

Structural Adjustment Review Committee (SARC)

Chair's Summary

7th Meeting

MLC Centre, Sydney

8-9 January 2014

Table of Contents

INTRODUCTION	1
ISSUE 7.1 LEGAL RIGHTS OF SHAREHOLDERS.....	1
ISSUE 7.2 CONSULTATION PROCESS	2
ISSUE 7.3: NSW FISHING COOPERATIVE VIABILITY STUDY.....	3
ISSUE 7.4 ‘FLEXIBILITY’ TO ALLOW FISHERS TO ACCESS SEASONAL FISHERIES.....	4
ISSUE 7.5: SETTING INTERIM TOTAL COMMERCIAL ACCESS LEVELS (ITCAL’S)	4
ISSUE 7.6: NEW SHARE CLASSES	5
ISSUE 7.7: REFORM PROCESS TIMELINE AND EXIT GRANT PROCESS.....	6
ISSUE 7.8: DETAILS OF COST RECOVERY (AND COSTS)	6
ISSUE 7.9: EFFORT SHARE LINKAGE AND INCREASED EFFICIENCY	6
ISSUE 7.10: MOVING FROM ITCAL’S TO TAE’S AND TAC’S.....	7
ISSUE 7.11: THE ROLE OF LEASING UNDER NEW SHARE LINKAGE ARRANGEMENTS.....	7
ISSUE 7.12: DEFINITION OF FISHING DAY	8
ISSUE 7.13: ROLE OF BOAT LICENCES	8
ISSUE 7.14: USE OF MANAGEMENT CHARGES AS A RESTRUCTURING TOOL	8
ISSUE 7.15: SHARE CLASS LEVEL AND THE EXIT GRANT	9

Introduction

The SARC met for two days in Sydney, 8-9 January 2014. This summary covers the major issues raised and discussed at that meeting, as well as additional advice on a range of key issues associated with the NSW Commercial Fisheries Reform Program.

SARC's advice was provided to and considered by the Share Linkage Working Groups during the latest round of meetings. The Government has yet to provide a view on some of the advice provided in the previous SARC summary, provided after the 5th meeting of the SARC. These are:

Issue 5.1: Extension of the timeline for the period of the reform

Issue 5.5: Deferral of further fee increases until 1/7/2016

Issue 5.14: Delay of interim ITCALs

The SARC was impressed by the level of engagement by industry through the working groups and the commitment by many to work through the challenges of the reform process. Through the Working Groups, fishers have given freely of their time to provide input to the process, at times receiving considerable criticism.

We are very aware of the level of concern and angst existing among industry and the uncertainty concerning share linkage options and what each option means for individual businesses, particularly where there are high levels of distortion between shareholding and catches by fishing businesses. The aim of minimising the impact of the reform on those active fishers remains central to the consideration of future options.

The SARC notes that trading before, during and after the exit grant phase of the Reform will be a complex process with a degree of uncertainty about the scale and extent of share availability and trade. This complexity is compounded by the commonplace situation where a number of share classes are held within existing businesses and the possibility that some operators may retain shares in anticipation of some future gain. Decisions by some shareholders may also be influenced by their ability to subsidise fishing operations from non-fishing activities. While these decisions may not be economically rational, 'lifestyle' choices may drive such decisions. It should be noted that choices to sell or buy shares will be individual business/commercial decisions involving risk. The application of an effective cost recovery process, the incentive of the exit grant process and, where appropriate, the application of minimum shareholdings, are designed to address these issues and make the reform process as effective as possible in achieving the reform objectives.

It is also important that, as the options for share linkage are worked through, the long-term aims of the process (rationalisation, economic efficiency and increased certainty, meaning and value of shares) continue to be the focus of the reform.

Issue 7.1 Legal rights of shareholders

There appears to be a strong sentiment among industry that shareholdings held by inactive fishers are of lower value than shares held by active fishers. The SARC notes that all shareholders have a legal right that was allocated to them at the time of the introduction of share management in 2007. That some fishers have decided, for whatever reason, to not exercise these rights by fishing, does not extinguish or diminish that right. As stated above, however, it would be clearly inequitable and

illogical to proceed down any pathway of reform that did not acknowledge the current and ongoing importance of active fishing businesses. Not to do so would also be inconsistent with due process.

Advice

SARC **recommends** that all shareholders recognise the legal rights attached to shares held by both active and inactive fishers and acknowledge that these rights must be respected in the reform process.

Issue 7.2 Consultation process

The SARC is very aware of the critical importance of getting industry input and an understanding of the perspectives of shareholders during the development of share linkage options prior to and during the public consultation phase. This phase will commence following finalisation of the share linkage options papers for each fishery. Available consultation channels were discussed at length to ensure that consultation opportunities are maximized, given available resources (see Figure 1).

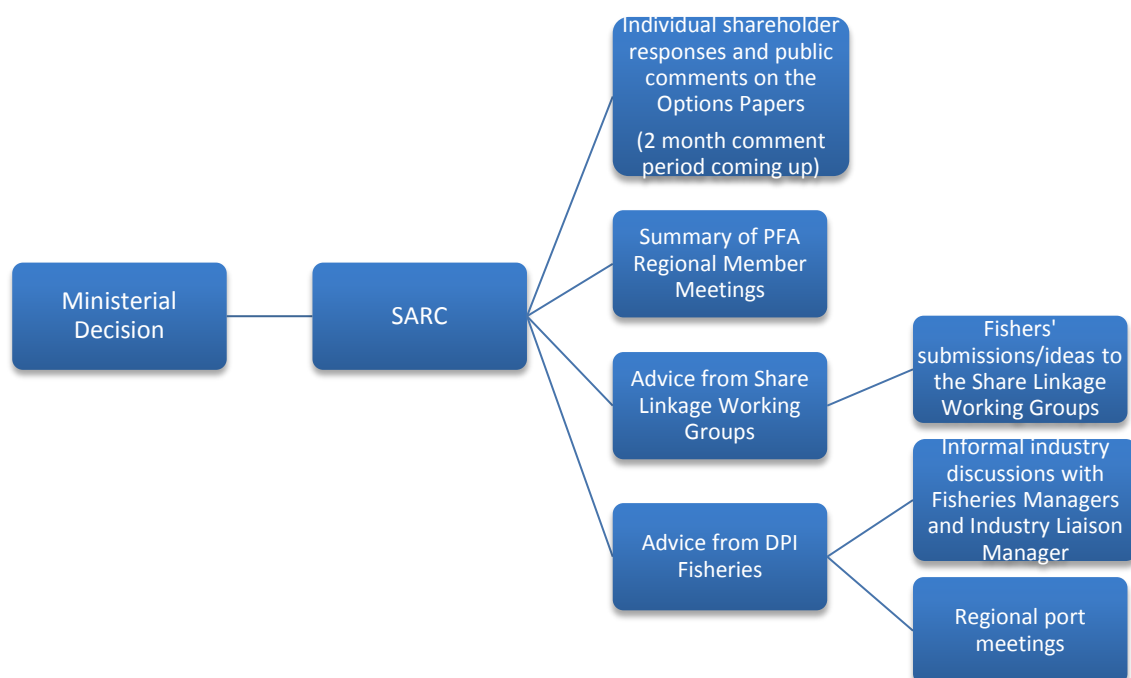


Figure 1: Consultation process

Significant resources and energy have been, and will continue to be, devoted to ensuring that the perspectives of stakeholders are heard, and that the underlying issues behind these perspectives are understood.

Shareholders have had the opportunity to raise issues and ideas using the template mailed to all fishers early last year, through the Working Groups, and through discussions with fisheries managers and the Industry Liaison Manager during port visits and over the phone. During the public consultation phase, shareholders and other interested parties will have further opportunity to comment on share linkage options by written submissions and attending port visits.

The SARC has already received a number of share linkage proposals that demonstrate the commitment of the industry to exploring possible innovative linkage options. These have been sent to the relevant share linkage working groups for further consideration and advice.

In forming final recommendations to the Minister, the SARC will consider the advice of the Share Linkage Working Groups, the advice provided by industry and DPI (following regional port meetings) and will give proper consideration to issues raised in all submissions received during the public consultation phase. It should be noted that the number of submissions supporting a particular share linkage approach will not be the single criterion for determining recommendations on share linkage options.

Advice

The SARC **recommends** that shareholders/stakeholders fully utilise one or more of these opportunities to express their views on share linkage options during the public consultation phase and note that the SARC will carefully consider all submissions received.

Issue 7.3: NSW Fishing Cooperative Viability Study

At the first meeting of the SARC in February 2013, in response to concerns raised by stakeholders, the SARC agreed there was a need to commission a desktop study on the potential impacts of the Commercial Fisheries Reform Program on the viability of NSW fishing cooperatives. Both the SARC and the Cooperatives Association reviewed the Terms of Reference for the study. A special joint DPI/Cooperatives Working Group was set up to raise and discuss issues of concern from fishing co-operatives surrounding the reform program, including contributing to and reviewing the results of the co-operatives study to help inform future policy discussions. The study was commissioned by DPI, undertaken by GHD Consultants and commenced in July 2013.

The draft findings of the report, “NSW Fishing Cooperative Viability Study” were presented to the Cooperatives Working Group and the SARC for comment and review in November 2013. The report is now close to finalisation, pending final review by the DPI/Cooperatives Working Group.

The draft report found that NSW fishing cooperatives have, in general, been operating in an environment of declining throughput, rising costs and flat prices which is putting pressure on operating profits. Some cooperatives remain confident about their future due to diversified incomes, asset backing and/or ability to value-add, while some are much less confident about their ongoing viability. If current trends continue, the report anticipates that 1-3 cooperatives will likely become unviable and therefore be forced to close, amalgamate or convert to private companies. These anticipated changes may occur earlier than expected as a result of the Reform Program and will depend on the financial structure and liabilities of the individual cooperatives as well as their ability to diversify income.

On the basis of the study findings, the SARC notes that total throughput to cooperatives as a result of the Reform Program is unlikely to be significantly reduced. However, due to the current poor financial viability of some cooperatives, the SARC also notes that those cooperatives are more vulnerable to potential reductions in membership/throughput as a result of the Reform Program.

Advice

The SARC notes that the findings of the study will prove extremely useful for the DPI and the cooperatives themselves in considering the long-term viability of the cooperatives in the context of the existing economic environment in which the cooperatives operate and the likely post-fisheries reform environment. The SARC **recommends** that the DPI and the cooperatives consider the implications of the study findings carefully. However, the SARC notes that the findings of the study will not influence the SARC's recommendations on the most appropriate share linkages for NSW fisheries.

Issue 7.4 'Flexibility' to allow fishers to access seasonal fisheries

Feedback from the Chairs of the Working Groups and PFA indicates that there is a view among industry that the Reform Program is somehow aimed at forcing individuals to specialise in one fishery. This would not be appropriate due to the need to take account of seasonal and other operational and fishery characteristics, which require access to a number of share classes.

Reducing diversification is not an objective of the Reform. However, there is a clear need to avoid the current trend towards economic overfishing of resources during times of good potential profits (ie. when fish abundance or market prices are high), allow individuals to tailor their shareholdings to best meet the needs of their businesses and strengthen the value of shares.

Advice

The SARC reiterates its previous **recommendation** that fishers be reassured that the reduction of diversification is not an objective of the Reform Program.

Issue 7.5: Setting Interim total commercial access levels (ITCALs)

As recommended by the SARC, DPI Managers and the Science Group met to consider the catch and effort data available to set ITCALs and to consider the most appropriate basis for the setting of ITCALs. The SARC was provided with the outcomes of these discussions and with feedback from the Working Groups and the PFA on DPI's initial approach to setting ITCALs. The SARC notes that the proposal, and SARC recommendation, to use recent catch or effort levels as the basis for ITCALs has proved problematic. In particular, this approach was likely to unnecessarily constrain production in some fisheries, noting that the setting of ITCALs was not intended to constrain catch, except where there is concern over the status of stock. Further, the SARC acknowledges that the size of the 'pie', as set by ITCALs does have a role to play in facilitating the reform process.

Advice

Accordingly, the SARC **recommends** that, unless there are sustainability concerns or concerning trends in the data, ITCALs should be set at the maximum catch level over the last 10-15 years (noting that a 15 year period could be unsuitable in Estuary General because the area available to the fishery declined substantially in 2002 with the introduction of 30 recreational fishing havens). The SARC considers that, given that catch levels are not currently constrained, setting ITCALs higher than current levels should not in itself stimulate more fishing effort or higher catch. However, the SARC notes that opportunities for increased fishing efficiency exist, through both streamlining management arrangements and improvements to operating efficiency (see Issue 7.9). The SARC

recommends that Fishery Management Strategy (FMS) trigger points be reviewed to ensure that these are sufficiently sensitive to detect significant changes in catch or effort and that the management arrangements are appropriately responsive to such changes.

Issue 7.6: New share classes

The SARC has previously recommended Working Group consideration of new species or effort share classes in exceptional circumstances (Section 5.9 Chairs Summary 16-17 September 2013). After consideration of feedback from the Working Groups, the SARC believes that there is a need to provide some additional advice on the implications of proceeding down the path of allocating a new share class and to clarify the circumstances in which a new share class should be considered.

The creation of a new share class will generally require a new allocation process. The complexities of allocation should not be taken lightly. Allocation processes are difficult, costly, time consuming and subject to legal appeal processes. Their use in the context of the NSW structural reform process must be considered carefully and in a benefit-cost context. Of utmost importance is that the structural adjustment sought under the reform process is not unnecessarily delayed. The SARC is of the view that the creation of new share classes, particularly if recent participation was to be taken into account, has the potential to cause significant delays. For example, full tradability of catch quota shares in the Commonwealth shark fishery was delayed by years due to appeals over the allocation process. During this time operators were subjected to considerable uncertainty about the final allocation formula including what percentage would be based on participation and what percentage based on the value of the entitlement. They were also unable to transfer quota during this extended period. This essentially stymied autonomous adjustment in the fishery.

Advice

Given the likely complexity and cost of the new allocation processes, the SARC **recommends** that new share classes should only be considered under certain criteria. Such criteria may include:

- a. a small number of shareholdings in the existing share class account for the bulk of the catch potentially placing an unacceptable and unintended financial burden on these fishing businesses which would be required to purchase a large amount of shares to continue their fishing operation having significant impacts on their economic viability;
- b. no other suitable linkage options and associated measures are available or feasible for the existing share class (e.g. staged implementation or delaying the commencement of the ITCAL) to minimise the financial burden on those operators;
- c. the benefits of moving to a new share class clearly outweigh the costs; and
- d. the proposed new share class must have the strongest form of share linkage feasible (i.e. a catch quota or if that is not feasible, a very tight effort quota).

In order to ensure that fishers are fully informed, the SARC **recommends** that the final options papers for public consultation should make shareholders aware of potential increased complexity and uncertainty associated with new share classes and that, based on experience in other Australian fisheries, new allocation processes can take up to 3-7 years during which time fishers remain in a very uncertain operating environment and adjustment through trading shares is precluded. In this

respect it is important that the benefits and costs be communicated as clearly as possible in the option papers.

Issue 7.7: Reform process timeline and exit grant process

The SARC recognises the importance of certainty about key dates in the reform process and, in particular, the operation of the exit grants process.

The SARC's proposal for a modified timeframe for development of the share linkage options, setting of ITCALs and the exit grant process is being considered by the Government. The SARC discussed the current status of the reform process timeline and is hopeful that final details on a revised timeline will be available to stakeholders by the end of January 2014..

DPI is intending to release an information sheet on the operation of the exit grant program to fishers in January 2014.

Advice

The SARC **recommends** i) that the Government agrees to a revised timeline as soon as possible and ii) that when shareholders receive the information on the exit grant program, they consider it carefully and that if they have any questions about the process they contact their fishery manager or the Industry Liaison Manager.

Issue 7.8: Details of cost recovery (and costs)

A number of Working Groups and individual fishers have noted that making business decisions concerning future actions with respect to the reform process, including whether or not to exit, requires a level of knowledge concerning the future costs of management. SARC has urged Government to move as rapidly as possible to agreeing a cost recovery policy, at least at the level of key principles. Advice from the Department indicates that appointments to the Ministerial Fisheries Advisory Council, which is responsible advising on the development of the cost recovery policy, have not yet been finalised. As a result, the SARC understands that there is no possibility that the cost recovery principles or regime details will be finalised within the timeline of the Reform Program.

The Department's attempts to provide meaningful cost estimates for the various share linkage options has proved that it is extremely difficult, and possibly misleading, to provide estimates of the likely costs of post-reform management. The SARC acknowledges and accepts this.

Advice

The SARC **recommends** that the share linkage options papers contain, at a minimum, the Department's best assessment of the likely costs of the options relative to each other. That is, while it may not be possible to ascribe dollar figures to each option, it should be possible to indicate whether one option is likely to be more or less costly than another. Although, it should be noted that even these relative costings may be affected by the cost recovery policy ultimately adopted.

Issue 7.9: Effort share linkage and increased efficiency

In considering share linkages based on effort, such as fishing days or net length days, the SARC is mindful that shareholders who have no familiarity with this management system may not be aware

that two factors which increase efficiency may act to put downward pressure on the Total Allowable Effort (TAE) level once ITCALs are replaced by TAEs.

The first factor is the increased efficiency of operators due to improvements in fishing gear or technology, often referred to as fishing power or effort creep. The second is the possible relaxation of existing input controls, which is intended to increase the efficiency of operators.

As operators become more efficient over time for both these reasons, there will be a need to account for these increases in order to prevent catches reaching unsustainable levels. The most administratively simple levers are to reduce the TAE e.g. total allowable fishing days, and/or restrictions such as surrendering a proportion of fishing days whenever days are transferred from one operator to another. Both measures have been introduced in the Queensland East Coast Otter Trawl fishery as a way to address increases in efficiency.

Advice

The SARC **recommends** that the share option papers released for public consultation discuss the implications on TAE levels to account for increases in fishing power/effort creep, when assessing linkage options based on effort.

Issue 7.10: Moving from ITCALs to TAEs and TACs

Share linkage option papers presented to the second round of Working Groups noted that ITCALs would not be biologically based because of the time and resources required. ITCALs will be progressively turned into TACs/TAEs and will be determined in accordance with best available science and the processes and requirements set out in the Fisheries Management Act 1994 for TAC setting committees. As observed by the Independent Review, “initial catch and effort levels which are set (i.e. ITCALs) may need to be scaled back over time in some share classes to ensure productivity of the resource or deal with overfishing issues...”

Advice

The SARC **recommends** that the final share option papers released for public consultation include a brief discussion on the transition from ITCALs to TACs and TAEs and canvass the probability that these are likely to be lower than ITCALs for most fisheries. This is because SARC has accepted the advice of the Share Linkage Working Groups, the PFA and DPI, to set ITCALs at higher than average historical catch/effort levels, wherever this does not jeopardize sustainability in order to assist the adjustment process (see Issue 7.5).

Issue 7.11: The role of leasing under new share linkage arrangements

The SARC has considered the short and long-term role that leasing (transfer) of catch/effort quota has to play in structural adjustment and the economic efficiency of NSW fisheries.

In the long-term the ability to lease quota or effort units maximises the flexibility of fishing operations and provides an avenue for new entrants to gain a foothold in a fishery. This is consistent with the arrangements in both the abalone and lobster fisheries in NSW and, for example, the Queensland trawl fishery.

However, in the period immediately following the implementation of new share linkage arrangements, the SARC is concerned that the ability to lease may impede adjustment by providing a disincentive to sell shares to those who need additional shares to maintain their level of production.

Advice

Consequently, the SARC **recommends** that, unless there are clear reasons to the contrary, in the short term, potentially for a period of 2 years, leasing of quota or effort units should not be permitted. In the long term the SARC **recommends** that leasing should be an integral component of the management of NSW fisheries.

Issue 7.12: Definition of fishing day

The use of effort based share linkage schemes based around days fished has been considered by a number Working Groups. In doing so the need to define a “fishing day” has arisen. The use of share linkages based on days is contingent upon the resolution of this issue.

The issue essentially revolves around when a fishing day should be decremented from the individual fisher’s allocation. For example, does a day include steaming time or does it include only time when the fishing gear is deployed. Further, should a day be defined as 24 hours, 12 hours or 8 hours? The issue of enforceability is also clearly important.

Advice

The SARC **recommends** that resolution of this issue should ensure that the definition of ‘fishing day’ does not create excessive complexity for future administration or compliance, or allow scope for the calculation of the ITCAL to be inflated above the maximum levels set in accordance with the approach outlined in Issue 7.5.

Issue 7.13: Role of boat licences

Feedback from the Working Groups indicates that there are differing views among fisheries on the need to retain fishing boat licences in the longer term, with preliminary support coming from the estuary/beach fisheries but less so from the ocean going fisheries. In the SARC’s view the long-term aim, to streamline management arrangements, should be to remove as many administrative constraints as possible. This will improve industry efficiency. However, to do so relies on their being an effective share linkage arrangement in place.

Advice

The SARC **recommends** that, once the new share linkage arrangements are in place, consideration should be given to whether the arrangements are sufficiently robust to operate without the constraint on effort provided by fishing boat licences.

Issue 7.14: Use of management charges as a restructuring tool

Some shareholders in fisheries with high levels of distortion (i.e. small number of shares/shareholders responsible for a high proportion of the catch) have suggested that management charges beyond the increases announced in July 2013 should be increased further in order to stimulate share trading from inactive to active shareholders.

The SARC Chairs Summary (16-17 September 2013) recommended that fee levels should not be increased further as a primary tool to remove latent effort (Issue 5.6) and the SARC continues to hold that view.

Advice

The SARC **recommends** that that shareholders note that, while the agreed increase in fee levels will be useful in encouraging businesses that do not use certain share classes to trade them, further fee level increases should not be a primary mechanism for removal of latent effort.

Issue 7.15: Share class level and the Exit Grant

The Government Response to the Independent Review restricts access to the exit grant process to transfer or surrender of shares at the 'fishery' level. Some parts of industry have requested access to the exit grant process through transfer or surrender of shares at the 'share class' level. The SARC notes that such an approach may provide additional options for some shareholders who might otherwise struggle to adjust.

The SARC noted advice from DPI that it may be possible to adopt this approach in the Ocean Trawl, Ocean Haul and spanner crab northern zone sector of the Ocean Trap and Line fisheries since the current transfer rules prevent share classes from being split in those fisheries and there is therefore no risk of the same share package simply being transferred back to the original owner after the exit grant has been paid. However this would need to be accompanied by a requirement that the receiving business already held the minimum shareholding (or more) in order to ensure that the exit grant facilitated a reasonable level of consolidation.

DPI also advised that under the current share transfer rules, a 'share class' level approach could only be adopted in Estuary General, Estuary Prawn Trawl and Ocean Trap and Line if the shares were surrendered, as opposed to being transferred. This would deliver adjustment since the remaining shareholders would be eligible for a greater share of the ITCAL while avoiding the risk of those shares being transferred back to the original owner with no adjustment benefit.

DPI has considered the pros and cons of other options to enable access to the exit grant process at the share class level. One such option is to tighten the transfer rules applying to the Estuary General, Estuary Prawn Trawl and Ocean Trap and Line fisheries to prevent the splitting of share packages. While this would be simpler than a contract based approach (see below), , it would require a regulatory change to impose a new restriction and unduly affect the short to medium term flexibility of share trading for everyone in the fishery.

Similarly, DPI has considered the adoption of an approach whereby a restriction was imposed, via a contract, on the buyer of the shares to prevent any subsequent splitting of their shares in that share class. The advantage of this approach is that it only affects the people involved in the transaction, however, it also requires a regulatory change and would create significant inefficiencies and costs into the administrative system/process.

Advice

The SARC considered this advice and **recommends** that, where participation in the exit grant process is possible at the 'share class' level (i.e. in the Ocean Trawl, Ocean Haul and Ocean Trap and Line (spanner crab north) fisheries), this should be facilitated. In other fisheries, eligibility for

participation in the exit grant process should be allowed at the share class level provided shares are surrendered (and not transferred).