



AUSTRALIA

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Introduction

Australia is a federation of eight states and territories, united by a Constitution that grants powers to the Australian Government (also called the Commonwealth of Australia). Fisheries powers are shared between the Commonwealth and states as articulated by the **Offshore Constitutional Settlement**. The Settlement provides for Australian states and territories to manage fisheries within the Exclusive Economic Zone from the coast out to 3 nautical miles, and for the Australian Government to manage fisheries from three to 200 nautical miles. Variations to these arrangements occur through instruments known as Offshore Constitutional Settlement Arrangements.

In addition to domestic sharing arrangements, bilateral agreements establish resource-sharing between Australia and other nations: the Torres Strait Treaty between Australia and Papua New Guinea, and the Australia-Indonesia Memorandum of Understanding regarding the Operations of Indonesian Traditional Fishermen in Areas of the Australian Fishing Zone and Continental Shelf between Australia and the Republic of Indonesia.

This report is divided into three sections describing small-scale fishing aspects within:

- Commonwealth Waters (the Australian Fishing Zone, 3-200 nm)
- State waters (0-3 nm), using the example of New South Wales
- Joint agreement, using the example of the Torres Strait Protected Zone

Why SSF?

Small-scale fishing in Australia occurs in commercial, recreational, and Indigenous fishing sectors. Recreational fishing, for sport or subsistence, is hugely popular, and enjoys government support, for example, through provision of boat ramps and fish cleaning facilities. Small-scale commercial fishing is prevalent in some states, such as Victoria, New South Wales and Queensland, making up the majority of fishing licenses in these states. Small-scale commercial fishing, however, is declining due to high costs in relation to cheaper imported seafood, and a policy environment that favours larger scale, more profitable businesses. Most Indigenous fishing in Australia is small-scale, and while some Indigenous fishing has struggled for decades due to processes of dispossession, recent legislative developments are gradually strengthening Indigenous fishing rights around the country.

The [FAO](#) defines artisanal/small-scale fishing as 'traditional fisheries involving fishing households, using relatively small amount of capital and energy, relatively small fishing vessels (if any), making short fishing trips, close to shore, mainly for local consumption') In practice, however, definitions vary between countries and scholars, related to size, capacity or horsepower of boats, subsistence versus commercial, cultural traditions, type of gear, and domestic or export markets as but a few examples [1]. The terms 'small-scale' or 'artisanal' fishing are not routinely adopted in Australian fishing legislation. Considering the definition of small-scale fishing above, however, many aspects of small-scale fishing do occur within each of Australia's fishing sectors, despite its absence in legislation. Because characteristics of small-scale fishing are present in the sectors, we are confident that we can overlay such a term with the Australian context.

[1]See Chuenpagdee, R., Liguori, L., Palomares, M.L.D. & Pauly, D. 2006, 'Bottom-up, Global Estimates of Small-Scale Marine Fisheries Catches', UBC Fac. Res. Publ. 14, 1-110. doi: 10.14288/1.0074761; Smith, H. & Basurto, X. 2019, 'Defining Small-Scale Fisheries and Examining the Role of Science in Shaping Perceptions of Who and What Counts: A Systematic Review', *Frontiers in Marine Science*, vol. 6, no. 236

Case Study 1: Australian Commonwealth Waters

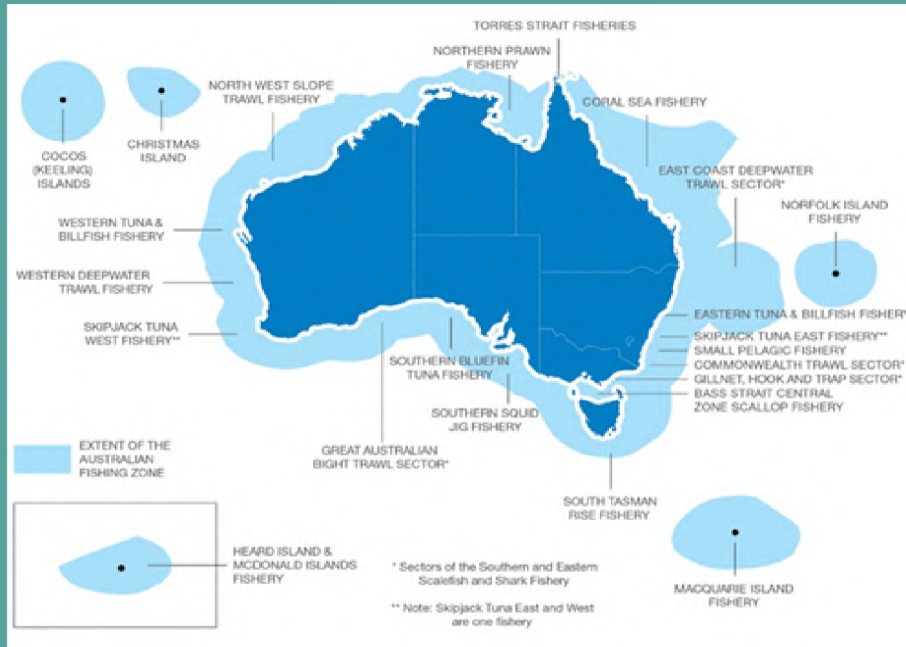


Fig. 1. Australian Fishing Zone showing the location of Commonwealth Fisheries (light blue coloured areas). ©Australian Fisheries Management Authority

The Australian Fishing Zone (AFZ), which was first declared in 1979, covers Australian Government-managed (Commonwealth) waters (shown in light blue, Fig. 1).

The AFZ is established through the Fisheries Management Act 1991 (Cth) and relates only to the use or protection of Commonwealth fisheries. The AFZ covers an area of over 8 million square kilometres.

Fisheries under the Act are managed by the Australian Fisheries Management Authority (AFMA), or under joint authority between AFMA and state governments.

What are SSF?

Small-scale fisheries (SSF) are not specifically defined as such, but fisheries that include SSF are legally defined in Primary fisheries legislation and National fisheries policy in each of three sectors: recreational, commercial, and Aboriginal/Indigenous.

In Australia, fishing is categorized as commercial, recreational and Indigenous (Aboriginal and/or Torres Strait Islander). Related terms for Indigenous fishing are community fishing, traditional fishing and cultural fishing. The interests of recreational and Indigenous fishers must be taken into account when implementing fisheries policy.

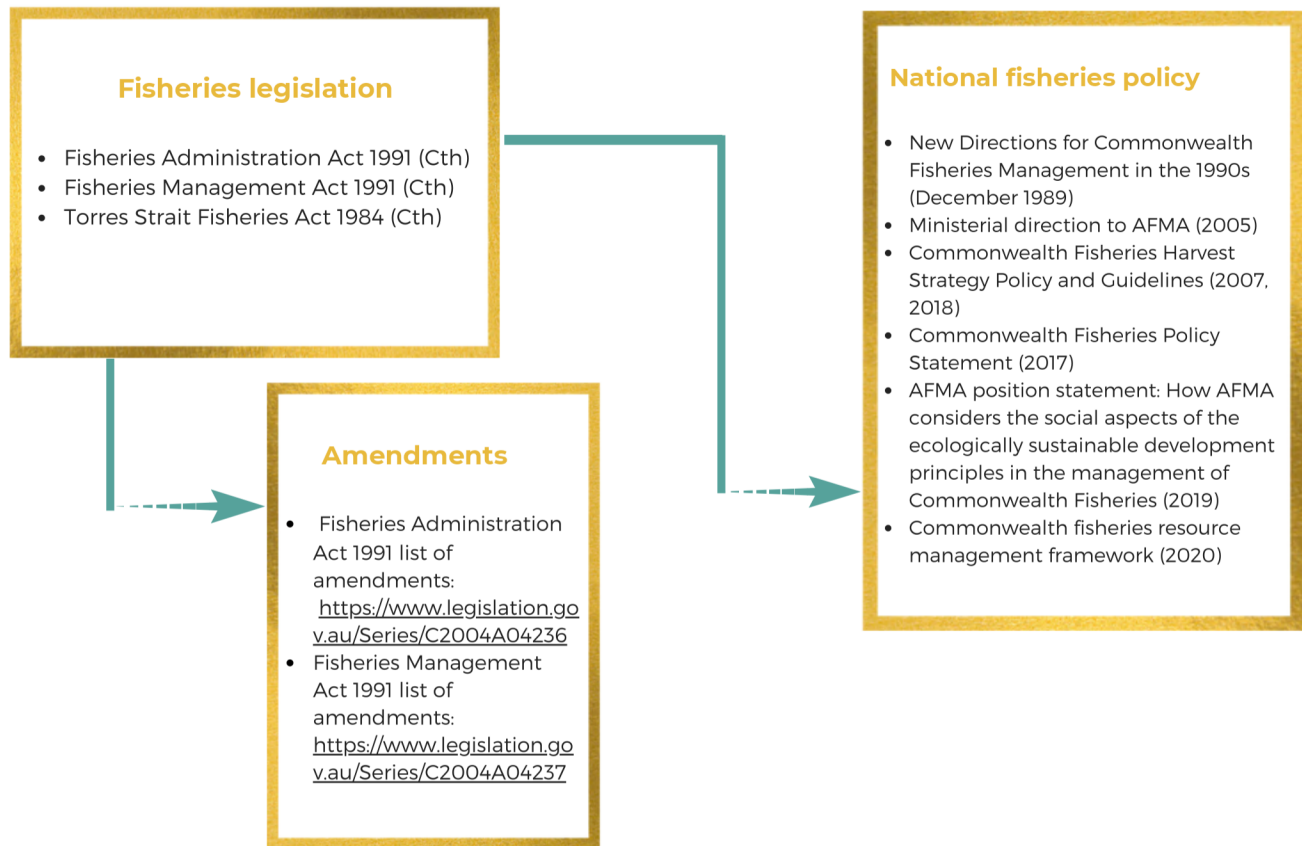
**Commercial,
recreational &
Indigenous
fishing**

Fisheries Management Act 1991 (Cth), Part 1, Section(2,e); Fisheries Administration Act 1991 (Cth), Part 2, Division 1, Section 6(2); Commonwealth Fisheries Policy Statement 2017, and Commonwealth fisheries resource sharing framework 2020.

**Traditional
fishing**

Torres Strait Treaty 1985, local zoning plans under the Great Barrier Reef Marine Park Act 1975 (Cth).

How are SSF governed?



Who governs SSF?

AFMA is the statutory authority established to manage fisheries under Commonwealth jurisdiction.

National authorities in charge of fisheries governance:



- The Australian Fisheries Management Agency (AFMA)
- The Commonwealth Minister for Agriculture, Fisheries and Forestry
- Commonwealth Department of Agriculture, Water and the Environment



Responsibilities:



- Implementing efficient and cost-effective fisheries management on behalf of the Commonwealth.
- Ensuring that the exploitation of fisheries resources and the carrying on of any related activities are conducted in a manner consistent with the principles of ecologically sustainable development.
- Maximizing net economic returns to the Australian community from the management of Australian fisheries.
- Ensuring accountability to the fishing industry and to the Australian community in AFMA's management of fisheries resources.
- Achieving government targets in relation to the recovery of AFMA's costs.



What principles govern fisheries?

Legislation: Yellow Blue: Policy



























Yes  

No  

Not clear  

Not specific to fisheries  

- Human rights & dignity
- Respect of cultures
- Non-discrimination
- Gender equality & equity
- Equity & equality
- Consultation & participation
- Rule of law
- Transparency
- Accountability
- Economic, social & environmental sustainability
- Ecosystem approach to fisheries
- Social responsibility
- Other SSF relevant principles

What legal and policy instruments are SSF specific?

Specific provisions for SSF

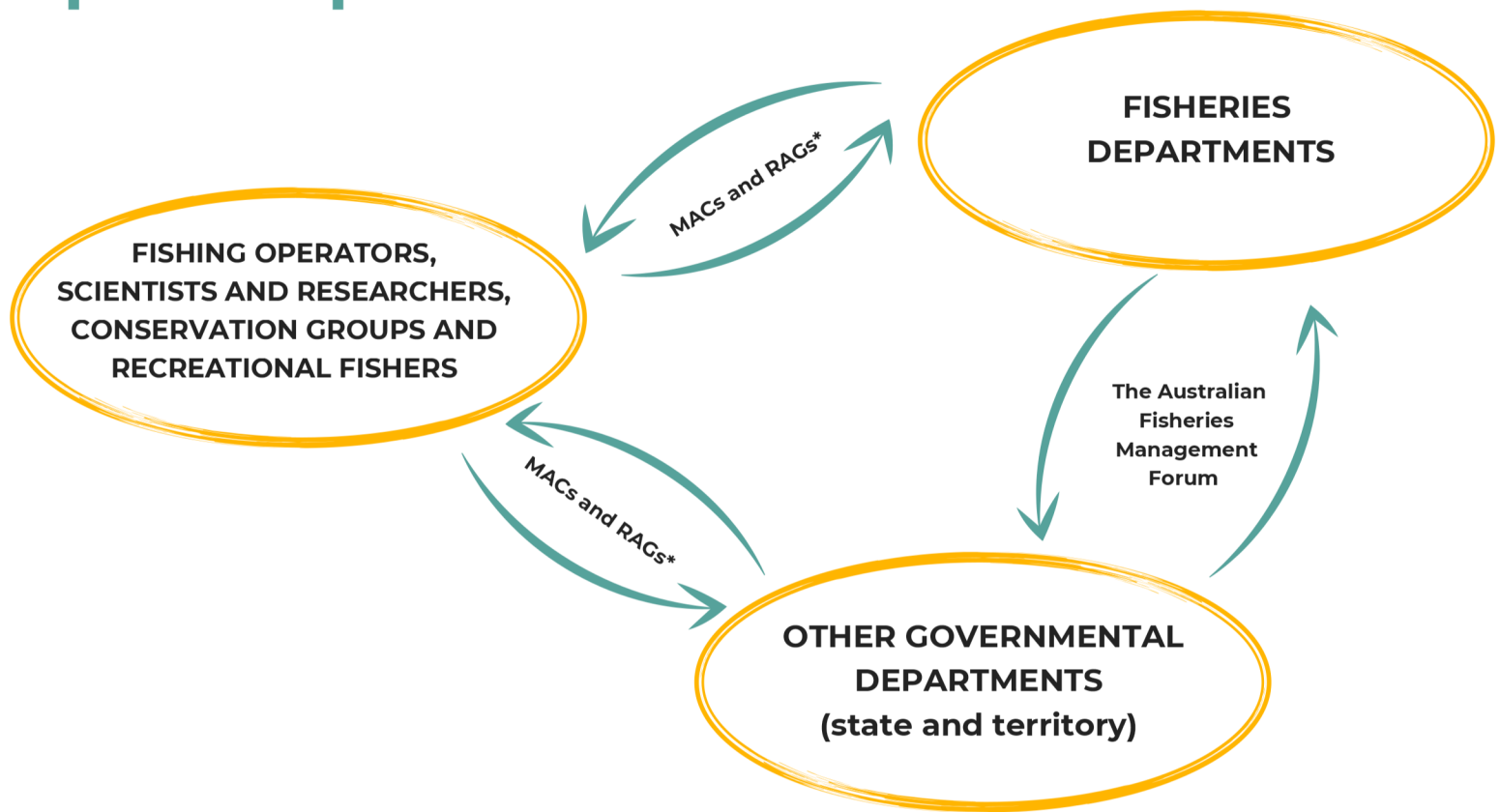
- **Tenure and related rights for SSF**
 - Native Title Act 1993 (Cth). However, this ruling has not been applied to 'sea country' within Commonwealth jurisdiction. Sea country usually refers to coastal and nearshore areas, which fall within state jurisdictions (0-3nm). States within Australia have individually addressed 'sea country' in various forms.

No specific provisions for SSF

- Exclusive fishing area or priority access to fishery resources for SSF
- Registration requirements for SSF
- MCS measures and others aimed to deter, prevent and eliminate IUU applying to SSF
- Social development, employment and decent work for SSF along the value chain
- Labour rights or social benefits for SSF along the value chain (e.g. financial support during closed season, social security, access to health care, unemployment benefit, old age pension, etc.)
- Capacity building program for SSF (e.g. provision of and access to education, training)
- Recognition of SSF as professional workers, along the value chain
- Protection of SSF from disaster risks/ climate change, and/or recognition of SSF vulnerability in disaster risk/climate change policies and strategies
- Responsible trade in fish and certification of fishery products from SSF, including sanitary and safety standards for domestic vs. export markets
- Legal protection of women in SSF, along the value chain
- Special treatment of women in SSF

What are opportunities for interaction & participation?

*Management advisory committees and resource assessment groups (known in Australia as MACs and RAGs) provide crucial advice and input to the Australian Fisheries Management Authority (AFMA) on the management of Commonwealth fisheries.



Representation of SSF in governance

Representation of SSF in decision making is not required. However, AFMA is required to consider and consult with a variety of industry members, which may include SSF. AFMA's directive is to 'ensur(e) that the interests of commercial, recreational and Indigenous fishers are taken into account.' Fisheries Administration Act 1991, Part 2, Division 1, Section 6(2) and Fisheries Management Act 1991 (Cth), Part 1, Section 3(2,e).

Fishers' participation in management, including co-management or decentralised fisheries management schemes

Fisheries are decentralised in the sense of federated legislation between Commonwealth (national) waters and coastal waters managed by individual state and territories, as discussed in the Introduction to this Section. AFMA adopts a consultation model that includes representation of diverse individuals on management advisory committees and resource assessment groups. AFMA is currently looking at enhancing the engagement with recreational and Indigenous fishers in these groups.

Holistic form of governance or reform

A goal of decentralised governance (e.g., co-management or industry-managed fisheries) is present in AFMA policy, and there are initial programs in place to advance its implementation, such as with the Northern Prawn Fishery and South East Trawl Fishing Industry Association.

Case Study 2: New South Wales

Each Australian state or territory creates and implements its own fisheries legislation for the coastal waters (0-3nm) within its jurisdiction.

Freshwater (inland) fisheries are managed under the Fisheries Act 1994 No 38 (NSW), and saltwater (coastal) fisheries in NSW are under two legal frameworks: the Marine Estate Management Act 2014 (NSW) and the Fisheries Act 1994 No 38 (NSW).

Fig. 2 Locations of recreational fishing havens within this jurisdiction shown on right. Image credit: NSW Department of Primary Industries, NSW Recreational Saltwater Fishing Guide, 2010.



What are SSF?

Small-scale fisheries (SSF) are not specifically defined as such, but fisheries that include SSF are legally defined in Primary fisheries legislation and National fisheries policy in each of three sectors: recreational, commercial, and Aboriginal/Indigenous.

Most fishing in NSW consists of household-operated, small vessels which corresponds to FAO's definition of small-scale fishing. In Australia, fishing is categorised as commercial, recreational and Indigenous (Aboriginal and/or Torres Strait Islander). Related terms for Indigenous fishing are community fishing, traditional fishing and cultural fishing.

**Freshwater
(inland)
fisheries**

Fisheries Act 1994 No 38 (NSW)

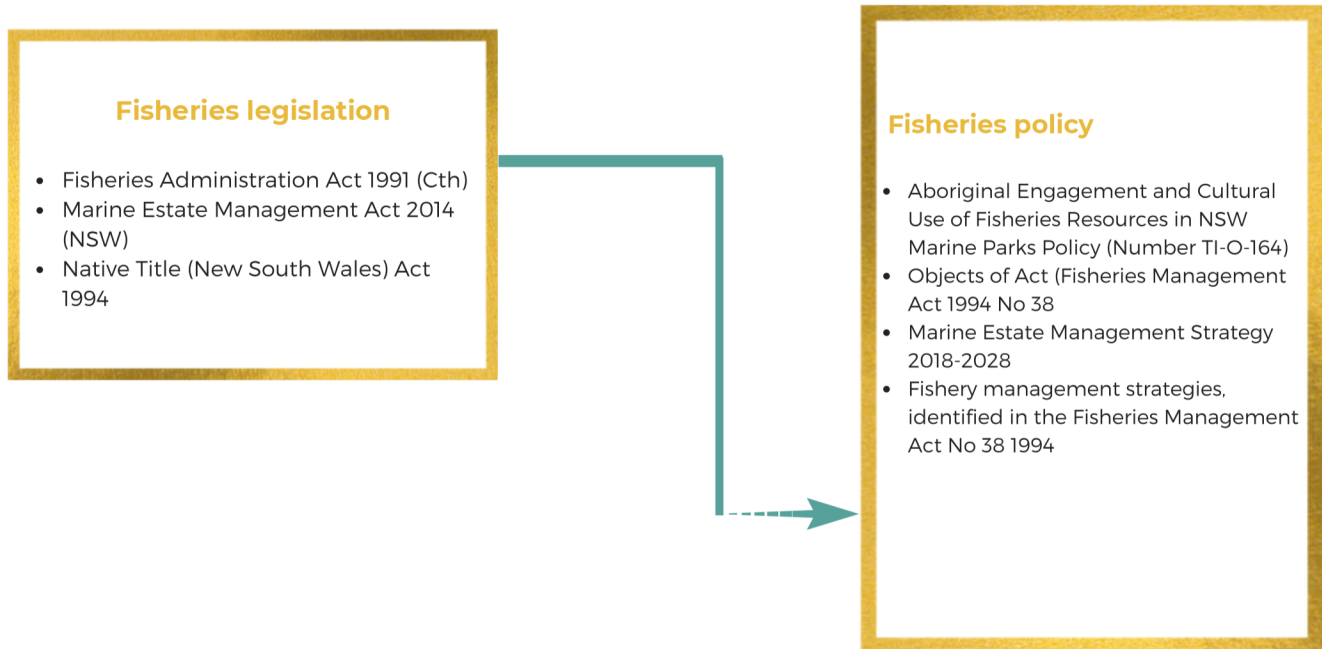
**Saltwater
(coastal)
fisheries**

Marine Estate Management Act 2014 (NSW)
Fisheries Act 1994 No 38 (NSW)

**Three Sectors
(recreational,
Commercial &
Aboriginal)**

Fisheries Management Act (NSW)
Marine Estate Management Act 2014 (NSW)
Native Title (New South Wales) Act 1994

How are SSF governed?



Who governs SSF?









NSW authorities in charge of fisheries governance:



























- Marine Estate Management Authority (MEMA).
- NSW Department of Primary Industries – Fisheries under the direction of the Minister for Primary Industries. NSW Department of Primary Industries – Fisheries (DPI-Fisheries) is an agency within MEMA.

Responsibilities of DPI – Fisheries

- Supports economic growth and sustainable access to aquatic resources through commercial, cultural and recreational fisheries management
- Undertakes research
- Supports aquaculture development
- Enables habitat protection and rehabilitation
- Administers regulation
- Enforces compliance

What principles govern fisheries?

Legislation: Yellow	Blue: Policy
Yes 	
No 	
Not clear 	
Not specific to fisheries 	

Human rights & dignity		
Respect of cultures		
Non-discrimination		
Gender equality & equity		
Equity & equality		
Consultation & participation		
Rule of law		
Transparency		
Accountability		
Economic, social & environmental sustainability		
Ecosystem approach to fisheries		
Social responsibility		
Other SSF relevant principles		

What legal and policy instruments are SSF specific?

Specific provisions for SSF

- **Tenure and related rights for SSF (Indigenous peoples)**
 - Tenure rights for Indigenous people are outlined in Native title legislation (Native Title (New South Wales) Act 1994)
 - Indigenous Land Use Agreements (ILUAs) to address Native Title needs
- **Exclusive fishing area or priority access to fishery resources for SSF (recreational fishing havens)**
 - The Fisheries Management Act 1994 provides for recreational fishing havens which allow exclusive access to recreational fishers, however this has resulted in commercial SSF fishers having reduced access to these areas.
- **Capacity building program for SSF**
 - Aboriginal Fishing Trust Fund under the Fisheries Management Act 1994

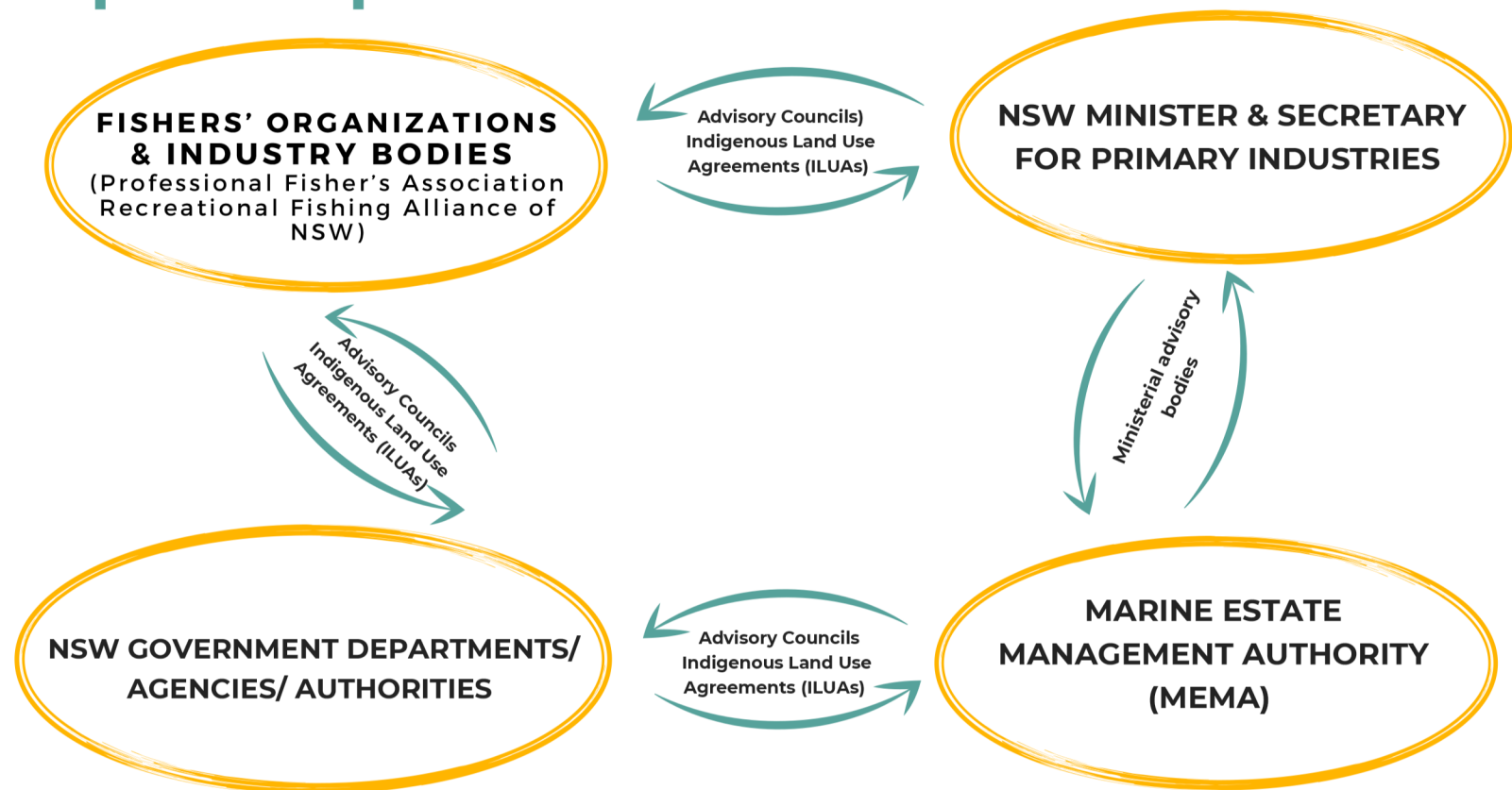
No specific provisions for SSF

- MCS measures and others aimed to deter, prevent and eliminate IUU applying to SSF
- Labour rights or social benefits for SSF along the value chain (e.g. financial support during closed season, social security, access to health care, unemployment benefit, old age pension, etc.)
- Recognition of SSF as professional workers, along the value chain
- Responsible trade in fish and certification of fishery products from SSF, including sanitary and safety standards for domestic vs. export markets
- Legal protection of women in SSF, along the value chain
- Special treatment of women in SSF
- Protection of SSF from disaster risks/ climate change, and/or recognition of SSF vulnerability in disaster risk/climate change policies and strategies
- Registration requirements for SSF
- Social development, employment and decent work for SSF along the value chain

What are opportunities for interaction & participation?

NSW has four advisory councils:

- Ministerial Fisheries Advisory Council
- Commercial Fishing NSW Advisory Council
- Aboriginal Fishing Advisory Council
- Recreational Fishing Advisory Council



Representation of SSF in governance

Final determinations are made by relevant Minister and/or Secretary who are required to consult with relevant sections of the community and industry.

Fishers' participation in management, including co-management or decentralised fisheries management schemes

Advisory committees are established in NSW for the three fishing sectors (commercial, recreational, Indigenous), which include SSF, following criteria for representation. Although it is a requirement of the legislation that relevant sections of the community are consulted via these committees, the final authority on determinations rests with the relevant Minister and/or Secretary.

Holistic form of governance or reform

MEMA is committed to holistic marine and coastal governance. In fisheries, there is a commitment to reform towards ITQs and towards using Harvest Strategies for fisheries management.

Case Study 3: The Torres Strait fisheries (Torres Strait Protected Zone)

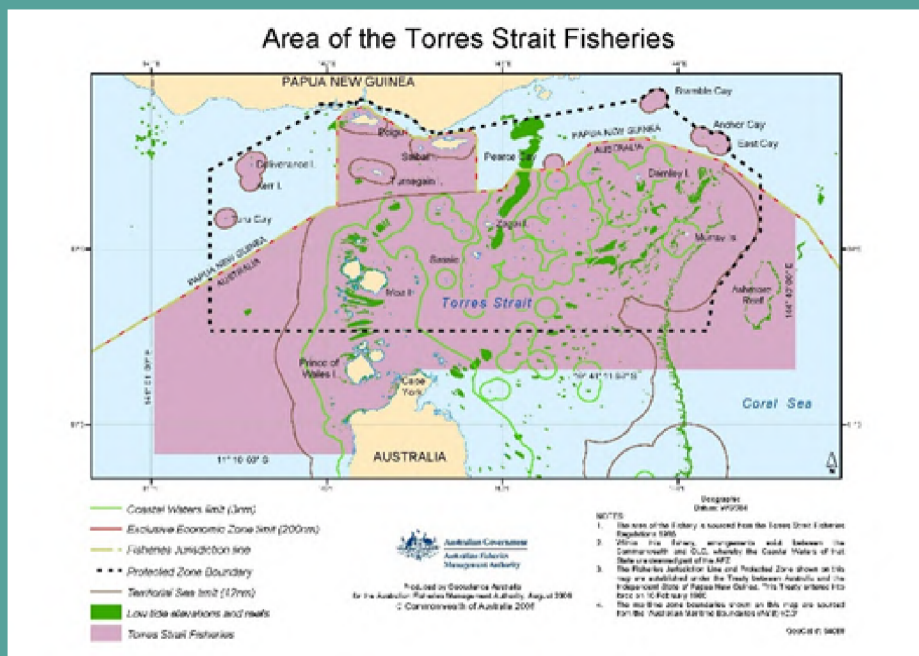


Fig. 3. Management zone: solid green lines show the state boundary (3nm). Yellow lines show international jurisdiction boundaries (Australia and Papua New Guinea) and the black hatched lines shows the area under joint management.

The 1985 [Torres Strait Treaty](#) between Australia and Papua New Guinea established the boundaries between the two nations and provides for joint management of the shared marine resources.

The treaty is concerned with sovereignty and maritime boundaries, protection of the marine environment, and optimum use of commercial resources in the region. It also establishes the Torres Strait Protected Zone (TSPZ) (Fig. 3), in which each nation exercises sovereign jurisdiction over migratory fish and sedentary species in its own waters. Australian fisheries within the Torres Strait are managed by the Torres Strait Fisheries Act 1994.

The principal purpose of establishing the TSPZ is to acknowledge and protect the way of life and livelihood of the traditional inhabitants of the area. This includes protecting traditional fishing methods and rights of free movement.*

*Fisheries Status Report 2020

What are SSF?

Small-scale fisheries (SSF) are not specifically defined as such, but fisheries that include SSF are legally defined in Primary fisheries legislation in each of three sectors: recreational, commercial, and Indigenous.

In Australia, fishing is categorised as commercial, recreational and Indigenous (Aboriginal and/or Torres Strait Islander). Related terms for Indigenous fishing are community fishing, traditional fishing and cultural fishing.

Commercial, recreational & Indigenous fishing

Torres Strait Treaty 1985
Torres Strait Fisheries Act 1984 (Cth)
Aboriginal and Torres Strait Islander Act 2005 (Cth)

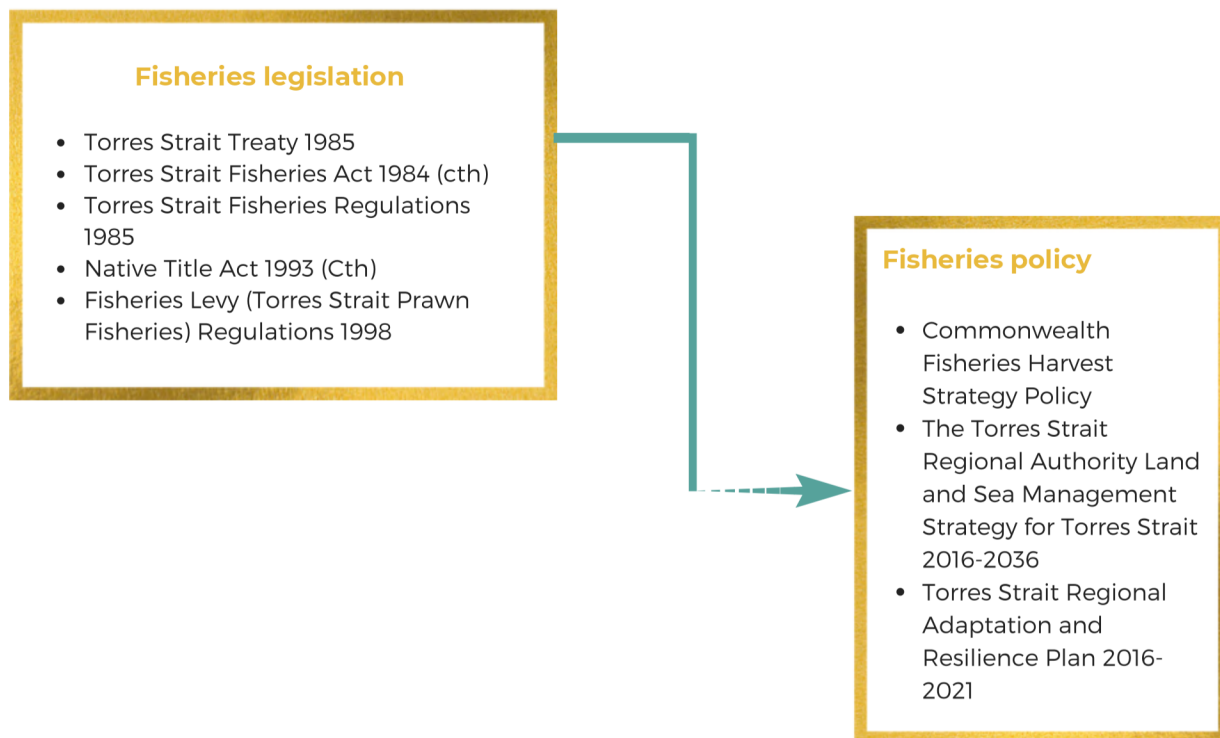
Traditional fishing

Torres Strait Treaty 1985

Community fishing

Torres Strait Fisheries Act 1984 (Cth)

How are SSF governed in the Torres Strait Protected Zone?



Who governs SSF?

Protected Zone Joint Authority

The Protected Zone Joint Authority (PZJA) is responsible for managing commercial and traditional fishing in the Australian area of the Torres Strait Protected Zone.

Several government agencies support the PZJA:

- **The Australian Fisheries Management Authority** oversees the management of Commonwealth fishery resources on behalf of the Australian community.
- **The Australian Department of Agriculture and Water Resources** develops policies and programs to address the effects of fishing on non-target species and the marine environment. Such policies include bycatch reduction, international and national plans of action for seabirds, sharks and other marine species impacted by fisheries, and ecosystem-based regional marine planning.
- **The Queensland Department of Agriculture and Primary Industries** provides day-to-day fisheries management and licensing of commercial fishers operating in the Torres Strait.
- **The Torres Strait Regional Authority** implements programs that ensure the lifestyle and well-being of Torres Strait Islander and Aboriginal people living in the region.

What principles govern fisheries?

Legislation: **Yellow** **Blue:** Policy

Yes



No



Not clear



Not specific to fisheries



Human rights & dignity



Respect of cultures



Non-discrimination



Gender equality & equity



Equity & equality



Consultation & participation



Rule of law



Transparency



Accountability



Economic, social & environmental sustainability



Ecosystem approach to fisheries



Social responsibility



Other SSF relevant principles



What legal and policy instruments are SSF specific?

Specific provisions for SSF

- **Tenure and related rights for SSF**
 - Torres Strait Treaty 1985 (customary rights); Native Title Act 1993 (Cth) (Indigenous rights to sea and land)
- **Exclusive fishing area or priority access to fishery resources for SSF**
- **Registration requirements for SSF**
- **MCS measures and others aimed to deter, prevent and eliminate IUU applying to SSF**
 - The Torres Strait Treaty 1985
- **Social development, employment and decent work for SSF along the value chain**
 - The Torres Strait Regional Authority Land and Sea Management Strategy for Torres Strait 2016-2036; TSRA Fisheries Programme
- **Protection of SSF from disaster risks/ climate change, and/or recognition of SSF vulnerability in disaster risk/climate change policies and strategies**
 - The TSRA Land and Sea Management Strategy for Torres Strait 2016-2036

No specific provisions for SSF

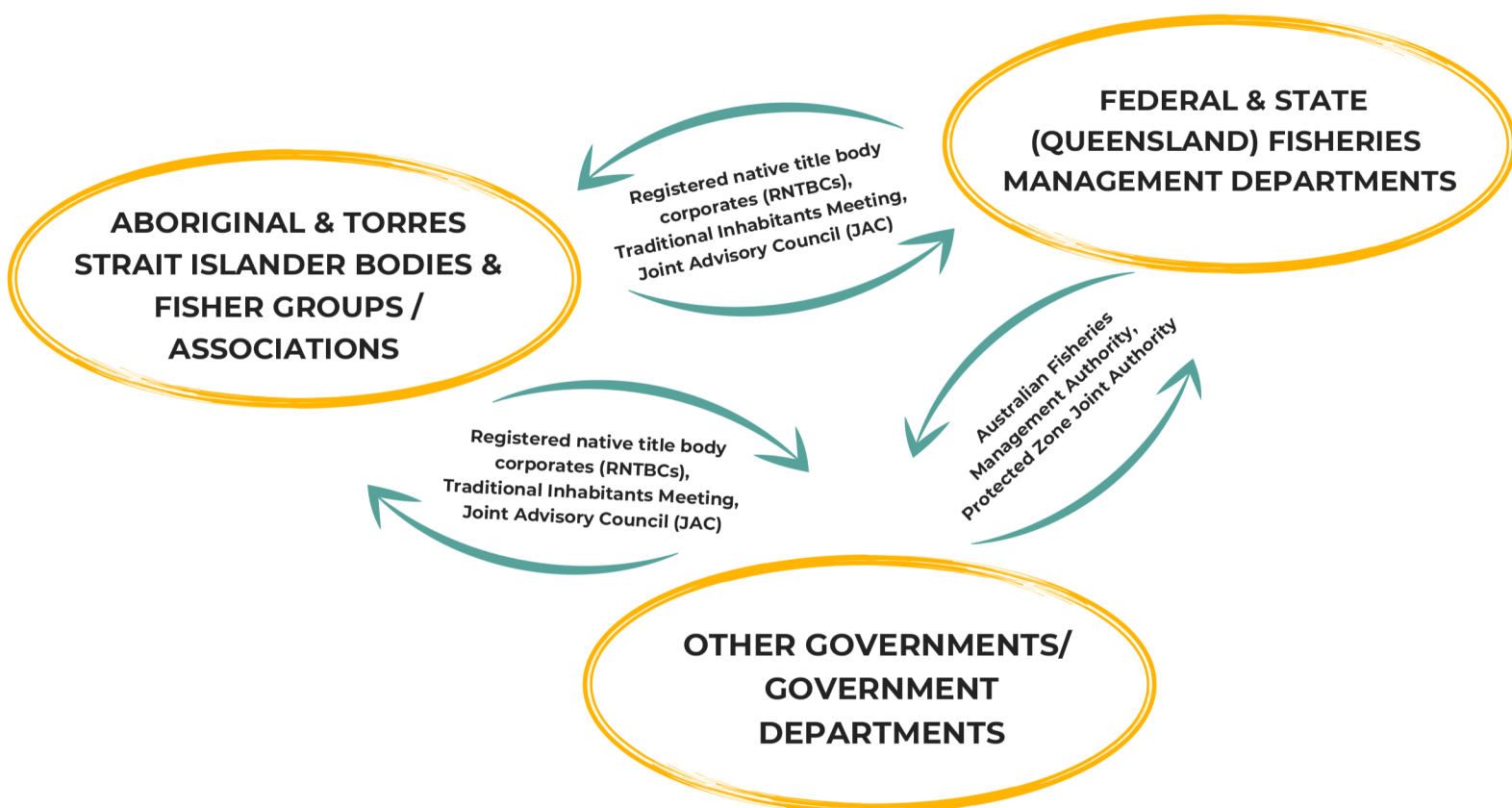
- Labour rights or social benefits for SSF along the value chain
- Capacity building program for SSF
- Responsible trade in fish and certification of fishery products from SSF, including sanitary and safety standards for domestic vs. export markets
- Legal protection of women in SSF, along the value chain
- Special treatment of women in SSF (e.g. capacity building program for women's organization)

Topic generally not considered

- Recognition of SSF as professional workers, along the value chain

What are opportunities for interaction & participation?

Several advisory bodies exist to advise and contribute to management measures. The Australian Fisheries Management Authority (AFMA) engages with Registered native title body corporates (RNTBCs), registered claimants and representative bodies through formal consultation and as invited participants on the Protected Zone Joint Authority (PZJA) consultative forums. The Joint Advisory Council (JAC) is an advisory body of Australian and Papua New Guinea officials, together with traditional inhabitant representatives.



Representation of SSF in governance

As part of the liaison arrangements under the Torres Strait Treaty, Article 18: 2(a), 3(a)+(b), and the government's obligation to keep traditional inhabitants informed of relevant developments in (and in the vicinity of) the Protected Zone, the Traditional Inhabitants Meeting (TIM) was formed. This is a forum for traditional inhabitants of both countries to discuss issues and activity in the region, and report concerns to government through their Treaty Liaison Officer.

Fishers' participation in management, including co-management or decentralised fisheries management schemes

Torres Strait Fisheries are managed through a consultative decision-making process. In order to aid consultation, the Protected Zone Joint Authority (PZJA) has established a number of committees to provide information and advice on scientific, economic and technical matters related to any fishery managed by the PZJA. The committees' members include Australian Traditional Inhabitant commercial and traditional fishers, non-Traditional Inhabitant commercial fishers, Australian and Queensland Government officials.

Holistic form of governance or reform

The Torres Straits Regional Authority is exploring the options for greater access of traditional inhabitants to fishery resources through the [Torres Strait Fisheries Community Management Framework](#). This process has gone through Phase 1 (consultation) and Phase 2 (report on the experience of māori fisheries in New Zealand).