



**Australian Government**

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**Department of Sustainability, Environment, Water, Population and Communities**

Assessment of the  
**WESTERN AUSTRALIAN WEST COAST ROCK  
LOBSTER MANAGED FISHERY**

**May 2013**

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#### **Disclaimer**

This document is an assessment carried out by the Department of Sustainability, Environment, Water, Population and Communities of a commercial fishery against the Australian Government Guidelines for the Ecologically Sustainable Management of Fisheries – 2<sup>nd</sup> Edition. It forms part of the advice provided to the Minister for Sustainability, Environment, Water, Population and Communities on the fishery in relation to decisions under Part and 13A of the *Environment Protection and Biodiversity Conservation Act 1999*. The views expressed do not necessarily reflect those of the Minister for Sustainability, Environment, Water, Population and Communities or the Australian Government.

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# Contents

<b>Table 1: Summary of the Western Australian West Coast Rock Lobster Managed Fishery .....</b>	<b>4</b>
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Table 1 contains a brief overview of the operation of the fishery including: the gear used, species targeted, byproduct species, bycatch species, annual catch, management regime and ecosystem impacts.

<b>Table 2: Progress in implementation of recommendations made in the 2007 assessment of the Western Australian West Coast Rock Lobster Managed Fishery .....</b>	<b>12</b>
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Table 2 contains an update on the progress that has been made by the Western Australian Department of Fisheries in implementing the recommendations that formed part of the fishery's previous inclusion in the list of exempt native specimens.

<b>Table 3: The Department of Sustainability, Environment, Water, Population and Communities' (the department) assessment of the Western Australian West Coast Rock Lobster Managed Fishery against the requirements of the EPBC Act related to decisions made under Parts 13 and 13A.....</b>	<b>17</b>
--	-----------

Table 3 contains the department's assessment of the Western Australian West Coast Rock Lobster Managed Fishery's management arrangements against all the relevant parts of the *Environment Protection and Biodiversity Conservation Act 1999* that the Minister must consider before making a decision.

<b>Final conditions and recommendations to the Western Australian Department of Fisheries for the Western Australian West Coast Rock Lobster Managed Fishery .....</b>	<b>31</b>
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This section contains the department's assessment of the Western Australian West Coast Rock Lobster Managed Fishery's performance against the Australian Government's Guidelines for the Ecologically Sustainable Management of Fisheries - 2nd Edition and outlines the reasons the department recommends that the fishery be declared an approved wildlife trade operation.

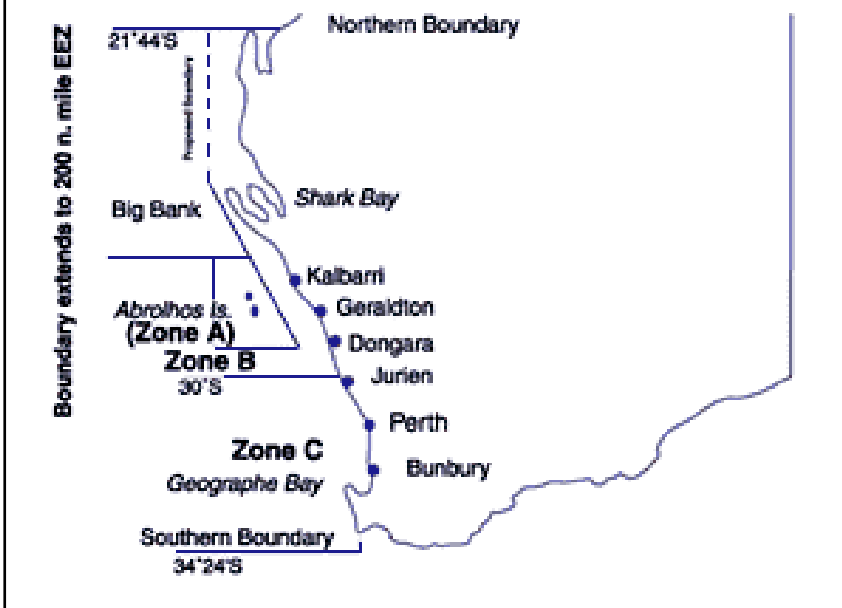
<b>Table 4: Western Australian West Coast Rock Lobster Managed Fishery Assessment – Summary of Issues, Conditions and Recommendations May 2013.....</b>	<b>33</b>
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Table 4 contains a description of the issues identified by the department with the current management regime for the Western Australian West Coast Rock Lobster Managed Fishery and outlines the proposed conditions and recommendations that would form part of the Minister's decision to declare the fishery an approved wildlife trade operation.

<b>References.....</b>	<b>42</b>
------------------------	-----------

**Table 1: Summary of the Western Australian West Coast Rock Lobster Managed Fishery**

<p><b>Key public documents relevant to the fishery</b></p>	<ul style="list-style-type: none"> <li>• Western Australian West Coast Rock Lobster Managed Fishery Management Plan 2012</li> <li>• Western Australian <i>Fish Resources Management Act 1994</i></li> <li>• Western Australian Fish Resources Management Regulations 1995</li> <li>• West Coast Rock Lobster Limited Entry Fishery Notice 1993</li> <li>• Western Rock Lobster Fishery Ecological Risk Assessment 2007 Report</li> <li>• Draft Western Rock Lobster Environmental Management System July 2010-2015</li> <li>• Western Australian State of the Fisheries and Aquatic Resources Reports 2007-08 to 2011-12</li> <li>• Marine Stewardship Council Assessment: The Western Australia Rock Lobster Fishery, March 2012</li> <li>• Western Australian Department of Fisheries' Application to the Department of Sustainability, Environment, Water, Population and Communities on the Western Rock Lobster Fishery, October 2012</li> <li>• West Coast Rock Lobster Managed Fishery Responsible Code of Practice for Reducing Whale Entanglements 2013</li> <li>• Marine Bioregional Plan for the North-west Marine Region 2012</li> <li>• Marine Bioregional Plan for the South-west Marine Region 2012</li> </ul>
<p><b>Area</b></p>	<p>The Western Australian West Coast Rock Lobster Managed Fishery operates in Western Australian and Commonwealth waters between North West Cape (Exmouth Gulf) and Cape Leeuwin (from 34°24'S to 21°44'S).</p> <p>The fishery is managed by the Western Australian government under an Offshore Constitutional Settlement arrangement that concedes management responsibility to Western Australia to the outer edge of the Australian fishing zone.</p> <p>Part of the fishery's operation occurs in the North-west and South-west Marine Regions. The western rock lobster is noted as a key ecological feature in the South-west Marine Region.</p>

	<p style="text-align: center;"><b>WESTERN ROCK LOBSTER FISHING ZONES</b></p>  <p><b>Figure 1:</b> Management boundaries of the Western Australian West Coast Rock Lobster Managed Fishery (Source: Western Australian Department of Fisheries, 2001)</p>
<p><b>Fishery status</b></p>	<p>The target species has been assessed by the Western Australian Department of Fisheries as having 'adequate' spawning stocks. The Western Australian Department of Fisheries' assessment indicates that annual variations in recruitment to parental biomass are due to environmental impacts, rather than fishing pressure, and that parental biomass is sufficient for ongoing successful spawning.</p> <p>The Western Australian <i>State of the Fisheries and Aquatic Resources Report 2011-12</i> reports that the western rock lobster stock remains close to maximum sustainable yield. Catch across the whole fishery has historically been close to 11,000 tonnes annually, however, with the introduction of catch limits and catch targets for each zone in 2009-10, annual catch is now restricted to 5,500 tonnes <math>\pm</math> 10 per cent.</p> <p>The fishery has a long-term scientific monitoring program that includes monthly sampling for post larval-stage lobsters (puerulus) settling on inshore reefs along the west coast, mainly between August and January each year. This puerulus settlement index reliably shows a strong correlation with catches of lobsters three and four years later. The current managed reduction in catch has been made in response to detection of very low numbers of puerulus settling on inshore reefs in 2008-09 and ongoing low levels of puerulus detected in subsequent years. This is anticipated to lead to low recruitment of adult lobsters into the fishery until at least 2013-14.</p> <p>The main performance measure is that the breeding stocks remain above 1980s pre-exploitation levels. Fishing effort is further managed in accordance with the puerulus settlement index so that breeding stocks can be predictably maintained above this level for least five years into the future. This performance measure has been met since 2007.</p>

<b>Target Species</b>	<p>Western rock lobster (<i>Panulirus cygnus</i>).</p> <p><i>Panulirus cygnus</i> is endemic to the west coast of Australia and has greatest abundance between Geraldton and Perth. Planktonic larvae are carried into the Indian Ocean up to 1,500 kilometres from the coast. The return of puerulus (post-larval stage, which resemble fully formed miniature rock lobsters) to the continental shelf is dependent on ocean currents with the number of puerulus settling being influenced by the strength of the Leeuwin Current, winter/spring westerly wind strength and water temperatures (Kailoa et al 1993). Settlement of puerulus has been significantly lower in recent years than historical levels, due to environmental fluctuations.</p> <p><i>Panulirus cygnus</i> is a highly productive species that reaches a maximum age of more than 20 years; attains a maximum carapace length of 200 millimetres and a maximum weight of 4.5 kilograms, although growth rates vary considerably along the coast (Kailoa et al, 1993). Juveniles migrate from shallow to deeper water as they mature. The greatest recorded migration of juveniles into deeper water is in the order of 170 nautical miles (Kailoa et al, 1993).</p> <p>Further information on the biology of the western rock lobster can be found in the Western Australian Department of Fisheries' <i>Application to Environment Australia on the Western Rock Lobster Fishery, October 2001</i>' and the Department of the Environment and Heritage's 2002 assessment of the fishery at <a href="http://www.environment.gov.au/coasts/fisheries/wa/rocklob/index.html">http://www.environment.gov.au/coasts/fisheries/wa/rocklob/index.html</a></p>
<b>Byproduct Species</b>	<p>The major byproduct species taken in the fishery include:</p> <ul style="list-style-type: none"> <li>• octopus (octopus sp.) (see commercial harvest section below for catch)</li> <li>• snow crab (<i>Chaceon bicolor</i>)</li> <li>• champagne crab (<i>Hypothalassia armata</i>), and</li> <li>• giant crab (<i>Pseudocarcinus gigas</i>).</li> </ul>
<b>Gear</b>	<p>Baited pots (a cage with an opening covered by a funnel shaped net) – dimensions including neck sizes and escape gaps are specified in Schedule 13 of the Western Australian Fish Resources Management Regulations 1995. The use of sea lion excluder devices (a rod inside a rock lobster pot secured to the base of the pot and rising vertically towards the neck) are mandatory for identified zones of the fishery.</p>
<b>Season</b>	<p>The Western Australian West Coast Rock Lobster Managed Fishery fishing season is open year round. For management purposes the season commences on 15 January and closes on 14 January each year.</p>

<b>Commercial harvest</b>	<p>Total landings for the 2010-11 season were 5,501 tonnes of rock lobster and 45,263 octopus (0.02 octopus per pot lift - within 10% of the historical catch range of 0.013-0.033 per pot lift).</p> <p>Total landings for the 2009-10 season were 5,899 tonnes of rock lobster and 66,300 octopus (0.03 octopus per pot lift).</p> <p>Total landings for the 2008-09 season were 7,593 tonnes of rock lobster and 120,337 octopus (0.03 octopus per pot lift). The number of octopus caught in the 2008-09 season was high due to the higher number of pot lifts compared with previous years.</p>
<b>Value of commercial harvest</b>	The gross value of production for the fishery in the 2010-11 financial year was \$194 million.
<b>Take by other sectors</b>	<p>The Windy Harbour/Augusta sector of the Western Australian South Coast Crustacean Fishery takes a small amount of western rock lobster. The average annual catch for the sector over the ten years from 2000-01 to 2010-11 was 16.3 tonnes.</p> <p>It is estimated that 150 tonnes of rock lobster was caught by recreational fishers in 2010-11 (98 tonnes by recreational potters, 52 tonnes by hand collection (divers)). This recreational catch accounts for around 3 per cent of the total rock lobster catch. A recreational licence entitles the holder to use two pots and/or dive for rock lobster and keep up to eight lobsters per day. Recreationally caught lobsters must be tail clipped to ensure they are not sold.</p> <p>The season for recreational fishing of rock lobsters starts on 15 November and concludes on 30 June each year. The Abrolhos Islands area is open for recreational fishing between 15 March and 30 June each year.</p> <p>Information collected through compliance enforcement activities indicates that the current illegal take in the Western Australian West Coast Rock Lobster Managed Fishery is minimal (&lt;1 per cent).</p>
<b>Commercial licences issued</b>	<p>Historically (prior to 2011) there were 610 commercial licences utilising 69,178 pot entitlements.</p> <p>The Western Australian West Coast Rock Lobster Managed Fishery Management Plan 2012 introduced a Total Allowable Catch which removes the need for a licence and pot entitlement. If a fisher holds catch quota, they are able to fish.</p> <p>The total allowable catch is set at a level to prevent the stock becoming overfished. In the 2012-13 season the total Allowable Catch was set at 5,500 tonnes <math>\pm</math> 10 per cent.</p>
<b>Management arrangements</b>	<p>The fishery is managed under the Western Australian West Coast Rock Lobster Managed Fishery Management Plan 2012 and the Western Australian <i>Fish Resources Management Act 1994</i>. Management of the fishery is based primarily on output controls although some input controls remain. These controls include:</p> <p><u>Output controls</u></p> <ul style="list-style-type: none"> <li>• a total allowable catch</li> <li>• minimum legal size of rock lobster of 77 millimetres carapace length</li> </ul>

	<ul style="list-style-type: none"> <li>• maximum size of 105 millimetres for lobsters landed south of 30°S and 95 mm for landed north of 30°S, and</li> <li>• protection for breeding females by prohibition on the harvest of setose females or those carrying eggs or tarspot.</li> </ul> <p><u>Input controls</u></p> <ul style="list-style-type: none"> <li>• limited entry</li> <li>• maximum number of pot entitlements</li> <li>• zonal management (Zones A, B and C)</li> <li>• restrictions on pots (size, configuration and escape gaps), and</li> <li>• spatial restrictions.</li> </ul> <p><u>Responsible Code of Practice for Reducing Whale Entanglements</u></p> <p>The Code of Practice was developed by the fishing industry in collaboration with the Western Australian Department of Fisheries and the Western Australian Department of Environment and Conservation following a slow but steady rise in whale entanglements from the mid 1990s to 2006. The Code of Practice articulates a number of voluntary measures focussed on pot setting patterns and techniques to reduce the length of potlines. These measures have been demonstrated to be effective in reducing whale entanglements and are used to supplement formal management arrangements.</p> <p>Adhering to the Code of Practice includes undertaking to:</p> <ul style="list-style-type: none"> <li>• reduce slack rope on the surface of the water</li> <li>• avoid setting pots in clusters</li> <li>• check pots more regularly, and</li> <li>• maintain up to date awareness on what to do and who to contact in case of an entanglement.</li> </ul> <p><u>Arrangements for recreational fishing</u></p> <ul style="list-style-type: none"> <li>• fishery closures</li> <li>• ban on night fishing in summer and winter months</li> <li>• minimum and maximum legal sizes</li> <li>• daily bag limit of eight per person per day and 24 per boat per day</li> <li>• pot limit of two pots per person, and</li> <li>• restriction on pot sizes and size of escape gaps.</li> </ul> <p>Part of the fishery operates within the South-west and North-west Marine Regions. The western rock lobster is a key ecological feature in the South-west Marine Region.</p>
<b>Export</b>	Catch is mainly exported to Japan, Taiwan, Hong Kong, China, USA and Europe.
<b>Bycatch</b>	<p>Fishery independent monitoring indicates that bycatch in the Western Australian West Coast Rock Lobster Managed Fishery is minimal. A regulation in the fishery requires the mandatory use of escape gaps on pots which lowers the risk of taking bycatch.</p> <p>Fishers are required to record all bycatch in daily fishing logs and to supply these logs to the Western Australian Department of Fisheries each month. In 2010 the recorded bycatch in the fishery was six tonnes of mixed finfish, with 3.5 tonnes of mixed finfish recorded in 2011.</p>



	While taken historically as bycatch, there have been no recorded captures of moray eels since the department's last assessment.												
<b>Interaction with Protected Species<sup>1</sup></b>	<p>The Western Australian West Coast Rock Lobster Managed Fishery has previously recorded interactions with manta rays, sea lions, turtles, humpback whales and southern right whales. The 2012 Western Australian West Coast Rock Lobster Managed Fishery Ecological Risk Assessment and subsequent Environmental Management Strategy rates the fishery as posing a low risk to these species.</p> <p>There have been no recorded interactions with manta rays, sea lions or turtles in the fishery since the department's last assessment.</p> <p><u>Whale entanglements:</u></p> <p>Populations of baleen whales have been increasing in Western Australian waters since the cessation of commercial whaling in the mid 1980s. This has coincided with an increase in the number of entanglements of these whales with fishing gear (Groom and Coughran 2012), as whales pass through fishing grounds during annual winter migrations between Antarctica and waters offshore of the Kimberley region. Humpback whales are the most common species entangled, with almost half of the 63 entanglements recorded between 1982 and 2010 being attributed to rock lobster fishing gear (Groom and Coughran 2012). Entanglement of baleen whales with fishing gear occurs in a number of other fisheries around the world and scientists consider that interactions between baleen whales and fisheries are likely to continue for the foreseeable future (Groom and Coughran 2012).</p> <p>Between 1989 and 2010, the entanglement rate for whales in the Western Australian West Coast Rock Lobster Managed Fishery was between zero and four per year (Groom and Coughran 2012). A fishery performance indicator over this time was that entanglement rates should not exceed four per year. Prior to 2011, this indicator was generally met.</p> <p>The department notes that while entanglement rates in the Western Australian West Coast Rock Lobster Managed Fishery have been increasing, none of the reported whale mortalities since 1982 have been confirmed as being caused by entanglements in rock lobster pot ropes.</p> <p><b>Table 1: Number of entanglements in the Western Australian West Coast Rock Lobster Managed Fishery from 2008 to 2012</b></p> <table border="1"> <thead> <tr> <th>Year</th><th>Entanglements</th></tr> </thead> <tbody> <tr> <td>2008</td><td>4</td></tr> <tr> <td>2009</td><td>1</td></tr> <tr> <td>2010</td><td>1</td></tr> <tr> <td>2011</td><td>7</td></tr> <tr> <td>2012</td><td>13</td></tr> </tbody> </table>	Year	Entanglements	2008	4	2009	1	2010	1	2011	7	2012	13
Year	Entanglements												
2008	4												
2009	1												
2010	1												
2011	7												
2012	13												

<sup>1</sup> 'Protected species' means all species listed under Part 13 of the EPBC Act, including whales and other cetaceans and threatened, marine and migratory species.

While the department acknowledges that any increase in humpback whale populations (due to recovery of the species) may lead to increasing entanglements over time, the magnitude of the increase in entanglements in the West Coast Rock Lobster Managed Fishery between 2010 and 2012 is cause for concern. The department does not consider that this increase can be attributed solely to the recovery of whale populations. Interactions have increased noticeably under the new management arrangements, under which fishing in whale migration pathways can now occur during peak whale migration periods.

The Western Australian Department of Fisheries, the Western Australian Fisheries Advisory Council and the Western Rock Lobster Council have advised that in the short term, mitigation could be achieved through the revision and dedicated promulgation of the *West Coast Rock Lobster Code of Practice for Reducing Whale Entanglements* (the Code), with a particular emphasis on the removal of pots from the water when fishing is not to occur for an extended period. The original Code was demonstrated to be successful in reducing the level of entanglements when first introduced in 2007 and the department considers that, subject to a high level of adoption by fishers during the 2013 whale migration season, diligent adherence to the Code should reduce the risk of entanglements.

#### Australian sea lions

The introduction of sea lion exclusion devices in November 2006 for both commercial and recreational rock lobster pots near sea lion breeding islands (between north of Freshwater Point and south of Wedge Island) has reduced the assessed ecological risk level to low. In March 2011 two new additional sea lion exclusion device zones within the Abrolhos Island area (Pelsaert and Easter Group Islands) were gazetted, adding further protection to sea lions breeding in this area. There have been no recorded interactions with sea lions in the Western Australian West Coast Rock Lobster Managed Fishery since the introduction of sea lion exclusion devices in 2006.

#### Turtles

Turtle deaths as a result of direct interaction with pot ropes in the Western Australian West Coast Rock Lobster Managed Fishery are very rare. The performance indicator for the Western Australian West Coast Rock Lobster Managed Fishery regarding turtle entanglements is that no more than the historical average of between two and five turtle interactions per season should occur in the fishery. There have been no reported interactions with turtles in the Western Australian West Coast Rock Lobster Managed Fishery since 2007.

Under sections 199, 214, 232 and 256 of the EPBC Act, persons who interact with a protected species must report that interaction within seven days of the incident occurring to the department.

	<p>A Memorandum of Understanding between the Western Australian Department of Fisheries and the Department of Sustainability, Environment, Water, Population and Communities is currently being negotiated for the Reporting of Fisheries Interactions with Protected Species. Once in place this will streamline reporting requirements for interactions with protected species, assisting fishers in meeting their requirements under the <i>Environment Protection and Biodiversity Conservation Act 1999</i>.</p>
<b>Ecosystem Impacts</b>	<p>Due to the harvesting method used in the Western Australian West Coast Rock Lobster Managed Fishery (traps), impacts to the physical ecosystem are considered to be low.</p> <p>In 2001 a voluntary Code of Practice for Using and Handling Bait, Bait Packaging and Rubbish was developed for the fishery which provides best practice techniques in the use of bait handling and storage and bait packaging disposal.</p> <p>Additionally there are various research initiatives underway which include a project to assess the effects of rock lobster fishing in deep water ecosystems and ongoing research comparing shallow water fished and unfished areas in Jurien Bay.</p> <p>The most recent Environmental Risk Assessment of the Rock Lobster Fishery was conducted in 2012 which identified that the ecological impacts of removing rock lobster biomass was a moderate risk for deeper water reef communities.</p> <p>The Marine Bioregional Plans for the North-west and South-west Marine Regions 2012 have identified that there are key ecological features present in the area of the fishery (Canyons, Ningaloo Reef, demersal fish communities, Exmouth Plateau, Western Rock Lobster stock, Houtman Abrolhos Islands, eddies and an upwelling) which some are noted as also being of regional priority. The Bioregional Plan for the North-west Marine Region 2012 notes that there are pressures in the area of the fishery from the harvesting of living resources, bycatch and physical habitat modification. The Bioregional Plan for the South-west Marine Region 2012 notes that there are pressures in the area of the fishery from chemical pollutants (from fishing vessels), physical habitat modification, harvesting of living resources, bycatch and oil pollution (from fishing vessels). While noting these concerns, given the benign harvesting method used in the fishery (pots), the department considers that impacts to the physical ecosystem are likely to be low.</p>

**Table 2: Progress in implementation of recommendations made in the 2007 assessment of the Western Australian West Coast Rock Lobster Managed Fishery**

Recommendation	Progress	Recommended Action
<p>1. Operation of the fishery will be carried out in accordance with the Western Australian West Coast Rock Lobster Managed Fishery management regime made under the Western Australian <i>Fish Resources Management Act 1994</i>.</p>	<p>The Western Australian Department of Fisheries advised that the Western Australian West Coast Rock Lobster Managed Fishery continued to operate in accordance with the West Coast Rock Lobster Limited Entry Fishery Notice 1993 under the Western Australian <i>Fish Resources Management Act 1994</i>.</p>	<p>The Department of Sustainability, Environment, Water, Population and Communities (the department) considers that this recommendation has been met.</p> <p>The department recommends that this action be continued as a condition on any future wildlife trade operation declaration (see <b>Condition 1, Table 4</b>).</p>

Recommendation	Progress	Recommended Action
<p>2. The Western Australian Department of Fisheries to advise DEW of any intended material change to the Western Australian West Coast Rock Lobster Managed Fishery legislated management plan and/or arrangements that could affect the criteria on which EPBC Act decisions are based.</p>	<p>The Western Australian West Coast Rock Lobster Managed Fishery was managed in accordance with the West Coast Rock Lobster Limited Entry Fishery Notice 1993 which stipulated the input and output controls to which the fishery was to be managed under.</p> <p>The Western Australian Department of Fisheries advised that the Western Australian West Coast Rock Lobster Managed Fishery would operate under the Western Australian West Coast Rock Lobster Managed Fishery Management Plan 2012 from October 2012.</p> <p>There have been many legislated management changes in the Western Australian West Coast Rock Lobster Managed Fishery since the last assessment in 2007 such as the introduction of a quota management system and the removal of seasonal closures. The changes were not, however, anticipated to affect the assessment against which EPBC Act decisions are based. The changes initially involved effort reductions due to low puerulus settlement. In 2010 the first phase of the new quota system was implemented which saw individual catch limits introduced while the fishery's input controls also remained in place.</p> <p>Several previous input controls (such as seasonal closures) have now been removed. An Interactive Voice Recording System for compliance and catch monitoring has also been introduced.</p>	<p>The department considers that this recommendation has been met.</p> <p>The department recommends that this action be continued as a condition on any future wildlife trade operation declaration (see <b>Condition 2, Table 4</b>).</p>

Recommendation	Progress	Recommended Action
<p>3. The Western Australian Department of Fisheries to continue to produce and present reports to DEW annually. Reports to include:</p> <ul style="list-style-type: none"> <li>i. Information sufficient to allow assessment of the progress of the Western Australian Department of Fisheries in implementing the recommendations made in the Assessment of the Western Australian West Coast Rock Lobster Managed Fishery 2007; and</li> <li>ii. A description of the fishery, management arrangements in place, recent catch data for all sectors of the fishery, status of target stock including performance of the fishery against objectives, performance indicators and measures, interactions with protected species, impacts of the fishery on the ecosystem in which it operates and research and monitoring outcomes.</li> </ul> <p>Information should only be provided on those aspects which are relevant to the fishery and that articulate 'changes' since the last annual report.</p>	<p>The Western Australian West Coast Rock Lobster Managed Fishery is included in the Western Australian Department of Fisheries publication, the 'Annual State of the Fisheries and Aquatic Resources', which is provided to the department. The Report includes all available information on the fishery.</p>	<p>The department considers that this recommendation has been met.</p> <p>The department recommends that this action be continued as a condition on any future wildlife trade operation declaration (see <b>Condition 3, Table 4</b>).</p>

Recommendation	Progress	Recommended Action
<p>4. The Western Australian Department of Fisheries to continue to monitor performance measures and indicators for the Western Australian West Coast Rock Lobster Managed Fishery. Within 3 months of becoming aware that a performance measure has not been met, the Western Australian Department of Fisheries to develop potential management responses and timeframes for implementation.</p>	<p>Ongoing. The Western Australian Department of Fisheries advised that the Western Australian West Coast Rock Lobster Managed Fishery is monitored through fishery-dependent and independent monitoring of lobster breeding stock levels and puerulus settlement.</p> <p>The Western Australian Department of Fisheries continues to monitor settlement of puerulus at a number of long-term monitoring sites spread across the area of the fishery.</p> <p>The Western Australian Department of Fisheries has advised that since the last assessment a new Catch and Disposal Record form has been implemented which is required to be submitted immediately upon return to port, thus capturing data more readily. The capture and/or interaction with protected species are reported through the catch and disposal record and reported in the Western Australian State of the Fisheries and Aquatic Resources report by the Western Australian Department of Fisheries.</p>	<p>The department considers that this recommendation is ongoing.</p> <p>The department recommends that this action be continued (see <b>Recommendation 1, Table 4</b>).</p>
<p>5. The Western Australian Department of Fisheries to examine the data and models used to monitor the ongoing performance of the Western Australian West Coast Rock Lobster Managed Fishery and resolve issues where necessary.</p>	<p>Ongoing.</p> <p>The Western Australian Department of Fisheries has advised that internal and external review (including audit) of the data is completed as part of the Marine Stewardship Council re-certification.</p> <p>The Western Australian Department of Fisheries advised that an audit of the current stock assessment model was carried out in 2010 by Marine Stewardship Council auditors and was found to be appropriate.</p>	<p>The department considers that this recommendation is ongoing.</p> <p>The department recommends that this action be continued (see <b>Recommendation 2, Table 4</b>).</p>

Recommendation	Progress	Recommended Action
<p>6. Western Australian Department of Fisheries to continue to actively monitor interactions with threatened, protected and endangered species, particularly sea lions and whales, and develop appropriate mitigation measures if the number or rate of interactions increase.</p>	<p>The Western Australian Department of Fisheries has advised that an Environmental Management Strategy was implemented in 2010.</p> <p>The Environmental Management Strategy adopted for the Western Australian West Coast Rock Lobster Managed Fishery requires monitoring of, and attempts to minimise, accidental interaction with protected species wherever practicable.</p> <p>The Western Australian Department of Fisheries also advised that sea lion exclusion devices are now in use by both commercial and recreational fishers operating near sea lion breeding grounds.</p>	<p>The department considers that this condition has been met.</p> <p>The department recommends that this action be continued (see <b>Condition 4, Table 4</b>).</p>
<p>7. The Western Australian Department of Fisheries to take account of the outcomes of the Western Australian West Coast Rock Lobster Managed Fishery independent stock assessment reviews, the ERA review and other relevant fishery research projects and make changes to management arrangements where required. Western Australian Department of Fisheries to ensure that the Western Australian West Coast Rock Lobster Managed Fishery Environmental Management System is updated following the completion of the ERA review.</p>	<p>The Western Australian Department of Fisheries advised that an audit of the current stock assessment model was carried out in 2010 by Marine Stewardship Council auditors and was found to be appropriate.</p> <p>A Draft Environmental Management Strategy for the fishery was published in 2011. This strategy considers the risks identified as 'moderate' in the 2007 Ecological Risk Assessment of the fishery. The Draft Environmental Management Strategy stipulates management measures for addressing the impacts of the fishery on threatened, endangered and protected species (including sea lions and whales) and the ecological effects the fishery may have on the environment. It includes objectives, strategies, indicators and performance measures to deal with each risk and provides an assessment of the fishery against them. The strategy also identifies key areas for further research in the fishery.</p>	<p>The department considers that this recommendation has been met and is ongoing.</p> <p>The department recommends that this action be continued (see <b>Recommendation 3, Table 4</b>).</p>



**Table 3: The Department of Sustainability, Environment, Water, Population and Communities assessment of the Western Australian West Coast Rock Lobster Managed Fishery against the requirements of the EPBC Act related to decisions made under Parts 12, 13 and 13A.**

**Please Note** – the table below is not a complete or exact representation of the EPBC Act. It is intended as a summary of relevant sections and components of the EPBC Act to provide advice on the fishery in relation to decisions under Parts 12, 13 and 13A. A complete version of the EPBC Act can be found at <http://www.comlaw.gov.au/>.

**Part 12**

<b>Section 176 Bioregional Plans</b>	<b>The department's assessment of the Western Australian West Coast Rock Lobster Managed Fishery</b>
(5) Subject to this Act, the Minister must have regard to a bioregional plan in making any decision under this Act to which the plan is relevant.	The Marine Bioregional Plan for the North-west and South-west Marine Regions have been considered in the preparation of advice in relation to decisions under section 303DC and section 303FN. Extraction of living resources, physical habitat modification and pollution from oil and chemicals have been identified as pressures operating within the North-west and South-west marine bioregional planning areas in which the Western Australian West Coast Rock Lobster Managed Fishery operates. Bycatch is also a recognised pressure of potential concern. However, the Western Rock Lobster Fishery Ecological Risk Assessment 2012 assessed impacts of the fishery to the physical ecosystem as 'low' to 'moderate', due to the benign harvesting method used in the fishery (pots). In addition, an annually reviewed total allowable catch restricts the removal of rock lobster from the ecosystem.

## Part 13

<b>Division 1 Listed threatened species</b> <b>Section 208A Minister may accredit plans or regimes</b>	<b>The department's assessment of the Western Australian West Coast Rock Lobster Managed Fishery</b>
<p>(1) Minister may, by instrument in writing, accredit for the purposes of this Division:</p> <p>(c) a plan of management, or a policy, regime or any other arrangement, for a fishery that is:</p> <ul style="list-style-type: none"> <li>i. made by a State or self-governing Territory; and</li> <li>ii. in force under a law of the State or self-governing Territory;</li> </ul> <p>if <b>satisfied</b> that:</p> <p>(f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that members of listed threatened species (other than conservation dependent species) are not killed or injured as a result of the fishing; and</p>	<p>The Western Australian West Coast Rock Lobster Managed Fishery will be managed under the Western Australian West Coast Rock Lobster Managed Fishery Management Plan 2012 in force under the Western Australian <i>Fish Resources Management Act 1994</i>.</p> <p>While the management arrangements for the Western Australian West Coast Rock Lobster Managed Fishery have changed since the original Part 13 accreditation was granted in 2007 and reported interactions with two listed threatened species (mainly humpback whales and a smaller number of southern right whales) have increased since 2011, the department considers the actions taken by the Western Australian Department of Fisheries to be appropriate in seeking to minimise future interactions. These actions include working with industry to refine fishing practises to reduce the risk of interactions with these species, committing to ongoing reviews of operational measures to minimise whale entanglements and undertaking research to identify improved management responses in the future. Subject to these measures remaining in place, as required by proposed <b>Condition A</b> (Table 4), the department considers that the fishery's management plan requires persons fishing in accordance with the plan to take all reasonable steps to ensure listed threatened species are not killed or injured as a result of fishing.</p> <p>The fishery has historically interacted with Australian sea lions, with Australian sea lion pups reported drowning after becoming trapped in pots. However, since the introduction of sea lion exclusion devices in 2006, interactions in the fishery have been nil to low with no deaths reported.</p>

<p>(g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the survival or recovery in nature of the species.</p>	<p>The current operation of the Western Australian West Coast Rock Lobster Managed Fishery is not likely to adversely affect the survival or recovery in nature of any listed threatened species. Therefore, the department considers that a new Part 13 accreditation should be granted.</p>
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**Part 13 (cont.)**

<p><b>Division 2 Migratory species</b> <b>Section 222A Minister may accredit plans or regimes</b></p>	<p><b>The department's assessment of the Western Australian West Coast Rock Lobster Managed Fishery</b></p>
<p>(1) Minister may, by instrument in writing, accredit for the purposes of this Division:</p> <p>(c) a plan of management, or a policy, regime or any other arrangement, for a fishery that is:</p> <ul style="list-style-type: none"> <li>i. made by a State or self-governing Territory; and</li> <li>ii. in force under a law of the State or self-governing Territory;</li> </ul> <p>if <b>satisfied</b> that:</p> <p>(f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that members of listed migratory species are not killed or injured as a result of the fishing; and</p>	<p>The Western Australian West Coast Rock Lobster Managed Fishery will be managed under the Western Australian West Coast Rock Lobster Managed Fishery Management Plan 2012 in force under the Western Australian <i>Fish Resources Management Act 1994</i>.</p> <p>While the management arrangements for the Western Australian West Coast Rock Lobster Managed Fishery have changed since the original Part 13 accreditation was granted in 2007 and reported interactions with two listed migratory species (mainly humpback whales and a smaller number of southern right whales) have increased since 2011, the department considers the actions taken by the Western Australian Department of Fisheries to be appropriate in seeking to minimise future interactions. These actions include working with industry to refine fishing practises to reduce the risk of interactions with these species, committing to ongoing reviews of operational measures to minimise whale entanglements and undertaking research to identify improved management responses in the future. Subject to these measures remaining in place, as required by proposed <b>Condition A</b> (Table 4), the department considers that the fishery's management plan requires persons fishing in accordance with the plan to take all reasonable steps to ensure listed migratory species are not killed or injured as a result of fishing.</p> <p>Manta rays are also known to occur in the fishery; however there have been no reported interactions since the last assessment.</p>

<p>(g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the conservation status of a listed migratory species or a population of that species.</p>	<p>The current operation of the Western Australian West Coast Rock Lobster Managed Fishery is not likely to adversely affect the conservation status of a listed migratory species or a population of that species. Therefore, the department considers that a new Part 13 accreditation should be granted.</p>
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**Part 13 (cont.)**

<p><b>Division 3 Whales and other cetaceans</b> <b>Section 245 Minister may accredit plans or regimes</b></p>	<p><b>The department's assessment of the Western Australian West Coast Rock Lobster Managed Fishery</b></p>
<p>(1) Minister may, by instrument in writing, accredit for the purposes of this Division:</p> <p>(c) a plan of management, or a policy, regime or any other arrangement, for a fishery that is:</p> <ul style="list-style-type: none"> <li>i. made by a State or self-governing Territory; and</li> <li>ii. in force under a law of the State or self-governing Territory;</li> </ul> <p>if <b>satisfied</b> that:</p> <p>(f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that cetaceans are not killed or injured as a result of the fishing; and</p>	<p>The Western Australian West Coast Rock Lobster Managed Fishery will be managed under the Western Australian West Coast Rock Lobster Managed Fishery Management Plan 2012 in force under the Western Australian <i>Fish Resources Management Act 1994</i>.</p> <p>While the management arrangements for the Western Australian West Coast Rock Lobster Managed Fishery have changed since the original Part 13 accreditation was granted in 2007 and reported interactions with two whale species (mainly humpback whales and a smaller number of southern right whales) have increased since 2011, the department considers the actions taken by the Western Australian Department of Fisheries to be appropriate in seeking to minimise future interactions. These actions include working with industry to refine fishing practises to reduce the risk of interactions with these species, committing to ongoing reviews of operational measures to minimise whale entanglements and undertaking research to identify improved management responses in the future. Subject to these measures remaining in place, as required by proposed <b>Condition A</b> (Table 4), the department considers that the fishery's management plan requires persons fishing in accordance with the plan to take all reasonable steps to ensure whales and cetaceans are not killed or injured as a result of fishing.</p>

<p>(g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the conservation status of a species of cetacean or a population of that species</p>	<p>The current operation of the Western Australian West Coast Rock Lobster Managed Fishery is not likely to adversely affect the conservation status of a species of cetacean or a population of that species. Therefore, the department considers that a new Part 13 accreditation should be granted.</p>
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**Part 13 (cont.)**

<p><b>Division 4 Listed marine species</b> <b>Section 265 Minister may accredit plans or regimes</b></p>	<p><b>The department's assessment of the Western Australian West Coast Rock Lobster Managed Fishery</b></p>
<p>(1) Minister may, by instrument in writing, accredit for the purposes of this Division:</p> <p>(c) a plan of management, or a policy, regime or any other arrangement, for a fishery that is:</p> <ol style="list-style-type: none"> <li>i. made by a State or self-governing Territory; and</li> <li>ii. in force under a law of the State or self-governing Territory;</li> </ol> <p>if <b>satisfied</b> that:</p> <p>(f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that members of listed marine species are not killed or injured as a result of the fishing; and</p> <p>(g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the conservation status of a listed marine species or a population of that species.</p>	<p>The Western Australian West Coast Rock Lobster Managed Fishery is managed under the Western Australian West Coast Rock Lobster Managed Fishery Management Plan 2012 in force under the Western Australian <i>Fish Resources Management Act 1994</i>.</p> <p>Currently, evidence suggests that the Western Australian West Coast Rock Lobster Managed Fishery only has minimal interactions with listed marine species (including syngnathids, sea snakes and sea lions).</p> <p>While Australian sea lion pups drowning after becoming trapped in pots have been reported in the fishery in the past, since the introduction of sea lion exclusion devices in 2006, interactions in the fishery have been nil to low with no deaths reported.</p> <p>As such the department considers that the fishery's management plan requires persons fishing in accordance with the plan to take all reasonable steps to ensure listed marine species are not killed or injured as a result of fishing.</p> <p>The current operation of the Western Australian West Coast Rock Lobster Managed Fishery is not likely to adversely affect the conservation status of a listed marine species or a population of that species. Therefore, the department considers that a new Part 13 accreditation should be granted.</p>

**Part 13 (cont.)**

<b>Section 303AA Conditions relating to accreditation of plans, regimes and policies</b>	<b>The department's assessment of the Western Australian West Coast Rock Lobster Managed Fishery</b>
(1) This section applies to an accreditation of a plan, regime or policy under section 208A, 222A, 245 or 265.	The department recommends that the management plan for the Western Australian West Coast Rock Lobster Managed Fishery be accredited under sections 208A, 222A, 245 and 265.
<p>(2) The Minister may accredit a plan, regime or policy under that section even though he or she considers that the plan, regime or policy should be accredited only:</p> <ul style="list-style-type: none"> <li>(a) during a particular period; or</li> <li>(b) while certain circumstances exist; or</li> <li>(c) while a certain condition is complied with.</li> </ul> <p>In such a case, the instrument of accreditation is to specify the period, circumstances or condition.</p>	<p>To satisfy the requirements of section 208A, 222A, 245 and 265 we recommend that the Western Australian West Coast Rock Lobster Managed Fishery be accredited under Part 13 subject to one condition that requires the Western Australian Department of Fisheries to:</p> <ul style="list-style-type: none"> <li>a) implement interim measures to reduce the risk of the fishery interacting with migrating whales in 2013, including through supporting the update of the <i>Western Australian West Coast Rock Lobster Managed Fishery Code of Practice For Reducing Whale Entanglements</i> (the Code)</li> <li>b) monitor and evaluate the uptake and effectiveness of interim measures, including robust validation and an analysis of the circumstances when entanglements do occur</li> <li>c) by 31 March 2014, complete a robust evaluation of longer term operational management measures to reduce the risk of whale entanglements, which could include the removal of some restrictions on western rock lobsters (such as removal of some size limits and removal of the restriction on keeping some pre-breeding females), spatial and seasonal closures and potential gear modifications</li> <li>d) taking account of the evaluation of the interim measures and the evaluation of longer term management arrangements, and in consultation with the department and the Western Australian Department of Environment and Conservation, determine a suite of management measures to minimise the entanglements of whales before the 2015 migration season, and</li> </ul>

	<p>e) in consultation with marine mammal experts, continue to monitor and review the adequacy of management measures to avoid mortality of, or injuries to whales.</p> <p>The Part 13 instrument for the Western Australian West Coast Rock Lobster Managed Fishery specifies this condition.</p>
(7) The Minister must, in writing, revoke an accreditation if he or she is satisfied that a condition of the accreditation has been contravened.	

## Part 13A

### Section 303BA Objects of Part 13A

(1) The objects of this Part are as follows:

- (a) to ensure that Australia complies with its obligations under CITES<sup>2</sup> and the Biodiversity Convention;
- (b) to protect wildlife that may be adversely affected by trade
- (c) to promote the conservation of biodiversity in Australia and other countries
- (d) to ensure that any commercial utilisation of Australian native wildlife for the purposes of export is managed in an ecologically sustainable way
- (e) to promote the humane treatment of wildlife
- (f) to ensure ethical conduct during any research associated with the utilisation of wildlife, and
- (h) to ensure the precautionary principle is taken into account in making decisions relating to the utilisation of wildlife.

<sup>2</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora

## Part 13A

Section 303DC Minister may amend list	The department's assessment of the Western Australian West Coast Rock Lobster Managed Fishery
<p>(1) Minister may, by instrument published in the Gazette, amend the list referred to in section 303DB (list of exempt native specimens) by:</p> <ul style="list-style-type: none"> <li>(a) including items in the list;</li> <li>(b) deleting items from the list; or</li> <li>(c) imposing a condition or restriction to which the inclusion of a specimen in the list is subject; or</li> <li>(d) varying of revoking a condition or restriction to which the inclusion of a specimen in the list is subject; or</li> <li>(e) correcting an inaccuracy or updating the name of a species.</li> </ul>	<p>The department recommends that specimens derived from species harvested in the Western Australian West Coast Rock Lobster Managed Fishery, other than specimens that belong to species listed under Part 13 of the EPBC Act, be included in the list of exempt native specimens while the Western Australian West Coast Rock Lobster Managed Fishery is subject to a declaration as an approved wildlife trade operation.</p>
<p>(1A) In deciding whether to amend the list referred to in section 303DB (list of exempt native specimens) to include a specimen derived from a commercial fishery, the Minister must rely primarily on the outcomes of any assessment in relation to the fishery carried out for the purposes of Division 1 or 2 of Part 10.</p>	<p>No assessment of the Western Australian West Coast Rock Lobster Managed Fishery has been carried out under Part 10 of the EPBC Act.</p>
<p>(1C) The above does not limit the matters that may be taken into account in deciding whether to amend the list referred to in section 303DB (list of exempt native specimens) to include a specimen derived from a commercial fishery.</p>	<p>It is not possible to list exhaustively the factors that you may take into account in amending the List of Exempt Native Specimens. The objects of Part 13A, which are set out below this table, provide general guidance in determining factors that might be taken into account. A matter that is relevant to determining whether an amendment to the list is consistent with those objects is likely to be a relevant factor.</p> <p>The department considers that the amendment of the list of exempt native specimens to include product taken in the Western Australian West Coast Rock Lobster Managed Fishery would be consistent with the provisions of Part 13A as:</p> <ul style="list-style-type: none"> <li>▪ the fishery will not harvest any Convention on International Trade in Endangered Species of Wild Fauna and Flora listed species</li> <li>▪ there are management arrangements in place to ensure that the resource is being managed in an ecologically sustainable way (see Table 1)</li> </ul>



	<ul style="list-style-type: none"> <li>▪ the operation of the Western Australian West Coast Rock Lobster Managed Fishery is unlikely to be unsustainable and threaten biodiversity within the next 2 years, and</li> <li>▪ the EPBC Regulations 2000 do not specify crustaceans as a class of animal in relation to the welfare of live specimens.</li> </ul>
<p>(3) Before amending the list referred to in section 303DB (list of exempt native specimens), the Minister:</p> <p>(a) must consult such other Minister or Ministers as the Minister considers appropriate; and</p> <p>(b) must consult such other Minister or Ministers of each State and self-governing Territory as the Minister considers appropriate; and</p> <p>(c) may consult such other persons and organisations as the Minister considers appropriate.</p>	<p>The department considers that the consultation requirements have been met. The application from the Western Australian Department of Fisheries was released for public comment from 26 November 2012 to 24 December 2012. The public comment period sought comment on:</p> <ul style="list-style-type: none"> <li>▪ the proposal to amend the list of exempt native specimens to include product derived from the Western Australian West Coast Rock Lobster Managed Fishery, and</li> <li>▪ the Western Australian Department of Fisheries' application for the Western Australian West Coast Rock Lobster Managed Fishery.</li> </ul> <p>No comments were received.</p>
<p>(5) A copy of an instrument made under section 303DC is to be made available for inspection on the Internet.</p>	<p>The instrument for the Western Australian West Coast Rock Lobster Managed Fishery made under section 303DC will be gazetted and made available on the Federal Register of Legislative Instruments website.</p>

Section 303FN Approved wildlife trade operation	The department's assessment of the Western Australian West Coast Rock Lobster Managed Fishery
(2) The Minister may, by instrument published in the Gazette, declare that a specified wildlife trade operation is an approved wildlife trade operation for the purposes of this section.	
<p>(3) The Minister must not declare an operation as an approved wildlife trade operation unless the Minister is satisfied that:</p> <p>(a) the operation is consistent with the objects of Part 13A of the Act; and</p> <p>(b) the operation will not be detrimental to:</p> <ol style="list-style-type: none"> <li>i. the survival of a taxon to which the operation relates; or</li> <li>ii. the conservation status of a taxon to which the operation relates; and</li> </ol>	<p>The department considers that the operation of the Western Australian West Coast Rock Lobster Managed Fishery is consistent with the objects of Part 13A (listed above this table) as:</p> <ul style="list-style-type: none"> <li>▪ the fishery will not harvest any Convention on the International Trade in Endangered Species of Wild Fauna and Flora listed species</li> <li>▪ there are management arrangements in place to ensure that the resource is being managed in an ecologically sustainable way (see Table 1)</li> <li>▪ the operation of the Western Australian West Coast Rock Lobster Managed Fishery is unlikely to be unsustainable and threaten biodiversity within the next two years, and</li> <li>▪ the EPBC Regulations 2000 do not specify crustaceans as a class of animal in relation to the welfare of live specimens.</li> </ul> <p>The department considers that the Western Australian West Coast Rock Lobster Managed Fishery will not be detrimental to the survival or conservation status of a taxon to which it relates within the next two years, given the management measures currently in place, which include:</p> <ul style="list-style-type: none"> <li>▪ limited entry</li> <li>▪ total allowable commercial catch limits</li> <li>▪ minimum and maximum legal size limits</li> <li>▪ vessel and gear restrictions, and</li> <li>▪ a Responsible Code of Practice for Reducing Whale Entanglements.</li> </ul>

<p>(ba) the operation will not be likely to threaten any relevant ecosystem including (but not limited to) any habitat or biodiversity; and</p> <p>(c) if the operation relates to the taking of live specimens that belong to a taxon specified in the regulations – the conditions that, under the regulations, are applicable to the welfare of the specimens are likely to be complied with; and</p> <p>(d) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.</p>	<p>The department considers that the Western Australian West Coast Rock Lobster Managed Fishery will not threaten any relevant ecosystem within the next two years, given the management measures currently in place, which include:</p> <ul style="list-style-type: none"> <li>▪ restrictions on take of target stock</li> <li>▪ gear restrictions which minimise bycatch, and</li> <li>▪ a Responsible Code of Practice for Reducing Whale Entanglements.</li> </ul> <p>The Environment Protection and Biodiversity Conservation Regulations 2000 (EPBC Regulations) do not specify crustaceans as a class of animal in relation to the welfare of live specimens.</p> <p>No other conditions are specified in relation to commercial fisheries in the EPBC Regulations.</p>
<p>(4) In deciding whether to declare an operation as an approved wildlife trade operation the Minister must have regard to:</p> <p>(a) the significance of the impact of the operation on an ecosystem (for example, an impact on habitat or biodiversity); and</p>	<p>The Bioregional Plan for the North-west Marine Region has identified that there are pressures in the area of the fishery from the harvesting of living resources, bycatch and physical habitat modification. The Bioregional Plan for the South-west Marine Region has identified that there are pressures in the area of the fishery from chemical pollutants (from fishing vessels), physical habitat modification, harvesting of living resources, bycatch and oil pollution (from fishing vessels).</p> <p>However, these pressures have been assessed as being ‘of potential concern’ only. The plans also note that these assessments are conservative in the context of active fisheries management, particularly when fisheries are managed at an ecosystem level, as in the Western Australian West Coast Rock Lobster Managed Fishery.</p> <p>While noting these concerns, given the benign harvesting method used in the fishery (pots), impacts to the physical ecosystem are considered low. Therefore, the department considers that the Western Australian West Coast Rock Lobster Managed Fishery will not have a significant impact on any relevant ecosystem within the next two years, given the management measures currently in place, which include:</p>

<p>(b) the effectiveness of the management arrangements for the operation (including monitoring procedures).</p>	<ul style="list-style-type: none"> <li>▪ restrictions on take of target stock</li> <li>▪ gear restrictions which minimise bycatch, and</li> <li>▪ a Responsible Code of Practice for Reducing Whale Entanglements</li> </ul> <p>The management arrangements that will be employed for the Western Australian West Coast Rock Lobster Managed Fishery are likely to be effective. The target species is managed under total allowable catch quotas, which is informed by scientifically determined recommended biological catch limits, in accordance with the West Coast Rock Lobster Fishery Stock Assessment and Harvest Strategy. There are management strategies in place to mitigate the impact of the fishery on protected species and rebuilding strategies in place to recover overfished stocks. Statistically robust monitoring programs are also in place. In addition, gear restrictions are employed as well as spatial restrictions, to further mitigate the impact of fishing on particular target and non-target species, including protected species.</p>
<p>(5) In deciding whether to declare an operation as an approved wildlife trade operation the Minister must have regard to:</p> <p>(a) whether legislation relating to the protection, conservation or management of the specimens to which the operation relates is in force in the State or Territory concerned; and</p> <p>(b) whether the legislation applies throughout the State or Territory concerned; and</p> <p>(c) whether, in the opinion of the Minister, the legislation is effective.</p>	<p>The Western Australian West Coast Rock Lobster Managed Fishery will be managed under the Western Australian West Coast Rock Lobster Managed Fishery Management Plan 2012, the Western Australian <i>Fish Resources Management Act 1994</i> and the Western Australian Fish Resources Management Regulations 1995.</p> <p>The Western Australian <i>Fish Resources Management Act 1994</i> applies throughout Western Australian waters.</p> <p>After evaluation of the fishery management measures in place for this fishery, summarised in Table 1, the department considers that the legislation enforcing these measures throughout the fishery is likely to be effective.</p>
<p>(10) For the purposes of section 303FN, an operation is a wildlife trade operation if, and only if, the operation is an operation for the taking of specimens and:</p> <p>(d) the operation is a commercial fishery.</p>	<p>The Western Australian West Coast Rock Lobster Managed Fishery is a commercial fishery.</p>

<b>Section 303FR Public consultation</b>	<b>The department's assessment of the Western Australian West Coast Rock Lobster Managed Fishery</b>
<p>(1) Before making a declaration under section 303FN, the Minister must cause to be published on the Internet a notice:</p> <ul style="list-style-type: none"> <li>(a) setting out the proposal to make the declaration; and</li> <li>(b) setting out sufficient information to enable persons and organisations to consider adequately the merits of the proposal; and</li> <li>(c) inviting persons and organisations to give the Minister, within the period specified in the notice, written comments about the proposal.</li> </ul>	<p>The department considers that the consultation requirements of the EPBC Act for declaring an approved wildlife trade operation have been met. A public notice, which set out the proposal to declare the Western Australian West Coast Rock Lobster Managed Fishery as an approved wildlife trade operation and included the Western Australian Department of Fisheries' application, was released for public comment which closed on 24 December 2012 with no submissions received.</p>
<p>(2) A period specified in the notice must not be shorter than 20 business days after the date on which the notice was published on the Internet.</p>	<p>A public notice, which set out the proposal to grant export approval to the Western Australian West Coast Rock Lobster Managed Fishery and included the submission from the Western Australian Department of Fisheries was released for public comment on 26 November 2012 and closed on 24 December 2012, a total of 20 business days.</p>
<p>(3) In making a decision about whether to make a declaration under section 303FN, the Minister must consider any comments about the proposal to make the declaration that were given in response to the invitation in the notice.</p>	<p>No public comments about the proposal were received.</p>

<b>Section 303FT Additional provisions relating to declarations</b>	<b>The department's assessment of the Western Australian West Coast Rock Lobster Managed Fishery</b>
<p>(1) This section applies to a declaration made under section 303FN, 303FO or 303FP.</p>	<p>A declaration for the West Coast Rock Lobster Managed Fishery will be made under section 303FN.</p>
<p>(4) The Minister may make a declaration about a plan or operation even though he or she considers that the plan or operation should be the subject of the declaration only:</p> <ul style="list-style-type: none"> <li>(a) during a particular period; or</li> <li>(b) while certain circumstances exist; or</li> <li>(c) while a certain condition is complied with.</li> </ul> <p>In such a case, the instrument of declaration is to specify the period, circumstances or condition.</p>	<p>The standard conditions applied to a commercial fishery wildlife trade operation include:</p> <ul style="list-style-type: none"> <li>• operation in accordance with the management plan</li> <li>• notifying the department of changes to the management regime, and</li> <li>• annual reporting in accordance with the requirements of the Australian Government 'Guidelines for the Ecologically Sustainable Management of Fisheries – 2nd Edition'.</li> </ul> <p>The wildlife trade operation instrument for the Western Australian West Coast Rock Lobster Managed Fishery specifies the standard and any additional conditions applied.</p>

(8) A condition may relate to reporting or monitoring.	One of the standard conditions relates to reporting.
(9) The Minister must, by instrument published in the <i>Gazette</i> , revoke a declaration if he or she is satisfied that a condition of the declaration has been contravened.	
(11) A copy of an instrument under section 303FN, 303FO or 303FP or this section is to be made available for inspection on the Internet.	The instrument for the Western Australian West Coast Rock Lobster Managed Fishery made under section 303FN and the conditions under section 303FT will be gazetted and made available on the department's website.

## Part 16

<b>Section 391 Minister must consider precautionary principle in making decisions</b>	<b>The department's assessment of the Western Australian West Coast Rock Lobster Managed Fishery</b>
(1) The Minister must take account of the precautionary principle in making a decision under section 303DC and/or section 303FN, to the extent he or she can do so consistently with the other provisions of this Act.	<p>Having regard to:</p> <ul style="list-style-type: none"> <li>the precautionary management measures in place in the fishery (summarised in Table 1)</li> <li>the requirement under the <i>Fish Resources Management Act 1994</i> for all Western Australian fisheries to be managed consistent with the precautionary principle, and</li> <li>the proposed conditions that would form part of any future approved wildlife trade operation declaration,</li> </ul> <p>the department considers that the precautionary principle has been accounted for in the preparation of advice in relation to a decision under section 303DC and section 303FN.</p>
(2) The precautionary principle is that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage.	

**The Department of Sustainability, Environment, Water, Population and Communities' final conditions and recommendations to the Western Australian Department of Fisheries for the Western Australian West Coast Rock Lobster Managed Fishery**

The material submitted by the Western Australian Department of Fisheries demonstrates that the management arrangements for the Western Australian West Coast Rock Lobster Managed Fishery continue to meet most of the Australian Government 'Guidelines for the Ecologically Sustainable Management of Fisheries, 2<sup>nd</sup> edition'.

**Stock status**

The Department of Sustainability, Environment, Water, Population and Communities (the department) considers that overall the management regime for the Western Australian West Coast Rock Lobster Managed Fishery aims to ensure that fishing is conducted in a manner that does not lead to overfishing. Management of the fishery has a history of reacting appropriately to threats to the sustainability of target stocks and the department is confident that the Western Australian Department of Fisheries will continue to provide this high quality management.

Management arrangements in place in the fishery include:

- quota limits to restrict total allowable catch of target stocks to scientifically determined levels
- conservative minimum size limits
- recreational gear and bag limits
- spatial closures to protect spawning grounds, and
- annual reviews of the performance of the fishery against indicators and performance measures.

**Ecosystem impacts**

Taking into account the spatial closures, close monitoring of take by individual fishers, the robust stock assessment model and the relatively low impact fishing methods employed, the department considers that fishing operations are managed to minimise their impact on the structure, productivity, function and biological diversity of the ecosystem.

However, while the fishery is relatively well managed, the department considers there is a key risk that must be managed to ensure that impacts on whales are minimised. Since the phasing in of quota management in the fishery in 2011 and the subsequent removal of seasonal closures, fishing may now continue through peak seasons for whale migrations and the recorded number of whales becoming entangled in potlines has increased since 2010. The department notes that all entanglements confirmed from the Western Australian Rock Lobster Managed Fishery have resulted in the whales being released alive and that fishing gear from other fisheries (such as the Western Australian Octopus Fishery) accounts for a proportion of the whale entanglements. While the level of interactions with whales under current fishing operations is unlikely to adversely affect the survival in nature of these species, the department remains concerned that entanglement numbers have risen substantially above previous levels.

Additional key challenges for this fishery will be:

- reviewing and updating the environmental management system for the fishery under the new management arrangements, and
- further understanding the ongoing impacts of fishing on protected species.

The department considers that, until it can be demonstrated that these issues have been adequately addressed, declaration of the harvest operations of the Western Australian West Coast Rock Lobster Managed Fishery as an approved wildlife trade operation for two years, until 28 May 2015, is appropriate. The department considers that the declaration should be subject to the conditions listed in Table 4. To contain and minimise the risks in the longer term the recommendations outlined in Table 4 have been made.

Unless a specific time frame is provided, each condition and recommendation must be addressed within the period of the approved wildlife trade operation declaration for the fishery (two years).



**Table 4: Western Australian West Coast Rock Lobster Managed Fishery Assessment – Summary of Issues, Conditions and Recommendations, May 2013**

	<b>Issue</b>	<b>Part 13A Conditions</b>
1	<p><u>General Management</u> Export decisions relate to the arrangements in force at the time of the decision. To ensure that these decisions remain valid and export approval continues uninterrupted, the Department of Sustainability, Environment, Water, Population and Communities (the department) needs to be advised of any changes that are made to the management regime and make an assessment that the new arrangements are equivalent or better, in terms of ecological sustainability, than those in place at the time of the original decision. This includes operational and legislated amendments that may affect sustainability of the target species or negatively impact on byproduct, bycatch, protected species or the ecosystem.</p>	<p><b>Condition 1:</b> Operation of the fishery will be carried out in accordance with the Western Australian West Coast Rock Lobster Managed Fishery management regime made under the Western Australian <i>Fish Resources Management Act 1994</i>.</p> <p><b>Condition 2:</b> The Western Australian Department of Fisheries to advise the department of any intended material change to the Western Australian West Coast Rock Lobster Managed Fishery legislated management plan and arrangements that may affect the assessment against which <i>Environment Protection and Biodiversity Conservation Act 1999</i> decisions are made.</p>
2	<p><u>Annual Reporting</u> It is important that reports be produced and presented to the department annually in order for the performance of the fishery and progress in implementing the conditions and recommendations in this report and other managerial commitments to be monitored and assessed throughout the life of the declaration (two years). Annual reports should include a description of any changes to the fishery or management arrangements in place, recent catch data for all sectors of the fishery, status of target stock, interactions with protected species, impacts of the fishery on the ecosystem in</p>	<p><b>Condition 3:</b> Western Australian Department of Fisheries, in its Annual State of the Fisheries Report, to report on the performance of the fishery against performance measures that relate to the sustainability of the fishery.</p>

<p>which it operates and information outlining progress in implementing the conditions and recommendations resulting from the previous assessment of the fishery (for a complete description of annual reporting requirements, see Appendix B of the 'Guidelines for the Ecologically Sustainable Management of Fisheries - 2<sup>nd</sup> Edition' available from the department's website at <a href="http://www.environment.gov.au/coasts/fisheries/publications/guidelines.html">http://www.environment.gov.au/coasts/fisheries/publications/guidelines.html</a>).</p> <p>The department acknowledges that the Western Australian Department of Fisheries reports annually on the performance of Western Australian fisheries in the publicly available 'Status reports of the fisheries and aquatic resources of Western Australia'.</p>	
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	<b>Issue</b>	<b>Part 13 Condition</b>
3	<p><u>Interactions with migrating whales</u></p> <p>Populations of baleen whales have been increasing in Western Australian waters since the cessation of commercial whaling in the mid 1980s. This has coincided with an increase of entanglements of these whales with fishing gear (Groom and Coughran 2012), as whales pass through fishing grounds during annual winter migrations between Antarctica and waters offshore of the Kimberley region. Humpback whales are the most common species entangled, with almost half of the 63 entanglements recorded between 1982 and 2010 being attributed to rock lobster fishing gear (Groom and Coughran 2012). Entanglement of baleen whales with fishing gear occurs in a number of other fisheries around the world and scientists consider that interactions between baleen whales and fisheries are likely to continue for the foreseeable future (Groom and Coughran 2012).</p> <p>Between 1989 and 2010, the entanglement rate for whales in the Western Australian West Coast Rock Lobster Managed Fishery was between zero and four per year (Groom and Coughran 2012). A fishery performance indicator over this time was that entanglement rates should not exceed four per year. Prior to 2011, this indicator was generally met. The department notes that none of the reported whale mortalities since 1982 were confirmed as being caused by entanglements in rock lobster pot ropes.</p> <p>In 2011, quota management arrangements were introduced into the fishery to improve harvest sustainability of the target species and to increase economic viability. These new arrangements included the phased removal of winter seasonal closures to rock lobster fishing, allowing fishers to have lobster pots in the water all year round by 2013. Following the introduction of this change in management arrangements, there were seven whale entanglements confirmed with rock lobster gear in 2011.</p>	<p><b>Condition A:</b></p> <p>The Western Australian Department of Fisheries to:</p> <ul style="list-style-type: none"> <li>a) implement interim measures to reduce the risk of the fishery interacting with migrating whales in 2013, including through supporting the update of the Western Australian West Coast Rock Lobster Managed Fishery Code of Practice For Reducing Whale Entanglements (the Code)</li> <li>b) monitor and evaluate the uptake and effectiveness of interim measures, including robust validation and an analysis of the circumstances when entanglements do occur</li> <li>c) by 31 March 2014, complete a robust evaluation of longer term operational management measures to reduce the risk of whale entanglements, which could include the removal of some restrictions on western rock lobsters (such as removal of some size limits and removal of the restriction on keeping some pre-breeding females), spatial and seasonal closures and potential gear modifications</li> </ul>

<p>In 2012, there was a total of 25 whale entanglements in Western Australian waters. Thirteen of these entanglements were positively attributed to the Western Australian West Coast Rock Lobster Managed Fishery, three were positively attributed to the Western Australian Octopus Fishery and nine could not be positively attributed to any specific fishery. The department notes that while there were entanglements, no whale entanglement mortalities were recorded in 2011 or 2012.</p> <p>While the department acknowledges that any increase in humpback whale populations (due to recovery of the species) may lead to increasing entanglements over time, the magnitude of the increase in entanglements in the West Coast Rock Lobster Managed Fishery between 2010 and 2012 is cause for concern. The department does not consider that this increase can be attributed solely to the recovery of whale populations. Interactions have increased under the new management arrangements, under which fishing in whale migration pathways can now occur during peak whale migration periods.</p> <p>The department notes that fishing patterns under the new quota management system are still developing and may take some years to become predictable within future seasons. There is also limited information on inter-annual variation in whale migration patterns along the Western Australian coast. While the increase in whale entanglement rates in 2011 and 2012 is still an emerging concern with causes that require further investigation, fisheries that operate within whale migration paths should apply increased caution until these issues are better understood.</p> <p>The department considers that immediate action to reduce the risk of whale entanglements is important. The Western Australian Department of Fisheries, the Western Australian Fisheries Advisory Council and the Western Rock Lobster Council have advised that in the short term, this could be achieved through the revision and dedicated promulgation of the <i>West Coast Rock Lobster Code of Practice for Reducing Whale Entanglements</i> (the Code), with a particular emphasis on the removal of pots from the water when fishing is not to occur for an extended period. The original Code was demonstrated to be successful in reducing the level of entanglements when first introduced in 2007 and the department considers that, subject to a high level of adoption by fishers during the 2013 whale migration season, diligent adherence to the</p>	<p>d) taking account of the evaluation of the interim measures and the evaluation of longer term management arrangements, and in consultation with the department and the Western Australian Department of Environment and Conservation, determine a suite of management measures to minimise the entanglements of whales before the 2015 migration season, and</p> <p>e) in consultation with marine mammal experts, continue to monitor and review the adequacy of management measures to avoid mortality of, or injuries to whales.</p>
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<p>Code should reduce the risk of entanglements. The review of the Code should be done in consultation with the Western Australian Department of Environment and Conservation. Uptake and adherence to the Code should be monitored by the Western Australian Department of Fisheries.</p> <p>In the longer term, the department is aware that a range of operational measures to reduce the risk of whale entanglements are under review by the Western Australian Department of Fisheries, however it accepts that these require critical evaluation of feasibility and effectiveness. The department considers that evaluation of these measures, which include the potential removal of some restrictions on western rock lobsters to improve fishing efficiency (such as removal of some size limits and removal of the restriction on keeping some pre-breeding females), as well as the potential for spatial and temporal closures and gear modifications, should be conducted before the whale migration season commences in 2014, and implemented during the 2014 fishing season as appropriate.</p>	
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	<b>Issues</b>	<b>Recommendations</b>
4	<p><u>Fishery reviews and ecological risk management</u></p> <p>Since the last assessment of the Western Australian West Coast Rock Lobster Managed Fishery in 2007, the Western Australian Department of Fisheries has invested in a number of reviews and research projects including, but not limited to:</p> <ul style="list-style-type: none"> <li>• the independent review of the Western Australian West Coast Rock Lobster Managed Fishery 2004-05 stock assessment process</li> <li>• reviews of the fishery's Ecological Risk Assessment Report in 2007 and 2013</li> <li>• research on the reproductive biology of western rock lobsters</li> <li>• research on the effects of fishing for western rock lobsters in deep water, and</li> <li>• research comparing shallow water fished and unfished areas in Jurien Bay.</li> </ul> <p>The Western Australian Department of Fisheries held a number of independent stock assessment and modelling reviews for the ongoing development of the western rock lobster stock assessment model. The recommendations from these reviews and in particular from the latest reviews in May 2010 and May 2011, have been incorporated into the model and the stock assessment process.</p> <p>In its 2012 submission, the Western Australian Department of Fisheries advised that a Draft Environmental Management Strategy had been published for the fishery in 2011. This strategy considers the risks identified as 'moderate' in the 2007 Ecological Risk Assessment of the fishery. The Draft Environmental Management Strategy stipulates management measures for addressing the impacts of the fishery on threatened, endangered and protected species (including sea lions and whales) and the ecological effects the fishery may have on the environment. It includes objectives, strategies, indicators and performance measures to deal with each risk and provides an assessment of the fishery against them. The strategy also identifies key areas for further research in the fishery.</p>	<p><b>Recommendation 1:</b></p> <p>The Western Australian Department of Fisheries to:</p> <ul style="list-style-type: none"> <li>a) continue considering the outcomes of the most recent Ecological Risk Assessment review and other relevant fishery research projects in light of the new quota management arrangements, and</li> <li>b) adjust management arrangements as appropriate, including through updating the Environmental Management Strategy for the fishery.</li> </ul>

	<p>The department understands that the Ecological Risk Assessment was reviewed most recently in 2013, the first review since the introduction of quota management in the fishery. The department recommends the Western Australian Department of Fisheries update the Environmental Management Strategy in accordance with the findings of this review.</p>	
5	<p><u>Research into whale migration patterns and fishing effort</u></p> <p>Baleen whale migrations are known to occur off the west coast of Western Australia during May to August (northern migration from Antarctica to calving grounds offshore of the Kimberley region) and September to November (return migration to Antarctic waters to feed). Whales on the southwards migration are often observed in shallower, coastal waters during the return migration for protection from predators to provide greater protection for calves migrating with their mothers. However, there is limited information on inter-annual variation in whale migration patterns along the Western Australian coast.</p> <p>Due to the uncertainties regarding the pathways of whale migration patterns and entanglement behaviours, and that currently spatial information on whale entanglements relates to where entanglements are first intercepted, rather than the site where the entanglement occurred, the department considers it would be helpful for the Western Australian Department of Fisheries to investigate whale migration patterns relative to fishing effort to improve understanding of circumstances when entanglements occur. This may allow better prediction of the likelihood of interactions and possible entanglements in the future, to better direct management effort.</p>	<p><b>Recommendation 2:</b></p> <p>The Western Australian Department of Fisheries to improve understanding of whale migration patterns and sites of whale entanglements as these relate to fishing effort in the fishery.</p>

## References

Groom, C.J. and D.K. Coughran (2012). Entanglements of baleen whales off the coast of Western Australia between 1982 and 2010: patterns of occurrence, outcomes and management responses. *Pacific Conservation Biology* 18(3):203-214.