



Hon Ken Baston MLC
Minister for Agriculture and Food; Fisheries

Our ref: 47-08460

Hon Simon O'Brien MLC
Chairman
Standing Committee on Environment and Public Affairs
Parliament House
PERTH WA 6000

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Dear Mr O'Brien

PETITION NO. 88 – OPPOSING SOUTH COAST CRUSTACEAN MANAGED FISHERY MANAGEMENT PLAN 2015

I refer to your letter of 11 August 2015 in regard to the above petition opposing the *South Coast Crustacean Managed Fishery Management Plan 2015* (the Plan), which was gazetted on 29 May 2015.

The Plan has been developed through a process which commenced in 2008 to consolidate the management arrangements of the three commercial rock lobster fisheries and the fishery for deep-sea crabs operating on the south coast of Western Australia into a single managed fishery management plan. The fisheries consolidated under the new Plan were the Windy Harbour-Augusta Rock Lobster Managed Fishery, the Esperance Rock Lobster Managed Fishery, the Southern Rock Lobster pot licence fishery (operating under Regulation 125 and 126 of the *Fish Resources Management Regulations 1995* relating to rock lobster fishing on the south coast outside of the two managed fisheries) and the deep sea crab fishery operating under Fishing Boat Licence Condition 105.

It is important to note that all authorisation holders have retained access to the Fishery under the new Plan. In particular, licence holders in the Windy Harbour-Augusta Rock Lobster Managed Fishery and Esperance Rock Lobster Managed Fishery (Zones 2 and 3 of the new fishery) have received the same level of entitlement as they held under their previous Managed Fishery Licences (MFLs). Authorisation holders in Zones 2 and 4 (the Albany and Inshore Bight zones i.e. the waters formerly encompassed by the Rock Lobster pot licence fishery) have received entitlement based largely on their catch history in those zones, determined through a method that has been applied consistently and equally to all fishers. This followed the then Minister's consideration of the recommendations by an independent panel that consulted with those fishers and approved by me as part of my consideration and approval of the new Plan.

Allocating fishery entitlement is inherently complex and sensitive. Noting this, the Department of Fisheries (Department) routinely appoints independent panels to consult with fishers regarding matters relevant to the allocation of entitlement for a fishery and to provide advice having considered industry views and matters relevant to achieving a fair and equitable outcome. In addition to the operation of the independent panel the Department, in developing its advice for Ministerial consideration, has undertaken significant consultation with authorisation holders and the Western Australian Fishing Industry Council, and has made considerable effort to ensure the development of the new management arrangements for the Fishery has been a balanced, transparent and fair process. A summary of the consultation opportunities provided to key stakeholders regarding the new management arrangements for the Fishery is enclosed.

Thank you for providing the opportunity to comment on this petition. Please see the enclosed comments on each of the matters raised by the petitioners.

If you would like further information on these matters, please contact Graeme Baudains at the Department of Fisheries on 9482 7369 or at graeme.baudains@fish.wa.gov.au

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ken Baston', written in a cursive style.

**KEN BASTON MLC
MINISTER FOR FISHERIES**

9 SEP 2015

Encl

RESPONSE TO PETITION

The Plan creates a redistribution of wealth in relation to the existing Rock Lobster Pot Licences

Upon commencement of the new *South Coast Crustacean Managed Fishery Management Plan 2015* (the new Plan), the number of units held by licence holders in the Windy Harbour-Augusta and Esperance Rock Lobster Managed Fisheries under the new Plan as well as the pot usage capacities of the respective zones, was unchanged. As both of the aforementioned fisheries were already operating under management plans with unitised entitlement to pot usage, and the capacity in terms of the total number of pots permitted to be used for each of those Fisheries was considered acceptable, there was no need to change the capacities to fish under the those units in Zones 1 and 3 of the new Fishery.

In contrast, in the Albany and Bight zones (Zones 2 and 4 of the new Plan), which had not been operating under management plans or appropriate fishery pot usage capacities, it was necessary to set capacities for those zones to address the significant amount of latent fishing effort (i.e. unused fishing capacity). A formal process to determine appropriate capacities for these areas and to allocate the entitlement to pot usage within those areas to the appropriate licence holders was undertaken for these Zones.

In 2008, when the review of rock lobster and deep-sea crab fishing on the south coast began, there were 3,658 pots available to be fished for rock lobster and deep-sea crab across what are now Zones 2 and 4 of the Fishery, while an unlimited number of deep-sea crab pots were able to be fished by those holding a Fishing Boat Licence with Condition 105 (deep-sea crab fishing only). In order to ensure the future sustainability of the Fishery it was necessary to reduce the capacity in Zones 2 and 4 to 652 and 427 pots, respectively (i.e. 1079 lobster/crab pots for both Zones combined). This was the average maximum number of pots used in these zones of the Fishery and represented a pot reduction of around 70%.

There were a number of ways that this reduction in pot numbers in Zones 2 and 4 could have been achieved. To assist in this process an independent allocation panel was established and that panel recommended that units be allocated within each of the two Zones on the basis of 10% for holding an authorisation (i.e. a Rock Lobster Pot licence or a Fishing Boat Licence with Condition 105) and 90% for relevant catch history. The independent allocation panel's recommendations (which were developed independently of the Department of Fisheries (the Department) and following consultation between the panel and South Coast Crustacean Fishers) as well as the then Minister's in-principle decision relating to allocation, were provided to industry in August 2013 (see summary of consultation at **Attachment 1**).

Compulsory monthly returns (statutory declarations) to the Department of Fisheries are never validated

Regulation 64 of the *Fish Resources Management Regulations 1995* (FRMR) requires a person engaged in fishing for a commercial purpose to keep records relevant to their fishing activity for a period of not less than seven years. Regulation 64 also stipulates that a person required to keep such records must submit a return to the Department each month, in addition to keeping receipts for fish sold or purchased. The FRMR

provides for significant penalties for individuals or bodies corporate for making a false or misleading statement.

With regards to validating returns, the Department scrutinises each return for obvious errors or omissions as it is received (and if necessary will follow up any matters with fishers). However, given fishers are required to declare and sign the return as being true and correct, the Department does not routinely audit returns unless a specific complaint has been made. Notwithstanding, if a complaint is made, the Department will investigate the complaint and act accordingly and if it finds that a person has made a false or misleading statement the Department may initiate action against the alleged offender. The Department has previously led successful prosecutions in cases where this has occurred and, while allegations of false returns have not previously been made with respect to the returns used to determine allocations for this fishery, any claims that can be substantiated will be investigated and responded to appropriately.

West Coast Crab Fishery was managed with different criteria to the South Coast Managed Fishery for the same species

Determining access to and allocating entitlement for a fishery is complex. The process undertaken to determine management arrangements (including determining access to the fishery, the setting of fishery capacities, establishment of entitlement and allocation of that entitlement) for each fishery is unique and relevant to the characteristics and circumstances of that fishery. Noting this, the Department routinely appoints independent panels to consult with fishers and provide advice on matters relevant to determining access and allocation.

An independent panel was tasked with considering and making recommendations on an appropriate allocation method for the Albany and Bight zones (Zones 2 and 4) of the South Coast Crustacean Fishery. After considering relevant matters and consulting with licence holders the panel recommended an allocation method. Given the new Fishery amalgamated four existing fisheries: the Windy Harbour-Augusta and Esperance Rock Lobster Managed Fisheries, the Southern Rock Lobster (SRL) Regulation Licence Fishery and a Fishing Boat Licence (FBL) Condition Fishery, and given the history of each of these fisheries, it is not surprising that the panel recommended a method for allocation in the South Coast Crustacean Fishery that was different to that used for the West Coast Deep Sea Crustacean Fishery, where the operators gaining access were a very small group of deep sea crab fishers.

Notwithstanding this, the allocation method applied to the Albany and Bight zones of the South Coast Crustacean Fishery considered both the highly variable catch history, the required reduction in the total number of pots for sustainability purposes, as well as providing some recognition (via the allocation process) to those licences that had little or no participation in the Fishery.

The amalgamation of the SRL and FBL Condition 105 fisheries under the new Plan has also provided increased flexibility for fishers by permitting rock lobster to be taken by fishers that were previously only permitted to take deep sea crabs.

The South Coast Rock Lobster Pot Licence has had a transferable pot allocation for some considerable time. The current licences expire on 31st December. The 2015 Management Plan cancels those licences prior to December and allocates pots to someone else with no mention of compensation

An annual licence renewal for a SRL licence attracted a fee of \$87. Fishers operating under a SRL licence were previously able to fish for southern rock lobster between 1 January and 30 June then from 15 November through to 31 December each year (i.e. the SRL licence did not permit fishing between 1 July and 14 November). The Department advised SRL licence holders that their 2015 licence would only be able to be fished from 1 January through to 30 June (after which it would be revoked) and that any fishing following that date would be under the authority of their new South Coast Crustacean Managed Fishery Licence in which the same fishing season applies. The Department did not receive any comments from industry on this matter.

With regard to the historical transferability of pots, SRL licences were permitted to be varied through administrative processes to the extent that the CEO of the Department would consider two applications:

- one application to reduce the number of pots that were permitted to be fished on one licence; and
- one application to increase the number of pots that were permitted to be fished on another licence.

Provided that the number of pots being increased on one licence was the same as the number of pots being reduced on the other licence, then the applications to vary each licence would be approved. This incurred a fee to vary each licence and was cumbersome for licence holders.

This mechanism is not the same as having a Managed Fishery Licence with fully transferable entitlement (including both permanent and temporary transfers) that is now available to fishers operating in Zones 2 and 4 under the new Plan, with the formal allocation of entitlement. However, the mechanism did provide a rudimentary way for fishers to adapt their fishing business to meet their financial expectations from this Fishery and to develop the catch history that was considered and applied in the allocation of entitlement under the new Plan.

There are cases that support the position that existing licences maintain some continuing rights

All fishers that had access to one of the previous four fisheries, through either a Managed Fishery Licence, SRL licence, or FBL Condition 105 will retain some access to the new Fishery, regardless of their level of fishing activity (provided the person lodges a competent application for the grant of a licence under the new Plan). In the case of Esperance and Windy Harbour-Augusta, fishers maintain the same level of access, while in the case of the newly created Zones 2 and 4 (the Albany and Inshore Bight zones) the former holders of a Rock Lobster Pot licence or a Fishing Boat Licence with Condition 105 retain a level of access consistent with having previously held a relevant authorisation and that reflects their fishing history in those areas.

The fee structure is inequitable

Access fees for the Fishery have been determined for each zone consistent with current Government policy for Managed Fisheries in WA. In accordance with this

Government policy, fees have been calculated by determining 5.75% of the average gross value of product (GVP) for each zone over a three year period. The access fees for the 2015/16 licensing period are included in the new Plan. A licence holder with units of entitlement in a particular zone pays access fees for that zone based on the number of units they hold. A summary of the access fees in relation to the 3 year rolling average GVP for each zone is included at **Attachment 2**.

Under the new Plan, the access fees for licence holders in Zones 1 and 3 (the former Esperance and Windy Harbour-Augusta Managed Fisheries) are calculated in the same manner as in previous years, and in accordance with the Government policy concerning the calculation of access fees for Managed Fisheries.

In contrast, Managed Fishery access fees were not levied for licence holders in Zones 2 and 4 (having previously operated under a Rock Lobster Pot licence), and fishers only paid an annual administrative fee of \$87. Similarly, Condition 105 fishers were not required to pay any additional fees for access to the resource above the annual Fishing Boat Licence renewal fee (\$315). Consequently, licence holders in Zone 2 and 4 will have experienced a substantial increase in the fees they are required to pay in order to access the new Fishery, which is now a managed fishery and, as noted above, comes with the associated strengthened rights framework and enhanced tradability of entitlement.

Importantly, under the new Plan, all of the fishers in the Fishery are paying fees determined using an approach that is consistent throughout the Fishery and across all Managed Fisheries in the State, and will result in fees that will increase and decrease over time in line with the economic performance of the fishery.

There is no provision in the Plan for affected persons to appeal (SAT)

The State Administrative Tribunal (SAT) reviews administrative decisions made by the Department's Chief Executive Officer. In the case of declaring a new management plan, the decision on access and allocation criteria is made by the Minister for Fisheries and is not reviewable by the SAT, although a person could appeal to the SAT if they considered that, in refusing to grant a licence, the CEO did not correctly apply the criteria. Licence holders had the opportunity to comment on the Independent Access Panel recommendations on access and allocation that were released in 2013, or by making a representation regarding the Minister's proposed access and allocation criteria during the statutory consultation period prior to the gazettal of the new Plan. The range of opportunities to comment on the development of the new Plan are summarised in **Attachment 1**.

ATTACHMENT 1

SOUTH COAST CRUSTACEAN FISHERY CONSULTATION

2009 – Fisheries Management Paper 232 (FMP232)

- The release of FMP 232 – The South Coast Crustacean Fishery: A Discussion Paper.
- The development of the management proposals in FMP 232 was the subject of significant consultation.
- FMP 232 was released in 2009 and the Department invited submissions.

2009 – First Panel

- As per recommendation of FMP 232, a panel was established to make recommendations on access and allocation criteria to the South Coast Crustacean Fishery.
- June 2010 – Panel provided recommendations to the Department's CEO.
- Early 2011 – Department requested the Western Australian Fishing Industry Council (WAFIC) co-ordinate comment from industry on the first panel report.

September 2011 – Second Panel

- Following feedback from industry, WAFIC suggested that procedural fairness had not been observed and requested the Department convene a new independent access and allocation advisory panel with a clearer requirement on consultation with licence holders.
- The Department agreed to establish a new independent access and allocation panel.

2012 – Consultation between second Panel and authorisation holders

- The second Panel held multiple open meetings with authorisation holders to understand the dynamics of the Fishery.
- The Panel offered one-on-one opportunities for authorisation holders to meet with the Panel and discuss any confidential matters that they did not wish to raise at previous meetings where other authorisation holders were in attendance.
- The Panel considered, within the knowledge available, all management changes, licensing changes and catch/effort data in the fisheries under the parameters of the Fishery, together with information provided by stakeholders through written submissions and at public meetings on the impact these changes may have on access and allocation considerations.
- WAFIC were provided with copies of all correspondence from the Panel and Department to authorisation holders throughout the new process.

2013 - Allocation Report

- Following the completion of the Panel's draft report in early 2013, the Department sought Ministerial approval to release the report to authorisation holders (August 2013).

- The Report did not differ substantively from the draft report circulated to authorisation holders in January 2013.
- The Department also sought the Minister's approval to consult with authorisation holders regarding a modification to the Albany zone allocation to enable all authorisation holders with access to that zone to retain both deep sea crabs and rock lobsters during the period rock lobster is allowed to be taken.
- A letter was sent to all authorisation holders and WAFIC consulting on the modified allocation including the revised formula which combined deep sea crab and rock lobster catch to form a single entitlement for the zone (11 September 2013).
- This modification was supported by all respondents.

2014 – Final Management Proposals

- A letter was sent to all authorisation holders and WAFIC to consult on a consolidated set of management proposals for the management of the Fishery including introducing the management plan in a two-staged approach (14 April 2014).
- Only two respondents provided unconditional support for the staged approach and thus it was not pursued further.
- These final proposals were adopted to draft the management plan.
- Further discussion regarding the management arrangements and allocation was undertaken at the Annual Management Meeting (AMM) for the south coast crustacean fisheries in August 2014.

2014 – Notification of anticipated allocation

- In August 2014 (prior to the AMM), letters were sent to all authorisation holders notifying them of their anticipated allocation.
- Authorisation holders were invited to make an appointment with the Department to discuss the allocation figures if they wished to discuss them further.
- Only one email was received to query catch history data used.

2015 – Approval of draft Management Plan

- Minister approved the draft management plan and its release for public consultation.
- During the public consultation period, all stakeholders (i.e. relevant authorisation holders, WAFIC and Recfishwest) were invited to attend a meeting in Albany to discuss the draft management plan and any concerns. Five stakeholders attended the meeting.
- Six submissions were received by the Department.
- Four respondents provided submissions indicating that they were unsatisfied with the allocation and with the process.
- Two submissions indicated support for the draft Plan and identified a number of minor issues to be amended or for further consideration.

Attachment 2

South Coast Crustacean Managed Fishery - 2015/16 Licensing Fees

Zone	GVP 2010/11	GVP 2011/12	GVP 2012/13	Total 3 Year GVP	Average 3 Year GVP	Total fees @ 5.75% of GVP	Number of Units	Fee per Unit
1 (Augusta)	\$269,839	\$242,401	\$191,663	\$703,903	\$234,634	\$13,491	350	\$39
2 (Albany)	\$442,563	\$496,271	\$814,890	\$1,753,724	\$584,575	\$33,613	653	\$51
3 (Esperance)	\$750,453	\$786,269	\$1,616,314	\$3,153,036	\$1,051,012	\$60,433	544	\$111
4 (Bight)	\$477,055	\$484,449	\$929,700	\$1,891,204	\$630,401	\$36,248	430	\$84
				\$7,501,867	\$2,500,622	\$143,786		