# Draft Living Marine Resources Management Amendment (Aquaculture Research) Bill 2021

## *SUMMARY OF PUBLIC CONSULTATION AND SUBMISSIONS*

***November 2021***

Department of
Primary Industries, Parks, Water and Environment

Tasmanian Government

## 1. Background

### 1.1. Context of the draft *Living Marine Resources Management Amendment (Aquaculture Research) Bill 2021*

The Tasmanian and Australian Governments have entered a Memorandum of Understanding (MoU) to support the implementation of the National Aquaculture Strategy enabling offshore aquaculture in adjoining Commonwealth waters. The draft *Living Marine Resources Management Amendment (Aquaculture Research) Bill 2021* (the draft Bill) seeks to ensure the legislative framework required in Tasmania to enable aquaculture research in Commonwealth waters. For further information on the provisions of the draft Bill, please refer to the Consultation Paper.

The draft Bill and accompanying clause notes were released for public comment prior to the Bill's introduction to Parliament. This report summarises the key issues raised in consultation and the Government's response to those issues.

### 1.2. Consultation process

The public consultation period ran from 20 October to 3 November 2021. Targeted stakeholder consultation was also undertaken by DPIPWE.

The Minister for Primary Industries and Water, Guy Barnett, issued a media release on 20 October 2021 to draw attention to the consultation, and public notices were placed in the three Tasmanian newspapers, the Mercury, the Examiner and the Advocate, on 23 October 2021. The consultation was also announced in the news feed on the DPIPWE landing webpage. Targeted consultation was undertaken with Tasmanian Association for Recreational Fishing (TARFish), Tasmanian Seafood Industry Council (TSIC), Tasmanian Salmonid Growers Association (TSGA), Institute for Marine and Antarctic Science (IMAS), Commonwealth Department of Agriculture, Water and Environment (DAWE), Blue Economy CRC and Marine and Safety Tasmania (MAST).

Fishing bodies certified under the *Living Marine Resources Management Act 1995* (LMRMA) were advised of the consultation, including Tasmanian Abalone Council, Tasmanian Rock Lobster Fishermen's Association, Tasmanian Commercial Divers Association and Oysters Tasmania, as well as the Chairs of Fisheries Advisory Committees established under the LMRMA.

Material relating to the consultation was available on a dedicated DPIPWE webpage. Submissions could be made by following the 'Have Your Say' link to an online form. There was a possibility of submitting confidential comments and attaching a file as part of a submission. It was stated that the Department would treat submissions as public information and would be published on the same webpage, except for confidential comments and attachments that were marked as such by the author.

The terms of reference for the consultation process were "Public comment is sought on the draft Bill and supporting clause notes." Issues raised in the submissions that were broadly in the scope of these terms of reference are summarised below.

### 1.3. Submissions received

In total, seven submissions were received, one of which included confidential comments. Seven stakeholder briefings were conducted.

The members of the public and organisations who have contributed are listed in Attachment 1.

## 2. Issues and responses

The following table summarises the issues raised from the submissions and targeted consultation.

| Issue | Government's response |
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| Length of the consultation period on the draft Bill | The public consultation ran for two weeks and was widely broadcast through a media release by the Minister, public notices in the three Tasmanian newspapers, and the DPIPWE webpage. Key industry stakeholders were directly contacted by DPIPWE. |
| Lack of confidence in Tasmanian government regulation<br><br>Environmental assessment and approvals | In granting a permit for marine farming of fish for research purposes, the Minister will be able to include any reasonable condition in accordance with existing s 15 of the *Living Marine Resources Management Act 1995 ("the Act")*. The Bill seeks to establish a permitting framework for the conduct of aquaculture research in Commonwealth waters that includes the key features of Tasmania's regulatory framework as currently applied in State Waters. The Bill also creates a requirement for the Minister to consult with the Director of the Environment Protection Authority in relation to applications for marine aquaculture research activities. The Minister will also be required to incorporate any conditions specifically for fin fish farming that the Director considers necessary.<br><br>The intention is that a permit for marine aquaculture research activities for research that involves finfish would include conditions broadly similar, but scaled appropriately, to those included in the contemporary Environmental Licences issued under EMPCA, permits under the LMRMA and other regulatory instruments that manage finfish farming in Tasmania.<br><br>The Bill will also ensure that research in Commonwealth waters is managed appropriately and consistently with State animal welfare laws for animal research activities, which in the context of research activities could, by way of example, include permit conditions relating to animal ethics approval.<br><br>These amendments do not exist in isolation from other State laws. For example, the *Biosecurity Act 2019* which has express extraterritorial operation and will apply to all dealings with fish and fishing equipment in Tasmania's adjacent waters. This means that, for example, the Chief Veterinary Officer can be consulted on research proposals, the Government intention is that the CVO would be consulted.<br><br>Commonwealth laws may continue to apply to aspects of the activity – either because they would apply anyway, if the activity was undertaken in Tasmanian coastal waters, or because of the nature of the activity.<br>For example, any activities which have a significant impact on a relevant Matter of National Environmental Significance would require approval under the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999*. |

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| Consultation and publication of permits for marine aquaculture research activities | The Government's policy intent is that once a fisheries management arrangement with the Commonwealth is in place, to satisfy the requirements of a permit application under the Act, the proponents of a specific research proposal would also be expected to have conducted appropriate stakeholder consultation in preparing and submitting their proposal. Existing provisions of the Act (s 13) provide for consultation with relevant fishing bodies if a proposal is likely to have a significant effect on the fishing body.<br><br>Powers under s 12 and 15 already provide the Minister with the scope to be satisfied that an appropriate level of consultation has occurred and/or to condition a permit regarding ongoing consultation. It is also noted that often the nature of research activities means that the details of those activities can be commercially sensitive and this would also be a relevant matter for the Minister.<br><br>Taking into account the feedback received, the Government's policy intent is that the summary details of permits issued for marine aquaculture research activities in Commonwealth waters under a fisheries management arrangement will be published on the DPIPWE website.<br><br>Irrespective, before a permitting process commences under the Tasmanian Act, there would be a 'fisheries management arrangement' between the State and the Commonwealth. Impacts on other sectors will be assessed and considered in the identification and development of the fisheries management arrangement. It is envisaged that any proposed fisheries management arrangement would be subject to a consultation process undertaken by the Australian Government before it is signed and gazetted. |
| Detail about consultation process and transparency for the community | There are two aspects to the framework to enable aquaculture research in Commonwealth waters. The first is the establishment of a 'fisheries management arrangement' under s72 of the Commonwealth *Fisheries Management Act 1991* and s161 of the Tasmanian LMRMA. This arrangement would:<br><br>- Establish the area in which aquaculture research may take place<br>- Provide for aquaculture research in the area to be managed under Tasmanian law<br>- Specify the time frame for which the arrangement is in place<br><br>The fisheries management arrangement would be supported by an MoU, that may set out expectations about how activities under the arrangement may be carried out.<br><br>It is envisaged that any proposed fisheries management arrangement would be subject to a consultation process undertaken by the Australian Government before it is signed and gazetted.<br><br>The second aspect is the implementation of the 'fisheries management arrangement'. This includes application for and |

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| | granting of a permit(s) under the Act for marine farming of fish for research purposes. The Bill would obligate the Minister to consult the Director, EPA and, if it relates to finfish farming, to include any conditions that the Director, EPA considers necessary. Existing provisions of the Act (s 13) provide for consultation with relevant fishing bodies if a proposal is likely to have a significant effect on the fishing body. |
| Sea-based offshore farming vs land based farming and industry investment trends in land based farming | The Government has announced a new ten-year Salmon Plan will be developed to commence on the first of January 2023. The Plan will be centred on innovation, continuous improvement, and world leading practices and it will be underpinned by four principles with one on Innovation– that future growth lies in land-based and offshore salmon farming. This includes a commitment to, the development of new research and innovation programs to support salmon farming further offshore in deep waters, including Commonwealth waters, and to increase salmon farming on shore in land based systems.<br><br>The Bill supports research into offshore aquaculture in Commonwealth waters – for all aquaculture, not just salmonids. This could include seaweeds and potentially shellfish, as well as other species of finfish. |
| Role of the Director, EPA vs the EPA Board | The Bill sets out that Minister would be required to consult with the Director EPA before granting any permit for marine aquaculture research, and if the permit relates to finfish, to include within the permit any conditions that the Director, EPA, considers necessary.<br><br>This proposed approach is consistent with the current provisions of the *Environmental Management and Pollution Control Act 1994* (EMPCA). Under Sections 42 I & J of EMPCA the Director is responsible for issuing environmental licences and the conditions therein that are applied to a particular activity. It is not the responsibility of the EPA Board. This is also consistent with the approach outlined under Section 17A of the *Marine Farming Planning Act 1995* where the Director may among other things, require any environmental management controls that relate to fin fish farming to be specified in marine farming development plans.<br><br>Moreover, EMPCA has no extra territorial powers and does not apply in Commonwealth waters and such power is not enabled through a fisheries management arrangement established under the Commonwealth *Fisheries Management Act 1991* or the LMRMA. The purpose of clause 8 of the amendment bill in requiring consultation with the Director EPA is to create a clear function for the Director EPA for the environmental regulation of marine research activities in Commonwealth waters, akin to an environmental licence that applies to marine farming in Tasmanian coastal waters. This function is then enabled through conditions on a permit issued under the Act. |
| Details on the nature and duration of "fixed-term, limited-scale activities" | Some of these details will form part of a 'fisheries management arrangement' between the State and the Commonwealth. Arrangements with the Commonwealth are expected to be time limited and to relate to a specific area and for a specific purpose. |

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| | Section 16 of the Act is clear that a permit is only in force for a period of up to 12 months. This necessarily limits the extent of activities undertaken.<br><br>Future legislative, regulatory, and administrative frameworks would need to be developed before commercial-scale aquaculture, or marine farming, could occur in Commonwealth waters. |
| Public appeal rights | Proposed marine aquaculture research activities to be enabled by the Bill would be for a fixed term and at a limited scale. They would not assign tenure or grant an occupation right to the organisation undertaking the research. As such, the framework for research does not include a full planning process. A planning system (including appeals) would be a matter for development as part of any potential future framework for commercial scale aquaculture in Commonwealth waters. |
| Clear policy around managing competing interests of existing and potential new users, including compensation. | Whether compensation is payable to Commonwealth fishers as part of any potential future framework for commercial scale aquaculture in Commonwealth waters is a question for the Australian Government. However, at this stage, only fixed-term research is currently being contemplated within any particular area and the research organisation (in this instance, Blue Economy CRC), as well as the State and Commonwealth will engage with relevant stakeholders to minimise any potential spatial conflict related to a proposal. It should be noted that it is not necessarily the case that aquaculture use is incompatible with recreational and commercial wild capture fisheries uses at a regional scale. |
| Management of navigation hazards in Commonwealth waters | The Department liaises with Marine and Safety Tasmania (MaST) in relation to marking requirements and navigational considerations for marine farms and marine farming research activities in Tasmanian coastal waters. A similar approach will be taken for marine farming for research purposes in Commonwealth waters, under a fisheries management arrangement.<br><br>Any relevant matters recommended my MaST may be reflected in permit conditions and / or design of the research activity. MaST may also issue relevant 'notice to mariners' to advise of any potential navigation hazards that arise from research activity.<br><br>It is Government's policy intention that permits for research would include conditions to require design, monitoring, marking and tracking of equipment to minimise potential navigational hazards and assist rapid recovery if any equipment moved outside the area where research is being conducted. |
| Scale of activity and potential for commercial return | Research is deliberately broad as the scope and nature of activities that may be permitted will depend upon the context. What is clear is that the power under s 12 of the Act would be to grant a permit for marine aquaculture research purposes. This means that the activity must meet the reasonable definition and purpose of research and would be expected to involve structured study according to scientific method.<br><br>It is clear that this means permitted activities must be research, not commercial scale farming.<br><br>The Act is clear that a permit is only in force for a period of up to 12 months. This necessarily limits the extent of |

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| | activities undertaken. Further, arrangements with the Commonwealth are expected to be time limited and to relate to a specific area and for a specific purpose.<br><br>All of these things demonstrate that permitted research activities would be bona-fide research.<br><br>Permits for scientific research generally include conditions that prevent the sale or transfer of product for commercial purposes. However, while the primary purpose is not commercial financial returns, the sale of 'fish' and/or intellectual property that may be derived from the permitted research activity may be used to offset costs incurred by the proponent in undertaking research activities.<br><br>While it is not intended that a research institution realises a commercial return from the sale of product grown under permit, it is sensible to allow it to be sold, for example:<br>- It enables the use of any plant or animal biomass produced under the permit if appropriate. For example, it would be a nonsense to send viable product to land fill.<br>- The offshore and exposed environments mean that a certain scale of infrastructure will likely be required for research. In many cases it is unlikely to find alternative users, such as donations to a Charity, who can take the products and they may not be able to deal with the volumes produced.<br>- It is reasonable that a research institution seeks to offset the cost of the research through sale of product from the research.<br><br>The Minister could impose conditions limiting revenue or sale of product where the potential revenue from permit activity would exceed the costs of that activity. The Government's policy intent is that any research proposal and permit application would be required to deal with the likely costs and revenues associated with the proposed activity and this would form part of the information considered by the Minister in determining whether to grant a permit, and if so, on what conditions.<br><br>It is worth noting that s 12 of the Act provides that an application for a permit needs to contain any details the Minister requires and further, that the Minister may require the applicant to provide further information or a declaration. |
| Opportunity for research into marine farming as well as new energy technologies<br><br>Definition of marine farming including other activities | The Bill deals specifically with marine aquaculture research activities. It enables a 'fisheries management arrangement' for the management of the fishery in Commonwealth waters that is 'marine farming of fish for research purposes' to be managed under Tasmanian law. An arrangement can relate only to those activities that relate to the management of the fishery and does not extend to research into other matters, such as energy technology.<br><br>The amendment that the draft Bill proposes to make to the definition of marine farming is appropriate and does not need to be extended to other matters that are not marine farming. |

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| | The proposed amendments do not provide for exclusive access arrangements over an area and it would be open to a research organisation to also undertake other activities in conjunction with marine farming for research, subject to having the appropriate (and separate) approvals for those activities. Such approvals for other activities would likely principally be under Commonwealth law. |
| Opportunity for combined aquaculture and energy activities | Proposed marine aquaculture research activities to be enabled by the Bill would be for a fixed term and at a limited scale. Future legislative, regulatory, and administrative frameworks would need to be developed before commercial-scale aquaculture, or marine farming, could occur in Commonwealth waters.<br><br>It would be appropriate for any potential future framework to consider how aquaculture may be integrated with other potential activities. |
| Exclusive access arrangements over an area for research | The proposed amendments do not provide for exclusive access arrangements over an area, such as applies to a statutory marine farming lease in Tasmanian coastal waters. It may, however, be appropriate to establish a research area under section 143 of the Act and this power can be exercised in relation to an area under a section 161 arrangement (a 'fisheries management arrangement') if it relates to the management of the fishery. An order under section 143 may specify restrictions on entry, fishing or any other matter apply in a research area. |
| Tenure and commercial access post research | Proposed marine aquaculture research activities to be enabled by the Bill would be for a fixed term and at a limited scale. Future legislative, regulatory, and administrative frameworks would need to be developed before commercial-scale aquaculture, or marine farming, could occur in Commonwealth waters.<br><br>It would be appropriate for any potential future framework to consider arrangements for allocation and duration of any tenure of an area for commercial aquaculture. |
| Reference to the *Animal Welfare Act 1993* | The principal permitting requirement for marine aquaculture research activities would be a permit under the *Living Marine Resources Management Act 1995*.<br><br>The Bill also makes clear that marine aquaculture research activities are research activities for the purposes of the *Animal Welfare Act 1993* (Tas). This means that where the research involves animal research, it could only be done by organisations that are licenced institutions under the *Animal Welfare Act 1993*. An institution can be an entity that wishes to conduct research or teaching, such as a university, or private organisation with a particular research interest. This requirement ensures that the animal research activity could only be conducted with Animal Ethics Committee approval, in accordance with the Australian Code for the Care and Use of Animals for Scientific Purposes \| NHMRC. |

**Attachment 1: Submissions received**

| No. | Name |
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| 1 | Christopher Wells |
| 2 | Ian Cartwright |
| 3 | Tasmanian Alliance for Marine Protection |
| 4 | Commonwealth Fisheries Association |
| 5 | Tassal Group |
| 6 | Tasmanian Salmonid Growers Association |
| 7 | Bob Brown Foundation |