

**INDEPENDENT REVIEW OF NSW COMMERCIAL
FISHERIES POLICY, MANAGEMENT AND
ADMINISTRATION**

REPORT

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Table of Contents

Executive Summary	i
Key Findings and Recommendations	viii
1 Setting the scene	1
1.1 Introduction	1
1.2 Historical perspective	3
1.3 NSW commercial fisheries overview	4
1.4 NSW Fisheries Administration	6
1.5 Current context	8
1.5.1 Government Climate	8
1.5.2 Operating environment	8
1.5.3 Environmental drivers	9
1.5.4 Economic factors	9
1.6 Comparisons with other jurisdictions	10
1.7 Summary	11
2. Methodology and stakeholder input	12
2.1 Feedback from submissions	12
2.2 Feedback from port meetings	14
3 Addressing the terms of reference	14
3.1 Current and alternative fisheries management models	15
3.1.1 Comparative analysis of the other arrangements	15
3.1.2 Governance, regulation, research and administration	20
3.1.3 Trust Fund	22
3.1.4 Cost recovery	23
3.2 Review of consultation framework	26
3.2.1 Current consultative mechanisms	26
3.2.2 Consultative arrangements and experiences in other jurisdictions	28
3.2.3 Alternative consultation models	29
3.2.4 Use of electronic technologies	33
3.3 Review of legislation to ensure effective resource management	34
3.3.1 Requirements and processes for issuing shares	34
3.3.2 The issuing of existing shares	35
3.3.3 Amendments to the Fisheries Management Act 1994	37
3.3.4 Review the compliance related amendments to the <i>Fisheries Management Act 1994</i>	40
3.4 Fisheries sharing arrangements relating to commercial fisheries access	44
3.4.1 Current level of commercial fisheries access	44
3.4.2 Use of recognised fishing grounds to better protect commercial fishing access	46
3.4.3 Access changes brought about by non-fishing use of waterways	48
3.5 Review of alternative fisheries management opportunities	51
3.5.1 Options for co-management	51
3.5.2 Delivery of fisheries services	53
3.5.3 Pre-requisites for alternative management options	55
3.5.4 Developmental fisheries	56

3.6	<i>Structural Adjustment Program</i>	56
3.6.1	Current structure of the fishery	57
3.6.2	Property rights in NSW Fisheries	61
3.6.3	Share management	63
3.6.4	Restructuring- benefits and approaches	64
3.6.5	Removal of fishing businesses	66
3.6.6	Buyout of shares	68
3.6.7	Linking shares to fisheries access	70
3.6.8	Restructuring options	75
3.6.9	Complementary structural adjustment actions	78
3.6.10	The role of catch history	79
3.6.11	Sequencing of the structural adjustment reforms	79
3.6.12	Impact of structural adjustment on the post harvest sector	82
4.	Implementation, resourcing and timing issues	83
Appendices		i
	<i>Appendix 1 Historical Background</i>	<i>i</i>
	<i>Appendix 2 Commonwealth/States/NT approaches to consultation</i>	<i>iv</i>
	<i>Appendix 3 Resource Sharing Policy Development Framework</i>	<i>xvi</i>
	<i>Appendix 4: Share allocation</i>	<i>xix</i>
	<i>Appendix 5: Implementation of Palmer Report recommendations</i>	<i>xxiv</i>
	<i>Appendix 6. Provisional recommendations on restructuring actions</i>	<i>xxxvi</i>

GLOSSARY OF TERMS

ABARES	Australian Bureau of Agricultural and Resource Economics and Science
ACoRF	Advisory Council on Recreational Fishing
AFAC	Aboriginal Fishing Advisory Council
AFANT	Amateur Fishermen's Association of the NT
AFMA	Australian Fisheries Management Authority
Act (the)	Fisheries Management Act 1994 [NSW]
CEO	Chief Executive Officer
CFAC	Commercial Fishing Advisory Council
DA	Development Application
DPI	Department of Primary Industries
DFZ	Designated Fishing Zone (WA)
DTRIS	Department of Trade and Investment, Regional Infrastructure and Services
ED	Executive Director
EG	Estuary General
EIS	Environmental Impact Statement
EPAA	Environmental Planning and Assessment Act 1979 [NSW]
EPBC	Environment Protection and Biodiversity Conservation Act 1999 [Commonwealth]
EPT	Estuary Prawn Trawl
EMG	Executive Management Group
ESD	Ecological Sustainable Development
FAC	Fisheries Advisory Committee (Tasmania)
FB	Fishing Business
FMC	Fishery Management Committee
FRDC	Fisheries Research and Development Corporation
GAB	Great Australian Bight
GVP	Gross Value of Production
IPART	Independent Pricing and Regulatory Tribunal
IUU	Illegal, Unregulated and Unreported
ITE	Individual Transferable Effort
ITQ	Individual Transferable Quota
MAC	Management Advisory Committee
MEY	Maximum Economic Yield
MFAC	Ministerial Fisheries Advisory Council
MPA	Marine Protected Area
MP	Member of Parliament
NGO	Non Government Organisation
NPF	Northern Prawn Fishery
OCS	Offshore Constitutional Settlement
OH	Ocean Hauling
OTL	Ocean Trap and Line
OT	Ocean Trawl
PFA	Professional Fishermen's Association
PFZ	Proclaimed Fishing Zone (WA)
PIRSA	Primary Industries and Resources SA
QFAC	Queensland Fisheries Advisory Committee
QFMA	Queensland Fisheries Management Authority
RAG	Research Advisory Group
RFG	Recognised Fishing Ground
RFH	Recreational Fishing Haven

RIS	Regulatory Impact Statement
SAG	Scientific Advisory Group
SESSFF	South Eastern Shark and Scalefish Fishery
SETFIA	South East Trawl Fishing Industry Association
SIAC	Seafood Industry Advisory Council
SMF	Share Management Fishery
SRG	Stakeholder Reference Group
TAC	Total Allowable Catch
TAE	Total Allowable Effort
TAG	Technical Advisory Group (Queensland)
WAFIC	Western Australian Fishing Industry Council

Disclaimer

This report has been prepared in accordance with the terms of reference set out in the Consultancy Agreement between the Department of Primary Industries, an office of the Department of Trade and Investment, Regional Infrastructure and Services and each of the three consultants. The Consultants expressly exclude all responsibility or liability arising in any way from reliance placed upon this report by a third party. Any such reliance is solely at the risk and responsibility of the relevant third party.

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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.

Key Findings and Recommendations¹

TOR 1 – Fisheries Management – governance and administration

Finding: The internal fisheries management decision-making processes within the Fisheries Division lack transparency, clear acceptance of responsibilities and a collegiate and co-ordinated approach. This has led to confusion and frustration among stakeholders, a breakdown in governance arrangements and continual delays in implementing a comprehensive reform agenda.

Recommendation 1.1: That the Minister ensure that appropriate powers are delegated to the Department and exercised to enable operational decision making to occur at the responsible level in the Department, with adequate reporting to the Minister to ensure accountability and transparency.

Recommendation 1.2: That the Executive Director, Fisheries take all steps necessary, including the creation of a formal Executive Management Group, to ensure the implementation of a co-operative and collegiate decision-making approach which guarantees involvement of the areas of management, research, compliance and administration with an overall resource focus rather than an emphasis on sectoral (commercial, recreational, Aboriginal and conservation) interests.

Recommendation 1.3: That the responsibility for ensuring that this co-ordination and co-operation flows through into servicing the Advisory Committee/Tasked Working Group processes lies with the Directors of Commercial and Recreational and Indigenous fisheries under the guidance of the Executive Management Group; further, that priorities for research and compliance activities should also be driven significantly through this process.

Recommendation 1.4: That delegated powers are provided to the Executive Director, Fisheries so that this position can exercise decision-making responsibility arising from the Advisory Committee/Tasked Working Group processes which report to this position.

Finding: Because of the need to focus on and achieve significant industry adjustment and restructuring and organisational change, it would be inappropriate, given the likely costs, disruption and administrative burden of such a change, to move to an alternative management model at this time.

Recommendation 1.5: That the existing public sector arrangements for the management of NSW fisheries remain with NSW DPI incorporating a Fisheries Division and that a separate statutory Authority model not be pursued at this time. However this review recommends significant changes to the current Departmental model.

Finding: The process for allocating funds from the Commercial Fishing Trust Fund is unnecessarily complicated by treating the source of funds differently. All funds, whether from consolidated revenue or industry management charges are required to be set against the costs of managing fisheries, especially since only a low proportion of total costs are currently being recovered. Further, none can be regarded as 'industry funds' available for the discretionary use by industry. However, there should be greater transparency through industry consultation on the total expenditure by the Fisheries Division on fisheries management.

¹ Note that only the major recommendations are provided here. A number of other recommendations are made in the main body of the document.

Recommendation 1.6: That the Commercial Fisheries Trust Fund continue to receive all funds from industry, and these, together with consolidated revenue funds, be directed to offsetting the costs of fisheries management. To enhance transparency and accountability, industry should be consulted on the priorities for expenditure across both sources of funds.

Finding: Currently, industry contributions toward the costs of fisheries management, compliance and research are very low, with the exception of the Abalone and Lobster fisheries. There is currently no formal cost recovery policy in place to guide fisheries management and encourage the efficient delivery of services. It will be necessary to recover a higher proportion of such costs to ensure the continued delivery of necessary services and change the current settings, which promote the persistence of latent effort.

Recommendation 1.7: That current management charges be progressively increased, initially in the form of a flat charge per share class, irrespective of the level of shareholding or catch, to recover a higher proportion of management costs and facilitate the structural adjustment process.

Recommendation 1.8: That the task of developing a formal cost recovery policy be undertaken as a priority activity by the Ministerial Fisheries Advisory Council (see Recommendation 2.1)

TOR 2 – Consultation framework

Finding: The current arrangements for consultation, communication and receiving advice in NSW fisheries are inefficient, counter to supporting good governance and do not provide the transparency necessary to achieve adequate understanding and support from stakeholders.

Recommendation 2.1: That the Minister forms a Ministerial Fisheries Advisory Council, initially under s.229 of the Act, comprising expertise based membership across the full range of skills and stakeholder interests involved in fisheries management. The Council should focus on strategic policy issues rather than operational matters and form working groups when necessary to address specific issues.

Recommendation 2.2: That the Act be amended with respect to the establishment of Management Advisory Committees to provide for their appointment and receipt of advice by the Executive Director Fisheries, rather than the Minister; further, that their appointment be through the calling of nominations from interested persons and not by election.

Recommendation 2.3: That the Seafood Industry Advisory Council be disbanded as a statutory body.

Finding: The Minister's Office has been used inappropriately by industry lobbyists to undermine the formal Fisheries processes and recommendations, engaging the Minister and advisors on a range of issues, including inappropriate operational issues. This practice has undermined the integrity of, and confidence in, fisheries management and needs to be rectified.

Recommendation 2.4: That consultation with the commercial fishing sector takes place through the following structured consultation pathways:

- **The Ministerial Fisheries Advisory Council on major strategy and policy issues (such as resource sharing, co-management, cost recovery and Harvest Strategy development for individual fisheries), Management Plans for individual fisheries, and any other matter referred to the Council for advice by the Minister.**
- **The Executive Director, Fisheries on major operational issues (such as gear changes, licensing changes, spatial closures and management plan development) via tasked working groups set up in consultation with the peak industry body and other stakeholder organisations, and for the setting of total catch or effort levels in individual fisheries via the TAC Committee.**

- **The peak industry body for the development of wider industry policy positions on issues such as cost recovery and other fisheries issues involving other non-fisheries Government agencies, for regional approaches to the resolution of localised issues, and as a first-stop calling centre for individual commercial fisher's issues.**
- **The Seafood Industry Council on broader marketing issues**

TOR 3 - Review of Legislation

Finding: While the Act is a comprehensive aquatic resource management tool box, it requires amendment in a number of key sections to ensure that the Government can achieve its statutory obligations. In particular it is necessary to make a number of changes to give effect to the recommendations made throughout this Review. In particular, while many of the recommendations of the Palmer and Institute of Criminology reports have been implemented, there remain some key actions and associated legislative amendments to be made, including the development and introduction of a demerit/penalty point scheme.

Recommendation 3.1: Review and amend (as necessary) the *Fisheries Management Act 1994* and associated regulations to give effect to the recommendations made in this Review.

Recommendation 3.2: That a demerit point scheme be introduced to deter recidivist offenders and provide greater consistency in the application of penalties for illegal fishing.

TOR 4: Resource sharing

Finding: It is necessary to balance the access to fisheries resources in NSW across a range of often countervailing uses. These include areas required for conservation, access for the recreational, commercial and Aboriginal fishing sectors and the needs and expectations of the non-fishing public that supplies of local seafood are available. The NSW commercial fishing sector has lost considerable access to fisheries resources through past decisions, which were made without an overarching resource sharing policy and process in place.

Recommendation 4.1: That the Minister develops and implements a Policy statement on resource sharing through the Ministerial Fisheries Advisory Council, which acknowledges the aspirations of the different fishing sectors, sets out preconditions for consideration of resource sharing proposals, guiding principles and a proper process for decision-making in relation to such proposals.

TOR 5 - Co-management

Finding: Most of the necessary pre-conditions for the development of delegated decisions under co-management arrangements in fisheries between the Department and the commercial industry do not exist in NSW, other than in one or two fisheries. This review seeks to restructure both internal and external relationships within and between the Department and industry to improve trust, transparency and relationships. When this has been achieved, and the economic circumstances of the fisheries have improved, co-management options are likely to become available in the future.

Recommendation 5.1: That the current state of working relationships between industry and the Department, together with the present failure of most consultative bodies across industry preclude the development of formal co-management arrangements at this time.

TOR 6 – Structural Adjustment Programme

Finding: Fishing businesses, which were originally introduced as a means of controlling effort upon the introduction of restricted fisheries and to prevent (and later control) licence splitting, have had value as an effort management tool in the past. However, when shares are established as the major tradable property right, as envisaged under share management, and appropriate catch and effort limits have been set, FBs will cease to have a role as a management tool.

Recommendation 6.1: Fishing businesses should cease to have a role as a management tool to limit access once linkages (to catch, effort or a limited number of endorsements) are in place.

Finding: In most NSW fisheries (excluding, in particular, Abalone and Lobster), shares are now a weak property right and management control. Due to an excess of these shares being issued, there is little or no scarcity, and therefore market, for most shares. In some fisheries, access is simply limited by having historical rights or a minimum number of shares, while in others there is limited or no ability for operators to ‘trade up’ to make their operations more viable. This has essentially prevented autonomous structural adjustment.

Recommendation 6.2: That shares in each fishery be linked directly to resource access in the form of catch or fishing effort to achieve the biological and economic objectives of the Act.

Finding: Minimum shareholdings, as proposed in the original share management proposal are a useful, if somewhat blunt, tool to limit effort (maximum number of operators) in a fishery. They have been used effectively to initiate restructure the Ocean Trawl (OT) and Ocean Trap and Line (OTL) fisheries, although there has been some criticism from industry concerning the need to invest as progressive minima have been introduced. Minimum shareholdings also reduce compliance and administrative costs as there are fewer fishers to service. Once shares become more effective as a management tool, the need for minimum share holdings as a primary effort control will reduce, but they should not be removed.

Recommendation 6.3: That minimum shareholdings be applied to each fishery as: (i) a means of linking the number of endorsements in a fishery to total effort as a proxy for catch as part of an agreed restructuring plan, and/or (ii) as a means of reducing management costs.

Finding: Past allocation of commercial fishing licences and the current complex and inefficient management framework of FBs, share classes and poorly defined access rights has resulted in considerable latent effort and the failure of shares to reach their intended value as the ‘currency’ of each share management fishery. It has also restricted the ways in which access rights can be used to manage sustainability, which has created an inefficient and costly range of measures based on complex input and other controls. Without radical restructure and reform, the economic crisis facing industry will continue and, indeed, worsen. Overfishing will also continue to be difficult to avoid and control effectively. Implementation of this far-reaching, complex and comprehensive reform will need to be funded adequately. Some allowance for flexibility in the application of funding for each stage of the structural adjustment process will be necessary.

In most fisheries, a relatively small proportion of active fishers (businesses) take the majority of catch and the remaining businesses holding shares have either nil or very low catches. Consequently there is a need to ensure that active fishers, and particularly those who have taken the majority of the catch in recent years, are not unduly disadvantaged when shares are directly linked to catch or effort. This will require the judicious use of the available structural adjustment funding to undertake a targeted programme of exit grants to provide an incentive to encourage those holding inactive shares to sell them, and to assist active fishers with small numbers of shares to reach minimum viable shareholdings.

Recommendation 6.4: To encourage share trading and consolidation, implement a targeted exit grant process for fishing businesses, with eligibility determined via a tender process. The amount to be offered for individual fishing businesses should not be capped, and exit grant payments made once the shares on the fishing business have been transferred.

Recommendation 6.5: That structural adjustment should be implemented as a complete package through a three-year staged process, assisted by Government and industry funding. The package should establish an autonomously adjusting system which will increase management efficacy and the value of, and trade in, shares. The suggested levels of funding for each element of the structural adjustment process are:

- | | |
|----------------------------|--|
| 1. Exit grant | \$15.5 million max (at least one phase) |
| 2. Southern fish trawl/OCS | \$ 0.5 million (max) |
| 3. Implementation costs | \$ 1.2 million (preferably funded separately, but otherwise from within the \$16 million structural adjustment programme budget) |

Finding: The way in which industry is provided with information, funding and decisions on the restructuring process will be critical to its ability to adapt and for trading of shares to occur. There is also a need for the Minister to set 'pegs in the ground', at the appropriate times through legislation. This will provide some level of certainty concerning future direction and send the appropriate signals to industry to inform decisions about exiting or remaining and investing in the fishery.

Recommendation 6.6: That the Minister makes two key decisions and announcements, one at the start of the structural adjustment process and a second, around 18 months later:

A first Key Decision and announcement, subsequently 'backed up' with legislative amendments, to:

- i) link shares with access (catch quota, effort quota or no. of endorsements) at the end of the structural adjustment period (end 2014);
- ii) apply a moderate 'base payment' charge on shareholdings in each share class from July 2012;
- iii) set total catch and effort levels (within around 18 months), in consultation with industry, to commence at the end of the structural adjustment period;
- iv) undertake a process of exit grant payments (at least one round);
- v) implement a process for consultation with industry at the share class level to determine the form of linkage;
- vi) remove the limit on the number of fishing businesses as each share class becomes linked;
- vii) identify unnecessary input controls and regulations that could be removed.

A second Key Decision and announcement to be made about 18 months after the initial decision to:

- i) Approve the final form of share linkage (effort or catch) for each share class
- ii) Approve the determination of total catch, total effort or the number of standardised endorsements.

INDEPENDENT REVIEW OF NSW COMMERCIAL FISHERIES POLICY, MANAGEMENT AND ADMINISTRATION

1 Setting the scene

1.1 Introduction

The multi-species, multi-gear nature of NSW fisheries, which are spread over 2,100 kms of coastline and in inland waters, rivers, estuaries and the open sea, provide a significant fisheries management challenge. The wild fisheries stocks are the last common property resource, and are being harvested by three sectors (commercial, recreational and Aboriginal). It is clear that the community wants to ensure protection for the resource and most importantly, its habitats. Fisheries managers, who are charged with regulating fisheries and ensuring sustainability, require adequate knowledge to inform decisions about how harvests should be regulated, such as catch levels and size limits.

Our understanding of fish resources and the impact of fishing relative to the impact of environmental and other changes is somewhat limited since, unlike many other natural terrestrial living resources, it is almost impossible to accurately count assets (fish stocks) or obtain knowledge of the physical elements of the marine environment and how they interact. Fisheries managers have to grapple with a number of important elements that influence the size of a fish stock. These elements include environmental influences incorporating climate change, the different biological characteristics of targeted fish stocks, and the impacts of commercial, recreational and Aboriginal fishing. The precautionary principle, which is now incorporated into all fisheries legislation in Australia, generally requires decision makers not to use a lack of scientific evidence as an excuse not to make decisions that avoid serious or irreversible environmental damage. Consequently, Governments invariably have to make fisheries management decisions in an environment where data and technical advice are scarce and a great deal of uncertainty exists.

In reviewing NSW commercial fisheries policy, management and administration, the Review Team has been mindful of the legislation that underpins these activities, i.e. the Act. The overarching objective of the Act is to “conserve, develop and share the fishery resources of the State for the benefit of present and future generations”. Conservation of fish stocks, key habitats and threatened species and ecological communities, and the promotion of ecologically sustainable development are given as primary objectives (ss.3(1) and (2)(a)-(c)). Consistent with these, the Act requires (ss.3(2)(d)-(h)) that fisheries management arrangements are developed to:

- promote viable commercial fishing and aquaculture industries;
- promote quality recreational fishing opportunities;
- appropriately share fisheries resources between the users of those resources;
- provide social and economic benefits for the wider community of New South Wales, and
- recognise the spiritual, social and customary significance to Aboriginal persons of fisheries resources and to protect, and promote the continuation of, Aboriginal cultural fishing.

It is clear from the above, in common with most other Australian jurisdictions, that there are somewhat countervailing objectives in relation to commercial fisheries. For instance, there is little guidance provided concerning the relative values of, say, the social benefits of maintaining coastal fishing infrastructure, communities and lifestyles versus the economic benefits of a management-led restructuring process leading to reduced numbers of more efficient and viable commercial fishing operations producing the same quantity of fish with less vessels and crew. This issue is particularly pertinent given the advice received by the Review Team that many of the fishing cooperatives located along the NSW coastline are potentially facing insolvency and the related call by some industry stakeholders to ensure that recommendations from this Review do not exacerbate this situation.

The Act requires the Department to implement proper conservation and management measures to protect the aquatic resources of NSW from over exploitation. The Department does this through the implementation of the provisions of the Act, Government policies, regulations, management strategies and plans (for commercial fishing). An equally important function is undertaking research programs that provide the necessary research to inform seafood policy determination, subsequent statutory arrangements and operational protocols.

As a result of the considerable fishing pressure placed upon the resource by the various fishing sectors, the Department's role is essentially that of a regulator, involving, amongst other things, endeavouring to constrain catch levels to maintain fisheries in a sustainable condition. To ensure all sectors comply with the rules, an effective compliance programme is a key component of successful fisheries management. Given the diverse, complex and extensive nature of NSW fisheries and the presence of organised crime in some fisheries, delivery of such a programme is critical.

Regulating to ensure that fisheries resources are sustainable and deliver long-term economic and social benefits inevitably results in preventing fishers from doing what they would like to. This is not a role that necessarily endears the Department to its main stakeholder groups. By restricting fishers to where and when they can fish, what gear they can use and introducing other controls, the Department is seen by many as inappropriately inhibiting economic performance.

Because of its responsibilities under the Act, the Department has to be generally conservative and cautious in its approach to fisheries management. No fisheries staff would want to be associated with a fish stock decline, let alone collapse. At the same time, those involved in harvesting the resource want to ensure they get what they perceive as their 'fair' share of the catch, and their particular interests (commercial, recreational and Aboriginal) are frequently at odds.

The delineation between Commonwealth and State fisheries is mostly clear in terms of lines on the water; however, there are a range of fisheries-specific issues, including conflict between trawl and trap fishers, which need to be resolved and efficiencies that can be achieved through changes to the jurisdictional arrangements. This will occur through a review of, and modification to, the OCS agreement between NSW and the Commonwealth. This matter is dealt with in more detail under Section 3.3.4 of this Report.

In NSW, all commercially important fish species are already at or near full exploitation, with catch levels via quotas established in both the Abalone and Lobster fisheries; thus, the opportunity for further expansion or industry growth is limited. Commercial fishers can however achieve greater economic returns by either reducing costs and becoming more efficient producers or getting higher prices for their catch through increasing quality or value adding. While Government has a role in providing cost-effective management, the responsibility for post-harvest initiatives lies with the private sector.

Apart from having to deal with the regulatory environment associated with fisheries management, the seafood industry itself is diverse and subject to major challenges, including natural or human-induced fluctuations in fishery resources, the costs of labour and fuel, dealing with global market forces (currency fluctuations and competition from imports), and in the case of services provided by Government, cost recovery and other fees and charges.

Implemented effectively, cost recovery is a strong driver of good fisheries management, creating incentives for achieving efficiencies - both in the supply of services by Government and, with industry, by driving cost effective management approaches. It is essential that attributable management services for which a fee is charged are cost effective and efficient, particularly when the Government or one of its agencies is the sole supplier of services, as is usually the case for research in fisheries. Ideally, a Government/industry partnership should work cooperatively to ensure that management services are delivered at a cost that is affordable, under policies and procedures that are efficient, flexible and cost-effective, and importantly, in a way that supports the

long-term sustainable future of the industry. Currently, there is no comprehensive cost recovery policy in NSW, driven by the most part, by a lack of profitability and ability (of commercial fishers) to pay.

It is widely accepted that strong, well-defined rights of access to fisheries resources are a prerequisite to effective fisheries management and the key means of aligning fisher's incentives with the objectives set by Government. Other than the Abalone and Lobster fisheries, rights of access for the commercial sector are seen to be very weak in NSW (see Section 3.6.2). This is due to chronic overcapacity (too many licensed fishers relative to the available resource) and the progressive and substantial losses of fishing grounds in favour of the recreational sector (e.g. RFHs) and conservation groups (e.g. Marine Parks) interests. These rights are seen by the commercial sector as being assigned to these sectors without adequate assessment of their impact on commercial fisheries, and in the absence of a fisheries resource sharing policy in NSW.

Confidence and trust are key elements in the relationship between the regulator and the industry, as are fair decision rules and procedures. Trust is also vital between the Minister's Office and the Department. In the past, managers have become disillusioned with the degree to which industry lobbying and resultant political directives have undermined advice from the Department. This has, in turn, led to some elements of industry considering that there is little point in working with fisheries managers on difficult or controversial issues when a more effective modus operandi is to go direct to the Minister's Office and seek a political solution.

In formulating advice, the regulator is often unaware of unintended and sometimes unexpected consequences of that advice - advice which may address a fish stock issue can often bring a critical and sometimes aggressive response, particularly when it impacts on a commercial fisher's business viability. Creation of effective forums at which Departmental positions can be discussed and fisher's views heard and factored into consequent decision-making processes is the usual approach to moderating such responses. Such consultative/advisory forums also help to provide industry and other stakeholders with a sense of confidence that management decisions are firmly rooted in both science and the economic and practical realities being faced. Currently these forums are not working effectively in NSW.

Gaining improved industry confidence through consistent and transparent decision-making (governance) at an appropriate level and without undue political intervention is necessary to create conditions conducive to efficient and rational behaviour by fishers. Past fisheries governance in NSW has led to some of the most complex, and arguably inefficient fisheries management in Australia, which has severely impacted on the morale of both fishers and the operational fisheries managers within the Department.

Finally, one of the critical issues in fisheries management that is often overlooked is that of human behaviour. Strictly speaking we are not managing marine resources, but the individuals, groups and industries that catch or impact them. Whilst there is almost always scientific uncertainty about the state of fisheries resources and individual fish stocks, it is also true that human behaviour on the part of the regulator and the users of the fisheries resource in fisheries management often creates uncertainty, not only in decision-making and advice, but more importantly in the implementation process.

1.2 Historical perspective

The scenario of complexity, unpredictability and uncertainty in the management of NSW fisheries has created a foundation for conflict in terms of conservation, access, and allocation that goes back to the early days of settlement. Examples include accounts of feuding between Chinese seine net fishers and local residents of Lake Macquarie recorded as long ago as the 1830's, and a Royal Commission held into fisheries in Sydney Harbour in the 1890's. Fisheries management history in NSW presents example after example of seemingly intractable issues.

In recent history (since 1990), attempts have been made to engage the community to resolve the complex issues of resource allocation and access. Resolution of these issues is required to address the demands of anglers who want to be able to catch a fish; commercial fishers who want to earn a living; seafood consumers who wish to avail themselves of the opportunity to purchase fresh, locally caught fish, and those in the community who gain some satisfaction and sense of good resource governance from just knowing it is unharmed. Resource allocation and management issues impacting on recreational, commercial and Aboriginal sectors have resulted in an intensely public and political debate, with significant fluctuations in the relative strength of each group's influence over public opinion and the political decision-making process. The policies of the incumbent Government and Government Minister have varied over time with respect to both fisheries management and the form of bureaucracy supporting primary industries. The priorities of the bureaucracy appointed to administer policy and legislation have had to change accordingly, often at the expense of dealing with the priority fishery management challenges of the day in a timely manner.

The Department has moved from being an 'over-regulator' (starting in the early 1990's) - where MACs were formed and consulted, but often the Department pushed ahead with management action and change despite MAC and industry views or opposition to additional constraints on fishing - to a point in recent times, where, arguably, industry/MACs have had too much latitude in influencing future actions and approaches (e.g. abalone research, share allocation criteria). The change has been very much politically driven (from the top), and largely stems from the poor relationship with industry and loss of trust caused by several factors including (i) the fact that industry/MAC advice was seen to be ignored by the Department, (ii) the RFH process, where industry believes it had little say on whether it should go ahead and in what form, and (iii) the Marine Park process. This led to the industry being very critical of the Department and the decision-making process, doing more Ministerial lobbying, and Ministers placing a renewed focus on improving relationships with industry by acceding to industry lobbying.

This meant the Department has had to have very strong justifications for taking any action not supported by the industry (which is often difficult in a data poor fisheries context), and has led to instances where fishery management stances/decisions based on sound process and logic have been overturned (at both Ministerial and ED level) following direct high level lobbying by industry representatives. Many decisions have, in effect, been delegated to industry but in the absence of a clear framework within industry (SIAC, MACs, shareholders) stating who gets to make the call or what the longer-term ramifications of those decisions are.

Appendix 1 provides a summary of the pertinent overall historical background to NSW fisheries management. Some specifics are highlighted under the various terms of reference, and in particular in the section on structural adjustment (Section 3.6).

Suffice to say that both industry and the Department are frustrated at the lack of progress with addressing long-standing fisheries management issues, in spite of the efforts and good will of industry leaders to embrace and support reform. The industry's view is that after years of policy inconsistency concerning the implementation of share management and frustrating delays in progressing reform, there is now an imperative for a clear Government policy direction regarding adjustment, shares and linkage to input and output controls, coupled with far more efficient governance and consultation arrangements.

1.3 NSW commercial fisheries overview

Since European settlement, the NSW seafood industry, comprising the catching, processing and marketing sectors, has represented a supply chain by which consumers have accessed high quality, fresh NSW-harvested seafood. This supply is of significance to the general public, in particular to

those who are unable or unwilling to catch fish for their own consumption (over 90% of the population).

This seafood is provided to consumers through a variety of outlets including the Sydney Fish Market (SFM), fishermen's cooperatives, supermarkets, restaurants, cafes, local fishmongers and suburban fish and chip shops. Australian seafood is a much sought after product with a sound reputation for quality and proven health benefits.

Principal species harvested include mullet (highly prized for its roe, much of which is exported) and high value table species such as rock lobster, prawns, crabs, snapper, bream, flathead, kingfish and whiting.

The seafood industry is one of NSW's oldest primary industries and is NSW's fourth most valuable food-based primary industry after beef, sheep and horticulture. It makes a significant contribution to small communities and regional economies along the entire NSW coastline, and is worth in excess of \$80 million to the fishing sector alone and many times this amount at the retail and restaurant level annually (Australian Fisheries Statistics 2010). Indirect employment activity provides many more jobs in the processing, maintenance, transportation, fuel, wholesaling, tourism, catering, retailing and other related fields. Commercial fishing has provided a source of income and lifestyle to many families and the sector is characterised by hard-working, adaptable and strongly independent individuals, most of who are now struggling to make a living due to a range of factors.

It is accepted that commercial, recreational and to a lesser extent, Aboriginal fishers place pressure (which is controlled by fisheries management) on the State's limited fisheries resources. However, non-fishing impacts, particularly from pollution, inappropriate coastal development, introduced species, climate change and natural events such as floods can also contribute adversely to the health of fish stocks.

Commercial fishers have had their access to the fisheries resources dramatically reduced. Implementation of commercial fishing area closures through the Marine Park process and through RFHs have had a profound negative impact on the efficiency of production – i.e. fishers have to travel further to catch fish - and a substantial impact on many commercial fishing and post harvest sector businesses. Of the 690 water bodies in NSW, 113 were available to commercial fishing in 2001 and of these, 24 supplied 95% of all fish caught commercially. Of the 24, 7 are now RFHs and 8 have excluded commercial fishing to some degree by the creation of RFHs or Marine Parks or other closures.

As a result of these closures and other fisheries management controls that make fishing inefficient, many parts of the industry are now only marginally financially viable. Structural adjustment is the only obvious solution for achieving acceptable economic performance and assured future biological sustainability.

In recent years, the post harvest sector, including the SFM, fishermen's cooperatives and transporters have found it necessary to identify alternative sources of product and income in order to survive. For example, the SFM which 15 years ago sourced 85% of its product volume from NSW now only receives 55% from that source and much of that is landed in NSW, but is caught in Commonwealth managed fisheries.

Commercial fisheries in NSW are based on over 100 key species. These species encompass a wide range of life histories from highly fecund and fast growing prawn species, to species of shark with low growth rates and limited reproductive output.

More than 10% of these species have been assessed as suffering from some form of overfishing. There are a handful species that are known to be 'overfished' or 'recruitment overfished', including abalone, sea garfish, gemfish, grey and jackass morwong, mulloway and school shark, where the stocks have been so heavily fished that it is most likely that recruitment back to the fishery is

suppressed. It should be noted that overfishing of these species may be from all harvest sectors – commercial, recreational and Aboriginal, and that for three of these species (gemfish, jackass morwong and school shark) the NSW fishery represents only a minor component of the total catch, with overfishing being largely attributable to other jurisdictions. In other situations, species are ‘growth overfished’, where overall production would likely increase if larger individuals were caught (redfish, silver trevally, snapper, eastern king prawn and yellowtail kingfish) – this is largely an economic issue and may not present any biological risks to the stock.

Around 30% of other species are considered ‘fully fished’, where the current level of commercial and recreational effort appears to be sustainable, based on stable catch rates and length and age distributions, level of biomass (stock size), and other characteristics. About 50% of the species that have had their exploitation status considered or assessed have been assessed as ‘uncertain’ or ‘undefined’. Owing to the range of species and the relatively small size of the commercial fisheries based on them, the cost of undertaking adequate research to shift species from uncertain or undefined categories to levels of exploitation status having greater certainty is substantial. However, the assessment of species as uncertain or undefined does not necessarily mean they are under threat from overfishing. Many of the species are landed in very small quantities by commercial and recreational fisheries. However, before the species can be categorised as moderately fished or under some other category, sufficient information is necessary to undertake a proper assessment. The Department attempts to review the available information for each species during an annual status assessment process in order to target future biological research. This seeks to ensure that scarce research funds are targeted at priority species.

It is regularly acknowledged at resource assessment workshops that the recreational sector is the greater harvester of a significant number of species – yet fisheries assessments in NSW are almost completely focussed on the commercial sector. This is due, in part, to the ease of sampling of the commercial sector. The Review Team is pleased to note that the Recreational Fishing Trust has funded a range of scientific projects on key species over recent years (e.g. Australian salmon and dusky flathead) and has committed funding for a state-wide recreational fishing survey commencing in 2012. The outcomes of these studies can be fed directly into future resource assessments.

In all cases, the level of fishing effort and catch (from all sectors) needs to be carefully monitored and, if necessary, controlled to ensure that biological overfishing does not occur. Generally, the opportunity for further industry expansion or industry growth is limited, particularly given the restriction in areas open to commercial fishing. Under existing management arrangements, where relatively crude gear and other controls are in place, the risk of overfishing in some fisheries is significantly greater and more complex and costly to manage than if there were there were more comprehensive limits on catch or effort.

1.4 NSW Fisheries Administration

Since 1990, fisheries administration in NSW in its various forms has had (and continues to have) changes at the senior management level on a regular basis. This, combined with numerous internal reviews, has had serious impacts on both productivity and morale within the Fisheries Division of the Department. A further complication is that Fisheries as an organisation has been joined to and then separated from NSW Agriculture, been through four major restructures, and merged into firstly the NSW DPI and now into the Department of Trade and Investment, Regional Infrastructure and Services (NSW Trade & Investment) ‘mega agency’ during that period. Across this time mergers there have seen major losses of corporate memory, and core skills and expertise; there have also been reductions in funding, staffing and capacity across nearly all disciplines associated with fisheries management. Some submissions to the Review have even suggested that with the current human, financial and infrastructure resources, it is questionable whether the present objectives and statutory responsibilities under the Act can be fully met.

An example of this is in the fisheries compliance area, where the Department has had to deal with illegal, unregulated and unreported fishing (IUU) as a real threat to fisheries management. Whilst fisheries can be managed using independent data and rules adjusted for law-abiding fishers in response to the latest data, illegal fishing can fundamentally undermine industries and their management. There has been a decrease in the number of fisheries officers since 2000 due to a range of factors including reduced funding from the commercial fishing sector (Abalone & Lobster industry contributions). In 2000, the staff establishment of fisheries officers within NSW Fisheries (including the 'Office of Conservation') was 101. In 2011, the staff establishment for fisheries officers is 91 positions and 10 Marine Park officers. It is important to note that in this 11-year period, the level of regulation has increased markedly. IUU fishing is a major barrier to successful fisheries management in NSW. The potential rewards from good management may be squandered by a lack of compliance resources.

Over the past 10 years there has been an increasing need, and demand, to obtain credible scientific information on the status of the wild fisheries resources of NSW and the impacts that fishing have on them. The NSW Government is charged with ensuring the sustainability of the State's wild fisheries resources. This is mandated by the Act and the various Fisheries Management Strategies for commercial fisheries in NSW. Further, permits from the Commonwealth Government to export NSW commercially-caught fish products require adherence to stringent science-based information on sustainability of catch levels and interactions with protected and threatened species.

While numbers of science staff nominally engaged in fisheries has remained constant, the supply of research services to support improved management decision-making has also been an issue. The Review Team has been made aware of the significant gaps concerning the prioritisation, relevance and application of science, exacerbated by the removal/centralisation of research from Fisheries into NSW DPI (this decision has been subsequently reversed). There is also now an unhealthy reliance on external finances to undertake necessary and core scientific research; namely from the Commercial and Recreational Fishing Trusts and federal agencies such as Fisheries Research and Development Corporation (FRDC).

The Department's role in fisheries economics analysis, has wavered over time. At one point in early 2000's the Department employed a dedicated fisheries economist, but when NSW Fisheries was merged with NSW DPI the fisheries economist position was moved to Orange and the degree of economics support dropped considerably, with the eventual loss of a dedicated function. While the Department still has access to quality economists, this fall in support and the significant reduction in general fisheries management positions/resources over the last five years, has meant the capacity to properly account for fisheries economics in decision-making has diminished. Consequently, the Department has been unable to use economics in policy development as it should be, particularly in the context of moving towards Maximum Economic Yield (MEY) approaches to fisheries management. This has resulted in the delegation of the economic decisions/policy making to industry (noting that in reality industry is equally ill-equipped to provide sound advice). **The Review Team recommends that the Department increase its capacity to undertake economic monitoring and analysis to inform management decisions.**

It would be naive to assume that funding for fisheries management is made independent of other calls for government spending or that there will ever be sufficient public resources available to have sound knowledge for all of our fisheries resources. If funding is to continue to be unduly constrained, this would indicate that the risk to resource sustainability and profitability is compromised and that more conservative catch/effort settings and supporting regulations are required to manage that risk.

As part of its input to this Review, the Department submitted that it had made efforts to implement the recommendations of previous reviews into the performance of fisheries management. While substantial efforts have been made, they have been severely constrained by insufficient resources and commitment at the political level to implement the recommendations. This, combined with

frequent changes in policy, has resulted in few positive changes to the environment in which the commercial fishing sector has been operating – the results of this are clear in the status of the commercial sector.

1.5 Current context

In addressing the context of this review, it is worthwhile to consider the wider context for fisheries management. This section considers three key contextual areas:

- i) the current climate in which Governments, Australia wide, are considering funding priorities within wider public sector organisational change;
- ii) the current operating environment facing the NSW commercial fisheries sector;
- iii) environmental issues; and
- iv) economic factors.

1.5.1 Government Climate

Governments at both the State and Federal level have undertaken numerous reviews over the last 10 to 15 years as to just how their public sectors are organised and structured, the stated aim being to achieve efficiencies in the delivery of services.

The rationale and importance of Government involvement to facilitate economic development in the primary industry sector (including the fisheries sector) continues to be well recognised. However, the nature of that involvement and the need for ongoing public funding of this involvement has faced increasing scrutiny.

The main drivers for this scrutiny include:

- ever increasing demands for public investment in areas such as health, education and public safety where there are seen to be few alternatives to public funding;
- recognition of the potential gains of using ‘market forces’ approaches for public services including the regulation of Primary Industries activities; and
- the rationale and equity debate around the beneficiaries of the economic gains associated with Primary Industries services paying for them.

This has meant that Primary Industries agencies across Australia, whether in their own right or as part of a mega agency, have had to continually address cost and efficiency when: meeting obligations under the legislation they are required to administer; implementing Government policy determined for their portfolio; and responding to circumstances and events which inevitably disrupt the normal pattern of public administration and management.

1.5.2 Operating environment

A major ‘cross over’ event occurred in 2007-08, when both the volume and value of imported fish exceeded that of Australian fisheries production. Estimates are that the shortfall in Australian seafood supply will grow from 280,000 tonnes in 2000 to 610,000 tonnes in 2020 and that the shortfall will most likely to come from aquaculture². However, any new investment in aquaculture will need to take account of the different cost pressures and marketing challenges faced in Australia in comparison with Asia, together with the far more stringent legislative and environmental requirements that new aquaculture development must meet. These facts make maintaining our domestic wild capture fisheries in a sustainable state all the more essential.

² Comments made by Professor George Kailis, Professor of Management at Notre Dame in Sydney to the Seafood Directions Conference in Melbourne, April 2010.

The Australian Bureau of Agricultural and Resource Economics and Sciences listed the gross value of NSW fisheries production in 2009-10 as \$132.9 million, of which the wild catch sector accounted for \$80.5 million or 61 per cent. The balance was produced by the aquaculture sector. The Report states that in 2009-10, the NSW wild-catch sector produced 13,422 tonnes of seafood, which was a decrease of 3% (384 tonnes) compared with 2008-09. Despite this decline, the value of wild-catch production increased by 2% (\$1.4 million).

1.5.3 Environmental drivers

Both the community and the Government require those licensed to operate in the commercial fisheries sector to clearly demonstrate that catches are sustainable and fishing has 'acceptable' impacts on the marine environment. For wild fisheries, the regulatory requirements to obtain access to a resource and a licence to operate are usually set by the main regulatory authority - in NSW this is the NSW DPI. This access is conditioned by the obligation to maintain catches within biologically acceptable levels. A number of other key environmental drivers apply to the sector, some of which can be influenced by the Department while others impose requirements (and costs) on licence holders that are beyond the control of the Department. These include:

- pressure from environmental Non-Government Organisations (NGOs), which see the commercial fishing sector as 'targets for action', as the sector is perceived to be fragmented in nature;
- the cost and uncertainties involved in marine research which restricts the ability of regulators to address or respond to environmental issues and defend their performance;
- environmental regulations such as those under the Commonwealth's *Environment Protection and Biodiversity Conservation Act 1999* which require environmental assessments for all fisheries that export fisheries products;
- the unknown impacts of climate change on aquatic ecosystems ; and
- the 'lock it away' approach to biodiversity and fisheries management embodied in national and state systems of marine protected areas and ecosystem based management.

As stated earlier, while a relatively small number of species and habitats are facing sustainability issues as a result of fishing the pressure for increased restrictions, driven by environmental NGOs continues to increase. The best defence against this pressure is to demonstrate effective and comprehensive management of environmental threats.

1.5.4 Economic factors

NSW fishers are under considerable pressure from external economic influences. These include increasing energy costs, an appreciating Australian dollar, barriers to trade access, inconsistent approaches to product quality, burgeoning imports, ill-defined value chains and consumer resistance to rising prices all impact on the sector's profitability. Some fishers questioned the need for structural adjustment in the face of declining industry profitability, which they put down to cost/price pressures: "... we have our good years and our bad depending on floods, droughts and currents. It is not the resource that is the problem – it is factors beyond our control, and all the restructuring in the world won't change that." (OT fisher).

These economic factors, combined with the problems associated with the overcapacity/misallocation issues that take up much of this report actually increase the urgency of the need for fisheries reform. Marginal operators are becoming closer to insolvency, compliance is being undermined and the value of fishing rights is substantially undermined.

Governments continually weigh up the appropriate level of investment of public funds to support the regulatory regime necessary to ensure the sustainability of wild fisheries while the commercial

sector should, in theory be returning direct financial benefits (in the form of resource rents – the community contribution in NSW) to offset these costs. The reality is that given the current status of most NSW fisheries where economic surpluses that should be generated by efficiently managed fisheries are being eroded due largely to the non-functioning share management scheme, there are no surplus profits being generated to enable returns to the community to be made.

1.6 Comparisons with other jurisdictions

Some of the actions under the terms of reference seek comparisons between where NSW currently sits in relation to fisheries management performance against the rest of Australia. In benchmarking the fisheries management performance in NSW against other States and the Northern Territory, the Review Team has taken account of a number of factors which make comparisons between individual jurisdictions somewhat problematic as illustrated below.

The importance and value of the fisheries sector to an individual State/Territory/the Commonwealth varies considerably, as do the geographic and demographic circumstances. For example:

- both NSW and Queensland have numerous estuarine fisheries coupled with a large populations living either on or close to the coast - in both cases, there is a strong focus on recreational fishing from a policy and planning perspective;
- in the Northern Territory, there are specific programs and resources provided to assist and encourage Aboriginal fishing opportunities;
- in Western Australia, the value and strategic importance of that State's rock lobster fishery alone has justified the retention of a separate Department of Fisheries - the only one in Australia;
- South Australia is large geographically, but has a small population size and comparatively smaller economy - but this has resulted in aquaculture development being more successful due to less competition for space and the smaller size of the recreational sector;
- Tasmania now has the highest fisheries production (by value) and as a result, fisheries policies and management achieve a high level of political interest and support; and
- most States administer a significant compliance team - this function is outsourced to the Police in both Tasmania and the Northern Territory.

Legislation varies in terms of its current relevance and influence on the behaviour and attitude of key stakeholders, together with the focus of activities undertaken by Government agencies responsible for fisheries.

There is a different policy approach taken by fisheries agencies in Australia. Firstly, dealing with overcapitalisation in both the commercial and to a lesser extent, recreational fishing fleets, secondly, dealing with other pressures on fisheries and resources such as environmental and planning requirements, and thirdly, encouraging the participation of key stakeholder groups in dealing with some of the more challenging issues as part of a partnership approach.

The information and data needs for informing management decisions on individual fisheries (which in turn influences research programs and resource allocation) varies enormously from State to State, as does the organisational arrangements for the delivery of research services.

Each State/Territory is in a different phase as far as the development and implementation of fishery management plans, which are increasingly incorporating 'hard-wired' performance measures. In addition, a number of States are currently reviewing their principal statute (Fisheries Act) to ensure it remains current and relevant to changed circumstances and to reflect known Government policy agendas.

The policies developed and implemented for cost recovery and co-management are not consistent across the States. Some States like Queensland have no policy whatsoever for cost recovery (and no intention of implementing any policy soon, but, rather, base their fees on a combination of 'value of the access right' and fees for particular services), whilst others have implemented versions of cost recovery (see Section 3.1.4). In the case of co-management, some States are moving very slowly to pursue this initiative - however, again, the framework, strategy and principles vary from State to State. Some States are yet to be convinced of the potential savings that can be realised through industry taking on a greater responsibility for managing fisheries. Nevertheless, a number of trials are underway across Australia on co-management.

Each jurisdiction generally works independent on IT systems, policy development, legislation and administrative support systems. Some advances have, however, been made in the compliance area, particularly through cross-boundary efforts to deal with organised crime in fisheries. There is significant potential for greater coordination to be achieved through the Australian Fisheries Management Forum on issues such as co-management and Harvest Strategy policy. Despite this, each party has tended to adopt what best suits their own situation, taking account of Ministers' requirements, Government policy (on issues like cost recovery and recreational fishing licence fees) and their relationship with their respective stakeholder groups.

While noting differences, there are a number of initiatives that have been undertaken by the Commonwealth and other State Governments in recent times to address a number of the issues currently facing NSW and covered by this Review. These include legislative change and policies covering key areas such as consultation arrangements, co-management, cost recovery, structural adjustment and resource sharing. There is much that NSW can draw from these other experiences and management approaches. In considering other State and Territory experience, the Review Team has been careful to ensure that recommendations based on such experience suit the operating environment for the commercial fishing industry in NSW, that they are practical and realistic, and that the pace of change recommended does not exceed the capacity of both the Department to implement and the industry to adapt. The section on implementation, resourcing and timing issues contained in this Report endeavours to address these and other issues.

1.7 Summary

The lack of action on some of the more important recommendations of previous reviews, coupled with a declining resource base and the ever-changing structural environment in which fishery managers have had to operate has seriously compromised NSW's ability to deal with the need for pressing structural adjustment in the commercial fishing industry. This has also impaired the ability of the Department to respond to the many significant fisheries management challenges which have occurred in the recent past. It has only increased the absolute necessity to tackle the immediate need for a reform agenda via this current Review.

NSW is still grappling with excessive overcapitalisation/overcapacity in its commercial fishing sector, inefficient input and other regulatory control management arrangements, and an ageing commercial fishing fleet (where a large number of ocean going fishing vessels are over 30 years old). It has long been agreed that the only effective way to deal with these issues is through a process of effective structural adjustment and innovative fisheries management arrangements which will maintain sustainability of fish stocks whilst contributing to industry viability. This current Review is very much about addressing this dual and difficult challenge.

The clear message received from the commercial fishing sector is that after years of frustration at the lack of progress on key challenges, there is heightened expectation that things will change, and that the new Government and the Minister will implement a reform agenda to sustain the industry well into the future. The submissions to the Review however contained a wide diversity of views on how this should happen, particularly in the area of structural adjustment.

At the same time, there is obviously interest in this Review and its recommendations from other sectors, most notably the recreational, Aboriginal and conservation sectors.

A number of the recommendations contained in this Report, and particularly those relating to governance, consultation, resource sharing and co-management also have implications for the other sectors; accordingly, these recommendations have been formulated with those sectors in mind.

Whilst the history of commercial fisheries management is important in providing some contextual information, including the attitudes of the various interested parties towards the fishery and each other, it is not the Review Team's role to comment on the merits or otherwise of the debates which have taken place in the past. In particular, we do not see our role as remedying alleged inequities from past fisheries management decisions.

2. Methodology and stakeholder input

The methodology for this review involved an initial briefing on the terms of reference from both the Fisheries Division staff within NSW DPI and former SIAC members at a meeting held in Sydney on 31 August 2011.

The Review Team examined previous reports relevant to fisheries management in NSW, sought input from commercial fishery shareholders via a letter dated 12 September 2011, from NSW DPI and from both the Advisory Council on Recreational Fishing (ACoRF) and the Aboriginal Fishing Advisory Council (AFAC). A number of current and former NSW DPI staff engaged in fisheries management, research and administration in NSW and a number of unsolicited submissions were also received, possibly reflecting the depth of feeling amongst some stakeholders. Submissions were also received from a variety of other sources, including one Government MP, a local council and other interested parties.

The Review Team established a Stakeholder Reference Group (SRG) to facilitate discussion on the terms of reference and the feedback provided by commercial fishery shareholders across the State. Two meetings of this group were held in October and December 2011. In addition, during November 2011 three open forums were held in Coffs Harbour, Newcastle and Ulladulla, with additional meetings with fisher groups upon request in Wallis Lake and Bermagui. These meetings provided an opportunity for commercial fishers to meet directly with the Review Team.

Finally, targeted discussion occurred with both fishery agencies and commercial fishers at the Commonwealth, State and the Northern Territory level on their approaches to the issues and actions raised under the terms of reference.

2.1 Feedback from submissions

A total of 80 written submissions were received. There was substantial variation between submissions on the same issue, reflecting the reality that achieving consensus to any plan of action to address the structural and other challenges facing NSW fisheries is unlikely.

Selected key issues raised are highlighted below:

- Many of the submissions provided by the commercial fishing sector to this Review were extremely critical of the past approach to fisheries management in NSW (slow response times, lack of clear direction). This dominated many of the submissions, with many problems defined and rather fewer solutions offered. There was a view that fishers were now paying for Government mistakes of the past.
- Most submissions considered that the MAC process was ineffective and should be replaced, and that regional representation and liaison with active fishers must be improved. There was mixed support for expertise-based representation on advisory groups. It was felt that much NSW DPI consultation was tokenism/'tick box'.

- Widespread concern was expressed at the lack of security (banks will not lend against shares/FBs). Currently commercial fishers have endorsement or method rights, but not clear access rights. Concern at the loss of grounds to Marine Parks and RFHs was strongly put.
- The Review Team received a number of submissions from the Aboriginal fishing sector, including commercial fishing stakeholders. One of the main thrusts of their submissions was that if the MAC system is to be dissolved and the idea of a peak commercial fisheries body is implemented, there needs to be a liaison person that is there just to consult Aboriginal commercial fishers in their area to ensure they are informed and have a voice in the industry. There were also suggestions that there should be greater development opportunities in commercial fisheries for young Aboriginal fishers.
- While most submissions considered latent effort to be an issue to be addressed, a surprising number considered that it was not a priority concern: “The structure of share management is working well and I don’t hear any complaints.” (Region 5 fisher). The Review Team heard many complaints.
- Many fishers wished to be able to use more gear to make their operations viable, however these desires were not matched with ways and means of controlling the additional fishing effort.
- There was a contrast between (i) claims for a need to hold ‘spare’ shares to take advantage of stock/seasonal variations, and (ii) the alternate view that activated latent effort during times of high abundance leads to ‘boom and bust’ fisheries and erodes/destroys profitability.
- Some faith was shown in the concept that once shares are established as the key access right through linkages and seen to have future value, the market will operate to reduce numbers of fishers, provided incentives are provided including minimum shareholdings. There was some opposition to restructuring by linking shares to access on the basis that the cost of doing this to existing operators will destroy them.
- The importance of ensuring productive fishers are not driven out of business by any restructuring programme was highlighted, with support by some for use of recent catch history in any restructuring programmes to deal with this issue.
- Concern was expressed over the future viability of cooperatives, which are already in difficult financial positions; some fear that structural adjustment could be the final straw and hasten demise in some cases.
- The Review Team received a number of submissions regarding resource sharing in the Pittwater, including from the State MP, the local Council and the Anglers Action Group. Whilst not strictly part of the Review’s terms of reference, the Review Team considers that the current debate around resource sharing in Pittwater is an example of how fisheries should not be managed, as there appears to be no comprehensive understanding of the issue – who catches what and when, clarity about the real issues, the importance of fairness and equity in the whole debate, and the need for effective consultation and decision-making processes. This highlights the need for an effective policy for resource sharing and allocation developed through an appropriate Ministerial forum where independence and objectivity can be used to achieve a rational outcome. If nothing else, Pittwater shows the potential for political lobbying to be used as *de facto* fisheries management.

2.2 Feedback from port meetings

The port meetings reflected a great deal of angst over the status of NSW fisheries and the possible outcomes of the Review. Many of the comments made in the submissions were re-iterated. Some additional key points were raised:

- There was general support for a well funded and resourced peak industry body established under legislation, preferably with independent funding in the long term, and that the Professional Fishermen's Association (PFA), with some adjustments, should be that body. When established, the peak body needs to develop a new, effective regional communication/representation strategy.
- Many fishers would be prepared to invest further in the industry provided there was a degree of security and more clarity of what one was buying.
- Catch history should be taken into account when any new shares are issued or as a basis for structural adjustment.
- Regional problems need regional solutions – place more emphasis on working at share class/regional level rather than at the whole-of-fishery level.
- Buyouts associated with Marine Parks and RFHs have not achieved what they should have; some effort has returned, additional effort has flowed to adjacent fisheries and unrealistic notions of the value of licences have been raised.
- The economic position of NSW fisheries is dire; there are no young fishers entering the fishery due to uncertainty and fishing pressure on existing open grounds and fleets are ageing and are not being replaced.

3 Addressing the terms of reference

In addressing the terms of reference, the Review Team has used the following preconditions as the key to achieving a high standard of performance of public administration in fisheries management:

- Policies and procedures which help guide the provision of consistent advice and recommendations to Government, provide confidence to the fisheries stakeholders and have the added advantage of providing a credible basis for responding to sometimes challenging issues raised by stakeholders and the community.
- Sound legislation that provides the necessary statutory and governance framework for sensible decision-making and investor confidence.
- A planning framework that reflects long-term sustainability, economic and resource sustainability targets.
- Committed and quality staff to analyse and provide advice/information on sometimes difficult and complex natural resource management questions.
- Adequate resourcing, including an appropriate cost recovery policy; and
- Effective consultation mechanisms.

The Review Team has found major deficiencies under these issues and has directed recommendations in these areas.

The existence of an effective and representative peak commercial industry body is arguably a prerequisite to not only dealing with fisheries management issues in a 'partnership approach' with the Department, but also to play a major role in the implementation of the recommendations set out in the Report. Further discussion on this matter is set out under the relevant Terms of Reference.

3.1 Current and alternative fisheries management models

TOR1: Examine the performance of the present public sector arrangements for the management of NSW fisheries and provide advice on whether the current arrangements or other models best address the governance, regulatory, research and administration needs of efficient and sustainable fish production in NSW

The Review Team received considerable feedback from stakeholders and has its own significant concerns about the effectiveness of the current internal arrangements and the degree to which decisions have been made in the best interests of the resource and the fishery as a whole, in the face of relentless industry lobbying and political intervention. This warrants attention and is a key driver in many of the recommendations made in this section.

3.1.1 Comparative analysis of the other arrangements

Carry out a comparative analysis of the arrangements in place in NSW against other Australian and international jurisdictions to determine if alternative models would be advantageous to NSW.

The public sector governance arrangements discussed here relate to the roles, powers and responsibilities of the various levels of decision-making within Ministerial/Departmental processes. However, it also focuses on their relationship to the fisheries management functions and does not seek to address the other process matters of normal administration e.g. audit, financial, risk management, IT committees etc. It does discuss some of the general principles of governance e.g. clear accountability, transparency, reporting, compliance with strategic plans, information management, consultation and how they impact on fisheries management functions.

It is acknowledged that consultative and advisory mechanisms are an integral aspect of governance, even though they do not generally have delegated decision-making functions. These issues are considered in some depth in the following section.

The governance arrangements for fisheries agencies/Departments are established under the legislation and are combined with Departmental administrative arrangements and Government and Departmental policy decisions.

The various Acts require Fisheries Departments/agencies to manage fisheries under the specific objects in the legislation, usually taking account of Ecological Sustainable Development (ESD) approaches. The legislation also sets out the respective powers of decision-makers and the processes and structures through which decisions are made. Other instruments include regulations, individual fisheries management plans and 'codes of conduct', some of which are statutory and others voluntary. The decision-making process requires the Department to engage in consultation with stakeholders that have an interest in the particular fishery or issue. This can include commercial, recreational, Aboriginal fishers, processors, marketers, environmentalists and local and Federal Governments (e.g. the Department of Sustainability, Environment, Water, Population and Communities - SEWPaC).

Fisheries management also takes place within strategic policy settings determined by Government on issues such as resource access, cost recovery, industry development, and environmental goals. These policies provide the necessary direction to ensure that the Fisheries Division's governance arrangements deliver acceptable fisheries management outcomes that satisfy the objects of the Act. Lack of such policy directions can hinder the process of decision-making resulting in decision-makers 'second guessing' the Government's or Minister's requirements, and in so doing, create considerable business uncertainty for both industry and administrators.

Departmental system

The most common form of fisheries administration is a Departmental structure, in which a Minister, subject to various levels of delegation, retains most of the decision-making powers. This structure exists in all States and the Northern Territory, but not the Commonwealth, which has established a Commission (the Australian Fisheries Management Authority (AFMA)). This section considers the major elements of public sector/Departmental systems.

(i) Role of the Minister

Typically, most powers under the Act reside with the Minister who remains the decision-maker in most instances in the sense that, to give effect to any fisheries law, regulation or plan, most often requires the Minister to take the decision to Cabinet and sometimes Parliament to have the law made and introduced. Legislative delegations can allow a delegate to make some decisions. However, the Minister cannot, and should not, personally be involved in making every decision about fisheries management arrangements, as this would be impractical and unachievable. Rather, the role of the Minister is to set strategic Government goals and policy directions about the use and management of fisheries resources. Many powers and functions are thus delegated to the Chief Executive Officer (CEO) of the Department and/or to the ED of the Fisheries Agency/Department to undertake the more operational decision-making. Sometimes there is further delegation to senior management positions in the Department, but always on the understanding that the exercise of the delegation is reported to the Minister in some form. The Review Team recommends this model for NSW.

Recommendation 1.1: That the Minister ensure that appropriate powers are delegated to the Department and exercised to enable operational decision-making to occur at the responsible level in the Department, with adequate reporting to the Minister to ensure accountability and transparency.

There needs to be clarity and consistency in the understanding of, and carrying out of these respective roles as failure to do so will lead to confusion among stakeholders and a breakdown of good governance and its respective authorities and responsibilities.

To assist the Minister in the overarching supervision of fisheries management, it is often the practice to form a Ministerial fisheries policy advisory committee comprising senior persons with expertise across sectors from the principal stakeholders, as well as particular expertise and senior Departmental representation, to provide advice on the issues relevant to the development of strategic policies and goals for fisheries management. The key role for this body is to assist in the development of policy statements to guide the achievement of Government objectives, to provide a 'sounding board' for the Minister on strategic issues and to deal with matters which impact across individual fisheries but which are not of an operational character (see also Section 3.2.3).

Such committees are not necessarily statutory but may be appointed by the Minister and act only in an advisory manner.

(ii) Role of the Department/Fisheries Division

The role of the Fisheries Division is to design and implement fisheries management arrangements/plans/regulations etc. to give effect to the Government's goals and policies and the objects of the Act. It does so under whatever delegated powers it has received to make decisions, or alternatively to make recommendations to the CEO of the Department and/or the Minister. This responsibility normally resides with the ED, Fisheries along with the responsibility to ensure that the Division functions effectively and efficiently in the application of all of its resources towards achieving fisheries management outcomes.

The ED, Fisheries normally has two structures in place to assist with these tasks. One is the internal Departmental structure comprising resources incorporating a range of specialist skills needed for fisheries management – fisheries managers, fisheries researchers, fisheries compliance officers and legal/administrative/licensing/conservation staff; the other relates to structures formed to engage stakeholders in consultation, advice and exchange of knowledge so that those people impacted by decisions have an ability to be heard in the decision-making process and receive appropriate feedback once decisions are made.

Because the nature of fisheries is one where there is rarely complete information/knowledge available in most cases, and because different decisions impact differently on various stakeholders, it is usually the case that consensus is not reached on the desired management outcome, and the means of achieving it. This is commonly true of the advice from stakeholders, but may also be reflected in the advice from researchers and other Government staff.

In such an environment, the prescriptions of the ‘precautionary principle’, embedded in ESD principles of the legislation, become important and provide a guiding doctrine.

This defines the crucial role of the fisheries manager in the above structure whose task it is to advance fisheries management in the face of uncertainty and lack of common agreement. This role holds the responsibility and authority to develop and recommend management improvements. Importantly, governance and process requires this to be done even in the absence of complete agreement or consensus among all stakeholders, or among all staff. This process requires a structure where the views of the researchers, compliance officers, legal and administrative staff can all be heard, together with the relevant stakeholders. However, it is the responsibility of the fisheries manager to bring this together and ultimately recommend an approach to the ED, Fisheries.

One effective way for the ED, Fisheries to promote a cooperative and collegiate approach to decision-making is to institute a formal internal EMG consisting of the key Departmental stakeholders in the decision-making process – managers, researchers, compliance and administrative personnel – to develop agreed approaches to management changes. 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.

When implementing such a process and making decisions under a specific provision of the Act or regulations, care must be taken by the ED, Fisheries not to breach relevant administrative law principles by:

- (a) taking into account ‘irrelevant considerations’; or
- (b) acting at the direction of the EMG so as to fetter his or her discretion.

Recommendation 1.2: That the Executive Director, Fisheries take all steps necessary, including the creation of a formal Executive Management Group, to ensure the implementation of a cooperative and collegiate decision-making approach which guarantees involvement of the areas of management, research, compliance and administration with an overall resource focus rather than an emphasis on sectoral (commercial, recreational, Aboriginal, conservation) interests.

The Review Team received similar strong feedback from stakeholders holding positions on advisory groups concerning the lack of effectiveness of the current internal management arrangements whereby managers have tended to champion the sectoral interests in their area of responsibility. This has been particularly true for recreational and commercial fisheries. The end result can mean

that the Division, instead of promoting a coordinated and cooperative approach to key issues becomes part of the problem and adds fuel to the differences between key stakeholder groups. Similar comments were received concerning the coordination of fisheries science and management. It is important that the coordinated approach outlined in Recommendation 1.2 flows through into dealings with consultative groups to address this issue.

Recommendation 1.3: That the responsibility for ensuring that this coordination and cooperation flows through into servicing the Advisory Committee/Tasked Working Group processes lies with the Directors of Commercial and Recreational and Indigenous fisheries under the guidance of the Executive Management Group; further that priorities for research and compliance activities should also be driven significantly through this process.

The position of ED, Fisheries should have suitably delegated powers to enable day-to-day operational decision-making to occur without recourse to the Minister. These powers will facilitate the development of timely responses to fisheries management issues, rebuild trust and respect between industry and the Department and remove the ability of antagonists to 'back door' decisions made using formal advisory channels.

Recommendation 1.4: That delegated powers are provided to the Executive Director, Fisheries so that this position can exercise decision-making responsibility arising from the Advisory Committee/Tasked Working Group processes which report to this position.

(iii) Advisory Committees

A Departmental model is usually accompanied by a structure of advisory bodies consisting of either 'representatives' of various sectoral groups in the industry and community, or of persons with appropriate 'expertise' in selected areas relevant to the functions to be performed by the body; examples of these are MACs, Scientific Advisory Groups (SAGs), Research Advisory Groups (RAGs) and Total Allowable Catch Committees (TACCs). Such advisory bodies can be statutory or non-statutory and may report to the Minister, the CEO or the ED, Fisheries. Sometimes these bodies may be very specific – to establish a TAC within a fishery – others may involve only a commercial fishery e.g. a prawn trawl fishery, while others may involve fisheries advice across a range of functions (research, management, compliance) and across a number of stakeholder interests, including commercial, recreational, Aboriginal, environmental, processors, marketers, and community development.

The advisory committee structure in NSW fisheries has progressively collapsed, except in one or two examples, with most MACs no longer functioning effectively (with the exception of Lobster MAC and the OT MAC), SIAC ceasing to operate in a formal sense, and the lack of a peak industry body representing all commercial fishers across the State. These matters are discussed further in this report.

In general terms, the Departmental model, when operating effectively, has a number of significant advantages including:

- a close relationship between the Government Minister and the fisheries agency;
- a capacity for all different stakeholders to have their views considered;
- a Government agreed legislative framework and objectives for management;
- an unbiased decision-making capacity, without sectoral interests;
- a capacity to provide substantial resources and skills; and
- a transparent process of decision-making, accountability and reporting, including ultimately to Parliament.

These aspects are covered in various recommendations in this review.

Alternative Models – Bureau/Agency or a statutory Authority

There is a range of possible models for fisheries management, based on what degree or progression of delegation is provided to non-Government entities to undertake certain fisheries management functions (covered in a later section of this report). Of these, there are two principal alternatives to the Government Department model described above. These are:

- a separate **Bureau or Agency** created within Government where the CEO holds substantial statutory powers; or
- a **statutory fisheries management Authority** consisting of an appointed Board holding all the powers and functions under the legislation to manage fisheries.

The main benefit of a separate **Bureau or Agency** within Government is a clear identity and greater transparency and accountability for the fisheries management function by giving it a separately identified legal status and reporting requirements from the Department itself.

The CEO has statutory powers and may be supported by a Board of Management, normally with ‘expertise’ based membership, with advisory powers to assist the CEO in undertaking all of the fisheries management functions. The Bureau can include research and compliance staff, as well as management staff, but, as it would be associated with increased cost recovery, this split between the Department and the Bureau would have to be negotiated. The Bureau would still operate under the Public Service Act with the CEO reporting to the Minister on the exercise of the fisheries management powers and to a Departmental Head for all other staff and financial matters. In this sense there may be less pressure to achieve cost efficiencies.

The essential difference between the Departmental and Bureau approaches is that the powers are exercised in the name of the CEO of the Bureau and not in the name of the Minister as is the case of the Departmental structure.

In a separate **statutory Authority**, almost all powers are exercised in the name of the Authority, and the Minister is at ‘arms length’ from decision-making. The two examples in Australia are:

- i) The Australian Fisheries Management Authority established to manage Commonwealth fisheries under the *Fisheries Administration Act 1991* and the *Fisheries Management Act 1991*, and its ‘Board’, the AFMA Commission.
- ii) The Queensland Fisheries Management Authority (QFMA), established under the Queensland *Fishing Industry Organisation and Marketing Act 1982*, and which managed Queensland fisheries for 12 years until dissolved in 1994.

The statutory Authority model has a number of advantages that include:

- greater flexibility of operations and not weighed down by overly bureaucratic overheads;
- greater incentives for cost effective administration, as industry is a key funder of this structure;
- less need for the Minister to become involved in day-to-day decision-making;
- a set of checks and balances arising from increased public accountability requirements;
- greater scope for delegation of decision-making; and
- clear delineation of responsibilities and accountabilities.

The two examples of a statutory Authority differed in a number of ways:

- With AFMA, strategic fisheries policy responsibility is retained by the Department of Agriculture Fisheries and Forests (DAFF) whereas the Queensland model contained the policy group in the authority, but research and compliance remained in the Department;

- The composition and functions of the Queensland authority reflected the State need to deal with recreational fishing, indigenous fishing, marketing, aquaculture and habitat protection; whereas AFMA did not have to deal with these issues – rather, its focus was almost solely on the commercial fishing sector; and
- In a State situation, the industry issues have a significant regional/community impact and this is reflected in a greater political engagement across a range of matters, particularly as competition for access to the fisheries through commercial/recreational interests is keener.

Nevertheless, fundamentally, the Authority model seeks to achieve the same objective - i.e. sustainable management of fisheries through all powers being vested in the board of the Authority. However, it should be clearly understood that this does not amount to industry self-management, as the authority is a mechanism through which the Government can fulfil its fisheries management responsibilities. It would, however, allow the Government to effect these responsibilities in a more flexible, open and less bureaucratic way, allowing for greater industry and stakeholder participation in outcomes. It also encourages the approach of 'letting the managers manage' minimizing outside political intervention in day-to-day matters, except for the process of Government's strategic policy direction where required.

The Minister's responsibility is met through ensuring that adequate policy direction is provided and reported upon, which distances the Minister from the need to become engaged in day-to-day decisions, which is all too frequently the case of a Government Department. The Minister always retains a power of direction in all cases to ensure Government needs are satisfied, while the Authority also reports to both the Minister and the Parliament, which established the Authority, through annual reports, operating plans and strategic plans.

In Queensland's case, the Authority model failed due primarily to a breakdown in governance issues between the authority and the Minister/Government. The Authority's industry reform agenda was at odds with Government policy and issues such as accountability, and transparency in decision-making ultimately led to its demise.

In initial meetings of the SRG, industry expressed some desire to move towards the statutory Authority model, inferring that there would be benefits in distancing decision-making from the Minister and political interference in operational fisheries management issues. While this motivation is understandable given past experience, the Review Team, in considering the current and alternative models, does not consider moving to a statutory model is justified at this time due to the likely costs, disruption and administrative burden of such a change.

Recommendation 1.5: That the existing public sector arrangements for the management of NSW fisheries remain with NSW DPI incorporating a Fisheries Division and that a separate statutory authority model not be pursued at this time. However this review recommends significant changes to the current Departmental model.

3.1.2 Governance, regulation, research and administration

Consider the current governance, regulation, research and administration relating to the management of commercial fisheries in NSW and recommend any changes needed to enable the NSW Government to deal effectively with the issues and priorities foreshadowed in the Coalition Government's pre-election Fisheries Policy.

Governance³

The current governance and administration of fisheries management in NSW is based on the Departmental model - the most commonly adopted model throughout Australia whose key characteristics are described above.

Recently, and in common with other fisheries jurisdictions, there have been a number of forces at work in NSW which have placed significant stress on this model in a number of important ways, including:

- increased management charges in most fisheries leading to industry wanting a greater 'say' in management rules;
- increased economic pressures on the commercial operators, both from the input costs of production and the market price received;
- increased environmental performance requirements on operators, both from State and Commonwealth environment Departments;
- reduction in operating grounds of the fishery through RFHs, marine parks, coastal development, marine transport and infrastructure requirements;
- increasing pressures for fisheries re-allocation in favour of recreational fishers;
- fisheries re-structuring initiatives which have changed the local fleet structure and infrastructure availability;
- fragmentation or loss of industry representational bodies to effect proper consultation; and
- Departmental re-structuring, budget pressures and leadership changes.

Faced with these pressures, the structure and effectiveness of governance and administration systems in NSW have suffered, leading to a loss of trust, confidence and respect between the Department and many commercial industry groups and operators.

Evidence of this lies in industry and Departmental frustrations over a number of years with the slowness, and inability, to have introduced change since the commencement of the Act and the aspirations for a market based share trading scheme to allow autonomous industry adjustment to overcome these pressures to maintain a viable industry.

Whilst the fisheries policy of the Government of the day has generally been known prior to an election, the implementation of that policy following an election has not been consistent in NSW. A change to significant implementation details associated with fishery share management arrangements over the years is an example of this inconsistency. In this and other instances, changes have been made to well researched and developed policies with limited consultation with key stakeholder groups. This has created a great deal of uncertainty and sent a signal that up until now, fisheries has not rated as a high priority policy issue for Government. The recommendation of this Review to establish a MFAC will go a long way to addressing this problem (see Section 3.2.3).

At the same time, the Fisheries Division has to respond (like all other agencies) to Government reforms, many of which have been directed towards rationalising the public sector, including amalgamation of various agencies into super Departments and achieving efficiencies in the delivery of Government services. While the Review is not suggesting that this is a bad thing, in general, the Fisheries Division of NSW DPI has not rated highly in changing public sector administrative arrangements. This, combined with the low priority afforded policy development, has resulted in an unsettling effect on morale. Similar changes have affected fisheries agencies around the country.

³ 'Governance' in the context of this review is taken to be the process of decision-making, as distinct from consultative processes; it is acknowledged that the two are inexorably linked.

These issues are addressed in various sections of this report along with the detailed recommendations for improvements and change. The reasons for this are covered in various sections and detailed changes are proposed to overcome both the internal and external failings. Suffice to say here that the Review Team believes that the governance arrangements impacting on regulation, research and administration have either broken down in some cases, or certainly been ineffective in many cases. This applies to both the internal processes for decision-making and priority setting, as well as the external processes for effective engagement with industry, transparency in relationships and accountability.

3.1.3 Trust Fund

Review the process for allocating funds from the commercial fishing trust fund, and how this process relates to both stakeholder and Government priorities.

This fund was established under the Act to receive all of the fees and charges relating to payments by the commercial sector and should, in effect, be regarded in the same manner as other sources of consolidated revenue that are dedicated to providing the service of managing the commercial fisheries of NSW. The only exception to this would be in the case where a 'specific purpose' charge or levy has been agreed to be collected from industry wherein the revenue should be set aside specifically for the purpose for which it was collected, e.g. the recent \$500 fee to establish a fund for industry adjustment in particular fisheries.

Currently, approximately \$3m is collected annually from the commercial sector and contributes towards the total costs of fisheries management for all sectors (including overheads) that is estimated at approximately \$30m. The actual costs which would be 'attributable' and 'recoverable' from the commercial sector and subject to a cost recovery policy would be far less than this figure, but not as yet calculated for the whole sector as no formal cost recovery policy currently exists. Nevertheless work to date by the Independent Pricing and Regulatory Tribunal (IPART) in 1998, and others suggests that for the five new share managed fisheries approximately 11% of the recoverable costs are recovered, whilst for the Abalone and Lobster fisheries the figure is 57% of recoverable costs; for other fisheries the figure would be lower.

Thus the industry as a whole is paying some costs of administration and licensing and only a small percentage of the costs of fisheries management, including the costs of research and compliance. The level of management charge is certainly a long way below covering the full costs of management as is usually the goal for cost recovery models around Australia.

In this sense, it is misleading to suggest that any 'carry-over' balance in the trust in any year is a surplus and could be regarded as discretionary industry funds subject to industry claims as to their disbursement.

The reality is that both the general consolidated revenue funds from Government (and hence taxpayers) and the industry contributions in the Trust Fund must be set against meeting the priority policy objectives and needs of the Act. In allocating these total funds, industry should be consulted on the total expenditure on commercial fisheries management so that there is transparency and agreement on the priorities to be met and transparency in the costs of delivering the relevant services – regardless of the source of funds. A further key element in this is the need for flexibility to be able to direct funds to emerging issues from time-to-time. This, however, should assist in driving efficiencies and effectiveness in the costs of delivering services until such time as a formal cost recovery model is adopted.

Industry consultation should occur both at the peak industry organisation level as well as through other appropriate bodies, e.g. advisory bodies, fishery specific groups or Department sponsored forums. Any strategic funding issues could be progressed through the MFAC.

Recommendation 1.6: That the Commercial Fisheries Trust Fund continue to receive all funds from industry, and these, together with consolidated revenue funds, be directed to offsetting the costs of fisheries management. To enhance transparency and accountability, industry should be consulted on the priorities for expenditure across both sources of funds.

3.1.4 Cost recovery

Formulate draft principles for cost recovery for commercial fisheries and provide advice on how and when they should be implemented.

Throughout Australia, Governments have always imposed fees and charges on the commercial fishing industry to partially offset the costs of fisheries management, which arise because of the existence of commercial fishing activities (the incremental or avoidable costs principle). However, the methods and rationale for establishing such fees and charges has varied among jurisdictions.

During the 1990s, a number of inquiries, at the Commonwealth level, into the governance arrangements around fisheries management and the commercial fishing industry began to formalize the basis for such fees and charges. This included a consideration of the respective responsibilities and accountabilities for fisheries management services provided principally by Government. This included the Industry Commission in 1992 (Cost Recovery for Managing Fisheries) and the Productivity Commission in 2001 (Cost Recovery by Government Agencies). This latter report established the principles underlying cost recovery together with the objectives of cost recovery that were to “improve the consistency, transparency and accountability of Commonwealth cost recovery arrangements and promote the efficient allocation of resources”.

The Commonwealth Government soon after adopted a cost recovery policy that was incorporated in its Cost Recovery Guidelines of July 2005 and used in Commonwealth fisheries. This was also influenced by the need to not only recover costs, but also to ensure competitive neutrality in the delivery of Government services under the 1995 Competition Principles Agreement. However, whilst the principles remain relevant, fisheries management within States involve significant recreational and Aboriginal fishing activities, aquaculture activities, as well as the protection of fisheries habitat. Given the additional complexity in other states and territories, it is not possible to simply adopt the Commonwealth guidelines.

Nevertheless, the broad principles underlying cost recovery models can be summarised as:

- Costs should be borne by those who create the need for, or who benefit directly from, provision of the services;
- Core responsibilities of Government (and services arising from market failure/public good considerations) should not be cost recovered;
- There should be transparency and accountability with respect to the basis of the charges, while cross-subsidies should be avoided wherever possible;
- The system must be cost effective to administer on all parties;
- Those impacted should be involved in the development of the system;
- Charges should be set on an equitable basis across sectors;
- The system must be flexible enough to enable resources to be directed at areas of greatest risk; and
- Exceptional hardship/capacity to pay issues must be able to be addressed through the system.

It has been demonstrated in Commonwealth and New Zealand fisheries that cost recovery regimes are capable of reducing costs of management and bringing greater cost consciousness and efficiency in the delivery of those delivering services.

While most States and the Northern Territory recover some costs of managing fisheries, there is a range of different approaches to industry charging. The Commonwealth, through AFMA, and South Australia have formal cost recovery models, based on the avoidable cost basis; Western Australia recently replaced its cost recovery model with an 'access fee' or royalty of 5.75% of the gross value of production; Queensland has a fee structure based on the 'value of the access right' and a fee for services; Tasmania and the Northern Territory do not have formal cost recovery systems.

NSW currently has a 'management charge' on a fishery-by-fishery basis together with a small 'community contribution' in share management fisheries, as required under the Act. The Act also envisages that management charges should be payable in proportion to the shares held in share managed fisheries, although until industry adjustment occurs applying this at an individual share level would be inequitable. The history of determining the most appropriate basis for management charges in NSW dates back to the IPART report in 1998 which businesses used the Productivity Commission principles, in part, to determine charges for the share managed fisheries. This was followed by a number of Departmental and independent reviews setting out a basis for possible cost recovery. However, despite these developments, there remains no formal cost recovery policy across fisheries.

There appear to be a number of reasons for this situation:

- Fisheries Division resources have been focused on 'sustainability audits', fisheries management strategies and plans and the need to change management arrangements to a share managed basis over this time;
- Industry resources have focused on Marine Parks, RFHs and viability issues;
- Industry has not had an effective single voice to engage in the necessary consultation;
- The Minister, nor the Department, have had a policy to adopt cost recovery;
- The Fisheries Division does not have the financial management systems to support a system and significant costs are involved in establishing such systems;
- In most cases, the working relationships with industry are not mature enough to engage in the necessary dialogue to develop a transparent system;
- In general, industry has lacked the capacity to pay significantly increased fees and charges (IPART report suggests 70% of industry would face problems paying higher management charges); and
- A significant proportion of commercial fishers remain 'lifestyle' fishers with very low returns from fishing.

Unfortunately, most of these issues remain today and hence the pre-conditions necessary to begin discussions on developing a broad based cost recovery model do not exist.

Further, the Review Team believes that the most important focus should be on achieving significant industry adjustment and resulting improvements to the viability of the remaining fishers. Through this approach a better basis for subsequently introducing cost recovery, especially on a share basis, will exist.

In the meantime, however, the Review Team is addressing a range of the above issues – developing a peak industry body, improving consultation and relationships with industry and changing the Fisheries Division culture to be more transparent and accountable. Also the Department should commence the task of improving financial procedures to more accurately identify fisheries management costs across fisheries.

The Review Team believes that there is, however, an immediate need to increase management charges across fisheries so as to begin the process of recovering a higher percentage of costs and also encouraging those holding inactive shares for speculative purposes to sell the shares to assist industry adjustment to occur. The relatively low levies and fees for a holding a fishing business and shares at present has allowed the speculators and inactive to adopt a “wait and see approach” (OTL fisher). To promote industry adjustment, a flat charge per share class, irrespective of the level of shareholding or catch, is recommended.

Recommendation 1.7: That current management charges be progressively increased, initially in the form of a flat charge per share class, irrespective of the level of shareholding or catch, to recover a higher proportion of management costs and facilitate the structural adjustment process.

Community contributions

Section 77 of the Act sets out the requirement for shareholders in a share management fishery to pay a periodic community contribution (or a 'rental charge' in the case of a Category 2 share management fishery - see s.77A). It is a monetary contribution to the NSW public for the right to access the fishery and is, in effect, a means of collecting 'rent' or super-normal profit (above that expected from a comparable alternative investment). Note that profit should be calculated after all costs, including management charges, have been allowed for. The community contribution requirements are set after agreement with the Treasurer and are as specified in the relevant share management plans. It is not applicable, according to the Act, to Restricted Fisheries or developing fisheries.

At this point, apart from the Abalone and Lobster fisheries that have separate arrangements, the annual contribution payment payable for each FB that holds shares in NSW is \$100. It is very unlikely that the revenue generated from this level of contribution would outweigh the total costs that are incurred through the process of seeking the Treasurer's concurrence to the amount, making the necessary legislative amendments, communication with shareholders about the requirements, and the actual task of collecting the money. It is also questionable whether there are any super-normal profits at all (that is, at the fishery-wide, not individual fisher level) to collect, given the industry is still a long way from paying full cost recovery and the need for the current structural adjustment program confirms the commercial viability problems facing most NSW fisheries and fishers. In respect of the community contributions payable by Abalone and Lobster shareholders, the former is subject to a complex formula which the Review Team understands results in shareholders having paid no contribution over the last few years, and the latter (at \$115 per shareholder per year) suffers from the same cost/benefit issue and questions about the existence of super-normal profits posed above in respect of the general community contribution requirement. While there is little recent economic data and analysis available, the rock lobster stock has rebuilt substantially and indications are that rents may currently be being generated. This does not, however, substantially undermine the rationale contained in the dot points below.

In reviewing the community contribution, noting that we have proposed that the MFAC develop an appropriate cost recovery policy for NSW commercial fisheries (see Section 3.1.4), **the Review Team recommends that the application of community contributions for NSW fisheries be reconsidered with a view to their removal**, on the grounds that:

- there is a genuine need to demonstrate that super-normal profits are being made, given the overall economic status of NSW fisheries, the diverse and low productivity nature of the State's fisheries resources and the unlikely prospect of significant rent generation in the future;
- there is a highly questionable cost/benefit outcome associated with determining and collecting the payments; and
- it is illogical to collect a rent from a fishery when the full costs of management are not being met – this is not currently the case and is a long-term goal at best.

Such a strategy is in accordance with the approach taken by most State and Commonwealth fisheries, many of which have attempted to collect resource rents, only to later abandon those proposals/programs.

3.2 Review of consultation framework

Examine the present arrangements for consultation with key stakeholder groups in NSW, and recommend ways to improve the transparency and efficiency of how the NSW Government seeks and responds to stakeholder input.

3.2.1 Current consultative mechanisms

Critically review the range of mechanisms currently used to seek advice from and communicate with stakeholders in respect of commercial fishing issues.

The consultative structure involving industry and other stakeholders has fallen away in most cases, ceased to exist in others and been heavily criticised as failing to promote change in others. Currently, the MACs are no longer formally operating, nor is SIAC. Further, the voluntary seafood industry lobby group, the NSW Seafood Industry Council (NSWSIC) has only met on an irregular basis for some time. The commercial industry is currently building a peak 'wild fisheries' representative organization through the PFA, which currently has a limited spread of representation/activity across the state. It is noted that the Department has, quite appropriately in the circumstances, been consulting with the former SIAC and MAC members on an informal basis since membership of these committees expired. Whilst there has been quite a bit of criticism at the performance of MACs, it needs to be acknowledged that a few select MACs, like the Lobster and OT MACs have worked very well.

The hiatus in appointments to SIAC and MACs was due mainly to the previous Premier's directions for Ministers to review the number of advisory bodies reporting to them. A review of advisory bodies was gearing up (a consultant was engaged) but due to the proximity to the 2011 State election the process was stopped.

There are a number of reasons for this collapse in consultative arrangements concerning the industry and the Department. The more important of these are:

- inappropriate membership and conduct of some MACs as a result of members being elected rather than appointed (on an expertise, rather than populist basis);
- a different selection process for consultative bodies, with direct appointments being made to SIAC in contrast to the electoral process for the MACs;
- inappropriate structure of some MACs which covered too broad an area/spread of fisheries;
- changes in Government policy towards a focus on recreational fishing at the expense of commercial fisheries, which did not allow the MAC structure to operate effectively and achieve much progress;

- diversion of MAC business from core fisheries management issues to other areas including legislative requirements of new Environmental Impact Assessments/Fisheries Management Strategies and Plans, proposals for RFHs and Marine Parks;
- a Departmental culture that allowed groups within the Department, and in particular management and research, to put divergent positions in discussions with industry;
- the Departmental member on a MAC (normally the manager of a particular fishery) having little or no authority to make decisions or commitments on behalf of the Department;
- a Departmental approach to MAC discussions which involved no opportunity for resolution of seemingly simple and straightforward issues at meetings, followed by a lack of timely decision-making by the ED, Fisheries or the Minister. The process required recommendations to be forwarded to the Minister's Office for consideration. The resultant delays and deferrals caused considerable frustration, even anger at the process;
- when industry representatives did agree on progressing commercial fisheries reform and in particular restructuring through the MAC or SIAC consultation process, there was often inconsistent advice between SIAC and the MAC, making it difficult for the Department to act (e.g. SIAC advising shares should be linked to catch/effort across the board, whereas some MACs made firm resolutions against such approaches for their fishery);
- a culture within the Department that responded to industry disagreement on matters by continual further consultation in unrealistic attempts to reach agreement with and between industry, frequently when all that was required was a clear decision by the regulator (the Department);
- instructions to SIAC from the Minister's Office to operate within strict confidentiality provisions, with the aim of preventing broad scale speculative investment - making it impossible for SIAC members to engage with grass roots fishers on their views and creating animosity amongst industry who perceived SIAC to be operating in an exclusive 'back room' environment; and
- general frustration regarding the length of time it takes to modify fisheries rules and regulations agreed to through the MAC or SIAC process.

Industry has responded to these problems by bypassing the normal consultative structure and going directly to the Executive within NSW DPI or the Minister with their concerns and issues, including their criticisms of NSW DPI's performance. Many of these criticisms were ill founded. This resulted in the situation where the Department's fisheries management staff were not confident in exercising any authority in industry meetings, or making decisions, as they were aware that industry could (and did) by-pass the MAC process and involve the Minister directly in decision making on a wide range of issues. Thus, the consultative structure broke down further as industry became increasingly frustrated and fisheries managers became almost totally marginalized and incapable of taking the lead on many fisheries management issues for the fear of being second-guessed or overruled by the Minister's Office, or, indeed others within the Department. The serious consequence of all this was that decisions, if reached at all, were not always based on the 'merits' of the information being presented, but frequently reflected bias on the part of the most active lobbyists. Consequently some decisions were not always in the best interests of the fishery or the community as a whole, and were driven by vocal, vested interest stakeholders.

To confound matters, or partly as a result of the above issues, industry has not been able to create and fund a peak industry body for some time which is capable of representing all of industry views. This has led to ad hoc and piecemeal lobbying of Ministers and the Department on a range of issues, but without an effective group driving industry policy for the industry as a whole. This has exacerbated the ability to reach consensus between the Department and industry, leading to further

rounds of consultation and engagement of independent consultant reports to inform decision-making by the Department. All of this has been a very costly and unrewarding experience for all involved and is further evidence of the breakdown in both internal and external governance.

It is recognized that the current PFA is attempting to build an organization to fill this void. However this group currently lacks an appropriate funding base and state-wide structure to ensure it is capable of achieving this task.

The breakdown of these structures in NSW has occurred over a time when hopes were high for a new management approach through the Act with the prospect of a combination of industry restructuring funding and self-adjustment through a share trading scheme in the market place with shares linked to catch or effort in each fishery. With the exception of two fisheries – Abalone and Lobster – this process has stalled and a combination of these factors above has led to a breakdown in key relationships and trust between the industry and NSW DPI. This has been occurring at a time when there has also been a high turnover of leadership in NSW DPI leading to confusion in policy direction.

Other factors have also been at play within the NSW DPI's internal governance arrangements themselves as discussed above, although not across the board including inconsistent messages from sections within the Fisheries Division (e.g. research and management). This has allowed industry to 'shop around' for solutions within the Department if they haven't liked a particular outcome, resulting in further delays, costs and frustration.

These examples of internal consultative (and the linked governance) breakdown within the Department's structure require addressing as a matter of urgency.

The situation is now that the new Minister is, quite appropriately, not prepared to simply re-form the previous MAC/advisory committee structure until the outcome of this current review and its recommendations on these matters is considered by Government.

In submissions and during port meetings, it became clear to the Review Team that the so-called 'Blue Book' published and circulated to all licensed commercial fishers, has a great deal of support from within industry as an effective communication tool. The publication was funded by the Department and produced and distributed by a private contractor. The publication, produced quarterly, included a report from each fisheries manager, copies of fisheries related media releases and a significant section on shares, gear and entitlements for sale/trade. The Review Team notes that publication of the Blue Book has now been suspended, on the basis that it was perceived by a minority as a Government propaganda machine. On the basis of support received from stakeholders throughout this review, the Review Team suggests that this suspension be reviewed. **The Review Team recommends that the Blue Book, or an electronic equivalent, be re-instated.**

3.2.2 Consultative arrangements and experiences in other jurisdictions

Consider consultative arrangements and experiences in other jurisdictions relating to commercial fisheries, particularly relating to regionally based consultation and expertise-based representatives versus elected representatives.

Fisheries advisory committees often take the form of MACs, which are established often on a 'fishery' basis to deal with the management arrangements for particular fisheries. It would normally be established by the Fisheries agency, with an independent Chair and comprise a mixture of stakeholders and 'expertise' membership covering all the relevant interests in that particular fishery. It may be supplemented by other technical working groups or committees reporting to it (e.g. RAGs. SAGs, TACCs etc.). However, regardless of how membership is structured, it is critical that members have the freedom to make recommendations or decisions around the table based on the best available information and debate, and not be restricted to a pre-determined policy position established beforehand.

Appendix 2 sets out in some detail the various approaches taken to consult on fisheries issues in other jurisdictions throughout Australia. The following summarises those approaches.

Where there are non-existent or ineffective industry peak bodies, a number of States have changed their consultative/advisory bodies and related processes. For example in Western Australia, Queensland and South Australia, the MAC process has been restructured in various forms depending on the local circumstances. Western Australia has abolished most MACs and the Government has provided funds from levy/licence collections directly to the peak industry body (WAFIC) and the peak recreational body (RECFISH WEST) to undertake consultation with their stakeholders and to bring a policy position forward to Government, rather than try to achieve this through a number of fishery based MACs. However, there is provision for 'issue driven' technical working groups to be formed by the Department as needed to meet particular circumstances.

Likewise South Australia has abolished its MAC structure and created two levels of consultation or advice. One is through the Fisheries Department (PIRSA) negotiating directly with all relevant stakeholders on fisheries management issues, including, where they exist, any industry-based fishery organizations. Secondly, it has created a Fisheries Council of South Australia that is in part a Ministerial advisory council on a wide range of matters and also has functions related to the preparation of, and review of, fisheries management plans; it also has a specific role in promoting co-management of fisheries. It has an expertise-based membership covering commercial and recreational fishing, plus research, socio-economics, conservation, business and law interests.

Queensland has also abolished its MAC structure, but replaced the MACs with one single large MAC to deal with all fisheries. There is provision, however, for working groups to be formed under this structure to deal with particular fisheries issues as the need arises.

The Commonwealth, Northern Territory and Tasmania are continuing with a MAC-type structure based around fisheries, with a trend in Commonwealth fisheries to amalgamate MACs where possible. Victoria abolished its Co-management Council some time ago but is yet to implement new arrangements for consultation; fisheries there share many of the consultation problems that currently prevail in NSW.

3.2.3 Alternative consultation models

Identify alternative models to those currently used in respect of commercial fisheries in NSW that would improve consultation with stakeholders and be appropriate in the NSW context.

From a governance point of view, effective consultative arrangements are a critical part of the process of moving fisheries management change forward and, as mentioned above, various forces have been at work to prevent their effective operation in NSW in the past – with the odd exception. It is critical that this process is rejuvenated and reformed in such a way as to provide greater certainty in the decision-making process for the Minister, the Department and all stakeholder groups.

Apart from the whole of Government decision-making process exercised through the Premier and Cabinet process, the Minister for Primary Industries has overall responsibility for the administration of the relevant NSW fisheries legislation. As such, the Minister receives advice from the Department on various issues requiring a decision and receives representations (and, on occasions, deputations) from a variety of people. These include MPs, stakeholder groups, special interest groups and the community more generally on a wide range of fisheries-related issues. It comes down to a matter of judgement by the Minister as to how much she wishes to become involved in the decision-making process, and retains the right to become involved in any matter which has the potential to be either sensitive or controversial (or both).

Based on the experience in other jurisdictions, there is a balance that can be achieved in consultative arrangements that will provide the Minister with confidence that issues are being properly addressed through appropriate forums and processes. The bottom line is that when a recommendation for a course of action is presented, assurances must be provided that a thorough assessment has been made, involving not only the Department, but interested stakeholder groups and, where necessary, the wider community.

Based on the discussion covering governance arrangements as set out under Term of Reference 1 above, together with the comments on the shortcomings of the present consultation arrangements, the Review Team considers that the following elements will provide the most efficient approach to future consultation in NSW.

i) Establishment of a Ministerial Fisheries Advisory Council

As set out under Term of Reference 1 covering governance arrangements and in accordance with the Government's Fisheries Policy Statement, a MFAC should be established as a priority, initially through regulation amendments made under s.229 of the Act, by the Minister. The Council will provide a high level forum for the consideration of fisheries strategy and policy issues, such as resource sharing, cost recovery arrangements, and opportunities for co-management. The Council could also have responsibility for monitoring industry adjustment, the ongoing governance arrangements across the Department and relationships with stakeholders as the change process continues to be rolled out as a result of the recommendations of this Review (as endorsed by the Minister). Once the MFAC is bedded down and operating effectively, consideration should be given to incorporating the Council into the Act and Regulations in its own right.

In relation to consultation it is proposed that it operates on the basis of formal referral of matters from the Minister or the DG of NSW DPI (on advice from the ED, Fisheries). The Council could also provide an appropriate mechanism for recommending draft policies and draft Fisheries Management Strategies or Plans to the Minister for wider consultation with fisheries stakeholder groups and the wider community, prior to a final recommendation to the Minister from the Council for adoption.

Further, members of the Council may raise issues from time to time, but only in accordance with the Council's terms of reference, and with the prior concurrence of the Chair.

Recommendation 2.1: That the Minister forms a Ministerial Fisheries Advisory Council, initially under s.229 of the Act, comprising expertise based membership across the full range of skills and stakeholder interests involved in fisheries management. The Council should focus on strategic policy issues rather than operational matters and form working groups when necessary to address specific issues.

ii) Executive Director, Fisheries

Depending on the level of authority that the Minister is prepared to delegate to the ED, Fisheries under the Act, certain 'classes' of consultation can be undertaken directly by this position. In making such delegations, there must be appropriate reporting and accountability arrangements in place to keep both the Minister and the DG of the Department informed on a regular basis as to the exercise of key delegations. Such delegations would contemplate the ED, Fisheries position establishing advisory committees, technical working groups, stakeholder reference groups and the like as forums for consultation on various fisheries issues. The ED, Fisheries would also be responsible for appointing the members of these groups in consultation with the proposed peak industry body and other stakeholder groups.

Finally, and to ensure cross fertilisation of issues under discussion, the ED, Fisheries would be an ex-officio member of the MFAC (see above). In the case of the commercial fishing sector (and other sectors for that matter), the relationship between the ED, Fisheries position and the office holders in the peak industry body becomes critical in relation to sorting through issues before they might get out of hand. The calibre of the person appointed to this position, together with the support this position receives from the senior levels of the Department is equally critical.

Finally, given the Government's intention to restructure the industry, the ED, Fisheries should provide regular reports to the MFAC on progress with industry adjustment and structural change to ensure it remains 'on track' or assist in overcoming difficulties.

iii) Establishment of a Peak Industry body

Recognising the focus in the Government's policy statement on the importance of regional engagement, together with the lack of effectiveness of the existing MAC and other existing consultation mechanisms, a properly structured and financially viable peak industry body should be established along the lines of the peak industry model in Western Australia, but with a regional focus. This body will be responsible for the vast majority of consultation with the commercial fishing sector, and in particular, for coordinating industry views and positions on fisheries management issues. In other words, the peak industry body could, if it operates effectively, take on the role of meeting the current requirements of the Act as set out above and on behalf of the Minister in relation to consultation with the commercial fishing sector. If this process works extremely well, then the peak industry body could be nominated (i.e. officially recognised) in the legislation as the body responsible for consultation with the commercial fishing sector. This would result in an obligation on the Minister to formally consult the peak industry body on those matters as set out in legislation.

The basis on which the peak industry body is to be established should be the subject of a separate NSW Industry Forum held within a few months of this report being submitted, chaired by an Independent Facilitator (appointed by the DG of NSW DPI), and focussing on:

- an appropriate name for the body;
- its constitution, including roles and responsibilities;
- membership arrangements, including a new regulation set up under the Act requiring all commercial fishing license/shareholders to fund its operation; and
- identification of an agreed level of funding and resources necessary for its effective operation.

The forum is necessary to test support for a peak body. Submissions and port meetings have revealed the level of support for such a body and recognised its need. However, the support is far from unanimous based on failures of previous bodies and reluctance to fund it, certainly on a voluntary basis. A levy would provide a stable funding base at least in the short-term. Industry input suggested that once established, some would prefer that the peak body becomes self funding on matters relating to advocacy, and receive funds from Government only on the basis of 'fees for service', including consultation services.

It is recommended that the peak industry body arrangements be finalised to come into effect as soon as possible after the Industry Forum, with the levy to operate for a period of three years, at which time a review would be undertaken to assess the performance and effectiveness of the peak industry body from both a commercial fishing industry and Government/Department perspective.

iv) Management Advisory Committees

The Review Team has come to the conclusion that it would not be appropriate to adopt a fixed MAC structure for every fishery or situation. In some cases, a more targeted advisory committee or technical working group if established by the ED, Fisheries (see above) in consultation with industry may be more appropriate to consult on an issue, where the group dissolves after completing its task. This reduces the ongoing overheads with running many committees and provides a more targeted (expertise-based) selection of membership to assist with possible solutions. In addition, it is possible that with appropriate structural adjustment measures achieving a more profitable and viable commercial fishery, and an increased level of discipline and maturity being established in relation to that fishery, a MAC process may subsequently be able to be considered as the best means of consultation. So the Review Team is recommending that the door be kept ajar on MACs to the extent that the current provisions relating to MACs in the Act be retained, subject to minor review, to include (i) removing the requirement for elections to determine MAC membership and the Minister to appoint MACs, and (ii) authorising the ED to appoint new MACs. .

Recommendation 2.2: That the Act be amended with respect to the establishment of Management Advisory Committees to provide for their appointment and receipt of advice by the Executive Director Fisheries, rather than the Minister; further, that their appointment be through the calling of nominations from interested persons and not by election.

It is clear from discussions with stakeholders that the behaviour by some MAC members has been highly inappropriate, both during and between meetings. To establish MACs as a forum for the responsible and proper discussion of key issues and formulation of advice, **the Review Team recommends that a code of conduct be developed by the ED, Fisheries to apply to the performance of all members of advisory committees, including MACs, to ensure their effective operation.**

Secondly, there are fisheries management issues which cross over a number of fisheries and/or related marketing / processing areas and hence across MACs and some overarching group may be needed to deal with these – if not, then there is a risk they can slow down the reform process by remaining unresolved. This group has been represented in the past, in part, by the SIAC. The Review Team is recommending that SIAC be disbanded and replaced by (i) the MFAC, (ii) an ED, Fisheries with delegated authority to make decisions, (iii) a peak industry body responsible for targeted consultation with the commercial fishing sector, particularly on a regional basis, and (iv) tasked working groups. Where important or serious cross-fishery issues require discussion, consultation can occur between the Department and senior office holders of the peak industry body on an ‘as required’ basis or by establishing technical working groups for this purpose. Further the NSWIC can be consulted on broader industry issues, particularly the marketing sector.

Recommendation 2.3: That the Seafood Industry Advisory Council be disbanded as a statutory body.

The acceptance of these proposals may necessitate a consideration of the role and reporting relationships of the equivalent existing statutory committees for the other stakeholders, namely ACoRF and AFAC. While outside the terms of reference of this review, consideration would need to be given as to whether these committees need to remain as statutory committees reporting to the Minister – given the formation of a cross-sector MFAC where these groups would have representation. The alternative is to reconstitute these as non-statutory bodies reporting to the ED, Fisheries. Of course the ED, Fisheries can choose to take appropriate issues forward to the Minister’s Council from any of these committees. As the aquaculture sector has a quite different set of issues to deal with, it should be kept outside the Ministerial Council process.

In summary it is recommend that consultation be carefully structured to ensure that appropriate bodies are used to provide the best advice to inform fisheries management decisions, from grass-roots fishers in regional centres to senior representatives on MFAC.

Recommendation 2.4: That consultation with the commercial fishing sector takes place through the following structured consultation pathways:

- **The Ministerial Fisheries Advisory Council on major strategy and policy issues (such as resource sharing, co-management, cost recovery and Harvest Strategy development for individual fisheries), Management Plans for individual fisheries, and any other matter referred to the Council for advice by the Minister.**
- **The Executive Director, Fisheries on major operational issues (such as gear changes, licensing changes, spatial closures and management plan development) via tasked working groups set up in consultation with the peak industry body and other stakeholder organisations, and for the setting of total catch or effort levels in individual fisheries via the TAC Committee.**
- **The peak industry body for the development of wider industry policy positions on issues such as cost recovery and other fisheries issues involving other non-fisheries Government agencies, for regional approaches to the resolution of localised issues, and as a first-stop calling centre for individual commercial fisher's issues.**
- **The NSW Seafood Industry Council on broader marketing issues**

3.2.4 Use of electronic technologies

Examine the utility of increased use of electronic technologies for improving consultative processes.

It is clear that there is a wide range of capabilities to use, and acceptance of, electronic technology, both as a means of communication and as a fisheries management tool. Any strategies that are formulated to increase the use of electronic technology must balance the reality that some fishers will not use it, with the need to ensure that efficiencies are not lost because of an inability of some to keep up with the times. In the case of communication, multiple strategies are likely to be the most effective.

Feedback to the Review suggests that a reasonably high percentage of commercial fishers have access to computers and therefore to email and the Internet. The almost universal use of mobile phones also offers additional opportunities for communication with fishers. The Fisheries Division considers that email communication is being increasingly effective not only in providing information to fishers, but in raising awareness of fisheries rules and regulations along with options for dealing with fisheries management issues.

Based on this, options for increased electronic technological use with respect to consultation could be achieved through electronic newsletters, Department moderated website forums, Facebook, and other website interfaces such as project management software applications or wiki pages which allow the sharing of ideas, documents and the ability to edit documents collaboratively by a moderated group of restricted access users.

From the commercial fisher's perspective, the one that stands out is text messages, with the PFA having shown this to be very effective. Apparently in the 1990's, NSW Fisheries used audio tapes circulated to fishers rather than paperwork (which no one seemed to read) so the licence holders could play them in their trucks/boats as they went to work. This could possibly be done with audio CD's today for the same task say twice a year outlining what has happened during the year and where to now.

Regarding email as a means of circulating information, fishers are picking this up with fishermen's cooperatives putting email to better use in getting to fishers. But having said that, this would only be a backup to what fishers know works best - face-to-face discussions, often one-on-one. Also video conferencing/Skype could be used more, taking the meeting to the fishers rather than the other way around.

Act amendments are currently proposed to recognise electronic data as 'in writing' - this is important. Ultimately the aim should be to phase out as much paper based information as possible in favour of electronic data and information collection and transmission. Also if the proposal for a peak industry body is implemented with professional Executive Officers talking face-to-face and backed up by coordinated electronic information, this will take NSW ahead in leaps and bounds compared to where the State is now.

In terms of monitoring and compliance, electronic technology has much to offer, particularly in reducing compliance risk and allowing innovative management strategies to be implemented (e.g. fine scale management for the Abalone fishery).

The development of the online self-service system 'FishOnline' will also incorporate a facility that allows broadcast SMS and emails to be sent to fishers. This is in addition to the ability for fishers to complete transactions over the Internet such as quota transfers, catch and effort reporting and an Interactive Voice Response system that supports pre- and post-commercial fishing landing reports. It is envisaged that it will be expanded to encompass other share management tools across all commercial fisheries as well as supporting new arrangements being delivered under the structural reform program, which will in the long term reduce costs and improve services to the commercial fishing industry.

3.3 Review of legislation to ensure effective resource management

Review the current legislation covering the fisheries sectors (including the basis for the issue of commercial fishery shares) and provide advice on how that legislation can better facilitate cost-effective and sustainable resource management to ensure our future seafood requirements and natural resource conservation.

3.3.1 Requirements and processes for issuing shares

Review the requirements and processes provided in the *Fisheries Management Act 1994* (and key regulations) for issuing shares within share management fisheries, taking account of any actions arising from the 2010 statutory review into that Act.

The process for implementing share management fisheries comprises four parts (s.41) these are:

1. Consultation with relevant industry bodies about which fisheries should become share managed fisheries;
2. Description of a share managed fishery in Schedule 1 and the criteria for the allocation of shares in the fishery, establishment of a MAC, and an invitation for eligible fishers to apply for shares, which are issued provisionally;
3. Access to the fishery is limited to provisional shareholders and those claiming to be eligible to receive shares; appeals against the provisional issue of shares determined and a draft management plan for the fishery prepared; and
4. The final stage is when the management plan commences, and all rights within the fishery are identified and exercisable.

The more detailed requirements and processes for issuing shares within share management fisheries are laid out in Part 3, Division 3 of the Act, under ss.46-52A.

Broadly speaking, active participants (and entitled individuals) in restricted fisheries that become share management fisheries are entitled to shares in that share management fishery. Allocation is to have regard to existing entitlements in the restricted fishery. Where there is to be a transfer from a Category 2 to Category 1 share management fishery there is a similar entitlement.

Shares in a fishery are to be allocated to eligible persons in proportion to their catch history in the fishery, whether as participants or owners of FBs at the time of allocation. If more than one class of fish was caught in the fishery the allocation is to take into account the value of each class of fish that was part of the catch history. Allocation of shares is clearly linked to catch history under the Act, using criteria specified by the Minister under public notice.

For the fisheries of interest, the process of issuing shares has been completed, along with the associated statutory appeals process. In the view of the Review Team, the process outlined under Division 3 (ss.46-52A) are adequate and do not require change at this time.

Of interest, however, are the current processes in the Act and Regulations for changes to existing allocated shares. This issue is dealt with in two areas of the Act;

- Section 44 (Omission of a share management fishery) and s.45 (Redefinition of a share management fishery) deal with the omission and associated cancellation of shares and the compensation payable; and
- Section 71A (Issue of further share classes in a fishery) deals with the creation and issue of further classes of shares in a share management fishery. Section 71A(2) indicates that an allocation is to be based on the criteria outlined in the management plan for the fishery, while s.71A(3) requires that the allocation criteria should use the 1986-1993 catch history, or such other period as might be specified in the fishery's management plan.

Section 44 and the associated compensation provisions act as a strong barrier to the consolidation of share classes, which could beneficially allow shareholders to vary the range of methods available in a particular share class or region, or to fish across existing regional boundaries. Accordingly, it is recommended that Act amendments be sought to allow for additional flexibility to allow the redefinition of, and consolidation of share classes in, existing fisheries without triggering compensation provisions.

With respect to the provisions under s.71(A), the Review Team is supportive of efforts by the Department to amend the Act to clarify that new shares issued pursuant to s.71A are issued as final shares solely in accordance with the criteria provided for in the management plan and are not subject to Part 3, Division 3 of the Act. The reference to the requirement to recognise catch history appears unnecessarily restrictive particularly since catch history does not transfer with shares when traded. This will continue to allow for the use of catch history, but will not compel the Department to use it.

The *Fisheries Management (General) Regulation 2010* (the General Regulation) does not have any substantive effect on the issue of shares, and the Review Team recommends that no immediate changes be made to the regulations with respect to the issue of shares.

3.3.2 The issuing of existing shares

Review the process of, and basis for, issuing the existing shares within the Estuary General, Estuary Prawn Trawl, Ocean Hauling, Ocean Trawl and Ocean Trap & Line fisheries.

To understand the process and basis for issuing shares, it is appropriate to briefly consider some background. The original share management fishery (SMF) scheme initially written into the Act and Regulations was premised on shares being issued/allocated primarily on catch history.

However, following the change of Government in 1995, only Abalone and Lobster proceeded to share management and all other fisheries fell under a Restricted Fisheries management framework

which, in 1997, saw the establishment of five 'defined fisheries', i.e. Estuary General (EG), Ocean Hauling (OH), Estuary Prawn Trawl (EPT), OT and OTL. Within each defined fishery were sub-fisheries or endorsement types, defined largely by gear and region. Access to each endorsement type was based primarily on validated catch history for the years 1986 to 1993 although in some cases ownership of boats or gear was also used.

The endorsement was simply a 'right to fish' and was issued to fishers with minimal catch histories, accompanied with a variety of input controls (or in some cases, output controls such as trip limits) introduced to limit fishing mortality of target and bycatch species. This allocation of rights differed markedly from the vision of the original architects of share managed fisheries in the following key aspects:

- there was little effective restriction despite the implied title of 'restricted fisheries' – and the criteria were over-generous and inclusive rather than exclusive;
- there was minimal security of the right under a restricted fisheries endorsement, since the endorsements were subject to annual renewal and could be cancelled at any time; and
- once endorsements were granted, there was no distinction between a part time and full time fisher.

The lack of access security provided under the Restricted Fishery programme was causing ongoing angst and unrest amongst industry and there was a push for greater tenure of rights. However, the Government of the time was unwilling to move fisheries directly from a Restricted Fishery framework into the full SMF scheme which offered compensatable rights with an automatic renewal after ten years. In 2000, former Minister Eddie Obeid pursued amendments to the Act to establish a 'middle ground' form of share management, which provided a 15 year tenure for shares. This new rights category was termed 'Category 2 share management', and the original (rights into perpetuity) form of the scheme was labelled from then on as 'Category 1 share management'.

In March 2001, six major fisheries at the time became Category 2 SMFs; OTL, Ocean Prawn Trawl, Ocean Fish Trawl, OH, EG and EPT. In March 2004, under the direction of former Minister Ian Macdonald, the Category 2 SMFs were converted to Category 1 SMFs to further improve the security of commercial fishing rights. Consultation had been occurring with industry on the criteria for the allocation of shares (see commentary below), and this resulted in the gazettal of a public notice outlining the approved criteria and seeking applications for shares in April 2004. An investment warning was issued by the Department in June 2004 in an attempt to reduce levels of speculative investment.

By December 2004, shares had been issued to eligible applicants on a provisional basis. Applicants who were dissatisfied with the allocations were able to lodge appeals with a statutory Share Appeals Panel that was formed in February 2005. Formal appeals were heard between 2005 and 2007; the same period during which the relevant share management plan regulations were being drafted. The share management plans (regulations) were finalised and commenced on 5 February 2007; the date upon which all shares issued on a provisional basis were replaced with the issue of final shares.

In respect of the process for determining how shares would be allocated, uniquely among Australian jurisdictions, and as far as can be ascertained, globally, NSW chose to allow each fishery/MAC to heavily influence the criteria by which shares would be allocated in particular fisheries. Other than in the OH and OTL fisheries, shares were allocated on a 'flat' or equal basis, with each restricted fishery endorsement holder receiving an equal number of shares, which, in general allowed the holder to use a standard amount of fishing gear (e.g. net length, number of traps or hooks).

Fishers who held shares and were eligible for an endorsement immediately before the commencement of each share management plan are recognised under those plans as 'original entitlement holders'. The minimum shareholding applied to those shareholders at the start of the

plan was 1 share, consistent with a Government commitment that no commercial fisher would lose endorsements upon introduction of SMFs. However, as soon as that shareholder begins trading in shares of that share class, the standard minimum shareholding was applied.

Abalone and Lobster are both ITQ fisheries where the share and catch are fully linked (via an ITQ/TAC), with secondary controls on effort (e.g. numbers of divers, minimum quota holdings). In other NSW SMFs, the property right that was issued was not well defined using traditional measures. The clear excess of rights, both in terms of shares and FBs, combined with a relatively restrictive, complex and indirect system of input control-based management, will, without change, continue to prevent the delivery of the efficiencies predicted when SMFs were introduced in 1994.

There is residual concern among entitlement holders that the process was flawed at the time of issuing shares. Further, it is becoming increasingly evident that the way in which shares were issued is impinging on the way in which desired changes to management arrangements can be made, and, specifically, the linking of shares to units of catch or effort. The Review Team notes that there was a significant political imperative at the time to finalise the Category 1 share management arrangements in a short time period, and that this mandate might have precluded much of the forethought (by both the Department and the industry) that should have been invested at the time to prevent structural issues later on.

The original intention of the share allocation was to allocate primarily on recorded catch history for the period 1986 and 1990, or some variation for those who were in the fishery, before, during or after these 'qualifying' years. The Act makes specific reference to the general allocation of shares in proportion to their catch history.

The basis and outcomes of issuing/allocating shares in the fisheries of interest is shown in Appendix 4. The following issues represent the major residual concerns:

- flat shareholdings vs. catch history as an allocation method – those with the former have now created the problem;
- no thought given to share equivalences to help with inter-fishery share trading;
- not possible to use catch history retrospectively to reallocate shares without cancelling all the shares in the fishery and triggering compensation provisions; and
- some expectation of the use of catch history, noting that it would now be difficult to go back to pre 1993 for any catch history assessments as that was nearly 20 years ago.

Overall, the manner in which shares were issued in these fisheries may be considered as a case of administrative failure, which, in turn has led to the current situation faced by fishers.

3.3.3 Amendments to the Fisheries Management Act 1994

Identify whether any amendments to the *Fisheries Management Act 1994* (and key regulations) could be made to promote more effective and cost-efficient management of NSW's commercial fisheries.

This section of the Review does not purport to be a detailed review of the Act, which has been recently reviewed in some detail and reported on in August 2011. Similarly, it is not a detailed review of key regulations. Such a task would require substantial additional dedicated time and resources. Rather, this section seeks to review the legislation where relevant to changes to current management arrangements suggested by the Review Team.

The report on the statutory review of the current Act notes that the objectives of the Act remain valid. The Review Team agrees with that statement, noting that the objectives, performance indicators and triggers for review in the fishery management plans is the appropriate place to lay out the specific ESD and resource sharing balance called for under the relevant provisions of the Act.

The Report of the Statutory Review of the Fisheries Management Act and more recent proposed legislative amendments put forward by the Department (see below) are, other than the reference to minimum shareholdings, in line with the views of the Review Team with respect to the issue (and potential consolidation and re-issue) of shares.

It should be noted that the Department already has a number of proposals in train to progress amendments to the Act and regulations to address issues raised throughout the Pymont Pact process over the past few years. The amendments relate to the modification or removal of unnecessary input controls and 'band aid' solutions that have been added over time, in anticipation of the introduction of share linkages. Specifically, the proposed amendments:

- provide for greater flexibility in the determination of TAC/TAE;
- provide for greater flexibility in the allocation of TAC/TAE (i.e. quota) between participants;
- provide for greater flexibility in the trading and management of quota;
- provide for electronic transactions to streamline administrative processes as part of the *FishOnline* reforms;
- remove the mandatory requirement for commercial fishing boats to be licensed;
- remove the requirement for maximum shareholdings; and
- include miscellaneous changes such as the authorisation of agents (for the purpose of online transactions) and the introduction of a general offence for providing misleading information.

The Review Team is very supportive of these proposed amendments and particularly those relating to allowing the necessary flexibility to achieve stronger rights-based SMFs. There is also a need for a review of the regulations under the Act to ensure they are as simple as possible. Such a review needs to determine:

- their effectiveness in achieving the objectives of the Act;
- whether they can be simplified and made more consistent across fisheries; and
- their practicality in terms of maximising voluntary compliance and ease of enforcement.

The regulatory review should be accompanied by a review of licensing conditions and policies to determine whether:

- the existing conditions need to be redrafted to achieve consistency across fisheries; and
- to simplify the rules governing the conduct of commercial fishing activities, and whether there is a demonstrated need to have separate policies in addition to licence conditions to achieve a clearer understanding of the rules for conducting commercial fishing activities.

The purpose of such a review is to rationalise the regulatory rules imposed on fishing activities to simplify and standardise the regulatory environment. The benefits of this de-regulation are that it will:

- make it easier for fishers to comply with fishing rules and improve voluntary compliance;
- make it easier for the Fisheries Division of NSW DPI to implement and enforce fishing rules;
- make it easier to measure the performance of the rules and of the Fisheries Division;
- facilitate the building of an efficient eLicensing system; and
- contribute to NSW's red tape reduction targets and provide long term cost savings.

Specific Act and regulation changes arising from the current Review, which should be pursued in addition to the proposed amendments identified above, include:

- To cover the establishment and selection and appointment of MACs to provide the ED, Fisheries with the authority to establish and dissolve MACs, and to appoint MAC members on the basis of their skills and expertise rather than on an elected basis;
- Remove reference to SIAC and include reference to MFAC;
- Include provisions for the peak industry body, including associated levy/funding arrangements;
- To remove the components in the Act relating to Category 2 share management fisheries, given it is unlikely it will ever be used again and creates complexity within the legislation;
- Make amendments necessary to consolidate share classes and remove right to compensation if fisheries are redefined in Schedule 1 as a result of such consolidation;
- Increase minimum shareholdings;
- Make amendments necessary to link shares to access;
- Make amendments necessary to facilitate cost recovery policy;
- The removal of FBs as a management tool to limit access; and
- Any amendments necessary to implement the penalty point scheme.

Recommendation 3.1: Review and amend (as necessary) the *Fisheries Management Act 1994* and associated regulations to give effect to the recommendations made in this Review.

Offshore Constitutional Settlement Arrangements

The OCS is a legal process whereby the two sets of laws impacting on the same fishers and fisheries, existing in both areas of jurisdiction – State and Commonwealth – can, by negotiation and agreement, be rationalized such that only one set of laws and management arrangements apply under one jurisdiction across an entire fishery.

These arrangements have been progressively introduced into all States since 1983. A range of agreements were struck between the Commonwealth and NSW in 1990 to transfer the management responsibility for many Commonwealth managed activities that operated beyond 3 nautical miles to NSW. This included prawn and fish trawling north of Barrenjoey Headland and OTL fishing (other than for tuna and tuna-like species) in offshore waters along the entire NSW coast. The key objective of the arrangement was to prevent many fishers having to hold (and pay for) licences in two jurisdictions and be subject to multiple catch reporting requirements, different management rules, etc.

However, significant management complexity remains off the coast of NSW and there are opportunities to reduce complexities in management through the development of additional Memorandums of Understanding and/or revisions to the current documented OCS agreements. There are also some longstanding ambiguities in the interpretations of the agreements (e.g. the retention of tuna by minor line methods beyond 3nm) that must be clarified and corrected where necessary.

The Review Team understands that the issues around OCS discussions between the Commonwealth and NSW are quite complex, and that it is unlikely that all these issues can be resolved in a short timeframe. This is because of resource constraints within the Fisheries Division of NSW DPI and the Commonwealth, but also because of the need to conduct close consultation with the commercial fishing sectors in both jurisdictions

Notwithstanding, the Review Team supports more recent moves to focus efforts on the southern fish trawl sector, as a means of providing increased protection for inshore species and habitats and reducing the considerable administrative complexity and cost burden associated with the need for commercial fishermen to have multiple licences.

It is understood that if the area within 3nm south of Barrenjoey Headland were to be closed to fish trawling (an option currently under discussion between agencies and with the commercial fishing sector in NSW), there would need to be offsets to statutory fishing rights issued by AFMA to compensate for lost area in NSW. A case can be made for using a portion of the \$16m adjustment funds (up to \$500k) to assist in resourcing the process and offsetting the loss of access to inshore non-quota species. The actual amount of funding should be determined following a detailed assessment of the catch and value of the non-quota species caught in NSW waters. But every attempt should be made to obtain a resolution of the jurisdictional issues associated with the southern fish trawl sector, as there are clear efficiencies for both industry and the Government that should flow from such agreement.

A key issue for the Commonwealth, which has been tied to the southern fish trawl negotiations, is the development of a 'global' stock assessment and allocation framework to ensure that State catches of Commonwealth quota species are limited and proportional. The relevant agencies so far have sought to limit consideration of this process to the Southern and Eastern Scalefish and Shark (SESS) fishery quota species, before seeking to apply it to other Commonwealth species or extend the framework to include other States. This process however, is complex in its own right and given the limited agency resources available, it would be prudent to refine the work plan to a single species which could be used as a test case to tease out and resolve the key issues. School whiting might be an appropriate species to use given the current concerns raised by South East Trawl Fishing Association (SETFIA) and some NSW OT fishers about likely increases in the State's catch of that species.

3.3.4 Review the compliance related amendments to the *Fisheries Management Act 1994*

Review the compliance related amendments to the *Fisheries Management Act 1994* (and key regulations) that were made following the *Palmer Report on Illegal Fishing for Commercial Gain or Profit in 2004* and the report by the Australian Institute of Criminology in 2007, *A national study of crime in the Australian fishing industry*, and recommend whether further changes are needed, including to incorporate a penalty points scheme for the commercial fishing sector.

Palmer Report

In response to concerns over compliance capacity and effectiveness against a backdrop of increasing illegal fishing and trade in fisheries products in the early 1990s, the then Minister of Agriculture and Fisheries and the DG of NSW Fisheries commissioned a review of illegal and black market fishing in NSW. This review, the Palmer Report, was handed down in 2004.

The key finding of the review was that illegal harvesting and black marketing of fish was a "serious, widespread entrenched and growing problem in NSW". Other key findings were:

- a lack of understanding of the seriousness of illegal fishing, both by the community and the judiciary;
- penalties and sanctions which are insufficient to deter illegal activity;
- inadequate fisheries officer numbers and overall compliance capacity to deliver effective compliance;
- a need for targeted education programmes;
- a need for a targeted Aboriginal cultural maintenance programme to manage customary fishing;

- that a small number of motivated and organised individuals are responsible for much of the illegal fisheries activity; and
- additional training required to meet existing and emerging challenges.

The NSW Government has been criticised by a number of sectors of the fishing industry for not implementing many of the recommendations of the Palmer Report in a timely manner. The Abalone sector was particularly vocal in this regard.

The *Fisheries Management Amendment Bill 2009* (the Bill) introduced a number of important reforms, many of which were in direct response to the findings of the Palmer Report. The key compliance-related matters addressed by the Bill were:

- improved management of Aboriginal cultural fishing, including the establishment of an AFAC;
- deeming that all fish held at commercial premises are being held for sale and requirement to maintain a 'paper trail' to prove provenance of product and reduce the level of black marketing;
- tougher penalties to deter people from committing serious fisheries offences, moving NSW legislation into line with other States and including a maximum penalty up to 10 times the market value of the fish and 10 years in jail;
- stronger prohibition orders to prevent repeat offenders from engaging in selected fishing or associated fishing activities;
- a number of amendments to improve and streamline fisheries compliance activities including the power to seize boats and motor vehicles if a person has any unlawful fishing gear; and
- increase the maximum penalty that the Local Court can impose to 200 penalty units, which currently equates to \$22k and deal with the forfeiture of boats and motor vehicles worth up to \$100k.

The Review Team has considered progress to date with the Palmer Report, and this is summarised in some detail in Appendix 4. It is the view of the Review Team that the recommendations relating to increasing penalties for serious illegal fishing have been extensively implemented through the implementation of: indictable offences for priority species (abalone and lobster at this stage); broadly doubling penalties; doubling penalties for second and subsequent offences; providing for the additional sanction of up to 10 times the market value of the fish; making the master of the vessel responsible for offences on board the vessel; expansion of restitution and prohibition orders; and establishing the offences of taking or possessing fish in circumstances of aggravation.

The Review Team recognises and supports the Law Reform Commission recommendation that fisheries officers be classed as Law Enforcement Officers for the purposes of the *Surveillance Devices Act 2007* and any other legislation to ensure effective investigation capabilities.

It is further recognised that there is a need to have a penalty notice scaling scheme in place (similar to that for driving offences) so that penalties can be appropriately applied commensurate to the number of fish involved or the type or quantity of fishing gear used in illegal fishing. Presently the rigid on the spot penalty amounts do not appropriately cater to varying degrees of seriousness of the same principal offence.

National Study of Crime in the Australian Fishing Industry

The Australian Institute of Criminology paper, "A National Study of Crime in the Australian Fishing Industry", endorsed Palmer's findings. One of the key recommendations of this study is a nationally consistent approach to fighting illegal fishing. NSW legislation now contains three sets of provisions that support the recommendations of both the Palmer Report and this study. The first set of amendments aims to reduce the black marketing of fish. The second seeks to provide more appropriate penalties for serious fisheries offences. The third aims to increase the accountability of those suspected of being involved in illegal fishing activity. The Act currently requires a person who has a certain quantity of fish in their possession to produce a written record of that fish if requested to do so by a fisheries officer.

Overall, it is the opinion of the Review Team that NSW has made significant progress with bringing its compliance arrangements into line with those of other states. Through the National Fisheries Compliance Committee, NSW continues to foster and provide leadership in programs that have appreciably advanced the principles of the nationally consistent approach.

NSW has developed key strategies and systems consistent with the principles of the Australian Fisheries National Compliance Strategy (AFNCS) 2010 – 2015, such as formalising the NSW State-wide Fisheries Compliance Plan 2010-15 which is underpinned by a risk-based compliance framework established by the Better Regulation Office (NSW Department of Premier and Cabinet) and linked to the Australian/New Zealand standard for risk assessment. NSW also provides key personnel to attend the annual Australasian Fisheries Law Enforcement Conference where intensive workshops are conducted with a view to facilitating the objectives of the AFNCS 2010-15 - and where important cross-jurisdictional partnerships are reinforced and new ones forged.

NSW's commitment to transformational change for a nationally consistent approach to fisheries compliance has been instrumental in driving reforms in the nation's most populous state, thereby helping to create substantial momentum from a national partnership perspective.

Penalty point scheme

In the past, courts in NSW have not always grasped the importance of natural resources and the impacts of illegal fishing. While the introduction of indictable offences has gone some way to address these issues, many convictions have led to small fines or other penalties and the offenders have been left with their licences to continue committing crimes. This reoffending occurs where proceeds of illegal activity far outweigh the small penalties received if caught. Even today, we have recently seen where offenders continue to commit crimes over a long period of time due to the benefits they receive.

Following the recommendations of the "A National Study of Crime in the Australian Fishing Industry" report (see above) AFMF was charged with, among other things, *giving consideration to the introduction of a demerit point scheme for serious fisheries offences, with that scheme having the capacity to be recognised by other jurisdictions*. Tasmania (2006) and South Australia (2009) have introduced demerit point schemes, which appear to have been very effective. Other states are considering their introduction.

The advantages of a demerit (penalty) point scheme are that:

- the process treats all offenders consistently (e.g. if two offenders commit the same crime but are tried by separate courts they will receive similar penalties);
- if offenders accumulate more than a set number of points, entitlements be either suspended or disqualified, which acts as significant deterrent;

- it enables an assessment of both individuals and corporate entities as licence holders – an important consideration where the entitlement is leased;
- it provides a mechanism for having representative bodies learn, acknowledge and support a framework of operation outside the traditional criminal arena;
- by complementing the ‘fit and proper’ provisions in most areas of legislation, adds value to ensuring the right people are in possession of the privilege to harvesting a community resource;
- removes much of the subjectiveness on administrative decision-making (e.g. when to suspend or cancel licenses or endorsements); and
- If properly synchronised, demerit points can apply across jurisdictions.

There is a good deal of commonality between the South Australian and Tasmanian demerit point schemes:

- If a person is found guilty of offences worth 200 demerit points, that licence (except quota) must be surrendered and that person may not operate in the (any) fishery;
- Points have a life of 5 years, and disappear after that time, similar to the demerit system for drivers’ licences; and
- Demerit points also carry across with the licence (e.g. commercial fishing licences, companies, fish processor registrations and recreational rock lobster pot or net registrations), thus devaluing their sale price upon transfer.

An additional benefit would be that under a linked (share/TAE or TAC) system of management, self-reporting would become more prevalent, with share forfeiture in some cases resulting in an increased benefit for remaining operators.

The Review Team sees great merit in introducing such a scheme in NSW and recommends that the necessary legislation be developed, drawing on the experiences of Tasmania and South Australia. For the life of points, the Review Team recommends that a period of at least seven years is appropriate, given the high degree of difficulty in detecting/proving fisheries offences.

<p>Recommendation 3.2: That a demerit point scheme be introduced to deter recidivist offenders and provide greater consistency in the application of penalties for illegal fishing.</p>
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3.4 Fisheries sharing arrangements relating to commercial fisheries access

Examine the present fisheries resource sharing arrangements in NSW, and provide advice on whether those arrangements are fair and equitable to all sectors, including seafood consumers.

3.4.1 Current level of commercial fisheries access

Review the current level of access to fisheries resources available to commercial fisheries in NSW and the factors that have modified access historically.

It was put to the Review Team that past history in NSW clearly demonstrates that the commercial fishing sector has had to endure significant cutbacks in its operations through:

- the closure of areas to commercial fishing (Marine Parks, RFHs, etc.), often accompanied by questionable science (or no supportive science at all); and
- changes in gear levels and industry practices designed to make the industry more inefficient.

Implementation of fishing closures, either through the Marine Park process or through RFHs, has had a profound effect on many FBs, both at the commercial fishing level and at the fishing cooperative level. The commercial fishing sector stressed that these closures have resulted in considerable distress (including marriage and family break up), because, in their view, the structural adjustment provided by the Government to those displaced from these areas did not adequately address:

- the displacement of commercial fishing effort;
- loss of income for fishers who choose to remain and keep fishing;
- employment loss through buyouts;
- social and family impacts associated with fishing closures (e.g. need to travel further to go to work);
- loss of production/turnover in subsidiary businesses dependent on the commercial fishing industry; and
- the need for meaningful and practical assistance to retrain and assist those affected to find new employment opportunities.

The commercial fishing sector believes that these cutbacks and closures have been out of all proportion to the commercial industry's impact on fish stocks. The sector is also concerned that the continuing 'sea change' phenomenon (movement of people from the country to the eastern seaboard), coupled with a growing population, will result in increased consumer demand for fresh seafood, which will in turn lead to increased pressure on the State's fisheries resources and the ecosystems that support them through increased fishing activity.

One submission to this Review suggested that the impacts of loss of access might be overstated by the commercial fishing sector in an attempt to raise the profile and create a political drive not to make more change. However, to test such a suggestion, it would be necessary to properly assess the actual area lost, compare it to the total area available and assess the impact – i.e. loss of fish catch and value from closed areas against the total catches of those species. But this would require the allocation of scarce resources by both the State Government and the commercial fishing sector. However, it is fair to say that the changes involving implementation of restricted and then SMFs, Marine Parks and RFHs were implemented without any follow up assessment of the impacts on the industry. The only way to find out is a dedicated study – anything else would be conjecture.

Some follow-up work has been done on the impacts of recreational fishing, which has shown a significant increase for some recreational species and a significant decrease in others. Also there has been little change to effort and the average size of most species is now larger.

An examination of the present resource sharing arrangements in NSW indicates that despite the Act incorporating an objective that fisheries management arrangements are developed “to appropriately share fisheries resources between the users of those resources”, there is no clear Government policy statement to guide how resource sharing arrangements should be considered. Indeed, there is no qualitative or quantitative impact assessment that evaluates the economic, social and cultural costs and benefits of a proposed option under a resource sharing arrangement that takes account of for example:

- contribution to the lifestyle;
- contribution to the economy;
- contribution to employment;
- consumer access to fresh seafood;
- maintenance and growth of regional communities;
- health impacts;
- sport and recreation opportunities;
- tourism impacts; and
- other criteria as relevant to the fishery.

Implementation of RFHs by the previous government were billed as ‘resource sharing’, but in reality, it has been resource redistribution, with the commercial fishing sector bearing the brunt of sometimes harsh proposals which have little basis and in fact, are more about perceptions than reality.

The fact is that on many occasions, the recreational sector has used its considerable weight of numbers, along with local community and local political support, to press for recreationally popular areas along the NSW coast to be closed to commercial fishing. This is continuing to happen in areas such as the Pittwater and Shoalhaven. Because the commercial fishing industry is currently disparate, not united and simply doesn’t rank when it comes to ‘voter’ power, it has not been able to mount effective arguments against proposals for closures.

While Marine Park planning has also had adverse impacts on the commercial fishing industry, this Review acknowledges that there is a separate review of the process involving the declaration of Marine Parks.

Taking account of all of the above, the Review Team considers it essential that a resource sharing policy be developed, through the auspices of the MFAC.

Recommendation 4.1: That the Minister develops and implements a Policy statement on resource sharing through the Ministerial Fisheries Advisory Council, which acknowledges the aspirations of the different fishing sectors, sets out preconditions for consideration of resource sharing proposals, guiding principles and a proper process for decision making in relation to such proposals.

The NSW Legislative Council Select Committee Report on recreational fishing recommended that recreational and commercial fishers should work together to determine if limited commercial access can/should occur in RFHs. The Government’s response to this Report indicated that the issue would be tackled on a case-by-case basis. The Review Team supports this approach.

Appendix 3 provides a framework for developing such a policy, and is based on experience gained in other jurisdictions in Australia.

It is also clear from submissions and the observations of the Review Team that there is strong perception that successive NSW governments have seen the commercial sector as a second class activity, lower in priority than the recreational or conservation (in the narrow use of the term) interests.

Views from a fishers' association

“The NSW commercial fishing industry has been constantly subjected to reviews, restructures, restrictions, reductions to days worked, gear controls, TACs and RFHs, resulting in loss of area access and ongoing buybacks as a result, for more than two decades. Most commercial fishers are very tired of the constant threat of removal and buyback bought about by political pressure and the government. Confidence in investment is discouraged and restricted, and fishers are demoralised.”

There were repeated calls from fishers for Government to provide gestures of support for the commercial fishing industry as a supplier of sustainable seafood to the community and address what is seen as a strong bias to the recreational sector. In this vein one EPT representative suggested that there should “... be a political expression of confidence in the industry ... that fishers will continue to fish... because it is their historic right to do so, it is a low impact fishery, low bycatch and provides jobs and production to a community that is growing in demand”. In this respect, and in order to restore confidence within the commercial sector, **the Review Team recommends that the Minister issue a statement of intention to build and support a strong sustainable NSW commercial fishing industry.** Such a statement or vision 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.

3.4.2 Use of recognised fishing grounds to better protect commercial fishing access

Review the use and utility of recognised fishing grounds, as provided for in the *Fisheries Management Act 1994*, as a means of protecting access for commercial fishers to important fishing areas (and ongoing fish supply for seafood consumers) and recommend changes to the Act if appropriate, to better protect commercial fishing access.

The concept of recognised fishing grounds (RFGs) was brought forward as content from the *Fisheries and Oyster Farms Act 1935*, to the 1994 Act.

The protection of commercial fishing activities offered under the existing legislation include:

- giving commercial fishers the authority to request a person to move an unlawful obstruction and making it an offence for a person not to remove such an obstruction from a RFG when directed by a fisheries officer (s.62 of the 1994 Act);
- giving priority to a commercial fisher who is taking or intends to take fish on a RFG over any other person (including a recreational fisher) who is taking or intends to take fish on that ground (cl.62 of the General Regulation);
- defining the rights of priority between commercial fishers using nets in any RFGs declared in inland waters (cl.63 of the General Regulation);
- preventing the interference of fishing activities (by a person using a boat, surfboard, water ski, aquaplane or similar equipment) so as to cause the likely dispersal of schooling fish, or fish travelling in a school or shoal, in or in close proximity to a RFG. However, this only becomes an offence if the person continues the interference after being directed to cease doing so by a fisheries officer (cl.65 of the General Regulation);

- provision for a commercial fisher, for the purpose of using a net on any RFG, to remove any unattended fishing gear (other than a lawfully set net) that has been so set as to obstruct the use of the fisher's net (cl.67 of the General Regulation);
- making it an offence for a person to, without reasonable excuse, intentionally disturb fish in the vicinity of a commercial fisher using a net or other fishing gear on a RFG (cl.68 of the General Regulation).

The scheme had its roots in the old rivalries where engine blocks and other debris was placed by other commercial or recreational fishers, or boats anchored or schools of fish intentionally disturbed to prevent commercial haul or trawl shots.

RFGs are areas where historical commercial net fishing takes place, and which are declared in accordance with the Act and the procedure described in the General Regulation (cl.64). The procedure requires draft maps with the proposed RFGs to be provided to SIAC and ACoRF before being publicly exhibited (both 30 day minimum comment periods), and then approved by the Minister and gazetted.

While the concept behind the protection of key important and historical hauling or trawling areas and creation of RFGs is sound, their utility is somewhat limited. Their declaration does not, by itself, prevent the placement of 'lawful' obstructions in those areas, such as approved jetties, moorings, or other structures that can have the effect of making that area impossible to work. They also rely heavily on ensuring a fisheries officer is on site and willing/able to issue an instruction for a person to do (or not do) something. In reality, much can be done to disturb the viability of a hauling or trawling shot prior to fisheries officers being called and attending the site. Even if such sites were designed to exclude all other forms of fishing, there are still many non-fishing activities (e.g. jet skis, water-skiing) that could cause problems for fishers and be difficult to permanently ban from specific areas via fisheries legislation.

It is for these reasons that very few RFGs exist in NSW. It has also been difficult, as the Review Team understands it, for commercial fishers to narrow down claims for RFGs to only a small number of key areas – the tendency for fishers is to suggest that all open areas and methods should be declared an RFG.

Despite the limitations, RFGs could provide advantages by identifying the key hauling and trawling sites used in estuaries or on ocean beaches. If such areas are properly and accurately declared, not only would commercial fishers obtain the legal privileges outlined above, but the RFGs could provide a useful reference for local or State Government agencies who have an approval and/or management role relating to coastal developments or other non-fishing activities that have the potential to impinge on the ongoing viability of commercial fishing.

The Review Team considered possibilities of tightening the RFG provisions such that there wasn't the current reliance on the instructions of fisheries officers before an offence is created. However, the vesting of such powers within commercial fishers themselves would be unprecedented and unlikely to be supported by the Attorney-General on the grounds that proper training and due diligence is necessary to authorise the proper exercise of legislative powers.

On balance, the Review Team believes there is value in retaining the RFG provisions within the legislation and utilising them over time. However, it notes that a process involving the identification, consultation on and declaration of RFGs state-wide would require dedicated and significant resources to implement. **The Review Team recommends that a process to identify consultation on and declare a network of RFGs statewide be undertaken at some time in future, but only after priority is given to the formal restructuring process recommended elsewhere in this report.**

3.4.3 Access changes brought about by non-fishing use of waterways

Review how commercial fishing industry groups in other jurisdictions or other NSW industry sectors respond to (e.g. shipping and coastal development). Recommend any steps the NSW industry could take to improve its influence over or robustness to such changes.

Apart from NSW and Western Australia (see below), there does not appear to be any other legislation that officially recognises commercial fishing grounds in a statute, other than with aquaculture/oyster leases.

In Western Australia, there are Designated Fishing Zones (DFZs) for the Salmon beaches in the south and southwest. Originally under the 1905 Western Australian Act, they were set up as Proclaimed Fishing Zones for the commercial fishery to provide protection for commercial fishing operations in the area. Under that State's new Fisheries Act, the DFZ's are set aside for 'salmon fishing' either commercial or recreational such that recreational and commercial fishers have the protection from each other and other recreational users if they are fishing for salmon in a DFZ. The DFZ's are used mainly to control the use of jet skis and surfers at the salmon beaches; however, it is not an offence for someone to conduct an activity that will interfere with a fishing operation in a DFZ. It is only an offence if they do not comply with an instruction from a fisheries management officer to leave or cease an activity. DFZs cannot be declared in a Marine Park, Reserve etc. but if a Marine Park is declared over an existing DFZ, the DFZ ceases to be, and DFZs cannot be created/prescribed in a marine nature reserve or marine park.

In Queensland, which has a number of commonalties with NSW fisheries, Marine Parks and in particular coastal development, are having a significant impact on the marine resources available for commercial fishing, particularly the inshore fisheries. The following examples provide some insight from a Queensland perspective.

In 2009, the Queensland seafood industry and State Government established a stakeholder group to deal with development applications (both applications for new developments or extensions to existing developments that include a seabed lease) from developers seeking to build on the Brisbane River that would result in a loss of access to the beam trawl fleet operating there. Agreement was reached that sought to establish a precedent (non-legislative), where all development applications that included a seabed lease would be channelled through this group. This was to ensure a process was in place that recognised the commercial beam trawlers as valid users of the resource and provided greater certainty for developers knowing that applications would be progressed in a timely manner with all stakeholders having input into the decision/approvals process upfront, rather than as an add-on right at the end of the process where last minute objections could hamper an application considerably. This has worked reasonably well with a range of offsets being considered as mitigation for loss of access (sometimes licence surrender through a buyout or other areas of the river being opened up to offset a loss of ground in another area). This process has required numerous Departments working together to ensure development applications that have seabed lease components are processed in this manner. Fisheries Queensland has been the lead agency.

Another example of access change for commercial fishers in Queensland is the major developments occurring in the coal and gas resources sectors. There are currently a number of opportunities for the commercial fishing industry to have input into the approvals process, but these are hamstrung by a lack of resources and time. Small, often voluntary Associations/Councils are no match for the amount of resources that developer/proponents can mount to support applications. This has been complicated further with willing Governments at all levels wanting to be seen as pro-development driven by the imperative to derive revenue from major projects. Many projects have been approved, many are currently going through the application process at various Government levels and many are in the very early stages of development.

In Queensland, there are a number of State Acts that are required to be followed depending on the nature and scope of the project. In addition, it is understood that developers can take an 'opt-in' approach where they can seek to have the Coordinator-General establish conditions for approval. This has both pluses and minuses for developers. There are also those applications that are considered a controlled action under the EPBC Act so also require Commonwealth approval. The seafood industry in Queensland hold the view that both processes that require State and Commonwealth approvals are deficient and require significant improvements to recognise other valid users of the marine resource such as commercial fishers.

The Queensland commercial fishing industry's summary of the present situation in that State is as follows:

- Current process for assessing and mitigating commercial fishing regional economy impacts arising from resource boom port developments and the domino style impacts on regional seafood business economies are not understood and not investigated by Port authorities or the State fisheries units at the EIA or any stage.
- Port developers and resource company proponents poorly understand linkages between seafood economies at various major ports. Seafood supply chain impacts are not understood or even explored. The seafood industry is a complex and diverse network of interdependent businesses and infrastructure providers. Individual ports and resource companies care little about that industry and even less about cumulative state-wide impacts on that industry.
- There is a need for a state-wide integrated approach to dealing with (resource boom) seafood economy impacts, rather than the current project-by-project, site-by-site, port-by-port approach. Simultaneous large-scale commercial development at productive ports around Queensland is damaging existing infrastructure and also investment in the sector. This is due to the haphazard 'one out' approach.
- Ports and resource company proponents offer to mitigate only impacts arising from the direct project footprint, arguing that wider impacts are partly attributable to other company activities. This of course results in many major indirect impacts on the seafood sector not being compensated at all. The argument lacks integrity, as it relies on the 'you can't prove what is our part of the damage' defence.
- The EIA process involves large sums spent on research about impacts on seagrass, migratory birds, etc., but few resources have been employed on understanding the economic/commercial aspects of the fishing industry, and its flow-on benefits to the community.
- Impacts of as little as 15 per cent of seafood production for 2 years may be sufficient to collapse the entire seafood infrastructure in a port, with consequential damage to domestic and export fisheries state-wide. Most Ports facing resource boom development activity will face 5 years or more of continuous construction impacts.
- EIA processes conclude there will be port specific impacts on the local seafood economy, but stop short of carrying out any independent research as to the scale of those seafood economy impacts at a regional and state level. Socio-economic factors, displaced effort, increased vessel traffic and pollution, and critical mass considerations must be examined prior to the issue of approvals and certainly before works start.

The Review Team believes there are some valid lessons to be learned from the Queensland examples cited above which could form the basis of a more open and transparent approach to dealing with such issues in NSW. This is also one of those issues that could be referred by the Minister to the proposed MFAC for development of a policy position. In addition, the peak industry

body should play a stronger role in engaging with both State and Local Government Authorities in relation to shipping and coastal development.

In summary, commercial fishing is relatively small in economic terms when compared with other primary or 'resource' industries. In the future, changes that are likely to occur and impact on commercial fishing in NSW include:

- pressure to establish further Marine Parks;
- conflict/overlap between charter/recreational/commercial fishing and pressure to establish more RFHs or exclude commercial fishing using other means;
- oil/gas and port developments;
- Local Government unilateral action;
- intrusion of cables and pipelines; and
- new sea transport corridors/channels requiring dredging and creating hazards for set gear.

Realistically the only way to address these on behalf of the commercial seafood industry is through the Act overriding other Acts, or interventions requiring concurrence from the Minister responsible for fisheries.

NSW is fortunate in having strong legislative powers (under Part 7 of the Act) relating to the protection of fish and fish habitat. These powers ensure that fish and fish habitat are critical considerations in the assessment of development applications and other significant planning programmes (e.g. through the implementation of Habitat Protection Plans). The existing approval and concurrence powers, which are used in the assessment of development proposals that have the potential to significantly affect fish, habitats or fishing activities, can and are used to help protect commercial fishing access to waterways. One recent example is where a proposal to build a private jetty on the Clarence River was rejected on the basis of its potential to detrimentally impact an important historical hauling area.

NSW DPI has also been working with industry in some of the larger estuaries (e.g. the Hawkesbury River) to define and map the important commercial fishing areas so that those grounds are well known and can be readily factored into Local Government planning processes/decisions in the early stages of the process, rather than at the end. NSW DPI has also been working with Councils, other State Government agencies (e.g. Roads and Maritime Services) and local commercial fishers to manage the impacts of the forms of development that do not require official development consent – this involves an educational role as well as a legislative role.

The Review Team strongly endorses the continued application of these powers and supports the concept of identifying the important commercial fishing areas upfront so they can be properly and genuinely factored into coastal planning processes.

The Review Team believes there will also be a prominent role for the new peak industry body to become active in debates about the impacts of non-fishing activities on commercial fisheries. Some recent examples of this include the potential impacts of port based activities such as shipping, dredging and anchoring around Newcastle and Port Kembla. Organised industry lobbying in those sorts of external processes can be very effective in making modifications to those activities (or alternatively seeking some form of compensation for unavoidable impacts on FBs). This is more a role for the industry association than for fishery managers who must remain focussed on ensuring the ongoing sustainability of NSW's commercial fisheries.

3.5 Review of alternative fisheries management opportunities

Provide advice on efficient and effective functioning of fisheries management in NSW including opportunities for co-management of fisheries involving all stakeholder groups, such that the overall costs of fisheries management are not an unnecessary burden on either the stakeholder groups or the Government.

3.5.1 Options for co-management

Consider past research and case studies relating to management in other fisheries and identify and assess co-management or other options that could work well in NSW.

There are a range of alternative fisheries management structures and related governance arrangements that exist around the world. Briefly these can be categorized in a number of ways as discussed below, but the central issue revolves around the extent to which Government is prepared to involve and share responsibilities with key stakeholders. This is because of the 'common property' nature of fisheries resources and the related 'tragedy of the commons' whereby the resource is inevitably over-exploited if completely unmanaged by anyone. Thus Governments accept they have the responsibility to manage fisheries on behalf of the community at large and to achieve certain objectives from the use of the resource as commonly agreed and expressed in statute. The ranges of possible models include the following:

Management by Local Communities/Cooperatives/Organisations: No Government Involvement.

This occurs where Government has no interest in managing a local fishery and the local community then constructs, implements and enforces local rules to share and manage the fishery to the community's advantage. This often occurs in developing countries, in particular small fisheries where the Government has no resources for management or no desire to become engaged in small artisanal fisheries.

Government Delegation to Local Community Boards.

This occurs in particular regional fisheries with a limited number of operators who are in defined areas. The Government delegates responsibility to the Board to manage the fishery locally under their own rules but usually to adhere to overall sustainability goals etc. set by Government e.g. they may set the quota, allocate that quota among fishers and decide how it is to be caught.

Government Delegation to a Company/ Co-operative/Organisation.

Similar to the above example, the Government may delegate responsibility for management to a particular company instead of a community Board to exercise management, but again usually under pre-determined triggers and targets around sustainability and performance.

Government Legislates to create a Statutory Fisheries Management Board.

This is the example of AFMA and the former QFMA (see Section 3.1.1) where the Government creates an expertise Board to hold and exercise all the fisheries management powers that exist under statute to manage fisheries on behalf of Government.

Government Legislates to create a Bureau within the Government Structure

In this case, the Government establishes a separate Bureau with a CEO within Government, not within a Government Department, but still reporting to the Minister. This separates the fisheries management functions from the day-to-day functioning of a Government Department and gives more transparency to its operations.

Government Creates a Division within a Government Department/ Creates a Separate Department.

This is the most common situation where fisheries are managed by a Division within an existing Department – often a ‘Primary Industries Department’ – with an ED responsible for management and reporting to the CEO of the Department and the Minister. In the case of Western Australia, a separate Department of Fisheries is responsible for management and answerable to the Minister.

Another way of viewing these alternative arrangements is to consider the extent to which the Government is prepared to share responsibility and power for fisheries management with stakeholders or industry. This is the ‘continuum of fisheries management’ arrangements and presents opportunities for ‘co-management’ of fisheries.

Co-management is defined in a comprehensive FRDC Report as “an arrangement in which responsibilities and obligations for sustainable fisheries management are negotiated, shared and delegated between government, fishers and other interest groups and stakeholders.” It is a term used to describe the extent of shared responsibility for fisheries management. It starts at one end with centralized Government control and regulation with no opportunity for industry input; moves through increasing industry and stakeholder engagement, involvement and participation, until, at the other end of the continuum, there is significant delegation by Government to stakeholder/industry groups for the delivery of fisheries management functions and services.

Most fishery management systems are currently somewhere in the middle of this continuum, where there is significant opportunity for stakeholder engagement and input into decision-making, but few examples of moving to the other end where there would be substantive delegation of functions from Government to industry to deliver. Currently there are examples across a number of fisheries in Australia of where the delegated model of co-management is being trialled e.g. AFMA is trialling delegation of some functions to industry in the Northern Prawn, Great Australian Bight and SESS fisheries and these are currently being evaluated. Also, the South Australian Spencer Gulf Prawn Trawl fishery has delivered some delegated functions concerning setting opening and closing times and areas for trawling on behalf of PIRSA.

Other examples exist where industry/stakeholders are deciding and implementing activities normally reserved for Government, either under a formal arrangement or simply with the concurrence of Government e.g. the Fish Trawl (Stout Whiting) fishery in Queensland, the Tasmanian Scallop Dredge fishery, fish stocking of dams in Queensland, and a wide range of research and monitoring activities which are delivered through stakeholder engagement.

It needs to be stressed, however, that co-management is not ‘one size fits all’ and that the lack of the characteristics below, or failure to meet all of the pre-conditions, does not prevent a dialogue commencing towards some co-management arrangements.

The Review Team has considered the above characteristics in terms of the prospects for co-management arrangements for NSW.

Firstly, in relation to the question of the issues to be addressed in progressing to a new entity to assume greater Departmental powers and an alternative management and governance structure to manage NSW fisheries, the following comments are appropriate;

- The most likely alternative would be a statutory Authority model;
- The establishment of such a model would require significant discussion with sectors and interests other than just the commercial sector, as it would be an expertise-based model;
- The commercial sector is about to undertake significant industry adjustment and reform that will require close attention, effort and committed resources from the industry and the Department;

- The current consultation arrangements with industry (i.e. MACs, SIAC) are not fully effective in many cases or non-existent, while there is, as yet, no state-wide peak industry representative body for all fishermen (noting that Fisheries Division has been using MACs/SIAC as needed, despite their informal nature); and
- Elements of the governance arrangements and decision-making processes within the Department require significant attention; including the formation of a MFAC.

For these reasons, it is proposed not to recommend a state-wide statutory Authority and to concentrate on industry adjustment and return to viability through changes to the current processes and improved governance arrangements; failure to achieve these, would make the task of any new entity even more difficult at this time. These changes can include elements of delegation of some fisheries management responsibilities to stakeholders. A key recommendation in this process will be the establishment of a SARC to ensure the reforms and industry adjustment are implemented. On completion of this process and together with the development of a peak industry organization, the stage would be set to consider co-management arrangements to assume further management roles from the Department. Therefore it is proposed to recommend the adoption of a range of changes to ensure that industry adjustment occurs, including a range of new governance arrangements and some elements of delegation to industry. Should, however, these arrangements fail to deliver the industry adjustment, then the consideration of a separate new entity (e.g. an Authority), to assume the fisheries management roles of the Department should be brought forward as there would be few viable alternatives.

The current focus should be on catching up the lost opportunities for fisheries management change and reform through this review. However, because of the potential advantages of an Authority, it could still have relevance as an option at a future time. Much will depend on the success of the proposed reform agenda in creating a more mature, viable and responsible industry, along with the agreement on the improvements in the governance arrangements for the Department and its associated improvements in performance.

3.5.2 Delivery of fisheries services

Identify the types of fisheries services (or components thereof) currently undertaken by Government that would be suitable for delivery through other models (e.g. co-management), including identifying any core functions that should not be delegated;

There is a range of services currently provided by Government that could be provided by industry, provided the necessary pre-conditions were satisfied as outlined below. A range of these is being delivered by industry around Australia, or are in the process of being trialled in fisheries. However, one of the fundamental pre-conditions for the delivery of any services is the existence of an industry, or fisheries, body to be held accountable for the delivery; otherwise, the arrangement would simply entail individual fishers working alongside Departmental staff (e.g. on research projects).

The possible functions include:

Administration

- Consultation and communication among fishers
- Community education and awareness
- Support for MAC/Regional committee functions
- Database of industry operators
- Logbook collections and follow-up

Research / Monitoring

- Conduct of research projects (if staff are appropriately qualified)
- Development of research proposals
- Assistance in research projects on stock assessment
- Provision of information/data collection for research
- Research logbooks
- Industry development activities
- Project management
- Report writing
- Extension among industry

Management

- Decision rules on harvesting within overall goals
- Codes of practice
- Drafting policy option papers
- Economic input into policy development
- Environmental management systems
- TEPS reporting

Compliance

- Information gathering
- Risk analysis intelligence
- Administrative penalties, where appropriate

However, there is a range of core fisheries management functions that should always remain the responsibility of Government. These are as follows:

- Government policy development
- Enactment of legislation
- Initial creation of access rights and authority to fish
- Fisheries access and allocation issues among all users and stakeholders
- Sustainability performance indicators and controls/TACs
- Enforcement and prosecution
- Legislated fees and charges
- Regional and development issues impacting on fisheries
- Foreign and international matters.

3.5.3 Pre-requisites for alternative management options

Identify the prerequisites for recommended management options (including co-management or other models) within the NSW context.

The alternative management options have been discussed previously in this review, i.e. variations of a Department model, alternative government models and a statutory authority model. The other option is a co-management arrangement under a Department model where co-management is more than simply collaboration with industry, but actual delegation of functions to industry.

Recent research – and some practice – in relation to such possible arrangements (FRDC project no. 2006/068) has shown that for co-management to be acceptable to all parties and to have a reasonable chance of success a number of pre-conditions are essential and need to be satisfied. These are:

- A willingness by governments to consider alternative management models;
- Fishermen's groups or organizations with a significant proportion of members wanting to move to co-management;
- Identified 'champions' who can build organizational ownership and negotiate effectively with Government;
- An effective fishermen's organization with good governance and track record in representing its members and in dealing with Government;
- Adequate resources and skills within the fishermen's organization to deliver such services;
- Existence of the legislative ability for Government to delegate powers;
- Ability to commit to legally binding undertakings through an MOU, contract or other agreement between the parties; and
- Existence of conflict resolution mechanisms.

Co-management can take many different forms depending on the objectives of the parties and the respective capabilities to carry out the service delivery arrangements. Thus all parties must see some advantage in moving to such a system. The potential advantages have been outlined in the research mentioned above. Fundamentally, the essence of co-management is for both parties to accept that by adopting a greater sense of shared responsibility for management outcomes, relationships can be improved and better outcomes achieved. It isn't about one party taking greater control, or simply trying to reduce the costs of management; it is about greater cooperation and joint responsibility for improved outcomes.

On an individual fishery basis, there are a number of factors that can influence the likely success of co-management. These include:

- clear definition of property rights in the fishery;
- clear geographic boundaries of the fishery, limited environmental issues and limited interaction with other parties;
- adequate scientific and socio-economic knowledge of the fishery;
- fishers with similar economic interests in the fishery; and
- a history of mature and sound working relationships between the fishers and the Department.

The inability to meet all of these pre-conditions, should not prevent a discussion on co-management commencing, however these will form a critical part of the negotiations. In the case of NSW, the Review Team is of the view that too many of the pre-conditions are lacking currently across most fisheries to warrant a focus on co-management arrangements. However, as the recommendations of this review are considered and adopted, elements of co-management arrangements could be considered.

Recommendation 5.1: That the current state of working relationships between industry and the Department, together with the present failure of most consultative bodies across industry preclude the development of formal co-management arrangements at this time.

3.5.4 Developmental fisheries

Developmental fisheries are harvesting activities that may have some commercial potential, but which fall outside established management plans under the Act. At time of preparing this report no formal policy covering developmental fisheries exists for NSW, although some work and limited stakeholder consultation has been undertaken on preparation of a draft policy.

The Fisheries Division's response to potential investors seeking the necessary authorisations to develop new fisheries has, up to this point, been to refuse them on the basis that the Department's limited resources need to remain focused on getting on top of management of the current commercial fisheries.

There is a strong case for ensuring a sound policy is in place before any developing fisheries proposals are approved, to avoid a future scenario where too many fishing rights, expectations or fishing capital are created. Indeed, many of the current commercial fisheries issues stem from the liberal allocation of commercial fishing licences prior to the 1990's (note that such licences were available to any person at a cost of \$2 per licence). Every effort should be made to prevent a repeat of history, so as to avoid the need to implement future structural adjustment programs for new fisheries. **The Review Team recommends that extreme caution should be exercised by the Government when considering new developmental fishery authorizations.**

The policy for developmental fisheries should cover issues relating to equity in the allocation of new access entitlements, appropriate environmental assessment, obligations of proponents, resource sharing (where relevant), precautionary development of resources, the need for research and information gathering and cost recovery, among other things. The finalization of a developing fisheries policy is a matter that could be picked up by the proposed MFAC as part of its work program.

However developed, **the Review Team recommends that work on developing fisheries proposals/authorizations doesn't draw valuable Departmental resources away from higher priority fisheries management issues, given the amount of work still to do to adjust and manage NSW's main commercial fisheries.**

3.6 Structural Adjustment Program

Provide advice on the most appropriate structural adjustment program to meet the objective of bringing into effect property rights through share management and facilitating fishing business and share class buyouts in a timely fashion.

Structural adjustment in the case of fisheries usually refers to a shift in resource allocation to lower cost producers to achieve improvements in economic efficiency and net economic returns. Such actions may also improve biological outcomes. As outlined above, this should ideally occur autonomously of any Government intervention, as an industry response to external pressures such as those from the market, resource user conflict, stock abundance and management measures.

In some instances, usually around the time of a major change in management (e.g. the Securing our Fishing Future Package in Commonwealth fisheries⁴) a structural adjustment package is introduced to promote an increased rate of adjustment relative to the rate that would have otherwise prevailed. In the case of NSW, the proposed restructure of NSW fisheries based on proportional access (linking shares) as a response to Government failure during the previous share allocation process would constitute such a change and, given the current structure and circumstances of industry, justifies Government intervention to facilitate adjustment. The benefits of share linkage to the community are that the risks to the sustainability of fish stocks are reduced and the persistence of low economic returns from the management of fisheries resources over a prolonged period is avoided.

In recognising the need to address the structure of fisheries more comprehensively, the NSW Government has decided to allocate funding for a targeted structural adjustment of the commercial fishing industry to “...fully bring into effect property rights...” and, in so doing, “...secure the future viability, jobs and the long-term sustainability of NSW’s important commercial wild harvest fisheries”⁵. On the basis of this policy statement, the Review Team has interpreted the overall objectives of a structural adjustment programme are to:

- ensure the ongoing sustainability, and where necessary the rebuilding, of fish stocks;
- maximise the long term viability and economic efficiency of commercial fishing operations; and
- ensure the ongoing supply of NSW seafood to consumers.

The proposed programme will provide a mechanism whereby the most efficient fishers can increase their access by acquiring other fisher’s shares in preparation for proportional (linked) access, thereby allowing access to the resource to flow to least-cost businesses while and providing a smooth exit path for others.

In undertaking such a programme of structural adjustment, the Review Team observes the somewhat countervailing commitment provided by the current NSW Government of “...increasing the number of jobs in the seafood sector”⁶. The intended outcome of structural adjustment under the above objectives will result in a smaller number of fishers, but with more secure, valuable and tradeable rights, accessing healthy fish stocks. That said, and based on experience elsewhere, a more economically viable and stable industry will open up opportunities for job creation in associated activities such as value adding and marketing.

This section of the report suggests a way forward for the structural adjustment of NSW fisheries, including a number of indicative recommendations. The use of the term ‘indicative’ relates to the complexity of NSW fisheries and the view of the Review Team that further analysis should occur during the 18 months after the initial announcement on the specific implementation details of the structural adjustment package.

3.6.1 Current structure of the fishery

Before consideration of the structural adjustment process it is useful to consider some key elements of the current structure of the industry in the case of the five Category 1 share management fisheries of interest (EG, EPT, OH, OT and OTL).

⁴ The \$200 million plus package was intended to address factors affecting the sustainability of the Commonwealth's fish stocks and the profitability of the fishing industry. These factors included overfishing, excess fishing capacity and economic and market pressures. Its primary component was a structural adjustment package.

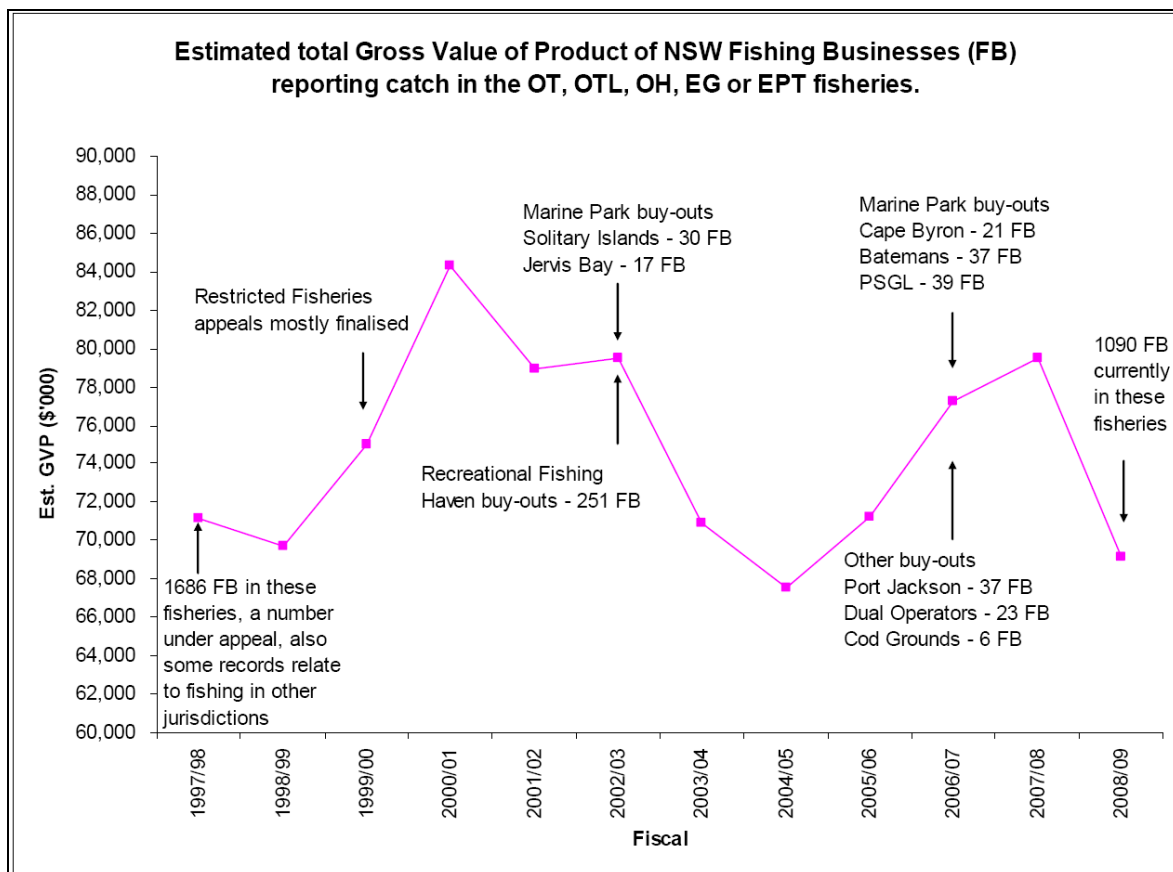
⁵ NSW Liberals and Nationals Fisheries Policy - *Securing sustainable viable and healthy fisheries*.

⁶ *Ibid.*

Fishing businesses (see Section 3.6.5), which restrict the overall number of operators in NSW fisheries, have reduced substantially between 1997 and now, from around 1700 to 1100, primarily as a result of buyouts associated with the implementation of Marine Parks and RFHs. The degree to which these buyouts removed, rather than displaced, effort was extensively questioned in submissions and during port meetings. The degree of latent effort certainly provided opportunities for fishers to buy back into the fishery, and place pressure on adjacent waters. Data presented in Figure 1 appears to broadly support this concern, since despite the reduction in the number of FBs, the value of production been largely maintained up until recent times⁷.

Some progress has been made over time with the amalgamation of entitlements, including (i) amalgamation of FBs under the 1994 and 1996 licensing policies, (ii) application of the unitisation scheme in the OT fishery, (ii) implementation of transferability requirements for FBs in the five nominated fisheries, and (iv) consolidation of shares in the OT and OTL fisheries due to minimum shareholding increases.

Figure 1. Estimated total Gross Value of Product of NSW Fishing Businesses' reported catch in the OT, OTL, OH, EG, or EPT fisheries



Latent effort can be defined in many ways, but for the purpose of this review, is defined as the number of FBs that collectively report a catch of less than 5% of the total catch. In most NSW fisheries, the levels of latent effort are very high. Examples include:

⁷ Care should be taken in interpreting this graph, In some sectors numbers of active FBs and effort has gradually and continually decreased and although catch rates have increased total fishery production has in fact dropped.

- of the 583 FBs reporting EG catch in any region over the five years from March 2003, 225 FBs reported a catch of <5% of the total catch; and
- of the 383 FB reporting OTL catch in any region over the five years from March 2003, 180 FBs reported a catch of <5% of the total catch

Over the same time period (five years from March 2003), 17% of the 1068 FBs reported no catch at all.

Table 1 provides an indication of latency across the fisheries of interest. The column headed 'Latency' provides an indication of the level of overcapacity by share class. For example, in share class EGMC4 (Estuary General Mud Crab Trapping Region 4), of a catch valued at \$1.16m, 95% was attributed to 33 of 84 operators, or put another way, 61% of the endorsed fishing businesses account for less than 5% of the total GVP in that fishery.

Table 1 Latent effort in EG, EPT, OH, OT and OTL fisheries.

Endorsement	GVP	*Act FBs	**95%	Latency	Endorsement	GVP	Act FBs	95%	Latency
				%					%
EGC1H2	898,044	26	9	65	EGP7	366,628	32	16	50
EGC1H4	2,329,687	51	16	69	EGT3	200,735	29	13	55
EGC1H5	593,882	15	5	67	EGT4	986,014	84	30	64
EGC1H6	897,887	17	5	71	EPTCR	1,789,656	95	41	57
EGC1H7	117,789	13	4	69	EPTHAR	2,104,095	56	28	50
EGC2H4	359,418	51	3	94	EPTHUR	537,289	27	17	37
EGET2	154,287	39	11	72	OHG1	345,049	14	1	93
EGET4	180,762	52	8	85	OHG2	234,418	31	6	81
EGHG1	214,256	15	4	73	OHG3	2,546,764	42	15	64
EGHG3	1,053,481	27	20	26	OHG4	4,599,195	106	34	68
EGHG4	583,294	34	10	71	OHG6	142,280	32	3	91
EGHG5	129,500	1	1	0	OHG7	1,159,058	35	6	83
EGHG6	411,040	12	6	50	OHGN4	512,733	21	7	67
EGHG7	178,402	5	3	40	OHGN7	169,387	11	3	73
EGHHC2	271,115	132	17	87	OHGPN1	550,387	6	1	83
EGHHC4	1,269,330	191	20	90	OHGPN3	213,797	25	3	88
EGHHC5	280,026	54	6	89	OHGPN4	1,205,278	49	11	78
EGM1	674,232	36	15	58	OHGPN6	362,596	13	2	85
EGM2	3,633,430	104	42	60	OHGPN7	823,780	14	3	79
EGM3	1,313,377	53	27	49	OHPAB1	370,756	5	2	60
EGM4	7,606,055	167	94	44	OHPAB4	124,636	5	2	60
EGM5	691,880	45	14	69	OHPS	11,661,636	15	7	53
EGM6	1,621,402	48	25	48	OTFN	8,214,506	46	16	65
EGM7	938,873	34	12	65	OTISP	11,213,955	199	48	76
EGMC1	774,983	19	12	37	OTLD	8,110,595	208	59	72
EGMC2	907,959	47	28	40	OTLLE	2,224,482	80	25	69
EGMC3	1,864,890	45	28	38	OTLLW	10,727,153	336	137	59
EGMC4	1,156,623	84	33	61	OTLSCN	1,351,511			
EGP1	117,967	21	11	48	OTLSG	360,612	20	3	85
EGP2	456,577	97	25	74	OTOSP	19,322,898	173	66	62
EGP4	2,608,917	153	68	56					
EGP6	810,241	39	14	64					

NB: Values cited here are totals from the catch reported in 2009/10 and 2010/2011 and are based on prices from SFM and should be used as an approximate guide only (businesses with a GVP<\$5k per annum are omitted).

* Number of FBs with some shares of that class.

** For two years, this number of FBs produced 95% of GVP.

Skewed distribution of catch has occurred in most fisheries with a flat (equal) allocation of shares, with a small number of FBs landing the majority of catch. This is the major impediment to linking shares to proportional access. Examples include:

- i) In the EG fishery, Region 2 Meshing component 21 FBs (of 104 entitled to catch) landed 80% of the total catch; and
- ii) In the OTL fishery, Line Fishing Western Zone component 79 FBs (of 336 entitled to catch) landed 80% of the total catch.

Figures 3 and 4 provide a graphical representation of the relatively flat level of shareholdings of each FB in the two examples listed immediately above, compared with the average annual GVP for each of those FBs.

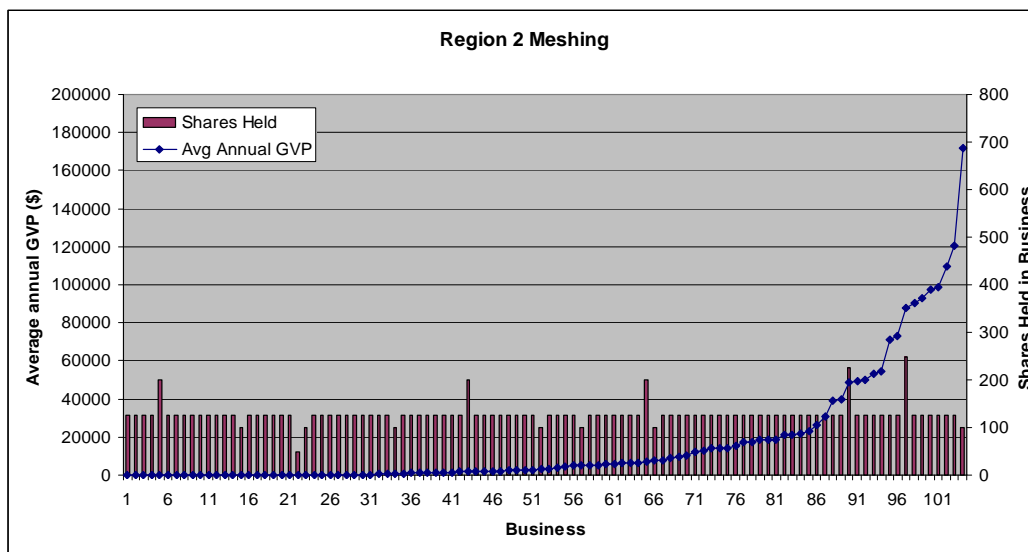


Figure 3: Relationship between numbers of shares held and average annual GVP for each of 104 EG Meshing (Region 2) businesses between 2009/10 and 2010/11.

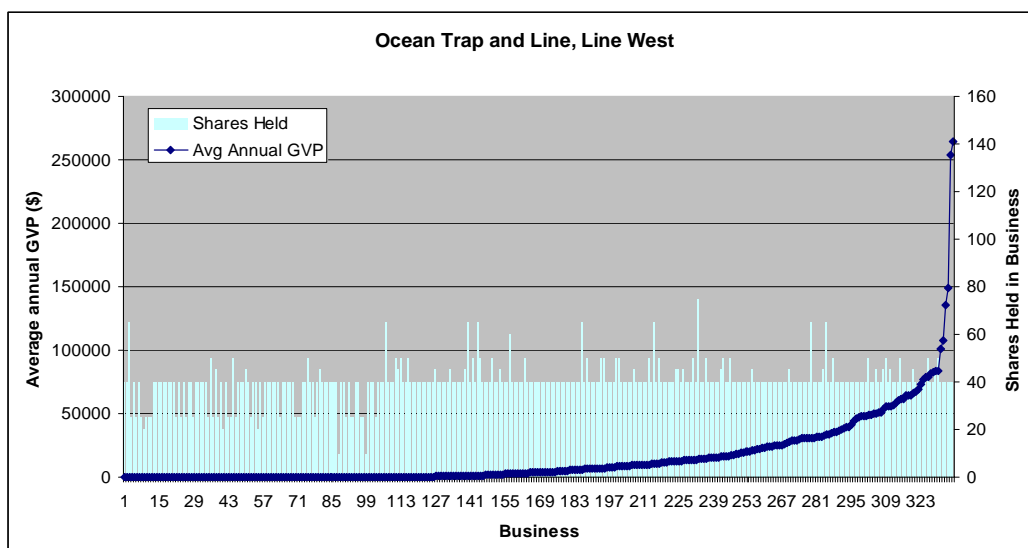


Figure 4: Relationship between numbers of shares held and average annual GVP for each of 336 OTL FBs between 2009/10 and 2010/11.

Note that few of the FBs shown in Figures 4 and 5 have shareholdings above (or below) the number required for an endorsement to operate, since there is little benefit in doing so in terms of additional proportional access. In each of the two examples, there are a large number of FBs with little or no GVP (catch), while there are a few that have very high earnings.

There is no doubt that linking shares to output (or effort proxies) would drive structural adjustment without need for a structural adjustment program, but this approach would be highly inequitable. Some individual fishers would require substantially more than their present number of shares to allow them to maintain their present level of catch. Very few of them (if any) could afford to buy that many shares, so linking shares will effectively force them out of the fishery unless the share acquisitions are subsidised in some way.

Low revenue per fishing business. In the two most recent fiscal years, median annual revenue from fishing was about \$28k. The top 10% of FBs all exceeded \$150k per year and the top 20% all exceeded \$87k.⁸

Disaggregated management structure. The fact that multiple share classes (mostly method based) apply across single biological stocks creates a significant challenge for ensuring both stock sustainability and industry efficiency. An obstacle to autonomous structural adjustment in the five NSW commercial fisheries of interest is the existence of 103 different classes of shares across 7 regions which, combined with poorly defined property rights, has led to thin (more than 10% of share classes with five or fewer shareholders) and non-transparent markets in terms of there being few buyers and sellers at any particular time. It should be noted that the proposed restructuring strategy will not address this issue fully, other than removing/merging a very limited number of share classes.

There is little doubt that there is an unacceptably high level of capacity (incl. both latent and active effort) as highlighted by comprehensive environmental impact statements. This is symptomatic of a misallocation (too many endorsements to fish) arising from poor rights allocation decisions in the past and the resulting inability of industry to adjust to become more competitive and profitable.

3.6.2 Property rights in NSW Fisheries

Strong property rights, such as those based on ITQs or ITEs, are fundamental to contemporary fisheries management, as was envisaged under the Act. A strong right may be transferred (traded) efficiently between businesses, enabling those that wish to enter or exit the fishery, or expand or reduce their operation, to do so with the right incentives in place.

In the case of the five Category 1 share management fisheries of interest (EG, EPT, OH, OT and OTL), a combination of excess fishing capacity (no. of fishers/amount of gear) and associated entitlements, combined with relatively complex management arrangements and the introduction of a number of RFHs and MPAs, has resulted in very weak property rights, poor or non-existent economic incentives to trade and the lack of an efficient market. This has resulted in an inability for industry to structurally adjust autonomously. As one EG fisher put it fishing capacity has grown to the point where "...fishers (are) holding shares they struggle to derive a living from that they cannot sell for a reasonable price to enable them to exit the fishery – a poverty trap".

Four basic characteristics of a property right in fisheries need to be in place (see Table 2) to allow continuous, autonomous structural adjustment to work effectively: security, exclusivity, duration and transferability. The table below describes the current status of shares in NSW fisheries with respect to these characteristics.

⁸ These figures (sourced from Fisheries Division) are likely to be underestimate due to under-reporting and the fact that regional prices can often exceed SFM prices upon which the figures are based

Table 2: Basic characteristics of a property right in fisheries

Characteristic	Description	Current situation in NSW
Security	Associated with certainty and the ability of the right-holder to withstand challenges of others to the right.	Some degree of security provided; further shares of the same class cannot be issued and shares cannot be cancelled without compensation. RFHs and MPAs have reduced security considerably as significant areas within the established SMFs have been excluded without payment of statutory compensation (though discretionary ex gratia payments were made).
Exclusivity	The ability to hold and manage the right without outside interference (including unreasonable management controls) and exclude other fishers from using the resource.	Very weak in some fisheries; effects of the flat allocation of shares and displacement from closed waters has resulted in reduced fishing opportunities and profitability, and increased competition. Complex input controls, including gear, time and area restrictions have reduced options/removed incentives for developing more efficient operations. Lack of a formal resource sharing framework means that uncontrolled changes in catch levels by other harvest sectors can have a direct effect on the value of commercial fishing rights. High levels of latent effort across many NSW commercial fisheries mean that new fishers can enter and compete at any time.
Duration	The time-span of the property right, the period during which the holder may exercise powers of ownership.	Relatively strong unless significant areas taken away through RFHs, Marine Parks or other reasons. Automatic right of renewal. Need to comply with changes to management plan, but basic share not changed.
Transferability and Divisibility	Ability to transfer the property right to another. Exclusive rights infer scarcity and acquire value, with demand and transfers occurring. Divisibility enables rights-holders to tailor holdings to particular needs and abilities, and thereby attain optimum allocation of the resource between exclusive users.	Somewhat restricted. Current rules have enabled a transfer of shares without the need to purchase entire FBs, but once transferred, now easier to restructure a business in terms of access to share classes. For many fisheries it is impossible to build tangible access entitlements by acquiring shares that exceed the minimum required.

In summary, shares in the NSW fisheries of interest are a relatively weak property right and consequently they have a relatively low value. This, in turn, has restricted trading and prevented operators from becoming more efficient, and made it difficult for those who wish to exit the fishery.

The rights conferred by some share classes, such as EG Handline and Hauling Crew shares have little value, or, more importantly, purpose due to the nature of the right (e.g. nearly all EG fishers hold Handline and Hauling Crew shares and so they are not exclusive). These sorts of share classes should be considered for consolidation or removal.

Resource sharing is a particular concern raised repeatedly by industry in submissions and during public meetings. As one shareholder put it: “the value and resource access provided by the shares in the limited entry commercial fishery cannot be ascertained nor is security over their right achieved until a broad resource sharing policy is implemented by NSW DPI and provided in legislation” (see Section 3.4 for additional discussion of resource sharing).

Strengthening property rights will be essential to address the ongoing problems that are impacting NSW fisheries and it is the key element of the structural adjustment package. Once this is achieved and rights are relatively well defined, autonomous structural adjustment is more likely to occur.

3.6.3 Share management

As discussed previously, the original intent of share management fisheries in NSW was to define the State’s fisheries and link and allocate shares to commercial fisheries based mostly on catch history, to create well defined and strong, transferrable fishing rights. This did not occur.

For the five fisheries of interest, a large number of share classes were developed which, in effect, became separate fisheries in terms of the way in which the shares operate as fishing rights. While relatively well defined in terms of a method or area, almost all were not well defined in terms of a share of resource access, expressed either in terms of levels of inputs (gear) or outputs (catch).

To be effective, shares within each share class should be well defined and provide proportional access either in the form of an individual right to:

- take a given quantity (quota) of fish of one or more species (basket quota) - **the ITQ share**;
- or
- use a given quantity of effort, which acts as a proxy for a defined level of catch. In this case access would be in the form of an individual right to use a given quantity of gear (or other fishing effort), usually for a specified time period - **the ITE share**.

In effect, effort controls are merely a proxy for output controls – the aim is to limit output to achieve a target catch. In some cases quota systems (TACs) are too costly and input controls are the management tool of choice.

In the case of both ITQs and ITEs, the property right inherent in the share should infer scarcity and value, leading to trading to enable fishers to modify the size and structure of their businesses over time to suit their own economic circumstances and fishing opportunities.

In theory, it would be possible, and legal, for the Government to declare a linkage across all fisheries between shares and effort or catch in a directly proportional manner, where, for instance 10 shares in a 100 share fishery would result in the share being an entitlement to take 10% of the allowable catch or effort, subject to other necessary input controls (e.g. size limits etc.). Once proportional allocation occurs and catch/effort limits are set at constraining levels, trading of ITQs or ITEs, under certain restrictions, generally follows and a process of autonomous and ongoing structural adjustment becomes established. There are key reasons for why a share linkage should not occur immediately, but happen only after a well-considered structural adjustment process:

- **the equity issue** - industry is in the position it is now due to policy inconsistency and a failure of Government to implement share management as envisaged in the original discussions and decisions;
- **the severe social costs** that would occur, particularly to those in share classes who have generated recent activity and earnings relative to inactive fishers; and
- **political sensitivity**, given the widespread hardship and inequity resulting from the change.

The Review Team, nevertheless, considers it essential, wherever practical and cost effective, to create proportional access linked to shares; thereby making shares the currency of the fishery and building an economically and biologically secure fishery for the future. In a limited number of cases

proportional access may not be immediately possible, and a simpler linkage option should be pursued based on limiting endorsement numbers (as a direct proxy for output) using minimum shareholdings.

As indicated above, the greatest hurdle to linking shares to catch/effort is the disparity between the current level of shareholding and the catch history associated with them.

3.6.4 Restructuring- benefits and approaches

While it is accepted by most sectors of industry that some action is necessary to address the current situation, the cost and hardship associated with disentangling the current fisheries management problems in NSW through a structural adjustment package have caused many to question whether such a process will be worthwhile.

The main benefits of proceeding with structural adjustment as a priority are provided below.

Increase certainty. A strong and clear decision on structural adjustment will address the current confusion, uncertainty and state of limbo that many operators find themselves in.

Strengthen property rights. Linking shares to provide a proportional access right will increase their value and drive structural adjustment. Shares in most NSW fisheries now have uncertain or little value as access rights and collateral and accordingly are not being traded in the way intended to enable the industry to adjust and become efficient.

Improve economic performance. An effective structural adjustment package will facilitate business consolidation, thereby enabling individuals to arrange their inputs (gear, time etc.) in a way that improves profitability. While some individuals are doing well, the majority are struggling to achieve profitability and maintain their vessels and gear: “We need more net/traps/hooks to be able to work legal”⁹ (EG fisher). Given the rising costs of operation and competition from other domestic fisheries, aquaculture and imports, it is important that operators are able to optimise their profitability and, as appropriate, invest in assets (shares) that have a more certain future value.

Encourage those who wish to leave the fishery to do so. Economic incentives using both Government and industry contributions (grants), combined with a clear view of the future operating environment, will provide the incentives for fishers to exit the fishery. The phased introduction of a comprehensive cost recovery policy will be an important element of establishing an incentive structure. Currently the flat and modest fee structure effectively subsidises the holding of multiple and unused share classes, which is essentially the opposite of what the structural adjustment programme seeks to achieve

Reduce costs of management. When controls are associated with allocations, capped and linked to shares then many other controls can be removed. The resulting restructured, simplified, more profitable and compliant (with regulations) fisheries will reduce the cost burden of fisheries management on the community and, under a future cost recovery scenario, industry. Further opportunities for cost reduction may be available using technology, self-entry of data and other similar initiatives. When the number of endorsements in particular share classes are reduced to more realistic levels, further changes to promote efficiency and reduce costs will be possible.

Ensure biological sustainability. The structural adjustment package recommended in the Review will efficiently add further protection to fish stocks by enabling more direct control on fishing mortality. In many NSW fisheries, there is a need to remove the threat of potential damage to sustainable and viable fisheries by the activation of latent fishing effort.

⁹ On a number of occasions during consultations with industry a surprising level of candour was displayed concerning the illegal use of excess fishing gear (over and above licence provisions). Many felt the management system had failed completely, and the only option open for survival was to fish with additional gear (e.g. longer meshing nets) and risk prosecution.

Increased voluntary compliance. When rights become better defined, there will be a greater incentive to ‘do the right thing’ (or report those that are non-compliant) and protect increasingly valuable assets. This will help eliminate the problem of fishers openly defying regulations by using excess fishing gear due to an inability to adjust businesses by investing in additional rights.

The costs to industry will largely be felt at the individual level, particularly during the restructuring process. Put simply, the rights to the fishery have been given away to too many, and there will be considerable hardship, even after subsidies are applied, in moving towards an appropriate number of endorsements matched to fishing opportunities.

As the majority of submissions concluded, doing nothing is not an option, and the Review Team agrees and suggests that a programme of active structural adjustment, assisted by Government is necessary.

The Steven’s 2007 report, the TORs for this review, and the Coalition’s Policy Statement provided the Review Team with some guidance with respect to the form of the restructuring package to be considered. These approaches were based on using the current shares and a range of measures to provide incentives to consolidate shareholdings, rather than more radical approaches involving cancelling or redefining shares. The Review Team gave consideration to a number of alternative approaches, which are summarised in Table 3 below. It should be noted that some elements of these approaches have merit and are envisaged under the recommendations of the Review.

Table 3: Alternative approaches to structural adjustment

Alternative approach	Conclusion
Cancellation of some or all share classes and re-issue of shares, as provided for under the Act, based partly or wholly on recent catch history.	Would be untenable primarily due to cost, time and administrative complexity considerations, in addition to legal challenges. Cancellation only may be viable with regulation change for one or two share classes.
Use of current (or revised) provisions in the Act (esp. ss.44 and 45) to redefine SMFs and issue species specific shares by converting current shares to 'species' shares based on criteria including relative quantity and value.	Potentially a more comprehensive solution. Substantial legal challenges likely from those who have purchased existing shares. Gear management still required for species shares to manage high impact gears. Basis for re-issuing shares likely to be complex and problematic if catch history used (previous messages, validation, appeals, regulation). Particular problems for multi-species fisheries. Some of the benefits of this approach will be captured by linking selected share classes to output access rights. The Review TORs, Coalition’s Policy Statement and SRG did not support ‘going back to the drawing board’ and all suggested an approach working with, and around, existing structures.
Allocate quota for main species, based on existing shares and subsidise purchase of quota by active fishers.	Is considered optimal for some situations (e.g. sea garfish) but for most species the resulting allocation would crystallise the maximum distortion currently in place and would rapidly use any Government subsidy. Also reduces time and flexibility for business to restructure. Use of quota in small, multi-species fisheries likely to be cost prohibitive.
Use minimum shareholdings alone to reduce latency and avoid link between shares and access.	Does not allow businesses to adequately tailor access to business needs within a share class and forces diversified businesses to hold a full access right for all activities. Sustainability issues would not be fully addressed, or make them more complicated to deal with, due to continued ‘loose’ linkage between individual fishing effort and catch. Cheap/effective in initial stages but could become costly as demand for shares rise over time and may be unduly costly to active fishers who wish to remain in the fishery.
Cancel shares associated with latent (e.g. those unused for the last five years) endorsements without compensation.	If possible, would assist with structural adjustment, but does not deal with creation of an autonomous adjustment mechanism. Not possible under current Act and contrary to security principles underpinning Category 1 shares. It also has equity issues and is contrary to past Government and NSW DPI commitments to industry (i.e. no more ‘use it or lose it’).

In consideration of the above, the Review Team considers that approaches involving restructuring based on current shares as allocated and an incentive-based package, involving exit grants, would be the best approach.

The Review Team is very aware of the significant differences between fisheries, and that the degree to which structural adjustment is necessary varies considerably between individual share classes and regions. This is why it has suggested that structural adjustment be approached at the share class level, while acknowledging the context of the overall fisheries within which share classes exist.

The next sections of the report are arranged to reflect recommendations on the three key actions suggested by the Review TORs, namely:

- the removal of fishing businesses;
- the buy out of shares; and
- linking shares to fisheries access.

3.6.5 Removal of fishing businesses

Recommend the number of fishing businesses that should be removed through the payment of exit grants, in order to achieve a viable and sustainable commercial fishing industry in the medium- to long-term.

In a well-managed fishery where rights are tightly linked to the level of access, there is no need for a control on the number of FBs, since the market will decide how many businesses are appropriate. Before consideration of the removal of FBs, it is necessary to consider the nature of these businesses in NSW, the degree to which they are an effective management/administrative measure, and their possible role in the future.

The concept of 'fishing businesses', as a management tool, had their origin at the time of the introduction of restricted fisheries. Their original purpose was to establish an administrative entity on which to attach endorsements and boat licences. They replaced (and to some extent incorporated) the concept of a Recognised Fishing operation (RFO) or Fishing Operation (FO) from the 1994 and 1996 licensing policies. The main benefit of the FB under that scheme was to prevent the splitting (separation) of entitlements to multiple operators, thus limiting potential effort and catch, albeit at a relatively coarse scale. If shares were linked to access, fishers would eventually trade their way to efficient scales of operation, which would determine the optimum number of FBs automatically.

The DG has responsibility for determining decisions concerning FBs and there is no compensation payable on their removal, unlike shares issued under the Act (s.34(O)).

Past buyouts in NSW of commercial FBs have offered generous terms, whether due to RFHs or to MPAs. Buyout processes have focussed on active businesses operating in the areas being closed and have generally paid above-market rates for cancelling fishing entitlements. This led to many commercial fishers accepting a Government offer for their entitlements and then purchasing a similar, at times inactive, business for much less than the amount received. The most recent buyouts for Marine Parks included agreements whereby FB owners who accepted buyouts were restricted in their operations in the fisheries they were removed from for a period of five years, to reduce effort flowing back into those fisheries. While the extent of the return of fishers after taking a buyout is not accurately known because business structures are often difficult to untangle, best estimates (from the Department) are in the 11-20% range.

At the time of writing, FBs are estimated to have a reported value of something of the region of \$10k-\$20k. Primarily the market has established this value because they are a limited commodity and can be useful in terms of acquiring and then building access to the industry. The current valuation has also been influenced by the level of ex gratia payments made at the time of the buyback arrangements for RFHs and Marine Parks, including the Port Stephens-Great Lakes and Batemans Marine Parks (\$20k minimum for a business and associated entitlements).

The current number of FBs is still considered to be excessive¹⁰ relative to the available fishing opportunities. Many FBs are inactive and have been retained due to (i) a lack of buyers, and (ii) as a speculative investment, in anticipation of a buyback arrangement. It is worth noting that both these rationales are based on the current level of uncertainty.

While there was some support from stakeholders for the purchase of a specific number of FBs, the Review Team could not agree with this course of action, as implied in the TOR (i.e. pre-determining a precise number of fishing businesses to be purchased through any buyback mechanism). Instead, the Review Team observes that an approach based on structural adjustment and rationalisation as recommended later in this section would provide a far superior outcome. The exit grant process implemented in 2010 aimed at achieving the removal of up to 100 FBs, using the \$1.5m available as an incentive for FB owners to sell off their shares. Only 17 businesses exited through that process and some concern has been expressed that the exit grant process proposed below will fare little better. The Review Team is of the view that there are considerable differences between the two processes. These include the facts that:

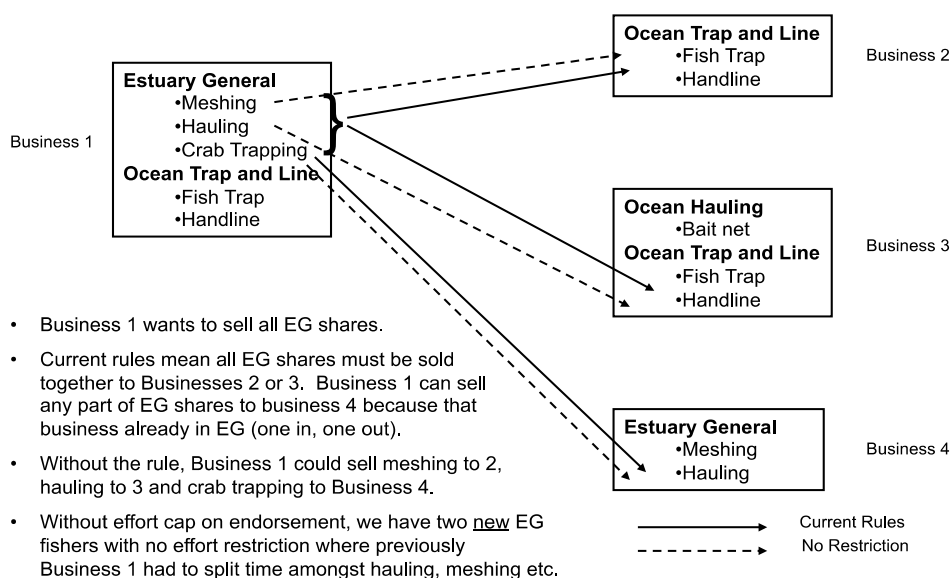
- the proposed exit grants will be part of a more comprehensive and better funded structural adjustment process; and
- there will be a greater level of certainty regarding the introduction of cost recovery and share linkages.

Given the past track record of Government decisions in relation to share management, it will be a challenge to get fishers to believe that the announced changes will occur; such belief will be fundamental to the success of future exit grants. Further, there have been several attempts at developing and implementing a comprehensive cost recovery scheme, all of which have not eventuated. The development of a cost recovery policy (suggested to be a priority action of the proposed MFAC) and the introduction of increased management charges (on a flat basis) early in the restructuring period will be pivotal to the success of the restructuring programme. The costs recovered from those holding shares, irrespective of whether or not they are active, will induce holders of inactive shares, from which they are deriving little or no income, to offload them.

Fishing businesses are currently used as a major effort control tool. Their premature removal before effective alternative management arrangements (e.g. linkages with appropriate TACs/TAEs or an appropriate number of endorsements in a given share class) are in place would be inadvisable and would likely lead to an unsustainable blow-out in effort in some share classes, as shown in the example below (Figure 4).

¹⁰ See the Environmental assessments undertaken 2001-2006 for major fisheries in NSW. This view was overwhelmingly supported by submissions to the Review Team.

Figure 2: Example of how trading rules prevent effort blowout.



Recommendation 6.1: Fishing businesses should cease to have a role as a management tool to limit access once linkages (to catch, effort or a limited number of endorsements) are in place.

3.6.6 Buyout of shares

Identify shares or share classes that could be considered ‘latent’¹¹ and/or ‘over-allocated’ and recommend priorities for the buy-out of shares.

Stakeholder opinion concerning latent effort was mixed. For many, latent effort was not seen as a problem, since, by definition, it was inactive, and that structural adjustment monies should not be spent purchasing it. Others, representing a majority of the comments received in submissions and during meetings, were strongly of the opinion that there was a need for a reduction in the number of shares/latent entitlements.

Latent effort is more commonly defined as effort that is not currently deployed in a fishery, i.e. where there are shares and/or vessels that are entitled to be used in a particular fishery, but for a variety of reasons fishers have not chosen to use them. The key reason is simply that there is no extra profit (over and above other economic activities) to be made in the fishery given current stock and effort levels. If this latent effort is relatively large and becomes ‘active’, it may be sufficient to move the fishery from a sustainable to unsustainable status or, more commonly, threaten the viability of businesses that have remained active on an ongoing basis. Recent concerns have been expressed that in times of high abundance of certain species or high prices, excess effort is being attracted, reducing the ability of those who focus/invest in a particular fishery to benefit ‘from the good times’.

¹¹ For the purpose of this report and in the interests of simplicity and past communication with industry, latent effort is discussed in the context of ‘not active’ effort or those businesses that (i) do not contribute to production, or (ii) contribute up to 5% of total effort in combination. Note that this definition only makes sense at a business level, not down at the share class level.

The following example typifies the problem.

Prawn ballot - activation of latent capacity

Every month (full moon) in EG Region 4 a ballot for positions takes place for the use of set pockets to catch prawns. There are approximately 160 EG region 4 Prawn share class endorsement holders. In the case of the Myall River, approximately 30 fishers will usually contest the ballot. As good quantities of prawns have been caught recently the number of fishers (share holders) entering the ballot has expanded rapidly and in the last 2 ballots 90 or more fishers have contested the Myall River prawn ballot.

Latent effort is not necessarily associated with over-allocation, and varies considerably between fisheries. In the case of mesh netting there was substantial misallocation of shares but there is a low level of latency due to ease of entry and low costs of operation. In some sense it is the activity that 'everybody does' in the EG fishery.

Current sustainability effects of fishing are probably manageable provided the combined commercial and recreational catches remain within historic levels. However, under the current management arrangements there is the potential for commercial fishing effort to significantly increase due to the lack of appropriate effort control mechanisms. The past response to manage this risk has been to impose further input controls (such as gear constraints), but this approach simply reduces the operating efficiency of industry and should be replaced by the use of more direct catch and effort controls.

Activation of latent effort will result primarily due to increases in revenue (e.g. catch rates and an increase in market price) or reductions in cost (e.g. through improvements in technology or techniques) leading to an increase in short-term profitability. Other drivers (most of which are related to profitability) that will tend to activate latent effort are:

- ***changes in other fisheries*** which are part of diverse fishing packages, specially in the EG fishery;
- ***low recruitment and/or abundance in other fisheries or areas*** leading to an increase of effort in particular fisheries and/or gear types;
- ***high recruitment and/or abundance*** leading to a dissipation of profits that would have gone to 'local' or 'long term' fishers; and
- ***shareholders selling or leasing their fishing entitlements*** to more efficient/active fishers.

The initial misallocation, and now distortion (in terms of the level of recent fishing activity vs. size of shareholding) of shares in NSW fisheries provides a considerable short-term, largely social, barrier to adjustment - in particular the ability to link shares without major disadvantage to some operators. Latent effort also presents a threat to the economic viability of ongoing operators by dissipating short-term profits and, in some cases, to sustainability. Once shares are linked the latent effort issue will no longer be a concerning factor.

The Review Team does not recommend that Government/industry purchase shares through a buyout. It believes, as discussed below, that such an action would put upward pressure on share prices and not be a good use of scarce resources, and that creating an incentive framework to encourage the aggregation of shares to address the current misallocation and distortion would be a more effective restructuring process.

3.6.7 Linking shares to fisheries access

Assess and make recommendations on how shares in the following five share management fisheries should be linked to fishing access (output or input) – the Estuary General, Estuary Prawn Trawl, Ocean Hauling, Ocean Trawl and Ocean Trap & Line fisheries.

As discussed previously in this and previous reviews, and laid out in the original share management strategy, it has been widely acknowledged that linking shares to access is essential. The Review Team notes that there were a number of stakeholders vehemently opposed to this approach, and structural adjustment in general, on grounds that included:

- having to pay money (which they would have to borrow to purchase shares to be assured of the minimum share (gear/quota) to operate in a restructured fishery based on linkages ('buying my business back');
- the number of current operators eligible to operate in a fishery would be reduced;
- fish supply would be reduced;
- cooperatives would be driven to the wall; and
- there is no need to undertake such a linkage, since the status quo with respect to shares coupled with some adjustments (e.g. upgrading of gear entitlements etc.) would be sufficient to achieve structural adjustment and increase profitability.

However, as envisaged by the TORs and in the opinion of the Review Team, it is essential to link shares to resource access in the form of catch or fishing effort. The importance of defining the total effort to be applied, or catch taken, in each fishery and then linking shares to these caps is central to efforts to address the ongoing problems and management paralysis that has afflicted most NSW fisheries for more than 20 years.

'Linking' has taken on a specific meaning in documents relating to NSW fisheries and refers to the linking of shares to finer scale access such as gear/time units and quota, which would form the basis of trading system to allow operators to adjust their quota or effort holdings to maximise their efficiency. The TORs for this review are clear that linkages should occur within all NSW fisheries using this specific meaning.

As the Review Team progressed its work it became clear that in some cases, and in particular the OT fishery, it may be possible to use minimum shareholdings to drive the number of endorsements to a level representative of that required to produce Maximum Sustainable Yield, or some meaningful proxy. In this sense, the access right (endorsement) would be linked to the minimum number of shares required to operate. This limited number of endorsements, combined with gear/vessel restrictions would allow for a relatively simple form of management akin to the Spencer Gulf Prawn fishery – an acknowledged example of good fisheries management.

Recommendation 6.2: That shares in each fishery be linked directly to resource access in the form of catch or fishing effort to achieve the biological and economic objectives of the Act.

A direct linkage between shares and access rights should:

- enable industry/Government to directly achieve resource conservation goals with management measures that will be effectively constraining;
- promote access to the most efficient operators using the price mechanism in the share market created by directly linking shares to a scarce resource. This will enable fishers to modify the size and structure of their businesses over time to suit their economic circumstances and respond to external drivers as described above; and

- in the longer term, result in the number of operators within each sector of the fishery matching the availability of fisheries resources, bearing in mind external drivers such as the market.

While the logic of linking shares to access is clear, achieving such a linkage in a way that addresses economic (efficiency) and equity impacts is daunting. There are substantial disparities in the number of shares held by individuals and the level of catch, particularly with fisheries with 'flat' (equal) allocations and/or gear restrictions, which have already been discussed. The example below typifies the problem.

The problem with linking shares – view from an OTL fisher

“If shares, in their current form are linked to catch and effort in any way it will be the end of the fishery I am involved in. If shares are linked to catch or effort, those currently operating will be forced to buy up shares from the latent and inactive shareholders and it will require those who are active and currently viable within the fishery to buy up enough shares to keep operating at their present level. This would in most cases require a full time operator (in the fishery in question) to buy his job back at least ten times over. This would leave a currently viable and active fishing operation in an impossible uneconomic situation”.

The suggested approach below does take account of this issue and seeks to address, to the extent possible, some of the problems faced by fishers such as the individual whose view is clearly articulated above. This will involve using a range of incentives to facilitate a transfer of shares from inactive to active fishers before the link commences.

Stevens’ 2007 report provided a range of options for linking shares to resource access and the Review Team has adapted this to current circumstances and a revised table of options is provided in Table 4.

Options for linking of shares to resource access

Fisheries management experience has shown that in general, output controls, based on species quotas, are the preferred means of managing fisheries. However, there are legitimate circumstances (e.g. costs of establishment and ongoing costs such as compliance, and in some multi-species fisheries that species-based output controls are not appropriate). Some well defined proxy for output in the form of gear units may then be appropriate. The Review Team proposes that the following hierarchy should be used to determine appropriate linking of shares to resource access in NSW commercial fisheries:

1. Where catch quota is a feasible proposition for a species, it should be pursued as the preferred option for linking shares to resource access. In multi-species share classes where species specific catch quotas do not encompass the bulk of the catch taken, the alternate linkage options below may need to be pursued for non-quota species.
2. If species specific catch quotas are not a feasible proposition, shares in that sector should be linked to fishing effort in the form of transferable time/gear based quota.
3. In the event that the two approaches above are demonstrated to not be feasible for a share class (i.e. the financial and other costs heavily outweigh the benefits), shares should be linked to resource access at the endorsement level whereby eligibility for an endorsement is determined by holding a minimum number of the corresponding shares.

Doing nothing or not linking shares to resource access via one of the above means is not an option, unless an alternative and more effective approach is identified or it is demonstrated that there is no need for structural adjustment in a particular share class. For example, (i) the share class has one or very few participants and the total GVP for the share class is too low to warrant a specific program, or (ii) there is no sustainability and viability problem with the current level of latent or active fishing

capacity, the stocks harvested are sustainable at current and potential effort levels and ongoing viability is assured.

For share classes that use the same or similar forms of fishing gear and for which a significant proportion of the catch constitutes the same or similar species, the same form of linkage should be pursued unless it is demonstrated to be impractical for one or more of the relevant share classes (i.e. the costs heavily outweigh the benefits).

Special consideration should be given to fisheries or share classes that are well down the path of pursuing feasible linkage proposals. Subject to meeting the principles of the share structural adjustment package, those fisheries or share classes should be permitted to continue down that path (e.g. catch quota in the northern spanner crab sector of the OTL fishery and linking shares to endorsements in the OT fishery).

The NSW fisheries of interest have a number of common features relevant to consideration of linkage options that apply to more than one fishery, and in some cases, to most fisheries. These are:

- I. the high level of latent effort in some regions/share classes;
- II. the inability of fishers to arrange inputs (net length, time/shots per day) to increase efficiency/remain viable;
- III. evidence of non-compliance with existing measures on gear restrictions (linked to II) above);
- IV. options to increase maximum gear size (e.g. net length) are limited given community, social and environmental (e.g. bycatch and discard mortality) issues;
- V. excess fishing effort applied during productive seasons eroding viability of full-time fishers;
- VI. the degree to which input controls, share transfer rules etc. can be relaxed as a result of linking shares; and
- VII. the relative cost and complexity of options for linking fisheries, especially compliance costs.

The Review Team used the above considerations and the hierarchy of options, combined with useful comments provided by stakeholders and the Department, to develop the table of provisional recommendations on restructuring actions in Appendix 4. The Review Team considers this table to be a reasonable starting point for consultation with shareholders on the most appropriate way to link shares to resource access and should not be seen as representing the firm recommendations of the Review Team.

Catch and effort limits are likely to be set, at least initially, at levels commensurate with current levels. While these limits may need to be scaled back over time in some share classes to increase the productivity of the resource or deal with overfishing issues, the issues associated with doing so will be considerably easier once a meaningful linkage has been established.

Finally, it is important to note that all input controls are subject to the phenomenon of 'effort creep'. That is, despite regulations in fisheries, the 'race to fish' phenomenon is still observed in these fisheries and manifests itself as operators substitute unregulated fishing inputs for regulated inputs.

Minimum shareholdings

It has been argued that the market should determine the minimum economic shareholding to enable a fisher to efficiently operate (i.e. have an endorsement to fish) within a fishery. However, the Review Team believes that minimum shareholdings should be considered as an integral part of the management of NSW fisheries, as envisaged in the original recommendations of the Fisheries Property Rights Working group on the implementation of SMFs.

It is suggested that the two major roles for minimum shareholdings in NSW fisheries in the future will be:

- I. ***In finely linked (ITE/ITQ) fisheries*** - to limit the number of operators in order to manage bycatch issues, and constrain compliance and administrative costs; and
- II. ***In more coarsely linked (no. of endorsement) fisheries*** - to provide a means of adjustment/forced aggregation, and act as a *de facto* licence to operate, limiting the number of participants in a fishery operating (see above).

Recommendation 6.3: That minimum shareholdings be applied to each fishery as: (i) a means of linking the number of endorsements in a fishery to total effort as a proxy for catch as part of an agreed restructuring plan, and/or (ii) as a means of reducing management costs.

The current number of share classes is unsustainable in the longer term, particularly as costs of management become increasingly recovered. There are benefits to merging share classes prior to linking, including increasing the flexibility to operate across regions and where a species can be taken by different gears/methods, to enable an operator to use the most efficient (lower cost) method of fishing.

A number of opportunities to merge regions and share classes were suggested in the Stevens' 2007 report. Ocean Hauling and EG are two fisheries where it appears some considerable savings in administrative and legislative complexity are available. The question is, should these mergers be attempted now as part of the structural adjustment initiative, or at a future time, when links have been made with share and access and the number of endorsements in each share class reduced?

Table 4. Options for linking shares to resource access.

What shares could be linked to	Brief description of option	Pros	Cons
Individual species catch quota based on weight of harvest (direct control)	The shares would be linked to a direct catch quota for an individual species, such as currently done with Abalone and Lobster	Well suited to high value, single-species fisheries High level of confidence in resource conservation (provided there is no discarding or high grading problem) Enables ongoing autonomous adjustment	Requires sophisticated catch and quota monitoring system with associated costs Creates discarding and high grading incentives in multi-species fisheries Assumes rationalisation of shares and implementation of catch/effort caps results in an efficient market and trades occurring
The number of days/nights fishing (indirect control)	The shares would be linked to the number of days/nights that the shareholder could fish using that method	Well suited to fisheries comprising species with highly variable abundance (e.g. prawns) Relatively easy to monitor and enforce Enables ongoing autonomous adjustment	Number of days/nights fishing does not necessarily relate to output No easy way of shifting effort away from species of concern
The amount or size of gear used (indirect control)	The shares would be linked to the number or size of gear units able to be used (e.g. trap or hook numbers, net length, etc.)	Enables ongoing autonomous adjustment	Assessment needed of the compliance requirements (i.e. would it require a significant and ongoing on-the-ground compliance effort?) Number of deployments or length of gear does not necessarily relate to output No easy means of shifting effort away from species of concern

After shares have been linked to output or effort, they will most likely assume higher values and this will make accounting for the relative value of differing gears or access to regions in any discussions on share class merging more difficult. However, there are a number of reasons for not undertaking a substantial realignment of share classes and regions before linking. These include:

- the ‘swamping’ of industry with too many changes at the one time;
- mergers will inevitably cause some disadvantage and working through those issues will be time consuming and costly, potentially rendering an already challenging timeline unachievable and compromising the overall process; and
- Industry input and potential support for merging of share classes may be easier to gain with fewer, more committed operators.

There are also environmental reasons for retaining the bulk of the share classes as defined by region and gear type including:

- spatial management of catch and effort by preventing fishers travelling and excessively targeting specific species in specific locations;
- reduction in the risk of excessive use of some gear types in certain areas and the resultant community/social problems arising; and
- prevention of fishers using gears with relatively larger environmental impacts than others.

Arguably, the environmental issues could be dealt with by implementing further gear controls (e.g. banning or limiting more damaging gear types), but this would add additional layers of complexity, inefficiency and cost.

On balance, while acknowledging that if there were more time and funds available merging share classes prior to linking would be a preferred option, the Review Team recommends delaying large scale merging of share classes at this time. There are, however, some cases of ‘low hanging fruit’ where it seems logical to explore the possibility of merging share classes, including the OTL spanner crab northern and southern zone shares. It is suggested that any potential share class mergers be identified during the period when fishers in share classes will be discussing preferred forms of linkage.

3.6.8 Restructuring options

Shifting from the current share structure to a system of meaningful property rights, given the level of funding available and the extent of the misallocation and misalignment, is problematic and will cause considerable hardship, regardless of the method chosen. Consideration of options, and a decision on a way forward requires a balance between efficiency and equity. Simply linking shares and setting conservative catch or effort limits would achieve efficiency, but would result in considerable inequity, particularly among those who have flat shareholdings and would need to invest heavily to build sufficient shareholdings to be able to achieve sufficient gear/quota to maintain current catch levels.

Many submissions to the Review suggested that the best way to address inactive effort was for Government to purchase ‘latent’ (unused) shares using structural adjustment funding, in fisheries where there was excess allocation and cancel them. This approach is also inferred by the Review TORs and is noted above. An alternative suggestion was for Government to purchase shares from selected FBs, ‘pool’ them, and redistribute these shares to active fishers to reduce the equity impact of linking.

The Review Team gave consideration to two share purchase (by Government) proposals and an alternative, the use of exit grants to act as an incentive to encourage the trading/amalgamation of shares. Table 5 provides a comparison of these three approaches to restructuring.

Table 5: Comparison of restructuring options

Option	Pros	Cons
1 Buy out and cancel shares	May have greater industry acceptance – generally accords with general industry expectations and ‘everybody gets something’ (or the same in a flat share structure).	Buy and cancel only partially addresses the ‘distortion’ (flat shareholdings vs. catch) i.e. will remove shares but all will benefit, and there will be no direct redistribution to active fishers.
	Would lead to an increase in proportional shareholding in a given share class for those remaining in the fishery, but the relative ‘distortion’ remains the same.	Entering the market on the demand side would drive up price and: <ul style="list-style-type: none"> • reduce capacity of those needing shares (‘actives’) to purchase shares; and • is a less efficient use of scarce funding (less shares purchased/ transferred). ‘Ratchet’ effect of steps in price increases means the period of higher prices is likely to outlast the period of structural adjustment (rapid increase, slower decrease).
		Would increase expectations and could influence future structural adjustment/ buyback initiatives.
2 Buy out and reallocate ‘latent’ shares	If reallocated/sold to active fishers would address ‘distortion’, but less efficiently than option 3.	Would increase expectations and could influence future structural adjustment/buyback initiatives.
	Likely to be a more acceptable model to fishers with high activity levels in flat shareholding fisheries.	Entering the market on the demand side would drive up price and: <ul style="list-style-type: none"> • reduce capacity of those needing shares (‘actives’) to purchase shares (where purchased); and • Is a less efficient use of scarce funding (fewer shares purchased/ transferred). ‘Ratchet’ effect of steps in price increases means the period of higher prices is likely to outlast the period of structural adjustment (rapid increase, slower decrease).
	Reallocation could be highly targeted to where ‘distortion’ is greatest.	Reallocation controversy associated with Government choosing who to redistribute shares too.
		Issues with misreporting to gain history of activity.

3.Exit grants	Temporarily reduces the price of shares at a time when trading is encouraged and need for shares is greatest. Lower price: <ul style="list-style-type: none"> • increases the capacity of those needing shares ('actives') to purchase shares; • facilitates cost-effective investment by individuals during period of structural adjustment and • results in a more efficient use of scarce funding (more shares purchased/ transferred). 	Relies on the capacity of active fishers to fund further share purchases.
	Less controversial than option 2; the public incentive is open to all.	Not as targeted (as option 2) at moving shares to those who wish to remain fishing and will need them in a linked environment.
	Supports self –determination unlike options 1 and 2.	
	Recognises past investment.	

Option 1, while likely to be more acceptable to most fishers in that all those remaining in the fishery receive equal benefit from buying out shares, will drive up price and not directly address the distortion that exists in most fisheries. Option 2, could provide greater targeting of funds, but the pressure on price remains and there is the major issue of allocation – who should be eligible and on what grounds, noting the problems associated with verifying catch history. After careful consideration of the above options, and the level of funding available, the Review Team considers that Option 3 above (exit grants), offered as part of a packaged incentive scheme provides the best option for achieving the objectives of structural adjustment.

The recommended approach is therefore based on option 3 above (exit grants), consisting of the following:

- the payment of exit grants for FBs involving a tender process;
- linking arrangements between shares and output (directly as quota, or indirectly as effort units) and setting TACs or TAEs;
- cost recovery, initially based on an interim flat charge per share class, irrespective of the level of shareholding or catch; and
- once the linkages and TAC/TAE for each share class are in place:
 - implementing an additional proportional management charge based on the number of shares held,
 - removing or streamlining input controls that are no longer needed, and
 - shifting away from using FBs as an effort management tool.

Importantly, share classes most in need of assistance (i.e. where the 'distortion' is worst) can be targeted through exit grants involving an uncapped cash payment offered to the owners of FBs who:

- i) sell or surrender all the shares in a FB; or
- ii) sell or surrender all shares in a fishery.

In the case of ii) above, the seller would be required to sell shares to existing shareholders under the current share transfer rules, thus aiding the process of amalgamation.

In order to target the exit grants, each share class must be able to be ranked against all other share classes, within the FB offered for tender. The process would involve the design of an algorithm to rank exit grants to achieve the greatest value for money in terms of contributing to structural adjustment in targeted share classes. Such an algorithm could result in:

1. determining an index of the need for adjustment for each share class, encompassing a measure of (i) economic importance (e.g. GVP), and (ii) a measure of 'distortion' (e.g. the 95% latency indicator in Table 1). Some share classes are likely to have a very low priority (e.g. those with a very low GVP or where there is little distortion between shareholdings and catch levels); and
2. dividing each business owner's bid amount by the above index (indices) to provide an overall ranking of offers to ensure value for money.

Recommendation 6.4: To encourage share trading and consolidation, implement a targeted exit grant process for fishing businesses, with eligibility determined via a tender process. The amount to be offered for individual fishing businesses should not be capped, and exit grant payments made once the shares on the fishing business have been transferred.

The Review Team considered the merits of allocating structural adjustment funds to fisheries that are willing to invest through additional industry levies, possibly in the form of matched funding. This approach would provide a further incentive for structural adjustment, encouraging those that wish to remain in the fishery to do so, and encourage those that do not wish to pay additional levies to leave the fishery. However, in general, active fishers would be better off using what spare money they have to buy shares outright and thus acquire and hold on to the right for themselves; if they contribute to a general levy, most of the benefit associated with the funds they contribute will go to other fishers.

Finally, the Review Team suggests that if the proposed structural adjustment program (or some version of it) proceeds, then there is much to be learned from the substantial Commonwealth fisheries restructure which occurred under the 'Securing Our Fishing Future' structural adjustment package. This package was announced in late 2005 by the then Federal Minister for Fisheries, Forestry and Conservation and completed in late 2006, to address low profitability and unsustainable fishing effort in Commonwealth fisheries. As with NSW, particular fisheries were targeted, and a total of \$149m was spent on the purchase of concessions in target fisheries. **In this regard the Review Team recommends that consideration be given to the ANAO Audit Report No 39 2008-09, which provides valuable insight into the process used in administering the 'Securing Our Fishing Future' structural adjustment package assistance programs.**

3.6.9 Complementary structural adjustment actions

Assess and make recommendations regarding complementary actions that could be taken by the NSW commercial fishing industry to contribute to an effective structural adjustment program.

Industry has already agreed, with some limited dissension, to a structural adjustment levy in the form of a \$500 annual charge per business – this impost commenced July 2011. Some stakeholders have also expressed a willingness to further invest in their future through the introduction of

additional structural adjustment levies (at the share class level), to compliment and extend the current funding available.

As noted above, fishers would arguably be better off purchasing shares directly rather than contributing to a levy.

3.6.10 The role of catch history

Catch history has long been used as a criteria for the allocation of fishing access rights, and the circumstances of its use (or non-use) in most NSW fisheries has been covered in previous sections. In considering structural adjustment options, those most likely to be severely affected are fishers that have undertaken considerable recent fishing activity, maximised the benefits from their existing shares, invested in additional shares/ infrastructure, and built viable fishing businesses. Under any linkage arrangement, they will be faced with the need to purchase considerable numbers of shares to remain viable, which in some cases, would result in their leaving the fishery.

The Review Team is of the view that the original catch history criteria period (1986-1993) has been incorporated within existing share allocations; albeit in a manner that has frustrated the original intent of the share management scheme and, while the issue above is acknowledged and requires consideration in addressing options for rebuilding, the use of recent catch history as a primary tool to drive restructuring options is problematic for the following reasons:

- it may not reflect investment by many fishers in the current structure; and
- it rewards new investors who have purchased bare bones entitlements (commonly one only) and worked them hard.

3.6.11 Sequencing of the structural adjustment reforms

Recommend appropriate sequencing of the structural adjustment reforms for commercial fisheries and identify any issues and resources required for implementation (noting the link with recommendations arising from TOR 1).

This section goes beyond sequencing and covers a range of implementation issues associated with the proposed structural adjustment reforms. The most important element of the structural adjustment process will be to ensure the use of appropriate incentive and regulation settings for each share class to achieve the objectives of (i) establishing meaningful (proportional) access rights through linking, and (ii) minimising the impact on active fishers (with insufficient shareholdings) of moving towards those rights.

Funding

Under the proposed strategy the vast majority of the funds available for facilitating restructuring will be expended on exit grants to encourage transfer of shares, as outlined in previous sections, in general from the people who hold shares and don't fish or fish very little, to fishers who have been recently active and will need a larger number of shares once the share linkage commences.

Recommendation 6.5: That structural adjustment should be implemented as a complete package through a three-year staged process, assisted by Government and industry funding. The package should establish an autonomously adjusting system which will increase management efficacy and the value of, and trade in, shares. The suggested levels of funding for each element of the structural adjustment process are:

- | | |
|----------------------------|--|
| 1. Exit grant | \$15.5 million max (at least one phase) |
| 2. Southern fish trawl/OCS | \$ 0.5 million (max) |
| 3. Implementation costs | \$ 1.2 million (preferably funded separately, but otherwise from within the \$16 million structural adjustment programme budget) |

Cost recovery

Fishing business charges are currently levied for the number of fisheries in the business; that is, a business that only exists in the EG fishery will currently pay about half compared to a business that has both EG and OH shares. Within a fishery, it is common for a business to hold several share classes. This levy structure can work against the goal of encouraging share trading and consolidation. Imagine a business that must have at least one share class in a fishery to operate, that business can hold all other share classes from that fishery for no marginal cost. Discussions about restructuring have implicitly assumed fees and charges will accrue at the share class level in future, unlike today. The change to that approach needs to be made explicit and should come into play as early in the restructuring program as possible to ensure the additional incentive to sell/accumulate shares.

Indicative structural adjustment programme and schedule

Appropriate sequencing of structural adjustment is vital, including announcements of key timelines and decisions, changes to the Act and regulations and consultation on certain implementation details. Such announcements will trigger major changes in fishers' decisions on a range of key issues, as economic incentives, based on greater levels of certainty, are established. Table 6 provides an overview of the recommended sequence for structural adjustment, which it is suggested should occur over a period of three to four years.

Table 6: Indicative structural adjustment programme and schedule

Time	Decision/Announcement	Consultation	Likely actions necessary
March/April 2012	Initial decision following acceptance of Review to: link shares after the structural adjustment period, set TACs/TAEs, exit grants, cost recovery etc. (Key Decision 1).	Communication of results of Review and subsequent Ministerial decision.	<ul style="list-style-type: none"> • Commence work on Act amendments (many of which are in preparation). • Preparation of exit grant tender documentation, conditions for acceptance etc.
June/July 2012	Exit grant tender opens.	Form of linkage, level of TACs/TAEs and share class-level structural adjustment strategy.	<ul style="list-style-type: none"> • Development of cost recovery principles/implications (to help inform the discussions on linkage options) and set up for an increased flat charge from July 1.
July 2012	Introduction of share-based cost recovery (flat charge only).		
September/October 2012	Exit grant tender period closes.		Assessment of offers.
October/November 2012	Exit grant offers made.		Accelerated share trading to meet conditions of exit grant offer. Payments commenced when shares traded or surrendered.
April 2013	Exit grant process completed.		
May 2013	Review for unexpended funds.		

August 2013	Decision on form of linkage, TACs /TAEs for each fishery and structural adjustment strategy for each share class (Key Decision 2).	Implementation of share class-level structural adjustment strategy, including additional structural adjustment levies; tender process to achieve share transfer.	Commence share level structural adjustment process. Commence work on regulation amendments.
September 2013	Second adjustment process, if needed.		
December 2014	Implementation of share linkage, FBs cease to be used as an input management tool. Per-share cost recovery introduced.		

The recommended approach is based on two key decisions and associated announcements, which will be aimed at sending the right signals and incentives to industry concerning the future management of NSW fisheries, and where opportunities exist to stay and invest in the fishery or exit.

Recommendation 6.6: That the Minister makes two key decisions and announcements, one at the start of the structural adjustment process and a second, around 18 months later:

A first Key Decision and announcement, subsequently 'backed up' with legislative amendments, to:

- i) link shares with access (catch quota, effort quota or no. of endorsements) at the end of the structural adjustment period (end 2014);**
- ii) apply a moderate 'base payment' charge on shareholdings in each share class from July 2012;**
- iii) set total catch and effort levels (within around 18 months), in consultation with industry, to commence at the end of the structural adjustment period;**
- iv) undertake a process of exit grant payments (at least one round);**
- v) implement a process for consultation with industry at the share class level to determine the form of linkage;**
- vi) remove the limit on the number of fishing businesses as each share class becomes linked;**
- vii) identify unnecessary input controls and regulations that could be removed.**

A second Key Decision and announcement to be made about 18 months after the initial decision to:

- i) Approve the final form of share linkage (effort or catch) for each share class**
- ii) Approve the determination of total catch, total effort or the number of standardised endorsements.**

Consultation

Given the magnitude of change proposed by the Review, it is essential that a sound consultative process is established, with an acknowledgement that industry is well placed to work through the detailed structural adjustment issues. Under the proposed schedule, and once the recommendations of the report have been accepted, the holders of each share class (or group of share classes) will be given a substantial period (18 months) to work together and with the Department to derive preferred linkages and provide advice on other issues associated with the structural adjustment process.

As evident in the submissions and during port visits, the views on how to achieve structural adjustment are many and varied, and the chance of achieving a consensus view within many share classes is remote. In line with its position on the role of industry in management decision-making, the Review Team is strongly of the view that while industry must be consulted on all aspects of structural adjustment, the final decisions on issues such as linkages, TACs/TAEs, timelines and allocation of funding remain the responsibility and prerogative of the Government and, as relevant, with the TACC.

Structural Adjustment Review Committee

For some share classes it will be relatively easy to take decisions on share linkages, with a minimum of consultation required. Others where misallocation and distortion of shareholdings are greatest will require extensive consultation and further analysis before advice and a final decision can be made on the form of linkage. To facilitate the process and provide independent advice to the Minister to ensure decisions are taken in a timely manner, the Review Team recommends that the SARC be established.

This committee would work closely with the ED Fisheries, and report to the DG NSW DPI.

Its membership would comprise an independent Chairman, an independent fisheries economist, an independent fisheries manager and the Director, Commercial Fisheries, NSW DPI.

The major roles of the SARC would be to:

- Provide oversight of the restructuring process;
- Mediate in cases where no consensus agreement on linking/restructuring occurs in a share class; and
- Make recommendations to the DG on detailed options for restructuring and share linkages.

The key role of industry, working with the Department, in developing preferred linkages and structural adjustment strategies is emphasised, with the SARC facilitating, rather than directly driving, the process.

3.6.12 Impact of structural adjustment on the post harvest sector

Assess the likely impact of the above recommendations on the post-harvest sector and recommend measures to mitigate any possible negative impacts on that sector and seafood supply.

The Review Team heard from a number of stakeholders, and in particular the fishermen's cooperatives, that the impact of structural adjustment could pose a very real risk to these operations, many of which appear to be in a parlous financial state. However, the Review Team considers that the primary purpose of the adjustment process is to secure the long-term economic sustainability of the industry and resource, and ensure, as much as possible, that there is an economically viable industry.

The Review Team is very much of the view that once latent effort is removed, and value is stored in the shares, then trading will occur and more efficient operators will tailor their inputs to minimise cost flow on and, inevitably, this will have flow-on effects for the post-harvest sector. One would hope however, that these effects would be overwhelmingly positive in the longer term.

It is beyond the wit or power of the Review Team to ensure that the recommendations result in particular fishers or groups of fishers selling product to particular cooperatives, or guaranteeing supply to particular sources. That said, the Review Team believes that structural adjustment should result in fish supplies being maintained and caught at lower cost, enabling more scope for industry-supported infrastructure and other measures to improve quality and marketing. Where fisheries are overfished, the new management structure may see fisheries supplies increased.

4. Implementation, resourcing and timing issues

Subject to the Government's acceptance of the recommendations set out in this Review, the following implementation, resourcing and timing issues will need to be addressed:

- i) If the Departmental model for the delivery of fisheries management is accepted, the position of ED, Fisheries will be required to:
 - exercise a strong discipline in dealings with all stakeholders (i.e. possess a steely determination to accept no nonsense and to stay the course in sometimes challenging circumstances);
 - pull the key sections of the Division (research, compliance and fisheries management) into a cohesive, closely knit unit (the EMG) that can deliver effective fisheries management outcomes for both the Government, stakeholders and the community;
 - ensure the governance structures and processes recommended in this Review are strictly complied with;
 - communicate effectively both internally within the public sector, but equally with external stakeholders and the community; and
 - have a clear ability to deal with short-term issues, but also an ability to have a strategic vision of where the Fisheries Division should be heading.
- ii) The development and implementation of a number of key policy frameworks consistent with the objectives of the Act and in support of sound fisheries management through the proposed MFAC should be the second priority. The establishment of this Council - roles, responsibilities and membership - by the Minister at an early date will ensure work can commence on pressing policy matters such as resource sharing, cost recovery and co-management. There will be costs associated with the advertising and selection costs for appointment of persons to this Council, together with ongoing meeting costs, remuneration of the Chair and members and secretariat costs. However, these should be offset to a large extent by the disbanding of SIAC, the establishment of a peak industry body and the reform of the MAC process.
- iii) The establishment of the EMG chaired by the ED, Fisheries to coordinate and manage implementation of relevant recommendations from this Review is a key part of the implementation process. In relation to resourcing, it is recommended that both the Fisheries Division and the commercial fishing sector (via the proposed Peak Industry body) agree to the appointment of a separately funded Project Manager to assist the ED, Fisheries with implementation. Apart from meeting costs (which should be a normal part of Departmental running costs), there will be an additional cost for the employment of a Project Manager, but this should only be necessary for a two to three year period to bed down the agreed reforms.

- iv) The next priority should be to appoint a Structural Adjustment Steering Committee comprised of an Independent Chair, senior management representatives from the Fisheries Division of DPI and Treasury and perhaps some outside expertise to administer the agreed structural adjustment program and funding. Again there will be meeting costs, and there will also be costs incurred in engagement of the Independent Chair and outside expertise (if considered appropriate).
- v) Finally, the formation of a peak industry body is a critical plank in achieving vastly improved consultation and industry engagement. In relation to the establishment of a Peak Industry body, this Review recommends that subject to the Minister agreeing to the recommendation from this Report that such a body be established, the existing PFA convene a Commercial Fishing Industry Forum before the end of June 2012 to decide on the constitution, (including roles and responsibilities), budget, staffing and other administrative matters. It is further recommended that this Forum be chaired by an Independent Facilitator appointed by the DG of NSW DPI, and that up to five delegates from each of the 7 Commercial Fishing regions be invited to attend the Forum to make decisions in relation to the Peak Industry body. The funding of the Peak Industry body is to be achieved through an increase in the general share management charge accompanied by an explanation to all licence holders as to the purpose of the increase.

Appendices

Appendix 1 Historical Background

In the late 80's, the fisheries bureaucracy was administered by the Fisheries Division of the Department of Agriculture and Fisheries. In 1991, however, a separate Department of Fisheries was created and tasked with a review of the *Fisheries and Oyster Farms Act 1935*. A key focus of the review was to develop a system to give commercial fishers long term secure fishing rights via the issuing of shares. The objectives of the new Act were clearly laid out in a hierarchy that allowed harvest, but only where it was consistent with long term sustainability. A new *Fisheries Management Act 1994* was enacted in 1995, and was the first fisheries legislation in Australia to embrace ESD as a statutory objective.

Following a change in Government shortly thereafter, a new review of the SMF scheme was undertaken. The review did not result in significant changes to the legislation, but did result in a shift in policy away from the full implementation of the SMF scheme, to Restricted Fisheries, a simplified form of limited access fishery management with a lower standard of security – and a reduced incentive for resource management by fishers. SMFs were introduced for the Abalone and Lobster fisheries only.

The critical difference between restricted fishery and share management was that SMF rights were legislated and to be issued in perpetuity with compensation payable if those rights were removed; whilst restricted fisheries offered the fishing access rights under regulation which could be revoked at any time, and explicitly stating no compensation would be payable.

After a period of time, both forms of fishery entitlement were transferable. Restricted fishery entitlements were packaged into FBs and a licence splitting policy prevented entitlements from being sold off individually. New entrants to the industry were required to purchase a complete FB, with all its entitlements, and with a minimum amount of associated catch history. This policy aimed to prevent latent effort (unused licences) from being activated. Fishing businesses that did not meet the criteria for the issue of a fishing licence to the new entrant could be amalgamated with other FB under a 'two (or more) for one' policy.

At the same time as this policy shift was occurring in 1995, a series of decisions were made that were perceived by commercial fishers as a reallocation of fisheries access and resources in favour of recreational fishers. These included the banning of the fishing method of pound nets (a large scale static net that acted as a trap for migrating fish) in Port Stephens, the banning of kingfish traps (floating cage style fish traps), and the banning of commercial fishing for native freshwater fish.

Recreational fishers applauded the decisions and whilst many commercial fishers thought the decisions had a lot of merit, they did not like the way in which the seemingly arbitrary decisions were made, without meaningful consultation and without discussion on structural adjustment, and feared 'their' fishery might be next.

When the kingfish trap ban was announced, commercial fishers went on strike and held a rally at the SFM. The fear of more such decisions prevented those commercial fishers who supported the decision from speaking out; what if the next seemingly arbitrary decision takes away my fishing method or my access? It has been suggested to this Review by the commercial fishing sector that this was a failure of the policy development and decision-making process and led to a serious long term decline in an already tense relationship between commercial fishers and the Department, and a real loss of trust.

A review of fisheries consultation was undertaken in 1996. The review recommended a compulsory levy for the statutory commercial fisher's body, the Commercial Fishing Advisory Council (CFAC), be

removed from regulation and over time the statute establishing the body was repealed and it disappeared. Whilst this was popular with some members of the industry who did not want to pay the fees, others found it hard to understand how sound relations could be maintained between Government and industry with no professional executive support. With no effective means of industry engagement, the relationship with Government worsened.

A series of advisory committees were established to fill the consultative void and in 1997 all the State's commercial fisheries came under a limited access regime for the first time. NSW was the last jurisdiction in Australia to get to this critical point in the fishery management timeline. The establishment of limited access fisheries was not the end, but the beginning.

At the same time, new legislation was being developed to protect threatened and endangered species, and to underpin the Government's agenda to roll out a series of multiple use Marine Parks along the state's coastline. Both these environmental agendas posed a new array of threats to commercial fishery viability and with no recognised peak industry body, the industry felt vulnerable.

Other legislation was also proposed ('Commercial Managed Fisheries') which mirrored the SMF legislation, but removed the onus on the State for compensation if a fishery was closed. The effect of this effort was to further erode industry Government/Department relations. However, following two parliamentary inquiries and political lobbying by a newly established fishing industry representative group (ProFish), Upper House amendments to the Bill designed to improve the legislation from the commercial fishing industry's perspective were unacceptable to the Minister (reinstating the compensation provisions) and the Bill was withdrawn.

Following re-election in 1999, the Labour Government changed the focus to the resurrection of share management, the implementation of a recreational fishing licence, and the use of funds from the licence to buy commercial fishing licences in exchange for closing popular recreational fishing areas to commercial fishing. A network of 6 Marine Parks was to be established with 3 in the next 4 years at Jervis Bay, Solitary Islands, and Lord Howe Island.

In 2000, a group of recreational fishers and others mounted a challenge to the fisheries legislation claiming it did not address the assessment requirements of the *Environmental Planning and Assessment Act 1979* (EPA Act). They believed commercial fishing constituted a "use of land" and therefore should be the subject of an Environmental Impact Assessment (EIA). The challenge was successful. As a consequence, the Government decided both planning and fisheries legislation should be amended so that all fisheries would be assessed through the development of a fishery management strategy and environmental impact statement. The first of these fishery assessments were completed in 2002 and 2003.

By this point the level of planning and impact assessment being conducted on fisheries of very little financial value far outstripped any sensible level. Commercial fishers felt they were under great threat. Increased management charges, and greater restrictions on gear, areas of operation, and catch composition (what they are allowed to catch and keep) all compounded this perception. The amount of monitoring required under each fishery management strategy was impractical and unaffordable, and data collection and reporting milestones have not been easily met. The approach of using the planning legislation for fisheries management has made little difference to fishery management outcomes. Further, it has been suggested that the Act, designed as a stand alone framework, had its systems 'bastardised' by the incorporation of the EPA Act's new oversight role.

In 2002, a recreational fishing licence was introduced, three Marine Parks were declared, and around 30 coastal estuaries were closed to commercial fishing as RFHs. The industry's new lobby group ProFish mounted and lost a challenge in the Land and Environment Court against the RFHs. The challenge (appeal) was also lost in the Supreme Court and further denied leave to a High Court appeal. With industry funding support commitments not forthcoming to meet court costs, ProFish was wound up with substantial unpaid debts.

In 2003 the Labour Government was re-elected for a third term and a new policy agenda was crafted. The then Minister expressed a view that he would restore the balance for commercial fishers. The share management agenda was to be fully implemented – after almost 10 years. The Minister gave assurances however, that RFHs would not be wound back.

In 2004, the Department was merged with 3 others, agriculture, minerals and forestry. From the industry's perspective, fisheries management stagnated and there was little progress of note in any commercial fishery.

Two further fisheries reviews were ordered by the then DG of NSW DPI in 2005 and 2007 - however, attempts to engage the then Minister in any meaningful discussion on the need for reform when both reviews were presented to him proved fruitless and were not helped by the lack of support from Treasury to deal with structural adjustment issues in commercial fisheries. Both reviews came to nothing at the political level and both were eventually gutted of any meaningful content, and the problems continued.

With the handing down of the structural adjustment report in October 2007, a hiatus period of more than 6 months ensued with no announcement forthcoming from the Government. It was not until September 2008 that the industry was finally advised that no money was available for structural adjustment.

In an attempt to secure some funding for structural adjustment in November of 2008, the SIAC supported a recommendation for structural adjustment funding through an industry levy and some monies from the commercial trust. Again this recommendation did not receive the support of the Minister. In the face of industry disquiet at this situation and given the failure of any commitment of funding to facilitate adjustment, a new suite of proposals came forward from the Department.

Known as the 'Pyrmont Pact' and while encompassing many of the issues of concern to the fishing industry, the Pyrmont Pact removed the focus of more than 5 years of industry work dedicated to structural adjustment. The result of this shift again eroded industry confidence in the Government's and the Department's willingness and ability to effect industry structural adjustment.

During 2009 and 2010 some 30 port meetings were held to discuss the issues contained within the Pyrmont Pact. In structural adjustment terms, the only result was a small exit grant program funded through monies held in the commercial trust (\$1.5m). Ultimately, less than 20 fishing businesses were surrendered at around \$15k each. Importantly, with no share (fishing capacity) surrender or 'linkage' of shares to catch or effort (to create a willing buyer/willing seller situation) the value of this program was a questionable use of scarce resources.

Appendix 2 Commonwealth/States/NT approaches to consultation

1. Commonwealth

AFMA is committed to consulting with relevant stakeholders to ensure that it is fully informed, that all options are considered and that the best possible advice is provided. MACs, RAGs and industry representative bodies provide the primary means of obtaining this advice.

AFMA's actions must always accord with its statutory objectives to which it must necessarily attach primacy. It is therefore important that MACs, RAGs and industry representative bodies frame their advice to AFMA in terms of AFMA's legislative objectives.

While MACs, RAGs and industry representative bodies are the main means of AFMA obtaining advice and information, they are not the only means. AFMA may seek advice and views from others with relevant expertise or interest. This includes AFMA staff, independent consultants, scientists or other experts, operators in fisheries more broadly, other stakeholder groups, and the Minister as a representative of the broader community.

AFMA has decided to establish a dual advisory model that distinguishes between strategic advice that reflects broader community interest in a fishery or fisheries and operational advice that the fishing industry is best placed to provide and take responsibility for.

MACs are statutory advisory bodies and are structured under the *Fisheries Management Act 1991* [Cth] to provide AFMA with advice reflecting the knowledge of all stakeholder groups that have an interest in the fisheries on which those MACs advise. MACs are therefore ideally suited to focus on strategic management and policy issues and act as a liaison body between AFMA and the broad range of stakeholder groups with an interest in the fishery. The role and functions of MACs are specified in detail but essentially focus on strategic level issues such as developing management policy settings and standards.

Industry representative bodies usually have a comprehensive understanding of the fishery or fisheries in which their members participate, including detailed knowledge about fleet structure, economic influences, market information, and demographics. This information can be important for management purposes as these factors can affect fisher behaviour and as a result, impact on the effectiveness of various management strategies. Industry representative bodies therefore have the potential to play a significant role in helping AFMA fulfil its legislative functions and effectively pursue its objectives.

Where a strong and well-supported industry representative body exists, it is the preference of the AFMA Commission that this body would act as the main liaison body between AFMA and fishing industry participants and provide the primary source of advice on operational fisheries management issues. A streamlined structure whereby industry bodies provide such advice will contribute towards the development of a broader co-management environment while achieving efficiencies in the management process.

An industry representative body could be requested to provide advice on a large suite of operational activities including:

- management plan review and developing or refining operational management arrangements under management plans;
- harvest strategy implementation and review (including review of decision rules underpinning harvest strategies);
- setting catch levels under harvest strategies (where these are compliant with Government policy and stock levels are at or above established reference points);

- developing and implementing responses to ecological risk assessments, bycatch and discard plans, and threat abatement and conservation plans;
- providing advice on research proposals;
- developing cost effective mechanisms to collect data and meet compliance standards;
- refining licensing arrangements; commenting on fishery management budgets; providing relevant economic and market information; and
- implementing resource sharing and regional marine planning policies.

Where an effective industry representative body does not exist, MACs may, at the discretion of the AFMA Commission, be tasked with providing advice on operational management issues relevant to a fishery or fisheries, or alternative consultative arrangements may be established.

In relation to regionally based consultation, the fisheries that AFMA manages are widely dispersed around the Australian coastline, so regionally based consultation can be difficult. However, both the Commission and the MACs hold meetings in regional ports around the country as part of the process of staying in touch with the major stakeholder group, the commercial fishing industry.

With respect to expertise based members versus elected representatives, AFMA has adopted a skills and expertise based approach, whereby industry members who are interested in being considered for appointment to a MAC must go through an application and assessment process before being considered for appointment by the AFMA Commission.

Being appointed to a MAC brings with it a number of important responsibilities. Specifically, MAC members must be prepared to meet the following requirements:

- they must be able to put views clearly and concisely and be prepared to negotiate to achieve acceptable outcomes and compromises where necessary;
- they must act in the best interests of the fishery as a whole, rather than as an advocate for any particular organisation, interest group or regional concern;
- they must be prepared to observe confidentiality and exercise tact and discretion when dealing with sensitive issues;
- they must contribute to discussion in an objective and impartial manner and avoid pursuing personal agendas or self-interest;
- they must be prepared to make the necessary commitment of time to ensure that they are fully across matters which are the subject of consideration at a MAC;
- they must during the course of a MAC meeting, disclose all interests, pecuniary or otherwise, in matters being considered or about to be considered by the MAC before those matters are discussed and abide by the decisions of the MAC in relation to their participation in discussions relating to those matters; and
- they must have the confidence and authority of their stakeholder group to undertake their functions as a MAC member and be prepared to consult with members of their stakeholder group as necessary to effectively contribute to MAC discussions.

2. South Australia

South Australia's approach to consultation recognises that the collection of information not only through research, but also from the principal user of the resource - the commercial fishing industry, is very important. Their cooperation and partnership is recognised as critical. Engagement with the commercial fishing sector and other stakeholder groups via appropriate consultation mechanisms is

recognised in South Australia as a key component of the fisheries management decision-making process.

The introduction of the *Fisheries Management Act 2007* saw the removal of Fishery Management Committees (FMCs) and the establishment of a single expertise based Fisheries Council to provide high-level advice to the Minister. The Council did not replace the consultative function of the FMCs.

One Object of the 2007 Act (s.7(1)(e)) is “the participation of users of the aquatic resources of the State, and of the community more generally, in the management of fisheries is to be encouraged”.

As a result, the Fisheries Council has developed a Policy paper as a basis for discussion on how best to achieve participation from stakeholders in the fisheries management decision-making process. In doing so, the Council is very aware of the need to establish consultative processes that are efficient and cost effective, so that they do not place an unnecessary burden on stakeholder groups, the Fisheries Council or PIRSA Fisheries.

PIRSA Fisheries actions must always accord with the objectives of the 2007 Act and it has therefore been recognised that any consultative processes established provide their advice/input in terms of those objectives. The Fisheries Council is also similarly required to do so in providing advice to the Minister.

As set out in the 2007 Act, the Fisheries Council has a number of functions directly related to consultation:

- to advise the Minister on State-wide policies in relation to fisheries management and research;
- to prepare management plans and to conduct reviews of management plans;
- to promote co-management of fisheries; and
- to advise the Minister on the management of aboriginal traditional fishing, commercial fishing and recreational fishing.

The Council’s membership includes persons who have expertise in commercial fishing and processing, recreational fishing, conservation, socio-economics, research and development, business and the law. Each member of the Council must have expertise in fisheries management and at least one must be a person with knowledge and experience of aboriginal traditional fishing.

The Council has decided that it needs to facilitate sound input and advice from key stakeholder groups on broad strategic/policy issues and thus ensure the best outcomes for the management of the State’s fisheries resources.

In South Australia, there are peak industry bodies representing the commercial fisheries sector, recreational fisheries, and the conservation sector, although the level of resourcing in support of these bodies can vary. Nonetheless, these bodies are used by both the SA Government and the Fisheries Council as ‘sounding boards’ for discussion of major policy issues such as allocation of resources between sectors.

Both PIRSA Fisheries and the Fisheries Council are keen to encourage the continuing strengthening of these peak industry bodies with a capacity to take on this consultation role, with the aim of achieving more cost effective and strategically focused policy outcomes.

The Fisheries Council and PIRSA Fisheries also want to see the continued establishment of strong fishery specific industry associations with a capacity firstly, to assist with operational fisheries management decisions and secondly, to help develop a fishery co-management role in the interests of delivering positive and constructive outcomes for individual fisheries in accordance with the objectives of the 2007 Act.

The drafting of commercial fishing industry sector based Strategic Plans with a recreational sector based plan to follow is another important part of the framework for effective consultation processes. Such plans are required in order to clearly identify strategic directions, major challenges and major outcomes sought. Once this type of information is known, effective communication and consultation can assist in achieving the outcomes or identifying impediments. The Council is currently in the process of providing assistance to the various fisheries in the development of these plans.

The South Australian Minister responsible for fisheries has recently released a draft policy paper which recommends a preferred approach to consultation in that State. Its basic principles are as follows:

Broad Strategic Policy advice

The membership of the Council, which includes expertise from all the key areas of interest of the stakeholder groups, provides the opportunity for consultation and discussion on advising the Minister on the development and implementation of management plans and key strategic policy issues such as allocation. In addition, the Council is providing opportunities for consultation on future strategic/policy issues with a broader group of interested parties, most notably the peak industry bodies, and provide advice to the Minister.

A framework for consultation outside the Fisheries Council on some of the more operational fisheries management issues, such as the setting of TACs, the development of harvest strategies for individual species of fish, and providing for reviews of fisheries management arrangements is currently under development.

Industry associations have a very good understanding of the fishery in which their members participate, including detailed knowledge about fleet structure, economic influences, market information and demographics. This information can be important for fisheries management purposes as these factors can affect fisher behaviour and therefore the effectiveness of various management strategies.

It is essential that industry associations are properly constituted, are well represented, financially viable and credible. A model that sets out preconditions for effective consultation by associations, and establishes a framework for self-assessment is currently under discussion.

The most appropriate consultation processes for the commercial fishing sector will vary depending on the nature of the management matter at hand. The following consultative processes are proposed:

For legislative issues and major policy setting (e.g. Management Plans - harvest strategy decision rules; resource allocation), the Fisheries Council will facilitate consultation with the commercial fishing sector and all other sectors as required.

For key fisheries management issues (e.g. the setting of TACs) PIRSA Fisheries will facilitate consultation with a working group, comprising expertise from all appropriate stakeholder groups. The working group may be the industry association or a specifically selected group of expertise based members.

For operational fisheries issues PIRSA Fisheries will facilitate consultation on a bilateral basis with the industry association.

For commercial and advocacy issues PIRSA Fisheries will facilitate consultation with industry.

South Australia does not have MACs; rather issues tend to be dealt with general or task specific Working Groups established under the auspices of the Fisheries Council. With respect to expertise based members versus elected representatives, at this stage, the approach has been for fishery

based Industry Associations to nominate who they see as the most appropriate representatives for the task at hand.

3. Western Australia

Like the Commonwealth and South Australia, Western Australia recognises the importance of effective consultation processes. In 2009, the WA Department of Fisheries and stakeholder groups agreed that the following consultation objectives should be pursued:

- Enhanced efficiency, cost effectiveness and flexibility.
- Clarification between:
 - fishing sector representation;
 - expertise based advice to the Department of Fisheries; and
 - Department of Fisheries as the primary source of management advice to the Minister for Fisheries.
- Enhancement of Department of Fisheries engagement with industry, stakeholders and the public.

In June 2010, the WA Government introduced a new uniform system for determining access fees for the State's commercial fishing, calculated at 5.75% of the GVP for respective fisheries. The funding model is to be reviewed by Government in liaison with industry after 5 years.

Revenue from access fees can only be used for the purposes set out in the Fisheries Research and Development Account (established under the *Fish Resources Management Act 1994*), which covers commercial fishing and aquaculture management, enforcement, education, research and monitoring of fishing activity. The Account cannot be used for recreational fishing.

Following the determination of the new commercial access fee, the Government provided the peak commercial fishing industry body, the Western Australian Fishing Industry Council (WAFIC) with, amongst other things, the following undertakings:

- (a) The access fee for commercial fisheries will be set at 5.75% of the GVP for respective fisheries; and
- (b) Part of the access fee equivalent to 0.5% of the GVP for each fishery will be provided to WAFIC for industry representation, and an additional 0.25% of the access fee will be provided to the FRDC for fisheries research.

Co-management

The Department works with licensees and/or WAFIC, on possible co-management arrangements for individual fisheries, where such arrangements allow the Department to continue to meet its statutory management and reporting obligations.

WAFIC and the Department are in the process of developing protocols aimed at improving industry consultation through formal management meetings and other agreed processes.

WAFIC is provided an opportunity to input into the Department's annual planning and priority setting process, including providing input on industry priorities for management and research. WAFIC is advised of progress on project outcomes and deliverables.

WA has no policy regarding regionally based consultation; in addition, whilst industry members are appointed to the peak industry body WAFIC by election at an Annual General Meeting, appointments to task based working groups is generally on a 'horses for courses' basis.

4. Victoria

The current consultation arrangements started on 1 July 2009 through amendments to the *Victorian Fisheries Act 1995* and associated policy changes.

The amendments abolished the Victorian Fisheries Co-Management Council (FCC) and its Fisheries Committees, (the previous Fisheries Co-Management Council cost Government up to approximately \$515k per annum to operate; these funds were surrendered as part of Fisheries Victoria's response to the previous Government's budget reductions of the Fisheries Revenue Allocation Committee). The legal status of Seafood Industry Victoria (SIV), VRFish and Victorian National Parks Association as the recognised 'peak body' for commercial fishing, recreational fishing and conservation interests, respectively is uncertain.

The amendments also introduced 'principles of consultation' that apply in relation to decisions made by the Minister responsible for fisheries (ss.3A(1) & (2) of the 1995 Act). These sections of the 1995 Act outline the following requirements for consultation:

- the purpose of consultation and any consultation process should be clear, open, timely and transparent;
- the level of consultation should reflect the likely impact of decisions on persons and fisheries resources;
- the consultation process should be adequately resourced;
- the consultation process should be flexible and designed to take into account the number and type of persons to be consulted and their ability to contribute to the process;
- the consultation process should involve consideration of representative advice which represents the views and values of the persons represented;
- representative advice in relation to the following persons or groups should be considered during any consultation process:
 - recreational fishers;
 - commercial fishers;
 - aquaculture operators;
 - conservation groups; and
 - indigenous groups.
- the consultation process should consider expert advice, which should be obtained from the most appropriate provider; and
- any expert advice obtained during the consultation process should be made available to persons participating in the consultation process.

The 1995 Act also lists the type of decisions for which these requirements apply, such as making quota orders, fisheries notices and management plans.

The new Victorian Government's Plan for Agriculture included the following policy statements:

- Recreational Fishing - "Legislate to reinstate a consultative process that involves all the peak bodies in the industry".
- Commercial Fishing - "Immediately amend legislation to reinstate an effective and pro-active consultation process with industry".

There is a wide range of approaches that could be examined to design future consultation arrangements. A set of "Consultation Arrangements for Statutory Decisions" has been developed to describe how the legislative requirements for consultation on the different types of statutory decisions are being put into practice under a range of circumstances. These arrangements deal with operational matters and were constructed involving the Fisheries Consultative Body and sector representatives. Fisheries Victoria is proposing to seek feedback on the draft arrangements from Seafood Industry Victoria, VRFish and the State-wide Recreational Fishing Roundtable Forum, prior to submitting the arrangements to the Minister for final endorsement. Fisheries Victoria has also established a number of groups and put mechanisms in place to give effect to the consultation principles.

Options are currently under consideration to improve the performance of the current consultative arrangements by implementing three actions:

- establishing a cross-sectoral Fisheries Advisory Forum;
- publishing the "Consultation Arrangements for Statutory Decisions" described above, following consultation and any necessary revision; and
- formalising the State-wide Recreational Fishing Roundtable Forum.

Fisheries Victoria is preparing a number of options to improve the governance arrangements for the provision of funding to sector organisations, particularly with regard to Seafood Industry Victoria and VRFish. The previous Minister made a commitment to continue to fund the operations of these bodies for three years (up to June 2012) through recreational fishing licence funds and a statutory levy on commercial licence holders, respectively.

There is currently discussion around how the intent of the Government's policy statements for the recreational and commercial fishing sectors can be achieved, such as:

- conducting consultation based on sound principles enabling processes to be developed tailored to the circumstances of a particular issue;
- the provision of better opportunities for a broader range of groups and individuals to express their views about matters that directly affect their business or other fishing interests (e.g. in setting the annual setting of Ts or priorities for projects to improve recreational fishing) - the previous legislative and policy arrangements were criticised by a number of commercial and recreational fishers who felt that their views were not being adequately presented to Government by the 'recognised' peak bodies;
- the provision of opportunities for fishers in regional areas to express their views directly to senior Fisheries Victoria representatives (ED or Director level);
- more efficient processes and reduced administrative costs; and
- continue the work to improve accountability for the expenditure of commercial industry levies and recreational fishing licence revenue by Seafood Industry Victoria and VRFish, respectively.

Improving stakeholder engagement in fisheries management in Victoria is directed at achieving three broad objectives:

- incorporating the information and experience stakeholders possess that would not otherwise be available;
- addressing procedural fairness issues by providing those whose interests are affected by a decision to have their views heard; and

- efficiency can be better achieved when stakeholders are engaged through increased level of voluntary compliance, and potentially through their ability to deliver services more efficiently than Government.

Victoria is currently in the process of developing a new Future Fisheries Strategy, part of which will consider how to address these objectives, including through encouraging the development of capable, representative stakeholder organisations. As part of the development of a new strategy for managing the State's fisheries, Fisheries Victoria is undertaking a thorough examination of alternative approaches for Government-sector decision making on fisheries matters. This work will set out the benefits of genuine stakeholder engagement, particularly in terms of delivering better decisions at lower cost, and the principles for implementing improved arrangements, and the best governance models for achieving those objectives.

In terms of commercial fisheries, Victoria does not formalise regional-based consultation, but it is taken as a given in dealing with each sector.

In terms of expertise vs. representative, Victoria does not have an express policy, and in practice their committees and working groups etc. are a mixture of both, erring on the side of representation at the moment.

At the Department level, Fisheries Victoria appointed 6 Regional Leaders in September 2011 - these are senior appointments to implement the Victorian Government's focus on regional consultation and service delivery.

5. Queensland

Like all other Australian Governments, the Queensland Government has the responsibility to manage fisheries resources in the public interest, including making decisions where there are competing interests.

Section 15 of the *Fisheries Act 1994* provides for the Queensland Government Minister responsible for management of fisheries to establish advisory bodies to assist in the administration of the Act. Although the Act allows for the establishment of advisory bodies, such bodies do not have statutory standing or responsibility.

Fisheries MACs were established under various ministers responsible for fisheries between 1995 (when the Act commenced) and 2009. These provided advice on all aspects of the relevant fishery to allow the Government to decide how a fishery should be managed now and into the future.

In March 2008, Premier Anna Bligh announced an independent review of Queensland Government boards, committees and statutory authorities (the Webbe and Weller Review). The final review recommendations were released on 31 March 2009. They included a recommendation to abolish the seven fishery MACs in existence at that time and establish a single MAC with a strategic focus, with no remuneration for committee Chair or members. This recommendation was accepted by the Government.

Fisheries Queensland has responsibility for advising the Minister on fisheries matters. In September 2009, the Minister established the Queensland Fisheries Advisory Committee (QFAC) to provide strategic advice on fisheries matters to Fisheries Queensland and the Minister. The final decision on issues however remains the responsibility of the Minister.

Based on the fisheries management priorities determined, the ED, Fisheries may establish Technical Advisory Groups (TAGs) to provide technical information that will assist Fisheries Queensland to pursue these priorities. TAGs may also be established to inform the strategic work of QFAC.

Although this statement of arrangements does not limit the number of TAGs, it is intended that the number of TAGs will be small (potentially 3-4). The Government's policy on consultation suggests that it would be inconsistent with the spirit of the independent review of Queensland Government

Boards, Committees and Statutory Authorities (the Webbe and Weller Review) and the subsequent Government decision to abolish the seven fishery-specific MACs if they were replaced by a TAG for each fishery that reproduced the function of the previous MAC for that fishery.

It is intended that the Minister and Fisheries Queensland employ the new structure to seek advice more strategically. Nevertheless, besides the formal advisory bodies of QFAC and the TAGs, there are other mechanisms for consultation that may be employed by Fisheries Queensland:

- may also establish technical working groups to generate information upon which to base decisions. These groups may be permanent or adhoc and can be fishery-specific or broader. They may be established to provide advice to Fisheries Queensland or to inform the decisions of a body such as QFAC. They would normally be funded from the existing budget of the relevant area and the responsible senior officer must justify and prioritise formation of technical working groups within these resources. For example, Fisheries Queensland will ensure that its decisions continue to be informed by appropriate scientific advice (formerly provided by the SAGs).
- Fisheries Queensland also consults directly with stakeholders through industry association meetings, port visits, newsletters and other means.

There are also legislated requirements for consultation; such as Regulatory Impact Statements (RIS) that ensure stakeholders in the fishery are consulted about significant changes in management arrangements.

The Queensland Fisheries Advisory Committee

Objective

The objective of QFAC is to provide coordinated, strategic advice on fisheries matters to Fisheries Queensland and the Minister that is representative of a broad range of Queensland fisheries resource users and other community stakeholders.

Role

QFAC will be advisory in nature - QFAC's role is to present the views of fisheries stakeholders on certain strategic issues as requested by Fisheries Queensland and strive to develop recommendations to inform the Government's decisions.

QFAC's advice will be sought on matters that are strategic in nature. It will therefore be valuable in assisting Fisheries Queensland drive the implementation of the Queensland Fisheries Strategy.

Subjects on which QFAC advice may be sought could include:

- prioritising actions under the Queensland Fisheries Strategy including measures to enhance the net economic value of fisheries to the Queensland community on a sustainable basis, removing unnecessary regulation, and instituting ecosystem-based management and opportunities for co-management.
- prioritising implementation of these measures across fisheries including development or refinement of management arrangements.
- priorities and principles to guide development or refinement of arrangements

It was initially proposed that QFAC meet twice yearly in sync with the Fisheries planning calendar to ensure there is sufficient lead in time for Fisheries Queensland and the Minister to consider its advice before making a decision. QFAC may meet on more than two occasions in one year if necessary.

Unless specifically requested by the Government, QFAC would not provide advice on matters that are operational or fishery-specific such as:

- decision rules underpinning harvest strategies
- detail of new management arrangements
- implementation of management arrangements
- ecological risk assessments, bycatch and discard plans

However, QFAC will receive updates on specific fisheries and work being undertaken by Fisheries Queensland to inform its advice on strategic matters and it may be invited to comment on the need for expert advice and appropriate consultation arrangements. It may also request additional information or further consultation to inform its advice. This may include the establishment of TAGs in some cases. These requests will be considered on a case-by-case basis by Fisheries Queensland.

Interestingly, QFAC formally reports to the Deputy Director General Fisheries who, when providing the advice to the Minister, retains the option to balance it with other information as appropriate.

Whilst the rationale behind abolishing the seven MACs and replacing them with QFAC may have seemed rational as an efficiency measure at the time, the fact is that the experiment has been an abject failure, with QFAC having met only once since its establishment in September 2010, and serious issues such as snapper closures being handled almost exclusively in the political arena.

6. Tasmania

In Tasmania, the operation of a fishery is supported by both rules and regulations made as subordinate legislation to the *Living Marine Resources Management Act 1995*. The majority of rules pertaining to each fishery are contained in a single set of statutory rules that are called a management plan under the 1995 Act. The Act stipulates the process to make rules that includes mandatory periods of public consultation, reporting that process to the Minister and ultimately approval of rules by the Minister. The Act also provides similar processes for the periodic review of rules that also includes mandatory public consultation on draft amendments, reporting to the Minister on this process, and ultimately ministerial approval. Both are open to scrutiny by parliament.

The 1995 Act also has other provisions to promote consultation and engagement with stakeholder groups. These provisions might be seen as additional safeguards to promote transparency, equity and appropriate sustainable fisheries management regimes.

Before recognition, s.25 of the 1995 Act provides for the recognition of ‘fishing bodies’ that represent the interests of participants, or certain fisheries or parts of the fishery. Then, for a range of activities that might be undertaken under the Act, including the making/amending of rules, the Minister is obliged to consult with ‘relevant fishing bodies’. While ‘fishing bodies’ are not well defined under the Act, in practice they include organisations such as the Tasmanian Rock Lobster Fishermen's Association (TRLFA) and the Tasmanian Abalone Council.

In determining what constitutes a ‘relevant fishing body’, the Minister will consider such issues as the governance, overall planning capability and track performance before recognition as relevant fishing bodies. It is also important, from a Departmental resource perspective, to limit the number of ‘relevant fishing bodies’ to a practical level. In some cases, Government will assist fishing bodies to become better organised and constituted, and therefore qualify as a ‘relevant fishing body’, as occurred with the case of the Tasmanian recreational fishing body TARfish. In the case of smaller fisheries the Tasmanian Seafood Industry Council (TSIC) undertakes the role of fishing body. In this sense, it is clear that fishing industry associations in Tasmania play a major statutory role in providing advice to the Minister on fisheries management issues. This role is underpinned by the statutory obligation of the provisions of the Act for the Minister to consult with ‘relevant fishing bodies’.

In addition, s.27 of the 1995 Act provides the creation of advisory committees to provide information and advice to the Minister on matters related to the administration of the Act. Several Fisheries Advisory Committees (FACs) have been set up for different fisheries to advise the Minister on management measures for particular fisheries.

As with fishing bodies, the nature and form of FACs are not well defined in the Act. In practice however these committees, including the Crustacean FAC and the Rock Lobster FAC are very central to the development of advice for the Minister, including assisting in the development of new rules/management measures for fisheries. The FACs also include membership of relevant fishing bodies and in this sense the Minister receives advice from both the FAC and direct from 'relevant fishing bodies'. In general, these two lines of advice are developed concurrently and rarely differ in substance.

Importantly, the FACs are very much an organ of the Minister. He/she is able to appoint individuals, change terms of reference, set the make up of the committees, including the numbers of commercial fishers, representation by relevant fishing bodies, etc. The FACs are expertise based rather than representational, although this does present some problems where the relevant fishing body takes a particular view and members of that body are also members of the FAC.

What this means in practice is processes are in place to assess issues in each fishery, develop appropriate policy and proposals and subsequently develop and implement appropriate subordinate legislation. These processes run through the fishery advisory committees with significant input from fishing bodies that are also represented on the advisory committees.

The fishing body is also under some obligation to consult and canvass their constituency and to present these views into all parts of the process. All individual stakeholders and the community generally have an opportunity to make comment on subordinate legislation as it is implemented.

Thus, at the higher level, any rules or provisions that applied to fishers are subject to appropriate processes, safeguards and the requirements of the Act. For any particular issue, there is often a range of views that may be diverted or conflicting - the processes utilised are the determinants of the final outcomes. All parties have opportunity or input into this process, however, if an individual does not support any particular outcome, this does not mean the process is flawed.

One of the FAC Chairs has made a number of observations as follows:

- The ability of the Minister to hire and fire and set the general working conditions of each FAC is, in my opinion, central to their effective operation. In some instances, the membership of the committee is defined as members of particular fishing industry bodies. In this case the body will put up a nomination to the Minister for acceptance, which is rarely refused. In this way, the Minister is able to have committees that he is comfortable with, while industry are able to see that there is a good spread of opinions from people whose reputation and expertise is considered appropriate.
- The facts provide an opportunity for industry researchers and managers to come together on a regular basis and discuss key issues relevant to the management of their fishery. By scheduling these meetings on a regular basis, a good deal of trust (but not always agreement) results. There is a good deal of respect at these committees for the endeavours of all three groups, and in my opinion, these groups, and the Commonwealth MACs provide the best example of fisheries consultation in Australia.
- The fact that the work of the FAC is legitimised through legislation is also an important factor. As I suggest above, FACs and relevant industry bodies work well together but a clear distinction should be drawn between the two. A FAC is very much a ministerial committee, appointed by the Minister to provide him with independent advice, incorporating a wide range of views and chaired independently. Industry bodies, through various processes,

will provide sector-based information, mostly derived from a majority view of that body's members. It is difficult to determine the degree of weight that the Minister will put behind these two sources of advice. For the most part they are in accordance, although sometimes, as in the case with the setting of total allowable catches, there can be a difference.

7. Northern Territory

The NT maintains mostly a consultative approach among key stakeholder groups, primarily through establishment and operation of MACs for major fisheries extending recently to a more collaborative approach for some offshore fisheries moving to ITQ management.

The NT is currently negotiating development of a sophisticated cooperative management framework with Traditional Owners driven by the Blue Mud Bay high court decision.

The NT has a strong recreational sector that takes a very proactive role in the management of fish stocks. The Amateur Fishermen's Association of the NT (AFANT) is the peak recreational body in the NT and it could be considered that the management of recreational fish stocks in the NT operates from a collaborative basis.

Appendix 3 Resource Sharing Policy Development Framework

In considering resource-sharing proposals, it needs to be understood that each of the user groups has significantly different needs and aspirations and these must be taken into account in making resource decisions.

For example, the Aboriginal sector is seeking

- Recognition of traditional use, subsistence fishing and of the cultural and social value of traditional fisheries
- Development opportunities for Aboriginal commercial fishing

The Commercial sector is seeking

- A rights based management system across all sectors that ensures the resource remains strong
- Secure access to proportional share of the fishery and current fishing area (at a minimum)
- An agreed up front framework providing for the payment of fair and adequate compensation or adjustment if allocations are changed, such as the loss of access to fishing grounds and/or reduction to the proportional share of the fishery
- A vibrant industry supported by Government and an informed community
- A commercial fishery managed cost effectively to encourage efficiency
- Business restructure assistance for fishers remaining in the industry and fishery dependent businesses to manage changes associated with any reductions in commercial sector allocations
- Complimentary management arrangements for all sectors
- Relevant land based infrastructure investment throughout NSW
- Evidence based management

On the other hand, the Recreational sector is seeking

- A quality recreational fishing experience for current and future generations encompassing a diverse range of opportunities (e.g. trophy fish, high catch rates, catching a meal, an eco experience)
- A reasonable expectation and level of opportunity for catching a quality fish
- An adequate level of access and minimal costs to reach locations known for abundance of desired species
- Optimum social and economic benefits for the sector and community
- Recognition and maintenance of social, lifestyle and economic values of recreational fishing
- Increased individual and community stewardship to promote sustainable, safe and appropriate recreational fishing practices

Fishing charter sector

- A quality guided fishing experience
- A reasonable expectation and level of opportunity for catching a fish

- An adequate level of access and minimal costs to reach locations known for abundance of desired species
- Further development of a world-class fishing tourism industry
- Maximising value from the sector to NSW
- Recognition distinct from the recreational fishing sector

Taking account of these aspirations, the Government needs to develop a policy that establishes the following preconditions for resource sharing:

- Long-term sustainability will remain the prime driver of management decisions and the current condition of stocks will be used as a benchmark for future management;
- Management arrangements will allocate use of the resource to one or more of the Aboriginal, commercial, recreational and fishing tourism operator sectors in accordance with the guiding principles set out below;
- Catch by weight will be used as the preferred unit for estimating use of the resource by a sector;
- Data used to apportion shares will be no more than five years old to ensure decisions are made based on contemporary knowledge;
- Commercial fishery data will be taken from catch and effort logbooks submitted in accordance with the regulations;
- Recreational fishing data will be taken from formal scientific and activity surveys;
- Aboriginal data will be taken from activity surveys;
- Social, cultural and economic impacts of different sectoral use will be described and as far as possible quantified, in terms of the magnitude of the fishery, the types of activities undertaken, the support industries associated, the current infrastructure, the dependence of the community on fisheries activities and any associated amenity issues;
- Any available additional information should be used where relevant; and
- Use of the resource by various sectors should be reviewed periodically, with that review based on the above criteria.

The process for undertaking an evaluation of a resource-sharing proposal should be overseen by the new MFAC recommended under term of reference 1 for the Review. Whilst views of the wider community will be taken into account through consultation, the level of public consultation will also depend on the wider implications arising from a proposal. Where allocation changes are made, appropriate monitoring needs to be implemented to allow review of the effectiveness of the changes and management methods used.

Account also needs to be taken of the resource implications of resource sharing proposals, such as:

- capacity to carry out targeted indigenous consultation in remote areas;
- the design of and ongoing capacity to conduct regular surveys for data requirements;
- implementation of effective education/awareness programs; and
- identification and establishment of relative measures for economic, social and cultural values for each sector.

But the most important policy ingredient is the establishment of Guiding Principles for resource sharing, such as:

Sustainability: the ongoing sustainability of the resource and the ecosystem on which they depend is paramount and the biological condition, vulnerability and resilience of the fishery must be considered and managed in a precautionary way.

Information: decisions should be based on the best available ecological, cultural, economic and social information, accepting that some decisions will need to be made on the basis of uncertain information.

Transparency: relevant stakeholders shall be consulted and have adequate opportunity to be involved in scoping and analysing potential solutions; this will include targeted consultation in regional communities; outcomes should be made with full transparency and be subject to public consideration.

Goal Orientation: outcomes must be focused on achieving the intended outcomes set out by the objectives of the *Fisheries Management Act 1994*.

Strategic Development: consideration should be given to planning for results that are equitable, justifiable, maximise economic, social and cultural benefit to NSW and provide for optimum utilisation of the resource.

Social Performance: seek to maximise the long term social benefits that are derivable from the resource, and in doing so give consideration to the full diversity of uses.

Practicality: ensure that resource-sharing outcomes are easy to understand and comply with, and are enforceable by law.

Certainty: a degree of stability and certainty in arrangements for all sectors to ensure adequate economic returns and to secure investment in the commercial aspects of using the resource.

Adjustment: consideration of compensation or structural adjustment where allocation from one user group to another results in loss of access to resources.

Appendix 4: Share allocation

Fishery	Share allocation criteria	Comments
Estuary General	<p>Shares were allocated on the basis of the primary region designated to a Fishing Business. A class of share was issued for each endorsement type held in each region. The specific criteria were:</p> <ul style="list-style-type: none"> i) 100 shares were allocated for each endorsement type a Fishing Business was entitled to at the time, except as in a), b), c) and d) below: <ul style="list-style-type: none"> a. 50 shares were allocated for each Restricted Fishery Review Panel allocated endorsement where the associated Fishing Business did not satisfy the transfer criteria in place at the time. b. 50 shares were allocated for each restricted hand gathering endorsement held in a region except; <ul style="list-style-type: none"> i. 1 share was allocated for each restricted hand gathering endorsement held in a region where the associated Fishing Business did not contain validated catch history. c. 1 share was allocated for each class of endorsement a Fishing Business was entitled to in a region other than the primary region. ii) 25 additional shares were allocated with respect to each endorsement a Fishing Business was entitled to where the Fishing Business satisfied the transfer criteria in place at the time, other than for classes of shares issued to Fishing Businesses in accordance with a), b) and c) above. 	<p>This criteria resulted in most Estuary General participants received a flat shareholding of 125 shares for their share classes. Some operators, presumably those with a smaller historical participation who gained their endorsement through a past review process, would only have received 50 shares. Some hand gatherers, who received their initial endorsements via a once-off Ministerial decree rather than through a criterion based process, only received a shareholding of 1 share.</p>

Fishery	Share allocation criteria	Comments
Ocean Hauling	<p>All shares, with the exception of purse seine shares, were allocated on the basis of the primary fishing region designated to a Fishing Business. General and Net classes of shares were allocated as below:</p> <p>A. General Ocean Hauling shares</p> <p>i) 40 shares were allocated for each Class A (skipper) endorsement a Fishing Business was entitled to; and</p> <p>a. 20 additional shares were allocated where the Fishing Business satisfied the transfer criteria in place at the time for at least one net type.</p> <p>ii) 20 shares were allocated for each Class B endorsement a Fishing Business was entitled to; and</p> <p>a. 20 additional shares were allocated where the Fishing Business satisfied the transfer criteria in place at the time.</p> <p>B. Net Shares</p> <p><i>1) General Purpose net shares</i></p> <p>i. 10 shares were allocated to those Fishing Businesses authorised to use a general purpose hauling net; and</p> <p>ii. 20 shares were allocated where the Fishing Business satisfied the transfer criteria in place at the time for the net; and</p> <p>iii. 10 shares were allocated for each 10 tonnes of combined total weight of mullet, bream, Australian salmon, luderick, dart and sand whiting taken by the ocean hauling method as indicated in the validated catch history of the Fishing Business.</p> <p><i>2) Garfish net shares</i></p> <p>i. 10 shares were allocated to those Fishing Businesses authorised to use a garfish bullringing or hauling net, and</p> <p>ii. 20 shares were allocated where the associated Fishing Business satisfied the transfer criteria in place at the time for the net, and</p> <p>iii. 10 shares were allocated for each 1 tonne of sea garfish taken by the ocean hauling method as indicated in the validated catch history of the Fishing Business.</p> <p><i>3) Pilchard, Anchovy and Bait net shares</i></p> <p>i. 10 shares were allocated to those Fishing Businesses authorised to use a pilchard, anchovy and bait net; and</p> <p>ii. 20 shares were allocated where the associated Fishing Business satisfied the transfer criteria in place at the time for the net; and</p> <p>iii. 10 shares were allocated for each 10 tonnes of combined total weight of anchovies, yellowtail, blue mackerel, sandy sprat (whitebait) and pilchards taken by the ocean hauling method as indicated in the validated catch history of the Fishing Business.</p> <p>C. Purse seine net shares</p> <p>i. Other than in a) below, 40 shares were allocated for each Class C or D endorsement a Fishing Business was entitled to; and</p> <p>ii. 10 shares were allocated for each 10 tonnes of combined total weight of pilchard, anchovy, sandy sprat (whitebait), blue mackerel, jack mackerel, yellowtail, silver trevally, bonito, sweep and Australian salmon taken by the purse seine method as indicated in the validated catch history of the Fishing Business, up to a maximum of 500 shares.</p> <p>a) 20 shares only were allocated where a Fishing Business had a Restricted Fishery Review Panel allocated endorsement and that Fishing Business did not satisfy the transfer criteria in place at the time.</p>	<p>This allocation involved a mix of flat and catch history based criteria, meaning that the resulting shareholdings will reflect past activity more than some of the other fisheries that used more of a flat allocation formula.</p> <p>One anomaly in this criteria appears to be the maximum cap placed on the allocation of purse seine shares, which means the small number of large purse seine operators will have received relatively fewer shares compared to their past catches than the smaller purse seine operators.</p>

Fishery	Share allocation criteria	Comments
Ocean Trap and Line	<p>A class of shares was issued for each endorsement type held, as follows:</p> <p>A. Ocean Trap and Line Shares (excluding spanner crab (northern zone))</p> <p>Except as in a), below:</p> <ul style="list-style-type: none"> i. 25 shares were allocated for each endorsement type a Fishing Business was entitled to; and ii. 15 shares were allocated for each endorsement type a Fishing Business was entitled to where the Fishing Business satisfied the criteria of: not less than \$20,000 value of catch history for the Fishing Business (excluding spanner crab catches if the fishing business does not hold a spanner crab southern or northern endorsement, and excluding prawn catches) during the 2 best years between 1986 to 1990, and in the best 1 year between 1991 to 1993. <p>a) 20 shares only were allocated for each Restricted Fishery Review Panel allocated endorsement where the Fishing Business did not satisfy the transfer criteria in place at the time.</p> <p>B. Spanner Crab (Northern Zone) Shares</p> <ul style="list-style-type: none"> i. 5 shares were allocated for each 1,200 kilogram range of spanner crab weight as indicated in the validated catch history of the fishing business during the 3 best years between 1986 and 1990. 	<p>This criteria resulted in largely a flat allocation structure, with most businesses being allocated 40 shares.</p> <p>The different criteria used to allocate spanner crab (northern zone) and spanner crab (southern zone) shares creates some complexities when trying to implement a catch quota for spanner crabs.</p>

Fishery	Share allocation criteria	Comments
Ocean Trawl	<p>The following classes of shares were issued:</p> <p>A. Inshore Prawn Trawl Shares</p> <p>Except as in a) below:</p> <ul style="list-style-type: none"> i. 5 shares were allocated for each inshore prawn trawl endorsement a Fishing Business was entitled to; and ii. 1 share was allocated for any inshore prawn trawl monthly catch return during the 3 best years between 1986 and 1990; and iii. 1 share was allocated for any inshore prawn trawl monthly catch return during the 2 best years between 1991 and 1993 inclusive. <p>a) Where a Fishing Business has a Restricted Fishery Review Panel allocated endorsement and did not satisfy the transfer criteria in place at the time for the endorsement or had an endorsement subject to a condition rendering the endorsement “non transferable”, 1 share only was allocated.</p> <p>Note: Inshore prawn trawl monthly catch returns were identified by the method <i>prawn trawl</i> undertaken in all ocean waters with indicator species including school prawns, king prawns, greasyback prawns, or ‘prawns unspecified’.</p> <p>B. Offshore Prawn Trawl Shares</p> <p>Except as in a) below:</p> <ul style="list-style-type: none"> i. 5 shares were allocated with respect to any P1, P2 or P4 endorsement a Fishing Business was entitled to; and ii. 1 share was allocated for any offshore prawn trawl monthly catch return during the 3 best years between 1986 and 1990; and iii. 1 share was allocated for any offshore prawn trawl monthly catch return during the 2 best years between 1991 and 1993 inclusive: <p>a) Where a Fishing Business had a P3 endorsement, 1 share only was allocated.</p> <p>Note: Offshore prawn trawl monthly catch returns were identified by the method <i>prawn trawl</i> undertaken in all ocean waters excluding those catches from ocean zones 7, 8, 9 and 10 after January 1992 inclusive. Indicator species included king prawns or ‘prawns unspecified’.</p> <p>C. Deepwater Prawn Trawl Shares</p> <p>Except as in a), below</p> <ul style="list-style-type: none"> i. 5 shares were allocated for each deepwater prawn trawl endorsement a Fishing Business was entitled to; and ii. 1 share was allocated for any deepwater prawn trawl monthly catch return during the 3 best years between 1986 and 1990; and iii. 1 share was allocated for any deepwater prawn trawl monthly catch return during the 2 best years between 1991 and 1993 inclusive. <p>a) 1 share only was allocated for each Restricted Fishery Review Panel allocated endorsement where the associated Fishing Business did not satisfy the transfer criteria in place at the time.</p> <p>Note: Deepwater prawn trawl monthly catch returns were identified by the method <i>prawn trawl</i> undertaken in the ocean zones 1, 2, 3, 4, 5, and 6 where the following indicator species were recorded: royal red, scarlet and ‘prawn unspecified’. If a Fishing Business held an inshore or offshore endorsement catch returns that only indicate ‘prawn unspecified’ catch were excluded.</p> <p>D. Northern Fish Trawl Shares</p> <p>Except as in a) below:</p> <ul style="list-style-type: none"> i. 5 shares were allocated for each northern fish trawl endorsement a Fishing Businesses was entitled to; and ii. 1 share was allocated for each northern fish trawl monthly catch return during the 3 best years between 1986 and 1990; and iii. 1 share was allocated for each northern fish trawl monthly catch return during the 2 best years between 1991 and 1993 inclusive. <p>a) 1 share only was allocated for each Restricted Fishery Review Panel allocated endorsement where the Fishing Business did not satisfy the transfer criteria in place at the time.</p> <p>Note: Northern fish trawl monthly catch returns were identified by the method <i>fish trawl</i> undertaken in ocean zones 4, 5, and 6. Indicator species included redfish, ling, mirror dory, john dory, ocean perch, tiger flathead, gemfish, ribbonfish, silver trevally, sand flathead, leatherjacket, snapper, tarwhine, yellowfin bream, mulloway, morwong, boarfish, moonfish, angel shark, gummy shark, school shark, hammerhead shark, endeavour dogfish, roughskin shark and saw shark.</p>	<p>Similar to the Ocean Hauling fishery, this allocation criteria uses a mix of a base share allocation with extra shares issued based on catch history.</p> <p>Note that “fishery trawl shares” were also allocated at the time based on a determined criteria, but these were cancelled before the stage of issuing final shares and thus are not reflected here. The Review Team understands that they were removed because they were seen as an additional layer of rights in the fishery that were set to only confuse rather than assist in future management settings.</p> <p style="text-align: right;">xxi i</p>

Fishery	Share allocation criteria	Comments
Estuary Prawn Trawl	<p>One class of share was allocated for any estuary prawn trawl endorsement type held by a Fishing Business as stated below.</p> <p>A. Hawkesbury River Prawn Trawl</p> <ul style="list-style-type: none"> i. 100 shares were allocated for each Hawkesbury River (S3) endorsement a Fishing Business was entitled to; and ii. 10 shares was allocated for each year of operation between 1986 and 1993 where the validated catch history of the Fishing Business contained two or more catch returns indicating estuary prawn trawl as a fishing method in the Hawkesbury River, up to a maximum of 50 shares. <p>B. Hunter River Prawn Trawl</p> <ul style="list-style-type: none"> i. 100 shares were allocated for each Hunter River (S4) endorsement a Fishing Business was entitled to. <p>C. Clarence River Prawn Trawl</p> <ul style="list-style-type: none"> i. 100 shares were allocated for each Clarence River (S5) endorsement a Fishing Business was entitled to; and <ul style="list-style-type: none"> a. 10 shares were allocated for each year of operation between 1986 and 1993 where the validated catch history of the Fishing Business contained two or more catch returns indicating estuary prawn trawl as a method in the Clarence River, up to a maximum of 50 shares. ii. 10 shares only were allocated for each Lake Wooloweyah (S6) endorsement a Fishing Business was entitled to. 	<p>This criteria resulted in a very flat share structure with all Hunter River operators receiving an identical shareholding and most Hawkesbury and Clarence River operators receiving 150 shares.</p> <p>Note that shares were also allocated for prawn trawling in Port Jackson, but these shares were subsequently cancelled during the provisional access stage when that waterway was closed due to elevated dioxin levels.</p>

Appendix 5: Implementation of Palmer Report recommendations

Recommendation	Response
<p><i>i.</i> A comprehensive, multi-faceted and sustainable, education and awareness strategy be developed and implemented jointly by Government and industry.</p>	<p>Ministerial press releases regarding NSW DPI, NSW Food Authority and NSW Police Force enforcement actions and high profile targeted operations released. Ongoing media program of announcing significant Compliance outcomes and court results.</p>
<p><i>ii.</i> Review the current establishment of NSW Fisheries Officers and take steps to increase numbers and compliance capacity to an appropriate level.</p>	<p>Implemented.</p>
<p><i>iii.</i> As part of the process in ii. above NSW Fisheries should review the findings of this report as a matter of priority and consider:</p>	
<p>1. implementing a divisional restructure that more efficiently delivers desired compliance outcomes;</p>	<p>Completed.</p>
<p>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;</p>	<p>Completed. Regional Manager position deleted. Director Fisheries Compliance position established.</p>
<p>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;</p>	<p>KRA 5 Outcome 5.4 – Fisheries Compliance planning and operational processes reform on target.</p>
<p>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;</p>	<p>Skills audit recommended integration of complete Cert IV in Government and now completed by all officers. Recruitment policy reflects skills required for various positions – specialist or generalist. Skills required are reflected by ‘compliance’ with the National Training package competencies.</p>

Recommendation	Response
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, agree a less prescriptive award framework;	Fisheries Officer positions were re-evaluated and pay rates adjusted.
6. ensuring the early implementation of a credible, uniform case management system;	Completed and ongoing. Secure Intelligence Data System and Nautilus enhancements offer a highly developed prosecution management system. Prosecutions Review Panel established to improve quality of prosecutions briefs and reduce workload on legal officers. Key objective is to reduce delays from date of offence to initiation of proceedings when court action is appropriate response.
7. Establish an effective criminal intelligence capacity to provide a sound and accurate basis to prioritise, target, resource and conducted compliance operations;	In service training with NSW Police for Analyst position. System development and training provided by developer of SIDS for SOIG officers. Training has been provided in 'Intelligence theory & Practice' & 'Criminal Intelligence & Analysis'.
8. developing an overall compliance capacity that allows for the conduct of sufficient deterrent-based, random or spot, premises searches and document examinations to act as a genuine self- incentive to comply;	Implemented and ongoing.
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;	Essential criteria provide for some necessary pre employment skills however on the job and targeted specialist skill development delivers role specific expertise.
10. working to expand and improve the quality of interagency agreements and arrangements to improve cooperation and collaboration with both State/ Territory and Commonwealth stakeholders;	Ongoing through National Fisheries Compliance Committee standards and agreements.

Recommendation	Response
11. investigating the value of an integrated Fisheries and boating patrol program;	On water cross jurisdictional review team established – discussions underway.
12. considering either the re-introduction of a ‘Flying Squad’ style mobile capacity, and/or the negotiation of outsourcing or partnership arrangements for these responsibilities with the NSW Police;	Both strategies are being employed by deployment of SOIG investigators with regional (local) staff and by development of taskforces with NSW Police to target specific local targets.
13. assessing y the opportunities and options for joint agencies and multi-jurisdictional operations as part of the response to identified national concerns and priorities;	Joint agency and multijurisdictional operations ongoing.
14. endorsing the fact that the members of the current Fisheries Investigation Unit (FIU), or equivalent should be officers of unquestionable integrity with the Director-General having the capacity to appoint and remove officers with total discretion;	Endorsed.
15. addressing, as a matter of urgency, the ways by which the present 1800 call service and the proposed, NSW Police related, call centre could achieve a more effective and credible after hours contact and response capacity.	Enhancements have been made including web and smart phone reporting capacity. Could not proceed with Police call centre service.

<p>iv. A comprehensive approach be developed to more effectively and equitably protect genuine traditional Aboriginal cultural fishing practices and fish stocks, including:</p>	<p>Significant progress made with the recognition of Aboriginal peoples' connection with the fisheries resource included in the objects of the Act and complimentary provisions developed to allow continued access to the resource for cultural fishing purposes. Further work in progress.</p>
<p>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;</p>	<p>Legislative amendments finalised into the Act in early 2010 effectively recognising Aboriginal cultural fishing as a distinct sector. The amendments also provided measure for the establishment of the Aboriginal Fishing Advisory Council (AFAC).</p>
<p>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;</p>	<p>Definition of cultural fishing has been established and specific ability to issue authority for access to the resource for major cultural fishing needs is now provided for within s.37 of the Act. Further cultural fishing regulation establishing rules that provide defined access to the resource is in development taking into consideration overall sustainability of the fishery resource and with recognition to sharing the resource with other sectors. Regulation is to be commenced in concert with the as yet to be proclaimed s.21AA of the Act which removes the application of the general bag and possession limits applying to Aboriginal people when culturally fishing and allows regulation to prescribe different limits for this purpose.</p>
<p>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;</p>	<p>A new group has been established through legislative provision. The AFAC reports to the Minister.</p>

<p>4. more actively and effectively promoting and integrating Aboriginal representation on 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;</p>	<p>The AFAC provides a forum for consideration of wider fishery management issues to capture Aboriginal views at the strategic level.</p>
<p>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, consideration of allowing beach shucking of abalone at a certain 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 the extension, clarification and effective communication of 'special permit' exemptions;</p>	<p>As identified above (see iv2) cultural fishing rules are under development to be introduced by way of regulation including different bag and possession limits for Aboriginal people when culturally fishing. Recognition of cultural practices forms part of the considerations as well. Whilst regulation is in development an interim compliance policy is in place providing for variance of the existing rules allowing small-scale cultural activity to be undertaken on a daily basis.</p>
<p>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;</p>	<p>Section 282K of the Act provides for community service orders for serious fisheries offences to include work to restore the fisheries resource. Resources to implement this scheme are very limited and to date no such community service has been conducted.</p>

<p>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.</p>	
<p>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 abalone compliance activities.</p>	<p>The 2005 reduction of the bag limit from 10 to 2 abalone reduced the criticality of this and similar recommendations however these spatial and temporal abalone management strategies are continually being assessed.</p>
<p>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.</p>	<p>As above.</p>
<p>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.</p>	<p>Bag limit reduced to 2. Subject to the Bag and Size Limit Review 2012.</p>
<p>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.</p>	<p>Estimations are applied to provide the courts with a value figure for seized abalone.</p>

<i>ix.</i>	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.	Not supported.
<i>x.</i>	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.	Not supported.
<i>xi.</i>	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.	Not supported.
<i>xii.</i>	A requirement be introduced for recreational fishers to cut or clip the central tail fin of a lobster at the time of catch.	Not supported – the commercial tagging of lobster is a successful strategy to differentiate between commercial and recreational catch.
<i>xiii.</i>	Corresponding offences be enacted for selling, buying, attempting to buy, or being in possession for sale of abalone or lobsters so marked.	As above.
<i>xiv.</i>	The practicality of recreational lobster fishers being required to maintain records of catch numbers and lobster sizes be further investigated.	Other strategies are employed to assess recreational catch.
<i>xv.</i>	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.	Ongoing issue with targeted operations undertaken.
<i>xvi.</i>	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.	Subject to the Bag and Size Limit Review 2012.

<p><i>xvii.</i> 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.</p>	<p>Successful targeted illegal eel fishing operations have brought illegal operators before the courts.</p>
<p><i>xviii.</i> 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.</p>	<p>Subject to the Bag and Size Limit Review 2012.</p>
<p><i>xix.</i> 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.</p>	<p>Not supported and registration requirement removed. Other effort assessment methods are employed.</p>
<p><i>xx.</i> NSW Fisheries initiate additional cooperative arrangements with the oyster farming industry to better assist the development of strategies to prevent and reduce oyster theft.</p>	<p>Operation Trident implemented. An ongoing joint Industry, Fisheries NSW, Police and NSW Food Authority operation.</p>
<p><i>xxi.</i> 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.</p>	<p>Strict reporting requirements in annual returns. Hatchery QAP system. Broodstock tagging and documentation processes</p>
<p><i>xxii.</i> A number of broader non-species specific legislative and regulatory changes be considered, including:</p>	
<p>1. abolishing the present 'prescribed quantities' provisions and replacing them with zero number and weight possession limits;</p>	<p>Prescribed quantities tightened up but could not implement zero limits.</p>

<p>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;</p>	<p>This would enhance deeming provisions under which fish found on commercial premises can be deemed as being in possession for sale.</p>
<p>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;</p>	<p>Existing deeming provisions apply to commercial fishers (s.105) and registered fish receivers (s.120) but do not extend beyond that first point of sale.</p>
<p>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;</p>	<p>Resistance to this proposal at drafting stage. NSW Food Authority has powers in this area.</p>
<p>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;</p>	<p>Implemented.</p>

<p>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;</p>	<p>Supported. Penalty points scheme project in the NFCC workplan. There is also a need for administrative sanctions (suspension of endorsements or fish receivers registration) if the holder fails to submit fish records as required.</p>
<p>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;</p>	<p>Supported. Proof of identity should be included in applications for licences/registration.</p>
<p>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;</p>	<p>Supported and provide for seizure of fish found in all or unmarked keepers / holding pens.</p>
<p>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;</p>	<p>Subject to the Bag and Size Limit Review 2012.</p>

<p>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;</p>	<p>Subject to the Bag and Size Limit Review 2012.</p>
<p>11. requiring persons purchasing commercial fishing net material to demonstrate that they hold a current fishing licence that authorises the use of that equipment;</p>	<p>Implemented.</p>
<p>12. implementing penalty provisions linked to value of illegal catch similar to those in force in Western Australia;</p>	<p>Implemented.</p>
<p>13. expanding proceeds of crime and confiscation of assets provisions to allow them to apply to specified fisheries offences;</p>	<p>Implemented. However need to open up court's capacity or application of forfeiture to include forfeiture of boats or vehicles owned by others (e.g. partners of defendants).</p>
<p>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;</p>	<p>Implemented. However amendment to s.35 required to include offence of possession of fish in NSW that were in possession of a person unlawfully in another jurisdiction (not just taken unlawfully).</p>
<p>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;</p>	<p>Ongoing consideration of this recommendation. Integrity bodies support conviction based reward systems.</p>

<p>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;</p>	<p>Not supported.</p>
<p>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.</p>	<p>Note recommendation that fisheries officers be classed as Law Enforcement officers. This would provide for Crimes Act provisions (s.60AA) providing much higher penalties, deterrents when officers assaulted.</p>
<p><i>xxiii.</i> 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.</p>	<p>Treasury support sought unsuccessfully.</p>

Appendix 6. Provisional recommendations on restructuring actions

The following recommendations are based on the principles outlined in Section 3.6.7 and recommended as a starting point for consultation with shareholders.

Share class	Issues	Linkage	Other suggested actions and observations
Estuary General			
Handline and hauling	Currently ineffective effort measure; shares granted to the vast majority of EG shareholders at start of SMF scheme.	N/A.	<ul style="list-style-type: none"> • Cancel all shares and authorise all endorsement holders in the EG fishery to use handlines and operate as crew (Cat 1 and 2 Hauling, Prawning). • Alleviates requirement to invest in handlining and hauling crew shares and removes seven share classes
Meshing	Differences between regions/waterways in net characteristics required for efficient operation. Endorsement authorises use of multiple net types.	Effort units – net length days (potentially for each net type).	Will allow businesses to tailor operations. Compliance issues, but will substantially reduce incentive for fishers to work unlawfully.
Category I Hauling	Endorsement authorises use of multiple net types (Overlap between Cat 1 and Cat 2 shares.	Effort units – net length days (potentially for each net type).	Maximum net length could be increased within reasonable limits subject to environmental, social and sustainability objectives.

Share class	Issues	Linkage	Other suggested actions and observations
Category 2 Hauling (Garfish and bait net)	As per Category 1 Hauling. Various species of garfish and some other species with populations likely to be estuary specific.	Consider species quota for garfish [otherwise effort units – net length days (potentially for each net type)].	Regional TACs would add additional protection against future overfishing of garfish, but cost and complexity of regional based quota management would need to be considered.
Prawning	Endorsement authorises use of multiple net types and different nets in different estuaries. Excess fishing effort applied during productive seasons eroding viability of full-time fishers.	Number of endorsements.	<ul style="list-style-type: none"> • A crude approach may be appropriate due to the large range of gears and relatively robust characteristics of prawn species. A secondary consideration is that the system of linkage would ideally establish some form of tradable rights between estuaries (small prawns) and the ocean fishery (larger, more valuable prawns). NB This option may be impractical at least in the foreseeable future. • To provide additional adjustment incentive, priority (where relevant) could be determined based on shares held.
Crab Trapping	Significant compliance problems, exacerbated by value of product and large black market.	Quota for mud crabs/Effort units – trap number days.	<ul style="list-style-type: none"> • Consider consolidation with Trapping (fish) share class to form new ‘Estuary Trapping’ share class, Should allow for a reduction in the complexity and inefficiency caused by existing rules and hence reduction in enforcement costs. • If share classes were consolidated, there would be a reduction in the number of share classes.
General Trapping (fish and blue swimmer crabs)	Different species targeted in different areas; gear not fully selective.	Effort units – trap number days.	<ul style="list-style-type: none"> • Consider consolidation with Mud Crab Trapping share class to form new ‘Estuary Trapping’ share class. • If share classes were consolidated, there would be a reduction in the number of share classes.
Eel Trapping	Evidence of non-compliance with existing measures to maintain viability.	Quota.	As per Mud Crab Trapping. Particular compliance issues due to remote operations in remote locations (tributaries). Vulnerable life history and species under some stress. Quota would help address these issues.

Share class	Issues	Linkage	Other suggested actions and observations
Hand Gathering	Reduction in landings of some species, particularly pipis. Multiple species with significant spatial variation in targeting in some cases.	Quota.	To stimulate early adjustment, consideration could be given to the implementation of temporal (e.g. daily, weekly etc.) species-specific quotas. Quota will assist those species under pressure.
Ocean Haul			
General Ocean Hauling (crew)	See below.	See below.	See below.
Hauling Net (General Purpose)	In some regions (e.g. region 7) there is a shortage of endorsed crew and there are reported instances of Skippers (holding Hauling GP shares) being 'held to ransom'.	Ability to use additional crew.	<ul style="list-style-type: none"> • Significant consideration will need to be given to the differences between regions in terms of latent and active effort and types of operation. • Where latent effort is a problem, consideration should be given to increasing the minimum shareholding. • Provides scope for skippers to invest in order to have greater control over who they employ within a crew, thereby increasing potential viability. • Outcome is equivalent to a 'block licence' i.e. a specified shareholding would entitle a skipper to use a certain number of unlicensed crew.
Garfish Net Hauling	Significant overfishing concerns.	Quota.	<ul style="list-style-type: none"> • Recovery Program changes may drive other changes/adjustments in this share class. Some potential for tradability across fisheries once recovery assured. • Will allow more efficient operations with removal of net, personnel/crew, regional and time restrictions.
Pilchard, Anchovy and Bait Net		Number of endorsements.	<ul style="list-style-type: none"> • Use of minimum shareholdings likely to be more important for this share class. • Department committed to reviewing bait for Commonwealth tuna fishing issue and use of bait nets/purse seines; the outcome of this review may have implications for this and the purse seines share classes.

Share class	Issues	Linkage	Other suggested actions and observations
Purse seine	Seemingly intractable issue regarding the distortion between catch history and share allocation (arising from an arbitrary decision by Government).	Quota, subject to cost benefit analysis.	May be possible to arrive at an agreed allocation of quota through compromise/negotiation, addressing the equity issues within the fishery.
Ocean Trap and Line			
Line Fishing (Eastern Zone)	Moving to link shares, even at the end of the structural adjustment period may cause considerable hardship for some operators. Current maximum number of hooks restricting some operations. Clear links with Commonwealth fishery (SESS).	Quota or effort units – e.g. hook numbers), based on catch/ shareholding distortion.	<ul style="list-style-type: none"> • Additional use of minimum shareholdings and other mechanisms (cost recovery, restructuring levy) will be necessary to reduce endorsements. • Eventual move to quota would be helpful in resource sharing with the Commonwealth.
Line Fishing (Western Zone)	Large number of potential methods with very different gears and hook numbers. High level of latency due to number of endorsements issued.	Number of endorsements.	<ul style="list-style-type: none"> • Additional use of minimum shareholdings and other mechanisms (cost recovery, restructuring levy) will be necessary to reduce endorsements. • Number of hooks not a meaningful control; management by the gear level not appropriate.
Demersal Fish Trap		Effort units – trap number days.	
School and Gummy Shark	High level of latency. School shark fishery marginal, species overfished. Now a very minor fishery.	Quota (catch cap).	Quota would align with Commonwealth.
Spanner Crab (Northern Zone)	Ministerial approval already granted - quota strongly supported by the Review Team.	Quota.	<ul style="list-style-type: none"> • Consider immediate consolidation with spanner crab (southern zone), subject to cost benefit analysis. Undertake joint spanner crab assessments with Queensland prior to setting a global TAC with the NSW allocation distributed in proportion to shareholding. • Note complications arising from different methods of allocation between the northern and southern zones and relative catch levels will preclude a direct allocation of quota based on shareholdings.

Share class	Issues	Linkage	Other suggested actions and observations
Spanner Crab (Southern Zone)	Quota strongly supported by the Review Team. Benefits in adopting an approach consistent with northern sector.	Quota, subject to cost benefit analysis.	See above.
Ocean Trawl			
Inshore Prawn	High level of latency.	Number of endorsements.	<ul style="list-style-type: none"> • Continue to develop the Ocean Trawl Reform Package (boat upgrade provisions, minimum shareholdings & relax input controls etc.). • Considerable success in rationalisation (reduction in latent effort) with increase in minimum shareholding. • Potential to move to a days-based linkage (e.g. net length days) across all ocean trawl sectors, but need to consider if cost-effective/necessary. • Consideration of quota for the management of school whiting in this sector, Offshore Prawn and Fish Trawl Northern Zone.
Offshore Prawn	Horsepower restrictions now constraining ability of operators to arrange input costs (fuel major cost) to improve efficiency.	Number of endorsements.	<ul style="list-style-type: none"> • Continue to develop the Ocean Trawl Reform Package (boat upgrade provisions, minimum shareholdings & relax input controls etc.). • Considerable success in rationalisation (reduction in latent effort) with increase in minimum shareholding.
Deepwater Prawn	Very few participants at present, low GVP and many shareholders below the minimum. Some potential remains for expansion if and when improved markets identified.	Number of endorsements.	<ul style="list-style-type: none"> • Continue to develop the Ocean Trawl Reform Package (boat upgrade provisions, minimum shareholdings & rationalising input controls etc.). • Considerable success in adjustment (reduction in endorsements) so far with increases in minimum shareholding.
Northern Fish Trawl	Mixed species fishery, with whiting and flathead key species.	Number of endorsements.	<ul style="list-style-type: none"> • Continue to develop the Ocean Trawl Reform Package (boat upgrade provisions, minimum shareholdings & rationalising input controls etc.). • Considerable success in adjustment (reduction in endorsements) so far with increase in minimum shareholding.

Share class	Issues	Linkage	Other suggested actions and observations
<i>Southern fish trawl (restricted fishery)</i>	Potential for fishery to be merged into the adjacent Commonwealth SESSF. Funding allocated under suggested restructuring package to facilitate such an approach.	N/A.	See Section 3.3.3 of this Review.
Estuary Prawn Trawl			
Clarence	High level of latency – 90 endorsements. High potential if harvesting rationalised (size of prawns, number of vessels participating).	Number of endorsements.	Suggest that a maximum of vessels should be endorsed, based the number that the river could reasonably support, on average.
Hawkesbury	High level of latency – 56 endorsements. Good market access; economics of this share class not directly compatible with Clarence / Hunter share classes.	Number of endorsements.	Suggest that a maximum of vessels should be endorsed, based the number that the river could reasonably support, on average.
Hunter	Moderate level of latency – 27 endorsements.	Number of endorsements.	Suggest that a maximum of vessels should be endorsed, based the number that the river could reasonably support, on average.

