

# NATIONAL COMPETITION POLICY

## REPORT ON REVIEW OF

### QUEENSLAND FISHERIES ACT 1994

15 March 2002

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## 1. PURPOSE OF REPORT

The Queensland Government is committed to the Competition Principles Agreement (CPA) under the National Competition Principles (NCP) arrangements endorsed by members of the Council of Australian Governments (COAG) in April 1995. To meet its commitment under the Agreement, the Fisheries Regulation review Committee was established in September 1998 to review the Fisheries Act 1994 in accordance with the Government's obligations.

This report provides for the purposes of information and record, a detailed statement of the:

- Background to the NCP review process
- Details and findings of the legislative review
- Government's response to the review.
- Progress on implementation of reforms out of review.

## 2. BACKGROUND TO NCP REVIEW

The Commonwealth, State and Territory CPA binds all parties, among other things, to the systemic review of existing legislation which may restrict competition and, where appropriate, institute reforms by the year 2000 (Clause 5). The outcome of the legislative review process was that legislation should not restrict competition unless it confers an overall community benefit and its objectives cannot be achieved through other means<sup>1</sup>.

It is a requirement that legislative reviews are undertaken of all Queensland legislation in accordance with the timetable provided by the Queensland Government to the National Competition Council (NCC). The Commonwealth has agreed to make payments to the States and Territories provided satisfactory progress is made in implementing change identified as part of the reform process. The payments are worth around \$16 billion over the next five to ten years.

The State Government has issued Public Benefit Test Guidelines (PBTGs), and a Competition Policy Unit has been established in Queensland Treasury Department to provide guidance to agencies undertaking reviews. The responsibility for ensuring all existing and proposed Queensland fisheries legislation is reviewed in accordance with NCP rests with the Minister for Primary Industries and Rural Communities and the Treasurer.

### 2.1 The Fisheries Act and Subsidiary Legislation

The Fisheries Act 1994 (FA 1994) is the predominant legislation providing a framework for administration of fisheries in Queensland. Subsidiary legislation supporting the FA 1994 provides for the management of over 17 individual fisheries and activities such as aquaculture and recreational fishing. Most of the specific restrictions relating to individual fisheries management are contained within the various forms of subsidiary legislation such as management plans, regulations, notices and conditions on licences.

<sup>1</sup> D Cope (Deputy Executive Director, National Competition Council), Speech to IIR Conference, 1 September 1998.

Legislation covered in the NCP review process included:

- The FA 1994;
- The Fisheries Regulations 1995 (FR 1995)
- Subsidiary legislation including management plans, notices and conditions on licences.

### 2.2 The Nature of the Legislation

The subject matter of the FA 1994 largely involves the regulation of a category of what are generally characterised as 'common property resources'.

Very generally, common property resources are defined as:

*"Those attributes of the natural world that are valued by society but are not in individual ownership and do not enter into the processes of market exchange and the price system. Notable among such resources are the atmosphere, watercourses, ecological systems, and the visual properties of the landscape."*<sup>2</sup>

This non-exclusive definition applies as much to wild stock fish as it does to resources such as the radio frequency spectrum where access to and use of the spectrum is the subject of similar (Commonwealth) regulatory regimes. Fish in their wild state fit into the definition, as they are not in individual ownership and do not, in that state, become part of the processes of market exchange and the price system.

### 2.3 The Guiding Principles of NCP

The guiding NCP principles that have driven the review process are that:

*Legislation (including regulations, rules, proclamations etc.) should not restrict competition unless it can be demonstrated that:*

- *Benefits of the restriction to the community as a whole outweigh the cost; and*
- *Objectives of the legislation can only be achieved by restricting competition.*

This means both criteria must be satisfied if restrictions are to be retained or implemented. It is not sufficient to demonstrate that a restriction (existing or proposed) passes the net community benefits test. It is also necessary to demonstrate that there are not less restrictive ways of obtaining the desired outcomes.

A presumption built into the NCP review process agenda by Australian Governments is that restrictions on competitive behaviour impose costs on the community and that such costs are unacceptable unless there are special considerations that warrant those restrictions. This means that the onus is on a review to demonstrate a net public benefit from retaining or introducing a restriction or package of restrictions. reviews are not required to demonstrate that benefits would arise from the removal of the restrictions. Significantly, additional or tighter restrictions can be justified if these are shown to result in a net public benefit.

<sup>2</sup> Butterworths Australian Legal Dictionary, p222

### 3. REVIEW PROCESS

#### NCP and Current Legislative Restrictions

The review process has at all levels reaffirmed the policy underlay that the 'common property' nature of fish resources means that unfettered competition can lead to over fishing.

In this context over fishing means an intensity of effort that leads to stocks being reduced to a point where they may not replenish themselves. Furthermore, it is likely to occur with more capital and human resources being expended in chasing the available fish than are efficient. However, because there are recognised difficulties in allocating title of fisheries resources, some regulation of access and harvesting is necessary to prevent over exploitation.

Such regulation, while appearing in the first instance to be anti-competitive, may actually be pro-competitive if it helps to establish or clarify property rights where they did not exist or were ill defined. Regulation may lead to the setting of discriminatory access criteria and, ultimately, to the granting of exclusionary rights. Such exclusionary rights carry with them responsibilities in proportion to the level of exclusivity or exclusiveness the rights confer.

Under the Act, there are several regulated commercial fisheries. Additionally, the Act regulates recreational fishing activities and other fisheries related uses of marine resources. In general, the legislative framework restricts and controls access, limits catch, and controls input used and constrains fishing effort to conserve, develop and share the fisheries resources of Queensland. However, the mix, nature and extent of these non-competitive restrictions that are applied vary among and between fisheries and user groups.

Overall, the fisheries and activities that come within the charter of the FA 1994 are managed in different ways and for different purposes, depending upon the nature of the fishery involved and the attitudes of the community at the time.

Within the NCP review process the various types of restrictions applied to Queensland fisheries have been assessed for their impacts on competition at a generic or 'in-principle' level. That is, they have been assessed in terms of the broad categories of access controls, input controls, and output controls that these restrictions come under.

The anti-competitive restrictions identified included:

- Entry/exit and internal adjustment restrictions such as licensing, license transferability, and quota transferability;
- Spatial restrictions such as area closures and depth restrictions;
- Temporal restrictions such as weekend and seasonal closures;
- Catch restrictions such as limits on total allowable catches;
- Restrictions on the transferability of output and unit quota;
- Restrictions on fish processing; and
- All restrictions generally found in the subsidiary fisheries legislation and policies.

The nature of these restrictions in NCP terms were categorised as follows:

- Restrictions applying to entry and exit (NCC Category 1), including the licensing of fishers and their boats, closure of fisheries to additional effort, amalgamating licences to reduce effort, licensing of aquaculture activities and prohibitions on market outlets;
- Controls on prices or production levels (NCC Category 2), including the control of total allowable catch, output quotas for commercial fishers, controls for aquaculture activities, and controls for recreational fishers;
- Restrictions on the quality, level or location of goods and services (NCC Category 3), including size limits, and area and time closures
- Restrictions on advertising and promotion (NCC Category 4);
- Restrictions on prices and types of inputs used (NCC Category 5), including restrictions on boats, gear, methods, and non-endemic species;
- Cost impositions on business (NCC Category 6), including cost recovery by administrators and costs of compliance by fishers and proc
- Differential impacts on exposure to competition (NCC Category 7), including categories of business organisation, distinctions between fisheries, and distinctions between aquaculture, and commercial and recreational fishing activities.

The FA 1994 operates through management plans and regulations constructed around individual fisheries and related activities. Each fishery/activity is managed through a combination of the input, output and access controls described above.

Individually, each restriction within each fishery could be considered as quite minor in nature and does not warrant a major cost-benefit analysis. The NCP review has therefore focused its evaluation in two ways:

- On qualitative evaluations on a fishery-by-fishery basis; or
- On grouping<sup>3</sup> of fisheries classified according to the principal type of activity occurring.

The review evaluation addressed the restriction of competition in terms of three basic design issues:

- The policy-related setting;
- The administrative framework; and
- The management regime.

The review subsequently applied a further level of evaluation covering six specific design points:

- The nature of the so-called 'right';
- The management unit;
- Determination of the total allowable catch;
- Monitoring, compliance, and enforcement needs;
- Additional regulations; and
- Aspects of allocation.

<sup>3</sup> Fisheries groupings were principally recreational, fisheries involving commercial activity (including harvest fisheries) and aquaculture.

In 1994, the Queensland Fisheries Act underwent a major rewrite to bring it up to date with requirements at that time. The new Act made significant changes to the processes in the management of fisheries and the protection of the habitat on which they depend.

As part of the Queensland Government's commitment to the regular review of its legislation, the Minister approved in 1998, a review of the FA 1994 to ascertain its effectiveness over the past five years, and to see if any changes were required to meet contemporary issues.

As a signatory to the Agreement of Council of Australian Governments (COAG), the Queensland Government instituted a comprehensive examination of all its legislation to ensure competition policy is being implemented. Accordingly, a key aspect of the review was to ensure the FA 1994 was compliant with NCP.

At the time the NCP review into fisheries was commenced, responsibility for managing Queensland fisheries was split between the DPI Fisheries Group and a statutory body the Queensland Fish Management Authority (QFMA). Concern over perceived fragmentation of fisheries management led to a review of fisheries management arrangements to provide a more unified and co-operative approach.

Amendments were made to the FA 1994 resulting in the amalgamation of the DPI Fisheries Group with the QFMA into a single body - the QFS - within the Department of Primary Industries.

#### Phase One

Under Phase One of the overall fisheries legislation review process, Queensland, the Commonwealth, other States and the Northern Territory agreed to engage a consultant to scope NCP legislative review issues. The Canberra based Centre for International Economics (CIE) was appointed for this purpose through a competitive tender process.

The Scoping Paper prepared by CIE translated fisheries management concepts into NCP terms to provide a common framework for NCP reviews of fisheries legislation.

#### Phase Two

Phase Two consisted of a review of wild stock fisheries legislation (including aquaculture) based on the PBTGs produced by Queensland Treasury and the Scoping Paper. It has resulted in this document.

It has involved the incorporation of all Queensland wild stock fisheries and aquaculture into the NCP framework. Restrictions have been identified at a generic or in-principle level according to historically derived interactions with classes of activities. The subsequent analysis in relation to NCP principles has been from the perspective of recreational fisheries, commercial (including harvest) fisheries, and aquaculture.

Consultants (ACIL Consulting) were engaged to undertake a full NCP review of the anti-competitive elements of the Queensland FA 1994. Their comprehensive report provided detailed advice on the economic impact of the various administrative tools used in the management of fisheries.

The result of this analysis was the identification of the non-competitive elements of fisheries legislation, the objectives these elements are intended to satisfy, and other restrictions demonstrated to not be in the public interest.

#### Phase Three

The Queensland Treasury PBTGs require a "process to ensure that a range of affected groups can input to the review".

The fisheries regulatory review process was designed to ensure a number of clear opportunities for industry and the broader community to participate. As a result of the Minister's request, a review Committee was formed with an independent Chairman to manage the review process and formulate the findings. The Committee met regularly throughout the review. A stakeholders' Reference Group with representatives from the broad community and the fishing industry provided advice on the consultation process and issues under consideration. This group met on three occasions and contributed significantly to the review outcomes.

Acting on advice from the Reference Group, the review Committee produced an Interim Report of its findings, which then became the primary vehicle for public consultation. Considerable input was received from fishing industry organisations, conservation groups and other bodies in compiling the Interim Report. Public meetings were held in 10 regional centres throughout Queensland and some 48 submissions were received which assisted the review Committee in completing its final report.

The review Committee report was referred to the Minister who requested that a report addressing NCP issues specifically be prepared. A summary of the June 2001 report's findings, conclusions and recommendations is detailed in Section 4.

#### Phase Four

Under the provisions of the Statutory Instruments Act 1992, there is a requirement to prepare a regulatory impact statement (RIS) in situations where changes to subordinate legislation is "likely to impose appreciable costs on the community or a part of the community"<sup>5</sup>

Under the RIS process, extensive stakeholder and community consultation takes place prior to the implementation of significant legislative changes. The detailed RIS statement presenting the proposed legislative changes, reasons for them and the regulatory instruments to be employed, provide stakeholders and the community with the opportunity to respond and submit input to the process of statutory change.

RIS processes will and have been employed for changes to several fisheries, which have resulted from the NCP review process.

In addition to the RIS consultation process, final reports dealing with NCP matters must be prepared for Cabinet during this calendar year covering:

1. Any fisheries management related matters together with any proposals for consequential legislative amendments within 12 months;
2. Amendments to the objectives of the Act in accordance the review recommendations

<sup>4</sup> Qld Treasury, Public Benefit Test Guidelines, 1999, p20.

<sup>5</sup> Statutory Instruments Act 1992 s 43.

3. Details of how the design of fisheries management regimes will be incorporated into existing management regimes noting the "NCP" design principles as detailed in attachment A.
4. Any consequential amendments of the existing access regimes having endorsed NCP principles for granting of access to fisheries resources as detailed in attachment B.

Note: Having agreed to widened principles for recovery of costs as detailed in attachment C, a Queensland Fisheries Service policy statement on Service Fees and a revised fee schedule will be submitted to Cabinet Budget review Committee for approval by December 2001. Ongoing consultation processes will take place with the Queensland Fishing Industry Development Council which represents all major stakeholder groups in Queensland's fishing industry.

## 4. FINDINGS & RECOMMENDATIONS

### 4.1 General Comments

Under NCP principles, the central legislative review issue for fisheries management regimes related to the extent to which Government intervenes in order to achieve the legislated objects of the FA 1994 (and related) legislation.

The general underlying NCP propositions are that:

- Fisheries management and administrative strategies which are as least restrictive on competition as possible are most likely to optimise net public benefits; and
- Those strategies, which are designed with, clearly stated and transparent objectives and which use mechanisms that directly target their objectives will have a greater chance of effectively delivering the outcomes desired by government.

Because fish resources are 'common property', restrictions on unfettered access and use are required to ensure the sustainability of the resources and habitat. The only effective way to conserve, develop and share the fish resource of the State is through legislative intervention.

The application of NCP principles within the review process required analysis to ensure that the benefits of this intervention could not be achieved in less restrictive ways. In this regard, the independent consulting group prepared a separate report to the process<sup>6</sup> on this very issue.

The ACIL review examined the options for managing fisheries including:

<sup>6</sup> The ACIL Report was made to the Queensland Fisheries Regulation review Committee. Its purpose was to provide the Committee with review of the provisions in the fisheries legislation in accordance with National Competition Policy Guidelines. It placed the Committee in an informed position in its conduct of the review of the Fisheries Act 1994 and regulations, which they are undertaking with view to amending these to meet modern management principles. The review was undertaken in accordance with both the competition principles agreed to by all Australian Governments and the guidelines for such tests published by the Queensland Treasury.

- Allocation of private property rights which are fully transferable;
- Non regulatory approaches or codes of practice;
- Use of contracts a quota on the number of fishers (access controls or licensing)
- Quota on the catch (output controls)
- Quota on effort (input controls),
- Hybrid approaches involving various restrictions on the catch, entry and inputs.
- Taxes are also a possible approach to regulating the amount of fishing effort undertaken and controlling adverse impacts on the habitat

The conclusions of ACIL's consideration of alternative management options or approaches advised to the mainstream review process were:

- ITQ systems are consistent with NCP principles in that they achieve the objectives at the Act with minimal restrictions on competition.
- Input controls are unlikely to achieve fully the objectives of the Act and they have the potential to impose large costs on fishers and the community. Whether they generate net benefits will depend on the extent to which they achieve the objectives being sought.
- Input controls could be better designed to achieve the objectives and to reduce the costs they impose on fishers. Input controls are based on partial measures of effort. If an effort index could be defined, a better approach may be a system based on effort quotas.
- It was possible to rank the instruments used in fisheries management according to their in-principle effects on efficiency and competition. Instruments that create property rights in the fisheries resources are – in principle – likely to be the least restrictive on competition, followed by output limits, access controls and input controls.
- Controls are put in place for a number of reasons eg effort control, allocation of access and sustainable use of the resource. All these objectives may not be able to be delivered solely by use of any one type of control. Input controls, for instance, are often implemented to achieve biological sustainability objectives, however, they are often less effective in controlling effort than other types of control. It is for this reason that most fisheries are managed using a mix of control measures resulting in packages of restrictions tailored to a particular fishery or fishery type.

## 4.2 Review Findings

### 4.2.1 Recreational Fisheries

The review found that with the exception of the eel fishery, all freshwater fishing activity is exclusively recreational in nature. It also found:

- Recreational fishers are involved to varying degrees in the marine fisheries accessed by commercial fishers.
- The set of restrictions on recreational fisheries has minimal impact on competition. The opportunity to undertake recreational fishing activity is available to all members of the community.

- The restrictions on recreational activity that do apply encourage sustainable fishing practices and, where they apply, apply equally to all recreational fishers.

It was concluded that the retention of the restrictions for recreational fishing activity is for the net benefit of the public.

### 4.3 Fisheries involving commercial activity

#### 4.3.1 Fisheries involving strong interaction between recreational and commercial activity

The review found that:

- Fisheries involving a combination of commercial and recreational fishing activity include the reef line (reef fish and Spanish mackerel), net (estuarine and coastal finfish), and crab (other than spanner crab) fisheries are likely to be multi-species and have multiple types of use.
- These fisheries are characterised by limited knowledge of fish stocks and the biology of the species. They tend to be regionally based, and localised depletion of stocks is an increasing feature of resource as recreational and commercial fishing activities continue to expand. Management of these fisheries is currently characterised by a heavy reliance on a suite of input and access controls to contain fishing effort.

The review concluded that the retention of restrictions on competition for these fisheries is justified by market failure arguments relating to the 'common property' nature of the resource.

In general, the restrictions in these fisheries are rationalised on the basis that they are the most effective option for trying to achieve biological sustainability and the least cost option in terms of enforcement and compliance. However, some public benefit gains may be realised through modification of current management arrangements. Management arrangements in the reef line fishery, for instance, are currently under review.

#### 4.3.2 Harvest fisheries

The review found in respect to Harvest Fisheries that:

- Harvest fisheries (aquarium fish, beche de mer, eels, trochus, shell, coral, shell grit and star sand, beach and blood worms, yabbies and lobster) involve varying degrees of commercial and recreational fishing activity.
- The beche de mer, coral, shell grit and star sand and trochus fisheries are managed through a combination of output, input and access controls and produces relatively efficient outcomes.
- Aquarium fish, eels, shell, beach worms, bloodworms, yabbies and lobster are managed through input and access controls. The retention of restrictions for these fisheries was justified on the market failure arguments relating to the 'common property' nature of the fish resources.

The review concluded that there are, to varying degrees, anti-competitive restrictions present in harvest fisheries management regimes, and public benefit gains may be realised through modification of current management arrangements.

#### 4.3.3 Predominantly commercial fisheries

The review found that:

- For the predominantly commercial fisheries in Queensland including the East Coast Trawl fishery (primarily prawns, scallops, squid and stout whiting), multiple hook (deepwater fish) and spanner crab fisheries, while they are predominantly commercial in nature, recreational anglers also take some of these species.
- In the last couple of years, new less restrictive management arrangements have been implemented in both the spanner crab and East Coast Trawl fisheries. Implementation of these arrangements has been in line with the requirements of NCP.
- The spanner crab fisheries are subject to output, input and access controls and, in the main, produce relatively efficient outcomes. However, minor modifications to the management strategies would help to deliver more efficient outcomes.
- Other crab fisheries are managed through input and access controls and may benefit from a shift to output based controls similar to those in the spanner crab fishery. Further detailed assessment of the likely improvement in net public benefit resulting from such a shift would be required.
- Trawl fisheries involve stocks that, in general terms exhibit highly variable recruitment and are characterised by high degree of uncertainty in predicting recruitment levels.
- Given the focus of the existing biological models for the fisheries, it would be difficult and potentially more risky to use current information to support output-based fisheries management regimes at this point in time. Because of this, the existing input-based management regimes (particularly, tradeable effort capping) were considered to deliver the most efficient outcomes. However, some of the anti-competitive restrictions in these fisheries could be modified to provide more efficient outcomes within the existing input-based management regimes.

#### 4.3.4 Aquaculture

The review concluded that the focus of restrictions for the aquaculture industry tended to be on access to the fish resource and/or crown waters, and the restrictions currently applying in relation to aquaculture development were intended to meet biological sustainability, fish health and biodiversity objectives. These restrictions appeared to be in the public interest.

#### 4.4. Review Conclusions

The review concluded that the application of the principles of NCP encouraged the adoption of market-based systems for new or changing allocation of access to the fish resource unless such strategies could be demonstrated to not be in the public interest.

Effectively, NCP called for a comparison of management strategies based on administrative processes and rules, or market-based mechanisms, or on some combination of these strategies to see how each of these relate to the measures of the public interest.

The review observed that in major fisheries, the move to more efficient management regimes was underway with considerable progress having been made in the East Coast Trawl and spanner crab fisheries.

In some others (eg line fishery) planning should proceed in this direction.

Whilst the balance of the benefits favours modification of current arrangements, a transition would need to occur in a stepwise way because of the costs of set-up, information, and discovery and the risks associated with such change. Fishery specific Public Benefit Tests would indicate the likelihood and magnitude of the net public benefit likely to result from management changes in specific fisheries. In cases where input controls were primarily designed to achieve sustainability objectives, the sustainability benefits must be weighed up in comparison to the costs of imposing the restrictions.

As a result, one conclusion of this review was that for these fisheries NCP issues were best addressed as part of the ongoing review cycle for fisheries management strategies.

Doing so will provide a systematic and structured process for accommodating NCP principles in a way that was as manageable for those doing the management and for those being managed.

The review found the adoption of NCP principles introduced another dimension into the way fisheries management strategies were designed. It would require a significant shift for traditional fisheries administrators in understanding and practically applying NCP concepts to ensure the degree of anti-competitiveness in future strategies was not disproportionate. This shift would result in management strategies, which encouraged competition within a clearly predetermined framework and set of rules. However, such a shift would take time to accomplish, especially because it would take time for the required structural, cultural, and management changes to occur, and this would need to take place before any of the potential benefits would be accepted and before any changes implemented. Further

advances in understanding of the ecology and biology of the fisheries would influence the scope and nature of these shifts.

Ultimately, the review concluded that the application of NCP principles was about identifying fisheries management strategies that would achieve the desired objectives and outcomes at the least possible cost to the community at large.

The findings of the review and the way in which these findings should be implemented provide a strategy pathway for the Queensland Fisheries Service to manage fisheries in a way that best achieves a sustainable and efficient resource outcome

#### 4.4. Recommendations for Action

Recommendations were made in relation to three key areas:

- 4.4.1 Objectives of the FA 1994;
- 4.4.2 Principles relating to recovery of costs, and
- 4.4.3 NCP principles for more efficient fisheries management controls.

##### 4.4.1 Recommendations relating to the objectives

- The primary objective of the Act should be the long term sustainability of the fisheries resource and ecosystem for future users but at the same time allow for the managed use of this resource by the industries based on this resource;
- All parties agree with this intent and adoption of the principles of ESD in the objectives of the Act would encompass this intent.
- For the purposes of the FA 1994, the following definition of ESD applies ...  
"...Using, conserving and enhancing the community's resources so that ecological processes on which life depends, are maintained, and the total quality of life, now and in the future, can be increased."
- That the current objectives of the FA 1994, be reviewed to ensure they encompass the objectives of the NSESD namely:
  - Enhance individual and community well being and welfare by following a path of economic development that safeguards the welfare of future generations;
  - Provide for equity within and between generations, and
  - Protect biological diversity and maintain essential ecological processes and life support systems.

##### 4.4.2 Recommendations relating to recovery of costs

The review found that the previously agreed principles by Cabinet for the recovery of costs under a fee regime for fisheries management remained appropriate under NCP principles.

These principles are detailed in Attachment C.

The review found that recreational fishers should contribute to the costs of fisheries management.

- Collection of the recreational contribution to management costs should continue to be made through existing mechanisms (stocked impoundment permit, private pleasure vessel levy and permits for charter tours and fishing competitions) rather than the introduction of a broad-based recreational fishing license.

#### 4.4.3 Recommendations relating to more efficient fisheries management controls

The review recommended the adoption of the following statement of principles for the granting of access to fisheries in general.

The review found that authorisation to take fish in Queensland fisheries should be granted by way of a single licence where possible. This could include, for example, details of the licence holder, current fishery symbols, boat(s) that may be used. In particular, the review recommended that licences unnecessary for achievement of the objectives of the Act should not be granted.

- Restrictions on numbers of licences for each fishery should be specified in the Regulations or relevant management plan(s).
- Individuals and corporations should be allowed to hold licences, with requirements for the licence holder or other nominated person to be present when fishing operations are being conducted imposed only where it is necessary for resource management reasons.
- Licences should be transferable except in circumstances where it can clearly be demonstrated that a licence should not be transferable for resource management reasons.
- Consideration should be given to issuing licences for longer periods (say ten years) than the present term of 12 months, unless there are clear resource management reasons why this cannot be done. Licences should be renewable except in exceptional circumstances such as where the holder has been convicted of certain offence(s) or has not complied with the conditions of the licence. The fee will continue to be collected on a fixed term basis.
- The granting of a licence does not in any way restrict the ability and responsibility of government to make resource management decisions and does not imply any right to compensation resulting from such decisions.
- Circumstances where licences may be suspended or cancelled should be provided for in the Regulations and/or relevant management plans.
- Competency issues need to be addressed prior to allocation. The competency base needs to be specifically related to fisheries.
- Responsibility for all activities performed under a licence rests with the primary licence holder regardless of whether they are present or not.

#### In respect to fishery specific access issues the review found that:

- The policy applying to commercial fishing competitions (permitting requirements and fees) should also apply to similar private fishing competitions where these will have similar impacts on fish stocks and fisheries habitats.
- Developmental and exploratory fishing permits should not establish rights and should not be automatically renewable or transferable

The review also recommended the following statements of principles be adopted and applied in designing fisheries management regimes and, in particular, selection of the mechanisms for controlling fishing activity

#### Sustainability

Management decisions should include:

- An independent published and regularly updated assessment of the sustainability requirements of fisheries including consideration of effort or catch limits or caps
- Limits on the impact on non-target species
- Process for ongoing monitoring of the condition of the stocks and habitat and for fine tuning of the arrangements for the fishery
- Establishment and regular public reporting against sustainability indicators

#### Management instruments

When selecting management instruments:

- The full range of costs and benefits (including environmental, social and economic) particular to each fishery, are to be considered when deciding management measures to be adopted in the fishery.
- Output controls such as individual tradeable quota options should always be assessed to determine if they are an appropriate management tool for the particular fishery
- Once a management scheme is in place it should be self-adjusting within the allowable catch/effort
- Trading of effort units within the fishery should occur to allow for the efficient allocation of effort across the fishery
- If input controls are used to control effort they should be established to achieve target levels of aggregate fishing effort with the minimum possible inefficiency in catching effort.
- Additional specific input or other controls may be needed to protect non target species and habitat sustainability
- Consideration should be given to use of the most efficient available techniques or tools to aid in management and enforcement (eg use of technology such as Vessel Monitoring System where possible)

#### Consultation

- Appropriate consultation with stakeholders will be undertaken during the development and implementation of management regimes.

#### Efficiency/effectiveness monitoring and reporting

- Inclusion of a process providing for the periodical monitoring and evaluation of the efficiency and effectiveness of the implemented fisheries management regime

In addition to these statements of principles applicable to fisheries generally, the review recommended that the current bag limits applying in the recreational fishery be reviewed. The management arrangements for recreational and commercial fishing are very different, reflecting the different scales of impact associated with the different nature of the activity.

The review therefore concluded it was important for equity as well as sustainability reasons to ensure that bag limits be set for recreational fishing that prevent the taking of fish on a scale where the economic value of the fish becomes significant.

Several fisheries specific restrictions were also raised in the PBT analysis as requiring review in light of the general principles. These restrictions included a number of input controls in the spanner crab fisheries, and restrictions in the harvest fisheries



## 5. GOVERNMENT RESPONSE TO REVIEW

In making a number of decisions in respect to the review's findings and recommendations Government has taken into consideration:

- Increasing concerns over environmental issues, the objectives of the Act should be more focussed on the management of the fisheries resource in an ecologically sustainable manner.
- Public Benefit Test Analysis and the submissions put forward during the review process clearly identified the need for Queensland fisheries to be managed by a range of management mechanisms to utilise appropriate features of access, input and output controls.
- That the Fisheries Act was due for a five yearly review and other elements<sup>7</sup> of the Act outside NCP requirements were also considered

Accordingly Government has decided

1. To approve the preparation of amendments to the objectives of the Act
2. To endorse the NCP principles for the design of fisheries management regimes and note that detail of how these principles will be incorporated into existing management regimes subsequently to be reported back to Cabinet. See attachment A for details of Design Principles.
3. To endorse the NCP principles for granting of access to fisheries resources and note that consequential amendments of the existing access regime will be submitted to Cabinet for approval. See attachment B for Access Principles.
4. To endorse the widened principles for recovery of costs and note that the Queensland Fisheries Service policy on Service Fees and a revised fee schedule will be submitted to Cabinet Budget review Committee for approval. See attachment C for Cost Recovery Principles.
5. Noted the Report does not support the introduction of a broad-based recreational fishing licence.

<sup>7</sup> These issues included: third party standing, an emphasis on habitat management, the streamlining of fisheries management processes, Management Advisory Committees and Zonal Advisory Committees, flexibility of emergency declarations, the rights and obligations of indigenous fishers, the effect of imperfect information and uncertainty, interjurisdictional issues, apportioning management costs, recreational fishing, aquaculture, dispute resolution, noxious fish controls, fishways, protection of wetlands, and buffers between wetlands and development, fish habitat areas and marine and freshwater parks/reserves.

## 6. IMPLEMENTATION OF NCP REVIEW OUTCOMES

A number of regulatory changes have or are about to be given effect as a direct consequence of the NCP review process.

These changes are based on the extensive review process undertaken by QFS and draw on independent advice focussed on analysis of the legislative environment for Queensland fisheries. Attachment D provides a detailed progress report on changes made and on those about to be made in the context of this calendar year.

## ATTACHMENT A

### NCP Principles for Design of Fisheries Management Regimes

#### Sustainability

Management decisions will include:

- An independent published and regularly updated assessment of the Sustainability requirements of fisheries including consideration of effort or catch limits or caps
- Limits on the impact on non-target species
- A process for ongoing monitoring of the condition of the stocks and habitat and for fine tuning of the arrangements for the fishery
- Establishment and regular public reporting against sustainability indicators

#### Management instruments

When selecting management instruments:

- The full range of costs and benefits (including environmental, social and economic) particular to each fishery, are to be considered when deciding management measures to be adopted in the fishery.
- Output controls such as individual tradeable quota options should always be assessed to determine if they are an appropriate management tool for the particular fishery
- Once a management scheme is in place it should be self-adjusting within the allowable catch/effort
- Trading of effort units within the fishery should occur to allow for the efficient allocation of effort across the fishery
- If input controls are used to control effort they should be established to achieve target levels of aggregate fishing effort with the minimum possible inefficiency in catching effort
- Additional specific input or other controls may be needed to protect non-target species and habitat sustainability
- Consideration should be given to use of the most efficient available techniques or tools to aid in management and enforcement (eg use of technology such as Vessel Monitoring System where possible)

#### Consultation

- Appropriate consultation with stakeholders will be undertaken during the development and implementation of management regimes.

#### Efficiency/effectiveness monitoring and reporting

- Inclusion of a process providing for the periodical monitoring and evaluation of the efficiency and effectiveness of the implemented fisheries management regime

## ATTACHMENT B

### NCP principles for licensing and determining access to the resource

- Authorisation to take fish in Queensland fisheries should be granted by way of a single licence where possible. This could include, for example, details of the licence holder, current fishery symbols and boat(s) that may be used. Licences not necessary for achievement of the objectives of the Act should not be granted.
- Restrictions on numbers of licences for each fishery should be specified in the Regulations or relevant management plan(s).
- Individuals and corporations should be allowed to hold licences, with requirements for the licence holder or other nominated person to be present when fishing operations are being conducted imposed only where it is necessary for resource management reasons.
- Licences should be transferable except in circumstances where it can clearly be demonstrated that a licence should not be transferable for resource management reasons.
- Consideration should be given to issuing licences for longer periods (say ten years) than the present term of 12 months, unless there are clear resource management reasons why this cannot be done. Licences should be renewable except in exceptional circumstances such as where the holder has been convicted of certain offence(s) or has not complied with the conditions of the licence. The fee will continue to be collected on a fixed term basis.
- The granting of a licence does not in any way restrict the ability and responsibility of government to make resource management decisions and does not imply any right to compensation resulting from such decisions.
- Circumstances where licences may be suspended or cancelled should be provided for in the Regulations and/or relevant management plans.
- Competency issues need to be addressed prior to allocation. The competency base needs to be specifically related to fisheries.
- Responsibility for all activities performed under a licence rests with the primary licence holder regardless of whether they are present or not.

## ATTACHMENT C

### Principles for Recovery of Cost

Cabinet has previously agreed to the following principles for the recovery of costs under a fee regime for fisheries management and this NCP review has found that these remain appropriate under NCP principles and that the Government needs to implement further cost recovery.

These principles are:

- (1) **Cost effectiveness:** The cost effectiveness principle recognises that all fisheries management services provided by QFS should be provided in a cost effective way. The principle requires that the level of services provided, as well as the costs of those services, should not exceed that required to achieve QFS's functions under the *Fisheries Act 1994*. Wherever practical the cost of providing services will be benchmarked against comparable private sector costs to ensure that services are provided at optimum cost.
- (2) **Fairness:** Each industry sector should pay its fair share of the costs to QFS of providing fisheries management services where these services are identified as both attributable and recoverable. The fairness principle recognises that the costs of providing management services to an industry sector should be attributed only to that industry sector. Where it is appropriate to recover service costs (or part thereof), they should be recovered only from the sector to which they are attributed.  
  
The 'recoverable' element of this principle also recognises there may be circumstances where the Government may decide on equity or other grounds to fund, wholly or in part, the cost of providing some management services to specific user groups.
- (3) **Service costs to be determined on a fishery-by-fishery basis:** That fishery management service costs should also be identified attributed and (where appropriate) recovered, on a fishery-by-fishery basis. Also, given the important role played by the MACs in developing fishery specific management plans, the basis for differentiating between fisheries should, wherever possible, fit within the already agreed MAC framework. This approach will also assist greatly in minimising the level of cross subsidisation of service costs between fisheries and industry sectors.
- (4) **Cross subsidisation to be minimised and, where possible, eliminated:** That services provided to one industry sector should not be attributed to or recovered (in whole or in part) from another sector. For services supplied jointly to more than one sector, an approach to cost sharing will be applied.
- (5) **Openness and transparency through effective consultation with user groups:** The process for identifying the level and cost of management services should meaningfully involve all users of those services. An open and transparent process involving all user groups offers increased commitment and improved incentives for better resource management by all parties. It is proposed the MAC process will provide the principal mechanism for negotiating the level of services to be provided the cost of those services, their attribution

and whether they are recoverable. In most cases this will occur as an integral part of the MAC's considerations under the fishery management planning process. Broader industry and community consultation will be provided through the public consultation phase of the management planning process. Consultation with key industry representative bodies as well as regional public meetings is also an integral part of this process.

Where the management planning process has preceded the development of this policy, industry and community consultation will occur through the MAC process and the release, for public comment, of a Regulatory Impact Statement.

- (6) **Special circumstances and other Government policies:** Implementation of service fees to recover costs should not cause undue hardship to those affected. Where costs to users are to rise significantly as a result of determining recoverable service fees, a phasing in period should be considered to allow adjustment and reduce the likelihood of hardship occurring. However, there may be circumstances where the Government may decide on equity or other grounds to fund, wholly or in part, the costs of providing management services to specific user groups.
- (7) **Service fees to be determined by Government.** The Queensland Government has ultimate responsibility determining fisheries management arrangements on behalf of the broader community. The final decision on fisheries management arrangements and the costs of services required to manage those resources is, therefore, the responsibility of the Government.

**Additional principles are now necessary to comply with outcome of the NCP Review of fisheries as follows:**

- (8) **Competitive neutrality:** For services that could be provided by the private sector, Government entities providing those services should neither be advantaged nor disadvantaged relative to private sector competitors. This means that the private sector should have a competitive choice among suppliers for services it pays for. An important question for fisheries management and enforcement activities is whether these services could be provided by the private sector on a cost recovery basis.
- (9) **Equitable distribution:** Cost recovery needs to have an equitable distribution across all users and beneficiaries of the resource subject, however, to principle 6 above.
- (10) **The calculation of costs** needs to take account of environmental impacts (often imposed as externalities to the fishery) where possible.

## ATTACHMENT D

### PROGRESS ON IMPLEMENTATION OF REVIEW OUTCOMES

Major Issues	Action
Objectives of Fisheries Act	Cabinet has agreed to prepare amendments to the Fisheries Act to reflect the suggested changes to the definition of objectives contained in the Act.
Objectives of the Act to be replaced with the singular, clearly expressed objective of ESD.	The approved amendments to the Fisheries Act are intended to be included in a proposed Primary Industries Legislation Amendments Bill 2002, the drafting instructions for which are currently being prepared within DPI.
The NCP review adopted the definition and guiding principles of ESD as set out in the <i>National Strategy for Ecologically Sustainable Development</i> 1992 (NSESD) by the Queensland Government through the Council of Australian Governments (COAG).	It is the intention to have this Bill completed for introduction into, and hopefully passage through, the Parliament by 30 June 2002.
Develop Service Fees Policy and revise fees schedule.	<p>Introduce a phased in system of cost recovery, emphasising user pays and moving away from cross subsidisation.</p> <p>In February 1999, Cabinet gave approval for the review of the current fee schedule and development of a service fees policy in accordance with specific principles.</p> <p>In October 2001, Cabinet endorsed the widened principles for recovery of costs and noted that the Queensland Fisheries Service policy on Service Fees and a revised fee schedule would be submitted to Cabinet Budget review Committee for approval.</p> <p>Cost Recovery Principles are detailed in Attachment C.</p> <p>QFS is currently involved in comprehensive review of all services along with an analysis of fees charged. This process, along with the development of the service fees policy (which complies with National Competition Policy principles) will be designed to reflect actual costs of fisheries management and eliminate cross-subsidisation by aligning fees with the costs of services delivered.</p> <p>QFS is scheduled to report back to CBRC before June 2002. On going consultation is underway with the Queensland Fishing Industry Development Council (QFIDC) and the Service Fees Policy Working Group of the QFIDC.</p>

Licensing Issues	Action
Authorisation to take fish in Queensland fisheries should be granted by way of a single licence where possible.	<p>Presently under review. Some separate licence types may still be required for management reasons.</p> <p>Linked to review of service fees and implementation of Integrated Planning Act (IPA).</p> <p>To be completed by 31 December 2002.</p>
This could include, for example, details of the licence holder, current fishery symbols, boat(s) that may be used.	
Licences not necessary for achievement of the objectives of the Act should not be granted.	This issue incorporated in the above review.
Restrictions on numbers of licences for each fishery should be specified in the Regulations or relevant Management Plan(s).	<p>Completed for 4 Management Plans.</p> <p>Other fisheries limited to current numbers by policy.</p> <p>To be addressed in each new Management Plan.</p>
Individuals and corporations should be allowed to hold licences, with requirements for the licence holder or other nominated person to be present when fishing operations are being conducted imposed only where it is necessary for resource management reasons.	<p>Subject to legislation presently being drafted.</p> <p>To be completed by 1 June 2002.</p>
Licences should be transferable except in circumstances where it can clearly be demonstrated that a licence should not be transferable for resource management reasons.	<p>Subject to legislation presently being drafted.</p> <p>To be completed by 1 June 2002.</p>

Licensing Issues	Action
Consideration should be given to issuing licences for longer periods (say ten years) than the present term of 12 months, unless there are clear resource management reasons why this cannot be done.	Linked to review of numbers and types of licences. Linked to review of service fees. Some licence types may still require short terms for management reasons.
Licences should be renewable except in exceptional circumstances such as where the holder has been convicted of certain offence(s) or has not complied with the conditions of the licence. The fee will continue to be collected on a fixed term basis.	Implemented.
Circumstances where licences may be suspended or cancelled should be provided for in the Regulations and/or relevant Management Plans.	Implemented for serious fisheries offences. Not appropriate for resource management reasons to specify circumstances for other than serious fisheries offences.
Responsibility for all activities performed under a licence rests with the primary licence holder regardless of whether they are present or not.	Currently facility in Fisheries Act to prosecute licence holder unless licence holder can demonstrate that appropriate instructions were given to the person committing the offence. No change required.

Recreational Fishing Issues	Action
The policy applying to commercial fishing competitions (permitting requirements and fees) should also apply to similar private fishing competitions where these will have similar impacts on fish stocks and fisheries habitats.	Policy regarding fisheries competitions, both commercial and private, is currently under review. Completion by 30 June 2002.
Collection of the recreational contribution to management costs should continue to be made through existing mechanisms (stocked impoundment permit, private pleasure vessel levy and permits for charter tours and fishing competitions) rather than the introduction of a broad-based recreational fishing licence.	Collection method unchanged. No change required.
Recreational bag limits should be reviewed to ensure they remain relevant to the sustainability needs of the species to which they are applied.	Considered at each fishery review. No action required.
The Public Benefit test examined the restrictions placed on recreational fishers under the Act and its subsidiary legislation and concluded that there are no important restrictions on competition.	No other changes required.

Aquaculture Issues	Action
The requirement for the area mentioned in an aquaculture licence to be free from waste material and debris before the Chief Executive may transfer it for unallocated State land, appears unnecessarily restrictive and should be removed.	Aquaculture licences will cease to exist once aquaculture becomes development for the purposes of the <i>Integrated Planning Act</i> and, accordingly, this restriction will cease to have any practical effect.  No changes required.

General Commercial Fishing Issues	Action
Restriction on number of boat licences and fishing authorities (in all fisheries) has minor anti-competitive effect.	Public Benefit Test noted that input controls employed in Queensland involve benefits well in excess of their costs, and made no recommendations to change their usage.  No change required.
Fisheries managed by input controls could be reviewed to be more competitive and consistent with NCP principles.	This has been carried out for trawl and spanner crab fisheries.  Regular reviews of management arrangements will include consideration of NCP aspects of input controls.  Some fisheries are not suited to output control management.

Developmental and Exploratory Fishing Issues	Action
Developmental and exploratory fishing permits should not establish rights and should not be automatically renewable or transferable.	Permits issued under the Fisheries Act are neither renewable nor transferable.  They are generally issued only for a short term.  DPI's policy on developmental and exploratory fishing permits makes it clear that no ongoing rights are conferred by these permits.

Trawl Fishery Issues	Action
Trawl effort cap (as a proxy for output controls) it is unlikely to achieve its objectives in the most efficient manner.	Possibly, but changing the method of setting the effort cap would be extremely difficult and not cost effective.  No other method of setting it is readily apparent.  No change required.
Trawl excess effort leads to inefficiency.	Excess effort will be reduced progressively under the Management Plan.  No change required.
Trawl maximum capacity restriction of 70 hull units is inefficient.	Required for resource management reasons.  No change required.

Harvest Fisheries Issues	Action
Licence non-transferability in all harvest fisheries is anti-competitive.	Subject to legislation presently being drafted.  To be completed by 1 June 2002.
Coral collection fishery requirement that the authority holder be present during harvest activity is anti-competitive.	Subject to legislation presently being drafted.  To be completed by 1 June 2002.
Coral collection fishery restriction on dives of 6 metres is anti-competitive.	Review of coral collection fishery management arrangements currently being carried out at the instigation of the Prime Minister. Results of that review required before any amendment is made.
Coral, Shell grit and Star Sand controls on quota transfer and linking of quota to specific areas has minor anti-competitive effect.	Remove transfer controls. Required for resource management reasons.

Harvest Fisheries Issues	Action
Consideration should be given to allowing trochus quota, coral, shell grit and star sand to be traded separately from authorities.	Subject to legislation presently being drafted. To be completed by 1 August 2002.
Some harvest fisheries controlled by output controls supported by input controls could be reviewed to be more competitive and consistent with NCP principles (move closer to output controls).	Output controls are already used where they are practical and input controls are necessary for resource sustainability reasons.
Basis for the TAC applying to the coral fishery should be clearly established and based on an assessment of the socially optimal harvest.	review of coral collection fishery management arrangements currently being carried out at the instigation of the Prime Minister. Results of that review required before any amendment is made.

Spanner Crab Fishery Issues	Action
Spanner Crab fishery controlled by output controls supported by input controls could be reviewed to be more competitive and consistent with NCP principles (move closer to output controls).	Output controls are already used where they are practical and input controls are necessary for resource sustainability reasons. Input controls are considered at the regular reviews of the Management Plan. See specific comments below.
The continued use of input controls in the spanner crab fishery in addition to the ITQ system should be reviewed and unnecessary restrictions designed to restrict effort rather than to manage habitat impact should be removed.	

Spanner Crab Fishery Issues	Action
Spanner Crab restricted transferability on unit quota is anti-competitive.	Only applied until 2 June 2001 as an adjustment mechanism. No change required.
Spanner Crab minimum quota holding of 18 units of quota should be removed because it is not essential to the objectives sought.	Subject to legislation presently being drafted. To be completed by 1 August 2002.
Spanner Crab maximum quota holding of 4,000 units is anti-competitive and should be abolished.	Required for resource management reasons.
A C2 fishery symbol should be automatically granted to those who have obtained spanner crab quota from existing C2 symbol holders.	Plan provides for issue upon application.
Fishers be given the freedom to use other apparatus, apart from dillies.	Required for resource management reasons.
Abolish the restriction that no more than 45 dillies can be used at a time and no more than 15 dillies may be set on a line.	Required for resource management reasons.
Restrictions on the length of the primary vessel and on the use of tender boats should be abolished.	Subject to legislation presently being drafted. To be completed by 1 August 2002.

<b>Spanner Crab Fishery Issues</b>	<b>Action</b>
The management plan should allow for the temporary transfer of quota.	Subject to legislation presently being drafted. To be completed by 1 June 2002.
Transfers of quota should not require prior approval of the QFS.	Required for resource management reasons.
The same management approach should be adopted in Area B as that used in Area A, along with the above recommendations.	Required for resource management reasons at this time.

<b>Line Fishery Issues</b>	<b>Action</b>
Move to more efficient and NCP compliant management regimes.	Generally Reef Line Fishery is NCP compliant New draft Management Plan is to be released for Coral Reef Fisheries about June/July this calendar year.

<b>Rocky Reef Fishery Issues</b>	<b>Action</b>
Move to more efficient and NCP compliant management regimes.	New Regulations are currently being introduced whereby size limits and recreational bag limits will be made NCP compliant. RIS process underway and anticipate changes to Regulations by August 2002.

<b>Inshore Finfish Fishery Issues</b>	<b>Action</b>
Move to more efficient and NCP compliant management regimes.	Individual species to be reviewed taking NCP principles into account. RIS process underway for Tailor. Expected to be finalised prior to 1 June 2002.

<b>Freshwater Fishery Issues</b>	<b>Action</b>
Move to more efficient and NCP compliant management regimes.	review of existing Management Plan has been completed taking account of NCP requirements. A RIS process has commenced with public consultation to take place in April 2002.

<b>Stout Whiting Fishery Issues</b>	<b>Action</b>
Move to more efficient and NCP compliant management regimes.	Propose to review current control mechanisms as they apply to the individual species during 2002. RIS consultation processes commenced and anticipate consequent changes to Regulations before December 2002.