

Proposed Amendments to the *Fish Resources Management Act 1994*
Volume 1 of 2 – Overview and Recommendations

Draft Report of the Ministerial Review Committee

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FOREWORD

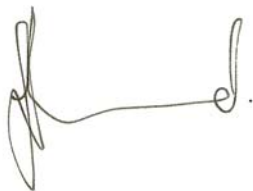
In accordance with the Government's commitment to review the effectiveness of the *Fish Resources Management Act 1994* (FRMA) in achieving its objectives, a Committee was established to review the FRMA in association with stakeholders and the community.

I have pleasure in releasing the Review Committee's draft report for public comment. The report follows a period for public submissions and meetings with key stakeholder groups.

Before Government receives and considers a final report it is important to obtain and consider the views of stakeholders and of the WA community. Accordingly, I have approved a public consultation period until **16 February 2007**.

At this time, I neither support nor oppose the recommendations of the Committee contained within this draft report. I will await feedback from the public comment period and the Committee's subsequent final report. Subject to my consideration of the final report, it may form the basis of drafting instructions for an Amendment Bill for the *Fish Resources Management Act 1994*.

I encourage you to provide comments on the Committee's draft report.



HON JON FORD JP MLC
MINISTER FOR FISHERIES

MAKING A SUBMISSION

Submissions on this draft report are welcome until **16 February 2007** and should be addressed to:

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Ministerial Review Committee
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WA 6850

Or by email to: rburrows@fish.wa.gov.au
Or online at: www.fish.wa.gov.au

When making a submission, please reference the particular Part or Section, or recommendation you wish to comment on.

Further copies of this report are available from the Department of Fisheries, or from its website at: www.fish.wa.gov.au. For further information, please contact the Executive Officer, Rae Burrows on (08) 9482 7238.

SUMMARY OF RECOMMENDATIONS

With respect of the Department of Fisheries' proposed amendments to the FRMA, as outlined in its discussion paper, the Committee's responses are as follows:

1. Amendments with Significant Responses

(highlighted in tan in the matrix, see also Section 3 'Key Policy Issues')

Some of the proposed amendments attracted considerable discussion and concern. The Committee has provided further discussion of these issues in Section 3. In summary, its recommendations are as follows:

1.1 Overlapping legislation (reference numbers 1, 2, 10, 51, 52, 53, 54, 56, 114)

The Committee supports the proposed amendments that will ensure complementarity with the proposed Biodiversity Conservation Bill (BCB), and ensure that the Department of Fisheries can effectively manage for aquatic conservation and ecological sustainable development, and to deliver appropriate services on behalf of other agencies. Specifically, it supports the proposed amendments as described in matrix reference numbers 1 (objects), 10 (order may prohibit fishing), 56 (conservation of threatened species), and 114 (Minister may prohibit activities that pollute waters).

The Committee supports the proposed amendments to reference numbers 51 (species of fish may be prescribed as noxious fish), 52 (noxious fish must not be kept or brought into the State), 53 (requirements relating to noxious, diseased or prohibited fish) and 54 (new section dealing with the movement of live fish).

1.2 Definition of 'fish' (reference number 2)

The Committee recommends that consideration be given to reviewing the definition of "fish" to exclude the elements that have historically not been part of the Department of Fisheries' operations.

1.3 Customary fishing (reference numbers 17–20)

The Committee supports the proposed amendments and provisions related to customary fishing and as described in matrix reference numbers 17 (management of fisheries), 18 (new section providing power for allocation and reallocation of shares), 19 (general contents) and 20 (management plan – authorisations).

1.4 Secure rights (reference number 1)

The Committee supports the proposed amended and expanded Objects of the FRMA (reference number 1) without the insertion of a secondary Object that specifically states that persons authorised to carry out fishing pursuant to a managed fishery management plan should have secure rights in the fishery (as proposed by WAFIC and WRLC).

1.5 Advisory committees (reference number 9)

The Committee recommends that further consideration be given to the establishment of statutory management advisory committees for either sectors, regions, or for specific fisheries.

1.6 Who can object? (section 146 of FRMA)

The Committee recommends that further consideration be given to options for expanding the “affected persons” provisions in the existing Act.

1.7 Aquaculture leases (Part 8 of the FRMA amendments)

The Committee recommends that consideration be given to amending the “better interests” test for the grant of an aquaculture lease from the “better interests of the industry” to the “better interests of the community”.

The Committee also recommends that this provision be amended to clarify that the licensee only “owns” the fish the subject of the licence.

1.8 Management plans (Part 6 of the FRMA amendments)

The Committee recommends that amendments to Part 6 of the FRMA should include powers:

- a) for the Executive Director to set sustainable harvest levels for fisheries resources; and
- b) for appropriate bodies to be established to hold and manage “rights” and funds (for the purchase of “shares”) on behalf of recreational and customary fishers respectively.

2. Amendments with Mixed Responses

(highlighted in green in the matrix, see also Section 4 ‘Other Issues’)

There has been a mixed response to some proposed amendments with some submissions supporting, and others not supporting the proposal. The Committee has considered the submissions, sought further clarification where required, and come to the views described in Section 4. In summary, the Committee’s responses to these matters are:

2.1 Meaning of WA Waters (reference number 3)

The Committee supports the proposed amendment with respect to the definition of “WA waters”. The Committee also recommends that “Fisheries Officer/s” throughout the FRMA be retitled to “Fisheries and Marine Officer/s”.

2.2 Order may prohibit fishing (reference number 10)

The Committee supports the proposed amendment with the inclusion of the requirement for all sectors covered by the relevant management plan to be consulted before a s43 order is made.

2.3 Class of fish may be prescribed as protected fish (reference number 11)

The Committee supports the proposed amendment with the broadening to cover all classes of fish for all sectors.

2.4 Commercially protected fish (reference number 12)

The Committee supports the proposed amendment with the inclusion of a defence if a person can show that the “protected” fish on commercial fishing boats, or on premises selling fish, were taken legally in an Australian Government fishery or a fishery in another state (e.g. South Australia).

2.5 General penalty – combined catch (reference number 16)

The Committee supports the first and second parts of the proposed amendment, as long as it is clarified that part 2 of the proposed amendment does not apply when a person admits to the offence.

2.6 Management of fisheries (reference number 17)

The Committee supports the proposed amendments to reference number 17 with the inclusion of the “compensation principle in the list of IFM principles.

2.7 Management plan – authorisations – Recreational Fishing Licences (reference number 20)

The Committee supports the first three parts of the proposed amendment.

With respect to the next three parts, the Committee recommends that:

- a) there should be a mechanism through which objections to the grant of RFLs can be made (see section 3.7);
- b) RFL holders should be able to apply for a variation under certain circumstances; and
- c) some parts of the associated entitlements (but not the licence itself) of RFLs (e.g. tags) should be able to be transferred.

2.8 How an interim managed fishery becomes a managed fishery (reference number 30)

The Committee recommends that this provision should relate to all sectors and fisheries the subject of a management plan.

2.9 General penalty (reference number 35)

The Committee supports the proposed amendments.

2.10 Grant of aquaculture licence (reference number 41)

The Committee supports the proposed amendments.

2.11 Penalty for contravention of lease conditions (reference number 45)

The Committee supports the proposed amendment.

2.12 Bonds and liability for costs (reference number 46)

The Committee supports the proposed new provision with the broadening of the range of options in addition to the power to demand a bond.

2.13 Designated fishing zones (reference number 55)

The Committee supports the proposed amendment.

2.14 Register (reference number 58)

The Committee supports both parts of the proposed amendment.

2.15 Transfer on death of holder (reference number 59)

The Committee supports the proposed new provision.

2.16 Renewal after expiry (reference number 60)

The Committee is unclear of the policy rationale behind the proposal for the extension

of the renewal period to 12 months, and recommends that further justification be provided by the Department of Fisheries.

2.17 Temporary transfer of entitlement (reference number 62)

The Committee supports the proposed amendment.

2.18 Variation (reference number 63)

The Committee supports the proposed amendment.

2.19 Miscellaneous offences (reference number 70)

The Committee supports the proposed amendment. It also recommends that an additional general offence be created for not returning unwanted fish to the water as soon as possible.

2.20 False statements in applications (reference number 75)

The Committee supports the proposed amendment with the inclusion of “returns” throughout the amended provision.

2.21 Warrants – high value species (reference number 78)

The Committee supports the proposed amendment related to warrants.

2.22 Other powers of fisheries officers (reference number 81)

The Committee supports the proposed amendments to this provision.

2.23 Liability of officers for offence by body corporate (reference number 87)

The Committee supports the proposed amendment, with the inclusion of a definition of “corporate body” in the Interpretation section of the Act.

2.24 Responsibility of adults (reference number 88)

The Committee supports the proposed amendment with the inclusion of a definition of “in possession of” in the Interpretation section of the Act.

2.25 Evidence of scientific matters (reference number 95)

The Committee supports the proposed amendment with the specific inclusion of DNA evidence in the provision.

2.26 Additional penalties based on ten times value of fish (reference number 100)

The Committee supports the proposed amendment.

2.27 Court may prohibit person (reference number 103)

The Committee supports the proposed amendment.

2.28 Giving of notice (reference number 105)

The Committee recommends that the period of time for which an infringement may be issued be amended to 45 days after the Fisheries Officer becomes aware of the offence.

2.29 Fisheries Research and Development Fund (reference number 106)

The Committee supports the proposed amendment, with the following additions:

- a) the Fund to be credited funds allocated to the recreational and customary

- sectors for reallocation purposes;
- b) the Fund to be a source of funds for the purchase of shares by the recreational and customary fishing sectors; and
- c) 'aquaculture' to be included as a potential beneficiary of the Fund.

2.30 Confidentiality (reference number 111)

The Committee recommends that a head power be drafted to prescribe alternate methods for ensuring the confidentiality of fishers when catch and effort data are released.

2.31 Regulations – other licences (reference number 115)

The Committee supports the proposed amendment.

2.32 Regulations – miscellaneous (reference number 116)

The Committee supports the proposed amendments with the inclusion of the following powers:

- a) enabling barter and exchange by customary fishers;
- b) regulating customary fishing;
- c) requiring data to be provided by the recreational fishing sector; and
- d) allowing registration of fish dealers and receivers.

It also recommends that holders of Commercial Fishing Licences (CFL) may obtain a RFL under prescribed (rather than “certain”) conditions, so that these must be specified in the Regulations.

3. Recommendations from General Comments

(not reflected in the matrix – see table 2, Volume 2)

There have been a large number of respondents who have provided comments or suggestions on sections of the FRMA which have not been described in the matrix. Some of these are outside the Committee's terms of reference. The Committee has considered the others and their recommendations are as follows:

3.1 Designated Fishing Zones (sections 109 and 112 of FRMA)

The Committee recommends that the word “Governor” be replaced with “Minister” in s 109(1), and that the Regulations clearly identify both commercial and recreational DFZs.

3.2 Aquaculture (sections 93 and 97 of FRMA)

The Committee recommends that the issue of renewal of aquaculture leases be considered in line with the proposed new pearling legislation.

3.3 Management plans (section 65 of FRMA)

The Committee recommends that further consideration be given by the Department of Fisheries to the issue of the Minister revoking management plans.

4. Amendments with Public Support or No Comments

(No highlighting in the matrix)

In a number of cases submissions from the public have substantively supported the proposed amendments, or there have been no comments from either the public or from the Committee. In these cases (ie, all amendments other than those identified in (1), (2) and (3) (above)), the Committee supports the proposed amendments.

1. INTRODUCTION

1.1 About the FRMA

The 1994 *Fish Resources Management Act* (FRMA) replaced the 1905 *Fisheries Act*. Features of the new Act included an increased level of security and protection for fishers, and more formal requirements for consultation with stakeholders. Conservation of the marine ecosystem and sustainability of fish stocks was also emphasised within the Act.

A number of provisions dealt with this matter specifically – for example, the creation of fish habitat protection areas for the conservation and protection of fish and fish breeding areas, or for the management of activities relating to the appreciation and observation of fish; powers to declare and control noxious fish; and the provision of power for the Minister to make orders to prohibit activities that may potentially pollute waters.

The objects of the current Act are to conserve, develop and share the fish resources of the State for the benefit of present and future generations with particular emphasis on:

- conservation of fish and protection of their environment;
- the exploitation of fish in a sustainable manner;
- the management of fishing, aquaculture and associated industries, and aquatic ecotourism;
- the development of commercial and recreational fishing and aquaculture; achieving optimum economic and social benefits for the community from the exploitation of fish resources;
- fish resource allocation between users;
- controlling foreign interests in fishing, aquaculture and associated industries; and
- the management of fish habitat protection areas and the Abrolhos Islands Reserve.

The Department of Fisheries notes that the Act has provided a firm foundation for modern fisheries management. However, it is now considered, 12 years from its inception, to be too narrow in concept to support the rapid changes that are, and will be, occurring to management methods.

The implementation of new initiatives such as Integrated Fisheries Management, the Aboriginal Fishing Strategy, and the changing emphasis in Natural Resource Management generally require a reconsideration of the Act. Increasing levels of organised crime have also resulted in the requirement to strengthen the fisheries compliance regime.

1.2 About the Review

The drafting of instructions for amendments to the FRMA commenced in early 2005, with a Cabinet Submission seeking approval to draft amendments prepared in September 2005. The Minister for Fisheries did not proceed with the Cabinet Submission when the Hon Murray Criddle MLC moved a motion in Parliament to appoint a Select Committee of four Members to inquire and report on the effectiveness of the FRMA in conserving, developing and sharing the fish resources of the State for the benefit of present and future generations.

The motion was subsequently withdrawn on the basis that a review committee was established by the Minister to review the Act and report on its effectiveness.

This Committee consists of:

Hon Matt Benson JP MLC – Chairman;
Max Ball;
John Newby; and
Heather Brayford.

The Department of Fisheries provides the executive support for the group.

The Terms of Reference for the Committee are:

1. to inquire into and report on the effectiveness of the FRMA in conserving, developing and sharing the fish resources of the state for the benefit of present and future generations;
2. to inquire into and report on the effectiveness of the FRMA in the protection of fish habitats and aquatic biodiversity; and
3. in the context of the FRMA, report on any other matters of significance arising from the review process.

2. THE REVIEW PROCESS

2.1 The Committee's approach

A key part of the review process has been to facilitate discussion and input on issues and proposed amendments. The Department of Fisheries released a Discussion Paper in April 2006 which outlined a large number of proposed amendments to the Act. Public comments were subsequently sought on the Discussion Paper and these comments and submissions have informed the Committee's deliberations and draft report.

In addition, and following the release of the Discussion Paper, the Committee met with peak stakeholders including Recfishwest, the Aquaculture Council of WA, and the Conservation Council of WA. The Committee was also briefed by the Department of Environment and Conservation (formerly the Departments of Conservation and Land Management, and Environment Protection), and the Department of Agriculture and Food on technical aspects of the proposed *Biodiversity Conservation* and *Biosecurity and Agriculture Management* bills respectively.

In addition, the Committee received a briefing from the Department of Fisheries on new fisheries management policy directions including ecologically sustainable development, Integrated Fisheries Management, and the Aboriginal Fishing Strategy. Separate discussions were also held between the Department of Fisheries and the WA Fishing Industry Council, and between the Department and representatives from a number of indigenous organisations including the Goldfields Land and Sea Council, the Kimberley Land Council and the Yamatji Maripa Barna Baba Aboriginal Corporation. The outcomes from these discussions were reported back to the Committee for its further consideration.

In compiling this draft report, the Committee has taken into account:

- the content of written submissions, in response to the Department of Fisheries' Discussion Paper;
- feedback from and discussions with stakeholder groups;
- changes in fisheries management policies over time, as advised by the Department of Fisheries;
- changing expectations of stakeholders for consultation and involvement in decision making;
- amendments to existing legislation and proclamations of new Acts; and
- increased risk of organised crime, and of illegal foreign fishing.

While the review has highlighted a number of areas in which the performance of the 1994 Act can be improved, it has also been able to identify and confirm some of the Act's strengths and areas in which the Act has functioned well since its introduction.

2.2 Consultation and Submissions

A total of 34 submissions were received on the Department's Discussion Paper. Of these, 31 per cent were from Australian Government and State government agencies, 38 per cent from individuals and industry bodies, and the remainder were from peak

bodies and advisory committees. A full list of respondents is provided at Table 4, Volume 2.

The number of submissions received and the broad cross section of the community from which they originated, has provided useful guidance for the development of this draft report.

As may be expected, a number of the comments received from groups and individuals were primarily about operational or policy issues. To the extent possible, they have informed the Committee about the operation of the current Act (see above). However, these are essentially outside the scope of this review process, so have been forwarded to the Department of Fisheries for its information. They are also included for completeness and as relevant, in the matrix of proposed amendments (“the matrix”) in Volume 2. For ease of reference, the matrix is based on the matrix provided in the Department of Fisheries’ Discussion Paper.

The remaining comments have been incorporated either into the matrix, or if the comment does not refer to a particular provision, in the “General Comments” section in Table 2, Volume 2.

The Committee has considered these public comments and formed its response based on the level of support or otherwise for the proposed amendment; and, where there has been different responses to a proposed amendment, on discussions within the Committee often based on further advice gained from a relevant authority.

Where there has been considerable discussion and different responses to a proposed amendment, the issue has been dealt with in more detail in Part 3 of this volume “Key Policy Issues”.

Where there have been relatively minor concerns (either through public submissions or by the Committee) with proposed amendments, then the Committee has considered further minor changes to the proposed amendment. Recommendations are presented in Part 4 “Other Issues”.

Where a proposed amendment has attracted no public comment, the Committee has considered the proposal and usually supported the amendment. In addition, in instances of unanimous support by both the public and the Committee for a particular amendment, the proposed amendment has been supported.

3. KEY POLICY ISSUES

3.1 Proposed Objects and ‘Overlapping’ legislation

Aquatic conservation and the Biodiversity Conservation Bill

The Committee received a number of submissions, most notably from the Conservation Commission, the Conservation Council of WA, and from the Department of Environment and Conservation (DEC), about the role of the Department of Fisheries in aquatic biodiversity conservation and relationship of the FRMA with the proposed Biodiversity Conservation Bill (BCB).

The submissions generally contended that the BCB, when enacted, should be the overriding legislation providing the biodiversity framework for Acts like the FRMA. They suggested that a single Biodiversity Commission be set up to determine objectives and performance measures for management agencies such as DEC, the Department of Fisheries, the Department of Agriculture and Food, and the Forests Products Commission (FPC).

Further, they suggested that the Department of Fisheries may be better reconstituted as a “Fisheries Products Commission” similar to the FPC, as the potential for a conflict of interest in a single organisation responsible for both production and conservation of a resource could be high. Because of this philosophical difference in understanding of the intent of the various legislations, respondents such as the Conservation Council have had issues with the proposed new or amended objects of the FRMA, the definition of fish (see 3.2 below), and with proposed provisions seeking to manage the interactions with other aquatic fauna.

The Committee’s task is to review the effectiveness of the FRMA in conserving, developing and sharing the State’s fish resources. Conservation and development of fish resources requires protection of fish habitats – this is already reflected in the 1994 Act.

The Committee has noted and acknowledges the proposals within the BCB and possible overlap with the FRMA. From the Committee’s perspective, there is no certainty around the scope and content of the BCB nor the FRMA and the Committee is not in a position to make recommendations in this regard. The Committee recognises the need to protect aquatic biodiversity and to ensure that the broad suite of conservation legislation is complementary and minimises the risk of legislative gaps. It considers that environmental assessment and ecosystem-based management are integral components of modern fisheries management practices. It also acknowledges that the Australian Government *Environment Protection and Biodiversity Conservation Act 1999* has specific ecological sustainable development assessment requirements which include an assessment of both target and non-target species and fish habitats.

The Committee must provide advice on the effectiveness of the current FRMA as it relates to fish resources and their habitats. The Committee also notes that the BCB is likely to apply only out to the three nautical mile State boundary, whereas the FRMA has application within the entire 200 nautical mile Australian Exclusive Economic Zone as a result of agreements with the Australian Government. The management of

fisheries and protection of their habitats under the FRMA is therefore required out to 200 nautical miles.

Ultimately decisions around the scope of the FRMA legislation and inclusion of fish, or otherwise, in the BCB is a matter for Government. Similarly, decisions around governance structures and institutional arrangements for the management of biodiversity (including fish), is a matter for Government.

However, in the absence of direction to the Committee in this regard, and given the current legislative framework (without the BCB being enacted) the Committee supports the proposed amendments to the Objects of the FRMA (matrix reference number 1) and to the other related provisions (for example matrix reference numbers 2, 10, 56, 114) to ensure the sustainable management of fish and their habitats out to 200 nautical miles.

Recommendation:

The Committee supports the proposed amendments that will ensure complementarity with the BCB, and ensure that the Department of Fisheries can effectively manage for aquatic conservation and ecologically sustainable development. Specifically, it supports the proposed amendments as described in matrix reference numbers 1 (objects), 10 (order may prohibit fishing), 56 (conservation of threatened species), and 114 (Minister may prohibit activities that pollute waters).

Noxious fish and the Biosecurity and Agriculture Management Bill

It is understood that the proposed *Biosecurity and Agriculture Management Bill* (BAMB) will largely replace Part 9 of the FRMA which deals with “noxious fish”. The Bill focuses on border biosecurity and biosecurity within the State and will serve to categorise, exclude, eradicate or manage declared terrestrial or aquatic pests.

While there may be some overlap between the FRMA and the BAMB, the Committee is keen to retain the provisions proposed by the Department of Fisheries related to declaring and translocation of noxious fish (matrix reference numbers 51-54). These can then be considered by Parliamentary Counsel during the drafting of the FRMA Amendment Bill to ensure the legislation is complementary and supplementary to the BAMB, and there are no legislative gaps that may put at risk the conservation of endemic aquatic species and habitats of Western Australia.

Recommendation:

The Committee supports the proposed amendments to reference numbers 51 (species of fish may be prescribed as noxious fish), 52 (noxious fish must not be kept or brought into the State), 53 (requirements relating to noxious, diseased or prohibited fish) and 54 (new section dealing with the movement of live fish).

Delivery of services

As a result of the Machinery of Government review of the WA Government in 2001 and to increase efficiency, cost-effectiveness and a greater integration of marine management agencies, the Department of Fisheries now delivers at-sea services on behalf of the Department of Planning and Infrastructure, and a range of fisheries

management and compliance services to other State and Australian Government agencies.

Accordingly, the Department of Fisheries is proposing to amend its objects to “enable the delivery of services on behalf of Government in the aquatic environment” (matrix reference number 1). The Committee understands that the government is keen to instigate a whole-of-government approach to maximise efficiency and cost-effectiveness. For this reason, it considers that the FRMA should provide scope for the Department to deliver a broader range of at-sea and other services in the future if required. It therefore endorses the broadening of the Objects to reflect this potential.

Recommendation:

The Committee supports the proposed amendments to, or the new objects described in reference number 1 of the matrix.

3.2 Definition of ‘fish’

Some submissions (for example the Conservation Commission and the Conservation Council) proposed that potential overlap between the FRMA and other legislation such as the BCB, may be avoided if the definition of “fish” in the FRMA was restricted to those animals targeted by fishing activities.

The current FRMA defines fish as “an aquatic organism of any species (whether alive or dead) and includes –

- the eggs, spat, spawn, seeds, spores, fry, larva or other source of reproduction of offspring of an aquatic organism; and
- a part only of an aquatic organism (including the shell or tail),

but does not include aquatic mammals, aquatic reptiles, aquatic birds, amphibians or (except in relation to Part 3 and Division 1 of Part 11) pearl oysters.”

*The proposed amendments include a broadening of the definition to include “live rock and live sand”. In addition, it is proposed that “pearl oysters” specifically excluded in the existing definition should be only pearl oysters of the species *Pinctada maxima* (matrix reference number 1).*

As the Committee understands it, the rationale for the current definition and proposed amendments is to enable the Department of Fisheries to regulate the take of, and interaction with, non-targeted aquatic species, and to control the take of material for the aquarium industry – a relatively recent activity in the aquatic environment.

The issue with the current definition of fish is its breadth. Seagrasses and mangroves are “aquatic organisms”, as are stygofauna and lacustrine macro-fauna. In theory and at its extreme, a company mining coal in Collie could be considered to require a commercial fishing licence due to the fact it is mining fossil aquatic vegetation (ie coal). This is clearly not the intent of the FRMA.

While the Committee appreciates the complexity of determining the scope of the definition, it appears prudent to, at least, review the definition with a view to removing those elements which historically have not been within the specific ambit of the Department of Fisheries (e.g. mangrove management).

In framing this view, the Review Committee is cognisant that many marine animals and plants have planktonic larval stages which result in wide-ranging distributions. These various representations of the life cycles must be managed to ensure the sustainability of the species and hence must continue to be included in the FRMA definition.

Recommendation:

The Committee recommends that consideration be given to reviewing the definition of ‘fish’ to exclude the elements that have historically not been part of the Department of Fisheries’ operations (e.g. freshwater flora).

3.3 Customary fishing

There was concern from some indigenous respondents that the proposed deletion of s.6 in the existing Act will dilute their rights.

Although not yet formally announced, the Committee understands that the Minister has expressed support for the Aboriginal Fishing Strategy developed by the Department of Fisheries and which includes a number of customary fishing principles. These principles have been reflected in the proposed amendments, and include:

- that customary fishing *“applies to persons of Aboriginal descent who are fishing in accordance with the traditional law and custom of the area being fished; and fishing for the purpose of satisfying personal, domestic, ceremonial, educational or non-commercial communal needs”*;
- that customary fishing is not limited to “traditional” fishing gear, species or methods, but any fishing gear or methods of fishing which are destructive or threaten sustainability and the take of threatened species must be subject to management to ensure sustainable fishing practices;
- that customary fishing is recognised as a positive existing right which has priority over other fishing sectors, including recreational and commercial; and
- that customary fishers are recognised as a distinct sector and will be given the same level of engagement in fisheries consultative and management processes as the commercial and recreational sectors.

The Committee believes that the proposed provisions and amendments outlined in Part 6 (matrix reference numbers 17 - 20) adequately address the requirements of customary fishing. The principle of customary access rights as a priority over all other fishing access is enunciated in reference number 17, while the power for the Minister to allocate shares to the sector, is provided in a proposed new section described in reference number 18.

The commitment to give the sector similar levels of recognition and engagement opportunities to the recreational and commercial sectors is reflected in reference numbers 19 and 20 where proposed amendments have broadened the powers for management plans to be developed for all sectors and provided the flexibility in the future for the Executive Director to issue authorisations for the management of customary fishing – if required.

Indigenous groups were also concerned that the Aboriginal Fishing Strategy recommendation to establish an Indigenous Fishing Fund which could be drawn upon

to help fund the purchase of commercial fishing enterprises by indigenous communities or groups, was not covered in the proposed amendments to the FRMA. The Committee understands that if the initiative proceeds, the framework will be established under more appropriate industry and training legislation – as required by the State Solicitors’ Office.

Recommendation:

The Committee supports the proposed amendments and provisions related to customary fishing and as described in matrix reference numbers 17 (management of fisheries), 18 (new section providing power for allocation and reallocation of shares), 19 (general contents) and 20 (management plan – authorisations).

3.4 Secure rights

The commercial fishing industry has been requesting increased security of rights for some time in order to plan their business and provide comfort to financial investors, and to provide a mechanism for compensation when fishers rights are removed for purposes unrelated to sustainability.

This position is supported in the submissions from the WA Fishing Industry Council (WAFIC) and from the Western Rock Lobster Council (WRLC). Specifically, the submissions argue that the legislation should be amended by:

- a) the insertion of a secondary Object that specifically states that persons authorised to carry out fishing pursuant to a managed fishery management plan should have secure rights in the fishery; and
- b) the consideration of compensation for licensed fishermen who suffer a demonstrable financial loss from the reallocation of resources from one user group to another.

In relation to a), the Committee notes that the notion of “secure rights” is not elucidated within the WAFIC submission. One could argue that the current and proposed legislation provides a level of security and protection for fishers through rights of renewal for all licence holders (subject to them abiding by the rules), a new proposed provision clarifying the right to bequeath one’s authorisation, and through the FRMA Register which identifies all commercial licences, permits, security interests and convictions, and was set up to provide security and comfort to investors in the commercial fishing industry.

The Committee is not in a position, based on the information available, to comment on the scope and level of “secure rights” suggested by WAFIC and the WRLC. Accordingly, the Committee is unable at this time to support the new secondary Object proposed by these bodies.

In relation to b), the Committee notes that the State is not obliged to pay compensation to any person for any act by which the State acquires a person’s property, in the absence of legislation that provides to the contrary.

However, through custom and practice, where there has been a change to access to fish stocks for purposes other than sustainability, successive Governments have usually offered a form of compensation through the buy back of fishing

authorisations. The Voluntary Fisheries Adjustment Scheme has been continued to support the reduction of commercial fishing effort. Recent amendments to the *Fishing and Related Industries Compensation (Marine Reserves) Act 1997* will provide for a further avenue for commercial fishers excluded from areas within Marine Management Areas and Fish Habitat Protection Areas to seek compensation.

Recommendation:

The Committee supports the proposed amended and expanded Objects of the FRMA (reference number 1) without the insertion of a secondary Object that specifically states that persons authorised to carry out fishing pursuant to a managed fishery management plan should have secure rights in the fishery (as proposed by WAFIC and WRLC).

3.5 Advisory committees

Part 4 of the FRMA establishes (or continues) three specific advisory bodies (namely the Rock Lobster Industry Advisory Committee, the Recreational Fishing Advisory Committee, and the Aquaculture Development Council), general fishery management advisory committees, and other *ad hoc* Ministerial advisory committees. The three major advisory bodies not only are specifically identified within the Act, but also their membership and functions are outlined. While this serves to give the maximum “weight” to these bodies, it also limits flexibility to respond to changing community and industry expectations and needs for consultative frameworks.

Changes such as membership of the Committee or an extension or change in the function must occur through a legislative amendment – which can require a considerable period to enact. The Department’s proposal is to deal with this issue by limiting the details that are specified in the primary legislation, and providing the Minister (on the advice of industry and the Department) the power to set up any advisory committee, its membership, functions and chairs.

The Committee notes that there were a number of submissions to the Department’s Discussion Paper on this proposed amendment (matrix reference number 9), in which concern was expressed about the removal of specific advisory committees from the legislation and their replacement with a more generic provision. The Committee acknowledges the benefit of flexibility in the legislation to meet future needs and changing circumstances.

However, given the move to integrated fisheries resource management, the benefit of specifying particular committees to ensure appropriate consultation across sectors is also recognised. The Committee therefore recommends that the need for the establishment of statutory management advisory committees for either sectors, regions, or for specific fisheries, be further considered by the Department of Fisheries.

Recommendation:

The Committee recommends that further consideration be given to the establishment of statutory management advisory committees for sectors, for regions, for specific fisheries, or fisheries management purposes.

3.6 Who can object?

The State Administrative Tribunal (SAT) was established in Western Australia in 2005 as an independent body that reviews a range of administrative decisions. Individuals, businesses, public officials and vocational boards can bring before the SAT many different types of applications related to civil, commercial and personal matters. The main objectives of the Tribunal in dealing with matters within its jurisdiction are:

- to achieve the resolution of questions, complaints or disputes, and make or review decisions, fairly and according to the substantial merits of the case;
- to act as speedily and with as little formality and technicality as is practicable, and minimise the costs to parties; and
- to make appropriate use of the knowledge and experience of tribunal members.

The SAT was established by the *State Administrative Tribunal Act 2004* and the *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* (Conferral Act). The Conferral Act refers to more than 130 existing Acts of Parliament, known as enabling Acts. The enabling Acts (like the *Fish Resources Management Act 1994*) give the SAT the jurisdiction to make decisions on specific matters. The enabling laws indicate who can apply to the SAT.

In the FRMA, section 146 identifies these applicants as “affected persons” and sets out who can appeal a decision through the SAT to be (generally):

- a person who applied for and was refused an authorisation;
- a person who applied for a transfer of an authorisation and the proposed transferee;
- a fish processor who is likely to be significantly affected by a decision; or
- an aquaculture licensee who is likely to be significantly affected by a decision.

The Committee has received submissions from Recfishwest and the Recreational Fishing Advisory Committee, seeking legislative amendment such that other parties may object to certain decisions. For example, it is noted that a recreational fisher who may consider themselves affected by the grant of an aquaculture lease in an area of coastal waters, is not able to apply to the SAT for a review of the decision.

The Committee considers with Integrated Fisheries Management, and the proposed recognition of all sectors in amendments to Part 6 of the FRMA, that it would be appropriate for all sectors to have access to the SAT to review relevant decisions. The Committee acknowledges the possible complexities and workload implications of such a move with respect to both the SAT and the Department of Fisheries. However, it is of the view that the matter deserves further consideration.

One option may be to amend s146 so that prescribed recognised bodies (eg peak bodies) can be heard in the SAT, with individuals having the right to “object” to decisions through these recognised bodies. While this is a possibility, the Committee acknowledges that submissions to a recent review of legislative arrangements for aquaculture suggested that broadening the opportunities for objections would greatly increase the timeframes for decisions and hence risk a significant downturn in aquaculture businesses. This view needs to be considered in determining a way forward on the matter.

Recommendation:

The Committee recommends that further consideration be given to options for expanding the “affected persons” provisions in the existing Act.

3.7 Aquaculture leases

Proposed amendments to Part 8 of the FRMA seek to provide a more flexible arrangement for aquaculture leases that creates business opportunities and generates financial investment in the industry.

The proposed amendments include a requirement for the grant by the Minister of an aquaculture lease to take into account, among other things, whether the grant will be in the “better interests” of the aquaculture industry. Some respondents believed that the provision should be broadened to the “better interests of the community”.

The Committee is of the view that the better interests of the community should be considered when determining whether a lease should be granted or renewed. This consideration should be made to ensure equity in decision-making, and to better adhere to the principles of Integrated Fisheries Management. Sectors or communities who consider their interests are being impacted by the grant of an aquaculture lease should have the ability to be heard and their concerns considered before the decision is made. This issue is linked to the objections provisions outlined in section 3.6 (above). The Committee recommends that the Department of Fisheries considers this further.

The Committee agrees also with the public proposal that licensees should only “own” the fish within a lease that are subject of the licence (eg mussel producers do not ‘own’ rock lobster puerulus that settles on the mussel frames).

Recommendation:

The Committee recommends that consideration be given to amending the “better interests” test for the grant of an aquaculture lease, from the “better interests of the industry” to the “better interests of the community”. The Committee further recommends that this provision be amended to clarify that the licensee only ‘owns’ the fish the subject of the licence.

3.8 Management plans

The proposed amendments to Part 6 of the FRMA (Management of fisheries) enable the development of management plans for a sector or multi-sectors (eg a management plan for rock lobster management that considers the commercial and recreational sectors), a single species (e.g. rock lobster), or a number of species, or a region (eg a management plan for the Kimberley) or a number of regions. This will allow more flexible and efficient management according to IFM principles.

While the Committee, like most of the respondents to these proposed amendments, supports the general thrust of this proposal, it considers that a number of additional powers will be required in order to ensure the IFM framework is fully supported.

These include:

- explicit power for the CEO to set sustainable harvest levels for fisheries resources; and
- the provision for appropriate bodies to be established to hold and manage “rights” on behalf of recreational fishers and customary fishers respectively. These bodies should also have the ability to “hold” and “manage” in trust available funds for the purchase of additional “shares” of a fishery where allocations are determined (see comments on matrix reference number 106).

On a separate matter, the Committee also notes a suggestion from WAFIC (matrix reference number 18) that all management plans include aims, objectives, and performance measures. It understands that this suggestion has been considered at length by the Department of Fisheries in liaison with the commercial fishing industry, and while the Committee considers the matter outside its purview, it also considers that the proposed amendments to Part 6 do not necessarily exclude such matters within a management plan.

Recommendation:

The Committee recommends that the amendments to Part 6 of the FRMA should include powers:

- for the Executive Director to set sustainable harvest levels for fisheries resources; and
- for appropriate bodies to be established to hold and manage “rights” and funds (for the purchase of “shares”) on behalf of recreational and customary fishers respectively.

4. OTHER ISSUES

For a number of proposed amendments, there was a mixed response from respondents. The Committee has considered these responses, sought further clarification where required, and then developed a view, which is outlined below.

4.1 Meaning of WA Waters (reference number 3)

To ensure that aquatic resources contained in dams and ponds may be managed when required, the Department of Fisheries has proposed that the “meaning of WA waters” be expanded to include artificial waters. While a number of submissions were not supportive of the proposal, the Committee considered that if the proposed amendment was to relate to **prescribed species** for **prescribed purposes** only, the amendment should be supported to ensure sustainable management of these particular species and purposes.

The proposed amended provision is the first time that the term “Fisheries Officer” appears. The term attracted considerable comments from respondents. The Committee agreed with the suggestion contained within the public submissions that “Fisheries Officer/s” throughout the FRMA should be replaced with “Fisheries and Marine Officer/s”. This reflects the current identification of those officers in the field.

Recommendation:

The Committee supports the proposed amendment with respect to the definition of “WA waters”.

The Committee further recommends that “Fisheries Officer/s” throughout the FRMA be retitled to “Fisheries and Marine Officer/s”.

4.2 Order may prohibit fishing (reference number 10)

The Committee understands that the rationale for the proposed amendment is to clarify that the use of a s43 order prohibiting fishing is as a “quick response” mechanism to an urgent issue. If a s43 order is likely to impact on a Management Plan, the proposed amendment requires the Minister to consult with industry before he makes the order (except where sustainability of the fish stock is at risk).

The Committee generally supports the requirement to consult before making such an order. However, it also notes that the amendments to Part 6 of the FRMA now extends Management Plans to encompass other sectors. It therefore suggests that all sectors covered by the Management Plan which is impacted by a s43 order, must be consulted before the order is made by the Minister.

Recommendation:

The Committee supports the proposed amendment with the inclusion of the requirement for all sectors covered by the relevant Management Plan to be consulted before a s43 order is made.

4.3 Class of fish may be prescribed as protected fish (reference number 11)

With the implementation of Integrated Fisheries Management, the Department of Fisheries has acknowledged that different sectors are likely to be managed under significantly different rules. For this reason it suggests that there is a need to provide a power for the declaration of protected fish specifically for recreational fishers.

The Committee acknowledges that Integrated Fisheries Management requires a clear recognition of the separate sectors within the legislation and agrees that s45 will require amendments to reflect this. However, the Committee believes that the amendment should be wider than is proposed by the Department of Fisheries. It recommends that s45 should be rewritten to ensure maximum flexibility for all sectors, including the customary sector.

Recommendation:

The Committee supports the proposed amendment with the broadening to cover all classes of fish for all sectors.

4.4 Commercially protected fish (reference number 12)

Commercially-protected fish are those which cannot be taken for sale. There is currently no offence under the FRMA for having these types of fish on commercial fishing boats or in premises from where fish are sold. The purpose of the proposed amendment is to close this compliance loophole.

The Committee generally agrees with the proposed amendment to this provision. However, it acknowledges an unintended consequence of the amendment – namely fish taken legally from a Australian Government fishery or a fishery in another state (e.g. South Australia) but which are protected in WA state waters - risk not being accepted by fish processors. As this is clearly not the intent of this amendment, the Committee recommends that this is included as a defence to the offence described in the proposed amendment.

Recommendation:

The Committee supports the proposed amendment with the inclusion of a defence if a person can show that the “protected” fish on commercial fishing boats, or on premises selling fish, were taken legally in an Australian Government fishery.

4.5 General penalty – combined catch (reference number 16)

There are two parts to the proposed amendment to this provision in the Discussion Paper. The first part of the amendment relates to the determination by the Court of the category of fish the subject of the offence. There were no substantive public comments on this proposal, and consequently, the Committee supports this part of the proposed amendment.

The second part of the proposal relates to people combining their catch and hence making it difficult for compliance officers to determine who has caught what. The

Committee supports the proposal that where two or more people have combined their catch and the combined bag or possession limit is exceeded (or there are protected fish amongst the catch), then all those people will be considered guilty of the offence. However, the Committee acknowledges the public comment that everyone present should not be charged if an individual/s admit/s to committing the offence. The Committee suggests that the proposed amendment does not apply in these circumstances.

Recommendation:

The Committee supports the first and second parts of the proposed amendment, as long as it is clarified that part 2 of the proposed amendment does not apply when a person admits to the offence.

4.6 Management of fisheries (reference number 17)

Reference 17 refers to the proposal of rewriting Part 6 (Management of fisheries) so that it clearly applies to all sectors, with a clear recognition of Integrated Fisheries Management. To assist Parliamentary Counsel in its drafting, the Department of Fisheries has included some of the principles of IFM. WAFIC has noted that one of the principles that has been agreed by Government – i.e. the consideration of compensation where reallocation results in a demonstrable loss to a licensed fisher, has been omitted from the list.

Even though the list of principles is presented as context for Parliamentary Counsel to draft the legislation, the Committee agrees that all approved principles of IFM should be included in the list.

Recommendation:

The Committee supports the proposed amendments to reference number 17 with the inclusion of the “compensation” principle in the list of IFM principles.

4.7 Management plan – ‘authorisations’ – RFLs (reference number 20)

The proposed amendments to this provision serve to broaden “authorisations” and management plans to cover all sectors. There are eight parts to the proposed amendment. The Committee supports the first three parts which relate to authorisations and management plans for recreational fisheries.

The next three parts relate to the differences between recreational and commercial authorisations – namely the proposal that there can be no objections made to the grant of recreational fishing licences (RFLs), a RFL cannot be varied, and RFLs and their associated entitlements cannot be transferred. The Committee supports the public comments and agrees that:

- (a) there should be a mechanism through which objections to the grant of RFLs can be made (see section 3.6);
- (b) holders of RFLs should be able to apply for a variation under certain circumstances; and

- (c) Some parts of the associated entitlements (but not the licence itself) of RFLs (e.g. tags) should be able to be transferred.

The proposal that provides the Executive Director power to issue authorisations for the purposes of managing customary fishing is dealt with further in section 3.3.

The final proposal that management plans for unitised fisheries need to specify the minimum levels of entitlement required before a licence can be operated, attracted no comments from either the public or from the Committee.

Recommendations:

The Committee supports the first three parts of the proposed amendment.

With respect to the next three parts, the Committee recommends that:

- there should be a mechanism through which objections to the grant of RFLs can be made (see section 3.6);
- RFL holders should be able to apply for a variation under certain circumstances; and
- some parts of the associated entitlements (but not the licence itself) of RFLs (e.g. tags) should be able to be transferred.

The Committee has no comment on the proposal for management plans to specify minimum levels of entitlement required before a commercial licence can be activated.

4.8 How an interim managed fishery becomes a managed fishery (reference number 30)

Section 63 of the current FRMA states that “an interim managed fishery can only become a managed fishery by a new management plan being determined for the fishery and the fishery being declared by that plan to be a managed fishery”. The Department’s proposal in the Discussion Paper was for this provision to continue to apply only to commercial fisheries.

While the proposed amendment to this provision attracted no comments from the public, the Committee does not support the proposal. It considers that as the proposed new Part 6 of the Act creates powers for a range of management plans to be developed – including for single sector, multi-sectors; single species, multiple species; and single region; the whole state; etc – then there should also be power for interim management plans to be put in place for the full range of options rather than just for commercial fisheries as is proposed. The Committee sees this as a logical extension of the IFM process.

Recommendation:

The Committee recommends that this provision should relate to all sectors and fisheries the subject of a management plan.

4.9 General penalty (reference number 35)

While the Department’s proposed concept of the development of a three-tiered approach to general penalties attracted no public comments, there was some concern about the interpretation of the level of seriousness of the failure to lodge returns in a

timely fashion. It was suggested that returns not submitted in time should not be considered as “fishing history” when considering allocations in the IFM process.

The Committee agrees that certain circumstances may need to be considered when assessing the seriousness of offences, but considers this to be a policy issue outside its terms of reference.

Recommendation:

The Committee supports the proposed amendments.

**4.10 New section – fish taken in excess of quota
(reference number 38)**

It is understood that the Department included this proposed new section to deal with over runs that may occur in quota-managed fisheries. The Committee understands that the proposed new provision deals only with the restitution to the Crown of fish taken **outside** of quota. The penalties awarded by the Court for the offence of fishing over quota will be in addition to this restitution.

Recommendation:

The Committee supports the proposed new provision.

4.11 Grant of aquaculture licence (reference number 41)

This proposed amendment was included to better reflect the factors that must be considered by the Executive Director before he approves the granting of an aquaculture licence. The Committee agrees that the flexibility of this provision should be maximised to respond to changing environmental, social and economic conditions.

Some of the other comments received on this provision were not directly concerned with the proposed amendments. Rather, they raised the issue of the ability for recreational fishers to object to the grant of an aquaculture licence. This matter is dealt with in section 3.7.

Recommendation:

The Committee supports the proposed amendment.

**4.12 Penalty for contravention of lease conditions
(reference number 45)**

This is a proposed new provision. While the aquaculture industry commented that there was no need for increased penalties for these matters, the Committee considers that this is currently a gap in the legislation that needs to be rectified.

Recommendation:

The Committee supports the proposed amendment.

4.13 Bonds and liability for costs (reference number 46)

This proposed new section provides the power for the Executive Director to require a bond from an aquaculture licensee and for that licensee to be liable for any costs of clean up etc as a result of that activity. While the Committee generally agrees with the concept it suggests that other alternatives to a bond should also be considered – for example, appropriate insurances, the appointment of a guarantor, etc – and included as options in the provision.

Recommendation:

The Committee supports the proposed new provision with the broadening of the range of options in addition to the power to demand a bond.

4.14 Designated Fishing Zones (reference number 55)

The proposed amendment to this provision suggests that designated fishing zones should continue to the extent they do not conflict with a management plan for the marine reserve in which they may operate. While there were some public comments about this proposal, the Committee considers them to be of an operational nature and outside the terms of reference for the Committee.

Recommendation:

The Committee supports the proposed amendment.

4.15 Register (reference number 58)

The Discussion Paper proposed two amendments to this provision in the FRMA. The first was to enable access for prescribed prosecuting or investigating authorities to information on the Register. The second was to provide power for the Registrar to delegate his authority when required. The latter received no comments from the public or the Committee. The first proposal received support as well as a suggestion that the details of recreational fishers should be made publicly available.

The Committee does not agree that information about recreational fishers should be made publicly available, as this access may subject recreational fishers to unwanted targeting by marketing and other non-prescribed organisations.

Recommendation:

The Committee supports both parts of the proposed amendment.

4.16 Transfer on death of holder (reference number 59)

The Committee understands that the inclusion of this proposed new provision is in response to the matter being raised with the State Solicitors' Office, and its subsequent response. It also understands that the Government has committed to increasing the security of fishers' rights, and providing the ability to bequeath an authorisation and its associated entitlement is a reflection of these increased rights.

Recommendation:

The Committee supports the proposed new provision.

4.17 Renewal after expiry (reference number 60)

The Discussion Paper suggests that there may be times when there are valid reasons for a fisher to be unable to meet the existing 60-day renewal period. The proposed FRMA amendment extends the period for renewal for authorisations that expire after the enactment of the amendment, to 12 months at the Minister's discretion. The Committee is unclear about the policy background for this proposal and cannot support it at this time.

Recommendation:

The Committee is unclear of the policy rationale behind the proposal for the extension of the renewal period to twelve months, and recommends that further justification be provided by the Department of Fisheries.

4.18 Temporary transfer of entitlements (reference number 62)

The proposed amendment to this provision would enable all entitlement to be moved temporarily off a licence without voiding that licence. While the only public comment about this proposed amendment was not supportive of the change, the Committee considers that the proposal reflects National Competition Policy principles of decoupling activity licences from units and entitlements. It also considers that the amendment will encourage more investment in fisheries, and provide a more professional business framework.

Recommendation:

The Committee supports the proposed amendment.

4.19 Variation (reference number 63)

The proposed amendment increases the ability of the Executive Director to refuse an application for a variation in an authorisation for reasons such as to prevent or mitigate environmental harm, or for any other reason set out in the Regulations or in the relevant Management Plan.

Comments from the public suggested that the Executive Director should also be able to refuse an application for a variation if he considered that public health would be put at risk, and only in accordance with ecologically sustainable development principles. The Committee considered the public comments and is of the view that the suggestion with respect of Ecologically Sustainable Development (ESD) is already covered by the provision, and that public health issues are outside the scope of the FRMA.

Recommendation:

The Committee supports the proposed amendment.

4.20 Miscellaneous offences (reference number 70)

The Discussion Paper outlined two major amendments to this provision. The first was

the proposed creation of a new general offence relating to the possession of fish taken by unauthorised fishing gear, or gear used in contravention of the Act, regulations or management plan. This proposal received support from the public and also prompted the suggestion that another general offence be created to deal with fishers who left unwanted or untargeted fish (eg blowfish) on the shore, jetty or elsewhere to die, rather than returning them to the water as quickly as possible. The Committee supports this proposal.

The other part of the proposed amendment dealt with people who “attempted to commit” an offence or people who aid, abet, etc another to commit an offence. The Department proposes that these people should all be treated as though they have committed the offence. This part of the proposed amendment attracted no comments from either the public or the Committee.

Recommendation:

The Committee supports the proposed amendment. It also recommends that an additional general offence be created for not returning unwanted fish to the water as soon as possible.

4.21 False statements in applications (reference number 75)

The proposed amendment to this provision is in two parts: the first to extend the existing provision to cover all documents relating to authorisations, entitlements or rights; and the second to create an offence for knowingly using a false document to get a benefit. Only the first part of the proposed amendment attracted a comment, and that was to further extend the provision to include “returns”. The Committee agrees that the word “returns” needs to be incorporated into the header and in the amended provision.

Recommendation:

The Committee supports the proposed amendment with the inclusion of “returns” throughout the amended provision.

4.22 Warrants – high value species (reference number 78, subsection 2)

The proposed amendments to this provision were in two parts: firstly enabling a Fisheries Officer who executes a warrant from not necessarily having to be the officer who obtained the warrant; and secondly, extending the powers of Fisheries Officers to obtain a warrant to enter and search a premise where it is reasonably suspected that high value fish species are being held.

While the first part of the proposed amendment attracted no comments, the second part received a comment which suggested that Fisheries Officers should have additional powers for entry and search of premises where it was suspected that non-priority fish species may be held. With respect to this comment, the Committee generally supported the extension of powers for Fisheries Officers to deal with lower value species, but it understands that the coercive powers of the State needs to be

balanced with the right of an individual to enjoy their privacy. The extent of powers of a Fisheries Officer is a political decision.

Recommendation:

The Committee supports the proposed amendment related to warrants.

4.23 Other powers of fisheries officers (reference number 81)

The Discussion Paper proposed four amendments to this provision:

1. provide power for a Fisheries Officer directing someone to stop to move, or be moved, to a safe stopping place;
2. more broadly define the records and documents Fisheries Officers may require and inspect to include financial records of the relevant fishing business;
3. redefine “photographs” to include all images, however stored (e.g. electronically or hard copy); and
4. ensure people who have been directed to wait for a Fisheries Officer must not interfere with any potential evidence.

Only the proposal about requiring financial records attracted a direct (and non-supportive) comment. However, the first proposal prompted a suggestion that Fisheries Officers should be cross-authorised to carry out duties on behalf of other agencies (eg DEC) and co-badged so that their uniforms display the logos of each of the agencies for whom the officer may represent in the field. The other proposals received no comments.

The Committee agrees with the proposed amendment with respect to the requirement for relevant financial records. It agrees that such records may be essential for an investigation particularly with respect to organised crime.

The Committee agrees with the public comment that Fisheries Officers should have cross-jurisdictional powers. However, it understands that it is legislation such as the *Conservation and Land Management Act* and the *Wildlife Conservation Act* that are unclear about the powers of Fisheries Officers as *de facto* wildlife or Conservation and Land Management (now DEC) officers. Addressing this situation is outside the scope of the Review.

Recommendations:

The Committee supports the proposed amendments to this provision.

4.24 Liability of officers for offence by body corporate (reference number 87)

The proposed amendments to this provision are in two parts: the first proposing the requirement for officers of a corporate body to prove they are not responsible for an offence; and the second about establishing the state of mind of a body corporate.

The public comments on the proposed amendment focussed on the requirement for “reverse onus of proof” and the concern that this concept was without precedent. In fact, the Committee understands that a similar requirement is outlined in other

legislation – for example the Victorian *Fisheries Act 1995* s.120– and is an accepted method to prove innocence in these circumstances.

There was also concern about the scope of the definition of “corporate body” within this proposed amendment. The Committee agrees that a clear definition of the term is required and suggests its inclusion within the “Interpretation” section of the Act.

Recommendation:

The Committee supports the proposed amendment, with the inclusion of a definition of “corporate body” in the Interpretation section of the Act.

4.25 Responsibility of adults (reference number 88)

The Discussion Paper described incidents where adults have claimed that children were the “owners” of any undersized fish found in the catch by fisheries officers. The proposed amendment is framed to make adults in charge of children responsible for their fishing activities.

The Committee supports the proposed amendments to this provision, acknowledging that “in possession of” will need defining in the Interpretation section of the FRMA.

Recommendation:

The Committee supports the proposed amendment with the inclusion of a definition of “in possession of” in the Interpretation section of the Act.

4.26 Evidence of scientific matters (reference number 95)

The proposed amendment to this provision was framed to broaden the scope of scientific evidence presented in a Court to include aquaculture, fishing gear, fish biology and pathology. The public comments raised the question of whether this would include DNA evidence. While the Committee understood that DNA evidence would be included in “scientific evidence”, it suggests that to put the matter beyond doubt, “DNA evidence” should be specifically included in the amended provision.

Recommendation:

The Committee supports the proposed amendment with the specific inclusion of DNA evidence in the provision.

4.27 Additional penalties based on ten times value of fish (reference number 100)

The Discussion Paper proposed two amendments to this provision: the first to clarify that the additional penalties should be based on the value of the fish that are subject of the offence; and the second to provide a maximum penalty that can be imposed in respect to circumstance, class of person, or class of the offence.

The second part of the proposed amendment attracted comments that there should be no maximum penalty. The Committee, however, considers that unless penalties are capped in the proposed manner, unfair and unrealistic fines may result, particularly

for some recreational fishing offences and commercial fishing offences of a technical nature.

Recommendation:

The Committee supports the proposed amendment.

4.28 Court may prohibit person (reference number 103)

The Committee understands that the three amendments proposed to this provision are designed to enable Fisheries Officers to more effectively deal with serial offenders. The first of these proposals – prohibiting serial offenders being on any boat (rather than any commercial fishing boat) – attracted a comment that this prohibition should only refer to boats in certain places.

The Committee did not agree with the public comment. It understands that black market offenders regularly use non-commercial fishing boats for illegal activities, and Fisheries Officers should have the powers to deal with these offenders in any location in State waters.

Recommendation:

The Committee supports the proposed amendment.

4.29 Giving of notice (reference number 105)

The proposed amendment to this provision extends the time for which an infringement notice may be served, from 21 days after the date of the alleged offence to 90 days after the Fisheries Officer becomes aware of the offence. While there was some support for the proposal, it was also suggested (by two respondents) that 90 days was too long and a more reasonable period should be 45 days after the Fisheries Officer becomes aware of the offence. The Committee supports this latter view.

Recommendation:

The Committee recommends that the period of time be amended to 45 days after the Fisheries Officer becomes aware of the offence.

**4.30 Fisheries Research and Development Fund
(reference number 106)**

The proposed amendments to this provision broaden the types of funds that can be credited to, and the sorts of activities that can be paid out of, the Fisheries Research and Development Fund. While there was general support for the proposed amendments, there was a comment that “aquaculture” had been omitted from the list of potential beneficiaries of the Fund, and that an “indigenous fishing fund” should be additionally created.

The Committee agreed that “aquaculture” should be included in the list of potential beneficiaries of the Fund. It also suggested that the Fund should be used to receive any funds provided to the recreational or customary sectors for reallocation purposes, and as a source of funds for these sectors to purchase shares from other sectors. The

Committee considered that the establishment of an Indigenous Fishing Fund (as described in the Aboriginal Fishing Strategy) would be more appropriately established under other State legislation such as the *Industry and Technology Development Act 1998* or under Commonwealth legislation.

Recommendations:

The Committee supports the proposed amendment, with the following additions:

- the Fund is to be credited with funds provided to the recreational and customary sectors for reallocation purposes;
- the Fund is to be a source of funds for the purchase of shares by the recreational and customary fishing sectors; and
- aquaculture is to be included as a potential beneficiary of the Fund.

4.31 Confidentiality (reference number 111)

The Discussion Paper proposed three amendments to this provision: the first providing for the release of summaries of catch and effort data; the second allowing for the release of confidential information to approved investigating agencies; and the third ensuring that catch history is transferred with the licence. Only the first proposal attracted comment, with suggestions to consider alternative mechanisms to ensure confidentiality.

The Committee agrees that alternative methods such as the use of other statistical aggregation models, or delaying the release of information to the public, should be considered to ensure confidentiality. It suggests that it may be appropriate to provide a power for the Regulations to allow the Executive Director to prescribe alternate methods to ensure confidentiality of fishers when their catch and effort data are released.

Recommendation:

The Committee recommends that a head power be drafted to prescribe alternate methods for ensuring the confidentiality of fishers when catch and effort data are released.

4.32 Regulations – other licences (reference number 115)

The proposed amendments to this provision provide for the regulations to provide the capacity for the licensing of all activities under the IFM framework, and to license “masters”. The public comments included a concern that the licensing of masters may duplicate the Department of Planning and Infrastructure’s role, and a lack of support for the proposed licensing of customary fishing.

The Committee understands that the “masters” referred to in this provision are “fishing” masters – not masters responsible for marine safety. Hence it sees no overlap with other legislation on this issue. With respect of the licensing of customary fishers, while the Committee acknowledges the public concern with this issue, it suggests that providing powers to regulate customary fishing is merely maximising future options. This matter is dealt with in more detail in section 3.3.

Recommendation:

The Committee supports the proposed amendment.

4.33 Regulations – miscellaneous (reference number 116)

The Discussion Paper outlined a number of additional powers required to regulate the range of activities and functions that had been identified through the broadening and updating of the Act. The comments received on the proposals included suggestions for further extension of this section – specifically in respect of customary fishing, the provision of catch and effort data from the recreational fishing sector, and the registration of fish receivers and dealers. There was also support for the proposal to include a head power in the Regulations to allow holders of Commercial Fishing Licences (CFLs) to apply for a Recreational Fishing Licence (RFL) in certain circumstances

The Committee generally agreed with both the proposed amendments, and the additional proposals from the public. It had some concerns about the proposal to allow CFL holders to hold RFLs, and suggests that the circumstances in which this may occur be prescribed in the Regulations.

Recommendations:

The Committee supports the proposed amendments with the inclusion of the following powers:

- enabling barter and exchange by customary fishers;
- regulating customary fishing;
- requiring data to be provided by the recreational fishing sector; and
- allowing registration of fish dealers and receivers.

It recommends also that holders of CFLs may obtain a RFL under prescribed (rather than “certain”) conditions, so that these must be specified in the Regulations.

5. GENERAL COMMENTS

A number of respondents provided either general comments on the FRMA, or suggestions on specific provisions which had not been picked up in the matrix. A summary of these comments, and the Committee's responses, are provided in Table 2 of Volume 2 of this Report.

Many of the suggestions are either outside the Committee's terms of reference, or have been incorporated into the relevant sections of this report. However, the Committee considered that three topics required further development and consideration. These are discussed under points 5.1, 5.2 and 5.3 below.

5.1 Designated Fishing Zones (s109, s112 FRMA)

There were a number of comments about s109 ('Area may be prescribed to be designated fishing zone') and s112 ('Directions relating to designated fishing zones') of the FRMA. With respect to s109, the provision currently requires that it is the Governor who decides whether an area meets the criteria to be prescribed a designated fishing zone (DFZ).

The suggestions for this provision included the proposal that the Minister (rather than the Governor) should make the decision, and that the criteria be clarified to ensure that DFZs can be declared for either commercial or for recreational fishing. The Committee agrees with both proposals and suggests that the Regulations be amended to describe both recreational and commercial DFZs.

There were also some comments both from individuals and from WAFIC, about the operation of DFZs generally. The Committee acknowledges that there may be some operational issues about DFZs that need consideration by both the Department of Fisheries and the commercial fishing industry. It recommends that further discussions be held about the matter.

Recommendations:

The Committee recommends that the word 'Governor' be replaced with 'Minister' in s 109(1), and that the Regulations clearly identify both commercial and recreational DFZs.

5.2 Aquaculture (s93, s97 FRMA)

The Aquaculture Council of WA made a number of comments and suggestions with respect to aquaculture. There were two suggestions that require further development in this section: namely, to provide a power to enable longer term licences; and a power to enable the application for a renewal of a lease site half way through the term of a lease.

With respect to the matter of longer-term licences, the Committee believes that the power already is provided in s93 of the existing FRMA. It therefore considers that no further amendment is required to achieve this outcome.

With respect to the timing of the application for renewal of a lease, the Committee is aware that the Minister is currently considering a similar proposal for pearling leases. The proposal for pearling leases would enable a lease-holder to apply for a renewal of his lease 15-18 years into the 21-year term. The Committee considers that this increased level of security of tenure has merit and recommends that this matter be considered in line with the proposed new pearling legislation.

Recommendation:

The Committee recommends that the issue of renewal of aquaculture leases be considered in line with the proposed new pearling legislation.

5.3 Management plans (s65 FRMA)

There was a suggestion that the Minister should not be able to revoke a management plan as currently provided in s65 ('Procedure for amending management plan'). Instead, it was suggested that if there was a need to close a fishery for a period (due, for example, to sustainability issues), then the management plan should be amended rather than revoked.

The Committee considered the suggestion and believes it has some merit. It suggests that the Department of Fisheries gives further consideration to the matter.

Recommendation:

The Committee recommends that further consideration be given by the Department of Fisheries to the issue of the Minister revoking management plans.

6. NEXT STEPS

This draft report is now open for public comment until **16 February 2007**. During that time, the Review Committee will be visiting a number of ports and regional centres to discuss the report, and any concerns or comments people may have. The exact dates and venues for these meetings will be advertised in both the local and state media outlets.

Once submissions have been received on this draft report, a final report will be developed and forwarded to the Minister for his consideration. It is likely that the final report may form the basis of the drafting instructions for the *Fish Resources Management Act* Amendment Bill which will bring the FRMA into the 21st century.

APPENDIX 1 LIST OF ACRONYMS

AFMA.....	Australian Fisheries Management Authority
BCB.....	Biodiversity Conservation Bill
BAMB.....	Biosecurity and Agriculture Management Bill
CFL.....	Commercial Fishing Licence
ED.....	Executive Director, Department of Fisheries
EPA.....	Environmental Protection Authority
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act</i>
FAS.....	Fisheries Adjustment Schemes
FO.....	Fisheries Officers
FRDF.....	Fisheries Research and Development Fund
FRMA.....	<i>Fish Resources Management Act 1994</i>
GPS.....	Global Positioning System
IFM.....	Integrated Fisheries Management
LAA.....	<i>Land Administration Act 1997</i>
RFL.....	Recreational Fishing Licence
SAT.....	State Administration Tribunal
SHL.....	Sustainable Harvest Level
VMS.....	Vessel Monitoring System
WA.....	Western Australia

Proposed Amendments to the *Fish Resources Management Act 1994*
Volume 2 of 2 – Matrix of Proposed Amendments

Draft Report of the Ministerial Review Committee

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INTRODUCTION

This document is a companion document to the “Draft Report of the Ministerial Review Committee; Proposed Amendments to the *Fish Resources Management Act 1994*. Volume 1”.

Volume 2 presents the data upon which the overview and recommendations in Volume 1 were based. It provides comments from the submissions received on the Department of Fisheries’ Discussion Paper¹ released for public comment in April 2006, together with the Ministerial Review Committee’s responses to these submissions and suggestions. The comments are summarised in two new columns of the matrix that was originally produced in the Discussion Paper.

The Matrix

The matrix has now been colour-coded. Proposed amendments that have received considerable discussion and concern expressed, have been coloured **tan**. These issues have been further developed and discussed in Section 3 (‘Key Policy Issues’), Volume 1. They include such matters as “overlapping legislation”, advisory committees, and customary fishing.

For some proposed amendments to the provisions there has been a mixed response with some submissions supporting, and others not supporting the proposal. These are highlighted in **green** in the matrix, and include such matters as the requirement of bonds, and the responsibility of adults for the actions of children in their care. The Committee has considered the submissions, sought further clarification where required, and come to the views described in Section 4 (‘Other Issues’) in Volume 1.

In a number of cases submissions from the public have substantially supported the proposed amendments. Where the Committee has also supported these proposed amendments, they have been left un-highlighted (appearing as white) in the matrix. Where there have been no comments from either the public or from the Committee on the proposed amendments, these have also been left un-highlighted (so appearing as white in the matrix).

In a number of instances, there have been multiple, similar responses to a proposed amendment – for example three people may support the proposed amendment. This is represented in the relevant provision in the “Substantive Comments – Public Consultation” column as, “Support (x3)”.

Other Comments

Some respondents provided comments on the FRMA which were not directly linked to a proposed amendment in the matrix. These comments have been summarised in Table 2, then linked where possible, to an appropriate matrix reference which may develop similar concepts or issues. The Committee’s response to the comment is presented in an additional column in Table 2.

The Committee’s consideration of both these comments, and those on the proposed amendments outlined in the matrix, have provided the basis for the recommendations presented in Volume 1.

¹‘Proposed Amendments to the *Fish Resources Management Act 1994*. Fisheries Management Paper No. 208’. April 2006.

Table 1: MATRIX OF PROPOSED AMENDMENTS

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s recommendations
1	PART 1 – PRELIMINARY S3 Objects <i>(the purpose/s of the Act – provides the framework)</i>	<p>The existing objects are reasonably narrow and reflect an era where fisheries management was primarily focussed on fishing activities. The Government’s approach to fisheries management, the community’s expectations, and the way people react to the Act have changed since that time.</p> <p>The requirements of the <i>EPBC Act 1999</i> means that the scope of the objects needs to be broadened so that interactions with non-targeted and protected aquatic fauna may be limited and recorded. Providing for the FRMA to deal with these issues in regard to fishery-caused interactions supports the provisions for the conservation and management of these species under the <i>Conservation and Land Management Act 1984</i> and</p>	<p>The proposed primary object of this Act is to conserve and develop and share <i>the² State’s fish, other aquatic resources and their habitats</i>.</p> <p>In particular, it is proposed that this Act has the following secondary objects:</p> <p>a) To conserve fish and protect their environments;</p> <p>b) <i>To ensure the impact of fishing activities on aquatic fauna and their habitats is minimised;</i></p> <p>c) To ensure the <i>use of aquatic resources</i> is carried out in a sustainable manner;</p> <p>d) To enable the management of fishing, aquaculture and associated industries, aquatic eco-tourism and other tourism <i>and non-extractive uses reliant on fish and the aquatic environment;</i></p> <p>e) To foster <i>appropriate levels of</i></p>	<p>Objects to be limited to fishing activities only. Support - ESD and precautionary principle should be included as principles within the objects.</p> <p>Support (x2).</p> <p>Support (x3). Do not support (‘impact’ may be interpreted to mean fishing) (x2).</p> <p>This object should not refer to ‘aquatic resources’, it should refer to ‘fishing activities’ only (x2).</p> <p>Do not extend objects to include non-extractive uses.</p> <p>Proposed alternative ‘to foster</p>	Dealt with in Part 3.

² Italicised objects are the proposed new objects, or proposed amendments to the existing objects

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s recommendations
2	S4 Interpretation <i>(list of definitions of words and terms used in the Act)</i>	<p>A range of new terms and words will be required in the proposed amendments to the Act to enable the implementation of new and modified policies. The words and terms will need to be clearly defined at the beginning of the FRMA to ensure a common interpretation of the Act.</p> <p>Some of the current definitions have proved over time to be unclear, or able to be interpreted in a way that was not the intent. A modification of their definitions is required.</p>	<p>Definitions required for new terms – required for new provisions – for example:</p> <ul style="list-style-type: none"> • aquatic resources • broodstock • bycatch • commercial quantities • customary fishing • holder (for the purposes of s140) • spat • sustainability • sustainable harvest level. <p>Clarification of definitions required – for example:</p> <ul style="list-style-type: none"> • authorisation • aquaculture • master • recreational fishing • sell. 	<p>Restrict the definition of ‘fish’ (x3).</p> <p>No need for definition of ‘aquatic resources’.</p> <p>Include definitions of ‘processing’</p> <p>‘fishing activities’</p> <p>‘release of fish’</p> <p>‘maters of boat’</p> <p>‘Public Drinking Water Source Areas’</p> <p>‘Designated areas’.</p> <p>Full range of activities included under ‘aquaculture’</p> <p>‘seedstock’ (includes spat)</p> <p>‘habitat’ (include augmentation).</p>	<p>Definition of ‘fish’ dealt with in Part 3, Volume 1.</p>
3	S5 Meaning of WA Waters	<p>The current definition of WA waters does not include artificial water bodies which are not fed or created by natural creeks, rivers and streams.(e.g. ‘turkey nest’ dams).</p> <p>To ensure that marine resources contained in such water bodies can be managed, there is a requirement to amend the current definition of ‘WA</p>	<p>Amend to ensure the flexibility to extend definition of “WA waters” to include artificial waters (e.g. in dams and ponds on private property not fed by naturally occurring water) and for prescribed purposes and species.</p>	<p>Do not support (x3).</p> <p>‘Fisheries Officers’ – or ‘Fisheries and Marine Officers’? (x2).</p>	<p>Needs clarification – if the proposed amendment refers to priority species only, support proposed change.</p> <p>Agree that ‘Fisheries Officer’ be replaced with ‘Fisheries and Marine Officer’.</p>

				waters'. It is proposed to only manage such private waters where there is a demonstrated need (eg to protect priority species).		
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Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments Public Consultation	Review Committee’s recommendations
4	S6 Application of the Act to Aboriginal persons	The indigenous sector to be recognised in Part 6	DELETE (subsumed by <i>Commonwealth Native Title Amendments Act 1998</i> , ‘customary fishing’ now dealt with in Part 6)	Support Customary fishers should not be required to have a recreational fishing licence.	Dealt with in Part 3, Volume 1.
5	S7(3) Exemptions (<i>circumstances where the Act does not apply</i>)	Provide the ability for the Executive Director or Minister to waive the requirement for application and/or fees for exemptions in certain circumstances (eg class exemptions for recreational fishers). Fisheries Officers undertaking investigations sometimes need to operate contrary to fisheries management legislation – e.g. taking lobsters for the purpose of marking them and following them through an illegal black market operation. Although the Minister has an undefined general power to grant exemptions to Fisheries Officers, it	Amend so that the Minister or the Executive Director may waive the requirement for an application, and/or the required fee in certain circumstances. Include a purpose in section 7(3) which enables the Executive Director to exempt Fisheries Officers from specific provisions of the FRMA when carrying out specified investigations and enforcement duties.	Support (whole provision). Do not support use of exemption to create additional fishing right in a managed fishery. Support – but extend to include the exemption for FOs to recover and rescue fish.	The Committee supports the entire proposed amendment, with the inclusion of ‘recovery and rescue of fish’ in s7(3).

		is proposed to provide a specific power for the Executive Director to issue this class of exemption. This will provide clarity and be more operationally responsive.			
	PART 2 – ADMINISTRATION				
6	New section	Ensure powers for the Department of Fisheries to be able to outsource specific functions, where required, to provide more economically viable business outcomes.	Create a power for the Executive Director to outsource specific agency functions to the private sector.	Maybe unnecessary. Do not support. Support (x2).	The Committee supports proposed amendment to ensure cost efficiency.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s recommendations
7	S11 Fisheries Officers and other staff	To minimise the potential for acting inappropriately, it is proposed to include a specific provision which addresses potential conflicts of interest.	Provide that Department of Fisheries staff cannot hold an interest in an authorisation or business connected with fish, unless the Executive Director is satisfied that the interest in the business is significantly remote to be of no consequence.	Maybe unnecessary – <i>Public Sector Management Act</i> s102 may override proposal. Support (x2).	The Committee supports the entire proposed amendment, acknowledging that Parliamentary Counsel may decide that the PSMA makes the proposed amendment unnecessary.
8	S14 Minister may carry out research <u>and other activities</u>	Require power for the Minister to carry out activities (in addition to research) to facilitate joint servicing arrangements in the better interests of the industry and of the State, and to increase potential trade and other partnership opportunities.	Amend header so that the Minister may carry out a range of activities relevant to the objects of the Act. Provide powers for the Minister (whether in partnership with other government departments, educational institutions, or other research bodies, or not), to provide research activities, or advisory, extension and consultative or other services, on a fee-for-service basis. Provide powers for the Minister to enter into agreements with other inter-state Ministers for the purposes of co-operating in furthering the objects of their corresponding legislation.	Activities to be confined to specific list. Education to be free (not fee-for-service). Support (x2).	The Committee supports the proposed amendment.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s recommendations
9	<p>PART 4 – ADVISORY COMMITTEES</p> <p>Part 4 – Advisory Committees Ss 29-40 <i>(refers to the Ministerial and Management Advisory Committees set up to facilitate engagement with stakeholders)</i></p>	<p>Require flexibility for the Minister to alter the functions and membership of Advisory Committees to address priorities and issues of the time, and meet changing community expectations.</p>	<p>Collapse the whole of Part 4 into one division so no individual Advisory Committee is identified by name in the Act. Provide that the Minister shall determine the membership, chairman and functions of the Committees. Provide that the Minister may (in writing) establish Advisory Committees for the integrated management of fisheries; Fish Habitat Protection Areas; western rock lobster management; recreational fishing; and for the development and management of aquaculture. A schedule to the Act has effect with respect to the constitutions and proceedings of each Advisory Committee.</p>	<p>Support (x4). Support – but ensure membership based on Ecosystem Based Management principles. Include independent governing Board for aquaculture. Do not support (no guarantee that future Ministers will appoint a RFAC). Include Schedule of Committees in the Regulations. Need to take account of consultation with indigenous people.</p>	<p>Dealt with in Part 3, Volume 1.</p>

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s recommendations
	PART 5 – GENERAL REGULATION OF FISHING				
	Division 1 – Prohibited fishing				
10	S43 order may prohibit fishing	<p>Management Plans deal with the rules relating to a particular fishery, while s43 orders can be of a general nature applying across a wide range of fisheries, species or activities. S43 orders are also used currently as a “quick response” mechanism to an urgent issue. Where a fishery is subject to both an s43 order and a Management Plan, it is considered that the s43 order prevails. The commercial fishing sector is concerned that s43 orders could be inappropriately used to <i>de facto</i> manage particular fisheries. To ensure this does not occur, where an order impacts on a Management Plan, the Minister shall consult with industry before making the order</p>	<p>Provide that the Minister shall not make an s43 order where the scope and intent of such an order could have been fully achieved through a variation to a single Management Plan. Provide also that where an s43 order impacts on a Management Plan, the Minister shall consult with industry before he makes the order – except in circumstances where, in the Minister’s opinion, the ecological sustainability of the fish stock is at risk.</p>	<p>Restrictions on activities to be consistent with Department of Water’s (DoW) policies and procedures.</p> <p>Do not constrain to commercial fishing.</p> <p>Minister needs to consult with all relevant stakeholders (not just industry).</p>	<p>The Committee notes that the proposed legislation broadens the scope of management plans to include fisheries other than commercial fisheries (ref. 19). Accordingly, this amendment should include the requirement for appropriate (which may include DoW) consultation by the Minister when making an s43 order which may impact on a management plan.</p>

		except where the Minister holds the opinion that the fish stock or aquatic environment is at risk. The current Act only provides limited powers for the total prohibition for possession of fish to ensure sustainable management and effective compliance. For example, there is no power to prohibit the possession of shark fin in certain circumstances (unless the shark is a totally protected species).	Amend s43 to provide the power to prohibit the possession and take of specified fish, parts of fish or classes of fish in specified circumstances.		The Committee has no comments on this part of the proposed amendment.
11	Division 2 – Protected fish S45(1) Class of fish may be prescribed as protected fish	With the implementation of IFM, different sectors may be managed under significantly different sets of rules. There is a need to provide the ability to declare protected fish specifically for recreational fishermen, e.g. recreational fishers may want a size limit on salmon, which is different from the size limit on salmon in the commercial sector.	Need for “recreationally protected” fish category to cover fish protected from recreational fishing activity or from any other activity of any prescribed class of persons. This will allow for different rules across classes and between classes of persons.	What happens to protected fish, once caught that aren’t going to survive if returned to the water? All fish protected under the BCA unless caught under some permission. Maximise flexibility and address commercial, recreational, customary classes of fish. Broaden to allow commercial fishers different size limits.	Dealt with in Part 3, Volume 1. The Committee agrees that s45 should be rewritten to ensure maximum flexibility for all classes of fish and sectors.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s recommendations
12	S47 Commercially protected fish	Commercially protected fish are those fish which cannot be taken for sale. However, currently, the legislation does not make it an offence to have such fish on commercial fishing boats or premises engaged in the sale of fish. This is an enforcement loophole which needs to be closed.	Amend so that it is clear that a person must not have in their possession commercially protected fish on a fishing boat or commercial premises where fish is processed, stored or sold for any purpose.	<p>What happens to protected fish, once caught that aren’t going to survive if returned to the water?</p> <p>All fish protected under the BCA unless caught under some permission.</p> <p>Do not support – unintended consequence of legally taken Australian Government fisheries species not being accepted by processors.</p>	<p>Dealt with in Part 3, Volume 1.</p> <p>The Committee acknowledges the issue of fish taken legally from an Australian, or other State Government managed fishery and suggests the inclusion of this as a defence.</p>

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
13	Division 3 – Bag and possession limits S50 Bag limits – taking of fish	The current provision does not provide the flexibility for bag limits to apply for different periods at different times of the year. – e.g. there may be different bag limits set at different stages of the breeding cycle of a particular species. Currently, the Act provides a defence in the bag and possession limit sections for the person who has aquacultured the fish, but not for the person who ultimately purchases the aquacultured fish.	Provide a power for different bag limits to be set for different periods at different times of the year. Amend s50(4)(b) to change ‘by the person’ to ‘by a person’.	Support (x3). Limits to be set with respect to ecologically sustainable fishing activities.	The Committee supports the proposed amendment.
14	S51 Possession limits – possession of fish	Currently it is not clear that people can legally purchase, and have in their possession, undersized fish which have been produced by a licensed aquaculture activity.	Amend s54(4)b to specifically provide a defence for people who purchase, and have in their possession, undersize fish which have been produced through aquaculture. Amend s51(4)b from ‘by the person, to ‘by a person’	Support Limits to be set with respect to ecologically sustainable fishing activities. Do not support – unintended loophole created. Provision needs to be made for methods for identification of undersized fish.	The Committee supports the proposed amendment, noting that the operational compliance issues raised need addressing by the Department.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s recommendations
15	New section required	<p>Currently the FRMA provides no powers for the Executive Director to determine fishing periods for customary and recreational fishing, and for commercial fishing activities that are not subject to Management Plans – except through a prohibitive process (ie through a s43 order).</p> <p>This provides flexibility for the Executive Director to open and close fishing seasons without amending subsidiary legislation. The use of such power would be in accordance with a Ministerial Policy Guideline after consultation with the particular sector concerned.</p>	<p>Provide for a power in all subsidiary legislation that allows for delegation for the Executive Director to determine (and publish) the length of fishing periods and the opening and closing dates.</p>	<p>Restrictions on activities to be consistent with Dept of Water’s policies and procedures</p> <p>Limits to be set with respect to ecologically sustainable fishing activities.</p>	<p>The Committee supports the proposed amendment.</p>
	Division 4 – General penalty				
16	S52 General penalty <i>(penalties for people who fish</i>	To date, the determination of the category of fish that is the subject of an	Amend the provision to enable the Court to determine the category of fish on best evidence where the intended species that is the subject of the offence cannot be	Separate netting out of provision example. Offence should be ‘net fishing where not allowed’ and no	The Committee supports the first part of the proposed amendment.

	<p><i>contrary to rules governing prohibited fishing or protected fish)</i></p>	<p>offence has defaulted to the category of lowest penalty. Penalties attributed by the Court need to accurately reflect the category of fish believed to be the primary target of the specific fishing method used – e.g. if a person has been net fishing in a known barramundi river, and, even if he has caught nothing, since the prime target was barramundi, the highest penalty class for that offence should apply.</p> <p>Current legislation has resulted in difficulties enforcing bag and possession limits where people have combined their catch since it is not possible to determine who has caught what.</p>	<p>determined beyond reasonable doubt.</p> <p>Amend the provision so that where two or more people have combined their catch and the combined bag or possession limit is exceeded (or protected fish are found in the catch) then these people are all deemed to be guilty of the offence.</p>	<p>additional penalty based on the value of the targeted fish.</p> <p>Support Allow one person to 'own up' before charging all. If offender unable to be identified – skipper responsible.</p>	<p>The Committee supports the proposed amendment, noting that this section does not apply to individuals who admit to being responsible for the offence.</p>
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Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments Public Consultation	Review Committee’s Recommendations
17	PART 6 – MANAGEMENT OF FISHERIES Part 6 – Management of fisheries	<p>Current provisions in this part of the Act refer to commercial fisheries only. IFM has been endorsed by the Government as the future for fisheries management and, as such, must be reflected in amendments to the Act.</p> <p>The provisions in this Part should apply to the management of all sectors. In practice, some may not apply to a particular sector at this time.</p> <p>The principles of IFM should be included at the beginning of the part to provide a context for management of the sectors.</p>	<p>Will require an ‘Interpretation’ section specific to this Part.</p> <p>The principles of IFM are:</p> <ul style="list-style-type: none"> • Fish resources are a common property resource managed by the Government for the benefit of present and future generations; • Sustainability is paramount; • Decisions must be made on the best available information, or on the precautionary principle; • A sustainable harvest level will be set for each fishery; • Customary fishing access right will be given priority over all other fishing access; • Allocations to user groups will account for the total mortality of fish resources resulting from the activities of each group (including bycatch and mortality of released fish); 	<p>Support (x2)</p> <p>Management plans to be developed in accordance with ESD principles and after consultation with the Biodiversity Commission.</p> <p>Include IFM principle of ‘consideration of compensation where reallocation results in a demonstrable loss to a licensed fisher’ (x2).</p> <p>Customary fishing does not have legislative force.</p>	<p>The Committee supports this proposed amendment with the addition of the ‘compensation’ principle, and noting that the ‘IFM principles’ identified are merely presented as a general context for the benefit of Parliamentary Counsel. It is understood that the principles do not represent legislative powers in their own right.</p>

		<ul style="list-style-type: none"> • The total harvest across all user groups will not exceed the prescribed sustainable harvest level; • Appropriate management structures and process will be introduced to manage each user group within their prescribed allocation; • Allocation decisions will aim to achieve the optimal benefit to the WA community; • Allocations to user groups will be generally made on a proportional basis to account for natural variations in fish populations; and • Management arrangements must provide users with the opportunity to access their allocation. 			
Division 1 – Management plans					
18	New sections required	Currently there are no appropriate provisions which enable the allocation of shares to different sectors (recreational, customary and commercial sectors), and the re-allocation of shares between the sectors under IFM.	Create a head power for the Minister to allocate, or to re-allocate, shares to various sectors. Create a head power for regulations to prescribe the process for the allocation, or reallocation, of shares to different sectors by the Minister.	Support (x2) Should be no reallocation of stocks from commercial fishers to recreational fishers.	The Committee supports the entire proposed amendment.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s recommendations
19	S56 General contents	<p>The existing provision was written in the context of management plans being only developed for the commercial take of fish. With IFM, there needs to be a clear capacity to enable the development and implementation of management plans for: recreational fishing (including passive or ecotourism use); customary fishing; commercial fishing (both for managed and unmanaged fisheries); and for no-take areas.</p> <p>There will need for flexibility to enable Management Plans to cover all sectors, one sector, one species, a range of species, an area or a range of areas, one activity or a range of activities, etc.</p> <p>Clarify that ‘interim managed fisheries’ only refer to commercial fisheries.</p>	<p>Provide powers for Management Plans to be developed for each sector, multi-sectors, a single species or multi-species, a region or a number of regions. Provide that a Management Plan may include provisions to modify fishing activity for biodiversity conservation, e.g. to protect sea lions from being caught in rock lobster pots.</p>	<p>Recreational fisheries Management plans need to include the requirement for fishers to provide catch and effort data.</p> <p>Provide process for setting Sustainable Harvest Levels for specific species in specific areas (x2)</p> <p>Executive Director to set the harvest levels. Minister to approve the shares.</p> <p>Set up power for trustees to hold and manage rights on behalf of recreational fishers. Need to have access to a fund (for buying shares) with the Minister to approve the source of funds. (x2)</p> <p>Provide a requirement for management plans to contain aims and objectives, and performance measures.</p> <p>Permit and define indigenous cultural fishing management plans (see SA Fisheries Bill).</p> <p>Interim managed fisheries should include recreational and other fisheries.</p>	Dealt with in Part 3, Volume 1.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s recommendations
20	S58 Management plan – “authorisations”	Currently the section primarily refers to commercial fishing. It should be clear that the provision is also relevant to other sectors (eg. Management Plans can be made for a recreational fishery). Customary and recreational fishing authorisations will have specific conditions which will need to be prescribed.	<p>Amend this section to specify that an authorisation with respect to recreational fishing means a licence, permit or other device (including registration, or tags) provided for under s257.</p> <p>Create a power to enable a recreational fisheries Management Plan to provide for different classes of authorisations (e.g. daily, weekly, tickets, tags, divers, etc). Ensure only “natural persons” are eligible for a recreational fishing authorisation.</p> <p>Prescribe the range of procedures for determining who will be granted an authorisation – e.g. tenders, ballots, lotteries or auctions.</p> <p>Provide that no objections to the grant of Recreational Fishing Licences (RFLs) will be considered.</p> <p>Ensure that a recreational fisheries Management Plan will specify the circumstances under which the Executive Director may vary an authorisation. The applicant for a RFL cannot apply for a variation – it is the Executive Director’s prerogative to vary it under certain circumstances. Ensure RFLs and associated entitlements cannot be transferred.</p>	<p>Does this section cover short-term recreational fishing licences?</p> <p>Provide for different classes of aquaculture licence.</p> <p>Do not support.</p> <p>RFL holder should be able to apply for a variation (x2).</p>	<p>The Committee supports the first three parts of this proposed amendment.</p> <p>The Committee agrees that in some circumstances, recreational fishers (and other persons) should be able to object to decisions. This is dealt with in section 3.6, Vol. 1.</p> <p>The Committee supports the public comments on this part of the proposed amendment – ie RFL holders should be able to apply for a variation under certain circumstances.</p>

		<p>To ensure that commercial fishing licence holders can only fish when their licence has a minimum number of units attached, management plans need to incorporate provisions for minimum unit holdings of permanent units to operate in a fishery.</p>	<p>Provide that a recreational fisheries Management Plan can prohibit the transfer of authorisations. Include a provision that allows the Executive Director to issue authorisations for the purpose of managing customary fishing.</p> <p>Provide the power for management plans for unitised commercial fisheries to specify the minimum levels of entitlement that are required to be attached to a licence before the licence can be operated.</p>	<p>Some parts of associated entitlements of RFL (eg tags) should be transferable (but not licence).</p>	<p>The Committee supports the public comments on this part of the proposed amendment – ie some parts of associated entitlements of RFL (eg tags) should be transferable (but not licence).</p> <p>The Committee has no comment.</p>
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Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
21	S59 Management plan – capacity of fishery	<p>With IFM, the capacity of the fishery may also be specified by reference to the gear type.</p> <p>Further explanation of ‘capacity’ is required as it is pivotal to the IFM concept of management.</p>	<p>Ensure that the capacity may also be specified according to fishing gear of a particular type.</p> <p>Amend so that it is clear that the Minister determines the share of the sustainable harvest level (SHL) for each sector and the Executive Director, from time-to-time, determines the SHL. The capacity of a commercial fishery is the share (as determined by the Minister) of the SHL expressed in terms relevant to the unit of entitlement.</p>	No comments.	The Committee has no comment on the proposed amendments.
22	S62 Management plan – miscellaneous (b) prohibit or regulate the use of any boat, vehicle, aircraft..	<p>The use of remote satellite tracking of fishing vessels allows for greatly improved compliance efficiencies if the mere presence of a fishing boat in a closed area is a prosecutable offence. This change would, for some offences, reduce the need for Fisheries Officers to prove that the offender was actually engaged in fishing. The fact that the fishing boat was in a prohibited area would be</p>	<p>Amend to enable a Management Plan to prohibit the ‘use’ and ‘presence’ of fishing and carrier boats in the waters of a fishery, or other waters at a specified time or during specified periods.</p>	<p>Instead, buy out Comet Bay trawlers.</p> <p>Support (x2).</p>	The Committee supports the proposed amendment in its entirety.

			<p>sufficient for prosecution.</p> <p>This measure increases the effectiveness of fisheries management and decreases the costs of compliance effort – e.g. less resources and time needed to undertake investigations and prepare briefs.</p>		

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
23	S62 Management plan – miscellaneous (e) ‘require specified gear or equipment to be installed...’	Clarify the sorts of gear or equipment which must be installed in, carried, or used on fishing boats in the fishery.	Include equipment used for research, monitoring or compliance programs.	Support – but does ‘equipment’ include for example Vessel Monitoring Systems (VMS)?	The Committee supports the proposed amendment, given that ‘equipment’ includes VMS.
24	S62 Management plan – miscellaneous (k) ‘specify the requirements related to any bycatch of fish in the fishery’.	The current provision specifically relates to fish that are caught as bycatch. To ensure sustainable management of the aquatic environment, other, non-fish bycatch (e.g. aquatic mammals, reptiles, seabirds) and fish byproduct (i.e. fish that are not targeted but used by the fisher) needs to be included in this provision.	Clarify and expand the provision to create a power for the effective management of byproduct. Extend to include the ‘bycatch of fish and other fauna’ in the provision. Include a subsection which provides power to regulate fishing activities which impact on non-target fish and aquatic fauna.	Should commercial fishers profit from byproduct? Extend to enable the information about bycatch to be publicly available, and require reporting.	The Committee supports the proposed amendment. The Committee supports the proposed amendment. It does not support an explicit provision to require information about bycatch to be publicly available – this is a matter for the relevant management plan. The requirement for reporting is covered in the proposed amendment ref 116.
25	S62 Management plan – miscellaneous (l) ‘require the holder of an authorisation to nominate – (i) an area... (ii) a period...’	Currently, a fisher only needs to nominate an area for fishing and the period of time he will be fishing. To maximise the flexibility of management of commercial fishing, the Management Plan	Add (iii) to include specific types of gear or any other activity as required by the Management Plan that will be used in the nominated area or during a nominated time.	Include gear that is prohibited (eg firearms).	The Committee supports the proposed amendment.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
26	S62 Management plan – miscellaneous (m) ‘...nominate...place..that fish ..will be unloaded.’ (n) ‘prohibit fish..unloaded outside the (nominated) port.’	The Management Plan needs to have the capacity to require the nomination of a time for the unloading of fish so that fish are not unloaded at unexpected times when compliance officers can not inspect them.	Ensure that a Management Plan may have the power to require fishers to nominate the time of unloading fish, and to prohibit fish from being unloaded at times other than the nominated time (if the Management Plan has required the nomination of time).	Support.	The Committee supports the proposed amendment.
27	S62 Management plan – miscellaneous (p) impose other obligations on the holders of authorisations...’	Clarify that the ‘persons acting on behalf of such holders’ as stated in the current subsection (p), refers only to authorisation holders in a commercial fishery. Recreational fishers may not act on behalf of a recreational fishing authorisation holder – they must be the holder of the authorisation.	Amend (p) so that it is clear that ‘persons acting on behalf of such holders or masters of boats’ refers only to commercial fisheries.	No comments.	The Committee supports the proposed amendment.
28	S62 Management plan – miscellaneous (q) ‘require specified records to be kept...’ by – (i) persons acting	The current provision is unclear as to who specifically is directly responsible for keeping records and submitting returns	Amend to provide the ability to specify who must keep, submit, or maintain records and returns. Amend (i) so that all authorisation holders, or, in the case of commercial	No comments.	The Committee supports the proposed amendment.

	under the authority of authorisations...?	(i.e. is it the licensee, or the master, or the lessee?). Clarify that (ii) refers to the commercial fishing industry, as recreational fishers may not sell fish.	fishing, persons acting under the authority of an authorisation holder, may be required to keep and submit records or returns. Clarify (ii) so that it refers to the commercial fishing industry.		
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Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
29	S62 Management plans – miscellaneous (u) ‘prohibit or regulate the handling,....’	<p>Currently this provision does not regulate or prohibit the possession of fish taken. It may be necessary to prohibit the possession of, for example, certain bycatch species.</p> <p>For effective quota management it is necessary to track and monitor fish through the marketing chain from the point of capture. Therefore, there is a need to control and monitor all people dealing in quota fish.</p> <p>‘Dumping of fish’ is currently not specifically identified as requiring regulation. An amendment is required to regulate such activity to control high grading in quota fisheries where low value catch is dumped and replaced by high value catch.</p>	<p>Include, ‘possession of’ after ‘storage’.</p> <p>Specify in a new subsection that a Management Plan may specify and regulate the persons (or class of persons) who deal, transport, or who may receive fish.</p> <p>Specify in a new subsection that a Management Plan may prohibit or regulate the disposal or return to any waters of any fish.</p>	Support (x2)	The Committee supports the entire proposed amendment.

		<p>There is a need for the clarification of responsibilities of persons operating in a fishery. In large fishing operations, particularly processing in quota fisheries, it may be necessary to identify persons responsible for certain activities to which certain legal responsibilities are ascribed (e.g. in a quota fishery, identifying the person responsible for receiving and weighing fish at a fish processing facility).</p>	<p>Provide in a new subsection that the authorisation holder may be required to nominate a supervisor to carry out any activity prescribed under a licence.</p>		
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Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
30	S63 How an interim managed fishery becomes a managed fishery	Currently, the provision refers only to commercial fisheries, and should continue to be interpreted in this way.	Clarify that the provision refers to commercial fishing only.	No comments.	The Committee considers that the provision should be broadened so that interim management plans can be put in place for all sectors, species, regions etc.
31	New section (specific to commercial fishing)	<p>Include a section to provide for the management of developing and exploratory fisheries by way of a permit limited in its scope and application (e.g. limited period of fishing allowed, specific area, non-transferable, non-reviewable by the SAT, not subject to FAS). This will enable the Executive Director to introduce flexible and immediate management prescriptions for fishing activities that do not warrant the complexities of a management plan. This would replace the variety of approaches taken to manage this class of fishing activity by a mix of orders, licence conditions and exemptions –e.g. mud crabs; octopus fisheries.</p>	<p>Provide a power for the Executive Director to declare a ‘permit fishery’ in commercial fisheries that are considered minor and/or developing and are not subject to a Management Plan. Provide a power for the Executive Director to issue permits for entry into these fisheries. The conditions attached to permits would be prescribed and would include:</p> <ul style="list-style-type: none"> • Permit valid for fixed period, with no right of renewal; • Permits are not transferable; • Permits are not subject to FAS; and • Decisions with respect to the granting etc of permits would not be subject to SAT review. <p>The addition of this provision will mean that no commercial fishing activity will be able to occur without either a permit, or a managed fishery licence (in a managed fishery).</p>	<p>Applications for new fisheries should be considered by formal committee, not by the Executive Director alone.</p> <p>Support – but consider how methods to collect data to ensure an assessment of sustainability of resource can be made before approval is given.</p>	The Committee supports the entire proposed amendment.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s recommendations
32	S69 Conditions	Clarify that a recreational fishing authorisation may not be transferred.	Clarify s69(2) to ensure that authorisations that are transferred are commercial fishing authorisations only.	No comments	The Committee has no comment on the proposed amendment.
33	S70 Authorisation ceases to have effect if management plan ceases to have effect	Clarify that s70(b) – ‘a management plan for an interim managed fishery.’ does not refer to recreational fishing since such plans will not occur in recreational fisheries.	Amend s70(b) to clarify that it refers to commercial fisheries only	No comments	The Committee has no comment on the proposed amendment.
Division 5 - Offences					
34	S74 Contravention of a management plan	The s222 additional penalties for management plan offences are, in some circumstances, creating excessive or unreasonable penalties, particularly for minor offences. See section 2.3.6 of this paper.	Remove reference to s222 in section 74. The application of s222 will be dealt with in a redrafted s75.	No comments.	The Committee has no comment on the proposed amendment.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s recommendations
35	S75 General penalty <i>(penalties for offences committed against the provisions of management plans)</i>	<p>The current legislation does not provide power to issue infringement notices for low level management plan offences, or for offences attracting unreasonable penalties not commensurate with the nature of the offence. For example, a fisher who fails to submit quota forms on time or fails to complete the form correctly should be dealt with by infringement notice and not by prosecution where there is no suggestion of quota fraud.</p> <p>Repeat offenders may ultimately need to be prosecuted but should not attract the high level of additional penalty under s222. However where there is quota fraud suspected with respect to the documents, then higher general penalties, including s222, would apply. See section 2.3.6 in this discussion paper.</p>	<p>Provide for a three-tiered (ie infringements, general penalty (fine), general penalty with an additional s222 penalty) approach to penalties which retains significant penalties for offences committed for gain but also provides for lower penalties including infringements for minor matters (e.g. errors and omissions). The structure and operation of the proposed three-tiered penalty approach will need further development as a part of the drafting process.</p>	<p>Failure to lodge a return in required time is not a ‘minor’. If not submitted in time, should not count as ‘history’ for allocations in IFM.</p>	<p>The Committee agrees with the proposed amendment and with the proposal that certain circumstances need to be considered when assessing the seriousness of offences – eg the regular and continual non- or late submission of returns may be considered as a major offence.</p>

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
36	S76 Court to order reduction of entitlement in certain circumstances	<p>There is currently some question of whether the Court can ‘round down’ to an amount less than one unit.</p> <p>Section 76(3) requires the Court to order a reduction in entitlement if fishing units have been used in excess of an entitlement e.g. if a person is convicted of over potting by six pots then the Court will reduce the unit holding of that authorisation by an equivalent of six pots. Authorisation holders can transfer their units prior to a Court case, thereby escaping the risk of a reduction of entitlement. Where this occurs, it is proposed to provide that the authorisation holder shall be required to pay the equivalent value to the FRDF. This is proposed to complement s140 when a transfer may</p>	<p>The Court is to round up or down to the nearest unit. If there is less than one unit, then it will be rounded up to one unit.</p> <p>If the Court finds that at the time of conviction, the entitlement the subject of reduction has been transferred or otherwise disposed of, then the Court shall order the authorisation holder to which the entitlement was attached at the time of the offence to pay to the FRDF the commercial value equivalent to the entitlement that was to be reduced.</p>	No comments.	The Committee has no comment on the proposed amendment.

37	S77 Contravention of condition of licence or permit	The provision was written specifically for commercial fisheries. Clarify that 'interim managed fishery permits' apply only in commercial fisheries.	have occurred through an administrative timing issue or by agreement with the Executive Director (refer item 61).	Amend header to replace 'licence or permit' with 'authorisation' and clarify that s77(b) applies only to commercial fisheries.	No comments.	The Committee has no comment on the proposed amendment.
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Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
38	New section	Given the nature of some quota fisheries, it is not possible to precisely control and measure the quantity of fish taken at the end of a quota period. In cases where quota “over runs” occur, it is proposed that the authorisation holder pays the market value of the excess catch to the Crown, unless there is another mechanism to value quota “over runs” in the Management Plan for that fishery. Failure to pay can result in the reduction of fishing units equivalent to the quota “over run”.	Provide for a mandatory requirement for authorisation holders to pay (to the FRDF) the market value of fish taken in excess of any quota entitlement or allocation, unless Management Plan or regulations provide an alternate treatment within a prescribed time frame. This is not a defence to any prosecution. Where there is a failure to pay within a prescribed time frame, the Executive Director can proportionally reduce entitlement and dispose of the entitlement as he sees fit, or recover the amount as a debt in an appropriate Court.	Penalty inadequate – pay double the value or even lose quota (x2)	The Committee understands that the proposed amendment deals only with restitution to the Crown of fish taken outside of quota. The penalties awarded by the Court for the offence will be in addition to this restitution. The Committee therefore supports the proposed amendment.
PART 7 - FISH PROCESSING					
39	S79 Fish processing establishment not to be established without a permit	The current provision does not make it clear whether fish caught by a vessel may be processed on board that vessel without the requirement for a permit.	Ensure that a permit is not required if the fish (other than fish of a prescribed class) are processed on the boat from which the fish have been caught.	Extend to require DoW advice if fish processing facility planned within a ‘designated area’ Provide a head power for ED to address matters of product safety and quality as part of licensing arrangements.	The Committee supports this amendment.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
40	<p>PART 8 – AQUACULTURE</p> <p>S90 Persons engaging in aquaculture and related activities to be licensed</p>	<p>Currently, ‘harvesting’ is not included in the definition of aquaculture. This needs to be rectified so it is clear that ‘harvesting’ of aquaculture product is an element of the aquaculture licence.</p> <p>The collection of broodstock is currently not an authorised activity under an aquaculture licence. This means that when aquaculturists require broodstock they need to continually apply for exemptions. In addition, aquaculture licences do not currently cover reseedling, or the collection of spat (say by mussel farmers). It is proposed to resolve these matters by amending the activities which are subject to an aquaculture licence which will remove the requirement for exemptions for broodstock purposes and clarify the situation around spat collection.</p>	<p>Include in an additional subsection that a person must not engage in the harvesting of aquaculture product (whether or not for sale) unless the person is authorised to do so by an aquaculture licence (except where provided by s91).</p> <p>Amend Section 90 to include the additional subsections: (e) collect from the wild, broodstock or spat; and (f) reseedling of aquaculture leases and WA waters.</p>	<p>Support (x3) but are harvesting and broodstock collection part of licence?</p> <p>If the collection of broodstock is to be included in the conditions, they should stay the same as under current exemptions. Include circumstances under which the collection of broodstock or spat from the wild of species is subject to a management plan (eg rock lobster) may occur (x2).</p> <p>Harvesting broodstock should require a Licensed Fishing Boat.</p> <p>Recreational fishers to have a right of objection to grant or renewal of an aquaculture lease or licence if impacting adversely on them (x2).</p>	<p>The Committee supports the proposed amendment.</p> <p>See section 3.7, Volume 1.</p>

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
41	S92 Grant of aquaculture licence	The criteria to grant an aquaculture licence need to be amended to better reflect factors that the Executive Director must consider in the assessment; and to include that the proponent must have evidence of tenure for the proposed site.	<p>Include in an additional subsection to (1) that the Executive Director may consider other prescribed matters. This will allow the prescription of matters included, for example, under Ministerial Policy Guideline No.8 to be considered more formally by the Executive Director in the assessment.</p> <p>Include an additional subsection to (1) that the Executive Director must also be satisfied that the applicant for the licence has appropriate tenure – whether in his own right, or has an agreement with another to work their lease. This amendment is also proposed to apply retrospectively to current licence holders, but will provide a grace period to licensees without leases at the time the new Act is passed.</p>	<p>Support. Do not support, s92 tests adequate.</p> <p>If an application is in a Public Drinking Water Source Areas, then applicant and the Executive Director must seek formal advice from DoW.</p> <p>Recreational fishers to have the right of objection to aquaculture licences/leases if impacting adversely on them.(z2).</p> <p>Do not support as aquaculture leases do not have security and certainty.</p>	<p>The Committee supports this part of the proposed amendment, believing that requiring ‘other prescribed matters’ to be considered by the Executive Director before granting an aquaculture licence to be necessary to ensure flexibility to respond to changing environmental, social and economic conditions. It should also cover issues such as that raised by DoW.</p> <p>The Committee agrees that recreational fishers (and other sectors) should have an ability to object to decisions through the SAT process. The Committee suggests that s 146 may be amended so that prescribed recognised entities (eg peak bodies) could object to decisions in the SAT (See section 3.6, Vol. 1).</p>

		<p>The current Act provides little flexibility for the Executive Director or the Minister to respond to short term, emergency needs of industry. There is a need for the Executive Director and the Minister to have the power to issue emergency permits and/or leases to allow a licensee to quickly relocate in the event of a significant event, say a cyclone, oil spill or major water contamination event.</p> <p>Section 92(3) currently provides that the Executive Director may seek the advice of relevant authority/ies to decide whether or not a proposal will adversely affect fish or the aquatic environment. The Executive Director needs to have the additional power to seek the advice of relevant authority/ies when determining whether the proposal is in the better interests of the aquaculture industry.</p>	<p>Create a power for the Executive Director in prescribed circumstances to grant a permit to an aquaculture licence holder for a total period of not more than six months – so an operation can be moved rapidly, if required.</p> <p>Include an additional subsection in s92(3) that allows the Executive Director to seek the advice of such authority or authorities as the Executive Director thinks fit in order to determine whether it is in the best interests of the aquaculture industry to grant a licence.</p>	<p>Support</p> <p>Do not support – current powers adequate.</p>	<p>The Committee supports this part of the proposed amendment.</p> <p>The Committee supports the proposed amendment.</p>
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Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee's Recommendations
42	S95 Conditions (<i>..attached to an aquaculture licence</i>)	<p>Currently, all conditions attached to a licence are terminated with the licence. If a licence is cancelled or not renewed, there is no power to require the former licensee to return the site to its original state. To address this, some of the conditions of the licence (e.g. requirements for the rehabilitation or cleaning of the aquaculture site) must continue to have effect after the licence has been cancelled or not renewed.</p> <p>Due to the nature of aquaculture operations, there is a need to ensure that aquaculturists are provided with the opportunity to care for and maintain their farmed product during a period of suspension, and/or during an appeal process.</p>	<p>Insert a new subsection to require the clean-up and rehabilitation of an aquaculture site after a licence has been cancelled or not renewed.</p> <p>Include an additional subsection that allows for the ongoing operation of an aquaculture authorisation during an appeal process, a suspension, or before conviction, to ensure fish, the subject of the licence, are maintained.</p> <p>Need a power to require that the fish which are farmed by the authorisation holder are looked after by that authorisation holder until they are sold, or removed (within 60 days). If they are not properly disposed of in that time, they become the property of the Crown.</p>	<p>Support (x3).</p> <p>Does requirement for clean-up extend to private sites?</p> <p>Requirement should be extended to trawlers.</p> <p>Aquaculture licences not to be granted in special DoW areas unless the relevant Minister approves.</p>	<p>The Committee supports the proposed amendment (with the expansion to include rehabilitation on private property).</p>

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s recommendations
43	S96 Contravention of condition of licence	It is proposed that the Minister have the power to cancel an aquaculture licence if he considers that the licensee may be causing, or may be at risk of causing, environmental damage- e.g. a marine aquaculturist causing both terrestrial and aquatic pollution and disease through their activities.	Provide a power for the Minister to cancel an aquaculture licence in circumstances where the licensed aquaculture activities are, in the Minister’s opinion, causing environmental damage, or are at risk of causing environmental harm (as may be defined by the <i>Environmental Protection Act 1986</i> s3A).	Insert ‘adverse’ before ‘environmental damage’.	The Committee supports the proposed amendment, and considers that ‘environmental damage’ requires no further qualification.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
44	S97 Grant of aquaculture leases	<p>The Act currently does not specify any criteria for the grant of an aquaculture lease. Criteria to guide the Minister’s decision on whether to grant/renew a lease will provide for a more transparent process.</p> <p>It is proposed to amend the current arrangements for aquaculture leases to provide for a more flexible system that creates business opportunities and generates investment. One element of this is to provide a more favourable system for the licence and leaseholders to be separate entities – this</p>	<p>Provide a head power to set the criteria for the grant/renewal of a lease – to include:</p> <ul style="list-style-type: none"> • The person applying is a fit and proper person to hold an aquaculture lease; • It is in the better interests of the aquaculture industry to grant or renew the lease; • The applicant has made effective use (or will make effective use) of the site for aquaculture activities; • The proposed purpose of the lease is unlikely to affect other fish or the aquatic environment; and • Other matters as prescribed. <p>Note that a Ministerial Policy Guideline for aquaculture leases will provide some definition around what the Minister expects in terms of satisfying such criteria.</p> <p>Include a new section which provides the Minister with the power to subdivide, sublet, amalgamate and transfer leases in a prescribed manner.</p> <p>Provide the power for the Minister to offer areas for lease by public auction, public tender, ballot or private treaty.</p>	<p>Formal advice from DoW will need to be included in ‘prescribed process’.</p> <p>Include ‘of community and affected persons’ after ‘industry’ (dot pt 2). Replace ‘aquaculture industry’ with ‘seafood industry’.</p> <p>Increased security, is of concern to other users.</p> <p>Increased security to be balanced by wider rights to object (x2). Include ‘or activities’ after ‘fish’. Insert ‘adversely’ before ‘affect other fish’, and ‘relevant’ before ‘matters as prescribed’.</p> <p>Supporting processes need clarification and simplification.</p>	Dealt with in Part 3 (Volume 1).

		<p>is addressed below under Section 99. The other is to allow leases to be used in ways which are in the commercial best interests of the industry, and to provide the Minister with alternative methods of allocation of sites.</p> <p>Given the proposed arrangements (above), there is a need to revise Section 97(3) in relation to ownership of product which will more appropriately belong to the licensee rather than to the lessee.</p> <p>Given the proposed arrangements which would enable licences and leases to be held by separate entities, it is important to ensure that the legislation is clear about liability and responsibility for offences.</p>	<p>Amend the provision to clarify that it is the licensee who undertakes the activities and who owns the fish within the leased area.</p> <p>Need to ensure legislation is worded so that the liability for offences is clear for:</p> <ul style="list-style-type: none"> • Licensees operating on a lease; • Lease holders whose lease an offence was committed on; • Lease holders who commit an offence; and • Joint operated leases. 	<p>Licensee should only 'own' the fish the subject of the licence (x2).</p>	
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Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s recommendations
45	New section	A penalty must be imposed for the contravention of a condition of a lease.	Provide a head power for a penalty for the contravention of a lease condition, covenant or restriction.	<p>Does this provision include penalties for contravention of a private property lease condition?</p> <p>Do not support – aquaculture industry sees no need for increased penalties.</p>	The Committee supports the proposed amendment, considering that this was previously a gap in the legislation.
46	New section required	The FRMA currently does not give the Executive Director or the Minister the power to require that a bond or appropriate insurances be in place in relation to an aquaculture licence. It is proposed to include a power for the Executive Director to demand a bond which can be used for clean-up or periodically throughout the life of the licence to - for example - fit a marking light where the licensee has not done so.	Amend the FRMA to allow that for any aquaculture activity undertaken under this Act the Executive Director may direct the person undertaking that activity to lodge a bond and be liable for any costs that the Department of Fisheries may need to undertake as a result of that activity.	<p>Supported (x2).</p> <p>Bonds to be negligible for marron kept on private property.</p> <p>Is a bond necessary if licence holder can be held accountable post non-renewal or cancellation? Is there an alternative eg nominate a guarantor?</p> <p>Do not support (already provided for under ref 41).</p> <p>Not to apply to freehold aquaculture leases.</p>	The Committee supports the proposed amendment (with a requirement for a bond or similar).

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s recommendations
47	S99 Aquaculture licence required in connection with a lease	Section 99 provides that an aquaculture licence is needed to undertake aquaculture activities. A person cannot undertake aquaculture activities if only a lease is held. This situation will remain. However, currently, 99(2) and 99(3) set up an interdependency of the lease and licence which make entering otherwise attractive commercial arrangements where the licence and lease holders are separate entities, undesirable.	<p>Create head powers for aquaculture licences and leases to be held by separate entities, and more specifically</p> <ul style="list-style-type: none"> • Delete subsection 99(2); • Amend subsection 99(3) to provide that the licence is not automatically cancelled when the lease on which the licensed activity is occurring is cancelled; and • Provide that the licence holder will be offered the opportunity to take up the lease if the original lease holder has the lease cancelled. Notice of the cancellation, suspension, expiry or non-renewal of the lease shall be published to offer the opportunity to others if the existing licence holder does not want to take up the lease. 	‘Prescribed manner’ to include consultation with DoW. Support (x2).	The Committee supports the entire proposed amendment, noting that ‘prescribed manner’ will be described in the Regulations.
48	New section - emergency leases	Need powers for Minister to issue short-term leases in special circumstances (e.g. in the case of an emergency like an oil spill which requires the temporary removal of aquaculture gear and stock from a lease site to protect both the gear and the animals).	In a new subsection provide that if the Minister believes it is in the better interest of the industry to do so, he may grant a lease of coastal waters for a term not exceeding six months and may waive such requirements relating to the granting of leases as he may consider appropriate in the circumstances, provided that the lessee complies with all covenants under the leases subject to the circumstances prevailing during the nominated period.	Support (x2) subject to the usual consultation mechanisms.	The Committee supports the proposed amendment as is, noting that the urgency of the lease may preclude normal consultation with stakeholders.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s recommendations
49	S102 Regulations relating to aquaculture	<p>Currently, there are no head powers to prohibit and regulate reseeded of sites, and the collection of spat and broodstock. If, as proposed, the definition of ‘aquaculture’ is broadened to include these activities, head powers will be required to regulate reseeded, collection of spat and broodstock.</p> <p>Currently there is no power to regulate aquaculture activities which may impact on fish that are not the subject of the licensed activity, or on other aquatic fauna (e.g. sea lions). This power is necessary to provide protection to the aquatic ecosystem.</p>	<p>Provide a power to prohibit and regulate the reseeded of sites and WA waters, and the collection of spat and broodstock.</p> <p>Include a subsection which provides power to regulate aquaculture activities which may impact on non-target fish and aquatic fauna.</p>	<p>Not support.</p> <p>Support with addition of ‘ranch and restock’ before ‘of sites’, and replacement of ‘spat’ ‘seedstock’.</p>	Dealt with in Part 3, Vol.1.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
50	PART 9 – NOXIOUS FISH Part 9 – Noxious, diseased or prohibited fish	<p>Note: Provisions in this part need to be complementary and supplementary to the <i>Biosecurity and Agriculture Management Bill (BAMB)</i>. Currently, this part refers only to ‘noxious’ fish. It needs to also include ‘diseased’ or ‘prohibited’ fish and ‘translocated live fish’ to provide stronger protection for WA’s endemic fish and aquatic habitats.</p> <p>Note: Noxious, diseased or prohibited fish would include fish similar to those species currently prescribed. These may include species that represent a significant threat to the environment, human health or industry. For example grass carp, piranha and parasitic catfish.</p>	Amend header of part to ‘Noxious and Translocated Live Fish’ and create two divisions – ‘Noxious, diseased or prohibited fish’, and ‘Translocation of live fish’.	<p>Support (x3).</p> <p>Yabbies to be considered ‘noxious’, and the ‘yabby line’ should be continued.</p> <p>Need a regulatory impact statement and information about how these provisions may impact on sale of live fish.</p> <p>Need additional category of ‘undesirable fish’ which covers translocation, sale, holding, release into the wild, breeding. (x2).</p>	The Committee understands that reference numbers 50-53 will be repealed with enactment of BAMB (refer Part 3, Vol. 1).

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s recommendations
51	<p>(new) Division 1 – Noxious, diseased or prohibited fish</p> <p>S103 Species of fish may be prescribed to be noxious fish</p>	<p>This provision needs to also enable ‘prohibited’ fish to be prescribed for the purposes of this Act, where ‘prohibited fish can be declared’ with respect to purpose (e.g. <i>Tilapia</i> may be declared prohibited unless it is used for licensed commercial purposes).</p>	<p>Modify s103(1) so that fish may also be prescribed to be ‘prohibited’ fish and that for the purposes of the Act, fish may be prescribed as either noxious, or prohibited fish ‘in prescribed circumstances’.</p> <p>Insert in s103(1) after ‘a species of fish’ add ‘in prescribed circumstances’.</p> <p>Insert in s103(2) after ‘areas’ add, ‘or by reference to a purpose’.</p>	<p>Support (x2).</p> <p>‘Feral fish’ to be reconsidered as ‘feral’ after a time period.</p> <p>Yabbies to be considered ‘noxious’ and ‘yabby line’ to continue.</p>	

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments Public Consultation	Review Committee’s Recommendations
52	S104 Noxious fish must not be kept, etc. S105 Noxious fish must not be brought into the State, etc.	Expand to include diseased and prohibited fish.	Amend s104, s105, s106 in this Division to include ‘noxious, diseased or prohibited fish’.	Support (x2). Include ‘aquarium fish’.	
53	S106 Requirements relating to noxious, diseased or prohibited fish	Currently this section does not specifically provide powers for Fisheries Officers to deal with noxious, diseased or prohibited fish. Also does not currently include diseased or prohibited fish.	Insert a new subsection which provides that if a person fails to comply with a written notice served on a person by a Fisheries Officer, or the person apparently responsible is not immediately available, or where a Fisheries Officer suspects on reasonable grounds that a person may not comply, a Fisheries Officer may destroy the noxious, diseased or prohibited fish (where the suspicion of a disease in a fish is grounds for treating the fish as diseased). Amend to include ‘diseased or prohibited fish’.	Support. Costs of disposal to be met by person holding fish. Remove ‘or where a FO suspects on reasonable grounds..comply’ [too discretionary] ‘suspicion’ is too discretionary – needs clinical analysis. Do not support – powers too broad.	
	(new) Division 2 – Translocation of live fish				
54	New section	Currently, there are limited powers for the Executive Director to deal with live fish brought into the State, or moved within the State, that may	Insert new sections similar to ss103 – 108 providing that the Executive Director can approve a species to be brought into, or translocated within, the State if the species is included on a prescribed species list. Create offences for bringing live fish that	Support (x2).	The Committee supports the proposed amendment in its entirety.

		<p>provide a threat to WA's endemic fish and aquatic habitats. A new section is required to prescribe the species and the purposes for which these species can be imported and/or translocated within the State – e.g. movement of live Pacific oysters into or within the State may be prescribed as a permitted activity for human consumption purposes. Otherwise, it may be considered as an offence.</p> <p>In some situations, live non-endemic fish, or diseased fish, are not held in a secure place.</p> <p>Infringements do not currently exist in relation to translocation or the release of fish. Many illegal activities would be more suitably addressed through an infringement process.</p>	<p>are not prescribed into, or attempting to bring into, the State.</p> <p>Create an offence for the keeping of prescribed or diseased fish without taking reasonable precautions to prevent their escape.</p> <p>Create offences for, and prohibit and regulate, the release of fish into the environment, with infringement notice penalties. Prohibit reseeding without approval from the Executive Director.</p> <p>Create offences for any person who has introduced species in their possession and who fail to take reasonable precautions to prevent the escape of these species.</p> <p>Create a power for the Minister to recover costs expended by the Department to prevent the introduction/escape of these species – or to enforce an order for the person to carry out the destruction, or for</p>	<p>Support.</p>	
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				breaching the conditions of a licence. Note: There will need to be a check of any overlap with the <i>Biosecurity and Agriculture Management Bill</i> with these sections.		
	PART 10 – DESIGNATED FISHING ZONES					
55	S110 Designated fishing zone not to be created in marine nature reserve or marine park	Designated fishing zones are used to control fishing activities on beaches – e.g. commercial salmon fishing teams have priority on designated beaches. Under current legislation, in areas where a marine park is declared, designated fishing zones cease to exist. However, it is intended that fishing continue to be permitted in some areas of marine parks and, as such, there will still be a requirement for designated fishing zones to exist within marine parks where they are not in conflict with marine park legislation.	Designated fishing zones to continue to be in existence and operate to the extent that they do not conflict with a management plan for marine reserves.	Support (x3) (but new example required) Needs a rewrite consistent with recreational and commercial fishers' expectations. DFZs established through management plans for reserves not established under FRMA Delete proposed changes, replace with 'DFZs shall only be created in a marine park or a marine management area (not a marine nature reserve) where there is consistent with the 'approved management plan' for the area.'	The Committee supports the proposed amendment but notes that there may be operational and policy issues that the Department of Fisheries may need to address. It also notes that the definition of " marine reserve " in the CALM Act is 'a marine nature reserve, a marine park or a marine management area'. With this definition, it considers the amendment as proposed is appropriate.	

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments Public Consultation	Review Committee’s Recommendations
56	<p>(new) PART 11A – CONSERVATION OF THREATENED SPECIES, CRITICAL HABITAT AND ECOLOGICAL COMMUNITIES</p> <p>New part</p>	<p>This part needs to act as a ‘trigger’ for when the <i>Biodiversity Conservation Act</i> takes effect, and must be supplementary and complementary to that Act. It must enable short-term conservation issues to be dealt with under the FRMA to provide low-level protection with respect to fisheries management.</p>	<p>In the absence of specific provisions under the <i>Biodiversity Conservation Act (BCA)</i>, the FRMA needs to have specific powers to declare, regulate and protect threatened species, critical habitats and ecological communities.</p>	<p>BCA to deal with these matters.</p>	<p>Dealt with in Part 3, Volume 1.</p>
57	<p>PART 11 – FISH HABITAT PROTECTION AREAS AND ABROLHOS ISLANDS RESERVE</p> <p>S121 Regulations relating to Abrolhos Islands reserve</p>	<p>Currently jetties and airstrips are not covered in the existing provision in the FRMA – it is considered that these need to be</p>	<p>Include jetties and airstrips specifically in the amended provision.</p>	<p>Support.</p>	<p>The Committee supports the proposed amendment.</p>

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specifically mentioned to ensure all sites and facilities are covered by the legislation.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
58	PART 12 – REGISTER S125 Register (<i>refers to the Department’s Register of authorisations and exemptions</i>)	The blanket ban on disclosure (s125(6) – ‘...details of recreational fishing licences must not be made available to the public.’) has had the unintended consequence of these details not being available to appropriate government authorities (e.g. the Police). The Registrar is the accountable entity for the maintenance, accuracy, integrity, timeliness and completeness of the register of authorisations, aquaculture leases and exemptions. The powers of the Registrar are currently unable to be delegated under the FRMA, which causes problems in case of absence of the Registrar through sickness or other leave.	Provide that for the purposes of s125(6), the public does not include a prescribed prosecuting or investigating authority whether in WA or in other prescribed jurisdiction. Need power for the Registrar to delegate his powers when required.	Details of recreational fishers to be made available to public. Support (x2). DoW to pay annual fees for access – Note: ‘ <i>prescribed fee</i> ’ could include <i>special annual access fees, as described – requires a change to the Regulations</i> .	The Committee supports the proposed amendment that enables prescribed authorities to have access to the information on the register. The Committee does not support the proposal (from a public submission) that information about recreational fishers should be made publicly available, as this access may subject recreational fishers to unwanted targeting by marketing and other organisations.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments Public Consultation	Review Committee’s Recommendations
	PART 13 – GENERAL PROVISIONS RELATING TO AUTHORISATIONS				
59	New section required	Currently, it is unclear whether or not an authorisation and its associated entitlement form part of an individual’s ‘personal estate’ that can be transferred to another on the death of the holder.	For the avoidance of doubt, add a provision that provides that commercial authorisations and their entitlement, and aquaculture authorisations and aquaculture leases, are to be taken to be part of the legal personal estate of a deceased authorisation holder (subject to the licence being active and all fees having been paid). If the authorisation and any associated entitlement is not transferred within two years (or any such further period as is approved by the Minister) of the death of the deceased holder, it will be suspended pending such transfer.	Trawl fishing licences should not be transferable on death of the holder. Support. Should be automatically cancelled in these circumstances unless just cause shown. Will give property status to licence – is this intended?	The Committee supports the proposed amendment.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s recommendations
60	S139 Renewal after expiry	<p>There may be occasions where there are valid reasons for the applicant not to be able to meet the 60-day renewal period. To address this, it is proposed that the period be extended to a maximum of twelve months at the discretion of the Minister in certain, limited circumstances. This would apply only for authorisations that expire after the enactment of this amendment – to avoid retrospective actions.</p>	<p>Include an additional provision that enables a holder of a processing, commercial fishing, or aquaculture authorisation to apply to the Minister (in the approved form) for renewal of their licence in certain circumstances if their licence expired more than 60 days but less than twelve months after the original expiry date. This should only apply to licences that expire subsequent to the enactment of this amendment. In order to be considered for renewal after expiry within this period, retrospective fees (plus interest) must be paid.</p>	<p>Do not support, significant late fee penalty required.</p>	<p>The Committee is unclear of the policy rationale behind this proposal. Further justification needs development.</p>

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
61	S140 Transfer	An authorisation that is the subject of legal proceedings where the Department of Fisheries is seeking a reduction of entitlement must not be transferred. This proposal is to prevent authorisation holders from escaping licence or entitlement suspension, reduction or cancellation by transferring their licence, entitlement, or part of their entitlement prior to conviction.	The ‘prescribed grounds’ for refusal to transfer applications (in the Regulations) to include where the authorisation holder or its agent, or the authorisation, is the subject of legal proceedings where the Department of Fisheries is seeking an order for a reduction in entitlement, or where the Executive Director considers that the holder of the authorisation, or a person acting on that person’s behalf, may be liable for conviction for an offence against the Act.	No comments.	The Committee has no comment.
62	S141 Temporary transfer of entitlements	Currently the Act does not permit the temporary transfer (transfer for a period of less than the licence period) of the last unit of entitlement without, in effect, voiding the licence (ie currently a licence is void if it has 0 units attached, for even a short period).	Need ability to permit the temporary transfer of all entitlements held under a licence – suggest in s141(1)(a) insert ‘or all of the entitlement’ after ‘part of an entitlement’.	Do not support – licences should not exist without entitlement except for up to 90 days when transfers are occurring.	The Committee supports the proposed amendment due to National Competition Principle of decoupling activities licences from units and leases.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s recommendations
63	S142 Variation	The scope for the Executive Director to refuse a variation should be increased for specific reasons (e.g. to prevent environmental harm, or for any other purpose set out in the Regulations or Management Plan).	Amend so that the Executive Director can refuse variation where a ground is set out in a Management Plan or the regulations. Give the Executive Director explicit power to refuse applications for variation, renewal and grant as in s140. Create a power for the Executive Director to vary (in any respect) an authorisation if he is of the opinion it is necessary to prevent or mitigate environmental harm (as defined by the <i>Environmental Protection Act 1986</i> (s3A) or the risk of harm. This decision takes effect unless, or until, it is overturned by a SAT decision.	Include power for the Executive Director to allow variations to ‘prevent or mitigate risk of public health issue’. Variations only to be permitted in accordance with Ecologically Sustainable Development principles.	The Committee supports the proposed amendment – given the other aspects can be covered in ‘or for any other purpose.’

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
64	S143 Cancellation, suspension and non-renewal	<p>Grounds for refusal to renew an authorisation should include the non-payment of costs awarded by a Court in favour of the Minister or Executive Director, and the non-payment of the costs of any remedial work that the Executive Director has been required to undertake to rectify damage caused by the authorisation holder – eg clean up of a site.</p> <p>Cancellation, suspension and non-renewal of an authorisation should apply if the holder has been convicted of an offence that relates to the aquaculture, fishing tour or ecotourism industries (in addition to the existing ‘fishing industry’).</p>	<p>Include in s 143(1)(g) the words ‘costs either awarded by a Court in favour of and in an action for or on behalf of the Minister or the Executive Director, or incurred by the Executive Director in making good damage caused by the authorisation holder.’</p> <p>In s 143(1)(a)(ii) insert the words ‘aquaculture, fishing tour, or ecotourism’ after ‘fishing’.</p>	<p>Ensure recreational sector is covered.</p>	<p>The Committee supports the proposed amendment, as it understands that this Part of the FRMA is now proposed to relate to all authorisations for all sectors.</p>

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
65	New section – Recognition of ‘demerit systems’ of other states	<p>At this time, other states of Australia are either considering, or introducing, a demerit system for various fisheries offences in their jurisdictions. To discourage fishers with multiple demerits on their authorisation avoiding suspension by moving interstate and hence being considered as having a ‘clean slate’, it is proposed to specifically take account of these demerits in the consideration of an application.</p> <p>Demerit points assigned to an individual in another state or territory may be taken into account by the Minister or Executive Director when considering cancelling, suspending or not renewing an authorisation held in WA by that individual, as the case may be.</p>	<p>Provide that for the purposes of this section, the Executive Director may take account of convictions and demerit point systems in other fisheries jurisdictions within the Commonwealth, State, or territories when determining whether to grant, transfer, renew, suspend or cancel an authorisation or its entitlement.</p>	<p>Support – but with WA not on demerit system, will it be able to share the information? Is WA’s information available to other jurisdictions?</p>	<p>The Committee supports the proposed amendment. It considers that the information referred to in the public comments can be accessed now through the proposed amendment to s125.</p>

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s recommendations
66	S144 Voluntary surrender	<p>Currently, s144(2) requires that an authorisation ceases to have effect 28 days after the day on which notice is given to the Executive Director of its voluntary surrender. Some holders of commercial fishing licences want to be able to go recreational fishing immediately upon surrender of their Commercial Fishing Licence.</p>	<p>Provide that an authorisation ceases to have effect 28 days or any such other number of days that the Executive Director determines, after the voluntary surrender of the authorisation.</p> <p>Provide in s144(3) that the holder of a CFL may surrender that licence and the surrender may take effect immediately in the context of an application for a RFL.</p>	Support.	The Committee supports the proposed amendment.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
67	S147 Executive Director to notify persons of certain decisions	Section 147 provides for a person to apply for review where an application for a licence is refused or where a notice is given adding new conditions to a licence, but not where a licence is granted subject to conditions. This issue was not addressed when the SAT legislative package was developed and implemented. It would be usual for an Act to include a right to apply for review where a licence is granted subject to conditions that are not acceptable to the applicant.	Amend to expressly provide for a right to apply for review in the relevant situations.	Support (x4). Include right of appeal of affected persons.	The Committee supports the proposed amendment. Section 3.7, Volume 1 details proposals to broaden the rights of objection.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments Public Consultation	Review Committee’s Recommendations
	PART 14 – RIGHT TO OBJECT OR APPLY FOR REVIEW				
68	S148 ED to publish notice of certain proposals	<p>There are many classes of proposals, some of which are merely minor variations to an authorisation. It is very expensive in time and money to publish every proposal. As a result, the Executive Director needs to have more flexibility to decide whether or not certain things should be published, who should be responsible for publishing the notice (e.g. the proponent rather than Executive Director in some circumstances), or how decisions should be communicated. For example, the Executive Director needs to have discretion in relation to the advertising of proposals to vary or transfer an aquaculture licence or fish processor’s licence.</p> <p>If:</p> <ul style="list-style-type: none"> - the site is land-based and approved by the relevant shire, or - the class of licence has no constraint on issue, or <p>the licence is not subject to any quota management arrangement, then only notification of the decision needs to be communicated.</p>	<p>Provide in a new sub-section that the Executive Director may choose not to publish certain decisions where he considers they are non-significant variations. The Executive Director may take other appropriate measures to inform potentially affected persons (e.g. website, mail), or require the proponent to publish the notice.</p>	<p>Proponents to be able to recoup costs by adding fee for distribution.</p> <p>Definition of ‘affected’ persons needs to be clear, amendments should provide for a wider group of interested persons to be:</p> <ul style="list-style-type: none"> • Notified of proposed authorisations • Given opportunity to object • Given opportunity to appear before SAT • Representatives of incorporated bodies representing the sectors. 	<p>The Committee agrees that sectors other than those identified in s146 ‘Affected persons’, need to have the ability to object to decisions (see section 3.7, Volume 1).</p>

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments Public Consultation	Review Committee’s Recommendations
69	PART 14A – INDICTABLE OFFENCES New Part - Indictable offences	There is a need to address national concerns on organised crime and associated increased levels of trafficking and other serious offences in the fishing industry (ie targeting unlicensed illegal commercial fishing operations) – see section 2.3.6 of this document.	Need to create a series of indictable offences relating to trafficking, taking, possession and dealing with high-value fish species which carry a 10-year term of imprisonment and significant financial and s222 penalties. Need a power to create a schedule of prescribed high value species and quantities that create indictable offences.	Support (x3).	The Committee supports the proposed amendments.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s recommendations
70	PART 15 – MISCELLANEOUS OFFENCES Part 15 Miscellaneous Offences	<p>There needs to be a general offence provision to ensure that persons in possession of fish taken or dealt with in contravention of the Act or regulations are adequately dealt with.</p> <p>There is some doubt that persons who attempt to commit offences or aid and abet other to commit offences is adequately covered in the Act. To clarify the position, specific provisions are to be put in the FRMA rather than rely on provisions in the <i>Criminal Code</i>.</p>	<p>New general offence relating to possession of fish taken by the use of unauthorised fishing gear or gear used in contravention of the Act, regulations, or management plan.</p> <p>“Attempts to commit” to be treated the same as offences against the Act (as for s4 <i>Criminal Code</i>)</p> <p>“Persons who aid, abet etc.. are taken to have committed the offence” (as above).</p>	<p>Support (x3).</p> <p>Include power for an offence for leaving unwanted and untargeted fish on the shore to die.</p> <p>Check ‘attempts’ and ‘parties to offences’ in the Criminal Code s36.</p>	<p>The Committee supports the entire proposed amendment, with the inclusion of creating an offence for not returning untargeted or unwanted fish to the water as soon as possible after catching them.</p>

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
71	S170 Use of explosives or noxious substances for fishing	<p>In general, firearms should be included in this provision, but there will need to be certain exceptions (e.g. for potentially shooting, in self defence/for safety reasons, large sharks that are legally taken but pose a risk to the crew).</p> <p>Methods that may damage non-targeted fish (e.g. a pesticide spill in river system), structures (e.g. physical damage to aquaculture structures) or the aquatic environment need to be included in the provision to maximise the protection of non-targeted fish, aquatic structures and the aquatic environment.</p>	<p>Include ‘firearms’ in title and in s170(1) and prescribe the conditions under which they may be used.</p> <p>Provide that a person may not discharge or use any unauthorised material, method or means that can be reasonably expected to result in the injury, damage or death of any non-targeted fish, or damage to the aquatic environment, naturally occurring or otherwise (eg reef, jetty, fish farm structure).</p>	<p>Support (x3) [there may be other exceptions].</p> <p>Only ‘captive bolt’ firearms allowed on boats.</p>	<p>The Committee supports the entire proposed amendment.</p>

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s recommendations
72	Ss171 & 172 Interference with lawful fishing activities and gear	Currently there is no protection under the Act from unlawful interference to the commercial operations of aquaculture, charter, or eco tourism ventures. It is proposed to give such operations the same protection that recreational and commercial fishing activities currently have in the FRMA.	Redraft these sections so that they make it an offence to interfere with aquaculture, charter, and marine eco-tourism operations.	<p>Definition of ‘recognised net fishing area’ (in s171) too broad.</p> <p>Ensure Water Corporation officers can stop illegal discharge of waste water from aquaculture sites or activities to sources of drinking water.</p>	<p>The Committee does not support the public proposal of narrowing the definition of ‘recognised net fishing area’.</p> <p>The Committee supports the proposed amendment, noting that the public proposal of giving powers to Water Corporation officers, is more properly dealt with in the legislations framework for the Department of Water.</p>

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
73	S173 Purchase or sale of fish taken in contravention of Act	<p>Fisheries Officers currently have difficulty proving that suspicious fish found at retail and wholesale outlets, or in a person’s possession, were taken contrary to the FRMA. It is proposed to reverse the onus of proof such that the person in possession of the fish must demonstrate that they held an honest and reasonable belief that the fish were taken or dealt with lawfully.</p> <p>Defences are required to ensure that ordinary members of the public buying fish from supermarkets, etc, are not caught by the new provision.</p> <p>Investigations into unlicensed commercial fish sales (black market) are difficult to prove and require</p>	<p>Include in s173(1) that a person must not sell, dispose of, or have in their possession any fish unless they have an honest and reasonable belief that the fish were not taken, processed or otherwise dealt with in contravention of the Act.</p> <p>Amend s173(2) so that it is a defence if the person charged can prove that the fish were purchased:</p> <ul style="list-style-type: none"> • From a person whose usual business was the retail sale of fish to the public; and • In the ordinary course of that business (eg members of the public buying fish from a supermarket, or from a licensed fisherman). <p>In a new section, provide that a person found in possession of, or who has sold or purchased any fish, shall on the request of a Fisheries Officer, immediately provide full details and</p>	Support (x3).	The Committee supports the entire proposed amendment.

		<p>significant resources, often involving many hours of covert surveillance. Tracking the movement of black market fish through the chain from capture to final destination of sale is a major impediment to successful apprehensions of serious offenders.</p> <p>Many investigations do not succeed because of the lack of evidence in regard to the origin of suspect fish.</p> <p>It is proposed to facilitate the investigation of this most serious class of offence by requiring persons in possession of, selling or purchasing fish to immediately on request provide Fisheries Officers with details of how they came into possession of those fish.</p>	<p>circumstances of how the fish came into their possession and the reasons why they believe that the fish were not taken, processed or otherwise dealt with in contravention of the Act. An offence will be created for failure to provide such information.</p>		
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Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s recommendations
74	S174 Use of foreign boats for fishing	Lack of powers to deal foreign fishers in State waters.	Note: This issue has been the subject of a separate cabinet submission, and is no longer required in these amendments.	No comments.	The Committee has no comment.
75	S176 False statements in applications	<p>This section needs to be broadened to cover all documents relating to authorisations and entitlements from which a person may receive a direct or indirect benefit.</p> <p>Currently offences under the FRMA only apply to the person who makes a false or misleading statement in any application and not to the person who gains the benefit of such an act (e.g. a person may provide a false fishing history to allow another person to meet access criteria for a fishing licence).</p>	<p>Extend the provision to cover all documents relating to authorisations and entitlements or rights under the FRMA.</p> <p>Create an offence for ‘knowingly using a false document or gaining a benefit – or causing another person to do so’.</p>	<p>Amend header and provision to include ‘returns’ as well as ‘applications’.</p> <p>New subsection that deals with ‘errors or omissions in returns’ with lower penalty and capable of being dealt with by infringement.</p>	<p>The Committee agrees with the public proposal ‘returns’ should be included in the provision.</p> <p>The Committee supports the proposed amendment, given the public proposal of ‘errors and omissions’ is created in reference number 35.</p>

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
76	New section	To address the trafficking of illegal fish products such as abalone, lobster and shark fin, there is a national fisheries compliance approach to create cross-jurisdictional offences. This new section will allow each state that finds an offender with illegal product from another state to charge the offender (e.g. if undersize Victorian lobster were found in WA the offender could be prosecuted under WA law).	New section that creates cross-jurisdictional offences between the States and territories.	Support.	The Committee supports the proposed amendment.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s recommendations
77	PART 16 – FISHERIES OFFICERS S182 Routine inspection	Fisheries Officers currently have the power to conduct routine inspections of any land, waters or premises subject to a licence e.g. an aquaculture or processing premises. Sometimes, such licences are not renewed on time and in such cases the Fisheries Officers either cannot carry out the routine inspection or would be acting outside his power if the license had not been renewed. Fisheries Officers need to be able to conduct routine inspections of such premises as though the business was currently licensed and ongoing.	Clarify powers of Fisheries Officers to enable them to enter premises which a Fisheries Officer could reasonably expect to be licensed, for routine inspections and to inspect records.	Support.	The Committee supports the proposed amendment.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments Public Consultation	Review Committee’s Recommendations
78	S187 Warrants	<p>As currently drafted, the Fisheries Officer that obtains a search warrant has to be the officer that executes the warrant. This is inconsistent with the powers of police officers and of s711 of the <i>Criminal Code</i>.</p> <p>Powers are also needed for entry and search where it reasonably suspected that priority fish (high-value fish species like abalone and rock lobster) are being held. This will provide Fisheries Officers with an enhanced ability to search for commercial quantities of black market fish, particularly in private premises e.g. where a Fisheries Officer can satisfy a Justice of the Peace that there are reasonable grounds to suspect that commercial quantities of abalone are being held in a private residence, a search warrant could be sought. It is also proposed that search warrants will be able to be exercised covertly in relation to</p>	<p>Amend so that the officer obtaining a search warrant does not necessarily have to be the officer executing the warrant.</p> <p>Extend power of Fisheries Officers to obtain a warrant to enter and search premises where there are reasonable grounds to suspect high-value fish species are being held, including a provision to allow warrants to be covertly exercised with respect to priority fish (e.g. indictable offence investigations).</p>	<p>Warrants not to be limited to high value species. Remove ‘high value’ before ‘fish species’.</p>	<p>The Committee has no comment on this part of the proposed amendment.</p> <p>The Committee supports the extension of powers for Fisheries Officers to deal with lower value species (as is proposed in the public comments), but understands that the coercive powers of the State needs to be balanced with the right of an individual to enjoy their privacy. The extent of powers of a Fisheries Officer is a political decision.</p>

		<p>priority species where a Justice of the Peace is satisfied, on reasonable grounds, that either the premises or fish may form part of an organised criminal enterprise. This allows the Fisheries Officer to determine if illegal commercial quantities of fish are being held at a place without the suspected offenders being aware that they are under investigation.</p>			
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Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments Public Consultation	Review Committee’s Recommendations
79	S189 Provision of information	<p>Clarify that the ‘name’ referred to in the provision that is required to be supplied, is the full name of the relevant person.</p> <p>S189 requires persons engaged in fishing and the masters of fishing boats to provide information to Fisheries Officers. The scope of this provision needs to be expanded to meet the demands of future quota management arrangements and to also cover aquaculture, charter and ecotourism activities. This will increase the range of persons required to give information to cover those on all boats and premises found receiving, transporting and warehousing fish, and processors/retailers, etc (this is essential, for example, for tracking and auditing lobster transactions under quota management for the western rock lobster fishery).</p>	<p>Amend so Fisheries Officers can require persons suspected of committing an offence to provide their full name.</p> <p>Amend section 189 to expand the scope of the provision to include:</p> <ul style="list-style-type: none"> • The master of any boat (ie used for commercial fishing, recreational fishing, eco tourism, charter or aquaculture). • Persons engaged in aquaculture, charter fishing or marine eco tourism. • All persons on a boat or otherwise engaged in commercial fishing, recreational fishing, eco tourism, charter or aquaculture). • All persons on premises, at any place or in any vehicles receiving, transporting or warehousing fish. • All persons engaged in fish processing, wholesaling or retailing of fish. <p>The expanded level of information required should include providing details of how, where, when and from whom fish or fishing/aquaculture gear came into a person’s possession, or was at a place, in a vehicle or in a premises.</p>	Support (x2).	The Committee supports the entire proposed amendment.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
80	New section: Search of persons for priority species	<p>Offenders are able to conceal fish (e.g. Roe’s abalone) and other evidence on their bodies, in or under their clothes. Currently, Fisheries Officers have no power to physically search such people. It is proposed to allow Fisheries Officers to search people who are reasonably suspected of carrying high-value and high-risk species. It is recognised that Fisheries Officers would need to be highly accountable for such searches and there would need to be a requirement for an appropriate level of reporting and oversight to ensure such a power is not misused (see <i>Victorian Fisheries Act 1994</i> s101(G)).</p>	<p>New section to allow Fisheries Officers to physically search people for high-value species, or for evidence relating to high-value fish species that may be held or concealed on their person.</p>	<p>Support (guidelines required).</p>	<p>The Committee supports the proposed amendment, and the need for clear guidelines and rules for such a search.</p>

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
81	S191 Other powers of fisheries officers	<p>S191 currently gives Fisheries Officers the power to signal or direct a person to stop a boat/vehicle or not to move a boat/vehicle. However, the provision does not expressly give Fisheries Officers the power to move the vessel/vehicle, or direct the vehicle/vessel to be moved to a safe stopping place. Fisheries Officers require this power to direct people who have been stopped for inspections at road side checks and on waterways to move the vehicle/boat out of the way of traffic for safety reasons.</p> <p>Clarification is required of the meaning of ‘records’ and ‘documents’ referred to in s191(1)(i) to include financial records relevant to the fishing business. This is necessary for forensic financial audits of</p>	<p>Insert a new paragraph to enable Fisheries Officers to signal or direct the person in control of a boat or vehicle “to move the boat or vehicle to a safe stopping place” for the purposes of inspection or search.</p> <p>‘Records’ and ‘documents’ need to be more broadly defined to give Fisheries Officers the power to request a broad range of information, including financial records related to fishing businesses.</p>	<p>FOs to be cross-authorized or co-badged.</p> <p>Do not support – financial records should be private</p>	<p>The Committee agrees with the public comment that FOs should have cross jurisdictional powers. However, it understands that legislation like the CALM Act and the <i>Wildlife Conservation Act</i> are unclear about the powers of FOs as <i>de facto</i> wildlife or CALM (now DEC) officers.</p> <p>The Committee agrees with the proposed amendments given financial records about fishing businesses may be essential for an investigation.</p>

		<p>businesses involving fish or connected with fish and will be especially important with the introduction of further quota managed fisheries.</p> <p>The word 'photographs' (in s191(1)(l)) has been read to mean hard copy photographs. All images, including digital images, need to be included in this provision.</p> <p>s191(10(q) has a potential compliance loophole in that the person being directed to wait for the Fisheries Officer may interfere with any potential evidence in that period.</p>	<p>Replace "photographs" with 'images however stored'.</p> <p>Insert in s191(q). after 'wait at a place indicated by the Fisheries Officer', 'and/or not to interfere with any fishing gear and fish the subject of a direction until the Fisheries Officer is able to inspect'.</p>		<p>The Committee has no comment on the other parts of the proposed amendment.</p> <p>The Committee has no comment on the other parts of the proposed amendment.</p>
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Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s recommendations
82	S192 Arrest	<p>To be consistent with some other fisheries jurisdictions, it is proposed to provide the power for the arrest of persons attempting to destroy or fabricate evidence (e.g. where a person attempts to throw undersize fish over the side of a boat), or interfering with witnesses in a case.</p> <p>It is also necessary to enable the arrest of a person where a warrant has been issued, but which for some reason (e.g. the isolated nature of the region) a copy is not available.</p>	<p>Powers of arrest without warrant need to be expanded to prevent the concealment, loss or destruction of evidence or to prevent the fabrication of evidence in relation to an offence; and to prevent the harassment of, or interference with, a potential witness in proceedings in respect of an offence.</p> <p>Also enable arrest of a person where a warrant has been issued but a copy is not available.</p>		<p>The Committee has no comment on the proposed amendments to this provision.</p>

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
83	S193 Seizure	<p>Currently a Fisheries Officer has the power to seize “any boat, vehicle, aircraft or other thing.....”</p> <p>Currently, the term <i>other thing</i> is read down and it may be inferred that it refers to a form of transport. By providing an expanded description of things that may be seized, there will be a better clarification of terms and powers.</p> <p>S193(e) is too narrow in that it only allows the proceeds of the sale of any fish taken in contravention of this Act to be seized. It is proposed to extend the scope of this section to provide for the seizure of any revenue that has resulted from actions associated with the illegal trade of fish.</p> <p>S193(h) provides for the seizure of fish and containers where 1/20th of the fish are totally protected fish. The section needs to also</p>	<p>In s193, specifically include ‘other forms of transport, gear equipment and other things, including that used for aquaculture and ecotourism operations’.</p> <p>Extend s193(e) to cover not just ‘sale’ but also ‘trafficking, transport, or dealing with fish’.</p> <p>Amend s193(h) to include any protected fish (not just totally protected fish).</p>	No comments.	The Committee has no comment on the proposed amendments.

		<p>cover commercially and recreationally protected fish.</p> <p>Currently, the powers of Fisheries Officers to seize containers holding fish is limited to certain circumstances relating only to totally protected fish. It is not practical for Fisheries Officers to carry their own containers to store fish when on patrol. It is proposed to extend the power to allow the seizure of containers holding any fish suspected of being illegally obtained or dealt with contrary to the FRMA.</p>	<p>Insert a new subsection to also give fisheries officers a general power to seize containers holding fish suspected to be illegally obtained, dealt with, transported or processed.</p>		
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Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s recommendations
84	S195 Seizure of abandoned etc fishing gear	Section 195 currently only deals with the forfeiture of abandoned fishing gear. It is proposed to allow Fisheries Officers to also seize abandoned ecotourism or aquaculture gear (e.g. where an aquaculture farm is abandoned and ropes and floats are left and pose a threat to small boat safety, these may be seized).	Include the power to seize abandoned aquaculture gear, or ecotourism gear.	No comments.	The Committee has no comment on the proposed amendment.
85	S197 Giving of assistance	Currently people who give assistance to Fisheries Officers may apply for compensation at any time after the event. For efficient administration, it is proposed to limit the period in which a person may apply for compensation to 90 days. Otherwise there may be an open ended liability for Government.	The right to apply for compensation should be limited to 90 days after providing assistance.	No comments.	The Committee has no comment on the proposed amendment.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
	PART 17 – LEGAL PROCEEDINGS				
	Division 2 – Responsibility of certain persons				
86	S202 Liability of master	Masters are currently liable for any offence committed by crews on boats. It is proposed to extend the provision to specify that the supervisor in the fish handling, transport and processing areas is also liable for any offence his team commits – e.g. in a fish receipt depot the supervisor of the depot would be liable for an offence if illegal non-quota fish were accepted at the depot by his staff. This power exists in other fisheries jurisdictions as a part of the tools required for effective quota management.	Amend s202 to include ‘supervisors’ throughout.	(see below).	The Committee has no comment on the proposed amendment.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s recommendations
87	S204 Liability of officers for offence by body corporate	<p>Currently, officers of a corporate body are liable for offences committed by the corporate body if the Crown can prove the officer consented to, or did not exercise due diligence with regard to, the offence. This can be difficult to prove if the corporate body does not cooperate with investigators. It is proposed to reverse the onus of proof to bring this section in line with other fisheries jurisdictions and with other sections of the FRMA.</p> <p>Issue of ‘state of mind’ of body corporate, and of directors, employees or agents of that body corporate.</p>	<p>Amend to require the reverse onus of proof such that officers of the corporate body must prove that they did not consent to, nor were negligent in their duties by failing to prevent, an offence.</p> <p>If it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, employee, or agent of the body corporate, was acting within the scope of that person’s actual or apparent authority.</p>	<p>Do not support reverse onus of proof.</p> <p>Reverse onus of proof not consistent with proposed PMB.</p> <p>Clarify that the ‘corporate body’ is a business under the ‘<i>Company (Co-operative) Act 1943</i>’.</p>	<p>The Committee supports the proposed amendment given the precedent for ‘reverse onus of proof’ in other similar legislation eg <i>Victoria Fisheries Act</i>.</p> <p>The Committee recommends that a clear definition of ‘corporate body’ is provided in the ‘Interpretation section’ of the FRMA to address the public comment.</p>

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s recommendations
88	New section	There have been cases where undersize fish (e.g. rock lobster) have been found at fishing camps. The adults present, although aware of the undersized nature of the fish, have claimed that the fish belonged to the children in the group. This can be an effective approach to avoiding prosecution in some cases. It is proposed to make adults in charge of children responsible for the fishing activities (and offences) of children in their care.	A new section be included providing that where children are in possession of illegally taken fish or fish taken with illegal gear or through any other offence, then the adult in charge of the child is deemed to be in possession of such fish or to have committed the offence.	Support (x2). Do not support.	The Committee supports the proposed amendments to this provision, noting that ‘in possession of’ will need defining in the Interpretation section of the FRMA.
	Division 3 – Evidentiary provisions				
89	New section	Currently, in prosecuting an offence involving documents, the Crown needs to prove the author of each document. This can be a difficult and onerous task, particularly for quota offences which may involve very large numbers of documents.	Insert a new section that provides that a return, record, transaction, form, application, or other information purporting to be completed, kept, provided by or on behalf of any person, shall be deemed to have been completed, kept or provided by that person unless the contrary is proved.	No comments.	The Committee has no comment on the proposed amendment.

		<p>It is proposed to adopt legislation from other fisheries jurisdictions – which states that any document purportedly belonging to a person is deemed to be kept, or completed by that person, unless the person proves the contrary (e.g. if the ACME Fishing Company submits the December fishing return for F64, then it is assumed that the return is submitted by the ACME Fishing company unless the ACME proves otherwise).</p>			
90	S208 Proof of contents etc of package	S208 currently provides that unless otherwise proved, the Court can take notice of labels on containers of fish to determine the type of fish, the quantity and who packed or consigned the fish. For the purposes of quota management, it is proposed to extend the section to cover the weight of fish marked on any container.	Add the word 'or weight' which allows for presumption of weight of fish in labelled containers.	No comments.	The Committee has no comment on the proposed amendment.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
91	S209 Proof that fish were taken for sale	S209 is a deeming provision which provides that if fish are sold, then they were deemed to be taken for the purpose of sale. The provision was designed to assist in the prosecution of people who take fish under the guise of recreational fishing and then sell them on the ‘black market’. The converse situation needs to be addressed where fish, caught by recreational fishing, are being allegedly held for private purposes but are found on commercial fish dealers’ premises. It is proposed that all fish found on premises involved in the commercial dealing of fish are deemed to be on the premises for a commercial purpose. Note: there will need to be regulations that provide for the management of <i>bona fide</i> businesses that store recreationally-caught fish as part of a legitimate business and as a service for their customers e.g. at a remote fishing resort which incorporates a restaurant, the resort owners may, as a service to their customers, temporarily store fish caught by their clients.	Provide a deeming provision that where any fish is sold, then it is deemed that the person who took those fish took them for the purpose of sale.	Support.	The Committee supports the proposed amendment.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
92	New section	<p>The laws of evidence usually require the original copy of documents to be submitted to the Court. Often Fisheries Officers conducting investigations take copies of business records but allow the business to keep its original records so that it can continue operating. At some later time, if a prosecution is commenced, it may be found that the original records may have been lost or destroyed. To address this, it is proposed to allow copies of documents to be submitted in evidence.</p>	<p>Provide that copies of documents taken by Fisheries Officers are to be placed in evidence subject to certain procedures (this is similar to the <i>New Zealand Fisheries Act</i> s239).</p>	<p>Support. Support but will provision include a form of official certification for the copies?</p>	<p>The Committee supports the proposed amendment.</p>
93	New section	<p>Currently, there is no power to require that forms, records and returns be completed in English and in a legible manner. This can result in unusable forms, returns and records being submitted.</p>	<p>Provide that records and returns, and all prescribed or approved forms, must be completed in legible English.</p>	<p>Support.</p>	<p>The Committee supports the proposed amendment.</p>

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
94	S212 Evidence of licensing matters	Currently this section does not provide power for the Registrar to give a certificate stating who is the holder of specific authorisations, or what authorisations are held by a specific person. This may cause problems when the mere holding of various authorisations may be the central element of an offence (e.g. holding a RFL and CFL simultaneously).	Amend to additionally provide for the Registrar to give a certificate as to who is or was the holder of a licence or licences at specific times or dates and what licences are/were held by a person at certain times or dates.	No comments.	The Committee has no comment on the proposed amendment.
95	S213 Evidence of scientific matters	This provision is to facilitate the Court process by allowing evidence of a scientific matter to be given by certificate. S213(3) permits an ‘authorised person’ to give evidence by certificate of technical information in regard to fish and fishing gear. It needs to be broadened to take account of aquaculture, identification of fishing equipment, fish biology and pathology.	Amend S213 to broaden the scope of scientific evidence to include aquaculture, fishing gear, fish biology and pathology.	(does this include DNA evidence?) (x2).	The Committee supports the proposed amendment with the specific inclusion of ‘DNA and’ ‘scientific evidence’.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
96	S215 Accuracy of measuring equipment	This provision currently provides that measuring equipment used by Fisheries Officers is accurate unless the contrary is proved. It is proposed to extend the scope of the provision to include modern electronic satellite monitoring and communication equipment used for monitoring the position of fishing vessels eg. Vessel Monitoring System.	Amendment to specifically include VMS or satellite communication systems linked to Global Positioning System (GPS).	No comments	The Committee has no comment on the proposed amendment.
	Division 4 - Forfeiture				
97	S217 Return of things seized	Fishing equipment and fish seized by Fisheries Officers are not always forfeited. They may instead be returned to the person from whom they were seized. However, some people do not collect the seized goods and the Department of Fisheries currently has no ability to deal with such cases. It is proposed that a three- month period be	Insert a new subsection along the lines of s219 creating a time limit (three months) within which seized items should be returned/collected once the Executive Director has authorised their return. Those seized items which are not able to be returned/collected in that time limit are forfeited.	Support.	The Committee supports the proposed amendment.

98	S218 Order for forfeiture	<p>given to collect seized items and if they are not collected within that period the goods be forfeited to the Crown.</p> <p>This provision needs to specifically cover all seizable items detailed in s193.</p> <p>It is not always possible for Fisheries Officers and the Court to determine which fish are the subject of an offence e.g. a trawler may fish in both open and closed waters on a single night before being apprehended. It is not possible to determine which fish were caught legitimately and which were illegally taken. It is proposed to provide the power for the option for the Fisheries Officer to seize the whole catch in such circumstances, and on conviction allow the Court the option of ordering the forfeiture of any amount of the catch the Court deems appropriate (which may include the whole catch).</p> <p>Need to provide for the automatic forfeiture to the Crown of illegal fish and fishing gear seized in</p>	<p>See s193 (above).</p> <p>Amend S218 to provide for the Court where it is not possible to determine which particular fish are subject to an offence to order the forfeiture of all the fish seized or any portion thereof.</p> <p>Amend to provide that if an offence has</p>	No substantive comments.	The Committee supports the proposed amendment.
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99	S220 Certain fish forfeited upon seizure	the event of an offender paying an infringement notice. Currently, such items can be returned if the infringement is paid and this may be inappropriate (e.g. the return of an illegal marron trap to an offender).	proceeded by way of an infringement, and offender has paid the infringement notice, the things seized are automatically forfeited to the Crown.		
	Some fish are automatically forfeited when seized under the FRMA e.g. berried female lobsters; undersized marron. It is proposed to extend the automatic forfeiture provision to include fish in excess of the bag or possession limit. This minimises and simplifies the administrative procedure which otherwise would involve Fisheries Officers managing the storage, the later disposal and the possible sale of such fish.	Insert a new subsection to provide that all fish found by a Fisheries Officer in excess of the bag limit or possession limit is automatically forfeited.	Support.	The Committee supports the proposed amendment.	

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
100	<p>Division 5 – Additional penalties</p> <p>S222 Additional penalty based on ten times value of fish <u>subject of the offence</u></p>	<p>The additional s222 penalty currently applies for each charge against a defendant, even though it is the same fish. It is proposed that the additional penalty only applies once for each defendant in respect of the same fish (see section 2.3.6 of this discussion paper).</p> <p>Currently s222 has the capacity to impose unreasonable and unfair mandatory penalties which are based on ten times the value of the fish subject of the offence (see section 2.3.6 of this discussion paper). There is a need to provide a discretionary upper limit on the additional penalty in circumstances where the full additional penalty would be too harsh (e.g. for some recreational fishing offences and for minor</p>	<p>Amend header to reflect the clarification.</p> <p>Amend to clarify that additional penalties are only to be applied once only, irrespective of the number of charges against a particular defendant relating to those fish.</p> <p>Amend s222 to provide the capacity to prescribe the maximum penalty that can be imposed in respect to circumstances, class of person, or class offence.</p>	<p>Do not support maximum penalty (x2).</p>	<p>The Committee supports the proposed amendment. It considers that unrealistic and unfair fines penalties may result if penalties are not capped.</p>

		<p>or technical commercial fishing offences).</p> <p>Currently, the provision has been interpreted to refer only to commercial fishing offences. Offences by the other sectors need to be included.</p>	<p>Tighten the wording of section 222 to ensure all authorisation holders are subject to <i>additional penalty</i> provisions.</p>		<p>The Committee has no comment on this part of the proposed amendment.</p>
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Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
101	S223 Court may cancel or suspend authorisation	Currently, if an authorisation is cancelled or suspended, the Court does not have the power to have the authorisation delivered up.	Provide in an additional subsection that a Court convicting a person in relation to an offence which requires the person’s licence to be cancelled or suspended to have the power to order that the person delivers up their licence to either the Court or the Executive Director.	No comments.	The Committee has no comment on the proposed amendment.
102	S224 Automatic cancellation of authorisation if three offences committed in 10-year period	Currently, where three ‘black marks’ (serious offences convictions) have been recorded against a licence in a 10-year period, the Executive Director must cancel the licence, and unless there are provisions in the Management Plan to allow it, the licence cannot be reissued. This has a significant impact on the fisher – but also creates uncertainty in the financial sector, creating a perception that the commercial fishing industry is a high-risk investment option. Less financial investment in the industry means no growth or ongoing	Amend header, and the rest of the provision to replace ‘cancellation’ with ‘suspension’. Consideration may also be given to the development of a system of true administrative penalties, where circumstances (yet to be identified) warrant the imposition of an administrative penalty instead of suspension of an authorisation Provide that on the recording of the third conviction, the authorisation must either – as appropriate – be suspended, or reduced, for a period of up to 5 years, with the Executive Director providing advice to the Court on the appropriate length of the period, in accordance with Ministerially endorsed policy guidelines. The Court to make its own determination of the appropriate length of the suspension period.. With respect to quota managed fisheries, suspending the licence for less than a full quota period will not be effective. Therefore, provide a power so that in quota managed fisheries, on	Support – clarify transfer of licence with black marks.	The Committee supports the proposed amendment.

		<p>prosperity. It is proposed that the provision be amended so that after three black marks are recorded against a licence in a ten year period, the Executive Director is required to automatically suspend that licence.</p> <p>Current wording of the provision allows for some authorisation holders who have their licence 'fished' by others to escape the imposition of 'black marks' (see section 2.3.5 of the discussion paper). The proposed changes mean, in effect, that all authorisations and the units of entitlement being fished at the time of a 'black mark' offence have a black mark attributed. Black marks over the units and the authorisations will be tracked (and will be recorded on the register).</p>	<p>recording of the third conviction, the entitlement relating to quota must be suspended or reduced for a period. Transition powers may be required to take account of authorisations cancelled under the existing FRMA provisions.</p> <p>Provide head powers to allow regulations to be prescribed for operation and management of this section.</p> <p>Amend the wording of section 224 to ensure all authorisation holders, including those holding the licence and those fishing on behalf of a licence holder, are subject to <i>black mark</i> provisions.</p>		
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Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
103	S225 Court may prohibit person from being on fishing boats or certain places etc.	<p>Currently, the scope of s225(1)a means that the Court can only prohibit serial offenders from being on commercial fishing boats. However, it is important that the ban applies to all boats, as black market offenders regularly use non-commercial fishing boats.</p> <p>The Court needs to be additionally able to prohibit persons convicted of offences against this Act from being in or on any places connected with the commercial dealing of fish</p> <p>Given the experience in other jurisdictions and the need to ensure serial offenders can not easily continue to engage in illegal fishing or black market fish dealing, it is proposed to extend the scope of this provision to include the ability for the Court to prohibit a person from</p>	<p>Remove the word ‘fishing’ from s225(1)(a) to broaden the provision.</p> <p>Insert a new subsection that prohibits a person convicted of an offence against this Act from being in or on a place or class of places used as a business involved in or in connection with commercial dealing of fish’.</p> <p>Insert a new subsection in s225(1) to prohibit a person from being in or on, specified, or all, waters of the State.</p>	Do not support – should only refer to boats in certain places.	The Committee supports the proposed amendment.

		<p>being on or in Western Australian waters, prohibiting people from being in places connected with fish processing and all places and activities connect to fishing and the business of selling, transporting and dealing in fish (e.g. in Tasmania, the Courts ultimately banned a serial abalone poacher for being in any Tasmanian waters, except when travelling on the ferry between Tasmania and Victoria.)</p> <p>Also need capacity to recognise interstate bans on individuals or serial offenders.</p> <p>The penalties need to better reflect the offence.</p>	<p>Insert a new section which will allow the Executive Director to apply to the Court at any time for an order where the Executive Director is of the view that a person is not a fit and proper person and is likely to offend against the FRMA (this will include a consideration of the person's fishing activities in any other state).</p> <p>Increase the penalties of s225(4) and (5) to be more appropriate to a contempt of court penalty.</p>		
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Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
107	Division 6 – Infringement notices		Amend header to read ‘Administrative penalties and infringement notices.’		
104	New section	<p>It is proposed that the Executive Director can seek to have the Court impose administrative penalties in certain cases rather than proceed with criminal prosecution. This process would need to operate under rigid guidelines to ensure an open, transparent, and consistent administration.</p> <p>Many fisheries cases are strongly defended, require considerable resources, and take significant time to bring to trial. For some classes of offences it will be more efficient and effective for both the Crown and the defendant to agree to proceed by administrative penalty.</p> <p>The penalties could</p>	<p>Insert a new section to provide for an administrative option as an alternative to prosecution – e.g. for offences like accidental overruns of quota in commercial fisheries.</p>	Support.	<p>The Committee supports the proposed amendments to this provision. It suggests that the example provided - ‘accidental overruns of quota’ is clarified to assist Parliamentary Counsel in its drafting of the new provision.</p>

		<p>be either (or both) pecuniary, or licence or entitlement suspension, e.g. where a fishing operator commits an offence concerning a serious administrative failure to maintain appropriate records but where the Executive Director is satisfied the offence was an error of omission or carelessness and not an attempt to cheat quota, an administrative penalty is appropriate.</p>			
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Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
105	S228 Giving of notice	<p>Currently, Fisheries Officers have 21 days from the date of an offence to issue an infringement notice.</p> <p>If the 21-day period expires, prosecution is the only penalty option available. This is a costly resource-demanding process that is not appropriate for minor or trivial offences.</p> <p>Consequently, this period has proved to be too short.</p> <p>The current 21-day limit legislation generally only permits the Executive Director to deal with offences where the Fisheries Officer actually apprehends the offender. The issue of infringement notices for minor offences (e.g. as a result of public complaint) often occur days after the offence and may not always receive the priority for</p>	<p>Increase the period of time within which an infringement notice is to be served from 21 days after the date of the alleged offence to 90 days after a Fisheries Officer becomes aware of the offence.</p>	<p>Support.</p> <p>Do not support (x2) max 45 days.</p>	<p>The Committee recommends the period be changed to 45 days.</p>

		<p>investigation, given that Fisheries Officers will focus on more serious matters.</p> <p>Fisheries Officers in remote and regional areas can be away on extended patrols and this limits their capacity to follow up on infringement notice issues. By extending the period to investigate and issue infringements for minor infractions, Fisheries Officers will be able to deal with this class of offence outside of peak demand periods and hence provide for a more effective compliance program.</p>			
	<p>PART 18 – FINANCIAL PROVISIONS</p> <p>Division 2 – Funds</p>				
106	<p>S238 Fisheries Research and Development Fund</p>	<p>Currently, the fund is to be credited with funds from a number of specified sources which do not include the fees and charges from the provision of advisory, extension and consultancy services, and the</p>	<p>Specify that the fund should be credited with fees and charges from such things as the provision of advisory, extension and consultancy services, and the proceeds of the sale of any fish taken as part of research activities conducted for, or on behalf of, the Department of Fisheries.</p>	<p>Support (x2.)</p> <p>Create indigenous fishing fund (*see section 3.3).</p>	<p>The Committee supports the proposed amendments to this provision with the inclusion of 'aquaculture'. It also recommends that the Fund should be considered to be used to receive and source any funds allocated to the recreational sector for reallocation purposes.</p>

		<p>proceeds of the sale of any fish taken as part of the research activities of the Department of Fisheries. These sources should be additionally specified.</p> <p>The current uses of the fund should include uses for the benefit of the recreational fishing sector, ecotourism industry and fishing tours; payment of members of Management Advisory Committees; and the payment of rewards for people providing information that leads to a conviction.</p>	<p>Specify that the fund may be used for the benefit of the recreational fishing sector, the ecotourism industry and fishing tours, and to pay members of prescribed Management Advisory Committees, and for the payment of rewards to persons providing information that leads to a conviction.</p>	<p>Include 'aquaculture'.</p>	
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Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
107	S239 Recreational Fishing Fund	Currently, this section does not specify that members of the Recreational Fishing Advisory Committee may be paid out of this fund. It is appropriate that this fund be the source of these payments.	Include that the fund may be used for the payment of Recreational Fishing Advisory Committee members.	Clarify – are travel expenses included?	The Committee has no comment on the proposed amendment.
108	S241 AFMA Fund	Arrangements with the Australian Fisheries Management Authority (AFMA) have changed since this provision was developed.	Retitle the section as ‘Services Fund’ to cover all funds from external sources (other than from the Fisheries Research and Development Corporation (FRDC)) for services other than research delivered by the Department of Fisheries.	No comments.	The Committee has no comment on the proposed amendment.
109	S242 Fisheries Research and Development Corporation Fund	The heading of this section is too specific and limiting. It should be rewritten to encompass all sources of funds referred to in this section.	Retitle section as ‘Research Fund’ to allow funds from sources other than the FRDC to be credited to the fund.	No comments.	The Committee has no comment on the proposed amendment.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments Public Consultation	Review Committee’s Recommendations
110	PART 19 – MISCELLANEOUS New section	In line with Government policy, the Department of Fisheries is moving to providing full disclosure of the prosecution case prior to trial. This allows for the defence to more properly assess the case against the defendant and potentially may reduce the trial time and costs to the Crown and to the defendant. It is proposed to require similar disclosure for the defendant in respect to any defences to be relied on under the FRMA or the <i>Criminal Code</i> , which will allow the Crown sufficient time to assess the defence or better prepare for trial.	Provide that the defendant may not rely on defences under the FRMA or the <i>Criminal Code</i> unless the Executive Director has been advised by defendant not less than 60 days prior to trial of the particulars of any defence (nature of accidents, cause, person relied on, etc).	Support.	The Committee supports the proposed amendment.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
111	S250 Confidentiality	<p>Currently, catch and effort information which may identify fishers may only be released with the written consent of all parties involved. This is difficult to administer and in small fisheries means that information is not released at all.</p> <p>Provision of information to approved investigating agencies.</p> <p>Need to ensure that when a licence is transferred the catch history of that licence can be available to the new licensee.</p>	<p>Amend s250(3) so that summaries of catch and effort data which relate to managed fisheries of significant interest to the community may be released, even though it may lead to the identification of the person/boat to whom the information relates.</p> <p>Allow for release of confidential information to other approved (by the Executive Director) government agencies (Commonwealth, State and Territories) where that information relates to a law enforcement investigation being conducted by the agency.</p> <p>Where a permanent transfer of an authorisation occurs, it will include the ability of the new licensee to access information about catch or production history (e.g. under Regulation 64) associated with the licence.</p>	Do not support – consider other ways to ensure confidentiality.	The Committee acknowledges the public comments and agrees that alternative methods should be considered to ensure confidentiality. It suggests that it may be appropriate to provide a power for the Regulations to allow the Executive Director to prescribe alternate methods to ensure confidentiality of fishers.

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments – Public Consultation	Review Committee’s Recommendations
112	New section	<p>Currently, the pecuniary penalties specified in the FRMA are fixed and over time must be individually amended by Parliament each time there is a requirement to change a penalty. In line with many more modern Acts, it is proposed to create a ‘penalty unit’ system where each offence will attract a certain number of penalty units (where one penalty unit has a fixed dollar value, which is set in the regulations). This means that periodic amendment to the penalty value can be made by a regulation amendment, rather than an Act amendment.</p>	<p>Provide for penalties to be expressed as penalty units and the capacity to prescribe unit value.</p>	<p>No comments.</p>	<p>The Committee supports the proposed amendment.</p>

Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments Public Consultation	Review Committee’s Recommendations
113	S254 Minister to be notified of certain works on a waterway	<p>It should be the Executive Director (not the Minister) who is notified of such matters, and this power should be delegable to other appropriate agencies e.g. the Environmental Protection Authority.</p> <p>This section currently requires the Minister to be notified (by the public authority planning to build the structure) before a dam or weir is constructed over a waterway. The intent of this was to ensure that the movement of fish can be considered and provided for in any construction.</p> <p>However currently, the legislation does not extend to requiring private individuals who are planning to build such structures to notify the Minister. There is also no offence created, or penalty set, for failure to notify the Minister of such plans.</p>	<p>Change all references to the ‘Minister’ to ‘Executive Director’ and allow for this function to be able to be delegated to other appropriate agencies.</p> <p>In s254(2) include ‘or person’ as well as a public authority. Also ensure, in s254(2)(b) that the Executive Director ‘may require’ rather than ‘so requests’.</p> <p>Create an offence (with an infringement penalty) for non-compliance.</p>	<p>Should not apply to ephemeral streams.</p> <p>Support – with requirement that any modifications to existing dams or weirs, or building of new dams and weirs should have provision for fish passage (x2).</p>	<p>The Committee supports the proposed amendments.</p>

		<p>There is also currently no requirement for the person who builds an illegal dam on a public waterway to either modify or remove the dam, or for the Executive Director to direct or commission the removal of any such illegal structures if the person responsible does not.</p> <p>Currently, the method of notification is not specified.</p>	<p>Provide powers for the Executive Director to require the removal (or commission the removal) of any structures built in contravention of this section, with costs to be met from the person in contravention of the section.</p> <p>Specify in the amended provision that any notification of a proposal should be in writing.</p>		
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Ref Number	FRMA Section	Issue	Proposed Amendment – Department of Fisheries	Substantive Comments Public Consultation	Review Committee’s Recommendations
114	S255 Minister may prohibit activities that pollute waters	Currently the provision applies to all activities that may pollute any aquatic environment. The special nature of Fish Habitat Protection Areas should be recognised by ensuring there are increased penalties for activities that may pose a pollution risk to these environments.	Amend s255(3) so that penalties are increased where the activity pollutes, or is likely to pollute, a Fish Habitat Protection Area.	Unnecessary once Fish Habitat Protection Areas dealt are dealt with in other legislations – as proposed in an earlier comment.	The Committee supports the proposed amendment.
115	S257 Regulations – other licences	With the introduction of IFM, there is a need to ensure that the regulations provide the capacity for the licensing of all activities (including for example, management of recreational fishing through fishing by tags – like in the Shark Bay recreational pink snapper fishery; and the licensing of diving for aquaculture, commercial fishing, or ecotourism) within each of the sectors (including, for example, the licensing of customary fishers, and for the licensing of	<p>Amend so that the regulations may provide for the licensing of ‘masters’ as part of the suite of licences within the commercial fishing sector.</p> <p>Amend so that the Executive Director may issue to persons undertaking specified recreational fishing activities a tag, which entitles the person to take a fish of the species identified by the tag.</p> <p>Include powers for regulations for the licensing of customary fishing, and for persons engaged in diving for the purposes of aquaculture, commercial fishing or ecotourism.</p> <p>Create a head power for regulations to provide for the licensing of activities of a prescribed class in a Fish Habitat Protection</p>	<p>Do not support – duplicates DPI provisions (and not included in objects).</p> <p>Do not support licences for customary fishing.</p> <p>Other forms of licences if in waters vested in the Biodiversity Commission, only</p>	<p>The Committee acknowledges the public concerns on this matter but understands that the ‘masters’ referred to in this provision are ‘fishing’ masters – not masters responsible for marine safety. Because of this the Committee supports the proposed amendment.</p> <p>See section 3.3, Volume 1.</p> <p>The Committee supports the proposed amendment. Fish Habitat Protection Areas are</p>

116	S258 Regulations – miscellaneous	<p>masters in the commercial fishing sector). This will increase the flexibility of management arrangements into the future.</p> <p>Currently, s257(f) states that the regulations may provide for the licensing of charter boats that are undertaking recreational fishing. While charter boat clients are fishing for recreation, they are paying for the privilege – which is part of the charter boat’s commercial operation. To avoid confusion, the reference to ‘recreational fishing’ in this provision should be removed.</p>	<p>Area.</p> <p>In s257(1)(f) remove reference to recreational fishing.</p>	<p>to be issued after consultation with Commission.</p> <p>Remove reference to recreational fishing charter boats.</p>	<p>currently administered through the FRMA.</p> <p>The Committee supports the proposed amendment.</p>
		<p>Some WA fishing tackle retailers are selling illegal fishing gear, which can ultimately result in it being used illegally in the WA waters (e.g. crab traps which, if lost, can continue ‘ghost fishing’ - killing</p>	<p>Create power to regulate and prohibit the sale of fishing equipment that is illegal in WA.</p>	<p>Need reg head power to allow barter and exchange by</p>	<p>The Committee supports this proposed amendment.</p> <p>The Committee agrees that a regulation head power is</p>

		<p>fish and crabs which are lost to the fishery).</p> <p>There is a need for a head power to specify what constitutes recreational fishing and who can engage in recreational fishing, e.g. it is inappropriate for a one-year old child to hold a recreational lobster licence, as a child that age could not dive for lobsters or pull a lobster pot. Alternately, it is reasonable for two people crabbing from a boat to each have a bag limit of crabs, where one person pulls the drop nets and the other only drives the boat.</p> <p>Future management arrangements may require the control of persons dealing in fish other than the current licensed fish processors. This is particularly important in tracking fish through the marketing chain in relation to quota fisheries and the 'black market' trade in high-value fish species.</p>	<p>Need to ensure there is a head power under the regulations which clarifies what entails 'involvement' in fishing activities.</p> <p>Create power to register, license, prohibit and regulate fish receivers and dealers.</p>	<p>customary fishers.</p> <p>Support.</p> <p>Include requirement for data to be provided by recreational fishing sector.</p> <p>Support – but registration system may be an alternative to licensing system.</p>	<p>required to allow barter and exchange by customary fishers.</p> <p>The Committee supports the proposed amendment.</p> <p>The Committee agrees that the recreational sector should be required to provide catch and effort and other data to assist management and research.</p> <p>The Committee agrees with the proposed amendment to provide the suite of options to register/licence fish receivers and dealers.</p>
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		<p>For compliance purposes, it is necessary to be able to identify the master of a vessel at any time, and to have the capacity to prescribe the responsibilities and qualifications required of these people. This will also assist in improving the community perception of commercial fishers.</p> <p>The regulations currently contain a large number of defences, reverse onus and deeming provisions. To provide legal surety that these provisions are soundly based, it is proposed to create a specific head power.</p> <p>Need for powers for protection of aquatic habitats</p> <p>Legitimate fishing activities can result in the accidental taking of fauna other than fish. e.g. dolphins in trawl</p>	<p>Create powers to license, register, and regulate masters of vessels (including prescribing qualifications) so as to prohibit unqualified person acting as master or any person taking a vessel to sea with a unregistered/unrecorded master).</p> <p>Create power for defences and reverse onus of proof and deeming provisions in regulations.</p> <p>In s258(i) include 'diseased, prohibited or restricted fish'. Provide that regulations may be made for the reseeded, or release of fish. Provide that licence conditions may be varied to mitigate or prevent environmental harm or risk of harm to the environment.</p> <p>Ensure that s258(za) includes the requirement for the recording of incidental marine fauna in Departmental records or returns.</p>	<p>Duplication of DPI requirements?</p> <p>Do not support reverse onus of proof.</p> <p>Support (x3).</p>	<p>The Committee supports the proposed amendment, given that 'masters' in this context refers to 'fishing masters'.</p> <p>Given similar legislation elsewhere, the Committee supports the proposed amendment.</p> <p>The Committee has no comment on the proposed amendment. The Committee has no comment on the proposed amendment.</p> <p>The Committee supports the proposed amendment.</p>
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		<p>nets. It is important that such accidental catches are recorded for management purposes.</p> <p>Currently, the holder of a CFL cannot hold a recreational licence for abalone, lobster and netting. It is proposed to allow commercial fishers to participate in these fisheries subject to certain conditions. It is necessary to ensure that appropriate head power is available to achieve this outcome.</p> <p>It is proposed to adopt 'Codes of Practice' under the regulations which will allow for either an offence for failing to comply with a 'code' or provide a defence if complying to the code e.g. complying with the live rock lobster holding code of practice will be a defence to any animal cruelty charge.</p> <p>There is a need for regulations to prohibit and manage the take of non-targeted fish e.g.</p>	<p>Provide a head power for regulations governing holders of CFLs participating in recreational fishing in certain conditions or circumstances and an offence provision.</p> <p>Create a power for the Executive Director to recognise/adopt formal documented 'Codes of Practice' which provide defences to activities.</p> <p>Add a new provision that relates to the prohibition and regulation of activities which impact on non-targeted aquatic fauna, and activities associated with fish and fishing</p>	<p>Support – but needs careful wording – recreational and commercial fishing can't occur together or from the same boat at the same time.</p> <p>Should be restricted to those impacted by direct fishing activities – all other sorts of impacts regulated by BCA.</p>	<p>The Committee supports the proposed amendment, under prescribed (rather than 'certain') conditions</p> <p>The Committee has no comment on the proposed amendment.</p> <p>Dealt with in section 3.1, Volume 1.</p>
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			<p>the incidental take of dolphins by trawl fisheries and fishing activities which impact on the aquatic environment.</p> <p>There is significant national concern with cross jurisdiction criminal activity in relation to high-value fish species e.g. lobster and abalone. There is a need for fisheries law enforcement agencies to share intelligence information.</p>	<p>which may damage aquatic habitats.</p> <p>Provide a head power to allow for the regulation of the exchange of intelligence information between agencies involved in fisheries law enforcement.</p>	<p>Need additional power to regulate customary fishing.</p>	<p>The Committee agrees that powers are required to regulate customary fishing.</p> <p>The Committee has no comment on the proposed amendment.</p>
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Ref Number	FRMA Section	Issue	Proposed Amendment - Department of Fisheries	Substantive Comments Public Consultation	Review Committee's Recommendations
117	S264 Consequential amendments to other Acts (<i>Other Acts that will need to be amended as a consequence of these Act amendments</i>)	Impacts on other legislation.	<ul style="list-style-type: none"> • <i>Telecommunications (Interception) Western Australia Act 1996</i> • <i>Criminal Investigations (Identifying People) Act 2002</i> • <i>Criminal Property Confiscation Act 2000</i> • <i>Surveillance Devices Act 1998</i> • <i>Parks and Reserves Act 1895</i> • <i>Fisheries Adjustment Schemes Act 1987</i> • <i>Mining Act 1978</i> • <i>Offshore Minerals Act 2003</i> • <i>Transfer of Land Act 1893</i> • <i>Fishing and Related Industries Compensation (Marine Reserves) Act 1997</i> 	List incomplete. Support. Support.	The Committee suggests that the Department of Fisheries checks that the list of legislation is complete.

Table 2: GENERAL COMMENTS

Number	Comment	Refer to Reference Number	Committee's Response
1	Risk of jurisdictional conflicts with other agencies (e.g. CALM)	Ref. No. 1	See Section 3.1
2	Ensure amendments do not constrain the functions of the Department of Fisheries (no suggestion of re-constitution as SMA)	Ref. No.1	See Section 3.1
3	Replace all references to 'Executive Director' with 'Director General'	General	Has since been updated by <i>Machinery of Government Amendments Act 2006</i> . 'Executive Director' should now be referred to as 'Chief Executive Officer'
4	Tourism industry needs a single licensing system	General	This is a whole of Government matter, outside the scope of the Review.
5	Maximise protection of dolphins, seals, sea lions and penguins	Ref. No. 1	The Committee agrees that protection to these animals should be maximised within the boundaries of the FRMA. The proposed amended objects reflect this.
6	Extend membership of advisory groups who provide advice on allocation decisions, to include representatives from non-extractive users	Ref. No. 9	The Committee believes that this proposal will be met by the recommendation.
7	Management of Abrolhos ineffective under FRMA – a review required	Ref. No. 57	The Committee considers that this proposal is outside its Terms of Reference.

Number	Comment	Refer to Reference Number	Committee's Response
8	Need for government structural review to properly reflect wildlife conservation (eg separation of 'Fish Products Commission' from a Marine Conservation Agency).	Ref. No. 1	The Committee considers that this proposal is outside its Terms of Reference
9	Need a separate 'Department of Aquaculture' that promotes and develops the (aquaculture) industry and provides a simple licensing system.	General	The Committee considers that this proposal is outside its Terms of Reference
10	Training required of FOs operating in public drinking water areas	General	The Committee considers this to be an operational matter.
11	Need a separate Act for aquaculture (like South Australia) x 2	General	The Committee considers that this proposal is outside its Terms of Reference
12	Include list of complementary legislation	General	The Committee considers that the complementary legislations has been referred in Section 3.1
13	Regulations in the FRMA regarding waterways need to be consistent and complementary with DoW's regs and policies for managing waterways	Ref. No. 116	Amendments to the Regulations will be developed in the next phase.
14	Objects need to be complementary to DoW's	Ref. No. 1	The Committee considers the proposed objects to be appropriate for the sustainable management of fish, and their habitats.
15	BCA to override FRMA. FRMA to cover fishing activities only (like Forest Products Commission)	Section 3.1	The Committee considers that this proposal is outside its Terms of Reference
16	FRMA amendments and BCA should go through Parliament at the same time	General	The Committee considers that this proposal is outside its Terms of Reference

Number	Comment	Refer to Reference Number	Committee's Response
17	FHPAs to be created and managed under CALM Act	General	The Committee considers that this proposal is outside its Terms of Reference
18	Need for specific recreational fishing management	Ref. No. 17-21	The Committee considers that this suggestion is adequately covered in the proposed amendments to Part 6 of the FRMA
19	Whole of Government approach required for regulation of ecotourism	General	The Committee considers that this proposal is outside its Terms of Reference
20	Streamline aquaculture applications processes	Ref. No. 40	The Committee considers this to be an operational matter outside its Terms of Reference.
21	Include 'EPBC Act' in acronyms	Appendix 1	The Committee agrees that this should be included.
22	Changes required to Part 14 – Right to object or apply for review Provide mechanisms for a wider group of interested persons to: <ul style="list-style-type: none"> • Be notified of proposed authorisations • Be given the opportunity of objecting • Be given the opportunity to appear before the Tribunal Such groups to include appropriate incorporated bodies representing: <ul style="list-style-type: none"> • Commercial fishers • Recreational fishers • Marine conservation • Customary fishers 	Section 3.6	The Committee agrees this is an issue and has proposed a way forward in section 3.6.
23	s109 – change 'Governor' to 'Minister'	s109	The Committee agrees with this proposal.
24	s109(2) Ensure DFZs can be declared for either commercial or recreational fishing (to be described in Regulations)	Ref. No. 55	The Committee agrees with the proposal

Number	Comment	Refer to Reference Number	Committee's Response
25	s112 Create additional offence for 'interfering with a priority fishing activity in a DFZ, where 'fishing' excludes 'searching for fish'	Ref. No. 55	The Committee considers this to be an operational issue to be considered further by the Department.
26	s112 Need power for FO (or anyone directed by a FO) to 'remove anything from a DFZ (eg unattended mooring or anchor), and the ability to recover costs from the owner.	Ref. No. 55	The Committee considers this to be an operational issue to be considered further by the Department.
27	Need for 'whole of government' review to ensure integrated business approvals package for aquaculture (MPG 8 expensive and hard to administer -> LONG DELAYS).	Part 8	The Committee considers this to be outside its Terms of Reference.
28	Need power to establish 'Aquaculture Development Zones' and to allocate such zones or areas on a competitive basis.	Part 8	The Committee suggests that this matter be considered further by the Department of Fisheries.
29	Implementation of the recommendations of the previous aquaculture reviews eg set up governing Board, chaired by Minister.	Part 8	The Committee understands that these matters have been considered by the 'Deregulation Committee' and recommendations forwarded to the Minister.
30	Power to allow application for renewal of leases halfway through of existing lease (as per PMB)	Part 8	The Committee agrees in principle and suggests that the relevant provisions are similar in both pieces of legislation.
31	Ability to register financial interests and priority on register (as per PMB)	Ref. No. 58	The Committee considers that this power already exists in the FRMA.

Number	Comment	Refer to Reference Number	Committee's Response
32	Create power for longer term licences	Part 8	The Committee considers that s93 of the existing FRMA provides for a term of licence in excess of 12 months. The Committee doesn't support any further change at this time.
33	Create power for Minister to delegate issue of leases to the ED	General	The Committee does not support this proposal as it does not conform with the existing FRMA, nor with proposed PMB provisions.
34	Legislate to support aquaculture peak body		The Committee considers this to be a matter of Government policy and hence outside its Terms of Reference.
35	Need for more provisions regulating aquarium fish trade, translocation of aquarium fish and aquaculture species.		A number of provisions have been proposed to strengthen this area and the BAMB will also provide further regulation. The Committee does not support this proposal at this time.
36	Omissions in FRMA with respect to recreational fishing access, in light of increasing interference of local governments restricting access along rivers.	General	The Committee looks forward to further discussions about this issue.
37	Seek direction from Minister as to whether amendments to the FRMA should reflect proposed PMB provisions.	General	The Committee suggests that this proposal should be pursued at the appropriate time.

Number	Comment	Refer to Reference Number	Committee's Response
38	Problems with interpretation of and definitions within existing Act	Ref. No. 2	The Committee believes that this matter will be considered during the drafting process.
39	Support increased powers and penalties	General	No comment required.
40	No transfer of catch allocation from commercial to recreational	Amended Part 6	The Committee considers this to be a policy issue outside its Terms of Reference.
41	Separate management for recreational and commercial	Amended Part 6	The Committee considers this to be a policy issue outside its Terms of Reference.
42	Stop 'catch and release' except for tagging	Part 6	The Committee considers this to be a policy issue outside its Terms of Reference.
43	Open more fishing areas	General	The Committee considers this to be a policy issue outside its Terms of Reference.
44	Increase and enhance public education activity.	Ref. No. 1	The Committee considers the proposed enhanced objects will cover this matter.
45	s54(2) Minister should not be able to revoke management plan – if need to close fishery for a period, amend plan	Part 6	The Committee sees some merit in the suggestion. Further consideration by the Department of Fisheries is recommended.
46	Proposed amendments make FRMA too broad, should focus on sustainable fishing only	Section 3.1	Dealt with in section 3.1.

Table 3: LIST OF SUBMISSIONS RECEIVED

Commonwealth Government	<ol style="list-style-type: none">1. Australian Fisheries Management Authority2. Department of Agriculture, Fisheries and Forestry
State Government	<ol style="list-style-type: none">1. Department for Planning and Infrastructure, Marine Safety2. Conservation Commission of Western Australia3. Department of Environment and Conservation4. Department of Primary Industries and Fisheries, Queensland5. Department of Water6. Department of Treasury and Finance7. Tourism Western Australia8. Department of the Premier and Cabinet
Peak Bodies and Advisory Committees	<ol style="list-style-type: none">1. Western Rock Lobster Council2. WAFIC3. Recfishwest4. ACWA5. RFAC6. Marron Growers Association of WA Inc7. Peel RRFAC8. Conservation Council of Western Australia9. Peter E Powell, VFLO Mandurah, Chair – Peel RRFAC10. Yamatji Marlpa Barna Baga Maaja Aboriginal Corporation and Goldfields Land and Sea Council
Private individuals, and Industry groups	<ol style="list-style-type: none">1. Zone C Professional Fisherman's Association2. South Coast Licensed Fisherman's Association3. Ron Edwards4. A.Sharp5. Louise Scibilia6. Maxima Pearling Company7. Bluecity Enterprises8. Raphael Ellul9. Sun Kissed Yabbies10. Phil Shaw11. Ben Fraser12. Peter Godfrey

Appendix 1: LIST OF ACRONYMS

AFMA.....	Australian Fisheries Management Authority
BCB.....	Biodiversity Conservation Bill
BAMB.....	Biosecurity and Agriculture Management Bill
CFL.....	Commercial Fishing Licence
ED.....	Executive Director, Department of Fisheries
EPA.....	Environmental Protection Authority
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act</i>
FAS.....	Fisheries Adjustment Schemes
FO.....	Fisheries Officers
FRDF.....	Fisheries Research and Development Fund
FRMA.....	<i>Fish Resources Management Act 1994</i>
GPS.....	Global Positioning System
IFM.....	Integrated Fisheries Management
LAA.....	<i>Land Administration Act 1997</i>
RFL.....	Recreational Fishing Licence
SAT.....	State Administration Tribunal
SHL.....	Sustainable Harvest Level
VMS.....	Vessel Monitoring System
WA.....	Western Australia