



**REPORT OF THE**

**STANDING COMMITTEE ON**

**ECOLOGICALLY SUSTAINABLE**

**DEVELOPMENT**

**IN RELATION TO**

**THE MANAGEMENT AND SUSTAINABILITY**

**OF THE WESTERN ROCK LOBSTER**

Presented by the Hon Christine Sharp MLC (Chairman)

Report 6

## **STANDING COMMITTEE ON ECOLOGICALLY SUSTAINABLE DEVELOPMENT**

### **Date first appointed:**

June 26 1997

### **Terms of Reference:**

1. A Standing Committee on Ecologically Sustainable Development is established.
2. The committee consists of five members.
3. The functions of the committee are to inquire into and report to the House on:
  - (a) any matter in Western Australia concerning or relating to the planning for or management, use or development of natural resources and the environment having particular regard to demographic, economic, ecological, technological and lifestyle and settlement factors and concerns; and
  - (b) any Bill or matter referred to it by the House.

### **Members at the date of this report:**

Hon Dr Christine Sharp MLC (Chairman)  
Hon Dexter Davies MLC  
Hon Helen Hodgson MLC (substitute for Hon Norm Kelly MLC)  
Hon Ljiljana Ravlich MLC (resigned from the Committee on March 21 2000)  
Hon Greg Smith MLC  
Hon Graham Giffard MLC (appointed to the Committee on March 21 2000)

### **Staff at the date of this report:**

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## SCOPE OF THIS REPORT

This Report sets out the Committee's findings in relation to five terms of reference of an inquiry into the *Management and Sustainability of the Western Rock Lobster*.

The Legislative Council first referred the Inquiry on May 5 1999. It subsequently lapsed and was re-referred on September 15 1999. The Committee then established an inquiry into the management of and sustainability of the Western Rock Lobster with the following terms of reference.

“That the Standing Committee on Ecologically Sustainable Development inquire into the management and sustainability of the Western Rock Lobster Fishery having regard to —

- (1) *The accountability of the Department of Fisheries and its rapid rate of expansion.*
- (2) *The potential conflict of interest of the department in being regulators and having involvement in projects and marketing.*
- (3) *A proportional redirection of Better Interests Development Funding to The Western Australian Rock Lobster Fishers Federation to enable them to better represent the interests of lobster fishers.*
- (4) *The ability of Western Australian fishers to store, feed and sell their product anywhere within Australia.*
- (5) *The establishment of a seafood exchange in Fremantle”.*

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## ABBREVIATIONS AND GLOSSARY

ACIL	National Competition Policy Legislation Review of the WA Rock Lobster Processing Industry, A Report to Fisheries Western Australia
Bennetts case	Bennetts v Board of Fire Commissioners of New South Wales and Others
CALM	Department of Conservation and Land Management
CEO	Chief Executive Officer
DBI	Development and Better Interest
ESD	Ecologically Sustainable Development
Federation	Western Australian Rock Lobster Fishers' Federation
Fisheries WA	Fisheries Western Australia
FRDF	Fisheries Research and Development Fund
<i>FRMA</i>	<i>Fish Resources Management Act 1994 (WA)</i>
MAC	Ministerial Advisory Committee
MSC	Marine Stewardship Council
National Strategy	National Strategy for ESD
NESB	non English speaking background
panuliris cygnus	western rock lobster
Plan	West Coast Rock Lobster Management Plan 1993
RLIAC	Rock Lobster Industry Advisory Committee
Rule	18% temporary pot reduction entitlement rule
RLSC	WAFIC Rock Lobster Sub Committee
State Ombudsman	Parliamentary Commissioner for Administrative Investigations
Tribunal	Fisheries Objections Tribunal
WAFIC	Western Australian Fishing Industry Council
WRLDA	Western Australian Rock Lobster Development Association (Inc)

# CHAPTER 1

## EXECUTIVE SUMMARY AND RECOMMENDATIONS

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### 1.1 EXECUTIVE SUMMARY

#### Background to the inquiry

- 1.1.1 Certain sectors of the fishing community resisted this inquiry for a variety of reasons. Some were incensed at the imputation that the western rock lobster fishery might be unsustainable. Others believed the inquiry had the potential to damage the reputation of the industry at a time when it was undergoing international certification. By contrast, others in the fishing community encouraged this inquiry in the mistaken belief that the process could be used to revive personal grievances with Fisheries Western Australia (“**Fisheries WA**”). Others used the inquiry as a platform to lobby for private property rights in the western rock lobster resource and a market research facility within Fisheries WA. Many fishers used the inquiry process as an opportunity to demand the return of lobster pots, lost through the 1993/1994 management package strategy.
- 1.1.2 Regardless of the different motivations witnesses had for making contributions to this inquiry, the Committee was impressed with the manner in which fishers, processors marketeers and managers exhibited a genuine pride in their industry. All protagonists emphasised that the western rock lobster resource, fishery and industry are sustainable.

#### Sustainability of the fishery

- 1.1.3 The western rock lobster (*Panuliris cygnus*) is a community resource, belonging to nobody, yet everybody and as a natural renewable source, it is limited and vulnerable. When access is unfettered, there is no incentive for individuals to protect the resource, so the community must act collectively to ensure that it is not over exploited. The Western Australian government, on behalf of the community has the responsibility of ensuring prudent management of the fishery.
- 1.1.4 Fisheries WA manages the fishery through the *Fish Resources Management Act 1994* (WA) (“**FRMA**”), an Act which specifically encapsulates principles of ecologically sustainable development (“**ESD**”). ESD provides a framework within which environmental and equity issues can be integrated with economic and resource use decision making.
- 1.1.5 The Committee’s assessment is that the fishery is a major success story in terms of sustainability of its yield and the infrastructure managing the fishery is operating within ESD principles. This success may be attributed in part to the activities of early

Western Australian fishery managers who recognised that a biological resource cannot be exploited too heavily without an ultimate loss of productivity as well as later research conducted by Fisheries WA's scientists into puerulus settlement rates.<sup>1</sup>

- 1.1.6 This research has supported biologists' predictions of sustainable catch levels and thereby enabled the setting of appropriate input controls. As a result, bumper harvests have been achieved over the past six seasons.
- 1.1.7 Input controls are specified in such documents as Fisheries WA's, *West Coast Rock Lobster Management Plan 1993* and the Rock Lobster Industry Advisory Committee's ("RLIAC") *1999 Operational and Work Plans for the West Coast Rock Lobster Managed Fishery*. Setose protection and the 18% temporary reduction in pot usage appear to be the most effective regulations for increasing the egg production in each of the zones of the fishery.<sup>2</sup>
- 1.1.8 The Committee's only criticism of the research effort is that to date, it has focused primarily on sustainable yields rather than on the ecosystems supporting the western rock lobster resource. Fortunately this gap in the research will now be addressed following the Marine Stewardship Council's ("MSC") insistence on an ecological risk assessment as part of its continuing certification of the fishery. Both Fisheries WA and the Western Australian Fishing Industry Council ("WAFIC") have signed a Memorandum of Understanding addressing all aspects of western rock lobster fishing on species, habitats and biotic communities.

### Management of the fishery

- 1.1.9 The Committee examined the management of the fishery from two perspectives. Firstly, that of key organisations playing a role in the decision making process for the management of the State's lobster resources and secondly, Fisheries WA, the government agency responsible for enforcing the *FRMA* and accountable to users of its services under cost recovery principles.
- 1.1.10 Overall, the Committee found that except for the WAFIC rock lobster sub committee ("RLSC"), the majority of key organisations performed reasonably well, whilst Fisheries WA employs sound management practices that are not always popular with some in the fishing community. However, it is clear that these unpopular decisions have contributed to the current sustainability of the fishery.
- 1.1.11 One key organisation provoked negative responses from many witnesses. This was the RLIAC, a ministerial advisory committee providing direct advice to the Minister on sustainable management of the fishery.

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<sup>1</sup> Puerulus refers to the larval stage of the western rock lobster

<sup>2</sup> Setose are breeding female western rock lobsters



- 1.1.12 It appeared to the Committee that essentially the whole inquiry turned on the effectiveness of the RLIAC and whether it is truly representative of fishers, a criticism levelled against it by the Western Australian Rock Lobster Fishers' Federation ("**Federation**").
- 1.1.13 The Committee decided that the RLIAC is numerically well represented with fishers although evidence suggested that historically it has been difficult to encourage fishers to nominate for the eight commercial fisher positions. This is partly attributable to fishers' reluctance to stand up in public and argue against fellow fishers that various conservation strategies must be adopted for the sustainable management of the fishery.
- 1.1.14 The Minister appoints members to the RLIAC on the basis of individual expertise, not as representatives of any particular group. The objective is to have a wide base of expert fisher advice. Hence, it is imperative that any person serving on the RLIAC is committed to the fishery as a whole and not use the appointment to promote sectional interests. Those selected to serve are Ministerial appointees and whilst representative *of* the industry, they are not answerable *to* the industry.
- 1.1.15 In creating a ministerial advisory committee like the RLIAC, Parliament has necessarily modified standards of impartiality. This modification means the Minister must weather the hazards of such a creation, especially that of potential conflicts of interest.
- 1.1.16 It appeared to the Committee that many fishers who gave evidence at this inquiry hold a mistaken belief that the RLIAC is directly accountable to them. This misunderstanding has resulted in unrealistic expectations of the RLIAC's performance and constitutes the primary reason for the dissatisfaction with the RLIAC process.
- 1.1.17 The Committee noted strong support for WAFIC, the industry's current peak body. However, WAFIC was also criticised, because in representing all commercial fisheries it allegedly has neither the resources nor the will to dedicate enough time to the western rock lobster fishery and to adequately represent the views of its fishermen. Some witnesses expressed the view that the RLSC is better positioned to be the industry body.
- 1.1.18 An industry steering committee is, at this time, seriously considering a model for a new unified body to represent the western rock lobster catching sector. This response by industry evolved from two concerns. Firstly, the fact that the western rock lobster fishery is the single most valuable fishery in Western Australia, generating \$300 million annually (compared with pearls worth \$200 million and prawns \$50 million); and secondly from the Federation and other Associations feeling disenfranchised and marginalised by current consultative mechanisms.
- 1.1.19 Industry is currently devising a model for a new unified body to represent the catching sector. The Committee believes another alternative for industry to consider is strengthening and re-inventing the RLSC as to make it the industry body. Nevertheless, whatever option is chosen, the Committee supports industry's own initiative in this matter.

## Accountability of Fisheries WA

1.1.20 It was levelled against Fisheries WA that its expansion has been at the expense of fishers, contrary to cost recovery principles. However, the Committee is satisfied that the expansion of Fisheries WA has occurred in fishing habitat protection, aquaculture, research and managing recreational fishing activities. The Auditor General concurs with this assessment whilst WAFIC, correctly reminded the Committee that when the *FRMA* was proclaimed, the agency was required to administer new functions prescribed under the *FRMA* with a consequent rise in costs to Fisheries WA. The Committee accepts that there is a perception that costs have increased for the western rock lobster fishery but there has in fact, been no resultant increase in management costs.

## Consultation

1.1.21 Some fishers expressed frustration with consultative mechanisms at all points within the fishery. One example is the RLIAC coastal tour, an annual event and major forum for consultation and discussion with industry. Tours are held at various locations along the coast, with fishers commenting that it affords limited opportunity to exchange information.

1.1.22 The Committee decided that the RLIAC has a fundamental problem with the manner in which it conducts the coastal tour in the southern/Fremantle area. This particular tour has language and cultural barriers making the consultative process ineffective. However, apart from the specific problem with the southern/Fremantle coastal tour, the argument by the Federation and others that the consultative process between the RLIAC and fishers is merely technical can no longer be justified. The RLIAC has responded to allegations of poor consultation by making significant changes to its work practices, for example, the use of regular newsletters and holding joint meetings with key organisations before the RLIAC meeting. These changes need time to make an impact.

1.1.23 Claims of poor consultation between the RLIAC and fishers is yet another manifestation of the misunderstanding some fishers have concerning the role, function and purpose of the RLIAC. This misunderstanding has become enmeshed with fishers own expectations of what the ideal RLIAC should be and how it should operate. Fishers want the RLIAC to be a representative body answerable to them but essentially, the RLIAC is an advisory body assisting the Minister.

1.1.24 In view of this fundamental misunderstanding of the RLIAC, the Committee made no recommendation to alter its structure but reminds the RLIAC of the necessity to provide clear, continuous communication of RLIAC activities to fishers.

### **Marketing and regulating**

- 1.1.25 A claim was made by the Federation that Fisheries WA undertakes marketing of western rock lobster and that this creates a potential for a conflict of interest because Fisheries WA is also the regulator.
- 1.1.26 The Committee decided that the question of whether Fisheries WA is engaged in marketing western rock lobster depended on the definition of 'marketing'. The Committee agreed with the Western Australian Rock Lobster Development Association (Inc) ("**WRLDA**") that Fisheries WA is not engaged in marketing but trade development and this is consistent with the objects of the *FRMA*. In fact the Committee decided that in order for Fisheries WA to responsibly achieve the objects of the *FRMA*, trade development is required.

### **The Development and Better Interest Fee**

- 1.1.27 The Development and Better Interest fee ("**DBI**") is an amount of money returned to the community, for use by the Minister for Fisheries, in the best interests of fisheries generally as well as fish and fish habitat protection.
- 1.1.28 Initially the Federation demanded access to this fee so as to enable it to better represent the interest of lobster fishers. However, by the time the inquiry commenced, the Federation's request for DBI funding was no longer an issue. This was because between the time of the drafting of the terms of reference and the commencement of this inquiry, industry had begun to review its institutional arrangements with the aim of working towards devising a new unified industry body for the catching sector. The Federation found this to be acceptable and withdrew its request for DBI funding.

### **Storing, feeding and selling fishers' produce**

- 1.1.29 The *FRMA* and other regulations restrict the ability of some fishers to store, feed and sell their produce interstate and overseas. There are no local restrictions but there is a significant restriction on fishers who want to be able to create niche markets interstate. The barriers are that fishers must hold a fish processor's licence and processing is only permitted on licensed premises. The processing licence can only be obtained from the 27 existing holders or from the issue of a new licence, the latter being unlikely to occur.
- 1.1.30 The Committee considered the milieu of National Competition Policy, where a Commonwealth, State and Territory Competition Principles Agreement binds all parties to the systemic review of existing legislation which may restrict competition. In the context of fisheries legislation, if anti competitive provisions are found, then reform of the legislation must be undertaken so as to not restrict competition. However, if it can be demonstrated that the benefits of the restriction to the community as a whole, outweigh the cost; and the objectives of the legislation can only be achieved by restricting competition, then no reform is required.

- 1.1.31 One of four reports assessing Western Australian's fisheries legislation compliance with National Competition Policy found that the legislation controlling the processing sector and the limit on the number of processing licences is by far the most important anti competitive provision.
- 1.1.32 The Committee considered the arguments in favour of deregulating the processing sector and noted significant resistance from many fishers, fisher Associations and processors. The Committee believes that deregulation of the processing sector will have an adverse impact on the sustainability of the western rock lobster fishery and the objects of the *FRMA* would be in jeopardy should deregulation occur.

### A seafood exchange

- 1.1.33 A member of the Federation proposed a seafood exchange for Fremantle. The proposal was described as a multi-functional complex, incorporating an internationally linked selling floor with world-class restaurants, function rooms, display areas, family restaurants and cafes. The concept is to create an auctioning system in the heart of Fremantle that is connected to the world via the Internet.
- 1.1.34 The proposal was linked to deregulation of the processing sector, yet the Committee considers that the current system regulating the processing sector need not be an impediment to such a facility. However, the Committee suggests that any concept plan be channelled through the normal consultative mechanisms.

## 1.2 RECOMMENDATIONS

**Recommendation 1:** That there be a series of more inclusive and consultative coastal tours which respect the cultural diversity of the southern/Fremantle region.

**Recommendation 2:** That Fisheries Western Australia utilise the services of officers with appropriate language skills within the southern/Fremantle region.

**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.

**Recommendation 4:** That newly appointed members to the Rock Lobster Industry Advisory Committee participate in an externally facilitated induction program which explains the processes and responsibilities involved in becoming a member.

**Recommendation 5:** That the processing sector not be deregulated.

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## CHAPTER 2

### PROCEDURE OF THE INQUIRY

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The Committee obtained information in a number of ways for the purposes of the Inquiry.

#### **2.1 PUBLIC HEARINGS IN GERALDTON**

2.1.1 The Committee conducted public hearings in Geraldton on October 27 1999. A list of persons who made submissions at those hearings is set out at Appendix 1. The Committee thanks each of the participants.

#### **2.2 PUBLIC HEARINGS IN PERTH**

2.2.1 The Committee conducted a number of hearings in Perth with representatives from key groups and others involved in the debate about management and sustainability of the western rock lobster. A list of persons who made submissions at these hearings is set out in Appendix 2.

2.2.2 The Committee thanks each of the representatives and their key groups for making their time and expertise available to the Committee.

#### **2.3 PUBLIC SUBMISSIONS**

2.3.1 The Committee sought written submissions to the inquiry through advertisements in the *West Australian*. A list of written submissions is set out at Appendix 3.

#### **2.4 SITE VISITS**

2.4.1 The Committee visited the Geraldton Fishermen's Co-operative and thanks the hosts for an informative tour of the facility.

#### **2.5 RESEARCH**

2.5.1 The Committee obtained information from a number of sources, including attendance at the Fishrights99 conference in Fremantle. The Committee is grateful to all those people who met what were often difficult requests for information. In particular, the

Committee thanks the Minister for the Environment, Fisheries Western Australia and Mr Peter Rogers, Executive Director of Fisheries, Fisheries Western Australia for the provision of information.

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## CHAPTER 3

### SUSTAINABILITY OF THE WESTERN ROCK LOBSTER RESOURCE

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#### 3.1 ECOLOGICALLY SUSTAINABLE DEVELOPMENT

3.1.1 The concept of ecologically sustainable development (“**ESD**”) had its genesis in the definition of *sustainable* development outlined in the 1987 Brundtland Report.<sup>3</sup> There, sustainable development was defined as development which meets the needs of the present without compromising the ability of future generations to meet their own needs. By contrast, ESD provides a framework within which environmental and equity issues can be integrated with economic and resource use decision-making.

3.1.2 Although there is no universally accepted definition of ESD, there are many authoritative statements, one of which is the Commonwealth’s National Strategy for ESD (“**National Strategy**”) which defines ESD as:

*“...using, conserving and enhancing the community’s resources so that ecological processes, on which life depends, are maintained, and the total quality of life, now and in the future, can be increased.”<sup>4</sup>*

3.1.3 The core objectives of the National Strategy are to:

- enhance individual and community well being and welfare by following a path of economic development that safeguards the welfare of future generations;
- provide for equity within and between generations; and
- protect biological diversity.

3.1.4 In 1989, the then Prime Minister of Australia, Mr RJ Hawke, issued a statement on the Environment called *Our Country Our Future*. Following its release, a summit of industry, union and conservation organisations was held to commence an approach towards encouraging Australia’s industry sectors and conservation groups to embrace and apply the principles of ESD. In 1991, nine national working groups were established to consider how to implement ESD principles in sectors of the Australian economy having significant inter relationships with the environment. One of these

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3 Otherwise known as: World Commission on Environment and Development, *Our Common Future* (1987)

4 Commonwealth of Australia (1992) *The National Strategy for ESD*, p.6

nine groups was a Fisheries Working Group under the Chairmanship of Dr Roy Green. The Fisheries Working Group concluded that:

*“...ecologically sustainable development in fisheries will not be achieved unless environmental and economic factors are considered together... This is because fish are a community resource. They belong to nobody, yet everybody. As a natural renewable source they are limited and vulnerable. There is no incentive for individuals to protect them when access is unfettered, so the community must act collectively to ensure that the resource is not over exploited. Governments on behalf of the community must ensure the prudent management of the fishery”.*<sup>5</sup>

### 3.2 COMPONENTS OF A SUSTAINABLE FISHING ACTIVITY

3.2.1 The Committee received many polarised views during this inquiry about what constitutes a sustainable fishing activity. At one extreme there is ESD theory which posits that it is impossible to declare any fishing activity sustainable in the face of environmental uncertainty. In the middle, are views like those of Mr Merv Collinson, Fisher, who commented that “... *the [western rock lobster] industry is ecologically sustainable subject to environmental conditions with current input controls.*”<sup>6</sup> The MG Kailis Group emphasised that it is compliance with and enforcement of fisheries legislation that makes a fishing activity sustainable. At the other extreme, there are others who assert that private property rights in the form of individual transferable quotas is the key to a sustainable fishing activity.<sup>7</sup>

3.2.2 The Marine Stewardship Council (“MSC”) is a global, independent charitable organisation established in 1996, seeking to harness the power of consumers, businesses, governments and international institutions to secure the future of fish stocks. The purpose of the MSC is to promote sustainable fisheries and responsible fishing practices worldwide, through developing long term, market based solutions, which meet the needs and objectives of both the environment and commerce. Central to the purpose of the MSC are its principles and criteria for sustainable fishing, against which independent certification companies may certify fisheries, on a voluntary basis. Fish from certified fisheries and fisheries stakeholders are then eligible to use the MSC logo, which conveys to consumers the assurance that the fish or fish product is from a well managed and sustainable fishery and that it has been fished responsibly.<sup>8</sup>

3.2.3 The MSC defines sustainable fishing as that which:

*“...allows target fish populations to recover at healthy levels from past depletion;*

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5 Ecologically Sustainable Development Working Groups, *Draft Report* (1991) p. viii

6 Mr Merv Collinson, Submission No. 2

7 The United MidWest Fishers Association, Submission No. 28; Mr Peter Burton, Submission No. 22

8 The MSC Website at <http://www.msc.org/>



*maintains and seeks to maximise the ecological health and abundance of marine fish;*

*maintains the diversity and structure of the marine eco-system on which it ultimately depends; and*

*conforms to all local, national and international laws and regulations."*<sup>9</sup>

3.2.4 The Committee notes that long before the term ESD entered colloquial language or the National Strategy was written, some aspects of ESD had been incorporated by Western Australian fisheries managers simply because it was recognised that a biological resource cannot be exploited too heavily without an ultimate loss of productivity.<sup>10</sup> Thus the concept of a 'sustainable level' of fishing had in fact been put into operation through early techniques like simple growth modelling of the lobster resource. Such techniques have been refined in the last decade to the point where puerulus settlement rates can now be predicted up to four seasons in advance.

3.2.5 In October 1995, a new *Fish Resources Management Act 1994 (WA)* ("**FRMA**") was proclaimed which specifically encapsulated the principles of ESD for Western Australia's fish resources. Section 3(1) for example, lists the objects of the *FRMA* as being to:

*"...conserve, develop and share the fish resources of the State for the benefit of present and future generations."*

Section 3(2)(b) of the *FRMA* ensures that the exploitation of fish resources is carried out in a sustainable manner, whilst section 3(2)(e) refers to achieving the "...optimum economic, social and other benefits from the use of fish resources".

### **3.3 ESD AND THE WESTERN ROCK LOBSTER FISHERY**

3.3.1 The western rock lobster (*Panulirus cygnus*) fishery is, according to the Auditor General, a "...major success story in terms of sustainability"<sup>11</sup> with annual catches remaining high since the first management plan was introduced in 1963.

3.3.2 Protagonists to this inquiry constituted fishers, processors and managers, yet all three groups have in common, a genuine pride in the viability of the industry and claim that both the resource and the industry are, and will continue to be sustainable. Many fishers who gave evidence at public hearings spoke passionately of being associated with such a dynamic industry. Written submissions expressed a similar theme,<sup>12</sup> whilst processors and industry were jubilant at the certification of the industry by the MSC on March 3 2000. Such certification means the industry is, by international standards, the best managed lobster fishery in the world.

9 Marine Stewardship Council (1999) *Our empty seas: A global problem, A global solution*

10 Fisheries WA, Submission No. 17

11 Office of the Auditor General (1999) *Performance Examination, Report No 6*, p. 15

12 For example, Mr Gil Waller, Submission No. 9

- 3.3.3 Dr Bruce Phillips, Adjunct Professor, Curtin University of Technology, conducted part of the certification process and explained its importance.

*“...This is the very first process assessment on a marine fishery. ...[The MSC] performed an auditing function in the same way that any International Standards Organisation process would involve auditing. That is, we work to a set of criteria and determine whether the process being examined meets the criteria. It is different from some ISO [International Standards Organisation] systems in that most are process based. We are looking at the process used to keep fish and look after them. This is a mixture of process and resource information. We are looking at the resource and trying to understand whether it is sustainable. The process is divided into three sections. The first relates to stock assessments, what stock assessments have been done and whether we think they are adequate and so on, and it is very technical. The second section relates to the environment and understanding what is known about it, how the fishery impinges on it and all the associated issues, such as bait being thrown over the side at the end of fishing and so on. Complicated and difficult questions are asked. The third section relates to the management of the fishery, the management plans and how they are promulgated, communication and whether it is inclusive of the entire community and so on...The net benefit of certification is an economic advantage to the fishery. The industry can use a logo on the product and this is seen as a market advantage. ...Economic studies suggest that the product may be sold as opposed to not sold, and in the present market it would attract a 10 per cent increase in value.”<sup>13</sup>*

- 3.3.4 The Conservation Council of Western Australia was the only voice to question the sustainability of the western rock lobster fishery:

*“...it could be and is argued that, in the case of the Western Rock Lobster Fishery, that maintenance of the catch over time indicates that the ecosystem components on which the fishery depends are maintained. However it does not necessarily follow that the structure, productivity, function and diversity of the ecosystem in which the fishery operates is being maintained. ...As there is no monitoring of the structure, function and diversity of the ecosystem in which the Fishery operates, nor any monitoring of how it is changing over time, it follows that there is no scientific basis on which to say that the Fishery is ecologically sustainable even though it may well be that it is sustainable as an industry.”<sup>14</sup>*

- 3.3.5 The Committee agrees with the Conservation Council’s observation that little research has been accomplished into the ecological impacts of the fishery and the marine habitats supporting the lobster resource. The research has tended to focus on sustainable yields, leaving the question of ecological sustainability unanswered.

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13 Dr Bruce Phillips, transcript of evidence, 24/11/1999, p. 2

14 Conservation Council of Western Australia, Submission No. 18

- 3.3.6 This identifiable gap in the research will now be addressed. The certification report of the MSC for the western rock lobster fishery contains a provision that for continued certification purposes, the western rock lobster fishery must conduct a comprehensive assessment of the risks of the fishery and fishing operations on the ecosystem within the next 14 months. The assessment is to address all aspects of western rock lobster fishing on species, habitats and biotic communities.<sup>15</sup>
- 3.3.7 In response, the Western Australian Fishing Industry Council (“**WAFIC**”), Fisheries WA and Scientific Certification Systems Incorporated<sup>16</sup> signed a Memorandum of Understanding agreeing to undertake this research in the form of an ‘ecological risk assessment’.
- 3.3.8 From a yield perspective, the industry is sustainable. However, reliance on yield statistics alone to determine sustainability of any fishery is an unbalanced approach. This is a theme espoused by Professor Carl Walters, Researcher at the University of British Columbia, who believes that the use of commercial harvest figures as the primary source of data to determine sustainability is foolish. Professor Walters suggests the information is distorted and “...is not a representative sample of what is really out there.”<sup>17</sup> However, in the case of the western rock lobster fishery, Professor Walters noted that independent surveys of egg production and puerulus settlement is balanced by accurate data from the commercial fleet.

### 3.4 RESEARCH AND DEVELOPMENT

- 3.4.1 During the last ten years, Fisheries Western Australia (“**Fisheries WA**”), a department of the Western Australian government responsible for regulating fisheries in Western Australian waters, has conducted extensive internal research as well as the commissioning of independent research into the sustainability of the western rock lobster.<sup>18</sup> This research has supported biologists’ predictions of sustainable catch levels and thereby enabled the setting of appropriate input controls.<sup>19</sup> As a result, Fisheries WA claims bumper harvests have been achieved over the past six seasons.
- 3.4.2 This success appears to stem from an unpopular 1993/1994 Fisheries WA management package, which, despite intense opposition from fishers, tackled the difficult problem of declining stock assessments. Modelling studies had shown that the breeding stock had fallen to dangerously low levels and was continuing to fall.<sup>20</sup>
- 3.4.3 In a 1995 study by Brown, Caputi and Barker, it was considered that the decline had been accelerated by the introduction of new technology like global positioning, colour echo sounders and the trend to larger more seaworthy vessels which resulted in an

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15 Scientific Certification Systems Incorporated (1999) *Report on the Western Rock Lobster Fishery in Western Australia*, section 12.1

16 Scientific Certification Systems Incorporated is a certification body accredited by the MSC

17 Walters, C, *Fishing on Thin Ice*, contained in the Submission of Hon Jim Scott MLC, Submission No 25

18 See Appendix 4

19 Examples of input controls are: boat sizes, gear (pot) restrictions and length of seasons

20 The research was first published in *Fisheries Management Paper No 54*, Rock Lobster Industry Advisory Committee, Management proposals for 1993/94 and 1994/5 western rock lobster season (1993)

increased exploitation rate, particularly on the deep water stocks principally comprising the breeding animals.<sup>21</sup>

- 3.4.4 Parts of the 1993/1994 management package remain in operation today despite continual lobbying by fishers to abolish certain parts, most notably, the 18% temporary reduction in pot usage. However, indications are that the package is achieving its aim of increasing the breeding stock to the target levels of the early 1980s. A recent Fisheries WA research paper assessing the impact of the 1993/1994 management package stated that:

*"...in general, the setose and 18% pot reduction appear to be the most effective regulations in increasing the egg production in each of the zones of the fishery. ...it is worth noting that the setose and maximum size regulations protect mature females only, but the 18% pot reduction and minimum size protect males as well as females."*<sup>22</sup>

Indeed the predicted catch for this season, 1999/2000, is approximately 14,000 tonnes compared with 13,000 tonnes in the 1998/1999 season.<sup>23</sup>

- 3.4.5 The Committee notes that the Department of Conservation and Land Management ("CALM") is proposing a new 70,000 hectare marine park which will affect rock lobster fishers from Jurien, Cervantes and Greenhead. If the Park is declared it will provide opportunities for scientific research into the eco-system supporting the lobster resource.
- 3.4.6 Western Australia's seven current marine parks contain sanctuary zones where all marine plants and animals are totally protected. Other zones are created for recreational purposes whilst general use zones provide for commercial fishing and other uses that are consistent with conservation. The purpose of the proposed Jurien marine park is to ensure that underwater habitat and ecosystems are preserved indefinitely.
- 3.4.7 According to CALM, the proposed Jurien marine park allows for 4% of the park to be designated a sanctuary zone.<sup>24</sup> The Committee considers sanctuary zones to be a vital component of sustainably managing an aquatic resource and notes that other marine parks have, by comparison, designated greater areas as sanctuary zones, depending on competing beneficial uses. However, the proposed Jurien marine park has also designated large areas for scientific research where rock lobster fishing can occur but no other extractive activities, like wet line fishing, spearing or recreational line fishing, will be permitted.

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21 Brown, RS, Caputi, N & Barker, EH (1995) 'A preliminary assessment of the effect of increases in fishing power on stock assessments and fishing effort of the western rock lobster fishery in Western Australia' *Crustaceana* 68, pp. 227-37

22 Fisheries WA, Submission No. 17

23 Fisheries WA, Submission No. 17

24 Conservation branch of CALM, (2000) table summarising zoning in existing marine conservation reserves

**3.5 COMMITTEE FINDINGS**

The Committee finds that:

1. scientific research into the western rock lobster focuses on sustainable yields of the resource rather than ecological sustainability of the industry. This inadequacy is now being addressed through a risk assessment of the fishery as part of continued certification requirements by the Marine Stewardship Council.
2. notwithstanding the focus of the research, the yield from the western rock lobster resource is currently sustainable and the infrastructure managing the fishery is operating along ESD principles; and
3. the recent certification of the industry by the Marine Stewardship Council is an indication of sustainable western rock lobster fishing.



## CHAPTER 4

### STRUCTURE OF THE INDUSTRY

#### 4.1 INDUSTRY ORGANISATION

4.1.1 The Industry consists of a fishing and a processing sector. The fishing sector currently comprises 597 licensed commercial vessels, working between 90 and 100 pots. The majority of operators own only one licence with the maximum number of pots per licence being 150. The minimum number is 75.

4.1.2 The processing sector was first regulated in 1966 when it became a requirement that a processing establishment be licensed. The impetus for regulation was the need to eradicate the ‘cacker trade’<sup>25</sup> and at the time, all processors were given the opportunity to apply for a licence.<sup>26</sup> There are two types of licences:

- a restricted licence which allow the licensee to cook and market up to 20,000 tonnes a year of whole rock lobsters in Western Australia; and
- an unrestricted licence which allows the licensee to export with no limits on volumes.

4.1.3 At present there are seven restricted licences (of which three are inactive) and 19 unrestricted licences of which four are inactive.<sup>27</sup> Twelve processing companies and two co-operatives run processing facilities at any point along the coast.<sup>28</sup> The processing sector is discussed in more detail in Chapter 9.

#### 4.2 KEY FISHING ORGANISATIONS ASSISTING THE MINISTER

4.2.1 Below are all the organisations and representative groups involved in the western rock lobster fishery.<sup>29</sup> As can be observed, the Minister has direct access to a wide variety of information from numerous sources.

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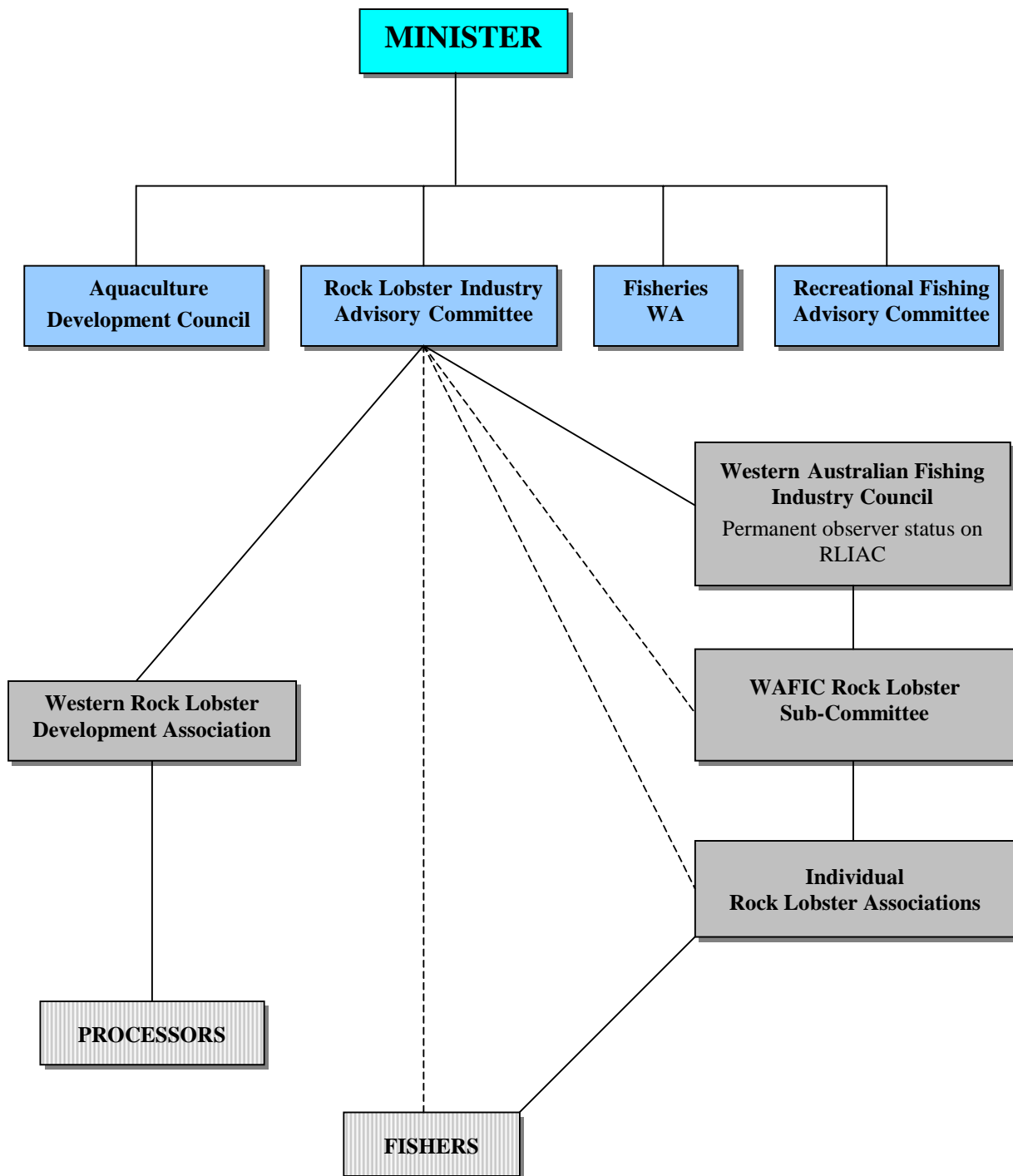
25 The practice of handling illegally caught undersized lobsters

26 Under the *FRMA*, these licences are ‘authorizations’

27 Fisheries WA (May 2000) List of Western Rock Lobster Processors

28 Previously there were restrictions on the location of processing facilities

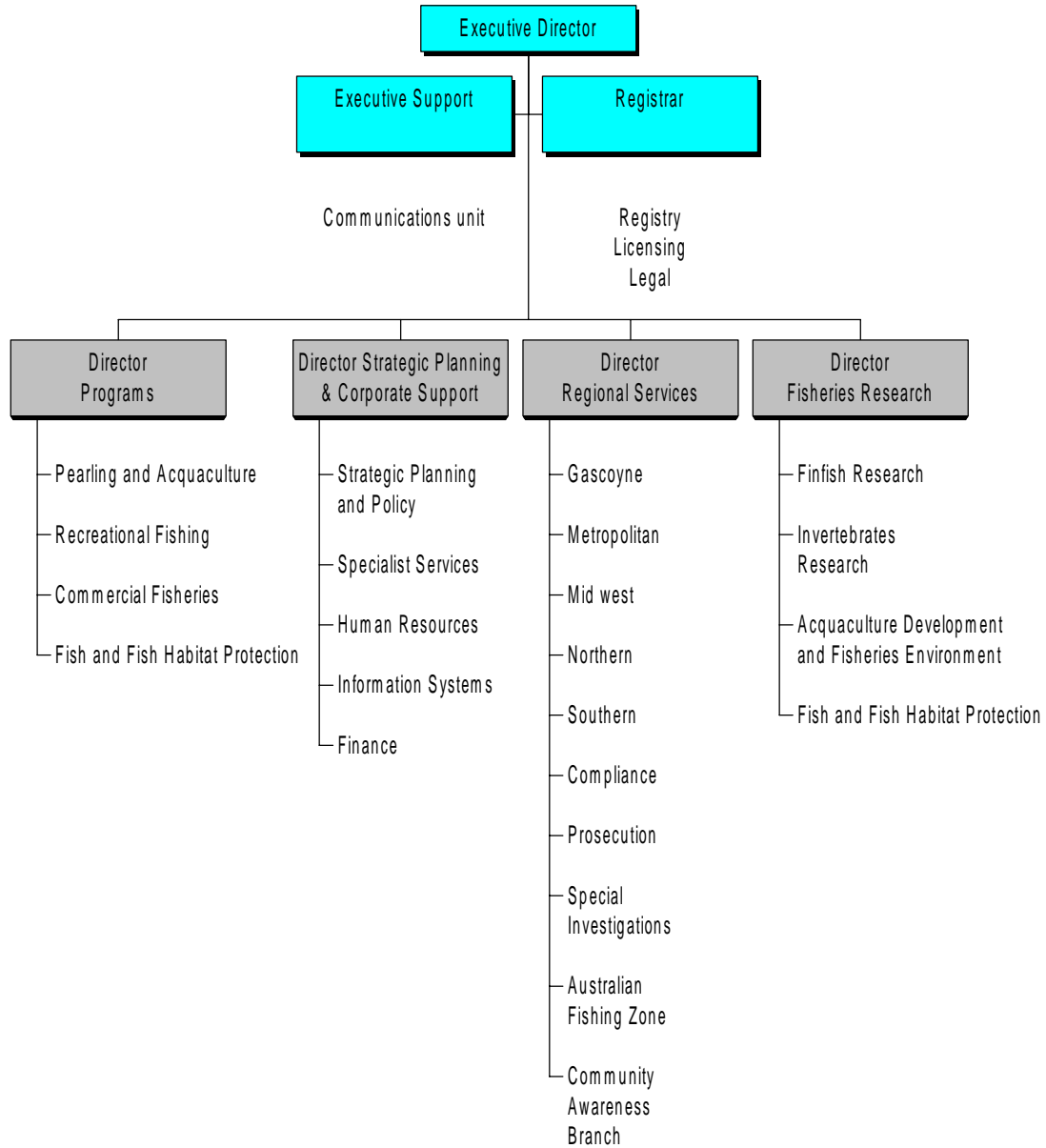
29 Adapted from *Fisheries Management Paper No. 123*, ‘Issues Affecting the Management of the western Rock Lobster Managed Fishery Over the Three Year Period 1999/2000 to 2001/02. A discussion paper prepared by Kevin Donohue on behalf of the Rock Lobster Industry Advisory Committee’.



---- indicates indirect access to the RLIAC. Parties can request a verbal representation or send a written submission.



4.2.2 The Organisational structure of Fisheries WA<sup>30</sup> is set out below.



30 Fisheries WA 1997/1998 Annual Report, p.17

4.2.3 Fisheries WA conducts four programs. Within one of these, the ‘commercial fisheries program’, there are six managed cost recovery fisheries and other smaller fisheries. The primary objective of the western rock lobster commercial fishery is sustainability and for this reason, an immense research division supports the program. The budget for western rock lobster research in 1998/1999 was \$1,111,000 or \$16 per pot at a time when licences were \$83 per pot.<sup>31</sup> This represents 19% of the total managed fishery fee. Various management committees support this commercial fisheries program.

#### 4.3 MINISTERIAL ADVISORY COMMITTEES

4.3.1 Ministerial Advisory Committees (“MAC”) are listed in Part 4 of the *FRMA*. They are a major source of advice for the Minister. Various MACs play a key role in the decision making process for management of the State’s fish resources,<sup>32</sup> although the Minister is at liberty to seek advice elsewhere. For the western rock lobster fishery, the relevant MAC is called the Rock Lobster Industry Advisory Committee (“**RLIAC**”). Fishery MACs provide an opportunity for interaction between all those who have an interest in the resource, including users, researchers and managers.<sup>33</sup>

4.3.2 The Minister appoints MAC members on the basis of their individual expertise, and not as representatives of any particular group.<sup>34</sup> Hence it is imperative that any person serving on a MAC be reconciled to the principle of commitment to the fishery as a whole. Ideally, a member must not use his or her appointment to the MAC for self enhancement or to promote the interests of the fisher Association that selected him or her for nomination. This demands constant vigilance on the part of the member and the independent Chairman.

4.3.3 Fisheries WA Management Guide No. 1,<sup>35</sup> contains an adopted benchmark description of a MAC member’s role. This description derives from *Bennetts v Board of Fire Commissioners of New South Wales and Others* (“**Bennetts case**”), where Chief Justice Street said:

*“...a member will be derelict in his duty if he uses his membership as a means to promote the particular interests of the group which chose him. In particular, a ...member must not allow himself to be compromised by looking to the interests of the group which appointed him rather than to the interests for which the board exists*

*He is not a mere channel of communication or listening post on behalf of the*

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31 RLIAC, Submission No.16

32 RLIAC, Submission No 16

33 RLIAC, Submission No 16

34 Except for those who are automatically members of the MAC, for example, the Executive Director of Fisheries WA

35 Contained in Fisheries WA Submission, Submission No. 17

*group which elected him. There is cast upon him the ordinary obligation of respecting the confidential nature of board affairs...*<sup>36</sup>

4.3.4 MAC members are, (amongst other things) required to:

- observe confidentiality and exercise tact and discretion when dealing with sensitive issues;
- avoid pursuing personal agendas or self interest; but participate in discussion in an objective and impartial manner;
- not to directly or indirectly use information gained in the course of their tasks as a MAC member to gain an advantage, financial or otherwise, for themselves or another party; and
- be committed to decisions taken by the MAC.<sup>37</sup>

4.3.5 However, the search for an impartially based, balanced MAC performing to the standard listed above is fraught with difficulty. If these MACs were tribunals or other quasi judicial bodies, they would not survive a claim of apparent bias at common law. This is because in practice, a ‘representative’ on a tribunal or other quasi judicial body is a partisan and an advocate, not a judge.<sup>38</sup>

4.3.6 Thus, MACs (borne of the Minister’s social agenda to have as wide a representation as possible) can scarcely be expected to observe the highest standards of judicial detachment. In creating these MACs under the *FRMA*, Parliament has modified the common law standard of impartiality. Such modification means the Minister must expect to weather the hazards of such a creation, especially that of potential conflicts of interest.

4.3.7 Dr Gordon Robertson, the Deputy Auditor General warned of this when he said:

*"...clearly the members of those committees do have an interest, sometimes quite a clear commercial interest, in the area on which they are meant to be providing advice. There are rules about declarations of a conflict of interest, and effectively it is up to the chairperson of the committee to ensure that the rules are both followed and documented at the time so that a person who had an interest in a particular area would declare that interest and the committee would then proceed in full knowledge of that interest. This probably applies to many forms of advisory committees where people are drawn onto the committee for their expertise, which unfortunately also brings with it a potential conflict because of a vested interest in the area, and it is up to the members of the committee to recognise which hat they are wearing at which time. That is the matter of principle that we were trying to draw to the Parliament's attention. There is a clear potential for conflict of*

36 (1967) 87 WN (Pt 1) (NSW) 307

37 *Fisheries WA Management Guide No. 1*, contained in Fisheries WA submission No. 17

38 *In Re Skene's Award* (1904) 24 NZLR 591

*interest, and that conflict of interest needs to be carefully managed so that the perception of conflict of interest is well and truly contained.*"<sup>39</sup>

- 4.3.8 The Committee finds that the lofty sentiments expressed in the *Bennetts case* and others<sup>40</sup> are pious hopes that members will behave to that standard. Historically, managing those potential conflicts of interest has been hazardous for fishing industry members, but it appears this hazard "...has been accepted by the Minister so as to ensure a wide base of expert fisher advice."<sup>41</sup>
- 4.3.9 Some fishers complained bitterly to the Committee about breaches of that standard of behaviour referred to in *Bennetts case*. For example, Mr Angelo Caranna, Fisher and past member of the RLIAC referred to incidents of ethnic taunting during RLIAC meetings.<sup>42</sup> Others referred to insider trading activities of RLIAC members. Many fishers believe, for example, that insider trading in pot licences took place before reductions were announced in the 1993/1994 management package.
- 4.3.10 The Committee's terms of reference do not permit an indepth examination of this particular issue. However, because this was such a persistent complaint before the inquiry, the Committee notes a letter from the Chairman of the RLIAC to Mr Richard Carr, Fisher, which states: "*The Minister for Fisheries has had this issue investigated regarding RLIAC. The Crown Solicitor's Office examined the pot-trading histories of all the members and observers and found that there was no basis for a prosecution.*"<sup>43</sup>
- 4.3.11 More significantly, the Auditor General listened to those persistent complaints about insider trading in the course of his 1999 report to Parliament. Mr Lewis Corner, Principal Performance Analyst commented:

*"The allegation at which we did look in some detail, because we thought this was something we could verify rather than just a vague 'this is a corrupt group of semi-criminals', was the allegation about insider trading in rock lobster pot licences. We wanted to know, because this had been raised, what Fisheries had done about it. We collected its documentation, which it gave to us freely, and it seemed to us that it had gone about it in a comprehensive and correct way. It had looked to see all the pot licence trades engaged in by the members of the Rock Lobster Industry Advisory Committee. It was open about the fact that this was being done. It had the licensing records. It did not see much to be concerned about, because very little trading had taken place, but it presented the evidence to the Crown Law Department and asked whether it believed there was any basis on which to proceed. I find it hard to see what else it could have done in the*

39 Dr Gordon Robertson, transcript of evidence, 24/11/1999

40 For example, R v Industrial Appeal Court; ex parte Maher [1978] VR 126

41 Office of the Auditor General (1999) *Performance Examination, Report No 6*, p. 23

42 Mr Angelo Caranna, transcript of evidence, 20/10/1999

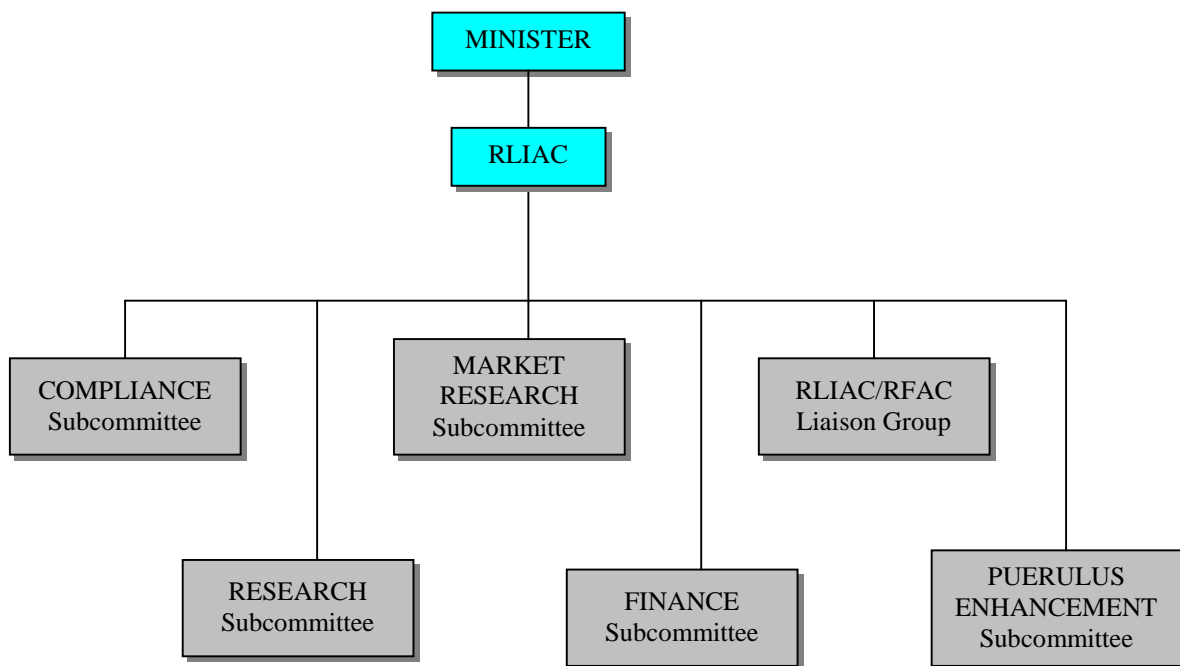
43 Contained in the submission of Mr RE Carr, Submission No. 14

*circumstances. The allegation was made, investigated and found to be lacking in substance."*<sup>44</sup>

4.3.12 The Committee finds that the perception of insider trading from 1993 persists to this day and has continued to undermine the confidence of fishers in the MAC process. In order to restore confidence in the MAC, more effort needs to be put into managing this perception of conflict. Clear rules administered impartially and firmly will assist as well as regular, continuous communication to alleviate the problem that when a committee largely comprises members of a particular interest group, they are quite easily misunderstood as promoting the viewpoint of that group.<sup>45</sup> Communication of the role and function of the MAC will help neutralise the high levels of mistrust referred to in evidence during this inquiry, by many disgruntled fishers.

#### 4.4 THE RLIAC

4.4.1 The Organisational structure of the RLIAC and its sub committees is set out below.



44 Mr Lewis Corner, transcript of evidence, 24/11/1999

45 The RLIAC MAC for example, is attempting this via its regular newsletters

- 4.4.2 As stated previously, the RLIAC is the MAC for the western rock lobster fishery. There are 14 members, eight of whom are commercial fishers. Their professional Associations nominate fishers for the RLIAC. These nominations are then forwarded to the Minister for consideration and appointment under section 29(2)(c) of the *FRMA*.
- 4.4.3 It is no accident that the number of commercial fishers on the RLIAC make up more than half the total number of members. The membership was deliberately constructed under the *FRMA* in recognition of the fact that the prime purpose of the RLIAC is to provide advice to the Minister on management of the activity undertaken by the major client group, in this case, the commercial rock lobster fishers.
- 4.4.4 A decision by the majority of the members present, is a decision of the RLIAC. Prima facie, this gives the commercial rock lobster fishers potentially enormous power on the RLIAC, who as a block, have the capacity to outvote managers and processors. In the worst case scenario, where consensus cannot be reached on an issue, members are permitted to submit all views to the Minister.<sup>46</sup>

- 4.4.5 Mr John Paterson, Chairman of the RLIAC recognised this power. He said:

*"I am amazed that fishermen complain about the structure of the Rock Lobster Industry Advisory Committee; the only criticism I would make is that there are too many fishermen on it. Any primary industry body that is over-supplied with members from its own industry tends to lose focus of what it is on about."*<sup>47</sup>

- 4.4.6 Mr John Ritchie, Fisher, also commented on the powerful presence of eight representatives on the RLIAC. He said: *"We will never get a body which is more biased towards us..."*<sup>48</sup>

- 4.4.7 The *National Competition Policy Legislation review of the WA Rock Lobster processing Industry* ("ACIL") report questioned the objectivity of the RLIAC and its advice.

*"...The incentives of the Committee are more closely aligned with the interests of the industry and incumbent authorisation holders than with either the community more generally or potential entrants into the industry. There would be less cause for such questioning if the various stakeholders were more equitably represented and if there were more independent experts on the Committee."*<sup>49</sup>

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46 RLIAC, Submission No. 16

47 Mr John Paterson, transcript of evidence, 13/10/1999

48 Mr John Ritchie, transcript of evidence, 27/10/1999

49 ACIL Consulting (1998) *National Competition Policy Legislation Review of the WA Rock Lobster Processing Industry, A Report to Fisheries Western Australia*, p. 39

- 4.4.8 It appeared to the Committee that essentially this inquiry is about the effectiveness of the RLIAC and whether it is truly representative of fishers. RLIAC's effectiveness is critical because its main role is sustainable management of the fishery.
- 4.4.9 The RLIAC is certainly numerically representative of fishers although the Western Australian Rock Lobster Fishers' Federation ("**Federation**") claims it is "*...stacked with the King's men.*"<sup>50</sup> However, other evidence put to the Committee suggests that it has been very difficult to encourage persons to nominate for the RLIAC. Some witnesses attributed this reluctance to serve as a direct outcome of the bitterness surrounding previous unpopular decisions, particularly the 1993/1994 management package. Mr Terry Lissiman, Member of the RLIAC tendered an alternative explanation: "*...fishing is a solitary occupation with fishers reluctant to stand up in public and argue against fellow fishers that certain conservation measures must be adopted.*"<sup>51</sup>
- 4.4.10 It was levelled against the RLIAC that members "*...are not accountable to fishermen.*"<sup>52</sup> Although meant as a criticism, this statement is absolutely true. The RLIAC is not and never has been accountable to fishers. The Committee finds this statement demonstrates a fundamental lack of understanding by many fishers about how the RLIAC actually operates. Those selected are Ministerial appointees and whilst representative of the industry, they are not answerable to the industry.
- 4.4.11 Many fishers who gave evidence at this inquiry hold a mistaken belief that the RLIAC is directly accountable to them. This misunderstanding has resulted in unrealistic expectations of the RLIAC and constitutes the primary reason for the dissatisfaction with the RLIAC process.
- 4.4.12 The RLIAC does not function as a conduit to the fishers. On the contrary, it is a vehicle for those eight commercial fishers and others that serve to report their deliberations directly to the Minister. However, this is not a reciprocal arrangement. Neither the Minister nor the RLIAC is under any obligation to then report back to fishers. Although this may be what fishers demand of the RLIAC process,<sup>53</sup> this is not its function.<sup>54</sup>
- 4.4.13 In 1991, the ESD fishery working group's final report said: "*The primary policy objective of the RLIAC is to refine current management practices so that the fishing effort exerted on the resource is contained at a sustainable level.*"<sup>55</sup> This philosophy was later codified under the *FRMA* in section 30(1) which states (amongst other things) that the functions of the RLIAC are:

*"...to advise the Minister on matters relating to the management, protection and development of rock lobster fisheries; and*

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50 Mr Greg Crombie, addition to the Federation Submission, Submission No 13

51 Mr Terry Lissiman, transcript of evidence, 13/10/1999

52 Mr Stuart Johnston, transcript of evidence, 20/10/1999

53 For example, Mr Leonardo Sgherza, transcript of evidence, 13/10/1999

54 Unlike the situation in Commonwealth controlled fisheries, where the Minister must provide a written explanation of why the Minister disagrees with the MAC's advice.

55 Ecologically Sustainable Development Working Groups (1991) *Final report- Fisheries*, p.30

*to advise the Minister on matters relating to rock lobster fisheries on which the advice of the [RLIAC] is sought..."*

#### **4.5 WAFIC**

- 4.5.1 WAFIC is a non statutory, incorporated peak industry body for fisheries. According to Mr John Cole, Chairman, WAFIC had its genesis in the mid 1960s when "... *industry and government saw great benefit in establishing an industry organisation that could represent the industry on broad generic issues...*"<sup>56</sup>
- 4.5.2 WAFIC has 50 members comprising regional fishermen's Associations, fishery specific associations, industry associations and major fishing companies. There is a nine person board acting as the governing body of the corporate entity, not as a representative of particular sectors. For Development and Better Interest Fee Funding ("DBI") purposes, WAFIC is considered the industry's peak body, although some dispute this claim, believing its rock lobster sub committee is better positioned to be the peak body.<sup>57</sup>
- 4.5.3 The main criticism of WAFIC is that because it represents all commercial fisheries, it has neither the resources nor the will to dedicate enough time to the rock lobster fishery and to adequately represent the views of its fishermen. However WAFIC maintains that its function is to consider generic issues (for example, native title, marine parks and cost recovery) pertinent to all commercial fisheries. It is not an exclusive club for the western rock lobster fishery.
- 4.5.4 Yet, the western rock lobster fishery is the single most valuable fishery in Western Australia<sup>58</sup> and the Committee heard argument that for this reason alone the fishery requires its own separate unified industry body. This explains lobbying by the Federation and others<sup>59</sup> for an alternative single unified body for the fishery.

#### **4.6 THE WAFIC ROCK LOBSTER SUB COMMITTEE**

- 4.6.1 The WAFIC rock lobster sub committee ("RLSC") was established in 1984 and composes all the presidents of the various fishers' Associations and their deputies. The RLSC is a catching sector group only although interaction with the processing sector does occur on a 'needs only' basis depending on the issues under discussion.
- 4.6.2 Currently 14 industry Associations are invited to attend. These are:

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56 Mr John Cole, transcript of evidence, 24/9/1999

57 For example, United MidWest Professional Fishermens Association

58 According to WAFIC's submission, western rock lobster generates \$300 million annually, followed by pearls \$200 million and prawns \$50 million. Submission No 29

59 For example, Mr Peter Burton, President, United MidWest Fishers Association, transcript of evidence, 27/10/1999



- Kalbarri Professional Fishers Association;
- Geraldton Professional Fishers Association;
- United Mid West Professional Fishers Association;
- Dongara Professional Fishers Association;
- Leeman Professional Fishers Association;
- Central West Coast Professional Fishers Association;
- Seabird/Ledge Point Professional Fishers Association;
- Zone C Professional Fishers Association;
- Two Rocks Professional Fishers Association;
- Fremantle Professional Fishers Association;
- South West Rock Lobster Fisher Professional Fishers Association (Mandurah);
- South West Licensed Fishers Association (Bunbury);
- Leeuwin Professional Fishers Association (Mandurah); and
- The Federation.<sup>60</sup>

However, only ten Associations actively participate. Two Rocks Professional Fishers Association, Fremantle Professional Fishers Association and South West Rock Lobster Fisher Professional Fishers Association (Mandurah) have withdrawn from the RLSC whilst the Federation refuses to participate.

- 4.6.3 The RLSC's main objective is to reach a consensus position on western rock lobster issues but when this does not occur, all views of the members are presented to the formal consultation process. Members also consult within the industry before making recommendations to the RLIAC.
- 4.6.4 WAFIC acts as a co-ordinator or facilitator for the RLSC when requested. For example, in respect of this inquiry, WAFIC was asked to speak on behalf of the RLSC whilst the Association representatives agreed to tender separate submissions.
- 4.6.5 WAFIC provides the RLSC with a Chairman<sup>61</sup> and secretarial support. It then forwards the views of the RLSC to the RLIAC. Frequently, WAFIC is asked to

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<sup>60</sup> This list was supplied by Mr Brett McCallum, Chief Executive Officer, WAFIC

<sup>61</sup> Mr Ian Findlay, a Director of WAFIC is the current Chairman.

conduct the presentation of the RLSC position on issues to the RLIAC. According to WAFIC, this is deliberately constructed so as to:

*“...give the process some significant backing support when presenting their [RLSC] view to the consultative process”.*<sup>62</sup>

However, WAFIC is adamant that it takes no proactive part in the development of the RLSC’s submissions or resolutions.

4.6.6 Finally WAFIC prepares articles based on the outcomes of RLSC meetings and publishes them in ‘PROWEST’, the commercial fishing industry magazine and “...primary communication tool within the industry.”<sup>63</sup> This magazine reaches all licensed commercial fishermen registered with Fisheries WA.

4.6.7 The Kalbarri Professional Fishermen’s Association commented that:

*“...the only forum outside of the Department is the rock lobster sub committee of WAFIC, a useful forum for expression of “grass roots” views from the local association level. But its effectiveness has been hampered by the withdrawal of several associations, due to dissatisfaction with consultative process”*<sup>64</sup>

4.6.8 Mr Peter Burton, President, United Mid West Fishers Association, believes there is an inherent weakness in the RLSC. There is no problem for grassroots fishermen wanting to communicate and consult with their local Associations up to the level of the rock lobster subcommittee. However, there is a breakdown in communications in the void between the decisions coming from the RLSC, which go to the RLIAC; the minister and then come back to industry. Mr Burton commented:

*“... the fact that the subcommittee comes under the umbrella of WAFIC does not promote our cause to the best ability. If the WAFIC subcommittee was to be renamed and funded outside the WAFIC scenario, that would be an easier scenario than having elections. How it is organised is the big problem.”*<sup>65</sup>

4.6.9 The Committee received either written submissions or heard oral evidence from only seven of the 14 Associations comprising the RLSC. Of those seven submissions, minimal mention was made of the Associations’ connections to the RLSC and only Kalbarri Professional Fishermens Association commented on the utility of the RLSC. Others were clearly aligned more with WAFIC than the RLSC. Not one Association made any reference to its inter-relationship with the other Associations.

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62 WAFIC, Submission No 29

63 WAFIC, Submission No 29

64 Kalbarri Professional Fishermens Association, Submission No. 20

65 Mr Peter Burton, transcript of evidence, 27/10/1999

4.6.10 The RLSC recently conducted a review of industry concerns and in response to allegations of poor consultation, resolved to hold joint meetings with the RLIAC prior to every RLIAC meeting. Mr Brett McCallum, CEO of WAFIC explained that this RLSC initiative is:

*“...designed to encourage a clear understanding of the industry positions on issues before the fishery and development of strategies to best consult with the broader grass roots licence holders on those issues”<sup>66</sup>*

4.6.11 The RLIAC has also supported this initiative, devising a consultation schedule for the development of management decisions which include:

*“...joint meetings and dates for release of discussion papers and deadlines for submissions. RLSC meetings [are] tailored to best ensure associations input to this process”<sup>67</sup>*

4.6.12 The RLSC did not conduct its own presentation at this inquiry or tender a written submission on its own behalf. However, the Committee heard indirectly from the RLSC through WAFIC's general submission and the seven individual Association submissions. For this reason, the Committee found it difficult to assess the efficacy of the RLSC as a discrete entity and suggests the lack of direct participation in the inquiry is symptomatic of a fundamental malaise within the RLSC.

4.6.13 There appears to be a lack of cohesion between the ten remaining Associations comprising the RLSC. This factor as well as the withdrawal of three other Associations and the non participation of the Federation, means its effectiveness as the key representative body for the catching sector has diminished.

4.6.14 Industry is currently devising a model for a new unified body to represent the catching sector. The Committee believes another alternative for industry to consider is strengthening and re-inventing the RLSC so as to make it the industry body. Nevertheless, whatever option is chosen, the Committee supports industry's own initiative in this matter.

#### **4.7 WESTERN AUSTRALIAN ROCK LOBSTER DEVELOPMENT ASSOCIATION (INC)**

4.7.1 The Western Australian Rock Lobster Development Association (Inc) (“**WRLDA**”) is the representative body of the processing and marketing sector for the western rock lobster fishery. According to Mr Anthony Gibson, Chairman, WRLDA “...translates the lobster catch into a saleable commodity which it sells and delivers to international markets and, to a small extent, the domestic market.”<sup>68</sup> Currently it has ten members. One of its objectives is to “...provide members with opportunities for the exchange of

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66 WAFIC, Submission No 29

67 Mr Brett McCallum, E mail correspondence to the Committee, March 29 2000

68 Mr Anthony Gibson, transcript of evidence, 24/9/1999

*information and ideas relating to the marketing of rock lobster...".<sup>69</sup>* Two positions out of 14 are allocated on the RLIAC for the processing sector.

#### **4.8 COMMITTEE FINDINGS**

The Committee finds that:

1. under the *FRMA*, the primary function of the RLIAC is to provide advice to the Minister on sustainable management, protection and development of the western rock lobster fishery;
2. the RLIAC process provides an opportunity for interaction between those who have an interest in the western rock lobster resource, including commercial and recreational fishers; processors, researchers and managers;
3. there is a general misunderstanding of the role, function and purpose of the RLIAC and this misunderstanding has resulted in unrealistic expectations of the RLIAC's performance;
4. it is not the role of the RLIAC to be a communication conduit between Ministerial decisions and fishers;
5. there is a perception that the WAFIC rock lobster sub committee is no longer an effective key representative body for the catching sector;
6. the withdrawal of three Associations from the WAFIC rock lobster sub committee and the non participation of the Federation indicates that the WAFIC rock lobster sub committee's effectiveness has diminished;
7. an alternative to devising a model for a new unified body to represent the catching sector is to strengthen and re-invent the RLSC so as to make it the industry body similar to how WRLDA represents the processing sector; and
8. WAFIC is currently the peak industry body for the western rock lobster fishery and has undertaken many positive initiatives, for example, sponsoring the recent MSC accreditation.

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69 WRLDA, Submission No. 5

## CHAPTER 5

### ACCOUNTABILITY AND THE EXPANSION OF FISHERIES WA

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#### 5.1 THE MEANING OF ACCOUNTABILITY

- 5.1.1 The Committee considered the term "accountability" and noted several definitions.<sup>70</sup> Essentially, accountability concerns an organisation explaining its actions, conduct, events and judgments to a superior.

#### 5.2 THE ACCOUNTABILITY OF FISHERIES WA TO ROCK LOBSTER FISHERS

- 5.2.1 Fisheries WA acknowledged that it is not directly accountable to "...any one specific sector of the Western Australian community - whether related to commercial, recreational, traditional, conservationists, or passive users."<sup>71</sup> Rather, Fisheries WA accounts to the "...whole of the Western Australian community through the Minister For Fisheries and the Parliament of Western Australia...".<sup>72</sup> This is a broad, ideological accountability and as such is inherently difficult to put into operation other than through statutory mechanisms.<sup>73</sup>

#### 5.3 ACCOUNTABILITY AND THE COST RECOVERY MODEL

- 5.3.1 Complicating Fisheries WA's general accountability to the whole of the Western Australian community is the fact that since 1995, Fisheries WA has been in transition from a revenue appropriation model to a full cost recovery model<sup>74</sup> for its six major managed commercial fisheries, including western rock lobster. The milieu of cost recovery makes explaining actions or decisions to the whole of the Western Australian community additionally problematic, because the concept is relatively new in fishery management.
- 5.3.2 Cost recovery in the fishing industry means that users of the aquatic resources of a fishery will pay for the costs associated with managing that fishery.<sup>75</sup> This 'user pay' policy is a government initiative to ensure that a portion of the costs incurred in managing the natural resources is recovered from client groups who have access to and benefit from using such resources.

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70 The Macquarie Dictionary, second edition 1991

71 Fisheries WA, Submission No 17

72 Fisheries WA, Submission No. 17

73 For example, under the *Financial Administration and Audit Act 1985* (WA) and annual reporting requirements under the *FRMA*

74 More colloquially it is known as the "User Pays/User Says" model

75 Fisheries WA, Submission No. 17

- 5.3.3 Generally, government agencies have no power to raise fees unless it is specifically provided for in the enabling legislation. Section 64 of the *Constitution Act 1889* (WA) states that all revenues raised must be returned to the Consolidated Fund. However, section 23A of the *Financial Administration and Audit Act 1985* (WA) allows agencies to retain their revenue if a net appropriation agreement has been made with the Treasurer. Fisheries WA is a net appropriation agency and Part 18, Division 2 of the *FRMA* provides for fees raised to be credited into various trust funds.
- 5.3.4 Cost recovery for fisheries management was first proposed by a Ministerial committee appointed in December 1994 after the Fisheries Portfolio Review was completed. The Review examined management requirements for fisheries and changes to the operations of the agency. Outcomes from the Review were made public in September 1995 in a document titled *Future Directions for Fisheries Management in Western Australia*.
- 5.3.5 It may be argued that the cost recovery model is a more equitable approach to financing a fishery due to the fact that there will be less funding reliance on the taxpayer who may not have a direct interest in fisheries management. Under the model, Fisheries WA becomes accountable to the users of its services rather than the entire community. This shift from a broad based system of community accountability to a user pays system carries inherent tensions arising from:
- the divergent views of fishery managers and users over the specifics of how the fishery should be financed and managed;
  - the users of services who, in considering themselves to be custodians of the fishery resource, challenge the position of fishery managers who see their ultimate role as that of responsibly protecting a community based natural resource; and
  - a conflict of interest between current users who want to exploit the fishery resource now and managers who must conserve the fishery for present and future generations.

The Committee notes that Fisheries WA has been challenged by the difficulties associated with accounting to the user pays sector of the community.

- 5.3.6 Fisheries WA acknowledges that the cost recovery model has had significant implications for work practices. It has made the agency *"...become more transparent in its dealings with the commercial sector. This has required FWA [Fisheries WA] to develop, in consultation with the commercial sector, new consultative and information sharing arrangements with industry."*<sup>76</sup> Unfortunately these new 'arrangements' have not achieved the desired objective and in fact the antipathy between fishers and Fisheries WA has increased. This relationship deteriorated to the point in 1997, when

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76 Fisheries WA, Submission No. 17

three Associations: Fremantle, Two Rocks and Mandurah withdrew from the official management structure and formed an independent group: the Federation. The Federation advised that its current membership is listed at 200.

5.3.7 Fisheries WA's statement about its new consultative and information sharing arrangements with fishers appears to be rhetoric. This was evidenced by complaints the Committee heard from fishers<sup>77</sup> concerning Fisheries WA's failure to fulfil its obligation to consult under the cost recovery model. This remains the primary source of the irritation, frustration and discontent felt by those fishers who demand an explanation of how their managed fishery fees<sup>78</sup> are being utilised to provide them with services.

5.3.8 In 1997, WAFIC claimed the implementation of cost recovery had created strains in the relationship between industry and Fisheries WA. WAFIC, in a submission for the creation of a 'Fisheries Management Authority'<sup>79</sup> in 1997, stated:

*"...unfortunately the opportunity for openness, more inclusive management and greater accountability has not been realised. ...It is widely acknowledged that a fundamental requirement for the successful introduction of cost recovery is consultation and open dialogue with industry."*<sup>80</sup>

5.3.9 WAFIC then gave an example of how Fisheries WA has failed to meet its obligations under the cost recovery model:

*"The internal culture of Fisheries Western Australia has not shifted sufficiently to embrace greater participation by industry in decision making. The agency has struggled to provide timely and meaningful information regarding the cost and scope of activities in the fisheries subject to cost recovery."*<sup>81</sup>

5.3.10 By 1999, WAFIC was pleased to comment in its 32nd Annual Report, that Fisheries WA had listened to the concerns raised above in 1997 and taken positive steps to ameliorate the situation. However, WAFIC commented that there were:

*"...fears that growth in the agency numbers and the slowness to deliver on some key principles, especially transparency in cost/benefit, may have affected confidence in the process."*<sup>82</sup>

Clearly, in WAFIC's opinion, Fisheries WA has a long way to go.

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77 For example, the Federation

78 Also known as access fees and formerly known as the limited entry fee

79 The concept of a Fisheries Management Authority was ultimately rejected by the Minister, partly on the basis of interpretations of recommendations made by the Commission on Accountability (the Burt Commission 1989)

80 WAFIC, *Strengthening the Management of Fisheries in Western Australia* (1997), p.2

81 WAFIC, *Strengthening the Management of Fisheries in Western Australia* (1997), p.2

82 WAFIC, *32nd Annual General Meeting and Annual Report* (1999), p.3

5.3.11 The Committee notes that because many stakeholders are to be expected to pay for services delivered under the *FRMA*, they are entitled to be consulted on the nature and extent of services to be delivered and the charges for receiving these services. This is done by establishing councils or committees<sup>83</sup> as a forum for consultation on operational policy, issues and proposals. There is also an implication that consultation on cost recovery will occur with a wider network of interested and affected parties.

#### 5.4 FISHERIES WA'S MANAGEMENT PLANS

5.4.1 The regulations governing commercial fisheries are normally set down in management plans having the status of subsidiary legislation.<sup>84</sup> The only criticism levelled at the western rock lobster management plan was by the Federation when it said:

*"There is also a growing realisation that the management plan for the fishery needs to be further broken down, at the least into separate plans for the northern and southern zones, and possibly further still into area plans. While some see this as a threat, there is no doubt that the current plan, in trying to cover the whole fishery, defeats itself in detail by exacerbating the effects of the rules to the advantage of some and the disadvantage of others."*<sup>85</sup>

5.4.2 The Auditor General was more critical of Fisheries WA's management plans, stating that they are inadequate. Mr Lewis Corner, Principal Performance Analyst commented that:

*"What we would think of as plans are not the so-called management plans for Fisheries WA. There is no statement of objectives; they are just sets of regulations. One might ask why these regulations exist and how one knows whether the fishery is succeeding. Fisheries WA will argue that all of these things are embraced by legislation or other documents such as the 'State of the Fisheries' reports, which give an account of the current problems and so on. We had a lot of sympathy with the view that, whether or not it was expressed as subsidiary legislation, it would be useful for a fishery to have a plan which clearly set out its objectives, the consultative arrangements, how compliance elements would be monitored and how the success of those arrangements would be judged."*<sup>86</sup>

5.4.3 The Committee examined the *West Coast Rock Lobster Management Plan 1993* ("**Plan**") and agrees with the Auditor General's assessment that the Plan is essentially a set of regulations with no reference to the objects of the *FRMA* or any indication of its compliance regime.<sup>87</sup> Although written in a 'plain English' style, it could not be

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83 For example, the RLIAC Finance Subcommittee

84 Office of the Auditor General (1999) *Performance Examination, Report No 6*, p. 25

85 Mr Daniel McDaniels, transcript of evidence, 24/9/1999

86 Mr Lewis Corner, transcript of evidence, 24/11/1999

87 Fisheries WA's rationale is that the Plan is a subset of the *FRMA* and as such, the objects can be no different in scope or content than those contained in the *FRMA*



characterised as a useful document for lobster fishers wanting to understand how the fishery operates in practice. The Committee found a more useful document for fishers is the RLIAC's 1999 *Operational and Work Plans for the West Coast Rock Lobster Managed Fishery*.

- 5.4.4 The Committee notes the Office of the Auditor General's criticism that management plans are working well below the level of the overall management of Fisheries WA and that there are problems with basic communication, especially with head office. Fisheries WA accepts that it needs to improve. There are a large number of justified complaints about difficulties in getting through to people in the first place, in dealing with an endless succession of different people, in not getting replies in time, and in getting contradictory information, sometimes verbal and sometimes written. These are weaknesses which Fisheries WA openly acknowledges.

## 5.5 THE OPINION OF THE AUDITOR GENERAL

- 5.5.1 The Committee has referred extensively to the work of the Office of the Auditor General in this report. This is because that Office plays a significant role in the accountability relationship which is established when Parliament confers responsibility on government agencies. The Auditor General is an independent office holder who has a specific responsibility to the community in general. The Auditor General is required to form an 'opinion' on the financial statements, controls and performance indicators of all government departments. However the role is far broader than this, encompassing a wide variety of examinations and investigations into 'value for money' issues. The Auditor General is required to "...*objectively gather and evaluate evidence to assess and report on...other requirements of sound resource management.*"<sup>88</sup> The opinion of the Auditor General is thus a valuable adjunct to the Committee's inquiries.

- 5.5.2 Despite the irritations mentioned above with management plans and basic communication, the Auditor General's overall conclusion is that the rock lobster fishery management is quite sound. Fisheries WA can demonstrate that it has been effectively managed for many years, it has a sound research base, and clearly there is a high level of commercial interest in developing a sustainable fishery. The overview is one of a well managed fishery by reference to other fisheries both in Western Australia and overseas.

## 5.6 THE EXPANSION OF FISHERIES WA

- 5.6.1 Mr John Ritchie, Fisher commented that:

*"...there is, I must say, a perception amongst fishermen that the rapid rate of expansion in the department's staff, buildings and vessels is directly related to the commencement of the user pays system and I tend to think that they are probably right, but I also believe that the department was seriously under-*

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88 The Burt Commission on Accountability: *Report to the Premier* (1989), p 20

*manned, or under-personed, and under-resourced...*"<sup>89</sup>

- 5.6.2 Mr Peter Rogers, Executive Director of Fisheries WA, stated that the agency has "...considerably expanded..."<sup>90</sup> since the introduction of the cost recovery model for services. The expansion has occurred in fishing habitat protection, aquaculture, research<sup>91</sup> and managing recreational fishing activities. Mr Rogers claimed that recreational fishing is the primary growth sector in sheer numbers and activity, requiring the rapid expansion of the agency. Recreational fishing for example, generates approximately \$550 million per annum for the Western Australian economy.<sup>92</sup>
- 5.6.3 The Auditor General concurred with the Executive Director's claims, noting that Fisheries WA grew rapidly in the 1990s "...in response to its widening role and the increasing complexity of fisheries management."<sup>93</sup> Costs increased from \$15 million in 1992/1993 to approximately \$40 million in 1997-98. In the same period, staffing rose from 210 to 336.<sup>94</sup> These costs and staff increases are attributed to research, strategic planning and policy as well as the opening of new regional offices.
- 5.6.4 WAFIC, as the peak industry body, commented that "...the growth areas are not directly linked to the commercial fishing sector, but to areas of recreational fishing, aquaculture and fish and fish habitat protection."<sup>95</sup> WAFIC correctly reminded the Committee that when the *FRMA* was proclaimed, the agency was required to administer new functions with the consequent rise in costs associated with those new functions.<sup>96</sup>
- 5.6.5 The Committee heard diverse opinion about the expansion of Fisheries WA. Some professional fisher organisations viewed the expansion as a non issue<sup>97</sup> or commented that the expansion was not at the expense of the western rock lobster fishery.<sup>98</sup> Others claimed the rapid expansion of the agency's budget had not produced any real improvements in service.<sup>99</sup> Mr Peter Carr, Fisher, criticised Fisheries WA for its "...substantial licence fees...[his concern being] that there seems to be no limit on fees and the criteria for increases obscure."<sup>100</sup>
- 5.6.6 Mr Peter Rogers, Executive Director of Fisheries WA, stated that

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89 Mr John Ritchie, transcript of evidence, 27/10/1999

90 Mr Peter Rogers, transcript of evidence, 29/9/1999

91 The cost of research is approximately 1% of the commercial catch value

92 *The West Australian*, January 3 2000

93 Office of the Auditor General (1999) *Performance Examination, Report No 6*, p.11

94 Office of the Auditor General (1999) *Performance Examination, Report No 6*, p.11

95 Mr Guy Leyland, transcript of evidence, 24/9/1999

96 For example: the introduction of cost recovery; the creation of a licence registry; a new Objections process; and regionalisation

97 For example, Zone C Professional Fisherman's Association, Submission No. 7

98 For example, Central West Coastal Professional Fishermens Association Inc., Submission No. 11

99 For example, Kalbarri Professional Fishermens Association, Submission No. 20

100 Mr Peter Carr, Submission No. 8

*"... this expansion has not incurred increasing management costs for the rock lobster industry, but from 1995 to 1999 has represented a reduction in real costs equivalent to \$7 a pot. There may be a perception that costs have increased for the rock lobster industry but this has resulted from the phased introduction of full cost recovery to allow industry to adjust."*<sup>101</sup>

5.6.7 The Committee requested Fisheries WA explain the perception that management costs had risen for the western rock lobster.

*"Hon LJILJANNA RAVLICH: Can you give an overview of how much costs might have increased for the average fisher person? ...Do you think this obvious increase in cost, which I suspect is cutting into the fishermen's profit margin, might be one of the key reasons that they might be a little disappointed with the activities of Fisheries WA?"*

*Mr ROGERS: Clearly, as I said before, it is a perception issue associated with the fact that through government agreement there is, if you like, the phased introduction of cost recovery.*

*Hon LJILJANNA RAVLICH: Perception aside, over the past three or four years has there been an actual, not perceived, increase in costs borne by fisher persons?"*

*Mr NICHOLLS: There are two separate issues: The department's cost of managing the fishery as distinct from that part of the cost which is being picked up by fishermen. Dealing with the cost of managing the fishery - these are the numbers in the submission, which have not grown dramatically - in 1996-97 it was \$4.2m; in 1998-99 the budget was \$4.1m; and for 1999-2000 the budget is \$4.3m. The overall cost of managing the rock lobster fishing has not changed. The perception that Mr Rogers referred to was that as phased implementation of cost recovery occurred - these are by way of progressive recovery of cash costs to date with non-cash items yet to be recovered - fishermen have been picking up an increasing proportion of that cost. Therefore, as the agency moved to phase in full cash cost recovery for 1998-99 under the agreed cost recovery arrangements with industry, of course the pot fees went up to reflect this fact.*

*Hon LJILJANNA RAVLICH: If I understand correctly, eventually that cost of \$4.3m last year will be picked up by the fishermen.*

*Mr NICHOLLS: Yes. In 1999-2000 this is the budgeted cash cost to be picked up through access fees from rock lobster fishermen.*

*Hon LJILJANNA RAVLICH: And, to get to that point, they have been picking it up over a number of years. Therefore, you would not be surprised that they are a little disappointed about their plight. How effectively have*

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101 Mr Peter Rogers, transcript of evidence, 29/9/1999

*you communicated this shift in government strategy to the people who have been pinned with those costs?*

*Mr ROGERS: There are two elements of that communication. ...Those cost shifts were certainly communicated through the coastal tour this year in meetings with industry. In fact, because of the unders and overs situation, which is one of the business rules around cost recovery, we are looking at a pot fee reduction next year because we have not moved to total cost recovery but are still at 100 per cent cash cost recovery for this financial year. The real scrutiny of the cost figures and so on occurs through the operations of the Rock Lobster Industry Advisory Committee and its various subcommittees. The information can be provided, but to what extent do people read it, absorb it and really care? When I went on the coastal tour this year, hardly a question was raised about the level of fees. We need to put this into context. The level of fees which relates to the value of the fishery is probably in the order of a 2 per cent value. ...We are looking at \$4m versus an industry which is worth \$250m or more at this time. Therefore, the costs in relative terms - relative to incomes - are not onerous. An aberration in the catch or price has a much more significant impact on rates of return to the industry than any aberrations around cost recovery."*

- 5.6.8 The Auditor General's summation was that cost recovery has resulted in improved accountability for Fisheries WA,<sup>102</sup> although the price for the agency has been an increase in administrative workload. Cost recovery is part of the Western Australian government's commitment in some areas for commercialisation and to ensure that community obligations continue to be funded equitably. It is part of a wider theme embracing commercial activities of government and policy issues.

## 5.7 COMMITTEE FINDINGS

The Committee finds that:

1. the cost recovery model collects from the major 'players' in the western rock lobster fishery. Therefore, there is less reliance on taxpayers who may not have an interest or benefit directly from fish resources management; and
2. the rapid expansion of Fisheries WA after the mid 1990s was due to new administrative functions prescribed under the *FRMA*. However, there has been no resultant increase in management costs for the rock lobster industry.

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102 Office of the Auditor General (1999) *Performance Examination, Report No 6*, p.33

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## CHAPTER 6

### THE CONSULTATIVE PROCESS

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#### 6.1 THE MEANING OF CONSULTATION

6.1.1 Many of the problems raised with the Committee during this inquiry concerned inadequate consultation. For this reason, the Committee first considered the meaning of the term "consultation" before assessing whether that consultation was adequate or merely a technical consultation.

6.1.2 Several definitions were noted.<sup>103</sup> Essentially, consultation is the "...*communication of a genuine invitation to give advice and genuine consideration of that advice.*"<sup>104</sup> The Committee considers the following principles are essential for true consultation to occur:

- decision makers who are obliged to consult should provide reasonable information to the parties with whom they consult;
- parties consulted should be given a reasonable opportunity to state their views;
- consultation should occur before final decisions are made;
- decision makers should be open to argument and not merely go through the motions of consultation; and
- consultation should not bring decision making to a standstill.

#### 6.2 STAKEHOLDERS IN THE CONSULTATIVE PROCESS

6.2.1 Dr Bonnie McCay, Professor of Anthropology and Ecology, Rutgers University New Jersey, USA stated at the 1999 FishRights Conference held at Fremantle that:

*"...bringing resource users and other stakeholders into the management process is difficult. The process tends to be "messy" and unreliable. However, it is absolutely necessary for effective and equitable fisheries management. Measures of both fairness and equity depend on early and meaningful involvement of stakeholders. ...The legitimacy of the management regime depends not only on whether those regulated feel that the regulations are the right ones, but also whether they feel that the process*

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103 The Macquarie Dictionary, second edition 1991

104 New Zealand House of Representatives, Report of the Primary Production Committee (1998) *Inquiry into the Government's Fisheries Cost Recovery Regime*, p. 19

*to create them was right. In participatory planning terms, if they meaningfully participate in the process, they become "owners" of it, and thus "stewards" or caretakers of it. And in the ideal, theoretical world, they will also more likely comply with the regulations."*<sup>105</sup>

- 6.2.2 In 1995, Mr Ross Gould, a Fisheries WA researcher conducted a study into the impact of the 1993/1994 package on smaller operators in the western rock lobster fishery. Like, Dr McCay, Mr Gould warned that:

*"...often the social issues and fishermen's attitudes may decide if management measures actually work. If fishermen don't believe in, understand, accept and support management strategies they will try and find a way to counter them. They may seek to avoid (break rules), undermine (increase effort), or change (apply political pressure) the strategies. Therefore it is considered extremely important to know about, and consider, the attitudes in the industry when developing fisheries' management policy".*<sup>106</sup>

- 6.2.3 The Committee finds that the issues raised by Mr Gould four years ago persist to this day and his prediction has crystallised. That is, fishers have used political pressure to attempt to change management strategies. This is the very essence of the democratic process.

### 6.3 ORIGIN OF BELIEF THAT CONSULTATION DOES NOT OCCUR

- 6.3.1 The Committee finds that the origin of the antipathy between some fishers and Fisheries WA is the 1993/1994 management package and more particularly the 18% temporary pot reduction entitlement rule ("**Rule**") described in the *West Coast Rock Lobster Management Plan 1993*.<sup>107</sup>

- 6.3.2 When Mr Gould, Fisheries WA researcher conducted his study into the impact of this package in 1995, he commented that:

*"... the department and RLIAC have not been totally successful in getting the industry to understand and accept the need and benefits of the management package. It is also clear that many fishermen do not understand the responsibilities of fishermen members of RLIAC and expect them to represent the interests of the fishing communities they work in."*<sup>108</sup>

- 6.3.3 Four years later, it appears that whatever measures were undertaken by Fisheries WA to redress the problem raised by Mr Gould (above), these have not produced any

105 In an address to the FishRights99 conference, November 11 1999

106 Mr Ross Gould (1995) Fisheries Management Paper No. 82, p. 42

107 At clause 18

108 Mr Ross Gould (1995) *Fisheries Management Paper No 82*, p. 21

positive outcomes. Many fishers continue to remain suspicious of the RLIAC and highly critical of its activities.

- 6.3.4 The Rule has been a persistent theme throughout the course of this inquiry. The Committee considered that there were cogent reasons for both abolishing and retaining the Rule. Season after season it continues to generate intense animosity between fishers and the RLIAC. This animosity is an outcome of the uncertainty about when the Rule might be relaxed because it was originally imposed in order to maintain sustainable yields. However, reviews conclude that the Rule is an important element of the current management strategy.
- 6.3.5 No fisher in either oral or written evidence sought abolition of the Rule with compensation. To the contrary, fishers demanded the use of their pots. Compensation for surrendering pots is feasible and has occurred in the past. For example, Fisheries WA compensated Windy Harbour-Augusta fishers in 1996 for the surrender of 696 pots at a total cost of \$659,688.00, on the grounds of sustainability.<sup>109</sup>
- 6.3.6 The Rule was introduced for sustainability purposes and though a source of continual irritation and grief for many fishers, the purpose remains justifiable. This is particularly evidenced by the current status of the western rock lobster fishery. That is, it is assured by the MSC that the western rock lobster is “...from a well managed and sustainable fishery and that it has been fished responsibly.”<sup>110</sup>
- 6.3.7 Although the use of 18% of fishers’ pots is denied, the pots remain a tradeable asset. That is they retain some financial value for their owners until such time as the RLIAC determines a change to the Rule.
- 6.3.8 The Committee makes no recommendation about the Rule, but reminds the RLIAC of the necessity to regularly inform fishers through its improved consultative mechanisms, the reasons for the Rule and why it cannot, at this time be relaxed.

## 6.4 EVIDENTIARY THEMES

- 6.4.1 Many fishers’ submissions and oral evidence reflected two consistent themes. The first was that some fishers, particularly from the southern zone, ‘feel’ they are not consulted. The second theme is that fishers are not satisfied with merely being consulted, they now demand to be co-managers of the fishery.

## 6.5 DOES CONSULTATION OCCUR?

- 6.5.1 The Federation claims the RLIAC was not, and is not meeting their needs in terms of representing fishers’ views to the Minister. Mr Daniel McDaniel, Chief Executive Officer (“CEO”) of the Federation explained:

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109 The cost was for 666 pots at \$973 per pot and 30 non transferable limited access pots at \$389 per pot

110 The MSC Website at <http://www.msc.org>

*"Honourable members may ask why the situation has arisen. When men who have been part of the industry for many years, in some cases all of their working lives, are prepared to put time and effort into opposing the management structure of the industry there is obviously something wrong. The management structure that exists is supposed to be one based on consultation and consensus. That it achieves neither of these things is a matter for regret. However, it must be asked who is responsible for both conducting consultation and achieving consensus. It is obvious that individual fishermen are not capable, nor can numerous different associations spread along the coast speak with one voice. It is clearly the responsibility of the ministerial advisory committee, RLIAC, and the Western Australian Fishing Industry Council, WAFIC, to provide consultation and to achieve consensus. That both these bodies have failed to satisfy a large minority, or perhaps a silent majority of fishermen on this point, is the nub of the problem."<sup>111</sup>*

Both the RLIAC annual coastal tour and the RLIAC process are primary sources of discontent.

## 6.6 THE RLIAC COASTAL TOUR

6.6.1 The Federation claims that: *"...technically by acting through RLIAC, consultation does occur but in practice, true consultation has not taken place."*<sup>112</sup> The Federation cited examples of this in relation to the 1997 coastal tour. The objections were:

- the tours have set agendas;
- question time is kept to a minimum, usually less than one hour of a day long meeting;
- when fishers offer valid suggestions or highlight the inadequacies or question the methodology of the research findings they are intellectualised, dismissed or told their points will be 'taken on board'; and
- fishers have to wait until the end of the meeting to question data and findings, often when the presenter has left.

6.6.2 The Auditor General's Principal Performance Analyst, Mr Lewis Corner supported the view that there were problems with the coastal tour:

*"...we met quite a lot of rock lobster people around the State, who made a number of comments. One example of where they thought the service was not all it could be was the annual rock lobster coastal tour, of which*

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111 Mr Daniel McDaniel, transcript of evidence, 24/9/1999

112 The Federation, Submission No. 15



*Fisheries is very proud as a consultative device, where fisheries officers go around the State and talk about their plans and receive comments. However, to a certain extent that has fallen a bit on its face. I was told that attendances were very low and that the fishers often see this as a device for Fisheries to preach at the fishermen and not receive their views in return, so what appears to be a fine idea about a productive consultative arrangement has not been very well supported and its purposes are not fully appreciated by the people on the receiving end."*<sup>113</sup>

- 6.6.3 The Committee examined three coastal tour agendas from 1993, 1996<sup>114</sup> and 1997<sup>115</sup> to see if any of the criticism could be validated. The Committee found that none of the agendas allocated any time for questions or general discussion. This lack of opportunity to participate contributes to the belief held by fishers that the coastal tour system is no more than a means for Fisheries WA to explain the regulatory regime which it imposes, with some fishers describing it as a seven hour indoctrination session.
- 6.6.4 Fisheries WA acknowledged that some of these problems exist and in later years have made improvements. For example, in a media release prior to the 1999 coastal tour, alterations were made to the agenda format including "...more time allocated for questions and time was specifically being set aside for industry to raise and discuss its own issues at the tour meeting."<sup>116</sup>
- 6.6.5 The Committee acknowledges that although some improvements were made to the format of the 1999 coastal tour agenda, only three sessions of ten to 15 minutes were allocated for questions or general discussion. If the RLIAC is committed to consultation, then many more opportunities are required throughout the course of the tour for fishers to present their opinions and comments.
- 6.6.6 The Committee reminds the RLIAC that there is an overwhelming need throughout the fishing community for fishers to feel that they have been listened to and their opinions considered. The Committee notes that in 1998 the RLIAC demonstrated its listening skills when it resolved not to pursue proposals made by its market research subcommittee to increase the period live animals were available to supply markets.<sup>117</sup> Significant catching sector resistance to the proposal was the reason for the decision.

## **6.7 MULTICULTURAL ISSUES AND THE RLIAC COASTAL TOUR**

- 6.7.1 The Hon Kimberley Chance, MLC and Member for the Agricultural Region claims that the coastal tours operate well in Dongara and Geraldton but the tour outcomes in Fremantle are poor. Mr Chance said:

113 Mr Lewis Corner, transcript of evidence, 24/11/1999

114 These were contained within the submission of Mr Richard Carr, Submission No. 14

115 The 1997 agenda was supplied by Hon Helen Hodgson MLC

116 Media Release, Fisheries WA, August 23 1999

117 Mr P Rogers, letter to the Committee, January 19 2000

*"...I would call [the Fremantle] tour appalling. It is a well-intentioned process, and it works well in some places. The Fremantle fishery is an excellent place for fishing. A great number of people for whom English is a second language are involved. I have spoken to people of both Portuguese and Italian descent who believe they are not respected by Fisheries WA or by Rock Lobster Industry Advisory Committee personnel. The process does not work in a large fishing population. ...Fremantle has, without doubt, the largest fishing population. It is extremely difficult for people for whom English is a second language to try to deal with the complicated issues that are addressed in a meeting which may number some hundreds of people. It is a pointless experience. If the coastal tour process is to be successful, then the way it is conducted in Fremantle, at least, needs to be addressed."*<sup>118</sup>

- 6.7.2 Many fishers complained to the Committee that the language is too technical; that they felt belittled, treated with disrespect and could not understand the material. The Committee finds that coastal tour personnel do not fully appreciate the multicultural issues facing non English speaking background (“NESB”) fishers, especially in the Fremantle area. Mr Kevin Donohue, Executive Officer, RLIAC trivialised this by stating:

*"Since I have been in this position no-one has brought this matter to our notice by saying they are having this difficulty. We would address that problem if it was communicated through the system by people ringing up or writing to us saying they did not understand what we were sending out. However, as far as I know, it is not a major issue; at least it has not been brought to our attention."*<sup>119</sup>

- 6.7.3 NESB fishers who do not fully comprehend the English language, cannot simply ‘telephone or write’ to a government agency and their dependence on children or grandchildren to interpret language or written material may be a source of frustration or cultural embarrassment for those fishers. It is fundamental to any effective consultative process that an explanation is rendered in a manner to suit the audience. It is the RLIAC’s function to appreciate that a unique problem exists with the Fremantle tour. The oral evidence clearly indicates a more sensitive approach is required.

- 6.7.4 The Committee notes that the RLIAC has made some adjustment to the Fremantle tour. Mr Terry Lissiman, Member of the RLIAC, commented that the RLIAC has, for example, shifted the coastal tour meeting from ethnic-oriented venues to neutral ground.

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118 Hon Kimberley Chance MLC, transcript of evidence, 24/9/1999

119 Mr Kevin Donohue, transcript of evidence, 13/10/1999

## 6.8 THE RLIAC PROCESS

6.8.1 The RLIAC is adamant that consultation with fishers occurs and that genuine attempts have been made in more recent times to improve the level of participation. For example by:

- circulating information from the RLIAC meetings via newsletters within six weeks;
- holding a joint WAFIC/WRLDA meeting prior to the RLIAC meeting;
- inviting the Federation to the RLIAC meetings; and
- inviting the CEO of the Federation to become a member of three sub committees.

6.8.2 The Committee suggests that these new initiatives have not had sufficient time to impact on the fishing community and commends the RLIAC's genuine attempts to improve its communication strategy.

6.8.3 It is indeed a conundrum that the RLIAC claims consultation occurs, yet the Federation is equally adamant that it is merely a technical consultation. Mr John Paterson, Chairman of the RLIAC said:

*"I think everybody has lost sight of the fact that...the processors, the association delegates and RLIAC are sitting in one room talking about the industry and the good of it without animosity. It has broken down animosity considerably. It has slowly happened without anyone realising how important it was."*<sup>120</sup>

6.8.4 However, for the RLIAC, the return of the Federation to the system is critical to re-building the relationship between the parties. Mr Paterson continued:

*"They [the Federation] seem to think that they are not listened to. I find it very difficult to understand how one can listen to people who do not turn up and who will not let us attend their meetings. It is a very difficult process to communicate with people who do not want to cooperate. I do not think that we have the problem, quite frankly.*

*"People cannot be outside the house and keep throwing stones at the window if they are not prepared to talk. [We] have given them every opportunity to become involved. ...The answer to everything is to get them to join the system and argue their point within the system."*<sup>121</sup>

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120 Mr John Paterson, transcript of evidence, 13/10/1999

121 Mr John Paterson, transcript of evidence, 13/10/1999

6.8.5 The Committee considers that the RLIAC is attempting genuine consultation but the process fails because of a fundamental misunderstanding of the function and purpose of the RLIAC by many fishers. Even those fishers who serve on the RLIAC experience great difficulty reconciling their roles. This places them in an invidious position, as was best explained by Mr Leonardo Sgherza, Skipper and ex RLIAC member, who said:

*"To be elected to RLIAC a fisherman is appointed by the minister and only accountable to him. ...Once appointed you cannot consult with your peers because it is against the law to discuss issues raised at RLIAC meetings. This places you in a position where you are unable to speak out against the system and represent your peers."*<sup>122</sup>

## 6.9 INDUSTRY RESPONSE

6.9.1 Industry has responded differently to the allegation that consultation does not occur. Although reeling from a significant number of the fishing community abandoning the system, industry is currently in the process of actively responding by reviewing institutional arrangements.<sup>123</sup> According to Mr John Cole, WAFIC's Chairman, the review process will be:

*"...discussing the industry as a whole and the direction in which the rock lobster industry is going so that we can get an overall view and whether WAFIC, RLIAC and the sub-committees are performing the correct roles."*<sup>124</sup>

6.9.2 Of the meetings held so far by the Steering Committee, the major problem perceived is the:

*"...consultative process between those involved in the industry, that is the fishers, processors and the government agency. Lack of communication was another concern. The idea of the workshop was to put together a management model that was acceptable to both industry and Government."*<sup>125</sup>

At the time of this Report, there is support from within the Associations for a new industry body to represent only the catching sector. The Steering Committee's preferred model includes the following features:

- the election of an industry body Council of eight fishers by all those who can be deemed to be voters, probably licence holders. This will catch those fishers who are not members of Associations;

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122 Mr Leonardo Sgherza, transcript of evidence, 13/10/1999

123 For example, a workshop facilitated by Mr Max Ball took place in late 1999

124 Mr John Cole, transcript of evidence, 24/9/1999

125 Mr Ken Palmer, transcript of evidence, 20/10/1999

- the relationship between the RLIAC and this new peak body is at arm's length; that is, it can give advice direct to the Minister or lobby the Minister;
- the body would be a member of WAFIC; and
- the body will be incorporated and employ an Executive Officer.

6.9.3 The Committee supports such initiatives, as this is clearly a recognition by industry that a positive response to those who feel disenfranchised is required.

6.9.4 The Federation and other fishers have not come to terms with management decisions from the 1993/1994 package and agrees with the RLIAC Chairman that the Federation needs to cease 'living in the past' and rejoin the system. However, the Committee acknowledges the Federation is receptive to industry's current initiative and is participating in a series of workshops examining problems and solutions as well as considering a model for a new peak body.

## 6.10 FISHER GRIEVANCES

6.10.1 The Committee heard general and specific grievances against Fisheries WA from 11 fishers during public hearings. Of these 11, the Committee asked Fisheries WA to respond to eight complaints.

6.10.2 The Committee is satisfied that Fisheries WA carried out correct process in respect of the events outlined in those eight complaints. The Committee was unable to identify any systemic issues from either the oral evidence of those eight fishers or from Fisheries WA's response.

6.10.3 The Committee notes that fishers' oral evidence and written submissions concerned grievances from many years past that had been thoroughly explored by Fisheries WA; fishers own lawyers, the courts and local Members of Parliaments.<sup>126</sup> Very little use appears to have been made of the Fisheries Objections Tribunal ("**Tribunal**"). This is explained by the fact that the majority of complaints:

- occurred long before the establishment of the Tribunal under the *FRMA*;
- were clearly matters not within the purview of the Tribunal; or
- concerned the commission of statutory offences.

6.10.4 Written submissions indicated that other aggrieved fishers explored some avenues to resolve their grievances but not all. None of the fishers appeared to be aware, for example, of the Parliamentary Commissioner for Administrative Investigations ("**State Ombudsman**"), the Anti Corruption Commission or the Australian Competition and Consumer Commission as legitimate forums of complaint.

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126 For example, Mr Ray Yukich, transcript of evidence, 20/10/1999

6.10.5 The Committee's terms of reference do not permit a consideration of the merits of individual cases of discontent with fishery management decisions or review decisions of the courts. Nevertheless, the Committee listened to the complaints because they were relevant to the issue of accountability of Fisheries WA. Despite certain individual attempts at legal redress, a general grievance against Fisheries WA and a specific grievance against the RLIAC over pot reductions strongly persists.

6.10.6 The Committee advises that those fishers who remain dissatisfied with the outcomes of their alleged treatment at the hands of Fisheries WA personnel consider the State Ombudsman. The State Ombudsman is a means of externally reviewing and investigating decision making. It is a valuable means for scrutinising decisions.

## 6.11 THE FISHERIES OBJECTION TRIBUNAL

6.11.1 The Tribunal is restricted to hearing objections against proposals concerning individual licences and permits.<sup>127</sup> Typical matters would include the Executive Director of Fisheries WA:

- refusing to grant a licence or permit;
- giving notice varying any conditions or adding new conditions to a licence or permit;
- cancelling, suspending or refusing to renew a licence or permit under section 143 of the *FRMA*;<sup>128</sup>
- refusing to vary a licence or permit following an application for the variation; or
- refusing to transfer a licence or permit, following an application.<sup>129</sup>

6.11.2 After the objection has been received, the Minister appoints the Tribunal. Between one and three persons sit if, in the Minister's opinion, they have suitable expertise to hear and determine the matter.<sup>130</sup> Fisheries WA appointed five members who are all legal practitioners to hear and determine the objections. Currently only one member hears the objections.

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127 These are defined as 'authorizations' in section 146 of the *FRMA*

128 Section 143 of the *FRMA* concerns cancellation, suspension or non-renewal of licences or permits where the holder has been convicted of an offence

129 *FRMA* section 147(1)(a-e)

130 These persons are appointed under Part 3 of the *Public Sector Management Act 1994* (WA)

- 6.11.3 The benefit of the Tribunal is that it is permitted under the *FRMA* to "...act according to equity and the substantial merits of the case without regard to the technicalities and legal forms."<sup>131</sup> It is not bound by the rules of evidence.
- 6.11.4 In its first three and a half years of operation, 98 objections were lodged with the Tribunal. Of these, 66 were withdrawn or resolved before proceeding further.<sup>132</sup> The average is nine complaints per year at a cost of \$5,500 per hearing.<sup>133</sup>
- 6.11.5 Only a small number of fisher grievances heard by the Committee would have come within the jurisdiction of the Tribunal. This is because the main thrust of the Tribunal is to hear objections to *administrative* decisions not matters relating to the commission of *statutory* offences. Statutory offences are quite correctly heard by the courts.

## 6.12 CO-MANAGEMENT

- 6.12.1 A second theme emanating from the evidence is that the Federation and others want to be co-managers of the western rock lobster fishery. They claim that the 'user pays/user says' slogan has not "...delivered accountability to fishers or allowed them to act as true co-managers".<sup>134</sup> The Federation's position is that "...the industry is not managed in a manner that...has satisfactory observance of the principles and philosophy pertaining to the co-management of a cost-recovery fishery."<sup>135</sup>
- 6.12.2 The Committee observed a subtle shift by the Federation and others<sup>136</sup> since 1997 from complaints about inadequate representation and lack of consultation to a demand for co-management. The Federation is positing that the principles of cost recovery imply co-management. The Committee doubts that this is so because Fisheries WA must maintain its regulatory position. That role cannot be shared.
- 6.12.3 Co-management finds expression in only one form under the *FRMA*. This is through commercial fishers participating in the various MACs, in the case of the western rock lobster, the RLIAC. Similarly, in Commonwealth controlled fisheries, industry achieves co-management through participation in various MACs.<sup>137</sup>

## 6.13 PRINCIPLES AND PHILOSOPHY OF A COST RECOVERY FISHERY

- 6.13.1 There is surprisingly little information about general theory and principles underlying cost recovery. The material that was available suggested cost recovery requires stakeholders to be consulted, either informally or formally under a statute. However

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131 *FRMA* section 154(1) & (2)

132 Office of the Auditor General (1999) *Performance Examination, Report No 6*, p.36

133 Office of the Auditor General (1999) *Performance Examination, Report No 6*, p. 36

134 Mr Greg Crombie, Submission No.13

135 Mr Daniel McDaniel, transcript of evidence, 24/9/1999

136 For example, the United MidWest Fishers Association, Submission No 28

137 Industry Commission (1992) *Cost recovery for Managing Fisheries*, p. 305

this process only extends to consultation about the extent of services to be delivered and the charges for receiving these services.<sup>138</sup>

- 6.13.2 The Federation and others have extrapolated the concept of consultation under cost recovery to mean co-management.<sup>139</sup> The Committee finds that co-management is not a constituent element of the cost recovery model. This was evidenced in 1995 when the Minister for Fisheries and the Chairman of WAFIC produced a joint statement titled *Future Directions for Fisheries Management in Western Australia*. It read:

*"Government as the ultimate custodian of essentially a community based, natural resource, will not be devolving its final responsibilities for management decision making on resource sustainability or resource allocation. These functions will remain the prerogative of Government through the responsible Minister, although a greater partnering in decision making with all stakeholders into the future will be encouraged".<sup>140</sup>*

- 6.13.3 The Committee finds that neither the term 'partnering' nor the concept of cost recovery imply co-management between Fisheries WA and its stakeholders. The Federation's belief that they could evolve into co-managers with Fisheries WA is flawed thinking. The management structure is deliberately exclusive and emanates from Fisheries WA's interpretation of recommendations from the 1989 *Burt Commission on Accountability*. Although specifically referring to statutory authorities, the Burt Commission emphasised that the strictest level of accountability stems from an entity which is subject to ministerial control.<sup>141</sup> Fisheries WA interpreted this to mean that the strictest level of accountability stems "...from an entity which has a departmental structure reporting to the Minister."<sup>142</sup>
- 6.13.4 Fisheries WA acknowledges that in the past both the RLIAC and the agency have not been totally successful in communicating, - the classic example being the need for pot reductions in 1993. Clearly some fishers are confused about the roles Fisheries WA, the RLIAC and WAFIC play in managing the fishery. The Committee finds that other fishers understand these roles quite well, they simply do not accept them as legitimate management structures. This is the danger that Dr Bonnie McCay, (see paragraph 6.2.1) alluded to in her address to the 1999 FishRights Conference.
- 6.13.5 The Federation does not grasp that, under cost recovery, fishers are only entitled to be consulted, not to be co-managers. The Federation is under a mistaken belief that cost recovery implies management 'rights'.

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138 Agricultural Compounds and Veterinary Medicines Group (1998) *Recovery of Costs, Discussion Paper*

139 Industry Commission (1992) *Cost Recovery for Managing Fisheries*, p. 305

140 Contained in the Submission of Fisheries WA, Submission No. 17

141 The Burt Commission on Accountability: *Report to the Premier* (1989), p. 103

142 Letter from Fisheries WA to the WAFIC Chairman dated April 22 1998, contained in the submission of Hon Jim Scott MLC, Submission No. 25



6.13.6 The Committee suggests that WAFIC was correct when it said, *"With cost recovery, industry has a self interest in the effective and efficient management of fisheries. Industry, ... is entitled to be assured...that it is receiving value-for-money from those being funded to manage the resource."*<sup>143</sup> However, this is all that industry is entitled to, it is not entitled to co-management, other than through the mechanism of a MAC.

#### 6.14 SUGGESTIONS FOR ALTERING THE STRUCTURE OF THE RLIAC

6.14.1 The Committee considered a range of suggestions for restructuring the RLIAC. These included:

- abolishing ministerial appointment;
- fisher representatives to be democratically elected by all fishers, not merely those belonging to fishing associations;
- a Federation proposal for a new RLIAC, a "REAL MAC"
- Association Presidents channelling nominations through a meeting of presidents;
- retired fishers only to serve on the RLIAC;
- a direct election to the RLIAC;
- abolishing the RLIAC;
- every fisher and licence holder to vote to establish an open committee to replace RLIAC and the rock lobster subcommittee;
- an elected body of fishermen independent of the agency;
- keeping the current management regime with some changes to the way the RLIAC members are appointed;
- strengthening the subcommittee of WAFIC and give it direct access to the RLIAC;
- turning the RLIAC into a rock lobster council; and
- having a body representing rock lobster fishermen in total, which includes the fishermen and the processing sector but no-one else.

6.14.2 In 1998, at the request of the Minister, WAFIC undertook a review of the RLIAC. The result was that overall, industry endorsed the current structure with the main

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143 WAFIC, *Strengthening the Management of Fisheries in Western Australia* (1997), p.2

discussion being the method of nomination and selection of catching sector members to the RLIAC. Association members proposed:

*“That nominations be called from industry in the usual way and that all nominations be presented to a meeting of all the association presidents for their consideration and negotiation as to the priority setting of the nominees. Consideration would be to cover the regional spread, expertise, period of previous membership on RLIAC, succession pathways and bringing on new industry participants. This process coupled with a staggered membership renewal approach and maximum terms of membership for any one person on RLIAC would greatly enhance the industry ownership and participation in the membership settings of RLIAC.”*<sup>144</sup>

6.14.3 WAFIC also made recommendations to the Minister about terms of membership for the RLIAC, that is, three years and any individual appointed to be limited to a maximum of two terms (that is, six years). The proposal was based on the fact that many members felt that a flow through of people on the RLIAC was conducive to fresh ideas and to promote the perception within industry that there were opportunities for anyone to nominate over a reasonable period of time. The two terms or six years maximum ensures that a RLIAC member has the opportunity to participate in at least one full (3/5 year) management cycle.

6.14.4 The Committee makes no recommendation about restructuring the RLIAC as it considers the problem is one of a fundamental misunderstanding of its role.

## **6.15 COMMITTEE FINDINGS**

The Committee finds that:

1. genuine consultation is being attempted but the process fails because of a fundamental misunderstanding of the function and purpose of the RLIAC;
2. consultation is occurring but language and cultural barriers contribute to making the process in the southern/Fremantle region ineffective;
3. the 18% temporary pot reduction entitlement was introduced for sustainability purposes and its continuation remains justifiable;
4. the RLIAC coastal tour in the southern/Fremantle region needs to be treated with appropriate flexibility;
5. regular non-inspectorial visits by Italian or Portuguese speaking Fisheries WA officers would enhance Fisheries WA's relationship with the southern/Fremantle fishing community;
6. it is unable to identify any systemic issues arising from the evidence of fishers' specific

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144 Letter to the Minister from Mr Brett McCallum, Chief Executive Officer, WAFIC, October 7 1998

- complaints against Fisheries WA;
7. aggrieved fishers mistakenly used the inquiry process as a forum for individual case histories to be heard. Their complaints should have been laid before the appropriate agencies such as: the Fisheries Objection Tribunal, the State Ombudsman, the Anti Corruption Commission or the courts;
  8. cost recovery principles do not infer co-management rights; and
  9. the RLIAC does not require any fundamental restructuring.

### 6.16 RECOMMENDATIONS

**Recommendation 1:** That there be a series of more inclusive and consultative coastal tours which respect the cultural diversity of the southern/Fremantle region.

**Recommendation 2:** That Fisheries Western Australia utilise the services of officers with appropriate language skills within the southern/Fremantle region.

**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.

**Recommendation 4:** That newly appointed members to the Rock Lobster Industry Advisory Committee participate in an externally facilitated induction program which explains the processes and responsibilities involved in becoming a member.



## CHAPTER 7

### FISHERIES WA'S REGULATORY AND MARKETING ROLES

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#### 7.1 TERM OF REFERENCE 2

7.1.1 Term of reference two of this inquiry concerns an alleged potential conflict of interest by Fisheries WA being both a regulator and having involvement in projects and marketing.

7.1.2 This issue does not seem to have overly concerned the Federation as demonstrated in the following dialogue:

*"Hon LJILJANNA RAVLICH: What about the perception of the potential conflict of interest through the department's involvement as a regulator and in projects and marketing? Do you see a conflict of interest?"*

*Mr McDANIEL: I am not so much sure I see a conflict of interest but the total inappropriateness of a government department getting involved in marketing. If you wanted to market a product, would you give it to a bureaucrat to market?"<sup>145</sup>*

7.1.3 However, Mr Tony Berdal, Skipper/Professional Fisher and Federation member said "Fisheries WA has been told by the industry to stay out of the marketing of lobsters...but it is persisting". Mr Berdal then described marketing as the "...release of sensitive commercial and research information to our competitors around the world".<sup>146</sup>

#### 7.2 THE DEFINITION OF MARKETING

7.2.1 The Macquarie Dictionary defines marketing as "...the total process whereby goods are put on to the market". Within the context of the western rock lobster fishery, marketing was best described by Mr John Fitzhardinge, Chairman of Directors, Geraldton Fishermen's Co-Operative Ltd, as "...sales, research and analysis."<sup>147</sup>

7.2.2 Mr Keith Pearce, president of Zone C Professional Fishermen's Association, voiced the position of other Associations when he said:

*"I assure the committee that the department has never sold a single rock lobster. It has never been involved in marketing. It has been involved in some discussions on whether there should be changes to the regulations to*

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145 Mr Daniel McDaniel, transcript of evidence, 24/9/1999

146 Mr Tony Berdal, transcript of evidence, 20/10/1999

147 Mr John Fitzhardinge, transcript of evidence, 13/10/1999

*consider marketing focuses. That is a requirement of the Fisheries Resources Management Act.*"<sup>148</sup>

### 7.3 FISHERIES WA'S POSITION ON MARKETING

7.3.1 Mr Peter Rogers, Executive Director of Fisheries WA explained that Fisheries WA has no direct marketing involvement in rock lobster and does not undertake any marketing on behalf of the industry. However, because the role of the agency under the *FRMA* is to facilitate the economic benefits from the rock lobster industry, the following current initiatives may have led to the perception that the agency is involved in marketing:

- the recent advertising for tenders for the development of a market focus industry strategy for the western rock lobster industry;
- a subcommittee to the RLIAC has been established in the past two years which has focused on getting information about what is happening with competitors;
- the Director of Strategic Planning, Mr John Nicholls, accompanying WRLDA to a trade fair in Brussels;
- the creation of a seafood quality management initiative;
- the trade market and development unit from Fisheries WA working in Agriculture West; and
- RLIAC's presentation of options to change the fishing season to provide opportunities to maximise the market return to the industry.<sup>149</sup>

7.3.2 Mr John Nicholls, Director, Strategic Planning, Fisheries WA expanded on the trade and market development initiative which was developed in consultation with industry, noting that it is about:

- information broking in relation to trade and market information which may be available through official networks;
- institutional impediments to trade, for example, questions around the requirements for food safety standards and meeting requirements around quality standards; and
- business management courses, which have been developed to help fishermen, particularly the 'mum and dad type' fisheries operations, improve the running

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148 Mr Keith Pearce, transcript of evidence, 13/10/1999

149 Fisheries WA, Submission No. 17

of their businesses and how they deal with their product quality and markets.<sup>150</sup>

7.3.3 Mr Peter Rogers, Executive Director, Fisheries WA, concluded: *"Over the past two to three years, that group of initiatives has probably generated the perspective that we are involved in marketing. Clearly we are not, have no intention of doing so and if we did, I am sure the industry would drop on us like a red hot brick in terms of our stepping from what we see as a facilitating role into a marketing role."*<sup>151</sup>

7.3.4 WAFIC, as the peak industry body, confirmed Mr Rogers' comments above. WAFIC does not support the agency or the MACs being involved in direct selling or being directly involved in marketing. However, WAFIC sees merit in the MACs having the best marketing advice available to ensure that management decisions do not create market difficulties. Mr Guy Leyland, Executive Officer, WAFIC said:

*"To ask the MAC to totally ignore the market implications of the recommendations is not a sensible approach to a significant economic activity in our State."*<sup>152</sup>

7.3.5 When the Minister for Fisheries asked WAFIC to undertake a review of the RLIAC structure and processes in 1998, part of that review included an assessment of the RLIAC's involvement in marketing issues. WAFIC reported to the Minister that:

*"There was full agreement that biological impacts should maintain priority and that this position should never be compromised. Members were of the view that RLIAC will need to develop extremely good economic and market research databases, similar to that in place for the biological analysis, before they can expect industry to accept proposed management options which have financial or social impacts. Until this economic or market research is in a form to give industry similar confidence to that of the biological understanding of the fishery it is the view of the majority of the members that RLIAC should not contemplate these issues in developing management arrangements in the future."*<sup>153</sup>

7.3.6 Mr Anthony, Chairman, WRLDA, said that the agency is not engaged in marketing, but trade development:

*"The agency has been doing some work in recent years with regard to trade development, and we fully support that initiative. For example, our organisation has been endeavouring over the past three to four years to get back into the European Union markets. In the 1970s, a lot of product was sent to the EU, but because of the buoyant Asian region and its requirement for our products and ability to pay more, we removed ourselves from the European marketplace. However, noting the Asian crisis, we decided as an*

150 Mr John Nicholls, transcript of evidence, 29/9/1999

151 Mr Peter Rogers, transcript of evidence, 29/9/1999

152 Mr Guy Leyland, transcript of evidence, 24/9/1999

153 Letter to the Minister from Mr Brett McCallum, CEO, WAFIC, October 7 1998

*industry group that we would be far better to direct some of our energies at trying to re-establish our focus on the European market.*

*The agency has been very useful to us, because we suffer an imbalance of trade with regard to the European Union, with a 15 per cent tariff barrier, combined with a value added tax, so we are 20 per cent behind some of our competitors in getting into the EU. The agency, through its trade development area, has been of assistance to us. Last year when we attended the European Seafood Expo in Brussels, John Nicholls, one of the assistant directors, into whose area trade negotiation falls, accompanied us. ...John, together with Ron Edwards, a former federal politician, who is our consultant, has been instrumental in trying to convince the European Union Parliament to grant us an exemption to the 15 per cent tariff barrier. If we can get it down to 8 per cent, like the Canadians, we will certainly be happy. Other countries, such as Cuba, go into that market at a tariff of zero, and we are competing with them.*

*I repeat that the agency is not involved in marketing, and we would strenuously oppose any move by the agency to become involved in marketing. However, we support its initiatives in trade development and will continue to do so."*<sup>154</sup>

- 7.3.7 Mr Kailis of MG Kailis, the largest non co-operative processor in Western Australia commented that marketing has traditionally been the role of the processing sector, well represented by the catching sector through two major cooperatives.

*"For our part, while we may not think it necessarily appropriate for the fisheries department to be heavily involved in marketing issues, we do not see where conflict would arise. ...It should also be noted that if the department engages in marketing issues at the initiative of and benefit for the community, that is not at the request or for the benefit of the commercial sector, then the question as to whether these costs should be recovered from the commercial sector needs to be considered in the context of [the cost recovery model]."*<sup>155</sup>

- 7.3.8 Mr John Fitzhardinge, Chairman of Directors, Geraldton Fishermen's Co-operative Ltd, stated that marketing could not be occurring within the agency because there are no speciality staff. If Fisheries WA were to become involved in any form of market promotion, this would necessitate a radical change in personnel, because it lacks such staff.

*"Fisheries WA and the minister are getting involved in promotion; from my point of view it is wrongly directed. There is promotion without any market research whatsoever. Let us target Norway because Norwegians love*

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154 Mr Anthony Gibson, transcript of evidence, 24/9/1999

155 Mr Alexander Kailis, transcript of evidence, 29/9/1999



*lobsters! End of story. No market research undertaken. What do Norwegians consume? What sort of lobsters do they like? I do not necessarily agree that we need to have Fisheries WA as it is now. I believe there needs to be a separate entity, possibly under the umbrella of Fisheries WA. It cannot be just given to Fisheries because there are no marketing experts.*"<sup>156</sup>

7.3.9 Mr Gary Parker, President, Dongara Professional Fishermen's Association, said his Association was in favour of 'promotion' of western rock lobster. However, the Association believes marketing should be the responsibility of processors who need to consult the research division of Fisheries WA about the biological management of the industry. In other words, marketing strategies need to stay within the bounds of sustainable management.

7.3.10 Geraldton Fishermen's Co-operative took the opportunity to lobby for a market research division within Fisheries WA. Mr John Fitzhardinge, Chairman of Directors, Geraldton Fishermen's Co-operative Ltd, said:

*"We would...say that Fisheries WA or some other department or entity has the responsibility of developing alongside the excellent biological and scientific research section, a marketing research section. There is no marketing research in the industry in this State."*<sup>157</sup>

7.3.11 Mr Roderick Dransfield, President, Geraldton Professional Fishermen's Association, supported the need for market research. He said:

*"Although most fishermen agree that there is no need or place for the department in the marketing of rock lobster, it must be realised that for there to be proper consultation and decision making on any issue to do with our industry, there must be a sound understanding of if not marketing then marketing research. It would be inconceivable that any change in the present management package would occur without taking market research into consideration to ensure that any conservational changes do not impact directly on present marks. We do not believe we should totally close our minds to any suggestions of possible windows of opportunity to discover new markets."*<sup>158</sup>

7.3.12 Mr John Ritchie, Fisher, claims every biological decision made has financial or marketing ramifications and thus, the RLIAC should consider what would happen to the market when making biological decisions.

*"To that end, I believe the department should have a market research department to gather all the information it possibly can. I draw the line, though, at the department's involvement in the promotion or sales side of marketing. This is the job of Western Rock Lobster Development Association and the individual processors and is paid for by fishermen from*

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156 Mr John Fitzhardinge, transcript of evidence, 13/10/1999

157 Mr John Fitzhardinge, transcript of evidence, 13/10/1999

158 Mr Roderick Dransfield, transcript of evidence, 27/10/1999

*the proceeds of their catch. It would be costly duplication for the department to get involved in something that few fishermen believe is its domain.*<sup>159</sup>

7.3.13 The Committee noted a range of interpretations about the definition of ‘marketing’ from witnesses. The existence of a RLIAC market research advisory sub committee probably adds to the confusion that ‘marketing’ is occurring.<sup>160</sup> The Federation presented no evidence that marketing is a feature of Fisheries WA’s activities but the Committee suggests the initiatives referred to in paragraphs 7.3.1 and 7.3.2, by Fisheries WA have led to the perception that marketing is occurring.

7.3.14 Section (3)(2)(e) of the *FRMA* states that one of its objects is to “...achieve the optimum economic...benefit from the use of fish resources...”. In order to responsibly achieve this objective, the Committee considers that some limited form of marketing is justified. This then turns on how the word is defined. ‘Marketing’ is not about selling rock lobsters, rather it is more to do with the promotion of the industry; the product and looking for market opportunities. If that is not being done, then the objects of the *FRMA* may not be being met. However, the Committee acknowledges that the resources for market research or a marketing strategy do not necessarily have to be within the agency. The expertise can be outsourced.

#### **7.4 COMMITTEE FINDINGS**

The Committee finds that:

1. there is no evidence to suggest a potential for a conflict of interest in Fisheries WA being regulators and having involvement in projects and marketing;
2. Fisheries WA does not undertake marketing but trade development and trade development is consistent with the objects of the *FRMA*;
3. trade development activity does not conflict with Fisheries WA’s regulatory role; and
4. there is significant interest in the concept of a market research division within Fisheries WA.

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159 Mr John Ritchie, transcript of evidence, 27/10/1999

160 This subcommittee is currently in recess

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## CHAPTER 8

### THE DEVELOPMENT AND BETTER INTEREST FEE

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#### 8.1 COMPONENTS OF THE MANAGED FISHERY FEE

- 8.1.1 The annual fee paid by fishers to Fisheries WA comprises a cost recovery component and a development and better interest (“**DBI**”) component. Fee receipts are credited to the Fisheries Research and Development Fund (“**FRDF**”) in accordance with section 238(4) of the *FRMA*.
- 8.1.2 The DBI fees collected are held by the Minister in the Fisheries WA Development and Better Interest Fund account which is a sub account of the FRDF. Fisheries WA uses the FRDF to fund the budgets set for each program.

#### 8.2 THE PURPOSE OF THE DBI FEE

- 8.2.1 The DBI fee is described by Fisheries WA as a return to the community, for use by the Minister for Fisheries, in the best interests of fisheries generally as well as fish and fish habitat protection. In 1998/1999, DBI funds were outlaid in the following manner:
- 20% to government initiatives;
  - 25% to industry bodies;
  - 20% to the FRDF;
  - 14% to the Industry Development Initiative; and
  - 21% to other industry projects.<sup>161</sup>
- 8.2.2 The government initiatives mentioned above include (amongst others) the rural leadership program, the trade and market development initiative and the seafood quality management initiative. A schedule in Appendix 5 demonstrates specific allocation of these funds over the last two financial years.
- 8.2.3 The DBI fee is based on a percentage of the gross value of production of the catch. The current rate is 0.65% of gross value of production or \$3.5 million across all managed commercial fisheries, whichever is the higher. In 1999, of the \$77 managed fishery fee, the DBI component was \$21 per pot. Thus the DBI component represents 27% of the managed fishery fee and represents a valuable resource for those peak bodies and others attempting to access a share.

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161 RLIAC, Submission No. 16

- 8.2.4 In 1997-98, approximately 72% of the DBI fee collected was paid out as grants to peak industry bodies such as, in the case of the western rock lobster fishery, WAFIC and WRLDA for their administrative and consultative functions. However, other groups benefited like the Industry Development Unit and the Pearl Producers Association.
- 8.2.5 A DBI MAC was established to provide advice to the Minister on the expenditure of the fee but the Minister recently dissolved this committee. The Minister now takes advice on matters relating to the DBI directly from the Executive Director of Fisheries against a set criteria.
- 8.2.6 To gain DBI funding an organisation must be a " ...peak body...which is recognised by the Minister as capable of representing the totality of interests of a particular sector with which Fisheries Western Australia...is required to consult in the course of fulfilling its functions and statutory responsibilities."<sup>162</sup> WAFIC meets this criteria and therefore receives funding.

### 8.3 THE POSITION OF THE FEDERATION PRIOR TO COMMENCEMENT OF THIS INQUIRY

- 8.3.1 The Federation's position up to the time of the commencement of this inquiry was that it should be included as a peak industry body alongside WAFIC because WAFIC could no longer presume to represent members of the Federation. The Federation desired "...dual representation..."<sup>163</sup> with WAFIC.
- 8.3.2 With dual representation, fishers would then be given the right to choose whom they will have represent them. By equating itself with WAFIC, the Federation would then be in a position to be considered for recognition by the Minister as a peak body for DBI funding purposes. However, being recognised as a peak body is no easy task especially when, for example, many Associations do not "...regard the Federation as peak body representation."<sup>164</sup>

### 8.4 THE POSITION OF THE FEDERATION AT THE COMMENCEMENT OF THIS INQUIRY

- 8.4.1 Mr Dan McDaniel, CEO of the Federation, disclosed during evidence that the Federation's request for DBI funding was no longer an issue. This was because between the time of the drafting of the terms of reference and the commencement of this inquiry, industry had begun to review its institutional arrangements.

*"The CHAIRMAN: Under our terms of reference we have been requested to look at the issue of redirection of the development and better interest*

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162 Fisheries WA, Submission No. 17

163 Mr Greg Crombie, Submission No. 13

164 Central West Coastal Professional Fishermens Association, Submission No. 11

*funding to the federation. Would you comment on how you think that would work, and what the federation would do with such funding?*

*Mr McDANIEL: Since that document was written I would like to see the federation written out of the equation and a body representing the catching sector written in. I have the backing of my executive in that respect. If we are to move forward as an industry, we must all put ourselves on the line. This is not about the federation getting power; this is about creating an organisation which can speak for the catching sector. There have been attempts in the past to form such an organisation, but they have not worked. Trying to get 13 different associations to talk with one voice is not easy. ...We want to promote a model where a professionally staffed organisation represents the interests of the catching sector. How that comes about and whether the federation is involved in it is a moot point. The federation would wind up tomorrow, if we could achieve a model that everybody could live with."*<sup>165</sup>

## **8.5 REACTION TO THE FEDERATION'S REQUEST FOR DBI FUNDING**

- 8.5.1 No other stakeholder supported the Federation's request for funding. The general consensus from fisher Associations was that if the Federation gained access to the DBI fund then this would open the floodgates. Mr Guy Leyland, Executive Officer of WAFIC stated: "*...the Federation is one of 13 associations with rock lobster members along the coast, each of which could mount a similar claim for funding.*"<sup>166</sup>
- 8.5.2 The Central West Coastal Professional Fishermen's Association pointed out that if the Federation was able to access DBI funding, this would have to be accounted for under the cost recovery model. Essentially this means the Federation would have to be funded by the whole of industry, an untenable situation for other Associations. The Associations are historically self funding, but would demand the same exposure to DBI funding and ultimately this would lead to an increase in licence fees to fund that cost recovery.

## **8.6 COMMITTEE FINDINGS**

The Committee finds that:

1. term of reference 3 is no longer relevant for the purposes of this inquiry; and
2. in any event, the DBI funding model would not permit an allocation to any Association.

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165 Mr Daniel McDaniel, transcript of evidence, 24/9/1999

166 Mr Guy Leyland, transcript of evidence, 24/9/1999



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## CHAPTER 9

### FISHERS ABILITY TO STORE, FEED AND SELL THEIR PRODUCT

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#### 9.1 CURRENT METHOD OF PROCESSING WESTERN ROCK LOBSTER

9.1.1 Currently, commercial rock lobster fishers are able to:

- sort lobsters by grade, size and sex; and
- chill or hold live lobsters on board their boats.

No other processing of lobsters at sea is permitted. On landing, fishers can sell lobsters to any licensed processor or sell lobsters directly to local retailers and the general public.<sup>167</sup> Mr Angelo Caranna, Fisher, explained his frustration with this system.

*"One cannot sell one's lobsters outside the State. Once a person touches a lobster, takes it off the boat and puts it into a different type of crate, it becomes processing. The terms of processing are so wide and varied that it does not matter what one does to a lobster; once it leaves the boat it virtually becomes processing. ... If I catch a lobster, it is a legal product, I pay for my rock lobster licence, I pay for the bait, I purchase my boat and I operate my business as such, I fail to see why somebody should come up to me and say that I have to channel my product through one of 12 people. I see no sense in that. Why can I not trade with my fellow Australians in a different State? I have no answer to that and I would like an answer."<sup>168</sup>*

9.1.2 Fisheries WA provided two reasons for the restrictions on sales into other states.

- the restriction prevents the establishment of other processing premises in another State as a means of overcoming the existing policy restrictions on granting new processing licences; and
- the restriction ensures that compliance costs are not unduly increased by the need to establish a Fisheries WA presence in other states.

9.1.3 The Federation complained to the Committee that:

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<sup>167</sup> For further information on the processing sector, see paragraph 4.1.2

<sup>168</sup> Mr Angelo Caranna, transcript of evidence, 20/10/1999

*"...the product no longer belongs to the fishermen from the moment it is brought to the surface. Fishermen are required, by law, to sell their product to one of the Western Australian licensed processors. They are not allowed to hold, feed or process their catch. It can be argued that the current arrangements restrict free trade. Processors may argue that a controlled market works to everyone's benefit. However, the experience of smaller fisheries in other States indicates that the advantage falls to the processor alone."*<sup>169</sup>

9.1.4 The Federation's view is that the product belongs to the fisherman until it is sold. Hence, fishermen should have the right to hold, feed, process and sell their catch to anyone within the Commonwealth. Fishers like Mr Caranna want to be able to create niche markets for their business, yet the barriers are that they must hold a fish processor's licence<sup>170</sup> and even then, processing is only permitted on licensed premises.<sup>171</sup> The processing licence can only be obtained from existing holders or from the issue of a new licence.<sup>172</sup>

9.1.5 Mr Alexander Kailis, CEO, Seafood Division, MG Kailis group, emphasised that the purchase of a processing licence is not so much a barrier, but *"...a hurdle, and some fishers have chosen to go over that hurdle in the past and buy a licence."*<sup>173</sup> However the Committee finds that the issuing of a new licence is a significant barrier as the number is currently fixed by regulation at 26.<sup>174</sup>

9.1.6 Mr Anthony Gibson, Chairman, WRLDA said:

*"...every fisherman has the capacity today to put a sign out the front of his or her house reading 'For Sale - Whole Rock Lobster' and/or 'For Sale - Cooked Rock Lobster'."*<sup>175</sup>

9.1.7 Fishers clearly have no *local* restrictions on selling but the interstate market remains closed. Fishers can store and feed if they possess an aquaculture licence but as Mr Angelo Caranna explained, the limitation on his licence is, again, that the lobsters have to remain within Western Australia and be processed through licensed premises. Similarly, access to the export market requires the product to pass through a registered export establishment.

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169 Mr Dan McDaniel, transcript of evidence, 24/9/1999

170 *FRMA*, section 82(1)

171 *FRMA*, section 86

172 Fisheries WA *Ministerial Guideline No 4*. (1996) states that no additional restricted or unrestricted rock processing licences (authorizations) should be granted

173 Mr Alexander Kailis, transcript of evidence, 29/9/1999

174 RLIAC Submission No. 16

175 Mr Anthony Gibson, transcript of evidence, 24/9/1999



9.1.8 The Committee suggests that if the processing sector is ultimately deregulated under national competition guidelines, then one of the two reasons for the interstate restriction will disappear but the requirement to process through licensed premises will remain.

## **9.2 FISHERIES WA RESPONSE TO DEMANDS FOR FISHERS TO STORE, FEED AND SELL THEIR PRODUCT**

9.2.1 Fisheries management paper number 122 is the formal response to that demand. The paper addresses the issue of extending opportunities for fishers to hold, fatten and process rock lobster. Amongst other things, it examines:

- the extended holding and feeding of rock lobster by fishers and others;
- the holding and culture of undersized rock lobster; and
- habitat modification and puerulus enhancement.

9.2.2 At this time, Fisheries WA has formed a reference group<sup>176</sup> to consider submissions on these issues. The group is drafting a revised policy paper that will ultimately give specificity to the proposals but at this time the work remains in progress.

## **9.3 THE MILIEU OF NATIONAL COMPETITION POLICY**

9.3.1 The Commonwealth, State and Territory Competition Principles Agreement binds all parties to the systemic review of existing legislation which may restrict competition. In the context of fisheries legislation, if anti competitive provisions are found, then reform of the legislation must be undertaken so as to not restrict competition. However, if it can be demonstrated that:

- the benefits of the restriction to the community as a whole, outweigh the cost; and
- the objectives of the legislation can only be achieved by restricting competition,

then no reform is required.

To date there have been four reports assessing Western Australian's fisheries legislation compliance with National Competition Policy. The ACIL report deals specifically with legislation controlling the processing sector and it found that the

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176 The Rock Lobster Aquaculture and Enhancement group

limit on the number of processing licences is by far the most important anti competitive provision.

*"The arguments for a continuation of the limit on processing licences are not convincing. In terms of economic benefits, the restriction is unlikely to have any impact on prices received for rock lobster exports. Removal of the restriction would not involve a substantial increase in enforcement costs. ACIL can see no benefits from continuation of this policy that justifies the restriction in competition."<sup>177</sup>*

#### 9.4 THE NUMBER OF PROCESSING LICENCES

- 9.4.1 The limited number of processing licences was introduced to eradicate the practice of landing and processing undersize lobster.<sup>178</sup> The current figure of 26 licences was reviewed via an independent inquiry in 1996 and it was found that sufficient licences were issued to cater for the requirements and volume of catch on an annual basis.
- 9.4.2 In paragraph 4.1.3, the Committee referred to the existence of four inactive unrestricted licences and three inactive restricted licences. Under section 143(1)(d) of the *FRMA* inactive licence holders are required to re-activate their licence within two years.
- 9.4.3 According to Fisheries WA, some licences tend to remain inactive for longer periods. If the licence holder is tardy in re-activating the licence, the ultimate sanction is for the Executive Director of Fisheries WA to exercise his discretion to either cancel or refuse to renew the licence, after having given due notice under section 143(1) of the *FRMA*.
- 9.4.4 According to Mr Tony O'Connor, Licensing Registrar, Fisheries WA, this sanction has never been applied. Fisheries WA is satisfied that there are cogent reasons for why processing licences may become inactive and need to remain inactive for lengthy periods.
- 9.4.5 According to Fisheries WA, in recent years, very few inactive processing licences have changed hands. Currently, the seven inactive licences have a high market value.
- 9.4.6 The Committee considers that Fisheries WA's regulation concerning the current number of processing licences (26) could not at this time be considered as restricting competition. This is because the demand for a processing licence could be satisfied if

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177 ACIL Consulting (1998) *National Competition Policy Legislation Review of the WA Rock Lobster Processing Industry*, A Report to Fisheries Western Australia p. vi

178 The cacker trade. See paragraph 4.1.2

a new entrant has the financial means to purchase a licence and the inactive licence holder is willing to sell.

- 9.4.7 The Committee suggested to Mr Alexander Kailis, CEO, Seafood Division, MG Kailis group, that the existing system is not competitive:

*"Hon LJILJANNA RAVLICH: Can I put to you the argument that perhaps the existing system is seen as restricting the catcher's ability to take a market share in processing and distribution and that maybe therein lies one of the fundamental gripes of the fishers?"*

*Mr KAILIS: Our company is on record as saying that we do not necessarily agree with the current number of processors. There is no magic that our number is the correct number, but we think there are a number of issues behind that. You would change the economic dynamic of the industry if it did become a completely open system, and no-one knows what the outcome of that would be. There might be far greater price fluctuations; therefore, as a trade-off, there would be a greater capacity to earn profit for ourselves.*

*Hon LJILJANNA RAVLICH: We are going from 13, which is fairly restrictive, to open slather, which implies that virtually any fisher can sell, which goes to the model of 600. The answer to a more deregulated system may lie somewhere in between, and one may argue that it will be more competitive and that supply and demand will determine a better price outcome."<sup>179</sup>*

- 9.4.8 At the time of this report, National Competition Policy recommendations have not yet been determined.

## **9.5 INDUSTRY RESISTANCE TO DEREGULATION**

- 9.5.1 The Committee notes significant resistance to deregulation of the processing sector from both industry and fisher Associations. Mr Alexander Kailis, CEO, Seafood Division, MG Kailis group, believes that the issuing of more processing licences is a "...severe threat..."<sup>180</sup> and will have a significant impact on the cost of compliance and enforcement of regulations. Mr Kailis, explained:

*"A key platform of enforcement is a limited number of delivery points, mainly processing establishments which receive product directly from fishermen. To substantially change this will at best increase the cost of enforcement but,*

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179 Mr Alexander Kailis, transcript of evidence, 29/9/1999

180 Mr Alexander Kailis, Submission No. 6

*more likely, will make enforcement cumbersome to the point where it cannot be maintained at anything like an acceptable level.*

*This will open the door not only for unscrupulous operators to land non-compliant product, that is undersize and setose, to the detriment of honest fishermen, but also will allow an unlimited outlet for black market product taken by non-commercial operators. Clearly, evidence in other fisheries where this is a prevalent problem - such as abalone - demonstrates that the western rock lobster resource is both of a high enough value and of easy enough access for these problems to quickly establish themselves.*

*We believe the impact on compliance and enforcement through changes in the fisheries legislation relating to delivery of catch by fishers has been grossly underestimated by previous reviews and presents a very real risk to ongoing sustainability of the western rock lobster resource.<sup>181</sup>*

- 9.5.2 The Committee agrees with the MG Kailis group and others that deregulation of the processing sector may have an adverse impact on the sustainability of the western rock lobster fishery.
- 9.5.3 Amending legislation simply for the purpose of not restricting competition is a mere ideological position. It fails to take into account issues such as ESD and that the current system for regulating the processing sector in fact contributes to the achievement of the *FRMA*'s objects by restricting outlets for illegal fishing and assisting with compliance. For example a Fisheries WA Officer might allege that a lobster is undersized when inspected at a processing establishment, but the fisher is not present to challenge that decision. When this occurs, the foreman of the processing establishment acts as an independent assessor. To deregulate the processing sector could potentially mean 597 outlets along the coast for Fisheries WA to monitor under cost recovery principles.
- 9.5.4 The Committee has closely considered the objects of the *FRMA*. One is to "...ensure that the exploitation of fish resources is carried out in a sustainable manner".<sup>182</sup> Fortunately, National Competition Policy posits that where the objects of the *FRMA* can only be achieved by restricting competition, then no reform is required. The Committee suggests that the objects of the *FRMA* may be in jeopardy should total deregulation of the processing sector occur.

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181 Mr Alexander Kailis, transcript of evidence, 29/9/1999

182 *FRMA* section 3(1)(b)

## 9.6 COSTS ASSOCIATED WITH DEREGULATION

- 9.6.1 Mr Gibson, Chairman, WRLDA suggested a certain naivety on the part of fishers who may not be aware of the enormous capital costs involved in establishing live tank holding facilities if deregulation occurs.

*"...the amount of capital invested at this stage by the processing sector is in the order of \$54m. That is not the ongoing maintenance and infrastructure cost but simply the capital cost of the tanks and current status. If fishermen were to look at holding lobsters to the degree of 100 per cent of what they have today, the additional capital requirement would be \$108m. We simply pose the question of whether the catching sector is aware of the capital requirement, because we talking about a science here. It is not a simple matter of placing the lobsters in a pen and harvesting them whenever we want. Lobsters need to be purged if they are to go into the live market, noting that the live market now represents 38 per cent of total annual catch. I believe it will stay at around that level, contrary to a lot of industry pundits who believe we will get to the stage where we will have a live lobster industry totalling 75 per cent of annual catch."*<sup>183</sup>

- 9.6.2 The MG Kailis group emphasised that the fishing sector is already well represented in the processing sector in Western Australia through two cooperatives.

*"We see no problem with fishers choosing to stock and feed their product provided it meets all the current fisheries legislation compliance requirements in place for the delivery and transfer of lobsters. Given that the enforcement of fisheries regulations is fundamental to ensuring ongoing sustainability, we can see no justification for loosening these."*<sup>184</sup>

- 9.6.3 Mr Bradley Arnup, President Central West Coastal Professional Fishermen's Association claims his members are satisfied with the current system of marketing lobster. The Association can foresee problems with fishers holding their own lobsters in traps. Economically it would be unviable to do it once fishers sustain loss of stock.

*"In addition, the product is regarded as the premium product in the world. Generally, the members are more than happy to leave the situation in the hands of the processors. ...They are more than happy to fish for the cooperatives and private companies. They are confident in the marketing and they do not want to know about the pain of doing it."*<sup>185</sup>

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183 Mr Anthony Gibson, transcript of evidence, 24/9/1999

184 Mr Alexander Kailis, transcript of evidence, 29/9/1999

185 Mr Bradley Arnup, transcript of evidence, 29/9/1999

9.6.4 Mr Gary Parker, President, Dongara Professional Fishermen's Association said:

*"The [Association] does not favour deregulation of the existing processing sector. Fishermen can sell their product to whom they choose but to undermine the quality control which exists in the industry today could be very detrimental in monetary terms to the industry and the State."*<sup>186</sup>

9.6.5 Mr Roderick Dransfield, President, Geraldton Professional Fishers Association said:

*"It is our fear that if unlimited numbers of seafood processors are holding lobsters, that will have detrimental effects on our present markets and any future ones. If people believe they have found a high-paying niche market, they must realise that anybody else holding product will compete and sell their stocks as well. If you think you will make a lot of money out of one little pocket, you can guarantee everyone else will be in there as well. Another fear is some backyard operators will not have the facilities required to hold optimum product and may sell poor quality lobsters into the market thereby destroying the perceived high quality of everyone else's product and dragging down the price in the process. The storage of lobster is an expensive operation and we feel this may force many well-intentioned sellers to quit product at a substantially lower price just to cut costs, thereby setting a much deflated market price. ...We suggest that the present practice of factories be continued."*<sup>187</sup>

9.6.6 Mr John Ritchie, Fisher said:

*"To store and feed lobsters one needs an aquaculture licence and premises with tanks, pumps, security, etc. Because the catch will not be any greater and the price received will at best be the same, the cost of all these extra facilities - perhaps one hundred or so - will come off the net returns to fishermen. There is a great potential that bad marketing decisions, or poorly informed ones, and poor quality lobsters will lower the market price for all lobsters under this system.*

*Another concern is that in high production periods these small operators will not be able to handle all their catch and will keep the highest value product and expect one of the mainstream processors to take the remainder, thus lowering the average value of that processor's production.*

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186 Mr Gary Parker, transcript of evidence, 27/10/1999

187 Mr Roderick Dransfield, transcript of evidence, 27/10/1999

*Perhaps of most concern to me are the compliance aspects of this proposal. Currently fisheries officers have about 19 factories and annexes to monitor and supervise the arrival of lobsters - the tags on the baskets, etc. With, for example, 100 extra facilities spread from beaches to backyards their job would be impossible. Visions of shady deals involving lobsters bought from recreational fishermen spring to mind. I think this whole idea is a bit of a no no.*<sup>188</sup>

- 9.6.7 The Committee notes the resistance of fishers and certain fisher associations to deregulation. This resistance is understandable when considering sustainability both of the resource and the fishery.

## **9.7 FURTHER IMPETUS FOR DEREGULATION**

- 9.7.1 The Federation suggested that there may be collusion between the processors to control or fix the beach price. Only two processors were questioned on this matter, the MG Kailis group and the Geraldton Professional Fishermen's Co-operative Ltd. Both denied this allegation.

- 9.7.2 The Federation posited the question:

*“What prices have been paid by users and suppliers of the product and are these prices compatible with the beach price received by the fishermen?”*

- 9.7.3 Mr Richard Carr, Fisher referred to a cartel<sup>189</sup> amongst processors. Mr Carr said:

*“The price has opened in Geraldton every year for 15 years. They all get their heads together and work out the price.”*<sup>190</sup>

## **9.8 IS COLLUSION OCCURRING?**

- 9.8.1 Collusion is a secret agreement for a fraudulent purpose. In economic terms, it is a formal or informal agreement between parties about the way they compete with each other that has the effect of lessening the level of competition in their industry.
- 9.8.2 Mr Angelo Caranna, Fisher, said that although he has no direct evidence of collusion, it leaves him wondering why one processor puts up the price one day and all 12 follow within the week.<sup>191</sup>

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188 Mr John Ritchie, transcript of evidence, 27/10/1999

189 A cartel is a collusive syndicate formed to regulate prices and output in a field of business

190 Mr Richard Carr, transcript of evidence, 29/9/1999

191 Mr Angelo Caranna, transcript of evidence, 20/10/1999

9.8.3 Mr Leith Pritchard, General Manager, Geraldton Fishermen's Co-operative Ltd commented:

*"Collusion for the benefit of the industry is very limited. There are 13 processors. As a marketing-selling person, I talk to one or two processors and say that the price should be kept at such and such. We try to do that. However, there are a number of small processors, so there is always one who will drop the price. A lower price will be brought about in most cases if more people are involved in marketing.*

*...If more people are selling, or wanting to sell, the product will tend to sell at a lower price because the marketplace has a greater supply than demand for the better part of the season. It is well accepted in marketing that the more people selling in those situations, the quicker the price will be driven down. It occurs even among the 12 establishments. Someone has product that needs to be sold so they think they should be the first to sell. They will sell the product 50¢ under the opposition's price. Once that 50¢ mark is established, the next one is lower. That happens when supply exceeds demand."<sup>192</sup>*

9.8.4 Australian case law<sup>193</sup> holds that not every determination of a price, following discussions between competitors, will amount to a price 'fixing'. There must be an element of intention or likelihood to affect price competition before price 'fixing' can be established. The relevant conduct has to lessen competition.

9.8.5 The Committee lacks sufficient evidence to determine if collusive practices are occurring within the western rock lobster fishery. Even if there were such evidence, this inquiry was not the appropriate forum to hear such allegations. The Committee suggests that those making such allegations raise the issue with the Australian Competition and Consumer Commission.

## 9.9 COMMITTEE FINDINGS

The Committee finds that:

1. fishers can sell western rock lobster direct to the general public and supply local retailers;
2. there are restrictions on supplying western rock lobster interstate which will disappear should deregulation occur;

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192 Mr Leith Pritchard, transcript of evidence, 13/10/1999

193 For example, *Radio 2UE Sydney Pty Ltd v Stereo FM Pty Ltd (1982) 62 FLR 437*



3. there is resistance to the deregulation of the processing sector from both industry and fishers;
4. if the processing sector is deregulated, this will have a consequent impact on the cost of compliance which will ultimately be borne by commercial fishers under cost recovery principles;
5. currently, there are seven inactive restricted and unrestricted processing licences available. This suggests that the regulation about the number of licences is not in itself restrictive and any demand for a processing licence could be satisfied if a new entrant has the financial means to purchase a licence and the inactive licence holder is willing to sell;
6. the Executive Director of Fisheries WA believes that there are cogent reasons for why processing licences need to remain inactive for lengthy periods, and consequently the discretion under section 143(1) of the *FRMA* has rarely been exercised;
7. deregulation of the processing sector may have an adverse impact on the sustainability of the western rock lobster fishery; and
8. there is insufficient evidence to establish whether collusive practices are occurring within the western rock lobster fishery.

#### 9.10 RECOMMENDATIONS

**Recommendation 5:** That the processing sector not be deregulated.



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## CHAPTER 10

### A SEAFOOD EXCHANGE IN FREMANTLE

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#### 10.1 THE CONCEPT OF A SEAFOOD EXCHANGE

10.1.1 A seafood exchange potentially adds value to seafood products. The exchange proposal has been described by its proponent, Mr Greg Crombie, PhD Student, as:

*"...a multi-functional complex, incorporating an internationally-linked selling floor with world-class restaurants, function rooms, display areas and family restaurants and cafes. The concept is to create an auctioning system in the heart of Fremantle that is connected to the world via the internet. Global customers will view live fish in the exchange holding tanks, and bid for them on a daily basis."*<sup>194</sup>

10.1.2 Mr Crombie's proposal includes facilities at the exchange complex to hold 100 tonnes of western rock lobster on a daily basis. With fisher-owned storage facilities, fishers will be able to supply the market, through the exchange, on a year round basis. Mr Crombie believes such an exchange will even out the peaks and troughs within the industry and tap the largely ignored domestic market.

10.1.3 Mr Crombie admitted that at this time the concept has not yet been fully floated within industry, but the Federation executive has confirmed support for a feasibility study. Mr Dan McDaniel, CEO, the Federation explained:

*"We see it [the exchange] as an option in the future, should deregulation of the processing sector be on the cards, and an option for the future for private sale of the product into the market, in much the same way as occurs at the Canning Vale markets and the Sydney fish markets."*<sup>195</sup>

10.1.4 Very few witnesses to the inquiry had heard of the seafood exchange concept. Many had no idea of its function, yet most expressed a desire to be kept informed about any further developments. Fisheries WA commented that the concept is not well explained and they have never been asked to investigate the proposal or seen a concept plan.

10.1.5 However, the Committee notes that in 1996, Fisheries WA examined electronic marketing (a significant component of the concept of a seafood exchange) in the context of the wetfish industry. The South Coast Professional Fishermen's Association was concerned about poor prices for consigned fish at the Perth Fish Markets. The study concluded (amongst other things) that:

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194 Mr Greg Crombie, Submission No. 13

195 Mr Daniel McDaniel, transcript of evidence 24/9/1999

*"...given the decentralised and deregulated methods of selling in WA establishing a system like the Sydney Fish Markets is unlikely to be cost effective. A group entering the market using electronic marketing techniques would have to compete against well established companies and networks that service the market at present."*<sup>196</sup>

- 10.1.6 Other identified problems were the likely need for subsidies to cover anticipated operating deficits (as has occurred in the Computer Aided Livestock Marketing system introduced in 1987) and a general resistance that few people in the seafood industry would support electronic marketing. Despite these problems, Fisheries WA indicated that it would *"...facilitate electronic marketing if initiated by industry."*<sup>197</sup>

## 10.2 THE SYDNEY FISH MARKET

- 10.2.1 The Committee considered the Sydney Fish Market as a potential model for a seafood exchange complex in Fremantle.<sup>198</sup> The Sydney market is Australia's only working fishermen's market, where the Southern Hemisphere's biggest seafood sale takes place; 1000 crates every hour and 65 tonnes of fresh catch are auctioned daily and shifted to the city and suburban and restaurants.

- 10.2.2 Fishers from across Australia, Singapore, New Zealand and the Pacific sell through the Market auction. At the conclusion of the auction, the facility assumes an eco-tourism role with tourists, shoppers and the lunchtime crowd replacing fishermen and merchants. There is a choice of fresh seafood complete with outdoor and harbour fronted dining facilities. Other on site services include the Sydney Seafood School which conducts cooking classes and a 'Fish Line', a free telephone advisory service to answer questions about seafood. The New South Wales Department of Fisheries is also located at this site as well as the Master Fish Merchants Association and Oceanwatch.

## 10.3 INDUSTRY RESPONSE

- 10.3.1 WAFIC as the peak industry body recommended the proponent of the seafood exchange prepare and circulate a detailed paper for industry consideration and comment.<sup>199</sup>

- 10.3.2 The Committee has some sympathy with the view expressed by Mr Keith Pearce, Zone C Professional Fishermen's Association about the Federation deviating from normal consultative processes in relation to the seafood exchange. Mr Pearce commented:

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196 Fisheries WA, Submission No. 17

197 Fisheries WA, Submission No. 17

198 Internet site: <http://www.sydneyfishmarket.com.au>

199 Mr Guy Leyland, transcript of evidence, 24/9/1999

*"I understand the Federation's major complaint is that fishermen are not being given the opportunity to discuss and determine things. Yet the whole reason these two issues [terms of reference 4 and 5] are before the inquiry is to ensure that the rest of the industry, outside of the federation, is not given the opportunity to discuss this through the normal consultative process. I cannot find anybody in the fishing industry who understands what a seafood exchange is. It has never been raised with the Rock Lobster Industry Advisory Committee, the Western Australian Fishing Industry Council's subcommittee or any association that I am aware of. The idea has never been before the consultative processes of our industry. It is hypocritical when the committee is asked to consider something the fishery has never seen."*<sup>200</sup>

10.3.3 The Committee has concerns about the lack of detail that was made available about this particular term of reference. The proponent admitted in evidence that support for the proposal had not been fully floated within industry and that "...it is merely a concept idea".<sup>201</sup> The primary complaint from the Federation during the course of this inquiry was poor consultation, yet this very proposal, had not proceeded through industry's normal consultative mechanisms.

10.3.4 Despite this criticism, the Committee considers the concept of a seafood exchange interesting. At this time, it is embryonic and the Committee makes no further comment or recommendation about it, except to say that any concept plan be channelled through the normal consultative processes.

#### 10.4 COMMITTEE FINDINGS

The Committee finds that:

1. at this time, there is insufficient evidence to determine if the concept of a seafood exchange has merit;
2. the proponent linked the concept of a seafood exchange to deregulation of the processing sector, yet there is no reason why it could not exist within the current framework; and
3. the concept of a seafood exchange needs to be channelled through the normal consultative mechanisms.



**Hon Christine Sharp MLC**  
**Date: May 18 2000**

200 Mr Keith Pearce, transcript of evidence, 13/10/1999

201 Mr Greg Crombie, transcript of evidence, 24/9/1999



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**APPENDIX 1**  
**PUBLIC HEARINGS IN GERALDTON**

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<b>Witness</b>	<b>Date</b>
Mr G Parker President Dongara Professional Fishermen's Association	27/10/99
Mr P Burton President United Midwest Fishers' Association <i>and</i> Mr D Fitzpatrick Consultant Fitzpatrick Teale	27/10/99
Mr R Dransfield President Geraldton Professional Fishermen's Association	27/10/99
Mr J Ritchie Ben Ledi Nominees Pty Ltd	27/10/99
Mr N Sharp Recreational Fisherman	27/10/99





**APPENDIX 2**  
**PUBLIC HEARINGS IN PERTH**

<b>Witness</b>	<b>Date</b>
Mr DN McDaniels Chief Executive Officer WA Rock Lobster Fishers' Federation <i>and</i> Mr G Crombie PhD Student	24/09/99
Mr G Leyland Executive Officer Western Australian Fishing Industry Council <i>and</i> Mr J Cole Chairman Western Australian Fishing Industry Council	24/09/99
Mr A Gibson Chairman Western Rock Lobster Development Association Inc.	24/09/99
Mr A Kailis Chief Executive Officer Seafood Division MG Kailis Group <i>and</i> Mr A Callander General Manager Lobster Seafood Division MG Kailis Group	29/09/99
Hon Kim Chance MLC	29/09/99
Mr P Rogers Executive Director Fisheries WA <i>and</i> Mr J Nicholls Director Strategic Planning and Policy Fisheries WA	29/09/99
Mr B Arnup President Central West Coastal Professional Fishermen's Association	29/09/99

Mr RE Carr Fisherman	29/09/99
Mr K Pearce President Zone C Professional Fishermen's Association	13/10/99
Mr JM Paterson Independent Chairman Rock Lobster Industry Advisory Committee <i>and</i> Mr K Donohue Rock Lobster Industry Advisory Committee <i>and</i> Mr T Lissiman Member Rock Lobster Advisory Committee	13/10/99
Mr J Fitzhardinge Chairman of Directors Geraldton Fishermen's Co-operative Ltd <i>and</i> Mr L Pritchard General Manager Geraldton Fishermen's Co-operative Ltd	13/10/99
Mr L Sgherza Skipper	13/10/99
Hon Jim Scott MLC	20/10/99
Mr DG Masotto Seaman/Mariner	20/10/99
Mr T Berdal Skipper/Professional Crayfisherman	20/10/99
Mr L Berdal Owner/Operator/Skipper	20/10/99
Mr A Caranna Director	20/10/99
Mr G Boyd Partner and Master	20/10/99
Mr R Mews Skipper/Owner	20/10/99

Mr S Johnston Rock Lobster Fisherman	20/10/99
Mr R Stock Director	20/10/99
Mr R Yukich Fisherman	20/10/99
Mr K Palmer Managing Director MG Kailis Group <i>and</i> Mr M Ball Director Palmstyle Pty Ltd	20/10/99
Dr G Robertson Deputy Auditor General Office of the Auditor General <i>and</i> Mr L Corner Principal Performance Analyst Office of the Auditor General	24/11/99
Dr BF Phillips Adjunct Professor Curtin University of Technology	24/11/99



**APPENDIX 3**  
**PUBLIC SUBMISSIONS**

<b>Submission Number</b>	<b>Date</b>	<b>Name</b>
1	03/08/99	Mr Noel Sharp additions to submission: 13/10/99 18/10/99 16/11/99
2	14/09/99	Mr Merv Collinson
3	18/09/99	Cradia Partners
4	20/09/99	Mr G Parker President Dongara Professional Fishermen's Assoc. Inc
5	20/09/99	Western Rock Lobster Development Association (Inc.)
6	21/09/99	Alex Kailis and Angus Callander MG Kailis Group
7	21/09/99	Mr Keith Pearce President Zone C Professional Fisherman's Association
8	27/09/99	Mr Peter Carr
9	28/09/99	Mr Gil Waller
10	29/09/99	Mr Peter Hammond
11	29/09/99	Mr Bradley Arnup Central West Coastal Professional Fishermen's Assoc.
12	24/09/99	Geraldton Professional Fishermen's Association Inc
13	24/09/99	Mr Greg Crombie additions to submission: 29/09/99 13/10/99
14	0/09/99	Mr Richard Earle Carr additions to submission: 06/10/99 13/10/99 14/10/99
15	01/10/99	WA Rock Lobster Fishers' Federation
16	01/10/99	Rock Lobster Advisory Committee

17	01/10/99	Fisheries WA
18	08/10/99	Ms Rachel Siewert Conservation Council of WA Inc
19	13/10/99	Mr Ray Yukich addition to submission
20	14/10/99	Mr Ralph Blundell Kalbarri Professional Fishermens Assoc.
21	15/10/99	Mr RG Burton
22	19/10/99	Mr P Burton
23	20/10/99	Mr Stuart Johnston
24	20/10/99	Mr Richard Mews
25	20/10/99	Hon Jim Scott
26	20/10/99	Mr Robert Stock
27	20/10/99	Mr Ken Palmer
28	25/10/99	United Midwest Fishers' Association
29	24/9/99	WAFIC

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**APPENDIX 4****EXTERNAL RESEARCH PROJECTS RESEARCH DIVISION, FISHERIES WA**

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- environmental effects on recruitment of the western rock lobster, CSIRO Division of Marine Research;
- modelling of ocean currents off WA and their effect on the larvae of the western rock lobster, CSIRO Division of Marine Research;
- economic efficiency of alternative input and output based management systems of the western rock lobster fishery, University of WA;
- genetic studies, University of WA;
- physiology and stress indicators, Curtin University;
- laboratory breeding and larval studies, University of WA and Curtin University;
- fishing power studies, Edith Cowan University and Murdoch University;
- recreational fishing survey, Murdoch University;
- ageing of rock lobsters, using the age pigment, lipofuscin, Queensland University of Technology;
- bait studies and Codes of practice for handling rock lobsters, WA Fishing Industry Council; and
- marketing studies, Marec Pty Ltd.





**APPENDIX 5**  
**DEVELOPMENT AND BETTER INTEREST FUND (DBI)- EXPENDITURE 1996/97 TO**  
**1998/99**

	96/97 \$'000 Actual	97/98 \$'000 Actual	98/99 \$'000 Actual
Opening Balance	1022	813	883
<b>ESTIMATED INCOME</b>			
DBI Fee transferred from Access Fees collected	2,775	3,500	3,500
Interest	120	115	130
<b>TOTAL REVENUE FOR THE YEAR</b>	<b>2,895</b>	<b>3,615</b>	<b>3,630</b>
<b>FUNDS AVAILABLE</b>	<b>3917</b>	<b>4428</b>	<b>4513</b>
<b>EXPENDITURE</b>			
<b>ANNUAL GRANTS-PEAK BODIES</b>			
WAFIC (a)	534	547	565
Pearl Producers Association	134	138	143
Western Rock Lobster Development Association	37	38	39
Aquaculture Council of WA	64	98	101
WARD Payment	21	24	22
<b>TOTAL PEAK BODY FUNDING</b>	<b>790</b>	<b>845</b>	<b>870</b>
<b>OTHER INDUSTRY FUNDINGS</b>			
Professor Bob Lindner-Economic Modelling	20	10	
Presence on Seafood Industry Council	23	23	23
Industry Profile	75	150	150
Strategies to minimise health and safety risks	120	120	120
Industry Development Grant (I.D.U.) (b)	156	538	571
Contributions to FRDC	600	600	600
SIS Cost			326
<b>TOTAL OTHER INDUSTRY GRANTS</b>	<b>994</b>	<b>1441</b>	<b>1790</b>
Agency Initiatives			
Pearling Industry Executive Support and Policy	95		
Vessel Monitoring System	78	109	
FAO Property Rights Conference-Administration			50
FAO Property Rights Conference-Executive Officer			33
FAO Property Rights Conference-Underwriting of Funds (e)			25
South Coast Pilchard Research			40
South Coast Pilchard Disease			
Disease Risk-Contingency			
Resource Sharing Guidelines			
DBI Administration			20
Shark Bay Snapper-Compliance			
<b>TOTAL DEPARTMENTAL FUNDING</b>	<b>173</b>	<b>109</b>	<b>168</b>
<b>INITIATED BY MINISTER</b>			
Communication Strategy	103		

Leadership Program	(c)	(c)	(c)	152
Trade and Marketing Development			53	200
Quality Assurance			8	150
Community Awareness Initiative-Fish for the Future (Edu Pge)				106
Reward and Recognition Program			8	14
Shire of Whyndham-East Kimberley Aquatic By-Pass Feasibility Study				5
DBI MAC Expenses		44	27	2
<b>TOTAL MINISTERIAL INITIATIVES</b>		<b>147</b>	<b>96</b>	<b>629</b>
<b>GENERAL CALL FUND-ALLOCATIONS</b>				
1996/97 approvals–monitoring the rebuilding of snapper stocks (d)				43
–extent and status of inner S.B. Snapper stocks			40	
–trawl fishery by catch (d)				20
Recreational Fishing Survey Leschenault			9	
Great Southern Seafood Network			5	5
Scallop Enhancement Project				70
Bream revival				20
General Call Allocation				
<b>TOTAL GENERAL CALL</b>			<b>54</b>	<b>158</b>
<b>TOTAL GENERAL EXPENDITURE</b>		<b>2104</b>	<b>2545</b>	<b>3615</b>
<b>PROJECTED BALANCE</b>		<b>1813</b>	<b>1883</b>	<b>898</b>
<b>TRANSFER TO GENERAL RESERVE</b>		<b>1000</b>	<b>1000</b>	<b>250</b>
<b>CLOSING BALANCE</b>		<b>813</b>	<b>883</b>	<b>648</b>
<b>GENERAL RESERVE FUND</b>		<b>1000</b>	<b>2000</b>	<b>2250</b>

## Footnotes:

- (a) WAFIC's 1999/00 grant is inclusive of allocation for Presence on Seafood Council.
- (b) Includes \$314,000 brought forward from 1996/97.
- (c) The 1996/97 and 1997/98 allocations of \$50,000 each were not drawn down and were carried forward to 1998/99.
- (d) Projects were in planning stage at 30/6/98 and funds were carried forward to 1998/99.
- (e) The underwriting funds have been refunded in January 2000.

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