



TASMANIAN ALLIANCE FOR MARINE PROTECTION

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TASMAN PENINSULA MARINE PROTECTION



Submission for the Review of the Living Marine Resources Management Act 1995

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Thank you for the opportunity to provide comment on this review.

This submission will address questions contained in the Discussion Paper (February 2022) in addition to providing various comments that relate to other parts of the Act.

TAMP and TPMP are organisations focused on the protection of Tasmania's marine environment and inland waterways and specifically on the affect the rapidly expanding Atlantic Farmed Salmon industry is having on our marine and inland waterway systems. Any document relating to Living Marine Resources Management must look at our marine ecosystem holistically and therefore recognise that maintenance of biodiversity is key to effective management. It must also recognise the importance and interaction of species that depend on our marine resources, including seabirds and mammals, (many classed as threatened) that depend on a rich and diverse marine ecosystem in order to sustain viable populations. It must also recognise that climate change will have significant and possibly rapidly changing effects on our marine ecosystem.

We urge and recommend that the LMRMA establish a very clear link to the threatened species act.

We also urge that the powers of the ministerial discretion be reduced, and that public consultation be increased. This applies especially to issues pertaining to Salmon Farming.

Areas of concern/interest to the submitters are in **bold**.

INTRODUCTION

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

The current review of the LMRMA 1995 is supported as it is generally agreed that some of the legislation is antiquated and could be improved to support effective management of Tasmania's fisheries into the future. Some of the suggested changes may require consequential Act and regulation changes and policy additions/amendments to support those changes. Lastly, such changes will necessarily require improving the capacity of the Marine Resources Division of DNRET (*Department of Natural Resources and Environment Tasmania*) to implement change, with the unfettered support of Government.

Looking back at the performance of the Act over the last 26 years, we need only to consider the current stock status of target species within nine declared commercial fisheries (*page 8 – discussion paper*). Of the 30 listed species, 8 are listed as 'Depleted or Depleting', 7 as N/A or closed, 1 recovering; leaving the remaining 14 (less than 50%) as 'sustainable'. Something is obviously failing where one of the Objectives of the Act is to '*provide and maintain sustainability*' of our fisheries resources.

Undoubtedly the major challenge for society with regard to any resource management into the future is the impact of climate change. Tasmania's fisheries resources are not immune. Climate change must be a consideration in any legislative/regulatory and policy regime.

With regard to Part 5 - Protection of Marine Areas and Habitats it is interesting that a little over 1% of immediate coastal waters are afforded protection by '*high level...sanctuary zones*'. **No Habitat protection plans have been declared.** This is despite '*Tasmania (having) one of the most biologically diverse marine environments in the world, with over 80% of all marine plants and animals found nowhere else on Earth*' (*Australian Marine Conservation Society 2022*).

Seven marine species of fish are currently listed as Threatened. Ninety-five percent of giant kelp forests have vanished (*Institute of Marine and Antarctic Studies 2021*). Other species of fish are listed as 'protected' including shellfish, sygnathids, and various sharks (*DNR website*). **Fishing and salmonoid aquaculture** are still permitted within the locality of the endangered Maugean skate and critically endangered Red handfish.

Protection and maintenance of habitats is fundamental to supporting productive fisheries while conserving protected species and aquatic biodiversity.

Threatened Species:

The provisions in the Act relating to **protection of fish (S.135)** are particularly 'weak' in their current format:

LIVING MARINE RESOURCES MANAGEMENT ACT 1995 - SECTION 135

Protection of species

- (1) The Minister, by a notice in the *Gazette*, may declare any species of fish to be protected.
- (2) A person must not take any protected fish.

Penalty: Fine not exceeding 500 penalty units.

We propose that the provisions be strengthened (again using the relevant NSW Act version as an example):

NSW FMA S.19 Protected fish

- (1) The regulations may declare that fish of a specified species are protected fish.
- (2) A person who takes protected fish is guilty of an offence.
- (3) A person who has protected fish in the person's possession is guilty of an offence.**
- (4) The regulations may declare the possession of any protected fish to be prohibited absolutely.
- (5) If the possession of protected fish is prohibited absolutely, subsection (3) applies whether or not the fish are taken from waters to which this Act applies.**

Secondly, while it is noted that threatened species legislation is contained (and relevant fish species listed) within the Threatened Species Protection Act 1995 **it is suggested that the LMRMA establish a clear link** to that legislation, particularly the **Administration (S.7)**, and **Objectives** of that Act:

Threatened Species Protection (TSP) Act 1995 Schedule 1:

PART 2 - Objectives of the Threatened Species Protection System Established by this Act

- 3.** The objectives of the threatened species protection system established by this Act are, in support of the objectives specified in Part 1 of this Schedule –
 - (a) to ensure that all native flora and fauna in Tasmania can survive, flourish and retain their potential for evolutionary development in the wild; and
 - (b) to ensure that the genetic diversity of native flora and fauna is maintained; and
 - (c) to educate the community in the conservation of native flora and fauna; and
 - (d) to encourage co-operative management of native flora and fauna including the making of co-operative agreements for land management under this Act; and
 - (e) to assist landholders to enable native flora and fauna to be conserved; and
 - (f) to encourage the conserving of native flora and fauna through co-operative community endeavours.

(NOTE: the definition of 'land' under the TSP Act:

land includes land covered by the sea or other waters and any part of the sea or waters covering that land;)

Endangered species must be afforded the highest level of protection

All of these challenges will require a robust fisheries management regime provided-for under the revised Act.

Theme One: Objectives and Scope

1. Purpose and objectives

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?*

A fundamental problem with the current Act is that its current *Purpose and Objectives* do **not lead** the document. These should be explicitly stated, first and foremost, as the rest of the legislation is underpinned by these statements.

Sustainable development (within the true definition of ESD (Education for Sustainable Development) is still relevant, but equally is the conservation of biodiversity for its own right.

The community includes the *whole* community (not just industry or recreational fishers) and must consider intergenerational responsibilities.

The inherent rights of Aboriginal interests *must* be included in those objectives.

Without 're-inventing' such objectives consider the Objects of the (NSW) Fisheries Management Act:

(1) *The objects of this Act are to conserve, develop and share the fishery resources of the State for the benefit of present and future generations.*

(2) *In particular, the objects of this Act include—*

(a) *to conserve fish stocks and key fish habitats, and*

(b) *to conserve threatened species, populations and ecological communities of fish and marine vegetation, and*

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

and, consistently with those objects—

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

- (e) to promote quality recreational fishing opportunities, and
- (f) to appropriately share fisheries resources between the users of those resources, and
- (g) to provide social and economic benefits for the wider community of New South Wales, and
- (h) to recognise the spiritual, social and customary significance to Aboriginal persons of fisheries resources and to protect, and promote the continuation of, Aboriginal cultural fishing.

Such an example clearly enunciates the objectives of contemporary fisheries management.

1. Scope

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?

The scope of the Act should be reflected in these objectives. **In particular it should enable truly sustainable commercial and recreational fisheries, sustainable aquaculture, protection of biodiversity and threatened species.** Enablers for the use of our fisheries resources necessitate the development of robust fishery management plans supported by best science and research. Lastly, the success of any management plan can only be assured with the provision of effective and efficient compliance, monitoring and review.

- a. To facilitate a holistic approach to management of our marine resources it is recommended the provisions of the Marine Farming Planning Act 1995 be included under the LMRMA. Specific marine farming regulations could then be prescribed by a separate marine farming instrument.
- b. There is much ground to make up for with habitat protection and MPA's (Marine Protected Areas). As previously stated, a little over 1% of Tasmanian coastal waters are protected as 'sanctuary zones'. This is totally inadequate given the urgent need to protect biodiversity (particularly in the face of climate change), and the concurrent need to maintain viable fisheries resources outside of those areas. The legislation is available to declare protected areas under LMRMA, together with Habitat protection plans (of which there are none). **We strongly call upon the government to enact the intention of this legislation.**

2. Benefit

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

The provision of appropriate management levies (including an environmental component and community contribution) should be factored into the management of any commercial fishery. Legislation should also enable the implementation of a recreational fishing fee where monies are kept in trust for the sole benefit of enhancing recreational fishing opportunities. Such a fee has been successfully implemented and supported in other jurisdictions.

3. Access

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

Character tests are entirely appropriate when considering access to a community resource. Such tests go some way to maintaining the integrity of management plans and not least ensuring (in this case) the safety of fisheries compliance officers. Corporate entities should also be subjected to a character test, and though such a test need not extend beyond the corporate structure, responsibility should include any/all directors.

The provisions can be further strengthened by an effective 'points demerit' system with the real prospect of suspension or cancellation of fishing authorities. To obviate the will of the Minister to make decisions in these circumstances it is desirable that the courts have this ability.

4. Resource sharing

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

Commensurate with an appropriate *Object of the Act* it should be acknowledged that resources be shared between all users. This would necessitate consultation with all user groups and catch and effort of each group (however 'insignificant') be included in any TAC (Total Allowable Catch). To ensure rigour, appropriate reporting and monitoring processes must be in-place, and when combined with best research, accurate stock assessments will allow review and adjustment where necessary.

LEGISLATIVE DESIGN

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?

Fisheries management is inherently complex and evolving. The Act review process should ensure legislation is easy to understand and structured in a 'cascading' line-of-sight format wherever possible, all underpinned by the Objects. Desirably, the Act should override General regulations, then individual fishery management plans (comprising specific fishery management rules). Occasionally, subordinate legislation inconsistencies may need to prevail but their occurrence should be kept to a minimum. Lastly, the provision of a fishery 'Closure' or 'Notification' section should permit the Minister/authority to implement rules on a short notice/temporary basis where a timely response to address specific risks is required.

ABORIGINAL FISHING

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?

Recognition of aboriginal cultural fishing rights must be enshrined in the Objects of the Act and appropriate rules established in consultation with aboriginal persons. The indisputable fact remains that the fisheries resources of the state we enjoy today ('sea country') were once owned, and appropriately managed for millennia, before they were 'stolen' by European settlers.

In addition, the interests of contemporary sustainable fisheries management across the community aboriginal fishing catch and effort information should be factored into fisheries management decision making processes.

An Aboriginal trust fund should be established under the Act to support cultural fishing arrangements and community fishing enterprises.

Theme Two: Fisheries management framework

2. Current management framework

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

As for the response relating to 'Legislative Design' (above) the current framework could be better re-aligned in a hierarchal 'line of sight' approach. Specific fishery rules could perhaps be better encapsulated as 'Management Plans' (as with other states). Clearly, where 8 target species are currently depleted or depleting then improvement in fishery management needs to be made, starting with the legislation.

A consultative, co-management approach is supported (to include representatives of *all* stakeholders) and subject to transparent decision making processes. **Ministerial discretion should be removed as far as possible, to maintain integrity and objectivity, as should industry 'self-regulation'**. Industry 'codes of practice' should have a regulatory back-stop where a code is found to be breached.

Management Plans should be informed by best science, with Environmental Assessments and Fisheries Management Strategies underpinning each plan. Stock Assessments should incorporate performance indicators ('trigger points') beyond which a review of the fishery rules should be mandatory.

Again, effective and efficient compliance is fundamental in maintaining the integrity of any management plan. The use of VMS (Vessel Monitoring Systems) and other technologies (in addition to adequate human and equipment resourcing) should be implemented to ensure best compliance outcomes.

3. Role of science and research

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?

Best science should underpin any relevant fishery management decision processes and the *precautionary principle* together with the *definition of ESD* (Ecologically Sustainable Development) referenced in the objectives of the Act.

Each fishery management plan should be subjected to an approved Environmental Assessment prior to development and approval by the Minister. If not already in place such assessments should be undertaken as a matter of priority to maintain the integrity of a fishery and any issues arising addressed. Scientists must have available to them accurate and timely presented catch and effort data provided by industry. Co-operative management should be encouraged wherever possible (e.g. : through the established observer program). Fishing bodies should be consulted regarding research priorities and provided reports regarding research programs and outcomes.

4. Consultation on fisheries management

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

The established consultation framework appears extensive. What appears wanting in certain circumstances is the political will to endorse decisions for and on behalf of the community. **A current example is the extensive expansion of farmed area available to the salmon industry where clear opposition to such expansion would appear to have been dismissed by the Minister.** In order to better align community expectations legislation could be better **framed to compel the relevant Minister to establish relevant advisory bodies and to acknowledge/ approve the consensus position.** Public exhibition of any draft management plan must be made mandatory (ref: S.44 (2)(b))

Further, the conduct of such advisory bodies (which necessarily should be aligned to principles of fairness, respect, transparency - and contained in *the Guidelines*) must be adhered-to in order to maintain the integrity of the decision-making process, and should be referenced in Part 3.

Needless to say, Aboriginal Tasmanians must have equal access to all decision-making processes contained within the Act and be invited to actively participate in those processes. This should be formally established within the statutory requirements of the Act, as should be the rights of aboriginal cultural fishing. Acknowledgement of these rights could be enshrined within a statement in the Act with an obligation of the Minister to observe such rights. Mutual respect and co-operation between aboriginal and non-aboriginal interests in marine resource (and other natural resource management) remains a fundamental key to successful management outcomes.

5. Decision making powers

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

Statutory rules should be established to ensure that the Minister (or their delegates) abide by recommendations of advisory bodies and the outcomes of public consultation processes.

6. Developing new fisheries

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

The revised Act should include provision for exploratory/developmental fisheries – separate from a permit to conduct ‘lesser’ matters. A license ‘endorsement’ to conduct the activity (subject to conditions) can be issued in lieu of a permit. The framework (guided by the provisions of the NSW Act) should provide for ‘restricted’ access. Before approval is provided the Minister must consult with the established consultation bodies, including public consultation. Participants must be required to pay relevant access costs and the fishery remains a restricted access fishery until it expires or becomes an ‘established’ managed fishery.

7. Joint management

It would appear prudent that any joint management arrangement with other states or with the Commonwealth, within, or outside of State waters, be determined within the parameters established for *Joint Authorities* (Part 7, Division 1). Such an arrangement would necessarily require the agreement of the other party under their respective statutes and must ensure that any arrangement is given full and proper consideration and consultation prior to any approval. **Such circumstances exist with the current State/Commonwealth deliberations of extending fish farming adjacent to State waters.**

THEME 3: Regulatory Framework

1. Characterization of the regulatory regime

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

The direct government regulatory regime is supported within the fisheries compliance environment. Self-regulation, quasi and co-regulation, particularly within a commercial environment, is generally not appropriate and even then compliance monitoring and intervention will be required depending on the level of risk.

Importantly, fishers and other stakeholders who are enabled, via appropriate consultation processes, may take ‘ownership’ of a particular management plan or rule which can assist to reduce compliance risks.

Maximising voluntary compliance is always the first tier of regulatory response. This can be enhanced by well delivered advisory programs, as well as providing effective deterrence using a well-resourced compliance team, delivering appropriate risk-based compliance responses.

2. a. Licences

i. Commercial fishing licenses.

Comment: to simplify current arrangements it is suggested that the ‘hierarchy’ of commercial fishing entitlements be regulated in the following manner:

Fishing Licence > Fishery > endorsement type. (*note: this model is currently enacted in NSW*)

All licences would have a common expiry date.

Rules could then be applied under the separate Fishery Management plans, with specific conditions applied per endorsement, and managed by relevant input and output controls.

Regulation could be based upon an overarching rule of 'contravene (specified) endorsement conditions'.

ii. Processors, handlers, and fish receivers

It would appear current arrangements could be simplified through the establishment of a single entity being a licensed Fish Receiver. Such an authority would be required by persons/entities receiving fish directly from licensed commercial fishers for re-sale (in excess of 'prescribed quantities' of fish). The authority could nominate specific premises for receiving / storing / processing fish, in addition to nominated handlers. The 'fit and proper' person test should apply to any holder. Essentially *prescribed records* must be required for the receipt and sale of any quantity of fish or fish products, commensurate with the National Docketing Scheme.

Quota should be deducted from quota managed fisheries as soon as the fish is landed (*ie: not sold*), and a *prescribed record* made at or before a sale taking place. These changes could simultaneously reduce 'red tape' for industry participants whilst strengthening the integrity of management rules and assist to eliminate black marketing.

iii Marine farming license

Despite the provisions of the Marine Planning Act 1995 (including relevant Marine Farming Development Plans and Finfish Farming Exclusion Zones declared under that Act) **it is suggested that there be *NO net increase* in lease area available to the aquaculture industry within in the marine waters of the State. This proposal is firmly based on the current level of contention that has been generated by the community (and justly so) over the recent and rapid expansion of the salmon farming industry and any suggestion of further expansion (lest there be a *reduction*) is untenable. Such a provision should be enshrined in the LMRM Act. This includes the approval of any permits.**

iv. Recreational fishing license

Despite current Government policy, it would be prudent for the department to consider introducing a general Recreational Fishing fee for the State. This may, or may not, incorporate the existing inland fishing 'licence', and potentially dispense with the current regime of 'licence' types for specific fishing methods. While the suggestion is contentious (and has been for other States) the advantages are many and have now reached a general level of acceptance and support in other jurisdictions. Fee exemptions would apply to minors, holders of Commonwealth Pension Concession cards and Aboriginal persons with (most importantly) all fees collected being allocated to a statutory trust – removed from Ministerial control – to be re-invested in improving recreational fishing opportunities throughout the state (including the 'buy-outs' of commercial fishing effort and establishment of recreational only fishing zones where relevant).

No less important should be the requirement for the recreational fishing sector to be subject to a Management Plan (*supported by an EIS Environmental Impact Statement*) - as other (commercial) sectors are subject – all of which would serve to assist the sustainability of our fisheries for future

generations. (While it is noted the use of recreational 'gill type nets is under review and not within the scope of this review their removal as a method of recreational fishing gear as soon as possible is strongly supported).

b. Quota

Discussion Question: 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.

A mix of input and output controls is appropriate for Tasmania's commercial fisheries. Quota allocation (total allowable catch (TAC) and/or total allowable effort (TAE) should be retained for the existing quota managed fisheries. To assist integrity and transparency a public register of quota holdings should be maintained.

An *independent* committee should be required to make quota determinations with due consideration of total allowable fishing (TAF). Such a determination should consider all interested parties who are affected by the determination (S.96), and a harvest Strategy under the respective Management Plan for the fishery. Public consultation should be incorporated into the determination process.

The NSW Fisheries Management Act 1994 (S.40E) also provides for the following general considerations:

The TAF Committee is also to have regard to—

(a) the need to ensure that the exploitation of fisheries resources is conducted in a manner that will conserve fish stocks in the long term, and

(b) the impact of fishing activities on all species of fish and the aquatic environment, and

(c) the precautionary principle, namely, that if there are threats of serious or irreversible damage to fish stocks, lack of full scientific certainty should not be used as a reason for postponing measures to prevent that damage.'

Rules governing other matters such as quota transfer and forfeiture need also be incorporated into respective fishery management plans.

The concept of 'share managed' commercial fisheries (as implemented in NSW) adds additional layers of complexity and is *not* a favoured consideration.

3. Permits

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?

The issue of permits is an appropriate way to manage activities that would otherwise be declared unlawful. However the administration of such can be cumbersome. To reduce this, commercial fishing permit arrangements could be incorporated into specific fishery management plans (by

way of regulation) wherever possible. Scientific (and other) permits are best dealt with using a defined set of 'standard conditions 'with specific conditions tailored to individual circumstances.

4. Fees, charges, and levies

Discussion Question: 1. How could the current fees and levy arrangements be improved?

It is suggested a 'community contribution 'should be made by all licence holders (to be placed in consolidated revenue) for the right of commercial access to a public resource. Other commercial licence fees attracted could be placed into a Commercial Fishery trust fund to cover management costs (including environmental assessment, and research) of individual fisheries. Similar trust funds could be established for Recreational fishing, Aquaculture, Charter Fishing, Fish Conservation, and Aboriginal Fishing. Fee waivers in special circumstances may remain the prerogative of the Minister.

5. Charter fishing

Discussion Question: 1. How would you like to see charter fishing managed?

As with other states Charter fishing in Tasmania should be managed as a separate 'managed fishery', subject to a management plan, separate license fees, entry and transferability rules, and catch and effort recording. This is recommended due to the quasi-commercial nature of such operations, and the need to manage effort and impact of the fishery.

6. Records and reporting requirements

a. Commercial fisheries

Accurate catch and effort reporting is a critical component of any well-managed fishery. The Act should provide rules for the most efficient collection and timely submission of such data underpinned by well enforced regulation to ensure the integrity of such information. The Fisheries Digital Transition Project is supported as a logical next step to facilitating good reporting outcomes.

To assist and encourage users, standardization of reporting mechanisms (including forms) could only improve outcomes and industry acceptability and further assist compliance to reduce black-marketing. The list of current forms (page 47 of the discussion paper) is a case at point – there would appear too many. The number of reporting steps in the accompanying diagram (with phone reporting in addition to the 'paper trail') may be considered too onerous and cumbersome.

A legislated requirement to use VMS on licensed fishing boats may remove some fisher 'at sea ' and 'place of landing requirements 'and an app. could be created to facilitate real-time reporting. Catch and effort reporting should remain the domain of the fisher. Once landed and sold, *prescribed records* (ie receipt of sales) should be used to close the loop 'and allow traceability of product in accord with the National docketing scheme. Importantly, quota should be deducted, and relevant catch and effort reporting completed, at the point of landing (or at the time product is transferred to a cauf), *not* at the point of sale (page 48).

b. Marine farming reporting requirements

Apart from production,⁷ it would appear that the most critical reporting requirements for marine farming are metrics required to be provided to the EPA (page 48). While it is understood these lie outside the scope of this review it is apparent that **self-reporting requirements are fundamentally inadequate, particularly within the highly contentious salmon farming industry. As such it is strongly recommended that as many compliance and reporting functions are directly overseen by authorised fisheries (or EPA) officers.**

7. Exemptions

Section 11 should be removed or amended as it is not appropriate for a Minister to exercise this function where the *provision provides significant discretion, including the grant of an exemption by the Minister's own initiative or on application*. Such a power ignores the established principles of requiring expert advice in the decision-making process, enabling appropriate consultation, and informing all affected parties.

Enabling legislation (ie: the issue of a permit under S.12) would appear more appropriate mechanism for consideration of the 'exceptional circumstances' outlined in the Case Study, which could also incorporate the *relevant considerations* outlined in S.11(9).

8. Legal responsibility

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?*

Vicarious liability is an important function of the Act particularly where commercial fishing enterprises become more corporatised into the future.

It is reasonable that persons leasing a licence take reasonable steps and use due diligence to ensure that the lessee is aware of their lawful obligations.

In 'Supervisor' arrangements liability should not be reduced. Risk may be reduced with a license condition ensuring employees only work under the *direct supervision* of their employer.

With regard to offences by Corporations (including a 'body corporate') the following legislation contained in the S. 279 of the NSW FMA 1994 is an effective and reasonable approach to contraventions:

279 Offences by corporations

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.*
- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.*

(3) *Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations*

In all cases proof of liability for any act or omission should lie upon the accused (suggest inclusion of the following Section, (again from the NSW FMA 1994):

281 Proof of lawful or reasonable excuse

If any act or omission is, by this Act or the regulations, made an offence when done or omitted without lawful excuse or reasonable excuse, proof of the lawful or reasonable excuse lies on the accused.

9. Offences and penalties

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

It is agreed that penalties be proportional to the seriousness of harm and level of offending.

To that end legislation should provide for a range of penalties, including monetary and declared indictable offences, and should be supported by appropriate enforcement and prosecution policy documents. The issue of Verbal and Written Caution notices, and Penalty infringement notices will no doubt comprise the bulk of penalty actions.

Penalties could also be prescribed for *first* and *second or subsequent* offences with additional penalties for prescribed offences committed in *circumstances of aggravation* and *trafficking of fish*.

Priority species and specified commercial quantities need to be defined for sale of fish in circumstances of *aggravation*.

Key species (eg: rock lobster and abalone) together with defined quantities of those species need to be stipulated within the Act (and regulations) to establish trafficking offences. It is noted provision for an additional monetary penalty to be imposed by the courts ('Special penalties') are included under the existing legislation, though it is suggested the prescribed penalties could be increased and a Clause inserted to make it explicit that such a penalty is in *addition to* the first made penalty.

Significantly higher penalties should also be prescribed for offences committed by corporations.

Any penalty should in addition to the value of anything seized in the connection of an offence including, fish, fishing gear, vehicles and boats.

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

Discussion Question: *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?*

The response to this question is the same as that contained above (offences and penalties). There is one regulatory regime that is applicable to all offences – IUU or otherwise. What requires

attention is strengthening the enforcement provisions and corresponding penalties in order to deal matters such as trafficking / black-marketing. Apart from that the Department requires the *capacity* to investigate, apprehend and successfully prosecute serious offences of an IUU nature, which are discussed in the following responses.

11. Enforcement powers

The enforcement provisions of the Act are extensive and appear sufficient in their current form noting the following further considerations:

Entry and search powers (S.174) to explicitly extend to marine farms, particularly considering the growth in this sector.

Production of records and documents (S. 191) to explicitly extend to the search for, production of, and examination of electronic devices and records (to keep abreast of the use of technology and storage of electronic records and to remove any ambiguity regarding the interpretation of *record*)

An additional section to authorise Fisheries Officers to access information maintained by the relevant transport departments (vehicle and marine). This would assist identification and ownership of same.

An additional power to compel persons to answer questions regarding any relevant document, fish, and/or apparatus found as part of a search, or part of any commercial fishing activity.

In addition to enforcement powers there remains real concern about the current and on-going capacity of the department to undertake effective and efficient fisheries compliance. This issue is not unique to Tasmania's fisheries nor is it a criticism of the current arrangement between the Department and Tasmania Police. It is however a suggestion that a review needs to be undertaken of the status-quo and how we can best move forward.

It is noted that all other Australian states have a separate establishment of dedicated, authorised Fisheries Officers. While the ability to appoint such officers currently lies within S.164 of the Act it is not known how many positions are available in this role. However, it is recognised that the Marine Command area of Police undertake the majority of fisheries compliance duties (again, unsure of numbers), in addition to other marine policing functions.

It should be recognised that fisheries compliance is a specialist role, requiring full-time (permanent, as against 3 years), fully trained and dedicated officers. Necessarily, the role needs to be fully resourced in order to perform their function (boats, vehicles, equipment), be supported by adequate training, policies and procedures, and be fully accountable to community, government and industry with regard to compliance reporting mechanisms. Tasmania Police should of course remain authorised to perform the role in co-operative arrangements with the Department (particularly in relation to organised crime and high-value species, and which can be expected to become more common-place) but it would not be their primary role.

The fisheries of Tasmania need and deserve effective management and enforcement arrangements, now and into the future.

12. Technological opportunities

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?

Fisheries management will need to continually adapt to technological advances and the legislative framework provide for this where possible. Two tools which are now highly relevant are VMS and electronic catch, effort and sales reporting. All of these can assist the Department and industry to maintain effective and efficient reporting of fishing activity.

VMS should be mandatory in all offshore and high-value species fisheries. EMS may be provided-for in a review of the legislation but its implementation within state-based fisheries will need to be proved effective and cost-effective.

Real-time electronic reporting of catch and landing (via a tailored app?) is entirely relevant, as is the periodic submission of catch and effort records. Prescribed records regarding transport and sale could also be provided-for here.

Of course, in all matters requiring making of electronic records it will be important to provide adequate training to relevant industry participants and to allow a 'fall-back' mechanism (eg: written record) for rare exceptions where there is a demonstrable failure in electronic submission systems.

13. Review of decisions

Discussion Question: 1. Are the review provisions sufficient to support the regulatory regime?

To improve the decision-making process, including, fairness, transparency and the removal of any suggestions of impartiality the relevant Division could provide for a Review panel comprising suitably qualified persons. Timeframes may need to be increased accordingly. The mechanism allowing the right of appeal to the Appeal Tribunal should remain.

14. Register

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?

A register of commercial fishing authorities could be accessible by any interested persons. To maintain privacy the entity name and licence authority number should be the only information available. This would assist transparency in the management of what is a publicly-owned resource and from an industry perspective could facilitate tradability processes where allowed.

Similarly, a register of permits should be publicly available. Fishery-wide commercial permits should be accessible on the department's website.

Further matters for consideration in the Review include, but are not limited to:

- A statutory requirement for the Department to publish an annual review of performance measured against how the Objects have been, and will be, achieved.
- The Function of the Minister (S.18) should specify that the Act is *administered in a way to give effect to the Objects of the Act*
- **The Powers of the Minister under S.19 are considered too far-reaching and are not considered appropriate functions of a ministerial position.**
- Part 7 - Joint arrangements with the Commonwealth (and other states), should be subject to the **same assessment and community consultation requirements as if the arrangement were a State-only managed fishery, and be subject to the relevant Objects of the LMRMA**
- The requirements of reporting by the Commissioner of Police (S.21) should be made publicly available and within an Annual Reporting requirement by the department
- **S.43 should require the Minister *must* prepare a management plan for the operation of any fishery within the State (including Marine farming fishery), that incorporates public exhibition and which *must* be precluded/supported by an EIS (Environmental Impact Statement) and Fisheries Management Strategy applicable to that fishery**
- S.60 (2)(ba) relating to fishing licenses may be better defined if a person is under the *immediate* supervision (of the holder of a fishing license, or supervisor). A definition of 'immediate' could be prescribed depending on the fishery activity concerned.
- The intention of S.112, (together with the prescribed penalty) is unclear. In the absence of any justification it should be deleted
- **S.123 Revocation of habitat protection area - would appear to be another example of Ministerial over-reach in its current form. Such revocation should only occur following appropriate consultation**
- S.139 **Protection of marine plant** – refers to *any prescribed marine plant*. It is suggested that seagrass sp. and marine macro algae sp. (with the exception of undaria sp) be included by way of regulation.
- S.230 Application to buy a forfeited thing – sale of seized items back to offenders is inappropriate and the Section should be deleted. The secretary could otherwise offer such items of value back to industry or community by way of auction or tender. Before any such sale is approved legislation should require the person is lawfully able to be in possession of such items under the Act
- S.257 Interfering with apparatus – should include a sub-clause relating to a *fishing apparatus* – (with the exclusion of sub paragraph (2)(b)).