



Australian Government

Department of the Environment, Water, Heritage and the Arts

Assessment of the
WESTERN AUSTRALIA
PEARL OYSTER FISHERY

October 2008

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Assistant Secretary
Marine Environment Branch
Department of the Environment, Water, Heritage and the Arts
GPO Box 787
Canberra ACT 2601

Disclaimer

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

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Table 1: Summary of the Pearl Oyster Fishery

Publicly available information relevant to the fishery	<ul style="list-style-type: none"> • Western Australia (WA) <i>Fish Resources Management Act 1994</i> (FRM Act) • WA <i>Pearling (General) Regulations 1991</i> • WA <i>Pearling Act 1990</i> • <i>ESD Report Series no 5 January 2006 – Pearl Oyster Fishery</i> • <i>Ministerial Policy Guidelines 17</i> • Department of Environment and Heritage (DEH) Assessment Report for the WA Pearl Oyster Fishery 2003 • Department of Fisheries WA (DFWA) State of the Fisheries Report 2005/06 • DFWA State of the Fisheries Report 2006/07 • Application to the Department of the Environment, Water, Heritage and the Arts (DEWHA) – Western Australia Pearl Oyster Fishery
Area	<p>The fishery is separated into 4 zones as follows:</p> <p>Pearl Oyster Zone 1: North West Cape (including Exmouth Gulf) to longitude 119°30' E. There are five licences in this zone.</p> <p>Pearl Oyster Zone 2: East of Cape Thouin (118°20'E) and south of latitude 18°14'S. The nine licences in this zone also have full access to Zone 3.</p> <p>Pearl Oyster Zone 3: West of longitude 125°20'E and north of latitude 18°14'S. The two licences in this zone also have partial access to Zone 2.</p> <p>Pearl Oyster Zone 4: East of longitude 125°20'E to the Western Australia/Northern Territory border. Exploratory fishing has shown that stocks in this area are not economically viable. However pearl farming does occur.</p> <p>There is also a 'buffer zone' between zone 1 and zone 2, which may be accessed by licensees from Zones 1 and 2; in practice, it is generally only utilised by Zone 1 licensees.</p>
Fishery status	DFWA's <i>State of the Fisheries Report 06/07</i> states the breeding stock levels for the Pearl Oyster Fishery are adequate.
Target Species	<p>Indo-Pacific silver-lipped pearl oyster (<i>pinctada maxima</i>)</p> <p>Information on the biology of this species can be found in the 2003 assessment of the fishery located on the DEWHA website.</p>
Byproduct Species	None.
Gear	<p>The harvest method is drift diving in which six to eight divers are attached to large outrigger booms on a trawler-style vessel and towed slowly over pearling beds, harvesting legal-sized oysters as they are seen.</p> <p>There are eight vessels in the fishing fleet, but the number of vessels used each year varies depending on quota transfers amongst companies and industry shell requirements (in recent years the industry has taken</p>

	fewer shell than permitted because of hatchery shell substitution and/or market conditions meaning fewer shell are required).
Season	March – June each year.
Commercial harvest 2006	<p>Season 2006: 538 882 oysters.</p> <p>The Total Allowable Catch (TAC) for the fishery was 592 500 oysters. The disparity between the TAC and the oysters caught was due principally to licensees choosing hatchery-produced oysters rather than their wild-shell quota.</p> <p>Zone 1 operators caught 71 446 oysters from the wild fishery and 18 554 oysters from hatchery production.</p> <p>The catch in Zone 2 was 455 676 oysters and 11 760 oysters in Zone 3.</p>
Value of commercial harvest 2006	<p>Estimated annual value to fishers for 2006: \$122 million</p> <p>Precise estimate of the value of product is difficult to determine owing to the time lags that occur between harvesting and sale to offshore buyers, and other variables incurred in grading, jewellery production and marketing before sales take place.</p>
Take by other sectors	Nil reported.
Commercial licences issued	There are 17 pearling licences held with a target effort range of 14 071 – 20 551 diver hours. In 2006, the overall fishery effort was 13 335 hours.
Management arrangements	<p>The Pearl Oyster Fishery operates under the <i>WA Pearling (General) Regulations 1991</i> in force under the <i>WA Pearling Act 1990</i>.</p> <p>The Western Australian pearling industry comprises of 3 main components: the collection of pearl oysters from the wild; production of hatchery-reared pearl oysters; and grow-out of pearls on pearl farm leases. Quota limits are set for the take of pearl oyster shells from the wild to ensure the long-term sustainability of the resource.</p> <p>In 1996 the WA Government granted hatchery options to licensees as part of an incentive program to encourage them to adopt new technology that enabled the production of pearls from oysters reared in hatcheries, thus reducing the reliance on the wild stocks of pearl oysters.</p> <p>The pearl oyster fishery is managed primarily through output controls in the form of a TAC divided up into zone specific individually transferable quotas (ITQs). There are a total of 572 wild stock quota units and 350 hatchery quota units held by 17 pearling licensees.</p> <p>Wild stocks are reviewed each year by DFWA in liaison with the Pearling Industry Advisory Committee (PIAC) to enable the TAC to be set for each zone of the fishery. There is a minimum legal size of 120mm shell length, and maximum legal sizes and area-specific TAC's are set where appropriate.</p> <p>A comprehensive Ecologically Sustainable Development (ESD)</p>

	assessment of this fishery was completed in 2002 with a review of the ESD and associated risk assessment undertaken in 2008. All risk rankings from the 2008 review remained the same.
Export	Pearls produced in the Pearl Oyster Fishery are exported world wide whilst other pearling products such as pearl oyster meat is sold within Australia and mother of pearl is sent to the US, Japan, South East Asia, France and the Middle East.
Bycatch	<p>Low.</p> <p>Divers have the ability to target pearl oysters of choice (species, sizes and quality of <i>P. maxima</i>). Pearl oysters brought to the vessel after hand collection are young and have relatively little epiphytic growth (fouling organisms). Any such organisms are removed from the oyster and put back in the water, prior to the oysters being placed in mesh panels. A small number of oversized or under-sized oysters are returned to the substrate.</p>
Interaction with protected species¹	<p>There have been no reported interactions with protected species over the last 5 years.</p> <p>The Pearl Producers Association (PPA) has put a whale management policy and protocol in place to reduce the impact of any interactions that may occur with pearl farm infrastructure.</p>
Ecosystem impacts	<p>Low.</p> <p>The fishery removes only a small proportion of the biomass of pearl oysters on the fishing grounds and is considered to have negligible impact on the food chain in the fishing area.</p> <p>Pearl divers have minimal contact with the habitat during fishing operations. The main habitat contact is by pearl oysters held in mesh panels on holding sites following capture. However, these sites cover a very small proportion of the habitat and the activity concerned is unlikely to cause any lasting effect.</p> <p>Similarly, the pearl farming operation, (which uses longline systems consisting of a rope backbone with attached surface floats anchored at each end by specially designed anchors with panels attached to the longlines by short lengths of rope [droppers] at regular intervals in areas of high tidal flow), has limited impact on the environment. Physical effects are limited to static anchoring systems in typically sand/mud habitats. Environmental management research is also being undertaken to quantify impacts on habitat and environment.</p>

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

Table 2: Progress in implementation of recommendations made in 2003 assessment of the WA Pearl Oyster Fishery

Recommendation	Progress	Recommended Action
<p>1. DFWA to include the operational objectives, reference points and performance measures from the DFWA ESD report in the Pearl Oyster Fishery Ministerial Policy Guideline and to review these at least every 5 years. Operational objectives to be developed in relation to minimising impacts on bycatch, protected species and the broader marine environment.</p>	<p>DFWA indicated that the operational objectives, reference points and performance measures from the ESD report were incorporated into the Ministerial Policy Guideline 17 on 9 August 2004 as outlined in the DFWA letter to the then DEH dated 30 January 2005.</p> <p>Furthermore, there have been a range of reviews of pearling policy and legislation since the 2003 assessment. The reviews have primarily focused on the hatchery policy, and the ongoing role of Government in the regulation of the hatchery production component of the pearling industry. While the reviews have been in progress, there has been an informal “moratorium” on amending pearling specific legislation and policy (including the Ministerial Policy Guidelines). This is expected to change over the next five years as the outcomes of the review processes are implemented.</p>	<p>DEWHA considers the recommendation met in this regard and commends DFWA for incorporating operational objectives, reference points and performance measures from the ESD report into the formal management regime of the fishery.</p> <p>DFWA to advise and update DEWHA on the outcomes of the review process and how they are being implemented.</p> <p>Refer Table 4, Recommendation 3.</p>

2. The DFWA ESD report to be amended to incorporate a clear timeframe for the completion of a performance measure breach review. The breach review report should include a clear timeframe for implementation of management response actions.	DFWA's ESD report is readily available online at the DFWA website and performance measures, responses and operational objectives contained in the report have been incorporated in the <i>Ministerial Policy Guideline 17</i> . Performance measure breach timeframes are included in the <i>Ministerial Policy Guideline 17</i> .	DEWHA notes inclusion of timeframes for performance measure breaches in the <i>Ministerial Policy Guidelines 17</i> and considers this recommendation to be met.
3. Within one year, the DFWA ESD report to be published, and all performance measures, responses and information requirements formally incorporated into a Ministerial Policy Guideline.	DFWA's ESD report is readily available online at the Department of Fisheries website and performance measures, responses and operational objectives contained in the report have been incorporated in the <i>Ministerial Policy Guideline 17</i> .	DEWHA considers this recommendation has been met.
4. DFWA to maintain effective compliance and enforcement mechanisms to ensure that all wild harvested pearl oysters are fully accounted.	<p>A comprehensive compliance program has been maintained to ensure the continued sustainability of the fishery and equity amongst wild stock licence holders. Compliance activities include at sea inspections and monitoring of fishing vessels and pearling leases. Compliance and enforcement outcomes are reported annually in the State of the Fisheries report.</p> <p>DFWA have advised that the Department initiated an</p>	<p>DEWHA considers this recommendation to be met and ongoing.</p> <p>DEWHA commends DFWA's efforts to maintain effective compliance and enforcement mechanisms and encourages DFWA to implement the recommendations arising from the independent review. DEWHA is satisfied that DFWA is committed to developing and maintaining ongoing compliance strategies to address current and emerging risks.</p> <p>Refer Table 4, Recommendation 5.</p>

	<p>independent review of pearling compliance in 2007.</p> <p>The review (which was completed contemporaneously with the Ministers independent review of the pearling industry) recommended a number of changes to the pearling compliance program, including (<i>inter alia</i>) the better and more integrated use of satellite communications and positioning technology in the compliance program.</p>	
<p>5. DFWA to inform EA of any changes to the <i>Pearling Act 1990</i>, Ministerial Policy Guidelines or managerial commitments in the DFWA ESD report.</p>	<p>Other than minor consequential amendments such as application fees, the review processes for the State Administrative Tribunal and “machinery of Government” amendments, there have been no changes to the <i>Pearling Act 1990</i> or the <i>Pearling (general) Regulations 1991</i> since the initial DEWHA assessment in 2003.</p> <p><i>Ministerial Policy Guideline 17</i> was amended in 2004 in accordance with recommendations 1 and 3 above.</p> <p>In early 2008, DFWA administered two minor changes to the <i>Enzootic Diseases Regulations</i></p>	<p>DEWHA considers this recommendation to be met and ongoing</p> <p>DEWHA notes that there have been no major changes to the management arrangements for the Pearl Oyster Fishery but requests that DFWA keep DEWHA informed of any developments relating to the 2007 review of the WA Pearling industry.</p> <p>Refer to Table 4, Recommendation 2.</p>

	<p>1970 to help facilitate the ongoing management of the pearl oyster mortality event in the WA Pearling industry. In absence of a definitive scientific conclusion as to the reasons for the mortality event DFWA has had to provide the event with a formal name – Oyster Oedema Disease (OOD). This reflects the syndrome found in the affected oysters.</p> <p>One of the amendments listed OOD as a mollusc disease in the regulations, thus requiring lease holders to report if they have oysters which have (or may have) the disease. The second amendment improved the mechanisms for disease testing of pearl oysters and also approval processes for the transport of pearl oysters when the oysters may be (or have been) affected by this disease.</p> <p>It was recognised in 2001 that existing pearling legislation was deficient in a number of areas, particularly with regards to hatchery regulation and management given industry advances in technology. DFWA advises that the Department and</p>	
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	<p>industry conducted a review of all aspects of industry in 2005. This led to the commissioning of an independent review of the WA pearling industry in 2007. DFWA are currently awaiting the outcomes of this report.</p>	
<p>6. A mechanism to be developed to enable the amendment of management arrangements to respond to new information or future Government plans and policies.</p>	<p>DFWA advises that there are well defined processes to facilitate amendments to the <i>Pearling Act 1990</i> and subsidiary legislation and policy.</p> <p>The <i>Pearling Act 1990</i> currently provides for the development and adjustment of policies in the pearling industry (in the form of Ministerial Policy Guidelines). The Pearling Act also provides for the Chief Executive Officer of DFWA to make decisions regarding specific issues (such as the adjustment of zone fishing arrangements and total allowable catch).</p> <p>Noting the relatively lengthy processes for amending Acts and Regulations, recent reviews into pearl oyster fishery policy and legislation have considered the capacity for Government to make amendments to management</p>	<p>DEWHA considers this recommendation to be met.</p> <p>Processes are currently in place to allow amendments to the management arrangements including Ministerial Policy Guidelines and decisions from the Chief Executive Officer.</p>

	<p>arrangements in a timelier manner. This will be further explored over the next few years during the consideration and implementation (if approved) of the outcomes of the Minister's independent review of the pearling industry.</p>	
<p>7. DFWA to encourage the PPA while finalizing their Environmental Code of Practice, to consider including actions to address issues relating to the wild harvest of pearl oysters that are highlighted in the ESD Report and EA's assessment report.</p>	<p>DFWA has encouraged the PPA to consider this recommendation. A copy of the current PPA Environmental Code of Conduct is included in the Appendix to this submission.</p>	<p>DEWHA considers this recommendation to be met.</p> <p>The PPA Code of Conduct was updated in July 2007 with the inclusions of issues being addressed relating to the wild harvest of pearl oysters.</p>
<p>8. DFWA to maintain an effective research and monitoring program in the fishery to validate the catch data, enhance understanding of the stocks status and develop biological performance measures.</p>	<p>DFWA's research and monitoring program has been improved through a number of initiatives, including the generation of several externally funded projects to investigate a number of projects including:</p> <ul style="list-style-type: none"> • Bio-eroding sponges in pearl oyster stocks and their habitats • Increasing the coverage of the catch sampling program; and • Developing a research program to examine the overall population size 	<p>DEWHA consider this recommendation to be met.</p> <p>DEWHA acknowledges DFWA's efforts with several externally funded projects put in place. Any research findings that result in changes to management arrangements stemming from the projects should be forwarded to DEWHA as they may trigger a reassessment under the EPBC Act.</p>

	<p>DFWA and the pearling industry have also formed a stock assessment working group to provide expert advice on stock status and recommended fishing levels to the Chief Executive Officer of the Department and the Minister (through PIAC).</p> <p>Furthermore, the “piggyback spat” project is now generating useful predictive stock indices and is fully integrated into the annual stock assessment program. The project is providing a good indicator of stock abundance 3 - 5 years in advance. This has enabled the development of a reliable decision rule framework to assist annual TAC assessments and recommendations. For example, the predictive tool indicated exceptionally high pearl oyster wild stock abundance and catch rates in zone 2 of the pearl oyster fishery in 2008. This tool in conjunction with early 2008 fishing results has allowed the decision rule framework to recommend a mid-year TAC adjustment to increase the total allowable catch in Zone 2 of the</p>	
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	fishery.	
9. Should fishing commence in Zone 4, DFWA to include Zone 4 in the assessment program for the fishery to ensure a reliable biological assessment of stock status is established, including performance measures, and that fishing is managed in an ecologically sustainable manner.	Fishing has not commenced in zone 4 and a zero TAC continues. The PIAC has recommended to the Minister that zone 4 be removed from the fishery. Given other review priorities, this has yet to be effected through an amendment to the relevant Notice, but the industry and the Department are functioning as though Zone 4 no longer exists (note: recent determinations of TAC in each zone do not refer to Zone 4).	DEWHA notes the intent to remove zone 4 from the Pearl Oyster Fishery however DEWHA considers this recommendation should remain in place until this has occurred. Refer Table 4, Recommendation 4.

Table 3: The DEWHA assessment of the WA Pearl Oyster Fishery against the requirements of the EPBC Act related to decisions made under Part 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 Part 13 and 13A. A complete version of the EPBC Act can be found on the DEWHA website.

Part 13

Division 1 Listed threatened species Section 208A Minister may accredit plans or regimes	DEWHA assessment of the WA Pearl Oyster Fishery
<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"> i. made by a State or self-governing Territory; and ii. in force under a law of the State or self-governing Territory; <p>if satisfied 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>(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 management regime for the Pearl Oyster Fishery is in force under the <i>WA Pearling Act 1990</i> and the <i>WA Pearling (General) Regulations 1991</i>.</p> <p>The Management regime for the Pearl Oyster Fishery was accredited in September 2003. The management regime for the Pearl Oyster Fishery has not significantly changed since this accreditation was granted. Consequently, a new Part 13 declaration is not needed at this time and DEWHA considers that the management regime in place takes all reasonable steps to ensure that members of listed threatened species are not killed or injured as a result of fishing.</p> <p>The submission provided by DFWA indicates that there have been no reported interactions with listed threatened species in the Pearl Oyster Fishery over the past 5 years. Therefore, DEWHA considers the current operation of the fishery is not likely to adversely affect the</p>

	survival or recovery in nature of any listed threatened species in the medium term.
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Division 2 Migratory species Section 222A Minister may accredit plans or regimes	DEWHA assessment of the WA Pearl Oyster Fishery
<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"> i. made by a State or self-governing Territory; and ii. in force under a law of the State or self-governing Territory; <p>if satisfied 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>(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 management regime for the Pearl Oyster Fishery is in force under the <i>WA Pearling Act 1990</i> and the <i>WA Pearling (General) Regulations 1991</i>.</p> <p>The Management regime for the Pearl Oyster Fishery was accredited in September 2003. The management regime for the Pearl Oyster Fishery has not significantly changed since this accreditation was granted. Consequently, a new Part 13 declaration is not needed at this time and DEWHA considers that the management regime in place takes all reasonable steps to ensure that members of listed migratory species are not killed or injured as a result of fishing.</p> <p>The submission provided by DFWA indicates that there have been no reported interactions with listed migratory species in the Pearl Oyster Fishery over the last 5 years. Therefore, DEWHA considers the current operation of the fishery is not likely to adversely affect the conservation status of a listed migratory species or a population of that species in the medium term.</p>

Division 3 Whales and other cetaceans Section 245 Minister may accredit plans or regimes	DEWHA assessment of the WA Pearl Oyster Fishery
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<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"> i. made by a State or self-governing Territory; and ii. in force under a law of the State or self-governing Territory; <p>if satisfied 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>(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 management regime for the Pearl Oyster Fishery is in force under the <i>WA Pearling Act 1990</i> and the <i>WA Pearling (General) Regulations 1991</i>.</p> <p>The Management regime for the Pearl Oyster Fishery was accredited in September 2003. The management regime for the Pearl Oyster Fishery has not significantly changed since this accreditation was granted. Consequently, a new Part 13 declaration is not needed at this time and DEWHA considers that the management regime in place takes all reasonable steps to ensure that cetaceans are not killed or injured as a result of fishing.</p> <p>The submission provided by DFWA indicates that there have been no reported interactions with whales and other cetaceans in the Pearl Oyster Fishery over the last 5 years.</p> <p>The PPA has put a whale management policy and protocol in place to reduce any possible interactions that may occur. Therefore, DEWHA considers the current operation of the fishery is not likely to adversely affect the conservation status of a species of cetacean or a population of that species in the medium term.</p>
<p>Division 4 Listed marine species Section 265 Minister may accredit plans or regimes</p>	<p>DEWHA assessment of the WA Pearl Oyster Fishery</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"> i. made by a State or self-governing Territory; and ii. in force under a law of the State or self-governing Territory; <p>if satisfied 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 management regime for the Pearl Oyster Fishery is in force under the <i>WA Pearling Act 1990</i> and the <i>WA Pearling (General) Regulations 1991</i>.</p> <p>The Management plan for the Pearl Oyster Fishery was accredited in September 2003. The management arrangements for the Pearl Oyster Fishery have not significantly changed since this accreditation was granted. Consequently, a new Part 13 declaration is not needed at this time and DEWHA considers that the management regime in place takes all reasonable steps to ensure that members of listed marine species are not killed or injured as a result of fishing.</p> <p>The submission provided by DFWA indicates that there have been no reported interactions with listed marine species in the Pearl Oyster Fishery over the last 5 years. Therefore, DEWHA considers the current operation of the fishery is not likely to adversely affect the conservation status of a listed marine species or a population of that species in the medium term.</p>
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Section 303AA Conditions relating to accreditation of plans, regimes and policies	DEWHA assessment of WA Pearl Oyster Fishery
(1) This section applies to an accreditation of a plan, regime or policy under section 208A, 222A, 245 or 265.	DEWHA recommends that Pearl Oyster Fishery accreditations under sections 208A, 222A, 245 and 265 remain.
<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"> (a) during a particular period; or (b) while certain circumstances exist; or (c) while a certain condition is complied with. 	The accreditation under section 208A, 222A, 245 and 265 does not specify conditions.

In such a case, the instrument of accreditation is to specify the period, circumstances or condition.	
(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 303DC Minister may amend list	DEWHA assessment of the WA Pearl Oyster 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"> (a) including items in the list; (b) deleting items from the list; or (c) imposing a condition or restriction to which the inclusion of a specimen in the list is subject; or (d) varying or revoking a condition or restriction to which the inclusion of a specimen in the list is subject; or (e) correcting an inaccuracy or updating the name of a species. 	
<p>(3) Before amending the list referred to in section 303DB (list of exempt native specimens), the Minister:</p> <ul style="list-style-type: none"> (a) must consult such other Minister or Ministers as the Minister considers appropriate; and (b) must consult such other Minister or Ministers of each State and self-governing Territory as the Minister considers appropriate; and (c) may consult such other persons and organisations as the Minister considers appropriate. 	<p>The public comment period on the DFWA submission sought comment on the annual reports for the Pearl Oyster Fishery and provided sufficient opportunity for consultation with other persons and organisations.</p> <p>Two public comments were received for the Pearl Oyster Fishery which contained no concerns for the fishery, the public comments focused on emphasising the fishery as being well managed and sustainable. Public comments were taken into account when considering the outcome of the assessment of the fishery against parts 13 and 13A of the EPBC Act.</p>

	A letter to the WA Minister of Fisheries Norman Moore advises him of the intention to declare the fishery exempt from the export provisions of the EPBC Act.
(5) A copy of an instrument made under section 303DC is to be made available for inspection on the Internet.	The instrument for the Pearl Oyster Fishery made under sections 303DC will be gazetted and made available on the DEWHA website.

Part 16

Section 391 Minister must consider precautionary principle in making decisions	DEWHA assessment of the WA Pearl Oyster Fishery
(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.	The precautionary principle must be considered when making a decision to include specimens on the List of Exempt Native Specimens (LENS).
(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.	

Objects of Part 13A

- (a) to ensure that Australia complies with its obligations under the Convention of International Trade in Endangered Species of Wild Fauna and Flora (CITES) 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.

Final recommendations to Department of Fisheries WA (DFWA) for the WA Pearl Oyster Fishery

The material submitted by DFWA indicates that the Pearl Oyster Fishery operates in accordance with the Australian Government *Guidelines for the Ecologically Sustainable Management of Fisheries 2nd Edition*. DEWHA considers that the fishery is well managed and unlikely to have an unacceptable or unsustainable impact on the environment in the medium term. Overall, DEWHA recognises the benign method of fishing along with the input and output controls in place, such as the Total Allowable Catch (TAC) with Individual Transferable Quotas (ITQ's), limited fishing licences and minimum and maximum size limits are conservative and suggest that the fishery is being managed in an ecologically sustainable way.

In making its assessment, DEWHA considers that the range of management measures are sufficient to ensure that the fishery is conducted in a manner that does not lead to over-fishing and that stocks are not currently overfished. Taking into account the benign method of fishing along with the input and output controls in place, such as the TAC with ITQ's, limited fishing licences and minimum and maximum size limits, DEWHA considers that fishing operations are managed to minimise their impact on the structure, productivity, function and biological diversity of the ecosystem.

DEWHA is satisfied that the fishery will not be detrimental to the survival or conservation status of the taxon to which it relates in the medium term. Similarly, it is not likely to threaten any relevant ecosystem in the short to medium term. To contain and minimize the risks in the longer term the recommendations listed below have been made. DEWHA believes that product taken in the fishery should be exempt from the export controls of Part 13A of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act), with that exemption to be reviewed in 5 years.

DEWHA considers that the operation of the fishery does not, or is not likely to, adversely affect the survival in nature of a listed threatened species or population of that species, or the conservation status of a listed migratory species, cetacean or listed marine species or a population of any of those species. DEWHA also considers that under the management regime, operators are required to take all reasonable steps to avoid the killing or injuring of protected species², and the level of interaction under current fishing operations is very low.

For these reasons, the management regime was accredited under Part 13 of the EPBC Act in September 2003. Since there have been no significant changes to the management regime since the initial assessment of the fishery, DEWHA considers that the existing Part 13 accreditation remains valid.

Recommendations are provided below with a brief explanation of the related issue/intent. Unless a specific time frame is provided in the recommendation each must be addressed within the life of the declaration (5 years).

² 'Protected species' means all species listed under Part 13 of the EPBC Act, including whales and other cetaceans and threatened, marine and migratory species.

Table 4: WA Pearl Oyster Fishery Assessment– Summary of Issues and Recommendations

	Issue	Recommendation
1	<p><u>General Management</u></p> <p>Export decisions relate to the arrangements in force at the time of the decision. In order to ensure that these decisions remain valid and export approval continues uninterrupted, DEWHA 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><i>Recommendation 1:</i></p> <p>Operation of the Pearl Oyster Fishery to be carried out in accordance with the management regime in force under the <i>WA Pearling Act 1990</i> and the <i>WA Pearling (General) Regulations 1991</i>.</p> <p><i>Recommendation 2:</i></p> <p>The Department of Fisheries Western Australia (DFWA) to inform the Department of the Environment, Water, Heritage and the Arts (DEWHA) of any intended amendments to the management arrangements that may affect the criteria on which EPBC Act decisions are based.</p>
2	<p><u>Annual Reporting</u></p> <p>It is important that reports be produced and presented to DEWHA annually in order for the performance of the fishery and progress in implementing the recommendations in this report and other managerial commitments to be monitored and assessed throughout the life of the declaration.</p> <p>Annual reports should include: a description of the fishery; management arrangements in place; research and monitoring outcomes; 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 which it operates; and information outlining progress in implementing conditions and recommendations resulting from the previous accreditation of the fishery (for a complete description of annual reporting</p>	<p><i>Recommendation 3:</i></p> <p>DFWA to produce and present reports to DEWHA annually as per Appendix B to the <i>Guidelines for the Ecologically Sustainable Management of Fisheries - 2nd Edition</i>.</p>

	<p>requirements, see Appendix B of the Guidelines for the Ecologically Sustainable Management of Fisheries - 2nd Edition available from the DEWHA website at http://www.environment.gov.au/coasts/fisheries/publications/guidelines.html).</p>	
3	<p><u>Inactive Fishing Zones</u></p> <p>A recommendation of the previous export approval highlighted arrangements that DEWHA would encourage to be utilised should fishing commence in Zone 4.</p> <p>DFWA have advised that fishing has not commenced in Zone 4 and that the TAC has remained at zero. DEWHA also notes the recommendation by industry and DFWA to remove the zone permanently from the fishery. Exploratory fishing has shown that stocks in zone 4 are not commercially viable.</p> <p>Until this removal is effected in legislation, DEWHA considers this recommendation should remain in case fishing commences in Zone 4. Should the removal of the zone come into force through an appropriate legislative instrument, this recommendation will become invalid.</p>	<p><i>Recommendation 4:</i></p> <p>Should fishing commence in Zone 4, DFWA to include Zone 4 in the assessment program for the fishery to ensure a reliable biological assessment of stock status is established, including performance measures, and that fishing is managed in an ecologically sustainable manner.</p>
4	<p><u>Compliance and Enforcement</u></p> <p>While a compliance program currently exists for the Pearl Oyster Fishery, DEWHA considers it a high priority for continued improvement of effective compliance and enforcement mechanisms. This ensures that any input and output controls which are in place are being monitored and implemented effectively and lawfully.</p> <p>DFWA in conjunction with the pearling industry have undertaken management initiatives with a view to ensuring a sustainable fishery and pearling industry well into the future. In January 2008 an independent review of the Pearl Oyster Fishery compliance program was completed by the New Zealand Ministry of Fisheries, <i>Western Australia Pearling Industry, An Independent Review of the Compliance Programme</i>. The review examined key components of the fishery's compliance program including</p>	<p><i>Recommendation 5:</i></p> <p>DFWA to consider the recommendations from the <i>Western Australia Pearling Industry, An Independent Review of the Compliance Programme</i> and implement those recommendations as appropriate.</p>

<p>legislation, wild stock harvesting, voluntary compliance and the pearl industry compliance strategy, and identified priority areas that needed to be addressed.</p> <p>A number of recommendations were made as part of the independent review such as the implementation of a Vessel Monitoring System, electronic daily reporting as well as clearly defined offences and penalties. DEWHA commends DFWA for the completion of the independent review of the Pearl Oyster Fishery compliance program and recommends that the implementation of these recommendations should be completed as a matter of priority. Detail of the implementation of the recommendations from the review should be reported against as part of DFWA's annual State of the Fisheries Report.</p>	
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Acronyms

CITES	Conservation of International Trade and Endangered Species of Wild Fauna and Flora
DEH	Department of Environment and Heritage
DEWHA	Department of the Environment, Water, Heritage and the Arts
DFWA	Department of Fisheries, Western Australia
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
ESD	Ecologically Sustainable Development
FRM Act	<i>Fish Resources Management Act 1994</i>
ITQs	Individual Transferable Quotas
LENS	List of Exempt Native Specimens
OOD	Oyster Oedema Disease
PIAC	Pearling Industry Advisory Committee
PPA	Pearl Producers Association
TAC	Total Allowable Catch
WA	Western Australia