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NCP Review of the Fisheries Management Act 1994

Outstanding issues:
- fish receiver licences
- charter boat licences

Prepared for:

New South Wales Fisheries

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Executive summary

The National Competition Policy Review of the New South Wales *Fisheries Management Act 1994* and subsequent assessment by the National Competition Council (NCC) raised three issues regarding anticompetitive provisions in the Act:

- the registration of fish receivers and level of fees;
- limits placed on the number of recreational charter fishing boats; and
- the non transferability of some charter fishing boat licenses.

Overall, because of the common property nature of fish resources and risks of the 'tragedy of the commons' phenomenon occurring with unfettered access, restrictions on fishing effort, while they may restrict competition in the short term, may promote competition in the longer term by sustaining fish stocks and enabling fishers to make more responsible decisions.

CIE has had extensive further discussions with New South Wales Fisheries and fisheries officers in other jurisdictions on these three matters.

On the basis of these discussions and further information supplied, CIE is satisfied that there is a sound case for retaining restrictions in these areas as they are integral to achieving the overall objective of sustaining fish stocks.

Fish receivers licenses

Is a Fish Receiver Program necessary?

- Maintaining sustainable fish stocks requires restrictions on fishing effort as well as a sound system of monitoring, surveillance and compliance.
- The Fish Receiver Program (FRP) has the objective of aiding the conservation of fish stocks by providing an auditable catch validation link between fish catches and point of first sale and minimising the

marketing of illegally caught fish. It also ensures quality standards are met.

- The program provides a register of all points of entry into the marketing system, limits possibilities for marketing illegally caught fish and provides valuable information from sales records that supplements fish catch records. This contributes to the sound management of the state's fisheries resources.
- CIE concludes that there is a sound case for such a program. Similar programs operate in other jurisdictions especially where there are output quota restrictions or share management fisheries. By July of this year, all major commercial fisheries in New South Wales will be share management fisheries. A cost recovery framework based on full cost recovery of attributable costs will be phased in for these commercial sector fisheries from December 2004.

Are the fees too high?

- Fees for fish receiver's licenses are set on the basis of cost recovery with about 75 per cent cost recovery. To effectively manage the FRP, New South Wales Fisheries is firmly of the view that annual inspections of premises is necessary. On this basis, fees are currently set at $2 766 per annum for a Registered Fish Receiver (RFR) licence and $830 a year for a Restricted Registered Fish Receiver (RRFR) licence. The latter entitles fishers to sell direct from their boats.
- Fees in most other jurisdictions are much less but inspections are not involved. In Queensland, however, a fish buyer's license – a license for buying fish for human consumption – (A license) is $2 932.50 a year, while a license for buying fish for non human consumption (B license) is $931.80.
- CIE concludes that, on the basis that annual inspections of premises is deemed necessary, the fee structure seems reasonable on the basis of cost recovery. The fish catching sector also pays fees, part of which is used for monitoring surveillance and compliance, and both sectors benefit from these activities. Should NCC have concerns about the level of fees, an external review by a suitably qualified independent consultant may be appropriate.

Other matters

- Some concerns were initially expressed that small fish buyers were disadvantaged relative to larger businesses because of the common fee structure. New South Wales Fisheries points out, however, that the

major cost of the program is in annual inspections of premises and it takes as many resources to inspect small premises as large premises. Also there is a two premises limit on any one RFR license.

- The FRP is complementary to the National Docketing System soon to be introduced. The latter is from first point of sale onwards whereas the FRP monitors fish movements from catch to first point of sale.

Charter Boat Sector

- Prior to 1997, when the Minister introduced amendments to restrict charter boat operations, the charter boat industry had doubled in the previous three years.
- This sector has the potential to put substantial pressure on fish stocks in certain 'hot spot' locations. It is therefore appropriate, in line with the objectives of the *Act*, to place some restrictions on the sector's fishing effort.
- CIE concludes that methods other than controlling the number of charters boats, such as more restrictive bag limits or restraints on fishers per boat beyond survey requirements, would be difficult and more costly to police and largely ineffective because of difficulties in ensuring compliance.
- The 'grand fathering' method of restricting charter boat operations is appropriate and has been widely used in other situations.
- The small number of non transferable licenses was introduced as a transitional measure to cater for part time operators who would not otherwise qualify for a full transferable license. If the non transferable licenses were to be made transferable, it would mean the potential of permanently increasing the fishing effort. Fishing effort from non transferable license holders will cease eventually when these businesses cease operating.

1 Introduction

THE NATIONAL COMPETITION POLICY REVIEW of the New South Wales Fisheries Management Act 1994 was completed by the Centre for International Economics (CIE) in May 2001 under the supervision of an inter-agency officials committee. The Review was released in April 2002.

Overall, the CIE review concluded that the benefits of restrictions on fishing exceed their costs and that fisheries management objectives can only be achieved by restricting competition.

The review did, however, raise some concerns that the social benefits may not exceed the social costs in respect of:

- the level of fees for the registration of fish receivers;
- limits placed on the number of recreational charter fishing boats; and
- limits placed on the transferability of some recreational charter fishing boat licences.

The review considered these as relatively minor matters but was unable to resolve them. On the first, it considered that New South Wales Fisheries should make a clear statement of the purpose for requiring the registration of fish receivers, and identify its costs of monitoring them and processing returns so that those costs can be appropriately allocated. On charter boat licences, the review sought clarification on the nature and extent of the social benefits and costs of the restrictions.

In its 2003 assessment, the National Competition Council (NCC) reiterated the concerns expressed in the review concerning fish receiver's registration fees and charter boats. The New South Wales Government was requested to complete the review and reform of:

- the recovery of fish management costs from users; and
- the licencing of the recreational charter boat fishing operations.

The former refers to cost recovery from the fish receivers program and more generally. This report only deals with the fish receivers program and the charter boat sector.

New South Wales Fisheries approached the CIE to further examine these two issues in the light of additional information supplied and further discussions with fisheries officers. A wider review of the cost recovery framework for commercial fishing and aquaculture is also being conducted NSW Fisheries has committed to implementing cost recovery as a component of ecologically sustainable development for both the commercial fishing and aquaculture industries. The NSW Government declared this commitment in an Industry Vision statement released in December 2003. This involves clear cost recovery policies for both sectors that will be progressively implemented over a three-year time frame: -

- For the commercial sector, the framework will be introduced from December 2004.
- For the aquaculture industry, the framework will be introduced by June 2005.

The difference in the timing of introduction reflects the relative position of the sectors in terms of their current progress towards paying cost recovery. The commercial fishing sector has been given significantly more notice and is already paying a greater proportion of their attributable costs; the gap between current and likely eventual charges of this sector is therefore significantly less.

Also, the charter boat industry is being examined as a component of preparing a revised Fisheries Management Strategy in the longer term.

In the meantime, New South Wales Fisheries is seeking a 'clean bill of health' on the management of fisheries in New South Wales from an NCP perspective.

CIE's approach has been to prepare an Issues Paper on the two issues including a list of key questions to be addressed by New South Wales Fisheries. The issues paper is at Attachment A. New South Wales Fisheries' response is at Attachment B. CIE has also examined how other states have handled these two issues and compared these with the way they are handled in New South Wales.

This report represents CIE's final reconsideration of the two issues as they relate to NCP Guidelines.

2 *Fish receiver licences*

The issue

Under the *Act* anyone may apply to become a registered fish receiver (RFR). An application fee of $2 766 is payable and provided the applicant meets the necessary criteria, a licence is granted without further charge. The licence is renewable on an annual basis. A RFR can legally purchase fish from licensed commercial fishers for processing and /or on-sale.

For a charge of $830 a year licensed commercial fishers can apply for a restricted registered fish receivers licence (RRFR). If granted the licence holder is entitled to sell his or her own legal fish catch direct to the public. There is no additional charge for the granting of the licence.

A condition of RFR and RRFR licences is that monthly records of transactions must be submitted to New South Wales Fisheries.

In its NCP Review of the *Fisheries Management Act 1994*, CIE concluded that the fish receivers licence was a restriction on competition:

- 'the fees payable and the information requirements on registrants increase the costs of fish wholesaling compared with other foods with which fish wholesalers compete'; and
- 'it is only noted that that the registration fees impose considerable costs for which there may not be corresponding offsetting benefits to those who register.'

Most fisheries legislation restricts competition but because of the common property nature of the fisheries resources, the benefits of restricting competition generally outweigh the costs, and generally there are no other means of achieving the same management objectives.

In the case of fish receiver's registration, the Review expressed concerns that the social benefits may not exceed the social costs. It considered that New South Wales Fisheries should make a clear statement of the purpose for requiring the registration of fish receivers and identify its costs of monitoring them and processing returns from them so that those costs can

be appropriately allocated between commercial fishers and fish receivers. On the latter the Review noted that both fish receivers and fishers were the beneficiaries of monitoring information but that there may be a disproportionate cost imposed on the fish receivers through the fish receivers program.

NCP Assessment

In its 2003 assessment of New South Wales fisheries legislation, the NCC generally concurred with the CIE findings and conclusions. It noted the CIE finding that moneys collected from fishers only covers a fraction of the funds spent by the New South Wales Department of Fisheries and suggested that the fish receiver registration fees should be evaluated further. In its assessment the NCC considered that:

> New South Wales is still to fulfil its CPA clause 5 obligations arising from the Fisheries Management Act. Specifically, the Government needs to complete the review and reform of the recovery of fisheries management costs from users and the licensing of the charter boat fishery operators (considered in the next chapter).

New South Wales Fisheries response

A detailed response by New South Wales Fisheries is at Attachment B. What follows is a concise summary of the main points.

Fish marketing has been deregulated

- Prior to November 1999 all fish caught commercially in New South Wales were required to be marketed through a fisherman's cooperative. The current Act completely deregulated fish marketing.
- Anyone can market fish in New South Wales provided they have a fish receiver licence. The Fish Receiver Program was introduced as a requirement of the new Act (section 117) and after extensive consultation with stakeholders.

Objectives of the Fish Receiver Program (FRP) are to ensure only legally caught fish are marketed

- The objectives of the *Fisheries Management Act 1994* are to conserve, develop and share the fisheries resources of the state for the benefit of present and future generations.

- The FRP is entirely consistent with this. Its objective is to aid the conservation of fish stocks by providing an auditable catch validation link between fish catches and first point of sale, and minimising the marketing of illegally caught fish.
- The FRP also ensures food quality standards are met.

Number of licenced fish receivers

- In February 2004 there were 97 RFR and 63 RRFR (for details, see Attachment B).
- Over 98 per cent of fish landings are accounted for by RFR. Only 160 tonnes were sold by fishers with a RRFR licence.
- In 2002-03 the top six RFR accounted for 70 per cent of all fish landings by mass and 62 per cent of the total catch value. On the other hand, 80 per cent of RFRs accounted for only 14 per cent of the landed catch by mass and 25 per cent by value.
- RRFRs accounted for only 1.5 per cent of fish landings.

The fee structure is based on cost recovery

- For 2003-04, application fees are $2 766 for an RFR and $830 for a RRFR. There is a two premises limit. An enterprise with three or four premises would need two RFR licences.
- These fees are based on cost recovery. The largest cost item for New South Wales Fisheries is inspection and audit of receiver premises.
- The lower fee for a RRFR is because the costs of audit and inspection for these fishers is significantly less than for a RFR.
- Components of the application and renewal process include company searches, checks with the Department of Fair Trading, database searches, verification of food safety licences, physical inspection of premises and computer entry of fish receiver data.
- In addition, there are costs of fisheries personnel devoted to the program (one full-time fisheries officer and a fish receiver registrar), inspection, auditory and monitoring staff; and court appearance costs by fisheries officers. Full details are contained in Attachment B.
- The Fish Receivers Program involved a total cost to New South Wales Fisheries of $334 848 in 2002-03. Fees collected were $253 314. Thus, the level of cost recovery was 75 per cent.
  - New South Wales Fisheries justifies this on the grounds that the level of cost recovery is '...in proportion to the benefit received by

them (fish receivers) from the Fish Receiver Program'. Fish receivers, fishers and the general public benefit from the program because it is part of the overall management of fisheries primarily aimed at conserving fish stocks at sustainable levels.

Should the fee structure be in proportion to the value of turnover?

- Up to the two premises limit, there is a flat fee for a RFR licence. From an NCP perspective, this raises the issue of whether licence fees should not be proportional to size of business. That is, are small businesses being disadvantaged by paying higher fees relative to their turnover?
- New South Wales Fisheries state that there is no proposal to introduce a sliding scale fee structure. If fees were to double for RFRs with a turnover greater than 5 per cent of total landings, only six businesses would be affected and the additional revenue would only be $16 600. The agency believes that additional costs of administering a sliding scale fee structure would outweigh any additional benefits.
- The agency also makes the following points.
  - The greater proportion of program running costs come from the inspection of premises and these are similar irrespective of the turnover of the establishment.
  - The level of participation by active RFRs is a function of their investment, business acumen and business environment, and the imposition of an application fee should not differentiate between businesses because of these factors.
  - The two premises limit is a practical way of partially relating business size, and therefore benefits received, to fee costs. But this is primarily based on cost recovery considerations because it costs more to inspect multiple premises.

Why are New South Wales' fees much higher than in other jurisdictions?

- The agency states that the differences between regions and diverse fisheries are so masked by differing regional economic, social and biological factors that there can be no directly comparable relationship between specific management policies and strategies in the different jurisdictions. Hence, there is no justification for comparing RFR and RRFR licence fees in New South Wales with those in other states where they exist.

Would the National Docketing System (NDS) supersede the FRP?

- The NDS is not yet in place. Its intention is to track fish nationally onwards from the point of fish processing. The FRP tracks fish from capture to first point of sale. The two programs, when NDS is introduced, are complementary and the NDS will not therefore replace the FRP.

The situation in other states

Commonwealth

The Australian Fisheries Management Authority is responsible for managing Commonwealth fisheries industries – the South East Trawl, South East Non Trawl, Southern Blue Fin Tuna, Bass Straight Central Zone Scallop, Great Australian Bight Trawl, Eastern Tuna and Billfish and Southern Shark Fisheries.

A Fish Receiver Permit (FRP) must be held by any one who receives fish from commercial operators who own licences to take fish from these fisheries.

A FRP must also be held by anyone who legally takes fish from these fisheries and uses them for further processing or for the purpose of aquaculture or mariculture.

The holder of a FRP is required to keep records of all fish species received and disposed of. Completed records must be regularly supplied to AFMA as required under Part 4, Division 2 of the Fisheries Management Regulations. The application fee for a FRP is $150. This covers the administration cost of processing the application.

South Australia

The registration of fish processors and conditions imposed on those holding a fish processing licence are governed under Sections 54 and 55 of the South Australian *Fisheries Act 1982*.

A fish processor or fish receiver can only operate legally if he or she is registered as a fish processor. The registration fee is $674 per year or $123 a year for a restricted fish processor licence, the holder of which is entitled to sell his or her own catch from boats or premises specified on the restricted

licence. Also, local fish shops can hold a restricted licence and purchase non quota fish from licenced fishers.

Fish processor licence holders are required to provide information on a regular basis relating to quota fish species.

Western Australia

In Western Australia a fish processor licence is required by anyone processing fish for a commercial purpose as prescribed under sections 79-89 of the *Fish Resources Management Act 1994*. The conditions on the licence holder are similar to other states, namely that records of fish transactions must be regularly submitted to Western Australia Fisheries.

A fish processor's licence under section 83 of the *Act* is granted if all conditions are met and an application fee of $365 is paid. The licence can be renewed for $72 a year. Variations, transfers or variations from the original place of processing specified on the licence can be made for a fee of $425.

Victoria

In Victoria, there is no fish receivers licensing system in place for fin fish but receivers of scallops and abalone are required to be licenced. These are quota fisheries. The fees are $185 a year for an application fee for scallops and $272 for abalone. Annual levies are charged in addition, of $1 866 and $9 978 respectively. These levies cover a combination of things including management, compliance, research levy as well as administration.

Queensland

Queensland has a system of fish buyer licences. An A class licence permits the holder to buy legally caught fish for human consumption. The fees are $2 932.50 per year for licence holders with premises and $2 178.70 for those without permanent premises. A B class licence permits the licence holder to but fish not for human consumption. The annual fee for this licence is $931.80.

CIE assessment

Assessment of legislation which potentially restricts competition involves examination of three key questions:

- Does the legislation restrict competition?
- If so, is it justified in terms of providing net public benefits? and
- Are there alternative less restrictive ways of achieving the same objectives?

The fish receivers program restricts competition

There is little doubt that the FRP does restrict competition. The reasons for this remain unaltered from the original CIE assessment:

- the fees payable on application are significant and put fish wholesalers and retailers at a disadvantage compared with sellers of other foods.
- Fish wholesalers and retailers in New South Wales may be disadvantaged compared with fish processors and sellers in other states because the fees in New South Wales appear higher than in most other states.

Is the Fish Receiver Program justified?

Increased pressure on stocks

Fish stocks in New South Wales waters have come under increasing pressure from fish harvesting particularly over the past two decades. Since the early 1980s New South Wales Fisheries has been progressively tightening the rules to reduce fishing effort and conserve stocks.

Of the eight main fisheries, two – abalone and rock lobster are share management fisheries subject to output quota controls or a *total allowable catch*. The other six fisheries are all *restricted commercial fisheries*, where there is no more entry into the fisheries and strict input or fishing effort controls apply. These fisheries will become share management fisheries by July 2004.

Thus all commercial fisheries in New South Wales are under pressure and monitoring and compliance are vital to the effective management of the fisheries. Effective and efficient monitoring and compliance are not only key elements in safeguarding the fish stocks but also in protecting the livelihoods of those with shares in the fisheries or other legitimate fisheries.

FRP is integral to fisheries management

In this context New South Wales Fisheries can rightly claim that the FRP is an integral part of managing fish stocks by ensuring that only legally caught fish by licenced commercial fisheries are marketed. The FRP is thus entirely consistent with the objects of the *Fisheries Management Act 1994*. A fish processor or fish receiver licensing system of some sort is seen as being necessary by the other fisheries agencies where there are share management fisheries.

It is worth nothing New South Wales Fisheries comments that when fish marketing in New South Wales was regulated, opportunities for illegal fish sales were small because the relatively small number of parties involved as points of entry into the marketing chain were known to government, and inspections were targeted accordingly. With deregulation the task of monitoring fish movements and minimising illegal fish catches and marketing has become much harder.

The FRP is clearly one part — albeit an important part — of a larger system of monitoring and compliance to ensure effective management of the fish resources of the state. Importantly, it provides a register of all points of entry into the marketing system. The benefits and costs of this program should therefore not be considered in isolation. The FRP involves:

- inspections of premises for compliance with a wide range of requirements such as fish size limits, threatened and prohibited species, tagging requirements for rock lobster, labelling, quality assurance and other requirements;
- back tracking of identified breaches into the fishing sector;
- achievable links between reported catches and first point of sale, thereby minimising black marketing and under reporting of catches; and
- minimising opportunities for unlicensed operators to sell fish.

In addition, the program provides valuable information to verify catch records thus aiding in the overall management of the fisheries.

The 2003 NCP Assessment (NCC 2003) put forward the principle case for government regulation of fisheries. This was based on the general absence of well-defined property rights, the common property nature of fisheries resources and the classic problem of the 'tragedy of the commons'. Regulations to prevent this must be backed up with effective monitoring surveillance and compliance provisions. The FRP is integrated to this and is therefore well justified.

The next set of issues relates to the fee structure.

Are the fees in New South Wales too high?

Examination of the fees charged for fish receiver or fish processor licences across the jurisdictions reveals that the fees in New South Wales appear to be significantly higher than in most other states or by the Commonwealth. But in the other jurisdictions, the lower fees charged are generally for the administrative processing of applications and issuing of licences. In New South Wales, the higher application fees are because the inspection of premises by fisheries offices is charged to the FRP. Each state has a different arrangement and direct comparisons of fees can be misleading. In Victoria for example, there is a relatively low licence fee charged on receivers of abalone and scallops but in addition these receivers get charged a large levy which covers a wide range of things such as research contributions, management and compliance. In some cases the question may well be asked 'why are fish processing licence fees so low in some of the other states?' In Queensland where inspections are also carried out, fees charged are comparable with those in New South Wales.

The key question is whether the fee structure in New South Wales can be justified. This may be an issue for review by an appropriately qualified body such as an independent external consultant.New South Wales Fisheries have provided adequate details of the fee structure and justification for it.

In essence:

- about 75 per cent of the cost of the FRP is recovered in fees;
- the high cost of the fees is because of the need for fisheries officers to inspect premises each year to ensure compliance with the licence, as well as the cost of data entry of fish receiver returns, and cost of administering the program. The costs of the program attributed to fish receivers do not include any audit and validation of fish receiver returns against commercial fishers returns.
- full cost recovery is not aimed at because other sectors of the fishing industry as well as the general community also benefit from the activities of the FRP; and
- it is by no means clear that there are viable alternatives to premise inspections.

CIE is of the view that there is a strong case for a FRP as part of the overall monitoring and compliance structure necessary for effective fisheries

management, and that there is a reasonable case for the level of fees charged for fish receiver licences.

Are there alternative, less restrictive ways of achieving the objectives?

There are two aspects to this issue. First, if the same level of compliance and monitoring is deemed appropriate to effectively manage New South Wales fisheries, are there other ways of achieving the objectives?

Second, is the level of compliance and monitoring being aimed at an 'over kill'?

On the first aspect, it is not clear that the same levels of compliance would be achieved in the absence of the FRP. New South Wales has a long coastline and illegal fishing is a constant threat to the sustainability of fish stocks. The FRP is a means of minimising opportunities for illegal fishers to sell their catch and hence gain rewards from such illegal activities. Other components of fisheries management such as input or output controls on licensed fishers will not address this issue. On the basis of the precautionary principle, a FRP is justified to provide surveillance data and compliance provisions to minimise illegal fishing. Furthermore, the data collected supplements data on fish catches collected from fishers and hence provides valuable information on fish stock levels necessary for effective fisheries management. This information is especially important for managing fisheries under pressure or where there are share management or quota regimes in place. In these circumstances any illegal fishing has direct consequences for the livelihoods of legitimate shareowners in the fishery.

On the second aspect – whether the FRP goes further than is necessary, and hence imposes unnecessarily large charges on fish receivers in New South Wales – CIE is not in a position to make a definitive judgement. If it is deemed necessary to inspect fish receiver premises every year to ensure compliance, then on the basis of NCP cost recovery guidelines, and taking into account the resources necessary to collect and process the data, the fees charged seem reasonable, even if on the surface they are significantly higher than in most other states. Three other questions remain:

- should the costs of the FRP be shared with commercial fishers who also benefit from the program;
- should the fees be approximately proportional to turnover of fish receiver businesses; and

- should there be full cost recovery of the FRP.

Should commercial fishers share some of the costs of the FRP?

This issue was raised in CIE's first NCP report on the *Fisheries Management Act 1994*. Commercial fishers are also beneficiaries of the FRP which contributes to better management of fisheries. Hence, should not they contribute to the cost of the FRP?

New South Wales Fisheries have adequately addressed this issue in their response (Attachment B). The commercial fishing sector, through the cost of licences contribute to the overall effort of monitoring, surveillance and compliance and it would be inappropriate to charge fishers for the cost of the FRP without also charging fish receivers for the cost of monitoring and compliance in the fish catching sector. Both sectors are beneficiaries of such activities and a practical approach is to have fish receivers pay for the FRP while fishers pay for monitoring and compliance related to activities in their sector.

New South Wales Fisheries also advise that they are aiming for full cost recovery of attributable costs in the fish catching sector with new provisions to be introduced from December 2004.

Should fees under the FRP be appropriately proportioned to business turnover?

CIE raised this question on the basis that the benefits from the FRP accruing to fish receiver licence holders would be appropriately proportional to their turnover. Small businesses would therefore be charged a lower fee than larger businesses.

New South Wales Fisheries has raised some legitimate objections to this approach.
They are:

- on the basis of cost recovery, it takes as many resources and agency costs to inspect and process returns from a small fish receiver business as it does for a larger one. And inspection costs are the biggest component of the application fee. Only a small part of the fee is proportional to turnover;
- there would be real practical difficulties in administering such a proposal because it would require additional information from fish receivers to classify them into turnover size categories. The additional costs would far outweigh the benefits;

- those RFRs who chose to scale down their turnover or remain dormant in a particular year should not be rewarded by paying a lower fee when it is their choice to scale down; and
- the two premise limit on one licence is adequate to differentiate on size and geographic location. This limit takes into account that it costs more to inspect multiple premises.

CIE accepts this explanation.

Should the level of cost recovery for the FRP be 100 per cent?

This issue is being reviewed by New South Wales Fisheries as part of a wider consideration of cost recovery across the portfolio. The agency recovers about 75 per cent of costs of the FRP from application fees and believes this is appropriate considering that the commercial fishing sector and the wider community are also beneficiaries of the program.

Conclusions

After careful consideration of New South Wales Fisheries responses and examination of the situation in other jurisdictions, CIE's assessment is that:

- the FRP is an integral part of the overall monitoring surveillance and compliance provisions necessary to effectively manage the fish resources of New South Wales and to achieve the objectives of the *Act;*
- it is not appropriate to make simple comparisons of fee structures across jurisdictions;
- the fee structure for the FRP seems reasonable under a necessary management regime of annual premises inspection ; and
- Overall, while the fees under the FRP are a restriction on competition, given that the program is an integral part of managing fisheries in New South Wales, the program is justified.

3 *The charter boat sector*

The issue

In its NCP report, CIE noted that with limits placed on numbers of licensed recreational charter fishing boats, significant restrictions have been imposed on entry to this sector of the industry. CIE also noted the division between transferable and non transferable licenses commenting that this places a barrier in the way of those with non transferable licenses leaving the industry.

The review was not in a position to resolve these matters and suggested that these issues should be clarified as to their social benefits and costs. In its assessment, the NCC stated that the New South Wales Government needed to 'complete the review and reform of: the licensing of the charter boat fishery operations'.

New South Wales Fisheries has re-examined these issues and provided a detailed response (Attachment B).

In essence, three questions arise.

- Is a licensing system which restricts the number of recreational charter boat operations justified in the public interest?
- Why is it necessary to have a dual system of transferable and non transferable licenses?
- Are there less restrictive ways of achieving the objective of sustainable management of fish resources?

Is a licensing system for charter boats necessary?

New South Wales Fisheries response

Key points in the New South Wales Fisheries response are summarised below.

- Fishing from charter boats is putting increasing, and in some localities unsustainable pressure on fish stocks. Previous studies show that this sector has the potential to take large numbers of fish and have a significant impact on fish stocks, particularly in hot spots.
- On the basis of the precautionary principle, fishing effort from charter boats must be at least stabilised and information on catches recorded to enable determination of the relative impact and appropriate management controls in the medium term.
- Specific objectives include:
  - conservation and sustainable utilisation of fish stocks targeted by the charter boat sector;
  - establish and maintain a register of charter boat operators;
  - determine the impact of charter boat operations on fish stocks;
  - maintain quality recreational fishing opportunities from charter boats;
  - determine the economic importance of the charter boat sector; and
  - integration of the charter boat sector into the overall management of New South Wales fish stocks – alongside recreational fishing and commercial fishing.
- The number of charter boats was initially capped to the level existing in October 1997 but this cut off date was later extended to 7 July 2000 and the closing date for license applications extended from 30 April 2001 to 20 June 2003.
- The agency also highlights concerns expressed by several bodies over the impact of increases in the number of charter boat operations on fish stocks and industry viability.
- As at February 2004, 285 licenses had been granted (including 39 non transferable licenses, 26 being active) while a total of 338 applications had been received. There were 227 active licensed charter fishing boat operations. Details are given in Attachment B.

The situation in other states

Western Australia has recently introduced a limited entry charter boat licensing system and South Australia is in the process of doing so. There are no licensing requirements for charter boats in Victoria and in Queensland there is a 'fish tour permit' system. Charter boat operations in Queensland must have a permit but there are no restrictions on the number of permits issued.

Western Australia

Commercial charter boat operations need a 'fish tour operator's license. There are three categories and four zones. The categories are for larger boats 7.5 metres in length or greater, land based operations such as guided beach fishing operations and smaller boats or aircraft tours. Licenses are restricted to those with a tour history prior to September 1997 but are transferable. As from 2000 there has been a five year freeze on the granting of new Fishing Tour Operations Licenses and transferability applies only to whole licenses. Within the license conditions boats and gear can be replaced. A basic annual fee of $500 applies.

Concern over the potential impact of charter boat operations on fish stocks is highlighted by the increase in number of operators – in 1990 there were 40 active operators. In 1997 there were a confirmed 135 operators with a potential 350 operators.

South Australia

At present there is no licensing system for charter boats but the South Australian government will be introducing such a system in July 2004. This is in response to concerns about the impact of charter boats on fish stocks, with these boats frequently having sophisticated equipment and expertise. To obtain a license, operators will have to demonstrate a charter business history prior to 28 November 2003. Thus the charter boat sector will have limited entry with licences transferable. The number of licences will be limited to the number approved at 1 July 2004 for a period of three years. A requirement of the licence is the payment of an annual fee and provision of statistical information on fishing operations. It is proposed that annual licence fees will range from $1 000 to $3 000. This is based on cost recovery and contingent on the final number of licences approved.

Victoria

There is no charter boat licensing system in Victoria.

Queensland

On this issue the Queensland government is keeping its options open at this stage. At present charter boat tour operators are required to hold a Fish Tour Permit under the *Fisheries Act 1994*. There are no restrictions on the number of permits issued. The fee structure includes an assessment fee of $62.70, a base permit fee of $146.70 and an additional amount of $51.60 for operations in each of inshore, offshore and non tidal waters.

CIE assessment

Two key questions are:

- Are fish stocks under threat?
- Will restricting the number of charter boats reduce pressure on fish stocks and contribute to achieving sustainability?

There is little doubt that nearly all fish stocks in New South Wales waters are under pressure or threat. The state of fisheries was summarised in the CIE NCP final report.

On the second question some have questioned whether limiting the number of charter boats will reduce pressure on fish stocks. In CIE's NCP final report mention was made of the concerns of the Anglers Action Group which claimed that limiting the number of charter boats would not automatically limit numbers of fish caught. The Group saw the charter boat sector as playing an educating role for recreational anglers to behave more responsibly. Also the Hon Jenny Gardiner in a submission suggested applying bag limits to charter boats.

Charter boat operators have considerable expertise and sophisticated equipment and with GPS tend to return to the same spots so as to ensure catches by patrons. The number of boats has also increased substantially in the past decade. So too has the number of private boats. Taking these considerations into account and having had further discussions with fisheries officers in New South Wales, Western Australia and South Australia CIE is of the view that the charter boat sector does put significant pressure on fish resources especially in 'hot spot' areas. Uncontrolled growth of this sector combined with the ever increasing sophistication of equipment (eg fish finders, GPS for example) could, in combination with recreational fishing from increasingly sophisticated private boats, put undue pressure on fish stocks. Furthermore, dwindling fish catches would adversely affect the viability of charter boat operations.

Limits on the number of charter boats should be seen as a precautionary measure at this stage. In the medium term the management of the charter boat sector should be reviewed in the light of more concrete data on catch records collected as an obligation of a charter boat licence. While bag limits apply to all recreational fishers, the expertise and equipment of charter boat operations has the potential to substantially increase pressure on fish stocks in particular locations. The charter boat sector under restrictions will continue to have an educational role on recreational fisher patrons who nevertheless expect to catch fish and enjoy the experience. Prevention of 'fish killing orgies' by recreational fisherman – as suggested by the

Anglers Action Group – could perhaps be better achieved by general education campaigns associated with recreation fishing licenses rather than relying on an uncontrolled charter boat sector to achieve this outcome.

The dual licensing system

New South Wales is the only state to have transferable and non transferable licenses. CIE in its NCP final report questioned the need to have such a dual system. New South Wales Fisheries response on this issue is summarised below.

New South Wales Fisheries response

- Non transferable licenses apply to only a small number of licenses - 39 out of 285.
- Non transferable licenses were issued in instances where a charter fishing boat operation had minimal historical participation in the charter boat sector. They were/are part time, undertaking relatively few 'social' fishing trips a year.
- The aim was to allow these businesses to continue to operate on a casual basis but that the licence would cease to exist when the casual business ceased to operate. The non transferable licence system is thus a transitional measure.
- These non transferable licences if made transferable could result in the new owner substantially increasing the size of the business and hence increasing fishing effort on a permanent basis.
- Boats can be replaced under a non transferable licence.

The alternative would be to not grant a licence to the people involved, which would have been inequitable.

- The non transferable licensee can benefit from the new licencing system as he or she is able to expand to a full time operation but cannot transfer the licence.
- Detailed statistics on the number of licences in different categories are in Attachment B.
- An extensive appeals and review process was put in place.

CIE assessment

CIE recognises that grandfathering provisions and sunset clauses have frequently been used in fisheries management (and in many other situations) to handle the introduction of input or output restrictions and transitional arrangements in a fair and equitable manner. Introduction of any such licensing system will always introduce 'grey' areas. One such 'grey' in this case is the casual operator who does not meet the criteria for a full transferable charter boat operators licence. The alternative to a non transferable licence would be to deny these people the opportunity of continuing these part time businesses, which would have been somewhat draconian and inequitable. It is unlikely that these people, given their past history would substantially increase the size of their operations but they have the opportunity to do so. These non transferable licences will cease to exist when the businesses concerned cease trading.

In short CIE accepts the detailed explanation by New South Wales Fisheries and notes the extensive appeals and review process that was put in place.

Are there less restrictive ways of achieving the same objectives?

Put another way, can fishing effort from the charter boat sector be replaced in ways which are less restrictive on competition?

The following alternatives to limiting boat numbers could be considered:

- limiting the number of people fishing per boat (an input control); and
- limiting the catch per person on boats or applying a total boat limit (an output control).

New South Wales Fisheries response.

- All anglers, including those on charter boats, are subject to general bag limits. Reducing bag limits, after due consultation, is a normal and commonly used fisheries management tool that may constrain fishing effort.
- However, applying more restrictive bag limits to anglers on charter boats or charter boat limits as a whole would be relatively inefficient and ineffective once fishing effort exceeded a certain threshold level.
- Enforcing output controls on each species taken by charter boats would be extremely resource demanding and expensive.

  - Under cost recover, this would mean substantial increases in licence fees.

- Overall, it would be extremely difficult to limit the total catch from the charter boat sector by indirect methods in the absence of restrictions on the number of boats.

CIE assessment

There is an implied assumption that normal angler bag limits, in the absence of limits on boat numbers is insufficient to limit fishing effort. Is this reasonable?

In brief, CIE believes it is a reasonable assumption. Charter boats may have 20 or more people fishing in a confined area. This also, can be repeated on a regular basis with the help of GPS, fish finders and the like. This fishing pressure would not occur in the absence of the charter boat fleet.

Restricting the number of people fishing per boat would be undesirable because it would severely affect the viability of chart boat operations.

The only real alternative would be to make bag limits much more restrictive for anglers fishing from charter boats or to place total catch limits on each boat. Charter boat operations are already required to provide bag book entries on catches and random audits could be applied with appropriate fines for contravention. At present, resources are required to police the bag limit system for anglers. But it would be harder for fisheries officers to pick the exact time charter boats return to port. Furthermore, fish caught become the personal property of patrons and there is no audit trail after boats arrive in port as there is with commercial fishing.

Furthermore patronage of charter boats would suffer and this would affect the viability of such operations. To be at all effective, personal bag limits or boat limits would have to be very much less than equivalent angler bag limits. If one angler caught his or her much restricted bag limit in the first 10 minutes and then had to not fish for the next four hours while on board, or if 3 out of 20 caught the boat limit in the first hour, forcing all others to cease fishing for the rest of the outing, the attractiveness of charter boat experiences would diminish considerably as would patronage and hence the viability of such operations. Also charter boat operators argued against boat limits in the past.

Conclusions

At the time the Minister introduced amendments to the *Act* to restrict charter boat fishing effort, the charter boat industry had doubled in the previous three years. Charter boat operators are skilled fishers and generally have sophisticated equipment to ensure fish are caught by their patrons. Unfettered growth in the industry would place severe pressure on fish stocks in key fishing spots with the potential for such spots to be largely fished out. Restrictions on the fishing effort of the commercial charter boat fleet are consistent with the objectives of *the Fisheries Management Act 1994* 'to conserve fish stocks and key fish habitats'. Thus, while such restrictions are anti competitive they are in keeping with the broad thrust of fisheries legislation which aims to prevent the phenomenon of the 'tragedy of the commons' from occurring. This has been clearly recognised by NCC in its 2003 Assessment.

Given that there is a case in the public interest for restricting the fishing effort of the charter boat fleet, it is then a question of the most appropriate and least restrictive way of reducing effort. Restrictions could be on the number of people fishing per boat, limits on the number of fish caught per person or per boat, or limits on the number of boats. Restricting the number of people fishing per boat, beyond surveyed boat capacity, would adversely affect the viability of all existing operators.

There are already bag limits on recreational anglers but these are deemed too generous to control the concentrated fishing effort of charter boats in key areas. Bag or boat limits are essential tools for ensuring resource sustainability, and their use is appropriate for achieving targeted sustainability outcomes. More restrictive bag limits or boat limits may have undesirable consequences for patrons, some of whom may have paid significant sums for the excursion but are suddenly denied the opportunity of fishing because the boat limit is reached. In any case, the policing of such a scheme would be extremely difficult. There would be literally only minutes for fishing officers to inspect boat catches when they return to port before patrons disappear.

CIE concludes that limits on the number of boats is the most appropriate means of controlling overall gross fishing effort from the charter boat fleet, that can be supported, where necessary in the interests of resource sustainability, by specific bag or boat limits. The method New South Wales Fisheries has chosen to implement this is consistent with many grandfathering methods employed in other fisheries and other industries. Also the sun setting of non transferable licenses is a reasonable way of catering for those who have had a history of part time operations but who would not otherwise quality for a full transferable license.

ATTACHMENT A

Fisheries in New South Wales (outstanding NCP issues: fish receiver licences and charter boat licences

Introduction

In late 1999, the Government of New South Wales established a Review Committee of officers from various departments with an interest in the New South Wales Fisheries Management Act 1994 (the Act) to oversee a review of the Act according to National Competition Policy (NCP) criteria.

The Review Committee commissioned the Centre for International Economics (CIE) to prepare an issues paper and undertake a National Competition Policy (NCP) review of the Act. During this process, some amendments were made to the Act in late 2000. The CIE's final report was completed in May 2001.

Overall, the CIE review concluded that the overall benefits of restrictions on fishing exceed their costs and that fisheries management objectives can only be achieved by restricting competition.

The review did, however, raise some concerns that the social benefits may not exceed the social costs in respect of:

- the level of fees for the registration of fish receivers;
- limits placed on the number of recreational charter fishing boats; and
- limits placed on the transferability of some recreational charter fishing boat licences

The review was unable to resolve these matters. On the first, it considered that New South Wales Fisheries should make a clear statement of the purpose for requiring the registration of fish receivers, and identify its costs of monitoring them and processing returns so that those costs can be appropriately allocated. On charter boat licences, the review sought clarification on the nature and extent of the social benefits and costs of the restrictions.

In its 2003 assessment, the National Competition Council (NCC) reiterated the concerns expressed in the review concerning fish receiver's registration fees and charter boats. The New South Wales Government was requested to complete the review and reform of:

- the recovery of fish management costs from users
- the licencing of the recreational charter boat fishing operations.

From an NCP perspective, the former essentially related to licencing arrangements for fish receivers.

New South Wales Fisheries has approached the CIE to further examine these two issues in the light of additional information supplied by New South Wales Fisheries. A wider review of the cost recovery framework for commercial fishing is being conducted, but this will take considerable time. Also, the charter boat industry is being examined as a component of preparing a revised Fisheries Management Strategy in the longer term.

In the meantime, New South Wales Fisheries is seeking a 'clean bill of health' on the management of fisheries in New South Wales from an NCP perspective.

CIE does not consider that the two issues it raised in the NCP Review are major issues in the context of restrictions on competition. The process it has suggested to New South Wales Fisheries to resolve these outstanding issues is as follows:

- preparation by CIE of this issues paper with specific questions;
- a response to the above by New South Wales Fisheries; and
- on the basis of this response, the preparation of a final short report on the two issues by CIE for consideration by New South Wales Fisheries and on passing to the NCC.

This issues paper addresses the first steps in this process.

Fish receiver licences

In New South Wales any person, organisation or company must be registered as a fish receiver before being legally able to buy fish from fishers for processing or resale. There are no limits on the number of fish receivers and two fees apply. Registered Fish Receivers (RFR) pay an annual fee of $2766, while the annual fee for Restricted Registered Fish Receivers is $830. The latter are restricted to sell their own catch direct to the public, fish merchants or any other RFR.

New South Wales Fisheries notes that the registration system is an integral part of managing the harvesting of fish and primarily aims to ensure that only legally caught fish are marketed. The program also allows fish to be tracked through the supply chain and minimises black marketing. It is essential information used to monitor wild stock fish sustainability.

In its report, CIE questioned whether the prime beneficiaries of the scheme, particularly with respect to information on monitoring, are commercial fishers rather than fish receivers and, therefore, whether commercial fishers

should not be making some contribution to the scheme. In short, the scheme imposes considerable costs on fish receivers for which there may not be corresponding benefits.

Such programs vary between states. For example, in Western Australia fish processors are required to be licenced, but other fish receivers are not. A general application fee of $375 is charged for a fish processors licence and a further $325 a year is charged for the granting or renewal of a fish processors licence. Higher fees apply in the case of prawns and rock lobsters. In Victoria, receivers of scallops and abalone require licences, but receivers of other types of fish do not. There are no limits on the number of licenced receivers. In South Australia, there is a fish processor licence scheme. Commercial fishers can sell their own catch for direct consumption with a restricted licence, but otherwise must sell to a firm with a fish processor licence. A full licence is $674 per year, whereas a restricted licence is $123 a year.

Key questions for New South Wales Fisheries

- Please expand on the objectives of the fish receivers registration and licencing system.
- What are the alternatives to achieving these objectives?
- How many fish receivers are currently licenced, by size?
- What are the current fees? Has any thought been given to scaling the fees according to size of turnover so that fees equate more with benefits?
- Why are New South Wales' fees so much higher than other states? What is the basis of the current fee structure?
- Is the national docketing system now in place? How will this work? Does this provide an alternative to a fish receivers registration system?
- Is the fee payable on granting of a licence or on application? If the latter, is it possible for a firm to apply, pay the fee and then be rejected?
- Under what conditions would New South Wales Fisheries revoke a fish receivers licence or restricted fish receivers licence?

Recreational charter boat licences

New South Wales Fisheries, along with Western Australia Fisheries, have recently introduced licences for charter boat operations. Such licences are not required in other states, but in South Australia discussion papers have

been prepared on the issue. In New South Wales, there is a division between transferable and non-transferable licences, and this was at the heart of CIE's concerns. The other area that needs to be addressed is whether there are other less restrictive ways of achieving the objective of limiting the total catch from the charter boat fleet.

Questions for New South Wales Fisheries

- What are the objectives underlying the charter boat licence scheme?
- What is the rationale for the division between transferable and non-transferable licences?
  - On what grounds would New South Wales Fisheries defend the non-transferable licence of small, part-time operators?
- Could New South Wales Fisheries provide data on the number of operations in each category as well as data arising from the appeals process?
- What less restrictive alternatives has New South Wales Fisheries considered to limit total catch from the charter boat fleet and why have they been rejected?

ATTACHMENT B

Fisheries in New South Wales (a response to the CIE issues paper, January 2004)

Fisheries in New South Wales

A response to CIE issues paper, January 2004:

Outstanding NCP issues:

- ***fish receiver licences***
- ***charter boat licences***
- ***cost recovery***

NSW Fisheries, February 2004

Preamble

NSW Fisheries is the State's leading agency in the conservation and management of living aquatic resources. The department is responsible for the administration of the Fisheries Management Act 1994 (the Act), which provides a comprehensive framework for the protection and sustainable use of living aquatic resources.

Objects of Act

1) The objects of this Act are to conserve, develop and share the fishery resources of the State for the benefit of present and future generations.

2) In particular, the objects of this Act include:
   a) to conserve fish stocks and key fish habitats, and
   b) to conserve threatened species, populations and ecological communities of fish and marine vegetation, and
   c) to promote ecologically sustainable development, including the conservation of biological diversity, and,

consistently with those objects:
   d) to promote viable commercial fishing and aquaculture industries, and
   e) to promote quality recreational fishing opportunities, and
   f) to appropriately share fisheries resources between the users of those resources, and
   g) to provide social and economic benefits for the wider community of New South Wales.

These objects govern the interpretation and application of all sections of the Act in managing the aquatic resources of NSW.

Fish Receivers

Introduction

Prior to 01 November 1999, legislation prescribed that all fish caught commercially in NSW were required to be marketed through a fisherman's co-operative (unless otherwise exempted by a consent to sell or certificate of exemption). The *Fish Marketing Act 1994* provided for the deregulation of fish marketing from 01 November 1999 through removal, on that date, of the regulatory controls imposed by the *Fisheries Act 1994* on fish marketing in New South Wales. Thereafter, commercial fishers were no longer required to market their catch through the Sydney fish market or other co-operative trading society market or in accordance with a relevant fish marketing authority.

Following the decision to implement the deregulation of fish marketing, NSW Fisheries consulted stakeholders over the regulations necessary to implement the Fish Receiver Program required under section 117 of the Fisheries Management Act. A discussion paper was released on 1 July 1999 and

fifteen consultative meetings were conducted at coastal locations between Tweed Heads and Eden. All sectors of industry attended (catchers, wholesalers, retailers, processors, restaurateurs and fish co-ops).

Since 01 November 1999, the *Fisheries Management Act 1994* requires that anyone who receives fish for resale or other commercial use must be registered as a fish receiver. Legislation governing the deregulated marketing system forms part of the *Fisheries Management Act 1994* (sections 117 to 125) and the *Fisheries Management (General) Regulations 2002* (sections 281 to 293). These two pieces of legislation prescribe the application and approval process, fees payable and other matters important to the administration of the system including regulations governing the completion of records detailing the sale and possession of fish (prescribed records) and reports that must be prepared by Registered Fish Receivers and sent to the Director General of Fisheries. The legislation also contains a number of penalty provisions for failure to comply with certain elements of the Act, and allows for the Minister for Fisheries to refuse, cancel or suspend a receiver certificate.

1) Objectives of the fish receiver registration and licensing system

The fish receiver registration and licensing system operates consistently with the objects of the *Fisheries Management Act 1994*. The objects of this Act are to conserve, develop and share the fishery resources of the State for the benefit of present and future generations as well as specifically: -

(a) Conserving fish stocks,
(b) Conserving threatened species, populations and ecological communities of fish, and
(c) Promoting ecologically sustainable development; and consistently with these objects; and
(d) Promoting viable commercial fishing and aquaculture industries, and
(e) Appropriately sharing fisheries resources between the users of those resources, and
(f) Providing social and economic benefits for the wider community of New South Wales.

The fish receiver registration system acts as an integral part of the management of the harvesting of fish and primarily aims to ensure that only lawful fish, caught legally, by licensed commercial fishers are marketed.

There are many laws that apply to the purchase, handling and sale of fish. When the marketing system was regulated, all parties were known to Government and inspections targeted accordingly. In a deregulated market, the opportunities for important conservation laws to be avoided have increased dramatically. The marketing sector have acknowledged they have obligations and actively supported a scheme that would see their operations conducted in a transparent manner.

The fish receiver system provides a means, in a deregulated marketing environment, of ensuring that only legally caught fish are marketed. Most importantly the scheme provides a register of all points of entry of fish into the marketing sector that facilitates: -

1. Planned inspections of premises for compliance with:
    - minimum and maximum species size limits (around 30 species are subject to size limits);
    - threatened species requirement (such as grey nurse shark and black cod);
    - species that cannot be lawfully sold (such as black marlin and Australian bass);
    - tagging requirement (such as for rock lobster);
    - and other statutory requirements such as labelling (to comply with national marketing name requirements and requirements of quality assurance programs such as for pipis);
2. Back tracking of identified breaches into the catching sector;
3. Targeted education and information exchange;
4. An auditable link between reported catches through to first point of sale;
5. Fish being tracked from the catching sector to the marketing sector thereby minimising black marketing and under-reporting of catches;
6. Minimising of opportunities for unlicensed operators to sell fish.

The program provides benefits to fish receivers, fishers, other stakeholders and the wider community. The major benefit is considered to accrue to fish receivers since fish receivers obtain the greatest financial benefit from the sale of fish[1]. In the absence of a fish receiver system, the opportunity for illegal, unregulated and unlicensed fishing to take place would increase dramatically with the consequent likelihood that resources would become more scarce, that there would be less fish to buy and sell, and that fish receivers would become unviable businesses.

The costs of the program attributed to fish receivers reflect only the marginal costs of direct inspections of premises by Fisheries Officers, the registration system, and the recording of fish receiver returns. Fish receivers are not charged for the commercial catch returns program or for any audit and validation of fish receiver returns against commercial fisher catch returns.

2) Alternatives to the fish receiver program

A system where fish receivers are not registered and where they are not inspected is not acceptable. The major alternative therefore is a return to a regulated marketing system, which would require all operators in the catching

[1] Value (@1st point of sale) of all NSW fish production (incl.aquaculture) 2001/2 = AU$135.7m; Estimated retail/export value of NSW fisheries catch (to fish receivers) 2001/2 = $269.7m; Estimated margin to middlemen (fish receivers) of all NSW fish production 2001/2 = $134.0m (98.7%). (Data source: ABARE Australian Fisheries Statistics 2002). The exact margin to fishers after operating costs are taken into account is unknown due to the diverse nature and different cost bases of individual fishers and fisheries. However, anecdotal evidence suggests that a margin to fishers of 33% is not unrealistic, and is about $^1/_3$ of that achieved by fish receivers.

sector to sell their product through local Fishermen's Co-operatives, the Sydney Fish Market, or directly interstate. As well as reintroducing unwanted market restrictions and inefficiencies, such a move would result in the loss of the market benefits obtained through the deregulation process followed in 1999.

Benefits from deregulation
Any person who wishes to receive fresh fish products from commercial fishers can do so by registering as a fish receiver. Many retail fish shops and associated businesses along the coast of NSW and in the Sydney metro area are now registered fish receivers. This has both broadened and deepened the marketing channel for fish products by giving commercial fishers a choice about where and to whom they sell their catch.

Consumers have benefited from a more competitive market that has resulted in greater consumer choice, whilst sellers (fish receivers) have been able to penetrate previously inaccessible markets or develop new ones. Commercial can also register as a fish receiver, or restricted fish receiver if they wish only to direct market their own catch. These new opportunities are continuing to supply niche markets in the state.

In addition to a loss of benefits, a return to a regulated market would be directly contrary to National Competition Policy Principles.

A secondary alternative is to remove the requirement for registration completely. In such a system, there would be no register of fish receivers and the marketing sector would become largely invisible to Government. There would be no barrier to any commercial fisher direct selling his or her catch with a level of compliance complexity that would undermine public health and resource sustainability.

3) Number of licensed fish receivers

Under Section 284 of the regulations, two classes of registered fish receiver are prescribed.

Section 284 Classes of registered fish receiver

For the purposes of section 118 (4) of the Act, the following classes of registered fish receiver are prescribed:
(a) Class A Registered Fish Receivers—being registered fish receivers who are commercial fishers and whose registration as a fish receiver is subject to a condition that the receiver must not receive fish for resale or other commercial use from any other commercial fisher,
(b) Class B Registered Fish Receivers—being all other registered fish receivers.

Class A Registered Fish Receivers are also known as Restricted Registered Fish Receivers (RRFRs).

Class B Registered Fish Receivers are also known as Registered Fish Receivers (RFRs).

As of 03 February 2004, there were: -
(a) 97 Registered Fish Receivers; and

(b) 63 Restricted Registered Fish Receivers.

The high numbers of fish receivers shows that the current scheme and charges offer no barrier to entry – with current gross value of commercial fish catches and aquaculture production at $135.7 million, the average gross throughput of the 160 fish receivers from NSW fish production is less than $85,000. It is not difficult to understand that more fish receivers are unlikely to be attracted to such a small market.

Table 1 shows the relative turnover (by mass) of RFRs and RRFRS during 2001/2 and 2002/3. It is quite clear from the table that the majority of the first point of sale transactions are conducted by RFRs, with an average during the two years from 2001-3, 98.1% (8,431 tonnes) of landings transacted by RFRs, whilst just 1.9% (160 t) were conducted by RRFRs.

No RRFRs had transactions that totalled more than 1% of the total weight of landings. On the contrary, the majority of RRFR transactions annually totalled less than 0.1% of total landings per RRFR.

Table 1: Frequency, percentage of total landings and their value, of RFRs & RRFRs in categories defined as percentage of total mass of 1st POS fish receiver landings 2001/2 & 2002/3 (excl. Sydney Fish Market – see insert).

		Percentage of Total Mass of 1st POS landings (by category)					
		0>x<0.1%	0.1>x<1%	1>x<5%	5>x<10%	10>x<20%	20%>x
2001/2	No. of RFRs	12	23	10	3	1	1
	Landings (tonne)	43	773	2137	1835	1161	2799
	%Total landing	0.48%	8.65%	23.89%	20.51%	12.98%	31.28%
	% per RFR	0.04%	0.38%	2.39%	6.84%	12.98%	31.28%
	Catch Val $k	500	7231	16144	13786	3498	11636
	Val $k per RFR	42	314	1614	4595	3498	11636
	No. of RRFRs	30	5	0	0	0	0
	Landings (tonne)	101	97	0	0	0	0
	%Total landing	1.13%	1.09%	0.00%	0.00%	0.00%	0.00%
	% per RRFR	0.04%	0.22%	0.00%	0.00%	0.00%	0.00%
	Catch Val $	548	684	0	0	0	0
	Val $ per RRFR	18	137	0	0	0	0
2002/3	No. of RFRs	20	32	7	4	1	1
	Landings (tonne)	53	1065	1219	2034	1194	2548
	%Total landing	0.65%	12.93%	14.80%	24.70%	14.50%	30.95%
	% per RFR	0.03%	0.40%	2.11%	6.18%	14.50%	30.95%
	Catch Val $k	877	11806	5506	14136	4362	12233
	Val $k per RFR	44	369	787	3534	4362	12233
	No. of RRFRs	24	5	0	0	0	0
	Landings (tonne)	39	83	0	0	0	0
	%Total landing	0.47%	1.00%	0.00%	0.00%	0.00%	0.00%
	% per RRFR	0.02%	0.20%	0.00%	0.00%	0.00%	0.00%
	Catch Val $k	498	393	0	0	0	0
	Val $k per RRFR	21	79	0	0	0	0

It is also clear from table 1 that the vast majority of the value of first point of sale landings (by weight) is extracted by RFRs. The average total value, during the two years from 2001/3, of all landings transacted by RFRs was $50.9m p.a., whilst the average total value of all RRFR transactions over the same period was just $1.06m p.a.

Insert: The Sydney Fish Market (SFM)

Due to the size of the SFM and the complexity of its business, comprising a multitude of species caught under other jurisdictions with separate management arrangements, the following data for the SFM are presented separately.

Data from NSW Commercial Fishers NSW catch returns recorded as passing directly from the fisher to the SFM.

2001/02	Total Disposal weight	2,556,498 kg (2,557 tonne)
	Estimated Value	$10,299,117 ($10.3m)
2002/03	Total Disposal weight	1,904,031 kg (1,904 tonne)
	Estimated Value	$7,689,965 ($7.7m)

From SFM report for the year 2001/02 11,081,036kg of produce from passed through the SFM from the following SFM suppliers regions:

Inland NSW	43,215 kg
North Coast NSW	4,666,926 kg
South Coast NSW	4,619,883 kg
Sydney Sundry NSW	1,630,714 kg
Sydney Trawler NSW	120,296 kg

This included Commonwealth catch and produce supplied to the SFM via other RFRs (eg co-ops and processors).

4) Current fee structure

Current (2003/4) application fees for registration as a fish receiver fees are: -

(a) Registered Fish Receivers – AU$2766
(b) Restricted Registered Fish Receivers – AU$830.

These fees recover the attributable costs of direct inspections, the cost of the registration system, and data entry of fish receiver returns. As a major cost is inspection of receiver premises, there is a two premises limit per registration. Multiple sites would result in an inequitable charging system where multiple site operators would be overly subsidised by operators with fewer sites.

The fee for restricted registered fish receivers is reduced significantly because the inspection requirements are significantly less for commercial fishers who only want to sell their own product. The risks of non-compliance, and hence auditing and enforcement costs, are assessed as substantially less for this sector as they are subject to regular inspections of their commercial fishing operations, they have a high level of awareness of fisheries laws, and they are only responsible for a relatively small throughput of total fish sales.

The present total cost of the fish receiver system to fish receivers ($253,314 in 2002/3). This is minimal in comparison with the greatly increased cost of expanded enforcement and compliance measures that would be necessary without such a system.

Table 2: Total catch value ($'000), value per FR ($'000), and corresponding percentages, of RFRs & RRFRs in categories defined as percentage of total value of 1st POS fish receiver landings 2001/2 & 2002/3 (excl. Sydney Fish Market – see insert).

		Percentage of Total Value of 1st POS landings (by category)					
		0>x<0.1%	0.1>x<1%	1>x<5%	5>x<10%	10>x<20%	20%>x
2001/2	No. of RFRs	9	22	12	6	0	1
	Catch Value $k	215	3345	11773	25826	0	11636
	% of Total Value	0.40%	6.19%	21.79%	47.80%	0.00%	21.54%
	Val $k per RFR	24	152	981	4304	0	11636
	% per RFR	0.04%	0.28%	1.82%	7.97%	0.00%	21.54%
	No. of RRFRs	31	4	0	0	0	0
	Catch Value $k	506	726	0	0	0	0
	% of Total Value	0.94%	1.34%	0.00%	0.00%	0.00%	0.00%
	Val $k per RRFR	16	182	0	0	0	0
	% per RRFR	0.03%	0.34%	0.00%	0.00%	0.00%	0.00%
2002/3	No. of RFRs	20	27	12	4	1	1
	Catch Value $k	410	4737	11342	14575	5622	12233
	% of Total Value	0.82%	9.51%	22.77%	29.26%	11.29%	24.56%
	Val $k per RFR	20	175	945	3644	5622	12233
	% per RFR	0.04%	0.35%	1.90%	7.32%	11.29%	24.56%
	No. of RRFRs	22	7	0	0	0	0
	Catch Value $k	251	640	0	0	0	0
	% of Total Value	0.50%	1.28%	0.00%	0.00%	0.00%	0.00%
	Val $k per RRFR	11	91	0	0	0	0
	% per RRFR	0.02%	0.18%	0.00%	0.00%	0.00%	0.00%

It is evident from table 2 that all RRFR operations occur in the lowest two value categories (<1% of total landed weight). In these two categories, there were on average 33 active RRFRs, as opposed to 40 active RFRs over the two years (2001/2 & 2202/3)

Each RRFR individually extracts less than 1% of the total value of landings, with an average value of 1st POS landings over the two years of $33,172 per RRFR. By comparison, RFRs in these two categories extract a value of $111,617 per RFR. Over these two years, the mean annual total value of first point of sale transactions extracted by all RFRs across all the categories was $884,478 per RFR per annum.

5) Basis of the current fee structure / Justification & comparison of fee levels

The fee structure is based on the need to recover costs of: -

1. Employing personnel to run the program.
2. The fish receiver application and renewal process, including
    - Company searches;
    - Checks with the Dept of Fair Trading;
    - NSW Fisheries legal database search;

- Verifying that the applicant has a current Safe Food licence;
- Physical inspection of the applicants premises by a fisheries officer;
- Data entry and maintenance of the fish receiver database;
- Printing and mailing costs.

3. Inspections and ongoing monitoring of fish receivers, including site inspections and verification of records.
4. Prosecution and court action.

Direct Fish Receiver Program funded positions comprise: -

- 1 full time Fisheries Officer Position
- Fish Receiver Registrar

Note that the above costs and positions are only those directly engaged in FRP and additional activities and operations are conducted across other related programs. Direct additional activities equate to one full time fisheries officer position.

Direct costs of implementing the Fish Receiver Program include:

Staff costs Base Salary Allowances	**Salary On Costs** Payroll Tax Workers Compensation FBT Superannuation Recreation & LSL
Operational Costs Travel – Sustenance, airfares etc Motor Vehicle Expenses Marine Craft Running Costs Mobile Telephone Fees Printing Stores	**General Overheads** Accommodation Communication Costs Freight, Cartage & Postage Depreciation Information & Advisory General Insurance IT Associated Costs Corporate Support

Since the strategy underpinning the fee structure is cost recovery, the fees levied on fish receivers should reflect that portion of the costs of the fish receiver program that are attributable to fish receivers. The total cost to NSW Fisheries of the fish receiver program in 2002/3 was $334,848, of which $253,314 was recovered from fish receivers. The cost of the fish receiver program to other stakeholders (predominantly fishers through their management charges, but also the wider community) was therefore $81,534. This represents about ¼ of the total cost and about $^1/_3$ of the fish receiver contribution. Proportionally, these fractions equate with the respective estimated profit margins obtained by these two sectors[1] from the sale of fish. It can therefore be argued that the level of fees is justified since NSW

fisheries is recovering attributable to costs from these sectors in proportion to the benefit received by them from the fish receiver program.

Given the difference in average turnover between RFRs and RRFRs, across all categories as well as within the two lower categories, the higher fee charged to RFRs is justified since these operations, being larger, incur greater costs to the fish receiver program. Despite the higher fee for RFRs, the level of fees as a proportion of average value of catch at first point of sale (in these two categories over the 2 years) is greater for RRFRs (2.4%) than for RFRs (1.1%).

There is therefore no justification for scaling back the level of fees for RFRs on the grounds that the fee for RFRs is proportionally too high.

Proposals to scale fees according to turnover have been rejected. The relatively small quantum of the fee combined with the costs of administration do not justify implementation of such a scheme, since only a small part of the total fee would be proportional to turnover, with the majority of the fee linked to the fixed costs of inspection which apply irrespective of the size of the receiver. Even if such a proposal were to be adopted, the number of RFRs affected would be minimal. For example, if the fee was doubled for RFRs with a turnover >5% of the total landings, only 6 RFRs (incl. SFM) would be affected, increasing revenue to the Fish Receiver Program by just $16,596 p.a. at current fee levels. It is quite likely that the additional costs to the FRP of a) monitoring landings in order to determine when RFRs are liable for the additional fee and; b) then extracting the fee, will exceed the additional revenue generated.

In addition, every year, a proportion of RFRs make no returns as they choose to remain dormant. There is little or no pressure by these RFRs for the return of their fees, as it is their business decision to not participate in the industry in that year. Similarly, the level of participation by active RFRs is a function of their investment, business acumen and business environment, and the imposition of an application fee shouldn't differentiate between them because of these factors. Only the cost to the FRP is a justifiable differentiating factor, and with the 2 premises limit per licence (a business may have more than one licence), these costs are reasonably equitable across all RFRs. Only because of the constraints under which RRFRs operate which limits their business capacity to the sale of fish caught only by themselves and hence imposes a lower cost on the FRP in overall terms, can the lower fee for RRFRs be justified.

The level of fees adopted by the Commonwealth and other states is dependent upon the economic, social, political and technological drivers prevalent in those jurisdictions and their fisheries as well as the management policy and consequent strategies adopted by their respective fishery management agencies. Although these drivers at the macro level may display similar trends due to the nature of markets, the differences between jurisdictions at the micro-level characteristic of regional and diverse fisheries are so marked that there can be no directly comparable relationship with

specific management policies and strategies adopted in NSW and there is therefore no justification nor basis for comparing the level of fees between jurisdictions in a like manner.

6) The National Docketing System

The National Docketing System (NDS) is not yet in place. The NDS provisions will ensure that all movements of nominated species of fish, particularly those with a significant illegal trade or which are of a high commercial value or conservation status, can be traced through an Australia wide system. The NDS therefore aims to overcome possible illegal product being sourced from other jurisdictions by utilising an Australia-wide docketing system to the final point of sale. Illegal trade is especially a problem in respect of high value products (*e.g.* abalone and lobster) for which there are differing management arrangements in place in neighbouring states. The NDS will require all points in the marketing chain to maintain a record of fish purchased or sold, including details of to whom the fish were purchased or sold. Product movements will therefore be able to be tracked beyond the first receiver and an audit process can be implemented if required.

When operational, the NDS will not replace the need for registered fish receivers because it is intended to track fish nationally onward only from the point of first processing, not from capture to point of first sale. The NDS is therefore a complementary system to, not a replacement for, the NSW Fish Receiver Program.

7) Payment of fees

Section 118 (2) of the Act and section 285 of the Regulations make it clear that the fee is an application fee for registration.

Section 118 Provisions relating to registration

(1) Any person may apply to the Minister to be registered under this Division as a fish receiver.
(2) An application is to be in the form approved by the Minister and is to be accompanied by such fee (if any) as is prescribed by the regulations.
(3) The Minister is required to register an applicant as a fish receiver unless the Minister is authorised by the regulations to refuse the application.
(4) The regulations may prescribe different classes of registered fish receivers.
(5) The registration of a fish receiver:
(a) is subject to such conditions as are prescribed by the regulations or specified in the certificate of registration, and
(b) remains in force for the period of 1 year or such other period as is specified in the certificate of registration, and
(c) may be renewed from time to time in accordance with the regulations, and
(d) may be cancelled or suspended by the Minister in the circumstances authorised by the regulations.
(6) The Minister may, at any time by notice in writing to a registered fish receiver, revoke or vary the conditions of the registration or add new conditions. This subsection does not apply to conditions prescribed by the regulations.
(7) A registered fish receiver who contravenes any condition of the registration is guilty of an offence.
(8) The regulations may make provision for or with respect to the registration of fish receivers.

Section 285: Fee to accompany application for registration as fish receiver

For the purposes of section 118 (2) of the Act, the prescribed fee in respect of an application for registration as a fish receiver is:
(a) in the case of an application for registration as a Class A Registered Fish Receiver—$830, or
(b) in the case of an application for registration as a Class B Registered Fish Receiver—$2,766.

The Regulations at sections 286 and 287 prescribe the criteria for refusal of an application. Under section 118 of the Act, the Minister is required to register any applicant unless the Minister is authorised to refuse the application by the applicant failing to satisfy any of the refusal criteria.

Section 286 Grounds for refusing application for registration

For the purposes of section 118 (3) of the Act, the Minister is authorised to refuse an application for registration as a fish receiver if:
(a) the applicant has been convicted of an offence under the Act or regulations made under the Act or of an offence relating to commercial fishing operations under the law of the Commonwealth, another State, a Territory or New Zealand; or
(b) the applicant has been convicted of an offence relating to the theft of fish, fishing gear or a boat; or
(c) the applicant has not paid any fee due and payable in connection with registration as a fish receiver, or
(d) the Minister is not satisfied that the applicant has any necessary development consent required by the *Environmental Planning and Assessment Act 1979* to receive fish for resale or other commercial use on the applicant's premises, or
(e) the Minister is not satisfied that the applicant has the capacity to meet the requirements of the *Food Act 1989* and the regulations made under that Act or a food safety scheme relating to fish that has been prescribed by regulations under the *Food Production (Safety) Act 1998*

Section 287 Renewal of registration

(1) A registered fish receiver may apply in writing to the Minister for renewal of his or her registration.
(2) The Minister may refuse to renew the registration if:
(a) the Minister receives the application after the expiration of the period in which the fish receiver's current certificate of registration remains in force, or
(b) the Minister is satisfied the fish receiver has contravened a condition of his or her registration, or
(c) the fish receiver has been convicted of an offence under the Act or regulations made under the Act or of an offence relating to commercial fishing operations under the law of the Commonwealth, another State, a Territory or New Zealand, or
(d) the fish receiver has been convicted of an offence relating to the theft of fish, fishing gear or a boat, or
(e) the fish receiver has not paid any fee due and payable in connection with registration as a fish receiver, or
(f) the Minister is not satisfied that the fish receiver has any necessary development consent required by the Environmental Planning and Assessment Act 1979 to receive fish for resale or other commercial use on the applicant's premises, or
(g) the Minister is not satisfied that the fish receiver has the capacity to meet the requirements of the Food Act 1989 and the regulations made under that Act or a food safety scheme relating to fish that has been prescribed by regulations under the Food Production (Safety) Act 1998).

Since the fee is payable on application rather than granting of a registration. It is therefore possible for an applicant to apply, pay the fee and be rejected. This has important implications for the administration of the Fish Receiver function as it is clear that the legislation does not intend for such fees to be paid by instalments, or to be refunded in the event that an application is refused, or in circumstances where a certificate is cancelled or suspended by the Department or relinquished by the certificate holder. The justification for this is that a large proportion of the costs attributable to fish receivers are

incurred in the execution of the comprehensive registration (and renewal) process described above [section 5].

8) Revocation of registration

Section 118(6) of the *Fisheries Management Act 1994* empowers the Minister to revoke or vary the conditions of a registration or add new conditions. For example, conditions were recently varied to include a requirement that fish must physically pass through registered premises.

Clause 288 of the *Fisheries Management (General) Regulation 2002* sets out the circumstances in which the Minister may cancel or suspend a registration.

Section 288 Cancellation or suspension of registration

The Minister may cancel or suspend the registration of a fish receiver if:
(a) the Minister is satisfied that the fish receiver has contravened a condition of his or her registration, or
(b) the fish receiver has been convicted of an offence under the Act or regulations made under the Act or of an offence relating to commercial fishing operations under the law of the Commonwealth, another State, a Territory or New Zealand, or
(c) the fish receiver has been convicted of an offence relating to the theft of fish, fishing gear or a boat, or
(d) the Minister is satisfied that the fish receiver does not have any necessary development consent required by the Environmental Planning and Assessment Act 1979 to receive fish for resale or other commercial use on the applicant's premises, or
(e) the Minister is satisfied that the fish receiver does not have the capacity to meet the requirements of the Food Act 1989 and the regulations made under that Act or a food safely scheme relating to fish that has been prescribed by regulations under the Food Production (Safety) Act 1998).

To date no certificate holder (RRFR or RFR) has been subject to the Act's penalty provisions in respective of registration as a fish receiver nor has any certificate been cancelled or suspended.

Charter Boats

1) Objectives underlying the charter boat licensing scheme

A. The primary objective of the charter-boat licensing scheme is to manage the sector through a limited-access licensing program. Like commercial fisheries it has a significant and increasing potential to impact on our fisheries resources. Unlike normal recreational fishing (that is expertise and time limited) and commercial fishing (which is effort limited) charter boat fishing has the mix of unrestrained potential fishing effort, along with high levels of fishing expertise and technology that can effectively denude coastal reefs of their fish populations.

In the medium term (5 to 10 years) the scheme will identify the catch attributable to charter fishing activities in NSW to enable determination of the relative impact, and appropriate management controls. The current charter boat licensing arrangements: -

1. Define recreational charter fishing operations;
2. Identify charter operators as significant stakeholders in the fisheries management process, including the formation of an industry management advisory committee;
3. Provide for the compulsory gathering of logbook data essential to effective fisheries management;
4. Assist with the allocation of scarce fisheries resources to all sectors of the industry; and
5. Provide for operators to contribute towards the cost of managing their industry and the fish stocks from which they make a living.

Specific Management Objectives:

1. The conservation and sustainable utilisation of fish stocks targeted by the charter fishing boat sector by limiting the number of charter fishing boats and associated effort.
2. Establish an accurate and comprehensive register of charter fishing boat operations.
3. To determine the impact of the charter fishing boat sector on fish stocks.
4. Maintain quality recreational fishing opportunities for the charter fishing boat sector.
5. Determine the economic importance of the NSW Charter Fishing Boat Sector.

B. A key objective of charter boat management is to integrate the management of the recreational charter fishing boat sector into the overall management of NSW fish stocks. As many fish stocks are at or near full exploitation there is a need to ensure that the charter fishing boat sector, along with the recreational and commercial fishing sectors, is included in management arrangements for the conservation and sustainable utilisation of fish stocks.

The licensing arrangements provide important recognition of recreational charter fishing boats as a legitimate third sector of the fishing industry, ensuring that this sector is adequately represented in the management process and that it continues to have access to its fair share of fish stocks. Recreational charter fishing boat operators derive a profit from the use of fishery resources. The sector provides fishing expertise and well-equipped boats to enable recreational anglers to maximise their fishing success across a range of fishing types and species, and to access areas not normally available to them. Studies conducted prior to the introduction of licensing arrangements, which included the analysis of voluntary logbook data completed by operators, have shown that the charter fishing boat sector involves hundreds of boats, catering to tens of thousands of anglers each year, with the potential to take large numbers of fish and to have a significant impact on fish stocks.

The aim of the Ministerial Warnings against further investment in the recreational charter fishing boat sector was to cap the number of recreational

charter fishing boats to that existing on the 22 October 1997, and the associated fishing effort by limiting: -

1. The number of recreational charter fishing boats to that operating as at 22 October 1997;
2. Any increase in the number of recreational fishers carried, as a result of an increase in the size of a replacement vessel, to the number allowed by the NSW Waterways Authority survey classification for the original vessel as at 4 August 1999.

It should be noted that the initial cut-off date for involvement in the charter fishing industry (22 October 1997 – consistent with the Ministerial warning) was amended during the licence assessment/review process to 7 July 2000 (the day the charter fishing boat regulation was gazetted) to ensure that the licensing of NSW charter fishing boats was an inclusive process. Additionally, the initial closing date for licence applications was extended from 30 April 2001 to 30 June 2003, to provide ongoing opportunities for prospective operators to lodge an application for a NSW charter fishing boat licence.

C. An essential aim of fisheries management is to be able to control fishing catch and effort. Consequently, the management of the marine and estuarine recreational charter fishing boat sector employs a range of fisheries management measures to control fishing effort. Such measures include, for example, controls over: -

1. The number of boats;
2. The number of passengers;
3. The type and amount of fishing gear allowed – governed by general recreational fishing rules;
4. Times of the year fishing may be allowed - this management restriction (seasonal closure) was not introduced to the charter fishing sector;
5. Areas that charter fishing may be conducted – charter fishing boat operators have not been zoned, therefore, they can operate throughout State and Commonwealth waters (consistent with their vessel's Certificate of Survey – issued by NSW Waterways Authority).

At the Charter Boat Industry Management Review Group meeting on Tuesday 23 September 1997, industry representatives (extract from summary record of meeting) "*expressed concern over the impact of recent and prospective increases in the number of charter operators, both in terms of the prospects for the conservation and sustainable management of fish stocks and for industry viability. Representatives were particularly insistent that there is a need for an immediate moratorium on the number of charter boats allowed into the industry so as to avoid a blow-out in effort that would further threaten fish stocks that are already considered generally fully exploited. Representatives affirmed their support for the introduction of licensed-based management, so long as this was supported by a cap on the number of charter boats to restrict the growth in effort and assist with the sustainable exploitation of fish stocks.*"

Two parliamentary reviews of the management of fishing in Australia highlighted the need for better monitoring of the charter boat sector. In June 1997, the House of Representatives Standing Committee on Primary Industries released a report on managing Commonwealth Fisheries. This report discussed the need to manage charter boat fishing and recommended "fisheries legislation be amended to regulate the activities of all fishing (including recreational fishing) in Commonwealth waters".

The Australian Fisheries Management Authority, and the Eastern Tuna Management Advisory Committee affirmed their need to monitor the activities of charter boats off the east coast of Australia. In NSW, the Standing Committee on State Development Inquiry into Fisheries Management and Resource Allocation also discussed the issue of charter boat management and recommended "the activities of charter boats be clearly defined and regulated by a system of registration and licensing and the lodgement of catch returns should be a condition of this licence".

Extract from NSW Fisheries Discussion Paper 1998 on the Management of the NSW Charter Fishing Boat Industry Future Management Options

Issue 2: Industry Management and the National Competition Policy

In considering the licensing of charter fishing boat operations it is necessary to also consider the National Competition Policy. The National Competition Policy stems from the Hilmer Report on anti-competitive legislation and requires all States and Territories to review their legislation to remove anti-competitive laws. The NSW Government supports the National Competition Policy and requires management agencies, such as NSW Fisheries, to comply with its aims. This has implications for the introduction of a licensed-based management system that has the potential to limit access and could be seen as anti-competitive.

This issue also figured prominently in the consideration of options for the future management of the aquatic charter industry of Western Australia by the West Australian Tour Operators Fishing Working Group (TOFWG). TOFWG considered that a legislative framework that can limit access is crucial not only to the future management of the charter fishing boat industry, but also for fish and habitat in general. As noted by TOFWG (1997: pp 9-10) the introduction of a management system that "might be viewed as anti-competitive is justifiable for the following reasons: -

1. It is necessary to manage the aquatic charter industry as part of an holistic approach to fish resource management;
2. Without the ability to cap the impact from the aquatic charter industry on living aquatic resources, this sector's operations may be unsustainable;
3. It is not equitable to allow the aquatic charter industry to continue to expand to unsustainable levels while the commercial fishing sector has been capped for many years, and in some cases is undergoing significant effort reductions; and

4. There are benefits for the general community in having a controlled aquatic charter industry, such that: -
5. The industry can be part of a living aquatic resource management framework that ensures biological sustainability and provides opportunity for economic viability;
6. Access to leisure activities (is) by a quality-based industry;
7. Economic benefits (accrue) to the community from tourism through marketing of the aquatic charter industry."

The rationale for licensing and managing the charter fishing fleet in NSW is consistent with this reasoning and has defined the operators and is monitoring their catches.

2) The rationale for transferable and non-transferable licences

The Act provides for the management of recreational charter fishing boat activities by the issuance of a recreational charter fishing boat licence. This licence may be issued to applicants, as prescribed under S127C(1) of the Act, who meet the specified eligibility criteria. Applicants, depending on how they meet the eligibility criteria, may be granted either a transferable or a non-transferable recreational charter fishing boat licence.

The vast majority of charter fishing boat licences in NSW are transferable and may be on-sold to new/existing operators. Non-transferable licences have been issued in instances where a charter fishing boat operation had minimal historical participation in the NSW charter-fishing sector. This division recognises the difference between a full-time dependent business, and a casual/part-time pursuit, whilst allowing all of these businesses to continue to operate into the future (non-transferable boats for the life of the existing operator).

To be issued with a transferable licence, operators were required to demonstrate more than 100 days of charter fishing in any consecutive 2 years during the criteria period. This equates to slightly less than one charter fishing trip per week for the relevant period.

3) Defence grounds for non-transferable licences

Non-transferable licences were issued to enable existing operators to continue their businesses in their present form while preventing the expansion of part-time operations into full time charter businesses.

There is no barrier to a new vessel being attached to a non-transferable licence providing the licence remains with the same owner. The licence only expires when the owner finally surrenders the licence. The licence cannot be disposed of to another party. This scheme provides recognition of the historic low level of operation of the existing operator, without placing the resource at

risk from a licence being sold to a new operator who operates it at a very much greater level.

It is difficult to argue that with an average of less than one days work per week, that significant capital investment was underpinned by this level of business – the non-transferable scheme allows the individual to continue to operate at their historic level as long as they wish to do so without placing the resource at risk from increased pressure.

NSW Fisheries will, over time determine the relative impact of the charter boat fleet on fish stocks (through the Recreational Fishery Management Strategy & associated Environmental Impact Statement[2] and long term analysis of catches and fishery assessments) and it is therefore inappropriate for management arrangements to allow significant increases in effort. Casual or part-time operations should not be able to become full-time charter fishing businesses – a serious risk if they are transferred.

It is also argued by industry that operators who operated on a casual basis should not benefit from a windfall gain brought about by a change in management regime. Industry is supportive of these operators being able to continue to operate at their historic levels but would prefer that criteria exclude them completely, in preference to allowing them to become transferable.

Industry argue that access to a tradeable asset (the transferable licence), the value of which is directly attributable its ability to be used full-time on a commercial basis, should only be to those operators with substantial operating history, as this demonstrates an ongoing commitment to the sector that is also usually reflected in substantial investment in infrastructure, equipment and employment opportunities.

The present licensing system represents the implementation of appropriate management arrangements in a fair and transparent manner. A charter fishing business that was only a casual/part-time operation in the past (i.e. 1-2 trips/fortnight) is now able to work full-time (potentially 1-2 trips/day, 7 days/week) and thus has the opportunity to derive a substantial increase in economic benefit from the charter boat licensing system. The only restriction is that the current owner cannot on-sell the business to new/existing operators (i.e. a sunset clause). Sunset clauses have long been used in commercial fisheries management to recognise historical part-time operations and allow the current owners to continue to operate the business and derive economic benefits, whilst preventing the future expansion of this part-time activity into a full-time, tradeable business with concomitant increases in fishing effort and risk to future sustainability (which are unacceptable social costs).

Following the introduction of charter fishing boat licences in November 2000, applicants who were unsuccessful in obtaining a licence[3] were given the opportunity to apply for a review by the Charter Boat Licence Review Panel, a

[2] Release of the EIS and draft FMS is presently scheduled for September 2005, with the public exhibition period commencing November 2005.

[3] *i.e.* did not satisfy the qualifying criteria of the licence applied for

statutory panel. Applicants under review were issued interim licences to enable them to continue to operate. In addition, the regulations make provisions for third parties to submit a review of the Department's decision to issue a licence. The appeals panel was appointed in October 2001 and commenced looking at review applications in December 2001 after meetings were arranged with the panel for briefing on guideline development, the charter boat licensing process, assessment against the original eligibility criteria and the review criteria. At the completion of the appeals process on 31 December 2003, around 109 matters had been reviewed by the review panel, including 28 applications submitted by 3rd parties. The review fee was a $100.00 flat fee, fully refundable if appeal upheld. The review panel convened and met at 3 locations – Wollstonecraft Fisheries Centre, Cronulla Fisheries Centre and Sydney Fish Markets. A Statement of Reasons was provided for persons with an unsuccessful review outcome. Statements of Reasons are a requirement of the *ADT Act* and are lengthy and detailed documents that can take from 5 to 10 working days to complete (full-time) depending on the complexity of the case.

Now that all applications for review are completed, interim licences will no longer be valid. Successful applicants can continue to operate under full licences (*i.e.* no longer interim) and unsuccessful applicants will no longer be licensed to operate unless they obtain an existing transferable licence in the market.

This approach is consistent not only with the objects of the Act, but also with the long-standing arrangements preventing licence splitting that are intended to stop increases in fishing effort and ensure sustainability. These arrangements are part of the management measures and restrictions that, taken as a whole, have previously been found to be justified[4] because they assist in the pursuit of objectives identified in legislation and their social benefits exceed their costs.

Australia, as a signatory to the Rio Declaration on Environment and Development (2nd UN Conference on Environment and Development, 1992), embraced the "precautionary principle" as a matter of national policy in the management of natural resources. There remains a high degree of uncertainty around the exploitation status of most species captured by NSW charter boats, which warrants a high degree of precautionary management. In a scenario, common to most fisheries, of limited and stochastic biological data with resulting high levels of uncertainty combined with demonstrable growth in both exploitation and effort, the risk to sustainability of allowing unfettered access and unlimited effort cannot be justified. Whilst the precautionary principle may sit uncomfortably with National Competition Principles, sustainability objectives and the observance of Australia's international obligations at all jurisdictional levels must have priority and it would be both reckless and negligent to assume otherwise.

[4] pp xiv & 61 in: Fisheries in New South Wales – NCP review of the Fisheries Management Act 1994 Final Report. Centre for International Economics, Canberra, 2001.

Appeal Milestones/Process Start Date: October 2001 (originally Feb. 2001)

- 22 October 2001, members appointed to the review panel – included a pool of industry and departmental reps to cater for conflict of interests and ability to accommodate workload/commitment of the panel members.
- 15 November 2001, meeting to develop procedural and policy framework
- December 2002, reviews commenced.
- March 2002 panel completed initial examination of all reviews
- April 2002, Commence panel hearings
- 7 June 2002, all reviews completed by panel
- 20 June 2002, Recommendations made to Minister
- 28 June 2002, out of session MERC MAC Agenda Item – proposed amendments to Guidelines and Regulation due to anomalies detected during the review process, which did not give the review panel full discretion to hear and determine certain matters that could arguably also be outside the jurisdiction of the ADT.
- 8 August 2002 – draft amended Guidelines/Regulation forwarded to Policy Unit.
- August 2002, Licence holders notified of Minister's decision. Due to Minister's decision to amend the regulations/guidelines, all panel recommendations for refusal of a licence were not accepted by the Minister but referred back to the panel for reconsideration under the amended regulation/guidelines.
- 13 September 2002, Minister's decisions on licences granted following a review published in the Gazette for the purpose of subjecting the licences granted following review to a 3rd party review process
- September/October 2002, The Minister may dismiss 3rd party reviews or establish another panel. The Minister extended panel appointments for a further 12 months to allow consideration of any 3rd party reviews resulting from the gazette and for all 'referred back' matters (around 40 review matters were referred back – these encompassed all recommendations for refusal of a licence and any recommendation for cancellation of a licence).
- September 2002 – Panel commenced reconsideration of "referred back matters" and new 3rd party matters in anticipation of the proposed amendments to the Guidelines and Regulation
- 1 December 2002 – clause 315(2)(d) added to review regulation to cater for anomaly detected during the review process. Amended guideline approved February 2003.
- Jan/Feb/March/April 2003 - Panel finalises recommendations to Minister on referred back matters.
- Minister approves recommendations and another gazette for licences issued arranged for third party review. Gazette publication undertaken on 16/5/03. No third party review applications received from this gazette.
- April 2003 – First ADT matter for charter boats finalised (Smith v Minister for Fisheries). ADT highlights that guidelines are inflexible and do not allow the Panel to exercise discretion to issue either a non-transf. Or transf. licence as required by the regulation.
- April to December 2003 – ADT affected matters referred back to Panel for reconsideration of review matters in line with ADT findings. Guidelines amended to remove reference to issue of non-transf. licence only and to implement guidelines for the Panel to assist in determining the type of licence that should be issued.
- Panel reconsiders affected Guidelines using draft guidelines. Draft Guidelines approved 22/12/03.
- Panel recommendations approved by Minister Nov/Dec 2003
- Letters of notification for outcome of reviews sent 24/12/03.
- Gazette currently being arranged for licences granted following review since last gazette of 16/5/03.
- Finish date: 31 December 2003

End – Outcome:

- Completion of all applications for review.
- Interim licences will no longer be valid.
- Successful applicants will be able to continue to operate under full licences (ie no longer interim) and unsuccessful applicants will no longer be licensed to operate unless they obtain an existing transferable licence.
- Regulations currently being amended to allow Dept. to undertake any third party reviews resulting from future gazettes and any other miscellaneous review matters that may arise.

4) Number of Operations in each Charter Boat category

Number of Initial Applications at Regulated Closing Date[5]	**319**
- of these[6]:	
Number issued non-transferable licence	10
Number issued transferable licence	217
Number rejected	92
Total Number of Applications to date (@ 3-Feb-04)[7]	**338**
Number of Operations In Each Category (Granted[8]*)*	**285**
Non-transferable charter fishing boat licences:	39
Transferable charter fishing boat licences:	246
Number of Active Charter Fishing Boat Licences (@ 3-Feb-04)	**227**
Non-transferable licences: (3 'processing status' & 23 'issued status')	26
Transferable licences: (34 'processing status' & 167 'issued status')	201
Number Of Inactive Charter Fishing Boat Licences[9] *(@ 3-Feb-04)*	**52**
Non-transferable licences: (11 'abeyance status' & 0 'expired status')	11
Transferable licences: (34 'abeyance status' & 7 'expired status')	41

[5] 30 April 2001
[6] Data in responses 4 & 5 are subject to correction as some applications are still outstanding
[7] The difference comprises late applications accepted by the Department after the closing date, some of which are still being processed.
[8] Total number granted/issued by the Minister via the application process and charter boat review process. The number of actual licences may be less than this figure as some of the licences granted were either cancelled as a result of departmental reviews or third party reviews conducted by the independent panel, or have been surrendered by the operator.
[9] Inactive licences have the potential to be activated at some point in the future.

5) Appeals Data

Total number of applications for review: 109

1. Number of review applications received from applicants that were refused the issue of a licence 81
2. Number of third party review applications received[10] 28

Total number successful for a licence after review[11] 63

1. Number of received review applications pursued by applicant (i.e. not withdrawn) 66
2. Number successful for non-transferable licence 30
3. Number successful for transferable licence 33
4. Number[12] of review applications from persons awarded non-transferable licence seeking transferable licence 2
5. Number of received third party review applications pursued by applicant (i.e. not withdrawn) 23
6. Number of successful third party review applications resulting in cancellation of a licence 10
   a) Number of cancelled non-transferable licences 2
   b) Number of cancelled transferable licences[13] 8

[10] A third party is a person who objects to the issue of a licence to an operator because they believe they do not satisfy eligibility criteria for the licence. Objections from third parties were in all instances received on the grounds that the operator shouldn't have received a licence at all. There were no instances of a 3rd-party applicant who objected to the issue of a transferable licence on the grounds the operator should have received only a non-transferable licence, nor were there any cases of a 3rd-party applicant who objected to the issue of a non-transferable licence on the grounds the operator should have received a transferable licence.

[11] Normal reviews - not including 3rd party reviews

[12] One was successful; one was withdrawn by the applicant.

[13] In the case of transferable licences cancelled following a 3rd-party review, the review panel re-examined the applicants eligibility under the review criteria and in some instances awarded either non-transferable licences or transferable licences because they either met the criteria for a non-transferable licence or met the review criteria under which the panel operated

6) Alternative Considerations

The Marine and Estuarine Recreational Charter Management Advisory Committee has had preliminary discussions about future industry development opportunities, incorporating the need for the Commonwealth Government's National Competition Policy requirements to be considered during this process. These issues are being considered/progressed (they have not been rejected) through the Fishery Management Strategy for recreational and charter fishing (extract of MERCMAC minutes attached).

All anglers are subject to the general recreational fishing rules when fishing from charter boats. Consultation regarding proposals to reduce to the recreational bag limit of certain species is an ongoing management tool.

Uncontrolled increases in the overall number of charter fishing boats operating in NSW would make it extremely difficult to limit the total catch of this sector. If the direct management restriction on the number of licences available for charter fishing operations was not an option, then indirect methods of management would have to be substituted in an attempt to achieve the prescribed objectives. Indirect management would seek to use more restrictive bag, boat and possession limits, than those imposed on other recreational fishers, to limit the catch by charter boats. It must be noted however, that such methods are relatively inefficient, are ineffective once fishing effort exceeds a certain level and would substantially reduce social and economic benefits and increase costs. The allocation and enforcement of a total allowable catch for each of the diverse suite of species taken by charter boats would be extremely resource demanding and expensive. The question of cost recovery needs to be considered in the light of capacity to pay and the public good nature of the recreational fishery.
If open entry was permitted to this fishery the process of monitoring catches and allocating quotas could not be carried out in real time and would be continually trying to catch up, with a concomitant increased risk to sustainability. There are sufficient global and Australian examples of management failure, stock collapse and consequent social and economic disruption to warrant a high degree of precaution until there is greater certainty around parameters of exploitation and yield.

Charter fishing boat operators have not supported boat limits in the past (*e.g.* gemfish – 10/boat/day) as they discriminate between small and large vessels (eg 5 people on a boat can take 2 gemfish each – a combined total of 10 gemfish; whereas 20 people on a charter boat can only take a combined total of 10 gemfish).

The NSW Legislative Council's Standing Committee on State Development report on Fisheries Management and Resource Allocation in New South Wales, finalised in 1997, noted that charter boats represent a unique crossover between the commercial and recreational fishing sectors. The report identified that the unregulated nature of the charter fishing industry had the potential to impact on the resource by providing recreational fishers with a more effective fishing platform. In the case of small stock fisheries typical of

the continental shelf, the charter sector alone would be quite easily capable of fully exploiting such stocks, even at current effort levels. The Standing Committee recommended that the activities of charter boats needed to be clearly defined and regulated by a system of registration and licensing, and that a catch return system should be a condition of these licensing arrangements.

Copy of final minutes from 3rd Marine and Estuarine Recreational Charter Management Advisory Committee meeting, held 8 May 2003

Agenda Item 8 **NSW Fisheries**

Issue
Consideration of industry development issues to be addressed in the Fishery Management Strategy and Environmental Impact Statement process for recreational and charter fishing.

Background (NSW Fisheries)
The FMS/EIS for recreational and charter fishing provides an opportunity for the charter fishing sector to consider issues for future development and expansion of the industry. As a preliminary step to the formal FMS/EIS consultation process, committee members are invited to consider where they envisage the charter fishing sector will be in the medium term, including how the industry will respond to changing fishing activities and possible development in tourism over that time.

Issues for consideration include: licence splitting and the transfer of fishing capacity between vessels; purchase of existing licences and amalgamation of licences to provide additional seats without increasing the total number of permitted passengers in the industry; increases in fishing capacity for vessels, for example, changing the permitted number of passengers; the tradeability of licences between ports and zones; and catch and release only licences for low impact methods such as fly fishing and gamefishing. The requirements of the Commonwealth Government's National Competition Policy must also be considered during this process.

Outcomes
The committee held preliminary discussions of industry development issues and was encouraged to consult with charter fishing operators to ensure a broad range of issues are identified.

Recommendation
The Committee to consider industry development issues that should be addressed in the FMS.

Final Minutes for 3rd MERCMAC Meeting 08/05/03 (1/03)

Copy of Minister's address to Parliament re: provisions for the management of the NSW charter fishing sector in the Fisheries Management Act 1994

FISHERIES MANAGEMENT AMENDMENT BILL 1997

I AM PLEASED TO BE ABLE TO TABLE AN AMENDMENT TO THE FISHERIES MANAGEMENT ACT TO ALLOW FOR THE REGULATION OF RECREATIONAL FISHING CHARTER BOATS IN NSW.

IN MY TIME AS MINISTER FOR FISHERIES I HAVE ALWAYS SOUGHT TO MAKE DECISIONS WITH AN EYE TO THE LONG-TERM, TO HELP ENSURE THE CONSERVATION AND SUSTAINABLE MANAGEMENT OF OUR DIVERSE, BUT LIMITED, FISHERIES RESOURCES. FISHERIES RESOURCES THAT ARE OF REAL IMPORTANCE TO OUR QUALITY OF LIFE, AND THE RECREATIONAL AND COMMERCIAL FISHING INDUSTRIES WHICH DEPEND UPON THEM.

IT IS IMPORTANT TO REMEMBER THAT SOME 30% OF THE PEOPLE REGULARLY GO RECREATIONAL FISHING, AND MANY MORE LIKE TO EAT SEAFOOD. FISHING AND FISH PRODUCTS ARE AN INTEGRAL PART OF OUR LIFESTYLE AND ECONOMY. IT IS ESSENTIAL THAT THE RIGHT MANAGEMENT DECISIONS ARE TAKEN, AT THE RIGHT TIME, TO ENSURE THE FUTURE OF OUR FISHERIES.

THE TIME IS RIGHT FOR THE RECREATIONAL FISHING CHARTER BOAT INDUSTRY TO BE MORE FORMALLY INCLUDED WITHIN THE MANAGEMENT PROCESS, AND FOR THE INDUSTRY TO PLAY ITS RIGHTFUL PART IN THE MANAGEMENT OF FISHERIES RESOURCES. THE POPULARITY OF RECREATIONAL FISHING GOES FROM STRENGTH TO STRENGTH, AND THE RECENT GROWTH OF THE CHARTER BOAT INDUSTRY IS EVIDENCE OF THIS.

RECENT STUDIES OF, AND DISCUSSIONS WITH, THE RECREATIONAL FISHING CHARTER BOAT INDUSTRY HAVE SHOWN THAT THE INDUSTRY HAS DOUBLED IN THE PAST THREE YEARS, AND THAT THE POTENTIAL EXISTS FOR CHARTER OPERATIONS TO HAVE A SIGNIFICANT IMPACT ON RECREATIONAL FISH STOCKS.

MOREOVER, NSW IS NOT ALONE IN HAVING TO RESPOND TO THE MANAGEMENT CHALLENGE POSED BY A RAPIDLY EXPANDING RECREATIONAL FISHING CHARTER BOAT INDUSTRY:

- TASMANIA, VICTORIA, QUEENSLAND, WESTERN AUSTRALIA AND THE NORTHERN TERRITORY HAVE MOVED, OR ARE MOVING TOWARDS, THE CO-OPERATIVE MANAGEMENT OF RECREATIONAL CHARTER FISHING.
- QUEENSLAND AND THE NORTHERN TERRITORY ALREADY REQUIRE MANDATORY LICENSING, AND WESTERN AUSTRALIA IS PROPOSING THE MANDATORY LICENSING OF CHARTER OPERATORS.

THE PRESSURE ON THE FISHERIES RESOURCES OF NSW IS MORE INTENSE THAN THAT OF THE OTHER STATES OR TERRITORIES, AND IT IS ESSENTIAL THAT THE GOVERNMENT IS ABLE TO ADEQUATELY MANAGE ALL ASPECTS OF FISHING ACTIVITY.

THE OBJECTIVES OF THE PROPOSED AMENDMENT OF THE ACT ARE TO:

- PROVIDE THE CAPACITY FOR THE MANAGEMENT OF CHARTER BOAT CATCH AND EFFORT;
- PROVIDE RELIABLE INFORMATION FOR FISHERIES MANAGEMENT;
- IDENTIFY AND LEGITIMISE RECREATIONAL FISHING CHARTER BOAT OPERATORS AS SIGNIFICANT STAKEHOLDERS AND TO ENABLE THEIR FORMAL INCLUSION IN THE FISHERIES MANAGEMENT PROCESS;
- ASSIST WITH THE ALLOCATION OF SCARCE FISHERIES RESOURCES;
- PROVIDE FOR OPERATORS TO CONTRIBUTE TOWARDS THE COST OF MANAGING THE FISH STOCKS FROM WHICH THEY MAKE THEIR LIVING.

IMPORTANTLY, THE GOVERNMENT HAS NOT SHIRKED ITS RESPONSIBILITY TO CONSULT AND WORK WITH THE CHARTER BOAT INDUSTRY IN THE DEVELOPMENT OF MANAGEMENT OPTIONS. I AM, AS ALWAYS, COMMITTED TO AN OPEN AND ACCOUNTABLE PROCESS IN WORKING WITH INDUSTRY ON SUCH MATTERS.

MEETINGS HAVE BEEN HELD WITH CHARTER BOAT OPERATORS AT PORTS ALONG THE NSW COAST TO DISCUSS THE NEED FOR MANAGEMENT OF THE RECREATIONAL FISHING CHARTER BOAT INDUSTRY. AS A RESULT OF THESE MEETINGS:

- A CHARTER BOAT INDUSTRY MANAGEMENT REVIEW GROUP HAS BEEN FORMED, WHICH INCLUDES INDUSTRY AND NSW FISHERIES MANAGEMENT AND RESEARCH REPRESENTATION, TO CONSIDER OPTIONS FOR THE MANAGEMENT OF THE INDUSTRY; AND
- THE BASIS FOR A STATE-WIDE CHARTER BOAT INDUSTRY OPERATORS ASSOCIATION HAS BEEN LAID.

THE GOVERNMENT WELCOMES THE OPPORTUNITY TO DEAL WITH THE INDUSTRY AND THE, NEWLY FORMED, CHARTER BOAT INDUSTRY ASSOCIATION. SIGNIFICANTLY, THE ISSUE OF LICENSING HAS BEEN DISCUSSED WITH THE INDUSTRY AND THEY HAVE RAISED NO OBJECTION TO AMENDING THE ACT TO ALLOW THIS TO OCCUR. IMPORTANTLY, THEY HAVE BEEN GIVEN ASSURANCES THAT MANDATORY LICENSING WILL NOT OCCUR WITHOUT FURTHER CONSULTATION AND INDUSTRY SUPPORT, AND I STAND BY THAT ASSURANCE TODAY.

I RECOMMEND THE BILL TO MEMBERS OF THE HOUSE FOR THEIR CONSIDERATION

Cost Recovery & Access Rights

On 5 December 2003, the NSW Minister for Fisheries, the Hon. Ian Macdonald MLC, released "A Vision for the NSW Seafood Industry".

In the vision document, the NSW Government made the following commitments, relevant to National Competition Principles, to improve fisheries management: -

- To provide security for the commercial fishing industry through the implementation of share management;
- To develop models for a consensus based approach to resolving resource-sharing issues;
- To charge fairly for the costs of management and access rights;
- To develop a better approach to industry structural adjustment & rationalisation;

To achieve these commitments, the NSW Government proposes the following actions: -

1. To finalise criteria for the allocation of shares by March 2004;
2. To allocate provisional shares for all major commercial fisheries by October 2004;
3. To progressively implement share management plans for major commercial fisheries following the completion of a fishery management strategy for each major fishery.
4. To publish a structural adjustment plan that encompasses all fisheries by June 2004.
5. To ensure involvement & collaboration in the development of a national model for resource sharing.
6. To finalise a cost recovery framework, in consultation with industry, by 2005.

Intrinsic to the vision commitment of providing industry security through access rights granted under share management, is the underlying principle that those that benefit from the access rights should bear the attributable costs of managing the resources for which they have such rights. The share management arrangements and cost recovery policy of NSW Fisheries are being developed and implemented in line with this principle.

A. Share management arrangements

Of the eight main commercial fisheries, two (rock lobster & abalone) are already category 1 share management fisheries. Fishers participating in these fisheries have well defined property rights in that they have a right of access to the fishery as well as a right to share proportionally (according to the number of shares they own) in the output from the fishery (in this case, quota).

The other main fisheries are currently category 2 share management fisheries. Entry to these fisheries is restricted and can only be gained by acquiring existing fishing businesses, subject to certain transferability restrictions. These category 2 share management fisheries become category 1 share management fisheries on 12 March 2004, and participants in these fisheries will then be allocated secure fishing rights.

The introduction of share management and the ownership of shares that are issued in perpetuity will provide certainty and long-term security for commercial fishing businesses, as opposed to the existing year-to-year arrangements for restricted fisheries. This pro-competitive action will act to eliminate the market failure that results from a tragedy of the commons scenario and will promote the sustainability of fishing resources and industry.

NSW Fisheries is currently working to finalise the criteria for the allocation of provisional shares in these fisheries. It is anticipated that a call for share applications from industry will occur in March/April 2004, and provisional shares issued by October 2004.

Once shares are allocated, share management plans will be prepared for each fishery. These plans will include the transfer rules for the sale of endorsements between fishing businesses, and will be linked to the fishery management strategies developed for each fishery.

Appeals against numbers of shares allocated will be able to be made to the Share Appeals Panel, established under Part 3A of the *Fisheries Management Act 1994*.

B. Cost recovery policy

NSW Fisheries is committed to implementing cost recovery, which is an important component of ecologically sustainable development, for both the commercial fishing and aquaculture industries. The NSW Government has clear policies in this regard for both sectors:

- For the commercial sector the policy is to introduce a framework by 2005, to be progressively implemented over three years as outlined in the attached vision statement for the NSW seafood industry,

- For aquaculture industry the policy is to introduce the framework by June 2005 and progressively implement it over five years as outlined in the attached "Aquaculture Pricing Position Paper".

The difference in timing of introduction reflects the relative position of the sectors in terms of their current progress towards paying cost recovery. The commercial fishing sector have been given significantly more notice and are already paying a greater proportion of their attributable costs – the gap between current and likely eventual charges is therefore significantly less.

The cost recovery program is guided by principles laid out in the attached reports:- "Pricing Principles for Management Charges in NSW Commercial Fisheries, 1998" by the Independent Pricing and Regulatory Tribunal (IPART) and "Review of NSW Aquaculture Industry Costs and Pricing, January 2000" by the Centre for International Economics.

Underpinning the formulation of a cost recovery framework in the commercial fishing sector is the legislative basis for charges contained in the *Fisheries Management Act 1994* and the Pricing Principles for Management Charges contained in the IPART report.

Cost Recovery Arrangements

1. Commercial Fishing

Cost recovery has been fully implemented in 2 of the state's 8 major commercial fisheries, abalone and rock lobster, in accordance with IPART principles. Of the total expenditure on these two fisheries, around 70-80% has been deemed attributable and is recovered from industry under these principles.

In the remaining 6 major fisheries a variety of user charges are in place based loosely around the traditional fee-for-licence system, supplemented with a fishery management charge, a levy to assist with the production of environmental assessments, and a research levy. Of the total expenditure on these remaining fisheries, approximately 30% is recovered in user charges.

Starting in 2005, the current system of flat fees will be replaced by a cost-recovery scheme based on levels of access (shares held) and numbers of entitlements. This scheme addresses the major concern that multi-purpose diversified fishing businesses could be severely financially impacted if such a framework were to be based solely on the number of entitlements. The scheme uses a "units" approach whereby fisheries and share packages are allocated "units". In this model, charges are levied to a Fishing Business in proportion to the number of units it holds. From modelling various scenarios, it is apparent that the unit approach is more equitable in that it offers a more even distribution of charges between fishing businesses.

A methodology using a three—stage approach to determine attribution and recoverability of NSW Fisheries' commercial fishing activities is under consideration for the cost recovery framework: -

Stage 1 Determination of appropriate commercial fishing activities to be performed by NSW Fisheries

NSW Fisheries' commercial fishing activities are assessed against the legislative basis for those activities. If activities cannot clearly be related to legislation, it then needs to be determined whether there is another justification for NSW Fisheries performing them, including whether it would be more efficient for NSW Fisheries to be contracted to provide the service.

Stage 2 Attribution of costs

The attribution of costs associated with particular NSW Fisheries commercial fishing activities is the next step in assessing whether costs should be recovered. It needs to be determined whether each of NSW Fisheries' current activities is attributable to a specific commercial fishing user group, or to another user group and/or to the general public. If a NSW Fisheries commercial fishing activity is needed because of the existence of a particular user group, then that activity should be considered attributable to that group. In practice, an activity can be considered to be attributable to a specific user group if the response to the question "Would the non-existence of that user group eliminate the need for the NSW Fisheries activity in question?" is "yes".

Stage 3 Recoverability of costs

The next step is to determine whether the costs of NSW Fisheries activities that are considered (Stage 2) attributable to specific commercial fishing user groups should be recovered from those user groups.

The following factors need to be considered in determining recoverability:

1. the extent of user group benefit from the activity;
2. consistency with Government cost recovery policy in other sectors;
3. the existence of extenuating socio-economic considerations;
4. the existence of government policy that Impacts on the cost recoverability for a particular activity;
5. the cost-effectiveness of recovering costs of any particular activity;

Using this methodology, the commercial fishing activities performed by NSW Fisheries have been identified and assessed against the legislative mandate of the *Fisheries Management Act*. Those activities considered "attributable" include: -

(a) Policy, Planning and Management

If there was no commercial fishing activity in NSW, there is no reason why most policy and planning activities would be required. In other words, it is the existence of the commercial fishing sector (and no other groups) that generates the need for policy and planning of the activity.

However, even if all commercial fishing in NSW stopped, NSW would still need to undertake (and pay for) a certain level of policy and planning. With a duty of care towards the environment and to meet national and international obligations, NSW would have to be involved in surveillance and enforcement related to illegal domestic commercial fishing, disease management and R&D, all of which have policy and planning components. Therefore not all costs associated with policy and planning for the commercial fishing and aquaculture industries could be avoided if those industries did not exist.

(b) Research and Development

If there were no commercial fishing industry in NSW, NSW Fisheries research and development would not be necessary. Therefore under the attribution definition, this activity can be attributed to the commercial fishing industry.

(c) Promotion and Development of the Industry

If there were no commercial fishing industry in NSW, NSW Fisheries' promotion and development of the industry would not be necessary. Therefore under the attribution definition, this activity can be attributed to the commercial fishing industry.

(d) Administration of Licences, Permits and other Authorities

If there were no commercial fishing industry in NSW, most administration of licences, permits and other authorities would not be necessary. However, a licence/permits system may still be required to deal with transit of fish and fish products through the state and importation into the state. As noted above, fish health services may also be needed to support this activity.

(e) Compliance

If there were no commercial fishing industry in NSW, most compliance (= surveillance and enforcement) would not be necessary. However, as noted above detection of illegal activity and that of non-NSW commercial vessels/aquaculture businesses landing product into NSW would still be necessary.

(f) Administration supporting (a) to (e)

If there were no commercial fishing industry in NSW, most of the associated administrative support would not be necessary. On-costs and overheads are calculated on a per person basis, and administrative support costs should therefore reflect the number of FTEs attributed to the relevant sector.

In addition to this cost recovery framework, there has been a joint initiative by Goverment and Industry to fund the preparation of Environmental Impact Statements for commercial fisheries. EISs are required to enable commercial fishers to meet NSW and Commonwealth environmental legislation (including export approval processes). After consultation with the key stakeholder groups in 2000, it was agreed that the best approach would be to assess the environmental impact of fishing activities at the fishery level. Such an approach would create greater certainty and also minimise costs.

Commercial fishers and the Government are sharing the cost of preparing the EISs over three years.

The EIS levy was set at $150 per fishery for the first two fisheries and $100 for each fishery thereafter (per fishing business) per year. The FRCAC levy was set at $80 per fishing business per year. These levies have been adjusted each year in line with the Consumer Price Index.

Fishers were advised (in an information paper provided to all commercial fishers in January 2001) that the costs for the assessments would be accounted for to industry, and contributions adjusted once more detailed and final costs were known. These arrangements currently extend to June 2007.

2. Aquaculture

At present, no formal cost recovery process is applied to aquaculture. However, fees for services are applied in many areas, including permits and leases. In aquaculture, approximately 15% of total expenditure is currently recovered from user charges. Charges are based on annual lease and permit fees.

By contrast with much of the commercial fishing expenditure, where the beneficiaries are clearly identifiable, much of the aquaculture research and development is considered blue-sky work that will benefit operators who may not yet be involved in that particular sector. Funding for these services is invested by Government in anticipation that there will be future industry growth leading to regional economic development and flow-on economic benefits to the wider community.

The focus of the cost recovery framework for aquaculture, therefore, will be on direct services for administration, policy, extension, veterinary and diagnostic services, and compliance. The 3-stage methodology described above will also be applied to the aquaculture sector.

In this regard, a draft cost recovery policy framework for the aquaculture industry that takes in to account the outcomes of the CIE review of costs and pricing in the NSW aquaculture industry, has been developed by NSW Fisheries (attached, confidential).

In summary the NSW Government has a clear policy to introduce an equitable program of cost recovery into the seafood industry, in a timely way. The program will focus on attributable costs for which clear beneficiaries are identifiable, and will be phased in so as to provide time for industry to adjust around the new scheme of charges.

References

National Consumer Council (NCC) 2003, *2003 National Competition Assessment*, Melbourne.