

Wetline Review Panels
Locked Bag 39
Cloisters Square Post Office
PERTH WA 6850

**Recfishwest Submission to Fisheries Management Paper No 191
“Access and Allocation Arrangements for the Commercial
‘Wetline’ Fisheries**

Thank you for the opportunity to provide comment on the above review. We wish to commend the Department of Fisheries and the Minister for Fisheries for proceeding with the review of this fishery and the important but extremely belated intention to introduce commercial fisheries management for the wetlining activity.

Recfishwest will be making a separate submission to papers 189 and 190.

Recfishwest regards this review as an essential component of integrated management, especially for scale fish which are extremely important to the recreational fishing community but which has not been explicitly recognised through management reforms.

The fishes targeted by the wetline fishery are regarded as key species for recreational fishers as recognised by their inclusion in Category One – Highest Risk within the regional recreational fishing regulations. That is, they are generally long lived, slow growing, vulnerable to localised depletion and are highly targeted.

Recfishwest believes the economic value generated by recreational anglers fishing for these species would far outweigh the value generated by commercial wetline fishers. Unfortunately, this appears to have been given little consideration by the Commercial Access Panel (CAP) which excluded recreational fishing representation.

Foreword

The Foreword attempts to address this matter by stating “However, it must be made clear that the ‘wetline’ review is not a sectoral resource sharing exercise.”

Recfishwest is highly critical of this statement as it ignores the inequities in management which have occurred since the Mandurah working group in 1985. Recreational fishers have come under significant and increasing controls while commercial fishing has been allowed a free reign, including the apparent blatant ignoring of misreporting of catches in direct contravention of the *Fish Resources*

Management Act 1994 (see bottom of page 21 of this report). This has had the effect of reducing the recreational catch share and penalising the recreational sector for responsible management.

For example Prokop 1995 (in Fisheries Management Paper 78) points out that there had been a 124% increase in the number of bag limits (which only apply to the recreational sector) in the period 1990 – 1993 in Western Australia. There had been a corresponding decrease by 16% in the number of size limits which apply to both the commercial and recreational sectors. It is this inequity, which has continued with the introduction of the Gascoyne and West Coast recreational reviews, without commercial controls of any sort, which has increased tension between recreational and commercial fishing interests.

Therefore, although Recfishwest understands the sentiment behind this statement, recreational fisheries management has evolved rapidly while practical commercial fishing has not changed.

Section 4.2

The task of the committee has been significantly complicated by inaction from the Department of Fisheries in managing commercial fishing effort. Page 12 of this report says “This paper (discussion paper from 1985) also proposed the adoption of a **benchmark date of April 1985** (emphasis added) as an exclusion date for determining participants in these fisheries.”

Section 4.2 (page 13) gives a lengthy consideration of the importance of the benchmark date. Recfishwest would like to point out that a number of letters, including those to us and the article in Western Fisheries clearly said that ‘fishing history after 3 November (1997) will not be taken into consideration.’

However, Recfishwest accepts the logic which the panel has applied in using history after this date as a second tier access criterion, but only if used in conjunction with significant catch history prior to November 1997.

The dot points on page 13 are not complete. The papers also clearly investigated the important issue of costs associated with management of the wetline fleet. Recfishwest believes that complicated management for the commercial wetfish sector (especially as proposed in papers 189 and 190), must fully consider the fact that the community will be expected to subsidise the commercial fishers who apparently will not meet the management costs.

It is disappointing that paper 191 ignores the financial and community impacts associated with the implementation of their recommendations.

Section 4.3

Recfishwest accepts the discussion relating to ‘pioneer rights’ transferring with the FBL that accrued them. We are therefore surprised at the discussion in section 5.2 that appears to consider watering down this quite categorical discussion.

The paper says – “The process generally takes a minimum of 12 months and....” We again reiterate that the first clearly published benchmark date was April 1985 and there have been no genuine wetfish commercial fishing management reforms since that time.

The statement concerning equitable resource sharing being impacted upon by delays is an understatement of mammoth proportions. For example, the Department of Fisheries has been attempting to bring the south-west beach seine fishery under management since at least 1991. At least 6 people have fished without authorisation since that time and with explicit knowledge of the Department of Fisheries. Recent proposals seek to institutionalise this unauthorised catch history which the community would then have to buy back.

We also share the concern of the committee that the longer the process drags on, the higher the expectation of access would be. It also means that there would be a higher likelihood of success through administrative appeal. This situation is exacerbated due to weaknesses in the *Fish Resources Management Act 1994* where recreational fishing is denied natural justice by not being considered an affected person for the purpose of any appeals.

While the Department of Fisheries is generally very professional and fair in its approaches to these appeals, there is less of an incentive when administrative oversights have been at least partly responsible for the creation of difficulties (as in s-w beach seine). Recfishwest has been trying for the last 8 years to get this situation rectified.

Section 5.1

Recfishwest endorses and supports the clear definition that there are no rights associated with an FBL. The statement that “... the FBL will not permit wetlining to be undertaken.” (p.17) is extremely important as is clarification that an FBL will not be sacrificed if wetlining activities are not endorsed.

There is still a clear need for management arrangements to be cleared up in relation to reporting of commercial wetline catches.

A management plan clearly specifies who can undertake what activities for commercial gain. The lack of a management plan for wetlining activities is at best, extremely poor, as the FRMA considers

only Managed Fisheries, Interim Managed Fisheries and Developing Fisheries and the wetlining activity is clearly NONE of these.

The paper raises significant doubts about over-reporting and under-reporting of catches. Recfishwest shares these concerns and the difficulties in ‘truing’ reported catches. It is also extremely important to obtain ‘useful’ information from a management perspective, especially as Western Australia moves towards an integrated fisheries management approach.

While outside of the direct task of this committee, two issues make the determinations in papers 189 and 190 extremely difficult. These are the inappropriateness of the CAESS system for determining whether catches were made nearshore, inshore or offshore and an effective link between catches and effort if more than one method is used during a reporting month.

Recfishwest strongly supports the consideration that the “circumstances of the Fischer case were different to those under examination in this review.” (p. 18)

We further fully support the universal application of Section 143 (1) (d), whether it applies to those with a ‘shark’ authorisation or any other authorisation. We would argue that the failure of the Department to implement a management plan for wetlining has increased an expectation for formal recognition of a ‘right’ which does not exist and has disproportionately impacted on recreational fishers.

It is Recfishwest’s clear view that the industry funded buy-back since 1986 was nothing more than an industry subsidised superannuation scheme for commercial fishers.

While commendable, only latent effort was ever removed and remaining fishers were able to reap some benefit through a commercial community ‘social’ dividend and an increased ‘scarcity’ of entitlements.

Recfishwest fully supports the need for wetlining activities to be managed and controlled as proposed since at least 1985.

Section 5.2

As stated in Section 4.3, the term *caveat emptor* must apply. Since at least 1985, the Department had been flagging that this fishery would be coming under management control. Buying an asset that was unlikely to bring benefits in terms of history is, and must remain the responsibility of the purchaser.

Recfishwest recognises that management suggestions vary according to the circumstances of the individual making the submission. Recreational fishing is not immune from this common problem in information poor natural resource management discussions. However, fish are a common property resource and the sustainability or management principles should not be compromised due to the unfortunate (and frequently foreseeable) circumstances of an individual.

Recfishwest does not accept the unverified catches of CFL holders forming the basis of management or allocation decisions.

Section 5.3

Recfishwest queries the importance and reliance on ‘economic’ dependency. The objects of the FRMA ask that the overall social and economic values to the community be considered in making management decisions. To only take the narrow impact of proposals on individual commercial fishers is not appropriate.

It could be argued that economic circumstances change considerably, often due to factors totally unrelated to fisheries issues. If the Department of Fisheries had brought this fishery under formal management in 1985 when it was asked to, or 1994 when it should have to meet the form of the FRMA, the economic factors would have been substantively different in each case.

Indeed, there are reports that rock lobster and abalone managed fishery licences, now worth huge sums of money, once changed hands for a carton of beer. The economic circumstances for these fisheries are now radically different and while we have sympathy with individuals who are undergoing financial hardship, the most important consideration must be sustainability of the resource.

The committee has not considered the economic, social or resource impact of a doubling of commercial wetlining catches in the west coast region since 1990 on recreational, charter or tourism activities. The committee should be wary of overvaluing the needs of individuals within the commercial sector relative to the community needs and expectations. The loss of some unviable operators in an activity with changing community values is a first world reality.

Managing any adjustments is largely to be determined within a sector, but allowing operators who are clearly not financially able to operate to remain will incur an enormous additional compliance cost. These additional costs must be borne by the commercial sector whose decision leads to the difficulty.

The failure of any commercial operator to meet any management cost for wetfish is an ongoing source of concern and one for which no

solutions (other than through the statutory authority review) have been proposed.

The proposal to handicap those who are fishing the most and reduce their catch by the greatest amount is exactly what happens with recreational fisheries management. However, there are sound reasons for accepting the traditional form of catch reduction which rewards those with the greatest history within the commercial fishing sector (providing it occurs within the TACC).

Recfishwest supports value adding for commercial fisheries to optimise the return for the unit catch. However, we find the misuse of statistics regarding consumer needs to be tiresome. Catches will be made available to those willing to pay the most, and if possible, this is through export markets. To imply that the wetfish catch is designed to provide 'fresh, local fish' is specious and ignores market reality (and also the provisions of the Australian Constitution regarding freedom of trade between the States).

We are extremely concerned about the commentary on page 20 regarding the reliance of commercial operators on vessel size etc. The principle of *caveat emptor* appears to have been ignored and the belated move towards management for these activities has been flagged since at least 1985. We do not believe that it is the role of this committee to engage in social engineering unless it gives full and adequate consideration of the consequences to the community (especially recreational, charter and tourism activities) of its recommendations. We can see no evidence that this wider debate was held.

Section 5.4

This entire section confirms that information about management reforms was widely available and should have been used by anyone considering making an investment decision in this fishery. Any failure to disclose information should be the subject of an independent assessment and/or legal action and should not be the consideration of this committee.

It is clear that the market adjusted to this news and this alone provides evidence that the information had an impact at the market face.

However, the CAP has not explored the impact of the failure to implement management on the charter boat industry which came under formal management between the announcement of the benchmark date and the release of this and papers 198 and 190. Indeed, there have been significant management reforms which have impacted on charter boat fishing, reducing their catches and in the eyes of some shifting catches to the commercial sector at the expense of another managed fishery.

A number of charter boats have indicated that their willingness to invest was impacted by a cynicism that commercial operations would be managed and that the needs of charter boats (to whom all of the arguments of economic reliance also apply) would be undervalued. We can find little evidence that the economic or social needs of the charter boat industry were considered by the CAP.

At the bottom of page 21, the view is put that some fishers were taking large catches to position themselves to enter the fishery once management is introduced. While we believe that there is some anecdotal evidence to support this, we also believe that some operators have fished very hard knowing that they wouldn't get into the fishery. As a result they may have given little thought of the impact of their activities on other users or the sustainability of the resource.

The final sentence causes recreational fishers enormous concern. It says "(they never bothered previously (to report their catches) despite the recording of all catches being a statutory requirement.) We believe that the CAP should have made a definitive statement that ignoring a statutory requirement should attract substantial penalties and that history so alleged cannot be taken into consideration in making any allocation. There are many legal examples of this principle and the failure to highlight this could be interpreted as the CAP condoning this activity.

The matter of history being accrued in one region can be an important factor. Interestingly, this matter was considered as part of the charter boat management (not considered by this committee).

The facts apply to a very small number of entitlements and it is for this purpose that an independent tribunal process has been established. The onus of proof should lie with the purchaser to demonstrate the circumstances that apply to their FBL. However, Recfishwest believes that it should be considered an affected person, especially given the 'rubbery' evidence that often accompanies an application through which the individual can obtain significant benefit.

Recfishwest fully supports the summary (page 22) that wetline management was well understood. We also commend the committee for its compromise position regarding secondary access criteria, on the express proviso that recent history must be accompanied by pre-benchmark date history.

Section 5.5

Recfishwest agrees that there will be a tangible and definable economic benefit accruing to the new authorisation rather than the FBL. We cannot foresee a ‘flood’ of FBL’s entering the market, but even if they did, market forces would dictate a response in line with ‘consumer’ confidence and the laws of supply and demand.

Recfishwest is however, concerned that the CAP has ignored an important consideration that was extremely important to the statutory management review. That is that the community should also receive a dividend from the increased economic value that will accrue if/when sustainable management results from wetline management. This should entail a clear move to full commercial cost recovery or a resource rent.

In the absence of this dividend, the community (whose resource we are talking about) will have to continue to subsidise the commercial management (which is likely to become increasingly costly and complex) and privatise the public good. Recfishwest believes that this is at least as important as the in-depth consideration given to the social equity arguments by the CAP in section 5.3.

Section 5.6

This section is extremely narrow in a debate which involves a community resource. The objects of the FRMA clearly dictate wider issues which have not been given consideration by the CAP. The true test of the management plan is to assess whether it is a reasonable means of achieving the ends as described by the FRMA. The needs of the community and the historical and natural injustices of the past cannot be ignored; otherwise recreational interests will fight any management reforms to ensure that our catches are legitimised by legislation. This is an illogical outcome and one that works solely to the benefit of commercial interests.

For example, the bottom of page 23 describes that ‘relevant considerations’ are important for the Minister. The CAP believes that social matters impacting on commercial fishing must fit this criteria, but the impacts on the community of an inappropriate allocation of the common property resource on recreational, charter and tourism industries is not considered at all.

The paper also takes an extremely narrow view of ‘legitimate expectation’. The recreational sector has had a ‘legitimate expectation that they would not be solely responsible for management reforms since 1985 and that at least some consideration of the issues raised by Recfishwest in submissions to among others the CAP (see Appendix 1) the Toohey Committee and the Statutory Management Review Committee would have been forthcoming.

Section 6.1

The 'fair expectation' needs to be taken in the context of Section 143(1) (d) and the fact that it will provide an illogical and unsustainable outcome. We support the CAP's conclusion on this matter and the assertion that there are no explicit 'rights' associated with an FBL.

Recfishwest supports the debate up to the last paragraph on the bottom of page 30. Changing the definition of demersal scalefish to include mackerel cannot be accepted. The term has clear and widely understood application and widening the access criteria is unacceptable. This allows the potential for double counting of catches to gain access to two limited entry fisheries.

We are disappointed that the CAP did not assess the mackerel management process which resulted in a hugely expensive management regime which will be funded by the community. While those who did not gain access to this fishery feel aggrieved, the recreational fishing community concerns were ignored and dismissed by the process.

We are displeased that the CAP has dismissed community implications of its decisions, yet has allowed mackerel catches from a previously determined commercial fishery to be carried over for direct financial benefit of individuals.

The CAP is allowing the double counting of a species that has been subject to a separate process. If the CAP is going to accept mackerel catches then it **MUST** consider the resource sharing aspects of all its decisions. It would be unacceptable to say that resource sharing issues are the subject of a separate review when the CAP has selected data from another review which clearly benefits commercial operators!

The tradition in applying catch history has not been equitable or transparent and has excluded users other than commercial fishers. The CAP, as per the objects of the *FRMA* has an obligation to ensure that the needs of the community are given full and not token consideration. Having said that, we believe that the CAP's proposed two tiered approach is quite visionary. However we would strenuously oppose any watering down of the described criteria.

Section 7

Recommendation 1

Support 1(a) on the very strong proviso that the 'and' between the two options is not removed.

Strongly support 1(b).

Oppose 1(c). Recfishwest believes that if there is an under-allocation, it should be not allocated. If this is not possible, strong consideration should be given to granting those who gain access in 1(a) a unit value greater than 1.0.

Recfishwest has significant concerns that this option

- a) Rewards those who have exhibited a strip-mine approach to the fishery;
- b) Undermines the principle of benchmark dates and also leaves the community exposed to numerous individual hard luck stories also gaining access;
- c) Ignores the problems with unviable operations having a strong incentive to undertake illegal activities. Without a clearly defined cost recovery approach to this fishery, the community should not have to subsidise the lifestyle requirement of a small number of commercial fishermen;
- d) Will cost enormous amounts to administer the movement of entitlements through the Registrar or licensing system which will be subsidised by the community for a small privatised gain from those who have not been able to meet the extremely generous entry criteria;
- e) Will have implications for integrated management discussions by allowing large numbers of unviable operators with different management expectations to undermine realistic integrated outcomes;
- f) Is inconsistent with the objects of the *FRMA*; and
- g) Will not allow recreational, charter or tourism interests to raise their objections through the tribunal.

Recfishwest similarly opposes 1(d).

Recfishwest supports recommendation 2 but would like to see management reforms that recognise that inshore catches are much more highly contentious than offshore catches due in part to their visibility to the public. The interactions must be managed and varying the unit values to discourage inshore net fishing needs to be considered. Recfishwest has already been extremely generous in supporting a Fisheries Adjustment Scheme for the metropolitan beach bait fishery to address what were largely access issues driven by local government. Recfishwest sees no recognition of these types of solutions for which we have received no tangible benefit.

Our comments for Recommendations 1 and 2 also apply to Recommendations 3 and 4.

Recfishwest strongly opposes the alternative option put forward in Section 7.4. Almost all of the impacts will be felt by recreational

fishers and the huge expense associated with compliance and administration for this concession will not be met by the beneficiaries. See also our comments on 1(c).

Section 9

We agree that the body assessing applications should have the ability to seek further information. The ability of this body to seek independent advice should also be canvassed. While the applicant's rights are important, there is a significant economic benefit to 'stretch the truth' and this must be carefully assessed.

Recfishwest believes that we must be considered to be an affected party during this process and should have the capacity to make submissions. While it is highly unlikely that we will have material evidence to submit in most circumstances, the possibility should be accommodated and our rights as users of the resource recognised.

The MPP's recommendation relating to minimum holdings was not a unanimous one. It is illogical to support an extremely expensive management regime which is unfunded and supplies a large benefit to a small number of commercial operators. In recent times, it has been common practice to allow those who have entitlements below the threshold to fish a period of up to 5 years to obtain sufficient units to fish or to lose those entitlements.

This is logical and defensible unless all true management costs associated with these 'bit players' are met by commercial operators. The community is tired of subsidising 'amateur' participants in a commercial fishery. Natural justice in a common property resource such as fish must consider the impacts on the entire community and not just the privileged commercial fishers.

Similarly, we are concerned that in spite of explicit recognition that FBL matters are outside the scope of this review, the CAP has chosen to make a comment. We would be less concerned if some of our community interest issues had received consideration as part of the review process.

Recfishwest supports recommendation 5, noting the caveats which apply in our comments in recommendation 1(c).

Recfishwest strongly supports recommendation 6. We are concerned that many new applicants (eg mud crabs) are being considered outside of the developing fisheries process to the detriment of the community. Previous outcomes through the developing fisheries process were of a high quality, although, as expected there has been no formal monitoring of the temporary entitlements, increasing the expectation that they will continue and once again privatising the public good impacting on the wider community.

In conclusion, although Recfishwest has been critical of some aspects of the text, the recommendations of the committee are generally supported.

Recfishwest has repeatedly sought clarification as to the process to assess and modify the recommendations from this committee and requires urgent and clear direction as to who will assess our submission, who will make recommendations for changes and how will further consultation be undertaken.

Thank you for your consideration of our submission. Further information can be obtained from our office on 9387 7864.

Yours sincerely

Frank B Prokop
Executive Director
Recfishwest
18 April 2005

Cc Jon Ford Minister for Fisheries
Peter Rogers, Executive Director, Department of Fisheries
Doug Bathgate, Chairman RFAC

Appendix 1 – Recfishwest submission to CAP November 2003

1. Fish are a Community Owned Asset.

The aquatic resources in Western Australian waters are a community owned resource and asset, and must be managed and harvested in a sustainable and equitable manner. The objects of the Fish Resources Management Act (FRMA) 1994, to optimise the social and economic return, must be fairly applied so that the Western Australian community gets the maximum benefit and value from the use of the community's resource.

2. Benchmark Date.

The benchmark date set for the wetline fishery by the Minister for Fisheries was Monday, 3 November 1997. Recfishwest believes it is essential that the criteria proposed for determination of the TAC are restricted to the 1997 benchmark.

Recfishwest insists that in principle the review must adhere to the benchmark date of Monday, 3 November 1997 in all aspects of the development of management for the commercial wetline fishery. The fundamental reason for this position being that fishery management announcements should not be overturned without serious grounds to do so.

However the allocation of access to the new managed fishery is principally a matter of equity within the commercial sector. Recfishwest and the recreational sector generally has an overriding concern that the TAC and the total number of participants are developed and managed in a cost effective manner that does not adversely impact on recreational interests or the sustainability of the resource.

The intention of the original benchmark date was that the new arrangements would be put in place the following year. Now, six years later it seems probable that the new arrangements will be put in place at least seven years after the benchmark date.

Recfishwest is insistent that a specific and expeditious date be set for the implementation of management arrangements for the commercial finfish sector. The introduction of the recreational fishing management changes on 1st October 2003 without corresponding changes in commercial finfish management has highlighted the inequity in management which continues to be an overriding issue for recreational fishers.

3. Access and Fishing Capacity.

Recfishwest considers it essential that the level of access is restricted to a number of commercial participants that ensures that the total fishing capacity falls below the level recommended by the Fisheries WA Research Division to ensure long term sustainability. With respect to management of the commercial wetline fishery, Recfishwest believes that the review should adopt 'knife edge' access criteria resulting in the smallest number of commercial operators who would be financially viable and a high minimum holding to limit the number of participants.

4. Number of Participants.

Recfishwest believes that it is important that the new commercial wetfish managed fishery should be limited to a small number of entitlement holders. This can be done in two ways.

Firstly, Recfishwest strongly believes that the provision under section 143 of the FRMA 1994 must be applied to remove the latent licences. This clearly defined pre-existing process will remove many latent licences. This process cannot possibly attract compensation or the entire process is doomed to failure.

Following the removal of latent licences the Recfishwest preference is to have a knife-edged cut-off so that commercial fishers with a low catch history do not get access to the new fishery. The other way is to allocate history to more previous participants, but specify that after a certain time (for trading rights) boats can only fish if they have a certain (high) minimum holding. Subject to meeting agreed management outcomes a combination of these may be possible.

It is very unlikely that this fishery will be a full cost recovery fishery, so it is essential that management is cost effective. Compliance and management costs will compete for the scarce funds available for overall fishery management, Recfishwest would not like to see the minimal funds available reduced to meet a complex management system for a low value commercial fishery. A relatively small number of dedicated participants in the industry will result in several benefits to participants and the Department of Fisheries.

- The cost of compliance will be reduced and its effectiveness will increase.
- The total market value of the wetfish catch is relatively low. A small number of participants would make participation financially viable.

- The fewer participants the greater the value of their licences. This results in increased financial security and is more likely to result in increased compliance responsibility of participants.

5. Entitlement to Take Wetline Fish.

It is the opinion of Recfishwest that LFB's should not be entitled to take wetfish without a wetline licence. All other managed fisheries have a monopoly on their target species, area or method of fishing. The same principle should apply to the managed Wetline fishery.

It is our understanding that all commercial fishers have the right to fish recreationally when they are not working their LFB. To allow commercial fishers to use their highly efficient fishing units or the retention of bycatch on these boats to take wetfish is inconsistent with the objects of the FRMA 1994. A fundamental concern of Recfishwest is that the total mortality of wetfish from this new managed fishery and the activities and bycatch of any other managed fishery must be considered part of the TAC for the commercial sector.

Conclusion

Our greatest concern is that the commercial catch level be set conservatively to protect the resource. The levels will have to be adjusted when we get up-to-date information on the recreational catch and an explicit resource allocation is made under the Integrated Management Process. It is important that in the absence of adequate information a precautionary approach is employed to conservatively set the Wetline TAC. Recent information regarding the decline of the oceanic pink snapper fishery in the Gascoyne provides a warning on the need to be conservative.

Also of concern when setting a TAC in this multispecies fishery is that target species are unlikely to be equally productive. The more susceptible species may be driven below sustainability levels while others may be under utilised. This further supports our wish that TAC be set conservatively and that monitoring of fishing practices is carried out to be able to track changes in target species, detect serial depletions or trophic impacts.

Recfishwest expects that setting the initial TAC rests with the Executive Director of the Department of Fisheries on the advice of the Research Division. Recfishwest will continue to lobby that this level will be conservative, as this is the aspect of the plan that is of most concern to recreational fishers.

Recfishwest is committed to the implementation of integrated management and our comments need to be assessed in this context.

Please do not hesitate to contact our office should further information or clarification be required.

Yours sincerely

Frank Prokop
Executive Director
Recfishwest
17th November, 2003