

# **REGULATORY IMPACT DECISION STATEMENT**

## **FISHERIES AND AQUATIC RESOURCES MANAGEMENT BILL 2011**

*Fish for the future*

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## 1. Executive Summary

The new Act (the *Fisheries and Aquatic Resources Management Act*) will replace the *Fish Resources Management Act 1994 (FRMA)* and the *Pearling Act 1990*, and provide the primary enabling legislation for the management for WA's aquatic biological resources and fisheries.

The prime focus of the new Act is to ensure the ecologically sustainable development of Western Australia's living aquatic biological resources and ecosystems by managing harvesting and other relevant human activities that affect these resources and their environment.

The new Act provides a flexible structure for the development of specific policy and legislative options.

It does not change the overall intent or impact of the enabling legislation for the management of fisheries. Existing subsidiary legislation is continued in force until such time as it is reviewed or a decision made to change it.

The model presented in the new Act is based upon tested concepts drawn from across the developed world, and modified for "best fit" to Western Australia.

It represents a best practice solution to current gaps and weaknesses in the legislative framework for the management of aquatic biological resources, which is evolutionary, rather than revolutionary in nature.

The new Act clearly builds on the strengths of pre-extant Acts (*FRMA*, *Pearling Act 1990* and the *Fisheries Act 1905*), and incorporates an up-to date conceptual framework for integrated resource management based on the principles of Ecologically Sustainable Development (ESD).

The overall impact of the new Act is anticipated to be positive in terms of sustainability performance, economic performance and social confidence.

## 2. Statement of issues

The drafting instructions for the *Fisheries and Aquatic Resources Management Act (FARMA)* propose a legal framework that provides enhanced governance capacity in seven key policy areas:

- Ensuring ecological sustainability
- Risk-based assessment and transparent and outcome-focused resource use planning.
- Integration of resource protection and use across all sectors.
- Security of resource access and allocation of proportional harvest entitlements.
- Management of aquatic farming activities, including pearl hatchery operations.
- Protection from the negative impacts of aquatic disease and harmful organisms (biosecurity).
- Devolution and delegation of decision-making, and deregulation.

Fisheries management across the western world is based on the demonstrated inability of markets to effectively provide for sustainable wild harvest fisheries (market failure). However the question of how best to use market elements and mechanisms to enhance governance outcomes remains, and is addressed in a number of features of the new legislation.

The core focus for both the *FRMA* and the *Pearling Act* is the management of specified commercial activities through a highly developed regulatory structure. The *FRMA* also provides head powers for broader regulation in terms of non-commercial aquatic biological resource use and the management of some forms of marine reserve such as Fish Habitat Protection Areas.

A range of factors is contributing to growing pressure on WA's aquatic environment and biological resources including population growth, climatic variations, technology improvements, and market conditions. These matters are on the public record, and are described in the discussion paper for the new Act "*A sea change for aquatic sustainability*". More detail is provided in both the Department's Annual Report and the "*State of the Fisheries and Aquatic Resources Report*", as well as a large number of specific policy and research reports.

During the past 15 years or so there have also been significant developments in aquatic resource management philosophy and policy, and a continuing growth in our understanding of not only the biological, social and economic dynamics of fisheries, and their impact on target fish populations, but also the dynamics of the natural world, and the matrix of interconnections between species, habitats, climate conditions, human use and other variables.

A select reference list at the end of this paper provides some key references to the major policy strands encompassed by the new Act.

These concepts are generally grouped under the heading of "Ecologically Sustainable Development" (ESD) and Ecosystem-based Fisheries Management (EBFM) (refer "*State of the Fisheries and Aquatic Resources 2011*").

Unlike the current legislation, the new Act incorporates these concepts in a systems-based approach to resource use planning and governance.

Many of the individual strands of policy incorporated into the new legislation have been developed over a 10-year time frame, with significant levels of industry and community engagement in each process, in addition to the more recent processes specific to this new Act. For example the Integrated Fisheries Management initiative has been accepted Government policy since 2004, and has already examined resource management and allocation issues in a number of resources including western rock lobster, abalone and west coast demersal scalefish resources.

The new Act integrates the most important of these policy strands into a coherent legislative framework aimed at meeting both resource protection and economic and social development goals.

At a high level, unless the conceptual and legislative framework for managing aquatic resources takes a holistic view of resource protection and use, and can provide transparent, effective and relevant management solutions that meet both resource-level governance and sectoral use requirements, it is inevitable that the productivity, value and condition of WA's aquatic biological resources will deteriorate in the face of population and other pressures, with attendant costs and opportunities foregone to government and the community.

### **3. Objectives**

The *FARMA* will replace the *Fish Resources Management Act 1994*(*FRMA*) and the *Pearling Act 1990*, and provide the primary enabling legislation for the management for WA's aquatic biological resources and fisheries.

The prime focus of the new Act is to ensure the ecologically sustainable development of Western Australia's living aquatic biological resources and ecosystems by managing harvesting and other relevant human activities that affect these resources and their environment.

It also seeks to protect these resources from disease and imported organisms and encourage optimum benefit for the Western Australian community and WA's seafood, aquaculture, pearling and recreational fishing sectors from their sustainable use.

It preserves the key access rights and commercial harvest allocations established under the two Acts it replaces, particularly in relation to commercial fisheries management plans established under Part 6 of the *FRMA*, and pearling entitlements under the *Pearling Act 1990*

The new Act will provide for cross-sectoral planning and management, the setting of explicit sustainable harvest levels and the allocation of access rights between harvest sectors.

It includes broadened scope to deal with wildlife interactions and food chain issues, as well as the harvest and farming of aquatic biota.

These impacts are presently dealt with by way of policy measures in the context of managed fisheries (eg by-catch exclusion strategies, the closure of large areas of sensitive habitat such as seagrasses to fishing methods which may permanently damage these ecosystem components).

Importantly the inclusion of these issues in the setting of allowable harvest levels and harvesting conditions will ensure explicit consideration of the food chain impacts of removing fish from an ecosystem.

The new Act will give these policies a substantive legal base and enable prosecution action for breaches. It is not envisaged that there will be significant adverse effects on legitimate and sustainable commercial or recreational fishing as a result, and there is likely to be a flow of benefits to aquatic ecosystems over time as fishing gear, methods and allowable catches are adjusted as a result of the planning processes in the new Act.

The new Act is intended to better complement and support other State policy initiatives, and hence does not include the planning and establishment of marine parks and nature reserves, which are the province of the *Wildlife Conservation Act 1950* and the *Conservation and Land Management Act 1985*.

The issue of jurisdictional interactions between the *FRMA*, the *CALM Act*, and the *Wildlife Conservation Act* and implications for the new *FARMA* has been the subject of a discussion between the Department of Fisheries and the Department of Environment and Conservation. The status quo is to be maintained in relation to the respective jurisdiction of legislation in the Fisheries and Environment portfolios.

Importantly the Act creates an administrative environment in which greater devolution of responsibility separates the strategic government role in decision making from the operational decision making needed to ensure that plans stay “on track” in meeting their approved objectives.

Appeal rights for devolved decisions in relation to licensing are provided for through the State Administrative Tribunal, as currently provided for in the *FRMA*.

Other devolved decisions occur in the context of a management strategy or resource use plan, both of which are subject to Parliamentary scrutiny as subsidiary legislation, and are approved by the Minister. Devolved decisions relate to the adjustment of fishery controls in a managed fishery context, rather than individual rights and entitlements.

The decision making process and requirements for consultation are outlined in the drafting instructions in Parts 3 and 4. The Act provides for a risk assessment prior to the Minister’s initial decisions to declare a resource as “managed”. This triggers a process to develop a draft resource management strategy. Strategic resource-level decisions such as the level of permissible exploitation (total sustainable use), ecosystem impact levels, and decision criteria for adjustment of permissible use levels are made as part of this process and approved by the Minister. The high level resource use decisions then flow down to the setting of explicit harvest levels or usage parameters for specified periods of time. See diagram in Attachment 4.

The *FRMA* already provides for this type of operational decision making by the CEO of the Department under Part 6. The status quo is maintained by the new Act and the establishment of rights of appeal for delegated operational decisions in relation to the management of fisheries (other than licensing as currently catered for) is not considered appropriate at this stage.

The new Act preserves arrangements for managed fisheries created under the *FRMA*, and provides for the transition of pearling into an access rights-based management structure. The intention being to allow an orderly progression over time for fisheries that would be best managed under an integrated resource management structure with stronger rights-based features.

#### **4. Options to address the issue**

As part of the development process for the new Act, the Department conducted a desktop review of primary (enabling) fisheries legislation in relevant national and international jurisdictions.

In particular the legislative models for fisheries and oceans management in the U.K., Canada, the USA, New Zealand, South Australia, the Northern Territory, Tasmania, Victoria and New South Wales were considered in detail, and their strengths and weaknesses analysed.

The review also considered transition issues from the current state (FRMA/Pearling Act).

The model presented in the new Act is based upon best practice concepts drawn from across the developed world, and modified for “best fit” to Western Australia.

For example a pure “quota management” (QMS) model as used in New Zealand for commercial fishing was not considered optimum due to concerns about its application to non-commercial fishing, its effectiveness in the smaller-scale data-limited multi-species fisheries typical of Western Australia, the appropriateness of output-based management systems in fisheries with highly variable annual yields, and the reporting and monitoring requirements of such a system.

However, concepts derived from, and tested in, the New Zealand QMS system, and in particular the allocation of tradeable fishing entitlements (resource shares), and the subsequent reduction in administrative oversight and improvement in fishery values have been incorporated in the new Act.

The new Act also encompasses the full range of regulatory options from self-regulation to Government administered regulation. Self and co-regulatory options are provided for in a number of areas of the proposed regulation including the provision of powers for the Minister to enter into legally binding “arrangements” with non-government entities.

The Act also provides for non-regulatory options, including education programs, codes of practice, court enforced undertakings etc.

The risk assessment and outcome-based resource planning framework also provides an environment in which deregulation for non-critical matters may more readily occur.

Minimum effective regulation is included as a principle for the decision making under the Act.

The approach taken with the drafting instructions is to establish high-level head powers in the Act that provide the flexibility to develop specific subsidiary legislation in response to operational requirements. Some specific elements of the *FRMA* have been moved down a layer in the legislative structure and broadened to allow improved scope for adaptive management.

The new Act provides a highly flexible structure for the development of specific policy and legislative options.

Four tiers of powers are established in the structure of the new Act, with delegated responsibility linked to the impact of decision making and their strategic relevance:

**Act level** –established through Parliamentary assent.

- Head powers – 18 Parts

**Subsidiary legislation level** – must be tabled and is disallowable in Parliament.

- Management strategies and resource use plans – delegated legislation requiring Ministerial approval for enactment.
- Regulations – requiring Executive Committee approval.
- Orders – requiring Ministerial approval.

**Devolved authority level**

- Licensing – Powers for the Director/CEO to grant or refuse applications for licences created in regulation or delegated legislation for specific purposes.
- Directions – Delegated powers to the Director/CEO to adjust specific operational controls in management plans to meet plan objectives approved by the Minister.

Under current State Government policy subsidiary legislation created under these powers would be subject to a separate regulatory impact assessment on a case-by-case basis, as is currently the process under the FRMA.

## **5. Impact analysis**

The new Act preserves the status quo under the FRMA and Pearling Acts, and will not significantly change the impact of fisheries legislation. Existing subsidiary legislation will be continued in force until such time as it is reviewed or a decision made to change it.

In the longer term any additional impacts are only likely to flow from subsidiary legislation created under the head powers in the new Act, which, as stated above, would be subject to separate impact assessments.

Benefits likely to accrue from management strategies under the new Act include improved sustainability and ESD outcomes, as well as improved economic performance in some fisheries.

The introduction of a consistent framework for the allocation and re-allocation of resource access rights, and the trading of temporary rights will provide a better basis for industry restructuring, improved economic performance and reduced reliance on direct Government administration of all aspects of fisheries entitlements.

The refocus on outcome-based management planning, and the allocation of clear statutory fishing access rights is likely to see significantly greater opportunities for deregulation around input controls, with attendant benefits for harvest operators in terms of flexibility of operation and business efficiency. For example the move of the western rock lobster resource to output controls (“catch/quota”) provides an opportunity to remove a significant amount of subsidiary legislation that was focused on controlling fishing effort as a surrogate for catch.



The economic and management pros and cons of the various styles of fisheries management are widely described in the literature. See the select list of references at the end of this statement and in particular FAO (2000) for an overview.

The overall impact of the new Act is anticipated to be positive in terms of sustainability performance, economic performance and social confidence.

Key elements of the new Act are outlined below.

Issue	Description	Options	Reasons for selected option	Analysis
Ensuring ecological sustainability	<p>ESD as a governing principle for natural resource management was adopted by all Australian States in 1992.</p> <p>The concept looks at the holistic impacts of resource use, rather than the more narrowly focused concept of management of individual fisheries.</p> <p>Refer specifically to: <i>Ecologically Sustainable Development Steering Committee (1992). National Strategy for Ecologically Sustainable Development.</i></p> <p><i>Fisheries Dept, Western Australia (2002). Policy for the Implementation of Ecologically Sustainable Development for Fisheries and Aquaculture within Western Australia.</i></p> <p><i>Fletcher et al (2005). Western Rock Lobster Fishery. ESD Report Series 4.</i></p>	<ol style="list-style-type: none"> <li>1. Single sector output based management systems.</li> <li>2. Single sector input-based management systems.</li> <li>3. Integrated output based management systems</li> <li>4. Integrated input based management systems</li> <li>5. Integrated ESD-based systems.</li> </ol>	<p>Options 1 and 2 are narrowly focused on single sector extractive use of aquatic resources, and do not readily provide for the management of total human impact, or the management of proportional impacts.</p> <p>Option 3 relies on extensive data sets on resource condition and does not readily deal with environmental variability.</p> <p>Option 4 constrains management options to highly regulated models.</p> <p>Option 5 was considered to offer the greatest flexibility for whole-of-resource management which takes into account the direct, indirect and cumulative effects of multi-sector resource use.</p>	<p>The new Act establishes a flexible capacity to established integrated ESD management systems for aquatic resources on a case-by-case basis. These are linked to an allocated fishing rights model and explicit exploitation limits and harvest levels.</p> <p>It is anticipated that this will have a positive impact on sustainability and on business and recreational user confidence.</p>
Risk-based assessment and transparent and outcome-focused resource use planning.	<p>Risk based assessment provides a model for applying precautionary thinking which takes into account uncertainty across the spectrum of direct and indirect impacts, both individual and cumulative, associated with fishing a resource. Refer <i>Fletcher et al 2001 and 2003.</i></p>	<ol style="list-style-type: none"> <li>1. Continue historical paradigms.</li> <li>2. Value-based or other assessment.</li> <li>3. Input –focused resource use planning.</li> <li>4. Risk based assessment.</li> </ol>	<p>Options 1 –3 lack transparency in terms of resource management objectives, and make adaptive resource use management problematic as a result.</p> <p>Option 4 was selected as offering the most effective and dynamic structure for improving both</p>	<p>Historically fisheries management paradigms in WA have tended to be risk averse and heavily based on regulatory controls for each sector (input controls). The new Act moves this paradigm to a harvest strategy approach which sets explicit exploitation limits and total</p>

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	Outcome focused resource use planning targets impacts and resource condition as objectives for management. Transparency is a prerequisite for outcome-based management.		sustainability and economic and social performance.	allowable catch limits. Benefits are likely to include improved sustainability performance, greater community confidence, and improved economic performance by commercial fisheries.
Integration of resource protection and use across all sectors.	Historically fisheries management has focused on single-sector (usually commercial) fishery management. In shared resources, where there are a range of fishing and non-fishing interests this model seldom provides confidence to the community that ongoing use is managed sustainably and equitably.	<ol style="list-style-type: none"> <li>1. Sector by sector fishery management.</li> <li>2. Protection fishery by fishery.</li> <li>3. Integrated resource use model</li> </ol>	Options 1 and 2 offer little beyond the historic single stock/single sector/single species focus of fisheries management. Option 3 was selected as the only option that could provide sufficient confidence that resource use would remain sustainable against the backdrop of population growth, technology development and other pressures.	The new Act establishes the capacity to set resource-level harvest and sustainability parameters, which then drive sector-by-sector management objectives and settings. This provides clarity and confidence around sustainability settings and allows management solutions to be more readily tailored to sector use profiles.
Security of resource access and allocation of proportional harvest entitlements.	<p>Lack of confidence in long-term access to resources tends to lead to a “race to fish”, high levels of intersectoral conflict, increased illegal activity and increased risks to sustainability.</p> <p>It also leads to sub-optimal economic and social performance in terms of benefits returned to the community from resource use. Refer to <i>FAO (2000), Use of property rights in fisheries management; Fisheries Dept (2011), Improving commercial fishing access rights in Western Australia</i></p>	<ol style="list-style-type: none"> <li>1. Uncertain (variable) confidence in resource access.</li> <li>2. No explicit allocation of harvest shares.</li> <li>3. Clear long-term access rights for all sectors</li> <li>4. Explicit harvest share allocation and management</li> </ol>	<p>Options 1 and 2 represent the current situation in most fisheries. Options 3 and 4 provide greater confidence for both commercial and recreational fishing sectors, and will assist in reducing conflict, ensuring sustainability and improving the economic performance of these sectors.</p> <p>For non-harvest interests a clear framework for fishing access rights provides confidence that all fishing sectors are being appropriately constrained.</p>	Security of access through the allocation of resource shares provides greater confidence for industry and the community, and has been shown to improve economic performance significantly in commercial fisheries over time.
Management of aquatic farming activities, including pearl hatchery operations	The FRMA provides a number of powers for the management of aquaculture, however Pearling is managed under the Pearling Act	<ol style="list-style-type: none"> <li>1. Continue current arrangements</li> <li>2. Integrate pearling and aquaculture in the overall resource planning framework</li> </ol>	Option 1 tends to emphasise the use of government regulation as a constraint, and does not provide the Pearling Industry with robust and	This element continues provisions in the FRMA for assigning areas of crown land/waters for pearling or aquaculture purposes.

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	<p>1990.</p> <p>Both aquaculture and pearling require lease areas and access to wild fish resources for broodstock, pearl seeding and other purposes.</p>		<p>durable access rights.</p> <p>Option 2 provides greater confidence for both industries in terms of long-term access to marine areas and wildstock fish resources, and provides more scope for deregulation.</p>	<p>Head powers provide a range of options for management, including devolution of responsibility for specific matters.</p> <p>The planning and access rights elements of the Act provide an improved basis for business confidence and economic performance.</p>
Protection from the negative impacts of aquatic disease and harmful organisms (biosecurity).	<p>Head powers in the FRMA are relatively weak and not well designed to meet the challenges inherent in ensuring that WA's waters remain free from pests and disease, or in controlling outbreaks.</p> <p>The introduction of waterborne diseases or exotic pests can have catastrophic consequences for WA's marine ecology and the fishing industry.</p>	<ol style="list-style-type: none"> <li>1. Rely on relatively weak provisions such as those in the current FRMA, or use the BAM Act powers and the Minister for Agriculture for dealing with aquatic biosecurity issues.</li> <li>2. Provide specific powers tailored to aquatic issues that allow the Minister for Fisheries to act promptly and tailor responses to specific aquatic situations.</li> </ol>	<p>Option 2 provides for both rapid response measures and the management of ongoing issues associated with the deliberate or unintentional transport of exotic aquatic life into WA waters.</p> <p>Option 1 – to maintain the status quo – is considered a high risk to the State's aquatic biota and ecosystems</p>	<p>Recent Government policy decisions re aquatic biosecurity require an underpinning and modernised legislative framework for their implementation. BAM Act may not meet needs of aquatic biosecurity (aquatic biosecurity very different to terrestrial biosecurity issues)</p>
Devolution and delegation of decision making, and deregulation	<p>Due to its regulatory nature, the FRMA pushes much of the decision making around the operational management of fisheries up to the Minister for Fisheries.</p> <p>This situation results in an excessively high work flow on minor matters, is often unwieldy and does not clearly separate high level strategic decisions around the core long-term principles of resource use which are properly the role of executive government, and operational decisions which are properly the role of operational</p>	<ol style="list-style-type: none"> <li>1. Retain an undelegated decision-making model with attendant inefficiencies.</li> <li>2. Provide for structured devolution of key operational decisions within the context of broad strategic approvals by the Minister</li> </ol>	<p>Option 2 provides the greatest flexibility for resource use planning and efficient operational management.</p> <p>It also provides for devolution of specific matters outside government and creates the potential for improved co-management arrangements.</p>	<p>The decision making model in most Australian Fisheries Acts depends heavily on powers assigned to the Minister by Parliament. In many cases this results in a top-heavy decision-tree, in which both strategic and operational decisions are being made at the highest level. The new Act provides for devolution of operational decision-making powers in the context of an approved high-level resource management strategy. Fisheries literature across most jurisdictions points to the unwieldiness of an undelegated</p>

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	managers.  <i>Refer to: Commission of the European Communities (2009) Reform of the common fisheries policy.</i>			model, and the need to move decision making to the right level in terms of responsibility.
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### **Groups directly affected**

- Commercial fishing industry
- Recreational fishers
- Pearling industry
- Aquaculture industry
- Fish processing sector
- Fishing charter industry
- Marine and freshwater transport vectors (biosecurity risks).

It is anticipated the impacts on resource user groups will not change significantly in the short-term.

## **6. Consultation**

A discussion paper “*A Sea Change for Aquatic Management*” on a framework for a new Act of Parliament to replace the FRMA was approved by the Minister for Fisheries and released on 3 June 2010. Public submissions closed on 24 August 2010.

Sixteen briefings for key stakeholder groups were conducted prior to release, and during, the submission period.

The discussion paper and call for submissions was placed in a prominent position on the Department’s website, and printed copies were circulated to approximately 80 identified stakeholders groups, including 11 WA Government Departments. The website entry for the discussion paper received 1,870 page views.

The initial media release received extensive coverage in metropolitan and regional papers, and continued to receive wide mention on websites and in other media during the submission period, including a major article in the *West Australian*. Display advertisements reminding readers of the closing date and call for submissions were placed in 22 regional and State newspapers in the first week of July 2010.

Groups specifically briefed include: Aquatic Advisory Committee – Fisheries; WA Fishing Industry Council; Recfishwest; Pearl Producers Association; Conservation Council; World Wildlife Fund (WA); Marine Parks and Reserves Authority; Paspaley Pearls; Department of Environment and Conservation; Department of Agriculture and Food; Department of Minerals and Energy; Department of Tourism; Rottnest Island Authority; Swan River Trust; Department of Local Government.

The consultation process, key issues raised and the Department’s response are summarised in Attachment 1.

### **Access Rights Working Group and further consultation on fishing rights**

A Fishing Industry-Government working group to review in detail the question of security of commercial resource access was established at the direction of the Minister for Fisheries and met during 2010.

The Access Rights Working Group was appointed under the following terms of reference: *“To provide advice on the improvement of commercial fishing access rights, including reference to the development of proposed new aquatic resources management legislation”*.

The Working Group’s report “Improving Commercial Fishing Access Rights in Western Australia” (Fisheries Occasional Publication No. 102, 2011) has been accepted by the Minister and the WA Fishing Industry Council.

Copies of the report are available at  
<http://www.fish.wa.gov.au/docs/op/op102/index.php?0706>.

The working group made 16 recommendations, of which 6 have specific relevance to the new Act. These are summarised in Attachment 2, together with the Department’s response in terms of the new Act.

### **Industry Reference Groups**

A series of meetings with peak industry bodies and stakeholder groups including the WA Fishing Industry Council, Recfishwest, the Pearl Producers Association, the commercial wild harvest fisheries sector and the aquaculture sector.

Further reference group meetings to work through the fine detail of the Act are planned as drafting progresses.

## **7. Policy development processes**

As stated above, many of the individual strands of policy incorporated into the new legislation have been developed over a 10-year time frame, with significant levels of industry and community engagement in each process.

For example the Integrated Fisheries Management initiative has been accepted Government policy since 2004, and has already examined resource management and allocation issues in a number of resources including western rock lobster, abalone and west coast demersal scalefish resources. The new Act beds the principles of this initiative down in primary legislation.

Key references for these processes are provided in Attachment 3.

## **8. Preferred options**

The preferred options for addressing the high level legislative framework for the State’s aquatic biological resources are presented in detail in the drafting instructions for the FARMA.

These have been provided to the RGU separately.

These options take into account feedback from stakeholder and industry reference groups, matters raised in public submissions, government policy in relation to fisheries

and biosecurity and developments in aquatic resource management over the past 17 years.

They represent a “best practice” solution to current gaps and weaknesses in the legislative framework, which is evolutionary, rather than revolutionary in nature. The new Act clearly builds on the strengths of pre-extant Acts (*FRMA 1994, Pearling Act 1990 and the Fisheries Act 1905*), and incorporates an up-to date conceptual framework for integrated resource management based on the principles of ESD.

## **9. Implementation and evaluation strategy**

Head powers under the new Act provide for the orderly implementation of the new resource management model on a resource-by-resource basis, as each resource is assessed and declared.

Fishery management arrangements under the FRMA will be carried over into the new Act, and if a resource is not “declared” will remain in force in their current form.

No sunset or review clause is proposed for the new Act. Primary legislation of this nature seldom specifies review or “sunset clause” dates due to the potential disruption to business and adverse effects on sustainability created by uncertainty. Amendments will be made to the Act as the need arises.

However, the Act does provide for specified review timeframes, performance indicators and targets for all strategies and plans created under its head powers.

## **10. Key elements and responses**

### **Ensuring sustainability**

The majority of submissions strongly supported the general direction proposed for an Aquatic Resources Management Act based on ESD principles, with a “climate change ready” statutory planning framework for aquatic biological resources.

Some submissions queried the scope of the proposed Act, with specific reference to the overlaps with marine reserves planning under the CALM Act. There was broad recognition that the approach to aquatic resource management in Western Australia could be better integrated across government, but no general agreement on how best to achieve this.

Discussions between the Department and DEC have considered the issue of jurisdiction. The Director General of DEC has indicated that DEC is generally supportive of the inclusion of ESD and ecosystem principles in the FARMA, and key changes to planning and allocation parameters in relation to fisheries (ref: Letter from DEC 9/11/2011).

No change in relation to functions and activities of the two Departments is envisaged as a result of the FARMA.



Conservation interests generally supported the focus on sustainable harvesting under ESD principles, and the inclusion of ecosystem parameters. The World Wildlife Fund considered biodiversity conservation should be a primary goal and legislation should be flexible enough to be “climate change ready”.

Commercial fishing interests were generally supportive of the directions proposed but felt the scope needed, at minimum, to maintain the status quo in relation to commercial fishing rights in the absence of clear Government policy on the overall direction for the management of marine areas.

Aquaculture interests wanted to see explicit recognition as a food producing industry not a “fishery”.

#### ***Department’s response***

The drafting instructions for the new Act incorporate ESD principles and a planning framework for the use of aquatic biological resources (Parts 1 – 4).

The drafting instructions position the new Act in approximately the same jurisdictional space as the FRMA, with some enhancements based upon the sensible application of more holistic thinking around the concept of ecological sustainability (ESD).

The explicit consideration of environmental variability, ecosystem and biodiversity issues in the planning processes are necessary components of ecological sustainability as mandated by the Act. Their inclusion does not imply, however, that primary responsibility within Government for the functions and activities associated with these issues is therefore transferred *in toto* as a consequence. Rather, the new Act recognises the need for consideration of these issues in the context of its mandate in relation to ecologically sustainable aquatic resource use.

Pearling and aquaculture are included in both the objects of the Act and under discrete industry management powers which provide for industry development needs.

#### **Risk-based assessment and transparent and outcome-focused resource use planning**

The guiding principles were broadly supported. There were some reservations were expressed about the use and definition of terms such as the “precautionary principle” by the harvest sectors.

The resource planning and allocation framework proposed was generally supported by all stakeholder groups. Commercial and recreational sector groups raised issues in relation to security of resource access, economic efficiency and the allocation and reallocation of sectoral harvest shares.

#### ***Department’s response***

The Department recognises the validity of concerns around the interpretation in law of the “precautionary principle”, as adopted in Agenda 21 of the 1992 Rio Summit. Instead it has opted for a “risk assessment” framework and planning approach which incorporates the key aspects of precautionary management without establishing the premise of an “absence of risk or certainty” as a basis for possible legal or political

challenge of management action (see Parts 2-4 of the drafting instructions). This is consistent with national approaches on this matter.

The planning framework has been refined to accommodate a more sophisticated resource sharing and allocation model which can be implemented on a case-by-case basis over time.

The resource allocation model provides for reduced Government administrative intervention in the transfer of fishing rights, and more flexibility for individual rights owners to trade freely and use their capital value to better effect.

Importantly the new model removes much of the incentive in the “race to fish” so prevalent under purely input controlled fisheries, effectively guaranteeing each rights holder a predefined share of the TAC.

### **Integration of resource protection and use across all sectors**

The introduction of a holistic resource planning framework with sector specific management (“resource use plans”) and clearly established harvest shares and rights was strongly supported in the majority of submissions.

The WA Fishing Industry Council has indicated that they support the conceptual framework of the FARMA, and is of the view that the new legislation will not have any adverse consequences for the fishing industry, given the restrictions that already apply. (ref: Letter from WAFIC 4/11/2011).

### **Security of resource access and allocation of proportional harvest entitlements**

A formal mechanism and decision making process for the allocation of proportional harvest entitlements in the context of an overall permitted resource use level was strongly supported by the large majority of submissions.

Conservation groups expressed some reservations about the implications for compensation if harvest entitlements are reduced – particularly through the excision of fishing grounds by reservation.

The purpose of “resource protection plans” and the need for explicit compensation mechanisms was raised by the WA Fishing Industry Council.

Strong support was evident from the fishing sectors for a clear “fishing rights” framework for all sectors. Recfishwest suggested that the form of this needs to be flexible to allow for development of the concept and its application for this sector

### ***Department’s response***

See comments above and attachment 2. The drafting instructions include a “fishing rights” framework as part of the planning and allocation model.

The *Fishing and Related Industries Compensation (Marine Reserves) Act 1997* already deals with this issue in relation to commercial fishing. There may be a case for a review of its application at some point in the future. The FARMA does not, and should not, consider compensation if fishing entitlements are reduced on the grounds of sustainability or misdemeanour.

Importantly the proportional allocation system in the new Act ensures that actual catch entitlements for each sector (and individual) slide up and down as the TAC is adjusted, meaning that there is no substantive reduction in the share (as opposed to the absolute value) when the TAC is adjusted for sustainability reasons. This model is widely accepted by the fishing industry and peak recreational groups as being an equitable and effective way of meeting sustainability targets.

### **Management of aquatic farming activities including pearl hatchery operations**

The Aquaculture Council of WA (ACWA) and the Pearl Producers Association (PPA) expressed a desire to ensure the new Act provided an appropriate management structure for their respective industries. The PPA noted the “hybrid” nature of the pearling industry encompassing both wildstock and hatchery (aquaculture) components.

#### ***Department’s response***

Further discussions with both ACWA and the PPA have clarified the precise requirements of the aquaculture and pearling sectors, and the drafting instructions have been prepared accordingly.

The PPPA has been briefed and invited to participate in further discussions as the Act takes shape (noting the Pearling Act 1990 is to be repealed).

### **Protection from the negative impacts of aquatic disease etc**

The need for biosecurity powers was identified in the context of recent State Government initiatives and discussions with the Department of Agriculture and Food.

The inclusion of Biosecurity powers, establishment of aquaculture zones and removal of fish processing from the Act was generally supported.

#### ***Department’s response***

A separate section dealing with aquatic biosecurity powers under the Minister for Fisheries has been included in the drafting instructions (Part 8).

### **Other matters**

Recfishwest placed emphasis on the need to provide for community-driven management options and clear processes for involvement by “affected parties” in decision making on areas of interest eg grant of aquaculture (fish farming) licences. It also expressed concern about the ownership and management of recreational fishing rights.

The provision of head powers that supported co-management arrangements with fishing sector groups or NGOs was also supported by both the recreational and commercial fishing sectors.

The Kimberley Land Council requested specific requirements for decision-making in relation to impacts on native title rights for “sea country”, the implementation of the aboriginal fishing strategy, and explicit powers to establish “indigenous protected areas” and appoint Aboriginal rangers.

A number of submissions raised the need for further consultation on matters of detail as the new Act was developed.

***Department's response***

The issue of “affected parties” relates to SAT processes in relation to licensing decisions. Recfishwest want to be able to “appeal” the grant of, for example, aquaculture licenses in order to resolve sectoral resource allocation decisions. Under the new framework resource allocation decisions will become a transparent part of the planning process, rather than an implication of licensing decisions. The issue of third party appeal rights will be considered as part of the drafting process.

Powers for the Minister to enter co-management arrangements with NGOs are included.

The matter of native title and its interactions with State legislation is largely outside the proposed new Act. Head powers to develop specific resource use plans and regulations in relation to Aboriginal customary fishing, and to provide for an allocation for customary purposes of the sustainable harvest where appropriate have been included. (ref Aboriginal Fishing Strategy – Fisheries management paper No. 168 and Customary Fishing Policy – December 2009).

<http://www.fish.wa.gov.au/docs/pub/CustomaryFishing/Customary%20Fishing%20Policy.pdf>

Reference groups with key stakeholder bodies have been established and a series of meetings held to fine tune the drafting instructions in the light of industry input. These will be ongoing as matters of specific detail emerge during the drafting process.

## 11. Attachment 1 – Consultation summary and responses

Date	Organisation	Notes
Stakeholder briefings – discussion paper – first phase		
31-Mar 2010	Minister for Fisheries	Fisheries – Ministerial Advisory Committee Tourism, Mines, Swan River Trust, Minerals and Energy, Agriculture WA Fishing Industry Council, Recfishwest, Aquaculture Council of WA, Rock lobster Council Pearling and abalone industry reps Senior Staff
23-Apr	Aquatic Advisory Committee	
5-May	Other Govt Depts	
14-May	Fishing Industry Stakeholders	
18-May	Pearl Producers Association and Abalone Divers Assoc	Includes World Wildlife Fund
31-May	Dept Environment and Conservation	
14-Jun	WA Fishing Industry Council Board	
16-Jun	Paspaley Pearls	
17-Jun	Marine Parks and Reserves Authority	
28-Jun	Conservation Council	
23-Jul	WA Fishing Industry Council (resource access committee)	
28-Sept	CEO – Dept of Local Government	
Stakeholder workshops – second phase		
7/2010-11/2010	Access Rights Working Group	6 meetings, commercial fisheries and boat broking industry reps. Inc consultation with the banking industry
10 January 2011	Recfishwest	Industry and departmental workshops on models for access rights. Inc reps from NZ Ministry of Fisheries and WA Fishing industry
25 & 26 May 2011	Access rights – management workshops	
27 May 2011	Access rights – industry workshop	
4 August 2011	Dept of Premier and Cabinet	
22 Sept 2011	Dept Environment and Conservation	
3 October	WAFIC reference group	
5 October	WAFIC – wild harvest fishery sub-group	
11 October	WAFIC – Aquaculture sub-group	
12 October	WAFIC reference group	
20 October	Pearl Producers Association	
21 October	Recfishwest Executive	
		Briefing and discussion of key issues

## WRITTEN SUBMISSIONS RECEIVED

Categories1	Company	FirstName	LastName	JobTitle
Aboriginal interests	Kimberley Land Council	Ari	Gorring	Project Manager
Animal welfare	RSPCA	Nicollete	Marsh	
Animal welfare	Animal Liberation South Australia	Suzanne	Pope	
Conservation	University of WA - Oceans Institute	Gary	Kendrick	
Conservation	Oceans Institute - UWA	Jessica	Meeuwig	Director - Centre for Marine Futures
Conservation	World Wildlife Fund	Gilly	Llewellyn	Manager - Conservation Programs
Conservation	Conservation Council and Wilderness Society	Piers	Verstegen	Director
Conservation	Envirocons Kimberley	Emma	Belfield	Kimberley Conservation Officer
Fishing industry	Pearl Producers Association	Brett	McCallum	Executive Officer
Fishing industry	Paspaley Pearling Company P/L	Kym	Coffey	Contracts Manager
Fishing Industry	WAFIC	Anna	Cronin	Chief Executive Officer
Fishing industry	Aquaculture Council of WA	Dan	Machin	Executive Officer
Government	Great Barrier Reef Marine Park Authority	Randall	Owens	
Government	Tourism WA	James	Hewitt	A/Executive Director - Industry Development
Government	Marine Parks and Reserves Authority	Cara	McGary	Executive Officer
Government	Department of Mines and Petroleum	Richard	Sellars	Director General
Government	Department of Water	John	Loney	Director, Strategic Policy and Water Services
Government	Department of Commerce	Brian	Bradley	Director General
Government	Dept of Agriculture and Food WA	Tony	Higgs	Chief Veterinary Officer
Government	Department of Transport	Alistair	Bryant	A/Managing Director
Government	Swan River Trust	Rod	Hughes	General Manager
Government	WA Museum	Diana	Jones	Executive Director - Collection and Content
Government	Department of Agriculture, Fisheries and Forestry	Rona	Mellor	Acting Secretary
Government	Aquatic Advisory Committee - Fisheries	Robert	Fisher	Chairman
Private	Department of Agriculture - Denmark	Di	Evans	Senior Veterinary Officer
Private	Z	Ben	Plozza	
Private	Z	Nigel	Laubsch	
Private	Z	Frank	Collins	
Private	Z	Astrid	Herlihy	
Private	Z	Garry	Williams	
Private	Pilbara wetline fisher	Jim	Money	
Recreational fishing	Recfishwest	Kane	Moyle	A/Executive Director
Recreational fishing	WA Gamefishing Association	John	Webber	President
Recreational fishing	WA Fish Foundation	Ian	Stagles	Chair

## SYNOPSIS OF ISSUES RAISED AND RESPONSES

From	Key points raised	Department's response re new Act
<b>Aboriginal interests</b>		
Kimberley Land Council	Wants a Kimberley marine resource workshop to set strategic policy direction. Wants clear recognition of Native title rights – in particular proper consultation and decision-making for “sea country”.	Aboriginal fishing strategy and policy will be implemented. Native title issues outside scope
<b>Animal welfare interests</b>		
Animal Liberation South Australia	Fish feel pain. Regulation is needed for their welfare.	Codes of practice and regulatory head powers already provided for in FRMA.
Department of Agriculture – Denmark Private submission – Di Evans.	Animal welfare provisions need to be strengthened or transferred to AWA.	See above
RSPCA	Fish welfare. Ref S96 of Animal Welfare Act.	See above.
<b>Conservation interests</b>		
Conservation Council and Wilderness Society	Supports integrated approach to aquatic biological resource management and ESD principles. Believes this needs to be in context of an overarching Biodiversity Conservation Act. Concerned with cross-Govt integration. Supports amalgamation of government services to achieve ecosystem-based management. Wants a whole-of-govt approach.	ESD and EBFM incorporated in new Act. Whole of Govt issues discussed with Minister and Premier's office. Largely outside scope.
Envirosearch Kimberley	Supports State Biodiversity conservation legislation. Mirrors Conservation council issues. Supports strengthened biosecurity powers. Concerned about compensation in relation to fishing rights.	See above. FRICMA Act deals with compensation issues already.
University of WA - Oceans Institute – Gary Kendrick	Supports general thrust including ESD and EBFM. Believes Biodiversity Conservation is not the same as sustainable harvesting. Qualified support for devolved management with responsibility remaining with the State.	ESD and EBFM incorporated in new Act. Biodiversity issues considered in the context of ESD and sustainable use – not in isolation.

*Regulatory impact decision statement – Fisheries and Aquatic Resources Management Act.*

University of WA – Oceans Institute - Jessica Meeuwig	Support revision of fisheries legislation to encompass EBFM. Believes biodiversity conservation and sustainable use are separate issues. Raises conflict of interest when role of regulator and legislator are combined. eg forestry Believes FD and document is negative to the establishment of marine sanctuaries.	Marine reserves network outside scope. Other issues are matters of Government policy not law.
World Wildlife Fund	Supports general thrust and context. Disagrees with assessment of environment. Supports key outcomes Does not support inclusion of cross-govt aquatic resource management within Fisheries portfolio. Improved security of access Risk based approaches to decision making Statutory office within Fisheries portfolio Strongly supports planning framework. Devolution needs to have strong and transparent governance framework. Legislation should be constructed or reviewed as “climate change” ready.	Scope of Act is in same space as FRMA. No substantial change proposed re cross-govt integration Other matters included in drafting instructions.
<b>Fishing industry and related interests</b>		
Aquaculture Council of WA	Aquaculture not a “fishery” – it is a food producing industry. Paper silent on aquaculture per se. Supports most principles. More on efficient administration More emphasis needed on industry development and community/economic return. Supports removal of fish processing from Act.	Act includes industry development and specific provisions for aquatic farming.
Paspaley Pearling Company P/L	Generally supportive. Focus on management of pearling and consistency with previous Govt commitments. Supports ESD. Supports simplification of regulatory framework Need to include maximising economic and social benefits. More defined secure rights Disagrees with proposal to split pearling into two elements – wild stock and aquaculture due to “hybrid” nature of industry. Supports focus on strengthened access rights Key transitions from Pearling Act important.	Ongoing discussions with Pearling Industry – Act accommodates all issues raised.



*Regulatory impact decision statement – Fisheries and Aquatic Resources Management Act.*

Pearl Producers Association	Supports need for reform. Supports need for a cross-govt approach. Wants specific engagement on the detail of pearling matters. Repeats WAFIC submission. Supports inclusion of pearling in general fisheries framework – with own division. Specific economic outcome needed. Supports explicit management objectives. Support risk assessment. Does not support precautionary principle per se – risk assessment includes this. Supports planning structure. Supports statutory office. Consultation approach needs clarification.	See above
WAFIC	Supports integration across Govt. Supports framework to manage all sectors. Supports simplification of legislative requirements. Recognises the need for legislative reform	New Act considers these issues. Ongoing discussions on specific details have clarified rights management model.
<b>Government</b>		
Aquatic Advisory Committee	Supports general thrust. Emphasis on a more informed management decision-making environment.	Agreed.
Department of Agriculture, Fisheries and Forestry	Agrees with general thrust. Will provide more specific comment.	Agreed
Dept of Agriculture and Food WA – Tony Higgs	Animal welfare issues – concerned about lack of action by Fisheries on regulation.	Policy matter – not legislative.
Department of Commerce	Main interest in biodiscovery legislative framework. Supports integrated ESD and biodiversity conservation approach. Supports statutory office within Department, particularly re issuing and revocation of authorisations. Supports need to clarify jurisdictional arrangements outside 3nm.	Agreed.
Department of Environment and Conservation	Supports general thrust of ESD and ecosystem based planning and resource access allocation. Requires dialogue on potential implications re overlaps.	Agreed.
Department of Mines and Petroleum	Needs a multiple user objective Alignment with Oceans Policy, EPBC Act and IUCN criteria. Access rights for the mining and resources sector an issue.	Mining access largely outside scope of Act. New objectives and principles align better with National and International policy arrangements.
Department of Transport	Impact on marine safety issues Restrictions and fishing on “traffic” Reduced commercial fishing and hence vessel numbers.	Nil impact on marine safety. Other issues are matters of policy.

*Regulatory impact decision statement – Fisheries and Aquatic Resources Management Act.*

Department of Water	No concerns with principles.	Agreed
Great Barrier Reef Marine Park Authority Manager Sustainable Fisheries – Randall Owens.	Strongly supports general thrust. Suggests ARMS could be applied to specific issues eg “reef water quality protection plan”.	Agreed.
Marine Parks and Reserves Authority	Supports general ESD/sustainability thrust. Concerned about lack of recognition of statutory role of MPRA and overlaps with CALM Act. Clarification on how whole of ecosystem model would work in practice needed. Concern re governance structure and lack of separation of “sustainability/conservation” functions with “resource exploitation” functions. Concern re application of risk assessment framework to marine reserves. Notes DEC has provided a detailed response and hasn’t repeated it.	General support agreed. Governance structure not supported – matter of Govt policy.
Swan River Trust	Supports approach Supports inclusion of ecosystem considerations Need to enhance response to estuarine health issues. Process by which scientific data influences management needs consideration. Supports Biosecurity powers Translocation appears to be missing. Is this consistent with an ecosystem approach?	Accommodated in proposed planning framework
WA Museum	Supports general thrust Support better cross-Govt integration. Need a dialogue within Government to progress this across jurisdictions. Question of scope of “biological resources” re aquatic mammals etc Supports expertise-based advisory committee. Further expansion of the role of marine reserves in the framework needed.	Agreed. Scope considers impacts of fishing on aquatic food chains and mammals etc Marine reserves network outside scope.
Tourism WA	Strongly supports general thrust. Concerned about licensing both tour operators and their passengers.	Planning framework allows for engagement on these matters as they arise.
<b>Private submissions</b>		
Collins, Frank	Concerned about red tape. Fisheries are over regulated Tax GPS units – they are the problem.	Act creates opportunity for deregulation re input controls No taxation on GPS possible at State level.
Herlihy, Astrid	Animal welfare and ban fishing	Don’t agree
Laubsch, Nigel	Aquaculture focus State should assume some of the financial risk for aquaculture ventures by establishing a sliding scale of assistance.	Policy matter
Plozza, Ben	Provide recreational fishing with priority access. Ban commercial wetline fishing for demersal fish.	Policy matter

*Regulatory impact decision statement – Fisheries and Aquatic Resources Management Act.*

Williams, Gary	Ban crab fishing at Mandurah for a few months. Limits on commercial catch needed	Planning framework accommodates range of policy options
<b>Recreational fishing and related interests</b>		
Recfishwest	General thrust strongly supported. Doesn't like "negative" statements about impact of rec fishing and doesn't accept that RF is "high risk". Wants benefits for conservative management highlighted. Concerned about process steps and role of sector in decision-making. Strongly supports co-management as biological risk reduces. Concerned about equity of impact of management. Other planning concerns raised re commercial fisheries. Strongly supports aquaculture "precincts" rather than "proponents".	Agreed. Planning framework uses best available information and risk assessment. Benefits accommodated in planning and decision making process. Equity an allocation policy matter Aquaculture zones accommodated.
WA Fish Foundation	General direction strongly supported. Supports a single aquatic resources agency Concerned about lack of govt cohesion on marine management.	Matter of Govt policy.
WA Gamefishing Association	General thrust of paper supported. Supports a review to give meaningful effect to formal recreational fishing rights in the new Act. Supports cross-Govt integration and clear demarcation of responsibility . Supports resource security but has concerns about methods of estimating catches. Need to differentiate between recreational user groups	Agreed Rights-based management supported. Matter of Govt policy. Operational issue Understood.

## **12. Attachment 2 - Responses to working group report on security of access.**

### **Recommendation 8 - Statutory aquatic resource use rights and their property elements to be strengthened across government**

*The State Government should legislate to establish stronger statutory fishing access rights that are recognized across government and statutory planning provisions that can deliver a better integrated approach to marine resource use and management.*

*In particular the Government should ensure better recognition of existing fishing rights and co-ordination across agencies and Acts of Parliament which grant or affect rights in the aquatic environment.*

*Specifically:*

- *The proposed Aquatic Resources Management Act have a section that describes its relationship to other Acts.*
- *That the Wildlife Conservation Act specifically excludes “fish” as defined in the FRMA.*
- *That the CALM Act 1985 is amended to recognize resource management strategies and other plans under the FRMA (or the proposed new Act) as evidence of “proper conservation and protection” of fish. (CALM Act Division 3, S13B). Other provisions of the Act not to affect the operation of the FRMA, except in Marine Nature Reserves (S4) or other negotiated areas.*
- *That the FRICMR Act includes compensation in relation to the removal or reduction in the quality fishing access rights (as considered in the property rights model) through the operation of any Act of Parliament.*

#### ***Department’s response***

The new Act includes a number of strategies to improve the robustness of fishing rights through the planning and allocation model.

Issues associated with cross-portfolio jurisdiction are matters of whole of Government policy and not in scope at this point.

The FRICMR Act is not currently in scope.

### **Recommendation 9 - The proposed Aquatic Resources Management Act to include specific provisions to strengthen fishing access rights.**

*The proposed Aquatic Resources Management Act should be structured around the concept of rights-based fisheries management, and make specific provision for establishing and managing these rights in a robust and integrated manner. Specifically the new Act should provide for:*

- *A separate Part or Division which describes the rights of resource users and their degrees of exclusivity, duration, transferability, and security.*
- *Power to establish the maximum level to which a given resource or set of resources should be harvested.*

- *Power to set and enforce sectoral and individual harvest levels (allocations) for all sectors.*
- *Clear objectives for resource and sectoral use plans.*
- *How fishing access rights can be dealt with and how they are to be managed.*
- *Provision for continuity of fishing rights if a plan is revoked.*
- *Penalty provisions should focus on the perpetrator/operator and not unfairly penalize rights owners.*
- *Review the need for and effectiveness of administrative penalties (S224) in addition to court imposed penalties.*
- *Provide for compensation for the revocation of rights on grounds other than sustainability.*

***Department's response***

The new Act incorporates provisions that address each of the dot points above except that of compensation. As previously stated this is covered under the FRICMR Act.

**Recommendation 10 - Consider a new rights management structure**

*For the purpose of developing a new Act, consideration should be given to the replacement or modification of the owner-operator model for rights management inherent in the FRMA 1994 with a new system for the creation, trading and administration of fishing access rights (fishery shares) discrete from fishing activity (fishing permits). A new system could facilitate rights trading by improving rights ownership and reducing the degree of unnecessary administrative intervention in transactions concerning fishing access rights.*

*Consideration should also be given to the flow of liability as provided in FRMA Part 17 and its impact on compliance and the property right elements of the licence.*

*The Department should work closely with WAFIC and other stakeholders to develop options for inclusion in the new Act as a matter of priority, noting the intention to have a new Act before Parliament in 2011.*

*The process should include an examination of the experience in New Zealand and other jurisdictions with quota rights and fishery share management, including a workshop involving an expert group to further develop a framework.*

***Department's response***

A series of workshops have been held with fisheries managers and the fishing industry (WAFIC) to further develop the fishing access rights and allocation framework set out in the drafting instructions.

These included a close examination of the New Zealand experience and input from senior fisheries managers from NZ.

**Recommendation 11 - Rationalisation of commercial licensing framework.**

*That the current licensing requirements of the FRMA be rationalised to better reflect rights-based management and focus on resource use. Specifically the multi-tiered requirements to hold managed fishery licences, fishing boat licences, commercial*

*fishing licences and fish processing licences concurrently be streamlined to focus on resource use.*

*Within the current owner-operator framework, the working group suggests that only three licence types, each with explicit rights and permissions attached, are required:*

- *A managed fishery (resource) licence. This provides access and sub-units of entitlement to a sustainably managed resource.*
- *A commercial fishing master's licence (fishing permit). This provides permission to fish commercially, and to run a commercial fishing operation. It provides no right of access without assigned entitlement in a resource.*
- *A licence created by regulation: This provides permission to fish commercially and access to "unmanaged resources i.e. those without a management plan. It is temporary in nature and allows for exploratory or short-term fishing for a range of purposes.*

*Any need to identify boats, gear or crew should be implemented as a registration against the fishing permit.*

***Department's response***

The new Act provides for a simplified licensing structure.

**Recommendation 12 - Ensure the proposed Entitlement Management System (EMS) accommodates or can be modified to accommodate future models of management which de-couple the owner-operator provisions of the FRMA.**

*The working group recommends that the proposed Entitlement Management System be scoped and constructed in a manner which will facilitate future models of management, including rights trading within and between sectors, as well as within and between fisheries.*

***Department's response***

The EMS system specifications include this requirement.

### **13. Attachment 3 - Select References**

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## 14. Attachment 4 – Decision and approvals process

