SEAFOOD INDUSTRY AUSTRALIA

Seafood Industry Australia
Ocean Access
Position Paper

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Seafood Industry Australia

Seafood Industry Australia (SIA) is the national peak-body representing the Australian seafood industry as a whole. We are the voice of Australian seafood, with members from the wild catch, aquaculture, and post-harvest sectors, including state, territory and sectorial associations, along with seafood businesses and producers. We are committed to a vibrant and prosperous future for our industry.

SIA provides consumers, Government and other stakeholders with confident, balanced and united representation from across the industry.

The Australian seafood industry directly supports more than 15,000 Australian jobs, and countless more downstream in transport, logistics, and processing. Australian seafood accounts for 10% of national agricultural production and contributes $3.5 billion in gross domestic product annually to the Australian economy.

Scope

This policy reflects the urgent need for the development of policy to manage the growing interest in further developing our blue economy and reducing conflict between existing and emerging industries.

The legislative arrangements that govern access and use of the marine domain and its resources are complex. Differences between State, Territory and Commonwealth jurisdictions add to this complexity. This policy does not set out to address or comment on each jurisdictional approach to marine spatial planning, but rather sets out the principles on which policies around planning, access and management should be based upon to ensure that Australia's seafood industry is recognised and supported by governments into the future.

Recommendations

To ensure the Australian seafood industry's ocean access rights are recognised and supported, SIA will actively promote and advocate for the following:

1. **The development of an integrated Government policy that addresses the complexities of managing access to a shared resource and reduces uncertainty and conflict between existing and emerging industries.**
2. **The implementation of a nationally agreed compensation framework that provides for fair and adequate compensation for impact and loss, with costs to be borne by the proponent.**
3. **The development of a sustainable and equitable consultation framework that recognises the costs of consultation are to be borne by the proponent.**
4. **The creation of a marine infrastructure legacy fund.**

Introduction

The seafood industry has always 'competed' for space alongside other industries and users such as, shipping, mining, tourism and defence. Advances in technology are seeing a growing interest in emerging industries such as carbon capture and storage and offshore renewable energy generation in line with the global initiative to de-carbonise industries and society. Increasing competition will put additional strain on resource access and is likely to increase conflict between users, particularly given an absence of government policy on integrated marine spatial planning.

Strengthening resource security is a foundational priority of SIA and an issue that our industry has been advocating for since the inception of contemporary fisheries management regimes during the 1980's. The term 'resource security' can be defined as the product of both secure resource sharing arrangements (resource allocation) and surety of access to fishing grounds (resource/ocean access). Whilst the two issues are at times inextricably linked, the focus of this policy is centered around ocean access.

The legislative and regulatory arrangements that govern ocean access are complex, multi-layered, and vary between State, Territory and Commonwealth jurisdictions. The complexity arises due to the nature of management responsibility for the overlapping, yet separate activities that occur within our oceans. In the fisheries context, not only does the commercial industry need to navigate fisheries-specific spatial management measures, but also the restrictions and loss of fishable area associated with other activities such as transport, defence, recreational fishing, aquaculture, tourism, marine parks, and mining.

State and Federal Governments are actively supporting and promoting new, emerging and transitioning industries such as renewable energy, carbon capture and storage and offshore aquaculture, as evidenced by recent policy and legislative actions including:

- Victoria released its Offshore Wind Policy Directions Paper[1] in March 2022, outlining its ambition to have Australia's first functioning offshore wind farm functioning by 2028.
- On 1st April 2022, the Tasmanian Department of Natural Resources and Energy granted the first permit to trial aquaculture in Commonwealth waters adjacent to the northwest coast of Tasmania under a memorandum of understanding with the Commonwealth Department of Agriculture.
- On 5th August 2022, the responsible Minister published the first notice of a proposal to declare waters (Bass Strait waters adjacent to Gippsland) as suitable for the development of renewable energy under the *Offshore Electricity Infrastructure Act 2022* (Cth) (OEI Act). A renewable energy zone was declared in December 2022.
- Amendments to the *Climate Change Act 2022* (Cth) commenced on the 14th of September 2022 to implement Australia's net-zero commitments.

The current regulatory approach to managing new and emerging industries is to promote 'coexistence', where all users must share the area with other users and interests. However, this premise is fundamentally flawed if new entrants are granted the legislative right to exclude and impact others where necessary, without adequate safeguards protecting existing operators and clarity on managing cumulative impacts.

[1] https://www.energy.vic.gov.au/__data/assets/pdf_file/0016/561400/Offshore-Wind-Policy-Directions-Paper.pdf

Whilst not specifically extending decision making powers, changes to the *Climate Change Act* 2022 now allow the responsible Minister to consider Australia's greenhouse gas emissions reduction targets when making a 'declared area' under the OEI Act. With a clear intention from State and Federal Governments to accelerate offshore renewable energy production, the commercial fishing industry faces a new and rapidly growing threat to its ability to operate and provide consumers with healthy, safe, Australian seafood.

Similarly, as the aquaculture industry responds to the growing domestic and global demand for seafood and other marine bioproducts, this sector will require access to suitable waters for future expansion and diversification. Regulatory certainty is key to building investor confidence in developing these new industries.

This policy paper outlines the need to maintain and safeguard Australia's sustainable seafood industry, the complexities of managing access to a shared resource and provides recommendations for the immediate needs for principle and evidence-based integrated spatial management of our oceans.

1. Benefits of Australian seafood

As an industry, seafood plays a key role in the country's primary production and food security network. Australia's seafood industry contributes more than $3.4 billion to the economy each year and employs more than 14,000 Australians in the wild-caught and aquaculture sectors, with thousands more employed downstream in post-harvest, transport, retail and foodservice sectors. Importantly much of this employment and economic activity is generated in small and medium sized coastal communities throughout regional Australia.

Australian seafood is a healthy choice of protein. The Australian Heart Foundation recommends including 2–3 servings of fish per week[2] as part of a heart-healthy diet. This reflects that fish provides energy, protein, and a range of vitamins and minerals including selenium, zinc, iodine and vitamins A and D, as well as omega-3 long-chain polyunsaturated fatty acids (omega-3).

Australian seafood is also a low carbon footprint form of protein as confirmed in a recent study funded through the Fisheries Research and Development Corporation (FRDC) titled *"Energy use and carbon emissions assessments in the Australian fishing and aquaculture sectors"*[3]. The study estimated the total emissions for Australian fishing and aquaculture to be approximately 1.5 million tonnes CO2-e, or put another way, each kilogram of Australian seafood produced generates 6.5 kgs CO2-e. Well below that of beef (25.2kgs CO2-e) and lamb (19.4 kgs CO2-e). In land-based food production, large amounts of emissions occur through land use and modifications, of which there are fewer of these in fishing and aquaculture.

Ensuring that Australians maintain access to affordable and healthy seafood is a key motivation of Australia's seafood producers, and must remain a priority of the State, Territory and Commonwealth Governments.

[2] https://www.heartfoundation.org.au/Nutrition_Position_Statement_-_Fish_and_Seafood.pdf
[3] https://www.frdc.com.au/project/2020-089

2. Sustainability and Security

2.1 Sustainability

Australia's fishing and aquaculture resources are among the best managed in the world. Our Commonwealth and State managed fisheries and aquaculture management is constantly evolving. Utilising scientific evidence to understand fish biology, movements, ecosystem function, and developing standard approaches for fisheries assessment and ecosystem-based management are key to ensure development of our marine resources is ecologically and socially sustainable.

The productivity and sustainability of Australia's wild fisheries resources are dependent upon a healthy ocean and well-functioning ecosystems. Whilst commercial fisheries production poses a risk, those risks are largely known, mitigated and monitored. Conversely, there are significant knowledge gaps when it comes to the likely and potential impacts of other marine industries on commercial fisheries production.

2.2 Security

A fundamental element of good fisheries management has been the establishment of long-term, secure, transferable access rights. This rights-based management approach provides the foundation for investment, innovation, productivity, profitability, sustainability, and stewardship of the resource. If not managed in a holistic manner offshore renewable energy development and other new industries pose a significant threat to these access rights and in turn to the long-term sustainability of both aquaculture and wild capture fisheries. The continual erosion of resource access will lead to a tipping point beyond which it will not be viable or cost-effective to maintain these activities.

An integrated marine spatial planning process that recognises and takes account of existing access rights can provide the opportunity to develop new aquaculture opportunities, new renewable energy projects and maintain a prosperous commercial fishing industry.

3. Policy and coexistence

3.1. Ocean policy settings

The need for better coordination and planning for ocean-based activities and industries is not a new concept. However, the exponential rise in interest and advocacy for offshore wind development has highlighted the urgent need for a coordinated and integrated planning approach to the oceans.

Australia has previously attempted to develop an integrated approach to manage the ocean with the publication of Australia's Ocean Policy in 1998. In December 1999, the Commonwealth established the National Oceans Office to guide the implementation of the Policy which aimed to integrate decision

making across jurisdictions and the relevant sectoral interests. Ultimately the Policy failed to achieve the support of the States and the Policy became a sectoral solution rather than an integrated one as envisaged (Tsamenyi, and Kenchington 2012). The National Oceans Office was incorporated into the Marine Division of the Department of Environment in 2004 and refocused exclusively on marine protected area network and marine bioregional planning under the EPBC Act. An Oceans Office was re-established in 2022 with a similar planning and policy mandate.

Although the Ocean Policy ultimately failed to deliver a national integrated planning and decision system across Australia's Exclusive Economic Zone (EEZ), individual jurisdictions have progressed with the development of State focused initiatives within their coastal waters. The Victorian Marine and Coastal Policy (2020) sets out the Victorian Government's approach to marine spatial planning which includes the development of a Marine Spatial Planning (MSP) Framework. The Victorian Government recognises that undertaking a MSP process can have significant benefits including proactively identifying and reducing conflicts between users, and between uses and natural values, to help protect economic, social, cultural, and environmental values linked to the marine environment. Marine Plans are yet to developed under this framework.

Similarly, the New South Wales Government has developed a Marine Estate Management Strategy 2018 – 2028, which identifies the need to explore opportunities for coordinated, innovative, long-term, sustainable development of the marine estate with a focus on those current and emerging activities which provide the greatest opportunity for sustainable growth. Whilst the need to develop this 'Blue Growth Strategy' has been identified, no work has commenced at the time of publishing this policy.

The fragmented approach to marine spatial planning, and the fact that there are still no formal approaches to planning that take account of climate change, cumulative impacts, and ecosystem function across jurisdictional boundaries highlights the difficulties of this challenge.

3.2. Opportunities

As well as being global leaders in the management of fisheries and aquaculture, Australia is seen as an active global citizen in managing ocean ecosystems and investing in ocean productivity. Australia, through the Prime Minister, is a member of the 17-nation High Level Panel for a Sustainable Ocean Economy[4] (the Ocean Panel), which is driven by a commitment to partnership, shared knowledge and science-informed policy. The Ocean Panel aims to advance three values underpinning a sustainable ocean economy, (i) effective protection, (ii) sustainable production and (iii) equitable prosperity.

As a member of the Ocean Panel, Australia has committed to sustainably managing 100% of the ocean area within our national waters, guided by a sustainable ocean plan, by 2025. At the time of publishing this policy, it is not clear what the Sustainable Ocean Plan will look like, however this is a unique and timely opportunity to, like the Ocean Panel itself, commit to a partnership approach between governments and stakeholders to develop a contemporary, science-based policy to guide the integrated management of Australia's oceans.

[4] https://oceanpanel.org/

By adopting the values of effective protection, sustainable production and equitable prosperity, SIA believes that it is possible to strike a balance between fostering innovation and the development of new and emerging industries, whilst at the same time maintaining our diverse and thriving commercial wild-harvest fisheries and their dependent post-harvest businesses. We also acknowledge that this will not be a simple process and will require compromise and trade-offs to achieve true coexistence.

3.3. Coexistence

SIA recognises that the ocean is a shared space and accepts that all users of the ocean must make reasonable attempts to accommodate others. The basis of coexistence within the marine domain is that all users should be free to carry out their normal licensed activities, and any new 'entrant' or activity must not interfere with or disrupt existing commercial operations in a manner that causes a loss, both current and future, as a result of that activity. Where a loss does occur that loss must be compensated for by the new entrant, or the relevant government on behalf of that entrant.

In pursuing a coexistence model, all avenues to avoid or mitigate impacts to existing users should be exhausted before an impact-and-compensate approach is taken. This not only recognises the access rights held by fishers, but also the value in maintaining a thriving wild-harvest commercial fishery that provides consumers with healthy, safe, Australian seafood.

Any new 'entrant' or activity must not interfere with or disrupt existing commercial operations in a manner that causes a loss, both current and future, as a result of that activity. Where a loss does occur that loss must be compensated for by the new entrant.

Government promotion and assurance of coexistence is fundamentally flawed without being backed by proper policy and safeguards within relevant legislation. A lack of policy and the absence of an integrated approach to planning for the oceans will lead to greater levels of uncertainty, reduced investor confidence, increased conflict and ultimately delays in Australia's transition to a renewable energy future.

4. Loss and compensation

4.1. Impact and loss

Impact and loss can present in a number of different ways, including:

- Loss of catch resulting from exclusion or loss of access to an area.
- Increased costs to fish as a result of a new activity (e.g. increased travel time to fishing grounds or fishing less productive areas).
- Potential decline of quota and/or access rights.
- Direct loss or damage to fishing gear and/or vessels.
- Changes to availability of fish as a result of other activities (e.g. seismic survey activity resulting in migration of fish from and area).
- Loss of prospectivity (e.g. loss of the opportunity to fish other areas as fish availability changes due to external factors such as climate change).

- Loss of areas due to be returned to natural state through amendments to decommissioning of infrastructure (e.g. oil and gas infrastructure not remediated to its natural state).

Over the years the Australian seafood industry has had various interactions and conflicts with other users which provide useful context for this policy. Below is a selection of examples of how these different sectors and their activities can directly and indirectly impact on the access security of the commercial seafood industry.

Marine Parks: Closed areas or areas with fishing gear restrictions within marine parks are a form of compulsory transfer of access rights as well as a loss of future prospectivity. Currently 45% of Australia's Exclusive Economic Zone is covered under marine park management. This is a considerable area and the implications for cumulative impacts of displacement of commercial fishing activities is a significant issue.

Mining: Oil and gas exploration and extraction has direct implications for fisheries. Historically seismic testing associated with oil and gas exploration has had the largest impacts on fisheries resources, access and operations. In general terms, the permanent structures associated with oil and gas extraction are small and more easily accommodated by fishing operations. In recent years oil and gas companies have developed their own compensation or 'loss adjustment' policies to provide certainty to fishers around compensating for loss of access, catch, as well as loss and damage to gear.

Decommissioning: End of life oil and gas infrastructure, indeed any infrastructure, left in-situ remains a permanent safety and operational risk to demersal fishing methods (e.g. trawling). As per the requirements of the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, petroleum titleholders are required to remove all property brought into the surrender area prior to surrender of a title. In other words, the decommissioning of infrastructure should occur in a manner that returns the habitat to its natural state. In recent years there is a growing interest in leaving infrastructure in place given the financial costs of full removal and arguments that there are environmental benefits in leaving the infrastructure in place, and environmental risks in their removal. The costs of leaving infrastructure need to account for the permanent loss of fishable areas and the safety hazards that this infrastructure poses. SIA supports the creation of a legacy infrastructure fund to promote safe fishing practices as well as investment into other areas such as fisheries research and development. Further detail on this is provided in section 4.2.

Recreational and indigenous fishing: There is often competition for resource share and access between recreational, indigenous, and commercial fishers. This competition can lead to conflict particularly when fishing areas overlap, when the target species are highly sought after by multiple groups, or when the different groups have different objectives (harvest strategies) when managing and taking their share of the resource. Fisheries management interventions are regularly implemented to manage this issue, and in many cases resource access to one sector is prioritised over another, such as implementing recreational only fishing areas. In some jurisdictions, actions have been taken to reduce conflict by formally allocating specific shares of a resource across the different sectors.

Loss of access can also occur through infrastructure such as the deployment of fish aggregating devices (FADs) or artificial reefs for the purposes of enhancing the recreational fishing experience. These activities are not compatible with some forms of commercial fishing such as pelagic longlining or demersal trawling, thus resulting in a loss of access either intentional or otherwise.

Whilst not a direct fisheries resource sharing issue, native title claims and recognition of indigenous rights can also impact access to fish stocks. These claims and negotiations are complex and require legal determinations that may take many years to resolve. The High Court ruling regarding the Blue Mud Bay decision in the Northern Territory has confirmed the rights of the Traditional Owners to manage access to the waters lying over Aboriginal land[5]. Therefore, for commercial fishers to access water above aboriginal land, commercial licensees need additional permission which can only be granted by the Traditional Owners or the relevant Land Council. This can have direct implications for a fisher wishing to utilise their existing access rights.

Other: In addition to the examples above, the seafood industry is also impacted upon by a range of other uses including domestic and international shipping routes, carbon sequestration, subsea communication and energy transmission cables, dredging and sea dumping of dredge spoil, rocket testing and debris and broader defence force exclusion zones.

4.2. Compensation

Where there are unavoidable impacts to existing commercial fishing rights and all other options for mitigation have been exhausted, then fair and adequate compensation or adjustment assistance must be provided. Compensation can take a variety of forms and will be dependent on the type of impact, whether direct to an individual(s) or more broadly to a group or industry sector. Impacts to associated industries, such as the post-harvest sector may also need to be considered depending upon the level of loss or impact to the fishery. This policy does not provide specific guidance on how this should be undertaken, except to say an examination of the success and failures of previous structural adjustment procedures should be conducted, and industry engagement will be essential.

4.2.1 *Compensation framework*

SIA supports the development of a nationally agreed compensation framework to alleviate the impacts of other marine development activities on the seafood sector. A compensation framework for fishers financially affected by the impacts of seismic surveys was one of the recommendations from the Australian Senate inquiry into the impacts of seismic testing on fisheries, *Making waves: the impact of seismic testing on fisheries and the marine environment* published in June 2021[6]. No uniform compensation frameworks currently exist. However, individual and collective 'loss adjustment protocols' have been developed, such as the one by National Energy Resource Australia (NERA) as part of a collaborative seismic environment plan project[7].

As the regulator, the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) can approve, or otherwise an environment plan based on how the petroleum company

[5] "Understanding the Blue Mud Bay Decision" [2013], Jon Altman
[6] https://parlinfo.aph.gov.au/parlInfo/Makingwavestheimpactofseismictestingonfisheriesandthemarineenvironment.pdf
[7] https://12259-console.memberconnex.com/NERA_csep loss adjustment protocol

proposes to deal with impacts and compensation to affected parties. However, NOPSEMA have not issued any formal advice regarding this and in their periodic newsletter 'The Regulator' (Issue 2, 2021[8]), it stated:

"Ultimately it is up to the [petroleum and fishing] industries to agree on solutions that address their respective needs. The case-by-case assessment and approval by NOPSEMA for individual seismic surveys will remain"

Despite a reluctance of NOPSEMA to provide formal advice, SIA will continue to advocate for a nationally agreed compensation framework that has the policy and legislative support of the Commonwealth, Territory and State Governments. A framework that provides fair and adequate compensation for impact and loss is imperative. A well-designed framework can provide certainty for sectors wishing to develop ocean resources as well as for the existing fishing industry sectors.

4.2.2 *Marine infrastructure legacy fund*

As introduced previously, SIA supports the creation of a marine infrastructure legacy fund to promote safe fishing practices around decommissioned energy infrastructure as well as supporting investment into other areas such as fisheries research and development. Borrowed from the UK Fisheries Offshore Oil and Gas Legacy Trust Fund Limited[9], the fund is paid for by oil and gas companies and administered through the trust. The concept is in its infancy here in Australia and will require significant collaboration between SIA, our members, and other parties to thoroughly investigate opportunities and potential for such a fund.

5. Environmental and resource impacts

The global growth in offshore wind development has also led to environmental concerns about the potential direct and cumulative impacts on marine habitats, fisheries, marine mammals and seabirds. Potential negative effects include collision, habitat displacement, and exposure to electromagnetic fields (Harsanyi et al, 2022) and underwater noise. Alternatively, offshore electricity infrastructure can provide suitable habitat for a range of demersal fish species with evidence showing the abundance of some species increasing with proximity to wind farms (van Hal et al, 2017).

Given the relative infancy of offshore wind development in Australia, there are limited data on long term effects of offshore wind turbines. Similarly, the cumulative effects associated with multiple wind farms and increased human activities, such as shipping, in the area of wind farms, are not well understood. The cumulative impacts of multiple wind farms and other existing industries is a key threat to maintaining access to productive fishing areas and accessing new areas for aquaculture. This will only increase with advances in technology allowing the use of floating wind turbines and other renewable energy technologies.

Partnerships between industries will be essential to build awareness, trust and shared outcomes. Furthermore, long-term monitoring of environmental, biodiversity and fishery impacts will need to be an

[8] https://www.nopsema.gov.au/sites/default/files/documents/2021-07/NOP7175%20The%20Regulator.pdf
[9] https://www.ukfltc.com/

essential component of offshore electricity infrastructure permit approvals, to be funded by those proponents.

6. Consultation

Essential to any proper process is early and genuine engagement with stakeholders, especially with relevant stakeholders such as the seafood industry in relation to ocean access and development. Competition and loss of access can have significant impacts on our industry members, their livelihoods and their physical and mental wellbeing.

Existing consultative requirements for the core business of fisheries management already require considerable time and resources. The addition of wind farm consultation on top of oil and gas and other development proposals is causing significant strain and is beyond the capacity of many industry associations and representative bodies.

Thorough and meaningful engagement in consultation is not a trivial matter. These are complex issues, being undertaken in an extremely dynamic and unpredictable environment, for which there is often very little available scientific information on which to base decisions. Furthermore, understanding and then communicating the potential impacts of a new activity is complex and time-consuming. Within all fisheries there are significant differences between operations, gear types, target species, non-target species, market and consumer demands and a host of other issues. It is simply not enough to draw conclusions about impacts based upon historical catch and effort. As climate change impacts continue to present in the form of changes to distribution and abundance, the needs of commercial fishing and aquaculture operations are also changing. These issues need to be considered in any future development proposals.

The 'consultation overload' that currently exists is further compounded by offshore development proponents acting outside of the formal permitting process. In an attempt to fast-track developments, some offshore wind companies are proceeding with referrals under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), despite offshore areas not being declared under the OEI Act, and with an expectation that the seafood industry will participate in their consultation. This is also despite the Australian Government publishing a guide to environment approvals for offshore renewable projects[10], and warning of the risks in doing so. However, this document fails to mention or have regard to the impacts on existing industries who are required to be 'consulted'.

There is an urgent need to establish a sustainable and equitable consultation framework for offshore renewable energy and other projects including oil and gas. This framework should form part of the broader government policy around the development of and integrated approach to marine planning and development. Importantly, and in line with the principles of coexistence, the cost of coexistence should be borne by the proponent, including the costs of the seafood industry to participate in consultation.

[10] https://www.nopsema.gov.au/sites/default/files/documents/Offshore%20Renewables%20Environmental%20Approvals.pdf

7. Conclusion and recommendations

This policy is built on the benefits and success of Australia's sustainable wild capture and aquaculture seafood industry, and our desire to see the Australian community continue to realise these benefits into the future. As Governments seek to facilitate growth and expansion of renewable energy and other emerging industries within the marine domain, there is a risk that the seafood industry will bear the cost of that growth, and with it the community will lose access to sustainable, healthy, and safe Australian seafood. To ensure the Australian seafood industry's ocean access rights are recognised and supported, SIA will actively promote and advocate for the following recommendations and actions:

1. **The development of an integrated Government policy that addresses the complexities of managing access to a shared resource and reduces uncertainty and conflict between existing and emerging industries.**
2. **Development of a nationally agreed compensation framework that provides for fair and adequate compensation for impact and loss, with costs to be borne by the proponent.**
3. **Development of a sustainable and equitable consultation framework that recognises the costs of consultation are to be borne by the proponent.**
4. **Creation of a marine infrastructure legacy fund.**

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