



MINISTER FOR PRIMARY INDUSTRY AND FISHERIES

WESTERN AUSTRALIA

Ref. 22508

27 OCT 2000

Mr Malcolm Peacock
Deputy Usher of the Black Rod
Legislative Council
Parliament House
PERTH WA 6000

Dear Mr Peacock

Government response to the Standing Committee on Ecologically Sustainable Development report in relation to *The Management and Sustainability of the Western Rock Lobster Fishery*.

Government welcomed the final report of the Western Australian Standing Committee on Ecologically Sustainable Development as it assessed the management of the western rock lobster fishery as being a major success story in terms of its sustainability of its yield and that the infrastructure managing the fishery is operating within ESD principles.

In terms of the recommendations contained in the report and other matters raised the Government provides the following response.

RECOMMENDATIONS

Recommendations 1 and 2

That there be a series of more inclusive and consultative coastal tours which respect the cultural diversity of the Southern/Fremantle region.

That Fisheries Western Australia utilise the services of officers with appropriate language skills within the Southern/Fremantle region.

Response

These matters have been referred to the Rock Lobster Industry Advisory Committee (RLIAC) for consideration.

In terms of the first recommendation there has already been a proposal to hold an industry convention each year instead of the RLIAC coastal tours. A convention has the potential to be more inclusive and improve consultation, as it would give the whole of industry an opportunity to vote on its position regarding RLIAC proposals. A

convention, where all industry was invited, would give the opportunity for all cultures to participate equally in formulating industry policy on issues that affect the lobster industry. The convention concept has been recently discussed at the RLIAC coastal tour and at RLIAC joint meetings with industry.

Recommendation 3

That whether the industry steering committee devises a new unified body acceptable to western rock lobster fishers or the Western Australian Fishing Industry Council Rock Lobster Sub-committee assumes that role, then that body should devise its own consultative mechanisms in order to effectively represent the views of fishers.

Response

A ballot is to be held in the near future on the formation of a catching sector peak body. If the peak body is formed it is expected that it would devise its own consultative mechanisms in order to effectively represent the views of fishers as recommended.

Recommendation 4

That newly appointed members of the Rock Lobster Industry Advisory Committee participated in an externally facilitated induction program, which explained the processes and responsibilities in becoming a member.

Response

Five newly appointed RLIAC members attended an externally conducted Management Advisory Committee training program. This training formed a major component of the induction program for the new members and included an explanation of the processes and responsibilities involved in becoming a member.

Recommendation 5

That the processing sector not be deregulated.

Response

Government has noted the recommendation of the Parliamentary Inquiry but has yet to determined its position on deregulation of the processing sector under National Competition Policy review.

OTHER ISSUES RAISED IN THE REPORT

Misunderstanding of RLIAC's Role


The following action has been undertaken to address the confusion over the role of RLIAC.

- The RLIAC Chairman explained the role of the committee at RLIAC's 2000 coastal tour held in October.
- A discussion of the Standing Committee's findings with respect to RLIAC's role and function has been included in a RLIAC Newsletter distributed to all west coast rock lobster fishery licensees
- An options paper on industry consultation prepared by an independent consultant and distributed to all licensees provided a detailed explanation of RLIAC's role and functions.
- Fisheries WA intends to further publicize the findings of the Standing Committee with respect to the role of Management Advisory Committees in general.

Allegations made in evidence presented to the Standing Committee

Fisheries WA has undertaken to examine the documentary evidence tabled at the Inquiry with a view to determining whether any written evidence presented warranted further action on the part of the Agency.

Yours sincerely


Monty House M.A.

MINISTER FOR PRIMARY INDUSTRY; FISHERIES





Our Ref: 696/99

Ms Anne Turner
Research/Advisory Officer
Legislative Council Standing Committee on
Ecologically Sustainable Development
Parliament House
PERTH WA 6000

Dear Ms Turner

**THE INQUIRY INTO THE MANAGEMENT AND SUSTAINABILITY OF THE
WESTERN ROCK LOBSTER FISHERY**

I refer to your letter regarding a number of issues raised by witnesses during the Public Hearings before the Legislative Council Standing Committee on Ecologically Sustainable Development in relation to the above Inquiry.

Fisheries WA provides the following responses to the issues which you have identified:

1. Mr Raymond Yukich

Question: *Why was Mr Yukich's snapper licence cancelled?*

In 1986 the then Director of Fisheries granted Raymond and Pamela Yukich an endorsement on their fishing boat licence which purported to authorise them to fish for snapper in a particular area of Shark Bay (FBL 'Condition No. 48'), ie:

"The vessel named herein is authorised to be used to take snapper (Chrysophrys spp) by use of handlines or droplines in the waters of Shark Bay below high water mark lying south of a line extending due west from a point on the high water mark on the mainland through Cape Peron north to a point on the high water mark of Dirk Hartog

Island south of Cape Levillain."

It appears that at the time that FBL 'Condition No. 48' was endorsed on Mr and Mrs Yukich's licence, there was in fact no restriction whatsoever on fishing for snapper in the waters of Inner Shark Bay. However, as a result of the gazettal of Notice 265 on 17 July 1987 and the subsequent replacement of that Notice on 6 November 1987 by Notice 284, FBL 'Condition No. 48' became necessary for the Mr and Mrs Yukich to continue to fish the waters of Inner Shark Bay.

On 22 July 1994, the Shark Bay Snapper Limited Entry Fishery Notice 1994 (Notice 656) was gazetted. For the first time, the waters of Inner Shark Bay were included within the Shark Bay Limited Entry Fishery (referred to as the *Shark Bay Snapper Managed Fishery* as from 1 October 1995). As such, only the holders of limited entry fishery licences issued pursuant to Notice 656 could continue to legally fish the waters of Inner Shark Bay. Mr and Mrs Yukich did not meet the criteria for entry to the Shark Bay Snapper Limited Entry Fishery as set out in Notice 656. Mr Yukich used to fish in the eastern gulf area, in particular Hamelin Pool.

However, between 1994 and 1996, both Fisheries WA and Mr and Mrs Yukich were under the mistaken belief that they, along with a small number of other fishers, were entitled to fish for snapper in the waters of Inner Shark Bay by virtue of holding FBL 'Condition No. 48'. As such, no action was taken by Fisheries WA between 1994 and 1996 to remove FBL 'Condition No. 48' from the licences of this small number of fishers.

The problem of the status of the Yukich fishing operations in Shark Bay first came to the notice of Fisheries WA in 1996 when Mr and Mrs Yukich objected to the proposed imposition, for conservation reasons, of a 2 tonne limit to the amount of snapper that they could take from the waters of Inner Shark Bay. It was at this stage that I became aware that FBL 'Condition No. 48' no longer had any legal effect by virtue of Notice 656, and it was therefore proposed to cancel it. The presumption was made that Mr Yukich would object and the issue would be properly determined by a tribunal established under the Fish Resources Management Act 1994. However, no notice of objection pursuant to Part 14 of the Act was received from Mr and Mrs Yukich to the proposed decision to cancel FBL 'Condition No. 48', so it was cancelled on 2 February 1997.

Mr and Mrs Yukich, however, continued to pursue the matter by other means. Fisheries WA undertook protracted discussions with them and their legal advisers as to a possible solution or settlement of the matter between late 1996 and early 1999, when the matter was finally resolved by mutual agreement. Unfortunately a solution which would have allowed them to continue to fish in the eastern gulf, particularly Hamelin Pool, was no longer an option, due to concerns over the perilous state of the snapper stocks.

On 1 April 1999, Mr and Mrs Yukich entered into a Deed of Settlement and Release with Fisheries WA and the Minister for Fisheries. The Deed contains a confidentiality clause as to the terms of the settlement.

2. Mr Robert Stock

Boat inspections

Question: *Were Mr Stock's 71 pots targeted for inspection by a FWA patrol vessel sent specifically for the task from Fremantle on 30 May 1998?*

Fisheries WA operates 3 seagoing patrol vessels, two of which (the PV “Baudin” and the PV “McLaughlan”), predominantly operate in the rock lobster fishery and are based in Fremantle and Geraldton respectively. The third vessel, the PV “Walcott”, operates throughout the State, but specifically in the lobster fishery from November to January each season.

Controlling the amount of fishing effort (i.e. the number of pot lifts) is a key element in maintaining the sustainability of the lobster fishery. The Agency’s seagoing compliance program is primarily directed at ensuring that lobster fishermen only operate the permitted number of lobster pots. This is achieved through the deterrent effect of patrol vessels doing random pot counts throughout the lobster fishery.

Over 95% of pot counts undertaken by patrol vessel crew are random checks.

Mr Stock’s pots were subject to inspection by the Fremantle based PV “Baudin” which was operating outside its usual patrol area because the Geraldton patrol vessel PV “McLaughlan” had been diverted to the south coast to assist with a research program in respect to large scale pilchard mortalities. The PV “Baudin” was directed to extend its patrol boundaries to cover the shortfall in at-sea compliance activity in the A and B zones of the fishery and was not sent from Fremantle to Freshwater Point to specifically target Mr Stock.

The 7 and 10 rule

***Question:** Why was Mr Stock not granted a dispensation for the 7 and 10 minimum and maximum pots to a boat rule, while a Mr Wells of Leeman was?*

Mr Stock was unable to obtain a dispensation regarding the 7 and 10 rule of West Coast Rock Lobster (WCRL) Management Plan (clause 16 (3) of the plan, ie the minimum pots on a boat is calculated by 7 x boat length and the maximum pots by 10 x boat length). Mr Stock was not permitted to use the 13 metre vessel he had purchased (to replace his existing vessel on his licence) because it was over length (under the then 7 and 10 rule) for the number of pots (81) he held on his licence. A thirteen metre vessel at that time (1996) required a minimum of 91 pots on the licence. The 7 and 10 rule was considered at the time, to be an integral and important element in controlling increases in the fishing power of the rock lobster fleet and hence the exploitation of the rock lobster stocks. For instance larger more powerful vessels can catch more rock lobsters by fishing more days of the season than smaller vessels, because they can go fishing in more adverse weather conditions. Thus a large vessel with ‘x’ pots would generally be expected to catch more than a smaller vessel with the same number of pots.

Mr Stock claims he had verbal communication with officers of the Agency in August 1996. He claims he was told he would not be exempt from the 7 and 10 rule on the grounds he was experiencing problems in obtaining the 10 additional pots he required to make his newly purchased 13 metre boat comply with the rule. Mr Stock claims that on the basis of this verbal advice he sold his boat (date?) and became unemployed for a year. I am not clear if Mr Stock means by unemployed that he leased his pots to another rock lobster fisher(s) for the seven and a half month rock lobster season as he did not have a legal length vessel and therefore could not work the pots himself, or that his pots did not fish, whether by lease or any other means.

According to FWA records Mr Stock did not make a written submission on or around August 1996, regarding his request for dispensation from the 7 and 10 rule. Therefore the Executive Director did not officially refuse in writing a written request from Mr Stock. However, the Executive Director did communicate to Mr Bob Bloffwitch MLA (Member for Geraldton) - who presented Mr Stock's case to him on 22 January 1997 - that he would not support dispensation in Mr Stock's case.

Mr Stock refers to a Mr Wells of Leeman who was given dispensation regarding the 7 and 10 rule in October 1996. The dispensation allowed Mr Wells to use his 11 metre boat with 68 pots rather than the 77 pot minimum required under the WCRL management plan. The dispensation was given to Mr Wells because he presented a clear and well substantiated case that he had anticipated he would be able to lease the additional 9 pots he required to make his 11 metre vessel conform with the 7 and 10 rule prior to the season commencing. Unfortunately despite his best endeavours he was unable to procure the necessary pots. The reasons for granting the dispensation to Mr Wells were stated in correspondence to him on the 24 October 1996 and were as follows [In *italics* is an additional explanation of the reasons as deemed necessary, which were not given in the letter]:

- Mr Wells already had a boat with a wetline concession.
He already had a licensed fishing boat (open west coast wetline concession), which could be used in the fishery on which he had spent a lot of money to refit it for rock lobster fishing. Mr Stock was replacing his existing legal size boat.
- Mr Wells was a new entrant to the fishery.
Therefore he may not have been as familiar with the vagaries of the pot market as a more experienced fisher may have been expected to be. Mr Stock was an experience fisher and would have been expected to have been aware of the boat replacement rules and to have had knowledge of the pot market.
- Mr Wells demonstrated a genuine attempt to acquire the necessary pots.
He supplied a comprehensive list of boat and pot brokers he had contacted to try and obtain the pots he needed and this was verified by FWA staff. There is no record that Mr Stock supplied similar information.
- Mr Wells and his family would be at serious economic disadvantage should the transfer of the license not be permitted to proceed.

Conditions to the dispensation also applied as follows:

- That Mr Wells actively pursue the lease of the further 10 pots he required, throughout 1996/97; and
- the concession not apply beyond 30 June 1997.

That is, the dispensation applied from 15 November 1996 to 30 June 1997, the seven and a half month rock lobster season.

3. Mr Stuart Johnston

Question: *Please provide details about the charges laid against Mr Johnson for failing to provide statutory fishing catch and effort returns.*

I note that the last sentence of the paragraph relating to Mr Stuart Johnston refers to "Mr. Stock". I have assumed that the question was actually meant to refer to Mr Johnston.

Fisheries WA's prosecution standards would not result in the prosecution of a fisherman where a lobster taken was only eight-hundredths of a millimetre undersize.

There is no legislative requirement for whole lobsters to be of a minimum weight.

Mr Johnston was subject to an investigation in September 1994 for failing to provide statutory fishing returns for the months of December 1993, January 1994, March 1994, April 1994, June 1994 and July 1994. Under section 18 of the *Fisheries Act 1905*, which was the applicable statutory provision at the time of the offence (regulation 64 of the *Fish Resources Management Regulations 1995* is the current equivalent provision), fishing returns for a monthly period were to be submitted by the 15th day of the following month. The catch and effort data collected from these fishing returns are used as part of Fisheries WA's rock lobster sustainability program.

Mr Johnston was part of a fishery-wide compliance operation in respect to fishermen who failed to submit monthly fishing returns. Such matters are generally only pursued where a fisherman is significantly behind in submitting fishing returns. In this instance, the operation was requested by Fisheries WA's Research Division after letters to offending fishermen requesting that outstanding returns be submitted had failed to achieve the desired result.

Fisheries WA, as a matter of general prosecution policy, only proceeded on one charge against Mr Johnston under section 18 of the *Fisheries Act 1905*. Mr Johnston pleaded guilty in the Geraldton Court of Petty Sessions on 20 March 1995. The Magistrate directed that no conviction be recorded pursuant to section 669 of the Criminal Code and awarded \$295 costs against Mr Johnston.

It should be noted that with the proclamation of the new Act on 1 October 1995, similar breaches can now be dealt with by way of infringement notice.

Mr Johnston raised the issue of the break-in of his camp and the stealing of records but did not ascribe it to a fisheries officer at his interview with the investigating Fisheries Officer in September 1994. Fisheries WA is unaware as to whether Mr Johnston approached the Police in regard to the Fisheries Officer he claims broke into his camp.

4. Mr Graham Boyd

E Zone Incorporation into C Zone

Question: Please provide information regarding the incorporation of Zone E into Zone C of the West Coast Rock Lobster Fishery

Definitions and background:

Zone E: 33°S to 34°24'S. Initially in 1972 with 9 vessels. Absorbed into Zone C in February 1989.

Zone D: 30°S to 34°24'S. With 7 vessels. Absorbed into Zone C in February 1989.

As at 30 June 1988 there were 3 vessels in Zone E and 5 in Zone D giving 8 vessels in total with 879 pots.

Zone C: 30°S to 33°S. As at 30 June 1988 there were 344 boats with 37 207 pots.

West Coast Rock Lobster Season : Commences on 15 of November each year and runs to 30 June the following year (7.5 months).

Mr Boyd wrote to the Department of Fisheries on 28 January 1988 seeking approval to purchase a Zone C West Coast Rock Lobster Fishery (WCRLF) licence and combine it with his 79 pot Zone E WCRLF licence to make one Zone D WCRLF licence. Zone D licensees

were entitled to operate in both Zones C and E of the WCRLF at that time. Mr Boyd also wanted to be able to sell the excess pots that would most likely be produced by combining the two licences. The excess pots from combining the two licences would be those greater than the number he could legally operate according to the then formula of 10 pots per metre of boat length (3 pots / foot length in imperial measure). Mr Boyd's proposal would have created a new Zone D licence with the flexibility to move between Zones C and E. The only Zone D licence to have been created since 1972, when 7 were created on the basis of historic fishing patterns, was some years before Mr Boyd's proposal, when a Zone E fisher purchased a Zone C licence and combined it with his Zone E licence and the excess pots were surrendered to the Department.

Mr Boyd's proposal as outlined above was put on the agenda of the Rock Lobster Industry Advisory Committee (RLIAC) for consideration at its meeting in Geraldton on 25 February 1988. Mr Boyd was informed in writing on 19 April 1988 that, based on the information available, RLIAC was not persuaded that the benefits to the industry were such that it should support the proposal. In making this recommendation to the Minister for Fisheries RLIAC noted that a similar proposal by another fisher had been approved, some years previously (as mentioned above), but his proposal had involved the surrender of a number of pots. RLIAC saw the surrender of pots as being of benefit to the industry in that it would mean less fishing pressure and exploitation on the stocks. Mr Boyd's proposal did not offer to surrender excess pots, but rather that he be able to sell them to other WCRL fishers. Mr Boyd was informed that if he wished to provide additional information, RLIAC would look at his proposal again.

The Minister, on the recommendation of RLIAC, abolished Zone E (ie it was incorporated into Zone C) on 27 February 1989, part way through the 1988-89 season. The question of whether to absorb Zone E into Zone C was placed on the RLIAC agenda and discussed at a number of its meetings between 1987 and 1989. RLIAC also presented the proposal for comment to the WCRL industry generally at its four coastal tour meetings at Geraldton, Jurien Bay, Ledge Point and Fremantle in 1988. In addition all Zone E (there were only three boats in Zone E as of 30 June 1988) and Zone D fishers were notified in writing of the proposal and were asked for their comments, as were all the Fishers Associations south of 30°S (ie the area incorporating Zones C, D and E). RLIAC followed its normal comprehensive consultative process prior to considering the proposal and making its recommendation to the Minister for Fisheries in November 1988 that Zone E be incorporated into Zone C. The Research and Management divisions of the Fisheries Department had made submissions to RLIAC that Zone E should be kept as a non commercial sanctuary zone to protect the rock lobster breeding stock that was there. RLIAC took the Department's views into account when making its decision, but was not persuaded of the merits of the sanctuary zone.

Prior to Mr Boyd's decision to move to Zone C he was informed by an Officer of the Department in January 1988, at a meeting to discuss his proposal, that Zone E would remain at least for the 1987/88 season. It was also intimated that the Department would like to see Zone E to remain as a sanctuary zone. However, as outlined above RLIAC had not yet made a recommendation to the Minister on the matter.

As background and history to Mr Boyd's claim that he spent \$600 000 to move from Zone E to Zone C, I tender the following information. Zone E pots were transferable to Zone C at the time, ie a Zone E fishers could sell their pots to Zone C fishers **for the going Zone C pot price**. There was strong demand for additional pots in Zone C at the time. As it transpired Mr and Mrs Boyd distributed (sold) their 79 Zone E pots between 11 Zone C fishers and then

purchased a 97 pot Zone C license (ie they purchased a licence with an additional 18 Zone C pots). Both transactions occurred in October 1988. In April 1991 the Boyds sold a half share in their licence to a Mr R S Boot (I understand he is Mr Boyd's brother-in-law). In January 1994 the Boyds and Boot purchased an additional 12 Zone C pots. It would appear Mr and Mrs Boyd made their own commercial decisions regarding their move from Zone E to Zone C. It could be presumed that the Boyds would have upgraded their licence from 79 Zone E to 97 Zone C pots for about the cost of an additional 18 Zone C pots. If Mr Boyd had maintained the same size licence as he had in Zone E (79 pots), his outlay to move to Zone C should have been relatively minor.

The Windy Harbour - Augusta Fishery

Question: *Please provide information regarding the restructuring of the Windy Harbour Augusta rock lobster fishery.*

The Windy Harbour - Augusta Fishery is located on the south coast of WA, with the two main anchorages being Windy Harbour and Augusta. It abuts the southern boundary of Zone C of the Western Rock Lobster Fishery at 34° 24' south latitude and the 115° 8' east line running from the Cape Leeuwin lighthouse to the intersection of 34° 24' south latitude.

Windy Harbour - Augusta fishery has always been considered marginal compared with the West Coast Rock Lobster Fishery, due to its location on the southern extremity of the biological range of the western rock lobster. This means the fishery receives sporadic and usually very low levels of puerulus settlement and hence catch. The puerulus is the stage of the western rock lobster that settles out onto the bottom after a 9 to 11 month oceanic larval cycle. It takes puerulus 4 to 5 years to grow to legal size.

At the request of the Australian Fishing Industry Council WA Branch (AFIC(WA)), the predecessor of WAFIC) the formerly open access rock lobster fishery at Windy Harbour - Augusta was made a limited entry fishery on 28 October 1987 after consultation with the fishing industry and other stake holders. Prior to 1986, under the relatively open access arrangements, 36 boats in the Windy Harbour - Augusta (WHA) area were endorsed to take rock lobster. The access criteria for the limited entry fishery reduced the number of boats permitted to continue fishing to 10 in the first instance, (with 878 pots) and to 14 (with 1052 pots) after appeals. In February 1995 there were 10 boats, with about 1052 pots in the fishery. The reduction in the number of boats came about by fishers totally redistributing their pots to other fishers in the WHA fishery and leaving the fishery.

At the time the limited entry fishery was introduced, the Department was of the view that the fishery could not sustain more than 1 to 3 specialist (full time) rock lobster boats. Prior to limited entry and during the first few years after limited entry was introduced, fishers had diversified fishing activities, with rock lobster being but one component of a larger fishing operation, (ie rock lobster fishing was combined with one or more of - shark, abalone, salmon and herring, fishing, etc). However, when pots became independently transferable with limited entry (ie they could be sold separately from a fisher's other fishing activities) most of the original licensees sold their pots to new entrants, who only had rock lobster to fish for. Some new entrants paid in excess of \$1500 per pot to enter the fishery. The sale of some of the licences took place just after two exceptionally good seasons of catch for WHA (1985/86 and 1986/87), which have not been repeated since. Annual total catches of around 15 to 20 000 kg, ie 15 to 20 kg per pot per season on average are considered to be the norm for WHA, whereas the average annual catch and annual catch per pot for the west coast fishery

are about 10 million kg and 150 to 200 kg per pot respectively (ie 10 times the annual catch per pot of WHA). Following the two good catch years, the economic circumstances of the fishery deteriorated due to lower rock lobster recruitment and hence catches.

In 1995, in response to industry submissions regarding the poor economic state of the WHA fishery the Department issued a discussion paper to the fishing industry, other interested parties, and to WHA fishers in particular, setting out a number of possible options to try and address the problem. There was no concern regarding the biological sustainability of the resource as WHA received its recruitment from the much larger west coast rock lobster stocks. The problem was a case of too many fishers harvesting the local stocks which were not abundant enough (except in exceptional years) to support the 10 rock lobster fishers trying to operate in the area. The Department estimated that to significantly improve the economic viability of the fishery there needed to be a 60 to 75% reduction in the number of pots and preferably only two operators (using about 350 pots in total). This compared to the 10 operators with about 1052 pots that were then involved in the fishery. This level of pot reduction was required to reduce the fishing effort to enable lobster abundance to increase to a level that would provide sustainable economic harvesting for two operators it was considered the fishery could support.

During the discussions of the options that ensued in 1995/96, WHA fishers agreed that there needed to be large reductions in the number of pots and boats in the fishery, but also argued that they should either be compensated for taking such a large pot reduction or that the government should provide funding for the rationalisation. At that point in time there was no readily available funding source to finance a rationalisation scheme so it was decided to proceed with a compulsory pot reduction of 60%. According to fishers this would have caused severe economic hardship to some fishers and would have left nearly all fishers (with the possible exception of one or two) with too few pots to be economically viable after the 60% pot reduction. The further rationalisation of the number of boats / licensees that would also have been required to achieve the rationalisation objectives was to be left up to industry.

The Agency pursued the implementation of the 60% compulsory pot reduction through an amendment to the WHA management plan on 30 August 1996. However this subsequently did not proceed because Parliamentary Counsel's office did not send the extracts to parliament as necessary under the requirements of Section 42 of the *Interpretation Act 1984*. The Agency prepared a replacement instrument which was signed and gazetted on 1 November 1996. However due to unforeseen procedural anomalies in the Legislative Council, caused by the prorogation of Parliament at the time the amendment was presented, the amendment was taken to have been disallowed by operation of the Standing Orders of the Legislative Council.

When it became known that the initial amendment to the management plan for the 60% pot reduction was not legal WHA fishers were informed. With the support of Paul Omedei (MLA), WHA fishers organised a meeting with the Minister for Fisheries and officers of the Agency in September 1996, to discuss the possibility of a buy-back scheme as an alternative to the compulsory 60% pot reduction. WHA fishers argued that they were being made to bear too great an economic burden for the proposed rationalisation, which they believed would benefit recreational fishers and the tourism trade, but would not resolve the longer term problems of the fishery, ie mainly how to bring about the creation of two viable fishing operations from the 10 licences in existence. They convinced the Minister for Fisheries that the case for financial assistance should be reviewed.

As a possible source of funds had recently been identified by the Agency, the Minister established a committee to advise him on whether a buy-back scheme was a desirable and viable option. The Committee advised the Minister that a buy-back scheme was a desirable and viable option, and the Minister then established a **voluntary** Fisheries Adjustment Scheme (FAS) for the purpose of reducing pot numbers in the WHA rock lobster fishery from 1046 (reduced from 1052) to 350 (a reduction of about 66%), and the number of operators from 10 to 2 (an 80% reduction in the number of boats / licensees). It should be noted that the FAS scheme was made at a time when it was understood that the management plan amendment for a 60% pot entitlement reduction was of no effect.

After detailed negotiations with the 10 WHA fishers (all of whom supported the proposal) and with the support of the Chairman of the Recreational Fishing Advisory Committee (representing recreational fishers) and WAFIC (representing the commercial fishing industry) the Minister agreed to buy 666 pots for \$973 each and 30 non transferable limited access pots for \$389 each - total cost \$659 688. The results of the FAS were published in the media (eg Augusta Margaret Mail 24 December 1996). The pot values were provided by the Valuer General's Office. By comparison, pot prices in Zone C of the WRLF at that time were about \$25 000 per pot (about 25 times greater).

Rationale for the funding of the WHA restructuring was based on two main premises:

- That the stakeholders who benefited most should provide the funds, in this case recreational fishers, government / the community and the two fishers who would remain.
- That the second phase of the rationalisation (ie the reduction from 10 licensees to two) should be accelerated rather than being left to the uncertainty of market forces. This was considered a more socially appropriate response to achieve the full rationalisation of the fishery.

Windy Harbour / Augusta, like the 'Capes' area, was known to be a very important area for recreational rock lobster divers. The rationalisation of the WHA fishery was considered to have significant benefits for recreational fishers, through potential increased catches, due to higher abundance brought about by greatly reduced fishing effort. There would also most likely be flow on advantages to the general community through the enhanced tourist attraction of the area (ie when it became known as a more rewarding rock lobster diving area).

Government and the community also derived benefits from restructuring the WHA fishery in that the rules regarding the taking of setose (sexually mature) females, maximum size lobsters and other rules (eg number of escape gaps in pots, size of pots, etc) that applied to the west coast rock lobster fishery could be applied across the entire range of the western rock lobster (including WHA), making enforcement more effective and efficient. WHA had previously been given dispensation not to have to comply with the setose and maximum size rules (and other rules) as a large part of the WHA catch comprised those categories of lobster. The protection of these large and reproductively valuable breeding females would be positive for the entire west coast rock lobster stock. Recent research by CSIRO had suggested that ocean currents in the area during the breeding season could take large quantities of larvae to the north along the west coast, thus making the area potentially important as a spawning area.

Once rationalisation was completed the WHA fishery and the associated recreational fishery had to comply with the rules of the West Coast Rock Lobster Fishery. This significantly reduced the policing problems of the WHA - WCRL Zone C boundary and the recreational fishery. Recreational fishers were known to have illegally caught setose and maximum size

lobsters in Zone C of the WCRLF and landed them in the WHA fishery area claiming them as legal catch from the WHA area. This had caused considerable policing problems for the Agency's local enforcement officers.

Funding for the scheme came from sources linked to the three stake holder groups considered to derive the greatest benefit from the buy-back scheme (ie recreational fishers, government and the two remaining licensees):

- \$278 000 from the \$2 million Government allocated to the Consolidated Fund for the Resource Sharing Initiative;
- \$381 688 from the general Fisheries Research and Development Fund (FRDF), and
- the two remaining licensees would repay \$100 000 to FRDTF through increased licence fees on the remaining 350 pot entitlements.

5. Mr Lajos Berdal

Question: *Please provide a transcript of the Court of Petty Sessions hearing regarding charges against Mr L Berdal of consigning undersize rock lobsters in his catch.*

I gather Mr Berdal refers to a hearing in the Court of Petty Sessions not a Tribunal as stated in the request for information. The Court would be the place for such charges would be heard. The files show that there have not been any convictions against Lajos Berdal. However, Mr Berdal's son Anthony who is the skipper of his boat was convicted on 23/1/1998 and 3/12/1994 for consigning totally protected fish (eg undersize rock lobsters).

The legislation is quite clear on the matters raised by Mr L Berdal. The relevant sections of the Act are sections 202, 203, and 224:

202. Liability of master

- (1) If a person (in this section referred to as "the principal offender") commits an offence against this Act, the master of a boat on which, or by the use of which, the offence was committed is taken to have committed the same offence.
- (2) It is a defence in proceedings against the master of a boat for an offence against this Act (by the application of subsection (1)) for the master to prove that —
 - (a) the master issued proper instructions and took reasonable precautions to ensure compliance with this Act;
 - (b) the offence was committed by the principal offender without the masters knowledge; and
 - (c) the master could not by the exercise of reasonable diligence have prevented the commission of the offence.
- (3) A master may be proceeded against and convicted of an offence against this Act by virtue of subsection (1) whether or not the principal offender has been proceeded against and convicted of the offence.

203. Liability of authorization holder

- (1) If a person (in this section referred to as "the agent") acting for or on behalf of the holder of an authorization commits an offence against this Act, the holder is taken to have committed the same offence.
- (2) It is a defence in proceedings against the holder of an authorization for an offence against this Act (by the application of subsection (1)) for the holder to prove that —
 - (a) the holder issued proper written instructions and took reasonable precautions to ensure compliance with this Act;
 - (b) the offence was committed by the agent without the holders knowledge; and
 - (c) the holder could not by the exercise of reasonable diligence have prevented the commission of the offence.
- (3) The holder of an authorization may be proceeded against and convicted of an offence against this Act by virtue of subsection (1) whether or not the agent has been proceeded against and convicted of the offence.

224. Automatic cancellation of authorization if 3 offences are committed in any 10 year period

(1) If —

- (a) the holder of an authorization, or a person acting for or on behalf of the holder, is convicted of a prescribed offence against this Act; and
- (b) in the Executive Directors opinion the offence relates to an activity being carried out, or purporting to be carried out, under the authorization,

the Executive Director must, as soon as practicable, notify the Registrar of that fact and the Registrar must record the conviction on the register in respect of the authorization.

(2) If the Registrar records 3 or more convictions in respect of an authorization in any 10 year period the Registrar must notify the Executive Director of that fact and the Executive Director must, by notice in writing given to the holder of the authorization, cancel the authorization.

(3) For the purposes of this section —

- (a) it is irrelevant that, at the time the authorization is cancelled under subsection (2), the authorization is held by a person other than the person who has been convicted of all or any of the offences;
- (b) if 2 or more offences arose out of one set of facts those offences are to be regarded as one offence;
- (c) a conviction may be recorded in respect of more than one authorization.

(4) Nothing in this section prevents another authorization from being granted to a person whose authorization has been cancelled under this section.

It should be stressed that pursuant to subsection 224(4), a person is not prohibited from applying for a new authorization immediately after an authorization has been automatically cancelled under s. 224. In exercising the discretion to grant a new authorization under the Act, the Executive Director will take into account the circumstances of the convictions that resulted in the automatic cancellation of any previously held authorization, including the extent of the applicant's personal involvement in the relevant offences.

6. Mr Tony Berdal

Question: *Please comment on Mr Berdal's:*

- (a) *assessment of the Vernier callipers that are used by Fisheries WA enforcement staff to help identify undersize lobsters in a fishers catch.*
- (b) *his statement that fisher's are prosecuted / fined for consigning rock lobsters that are only 0.05 mm undersize.*
- (c) *his statement that fishers have no way to check undersize lobsters that are allegedly found in their catch.*

The level of compliance with the provisions of the Act concerning the taking and consignment of protected lobsters (ie, oversize, undersize, setose, tarspot and berried lobsters) by commercial fishermen is extremely high. The industry standard for the 1998/99 season was one protected lobster per 1000 lobsters consigned.

The vast majority of the lobster fleet operate throughout the lobster season with none or only a very small number of undersize lobsters detected in their catch. Small numbers of undersize lobsters found in catches are dealt with by warning or infringement notices (ie, 34 infringement notices and 190 warnings were issued in 1998/99 for undersize lobsters). No illegal lobsters were found in the consignments of 50% of the fleet and only three prosecutions for undersize lobsters were commenced for the 1998/99 lobster season.

This data does not support claims that there is:

- (a) a problem with the accuracy of rock lobster gauges used by the industry;
- (b) that Fisheries WA is being unreasonable in determining the size of lobsters; or

- (c) that weather conditions are a significant factor in the accidental take and consignment of undersize rock lobsters.

It is Fisheries WA's view that where a fisherman has concerns over the accuracy of any gauge he (the fisher) is using or is about to use, the onus rests with that fisherman to take measures to ensure the gauge's accuracy. For example, Geraldton Fisherman's Co-op has arranged for the purchase of laser cut lobster gauges.

Fisheries WA's prosecution standards would not result in a prosecution of a fisherman for taking a rock lobster that was only 0.05 of a millimetre undersize.

Fisheries Officers use Sheridan gauges (the type the great majority of fishers use), not Vernier callipers, to initially measure lobsters. Verniers are only used to measure the actual size of the carapace of a lobster that has already been identified with the use of a Sheridan gauge as undersize. To provide admissible evidence of the length of a lobster to a Court, the *National Measurement Act 1960* requires that a certified measuring device be used. Knowing the exact carapace length of the undersize lobster also assists Fisheries WA and the Court in determining what action or penalty is to be applied to an offence involving undersize lobsters. The Vernier calliper has an edge which is thinner than that of the Sheridan gauge and officers are instructed on how to use them so that they do not dent the posterior margin of the carapace when measuring. However, it is emphasised that the Vernier calliper is **not used** as the primary indicator of an undersize lobster.

It is Fisheries WA's policy to return live protected fish, including lobster, to the water as soon as possible. In cases where fisheries officers are likely to instigate prosecution action against a fisherman, wherever possible the fisherman concerned is contacted and given the opportunity to measure the lobsters before they are returned to the water. However, consignments of lobsters are often transported hundreds of kilometres from various landing points between Bunbury and Carnarvon to processing establishments in coastal towns or cities. Consequently it is often not practical to provide fishermen with the opportunity to inspect seized undersized lobsters. In such cases it is usual practice to have an independent member of the processing staff (usually a foreman or manager) inspect the lobsters.

7. Mr Deane Massotto

Prosecutions

Question: *What were the issues surrounding Mr Massotto's alleged prosecution in January 1994?*

Neither Fisheries WA nor the Crown Solicitor's Office have any record of Mr Massotto being prosecuted or convicted for an offence in January 1994. However, Mr Massotto does have convictions for fishing whilst not holding a professional fishermen's licence in 1995, and fishing in closed waters of the Abrolhos Islands in 1986. The latter conviction was under the Commonwealth *Fisheries Act 1952-1973*.

It is not possible for Fisheries WA to provide further comments on the compliance issues raised by Mr Massotto without clarification from Mr Massotto with regards to:

1. What offence in 1994 he is referring to; and
2. The identity of the alleged second offender.

I acknowledge your verbal advice of 23 December 1999 that the Committee does not require Fisheries WA to further pursue these aspects of Mr Massotto's evidence at this stage.

76mm rule for "whites" and small coastal operators

Question: *Does the increase in the minimum size for the 'whites' fishery (15 November to 31 January) disadvantage small coastal vessel operators?*

In 1993 the Rock Lobster Industry Advisory Committee (RLIAC), after extensive consultation with industry over a number of years, recommended to the Minister for Fisheries a comprehensive management package for the western rock lobster fishery to rebuild the spawning stock. Researchers had shown that the breeding stock had fallen to dangerously low levels (ie 15 to 20% of the virgin biomass levels) and was continuing to fall. Part of this package increased the minimum size for western rock lobsters (wrl) from 76 mm to 77 mm for the first 6 weeks of the season (15 November to 31 January).

RLIAC recommended the increase in the minimum size for two main reasons:

- It formed an integral part of the spawning stock building programme, by allowing more immature animals to escape capture during the annual "whites" migration, when there is a large movement of pale shelled, mostly immature animals out to replenish the deep water breeding grounds.
- By increasing the minimum size from 76 to 77 mm during the whites the exploitation of the stock was reduced, thus allowing RLIAC to recommend a lower pot reduction than would have otherwise been required to meet the objectives of the management proposals. Initially RLIAC was considering a pot reduction of 25% to meet the management objective of rebuilding the breeding stock back to at least about 25% of the virgin biomass.

Mr Massoto claims that small operators were disadvantaged by this aspect of the management package. In 1995 at the request of the rock lobster industry the Department seconded a financial analyst from the Rural Adjustment and Finance Corporation to investigate the claims that the total management package and each of its individual components had a greater impact on the smaller operators in the fishery than larger operators. All small operators in the fishery (those with less than 100 pots) were surveyed and asked to provide information to support the case that they were suffering financial hardship due to any of the management arrangements. Only 5 licensees completed forms and only two of these claimed they were suffering financial hardship. On investigation the real reasons the two licensees were in financial difficulty were:

- one operator was trying to establish himself in the fishery without a sufficient capital base; and
- in the other case the business was trying to support too many families from a limited capital base.

Meetings and discussions were also held with 115 fishers, including interviews with 25 individual fishers. The resulting report *Impact of the New Management Package on Smaller Operators in the Western Rock Lobster Fishery* by Ross Gould (Fisheries Management Paper # 82, September 1995), detailed all the issues raised by small operators and found that overall they were not more affected by the management package or any one of its components (including the increase in whites minimum size) in comparison to larger operators in the industry. However, the report did find that some operators experienced a cash flow problem during the 1994/95 whites fishery (15 November to the end of January). However, by April

95 the increase in price and higher catches had compensated for any loss due to the pot reduction or lower whites catch.

RLIAC in a foreword to the report stated that:

While RLIAC always seeks to avoid disadvantaging any group when it makes changes to the management of the fishery, it always tries to make decisions that will in the long term, be in the better interests of the fishery. RLIAC also has to consider management of the fishery as a community resource and sometimes needs to consider issues that are wider than the catching and processing sectors.

In its lengthy discussions with industry prior to the introduction of the 1993/94 management package, RLIAC was aware that different components of the management package would impact differently on individual fishers operations (eg maximum size and setose rules would impact fishers who caught more of their catch from these categories of lobsters and the 77 mm minimum size whites rule would impact more on fishers who caught more small lobsters during the whites, etc). However, RLIAC believed the management package it developed to rebuild the dangerously low level of breeding stock, and eventually recommended to the Minister for Fisheries, was the best and most equitable it could devise based on the information available at the time. Gould's 1995 report also found that despite the evidence of earlier opposition, most fishers now appeared to support the management package. In addition an independent survey carried out by the Marketing Centre in 1996 showed that only 30.1% of the fishers who responded remained opposed to pot reductions.

Prohibition against pulling pots before dawn

Question: *What is the purpose of the ban on pulling pots at night, what was the consultative process prior to its introduction and what is the penalty involved.*

The regulation that does not allow the pulling of rock lobster pots before dawn (4.30 am in summer and 6.00 am in winter) was put in place at the request of the rock lobster industry directly to the Minister for Fisheries (via WAFIC). Industry wanted the restriction to reduce the problem of illegal pot hauling that was occurring, particularly around the populated coastal areas (especially Perth / Fremantle). The regulation reduced the opportunity for commercial and recreational fishers to illegally pull other fisher's pots (both commercial and recreational) under the cover of darkness. In addition researchers were concerned that a trend towards pulling pots more than once a day, as had started to happen in the northern Big Bank fishery, would spread to other parts of the fishery (particularly the coastal whites), with the potential to significantly increase exploitation and hence reduce the level of the breeding stock, which was already considered to be at a dangerously low level.

The rule has been effective in reducing the conflict between commercial and recreational fishers and within each of these sectors and in containing a potential escalation in fishing effort. The proposal did not go through the formal RLIAC - Industry consultative process and as such was not a recommendation to the Minister. However the proposal was included in background papers that were sent out to all west coast rocker licensees in 1992, in the form of the original letter from WAFIC to the Minister (letter dated 28 February 1992) recommending it as part of the management package proposed by the Rock Lobster Subcommittee of WAFIC for Zone C (south of 30°S) for the 1992/93 season. It did not appear to raise any controversy compared to the other management issues being discussed at the time (eg pot reductions, maximum size, protecting tarspot and setose females, etc), probably because it was not one of

RLIAC's proposals for discussion with industry, and was not one of their recommendations to the Minister.

Pulling pots prior to the prescribed times is a breach of a Management Plan under s.74 and Section 75 provides the penalties. Pulling pots outside prescribed hours is a major provision of the Plan and has the following General Penalty:

- 1st offence - for an individual a fine not exceeding \$25000 and imprisonment for 1 year
 - for a body corporate a fine not exceeding \$50000.
- 2nd or subsequent offence -
 - for an individual a fine not exceeding \$50000 and imprisonment for 2 years
 - for a body corporate a fine not exceeding \$100000

8. Mr Noel Sharp

Commercial fishers fishing in shallow water.

Question: Are commercial fishers allowed to operate close to shore?

Commercial rock lobster fishermen are allowed to fish for rock lobster in any depth of water in the rock lobster fishery, including shallow water.

I hope that all of the issues raised in your letter have been addressed above to your satisfaction. Should you require further information from Fisheries WA, please do not hesitate to write to me, or to telephone Mr Rhys Brown, Commercial Program Officer, on telephone number (08) 9482 7315 or 9295 4673.

Yours faithfully

P P ROGERS
EXECUTIVE DIRECTOR

8 February 2000