

Corner Inlet Fishery Management Plan Steering Committee

FISHERIES ACT 1995 EXTRACTS

The sections of the *Fisheries Act 1995* relevant to the review and development of fishery management plans are detailed below and are to be used as a reference.

Version No. 097

Fisheries Act 1995

No. 92 of 1995

Version incorporating amendments as at
1 June 2020

3 Objectives of Act

The objectives of this Act are—

- (a) to provide for the management, development and use of Victoria's fisheries, aquaculture industries and associated aquatic biological resources in an efficient, effective and ecologically sustainable manner;
- (b) to protect and conserve fisheries resources, habitats and ecosystems including the maintenance of aquatic ecological processes and genetic diversity;
- (c) to promote sustainable commercial fishing and viable aquaculture industries and quality recreational fishing opportunities for the benefit of present and future generations;
- (d) to facilitate access to fisheries resources for commercial, recreational, traditional and non-consumptive uses;
- (e) to promote the commercial fishing industry and to facilitate the rationalisation and restructuring of the industry;
- (f) to encourage the participation of resource users and the community in fisheries management.

S. 3(e)
substituted by
No. 108/2003
s. 23.

3A Consultation principles

S. 3A
inserted by
No. 35/2009
s. 27.

- (1) To the extent that it is practicable, the following consultation principles apply to decisions made by the Minister, Secretary or Victorian Fisheries Authority under this Act, which affect the use and conservation of Victoria's fisheries resources—
 - (a) the purpose of consultation and any consultation process should be clear, open, timely and transparent;
 - (b) the level of consultation should reflect the likely impact of decisions on persons and fisheries resources;
 - (c) the consultation process should be adequately resourced;
 - (d) the consultation process should be flexible and designed to take into account the number and type of persons to be consulted and their ability to contribute to the process;
 - (e) the consultation process should involve consideration of representative advice which represents the views and values of the persons represented;
 - (f) representative advice in relation to the following persons or groups should be considered during any consultation process—
 - (i) recreational fishers;
 - (ii) commercial fishers;
 - (iii) aquaculture operators;
 - (iv) conservation groups;
 - (v) indigenous groups;
 - (g) the consultation process should consider expert advice, which should be obtained from the most appropriate provider;
 - (h) any expert advice obtained during the consultation process should be made available to persons participating in the consultation process.
- (2) Without limiting the generality of subsection (1), for the purposes of that subsection, the following decisions are taken to affect the use and conservation of Victoria's fisheries resources—
 - (a) a decision by the Minister to declare or amend a management plan under Part 3;

(b) a decision by the Victorian Fisheries Authority to vary a class of fishery licence under section 54(1)(c);

S. 3A(2)(b)
amended by
No. 68/2016
s. 49(2).

(c) a decision under section 54(1)(d) by the Victorian Fisheries Authority to vary or revoke a condition imposed by the Victorian Fisheries Authority, or to impose a new condition, on a class of fishery licence;

S. 3A(2)(c)
amended by
No. 68/2016
s. 49(2).

(d) a decision by the Minister to give, revoke or amend a direction on matters relating to the management of fisheries or zones in a fishery under section 61;

(e) a decision by the Minister to make, revoke or amend a quota order in relation to a fishery under section 64, 64A, 66C or 66D;

(f) a decision by the Minister to make, revoke or amend an order declaring sub-zones in a quota fishery under section 64AB or 66E;

(g) a decision by the Minister to appoint a person as a member of the Commercial Fisheries Licensing Panel under section 132(2)(c) or 132(2)(d);

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S. 3A(2)(h)
repealed by
No. 40/2019
s. 10.

(i) decisions relating to the making and content of regulations in respect of royalties and levies imposed in accordance with sections 150 and 151;

(j) decisions by the Minister relating to priorities for the disbursement of funds that may be paid out of the Recreational Fishing Licence Trust Account under section 151B;

(k) a decision by the Minister to make a fisheries notice under section 152(1).

(3) This section does not apply in relation to the following decisions—

(a) decisions which are specific to an individual licence or permit, the holder of a licence or permit or a person acting on behalf of a holder of a licence or permit;

(b) reviewable decisions within the meaning of section 137.

(4) In this section *person* includes an association or body.

Part 3—Management plans

28 Management plans

- (1) The Minister may declare a management plan by notice published in the Government Gazette.
- (2) The Minister may prepare and issue guidelines for or with respect to the preparation of management plans by notice published in the Government Gazette.
- (3) A management plan must be prepared in respect of each fishery for which the Minister declares by notice published in the Government Gazette that a fishery management plan is to be prepared.
- (4) A management plan may be prepared for any noxious aquatic species declared under section 75.
- (5) A management plan must be prepared in respect of a fisheries reserve as soon as possible after the fisheries reserve is declared under section 88.
- (6) A management plan must—
 - (a) be consistent with the objectives of this Act;
 - (aa) be consistent with any guidelines issued under subsection (2);
 - (b) include the management objectives of the plan;
 - (c) specify the management tools and other measures to be used to achieve the management objectives;
 - (d) include guidelines for the criteria to be used in respect of the issue of licences and permits and in respect of the renewal, variation or transfer of licences;
 - (e) as far as is known, identify critical components of the ecosystem relevant to the plan and current or potential threats to those components and existing or proposed preventative measures;
 - (f) specify performance indicators, targets and monitoring methods;
 - (g) as far as relevant and practicable, identify in respect of the fishery, declared noxious aquatic species or fisheries reserve, the biological, ecological, social and economic

S. 28(6)(aa)
inserted by
No. 108/2003
s. 25.

factors relevant to its management including—

- (i) its current status, human uses and economic value;
- (ii) measures to minimise its impact on non-target species and the environment;
- (iii) research needs and priorities;
- (iv) the resources required to implement the plan.

(7) A management plan may—

- (a) specify the manner in which fishing capacity is to be measured and the fishing capacity so measured;
- (b) specify the duration of the management plan;
- (c) specify the procedures or conditions for review of the plan;
- (ca) specify that licences of a class of access licence may be issued for a period of up to 5 years;
- (cb) specify a fish harvest strategy, including actions to be taken if fish stocks fall below specified levels;
- (d) include any other relevant matters.

S. 28(7)(ca)
inserted by
No. 35/2009
s. 53.

S. 28(7)(cb)
inserted by
No. 40/2019
s. 12.

(8) Guidelines included in a management plan under subsection (6)(d) may include criteria designed to reduce the number of licences or permits that are held in respect of a fishery.

S. 28(8)
inserted by
No. 5/1997
s. 8.

29 Contents of fishery management plan

- (1) The purpose of a fishery management plan is to specify policies and strategies for the management of the fishery to which the plan applies on an ecologically sustainable basis having regard to relevant commercial, recreational, traditional and non-consumptive uses.
- (2) A fishery management plan must—
 - (a) comply with section 28(6);
 - (b) define the fishery to which it relates;
 - (c) specify the objectives, state, status or use of the fishery.
- (3) A fishery management plan may include the matters specified in section 28(7).

30 Contents of fisheries reserve management plan

- (1) A fisheries reserve management plan must—

- (a) comply with section 28(6);
 - (b) be consistent with the Order in Council declaring the fisheries reserve.
- (2) A fisheries reserve management plan may in addition to the matters specified in section 28(7)—
- (a) specify guidelines regulating or restricting activities in the fisheries reserve;
 - (b) specify standard terms and conditions subject to which permits may be issued in respect of activities in the fisheries reserve.

31 Contents of declared noxious aquatic species management plan

A declared noxious aquatic species management plan must—

- (a) comply with section 28(6);
- (b) include a description of the species and its distinguishing characteristics and habitat requirements;
- (c) identify the effects or likely effects of the species on Victorian fisheries.

32 Submissions on management plan

- (1) Before the Minister declares a management plan, the Minister must—

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- (b) publish a notice of intention to declare a management plan in a newspaper circulating generally in Victoria at least 60 days before the declaration is made.

- (2) The notice of intention must specify—

- (a) the reasons for the proposed declaration;
- (b) the fishery, fisheries reserve or declared noxious aquatic species in respect of which the declaration is proposed;
- (c) where a copy of the draft management plan may be examined and obtained;
- (d) the procedures for making public comments and considering submissions.

S. 32
(Heading)
inserted by
No. 35/2009
s. 29(1).

S. 32(1)
amended by
No. 29/2011
s. 3(Sch. 1
item 39.1).

S. 32(1)(a)
repealed by
No. 35/2009
s. 29(2).

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| (3) The Victorian Fisheries Authority must consider all submissions received under this section. | S. 32(3)
amended by
No. 68/2016
s. 54. |
| (4) The Victorian Fisheries Authority must submit a report on the submissions to the Minister. | S. 32(4)
amended by
No. 68/2016
s. 54. |
| (5) The Minister may appoint a person or persons as a review panel to review the submissions and the draft management plan and report to the Minister. | |
| * * * * * | S. 32(6)
repealed by
No. 35/2009
s. 29(2). |

33 Amendment of management plan

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| (1) The Minister may amend a management plan by notice published in the Government Gazette. | |
| (2) If the Minister is satisfied that the proposed amendment does not substantially alter the management plan, the Minister may make the amendment. | S. 33(2)
amended by
No. 35/2009
s. 30. |
| (3) If the Minister is satisfied that the proposed amendment does substantially alter the management plan, the Minister must before making the amendment comply with section 32 as if the proposed amendment were a proposed declaration. | |

34 Duty of public authorities

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| (1) A public authority must have regard to any relevant management plan when performing its functions and exercising its powers. | |
| (2) If a public authority proposes to take any action that is inconsistent with a management plan, the public authority must consult the Victorian Fisheries Authority in writing at least 28 days before the action is to be taken. | S. 34(2)
amended by
No. 68/2016
s. 55. |
| (3) After complying with subsection (2), a public authority may take such action if there is no reasonable alternative means of performing its functions or exercising its powers. | |

35 Inconsistency

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| (1) A management plan must not be inconsistent with any regulation or fisheries notice. | |
| (2) A management plan is inoperative to the extent that it does not comply with subsection (1). | |