

SOUTH AUSTRALIAN FISHERIES MANAGEMENT ACT 2007

This Act is for improved fisheries legislation to replace the current Fisheries Act which was enacted in 1982, some 24 years ago. This Act will provide for the ecologically sustainable development of our fisheries and other living aquatic resources found in the marine and inland waters of South Australia. No longer can we just focus on the fish in terms of our management practices, as it is recognised world wide that an ecosystem-based approach is necessary to ensure fish stocks are managed sustainably for current and future generations.

Over the past 20 years many countries have borne witness to the collapse of many wild fish stocks. Australia, and South Australia in particular, has an enviable record internationally for the sustainable management of its fish stocks and this has much to do with the governance arrangements implemented through superior legislation. This legislation provides the government with powers to ensure fish harvest strategies for commercial fisheries are sustainable over the longer term and that opportunities for recreational fishers to enjoy reasonable access to fish for personal use and sporting purposes are maintained and enhanced. The Act builds on the excellent legacy of the current Act and provides an improved governance framework for the future management of our fisheries.

The wild fisheries in South Australia are very important for regional economic development and this support for fisheries management and development will continue under this Act, so that regional communities continue to benefit.

The objectives of this Act make it clear that the sustainable management of our fisheries resources is of paramount importance and that it is only within a sustainable management framework that these resources can be developed for the benefit of the community as a whole. The avoidance of over-fishing is set out as the primary principle of the legislation. The Act also sets out a number of other principles that need to be weighed up when making decisions under the legislation, including the requirement to explicitly allocate access to fish resources between stakeholders and to provide for optimal utilisation and equitable distribution of fish resources between stakeholders. Optimal use of our aquatic resources is very important to economic growth and development of new resources and value adding of existing resources is to be encouraged under this legislation.

The principles also require that commercial, recreational and Aboriginal traditional fishing activities be fostered, and that the aquatic ecosystems on which fisheries rely upon for their productivity, are not endangered or irreversibly damaged.

The great success of wild fisheries management in South Australia has been the science-based and precautionary approach taken to management decisions, through close, transparent formal consultation with industry groups and the broader community utilising the Fishery Management Committees.

This co-management approach will continue under this Act with the establishment of a new Fisheries Council to provide advice to the Minister on the management of fisheries, whether they are for commercial use, recreational use or for Aboriginal traditional fishing purposes. The Fisheries Council will be expertise-based and will have 9 members appointed by the Governor, plus the Director of Fisheries as an *ex officio* member. This will maintain close links between the Department and the Council. The Council will have a broad advisory role and key responsibility for the development of new fishery management plans. The government has already committed ongoing funding support for the Fisheries Council in the Budget Forward Estimates. This is an important and significant policy decision, as for the first time it recognises and supports the common law principle that fisheries are a common property resource owned by the people of South Australia. Accordingly, this government believes that a proportion of the costs for management of this community resource should be borne by the government on behalf of the community. Additional costs for management of the commercial fisheries will continue to be collected through commercial licence fees under the government's full cost recovery policy.

To assist with its advisory role to government, the Fisheries Council will be required to establish advisory committees and co-opt expertise as necessary to ensure robust advice on fisheries management issues, within a co-management framework. The establishment of these committees will be under the control of the Minister, to ensure that a minimum number and type of committees is established. These committees will ensure the ongoing involvement of stakeholders in fisheries decision-making.

Clause 10 gives the Minister broad delegation powers. These will allow for a conscious move to greater industry control over management in those commercial fisheries where good governance and

due diligence arrangements are demonstrable and memorable to ensure these fisheries and associated species and habitats can continue to be sustainably managed by industry groups.

The proposed statutory management plans will establish arrangements for managing recreational and commercial fisheries and the eco-system impacts of those fisheries. The legislation sets out a comprehensive process for developing and approving the plans, ensuring greater levels of involvement from the community in the preparation of the plans. A key feature of the plans is the requirement to include provisions relating to the allocation of access to aquatic resources and mechanisms for adjusting that access between sectors in the future. They will also provide the framework for granting commercial fishing licences for periods of up to 10 years in conjunctions with the life of a management plan, providing an improved investment climate for the commercial fishing industry, as currently commercial fishing licences can only be issued for a period of 12 months. Another important feature of the plans will be the inclusion of biological reference points and triggers. This will define what over-exploitation means in relation to a particular fishery and establish rules for maintaining stock levels and responding to stock declines. The Act provides that plans must be extended or replaced upon expiry so there will always be a plan in place for a fishery.

Recreational fishing is an important activity in South Australia. It has been estimated that about 320 000 people fish at least once a year in our waters, with the most popular species being King George whiting, snapper and rock lobster. This Act will maintain the right of everyone in the community to have reasonable access to fish for personal use. New strict possession limits are proposed for recreational anglers. This will involve determining appropriate maximum amounts of fish for a non-commercial fisher to have in his or her possession. This move to possession limits, as already introduced in all of the other States and the Northern Territory will assist in reducing the level of illegal fishing and illegal sales and provide for our fish resources to be more evenly shared within the recreational sector. Possession limits may also assist in reducing the risk of localised depletion of fish stocks. The actual possession limits will be established by regulation, following a separate community consultation process. The regulations will limit the application of strict possession limits to prescribed circumstances. For example, it is proposed that possession limits will not apply to a person's principal place of residence. Fisheries officers will still need to obtain a warrant to enter residential premises if illegal activity is suspected.

As already mentioned, the Act provides for a new category of fishing being Aboriginal traditional fishing. This provides for cultural access for a native title group, which has reached a formal agreement with the government through an Indigenous Land Use Agreement under the Commonwealth Native Title Act. The Aboriginal Legal Rights Movement in South Australia, which represents native title interests, commercial fishing industry groups and local governments have endorsed this approach. For the first time, this will provide clear access arrangements to fisheries for Aboriginal people for their cultural community purposes. Commercial fishing opportunities will also be progressed by this government within the current limited entry licensing framework for commercial fisheries. In other words, no new licences will be created but investment opportunities may be provided to buy existing commercial licences on the open market.

Fisheries officers' powers in this Act remain essentially unchanged. However, there is a new power which provides officers with the ability to search a person suspected of hiding important evidence or material on their person, once suspected by an officer of committing an offence against specified serious offences. This is an important power, as there is an increase in organised criminal activity in the fishing industry and many of these illegal activities occur in distant places or waters. Officers need the ability to search persons for mobile phones, documentation and other material that may provide critical evidence in the investigation of the illegal activity. There are strict controls in the Act about how a search of a person will be conducted, including requirements for same sex searches and reporting of searches. Clause 80(1)(b) will enable fisheries officers to attach to or implant in aquatic resources identification devices, thereby providing another technique for tracking fish in investigations. This is particularly important in fisheries investigations given the volumes of fish that may be involved or the remoteness of the activity being investigated.

This Act has greatly increased the penalties for breaches of the fisheries legislation. The last 24 years have seen major increases in value of our major species and therefore the incentive to operate illegally. This Act addresses the imbalance between the penalties and the impact of illegal activity, both in terms of damage to the fish stock, but also of impact on the economic potential of the industry. Most of the offences in the Act are summary offences that have a maximum penalty of \$120 000 and/or 2 years imprisonment, but the Act also creates a number of new minor indictable offences. These indictable offences pertain to serious criminal and fraud activities related to the sale and purchase of fish taken illegally. A new offence of trafficking of priority species, such as abalone and rock lobster, will allow for organised criminal elements to be effectively dealt with. Illegal

proceeds from the sale of fish will be traced with the potential for their confiscation on successful prosecution.

The Act will provide for a new system of demerit points for all persons who expiate or are found guilty of offences. Demerit points will be applied automatically under the legislation, with consequences for accruing 200 points in a 5 year period. A person or company (and its directors) will be liable to be disqualified from holding any authority for a period of 10 years. Furthermore, if a person or company holds a transferable authority (a commercial licence), the licence will have to be transferred to a non-related third party within 6 months or the Minister may compulsorily acquire the authority. The deterrence value of the demerit points system will come through setting the points that will apply to various offences. This will be done by regulation and in consultation with industry and the community. An important aspect in introducing a demerit point system is that it will replace the current power to cancel a transferable authority. This will give recognition to the value of commercial fishing licences, by removing the discretion currently associated with that type of decision. Therefore, a licence will not be able to be cancelled except in accordance with the demerit points scheme.

The Act includes a number of types of court orders that may be used in addition to traditional types of penalties. The provisions are intended to provide guidance to the courts, highlight the severity of fisheries offences and promote consistency in sentencing for fisheries crime. One of the types of orders may be to exclude a person from being in, on or near specified waters with fishing gear. The courts have already used these orders on an ad hoc basis for restricting the activity of fish thieves involved in serious abalone theft and this explicit power is to formalise use of this tool for dealing with serious and repetitive fisheries crime.

Biosecurity of our marine and freshwater environments is very important to support sustainable fisheries and aquaculture production. Introduced species of noxious fish present a significant risk to the future of these valuable industries and the Act provides new powers to deal with the illegal introduction, sale, purchase and possession of noxious species. The effective control of exotic aquatic species will be required under national agreements through the Natural Resource Management Ministerial Council and the provisions in this Act will allow for appropriate licensing, monitoring and response to exotic pests to occur.

The Act also provides many other useful fisheries management tools, including the constitution of aquatic reserves for fisheries management purposes, which should not be confused with marine protected areas that will be established for biodiversity conservation under other legislation. Aquatic reserves may be used for purposes such as protecting fish nursery areas, fish spawning grounds, and establishing marine research zones or recreational fishing areas. There are 15 aquatic reserves established under the current Fisheries Act and these reserves will continue in existence under the new legislation.

Another feature of the legislation is the introduction of protection and reparation orders, which may be used to ensure compliance with fisheries management arrangements.

Fisheries research, fisheries development opportunities and other investigations will be facilitated through a new permit system that may be established by regulation under the Act. Currently there is no effective mechanism to allow for short term access to fish resources, other than issuing exemptions under section 59 of the current Act. Permits will provide greater support of these initiatives in the future.

This Act has been through a long development and consultation process over the past 5 years and the community and industry groups have been thoroughly engaged in the development of the legislation. The legislation is innovative and dynamic, with a balance between the required regulatory role of government to ensure aquatic resources are managed at sustainable levels for current and future generations, whilst allowing for a move to greater control over management in those commercial and cultural fisheries where the maturity of an industry or community group warrants this level of delegation. This Act will provide for continued ecologically sustainable development of the fisheries of South Australia.

FISHERIES MANAGEMENT (GENERAL) REGULATIONS 2007

Under the current *Fisheries Act 1982* there are *Fisheries (General) Regulations 2000*, which establish a range of requirements and offences. In particular, the regulations prescribe fishing activities that are prohibited. The offence for undertaking a prohibited activity is established in the Act, and the actual activities are prescribed by regulation. The same structure is replicated in the *Fisheries management Act 2007*. The offence is established by section 70 and therefore prohibited fishing activities also need to be prescribed in regulations under that Act.

Existing prohibited activities have been implemented following consultation in relation to the relevant fisheries over many years. They are longstanding arrangements that are well understood by commercial and recreational fishers respectively.

It is not proposed to make major changes to the existing arrangements. Therefore, it is proposed that the existing arrangements be continued under the new Act. This will require minimal changes to the regulations and therefore no further consultation is proposed.

However, there are a number of changes proposed. These are either minor or have already been agreed through consultative forums. They are discussed below.

DISCUSSION

There are a number of longstanding exemptions that have been in place in relation to the existing regulations. It is proposed that these be permanently incorporated into the arrangements. They relate to the number of 'relief days' for which Northern Zone Rock Lobster fishers may use a replacement master and to the use of commercial boats for recreational fishing purposes. These arrangements are treated by licence holders as permanent arrangements and should be reflected in regulation. A closure on taking shellfish in the upper Port River which has been in place for many years will also be incorporated.

Two specific issues were the subject of recommendations from Fishery Management Committees (comprising commercial, recreational, scientific, fisheries management and community representatives) during the past 12 months. These recommendations were approved at the time but amendments to regulations have been deferred pending the new Act. Specifically they relate to the recognition of dip tins as a permitted recreational device and the shifting of the blue crab closure in Spencer Gulf by 2 weeks.

Dip tins - 'Dip tins' are used to dry fruit in the Riverland and are also used as fishing devices for catching yabbies only. Their use is widespread but has never been formally recognised as an approved recreational fishing device. It is proposed to formally permit their use under the regulations, subject to restrictions on the dimensions of the tin. The Inland Fisheries Management Committee supports this approach.

Blue crab closure - The commercial blue crab fishery is closed for a month over Christmas each year to protect spawning females. Over the last three years, the commercial fishery has trialled an alteration to this month-long period, starting two weeks later and ending two weeks later. This trial has been successful and the Blue Crab Fishery Management Committee is confident that there are no sustainability impacts of shifting the closure in this way. The alteration to the closure dates, from 1 December – 31 January to 21 December – 19 February, allows licence holders to continue fishing for longer during the pre-Christmas period and taking a longer break after Christmas, when prices generally drop. Given that there are no negative stock impacts from doing this, the opportunity to increase returns from the resource is supported.