

A UNIT REGISTER FOR COMMERCIAL FISHERIES

An issues paper

Prepared by the Unit Register Working Group

FISHERIES OCCASIONAL PAPER No. 15

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A Unit Register for Commercial Fisheries
- An issues paper

Prepared by the Unit Register Working Group
(Consisting of representatives from boat brokers, the Western Rock Lobster Council,
the commercial fishing industry and the Department of Fisheries)

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OPPORTUNITY TO COMMENT

This paper is designed to encourage stakeholder involvement in a review of the existing Department of Fisheries' Register, and development of a concept for a new Unit¹ Register, under the *Fish Resources Management Act 1994* (FRMA). It is not a fisheries management proposal but a proposal dealing with the facilitation of the fishing licence business. Comments are sought from all stakeholders, including commercial fishers, recreational fishers, banks, accountants, lawyers, third party investors and brokers.

The comments gathered through the responses to this 'issues paper' will form the basis for the Unit Register Working Group to develop the concept of a unit register further. The proposals developed will then be incorporated into a 'discussion paper', which will again be distributed for stakeholder and public comment. The final proposal, incorporating feedback from the discussion paper, will be submitted to the Minister for Fisheries for final consideration.

The fishery proposed to be a pilot for the new unit register proposal is the West Coast Rock Lobster Managed Fishery, but the proposal is likely to extend over time to other unitised commercial fisheries. At this first stage of the consultation process we are seeking your thoughts on your particular needs for a commercial fishing unit register and the specific issues you or your group need to have addressed.

Some examples of unit register *needs* may include:

- Level and priority of security interest to be identified;
- Unique identification of units;
- Details of unit holder or 'owner';
- Current dealings/applications; and
- Online access to the register from private personal computers.

Some examples of *issues* you may have with the creation and operation of a unit register may include:

- Tax implications;
- How 'owners' may be 'required' to register their details;
- Cost versus the benefits of a unit register; and
- The value of the privilege bestowed by such a register.

Please read the proposal then provide us with feedback on the attached form (see Section 6 of this document) or through a written submission. *Remember we want to know what you need from a unit register, and what issues you believe will need to be addressed in this project.*

Your feedback is important for the success of this project.

Please forward your completed feedback form or submission, by close of business on **15 April 2005**, to:

Unit Register Working Group
C/- Department of Fisheries
Reply Paid 61461
Locked Bag 39
CLOISTERS SQUARE 6850

Or email to:

rburrows@fish.wa.gov.au

¹ A 'unit' expresses the extent to which the authority (eg fishing days; amount of fish; specified gear; etc) can be exercised.

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1.0 INTRODUCTION

1.1 How are fisheries managed?

All fisheries managed under WA law have the common objective of ensuring sustainability – ‘fish for the future’ – for the benefit of present and future generations.

Commercial fishing in Western Australia is managed by controlling either inputs (e.g. the number and size of boats, the amount or type of fishing gear, the length of the season) or outputs (e.g. the amounts of fish which can be caught), or a combination of both. In general, controls are established through Management Plans or Orders made under the *Fish Resources Management Act 1994* (FRMA).

There are currently 37 managed fisheries (including six interim managed fisheries), and numerous other small or developing fisheries managed by a combination of prohibition notices, licence conditions and/or exemptions.

The minimum requirements to fish commercially include:

- All crew involved in commercial fishing to have a Commercial Fishing Licence; and
- The boat from which the commercial fishing occurs must hold a Fishing Boat Licence.

If a management plan applies to a fishery an additional authority is required – namely a Managed Fishery Licence (MFL) or an Interim Managed Fishery Licence.

The West Coast Rock Lobster Managed Fishery – the fishery which is proposed to be the pilot for any new unit register development – is managed under the *West Coast Rock Lobster Management Plan 1993*, under the fishing authority of a managed fishery licence. It is one of five major commercial fisheries in Western Australia that operates in a cost recovered management environment.

1.2 The licensing system and register

The licensing process is managed by the Department of Fisheries using a computer-based Fisheries Licensing and Management System (FLAMS).

An accurate FLAMS and licence register (the public interface area of FLAMS):

- Provides the basis for fisheries management and compliance;
- Helps protect the fishing rights of licence holders and investors; and
- Increases the lending confidence of banks against licences.

The register is currently managed by the Department of Fisheries’ Registrar, who ensures the information is accurate, reliable, of evidential quality and accessible to the public at reasonable cost.

1.3 Existing register

The existing register established under the FRMA is minimalist in concept. It records specified and prescribed details in respect of ‘authorisations’ (i.e. licences and permits), ‘exemptions’, and aquaculture leases.

The register provides for, though does not require, security interests created under the general law in, or in respect of, authorisations and aquaculture leases to be noted on the register in relation to those authorisations, etc. If the security interest is noted on the register, additional details in respect of the notation – namely the date of the creation of the interest, the date of notation of the interest, and any entitlement affected by the interest – are required to be included.

The register also provides for convictions or ‘black marks’ to be recorded against authorisations in respect of certain offences committed under the FRMA.

The recording of matters on the existing Department of Fisheries register has no ‘legal effect’ in the same sense that the recording of dealings (e.g. transfers, statutory mortgages, caveats etc.) in land on the Torrens Register has effect. In addition, the recording of matters on the existing register does not change the nature of, nor enhance in any respect, the property characteristics of the registered leases, licences and exemptions.

The register provisions provide for a public disclosure of prescribed details about commercial fishing licences, etc, by way of a public search facility for a fee.

The West Coast Rock Lobster Managed Fishery licence register currently displays the information below:

| MFL No. | MFL Holder | No. of Units (at start of season) | Security Interest (according to date of regist'n) | | |
|--------------------------|------------------|--------------------------------------|--|---------|-------|
| | | | 1 | 2 | 3 |
| WCRL 1400 (Example 1) | Bloggs ++ [C(1)] | Total: 100 units | C'wlth | Westpac | Bn'go |
| WCRL 1403 (Example 2) | Clement ++ | Total: 85 units | Westpac | | |

++ = address

[C(1)] = one conviction

In May 2003 the Minister for Fisheries approved a recommendation from the Rock Lobster Industry Advisory Committee to ensure that the details of the number of units affected by a security interest and the financial limit of the charge would be identified on the register.

The regulation amendment to implement this recommendation, *Fish Resources Management Amendment Regulations (No 4) 2004*, was gazetted on 30 November 2004. Operational systems are currently being developed to support the amendment.

1.4 Drivers for change

The need to develop a system which would allow the creation of a unique identifier for each individual unit of entitlement in the West Coast Rock Lobster Managed Fishery was first approved by the then Fisheries Minister, Monty House in 2000. The original purpose for this initiative was to increase security and confidence of investors in the industry.

The National Competition Policy (NCP) is a Commonwealth Government initiative that aims to ensure legislation and regulation in Australia is in the public interest. The assessment of the NCP implications on the FRMA and subsidiary legislation took three years and involved industry and the Department of Fisheries.

The State Government directions in response to the NCP were announced on 26 April 2002. These included the government's position on 'the register', namely:

'In order to improve information levels and maximise the opportunities for investment in those fisheries that are managed under a unitised system a register will be established that recognises the current and ongoing changes to individual unit holdings'.

Consultation between government, and industry stakeholders - in particular, those involved with the West Coast Rock Lobster Managed Fishery - continued about the register concept from 2002. In 2004, stakeholders requested that the Minister for Fisheries appoint a government/industry 'Unit Register Working Group' to progress the development of a unit register proposal.

2.0 OBJECTIVES

The Department of Fisheries and industry are keen to progress the concept of a unit register and have endorsed the following objectives for the project:

1. *To develop a register that identifies each unit with a unique identifier – for example in the West Coast Rock Lobster Managed Fishery, there may be an alpha-numeric code assigned to each unit in each zone – WCRLZ1 23,500.*
2. *To increase the security of financial investment in the industry – through the identification on the unit register of unit 'owners', and the level of security interest held against both the licence and the units.*
3. *To require the registration of security interests in units (including the number of units affected, and the financial limit of the charge). At present, the FRMA register does not require this to happen.*
4. *To identify the proprietary interest in units ("ownership of units") rather than just the MFL holder who fishes the units on behalf of the 'owner'. The unit holder may nominate any MFL to fish all or some of their units at the beginning of each*

season. It is intended that unit holders will be **required** to identify themselves on the unit register, so that MFL holders, and unit holders are separately identified.

5. *To address National Competition Policy outcomes* - specifically to improve the effectiveness of the recording of licence entitlements, and provide for a higher level of security for those individuals investing in the industry.

3.0 UNIT REGISTER – USER NEEDS (WORKING GROUP ASSESSMENT)

To ensure any new or revamped register meets the needs of the majority of stakeholders, a preliminary assessment of stakeholders' requirements has been made by the Working Group. The following have been identified:

- Identify the date of creation of the security interest, so that potential investors are provided clarity and transparency of the potential risks for investment.
- Increase the ease of searching, and the accessibility of, the register to make it more user friendly - including making it available online at stakeholders' personal computers.
- Identification of the priority of security interests (similar to the Australian Securities and Investment Commission register, and to the Department of Land Administration register).
- Ensure security interest amounts are consistently identified either by the dollar value or the number of units held.
- Some security interest holders have suggested that transfers should not proceed until the Registrar gets approval from all the affected security interest holders, rather than the current situation where if nothing is heard in 21 days, the Registrar allows the transfer.
- Put in place mechanisms to ensure the information provided on the register is current and correct.
- Identification of the unit holders and their contact details.
- Clarification of which units are leased and which are 'owned' and by whom.
- Extend the online capacity of the register to retrieve and report historical data – like licensing history.
- Configure the register to enable it to produce both full reports, and extracts of current authorisations and exemptions.
- Compliant with privacy principles.

What other needs do *you* have in a register?

4.0 ISSUES

There are a number of issues that need to be addressed for the development and operation of a register that meets both the above needs and any further requirements which may be identified, including:

- a) Operational issues. Any current issues with the operating and functioning of the existing register need to be addressed, and the resulting processes and principles incorporated into the operation of any new register – for example – the issue of Stamp Duty on transfers, and the time taken for transactions.
- b) Identification of ‘ownership’ of units. One of the primary reasons for a new register would be to identify the ‘owners’ of units. How could this be made a requirement that is effectively enforceable under the FRMA?
- c) Attributing ‘black marks’ after a conviction is finalised. Currently the Managed Fishery Licence (MFL) holder, Fishing Boat Licence (FBL) or Commercial Fishing Licence holders may all have a black mark notated on their licences for a single offence. With a new register identifying unit holders as well as holders of authorisations, an alternative means of attributing black marks may be considered.
- d) Capital Gains Tax, and other potential tax implications. Would a new register create an asset (in which case attracting Capital Gains Tax) or would it merely be recognising an existing asset? Would a contract identifying the date of ‘acquisition’ of units be enough to satisfy the State Revenue Office that the units were ‘owned’ before they were specifically identified on any new register? This information would need to be clarified ‘up front’ with the State Revenue Office.
- e) Impact of a unit register on current MFL holders. Some MFL holders may consider that a unit register that identifies the ‘owners’ of the units diminishes the authority of the holders of the authorisations. In the existing register, the holders of the authorisations are the primary focus. All communications and dealings must be through these people.
- f) Impact of a unit register on current security interest holders. Will a new register have any impact on existing security interest holders – or will it merely be ‘business as usual’? It is possible that a new register could separately identify security interests in an authorisation, as well as in individual units of entitlement, or in a total number of units. It is believed that this increased transparency and accountability could increase the commercial opportunities for investment in the relevant fishing industry.
- g) Support systems. Will a unit register require a different and/or more complex set of procedures to be followed by commercial fishers and third party investors? What impact would a unit register have on the Department of Fisheries’ Licensing Branch and other staff and resources?
- h) Cost. What would be the costs of introducing, and operating a new register that better meets the needs of all stakeholders? Would these costs be worth the

benefits conveyed by any new register? To provide the level of support and service required, would a full-time Registrar be required?

- i) Legislation. What amendments would be required to the FRMA and its subsidiary legislation to provide a legislative framework for a unit register? How long would it take for these amendments to come into force, and what impacts would such amendments have on the West Coast Rock Lobster Managed Fishery (and other unitised fisheries)?
- j) Extension of any new register. How and when would a new register be extended to other unitised fisheries?
- k) Implementation of any new register. Depending on the scope of the requirements – and the resulting agreed concept - for any new register, it is likely that it would be phased in, providing an increasing level of benefits to users over time.
- l) The ‘value of the privilege’ bestowed by a unit register. A register that identifies the ‘owners’ of the units, and specifies the amount and details of the security interest holders, may provide the financial sector with increased confidence for lending, and unit holders with increased security for trading. In addition, if a new register does increase the value of the privilege or “fishing right”, the Government may also need to consider an increased return. This is an issue, even given that the West Coast Rock Lobster Managed Fishery is one in which the current costs for management are recovered from the industry. It needs very careful consideration by Government in liaison with stakeholders and the community.

In order to progress, we need to know of any other issues, which may need clarification or addressing. We also are seeking your feedback and comments on the issues identified above.

5.0 WHERE TO NOW?

The Unit Register Working Group is committed to the following process and the proposed dates for completion:

1. Seek feedback via the ‘issues paper’ from specific users and those directly affected by the instigation of a unit register (by 15 April 2005)
2. Develop a concept proposal and draft ‘discussion paper’ for the implementation and operation of a unit register (May 2005)
3. With the approval of the Minister, release draft ‘discussion paper’ for a three-month public consultation period (July 2005 until October 2005)
4. Finalise Policy Paper – which incorporates register proposal – for consideration of the Minister (by January 2006).
5. Make any required legislative changes to FRMA, regulations and *West Coast Rock Lobster Management Plan* (July 2007).
6. Introduction of unit register begins phase-in by end August 2007.

6.0 YOUR FEEDBACK IS NEEDED

To ensure we meet YOUR needs and address any issues YOU may have with the development of a new register, please provide us with your feedback – either on the attached form or through a written submission, by **15 April 2005**.

A summary of responses, and a list of respondents will be included in the appendix of the ‘discussion paper.’ Comments will not be attributed to individual respondents.

Your feedback is important for the success of this project.

Please forward your completed feedback form or submission, by close of business on **15 April 2005**, to:

Unit Register Working Group
C/- Department of Fisheries
Reply Paid 61461
Locked Bag 39
CLOISTERS SQUARE 6850

Questions

1. In general terms, do you support the concept of the development of a new unit register?

Yes No *If 'yes' go to Q2, if 'no' please could you list your reasons for non-support below.*

.....
.....
.....
.....

2. What would you find most useful in a unit register? *Please rank the 11 elements below numerically in order of their usefulness, i.e. 1 is the most useful.*

Date of creation of the security interest.

Ease of access - making it accessible online, via your personal computer.

Identification of the priority of security interests.

Ensuring security interests are identified, either by dollar value or number of units.

Transfers should not proceed until Registrar gets approval from all affected security interest holders.

Mechanisms to ensure information provided on the register is current/correct.

Identification of the unit holders and their contact details.

Clarification of which units are leased and which are owned (and by whom).

Online retrieval and reporting of historical data, like licensing history.

Ability of the online register to enable it to produce full reports and extracts of current authorisations and exemptions.

Compliancy of the register with privacy principles.

3. Are there any other features you would find useful in a register?

.....
.....

4. What issues do you think need addressing before a unit register - see Section 4 of this document - can be introduced? *Please rank the 12 elements below numerically in order of their importance, i.e. 1 is the most important.*

Operational issues.

Identification of 'ownership' of units.

Attributing 'black marks' after a conviction is finalised.

Capital Gains Tax and other potential tax implications.

Impact of a unit register on current Managed Fishery Licence holders.

Impact of a unit register on current security interest holders.

Support systems.

Cost.

Legislation.

Extension of any new register.

Implementation of any new register.

The 'value of the privilege' bestowed by a unit register.

5. Are there any other issues you think need clarification or addressing for the development and operation of a register?

.....
.....

6. Your primary occupation (tick most applicable box)

| | | | |
|-------------------------------|--------------------------|---------------------------------|--------------------------|
| Legal | <input type="checkbox"/> | Managed Fishery Licence holder | <input type="checkbox"/> |
| Recreational Fishing industry | <input type="checkbox"/> | Commercial rock lobster fisher | <input type="checkbox"/> |
| Bank | <input type="checkbox"/> | Seafood processing or marketing | <input type="checkbox"/> |
| Investor | <input type="checkbox"/> | Accountant | <input type="checkbox"/> |
| Boat broker | <input type="checkbox"/> | Other | <input type="checkbox"/> |

8. How would you use a fisheries register?

.....
.....
.....

Thank you for taking the time to complete this feedback form.

