



Western Australia

Aquatic Resources Management Act 2016

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Aquatic Resources Management Act 2016

An Act to provide for —

- **the ecologically sustainable development and management of the State's aquatic resources; and**
- **the development of strategies and plans for the conservation of aquatic resources and the protection of aquatic ecosystems; and**
- **the development and management of aquaculture that is compatible with the protection of aquatic ecosystems; and**
- **the management of aquatic biosecurity; and**
- **the repeal of the *Fish Resources Management Act 1994* and the *Pearling Act 1990*; and**
- **consequential amendments to various other written laws, and for incidental and related purposes.**

The Parliament of Western Australia enacts as follows:

Part 1 — Preliminary

1. Short title

This is the *Aquatic Resources Management Act 2016*.

2. Commencement

(1) This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

(2) Despite subsection (1)(b), if section 377 has not come into operation before the day on which the *Planning and Development Amendment Act 2023* section 50 comes into operation, the 2nd row in the Table to section 377(2) —

- (a) does not come into operation; and
- (b) is deleted on that day.

[Section 2 amended: No. 34 of 2023 s. 58.]

3. Terms used

(1) In this Act, unless the contrary intention appears —

Aboriginal body corporate means —

- (a) a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Commonwealth); or
- (b) an incorporated association under the *Associations Incorporation Act 2015* the membership of which is wholly or principally composed of Aboriginal persons;

Aboriginal person means a person who is wholly or partly descended from the original inhabitants of Australia;

Abrolhos Islands reserve means Reserve No. 20253 being a class A reserve for the purposes of the *Land Administration Act 1997*;

approved means approved by the CEO;

aquaculture means —

- (a) the keeping, breeding, hatching, culturing or harvesting of aquatic organisms; or
- (b) the culturing or harvesting of pearls;

aquaculture gear means any vessel, equipment, implement, device, apparatus or other thing used or designed for use for, or in connection with, aquaculture and includes —

- (a) gear used for navigational lighting or marking as a part of aquaculture safety; and
- (b) gear used to delineate the area of an aquaculture licence, temporary aquaculture permit or aquaculture lease;

aquaculture lease means a lease granted under section 88;

aquaculture licence means an aquaculture licence granted under section 77;

aquatic eco-tourism means tourism relating to aquatic organisms in their natural environment and includes the viewing and feeding of aquatic organisms but does not include the taking of aquatic organisms;

aquatic environment, subject to subsection (2), means organisms living in or adjacent to waters, their physical, biological and social surroundings, and interactions between all of those;

aquatic habitat protection area means an area set aside under section 117(1) as an aquatic habitat protection area;

aquatic organism means an organism of any species that lives in or adjacent to waters and —

- (a) includes —
 - (i) the eggs, spat, spawn, seeds, spores, fry, larva and other source of reproduction or offspring of an aquatic organism; and
 - (ii) a dead aquatic organism; and
 - (iii) a part only of an aquatic organism including the shell or tail; and
 - (iv) live rock and live sand;
- but
- (b) does not include —
 - (i) an aquatic mammal; or
 - (ii) an aquatic reptile; or
 - (iii) an aquatic bird; or
 - (iv) an amphibian;

aquatic resource has the meaning given in section 4;

aquatic resource management strategy (ARMS), in relation to a managed aquatic resource, means a strategy approved for the aquatic resource under section 20(1) as in force from time to time;

aquatic resource use plan (ARUP), in relation to a managed aquatic resource, means a resource use plan made in respect of the aquatic resource under section 24(1) as in force from time to time;

authorisation means —

- (a) an aquaculture licence; or
- (b) a managed fishery licence; or
- (c) any other licence provided for in the regulations;

bed, in relation to any waters, means the land permanently or intermittently covered by the waters or the land over which the waters permanently or intermittently flow;

boat means a vessel, craft or floating platform of any description that is capable of use in or on water, whether floating or submersible;

broodstock means aquatic organisms taken or kept for breeding;

CALM Act means the *Conservation and Land Management Act 1984*;

CALM Minister means the Minister who administers the CALM Act;

catch entitlement means an entitlement registered under section 37(3), 38(3) or 47(4)(b);

CEO means the Chief Executive Officer of the Department;

commercial fishing means fishing for a commercial purpose and includes taking aquatic organisms for broodstock or other aquaculture purposes;

commercial purpose means the purpose of sale or any other purpose that is directed to gain or reward;

Commonwealth Act means the *Fisheries Management Act 1991* (Commonwealth);

compliance officer means a person designated as a compliance officer under section 159(1);

customary fishing means fishing by an Aboriginal person that —

- (a) is in accordance with the Aboriginal customary law and tradition of the area being fished; and
- (b) is for the purpose of satisfying personal, domestic, ceremonial, educational or other non-commercial communal needs;

declared organism has the meaning given in section 98;

Department means the department of the Public Service principally assisting the Minister in the administration of this Act;

disease means —

- (a) a disease that is capable of having a detrimental effect on an animal or a plant and includes —
 - (i) a micro-organism; and
 - (ii) a disease agent; and
 - (iii) an infectious agent; and
 - (iv) a parasite at any stage of its life cycle;
- or
- (b) a genetic disorder of an animal or plant;

document includes a tape, a disk and any other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

engage in conduct means —

- (a) do an act; or
- (b) omit to do an act;

entitlement means an entitlement that a person has from time to time under a managed fishery licence;

exemption means an exemption granted under section 7;

export means to take out of, or cause to be taken out of, Western Australia for any purpose;

fishery means —

- (a) one or more stocks or parts of stocks of aquatic organisms that can be treated as a unit for the purposes of conservation or management; or
- (b) a class of fishing activities in respect of those stocks or parts of stocks of aquatic organisms;

fishing or **fishing activity** means —

- (a) taking an aquatic organism in any way; or

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- (b) searching for an aquatic organism, or any other activity that can reasonably be expected to result in taking the organism; or
- (c) any activity in support of, or in preparation for, any activity described in this definition;

fishing boat means a boat that is used for commercial fishing;

fishing gear means any equipment, implement, device, apparatus or other thing used or designed for use for, or in connection with, fishing;

fishing period has the meaning given in section 16(1)(e);

fishing tour means a tour that has a central purpose of providing an opportunity for recreational fishing and may include the provision of fishing guidance, fishing gear, accommodation or transport;

foreign boat has the same meaning as in the Commonwealth Act section 4(1);

honorary compliance officer means an honorary compliance officer appointed under section 160(1);

managed aquatic resource means an aquatic resource that has been declared to be a managed aquatic resource under section 14;

managed fishery means a fishery declared by a management plan to be a managed fishery;

managed fishery licence, in relation to a managed fishery, means a licence granted under section 54 or renewed under section 58 in respect of that fishery;

management plan means a management plan continued under section 273(2) as in force from time to time;

marine management area has the meaning given in the CALM Act section 3;

marine nature reserve has the meaning given in the CALM Act section 3;

marine park has the meaning given in the CALM Act section 3;

master, in relation to a boat, means the person for the time being having the command, charge or management of the boat;

noxious substance means any substance that may be harmful to aquatic organisms;

organism means —

- (a) a living thing, except a human being or part of a human being; or
- (b) a prion or other prescribed organic agent that can cause disease; or
- (c) a disease;

pearl includes natural or cultured, whole, half, baroque, seedless and blister pearl;

place means any land, waters, building, structure (whether permanent or temporary), tent or vehicle or any part of any land, waters, building, structure, tent or vehicle;

possession includes having under control in any place, whether for the use or benefit of the person in relation to whom the term is used or another person, and whether or not another person has the actual possession or custody of the thing in question;

prescribed means prescribed by regulation;

private land means any land that —

- (a) is alienated from the Crown for any estate of freehold; or
- (b) is the subject of a conditional purchase agreement, or of any lease or concession with or without a right of acquiring the fee simple in that land;

process means cut up, break up, shell, skin, shuck, fillet, cook, void, purge, pack, chill, freeze, can, preserve or otherwise treat any aquatic organism and, in relation to aquatic organisms of a prescribed class, includes hold the aquatic organisms live for export and consign the aquatic organisms live for export;

protected aquatic organism has the meaning given in section 125(1);

purchase includes —

- (a) to take in exchange; and
- (b) to agree or offer to take in exchange; and
- (c) to receive, accept or take delivery under an agreement to take in exchange; and
- (d) to attempt to purchase,

but does not include to conduct a transaction of a prescribed type if the transaction is conducted by an Aboriginal person;

quantity, in relation to the taking of an aquatic resource, means a quantity of aquatic organisms that comprise the resource that is, or may be, taken by reference to one or more of the following —

- (a) the weight or volume of aquatic organisms;
- (b) the number of aquatic organisms by reference to sex, size, weight, reproductive cycle or any other characteristic;
- (c) the time spent fishing for the aquatic organisms;
- (d) the quantity and type of fishing gear used in fishing for the aquatic organisms;

record includes any document, whether or not it has been completed;

recreational fishing means fishing other than commercial fishing;

recreational fishing licence means a licence granted under the regulations authorising an individual to undertake recreational fishing;

register means the register kept under section 150(1);

registrable interest means any of the following —

- (a) an authorisation;
- (b) a temporary aquaculture permit;
- (c) an aquaculture lease;

- (d) an exemption;
- (e) a resource share;
- (f) catch entitlement;
- (g) a share option;

regulate includes prohibit;

resource share means a share, of any type, in respect of a managed aquatic resource that is made available under the ARMS for the resource;

security holder means a person noted on the register as having a security interest in a registrable interest;

security interest, in relation to a registrable interest referred to in section 153, means an interest in the registrable interest (however arising) which secures payment of a debt or other pecuniary obligation or the performance of any other obligation;

sell includes each of the following —

- (a) to auction;
- (b) to put out to tender;
- (c) to barter or exchange;
- (d) to supply for profit;
- (e) to offer for sale;
- (f) to receive or possess for sale;
- (g) to expose for sale;
- (h) to consign or deliver for sale;
- (i) to dispose of by way of raffle, lottery or other game of chance,

but does not include to conduct a transaction of a prescribed type if the transaction is conducted by an Aboriginal person;

share option means an option granted under section 42(2);

species includes subspecies, hybrid and variant;

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specified means specified in the regulation, ARMS, ARUP, management plan, authorisation, order, notice or other instrument in relation to which the term is used;

surety, in relation to an authorisation, means surety for the authorisation required or provided under section 39 and includes a substituted surety provided with the approval of the CEO under section 41(4);

take includes each of the following —

- (a) to catch;
- (b) to capture;
- (c) to entrap;
- (d) to enclose;
- (e) to gather;
- (f) to remove;
- (g) to poison;
- (h) to stun;
- (i) to kill;
- (j) to destroy;

temporary aquaculture permit means a temporary aquaculture permit granted under section 87;

total allowable catch (TAC) means the quantity of a managed aquatic resource that may be taken by the commercial and recreational fishing sectors in a fishing period for the resource;

vary, in relation to an authorisation, means to vary anything in the authorisation and includes to substitute any boat, place or other thing in respect of which the authorisation is granted;

vehicle includes a train, a boat, an aircraft and any other thing used as a means of transport;

WA waters has the meaning given in section 5;

waters includes —

- (a) the bed or subsoil (if any) under any waters; and

- (b) the airspace above any waters.
- (2) For the purposes of the definition of *aquatic environment* in subsection (1), the social surroundings of human beings are the aesthetic, cultural, economic and social surroundings to the extent that those surroundings directly affect or are affected by physical or biological surroundings.
- (3) For the purposes of this Act a class of fishing activity may be defined by reference to one or more of the following —
 - (a) a species or type of aquatic organism;
 - (b) a description of aquatic organisms by reference to sex, weight, size, reproductive cycle or any other characteristic;
 - (c) an area of land or waters;
 - (d) a method of fishing;
 - (e) a type of fishing gear;
 - (f) a class of boat or other vehicle;
 - (g) a class of persons;
 - (h) a purpose of activities.

[Section 3 amended: No. 14 of 2021 s. 4.]

4. Meaning of aquatic resource

- (1) In this Act, a reference to an aquatic resource is a reference to —
 - (a) a population of one or more identifiable groups of aquatic organisms; or
 - (b) one or more identifiable groups of aquatic organisms in a bioregion, area, habitat or ecosystem.
- (2) Without limiting subsection (1), an identifiable group of aquatic organisms includes —
 - (a) a species of aquatic organisms; and

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- (b) a species of aquatic organisms limited by reference to sex, weight, size, reproductive cycle or any other characteristic; and
- (c) a species of aquatic organism limited by reference to the way in which the organism is taken.

[Section 4 amended: No. 14 of 2021 s. 5.]

5. Meaning of WA waters

- (1) In this Act, a reference to WA waters is a reference to —
 - (a) all waters within the limits of the State; and
 - (b) except as provided in subsection (2), any waters not within the limits of the State that are on the landward side of waters adjacent to the State that are within the Australian fishing zone; and
 - (c) any waters to which the legislative powers of the State extend for purposes relating to —
 - (i) fishing activities that are to be managed in accordance with the laws of the State under an arrangement made under Part 15; and
 - (ii) the management of recreational fishing, within the meaning of the Commonwealth Act, other than recreational fishing carried on by the use of a foreign boat or recreational fishing prohibited or regulated by a plan of management determined under the Commonwealth Act section 17.
- (2) For purposes relating to a fishing activity that is to be managed in accordance with a law of the Commonwealth under Part 15, WA waters does not include waters not within the limits of the State that are on the landward side of waters adjacent to the State that are within the Australian fishing zone.

[6, 7. Have not come into operation.]

8. Crown bound

- (1) This Act binds the State and, so far as the legislative power of the State permits, the Crown in all its other capacities.
- (2) Nothing in this Act makes the State, or the Crown in any of its other capacities, liable to be prosecuted for an offence.

Part 2 — Objects

9. Objects of Act

The objects of this Act are —

- (a) to ensure the ecological sustainability of the State's aquatic resources and aquatic ecosystems for the benefit of present and future generations; and
- (b) to ensure that the State's aquatic resources are managed, developed and used having regard to the economic, social and other benefits that the aquatic resources may provide.

10. Means of achieving objects of Act

The objects of this Act are to be achieved in particular by —

- (a) conserving and protecting aquatic resources and aquatic ecosystems and where necessary, restoring aquatic ecosystems; and
- (b) managing aquatic resources and aquatic ecosystems on the basis of relevant scientific data and principles; and
- (c) encouraging the sustainable development of fishing, aquaculture and other activities reliant on aquatic resources; and
- (d) encouraging members of the public to actively participate in decisions about the management and conservation of aquatic resources and aquatic ecosystems; and
- (e) ensuring that the interests of different sectors of the community that use aquatic resources or aquatic ecosystems are identified and considered; and
- (f) managing aquatic resources and aquatic ecosystems in a manner that is as practical, efficient and cost effective as possible.

11. Regard to be had to objects of Act

A person or body performing or exercising a function or power under this Act must have regard to the objects set out in section 9 and the means of achieving them set out in section 10.

Part 3 — Managed aquatic resources

Division 1 — Preliminary

12. Terms used

In this Part —

consultation period, in relation to a draft strategy, means the period of 2 months commencing on the day on which notice required by section 17(1)(b) in respect of the draft strategy is published in the *Gazette*;

draft strategy means the draft of an ARMS prepared by the CEO under section 17(1)(a);

recreational fishing does not include customary fishing;

risk assessment means an assessment undertaken under section 13(b).

Division 2 — Strategy and planning

Subdivision 1 — Declaration of managed aquatic resources

[13. *Has not come into operation.*]

14. Declaration of managed aquatic resources

- (1) The Minister may, by notice in writing, declare that a specified aquatic resource is a managed aquatic resource if the Minister is of the opinion that there is reason to do so.

[(2), (3) *have not come into operation.*]

- (4) A notice under subsection (1) is subsidiary legislation for the purposes of the *Interpretation Act 1984*.

Subdivision 2 — Aquatic resource management strategies

15. Requirement for ARMS

As soon as is practicable after an aquatic resource is declared to be a managed aquatic resource an aquatic resource management strategy (ARMS) must be approved under section 20 in respect of the aquatic resource.

16. Content of ARMS

- (1) An ARMS for a managed aquatic resource must set out the following things —
 - (a) a description of the aquatic resource that is to be managed;
 - (b) the main objective to be achieved by managing the aquatic resource;
 - (c) the minimum quantity of the aquatic resource that is considered necessary to be maintained for the resource to be ecologically sustainable;
 - (d) the activities that should be regulated in respect of the aquatic resource;
 - (e) the details of each period for which activities in respect of the aquatic resource are to be regulated (*fishing period*);
 - (f) the quantity of the aquatic resource that is to be available in a fishing period for customary fishing and public benefit uses;
 - (g) the method to be used in calculating the following —
 - (i) the total allowable catch (TAC) for the aquatic resource;
 - (ii) the quantity of TAC available for commercial fishing for the aquatic resource, including the quantity of TAC available for a type of resource share in the aquatic resource;

- (h) the proportion of the TAC that is to be available for recreational fishing for the resource;
 - (i) the proportion of the TAC that is to be available for commercial purposes, including —
 - (i) the proportion of the TAC to be available for commercial fishing for the resource; and
 - (ii) the proportion of the TAC that is to be available for taking incidentally in the course of commercial fishing for other aquatic resources;
 - (j) the type or types of resource shares in the aquatic resource that are to be made available to the commercial sector;
 - (ja) the number of a type of resource share in the aquatic resource that is to be made available to the commercial sector;
 - (k) the scientific parameters to be used to assess how effectively the aquatic resource is being managed;
 - (l) the consultation to be carried out in relation to the making, amendment or revocation of an aquatic resource use plan (ARUP) to implement the ARMS.
- (2) For the purposes of subsection (1)(d), the activities that should be regulated in respect of the aquatic resource may include the taking of other aquatic resources incidentally in the course of commercial fishing for the aquatic resource.

[Section 16 amended: No. 14 of 2021 s. 6.]

17. Draft ARMS

- (1) As soon as is practicable after an aquatic resource is declared to be a managed aquatic resource the CEO must —
 - (a) prepare a draft of an ARMS for the resource; and
 - (b) give public notice of the proposal for an ARMS.

- (2) The public notice of the proposal for an ARMS must —
 - (a) contain information about the draft strategy; and
 - (b) specify where copies of the draft strategy may be obtained without charge; and
 - (c) invite interested persons to make submissions to the CEO on the draft strategy within a specified period; and
 - (d) specify how those submissions may be made.
- (3) The public notice of the proposal for an ARMS —
 - (a) must be published in the *Gazette*; and
 - (b) may be published in any other manner that the CEO considers appropriate to bring the proposal to the attention of persons who will, or may be, affected if the draft strategy becomes an ARMS, which may include the following —
 - (i) publishing the notice in a newspaper circulating generally throughout the State;
 - (ii) posting the notice on a website maintained by the CEO.
- (4) Subsection (3) does not prevent the CEO from adopting any additional means of publicising the proposal for an ARMS.

18. CEO to consult on proposal for ARMS

- (1) The CEO must, within the consultation period for a draft strategy, make reasonable efforts to consult any public authority, person or body that the CEO considers likely to be affected if the draft strategy becomes an ARMS.
- (2) Consultation under subsection (1) may be undertaken in any way that the CEO considers appropriate in the circumstances, having regard to the number of public authorities, persons or bodies considered likely to be affected as described in subsection (1).

- (3) If the description in the draft strategy of the aquatic resource to be managed does not describe the resource by reference to a particular area of the State, then consultation must be carried out under subsection (1) as if the draft strategy had relevance for the whole of the State.

19. Revision of draft strategy following consultation

- (1) A person may make submissions to the CEO in relation to a draft strategy in the manner and within the period specified in the relevant notice required by section 17(1)(b).
- (2) After the end of the consultation period for a draft strategy the CEO —
- (a) must consider —
 - (i) any submissions made in accordance with subsection (1); and
 - (ii) any views expressed by a public authority, person or body consulted under section 18(1);and
 - (b) may revise the draft strategy to any extent the CEO considers appropriate.
- (3) The CEO must submit to the Minister not later than 2 months after the end of the consultation period for a draft strategy —
- (a) a copy of the draft strategy, including any revisions made under subsection (2)(b); and
 - (b) a report on the development of the draft strategy.
- (4) The CEO must include in a report under subsection (3)(b) the reasons for any revision of the draft strategy.

20. Approval of ARMS

- (1) The Minister may, in writing, approve or refuse to approve a draft strategy submitted by the CEO under section 19(3) or subsection (4) as the ARMS for a managed aquatic resource.

- (2) The Minister is not to approve a draft strategy as the ARMS for a managed aquatic resource under subsection (1) unless the Minister is satisfied that the draft strategy is consistent with the objects of this Act.
- (3) If the Minister refuses to approve a draft strategy submitted by the CEO under section 19(3) or subsection (4) as the ARMS for a managed aquatic resource the Minister may request the CEO to revise the draft strategy taking into account any matters referred to in the request.
- (4) The CEO must, within 2 months of a request under subsection (3) or such longer period as the Minister allows, submit to the Minister —
 - (a) a copy of the draft strategy as revised taking into account the matters referred to in the request; and
 - (b) a report on the revisions that have been made.
- (5) Notice of an approval under subsection (1) must be published in the *Gazette*.
- (6) An ARMS comes into effect on the day after the day on which the relevant notice is published in the *Gazette* or on a later day specified in the notice.

21. Amendment and revocation of ARMS

- (1) The Minister may, in writing, approve an amendment to an ARMS for a managed aquatic resource.
- (2) This Subdivision applies in respect of an amendment to an ARMS as if a reference to an ARMS included a reference to an amended ARMS.
- (3) An ARMS for a managed aquatic resource is revoked if the declaration under section 14 in respect of the aquatic resource is revoked.

[22. *Has not come into operation.*]

Subdivision 3 — Aquatic resource use plans

23. Terms used

In this Subdivision —

ARMS, in relation to an ARUP, means the ARMS identified in the ARUP in accordance with section 25(1)(b);

resource means a managed aquatic resource, and in relation to an ARUP, means the managed aquatic resource to which the ARUP relates.

24. Minister to make ARUP for managed aquatic resource

- (1) The Minister must make an ARUP, or more than one ARUP, to implement an ARMS that is in effect for a managed aquatic resource.
- (2) The Minister is not to make an ARUP for a resource unless —
 - (a) the consultation required in relation to the making of the ARUP set out in the ARMS for the resource has been carried out; and
 - (b) in the opinion of the Minister, the plan is consistent with —
 - (i) the ARMS for the resource; and
 - (ii) all other ARUPs made for the resource, or that apply to or in relation to the resource; and
 - (iii) regulations made under section 22 in relation to the ARMS for the resource.
- (3) An ARUP is subsidiary legislation for the purposes of the *Interpretation Act 1984*, and section 42 of that Act applies to and in relation to a plan as if the plan were a regulation.

25. Content of ARUPs

- (1) An ARUP must —
 - (a) identify the resource to which the ARUP relates; and

- (b) identify the ARMS that the ARUP is to implement; and
- (c) set out the objectives to be achieved by the ARUP; and
- (d) identify the activities regulated under the ARUP; and
- (e) identify the class or classes of persons that may undertake the activities regulated under the ARUP; and
- (f) specify the type of authorisation (if any) required to undertake activities regulated under the ARUP; and
- (g) specify the form and the minimum and maximum amounts of surety (if any) that may be required to be provided for an authorisation to undertake activities regulated under the ARUP; and
- (h) specify —
 - (i) the type or types of resource shares in the aquatic resource available under the ARUP; and
 - (ii) the number of a type of resource share in the aquatic resource available under the ARUP;and
- (i) set out the method for allocating any resource shares available under the ARUP at the commencement of the ARUP; and
- (j) set out any restrictions in relation to persons who are eligible to be holders of resource shares available under the ARUP; and
- (k) set out procedures for monitoring the quantity of the resource that is taken in a fishing period; and
- (l) set out any conditions that are to apply in respect of the transfer of catch entitlement for the resource; and
- (m) set out any circumstances in which the CEO may, by notice published in the *Gazette*, modify provisions in the ARUP in order to ensure that the objectives to be achieved by the ARUP are achieved.

- (2) An ARUP may include any provision that, in the Minister's opinion, is necessary for —
- (a) the protection or management of the resource; or
 - (b) the protection of the aquatic environment, other aquatic resources, aquatic mammals, aquatic reptiles, aquatic birds and amphibians from activities related to the resource.
- (3) The objectives to be achieved by an ARUP are to be consistent with, but not limited to, the main objective of the ARMS that the ARUP is to implement.

[Section 25 amended: No. 14 of 2021 s. 7.]

26. Method for allocating shares under ARUP

- (1) In making an ARUP that sets out a method for allocating resource shares the Minister must have regard to the following —
- (a) the interests of persons who have a history of involvement in taking the resource;
 - (b) the interests of persons who have entitlements to take the resource under this Act immediately before the commencement of the ARUP;
 - (c) any option granted under section 42(2) in respect of the resource or a component of the resource.
- (2) A method for allocating resource shares set out in an ARUP may include, but is not limited to —
- (a) allocation based on converting previous entitlement to take the resource to a specified share entitlement; or
 - (b) allocation based on converting options granted under section 42(2) to a specified share entitlement; or
 - (c) grant by the CEO on application, including payment of an application fee if applicable, and on the basis of specified criteria; or

- (d) sale by public tender or auction.
- (3) An ARUP that sets out a method for allocating resource shares other than by sale by public tender or auction must provide —
 - (a) that a decision not to allocate a resource share is a reviewable decision for the purposes of sections 146 and 147; and
 - (b) that a person who is affected by a decision about allocation of a resource share is an affected person for the purposes of those sections.

27. Form of surety

The form of surety for an authorisation specified in an ARUP may be one or more of the following —

- (a) a monetary bond to be paid to the CEO;
- (b) nomination of a number of resource shares in the resource to which the ARUP relates;
- (c) surety in a form prescribed for the purposes of this section.

[28-31. Have not come into operation.]

Division 3 — Administrative matters for managed aquatic resources

Subdivision 1 — Preliminary

32. Terms used

In this Division —

allocated catch, in relation to a resource share, means the catch allocated for the resource share for a fishing period in accordance with a notice given under section 33(1);

catch means a quantity of aquatic organisms;

relevant ARUP, in relation to a resource share, means the ARUP under which the share is made available.

33. CEO to notify TAC and catch

- (1) At least 30 days before the commencement of each fishing period for a managed aquatic resource the CEO must publish in the *Gazette* a notice setting out the following in respect of the fishing period —
 - (a) the TAC for the resource, calculated in accordance with the ARMS for the resource;
 - (b) the quantity of TAC available for commercial fishing for the resource, including the quantity of TAC available for a type of resource share in the resource, calculated in accordance with the ARMS for the resource;
 - (c) the quantity of TAC available for recreational fishing for the resource, calculated in accordance with the ARMS for the resource;
 - (d) the catch to be allocated for a type of resource share in the resource.
- (2) For the purposes of subsection (1)(d), the catch to be allocated for a type of resource share in a resource for a fishing period is the quantity of TAC available for that type of resource share divided by the number of that type of resource share in the resource.

[Section 33 inserted: No. 14 of 2021 s. 8.]

Subdivision 2 — Commercial fishing

34. Allocation of resource shares

- (1) When an ARUP comes into operation any resource shares in an aquatic resource available under the ARUP vest in the Minister.

- (2) The Minister must, as soon as is practicable after an ARUP comes into operation, allocate the resource shares in accordance with the method set out in the ARUP.
- (3) A person to whom a resource share is allocated may request the CEO to register the person as the holder of the resource share.
- (4) A request must —
 - (a) be in an approved form; and
 - (b) be accompanied by the fee (if any) that is set out in the relevant ARUP or the regulations.
- (5) On receipt of a request under subsection (3) the CEO must register the person as the holder of the resource share.

35. Nature of resource shares

- (1) Subject to section 37, a person who is the holder of a resource share in an aquatic resource at the beginning of a fishing period for the aquatic resource is entitled to be registered as the holder of the allocated catch for the share for that fishing period.
- (2) A resource share —
 - (a) is transferrable as provided by this Act; and
 - (b) is capable of devolution by will or by operation of law.
- (3) In accordance with the *Personal Property Securities Act 2009* (Commonwealth) section 10 in paragraph (b) of the definition of *personal property*, a resource share is declared not to be personal property for the purposes of that Act.

36. Transfer of resource shares

- (1) The holder of a resource share in an aquatic resource may, in accordance with the relevant ARUP or the regulations, request the CEO to transfer the share to another person (the *recipient*).

- (2) On receipt of a request under subsection (1) the CEO must transfer the share by registering the recipient as the holder of the resource share unless subsection (3) applies.
- (3) The CEO must not transfer a resource share if —
 - (a) a fee or fine payable by the holder of the share under this Act is outstanding; or
 - (b) the share is nominated as surety for an authorisation; or
 - (c) the recipient is a person who is not eligible under the relevant ARUP to hold the share; or
 - (d) the CEO has, under section 156, given details of the request to a security holder unless —
 - (i) 21 days has expired from the day on which the details were given; or
 - (ii) the CEO has the written consent of the holder of the share and the security holder to do so.

37. Registration of catch entitlement

- (1) The holder of a resource share in an aquatic resource may request the CEO to register the holder of the resource share as the holder of catch entitlement of an amount equal to the allocated catch for the share.
- (2) The request must —
 - (a) be in an approved form; and
 - (b) be accompanied by the fee that is set out in the relevant ARUP or the regulations.
- (3) Subject to subsections (4) and (5), the CEO must register the applicant as the holder of catch entitlement in accordance with the request.
- (4) Before registering the holder of a resource share as the holder of the catch entitlement the CEO must reduce the amount of the allocated catch in accordance with section 41(7)(a) or 210(2)(b) if applicable.

- (5) The CEO must not register the holder of a resource share as the holder of catch entitlement for the share if —
 - (a) a fee or fine payable by the holder of the share under this Act is outstanding; or
 - (b) the share is nominated as surety for an authorisation and the authorisation is suspended under section 209 at the beginning of the fishing period to which the catch relates.
- (6) If the holder of a resource share does not make a request under subsection (1) within 90 days of the commencement of the fishing period in respect of which the catch is allocated the CEO may, by notice in writing, require the holder to pay the fee referred to in subsection (2)(b) within the period specified in the notice.
- (7) In accordance with the *Personal Property Securities Act 2009* (Commonwealth) section 10 in paragraph (b) of the definition of *personal property*, catch entitlement is declared not to be personal property for the purposes of that Act.

38. Transfer of catch entitlement

- (1) A person who is registered as the holder of catch entitlement may request the CEO to transfer to another person (the *recipient*) part or all of the catch entitlement.
- (2) The request must be made in an approved manner and form.
- (3) Following the receipt of a request, the CEO must register the recipient as the holder of catch entitlement up to the amount specified in the request —
 - (a) in accordance with the regulations; and
 - (b) subject to any conditions set out in the ARUP under which the catch entitlement is allocated.
- (4) A person who makes a request referred to in subsection (1) may withdraw the request to the extent that the recipient has not been

registered as the holder of an amount of catch entitlement specified in the request —

- (a) in accordance with the regulations; and
- (b) subject to any conditions in respect of the withdrawal of a request to transfer the catch entitlement set out in the ARUP under which catch entitlement is allocated.

39. Provision of surety for authorisation

(1) In this section —

notice means a notice given under subsection (2) and includes a notice amended under subsection (5).

(2) The CEO may, by notice in writing, require a person who is the holder of an authorisation to undertake activities regulated under an ARUP to provide surety for the authorisation if the person is charged with, or convicted of, an offence against —

- (a) this Act; or
- (b) a written law other than this Act if the offence relates to the fishing, aquaculture, fishing tour or aquatic eco-tourism industries; or
- (c) a law of the Commonwealth, or of another State or a Territory, relating to the management or regulation of aquatic resources.

(3) A notice must specify —

- (a) the form and amount of the surety; and
- (b) the day on, or before which, the surety is to be provided.

(4) For the purposes of subsection (3)(a) —

- (a) the form of the surety must be a form specified in the relevant ARUP; and
- (b) the amount of surety must not be —
 - (i) less than the minimum amount specified in the relevant ARUP; or

- (ii) more than the maximum amount specified in the relevant ARUP.
- (5) The CEO may, by notice in writing, amend or revoke a notice given under subsection (2).
- (6) If a person required by a notice to provide surety for an authorisation does not provide the surety on or before the specified day, the authorisation is suspended for the period —
 - (a) commencing on the day after the specified day; and
 - (b) ending on —
 - (i) the day on which surety is provided; or
 - (ii) if the notice is earlier revoked, on the day on which the notice is revoked.

40. Registration of surety

- (1) On receipt of surety for an authorisation the CEO must —
 - (a) record on the register the provision of the surety for the authorisation; and
 - (b) if the surety is provided in the form of the nomination of one or more resource shares, record on the register the nomination of each nominated share as surety for the authorisation.
- (2) If, under section 156, the CEO gives written details of the nomination of a resource share as surety for an authorisation to a security holder the CEO must not record the nomination of the resource share as surety for the authorisation unless —
 - (a) 21 days has expired from the day on which the details were given; or
 - (b) the CEO has the written consent of the holder of the resource share and the security holder to do so.

[41-50. Have not come into operation.]

[Parts 4-15 have not come into operation.]

Part 16 — Miscellaneous

253. Protection from liability

- (1) An action in tort does not lie against a person for anything that the person has done, in good faith, in the performance or purported performance of a function under this Act.
- (2) The protection given by this section applies even though the thing done as described in subsection (1) may have been capable of being done whether or not this Act had been enacted.
- (3) Despite subsection (1), the State is not relieved of any liability that it might have for another person having done anything as described in that subsection.
- (4) In this section, a reference to the doing of anything includes a reference to an omission to do anything.

254. Administrative guidelines

- (1) This section relates to guidelines for any of the following purposes —
 - (a) providing practical guidance to persons who have duties or obligations under this Act or any other Act administered by the Minister;
 - (b) providing information to industry and the public.
- (2) The Minister may issue, amend or revoke guidelines.
- (3) The Minister must ensure that guidelines are published in the prescribed way.

255. Guidelines about foreign interests

- (1) This section relates to guidelines about foreign persons holding, controlling or having an interest in resource shares, catch entitlement or authorisations.
- (2) The Minister may issue, amend or revoke guidelines.

- (3) The Minister must ensure that guidelines are published in the prescribed way.

256. Consultation in relation to guidelines

Before issuing, amending or revoking a guideline referred to in section 254 or 255 the Minister must consult with any industry body the Minister thinks appropriate and may consult with any other person the Minister thinks appropriate.

257. Guidelines to be taken into account

- (1) In performing a function under this Act or another Act administered by the Minister, a person must take into account any guidelines referred to in section 254 or 255 that are relevant to the performance of the function.
- (2) Nothing in subsection (1) —
- (a) derogates from the duty of a person to exercise a discretion in a particular case; or
 - (b) precludes a person from taking into account matters not set out in guidelines; or
 - (c) requires a person to take into account a guideline if the guideline is inconsistent with a provision of the Act under which the function is conferred.

[258-266. Have not come into operation.]

266A. Review of Act

- (1) The Minister must review the operation and effectiveness of this Act, and prepare a report based on the review, as soon as practicable after the 5th anniversary of the day on which section 268 comes into operation.

s. 266A

- (2) The Minister must cause the report to be laid before each House of Parliament as soon as practicable after it is prepared, but not later than 12 months after the 5th anniversary.

[Section 266A inserted: No. 14 of 2021 s. 16.]

[Parts 17-19 have not come into operation.]

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Notes

This is a compilation of the *Aquatic Resources Management Act 2016* and includes amendments made by other written laws. For provisions that have come into operation see the compilation table. For provisions that have not yet come into operation see the uncommenced provisions table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Aquatic Resources Management Act 2016</i> Pt. 1 (s. 1-5 and 8), Pt. 2, Pt. 3 (s. 12, 14(1) and (4), 15-21, 23-27 and 32-40) and Pt. 16 (s. 253-257)	53 of 2016	29 Nov 2016	Pt. 1 (s. 1 and 2): 29 Nov 2016 (see s. 2(a)); Pt. 1 (s. 3-5 and 8), Pt. 2, Pt. 3 (s. 12, 14(1) and (4), 15-21, 23-27 and 32-40) and Pt. 16 (s. 253-257): 2 May 2018 (see s. 2(b) and <i>Gazette</i> 1 May 2018 p. 1431)
<i>Aquatic Resources Management Amendment Act 2021</i> s. 4-8 and 16	14 of 2021	24 Aug 2021	25 Aug 2021 (see s. 2(b))
<i>Planning and Development Amendment Act 2023</i> Pt. 8 Div. 3	34 of 2023	11 Dec 2023	12 Dec 2023 (see s. 2(c))

Uncommenced provisions table

To view the text of the uncommenced provisions see *Acts as passed* on the WA Legislation website.

Short title	Number and year	Assent	Commencement
<i>Aquatic Resources Management Act 2016</i> Pt. 1 (s. 6 and 7), Pt. 3 (s. 13 and 14(2) and (3), 22, 28-31 and 41-50), Pt. 4-15, Pt. 16 (s. 258-266) and Pt. 17-19	53 of 2016 (as amended by No. 8 of 2017 s. 8; No. 14 of 2021 (other than s. 4-8 and 16))	29 Nov 2016	To be proclaimed (see s. 2(b))

Aquatic Resources Management Act 2016

Notes Uncommenced provisions table

Short title	Number and year	Assent	Commencement
<i>Aquatic Resources Legislation Amendment Act 2016 Pt. 2</i>	40 of 2016	29 Nov 2016	Operative on commencement of the <i>Aquatic Resources Management Act 2016</i> s. 263 (see s. 2(b))
<i>Directors' Liability Reform Act 2023 Pt. 3 Div. 5</i>	9 of 2023	4 Apr 2023	Immediately after the <i>Aquatic Resources Management Act 2016</i> s. 191 and 192 come into operation (see s. 2(c)(ii))

Defined terms

[This is a list of terms defined and the provisions where they are defined.

The list is not part of the law.]

Defined term	Provision(s)
Aboriginal body corporate	3(1)
Aboriginal person	3(1)
Abrolhos Islands reserve	3(1)
allocated catch.....	32
approved	3(1)
aquaculture.....	3(1)
aquaculture gear	3(1)
aquaculture lease.....	3(1)
aquaculture licence.....	3(1)
aquatic eco-tourism.....	3(1)
aquatic environment.....	3(1)
aquatic habitat protection area	3(1)
aquatic organism	3(1)
aquatic resource	3(1)
aquatic resource management strategy (ARMS).....	3(1)
aquatic resource use plan (ARUP)	3(1)
ARMS	23
authorisation.....	3(1)
bed.....	3(1)
boat	3(1)
broodstock.....	3(1)
CALM Act	3(1)
CALM Minister	3(1)
catch.....	32
catch entitlement	3(1)
CEO	3(1)
commercial fishing	3(1)
commercial purpose.....	3(1)
Commonwealth Act	3(1)
compliance officer	3(1)
consultation period.....	12
customary fishing.....	3(1)
declared organism	3(1)
Department.....	3(1)
disease.....	3(1)
document.....	3(1)
draft strategy	12
engage	3(1)
entitlement	3(1)

Defined terms

exemption	3(1)
export	3(1)
fishery	3(1)
fishing	3(1)
fishing activity	3(1)
fishing boat	3(1)
fishing gear	3(1)
fishing period	3(1), 16(1)
fishing tour	3(1)
foreign boat	3(1)
honorary compliance officer	3(1)
managed aquatic resource	3(1)
managed fishery	3(1)
managed fishery licence	3(1)
management plan	3(1)
marine management area	3(1)
marine nature reserve	3(1)
marine park	3(1)
master	3(1)
notice	39(1)
noxious substance	3(1)
organism	3(1)
pearl	3(1)
place	3(1)
possession	3(1)
prescribed	3(1)
private land	3(1)
process	3(1)
protected aquatic organism	3(1)
purchase	3(1)
quantity	3(1)
recipient	36(1), 38(1)
record	3(1)
recreational fishing	3(1), 12
recreational fishing licence	3(1)
register	3(1)
registrable interest	3(1)
regulate	3(1)
relevant ARUP	32
resource	23
resource share	3(1)
risk assessment	12
security holder	3(1)
security interest	3(1)

sell.....	3(1)
share option.....	3(1)
species.....	3(1)
specified.....	3(1)
surety.....	3(1)
take.....	3(1)
temporary aquaculture permit.....	3(1)
total allowable catch (TAC).....	3(1)
vary.....	3(1)
vehicle.....	3(1)
WA waters.....	3(1)
waters.....	3(1)

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