D. The Inadequacy of Existing Regulatory Mechanisms

Red and gray kangaroos have protected status in all parts of their respective distributional ranges throughout Australia under relevant State or Territory legislation. The responsibility for wildlife conservation rests with individual State or Territorial governments through their faunal conservation authorities (ANPWS 1991). The decision to provide for a commercial harvesting industry is determined by State or Territory government policy and legislation. The Commonwealth has no power in law to influence how States and Territories manage red and gray kangaroos except for those populations subject to export or international agreements. The Commonwealth would be powerless, for example, to directly intervene should any individual State or Territory, with no export program, develop or operate an intrastate program that was counter to the Commonwealth views of conservation and management. The ANCA, however, is aware of the level of protection provided in mainland States and Territories that do not seek to export kangaroo products, and the Commonwealth is satisfied that management in those mainland States and Territories (Victoria, Northern Territory, Australian Capital Territory) is in significant agreement with Commonwealth standards of conservation and management (ANPWS

The management of kangaroos in New South Wales, Queensland, South Australia, and Western Australia is based on legal protection and regulations controlling the harvest of kangaroos. Each of these four States has a kangaroo management program that includes provisions for the establishment of harvest quotas and for the reduction of harvests, if necessary, and each State has the responsibility to implement the provisions of its individual kangaroo management programs. The largest populations of red and gray kangaroos occur in the four States, and the Commonwealth Government does have a mechanism to enhance the protection of those populations. That mechanism exists through the Wildlife Protection (Regulation of Exports and Imports) Act of 1982 (WP(REI)A). The WP(REI)A consolidated wildlife controls into a single act so the Commonwealth could more effectively implement the objectives of CITES. Commercial trade is permitted only if it has been conclusively established that the native species will not become threatened

because of the inadequate control of exports or through the import of some non-native species. The Commonwealth Minister for the Arts, Sport, the Environment and Territories can approve or disapprove of proposed management programs for individual species after having been advised of their merit by the ANCA and the Minister's Scientific Advisory Committee on Kangaroos. State governments in Western Australia, South Australia, New South Wales, and Queensland have each developed kangaroo management plans that have been approved by the Commonwealth so that an export trade in kangaroo products is allowed from each of those States. The kangaroo management plan for each State has a monitoring provision for both population trends and harvest returns to ensure that conservation of the species is the foremost objective.

An approved kangaroo management program indicates that kangaroo products for export must be from kangaroos taken in a specified and approved manner. An approved kangaroo management program must contain sufficient biological information so it can be evaluated. There also needs to be ample proof that the biological information has been considered in developing the program, and discussions must have occurred between the State and Commonwealth governments so the management programs attain acceptable standards. The management program must ensure that taking in the wild will not be detrimental to the survival of the species, will be carried out at minimal risk to the continuing role of that species in the ecosystem, will occur in a humane manner, and that adequate periodic monitoring and assessment of the effects of the taking of specimens will occur to ensure the long-term survival of the species.

The kangaroo management programs are generally based on multiple-use tenets and are designed to ensure the continued survival of kangaroos throughout their range. The programs assume that kangaroos are successful native herbivores whose numbers frequently need to be controlled. The programs are based on population monitoring and use a licensing system to control the legal harvesting of animals. The individual States have the responsibility to ensure that the harvesting of kangaroos does not significantly affect the distribution and abundance of the species.

The general objectives of the kangaroo management programs are to (1) maintain viable populations of

kangaroos throughout their natural range, (2) minimize the effects of kangaroos on pastoral and agricultural development, (3) maintain populations of kangaroos at levels that will not produce long-term adverse impacts to habitat, and (4) manage the species as a renewable resource. Implementation to achieve objectives includes enabling legislation and an administering organization with sufficient funding to accomplish appropriate research, management, and monitoring activities.

The New South Wales National Parks and Wildlife Service controls the harvest of kangaroos through the National Parks and Wildlife Act 1974. All kangaroos entering commercial trade must be legally taken in accordance with this Act, and it is an offense to kill kangaroos or have them in possession without an appropriate license. Landholders have to approach the NSWNPWS for a permit to kill kangaroos on their property, and tags are issued if the killing is found to be warranted. Shooters, commercial dealers, and tannery operators are each licensed so controls exist at several levels of the commercial harvest. The total allowable commercial harvest occurs within the framework of the commercial quota. The development of the quota has been described in a general manner under factor B above.

The legislation protecting and conserving nature in Queensland is the Faunal Conservation Act 1974, which has been replaced by the Nature Conservation Act 1992. The new Queensland Act has been implemented for kangaroos, replacing the existing legislation. The Nature Conservation Act 1992 creates classes of protected areas; designates classes of wildlife; and provides for development of conservation plans to protect, use, and manage protected areas, critical habitats, and classes of wildlife. The Queensland kangaroo management program describes how the activities of shooters and dealers are regulated, how the size and/or composition of the population is to be monitored, the harvest regulations and checks to prevent illegal harvest or over-harvest, and other measures to ensure the conservation of the species. The approval of Queensland's kangaroo management program by the Commonwealth Government indicates an assurance that commercialism will not threaten the survival of kangaroo populations throughout their range.

Kangaroos and all native fauna in South Australia are protected under the National Parks and Wildlife Act 1972. A permit is required to take any animal for damage mitigation purposes and any kangaroo that enters the commercial