

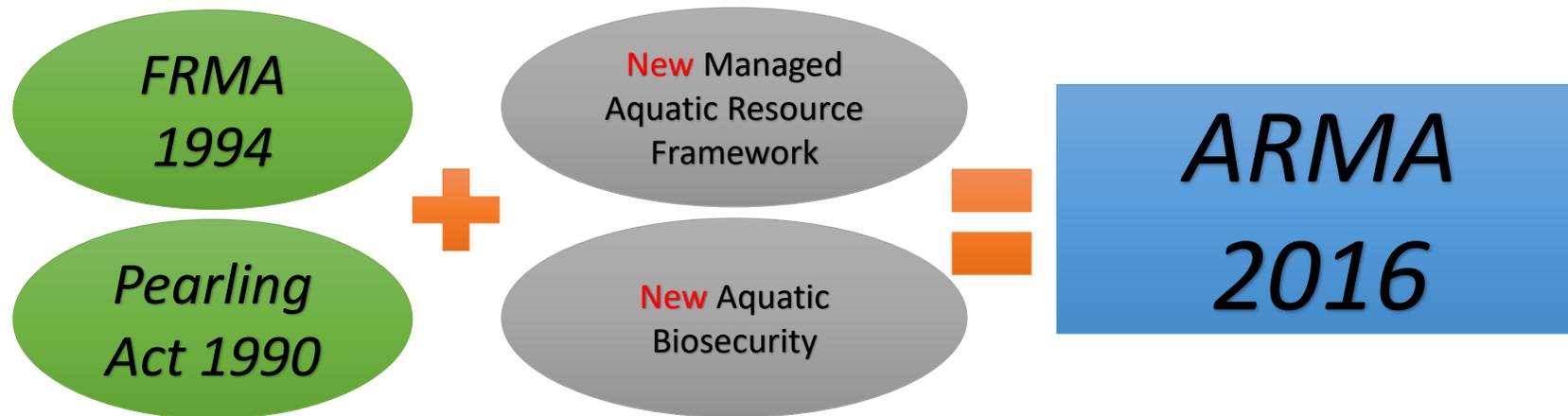
ARMA Part 3
WRL Submission on Property
Rights

AMM 16-18 October 2019

P. Rogers

What is ARMA?

- ARMA will be the primary piece of legislation managing aquatic resources in WA.



Aquatic Resources Management Act 2016

- Primarily a “tool box” Act for Management of Aquatic Resources.....Not Fisheries
- Parts covering Management of fisheries, Aquaculture, Aquatic Habitat Protection and Abrolhos Islands, Register, Compliance, legal proceedings , Financial Provisions , Arrangements with other Jurisdictions, and Miscellaneous remain largely unchanged
- Areas to Focus upon in the Act are parts 2,3,6,13 and 18. These are the objects of the Act, Managed Aquatic Resources, Aquatic Biosecurity, Administration and the Transitional Provisions.
- The real power of legislation evolves from the application of subsidiary legislation.
- Policy can be a driver of decision making

Part 3 Managed Aquatic Resources - all licensees should read

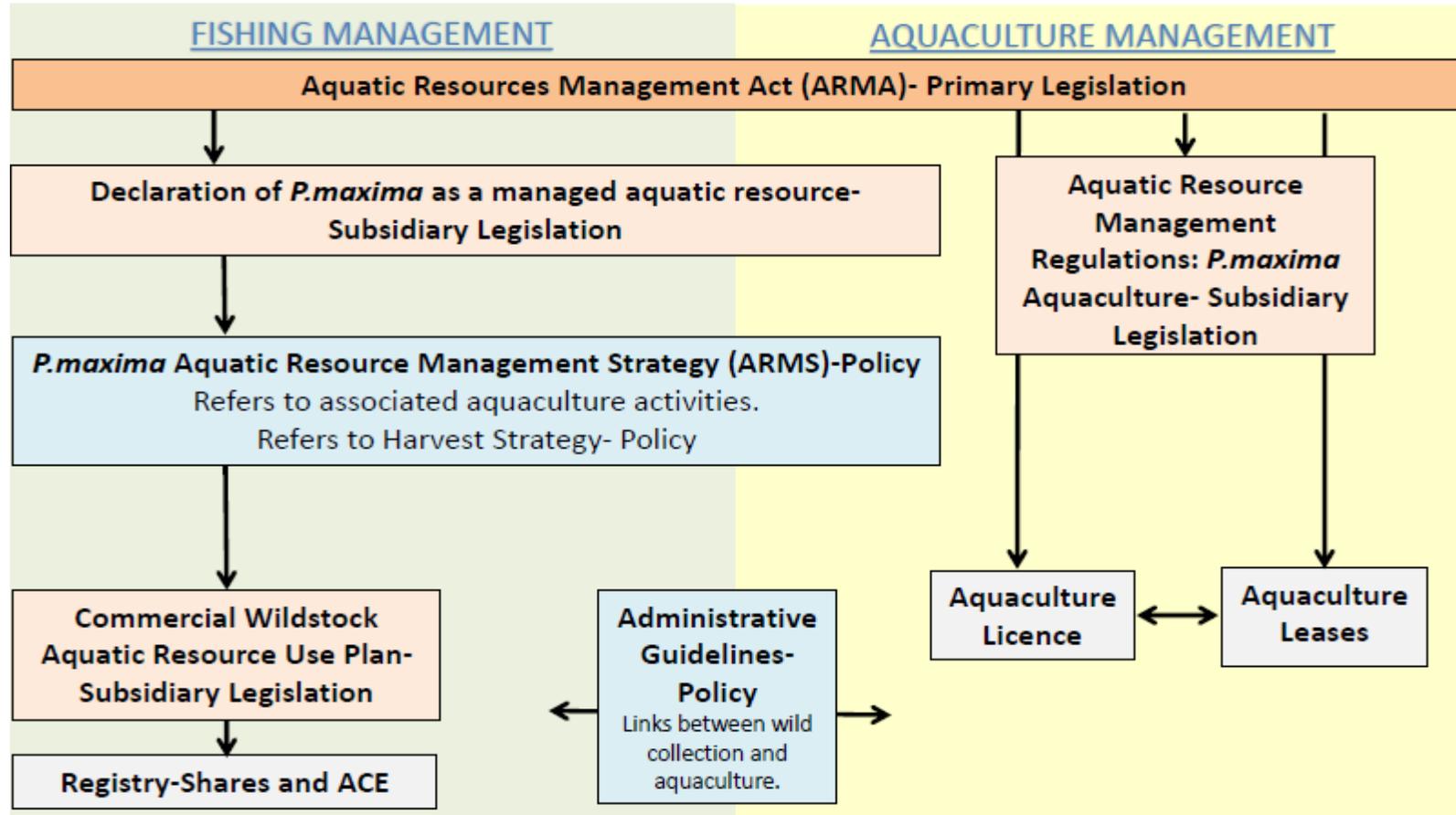
- Sets out declaration of Aquatic Resource Management Strategy (ARMS), its content , period of consultation of the draft strategy and the determination of the subsequent final strategy;
- The content covers resource to be managed, main objective, minimum quantity for sustainability, activities for regulation, allocation for customary fishing, public benefits use , method of determining TAC, the proportions available for recreational and commercial fishing, the number of shares available to commercial fishing, etc.
- The requirement of the CEO to consult on the draft ARMS, to consider submissions and to re-submit an amended draft ARMS to the Minister and the approval process.

Part 3 Managed Aquatic Resources- all licensees should read

- The preparation of Aquatic Resource Use Plans (ARUP's) by the CEO and their content inclusive of all relevant detail for management of activity and allocation detail(similar to a management plan under the FRMA) for approval by the Minister.
- The requirement for the CEO to set for each prescribed fishing period, the level of TAC and flowing from this the respective quantum's for commercial and recreational TAC and values per unit share, 30 days before fishing commences.
- Other matters pertaining to revocation, future allocation of shares in a new ARUP, levels of penalties for breaches of an ARUP, the administration of entitlements and resource shares, their transfer and registration, including a system of surety being applied for individuals who breach the legislation.

Example of ARMA Management Framework (Pearling)

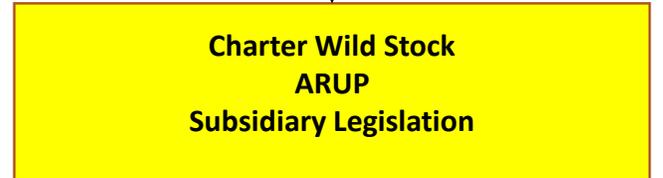
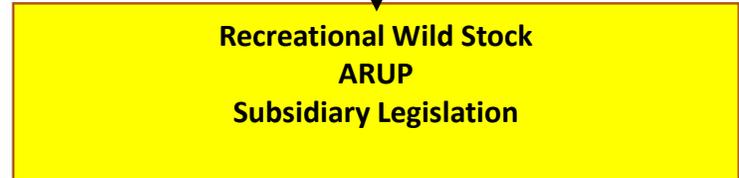
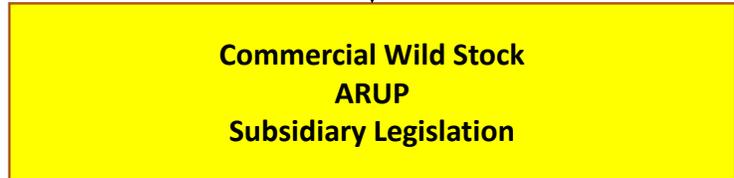
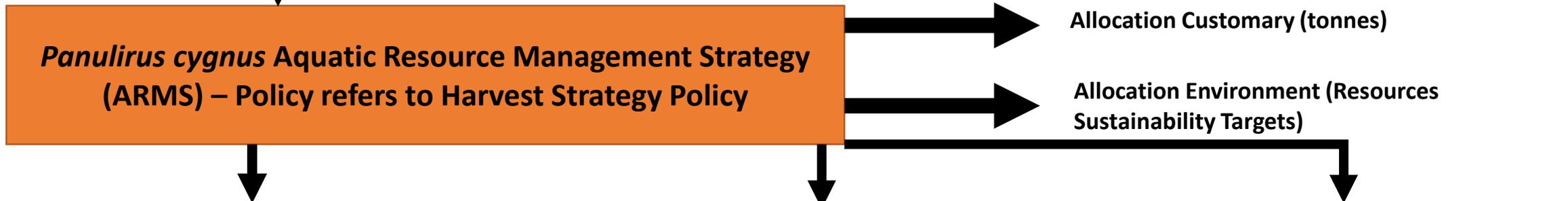
MANAGEMENT FRAMEWORK FOR THE PEARLING INDUSTRY UNDER ARMA- INTERACTION OF KEY LEGISLATION AND POLICY



Draft Example of ARMA Management for Rock Lobster

Fisheries Management

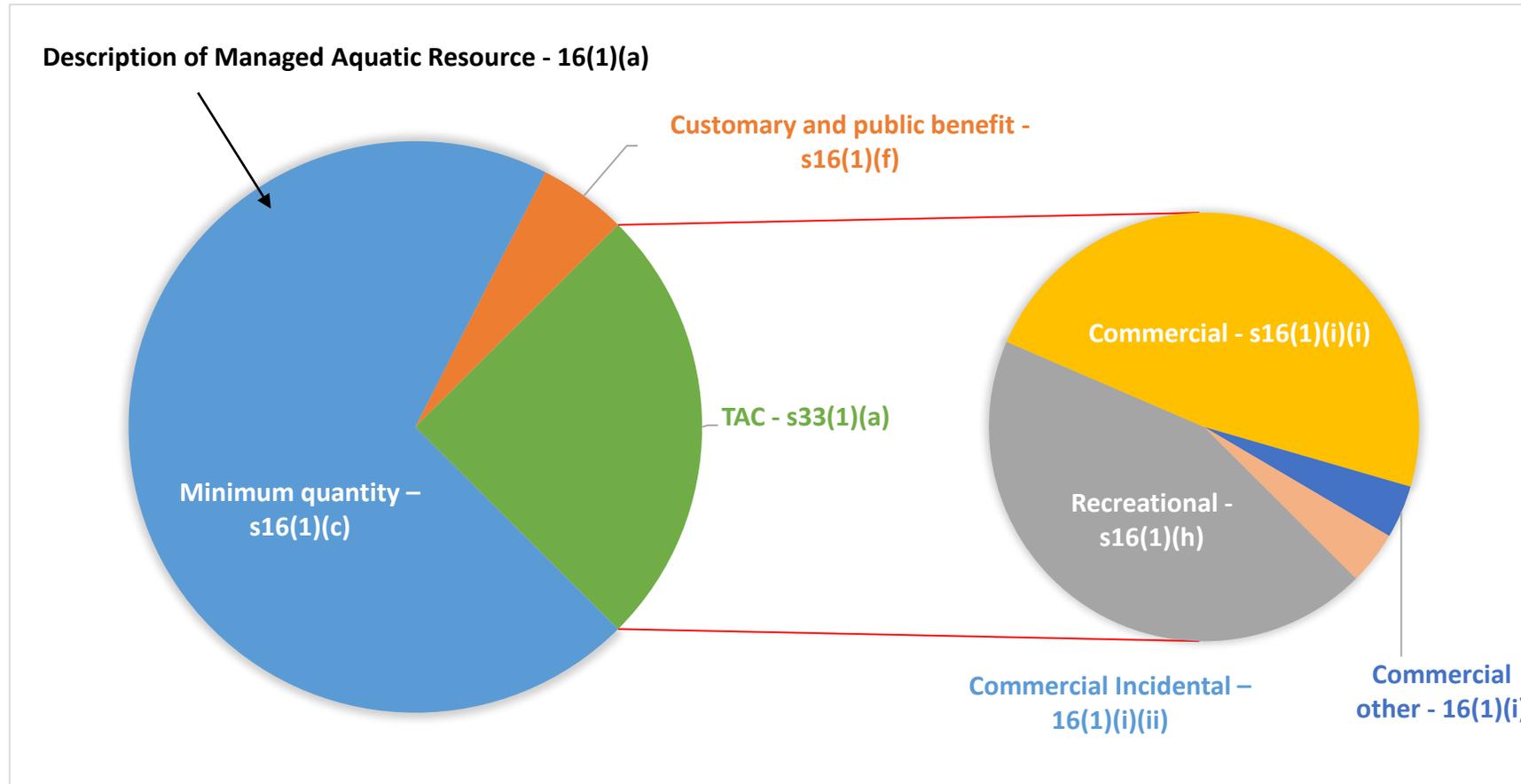
Aquaculture Management



What is an ARMS?

- Policy document approved by the Minister at the 'whole-of-resource' level.
- Key elements:
 - main objective for managing the resource;
 - activities that are to be managed;
 - how the resource is to be allocated;
 - method for determining the TAC;
 - how the status of the resource is to be assessed.

Resource use under an ARMS



What is an ARUP?

- An ARUP is an operational document which implements an ARMS.
- Much like an existing 'Management Plan'.
- Can be sector specific i.e. commercial or recreational.

Commercial ARUP- e.g. Rock Lobster

- Applies to all WA water; or part thereof
- Could be two commercial ARUPs; one for WRL and the other for Windy Harbour; other options possible including Charter.
- Number of shares (in ARMS and ARUP);
- Operational fishing requirements;
- Electronic Reporting.
- (Legislation is sufficiently flexible to embody much of what today is in the management plan and regulations into a single document- Consultation will be key in its development)

Resource Shares and Catch Entitlement

- On commencement of an ARUP, persons meeting the allocation criteria are able to apply to have resource shares registered in their name.
- At the start of each fishing period, registered share holders are able to register Annual Catch Entitlement (ACE) in their name.
- Annual access fees are payable by the share holder on registration of ACE.
- ACE can be catch (e.g. kgs) or effort (e.g. days) etc.
- ACE may fished by the registered ACE holder or transferred to another person.

Resource Shares and Catch Entitlement

- ACE can only be used during the fishing period for which it was issued.
- At the end of each fishing period all unused ACE 'disappears' and the holder of resource shares once again becomes eligible to register the next year's ACE in their name etc.
- Resource shares are held for the life of an ARMS and are capable of being transferred to another entity.
- Where an ARMS or ARUP is revoked, share holders are granted 'share options' which must be considered under any new ARMS/ARUP for the resource.

WRL Recommendations to the
Inquiry by the Legislative
Council Standing Committee of
Public Administration on
Property Rights

That the Standing Committee for Public Administration support and where appropriate recommend the following:

1. The amendment of the Western Australian Constitution to provide the same protections for property and rights of compensation as specified under the Australian Constitution.
2. The establishment of a single authority by the Western Australian Government to centralise the procedural requirements around compensation by Government into a single agency for claims covering loss of property and injurious affection arising from the assertion identified by the Committee's terms of reference (d). That is fair and reasonable compensation must be paid to the owner of private property if the value of the property is diminished by a government encumbrance or resumption in order to derive a public benefit.
3. That fishing licences be recognised in the ARMA legislation as property for the purposes of compensation.

4. The proposed eight “Actions” (pages 16,17) towards removing uncertainty in the rights of resource access of commercial fisheries specified in Part 2 of this submission for amendment to ARMA be enacted.

5. WRL provides qualified support for the implementation of ARMA at the earliest date on the condition that Government provides a commitment not to proceed with the further development of ARMS and ARUP’s until:

- i. The Actions specified in Part 2 of this submission have been considered and determined (Recommendation 4) and
- ii. The matters raised in recommendations 7 and 8 concerning aquatic resource allocation, resource sharing processes, supporting legislation and aquatic resource re-allocation are clarified and determined; or
- iii. There exists support from the relevant commercial fishing sector to proceed with the development of ARMS and ARUP under Part 3 of ARMA.

6. The broadening of the scope covering a range of private and public funding and procedures to facilitate commercial fisheries adjustment provided by the Fisheries Adjustment Schemes Act 1987 be enacted.

7. The Public Administration Committee recommend the implementation of supporting legislation that guarantees the adoption of established principles for allocation, procedures and supporting administrative requirements that need to be applied in achieving outcomes expected under Part 3 of ARMA.

8. The Public Administration Committee recommend:

i. The establishment of an expert group inclusive of key stakeholders to advise on the principles and approaches that could be applied in facilitating re-allocation of aquatic resource access and use including market and compensatory pathways linked to changes in aquatic resource sharing and resource access inclusive with the ability to change fishing capacity under ARMA. (To not link these requirements could undermine sustainability objectives)

ii. Defining appropriate terms of reference that takes into account the findings of their Property Rights Inquiry on compensation for fishing licences and directions for development in terms of outcomes expected under Part 3 of ARMA and the findings relevant to the aquatic resources access and usage sectors particularly in relation to reference (a) of this Inquiry.

iii. Advice on how the expert group should proceed.

The following Actions are proposed.

Action 1: That all commercial fishing including charter fishing and indigenous commercial fishing activity fall within the definition of commercial fishing.

Action 2: That the power of exemption under section 7 of ARMA for commercial purposes cannot be applied in a managed fishery or ARUP to any person other than a unit holder in the prescribed fishery and applied as a general exemption for all fishing licence holders as a class of persons in that fishery.

Action 3: That on the transition of existing commercial fishing resource access rights from an existing fisheries management plan to an ARMS and operational ARUP under Part 3 of ARMA the following preconditions must apply:

- i. The existing rights of access and number of units of entitlement that apply under a fisheries management plan to transfer across to the new management instrument unaltered.
- ii. Where resource shares have been defined between the commercial and recreational sectors by administrative fiat, they remain unaltered.
- iii. Any pre-existing commercial harvest of an aquatic resource in accordance with section 16(i) ii of ARMA be limited to that quantity or proportion that has historically been harvested, not previously recognised in an existing plan.
- iv. The creation of new management arrangements under ARMA does not open any new taxation implications for existing commercial fishing sector.

Action 4: That where a change is implemented in resource shares between resource use under Part 3 of ARMA are to be implemented, it may only proceed through evidence of payment of market-based compensation between one sector and the other by amendment of proportions or weight of the aquatic resource proportionate to the compensation paid. Adjustments to equivalent fishing capacity between the contributing and beneficial sectors to apply so as to prevent escalation of resource harvest to underpin resource sustainability.

Action 5: That the power to vary unit values within a managed fishery or ARUP under Part 3 of the ARMA legislation by the Minister or the CEO for other than resource sustainability reasons not be permitted unless there are defined public benefit reasons for doing so that can be demonstrated and where compensation paid for permanent loss of commercial fishing entitlement has been met.

Action 6: That principles 3 to 5 above to be applied where they practically can be applied for fisheries managed by Regulations or by Orders under the ARMA legislation.

Action 7: That the ARMA legislation not allow for the conferral of commercial fishing resource access entitlements to the State or Agents of the State by Exemption or by inclusion in any fisheries management plan or ARUP under Part 3 of ARMA.

Action 8: That in the adoption of the above principles, the consequential ARMA amendments be implemented.