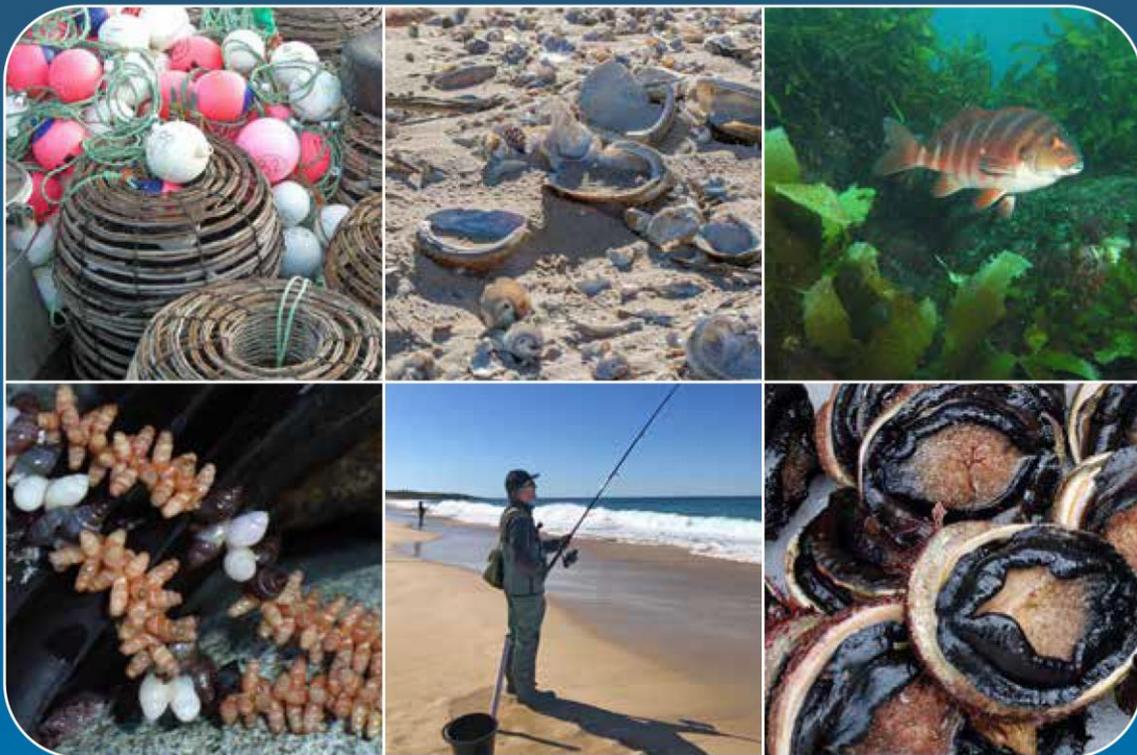


Modernising Tasmania's Fisheries Legislation

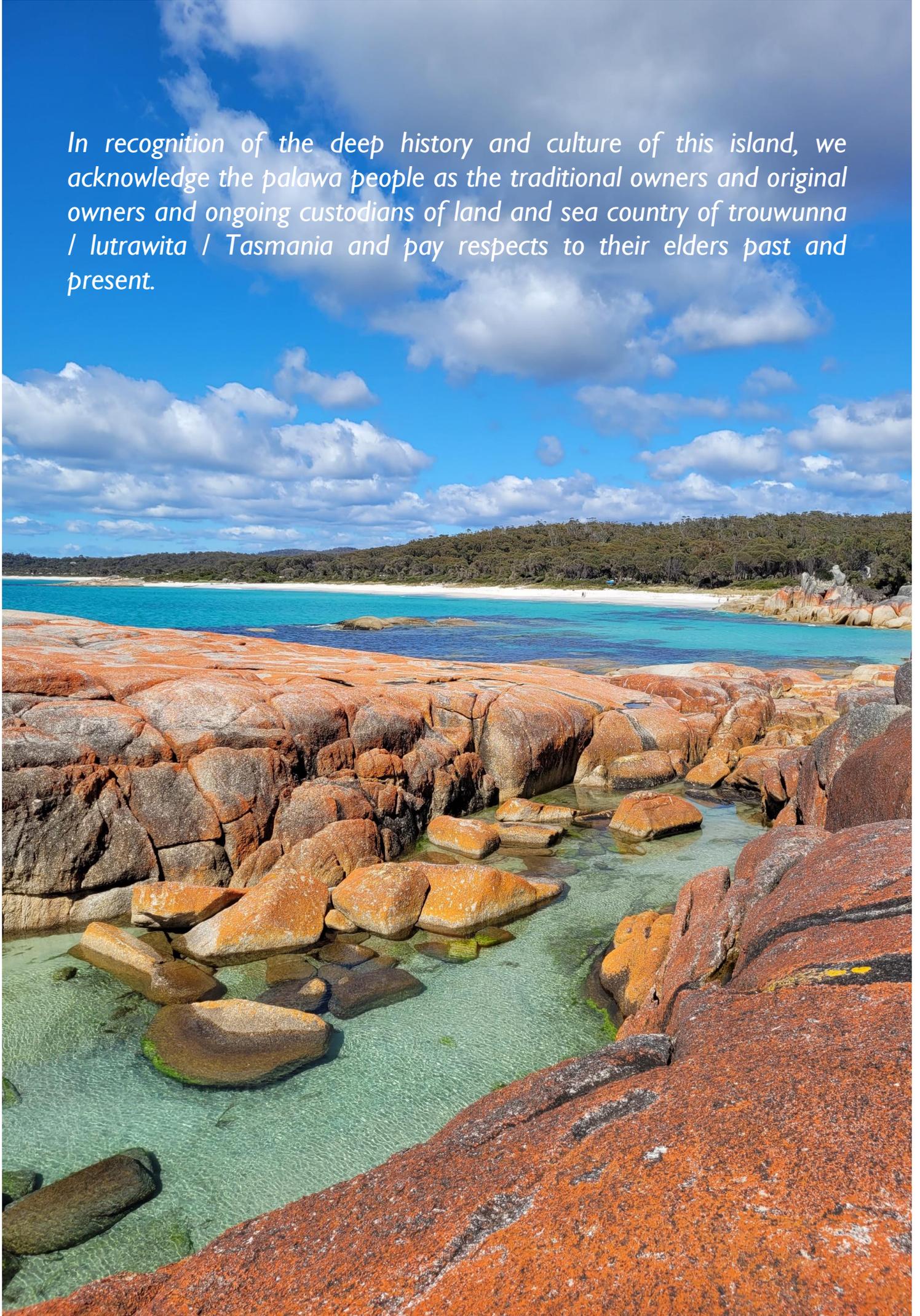
A Review of the
Living Marine Resources Management Act 1995

DISCUSSION PAPER



February 2022

In recognition of the deep history and culture of this island, we acknowledge the palawa people as the traditional owners and original owners and ongoing custodians of land and sea country of trouwunna / lutrawita / Tasmania and pay respects to their elders past and present.



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Ministerial foreword



As the Minister responsible for the *Living Marine Resources Management Act 1995* I am pleased to release this Discussion Paper as part of a review of the management and regulation of Tasmania's fisheries.

Maintaining the sustainability of our fisheries is essential for Tasmanian's way of life and to protect our marine resource for future generations. Increasingly our fisheries are shared between commercial and recreational fishers, all of which adds to our social fabric and economic wellbeing. At the same time, pressures on fish stocks and the marine environment are increasing.

Given this, we need a forward-thinking approach to our fisheries management. Tasmania has some of the best fisheries in the world and we need to ensure our management frameworks are also world-class.

The Act has not had a comprehensive review since it was enacted over 25 years ago; numerous developments have occurred in best-practice fisheries regulation and the way in which Tasmania's marine environment is used. This, along with the inflexibility of some parts the Act that became apparent during the Covid-19 pandemic, have demonstrated that now is the time to review the Act and consider changes to ensure the robustness of our management framework to changing environmental and market condition.

This Discussion Paper is the first step in an 18-month process to consider how the legislation operates, how it meets the objectives of achieving the sustainable development and management of our marine resources and understanding stakeholders' experiences of its effectiveness and practicality. What we want to hear from you about is:

- **Sustainability:** The extent to which the sustainability objectives of the Act are being achieved;
- **Decision-making processes:** The extent to which the Act provides a sound framework for living marine resource management in Tasmania;
- **Fisheries management:** The extent to which the Act aligns with current best practice fisheries and marine resource management principles;
- **Future challenges:** The extent to which the Act is flexible and prepares Tasmania for future risks and challenges associated with the marine environment.

I encourage anyone interested in the future management of Tasmania's important marine resources to read this discussion paper and contribute to the review.

Following the review, the Government will be considering options for modernising our legislative regime to last another 25 years. This is a unique opportunity to consider the future options for Tasmania's marine resource management.

Guy Barnett

Minister for Primary Industries and Water

Have your say

The discussion paper is divided into three themes: Objectives and scope, Fisheries management framework and Regulatory framework. Each theme includes a series of questions which are prompts only. Submissions need not address all questions specifically.

Written submissions can be forwarded to:

Email: LMRMAReview@nre.tas.gov.au

Mail: LMRMA Review – Marine Resources
GPO Box 44
Hobart TAS 7001

All written submissions **must be received by Thursday 31 March 2022**.

Consultation forums

A number of consultation forums will be held with Key Stakeholder Group members in February and March 2022.

Important information

Confidentiality

Your name (or the name of the organisation) will be published unless you request otherwise.

In the absence of a clear indication that a submission is intended to be treated as confidential (or parts of the submission), the Department will treat the submission as public.

If you would like your submission treated as confidential, whether in whole or in part, please indicate this in writing at the time of making your submission. Clearly identify the parts of your submission you want to remain confidential. In this case, your submission will not be published to the extent of that request.

Personal information protection

Personal information collected from you will be used by the Department for the purpose of acknowledging your submission. Your submission may be published unless it is marked “confidential”. Personal information will be managed in accordance with the *Personal Information Protection Act 2004*.

Accessibility of submissions

The Government recognises that not all individuals or groups are equally placed to access and understand information. We are therefore committed to ensuring Government information is accessible and easily understood by people with diverse communication needs. Where possible, please consider typing your submission in plain English and provide it in a format such as Microsoft Word or equivalent. The Government cannot, however, take responsibility for the accessibility of documents provided by third parties.

Right to Information Act 2009

Information provided to the Government may be provided to an applicant under the provisions of the *Right to Information Act 2009* (RTI). If you have indicated that you wish for all or part of your submission to be treated as confidential, your statement detailing the reasons may be taken into account in determining whether or not to disclose the information in the event of an RTI application for assessed disclosure. You may also be contacted to provide any further comment.

Purpose of the Discussion Paper

This **Discussion Paper** is to canvas the views of stakeholders on their experiences with the administration of the *Living Marine Resources Management Act 1995* (the Act) and on the future of marine resource management in Tasmania.

This Review addresses **three key themes**:

- Objectives and scope
- Fisheries management framework
- Regulatory framework

The Discussion Paper is structured around those three themes and presents information on how the Act works. It then asks some questions about those themes to facilitate discussion. Not every section of the Act is discussed in detail. By necessity this Discussion Paper is lengthy and technical. You do not need to address every aspect of the Discussion Paper in your submission and are encouraged to focus on your areas of interest and expertise.

This consultation will be facilitated through the **Key Stakeholder Group**, comprising industry representative groups and community groups (listed at [Attachment A](#)). Members of the Key Stakeholder Group will be invited to forums to discuss their views with the Department. Department expects Key Stakeholder Groups will consult with their members and interested community to provide written submissions by **31 March 2022**.

Individuals are also able to provide a written submission to this Discussion Paper.

Timeline

	Discussion Paper to facilitate engagement and consultation forums held	January 2022 – March 2022
	Summary report on issues identified by Government, Key Stakeholder Group, and other stakeholders	June 2022
	Public consultation – Draft White Paper	From November 2022
	Delivery of White Paper to Government	Mid 2023

A **draft White Paper** will be prepared based on feedback for public consultation towards the end of 2022. The White Paper will be a detailed document that identifies and analyses the issues raised by stakeholders and presents a future pathway to Government.

Introduction

The *Living Marine Resources Management Act 1995* (the Act) has been in operation for 26 years. Since then, fisheries management approaches, use of technology and fishing business models have changed. The impacts of climate change have been seen, with warming oceans currents and sea urchin encroachments on key Tasmanian marine habitats. Emerging species such as snapper and kingfish have made their way into Tasmanian waters. Market conditions, and the pandemic, have impacted the commercial industry.

The legislative framework enables the administration, management, and protection of living marine resources and the marine environment. That legislative framework must be agile and responsive to challenges, support effective and efficient decision making and support emerging marine environmental management issues as they arise.

This Review will consider how well the Act, and associated instruments, are at administering a framework that enables the sustainable development of marine resources and enables the fisheries management framework to be effective. It will also examine how 'future proof' the framework is.

This will be achieved in two ways:

1. **Review** – consider the last 26 years and how well the Act has performed, and
2. **Improve** – in light of the Act's performance, what could be done to support a robust legislative regime into the future.

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?*

Background

The *Living Marine Resources Management Act 1995* (the Act) is the primary legislation for administering the use, development, and protection of living marine resources in State waters. This includes fisheries management, as well as protection of marine fish, including habitats and Aboriginal cultural fishing. Living marine resources are also regulated under the *Nature Conservation Act 2002* which applies protections to marine habitats and marine animals.

Managed commercial fisheries

Tasmania has nine managed commercial fisheries. While target-species based, management extends to by-product species, and marine habitats. The table below recognises the commercial fisheries and the status of various targeted species¹

Fishery	Zone/ target species	Stock status
Abalone	Bass Strait Zone (blacklip abalone)	Sustainable
	Eastern Zone (blacklip abalone)	Sustainable
	Northern Zone (blacklip abalone)	Sustainable
	Western Zone (blacklip abalone)	Depleted
	Greenlip Abalone (greenlip abalone)	Depleting
Rock lobster	Southern rock lobster	Sustainable
Scalefish	Banded morwong	Sustainable
	Bastard trumpeter	Depleted
	Southern calamari	Depleting
	Wrasse	Sustainable
	Tiger flathead	Sustainable
	Eastern school whiting	Sustainable
	Octopus	Depleting
	Gummy shark	Sustainable
	School shark	Depleted
Scallop	Commercial scallop	Depleting
Giant crab	Giant crab	Depleted
Shellfish	Venus clams (Georges Bay)	Recovering
	Cockles	Closed
	Native oysters	n/a
	Pacific oysters	n/a
	Wavy periwinkle	Sustainable
Mackerel	Blue mackerel	Sustainable
	Jack mackerel	Sustainable
	Redbait	n/a
Commercial dive	Long spined sea urchin	Sustainable
	Short spined sea urchin	n/a
	Periwinkles	Sustainable
Marine plant	Bull kelp	n/a
	Undaria	n/a

¹ Status of Australian Fish Stocks Reports 2020 SAFS Report (5th Edition)

Marine farming

The Act provides the framework for regulation of marine farming (aquaculture) operations. This includes granting of licences for marine farming, whether on land or in the sea. Aspects of marine farming management and regulation, including planning and environmental regulation occurs under other legislation:

- The *Marine Farming Planning Act 1995* (MFPA) sets out the process for preparing and amending Marine Farming Development Plans, allocation, and administration of marine farming leases.
- The Act provides for the licensing of marine farming (which depends on a lease being held) and includes on-water finfish, marine plants, and shellfish farming (including oysters, mussels, and abalone). It can also include onshore hatcheries to produce these species that are then on-grown in either/both marine and land-based farming operations.
- *Environmental Protection and Pollution Control Act 1994* (EMPCA) provides for environmental licensing of finfish farming and is administered by the independent Environment Protection Authority (EPA).

The following table summarises the relationship and role of those pieces of legislation:

Marine Farming Regulatory Activities	Relevant Legislation	Within scope of Review?
Planning of Marine Farming Development Plans and creation of marine farming zones	<i>MFPA</i>	NO
Allocation and administration of marine farming zones	<i>MFPA</i>	NO
Operation of marine farming development plans and management of infrastructure	<i>MFPA</i>	NO
Granting, monitoring and compliance with permits issued for marine farming activities	<i>The Act</i>	YES
Monitoring and management of environmental effects and regulation of marine farming operations, including record keeping and reporting	<i>The Act</i>	YES
	<i>MFPA</i>	NO
	<i>EMPCA</i>	NO
Regulation of land-based hatcheries, nurseries, and farms (finfish)	<i>Inland Fisheries Act 1995</i>	NO
Regulation of land-based hatcheries and farms (all marine species)	<i>The Act</i>	YES
Management of biosecurity risks	<i>Biosecurity Act 2019</i> <i>Agriculture and Veterinary Chemicals (Control of Use) Act 1995</i> <i>Animal Health Act 1995</i> <i>Animal Welfare Act 1993</i>	NO
Regulation of interactions with wildlife	<i>Animal Welfare Act 1993</i> <i>Nature Conservation Act 2002</i>	NO
Management and allocation of surface and groundwater (freshwater) resources	<i>Water Management Act 1995</i>	NO

Administration of the Act

The Minister for Primary Industries and Water (the Minister) is the responsible for the Act. The Department is Tasmania's lead natural resources agency. It is currently divided into four Divisions, including the Primary Industries and Water Division which includes Marine Resources, which administers the Act.

The Department undertakes administration (through consideration and processing of permit and licence applications, processing of dockets and reports, etc), monitoring (through inspections and data analysis), management (development of fisheries regulations, management plans, harvest strategies assessments (with Institute for Marine and Antarctic Studies (IMAS), consultation, etc), and compliance (from monitoring data, audits, and marine police investigations).

Living Marine Miscellaneous Amendments (Digital Process) Act 2021

The *Living Marine Miscellaneous Amendments (Digital Processes) Act 2021* ('Digital Processes Amendment Act') passed the Tasmanian Parliament in November 2021 and amends the *Living Marine Resources Management Act 1995*. The amendments will not come into effect until they are proclaimed by the Governor. This is expected to occur within the next 18 months and all affected licence holders will be notified.

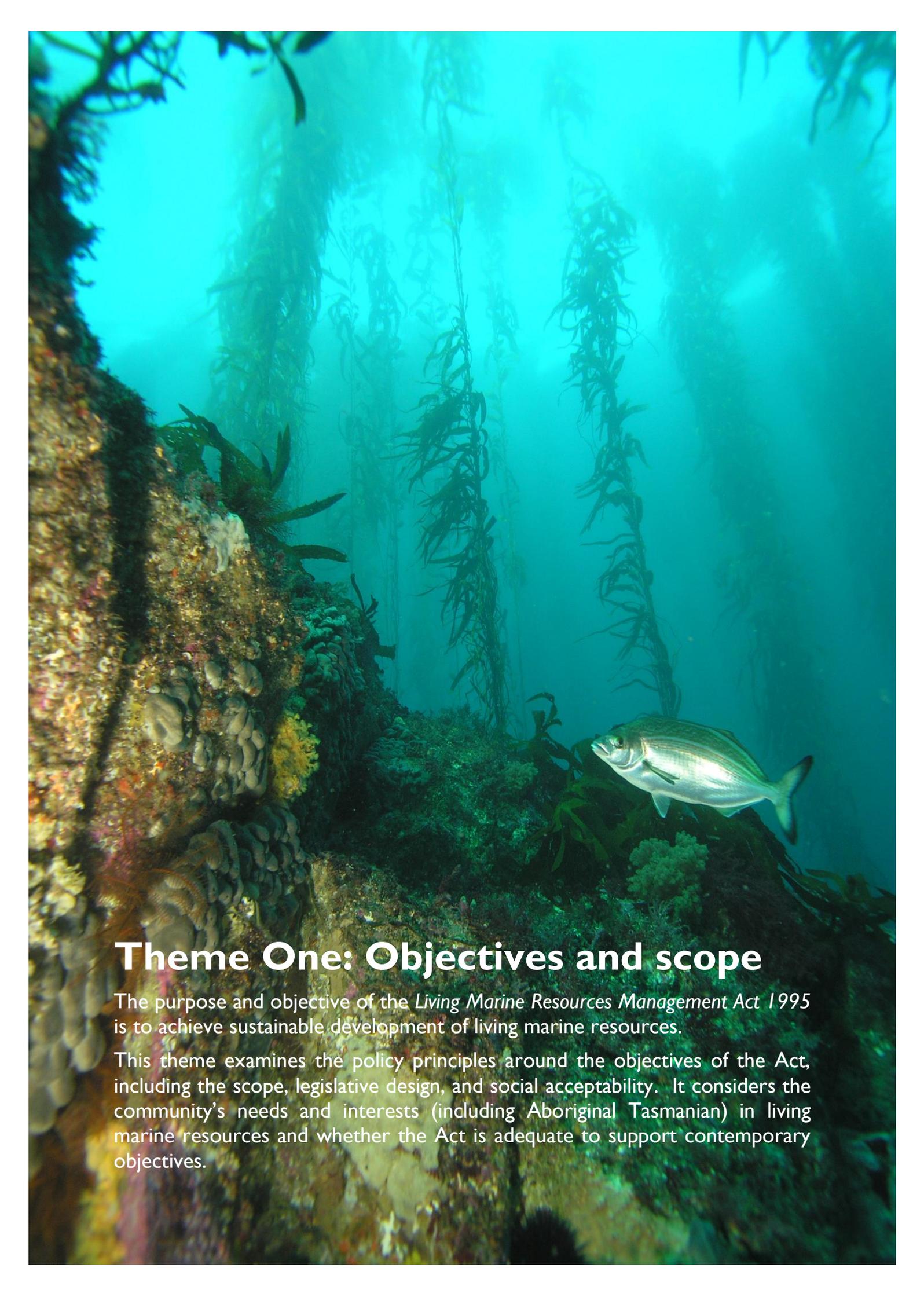
The Digital Processes Amendment Act enables the introduction of digital platforms and processes in the regulation of sea fisheries in Tasmania. It allows for digital licensing and reporting and will substitute a two-stage licensing process where a person must first become an 'eligible person' to hold a licence of a particular category before being able to hold a licence of that category.

The decision on eligibility must be made by a human exercising their discretion and not by a computer. The Digital Processes Amendment Act also devolves certain licence-based decision making from the Minister to the Secretary of the Department to further streamline the licensing process.

Living Marine Resources Management Amendment (Aquaculture Research) Bill 2021

In November 2021, public comment was sought on the draft *Living Marine Resources Management Amendment (Aquaculture Research) Bill 2021*. The Bill which passed the House of Assembly in the Tasmanian Parliament in November 2021 seeks to create the legislative framework required in Tasmania to enable aquaculture research in adjoining Commonwealth waters. This is to support the Memorandum of Understanding to support the implementation of the National Aquaculture Strategy.

If passed by the Parliament, the Bill will amend the Act to ensure that Tasmania can enter into an arrangement with the Commonwealth under section 72 of the *Fisheries Management Act 1994* (FMA) for marine farming of fish for research purposes in Commonwealth waters to be managed under State laws.

An underwater photograph of a kelp forest. The water is a deep, clear blue. Tall, thin kelp stalks rise from the seabed, their fronds reaching towards the surface. In the foreground, a silver fish with dark stripes swims towards the left. The seabed is covered in various marine life, including sponges and other small organisms.

Theme One: Objectives and scope

The purpose and objective of the *Living Marine Resources Management Act 1995* is to achieve sustainable development of living marine resources.

This theme examines the policy principles around the objectives of the Act, including the scope, legislative design, and social acceptability. It considers the community's needs and interests (including Aboriginal Tasmanian) in living marine resources and whether the Act is adequate to support contemporary objectives.

I. Purpose and objectives of the Act and sustainable development

The purpose and objectives of the Act are provided for in section 7.

7. Purpose and objectives

- (1) The purpose of this Act is to achieve sustainable development of living marine resources having regard to the need to –*
- (a) increase the community's understanding of the integrity of the ecosystem upon which fisheries depend; and*
 - (b) provide and maintain sustainability of living marine resources; and*
 - (ba) take account of a corresponding law; and*
 - (c) take account of the community's needs in respect of living marine resources; and*
 - (d) take account of the community's interests in living marine resources.*
- (2) A person must perform any function or exercise any power under this Act in a manner which furthers the objective of resource management.*

Subsection 2 refers to the *objectives of resource management*, as found at Schedule 1. This solidifies the Act as part of the Resources Management and Planning System of Tasmania.

The objectives of that system are:

- (a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and*
- (b) to provide for the fair, orderly and sustainable use and development of air, land and water; and*
- (c) to encourage public involvement in resource management and planning; and*
- (d) to facilitate economic development in accordance with the objectives set out in paragraphs (a), (b) and (c); and*
- (e) to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.*

Sustainable development is the cornerstone of the Act. Schedule 1 defines 'sustainable development' to mean managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being, and for their health and safety while:

- Sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and
- Safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
- Avoiding, remedying, or mitigating any adverse effects of activities on the environment.

Contemporary concepts used in fisheries management include 'maximum sustainable yield', being the theoretical point where the maximum harvest can be continually taken from a stock each year. Another concept, 'maximum economic yield' maximises the economic gain from use of the fisheries resource. Fishing at 'maximum economic yield' maximises the annual economic gain from commercial fishing, which typically results in a lower annual harvest from a more abundant fish stock than that when fishing to the point of maximum sustainable yield.

In some cases, fish stocks can be fished down to a low abundance where harvest is well below maximum sustainable yield or maximum economic yield but can still be fished sustainably. A

fish stock can have a much lower abundance than a stock managed to produce maximum economic yield or maximum sustainable yield and still be classed as ‘sustainable’ if the fishery is managed to ensure the stocks are maintained and not depleted further. These ‘sustainable’ fish stocks can be fished at a level that does not allow for the fishery to recover to the point where benefits from the fishery can be maximised. So, it may be important to have a measure of success for fisheries that is higher or more than a simple classification of ‘sustainable’.

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?*
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?*

2. Scope of the Act

The Act establishes a regulatory regime for the taking of living marine resources from State waters. It also establishes the framework for fisheries management, including management planning. It includes regulation for the take of fish, marine farming activities and provides for protection of marine areas and habitats.

The Act purposely expanded upon the previous legislation, the *Fisheries Act 1958*, to include more than just fisheries related matters. The name-change to Living Marine Resources Management was a deliberate policy to include environmental sustainability as a factor for management of fish stocks and fisheries.²

‘**Fish**’ is defined at section 4. The definition is broad and includes generally any aquatic organism which would normally spend part or all its life in the aquatic environment. The Act regulates when a fish can or cannot be taken, who can or cannot take that fish, and the way in which that fish can be taken. It allows for management plans, rules and regulations that dictate all those parameters as well as fisheries capacities, entitlements, fish processing and handling activities.

a. Marine farming

Marine farming is managed and regulated under multiple pieces of legislation – including the Act, the *Marine Farming Planning Act 1995* (MFPA) and the *Environmental Protection and Pollution Control Act 1994* (EMPCA). The Act provides for the licensing of marine farming (and includes in sea finfish, marine plants, and shellfish farming including oysters, mussels, and abalone). It also includes onshore hatcheries to produce these species that are then on-grown in either/both sea or land-based farming operations.

² Hansard 28 June 1995, House of Assembly



Image: Oyster farming in Tasmania

b. Habitat protection and marine protected areas

The Act (Part 5 Division 2 and 3) provides for the establishment of marine resources protected areas and for habitat protection plans. No such areas or plans have been established. Habitat restoration work is supported through other mechanisms in the Act including closed fishing areas and gear restrictions. The current marine protected areas in Tasmania are declared under the *Nature Conservation Act 2002*, with fishing restrictions made in rules and regulations under the Act.



Image: Marine protected species weedy sea dragon (*Phyllopteryx taeniolatus*) (left). Spotted handfish (*Brachionichthys hirsutus*) (right) are classified as critically endangered.

The Act provides for the declaration of protected fish at section 135 and for specific protections for marine plants (section 139). The *Fisheries (General and Fees) Regulations 2016* establishes prohibitions on taking certain fish (regulation 15) including some limpets, sharks, seahorses, sea dragons and handfish. The Act and regulations also prescribe noxious fish.

Case study – Shark refuge areas

Shark refuge areas established under the *Fisheries (Scalefish) Rules 2015* are important habitat for the breeding of school and gummy sharks, skates, and rays. No shark, skate or ray can be taken from a Shark Refuge Area. The only exception is elephantfish. The use of set lines and auxiliary fishing gear is prohibited in these areas. The use of mullet nets is also prohibited in Shark Refuge Areas and other netting restrictions may apply.

Shark refuge areas around the State include - Blackman Bay, D'Entrecasteaux Channel, East Coast waters, Frederick Henry Bay and Norfolk Bay, Georges Bay, Great Oyster Bay, Mercury Passage, Pitt Water, Port Sorell, River Derwent and River Tamar.

Discussion Questions

1. *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?*

2. Benefit

The Act provides that the living marine resources in State waters are under the ownership of the State³, and that the resource is to be managed in the interests of the Tasmanian community. The Tasmanian community, and the interests of that community, are not defined in the Act.

The seafood sector makes an important contribution to the Tasmanian economy and is a significant job provider in regional areas.

Sector	2017-18	2018-19	2019-20	2020-21
Commercial fisheries	194	183.7	147.6	110
Aquaculture	869	862.4	930.7	950

Table: Value of primary sector in \$mil (Department Annual Report)

The level of catch, value of production and profitability of Tasmanian commercial fisheries has varied significantly over time, depending on the state of the stocks and market demand/ access. As access to commercial fisheries has become more restricted, the value of tradable access rights has increased substantially since their establishment. When management plans under the Act were developed for existing fisheries in the 1990's and early 2000's, access rights were granted to existing licence holders. In contrast, access to new fisheries that were originally managed by permit (giant crab, inshore clam, and octopus) include a licence granting fee.

Tasmania's living marine resources support employment around the state in the commercial fishing sector, aquaculture industry and support services. Downstream employment flows on to the processing sector and to coastal and regional communities.

³ Except for fish provided for under a marine farming licence, which are the property of the licence holder.

Sector	Directly employed	Indirectly employed
Commercial fishing sector	644	408
Aquaculture sector	2,170	3,226

Table: Number of people directly and indirectly employed in 2018-19 (IMAS)

Significant **social and lifestyle benefits** exist in relation to Tasmania's living marine resources. Over 100,000 Tasmanians participate in recreational sea fishing, and many more enjoy non-fishing activities such as diving, snorkelling, and boating. Tasmanians have a high affinity with the ocean, and it is an important part of the Tasmanian way of life. Recreational fishing also provides significant economic benefits to Tasmanian businesses and communities and is an important contributor to the food security and wellbeing of fishers.

Section 274 of the imposes fees, charges, and royalties. The Minister may impose fees, charges and royalties on permits, licences or other authorities under the Act and may be varied if necessary or desirable. Fees and charges cover some, but not all, costs of the government of managing the fisheries.

A royalty is a payment to the government in return for permission to engage in activities taking benefit from a government asset and provides a return to the community above and beyond the public cost of managing the fishery. While the State can impose a royalty on extraction of a resource, it does not have the constitutional power to impose any additional tax that would be considered a customs duty or excise duty.

The King Island Giant Kelp Fishery requires a royalty to be paid, calculated according to tonnage of kelp harvested, in addition to the base licence fee.

Under the Deed of Agreement for the taking of abalone in State waters, the abalone sector pay a proportion on the landed value of the fishery (6%), based on beach price, as a fee. This is commonly considered to be a royalty.

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?*

3. Access

The Act and associated instruments prescribe that access to marine resources, for all commercial, research and development, and some recreational activities, must be authorised by the Minister, either by licence, permit or exemption. An Aboriginal Tasmanian person does not require approval for access, if that access is for non-commercial purposes or the taking of prescribed fish to manufacture artefacts for sale.

The application (including renewal, transfer, or variation) for a fishing licence, a marine farming licence, a processing licence or a handling licence is subject to certain requirements, including character tests⁴.

These tests require the Minister to be satisfied that:

- (a) the applicant has complied with this Act; and*
- (b) the applicant, within 5 years before the date of the application, has not been convicted of any offence under this Act, any other Act or a corresponding law which the Minister considers relevant to the holding of a licence; and*
- (c) the applicant is not disqualified from holding the licence; and*
- (d) granting the application is not likely to contravene a management plan; and*
- (e) there are no environmental or resource constraints in granting the application; and*
- (f) the applicant is a fit and proper person to hold the licence; and*
- (fa) the applicant is, in the case of a natural person who is applying for a licence for commercial purposes, an adult; and*
- (g) the applicant has paid the appropriate, levies, fees and charges; and*
- (h) it is appropriate to do so.*

The character test described in the Act is well developed for an individual natural person. However, the fishing industry has changed in its design, and in many cases, it is not fishers that hold licences (owner operators), but rather corporate and other entities. The Act does not require the decision-maker to look behind the ‘corporate veil’ to be satisfied of the character of the office holders (such as Directors) of corporate entities⁵.

The Act does not limit who can apply for access rights to Tasmanian marine living resources. This includes not limiting the type of corporate or non-corporate entity that can apply for access – thus including natural persons, partnerships, corporations, trustees, incorporated associations, and Aboriginal corporations.

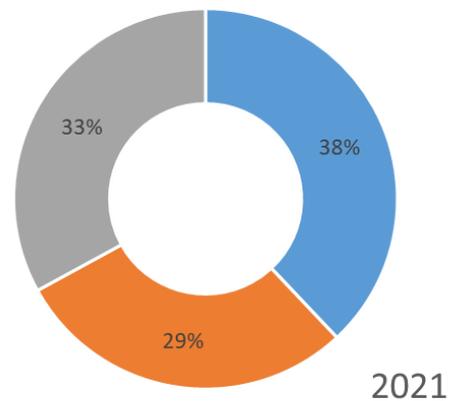
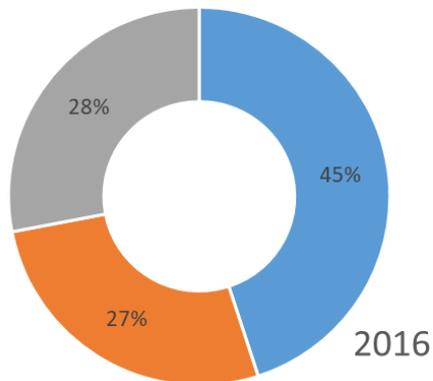
⁴ The Digital Processes Amendment Act will substitute a two-stage licensing process for fisheries licensing where a person must first become an ‘eligible person’ to hold a licence. The decision on eligibility must be made by a human exercising their discretion and cannot be made by a computer program. These new licensing provisions will come into force on proclamation in the coming 18 months.

⁵ Except for the transfer of a licence where the Minister may defer a decision on an application to transfer pending the determination of proceedings against an associate of a proposed transferee (section 82).

Licence ownership under the Act: 2016 and 2021

Licence ownership type

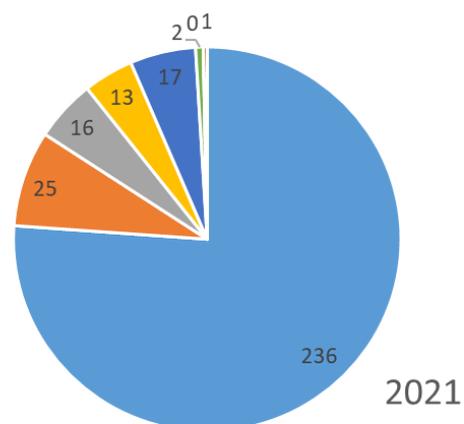
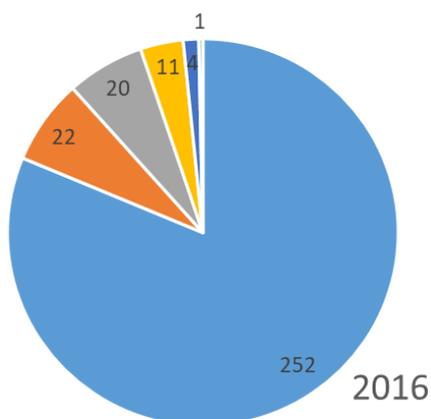
■ Natural Person ■ Partnership ■ Companies



Licence holder by state

■ TAS ■ VIC ■ SA ■ QLD ■ NSW ■ ACT

■ TAS ■ VIC ■ SA ■ QLD ■ NSW ■ WA ■ ACT ■ Unknown



With the exception of Abalone Deed holders, where the terms of access to abalone is governed by each Deed, access rights to commercial fishing and marine farming licences are for the duration of the licence. The Act provides that this can be up to 10 years, however as a matter of administration licences are generally issued for one year. Even though issued for one year, there is an expected continual renewal process of access rights provided the licensing criteria, including the fit and proper person test, is satisfied.

Many of the fisheries management plans limit the total number of licences a licence holder can hold or obtain benefit from (including rock lobster, giant crab, banded morwong, and scallop). Most other commercial fisheries (with the exception of commercial dive) do not have such limits. There are no limitations on how many marine farming licences a single entity can hold.

Case study – Rock lobster quota limitations

Under the *Fisheries (Rock Lobster) Rules 2011* there are maximum and minimum requirements. Rule 55 provides that the number of rock lobster quota units held on a licence is to be not more than 200. It also provides that the holder of fishing licence (rock lobster) must not hold more than 200 quota units or receive a payment, financial advantage or benefit in kind from more than 200 quota units. This prevents over-monopolisation of the industry by a single fisher or related entities.

Rule 56 provides that unless given specific authority from the Secretary of the Department, it is not possible to fish a fishing licence (rock lobster) with less than 15 units.

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?*

4. Resource sharing and sectoral allocation

The Act provides that the marine resources in State waters are owned by the State, except for fish provided for under a marine farming licence. This statement of ownership means that it is for the State to determine who should have access to those resources, for what purpose and for what benefit in accordance with the provisions of the Act.

The Act does not provide a framework for resource sharing, being the allocation between sectors. There are multiple sector groups in the Tasmanian community: non-extractive users (including divers, tourism operators and environmental NGOs), Aboriginal Tasmanian communities, recreational fishers, commercial fishers, and marine farming operators.

Section 96 provides for determining Total Allowable Catch (TAC) for a species that may be allocated to licence holders, recreational fishers and Aboriginal Tasmanians engaging in Aboriginal activities.

The only legislated sectoral allocation is found within the Rock Lobster Fishery. In the current management plan, the recreational rock lobster fishery will be allocated 170 tonnes if the TAC is set below 1,700 tonnes. If the TAC is higher than 1,700 tonnes, then the commercial fishery is allocated 90 per cent and the recreational fishery is allocated 10 per cent. There is no specific allocation for Aboriginal cultural fishing.

Discussion Questions

1. *Should the legislation include a framework for resource sharing?*
2. *If yes, what elements might comprise such a framework?*

5. Legislative design

The Act provides a prescriptive framework for managing living marine resources, establishes the broad regime for managing living marine resources and imposes prohibitions on certain activities in relation to those resources, as well as penalties for non-compliance.

Contemporary legislative design can be guided by considerations of the following aspects:

1. *The extent of the detail that the legislation should contain.*

Greater detail may lead to greater certainty in applying the law, however in doing so legislation becomes more complex, inaccessible and is likely to require a more frequent and lengthy amendment process.

2. *The extent to which the law should be allocated between the primary legislation and subordinate legislation.*

Details on licence types, fishing activities, entitlements and quota management are found in the regulations and rules made for the purpose of the Act. These are heavily prescriptive and, in some cases, overlap with provisions of the Act and regulations, making interpretation and application a complex task.

Unusually, the Act provides for subordinate legislation to override, in part, provisions of legislation higher up in the hierarchy, with rules prevailing over regulations, management plans prevailing over rules, and management plans prevailing over the provisions of Part 4 (licences, quotas and agreements) to the extent of any inconsistency⁶.

3. *Whether the legislation should be rules-based or principles-based.*

Principles-based legislation sets out overall objectives that must be achieved. It provides a framework which regulators can use to achieve the overarching goals, with specificity found within separate subordinate legislation (such regulations). Rules-based legislation includes a prescriptive set of rules that are to be included within the principal Act.

Discussion Questions

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?*

6. Aboriginal fishing

The Act defines an Aboriginal activity as:

- a) *the non-commercial use of the sea and its resources by Aborigines; and*
- b) *the taking of prescribed fish by Aborigines for the manufacture, by Aborigines, of artefacts for sale; and*
- c) *manufacturing of the kind referred to in paragraph (b).*

⁶ With the exception of provisions for allocation of rock lobster quota units (s76).

An Aboriginal activity is mentioned in specific fisheries management plans in relation to not requiring a licence (instead having to only mark fishing gear with a Unique Identifying Code for certain gear types), having less restrictive regulation, including bag and possession limits, and having some less restrictive gear requirements.

Prescribed fish for manufacture of artefacts for sale are listed at Schedule 5 of the *Fisheries (General and Fees) Regulations 2016*. This includes shells to support traditional necklace making.



Image: Aboriginal shell necklace

The Act further provides for an Aboriginal fisher to apply for a permit to take more fish, use different gear or do different activities as allowed for under the management plans for the purpose of Aboriginal cultural and ceremonial activities. There is currently no policy on how that permit application is assessed. The Department has recently engaged its first Aboriginal Fisheries Officer, who will lead relationship building and consultation with Aboriginal peoples on marine resources management practices including supporting this Review.

Case study – Permitting cultural activities

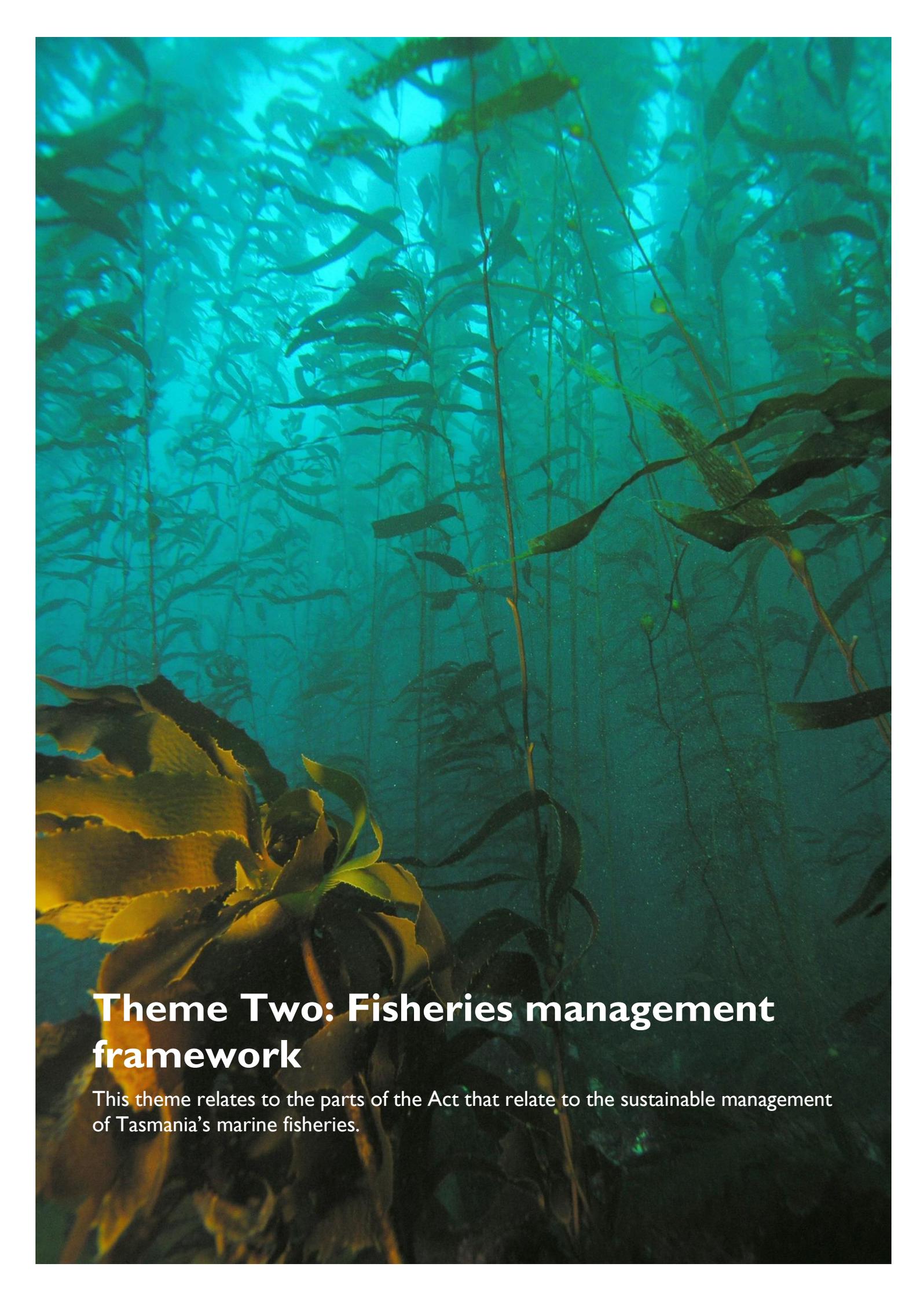
Every year the Department issues, upon application, a permit for an individual to engage in Aboriginal Cultural and Ceremonial activities. The permit enables the permit holder, their agents, and the extended family members of such to take a defined quantity of defined species using defined methods (i.e., 20 abalone and 20 lobsters taken by hand via shore-based diving), and to then prepare the fish for consumption by the extended family. This is to enable the family to teach their children about culture, with full participation by all members, and to pass information, knowledge, and practices on to the next generation.

There are no specific allocations for Aboriginal cultural fishing and in determining total TAC for fisheries, the cultural take is considered negligible. While there are some Aboriginal people (as commercial harvesters) participating in Fishery Advisory Committees (FAC), there is no requirement for Aboriginal representation nor a separate governance body.

The Act states that the living marine resources of Tasmania belong to the State. There is currently no recognition of Aboriginal people as the traditional owners and continuing custodians of those resources in the Act.

Discussion Questions

1. *What is the role of legislation to support ceremonial, cultural and economic practices?*
2. *How else can Aboriginal Tasmanian communities be supported to benefit from living marine resources through harvesting and other means?*

An underwater photograph of a dense kelp forest. The water is a deep, clear blue-green. Numerous vertical stalks of kelp rise from the bottom, topped with long, dark, blade-like leaves. The lighting is soft and diffused, creating a serene and natural atmosphere. The kelp appears to be a species of giant kelp, with some stalks showing small, developing fronds.

Theme Two: Fisheries management framework

This theme relates to the parts of the Act that relate to the sustainable management of Tasmania's marine fisheries.

1. Management of fisheries

Fisheries management arrangements vary in the degree of delegation for day-to-day management decision-making across a continuum. They may be characterised into four models⁷:

- A **centralised “command and control” model** in which government takes full responsibility for almost all management decisions, with little or no consultation with fishers and other stakeholders.
- A **consultative model** (progression towards co-management), in which management decisions are discussed and debated with the majority of management decisions made by the government or management agency.
- A **collaborative model**, in which decision making is negotiated and shared between government and fishers, fisher organisations and other stakeholders with some decisions, such as fishing times or area closures, assigned to fishers or fisher organisations.
- A **delegated model** in which agreed, negotiated management decisions are made by governments, fishers, fisher organisations and other stakeholders within a broad framework and agreed functions are undertaken, or services delivered, by a fisher organisation under a formal agreement.

The current system of fisheries management in Tasmania is a combination of a centralised and consultative approach in which fisheries management decisions are based on science assessments, consideration of social and economic factors, with mandated minimum statutory consultation with stakeholders.

2. Current management framework

The management of fisheries is prescribed under section 33 and section 285, which empowers the Governor to make regulations for the purposes of the Act and the Minister to make rules in respect of management plans, fisheries, or other matters.

A **regulation** is subordinate legislation made by the Governor and is subject to the *Subordinate Legislation Act 1992*.

A **rule** is a legal instrument made by a decision maker and subject to the *Rules Publication Act 1953*. They must be published in the *Gazette* within 21 days of making and be tabled within 10 sitting days of that publication.

Two regulations are currently in force:

- The *Fisheries (General and Fees) Regulations 2016* provide for minimum abalone sizes, marine plant royalties and other general and fee related matters.
- The *Fisheries (Penalties) Regulations 2021* prescribe penalties.

There are currently 11 rules in force:

⁷ FRDC Co-management: Managing Australian’s fisheries through participation and delegation

- The *Fisheries Rules 2019* provide for matters relevant to all fisheries (such as taking of fish generally, provision of receipts and vessel licensing). It also provides for Vessel Monitoring System (VMS).
- The *Fisheries (Processing and Handling) Rules 2021* regulate the processing and handling sector.

Nine Tasmanian marine fisheries are managed under management plans, which are a collection of rules for a specific fishery.

Managed fishery	Current management plan	Past updates
Abalone	<i>Fisheries (Abalone) Rules 2017</i>	Introduced in 1997. Amended in 2018, 2019, 2000, 2001, 2002, 2003, 2004 & 2014. New rules 2000 & 2009. New rules in 2017. Amended in 2019 (some provisions disallowed in 2021).
Commercial Dive	<i>Fisheries (Commercial Dive) Rules 2021</i>	Introduced in 1999. Amended in 2000, 2001 & 2014. New rules in 2011 and 2021.
Giant Crab	<i>Fisheries (Giant Crab) Rules 2013</i>	Introduced in 1999. Amended in 2002, 2005 & 2010. New rules 2001, 2006, 2013.
Rock Lobster	<i>Fisheries (Rock Lobster Rules) 2011</i>	Introduced in 1997. Amended 1998, 1999, 2002, 2005, 2010, 2014, 2015, 2017 & 2019. New Rules in 2001, 2006 and 2011.
Scalefish	<i>Fisheries (Scalefish) Rules 2015</i>	Introduced in 1998. Amended in 2003, 2007, 2008 & 2009. New rules in 2001, 2004 & 2015.
Mackerel	<i>Fisheries (Mackerel) Rules 2019</i>	Introduced in 1999. Amended in 2002 & 2007. New rules in 2009 & 2019.
Scallop	<i>Fisheries (Scallop) Rules 2020</i>	Introduced in 2000. Amended 2004 & 2008. New rules 2005, 2010 & 2020.
Marine Plant	<i>Fisheries (Marine Plant) Rules 2017</i>	Introduced in 2017.
Shellfish	<i>Fisheries (Shellfish) Rules 2017</i>	Introduced in 2007. New rules in 2017.
All fisheries	<i>Fisheries Rules 2019</i>	Introduced in 1996. Amended in 1996, 1997, 1998, 1999, 2000 (twice), 2001, 2002, 2003, 2005, 2009, 2011, 2015 & 2017. New rules in 1999, 2009 & 2019.

The collection of rules and restrictions is complex, expensive, and cumbersome to administer. To assist in stakeholder education, the Department has prepared guides for end users. These include the *Operational Guide for the Commercial Scalefish Fishery*, *Operational Guide for the Commercial Banded Morwong Fishery*, *Commercial Abalone Fishery Operational Information Paper*, and the *Recreational Sea Fishing Guide*.

a. Management plan, rules, and regulation development

The process for developing and changing management plans for a fishery are provided for at Part 3, Divisions 2 and 3. This includes public exhibition processes and consideration of representations.

Procedure for making a fisheries management plan

The Act provides for the Minister to make rules for specific fisheries and these rules can be in a management plan. The Act sets out the matters that can be included in management plans and establishes the process that must be followed when making management plan rules. The following steps explain this process, which can take 12 – 24 months.

Draft

- Minister determines that rules relating to a specific fishery (a management plan) is to be prepared (section 43(1))
- Secretary consults with appropriate persons and prepares a draft plan (section 43(2))



Consult

- Secretary refers draft management plan to Minister for approval to be publicly exhibited (section 44)
- Minister approves public exhibition of draft plan (section 44(2))
- Secretary issues public notice of the public exhibition (section 44(3))
- Representations on the draft plan must be made within the period determined by the Secretary (not less than 60 days from the date of the public notice) (section 44(4))
- Secretary considers representations, prepares report and draft plan for Minister (section 46, section 47)



Determine and notify

- Minister considers the report and the draft plan (section 47)
- Minister must accept draft plan if it promotes and develops commercial or recreational fishing without detriment to fish habitat and the environment, and the Secretary has taken appropriate action in respect of representation. If Minister is not satisfied, relevant fishing body is advised and draft management plan referred back to the Secretary (section 47(2), section 47(3))
- If the Minister approves draft plan, Secretary issues a public notice of the approval (section 48)
- The plan is published in the *Gazette* and tabled in both Houses of Parliament and is subject to disallowance (section 47 *Acts Interpretation Act 1931*)

Procedure for amending a fisheries management plan

The Act provides for the Minister to correct, change, or review a management plan. The criteria and process for corrections, changes, and review vary. The following steps explain these processes, which can take 6 to 9 months.

Review

Minister may change a management plan to correct an error, remove an anomaly, clarify or simplify, remove inconsistency, make procedural change or for a prescribed purpose (section 48A)

- Minister may change a management plan by amending, substituting or adding any provision if satisfied that an emergency has arisen or is likely (emergency order) (section 49)
- Minister may direct the Secretary to review a management plan if satisfied that it is necessary or desirable to do so due to biological, economic or other factors relating to the fishery (section 53)



Consult

- Minister must consult with the relevant fishing body before correcting or changing a management plan (section 48A, section 49)
- Secretary must consult with the relevant fishing body and any person the Secretary considers appropriate to consult with on a review of a management plan (section 53)
- If the Minister approves an alteration to a management after review, the Secretary must issue a public notice of the proposed alteration (section 54)
- representations on the proposed alteration must be made during the period for representations (at least one month from the date of the notice) (section 54(2))



Accept and notify

- the Secretary is to issue a public notice specifying the correction or the proposed change and must notify the correction or proposed change to any person holding a licence for commercial purposes affected by the order (section 48A(2))
- After the Minister changes a management plan (emergency order) the Secretary must notify any person holding a licence for commercial purposes affected by the order (section 50)
- The Secretary is to issue a public notice of alteration of a management plan and must notify any person holding a commercial licence who is affected by the alteration (section 57)
- Public notice is published in the *Gazette* and in a daily newspaper circulating in the State

Rules that are not management plans have a different process for development. This involves consultation with the relevant fishing body and notification of the change by public notice (section 33). Rules are required to be published in the *Gazette* and tabled in Parliament within 10 sitting days of being made and can be subject to disallowance under the *Acts Interpretation Act 1931*. There is not timeframe between the disallowance motion being raised and the debate, meaning rules can be disallowed regardless of how long they have been in place.

The development of **regulations** is subject to the procedures in the *Subordinate Legislation Act 1992* including preparation of a regulatory impact statement where there is an impact on competition etc and consideration by the Subordinate Legislation Committee of the Parliament.

Case study – Changes to the Scalefish Fishery

The Scalefish Rules were first introduced in 1998. They were remade in 2001 after reviewing the performance of the fishery and to factor in transfer of management of the shark fishery to the Commonwealth. They were amended again in 2003 for minor updates.

A new set of rules were made in 2004. Changes included making licences with nil catch since introduction non-transferable, excluding commercial fishing from two areas and placing additional gear and catch restrictions on recreational fishers. Further amendments were made in 2008 and 2009 that introduced the new calamari licence and moving part of the banded morwong fishery to quota management.

The most recent rules were made in 2015. This was a major remake of the rules and included moving banded morwong to a weight-based quota management system (was formerly numbers of fish), introducing new or extended no netting areas to protect penguins, further gear restrictions for recreational setlines and new size limits for flathead, King George whiting, yellowtail kingfish and silver warehou.



Image: Live banded morwong in a holding tank

Modern fisheries management should be responsive to ecological, social and market driven drivers with timely decision making. Many of the current processes in the Act are prescriptive rather than enabling. In recent times these drivers have included the need for stock rebuilding or habitat restoration, or for market diversification and recovery due to COVID-19. Many management plans provide for Ministerial determinations (on matters such as opening and closing seasons or areas and changes to gear types). Section 11 also provides that the Minister may issue an exemption to a person or class of persons from any provision of the Act in response to various drivers.

a. Total Allowable Catch (TAC), quota management and harvest strategies

Sections 93 and 94 provide that the Minister may declare any fishery to be subject to quota management and may set the TAC for that fishery. The Minister must consult with any person or body with an interest in the amount that may be set and have regard to the purposes of the Act. Annual stock assessments are conducted by the IMAS. These stock assessments are presented to the Fishery Advisory Committee (FAC) for the relevant fishery to provide a biological (and in some cases, such as rock lobster, an economic) basis for advice to the Minister on management settings including TACs, size limits, seasons and closed areas.

Harvest strategies are a tool in modern fisheries management. The key purpose of harvest strategies is to provide a structured framework that increases the objectivity around fishery management decision making and most significantly, the setting of TACs. The Act does not require the development or implementation of harvest strategies or management planning documents⁸. In 2018 a harvest strategy was developed for the Tasmanian Abalone Fishery consistent with the National Guidelines⁹. Rock Lobster TAC setting, while not formalised in a harvest strategy, has been guided by reference points and performance indicators since 2011.

Through the *Tasmanian Recreational Sea Fishing Strategy 2021-2030*, the Tasmanian Government has undertaken to develop harvest strategies for key priority species (including abalone, rock lobster, calamari and flathead, and emerging species such as King George whiting, snapper, and yellowtail kingfish).

Harvest strategy

In 2014 the *National Guidelines to Develop Fishery Harvest Strategies* were developed by the Australian Fisheries Management Forum (a group comprising of the FRDC, Australian Commonwealth and state/territory fisheries agencies, including Tasmania).

A harvest strategy should include:

- defined operational objectives for the fishery;
- indicators of fishery performance related to the objectives;
- a statement defining acceptable levels of risk to achieving the objectives;
- reference points for performance indicators;
- a monitoring strategy to collect relevant data to assess fishery performance;
- a process for conducting assessment of fishery performance relative to objectives;
- and
- decision rules that control the intensity of fishing activities and/or catch.

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?

⁸ Most states and the Commonwealth have management plans that outline the full suite of arrangements for managing a fishery and include harvest strategies. The 'management plan' in Tasmania is the set of rules for a fishery.

⁹ National Guidelines to develop fishery harvest strategies | FRDC

2. What improvements would you like to see?

3. Role of science and research

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.

Since 2011, the Department has partnered with the University of Tasmania and IMAS under the *Sustainable Management and Research Collaboration Agreement*. Under this agreement, scientific advice is provided on fisheries assessments, surveys, spatial management, biosecurity and environmental impacts, aquaculture, innovation, and marketing. Education and outreach are also specific activities provided by IMAS under the Agreement. The work conducted under the Agreement supports the marine resources management and the administration of the Act.

In the 1992 Rio Declaration on Environment and Development, the precautionary principle was an underlying element of the broader framework for sustainable development. As defined in the Australian Intergovernmental Agreement on the Environment (1992):

Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective 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.*

The precautionary principle is not provided for specifically in the Act.

Discussion Questions

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?*

4. Consultation on fisheries management

a. Fishing Bodies

Section 25 provides for the Minister to certify a body corporate or association as a fishing body if satisfied that it represents the interests of participants in: a fishing industry or part of a fishing industry, a fishery, the marine farming industry or part of the marine farming industry or a combination of all of those.

Certified fishing bodies:

- Oysters Tasmania
- Scallop Fishermen's Association
- Tasmanian Abalone Council Ltd (TAACL)
- Tasmanian Association for Recreational Fishing (TARFish)
- Tasmanian Commercial Divers Association (TCDA)
- Tasmanian Rock Lobster Fishermen's Association (TRLFA)
- Tasmanian Seafood Industry Council (TSIC)

There are times when that fishing body must be consulted with prior to making the following decisions:

- granting a permit for certain specified purposes
- making rules
- correction of an error in a management plan
- making an order changing a management plan
- reviewing or revoking a management plan
- making an emergency order (such as to close a fishery)
- declaration of quota management (for a fishery)
- prior to setting a TAC (annually)
- licence allocations
- approval of a habitat protection plan and
- making an order relating to a diseased area (in relation to marine farming).

While the Act does not require agreement with the views of the fishing body, this consultation can be beneficial for efficient management, such as where advice from industry will improve the outcome.

b. Advisory committees

Section 27 provides that the Minister can establish advisory committees to provide information and advice on the administration of the Act. The following advisory committees currently exist:

Committee	Purpose
Abalone Fishery Advisory Committee (AbFAC)	Advice on the management of the Abalone Fishery
Crustacean Fisheries Advisory Committee (CFAC)	Advice on the management of the Rock Lobster and the Giant Crab Fishery
Recreational Fishery Advisory Committee (RecFAC)	Advice on recreational fisheries (all species)
Scalefish Fishery Advisory Committee (SFAC)	Advice on the management of the Scalefish Fishery, including the Banded Morwong Fishery
Scallop Fishery Advisory Committee (ScFAC)	Advice on the management of the Scallop Fishery

The Act does not prescribe the membership of the Fishery Advisory Committees (FACs) or the roles of specific FAC members. The current FACs meet several times a year and provide

advice to the Minister on issues that include changes to management plans, setting of TAC, and spatial allocations. In some management plans, the Minister is required to consult the relevant FAC, such as a decision to open or close a fishery.

Their membership is by nomination or expressions of interest, with a two to three-year term. Currently most FACs have an independent chair with a selection of 6-8 industry members (including the certified fishing body), a science advisor from IMAS, a Marine Police representative and a community and conservation representative.

The Minister has approved *Guidelines for the establishment and procedures for Fishery Advisory Committees*. Members must declare their interests in advance of meetings and provide advice that is in the best interests of the community. Members are selected based on the expertise they can provide. While consensus is encouraged, all advice is provided to the Minister including dissenting opinions.

c. Public consultation

Statutory public consultation occurs at key fisheries management stages in the Act. For example, the making of a new management plan requires no less than 60 days of public consultation (section 44), making amendments to a management plan requires one month of public consultation (section 54), and draft codes of practice must be open for submissions for no less than 45 days (section 30). Habitat protection plans also require public consultation however no specific period for those representations is set under the Act.

Consultation generally takes the form of the release of a formal document, on which written submissions are invited. The Department often also conducts port visits and other public meetings, including Fisheries Forums and a high-profile engagement at major events such as Agfest. The Act does not prescribe how public consultation shall be conducted, other than the document being made available for a set period of time.

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?*

5. Decision making powers

a. Fisheries management decisions

Currently decision-making powers for fisheries management sits with the Minister for Primary Industries and Water. These management decision-making powers include:

- Making or changing fisheries rules (management plans)
- Making rules under the Act
- Setting of the TAC

In most cases this power can be delegated to Departmental officials, however in practice it is not exercised with the Minister retaining the final decision.

b. Regulatory decisions

Decision-making powers for regulatory activities such as issuing licences and permits, and entering deeds, also sit with the Minister. Under the Act successive Ministers have delegated many of these powers and functions to officers and employees of the Department to ensure administrative efficiency, particularly in licensing transactions. The Digital Processes Amendment Act will, once proclaimed and in force, will devolve certain licence-based decision making from the Minister to the Secretary of the Department.

Discussion Questions

1. What should be considered when determining who should be the decision maker at each stage of the fisheries management framework?

6. Developing new fisheries

The Act does not provide a framework for the establishment of new fisheries. All developmental fishery activities (such as scientific assessment, trial fishing, stock assessment) is conducted under permit issued under section 12. Permits are limited to up to a 12-month period. A *Developmental Fisheries Management Policy*¹⁰ is used to guide the principles for the developmental fisheries. For the regulation of new marine farming species (such as marine plants) there is a stepped permit process – for harvesting of wild species, for research and for establishing experimental farming activities.

The emergence of new species, as well as changes in range and gear type of current fisheries, present the opportunity for new fisheries to be established and for adaptation of existing fisheries to occur. In the Scalefish Fishery there are species considered under-utilised or emerging that are not targeted due to lack of markets, for example: Australian salmon, barracouta, yellow-eye mullet, and gurnards. Whereas King George whiting, snapper and yellowtail kingfish would be considered emerging species as while they have been present in Tasmanian waters for many years they are increasingly being targeted as their range expands.

Discussion Questions

1. How should developmental fisheries be supported and administered under the framework for fisheries management?

7. Joint management

The State waters of Tasmania are bounded by Commonwealth waters. Section 152 provides for the State to enter into a Joint Authority with the Commonwealth for the management of a fishery in State waters under the Commonwealth *Fisheries Management Act 1991* (FMA). No such Joint Authorities currently are in effect.

¹⁰ Developmental Fisheries Management Policy Document.pdf (nre.tas.gov.au)

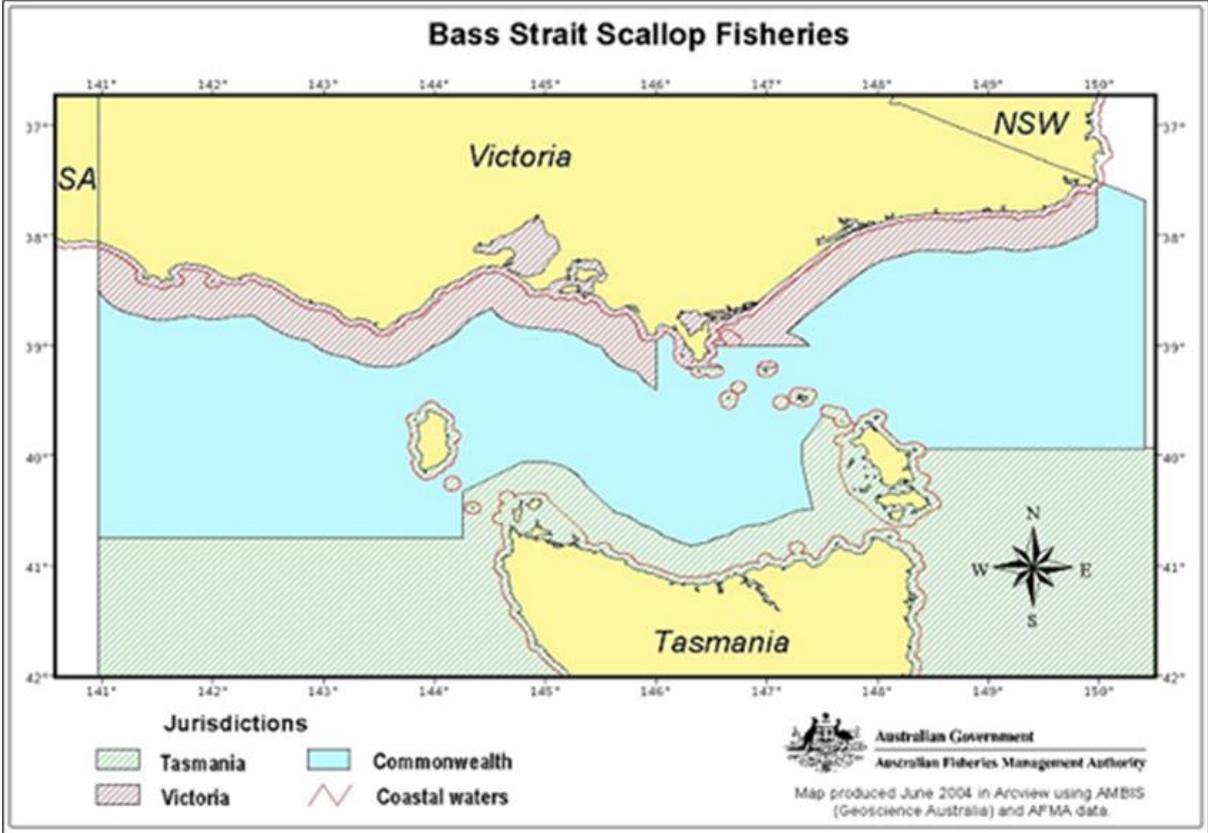
Section 161 also provides for the State to enter into an arrangement under an Offshore Constitutional Settlement (OCS) with the Commonwealth either for the management of a state fishery under the FMA or the management of an adjacent Commonwealth fishery under the Act. In the latter case this extends the jurisdiction of the State over the area specified in the arrangement, potentially to the edge of the Commonwealth jurisdiction (200nm or less). Complementary provisions to support these arrangements are found at section 72 of the FMA.

The following fisheries are currently managed under joint arrangements:

- Southern Rock Lobster
- Octopus
- Giant crab
- Scallop

Case study – Bass Strait Scallop Fishery

Commercial scallop fishing in the Bass Strait is managed under three jurisdictions. In 1986, management of the Bass Strait Scallop Fishery was split between the Commonwealth, Tasmania, and Victoria under an OCS. Australian Fisheries Management Authority (AFMA) manages the Bass Strait Central Zone Scallop Fishery (BSCZSF). The Tasmanian and Victorian scallop fishery extends to 20 nautical miles from the coast of respective states, except for Bass Strait.



Section 162 of Act provides for Agreements with other States for purposes relating to the exercise of good governance. No such agreements are currently in force.

An underwater photograph showing a diverse school of fish swimming over a vibrant coral reef. The fish include various species, such as striped snappers and smaller reef fish. The coral is colorful, with shades of yellow, orange, and white. The water is clear and blue, with sunlight filtering through from above.

Theme Three: Regulatory framework

The regime established by the Act is a permissive regime + one that requires entrants to seek approval to conduct an activity and imposes penalties for failure to comply with legislative obligations. The regulatory regime codifies and qualifies the common law right to fish – providing a complete regulatory framework for many species found within State waters.

I. Characterisation of the regulatory regime

The current system is one of direct government regulation. Other regulatory types include:

- self-regulation (self-regulation is generally characterised by industry-formulated rules and codes of conduct, with industry solely responsible for enforcement),
- quasi-regulation (arrangements where government influences businesses to comply, but which do not form part of explicit government regulation), and
- co-regulation (situations where industry develops and administers its own arrangements, but government provides legislative backing to enable the arrangements to be enforced)¹¹.

The Act provides a legislative framework for the management and use of Tasmania’s marine resources as shown below:

<p>Regulatory framework under the <i>Living Marine Resources Management Act 1995</i></p> <ul style="list-style-type: none"> • Establishes ownership of all living marine resources present in Tasmanian State waters to the State except fish held under a marine framing licence. • Establishes power to declare quota and allocate catch provisions to licence holders. • Establishes processes for granting, varying, transferring, and cancelling licences as well as a permitting system for various activities. • Outlines and sets various infringement and indictable offences such as unauthorised and unlawful take and possession of fish, unlawful sale of fish etc. • Establishes enforcement powers of fisheries officers. • Provides for regulation making powers. 	
<p>Fisheries Rules 2019 and Fisheries (various fisheries) Rules (management plans)</p> <ul style="list-style-type: none"> • Controls sea fishing. • Provides for class of licences (both commercial and recreational). • Rules on licences and requirements. • Outlines mandatory legislative obligations of all fishers. 	<p>Fisheries (General and Fees) Regulation 2016 and Fisheries (Penalties) Regulation 2017</p> <ul style="list-style-type: none"> • Sets and administers fees, levies, and charges in relation to an authority to fish in State waters. • Establishes grades and penalty units for offences under various Fisheries Rules for all fisheries.
<p>Other tools:</p> <ul style="list-style-type: none"> • Licensing and permit conditions • Ministerial Guidelines • Exemptions 	

Discussion Questions

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

¹¹ See Australian Government, National Classification Scheme Review (DP 77)

2. Consideration of input and output controls in best practice regulation

Input and output controls are fisheries management measures used to regulate the intensity of fishing through limits on the use of inputs, that include vessels and gear, to catch fish (input control) or on how much fish can be taken (output control).

Examples of input and output controls

Input controls are an indirect way of limiting catch by restricting various fishing inputs that can include:

- Number of licences issued in a fishery or controlling the number of participants
- The size or power of fishing vessels
- Time fishing vessels are allowed to fish (days at sea fishing effort)
- Types or amounts of fishing gear that can be used (gear fishing effort)
- Closed seasons
- Areas closed to fishing

Output controls are essentially direct or indirect limits on the quantity of fish taken or harvested in a fishery during a certain timeframe and include:

- Direct limits on tonnage of fish or TAC
- Daily limits in the amount and number of fish taken

a. Licences

i. Commercial fishing licences

The predominant mechanism for the regulation of commercial fishing activities in Tasmania is through a licensing system, combined with controls on how fish can be taken and in what quantity.

In order to take fish for sale, it is necessary to consult the relevant management plan and other rules for the commercial fishery to determine what licence classes are required.

To support sustainable development of fisheries, many of the licence classes are limited entry through specific prohibitions in management plans. This means that no additional licences will be issued. The only way to obtain a certain licence is to transfer it from someone else, with transfer (and other matters relating to licensing) subject to Ministerial Guidelines. Ministerial Guidelines are issued under section 27. The purpose of these Guidelines is to guide the decision-making process on fisheries licensing matters which decision makers are required to take into account when performing functions or exercising powers under the Act.

There are 39 types of commercial fisheries licences. The table below shows numbers of these different licences as at September 2021:

Licence type	No. of licenses	Open entry/limited entry	Transferable y/n
Fish processing licence	53	Open	N
Fishing licence (abalone quota)	40	Limited	N (tendered)
Fishing licence (abalone)	121	Limited	Y

Licence type	No. of licenses	Open entry/limited entry	Transferable y/n
Fishing licence (australian salmon)	7	Limited	Y
Fishing Licence (automatic squid jig)	18	Limited	Y
Fishing licence (banded morwong)	26	Limited	Y
Fishing licence (beach seine A)	25	Limited	Y
Fishing licence (beach seine B)	24	Limited	Y
Fishing licence (clam Georges Bay north)	2	Limited	Y
Fishing licence (clam Georges Bay south)	0	Limited	Y
Fishing licence (cockle Ansons Bay)	1	Limited	Y
Fishing licence (commercial dive)	53	Limited	Y
Fishing licence (danish seine)	6	Limited	N
Fishing licence (giant crab)	71	Limited	Y
Fishing licence (introduced marine plant)	3	Open	N
Fishing licence (King Island kelp)	1	Limited	N
Fishing licence (limited danish seine)	1	Limited	N
Fishing licence (mackerel - category A)	0	Limited	Y
Fishing licence (mackerel - category B)	1	Limited	Y
Fishing licence (marine plant)	17	Open	N
Fishing licence (mussel spat collection)	0	Open	N
Fishing licence (native oyster Georges Bay)	2	Limited	Y
Fishing Licence (octopus)	2	Limited	Y
Fishing licence (pacific oyster)	3	Open	N
Fishing licence (personal)	502	Open	N
Fishing licence (purse seine net)	9	Limited	Y
Fishing licence (rock lobster)	311	Limited	Y
Fishing licence (scalefish A)	63	Limited	Y
Fishing licence (scalefish B)	146	Limited	Y
Fishing licence (scalefish C)	45	Limited	N
Fishing licence (scallop spat collection)	0	Open	N
Fishing licence (scallop)	63	Limited	Y
Fishing licence (small mesh gillnet)	10	Limited	Y
Fishing licence (southern calamari)	17	Limited	Y
Fishing licence (undaria)	1	Limited	N
Fishing licence (vessel)	654	Limited	Y (except abalone only)
Fishing licence (wrasse)	61	Limited	Y
Handling Licence	1	Open	N

Case study – Requirements for commercial rock lobster fishing

To take rock lobster for sale a person must be the holder of a fishing licence (personal), a fishing licence (vessel), a fishing licence (rock lobster). A fishing licence (rock lobster) must have at least one quota unit specified on the licence, to be activated for fishing it must have at least 15 quota units specified on the licence. A rock lobster fisher can only use a specified number of rock lobster pots as provided on the licence (maximum of 60), even if more than the specified number of pots are attached to the fishing licence (rock lobster).

In addition to being a rock lobster licence, a fishing licence (rock lobster) is also classed as a scalefish licence under the scalefish fishery management plan. This is due to the scalefish gear component of the licence and trip limits of certain species as a result of the scalefish OCS Tasmania has with the Commonwealth.

Licences are issued for a one-year duration with various conditions. Licence holders are required to renew their licence under section 81 annually (as shown in table below). The renewal process involves the submission of a completed application to the Department.

Fishery/ licence type	Licensing period (annual)
Fishing vessel licence All scalefish fishery licences Fishing licence (rock lobster) Fishing licence (giant crab) Fishing licence (scallop)	1 March – end of February
Fishing licence (mackerel)	1 May – 30 April
Fishing licence (abalone dive)	1 January – 31 December
Fishing licence (commercial dive) Fishing licence (minor shellfish) Fishing licence personal Fish processing licence Handling licence All marine plant fishing licences	1 September – 31 August

ii. Processors, handlers, and fish receivers

Section 67 and 71 requires a person to hold a fish processing licence and/ or a handling licence to process and be in possession of fish taken for sale. Licensing requirements for processors are determined by species (abalone, rock lobster, scallop, and giant crab) and prescribed quantities (100kg of marine plants or 10 tonnes of any combination of other species per annum).

A handling licence is granted to a person or class of persons who receive, transport, store and deal with fish from a licensee. All licence holders are required to comply with the requirements to make and keep records as implemented under the National Docketing Scheme.

The Act also controls the chain of custody or persons in possession of the fish. This is a component of compliance which enables, particularly high value species to be tracked from catch through to retail sale as well for quality assurance.

The table below outlines the licensing types to process and be in possession of fish taken for sale:

Licence type	Species endorsement
Processing licence	Abalone (wild and marine farmed)
	Rock lobster less than 5 tonnes
	Rock lobster greater than 5 tonnes
	Giant crab
	Scallop
	Banded Morwong
	Marine Plant (various species)
Handling licence	Prescribed fish greater than 10 tonnes (prescribed fish is all other fish other than abalone, rock lobster, giant crab, and scallop)
	Rock lobster less than 5 tonnes Rock lobster greater than 5 tonnes

National Docketing Scheme (NDS)

The National Docketing Scheme (NDS) or system was developed by the National Fisheries Compliance Committee (a body made up of senior fisheries compliance officers from multiple jurisdictions) and implemented in mid- late 2000s by all state and territory fisheries agencies and the Commonwealth. This system creates a standardised audit trail of purchase and sale documentation for all fish, with special requirements for abalone and rock lobster, and marine products in Australia to assist national and state efforts to combat IUU fishing.

iii. Marine farming licence

Section 64 authorises the holder of a marine farming licence to conduct the operation or activity of marine farming. This includes:

- carrying out marine farming in State waters
- taking live fish for the purpose of marine farming in State waters
- operating a hatchery in inland waters where the fish would then be transferred to State waters² or
- operating a hatchery on land if State waters are used to grow the fish¹²

Sector	No of marine farming licences (as at Sept 2021)
Finfish	47
Non finfish	104
Land based	13

A marine farming licence for State waters can only be granted where the person also holds a marine farming lease under the *Marine Farming Planning Act 1995* (MFPA) for the same area unless the applicant owns the area. A marine farming licence is made subject to the Marine Farming Development Plan (made under the MFPA) for the lease area that the licence relates and can include other conditions such as requirements to comply with record keeping and reporting procedures. Marine farming outside and existing lease area can be conducted under permit.

¹² does not apply to a licence holder operating a freshwater fish hatchery under the *Inland Fisheries Act 1995*

Case study- Scientific research permit for marine farming activity

Recent developments in aquaculture have led to the consideration of commercial native marine plant species as a possible future marine farming activity. This culture of a novel native marine plant species requires research activities to be undertaken to determine the suitability and or viability of the species for commercial aquaculture production. A scientific research permit can be issued for up to 12 months after the consideration of a proponent's research plan. Permits contain a range of conditions to ensure activities are undertaken in a sustainable manner and provide outcomes in the form of a report.



Image: Seaweed growing research trials at Sea Forest in Tasmania

iv. Recreational fishing licence

Recreational fishing is defined in the Act as fishing other than for a commercial purpose or as part of an Aboriginal activity. While recreational fishing is considered a 'non-commercial' activity it generates considerable economic benefits as recognised in recent recreational fishing surveys.

Recreational fishing is managed by a range of controls including licences for some high value species and high-impact gear types, area restrictions, catch limits, size limits, and restrictions on gear type and number. Permitted recreational fishing gears are prescribed in the rules and management plans. These include hooks and lines, set lines, spears, bait traps and pumps, and various types of nets (e.g., gillnets, beach seine nets and landing nets).

Recreational inland fishers must hold a freshwater angling licence issued by the Inland Fisheries Service (IFS) under the *Inland Fisheries Act 1995*. Line fishing in marine waters remains unlicensed. Current Government policy is not to introduce additional fishing licences or fees.

Licences are required for the following types of recreational sea fishing:

- abalone
- beach seine net
- graball net
- mullet net
- rock lobster pot, ring, or dive
- scallop
- set line (includes longline and dropline)

Recreational licensing provides the basis for a database of licence holders that is used to survey fishers about their fishing catch and effort. To understand fishing catch and effort across the broader fishery, a general recreational fishing survey is conducted every five years.



Image: Striped trumpeter, a popular game fish in Tasmania

The Recreational Sea Fishing Strategy¹³ was launched in October 2021 following extensive public consultation.

b. Quota

Five of Tasmania’s most valuable commercial fisheries now use an individual transferable quota system to manage quantity of fish that is taken. Those fisheries are – rock lobster, giant crab, scallop, abalone, and banded morwong. The mechanism for the establishment of quota arrangements is at section 93, where the Minister may declare in the *Gazette* quota management and set quota under management plans.

Each fishing season a quantity (by weight) of fish catch for a species is set by the Minister called a TAC. Within the TAC, allowances are made for catches by sectors such as recreational, Aboriginal cultural fishing and commercial. An allowance to the commercial sector called Total Allowable Commercial Catch (TACC) (except for Abalone, see below) is allocated to quota units. Each fishery has a set number of quota units. Licence holders each own a number of quota units and in turn hold an amount of quota, which can be transferred (or leased) on a permanent or seasonal basis. In Tasmania, for all quota fisheries except Abalone, quota units must be attached to a fishing licence or entitlement.

Quota is taken to be deducted from the annual allocation at the time of transfer or sale. The table below outlines the minimum and maximum quota units that can be held on a fishing licence:

Licence quota type	Minimum units seasonally	Minimum units permanently	Maximum units on a fishing licence
Banded morwong	0	0	200
Giant crab	0	1	300
Rock lobster	0	1	200
Scallop	10	10	1200

¹³ Recreational Sea Fishing Strategy

Abalone quota and deed of arrangement

Abalone quota can only be held by an entity that has a deed of agreement pursuant to section 99 with the Crown. However, abalone may only be physically taken commercially by a holder of a fishing licence (abalone dive). To take quota, therefore, an abalone deed holder must either also hold a fishing licence (abalone dive) or authorise the holder of a fishing licence (abalone dive) to take abalone on their behalf. The terms and conditions of existing deeds are not subject to this review.

Discussion Questions

- 1. What should the control arrangements be in the Tasmanian fisheries framework? Could access be controlled in a simpler way while still achieving the objectives of the Act? Examples of your experiences with licensing under the Act can be provided.*

3. Permits

Section 12 provides that the Minister may grant a permit for an activity that would otherwise contravene a provision under the Act. The purposes for which a permit can be issued include:

- Scientific research
- Environmental monitoring
- Developmental fisheries
- Development of marine farming
- Fish stock depletion or enhancement
- Promotion of fishing and fish products
- Educational and community awareness
- Aboriginal cultural activities
- Collection and cultivating rare or endangered species

Case study – IMAS two-pots (2POTS) research program

Commercial rock lobster fishers volunteering to participate in the 2POTS research program are issued with an annual permit to carry two extra pots with the standard escape gaps closed. The permit requires all lobsters caught be recorded and measured and allows the fisher to keep legal-size lobsters caught. Data is collected by fishers from around Tasmania over the quota year, so researchers can better understand and describe the spatial and temporal variations of lobster size and the biomass of pre-recruits.



Image: Rock lobster pot used in the IMAS two-pots (2POTS) research program

Permits are issued for a period not exceeding 12 months with a range of conditions to ensure the permit holder, or their agents, conduct activities in line with the requirements of the Act. The current permit provisions are broad and allow considerable discretion.

Case study – Habitat restoration trials

Currently several research and commercial organisations are trialling habitat restoration of Giant Kelp (*Macrocystis pyrifera*) forests in State waters. The giant kelp forests have experienced 95% range contraction due to warming currents and grazing by urchins, which has impacted species reliant on them, including those of commercial interest. Permits allow for the organisations to take small quantities of plant tissues from wild stock to create laboratory seedstock, which are then cultured and grown in laboratories to identify heat tolerant strains. These can then be further cultured and out planted into the wild, under strict permit conditions and within defined sites, and progress reports made to the Department.

The table below lists the approximate number of permits issued under the Act for various activities such as scientific research, development of marine farming, promotion of fishing and fish products, educational and community awareness etc:

Calendar year	Number of permits issued
2021 to September 2021	85
2020	166
2019	197
2018	195
2017	209
2016	166
2015	209
2014	219

Case study – Permits for ‘seafood experience’

In recent years some marine tourism ventures have required permits to conduct commercial fishing for the purposes of a ‘seafood experience’ under the promotion of fish products. This includes experiences where rock lobster, abalone and urchin are harvested directly to the boat for consumption by paying clients. By virtue of the operation being for commercial gain, the venture/operator must hold an appropriate commercial licence and quota, although the quantities may be small and more recreational in nature.

Discussion Questions

1. *Should there be a more defined framework for some activities currently regulated under the permits?*
2. *Is it suitable to have permit provisions that are broad and allow considerable discretion? Why?*

4. Fees, charges, and levies

Fees and levies charged in the fishing industry are typically for the management of fish resources, to conduct scientific research and to collect data.

a. Fees and charges

The Minister, under section 274, may impose and vary fees, charges, and royalties on permits, licences, or other authorities under the Act.

The fees charged for licensing are provided every year on the Department's website¹⁴. The level and types of unitised fees are listed in Schedule 1 of the *Fisheries (General and Fees) Regulation 2016*. These fees cover some, but not all, of the costs of fisheries management including administering the licensing scheme.

2021 Fisheries Assistance

The Department offered a range of support and fee relief to the commercial fishing industry in response to pressures arising from COVID-19. The *Commercial Licence Fee Relief* is a Fisheries Assistance package that offers targeted relief measures for commercial quota owners and fishers, including:

- waiver of the 2021 biotoxin levy for rock lobster fishers
- waiver of the 2021 translocation levy for rock lobster fishers
- waiver of rock lobster tags fees payable by fishers and processors, and
- waiver of the 2021/22 Fishing Vessel licence renewal fee for all sectors.

b. Industry levy

A fishing body may ask the Minister to impose an industry levy under section 279 to be payable by persons undertaking any activity under authorisation if satisfied the majority of persons likely to be affected are in favour of the levy. Currently several levies are imposed on licences which are passed directly from the Department to the fishing body.

Types of levies charged	
Biotoxin Levy	A levy imposed per rock lobster quota unit to support the biotoxin monitoring program (currently funded 70% by industry and 30% by Government).
EPA levy	A levy imposed on all marine farming salmonoid licences for environmental regulatory services conducted by the Environment Protection Authority.
FRDC levy	Fisheries Research and Development Corporation – levy collected as an industry contribution and passed directly to the FRDC.
Salmon Industry Planning levy	A levy imposed on all marine farming salmonoid licences to support the Department conduct activities including marine farming planning, compliance activities and targeted research programs.
SFAT levy	Scalefish Fishermen's Association of Tasmania – levy collected on all scalefish licences as a membership fee and passed directly to the fishing body.
ShellMAP levy	A levy imposed on all marine farming bivalve shellfish licences to fund the Shellfish market access program run by the Department.

¹⁴ 2021-2022 Commercial Fishing Application Fees.pdf (nre.tas.gov.au)

TACL industry levy	Tasmanian Abalone Council Limited – levy collected on all abalone quota, abalone dive and abalone processing licences as a membership fee and passed directly to the fishing body.
TORC levy	Tasmanian Oyster Research Council – a levy collected on all marine farming Pacific Oyster licences to fund Oysters Tasmania.
Translocation levy	A levy collected per rock lobster quota unit to fund the cost of the industry translocation program. The amount is set by TRLFA, and the funds held on trust by the Department. TRLFA puts out calls for tender to undertake translocation activities, which is paid from the trust account.
TRLFA executive officer levy	Levy collected from all rock lobster licences and passed to the fishing body to fund the executive officer position.
TRLFA membership levy	Tasmanian Rock Lobster Fishermen’s Association – levy collected on all rock lobster licences as a membership fee and passed directly to the fishing body.
TSIC levy	Tasmanian Seafood Industry Council – levy collected on all fishing licence personal and marine farming licences as a membership fee and passed directly to the fishing body.

Discussion Questions

1. *How could the current fees and levy arrangements be improved?*

5. Charter fishery

While a range of charter fishing businesses operate in in Tasmania, most operate from the east coast and target game and offshore species. The charter fishery is deemed to operate within the recreational sector which does not require charter vessels to be licenced.

Charter fishing guests pay a ‘charter fee’ to the vessel operator and are subject to recreational fishing rules. The only exception to this relates to southern bluefin tuna, yellowfin tuna and bigeye tuna: under Section 11, operators can apply for an exemption to increase the recreational boat limit for these species upon meeting prescribed conditions.

Discussion Questions

1. *How would you like to see charter fishing managed?*

6. Records and reporting requirements

a. Commercial fisheries

Sections 144 and 145 provide for the collection of information relating to the fishing industry and the protection of the marine environment by assessing fish stocks, number of fish caught and effects of any activity under a licence on the marine environment.

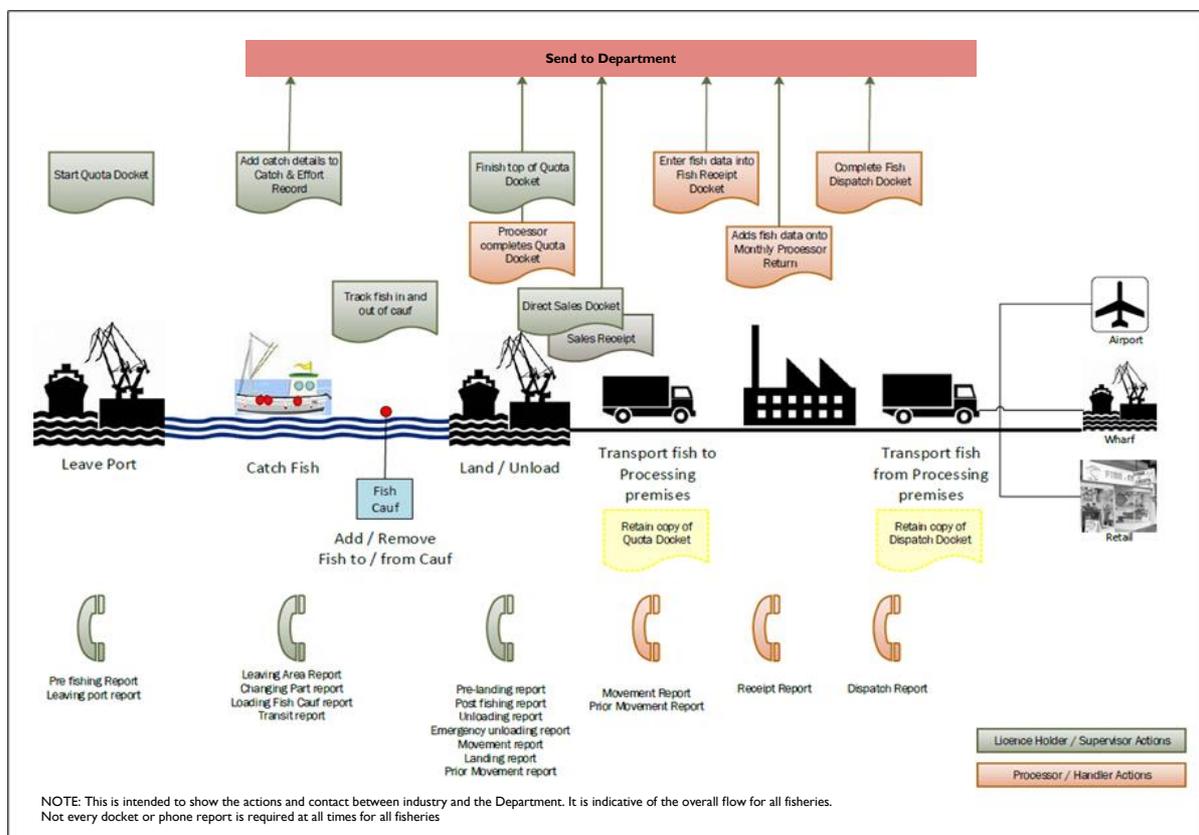
Holders of fishing licences and supervisors are required to submit reports to notify the Department of their fishing activity as required under specific management plan provisions and by approved means (reporting service). Reports submitted by commercial fishers by means of a reporting service known as ‘telephone reporting’ allows enforcement officers to know when vessels are departing or arriving in port, and their location at sea. It also provides information on movement of product from harvest to retail.

The system is utilised in addition to docket books which capture specific catch and effort details including date of sale and weight of consignments made.

There are two predominant reasons for submitting reports and completing records in the commercial fishery. The first is to support sustainable fisheries management. Catch data is the predominant data source used to conduct scientific assessment of the fishery – including stock assessments and fishery health reports. The other reason for reporting is to support compliance activities. This enables inspection of catch when it is unloaded or transferred.

Over the coming years the Fisheries Digital Transition Project (FDTP) will digitise many of these reports – including catch and effort, fishing activity and quota management reports. This may include real-time reporting, which would be a valuable tool for fisheries management (close catch cap areas, close a fishery when quota is met etc), compliance purposes and importantly for fishers to monitor annual quota usage.

Reporting and docket submission requirements for Tasmanian quota fisheries



Fishing licence holders and/ or supervisors are required to use the relevant docket books issued by the Department to record all details of commercial fishing activity carried out as authorised by a licence. Each docket book contains dockets in duplicate or triplicate and with instructions for accurate completion. Completed dockets are required to be submitted to the Department after the unload and sale of fish (within 48 hours or as specified in the relevant Fisheries Rules) and monthly by fish processors as outlined in various Fisheries Rules. It is also a requirement that fishing licence holder retain copies of completed dockets for a period of 5 years.

The table below lists the docket books developed for commercial fisheries:

Abalone Dive Docket, Diving Team Docket & Transfer Docket - Bass Strait Blacklip
Abalone Dive Docket, Diving Team Docket & Transfer Docket - Eastern Blacklip
Abalone Dive Docket, Diving Team Docket & Transfer Docket - Greenlip
Abalone Dive Docket, Diving Team Docket & Transfer Docket - Northern Blacklip
Abalone Dive Docket, Diving Team Docket & Transfer Docket - Western Blacklip
Abalone Processor Monthly Return
Commercial Banded Morwong Quota Docket Book
Commercial Catch, Effort and Disposal Record Book
Commercial Dive Direct Sales Receipt Book
Commercial Diver's Docket Book
Fish Dispatch Docket Book
Fish Processing or Fish Handling Weigh Sheet
Fish Processor Monthly Return
Fish Receipt Docket
Fish Transfer or Sale Receipt Book
Giant Crab Catch Record Book
Giant Crab Quota Docket Book
Marine Plant Commercial Fishing Docket Book
Octopus Catch, Effort and Disposal Record Book
Octopus Fishery Research Pot Sampling Record
Rock Lobster and Giant Crab Direct Sales Quota Docket
Rock Lobster and Giant Crab Sales Receipt Book
Rock Lobster Catch Record and Quota Docket Book
Rock Lobster, Giant Crab and Abalone Fish Receipt Docket Book
Scallop Processor Monthly Return
Scallop Quota Docket Book
Scallop Sales Receipt
Shellfish Docket Book
Shellfish Transfer/Disposal Receipt Book

Case study – Rock lobster unload and sale during COVID-19

In the Rock Lobster Fishery, fishers traditionally sell almost all of their catch to processors. The quota for rock lobster is deducted at the point of sale. This is typically soon after the fisher unloads to their chosen processor or buyer. During COVID-19, when market conditions changed, fishers pivoted to selling catch to the local market through third parties or doing their own retailing.

Depending on the type of sale, fishers were required to complete the relevant books issued by the Department. The table below outlines these requirements:

1. Commercial Rock Lobster and Giant Crab Sales Receipt book

Book used to record each direct sale to the public of 20 or less lobsters.

2. Commercial Rock Lobster and Giant Crab Direct Sales Quota book

For 20 rock lobster or less:

At the end of each day fishers must summarise all sales of 20 or less lobsters for that day, by completing the Commercial Rock Lobster and Giant Crab Direct Sales Quota Docket and submit the pink and yellow sheet to the Department within 48 hours.

For more than 20 rock lobster:

A new sheet is used from the Commercial Rock Lobster and Giant Crab Direct Sales Quota Docket Book to record each direct sale to the public of more than 20 lobsters or export sales out of Tasmania.

3. *Commercial rock lobster (RL) quota docket book*

Must be completed to record all sales to processors.

Some fishers chose to sell lobsters direct to the public from their vessel, holding lobster onboard for extended periods, with quota being deducted once sales were made.

Other fishers who sold their catch in locations other than from on their vessel, were required to first make a sale before being able to unload their catch. Fishers completed dockets (chain of custody documentation) to family members, to be able to move their catch from their vessel as 'sold catch', to then be able sell at another location. Quota was deducted at this point of sale. As individual sales were made, fishers were required to complete Commercial Rock Lobster and Giant Crab Direct Sales Quota books and were required to submit these within 48 hours.

b. Marine farming reporting requirements

Conditions on a marine farming licence require a licence holder to make and keep records of all fish brought onto and taken off the area to which the licence relates. All marine farm licence holders are required to submit data required as specified in relevant marine farm licence, this includes the quarterly reporting of production and employment information. The licence holder must also keep records in a prescribed manner and form for 5 years.

Salmon farming operators are required to report key metrics to the Department and the EPA to ensure they are meeting licence and permitting requirements and to inform management decisions. These include production, employment, feed usage, therapeutant, and seal deterrent usage, as well as wildlife interactions.

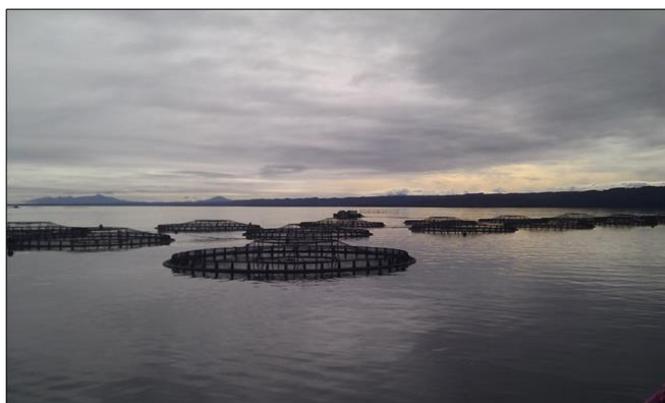


Image: Salmon farming pens in Tasmania

Discussion Questions

1. *What are your views on the levels of reporting required under the Act?*

7. Exemptions

Under section 11 the Minister can exempt any person or class of person from any provision of the Act, other than the requirement to hold a licence for fin fish farming. Exemptions are subject to conditions and limitations for a period of 3 years unless revoked at any time. The provision provides significant discretion, including the grant of an exemption by the Minister's own initiative or on application.

The Act does not explicitly require the Minister to ensure affected licence holders be notified that an exemption has been made. However, the Act requires the Minister to ensure that persons affected are notified of variations or revocation of an exemption.

Case study – Exemptions during COVID-19

During the COVID-19 pandemic the issuing of exemptions proved useful in enabling any uncaught commercial rock lobster fishing quota unit balance relating to the fishing year 1 March 2019 to 29 February 2020 to be taken in the immediate subsequent fishing year 1 March 2020 to 28 February 2021 by the holder of a fishing licence (rock lobster).

Discussion Questions

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

8. Legal responsibility

a. Subleasing and supervisors

Section 87 authorises a licence holder to allow the use of a licence by other persons following the Minister's approval by means of leasing, subleasing, or lending, acting as a supervisor or other agreements. Section 64 (1A)(b) outlines subleasing of a marine farming licence is authorised under section 74 of the MFPA.

Section 89 requires that all activity conducted under a licence is supervised by an approved person, either the licence holder themselves, or a person nominated who is approved by the Minister to supervise the activity or a person approved under section 87. A supervisor must ensure all activities carried out under a licence complies with the Act as if the supervisor were the holder of the licence.

Section 213A and 214 outlines the legal responsibility or liability of a licence holder and the supervisor for activities carried out under the authority of a licence.

b. Vicarious liability

The Act contains provisions which establishes a liability arrangement for different classes of people undertaking fishing activities. The Act binds all individuals including a master of a vessel, a licence holder, supervisors and employees and each person responsible for the management of body corporate liable for offences committed under the Act (Part 9, Division 2).

The Act also provides defences where a person liable demonstrates that:

- the offence could not have been prevented.
- the offence took place without the persons knowledge.

- reasonable steps were taken to have a person comply with the Act before the offence was committed.
- and reasonable steps were taken to minimise the impact of the offence on fish and the marine environment.

The Act outlines any offence committed by another person is taken to have been committed by the class of persons responsible or hold the authorisation to undertake the activity. Proceedings may be commenced against each person responsible or holding an authorisation under the Act. The Act does not explicitly hold Directors of a corporation liable for offences committed.

Discussion Questions

1. What are your views on the balance of responsibility and penalties between licensees, deed holders, leases, divers and nominated natural persons?
2. Who should be responsible for ensuring compliance with a licence and activities conducted on water?

9. Offences and penalties

The Act contains offence provisions and penalties to regulate behaviour or impose accountability on individuals who contravene the law. This is one mechanism used to achieve the objectives of the Act and protect the integrity of participants extracting or using resources.

Modern compliance and enforcement is based around the enforcement pyramid, which promotes a regulatory approach that is predominantly one of cooperation and education, followed by progressively tougher sanctions depending on the seriousness of the offence and the culpability of the offender. Penalties are intended to be proportional to the seriousness of harm and level of offending. The level of penalties can vary from stipulation of a daily fine to a maximum penalty that a court may impose to deter or punish a worst-case offence or a repeated offence. Enforcement activity to respond to non-compliance varies from education (cautions or warning) to strict enforcement (criminal prosecutions) to effectively deter illegal and unlawful behaviour and ensure fair results.

Offences and penalties are found in the Act, regulations and in the various rules. They range from offences that would otherwise undermine the success of the regulatory regime (such as taking fish for sale to holding a licence) to offences that support sustainability (exceeding bag or size limits of fish) to offences that support compliance with the regime (identification of fishing gears or reporting fishing intentions).

The range of penalties are from 1 penalty unit to a maximum of 5000 penalty units with the current financial unit of \$173. Special penalties (sections 267 and 268) apply for certain offences such as illegally taking and possessing fish, illegal use of apparatus etc. Special penalties provide no discretion to the Court in determining the quantum of the penalty.

The rules provide for the application of infringement notices by fisheries officers for certain offences. This allows for the issuing of a fine in the first instance, rather than proceeding to court for full criminal proceedings, should the offender choose to accept the fine.

The *Fisheries Penalties Regulation 2021* provides for 3 different grades of penalties for offences against fisheries rules. This is not the case in the Act. Such an option could be of value to provide greater deterrent for ongoing illegal behaviour. This could include differing the penalty between a first, second or aggravated offence for fisheries and marine farming activities.

Penalties do not differentiate between offences committed by natural persons and corporations.

Part 9 Division 6 allows for allocating a prescribed number of demerit points to a person, licence, or fishing certificate for up to 5 years from the conviction date. The Act contains the process to allocate demerit points and how it applies to permanently or temporarily disqualifying and suspending licences or persons from obtaining or holding a licence.

Discussion Questions

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

10. Illegal, Unreported, and Unregulated (IUU) fishing

IUU fishing by its nature, cannot be quantified, but it can have significant impacts on fish stocks, and undermine legitimate fisheries management tools used to manage environmental, social, and economic outcomes.

Examples of IUU

Illegal and organised black-market crimes occur in all sectors and takes various forms:

- Illegal catch mixed with legal catch (grey landing)
- Taking excess quota
- False, under or non-reporting of catch
- Bartering or sale of recreational catch
- Use of fishing businesses (aquaculture, bait and tackle shops, vessels etc) for money laundering and sale of illegal catch
- Use of unauthorised vessels

It is important to distinguish between those in the regulated community who offend unintentionally, and those who offend outside of the regulatory regime by being opportunistic and intentional. Different enforcement tools are necessary to deter such behaviour.

The Act contains offence provisions for indictable offences such as trafficking and unlawful possession of fish under section 264. These offences are not limited to priority or key species and do not define quantities of fish that would be considered indicatable.

The Australian National Plan of Action to prevent, deter and eliminate IUU fishing describes the developed model legislation by the Commonwealth, state, and territory jurisdictions that provides cross-jurisdictional powers for law enforcement against serious cross-border fishing crimes. The model legislation enables fisheries enforcement agencies in Australia to undertake covert investigations that extend beyond the boundaries of any one jurisdiction. This national approach to create cross-jurisdictional offences to combat IUU fishing and develop effective corporation with other states and territories is crucial in addressing the issue.

Discussion Questions

1. *Does the Act deal with IUU fishing effectively? What species are most at risk of IUU fishing in Tasmania and how should that risk be better addressed in the legislative arrangement?*

11. Enforcement powers

Part 8 Division 2 to Division 7 relate to enforcement powers. The effective enforcement of fisheries rules is an essential component of fisheries management to achieve the objectives of the Act. A fisheries officer and assistant fisheries officer are appointed by the Secretary to undertake compliance and enforcement functions under the Act. Fisheries officers in Tasmania include officers from the Department and Tasmania Police.

The Department has a Memorandum of Understanding with Tasmania Police for compliance and enforcement activities of marine fisheries enforcement, compliance and investigation under the Act. This includes on-water patrols by Tasmania Police, as well as inspections and compliance operations at wharves and on-land in Tasmania. Compliance and enforcement for marine farming activities is conducted by the Department.

The Act provides fisheries officers with powers that vary from general to specific to enable them to carry out their functions and responsibilities to support the effective implementation of fisheries legislation. Specific powers include:

- powers of entry and search
- power to detain
- power to board and examine
- the power of arrest
- the power to require or give orders
- the power of seizure, and
- the power to secure information and evidence.

The Act provides for procedures to be followed in the exercise of powers if items are seized, and the requirement for the custody and release of the seized items. Specific purposes of carrying out a seizure includes preventing the continuation of an offence and to collect evidence where legal proceedings are likely to follow.

Discussion Questions

1. *What are your views about Tasmanian fisheries enforcement?*
2. *Are all necessary powers included, noting changes in fishing behaviour and practices?*

12. Technological opportunities

New techniques and technology are becoming more practical for fisheries management and enforcement, these provide cost effective data collection and significantly help reduce red tape. Technological advances in vessel and gear designs as well as improvements on fish-finding and navigation equipment has increased through time.

Improved and enhanced Vessel Monitoring Systems (VMS) provide cost-effective and accurate data for monitoring and surveillance. VMS is currently used on vessels fishing in the Tasmanian Abalone Fishery, Giant Crab Fishery and Scallop Fishery.

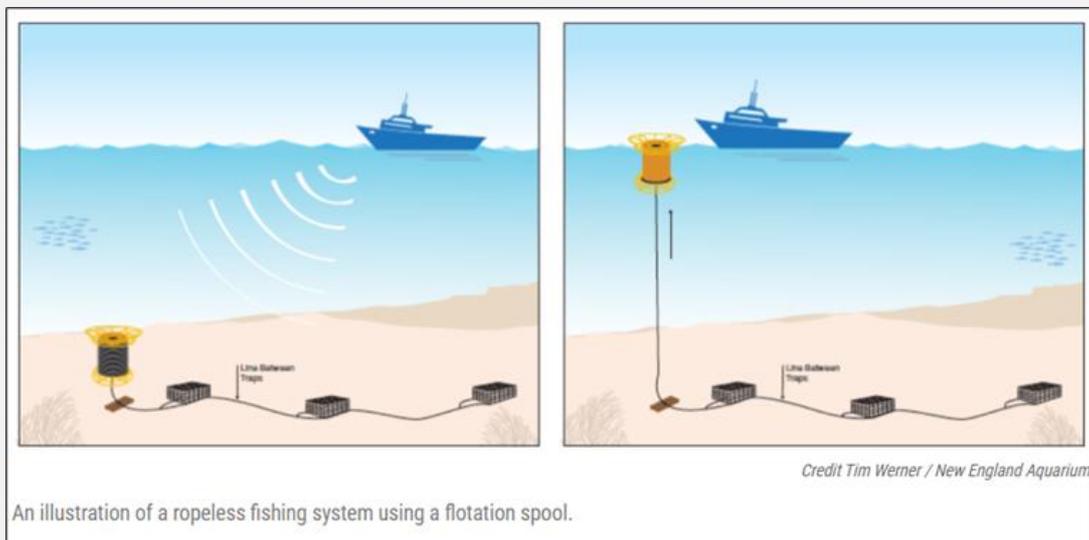
The Act does not prescribe technology to be used. The prescriptive nature of the Act may make it more difficult to implement trials of new technology.

Examples of recent technological advances in fisheries management tools:

- An Electronic Monitoring System (EMS) is a tool used to collect fishing data via a system of video cameras and gear sensors. Major advancements in this technology

include recognition of fish species being hauled or taken and facial recognition may soon allow for more efficient fisheries data collection.

- Large fishing vessels in certain European countries currently use motion-compensated weighing system at sea to directly measure and record raw weight of the catch. This smart weighing system at sea calculates the weight of catches while taking into account boats' movement. The system also has the capability to regularly send catch data to fish market and ports by satellite support to update landing forecast. It also integrates with electronic logbooks and prints labels for fish boxes providing trace of product from catch to plate.
- Other more recent innovations in fishing gear include the “rope-less” or “buoy-less” system which is a remote-control setup for locating and activating them to float to the surface (image below). This prototype is aimed at mitigating marine animal entanglements. Other purposes could include mitigation of theft from and interference with set fishing gear.



Discussion Questions

1. *In your view what opportunities are offered by emerging technology in fisheries management and compliance? You may want to consider opportunities for more cost-effective data collection and improved fishing equipment.*
2. *How can the legislative design be responsive to emerging technology?*
3. *Is it appropriate to mandate certain technology where there is a clear management benefit for obtaining this information at a lower cost?*

13. Review of decisions

Part 10 Division 3 provides where a person may apply to the Minister or Secretary to review a decision. This applies to all prescribed decisions (such as licence and permit determinations), which includes any decision except the decision to issue a special abalone licence.

The applicant wanting to make an application must do so in writing within 21 days after the date the notice of decision was served and specify the reasons for the application. The Act requires the review of the decision and a determination to be made within 45 days of receiving an application to review.

The provisions also outline the process to appeal a determination made under the Act. A person may appeal to the Appeal Tribunal against the determination made.

Discussion Questions

1. *Are the review provisions sufficient to support the regulatory regime?*

14. Register

Section 298 requires the Secretary to keep and maintain a register containing:

- the names and addresses of persons holding fishing authorisations;
- including details of all transactions (grant, renewals, transfers, cancellation) conducted in respect to these authorisations.

The register is not publicly available, and the Act outlines that on application and the payment of a fee a person may obtain a copy of any authorisations kept in the register. The *Fishing (Licence Ownership and Interest) Registration Act 2001* establishes a system of registration of ownership and interests in fishing licences held under the Act.

Section 249 requires the Secretary to keep a register of demerit points allocated to a person or licence. A demerit point allocated remains in force for a period of 5 years from the date of conviction. A person, on payment of a fee, and with the authorisation of the person to whom the demerit points are allocated may examine the register.

There is no requirement for a register to be maintained for permits issued under the Act.

All marine farming licences are available publicly and can be viewed on the Land Information System Tasmanian (the LIST).

Discussion Questions

1. *Should the register of authorisations be open and accessible by any interested persons? What of commercial and personal privacy considerations?*
2. *What information should be made available on permits?*

Glossary

AbFAC	Abalone Fishery Advisory Committee
AFMA	Australian Fisheries Management Authority
BSCZSF	Bass Strait Central Zone Scallop Fishery
CFAC	Crustacean Fisheries Advisory Committee
EMPCA	<i>Environmental Management and Pollution Control Act 1994</i>
EMS	Electronic Monitoring System
EPA	Environment Protection Authority
FAC	Fishery Advisory Committee
FDTP	Fisheries Digital Transition Project
FMA	<i>Fisheries Management Act 1991 (Commonwealth)</i>
FRDC	Fisheries Research and Development Corporation
IFS	Inland Fisheries Service
IMAS	Institute for Marine and Antarctic Studies
IUU	Illegal Unregulated and Unreported
LIST	Land Information System Tasmanian
MFPA	<i>Marine Farming Planning Act 1995</i>
NDS	National Docketing system
NGO	Non-Governmental Organisation
OCS	Offshore Constitutional Settlement
RecFAC	Recreational Fishery Advisory Committee
RTI	Right To Information
ScFAC	Scallop Fishery Advisory Committee
SFAC	Scalefish Fishery Advisory Committee
SFAT	Scalefish Fishermen's Association of Tasmania
ShellMAP	Shellfish Market Access Program
TAC	Total Allowable Catch
TACC	Total Allowable Commercial Catch
TACL	Tasmanian Abalone Council Limited
TAF	Total Allowable Fishing
TARFish	Tasmanian Association for Recreational Fishing
TCDA	Tasmanian Commercial Divers Association
The Act	<i>The Living Marine Resources Management Act 1995</i>
The Department	The Department of Natural Resources and Environment Tasmania Until 1 December 2021 was known as the Department of Primary Industries, Parks, Water and the Environment
TORC	Tasmanian Oyster Research Council
TRLFA	Tasmanian Rock Lobster Fisherman's Association
TSIC	Tasmanian Seafood Industry Council
VMS	Vessel Monitoring System

Attachment A - Key Stakeholder Group Members

- Tasmanian Seafood Industry Council (TSIC)
- Tasmanian Rock Lobster Fishermen's Association (TRLFA)
- Tasmanian Abalone Council Ltd
- Scalefish Fishermen's Association of Tasmania (SFAT)
- Tasmanian Commercial Divers Association
- Scallop Fishermen's Association of Tasmania
- Tasmanian Rock Lobster Processors Association
- Oysters Tasmania
- Tasmanian Salmon Growers Association (TSGA)
- Tasmanian Abalone Growers Association
- Tasmanian Association for Recreational Fishing (TARFish)
- Australian Southern Rock Lobster Exporters Association
- Pennicott Wilderness Journeys
- NRM South, NRM North and NRM Cradle Coast
- Environmental Defenders Office (Tasmania)
- The Australia Institute (Tasmania)
- Tasmanian Independent Science Council
- Tasmanian Conservation Trust
- Birdlife Australia
- Tasmanian Alliance for Marine Protection (TAMP)
- Bob Brown Foundation
- Tasmanians for Marine Parks

The Department will also engage with interested Tasmanian Aboriginal Corporations and communities.

This list of members on the Key Stakeholder Group is not exhaustive. If you consider that your organisation should be engaged in consultation forums, please forward your nomination to LMRMARreview@nre.tas.gov.au



Tasmanian
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