

Report on Illegal Fishing for Commercial Gain or Profit in NSW

Conducted by Mick Palmer

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Table of contents

Introduction.....	3
Overall goal.....	4
Summary	4
Methodology	7
Limitations of the review	8
Recommendations	9
Background and Review Findings	17
General.....	17
Abalone and rock lobster	19
Other species and issues	27
Indigenous	31
Operational compliance capacity	34
Legislation	41
History	46
<i>The agency</i>	46
<i>The clients</i>	46
<i>The commercial industry</i>	46
<i>The recreational sector</i>	47
<i>The aquaculture sector</i>	47
Summary of processes used in the review	48
<i>Public meetings</i>	48
<i>Group meetings</i>	48
<i>Confidential meetings</i>	48
<i>Submissions</i>	48
Appendices	
Appendix A - Terms of reference	49
Appendix B - Graphs	50

Introduction

The illegal capture and sale of fish for commercial gain or profit is accepted as a significant issue in NSW. For a long time it has been known that abalone and rock lobster in particular have formed the basis of a significant illegal trade, but other species are becoming increasingly involved as the demand for fresh seafood, and the price of quality product, have risen.

Various compliance strategies have been implemented over time to increase compliance capacity and effectiveness, with varying degrees of success. Accurate and timely information has traditionally been difficult to obtain and, consequently, even targeted compliance operations have frequently proven to be extremely resource and time intensive.

In an attempt to better understand the nature and causes of the problem and to identify possible solutions, the NSW Minister for Agriculture and Fisheries, the Hon Ian Macdonald MLC, together with the Director-General of NSW Fisheries, Mr Stephen Dunn, commissioned a review of illegal and black market fishing in NSW, to analyse the extent of illegal harvesting and sale of fish and to recommend the means and resource priorities necessary to optimise compliance and create effective deterrents. As part of this process a joint industry and government Advisory Team was established to provide advice to the Chair of the review.

The Minister requested that Mr Mick Palmer lead and chair the review. The Advisory Team, formed to assist the chair, comprised the following persons:

John Roach	Master Fish Merchants Association
Graeme Byrnes	Chair, Seafood Industry Council (commercial fisher representative)
Bruce Schumacher	ACoRF Chair (recreational fisher representative)
Tony Andrews	New South Wales Fisheries
Terry Outtrim	SafeFood NSW
John Smythe	Abalone Industry Representative

Overall goal

The overall goal of the review was to scope and assess the nature and extent of illegal harvesting and black marketing of fish for commercial purposes and to recommend areas for potential improvement in legislation, regulation, education and enforcement including identifying the resources and priorities necessary to achieve optimal compliance and effective deterrents.

The review reflects a genuine commitment by the Minister for Agriculture and Fisheries, and the Director-General, NSW Fisheries, to comprehensively analyse and assess the problems and their apparent causes, including any weaknesses, deficiencies or vulnerabilities in present regulatory arrangements and enforcement capacity and effectiveness.

Recognising the complexity of the subject matter and the multi-faceted nature of the fishing industry the review team has attempted to take a “whole of industry” approach, to validate, wherever possible, the root causes of the illegal harvest and black market problems and to make pragmatic achievable recommendations that genuinely have potential to make a positive difference.

The terms of reference for the review are attached at Appendix A.

Summary

The clear finding of this review is that the illegal harvesting and black marketing of fish is a serious, widespread, entrenched and growing problem in NSW.

The activities and practices involved threaten resource sustainability and have serious potential consequences for public health and safety, Government policy and Governance, the continuation of Indigenous cultural practices and the ability of the legitimate fishing industry to properly plan and manage its business affairs, and maintain confidence and profitability in the industry. The environmental (sustainability) and health (public risk) dimensions of this situation are very significant and cannot be overstated.

Whilst it is more difficult to quantify the direct economic cost of non-compliance in lost revenue terms, the cost to Government of existing threats to the viability of a number of sections of the commercial fishing industry (eg. abalone, lobster and oysters alone are worth more than \$45 million p.a. collectively) and the necessary reliance on expensive and frequently protracted research projects, the findings of which are compromised by illegal fish catch figures, are clearly substantial.

The value of NSW fishing stocks is, however, probably best illustrated by the diversity of fish species that frequent NSW waters. Supported by a long coastline

and extensive river, estuary and lake systems, together with a combination of temperate and subtropical climates, NSW waters are the source of the widest range of commercial fish species found in any jurisdiction in Australia. These species include a wide variety of pelagics (e.g. tunas), bottom demersal (e.g. snapper), estuarine (e.g. flathead), crustaceans, bait species and shellfish.

This assessment was corroborated by people attending meetings or who otherwise gave information or opinion to the review. The overwhelming majority clearly believed that the present level of illegal activity is serious, creates significant public health risks and is unacceptable and unsustainable in the long term, in environmental, economic and compliance terms.

As part of this concern there was a strongly held, and consistently expressed, view that there is a need to fundamentally change the prevailing "Australian" fishing culture, not only of the fishing community, but also of the judiciary, the government and the general public. In particular, many people within the industry expressed serious concern at the apparent lack of judicial recognition of the environmental impact and direct threat to the resource, caused by many forms of illegal harvesting and black marketing of fish. A related and fundamental concern is the lack of understanding of Aboriginal cultural fishing practices and the importance, in the development of future fishery policy, of an effective Aboriginal cultural maintenance program.

Present attitudes and poor levels of understanding of the need for resource protection are widely believed by stakeholders to have led to an inappropriate level of community acceptance of illegal fishing practices, an unwillingness to report illegal activity, a lack of government commitment to provide adequate enforcement resources, and an under-estimation of the seriousness of offences by the judiciary when determining penalties.

At present, neither the risk of being apprehended, nor the fear of significant penalty or sanction, are sufficient to deter illegal activity. Whilst a multi-faceted approach to this situation is essential it is obvious that current Fisheries Officer numbers and overall compliance resource capacity is inadequate to deliver effective compliance. As well, it is clear that legislative amendment will be necessary if the aim of the review "to achieve optimal compliance and effective deterrents" is to be achieved.

Whilst the need for immediate compliance and legislative improvements was constantly emphasised by stakeholders, education, including capacity building and targeted education programs, was stressed as the single most important way by which fundamental change can be achieved and sustained. This view is strongly supported by the review team, although the importance of an holistic multi faceted approach to cultural change is recognised as essential to overall success.

In particular, there is strong industry recognition that the people posing most risk to the fishery are organised, motivated by greed and opportunity, and consistently involved in fish theft or black marketing for profit or gain. Whilst this recognition is hardly unexpected, the overwhelming weight of anecdotal information points to the fact that the majority of fish theft and black marketing is committed by a relatively small number of people. This situation provides genuine opportunities, through sensible, properly targeted legislative reform, educational programs, culturally based equitable allocations and fisheries enforcement, to markedly reduce illegal activity and improve compliance levels.

During the review, NSW Fisheries' compliance management and officers were the subject of substantial criticism, the reasons for which are addressed in this report. However, it is important to consider this criticism in light of an environment where there has been considerable recent change to fisheries management in NSW, including the introduction of a recreational fishing licence, the consideration of an Indigenous fisheries strategy and the closure of areas to commercial fishing. These changes have not necessarily been universally accepted with good grace, and the following comments are made with these issues in mind.

Despite the criticisms, there is clearly strong support from across the fishing community and from the vast majority of stakeholders, for the role and responsibilities of fisheries compliance. As a consequence, there is a significant opportunity for NSW Fisheries to work much more closely and productively with the commercial, recreational and Indigenous fishing sectors to mutual and wider benefit.

NSW Fisheries compliance managers and staff are a dedicated group of hard working officers with a great deal of knowledge about the industry and the resource. They are often unfairly maligned because of their perceived inability to effectively deter and apprehend illegal activity. Much of this incapacity is beyond their control and not of their own making.

The reality is there are insufficient officers to appropriately meet the challenges of illegal fishing and black market sale that now exist. Of equal importance, there is a clear need for officers to be better trained and resourced to meet existing and emerging challenges in deterrence, and to effectively undertake proactive enforcement, investigations, prosecutions and broader operational techniques.

NSW Fisheries Officers have a diverse and multi-dimensional set of responsibilities. However, illegal fishing and black market sale of fish is a major challenge that cuts across almost every aspect of their role. They are required to exercise judgment and discretion in a working environment where those they must inspect can often be confrontational and aggressive. At times, unavoidably, they face violent and abusive behaviour and are placed in situations of risk.

This environment needs to be fully and properly appreciated in the consideration of this report and the formulation of any new policy.

Methodology

The processes applied in the conduct of the review included public meetings, the receipt of written submissions and a series of confidential meetings. The confidential meetings were conducted by the Chairperson, in the presence of an impartial third party unconnected with the fishing industry or NSW Fisheries.

The Chairperson also visited Victoria and Tasmania and held discussions on operational practices, powers and authorities, and broader legislation, with representatives of Fisheries Victoria, Tasmania Police and Tasmania Fisheries.

Whilst attendance at most public meetings was modest, attendees were representative of the full range of commercial as well as recreational fishing activities within the state. Almost all of the people who either attended public meetings, took part in confidential discussions with the Chairperson, or who made written submissions, presented as people with a strong and generally long involvement with fishery management and their respective sectors. They expressed genuine concerns for the proper protection of the fisheries resource and a commitment to the improvement in the illegal harvesting and the broader black market situation.

Separate meetings and consultations were held with Aboriginal stakeholder representatives, and the Indigenous Fishing Strategy Working Group was briefed on the issues and findings of the review.

At a number of meetings there was quite rigorous debate between recreational and commercial fishers but on almost every occasion the parties came to a position of strong common agreement on the seriousness of the problem and possible solutions. Invariably they recognised and endorsed the need for recreational and commercial fishers to work more closely together and to seek to improve levels of mutual understanding between fishing sectors and factions.

Information received during confidential meetings tended, understandably, to be more specific than that received at the public meetings or through written submissions. However, many people were prepared to speak very frankly and strongly in the public forums and a number of written submissions were quite detailed.

Almost inevitably the vast majority of information received during the review was anecdotal rather than evidential or empirical. The report is therefore largely based on such “informed source” information, received from people with long experience in, and knowledge of, the fishing industry and who are clearly

concerned about the future sustainability of the fisheries resource.

However, in the opinion of the chairperson, the knowledge and experience underpinning most of the concerns and opinions, and the strength and consistency of the views and arguments, provided a sound basis upon which conclusions could be reached.

Some empirical and statistical support was found in NSW Fisheries research reports and submissions to the Total Allowable Catch (TAC) Committee but it is recognised by all stakeholders that the quality of available data is not as high or as reliable as is desired. These limitations and the inevitable subjectivity and self-interest on the part of some fishing industry participants, were taken into account in the drafting of this report.

Limitations of the review

It needs to be recognised that the review process was undertaken within a relatively short time frame and was not resourced to undertake research or otherwise empirically validate the majority of information received. In order to corroborate many of the more serious allegations, the review team would have needed the capacity to undertake investigative audits and field assessments. This capacity was neither intended nor available and the findings and recommendations of this report should be considered in this light.

Regardless of these constraints, the issues and concerns upon which the findings of this report are based, were raised with sufficient frequency, consistency and authority to provide confidence in the conclusions reached.

Recommendations

The issues canvassed in "Background and Review Findings" of this report are, in the opinion of the Review Team, all worthy of further consideration. The recommendations listed below identify areas for potential improvement in education, enforcement and legislation as specifically required by the terms of reference of this review. They reflect those findings that, it is considered, require immediate or early attention if appropriate action is to be taken to achieve optimal compliance and effective deterrence.

It is recommended that:

- i. A comprehensive, multi-faceted and sustainable, education and awareness strategy be developed and implemented jointly by government and industry, targeting all stakeholders and with a particular focus on youth, Indigenous issues, community-wide awareness of the actual impact of illegal harvesting and black marketing, and cultural change. This strategy should seek to clearly and unambiguously inform and educate people of the significant health consequences of illegal activity, the fragility of the NSW fishery, of the laws in force and their purpose, and of the role of NSW Fisheries - in terms of what it does and why it does it.
- ii. The current establishment of NSW Fisheries, Fisheries Officers be immediately reviewed and properly integrated steps taken to increase both fisheries officer numbers and compliance capacity to the level necessary to deliver acceptable compliance outcomes.
- iii. As part of the process in paragraph ii. above NSW Fisheries should review the findings of this report as a matter of priority and consider:
 - 1) implementing a divisional restructure that more efficiently facilitates and supports a corporately cohesive and consistent approach to the delivery of compliance outcomes,
 - 2) reducing (as proposed in Finding No. 95) the "hard barrier" reporting levels, within compliance, to no more than three levels and to creating a new, executive level, Chief Compliance Officer position, with a direct reporting line to the Director-General of NSW Fisheries, and with overall responsibility and accountability for all aspects of compliance performance, and the delivery of effective outcomes,
 - 3) immediately refocusing and re-badging the corporate compliance strategy so that it fully inculcates the compliance role into the broader mission and corporate planning of NSW Fisheries, from

program design, through planning to administration and sets an unambiguous framework for the focus, prioritisation and measurement of compliance development, activities, outputs and outcomes,

- 4) conducting a skills and capacity audit, to identify the strengths, weaknesses and deficiencies in the present NSW Fisheries compliance profile and implementing a recruitment and in-service selection and development policy that will facilitate the selection, appointment, up-skilling and development of the range of skills and capacities needed to deliver effective compliance outcomes,
- 5) ensuring that any award based limitations to the achievement of the above recruitment and development outcomes are addressed in the current industrial award negotiations and, to the fullest extent possible, a less prescriptive award framework agreed which properly facilitates and balances personal growth, performance recognition and reward, with organisational flexibility and productivity,
- 6) ensuring the early implementation of a credible, uniform case management system that will enable the timely and efficient collection, analysis and exchange of information and intelligence, effectively support and inform the planning and management of compliance operations and activities, identify operational priorities and accurately measure performance,
- 7) establishing as a matter of urgency, through a combination of targeted recruitment, in-service training and system development, an effective criminal intelligence capacity sufficient to provide a sound and accurate basis upon which crime trends and crime group targets can be identified and compliance operations appropriately prioritised, targeted, resourced and conducted,
- 8) developing an overall compliance capacity that allows, in addition to targeted operations, for the conduct of sufficient deterrent-based, random or spot, premises searches and document examinations to act as a genuine incentive to enhanced compliance and self-regulation,
- 9) implementing a recruitment policy, that requires as a precondition or preference to appointment as a Fisheries Officer, that applicants possess a range of certificate type qualifications, including four wheel drive, first aid, boat handling, and power tool operation training, and when suitable courses are available, more sophisticated training (including indigenous and ethnic awareness

education, intelligence analysis, crime-scene preservation and possibly targeted investigation skilling),

- 10) working to expand and improve the quality of interagency agreements and arrangements with a view to achieving the highest possible levels of compliance-focussed cooperation and collaboration with both State/Territory and Commonwealth stakeholders,
 - 11) investigating the value of an integrated Fisheries and boating patrol program,
 - 12) considering either the re-introduction of a "Flying Squad" style mobile capacity, sufficient to support a multi-disciplinary, teams based and targeted, approach to serious fisheries investigations and/or the negotiation of outsourcing or partnership arrangements for these responsibilities with the NSW Police,
 - 13) assessing as a particular priority the opportunities and options for an increased use of properly targeted joint agencies and multi-jurisdictional operations as part of the response to identified national concerns and priorities.
 - 14) endorsing the fact that the members of the current Fisheries Investigation Unit (FIU), and any functionally similar unit that may replace it, should be officers of unquestionable integrity with the Director-General having the capacity to appoint and remove officers with total discretion,
 - 15) addressing, as a matter of urgency, the ways by which the present 1800 call service and the proposed, NSW Police related, call centre arrangements could be supplemented to achieve a more effective and credible after hours contact and response capacity.
- iv. A comprehensive approach be developed to more effectively and equitably protect genuine traditional Aboriginal cultural fishing practices and fish stocks, including:
- 1) the implementation of an holistic and constructive approach to reform, involving full engagement and open consultation with Aboriginal stakeholders and consideration of legislative changes necessary to recognise cultural fishing practices and the establishment of a permanent advisory body to the Minister,
 - 2) seeking to distinguish between genuine "culturally based" fishing rights and "commercial exploitation," in a way that properly

recognises and accommodates traditional cultural practices whilst adequately protecting the resource,

- 3) extending, indefinitely, the life of the Indigenous Fisheries Working Group beyond its present cessation date of June 2004 and considering aligning its status with that of other management committees,
 - 4) more actively and effectively promoting and integrating Aboriginal representation on Management Advisory Committees (MACs) to ensure Aboriginal people have greater input into both fishery management and recovery and that their views are properly expressed and taken into account in the management process. Continually assessing, as part of this process, the quality, relevance and value of the training and preparation of Indigenous people to provide them with the skills necessary to allow them to participate properly in fishery management.
 - 5) assessing the opportunities and options for creating practical exceptions to present and proposed bag limits and offence descriptions, that recognise the reality of Aboriginal cultural practices and extended family obligations, including, (1) consideration of allowing beach shucking of abalone at a certain minimum distance from the water and after a period of time has elapsed sufficient to allow a fisheries officer who was present to have measured the catch, and (2) the extension, clarification and effective communication of "special permit" exemptions,
 - 6) examining options for the implementation of wider, more flexible penalties - including the use of those that are culturally based - that operate to reduce the prospect of Aboriginal people, particularly young Aboriginal men, being locked into the justice cycle, and that offer opportunities for offenders to "work off" fines, for example, through meaningful, fisheries related work experience,
 - 7) considering the viability of creating a community abalone scheme, as an alternative to the current permit scheme and the ongoing investigation into the feasibility of establishing a hatchery based, stock enhanced, abalone fishery in which Aboriginal people would be the principal shareholders.
- v. Recognising initiatives presently being proposed in Fisheries Management Strategy processes, that early consideration be given to the implementation of further spawning season closures of designated abalone reefs in conjunction with targeted NSW Fisheries compliance activities aimed at minimising abalone theft and maximising the

effectiveness of compliance activities.

- vi. Immediate consideration be given to classifying remote and threatened abalone reefs and closing them to recreational fishing other than during clearly defined "prescribed periods" each year, when compliance activities could be appropriately focused and optimised.
- vii. The bag limit for recreationally caught abalone be reduced from 10 to 5 and consideration given to the introduction of vehicle or boat limits of no more than twice the personal bag limit.
- viii. A shucked abalone size limit be calculated by setting an agreed "number per kilo" limit for shucked abalone found in the possession of a recreational diver, and applying this limit in the same way as a bag limit to ascertain lawful catch and possession limits.
- ix. An offence, similar to that in force in South Australia, to take or attempt to take, abalone without being in actual possession of an approved measuring device, suitable for measuring abalone, be enacted.
- x. An offence, similar to that in force in South Australia, be enacted to create an offence for divers who fail to re-attach abalone to a reef after it has been measured and found to be undersize.
- xi. A requirement be introduced for recreational fishers to score (or otherwise suitably mark) the foot of abalone before they are placed into a catch bag.
- xii. A requirement be introduced for recreational fishers to cut or clip the central tail fin of a lobster at the time of catch.
- xiii. Corresponding offences be enacted for selling, buying, attempting to buy, or being in possession for sale of abalone or lobsters so marked.
- xiv. The practicality of recreational lobster fishers being required to maintain records of catch numbers and lobster sizes be further investigated.
- xv. State and Commonwealth fisheries authorities explore ways to improve the quality and extent of current liaison and cooperation in an attempt to reduce the incidence of lobster theft and lobster trap theft by Commonwealth fishers and the effectiveness of detection and enforcement.
- xvi. Immediate consideration be given to reducing the present bag limits of high priced fin fish and crustaceans such as blue swimmer crabs and mud crabs.

- xvii. Compliance activity be focused on illegal catch of eels, and excessive gear use, to make this activity less prevalent, with special consideration given to categories of offences such as for elvers.
- xviii. A bag limit of no more than one 10 litre bucket, or 20 fish, for sea garfish be implemented, with the bag limit further reviewed as part of the recreational fishery management strategy.
- xix. There be a requirement for the use of a 6 metre hand hauled prawn net by a recreational fisher to be subject to annual registration, with a requirement for the nets to be tagged and only used when the owner is present.
- xx. NSW Fisheries initiate additional cooperative arrangements with the oyster farming industry to better assist the development of strategies to prevent and reduce oyster theft.
- xxi. In order to properly protect the legitimate aquaculture industry, regular audits of aquaculture farms be fully integrated into the NSW Fisheries compliance strategy and expanded to include "feed tonnage to stock on hand" and "sales records to maximum yield," ratio assessments, as a basis for further audit and investigation.
- xxii. A number of broader non-species specific legislative and regulatory changes be considered, including:
 - 1) abolishing the present 'prescribed quantities' provisions and replacing them with zero number and weight possession limits,
 - 2) implementing 'sale of fish' provisions, which prohibit recreationally caught fish from being stored on designated commercial premises and deeming all fish, found on a such a premises without proper documentation, as being held for sale,
 - 3) implementing graded offences and penalties and wider 'Court Order' provisions, similar to those presently in force in other jurisdictions and as outlined in Finding No. 127, and creating clear civil proceedings remedies that allow for the awarding of damages, including punitive damages, for specified 'unlawful sale or purchase' breaches,
 - 4) given the critical importance of changing the prevailing black market fishing culture in NSW, the serious threat caused to the sustainability of fishing stocks by black market activity and the importance of effective monetary deterrence, enacting "temporary

(24-72 hour) closure" powers that would allow NSW Fisheries, SafeFood NSW and other approved officers to issue an "Immediate Closure of Premises" order to a trader found in possession of illegally caught or undocumented fish,

- 5) adopting a provision, consistent with maritime law and similar to that in force in Western Australia, making the master of a vessel or permit holder jointly liable for any fisheries offences committed on his vessel,
- 6) consistent with FMS processes, implementing a mandatory points system resulting in automatic licence suspension and fishing rights cancellation in all NSW commercial fisheries, specifically extending share cancellation provisions from the rock lobster fishery to all share management fisheries for serious offences.
- 7) implementing a requirement that commercial fishers and charter boat operators provide proof of identity to a Fisheries Officer where there is reason to believe an offence has been committed.
- 8) to deal with the current problem that arises when illegally caught fish are found on a vessel or vehicle and no one admits ownership of the fish, implementing a provision that provides, in the absence of any admissions by occupiers of any vessel or vehicle upon which such fish is found, that all persons in or on the vessel or vehicle are deemed to be in joint possession of the fish,
- 9) on the basis that there is an almost unanimous view across the fishing community that present bag limits for most species of fish are too generous and easily open to abuse, reviewing all present bag limit levels with a view to their reduction and their supplementation, (and for some species their replacement), with maximum boat, vehicle or where practical, total weight limits,
- 10) reassessing the value and acceptability of big catch fishing competitions and considering their replacement by competitions with structures more compatible with responsible fishing behaviour and modern fishery management goals,
- 11) requiring persons purchasing commercial fishing net material to demonstrate that they hold a current fishing licence that authorises the use of that equipment,
- 12) implementing penalty provisions linked to value of illegal catch similar to those in force in Western Australia,

- 13) expanding proceeds of crime and confiscation of assets provisions to allow them to apply to specified fisheries offences,
 - 14) as part of a national approach, implementing appropriate cross-border enforcement powers and nationally consistent legislation to properly deal with organised trafficking and trading in fish and other natural resources. The implementation of trafficking provisions similar to those recently introduced in Victoria will be important to intra-state trafficking and trading as well as to cross-border crime,
 - 15) expanding the present "conviction based" reward system (which due to uncertainties and prolonged time delays has proven to be an ineffective incentive to the report of illegal activity) to allow the payment of rewards, or part rewards to be made following the laying of a criminal charge, rather than only after conviction,
 - 16) applying the reward system to a wider range of prescribed fisheries offences, (presently restricted to abalone and lobster), based upon an assessment of the size of the problem and the threat to the viability of the stocks and to legitimate industry, caused by the conduct,
 - 17) amending current legislation to ensure equitable protection and parity for Fisheries Officers with NSW Police Officers with respect to assaults committed upon them in the course of their duties.
- xxiii. The Government should consider providing budget supplementation to NSW Fisheries based on the level of fines received for fisheries offences as a means of funding some of the costs of effective compliance and resource protection

Background and Review Findings

General

1. Although the level of illegal harvesting of fish for commercial purposes (including broader black market fishing activities) in New South Wales cannot be accurately quantified, the problem is clearly serious and poses significant public health, environmental and economic threats to the sustainability of the NSW fishery. Indeed NSW fishery resources, whilst diverse, are in most instances less abundant and under more pressure than those in many other states. Accordingly they require a higher level of protection than their value might otherwise suggest.
2. These threats potentially impact on the credibility of data, the overall management of the resource, the setting of total allowable catch levels, critically important safe-food health standards and the economic viability of the fishing and the seafood industries.
3. The seriousness of illegal harvesting and black-market fishing in NSW is strongly and broadly recognised across all aspects of the fishery and broader seafood industry. Commercial, recreational and indigenous fishers accept that they are custodians of a scarce, and potentially diminishing, resource and have a shared responsibility for its protection.
4. At a number of public meetings, there was quite rigorous and passionate debate between recreational and commercial fishers. However, all parties consistently identified areas of mutual concern and reached positions of common agreement.
5. There is a particularly strong agreement across the fishing industry of the need for a fundamental cultural change to fishing attitudes and practices if the level and scope of illegal harvesting of fish is to be significantly reduced. Education was consistently stressed as the single most important way by which such fundamental change could be achieved and sustained. This view is strongly supported by the review. To be successful, it will be important to develop a comprehensive strategy that embraces a multi-faceted and sustained educational and awareness campaign, targets all stakeholders and the wider community (with a particular emphasis on youth), and fully engages commercial, recreational and Indigenous stakeholders in the education and promotion process.
6. There is an unequivocal recognition that the people posing most risk to the fishery are organised, motivated by greed and opportunity and consistently involved in fish theft or black marketing for profit or gain.

Whilst this recognition is hardly unexpected, the overwhelming weight of anecdotal information points to the fact that the majority of fish theft and black marketing is committed by a relatively small number of people. This situation provides genuine opportunities, through sensible, properly targeted legislative reform, educational programs and fisheries enforcement, to markedly reduce illegal activity and improve compliance levels.

7. Consequently, to be effective in achieving cultural change and improving levels of compliance, it will be critical to target and reform the market end of illegal activity as well as the illegal catching of fish.
8. NSW is a part of a national approach to food safety aimed at assuring public health. Illegal take and sale of fish has significant implications for this program, for public health, and for the stability of the industry. The creation of a strong cooperative alliance between NSW Fisheries and SafeFood NSW is recognised as a particularly important initiative in this regard. SafeFood NSW has demonstrated a genuine desire to develop a strong operational relationship with NSW Fisheries that was demonstrated in several public meetings, as well as in the Advisory Committee forum.
9. On the findings of this report there is no evidence of any significant change (better or worse) to the size and nature of illegal harvesting of fish for commercial gain since the findings of the Report on Fisheries Management and Resource Allocation in New South Wales in 1997 or, to the extent of its relevance, the Study of Amateur and Poached Catch of Abalone from the Waters of New South Wales, conducted by J.D. Prince in 1989.
10. Anecdotal reports from those spoken to during the current review process indicate that illegal harvesting and black-market sales of some of the more valuable species of fish could range between 30% and 60% of lawful catch.
11. The Total Allowable Catch Committee has examined illegal catch issues in some detail as part of their process of setting allowable catches for the abalone, lobster and red urchin fisheries, and have incorporated estimates of illegal catches in their modelling.
12. Whilst the review team initially placed a primary focus on the theft of abalone and rock lobster it quickly became apparent that illegal fishing and black market problems are prevalent in all areas of the fishing industry and pose significant threats to the resource.

Abalone and rock lobster

13. Theft of abalone stock in NSW is most consistently estimated by industry as being between 20% and 60% of the Total Allowable Commercial Catch of 281 tonnes per annum, with frequent “illegal catch” estimates by industry representatives of 150 tonnes, and some as high as 300 tonnes, being provided to the review.
14. These figures are consistent with findings made by Prince in his 1989 study of amateur and poached catch of abalone. The results of the Prince study, which was a qualitative survey, suggested, inter alia, an illegal harvest of abalone of at least 340 tonnes and an annual harvest by poachers of about 1.7 million abalone. Although the majority of estimates during the current review were a little more conservative, and whilst 340 tonnes might be little more than educated guess work, there is little to suggest that the situation, in terms of the actual level of observed poaching activity, has changed measurably since 1989.
15. The NSW Fisheries 2003 submission to the TAC Committee referred to two estimates of the legitimate annual recreational catch of abalone in NSW. Both estimates were based on telephone surveys, one in 1997 (which made contact with 11,732 people in NSW) and the other conducted in 2001 (8,760 households). The result of the 1997 survey was an estimate of about 52 tonnes whilst the 2001 survey estimated the recreational catch to be approximately 35,000 abalone or about 11 tonnes. Due to differences in survey methods and timings it is difficult to accurately compare the two results, however, NSW Fisheries and the Abalone Management Advisory Committee (ABMAC) believed the more rigorous methodology of the 1997 survey provides the best indication, and as a result the TAC Committee incorporated this figure into their modelling.
16. The Prince Report (commissioned by industry) estimated that the legitimate recreational catch of abalone was about 93,000 abalone per annum, which represents a more conservative estimate of about 18-25 tonnes at that time. However, Prince drew a number of conclusions that remain relevant in the present environment. Inter alia he said: "In comparing the commercial catch to the size of the recreational and poached catch it should be noted that the fact that the size limit regulations are not observed by the poachers means that their catch is far more damaging than an equivalent commercial catch. This is because the taking of undersized abalone will undermine the breeding stock reducing the future productivity of the stock".
17. Prince also says "it should also be noted that the legitimate recreational take is inconsequential to the abalone stocks in

comparison to the commercial and poached catches, and that legitimate recreational activity clearly poses no threat to the industry. However, it is also evident that most of the recreational catch is taken by a relatively few individuals who are apparently involved in the illegal trade and that most of their 'legitimate take' is being taken for commercial rather than personal reasons". This claim that a significant trade in bag limit catches occurs, appears to be as true today as it was then, and can only be addressed by a reduction in bag limit.

18. The size of the illegal catch is of particular concern, not only because of the economic threat that it poses to the legitimate abalone fishing industry, but perhaps more importantly, because of the fragility of abalone resources in NSW. The threat caused to the overall sustainability of the resource is aggravated by the proximity of abalone stocks to the large NSW coastal population.
19. An issue not always fully appreciated by the abalone industry is the statutory requirement in the development of Fishery Management Strategies for NSW Fisheries and the NSW commercial abalone fishery to properly take account of cumulative environmental issues in the development of management plans. Commonwealth legislation requires a fishery to satisfy the Commonwealth that it is operating on a sustainable basis. Any management arrangements are open to testing by the Commonwealth through the *Environmental Protection and Biodiversity Conservation Act 1999* and could result in the withdrawal of export permits. The NSW Government may be subject to court challenge under state environmental legislation (the NSW *Environmental Planning and Assessment Act 1979*) if it is considered that environmental impacts were not adequately taken into account in the issue of a licence. This situation requires the development of risk management strategies that demonstrably identify threats to the resource and propose strategies that address high risks and operate to reduce or remove those threats.
20. One strong view from industry was that NSW abalone stock is now so threatened that only full closure of all abalone fisheries for a period of up to 5 years will facilitate reasonable stock recovery. The accuracy of this position would clearly need to be unambiguously established before being implemented. The TAC Committee does not appear to hold this view as it has continued to set a total allowable catch for the fishery. Irrespective of whether a complete closure is necessary, the unanimous view of industry is that effective policing of any closed areas is critical to stock protection and regrowth. A number of closures to commercial fishing have already been affected as part of the wider management of the NSW abalone fishery. These closures were essentially in response to declines in abalone stocks and an

outbreak of Perkinsus infection. The NSW Fisheries submission to the TAC Committee (2003) stated: "Although survey data is limited, results to date indicate that removing commercial fishing pressure has been beneficial and is helping to slowly rebuild stocks in some areas within these subzones".

21. In late 2002 a new closure, which replaced all previous abalone closures for the same waters, was imposed on both commercial and recreational fishing, for the whole of the waters between Port Stephens and the middle of Wreck Bay Beach. This followed survey reports of further Perkinsus based decline to abalone stocks. Perkinsus is a parasite that kills abalone. It has progressively spread north and south from Sydney, between Port Stephens and Jervis Bay. Spawning season closures are also in place for subzones. These spawning closures resulted from a recommendation from the Abalone Management Advisory Committee of the benefit of spawning season closures in certain high risk areas. The implementation of similar options involving further periodic/seasonal closures of identified high risk or remote abalone reefs have been canvassed, with proposals for targeted compliance activity during closure periods, creation of an offence for diving on designated closed reefs and the implementation of regional catch limits and restrictions. These options are considered worthy of more detailed examination.
22. Clearly the demand for abalone is significantly greater than the capacity of legitimate supply. Australia produces about a third of the world's market of wild harvested abalone. This share is growing towards 50% due to continuing declines and collapses of other abalone producing areas in the world market.
23. The NSW abalone yield represents only a small proportion of the Australian market but the stocks, although limited and vulnerable, are of high quality and in high demand, both in export and domestic market terms.
24. The accessibility of the NSW abalone bearing reefs to the general public as well as commercial divers, and the high prices that abalone can fetch in the export and domestic markets, pose particular enforcement problems whilst creating significant opportunities and incentives for illegal harvest and sale.
25. The Abalone Management Advisory Committee, the TAC Committee and NSW Fisheries Officers in the Fisheries Investigation Unit (FIU) have all identified the theft of abalone as a serious threat to the sustainability of the industry and the resource itself, and offenders as frequently being highly organised, sophisticated, counter surveillance

conscious, well funded and equipped, and with a willingness to be aggressive, litigious, and potentially violent.

26. Abalone theft for commercial gain requires reliable market sources, and preventing the black marketing of abalone into the post harvest sector is an equally if not more serious challenge. Industry claims specific knowledge of widespread black market trading in Sydney's Chinatown and of a significant illegal export industry. In particular, repeated reference was made to the presence of substantial supplies of dried abalone, often openly displayed for sale in Chinatown, and evidence (from eye-witness accounts of industry representatives) of large quantities of allegedly black-marketed Australian produced dried abalone being available on the Hong Kong market. When it is recognised that one kilogram of dried abalone is equal to 12 kgs of shell weight, the potential of the problem - both in economic and potential health risk terms - can be easily identified.
27. It is understood that there are only two approved abalone drying factories in Australia, one in Tasmania and one in Sydney. The Sydney factory, according to industry sources, owns two retail outlets and does not sell to any other retailers. Neither of the two drying factories presently have export licences although it is believed both are presently seeking export approval from Australian Quarantine Inspection Service (AQIS). Despite these restrictions the unanimous, and current, industry opinion is that dried abalone is openly displayed for sale in virtually every abalone retail outlet in Sydney's Chinatown. If this anecdotal information is accurate, and its veracity can be readily confirmed, the availability of dried abalone appears to heavily outweigh the size of the legal market.
28. Additionally, if the information concerning the domestic and export trade in dried abalone is accurate (and there is no obvious reason to doubt it) then current legislation and compliance strategies are not providing an effective deterrent. If the fisheries resource (and the industry) is to be properly protected, there is a need to improve the effectiveness of both legislation and compliance. This improvement needs to occur to both proactive and reactive enforcement capacity. At the present time, neither the risk of being apprehended, nor the fear of significant penalty or punishment, is sufficient to deter illegal activity. This situation must be changed and the deterrent value substantially increased, particularly in the post harvest sector of the industry, if improved compliance and stock protection is to be achieved.
29. Access by poachers is largely limited to snorkel diving in relatively shallow waters. If the black market is as widespread as believed then a significant part of the illegal catch must be coming from persons

using commercial style compressed air diving equipment, or from interstate. This means that there is a high level of sophistication in the illegal take and shipment of abalone that presents a major challenge for Government if it is going to be adequately addressed.

30. The dangers to the broader legitimate export trade is probably best reflected in a recent example provided to the Review, of a legitimate Fish Receiver seeking to sell frozen abalone meat overseas for \$125 per kilo (a price that was cost negative) only to be advised by his prospective customers that they were able to buy Australian meat product for \$45 per kilo. If the example is accurate it is a clear indication of an organised black market export industry. Clearly, if the illegal export market is significant, and comparisons of total Australian abalone catch figures with AQIS export weights are, in their present form, inconclusive, it has to involve organised false labelling and documentation.
31. The introduction of an abalone docketing system that requires a document to accompany the fish from initial receipt, through handling, to final point of sale or export, and which records the numbers of abalone as well as the weight that are transferred, sold or received, is an important requirement. The present NSW system, only requires total weights - rather than total weight and total abalone fish numbers - to be recorded on documentation, other than divers catch records, and this creates the potential for fish substitution (e.g. of whole abalone weight by dried or canned abalone, with ratios of 1:12 and 1:4 respectively) and massive quota avoidance.
32. As part of the abalone share management fishery arrangements, shareholders in the fishery are required to make a community contribution of 6% of the gross value of the fishery as a return to the community for privileged access rights. This contribution is being phased in over a 3-year period, with completion due in 2004. The present contribution level is 4%. However, Industry members of the Abalone Management Advisory Committee believe these contributions should be dedicated to the investigation of illegal abalone harvesting or black marketing. This is not presently occurring as the community contribution revenue is returned to the consolidated fund. The abalone industry believes that this arrangement limits industry's ability to use monies for the benefit of the fishery although this attitude may not properly recognise the current purpose of community contributions.
33. Abalone bearing reefs are often in remote locations where normal recreational diving would not take place. Often the only people who dive these locations are commercial fishers, or those intent on illegal harvesting. Accordingly, consideration should be given to classifying

these remote reefs and closing them to recreational harvest (all diving) other than for defined periods each year when compliance activity could be appropriately focused. The same principle could be applied to reefs adjacent to urban areas that are heavily fished, for resource conservation purposes - a system similar to this is applied successfully in Western Australia.

34. The recreational bag and possession limit for abalone is currently 10. It has previously been recommended in a bag limit review that this be reduced to 5. This change is supported as a priority both for resource conservation purposes and to reduce the ability for bag limit compliant illegal harvesting, where the same person enters the water on multiple occasions each day, taking the bag limit on each occasion. As well, consideration should be given to the introduction of a vehicle and boat possession limit of twice the bag limit.
35. Reducing abalone bag limits potentially raises an issue with Aboriginal traditional cultural harvesting that needs to be addressed by the NSW Government and NSW Fisheries on advice from the Indigenous Fisheries Strategy Working Group and considered as part of wider Indigenous reforms mentioned in this report. Indeed there is recognition of the need to consider increasing recreational abalone bag limits for Indigenous fishers to properly allow for cultural occasions and cultural fishing rights. These issues should be fully considered in the development of any new policy or legislative arrangements.
36. Within the recreational fishing community there is likely to be some resistance to a reduction in recreational abalone bag limits as they were originally set at 25 per day in 1972 and reduced to the present limit of 10 in 1987. These restrictions coincided with graduated increases in minimum catch size limits (from 100mm to the current 115mm). It needs to be recognised, however, that these changes have been in response to increasing concerns about the fragility and size of NSW abalone stocks and have been mirrored by significant reduction in abalone commercial catch quotas.
37. Because of the high value of abalone and the potential for significant rewards from abalone theft, the possession of hookah diving equipment by recreational divers should be made an offence.
38. The possession of greater numbers of abalone than the recreational bag limit should also be treated as a commercial offence and those abalone should be deemed as having been taken for the purposes of sale until proven otherwise by the diver, noting that there are Indigenous fishery issues that will need to be addressed.

39. The taking of undersize abalone is recognised as a particular threat to the sustainability of the industry. Size limits are set on the basis of scientific data but cannot be applied to abalone that has been shucked (removed from its shell). To assist with compliance it is recommended that a shucked abalone size limit be applied through the setting of a “number per kilo” limit for abalone in possession.
40. Abalone that are measured and then not immediately reattached to a reef if undersize, have a low chance of survival. As in South Australia, it should be an offence in NSW not to reattach an abalone after it has been measured and found not to be of legal size. The observed practice of poachers throwing back undersize abalone without giving a Fisheries Officer the opportunity to measure their catch would then be an offence.
41. At this time recreational divers can fish for abalone and rock lobster without having to possess a device capable of measuring abalone. Within South Australia it is an offence to take, or attempt to take, abalone without being in possession of a measuring device suitable for measuring abalone. This scheme should be introduced in NSW.
42. Lobster theft remains a serious problem along the entire NSW coast due to its high market value. There is, however, a strong and widely held view that the requirement to tag lobsters offered for sale, particularly since the improvements to the integrity of the tagging system, has had a positive impact on the illegal industry and measurably reduced the levels of overall lobster black marketing.
43. There is a strong view that a requirement should be introduced for recreational fishers to cut or clip the central tail fin of a lobster at the time of catch, with corresponding offences created for selling, buying, or being “in possession for sale” of such fish. This would further improve levels of compliance without having any negative impact on the legitimate recreational industry. Similar non-commercial fin clipping and/or tagging of higher priced finfish and the scoring (cutting) of abalone, with offences created for both catchers and buyers, were also widely proposed. These provisions are consistent with those already in place in other jurisdictions and are supported.
44. A lack of any requirement for recreational divers to keep records of lobster catches remains of serious concern to commercial fishers and a view has been expressed that recreational fishers should not be able to use traps for lobster catching - this should arguably be extended to other forms of largely commercial fishing style passive gear, such as crab traps in estuaries. The practicality of recreational rock lobster

fishers being required to tag their catch and maintain records of catch numbers and size has been recommended previously, and should again be investigated.

45. Much of the illegal lobster industry is clearly well organised with alleged involvement of people within, as well as outside, the industry. A report was received from the Police, of lobsters allegedly being transported to market, secreted under layers of other fish and of long-line fishers stealing from lobster traps set off the ocean shelf, including the theft of full traps. One example was given of the alleged theft of 17 traps capable of containing up to 100 lobsters each. Similar concerns were expressed by Commonwealth authorities who have experienced legislative difficulties in obtaining sufficient evidence to support prosecution. One particular problem is that much of the alleged lobster theft occurs in or adjacent to legitimate long-line fishing areas and defences are consequently easily open to suspected offenders. NSW Fisheries and Commonwealth authorities should liaise closely to increase co-operation and identify opportunities for joint operations. Where necessary, legislative changes should be identified and pursued, and an investigation made of the practicality of the use of permit conditions to ban the possession of lobsters.
46. Industry cooperation is critical to improved compliance in this area with a recognised need (by Australian Fisheries Management Authority (AFMA) and NSW Fisheries) to involve industry leaders in consultations to develop permit conditions, within the purpose and head of Commonwealth power, which specifically address identified compliance issues, such as the illegally claiming of state managed species as legally caught in a Commonwealth managed fishery.
47. Existing memorandums of understanding for national and international cooperation and information and data sharing, may not be being used to their full potential. There was common agreement between AFMA and NSW Fisheries of the value of clarifying and settling a policy governing the circumstances in which information could and would be shared. Whilst the requirements and limitations of Privacy law are understood it is clear that there is significant opportunity, beyond that presently employed, for the sensible, lawful and productive sharing of information within the “purpose” of each Fisheries authority (Commonwealth, State and Territory). Such an initiative would contribute to the achievement of improved levels of compliance.
48. The Australian Capital Territory (ACT) is regarded as an easy market for illegally caught lobsters (as well as abalone and many other species) due to the lack of any requirement for lobsters offered for sale in the ACT to be tagged (or for prescribed records for other fish).

Every effort should be made to remove this anomaly. There are strong indications of an ACT market for illegal abalone with evidence of commercial-size quantities of abalone having been shucked on the southern outskirts of Canberra adjacent to the Monaro Highway. The ACT Government is understood to be amenable to tighter, more effective regulation - this should be pursued as a priority.

Other species and issues

49. Crab theft and the theft of crab pots is a significant problem, particularly in the estuaries of central and northern NSW (the Clarence River was specifically identified). Illegal trapping of mud crabs and trap theft on the mid coast is seen as posing a genuine threat to the legitimate industry. There was a widely held view expressed that present bag limits of crustaceans such as blue swimmer crabs (20) and mud crabs (5) are too high, and are operating to encourage theft and illegal sale.
50. The black marketing of prawns was identified, by people closely associated with the industry, as being a significant and entrenched problem, with estimates of up to 60% of the catch being sold outside of the legal marketing framework.
51. The 6 metre hand hauled net used by recreational fishers can catch large quantities of small prawns in a short time. It undoubtedly offers a greater opportunity than any other recreational fishing method for those intent on illegal sale of prawns, to catch commercial quantities. The net can also be readily modified for use as a small trawl net. Whilst it would be desirable that this net not be used by recreational fishers (and perhaps this is a long term goal) it is accepted that in the short term this may not be possible. It is therefore recommended that the use of this net be made subject to annual registration, with nets tagged, and with renewal dependent on submission of a return detailing the area where the net has been used, and the prawn catch, with an appropriate fee charged to cover the full cost of this program.
52. Illegal catching and black marketing of higher priced finfish is a problem along the entire NSW coast. Major bag limit restrictions have been progressively introduced since the early 1990's and were initially deliberately made generous as a means of changing the harvesting culture of recreational fishers. However, overgenerous bag limits and the presence of an entrenched culture of illegal sale and purchase within the retail seafood market in many coastal areas, are widely acknowledged to contribute to the problem.
53. Sale of fish laws are easily abused. As mentioned earlier in respect of

abalone, there is a need to improve fish "catch to plate" documentation and audit trails for all species of fish. The expeditious introduction of a 'National Docketing System' for a broader range of high price species to more rigorously and accurately track and regulate the movement of fish and improve the integrity of the paper trail, is strongly supported.

54. Two other species mentioned by those who made submissions to the review are eels and garfish. Eels are targeted in estuaries and in freshwater and there appears to be a ready black market for them both dead and alive. Compliance activity should be focused on this issue and bag and size limits, and gear use reviewed to make this less prevalent. Sea garfish are apparently scoop netted in a few locations, with occasional large catches reported that are not consistent with recreational fishing. A bag limit of no more than one 10 litre bucket or 20 fish should be immediately implemented, with the bag limit further reviewed as part of the recreational fishery management strategy.
55. The under-reporting of catch figures by commercial fishers was seen by some in industry as having a substantial impact on the accuracy of statistics in different areas of the fishery, leading to potentially flawed decisions, or the basis upon which decisions are made. The new fishery management strategies acknowledge this and have in place actions to implement "fishery independent" monitoring systems to complement existing catch returns. This initiative is strongly supported by the review team.
56. Oyster theft, particularly on the mid north coast, was identified by the industry as being at an all time high and as having changed its scope and nature. There is reported significant growth in the size of theft and the level of organisation in this crime, with one recent theft of \$25,000 worth of oysters being reported to the review.
57. New technology is seen to have inadvertently created some opportunities for illegal activity, for example, the introduction of "snack pack" bags of 6 dozen oysters that can easily be unclipped and stolen from oyster racks.
58. The food safety and consequent public health implications of oyster theft and black marketing are particularly serious. As recent history demonstrates, the bypassing of quality-control health requirements and processes poses significant risks to public health as well as having the potential to cripple the oyster industry.
59. There is general apathy amongst oyster farmers on the issue of oyster theft. This has been allegedly bred by a lack of enforcement action by police and NSW Fisheries due to their limited capacity to respond to

complaints. NSW Fisheries does not have the resources to maintain effective surveillance on the thousands of hectares of oyster leases in the 29 oyster producing estuaries. This has led to low levels of reporting of thefts and alleged intimidation within the industry that is counter-productive to both its viability and integrity. One issue that should be considered is the removal of the offence of oyster theft from the *Fisheries Management Act* to avoid conflict with the *Crimes Act*. This would reflect NSW Fisheries policy of automatically referring all matters of oyster theft to the police.

60. Industry has raised two issues that would also assist to deal with this issue. The first is that navigation is relatively unrestricted within the area of oyster leases, making theft and the availability of defences easy - this matter should be reviewed. The second is that it is no longer an offence to be in possession of oysters on or adjacent to waters between sunset and sunrise - this offence should be reintroduced.
61. One result of current industry frustrations has been a tendency to look for private solutions to theft problems and in the Forster/Tuncurry area commercial oyster farmers have employed private investigators to deal with the problem. NSW Fisheries should continue to offer support to such initiatives and seek to work co-operatively, within the bounds of their resources and responsibilities.
62. Further assistance may be provided to oyster farmers through the joint development of theft prevention and target hardening strategies (making the commission of offences more difficult and less attractive) and the use of better technology.
63. There is evidence from within the inland fishing community, and from Victorian Fisheries and NSW Fisheries, of organised illegal fishing and black marketing of fish in the inland waters fishery. Vast, remote and often inaccessible tracts of country combine with limited fisheries officer numbers to create significant opportunities for illegal activity and to minimise the chances of apprehension. This appears to be aggravated by an entrenched inland waters illegal fishing culture involving the sale of fish to local markets. The use of fish traps, (including steel mesh traps up to 2.5 metres long), gill nets, drum nets, multiple hooks on set lines, and abuse or exploitation of legal bag limits, were all seen by spokespeople as widespread problems.
64. An area of concern specifically emphasized, was the illegal catching of high priced species, including Murray Cod, Golden Perch and Yabbies, and their laundering through a small number of aquaculture farms - not necessarily in NSW. Whilst the common view is that only a

small number of operators are involved, the issue is seen as a serious and emerging problem and a threat to the legitimate industry. However, these concerns need to be viewed in light of a recent joint operation with Victorian Fisheries to target 40 border region fish outlets that identified almost unheard of 100% compliance with fisheries laws.

65. The absence of regular audits and aquaculture inspections was identified as having been a deficiency in the NSW Fisheries compliance strategy until very recent times, and as having failed to protect the interests of legitimate farmers. A new strategy, which more effectively integrates compliance into the department's organisational goals and priorities, is understood to be being introduced. This approach is strongly supported by the Reviewers and should be by the legitimate industry, which has a genuine self interest in protecting its investment and business.
66. Conversely there is also a genuine concern that the issue of black marketing of fish through aquaculture farms may be being deliberately over-stated by persons who feel threatened by the emergence of the farming industry. This potential conflict should be able to be clarified. There are well developed Farm Development Plans for aquaculture farms and the yield per acre of different species is apparently well known and scientifically documented (e.g. 5-6 tonnes per hectare for Golden Perch).
67. Whilst it is likely that there is some under-reporting of production figures for tax avoidance purposes, if random and targeted audits (which are part of the new NSW Fisheries compliance strategy) are combined with comparison checks of sale records against known maximum yield figures, it may be quite possible to identify organised black market activity. NSW Fisheries managers suggested the implementation of checks of "feed tonnage to stock on hand" ratios (food to fish ratio of 1:1.5) and using these as a basis for targeted audits, and where appropriate, full audit traces to the markets.
68. Clearly, whatever the reality, the situation has been aggravated by the absence of any baseline knowledge that allows a realistic estimate to be made of the size of the overall market. The biomass is apparently not known and it is consequently difficult to make any authoritative statements. This situation is aggravated by the high profitability of the fish, the comparatively low prospects of apprehension (once a fish is on an aquaculture farm it is effectively laundered), the "multi-jurisdictional" nature of the near border locations of many aquaculture farms and the size of the Australian seafood market.

69. The \$ for \$ restocking programs employed in some inland waters areas were seen by recreational anglers as offering a real benefit to the community and developing a genuine sense of community ownership and responsibility. According to fishing sources on the mid-coast, the program has fundamentally changed attitudes and led to a higher preparedness by fishers to report illegal activity and to play a positive role in regulation.
70. Industry raised the issue of increasing levels of habitat degradation resulting in lower fish numbers, increasing prices and the consequent increase in incentive to poach. Government should be mindful of this issue.

Indigenous

71. The problems with Indigenous fishing, particularly as they relate to abalone fishing, are sensitive and complex. The present situation is, however, socially damaging to Aboriginal people, as well as being of economic and environment concern and should not be allowed to continue. Consistent with the aims of the Indigenous Fishing Strategy, appropriate protection of traditional Aboriginal cultural fishing rights should be inculcated into all aspects of NSW fishery policy rather than being dealt with separately or in isolation.
72. Historically, Indigenous Australians with access to aquatic environments have harvested aquatic species for thousands of years. All of these traditionally caught species are targeted to some degree by commercial and or recreational fishers. It is understood, for example, that all the species mentioned in this review have been taken traditionally by indigenous fishers.
73. In seeking to address this situation NSW Fisheries has implemented the Government's \$1.6 million, 2-year Indigenous Fisheries Strategy 2002-2004. Whilst there is scepticism in some sectors of the Aboriginal community about this strategy, it has achieved a range of good outcomes. Most NSW Fisheries staff have received cultural awareness training, and a small business aquaculture grants program has assisted Aboriginal businesses. The Indigenous Fisheries Strategy (IFS) Working Group is working to resolve many complex issues, and is supporting a coordinated Indigenous approach to natural resource management. The role and status of this group will be critical to properly dealing with genuine aboriginal concerns relevant to bag limit and abalone offence reforms recommended in this report.
74. Indigenous representatives spoken to during the review were generally of the view that similar reviews conducted previously had not assisted

the Aboriginal situation or protected their cultural practices. Their strong position was that they were, by tradition, hunters and gatherers, but that this fact was not recognised in the current law which impacts on their ability to continue traditional cultural fishing practices.

75. Additionally, Indigenous representatives argued that present bag limits and offence descriptions (e.g. beach shucking) did not make proper allowance for the reality of aboriginal culture or the extended aboriginal family and that they operated to create poachers out of traditional fishers. Discussions should be held with the IFS working group about a scheme to overcome this issue. One option is to investigate the practicality of allowing beach shucking at a certain distance from the water and after an appropriate period of time has elapsed, sufficient for a Fisheries Officer to have measured the catch, and assessing the practicality of allowing broader "special permit" exemptions from specified areas of regulation. As an example, it is understood that during 2002 two special permits were issued to Aboriginal fishers on the south coast for traditional community cultural occasions.
76. Penalties were seen to impose too heavy a burden on Aboriginal people and to actually aggravate the criminal and justice cycles. There is evidence in the broader justice system to support this contention, particularly in regard to young male Aboriginals. Clearly, whilst it is a reflection of a wider problem, it is critical to do whatever possible, within fisheries law, to get young Aboriginals out of the justice cycle. One option may be the creation of wider, more productive and flexible, penalty structures - including culturally acceptable punishments - for certain agreed crimes, that allow young offenders to "work off" fines. Precedents already exist through the Government's Youth Justice Conference Scheme and the use of Circle Sentencing Courts which allows the application of Aboriginal common law to apply and be managed by the local Aboriginal community. Consideration should also be given to linking existing penalties (e.g. unpaid fines) to any such new strategies. Work experience within the fishing industry presents as a significant, positive initiative and should be encouraged and fostered.
77. Despite these concerns, the Indigenous representatives spoken to recognised the need for a change to their practices and expressed a desire to become part of the industry and to work within the law rather than outside it. As part of this process there appeared to be an acceptance of the need to work within any new rules that were jointly agreed and to play an active and positive part in the protection of the resource and the appropriate regulation of illegal activity by Indigenous people.

78. There is a need to distinguish between "culturally based hunting" and "commercial exploitation" in a way that properly accommodates and recognises genuine cultural practices, whilst continuing to adequately protect the resource. As part of this process it may be necessary to consider changes to certain offence descriptions and to create culturally based defences. This issue is exacerbated by the present differences between inland waters and coastal fishing Indigenous fishing licence exemptions. The value and appropriateness of these differences should be reassessed.
79. One solution might be to require all persons to hold a licence but for the funds raised from sales to Indigenous persons to be placed into a trust fund for promotion of Indigenous fisheries issues.
80. An holistic approach to reform which involves full and open consultation with Indigenous people presents as offering the best chance of genuine progress and improvement. This will necessitate providing genuine opportunities for Indigenous people to have greater input into both fishery management and recovery.
81. A positive option would be to prolong the life of the present Indigenous Fisheries Strategy Working Group beyond June 2004 and to consider aligning its status with that of other committees. Membership of Aboriginal representatives on Management Advisory Committees (MACs) should be continued but this role needs to be properly communicated and implemented. Currently many Aboriginal people are unaware that there are Aboriginal positions on MACS.
82. Wider possibilities for reform could include investigating the creation of a community abalone scheme as an alternative to the current permit scheme, as well as ongoing investigation into the feasibility of establishing a commercial hatchery or stock enhanced abalone fishery in which Aboriginal people would be the major stakeholders. It is understood that recent research has provided valuable information and some promising results on the prospects of successfully reseeded depleted or barren reefs.
83. Such initiatives, together with appropriate support towards longer-term sustainability, will need to be reconsidered if the aims of the Indigenous Fishing Strategy to "recognise the importance of traditional cultural fishing activities of Aboriginal communities and encourage their involvement in the stewardship of fishery resources" are to be achieved.

Operational compliance capacity

84. In terms of its compliance responsibilities and role, NSW Fisheries must work to improve the levels of trust and respect within the fishing industry.
85. Commercial and recreational fishers expressed strong concerns about the present level and effectiveness of fisheries enforcement with the strong, prevailing view that both Government and NSW Fisheries management needs to take fisheries compliance more seriously; make enforcement resources adequate to meet the challenge, and enforcement capacity more effective.
86. Despite these concerns there is general support for individual fisheries officers who are largely seen to be doing the best they can with limited resources, an arguably over-diverse workload, and an hierarchical and prescriptive management regime.
87. In the opinion of the Chair of this Review, NSW Fisheries is a lean organisation, blessed with a high percentage of enthusiastic Fisheries Officers who have a good understanding of the fisheries resource and its stakeholders and a genuine commitment to their responsibilities. Senior managers present as having excellent technical knowledge, possessing a high work ethic, operating under heavy workloads and as being dedicated, loyal and industrious. The organisation presents, however, as a prisoner of both its past and of its current regulatory obligations. To improve performance the Department needs to be given sufficient flexibility to allow its structure and systems to be less heavily weighted towards process and prescription, and more towards the achievement of its compliance priorities.
88. NSW Fisheries has a wide-ranging and diverse program of responsibilities covering conservation, habitat protection and rehabilitation, recreational fishing, commercial fishing, sustainable aquaculture, the development of environmental impact statements and fishery management strategies, and community consultation and involvement. This diversity of responsibility creates tensions which are understandably difficult to manage and which require careful, and often quite precise, priority setting and resource appropriation. Effective levels of regulatory compliance can only be achieved if there is a correspondingly effective sting in the regulatory tail through compliance and enforcement activities - people must believe there is a reasonable chance of being caught. Strong views were expressed that this is not necessarily the case in NSW at the present time.

89. It is generally acknowledged that when compliance capacity in any field is less than optimal, it can actually serve to increase the size of non-compliance by creating an environment, in which the only people who appear to be regulated are those who operate within the rules.
90. The achievement of effective compliance requires, as a condition precedent, demonstrably effective enforcement strategies and capacity, and an educational and judicial framework that acts as a genuine deterrent to illegal behaviour. Current arrangements do not meet this criteria - a lot of people do not think they are going to get caught, and if they do, they are not worried about the penalties - the opportunities are presently seen as outweighing the risks.
91. Part of industry's scepticism is caused by, what stakeholders reported as unacceptably low numbers of Fisheries Officers, about 50 for over 1,000 kilometres of coastline, and 20 for the whole of inland NSW (excluding managers and supervisors). The fishing community believes these resources to be grossly inadequate. Whilst not accepting this view, per se, the reviewers recognise there is a need for a "critical mass" of compliance resource capacity and that, inevitably, economies of scale, diversity of responsibility and logistics, including pure geography, will impact adversely on performance.
92. Having regard to the prevailing environment, an assessment of Fisheries compliance capacity and the broader concerns that led to this review, the finding of this report is that current Fisheries Officer numbers and overall compliance resource capacity is insufficient to deliver effective compliance.
93. However, the Reviewers are of the opinion that the need for increased resources is only modest and should be addressed as part of a matrix of improved arrangements and corporate reform.
94. It will be important to demonstrate higher levels of management support through a combination of:
- i. more effective and better focussed training programs,
 - ii. improved operational methodologies, including the introduction and inculcation of an effective intelligence capacity, including analysis into operational targeting and planning,
 - iii. a revised award and industrial framework to support improved operational practices,
 - iv. less prescriptive work profiles, combined with the development of agreed outcomes-based charters of performance,
 - v. an improved emphasis on quality over quantity,
 - vi. increased operational flexibility,

- vii. a corresponding opportunity for the exercise of individual discretion, and
 - viii. an overall improvement in the organisation's investigative skill-profile.
95. These improvements will be best and most effectively achieved if they are underpinned by significant compliance branch restructuring aimed at reducing the number of "hard barrier" management levels in the compliance ranks.
96. The number and location of fisheries officers' locations is largely historic and has only an accidental bearing on current priorities and the performance of necessary and desirable work practices. During any internal review of compliance it will be important to properly assess actual workload requirements and to move, over time, to ensure the organisation is properly positioned and structured to deliver agreed corporate outcomes. As part of this process the organisation should be encouraged to better and more strategically position staff. This will generally require the staffing of a smaller number of strategically located centres, which are properly set up to service significant geographic regions.
97. There are still stations where only one fisheries officer is located and these arrangements should be reviewed as a matter of priority. On the information to hand it makes good sense for the Department to locate officers in larger offices where the benefits of scale can be realised. Every aspect of performance can be improved from a move of this kind. Training is improved, consistency of operating practice is encouraged, and work standards and performance are more easily managed.
98. Under these new arrangements it will be important to ensure that local needs and priorities are properly recognised and serviced. As part of this process regular office days and patrol presence in local communities should be agreed and actively encouraged.
99. Best practice investigation methodologies are critical to the success of NSW Fisheries compliance activities in meeting its primary responsibility for conserving New South Wales' fishery resources. The skills and competencies required do not presently exist and this matter needs early attention. As part of this process it will be important to continue to develop a properly coordinated corporate approach to the planning and conduct of investigations, and to post investigation evaluation.

100. Whilst the Fisheries Investigation Unit (FIU) has conducted some impressive and professional, well planned and targeted investigations into illegal fishing activities, their resources and capacity are presently inappropriately limited. In particular the FIU does not presently possess sufficient or appropriate tactical or strategic intelligence skills to properly facilitate crime trend and target identification, or to underpin intelligence-based operations. Such a capacity is considered fundamental to the achievement of properly targeted, prioritised and cost effective compliance operations and outcomes.
101. The absence of a uniform case management model, whilst now being rectified, has impacted negatively on operational planning and effectiveness. Such a case management framework is essential to enable staff to properly facilitate the collection, analysis and exchange of intelligence, effectively support the planning and management of operations, and accurately assess priorities and measure performance (both in outcomes and cost terms). The value and relevance of any case management model implemented should be continuously assessed, evaluated and modified against the achievement of desired operational outcomes.
102. There needs to be a multi-disciplinary approach to recruitment that properly identifies and recruits to the skill and capacity needs of the organisation. Present recruitment policy should be amended to require as preconditions to appointment that applicants possess a range of certificate type qualifications, including four wheel drive, first aid, boat handling, and power tool operation training, and when suitable courses are available, more sophisticated cultural awareness (including both indigenous and ethnic awareness education) and operational training. These initiatives will both improve the status and entry skill levels of Fisheries Officers and free up invaluable in-service time and money for increased, better directed and more advanced investigative training and development.
103. Current recruitment practices are inappropriately restrictive. Most of these restrictions are award related and operate to limit the ability of NSW Fisheries to select the range of skills and capacities, including specialised and broader investigative, technical and analytical skills needed to deliver effective compliance outcomes. These deficiencies are serious and should be addressed in the current industrial award negotiations. This review should aim to settle a new work practice framework that creates and balances opportunities for personal growth, recognises and rewards performance and actual responsibilities rather than simple rank or title, allows lateral appointment to meet identified skill-gap requirements, and facilitates organisational productivity.

104. The re-introduction of a NSW Fisheries "flying squad" investigation capacity needs to be seriously considered. Arrangements for a mobile strike team would be best supported by a flexible, multi-disciplinary team approach to investigations, with the composition of any team reflecting the nature, focus and desired outcomes of the investigation. This approach may require a composition of skills not always found within NSW Fisheries, for example, strategic intelligence analysis, high level surveillance skills, forensic accounting, crime scene preservation, occasionally, even undercover operatives or in certain circumstances the creation of a "specific purpose" joint agency taskforce.
105. Whilst generally Fisheries Officers are highly committed, performance is variable with some examples of entrenched old fashioned practices which need to be addressed as a matter of priority. The attitudes and support of NSW Fisheries middle and senior level management will be critical to improvements in this area. As importantly, regular and appropriate skills-update training will result, over time, in the removal of any trend towards entrenchment of outdated investigative practices and/or inconsistent standards of operational performance and avoid the creation of a narrow and shallow operational skill base. As part of this process it will be particularly important to continue to monitor, sense check and assess the quality and relevance of cultural awareness and cross cultural education programs to ensure the value of education is being reflected in practice in the field, especially in dealing with Indigenous fishers. The success of such programs will contribute significantly to the improvement of levels of trust and credibility between Aboriginal and ethnic people and Fisheries Officers.
106. The existing compliance supporting plan needs to be refocused and rebadged as a corporate 'Compliance Development and Performance Strategy' that settles an unambiguous framework for the focus, prioritisation and measurement of compliance strategy development, activities and results. This will be particularly important, in view of the many competing demands on NSW Fisheries to deliver a range of occupational health and safety programs and the difficulty, in an environment of limited budget and people, of achieving and maintaining a balanced training program.
107. Experienced Fisheries Officers spoken to during the review were requesting investigation and compliance training to build on their post recruitment training, and the Certificate IV Fraud training required by the Commonwealth for Commonwealth fishery investigations. These issues are considered important and supported by the review team.

108. The relevance and role of compliance to the overall broader mission of NSW Fisheries should be inculcated through every activity of the Department from program design, through planning to administration - and the influence should be transparent and unequivocal.
109. Whilst the strong conservation focus of NSW Fisheries is recognised and supported, no resource or industry which relies upon regulation for its protection and sustainability will be properly safeguarded unless the risks of non-compliance outweigh the benefits. The current situation arguably places inappropriately stronger weight on policy, research and management, than on compliance. This imbalance needs to be redressed.
110. Success in compliance and investigation can only be properly measured by a process of continuous review of the effectiveness of program delivery and the value and relevance of the outcomes achieved. There needs to be an increased focus in this area.
111. Attention needs to be given to how operational practices are set, especially with regard to operating methods and priority settings. If these are set at the local level there is a risk that quality control or commitment to relevant, outcomes based, performance assessment or continuous improvement will be lost in favour of local priorities and views. It is recognised, however, that local knowledge is crucial to target identification and operational tactics and it will be important to put in place operational guidelines and practices that ensure a balance between corporate standards and prioritisation and local flexibility and discretion.
112. NSW Fisheries does not maintain a call centre to record intelligence received. The present after-hours 1800 call service is not a call centre and could be counterproductive to intelligence reporting. Stakeholders were concerned that the call service offers little functionality, and could present as a disincentive to the reporting of illegal activity. This, in the view of some, created an impression that NSW Fisheries is not genuinely committed to improving reactive compliance capacity. Contrary to that opinion, NSW Fisheries reports that a great deal of useful data is received through the 1800 number in terms of patterns of illegal activity. NSW Fisheries shares the view that strategic and reactive compliance could be improved through a call centre approach.
113. Part of the problem has been caused by a lack of understanding by the fishing community of the intent, purpose and limitations of the 1800 service - it is not and has never been portrayed as a "000 service" for fisheries matters. An improved on-call system is presently being

implemented but it will not address the fundamental concerns of fishers that a more effective on call, after hours, response capacity is critical to effective deterrence and improved compliance.

114. As part of the response to the prevailing NSW Fisheries environment there is a need for improved corporate-wide understanding of all facets of the compliance role and the development of more effective linkages and interaction between the compliance and investigation functions and all other functional areas of NSW Fisheries.
115. Whilst NSW Fisheries has agreements and memorandums of understanding with a number of partner agencies and engages in a variety of valuable joint operations there is the potential and need for an expansion of these arrangements and practices. Although compliance staff, in particular the FIU, network with a range of Government Agencies including the NSW Police, Australian Federal Police, Australian Customs Service, Coast Watch, the Australian Taxation Office, National Parks and Wildlife Service, SafeFood NSW, the Waterways Authority and other Fisheries Agencies, the extent and nature of collaboration could be improved to mutual advantage.
116. This need is accentuated by national concerns over an increase in organised criminal activity in the illegal fishing industry, which has created new dimensions to the challenge of effective compliance. It has been recognised in a number of other forums that there is an expansion of organised criminal activity in all aspects of illegal fishing and black marketing. Whilst substantially anecdotal these concerns arise from the reports of organisations like the Australian Crime Commission and from Police and Fisheries Officers in a number of Australian jurisdictions. It is understood that similar concerns are being addressed in Australia's draft National Plan of Action to Prevent, Deter and Eliminate the Illegal Unreported and Unregulated (IUU) Fishing.
117. In addressing these concerns there will be a need to ensure that new fisheries enforcement strategies are sufficient to effectively deal with the new and emerging environment and include appropriate cross-border enforcement powers, joint agency and multi jurisdictional collaboration and operations and appropriate national legislation, particularly with regard to the trafficking and unlawful trading in fish.
118. Additionally and more generally there is considerable scope for more comprehensive cooperative arrangements with State and even Commonwealth agencies with compliance responsibilities. There will be significant benefit in the development of a stronger, more cohesive, partnership approach between NSW Fisheries and SafeFood NSW, particularly in addressing the health and safe food handling aspects of

the illegal marketing of fish, and with NSW Police, National Parks and Wildlife Service, the Waterways Authority, AFMA, AQIS, the Australian Customs Service (ACS), Coast Watch and the Australian Taxation Office. In particular the model of a combined fishing and boating patrol should be actively investigated where Waterways Officers and Fisheries Officers functions are combined, as occurs in Queensland.

119. In view of the increasingly complex and organised nature of illegal fishing, black marketing, and other “wildlife” type crimes, it may be worthwhile to consider a more comprehensive whole of government approach. Such an approach may more effectively maximise resource capacity and facilitate a more strategic and formal examination of the benefits and practicality of such issues as joint agency operations, skills and capacity sharing, inter-agency collaboration and co-location.

Legislation

120. Whilst the provisions of the NSW Fisheries Management Act are generally sound, the Act itself is complex. The legislative framework needs attention to ensure there are no legislative or regulatory deficiencies or inconsistencies that operate to prevent effective compliance of black market activities. Legislative amendment will be necessary if the term of reference of this Review, " to achieve optimal compliance and effective deterrents", is to be achieved. Ongoing attention needs to be given to making sure legislation is explained to fishers in a way that can be readily understood.
121. The main purpose of the *Fisheries Management Act 1994* should be to protect and properly manage the New South Wales fishery in all its dimensions. The Act and Regulations should be reviewed to make sure they adequately meet this purpose with respect to this review.
122. In particular, the 'prescribed quantities' provisions need attention. They are too easily open to exploitation, are difficult to effectively enforce and operate to provide a threshold opportunity for the black marketing of fish. Fish are either caught for commercial purposes (for sale) or for recreational purposes (not for sale). Whilst understanding the reasons underpinning the 'prescribed quantities' exception provisions, the Reviewers believe they should be abolished and replaced with zero number and weight possession limits.
123. 'Fish for Sale' provisions are similarly open to abuse. Present offences require proof that fish are being held for sale and, as presently worded, are widely recognised as creating an inappropriate and unnecessary legislative loophole to effective deterrence and to act as a significant barrier to successful prosecution. Whilst providing an evidentiary presumption that fish found on commercial premises are

for sale, this presumption may in many circumstances, currently be rebutted by a simple denial by the vendor in whose possession they are found.

124. Currently, the maximum penalty for abalone theft in NSW is \$11,000. In Tasmania for example, it is \$500,000. This is a significant disparity and should be reviewed to ensure that the potential reward from these offences is reflected in the potential penalty - the scheme should involve graded offences and penalties that would guide the choice of the court which would hear the charge, and the level of penalty available to the magistrate or judge. In Tasmania there are three penalty categories the first carrying a maximum penalty of up to \$20,000, the second \$100,000 and imprisonment for up to 6 months, and third a maximum fine of \$500,000 and imprisonment for up to 2 years. Additionally, offences are ranked at two levels. The first level includes all first offenders for recreational size and bag limit offences. The second level applies to persons with a previous conviction for a level 1 offence or to first time offenders, for offences relating to abalone, lobster and other identified threatened species - or commercial scale illegal fishing activities. Western Australian provisions also link and grade penalties according to the size of the illegal fish catch and provide guidance in this area. It is considered that serious consideration should be given to the adoption of similar provisions in NSW.
125. The fragility of the NSW resource and the importance of the industry makes the adoption of such provisions in NSW a priority, not only for abalone, but for all high value and threatened fish stocks.
126. Similarly, the value and fragility of certain fish stocks warrants consideration of extending the present "share forfeiture" provisions that apply to the lobster share management fishery to all share management fisheries in respect of designated offences that are determined to be sufficiently important to attract a share forfeiture sanction.
127. Additionally, '*court order*' provisions presently in force in Victoria, Tasmania and South Australia should be considered in NSW. For example, it should be expressly possible for a court to place orders on serious and repeat offenders, which prohibit an offender from being:
 - i. in possession of fishing equipment capable of taking fish of the type to which the offence relates;
 - ii. on or in specified waters on any specified vessel type or size;
 - iii. in possession of designated fish species;
 - iv. issued with a fishing licence or from working in an industry for a

specified period.

Such options would operate as real and meaningful deterrents and provide greater flexibility, equity and fairness in the imposition of penalties - including where financial penalties would impose a disproportionate burden upon an offender.

128. A strong perception across the fishing industry that penalties for serious fisheries offences demonstrate little understanding of the actual impact of the illegal behaviour and are inadequate and inconsistent, has created a counter productive lack of confidence and trust in the judicial process. This lack of confidence is reflected by low reporting levels and unwillingness by stakeholders to become involved in court proceedings. This situation needs to be corrected.
129. One option which would assist in providing credibility and consistency is the introduction of impartial "court accredited" experts, not associated with either the prosecution or the defence, to be available to assist the court in determining the impact of an offence (in environmental as well as economic terms), after conviction but before a penalty is imposed. Such a system would serve to reduce any inconsistency in penalties and to aid the court in setting penalties that, inter alia, better reflected the actual seriousness of the crime.
130. Legislation should prohibit recreationally caught fish from being stored on premises prescribed as being "commercial". All fish found on such premises, without appropriate documentation, should be deemed to be for sale. It should be an offence for any commercial premises to have fish on their premises otherwise than for sale.
131. Given the criticality of changing the culture and in recognition of the rise of organised criminal activity in the illegal marketplace consideration should be given to the introduction of temporary (24 hr to 72 hr) "suspension of trading" or "forced closure" powers for traders found in possession of illegally caught or undocumented fish, to be effective immediately upon the seizure of the illegal product, whilst a comprehensive audit is instigated.
132. Similar powers exist in liquor legislation in the Northern Territory and have made a significant positive impact. The powers could allow Fisheries Officers, SafeFood NSW Officers and Police Officers, to issue a "Closure Order" on any commercial premises upon which illegally harvested fish are found. These provisions would need to be underpinned by operational guidelines, a graded system of warnings, and an effectively promoted education policy. However, if the present illegal market culture is to be significantly changed, penalties that

operate as real economic deterrents will be essential. The proposal, when raised by the Chair of the Review, was widely supported across the fishing industry.

133. Whilst it is considered important that concerns over the involvement of organised crime be kept in context it will be important to seriously consider the expansion of current Confiscation of Assets legislation to allow the provisions to apply to specified fisheries and related natural resources offences.
134. As part of a national approach it is also important for NSW to support new customs regulations that seek, inter alia, to address the shipping of high value species through international air travel as luggage.
135. Currently, and contrary to accepted maritime law, in the absence of any direct or confessional evidence, the master of a vessel is not liable for illegal activity conducted by another person on the ship for which they have responsibility. This deficiency operates to protect persons, reasonably believed to have committed fisheries offences, from prosecution. The adoption of a provision similar to that in Western Australia under which the master of a vessel is deemed to be jointly liable for any offences on board the vessel for which the master has responsibility would be valuable.
136. Additionally, problems arise when a vehicle or boat is searched and illegally taken fish are found in possession, and no one admits ownership. The legislative provisions that apply to deemed ownership of fish found in a vehicle or boat should be clarified to ensure, that in the absence of specific admissions by an occupier of a boat or vehicle, all persons in or on the boat or vehicle are deemed to be in joint or shared possession unless the contrary is proved by the person charged.
137. Apart from the bag limit recommendation for abalone discussed above, the present bag limits for most other species of fish are almost unanimously accepted as too liberal, too easily open to abuse and counterproductive to effective regulatory compliance. They should be reviewed and reduced, and supplemented or replaced, at least in part, by boat and vehicle limits or total weight limits as part of recreational fishing management strategy development.
138. Big catch fishing competitions, despite the catch and release controls that are sometimes applied, are incongruous to the proper protection of fishery resources and to the strongly expressed desire of the vast majority of those who contributed to this review to change the prevailing fishing culture. Despite their obvious economic attraction and popularity amongst certain sections of the fishing community, they

should be abolished and replaced by competition structures more compatible with modern management goals.

139. The present reward system for information leading to the conviction of a person for certain illegal fishing offences does not operate as a sufficient incentive to report illegal conduct. The present "conviction based" arrangements result in long delays and uncertainty in payment with present reward levels seen as insufficient. A system based upon information sufficient to support a criminal charge would be more effective even if a part payment only was able to be made at this time. Consideration should also be given to applying the reward system to a wider range of offences. It is relevant to consideration of this issue that the NSW Police Crime Reporting line offers a reward to anyone reporting an offence where that information is subsequently the basis of a successful prosecution.
140. Currently there is no requirement for a person buying commercial quantities of netting material to demonstrate that they can legally use that equipment. It should be made a requirement that persons purchasing commercial fishing net material demonstrate that they hold a fishing licence that authorises the use of that equipment.
141. The current system of commercial fisher catch returns relies heavily on the honesty of individual commercial fishers, as well the accuracy of their personal records. This can lead to both deliberate and inadvertent misreporting of catches. The new fishery management strategies have identified this as a high risk area which requires "fishery-independent" monitoring programs. These programs should be implemented as a high priority. It should be noted that concern was expressed over the risk of fishery management decisions being made on the basis of inaccurate and flawed statistics.
142. The requirement for a registered fish receiver program has been questioned. This program provides an opportunity for fish being sold by commercial fishers to the post harvest sector to be monitored as a means of validating catch records. To date, the returns have not been used for large scale validation and this should be done as a matter of priority. If this proves impractical then the program should be reviewed and refocused or abandoned.

History

The agency

NSW Fisheries is a service agency focused on the conservation of living aquatic resources.

It is a Government inner budget sector agency with a Director-General, who is the Chief Executive Officer, reporting to the Minister for Agriculture and Fisheries. Funding comes from consolidated revenue, a number of trust accounts such as for the recreational fishing fee created by legislation for specific purposes, and grants obtained from a variety of sources generally for research.

Total expenses for NSW Fisheries operations in the year ended 30 June 2003 were \$58.7 million. NSW Fisheries currently has approximately 420 staff. These staff are based at the major fisheries centres at Cronulla, Wollstonecraft and Port Stephens, a number of smaller management or research centres throughout the state and at 32 local Fisheries Offices staffed by Fisheries Officers and administration staff.

Full details of the Department's operations can be viewed on the website www.fisheries.nsw.gov.au where the annual report can be downloaded.

The clients

Clients of the agency include the recreational fishing, commercial fishing, aquaculture and conservation sectors, and the community in general as owners of the fisheries resource. The agency's responsibility is to conserve, develop and share the fisheries resource. It undertakes a range of functions including education, research, compliance, environmental assessment of fishing impacts, and the development of policy and law.

The commercial industry

The commercial sector comprises approximately 1,300 commercial fishing businesses utilising approximately 2200 fishing boats of varying sizes and capacities.

The state's \$94million commercial fishing industry includes seven key fisheries: abalone, rock lobster, ocean trawling, ocean trap and line, estuary general, estuary trawl, and ocean hauling. There is also a small inland commercial fishery for yabbies and carp.

This diversity of fishing methods, and the small scale nature of the industry, is a reflection of the relatively poor fisheries resources found within the state. This reflects the geographic positioning of NSW on the Australian coastline, the nature of those resources and the relatively narrow continental shelf. The industry has a markedly different structure to that of other states.

A great deal of industry restructuring has occurred in recent years resulting in a reduction in the number of commercial fishers and an increase in the area closed to commercial fishing.

With the introduction of the general recreational fishing fee there was a program of buy outs of commercial fishing effort in certain areas of the state. Fishers were compensated for surrendering their right to operate commercially in certain waters, which were then closed to commercial fishing. These waters became Recreational Fishing Havens (RFH's). Commercial fishing gear was not purchased in this process and was retained by its original owners. This gear could be sold without restriction.

A strained relationship between some within the commercial sector and the Department is evident possibly as a result of the effects of this restructuring program.

The recreational sector

Data from the recent National Angling Survey suggests that, in NSW, over one million people fish at least once a year, with recreational fishing recognised as one of the most popular participant sports in NSW. The sport's profile is growing significantly and it is generally seen as a wholesome and healthy activity with participation encouraged by many sectors of the community.

The fishery encompasses a variety of fishing methods and fishing areas, diverse education and compliance demands, resource intensive programs such as fish stocking and Fishcare Volunteer programs. It requires substantial management, research, compliance and administrative services to clients. The fishery is regulated by a comprehensive set of gear, area, species and time restrictions and rules.

Unless otherwise exempt, recreational fishers are required to obtain and carry a licence to fish in any waters in NSW. Licence revenue is held in a trust fund with expenditure overseen by expenditure committees, comprising regional, saltwater and freshwater, angler representatives.

Particular challenges facing NSW include that it has a relatively short coastline, the highest coastal population density in Australia, and by far the greatest number of anglers - all targeting a relatively poor fisheries resource.

The aquaculture sector

This sector is dominated by the oyster industry with established prawn and trout farming components, and emerging native fish, yabby, and marine farming industries. The sector is now worth over \$50 million in annual production.

The oyster industry has faced significant restructuring in recent times and is under pressure from competing market segments, disease, and environmental impacts.

This sector is rapidly expanding worldwide and some sectors in NSW are seen to be well placed to join this growth trend. Significant research and market development has been achieved and further development is expected.

Summary of processes used in the review

The review process involved:

Public meetings

To assist the review, regional community meetings were held in Ballina, Coffs Harbour, Forster, Port Stephens, Wollongong, The Entrance, Ulladulla, Narooma and Eden. These meetings were advertised through the major NSW and Regional newspapers. In addition there was substantial timely local radio coverage. Input at these meetings was recorded.

Group meetings

Meetings were held with representatives of various industry sectors, management and operational staff of NSW Fisheries, interstate fisheries management and operational staff, and relevant state and federal government agencies.

Confidential meetings

The opportunity was provided for people to speak confidentially to the Chair of the Review and a significant number of interested people from all sectors took advantage of this facility, either face to face or by telephone.

Submissions

Written submissions were invited from interested persons or organisations and a number were received via the post and the website set up specifically for the review.

Appendix A

Terms of reference

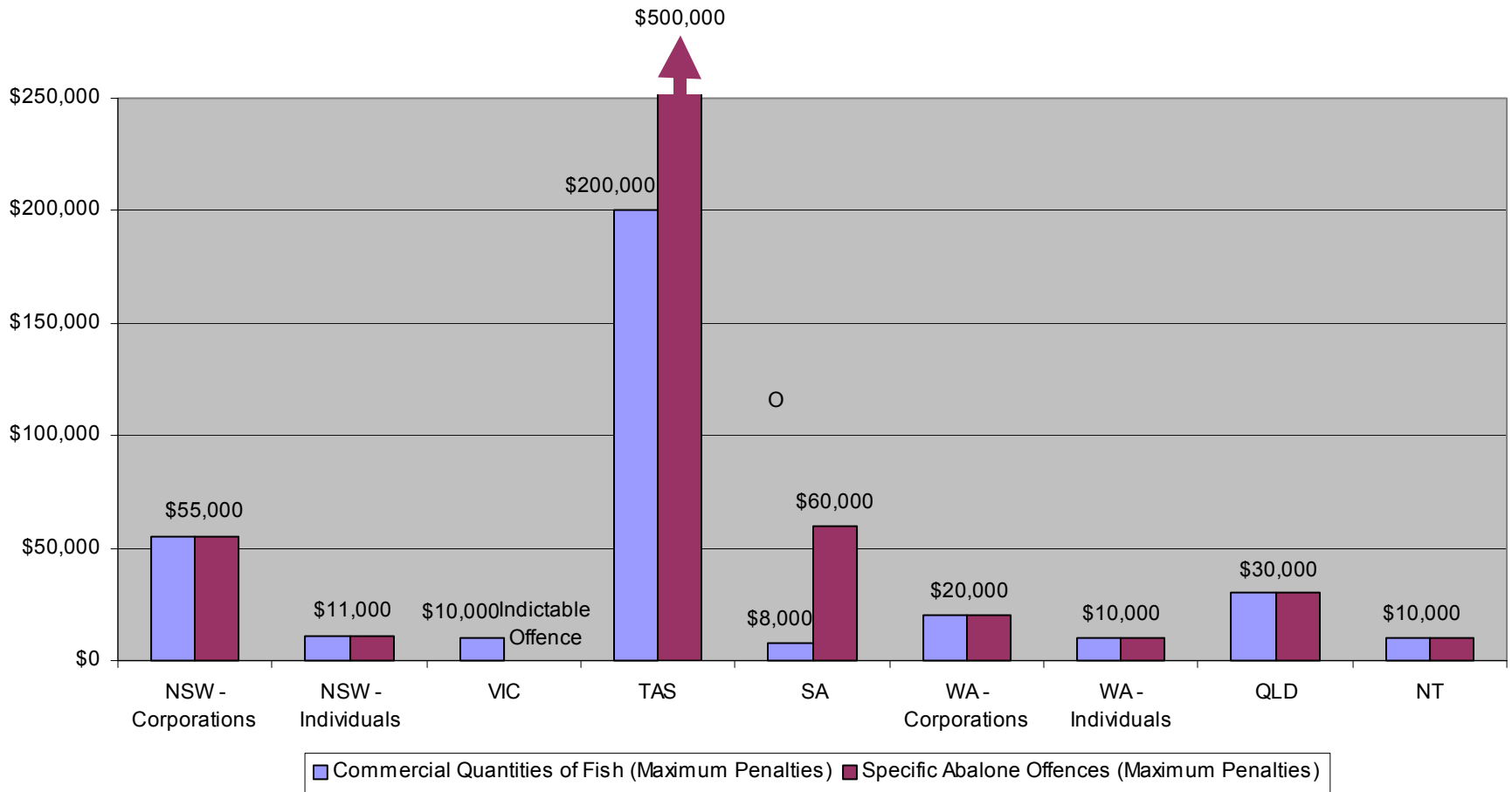
1. Scope the extent of the unlicensed illegal harvesting and sale of fish in NSW.
2. Identify areas and times of highest impact.
3. Review current state and national legislation.
4. Identify legislative and other mechanisms that can be used to improve the current situation.
5. Recommend means, and prioritise resources to achieve optimal compliance and create effective deterrents.
6. Recommend potential for improvements in legislation, education and enforcement.
7. Address other matters referred by the Director-General, NSW Fisheries, or the Minister for Agriculture and Fisheries, or matters identified by the forum.
8. Deliver a report to be published for public comment to the Minister for Agriculture and Fisheries by 30 November 2003 (note this date later extended to allow additional consultation).

Appendix B - Graphs

State Penalty Comparisons - Take fish for sale whilst unlicensed & Specific Fish Receiver Legislation (Maximum Penalties)

Take fish for sale whilst unlicensed & Specific Fish Receiver Legislation (Maximum Penalties)	Take fish for sale whilst unlicensed (Maximum Penalties)	Specific Fish Receiver Legislation (Maximum Penalties)	Additional Penalties
NSW - Corporations	\$55,000	<i>As per Take fish for sale whilst unlicensed</i>	
NSW - Individuals	\$11,000	<i>As per Take fish for sale whilst unlicensed</i>	
VIC	\$10,000 or 6 months jail, or both	\$20,000 or 12 months jail, or both	<i>New Legislation provides for additional penalty of \$100 per fish in excess of bag limit, and maximum 5 years imprisonment for take commercial quantities of abalone, or 10 years imprisonment for trafficking commercial quantities of abalone</i>
TAS	\$200,000 or 12 months jail, or both	\$500,000 or 12 months jail, or both	Plus a penalty equivalent to 10 times the value of the fish
SA	\$8,000	\$8,000	
WA - Corporations	\$100,000	\$40,000 plus a penalty of \$1,500 per day, for the duration of the offence	Plus a penalty equivalent to 10 times the value of the fish
WA - Individuals	\$50,000 or 2 years jail, or both	\$20,000 plus a penalty of \$750 per day, for the duration of the offence	Plus a penalty equivalent to 10 times the value of the fish
QLD	\$30,000	\$100,000	
NT	\$20,000 or 2 years jail, or both	\$10,000 or 1 year jail, or both	

**State Penalty Comparisons -
Commercial Quantity of Fish Offences & Specific Abalone Offences**



State Penalty Comparisons - Take fish for sale whilst unlicensed & Specific Fish Receiver Legislation (Maximum Penalties)

Take fish for sale whilst unlicensed & Specific Fish Receiver Legislation (Maximum Penalties)	Take fish for sale whilst unlicensed (Maximum Penalties)	Specific Fish Receiver Legislation (Maximum Penalties)	Additional Penalties
NSW - Corporations	\$55,000	<i>As per Take fish for sale whilst unlicensed</i>	
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QLD	\$30,000	\$100,000	
NT	\$20,000 or 2 years jail, or both	\$10,000 or 1 year jail, or both	

State Penalty Comparisons -
Take fish for sale whilst unlicensed & Specific Fish Receiver Legislation
(Maximum Penalties)

