

DRAFT Development of a Western Rock Lobster Package of Initiatives

WRL BOARD APPROVED FOR INDUSTRY CONSULTATION

16 July 2020

Core statement of intent

The following three paramount proposals are presented as a package given they are intrinsically linked, with each proposal enabling the others. The highest priority objective to obtain resource access security for all fisheries in Western Australia is fundamentally addressed in the first proposal. The second and third enabling proposals cover independent funding to the peak body for increased industry representation, co-management and promotion, investment in new independent research to underpin sustainability and develop the industry, and improving accessibility and availability of western rock lobster on the local market through the introduction of a domestic quota.

The **first initiative** aims to secure support for legislation to strengthen the resource access rights of all fisheries in Western Australia. This would incorporate defined principles and policies for resource allocation and re-allocation including compensatory rights where access is removed for non-sustainability reasons. This would elevate the fishing industry towards other primary industries and the mining industry with respect to resource access certainty to encourage new investment, including post-harvest investment.

The **second initiative** seeks to gain independence for the peak body to better represent industry's interests through self-funding. This includes responding without constraint to any type of threat or opportunity, increasing independent research capacity and capability, increasing the peak body's ability to co-manage the industry, facilitation of industry development and building community support for the western rock lobster industry.

The **third initiative** seeks to develop the Australian market for western rock lobster through the introduction of a domestic quota under the total allowable commercial catch (TACC). This will be reviewed annually by the expert TACC Committee.

Western Rock Lobster (WRL) is undertaking a genuine and comprehensive industry consultation process in order to develop this package of initiatives into a final proposal for Members to vote through a plebiscite in the second half of 2020.

The package below and the commitment by WRL are contingent upon:

- continued support by Government to progress with the proposed strategies and direction;
- development of further detail through continued industry consultation across the Western Australian fishing industry (including Western Australian Fishing Industry Council (WAFIC));
- submission of a Secure Fishery Resource Access Rights Policy Paper (RAR Policy Paper) on resource access security to the Legislative Council Public Administration Committee Inquiry;
- ongoing assessment by Government of those conditions requiring Government support;
- working with WAFIC and fishing industry sector bodies to incorporate the policy principles for resource access security within a Fisheries Policy agenda and draft legislation seeking political support ahead of the 2021 State election;
- establishment of a steering committee to resolve issues of difference and to reach a negotiated position for industry and Government agreement (including implementation strategy and timelines);
- demonstration of western rock lobster industry support for the whole of the Package of Initiatives through a successful plebiscite (requiring the approval of at least 60 per cent of respondent MFL holders in the West Coast Rock Lobster Managed Fishery). The results of the plebiscite will also be presented in terms of the level of unit holding support for the proposal;
- final agreement between the Government and WAFIC (including western rock lobster) as to the terms surrounding resource access security only; and
- final agreement between the Government and WRL on the details of the package.

1. COMMITMENT TO THE RESOURCE ACCESS SECURITY SOUGHT IN WRL'S SUBMISSION FOR THE LEGISLATIVE COUNCIL STANDING COMMITTEE INQUIRY INTO PROPERTY RIGHTS AND THE SECURE FISHERY RESOURCE ACCESS RIGHTS POLICY POSITION PAPER.

The following four points are the highest priority resource access security measures sought by industry. WRL seeks business certainty in the management of fisheries, both within the current *Fish Resources Management Act 1994* (FRMA) and under the *Aquatic Resource Management Act 2016* (ARMA), through strengthening rights-based aquatic resource management by the following legislative actions:

- continued support for the principles and policies in place for fishing access right allocation between sectors;
- the development of principles, policy and processes for resource re-allocation supported by the deliberations of the Public Administration Committee and appropriate legislation;
- recognition of fishing licenses as a form of property for the purposes of compensation where reallocation of entitlements occurs for public benefit. This needs to occur concurrently with changes in harvest capacity to provide resource security. The scope for adjustment is to extend to market-based solutions between sectors inclusive of private interests including funding and agreements between parties where priority of rights in access change; and
- amendment to the ARMA legislation to provide certainty for all parties on the scope of powers resting with the Minister and the CEO in the management of fisheries' access rights. These amendments are outlined in the RAR Policy Paper currently under consideration by the WRL and WAFIC Boards and Sector Body Management Committees. Once the RAR Policy Paper is approved, amended legislation consistent with the RAR Policy Paper will be drafted for both ARMA and *Fisheries Adjustment Schemes Act 1987* (WA).

WRL's and WAFIC's submissions to the Legislative Council Standing Committee on Public Administration Inquiry into Private Property Rights were used in the development of the RAR Policy Paper. The full details of resource access security being sought by industry are contained in the RAR Policy Paper which will be made available to industry once approved.

Immediate recommendations to enact resource access security can be found at Annexure 1. Longer term changes to policy and legislation can be found at Annexure 2. We suggest these recommendations be read in the context of the RAR Policy Paper for further clarification explanation.

Industry supports charter tourism based on a lobster experience (not commercial sale) at the current trial level. However, any increase above the current level should be obtained through acquisition of entitlement from the commercial sector under resource re-allocation principles.

Reasons for this initiative and anticipated benefits

Creates legislation that provides greater security and certainty around future access and investment, not only for the western rock lobster industry but for all Western Australian fisheries.

Reduces the risk of Minister and CEO discretion undermining the value of existing fishing access rights.

Strengthens investment value in the industry and supports lending from financial institutions.

Delivers compensation where government re-assigns access rights.

2. INDUSTRY FUNDING WRL AND A NEW LOBSTER INSTITUTE INDEPENDENTLY OF GOVERNMENT THROUGH A SEPARATE GVP LEVY

It is proposed that a mechanism be established for industry members to directly fund the western rock lobster peak body, which will fund a research institute, unit registry and a quota trading platform.

Further independent funding details requested

The development of the preferred funding mechanism will be completed and made available to Members prior to the plebiscite. In response to industry requests for more information, WRL developed further details as to how the preferred independent funding mechanism would operate. The following is a summary of the additional information and the full reference document will be made available in due course.

- Current legislation will be amended (or new legislation enacted) to allow WRL to collect a levy directly from MFL holders. The collection mechanism will be modelled (but modified to apply to the WCRLMF) on the New Zealand levy collection legislation.
- The funds collected will only be able to be used for specific purposes set out in legislation, but for the primary purpose of best representing the views and interests of those persons paying the levy.
- The WRL Board (i.e., not the Minister) will be responsible for how the funds are spent and managed. The funds will be spent according to the goals and directions requested by industry, as outlined in documents such as the Board-approved Strategic Plan.
- The funds will be collected by WRL (or a third party appointed by WRL). Current legislation will be amended to allow for debt recovery, with interest penalties imposed to assist with compliance.
- The government will be involved only to establish (or to approve any industry requested change to) the levy collection and debt recovery framework.
- WRL may recommend to the Minister that the amount of the levy be changed. This may only be done if supported by Members by referendum.
- WRL will keep full financial records and disclose those records to levy contributors within an annual financial report including balance sheet and statement of revenues and expenditure.
- WRL will appoint an auditor to access and review its financial records.

How the independent funding mechanism would operate

The preferred independence would have Government only renewing individual licences after receipt of advice from WRL that the applicable licensee has made the annual industry payment.

It is proposed that a fee per unit is paid by the owner of the unit of usual entitlement, directly to WRL (the peak industry body). This contribution will meet the industry cost for representation, co-management, research and development and crisis management for the western rock lobster fishery.

The annual fee will be determined on a per unit basis, using a three-year rolling average of GVP.

A total industry fee equivalent to 1.00 per cent of GVP is proposed for the 2021/2022 season. This equates to:

- approximately \$4 million using the 2020/21 three-year rolling average GVP figure of around \$405M; and
- approximately \$3.92/unit in A Zone, \$5.60/unit in B Zone and \$5.68/unit in C Zone. These fees would be tax deductible.

Approved business cases will need to be developed for accurate budgeting, however WRL anticipates an indicative breakdown of the \$4 million as follows:

- \$1.5 million for WRL (a \$500,000 increase on current funding);
- \$1 million for the new institute;
- \$1.5 million for research and development seed funding (a \$500,000 increase on current funding); and
- any additional or surplus funds will be directed into a contingency fund for rapidly responding to unforeseen market, environmental and other risks including to resource access security.

It is proposed that a change in the GVP fee rate of 1.00 per cent would require approval of Members, with the WRL Board determining how those funds are allocated through annual budgets.

How the independent funds would be used

The proposed additional funding of WRL will increase capacity for co-management and enable the establishment and operation of the unit registry, quota trading platform, local supply program, industry promotion and governance for the research institute.

It is proposed that Government commit to supporting an industry-managed **quota trading and licensing platform** and **unit registry** for western rock lobster, subject to an approved business case.

The proposed unit registry would incorporate the same functions as those currently undertaken by DPIRD including licensing, trading and leasing of quota (ACE), security of interests, real-time register of unit holders and membership of WRL, and data to understand the demographics of unit ownership.

The funds allocated to establish and operate a collaborative **research institute** will facilitate:

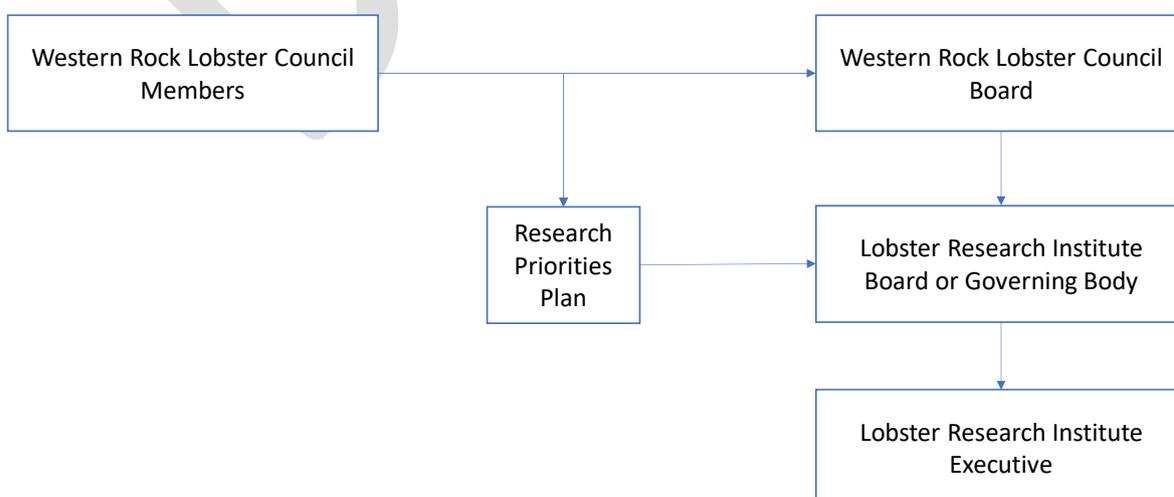
- industry development;
- economic and market assessments;
- industry promotion;
- innovation;
- community based programs; and
- science to complement the core research being undertaken by Government for best practice in resource management.

WRL will provide the industry funding for research and development through the proposed institute; and will seek Federal Government commitments for matching funds through the Fisheries Research and Development Corporation (FRDC). This may lead to a higher than current level of contribution to research and development in Western Australia. This will also create the opportunity for greater co-investment by third party research providers.

Further research institute details requested

Following industry requests for more information, WRL commissioned an Institute Briefing Paper to develop the proposal in further detail. The following is a summary of the additional information and the full Institute Briefing Paper will be made available in due course.

- The Institute will take a partnering approach with other research providers in order to maximise skill base and financial leverage. The Institute will not attempt to replicate infrastructure and capability found in government agencies or universities.
- Western Rock Lobster industry will continue to work with FRDC and contribute toward natural resource and seafood industry-wide research and development. This will support and assist smaller Western Australian fisheries with their RD&E.
- Research areas (as previously identified by industry) could include maintaining optimal sustainable harvest, improving productivity in the fishing effort and maintaining social licence to operate, new lobster products and markets, downstream productivity and supply chain optimisation, lobster feedlot and holding facility optimisation and policy for industry growth.
- The WA Government would be expected to continue undertaking core sustainability research.
- Formal agreements with FRDC and the Commonwealth Minister for longer term funding partnership are to be finalised.
- Similar 'virtual' research institutes have annual operating costs in the range of \$0.5 to \$1.0 million. A detailed financial forecast for the Institute will be undertaken as a key component of the business planning exercise.
- The peak decision-making body for the Institute will report directly to the WRL Board and will likely be comprised of industry leaders including fishers, exporters and technical experts and possibly government representatives.
- The Research Priorities Plan will be developed through industry consultation and will guide the function of the Institute.



Progress on this initiative will depend on continued Government commitment to current funding for best practice management and for biological research programs, including rock lobster stock assessment and wildlife mitigation measures.

How the current funding arrangements would change

Government is to retain the full 5.75 per cent GVP fee collected from the western rock lobster fishery. This is intended to facilitate ongoing funding of WAFIC for whole of Western Australia seafood industry representation and promotion, as well as additional funding for minor fisheries and aquaculture representation and research and development.

Reasons for this initiative and anticipated benefits

Delivers industry's desire over the last decade for self-funding and independence.

Allows the western rock lobster peak body full discretion in how it represents industry and relates to government.

Greater independence from Government for industry in representation and co-management.

Greater involvement of industry in determining the directions for planning, and co-investment in opportunities to increase the economic return of industry.

These arrangements will not negatively impact current Government funding for WAFIC and the other sector bodies, with the potential to reallocate the WRL funding (currently \$0.7 million / year) towards increasing the representation, development and therefore value of the other seafood sectors.

The western rock lobster derived contribution presently being made to FRDC (approx \$1 million / year) could be utilised by the WA Research Advisory Committee for research and development of minor fisheries and aquaculture in WA to build a stronger seafood industry.

Government will receive an increasing return as the value of the western rock lobster industry increases through these industry initiatives.

A changing international export market can be expected to alter the economic outlook for western rock lobster, which makes a more urgent case for industry diversification including the potential establishment of a domestic quota.

Historically, WRL's investment research has received limited, if any, leverage. The Institute will achieve leverage of up to three times industry's investment (past modelling suggests approx. \$13.8 million in total) and will ensure industry's investment is targeted as its strategic research priorities.

3. DOMESTIC QUOTA

The introduction of a domestic quota would replace existing local sales arrangements for registered receivers.

The Back of Boat Sales system would remain operational providing fishers with the option of selling lobsters directly to non-register receivers.

Western rock lobster assigned for domestic quota is to be available only for Australian domestic consumption at the first point of sale.

Units will have all of the same characteristics as current export units, but be destined for initial sale in the domestic market.

Domestic quota is to be open to temporary transfer within season between MFL holders but remaining inextricably linked to quota ownership transfer.

Domestic quota is to be derived from unit holdings and allocated on a pro rata basis.

The setting of a domestic quota will form part of the TACC. Advice on forming the level of TACC will be reviewed annually by the TACC Committee for recommendation to the Board prior to final advice being submitted to the Minister.

Lobster would not need to be tagged or marked.

Further detailed analysis needs to be completed on compliance requirements and any resulting legislative requirements. WRL is proposing to establish a working group including processors and DPIRD representatives to further develop this policy action.

Performance reviews of the initiative are to be undertaken periodically. The assessment could include supply, demand, prices (at the first point of sale through to the domestic consumer as well as comparing export and domestic prices) and estimated benefits to tourism, hospitality and the broader economy.

Industry will continue to be involved in the promotion of western rock lobster and education regarding the local availability and accessibility of western rock lobster, as well as the supply of cheaper alternatives from other origins. It is expected this promotion will involve other key stakeholders such as AHA and include advertising across all media.

Reasons for this initiative and anticipated benefits

Easy to implement, preliminary investigations reveal no legislative changes would be required, simply an amendment to the WCRLMF Management Plan.

Trialling a domestic quota will assist in determining the extent of the domestic demand for western rock lobster and help clarify the opportunity for development of a sizeable Australian consumer market longer term.

Establishes a mechanism that allows the gradual development of an Australian market for western rock lobster through gradual increase in the TACC towards the position of Maximum Economic Yield.

Assesses the practicality of reducing dependence on a single export market through domestic market development supported by a platform of promotion and research evaluation.

Promotes the industry and generates social licence in support of continued access to the community resource.

Increases availability and accessibility of western rock lobster to the Western Australian tourism and hospitality industries and local consumers.

Placing the control of domestic sale lobster in the hands of industry.

Provide a permanent platform to manage an increased domestic availability of western rock lobster whilst minimising black market illegal take and sale of rock lobster.

Transferability would allow fishers to solely service the domestic market.

Opens the opportunity for longer term supply chain development by Western Australian rock lobster registered receivers and processors building Australian demand for this product across Australia as a luxury item.

Annexure 1: immediate recommendations to enact resource access security (as outlined in the RAR Policy Paper)

- (1) The State shall not be empowered to dilute rights within a managed fishery;
 - a. Broad powers of the CEO and the Minister to issue new units (shares under ARMA) within a managed fishery be removed or narrowed. Where zonal allocations operate, total shares within a fishery to be allocated by zone.
 - b. The ability of the Minister to issue new units in a managed fishery by Gazettal be removed, except in the case of issuing new unit allocations on equivalent terms to all existing unit holders.
- (2) The State shall not hold shares in or participate within a managed fishery;
 - a. the State or an agent of the State be prohibited from applying for a managed fishery licence (or shares in the fishery); and
 - b. the CEO or Minister be prohibited from granting a managed fishery licence (or shares in the fishery) to the State or an agent of the State.
- (3) Primacy of fishing rights in managed fisheries not to be circumvented through exemptions;
 - a. The power of exemption under section 7 of ARMA for commercial purposes cannot be applied in a managed fishery or ARUP to any person other than a unit holder in the prescribed fishery and applied as a general exemption for all fishing licence holders as a class of persons in that fishery.
- (4) Secure rights to be the basis for all commercial fishing;
 - a. Non-commercial fishers, charter fishers and indigenous fishers seeking the ability to sell fish may only do so in an existing managed fishery by the acquisition of shares from that fishery.
- (5) Transitions between management regimes to be on fair and just terms;
 - a. Units (shares under ARMA) within a fishery must transition in equivalent terms from a management plan to an ARUP;
 - b. Existing allocation of commercial and recreational shares in managed fisheries to be maintained in any new management arrangements under ARMA. Where allocations presently operate on an informal basis stemming from historical catch shares, allocations splits to be explicitly formalised in documentary form.
 - c. Where feasible, the total shares allocated between the recreational sector and the commercial sector to be set in percentage terms of the total allowable catch and expressed in equivalent units for the commercial and recreational sectors.
 - d. Industry reiterates its qualified support for the implementation of ARMA at the earliest date, conditional upon Government provides a binding commitment (legislative or otherwise) not to proceed with the further development of ARMS and ARUPs for a commercial fishing sector until that sector has been adequately consulted and has expressed support.
 - e. The principles to be practically applied to fisheries managed by Regulations or Orders under the FRMA continue to apply, on a like-for-like basis, into the future under ARMA and subsidiary legislation.
- (6) The State to assist transitions to occur without imposing taxation burden on rights-holders;
 - a. The potential taxation implications stemming from creation of new management arrangements under ARMA are minimised, and State government assistance provided to ensure that no heightened taxation burden is felt by the existing commercial fishing sector.
- (7) Better incorporation of recreational fishers within management regimes;
 - a. The shares for the recreational sector be held in trust and administered by a peak body.
- (8) Where actions of the State affect the rights and livelihoods of fishers, compensation should be payable; and
 - a. The removal of shares from the fishery shall only occur where:
 - i. compensation (including where appropriate compensation reflecting injurious affection) has been paid through commercial (market based) or legislative arrangement; or
 - ii. by provisions of legislation under specified offences.
 - b. In the absence of public policy concerns that would militate the State provide compensation, resource reallocation between sectors shall be effected via market-based transfer mechanisms that ensure the party suffering a detriment is compensated.
 - c. Further changes are to be proposed to the Fisheries Adjustment Schemes Act covering matters to be taken into account and procedures for determining levels of compensation, and where appropriate injurious affection, in the absence of market solutions.

- (9) Security of resource access represented by fishing rights to be enhanced and protected.
- a. The development of fishing licences as secure access rights as per the Western Rock Lobster submissions covering changes to ARMA and the Fisheries Adjustment Schemes Act be adopted.
 - b. Proposed resource access security relating to fisheries managed under ARMA within the Part 3 framework should also apply to existing managed fisheries.
 - c. To avoid administrative inadvertence unduly affecting the desired secured property character of fishing rights, current provisions resulting in licence cancellation for non-payment of fees to instead grant discretion to the CEO to suspend a licence for as long as deemed necessary to resolve outstanding disputes.

Annexure 2: longer term recommendations to enact resource access security (as outlined in the RAR Policy Paper)

- (10) That fishing licences be recognised in the ARMA legislation as property for the purposes of compensation.
- (11) The establishment of a single authority by the Western Australian Government to centralise the procedural requirements around compensation by Government into a single agency for claims covering loss of property and injurious affection arising from the assertion identified by the Committee's terms of reference (d). That is fair and reasonable compensation must be paid to the owner of private property if the value of the property is diminished by a government encumbrance or resumption in order to derive a public benefit.
- (12) Broadening of scope covering a range of private and public funding and market mechanisms to facilitate commercial fishing adjustment by the Fisheries Adjustment Schemes Act 1987 be enacted as proposed below and to be further developed:
- a. A provision under the Fisheries Adjustment Schemes Act or ARMA, that where circumstances apply within the terms of reference (d) of the Public Administration Committee's Inquiry into Private Property Rights to commercial fishing access rights, the Minister be required to establish a committee of advice under the Fisheries Adjustment Schemes Act.
 - b. The provision of powers to open funding explicitly from a range of sources, outside of Government sources, inclusive of corporate and sponsorship funding to facilitate adjustment schemes.
 - c. The ability of the advisory committee appointed under the legislation to appoint an independent person to directly negotiate the possible terms of settlement of a contract of sale with an individual fishing authorisation holder or group of authorisation holders, in particular circumstances. This could be applied to situations where coastal development directly and significantly impacts on commercial fishing access rights, involve the developer whether private or government, a requirement to meet costs of compensation with costs to be met by the developer, whether through a negotiated outcome or contractual settlement or through a voluntary adjustment scheme. The Ocean Reef Marina development example provided to this inquiry is a case in point, especially given the complexity of issues and significant impact on the abalone fishery.
 - d. An ability for the advisory committee to report on any arising issues of injurious affection to be met in just terms in its advice to the Minister under the Act, where a case for this form of compensation beyond loss of fishing access rights ought to apply.
 - e. To provide scope to the advisory committee and the Minister, within the legislation, enabling different pathways for compensation to apply, such as Act of Grace payments for temporary loss of resource access in particular circumstances. For example, an inability to fish by licence holders due to coastal developments. The Wheatstone developments at and near Onslow and the likely loss of visibility to fish for abalone during construction of Ocean Reef Marina are examples.
 - f. Where an adjustment scheme is implemented under the provision of this legislation that is known to result in a re-allocation of resource use to different sectors or reduce directly overall resource harvest levels, a requirement for the resource management agency responsible (DPIRD currently) to amend the harvest capacity of the management plan or aquatic resource use plan under the FRMA or ARMA legislation (whichever is applicable at that time). Without this requirement, resource sustainability could be placed at risk and a penalty for non-compliance by the management agency within reasonable time should apply.

Possible changes to WA Constitution at least equivalent to the Commonwealth Constitution on protection of access rights and compensation that may arise from the Western Australia Legislative Council Public Administration Committee report into Private Property Rights.

DRAFT