

Western Rock Lobster Fishery

Western Rock Lobster Fishery 2005 MSC Annual Surveillance Report Review of Corrective Actions from July 2005

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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 is the last report that is to be issued by Scientific Certification Systems, Inc. (SCS) regarding the continued compliance of the Western Australia Rock Lobster Fishery (WRLF) with the MSC standards from the date of the fishery's initial certification in March 2000. Although the original certificate was set to lapse into inactivity in March 2005, extensions were granted by SCS to the client in order to allow the client to adequately respond to continued requests to comply with the original "Conditions for Continued Certification". In addition, given that this was the first certified MSC fishery to enter reassessment, it was deemed appropriate to provide some additional time to complete the new assessment and do so in a way that the complete record of annual surveillance audits would be available to consider by the team. The extensions have allowed the certificate to remain active through this final surveillance audit.

Background to this report

The focus of this surveillance report is to review the performance of the WRLF management system against existing and ongoing "Conditions for Continued Certification" also known in other certification schemes as 'Corrective Action Requests' or CARs. The actions taken in this report are important as they provide the basis for whether the certificate for the WRLF remains active. The WRLF certificate has remained active beyond the initially specified ending date (March 2005) through extensions provided by the Certification Body, SCS, with approval from the MSC. The certificate for the WRLF was extended to 28 September 2005 to coincide with the issuance of this review.

There are MSC documents that guide what actions and requirements a Certification Body must contend with when assessing a fishery for certification or conducting surveillance audits of already certified fisheries. The primary documents are the MSC's Accreditation Manual Issue 4 and the Fisheries Certification Methodology (Version 5). Although these are the primary documents, there exist a number of other documents that may also pertain to a Certification Body's actions. These documents are typically provided to clarify existing requirements or to set additional requirements not previously or properly elucidated by existing MSC documents.

The MSC documents beyond the Accreditation Manual and Fisheries Certification Methodology that are pertinent to this report are:

1. MSC TAB Directive Number TAB D-007 – Effect on fish and fish products if a fishery certificate is suspended or withdrawn,
2. MSC TAB Directive Number TAB D-008 – Content of Conditions, and

3. MSC Guidance to SCS 5 April 2005 – Potential Implications of Outstanding Conditions and Corrective Action Requests to Re-Certification Decisions.

All these documents are important to this report, as with all other surveillance reports, as they provide the basis by which a Certification Body must act. As such, these documents set forth the actions that can and should be taken by Certification Bodies in terms of proper methodological performance by the Certification Body, proper performance against the MSC standard by a fishery, and the requirements governing the issuance and/or ongoing maintenance of fishery certificates.

The MSC requirements state that any outstanding ‘Conditions’ or ‘CARs’ must be addressed by a fishery and the measures put in place approved by the Certification Body in an agreed time frame. According to the MSC documents at the time of the initial certification, which were actually Accreditation Manual (Issue 3) and Certification Methodology (version 3), the time frame was open and set through discussions between the Certification Body and the Client for fishery certification. There was no original specification in writing that a condition had to be met prior to the 5-year required re-assessment. Since the time of the initial certification of the WRLF, Accreditation Manual No. 4 and Certification Methodology Version 5 were issued by the MSC, with the requirement that they become immediately effective. In the new Certification Methodology (Version 5), Section 3.4.1 of the document states:

"Where the fishery achieves a score of less than 80 but of at least 60 for any individual Performance Indicator, the certification body shall set one or more conditions for continuing certification. The condition(s) shall improve performance to at least the 80 level within a period set by the certification body but no longer than the term of the certification."

This now makes it necessary to ensure that all ‘Conditions’ or ‘CARs’ are properly addressed by the fishery and approved by the Certification Body by the end of the 5-year certification period.

Even without this new requirement in the MSC methods, the original documents governing the assessment and certification in March 2000 required that SCS as the certification body of record negotiate and agree both the content and timelines for completion for the initial ‘Conditions’ or ‘CARs’ with WAFIC as the applicant for the WRLF certification. SCS did conduct and complete negotiations with the Executive Director of WAFIC, Brett MacCallum, and subsequently signed a Memorandum of Understanding with both WAFIC and the Western Australia Department of Fisheries (signed by Peter Rogers) where all parties agreed to the Conditions and timelines. SCS has specified in a number of annual surveillance reports for the WRLF that the initial timelines agreed were found to be too ambitious and needed to be amended to be in line with the realities of achieving changes in management performance in a cost-recovery fishery where the managers can only make recommendations for change, but the Minister of Fisheries must make the final decision. To that extent, SCS has modified timelines for meeting conditions on a case by case basis to allow sufficient time to determine the changes needed, make recommendations through the required regulatory channels (such as the Rock Lobster Industry Advisory Committee), and allow time for decisions to be completed. As the first fishery in the MSC program, achieving the Conditions for Continued

Certification was a new process and in many instances was much more difficult than originally anticipated. However, in each case where SCS granted extensions on timelines for achieving required Conditions SCS based its decisions on evidence that sufficient progress was being made to allow SCS to believe that compliance with a Condition or CAR would eventually come to fruition.

Review of Continuing Conditions

To determine if the WRLF has now met all the requirements of the Conditions placed on the fishery, it is useful to review what the Conditions are and how, if at all, they have changed over the period of certification.

The Conditions for Continued Certification (and their associated timelines) stated in the original certification report, and as importantly agreed through a written and signed Memorandum of Understanding between WAFIC, SCS, and the Western Australia Department of Fisheries are:

The 5 specific requirements are:

1. Ecological Risk Assessment (Performance Indicator 2A)
Within 14 months of certification, WAFIC and Fisheries WA agree to complete a comprehensive and scientifically defensible assessment of the risks of the fishery and fishing operations to the ecosystem (ecological risk assessment). The risk assessment is to be based on existing knowledge, and take into account points 2 to 5 in Performance Indicator 2C in the report *Certification Report on the Western Rock Lobster Fishery in Western Australia, SCS-MFCP-F-0001*. The assessment should consider risks of all aspects of fishing (see intent in criterion 2B) on species (including protected and ecologically related species), habitats, and biotic communities (see criterion 2A). The risk assessment will identify and prioritize gaps in knowledge. The risk assessment will produce a set of prioritized risks, and strategies to address those risks, including research strategies that make maximum use of comparisons between fished and unfished areas. The risk assessment will be reviewed by independent and external expert reviewers, and be available for public comment.
2. Environmental Management Strategy (Performance Indicator 2B)
Within 24 months of certification, WAFIC and Fisheries WA agree to prepare an Environmental Management Strategy for the fishery and distribute it for public comment and input. The EMS will address impacts of the fishery on the environment, and will include proposed objectives, strategies, indicators and performance measures. The EMS will specify an operational plan, including implementation actions and a supporting program of research. Future research should aim to provide information on the impacts of the fishery on the ecosystem that is at least as scientifically valid as that produced by studies of fished versus unfished areas.
3. Operation of the EMS (Performance Indicator 2C)

Within 36 months of certification, WAFIC and Fisheries WA will effectively incorporate the Environmental Management Strategy developed under 2 above, into the operational arrangements for the fishery.

4. Transparency of Decision Making (Performance Indicator 2D)

Within 24 months of certification, WAFIC and Fisheries WA will increase the participation of the environmental community or their representatives in the decision-making processes in the fishery. This will include consultation on impending decisions, and involvement (full participation) in the decision-making processes at a range of levels in the fishery.

5. Data on By-catch of Icon Species (Performance Indicator 2E)

Within 12 months of certification, WAFIC and Fisheries WA agree to improve the formal monitoring systems in the fishery with arrangements for recording data on the by-catch of, or any other interactions of the fishery with, mammals, seabirds, manta rays, dolphins, or whales.

These conditions have been either cited or restated in many if not all the surveillance reports in one form or another. Although SCS has been careful to continue to point to the original wording, there are some people and organizations that still question whether the performance requirements now imposed by SCS on the WRLF are significantly different than those outlined in the original certification report and in the signed Memorandum of Understanding between all parties. It is SCS's contention that there has been no change to the requirements. Each surveillance report has simply tried to determine what progress has been made by the fishery and what work was still necessary to meet the original condition. Should anyone contend that the requirements have changed, they simply need to go back to the original wording to see that nothing has changed. SCS is still judging the information provided by the client (WAFIC) against the wording of the original conditions.

At present, SCS has signed off on a number of the Conditions/CARs. However, the outstanding issues to be dealt with in this report are, as outlined in the previous surveillance report of 13 July 2005, the two areas of non-conformance: (1) the publication of a publicly reviewed Ecological Risk Assessment (ERA) and (2) a sufficient response in the Environmental Management of the fishery to potential ecological risks to sea lions.

The reason the risks to sea lions still formed a non-conformance in July 2005 is because of the risk ranking assigned to sea lion interactions in the fishery and the management responses proposed. In the first ERA report (2002) the status of the sea lion as a threatened species led to a ranking of moderate risk with regard to the potential impacts from the fishery. Specifically, the report stated:

“ERA Risk Rating: Sea lion pups entanglement in pots (C3 L4 MODERATE).”

The management response proposed by RLIAC based on advice from an independent Scientific Reference Group was to implement sea lion excluder devices or SLEDs to reduce potential mortality of sea lions to zero. SCS viewed this as meeting the

requirement for both identifying and assigning risk as well as providing an appropriate management response.

However, on 12 July 2005 a media release stated:

“Fisheries Minister Jon Ford has responded to the concern of professional fishers and announced a 12-month delay in the introduction of sea lion exclusion devices in the West Coast Rock Lobster Fishery.

This decision to delay implementation therefore negated the proposed management actions to mitigate the moderate risk. This was in direct opposition to what the client (WAFIC) supported.

Unfortunately, the Minister’s decision also created a problem with regard to MSC certification. The fact that SLEDs are not being implemented leaves a risk active in the fishery that is at the least considered moderate (2002 ERA), and at worst considered moderate to high by a number of workshop participants in the 2005 ERA.

Both the past and the recent ERAs require that any moderate to high risk factor should be dealt with by appropriate management response. A timely management response is therefore required, as the risks are no longer considered low given the Minister’s decision. Based on this change in management, the Condition or CAR to provide an appropriate management response was therefore reinstated in July 2005 as required under the terms of the original certificate. In this report we review what the management system is doing in response to the high risk.

The non-conformance associated with the ERA was based on the fact that a second ERA as agreed had not been completed. The requirement for a second ERA is not a change in the performance required to meet the original condition. Instead, the requirement for a second ERA resulted directly from a review of the first ERA against the specifics of the required Condition or CAR. As stated above, the original conditions required some process to identify and rank potential ecological risks in the area of the fishery. The Department of Fisheries produced an ERA in 2002 to meet this response. SCS commented upon receiving the first ERA produced, that the ERA was did not fully meet the original requirements. SCS noted it would accept the 2002 ERA as partially meeting the requirement, if WAFIC and the Department of Fisheries agreed to produce a second ERA before the end of the 5-yr. certification period that addressed SCS’s concerns about gaps in the 2002 ERA process and content. An agreement was reached in 2003 and signed by all participants (WAFIC, the Department of Fisheries, and the SCS assessment team). It was agreed that the second ERA would provide an improved methodological approach consistent with the most appropriate and rigorous parts of the AFMA ERA and National (those used Western Australia) ERA methods combined. A non-conformance was issued, and a new timeline set for WAFIC and the Department of Fisheries to comply by producing a second ERA of much higher quality before March 2005.

The timeline agreed for developing a new ERA was March 2005; however, it was not produced in this timeframe. An urgent non-conformance was issued with a specific timeframe for compliance or potential loss of the MSC certificate. WAFIC provided the second ERA on 15 August 2005. SCS notes that producing the document again

provides partial compliance with the non-conformance. To fully meet the non-conformance the document, as originally stated in the first non-conformance, must meet the requirements of the original condition which is to produce “a comprehensive and scientifically defensible assessment of the risks of the fishery and fishing operations to the ecosystem (ecological risk assessment)”.

This report is to review and comment on the content of the second ERA to determine if it is a document that meets the specifics set forth in the original condition. To do so the ERA would have to be a significant improvement over the original ERA in terms of process, scope, content, response to stakeholder comments, and outcomes. In addition, SCS will review whether there are any outstanding issues from the agreements signed by WAFIC and the Department of Fisheries subsequent to the original ERA. And last, it is important to note that the work provided in response to the original condition must also bring the performance of the fishery up to the original 80 scoring guidepost which states:

- There has been a comprehensive and peer-reviewed evaluation of the risks posed by the fishery to the environment (ecological risk analysis), based on existing information.
- Such an evaluation is based, at least in part, on information from fished versus unfished areas.
- There have been studies to address specific identified impact issues, and these have evaluated ecological risks using scientifically robust methods.

Findings

High Risk Ranking for Fishery Impacts on Sea Lions

According to the ERA (2005) produced by the Fisheries Department, the action by the Minister of Fisheries in Western Australia (WA) to stop the introduction of SLEDs in the fishery creates a high risk situation in terms of potential impacts from the fishery. Moreover, high risk rankings in the ERA require a management action to address and mitigate the high risk.

Utilizing the newly implemented Environmental Management System, the fishery managers called a meeting of the Sea Lion Scientific Reference group on 24 August 2005, within weeks of the Minister’s decision to discuss the matter and provide advice to the Department of Fisheries and RLIAC. Dr. Chet Chaffee (SCS) joined the meeting as an observer by teleconference. The SRG discussed what measures other than SLEDs might be implemented in the short-term to mitigate potential impacts to sea lions in the 2005/2006 fishing season. Official advice from the Sea Lion SRG is still pending, and therefore no further management actions have yet been discussed or implemented to mitigate the potential risk identified in the 2005 ERA. Without further management actions, the risks will not be mitigated in the 2005/2006 fishing season. Moreover, the statements in the 2002 and 2005 ERAs indicate a firm

requirement for management plans to mitigate moderate and high risks. And as of the writing of this report, none have been developed.

SCS finds that quick action by the client to begin addressing the high risk potentials associated with sea lions is affirmation that this aspect of the EMS put in place is functional. Given the quick action to convene the Sea Lion SRG and seek advice on appropriate management actions (mostly due to WAFIC), SCS finds that there is sufficient progress to avoid revoking the fishery certificate. However, the lack of official action addressing the high risk associated with potential fishery impacts on sea lions remains a concern. Since the meeting of the Sea Lion SRG in August 2005, SCS has had no further evidence that things discussed in the Sea Lion SRG were formally adopted and provided as advice to RLIAC, or that RLIAC has made further recommendations to the Minister to address this problem. Moreover, while WAFIC and the Department of Fisheries have noted in a written statement their combined support for SLEDs, there is still no guarantee that SLEDs will be implemented in the following year or any other year due to the political pressures in the system. SCS finds that the existing gap in management action to address this high risk issue is a matter of significant concern to cause further review during the re-assessment process.

Ecological Risk Assessment

As stated earlier, the delivery of a completed ERA with stakeholder comments and Department of Fisheries' responses to stakeholder comments partially meets the existing non-conformance in the WRLF as it was delivered prior to the final date of 28 August 2005. The remaining issue is whether the ERA process and outcomes can be shown to meet the original 'Condition' and the scoring guideposts for the original performance indicator (see description above).

In making its decision about the content of the ERA, the SCS assessment team reviewed all submitted documentation from WAFIC and the WA Department of Fisheries. In addition, the SCS assessment team was provided with comments from stakeholders (WWF, Mr. David Offord, and Dr. R. Babcock of CSIRO) regarding the ERA. And last, SCS spoke with Dr. Mark Burgman (University of Melbourne), the professional in ecological risk assessment methods hired by the Department of Fisheries to help facilitate the ERA process.

There is no question that the 2005 ERA report is an improvement over the first ERA report from 2002. The report provides more information on the range of scores from the participating professionals and stakeholders, it discusses the uncertainty around the assignment of risk rankings, and it provides a more thorough discussion about the strengths and weaknesses associated with the risk rankings.

The real question is does the new ERA (2005) meet the intent of the original Condition for Continued Certification which is specifically to meet the 80 scoring guidepost from the original performance indicator.

Original Condition for Continued Certification

Each point below is drawn from the exact words in the original condition. For each, we review whether the new ERA provides compliance as required under the MSC program.

- A. A comprehensive and scientifically defensible assessment of the risks of the fishery and fishing operations to the ecosystem (ecological risk assessment).

It is difficult to determine if the 2005 ERA is fully comprehensive and scientifically defensible. The document does not provide the scientific bases for most of the decisions made by the panel. The document states: “Like step 3, this step was not undertaken in the current project. Background material developed previously is provided in Fletcher et al. (2005). The descriptions in the *Guide* are detailed. The descriptions here are an overview of the process for those who require a general understanding.” In addition, participants were given a workbook in preparation for the ERA workshop where potential risks were identified and ranked. In part, this is an improvement over the 2002 ERA. However, in checking with stakeholders and Dr. Burgman, it was clear that not all participants had easy access to the material, nor were they given sufficient time to review and digest the material before attending the workshop. This would appear to limit a comprehensive discussion by all participants. In addition, we found portions of the ERA where the information cited is out of date and raises questions about the scientific defensibility of the document. For example:

- Page 36 last paragraph and over the page: The issue of “risk from efficiency gains” is discussed extensively, but mainly in relation to “campaign fishing”. There is a single line that “Depletion studies include direct investigations into catchabilities and fleet efficiencies” but no mention of what these studies have shown. In fact, we have addressed this issue in discussions with the Department of Fisheries as part of the re-certification process, as it appears that there is an very rapid increase in efficiency, which, if true, could significantly alter the risk ranking. This seems a key piece of information to provide to the participants, but it appears this was not even presented.
- Page 53: Effects of rock lobster removal on ecosystems. Bullet point 4: “breeding stock ... is currently as high now as it has been over the last 30 years (Penn 2000)”. This information is at least five years out of date. In fact the current assessment, as we have discussed with the Department of Fisheries and WAFIC shows significant declines in breeding stock in given areas, which in our opinion seems to lead to a higher probability that the breeding stock is at or below the identified reference level. Support for this can also be seen by the management actions going into effect to limit fishing in some zones to counter the observed decline.
- Page 62: The report states explicitly that “the EcoSRG was unable to determine the impact on the ecosystem of removing lobsters from deepwater habitats”. In light of this uncertainty and lack of information, shouldn’t the risk be assessed as moderate or high rather than low? Under the AFMA risk assessment method, a significant lack of data and understanding triggers a moderate risk and requires further analysis before a the assigned risk can be lowered. However, under the National guidelines used in WA for the 2005 ERA there does not appear to be the same need to address the lack of knowledge or a high level of uncertainty before assigning a low risk ranking.

There are other such examples as well, but it seems unnecessary to deal with each point at this time as they will be dealt with in due course under the full re-assessment that is currently underway. An issue that is relevant is that many of the areas where the 2005 ERA cites outdated information or does not adequately deal with a lack of information are the same areas where the SCS assessment team found problems in the 2002 ERA. There is now, as there was in some cases in 2002 ERA, sufficient evidence that the background data provided and the discussion engaged were lacking up to date information and analyses. This is not just a matter of judgment, but one of fact.

Our finding therefore is that despite the notable improvements from 2002, the 2005 ERA still does not provide a scientifically defensible examination of the ecological risks in the fishery.

B. The risk assessment is to be based on existing knowledge.

There is no doubt that the document is based on existing knowledge. In fact, it is based on more than that. In at least one instance the department actually sought out more than existing knowledge to inform the workshop participants about potential impacts to sea lions in the areas of the fishery. The Department of Fisheries actually undertook additional studies as a direct result of the previous ERA and the EMS activities.

C. The assessment should consider risks of all aspects of fishing (see intent in criterion 2B) on species (including protected and ecologically related species), habitats, and biotic communities (see criterion 2A).

For the most part, risk identification was not limited to any specific set of issues. Dr. Mark Burgman used processes that opened up discussions in all fields and to all participants in terms of identifying potential impact areas.

D. The risk assessment will identify and prioritize gaps in knowledge.

Clearly, some of this is implicit in the 2005 ERA report as the authors acknowledge at least some areas where little is known (see Page 62: The report states explicitly that “the EcoSRG was unable to determine the impact on the ecosystem of removing lobsters from deepwater habitats”). However, there is no explicit statement about gaps in data or knowledge for all the risk categories. As we have pointed out already, it appears that gaps in knowledge were not given much credence when assigning risk rankings, so it is hard to see what priority these gaps have in terms of providing an adequate scientific basis for the decisions about risk.

E. The risk assessment will produce a set of prioritized risks

This was accomplished.

- F.** (The risk assessment will produce) strategies to address those risks, including research strategies that make maximum use of comparisons between fished and unfished areas.

The 2005 ERA specifically points out that strategies to address risks are the domain of the EMS and will be undertaken as part of the EMS. SCS finds this broadly satisfactory as a process. While some measures have been taken to address some of the risks in the fishery, the fact remains that the 2005 ERA points out that management strategies for most risks are only going to be dealt with during the full revision of the EMS in July 2006. This allows some areas identified as having moderate to high risk now to continue through the 2005/2006 fishing season before receiving specific attention.

Another important aspect is whether the research strategies make maximum use of comparisons between fished and unfished areas. While SCS has been given evidence that some discussions have focused on this issue (as part of the Eco SRG meetings), there is nothing in the EMS or the two ERAs that addresses this point specifically.

Based on the evidence provided, the 2005 ERA does not appear to meet this requirement.

- G.** The risk assessment will be reviewed by independent and external expert reviewers.

The 2002 ERA was reviewed by external peer reviewers. However, the new 2005 ERA has not been externally reviewed. SCS accepts that having Dr. Mark Burgman as a facilitator has partially addressed the intent. However, there was no specific document produced by Dr. Burgman reviewing and commenting on the ERA process and outcomes. WAFIC should request this of Dr. Burgman as part of meeting this requirement.

At present, this requirement was not met in full.

- H.** The risk assessment will be available for public comment.

The document was made available for public review and comment. However, the WA Department of Fisheries responses to comments did not provide SCS (or the public) with any way to determine the basis by which comments were accepted or rejected. This may have been due more in part to restricted time availability than anything else. Regardless of the reason, the responses to stakeholder comments appeared to ignore some very important issues.

Scoring Guidepost for Performance Indicator 2A of the Original Assessment

The original scoring guideposts for Performance Indicator 2A are listed below with a review regarding the fishery's compliance after completion of the 2005 ERA.

- A.** There has been a comprehensive and peer-reviewed evaluation of the risks posed by the fishery to the environment (ecological risk analysis), based on existing information.

This is the same as above. A peer review was not conducted on the 2005 ERA.

- B.** Such an evaluation is based, at least in part, on information from fished versus unfished areas.

The client has suggested that there appears to be little information available on fished and unfished areas that can be used to understand the ecological consequences of the WA lobster fishery. However, there does appear to be some that is worth considering. Dr. Babcock of CSIRO provided comments to the ERA workshop and in written form during the stakeholder review that illustrated some comparable analyses using fished and unfished areas. SCS is not able to judge at this point whether the information is significant or not. However, even in the case where the information is not useful, there should be a thoughtful analysis provided so that stakeholders (and the assessment team) can understand the basis for a decision to not use the information. No such review was provided.

It appears that the 2005 ERA used no information on comparable situations where fished and unfished areas were assessed.

- C.** There have been studies to address specific identified impact issues, and these have evaluated ecological risks using scientifically robust methods.

Other than the ERAs (2002, 2005) the assessment team was provided with some specifically identified studies on fishery related impacts to the ecosystem in the area of the fishery. For example, there have been some studies on the impacts of dropping pots in specific areas and these studies were considered in the ERAs. Also, the WA Department of Fisheries did conduct the 2002 and 2005 ERAs, which directly address fishery related ecological impacts. By conducting these studies the fishery management system partially complies with this scoring guidepost. However, the scoring guidepost does say “using scientifically robust methods. The peer reviews and stakeholder reviews, as well as the assessment team review all questioned the proposition that the 2002 ERA was scientifically robust and defensible. In reviewing the 2005 ERA, the SCS assessment team still has many concerns about the robustness of the process and the outcomes. Many of these issues have already been identified in the paragraphs above, so it is not necessary to reiterate them again in this section.

Additional Points

Two additional areas worth mentioning are the process of selecting ERA workshop participants, and the status of the lobster stock in Western Australia.

The entire basis of identifying and ranking risks using the National (Australia) scheme for conducting ERAs is the use of judgment by expert participants. This means that the entire process hinges on who participates. For example, if one held a workshop with nothing but participants from environmental and conservation organizations, it might result in a much larger number of high risks in the fishery. Clearly, it is exceedingly important when using a methodology that relies heavily on the judgment of the participants that the right balance is struck in terms of participation.

The SCS assessment team took issue with the structure of the workshop in the 2002 ERA pointing out the heavy emphasis on using Fisheries Department staff to develop a list of risks and then rank them. Although this was a major concern pointed out by SCS and many of the stakeholders, the 2005 ERA appears to have done little to correct this problem. There is no question that the staff in the fisheries department has greater knowledge about the WRL fishery than scientists from outside the fishery; however, this is not the point. The point is to bring together capable experts from different areas and provide them with significant background materials to properly identify and address potential risks in a systematic and scientifically defensible manner. In the 2005 ERA there appears to still be significant bias toward using a larger number of departmental staff and their colleagues over outside experts. The ERA workshop participation by affiliation for the first workshop was: Department of Fisheries (8), conservation NGOs (2 plus one partial attendance), WAFIC (1), fishing industry (2). In the second workshop there were 11 Department of Fisheries staff, 2 people from CALM, 2 external scientific participants, and 1 conservation person. Comments from the stakeholders and the workshop facilitator support the view that the 2005 ERA group of workshop participants was heavily weighted in a specific direction. SCS was also provided with a number of statements about the workshop discussions, indicating that the bulk of the discussion time was carried by a few Department of Fisheries staff, mostly from the research department. The purpose of choosing a balanced set of participants is to avoid even inadvertent bias to the extent possible. It does not appear that this problem was properly addressed by the 2005 ERA workshop conveners, even though it was stressed in the assessment team's review of the 2002 ERA. As in the first ERA (2002), this casts doubt on the outcomes of the project.

The EMS developed and implemented for the WRL is based in some part on the findings of the 2002 and 2005 ERAs conducted for the fishery. In each, the status of the lobster stock, specifically the breeding stock, is identified as the key risk factors in the fishery. Should there be any problem with the stock, the fishery would act immediately to address the problem and ensure that the stock stays at levels above the recommended limit reference point for the fishery. The fact is that the Department of Fisheries has now identified a problem in the level of breeding stock in the fishery and implemented management actions to address it. SCS sees this as affirmation that the management system is adaptive and responsive to threats to the fishery. However, the information provided to SCS on the assessments of the stock is still of concern as we indicated in the previous surveillance reports. The concern stems from the fact that the various assessments seem to provide different results, and it is difficult to determine if the situation is fully understood and the management actions warranted. While we applaud the implementation of management measures to be precautionary, we believe that a better understanding of the status of the stock is

necessary to eliminate any uncertainties and ensure the long term stability of the fishery.

Conclusion

As we have stated in the report, there are 2 areas of performance of consequence in this report:

1. Did the ERA fully meet the specific requirements of the original “Conditions for Continued Certification”?
2. Did the ERA and associated work provided by the Client (WAFIC) bring performance of the fishery management system up to the 80 scoring guideposts from the original assessment’s performance indicator?

SCS believes that the work completed does show significant progress on behalf of WAFIC to comply with the required conditions. In acknowledgement of this work, SCS is not revoking the certificate.

However, the substantive issues that still remain to be addressed, are also significant enough to preclude the basis for further extension of the current certificate, according to MSC procedures and guidance.

Based on these findings, SCS has determined that the most logical disposition of the current certificate will be its natural lapse. The posting of this report on the MSC website on 24 October 2005 begins the mandatory 30-day notice to the client and all interested parties (as required by MSC’s Fisheries Certification Methodology, Version 5) before this lapse becomes finally effective. The intent of this procedure is to allow appropriate notification to interested stakeholders and chain of custody holders about a change of status that may affect marketing of labelled products.

No further extension to the certificate will be considered unless over the 30-day notice period the client (WAFIC) can provide corrective actions that fully address the specific problems identified in this report. That means that no lobsetr caught in the WA Rock Lobster Fishery after 24 October 2005 may be sold under the MSC label unless an extension to the certificate is put in place or the successful re-certification of the fishery is completed.

To that end, the Corrective Action Requests that would need to be specifically and fully completed by WAFIC before 24 November 2005 to receive consideration for requests for an extension to the MSC certificate are:

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.