

DEPARTMENT OF FISHERIES
WESTERN AUSTRALIA

Report of the Funding Working Group

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1. INTRODUCTION

In recent years the profitability of the fishing industry in Western Australia has been severely impacted by a combination of the high cost and scarcity of labour, high fuel prices, a poor exchange rate and the recent global financial crisis. The prices for some locally caught fish species have been impacted by the significant growth in overseas aquaculture production.

These pressures have led to more serious scrutiny of fishing methods and the cost of business inputs. One of the business input costs that has been the subject of concern from industry is the fees paid by fishers to Government under 'cost recovery'.

Funding policy and mechanisms within the Department of Fisheries shifted to full cost recovery from the major commercial fisheries in 1995 under a policy paper entitled "Future Directions for Fisheries Management in Western Australia" or better known as the 'Cole-House Agreement'.

Initial application of cost recovery, particularly the attribution of costs, led to the development of sophisticated financial management models, including the Integrated Project and Activity Costing (IPAC) model. This model provides important advantages in terms of Departmental financial accounting and transparency.

The most significant ongoing issue with cost recovery from the fishing industry's point of view is in respect to the lack of opportunity to assess the efficiency and effectiveness of the Department's service delivery through contestability. Industry argues that the cost recovery system involves excessive costs and that greater efficiency and effectiveness must be found to reduce costs incurred in the management of fisheries.

To achieve this, industry has advocated a 'funder-purchaser-provider' system, which was not referred to in the Cole-House Agreement of 1995, but appears in explanatory documents in regard to implementing Cole/House and in attachments to Ministerial Guidelines for Management Advisory Committees in 1998 and 2000. The funder-purchaser-provider system allows efficiencies to be driven by separating fisheries management decisions from the service delivery areas within the Department. This system has not been introduced. The application of cost recovery without evaluation of potentially more efficient and cost effective service delivery options (eg outsourcing) has been the subject of ongoing industry criticism.

The Department is concerned that the current cost recovery model is inflexible and as a consequence, resources are applied only to fisheries which pay the fees and not to the highest priorities or greatest risk. The Department has also been concerned for some time that the industry was having a considerable say on the nature and amount of compliance resources being applied to fisheries. The amount of administrative resources supporting the cost recovery initiative and the deleterious impact on relationships with industry stakeholders is also a matter for concern.

Further, the current cost recovery model is designed for the commercial fishing sector to pay for the cost of managing particular fisheries, but it does not provide for any sector to pay for access to the resource that is 'owned' by the community (ie fish resources are a common good). There is a direct link between paying an access fee and the security of those access rights to the holder.

Cost recovery, as outlined in the 'Cole-House Agreement' has only been applied by government to the commercial sector to date. Although considered by the Functional Review Taskforce in 2000, the issue of fees payable by participants in the aquaculture industry has not been advanced.

Recreational fishers paying licence fees for some fisheries (rock lobster, abalone, etc) are used to cover some of the costs of management and Government chooses not to recover the remainder in recognition of the public good.

2. WORKING GROUP

This report outlines recommendations of the Funding Working Group (Working Group) established by the CEO of the Department of Fisheries to advise on the development of new funding arrangements for the management of fishing activity in Western Australia. The Working Group's advice was developed based on the following principles.

3. PRINCIPLES FOR DEVELOPING NEW FUNDING ARRANGEMENTS

Certainty

The Department and industry require a degree of certainty with respect to total revenue in current and future years.

Flexibility

The Department requires the financial ability to apply necessary resources against priorities.

Efficiency

The funding model should provide mechanisms that encourage the most efficient management, regulation and service delivery. Funding arrangements should not be administratively burdensome and transaction costs should be kept to a minimum.

Effectiveness

The funding model is to provide a mechanism to link fees paid to management effort (need). Funding should reflect the nature of the fishery/industry operations.

Equity

The funding arrangements apply to government, all commercial fisheries, aquaculture and recreational fishing, and includes greater tenure for access rights, fees for access rights to a community owned resource, as well as recovery of management costs.

Fishing sector development

The funding model is to have the capacity for raising and allocating funding for activity important to fishing sectors (commercial, recreational, aquaculture) outside Department of Fisheries core management activities.

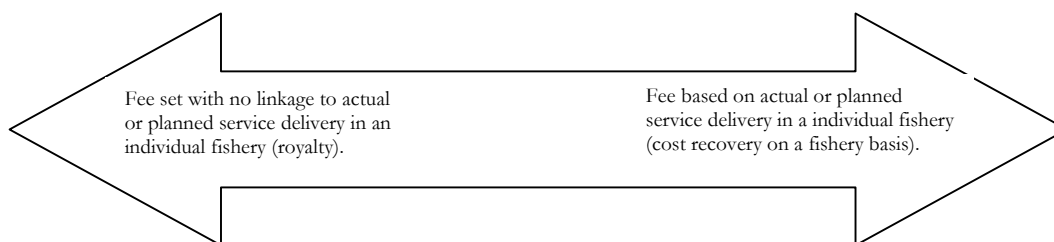
In the original meeting of the Working Group it was acknowledged that:

- Access rights are separate to cost recovery, and that there is a direct correlation between the strength of access rights and level of benefit received from the community for that access, including fees.
- Commercial fishers have access rights to a community resource (fish stocks) and the community (through the State) expects a return for that access in the form of local food source, jobs, tax, export income and an access fee.

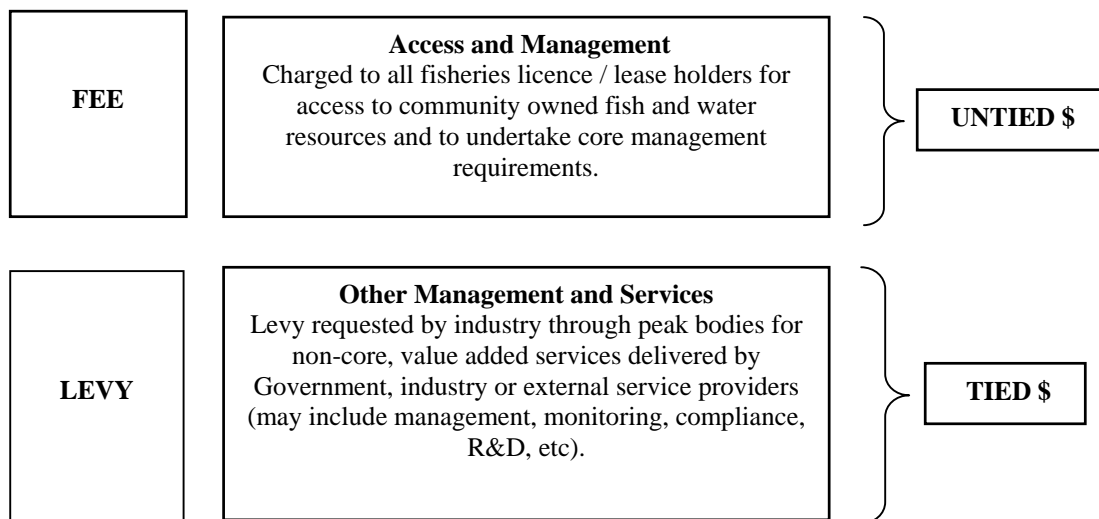
- Recreational fishers have access rights to a community resource (fish stocks) and the community (through the State) expects a return for that access in the form of social benefit, jobs, tax, tourism income and an access fee.
- Aquaculturalists and pearlers have access rights to a community resource (areas of water) and the community (through the State) expects a return for that access in the form of a local food source, jobs, tax, export income and an access fee.
- Core fisheries management activities are required to ensure that fish resources are accessed in accordance with the community's expectations as demonstrated within the objects of fisheries legislation, including sustainable fishing. This management requires specific information to be made available and activity to be carried out to meet those legislative objectives, with costs funded by those accessing the resource. It is the Working Group's view that these activities be the most efficient and cost effective and determined through implementation of a competitive service delivery process.
- Some services currently delivered by the Department in the area of fisheries management are in excess to that required to meet legislative requirements (eg sustainability of the resource). These 'non-core' activities (eg Marine Stewardship Council certification) may add value to the fishery/industry. The Working Group is of the view that the Department's funding base recognise the separation between core and non-core management activities and that a funding arrangement include the opportunity for sectors to raise and allocate funds for non-core management activity.
- For the purpose of funding, pearling will be separated in to its two elements – commercial fishing and aquaculture.

4. OPTIONS

The Working Group developed three options outlined below. These options for setting of fisheries fees fit along a continuum.



4.1 Option 1 - Fee set with no linkage to actual or planned service delivery in an individual fishery (far left of continuum)



Under this option a fee will be set (that includes both access and cost recovery elements) and then the level of servicing required by the Department to meet their ‘core’ responsibilities will be at the discretion of the Minister for Fisheries on the advice of the Department. The fee could be set through a predetermined formula that allows a tiered approach. This tiered approach means that fisheries that cost more to manage (eg requires more intensive research, compliance and management arrangements) would attract a higher fee than those that cost less to manage. A benefit of this approach is the incentive to industry (and the Department) to move from a higher to a lower management intervention model.

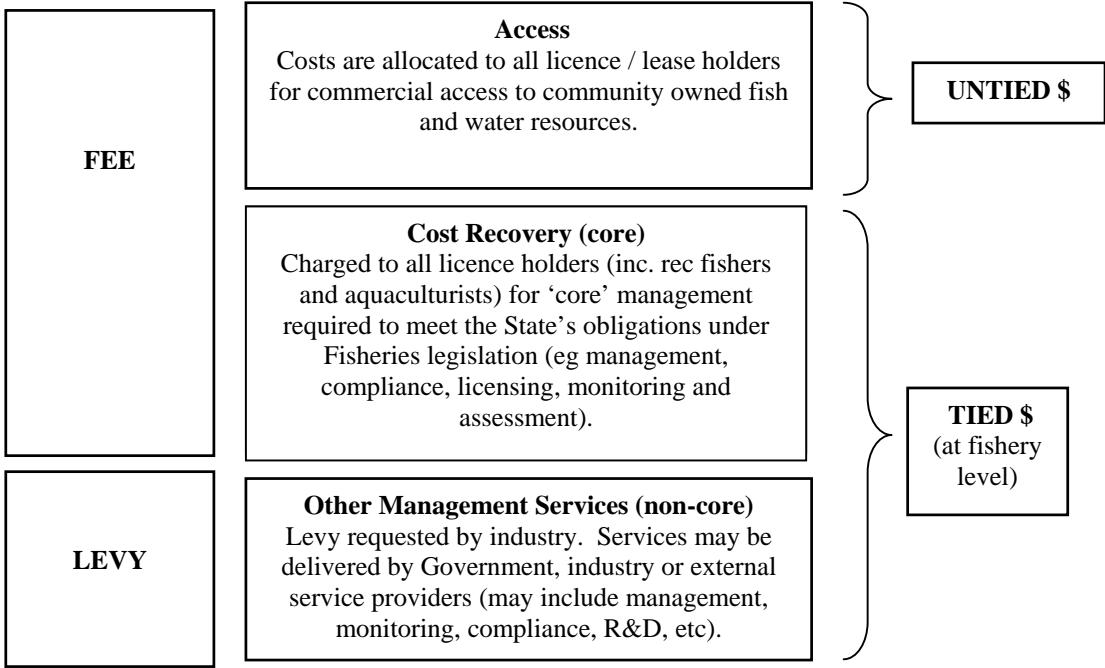
The Department retains the responsibility for managing the activities required to maintain sustainability. The efficiency of service delivery should be established through competitive tendering and third party service delivery where appropriate. Where additional ‘non-core’ services are required, the necessary funds will be levied from the industry, through a mechanism similar to the current provisions of the *Fishing Industry Promotion Training and Management Levy Act 1994*.

The benefit of this model to the Department is that resources can be applied according to what the Department identifies as priority rather than the Department seeking to extract increased fees from operators in the priority “troubled” fisheries at a time where capacity to pay may be compromised. In the case of the recreational fishery there is no capacity to extract increased fees. The Department’s view is that a fishery assisting another through use of their fees will eventually recoup those funds should they fall into troubled times in the future, but there is no guarantee.

The industry members of the group were not in favour of this approach as it will result in one or more fisheries, or a sector (eg recreational), cross subsidising the ‘troubled fishery’. There is little incentive for an individual ‘troubled fishery’ to introduce reforms that have a direct impact on fees paid or resolve their issues knowing they will be subsidised. There is also no guarantee that the fishery or sector that is subsidising will ever have the amount repaid at some time in the

future. The industry view is that having fees aligned to costs of services allows for the delivery of government services to be more efficient.

4.2 Option 2 – Fee based on access plus actual or planned service delivery in an individual fishery plus industry determined levy



The second option considered by the Working Group was effectively the cost recovery model currently in place with several key inclusions:

- an untied access fee would be introduced,
- a levy could be charged for non-core services, and
- core management services would be determined through a competitive tendering and third party service delivery model for compliance, management and research where appropriate.

Core management services would remain cost recovered at the fishery level and funding applied specifically in that fishery only. Combined access and cost recovery charges would make up the fee for the fishery.

While not providing the same resource flexibility to the Department as Option 1, this option still provides the Department of Fisheries with a degree of flexibility in the application of the untied access fees. This access fee would need to be linked to the strength of the access right and must also reflect the associated value. Access fees and access rights are discussed further in Chapter 5.

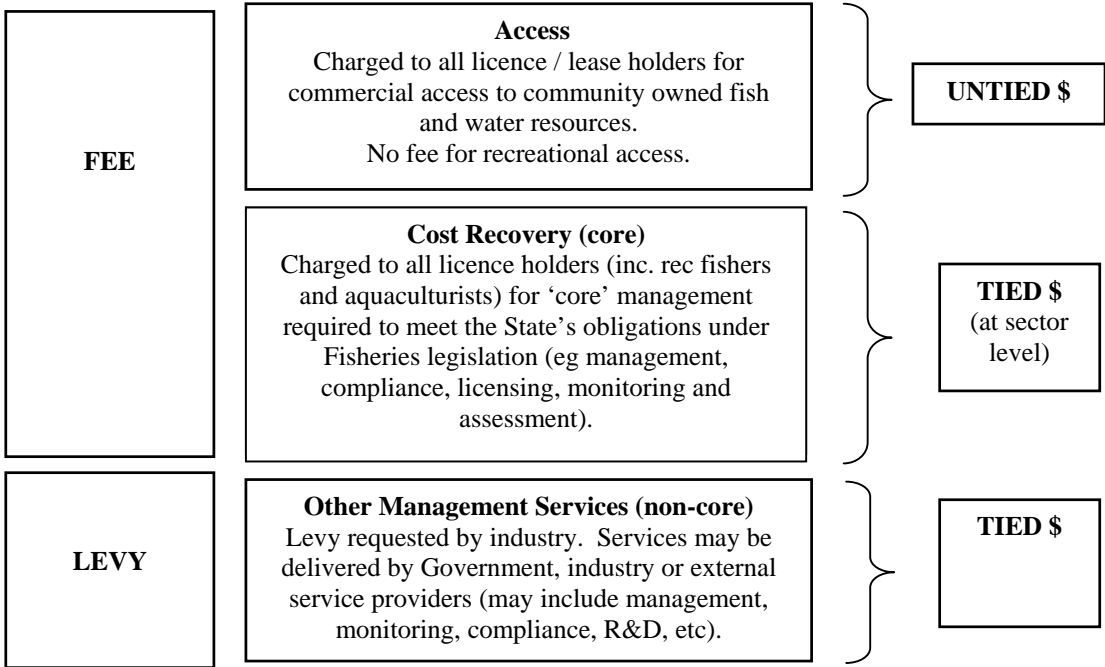
The Department is of the view that it requires the financial ability to apply necessary resources against priorities. If this financial ability is deemed important, and the Minister is of the view that the return to the community is appropriate, then the additional funding will be required from government under this Option.

In relation to cost recovery, industry members identify that there has been no opportunity to determine whether the Government is delivering fisheries management services efficiently or cost effectively. They argue that if services were subject to competitive tender for delivery by external organisations the cost incurred by the Department and the cost recovery fees paid by industry could be reduced. The Department indicated it's support for outsourcing activities subject to the resulting arrangements providing the outputs required to enable the discharge of responsibilities under the *Fish Resources Management Act 1994*. The issue of outsourcing is considered further in Chapter 6.

In relation to cost recovery on a fishery basis, the following issues are noted:

- Challenges with unders and overs in the collection and spending of fees within a fishery every year, however these could be addressed by agreements between the Department and each fishery about averaging fees and costs over several years.
- Addresses cross-subsidisation concerns.
- Full cost allocation should apply to all fisheries. It then becomes a decision of government as to whether it chooses to subsidise fisheries/sectors that either cannot afford to pay full cost recovery (eg some minor commercial fisheries) or not to recover cost in recognition of the public good (eg recreational fishing).
- Industry members are of the view that cost recovery on an individual fishery basis provides industry members with the incentive to invest time and resources in reducing the management interventions in their fishery and where necessary seek the most efficient and cost effective form of service delivery.

4.3 Option 3 - Fee based on actual or planned service delivery in a sector (commercial, recreational or aquaculture)



Option 3 is similar to Option 2, the only difference being the cost recovery component is tied, at a sector level, not fishery level. This means that fees paid by commercial fishers will only fund commercial activity, recreational fees will only fund recreational fishing activity, etc. This model

prevents cross subsidisation across sectors, but does not prevent cross subsidisation within a sector. For example rock lobster may subsidise minor commercial fisheries.

In this scenario, the cost recovery component will be based on an estimate of the cost of service delivery in each fishery, extending the current full cost recovery model to all managed fisheries. However, in contrast to the current position, adjustments will not be made for service delivery variations on a fishery-by-fishery basis (no unders and overs). Reporting back to industry will be at a sector level only.

The industry members of the group were not in favour of this approach as it could result in one fishery cross subsidising another. There is minimal incentive for an individual fishery to introduce reforms that have a direct impact on fees paid. The industry view is that having fees aligned to costs of services allows for the delivery of government services to be more efficient.

5. ACCESS FEES AND ACCESS RIGHTS

All options allow for fees to be charged on the basis of providing access rights to a community resource. **Appendix 1** provides some background in the form of High Court decisions to the nature of access fees and access rights in fisheries.

Industry representatives have supported identifying the benefits the community gains from providing access, including fees commensurate with the strength of tenure in the access right provided.

Industry representatives also highlighted that enhanced access rights provide greater incentive for industry to take a long term view of the fishery, to have greater confidence to invest in new technology, product development, market development and sustainable practices all of which provide a greater benefit to the community from allowing access to the resource such as a form of local food source, jobs, tax, and export income. These non-tangible benefits (ie not a direct fee) must be considered when setting an access fee.

For this approach to be progressed, two key issues will need to be addressed.

Firstly, practical application of these access rights in a way that provides tangible benefits to each sector will need to be identified. Some examples may include:

- de-coupling of annually renewable activity licenses from the more permanent access right (with government maintaining ability to reduce activity level to zero without removing access rights); and
- enabling security interests in leases and access rights to be formally registered by third party interests.

Secondly, government and fishing sectors will need to agree to the method of calculating fees associated with enhanced access rights. In doing so, consideration should be given to the principle that access fees should be linked to the value of the resource. **Appendix 2** includes, for information, a listing of all commercial fisheries and gross value of production for the 2006-2007 financial year. The working group reminds the reader the GVP for 2008/09 will be significantly reduced.

6. MODES OF SERVICE DELIVERY – OUTSOURCING

The Department and sector representatives agreed that comprehensive tendering must be used in the provision of the ‘core’ activities of the agency such as fisheries research, compliance, licensing, consultation, policy development and other services through competitive tendering. Services can be tendered for by the Department of Fisheries or external service providers. As manager and regulator of the use of the community’s fish and aquatic resources the Government (the Department of Fisheries) would require successful tenders to deliver outcomes that satisfy its statutory responsibilities. These outcomes would include:

- information required to set management objectives.
- information required for determining that management objectives are being met.
- delivery of compliance activities (inspection, education, prosecution).
- provision of accurate and timely advice to the Minister for Fisheries
- information that the development of industry is in a sustainable manner.

If these outcomes can be met almost any fisheries management service can be considered for competitive delivery.

7. RECOMMENDATIONS

The Working Group recommends the adoption of Option 2, inclusive of enhancement of access rights with appropriate assessment of benefits of this enhancement to the community and setting of access fees, to be developed. The rationale for this recommendation includes that it:

- Provides a level of certainty regarding funding for the Department and peak bodies.
- Provides a level of certainty for industry in access to a resource.
- Addresses the principle of adoption of an access fee for use of a community resource in addition to cost recovery.
- Provides some limited ability to for the department to address changes in priorities.
- Is equitable in its application to all sectors and minimises cross-subsidisation.
- Maintains the rigour for transparency and accountability of the Department.
- Allows for effectiveness and efficiency through competitive outsourcing of services.
- Transparency and clarification as to who pays, why they pay, how much they pay and where funds are allocated.
- Incorporates the option of a levy for sectors to apply for non-core management services and sector development needs.

8. THE WAY FORWARD

Once the broad principles of a model are agreed and endorsed by the Minister for Fisheries, it will be necessary to:

- Document and detail the agreed model;
- Confirm that the model is supported by the legislative provisions (**Appendix 3**) and if necessary, consider amendments that may be required;
- Consider and if required, develop legislative amendments to clarify access rights; and
- Develop a position paper on the competitive delivery of services to the Department of Fisheries. This will need to determine a basis for which services may/may not be delivered by third parties.

APPENDIX 1 – Access Rights and Access Fees

High Court, Harper v Minister for Sea Fisheries (1989) 168 CLR 314.

Mason CJ, Deane and Gaudron JJ expressed the following:

“The right of commercial exploitation of a public resource for personal profit has become a privilege confined to those who hold commercial licences. This privilege can be compared to a profit a prendre. In truth, however, it is an entitlement of a new kind created as part of a system for preserving a limited public natural resource in a society which is coming to recognize that, in so far as such resources are concerned, to fail to protect may destroy and to preserve the right of everyone to take what he or she will may eventually deprive that right of all content.

In that context, the commercial licence fee is properly to be seen as the price exacted by the public, through its laws, for the appropriation of a limited public natural resource to the commercial exploitation of those who, by their own choice, acquire or retain commercial licences. So seen, the fee is the quid pro quo for the property which may lawfully be taken pursuant to the statutory right or privilege which a commercial licence confers upon its holder.”

Dawson, Toohey and McHugh JJ agreed with Brennan J on the following:

“...it is possible to discern a relationship between the amount paid and the value of the privilege conferred by the licence, namely, the right to acquire abalone for commercial purposes in specified quantities. In discerning that relationship it is significant that abalone constitute a finite but renewable resource which cannot be subjected to unrestricted commercial exploitation without endangering its continued existence.”

APPENDIX 2 – Commercial fisheries gross value of production

DEPARTMENT OF FISHERIES GROSS VALUE OF PRODUCTION

2006-2007

Fishery	\$	1%	2%	3%
Abalone	11,066,669	110,667	221,333	332,000
Abrolhos Islands Trawl **	172,128	1,721	3,443	5,164
Broome Prawn	591,332	5,913	11,827	17,740
Cockburn Sound Crab	6,226	62	125	187
Cockburn Sound Fish Net	76,756	768	1,535	2,303
Cockburn Sound Line & Pot	142,572	1,426	2,851	4,277
Cockburn Sound Mussel	0	0	0	0
Esperance Rock Lobster	888,726	8,887	17,775	26,662
Exmouth Gulf Prawn	8,940,554	89,406	178,811	268,217
JASDGL	4,643,388	46,434	92,868	139,302
Kimberley Gillnet & Barramundi	643,408	6,434	12,868	19,302
Mackerel	1,907,573	19,076	38,151	57,227
Kimberley Prawn	550,254	5,503	11,005	16,508
Nickol Bay Prawn	1,324,833	13,248	26,497	39,745
Northern Demersal Scalefish	4,971,464	49,715	99,429	149,144
Onslow Prawn	258,404	2,584	5,168	7,752
Pilbara Trap	2,307,031	23,070	46,141	69,211
Pilbara Trawl	6,379,868	63,799	127,597	191,396
Shark Bay Beach Seine	776,766	7,768	15,535	23,303
Shark Bay Crab	2,465,561	24,656	49,311	73,967
Shark Bay Prawn	16,901,689	169,017	338,034	507,051
Shark Bay Scallop	8,054,688	80,547	161,094	241,641
Shark Bay Snapper	1,390,633	13,906	27,813	41,719
South Coast Estuarine	815,751	8,158	16,315	24,473
South Coast Purse Seine	1,457,802	14,578	29,156	43,734
South Coast Salmon	180,406	1,804	3,608	5,412
South West Coast Salmon	257,187	2,572	5,144	7,716
South West Trawl	100,214	1,002	2,004	3,006
Warnbro Sound Crab	0	0	0	0
WC Beach Bait	29,366	294	587	881
WC Deep Sea Crab	2,774,726	27,747	55,495	83,242
WC Estuarine	664,309	6,643	13,286	19,929
WC Purse Seine	251,787	2,518	5,036	7,554
WC Rock Lobster	244,465,656	2,444,657	4,889,313	7,333,970
WCDGDL	1,007,884	10,079	20,158	30,237
WH-A Rock Lobster	985,755	9,858	19,715	29,573
Total	327,451,363	3,274,514	6,549,027	9,823,541
Pearling	122,000,000	1,220,000	2,440,000	3,660,000
<i>** Note AITF calculated on 3 yr rolling GVP</i>				
	449,451,363	4,494,514	8,989,027	13,483,541

APPENDIX 3 – Legislative power to set fees

s58. Management plan — authorisations

(2) The management plan may —

.....

- (l) prescribe fees payable in respect of applications for —
 - (i) the grant, renewal and variation of authorisations; or
 - (ii) the transfer of authorisations or entitlements under authorisations;
- (m) prescribe fees payable for the issue of authorisations.

s258. Regulations — miscellaneous

The regulations may —

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- (zc) prescribe fees and charges for the purposes of this Act, including fees and charges payable in respect of —
 - (i) applications, other than an application to the State Administrative Tribunal for a review;
 - (ii) the issue of authorisations; and
 - (iii) the provision of any service or information;and
- (zd) allow the payment of any fee or charge to be made by instalments, and provide for the payment of a surcharge if the payment of any fee or charge is made by instalments.