

**PROPOSED AMENDMENTS TO THE
*FISH RESOURCES MANAGEMENT ACT 1994***

Discussion Paper

FISHERIES MANAGEMENT PAPER NO. 208

Department of Fisheries
168 St Georges Terrace
Perth WA 6000

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Fish Resources Management Act 1994

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This document was produced by the Department of Fisheries to serve as a basis for discussion and feedback from interested parties.



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SECTION 1 INTRODUCTION

This paper has been prepared by the Department of Fisheries and is designed to encourage consideration and feedback on proposed amendments to the *Fish Resources Management Act 1994* (FRMA). Many of the substantive issues and proposals have been previously discussed by the Department with stakeholder representatives.

The discussion paper has been prepared to support the work of the Ministerial Review Committee established by the Minister for Fisheries 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 Committee's members consists of:

Matt Benson (MLC for the South West) – chairman;
Max Ball (chairman, WA Fishing Industry Council);
John Newby (chairman, Geraldton Fishermen's Co-operative); and
Heather Brayford (Department of Fisheries).

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

The Ministerial Review Committee is committed to ensuring stakeholders and other interested parties have every opportunity to consider and provide input into the amendments to the FRMA. The Committee has asked the Department of Fisheries to prepare this document to provide a basis for community discussion and feedback.

For ease of understanding and comment by interested parties, this paper has been divided into two major sections – Section 2 gives an overview of the context for, and proposed major changes to, the FRMA; and Section 3 presents, in a matrix, the existing provisions of the FRMA, a description of the issue that has been identified with the provision, and the proposed change to the section to address the identified issue.

Each provision represented in the matrix has been given a reference number (in the left hand column) so that it may be easily referred to in submissions. The matrix should be read in association with the *Fish Resources Management Act 1994* – available in hard copy form from the State Law Publisher, ground floor, 10 William St, Perth – or you may refer to each relevant provision of the Act online at: http://www.austlii.edu.au/au/legis/wa/consol_act/frma1994256.

Issues of law (eg 's266 Savings and transitional provisions', and amendments resulting from the Australian Government's *Fisheries Legislation Amendment (Cooperative Fisheries Arrangements and other Matters) Bill 2005*) or amendments of a grammatical nature have not been included in this paper. In addition, subject to community input and decisions to adopt proposed or modified amendments, there may be issues arising from the application of the current Act and the Act amendments which may require particular transitional provisions. These will be considered and incorporated at the drafting stage.

If more information is required about either a specific issue or a proposed change, please contact the Executive Officer of the Ministerial Review Committee (contact details are provided below).

Submissions and comments need not be restricted to the specific provisions identified. All comments on all aspects of the Act are welcomed and may be made either on the form provided at Section 4, or as a handwritten or electronic submission to the Ministerial Review Committee.

Please identify the provision you are referring to, describe the issue you have with it, and suggest a feasible solution if possible. Specific examples of the issue with the provision may assist us to understand your comments and suggestions.

All submissions will be considered by the Ministerial Review Committee and will form the basis of its draft report, which will then be released for public comment. Comments from that process will be given further consideration by the Ministerial Review Committee, incorporated into a Final Report and submitted to the Minister for consideration. The Minister may choose to use the Final Report as the basis for the drafting instructions for the *Fish Resources Management Act Amendment Bill*.

Submissions will close on **7 July 2006**. Please read and consider this document, then provide feedback in your preferred format. Your involvement in this consultation is essential to ensure the most effective legislative framework is developed to ensure 'fish for the future' in Western Australia.

Please forward your completed form, or written submission, by close of business **7 July 2006** to:

Rae Burrows
Executive Officer
Ministerial Review Committee
Reply Paid 61461
Locked Bag 39
CLOISTERS SQUARE
WA 6850
Tel: (08) 9482 7238
Or email to: rburrows@fish.wa.gov.au

SECTION 2 OVERVIEW

2.1 Historical overview

The FRMA was implemented on 1 October 1995 following widespread public consultation and support from both Houses of Parliament. The Act implemented a number of significant changes to public administration and made certain advances in many areas (e.g. a public register of authorisations).

In the ten years of its operation, the FRMA has demonstrated many strengths, however, experience and changes in policy direction have highlighted certain aspects of fisheries management and law that deserve attention and possible amendment.

2.2 General requirements for the amendments

The amendments proposed relate to the following five key areas:

1. Clarification of the definitions of some of the words and terms currently used (or proposed to be used) throughout the Act.
2. Modification of some of the existing divisions and sections to better take account of the developing industry sectors regulated by the Act (e.g. biodiversity conservation; aquaculture; ecotourism).
3. Reflection of policy modifications, and new policies that have developed over time in response to changing community expectations, and environmental conditions (e.g. Integrated Fisheries Management [IFM], customary fishing).
4. Enhancement of provisions governing offences, penalties and Fisheries Officers' powers, in response to the increased risk and incidence of organised crime, and offences by foreign fishers.
5. Complementary and supplementary provisions to other legislation or proposed legislation (e.g. *Biodiversity Conservation Bill*; *Biosecurity and Agriculture Management Bill*).

2.2.1 Definitions

Some of the definitions of words and terms currently described in the FRMA require clarification. These include, for example, the definitions of:

- recreational fishing – to specifically exclude customary fishing (as customary fishers are now regarded as constituting a separate sector in the IFM framework); and
- aquaculture – to include the activity of 'harvesting' as a specific component or activity within the aquaculture licensing regime.

In addition, there are a number of words and terms that are currently used, or proposed to be used, throughout the FRMA which have previously been undefined, and which are now proposed to be included in the 'Interpretation' section (s3).

2.2.2 New industry sectors and services

When the FRMA was developed, the aquaculture and ecotourism sectors were emerging users in the aquatic environment. While some modifications to the Act and development of subsidiary legislation since 1994 have provided a basic framework for the management of these sectors, further experience in the operation and management of the developing sectors indicates further amendment is required.

The ecotourism, recreational fishing, and the customary fishing sectors, will all be considered in the allocation processes and management of access shares under the IFM framework. A set of head powers will be provided to implement IFM across fisheries.

In 2001, the Machinery of Government Taskforce recommended that the Department of Fisheries be responsible for the delivery of 'at-sea' boating safety services. The Department took over this responsibility in 2002, and it is proposed that the delivery of such services in the aquatic environment be reflected in amendments to the FRMA.

It is also proposed that the amendments provide the flexibility for the Department to deliver other services, as required, by the Government.

2.2.3 Government and departmental policies

Government and departmental policies have changed over time in response to changing community expectations and prevailing conditions. Changes include an increased focus on stakeholder and community involvement in decision-making, and an increased interest in and demand for aquatic biodiversity conservation.

In addition, it has been recognised that enforcement and penalty regimes (e.g. 'black mark' attribution; automatic cancellation of authorisations after three convictions in a ten-year period) require review.

As a reflection of increasing competition for aquatic resources, and community expectations for sustainable management, the Department of Fisheries and Government has developed new policies, which will impact on the future management of the State's aquatic resources and habitats. The recognition of customary fishing through the Aboriginal Fishing Strategy, regionalisation of recreational fishing management, and the IFM strategy, require head powers and subsidiary legislation to allow for their efficient implementation and operation.

There has also been a move towards a stronger departmental focus on aquatic biodiversity conservation, which is proposed to be reflected in amended objects of the Act. The Department of Fisheries will also be seeking advice on the impact of modifying the title of the Act to be more reflective of this broader aquatic biodiversity conservation focus.

It is proposed that these policy changes be reflected in the amendments to the FRMA.

2.2.4 Compliance and law enforcement

Amendments to the FRMA are intended to provide a more flexible approach to penalties, including an increased use of infringements to ensure penalties reflect the particular circumstances of an offence – particularly with respect to recreational fishing offences and less serious commercial offences.

Over the past ten years, there has been increasing national concern over the threat posed to sustainable fisheries management by organised crime and offences considered to be of a serious nature. As a reflection of this concern, and in an attempt to better manage the threat, it is proposed that the provisions in the FRMA which govern offences, penalties and the powers of Fisheries Officers be enhanced in line with those available to other enforcement authorities. This will also provide greater security with respect to the management of existing and future quota fisheries.

2.2.5 Quota management

In the future, to ensure sustainability, a mix of quota and input management controls may be used for fisheries management purposes in WA. To ensure the State is in a position to manage the complexities of large-scale quota fisheries, a range of amendments are being proposed. These changes mainly relate to the need to track and audit quota managed fish products from the point of capture to either the domestic or export market places.

Unlike input managed fisheries which rely on field checks to monitor the amount of gear being used (e.g. the number of pots used by lobster boats), quota fisheries require monitoring the amount of fish caught and rely primarily on quota documents provided by fishers, processors and fish dealers. The compliance focus is on auditing and validating industry records. Proving offences in quota fisheries can be complex and requires the presentation of large quantities of documentary evidence to the Court.

Amendments proposed include a provision to identify people responsible for the supervision of parts of the quota fishing and marketing chain, their responsibilities and legal liabilities, and facilitating the submission of documentary evidence.

2.2.6 Foreign fishing

The increasing level of illegal foreign fishing activity off the north west of WA is posing a significant risk to the State's northern fish resources. The recent incursions into WA waters by Indonesian trochus fishermen, involving the landing on onshore reefs and islands, impacts directly on remote communities, raises biosecurity risks for the health of the community, regional agri-industries and the pearling sector.

The number of foreign fishing offences in State waters has increased significantly in 2005/6. Additional powers to detain foreign fishermen for the purpose of investigation and prosecution of fishing offences are being sought. The Government

is considering an increase in the pecuniary and imprisonment provisions of the FRMA, including a mandatory minimum six-month terms of imprisonment.

2.2.7 Impact of other anticipated legislation (e.g. Biodiversity Conservation, and Biosecurity and Agriculture Management Bills)

A *Biodiversity Conservation Bill* is to be prepared, following a clear Government policy commitment to “introduce biodiversity conservation legislation as a priority”. Negotiations and discussions between key natural resource management agencies is currently being progressed to ensure that this legislation does not create legislative ambiguity or overlap or uncertainty.

It is anticipated that these negotiations will lead to gaps in existing legislative schemes being addressed and the replacement of identified ineffective and dated frameworks.

A separation of the responsibilities for fish from those for other fauna and flora in relation to conservation needs, and a complementarity of legislative schemes is highly desirable from a public and governance perspective. As a result, it is clearly desirable that the broad scope of the *Biodiversity Conservation Bill* should cover all of Western Australia’s biodiversity other than fish as defined in the FRMA (other than fish listed as threatened species) across all lands and waters contained within, or administered by, the State. This will avoid legal and policy uncertainty and overlap in dealing with existing legislative and administrative gaps.

Bio-security matters will be dealt with under the *Bio-security and Agriculture Management Bill* in the agriculture portfolio.

2.3 Specific issues

2.3.1 Objects

There is an increasing demand in the community for the broadening of aquatic management to include all user sectors with an interest in the aquatic environment, and to ensure integrated management.

In an effort to reflect this and to provide the Department of Fisheries with enough flexibility to operate with maximum effectiveness into the future, it is proposed to amend the sub-title of the Act and widen the scope of the current objects of the FRMA. Because of possible overlaps with CALM legislation, the amended objects may need further refinement. Terms like ‘aquatic resources’ and ‘aquatic habitats’ also will need to be specifically defined to ensure there is no overlap between the FRMA and other jurisdictions.

The proposed modifications to the existing objects are identified in italics (below).

- (1) The primary object of this Act is to conserve, and share *the State’s fish, other aquatic resources and their habitats*.

- (2) In particular, it is proposed that this Act has the following secondary objects:
- a. to conserve fish, and protect their environments;
 - b. *to ensure the impact of fishing activities on aquatic fauna and their habitats is minimised.*
 - c. to ensure the *use of aquatic resources* is carried out in a sustainable manner;
 - d. to enable the management of fishing, aquaculture and associated industries, aquatic eco-tourism and other tourism *and non-extractive uses reliant on fish and the aquatic environment*;
 - e. to foster *appropriate levels of development for each of the user groups of the aquatic resources*;
 - f. to achieve the optimum economic, social and other benefits from the use of aquatic resources;
 - g. to enable the allocation *and reallocation* of fish resources between users of those resources (in an integrated framework);
 - h. to provide for the control of foreign interests in fishing, aquaculture and associated industries;
 - i. to enable the management of fish habitat protection areas and the Abrolhos Islands Reserve;
 - j. *to enable the delivery of services on behalf of Government in the aquatic environment; and*
 - k. *to promote the conservation of fish and the aquatic environment to the wider community through the provision of advisory, extension and education services.*

The *Environment Protection and Biodiversity Conservation Act 1999* requires fisheries to be demonstrated as being ecologically sustainable before the fish products from that fishery can be exported. The Commonwealth Department of Environment and Heritage assesses each fishery against stringent requirements and has recommended that the management of each fishery requires objectives which relate to limiting or minimising interactions with protected and non-targeted aquatic species (e.g. turtles and sea birds).

The FRMA currently has no scope or powers to enable this to occur. The proposed additional object (b) – ‘To ensure that the impact of fishing activities on aquatic fauna and their habitats is minimised’ - is designed to enable the requirement for fishers to limit and record the take of such fauna.

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 *Conservation and Land Management Act 1984* and the *Wildlife Conservation Act 1950*.

2.3.2 *Integrated fisheries management*

IFM is an initiative aimed at addressing the issue of how fish resources can be best shared between competing users within the broad context of Ecologically Sustainable Development (ESD).

The new approach follows the November 2002 report of the IFM review committee chaired by Justice Toohey.

In October 2004 the Government released its policy on IFM and the Integrated Fisheries Allocation Advisory Committee was appointed to provide the Minister for Fisheries with advice on allocations of fish resources. The Government made an initial budget commitment to support the implementation of IFM including the resourcing of critical information gathering processes.

Fisheries management in WA in the future will be carried out under the principles that underpin the IFM initiative.

In summary IFM involves:

- setting the sustainable harvest level of each resource that allows for an ecologically sustainable level of fishing;
- allocation of explicit catch shares for use by commercial, recreational and indigenous customary fishers;
- continual monitoring of each sectors harvested catch;
- managing each sector within its allocated catch share; and
- developing mechanisms to enable the reallocation of catch shares between sectors.

Legislative changes are required to give recognition and effect to the IFM guiding principles and Government requirements such as indigenous customary fishing being given a priority.

Specifically, legislative amendments are required to:

- Outline the IFM concept and principles within the legislation and define terms such as sustainable harvest level.
- Amend Part 4 of the FRMA to enable the creation of fishery advisory committees which meet the needs of consultation requirements in managing sector shares under IFM.
- Provide power for the:
 - Executive Director to set sustainable harvest levels for a fish resource;
 - Minister for Fisheries to determine allocations to sectors;
 - Government to 'hold' and trade fishing rights on behalf of the recreational sector; and
 - establish reallocation mechanisms for the transfer of allocations:
 - between sectors; and
 - intra sector (for example, recreational fishers to charter boat and gillnet and longline licensees to wetline licensees).
- Ensure adequate 'tools' are available to manage sectors within their allocations including:
 - providing for recreational, and customary fishing management plans under Part 6 of the FRMA;
 - provide for a priority allocation to the customary sector;

- flexibility to use, for example, tags or short term licences etc. to regulate recreational fishers;
- providing for lotteries of tags, registration or limited licence rights; and
- obligations to provide recreational data.

2.3.3 *Permit system*

It is proposed to create an additional management tier to managed fisheries which will allow the Executive Director to more efficiently manage minor and developing fisheries by permit. Permits would not have the status of managed fisheries licences, and would not be transferable, but will allow the Executive Director to declare a particular fishery or fishing activity to be a 'permit fishery' and issue permits to operate in that permit fishery.

The current method of managing developing fisheries through exemptions is not appropriate as exemptions become, in effect, licensing instruments. A permit system would be more appropriate.

It is proposed that such permits would not be granted as of right, would be valid only for limited and fixed periods with no right of renewal, not reviewable by the State Administrative Tribunal (SAT), and not eligible for compensation under any Fisheries Adjustment Scheme (FAS). While there will be no requirement for the high level of consultation that is required for a management plan, it is proposed that a committee of sector representatives with an independent chairman would recommend a framework for the permit fisheries. This, in turn, would be given effect by the Executive Director.

If it is agreed that such a permit system be introduced for developing fisheries, there will need to be further consideration at the drafting stage of the Act amendments of the capacity of permits to disapply certain (specified) prohibitions.

2.3.4 *Aquaculture*

Significant amendments are being proposed for Part 8 of the FRMA which relates to the management of aquaculture licences and leases in Western Australia, and to other sections of the FRMA as relevant to aquaculture (e.g. interpretation and enforcement sections).

Many of the amendments have been generated from the 2003 review of WA's aquaculture industry, in particular the '*Review of Legislative Arrangements*' (Ciffolilli, 2003) which looked at, amongst other aspects, the possible ways of increasing business investment in the aquaculture industry. The general directions of the amendments are to:

- *Create a system of secured tenure arrangements for the aquaculture industry.* This amendment will result in a requirement that a licence to undertake aquaculture activities on a given site cannot be granted without proof of tenure being produced for the site. In relation to coastal waters, this will be a significant shift as, at this time, leases have not been treated as mandatory. Currently,

licensees are operating on the basis of an aquaculture licence alone, with no security of tenure and no formal approval from the landlord (the Crown) to occupy the area. This places licensees at risk of loss of access due to other competing tenure-holding ventures moving into the area.

- *Create greater flexibility in the regulation of relations between the holder of a lease and of a licence.* Although the current FRMA allows for the lease and licence holder to be separate entities, certain provisions of the Act make such an arrangement problematic and unattractive – e.g. provisions that provide that the cancellation or non-renewal of a licence or lease results in the cancellation of the other authorisation. It is proposed the FRMA should be amended to remove such obstacles.
- *Create greater rights in relation to commercial dealings of aquaculture leases.* It is proposed to amend the FRMA to create additional rights for aquaculture leaseholders. The amendments will allow for subletting, subdivision, amalgamation and transfer of aquaculture leases.

In addition to amendments related to aquaculture leases, it is also proposed to strengthen enforcement powers to ensure that aquaculture authorisation holders who are in breach of any conditions on their licence are dealt with efficiently. Proposed powers include the seizure of aquaculture gear used in a breach, the issue of infringement notices for breaches, and the sale of aquaculture gear and product forfeited in the event of a breach.

Less significant amendments to Part 8 are proposed to include:

- Bringing the collection of broodstock and spat under the aquaculture licence (thus eliminating the need for exemptions for broodstock collection).
- Acknowledgement and recognition under the FRMA of modern forms of aquaculture including ranching and reseeding; and the recognition of harvesting in the terminology.
- The creation of a power to issue emergency aquaculture licences and leases.
- The power for the Minister to offer unallocated aquaculture sites by way of public auction, public tender, ballot or private treaty.
- Amendment of the provisions in relation to the Aquaculture Development Council in order to give the Minister greater flexibility in relation to the membership of the Council.

2.3.5 s224 Automatic cancellation of authorisation if three offences ('black marks')

Currently, this provision provides for the automatic cancellation of authorisations where an authorisation accumulates three prescribed offences ('black marks') in a ten-year period. For the purposes of fisheries management, given the range of offences that are prescribed for the purposes of s224 and the penalties imposed under s75 and s222 for those offences, automatic cancellation of an authorisation on the recording of three prescribed offences is too severe.

It is proposed to amend the section to provide for the mandatory suspension (rather than the compulsory cancellation) of authorisations for up to five years, with the ability for the Executive Director to provide advice to the Court in its determination of the length of the suspension period. In developing and providing that advice, the Executive Director would be facilitated by policy guidelines to be endorsed by the Minister for Fisheries.

The Courts will make their own determination of the appropriate period of suspension. Long-term serious offenders will still be subject to permanent authorisation cancellation through the operation of s143 of the FRMA, which provides an alternate capacity for the Executive Director to cancel authorisations.

Transition powers may also be required in the FRMA Amendment Act to take account of authorisations cancelled under the existing FRMA provisions which, unlike under the previous legislation, do not easily allow the reinstatement of cancelled licences.

Another issue has been the imposition of 'black marks' on licensees who are not directly engaged in the fishing operation. The principle that the holder of a licence must be ultimately responsible for the operation of their licence needs to be preserved in the context of s224.

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.

There is also a requirement to tighten the current wording of s224 to ensure that both those holding the licence and those persons who may be fishing on behalf of a licence holder are subject to 'black marks' when a prescribed ('black mark') offence is committed.

At present, other fisheries jurisdictions across Australia are either considering, or commencing, the implementation of a demerit system. For example, the draft *South Australian Fisheries Management Bill 2005* sets up a demerit scheme that provides that if an aggregate of 200 or more demerit points is recorded against a fishery authority in five years, the Minister must cancel the authority.

There have been suggestions that it would be beneficial to introduce a similar scheme nationwide. This would require considerable redevelopment of relevant policies in WA.

While this may be considered, it is proposed that the current proposed amendments to the FRMA provide powers to recognise demerit points attributed to an individual in other states, and take them into consideration when determining an application.

2.3.6 Offences, penalties and powers

There is national concern over the potential impact of organised crime in the fishing industry, particularly unlicensed black market operators in high-value, low-volume fish products such as lobster, abalone and shark fin. The significant profits which

organised criminal groups can obtain through infiltration of both the licensed and unlicensed commercial fishing sectors has resulted in many Australian fisheries jurisdictions upgrading their legislation with respect to fisheries offences, powers and penalties.

It is proposed that, in keeping with the national trend, the FRMA should be amended to include indictable offences (trial by jury) which will carry significant pecuniary and imprisonment provisions (up to 10 years in prison).

It is proposed that indictable offences should be limited to high-value, high-risk species (i.e. **priority species**) and only be triggered by defined quantities or values of the fish involved. 'Priority species' refers to those fish species that will be subject to indictable offences.

Indictable offences are to target serious fisheries crime (e.g. an unlicensed abalone operator taking or dealing in large quantities of abalone). Indictable offences will provide the Court with the powers to confiscate unlawfully obtained assets derived from illegal fishing.

In order to facilitate investigations into serious offences relating to key species, additional powers of search are also being sought to enable Fisheries Officers to obtain search warrants where persons are suspected of having quantities of 'priority species' in their possession.

Conversely, it is also proposed to moderate some penalties in relation to recreational and commercial fishing offences. Section 222 provides for a mandatory penalty of 10 times the value of the fish that are the subject of an offence. In its current form, the inflexibility of s222 may result in unrealistic and unfair penalties in some situations and can influence the Department of Fisheries in its decision not to proceed to prosecution in some cases.

Commercial fishing offences, which may involve a large number of legitimately caught fish, can produce s222 penalties (i.e. ten times the value of the fish) that could bankrupt an operator. Such an outcome is neither fair nor reasonable, particularly in cases relating to first offenders or to some technical offences.

The outcome can be similar for recreational fishers where a recreational fisher who is charged for three simultaneous offences relating to the same fish (e.g. undersize fish; using illegal gear; and out of season fishing;) will receive the additional s222 penalty three times (i.e. once for each offence).

It is proposed to amend the FRMA to cap the maximum penalty that can be applied to prevent unrealistic penalties and to ensure that the additional penalty can only be applied once for each offender in relation to the fish that are the subject of the offence.

There have been similar issues with commercial management plan offences where relatively minor offences or technical offences can attract a s222 penalty, which can result in unreasonable penalties.

The current inability to issue infringement notices for management plan offences generates significant inefficiencies for the compliance effort of the Department of Fisheries. To address these issues, it is proposed to have a three-tiered approach to managed fishery offences:

1. infringements for technical classes of offences (e.g. failure to submit returns on time);
2. minor offences which will not attract a s222 additional penalty; and
3. serious offences which will have a s222 additional penalty.

For technical and minor offences it is proposed that the legislation be amended to cause a significant reduction in potential penalties. Similarly, the capping of s222 penalties will mean legitimate commercial operators will not be faced with excessive fines related to the quantity of fish that are the subject of the offence.

2.3.7 Conservation and the environment

Presently, the FRMA provides for the protection of biodiversity within the aquatic environment, including marine reserves, through the prohibition and regulation of fishing in circumstances that are unique in Western Australia, as the exercise of this jurisdiction extends out past State waters (three nautical miles) to 200 nautical miles, the limits of the Australian Fishing Zone.

However, community expectations surrounding the conservation of Western Australia's environment generally will lead to an expansion of the existing role for the Department of Fisheries, presenting significant challenges and management issues. It is proposed that the sub-title of the Act be modified to suit this broader focus on aquatic conservation and ecological sustainable development.

The relationship with the proposed *Biodiversity Conservation Bill* should be complementary and supplementary in addressing matters such the conservation of threatened species and communities within all waters over which the State can exercise control.

If these important outcomes are not achieved, there is the potential for the creation of unnecessary public and investment uncertainty, governance inefficiencies and enforcement difficulties as aquatic fauna such as fish move across artificial boundaries.

Therefore, the new powers proposed within this draft document will provide support to the conservation objectives of Government, through the enhancement of existing legislation to 200 nautical miles, while providing for management arrangements for the aquatic environment that are not in conflict with other statutes.

These powers focus on addressing present shortcomings, namely:

- The recognition of international standards and requirements for the listing and protection of endangered fish (for example, the *Stygofauna* communities found within the cave systems of the State).
- The management and translocation of noxious or introduced fish to support new approaches to biosecurity.

- The management of incidental interactions with marine mammals and birds, thus complementing and supporting Australian government legislation.
- Increasing the ability to regulate human impact through the modification of waterways and pollution. It is proposed these powers be expanded and strengthened, given the importance of the many small, discrete native fresh fish populations and the detrimental impacts of habitat modification on biodiversity generally.

SECTION 3 MATRIX OF PROPOSED AMENDMENTS

Ref Number	FRMA Section	Issue	Proposed Change
1	<p>PART 1 – PRELIMINARY</p> <p>S3 Objects <i>(the purpose/s of the Act – provides the framework)</i></p>	<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 EPBC Act 1999 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 the <i>Wildlife Conservation Act 1950</i>.</p> <p>The sub-title of the Act to be modified to reflect the focus on ESD and aquatic conservation (while being complementary to CALM legislation)</p>	<p>The proposed primary object of this Act is to conserve and develop and share the <i>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> <ul style="list-style-type: none"> a) To conserve fish and protect their environments; b) <i>To ensure the impact of fishing activities on aquatic fauna and their habitats is minimised;</i> c) To ensure the <i>use of aquatic resources</i> is carried out in a sustainable manner; 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> e) To foster <i>appropriate levels of development for each of the user groups of the aquatic resources;</i> f) To achieve the optimum economic, social and other benefits from the use of aquatic resources; g) To enable the <i>allocation and reallocation</i> of fish resources between users of those resources; h) To provide for the control of foreign interests in fishing, aquaculture and associated industries; i) To enable the management of Fish Habitat Protection Areas and the Abrolhos Islands Reserve; j) <i>To enable the delivery of services on behalf of Government in the aquatic environment; and</i> k) <i>To promote the conservation of fish and the aquatic environment to the wider community through the provision of advisory, extension and education services.</i>

Ref Number	FRMA Section	Issue	Proposed Change
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.
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 waters’. It is proposed to only manage such private waters where there is a demonstrated need (eg to protect priority species).</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>

Ref Number	FRMA Section	Issue	Proposed Change
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)
5	S7(3) Exemptions (<i>circumstances where the Act does not apply</i>)	<p>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).</p> <p>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 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.</p>	<p>Amend so that the Minister or the Executive Director may waive the requirement for an application, and/or the required fee in certain circumstances.</p> <p>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.</p>
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.

Ref Number	FRMA Section	Issue	Proposed Change
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.
8	S14 Minister may carry out research and <u>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.
PART 4 – ADVISORY COMMITTEES			
9	Part 4 – Advisory Committees Ss 29–40 <i>(refers to the Ministerial and Management Advisory Committees set up to facilitate engagement with stakeholders)</i>	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.	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.

Ref Number	FRMA Section	Issue	Proposed Change
	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 a 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 except where the Minister holds the opinion that the fish stock or aquatic environment is at risk.</p>	<p>Provide that the Minister shall not make a 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 a 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>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).</p>	<p>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.</p>
Division 2 – Protected fish			
11	<p>S45(1) Class of fish may be prescribed as protected fish</p>	<p>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.</p>	<p>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.</p>
12	<p>S47 Commercially protected fish</p>	<p>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.</p>	<p>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>

Ref Number	FRMA Section	Issue	Proposed Change
13	<p>Division 3 – Bag and possession limits</p> <p>S50 Bag limits – taking of fish</p>	<p>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.</p> <p>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.</p>	<p>Provide a power for different bag limits to be set for different periods at different times of the year.</p> <p>Amend s50(4)(b) to change 'by the person' to 'by a person'.</p>
14	<p>S51 Possession limits – possession of fish</p>	<p>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.</p>	<p>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.</p> <p>Amend s51(4)b from 'by the person, to 'by a person'</p>
15	<p>New section required</p>	<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 (i.e. through a s43 order).</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>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>Division 4 – General penalty</p>		
<p>16</p>	<p>S52 General penalty <i>(penalties for people who fish contrary to rules governing prohibited fishing or protected fish)</i></p>	<p>To date, the determination of the category of fish that is the subject of an 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>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 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>

Ref Number	FRMA Section	Issue	Proposed Change
	PART 6 – MANAGEMENT OF FISHERIES		
17	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); • 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;

			<ul style="list-style-type: none"> • 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.	<p>Create a head power for the Minister to allocate, or to re-allocate, shares to various sectors.</p> <p>Create a head power for regulations to prescribe the process for the allocation, or reallocation, of shares to different sectors by the Minister.</p>
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>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.</p> <p>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>Clarify that ‘interim managed fisheries’ only refer to commercial fisheries.</p>	<p>Amend s56(1)(b) and s56(2) so that ‘interim managed fisheries’ only will occur in commercial fisheries.</p>
<p>20</p>	<p>S58 Management plan – “authorisations”</p>	<p>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> <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>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.</p> <p>Ensure RFLs and associated entitlements cannot be transferred.</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 unutilised 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>

Ref Number	FRMA Section	Issue	Proposed Change
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>
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 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>	<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>

Ref Number	FRMA Section	Issue	Proposed Change
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.
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.
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 may also require the nomination of the type of gear to be used while fishing. It also needs to be clarified that the management plan may require the authorisation holder to nominate one or any combination of the identified items.	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 'one or any combination of' the listed items in the provision.

Ref Number	FRMA Section	Issue	Proposed Change
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).
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.
28	S62 Management plan – miscellaneous (q) ‘require specified records to be kept...’, by – (i) persons acting under the authority of authorisations...?’	The current provision is unclear as to who specifically is directly responsible for keeping records and submitting returns (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.	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 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.

Ref Number	FRMA Section	Issue	Proposed Change
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>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>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> <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>

Ref Number	FRMA Section	Issue	Proposed Change
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.
31	New section (specific to commercial fishing)	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>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>
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.
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

Ref Number	FRMA Section	Issue	Proposed Change
34	<p>Division 5 - Offences</p> <p>S74 Contravention of a management plan</p>	<p>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.</p>	<p>Remove reference to s222 in section 74. The application of s222 will be dealt with in a redrafted s75.</p>
35	<p>S75 General penalty (<i>penalties for offences committed against the provisions of management plans</i>)</p>	<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 (i.e. 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>

Ref Number	FRMA Section	Issue	Proposed Change
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.</p> <p>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 have occurred through an administrative timing issue or by agreement with the Executive Director (refer item 61).</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>
37	S77 Contravention of condition of licence or permit	<p>The provision was written specifically for commercial fisheries. Clarify that 'interim managed fishery permits' apply only in commercial fisheries.</p>	<p>Amend header to replace 'licence or permit' with 'authorisation' and clarify that s77(b) applies only to commercial fisheries.</p>

Ref Number	FRMA Section	Issue	Proposed Change
38	New section	<p>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”.</p>	<p>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.</p>
	PART 7 - FISH PROCESSING		
39	S79 Fish processing establishment not to be established without a permit	<p>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.</p>	<p>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.</p>

Ref Number	FRMA Section	Issue	Proposed Change
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 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>

Ref Number	FRMA Section	Issue	Proposed Change
41	S92 Grant of aquaculture licence	<p>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> <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>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>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>

Ref Number	FRMA Section	Issue	Proposed Change
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>
43	S96 Contravention of condition of licence	<p>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.</p>	<p>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).</p>

Ref Number	FRMA Section	Issue	Proposed Change
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 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>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>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>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>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.
45	New section	<p>A penalty must be imposed for the contravention of a condition of a lease.</p>	<p>Provide a head power for a penalty for the contravention of a lease condition, covenant or restriction.</p>
46	New section required	<p>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.</p>	<p>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>
47	S99 Aquaculture licence required in connection with a lease	<p>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>	<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.

Ref Number	FRMA Section	Issue	Proposed Change
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.
49	S102 Regulations relating to aquaculture	Currently, there are no head powers to prohibit and regulate reseedling 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 reseedling, collection of spat and broodstock. 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.	Provide a power to prohibit and regulate the reseedling of sites and WA waters, and the collection of spat and broodstock. Include a subsection which provides power to regulate aquaculture activities which may impact on non-target fish and aquatic fauna.

Ref Number	FRMA Section	Issue	Proposed Change
50	<p>PART 9 – NOXIOUS FISH</p> <p>Part 9 – Noxious, diseased or prohibited fish</p>	<p>Note: Provisions in this part need to be complementary and supplementary to the <i>Biosecurity and Agriculture Management Bill</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>	<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>
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>

Ref Number	FRMA Section	Issue	Proposed Change
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 s 104, s 105, s 106 in this Division to include 'noxious, diseased or prohibited 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'.
(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 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.	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 are not prescribed into, or attempting to bring into, the State.

		<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>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 reseedling 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 breaching the conditions of a licence.</p> <p>Note: There will need to be a check of any overlap with the <i>Biosecurity and Agriculture Management Bill</i> with these sections.</p>
	<p>PART 10 – DESIGNATED FISHING ZONES</p>		
<p>55</p>	<p>S110 Designated fishing zone not to be created in marine nature reserve or marine park</p>	<p>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.</p>	<p>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.</p>

Ref Number	FRMA Section	Issue	Proposed Change
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</i>, the FRMA needs to have specific powers to declare, regulate and protect threatened species, critical habitats and ecological communities.</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 specifically mentioned to ensure all sites and facilities are covered by the legislation.</p>	<p>Include jetties and airstrips specifically in the amended provision.</p>

Ref Number	FRMA Section	Issue	Proposed Change
58	<p>PART 12 – REGISTER</p> <p>S125 Register (refers to the Department's Register of authorisations and exemptions)</p>	<p>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.</p>	<p>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.</p> <p>Need power for the Registrar to delegate his powers when required.</p>

Ref Number	FRMA Section	Issue	Proposed Change
	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.
60	S139 Renewal after expiry	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.	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.

Ref Number	FRMA Section	Issue	Proposed Change
61	S140 Transfer	<p>An authorisation that is the subject of legal proceedings where the Department of Fisheries is seeking a reduction of entitlement must not be transferred.</p> <p>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.</p>	<p>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.</p>
62	S141 Temporary transfer of entitlements	<p>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).</p>	<p>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'.</p>
63	S142 Variation	<p>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).</p>	<p>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.</p>

Ref Number	FRMA Section	Issue	Proposed Change
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 – e.g. 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 s143(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 s143(1)(a)(ii) insert the words ‘aquaculture, fishing tour, or ecotourism’ after ‘fishing’.</p>

Ref Number	FRMA Section	Issue	Proposed Change
65	New section – Recognition of ‘demerit systems’ of other states	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. 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.	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.
66	S144 Voluntary surrender	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.	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. 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.

Ref Number	FRMA Section	Issue	Proposed Change
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

Ref Number	FRMA Section	Issue	Proposed Change
68	<p>PART 14 – RIGHT TO OBJECT OR APPLY FOR REVIEW</p> <p>S148 ED to publish notice of certain proposals</p>	<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. 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>

Ref Number	FRMA Section	Issue	Proposed Change
	PART 14A – INDICTABLE OFFENCES		
69	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 (i.e. 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.
	PART 15 – MISCELLANEOUS OFFENCES		
70	Part 15 Miscellaneous Offences	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. 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> .	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. “Attempts to commit” to be treated the same as offences against the Act (as for s4 <i>Criminal Code</i>) “Persons who aid, abet etc.. are taken to have committed the offence” (as above).

Ref Number	FRMA Section	Issue	Proposed Change
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>
72	Ss171 &172 Interference with lawful fishing activities and gear	<p>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.</p>	<p>Redraft these sections so that they make it an offence to interfere with aquaculture, charter, and marine eco-tourism operations.</p>

Ref Number	FRMA Section	Issue	Proposed Change
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 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>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 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>

		<p>Many investigations do not succeed because of the lack of evidence in regard to the origin of suspect fish. 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>	
74	S174 Use of foreign boats for fishing	<p>Lack of powers to deal foreign fishers in State waters.</p>	<p>Note: This issue has been the subject of a separate cabinet submission, and is no longer required in these amendments.</p>
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>

Ref Number	FRMA Section	Issue	Proposed Change
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.
PART 16 – FISHERIES OFFICERS			
77	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.

Ref Number	FRMA Section	Issue	Proposed Change
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.</p> <p>It is also proposed that search warrants will be able to be exercised covertly in relation to 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>	<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>

Ref Number	FRMA Section	Issue	Proposed Change
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.</p> <p>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 (i.e. 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>

Ref Number	FRMA Section	Issue	Proposed Change
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 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>

Ref Number	FRMA Section	Issue	Proposed Change
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 or 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 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)(f)) has been read to mean hard copy photographs. All images, including digital images, need to be included in this provision.</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>Replace "photographs" with 'images however stored'.</p>

82	S192 Arrest	<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>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>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>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>
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Ref Number	FRMA Section	Issue	Proposed Change
83	S193 Seizure	<p>Currently a Fisheries Officer has the power to seize ‘any boat, vehicle, aircraft or other thing.....’ 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 cover commercially and recreationally protected fish.</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>

		<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>
84	S195 Seizure of abandoned etc fishing gear	<p>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).</p>	<p>Include the power to seize abandoned aquaculture gear, or ecotourism gear.</p>
85	S197 Giving of assistance	<p>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.</p>	<p>The right to apply for compensation should be limited to 90 days after providing assistance.</p>

Ref Number	FRMA Section	Issue	Proposed Change
	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.
87	S204 Liability of officers for offence by body corporate	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.	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>Issue of 'state of mind' of body corporate, and of directors, employees or agents of that body corporate.</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>88</p>	<p>New section</p> <p>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.</p>	<p>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.</p>
<p>Division 3 – Evidentiary provisions</p>		
<p>89</p>	<p>New section</p> <p>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.</p>	<p>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.</p>

90	S208 Proof of contents etc of package	<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>	
		<p>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.</p>	<p>Add the word ‘or weight’ which allows for presumption of weight of fish in labelled containers.</p>

Ref Number	FRMA Section	Issue	Proposed Change
91	S209 Proof that fish were taken for sale	<p>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.</p> <p>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.</p>	<p>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.</p>

Ref Number	FRMA Section	Issue	Proposed Change
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 s239</i>).</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>
94	S212 Evidence of licensing matters	<p>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).</p>	<p>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.</p>

Ref Number	FRMA Section	Issue	Proposed Change
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.
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 included 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).
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.	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.

98	S218 Order for forfeiture	<p>It is proposed that a three- month period be 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 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).</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 proceeded by way of an infringement, and offender has paid the infringement notice, the things seized are automatically forfeited to the Crown.</p>
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Ref Number	FRMA Section	Issue	Proposed Change
99	S220 Certain fish forfeited upon seizure	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.

Ref Number	FRMA Section	Issue	Proposed Change
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).</p> <p>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 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>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>Tighten the wording of section 222 to ensure all authorisation holders are subject to <i>additional penalty</i> provisions.</p>

Ref Number	FRMA Section	Issue	Proposed Change
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.
102	S224 Automatic <u>cancellation</u> 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 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>Amend header, and the rest of the provision to replace 'cancellation' with 'suspension'.</p> <p>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</p> <p>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 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>

		<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>103</p>	<p>S225 Court may prohibit person from being on fishing boats or certain places etc.</p>	<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>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>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 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 subsection in s225(1) to prohibit a person from being in or on, specified, or all, waters of the State.</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). 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 Change
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 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>	<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>

Ref Number	FRMA Section	Issue	Proposed Change
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 after the offence and may not always receive the priority for investigation, given that Fisheries Officers will focus on more serious matters.</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>

Ref Number	FRMA Section	Issue	Proposed Change
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.
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.
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.

Ref Number	FRMA Section	Issue	Proposed Change
	PART 19 – MISCELLANEOUS		
110	New section	<p>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.</p>	<p>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).</p>
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>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>Need to ensure that when a licence is transferred the catch history of that licence can be available to the new licensee.</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>
<p>112</p>	<p>New section</p>	<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>

Ref Number	FRMA Section	Issue	Proposed Change
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. 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>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>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>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>

Ref Number	FRMA Section	Issue	Proposed Change
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.
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 masters in the commercial fishing sector). This will increase the flexibility of management arrangements into the future.	<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 Area.</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>In s257(1)(f) remove reference to recreational fishing.</p>
<p>116</p>	<p>S258 Regulations – miscellaneous</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 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>Create power to regulate and prohibit the sale of fishing equipment that is illegal in WA.</p> <p>Need to ensure there is a head power under the regulations which clarifies what entails ‘involvement’ in fishing activities.</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>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, skills 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 nets. It is important that such accidental catches are recorded for management purposes.</p>	<p>Create power to register, license, prohibit and regulate fish receivers and dealers.</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 reseedling, 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>
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	<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 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>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. 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>	
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Ref Number	FRMA Section	Issue	Proposed Change
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>

SECTION 4 YOUR FEEDBACK IS NEEDED

To ensure your views are considered, please provide your feedback – either on the attached form or through a handwritten or electronic submission by **7 July 2006**.

We are interested in comments on any aspect of the FRMA – not just on the Department of Fisheries' proposed amendments listed in the matrix in Section 3.

Your feedback is essential to ensure an effective legislative framework to sustainably manage fish and the aquatic environment into the future.

Please forward your completed feedback form or submission, by close of business on **7 July 2006** to:

Rae Burrows
Executive Officer
Ministerial Review Committee
Reply Paid 61467
Locked Bag 39
CLOISTERS SQUARE
WESTERN AUSTRALIA 6850;

Tel: (08) 9482 7238

Or email to:

rburrows@fish.wa.gov.au

4.1 Comments on proposed amendments (as listed in Section 3: Matrix)

Reference Number	Comment

4.2 Other comments

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APPENDIX 1 LIST OF ACRONYMS USED IN THIS PAPER

AFMA.....	Australian Fisheries Management Authority
BCA.....	Biodiversity Conservation Act
CFL.....	Commercial Fishing Licence
ED.....	Executive Director, Department of Fisheries
EPA.....	Environmental Protection Authority
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

FISHERIES MANAGEMENT PAPERS

- No. 1** The Report of the Southern Western Australian Shark Working Group. Chairman P. Millington (1986)
- No. 2** The Report of the Fish Farming Legislative Review Committee. Chairman P. Rogers (1986)
- No. 3** Management Measures for the Shark Bay Snapper 1987 Season. P. Millington (1986)
- No. 4** The Esperance Rock Lobster Working Group. Chairman A. Pallot (1986).
- No. 5** The Windy Harbour - Augusta Rock Lobster Working Group. Interim Report by the Chairman A. Pallot (1986)
- No. 6** The King George Sound Purse Seine Fishery Working Group. Chairman R. Brown (1986)
- No. 7** Management Measures for the Cockburn Sound Mussel Fishery. H. Brayford (1986)
- No. 8** Report of the Rock Lobster Industry Advisory meeting of 27 January 1987 . Chairman B. Bowen (1987)
- No. 9** Western Rock Lobster Industry Compensation Study. Arthur Young Services (1987)
- No. 10** Further Options for Management of the Shark Bay Snapper Fishery. P. Millington (1987)
- No. 11** The Shark Bay Scallop Fishery. L. Joll (1987)
- No. 12** Report of the Rock Lobster Industry Advisory Committee to the Hon Minister for Fisheries 24 September 1987. (1987)
- No. 13** A Development Plan for the South Coast Inshore Trawl Fishery. (1987)
- No. 14** Draft Management Plan for the Perth Metropolitan Purse Seine Fishery. P. Millington (1987)
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- No. 16** The South West Trawl Fishery Draft Management Plan. P. Millington (1988).
- No. 17** The final report of the pearling industry review committee . F.J. Malone, D.A. Hancock, B. Jeffriess (1988)
- No. 18** Policy for Freshwater Aquaculture in Western Australia. (1988)
- No. 19** Sport Fishing for Marron in Western Australia - Management for the Future. (1988)
- No. 20** The Offshore Constitutional Settlement, Western Australia 1988.
- No. 21** Commercial fishing licensing in Western Australia. (1989)
- No. 22** Economics and marketing of Western Australian pilchards. SCP Fisheries Consultants Pty Ltd (1988)
- No. 23** Management of the south-west inshore trawl fishery. N. Moore (1989)
- No. 24** Management of the Perth metropolitan purse-seine fishery. N. Moore (1989)
- No. 25** Rock Lobster Industry Advisory Committee report to the Minister for Fisheries November 1988. (1989)
- No. 26** A report on marron fishing in Western Australia. Chairman Doug Wenn MLC (1989)
- No. 27** A review of the Shark Bay pearling industry. Dr D.A.Hancock, (1989)
- No. 28** Southern demersal gillnet and longline fishery. (1989)
- No. 29** Distribution and marketing of Western Australian rock lobster. P. Monaghan (1989)
- No. 30** Foreign investment in the rock lobster industry. (1989)
- No. 31** Rock Lobster Industry Advisory Committee report to the Hon Minister for Fisheries September 1989. (1989)
- No. 32** Fishing Licences as security for loans. P. Rogers (1989)
- No. 33** Guidelines for by-laws for those Abrolhos Islands set aside for fisheries purposes. N. Moore (1989)
- No. 34** The future for recreational fishing - issues for community discussion. Recreational Fishing Advisory Committee (1990)
- No. 35** Future policy for charter fishing operations in Western Australia. P. Millington (1990)

- No. 36** Long term management measures for the Cockburn Sound restricted entry fishery. P. Millington (1990)
- No. 37** Western rock lobster industry marketing report 1989/90 season. MAREC Pty Ltd (1990)
- No. 38** The economic impact of recreational fishing in Western Australia. R.K. Lindner, P.B. McLeod (1991)
- No. 39** Establishment of a registry to record charges against fishing licences when used as security for loans. P. Rogers. (1991)
- No. 40** The future for Recreational Fishing - Forum Proceedings. Recreational Fishing Advisory Committee (1991)
- No. 41** The future for Recreational Fishing - The Final Report of the Recreational Fishing Advisory Committee. Recreational Fishing Advisory Committee (1991)
- No. 42** Appendix to the final report of the Recreational Fishing Advisory Committee. (1991)
- No. 43** A discussion of options for effort reduction. Southern Gillnet and Demersal Longline Fishery Management Advisory Committee (1991)
- No. 44** A study into the feasibility of establishing a system for the buy-back of salmon fishing authorisations and related endorsements. (1991)
- No. 45** Draft Management Plan, Kimberley Prawn Fishery. (1991)
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- No. 48** Pearl oyster fishery policy guidelines (Western Australian Pearling Act 1990) Western Australian Fisheries Joint Authority (1992)
- No. 49** Management plan, Kimberley prawn fishery. (1992)
- No. 50** Draft management plan, South West beach seine fishery. D.A. Hall (1993)
- No. 51** The west coast shark fishery, draft management plan. D.A. Hall (1993)
- No. 52** Review of bag and size limit proposals for Western Australian recreational fishers. F.B. Prokop (May 1993)
- No. 53** Rock Lobster Industry Advisory Committee, Chairman's report to the Minister for Fisheries. (May 1993)
- No. 54** Rock Lobster Industry Advisory Committee, Management proposals for 1993/94 and 1994/95 western rock lobster season (July 1993)
- No. 55** Rock Lobster Industry Advisory Committee, Chairman's report to the Minister for Fisheries on management proposals for 1993/94 and 1994/95 western rock lobster seasons (September 1993)
- No. 56** Review of recreational gill, haul and cast netting in Western Australia. F. B. Prokop (October 1993)
- No. 57** Management arrangements for the southern demersal gillnet and demersal longline fishery 1994/95 season. (October 1993)
- No. 58** The introduction and translocation of fish, crustaceans and molluscs in Western Australia. C. Lawrence (October 1993)
- No. 59** Proceedings of the charter boat management workshop (held as part of the 1st National Fisheries Manager Conference). A. E. Magee & F. B. Prokop (November 1993)
- No. 60** Bag and size limit information from around Australia (Regulations as at September 1993) F. B. Prokop (January 1993)
- No. 61** Economic impact study. Commercial fishing in Western Australia Dr P McLeod & C McGinley (October 1994)
- No. 62** Management arrangements for specimen shell collection in Western Australia. J. Barrington, G. Stewart (June 1994)
- No. 63** Management of the marine aquarium fish fishery. J. Barrington (June 1994)
- No. 64** The Warnbro Sound crab fishery draft management plan. F. Crowe (June 1994)
- No. 65** Not issued

- No. 66** Future management of recreational gill, haul and cast netting in Western Australia and summary of submissions to the netting review. F.B. Prokop, L.M. Adams (September 1994)
- No. 67** Long term management strategies for the Western Rock Lobster Fishery. (4 volumes) Evaluation of management options Volume 1. B. K. Bowen (September 1994)
- No. 68** Long term management strategies for the Western Rock Lobster Fishery. (4 volumes) Economic efficiency of alternative input and output based management systems in the western rock lobster fishery, Volume 2. R.K. Lindner (September 1994)
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- No. 71** The Rock Lobster Industry Advisory Committee Chairman's Report, October 1994, The Western Rock Lobster Fishery - Management proposals for the 1994/95 and 1995/96 seasons (November 1994)
- No. 72** Shark Bay World Heritage Area draft management plan for fish resources. D. Clayton (November 1994)
- No. 73** The bag and size limit review: new regulations and summary of submissions. F. Prokop (May 1995)
- No. 74** Report on future management options for the South West trawl limited entry fishery. South West trawl limited entry fishery working group (June 1995)
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- No. 76** Draft report of the South Coast estuarine fishery working group. South Coast estuarine fishery working group. (February 1995)
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- No. 78** The Best Available Information - Its Implications for Recreational Fisheries Management. Workshop at Second National Fisheries Managers Conference, Bribie Island Queensland. F. Prokop (May 1995)
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- No. 81** Management Options (Discussion Paper) for the Shark Bay Snapper Limited Entry Fishery. Shark Bay Snapper Limited Entry Fishery Working Group, Chaired by Doug Bathgate (June 1995)
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- No. 83** Translocation Issues in Western Australia. Proceedings of a Seminar and Workshop held on 26 and 27 September 1994. F. Prokop (July 1995)
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- No. 85** West Coast Rock Lobster Fishery Management Plan 1995 - Draft for Public Comment. Edited by M. Moran (August 1995)
- No. 86** A Review of Ministerial Policy Guidelines for Rock Lobster Processing in Western Australia from the Working Group appointed by the Minister for Fisheries and chaired by Peter Rich (December 1995)
- No. 87** Same Fish - Different Rules. Proceedings of the National Fisheries Management Network Workshop held as part of the Third Australasian Fisheries Managers Conference. F. Prokop
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- No. 89** Fishermen's views on the future management of the rock lobster fishery. A report. Prepared on behalf of the Rock Lobster Industry Advisory Committee by The Marketing Centre. (August 1995)
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- No. 92** Pearling and Aquaculture in the Dampier Archipelago - Existing and Proposed Operations. A report for public comment. Compiled by Ben Fraser (September 1996)
- No. 93** Shark Bay World Heritage Property - Summary of Public Submissions to the Draft Management Plan for Fish Resources. Kevin A Francesconi (September 1996)
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- No. 96** Summary Report of the Freshwater Aquaculture Taskforce (FAT) by Chris Wells (*in press*)
- No. 97** (*in press*)
- No. 98** A Pricing Policy for Fisheries Agencies - Standing Committee on Fisheries and Aquaculture Management Committee. P Millington (March 1997)
- No. 99** Management of the South Coast Purse Seine Fishery. J Fowler, R Lenanton, Kevin Donohue, M Moran & D Gaughan. (n.d.)
- No. 100** The Aquaculture of non-endemic species in Western Australia - Redclaw crayfish (*Cherax quadricarinatus*). Tina Thorne (June 1997)
- No. 101** Optimising the worth of the catch - Options and Issues. Marec Pty Ltd (September 1997)
- No. 102** Marine farm planning and consultation processes in Western Australia. Dave Everall (August 1997)
- No. 103** Future management of the aquatic charter industry in Western Australia by the Tour Operators Fishing Working Group (September 1997).
- No. 104** Management of the Houtman Abrolhos System (draft). Prepared by the Abrolhos Islands Management Advisory Committee in conjunction with Fisheries Western Australia (October 1997)
- No. 105** Plan for the Management of the Houtman Abrolhos Fish Habitat Protection Area (draft). Prepared by the Abrolhos Islands Management Advisory Committee in conjunction with Fisheries Western Australia (October 1997)
- No. 106** The impact of Occupational Safety and Health on the management of Western Australian Fisheries. Cameron Wilson (*in press*)
- No. 107** The Aquaculture of non-endemic species in Western Australia - Silver Perch (*Bidyanus bidyanus*). Tina Thorne (June 1997)
- No. 108** Issues affecting Western Australia's inshore crab fishery - Blue swimmer crab (*Portunus pelagicus*), Sand crab (*Ovalipes australiensis*). Cathy Campbell (September 1997)
- No. 109** Abalone Aquaculture in Western Australia. Cameron Westaway & Jeff Norriss (October 1997)
- No. 110** Proposed Voluntary Fishery Adjustment Scheme - South Coast Purse Seine Managed Fishery Report by Committee of Management (October 1997)
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- No. 112** Summary of Submissions to Fisheries Management Paper No. 108 - issues affecting Western Australia's inshore crab fishery. Compiled by Cathy Campbell (April 1998)
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- No. 115** Guidelines for granting Aquaculture Leases. Prepared by Fisheries WA, the Aquaculture Development Council & the Aquaculture Council of WA. (July 1998)

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- No.117** Management of the Houtman Abrolhos System. Prepared by the Abrolhos Islands Management Advisory Committee in conjunction with Fisheries Western Australia. (December 1998)
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- No. 119** Access to Wildstock for Aquaculture Purposes (not published)
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- No. 123** Future directions for the Rock Lobster Industry Advisory Committee and the Western Rock Lobster Managed Fishery. A discussion paper prepared by Kevin Donohue on behalf of the Rock Lobster Industry Advisory Committee. (December 1998)
- No. 124** A Quality Future for Recreational Fishing in the Gascoyne. Proposals for Community Discussion. A five-year management strategy prepared by the Gascoyne Recreational Fishing Working Group (May 1999).
- No. 125** Changes to Offshore Constitutional Settlement Arrangements; North West Slope Trawl Fishery and Western Deepwater Trawl Fishery. A discussion paper by Fiona Crowe and Jane Borg (May 1999)[not published]
- No. 126** The South Coast Estuarine Fishery. A discussion paper by Rod Pearn and Tony Cappelluti. (May 1999)
- No. 127** The Translocation of Barramundi. A discussion paper by Makaira Pty Ltd.[July 1999]
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- No. 130** Developing New Fisheries in Western Australia. A guide to applicants for developing fisheries Compiled by Lucy Halmarick (November 1999)
- No. 131** Management Directions for Western Australia's Estuarine and Marine Embayment Fisheries. A strategic approach to management (November 1999)
- No. 132** Summary of Submissions to Fisheries Management Paper No. 126 - The South Coast Estuarine Fishery - A Discussion Paper. Compiled by Rod Pearn (November 1999)
- No. 133** Abalone Aquaculture in Western Australia, A Policy Guideline (December 1999)
- No. 134** Management Directions for WA's Coastal Commercial Finfish Fisheries. Issues and proposals for community discussion (March 2000)
- No. 135** Protecting and Sharing Western Australia's Coastal Fish Resources. The path to integrated management. Issues and proposals for community discussion (March 2000)
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- No. 138** Information on Quota Management of Rock Lobster Fisheries in South Australia, Tasmania and New Zealand. By Kevin Donohue and Eric Barker (May 2000)
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- No. 140** Aquaculture Plan for the Recherche Archipelago, Western Australia. (June 2000)
- No. 141** Fish Protection Measures in Western Australia (June 2001)
- No. 142** Fisheries Environmental Management Plan for the Gascoyne Region (June 2002)

- No. 143** Western Rock Lobster. Discussion paper for seasons 2001/2002 and 2002/2003 (July 2000)
- No. 144** The Translocation of Brown Trout (*Salmo trutta*) and Rainbow Trout (*Oncorhynchus mykiss*) into and within Western Australia. Prepared by Jaqueline Chappell, contributions from Simon Hambleton, Dr Howard Gill, Dr David Morgan and Dr Noel Morrissy. (*not published, superseded by MP 156*)
- No. 145** The Aquaculture of non-endemic species in Western Australia - Silver Perch (*Bidyanus bidyanus*). As amended October 2000. Tina Thorne. This replaces Fisheries Management Paper No. 107.
- No. 146** Sustainable Tourism Plan for the Houtman Abrolhos Islands (February 2001)
- No. 147** Draft Bycatch Action Plan for the Shark Bay Prawn Managed Fishery (Full Report) (April 2002)
- No. 148** Draft Bycatch Action Plan for the Shark Bay Prawn Managed Fishery (Summary Report) (April 2002)
- No. 149** Final Plan of Management for the Lancelin Island Lagoon Fish Habitat Protection Area (March 2001)
- No. 150** Draft Plan of Management for the Cottesloe Reef Proposed Fish Habitat Protection Area (April 2001)
- No. 151** Inventory of the Land Conservation Values of the Houtman Abrolhos Islands (July 2003)
- No. 152** Guidelines for the Establishment of Fish Habitat Protection Areas (June 2001)
- No. 153** A Five-Year Management Strategy for Recreational Fishing on the West Coast of Western Australia. Final Report of the West Coast Recreational Fishing Working Group (August 2001).
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- No. 155** Plan of Management for the Cottesloe Reef Fish Habitat Protection Area (September 2001)
- No. 156** The Translocation of Brown Trout (*Salmo Trutta*) and Rainbow Trout (*Oncorhynchus mykiss*) into and within Western Australia (June 2002)
- No. 157** Policy for the Implementation of Ecologically Sustainable Development for Fisheries and Aquaculture within Western Australia. By W.J. Fletcher (May 2002)
- No. 158** Draft Plan of Management for the Miaboolya Beach Fish Habitat Protection Area (March 2002)
- No. 159** The Translocation of Barramundi (*Lates calcarifer*) for Aquaculture and Recreational Fishery Enhancement in Western Australia. By Tina Thorne.
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- No. 174** Translocation of Golden Perch, Murray Cod and Australian Bass into and within Western Australia for the Purposes of Recreational Stocking, Domestic Stocking and Commercial and Non-commercial Aquaculture (December 2003)
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- No. 178** Draft Plan of Management for the Kalbarri Blue Holes Fish Habitat Protection Area (March 2004)
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- No. 184** South West Beach Seine Management Discussion Paper
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