

AQUATIC RESOURCES MANAGEMENT AMENDMENT BILL 2021

EXPLANATORY MEMORANDUM

Background to the *Aquatic Resources Management Act 2021*

The *Aquatic Resources Management Act 2016* (ARMA) provides a modern, innovative framework that will provide a sound basis for effective, efficient and integrated fisheries and aquatic resource management for decades to come. It is based on the principles of ecologically sustainable development, and will provide the legal framework for improved governance.

A key feature of the legislation is that it is based around the aquatic resource – rather than the traditional approach based on a fishery or fishing activity. This enables a structured approach to providing secure fishing access rights for all sectors, but with resource sustainability at its core.

Aquatic resources will be managed by a framework comprising of an Aquatic Resource Management Strategy (ARMS) and an Aquatic Resource Use Plan (ARUP). The ARMS establishes the high level policy settings for the aquatic resource, and identifies what sectors require access to that resource. It sets the proportion of the total allowable catch (TAC) for the resource that the recreational and commercial sectors can take, and sets out how the TAC is to be determined. It also identifies the number of shares in the resource that are to be made available under the ARUP for the resource.

The ARUP for an aquatic resource is subsidiary legislation that gives effect to the relevant ARMS.

The ARMA allows for existing management arrangements and resource access rights to remain effective for the State's commercial fishing and pearling industries, until each is separately migrated to the new legislative framework. As the ARMA will revoke the current legislation that regulates pearling activity, the pearling industry will be the first to be moved into the new ARMS and ARUP framework.

The ARMA was passed by Parliament in November 2016.

Overview of the Bill

The *Aquatic Resources Management Amendment Bill 2021* makes changes to the ARMA. These changes are designed to allow for the seamless transition of existing fisheries managed under the *Fish Resources Management Act 1994* (FRMA) to management by an ARMS and ARUP under the ARMA.

The focus of ARMA is to ensure the ecologically sustainable development of Western Australia's living aquatic biological resources and ecosystems by protecting these resources from over-exploitation and the threats posed by diseases and harmful imported organisms, while encouraging the development of the industries and activities associated with their use.

When ARMA commences, it will replace the FRMA and the *Pearling Act 1990* as the primary legislation for the management of Western Australia's fisheries and aquatic biological resources.

In order to enable existing resource management tools to continue to be applied, the Bill amends the head powers in ARMA that are used to make an ARMS and an ARUP. The

amendments will allow the resource shares in a managed aquatic resource to be divided into types of resource shares. In addition, the number of resource shares in each type of resource share will be identified in the ARMS and ARUP.

The division of resource shares into types of resource shares will allow the use of management tools like the division of a fishery into zones, or the division of shares between users of different types of fishing gear. It will provide more flexibility in the ARMS and ARUP provisions of ARMA, which will allow more varying types of aquatic resources to be managed under the new legislative framework.

The Bill also makes amendments to -

- (a) broaden the definition of an aquatic resource;
- (b) remove the requirement for the CEO to publish notice of a decision to grant, vary or transfer an aquaculture licence;
- (c) introduce a requirement for the legislation to be reviewed after five years from the repeal of the *Pearling Act 1990*; and
- (d) correct a number of administrative errors in ARMA.

A clause by clause commentary of the content of the Bill is provided below.

Clause 1 Short title

Provides that the title of this Act is the *Aquatic Resources Management Amendment Act 2021*.

Clause 2 Commencement

Sets out the commencement provisions and provides that different sections of the Act will commence on different days.

Clause 3 Act amended

States that this Act amends the *Aquatic Resources Management Act 2016*.

Clause 4 Section 3 amended

Clause 4 amends the definition of **resource share** in section 3, to include a type of resource share.

This will allow the commercial take of a managed aquatic resource to be divided into types of resource shares.

A type of resource share may link to a zone where the resource can be taken from. For example, an ARMS and ARUP can now provide for Zone 1 resource shares and Zone 2 resource shares for the Pearl Oyster Managed Aquatic Resource.

Similarly, a type of resource share may be specific to a species that can be taken under the linked ARMS and ARUP. For example, an ARMS and ARUP can now provide for multi-species resource shares for a Managed Aquatic Resource.

This amendment allows resource management under ARMA to be tailored to the individual resource, as was originally intended.

Clause 5 Section 4 amended

Clause 5 amends the explanation of the meaning of **aquatic resource** in section 4.

Subclause (1) makes minor corrections to numbering errors in section 4(1).

Subclause (2) amends what can be an identifiable group of aquatic organisms by including an additional category, namely a species of aquatic organisms limited by reference to the way in which the organism is taken. This will allow aquatic resources to be further identified by the gear or method that is used to take them.

These amendments will allow the continuation of separate management arrangements in situations where multiple fishing activities occur for a single species or species group, but where these activities are too different for them to be dealt with effectively under a single ARMS.

For example, it is unlikely to be practical to manage the taking of finfish for food by line and net, and the taking of finfish by diving for display in aquaria, under the same ARMS. The inclusion of new paragraph (c) would allow an ARMS to be made for each of these scenarios, rather than requiring a single ARMS for the entire finfish resource.

Clause 6 Section 16 amended

Clause 6 amends the required content of an ARMS under section 16(1).

Paragraph (g) is amended to insert a new requirement for an ARMS to set the method that is to be used to calculate the quantity of TAC available for commercial fishing for an aquatic resource, including the quantity for a type of resource share.

The amendment to paragraph (j) requires the ARMS to specify the type or types of resource shares that are to be made available to the commercial sector. New paragraph (ja), requires the ARMS to also specify the number of a type of resource share that is to be made available.

These amendments will enable a commercial ARUP made under the ARMS to specify the types of resource shares available in the aquatic resource, and the number of each type that is available. For example, the ARMS may provide:

Resource share type 1: Fishing in Zone 1 – 125 shares
Resource share type 2: Fishing in Zone 2 – 175 shares

This will provide certainty for the commercial sector as to the management structure in place for the ARMS for the relevant managed aquatic resource.

Clause 7 Section 25 amended

Clause 7 amends the required content of an ARUP under section 25(1). It amends paragraph (h) to require that an ARUP specify the type or types of resource shares in the aquatic resource, as well as the number of a type of resource share in the aquatic resource, that are available under the ARUP.

As a result, when the CEO sets the TAC for the fishing season by notice under section 33(1), the TAC for the commercial sector will be divided between the type or types of shares in the resource, and the number of a type of resource share, in accordance with the ARUP.

Clause 8 Section 33 replaced

Clause 8 deletes and replaces existing section 33.

New subsection (1) largely reflects the current subsection (1), with some amendments.

Paragraph (a) is amended to confirm that the CEO will calculate the TAC in accordance with the ARMS for the resource (which was previously required in subsection (2)).

Paragraph (b) is amended to include the quantity of TAC available for a type of resource share in the resource. Both the quantity of TAC available for the whole commercial resource, and the quantity available for each resource share, are to be calculated in accordance with the ARMS for the resource (which was previously required in subsection (2)).

Paragraph (c) is amended to confirm that the CEO will calculate the TAC available for recreational fishing in accordance with the ARMS for the resource (which was previously required in subsection (2)).

Paragraph (d) is amended to apply to a type of resource share in the resource.

Subsection (2) reflects current subsection (3), with amendment to reflect that the catch to be allocated under subsection (1)(d) is for a type of resource share.

These amendments will allow the CEO to determine the catch to be allocated for a type of resource share when setting the TAC for a fishing period for a managed aquatic resource. It reflects the changes made to section 16 and 25 to insert provision for types of resource shares.

Clause 9 Section 79 amended

Clause 9 deletes section 79 to remove the requirement for the CEO to publish notice of a decision to grant, vary or transfer an aquaculture licence.

Aquaculture licences under ARMA will also apply to pearl oyster (*Pinctada maxima*) aquaculture. Under the *Pearling Act 1990*, there is no requirement for advertising such decisions. A single licensee may make numerous requests per year to the CEO to vary seeding amount under an aquaculture authorisation. The requirement for the CEO to publish notice of every decision to vary a pearling aquaculture licence would be administratively time consuming and incur extensive publication costs.

The deletion of this requirement will reflect the status quo in terms of pearling aquaculture licences.

The amendment in clause 15 of this Bill retains the requirement for the CEO to give notice of a decision to the affected person, and to advise the person that they may apply for a review of a decision under section 147.

Clause 10 Section 86 amended

Clause 10 amends section 86 to correct an administrative error in the offence provision. The incorrect use of “on” is corrected to “an”.

Clause 11 Section 107 amended

Clause 11 amends section 107 to correct an administrative error in paragraph (a) of the penalty. The incorrect use of “if” is corrected to “of”.

Clause 12 Section 108 amended

Clause 12 amends section 108 to correct an administrative error in paragraph (a) of the penalty. The incorrect use of “if” is corrected to “of”.

Clause 13 Section 109 amended

Clause 13 amends section 109 to correct two administrative errors.

In (2), the incorrect use of “on” is corrected to “an”.

In (4), the incorrect use of “if” is corrected to “of”.

Clause 14 Section 146 amended

Clause 14 amends section 146 to remove reference to item 5 in the Table to section 145. The result of this amendment is that, before giving effect to a decision to grant, vary or transfer an aquaculture licence (“a reviewable decision”) the CEO must give a person who holds an aquaculture licence and is likely to be significantly affected by the decision (“an affected person” notice of that decision under section 146.

This amendment is linked to the deletion of section 79 in clause 9 of this Bill. Publication of a decision regarding aquaculture licences is no longer required; however, the CEO must give each affected person notice of the decision and allow them sufficient time to make an application for review under Part 9 of the Act.

Clause 15 Sections 148 and 149 replaced

Clause 15 deletes and replaces existing sections 148 and 149. The new sections have been amended to remove the separate requirements for notice of a reviewable decision relating to an aquaculture licence.

These amendments are linked to the deletion of section 79 in clause 9 of this Bill and the amendment to section 146 in clause 14 of this Bill.

Clause 16 Section 266A Inserted

Clause 16 inserts a new clause which introduces a requirement for the Minister responsible for administering the Act to review the legislation’s operation and effectiveness as soon as practicable after the fifth anniversary of the revocation of the *Pearling Act 1990*. A report of the review must be tabled before both Houses of Parliament no later than six years after the *Pearling Act*

1990 is revoked. The review process is linked to the revocation of the *Pearling Act 1990* because as some parts of the ARMA have already commenced, providing for a specific event rather than “commencement of the Act” is required. The 5 year review will consider how the pearling aquatic resource is operating under the ARMA since this is the first resource to be transitioned under the new framework and also review other resources that may have transitioned over to the new framework within this period.