8 and 12.

The Privy Council in 1913 (being the highest court of appeal in the British Empire at the time) reaffirmed that the public right of fishing was part of the law of England and also that of British Columbia, Canada<sup>10</sup>. The High Court of Australia accepted the existence of the public right of fishing in tidal waters in Australia in 1989<sup>11</sup>. The High Court also pointed out that, like all rights, the public right of fishing can be extinguished or regulated by legislation. Before considering what impact legislation has had on the public right of fishing, it is useful to look at what the nature of the right is.

Sir Matthew Hale, in his treatise, 'De Jure Maris'<sup>12</sup> wrote that the king, being the owner of the seas and seabeds, had the primary right of fishing and that the 'common people of England have regularly a liberty of fishing in the sea, creeks or arms thereof'. Accordingly, it appears that the right arises because of the King's ownership of the seas. As the right was limited to 'sea, navigable rivers and the arms of the seas', a public right of fishing does not exist in non-tidal waters such as freshwater rivers, streams, lakes and manmade weirs. Whoever owned the land on which the non tidal rivers flowed also owned the fishing rights.

The Courts have held that the public right of fishing is for 'the sustenance and beneficial employment of individuals'<sup>13</sup>. It is subject to other rights, most notably, the public right of navigation<sup>14</sup>. The courts have also held that the public right of fishing is unrestrained by the need to prevent overfishing. Accordingly, measures to prevent overfishing (such as size limits and bag limits) can only be imposed by legislation<sup>15</sup>.

In addition, the public right of fishing does not include the right to land fish or a boat on private property without the permission of the owner<sup>16</sup>. This means that there will be places where the right can only be exercised from a boat launched from a public place<sup>17</sup>. Anglers who wish to fish off the banks, foreshores or piers on private property must seek the owner's permission or run the risk of being prosecuted for trespass<sup>18</sup>.

Where the public has a right of access to places like piers, jetties and beaches, the local authorities or owners have a right to impose restrictions or fees on anglers wishing to fish there. Such fees are

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<sup>10</sup> *Attorney-General (British Columbia) v Attorney-General (Canada)* [1914] AC 153.

<sup>11</sup> *Harper v Minister for Sea Fisheries* (1989) 168 CLR 314

<sup>12</sup> Lord Hale, *De Jure Maris*, reproduced in Moore, *A History of the foreshore and the laws relating thereto*, Stevens and Haynes, London, 1888

<sup>13</sup> *Blundell v Catterall* (1821) 5 B & ALD 268 at 305; 106 ER 1190 at 1203.

<sup>14</sup> *Williams v Wilcox* (1838) 8 AD & E 314 at 330; 112 ER 857 at 863; *Gann v Free Fishers of Whitstable* (1865) 11 HLC 192 at 213-214; 11 ER 1305 at 1312, 1314.

<sup>15</sup> *Fitzgerald v Firbank* [1897] 2 Ch 96 at 100; *Goodman v Saltash Corporation* (1882) 7 App Cas 633 at 646 and 654; affirmed in *Harper v Minister for Sea Fisheries* (1989) 168 CLR 314 at 330.

<sup>16</sup> *Blundell v Catterall* (1821) 5 B & ALD 268 at 289, 295, 301-302, 304; 106 ER 1190 at 1198, 1200, 1202 & 1203; *Lord Fitzharding v Purcell* [1908] 2 Ch 139 at 166.

<sup>17</sup> *Hull* (1924) at 5-6.

<sup>18</sup> *Hull* (1924) at 5-6; *Millchamp* (1990) at 13.

not for the right to fish but the right to use the property for fishing. This fee may be accompanied by a requirement to observe certain rules regarding conduct or fishing method<sup>19</sup>. For example, the Southport Sandpumping Jetty on the Gold Coast charges a modest fee for any adult wanting to fish off the jetty. The jetty provided rubbish bins, cleaning tables and fresh water taps at various intervals along the jetty. A limit of two rods per person was imposed to prevent anglers from hogging the jetty to the detriment of other anglers and certain parts of the jetty are prohibited to ensure the safety of the public.

The public right of fishing became part of Australian law with British settlement in 1788. A number of Indigenous people exercised exclusive fishing rights prior to 1788. The High Court held in the Croker Island case in 2001 that native title claims in offshore areas can be recognised but this did not include a right to control access to offshore areas. While native title holders can exercise a right to fish in offshore areas, this does not prevent members of the public from exercising their public right to fish in the same area. Incidentally, section 112 of the *Native Title Act 1993 (Cth)* (and sections 18 and 18A of the *Native Title (Queensland) Act 1993(Qld)*) provides that the Commonwealth or the States can pass laws confirming existing public access to and enjoyment of waterways, coastal waters, beaches and other areas that were public places as at 31 December 1993.

As mentioned earlier, the public right of fishing does not exist in non-tidal waters. However, given that the right was based on the King's ownership of the sea and seabed, there may be scope for arguing that the public can fish in non-tidal waterways on Crown land. This appears to be the assumption in section 38 of the *Fisheries Management Act 1994 (NSW)* provides that 'a person may take fish from waters in a river or creek that are not subject to tidal influence despite the fact that the bed of those waters is not Crown land as long as the person is in a boat on those waters or is on the bed of the river or creek.'

Given that the public right of fishing is an unrestrained right to fish, only Parliament can enact measures to prevent overfishing. Fishermen are only too aware of the number of rules and regulations that govern the sport. The question is whether the public right has been regulated by legislation or extinguished by it. The note to section 3 of the *Fisheries Management Act 1994 (NSW)* contains the following statement:

Note. At common law, the public has a right to fish in the sea, the arms of the sea and in the tidal reaches of all rivers and estuaries. The public has no common law right to fish in non-tidal waters—the right to fish in those waters belongs to the owner of the soil under those waters. However, the public may fish in non-tidal waters if the soil under those waters is Crown land. In the case of non-

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<sup>19</sup> Millichamp (1990) at 13, 14.

tidal waters in rivers and creeks, section 38 declares that the public has a right to fish despite the private ownership of the bed of the river or creek. However, the right to fish in tidal or non-tidal waters is subject to any restriction imposed by this Act.

The note indicates that the Fisheries Management Act only regulates the public right of fishing rather than extinguishing it. However, the notes do not form part of the Act (s285). The public right of fishing will be extinguished by legislation if it expressly says so or contains a complete statutory regulation of fishing that it is extinguished by necessary implication.

The High Court held in the Blue Mud Bay case in 2008<sup>20</sup> that the *Fisheries Act* (NT) extinguished the public right of fishing. Essentially, the Northern Territory Act prohibited fishing in the Northern Territory without a licence except where the fishing was for personal or subsistence use only. Further, as the manner in which a person could take fish or aquatic life could only be answered by reference to the Act and not any common law right, the High Court concluded that the Act, by necessary implication, has completely extinguished the Public Right of Fishing. It is difficult to predict with absolute certainty what conclusion the High Court may draw with respect to New South Wales legislation. Accordingly, Parliament should give consideration to amending the *Fisheries Management Act 1994* and the *Marine Park Act 1997* to expressly state that the provisions of those Acts and the regulations made under them do not extinguish the public right of fishing.

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<sup>20</sup> Northern Territory of Australia v Arnhem Land Aboriginal Land Trust [2008] HCA 29 (30 July 2008)



**Attachment B – Endorsement of Recfish Australia National Code of Practice for Recreational and Sport Fishing on CFC newsletters**

The Club also supports the Recfish Australia National Code of Practice for Recreational and Sport Fishing, which endorses:

1. Quickly and correctly returning unwanted or illegal catch to the water
2. Quickly killing fish that are kept for consumption
3. Using only appropriate, legal tackle, attending gear and valuing the catch
4. Taking no more than our immediate needs
5. Supporting and encouraging activities that preserve, restore and enhance fisheries and fish habitat
6. Understanding and observing all fishing regulations and reporting illegal fishing activities
7. Preventing pollution and protecting wildlife by removing rubbish
8. Taking care when boating and anchoring to avoid damage to wildlife and habitat
9. Using established roads and tracks
10. Reporting environmental damage
11. Avoiding unnecessary interactions with wildlife species and their habitats
12. Practising courtesy towards all those who use inland and coastal waters
13. Obtaining permission from landholders and traditional owners before entering their land
14. Caring for our own safety and the safety of others when fishing.