



Factsheet

19b. Commercial Fishing

Western Australia's commercial fisheries are managed in accordance with the environmental and industry constraints imposed on them. Participation in the industry is kept under control by restricting inputs, such as boat numbers and sizes, fishing gear and the length of the fishing season, and / or outputs, such as the amount of fish which may be caught. Most commercial fisheries are fully exploited meaning that few economical viable stocks are available for development. Most commercial fishing in Western Australia is tightly controlled by restricting entry into the industry and is rigorously managed and monitored. Commercial fisheries are primarily managed in accordance with Management Plans made under the **Fisheries Resources Management Act 1994 (WA)** ("FRM Act").

What is Commercial fishing?

Commercial fishing is fishing done for the purpose of sale, or directed at gaining profit.

Who regulates fishing in Western Australia?

Fishing in Western Australia is regulated by a combination of State and Commonwealth laws that deal with different regions. All fisheries within three nautical miles of the coastal baseline ("coastal waters") are protected by State laws. Beyond the three nautical mile zone to the 200 nautical mile exclusive economic zone ("EEZ") the Commonwealth government has the power to regulate fishing ("Commonwealth Marine Area" or "CMA").

However, there is scope for the reallocation of State and Commonwealth responsibility for fisheries, where the State and Commonwealth governments, by agreement are able to entrust their fisheries to each other to make their regulation more practicable and efficient by way of Offshore Constitutional Settlement arrangements. The Commonwealth controls tuna and tuna-like species fisheries and deep-water trawling off the Western Australian coast. Some fisheries overlapping the State's borders are managed by WA under joint authority arrangement. All others are managed by WA out to the edge of the EEZ.

Commonwealth

Fisheries controlled by Commonwealth law comprise:

- The Northern Prawn Fishery;
- The Tuna Fishery;
- Western Deepwater Trawl;
- North-West Slope Trawl; and
- All Export Fisheries.

The area within the EEZ, together with certain offshore island territories (e.g. Cocos Island, Christmas Island), comprise the Australian Fishing Zone ("AFZ"). Other nations may not legally fish within the AFZ except with the permission of the Australian Government. Further, Australia is obliged to utilize and manage all fisheries within the AFZ.

Export fisheries are wild capture fisheries where some or all of the catch is exported out of Australia. Additional requirements for environmental assessment are placed on export fisheries by the Australian Government through wildlife trade legislation found in the *Environmental Protection and Biodiversity Conservation Act (Cth) 1999* ("EPBC Act"). All export fisheries have been assessed for their ecological sustainability and certified in order to maintain their exemption for export. Ecological sustainability audit reports are required from exempted fisheries in order to maintain their authority to export.

State of Western Australia

As a general rule, all fisheries in State waters are subject to the *FRM Act* and indeed, all aquatic organisms, other than protected species. Threatened aquatic species may be protected under State and Commonwealth biodiversity conservation laws; a robust debate exists, where these laws differ, as to which laws have priority. Even as between State legislation there are overlaps in the laws protecting species. Aquatic flowering plants (e.g. seagrasses) and as algae are ‘fish’ for the purposes of the *FRM Act* as well as being protected flora under the *Wildlife Conservation Act 1950*; seagrasses are also ‘native vegetation’ for the purposes of the clearing laws (see [Fact Sheet 7](#)).

How is the regulation of fisheries administered?

Commonwealth

The Australian Fisheries Management Authority (“AFMA”) is an Australian Government body and is legally responsible for the management and sustainable development of all Commonwealth fisheries. The AFMA issues statutory fishing rights to participants to operate in a fishery.

The Australian Government’s Department of Environment and Heritage (“DEH”) may be involved in the assessment of a fishery that has impacts on listed marine species or threatened species under Part 13 of the *EPBC Act*. It also regulates export of native wildlife under Part 13A of the *EPBC Act*. An example of a fishery assessed under both these Parts of the *EPBC Act* is the Western Rock Lobster Fishery.

State

Regulation of commercial fishing in Western Australia may be achieved through exemption (licensing) or a statutory Interim Management Plan or a Management Plan. The *FRM Act* provides for the Minister for Fisheries to make most decisions, which are then implemented by the Fisheries Department through regulations and management plans. The Minister’s general guidelines are reviewed from time to time, but the main detail of the regulation of the industry is in the management plans, which not only regulate commercial fishing, but aim to ensure ecologically sustainable development of the fishery.

The term “fishery” is a useful summary of the characteristics of the fishing activity being managed and describes the collective enterprise of taking fish. As “fish” has a very wide definition under the *FRM Act* - generally, all marine organisms other than aquatic reptiles, birds, mammals and amphibians – most aquatic species are subject to regulation. This includes:

- finfish, e.g. sharks, some rays and bony fish, scalefish (fish with scales);
- crustaceans, e.g. prawns, crayfish;
- shellfish, e.g. scallops, oysters, mussels trochus and also
- octopus and squid.

A fishery is usually defined in terms of:

- the target species (one or more);
- the gear and / or fishing methods used and
- the spatial area e.g. Shark Bay Prawn Fishery.

Fishing regulations are administered by the Department of Fisheries (WA). The complete list of commercial fisheries in WA can be found online at the following website: <http://www.fish.wa.gov.au/sec/com/fisheries/index.php?0206>

The Department manages commercial and recreational fishing in Western Australia within four regions – the West Coast, Gascoyne, South Coast and North Coast. Commercial fishery Management Advisory Committees (“MAS”) advise the Minister on issues pertaining to the sustainability of our major commercial fisheries. The Minister uses Management Plans declared under the *FRM Act* as the tool to regulate commercial fishing.

The Australian Seafood Industry Council (“ASIC”) is the major commercial fishing industry representative and provides a forum for issues affecting the commercial fishing industry.

What controls are placed on commercial fishing in Western Australia?

Specific controls on commercial fishing usually take the form of:

1. Input controls:

- Licensing;
- Gear/ boat restrictions;
- Limits on fishing time (effort quotas);
- Timed closures in particular areas to maximize the value of the fishery where there are juvenile or breeding fish in the area;
- Spatial closures and
- Seasonal closures.

2. Output controls:

- Quotas, or limits, on the quantity of fish taken.

What kinds of Licences are granted and what is their effect?

Most commercial fishing is tightly controlled by restricting entry in to the industry through a licensing system managed by regulations. A licence is required to legally undertake any commercial fishing in Western Australia. The following major controls are in place to restrict commercial fishing:

- Commercial fishing licence – it is at the discretion of the Executive Director of the Department of Fisheries whether to grant the licence, having regard to the best interests of the fishing industry. A base penalty of \$5,000 applies to any fish that is sold without a commercial fishing licence.
- Fishing Boat licence – any fishing boat involved in commercial fishing must have a fishing boat licence and the licence number painted on the hull of the boat. A penalty of \$10,000 applies if the boat is not licensed. A person not holding a commercial fishing licence may not board a licensed fishing boat.
- Managed Fishery Licence – where a boat is operating in a “managed fishery” (i.e. a fishery controlled by a formal management plan) a managed fishery licence is required in addition to a commercial fishing licence.

A person with a commercial fishing licence may not hold a recreational fishing licence, except for licences relating to marron and freshwater fish.

‘Wetline’ Fishing

Currently, all licensed fishing boats in Western Australia may engage in fishing activities that lie outside the managed fisheries that are limited entry. Line fishing for scalefish, referred to as ‘wetlining’, is the major such activity conducted. Open access fishing is being phased out; as will be discussed below, a dedicated, limited entry wetline fishery is being phased in, in order to sustainably manage the risks.

The commercial wetline fishery competes directly with recreational fishers. An Integrated Fisheries Allocation panel has been established to advise the Minister on the formal allocation of the Total Allowable Catch between sectors. The Integrated Fisheries Management Strategy aims to incorporate the management of all fisheries on an ecological basis, recognising that fish species are interdependent, and also to take account of the movement of target species and by-catch.



What are the major Commercial Fisheries in WA?

There are four major commercial fisheries in Western Australia:

1. Western Rock Lobster Managed Fishery;
2. Abalone Managed Fishery;
3. Shark Bay Prawn and Scallop Managed Fishery; and
4. Exmouth Gulf Prawn Managed Fishery;

The four major commercial fisheries operate on a cost-recovery basis whereby the industry contributes to the cost of management of the fishery in return for participation in the industry. Each participant in the fishery must pay a Managed Fishery Fee in order to legally fish from the fishery. The Managed Fishery Fee completely finances the cost of management of the fishery, such that participants in the industry are providing for its management, including funding research and the MACs.

Other significant commercial fisheries include:

- Shark Bay Pink Snapper Managed Fishery;
- Four Shark Fisheries;
- Crab Fisheries; and
- Pilchard Fisheries (including the South Coast and West Coast Purse Seine Managed Fisheries).

Although the licence fee contributes to these, the licence fee does not cover the total cost of fishery management. Recommendations have been made that other fisheries, such as the Northern Demersal Scalefish Fishery be administered by the cost-recovery scheme. Participants in all commercial fisheries must pay a contribution of 0.65% of their gross value of production to the Development and Better Interest Fund (DBI fee) which is applied to the better interests of fisheries, fish and fish habitat management.

Western Rock Lobster Fishery

The Western Rock Lobster fishery, extending from Cape Leeuwin to Shark Bay, is the most valuable fishery in Australia. Entry into the fishery has been limited for over 20 years. The major restrictions placed on the fishery are:

- Gear restrictions (e.g. pot/trap dimensions);
- Zones of access with differing size restrictions, to distribute the fleet;
- Prohibition on catching breeding females;
- Minimum and maximum size restrictions; and
- Seasons: Coastal (zones B and C) 15 November – 30 June; Abrolhos Island (Zone A) 15 March – 30 June.

The Marine Stewardship Council (“MSC”) certification of this fishery was the first granted to any fishery in the world. The certification is currently being reassessed. Its status can be checked online at: http://www.msc.org/html/content_490.htm

What issues can be regulated by Management Plans?

The Minister for Fisheries may establish or revoke a Management Plan for any commercial fishery. As Management Plans will be specific to each fishery their regulatory measures will vary, but their scope is quite wide and what they may contain is at the Minister's discretion. A Management Plan may completely prohibit fishing, authorise fishing, regulate fishing and specify the capacity of the fishery (i.e. how much it can be fished). Generally a Management Plan for a fishery will describe the fish stocks, their habitat and fishing activities, outline objectives and issues pertinent to the fishery it is seeking to control and prescribe regulatory measures, including restricting or prohibiting fishing. There are penalties for the contravention of an offence provision of a Management Plan.

A Management Plan must declare the fishery to be either a Managed Fishery or an Interim Managed Fishery, where the fishery will only be controlled by the Management Plan for a specified period and there are no continuing access rights.

As noted above, some fisheries are managed with MACs including abalone, purse seine (south and west coast) and shark.

How is by-catch managed?

By-catch refers to non-target plants and animals caught whilst fishing. By-catch can include turtles, dugong and other ocean mammals, and, in some cases, birds, for example albatross, as well as non-targeted fish, including corals, sponges and other habitat components. Clearly, the incidence of by-catch can contribute to the population decline of those and other species, and to habitat change and changes to food webs. In relation to by-catch, the Australian Government has an obligation under international law to protect not only its fished species, but also "species associated with or dependent upon" fished species within the CMA.

Commonwealth

The Australian Government's National By-catch Policy has been established to address the issue of by-catch and is embodied in the *Fisheries Management Act 1991 (Cth)*. As by-catch species can often be the targeted species in another fishery, by-catch is managed under fishery-specific management plans, usually in conjunction with management plans to limit their fishing in other fisheries. These arrangements are administered under the Offshore Constitutional Settlement agreements between the State and Commonwealth governments. The way in which by-catch is managed varies depending on the fishery, although usually will be in the form of fishery-specific action plans or measures will be included in Management Plans.

State

Western Australia has adopted the National Policy on Fisheries By-catch as its equivalent State policy for recreational and commercial fishing and the Department of Fisheries is to prepare action plans for all fisheries.

Is commercial fishing prohibited in protected areas?

Areas that have been designated as protected will almost certainly have some fishing limitations, although commercial fishing is not generally prohibited except in sanctuary zones. Commercial fishing may be permitted in these areas depending on the fishery in question. Protected marine areas in Western Australia are marine nature reserves or marine parks managed under the *Conservation and Land Management Act 1984*. While Fish Habitat Protection Areas (FHPAs) managed under the *FRM Act* do provide a form of protected area, no compensation is payable for displaced fishers under an FHPA. A FHPA cannot be created in the same area as a Marine Park. See [Fact Sheet 17](#) for more information about protected areas.

Compensation for Displaced Fishers

There is provision for compensation to be paid to licence holders (including commercial fishing, fishing boat and managed fishery licence holders) where they suffer loss as a result of the bringing into existence of protected areas, under the *Fishing and Related Industries Compensation (Marine Reserves) Act 1997*. A licence holder will be entitled to fair compensation where the market value of their licence is decreased as a result of the declaration of a marine park or marine nature reserve, the amendment of a management plan, substitution of a new management plan or classification as a sanctuary or recreation area.

A licence holder will only be entitled to compensation where the loss is in the form of:

- a licence being unable to be renewed;
- only renewable in a different or smaller area;
- only renewable with the recommendations of the CALM Minister being considered; or
- where a fishing area will not be available for commercial fishing after renewal of a licence.

Compensation will not be paid where the loss in licence value has been offset by a fisheries adjustment scheme under the *Fisheries Adjustment Schemes Act 1987*.

There is no requirement that compensation be paid to holders of a recreational fishing licence displaced by creation of a protected area.

How is enforcement of fisheries laws undertaken?

If you believe you have seen a breach of a fishing regulation, such as commercial fishing in unlicensed boats, sale of fish by unlicensed operators, or fishing in closed areas or with non-approved gear, contact the Department of Fisheries hotline: 1800 815 507. Record any boat registration numbers or licence plate number.

Vessel Monitoring System (VMS)

For certain fisheries compliance with time/space regulations is now monitored by a Vessel Monitoring System requiring all boats operating within the fishery to be installed with an Automatic Communication Locator (ACL). The ACL allows the location of the boat to be transmitted to a monitoring system at any time, and also facilitates the communication between the boat and the Department of Fisheries.

Powers to search

Fisheries officers have wide-ranging powers and generally they may be exercised wherever the officer has reasonable grounds to suspect that an offence has been committed. Fisheries officers may board and search any boat or vehicle, break open any container in order to search for fish or any evidence that supports an offence having been committed, require records be produced for inspection, examine any fish and require any fishing gear be hauled in and brought to land.

Other powers

In addition, fisheries officers have the power to issue notices to stop a boat being interfered with for a specified period and to require delivery of fish or fishing gear to a certain point. Failing to comply with the direction of a fisheries officer in relation to one of these powers is an offence. The penalty is \$10 000 for an individual or \$20 000 for a body corporate. Fisheries officers may require any person, whether the master of a boat or otherwise, to provide assistance in exercising any of his powers. The penalty for not complying is \$10 000.

Power to arrest

A fisheries officer may arrest a person without a warrant where a person fails to, or gives a false name or address, where a person assaults a fisheries officer or where the officer has reasonable grounds to suspect the person has committed an offence and will continue to commit the offence if not arrested.

Power of seizure

A fisheries officer may seize any fish, boat or fishing gear in relation to an offence suspected of being committed.

Vesting of powers

Police officers may also assume all the powers of fisheries officers, and naval officers may assume that power in relation to foreign fishing boats.

What is Australia's Oceans Policy?

Australia's Oceans Policy is a broad framework for managing the competing demands of resource development and conservation placed on our marine environment. The National Oceans Office, based in Hobart, is responsible for implementing Australia's Oceans Policy (www.oceans.gov.au). Of relevance to Western Australia are the South-West, Western-Central and North-West Marine Planning Regions that have been flagged for regional planning to implement the Oceans Policy. The National Oceans Ministerial Board oversees the implementation of the Oceans Policy and is a consultative and decision making body of the Commonwealth Government. It is comprised of various Government Ministers, including the Minister for Agriculture, Fisheries and Forestry. In Western Australia the Oceans Policy is administered by the Department of Fisheries.

How can you become involved?

Although WA's commercial fisheries are primarily managed by the Minister liaising with the fishing industry there is still scope for public involvement in the protection of WA's fisheries:

- If you believe there has been a breach of fisheries regulations call the Department of Fisheries hotline: 1800 815 507;
- Lobby MACs regarding issues pertinent to specific fisheries, as a means of making the Minister aware of concerns;
- Ensure all fishing gear is approved by the Department of Fisheries in order to reduce by-catch, and release and return all by-catch to the sea as soon as possible;
- Monitor proposed Action Plans issued by the Department of Fisheries regarding relevant fisheries as some may invite public submission; and
- Monitor law reform moves by the EDO and other groups such as the Conservation Council, which aim to improve the status of the environment through decision-making about managing fisheries.

 Relevant contacts listed on the next page

Contacts and further information

Department of Fisheries (W.A.):	08 9482 7333
Go access information online at:	www.fish.wa.gov.au
Department of Agriculture, Fisheries and Forestry (Australia):	www.affa.gov.au
National Oceans Office:	www.oceans.gov.au/home.jsp
Marine Stewardship Council:	www.msc.org
Australian Seafood Industry Council:	www.asic.org.au
Australian Fisheries Management Authority:	www.afma.gov.au

The Environmental Defender's Office WA (Inc)

The Environmental Defender's Office WA (EDO) is a community legal centre specialising in public interest environmental law.

The objects of the EDO include:

- ◆ to provide community groups and individuals with legal advice and representation to help protect the environment;
- ◆ to promote law reform that improves environmental protection; and
- ◆ to provide community education about environmental law.

The EDO is a non-profit, non-government organisation. The EDO receives its principal funding from the Federal Attorney-General's Department. However, these funds are limited and donations from the public provide a vital source of funds for many of our activities. Donations over \$2 are fully tax deductible. The EDO also welcomes people with a commitment to the environment to join as members.

If you require legal advice on an environmental issue or wish to find out more about the EDO, please contact us at the following address:

Environmental Defender's Office WA (Inc)
Second Floor, Kings New Office Tower
533 Hay Street, PERTH WA 6000

Tel: (08) 9221 3030 Fax: (08) 9221 3070

Email: edowa@edo.org.au Web: www.edo.org.au/edowa

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