



Australian Government

Department of Sustainability, Environment, Water, Population and Communities

Assessment of the
New South Wales Lobster Fishery

MARCH, 2012

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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 – 2nd 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 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 Sustainability, Environment, Water, Population and Communities or the Australian Government.

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Table 1: Summary of the New South Wales Lobster Fishery

Publicly available information relevant to the fishery	<ul style="list-style-type: none">• New South Wales (NSW) <i>Fisheries Management Act 1994</i>• NSW <i>Fisheries Management (General) Regulation 2010</i>• NSW <i>Fisheries Management (Supporting Plan) Regulation 2006</i>• NSW <i>Fisheries Management (Lobster Share Management Plan) Regulation 2000</i>• Fishery Management Strategy for the NSW Lobster Fishery – February 2007• Lobster Fishery Environmental Impact Statement – December 2004• Total Allowable Catch Committee – Report and Determination for 2011-12, Rock Lobster Fishery – June 2011• Submission to the Department of the Sustainability, Environment, Water, Population and Communities on behalf the NSW fishing industry seeking ongoing export approval for the NSW Lobster Fishery – January 2012• Department of the Environment and Water Resources – Assessment of the NSW Lobster Fishery – March 2007
Area	<p>The NSW Lobster Fishery operates in NSW and Commonwealth waters off the NSW coast from the Queensland border to the Victorian border (Figure 1). There are a number of marine parks and aquatic reserves which prohibit commercial fishing within parts of the fishery area.</p> <p>Under an Offshore Constitutional Settlement agreement between the Australian Government and the NSW Government, the fishery is managed by the NSW Department of Primary Industries under NSW legislation.</p>



Figure 1: Map of the NSW Lobster Fishery (Source: NSW Department of Primary Industries 2007).

<p>Target Species</p>	<p>The NSW Lobster Fishery targets eastern rock lobster (<i>Sagmariasus verreauxi</i>).</p> <p>Eastern rock lobsters inhabit rocky reef and sandy substrates to 200 metres in depth from southern Queensland to Port MacDonnell in South Australia (including around Tasmania) (Rowling <i>et al.</i> 2010). Female lobsters mature at between 14 centimetres and 18 centimetres carapace length. Each female can carry between 400,000 to two million eggs which she releases in early to mid summer. From hatching, lobsters take approximately three to five years to reach the minimum legal size limit whereby they are available for harvest in the NSW Lobster Fishery. Spawning occurs from September to January (spring to summer) each year in depths less than 50 metres (NSW Department of Primary Industries 2007).</p>
<p>Fishery status</p>	<p>The 2008/09 <i>Status of Fisheries Resources in NSW</i> reports the eastern rock lobster stock is fully fished. Classifying a stock as fully fished indicates that the stock is being fished at a level whereby it is biologically sustainable.</p>

Byproduct Species	<p>The following lists the reported catch weights for prescribed byproduct species in the NSW Lobster Fishery for 2009/10 as reported in the NSW Department of Primary Industries 2011 submission:</p> <table border="1"> <thead> <tr> <th><i>Common name</i></th><th><i>Reported catch (kilograms)</i></th></tr> </thead> <tbody> <tr><td>*southern rock lobster</td><td>-</td></tr> <tr><td>*painted rock lobster</td><td>-</td></tr> <tr><td>banded (bar) rockcod</td><td>5</td></tr> <tr><td>blind shark</td><td>-</td></tr> <tr><td>catfish</td><td>-</td></tr> <tr><td>catsharks and swellsharks</td><td>519</td></tr> <tr><td>wrasse spp.</td><td>17</td></tr> <tr><td>cuttlefish</td><td>-</td></tr> <tr><td>eastern red scorpionfish</td><td>158</td></tr> <tr><td>eastern wirrah</td><td>494</td></tr> <tr><td>foxfish and pigfish</td><td>28</td></tr> <tr><td>hermit crabs</td><td>-</td></tr> <tr><td>leatherjacket spp.</td><td>8799</td></tr> <tr><td>ocean perch</td><td>34</td></tr> <tr><td>octopus</td><td>257</td></tr> <tr><td>redfish</td><td>189</td></tr> <tr><td>silver trevally</td><td>15</td></tr> <tr><td>slipper lobster</td><td>33</td></tr> <tr><td>silver sweep</td><td>-</td></tr> <tr><td>striped trumpeter</td><td>-</td></tr> <tr><td>wobbegong shark</td><td>68</td></tr> </tbody> </table> <p>*These species are recorded as part of the total lobster catch and therefore individual species catch weights are not known, however the department has been advised by NSW Department of Primary Industries that they represent less than 1 per cent of total lobster catch.</p> <p>Take of byproduct species is restricted by bag limits and minimum legal size limits as set out in Part 2 of the NSW <i>Fisheries Management (General) Regulation 2010</i>. In particular, retention of wobbegong shark species is restricted to a six carcass daily catch limit of any, or any combination of, wobbegong shark species.</p> <p>Leatherjackets are the primary byproduct species retained in the NSW Lobster Fishery due to the type of gear used (traps). The 2008/09 <i>Status of Fisheries Resources in NSW</i> reports that the abundance of the most commonly caught species of leatherjacket (<i>Nelusetta ayraudi</i>) has increased significantly since 1999/2000. The majority of catch (approximately 600 tonnes in 2008/09) is taken in the NSW Ocean Trap and Line Fishery.</p> <p>Commercial fishers cannot retain byproduct species (other than southern and painted rock lobster species) while fishing in waters of less than 10 metres in depth (NSW Department of Primary Industries 2007).</p> <p>The NSW Department of Primary Industries advised that byproduct was only retained in less than 7 per cent of fishing operations in the 2009/10 period.</p>	<i>Common name</i>	<i>Reported catch (kilograms)</i>	*southern rock lobster	-	*painted rock lobster	-	banded (bar) rockcod	5	blind shark	-	catfish	-	catsharks and swellsharks	519	wrasse spp.	17	cuttlefish	-	eastern red scorpionfish	158	eastern wirrah	494	foxfish and pigfish	28	hermit crabs	-	leatherjacket spp.	8799	ocean perch	34	octopus	257	redfish	189	silver trevally	15	slipper lobster	33	silver sweep	-	striped trumpeter	-	wobbegong shark	68
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Gear	<p>Commercial fishers are permitted to use both inshore and offshore lobster traps.</p> <p>Inshore lobster traps can only be used in waters up to 10 metres and have either a rectangular base (rectangular trap) not exceeding 1.2 metres by 1.2 metres or a circular base (small beehive trap) not exceeding 1.2 metres in diameter¹. They cannot contain any compartments or materials that would obstruct free movement of lobsters within the trap.</p> <p>Offshore lobster traps are used in waters greater than 10 metres in depth, are not permitted to exceed 2 metres in length, width or depth, consist of mesh (having a measurement from one plain wire to the opposite plain wire of not less than 50 millimetres) and can not contain any compartments or materials that would obstruct free movement of lobsters within the trap.</p> <p>Recreational fishers are permitted to dive (without the aid of an underwater breathing apparatus), or use a single trap to a depth of up to 10 metres (NSW Department of Primary Industries 2007). These traps are very similar to the above mentioned inshore lobster traps used by commercial fishers.</p>
Season	<p>Prior to the 2011/12 fishing season, the fishing period for the NSW Lobster Fishery commenced on 1 July and closed on 30 June the following year. Due to a recent request from industry representatives to better align the fishing season with productive fishing (instead of with the financial year), the NSW Minister for Primary Industries, the Hon Katrina Hodgkinson, determined the 2011/12 season to be open from 1 July 2011 and will end 31 July 2012. In the future, the fishing period is likely to commence 1 August and end on the following 31 July, subject to continual monitoring.</p> <p>The NSW Department of Primary Industries has advised that the Total Allowable Catch Committee factored the new fishing period into the 2011/12 total allowable commercial catch setting process.</p>
Commercial harvest 2010/11	The commercial harvest for the 2010/11 season was 129.4 tonnes which represents 98.7 per cent of the total allowable commercial catch.
Value of commercial harvest 2010/11	\$7.7 million (based on Sydney Fish Market prices).

¹ NSW Fisheries Management (Lobster Share Management Plan) Regulation 2000

Take by other sectors	<p>No other commercial fisheries in NSW are permitted to land eastern rock lobsters and if they are caught as bycatch they must be returned to the water alive (NSW Department of Primary Industries 2007). Small quantities of eastern rock lobsters are taken as byproduct in Victorian, Tasmanian and South Australian rock lobster fisheries.</p> <p>Recreational catch is suggested to be less than 30 tonnes (Rowling <i>et al.</i> 2010). The Total Allowable Catch Committee estimate recreational catches to be 10 per cent of the total commercial landings and as such they incorporate this value into population models used for setting the annual total allowable commercial catch.</p> <p>Illegal catch estimates are not available for the NSW Lobster Fishery. The Total Allowable Catch Committee does, however, account for illegal take in their annual total allowable commercial catch setting process by using an illegal catch estimate of 8.5 per cent of the total commercial catch.</p> <p>Indigenous people operate under specific traditional practices permits or in accordance with recreational regulations. In 2010, seven permits were issued for cultural fishing purposes. No estimate of take is available for the Indigenous sector. However it is believed to be low.</p>
Commercial licences issued	<p>There were 104 shareholders in the fishery (as at December 2011) with 92 shareholders endorsed to operate (i.e. they hold the minimum amount of shares to allow fishing to occur – 55 shares).</p>

Management arrangements	<p>The fishery is managed by the NSW Department of Primary Industries under the:</p> <ul style="list-style-type: none"> • NSW <i>Fisheries Management Act 1994</i> • NSW <i>Fisheries Management (General) Regulation 2010</i> • NSW <i>Fisheries Management (Supporting Plan) Regulation 2006</i>, and • NSW <i>Fisheries Management (Lobster Share Management Plan) Regulation 2000</i>. <p>The NSW <i>Fisheries Management (General) Regulation 2002</i> was automatically repealed on 1 September 2010 and replaced with the NSW <i>Fisheries Management (General) Regulation 2010</i>.</p> <p>A resource assessment for eastern rock lobsters is conducted annually using a range of information from both fishery dependent and independent data sources. The assessment incorporates commercial catch data, results from programs monitoring spawning stock abundance and settlement of post-larval lobsters and spatial and temporal trends. Each year an annual total allowable commercial catch limit is set based on the above mentioned information.</p> <p>Management controls currently in place for the fishery include:</p> <p><u>Output controls</u></p> <ul style="list-style-type: none"> • total allowable commercial catch limits (149 tonnes for 2011/12 season acknowledging it is a 13 month period) • individual transferable quotas • mandatory tagging of commercially harvested lobsters • recreational possession limit of two rock lobsters (eastern and southern rock lobsters combined) • minimum and maximum size limits for eastern rock lobsters (104 millimetres and 180 millimetres carapace length, respectively, applies to all harvest sectors) • prohibition on the take of egg-bearing females (applies to both commercial and recreational sectors) • a six carcass daily catch limit on wobbegong shark (<i>Orectolobus</i> spp.), and • limits on byproduct (refer to Byproduct above). <p><u>Input controls</u></p> <ul style="list-style-type: none"> • limited entry (limited to shareholders in the fishery who hold a number of shares greater than the prescribed minimum shareholding) • area closures (marine parks and aquatic reserves) • gear restrictions, and • prohibition on the use of underwater breathing apparatus to take lobsters (both commercial and recreational).
Export	<p>The Total Allowable Catch Committee reported that there is only a minor export market (13 per cent of 2010/11 catch) for NSW lobsters with the greatest amount being exported to Hong Kong, China and Japan (Total Allowable Catch Committee 2011).</p>

Bycatch	<p>The fishery only harvests relatively low quantities of bycatch. This can be attributed to the relatively selective gear design and benign nature of the operation. Bycatch is mainly composed of non-retainable lobsters (undersized lobsters or berried females), hermit crabs, octopus and some shark species (NSW Department of Primary Industries 2004). Due to their hard shells, hermit crabs are likely to have a low mortality associated with discarding and as such have been awarded a high to intermediate resilience to fishing in the <i>Lobster Fishery Environmental Impact Statement</i>. Also due to the small amount of discards of other bycatch species and output controls in place for wobbegong sharks, the fishery is likely to have a negligible effect of discarding on these populations.</p>
Interaction with Protected Species²	<p>The <i>Lobster Fishery Environmental Impact Statement</i> summarises the risk toward protected species including dolphins, whales and turtles as low due to the selectivity of the gear.</p> <p>Since 2005, reporting of threatened species interactions for all commercial fishers in NSW has been mandatory. There were no reported interactions with protected species in the most recent fishing season in the NSW Lobster Fishery.</p> <p>The NSW Department of Primary Industries has advised that a two year observer program, which included monitoring of any protected species interactions, has recently been completed in the fishery. Results of the program are currently being compiled. The NSW Department of Primary Industries advises that a report of the outcomes will become publicly available.</p>
Ecosystem Impacts	<p>The <i>Lobster Fishery Environmental Impact Statement</i> assessed impacts caused by the removal of lobsters to the physical ecosystem as low due to the harvesting method employed in the fishery (traps and recreational hand harvesting).</p>

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 2: Progress in implementation of recommendations made in the 2007 assessment of the New South Wales Lobster Fishery

Recommendation	Progress	Recommended Action
1. NSW DPI to advise DEW of any material change to the NSW Lobster Fishery's management arrangements that could negatively affect the assessment of the fishery against the EPBC Act criteria, within three months of that change being made.	The NSW Department of Primary Industries has informed the department of all management changes over the course of the last export approval, including changes to the reporting requirements for commercial fishers and changes to the catch limits applying to wobbegong sharks.	<p>The Department of Sustainability, Environment, Water, Population and Communities considers that this recommendation has been met.</p> <p>The department recommends that this action be continued (see Recommendation 2, Table 4).</p>

Recommendation	Progress	Recommended Action
<p>2. NSW DPI to monitor the spatial population structure of the eastern rock lobster stock and trends in effort at an appropriate scale and, as required, implement management measures to minimise the risk of localised depletion and to inform the TACC setting process.</p>	<p>The NSW Department of Primary Industries has advised the department that the Total Allowable Catch Committee continues to review and set the total allowable commercial catch annually. The committee gives consideration to a range of information including spatial and temporal trends of the spawning stock biomass in order to maintain the stock at viable levels.</p> <p>Data from a fishery independent monitoring program measuring the spawning stock abundance has identified that a large proportion of the spawning aggregation is typically found in the northern area of the fishery. From 2000/01 to 2003/04, when the fishery experienced a period of decreased catch rates for lobsters across the far-north and mid-north coasts, the committee recommended amendments to the management arrangements aimed at protecting the spawning stock. This included setting reduced total allowable commercial catch limits and reducing the maximum legal size limits (Total Allowable Catch Committee 2011). The north coast spawning stock has increased substantially since then with 2010/11 catch rates reaching the highest level since monitoring began in 1998/99. The committee reports that there are now an increased number of mature female lobsters which are larger than the maximum legal size limit and are protected from harvest.</p> <p>The department considers that the management arrangements in place for the NSW Lobster Fishery adequately control the risk of localised stock depletion. The department also considers that the committee is monitoring the spatial structure of the spawning stock biomass and responding to stock trends as appropriate.</p>	<p>The department considers that this recommendation has been met.</p>

Recommendation	Progress	Recommended Action
<p>3. NSW DPI to modify the Lobster Fishery catch recording system to record and monitor landings of all other species taken in the lobster traps and retained, including records for separate species, within 1 year. Appropriate support for byproduct reporting should be provided to fishers including guides to species identification and information on the importance of complete and accurate reporting.</p>	<p>In July 2009, the NSW Department of Primary Industries informed the department that revised catch and effort reporting arrangements had been introduced for a number of their commercial fisheries.</p> <p>The revised <i>Lobster Fishery Catch and Effort</i> logbooks require mandatory reporting of all species taken in the NSW Lobster Fishery whilst also requiring finer spatial and temporal reporting. The NSW Department of Primary Industries reports that the improved method of reporting allows for streamlined and effective auditing between reported landings (logbooks) and fish receiver data.</p> <p>Given the low level of byproduct in the NSW Lobster Fishery the department considers that the revised logbooks provide adequate information collection for management of this fishery.</p>	<p>The department considers that this recommendation has been met.</p>

Table 3: The Department of Sustainability, Environment, Water, Population and Communities’ assessment of the New South Wales Lobster Fishery against the requirements of the EPBC Act related to decisions made under Parts 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 13 and 13A. A complete version of the EPBC Act can be found on the department’s website.

Part 13

Division 1 Listed threatened species Section 208A Minister may accredit plans or regimes	The department’s assessment of the New South Wales Lobster 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> <ol 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 New South Wales (NSW) Lobster Fishery will be managed under the:</p> <ul style="list-style-type: none"> • <i>NSW Fisheries Management Act 1994</i> • <i>NSW Fisheries Management (General) Regulation 2010</i> • <i>NSW Fisheries Management (Supporting Plan) Regulation 2006</i>, and • <i>NSW Fisheries Management (Lobster Share Management Plan) Regulation 2000</i>. <p>The management regime for the NSW Lobster Fishery, in force under the <i>NSW Fisheries Management (Lobster Share Management Plan) Regulation 2000</i>, the <i>NSW Fisheries Management (General) Regulation 2002</i> and the <i>NSW Fisheries Management Act 1994</i>, was accredited under Part 13 of the EPBC Act in March 2007. In 2010, the <i>NSW Fisheries Management (General) Regulation 2002</i> was replaced with the <i>NSW Fisheries Management (General) Regulation 2010</i>. Amendments made to the regulation, summarised in the NSW Department of Primary Industries’ application, are largely administrative. The department considers that the management regime for the NSW Lobster Fishery still requires operators to take all reasonable steps to ensure that listed threatened species are not killed or injured as a result of the fishing.</p> <p>Due to the selectivity of the gear used in the NSW Lobster Fishery, the department considers that the risk of interactions with listed threatened species is low. The NSW Department of Primary Industries advises that no interactions with listed threatened species have been reported in the fishery. Therefore, the department considers the current operation of the NSW Lobster Fishery is not likely to adversely affect the survival or recovery in nature of any listed threatened species.</p>

Part 13 (cont.)

Division 2 Migratory species Section 222A Minister may accredit plans or regimes	The department's assessment of the New South Wales Lobster 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> <ol 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 New South Wales (NSW) Lobster Fishery will be managed under the:</p> <ul style="list-style-type: none"> • <i>NSW Fisheries Management Act 1994</i> • <i>NSW Fisheries Management (General) Regulation 2010</i> • <i>NSW Fisheries Management (Supporting Plan) Regulation 2006</i>, and • <i>NSW Fisheries Management (Lobster Share Management Plan) Regulation 2000</i>. <p>The management regime for the NSW Lobster Fishery, in force under the <i>NSW Fisheries Management (Lobster Share Management Plan) Regulation 2000</i>, the <i>NSW Fisheries Management (General) Regulation 2002</i> and the <i>NSW Fisheries Management Act 1994</i>, was accredited under Part 13 of the EPBC Act in March 2007. In 2010, the <i>NSW Fisheries Management (General) Regulation 2002</i> was replaced with the <i>NSW Fisheries Management (General) Regulation 2010</i>. Amendments made to the regulation, summarised in the NSW Department of Primary Industries' application, are largely administrative. The department considers that the management regime for the NSW Lobster Fishery still requires operators to take all reasonable steps to ensure that listed migratory species are not killed or injured as a result of the fishing.</p> <p>Due to the harvesting method employed in the fishery (trap and recreational hand collection), the likelihood of interactions with listed migratory species is low. Therefore, the department considers that the current operation of the NSW Lobster Fishery is not likely to adversely affect the conservation status of a listed migratory species or a population of that species.</p>

Part 13 (cont.)

Division 3 Whales and other cetaceans Section 245 Minister may accredit plans or regimes	The department's assessment of the New South Wales Lobster 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> <ol 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 New South Wales (NSW) Lobster Fishery will be managed under the:</p> <ul style="list-style-type: none"> • <i>NSW Fisheries Management Act 1994</i> • <i>NSW Fisheries Management (General) Regulation 2010</i> • <i>NSW Fisheries Management (Supporting Plan) Regulation 2006</i>, and • <i>NSW Fisheries Management (Lobster Share Management Plan) Regulation 2000</i>. <p>The management regime for the NSW Lobster Fishery, in force under the <i>NSW Fisheries Management (Lobster Share Management Plan) Regulation 2000</i>, the <i>NSW Fisheries Management (General) Regulation 2002</i> and the <i>NSW Fisheries Management Act 1994</i>, was accredited under Part 13 of the EPBC Act in March 2007. In 2010, the <i>NSW Fisheries Management (General) Regulation 2002</i> was replaced with the <i>NSW Fisheries Management (General) Regulation 2010</i>. Amendments made to the regulation, summarised in the NSW Department of Primary Industries' application, are largely administrative. The department considers that the management regime for the NSW Lobster Fishery still requires operators to take all reasonable steps to ensure that cetaceans are not killed or injured as a result of the fishing.</p> <p>The <i>Lobster Fishery Environmental Impact Statement</i> identifies the risk associated with the operation of the NSW Lobster Fishery to whales and other cetaceans as negligible. The department considers that due to the selective nature of the gear used, interactions are unlikely and 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.</p>

Part 13 (*cont.*)

Division 4 Listed marine species Section 265 Minister may accredit plans or regimes	The department's assessment of the New South Wales Lobster 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> <ol 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 New South Wales (NSW) Lobster Fishery will be managed under the:</p> <ul style="list-style-type: none"> • <i>NSW Fisheries Management Act 1994</i> • <i>NSW Fisheries Management (General) Regulation 2010</i> • <i>NSW Fisheries Management (Supporting Plan) Regulation 2006</i>, and • <i>NSW Fisheries Management (Lobster Share Management Plan) Regulation 2000</i>. <p>The management regime for the NSW Lobster Fishery, in force under the <i>NSW Fisheries Management (Lobster Share Management Plan) Regulation 2000</i>, the <i>NSW Fisheries Management (General) Regulation 2002</i> and the <i>NSW Fisheries Management Act 1994</i>, was accredited under Part 13 of the EPBC Act in March 2007. In 2010, the <i>NSW Fisheries Management (General) Regulation 2002</i> was replaced with the <i>NSW Fisheries Management (General) Regulation 2010</i>. Amendments made to the regulation, summarised in the NSW Department of Primary Industries' application, are largely administrative. The department considers that the management regime for the NSW Lobster Fishery still requires operators to take all reasonable steps to ensure that listed marine species are not killed or injured as a result of the fishing.</p> <p>Information provided by the NSW Department of Primary Industries indicates that there have been no interactions with listed marine species in the NSW Lobster Fishery and the likelihood of interactions with listed marine species is low. Therefore, the department considers that the current operation of the NSW Lobster Fishery is not likely to adversely affect the conservation status of a listed marine species or a population of that species.</p>

Part 13 (*cont.*)

Section 303AA Conditions relating to accreditation of plans, regimes and policies	The department's assessment of the New South Wales Lobster Fishery
(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 regime for the NSW Lobster Fishery be accredited under sections 208A, 222A, 245 and 265.
(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: (a) during a particular period; or (b) while certain circumstances exist; or (c) while a certain condition is complied with. In such a case, the instrument of accreditation is to specify the period, circumstances or condition.	The department considers that no conditions are required for the accreditation of the management regime for the NSW Lobster Fishery under Part 13.
(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 CITES³ 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.

³ 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 New South Wales Lobster 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>(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 NSW Lobster 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 above 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 NSW Lobster Fishery until 30 March 2017 would be consistent with the provisions of Part 13A as:</p> <ul style="list-style-type: none"> ▪ the fishery will not harvest any CITES listed species ▪ there are management arrangements in place to ensure that the resource is being managed in an ecologically sustainable way (see Table 1) ▪ the operation of the NSW Lobster Fishery during the period of the recommended inclusion in the list of exempt native specimens is unlikely to be unsustainable or threaten biodiversity, and ▪ the <i>Environment Protection and Biodiversity Conservation Regulations 2000</i> do not specify fish as a class of animal in relation to the welfare of live specimens.
<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 department considers that the consultation requirements have been met. The application from the NSW Department of Primary Industries was released for public comment from 23 January 2012 to 22 February 2012. The public comment period sought comment on:</p> <ul style="list-style-type: none"> ▪ the proposal to amend the list of exempt native specimens to include product derived from the NSW Lobster Fishery, and ▪ the NSW Department of Primary Industries application for the NSW Lobster Fishery. <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 NSW Lobster Fishery made under section 303DC will be gazetted and made available on the department's website.</p>

Part 16

Section 391 Minister must consider precautionary principle in making decisions	The department's assessment of the New South Wales Lobster 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 has been considered in the preparation of advice in relation to decisions under section 303DC.
(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 recommendations to the New South Wales Department of Primary Industries for the New South Wales Lobster Fishery

The material submitted by the New South Wales (NSW) Department of Primary Industries indicates that the NSW Lobster Fishery operates in accordance with the Australian Government *Guidelines for the Ecologically Sustainable Management of Fisheries - 2nd Edition*.

Stock Status

The NSW Department of Primary Industries undertakes stock status determinations for key species in NSW fisheries annually with biennial reporting. The most recent stock status assessment classifies the eastern rock lobster (lobsters) stock as fully fished which indicates it is being fished at a level whereby it is biologically sustainable (Rowling *et al.* 2010).

A resource assessment for eastern rock lobsters is conducted annually using a range of different information from both fishery dependent and independent data sources. The resource assessment:

- takes into account the quantity, size and sex of lobsters landed in the fishery
- incorporates results from the spawning stock abundance and settlement of post-larval lobsters monitoring programs
- analyses temporal and spatial catch and effort information
- investigates temporal and spatial recruitment indices
- models the predicted fishery populations based on management arrangements, and
- considers alternate harvest strategies.

To protect older mature lobsters from fishing pressures (as they provide a large proportion of egg production), a maximum size limit is in place. To protect future recruitment, fishers are prohibited from taking berried (egg carrying) female lobsters. Juvenile lobsters are protected, and their opportunity to recruit into the fishery increased, by a minimum legal size limit.

Commercial harvest from the NSW Lobster Fishery is restricted through a quota management system. Each year an independent Total Allowable Catch Setting and Review Committee reviews available fisheries information, including the above mentioned resource assessment and monitoring programs, and sets an annual total allowable commercial catch limit.

To maintain the integrity of the quota management system, tags are required to be attached to commercially harvested eastern rock lobsters. Tags distinguish those lobsters taken legitimately by fishers in the NSW Lobster Fishery.

In addition, recreational harvest of lobsters is restricted by a bag limit.

The department considers that the 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.

Ecosystem Impacts

Taking into account the above management measures and the area closures and gear restrictions (trap or recreational hand collection only) in place in the fishery, the department considers that fishing operations are managed to minimise their impact on the structure, productivity, function and biological diversity of the ecosystem.

Conclusion

The department considers 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. To contain and minimise the risks in the longer term, the recommendations listed in Table 4 have been made.

Table 4: The New South Wales Lobster Fishery Assessment – Summary of Issues and Recommendations March, 2012

Issue	Recommendation
<p><u>General Management</u></p> <p>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 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>Recommendation 1:</p> <p>Operation of the New South Wales Lobster Fishery to be carried out in accordance with the New South Wales <i>Fisheries Management (Lobster Share Management Plan) Regulation 2000</i> in force under the New South Wales <i>Fisheries Management Act 1994</i>.</p> <p>Recommendation 2:</p> <p>The New South Wales Department of Primary Industries to inform the Department of Sustainability, Environment, Water, Population and Communities of any proposed substantive changes to the New South Wales Lobster Fishery management arrangements that may affect the criteria on which <i>Environment Protection and Biodiversity Conservation Act 1999</i> decisions are based.</p>
<p><u>Annual Reporting</u></p> <p>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 recommendations in this report and other managerial commitments to be monitored and assessed throughout the life of the declaration. Annual reports should follow Appendix B to the <i>Guidelines for the Ecologically Sustainable Management of Fisheries - 2nd Edition</i> and 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 progress in implementing the department's recommendations. Electronic copies of the guidelines are available from the department's website at http://www.environment.gov.au/coasts/fisheries/publications/guidelines.html</p>	<p>Recommendation 3:</p> <p>The New South Wales Department of Primary Industries to produce and present reports to the Department of Sustainability, Environment, Water, Population and Communities annually as per Appendix B to the <i>Guidelines for the Ecologically Sustainable Management of Fisheries - 2nd Edition</i>.</p>

References

Rowling, K.A. and Hegarty and M. Ives (ed.) (2010) Status of Fisheries Resources in NSW 2008/09. Industry & Investment New South Wales, Cronulla.

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New South Wales Department of Primary Industries (2004) Lobster Fishery Environmental Impact Statement – Public consultation document. New South Wales, Cronulla.

New South Wales Department of Primary Industries (2007) Fishery Management Strategy for the NSW Lobster Fishery. New South Wales, Cronulla.

Acronyms

CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
DEW	Department of Environment and Water
DPI	Department of Primary Industries
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
NSW	New South Wales
TACC	total allowable commercial catch