

Commercial Fishing NSW Advisory Council
Meeting 8, 11 September 2018
Rydges, 28 Albion Street, Sydney

Members present	Stuart Richey AM (CommFish NSW Chair), Graeme Byrnes, John Luke, Geoff Blackburn, Steven Everson, Mark Cranstone, Mitchell Sanders, John Jarvis, Steve Hounsell, Greg Finn, Darren Ward, David McPherson, Brad Mackay (Executive Officer NSW DPI).
Invited guests	<ul style="list-style-type: none"> • Mathew Richardson, Program Leader Compliance Projects, NSW DPI • Sarah Fairfull, Director Aquatic Environment, NSW DPI
Apologies	Greg Rzy & Scott Massey

1. Member Welcome, Introductions and Housekeeping

The Chair opened the meeting at 9:00 am. The Aboriginal member acknowledged the traditional owners of the land, past and present, acknowledging that the meeting was being held on the traditional lands of the Cadigal people. The Chair welcomed all Council members and attending guests present, including the Program Leader Compliance Projects (Mathew Richardson) and Director of Fisheries Compliance (Patrick Tully).

2. Review of Agenda

The Chair invited Council members to provide additional agenda items. No additional inclusions from members were identified. Further discussion included:

- Senior Policy Officer, Minister’s Office (Miranda Pade) to attend from midday.
- The resignation from office, submitted by the Ocean Haul member, has not yet been considered by the Ministers office.

3. Review, Declarations and update Register of Interests

The Chair asked all members to identify any pecuniary interests not previously disclosed on the distributed register of interests. The SUTS member stated that he has had a change in shareholdings owned.

ACTION 8.1: The Executive Officer to amend the register of interests and distribute to Council members.

4. Confirmation of Minutes from Meeting 7

The Council accepted the draft minutes from the seventh meeting held on 11 July 2018 in Sydney, without change, as a true and accurate record of discussions.

5. Actions Arising from Meeting 7

The Council reviewed previous actions, and were pleased that significant progress had been made in completing actions particularly given the time elapsed from the last Council meeting, noting the following:

Action item 7.3 – List of regulations for review

‘Council recommends that NSW DPI make the list of regulations available to industry for feedback at the earliest opportunity and allow a period of four weeks for consultation.’

NSW DPI nominee indicated that the release to industry has been interrupted due to other consultation occurring, while some of the inclusions require further internal consultation and pending this consultation the list will be released. Council members noted the importance to release the list to industry.

ACTION 8.2: When supported and finalised through additional internal consultation, NSW DPI to release list of regulations to industry.

Action item 7.4 - Harvest strategies

‘Invite Research Leader Fisheries Resource Assessment (NSW DPI) to attend the next Council meeting and provide an update on the development of fishery harvest strategies.’

The Chair indicated that is a standing agenda item, with DPI to provide updates at future meetings.

Action item 7.5 – Recreational Fishing NSW Advisory Council (RFNSW)

‘Council support NSW DPI investigating a joint meeting this year with RFNSW.’

The Chair indicated that this was scheduled to occur at the November meeting, however due to this being moved forward (i.e. the current meeting), the joint meeting with RFNSW was not feasible. However, the joint meeting is still supported to occur.

ACTION 8.3: Executive Officer to investigate a joint meeting with RFNSW at the first available opportunity.

Action item 7.6 – Illegal fishing progress

‘NSW DPI and Abalone Council members to continue out of session discussions on measures to assist compliance and table at the next Council meeting.’

The NSW DPI nominee indicated that this is still to occur and potential to include other Council members.

ACTION 8.4: Estuary General and SUTS Council members to be involved in the drafting of an issues paper identifying potential measures to assist compliance in reducing illegal fishing and distribute to other Council members for comment.

Action item 7.8 – Signage

‘Council supports NSW DPI, MFAC and Estuary General Members developing signage options in support of NSW commercial fishing for tabling at a future Council meeting.’

The Chair indicated that is a standing agenda item.

Action item 7.20 – Catch and effort reporting

‘NSW DPI investigates functionality of pre-populating catch and effort reports from completed FisherMobile reports.’

The NSW DPI nominee indicated this is currently being investigated.

Action item 7.21 – Demerit (PDS)

The Chair indicated that further discussion on the Penalty Demerit Scheme is scheduled to occur at this meeting.

Action item 7.22 – GB discussion meeting 7

The Council recommends:

1. NSW DPI investigates the issues raised in regard to FisherMobile and catch and effort reporting system errors.
2. Further discussion on boat licences to be included at a future Council meeting.
3. Including discussing changes to NSW DPI Fisheries compliance practices with onset of mobile reporting systems at a future Council meeting.'

The NSW DPI nominee indicated that there are changes to the system set to occur later this year that will allow fishers to more easily rectify incomplete reports. Further Council discussion included:

- General consensus within Council to remove boat licencing by NSW DPI, potential risks of this occurring were discussed and potential to include in the list of regulations consultation.
- The Chair indicated that boat licencing and Fisheries compliance practices are standing agenda items, with DPI to provide updates at future meetings

6. Strategic Agenda Item 1 – Review of Compliance Penalty Demerit Scheme (PDS) submissions and revised NSW DPI proposals

NSW DPI introduced each section of the scheme, providing a summary of the submissions received. NSW DPI also advised that due to the industry submissions received and previous input from Council, some amended DPI proposals had been developed. Further discussion included:

- Executive officer providing a summary of previous meeting discussion and actions involving PDS.
- Chair indicating that Council supported the concept and principle of the proposals but needs to work through the details.

General elements of the Demerit Point Scheme

Category A and B offences

The Council discussed NSW DPI's proposals and the submissions received. Council discussion included:

- Submissions suggested that the existing list needs to be modified. In particular offences regarding catch records, real-time reporting and licence conditions were not supported as category A offences.
- NSW DPI noted that real-time reporting offences have direct resource and quota management implications.
- Members indicated that industry is still adjusting to real-time reporting requirements and after industry has had time to adjust, then consideration should then be given to including this as an offence.
- Members indicated that including the reporting of quota (kilograms) to the nearest 100 grams in the PDS as an offence was an issue given the differing weight at the time of validation (wet vs dry weight for some species) .
- NSW DPI went through the proposed revised category A list, indicating offences proposed to be removed or retained, with examples of offences and penalties applicable being provided.

ACTION 8.5: Unanimous recommendation to support the NSW DPI proposals regarding:

1. **Revising the list of demerit point offences to remove nine offences, including catch records and real time reporting.**
2. **Removing Category B totally from this scheme.**
3. **Adding or reintroducing offences based on a future review of the PDS.**

Demerit point expiry period

The Council discussed NSW DPI's proposals and the submissions received. Council discussion included:

- Many submissions suggested that ten years was far too long for demerit points to be in place, and would result in fishers being disqualified more rapidly, and suggested the expiry period be reduced to 2 or 3 years.
- NSW DPI suggested that seven years may be the right balance of ensuring an effective deterrent whilst minimising the risk of impacts on compliant fishers.
- Council members discussed the risks and benefits in reducing the expiry period of offences, including impacts to individuals and the need to still provide an effective deterrent.
- Periods of demerit point expiry were compared in other jurisdictions to the NSW DPI proposal period.
- Two members noted concerns in recommending period of accruals greater than 2 years.
- Members noted uncertainty in providing a recommendation and considered the potential to defer commencement of the scheme until industry has been provided opportunity to review the list of regulations proposed to remove red tape.

ACTION 8.6: Council recommends the expiry period for demerit points be set at five years, noting:

1. **Two members wanted concern with the recommended period recorded.**
2. **Period is consistent with other jurisdictions.**
3. **Commencement of PDS to occur in July 2019, after red tape reductions have been achieved.**

Disqualification

Length of disqualification

The Council discussed NSW DPI's proposals and the submissions received. Council discussion included:

- Submissions included suggesting that ten year period for disqualification was too harsh, and suggested reduced periods and that the fisher/business owner could not re-enter the industry at the conclusion of the exclusion.
- NSW DPI proposes to implement the ten year disqualification period as originally proposed.
- The deterrent factor is an important component in driving behaviour change.
- NSW DPI clarified the proposed outcome for an individual disqualified, including total exclusion from industry for 10 years and an inability to hold any licence related to commercial fishing, including shareholding.
- The Chair noted other jurisdictions have lifetime of 10 year disqualification periods.

ACTION 8.7: Majority of Council members recommend support for the NSW DPI proposal to implement the ten year disqualification period, as previously proposed.

Members further discussed the potential risk that disqualified individuals from other jurisdictions could re-enter NSW fisheries and the mechanisms potentially available to exclude entry.

ACTION 8.8: Council recommends that NSW DPI should include a fit and proper person test for new entrants into NSW fisheries.

Members also further discussed other options related to disqualification, including potential for automatic disqualification to be incurred for certain high level offences.

ACTION 8.9: Council members recommend that NSW DPI:

- 1. Investigate the potential of automatic disqualification for certain high level offences such as trafficking fish.**
- 2. Provide further information on the topic of automatic disqualification for Council members review at a future meeting.**

Crewing, fishing boat licences and fish receiver permits

The Council discussed NSW DPI's proposals and the submissions received. Council discussion included:

- Some submissions suggested that not allowing a recidivist offender to work as crew or cancelling and then refusing to issue a fishing boat licence and/or a fish receiver permit was too harsh.
- NSW DPI proposes to implement the extent of the disqualification as originally proposed.
- NSW DPI noted that totally excluding a repeat offender from participating in the NSW commercial fishing industry is vital to creating greater social licence, enhancing the viability of compliant fishers and fishing businesses, and supporting the integrity of the new quota arrangements.

ACTION 8.10: Majority of Council members recommend support for the NSW DPI proposal to implement the extent of disqualification for crew, fishing boat licences and fish receiver permits as previously proposed by NSW DPI.

Time to transfer shares if a person is disqualified

The Council discussed NSW DPI's proposals and the submissions received. Council discussion included:

- Submissions suggesting that six months would be too short a period to sell shares as a result of disqualification, reasoning included that shares would be sold below market value, or fishers would be forced to make important business decisions in a state of panic.
- Benefits of allowing greater flexibility to disqualified individuals to transfer shares to other entrants, including supporting the value of the fishery and shares.

ACTION 8.11: Majority of Council members recommend support for the NSW DPI proposal to enable Ministerial discretion regarding an extension of up to six months for disqualified persons to sell shares, if reasoning is justified by supporting evidence.

One Council Member recommended 12 months.

Share Suspension

The Council discussed NSW DPI's proposals and the submissions received. Council discussion included:

- The majority of submissions disagreed with accruing demerit points against share classes and the impacts of suspension, indicating that they would welcome further consultation on this issue.
- NSW DPI proposal to remove the share aspect from the scheme in the interim, and have further consultation with industry on attaching demerit points to share classes.
- Council members considered NSW DPI proposal, including the impact to share values and other financial risks if demerit points were attached to shares, and supported further review on attaching demerit points to share classes.

ACTION 8.12: Unanimous recommendation to support the NSW DPI proposal regarding:

- 1. Removing the application of demerit points to share classes from the draft legislation.**

2. **Conducting further industry consultation on the issue of shareholder responsibility for nominated fishers, including ways to address concerns about shareholders directing illegal activity (by nominated fishers) with no recourse or penalty.**

Reviews/Appeals – Licence disqualification and share suspension

The Council discussed NSW DPI's proposals and the submissions received. Council discussion included:

- NSW DPI noting that as the list of Category A offences and the lifespan of points is likely to be reduced, there are likely to be fewer disqualifications.
- NSW DPI confirmed that under the proposal individuals would have to obtain a stay order through the Land and Environment Court and this would only be relevant to fishers who repeatedly commit serious offences over many years and are subject to disqualification.
- Industry concerns about fairness; these concerns will be addressed via procedural fairness and natural justice through the NSW DPI prosecution review process, including penalty notice reviews.

ACTION 8.13: Unanimous recommendation to support the NSW DPI proposal to implement the arrangements regarding licence disqualification and share suspension as previously proposed by NSW DPI.

Access to demerit point information

The Council discussed NSW DPI's proposals and the submissions received. Council discussion included:

- NSW DPI noted that the majority of respondents suggested to ensure that sufficient privacy measures were in place, information should not be accessible by the public or other members of the fishing industry.
- The Chair provided examples of other jurisdictions access to demerit point information.
- Confirmation that NSW DPI does not support adopting a notification process, given the privacy concerns expressed by industry, and the administrative cost and burden placed on the Department.
- Members considered other options concerning access to demerit information, including options to reduce the NSW DPI administrative burden and the relationship to cost recovery.
- Members support the privacy of individuals and that information in regard to demerit points should be between the parties involved, excluding the Department from administrative measures in transferring information, but providing measures for individuals to access their own information.

ACTION 8.14: Members recommend not allowing demerit point information to be available on the NSW DPI public website and allowing members to access their own information on FisherDirect.

Delaying implementation

The Council discussed NSW DPI's proposals and the submissions received. Council discussion included:

- A large proportion of submissions indicated that industry had been through significant upheaval in recent years and needed a period of time to fully adjust to the new management regimes across each commercial fishery.
- Other submissions identified the need to remove redundant and outdated regulations prior to implementing a demerit point scheme to avoid fishers from being impacted by overly complex rules.

- The proposed delay would give NSW DPI the opportunity to provide advice to industry on how the penalty demerit scheme will work, building fishers' confidence in the integrity of the scheme.
- Allow time for further consultation with industry on several sections of Draft PDS, including points applying to share classes.
- Consideration that there are further fisheries going to quota and the need for a potential advisory period to allow the remainder of industry to adjust to new reporting requirements.
- Members supported an additional meeting undertaken this year to further discuss and progress pending Council issues.

ACTION 8.15: Unanimous recommendation to support the NSW DPI proposal to delay the start of the scheme until at least July 2019, recognising the importance of this scheme to assist with enhancing the viability of commercial fishing businesses.

The chair noted the departure of the Estuary Prawn Trawl member and arrival of Senior Policy Officer.

7. Strategic Agenda Item 2 - Marine Estate Management Authority (MEMA) reforms update

The Chair introduced the Director Aquatic Environment, Sarah Fairfull, to provide an update to the MEMA reforms. The presentation and discussion included:

- An overview of current marine estates, including previous implementations, bioregion division and the strategy undertaken in developing these.
- Discussing the current social, cultural and economic threats to marine estates and level of risks associated.
- Examples of Abalone and Lobster fisheries that strong quota management, quality research and data, and have low threats due to low levels of bycatch and low recorded interaction with threatened species.
- Management initiatives developed to protect marine estates, including ensuring sustainable fishing and aquaculture through development of harvest strategies.
- In developing zonings for the current marine park proposal, previous reported commercial fishing activity was assessed.
- Hawksbury shelf marine bioregion overview, including previous engagement that started in 2014 through community responses to the Marine Estate Community Survey.
- Overview of the marine park proposal, including threats and risk involved around fishing activities and managing resource use conflict.
- Sites were identified that the proposed marine park will impact regarding commercial fishing activities that NSW DPI would like further consultation on.
- Currently online submissions remain open, with submissions closing 27 September 2018.

The Chair thanked the Director of Aquatic Environment for the presentation provided.

8. General Business

8.1 - Correspondence received

The Executive Officer indicated that all correspondence received that had not previously been distributed to members, as per previous meeting action, has now been provided to members along with a summary of all correspondence received. Council members discussed the following correspondence received:

8.1.1 – Minister Response to meeting 7 recommendations

Noted appreciation of response received.

8.1.2 Estuary General crew- Multiple submissions

Members support written response to this individual.

ACTION 8.16: Council recommend NSW DPI draft written response to industry individual that has provided multiple submissions to the Council, issue was deemed to be NSW DPI operational.

8.1.3 – Estuary General member submission – Possession of non-quota species

The Estuary General member provided overview of the issue related to the transport and possession of catch by nominated agents, rather than by the fisher who is endorsed to take the fish. Further discussion included:

- This is currently documented through a record of sale or possession from the fisher which requires individual species weight to be recorded.
- The current process provides for traceability of possession.
- Indications that compliance risks increase when transport of catch includes delivery to multiple locations.

ACTION 8.17: Council members support NSW DPI investigating options and further discussion at a future Council meeting around the issue of possession and transport of catches of non-quota species by authorised agents.

8.1.4 - Other submissions received

The following submission topics were provided to Council members for their information and consideration of recommended action:

- Multiple Estuary General endorsement fees and unendorsed crew
- Estuary General region 7 closures
- NSW DPI staff knowledge
- Password reset in online reporting systems
- Removal of the 10 fish mulloway possession between 45-70cm
- PDS submissions
- Quota carry over and advance
- Restrictions on tailor harvest in ocean haul fishery
- SUTS fishery entry
- Clarence River mud crab area trapping closure

ACTION 8.18: Executive Officer to:

- 1. Refer issues identified as operational matters to NSW DPI; recommend NSW DPI to send written response to issues identified.**
- 2. Respond to individuals that have made submissions to the Council that have relevance to the list of regulations, indicating that correspondence received will be retained as a submission.**
- 3. Update summary of correspondence register and redistribute to Council members prior to any Council meetings.**

8.2 - Additional discussion

The Chair called for additional items with Council discussion included:

- Estuary General member has had indications from industry that meshing day quota should negate the additional shareholding crew requirement and allow operators with minimum shareholding to use additional crew.
- Council discussed that EIS around new marine parks should include recreational fishing impacts.
- Senior Policy Officer indicated that the Ministers office have appreciated members' advice; the comment was also supported by NSW DPI nominee.
- NSW DPI nominee recommends that all Council members make a submission in regard to MEMA process.
- Council members are appreciative of this meeting being rescheduled, allowing the opportunity to discuss the PDS.
- Members support proceeding with the November Council meeting as planned.

ACTION 8.19: Council members request that a NSW DPI recreational fishing manager attend a future Council meeting to provide a briefing on the recreational EIS development.

9. Next Meeting Confirm Date and Location

The Chair confirmed that next meeting date will be 21/22 November 2018 in Sydney.

Meeting Close

The Chair closed the meeting at 3:30 pm, thanking all Council members for their contributions and invited guests for their attendance.

ACTION Arising List

Meeting#	Action#	Action	Status
7	4	Invite Research Leader Fisheries Resource Assessment (NSW DPI) to attend the next Council meeting and provide an update on the development of fishery harvest strategies.	NSW DPI
7	8	Council supports NSW DPI, MFAC and Estuary General Members developing signage options in support of NSW commercial fishing for tabling at a future Council meeting.	NSW DPI/ MFAC, EG members
7	22	The Council recommends: <ol style="list-style-type: none"> 1. NSW DPI investigates the issues raised in regard to FisherMobile and catch and effort reporting system errors. 2. Further discussion on boat licences to be included at a future Council meeting. 3. Including discussing changes to NSW DPI Fisheries compliance practices with onset of mobile reporting systems at a future Council meeting. 	All members/ NSW DPI
8	1	The Executive Officer to amend the register of interests and distribute to Council members.	Executive officer
8	2	When supported and finalised through additional internal consultation, NSW DPI to release list of regulations to industry.	NSW DPI
8	3	Executive Officer to investigate a joint meeting with RFNSW at the first available opportunity.	Executive Officer
8	4	Estuary General and SUTS Council members to be involved in the drafting of an issues paper identifying potential measures to assist compliance in reducing illegal fishing and distribute to other Council members for comment.	EG/SUTS/ AB; NSW DPI nominee
8	5	Unanimous recommendation to support the NSW DPI proposals regarding: <ol style="list-style-type: none"> 1. Revising the list of demerit point offences to remove nine offences, including catch records and real time reporting. 2. Removing Category B totally from this scheme. 3. Adding or reintroducing offences based on a future review of the PDS. 	All members
8	6	Council recommends the expiry period for demerit points be set at five years, noting: <ol style="list-style-type: none"> 1. Two members wanted concern with the recommended period recorded. 2. Period is consistent with other jurisdictions. 3. Commencement of PDS to occur in July 2019, after red tape reductions have been achieved. 	All members
8	7	Majority of Council members recommend support for the NSW DPI proposal to implement the ten year disqualification period, as previously proposed.	All members
8	8	Council recommends that NSW DPI should include a fit and proper person test for new entrants into NSW fisheries.	All members
8	9	Council members recommend that NSW DPI: <ol style="list-style-type: none"> 1. Investigate the potential of automatic disqualification for certain high level offences such as trafficking fish. 2. Provide further information on the topic of automatic disqualification for Council members review at a future meeting. 	All members

8	10	Majority of Council members recommend support for the NSW DPI proposal to implement the extent of disqualification for crew, fishing boat licences and fish receiver permits as previously proposed by NSW DPI.	All members
8	11	Majority of Council members recommend support for the NSW DPI proposal to enable Ministerial discretion regarding an extension of up to six months for disqualified persons to sell shares, if reasoning is justified by supporting evidence. One Council Member recommended 12 months.	All members
8	12	Unanimous recommendation to support the NSW DPI proposal regarding: <ol style="list-style-type: none"> 1. Removing the application of demerit points to share classes from the draft legislation. 2. Conducting further industry consultation on the issue of shareholder responsibility for nominated fishers, including ways to address concerns about shareholders directing illegal activity (by nominated fishers) with no recourse or penalty. 	All members
8	13	Unanimous recommendation to support the NSW DPI proposal to implement the arrangements regarding licence disqualification and share suspension as previously proposed by NSW DPI.	All members
8	14	Members recommend not allowing demerit point information to be available on the NSW DPI public website and allowing members to access their own information on FisherDirect.	All members
8	15	Unanimous recommendation to support the NSW DPI proposal to delay the start of the scheme until at least July 2019, recognising the importance of this scheme to assist with enhancing the viability of commercial fishing businesses.	All members
8	16	Council recommend NSW DPI draft written response to industry individual that has provided multiple submissions to the Council, issue deemed NSW DPI operational.	NSW DPI
8	17	Council members support NSW DPI investigating options and further discussion at a future Council meeting around issue of possession and transport of catches of non-quota species by authorised agents.	NSW DPI
8	18	Executive Officer to: <ol style="list-style-type: none"> 1. Refer issues identified as operational matters to NSW DPI; recommend NSW DPI to send written response to issues identified. 2. Respond to individuals that have made submissions to the Council that have relevance to list of regulations, indicating that correspondence received will be retained as a submission. 3. Update summary of correspondence register and redistribute to Council members prior to any Council meetings. 	Executive officer
8	19	Council members request that a NSW DPI recreational fishing manager attend a future Council meeting to provide a briefing on the recreational EIS development.	NSW DPI