

4 IMPLEMENTATION OF THE ACT

The establishment of share management fisheries is a major component of the *Fisheries Management Act 1994*. The election of the Carr Labor Government in March 1995 led to a shift in emphasis from share management to restricted fisheries. This change in policy has been criticised by many stakeholders, including commercial fishers and conservationists, as being contrary to the intent of the Act and potentially damaging to the ecological status of the State's fisheries. This criticism was countered by NSW Fisheries, which argued that the change in policy ensures that the most suitable management structures are implemented.

4.1 Share Management Fisheries Review

Shortly before the March 1995 election, the Shadow Minister for Fisheries, Bob Martin MP, released an open letter to commercial fishers which stated:

I am still opposed to the new Act and regulations. I believe it is wrong in principle and that it is bad legislation because it has had no community consultation. Our priority after March 25, if we are elected to government, will be to immediately review the Act and regulations, and I will be seeking input from all sectors of the industry to try to get the Act right.¹

Following the election, the Hon Bob Martin MP, as Minister for Fisheries, established the Share Management Fisheries Review Committee as a result of his concerns, and those of the Department and the recreational sector, over the continued implementation of share management.

The Review Committee comprised:

- Mr Paul Crew, Director of Fisheries
- Mr David Evans, Managing Director, Hunter River Water Corporation, and resource economist

¹ Bob Martin MP (1 March 1995). *Open Letter to the Commercial Fishers of New South Wales*.

- Dr John Glaister, Manager Operations Support, Queensland Fisheries Management Authority, and fisheries scientist
- Mr Andrew Goulstone, Fisheries Manager, NSW Fisheries - Executive Officer
- Mrs Jenny Saminaden - secretarial support²

The terms of reference for the Review Committee were “To review the implementation of share management fisheries to ensure that the concept is effectively applied as part of an integrated approach to fisheries management in NSW”.

The Review Committee was specifically required to report on:

The preconditions for establishing share management fisheries including:

- the biological basis for determining total allowable catches;
- the method of allocation of shares, including problems associated with the equitable distribution of resources between recreational and commercial fishers;
- enforceability issues (capacity to define and enforce the property right - for example capacity to enforce total catch).

Acceptability of concept to the affected parties incorporating:

- compensation issues in the event of unforeseen changes to fisheries resources;
- time which may elapse leading up to the allocation of shares in a share fishery (delays in implementation);

² Share Management Fisheries Review Committee (1995). *Report to the Minister for Fisheries The Hon Bob Martin, MP, 20 August 1995*, Share Management Fisheries Review Committee, Sydney, p 1

- assessment of the general level of support for share management fisheries by commercial and recreational fishers and advice on how to achieve the necessary level of commitment;
- problems raised by issuing shares prior to the development of management plans.

Criteria for the choice between input and output controls for regulation and a preliminary assessment of which fisheries could reasonably be placed into the share management regime and over what time frame.³

The Review Committee reported to the Minister on 20 August 1995. The Review Committee wrote that, due to its terms of reference, it did not consider non-implementation of share management an option and added:

The Committee recognises that any delay in proceeding with implementation is likely to be a cause for frustration for some commercial fishers and their representatives who are committed to the previous government's legislation. In particular, they have expressed concern at opportunistic fishers exploiting resources, in the interim period before implementation, from which they know they will be eventually excluded. To this end, the Committee suggests that the Minister minimise the redirection of existing effort by restricting all commercial fisheries as provided in the Act. This could be on the basis of validated catch history and existing agreed criteria years to effectively cap commercial effort at present levels.⁴

The report provided the Minister with a comparison of the strengths and weaknesses of two "paths" to share management fisheries - *immediate* and *progressive implementation*⁵.

³ SMF Review Committee Report, p 1

⁴ SMF Review Committee Report, p 4

⁵ The term "progressive implementation" is used by the Share Management Fisheries Review Committee to describe the Committee's preferred management implementation option.

4.1.1 Path 1: Immediate Implementation

The Review Committee states that the previous government had chosen the immediate implementation path, and outlined the Minister's responsibilities under this path as follows:

- 1 To make recommendations to the Governor about the insertion or omission of SMFs in Schedule 1.
- 2 To give public notice about the fishery descriptions and the criteria for allocation of shares.
- 3 To appoint the Share Appeals Panel.
- 4 To appoint the TAC Committee.
- 5 To approve the commencement date for a limited access fishery.
- 6 To approve of the regulation enabling commencement of the management plan.
- 7 To sign a gazettal notice to publish the names of all shareholders and their respective number of shares.⁶

The strengths identified by the Review Committee of the immediate implementation path are summarised below:

- *Support for scheme* - backing of the peak industry bodies CFAC and, to a lesser extent, RFAC.
- *Legislative base* - the detailed statutory base illustrates each stage of implementation, making the scheme transparent and avoiding disputes about process.
- *Appeals* - the Minister is removed from determining administrative matters relating to share issue by the provision of a Share Appeals Panel.⁷

⁶ SMF Review Committee Report, pp 4-5

⁷ SMF Review Committee Report, pp 6-7

The weaknesses identified by the Review Committee of the immediate implementation path are summarised below:

- *Support for scheme* - while peak industry bodies support the scheme, there appears to be widespread misunderstanding of its implications among ordinary fishers. For instance, many commercial fishers perceive the scheme to mean catch quotas, when less than a third of the State's production was initially proposed for catch quota management, with the other two thirds to be regulated by input management. Similarly, quota management appears to be the basis of support from recreational fishers.
- *Limiting access* - limiting access is a major management tool for fisheries where there are sustainability concerns. Under this scheme, there is a risk that implementation will be significantly delayed through the fishery not becoming limited access until after all provisional shares have been issued.
- *Development of management plans* - under this scheme, no clear direction for management needs have been established until the Minister prepares the draft plan after the fishery becomes a limited access fishery.
- *Concentration of ownership* - as shares are individually transferable and may be owned by anyone, concentration of share ownership, including foreign ownership, will be difficult to police.⁸
- *Definitions of fisheries* - definitions proposed for share management fisheries include some problems in multi-method/multi-species aggregations, where it may be difficult to define what a "share" represented.⁹

4.1.2 Path 2: Progressive Implementation

The Review Committee considered *progressive implementation* of share management fisheries to be a more cautious approach, and described the path as follows:

⁸ SMF Review Committee Report, pp 6-7

⁹ SMF Review Committee Report, p 13

- 1 Examine each fishery to determine whether a share management scheme should be adopted immediately. In particular, restricted fisheries with management rules in place could be considered for an immediate move to share management.
- 2 Prepare a scoping paper, including a draft management plan, for fisheries with less formalised or no existing management arrangements in place. This paper would allow informed debate and outline criteria under which the Minister would decide to establish the fishery either as a restricted fishery or a share management fishery.
- 3 If it was decided that a share management was the most appropriate management method for a fishery, the process under the immediate implementation path would then apply.
- 4 If it was decided that a restricted fishery should be implemented, the Minister would be required to:
 - consult with CFAC and RFAC on the direction for management as a restricted fishery;
 - publish a proposal for public comment; and
 - make a regulation putting the restricted fishery into effect.¹⁰

The strengths identified by the Review Committee of the *progressive implementation* path are summarised below:

- *Limiting access* - this path provides for the regulation of a binding implementation date. This would address sustainability concerns by limiting further increase in access to commercial fisheries in line with the requirement that the Minister take a precautionary approach to managing fisheries resources.
- *Development of management plans* - the Act allows the development of management plans for restricted fisheries. While the Act does not provide for recreational or community involvement in the development of

¹⁰ SMF Review Committee Report, p 8

management plans for share management fisheries, under this path the Minister could regulate such involvement for restricted fishery plans.

- *Compensation* - no statutory compensation is payable if a restricted fishery is cancelled.
- *Catch quotas* - TACs may be set for a restricted fishery, and may be set by either the Minister or the TAC Committee.¹¹

The weaknesses identified by the Review Committee of the *progressive implementation* path are summarised below:

- *Support for scheme* - this option has not been publicly canvassed, but provides greater flexibility, allows all aspects of the proposed fishery to be managed through regulation, and gives the Government and community an opportunity to consider the consequences of share management prior to issuing shares.
- *Appeals* - the restricted fishery scheme does not directly provide any appeal mechanism, meaning that most appeals would be considered by administrative review. Clearly defined criteria will minimise appeals, a body similar to the Share Appeals Panel could be regulated for restricted fisheries, and any fisher has the right to appeal to a higher court.¹²

4.1.3 Review Committee Recommendations

The Review Committee also outlined a number of general issues for consideration. Referring to changes to the Act, the Review Committee wrote:

It is not uncommon for new legislation, especially when it is as complex as the Fisheries Management Act, to be amended within the first few years of its operation. For example, a provision to legislate recreational participation in appropriate MACs would enhance the operation of the Act.¹³

¹¹ SMF Review Committee Report, p 9

¹² SMF Review Committee Report, pp 9-10

¹³ SMF Review Committee Report, p 10

With respect to input controls (restrictions on gear, time, areas fished et cetera) versus output controls (catch quotas), the Review Committee considered that fisheries with the following attributes would be most suited for quota management:

- single jurisdiction;
- single target species;
- single gear type;
- high value/low volume fully exploited;
- fished by a limited number of participants from a single user group;
- limited fishing ports;
- and adequate scientific understanding of the resource;
- low management costs;
- adequate enforcement; and
- strong support from industry.¹⁴

The Review Committee considered sufficient data and expertise existed to derive sustainable TAC estimates for abalone, rock lobster and spanner crabs, but that the position for other species was unclear. It also considered that the magnitude of recreational catches needed to be determined urgently and that multi-method fisheries for the same species would be difficult to manage by TAC methods. The Review Committee also considered catch per effort data (log books) no longer useful for stock assessment purposes when determining a TAC because fishers subject to a catch quota will target their quota, resulting in catch rates which no longer approximate the abundance of the species sought. As a result, the Review Committee considered stock assessment methods that are independent of the fishery, such as research surveys, necessary for TAC estimation.¹⁵

The major Review Committee recommendations are reproduced in full below:

¹⁴ SMF Review Committee Report, p 11

¹⁵ SMF Review Committee Report, p 13

1. That the validation of commercial fishers catch records be completed within 12 months.
2. That all commercial fisheries be declared restricted fisheries (s111) to stem opportunistic behaviour of fishers. Note that such action requires consultation with CFAC and RFAC and public notification (s111(3)).
3.
 - (i) That the Minister proceed with implementation of share management fisheries for the abalone and rock lobster fisheries (subject to satisfactory resolution of the 2:1 issue in abalone and validation of catch histories for rock lobster participants).
 - (ii) That for both these fisheries, the Department produce comprehensive consultative programs for the Minister's approval.
 - (iii) That the Department produce comprehensive and complete management plans including strategies for addressing recreational catches, firm recommendations to the TAC Committee on appropriate TACC levels, and detailed compliance and research strategies.
4. That the Minister require the Department to prepare scoping papers for the remaining fisheries that define the preferred management options and the implications of converting these fisheries to share management fisheries.
5.
 - (i) That the Minister appoint the Share Appeals Panel.
 - (ii) That an appropriate SAP protocol be defined by the Department based on legal advice.
 - (iii) That the role of the SAP be emulated in the regulations to allow for the determination of all

- catch histories for restricted fisheries in anticipation of their possible transformation to share management fisheries.
6. (i) That the Minister appoint the TAC Committee.
 - (ii) That an appropriate TAC Committee protocol be defined by the Department, based on legal advice, and that TACs are based on the best available science and are in accordance with the objects of the Act.
 - (iii) That the TAC Committee be required to define Total Allowable Catches which account for all catches (of the species for which a TACC is set).
7. That the Department examine its capability to deliver sound advice on possible TAC estimates for nominated output control fisheries, and that research directions and funding be prioritised so as to meet this challenge.
 8. That the Department review the delivery of compliance services in the nominated share management fisheries, in particular for output control fisheries.
 9. That the Minister note that the Act provides for statutory limitations on the concentration of ownership, including foreign ownership, but these aspects will be difficult to enforce. It is noteworthy, however, that this concentration can already occur in those fisheries where input regulations are presently tradeable.
 10. That the Minister note that share management fisheries attract a Capital Gains taxation liability for the difference in value between the existing license entitlement and the value of the share disposal. Any leasing arrangements may also create a potential Fringe Benefits taxation liability.

11. That in order to determine the market value of a share for compensation purposes (s44(3)):
 - market value must be defined in the regulations; and
 - the Act must be amended to allow for compensation to be determined independently of other administrative process (for example that compensation be determined by a “panel” comprising the Valuer-General and experts in the relevant fisheries).

12. That all management plans and TACs address recreational fishing impacts and that consultative mechanisms include recreational representation. This will require legislative amendment.¹⁶

13. (i) That the Minister note that implementation of the management regimes proposed in the report will require additional administrative resources and that the capacity of the Department to undertake this development will be dependent on the availability of funding.

(ii) That the Minister note that, should requested funding not be available, the rate of implementation of the management regime will be reduced and priority for implementation should be accorded to limiting access in unrestricted fisheries.

14. That the Minister note that proposed market deregulation may make it more difficult to ensure compliance with quotas.

¹⁶ SMF Review Committee Report, pp 14-15

4.2 Outcome of the Review: *Progressive Implementation*

The Share Management Fisheries Review resulted in a swift change in fisheries management policy. On 31 August 1995 the Minister released an open letter to fishermen outlining his response to the report. This letter is reproduced in part below:

As with other natural resources such as water, forests and land, the Government is committed to proper management on behalf of the community. The Government also recognises that all interests, including recreational and commercial fishers, must be considered in this process.

Acting on the review recommendations, the Government will implement the following strategy under which access will be restricted in all our fisheries, followed by the determination of the best management approach for each. Future access will be based on historic fishing activity. Since 1990, commercial fishers have been aware that they should not diversify into fisheries in which they do not have a fishing history. I will be reviewing all the proposed access criteria with that in mind.

This strategy involves the following actions:

1. The abalone and rock lobster fisheries are already well advanced with their management, so I will immediately start the process of implementing them as share management fisheries.
2. The validation of all commercial fishers catches will continue and will be completed in around 12 months.
3. The State's estuary, fish trawl, inshore prawn trawl and trap and line fisheries will each be made restricted fisheries.
4. To enable adequate consultation to take place, and to ensure that commercial and recreational fishers and the community are fully aware of the details of each individual management scheme, I will commission the preparation of scoping documents for each fishery.

The scoping document will consist of two parts. The first part will be a discussion paper which analyses the issues associated with management, the use of catch quotas and/or gear controls, and the preferred management options. The second part will be a draft management plan.

5. To ensure that all commercial and recreational fishers get adequate representation, I will be forming Advisory Committees for each fishery.

The Standing Committee received evidence from Mr Paul Crew, the Director of Fisheries at the time, who said that he had believed the shift in policy emphasis from share management to restricted fisheries would adversely affect the relationship between the Department and the fishing industry. Mr Crew stated:

The new Fisheries Act was a very good Act in that it provided options for government. It did not have to be a share-managed fishery option, it could be a restricted or unrestricted fishery option. The Act provided plenty of options for government to change its mind and do whatever it felt appropriate to manage fisheries. My major concern was that the industry had spent some time and quite some effort, professionally and responsibly, working with the Department to bring together an Act, and it was looking for a share-managed fisheries Act. The Minister [Bob Martin] made it quite clear—and I knew and had to accept the fact—that he was not going to go down that path and that we had to look at another way. The other way was the restricted fisheries path, but that still left an avenue open to progress to a share-managed fishery once a restricted fishery was up and running. It basically lengthens the period in which the management regime must be in place. I knew that would be frustrating to the industry, but I thought that once we got this together at least we could try to sell it to industry. We had to put something there to give industry confidence about the future.¹⁷

The abalone share management fishery commenced with the issue of provisional shares on 9 February 1996. Provisional shares for the rock lobster fishery were

¹⁷ Evidence of Mr Crew, 4 April 1997, p 4

issued on 1 July 1996. Management plans for these fisheries are presently being developed in consultation with the Management Advisory Committees (MACs), although the abalone share issue is the subject of a legal challenge. Fishery-based steering committee meetings began in November 1995 to develop entry criteria and produce scoping papers discussing management options for the remaining restricted fisheries.

The *New South Wales Fisherman* magazine reported in its March-April 1996 issue:

Once the participants in each fishery have been identified, the debate on whether the fishery should proceed to share management or remain restricted may then be pursued by the participating fishers. The fishers may then consider the implications of quota management should it be deemed necessary, and grapple with the very nature of the shares that might be issued in a mixed species, multi-gear type fishery such as the estuary general fishery if it was continued to be managed under input controls.¹⁸

On 1 May 1996 the Legislative Council referred the issue of fisheries management and resource allocation to the Standing Committee on State Development as a result of widespread concern with the change in fisheries management policy among commercial fishers and conservationists.

On 2 May 1997 the Minister gazetted the *Fisheries Management (General) Restricted Fisheries Termination Regulation*. This Regulation set the following deadlines for the implementation of share management:

1. Exhibit the rolls of those fishers eligible to vote in the election of each MAC by 30 June 1997.
2. MAC elections are to be completed by 30 September 1997.
3. MACs are to report to the Minister by 30 April 1998 to resolve:
 - whether the fishery should be subject to input or output controls; and

¹⁸ *The NSW Fisherman*, March-April 1996, p 18

- whether the fishery should be a share managed or restricted fishery.
4. The Minister is to publicly release the report of each MAC together with his response by 30 June 1998.

A motion to disallow the Restricted Fisheries Regulation was debated in the NSW Legislative Council on 22 April 1997 and again on 6 May 1997 when it was deferred until 24 September 1997. This debate lapsed due to the prorogation of Parliament.

4.3 Criticism of the Review Process and Outcome

The Standing Committee received considerable evidence that was critical of the way in which the review was conducted and the Minister's adoption of the *progressive implementation* path.

4.3.1 Review Consultation

The Standing Committee heard that the review was conducted without consultation with stakeholders. The Review Committee Report itself reveals that little consultation took place during the review, stating only that the Review Committee relied heavily on the Department for advice and information, that it had interviewed representatives of CFAC, and that "Recreational and commercial fishers were also extremely helpful in providing information and opinions to the Committee".¹⁹ Referring to its *progressive implementation* option, the report also states that "this option has not been canvassed publicly".²⁰

In evidence, Dr Glaister agreed that the Review Committee did not undertake public consultation, but relied on experts, published information, unpublished briefing notes, status reports and conversations with a few fishers.²¹

Most commercial fishers that participated in the inquiry considered the Review to be little more than an internal Departmental exercise under the influence of Dr Glaister.

¹⁹ SMF Review Committee Report, pp 2 and 6

²⁰ SMF Review Committee Report, p 9

²¹ Evidence of Dr Glaister, 19 May 1997, p 61

For example, the United Commercial Fisherman's Association of New South Wales submitted:

The review of Fisheries Consultation [SMF Review] by Dr Glaister recommended to the Minister that a move to restricted fisheries was Dr Glaister's preferred path as opposed to share managed fisheries....

... The change in direction to restricted fishing brought about by Dr Glaister's review has seen the NSW fishing industry's economic viability placed in jeopardy. ...

NSW Fisheries conducted road shows along the entire coast of NSW during September and October 1995 to advise fishermen of Dr Glaister's change of direction and [when] port meetings were conducted following these road shows, 90 per cent of industry opposed the move to restricted fisheries and supported share managed fisheries.²²

4.3.2 Dissatisfaction with *Progressive Implementation*

The decision to progressively implement the share management provisions of the Act was criticised by user groups and conservation groups who had contributed to the drafting of the share management provisions of the Act. The overwhelming weight of evidence from all stakeholders other than recreational interests and the Department was critical of the review Committee's recommendations. The Standing Committee heard that the *progressive implementation* path adopted by the Government will delay the establishment of most share management fisheries and may, for some fisheries, prevent share management being implemented altogether. A common claim was that *progressive implementation*, and the greater reliance on restricted fisheries that it entails, is contrary to the spirit of the Act. For example, Mr Ronald Snape, commercial fisher, stated:

All New South Wales fisheries were to be managed as share managed fisheries. We had to have a provision within the Act that allowed for any new developing fishery. If there was a new method came along, or if there was a new species found, or fishermen wanted to go outside what a share managed

²² Submission 18, United Commercial Fishermen's Association of NSW, p 6

fishery was defined as, we had to have a section within the Act where that officially could evolve. If it did fall within the principles and was to be a fishery of the future, then it could be issued as a share managed fishery - an exploratory, developmental fishery. That is what restricted fisheries were going to be.

To actually implement that section 111 of the Act is really outside the spirit of the Act, because the spirit of the Act was to have share managed fisheries.²³

The United Commercial Fishermans Association of NSW submitted:

The *Fisheries Management Act 1994* comprises 151 pages. The Department of Fisheries is attempting to manage 75 per cent of the fisheries within NSW, namely Ocean Trap and Line, Estuary General Ocean Prawn Trawl and Ocean Fish Trawl on one section consisting of one page of this Act, a section that was not designed or intended for the purpose for which it is now being used. Part 4, Division 3 of the *Fisheries Management Act 1994*, "Exploratory, developmental and other restricted fisheries", was created to allow restricted access to new fisheries whilst research was carried on with a view to determining the long term viability of the new fishery. The Department is attempting to squeeze 75 per cent of the recognised and long term established fishing methods into this category.²⁴

This disillusionment and uncertainty among stakeholders was highlighted by Dr Michael Young, Senior Principal Research Officer CSIRO and 'architect' of the Act. Dr Young recalled the reaction of stakeholders to the implementation of restricted fisheries:

At the start of implementation of the entire system, after it went through Parliament, the advice I was receiving and the contact I was having was from a group of environmental, recreational and commercial people who were all excited about the change

²³ Evidence of Mr Snape, 30 January 1997, p 111

²⁴ Submission 18, United Commercial Fishermans Association of NSW, p 5

that was about to happen. They were incredibly enthusiastic. People around the world were extremely excited that at last somebody had got it right. There was then a change in Government. When that change happened the Premier claimed that it was the right thing to do. Conferences were held in Sydney praising the way all the reforms were occurring and suddenly it all stopped. When the Minister came to power he changed the chief executive officer. After that I had a number of calls from people who were very concerned about the changes that were being made, that it was going back to the old system with an emphasis on shifting towards restricted fisheries.²⁵

Dr Young described the problems that he perceived existed with restricted fisheries as follows:

The State has already had restricted fisheries under a slightly different name and most of the problems are there today because that system does not work. It fails to emphasise stewardship, it makes it easy for people to get licences and it makes it hard for structural judgment to occur. ... The system that is in place does not enable people to trade parts of licences and to put, say, three boats into one boat or to change the size of nets and so on. It is a lobby system where the way to succeed is to get on with the right people.²⁶

Comparing restricted and share management fisheries, Mr John Connor, representing the Nature Conservation Council, stated:

I think the share management fishery, and certainly it is set out in the Act, is a far clearer articulation of where the rights and responsibilities lie and also provides the basis for the commercial effort to actually be interested in the sustainability of the resource. It provides some actual clear incentives in that regard.

²⁵ Evidence of Mr Young, 3 April 1997, p 5

²⁶ Evidence of Mr Young, 3 April 1997, pp 5-6

Restricted fisheries, it's a bit of a mystery I guess to us at the moment. Just how that is to be managed and what sort of performance indicators and criteria are to be set are unknown at this stage. That is part of the problem. There has been the focus of trying to get these things up without really understanding what they are trying to achieve, frankly. That is one of the major problems I see the Minister has had in trying to run the argument that these are just as effective in terms of sustainability as the share management fisheries.²⁷

Most commercial fishers that appeared before the Standing Committee believed that the use of restricted fisheries and the associated catch validation process were aimed at eliminating the Government's exposure to the payment of compensation.

Mr Hillyard stated:

We believe that under restricted fisheries the department would be able to place further restrictions on commercial operators and it could get to the point where it would no longer be viable to work that fishery, and fishermen will walk away, thus saving any payment of compensation.²⁸

Similarly, Mr Graeme Byrnes, Manager of Alan A Byrnes & Sons, has publicly stated:

Fishermen consider it hideous that restricted fishery regulations are being used as a "people sieve" to remove as many fishermen as possible from their industry before any supposed move to share managed fisheries...²⁹

The Standing Committee also heard that most commercial fishers were sceptical of the Minister's willingness to accept advice from Management Advisory Committees, particularly recommendations to implement share management. Mr Sturgess, professional policy advisor, stated:

²⁷ Evidence of Mr Connor, 5 May 1997, p 29

²⁸ Evidence of Mr Hillyard, 19 February 1997, p 30

²⁹ Graeme Byrnes quoted in *NSW Commercial Fishing*, May 1997, p 8

I think there is a concern among a significant number of people in the industry that the Minister is not fair dinkum about using the MACs. I think there is a widespread view that if one of the management advisory committees were to come up with a recommendation in favour of share management fisheries, they are not entirely convinced that the Minister would accept that recommendation.³⁰

4.4 Support for *Progressive Implementation*

Those in favour of *progressive implementation* of share management fisheries emphasised the complicated and expensive nature of share management. The Standing Committee heard that fisheries management strategy should be determined by considering the biological, economic and social requirements on a fishery by fishery basis. In evidence, Mr Anthony Harrison, Chairman of the New South Wales TAC Committee, highlighted the need for management structures to reflect fishery attributes, stating:

... the share management fishery and individual transferable quota is the current Rolls Royce of fisheries management and, frankly, many fisheries do not justify having such a sophisticated and therefore expensive form of management. ... you begin with open access fisheries like most of the recreational fisheries, then you proceed to restricted fisheries, then you may proceed to various versions of them, finally ending up with the Rolls Royce, and New South Wales has many small and not particularly valuable fisheries and many of them, I think, would be difficult to justify the very sophisticated share management regime.³¹

In determining the most appropriate management regime for any fishery, the Department is responsible for clearly explaining to participants the economic ramifications of the various management structures. Referring to the Department's responsibilities, Dr Glaister said:

³⁰ Evidence of Mr Sturgess, 12 May 1997, p 28

³¹ Evidence of Mr Harrison, 14 April 1997, pp 85-86

Let me explain that share management [fisheries] will have the option to be managed either through outputs or inputs. So a range of costs will be involved depending on which way it goes. The legislation spells out both cost recovery and the community charge. ... I have been trying to make clear to fishermen that when they are sitting around the table in the MAC deciding on whether a fishery should stay restricted or progress to share management, my intent is to be completely transparent about the implications. So everyone sitting around that table will be fully aware that the stronger property right is the good news but the bad news is they have to pay for it. I want to make sure that they understand that. In discussing this with colleagues interstate, the issue of cost recovery generates a lot of heat within industry. Before people leap into that system, all I want to do is be transparent. So we will give an estimate to each of the MACs of what we think both systems will cost and let them make the choice...³²

Dr Glaister rejected claims that the Minister would not accept the recommendations of MACs, and stated:

You have raised a concern that fishermen have about there being an agenda that the restricted fishery process will ... be the end of the line. In every meeting that I have attended in recent times I have said very clearly that it will really be up to the elected management advisory committee to make a recommendation to the Minister, which I believe he will accept, that if the fishermen in that particular fishery wish to proceed to share management then it will.³³

The Standing Committee notes that implementation of share management has commenced in the abalone and rock lobster fisheries.

Mr Steve Dunn, Policy Manager, NSW Fisheries, conceded that there was concern about the permanency of restricted fisheries within the commercial sector but claimed that the Department was trying to address these concerns. Mr Dunn stated:

³² Evidence of Dr Glaister, 7 July 1997, p 13

³³ Evidence of Dr Glaister, 12 May 1997, p 42

I am not going to deny that there is a degree of concern amongst the industry. We all know that we have held meetings with the industry and that those meetings, even recently, have resulted in whole rooms full of fishermen saying they would prefer to move directly to share management. I appreciate their concern that restricted fisheries may be the never-never in fisheries management - or that is what they perceive. They think we are moving to that, and we are not moving any further.

That concern I do not believe is justified. I believe that this Government is intent on introducing reform in the fishing industry which will see that the commercial sector, the commercial fishing industry has a long-term and viable future. And nothing that I can do, or nothing that I have been able to say has been able to convince the industry that is the case. Despite the reassurance of the Minister, despite the fact that the review of share management fisheries was signed off by the Premier, nothing that I have been able to say has been able to reassure the industry of that fact.³⁴

With respect to the initial procedures associated with the move to restricted fisheries, Dr Glaister indicated that catch validation was a necessary but inherently difficult process which was designed to protect the interests of legitimate commercial operators, not exclude them from a fishery. Dr Glaister did concede:

....The idea of drawing a line and saying that the fisheries of New South Wales have now grown to this extent and will not grow any further, was always going to be a difficult process. Wherever you set up criteria, criteria of any kind, there will be people who make the hurdle and people who do not. The difficulty is that you are talking about human beings, about people's livelihoods and about families. Those kinds of decisions are not ones that you take lightly.

That is why the Minister and I have both said that this process is not about trying to throw people on the scrap-heap; it is about trying to identify who the participants are, based on criteria that have been agreed to by the industry. But,

³⁴ Evidence of Mr Dunn, 19 May 1997, p 10

irrespective, even if there is one fishermen who does not do something that he has done for some time, then there is going to be pain involved.³⁵

4.5 Comment

The Standing Committee is concerned that the Share Management Fisheries Review Committee undertook only very limited, and possibly selective, consultation before reporting to the Minister. The Standing Committee views this as a serious shortcoming and considers that it accounts for much of the stakeholder suspicion surrounding the Review Committee's report and recommendations. The Standing Committee also considers that the "progressive implementation path" will not necessarily lead to the implementation of share management in all fisheries, despite the Review Committee writing that it "did not consider not implementing SMF as an option".³⁶

The *Fisheries Management (General) Amendment (Management Advisory Committees) Regulation 1997* stipulates that the majority of Management Advisory Committee (MAC) members must be commercial fishers elected by their peers. The Act envisages that this group of people will be responsible for drawing up management plans. Accordingly, the Standing Committee considers that MACs are an appropriate body to recommend whether a fishery is administered under the share management or restricted fishery provisions of the *Fisheries Management Act 1994*. Additionally, the Standing Committee recognises that the fisheries of New South Wales vary greatly in terms of method, number of species targeted, catch size and value, and the relative significance of different user groups. Stakeholders must consider these aspects, as well as the financial implications of the various management regimes, before determining the most appropriate form of fisheries management. The Standing Committee understands that it is for this purpose that MACs have been given until 30 April 1998 to choose to move to share management.

After considering the voluminous evidence before it, the Standing Committee believes share management to be the appropriate fisheries management outcome for New South Wales. The Standing Committee notes that, under the present "*progressive implementation path*", MACs are due to make their recommendations to the Minister by 30 April 1998. Accordingly, the Standing Committee recommends:

³⁵ Evidence of Dr Glaister, 19 May 1997, p 68

³⁶ SMF Review Committee Report, p 4

Recommendation 2

That the Minister implement share management immediately after 30 April 1998 in fisheries whose MACs request it.