

REPLY TO DISCUSSION PAPER – LMRA REVIEW

INTRODUCTION

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

As stated in the preamble the current LRMA is dated. In fact, it was officially released only 5 years after the internet became available in Australia! Education, access to information and technology has advanced in leaps and bounds in that time.

The Act has weathered well considering but is in dire need of updating to recognise changing uses and impacts on the marine environment, advances in technology and prepare for a future of adapting to climatic changes.

This Review is applauded.

Theme One: Objectives and Scope

1. Purpose and objectives of the Act and Sustainable development

Sustainable Development

The concept of ‘maximum sustainable yield’ is a clear management ideal however the definition of ‘sustainable’ is lacking clarity. As described in the Discussion Paper sustainable can be interpreted to mean a very low level that has no safety margin or room for error. This is not the intended meaning and needs to be stated.

A similar mistake can be applied to the concept of ‘maximum economic yield’. It could imply the emphasis is on achieving the highest economic return from a fishery as the objective rather than maintaining or rebuilding the health of a fishery.

A definition of ***sustainable*** needs to be included in the Act in **Definitions and applications**.

1. Purpose and objectives of the Act and sustainable development

Discussion Questions 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?

Although somewhat outside the scope of this paper there needs to be a review of the suitability of the different management processes applied to the wild fishery vs the marine farms ie Precautionary Principal vs Adaptive Management.

Adaptive management as a tool, provides the ability to make/change decisions in the light of emerging science. It can be argued the last 30+years of science and technology development now

warrants a change of this management technique to the Precautionary Principle. It could also be argued the wild fishery might be more suited to an adaptive management approach in order to adjust to the impacts of climate change.

2. Benefit

Discussion Questions 1. How should the costs and benefits from living marine resource use be calculated? You may want to consider biological, economic, Aboriginal cultural and social aspects. 2. Should there be a return to the State and the Tasmanian community from the use of a public resource? In addition to economic return, what Aboriginal cultural, environmental, and social benefit could be returned?

The recreational fishery pays a licence fee to access the fishery and the commercial fishery pays an access fee plus royalties. The current method of a fixed % Royalty fee is not reflective of the value of the commercial fisheries. The nature of a fixed fee implies a fixed return which is not the case. There is no parity between different fisheries.

For many commercial fisheries a research fee is included with the access fee. This contributes to independent research identified by management or science. To manage the marine resource equitably independent research is imperative and all user groups must contribute because all Tasmanians benefit.

The ancient British/US concept of The Law of the Commons is still a cornerstone of our law and order however there are situations in the marine environment where a pervasive influence to divide personal gain from communal property has developed traction ie The Tragedy of the Commons.

3. Access

Discussion Questions: 1. Are the character tests for participation in the regulatory framework appropriate? 2. Should the Act consider the character of corporate entities beyond the corporate structure? 3. What other conditions should be applied under the Act to those who seek or have been granted access to Tasmania's living marine resources?

As evidenced across a wide range of primary industries market demands influence the value of a product and consequently the focus of investment. Experience has demonstrated the impact foreign investment has on market manipulation which ultimately results in poor environmental impacts, damage to the product and lower returns to the State and community.

Tasmania is a small island with very limited marine resources. Foreign investment and exploitation can quickly consume a fishery resulting in a major socio-economic shift that may never recover. The Act and the enforcement process must prioritise Tasmanian's access to all marine resources.

Foreign investment must be capped and character tests for office holders of corporate entities are warranted and should be applicable.

Theme Two: Fisheries management framework

1. Current management framework

Discussion Questions 1. Do you think the current management framework for fisheries making is effective, easy to understand and supports the objectives of the Act? 2. What improvements would you like to see?

The Act as a long-term document provides the overarching objectives and theoretical parameters for fisheries management. As the fisheries are managed as individual components the relevant Rules need to be separate (where possible) and aligned with the relevant fishery. Individual fishery Harvest Strategies and Operational Papers, both of which require regular reviews, form a simpler nimbler document.

The commercial Abalone fishery recommends a co-management approach with open meetings for all sectors at the information and discussion stage which then tapers towards smaller defined attendance for the recommendation and decision-making stage. This model has worked well in the past but has been loosely interpreted at times. This model requires further detailing and inclusion as part of the Management framework in the Act.

3. Role of Science and Research

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?

In line with contemporary management practices around Australia, Tasmania is moving toward a system of Harvest Strategies for commercial fisheries. A Harvest Strategy outlines management controls and provides a transparent methodology of developing and adapting a TAC. It also provides the basis of a broader education/communication strategy which is at present an underutilised by-product.

A co-management process is essential to providing a dependable and justifiable harvest strategy. The major stakeholders being the fisher, science and Govt must have equitable input. The Stock Assessment process plays a different (but equally vital) role being a record of due processes. Input from the fisher group is not so essential at this stage.

At present the core data source for the Strategies is limited and needs to be expanded as practices change and new technology becomes available. Funding for continued science in this field is of vital importance to resource management and should be a core part of the research funding allocation.

The production and frequent review of Harvest Strategies must be part of the co-management decision-making process within the Act.

4. Consultation on fisheries management

Discussion Questions 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?

Under the Fisheries Advisory Council Guidelines formal appointments to the Fisheries Advisory Committees are limited to Chair and the Dept in a secretariat role. Other appointees are described as “people with direct expertise in the relevant fishery, members from bodies providing fisheries support services and members with expertise in conservation”.

By not formalising a more detailed description for all or part of these positions there exists a risk where a balanced viewpoint may not be achieved. Any such amendment to the Fisheries Advisory Guidelines would assist in providing a greater level of integrity and transparency.

To provide for a co-managed fishery structure a consultation strategy confirming links between fishery sectors, science, the Dept requires validating as part of the Advisory Council Guidelines.

There are examples where the Minister, obligated to make decisions on community contentious proposals, have resulted in the integrity of the advice being consistently questioned.

Section 27. provides for the inclusion of a Citizen Jury processes as part of the government decision-making process. Established and implemented nationally and internationally as a legitimate method to provide the Minister with Community advice and the consultation process.

The Tasmanian Planning Scheme, although not directly associated with the LMRA (1995), can be considered a benchmark for decision making ‘for all tiers of government, regulatory bodies, and the community’. Embedded in that process is a mechanism to call for a review of a decision. There is no such mechanism evidenced in the current LMRA (1995).

7. Joint management

The Act requires a degree of clarification regarding agreements between State and Commonwealth ie. Section 152 and 161.

Section 161 (6) specifically applies to marine farming of fish for research purposes however it is unclear if,

- on the completion of the research, which entity /entities are responsible for the management, policing etc and
- which entity is responsible for formulating policies and plans ie Section 153 Cl (2) & (3).

Case Study: The recent agreement to establish research marine farming in Commonwealth waters in Bass Strait highlights just one of many gaps in the system. Both entities require stakeholder / public consultation but which entity and under which under the Act is the consultation performed or can it be offloaded to a private enterprise that has high economic interests?

THEME 3: Regulatory Framework

1. Characterisation of the regulatory regime

Discussion Questions 1. Does the current direct government regulatory regime adequately support the objectives of the Act? How else could regulatory outcomes be achieved?

This part of the Act provides for the issue or non-issue of access licences but does not recognise a buy-back system which could be utilized as a mechanism to regulate a commercial fishery.

4. Fees, charges, and levies

Section 274 (3) This Clause does not adhere to the principles of transparency, impartiality, and integrity. Currently parity between different fisheries does not exist and there is no justification other than the Minister's discretion.

Charges, fees and royalties should be based on a scale according to the average annual landed value of each fishery at an equitable rate between the fisheries.

6. Records and reporting requirements

a. Commercial fisheries

Currently the calculation of diver over-catch in the Abalone Industry is based on an average across all zones. This is not considered an equitable method of calculation. Digital reporting will identify other such anomalies and provide a simple method to calculate zone by zone.

Case Study: A diver that exceeds quota in some zones can make a profit, however exceeding quota by similar kg amounts in other zones can be extremely costly.

b. Marine farming reporting requirements

The public have lost confidence in the regulation of marine farms. This is evidenced by the difficulty in obtaining information, secretive deals and lack of will to impose fines. Eg. Zero tolerance of waste. There is a vast difference on the level and extent of reporting between commercial harvest reporting requirements and marine farm reporting.

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