



25 January 2019

The Hon Dave Kelly MLA
Minister for Fisheries
13th Floor, Dumas House
2 Havelock Street
West Perth WA 6050

Dear Minister,

Consultation on Amendment of the West Coast Rock Lobster Managed Fishery Management Plan 2012: Western Rock Lobster Council Submission

I refer to a letter from the Director General of the Department of Primary Industries and Regional Development dated 14 December 2018, requesting feedback on the abovementioned matter. Please accept this correspondence as Western Rock Lobster Council's submission on the matter.

As you are aware from previous correspondence, on 21 December 2018, the Western Rock Lobster Council Board unanimously resolved to reject the non-binding Term Sheet between the Western Australian Government and Western Rock Lobster Council.

Western Rock Lobster Council Inc., the peak representative body for the Western Rock Lobster industry, remains totally opposed to the vesting of quota and units with the Western Australian Government and recommends, in the interests of industry stability and good government practice, that:

1. The Western Australian Government abandon its plan to nationalise a portion of the Western Rock Lobster industry with immediate effect; and
2. The Western Rock Lobster industry, through submissions to the Western Rock Lobster Council, commits to work in partnership with the Western Australian Government to increase the fiscal and social value the Western Rock Lobster industry delivers to the State; and
3. The Western Australian Government must ensure any increased fiscal and social contribution from the Western Rock Lobster industry does not compromise the industry's future and the growing contribution it makes to the State.
4. The Western Australian Government and Western Rock Lobster Council enter into an agreement that provides the Western Rock Lobster industry with adequate time to develop, assess and, through consultation, validate new policy options. The agreed amount of time afforded to industry for the assessment and consultation process should be commensurate with the degree of change and level of impact.

The detail of these recommendations and the basis for them are outlined in this submission, but in summation:

- There is no evidence of industry-wide failure to manage the fishery that justifies the intervention in the Western Rock Lobster industry being proposed by the Western Australian Government;
- The intervention proposed by the Western Australian Government creates immediate financial detriment to industry and ongoing uncertainty for industry and capital markets;
- The Western Australian Government proposal creates a conflict of interest environment conducive to a distortion event, which would result in long-term damage to the Western Rock Lobster industry, Western Australian Government and the State of Western Australia;
- The Western Australian Government proposal destabilises an important Western Australian primary industry with the potential loss of a significant number of jobs;
- The Western Australian Government proposal undermines industry's current investment in managing risk and achieving growth;
- The rationale behind the Western Australian Government proposal is based on significant factual error;
- The Western Australian Government has not undertaken proper analysis on the impact of its proposal; and
- The Western Rock Lobster industry has not been afforded time to generate alternatives, undertake comprehensive analysis or adequately consult, in a way that is consistent with good industry policy development practice and precedence.

Minister, in the interests of ensuring the sustainability of the Nation's most valuable and iconic fishery, it is my sincere hope that the Western Australian Government will give due consideration to this submission and accept its recommendations as a rational, sensible and constructive path for both the Western Australian Government and the Western Rock Lobster industry to address this matter.

Yours sincerely,



Kim Colero
Chairman
Western Rock Lobster Council

*Cc: Mr Ralph Addis
Ms Heather Brayford*

The Western Rock Lobster Council Inc.

The Western Rock Lobster Council Inc. (WRLC) is the peak representative body for the Western Rock Lobster industry in Western Australia. WRLC's total membership is comprised of more than 650 West Coast Rock Lobster Managed Fishery Licence (MFL) holders, operating approximately 230 lobster fishing vessels.

The Western Rock Lobster industry is an iconic, world-class fishery based on the spiny lobster (*Panulirus cygnus*) along Western Australia's coast, between Shark Bay and Cape Leeuwin. In recognition of the high environmental values and sustainable fishing practices maintained by WRLC members, in 2000 the Western Rock Lobster Fishery became the World's first fishery to be certified as ecologically sustainable by the Marine Stewardship Council (MSC). The fishery has maintained its MSC certification and is globally recognised as a world-leader in fisheries innovation and sustainability.

The Western Rock Lobster industry is also a significant contributor to the Western Australian economy, generating Gross Value of Product (GVP) in excess of A\$430 million, and directly and indirectly employing more than 2,400 people. It is also an important component of the social fabric of many coastal communities between Kalbarri in the State's Mid West Region and Busselton, in the State's South West Region.

Background to this Submission

In November 2018, the Western Australian Government (WAG) approached the WRLC asking it to commence confidential discussions, for a set period of four weeks, to explore alternative fiscal and other arrangements between the Western Rock Lobster industry and WAG. WRLC agreed to have discussions with WAG for the specified confidential period on the basis that it would not be able to bind the industry to any arrangement without extensive consultation with its membership.

From the commencement of these discussions, WAG prosecuted, without compromise, a new mechanism through which WAG would gain significantly greater fiscal revenue from the Western Rock Lobster industry, and, in its view, generate some additional social value. The new mechanism proposed by WAG has the following key features:

- The Total Allowable Commercial Catch (TACC) for Western Rock Lobster would increase from its current level of 6,300 tonnes to 8,000 tonnes;
- 315 tonnes of this increase would be allocated to existing Western Rock Lobster MFL Holders on a *pro-rata* basis;
- The remaining 1,385 tonnes of additional quota (and associated units) would be vested with WAG; and
- WRLC understand that WAG will use the vast majority of this quota to generate additional revenue for WAG either through sale or lease of that quota, and to address other policy objectives such as supporting Indigenous participation in the industry and diverting subsidised lobster product to local retail markets and the hospitality and tourism sectors of the Western Australian economy.

From the commencement of these discussions, WRLC has vehemently objected to WAG owning, controlling and dealing in commercial Western Rock Lobster quota and units. On the basis that this position was put to WRLC by WAG as 'non-negotiable', WRLC, in good faith and on a *without prejudice* basis, explored alternative structural options that could mitigate the risk associated with such a

proposition, as well as an associated industry benefits package which, if acceptable to its members, could alleviate some of the significant harm that the WAG proposed revenue model would invariably cause industry. This benefits package included:

- A process toward a framework and specific legislative amendments for greater certainty and security over commercial Western Rock Lobster fishing rights;
- Establishment of, and WAG investment in, a new, independent body-corporate that would allow the industry to co-manage the resource and fishery; and
- WAG investment in the proposed Australian Institute for Spiny Lobster Research.

The report detailing these initial discussions is contained in [Attachment 1](#) to this submission and the outcome of the discussions in the expressly non-binding, in-principle Term Sheet are contained in [Attachment 2](#) to this submission.

At its meeting on 21st December 2018, the Board of Directors of WRLC resolved, among other things, to reject the Term Sheet contained in [Attachment 2](#), principally on the basis that WAG ownership and control of quota (and associated units) presents a fundamentally unacceptable risk to industry. The WRLC wrote to the Minister for Fisheries advising him of this decision, and this letter is contained in [Attachment 3](#) to this submission.

Since the completion of the discussion with WAG and the consequential termination of the period of confidentiality, WRLC has been able to undertake preliminary consultation based on limited facts with its members. This has included a coastal tour providing MFL holders the opportunity to provide direct feedback to WRLC, a voluntary online survey of MFL holders and solicitation of views from Central West Coast Professional Fishermen's Association, Geraldton Professional Fishermen's Association, Combined Zone C Association, Western Australian Fishing Industry Council, and Seafood Industry Australia.

The WRLC membership has unanimously and categorically rejected WAG's proposal for State ownership of units. In addition and in response, WRLC actively sought frequent feedback from its Members as it attempted to identify an acceptable policy solution. WRLC received a strong preference in feedback from industry, including submissions from the Geraldton Fishermen's Cooperative and Fishing Families WA, in support of an increase to the fishery's GVP fee as opposed to Government ownership of units.

Summary of Recommendations of this Submission

This submission to WAG from the WRLC makes the following recommendations:

1. Western Australian Government must abandon its plan to nationalise a portion of the Western Australian Rock Lobster industry

With immediate effect, WAG must abandon its proposal to increase the Western Rock Lobster Total Allowable Commercial Catch (TACC) and to vest quota and associated units with WAG, cease any processes that it has put in place to give effect to this proposal, and make a public statement to this effect.

2. The Western Rock Lobster industry commits to work in partnership with the Western Australian Government to increase the fiscal and social value the Western Rock Lobster industry delivers to the State

The WRLC has an ongoing growth strategy that was established and underway prior to the WAG's proposal to nationalise 17 per cent of the industry. WRLC's position in discussions with

WAG to date reflects our commitment to deliver this growth strategy and to work in partnership with the State to increase the fiscal and social return the industry provides to Western Australia.

3. **WA Government must ensure any increased fiscal and social contribution from the Western Rock Lobster industry does not compromise the industry's future and the growing contribution it makes to the State**

WAG and WRLC must enter into an agreement that provides the Western Rock Lobster industry with adequate time to develop, assess and, through consultation, validate new policy options. The following should be achieved:

- a. The agreed amount of time afforded to industry for the assessment and consultation process should be commensurate with the degree of change and level of impact;
- b. Greater security for Western Rock Lobster commercial fishing rights. This security may take the form of a deed of agreement such that quota units can neither be created nor destroyed; and
- c. An agreed co-investment strategy in specific initiatives designed to support the Western Rock Lobster industry's current growth strategy and future management.

The details of these recommendations and their basis are discussed in the following sections of this submission.

Recommendation 1: Western Australian Government must abandon its plan to nationalise a portion of the Western Australian Rock Lobster industry

Nationalisation of industries is a policy framework that is more common to developing nations, where a critically desperate need for government revenue outweighs the importance of more robust, economy-wide benefits, which are more efficiently delivered by private enterprise operating in a rules-based free market. **The WAG proposal is unprecedented in an Australian primary industry and, in a successful, modern, rules-based open economy such as Australia, it is untenable. The sovereign risk to the WAG is substantial with potentially devastating effects for investment in the WRL and a number of other key WA industries.**

In the absence of clear market failure, government participation in markets is poor public policy...

Market failure refers to the inefficient exchange of goods and services between producers (supply-side) and consumers (demand-side). Central to the notion of market failure is the definition of an efficient market. An efficient market is an interaction between supply and demand that produces prices that reflect the full cost of the goods and services used in production and consumption. If all markets were perfectly efficient then social welfare (defined as economic benefits to all people in society) would be maximised, as the prevailing prices would lead to a socially desirable quantity of each good and service being produced and consumed.

In reality, there is a degree of market failure in the vast majority of markets. However, from the perspective of justifying public sector intervention designed to address identified market failure, it is

only significant market failure that results in significant public cost or loss of significant public benefit that should be of interest to policy-makers.

On this basis, government intervention to facilitate Indigenous participation in the industry is far more likely to be successful if designed and executed collaboratively between industry and Indigenous interests, with government support. Achieving an equitable and fair return for the State in exchange for the rights to commercialise a natural resource also justifies government intervention, albeit taxation is the most efficient means of achieving this. However, directly intervening in a rules-based free market in order to appropriate value from one industry (the Western Rock Lobster industry) to subsidise consumer purchases of a luxury product (Western Rock Lobster), or to subsidise the operating costs of operators in other industries (tourism and hospitality), is not justified on the basis of market failure.

Indeed, careful consideration to both the nature of the market failure and an appropriate response is mandated by the principles of good government. Elements of good practice policy making and review have been formally recognised by Australian governments and are reflected in a number of guidelines and requirements at Commonwealth and state/territory levels. In 2006, the Australian Government adopted the following principles to aid sound policy development as identified by the Taskforce on Reducing Regulatory Burdens on Business¹:

- Governments should not act to address problems until a case for action has been clearly established. This should include establishing the nature of the problem and why actions additional to existing measures are needed, recognising that not all problems will justify (additional) government action.
- A range of feasible policy options need to be identified and their benefits and costs (including compliance costs) assessed with an appropriate framework.
- Only the option that generates the greatest net benefit for the community, taking into account all of the impacts should be adopted.
- Effective guidance should be provided to relevant regulators and regulated parties in order to ensure that the policy intent of the regulation is clear, as well as the expected compliance requirements.
- Mechanisms are required to ensure that regulation remains relevant and effective over time.
- There needs to be effective consultation with regulated parties at all stages of the regulatory cycle.

These principles are now being incorporated into regulatory impact assessments for any regulatory or quasi-regulatory proposal. State jurisdictions and the Commonwealth are required to undertake a regulatory impact assessment for the development of new regulations. All jurisdictions specify that a cost-benefit-analysis framework be used to assess policy options, with preference for costs and benefits to be quantified. In a few instances, guidance documents are provided in order to assist in the development of a regulatory impact statement.² To the best of WRLC's knowledge, no cost-benefit-analysis or impact statement has been undertaken by WAG with respect to its proposal.

Indeed, it is certain that a cost-benefit-analysis will demonstrate that if implemented, the WAG proposal will divert resources that would otherwise be invested by the Western Rock Lobster industry in new productive capital, research and technology development, new products and local and export

¹ Banks, G. (2006), *Taskforce on Reducing Regulatory Burdens on Business*, Productivity Commission, Canberra

² Victorian Government (2007) and New South Wales Government (2007)

market development (all resulting in job creation including new jobs in regional Western Australia) and will substantially increase costs by:

- Subsidising domestic consumer access to a luxury product;
- Subsidising the operating costs of operators in other mature sectors of the economy (tourism and hospitality); and
- Inefficient allocation of economic resources through inefficient government mechanisms.

Government intervention creates immediate and ongoing uncertainty...

WAG's proposal to act as an owner of quota (and associated units) is of particular concern. A rules-based free market allocates economic resources efficiently because:

- The rules that apply to commerce are clear and transparent to participants;
- Suppliers have a transparent motivation to optimise returns, meaning they set prices and volumes and make investments in capital, human resources and other factors of production in order to serve this motive; and
- Consumers limit the rents that can be achieved by suppliers by establishing volumes of product they are prepared to purchase at given price increments.

The transparency of motive in a rules-based market creates a commercial environment that provides transparency and predictability that is conducive to effectively managing commercial, investment and financing risk.

Significant government participation in a market, such as that proposed by WAG, undermines this. Governments do not behave in markets in the same way as the private sector. While they may in part be motivated by return, their supply decisions are also influenced by less predictable factors such as a government espoused or non-espoused social and political agenda and issues that change with the sentiment of the electorate. The potential for WAG being a regulator and financial participant in the industry also creates a serious conflict of interest.

Additionally, governments, by virtue of their fiscal base, tend to have far greater resources than any individual operator in the private sector. This is certainly the case when comparing WAG with the Western Rock Lobster industry. This means that government as a supplier has an unfair competitive advantage, being able to sustain lower prices or incur higher costs for longer duration than the private sector suppliers in the market. The existence of a supplier in the market that possesses an unfair competitive advantage adds further risk to commercial, investment and financing decisions.

The lack of transparency and predictability of WAG as a supplier in the market, combined with its unfair competitive advantage will result in significant uncertainty in the Western Rock Lobster industry. This is already leading to reduced investment and will result in an inability of equity and debt markets to finance the industry and ultimately lead to lower levels of employment and economic contribution to the State. This will have a follow-on effect to downstream sectors and allied industries, many of which are located in regional Western Australia.

It is noted that from the banking sector's perspective, the announcement of WAG's proposal has already affected the bankability of the sector.³

³ Mercer, D. (2019) 'Banks for nothing Minister!', The Weekend West, Perth, 12 January, p.17.

The Western Australian Government’s proposal creates an environment that is conducive to distortion...

Nothing in this submission should be interpreted as suggesting that WAG is or intends to engage in activity that is corrupt. However, the fact is that government participation in business creates an environment that substantially increases the risk of distortion due to conflict of interest. The implementation of the WAG proposal would require a robust and expensive governance framework to minimise the risk of distortion that could result, for argument’s sake, from WAG transacting in quota and units with related parties, operators related to organised crime or simply through a non-compliant tender process.

Irrespective of the investment WAG might make in governance, this risk can never be eliminated, and history suggests it is very difficult to do so when government participates in the market. A major corruption event would deliver long-term damage to WAG, the Western Rock Lobster industry and the State of Western Australia.

The Western Australian Government’s proposal destabilises an important Western Australian industry ...

Western Rock Lobster is Western Australia’s 7th most valuable agriculture, fishery or forestry product, and is significantly more valuable than the State’s forestry output, the production of fruit and nuts, and the production of vegetables. Western Rock Lobster production is around twice as valuable as milk or pulse production in Western Australia. Most importantly, over the past five years the Western Rock Lobster industry has had amongst the highest growth rates of all major Western Australian primary industries.

The Western Rock Lobster industry is an important sector in the Western Australian economy. At a macro-level, the industry contributes more than A\$500 million to Gross State Product (GSP), directly and indirectly employs more than 2,400 people across the fishery (1,700 people), seafood processing (480 people), boat building (190 people) and tourism (60 people) sectors with an estimated employment multiplier of 1.77.⁴ Furthermore, the total capital value of the industry has been estimated at A\$5.2 billion.⁵

As summarised in Table 1⁶ below, the Western Rock Lobster industry is a major component of the economic and social fabric of many Western Australian communities and coastal towns between Kalbarri and Busselton.

Location	Activity	Total Gross Value Add (A\$m)	Share of Gross Town Product (%)	Total Local Employment (FTE)
Kalbarri to Horrocks	Fishing fleet	8.7	13	33
Geraldton	Fishing fleet and processing	49.4	24	218

⁴ ACIL Allen Consulting (2017), *Economic Contribution of the Western Rock Lobster Industry*, Western Rock Lobster Council

⁵ Barnett, R. (2018) *Australasian Institute for Spiny (Rock) Lobster Research: A Concept Study*, Western Rock Lobster Council

⁶ ACIL Allen Consulting (2017), *Economic Contribution of the Western Rock Lobster Industry*, Western Rock Lobster Council

Dongara & Port Denison	Fishing fleet and retail	16.3	14	35
Leeman & Green Head	Fishing fleet	5.7	23	21
Jurien Bay	Fishing fleet	15.4	16	58
Cervantes	Fishing fleet and processing	24.5	75	138
Lancelin, Ledge Point & Two Rocks	Fishing fleet	15.6	32	58
Perth	Fishing fleet and processing	302	n.a.	1,272
Bunbury & Busselton	Fishing fleet	2.3	n.a.	9
TOTAL		439.9		1,842
TOTAL REGIONAL COMMUNITIES		137.9		570

Table 1 - Contribution of the Western Rock Lobster Industry to Western Australian Coastal Communities

However, very importantly, this ongoing contribution, let alone growth in the Western Rock Lobster industry, is by no means guaranteed.

Firstly, the Western Rock Lobster industry is based on a natural renewable resource, the sustainable harvest of which varies from season to season. As recent history has shown, natural events and events that are the result of global climate change can dramatically change sustainable harvest levels season-on-season. Industry and WAG invest significantly in the science and management framework that ensures that the natural resource is not placed at risk by these circumstances, and any negative impact on important overseas market share from these circumstances is minimised. The increase in TACC proposed by WAG is contrary to the recommendations of this framework and completely undermines risk management in this regard, placing at risk the Western Rock Lobster industry.

Secondly, Western Rock Lobster faces significant competitive threats in all of its markets from lobster production around the globe. The overseas markets, particularly in the People’s Republic of China (PRC), will be watching the current proposed nationalisation with interest. They will not hesitate to use the current instability to drive down prices in the long term. The current market’s supply and demand ratio is finely balanced. Any move to issue additional quota and force it into the export market may lead to long term price drops. As has been experienced in other fisheries, once the price falls, it often takes years and a significant demand imbalance for the price to recover.

The approximate 300,000 tonnes of total lobster product produced globally in 2015 had a value of US\$3.75 billion, representing approximately 2.8 per cent of the global seafood industry. During the past five years, there have been three notable trends in global lobster production:

- Production of American Clawed Lobster has increased and continues to dominate global lobster supply (greater than 50 per cent);
- A decline in production of other northern hemisphere, cold water lobster species, primarily from European fisheries; and
- An increase in production of spiny lobster species, driven primarily by increased production of various tropical spiny lobster species.

While, as a luxury product, it typically attracts premium pricing, Australian wild-caught lobster production represents only a small portion of global supply. Furthermore, its market share in Asia is under constant threat from Caribbean Spiny Lobster and particularly production of various species of tropical spiny lobster, increasing volumes in the latter of which are produced from low-cost, grow-out systems in South East Asia based on harvested puerulus.

Recent trade history in global lobster markets exhibits several key trends:

- North American markets continue to dominate global lobster trade;

- The European Union remains a significant market, but demand has plateaued;
- The PRC is an expanding market for lobster; and
- Despite increased production, spiny lobster species market share is being displaced by cheaper price point American Clawed Lobster in all key markets, a trend that is particularly evident in Japan and the PRC.

Overall, global demand for lobster is increasing, including in markets traditionally supplied by the Australian lobster industry. However, in all instances, the vast majority of new demand is being met by increased imports of American Clawed Lobster. This overall trend, combined with the threat of increased supply competition from grow-out produced tropical spiny lobster supply from South East Asia is a significant threat to the Australian lobster industry.^{7 & 8}

Australia is the world's second largest producer of spiny lobster species and its lobster industry can be described according to the following dynamics:

- The Western Rock Lobster industry dominates Australian lobster production, accounting for around 60 per cent of domestic lobster production by volume and value;
- Prosperity is currently driven by a single product sold to Asian markets;
- The domestic lobster market is very small;
- There is price discrepancy across Australian lobster product;
- There is limited coordination between the different sectors of the Australian lobster industry
- The Southern Rock Lobster states and New Zealand supply markets are nearly fully integrated with multiple cross holdings on the production side; and
- Any disruption in the Western Rock Lobster will allow the Southern Rock Lobster States to maintain a commercial and production advantage.

Strong product similarity exists between Australian and New Zealand produced Southern Rock Lobster and Western Rock Lobster. More could be done to achieve higher prices for a larger volume of Western Rock Lobster as occurs with the Southern Rock Lobster.

The Western Australian Government's proposal undermines industry's current investment in managing risk and achieving growth...

Through the WRLC, the Western Rock Lobster industry has in place, and is continuously investing in, a sophisticated, world-class primary industry risk management and development strategy that is designed to achieve the following:

- Ensure that sustainable harvest of the natural resource is maintained, thereby securing the future of the Western Rock Lobster industry, its MSC accreditation and ongoing access to the resource by the wider Western Australian community;
- Monitoring and managing a range of identified commercial, environmental, political and social risks faced by the industry;
- Maintaining profitable market position and share in key export markets; and

⁷ McLeod, P. (2018) A graphical analysis of recent trends in global lobster markets with related data bases, Economic Research Associates

⁸ Total Allowable Commercial Catch Committee Report (2018), Western Rock Lobster Council

- Carefully and responsibly growing the industry and its contribution to Western Australia in terms of GSP contribution, taxation payments, job creation and integration with other important sectors of the Western Australian economy.

On several occasions WRLC has briefed or submitted briefs to the Minister of Fisheries on key aspects of its strategy and the implementation of that strategy. The key aspects of the Western Rock Lobster strategy are as follows:

- **Risk Management Framework**

The WRLC Board has developed, and actively monitors and responds to, a world-best-practice primary industry risk management framework. This framework identifies the full ambit of foreseeable natural resource, commercial, environmental, political and social risks that could adversely impact the Western Rock Lobster industry. Nationalisation of the industry by WAG is not a risk that was reasonably foreseen.

- **Increasing TACC and Supply**

The Western Rock Lobster industry has been conservative in setting TACC since the puerulus collapse in 2010 when quota was introduced. Conservative custodianship, together with the successful stock recovery, has resulted in a current TACC that industry believes is below Maximum Economic Yield (MEY) and sustainable. Industry is committed to maintaining sustainability of the fishery through an appropriate MEY approach.

- **New Markets and In-market Promotion to Increase Demand**

Approximately 95 per cent of Western Rock Lobster is currently exported live to the PRC. The direct trade to the PRC consumer creates an excellent opportunity to utilise the Western Rock Lobster industry's MSC sustainability certification and other competitive advantages to increase demand for Western Rock Lobster through in-market promotion and consumer education in partnership with processors and Western Australian trade offices. The WRLC can play a key role in understanding markets and assisting the processing sector to reach more broadly and deeply in to new markets to grow demand and GVP. WAG intervention, designed to heavily and artificially discount prices of Western Rock Lobster in local markets, will significantly undermine the industry's marketing strategies in the PRC and other export markets as well as significantly risk export pricing. For this reason, it is critically important that Western Rock Lobster producers manage domestic market supply, ensuring more Western Rock Lobster is available to Western Australian consumers, but that price differentials do not undermine critically important export market strategies.

- **Maximising the Value of Every Lobster**

Ensuring demand exceeds supply is absolutely critical to maximising the value of every lobster. Southern Rock Lobster sustains a premium market price above Western Rock Lobster despite Western Rock Lobster having MSC certification and considerably higher tail meat recovery ratios. In-market promotion and education of our competitive advantages through direct trade is considered a very effective method to maintain or lift the market price of Western Rock Lobster. Another effective strategy to sustain or possibly increase price for Western Rock Lobster is to stabilise a continuous and regular supply of lobster to avoid the current price cycle crashing from pulses in catching and exporting, a function performed by the downstream sector. The WRLC's TACC Subcommittee incorporates the processing sector and is undertaking important economic and market research focused on maximising the value of the Western Rock Lobster industry.

- **Increasing Productivity through Digital Technology**

A program of digitising the Western Rock Lobster industry is proposed which includes a new catch application, on-vessel lobster scanning and tagging, blockchain e-commerce and traceability from catch to plate, new OH&S on-line checklists and auto reporting with certification, real-time market dashboard and catch data to inform fishing decisions and a real-time quota trading platform. These digital technologies, developed in conjunction with the new institute (see below), will make operations and catching more efficient, improve fishery management, better link catching to demand and increase the value of Western Rock Lobster to the consumer.

- **Leverage other Industries (such as Tourism and Agriculture)**

The WRLC wants to increase the industry's relationship with tourism and combine with other primary industries, such as wine, to grow the demand and value of domestic lobster consumption. The Lobster Shack in Cervantes is an excellent example of a lobster business that has grown the value of its product through tourism while also providing increased employment and economic activity in regional Western Australia. A permanent Local Lobster Program would help boost demand and raise the profile of Western Rock Lobster, not just through a reliable local supply but importantly for tourists to see, taste and appreciate Western Rock Lobster locally before returning home to increase export demand and promotion based on their Western Australian experience. In addition to leveraging domestic demand, the WRLC recognises that Western Rock Lobster GVP can be increased through learnings and more specifically through scoping and implementing selected current practices and innovations from other primary industries.

- **Establish a National Institute for Spiny Lobster Research in Perth**

The WRLC believes the current Fisheries Research and Development Corporation Industry Partnership Agreement has failed to deliver industry benefit to Western Australia, and most importantly is a constraint to the Western Rock Lobster industry achieving its growth objective. Based on due diligence in the recently completed *Australasian Institute for Spiny Lobster Research Concept Study Report*, the WRLC is convinced that transitioning funding to a new Western Australian based institute for lobster research will produce far superior research and development, innovation, institutional funding, grant funding and return on investment across the entire value chain that will drive GVP growth and create new jobs, especially if coupled with tourism and possibly outsourced retail opportunities. The institute would provide a focus for the specific Western Australian lobster-related research needs in science, economics and product development. Therefore, the WRLC could co-locate together with some DPIRD fishery managers and scientists in the new institute to maximise the collaborative relationships necessary to productively and effectively deliver industry benefit through innovative co-management arrangements. An Expression of Interest to design the institute has been put out to market.

- **Local Lobster Supply**

The Local Lobster Program (formerly known as the Local Access Trial) is a WRLC initiative designed to make more local lobsters available to Western Australian restaurants and on local plates. Under the program dozens of restaurants, hotels and sporting clubs in Western Australia have been provided with affordable lobster (wholesale prices between A\$15.00 and A\$20.00 per lobster). Since September 2017, WRLC has been advocating to the Minister for

Fisheries to permanently increase the Local Lobster Program with an initial volume four times larger than current supply ([see Attachment 4](#)). It is only the Minister's refusal to lift the current restrictions that is limiting supply of Western Rock Lobster on local markets.

- **Community Allocation**

As part of the abovementioned Local Lobster Program, fishers have been providing lobsters to community and charity groups. Similarly, the WRLC has been advocating to the Minister for Fisheries to broaden the community allocation under the Local Lobster Program and to develop a system to ensure that community allocations are not used for commercial purposes ([see Attachment 5](#)).

The above strategy initiatives are designed to manage the significant natural biological risk that the Western Rock Lobster industry faces, the significant market risk it faces as a relatively small player in a fiercely competitive global market, and to ensure that industry is on a growth trajectory. The WAG proposal will undermine this investment, placing at significant risk the industry and its current and possible future contribution to Western Australia. The mere announcement of WAG's intentions has already eroded asset values and adversely affected the industry's bank lending profile.

The Western Australian Government proposal is based on nonsense...

Western Australian Government revenue expectations will not be met...

The Western Rock Lobster industry accounts for approximately 75 per cent of the A\$29 million in licensing fees the Western Australian commercial fishing sector pays to the Western Australian Government, the majority of which is allocated to the management of all Western Australian fisheries. WRLC discussions with WAG to date indicate that WAG expects to generate approximately A\$65 million annually or A\$1.4 billion in a one-off transaction from its proposed nationalisation of 17 per cent of the Western Rock Lobster industry.

These revenue estimates appear to be based on current asset values, which will not realistically be maintained if the WAG proposal is implemented because:

- An increase in Western Rock Lobster units of 17 per cent will naturally and immediately drive down the market price of Western Rock Lobster, decreasing the value of the catch and therefore the value of quota and units that can be realised by WAG through a leasing or sale transaction;
- The increased participation in the industry that will result from the release of additional units will add competitive pressure to the fishing environment, reducing catches and placing further downward pressure on the value of quota and units and therefore the value that can be realised by WAG from a leasing or sale transaction; and
- Many existing fishermen are already heavily geared with debt. It is unlikely that many of them could raise the capital required to purchase any of the WAG 17 per cent when it came on to the market. This would result in a 17 per cent reduction in their industry stake hold and marginalise the small operators further.

Indeed, as a result of the announcements of WAG's intent, Western Rock Lobster asset values have already declined dramatically. While WRLC is still to undertake modelling to determine the likely

extent of asset value erosion that would result from WAG’s proposal, preliminary anecdotal internal assessments suggest around A\$1.0 billion in value has already been eroded.⁹

Western Australians already enjoy significant access to Western Rock Lobster product...

The Western Rock Lobster industry is committed to improving local consumer access to Western Rock Lobsters. However, to suggest as WAG has, that the community is not benefiting from the Western Rock Lobster natural resource is both disrespectful and untruthful.

As discussed above, the Western Rock Lobster industry has initiated and implemented a local affordable supply program and it is WAG that is limiting the scope of this initiative. To date, this program has delivered approximately 18 tonnes of affordable Western Rock Lobster to the Western Australian domestic market.

Very importantly, the Western Rock Lobster resource is also the focus of a significant recreational fishery in Western Australia, a pastime that is an important component of Western Australian culture, particularly along the coast. Indeed, the Total Allowable Recreational Catch (TARC) for lobster in Western Australia represents a volume that is equivalent to approximately 74 per cent of current domestic market supply from the commercial sector.

As illustrated in Figure 1¹⁰ below, the number of lobster recreational fishing licences on issue in Western Australia has increased by more than 50 per cent from 2012-13, to approximately 55,500 licences.

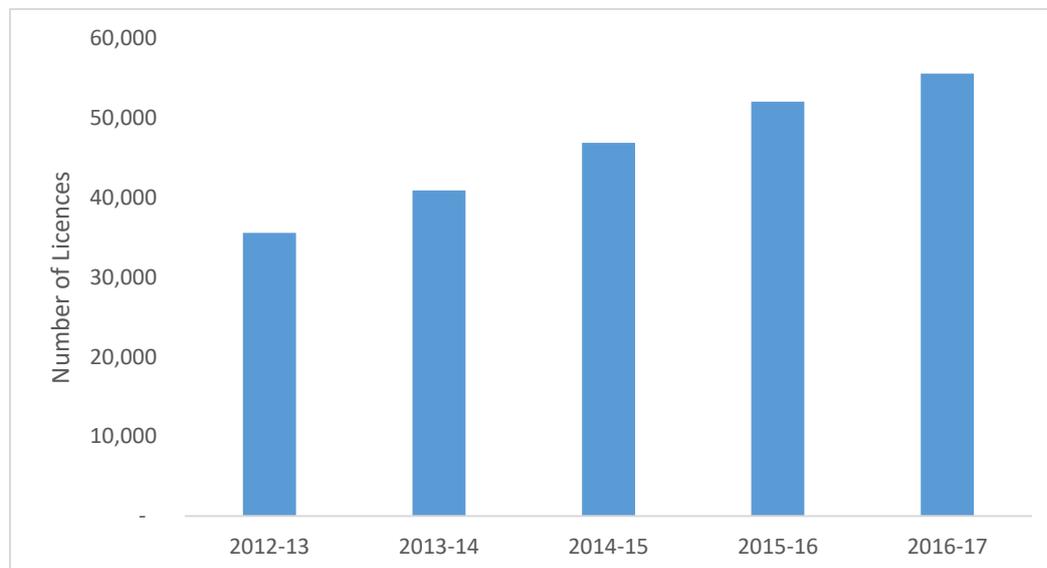


Figure 1 - Western Australian Rock Lobster Recreational Fishing Licences on Issue

The increase in issued recreational licences has responded to an increase in the TARC for lobster in Western Australia. While the estimated¹¹ actual recreational Lobster catch in Western Australia is

⁹ P Hammond 2019, personal communications, 18 January 2019. *Opinion of retired commercial broker with 30 years experience in the industry.*

¹⁰ Data provided by Recfishwest

¹¹ Recreational catch estimates are based on surveys of recreational licence holders.

below the TARC, the gap has narrowed considerably in recent years from as low as 60 per cent in 2012-13 to 20 per cent gap currently.

There is a very significant risk that the substantial increase in TACC that is the subject of the WAG proposal will render it more difficult for recreational fishers to catch lobster in Western Australia, further disenfranchising the Western Australian community.

There is significant concern from both the commercial and recreational sectors¹² of the Western Rock Lobster fishery for the sustainability of the stocks under the WAG proposal.

The Western Rock Lobster industry is not a 'super-profits' industry...

The unprecedented appropriation of value from the Western Rock Lobster industry that is proposed by WAG seems to be based on a notion that it is a highly profitable industry that can easily bear a greater government impost. This is patently untrue.

As illustrated in Figure 2¹³ below, while there are a number of larger operators able to achieve economies of scale, the vast majority (80 per cent) of vessels contribute less than A\$100,000 in licence fees, meaning they catch product worth less than A\$1.8 million per annum. When operating, capital and financing costs are deducted, the remaining returns can hardly be considered excessive, particularly given the significant biological and market risk these businesses carry.

It is the viability of these approximately 200 smaller Western Rock Lobster operators that will be put at serious risk if WAG's proposal is implemented. Any changes to the industry should seek to minimise the impact on these smaller operators.

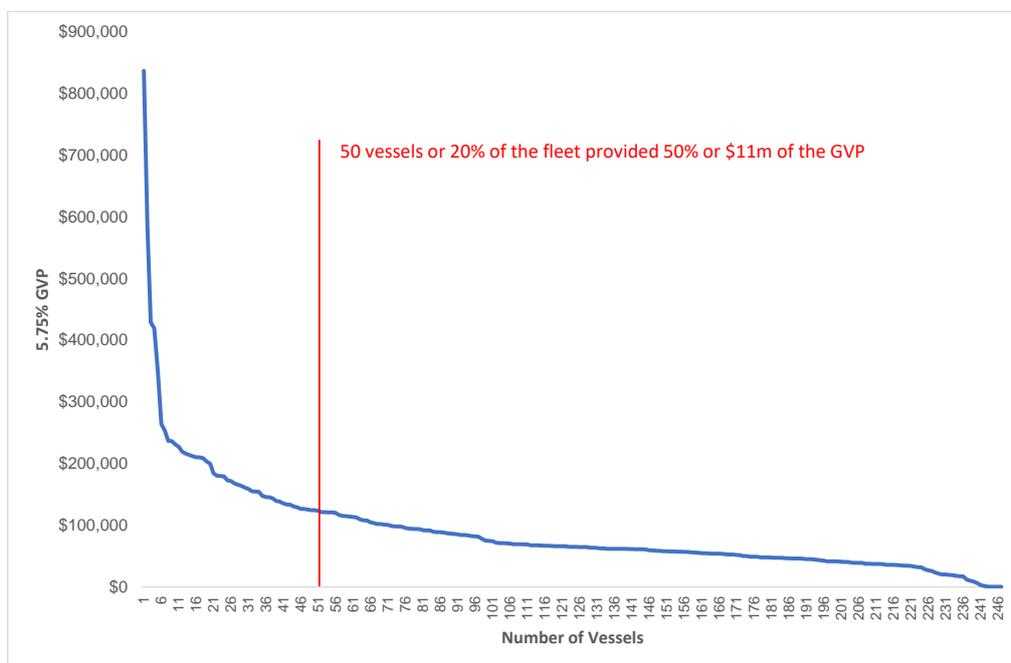


Figure 2 – Estimated GVP Licensing Fee Contribution by Western Rock Lobster Fishing Vessel

¹² Mercer, D. (2019) 'Cray grab to cut stocks: fisher lobby', The Weekend West, Perth, 22 January, p.19.

¹³ Department of Primary Industries and Regional Development Data (2018 GVP Licence Fees)

This scale of operation distribution curve is found in practically all primary industries, where there are a few significant operators and a large number of smaller operators which make up the fabric and effort of a whole industry.

There is no support from the Western Rock Lobster industry for the Western Australian Government's proposal...

Given the discussion in previous sections of this submission, it is not surprising that WRLC's preliminary consultation has identified unanimous opposition to WAG's proposal from its members and key stakeholders. This feedback has been consistent across all Western Rock Lobster businesses, including fishers of all scale, fishers in different locations, and participants in downstream and supporting industries.

The WRLC membership has unanimously and categorically rejected WAG's proposal for State ownership of units. In addition and in response, WRLC actively sought frequent feedback from its Members as it attempted to identify an acceptable policy solution. WRLC received a strong preference in feedback from industry, including submissions from the Geraldton Fishermen's Cooperative and Fishing Families WA, in support of an increase to the fishery's GVP fee as opposed to Government ownership of units.

Recommendation 2: The Western Rock Lobster industry commits to work in partnership with the Western Australian Government to increase the fiscal and social value the Western Rock Lobster industry delivers to the State

The Western Rock Lobster industry is acutely aware of, and indeed embraces, the fact that its right to sustainably commercialise the Western Rock Lobster industry is dependent on a social licence to operate that is granted by the people of Western Australia. Through its current economic contribution profile, growth strategy and other initiatives, the industry is, and has for some time been, committed to continuing to increase the fiscal and social contribution it makes to Western Australia.

Working from the foundations set by industry initiatives that are already underway, the Western Rock Lobster industry is committed to working with the Western Australian Government to put in place initiatives that continue to grow its fiscal and social value contribution. This may include a mix of:

- Increased revenue to WAG;
- A meaningful Indigenous industry participation program developed in conjunction with Indigenous Western Australian interests;
- A well-managed program for supply of product to the domestic market that does not undermine the wider economic contributions made to the State by the industry; and
- Development of a strategic program whereby the Western Rock Lobster industry can work with sectors such as tourism and hospitality in ways that benefits all participating industries and the wider Western Australian economy.

In return, the WRL industry requires the WAG to create greater security over Western Rock Lobster commercial fishing rights. This security may take the form of a deed of agreement such that quota units can neither be created nor destroyed.

Recommendation 3: The Western Australian Government must ensure any increased fiscal and social contribution from the Western Rock Lobster industry does not compromise the industry's future and the growing contribution it makes to the State

The Western Australian Government has not analysed the socio-economic impact of its proposal...

WAG has not undertaken appropriate analysis of the socio-economic impact of its proposal and therefore has not provided industry or the public with the opportunity to scrutinise an impact study. This lack of rigour and transparency is not normal government policy-making practice.

The time provided to the Western Rock Lobster industry to consider the Western Australian Government's proposal and provide validated alternatives is grossly inconsistent with normal government practice in implementing industry policy...

When governments propose policy that has significant structural implications for industry, substantial timeframes are typically provided to ensure proper analysis and consultation by both industry and government. WAG's proposal to nationalise 17 per cent of the Western Rock Lobster industry is unprecedented and compared to other recent proposed changes to primary (and extractive) industry policy, far more material. However, the time allocated for analysis and consultation for relatively minor changes in other industries has been far greater:

- **Abolition of the Western Australian Potato Marketing Corporation**

The Potato Marketing Corporation of Western Australia (PMC) was a statutory corporation created by the *Marketing of Potatoes Act 1946* (WA). The PMC was charged with managing the supply of fresh table potatoes in Western Australia. The statutory corporation operated to ensure licensed growers supplied potatoes all year round to the Western Australian domestic market and dictated the varieties and volume of potatoes in the Western Australian market. The corporation was self-funded by revenue from licence fees and did not receive financial support from the state government.

In June 2014 the Western Australia's Economic Regulation Authority released a report recommending the abolition of the Potato Marketing Board. This resulted in significant industry discussion, anger and reaction.

Government provided both time and space for industry to undertake an economic impact analysis and to conduct grower and other stakeholder consultation. Following considerable engagement and sound understanding, a final decision was made in September 2016, but not before the full impact was understood and industry development packages were developed. The timeframe of the consultation period was in excess of two years.

- **Western Australian Royalty Rate Analysis**

In 2012, the Western Australian Government, having concerns that it was not receiving a fair and equitable return from its current minerals' royalty regime, announced a formal review of royalties. Known as the West Australian Minerals Royalty Rate Analysis, the process was led by the then Department of State Development and Department of Mines and Petroleum. Under Terms of Reference issued in August 2013, the review involved extensive analysis, modelling and consultation between government and industry that resulted in well assessed, evidence-based and validated submissions. This process ran for a period of approximately three years, with WAG's final recommendation published in July 2015. While the minerals industry is a larger and more complex industry than Western Rock Lobster, the notion of incremental changes to royalty rates is significantly less disruptive than a proposal to nationalise 17 per cent of the industry.

The notion that WAG expects a fully analysed and validated (through consultation) response to its proposed nationalisation of 17 per cent of the Western Rock Lobster industry in a period of two months, which was comprised of one month of confidential discussion between representatives of the WRLC Board and WAG, and one month of wider consultation over the Festive Season, is ludicrous and patently inadequate.

WAG and WRLC must enter into an agreement that provides the Western Rock Lobster industry with adequate time to develop, assess and, through consultation, validate new policy options...

However, the agreed amount of time afforded to industry for the assessment and consultation process should be commensurate with the degree of change and level of impact...

The Western Rock Lobster industry is committed to increasing the fiscal and social contribution it makes to Western Australia. This includes working with WAG to provide a potential increase in the net fiscal revenue to the State, an increase in the supply of Western Rock Lobster for local markets, explore participation opportunities for Indigenous Western Australians and importantly, to ensure this important Western Australian industry remains competitive in global markets and is able to optimise its contribution to Western Australia by achieving sustainable growth.

Before these options can be responsibly presented to WAG for consideration, more work is required to:

- Understand the economic, social and natural resource impact of each proposal and the risks and benefits associated with each proposal;
- Understand the legality of options;
- Subsequently refine, compare and assess the relative merits of each proposal; and
- Most importantly, present models, their analysis, and pros and cons, to WRLC's 650 MFL licence holder members and other key industry stakeholders for review, feedback and approval.

WRLC believes the following considerations should have been completed prior to WAG announcing its nationalisation policy and should in fact be part of any due diligence underpinning such significant changes in government policy:

- **Generation of Additional Alternative Models**

In the limited time that has been afforded to industry, WRLC has worked to identify a number of preliminary alternative models that consider both taxation and use of the natural resource to meet WAG and industry objectives. However, these models are preliminary and rudimentary in nature and would require further assessment by professional economic modelling expertise. Further, a number of additional options have been recently identified which WRLC has not had time to consider.
- **Legal Assessment**

A number of the models identified present *prima facie* constitutional and taxation law issues, requiring professional legal and taxation opinions to be sought.
- **Natural Resource Impact Assessment**

Any use of the natural resource implies issues of sustainable management and maintenance of the fishery's MSC status. This is of paramount concern to industry and should similarly be so for WAG. Once models have been further developed, their likely impact on the natural resource needs to be assessed by WRLC's TACC Subcommittee and the input of that committee considered in implementation design, particularly given MEY is not expertly assessed.
- **Economic Impact Assessment**

The likely impact of each model on the industry and each segment of the industry value chain, WAG's net fiscal position, other discrete economic interests such as potential Indigenous stakeholders and existing allied industries, as well as the wider Western Australian economy needs to be independently modelled and assessed.
- **Social Impact Assessment**

As outlined in a previous section of this submission, the Western Rock Lobster industry has a significant operational and economic footprint in regional Western Australia and the nature of individual Western Rock Lobster businesses is diverse. The likely social impacts of each model will also need to be independently modelled and assessed.
- **Full Cost-Benefit Analysis**

Based on the above analysis, each alternative must be assessed on its overall relative merits, compared and ranked in terms of overall preference with respect to meeting WAG and industry's objectives.
- **Consultation**

In order to be validated options, WRLC must present any analysis to its members and seek their feedback and approval. This will be critical to ensuring the success of any change in policy pertaining to the industry.

As previously stated, this work package should be overseen by an industry steering group that is both expert-based and representative of industry interests.

To proceed with any changes to the current fiscal arrangements or quota pertaining to the Western Rock Lobster industry without such a process presents significant and totally unnecessary social, economic and natural resource risk and would be irresponsible and reckless.

Furthermore, given the scale of the proposed WAG intervention and in light of established norms for government policy practice of extensive analysis and consultation, WRLC believes it is reasonable there be an adequate amount of time to carry out all due diligence necessary.

The consequences of poorly developed and implemented primary industry policy can be devastating...

The last time an Australian Government made significant changes to primary industry policy without adequate analysis or consultation was the Gillard Labor Government's ban on live cattle exports. A Federal Labor Minister's decision to act indiscriminately in banning all farmers from exporting live cattle to Indonesia for six months in 2011 was not justified, and cost the industry hundreds of millions of dollars.

The issue of live exports had been controversial for many years but became "volcanic" when a May 2011 ABC Four Corners program aired footage showing the "appalling" and "abhorrent" treatment of animals in facilities in Indonesia. The Minister at the time (Senator Joe Ludwig) was familiar with the live animal industry, having a long background of involvement in rural issues, and in September 2010 told key stakeholders he had no intention of making any "drastic" changes within his portfolio, including live animal exports.

Various reports, memos and other material were provided to Minister Ludwig in the lead-up to the airing of the program. They included advice to him, days before the program, to continue to work collaboratively with industry to voluntarily improve the welfare of Australian livestock in Indonesia and to revisit regulation if, and when, voluntary efforts failed to deliver improvements. However, two days after the program he "was rushed into taking dramatic steps" and made a control order banning export to 12 specific locations, followed by a second control order on 7 June that banned the export of non-breeder livestock to Indonesia for six months.

A current class action in the Federal Court, brought by northern Australian cattle farmers against the then Minister for Agriculture alleges 'misfeasance in public office', and accuses the Minister of making the second order with "reckless disregard of its invalidity and consequences".

At the time of the decision (July 2011), a report on the financial impacts of cattle export restrictions on producers and other stakeholders in Northern Australia was commissioned by the Commonwealth Department of Agriculture Fisheries and Forestry and prepared by Hydros Consulting. The major findings related to lack of consultation with industry, impact in in-market customers and government decisions, flow on impact throughout the whole value chain and most importantly, the impact on the financial banking system and cashflow in the industry.

The process being pursued by WAG with respect to its nationalisation of 17 per cent of the Western Rock Lobster industry presents industry and government with similar risks.

CONCLUSION

The Western Rock Lobster industry is a sophisticated, sustainable and shared fishery. The success of WRL is a result of almost eight generations of Western Australian fishing families taking substantial risks, working hard and investing to build a successful export market.

The WRLC urges the Western Australian Government to work in partnership with industry to increase the fiscal and social returns from this iconic and world-leading fishery for the benefit of all Western Australians.