

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



CONTENTS

SECTION 1	INTRODUCTION.....	5
SECTION 2	OVERVIEW.....	7
2.1	HISTORICAL OVERVIEW.....	7
2.2	GENERAL REQUIREMENTS FOR THE AMENDMENTS.....	7
2.2.1	<i>Definitions</i>	7
2.2.2	<i>New industry sectors and services</i>	8
2.2.3	<i>Government and departmental policies</i>	8
2.2.4	<i>Compliance and law enforcement</i>	9
2.2.5	<i>Quota management</i>	9
2.2.6	<i>Foreign fishing</i>	9
2.2.7	<i>Impact of other anticipated legislation (e.g. Biodiversity Conservation, and Biosecurity and Agriculture Management Bills)</i>	10
2.3	SPECIFIC ISSUES.....	10
2.3.1	<i>Objects</i>	10
2.3.2	<i>Integrated fisheries management</i>	11
2.3.3	<i>Permit system</i>	13
2.3.4	<i>Aquaculture</i>	13
2.3.5	<i>s224 Automatic cancellation of authorisation if three offences ('black marks')</i>	14
2.3.6	<i>Offences, penalties and powers</i>	15
2.3.7	<i>Conservation and the environment</i>	17
SECTION 3	MATRIX OF PROPOSED AMENDMENTS.....	19
SECTION 4	YOUR FEEDBACK IS NEEDED.....	91
APPENDIX 1	LIST OF ACRONYMS USED IN THIS PAPER.....	93

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.

