



Review of the Living Marine Resources Management Act 1995 (Tas)

Submission in response to Discussion Paper

Australian Marine Conservation Society

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1. Introduction

1.1. About the Australian Marine Conservation Society

The Australian Marine Conservation Society (AMCS) appreciates the opportunity to provide a response to the Discussion Paper forming the first stage in the consultation on the Independent Review of Tasmania's fisheries management legislation, the *Living Marine Resources Management Act 1995* (LMRM Act).

AMCS is a national environmental organisation working towards the conservation of Australia's coastal and marine environment and the marine biodiversity they support. Our mission is to help protect Australia's oceans for the sake of current and future generations.

AMCS represents over 300,000 people and supporters.

Since forming in 1965, AMCS has had a long-standing involvement in improving the protection and management of Australia's marine environment.

Throughout our 50-year history we have worked through science-based research, policy advocacy, on-ground activity, community engagement, and education to take effective action to protect Australia's marine and coastal environment. We work with and empower individuals, volunteers, and communities to also be voices for marine conservation. We work with industry, stakeholder groups, and indigenous organisations to identify solutions to unsustainable use of marine resources. We seek to work with and persuade government to make long term, precautionary and ecosystem-based management founded on the principles of ecologically sustainable development.

1.2. Overview of our submission

The LMRM Act should be modernised to reflect an ecosystem-based management approach to Tasmania's fisheries. The modernisation should include new objectives that more clearly require the Act to support ecologically sustainable development, and the application of the precautionary principle.

Consistent with the ecosystem-based management approach recommended, the review ought to consider the interaction of the LMRM Act with Tasmanian conservation legislation and aquaculture legislation, and the importance of effective strategic and spatial planning and marine protected areas to ecologically sustainable fisheries.

The review and modernisation of the LMRM Act should take note of the principles for good fisheries management identified through reviews of fisheries legislation in other jurisdictions, while also paying particular attention to the need for a robust and resilient legislative framework to address legacies of past unsustainable management and the significant challenges posed by climate change to the Tasmanian marine environment.

As we outline below, the review needs to respond to the challenges of a legacy of unsustainable management on the one hand, and the already present and increasing challenge of climate change. These challenges are distinct but interact synergistically to increase the challenges to which a reformed LMRM Act must respond.

As invited, this submission does not respond to every question raised in the Discussion Paper – it focuses on those areas where AMCS has concerns and expertise to share with the Review.

Our submission does not follow the structure of the Discussion Paper, however, we have indicated our position on selected questions posed by the Discussion Paper where relevant. Where we think there is a clear direction that should be adopted by the review we say so, but, mindful of the fact that the review will proceed over multiple stages, we have also suggested areas where we believe the review ought to make further inquiries.

2. Scope of the review

2.1. A broad ranging review is required

AMCS is concerned that any attempt to confine the scope of the review by excluding certain matters will lead to a less than optimal outcome from this review.

We believe that the key issue that needs to be addressed with the current LMRM Act is the lack of a modern, holistic, ecosystem-based management approach to fisheries management. It is critical that the review does not reproduce and maintain this problem rather than address it, especially as this review is occurring without the benefit of an overarching Tasmanian marine plan or strategy.

It appears that, in setting the Terms of Reference for this review, the government is attempting to confine the scope of this review in a manner that would compromise the opportunity for a holistic approach, including consideration of the interaction of the LMRM Act and conservation and aquaculture legislation. However, we are pleased to see that the Discussion Paper has recognised the need for a comprehensive review, extending to matters such as the legislative framework for marine protected areas contained in the LMRM Act, and we welcome this expansive approach.

2.2. General modernisation of objectives, regulatory approaches, decision making, advice, consultation and compliance and enforcement mechanisms

As noted in the Discussion Paper, the LMRM Act has not been reviewed or updated in any substantial manner since it was introduced in 1995. This means that regardless of the immediate reasons that have prompted the government to initiate a review, this review is a timely opportunity to scrutinise the Act to ensure that it remains fit for purpose and meets contemporary standards for good regulatory design.

Arguably, it was behind the times even for 1995 in that it failed to include the then relatively new concepts of ecologically sustainable development and the precautionary principle in the legislative scheme.

There have been considerable developments since the Act was introduced, in terms of knowledge and understanding of fisheries management and marine conservation, and also in terms of the architecture and detail of environmental and nature resource management legislation. These developments need to be identified by the review and a pathway for modernising the LMRM Act based on these.

It is not clear from either the Terms of Reference or the Discussion Paper whether the objective of the review is simply the reform of the existing Act or whether it could extend to its replacement with new legislation. Without pre-empting the Review's findings and recommendations, we think it would be useful to adopt an approach that ensures all options are on the table. This would appropriately

recognise that the reforms that are required are far reaching such that a new Act, rather than amendments to the existing LMRM Act, is the appropriate approach.

AMCS Recommendations

- The Review should continue to adopt an expansive approach to its Terms of Reference and ensure that this review takes a comprehensive and holistic approach to its consideration of the LMRM Act and its interaction with other legislation.
- The Review should seek advice on whether the current Act meets contemporary standards for good regulatory design and recommend opportunities to modernise the legislation.
- The draft white paper ought to include explicit consideration of whether the reforms suggested can be accommodated by reforming the existing LMRM Act, or whether it would be better to replace the Act with new, fit for purpose legislation.

3. Review context

This section of our submission covers matters which we believe are important context for the Review. The following partly responds to the Discussion Questions on page 7 in the introductory section of the Discussion Paper, although as will be evident from what follows that we do not believe the Discussion Paper sufficiently recognises the challenges that a review of the Act must address. We recommend that the draft White Paper contain much more information and analysis of the current state of Tasmanian fisheries and the challenges that the LMRM Act must address if it is to adequately respond to these challenges.

3.1. Unsustainable fisheries/fisheries impact on habitat

The table on page 8 of the Discussion Paper lists the stock status of Tasmania's managed commercial fisheries, but this provides very little insight or acknowledgement of the challenges faced by Tasmanian fisheries and to the marine environment from those fisheries. In our submission, the sustainability challenges of Tasmanian fisheries require greater emphasis as an important context for this review – how this situation has arisen and the need for fisheries management legislation with the objectives, institutional arrangements, and regulatory tools necessary to address these problems, should be a key focus for the review, and developing these solutions first requires clear recognition of the problem.

Examples of these challenges that are not clear from the Discussion Paper include:

- The Tasmanian Rock Lobster Fishery has declined to the point that it is under a rebuilding plan and is widely acknowledged to have failed to optimise economic value of the resource for decades.¹

¹Tasmanian Rock Lobster Fishery. East Coast Stock Rebuilding Strategy 2013-2023' (Wildlife Management Branch, Department of Primary Industries, Parks, Water and Environment, Tasmanian Government, September 2018), https://nre.tas.gov.au/Documents/East_Coast_Stock_Rebuilding_Strategy_Sept18.pdf.

- The Tasmanian Abalone Fishery is also failing to optimise economic and social benefits and is continually the subject of public controversy.²
- The Tasmanian Scalefish Fishery is a shadow of its former self – we have lost a sustainable and relatively affordable local resource with increasing numbers of stocks being overfished. According to the most recent Tasmanian Scalefish Fishery Assessment:

“Since the early 1990s, annual commercial catches of the major species have generally declined. This decline can be explained in part by changed targeting practices and market demand, declines in species abundance or biomass, the introduction of the Scalefish Fishery Management Plan in 1998, and the transfer of the Southern Shark Fishery to the Commonwealth in 2000. The number of vessels participating in the scalefish fishery and the number of scalefish fishing licences have declined notably since 2000. Commercial catches have also declined over this period, however this is only partly attributable to declining effort and there is ongoing concern or insufficient information about the status of multiple routinely assessed species. There is also concern regarding the level of latent capacity within the fishery from licence holders who are currently participating either at low levels or not active (only 20–50% of licences are active depending on the type).”³

- The Australian Southern and Eastern Scalefish and Shark Fishery (SESSF) has been beset by problems and is in broad scale decline despite having one of the more comprehensive (but still inadequate) management frameworks in international fisheries management.⁴ Although this is a Commonwealth fishery, many species caught are also included in Tasmanian fisheries managed under the LMRM Act, and so the issues faced by the SESSF are important context for a review of the Act.
- The loss of the once iconic local recreational and commercial fishery for ‘snotty trevally’ (blue warehou), once a primary target species, was found by the Threatened Species Scientific Committee under the *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* in 2015 to satisfy the criteria for listing as ‘critically endangered’. The species was listed as ‘conservation dependant’ in light of the management plan in place, but it is not recovering.⁵
- Recreationally iconic and locally important seafood species like southern garfish appear to be in a state of collapse in Tasmania, with commercial catches falling fivefold to only ~7 tonnes in 2019. A species that has life history characteristics ordinarily considered relatively resilient to fishing and climate change impacts, southern calamari, also appears to be

² ‘Tasmania Has the Largest Wild Caught Abalone Fishery in the World, but Is the Industry at War with Itself?’, Sound, ABC Radio (Australian Broadcasting Corporation, 5 October 2021), <https://www.abc.net.au/radio/hobart/programs/mornings/quota-holders--put-the-tasmanian-abalone-council-on-notice/13569316>.

³ Kate Fraser, Klaas Hartmann, and Nils Krueck, ‘Tasmanian Scalefish Fishery Assessment 2019-20’ (Institute for Marine Science and Antarctic Studies, University of Tasmania, October 2021).

⁴ Ian Knuckey et al., ‘Understanding Factors Influencing Under-Caught TACs, Declining Catch Rates and Failure to Recover for Many Quota Species in the SESSF’ (Fisheries Research and Development Corporation, 2018).

⁵ ‘Listing Advice *Seriotelella Brama* Blue Warehou’, 2015, 26. For current status see ‘Blue Warehou 2020’, accessed 20 March 2022, <https://www.fish.gov.au/report/266-Blue-Warehou-2020>.

declining rapidly, with commercial catches allowed to exceed levels associated with Maximum Sustainable Yield by 100% in key regions. These are species that should be both staples for Tasmanian communities and centrepieces for the Tasmanian hospitality industry; both are now redlisted in AMCS's GoodFish Sustainable Seafood Guide.

3.2. Climate change

3.2.1. Recognising the issue

The Discussion Paper makes mention of 'climate change' only once, in the first paragraph of the Introduction. On any view, this seems to represent a serious lack of engagement with a central issue to the management, sustainability, and economic viability of Tasmanian fisheries.

The already observed and projected impacts of climate change on fisheries are well known and documented. According to the recently released IPCC WGII Sixth Assessment Report *Climate Change 2022: Impacts, Adaptation and Vulnerability*, Chapter 3 on Oceans and Coastal Ecosystems and their Services:

“Anthropogenic climate change has exposed ocean and coastal ecosystems to conditions that are unprecedented over millennia (*high confidence*), and this has greatly impacted life in the ocean and along its coasts (*very high confidence*). Fundamental changes in the physical and chemical characteristics of the ocean acting individually and together are changing the timing of seasonal activities (*very high confidence*), distribution (*very high confidence*), and abundance (*very high confidence*) of oceanic and coastal organisms, from microbes to mammals and from individuals to ecosystems, in every region.”⁶

The CSIRO's Regional Projections for Eastern Australia documents current and projected climate impacts including increasing ocean temperatures, marine heatwaves, sea level rise, oxygen decrease, and acidification. Varying sensitivities across species are projected to result in species shifts and ecosystem change in five ways:⁷

- **Abundance** – due to changes in the number of offspring surviving, mortality (e.g. due to unfavourable physical conditions or changed habitats, food sources, or predators)
- **Distribution** – as species may move to more favourable environmental conditions (if they have the capacity to move, either while still larvae or at later juvenile or adult stages)
- **Phenology** – the timing of events (like reproduction, major migrations, or metamorphosis). This has the potential to also influence the abundance or distribution
- **Physiology** – when the animals' condition changes. They may be fatter/healthier if environmental conditions are more favourable, or in a poorer state if the environment is not as suitable or food availability has declined
- **Variability** – high environmental variability may see species numbers, location, condition, etc, become much more variable than in the past.

These impacts are not uniform and Tasmanian waters are a climate change hotspot likely to experience the impacts of climate change earlier, and more intensely than other areas.

⁶ 'Chapter 3', in *IPCC WGII Sixth Assessment Report Climate Change 2022: Impacts, Adaptation and Vulnerability* (IPCC, 2022),

https://www.ipcc.ch/report/ar6/wg2/downloads/report/IPCC_AR6_WGII_FinalDraft_Chapter03.pdf

⁷ 'Regional Projection for Eastern Australia' (CSIRO, n.d.).

A case study in the Discussion Paper (in the context of the discussion of permits rather than climate change impacts per se) mentions the contraction of giant kelp forests by 95% as a result of warming currents and grazing by urchins.⁸

Other examples of already documented impacts include:

- Tropicalisation of temperate reefs, where the Great Southern Reef has been identified as likely to experience exceptional impacts:

*“Tropicalisation is unlikely to be the cause of species extinctions at a global scale at least in the short term (e.g., within 50 years), partly because many temperate species are habitat generalists (Taylor & Cole, 1994) and partly because most temperate coastlines extend across broad latitudinal ranges where poleward retreat is possible. Exceptions to this include the Great Southern Reef (GSR) in Australia (Bennett et al., 2016), which runs across the entire southern edge of the continent (including Tasmania), but ends at 39°S and has few stepping stones or connections further south towards Antarctica. The GSR has high levels of endemism; for example, up to 77% of sea-weeds, and 56% of invertebrates are found nowhere else globally (Bennett et al., 2016). Many of these species could disappear given currently predicted poleward shifts in seaweed forests beyond the continent by 2100 (Martínez et al., 2018), posing a critical threat and a substantial management challenge for this region in the immediate future”.*⁹

According to the authors:

*“Even with rapid reductions in carbon dioxide emissions, the world's oceans will continue to warm for many decades and continued impacts on coastal ecosystems are expected globally (Gattuso et al., 2015). Fundamental to our understanding of tropicalised temperate systems is that regardless of which trajectories are followed, these systems will represent novel ecosystem configurations. This poses major challenges, practically, legally and philosophically, to traditional approaches to conservation and environmental management, which typically focus on maintaining or returning species to particular locations (Hobbs et al., 2017; McDonald et al., 2019).”*¹⁰

- Climate-driven changes in the distribution of species around the Australian coastline has been described as “a pervasive and accelerating impact of climate change” especially around Tasmania.¹¹

“Tasmania's coastal ocean is associated with more records of range shifting species than any other region of Australia's surrounding ocean (Figure 3; Table S4). This is likely to, in part, reflect that Tasmania is situated at the southernmost point of the Australian continental shelf and species are generally unable to viably extend their poleward distributions beyond this point due to physical habitat limitations. Historically, temperate reef communities off Tasmania have remained relatively stable (Stuart-Smith et al., 2009). However, with an

⁸ Discussion Paper, at 43.

⁹ Adriana Vergés et al., ‘Tropicalisation of Temperate Reefs: Implications for Ecosystem Functions and Management Actions’, ed. Gareth Williams, *Functional Ecology* 33, no. 6 (June 2019): 1003, <https://doi.org/10.1111/1365-2435.13310>.

¹⁰ Vergés et al., 1006.

¹¹ Connor Gervais, Curtis Champion, and Gretta T. Pecl, ‘Species on the Move around the Australian Coastline A Continental-scale Review of Climate-Driven Species Redistribution in Marine Systems’, *Global Change Biology* 27 (2021): 3200–3217.

increasing number of novel species observed in this region and the concurrent decline in key habitat-forming kelp forests, native ecosystems are undergoing rapid change (Ling, 2008). The geographical characteristic of Tasmania's coastal ocean has led to an accumulation of novel species assemblages among this region's native species (Johnson et al., 2011; Last et al., 2010). As native coastal species are unable to redistribute further polewards, Tasmania thus represents a 'species sink' as the rate of novel species arrivals is likely to outpace the rate of local extirpations/extinctions. Indeed, 48 fish species have been observed shifting their distribution in the Tasmanian region. This accounts for 64% of Australian marine fishes observed to be undergoing climate-driven range shifts (Table S4). Of these, nearly all (45 of 48 fish species) are extending their southern range edge poleward, with only a small proportion of fishes observed contracting their equatorward range edges (2 of 48 fish species) or shifting both range edges poleward (1 of 48 fish species). Similarly, benthic invertebrates and algae in Tasmania are displaying a parallel trend with most species exhibiting distributional changes that are consistent with the predicted effects of climate change (Figure 5). However, to date only one fish is known to have become extinct over the recent decades—largely due to habitat loss (Last et al., 2020). Furthermore, the marine environment off southeast Australia is warming at a rate that is more rapid than other regions of Australia's coastal ocean (Hobday & Pecl, 2014), which is likely to be driving a greater number of species redistributions relative to regions experiencing slower rates of ocean warming. Range shift studies from Tasmania also benefit from the availability of longterm historical records, both from commercial fisheries (Last et al., 2010) and established biodiversity surveys (Pitt et al., 2010). These records offer baseline information on a greater number of species (specifically fish and invertebrates) relative to other regions.”¹²

These impacts of climate change operate synergistically with poor fisheries management, and are exacerbated by the failure of fisheries managers to adequately respond to existing or projected climate change impacts. Addressing this failure must be a central task of this Review.

Massive changes to ecological function and composition (like loss of east coast kelp forest) have arisen from insufficiently careful fisheries management in a changing climate. Fishery managers have been happy to 'write off' hundreds to thousands of tonnes of fishery production to climate impacts, at levels of change to these fisheries that can equal or exceed those ascribed to fishing, without explicitly (even over a decade later) incorporating climate monitoring and resilience explicitly in fishery decision making and settings.

Examples include:

- Loss of kelp forest and rock lobster overfishing. The research of Ling et al. demonstrates the synergistic effects of climate change and rock lobster overfishing, with ocean warming driven extension of the range of long spined sea urchin leading to catastrophic overgrazing of kelp beds.¹³ The authors conclude:

“our findings provide a strong empirical basis to shift from traditional equilibrium-based thinking; that is, “topdown” predator-driven vs. “bottom-up” environmentally driven

¹² Gervais, Champion, and Pecl, 3208.

¹³ S. D. Ling et al., 'Overfishing Reduces Resilience of Kelp Beds to Climate-Driven Catastrophic Phase Shift', *Proceedings of the National Academy of Sciences* 106, no. 52 (29 December 2009): 22341–45, <https://doi.org/10.1073/pnas.0907529106>.

control, toward adopting more integrated resilience-based ecosystem management approaches (7, 8). This shift in conceptual basis, to focus on reducing risk of major ecosystem change, is particularly urgent in the face of rapidly warming climate and unprecedented levels of predator removal from the world's oceans. Finally, interactions between multiple human-induced stressors will continue to exacerbate nonlinear responses of ecosystems and will progressively limit the adaptive capacity of natural systems to cope with rapid climate change.”¹⁴

- The decline of the jack mackerel fishery and the replacement of jack mackerel with redbait following intensive fishing has altered the population structure and led to the replacement of jack mackerel with redbait as the dominant small pelagic species off eastern Tasmania. This change has been found to be linked with climate driven changes to prey organisms lower in the food chain.¹⁵

3.2.2. A legislative framework responsive to climate change – principles

Changes to the objectives and other aspects of the LMRM Act to respond to climate change are covered throughout our submission, however, we believe it would also be useful for the Review to have regard to ‘design principles’ for climate change adaptation laws and policies identified in the legal and policy literature. McDonald and McCormack have outlined five such principles:¹⁶

- Laws must be “adaptable to broader social, environmental, and climatic conditions and changes”
- Laws must attend to the equity dimensions of climate change
- “New laws may need to shift from business as usual to enabling, and perhaps even requiring, innovative approaches”
- Adaptation laws should “maximize co-benefits and minimize risks”
- Adaptation laws “must provide transparent and explicit processes for prioritizing actions and managing trade-offs across sectors, scales, and affected interests”.

Undoubtedly the specific context of fisheries and marine ecosystem management legislation will require some refinement and modification of these principles. However, the overarching point remains that adequately responding to current and projected climate change impacts on the Tasmanian coastal and marine environment will require not just doing things the old way better, but legislative support for new approaches. This is especially the case given the synergistic relationship between past poor management and climate impacts on marine ecosystems.

This section responds to the following question in the Discussion Paper:

1. How well do you think the Tasmanian legislative regime has supported the protection and management of Tasmania’s marine resources over the past 26 years?

2. What do you think will be the major challenges for the sustainable management and development of Tasmania’s living marine resources in the next 20 years?

¹⁴ Ling et al., 22344.

¹⁵ David J. McLeod et al., ‘A Prey-Related Shift in the Abundance of Small Pelagic Fish in Eastern Tasmania?’, *ICES Journal of Marine Science* 69, no. 6 (1 July 2012): 953–60, <https://doi.org/10.1093/icesjms/fss069>.

¹⁶Jan McDonald and Phillipa C. McCormack, ‘Rethinking the Role of Law in Adapting to Climate Change’, *WIREs Climate Change* 12, no. 5 (September 2021): 15–16, <https://doi.org/10.1002/wcc.726>.

3. How do you think the legislative regime will, or should, respond to those challenges?

AMCS recommendations

- We recommend that the draft White Paper contain much more information and analysis of the current state of Tasmanian fisheries and the challenges that the LMRM Act must address if it is to adequately respond to these challenges.
- We recommend that in developing a draft White Paper, the Review should thoroughly analyse the impact of already occurring and projected climate impacts, and document how the LMRM Act needs to be able to respond to these impacts.
- The review should draw upon research on climate adaptation law and policy to develop principles that should inform the reform of the legislative framework for managing fisheries in Tasmania in a manner that responds to climate change impacts on the Tasmanian marine and coastal environment now and into the future.

3.3. Best practice fisheries management legislation – learning from past reviews

The Review should consider the recommendations from reviews of fisheries management legislation in other jurisdictions such as the Borthwick review of national fisheries legislation and the review of Queensland fisheries laws, which included a review of best practice principles for fisheries management based on a survey of laws from other jurisdictions.

We hasten to add that, as useful as we think these reviews will be to the current Review, neither of them have provided much guidance on how to address the climate change related challenges outlined above. In this sense these past reviews provide a useful reference to how ‘best practice’ has evolved in the 26 years since the LMRM Act was introduced, but they do not provide a complete solution to the challenge of developing future focussed fisheries management legislation for Tasmania.

4. LMRM Act – the need for modernisation

4.1. Legislative design

The current LMRM Act is comparatively easy to understand and follow but, given our submission that substantial reform is required, this question really needs to be addressed by reference to how the Act needs to evolve through reforms or be replaced by fresh legislation.

AMCS supports the principle that any legislation should be drafted in plain English, be capable of being understood and applied by those who are required to work with it, and that it should be no more complex than necessary, noting that the technical and contentious subject matter by necessity will require a certain level of complexity in the Act.

How much detail should be in the legislation? The Act needs to contain sufficient detail to provide a clear, enduring, and adaptable framework for managing Tasmanian fisheries in a holistic fashion in the context of the past failures and rapidly changing and uncertain circumstances documented above. We agree that this means that the Act needs to be a clear expression of the Tasmanian

Parliament's intentions in terms of the overall objectives and principles for governing access to a community owned resource. However, this does not mean that the Act should simply be framed in terms of overarching principles – in some instances the public importance of the subject matter, risks intended to be managed, possibility of controversy, risk of regulatory capture, and integrity challenges will mean that the principal legislation needs to contain a level of prescriptive detail.

Primary or subordinate legislation? This is partly answered by the response above. Subordinate legislation (regulations and rules under the scheme that applies under Tasmanian laws) provides a means for Parliament to delegate the development of detailed provisions to the Minister, the Department, or others. This provides a level of flexibility and adaptability that would not be possible if the Act needed to be amended every time a regulation or rule needed to be updated or changed, and allows the legislation to provide for routine monitoring, evaluation, review and updating of regulations and rules as part of the overall regulatory scheme. This is important generally in dealing with an uncertain and variable resource like fish stocks, and an important design feature in the context of climate change impacts as outlined above.

The critical issue that needs attention is not just a logical hierarchy of instruments in the form of the Act, policies and plans, rules and regulations, but a clear overarching framework of objectives and principles to underpin them, and an overarching governance framework to ensure that the flexibility and adaptability of subordinate legislative instruments is utilised with integrity.

In this regard, the complex interactions between instruments noted in the Discussion Paper, where subordinate instruments have been permitted to override or displace instruments superior in the hierarchy, undermines the rationality and the integrity of the scheme and ought not be permitted.

4.2. Need for an ecologically based management approach to be embedded in the legislation

The LMRM Act is a reflection of its time, in that it has too much emphasis on a narrow conception of marine resources as an economic resource and too little emphasis on the broader marine ecosystem.

There has been an increasing emphasis on ecosystem-based management since the Act was introduced, and reviews such as the Borthwick review of Commonwealth fisheries laws have endorsed this expanded vision of the scope and purpose of fisheries management legislation as a critical foundation for modern fisheries management laws.

Ecosystem-based management is an essential basic building block of any contemporary fisheries management policy or regime. It takes into account the impact of fishing on target, nontarget, other dependent species, and the ecosystems and habitats in which those species occur.

The oceans are the last great global common belonging to everyone but owned by no one. They provide a range of values, with fishing just one activity that must be balanced with a range of other multiple use activities to achieve maximum community benefit for current and future generations.

As naturally open-access renewable resources, fisheries pose significant economic and governance challenges for policy makers and governments. Worldwide experience and many studies have shown that poorly or unregulated fisheries suffer from overfishing, over-capitalization, falling or negative profitability, data-deficiency, and falling productivity, resulting in severe pressure on target stocks,

bycatch, protected species, and the ecosystems that support them. This has been widely referred to as the 'tragedy of the commons'.

The key principles of ecosystem-based management are:¹⁷

1. *Maintaining the natural structure and function of ecosystems, including the biodiversity and productivity of natural systems and identified important species, is the focus for management.*
2. *Human use and values of ecosystems are central to establishing objectives for use and management of natural resources.*
3. *Ecosystems are dynamic; their attributes and boundaries are constantly changing and consequently, interactions with human uses also are dynamic.*
4. *Natural resources are best managed within a management system that is based on a shared vision and a set of objectives developed amongst stakeholders.*
5. *Successful management is adaptive and based on scientific knowledge, continual learning and embedded monitoring processes.*

This section responds in part to the following questions in the Discussion Paper:

1. *Is the Act easy to understand and follow?*
2. *In considering the three legislative design aspects above, what hierarchy between the Act and other instruments would best support sustainability?*

AMCS recommendations

- We recommend that the current Review endorse an ecosystem-based management approach to Tasmania's fisheries as a foundation for the review and reform of the LMRM Act, and ensure that ecosystem-based management principles are reflected in the Act's objectives, decision making criteria, and regulatory tools.

¹⁷ T Ward et al., 'Ecosystem-Based Management of Marine Fisheries. Policy Proposals and Operational Guidance for Ecosystem-Based Management of Marine Capture Fisheries' (WWF Australia, June 2002), 5.

5. Objectives and principles

5.1. Objectives – issues with the current legislation, and principles for reform

Legislative objectives are important because they can inform administration of the Act at all levels, and a benchmark against which decisions, plans, regulations, and overall performance of the legislative framework can be evaluated.

Importantly, legislative objectives can also provide a basis for a shared understanding of what the Act intends to achieve in relation to a publicly owned resource, and the community values that are prioritised – for example sustainability, accountability, protection of the environment, and recognition rights and aspirations of Aboriginal Tasmanians.

The current LMRM Act objectives fail to do these things, and they do not provide clear direction on fisheries management, and in so far as they are clear on anything they emphasise the economic sustainability of the fisheries industry at the expense of other considerations.

Our submission is that the LMRM Act's objectives need to be revised and reformulated. Our position in summary is that:

1. The current objectives in section 7 of the Act confound purposes and objectives. Although section 7 is titled "Purpose and objectives", section 7(1) seems to be restricted to a statement of the Act's purpose. The purposes of a particular piece of legislation and the legislative objects are, however, conceptually separate and in modern legislative drafting are typically separated into different sections. In the case of the LMRM Act, they should be disentangled so that the objectives from the purposes of the Act are distinct and clearly stated.
2. The purposes of the LMRM Act set out in section 7(1) gesture toward fisheries specific objectives, however, it is not clear if these are quasi objectives or an aid to the interpretation of the purpose of the Act. It would improve clarity as to multiple outcomes the Act is seeking to achieve if they were stated separately and organised and enumerated thematically.
3. Subsection 2 seems to be intended to operationalise a sustainability objective by reference to other legislation and the objective of the resource management and planning system in Tasmania. While it is unfortunate that the reader needs to journey to Schedule 1 to the Act to find these objectives, this is a useful approach in that it seeks to integrate an overarching legislative policy on an important matter in a manner which supports consistency across different areas of environmental management.

There are, however, two problems with the current approach. Firstly, this incorporation of generic sustainability considerations should not be seen as a substitute for the clear articulation of specific objectives relevant to the subject matter of the LMRM Act – for example an articulation of support for ecosystem-based management. Secondly, the precautionary principle is notable by its absence from the resource management and planning system objectives, despite being widely recognised and incorporated into resource management and sustainability objectives elsewhere.

4. It is critical that all objectives are operationalised through the Act. So, for example, the objectives of the Act should be specified as decision making criteria in the regulatory scheme of the Act.
5. Subject to the suggestion below in relation to the possibility of including principles in the legislation, it can also be useful for objectives to focus on the administration of the Act – for example consultation, and accountability for decision making.

5.2. Developing a renewed set of objectives

With these principles in mind, we think the Review should adopt a more expansive task than is currently suggested by the questions posed in the Discussion Paper, which operate within the framework of the current objectives, and instead seek to develop a renewed set of objectives based on the principles outlined above.

In our view these objectives must give ecosystem-based management, and ecologically sustainable development more broadly, a clearer and more prominent role as objectives of the LMRM Act. This should include the precautionary principle and intergenerational equity as components of ecologically sustainable development because although these principles have been prevalent in this area for a while (see for example the definition of ecologically sustainable development in the *Marine Estate Management Act 2014 (NSW)*), they are not in the Tasmanian legislation and are now arguably more important than ever, given the challenges and uncertainty of climate change.

AMCS believes that the primacy of the ecologically sustainable development objective must be established in fisheries management, including clear definitions of the precautionary principle and precautionary approach, and clear guidance as to how the principle and approach should be applied in day-to-day management decisions. Other objectives, such as economic objectives, can only be pursued with a healthy and robust marine environment, and can be pursued in conjunction with the principles of ecologically sustainable development; conversely, however, if economic objectives are prioritised, this can come at the expense of a healthy marine environment leading to resource sustainability issues as well as poor ecosystem outcomes.

The objects of the *Fisheries Management Act 1994 (NSW)* might provide a good starting point for considering how the LMRM Act objectives might be improved. These objects, reproduced below, set out objectives which are clear and distinct, as to both what each one is intended to be, and the relationship between them. Like the LMRM objects, the NSW objects incorporate a definition of ecologically sustainable development common to all NSW resource management laws, which includes the precautionary principle (in this case contained in the *Protection of the Environment Administration Act 1991 (NSW)*).

The *Fisheries Management Act 1994 (NSW)* objectives are set out in section 3:

- (1) The objects of this Act are to conserve, develop and share the fishery resources of the State for the benefit of present and future generations.
- (2) In particular, the objects of this Act include—
 - (a) to conserve fish stocks and key fish habitats, and
 - (b) to conserve threatened species, populations and ecological communities of fish and marine vegetation, and

(c) to promote ecologically sustainable development, including the conservation of biological diversity,

and, consistently with those objects—

(d) to promote viable commercial fishing and aquaculture industries, and

(e) to promote quality recreational fishing opportunities, and

(f) to appropriately share fisheries resources between the users of those resources, and

(g) to provide social and economic benefits for the wider community of New South Wales, and

(h) to recognise the spiritual, social and customary significance to Aboriginal persons of fisheries resources and to protect, and promote the continuation of, Aboriginal cultural fishing.

5.3. Should the LMRM Act contain a statement of principles?

It would be worth exploring the inclusion of overarching principles in the LMRM Act in addition to a clearer and more up to date statement of objectives.

Principles in legislation set out high level norms or ‘rules of conduct’ that are critical for the effective implementation of the legislation. Clearly spelling these out will assist in understanding how the legislation is to be interpreted and applied.

A recent example in environmental legislation from another jurisdiction is the list of principles in Part 2.3 of the *Environment Protection Act 2017* (Vic) which lists principles to which regard must be had in administering the Act, including a principle of integration of environmental, social, and economic considerations, the precautionary principle, and a principle of accountability.

This approach to legislative design has not typically been adopted in Tasmania, although an example can be found in section 4 of the *Biosecurity Act 2019*.

Recently, the Independent Review of the *Climate Change (State Action) Act 2008* has endorsed the recommendation of an earlier review for that legislation to be amended to include “A set of principles to guide climate action” (Review recommendation #3).¹⁸ The rationale for the recommendation is that:

“The objects do not inform decision-makers in considering climate change in a meaningful way. The principles further guide climate action to the themes of the Act (recommendation #2), to deliver appropriately and effectively against the target and objectives of the Act. The principles establish a set of expectations for relevant Government action on climate change, including the development of mitigation and adaptation strategies and relevant policies.”¹⁹

Recommended principles in this context include sustainable development and social equity, transparency and reporting, a science-based approach, integrated decision making, risk

¹⁸ Craig Clifton, Hugh Sheehan, and Rebecca Micallef, ‘Independent Review of the Climate Change (State Action) Act 2008’ (Jacobs, 11 June 2021), https://www.dpac.tas.gov.au/__data/assets/pdf_file/0008/586403/Independent_Review_of_the_Climate_Change_State_Action_Act_2008_-_Final_Report_2021.PDF.

¹⁹ Clifton, Sheehan, and Micallef, 70.

management, and community engagement. Similar principles could be developed to inform the administration of the LMRM Act where the rationale outlined above is equally applicable.²⁰

5.4. Precautionary principle

Whether or not the suggestion above for the inclusion of a set of principles in the LMRM Act is adopted, AMCS is strongly of the view that the legislation needs to specifically include a requirement for the precautionary principle to be applied across all aspects of the administration of the Act.

The precautionary principle has long been recognised as playing a key role in guiding decision making under conditions of uncertainty that characterise fisheries management,²¹ and would be a critical reform to ensure that the LMRM Act was better positioned to respond to the climate change impacts outlined above.

Below we highlight the importance of the precautionary principle and the need for it to be applied rigorously. In the absence of a much better understanding of ecosystems we maintain that more precaution is needed in the management of Tasmania's fisheries.

Many jurisdictions have legislative objectives that mandate ecologically sustainable development. They are often poorly defined or qualified by economic or social objectives/goals or provisions that allow for varying the weighing of the principles in accordance with particular circumstances. In order to protect marine resources and the communities that depend on them, ecosystem-based management objectives should be well articulated in all fisheries legislature, including that ecological sustainability objectives should be considered paramount over social and economic objectives; and that it is inappropriate for political, social, and economic considerations to outweigh ecological requirements.

The precautionary principle is a fundamental tenet of contemporary environmental management. Most jurisdictions have a requirement or definition of the precautionary principle in their legislation, however there is a need for this to be applied consistently across jurisdictions.

We favour the use of the definition in Clause 3.5.1 of the Intergovernmental Agreement on the Environment (IGAE) as follows:

Where there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In the application of the precautionary principle, public and private decisions should be guided by:

- i. careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment; and
- ii. an assessment of the risk-weighted consequences of various options.

²⁰ A review of Victorian fisheries legislation in 2011 recommended that the Fisheries Act 1995 (Vic) that the Act be amended to include revised objectives and a set of principles – see 'Future Fisheries Strategy: Proposals for Reform' (DPI Victoria, October 2011).

²¹ See for example section 6.2.1 in David Borthwick, 'Review of Commonwealth Fisheries: Legislation, Policy and Management', 17 December 2012.

5.5. Addressing climate change impacts at the level of the Acts objects

As we have argued above, the LMRM Act must be more responsive to climate change impacts on Tasmanian fisheries and marine ecosystems. This responsiveness must go beyond a token mention of climate change in the purposes or objects of the Act – in one sense the significance of the issue means *all* objects and principles should be assessed against whether they support a legislative framework capable of dealing with challenges of climate change. However, an approach that accepts the all-pervasive nature of the issue without making specific provision for how it is to be approached would fall short of what is required. To avoid this, the Review could also consider incorporating a specific reference to climate change impacts on Tasmanian coastal and marine ecosystems to indicate that climate change impacts are a key issue that the Act is intended to address. This would also need be operationalised throughout the provisions in the rest of the Act, but even on its own it would provide a clear direction and mandate for climate change impacts to be the focus of attention.

Consideration could also be given to how the LMRM Act not only integrates with or relates to aquaculture, biodiversity conservation, and environmental protection legislation, but also the legislative framework in the *Climate Change (State Action) Act 2008*, particularly as it relates to supporting the need for adaptation and resilience in Tasmania's environmental, social, and economic systems.

This section responds to the questions on page 13 of the Discussion Paper:

1. *Are the current objectives of the Act, including that of achieving sustainable development still relevant for the Act? What other objectives for the management of our living marine resources could be relevant?*
2. *The purposes refer to the community and the community's interests. What do you think community means and what are their interests?*
3. *Could the Act's objectives be strengthened with regards to Aboriginal activities and connection to sea country and sea country values?*

AMCS Recommendations

- The LMRM Act's current objectives should be revised to provide a clearer statement of objectives specific to the Act, including Ecologically Sustainable Development, and recognition of the importance of ecosystem-based management to Tasmanian fisheries management.
- The LMRM Act's current objectives should be revised so that ecological sustainability objectives should be considered paramount over political, social, and economic objectives.
- The Act should specifically include the precautionary principle and mandate its use in the administration of the Act.
- The review should consider the desirability and utility of including a set of overarching principles in the legislation in addition to the objectives to guide the administration of the Act and support the delivery of its objectives.

- Any reform of the objectives of the Act should be considered with reference to whether these objectives will clarify, strengthen and support the need for the legislation to be responsive to climate change impacts on the Tasmanian marine and coastal environment including Tasmanian fisheries.

6. Scope of the Act

6.1. Marine protected areas

Part 5 of the Act provides a comprehensive framework for marine resource protected areas and habitat protection areas. This framework includes powers to make rules in relation to both forms of protected areas, and powers to declare such areas, including notice and consultation requirements and the development of management plans. The Act also provides for the powers and functions of management authorities for these protected areas and supports the implementation of protected areas with a range of restrictions and offences.

These provisions are there because it was recognised at the time the LMRM Act was passed that this was necessary and logical and that protected areas had an important role in the overall system.

This extract from the second reading speech on the introduction of *the Living Marine Resources Management Bill* in 1995 makes this clear:

“The third major issue, directly related to the first, is the addition of specific provisions to protect or preserve marine environments. As I said earlier, it is futile to believe that fish can be managed to sustainable levels without regard to their environment. Hence Part 5 of the Living Marine Resources Management Bill provides for the creation of marine resources protected areas, similar to reserves on land created under the Parks and Wildlife legislation.

The bill also enables the establishment of habitat protection areas. In this regard, one of the great concerns of marine scientists is the emerging evidence of the destruction of seagrasses and of fish breeding and nursery areas. In many respects, seagrasses and other marine plants are to fish the equivalent of the Amazon jungles for monkeys or the prairies for buffaloes in the American continents.

The Somer Report [review of Australian fisheries] identifies Tasmania as having a bioregion with one of the world's highest diversities of marine plants. The report also suggests that more than 4 000 hectares of seagrasses have already been lost from the State's marine waters. The need for habitat protection areas was also highlighted by reports from marine scientists only a few weeks ago of the discovery of colonies of previously unknown and rare marine animals in the Bathurst Channel area on the south-west coast.

Accordingly, the bill provides new measures for the greater protection of marine environments for such purposes as fish breeding areas, fish feeding areas and maintenance of marine biodiversity. There are also provisions to support the proposed endangered species legislation in recognition that there are fish species which also need protection.”

These provisions have never been used, and only limited protected areas have been declared under the Nature Conservation Act. Appropriately designed and managed marine protected areas (MPAs), including habitat protection, play a critical role in marine conservation and fisheries management. Their design may differ according to the objectives they are trying to achieve.

We note that this departure also means Tasmania is not addressing its commitments under Australia's Oceans Policy, released in 1998, which committed the Australian Government, and all State and Territory Governments, to the development of a national representative system of marine protected areas (NRSMPA).²² The primary goal of the NRSMPA is to establish and manage a comprehensive, adequate and representative (CAR) system of MPAs to "contribute to the long-term ecological viability of marine and estuarine systems, to maintain ecological processes and systems, and to protect Australia's biological diversity at all levels."²³

The review should consider the role of MPAs as a component of an effective overall approach to managing the marine estate, and to complement and support the ecosystem-based management of fisheries. MPAs are recognised as one important component of marine spatial planning, which is an important but currently lacking element of the interacting legislation governing Tasmania's coastal and marine environment.

Furthermore, the scientific evidence establishing the value of MPAs as a key tool for conserving and restoring ocean life has significantly advanced since the Act was passed.²⁴

Relatedly, there are emerging international commitments for protecting marine ecosystems – for example the emerging commitment to protect 30% of marine ecosystems by 2030 presently under discussion in the development of the Post 2020 Global Biodiversity Framework under the Convention on Biological Diversity. The Australian government has already indicated its support for this target by signing on to the Kunming Declaration, as well as through its membership on The High Level Panel for a Sustainable Ocean Economy (The Ocean Panel).²⁵ An important task of this review ought to be to ensure that Tasmanian legislation, including the LMRM Act, is ready to respond to expectations that, like all jurisdictions, Tasmania will play a role in achieving these targets.^{26 27}

This section responds to the question on page 15 of the Discussion Paper:

I. *What are your views on the scope of the Act? Are any key activities relating to the protection, development and management of our marine resources missing that should be added, or should anything be removed?*

AMCS Recommendations

- The review should consider and document the important role that Marine Protected Areas and habitat protection play in marine conservation and ecologically sustainable fisheries

²² *Australia's Oceans Policy: Caring, Understanding, Using Wisely.*, Reprinted, vol. 1 (Canberra: Environment Australia, 1999).

²³ ANZECC Task Force on Marine Protected Areas, Australia, and Environment Australia, *ANZECC: Guidelines for Establishing the National Representative System of Marine Protected Areas*. (Canberra: Environment Australia for the Australian and New Zealand Environment and Conservation Council, 1998).

²⁴ For a list of key papers, see: <https://marine-conservation.org/scientific-support/>

²⁵ Conference of the Parties to the Convention on Biological Diversity, Fifteenth meeting (part I), Kunming, China, 11-15 October 2021 and 25 April to 8 May 2022. "Kunming Declaration: Ecological civilization: building a shared future for all life on Earth" <https://www.cbd.int/doc/c/c2db/972a/fb32e0a277bf1ccfff742be5/cop-15-05-add1-en.pdf>

²⁶ Bethan C. O'Leary et al., 'Effective Coverage Targets for Ocean Protection', *Conservation Letters* 9, no. 6 (2016): 398–404, <https://doi.org/10.1111/conl.12247>.

²⁷ Kendall R. Jones et al., 'Area Requirements to Safeguard Earth's Marine Species', *One Earth* 2, no. 2 (February 2020): 188–96, <https://doi.org/10.1016/j.oneear.2020.01.010>.

management, and affirm the original legislative intent of the Act in relation to the importance of these areas.

7. Regulation of fisheries

7.1. A community owned resource

The starting point for the consideration of the current regulation of specific fisheries is the community owned nature of the resource.

The fisheries sector is accessing a community owned resource that brings benefits for, and value to, other stakeholders including Traditional Owners, the tourism industry, and recreational fishers. It is crucial that the interests of non-extractive sectors of the community and economy such as tourism and non-fishing recreation are given proper consideration and weighting in so called 'resource allocation' processes.

7.2. Management plans, regulations and rules

As outlined above, in our submission the Act's objectives need to be reformulated, ecosystem-based management must be more thoroughly integrated into the Act, and the Act needs to be far more responsive to the impact of climate change than is currently evident in the Act itself and in its implementation.

This, by necessity, will require a review and some reform the existing regulatory regime to ensure that it is fit for purpose.

At the very least, the Act should contain a clearer requirement for management plans, regulations, and rules to give effect to the objectives.

7.3. Co-management

We are supportive of the concept of co-management, but suspect in practice much more work is needed to advance beyond its very limited adoption in specific circumstances. In theory, it is very attractive as it promotes the 'ownership and custodianship' of the resource and the ecosystem which supports them.

A key question is: what precisely is meant by co-management? We believe there are a range of potential co-management models – ranging from ensuring all key stakeholders are involved in considering management issues and providing input to decisions, to devolving responsibility for the management of the resource and ecosystem against agreed targets and outcomes to a group or groups. In this latter form we believe there are very few fisheries or sectors where this could be applied. A key issue is that, as the fishing sector is accessing a community owned resource, checks and balances are needed to ensure appropriate standards are set and that these are met. Therefore, the system must still include significant independent scrutiny, reporting, and auditing of the management arrangements and its success or otherwise.

Similarly, it is critical that co-management and other forms of devolution of responsibility are evaluated against the objectives set out in the Act. They ought to be conceptualised and implemented as alternative means of implementing the Act's objectives rather than as an alternative to regulation – their justification is that particular circumstances make the arrangements appropriate for achieving the Acts objectives given the fishery or location.

7.4. Exemptions

We want to emphasize our view that exemptions risk undermining the integrity of the system and should be limited. Any exemptions should be designed to be responsive and capable of dealing with uncertainty.

Exemptions contained in the current section 11 of the Act, and the broad ministerial powers to grant them, risk undermining the achievement of the Act's objectives and creating governance and integrity issues (real and perceived) in the administration of the Act. On this basis, AMCS is not in favour of casting the current section 11 exemptions power more broadly than the current broad formulation. Indeed, we consider there would be merit in adding a constraint to enabling focus of section 11 by requiring the Minister to demonstrate that the granting of an exemption is consistent with and advances the objectives of the Act, rather than just making the objectives a relevant consideration.

We believe that the Review should be wary of using the Covid-19 pandemic example noted in the Discussion Paper as the basis for supporting a broader range and more extensive use of exemptions as this situation was exceptional. Governments all around Australia (including in Tasmania – see the *COVID-19 Disease Emergency (Miscellaneous Provisions) Act 2020*) have needed to change laws to manage the extraordinary circumstances of the pandemic. In general, the LMRM Act scheme of regulation should be anticipating fisheries related challenges and ensuring that the capacity to respond to these is reflected through the Act from the objectives down, rather than through Ministerial interventions to grant exemptions.

This section responds to the question on page 49 of the Discussion Paper:

1. How can the exemption process be improved, if at all?

AMCS Recommendations

- The current facility for the Minister to grant exemptions under the LMRM Act should not be expanded, and consideration should be given to ensuring that the exercise of this power is limited to circumstances where it can be positively shown that the grant of exemption is consistent with and advances the objects of the Act.

8. Decision making

8.1. Independence and good governance

Responsibility for the administration of the LMRM Act currently rests with the Minister and Department. It seems evident from the Discussion Paper that the Review is not contemplating the need for reform to the current institutional arrangements for fisheries management in Tasmania, a perhaps surprising situation given the independent statutory authority model for Commonwealth fisheries.

AMCS does not have a strong view on whether institutional reform ought to be considered by the review or recommended in the proposed White Paper.

Regardless, clear specification of decision-making responsibilities and powers, and transparency and accountability in their exercise is important, and the LMRM Act could be usefully reviewed to ensure that it meets contemporary standards for best practice. As already noted, we also believe that it

would be useful to ensure that reformed objectives (and potentially principles) set out in the Act are operationalised by decision makers in carrying out their functions by ensuring that the obligation to do so is clearly stated in relevant provisions.

It is also important that decisions are seen to be and are in fact rule-based and informed by appropriate scientific and technical advice, rather than the result of the exercise of excessive discretion and political influence. The need for of accountability, integrity, and public confidence in the administration of the LMRM Act is discussed further below.

8.2. Role of science and research

It is important that the inquiry note the productivity benefits of good science. Good fisheries management processes rely on the best available science. When this is not available, management decisions suffer and greater precaution will be needed, which may impose a higher regulatory burden on fishing sectors.

There is a high degree of uncertainty in our understanding of the marine environment, and even in relation to individual target species. This lack of understanding covers a wide range of issues, from species biology (e.g. do we know enough about what age a particular species starts to reproduce in order to make sound management decisions), through to lack of data on fishing mortality (e.g. do we really have sufficient information to manage risk of overfishing, if fishers are only reporting some species at genus or even family level). Managers must have access to sufficient biological information and reliable up-to-date data and assessments to develop appropriate harvest strategies, deal with risk and uncertainty, and assess broader environmental impacts related to fishing activity.

Page 29 of the Discussion Paper notes:

“There are many management decisions that need to be made under the Act and associated rules and regulations. In making any decision under the Act, the decision-maker must have regard to the objective of resource management (section 7).

The Act is silent on the weight or significance of scientific advice and evidence in decision making.”

We would add to this analysis that a key aspect of integrating scientific advice into regulatory decision making is dealing with scientific uncertainty, a key issue for fisheries, and as has already been outlined, the Act is silent in relation to the application of the principle.

AMCS is unsure if there is much to be gained by attempting to specify the weight or significance that must be attached to scientific advice or evidence in decision making. Rather than attempting to be prescriptive as to how decision making should occur on complex issues, we believe it would be better to ensure that the legislation’s objectives and principles provide clear overall guidance to decision makers on the need for decisions to be informed by the best available scientific data and advice, and to ensure that there is a clear mandate in the Act for ecosystem-based management and the application of the precautionary principle.

This section responds to the questions on page 29 of the Discussion Paper:

- 1. Do the current requirements for the use of scientific advice and evidence provide adequate support for the sustainable management of Tasmania’s living marine resources?*

2. Are there alternative approaches to the integration of science into decision-making that should be considered?

AMCS Recommendations

- Responsibilities and powers of decision makers under the Act should be clearly specified, and mechanisms developed to ensure that that decisions are seen to be and are in fact rule based and informed by appropriate scientific and technical advice, rather than the result of the exercise of excessive discretion and political influence.
- Particular attention should be paid to ensuring that the Act's objectives and principles are operationalised through the range of decisions and functions under the legislation.
- Decision making should be based on the best available scientific and technical advice, and the incorporation of such advice into the administration of the Act should be guided by the objectives and principles developed for this purpose, especially the precautionary principle which is a key tool for making decisions in situations of scientific uncertainty.
- Decision making that relates to scientific or technical matters should be based on scientific and technical advice, and distortion of decision making by financial interest should be avoided. Where Ministerial discretion is provided for, the criteria and boundaries for the exercise of this discretion should be clearly stated in the legislation, and decisions should be explained by reference to the criteria.

9. Consultation

9.1. Public consultation

Consultation including notice, access to information and the right to have a say on decisions is an important feature of any legislative scheme for the management of a public resource and the protection of the environment, including the LMRM Act. In this regard, AMCS believes that it is particularly important that environmental and conservation values are represented around the table.

We also support the right of Tasmanian Aboriginal communities to have their rights and aspirations recognised in the administration of the Act, and we support their right to specify how this might best be delivered.

Our proposal to reform the Act's objectives and principles has the potential to create an overarching framework for advice and consultation under the Act, which will avoid the need for prescriptive detail about how this is to occur in every instance. An example of such a provision can be found in section 3A of the *Fisheries Act 1995* (Vic), which sets out detailed consultation principles that apply across the Act.

9.2. Advisory bodies

While informal and formal advisory bodies are one way in which consultation can be carried out in a structured manner and views captured from a diversity of interests, AMCS has no particular suggestion to make as to how these processes might be improved or reformed under the LMRM Act

beyond the suggestion that these inputs and the management of such bodies would be assisted by clearer guidance in the form of revised objects and principles being included in the legislation.

This section responds in part to these questions on page 31 of the Discussion Paper:

1. *Do the consultation mechanisms effectively and appropriately allow for engagement with all interested stakeholders? Are there better ways of consulting?*
2. *Are the existing consultation bodies and associated processes effective, and do they adequately cover the social, economic, and environmental needs of fisheries management?*
3. *What structures or mechanisms could encourage Aboriginal Tasmanian communities to share and participate in consultation and decision-making in fisheries management?*

AMCS Recommendations

- Effective consultation under the LMRM Act, whether undertaken through formal or informal advisory bodies or not, should be informed by clear objectives that include prioritisation of ecosystem-based management and the full range of social, environmental, and cultural values, rather than just the views of those with an economic interest in fisheries management.

10. Reporting, evaluation, and review

We recommend that the Review consider the need for more rigorous reporting, monitoring, evaluation, and review requirements under the LMRM Act. Including this within the Act is one way in which an amendment to the Act could be more responsive to the need to address climate impacts on Tasmania's marine environment, and would be consistent with the principles for climate adaptation outlined above at section 3.2.2 above.

A related reform would be to include a provision in the LMRM Act requiring periodic independent review of the Act and the extent to which it is achieving its objects. Section 18 of the *Climate Change (State Action) Act 2008*, which requires independent reviews of that Act on a 4-yearly basis, would provide a suitable model for such a provision. Such a provision has the advantage of taking the politics out of a decision as to whether to review the Act and the scope of such a review.

AMCS Recommendations

- This review should consider the desirability of including a framework for reporting, monitoring, review, and evaluation of the Act within the legislation.
- Consideration should also be given to including a legislative requirement in the LMRM Act for regular independent review of the Act based on section 18 of the *Climate Change (State Action) Act 2008*.

11. Compliance and enforcement

11.1. Offences and penalties

Penalties should be commensurate with those in other jurisdictions. On its face, it appears that applicable penalties in Tasmania are lower than at the Commonwealth level and in other jurisdictions. This should be the subject of a comparative analysis and any need for reform identified as part of the Review's program of identifying opportunities to modernise the Act.

11.2. Compliance and enforcement regime under the Act

Effective fisheries management legislation needs to be supported by a range of compliance and enforcement options drawn from current regulator best practice. Once again, we recommend that both the range of enforcement and compliance tools available to the regulator, as well as the utilisation of these in practice, be examined by the Review with a view to updating this tool kit.

Modern good regulatory practice is for compliance and enforcement to be supported by an enforcement strategy and policy. The Review should recommend that such a strategy and policy be developed.

This section responds to questions on page 51 of the Discussion Paper:

1. *Are the current penalties for fisheries offences appropriate?*
2. *How could the rules dealing with compliance be improved?*

AMCS Recommendations

- The current range of offences and penalties under the LMRM Act should be reviewed and benchmarked against comparable offences and penalties in other jurisdictions, and any need for reform identified.
- The Review should ensure that the White Paper includes an examination of whether the 'regulatory toolkit' for compliance and enforcement represents contemporary regulatory best practice, and any shortcomings should be rectified.
- The Review should recommend that the Department develop and publish a compliance and enforcement strategy and policy.