

**ACCESS AND ALLOCATION
ARRANGEMENTS FOR THE
COMMERCIAL 'WETLINE' FISHERIES**

Proposals for discussion

A report to the Minister for Fisheries prepared by the
Commercial Access Panel

FISHERIES MANAGEMENT PAPER NO. 191

Department of Fisheries
168 St. Georges Terrace
Perth WA 6000

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Access and Allocation
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Commercial 'Wetline' Fisheries

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Wetline Review

Commercial Access Panel

Hon Kim Chance MLC
Minister for Agriculture, Forestry and Fisheries
11th Floor, Dumas House
2 Havelock Street
WEST PERTH WA 6005

Dear Minister

On behalf of the Commercial Access Panel, I have pleasure in forwarding to you the Panel's report "*Proposed Access and Allocation Arrangements for the Commercial 'Wetline' Fisheries*" for your consideration.

The Panel is aware that many operators in the commercial fishing industry are eagerly awaiting these findings. Clearly this report needs to be read in conjunction with the Management Planning Panel reports and I would like to suggest that all reports are released simultaneously for wider public comment.

Yours sincerely



Elizabeth Woods
Chairperson
Commercial Access Panel

17 December 2004

CONTENTS

SECTION 1	FOREWORD	1
SECTION 2	SUMMARY OF PROPOSALS	3
SECTION 3	REVIEW PROCESS	7
3.1	TERMS OF REFERENCE.....	7
3.2	MEMBERSHIP.....	8
3.3	CONSULTATION PROCESS	8
3.4	MAKING A SUBMISSION.....	10
SECTION 4	BACKGROUND.....	11
4.1	WHAT IS 'WETLINING'?	11
4.2	WETLINE MANAGEMENT TO DATE	12
4.3	WHY USE BENCHMARK DATES?.....	14
SECTION 5	KEY MATTERS FOR CONSIDERING ACCESS AND ALLOCATION.....	17
5.1	AUTHORITY TO WETLINE	17
5.2	EXTENT OF INVOLVEMENT IN WETLINING.....	18
5.3	RELEVANCE OF CATCH HISTORY.....	19
5.4	AWARENESS OF BENCHMARK DATE.....	20
5.5	IMPACT OF MANAGEMENT ON THE 'VALUE' OF FBLs.....	22
5.6	SUMMARY OF THE RELEVANT GENERAL PRINCIPLES OF LAW	23
5.7	SUMMARY OF RELEVANT FACTS	24
SECTION 6	OPTIONS FOR ACCESS AND ALLOCATION.....	27
6.1	TYPES OF OPTIONS.....	27
6.1.1	Options based around the premise that all operators have an equal entitlement to wetline	27
6.1.2	Options based on a level of involvement in, or dependency on, wetlining... ..	29
6.1.3	Options based in part on both the premise that all operators have an equal entitlement to wetline while also recognising each operator's level of involvement in, or dependency on, wetlining	31
SECTION 7	PROPOSED CRITERIA FOR ACCESS AND ALLOCATION.. ..	33
7.1	ACCESS CRITERIA	33
7.2	ALLOCATION CRITERIA	34
7.3	RECOMMENDED CRITERIA FOR ACCESS AND ALLOCATION.....	34
7.4	ALTERNATIVE OPTION	38
SECTION 8	WORKING EXAMPLES OF THE APPLICATION OF THE ACCESS AND ALLOCATION CRITERIA IN FUTURE 'WETLINE' FISHERIES IN WA	39
8.1	WEST COAST AND GASCOYNE REGIONS	39
8.1.1	West Coast Demersal Scalefish Fishery.....	39
8.1.2	Gascoyne Demersal Scalefish Fishery	40

8.1.3	West Coast and Gascoyne Inshore Net Fisheries	42
8.2	ANALYSIS OF ALTERNATIVE OPTION.....	42
9.2.1	Gascoyne Demersal Scalefish Fishery	44
SECTION 9	ADDITIONAL MATTERS FOR CONSIDERATION.....	45
9.1	CATCH VERIFICATION.....	45
9.2	MINIMUM UNIT HOLDING	45
9.3	LICENSING SYSTEM	45
9.4	IMPACT OF INTRODUCING ACCESS CRITERIA FOR WEST COAST AND GASCOYNE WETLINE FISHERIES ON OTHER REGIONS	46
SECTION 11	BIBLIOGRAPHY.....	49
SECTION 12	APPENDIX.....	51
12.1	SUMMARY OF ISSUES RAISED IN INITIAL SUBMISSIONS RELATING TO ACCESS AND ALLOCATION ISSUES	51
12.2	SUMMARY OF LICENCE TYPES.....	54
FISHERIES MANAGEMENT PAPERS	57

TABLE OF FIGURES

<i>Figure 1: Integrated Fisheries Management and ESD</i>	<i>1</i>
<i>Table 1: Application of access and allocation criteria to the West Coast Demersal Scalefish Fishery.....</i>	<i>39</i>
<i>Table 2: Application of access and allocation criteria to the inner-shelf zone of the Gascoyne Demersal Scalefish Fishery.</i>	<i>41</i>
<i>Table 3: Application of access and allocation criteria to the outer shelf zone of the Gascoyne Demersal Scalefish Fishery.</i>	<i>41</i>
<i>Table 4: Impact of access and allocation criteria on West Coast and Gascoyne Inshore Net Fisheries.....</i>	<i>42</i>
<i>Table 5: West Coast Demersal Scalefish Fishery</i>	<i>43</i>
<i>Table 6: Gascoyne Demersal Scalefish Fishery.....</i>	<i>44</i>

SECTION 1 FOREWORD

Western Australia's scalefish stocks, while low in productivity by world standards, provide an important resource for both commercial and recreational fisheries. The level of fishing activity by both of these sectors has increased in recent years and represents a threat to the long-term sustainability of demersal/reef species such as dhufish and pink snapper.

Clearly if scalefish stocks are to be managed sustainably in the future it is important that a more integrated approach, encompassing all user groups, is adopted. The recently announced Integrated Fisheries Management (IFM) initiative involves setting a total harvest level in each fishery that allows for an ecologically sustainable level of fishing, and the allocation of explicit catch shares for use by each of the principle user groups (Figure 1).

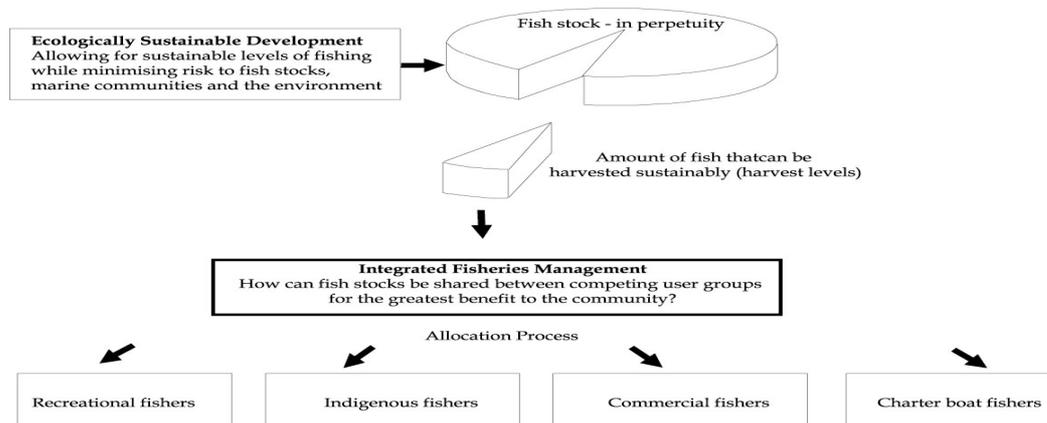


Figure 1: Integrated Fisheries Management and ESD

Therefore the new integrated approach will demand more effective management arrangements to contain the take of each user group within specified catch allocations. The introduction of new management frameworks across all sectors is an essential first step in the introduction of a new integrated management system within which allocation issues can be addressed.

This process has already commenced in the recreational sector with the introduction of a regionally based management framework for fishing tour operators (charter boat sector) and with the implementation of new recreational management arrangements for the West Coast and Gascoyne bioregions. These initiatives have included a licensing system for charter boats, a reduction in recreational bag limits for vulnerable species and the introduction of a statewide possession limit applying to recreational fishers.

A major recreational catch survey will be undertaken in 2006 to provide up to date information on the recreational catch on the West Coast. Planning processes for the

South and North Coast regions are also well advanced and it is likely new recreational plans will be introduced for these regions in 2005.

The current 'open access' arrangements for the commercial take of scalefish by line in most parts of the State (commonly known as 'wetlining') can not ensure the sustainability of these commercial fisheries nor the security/viability of those fishers operating in them.

The primary consideration must be the long-term sustainable management of scalefish stocks and the provision of quality scalefish for consumers via the commercial industry. The establishment of managed wetline fisheries may also enhance the opportunity for operators to maximise returns in meeting market demands.

The Minister for Fisheries established this review of open access (wetline) commercial fishery arrangements to provide a more effective management framework for wetline fishing and to complement the recreational initiatives. This must involve the removal of excess fishing capacity, including latent effort, from the fishery and the establishment of a dedicated commercial fishery with clear entry criteria and an appropriate limit on catch in each bioregion.

However it must be made clear that the 'wetline review' is not a sectoral resource sharing exercise. Following the implementation of new management arrangements for the 'wetline' fisheries, the appropriateness of the existing levels of use between the various user groups in the West Coast region will be examined under the new integrated fisheries initiative.

SECTION 2 SUMMARY OF PROPOSALS

Recommendation 1) West Coast Demersal Scalefish Fishery

(a) Access criteria

Access to the West Coast Demersal Scalefish Fishery (as defined in the Management Planning Panel report) should be determined on the basis of:

- Operators who have caught a minimum of 1000kg/year of demersal scalefish by a 'wetlining' method in at least three out of the four financial years during the period 1 July 1993 to 31 October 1997*
and
caught a minimum of 1000kg/year of demersal scalefish by hand line or drop line in the West Coast region (as defined in the Management Planning Panel report) in at least three out of four financial years during the period 1 July 1999 to 30 June 2003.

* *The final financial year for this period should incorporate the period 1 July 1996 to 31 October 1997*

(b) Allocation criteria

Operators who meet the access criteria in (a) should receive an allocation of entitlement based upon their average catch of demersal scalefish taken by hand line or drop line in each management zone within the fishery. The average should be determined on the basis of the three highest annual catches recorded against the FBL during the financial years from 1 July 1999 to 30 June 2003.

If the combined allocation to these operators exceeds the sustainable commercial catch for a management zone, the entitlement allocated to each licence holder should be reduced by an equal proportion to achieve the sustainable commercial catch.

(c) Supplementary access criteria

If the overall catch allocation to operators in (b) is below the sustainable commercial catch in a particular management zone and a 'surplus' catch is available, access for additional operators should be considered in accordance with the following criteria:

- Operators who have caught a minimum of 1000kg/year of demersal scalefish by hand line or drop line in the West Coast region (as defined in the Management Planning Panel report) in at least three out of the four financial years during the period 1 July 1999 to 30 June 2003.

(d) Supplementary allocation criteria

Operators who meet the access criteria in (c) should receive an allocation of entitlement for each management zone within the fishery based upon their average catch of demersal scalefish taken by hand line or drop line in that zone. The average should be determined on the basis of the three highest annual catches recorded against the FBL over the financial years from 1 July 1999 to 30 June 2003.

If the combined allocation to these operators exceeds the 'surplus' of the sustainable commercial catch, the entitlement of each eligible operator should be reduced by an equal proportion to achieve the 'surplus' of the sustainable commercial catch.

Recommendation 2) West Coast Inshore Net Fishery

(a) Access criteria

Access to the West Coast Inshore Net Fishery (as defined in the Management Planning Panel report) should be determined on the basis of:

- Operators who have caught a minimum of 1000kg/year of scalefish by 'open access' netting in the West Coast region (as defined in the Management Planning Panel report) in at least three out of the four financial years during the period 1 July 1999 to 30 June 2003.

Recommendation 3) Gascoyne Demersal Scalefish Fishery

(a) Access criteria

Access to the Gascoyne Demersal Scalefish Fishery (as defined in the Management Planning Panel report) should be determined on the basis of:

- Operators who have caught a minimum of 1000kg/year of demersal scalefish by a 'wetlining' method in at least three out of the four financial years during the period 1 July 1993 to 31 October 1997*
and
caught a minimum of 1000kg/year of demersal scalefish by 'wetlining' in the Gascoyne region (as defined in the Management Planning Panel report) in at least three out of four financial years during the period 1 July 1999 to 30 June 2003.

* *The final financial year for this period should incorporate the period 1 July 1996 to 31 October 1997*

(b) Allocation criteria

Operators who meet the access criteria in (a) should receive an allocation of entitlement based upon their average catch of demersal scalefish taken by hand line or drop line in each management zone within the fishery. The average should be determined on the basis of the three highest annual catches recorded against the FBL during the financial years from 1 July 1999 to 30 June 2003.

If the combined allocation to these operators exceeds the sustainable commercial catch for a management zone, the entitlement allocated to each licence holder should be reduced by an equal proportion to achieve the sustainable commercial catch.

(c) Supplementary access criteria

If the overall catch allocation to operators in (b) is below the sustainable commercial catch in a particular management zone and a 'surplus' catch is available, access for additional operators should be considered in accordance with the following criteria:

- Operators who have caught a minimum of 1000kg/year of demersal scalefish by hand line or drop line in the Gascoyne region in at least three out of the four financial years during the period 1 July 1999 to 30 June 2003.

(d) Supplementary allocation criteria

Operators who meet the access criteria in (c) should receive an allocation of entitlement for each management zone within the fishery based upon their average catch of demersal scalefish taken by hand line or drop line in that zone. The average should be determined on the basis of the three highest annual catches recorded against the FBL over the financial years from 1 July 1999 to 30 June 2003.

If the combined allocation to these operators exceeds the 'surplus' of the sustainable commercial catch, the entitlement of each eligible operator should be reduced by an equal proportion to achieve the remaining available commercial catch.

Recommendation 4) Gascoyne Inshore Net Fishery

(a) Access criteria

Access to the Gascoyne Inshore Net Fishery (as defined in the Management Planning Panel report) should be determined on the basis of:

- Operators who have caught a minimum of 1000kg/year of scalefish by ‘open access’ netting in the Gascoyne region in at least three out of the four financial years during the period 1 July 1999 to 30 June 2003.

Recommendation 5)

The generic access criteria recommended for the West Coast and Gascoyne fisheries be introduced for all other ‘wetline’ fisheries in WA, particularly the demersal wetline fisheries in the South Coast and Pilbara regions, to avoid the potential for any unregulated transfer of effort between fisheries and to ensure commercial fishing is maintained at sustainable levels.

Recommendation 6)

The Minister give consideration to prohibiting all ‘open access fishing’ in WA to avoid any future unregulated expansion of fishing effort. Access to any new or developing fisheries (not addressed as part of this review) should be assessed through the Developing New Fisheries process.

SECTION 3 REVIEW PROCESS

The Minister for Fisheries established two Panels to conduct the review of ‘wetline’ fishing in the West Coast and Gascoyne bioregions:

- A Commercial Access Panel (CAP) appointed to devise a fair and equitable method of determining who will have access to the fishery and their level of allocation; and
- A Management Planning Panel (MPP) appointed to develop the specific management arrangements for the fishery.

This is the first time a two-Panel system has been used in a review in WA. This approach, which was suggested by the WA Fishing Industry Council (WAFIC), was taken to separate the task of determining the management arrangements for the fishery (which requires expertise and input from commercial fishers) from access and allocation (which may benefit from a more independent analysis of fairness and equity issues).

Therefore the CAP’s primary responsibility is to develop criteria for access and allocation within the context of the management framework developed by the MPP. It is therefore important that this Report is read in conjunction with the reports prepared by the MPP that outline the proposed management arrangements the West Coast and Gascoyne regions.

3.1 Terms of Reference

The terms of reference for the CAP are:

‘To provide advice and recommendations to the Minister on matters related to the grant of access to each of the regional ‘wetline’ managed commercial fisheries in Western Australia and in particular by:

- Recommending a method for determining who should be eligible to access each of the fisheries; and
- Recommending a method to determine the degree and nature of access which should be granted to eligible persons.

The Minister also noted that in providing these recommendations the panel should:

- Examine the West Coast and Gascoyne Regions first, followed by the other Regions.
- Liaise with the Management Planning Panel on relevant issues.
- Make such enquiries on ‘wetline’ fishing as the committee thinks necessary to properly carry out its function.
- Take into account the spatial distribution of catch and effort.
- Take into account whether there should be any weighting given to key species.

- Take into account the various statements by the Minister regarding investment or activity in the wetline fishery after 3 November 1997 and any future allocation of access to the fishery.
- Take into account other issues related to access criteria which the panel consider relevant.

3.2 Membership

The Minister for Fisheries appointed a three-person independent panel to provide advice and recommendations on access and allocation issues. Members of the CAP are:

Ms Elizabeth Woods	Chair
Mr John Cole	Member
Mr John Jenkin	Member

3.3 Consultation process

On 11 July 2002 the Minister for Fisheries released a media statement formally announcing plans to review the management of the 'wetline' sector of WA's commercial fishing industry. The Department of Fisheries developed the review process in consultation with WAFIC.

The Minister released a further media statement on 11 April 2003 announcing the creation and membership of the two panels to undertake the review of management arrangements for WA's commercial wetline fisheries. Further detail around the review of commercial 'wetlining', commencing in the West Coast and Gascoyne regions was included in an article in the Department's *Western Fisheries* magazine, summer edition 2003, including information about the composition and role of each of the two panels.

The Department wrote to all FBL holders on 23 June 2003 seeking a validation of wetline catch records for the period 1991/92 to 2001/02, and also advising of the establishment of two panels to undertake a review of WA's commercial wetline fishery. A copy of the Minister's media statement of 11 April 2003 was included with the letter.

In September 2003, advertisements explaining the review and extending an invitation for any interested persons to make initial written submissions on matters the panels should consider as part of the review were placed in *The West Australian* (on the 12th and 13th and 25th), the *Geraldton Guardian*, *Northern Guardian* and the *Augusta-Margaret River Mail* (on the 17th), and the *Bunbury/South West Times* (on the 18th).

In mid-September 2003, information about the review was placed on the Department of Fisheries' website, including provision to make a submission on-line. This information was also duplicated on the *Citizenscape and Consultation Catalogue*

sections of the Department of Premier and Cabinet's website, with a direct link to the Department of Fisheries website.

The Department of Fisheries gave a presentation to WA boat brokers on 19 September 2003 to make them aware of the scope and nature of the review.

On 26 September 2003 a letter was sent to all peak industry bodies, including professional fishermen's associations, explaining the review and the call for submissions on matters they believe the panel should consider as part of the review. This letter was subsequently sent to all FBL holders on 8 October 2003.

Posters about the review were displayed in the Department's regional and district offices, as well as at major wetfish processing establishments. The same posters were displayed at the three meetings of the annual rock lobster coastal tour (in Fremantle, Dongara and Jurien) in the week beginning 13 October.

Articles on the review appeared in the September/October 2003 and the October/December 2003 editions of *ProWest* that reiterated the call for submissions and outlined the proposed CAP meeting dates in the regions.

Members of the CAP (and the MPP) received copies of all initial submissions that were received.

The CAP held a series of meetings to provide an opportunity for interested associations and individuals to provide their views on relevant issues such as access and allocation. Following an initial meeting with WAFIC, meetings were held in a number of regional locations with associations and individual fishers:

Jurien Bay	3 November 2003
Dongara	2 February 2004
Geraldton	2,3 February 2004
Kalbarri	3 February 2004
Carnarvon	4 February 2004
Bunbury	4 May 2004
Busselton	4 May 2004
Fremantle	5 May 2004

In addition to hearing the views presented at these meetings, the CAP extended an invitation for people to provide further written submissions should they subsequently identify any additional matters that they felt required consideration.

The CAP subsequently held a series of meetings to carefully consider all of the matters that were raised during these meetings or in written submissions. The CAP examined a wide range of possible options in the development of its position, which is recommended in this paper.

The release of this report for public comment by the Minister will provide a further opportunity for people to raise matters that they believe require consideration. Following consideration of matters raised in the public comment period, the Minister will make his final decisions on the management of the 'wetline' fisheries. Legislative changes will then be required to implement the new plans.

3.4 Making a Submission

Members of the fishing industry and the public are invited to make written submissions on this discussion paper.

Respondents are encouraged to reference the particular proposal or section of the report they wish to comment on. If you disagree with a particular proposal or section, try to suggest alternative ways to address or resolve the issues identified in the Report. Clear reasons should be included in your response so that your views can be properly considered.

Submissions should be made prior to 15 April 2005 and sent to:

**‘Wetline’ Review Panels
Locked Bag 39
Cloisters Square Post Office
Perth WA 6850.
Fax: 08 9482 7224**

Submissions can also be sent electronically via the Department of Fisheries website:
www.fish.wa.gov.au.

SECTION 4 BACKGROUND

The context of this review can be best understood in the light of the history and evolution of commercial fishery management in WA.

Before September 1983, there was no constraint on the issue of Fishing Boat Licences (FBLs) in Western Australia. Any person submitting a competent application was granted a new licence. It gave the holder an authorisation to use a boat for commercial fishing.

Provided that person also held a commercial fishing licence (CFL), the licensed boat could be used in fishing operations to take any fish¹ for commercial sale, unless there was an existing constraint under fisheries legislation preventing the licence holder from undertaking that activity (e.g. operating within a managed fishery, operating in a specific area or taking a specific fish species).

On 5 September 1983 the then Minister for Fisheries announced an immediate freeze on all new applications to enter the fishing industry via a Fishing Boat Licence, noting that ‘the government and industry are increasingly being faced with the consequences of excess fishing capacity in areas such as ... the inshore fisheries on shark, dhufish and other reef fish species ...’.

He also stated that ‘the estuarine fisheries and the close inshore net fisheries on species such as herring, salmon, mullet, whiting, etc. appear to be fished to optimum utilisation and in some instances are in danger of excessive exploitation’ (Fisheries and Wildlife 1983).

Ultimately this led to the *Ministerial Policy Guidelines for Entry into the Western Australian Fishing Fleet* being adopted in 1984. The main thrust of the guidelines was a permanent cap on the total number of registered fishing boats in the WA fishing industry. Thus from 1984 onwards, people wishing to enter into the commercial fishing industry could only do so by purchasing an existing FBL.

At that time there were only about five managed fisheries and fishers who did not have access to these managed fisheries had a range of other fishing opportunities. Since this time the majority of WA’s commercial fisheries have progressively been brought under management and there are now 38 managed fisheries. This has reduced the range of activities available to the holder of an unrestricted FBL, to the extent that ‘wetlining’ is the last major commercial activity available without an additional authorisation of some form.

4.1 What is ‘Wetlining’?

In terms of fisheries legislation, there is currently no such activity as ‘wetline’ fishing. The term ‘wetlining’ is generally applied to fishing activity undertaken under the

¹ “Fish” mean an aquatic organism of any species (excluding aquatic mammals, aquatic reptiles, aquatic birds, and amphibians). It therefore includes all species taken commercially by fishers including crustaceans, molluscs, squid and octopus as well as scalefish.

authority of a CFL used in conjunction with an FBL. Permitted fishing activities are any activity (which may include fishing for certain species, using certain gear, or operating in certain areas), which is not otherwise prohibited by other legislation (such as a management plan, regulations, or Section 43 Order). Typically, wetlining involves the catching of scalefish using handline or dropline, but may also involve the use of nets in inshore areas to target species such as mullet or whiting.

Wetline activity, in terms of the species targeted and gear that can be used, can therefore vary between regions depending upon the existing managed fisheries that may be present in that region. For example in the Gascoyne, historically a wetliner has been able to target reef and demersal scalefish species by handline or drop line but can not take pink snapper in most areas of the Gascoyne due to the Shark Bay Snapper Managed Fishery (SBSMF) that restricts the take of snapper to persons who hold a managed fishery licence (MFL) for that fishery.

As there are no readily identifiable regulations (rules), it can be difficult for commercial fishers to identify what activities can be undertaken under the auspices of an unrestricted FBL. The complexity of fisheries legislation means it is a complex and time consuming task for Department of Fisheries staff to respond to enquiries regarding ‘what fishing activities can I undertake with my FBL’.

4.2 Wetline management to date

The introduction of management for the wetline fishery is not a new concept. A discussion paper released by the Department of Fisheries in 1985 ‘Arrangements for entry to all fisheries off and along the West Coast’ proposed the establishment of a managed handline fishery and a managed dropline fishery on the West Coast and the establishment of a managed line and trap fishery in the Gascoyne. This paper also proposed the adoption of a benchmark date of April 1985 as an exclusion date for determining participation in these fisheries.

Commercial industry leaders and Fisheries Department representatives met in Mandurah in 1986 (the “Mandurah Working Group”) where consensus on future management for the commercial fishing fleet was reached. An urgent push from both industry and managers to reap benefits (both in terms of sustainability and with industry seeking resource security with goodwill values tied to licences, generating improved investment capacity) of controlled access, led to a rapid implementation of management arrangements for the State’s smaller fisheries.

The Mandurah Working Group sought and gained ministerial approval for an increase in the number of fisheries brought under management and the introduction of a government/industry funded Fisheries Adjustment Scheme to reduce the number of FBLs.

Between 1987 and July 1999, 187 commercial licences or fishing units were bought out through the general Fisheries Adjustment Scheme. Of these 69 were FBL holders with no other managed fishery access (i.e. ‘wetline’ operators).

On 3 November 1997 the Department of Fisheries announced that a study would be undertaken into the activities associated with the unrestricted WA FBL, commonly known as 'wetline' or 'open access' fishing, and its associated wetline fishery. At the same time it was announced that 3 November 1997 would be a benchmark date² for all open access fisheries where benchmark dates had not previously been announced.

This benchmark date was announced following concerns that large numbers of operators who did not normally participate in the wetline fishery were gearing up to gain history following the commencement of negotiations between Fisheries and WAFIC over future management.

A media statement was issued and letters sent to all existing FBL holders. The media statement noted that 'no wetline fishing history after this date would be considered in the development of any new management arrangements for the fishery.' A letter was also sent to all FBL holders which noted that '.... fishing history after 3 November may not be taken into account'.

In March 2000, the Department of Fisheries released a series of discussion papers proposing a shift towards a more integrated approach to fisheries management. Two of these papers Fisheries Management Papers No. 134 *Management Directions for WA's Coastal Commercial Finfish Resources* and No. 135 *Protecting and sharing Western Australia's coastal fish resources – the path to integrated management* proposed:

- The State's coastal fish resources should be managed on the basis of four major marine regions – the Kimberley/Pilbara, Gascoyne, West Coast, and South Coast.
- That scalefish stocks no longer automatically be available for take by all commercial fishing boat license holders.
- A dedicated small-scale commercial fishery for scalefish should be established, with clear entry criteria, and an appropriate limit on the number of operators in each bioregion.
- The basis for managing the scalefish fishery should be the allocation of Total Allowable Effort for commercial fishers, complemented by appropriate controls on recreational catches³.

In July 2002, the current Minister for Fisheries announced that a review of wetline fishing would be undertaken and this led to the appointment of the MPP and CAP in 2003 to undertake the current review.

² Benchmark dates are components of policy statements that take effect in law when they are incorporated into and implemented through a management plan, or interim management plan. The announcement of a benchmark date is intended to allow industry to carry on its activities, while making business decisions in the full knowledge that changes to management arrangements are in prospect.

³ Regional management for recreational fishing was introduced in the West Coast and Gascoyne bioregions on 1 October 2003, which included revised bag limits and a 20kg possession limit.

4.3 Why use benchmark dates?

The management of fisheries through setting a limit on the number of licences issued is used extensively in Australia as a fundamental form of fisheries management. Although commonly supported by a range of other controls, such as area closures, size limits, and gear restrictions, it is one of the most fundamental methods used to manage fisheries.

In order to limit the number of licences, there has to be some way of deciding who gets into a fishery (is issued with one of the limited number of licences) and who does not gain entry. In the past what are termed 'pioneer rights' of licence holders have been used as the basis for continued access to a fishery when a fishery has been brought under management.

In Western Australia, and with most other national jurisdictions, access to limited entry fisheries has traditionally been granted on the basis of catch history in a particular fishery. In WA, catch history is recorded against the FBL which has led to these 'pioneer rights' traditionally being associated with the FBL under which the history has been accumulated. Because FBLs are transferable the 'pioneer rights' related to that history have always been taken to rest with the current holder of the relevant FBL.

The process for developing management generally involves the following:

1. A decision is made to introduce a higher level of management for a fishery – triggered by a call from managers, industry or scientists.
2. Consultation occurs with the fishery's key stakeholders in the fishery to decide whether further management is necessary and if so, the most appropriate form of management.
3. If the Minister decides that management should proceed for a particular fishery, the Minister makes a public statement to advise of his/her decision. This statement usually includes a benchmark date, after which fishing history may not be taken into consideration. Essentially this is a warning not to invest in a fishery that is going to be managed, as there would be no guarantee of access to new fishers in this fishery.
4. The Department then drafts an issues paper, providing background information on the fishery, setting out the problem as seen by various stakeholders, and providing options for management of the fishery. This paper is then released for wider public consultation.
5. After consultation, a draft management plan is prepared and once approved by the Minister, it is required by law to be available for public consultation. Once public comments have been considered and any changes approved by the Minister, the plan is gazetted and becomes law.

This process generally takes a minimum of 12 months and, as has been the case with the 'wetline' fisheries, can take a number of years. Such a prolonged time period can have ramifications for the sustainable management of the fishery and for equitable

resource sharing. It also creates difficulties for fishers in deciding whether to invest in the fishery. The long delay in the case of the wetline fishery has undoubtedly made this review process more complex.

The fishing industry is aware that fishing history has always been a critical component in determining who has access to a fishery. As soon as there is the slightest hint that management may be introduced into a fishery, a common response is for any fisher who may have an interest in gaining access to this fishery, to start fishing in it so as to accumulate fishing history. This can have drastic affects:

- The resources are fished at a higher rate than would normally have occurred at that time. This may threaten the sustainability of the resources.
- Fishermen whose livelihoods are dependent on those resources have their livelihood threatened by overfishing of the resources they would target. In addition, the supply of extra fish to the markets may result in lower returns for fishers.
- There are now more fishermen with history and the longer the process drags on, the higher their expectation of access.

The long delay between the announcement of the benchmark date and the establishment of this review has clearly exacerbated such matters with respect to the wetline fishery.

SECTION 5 KEY MATTERS FOR CONSIDERING ACCESS AND ALLOCATION

5.1 Authority to wetline

Commercial fishermen operating from licensed fishing boats have historically been able to take scalefish by ‘wetlining’ methods (except in the Kimberley where the take of demersal scalefish has been under formal management since 1998). In general terms, fishing for scalefish by handline or dropline (‘wetlining’) does not fall under a ‘managed’ fishery and no separate authority (permission) is required. Wetlining remains in essence an aspect of the ‘commons’ that is not yet restricted (other than to restrict catching fish for sale to authorised commercial fishermen).

An FBL is however sometimes colloquially referred to by commercial fishers as an ‘open west coast licence’ or ‘wetline licence’ which has promoted a perception that wetline fishing is a separately managed (and licensed) activity. It is likely boat brokers initially coined these terms following the introduction of ‘limited entry’ for commercial fisheries, when licences became a marketable commodity. Such terms are now widely used and some fishers believe that an FBL carries some form of endorsement, or confers some form of right, to take scalefish (when in fact it simply means a lack of a prohibition).

As noted in section 5.1, an FBL is a licence granted under the *Fish Resource Management Regulations 1995* that authorises a person to use a boat for commercial fishing. It is the Commercial Fishing Licence (CFL) that authorises a person to engage in commercial fishing (that is, to take fish for sale). However if a boat is used in conjunction with the fishing activity an FBL is also required. For example, a commercial fisher who uses a hand-hauled net from shore does not require an FBL. If however he uses a dinghy as part of that operation, an FBL is required (that is, the dinghy must be licensed).

The Department of Fisheries records commercial catches against the FBL (via a licensed fishing boat number). The CAP found this somewhat of a peculiarity given it is the CFL that permits fish to be taken. The CAP noted however that all persons engaged in fishing are required to hold a CFL (e.g. skipper or deckhand) and it is likely that this precludes catch from being meaningfully recorded against the CFL. Therefore the practice of recording catch against the FBL is likely to be the more practical option.

In practice, the majority of commercial fishing operations require the use of a boat and consequently the holding of an FBL. Therefore, even in the event that a commercial fisherman did not gain access to the future managed wetline fishery, fisheries legislation still requires an FBL to be held in order to use a boat in his other managed fishing operations. However, in itself, the FBL will not permit wetlining to be undertaken.

This is an important point to note, as a number of fishers have indicated they believe they may ‘lose’ their FBL if they do not gain access to a future managed ‘wetline’ fishery. This is not the case and FBL holders who may not initially gain access to the

managed 'wetline' fishery will retain the ability to lease/buy 'wetline' access off other fishers in the future so that catching scalefish becomes part of their fishing 'package'.

A number of submissions noted a belief of a 'right' to wetline (in the form of an FBL) and this could not be taken away from fishers. A number of these submissions also noted that the findings in Fischer and Australian Fisheries Management Authority [(2002) AATA 857] was of particular relevance to this review. The CAP noted the particular circumstances of the Fischer case were different to those under examination in this review.

One key difference was that the Commonwealth had already issued explicit permits to operate in the shark fishery. That is, a select group of commercial fishers had been issued with a permit to take shark and proposed management changes were to affect those fishers who had not been using this permit. The CAP considered this to be an important distinction, as the ability to wetline is not explicitly conferred by any licence or authorisation.

Following the Mandurah Working Group in 1986, industry contributed funding for a buyback scheme to reduce the number of boats. A number of submissions claimed this was to guarantee a continuing 'right' to catch scalefish. The CAP was unable to substantiate these claims. However, the CAP did note that even if this were the intent of the buyback at the time, scalefish stocks cannot remain sustainable without management and there is still an excess amount of effort, both real and latent, that must be reduced.

The CAP does not believe there are any legitimate grounds to expect that the existing 'open access' arrangements can continue and considers that the need for a higher level of wetline management is widely recognised and supported by most commercial fishers.

5.2 Extent of involvement in wetlining

Clearly various FBL holders have chosen to exercise the option to wetline to varying degrees:

- Some FBL holders are fully dependent on this fishery (they do not have access to any other managed fishery).
- For others it may be an important component of their overall fishing operations.
- The majority of FBL holders have historically only utilised minimal access (i.e. for personal use or occasional limited sale) or not accessed it at all.

The CAP also noted that the circumstances of operators with regard to involvement in wetlining may have changed over the past decade. A number of FBLs would have changed ownership and the fishing patterns of some operators may have changed over this period. For example, FBLs without pre-1997 history could now rely on wetlining for all/part of their commercial activity. Alternatively, some FBLs that were used for wetlining prior to the 1997 benchmark date may not have 'wetlined' since that time.

The various submissions and views put forward at meetings encompassed fishers with differing circumstances within the commercial industry. While almost all fishers

agreed that management of wetline fishing was required for sustainability reasons, the preferred approach to management varied and commonly reflected one that best suited their individual circumstances. In the extreme, some with a full dependence on wetlining suggested that all other fishers should be excluded from the fishery while others with little or no previous involvement suggested they had an equal right and should be able to retain this access.

The CAP also heard from fishers who were leasing licences. While some of those fishers had caught and sold fish over a number of years, they had no 'catch history' recorded against their activity (as this is recorded against the FBL, and hence the licence holder accrues the history).

However the alternate view put forward was that it is the FBL holder who made the investment and commitment to the fishery and it was suggested the persons actually catching the fish are 'employees' or 'sub contractors'. Further, as all skippers and deckhands catch fish and are legally required to have CFLs, this would potentially create a substantial number of small bits of history in the fishery of which there is no documented record.

5.3 Relevance of catch history

There was judicial comment in *Adams v Executive Director* [(2000) WASC 34] that 'fishing history' is not a proprietary right so 'what is the relevance of the fact'? The CAP considers that one point of relevance may be that fishing history can be used to indicate that a licence holder has developed an economic dependency on a particular type of fishing.

That is, a particular type of fishing represents all or a significant proportion of an operator's livelihood and changes to existing management arrangements may therefore have economic and social consequences for them. This level of dependence could be demonstrated by their long-term reliance on that type of fishing, and catch history may be used as an indicator for this. Other measures of the operator's economic position may include the value of licences, vessel, gear and any associated onshore facilities relating to wetline fishing.

The difficulty with considering these measures is that wetlining is often part of a fishing package, and items such as an FBL or boat for example, are required to operate commercially, irrespective of whether the operator has an interest in wetlining. Therefore the CAP considers that catch history (in the form of scalefish catches taken by wetlining) provides the most reliable measure of an operator's dependency on wetline fishing and their current economic circumstances.

The CAP considers the level of dependence upon a fishery is an important consideration, and that catch history can provide a measure of the effects of management options on commercial operators. This may be to the degree that if an operator depends significantly upon wetlining, the introduction of some management options may put an operator 'out of business'. However 'shedding' of effort is commonly an unfortunate, but necessary, outcome of the introduction of management.

In terms of using catch history, there is also judicial comment that if there is too much fishing and if everyone has to be treated equally, then why not make those who are fishing most reduce their fishing effort?

The CAP noted that a key purpose of commercial industry is to make fresh seafood available for sale to consumers, either directly or through retailers, restaurants etc. In this regard the MPP report listed one of the objectives of management of the wetline fishery as *'The management arrangements should be compatible with encouraging the supply of a high quality scalefish product to markets and the maximisation of returns through processes such as value adding'*.

Reducing the level of fishing to the lowest denominator as suggested by some Courts fails to recognise the need to optimise economic efficiency in the fishing industry and would likely impact on both the supply and price of scalefish. It also fails to recognise that different operators have varying levels of dependence on 'wetlining'. The sole activity of some operators is wetlining and they may have made significant investments to purchase and operate large vessels. Other fulltime wetliners may have smaller vessels and do not require catches as large to maintain a viable business.

The viability of communities and possible social impacts of management was also a key consideration. The CAP was conscious of attempting to minimise the potential for management that results in a redistribution of wealth among operators.

The CAP also considers there is a widespread acceptance among industry that the approach of recognising catch history has been used over an extended period of time in WA and is a logical and proper approach. This view was reinforced in submissions and at meetings, and is also reflected in the market place, with licences commonly being transferred on the basis of catch history.

Therefore, the CAP sees considerable merit in applying a consistent approach, unless an alternative approach was identified that could better meet the aims of management.

5.4 Awareness of benchmark date

In 1997 there was a clear message that fishing history after 3 November 1997 may not be taken into account when determining future management arrangements. This included the Department issuing a media statement and sending a letter to all FBL holders (and in fact the media statement indicated history after this date would **not** be taken into account).

The Department of Fisheries has advised the CAP that advice on the benchmark date is provided to any person who contacts the Department regarding wetline fishing or buying an FBL. While the CAP noted that not all buyers would necessarily have chosen to contact the Department, they considered it would be reasonable to expect that persons intending to invest large amounts of money in the fishing industry would make enquiries to all relevant Government agencies that may have knowledge about issues that could affect the venture.

The WA Fishing Industry Council (WAFIC) provided similar advice to its members in its industry magazine (*Prowest*, Jan/Feb 2002 issue), stating 'inevitably the criteria for access will be based on historical participation in the fishery prior to the benchmark date of November 3, 1997'.

A Ministerial media statement in July 2002 announced that a formal review of wetlining would be undertaken. Since this time, the Department has provided written advice to all persons seeking to purchase (transfer) an FBL that the wetline review is underway and reiterating the previous statements around the 1997 benchmark date.

Matters raised in submissions during and discussions with the CAP reinforce the view that there is a widespread awareness and understanding of the relevance of the 1997 benchmark date. The CAP considers that the role of catch history in management is widely recognised and that the practice of fishing history being transferred with an FBL is also widely understood and accepted by fishers.

Some fishers advised the CAP that the benchmark announcement affected their decision on which FBL to purchase. For example, one fisher advised that when seeking to buy a licence some five to six years ago, there were a number of licences on the market that did not have pre-1997 history, but when one became available 'with history' he bought it immediately (and he understood there was a 'queue' of other buyers in case the sale fell through). A number of other fishers indicated they chose to lease a licence rather than purchase one due to the uncertainty over future management.

The CAP heard from fishers that there had been a differential in the market price for FBLs immediately following the announcement of the benchmark date, whereby licences for sale with pre 1997 benchmark history had a premium of some \$10,000-\$20,000. Licences for lease also attracted a premium value.

Brokers have advised that even now fishers are still looking for licences with catch history and the CAP considers that the benchmark date and catch history are affecting people's business decisions. FBLs being advertised for sale are being promoted as having wetline history in specific areas.

The CAP is aware that a number of fishers have chosen to ignore the 3 November 1997 benchmark announcement and have commenced wetlining after this date. Some submissions to the CAP noted that the benchmark date is now 'a long time ago' and should not be relevant as businesses have had to move on and make investment choices.

Alternatively, the view was also put forward that those fishers taking large catches are positioning themselves with these profits to be able to buy into the fishery once management is introduced. Some fishers have advised that they believe there has been a degree of 'over reporting' since the benchmark date as fishers try to gain additional history. Other fishers advised that they only began recording minor scalefish catches since the benchmark date was announced (they never bothered previously despite the recording of all catches being a statutory requirement.)

The CAP also noted that the initial announcement of the 1997 benchmark date did not incorporate the concept of regional management. The first time this appears to have been widely acknowledged was in March 2000 when the integrated fisheries management documents were released for public comment (and copies mailed to all FBL holders).

This raises the potential for FBLs that may have been traded on the basis of 'having history' may now be operating in a different bioregion/zone. For example an operator may have purchased an FBL with history (eg West Coast) but now be fishing in a different region (e.g. Pilbara). This may also apply to zones within the West Coast region.

In summary the CAP considers that the impending management of wetline fishing was well publicised and therefore if people invested after the benchmark date they did so at their own commercial risk.

However a significant period of time has elapsed since the benchmark date announcement in 1997 - primarily because of the length of time between its announcement and the establishment of this review - and the CAP does not consider that FBLs should necessarily be excluded from consideration for access on the sole basis of not meeting the benchmark date for wetlining activity.

However, given the previous Government's statements regarding the benchmark date and the widespread understanding among industry, the CAP's view is that some weighting must be given to FBLs that have a long history of involvement/dependence on wetlining. The CAP therefore felt that the benchmark date should play the key role in deciding access and allocation criteria, particularly where the resource is being overfished and commercial effort must be reduced.

5.5 Impact of management on the 'value' of FBLs

FBLs are transferable and because of the policy of restricted entry into WA fisheries, they have a value that is dictated by the market at the time a licence is traded.

The CAP understands that following the benchmark date announcement, licences with pre 1997 'wetline' history attracted a premium on the market of some \$10-20,000 above an FBL 'without history'. This was reaffirmed in discussions with some fishers who indicated they elected not to purchase some licences that were available for sale, but rather waited until a licence 'with history' became available, even if it was more expensive.

In more recent years the market price of an FBL has increased to about \$75,000-110,000, irrespective of any 'wetline' history. The CAP understands that this price is being driven by a limited availability of licences for sale and is unlikely to represent the 'value' of a licence to go wetlining. For instance, a fisher who may have invested millions to enter a high value managed fishery, such as rock lobster, may be prepared to pay a premium to secure the FBL required.

FBLs are still required for commercial fishing (where a boat is required) and they will therefore retain a market value. It is unlikely this value will change as a direct consequence of this review unless the new arrangements resulted in a ‘flood’ of FBLs for sale.

Once wetline management is introduced, any value attributable to the ability to wetline will be assigned to the newly created entitlement rather than the FBL itself. Under the proposed management framework, this value will relate to the potential catch from each unit of entitlement (rather than what the current operator has historically been able to catch).

5.6 Summary of the relevant general principles of law

The nature and purpose of the *Fish Resources Management Act 1994* (FRMA) is to conserve fish, ensure that the exploitation of fish resources is carried out in a sustainable manner, enable the management of fishing, foster the development of commercial fishing, and enable the allocation of fish resources between users of those resources.

The Minister is responsible for the administration of the FRMA and has powers for the making of ‘management plans’ (delegated legislation).

The imposition of a management plan may have the effect of rendering authorisations ineffective. For example Section 71 of the FRMA notes:

(1) The fact that a person engaged in fishing, or used any boat for fishing, in a fishery before a management plan was determined for the fishery is not to be taken as conferring upon that person any right to the grant of an authorisation if a management plan is determined for the fishery.

(2) Despite subsection (1) the Executive Director is to take into account a person’s past history of fishing in a fishery when determining whether or not to grant the person an authorisation.

Section 73 of FRMA notes *A commercial fishing boat licence or any other licence granted under the regulations does not authorise a person to use a boat for fishing or engage in a fishing activity in a managed fishery or an interim managed fishery.*

The power to make delegated legislation has been given for a reason – to achieve a purpose (in this case to ensure the sustainability of the wetline fishery). The test for the validity of a management plan is not whether the rules ought to have provided a ‘fairer’ procedure for allocation. The test is whether the management plan is a reasonable means of attaining the ends of the management plan powers.

In exercising delegated legislative powers, the Minister is bound to exercise the power ‘properly’. There is an established body of law in respect of matters concerning natural justice like: exercising the power for a proper purpose, taking into account relevant considerations, not taking into account irrelevant considerations, and other matters.

One of the core principles of natural justice is 'fairness'. One example of the application of this principle is the legal concept of a 'legitimate expectation'. A legitimate expectation may exist where a person enjoys a 'right' (like wetline fishing) and they have developed an expectation that their 'right' will continue to be renewed.

5.7 Summary of relevant facts

For many years commercial fishing activities have been carried out from licensed fishing boats. The details of these activities have been recorded on 'returns' submitted by commercial fishers to the Department. These returns are stored by reference to the FBL (via the licensed fishing boat number).

There is an established convention in the industry by which the history of fishing activities carried out under a licence is taken to accrue or belong to the Fishing Boat Licence. This history is called 'fishing history'. However the CAP noted that fishing history is a factual matter, not a proprietary right [Adams v Executive Director [2000] WASC 34].

Over an extended period of time, fishing history has been used as a criterion for determining access to 'limited' and 'restricted' entry fisheries in Western Australia. [and in other jurisdictions]. In addition to using fishing history for determining eligibility, fishing history has also been used as a basis for allocating different entitlements between fishermen. There are numerous examples of this such as the many limited entry fishery notices made under section 32 of the Fisheries Act 1905 and management plans made under section 54 of the FRMA.

Prior to the imposition of fishing restrictions, all fishermen (and in fact all citizens) had the right to engage in fishing. This stems from the right of the 'commons' – nobody owns the oceanic fish resources and everyone has a right to go fishing; however the State (Government) has jurisdiction to regulate fishing activities and it does so by making legislation. Inevitably, over time fishing activities have had to be constrained (limited) to ensure their sustainable use.

Commercial fishermen operating from licensed fishing boats have historically taken scalefish. Fishing for scalefish from a licensed fishing boat ('wetlining') does not fall under a 'managed' fishery and no separate licence (permission) is required. Wetlining remains in essence an aspect of the 'commons' that is not yet restricted.

There are various degrees to which commercial operators have chosen to wetline:

- Some operators have never wetlined (they only operate in managed fisheries).
- Some operators only wetline (they do not have access to a managed fishery).
- Some operators wetline 'part time' in addition to their other fishing activity (or other vocation in some instances, i.e. 'lifestyle fishers').
- Some operators may have wetlined previously, but no longer do.
- Some operators have wetlined on certain parts of the coast, but not in other regions.

In 1997 there was a media release, newspaper article and a letter sent to all FBL holders advising fishermen that fishing history relating to the period after 3 November

1997 may not be taken into account in determining management arrangements. The Fisheries Department also provides this advice to any persons who contact them regarding wetline fishing or buying an FBL.

Since mid 2002 the Department has provided written advice of the impending wetline review and the benchmark date to all persons seeking to purchase (transfer) an FBL.

The WA Fishing Industry Council (WAFIC) provided similar advice to its members in its industry magazine, stating “inevitably the criteria for access will be based on historical participation in the fishery prior to the benchmark date of November 3, 1997” (*Prowest*, Jan/Feb 2002 issue).

A Ministerial media statement in July 2002 announced a formal review of wetlining would be undertaken. The review process has provided the opportunity for interested persons to have input into the development of management arrangements for this fishery.

Research advice is that fishing pressure on demersal scalefish needs to be reduced and controlled (managed). A regional framework has been adopted for scalefish management and a target commercial catch needs to be set in each region (a capacity for the purposes of s59 of the FRMA).

SECTION 6 OPTIONS FOR ACCESS AND ALLOCATION

The CAP considered a wide range of options by which access to a future wetline fishery, and possible methods of allocation of entitlement, could be determined. These included options that have been used in other fisheries, options suggested in submissions or meetings, or options identified by the CAP itself.

Given the current 'open access' arrangements, the CAP recognised that whichever method is adopted it will change the circumstances of most fishers. The CAP therefore examined the rationale behind each of these options and the likely implications across the range of commercial operators.

While the CAP was conscious of trying to minimise any impacts on the circumstances of individuals if possible, the primary outcome must be the sustainable management of the commercial scalefish fisheries.

The range of options considered can be broadly categorised into two groups:

1. Options based around the premise that all operators have an equal entitlement to wetline
2. Options based upon an operator's level of involvement in, or dependency on, wetlining

The CAP considered the merits of these various options firstly as a means of determining access to the fishery and then for those licence holders that gain access to a particular fishery, determining the level of allocation of entitlement to each operator.

6.1 Types of options

6.1.1 Options based around the premise that all operators have an equal entitlement to wetline

All FBL holders currently have an equal ability to access the wetline fishery and from a broad perspective it could be argued that there should be a fair expectation that they all get equal rights of access. However such an approach would clearly have a differential impact across operators, varying with their level of dependence on wetlining.

The CAP considered that while all FBLs currently have the ability to take scalefish, this couldn't be construed as any form of permanent or ongoing 'right' (see section 6.1 of report). An FBL is a licence to use a boat for commercial fishing and does not convey any form of 'right' or entitlement to catch anything.

The current ability to take scalefish by wetlining is, in essence, an aspect of the 'commons' that is not yet restricted. Indeed the introduction of management that will restrict the current ability of commercial fishers to take scalefish by line could be seen as akin to that of recreational fishers whose historic 'right' to take as many scalefish as they wanted (but not for commercial purposes) has been progressively restricted by the introduction of bag limits and other controls.

Despite this position, a number of fishers have expressed the view that they believe they have an equal 'right' (expectation) to take scalefish and should therefore receive an equal proportion of the sustainable catch.

The CAP noted that such an option could be attractive in a large and productive fishery whereby the large catches and value could potentially support a large pool of vessels. However given the comparatively low sustainable harvest levels and value of the wetline fisheries, the CAP did not support this option.

For example on the West Coast the MPP has proposed a commercial catch target of 753 tonnes which, if divided equally among all 1350 FBL's, would result in an allocation of under 600kg of scalefish per FBL. Furthermore this level of allocation per boat would be even smaller in other areas of WA where the sustainable commercial catch may be lower.

This approach would have a significant impact on the current economic position of most existing wetliners and the majority of operators who were dependent upon this fishery would become instantly unviable. Many of these fishers would be unable to afford the necessary reinvestment to remain in the fishery and would lose their livelihood.

People who have a long history and high dependence on wetlining would therefore be severely disadvantaged under this option as would persons who may have paid a premium to purchase a licence 'with history' (as compared to fishers who chose a cheaper licence without history).

The only fishers to benefit from this option would be those fishers that have never wetlined or only wetline to very small levels. For instance, operators based in different regions, who may never have fished on the West Coast, would receive a small allocation that they, in all likelihood, would not use. However, it is likely they would sell this entitlement straight away for a small commercial gain.

This option may also have immediate impact on the commercial supply of fish while the industry readjusted. Some operators may choose to hold on to their entitlement (or a pool of entitlements they purchase) but not utilise it in a particular year. This will have the result of reducing the commercial supply of fish available to consumers, which is the prime purpose of the commercial industry in utilising a community resource (and a key management objective identified by the MPP).

The CAP also considered a number of variations around this option, such as only recognising boats based, or that operated in, a particular region (for example boats based on the West Coast only). Again, however, given the low commercial catch and value and small allocations under these scenarios, the CAP did not support these options.

6.1.2 Options based on a level of involvement in, or dependency on, wetlining

Clearly various FBL holders have chosen to access the wetline fisheries to varying degrees:

- Some FBL holders are fully dependent on this fishery (no access to any other managed fishery)
- For others it may be an important component, in conjunction with managed fishery operations, of their total fishing operation.
- Others operators may currently only utilise minimal access (i.e. either opportunistically, for personal use or limited sale) or not access it all.

In addition, the CAP noted that the extent to which an operator had wetlined may have varied over time and wetline fishers could be broadly grouped as:

- ‘Long-term wetliners’ - FBLs that have a long involvement in wetlining (i.e. they wetlined prior to the 1997 benchmark and have continued to wetline through to recent years).
- ‘Previous wetliners’ - FBLs that used to wetline prior to the benchmark but have not wetlined in recent years
- ‘Recent wetliners’ - FBLs that have recently commenced wetlining but did not report wetlining prior to the 1997 benchmark)
- ‘Never wetlined’ - FBLs that have never reported a wetline catch

The catch history that is associated with an FBL can provide an indication of the extent to which a particular FBL had been involved in wetlining as set out below:

Group	Pre '97 benchmark catches	Recent catches
Long-term wetliners	Yes	Yes
Previous wetliners	Yes	No
Recent wetliners	No	Yes
Never wetlined	No	No

The CAP considers that catch history can provide an indication of the level of involvement and dependency that an operator may have on wetline fishing in different regions. Criteria based on catch history have been used over a period of time as a means of determining both access and also the level of allocation in Western Australian and national fisheries. The CAP recognised that there is a high level of awareness and acceptance among industry that this is the general approach used in WA and there appears a widespread industry expectation that this would continue to be the case in the development of management for the wetline fishery.

There is a wide range of possible options involving catch history that could be used. These could be based upon criteria such as:

- Any level of catch history.
- A prescribed minimum level of catch.
- A consistent catch over a number of years or over a certain period of time.

The CAP noted that a large number of boats have recorded some level of wetline catch. For example the MPP report indicates that in the West Coast region, while just over 500 boats have recorded a wetline catch on the West Coast at least once since 1990/91, on average some 220-260 FBLs have recorded a wetline catch (of any size) in any given year (MPP report). A closer analysis of returns indicate that a much smaller pool of vessels undertake wetlining consistently across years while a large number of boats opportunistically move in and out of the fishery.

If the commercial catch for the West Coast region was distributed evenly across all FBLs that have ever recorded a wetline catch in this region over the period 1990/91 to 2002/03, each boat would receive about 1.5 tonnes entitlement. Alternatively this catch could be distributed proportionally among these fishers according to their history. However given the large number of FBLs involved, operators that depend upon wetlining for all or part of their business would still be adversely affected.

As with the options in section 7.1.1, some FBLs that had never regularly wetlined (and perhaps only recorded a single catch of scalefish) would receive a 'bonus' of some entitlement that the licence holder would probably sell, while some full time operators would become unviable and may not be able to afford to reinvest to stay in the industry.

The level to which various operators depend upon the wetline fishery varies markedly. For example, full time operators, whose sole source of income is wetlining for demersal scalefish, may catch anywhere from 10 tonnes to over 30 tonnes annually. However, operators who also fish in other managed fisheries may take considerably smaller catches than 10 tonnes, and some operators have reported annual scalefish catches of under 100kg.

The CAP was also advised that some fishers record all wetline catches, including small quantities taken for personal use, while other fishers indicated that they never recorded such small catches.

In terms of determining an operator's dependence on wetlining, the CAP considers that operators should be able to demonstrate they consistently caught a minimum quantity of scalefish in a particular region or zone. In terms of this quantity being able to demonstrate a reasonable level of dependence, the CAP regards an annual minimum catch of 1000kg of scalefish is appropriate.

These catches should be based on the catch of 'unmanaged' scalefish species taken by handline and dropline (or other 'wetline' methods such as longline prior to the introduction of management arrangements that prohibited the use of these methods outside of managed fisheries.)⁴

⁴ This will require that the term 'demersal scalefish' used in Recommendations 1 and 3 (and the method specifications of hand or dropline) includes any reported mackerel catch by trolling (or other wetline method) which is less than the criteria specified for access under the Mackerel Interim Managed Fishery Plan for the area in which it was taken.

The CAP believes that since the take of mackerel was previously a wetline activity, recognition of historic catches of mackerel should be considered as being eligible to contribute toward wetline catch history in instances where these catches fell below the criteria established for access to the mackerel fishery. Clearly if an operator's mackerel catches meet the minimum requirements specified in the Mackerel Interim Managed Fishery Management Plan they will be recognised in the mackerel fishery and should not be eligible for consideration for wetline history.

The CAP also considered it important that this catch is taken consistently over a number of years in order to demonstrate a dependency on wetlining. This type of approach has traditionally been used in many Western Australian fisheries, including most recently the development of management arrangements for mackerel. The period of time may involve pre-benchmark history only, recent history only or some combination, or overlap, of the two.

The CAP looked at precedents that have been used in WA for considering appropriate periods by which catch history should be considered. For example the Cockburn Sound Managed Fisheries and the Northern Demersal Scalefish Fishery took four years into account, while the Mackerel Interim Managed Fishery Management Plan criteria took fishing activity over a seven-year period into account.

The CAP considers that four years provides a reasonable period of time with which to assess an operator's level of involvement in the fishery. The CAP considers it is important to allow some limited scope for exceptional circumstances and therefore proposes that criteria should encompass an operator's best wetline catches over three years within the specified four-year period.

Given that the benchmark date of 3 November 1997 falls part way in to a financial year, the CAP considers that this additional period should be included as part of the 1996/97 financial year (that is incorporate the period 1 July 1996 to 31 October 1997). In effect operators will get the benefit of a 16-month 'year' in which to meet catch criteria.

Criteria based around catch history can also be used for the purposes of allocation. This involves determining allocations on the basis of catch history as a proportion of the total available commercial catch and this approach has also been used in a number of WA fisheries. Other variations of this option of using catch history for determining the level of allocation of entitlements included the possibility of setting a minimum level of allocation or a possible maximum level of allocation for each FBL that gained access.

6.1.3 Options based in part on both the premise that all operators have an equal entitlement to wetline while also recognising each operator's level of involvement in, or dependency on, wetlining

These options looked at combining the two broad types of options and allocating a certain proportion of the commercial catch equally among all operators (based on their current equal ability to take scalefish) and allocating the remaining proportion to

those fishers who could demonstrate a dependency on wetlining. For example, one suggestion was that

- 50% of the commercial catch could be allocated across all FBLs based on a 'right' or entitlement to wetline
- The remaining 50% of the commercial catch could be allocated to fishers who can demonstrate a history of wetlining (eg pre benchmark history or recent history or some combination of both)

The CAP noted that the potential attractiveness of such an option is again severely restricted by both the comparatively small sustainable catch and value of the wetline fisheries. For example an allocation of 50% of the commercial catch for the West Coast made equally across all FBLs would result in operators getting an allocation of under 300kg each for this region.

The allocation of the remaining catch among FBL holders who could demonstrate a dependence on wetlining would also result in these operators getting substantially lower levels of allocation than they currently depend upon. The CAP again had concerns over both the impact on current wetline operators and the commercial supply of scalefish under these options.

SECTION 7 PROPOSED CRITERIA FOR ACCESS AND ALLOCATION

After careful consideration of all of the matters raised, the CAP considers that given the long term role that benchmark dates and catch history have historically played in the management of WA fisheries, coupled with a widespread industry understanding and acceptance of this practice, these matters cannot be ignored in developing access and/or allocation criteria.

The CAP was, however, conscious that a significant period of time has elapsed since the announcement of the benchmark date and an operator's involvement and dependence on wetlining may have changed over this period. For example, an operator that wetlined prior to the benchmark date may have developed his business since then and may now operate a larger boat, employ additional staff and take higher catches than he did previously.

Other operators who used to wetline may have since bought into a managed fishery and may no longer rely on wetlining as part of their business. There are a wide range of possible circumstances within industry and clearly some operators will be impacted upon no matter what criteria is adopted for access and allocation.

7.1 Access criteria

On balance, the CAP considers that licence holders with a long involvement in wetlining (that is, those operators that currently rely on wetlining and also have a history of having wetlined prior to the benchmark date), should be recognised as having strongest claims for entry (access) to the managed 'wetline' fisheries. On this basis the CAP considers that considerable weighting must be given to the benchmark date of 3 November 1997 in terms of determining access to the wetline fisheries.

If however there is scope for additional operators in a particular fishery or management zone (that is the recent catches of all 'long-term' operators that gain access falls below the sustainable commercial catch level) the CAP considers that operators with a recent involvement in wetlining should be considered for access to the balance of the sustainable catch.

In essence, the benchmark date criterion will only have an impact where the recent commercial catches in a particular management area have risen to a level that is not sustainable and need to be reduced.

The proposed approach does not recognise operators who have a historic involvement in wetlining (that is, the FBL has recorded wetline history prior to the benchmark date) but no longer continue to wetline. However the CAP felt that despite having had historical wetline catches, operators who no longer rely on wetlining (that is, having no recent recorded catch history) could be considered to be no different to operators that have never wetlined. That is, the current circumstances of both of these types of operator indicate that they are not dependent on the wetline fishery.

Given the Department of Fisheries' advice that demersal scalefish resources are fully exploited in all regions, the CAP does not envisage it necessary to develop any additional criteria for access beyond those for the long term and recent wetliners.

7.2 Allocation criteria

While the CAP considered that pre-benchmark catch history should be of relevance in determining access to the wetline fisheries, it considered the level of allocation for each operator that gains access should be based upon their recent catches. This is because it is the recent catches of an operator that best illustrate their current dependence upon the wetline fishery.

7.3 Recommended criteria for access and allocation

The CAP believe a generic set of criteria should apply across all 'wetline' fisheries to be brought under management. Given that the majority of licence holders are primarily interested in the management arrangements for the particular region or management zone in which they operate, the criteria has been incorporated into separate recommendations as they will apply to each specific managed 'wetline' fishery (as proposed in the MPP report), although there is a 'common thread' running through each of the recommendations.

As the MPP have proposed that the inshore net fisheries in the West Coast and Gascoyne be managed by limited entry at this stage, the generic allocation criteria do not need to be applied to the inshore net fisheries. Research advice indicates that recent catch levels within these inshore net fisheries appear to be sustainable and therefore both the 'long-term' and 'recent' wetliners can be accommodated. On this basis it has been possible to simplify the access criteria to relate to recent catches only in the inshore net fisheries.

An assessment of the likely implications of the application of these criteria in each of the management zones proposed by the MPP for the West Coast and Gascoyne bioregions is provided in section 9.1.

Recommendation 1) West Coast Demersal Scalefish Fishery

(a) Primary access criteria

Access to the West Coast Demersal Scalefish Fishery (as defined in the Management Planning Panel report) should be determined on the basis of:

Operators who have caught a minimum of 1000kg/year of demersal scalefish by a 'wetlining' method in at least three out of the four financial years during the period 1 July 1993 to 31 October 1997*

and

caught a minimum of 1000kg/year of demersal scalefish by hand line or drop line in the West Coast region (as defined in the Management

Planning Panel report) in at least three out of four financial years during the period 1 July 1999 to 30 June 2003.

- * *The final financial year for this period should incorporate the period 1 July 1996 to 31 October 1997*

(b) Allocation criteria

Operators who meet the access criteria in (a) should receive an allocation of entitlement based upon their average catch of demersal scalefish taken by hand line or drop line in each management zone within the fishery. The average should be determined on the basis of the three highest annual catches recorded against the FBL during the financial years from 1 July 1999 to 30 June 2003.

If the combined allocation to these operators exceeds the sustainable commercial catch for a management zone, the entitlement allocated to each licence holder should be reduced by an equal proportion to achieve the sustainable commercial catch.

(c) Secondary access criteria

If the overall catch allocation to operators in (b) is below the sustainable commercial catch in a particular management zone and a 'surplus' catch is available, access for additional operators should be considered in accordance with the following criteria:

Operators who have caught a minimum of 1000kg/year of demersal scalefish by hand line or drop line in the West Coast region (as defined in the Management Planning Panel report) in at least three out of the four financial years during the period 1 July 1999 to 30 June 2003.

(d) Secondary allocation criteria

Operators who meet the access criteria in (c) should receive an allocation of entitlement for each management zone within the fishery based upon their average catch of demersal scalefish taken by hand line or drop line in that zone. The average should be determined on the basis of the three highest annual catches recorded against the FBL over the financial years from 1 July 1999 to 30 June 2003.

If the combined allocation to these operators exceeds the 'surplus' of the sustainable commercial catch, the entitlement of each eligible operator should be reduced by an equal proportion to achieve the 'surplus' of the sustainable commercial catch.

Recommendation 2) West Coast Inshore Net Fishery

(a) Access criteria

Access to the West Coast Inshore Net Fishery (as defined in the Management Planning Panel report) should be determined on the basis of:

Operators who have caught a minimum of 1000kg/year of scalefish by ‘open access’ netting in the West Coast region (as defined in the Management Planning Panel report) in at least three out of the four financial years during the period 1 July 1999 to 30 June 2003.

Recommendation 3) Gascoyne Demersal Scalefish Fishery

(a) Primary access criteria

Access to the Gascoyne Demersal Scalefish Fishery (as defined in the Management Planning Panel report) should be determined on the basis of:

Operators who have caught a minimum of 1000kg/year of demersal scalefish by a ‘wetlining’ method in at least three out of the four financial years during the period 1 July 1993 to 31 October 1997*

and

caught a minimum of 1000kg/year of demersal scalefish by ‘wetlining’ in the Gascoyne region (as defined in the Management Planning Panel report) in at least three out of four financial years during the period 1 July 1999 to 30 June 2003.

*** *The final financial year for this period should incorporate the period 1 July 1996 to 31 October 1997***

(b) Allocation criteria

Operators who meet the access criteria in (a) should receive an allocation of entitlement based upon their average catch of demersal scalefish taken by hand line or drop line in each management zone within the fishery. The average should be determined on the basis of the three highest annual catches recorded against the FBL during the financial years from 1 July 1999 to 30 June 2003.

If the combined allocation to these operators exceeds the sustainable commercial catch for a management zone, the entitlement allocated to each licence holder should be reduced by an equal proportion to achieve the sustainable commercial catch.

(c) Secondary access criteria

If the overall catch allocation to operators in (b) is below the sustainable commercial catch in a particular management zone and a ‘surplus’ catch is available, access for additional operators should be considered in accordance with the following criteria:

Operators who have caught a minimum of 1000kg/year of demersal scalefish by hand line or drop line in the Gascoyne region in at least three out of the four financial years during the period 1 July 1999 to 30 June 2003.

(d) Secondary allocation criteria

Operators who meet the access criteria in (c) should receive an allocation of entitlement for each management zone within the fishery based upon their average catch of demersal scalefish taken by hand line or drop line in that zone. The average should be determined on the basis of the three highest annual catches recorded against the FBL over the financial years from 1 July 1999 to 30 June 2003.

If the combined allocation to these operators exceeds the ‘surplus’ of the sustainable commercial catch, the entitlement of each eligible operator should be reduced by an equal proportion to achieve the remaining available commercial catch.

Recommendation 4) Gascoyne Inshore Net Fishery

(a) Access criteria

Access to the Gascoyne Inshore Net Fishery (as defined in the Management Planning Panel report) should be determined on the basis of:

Operators who have caught a minimum of 1000kg/year of scalefish by ‘open access’ netting in the Gascoyne region in at least three out of the four financial years during the period 1 July 1999 to 30 June 2003.

7.4 Alternative Option

While the previous recommendations prescribe the CAP's preferred approach, detailed consideration was also given to a variation of this option. This option was designed to give a greater level of recognition to recent wetliners in management areas (as prescribed in the MPP paper) where the commercial catch would be fully utilised by long-term wetliners and would not leave a surplus to allow for any allocation, or only a minimal allocation, for recent wetliners.

Under this option, rather than granting long-term wetliners a full allocation equal to their recent catches (providing their combined allocation is within the sustainable commercial catch) this allocation would be reduced to allow 'recent wetliners' to receive an increased allocation.

This approach could be based around setting a proportion that should apply to reduce the allocation to long-term wetliners. That is, each operator should incur a set reduction of a specified percentage eg 10%, 20% etc. Alternatively, a minimum percentage could be set for the allocation to recent wetliners i.e. operators that meet the access criteria for 'recent wetliners' should receive a minimum allocation of say 40%, 50% or some other proportion of their recent average catches.

The impact of this option on operators will vary according to the size of the commercial catch (as identified in the MPP report) and the number of operators eligible for access in each management zone. It is therefore difficult to set a single figure that would be appropriate to apply across all management areas. For example on the West Coast region, this option would impact most on long-term wetliners in the Kalbarri zone because the recent catch of 'long term operators' is already above the sustainable commercial catch.

A summary of how this alternative scenario would impact on operators is provided in section 9.2.

SECTION 8 WORKING EXAMPLES OF THE APPLICATION OF THE ACCESS AND ALLOCATION CRITERIA IN FUTURE 'WETLINE' FISHERIES IN WA

Explanatory Notes:

'Long-term wetliners' represent those FBLs that appear to meet the access criteria in recommendation 1. The recent catch for this group is the combined average annual 'recent catches' of these FBLs.

'Recent catches' in the following tables are based on the 'wetline' catches recorded against each FBL in accordance with the proposed allocation criteria (i.e. catches of scalefish taken by wetlining during the period 1 July 1999 to 30 June 2003).

'Recent wetliners' represent those FBLs that appear to meet the access criteria defined in recommendation 2. The recent catch for this group is the combined average annual 'recent catches' of these FBLs.

'Surplus catch' is the difference between what is considered to be the sustainable commercial catch and the combined recent catch of long-term wetliners.

8.1 West Coast and Gascoyne regions

8.1.1 West Coast Demersal Scalefish Fishery

The MPP has proposed that the West Coast Demersal Scalefish Fishery be managed on the basis of four zones. The availability of any 'surplus' (and hence the potential for recognising recent wetliners) varies between these zones (Table 1).

Zone (as per MPP paper)	Sustainable Catch (t)	'Long-term' Wetliners (LTW)		Surplus catch	'Recent' Wetliners (RW)	
		No. Boats	Recent Catch (t)	Sustainable catch – LTW recent catch	No. Boats	Recent Catch (t)
Kalbarri	193	16	200	0	11	74
Mid West	350	35	282	68	17	114
Metropolitan	115	20	88	27	13	26
South West	98	10	90	8	6	28
Total	756		660	96		242

Table 1: Application of access and allocation criteria to the West Coast Demersal Scalefish Fishery.

Points to note:

- In the Metropolitan zone, the sustainable catch can accommodate the recent catches of both the long-term wetliners and the recent wetliners.
- In the Mid-West zone, 'long-term wetliners' will receive an allocation equivalent to their current level of fishing. Once the catch of the long-term wetliners is deducted from the sustainable catch, there is a 'surplus' of 68 tonnes available for allocation to the 'recent wetliner' category. The combined annual catch of recent wetliners is 114 tonne, which in order to reduce this figure back to 68 tonnes, means that each 'recent wetliner' would need to have their recent average catch reduced by 40.4%. That is, each of the 'recent wetliners' will still get an allocation of approximately 60% of their current catch level even though they do not meet the benchmark criteria.
- In the South West, once the long-term wetliners catch is deducted from sustainable catch, there is 8 tonnes available for allocation to the 'recent wetliners'. The combined annual catch of recent wetliners is 28 tonne, which to reduce back to 8 tonne means that each operator would need to have their recent average catch reduced by 71%. That is, each of these 'recent wetliners' will get an allocation of approximately 29% of their average recent catch.
- In the Kalbarri zone the average recent catch of 'long-term wetliners' is marginally above the sustainable commercial catch. The catch of long-term wetliners must therefore be reduced marginally to achieve the sustainable catch and consequently there is no surplus commercial catch available to recognise 'recent wetliners'.

8.1.2 *Gascoyne Demersal Scalefish Fishery*

The MPP has proposed two management zones for the *Gascoyne Demersal Scalefish Fishery*

- a. An inner-shelf zone extending out to a line of best fit based on the 150 metre depth contour; and
- b. An outer-shelf zone extending from the 150-metre line to a line of best fit based on the 250-metre depth contour.

The CAP considers that the access and allocation criteria should apply separately to each of these two zones.

Inner shelf zone

The inner shelf zone encompasses the area in which both snapper fishing and wetlining for other species has traditionally been undertaken and the criteria around pre benchmark history is likely to effect operators the most .

	Zone	Sustainable Catch (t) (SC)	Long-term Wetliners (LT)		Surplus catch	Recent Wetliners (RW)	
			No Boats	Recent Catch (t)	Difference (SC – LT catch)	Boats	Catch (t)
	Inner-shelf	116	14	98	18	5	31

Table 2: Application of access and allocation criteria to the inner-shelf zone of the Gascoyne Demersal Scalefish Fishery.

Points to note:

- ‘Long-term wetliners’ will receive an allocation equivalent to their current level of fishing. Once the catch of the long-term wetliners is deducted from the sustainable catch, there is a ‘surplus’ of 18 tonnes available for allocation to the ‘recent wetliners’ category. The combined annual catch of recent wetliners is 31 tonne, which in order to reduce this figure back to 18 tonnes, means that each ‘recent wetliner’ would need to have their recent average catch reduced by about 42%. That is, each of the ‘recent wetliners’ will still get an allocation of approximately 58% of their current catch level.

Outer shelf zone

The deepwater fishery in the outer shelf zone did not commence until after the benchmark date and the access criteria relating to pre benchmark date history will effectively have no relevance. That is, in applying the proposed criteria, it does not appear that any FBLs will meet the criteria in recommendation 1 and consequently all of the sustainable commercial catch will be the ‘surplus’ amount that is available for allocation to operators that meet the ‘recent wetliners’ criteria (under recommendation 2).

In effect, the criteria based around recent history will determine both access and allocation for the outer shelf zone.

Sustainable Catch (t)	‘Long-term’ Wetliners (LTW)		Surplus catch	‘Recent’ Wetliners (RW)	
	No. Boats	Recent Catch (t)	Sustainable catch – LTW recent catch	No. Boats	Recent Catch (t)
100	0	0	100	4	90.5

Table 3: Application of access and allocation criteria to the outer shelf zone of the Gascoyne Demersal Scalefish Fishery.

Points to note:

- A number of other boats that are operating in this fishery but do not meet the criteria specified under Recommendation 2 for ‘recent wetliners’. As a consequence there is a surplus of 9.5 tonnes.

There are a number of options to treat this 9.5 tonnes: it could be allocated equally among the boats that qualify (such that each vessel gets an additional 2.4 t); or alternatively it could be allocated to other boats that may be operating in this fishery but do not meet the criteria in recommendation 2.

A third option is not to allocate this small surplus and leave it to benefit the breeding stock.

The CAP proposes that this surplus should be allocated equally among the boats that get access.

8.1.3 West Coast and Gascoyne Inshore Net Fisheries

Region	Sustainable Catch (t)	Long-term Wetliners (LT)		Recent Wetliners (RW)		Total LT + RW
		No Boats	Recent Catch (t)	Boats	Catch (t)	
West Coast	15-25	2	13	1	8.6	21.6
Gascoyne	30-50	1	13	2	10.5	23

Table 4: Impact of access and allocation criteria on West Coast and Gascoyne Inshore Net Fisheries.

The CAP also considers that the proposed criteria can be reasonably applied to the inshore net fisheries in both the West Coast and Gascoyne bioregions. While there is no sustainability issue at present it is important to place a ceiling on the number of operators to prevent further growth in effort (particularly following the implementation of management for the demersal scalefish fishery in each region).

8.2 Analysis of alternative option

While this is not the CAPs recommended approach, an analysis of the implications of the alternative option discussed in section 8.3 is provided below.

Zone	Long-term wetliners	Surplus catch available (t)	Recent wetliners
Kalbarri	3.5 % reduction (necessary to achieve sustainable commercial catch target)	0	No allocation to recent wetliners (no surplus available)
	10% reduction	13	82% reduction (i.e. recent wetliners would get allocated 18% of their average recent catch)
	15% reduction	23	69% reduction (i.e. recent wetliners would get allocated 31% of their average recent catch)
	20% reduction	33	55% reduction (i.e. recent wetliners would get allocated 45% of their average recent catch)
Mid West	No reduction	68	40% reduction (i.e. recent wetliners would get allocated 60% of their average recent catch)
Metro	No reduction	27	No reduction as surplus accommodates catches of all recent wetliners (i.e. recent wetliners would get allocated all of average recent catch)
South West	No reduction	8	71% reduction (i.e. recent wetliners would get allocated 29% of their average recent catch)
	3.5% reduction	11	60% reduction (i.e. recent wetliners would get allocated 40% of their average recent catch)
	7% reduction	14.3	50% reduction (i.e. recent wetliners would get allocated 50% of their average recent catch)
	10% reduction	17	40% reduction (i.e. recent wetliners would get allocated 60% of their average recent catch)

Table 5: West Coast Demersal Scalefish Fishery

9.2.1 Gascoyne Demersal Scalefish Fishery

Inner shelf zone

<i>Full time wetliners</i>	<i>Surplus catch available (t)</i>	<i>Recent wetliners</i>
No reduction	0	42% reduction (i.e. recent wetliners would get allocated 58% of their average recent catch)
5% reduction	23	26% reduction (i.e. recent wetliners would get allocated 74% of their average recent catch)
10%	28	10% reduction (i.e. recent wetliners would get allocated 90% of their average recent catch)

Table 6: Gascoyne Demersal Scalefish Fishery

SECTION 9 ADDITIONAL MATTERS FOR CONSIDERATION

9.1 Catch verification

A number of operators noted some concern over the use of catch records, believing that a number of operators may have over reported catches since 1997 in case late history was taken into account. A number of submissions suggested that additional ‘proof’ of involvement in wetlining should be required to verify catch return information, such as receipts from fish receivers or tax documents.

The CAP noted that where licences have been transferred it might be difficult for operators to provide alternative records, although these may be able to be obtained with the cooperation of the previous owner.

The CAP believes the onus should be on applicants to the new wetline fisheries to demonstrate past history, and the body assessing applications should have the ability to seek further information as required.

9.2 Minimum unit holding

The fact that the MPP has recommended a unitised fishery will enable fishers with diversified operations or persons with a small interest in the fishery to be recognised. The CAP considers this will allow for the diversity in the scale of operations that currently exist in the wetline fishery and will help allow for smaller operations to continue.

Given the recommendation to base access criteria around a minimum of 1000kg catch, the CAP supports the MPP’s view that it should not be necessary to impose a minimum unit holding in the management plan. Operators should be able to determine for themselves whether it is worth their while continuing in the fishery with a small unit entitlement.

9.3 Licensing system

While noting the historical origins of the licensing system, particularly with regard to the progressive development of management over a long period, the CAP still found the current licensing system complex and somewhat confusing.

Some of these apparent ‘oddities’ that were identified by CAP include:

- The use of FBLs to record catch data when the authority to take fish relates to the CFL and in some fisheries also an MFL;
- A lack of clear understanding among industry about what various licences legally entitle the holder to do.

Following the introduction of wetline management across all regions and once there are no more 'open access' fisheries in WA (that is, once all fisheries have effective management controls in place) the CAP believes the requirement for limited entry (by way of a 'freeze' on FBLs) becomes questionable. As long as other tools are in place to provide appropriate constraints on catch and/or effort to ensure that sustainability is not compromised, it may be reasonable to allow the market to dictate the number of participants in a fishery at any time.

A number of operators expressed concern that they would lose a valuable asset if FBLs were no longer required, however it would appear that any value currently attached to an FBL would become incorporated in the value of the fishing entitlement (that is, MFLs or units of entitlement).

Clearly this matter requires careful consideration and is outside the terms of this review. The CAP considers there may be merit in establishing a future review to examine the role of FBLs and possibly other licence categories following the implementation of wetline management throughout the state.

9.4 Impact of introducing access criteria for West Coast and Gascoyne wetline fisheries on other regions

The CAP noted that many of the current management problems have arisen from the 'staggered' introduction of management across fisheries, consequently as more fisheries are brought under management those fishers unsuccessful in gaining access are 'pushed' into other fisheries.

Such issues arise from the historic nature of 'open access' fishing. With the majority of fisheries now under management, wetline fishing has become the only major option available to persons who only hold an FBL.

The CAP therefore believes it is essential that the introduction of wetline management in the West Coast and Gascoyne regions does not result in a 'spill-over' of effort into other fisheries, such as the wetline fisheries in the Pilbara or south coast regions.

It is therefore suggested that the Minister for Fisheries consider applying the access criteria recommended in this review across all open access fisheries across the State. In the case of future or emerging fisheries, access could be considered via the Developing New Fisheries process to avoid a recurrence of similar problems of unregulated increases in catch and effort.

On this basis, the outcome of the current wetline review could be the introduction of management plans for the West Coast and Gascoyne fisheries and the introduction of limited entry fisheries on the north and south coasts.

It may then be possible to 'fast track' management in the north and south coast regions by making these fisheries limited entry initially (and thereby avoid problems of possible transfers of effort) and then developing more specific management arrangements for these fisheries (presumably along the lines of those proposed by the MPP for the West Coast and Gascoyne fisheries).

Recommendation 5)

The generic access criteria recommended for the West Coast and Gascoyne fisheries be introduced for all other ‘wetline’ fisheries in WA, particularly the demersal wetline fisheries in the South Coast and Pilbara regions, to avoid the potential for any unregulated transfer of effort between fisheries and to ensure commercial fishing is maintained at sustainable levels.

Recommendation 6)

The Minister give consideration to prohibiting all ‘open access fishing’ in WA to avoid any future unregulated expansion of fishing effort. Access to any new or developing fisheries (not addressed as part of this review) should be assessed through the Developing New Fisheries process.

SECTION 11 BIBLIOGRAPHY

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SECTION 12 APPENDIX

12.1 Summary of issues raised in initial submissions relating to access and allocation issues

- It is not possible to please everybody - this is about protection of fish stocks. Wetline MFLs are imperative.
- 1997 benchmark date should stand.
- Anyone buying an FBL after the benchmark date should have been aware of the Minister's warning about gearing up. This was well known at the time, and prices of wetline licences reflected that.
- Review benchmark date to cater for those who have made more recent investment decisions.
- Should be automatic access to those boats whose sole source of income prior to benchmark date was from wetlining.
- The benchmark date should be the day the Minister accepts the recommendations from the CAP. From that day, active fishers would be allocated a wetfish allocation, which would be enshrined within their licence. Inactive licences could not be activated after that date.
- Access must be granted to boats whose sole source of income is wetline fishing prior to the benchmark date. If the benchmark date is not taken into account, catch history must be proven by other information, in addition to CAES returns.
- Unclear if new FBL holders have been given clear and consistent advice since the benchmark date.
- There might be a case for those who bought an FBL pre-1997 and have shown since then that they have wetlined exclusively and are reliant on it for their livelihood.
- The period 1990-1997 only gives a very limited period of history. The period of catch history should be extended to 1980-2000 to allow the true wetline fisher a fuller period to justify access.
- Catch allocation should be based on the 10 year history prior to the benchmark date.
- FBLs which are held in conjunction with MFLs should only be granted access if they have a catch history prior to the benchmark date.
- If no wetline catch recorded by an FBL, which is held in conjunction with an MFL, access to wetline fishery should only be granted during the managed fishery season.
- If wetline catch recorded at sometime during the last five years or in all of the fisher's catch history prior to last five years, should be a full participant in wetline fishery.
- Catch history should be used to determine level of access.
- Common knowledge that many operators who had previously not caught or not reported catch are now reporting.
- Catch history should be from 1991-1997.
- Access to the fishery should be based on consistency of catch over a period of time prior to the benchmark date, rather than on quantity of catch. This caters for small sustainable operators in a multi species fishing operation.

- Use of historical catch data may adversely impact on the smaller operator.
- Important to ensure that the fishers who have built the industry are not disadvantaged.
- Now six years since the benchmark date was announced. Suggest taking all catch history from 1990-2002, and grant access to the 45 boats with the highest annual tonnage. The tonnage should include all species (even though some are no longer able to be taken by wetliners). Monthly returns following the benchmark date should be validated by market returns, dockets etc.
- Further validation, eg, bank statements, dockets, tax records, should be required.
- Days fished as well as tonnage should be taken into consideration in determining access.
- Access should not be granted to those catching less than 5 tonnes. This catch is 'incidental' and generates only a small amount of income.
- Catches of < 5 tonnes are not viable for a wetline only operation.
- Do not grant access to boats with annual average catch of less than 6 or 7 tonnes.
- If those catching <5 tonnes are not granted access, approximately one third of the catch remains for the recreational sector and for the purposes of stock rebuilding, and the other two thirds of the current catch will be caught by the dedicated wetline fleet, as at present.
- The interests of full-time wetliners should take priority over part-timers.
- May need different access criteria between zones.
- Boats which have been mobile have spread their effort, but may not have sufficient history in any one zone.
- Catch history in Cockburn Sound before CS fisheries became managed should be included.
- Should be 'knife edge' access criteria resulting in the smallest number of commercial operators who would be financially viable.
- All those who own only an FBL should receive equal allocation, along with those in minor managed fisheries who can prove they will be disadvantaged by not having access to wetlining.
- There are currently some dedicated wetliners who have consistently caught small but significant tonnages, but rely on fishing as their livelihood. Some weighting should be given to key species, eg, dhufish. This would compensate 'quality' fishers compared to others who have large catches of lower value, more easily caught fish. With dhufish, a multiple of two would reflect the commercial difference in value.
- If tonnage is used, will mackerel catches be used? Some operators have spent time catching mackerel, but have not gained access to that fishery, so must be able to use that catch history for wetline fishery.
- Although all fishers need an FBL to operate, there are three main groups of fisheries in WA:
 - * major (cost recovered) fisheries: economic viability is not dependent on wetline fishing and should not be considered in the access process;
 - * minor managed: some dependent on demersal scalefish to make their operation viable;
 - * current non-managed wetline fishery: largest number that depend on wetline fishery for their viability.

If criteria set too high, it will disenfranchise majority of the third group and many of the second group.

- Those with limited history of catching mackerel are not to be given access to the mackerel fishery. If this is a fair strategy for mackerel, it should apply to all fisheries.
- Although many will claim they paid a lot of money for their FBL, most were not bought to go wetlining but to be able to operate an MFL.
- Should be some compensation for boats, which will be forced out of the industry.
- Lessors should be encouraged to be divested of their FBL through buyback scheme or other incentive.
- Those who have reported some wetline catch to lose the FBL, by way of a buyback, at current value of the FBL based on the earnings recorded.
- All FBLs not being used for wetlining be redeemed and compensated at a fair rate.
- To take away wetline access is a diminishing of rights. Any change from the current position would require some form of compensation.
- The argument is not about using the FBLs, it is about the right that was paid for in the first place.
- Should be no consideration given to licence buy-back.
- There are legal precedents that may impact on the right to continued access to wetline fishery. An understanding of implications of recent court decisions is fundamental to deliberations on fair and equitable allocation.
- There are expectations in industry that right of access cannot be terminated without due process and/or compensation.
- Many in commercial fishing industry believe that by contributing to the costs of a buy-back of licences the industry preserved its right of access to the wetline fishery.
- LFBs should not be able to take wetfish without a wetline MFL. All other managed fisheries have a monopoly on their target species, area or method of fishing.
- The wetline managed fishery should be protected from other operators, as are other managed fisheries.
- Wetline access should be separated into inshore and offshore zones.
- If history gained in inshore area, that history cannot be used for access to offshore fishery.
- Unclear what purpose will be served by restricting FBLs from open-access fisheries. Other management tools, eg, bag and size limits, spatial and temporal closures, methods and gear restrictions, species limitations, could achieve same result.
- Need to remove latent effort.
- Section 143 of the *Fish Resources Management Act 1994* should be used to remove the latent licences.
- Following removal of latent effort, have a knife-edge cut-off to preclude operators with a low catch history.
- Fishing history, and resultant access granted, should relate to individual fisher, not the FBL.
- Allowing rock lobster licence holders to opportunistically wetline does not promote sustainability.

- Many MFL holders, in particular rock lobster fishers, do not need the extra income.
- There are times such as poor seasons and low prices when rock lobster fishers need to use their FBL.
- Many rock lobster fishers do not use their FBL to catch wetfish, or only catch for themselves and crew.
- The number of rock lobster boats that have submitted returns has escalated since 2001. All boats with history before 2001 should retain access to wetlining.
- 50% of the wetline access granted to the rock lobster fleet should be distributed evenly between the whole fleet, with the remaining 50% weighted to those with a history.
- Small rock lobster fisher relies heavily on wetfishing - deserves consideration over others with no history.
- Offer rock lobster MFLs an additional lobster pot to forfeit the right to sell wetfish, and then allow recreational bag limits.
- Those rock lobster MFLs who wish to be involved in wetfish fishery to forfeit one rock lobster pot.
- Rock lobster fishers who have not reported wetline catch to lose the FBL, by way of a buyback at minimum price because they have no history of earnings from that source.
- Need to consider the importance of the local fishing industry to supply of local and tourist markets. Some small operations in small local communities are part of the tourist industry. Special consideration should be given to accommodate small-scale commercial fishery operating from a homeport supplying a demand from visitors for fresh local seafood.
- If the number of fishers who can wetline is restricted, price of fish for buying public may increase.
- Any reduction in supply of wetfish will result in more imported product.
- Wider community needs access to commercially caught fish.
- Any access criteria should have a flexible appeals process, with an 'exceptional circumstances' clause.

12.2 Summary of licence types

Commercial Fishing Licence (CFL)

Regs 121 and 122

Commercial Fishing Licence" (CFL) means a licence granted under the regulations authorizing a person to engage in commercial fishing.

Any person who engages in commercial fishing must hold a CFL.

Commonly referred to as a deckhand's licence. There are no restrictions on the number of licences granted and CFL's are regularly issued.

Fishing Boat Licence (FBL)

Regs 117 and 118

Fishing Boat Licence (FBL) means a licence granted under the regulations authorizing a person to use a boat for commercial fishing.

A person having the control of any boat used in connection with commercial fishing must ensure that a current FBL is in force in respect of the boat.

FBLs may be granted subject to criteria being satisfied. FBLs are rarely granted unless under exceptional circumstances.

Managed Fishery Licence (MFL)

Section 66

A person may apply for a MFL under the arrangements of a managed fishery plan. Criteria specified in the plan must be satisfied.

The entitlement a person has under a MFL may be limited. (ie. the area of water, type of gear, quantity of fish).

Interim Managed Fishery Permit (IMFP)

Section 66

A person may apply for a IMFP under the arrangements of a interim managed fishery plan. An interim managed fishery plan may be established for a limited period and for developmental purposes.

Rock Lobster Pot Licence (RPL)

Regs 125 and 126

A person may apply for a RPL to engage in commercial fishing of rock lobster. The take of rock lobster is only permitted in areas outside of rock lobster managed fisheries.

RPLs are rarely granted unless under exceptional circumstances. Gear restrictions are applied.

Fish Processors Licence-sea based (FPL) Section 83

A person may apply for a FPL to process fish of a prescribed class (rock lobster, prawns and scallops).

FPLs are regularly granted subject to conditions.

Carrier Boat Licence (CBL) Regs 119 and 120

A person may apply for the grant of a CBL for the use of a boat for the transporting of fish for commercial purposes that have been caught with the use of another boat.

CBL granted on a limited basis.

Aquatic Eco-tourism Operators Licence (AEOL) Regs 128 A and B

A person who engages in aquatic eco-tourism for a commercial purpose must hold an AEOL.

Licences are granted subject to criteria being satisfied.

Fishing Tour Operator's Licence (FTOL) Regs 128 I and 128 J

A person who conducts a fishing tour for commercial purpose must hold a FTOL.

Licences are granted subject to criteria being satisfied.

Licensed Fishing Boat (LFB) Number

A commercial fishing boat that holds a FBL must have a distinguishing letter and number on yellow background painted on the side of its hull. (ie. LFBF77-“F” stands for Fremantle, “A” for Albany etc)

FISHERIES MANAGEMENT PAPERS

- No. 1** The Report of the Southern Western Australian Shark Working Group. Chairman P. Millington (1986)
- No. 2** The Report of the Fish Farming Legislative Review Committee. Chairman P. Rogers (1986)
- No. 3** Management Measures for the Shark Bay Snapper 1987 Season. P. Millington (1986)
- No. 4** The Esperance Rock Lobster Working Group. Chairman A. Pallot (1986).
- No. 5** The Windy Harbour - Augusta Rock Lobster Working Group. Interim Report by the Chairman A. Pallot (1986)
- No. 6** The King George Sound Purse Seine Fishery Working Group. Chairman R. Brown (1986)
- No. 7** Management Measures for the Cockburn Sound Mussel Fishery. H. Brayford (1986)
- No. 8** Report of the Rock Lobster Industry Advisory meeting of 27 January 1987. Chairman B. Bowen (1987)
- No. 9** Western Rock Lobster Industry Compensation Study. Arthur Young Services (1987)
- No. 10** Further Options for Management of the Shark Bay Snapper Fishery. P. Millington (1987)
- No. 11** The Shark Bay Scallop Fishery. L. Joll (1987)
- No. 12** Report of the Rock Lobster Industry Advisory Committee to the Hon Minister for Fisheries 24 September 1987. (1987)
- No. 13** A Development Plan for the South Coast Inshore Trawl Fishery. (1987)
- No. 14** Draft Management Plan for the Perth Metropolitan Purse Seine Fishery. P. Millington (1987)
- No. 15** Draft management plan, Control of barramundi gillnet fishing in the Kimberley. R. S. Brown (1988)
- No. 16** The South West Trawl Fishery Draft Management Plan. P. Millington (1988).
- No. 17** The final report of the pearling industry review committee. F.J. Malone, D.A. Hancock, B. Jeffriess (1988)
- No. 18** Policy for Freshwater Aquaculture in Western Australia. (1988)
- No. 19** Sport Fishing for Marron in Western Australia - Management for the Future. (1988)
- No. 20** The Offshore Constitutional Settlement, Western Australia 1988.
- No. 21** Commercial fishing licensing in Western Australia. (1989)
- No. 22** Economics and marketing of Western Australian pilchards. SCP Fisheries Consultants Pty Ltd (1988)
- No. 23** Management of the south-west inshore trawl fishery. N. Moore (1989)
- No. 24** Management of the Perth metropolitan purse-seine fishery. N. Moore (1989)
- No. 25** Rock Lobster Industry Advisory Committee report to the Minister for Fisheries November 1988. (1989)

- No. 26** A report on marron fishing in Western Australia. Chairman Doug Wenn MLC (1989)
- No. 27** A review of the Shark Bay pearling industry. Dr D.A.Hancock, (1989)
- No. 28** Southern demersal gillnet and longline fishery. (1989)
- No. 29** Distribution and marketing of Western Australian rock lobster. P. Monaghan (1989)
- No. 30** Foreign investment in the rock lobster industry. (1989)
- No. 31** Rock Lobster Industry Advisory Committee report to the Hon Minister for Fisheries September 1989. (1989)
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- No. 33** Guidelines for by-laws for those Abrolhos Islands set aside for fisheries purposes. N. Moore (1989)
- No. 34** The future for recreational fishing - issues for community discussion. Recreational Fishing Advisory Committee (1990)
- No. 35** Future policy for charter fishing operations in Western Australia. P. Millington (1990)
- No. 36** Long term management measures for the Cockburn Sound restricted entry fishery. P. Millington (1990)
- No. 37** Western rock lobster industry marketing report 1989/90 season. MAREC Pty Ltd (1990)
- No. 38** The economic impact of recreational fishing in Western Australia. R.K. Lindner, P.B. McLeod (1991)
- No. 39** Establishment of a registry to record charges against fishing licences when used as security for loans. P. Rogers. (1991)
- No. 40** The future for Recreational Fishing - Forum Proceedings. Recreational Fishing Advisory Committee (1991)
- No. 41** The future for Recreational Fishing - The Final Report of the Recreational Fishing Advisory Committee. Recreational Fishing Advisory Committee (1991)
- No. 42** Appendix to the final report of the Recreational Fishing Advisory Committee. (1991)
- No. 43** A discussion of options for effort reduction. Southern Gillnet and Demersal Longline Fishery Management Advisory Committee (1991)
- No. 44** A study into the feasibility of establishing a system for the buy-back of salmon fishing authorisations and related endorsements. (1991)
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- No. 48** Pearl oyster fishery policy guidelines (Western Australian Pearling Act 1990) Western Australian Fisheries Joint Authority (1992)
- No. 49** Management plan, Kimberley prawn fishery. (1992)
- No. 50** Draft management plan, South West beach seine fishery. D.A. Hall (1993)

- No. 51** The west coast shark fishery, draft management plan. D.A. Hall (1993)
- No. 52** Review of bag and size limit proposals for Western Australian recreational fishers. F.B. Prokop (May 1993)
- No. 53** Rock Lobster Industry Advisory Committee, Chairman's report to the Minister for Fisheries. (May 1993)
- No. 54** Rock Lobster Industry Advisory Committee, Management proposals for 1993/94 and 1994/95 western rock lobster season (July 1993)
- No. 55** Rock Lobster Industry Advisory Committee, Chairman's report to the Minister for Fisheries on management proposals for 1993/94 and 1994/95 western rock lobster seasons (September 1993)
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- No. 60** Bag and size limit information from around Australia (Regulations as at September 1993) F. B. Prokop (January 1993)
- No. 61** Economic impact study. Commercial fishing in Western Australia Dr P McLeod & C McGinley (October 1994)
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- No. 78** The Best Available Information - Its Implications for Recreational Fisheries Management. Workshop at Second National Fisheries Managers Conference, Bribie Island Queensland. F. Prokop (May 1995)
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- No. 83** Translocation Issues in Western Australia. Proceedings of a Seminar and Workshop held on 26 and 27 September 1994. F. Prokop (July 1995)
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- No. 97** (*in press*)
- No. 98** A Pricing Policy for Fisheries Agencies - Standing Committee on Fisheries and Aquaculture Management Committee. P Millington (March 1997)
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- No. 125** Changes to Offshore Constitutional Settlement Arrangements; North West Slope Trawl Fishery and Western Deepwater Trawl Fishery. A discussion paper by Fiona Crowe and Jane Borg (May 1999)[not published]

- No. 126** The South Coast Estuarine Fishery. A discussion paper by Rod Pearn and Tony Cappelluti. (May 1999)
- No. 127** The Translocation of Barramundi. A discussion paper by Makaira Pty Ltd.[July 1999]
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- No. 141** Fish Protection Measures in Western Australia (June 2001)
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- No. 143** Western Rock Lobster. Discussion paper for seasons 2001/2002 and 2002/2003 (July 2000)
- No. 144** The Translocation of Brown Trout (*Salmo trutta*) and Rainbow Trout (*Oncorhynchus mykiss*) into and within Western Australia. Prepared by Jaqueline Chappell, contributions from Simon Hambleton, Dr Howard Gill, Dr David Morgan and Dr Noel Morrissy. (*not published, superseded by MP 156*)
- No. 145** The Aquaculture of non-endemic species in Western Australia - Silver Perch (*Bidyanus bidyanus*). As amended October 2000. Tina Thorne. This replaces Fisheries Management Paper No. 107.

- No. 146** Sustainable Tourism Plan for the Houtman Abrolhos Islands (February 2001)
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- No. 148** Draft Bycatch Action Plan for the Shark Bay Prawn Managed Fishery (Summary Report) (April 2002)
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- No. 150** Draft Plan of Management for the Cottesloe Reef Proposed Fish Habitat Protection Area (April 2001)
- No. 151** Inventory of the Land Conservation Values of the Houtman Abrolhos Islands (July 2003)
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- No. 153** A Five-Year Management Strategy for Recreational Fishing on the West Coast of Western Australia. Final Report of the West Coast Recreational Fishing Working Group (August 2001).
- No. 154** A Five-Year Management Strategy for Recreational Fishing in the Gascoyne. Final Report of the Gascoyne Recreational Fishing Working Group (September 2001)
- No. 155** Plan of Management for the Cottesloe Reef Fish Habitat Protection Area (September 2001)
- No. 156** The Translocation of Brown Trout (*Salmo Trutta*) and Rainbow Trout (*Oncorhynchus mykiss*) into and within Western Australia (June 2002)
- No. 157** Policy for the Implementation of Ecologically Sustainable Development for Fisheries and Aquaculture within Western Australia. By W.J. Fletcher (May 2002)
- No. 158** Draft Plan of Management for the Miaboolya Beach Fish Habitat Protection Area (March 2002)
- No. 159** The Translocation of Barramundi (*Lates calcarifer*) for Aquaculture and Recreational Fishery Enhancement in Western Australia. By Tina Thorne.
- No. 160** The Introduction and Aquaculture of Non-endemic Species in Western Australia: the 'Rotund' Yabby *Cherax rotundus* and the All-male Hybrid Yabby. A Discussion Paper. (June 2002)
- No. 161** Plan of Management for the Miaboolya Beach Fish Habitat Protection Area (September 2002)
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- No. 165** Report to the Minister for Agriculture, Forestry and Fisheries by the Integrated Fisheries Management Review Committee (November 2002)

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- No. 167** Draft Fisheries Environmental Management Plan for the Northern Region (*in press*)
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- No. 179** A Draft Policy for the Translocation of Brown Trout (*Salmo trutta*) and Rainbow Trout (*Oncorhynchus mykiss*) into and within Western Australia for the Purposes of Recreational Stocking, Domestic Stocking and Commercial and Non-Commercial Aquaculture (August 2004)
- No. 180** The Sustainable Management of Western Australia's Temperate Shark Fisheries (July 2004).
- No. 181** A Quality Future for Recreational Fishing in the Pilbara/Kimberley. Proposals for Community Discussion. A five-year strategy for managing the recreational component of the catch, prepared by the Pilbara/Kimberley Recreational Fishing Working Group (July 2004)
- No. 182** A Quality Future for Recreational Fishing in the Southern Region of WA. Proposals for Community Discussion. A five-year strategy for managing the recreational component of the catch, prepared by the Southern Recreational Fishing Working Group (July 2004)
- No. 183** Final Report of the Fisheries Statutory Management Authority Advisory Committee. Published by the Department of Fisheries (*in press*)
- No. 184** South West Beach Seine Management Discussion Paper (*in press*)
- No. 185** Plan of Management for the Point Quobba Fish Habitat Protection Area (July 2004)

- No. 186** Management of the West Coast Rock Lobster Fishery - Advice to Stakeholders on Resource Sustainability Matters. (*in press*)
- No. 187** Proposals for community discussion on the future management of pink snapper fishing in Cockburn Sound and surrounding waters. (October 2004).
- No. 188** Plan of Management for the Kalbarri Blue Holes Fish Habitat Protection (*in press*).
- No. 189** Proposed Management Arrangements for the Gascoyne Commercial 'Wetline' Fishery. A Discussion Paper Prepared By The West Coast And Gascoyne Wetline Review Management Planning Panel (January 2005).
- No. 190** Management Arrangements for the West Coast Commercial 'Wetline' Fishery. A Discussion Paper Prepared By The West Coast And Gascoyne Management Planning Panel (January 2005).
- No. 191** Access And Allocation Arrangements For The Commercial 'Wetline' Fisheries, Proposals For Discussion. A Report To The Minister For Fisheries Prepared By The Commercial Access Panel. (January 2005).