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Proposed Amendments to the *Fish Resources Management Act 1994*, Draft Report of the Ministerial Review Committee, Fisheries Occasional Publications No. 38 Volume 1 and 2.

Dear Rae

Thank you for the opportunity to provide comment on the proposed amendments to the *Fish Resources Management Act 1994* as outlined in the overview and recommendations of the above document.

Recfishwest supports many of the proposed changes to the *FRMA 1994*. Our comments refer to omissions that we believe exist in the proposals, to amendments with which we do not support or to our previous comments to Fisheries Management Paper 208 that appear to have not been adequately addressed in Fisheries Occasional Publications No. 38 Volume 1 and 2.

Recfishwest believes that the *FRMA 1994* needs to be kept as flexible as possible as per comments from our previous submission to FMP 208. To illustrate our concerns; the Minister for Fisheries is currently considering the outcomes of a review of the Department of Fisheries recreational fishing consultative structures which may result in recommended amendments to the current structure. Any proposed changes should be able to be reflected in the amendments to the *FRMA 1994*. At least those areas concerning consultative structures should be sufficiently broad to encompass the possible outcomes of the review.

Recfishwest believes that cross authorisations of the marine sea safety between the Department of Fisheries and the Department of Planning and Infrastructure should be outlined in the *FRMA 1994* and should include the Swan and Canning Rivers and all regional areas of Western Australia.

The responsibilities between the Department of Fisheries and the Department of Environment and Conservation (DEC) are not reflected in the *FRMA 1994* in terms of cross authorisation. Recfishwest believes that penalties for environment damage should provide for ten times the value for the damage as applies for other fish related penalties.

Specific Comments on Overview and Recommendations

(Reference 1)

It appears that Recfishwest's comments on FMP208 in relation to Reference 1 s3 Objects were not adequately addressed by the Committee. Neither volume 1 nor volume 2 of the proposed amendments reflects any discussion of our previous comments regarding part (b) *To ensure the impact of fishing activities on aquatic fauna and their habitats is minimised.*

Recfishwest has concerns that "*minimised*" could be interpreted to imply that all fishing activities should cease. As currently worded, we believe that the proposed object is not necessary and may be open to an interpretation which is contrary to the very nature of fishing. The intention of the sentence could however be reflected in more generic terms, for example "...to minimise the impact on non-target fauna and marine habitat".

(Reference 6)

We support the proposed amendment. Education and extension are key functions that could potentially be externally sourced.

(Reference 7)

Recfishwest supports the recommendation; however we believe that the proposed amendment could be more precisely qualified by reference to the *Conflict of Interest Guidelines*; in the *Public Sector Management Act*.

(Reference 9)

Recfishwest supports the recommendation "...that further consideration be given to the establishment of statutory management advisory committees for sectors, for regions, for specific fisheries, or for management purposes". However we maintain that the possible schedule of committees should be included in the Regulations not the *FRMA 1994* and that any amendment should be able to take into account the outcomes of the review of recreational fishing consultative structures.

(Reference 10)

As part of our submission to FMP 208 Recfishwest recommended that the Minister for Fisheries should consult with all possibly relevant stakeholders not just 'industry' before a s43 order is made. The recommendation supports "*the inclusion of the requirement for all sectors covered by the relevant Management Plan to be consulted before a s43 order is made*". However there appears to be inconsistency in wording of the recommendation between volume 1 and 2 of the proposed amendments and the recommendations do not appear to be clear on whether relevant stakeholders will be consulted by the stipulating that only sectors "*covered by the relevant Management Plan*" will be consulted.

(Reference 11)

Recfishwest supports the recommendation that the entire Section (s45) must be rewritten to ensure maximum flexibility and that it should address commercial, recreational and customary classes of fish to reflect Integrated Fisheries Management (IFM) and different management regimes that may occur for the respective sectors.

(Reference 14)

Recfishwest has concerns with operational compliance issues raised by this proposal. The proposed amendment may create a loophole for possession of undersize fish. Provision should be made for specific methods of identification for undersize aquaculture fish e.g. a receipt identifying the fish from an authorised vendor.

(Reference 16)

Recfishwest supports the amended recommendation that stipulates that Part 2 of the proposed amendment does not apply when a person admits to an offence. This provision allows for a person or persons to “own up”. Recfishwest believes that the amendment may also require consideration of the circumstances where a Fisheries Officer is unable to identify an offender. The responsibility then should refer back to the skipper of the boat similar to s202 and s202a of the *FRMA 1994* where *...the master of a boat on which, or by the use of which, the offence was committed is taken to have committed the same offence.*

(Reference 17)

Recfishwest did not comment on this proposal in FMP 208, but we cannot support the added recommended for compensation for reallocation. If market based structural adjustment mechanisms are set up to deal with reallocation between sectors then this proposal for compensation for reallocation could effectively constitute “double dipping”. For example if the recreational sector pays \$X based on market values to the commercial sector for a 1% reallocation to the recreational sector in that fishery, why then should compensation also be paid to the commercial sector additional to the market based adjustment?

(Reference 18)

Recfishwest supports the recommendation although the actual wording of this new section will be critical. The Executive Director should set an appropriate harvest limit that is sustainable; the Minister should then approve the share allocation equal to or less than the sustainable harvest limit on the recommendation of IFAAC or a management advisory committee.

(Reference 19)

Recfishwest’s concerns regarding this proposal do not appear to have been addressed. We believe that it is possible under some circumstances that an interim managed fishery provision should be permitted for recreational fisheries, for example Lake Kununurra.

(Reference 20)

Recfishwest agrees with the recommendation that some part of the associated entitlements of a Recreational Fishing Licence should be transferable (in particular tags), but not the licence itself.

To eliminate the potential for people to scalp entitlements, any transfer between individuals should not be allowed for monetary gain. However, allowances should be made for returning unused tags to the Department Fisheries.

(Reference 18, 19, 20 & 21)

Currently the government policy states that the Executive Director of Fisheries sets “the sustainable harvest level”. This could lead to the impression that it must be the maximum sustainable harvest level. There are an infinite number of sustainable harvest levels (and also of unsustainable ones). This is an important issue and should be clearly defined to avoid future problems with conservation. The Minister has advised the Integrated Fisheries Allocation Advisory Committee (IFAAC) that he does not want IFAAC to recommend a specific “non-catch” allocation; it has been inferred that the non-catch allocation (to look at and to support the ecosystem) will be allowed for in the Executive Director’s setting of a sustainable harvest level. Obviously this is not just a simple scientific calculation. Not only conservationists but recreational fishers and commercial fishers have an interest in the target stock level and in sometimes setting it above the minimum sustainable level. **The Act should provide for a process for setting a sustainable harvest level (which could be different for the one species in different areas).**

Recfishwest agrees with the recommendation to provide powers for appropriate bodies to be established to hold and manage “rights” and funds (for the purchase of shares) on behalf of recreational and customary fishers respectively.

We acknowledge that IFM will require a range of new financial arrangements to enable inter-sectoral transfer of entitlements to catch fish. Individuals who are natural persons or corporate bodies currently hold the commercial rights and can trade on their own behalf. A new corporate body could be formed to hold rights on behalf of the recreational sector and trade in those rights. Alternately and less attractively, the Government could hold this entitlement on behalf of recreational fishers. In either case a set of Trustees will be required to make the commercial decisions on behalf of the recreational sector. With appropriate ministerial approvals the new corporate body will have to be able to access a fund. Presumably broad powers will be needed for the Minister to approve sources of these funds.

(Reference 24)

The issues surrounding by-catch and by-product are complex. Species based authorisations are an issue when by product is “allowed”. Recfishwest believes that by definition “by-product” provides a loophole for licensees of a managed fishery to profit from commercially valuable “non-target” fish. It is questionable whether these species are not targeted themselves e.g. large catches of squid and or blue swimmer crabs by the prawn trawl and fish trawl managed fisheries.

Under the IFM process information must be made available on the total mortality of fish under question. The examples above (squid and blue swimmer crabs) are significantly targeted recreational fish and other commercial species based fisheries take quantities of other species as by-product that are important to recreational fishers and by product catch data must be available to enable more accurate assessment of the total commercial take.

(Reference 31)

We believe that a formal committee should consider applications for new fisheries whether by permit or any other authorisation. Assessment should not be left to the Executive Director only. There appears to be no objection process and no mention of the Developing New Fisheries Committee and its role.

(Reference 35)

Recfishwest does not consider the failure to lodge returns as a minor matter. The allocation of future rights will be based on catch history. Regarding errors or omissions, the failure to submit a “return” is not a minor matter and there should be a provision that any return not submitted on time do not count as “history”. This problem surfaced again recently with researchers/managers unable to give accurate information regarding the fishing charter industry at a presentation to RFAC.

(Reference 38)

We strongly believe that paying for over-quota retrospectively is an entirely inadequate penalty. (See New Zealand legislation). Recfishwest believes that the penalty should involve double the market value paid to the FRDF or the market value plus a debit to the following year’s quota. A provision should also be included for permanent loss of quota for repeat offences.

(Reference 41)

Given the granting of an aquaculture licence could impact on recreational fishing, Recfishwest are of the view that they should have the right to object to the granting of an aquaculture licence. If a licence is granted there needs to be ongoing monitoring. The changes should include specific ‘interaction with existing practices’. Notification should also be required if aquaculture sites are being moved.

(Reference 44)

Recfishwest supports the recommendation regarding “better interests” test for granting of an aquaculture licence to take into account the “better interests of the community”. We also believe that this test should be expanded to include “affected persons”. The granting of an aquaculture lease may significantly impact on the quality of recreational fishing in a given area, without necessarily affecting other fish or the aquatic environment. The degree to which an aquaculture lease impacts on recreational fishing must be considered in the granting of that lease.

We also agree that the provision be amended to clarify who “owns” the fish, as there may also be wild stock of the same species within the leased area for example, barramundi in the Kimberley or pink snapper in the Gascoyne. There are also potential problems with stock enhancement, when does a licensee cease to own the fish? We believe there needs to further clarification of this proposed amendment.

Recfishwest believes that the creation of a system of secured tenure arrangements for this industry is a concern for recreational fishers. If a more secure system is introduced it should be balanced by giving wider rights to object. These should include:

- The lease is against the public interest (recommendation to broaden “better interest test”).
- There is risk of environmental damage.
- There is excessive inconvenience to navigation, recreational or commercial fishing.
- The lease significantly impacts on the quality of recreational fishing experience in the area.

(Reference 50, 52, 53)

Recfishwest provided comment on the proposed amendments under Part 9 Noxious Fish. We understand that this section will now be replaced by the *Biosecurity and Agricultural Management Bill*.

(Reference 60)

Recfishwest agrees with the recommendation that further justification is required. We do not support authorisation renewals where the licence has expired by more than 60 days.

Inside 60 days, a late fee penalty should be provided for and we believe that the penalty needs to be significant if this proposal is included.

(Reference 62)

Recfishwest does not support this proposed amendment. We believe that licences should not exist without entitlement except on a short (30 – 90 days) term or temporary basis. There is considerable administration costs associated with the proposal, if this amendment is to proceed then it must be fully recovered in terms of administrative costs.

(Reference 66)

Recfishwest supports the recommendation to allow commercial fishers to hold a recreational fishing licence.

(Reference 67)

We support the recommendation to broaden the right of appeal of affected persons.

(Reference 68)

Recfishwest supports the recommendation to further consider options for expanding the “affected persons” provisions in the existing Act. The definition of an “affected person” needs to be clearly stated as should the consultation protocols for granting of aquaculture licences.

Changes are needed to the existing *Part 4* of the *FRMA 1994* regarding objections to decisions concerning authorisations. These changes should provide mechanisms for a wider group of interested persons to;

- Be notified of proposed authorisations
- Be given the opportunity to object
- Be given the opportunity of appearing before the Tribunal

Such groups should include appropriate incorporated bodies representing commercial fishers, recreational fishers, customary fishers and marine conservation.

(Reference 70)

Recfishwest supported the original proposed amendment outlined in FMP 208; however we strongly disagree with the new recommendation to provide for an additional offence for not returning unwanted fish to the water as soon as possible. The example given is for “blowfish” in terms of sustainability it is highly unlikely that recreation line fishing could have an impact on “blowfish” numbers.

Recfishwest, through its regional fishing clinic program conducts 70 clinics annually. Part of the message is respect for the marine environment and fish, we teach children the importance of not killing fish like “blowfish”. Education and extension would be far better than a situation where by a Fisheries Officer is handing out infringements to children throughout Western Australia. Recfishwest doubts very much that the total discard of unwanted fish by recreational anglers would amount to anywhere near the waste of by-catch through the various commercial trawl fisheries.

Another point of note is that the very successful bream fishing tournaments run in Western Australia rely on keeping the fish alive and releasing them at the end of the days fishing. Recapture rates are high and this activity should not be targeted in this way.

(Reference 71)

Recfishwest reiterates that it does not support this recommendation to permit firearms to be carried on boats unless “captive bolt” type firearms only are prescribed.

(Reference 113)

Recfishwest strongly supported the proposal in FMP 208 to amend S254, however it appears that our comments for broadening the amendment to consider the maintenance of fish passage were not addressed in either volume of the recommendations.

Recfishwest believes that consideration must be given to the maintenance of fish passage where there are identifiable ecological, social, cultural and economic values of fish species. The changes should include the following provisions;

- Any structural modifications to an existing dam or weir will require provision of fish passage
- Any development of a dam, weir or barrier on a waterway needs to provide for fish passage

(Reference 116)

While Recfishwest agrees that it is important to gain a better understanding of recreational fishing catch and effort, it is unclear in the recommendation if a compulsory logbook is proposed. Resourcing requirements for compliance and education of this proposal would be significant. If the proposal is for a compulsory logbook system for recreational anglers, then further development of the concept is required.

Conclusions

Recfishwest believes there are omissions related to recreational fishing access in the *FRMA 1994*. There appears to be an increasing trend of interference by local government attempting to use local government law to restrict recreational fishing access. Recfishwest will continue to liaise with the Ministerial Review Committee on this issue.

Please do not hesitate to contact our office on 9246 3366 should further information or clarification of this submission be required.

Yours sincerely,

Frank Prokop
Executive Director

16 February 2007

CC Mr Doug Bathgate, Chair, RFAC