

# **OPERATIONAL AND COMPLIANCE ELEMENTS OF A NEW MANAGEMENT PLAN FOR THE WEST COAST ROCK LOBSTER MANAGED FISHERY**

**A DISCUSSION PAPER**

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**FISHERIES MANAGEMENT PAPER NO. 255**

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Government of **Western Australia**  
Department of **Fisheries**

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## **OPPORTUNITY TO COMMENT**

This paper was prepared to set out the proposed direction for compliance and other operational matters under a new management plan for the West Coast Rock Lobster Managed Fishery (the new Management Plan) which is expected to commence operation on 15 January 2013. It is one of two papers being released by the Department of Fisheries (Department) for comment as part of consultation on the development of this legislation, and is designed to encourage public involvement in the changes to the management arrangements for the West Coast Rock Lobster Managed Fishery (the fishery).

A related paper proposing a harvest strategy and decision rules for setting zonal Total Allowable Commercial Catches (TACCs) for the fishery will be released for industry comment.

Comments on proposals in this discussion paper are sought from all stakeholders, including commercial and recreational fishers, relevant community interest groups, Government agencies and interested members of the public.

Once the public comments received have been considered, the Minister will make decisions on the management arrangements for the fishery.

Although specific issues have been identified, your views are sought on any or all of the matters in the document of significance to you and/or your group.

To ensure your submission is as effective as possible, please:

- Make it clear and concise.
- List your points according to the topic sections and page numbers in this paper.
- Describe briefly each topic or issue you wish to discuss.
- State whether you agree or disagree with any or all of the information within each topic, or just what is of specific interest to you. Clearly state your reasons, particularly if you disagree, and give sources of information where possible.
- Suggest alternatives to address any issues that you disagree with.

Your comments would be appreciated by 31 March 2012, and should be marked to the attention of the Manager, West Coast Rock Lobster, and addressed to:

Director General  
Department of Fisheries  
Locked Bag 39  
Cloisters Square Post Office  
PERTH WA 6850

Or by email to:  
[Lobster.Submissions@fish.wa.gov.au](mailto:Lobster.Submissions@fish.wa.gov.au)

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## SUMMARY OF RECOMMENDATIONS

**Recommendation 1** – That in addition to existing requirements relating to floats, where a boat is named on more than one MFL, each pot be required to have a float attached which is marked with the MFL number of the licence under which it is being operated.

**Recommendation 2** – That where a boat is associated with either:

- multiple MFLs conferring access to more than one zone; or
- an MFL that confers access to more than one zone;
  - a) pots be permitted to be pulled in only one zone on each trip;
  - b) all lobsters must be removed from the authorised boat prior to pulling any pots in a zone which is different from the one from which catch was taken on the most recent fishing trip; and
  - c) fishers be required to nominate using the IVR system the zone from which catch will be landed prior to commencing fishing.

**Recommendation 3**

- a) That existing provisions allowing pots to be carried onboard boats, baited and set in Zones B and C prior to the start of the season not be included in the new Management Plan.
- b) That pots must be removed from the water when the quota entitlement of a licence is exhausted.
- c) That in the event of a closed season remaining for Zones B and C, pots be removed from the water on the day before the closure commences and that they not be permitted to be carried onboard boats, baited or set again until the first day that the zone(s) re-open.
- d) That current rules relating to holding pots in designated soaking areas at the Abrolhos Islands continue under the new Management Plan.
- e) That similar to Zones B and C, pots only be permitted to be baited and set from the day that the Abrolhos Islands Area opens.

**Recommendation 4** – That restrictions on the times when commercial fishers may pull pots be removed noting that this will require some adjustment to rules relating to holding over and IVR.

**Recommendation 5** – That current rules relating to commercial fishers holding lobsters in the fishery be maintained.

**Recommendation 6**

- a) That there be a continued requirement that lobsters may only be landed in approved landing areas.
- b) That the existing 50 approved landing areas under the current Management Plan be included in the new Management Plan.

**Recommendation 7** – That existing requirements relating to container security and tagging be included in the new Management Plan.

**Recommendation 8** – That lobsters must be weighed either at a prescribed weighing point, or at a location within 90 m of the authorised boat where FMOs can remotely observe weighing and intercept the catch.

**Recommendation 9** – That the higher of the net weights recorded by the fisher and the Registered Receiver be the weight deducted from the quota associated with an MFL, but that consideration be given to how legitimate losses can be mitigated.

**Recommendation 10**

- a) That the Department explore the possibility of including an additional copy of the CDR to be retained by the Registered Receiver.
- b) That the post-landing IVR call confirmation number not be required to be included on the copies of the CDR provided to the Registered Receiver by the fisher.

**Recommendation 11**

- a) That pre-fishing, pre-landing and post-landing IVR calls are required to be made for each fishing trip.
- b) That post-landing calls be permitted to be made immediately after the fisher has returned to their pen/mooring/anchorage (within the same landing area) or within 10 minutes, whichever occurs first.

**Recommendation 12**

- a) That the current prohibition on CFL holders being Registered Receivers or acting for or on behalf of Registered Receivers remain in place.
- b) That Registered Receivers be prohibited from operating in the same premises as another Registered Receiver or from accepting lobsters on behalf of another Registered Receiver unless the lobsters are being held in tagged and sealed containers.

**Recommendation 13**

- a) That the new Management Plan include requirements for Registered Receivers to complete annual stock audit forms.
- b) That the new Management Plan requires that those storing or transporting lobsters be able to demonstrate through documents/records that the lobsters were legally obtained.

**Recommendation 14** – As fishers have alternate avenues available to them to obtain personal consumption lobsters, and to minimize risks of non-compliance, it is proposed that the take of personal consumption lobsters be prohibited.

**Recommendation 15**

- a) That requirements be placed on the Masters of carrier boats (including dual authorised boats) such that only lobsters that have been taken and dealt with in accordance with the management plan are carried onboard the carrier boat.
- b) That the pulling of rock lobster pots from any carrier boat is prohibited.

**Recommendation 16**

- a) That the new Management Plan have a defence to prosecution in cases where a fisher exceeds their quota by less than 30kg provided that they pay the prescribed value of the lobsters into the Fisheries Research and Development Account within 21 days of the overrun.
- b) Fishers apprehended attempting to defraud the quota system should have their entitlement permanently reduced regardless of whether they have actually exceeded their entitlement.

**Recommendation 17** – That no provisions are made for breakdown agreements in the new Management Plan.

**Recommendation 18**

- a) That a daily limit of 12 deep sea crabs per boat be included in the new Management Plan.
- b) That the requirement for deep sea crabs to be landed whole be retained.

**Recommendation 19** – That a provision be included in the new Management Plan that prohibits the possession of lobsters that have been taken, sold or otherwise dealt with contrary to the management plan.

**Recommendation 20** – That current prohibitions on taking lobsters:

- in breeding condition (berried, setose and tarspot);
- less than 77 mm carapace length; and
- females greater than 95 mm carapace length in Zones A and B and 105 mm carapace length in Zone C

remain in place.

**Recommendation 21** – That current restrictions on pot design as prescribed in the FRMR remain in place.

**Recommendation 22** – That the current Regulation requiring that totally protected rock lobster be returned to the water within five minutes of capture and before the next pot is pulled be extended such that it applies to all rock lobster which are not to be retained.

**Recommendation 23** – That the FRMR be amended to remove the prohibitions on the use of hide, bovine material and rock lobster products as bait and the carrying of these products onboard boats intended to be used for fishing for rock lobster.

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## **SECTION 1      BACKGROUND**

### **1.1 Moving to Individual Transferable Quotas (ITQs)**

In 2008/09, in response to record low puerulus settlement, the Minister for Fisheries (Minister) decided, for the first time, to manage the fishery to an explicit catch limit. The intention was to reduce the total catch from an expected level of around 9,000 tonnes to less than 7,800 tonnes. This outcome was successfully achieved.

In the 2009/10 season, this concept was expanded to include catch targets and limits for each zone of the fishery for the first and second halves of the season, with the intention of restricting the total catch to 5,500 tonnes +/- 10%. Although the desired catch outcomes were achieved, the result of applying these competitive Total Allowable Commercial Catch (TACCs) was:

- a “race to fish”;
- high levels of uncertainty for industry; and
- Government micro-management to assist industry to optimise economic returns from the available catch.

In February 2010, the WA Fishing Industry Council (WAFIC) requested that the Minister move the fishery to quota management from the 2010/11 season. The Western Rock Lobster Council (WRLC) supported this change being introduced as soon as possible. Having consulted with the former Rock Lobster Industry Advisory Committee (RLIAC) and WAFIC regarding the management model that could be introduced for the 2010/11 season, the Minister decided to commence the transition to quota from 1 October 2010.

A key element of the new management arrangements was the allocation of individual catch limits to Managed Fishery Licences (MFLs) in proportion to the current entitlement of the licence at specified times during the licensing period.

With more explicit controls on catch and by curbing the “race to fish”, it was possible to relax certain other controls. For example, the unit value was increased to 0.5 pots per unit (from as low as 0.3 pots per unit in some zones at some times during the 2009/10 season), the fishing season was extended to 31 August and weekend closures were removed for the final months of the season.

The current licensing period, which commenced on 1 October 2011, has been extended to 14 January 2013 in response to requests from the WRLC for the quota period to start after the “whites” peak. Further changes to increase flexibility for industry have also been (or are proposed to be) introduced. These include permitting fishing on all days during the season (no weekend or public holiday closures), extending the fishing season (fishing will now only be prohibited between 1 October and 14 November) and allowing Zone A MFL holders to return to fish in Zone B from 1 July 2012<sup>1</sup>.

Despite the current management arrangements enabling industry to enjoy many of the benefits that are associated with ITQ systems, determination of the fishery capacity continues to be defined in terms of the number of pots that can be used in each zone and individual entitlements are still conferred as units with a value in pots (albeit with an overall catch limit dictated by the number of units). This means that catch limits (or quota) cannot be treated independently from

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<sup>1</sup> At the time of writing this paper, the Minister had recently completed consultation with industry regarding possible changes to management arrangements for the Abrolhos Islands Area which would provide Zone A licensees with greater flexibility regarding returning to fish in Zone B.

rules relating to pot usage. This in turn does not allow the full range of management options available under an ITQ system to be implemented.

Implementing a new Management Plan for the fishery based around quotas being the primary management tool is the most appropriate way to complete the transition to a full ITQ system.

## **1.2 Compliance Implications of Moving From Input Controls to Output Controls**

The introduction of individual catch limits in 2010 has necessitated a significant change to the focus of compliance activities in the fishery.

Under the previous effort control model, the focus of compliance was on monitoring fisher compliance with effort controls (i.e. closures and pot numbers).

Under ITQs, the future sustainability of the fishery will be dependent on maintaining compliance integrity around the TACC. This changes the nature of the responsibilities that fishers and Registered Receivers/processors must fulfil.

Although most of the changes that the Department considered necessary to facilitate compliance under an output based management regime have already been introduced through amendments to the current Management Plan, the implementation of a new Management Plan provides the opportunity to revisit and refine these arrangements.

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## **SECTION 2 PROPOSALS UNDER A NEW MANAGEMENT PLAN**

### **2.1 Identification of Pots When Two or More MFLs are Associated with One Boat**

As outlined in Fisheries Management Paper 253 *Licensing and Allocation Under A New Management Plan for the West Coast Rock Lobster Managed Fishery* (FMP 253), in the past, the Department has received a small number of requests to operate two MFLs from one boat. These requests have normally been made by holders of both a Zone A and a Zone B MFL wishing to operate only one boat during the “whites”.

Interest in operating more than one MFL from the same boat has increased with the move to individual catch limits. Although there is nothing within the current Management Plan which explicitly prevents this, long-standing policy has been to not permit a boat to be named on more than one MFL because it makes it more difficult to determine under which licence an offence may have occurred. This can be overcome by prohibiting fishing under more than one MFL on each trip. At the time of writing this paper, consultation with WAFIC regarding an amendment to the current Management Plan to explicitly prohibit fishing being carried out under more than one MFL on the same trip had been completed.

A supplementary issue associated with a boat being named on more than one MFL is that current legislation requires floats attached to pots to be identified using only the Licensed Fishing Boat (LFB) registration number (e.g. F123).

This creates difficulties where non-compliant pots (e.g. pots with incorrect escape gaps) are located by Fisheries and Marine Officers (FMOs) but only an LFB number is displayed because they would be unable to determine under which MFL the gear is being operated.

To address this issue, it is proposed that in cases where more than one MFL is being operated from a boat, a float carrying the MFL number under which each pot is being operated must be attached.

***Recommendation 1 – That in addition to existing requirements relating to floats, where a boat is named on more than one MFL, each pot be required to have a float attached which is marked with the MFL number of the licence under which it is being operated.***

### **2.2 Pots in Multiple Zones at the Same Time**

Under proposals discussed in FMP 253, there are two circumstances that could result in pots operated from the same boat being set in more than one zone simultaneously:

- where more than one MFL is being operated from a boat and the MFLs confer access to different zones; or
- where an MFL has units for multiple zones associated with it.

Having pots set simultaneously in more than one zone provides the opportunity for lobsters to be taken from one zone, but to be declared as having been caught in another. This activity is known as “trucking” and is a problem in many quota fisheries around the world.

Trucking offences are complex to detect because FMOs need to either:

1. prove from which zone (and potentially also under which MFL) the lobsters were taken; or
2. apprehend the person in the act of pulling pots.

The most risk averse strategy from a compliance perspective would be to allow pots to be set in one zone at any time. However, compliance risks need to be balanced against the potential benefits that the additional flexibility of being able to have pots in more than one zone at the same time could provide to industry.

It is likely that the origin of some catch would be misreported as described above. However, noting that multi-zone operations are likely to be only a moderate proportion of the total fleet (even in the event of Zone A operators being allocated discrete Zone B units), and pressure within industry because of equity issues that would arise as a result of trucking, misreporting is expected to be limited.

The Department therefore considers that it is appropriate to allow pots to be set in more than one zone simultaneously provided that the following measures are introduced to mitigate compliance risks:

- that pots may only be pulled in one zone on any trip (though they could be set in more than one zone on the same trip);
- all lobsters must be removed from the authorised boat prior to pulling any pots in a zone which is different from the one from which catch was taken on the most recent fishing trip; and
- that fishers be required to nominate using the Interactive Voice Response (IVR) system the zone in which pots will be pulled, and from which catch will be landed, prior to commencing fishing.

***Recommendation 2 – That where a boat is associated with either:***

- multiple MFLs conferring access to more than one zone; or
- an MFL that confers access to more than one zone;
  - a) *pots be permitted to be pulled in only one zone on each trip;*
  - b) *all lobsters must be removed from the authorised boat prior to pulling any pots in a zone which is different from the one from which catch was taken on the most recent fishing trip; and*
  - c) *fishers be required to nominate using the IVR system the zone from which catch will be landed prior to commencing fishing.*

## **2.3 Carrying, Baiting and Setting Pots Outside the Season**

Although many provisions relating to carrying, soaking, baiting and setting pots outside of the fishing season have been removed from the current Management Plan, the legislation still permits the following activities outside of the season:

### *Mainland fishers*

In order to reduce congestion on wharves at the start of the season, fishers are currently able to load their pots (baited or unbaited) onboard their boats up to seven days prior to the start of the fishing season. These pots can also be transported by boat to the harbour or anchorage from which fishing will be undertaken when the season commences. Baited pots are able to be set from 4.30am on the day before the start of the season.

### *Abrolhos fishers*

Pots can be taken to the Abrolhos Islands from 25 February each year by either carrier boat or onboard the fisher's boat. Pots can be placed (unbaited) into designated pot soaking areas until they are ready to be baited and set from 6am on the day before the start of the season. Alternatively, pots can be placed on a jetty or at a fisher's camp.

Pots can be pulled from soaking areas, baited and stored onboard the authorised boat on either 13 or 14 March each year.

### *Carrying, Baiting and Setting Pots Under ITQ*

Under an ITQ system, there are not the same 'drivers' to commence fishing on the first day of the season. In addition, from 2013, the licensing period will start and end during a period when fishing is permitted rather than during the closed season. It is also proposed that fishing in Zones B and C be permitted all year (i.e. no closed season) (refer FMP 253). As such, there is no longer a need for provisions relating to carrying, baiting and setting pots with respect to these two zones. The only requirement is a prohibition on undertaking these activities once a licensee has exhausted their quota and has removed their gear from the water.

Should the proposal for year round fishing be rejected, a closed season will remain for Zones B and C. In this instance, it is proposed that fishers should be required to remove their pots from the water on the day prior to the start of the closure and not be permitted to carry, bait or set pots again until the closure ends.

It is recognised that the situation at the Abrolhos Islands is different from that on the mainland because some boats are not able to transport all required gear in a single trip. It is therefore intended to retain existing provisions relating to setting pots in designated soaking areas prior to the opening of the season, but similarly to Zones B and C, only allow these pots to be baited and set from the day the Abrolhos Islands Area opens.

### **Recommendation 3**

- a) *That existing provisions allowing pots to be carried onboard boats, baited and set in Zones B and C prior to the start of the season not be included in the new Management Plan.*
- b) *That pots must be removed from the water when the quota entitlement of a licence is exhausted.*
- c) *That in the event of a closed season remaining for Zones B and C, pots be removed from the water on the day before the closure commences and that they not be permitted to be carried onboard boats, baited or set again until the first day that the zone(s) re-open.*
- d) *That current rules relating to holding pots in designated soaking areas at the Abrolhos Islands continue under the new Management Plan.*
- e) *That similar to Zones B and C, pots only be permitted to be baited and set from the day that the Abrolhos Islands Area opens.*

## **2.4 Pot Pulling Times**

The current Management Plan regulates the times of the day when pots must not be pulled as follows:

- between the start of the season and 31 March, before 0430 hours and after 1930 hours; and
- between 1 April and the end of the season –

- in waters less than 36.6 m in depth, before 0600 hours and after 1800 hours; and
- in waters greater than or equal to 36.6 m in depth, before 0430 hours and after 1930 hours.

These controls are designed to restrict pot pulling to what are essentially daylight hours. The reasons for their introduction were to:

- constrain effort in an effort-managed fishery (i.e. stop multi-pulling of pots);
- minimise the risk of gear interference; and
- minimise handling of undersized rock lobsters which tend to leave pots prior to sunrise.

Handling undersized lobsters as a result of pulling pots during the night is not regarded as a risk to stock sustainability as handling mortality is likely to be low. Furthermore, gear interference is an equity issue between commercial fishers and is therefore not a high priority for the Department.

The Department supports removing restrictions around the times when pots can be pulled in the commercial fishery. This will necessitate some adjustments to holding over and IVR system requirements which are based around current pot pulling times.

With respect to the recreational sector, there remains a case for retaining existing restrictions on the times when pots may be pulled. This will assist with regulating effort, minimise the risk of gear interference (involving the pulling of both commercial and recreational pots) and minimise opportunity for “black market” activity. Accordingly, no change to recreational pot pulling times is proposed at this stage.

***Recommendation 4 – That restrictions on the times when commercial fishers may pull pots be removed noting that this will require some adjustment to rules relating to holding over and IVR.***

## 2.5 Holding Lobster

The current Management Plan permits lobsters to be held:

- onboard an authorised boat outside an Abrolhos Islands holding area or an approved landing area (see below) provided that information required to be provided in the holding over book has been recorded by 1930 hours;
- onboard an authorised boat inside an approved landing area provided that the lobsters are held in containers sealed with landing tags and Catch and Disposal Record (CDR) completion requirements have been met;
- onboard an authorised boat in an Abrolhos Islands holding area provided that information required in the holding over book is completed by 1930 hours and containers/holding tanks are secured with holding or landing tags at any time when the Master is not onboard the boat; and
- in Designated Holding Areas (DHAs) in the Abrolhos Islands Area provided the information required in the holding over book is accurately recorded prior to 1930 hours and containers/pontoons are secured with holding/landing tags. N.B there are provisions to allow more than one MFL holder to keep lobster in the same pontoon.

It is proposed to continue these arrangements under the new Management Plan. However, there is likely to be a need to implement minor changes to the rules around the time when the entry in the holding over book must be completed if restrictions on pot pulling times are removed.

The Department proposes to expand the existing prohibition on commercial fishers holding lobster generally in the waters of the fishery (i.e. other than as described above) such that it would apply to all persons. This is because the capacity for lobsters to be held in crates or holding pots at sea is a major risk in terms of quota fraud and “black market” activity.

In developing such a prohibition, it will be necessary to consider circumstances where recreational fishers legitimately hold lobsters in the waters of the fishery (e.g. at Rottnest Island) and to develop appropriate exceptions. Because of the impact of this proposed change on recreational fishers, specific consultation will be undertaken with Recfishwest before advice is prepared for the Minister’s consideration.

***Recommendation 5 – That current rules relating to commercial fishers holding lobsters in the fishery be maintained.***

## **2.6 Approved Landing Areas**

The current Management Plan prohibits lobsters being landed other than at 50 approved landing areas. The approved landing areas were determined based on the locations where lobsters had historically been landed prior to commencing the transition to quota. Their purpose was to limit the opportunity for lobsters to be landed without being acquitted from quota.

Although some approved landing areas are rarely used, with pre-fishing nominations using IVR, FMOs have greater capacity to plan their daily activities. Thus there is no reason why fishers should not continue to have the flexibility to use all of the currently approved landing areas.

***Recommendation 6***

- a) *That there be a continued requirement that lobsters may only be landed in approved landing areas.*
- b) *That the existing 50 approved landing areas under the current Management Plan be included in the new Management Plan.*

## **2.7 Containers and Tags**

The current Management Plan requires that lobsters must not be removed from an authorised boat (other than when they are to be held in a DHA at the Abrolhos Islands), unless they are in containers sealed with not more than four landing tags issued by the Department. These landing tags must remain intact until the consignment reaches the Registered Receiver’s premises and for not less than 10 minutes after the Registered Receiver takes possession of the consignment.

Where lobsters are being held in an Abrolhos Islands holding area:

- onboard a boat – the containers of lobster must be secured with not more than four holding or landing tags or, where lobsters are being held in holding tanks, but not in tagged containers, at any time when the Master of the boat is not onboard the holding tanks must be secured with holding tags. N.B landing tags may be used when it is not intended to re-pack lobster for transport to the mainland; or
- in a DHA – either the containers of lobster must be secured with not more than four holding or landing tags or the pontoon must be secured with holding tags. Where a pontoon is shared by two or more MFL holders, the pontoon must be divided accordingly and lobsters must either be held in containers secured with holding and landing tags or alternatively, each section of the pontoon must be secured with holding tags.

The purpose of the rules regarding container security and tagging is to provide continuity of evidence where prosecution action is taken, that is, to remove the ability for those charged with an offence from claiming that their catch was tampered with by a third party.

While there were some issues with tagged sealed containers in the first year of their use, these have largely dissipated and it is therefore proposed that the existing rules for the use of holding and landing tags as well as requirements relating to container security be maintained.

***Recommendation 7 – That existing requirements relating to container security and tagging be included in the new Management Plan.***

## **2.8 Weighing Lobster**

### **2.8.1 Location Where Weight Must be Determined**

The current Management Plan requires that lobsters be weighed within 15 metres of the authorised boat or at alternative weighing points as prescribed in the legislation. These rules exist to ensure that catch must be acquitted within a defined area to minimise the opportunity for lobsters to be moved outside of quota.

The 15 metre rule has proved impractical in some circumstances due to local by-laws restricting weighing operations on jetties and wharves. In another case the rule prevented efficient unloading.

The Department therefore proposes that the 15 metre rule be extended to 90 metres provided that FMOs can remotely observe weighings and intercept the catch.

***Recommendation 8 – That lobsters must be weighed either at a prescribed weighing point, or at a location within 90 metres of the authorised boat where FMOs can remotely observe weighings and intercept the catch.***

### **2.8.2 Method for Determining the Weight Deducted From Quota**

There are three options available for determining quota usage:

1. Registered Receiver net weight;
2. fisher net weight; and
3. the higher of the net weights recorded by the fisher and the Registered Receiver.

The current Management Plan is based on Option 3 as the method for determining catch limit usage.

This method was adopted because it was seen as offering the most efficient and effective compliance and administrative option.

Calculating catch limit usage in this way is unpopular with many fishers because in cases where the fisher's net weight is greater than that of the Registered Receiver because of water loss, the fisher is paid on the lower weight as determined by the Registered Receiver, but the higher weight (recorded by the fisher) is deducted from the catch limit.

According to the Department's catch monitoring database, in almost half of all consignments, the weight recorded by the Registered Receiver is higher than that declared by the fisher. As methods for storing, handling and weighing the catch by fishers and Registered Receivers vary across the fishery, this is to be expected. It is apparent that some methods provide for a greater alignment between the two net weights.

With these matters in mind, the following options have been explored-

### ***Registered Receiver Net Weight***

Under the Registered Receiver net weight model, the only point where the quota weight can be validated is at the point where the Registered Receiver is weighing the consignment. When an FMO is present, the Registered Receiver will declare the correct net weight, but in all other cases the opportunity exists for the weight to be under-declared by the Registered Receiver. This is because once lobsters have been tipped from their tagged containers, auditing Registered Receivers' holdings against individual fishers' CDRs is problematic.

The deliberate under-declaring of catch by receivers is known as “skimming” and is a well known phenomenon in quota fisheries. For example:

- the fisher correctly weighs and records a consignment weight of 100kg;
- the consignment arrives at the receiver and there is no FMO present;
- the receiver determines the net weight of the consignment at 100kg, but records 95kg on the CDR;
- only 95kg is deducted from the fisher’s catch limit; and
- the Registered Receiver has 100kg of lobster to sell and may or may not split the financial gain with the fisher.

Under the Registered Receiver net weight model, there is no incentive for fishers to discourage Registered Receivers from engaging in skimming, because they are paid for the same quantity of lobster deducted from their quota regardless of the actual weight of the consignment. In fact, fishers may even benefit financially as a result of skimming by Registered Receivers, if the Registered Receiver passes some of the advantage they have gained back to fishers in the form of higher prices, lower service costs or other benefits/payments.

Some in industry have suggested that the compliance risks associated with using Registered Receiver net weights as the basis for deducting quota could be mitigated by having a constant FMO presence at major Registered Receivers’ premises or through the use of video surveillance.

It is not cost effective or practical for FMOs to observe all weighings. While video surveillance or other technologies may ultimately be tools that can form a useful adjunct to existing compliance strategies, they are not currently viable options for overcoming the compliance concerns associated with the Registered Receiver net weight model.

Currently, the only compliance tools available to address skimming under the Registered Receiver net weight model are stock audits and covert operations, both of which are technically difficult.

### ***Fisher Net Weight***

Under this scenario, the quantity of lobster deducted from quota would be determined based on the net weight recorded by fishers at the point of landing. Although Registered Receivers may also be required to determine and record the net weight, this would serve as a validation tool only and compliance activity in relation to detecting over-quota offences would be focused on the point where lobsters are landed.

The main advantage from a compliance perspective of the fisher net weight model is that there is a clear connection between the person authorised to catch and land lobsters and the person who is responsible for determining the weight deducted from quota. For the fisher, it would provide a simple and immediate capacity to track catch against quota.

The use of fisher net weights would result in similar industry concerns and actions as exist under the current weighing arrangements. That is, fishers would act to increase the likelihood of being paid for the same quantity of lobster as is deducted from quota by underreporting the recorded weight to increase the likelihood of it matching the Registered Receiver's weight.

Overall, the use of fisher net weights as the basis for determining quota usage is in some ways a more robust model than relying on the Registered Receiver net weight, but it lacks the natural checks and balances and, particularly, the practical opportunities for detecting offences that are features of the current higher of the two weights model.

### ***The Higher of the Net Weights Recorded by the Fisher and the Registered Receiver***

The current catch validation process is focused on both fishers and Registered Receivers committing to weights prior to the lobsters being removed from their containers. This maximises the opportunity for FMOs to intercept and validate weighing declarations, as once lobsters have been tipped out of their containers, auditing and monitoring the Registered Receiver's net weight is problematic (see above).

The higher of the two weights model provides a direct incentive for fishers to monitor the activities of Registered Receivers as the fisher carries a financial risk if the Registered Receiver skims product. Conversely, the Registered Receivers run a risk of losing business if they engage in skimming.

It is these attributes of the current model for determining quota usage that result in it representing the most robust approach from a compliance perspective.

It is essential that Government implements fisheries management frameworks that are consistent with maintaining resource sustainability. Under quota management, this means ensuring the integrity of the TACC. Having a system with inbuilt checks and balances between the fisher and Registered Receiver provides this integrity. The Department therefore continues to support the use of the higher of the net weights recorded by the fisher and the Registered Receiver as the basis for determining quota usage.

However, industry's concerns about water loss are acknowledged and consideration needs to be given to how these can be mitigated. This could involve a consignment-based allowance for water loss or similar.

***Recommendation 9 – That the higher of the net weights recorded by the fisher and the Registered Receiver be the weight deducted from the quota associated with an MFL, but that consideration be given to how legitimate losses can be mitigated***

## **2.9 CDRs**

The completion and submission of CDRs by fishers and Registered Receivers is an integral component of the quota monitoring system.

Currently, the CDR is a triplicate form. The original is completed by the fisher and is then sent to the Department, the triplicate is provided to the Registered Receiver by the fisher with the relevant consignment of rock lobster. Once the Registered Receiver has determined the net weight of the consignment, the form is completed and submitted to the Department. The duplicate remains in the CDR book held by the Master of the authorised boat.

Some Registered Receivers have expressed a desire to retain a copy of the CDR in the same way the fishers keep the duplicate. Because of the size of the CDR form, it is difficult to photocopy.

The Department will explore the addition of providing an extra copy of the CDR to be retained by the Registered Receiver.

Currently, the legislation and CDR book design mean that the post-landing IVR confirmation number must be recorded on the Registered Receiver's copy of the CDR. That is, fishers must make the post-landing call and record the confirmation number on the original of the CDR form before consigning lobsters with the triplicate.

During the current season, to overcome delays in consigning lobsters because of the above requirement, the Department has allowed the post-landing call to be made after consignment. That is, the post-landing confirmation number has not had to be recorded on the Registered Receiver's copy of the CDR. The Department supports the new Management Plan formalising this arrangement. This change is also consistent with proposals relating to the timing of the post-landing IVR call (see below).

In preparing for the 2013 season, it should be acknowledged that the Department is engaging in a major project, Fisheye, which aims to provide the capacity for electronic reporting. In addition, it is likely that IVR will enable the CDR to be simplified.

***Recommendation 10***

- a) *That the Department explore the possibility of including an additional copy of the CDR to be retained by the Registered Receiver.*
- b) *That the post-landing IVR call confirmation number not be required to be included on the copies of the CDR provided to the Registered Receiver by the fisher.*

## **2.10 IVR**

Fishers are currently required to make pre-fishing, pre-landing and post-landing calls to the IVR system for each fishing trip.

The IVR system provides important administrative and compliance benefits including:

- assisting in the allocation of compliance resources;
- enhancing the integrity of the quota management system by committing fishers to pre and post-landing details;
- providing a greater opportunity to identify and apprehend offenders;
- more accurate and timely data, including catch balances; and
- lower data entry costs, as the initial QMS data is received electronically.

The IVR system provides useful intelligence in the timely identification of potential illegal activity and the subsequent targeting of potential offenders.

Under the current arrangements, the post-landing call must be made immediately after the last consignment of lobsters is weighed. Fishers have raised concerns that this requirement is contributing to congestion at some landing areas during peak periods. To assist in resolving this issue, it is proposed that the post-landing call can be made immediately upon the fisher returning to their pen/mooring/anchorage (within the same landing area) or within 10 minutes, whichever occurs first.

***Recommendation 11***

- a) *That pre-fishing, pre-landing and post-landing IVR calls are required to be made for each fishing trip.*

- b) *That post-landing calls be permitted to be made immediately after the fisher has returned to their pen/mooring/anchorage (within the same landing area) or within 10 minutes, whichever occurs first.*

## 2.11 Registered Receivers

To receive rock lobster, a person must apply to the Department to become a Registered Receiver. In addition, fishers are only permitted to consign lobsters to Registered Receivers and the consignments can only be opened at the place named on the Registered Receiver's certificate.

The use of Registered Receivers provides the Department with a number of tools including:

- a first check and balance to ensure the weight of lobsters has been correctly determined and recorded, as the fisher and Registered Receiver weights are recorded independently;
- the clear identification of persons who should not be receiving lobsters directly from fishers; and
- a known group of people that the Department can educate regarding the requirements of the quota management system.

Commercial Fishing Licence (CFL) holders are not permitted to be or act on or behalf of a Registered Receiver because of the importance of the fisher-independent weighing of the consignment. Although it could be argued that the risks associated with CFL holders becoming Registered Receivers, or acting on their behalf, is significantly reduced if the CFL holder does not operate in the fishery, there is no way to determine and track which fisheries a CFL holder is fishing in at any given time.

Citing opportunities for increased efficiency and cost savings for industry, some Registered Receivers have expressed an interest in having other receivers acting on their behalf to receive and weigh lobsters. However, an issue arises if the containers of lobster are opened or untagged containers of lobster are found on the premises of these 'sub-receivers'. Depending on the circumstances, this may constitute an offence and difficulties may arise in identifying which 'receiver' is actually committing the offence.

A more common scenario is where Registered Receivers share the same depot facility. In this case there are fewer compliance concerns as the containers of lobster cannot be opened in a depot. One receiver accepts the sealed containers of lobster on behalf of another receiver and the consignment (still in its sealed container) is later transported to the intended Registered Receiver's premises where the containers are opened and the net weight is determined.

The Department is supportive of this type of arrangement as it provides receivers with efficiency gains and fishers with greater choice.

### ***Recommendation 12***

- a) *That the current prohibition on CFL holders being Registered Receivers or acting for or on behalf of Registered Receivers remain in place.*
- b) *That Registered Receivers be prohibited from operating in the same premises as another Registered Receiver or from accepting lobsters on behalf of another Registered Receiver unless the lobsters are being held in tagged and sealed containers.*

## **2.12 Auditing and Monitoring Storage and Transport of Rock Lobsters**

Current legislation for the fishery is largely directed at controlling the activities of fishers and Registered Receivers to the point when they determine the net weight of consignments. There is no ability to monitor and audit the subsequent movement of lobster through the transport, processing, wholesale and retail chain to the point of consumption.

This is a significant compliance gap, because “black market” lobsters generally feed back into the legitimate marketing chain at some point.

Many fisheries jurisdictions require a level of record keeping that facilitates the tracking of fish from capture to consumption. This capacity would greatly benefit compliance in the fishery, but would require significant consultation and could not be introduced immediately.

As a first step, in late 2011, the Department posted a voluntary baseline stock survey questionnaire to all Registered Receivers. The purpose was to gain an understanding of the Registered Receivers’ business practices and record keeping and to obtain a baseline of lobster stock held. From a total of 159 Registered Receivers only 46 responded. Most major processors did not participate.

Therefore, it is proposed to include provision in the New Management Plan for annual stock audits of Registered Receivers. Also, insofar as is possible, it is intended to require that those storing or transporting lobster be required to be able to prove (through documentary evidence) that they were lawfully obtained.

### ***Recommendation 13***

- a) That the new Management Plan include requirements for Registered Receivers to complete annual stock audit forms.*
- b) That the new Management Plan requires that those storing or transporting lobsters be able to demonstrate through documents/records that the lobsters were legally obtained.*

## **2.13 Retaining Lobsters for Personal Consumption**

The move to an interim quota management system saw restrictions placed on the amount of lobsters that could be taken for personal consumption. In addition the weight of the lobsters was deducted from the fisher’s individual catch limit and the lobsters had to be tail clipped or punched in a manner similar to that of recreationally caught lobsters. A total of 1,433kg of lobster were reported as being taken for the purpose of personal consumption during the 2010/11 season.

Lobsters destined for personal consumption are currently subject to essentially the same CDR form and tagging requirements as those consigned to a Registered Receiver. However, a key difference is that personal consumption lobsters are not subject to the second, fisher-independent, weighing process at the Registered Receiver.

Evidence from the 2010/11 season indicates that lobsters were being landed ashore without coming off the catch limit. Operations to detect this type of behavior are technically difficult and costly. The level of compliance with the CDR requirements has also been poor.

Under an input control system, some fishers obtained lobsters for the purpose of personal consumption from the processor to whom they consigned their catch. There is nothing to stop this arrangement continuing under present or future management arrangements.

Commercial fishers are now also permitted to obtain recreational fishing licences, including for rock lobster, although they cannot not recreationally fish from a Licensed Fishing Boat. This

provides a further opportunity for fishers to take lobsters for their own use without them coming off their catch entitlement.

For these reasons, the Department's view is that provisions relating to retention of lobsters for personal consumption should not be included in the new Management Plan.

***Recommendation 14 – As fishers have alternate avenues available to them to obtain personal consumption lobsters, and to minimize risks of non-compliance, it is proposed that the take of personal consumption lobsters be prohibited.***

## **2.14 Authorised Boats acting as Licensed Carrier Boats**

Carrier boats have traditionally carried fuel and provisions to the Abrolhos Islands and then brought lobster back to Geraldton for processing. A decrease in the number of boats operating at the Abrolhos Islands has also seen reductions in the number of licensed carrier boats operating. As a result, some fishers have taken out Carrier Boat Licences for their authorised boats (for the purpose of this section, such boats will be referred to as dual authorised boats).

Various restrictions apply to the operation of carrier boats are in place in the current Management Plan. One of the core reasons is to provide the Department with the ability to identify the origin of lobster being carried on a carrier boat.

The current Management Plan requires that all CDR and weighing requirements are completed before lobsters can be taken onboard a carrier boat. In addition, where a boat is dual licensed, pots cannot be pulled when the boat is operating as a carrier boat (i.e. carrying lobsters taken by another boat). The Department considers that these requirements should remain under the new Management Plan.

### ***Recommendation 15***

- a) *That requirements be placed on the Masters of carrier boats (including dual authorised boats) such that only lobsters that have been taken and dealt with in accordance with the management plan are carried onboard the carrier boat.*
- b) *That the pulling of rock lobster pots from any carrier boat is prohibited.*

## **2.15 Over Quota**

The Minister has recently consulted on an amendment to the current Management Plan to increase the defence to prosecution for over quota offences from 10kg to 30kg. This defence is only applicable provided that the fisher pays the prescribed value of the lobsters into the Fisheries Research and Development Account within 14 days of the overrun occurring. Should fishers choose not to use this defence then they could be liable for either an infringement notice (proposed to be included in the FRMR) or prosecution action.

It has been identified that the 14 day period applying to this defence may be too short in some circumstances and it is proposed to extend the timeframe to 21 days.

The defence provides an administratively simple method of dealing with minor, unintentional over quota offences. However, where a fisher is caught deliberately attempting to defraud the quota system (eg. moving lobsters “off quota”), regardless of amount, it is appropriate that prosecution action is instigated. In these cases it is also appropriate that the amount of lobster subject of the offence is permanently reduced from the entitlement of the licence regardless of whether they had actually exceeded their entitlement at the time of the offence.

***Recommendation 16***

- a) *That the new Management Plan have a defence to prosecution in cases where a fisher exceeds their quota by less than 30kg provided that they pay the prescribed value of the lobsters into the Fisheries Research and Development Account within 21 days of the overrun.*
- b) *Fishers apprehended attempting to defraud the quota system should have their entitlement permanently reduced regardless of whether they have actually exceeded their entitlement.*

## **2.16 Breakdown Agreements**

The Plan currently provides for a fisher to apply to use a boat other than the authorised boat named on their licence in the case of breakdown. These arrangements are administered by the Department and can be approved for a period of up to 10 days. This arrangement is not available in other fisheries.

Breakdown agreements were very important in an input managed fishery as every day that the pots were not pulled would reduce the number of lobsters caught.

It is understood that industry may have concerns about the possibility of removing breakdown agreements on the basis that a fisher may be unable to operate during times when the price is high. However, there are avenues available to fishers which would enable them to continue to operate without a specific boat breakdown facility. These include boat replacements and temporary transfers of units. Changes being introduced to the Department's licensing and catch monitoring systems are expected to improve efficiency and therefore reduce the time it takes to process such applications. Although boat replacements and temporary unit transfers incur a cost for industry that does not exist under current boat breakdown arrangements, this is not considered a valid argument for their retention given that operators in other fisheries do not enjoy this privilege.

***Recommendation 17 – That no provisions are made for breakdown agreements in the new Management Plan.***

## **2.17 By-catch Issues**

The current Management Plan provides for a limit of 12 deep sea crabs per day per boat. The FRMR provides that these crabs must be landed whole. It is not intended to change these provisions.

***Recommendation 18***

- a) *That a daily limit of 12 deep sea crabs per boat be included in the new Management Plan.*
- b) *That the requirement for deep sea crabs to be landed whole be retained.*

## **2.18 Rock Lobster Taken Contrary to the Plan**

The current Management Plan currently has a number of provisions that deal primarily with the person who has committed the offence (e.g. the Master of a boat that has landed lobsters outside of an approved landing area). However, third parties such as a person who transports lobsters that have been received illegally may not commit an offence under the current Plan because they were not directly involved in taking the lobster, bringing it onto land or receiving it from the fisher.

Therefore, provisions are required that prohibit the possession of lobsters that have been taken, sold or otherwise dealt with in contravention of the management plan.

***Recommendation 19 – That a provision be included in the new Management Plan that prohibits the possession of lobsters that have been taken, sold or otherwise dealt with contrary to the management plan.***

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## **SECTION 3**

## **CONSIDERATION OF ISSUES COVERED UNDER THE FRMR**

### **3.1 Biological Controls**

The FRMR prohibits the taking of lobsters in breeding condition and lobster above and below prescribed size limits. Under a quota management framework, provided the TACC is set conservatively, it should be possible to remove these controls without adversely impacting on resource sustainability. However, until there is a greater understanding of the causes and impact on future abundance associated with current low puerulus settlement, it is not appropriate to relax or remove these restrictions.

***Recommendation 20 – That the current prohibitions on taking lobsters as set out below remain in place:***

- *in breeding condition (berried, setose and tarspot);*
- *less than 77 mm carapace length; and*
- *females greater than 95 mm carapace length in Zones A and B and 105 mm carapace length in Zone C*

*remain in place.*

### **3.2 Permitted Fishing Gear**

The current Management Plan prohibits fishing for rock lobster other than by the use of pots, the specifications for which are included in the FRMR. Under an ITQ system, it is possible to relax rules relating to permitted fishing gear. The Department understands that some in industry are interested in trialing new pot designs to improve economic efficiency and acknowledges that this is consistent with the objectives of quota management.

Continued low puerulus settlement in the fishery remains a major concern. And the Department needs to maintain a good understanding of the efficiency of fishing gear. Rather than assessing the efficiency of new pot designs, their efforts should be devoted to identifying the causes of the low settlement. On this basis, the Department does not support changes to existing gear restrictions at the current time.

***Recommendation 21 – That current restrictions on pot design as prescribed in the FRMR remain in place.***

### **3.3 High Grading**

High grading is the practice of maximising profits by landing the most valuable lobsters and returning lower grade and damaged product to the water. It is an inevitable consequence of moving to quota, but needs to be managed carefully to ensure it does not have adverse sustainability impacts.

In the case of lobsters, high grading can significantly increase fishing mortality if they are held on the boat for extended periods or are returned to the water at a place other than where they were caught.

Concerns have been expressed that some fishers are grading lobster when returning to port, including just outside landing areas.

Although the most effective means of dealing with high grading is likely to be through education and industry codes of conduct, there may be value in also having supporting legislation prohibiting high grading except under the same circumstances as currently apply to returning totally protected rock lobsters to the water. That is, any lobster that is not going to be retained must be returned to the water within five minutes of capture and before the next pot is pulled.

Although such legislation is not easy to enforce, successful prosecutions have occurred under the existing “five minute rule” for totally protected rock lobster. The Department therefore considers there would be merit in implementing such legislation with respect to high grading. The Department also proposes to apply this Regulation to recreational fishers, subject to discussions with Recfishwest.

***Recommendation 22 – That the current Regulation requiring that totally protected rock lobster be returned to the water within five minutes of capture and before the next pot is pulled be extended such that it applies to all rock lobster which are not to be retained.***

### **3.4 Regulations Relating to Products that Must not be Used as Rock Lobster Bait**

The FRMR currently prohibits:

- any bovine material other than gelatin or tallow;
- any skin or hide (except fish skin);
- anything to which any mammal skin or hide is attached; or
- any lobster material

from being used as rock lobster bait, or from being carried onboard a boat intended to be used for rock lobster fishing. These prohibitions apply to both commercial and recreational fishers.

These provisions were put in place to address marketing issues in Japan where animal hairs found in the digestive tract of lobsters were seen to detract from the quality and presentation of the product and where there were more general concerns about the consumption of bovine products following the advent of “Mad Cow Disease”.

The Department’s view is that industry is better placed than Government to manage responses to marketing issues and therefore considers that this regulation should be revoked.

***Recommendation 23 – That the FRMR be amended to remove the prohibitions on the use of hide, bovine material and rock lobster products as bait and the carrying of these products onboard boats intended to be used for fishing for rock lobster.***



