



Australian Government

Department of the Environment and Water Resources

Assessment of the
NSW Lobster Fishery

March, 2007

© Commonwealth of Australia 2007

This work is copyright. Apart from any use as permitted under the Copyright Act 1968, no part may be reproduced by any process without prior written permission from the Commonwealth, available from the Department of the Environment and Water Resources. Requests and inquiries concerning reproduction and rights should be addressed to:

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

ISBN: 0 642 55265 7

Disclaimer

This document is an assessment carried out by the Department of the Environment and Water Resources of a commercial fishery against the Australian Government *Guidelines for the Ecologically Sustainable Management of Fisheries*. It forms part of the advice provided to the Minister for the Environment and Water Resources 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 and Water Resources or the Australian Government.

While reasonable efforts have been made to ensure that the contents of this report are factually correct, the Australian Government does not accept responsibility for the accuracy or completeness of the contents, and shall not be liable for any loss or damage that may be occasioned directly or indirectly through the use of, or reliance on, the contents of this report. You should not rely solely on the information presented in the report when making a commercial or other decision.

Table 1: Summary of the New South Wales (NSW) Lobster Fishery

<p>Publicly available information relevant to the fishery</p>	<ul style="list-style-type: none"> • <i>Fisheries Management (General) Regulation 2002;</i> • <i>Fisheries Management (Lobster Share Management Plan) Regulation 2000;</i> • <i>Fisheries Management Act 1994;</i> • <i>Lobster Fishery Environmental Impact Statement (Lobster EIS);</i> • <i>Total Allowable Catch Committee Rock Lobster Fishery Report and Determination for 2006-07;</i> • <i>Fisheries Management Strategy for the NSW Lobster Fishery February 2007 (Lobster FMS);</i> • <i>Summary of Submissions and Preferred Strategy Report for the NSW Lobster Fishery, December 2005;</i> and • Department of Environment and Water Resources'* (DEW) <i>Assessment of the NSW Lobster Share Management Fishery, January 2006.</i>
<p>Area</p>	<p>The area of the NSW Lobster Fishery includes waters adjacent to the entire coastline of NSW and out to the outer edge of the continental shelf. Part of the fishery area is in Commonwealth waters, however, the entire fishery is managed by NSW under an Offshore Constitutional Settlement agreement between the Australian Government and the NSW Government.</p>
<p>Fishery status</p>	<p>The Lobster FMS reports eastern rock lobster as fully fished. The Lobster Fishery Total Allowable Catch Committee report for 2006-07 indicates an improving stock status.</p>
<p>Target Species</p>	<p>The fishery targets eastern rock lobster (<i>Jasus verreauxi</i>) under quota management arrangements.</p> <p>Information on the biology of eastern rock lobsters can be found in the initial DEW assessment of the fishery at http://www.environment.gov.au/coasts/fisheries/nsw/lobster/report.html.</p>
<p>Byproduct Species</p>	<p>Unrestricted but small numbers of painted (tropical) rock lobsters (<i>Panulirus ornatus</i> and <i>P. longipes</i>) and southern rock lobsters (<i>J. edwardsii</i>) are taken, but represent less than 1% of the rock lobster harvest.</p> <p>No other species may be retained in depths of less than 10 meters (m) other than the rock lobster species listed above. In deeper water, only species which are not protected or for which there are no legal sizes prescribed in NSW may be retained (unless the operator also holds appropriate endorsements for other fisheries). The main byproduct species taken are hermit crabs (Paguridae), wobbegong sharks (<i>Orectolobus ornatus</i> and <i>O. maculatus</i>), morwong species (Nemadactylidae), redfish (<i>Centroberyx affinis</i>) and leatherjackets (Monacanthidae).</p> <p>NSW Department of Primary Industries (NSW DPI) advises that the <i>Fisheries Management (Lobster Share Management Plan) Regulation 2002</i> is currently being amended to limit the byproduct species caught in deeper waters to those specified in Table 3.3 of the Lobster FMS.</p>

*The Department of the Environment and Water Resources was formerly the Department of the Environment and Heritage.

Gear	The fishery primarily uses rectangular traps and beehive pots, with different restrictions applying if used in 0-10 m or deeper waters. Diving for lobsters is only permitted without the use of any underwater breathing apparatus.
Season	Year round.
Commercial harvest [2004/05]	98.1 tonnes (t). In recent years concerns about the spawning stock and low catches has resulted in a reduced Total Allowable Commercial Catch (TACC). Since then, catches have stabilised and the fishery is showing signs of an improving stock status.
Value of commercial harvest 2004/05	An estimated \$3.8 million.
Take by other sectors	<p>As eastern rock lobsters only occur in sufficient numbers to support fishing in waters adjacent to NSW, no other jurisdictions have interests in the species. No other commercial fisheries in NSW are permitted to land rock lobster.</p> <p>The Lobster TACC Committee assumes a recreational catch of 25.8 t when determining the TACC. Recreational fishers are restricted to the use of one marked trap in a depth of 10 m or less and have a daily bag limit of 2 rock lobsters.</p> <p>The TACC Committee also estimates the illegal and over-quota catch to be 17% of the TACC when determining the final TACC.</p>
Commercial licences issued	128 licensed fishers currently endorsed for lobster fishing. 10,027 shares currently held among 131 shareholders.
Management arrangements	<p>The fishery is managed under the <i>Fisheries Management (General) Regulation 2002</i> and the <i>Fisheries Management (Lobster Share Management Plan) Regulation 2000</i> which give effect to the objectives of the <i>NSW Fisheries Management Act 1994</i>.</p> <p>Management of the fishery is based on a mixture of input and output controls. These controls include:</p> <p><u>Output controls</u></p> <ul style="list-style-type: none"> • TACC and Individual Transferable Quotas (ITQs); • mandatory tagging of all commercially harvested lobsters; • minimum (104 mm carapace length [CL]) and maximum (180 mm CL) lobster size limits for eastern rock lobster; • zero lobster byproduct restriction in all other NSW commercial fisheries; • prohibition on the harvest of berried females; and • daily bag limit of 2 rock lobsters for recreational fishers. <p><u>Input controls</u></p> <ul style="list-style-type: none"> • limited entry (new fishers may enter by buying existing shares and endorsements); • restrictions on pots and traps (sizes, construction, buoying and marking);

	<ul style="list-style-type: none"> • prohibition on the use of underwater breathing apparatus to take lobsters; and • gear limits for recreational fishers.
Export	Mostly sold whole on local fresh seafood market.
Bycatch	Low – surveys indicate a relatively low level of overall bycatch with mainly non-retainable lobsters, hermit crabs, octopus and several scalefish and shark species.
Interaction with Protected Species	Interactions with protected species are thought to be minimal. The Lobster EIS classifies interactions with protected species as low. There is some potential for interactions with dolphins, whales, turtles and seabirds, but there have been no reported incidents.
Ecosystem Impacts	Due to the harvesting method used in the fishery (traps and hand harvesting) impacts to the physical ecosystem are considered to be low. The Lobster FMS includes a management action to develop a code of practice which will address issues such as best practice techniques in disposal of wastes, handling and returning bycatch and use of gear. Additionally the Lobster FMS includes an action to map major lobster fishing grounds to identify areas sheltered from the impacts of lobster fishing.

Table 2: Progress in implementation of conditions and recommendations made in initial assessment of the NSW Lobster Fishery

Condition	Progress	Recommended Action
The FMS for the NSW Lobster Fishery to be finalised and approved by 28 February 2007.	NSW DPI informed DEW on 28 February 2007 that the NSW Minister for Primary Industries had approved the final Lobster FMS. An electronic (pre-published) copy of the approved Lobster FMS was provided to DEW so that an assessment could be completed.	None. DEW considers that this condition has been met. DEW acknowledges that the Lobster FMS needs to undergo editorial changes for final publishing and encourages NSW DPI to undertake this as soon as possible so that it can be easily accessible to the public.
Recommendation	Progress	Recommended Action
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 <i>Environment Protection and Biodiversity Conservation Act 1999</i> (EPBC Act) criteria, within three months of that change being made.	New commercial fishery licensing and management arrangements commenced on 5 February 2007.	<p>The licensing and management changes implemented across NSW fisheries relate to fishing business cards and use of endorsements; transferring of shares; and changes relating to the use of crew. These changes did not require a revised assessment of the fishery.</p> <p>As export decisions relate to the arrangements in force at the time of the decision, DEW needs to be advised of any changes that are made to the management regime in order to ensure that the export determination is still valid. As such DEW recommends that NSW DPI continue to advise of any material changes to the management of the fishery. (Recommendation 1, Table 4).</p>
NSW DPI, within 2 years, to review current arrangements for validating daily lobster landings and other catch and effort data and implement measures to improve the robustness of the data where necessary.	The approved Lobster FMS includes a management response 6.2 (c) which commits to investigate the feasibility, and implement the outcome of introducing arrangements for validating daily lobster landings	None. DEW acknowledges that the Lobster FMS management action commits to investigate the feasibility of introducing arrangements for validating landings and as such addresses DEW's recommendation. DEW considers the validation of catch to be an important measure and encourages NSW DPI to implement this within the timeframe defined in the FMS.

	<p>and other catch and effort data to improve the robustness of data, within 1 year of finalising the FMS.</p> <p>Additionally, management response 7.3 (b) requires periodic review of the mandatory catch and effort return forms submitted by lobster fishers and implementation of changes if the data collected is perceived to be insufficient, with an ongoing timeframe.</p>	
<p>NSW DPI to institute programs to provide appropriate estimates of annual harvests by the recreational and Indigenous sectors and of the illegal and unreported commercial harvests in time for inclusion in the 2007/08 stock assessment and TACC setting processes.</p>	<p>The approved Lobster FMS includes management response 4.1 (a) to refine estimates of total catches of eastern rock lobster, taking into account commercial catch and estimates of recreational, Indigenous and illegal catches for use in stock assessment models within 3 years of approval of the Lobster FMS.</p> <p>As part of this response, NSW DPI will be implementing a system of recording all lobsters sighted in the possession of recreational fishers as part of the Compliance Program Activity Reporting system. Additionally, the strategic research plan outlined in the Lobster FMS includes refining estimates of rock</p>	<p>None. DEW considers that the approved Lobster FMS addresses the requirement to improve estimates of annual harvest of recreational and Indigenous sectors and notes that this action has been included in the strategic research plan as a high priority. DEW acknowledges that the Lobster FMS timeframe is slightly longer than the initial DEW recommendation, but encourages NSW DPI to implement the management response as a priority.</p>

	lobster by recreational fishers (including Indigenous catch) and estimates of illegal lobster catch as high priorities.	
In consultation with the Lobster Management Advisory Committee, NSW DPI to progressively develop and implement appropriate management responses to combat illegal possession and sales of lobsters.	<p>Goal 6 of the Lobster FMS is to facilitate effective and efficient compliance, research and management of the fishery. The management responses under this goal include to utilise and review the compliance strategic plan and share forfeiture scheme; require tags and trap markings; and investigate and implement arrangements for validating daily lobster landings.</p> <p>The Preferred Strategy Report also advises that the NSW Government is considering and implementing appropriate actions in light of the report on illegal fishing for commercial gains in NSW which includes specific recommendations in respect of the lobster resource.</p>	None. While DEW noted in the initial assessment that illegal possession and sales of lobsters is a historic and ongoing concern, the management responses outlined in the approved Lobster FMS appear to provide an adequate compliance approach. DEW expects that NSW DPI will respond appropriately where risks are identified to ensure ongoing adaptive and effective compliance arrangements.
NSW DPI, within 2 years, to review current gear specifications and institute research to determine the optimum dimensions and use of escape gaps and fish escape panels across the fishery and assess the benefits in terms of reduced catches of undersized	The approved Lobster FMS requires under 1.2 (a) the use of escape gaps in lobster traps to be investigated, with research to be undertaken within 2 years of final approval of the FMS and appropriate measures implemented within 18 months of research	<p>None. DEW considers that the approved Lobster FMS commits to investigating escape gaps and fish escape panels which addresses the recommendation.</p> <p>DEW also encourages NSW DPI to consider the relevance of these escape gaps and fish escape panels more broadly across the entire fishery rather than specified depths when investigating the use of escape gaps and fish escape panels. This may be</p>

<p>lobsters and other bycatch. Appropriate measures necessary to minimise bycatch should be implemented within 18 months of the completion of relevant research.</p>	<p>completion. This action is included in the strategic research plan for the fishery.</p> <p>An additional management response 1.2(e) has also been included in the FMS which requires the use of fish escape panels in lobster traps set in waters deeper than 10 m to be investigated within a 3 year timeframe.</p>	<p>particularly relevant for consistent management measures across the fishery and for compliance and enforcement efforts.</p>
<p>NSW DPI to include the requirement for mandatory daily reporting of all byproduct, including separate records for key species, by the start of the 2006/07 lobster fishing season. Appropriate support to be provided, including guides to species identification and information on the importance of complete and accurate reporting.</p>	<p>Management response 2.3 (d) in the approved Lobster FMS commits to modifying the catch recording system to record and monitor landings of all other species taken in the lobster traps (including sharks). The timeframe given is within 1 year of the Lobster FMS approval.</p>	<p>DEW considers this to be an important FMS commitment and therefore reinforces this with a recommendation that NSW DPI modify the Lobster Fishery catch recording system to record and monitor landings of all other species taken in the lobster traps 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 (Recommendation 3, Table 4).</p>
<p>NSW DPI, by 2007/08, to develop and implement monitoring and assessment arrangements sufficient to enable detection of changes in the quantity and/or composition of bycatch over time.</p>	<p>Management response 1.2 (b) of the approved Lobster FMS is to implement a monitoring program to collect information on the quantity and composition of bycatch.</p> <p>The monitoring of bycatch will be incorporated within the periodic observer program which will commence within 18 months and</p>	<p>None. DEW considers that the monitoring of bycatch through the periodic observer program will provide for ongoing monitoring and assessment of bycatch in the lobster fishery. DEW expects NSW DPI to respond appropriately should any deviation occur.</p>

	<p>collect among other things, the magnitude and species composition information on byproduct and bycatch.</p> <p>A performance indicator to assess increases in bycatch has also been included as part of the annual assessment of the fishery.</p>	
<p>NSW DPI to include, as a priority management action, the mapping of lobster fishing grounds and habitat types as a key tool for identifying lobster and other fishery impacts and the need for detailed studies or direct remedial action.</p>	<p>Management response 1.1(e) of the approved Lobster FMS is to map major lobster fishing grounds, assess the level of lobster fishing in each ground and define the areas in the NSW waters open to lobster fishing.</p> <p>While the timeframe given for this action is long term (in excess of 3 years) the Lobster FMS has been amended so as to require that information on key fishing areas and habitats will be sought from fishers within 3 years.</p>	<p>None. DEW is satisfied with the management action outlined in the approved Lobster FMS. DEW is encouraged by the inclusion of information being sought by fishers within 3 years and expects NSW DPI to undertake this action as a priority to ensure fishery impacts are identified and appropriate action is taken to mitigate any adverse impacts.</p>

Table 3: The DEW assessment of the NSW Lobster Fishery against the requirements of the EPBC Act related to decisions made under Parts 13 and 13A

Part 13

Section 208A Minister may accredit plans or regimes	DEW assessment of the NSW Lobster Fishery
<p>Minister may, by instrument in writing, accredit for the purposes of this Division:</p> <p>(e) a plan of management for a fishery made by a State or self-governing Territory and that is in force in the State or Territory;</p> <p>if satisfied that:</p> <p>(d) the plan or regime requires persons engaged in fishing under the plan or regime to take all reasonable steps to ensure that members of listed threatened species are not killed or injured as a result of the fishing; and</p> <p>(e) the fishery to which the plan or regime relates does not, or is not likely to, adversely affect the survival or recovery in nature of the species.</p>	<p>The NSW Lobster Fishery is managed under the <i>Fisheries Management (General) Regulation 2002</i> and the <i>Fisheries Management (Lobster Share Management Plan) Regulation 2000</i> in force under the <i>NSW Fisheries Management Act 1994</i>.</p> <p>The management plan for the NSW Lobster Fishery was accredited in November 2005. The management arrangements for the NSW Lobster Fishery have not significantly changed since this accreditation was granted. However in the initial assessment, only the management plan for the Lobster Fishery was accredited under Part 13 and as the management regime for the fishery is also covered under the <i>NSW Fisheries Management Act 1994</i>, the <i>Fisheries Management (General) Regulation 2002</i> and the <i>Fisheries Management (Lobster Share Management Plan) Regulation 2000</i>, a new Part 13 declaration is required.</p> <p>The Lobster EIS recognises the potential for fishing gear interactions with seabirds and turtles however these were assessed as a low risk. Currently, evidence suggests that the NSW Lobster Fishery only has minimal interactions with listed threatened species. Therefore, DEW considers that 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>

Section 222A Minister may accredit plans or regimes	DEW assessment of the NSW Lobster Fishery
<p>Minister may, by instrument in writing, accredit for the purposes of this Division:</p> <p>(b) a plan of management for a fishery made by a State or self-governing Territory and that is in force in the State or Territory;</p> <p>if satisfied that:</p> <p>(d) the plan or regime requires persons engaged in fishing under the plan or regime 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>(e) the fishery to which the plan or regime relates does not, or is not likely to, adversely affect the survival or recovery in nature of a listed migratory species.</p>	<p>The NSW Lobster Fishery is managed under the <i>Fisheries Management (General) Regulation 2002</i> and the <i>Fisheries Management (Lobster Share Management Plan) Regulation 2000</i> in force under the <i>NSW Fisheries Management Act 1994</i>.</p> <p>The management plan for the NSW Lobster Fishery was accredited in November 2005. The management arrangements for the NSW Lobster Fishery have not significantly changed since this accreditation was granted. However in the initial assessment, only the management plan for the Lobster Fishery was accredited under Part 13 and as the management regime for the fishery is also covered under the <i>NSW Fisheries Management Act 1994</i>, the <i>Fisheries Management (General) Regulation 2002</i> and the <i>Fisheries Management (Lobster Share Management Plan) Regulation 2000</i>, a new Part 13 declaration is required.</p> <p>Currently evidence suggests that the NSW Lobster Fishery has minimal interactions with listed migratory species. The Lobster EIS recognises the potential for fishing gear interactions with whales however it is assessed as a low risk. Therefore, DEW considers the current operation of the NSW Lobster Fishery is not likely to adversely affect the survival or recovery in nature of any listed migratory species.</p>

Section 245 Minister may accredit plans or regimes	DEW assessment of the NSW Lobster Fishery
<p>Minister may, by instrument in writing, accredit for the purposes of this Division:</p> <p>(b) a plan of management for a fishery made by a State or self-governing Territory and that is in force in the State or Territory;</p> <p>if satisfied that:</p> <p>(c) the plan or regime requires persons engaged in fishing under the plan to take all reasonable steps to ensure that cetaceans are not killed or injured as a result of the fishing; and</p> <p>(d) the fishery to which the plan 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 NSW Lobster Fishery is managed under the <i>Fisheries Management (General) Regulation 2002</i> and the <i>Fisheries Management (Lobster Share Management Plan) Regulation 2000</i> in force under the <i>NSW Fisheries Management Act 1994</i>.</p> <p>The management plan for the NSW Lobster Fishery was accredited in November 2005. The management arrangements for the NSW Lobster Fishery have not significantly changed since this accreditation was granted. However in the initial assessment, only the management plan for the Lobster Fishery was accredited under Part 13 and as the management regime for the fishery is also covered under the <i>NSW Fisheries Management Act 1994</i>, the <i>Fisheries Management (General) Regulation 2002</i> and the <i>Fisheries Management (Lobster Share Management Plan) Regulation 2000</i>, a new Part 13 declaration is required.</p> <p>Currently evidence suggests that the NSW Lobster Fishery has minimal interactions with cetaceans. The Lobster EIS recognises the potential for fishing gear interactions with whales and dolphins however both were assessed as a low risk. Therefore, DEW considers the current operation of the NSW Lobster Fishery is not likely to adversely affect the conservation status of a species of cetacean or a population of that species.</p>

Section 265 Minister may accredit plans or regimes	DEW assessment of the NSW Lobster Fishery
<p>Minister may, by instrument in writing, accredit for the purposes of this Division:</p> <p>(b) a plan of management for a fishery made by a State or self-governing Territory and that is in force in the State or Territory;</p> <p>if satisfied that:</p> <p>(c) the plan requires persons engaged in fishing under the plan 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>(d) the fishery to which the plan 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 NSW Lobster Fishery is managed under the <i>Fisheries Management (General) Regulation 2002</i> and the <i>Fisheries Management (Lobster Share Management Plan) Regulation 2000</i> in force under the <i>NSW Fisheries Management Act 1994</i>.</p> <p>The management plan for the NSW Lobster Fishery was accredited in November 2005. The management arrangements for the NSW Lobster Fishery have not significantly changed since this accreditation was granted. However in the initial assessment, only the management plan for the Lobster Fishery was accredited under Part 13 and as the management regime for the fishery is also covered under the <i>NSW Fisheries Management Act 1994</i>, the <i>Fisheries Management (General) Regulation 2002</i> and the <i>Fisheries Management (Lobster Share Management Plan) Regulation 2000</i>, a new Part 13 declaration is required.</p> <p>Currently, evidence suggests that the NSW Lobster Fishery only has minimal interactions with listed marine species. Therefore, DEW considers 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 13A

Section 303DC Minister may amend list	DEW assessment of the NSW Lobster Fishery
<p>Minister may, by instrument published in the Gazette, amend the list referred to in section 303DB (list of exempt native specimens) by:</p> <p>(a) including items in the list;</p>	

<p>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>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 (LENS). 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>DEW considers that the amendment of the LENS to include product taken in the NSW Lobster Fishery would be consistent with the provisions of Part 13A as:</p> <ul style="list-style-type: none"> ▪ the fishery will not harvest any Convention on International Trade in Endangered Species of Wild Fauna and Flora (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 is unlikely to be unsustainable and threaten biodiversity within the next 5 years; and ▪ the EPBC Regulations 2000 do not specify fish as a class of animal in relation to the welfare of live specimens.
<p>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 	<p>The letter to the Hon Ian Macdonald MLC, NSW Minister for Primary Industries, advises him of the intention to declare the fishery exempt from the export provisions of Part 13A of the EPBC Act.</p>

<p>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>	
---	--

Section 303FR Public consultation	DEW assessment of the NSW Lobster Fishery
<p>Before making a declaration under section 303FN, the Minister must cause to be published on the Internet a notice:</p> <p>(a) setting out the proposal to make the declaration; and</p> <p>(b) setting out sufficient information to enable persons and organisations to consider adequately the merits of the proposal; and</p> <p>(c) inviting persons and organisations to give the Minister, within the period specified in the notice, written comments about the proposal.</p>	<p>Under the EPBC Act, a decision to amend the LENS does not require a public consultation period. However, a public notice, which set out the proposal to grant export approval to the NSW Lobster Fishery and included the NSW Lobster Fishery EIS and draft FMS, was released for public comment which closed on 4 February 2005 with 19 submissions received. These comments are relevant to this new assessment and have been taken into account.</p>
<p>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 NSW Lobster Fishery and included the submission for the NSW Lobster Fishery was released for a 30 day public comment period that expired on 4 February 2005.</p>
<p>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>The DEW assessment has considered the public comments received on the submission.</p>

Section 391 Minister must consider precautionary principle in making decisions	DEW assessment of the NSW Lobster Fishery
<p>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>	<p>The Minister for the Environment and Water Resources or Delegate of the Minister must consider the precautionary principle when making a decision to include specimens on the LENS.</p>

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 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.

Recommendations for the NSW Lobster Fishery

The material submitted by NSW DPI indicates that the NSW Lobster Fishery operates in accordance with the Australian Government *Guidelines for the Ecologically Sustainable Management of Fisheries*. DEW considers that the fishery is well managed and unlikely to have an unacceptable or unsustainable impact on the environment in the short to mid term. Overall, DEW recognises that the presence of a TACC and ITQs in the fishery, legal minimum and maximum size limits, and protection of berried female lobsters are conservative and suggest that the fishery is being managed in an ecologically sustainable way.

In making its assessment, DEW 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 close monitoring of take by fishers, the relatively benign fishing methods employed, the comprehensive suite of input and output controls and the wide range of reviewable management objectives, strategies and performance indicators outlined for the fishery, DEW considers that fishing operations are managed to minimise their impact on the structure, productivity, function and biological diversity of the ecosystem. The approval of the Lobster FMS in February 2007 by the NSW Minister for Primary Industries affirms the commitment to manage the fishery in an ecologically sustainable way. In particular the Lobster FMS provides a comprehensive strategic plan with clear goals and objectives and outlines a program for monitoring the performance of the fishery against the management goals. Additionally, management of the fishery has a history of reacting appropriately to threats to sustainability and DEW is confident that NSW DPI, in conjunction with the independent TAC Committee and the industry, will continue to provide high quality management.

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

DEW 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. DEW also considers that under the management plan operators are required to take all reasonable steps to avoid the killing or injuring of protected species, and the level of interaction under current fishing operations is low. For these reasons, the management plan was accredited under Part 13 of the EPBC Act in November 2005. There have been no changes to the management arrangements since the initial assessment of the fishery that affect the assessment. However in the initial assessment, only the management plan for the Lobster Fishery was accredited under Part 13 and as the management regime for the fishery is also covered under the NSW *Fisheries Management Act 1994*, the *Fisheries Management (General) Regulation 2002* and the *Fisheries Management (Lobster Share Management Plan) Regulation 2000*, a new Part 13 declaration is required.

DEW notes that the approved Lobster FMS indicates that the management plan for the Lobster Fishery will be amended to bring into operation any modified or new controls in the fishery that are described in the Lobster FMS. DEW will need to be advised of these changes so that a determination can be made on whether a new decision under Part 13 or 13A is required.

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

Table 4: NSW Lobster Fishery Assessment– Summary of Issues and Recommendations March, 2007

	Issue	Recommendation
1	<p><u>General Management</u> Export decisions relate to the arrangements in force at the time of the decision. In order to ensure that these decisions remain valid, DEW 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.</p> <p>DEW notes that in the approved Lobster FMS the management plan for the Lobster Fishery will be amended to bring into operation any modified or new controls in the fishery that are described in the approved Lobster FMS.</p>	<p>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.</p>
2	<p><u>Spatial management</u> DEW notes that in the 2006-07 Rock Lobster Fishery Total Allowable Catch Committee Report, the Committee indicated that the eastern rock lobster stock and fishery is spatially structured and recommended a more comprehensive approach to management of the fishery should be adopted which gives regard to the north-south dynamic of the fishery.</p> <p>Additionally, DEW considers that the potential risk of localised depletion could occur under the current management arrangements and should be monitored and assessed to minimise this risk.</p> <p>As such DEW considers that NSW DPI should 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 of lobster stock and to inform the TACC setting process.</p>	<p>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>

3	<p><u>Byproduct reporting and identification</u></p> <p>DEW notes the commitment made in the approved Lobster FMS to modify the catch recording system to record and monitor landings of all other species taken in the fishery. DEW considers this action an important measure for ensuring the sustainable management of the fishery and the ongoing assessment of the impact of the fishery on all retained species. As such DEW reinforces the Lobster FMS commitment with a recommendation that NSW DPI implement this action within the 1 year timeframe.</p> <p>DEW also notes that specific measures to assist fishers in identifying byproduct are not specified under management action 2.3 (d). The Lobster FMS in particular notes that there are some species for which correct identification or reporting can be difficult (including different species of leatherjackets). As such DEW continues to consider that appropriate support needs to be provided to fishers including guides to species identification and information on the importance of complete and accurate reporting.</p>	<p>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>
---	--	--

References

NSW Department of Primary Industries (2004) *Lobster Fishery Environment Impact Statement* - Public consultation document, 311 pp, Cronulla, Australia.

Total Allowable Catch Setting and Review Committee (2006) *Total Allowable Catch Committee Rock Lobster Fishery Report and Determination for 2006-07*, 40 pp.

NSW Department of Primary Industries (2007) *Fisheries Management Strategy for the NSW Lobster Fishery February*, 99pp, Cronulla, Australia.

NSW Department of Primary Industries (2005) *Summary of Submissions and Preferred Strategy Report for the NSW Lobster Fishery*, 30 pp, NSW, Australia.

Department of Environment and Water Resources (2006) *Assessment of the NSW Lobster Share Management Fishery*, 29 pp, Canberra, Australia.

Acronyms

CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CL	Carapace length
DEW	Department of the Environment and Water Resources
EIS	Environmental Impact Statement
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
FMS	Fisheries Management Strategy
ITQ	Individual Transferable Quota
LENS	List of Exempt Native Specimens
NSW	New South Wales
NSW DPI	New South Wales Department of Primary Industries
TACC	Total Allowable Commercial Catch