

Executive Summary

In addressing the terms of reference, the Review Team has focussed on two main areas: firstly, the shortcomings of commercial fisheries policy, management and administration in NSW, and secondly, what needs to be done to fix them. Historical context is clearly relevant, and strong, often irreconcilable views as to the solutions remain within industry, partly as a result of this history. In the Review, we have made reference to the past only where it provides context and is relevant to suggested future actions and recommendations.

We have particularly taken into account the NSW Liberals and Nationals Fisheries Policy Statement “Securing Sustainable, Viable and Healthy Fisheries” published prior to the State Election held in March 2011. In part, this Policy states that the new Government’s aim is “to ensure we have a strong and viable commercial fishing industry”. This focuses the review entirely on the commercial seafood industry, although some comments and recommendations have application to other sectors. In the body of this Report, we have gone into some detail to address the terms of reference and each of the actions set out under those terms of reference so as to provide a rationale for the Review’s findings and recommendations.

The Review Team has taken a highly consultative approach to the Review. A Stakeholder Reference Group from a cross section of commercial fishery stakeholders and the post harvest sector assisted deliberations and the recommendations of many previous reviews were also considered. Submissions were called from the industry at large and five regional meetings (incl. three open forum meetings) were held at ports across the State. Submissions were also received from a variety of other sources, including the recreational fishing sector, the Aboriginal fishing sector, one Government MP, a local council and other interested parties.

The fishing industry is one of NSW’s oldest primary industries and with an initial ‘first point of sale’ value of approx. \$80 million for wild caught species, is the fourth most valuable food-based primary industry in this state. Through the catching and marketing sectors, the industry provides fresh seafood to the NSW consumer, and makes a significant contribution to many regional communities along the NSW coastline. Catches by recreational and commercial fishers consist of well over 100 main species taken from fresh water, estuaries, inshore and oceanic waters, using a range of fishing gears over more than 2,100km of coastline. Fisheries resources are shared by both extractive (recreational, commercial and Aboriginal fishers) and non-extractive (e.g. catch and release recreational fishers and divers) users, and are subject to increasing conservation through the establishment of Marine Parks. Under these complex conditions, provision of affordable and effective fisheries management services to ensure desired biological and economic outcomes presents a significant challenge.

While the exploitation status of around 50% of the key species taken by NSW commercial fishers are considered ‘uncertain’ or ‘undefined’ with six species considered biologically ‘overfished’, most appear to be sustainable according to scientific reports. However, there are some anecdotal reports of increasing depletions of some species in local areas due to fishing pressure.

There is a clear need to continue with efforts to ensure sustainability of the resource and, as far as possible, ensure an ongoing and consistent supply of quality seafood to the consumer, while catering for the needs of other stakeholders. To achieve this seafood supply requires the existence of well-managed and viable fishing businesses, operating profitably and responsibly, with the certainty necessary to enable sound business investment at all scales of operation. An inflexible and inappropriate management system burdened by an excess allocation of access rights (too many fishers for too few fish) continues to prevent industry self-adjustment. Loss of fishing areas to Marine Parks and Recreational Fishing Havens (RFHs) coupled with a range of unfavourable cost/price factors has further exacerbated the problem, leading to an increasing number of economically non-viable operators.

Previous efforts to correct this situation have not been successful. Complications arising from complex shared fisheries management arrangements with the Commonwealth Government and the failure to resolve Offshore Constitutional Settlement (OCS) arrangements all contribute to the need for reform.

As reported in numerous previous reviews into commercial fisheries in NSW, there remains a lack of confidence, certainty and optimism throughout the commercial fishing industry, reflected in extreme difficulty in getting financial support from the finance sector, little new investment in the industry, an ageing commercial fishing fleet, and a shortage of young people coming through the industry. Industry frustration with the 'stop/go' history of share management and structural adjustment, and constant changes to the reform process, caused by many Government policy reversals over 15 years, has led to a breakdown in trust, respect and working relations between the industry and government and even within government itself.

There is a sense of desperation in many sectors of the industry, with many commercial fishers feeling that this is the last opportunity for Government to institute changes to management arrangements which will reduce effort, minimise conflict and allow industry internal self-adjustment to achieve a "strong and viable commercial fishing industry".

Views on the seriousness of current problems in the commercial sector are mixed, as are the possible solutions to them. NSW fisheries are faced with a form of Gordian knot, that is, an intractable problem that is best solved by a bold stroke in the form of comprehensive restructure of the share management fisheries combined with institutional adjustment.

A recommended approach to dealing with the problems through three key reform activities is outlined below:

1. **A comprehensive structural adjustment program** to address the problems of excess and poorly defined fishing rights if the original vision for share managed fisheries is to be realised;
2. **Governance processes** be reformed to achieve a proper balance of responsibilities and accountabilities within Government and industry to restore confidence in decision making; and
3. **Consultation** be reformed to provide for effective processes and structures to facilitate co-ordinated advice, communication and feedback between Government and industry.

1. Structural adjustment

The problem

All sound fisheries management schemes require clearly defined and strong access rights and a system to autonomously adjust to changes brought on by a wide range of factors including changes in seasons, sustainability needs, costs and markets. In 1994, the Government enacted the *Fisheries Management Act 1994* (the Act) to introduce a share management scheme, which would provide a secure property right across all fisheries. This right would be defined, tradeable and allow internal adjustment. Allocation was to be based primarily on catch history, and provide security for finance companies to loan against, thus encouraging investment and better fishing practices. The industry recognised that it would also have to cover the increased costs of the new system.

However, the reality was that only two fisheries – Lobster and Abalone – came under the share management arrangements (in 1996), with the remainder declared as 'restricted fisheries' in 1997. Generous qualification criteria resulted in an excessive level of access, which was to be controlled, in part, through the application of minimum shareholdings. Following a number of changes in Government policy and administrations over time, the original intent and purpose of the share management scheme has never been fully realised, other than in the Lobster and Abalone fisheries.

Most other fisheries were eventually declared share management fisheries by 2004, including those that the Review Team has focussed its comments on. The original problem of the over-allocation of fishing rights persisted, with shares only partially linked to catch history, and with no definition of the 'value' of the share in terms of fishing access, expressed in outputs (catch) or inputs (gear/time). This resulted in poorly defined and insecure shares with limited market value, and an inability for industry to self adjust to today's pressures. The crowding of industry into smaller areas following the establishment of extensive Marine Parks and RFHs has made the situation worse, with a number of fishers who were bought out utilising latent effort to re-enter remaining waters open to commercial fishing. Many fishers are now caught in a form of poverty trap, where those that hold shares struggle to derive a living from them or tailor their operations to become more viable, and are unwilling to sell out due to their low value.

There is now a major distortion within most share classes where a flat (equal) allocation of shares was adopted, given the general trend of only a small proportion of fishers landing the majority of catch. It is this disparity between the current level of shareholdings and the catch history associated with them that is the major impediment to directly linking shares to some type of proportional access. Many individual fishers would require substantially more than their present number of shares to allow them to maintain their current level of catch, and unless these individuals could afford to buy that many shares, linking shares will effectively force them out of the fishery unless the share acquisitions are subsidised in some way. While there is general agreement that the status quo with respect to shares is untenable, there is no agreement among industry on how to correct this situation in order to return to the original intent of the scheme.

It is the strong view of the Review Team that without full implementation of a structural adjustment scheme as provided for in the Coalition's Fisheries Policy Statement, the NSW commercial fishing industry will continue to decline economically and potential risks to the sustainability of the State's fisheries resources (e.g. latent effort activation) will remain. Moreover, the industry's dependence upon government resources for adjustment, administration and other support will only increase in the future as the viability of the industry decreases.

A further consequence of inaction is that resource conflict in some areas will continue and possibly increase, resulting in calls from some sectors, most notably the recreational fishing sector, for commercial fishing to be further curtailed or even removed. This is already happening in areas like the Pittwater and Shoalhaven. Any further reduction in areas available to commercial fishing will result in the NSW Government having to deal with a reduction in locally caught seafood available to the domestic consumer and further calls, including on the State Budget, to fund compensation for those commercial fishers removed. Dealing with structural adjustment now and developing a Resource Sharing Policy framework should considerably lessen the likelihood of the Government having to deal with resource conflict and compensation issues in the future.

The remedy

Given the scale of the problem and the available funds for structural adjustment, the Review Team does not recommend that government/industry purchase shares through a buyout. It believes that such an action would put upward pressure on share prices and not be a good use of scarce resources. Instead, we conclude that a more effective way of rectifying the misallocation of shares and addressing the current distortion between shareholdings and fishing activity is by creating an incentive framework involving a system of targeted exit grants.

The proposed restructuring package uses the currently available Government and industry funding to facilitate structural adjustment by:

- the payment of exit grants involving a tender process targeted at share classes most in need of assistance (i.e. where the 'distortion' is worst);

- the introduction of cost recovery, initially based on an interim flat charge per share class, irrespective of the level of shareholding or catch;
- establishing links between shares and output (directly as quota, or indirectly as effort units) and the setting of Total Allowable Catch (TAC) or Total Allowable Effort (TAE) limits; and
- once the linkages and TACs/TAEs are in place:
 - removing or streamlining input controls that are no longer needed,
 - implementing a proportional management charge based on the number of shares held, and
 - moving away from using fishing businesses as an effort management tool as is now the case in the Abalone and Lobster fisheries.

Over a period of three years, each share would become linked to a direct proportion of the TAC or TAE in a given share class. This will effectively increase the value of shares and make them the currency of NSW fisheries as originally intended. The result will be an autonomously adjusting system with a reduced number of viable and well-managed operations.

The number of fishing businesses (FBs) as an effort management tool will not be required once structural adjustment has occurred and shares are linked.

The process will be aimed at enabling those who wish to stay and invest in the fishery to do so with some assistance and certainty, and allow others to exit with more than the current market value of their shares. It is evident, however, that this process will not be met with universal acclaim from industry, particularly given the scale of the problem relative to the available funding. While there will be considerable hardship and dislocation at the individual business level, it is clear to the Review Team that hard decisions will need to be taken and implementation effected if the past is not to be simply repeated.

2. Governance

The problem

A breakdown has occurred in the governance arrangements necessary for effective, efficient and transparent decision making in two key areas: confusion in identified responsibilities for decision making and a lack of a collegiate approach to decision making within the Department.

There has been a history of difficulties with the decision-making process within the Department and with industry. Advice from fisheries managers, researchers and, to a lesser extent, compliance officers has been seen to be inconsistent at times. Robust internal discussion and differing views are healthy, but an accepted Departmental position must be agreed through a rigorous process overseen by the Executive Director (ED), Fisheries so that industry understands the position and is not confused by opposing positions being argued externally by staff.

This situation has not only hampered the development and implementation of agreed policies and approaches, but it has led to industry 'shopping around' for other decisions within the Department and if unsuccessful, shifting the decision level upwards until it inevitably involved the Minister's office (unreasonably, in far too many cases). Decisions and directives have then been handed down from that office, undermining the Executive and removing responsibility and accountability from fisheries managers. This has also resulted in confirmation to industry that it can fly over the heads of the Department on even the most minor operational issues and, in effect, be rewarded for inappropriate process. This constant lobbying has also created considerable uncertainty as to who was responsible for what decisions and at what level, resulting in extreme frustration, delays and frequent changes in approaches.

While responsibilities may have been delegated down to the Department in the past to get on with management, there has been a clear perception from industry that no decision has really been made until the Minister makes it personally. This has resulted in a distortion of the governance system and its accountabilities, responsibilities and transparency arrangements.

As a result of these problems, there is a desire by industry to explore alternative governance models, including the creation of a separate statutory Authority and delegated (to industry) management activities and decision-making.

The remedy

Despite performance issues in the past, the current Departmental model remains the best approach for the medium term. However, for governance to be effective, a substantial range of changes will need to be made, particularly in relation to how the Minister's Office obtains advice and the way in which delegated decisions are developed and taken. As NSW commercial fisheries structurally adjust and reform, transition to an authority model may be an option for the future, and increasing opportunities for co-management governance models will arise; for now the key issue is to get the Departmental model working and focus on restructuring commercial fisheries and improving their management.

It is essential that both the Director General (DG), NSW Department of Primary Industries (NSW DPI) and ED, Fisheries are delegated with the appropriate powers and responsibilities to undertake operational management and decision making, upon advice from the relevant advisory committees and working groups. Only strategic and policy issues which arise from these considerations and exceed this responsibility/authority should be referred to a single, non-statutory, committee body - the Ministerial Fisheries Advisory Council (MFAC). The MFAC should be formed to provide the Minister with high level strategic and policy advice but not be involved with operational matters.

The ED, Fisheries should institute a formal internal Executive Management Group (EMG) consisting of the key Departmental personnel in the decision making sections – managers, researchers, and compliance and administrative personnel – to develop agreed approaches to management changes in a collegiate manner. This will be particularly important at the interface between research and management. The current, and likely ongoing, conflicts between commercial and recreational fisheries should be handled in an integrated and consistent manner by the EMG ensuring that fisheries- and species-based approaches are taken. This will avoid the somewhat silo-like mentality that has occurred in the past by sections of the Department becoming *de facto* advocates for either commercial or recreational fishers, or independently developing policy approaches to issues.

3. Consultation

The problem

The very strong view expressed throughout this review, and in previous reviews, is that the consultation process has not been satisfactory for a number of years and there is little confidence in it. Some of the issues are no doubt related to the geographical spread of many of the fisheries and the highly complex, regionally differentiated, management issues associated with the share classes within them. The lack of a peak industry representative body has also been cited as a barrier to effective consultation and representation. Consultation processes have been unclear and many felt distrust or that they were not well served by, the Management Advisory Committee (MAC) and Seafood Industry Advisory Council (SIAC) processes and were not supportive of the outcomes and recommendations from them. As a result, many selectively ignored the process or lobbied around it to achieve an alternative outcome, thereby exacerbating the governance issues raised above or resulting in no outcomes being achieved at all.

While fault has existed with all parties from time to time, the result has been a breakdown in trust, respect, goodwill and a willingness to work together. Scarce resources have been wasted fighting ad

hoc issues both within and outside of the proper consultation processes. Simply reforming the previous bodies is no longer an option

The remedy

Consultation with the commercial fishing sector must take place within a structured pathway that recognises that there is a range of different levels of issues to be consulted upon. These range from highly localised, operational issues relating to particular water bodies, through to major policy matters such as cost recovery and resource sharing.

The MFAC mentioned above should be used for high-level consultation on strategic policy issues across all fishing sectors. In light of strong industry criticism of MACs, there is a case for dissolving all of the current MACs, removing their description in the current legislation and replacing them with selected expertise-based advisory committees or tasked working groups. In addition, focussed regional consultations should be established by the Fisheries Division to provide advice to the ED, Fisheries on operational matters and fisheries management needs and plans.

There is a need for a peak industry body to undertake both representative and consultative roles. This body is likely to be able to achieve a much greater degree of regional penetration, consultation and buy-on than is currently possible using the current MAC structure. The peak industry body would, in effect, be a 'first stop shop' for individual commercial fisher's issues. In addition the peak industry body would consider the development of wider industry policy positions on issues such as cost recovery and other fisheries issues, and provide coordinated advice on these and operational matters to the Department. As the peak body becomes established and demonstrates that it is able to conduct its operations in a professional and disciplined manner, it should be able and eligible to provide contracted consultation services to Government.

Other actions

The body of the report provides advice on a number of other suggested actions relevant to the Terms of Reference. These include:

- A number of legislative changes that will be necessary to support the agreed recommendations in this review, in particular to support the new consultation processes, refine the share management structure and to provide greater flexibility in how shares are issued and used.
- It will be necessary to re-build trust and relationships before any significant co-management can occur as currently few, if any, of the necessary pre-conditions for co-management by industry are in place in NSW. Nevertheless, with the forming of the peak industry body and a commitment to improving relationships through the new consultation arrangements, some co-management opportunities could arise in the consultation, advice and research areas.
- There is a need to resolve OCS issues with the Commonwealth Government to remove unnecessary complexities in management.

Conclusion

The Review has suggested a range of actions to address the management issues that have arisen from past policy inconsistency in the development and implementation of share management, deteriorating relationships between Government and industry, and a consequent frustration resulting from delays in the delivery of urgent reforms and restructuring within industry. Strong and visionary leadership is now needed both within Government and industry with the identification of responsibilities for decision-making and accountability understood by all. This Review provides a clear direction to re-commence the reform process and re-build relationships. This will not be painless and will result in increased costs in the short term to a significant number of operators.

However, these costs will in effect be an investment in more tradable and secure fishing rights, which will be more valuable than the current access entitlements held within FBs.

From the commercial fishing sector's perspective they are naturally keen for their fisheries and businesses to be viable and profitable; most of all they want their fisheries to have a future. As indicated earlier, many have commented that this Review is their last chance to restore viability and profitability so that investment can occur and young people can again be attracted to the industry.

The Review Team notes that to restore confidence within the commercial sector it would be appropriate for the Minister to consider issuing a statement of intention to build and support a strong sustainable NSW commercial fishing industry. Such a statement would act to counteract some of the negative and, arguably, inequitable outcomes that have arisen from the reallocation of resources to the recreational sector, and to a lesser extent, the growth in Marine Parks.

Finally, the Review Team recognises that implementation will be a critical part of achieving long-term improvements for the commercial fishing sector. To assist in this process it is suggested that an independent Structural Adjustment Review Committee (SARC) be established to act as a review body during the restructuring process, thereby assisting industry and the Department to work through and seek optimal structural adjustment pathways and provide advice to the Minister when decisions fall due.

It is also suggested that both the commercial fishing sector and the Fisheries Division engage specialist project managers to work together with the above Committee to support the implementation process. Further details on implementation, resourcing and timing issues are set out under Section 4 at the end of this Report.

For clarity and to provide increased focus on key areas, the recommendations along with the Review's findings are set out in greater detail in the following section in accordance with the order of the terms of reference.