



# AUSTRALIAN ANGLERS ASSOCIATION

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4<sup>th</sup> April 2013

Ms Ellen Smith  
Policy Officer,  
RECFISHWEST

Dear Ellen,

**SUBJECT: ERRORS AND OMISSIONS IN STATE-WIDE RULES GUIDE BOOKLET**

Thank you for the opportunity to comment on the errors and omissions in the State Wide Recreational Fishing Guide 2013. It suggests that they are ". . simpler rules for better fishing." This organisation believes that in some instances this is not the case.

The following material has been collated from the December and January issues of the Recreational Fishing Guide 2013. Individual members of member clubs from this association have had input in this process but due to the short time line for submission of comments it is by no means a complete list of concerns.

These comments refer to the Recreational fishing guide 2013 currently being distributed and the PDF version on the Department of Fisheries website as at early April 2013.

<http://www.fish.wa.gov.au/Fishing-and-Aquaculture/Recreational-Fishing/Recreational-Fishing-Rules/Pages/default.aspx>

Of major concern are the disclaimers in the booklet and on the Department of Fisheries (D of F) web site. The booklet has a disclaimer on page 2 which includes "*The information provided is current at the date of printing but may be subject to change. For the most up-to date information visit: [www.fish.wa.gov.au](http://www.fish.wa.gov.au)*" This indicates and makes it clear that the Guide and the website are complementary, and also that the D of F places the onus on recreational fishers to keep themselves up to date.

However that web page does not have any indication that the guide booklet available for download is different to the booklet, which was on the same web page with the same file name from 18 December to sometime in January, and the 50,000 copies which are believed to have been printed and distributed. *There is no errata or update sheet which could be used by people in conjunction with the original printed version.*

That guide downloaded from the website has no clear indication that it is a different version to the original version. The front pages on the two versions are identical, have the same "Issued February 2013", and none of the changes are marked in the document. The only indication is a date in a small font near the spine on the back page. Unless someone was specifically looking for this there is no indication to show that there are different versions available. Even Fisheries and Marine Officers (FMOs) on a beach patrol in the metropolitan area were not aware of the differences until it was pointed out to them. This demonstrates a sad situation of a lack of communication within the D of F.

If the full implications of the disclaimer on page 2 were read and understood, that would encourage people to make sure that they have the very latest issue of the Guide. However because there is



no indication on the website that there has been an update, and no effective indication on the printed versions that there are updates, then the very great majority of people would believe that they have the latest version because there is nothing to indicate to them that they do not have it. Errors in that original version (December 2012) included misleading details about prawning closures in the Peel Harvey Estuary, and any angler who relies on that version is at risk of breaching the regulations.

The website has a disclaimer which states *"The information and advice provided is made available in good faith and is derived from sources **believed to be reliable and accurate** at the time of release on the Internet. However, the information is provided solely on the basis that readers will be responsible for making their own assessment of the matters contained or discussed herein and are advised to verify all relevant representations, statements, information and advice."*

All this fails the test of what a normal person would reasonably expect from the D of F which specifies and administers and approves the Regulations, writes and issues the guides, and briefs and trains their staff to administer and enforce those same Regulations. This is an inexcusable failure of the D of F to do what is required of them, particularly considering the words in the disclaimer in the Guide *"It cannot be used as a defence in a court of law."*

***The proposal to print yet another version of the Guide in early April will only compound this problem unless effective action is taken to publicise that there are different versions and explain the differences between them.***

This organisation believes that the best advice that can be given to recreational anglers is to regularly discard the guide and obtain new printed copies, which is obviously a waste of time and resources.

#### **Filleting at sea.**

On page 33 of the guide, it says

*"Fish without a size limit, can be carried at sea and landed:*

- *filleted, skin on;*
- *trunked, skin on; or*
- *whole (can be gutted and gilled)."*

The Fish Resources Management Act Regulations version 1 March 2013 downloaded from the State Law Publisher's website

[http://www.slp.wa.gov.au/legislation/statutes.nsf/main\\_mrtitle\\_1458\\_homepage.html](http://www.slp.wa.gov.au/legislation/statutes.nsf/main_mrtitle_1458_homepage.html) do not appear to have any Regulation specifying or confirming those requirements.

If that is correct, then the Guide is incorrect and misleading in stating those. People are entitled to believe that everything is allowed which is not specifically prohibited.

Please advise which Regulation contains those requirements written in the Guide.

Regulation 16(1) is headed *"Certain small protected finfish, how to be landed"* As worded, this Regulation does not appear to apply to fish species *"without a size limit."*

If this regulation is intended to apply to fish species without a size limit, then the heading is misleading since many of the species without size limits are very large fish and do not fit the description *"small"*.

Similarly Regulation 15 is headed *"Certain large finfish, how to be landed"* yet it applies to many fish with a minimum size limit of 250 to 300 mm, which cannot be considered *"large"*.

This area of the booklets and the Regulations are not clear and could cause a recreational angler to be prosecuted. To clarify this situation it is recommended that a clear and concise set of definitions be established for each of the three sections of the Regulations and be widely publicised and also be printed in the guide..

### **Definition of fillets.**

The definition of fillets, pieces of fish, etc has long been a source of confusion and many unintentional breaches. Any guide to the rules **MUST** adequately explain the provisions as part of the simplification of the rules.

The Guide does not have any definition or explanation of "fillets" yet it uses that term in several places, e.g. page 32.

*"Fillet" is defined in the Regulations as "means any part or piece of a finfish, other than a whole fish, fish trunk, head, tail, fin or a product of gilling or gutting the fish;"*

Of great concern is that the Guide actually misleads anglers about their possession limit entitlements by stating on page 32:- *"The maximum quantity of finfish (includes scalefish, sharks and rays) you may have in your possession - either whole **or in pieces** - is:"*

The failure to explain "fillets" and use of the words "**or in pieces**" can only be interpreted by any reasonable person that the weight limits stated include heads or tails, yet the Regulations specifically exclude these.

This is an example where deliberate or negligent omissions will lead anglers to believe that they are entitled to less than the Regulations allow, which is effectively some reduction in the possession limits.

### **Exclusion of "wings" from possession limits**

Proposal 2 by Department of Fisheries, State-wide finfish possession limits, included a provision that *"heads, tails and **wings** are not included in the fillet weight possession limit."* (FMP 252 pages 2 and 20.) Heads and tails were already excluded in the Regulations of the time.

That specific provision was supported by Recfishwest, (page 5 of Recfishwest's consultation report [http://www.recfishwest.org.au/images/PDF/Submission/Consultation\\_report\\_state-wide\\_review\\_FINAL\\_DRAFT\\_Web.pdf](http://www.recfishwest.org.au/images/PDF/Submission/Consultation_report_state-wide_review_FINAL_DRAFT_Web.pdf)) yet the Regulations have not been amended to exclude wings.

This is an example of the D of F proposing something, that specific provision being supported and accepted by the recreational fishing Peak body, and yet the Department of Fisheries has not delivered what has been promised or has been stated in the various publications about the changes, by negligently or deliberately failing to amend the Regulations to allow the exemption.

### **Definition of fish trunk.**

The Guide does not have any definition or explanation of "trunk" yet it uses the term in several places on pages 32 and 33.

Page 2 of the Regulations have the definition

*fish trunk means -*

- (a) *a finfish that would be a whole fish except that -
  - (i) all of its head; and
  - (ii) all of its tail,has been removed; or*
- (b) *a low risk finfish that would be a whole fish except that all, or any part of, its head, tail or scales has been removed; or*
- (c) *a shark that would be a whole fish except that —
  - (i) all of its head; and
  - (ii) all of its tail; and
  - (iii) one or more of its fins,has been removed;*

Looking for a definition of the term "low risk finfish" to see which species part (b) might apply to, leads to *"low risk finfish has the same meaning as in regulation 16(1)"* However that regulation 16(1) does not seem to apply to "low risk" fish as they were previously defined.

There is thus no explanation of the application of part (b). The classification term "low risk finfish" is obsolete.

The different definitions of a trunk mean that a fish covered by part (a) must have both head and tail removed for it to be classed as a trunk, and any such fish with just one of head or tail removed will be classed as a fillet, (piece of fish); whereas other fish covered by part (b) (when that is properly defined) can have head or tail removed or be partly or fully scaled to be classed as a trunk.

For a shark to be trunked, all of its head, all of its tail **and** one or more of its fins has to be removed. Why in a document aimed at simplifying the rules does one of its fins need to be removed? There is also no explanation of this provision in the Guide.

### **Effect of definitions of fish trunk on possession limits.**

Possession limit options include trunks.

The apparent intention, for the purposes of managing filleting at sea, to separate the definitions for trunks into

1. species with a minimum size limit which require both head **and** tail to be removed to be a trunk, otherwise they will be classed as pieces of fish / fillets where weight applies, not number, or
2. species without a minimum size limit which allow either head or tail to be removed to be a trunk

means that anglers on land away from their place of permanent residence and in transit could find that they could be in breach of the possession regulations because of these different definitions for different species and the possible classification as fillets instead of trunks equivalent to and counted as whole fish as they expect.

One of the clearly stated purposes of the review of the fishing regulations was to simplify the rules. Such unnecessary complexity in the definitions of trunks does not deliver simplicity, and the failure of the Guide to cover the differences adds to the confusion and adds to the risk of recreational anglers unintentionally and unknowingly breaching the regulations.

This is another failure of the test of what a normal person would reasonably expect.

### **Summary of the errors in the Recreational Fishing Guide:**

Most of these changes are simple changes in the order and layout of the text and are not important. Some images have also been changed. Overall the proof reading document and issue control of these publications has been very poor and almost non - existent.

If a recreational angler is given a rec fishing guide 2013 by an FMO, which version does he get. There is no visible difference as both of these are labelled "Published February 2013". Small text near the spine on the back page which identifies the real date of issue of these two versions.

However one change in particular could lead people to fish for prawns in a closed area during a closed season. Page 41 has a change which now lists the entire Peel - Harvey Estuary and all its tributaries in the closed area.

People relying on the December version could only interpret that as prawning is allowed in the Peel Harvey estuary when in fact it is not. The disclaimer on page 2 would prevent any such person from using the December version of the guide as a defence should they be charged with fishing/prawning in a closed area during a closed season.

**It would be very simple to, and in fact it should be mandatory to, list and warn of the major changes between these two versions of the guide or any future updates, and to much more clearly identify the version of the guide held by any person.**

One important change which could lead people using the original version to fish/prawn in close areas during closed seasons.

**Murray and Serpentine rivers, Yunderup Canals:**

Closed to all prawning 1 July – 30 November (inclusive).

Closed seasons and protected areas 41

Dec version

**Peel-Harvey Estuary and all the rivers and tributaries that flow into it:** Closed to all prawning 1 July – 30 November (inclusive).

Closed seasons and protected areas 41

Jan version

Another change is in the demersal listing.

	<b>Cods*</b> (Pictured top to bottom: breaksea cod, orange-spotted, Malabar cod) Family <b>Epinephelidae</b> All species <b>except Chinaman cod</b>
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Dec version

	<b>Cods*</b> Family <b>Serranidae</b> (Pictured top to bottom: Breaksea cod, orange-spotted, Malabar cod) All species <b>including harlequin fish except Chinaman cod</b>
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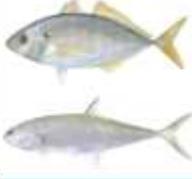
Jan version

Another change in the nearshore/estuarine category. The captions were initially correct, but in the later version were changes. And are now incorrect.

	<b>Trevally and queenfish</b> – pictured bottom (all other species not specifically mentioned in these tables* <b>except needleskin queenfish and yellowtail scad</b> ) (Pictured top: Skipjack trevally) Family Carangidae
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Dec version.

Species captions above are correct

	<b>Trevally and queenfish</b> (all other species not specifically mentioned in these tables* <b>except needleskin queenfish and yellowtail scad</b> ) Family Carangidae (Pictured top to bottom: <b>Queenfish, skipjack trevally</b> )
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Jan version

Now has wrong captions for species images. Have been changed from correct to wrong.

These are but a few of the concerns relating to this publication and the Association takes this opportunity to thank Recfishwest for the opportunity to have input. Given a longer lead time more details would have been made available but time constraints (Easter break) and availability have prevented a more complete report being presented.

As an aside to this concern relating to the Recreational Fishing Guide 2013 - *Simpler rules for better fishing* a similar situation has arisen where in the new species identification guide [http://www.fish.wa.gov.au/Documents/occasional\\_publications/fop103.pdf](http://www.fish.wa.gov.au/Documents/occasional_publications/fop103.pdf) the only place it is referenced on the Fisheries website is under publications. A link to this under recreational fishing

and also published in the booklet, would be helpful. Within this publication the grey nurse shark is not shown as protected, although other Fisheries docs show it is protected under DEC legislation.

Once again thank you for the opportunity to participate.

Kind Regards

A handwritten signature in blue ink, appearing to read "John Curtis", with a long horizontal stroke extending to the right.

John Curtis,  
President. A A A (W A Division) Inc.

CC Mr Andrew Matthews, Chairman, Recfishwest

Dr Andrew Rowland, C E O Recfishwest.