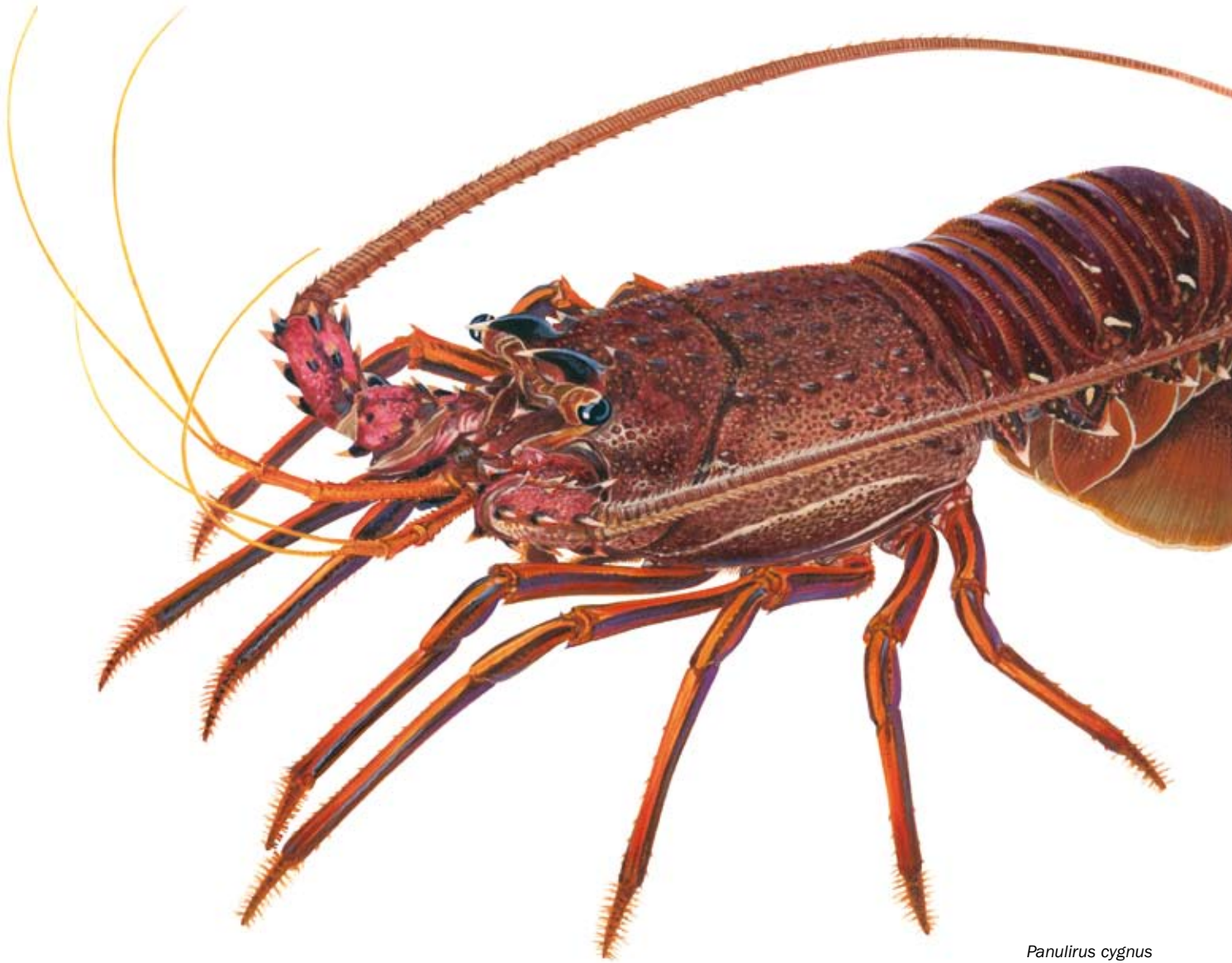


# ROCK LOBSTER PROCESSOR LICENSING ARRANGEMENTS DISCUSSION PAPER

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*Panulirus cygnus*  
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Department of  
**Fisheries**



*Fish for the future*

# ROCK LOBSTER PROCESSOR LICENSING ARRANGEMENTS

## DISCUSSION PAPER

Department of Fisheries  
Western Australia

Released for Comment

May 2006

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Written responses to:

Review of Rock Lobster Processor Licensing Arrangements  
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**Disclaimer:** The views expressed in this document do not always reflect the existing policy of the Western Australian Government but are presented in order to promote discussion and feedback for the development of policy in the future.

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## 1. INTRODUCTION

On 28 March 2002, the Minister for Agriculture, Forestry and Fisheries, Hon Kim Chance MLC, announced the Government's position on National Competition Policy (NCP) insofar as this policy related to licensing of western rock lobster processors (hitherto referred to as 'rock lobster processors' or simply as 'processors'), as governed by the provisions of the *Fish Resources Management Act 1994* (FRMA).

In making the announcement, the Minister also undertook to further "*review the potential costs and risks of deregulation*" ... "*in 2006*", when they "*are better understood by both Government and industry itself*".

This document is the first stage of the review foreshadowed by the Minister in 2002. It assesses a number of options for licensing rock lobster processors in Western Australia, weighing the pros and cons and raising issues for consideration and feedback.

Specifically, this document has been prepared in order to:

- raise issues likely to arise from the possible amendment of processor licensing arrangements;
- seek feedback from stakeholders about the various options and issues raised; and
- fulfill the commitment by the Western Australian Government to reconsider the licensing arrangements for rock lobster export processors by 30 June 2006.

The 30 June 2006 deadline coincides with the expiry of existing Ministerial Policy Guidelines (MPGs) that supplement provisions in the FRMA in governing the rock lobster processing industry. Relevant MPGs are MPG 2, MPG 3 and MPG 18.

Feedback by interested parties on the options considered in this report is requested by Friday 16 June 2006. All responses should be forwarded to Mr Neil Thomson, Senior Economist, Strategic Planning and Policy Branch, Department of Fisheries, telephone 08 9482 7223 or by email at [nthomson@fish.wa.gov.au](mailto:nthomson@fish.wa.gov.au).

## **2. BACKGROUND**

### **2.1 National Competition Policy**

NCP (to which Western Australia is a signatory) requires that all legislation that restricts competition be reviewed in accordance with the principles laid out in Clause 5(9) of the Competition Principles Agreement.

Legislation governing the rock lobster processing industry was reviewed within the context of NCP in June 1999, when ACIL Tasman Consulting examined the relevant clauses of the FRMA on behalf of the Minister for Agriculture, Forestry and Fisheries.

The ACIL Tasman review recommended that the restriction on the number of rock lobster processors (in both the domestic and export markets) be removed. Specifically, it recommended that the following amendments to the existing regulations be made:

- removal of the policy limiting the number of unrestricted rock lobster processor licences;
- removal of the restrictions on the number of annexes a processor can have;
- converting restricted processor licences to unrestricted processor licences;
- removal of the restriction on entry in the form of limitations on foreign ownership and control of rock lobster processing authorisations;
- increase in the term of processor licences;
- alignment of restrictions on approval of transfers with remaining recommended requirements for new licences (such as to satisfy the fit and proper person test); and
- removal of the restriction of processing on public holidays.

The ACIL Tasman review was considered by Government in 2002 and it was concluded that the recommendation to remove limits on the number of processors only be accepted for the domestic processing sector. A decision on the treatment of unrestricted rock lobster processing authorisations<sup>1</sup> (that is, those processors that are licensed to process for export) was deferred subject to further review and consultation, to be completed by 30 June 2006. This decision was reported to the National Competition Council (NCC) in the State's Annual NCP Progress Report in 2003.

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<sup>1</sup> Processing licences are granted by means of an authorisation under the relevant provisions of the FRMA. There is no limit on the number of authorisations granted for processing for the domestic market (these are referred to as restricted rock lobster processing authorisations), whereas there are limits on the number of authorisations granted to process for any market including the export sector (these are referred to as unrestricted rock lobster processing authorisations).

The NCC's position on the review and reform was outlined in its most recent annual assessment of Western Australia's progress against NCP where it found that, although progress had been made to achieve competitiveness, *"the Government has not provided adequate evidence that limiting the licences for processing rock lobster for export was in the public interest"*.

The NCC agreed with the State's position that licensing of the processing sector was important to maximise compliance with rock lobster fishery controls, thereby assuring the long-term yield and sustainability of the fishery. However, the NCC also found that it was not clear why this objective necessitated limiting the number of export processing facilities.

## **2.2 Western Australia's Response to the National Competition Policy Review**

Following the NCP review of 1999, the Government of Western Australia, in 2002, concluded that:

1. *"the regulatory framework pertaining to the granting and control of "unrestricted" processing authorisations be retained and reviewed in 2006 once the potential costs and risks of 'deregulation' are better understood by both Government and industry itself"; and*
2. *"the regulatory framework pertinent to the current holders of "restricted" licences (processing authorisations) be amended so as to allow for the issue of a new class of domestic (ie Australian market) processor licence. The new class of domestic licences to be issued to all applicants deemed to be 'fit and proper' with no cap on the number of licences"<sup>2</sup>.*

In developing the MPG18, which was prepared in response to the State's NCP decision, the:

1. regulatory measures protecting the processing industry against foreign domination were retained and modified to allow for the granting of additional licences if foreign ownership was posing a threat to the competitiveness of the sector; and
2. restrictions on processing activities on public holidays were omitted, and thereby removed from the regulatory framework.

## **2.3 Existing Regulatory Arrangements in the Processing Sector**

Part 7, Section 80 of the FRMA outlines the restrictions governing the establishment and operations of fish and rock lobster processors. Other provisions of the FRMA also govern the establishment and maintenance of processing establishments.

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<sup>2</sup> Extract from 'State Government Directions In Response to the National Competition Policy'.

The provisions in the FRMA provide some discretion to the Executive Director of the Department of Fisheries when s/he considers an application for a rock lobster processing authorisation. MPGs also govern the allocation of new authorisations within the context of the Act, further clarifying the role of the Executive Director and defining the constraints on rock lobster processing establishments.

**Provisions in the FRMA, relevant to the licensing of rock lobster processing**

80 (1) If a person applies to the Executive Director for a permit and the Executive Director is satisfied that-

80 (1) (a) the person is a fit and proper person to hold such a permit;

80 (1) (b) the person intends to process fish for a commercial purpose in or on the place;

80 (1) (c) the person appears likely to satisfy the criteria for the grant of a fish processor's licence;

80 (1) (d) it is in the better interests of the fishing industry to grant the permit having regard to -

80 (1) (d) (i) the number of establishments in respect of which permits or fish processor's licences have already been granted or sought;

80 (1) (d) (ii) the size and nature of those establishments; and

80 (1) (d) (iii) such other matters as the Executive Director thinks fit; and

80 (1) (d) (e) the construction or modification (as the case may be) and the use of the place has been approved by other relevant authorities,

80 (2) The permit may authorise the person, or persons acting on that person's behalf, to construct the place or to modify the place for the purpose of enabling the use of the place to process fish for a commercial purpose;

81 (3) the Executive Director may, at any time, delete or vary permit conditions;

87 (2) (b) a licence is subject to any conditions imposed by the Executive Director; and

87 (4) the Executive Director may, at any time, delete or vary licence conditions.

The MPGs relevant to rock lobster processing, are:

- MPG 2, Foreign Interests in Rock Lobster Processing Authorisations, Issued Pursuant to Section 247 of the *Fish Resources Management Act 1994*;
- MPG 3, Determining a Fit and Proper Person for Rock Lobster Processing Authorisations, Issued Pursuant to Section 247 of the *Fish Resources Management Act 1994*;
- MPG 4, Determining What is “In the Better Interests of the Industry” for Rock Lobster Processing Authorisations Issued Pursuant to Section 246 of the *Fish Resources Management Act 1994*; and
- MPG 18, Assessment of Applications for Rock Lobster Processing Authorisations and Imposing Licence Conditions, Issued Pursuant to Section 246 of the *Fish Resources Management Act 1994*.

MPGs 2, 3 and 4 can be accessed on the Department of Fisheries' website at [http://www.fish.wa.gov.au/docs/mp/mpg002\\_3\\_4/fmpg002\\_004.pdf](http://www.fish.wa.gov.au/docs/mp/mpg002_3_4/fmpg002_004.pdf).

As noted above, in 2003 changes were made to relax entry restrictions in the Western Australian domestic rock lobster processing sector. Prior to that, the only way for a new entrant to establish as a rock lobster processor was to purchase an existing authorisation from an existing rock lobster processor – subject to the approval of the Executive Director of Fisheries. The reform was facilitated through the application of MPG 18, which was published in July 2003.

MPG 18 is available at <http://www.fish.wa.gov.au/docs/mp/mpg018/fmpg018.pdf>.

MPG 18 outlined the key reform elements and the need for further review where it states (Page 5 of MPG) that:

1. *“The current regulatory framework pertaining to the granting and control of ‘unrestricted’ processing licences be retained and reviewed in 2006 once the potential costs and risks of deregulation are better understood by both Government and industry itself.*
2. *The regulatory framework pertinent to the current holders of ‘restricted’ processing licences will be amended to allow for the issue of a new class of ‘domestic’ (ie Australian market) processing licence. Domestic processing licences will be issued to all applicants deemed to be ‘fit and proper’. There will be no cap on the number of licences issued provided all conditions are met.*
3. *Prior to deregulation of the domestic processing sector (1 July 2003) the Department of Fisheries will call for expressions of interest to gauge the level of interest in the new domestic processing licences”.*

It is noted in MPG 18, that *“the guidelines (as outlined in the MPGs) apply unless amended or revoked by the Minister for Fisheries”,* and that *“the Executive Director should review the usefulness of the guideline for decision making no later than July 2006”.*

#### **2.4 Grounds for Issuing New Licences Under Existing Regulatory Arrangements**

As noted earlier, the FRMA outlines grounds for issuing new licences. In particular, Section 80 (1) (d) states that licences be granted where they are in the better interests of the fishing industry, having regard to the number of establishments and which permits or fish processor's licences have already been granted or sought.

The importance of the number of processors in the marketplace is reiterated in MPG 18, where *“the Executive Director may, under exceptional circumstances, grant additional unrestricted (export) processing licences”.* The ‘exceptional circumstances’ provisions of Page 8 of MPG 18 restrict the Executive Director from issuing additional unrestricted rock lobster processing authorisations unless:



- *“a review of the level of workable competition suggests that the social and economic benefits of granting an additional authorisation will outweigh any social and economic costs;*
- *the Executive Director has evidence that the majority of the catch volume or gross value of any of the State’s rock lobster fisheries is controlled by foreign owned or foreign controlled authorisation holders;*
- *the Executive Director has evidence that suggests the existing authorisation holders are unwilling to adopt changes or initiatives with likely economic and social benefits that outweigh any likely economic and social costs; and*
- *where either:*
  - (i) *“the number of effectively competing rock lobster unrestricted processor licence holders serving the West Coast Rock Lobster Managed Fishery falls to less than ten (10);*
  - (ii) *the number of effectively competing unrestricted rock lobster processors serving the Esperance and South Coast Rock Lobster Managed Fishery falls to less than two (2) in either of these two rock lobster fisheries; or*
  - (iii) *the Executive Director should review the level of workable competition within the industry and the social and economic costs and benefits of granting a new processing authorisation”.*

In view of the provisions outlined above, the number of processing establishments appears to be an important policy consideration, especially in view of the present and ongoing decline in the number of establishments operating in Western Australia. Currently there are only six active unrestricted processing authorisations, down from eight over a 12-month period.

Under the MPG 18, the Executive Director, in deciding applications for additional unrestricted licences, *“may consider:*

- (i) *the likely market value of an unrestricted rock lobster processing licence;*
- (ii) *in view of the ‘exceptional circumstances’ that gave rise to the additional licences being granted, the equity of granting them through other than an auction, sale by tender or similar means;*
- (iii) *the risk that any additional licences will be acquired by an existing licence holder to prevent new entrants into the industry;*
- (iv) *the cost involved in any sale compared with likely sale proceeds;*
- (v) *any legal constraints; and*
- (vi) *any other factors he/she considers are relevant.”*

In considering the reform options available today, within the context of criteria laid out in MPG 18, the following observations appear reasonable:

- The market value of rock lobster processing licences appears to be becoming less relevant, given the number of inoperative licences currently being held by licensees.
- Any new system should consider equity, although the ‘deregulation’ option could be equitable in itself because it treats both new entrants and incumbents in the same manner.
- Any inoperative licences could be being held by processors (who already have at least one operative licence) in order to restrict new entrants and thereby reduce competition.
- The high number of inoperative licences could simply reflect a low demand for new licences – in which case, ‘deregulation’ may have little or no impact on processor numbers.

The benefits (if any) of additional competition need to be weighed against the potential risks of possible reform options. For example:

- In 2002, when the decision was made not to ease restrictions on the export sector (but to do so for the domestic sector), the main reason given was the concerns about how ‘deregulation’ would impact on the sale of illegally obtained lobsters (for example undersize, setose or caught by unlicensed fishers or traps). In Western Australia, levels of non-compliance in the Western Rock Lobster fishery are thought to be less than five per cent.
- The exceptional circumstances provisions (of MPG 18) safeguarding against the concentration of ownership (either foreign or other) have not been invoked, although it is clear that the industry is becoming increasingly concentrated. Questions for the review, about the reality of risks or otherwise, the costs associated with foreign ownership or domination and the relevance of concerns if the number of unrestricted authorisations was deregulated, need to be considered.

**Review Issue 1:** Has the ongoing decline in the number of active unrestricted rock lobster processor authorisation impacted on competition and therefore the case for amending existing regulations?

**Review Issue 2:** Is the issue of foreign ownership (namely the potential risks to the industry posed by foreign domination of the processing sector) an ongoing issue requiring protection under the law?

**Review Issue 3:** Is the market value of authorisations a relevant consideration at this juncture? If so, then what is the current value of licences, bearing in mind that there are many inactive licences?

**Review Issue 4:** Are potential new entrants (into the export processing sector) being excluded because of existing policies?

**Review Issue 5:** Are there any other issues, relevant to existing government policy that should be considered in reviewing the current policy settings?

## **2.5 Regulations in the Catching Sector**

The ACIL Tasman report also concluded that part of the compliance issue, which is still one of the key concerns, was a catching sector issue. ACIL Tasman did note, however, that the appropriate compliance model very much depends on the management method adopted for the catching sector. ACIL Tasman goes on to say, *“should the catching sector move to an output based method of control, such as an individual tradeable quota system, this would have significant implications for the optimal enforcement method.”*

It was also noted that the review of the Western Rock Lobster fishery’s management options is still to be finalised and that this review could have a bearing on the future management of the processing sector.

### **3. THE IMPACT OF THE 2002 REFORMS: DEREGULATING DOMESTIC PROCESSOR NUMBERS**

#### **3.1 Compliance and Inspection**

As noted earlier, limits on the number of domestic rock lobster processing authorisations were removed in 2002, while limits on the number of unrestricted rock lobster processing authorisations remained in place.

One of the main reasons for ‘deregulating’ domestic processor numbers was that the domestic market accounts for less than five per cent of all rock lobsters harvested from the Western Rock Lobster fishery. Therefore, even if non-compliance was high (relative to the volume of domestic sales), then it would still represent a small proportion of the overall catch from the fishery. As it has turned out, there have been no substantive issues of non-compliance since the deregulation of the domestic processing sector.

#### **3.2 Trends in Industry Since the Deregulation of Domestic Processing Sector**

In summary, across industry:

- there were 26 domestic processors in the domestic sector before relaxation of entry restriction;
  - only four additional domestic processing licences were issued following relaxation of entry restriction;
  - 11 licences have not been renewed since relaxation of entry restriction, so there are now only 19 remaining; and
  - of the 19 domestic processing licences, only six are currently active and these only take a small proportion of the overall catch;
- there are 18 export processing authorisations, although only six of these are active, two down from 2004; and
- in total, 48 processors are able to process rock lobster – either for export of the domestic sector, although only 21 are active either processing for the domestic market or for the export market.

**Review Issue 6:** Has the removal of limits on the number of domestic rock lobster processors impacted negatively on the rock lobster processing industry?

### **3.3 Competition Impacts of Reforms**

In view of the ongoing decline in the number of processors operating in the market, it would appear that reforms introduced as a result of the NCP review have only had a temporary impact (if any) on competition within the market, although feedback from processors, retailers and suppliers is sought on this conclusion.

**Review Issue 7:** Has the removal of limits on the number of domestic rock lobster processors resulted in a significant change to the structure of the processing industry?

## 4. REFORM OPTIONS: EXPORT ROCK LOBSTER PROCESSING

### 4.1 Options Available

Three options are considered (including the status quo option). With the exception of the status quo, the options involve relaxing limits on the number of rock lobster processors operating in the market. The options considered in more detail can be summarised as the:

1. status quo option;
2. ‘full deregulation’ option involving the complete removal of limits on the number of export processors, while retaining fishery compliance regulations and the ‘fit and proper’ persons test; and
3. ‘partial deregulation’ option, relaxing restrictions on the so-called ‘restricted authorisation’ so licensees can undertake secondary processing only for export (that is no primary processing or receiving product from fishers for export), but still be entitled to undertake primary and secondary processing for the domestic market.

As noted in Section 2.4, foreign ownership provisions should also be re-examined if processor numbers were deregulated (or even partially deregulated), as both measures would potentially increase competition within the sector and thereby reduce the risk of concentrated ownership and foreign domination of the fishery.

**Review Issue 8:** Are there any other options for reform (or variations of options considered) that should be considered as part of the review of the rock lobster processing industry?

**Review Issue 9:** Are the existing foreign ownership limits necessary under the various options being considered and if so, should they be amended?

### 4.2 Option 1: Status Quo

#### *Description of Scenario:*

Limits would continue to exist on the number of processors eligible to process rock lobster for export. This would mean limits would also continue on the allowable activities of fishers, limiting them to sorting and storing lobsters prior to their delivery to licensed processors. Domestic processing would remain open to new entrants, provided they could demonstrate their good character with the Executive Director.

***Management/Compliance Implications:***

The Department allocates about 3.5 Full Time Equivalent (FTEs) positions to monitor rock lobster consigned by fishers to licensed commercial processing establishments. The program is aimed at inspecting between three to five per cent of the total annual catch with the inspection effort spread across all lobster processors. The object of the program is to ensure lobster fishers comply with key management rules, in that they are not processing setose, undersize, oversize or spawning lobster. The factory-monitoring program is targeted at commercial fisherman rather than processors because this is considered to be the most efficient and effective way to inspect fishers' catches.

***Cost Implications:***

Currently the cost of fish processor inspections is about \$205,000<sup>3</sup> per annum (costs based on 3.5 FTEs). At present, this cost is recovered directly from fishers and included as part of the overall fishery's compliance program.

The Department receives approximately \$36,000 from the rock lobster component of processor licence fees (based on 48 processors who are allowed to process rock lobster multiplied by the fee they would pay if they only processed rock lobster).

The revenue is derived from annual licensing fees, where processors that process:

- rock lobster, prawns and fish are required to pay \$1,730;
- only rock lobster and prawns pay \$1,350;
- rock lobster and fish pay \$1,040; and
- rock lobster only pay \$700.

***Potential Strengths:***

In retaining the status quo, there would be no additional costs to the Department or processors and no change to existing marketing arrangements.

In retaining the status quo, the risk of non-compliance is maintained at its current low level or is even reduced as the number of active licences continues to decline.

***Potential Weaknesses or Risks:***

Under the status quo, there is a risk of a lessening of competition in the processing sector, because there are too few processors. If a lessening of competition occurs (or is occurring) then this may impact on the average long-term cost of processing rock lobsters.

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<sup>3</sup>Based on data from the Department's accounting system AXIOM including on-costs.

### **4.3 Option 2: Full Deregulation of Limits on Processor Numbers**

#### ***Description of Scenario:***

Under this option, limits would be removed on the number of processors eligible to process rock lobster for any market (including export). A licence would still be required for processors to operate, processors would be required to demonstrate that they were 'fit and proper persons' and processors would continue to be subject to inspections by the Department of Fisheries. New licensees would also be required to comply with the Commonwealth Government's, *Export Control Act 1982* (which governs reporting and other compliance issues related to export premises and reporting) and laws concerning health, food safety and local government.

#### ***Management/Compliance Implications:***

If limits were removed on the number of processors supplying the export sector, it is expected that there would be some initial increase in the number of processors who were licensed and this could lead to an increased cost in compliance on the Department. These new entrants may be smaller in scale, meaning the average cost of compliance per consignment could increase.

The risk is that anyone wishing to engage in illegal activities may consider being licensed in order to better cover their cheating of the system. The sorts of illegal activities likely to occur involve processing catches made by fishers outside of the management regime (unlicensed fishers, unreported quota catches, undersize or protected lobster). The incentive for illegal activity would probably be increased if Western Australia adopts a quota regime in the fishery, in place of the existing input controls.

#### ***Cost Implications:***

If there was a proliferation of small processors wishing to enter the export trade, this could increase the total cost of inspection, although the degree to which this occurs is difficult to assess. Since the deregulation of the domestic sector, it has been noted that the cost of inspecting small processing premises is higher (per consignment) than the cost of inspecting large processing premises. However, domestic deregulation did not result in a huge proliferation of small processors and the few new entrants that did become licensed were located in the metropolitan area, meaning the associated travel costs were limited.

Compliance management is the most costly component of rock lobster processor management and an increase would most likely be passed on to the fishing sector, through cost recovery. However, if the cost were to be passed onto processors, this may serve as a disincentive to small operators or for persons holding licences that might only be used occasionally or not at all.



Processor licensing fees could be increased to cover all (or part) of the cost of operating the Department of Fisheries processor compliance regime. The rationale for the increase in licence fees would be to provide a more direct market signal to the industry about the cost of compliance (which is related mainly to the number of establishments processing – noting as the number of processors increased, the cost of compliance would go up along with the revenue derived from licensing).

Full cost recovery through licence fees would result in very high annual licence fees and this is likely to be unpopular in the industry, although potentially supported by the fishing sector – even though the cost would probably be passed onto fishers.

For example, if it assumed that the total budget for managing the regulatory compliance of rock lobster processors is about \$205,000 per year, this would result in the following costs:

- Assuming all 12 active licensees (six domestic and six export) were treated equally the average fee would be about \$17,000 per annum; alternatively,
- If a differential fee were applied to domestic and export processors, domestic processors could face fees of say \$2000 per year while export processors faced fees of about \$32,000 per year.

Depending on the views of industry and government, the option to implement higher licensing fees could also be coupled with a rebate to existing licensees for a period of time (say five years) as a form of compensation for any loss in value of licences. However, such a rebate scheme may be seen as unfair for new entrants, especially in view of the large number of inoperative licences currently in the system. Alternatively, licensees could be charged a variable rate depending on the number of inspections carried out each year.

**Review Issue 10:** Are the potential increased costs of compliance and increased risks of non-compliance likely to be outweighed by the benefits of competition?

**Review Issue 11:** Is there merit in increasing licensing fees to cover the full/partial cost of managing industry compliance? If so, should the fee be variable in accordance with the inspection costs per each licensee?

### ***Potential Strengths:***

Potentially, ‘deregulation’ of processor numbers could lead to the following:

1. It would remove the need for the Executive Director of Fisheries to maintain ‘exceptional circumstances’ provisions which are currently required in order to protect against an overly concentrated market or foreign dominated market. The removal of this requirement would be possible since anyone could set up a processing establishment, provided they were fit and proper persons and provided they met other requirements (eg those under the *Export Control Act 1982* (Commonwealth), local government regulations and relevant provisions under health legislation).

2. Greater competition could underpin the ongoing maintenance of low processing costs or even assist in the development of new niche markets that may be overlooked by more established process.
3. New entrants could enter the market without having to purchase licences from existing processors.

**Review Issue 12:** To what extent is there likely to be further innovation in marketing of rock lobster if limits on the number of unrestricted rock lobster processing authorisations are removed?

***Potential Weaknesses or Risks:***

Increased competition could pit one processor against another in the competitive overseas marketplace. This is a case that has often been put in the defense of statutory marketing arrangements (eg the wheat marketing monopoly of AWB Ltd). Even if the logic is true, the key issue facing the rock lobster processing market is the impact of additional processors in what is already a relatively competitive processing sector.

Under deregulation, the value of rock lobster processing licences (which are tradeable) would evaporate meaning the existing industry could lose capital accumulated over the years. There is some uncertainty around the existing value of licences.

**Review Issue 13:** Is the market for processing for export sufficiently competitive and would additional processors impact negatively the ability of existing processors to market their product overseas?

**Review Issue 14:** Will existing processors be adversely affected by changes to the value of their licences?

**Review Issue 15:** Is there a net public benefit in removing limits on the number of unrestricted rock lobster processing authorisations?

#### **4.4 Scenario 3: Partial Deregulation on Restricted Processor Activities**

##### ***Description of Scenario:***

Limits would be removed on the number of processors eligible to undertake second stage processing of rock lobster for export (eg process lobster that had been purchased from another export processor). Under this scenario, the terms of a restricted (domestic) authorisation could be extended to allow restricted licensees to hold whole, cooked or processed lobsters (excluding tailed lobsters) for the intention of export, provided they had acquired those lobsters from a licensed export processor.

This option could also allow restricted licensees to continue to be entitled to legally acquire (from fishers) lobsters to hold live, raw or cooked rock lobster for wholesale sale, retail sale or consignment within Australia.

**Review Issue 16:** What new rights should be given to restricted authorisation holders if a partial ‘deregulation’ option was implemented?

**Review Issue 17:** If new rights for secondary processing are granted to restricted authorisation holders, how can they be readily differentiated from those of unrestricted authorisation holders?

##### ***Management/Compliance Implications:***

The reason for retaining limits on the primary processing of rock lobster would be to retain limits on the number of processors able to receive lobsters from fishers. In doing this, there could be a fewer processors needing close scrutiny at the critical transaction between the fisher and the processing sector.

It is hoped that the cost of compliance would be limited because it should be relatively easy to check secondary processor records to determine whether they received lobsters from one of the few holders of unrestricted rock lobster authorisations. At least unrestricted processors, who had a track record with the Department’s compliance program, could corroborate the records held by new entrants who held secondary processing licences.

##### ***Cost Implications:***

Given the point above, the Department could be faced with increased compliance costs, although this may be minimal (or even nil) given there are likely to be few opportunities for new entrants who would only process lobsters at the secondary stage.

***Strengths:***

There could be an increase in the competitiveness of the industry as a result of new entrants in the secondary processing market. However, this would be limited to the extent to which new entrants took up the restricted licences and to the extent there was a competitive market for lobsters available for secondary processing. A concern could be that secondary processors would be overly reliant on a limited number of unrestricted processors who may be unwilling to sell product to potential competitors.

***Weaknesses/Risks:***

The option to provide an unlimited number of secondary processing licences would require the specification of different processing activities into primary and secondary processing. This process is likely to be arbitrary and could create additional compliance effort.

The model may also be ineffective in developing a more competitive market, as the economics of the industry appear to be favouring greater degrees of vertical integration. This would limit such integration to a few incumbent licensees.

**Review Issue 18:** Is there likely to be any interest amongst potential new entrants for a licence which allows them to process for the export market but restricts them to secondary processing only?

**Review Issue 19:** Is there a net public benefit in removing restrictions on entry into the export sector of the rock lobster processing industry that restricts that processor to only undertaking secondary processing?

## 5. CONCLUSIONS

There is evidence in other industries that increased competition can encourage efficiency gains within an industry leading to a more efficient outcome for the community as a whole. However, it is unclear how much could be gained if existing limits on the number of rock lobster processors who service the export market were removed. The main reason for uncertainty is the balance between the potential benefits of additional competition and the potential risks associated with the compliance of rock lobster fishers to fishery rules, noting:

- that insofar as competition is concerned, the number of rock lobster processors servicing the export market has fallen well below the number quoted in MPG 18<sup>4</sup> as providing a threshold for the Executive Director to exercise the ‘exceptional circumstances’ provision and issue new authorisations; and
- the possibility of increased compliance risk if rock lobster processing numbers increase substantially.

In view of the ongoing decline in processor numbers, it would appear that the balance of risk would support further relaxation of current regulatory limits on processor numbers; however, feedback is requested on this assertion.

Two alternatives to the status quo (that both result in the relaxation of limits) are:

- to fully deregulate limits on the number of processors altogether; or
- to partially deregulate by removing limits on secondary processing.

It is noted that the full deregulation option could be introduced with provisions that alter the fee structure so that the cost of compliance is fully (or partially) cost recovered from the processors (and not the fishers) so that there is a direct market signal reflecting the cost of compliance.

It is noted that there are other significant hurdles to establish a processing facility for export, including local government regulations, health regulations, requirements under the *Export Control Act 1982* (Commonwealth) and the capital required to establish a cost effective plant. In this respect, it is unlikely that deregulation or partial deregulation would result in a significant influx of new processor operations.

Feedback is sought on these options (along with the status quo option) and where possible comments are encouraged against the review issues raised in the discussion paper. A summary of the review issues is provided in the Attachment.

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<sup>4</sup> MPG 18 indicated that the Executive Director could allocate new authorisations under exceptional circumstances provisions if there were fewer than 10 processors – there are now only six active export processors.



## **ATTACHMENT: SUMMARY OF REVIEW ISSUES**

**Review Issue 1:** Has the ongoing decline in the number of active unrestricted rock lobster processor authorisation impacted on competition and therefore the case for amending existing regulations?

**Review Issue 2:** Is the issue of foreign ownership (namely the potential risks to the industry posed by foreign domination of the processing sector) an ongoing issue requiring protection under the law?

**Review Issue 3:** Is the market value of authorisations a relevant consideration at this juncture? If so, then what is the current value of licences, bearing in mind that there are many inactive licences?

**Review Issue 4:** Are potential new entrants (into the export processing sector) being excluded because of existing policies?

**Review Issue 5:** Are there any other issues, relevant to existing government policy that should be considered in reviewing the current policy settings?

**Review Issue 6:** Has the removal of limits on the number of domestic rock lobster processors impacted negatively on the rock lobster processing industry?

**Review Issue 7:** Has the removal of limits on the number of domestic rock lobster processors resulted in a significant change to the structure of the processing industry?

**Review Issue 8:** Are there any other options for reform (or variations of options considered) that should be considered as part of the review of the rock lobster processing industry?

**Review Issue 9:** Are the existing foreign ownership limits necessary under the various options being considered and if so, should they be amended?

**Review Issue 10:** Are the potential increased costs of compliance and increased risks of non-compliance likely to be outweighed by the benefits of competition?

**Review Issue 11:** Is there merit in increasing licensing fees to cover the full/partial cost of managing industry compliance? If so, should the fee be variable in accordance with the inspection costs per each licensee?

**Review Issue 12:** To what extent is there likely to be further innovation in marketing of rock lobster if limits on the number of unrestricted rock lobster processing authorisations are removed?

**Review Issue 13:** Is the market for processing for export sufficiently competitive and would additional processors impact negatively the ability of existing processors to market their product overseas?

**Review Issue 14:** Will existing processors be adversely affected by changes to the value of their licences?

**Review Issue 15:** Is there a net public benefit in removing limits on the number of unrestricted rock lobster processing authorisations?

**Review Issue 16:** What new rights should be given to restricted authorisation holders if a partial 'deregulation' option was implemented?

**Review Issue 17:** If new rights for secondary processing are granted to restricted authorisation holders, how can they be readily differentiated from those of unrestricted authorisation holders?

**Review Issue 18:** Is there likely to be any interest amongst potential new entrants for a licence which allows them to process for the export market but restricts them to secondary processing only?

**Review Issue 19:** Is there a net public benefit in removing restrictions on entry into the export sector of the rock lobster processing industry that restricts that processor to only undertaking secondary processing?