

## **Western Rock Lobster Fishery**

### **Western Rock Lobster Fishery 2005 MSC Final Surveillance Report Review of Corrective Actions from October 2005**

**Client:** Western Australian Fishing Industry Council  
**Certification Body:** Scientific Certification Systems, Inc. (SCS)  
**Lead Assessor:** Dr. Chet Chaffee  
**Contracted Assessment Advisors:** Dr. Bruce Phillips (Curtin University)  
Dr. Trevor Ward (Univ. of Western Australia)  
Dr. Tony Smith (CSIRO)

**Date:** 6 December 2005

#### **MSC reference standards:**

- 1. MSC Accreditation Manual Issue 4,**
- 2. MSC Fisheries Certification Methodology (FCM) Version 5,**
- 3. MSC TAB Directive Number TAB D-007**
- 4. MSC TAB Directive Number TAB D-008**
- 5. MSC Guidance to SCS 5 April 2005 – Potential Implications of Outstanding Conditions and Corrective Action Requests to Re-Certification Decisions**

## **Preface**

The information, opinions, and assertions made in this report are the sole responsibility of Scientific Certification Systems, Inc. (SCS). Advice was sought and provided by Dr. Trevor Ward, Dr. Bruce Phillips, and Dr. Tony Smith, but they are not responsible for, or in control of, the final determinations made in this report.

## **WRL Surveillance of Corrective Actions from July 2005**

### **Introduction**

This Surveillance Report finalizes all surveillance audits and findings for the Western Rock Lobster Fishery (WRL) under the initial certification granted by Scientific Certification Systems, Inc. (SCS) dated March 2000. The original certificate was set to lapse into inactivity in March 2005, however, extensions were provided October 24 2005 to complete all surveillance requirements. Five remaining non-conformances and associated Corrective Action Requests (CARs) were issued in October 2005, with a 30-day time period for the Western Australia Fishing Industry Council (WAFIC) to respond affirmatively or have the MSC certificate for the fishery cancelled. This report finalizes all positions with regard to the WRL fishery's compliance with MSC requirements, including the original "Conditions for Continued Certification".

It is the finding of SCS that the client, WAFIC, has addressed the 5 CARs issued in October 2005 in a sufficient manner to warrant consideration of its request to extend the certificate. However, any consideration of an extension will still be tempered by the need to see evidence of follow through by the client on the activities initiated as part of answering the 5 CARs. Any lapse of activity on any of the activities set in motion to answer the 5 CARs will invoke an immediate denial of extension and revocation of the certificate.

### **Background to this report**

The Corrective Action Requests that needed to be specifically and fully addressed by WAFIC by 24 November 2005 to receive consideration for requests for an extension to the MSC certificate were:

1. Contract Dr. Mark Burgman to complete a review of the 2005 ERA process and outcomes. Specifically, SCS asks that Dr. Burgman provide WAFIC with a pointed and comprehensive review that identifies all areas in which the ERA process needs to be improved to meet best practice standards.
2. Contract Dr. Mark Burgman to hold a stakeholder workshop (within the 30-day notice period if at all possible) where he will facilitate a discussion around three areas: a) the ERA process and ERA risk rankings from the 2005 ERA, b) addressing stakeholder comments from the 2005 ERA, c) the risks and potential mitigation measures associated with fishery sea lion interactions in light of the Ministerial decision on SLEDs, and d) discussing what the stakeholders believe needs to be modified within the management system of the WRLF to support continued MSC certification. Specifically, the workshop should have at the very least each of the stakeholders (or their representatives) from the 2005 workshop in attendance, as well as stakeholders that provided written comment and other interested stakeholders in the region. The

workshop should also have a member of the SCS assessment team in attendance. Department of Fisheries staff should not be in attendance except as observers (upon request) to answer questions directed specifically at the Department staff. Dr. Burgman will prepare a report of the findings of the workshop. WAFIC will provide SCS with a written discussion of how the outcomes from the workshop will be addressed.

3. Get under contract a member of the CSIRO Ecological Risk Assessment staff, such as Alastair Hobday, to complete an ERA according to the methodology developed and used by CSIRO for AFMA managed fisheries. SCS believes that the ERA conducted by the WA Department of Fisheries was insufficient to be considered fully equivalent to the Level 1 review required under the CSIRO methodology, and neither a Level 2 or Level 3 analysis of risks in the WRLF was ever completed. The contract with CSIRO staff would be to use the 2005 ERA developed by the WA Department of Fisheries as a starting point and conduct both Level 2 and Level 3 analyses in accordance with the CSIRO/AFMA Risk Assessment Methodology on any identified risks that received a ranking of moderate or higher by one or more workshop participants. In addition, the contract should specify a realistic time frame for the completion of the analyses that is agreed by CSIRO and SCS.
4. Given the Minister's decision to delay the implementation of SLEDs (Sea Lion Excluder Devices) in the WRLF, SCS needs to receive official documents identifying what management measures will be taken to now mitigate the ongoing moderate to high risk posed to Sea Lions in the WRLF for the 2005/2006 fishing season. The documents should include at a minimum, the Official report for the August 2005 Sea Lion SRG meeting (signed off by all SRG members), the advice provided to RLIAC from the SL-SRG, and the advice provided to the Minister from RLIAC. In addition, SCS would like to see what will be accomplished to mitigate the risks to Sea Lions in the 2005/2006 fishing season while further research is conducted on SLEDs. In other words, what actions are being taken based on the advice provided, and a timeframe for the actions to be completed.
5. Contract an internationally recognized independent expert on stock assessment to review current work and results on the status of the WA lobster stock provided by the Department of Fisheries. Given the contradictory nature of the results provided to SCS, it is imperative that an outside and independent expert be contracted to review the status of the stock. The importance of a healthy stock in this fishery cannot be overstated. The fact that the fisheries management system in Western Australia is implementing pot reductions in some parts of the fishery indicates that there are some concerns over the status of WA rock lobster. Since the results of stock analyses provided to the SCS assessment team were not consistent with the recommended management measures, SCS believes an expert review is necessary and should be conducted by a world-class stock assessment expert independent of the Department of Fisheries. The contracted expert and the timeline for the review should be acceptable to both WAFIC and SCS to ensure independence and quality of the review.

The information submitted to SCS is:

CAR No. 1	Review of the Western Rock Lobster Ecological Risk Assessment, 2005 <i>Report prepared for The Western Australian Fishing Industry Council by Mark Burgman, University of Melbourne, November 14th, 2005</i>
CAR No. 2	Contract arrangements between Mark Burgman and WAFIC to hold Stakeholder workshop; Workshop invitation and agenda to stakeholders for 24 November 2005; and Details of venue for 24 November 2005 Workshop. Workshop completed 24 Nov. 2005 Participation by SCS Assessment Team members at the 24 November 2005 workshop. Draft summary of workshop outcomes and minutes by Dr. Mark Burgman.
CAR No. 3	Signed Contract between WAFIC and Dr. Hobday at CSIRO to conduct further analyses of ecological risks in the WRL according to the AFMA/CSIRO model for ERAs.
CAR No. 4	<ul style="list-style-type: none"> <li>• The Western Rock Lobster/Sea Lion Interaction Scientific Reference Group- Report from the Meeting of 24 August 2005. This report is publicly available from the website <a href="http://www.fish.wa.gov.au/docs/op/op028/fop028.pdf">http://www.fish.wa.gov.au/docs/op/op028/fop028.pdf</a>.</li> <li>• Advice from SRG members (and one observer) with tracked changes and signing off on the final report from the 24 August 2005 meeting. These are: <ul style="list-style-type: none"> <li>○ Guy Leyland (tracked changes in blue)</li> <li>○ Ron Edwards (tracked changes in green)</li> <li>○ Peter Mawson (tracked changes in brown)</li> <li>○ Nick Caputi and Richard Campbell (tracked changes in kaki)</li> <li>○ Nick Gales sign off</li> <li>○ Ron Edwards sign off</li> </ul> </li> <li>• Advice provided to the Minister from RLIAC meeting of 19 September 2005. The resolutions from the meeting were as follows: <ul style="list-style-type: none"> <li>○ Action # 1: A copy of the research program for SLEDs will be circulated to members. Members agreed that any concerns/feedback should be directed in writing to Mr Tim Bray.</li> <li>○ Action # 2: A progress report on SLEDs will be provided to RLIAC at the next meeting on 11 November.</li> </ul> </li> <li>• Copies of the research programme. These are: <ul style="list-style-type: none"> <li>○ Video Trials</li> <li>○ Research Trials</li> <li>○ Commercial Trials</li> </ul> </li> <li>• Timeline for completion of the various trials,</li> </ul>

	<p>presentation of advice to the Minister and implementation.</p> <ul style="list-style-type: none"> <li>• Copy of power point presentation given to the RLIAC rock lobster tour over the week 7-10 November 2005. The presentation gives results of the research trials.</li> <li>• Mark Burgman’s review of the Western Rock Lobster Ecological Risk Assessment 2005 (see WAFIC response to CAR 1) urged WAFIC and the Department of Fisheries to reconsider the position that undertaking modelling on mortalities of sea lion pups would be of little benefit. WAFIC will discuss the matter further with the managers and researchers of the fishery and with Dr Peter Mawson from the Department of Conservation and Land Management with a view to undertaking a feasibility study on undertaking a modelling exercise.</li> <li>• Minister of Fisheries position on SLED implementation for the 2006/2007 fishing season.</li> <li>• SLED research results as required by the WA Minister of Fisheries.</li> </ul>
<p>CAR No. 5</p>	<ul style="list-style-type: none"> <li>• Signed Memorandum of Understanding between Murdoch University and WAFIC to negotiate and agree on a contract to have Dr. Norm Hall carry out a review of the current stock assessment of WRL.</li> </ul>

## Findings

### CAR #1.

Dr. Burgman was hired to complete a review of the 2005 ERA process. A draft review was written and disseminated for comment. A final was submitted prior to the 24 November 2005 requirement. The review discussed a variety of areas where the ERA process used for the WRL fishery can be and needs to be improved to be a valid and accepted process with validity to both the scientific and stakeholder communities. Dr. Burgman’s review is comprehensive, including errors made throughout the process by the convenors as well as the facilitator.

SCS finds this report acceptable and notes that it meets the CAR and closes out the associated non-conformance.

SCS notes here that the next ERA conducted for the fishery will need to properly address all the shortcomings identified in Dr. Burgman’s review to meet even minimum acceptance under the MSC program. This includes, but is not limited to, properly and thoroughly answering all submitted stakeholder comments during the ERA process and after the release of the ERA Draft Report. SCS highly recommends that the client, WAFIC, conduct the next

ERA to ensure it is comprehensive and inclusive of all parties as WAFIC is the client responsible for the MSC certification process.

### CAR #2.

Dr. Burgman was hired by WAFIC to conduct a workshop as required by CAR #2 issued by SCS on 24 October 2005. The workshop was conducted on 24 November 2005 and a draft report summarizing the outcomes and minutes were provided shortly thereafter.

The workshop covered all the topics required by SCS. It is the observation of SCS that while each topic was covered at some level, it would have been useful to spend more time on some of the areas than was available in the single day. This is not the fault of the client or the facilitator. It is just an observation that is noted by SCS so that when future forums designed to solicit stakeholder comment are arranged, the client can allow sufficient time for in-depth discussions on all topics.

The summary of the workshop discussions provides a useful guide on a number of things that need to be addressed to contend with stakeholder concerns. Although SCS does not expect that this fishery, or any fishery, would be managed based on stakeholder concerns, it does note that concerns should be properly considered from all stakeholders, not just those associated with the fishing and processing sectors, to meet the MSC requirements.

As required, WAFIC still needs to provide SCS with a written discussion of how the outcomes from the workshop will be addressed. SCS notes that WAFIC is actively engaged in this activity. Any consideration of an extension, or any extension to the MSC certificate will be negated if SCS does not receive this by 15 February 2006<sup>1</sup>. In addition, any future MSC related activities will review these concerns and the WAFIC responses. Lack of follow through on these issues will significantly jeopardize any existing MSC certificate (old or new), as the lack of follow through or progress by either WAFIC or the Department of Fisheries on addressing stakeholder concerns was one of the major problems identified by stakeholders in the workshop.

SCS finds that Dr. Burgman's facilitation of the workshop, Dr. Burgman's summary of the outcomes, and WAFIC's progress on providing responses to the workshop outcomes is sufficient to meet the CAR issued by SCS and close out the non-conformance, as long as WAFIC completes its responses, submits them to SCS for review by 15 February 2006<sup>2</sup> and SCS find them comprehensive and acceptable. If the WAFIC responses are not completed and submitted for review by 15 February 2006<sup>3</sup>, any existing certificate (old or new) will be immediately suspended and subject to revocation.

### CAR #3.

---

<sup>1</sup> This date was chosen instead on one in January 2006 to allow for enough time to complete the task recognizing that the end of December 2005 and the month of January 2006 are holiday and vacation times in Australia.

<sup>2</sup> Ibid

<sup>3</sup> Ibid

An understanding has been reached between WAFIC and CSIRO to contract Dr. Hobday (CSIRO) to conduct Level 2 analyses commensurate with AFMA ERA methods on all risks identified as moderate or higher by at least one workshop participant in the 2005 ERA conducted by the WA Department of Fisheries. SCS recognizes that Dr. Hobday was out of the country during the 30-day period that SCS allowed WAFIC to respond to this CAR, which made it impossible to draft a specific contract. However, SCS was provided evidence that Dr. Hobday is willing and able to conduct the required analyses and that WAFIC has agreed to hire his services. Since Dr. Hobday and his colleagues at CSIRO have conducted these analyses for a number of commonwealth fisheries, SCS has no concerns about the rigor that will be applied to this project. Many, if not all, of the concerns SCS has about the scientific underpinnings of the 2005 ERA conducted by the WA Department of Fisheries (such as using existing information on fished and unfished areas to facilitate an understanding of potential fishery impacts) will undoubtedly be examined and addressed as part of this project.

SCS finds the existing arrangement to formalize a contract between CSIRO and WAFIC to conduct the Level 2 analyses commensurate with the AFMA ERA methodology sufficient to meet the CAR and close out the associated non-conformance.

However, since an actual contract is not yet in place, any consideration of an extension to the existing certificate will be contingent upon getting a formal contract in place that is acceptable to SCS. Furthermore, if an extension to the existing certificate is allowed, it will be contingent on SCS reviewing evidence that progress is being made on a monthly basis toward completing the required analyses. Should there be any indication that the intention of fulfilling this requirement is being stalled or neglected, any existing certificate (old or new) will be immediately suspended and subject to revocation.

#### Car #4.

The issue of mitigation to potential risks to sea lions from the WRL fishery remains a subject of concern. WAFIC made what SCS considers to be every reasonable effort to facilitate the implementation of SLEDs (Sea Lion Excluder Devices) after the recommendation by the WA Department of Fisheries and the Sea Lion Scientific Reference Group set up as part of the new Environmental Management System. WAFIC encouraged the Department of Fisheries to complete research on SLEDs, encouraged fishermen and RLIAC (Rock Lobster Industry Advisory Council) to support the adoption of regulations to implement SLEDs, and encouraged the Minister of Fisheries to set regulations to implement SLEDs for the 2005/2006 WRL fishery. Through no fault of WAFIC as the client for MSC certification, a decision was made by the Minister of Fisheries that negated the intended mitigation measures for the 2005/2006 WRL fishery due to a concern over the research findings of the Department of Fisheries. Even after the Minister's decision, WAFIC made every effort to encourage the Department of Fisheries to complete additional research requested by the Minister, and to get something in place for the 2005/2006 fishing season. On top of that, WAFIC pushed for a formal meeting of the Sea Lion Scientific Reference Group (SL-SRG) to discuss the potential

for other short-term emergency measures for the 2005/2006 fishing season. The SL-SRG reviewed the situation and found that there were no short-term measures (such as time or area closures) that could be guaranteed to positively reduce risks to sea lions. In point of fact, that is why the SL-SRG originally recommended the introduction of SLEDs.

The fact remains that the recommendation by the Department of Fisheries and the SL-SRG is that SLED implementation is the only way to properly address the situation – and this did not happen in the 2005/2006 WRL fishery which means that the risks in the fishery will still exist until the 2006/2007 WRL fishing season.

However, in the 30-day period provided to WAFIC to address this CAR, the Department of Fisheries has completed its new research on SLEDs as requested by the Minister and a formal letter from the WA Minister of Fisheries indicates that SLEDs will be implemented in the 2006/2007 WRL fishery. This shows that mitigation efforts did continue to occur on the research side in 2005 as well as by management to facilitate implementation of SLEDs in 2006/2007, which is evidence that activities to mitigate risks to sea lions have been ongoing. In addition, some low level implementation of SLEDs is occurring in the 2005/2006 WRL fishery, and WAFIC is continuing to formally encourage fishers to implement SLEDs voluntarily throughout the 2005/2006 fishing season, which is all WAFIC can do under the circumstances. While unfortunate that all activities did not culminate in the full implementation of SLEDs throughout the WRL fishery in 2005/2006, it provides for mitigation in 2006/2007. In addition, the SL-SRG concluded that the risks to sea lions in 2005/2006 should not be any higher than in previous years, so the year delay should not in and of itself cause a collapse in the sea lion colonies.

SCS finds the continued activities by WAFIC to encourage the Department of Fisheries research on SLEDs to be completed and to get the Minister of Fisheries to approve the implementation of SLEDs for the 2006/2007 WRL fishery acceptable evidence that efforts were made by the client to facilitate mitigation measures for sea lions in the area of the WRL fishery to the extent possible by the client. SCS finds that this is sufficient to meet the CAR and close out the associated non-conformance with the following caveats.

SCS notes that the promise of implementation is not implementation in and of itself. On other occasions, intentions to address requirements imposed by the MSC process failed, leaving a gap that had to be addressed by WAFIC and SCS. As a result, SCS will need to continue to monitor the situation on a regular and ongoing basis to ensure that progress is being made to facilitate the implementation of SLEDs in 2006/2007. If SCS is not satisfied that progress is sufficient, any MSC certificate (old or new) will be immediately suspended and subject to revocation.

In addition, the stakeholders pointed out in the recent workshop (24 November 2005) that lack of progress on mitigating sea lion impacts in the WRL fishery may have caused the WRL fishery to be in violation of the EPB&C Act. If the

fishery is formally found to be in violation of this or any other domestic or international law due to a lack of implementing sufficient mitigation measures for sea lions, this too will cause an immediate suspension of the MSC certificate as well as revocation procedures until the problem is properly addressed.

#### CAR #5.

The fifth and final CAR is for WAFIC to facilitate a contract with an internationally recognized independent expert on stock assessment to review current work and results on the status of the WA lobster stock provided by the Department of Fisheries.

SCS was provided evidence that WAFIC made every effort to contact agreed international experts to conduct a review of the ongoing issues SCS identified in association with the current analyses on the status of the WRL stock.

No independent expert was able to be found during the 30-day period. However, WAFIC was able to find an internationally recognized expert in stock assessment and in the WRL fishery that agreed to be part of the required review. Dr. Norm Hall of Murdoch University has agreed to set up a contract with WAFIC to conduct the reviews required by the CAR issued by SCS. Although Dr. Hall is a noted expert, and is most familiar with the WRL due to his past and current association with the WA Department of Fisheries, he is not fully independent as he continues to work on certain aspects of the WRL fishery under contract. SCS does agree that Dr. Hall is one of the most competent assessors available to review the analyses on the status of the WRL stock, and he is acceptable to SCS in this capacity. However, to satisfy the independence of the review, SCS will continue to require that the contract to complete the review include the participation of an independent scientist acceptable to SCS to work in conjunction with Dr. Hall in setting up the protocols for the review, identifying the work to be completed, and reviewing Dr. Hall's results and recommendations. This will ensure that the review is done by a scientist that is fully competent and familiar with the fishery making the review economic and efficient, as well as ensuring that the results are acceptable to an independent expert of international standing to address any concerns over potential conflicts of interest.

SCS finds the continued activities by WAFIC to get in place a contract to review the status of the WRL stock acceptable and sufficient to meet the CAR and close out the associated non-conformance with the following caveats.

A formal contract must be developed by WAFIC, signed by the agreed scientists, and accepted by SCS no later than 15 February 2006<sup>4</sup>. SCS will provide WAFIC with specific details that SCS believes need to be in the Terms of Reference for the contract. In addition, SCS will need to continue to monitor the situation on a regular and ongoing basis to ensure that progress is being made on the required analyses. If SCS is not satisfied that progress is

---

<sup>4</sup> Ibid

sufficient, any MSC certificate (old or new) will be immediately suspended and subject to revocation.

### **Conclusion**

SCS finds that the suite of activities by the client (WAFIC) and the managers of the WRL fishery, are sufficient to meet the CARs issued in October 2005. Associated caveats will remain in place. SCS will monitor the situation in the fishery monthly to ensure regular and sufficient progress is made on each of the ongoing processes. Any indication that work is not progressing on each project will cause an immediate suspension of any existing certificate (either an extended certificate from March 2000 or a new certificate from the 2005/2006 re-assessment of the fishery if they occur) and immediate procedures to revoke the certificate.

SCS is now able to consider the request by WAFIC for a further extension to the existing certificate. Upon receiving an official request, SCS will consider the request and provide its decision after consultation with the MSC.