

A REVIEW OF THE LIVING MARINE RESOURCES MANAGEMENT ACT 1995

SUBMISSION

This submission is made by the Tasmanian Abalone Council, and follows the structure of the departmental questionnaire.

INTRODUCTION

The Introduction poses three questions, which are then dealt with in further detail throughout the paper:

- 1. How well do you think the Tasmanian legislative regime has supported the protection and management of Tasmania's marine resources over the past 26 years?*
- 2. What do you think will be the major challenges for the sustainable management and development of Tasmania's living marine resources in the next 20 years?*
- 3. How do you think the legislative regime will, or should, respond to those challenges?*

RESPONSE

Any natural resource is exposed to a range of influences, some natural, and some man-made.

In a marine environment, those natural influences could involve water temperature, nutrition, invasion and disease. The question remains as to where and whether one draws the line in combating natural variations and change.

Harvesting and harvest techniques have also had an impact. The human interaction involves the taking of product, and much of that is for commercial purposes. As such, management regimes should be such as to enable the efficient operation of commercial enterprises, within the framework of a sustainable resource.

There is a separation between recreational and commercial activity. However, from the point of view of the resource, what label is placed on the harvester is irrelevant. As such, different rules for different categories of catcher serve no useful purpose. If an area is to be closed, then it should be closed to all.

There is a lot of talk about "sustainable management", but nowhere is sustainability adequately defined. This is not just semantics, as sustainability can mean different things to different people and management approaches can reflect different interpretations of sustainability.

For some, sustainability means a maximum number of animals, where for others it can mean a minimum number. Culling a population to ensure survivors are strong and healthy is as much a management tool as allowing natural forces to hold sway.

The past few years have seen the provision of property rights over a number of fisheries and these rights need to be recognised and protected. As such there needs to be a recognition that these access rights are now a part of the fisheries management framework.

Harvesting of a resource should be seen as a tool for the continuing viability of the resource and management regimes need to reflect this.

The Department is the manager, but its data management systems are cumbersome and outmoded, and hinder its effectiveness. It finds itself in the absurd position of not being able to update its systems because of legislative constraints. Quite frankly, this is a pathetic state of affairs.

In an environment of change, managers need to be flexible. Rules that are too prescriptive hinder the ability to adapt, and make management regimes open to ridicule and abuse. It is just not good enough to blame the system for causing inefficiencies – management should be about resolving them, not hiding behind them.

Generally speaking, the TACL is of the view that the framework of the Act is adequate for the fishery, and the current review should be an act of refinement and updating, as distinct from a complete re-write.

THEME ONE – OBJECTIVES and SCOPE:**1.1 OBJECTIVES:**

- 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?*

RESPONSE

1 The issue of sustainability needs careful consideration. Sustainability can be achieved at a number of levels of activity and population size. The question arises as to how much product can be taken without threatening the survival of the targeted species. Obviously, one needs to ensure that the population does not fall below a viable replacement level, but other factors may determine a higher population level than mere survival.

Commercial interests are a significant part of the equation, and understanding the commercial environment is important if there is to be a viable commercial sector. It needs to be recognised that within this framework, the precautionary principle needs to be tempered with a sensible approach to risk management. Economic interests reflect a risk-reward approach in its operation.

2 Like sustainability, community is a very broad-spectrum term. At one level, we talk of feeding the world's hungry, at another we talk of the survival of a fishing community (i.e. employment), and at another, that the resource, being a public resource, is saved from exploitation. Community can be used to create emotive and personal concepts. There needs to be a widening of this so it includes benefits that flow back to the community as a result of commercially using the marine resources. .

The benefits to the community from establishing and operating commercial enterprises should consider economic factors such as employment, wealth generation, investment and a return from licence fees, etc.

3 Aboriginal rights and activities are, at a cultural level, a recreational matter, and should not be isolated and treated separately.

1.2 SCOPE:

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

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?

RESPONSE

As in 1.1

1.2 BENEFIT: (following numbering in document)

The Act provides that the living marine resources in State waters are under the ownership of the State, 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.

- 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?*

RESPONSE

The questions reflect an economic perspective. The investment in the industry, the income it generates, the people it employs, the vagaries of the market are all the stuff of modelling.

1.3 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.

- 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?*

RESPONSE

We are not clear as to how character tests are already working. On what basis are people not allowed to participate?

If a person or corporation is found to be wilfully breaking the rules, then naturally the law will exact a penalty for so doing.

The marine resource is limited, and so thus is access. A decision should be made as to whether a fishery is to remain open by restricting the number of entitlements a person can have. If no such decision is taken, then it remains open for someone to amass a large percentage of fishery rights, and this could be detrimental to good fishery policy.

The purchase and sale of these entitlements can have a special resonance, particularly if/when businesses are sold.

The Australian Constitution will not allow for decisions based on which state a person may come from or reside in. However, it can play a part in restricting foreign investment.

1.4 RESOURCE SHARING:

The Act does not provide a framework for resource sharing, being the allocation between sectors

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

RESPONSE

It seems that until recently the commercial and recreational sectors have been treated as two separate entities. And yet they chase down the same resource. Logic dictates that the different sectors should have the same restrictions placed on them when it comes to the size of the catch. The question remains as to how flexible the arrangement needs to be, and certainly, a decision must follow particular guidelines. A decision might change from year to year, but it cannot be taken lightly, and needs to be removed from any election cycle.

1.5 LEGISLATIVE DESIGN:

This section poses the question as to the role of subordinate legislation, which means regulations and rules, and whether they should be incorporated into the principal Act. It presents three different approaches to this question.

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?*

RESPONSE

The need for flexibility necessitates a separation of the principles, as laid down in the Principal Act, from the operational requirements, which might change from time to time

and require more variable guidelines. In management parlance, objectives are fixed, strategies can vary.

1.6 ABORIGINAL FISHING:

This section raises the question whether aboriginal activity should be recognised in fisheries management.

- 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?*

RESPONSE

There should be no special provision made. If it is a commercial operation, it needs to follow commercial guidelines, if it is a recreational activity, then it must conform to those guidelines.

THEME 2 FISHERIES MANAGEMENT FRAMEWORK

The need for a management regime is a result of a finite resource and an increasing demand to exploit it, thus putting pressure on its sustainability, as defined.

It is obviously a departmental responsibility to carry out a management activity, based on government policy. Both should be transparent.

The issue then is where does the Government obtain its advice. Every player, including government agencies, has a vested interest in this matter, and the panels of advice should be such as to ensure each interest is heard, and regularly.

2.1 MANAGEMENT OF FISHERIES

RESPONSE

Fisheries management is based around a series of controls, such as a limit on licence numbers, catch rates, closures and minimum size lengths. These are relevant controls.

2.2 CURRENT MANAGEMENT FRAMEWORK

Sections 1 and 2 consider how a fishery is managed. It covers matters such as management plans, quota management, the TAC and harvest strategies.

1 Do you think the current management framework for fisheries making is effective, easy to understand and supports the objectives of the Act?

2 What improvements would you like to see?

RESPONSE

The Management framework needs to recognise that the Government is acting on behalf of the community and has over time created a number of systems of access rights which have considerable commercial value. These rights are owned by members of the community who expect and depend on a financial return from these rights. The management decisions made will vary these returns. As with most decisions return is usually related to risk and those who are taking the risk are the owners of the rights. They should be directly involved in the management decisions which will impact the risk to their rights and returns from investment.

2.3 ROLE OF SCIENCE AND RESEARCH

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

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?

RESPONSE

Science needs to be the primary consideration for management but it needs to be robust. The role of science in the process should be to provide data in a timely and understandable manner so that the stakeholders can make decisions on management. The management of fishery should involve experienced managers i.e. people who have a history in evaluating risk and reward.

Scientists do not necessarily have this experience and by nature are risk averse.

2.4 CONSULTATION ON FISHERIES MANAGEMENT

- 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?*

RESPONSE

The Department has made endeavours to communicate with industry, and the lines are open. However, this is as much an informal arrangement as anything else.

The Act should stipulate that Fishery Advisory Committees have a set number of elected representatives of the fishery on the committee.

In the abalone industry the only formal arrangement is AbFAC, which has been designed to advise the Minister. However, the structure of ABFAC is seriously wanting, and the lack of timely communication makes it almost a retrospective body.

Members of AbFAC should have a stake in the industry, and those with a stake in the industry should be properly represented on the fishing advisory body.

2.5 DECISION MAKING POWERS

At present the power to make decisions on matters such as the making of rules, changing management plans and setting the TAC reside with the Minister

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

RESPONSE

The Act is an Act of Parliament. Responsibility must remain with the Minister who is responsible to Parliament.

2.6 DEVELOPING NEW FISHERIES

The Act does not presently provide a framework for the establishment of new fisheries

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

RESPONSE

It is recommended that the normal approach should be by permit to begin with, leading to a licence, with adequate support from staff. Maximum Sustainable Yield as mentioned in the LMRMA suggests that developmental fisheries will require considerable support from NRET if they are to be established.

2.7 JOINT MANAGEMENT

Some fisheries fall within both Commonwealth and State jurisdictions. No questions were posed.

RESPONSE

This matter is serious in that some fish species are migratory, and certainly diseases and pests can be transmitted across jurisdictional boundaries.

THEME 3 REGULATORY FRAMEWORK

This group has 14 sections, covering the present regulatory regime.

3.1 CURRENT REGIME

The Act provides a legislative framework for the management and use of Tasmania's marine resources

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

RESPONSE

Management requires a regulatory regime in which to operate. However, the effectiveness of that regime is dependent on the tools that are provided to exercise that approach. The department's record keeping system, for example, is archaic, and simply puts the department at a disadvantage when exercising its responsibilities.

The regulations have at times been overly restrictive. That said, it is important that people are penalised for wilfully disobeying the rules.

3.2 INPUT AND OUTPUT CONTROLS

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.

RESPONSE

The move to an electronic system of recording should simplify and make more practical control arrangements. Such a system should also be transparent to ensure that confidence in the system is maintained.

3.3 PERMITS

The Minister may grant a permit for an activity that would otherwise contravene a provision under the Act.

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?*

RESPONSE

Permit arrangements need to be flexible, within broad guidelines, such as for scientific research. The trick is to allow legitimate activity to occur, without being overly restrictive.

3.4 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.

How could the current fees and levy arrangements be improved?

RESPONSE

No comment.

3.5 CHARTER FISHERY

The charter fishery is deemed to operate within the recreational sector which does not require charter vessels to be licenced. Most charter fishing businesses operate from the east coast and target game and offshore species.

How would you like to see charter fishing managed?

RESPONSE

Charters should be regarded as a recreational fishery. Charter fishing should be given broad provisions and discretion but catches need to be reported accurately with consequence for not doing so.

3.6 RECORDS AND REPORTING

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

RESPONSE

Reporting is necessary for compliance and management. There should be more effort made to simplify the requirements of operators and more effort from the regulators to assist the operators in reporting. Electronic reporting should assist in this regard.

Leaving area reports are no longer appropriate as electronic surveillance of vessels via VMS is available.

3.7 EXEMPTIONS

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

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

RESPONSE

We have no view at this stage

3.8 LEGAL RESPONSIBILITY

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?*

RESPONSE

The onus is on the person catching the fish – or processing the fish - to do so within the law. The question arises as to that person's ability to advise of changed circumstances within a set period of time. Again, a move to electronic reporting would assist in this regard.

3.9 OFFENCES AND PENALTIES

There are provisions and penalties to regulate behaviour or impose accountability on individuals who contravene the law.

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

RESPONSE

Although in general terms the current penalties are appropriate for those who deliberately flout the law, there needs to be a recognition that at times mistakes are genuinely made, and this should be taken into account. A genuine and sensible approach to the "show cause" notice for reasonable and inadvertent errors in quota control is required.

3.10 ILLEGAL AND UNREGULATED FISHING

IUU stands for 'Illegal, Unreported and Unregulated', and this section refers to intentional behaviour.

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

RESPONSE

1. Yes.

2. Abalone and crayfish. The two most valuable resources and products.

3.11 ENFORCEMENT POWERS

This section relates to compliance and enforcement functions.

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

RESPONSE

They are severe but warranted. However, inadvertence, such as not dotting the l's and crossing the t's should be an infringement notice, and not a penalty. Ongoing "inadvertence" needs to be discouraged, and a penalty points system may deter ongoing infringement of this nature.

3.12 TECHNOLOGICAL OPPORTUNITIES

This section notes the occurrence of new technologies and fishing techniques

- 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?*

RESPONSE

New technology can determine increased catch rates (e.g. the so-called super trawler, in effect a factory ship) or catch methods. In limited fisheries, the question can become one of the big guys and the little guys. Our view is that technology is good, but it should be fair to all.

Mandating the use of a particular technology is not a good idea. However, what the outcome of using such technology might deliver – e.g. improved survival of harvest, should be mandated.

Also, the use of technology for data collection is a no-brainer.

3.13 REVIEW OF DECISIONS

A person may apply to the Minister or Secretary to review a decision

- Are the review provisions sufficient to support the regulatory regime?*

RESPONSE

There needs to be an Appeals mechanism as well.

3.14 REGISTER

Data is collected by the department and is maintained in a register, which is not publicly available.

- 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?*

RESPONSE

The Register should be open. The same standards should be applied to Licence Registers as to other similar registers e.g. Land Titles. A register of Land Titles is available and no consideration of personal privacy is relevant.

Similarly, the shareholders of Public Company's registers is available by law. In fact published annual reports make it MANDATORY for the top 20 shareholders to be recorded.

I also note through ASIC Directors of private Company's is available on-line with shareholder information.

FINALLY

Some Abalone specific matters:

Composition of Ministers Advisory Council AbFAC

The Act needs to specify that a minimum proportion of AbFAC (50 %) is composed of nominated representatives from the Peak Industry Body.

Total Allowable Catch Proportions

The Act should acknowledge specified proportions for the various fishing sectors. It should also require that each sector is managed to ensure their TAC targets are met.

Property Rights

Existing property rights need to be recognised and need to be protected. The fishery is a commercial fishery, and management regimes need to reflect that fact.