NSW Legislative Council Hansard

Fisheries Management Amendment Bill

Extract from NSW Legislative Council Hansard and Papers Tuesday 9 May 2006.

Second Reading

Debate resumed from 6 April 2006.

The Hon. IAN MACDONALD (Minister for Natural Resources, Minister for Primary Industries, and Minister for Mineral Resources) [8.57 p.m.]: I move:

That this bill be now read a second time.

This bill makes a number of minor changes to the Fisheries Management Act 1994. Its primary focus is on improving the administration of fisheries management, particularly in the areas of licensing, the issue of endorsements, levying of annual charges and contributions and the reporting of fishing activity. The amendments build on those made in 2004 and represent subtle adjustments where these are necessary, rather than broad-scale changes. A key theme of the bill is ensuring consistency in administrative arrangements across the share management, restricted fishery and charter boat fishery frameworks. Before I proceed to detail with its key aspects, I emphasise that the bill contains a range of enabling or discretionary, rather than directive, provisions. It largely qualifies or extends existing regulation-making powers, and ensures consistency with provisions already enacted.

Where new regulations, including share management plans and supporting plans, are required to give effect to the provisions of this bill there will be statutory consultation, which I anticipate will occur in coming months. The majority of provisions relating to share management, restricted fisheries and the recreational charter boat fishery will not be commenced until the regulations to which they refer have been drafted, consulted on, and revised, where necessary. A number of management advisory committees and advisory councils established under the Fisheries Management Act represent commercial and recreational fishing, conservation and Aboriginal interests in our commercial fisheries and the charter fishing boat fishery. The relevant management advisory committees were consulted on aspects of the bill and any issues raised have been carefully considered during drafting.

The Seafood Industry Advisory Council was also consulted on the amendments in this bill—members were given a briefing and update at their meeting in September last year. The chairperson and deputy chairperson of the advisory council were also given an opportunity to review the detail of the bill. While there has been consultation on the bill, more significant consultation will follow as we work through the details of the regulations. Before I turn to the specific amendments contained in the bill I stress that this bill is a small part of the broader suite of management arrangements that are being undertaken by this Government to assist commercial fishers. As honourable members know, the Government has closed Sydney Harbour indefinitely to all commercial fishing to protect public health. An expert panel, made up of Government and independent experts, was convened in mid-December 2005 to provide recommendations on the results of the dioxin testing.

The expert panel advised that seafood caught in Port Jackson posed a potential public health risk and should not be consumed on a regular long-term basis. The Government has implemented a $5.8 million response package, comprising a $5 million buyout of commercial fishing entitlements, a $250,000 public education program to inform recreational fishers about the dietary limits, and further sampling of other fish species. Sixty-nine permanent warning signs, translated into eleven languages, have been erected around the harbour. Advisory letters with the dietary advice have been sent to all one and three year licence holders in the Sydney region and are being sent to such fishers elsewhere, and brochures have been sent to bait and tackle shops, NSW Fisheries offices, charter boat operators and others. A multilingual brochure has also been developed to warn recreational fishers of the dangers of consuming fish, prawns and crustacean, molluscs taken from Port Jackson.

The buyout package is based on the Marine Parks and Recreational Fishing Haven buyout model whereby a fair offer is made on fishing businesses based on catch history. I advised the Seafood Industry Advisory Council at its meeting on 17 March 2006 that the New South Wales Government has no intention to change the overall formula used for marine park buyouts. I have maintained this position throughout this Port Jackson buyout process and it is disappointing that the Opposition, including the member for Wakehurst in the other place, is so intent on trying to undermine this process. The minimum offer for a fishing business is $20,000 and the maximum is $350,000. Fishers also were offered up to $10,000 for training and relocation and up to $20,000 for accelerated depreciation of their fishing equipment. Plus they received an up front payment of $10,000 once they agreed to a buyout. Fishers are free to sell their boats and other fishing equipment if they wish.

The 2005-06 fisheries management invoice charges, commercial fishing licence, boat licence, fish receiver and

New South Wales Food Authority seafood licence fees are also being waived for the relevant Port Jackson fishers. In recognising the hardships currently being faced by fishers affected by the closure in Port Jackson—which, I might add, is no fault of their own—the buyout was made a priority. A second round of buyout offers were made, and those closed on 5 May. Of the 44 offers that were made, 32 fishing business owners had accepted the offer as at 5 May. Arrangements will also be put in place to give those fishers who accept the offer the first option to re-enter the fishery if it is reopened in the future. Any such arrangements would be based on a scientific and economic assessment to determine the number of operators and the fishing methods.

Another issue that I would like to mention in the context of discussing this bill in detail relates to the abalone commercial fishing industry. The Government has introduced a number of measures to assist this industry through some difficult times. Honourable members may be aware that I established an independent task force to review the industry after receiving advice that the resource is under increasing pressure. The task force chairperson, Dr John Keniry, has completed his report, which makes recommendations on future directions for the fishery. I will be advising the House on the Government's response to this report in due course.

But, this is not the only measure the Government is taking to assist the abalone industry. Other measures include increased fines for illegal fishing; increased training for law enforcement officers in criminal investigations; the purchase of a new patrol boat to target illegal fishing on the South Coast; continuing research into Perkinsus to try to arrest the devastating impact it is having on the industry, which will assist future management of abalone populations; basing the community contribution on the quantity of catch rather than on the quota allocated to shareholders and allowing payment to be subject to price thresholds and changes in the total allowable catch—members should note that no community contribution is payable by shareholders in 2005-06; passing on savings from operational efficiencies resulting from the establishment of the Department of Primary Industries to abalone shareholders with respect to their management charge, wherein overheads have been cut from 61 per cent to 48 per cent; and, increasing the contribution paid by the Government in 2005-06 with respect to the benefits that flow from the management of the fishery to recreational fishers.

The last point I would like to make is that I was disgusted to see the member for Bega, Andrew Constance, again abuse his privilege and name a public servant in Parliament last week. This public servant, Dianna Watkins, continues to do an excellent job under sometimes difficult conditions and she continues to have my full support. If the Opposition really wanted to help industry, it would cease its petty sniping and underhand political tactics, which only serve to highlight its complete lack of understanding of the real issues involved in fisheries management. It should also call on its Federal counterpart to ease fuel prices. This would be a huge benefit to industry.

I now turn to the specific amendments—firstly to those relating to the commercial fisheries management framework. Commercial fishing in New South Wales is now, in the main, managed under category 1 share management. Share management provides industry with ongoing security of access, encourages greater stewardship of the resource and enables more effective management. Under share management, fishing business owners are issued with tradable shares and operate within the requirements of statutory fishery management plans. Fishing business owners play a major role in ensuring the future of their industry, and are integral in developing the fishery management plans.

Many of the amendments to the Fisheries Management Act facilitate the final stage of share management for our major commercial fisheries, that is, the implementation of share management plans and issue of final shares in 2006. A commercial fishing licence authorises a person to take fish for sale in New South Wales. However, in restricted fisheries and share management fisheries, fishing activity can only occur in accordance with an endorsement. An endorsement is a form of statutory authorisation that allows a fisher to participate in a specific fishery, to use a certain type of fishing gear, harvest a particular species or fish in a specific region.

Several provisions in the bill relate to the issue and holding of endorsements, the ability to revoke, vary or add conditions attached to an endorsement and the recording of particulars of endorsements in the share register. Clauses 9 and 13 relate to the holding of endorsements by shareholders or their nominated commercial fisher. Endorsements are currently listed on each individual's commercial fishing licence, and the historic system for changing endorsements between the shareholder and their nominees is bureaucratic and cumbersome. It requires a licence to be returned to the department, amended and reissued.

The share management plan regulations currently under development will provide a more flexible system for changing endorsement holders. Endorsements will be removed from individual fishing licences and placed on a card. Subject to any requirements in the fishery management plan, a licensed commercial fisher in possession of the card would be taken to hold the endorsement and be able to take fish for sale in accordance with the relevant legislation. The management plans will positively specify the circumstances in which shareholders can hold endorsements or nominate others within and across fisheries. The purpose is to ensure there can be no dispute as to which fishing business a commercial fisher is operating on behalf of at any point in time. This is significant in terms of ensuring compliance with fishery rules, and particularly so where serious breaches and subsequent convictions could result in loss of access to the fishery.

Clauses 11, 14 and 21 relate to conditions on endorsements in share management and restricted fisheries. Endorsements are already subject to conditions, as listed on each commercial fishing licence. These conditions reflect subtle management differences between endorsements authorising different activities, such as the use of nets or traps or the taking of certain fish species generally to reflect local conditions. A similar cumbersome process applies to changing conditions, as applies to changing endorsement holders. For this reason, where they are required, endorsement conditions will be prescribed in share management plans. However, in limited circumstances an endorsement condition may need to be implemented immediately by notice in writing, pending the necessary regulatory change. The new provisions in relation to endorsement conditions mirror those that already apply to conditions on commercial fishing licences under section 104 of the Act and on charter boat fishing licences under section 127C. I seek leave to incorporate the remainder of my second reading speech in *Hansard*.

The Hon. Duncan Gay: Only if it is the same as the speech delivered in the other place.

The Hon. IAN MACDONALD: I think it virtually is. The earlier part was on the arrangements. The rest of it is the same, yes. The only reason I read the first part of the speech was that it dealt with the officers and some of the claims that had been made. The rest follows and outlines each and every point of the bill. I seek leave to incorporate the remainder of my speech in *Hansard*.

Leave granted.

Accordingly, an equivalent 100 penalty units apply to a contravention on an endorsement condition.

I now turn to the provisions relating to management charges and annual contributions.

I must stress that this bill does not increase revenue collected via charges and contributions from those already subject to them, nor does it set the amount of any future charges or introduce new charges over and above those already in place.

The Government is aware that the commercial fishing industry is under financial pressure as a result of the drought, rising fuel costs, fluctuating market prices as well as longstanding structural problems.

It is further acknowledged that some businesses are finding it difficult to pay the annual charges which help support the sustainable management of their industry.
In the past 12 months the Government has assisted in relieving financial pressure on industry in a number of ways.

In 2004-05 the fishery monitoring charge, a contribution to a monitoring program required by the environmental approvals issued under New South Wales and Commonwealth laws was waived, saving industry around $400,000.

As I mentioned earlier, a new method for calculating the abalone community contribution, previously set at 6 per cent of the gross value of the fishery, has been introduced, passing a considerable saving to industry.

The community contribution for the lobster fishery has been set at $112 per shareholder until 2008 instead of being calculated based on 6 per cent of gross value of the fishery. The annual lobster management charge has also been reduced.

Nevertheless, in a commercial environment, it is only fair that all business owners pay their share of management costs.

The department has given industry members additional time to pay their 2005-06 charges without any penalties and those operators with legitimate financial difficulties will be treated fairly in line with Government financial policies.

The Government will continue to work with industry on a fair pricing and charging regime.

In the meantime, this bill makes sensible, practical and important changes to progress the shift from charging commercial fishing licence holders to charging fishing business owners, as the owners of those statutory rights.

Firstly, the bill ensures management charges and annual contributions are to be paid by the fishing business owners, the owners of shares and restricted fishery endorsements rather than the licensed commercial fishers who fish under them and who in some cases are only employees.

Secondly, the bill, through clause 17, requires payment of the management charge and annual contributions irrespective of whether the fishing business owner chooses to actively fish, or hold their endorsements in abeyance.

Regardless of whether a fishing business or its endorsements are active, the owner holds saleable property rights and receives a benefit from activities such as management, research and compliance, which are funded by the charges and contributions.

The existing provisions are inequitable because the full time operators subsidise those who choose not to activate their business but could do so at any time subsequently benefiting from any new management initiatives.

This form of free-riding encourages latent effort, which is acknowledged as a major problem in the industry.

Clause 18 provides flexibility in the way the management charges are structured. It enables a single management charge to be payable for more than one share management fishery, and for a single management charge to apply to a single fishing business, subject to the management plan adopting such provisions.

This approach is consistent with the Government's position as indicated during the second reading speech relating to the 2004 Fisheries Management Act amendments, that is, the charging system should not penalise fishers for being diversified and, in fact, it should be capable of being structured so as to foster diversification.

Clause 20 repeals the existing provisions requiring the payment of an annual contribution by commercial fishing licence holders—as opposed to business owners—under section 106.

Commercial fishing licence holders will continue to pay licence fees, however the costs of management, research and compliance will increasingly shift to owners of the property rights in the future.

Clause 22 introduces an annual contribution payable in restricted fisheries, while clause 26 introduces an equivalent annual contribution payable by the holders of charter boat fishing licences.

Let me be clear that the annual contributions for restricted fisheries and the charter boat fishery will replace existing endorsement and activity based charges—they will not be additional charges.

Members will note that the bill reinforces that annual contributions are payable towards specific industry costs consistent with existing statutory provisions governing expenditure from the Commercial Fishing Trust Fund and Charter Fishing Trust Fund.

Put simply, the bill makes it clear that revenue can only be collected for the purpose for which it can be lawfully spent.

A further amendment via clause 16 of the bill corrects a drafting oversight related to the Commercial Fishing Trust Fund.

Mandatory share forfeiture for non-payment of charges is a last resort, and applies once all the normal debt recovery procedures have been exhausted.

The sale of shares by public tender to recover outstanding charges has had limited application to date, but is a necessary instrument to safeguard revenue for effective management of our commercial fisheries.

With the exception of the community contribution, all of the charges levied on shareholders are payable directly to the Commercial Fishing Trust Fund, as required under section 236 of the Act.

Erroneously, the original legislation overlooks this fact by requiring all revenue from the sale of forfeited shares to be paid only to the Consolidated Fund, even where shares have been forfeited to recover an outstanding amount that, had it been paid in the normal course, would have been paid into the Commercial Fishing Trust Fund and used for management purposes.
As is appropriate, the amendments enable the Commercial Fishing Trust Fund to be credited following the sale of shares to recover outstanding amounts, excluding the community contribution.

I now turn to the amendments regarding the making, keeping and submission of fishing activity records.

Commercial fishers and charter boat operators are already obliged to submit records on the quantity and species of fish harvested, the fishing methods and boats used. This generally occurs on a monthly basis, with some commercial catch data spanning over 50 years.

The records provide a vital data source, which along with other independent information, assist in the monitoring of our fish stocks and assist decision-making.

Fishing business and charter fishing boat owners therefore have an interest in providing accurate and timely

records to the Department.

Clauses 23, 24, 25, and 27 amend provisions relating to the making, keeping and submission of fishing activity records in the commercial and charter boat fisheries.

Records confirming nil fishing activity, or fishing activity that did not result in any catch are equally important as records of catch and are now specifically provided for in the legislation. These records can provide important information on stock availability.

As with the other substantive provisions of this bill, the detail will be contained in the regulations. I can confirm that the regulations will not require submission of records by both commercial fishers or masters and fishing businesses—this would be unnecessary duplication.

Rather, the principle is that the fishing business owners or charter fishing licence holder owners would be normally required to submit records to the director-general in respect of their business. There may be some exceptions, for example in quota managed fisheries where this would be impractical.

Importantly, a commercial fisher or charter fishing master who fails to provide relevant information to their fishing employer will be committing an offence, as will the employer if they fail to make and submit a record of fishing activity. The penalties have not changed.

The bill also adopts consistent provisions with respect to the making, keeping and submitting of fish receiver records.

Due to privacy legislation, catch records prepared by a nominated fisher or employed charter boat master cannot currently be released to the fishing business owner without their permission.

While the future reporting requirements as just outlined will address this issue, further amendments are necessary to deal with access to historic information.

Fishing business owners have a legitimate interest in knowing how much catch their business has generated, especially if they are considering selling or refinancing.

Clause 29 of the bill allows fishing business and charter fishing boat owners access to records prepared in relation to their business.

I will now deal with the balance of the provisions in the bill.

A Share Appeal Panel has been established to hear appeals relating to the provisional issue of shares in the new category 1 fisheries.

Clause 35 of the bill introduces important amendments to the savings provisions relating to the Share Appeal Panel.

These amendments are necessary to remove ambiguity as to the matters the panel is to hear, to safeguard the intent of the original savings provisions, and to ensure the appeals are efficiently and fairly dealt with.

When the Fisheries Management Act was passed in 1994 it was intended that each fishery would move directly from open access arrangements to a share management framework.

Appropriately, the original share appeal provisions of the Act envisaged appeals to the Share Appeal Panel relating to catch history, a key component of the proposed share allocation criteria.

During its first term, this Government on the advice of industry implemented a restricted fishery framework, which relied largely on catch history to allocate endorsements.

A comprehensive and independent review process followed the issue of restricted fishery endorsements in 1997. It involved assessment of over 800 appeals by an independent panel established under the regulations between 1997 and 2000.

Where appellants were not satisfied with the outcome of their restricted fisheries review they were able to appeal the decision to the Administrative Decisions Tribunal as was their right under section 126 of the Fisheries Management Act.

When the category 2 share management framework was incorporated into the Act in 2000 the significance of the comprehensive restricted fishery review process was not overlooked.
Savings provisions were inserted into the Act to specifically exclude appeals to the Share Appeal Panel relating

to the eligibility for restricted fishery endorsements and validated catch history where these could have been subject to a review request through that process.

It was clear that restricted fishery matters were not intended to be reopened via the share appeal process and accordingly the existing savings provisions direct the panel to refuse to hear any such matter.

However, the conversion from category 2 to category 1 fisheries in March 2004 has led to some ambiguity as to the application of the savings provisions as originally intended.

While the amendments may appear to be a significant redraft they do not go beyond what was originally intended.

They clarify the matters for which there is no appeal. They ensure the panel is not required to revisit matters that have already been exhaustively examined.

This includes matters dealt with by earlier internal reviews and review panels over the past 10 years and which could have been the subject of appeals to the Administrative Decisions Tribunal.

As to current appeals that have been lodged with the Share Appeal Panel, of 1,257 fishing businesses, only 88 share appeal applications were received with respect to the allocation of provisional shares.

This figure signals that the vast majority of applicants felt their shares had been correctly allocated and that catch history had indeed been already finalised.

Importantly, these amendments will be commenced shortly after assent so that the Share Appeal Panel can proceed with the appeal hearings and complete the process without further delay or undue expense.

The independent Total Allowable Catch Setting and Review Committee makes determinations on harvest levels for specified species by commercial fishers currently abalone and rock lobster.

At the moment, the committee is required to call for public submissions before it makes or reviews a determination.

Even if the review itself takes place soon after the original determination, a second call for submissions is required.

The determinations usually relate to a one-year period, and the existing requirement for a second round of submissions can result in undue delays and uncertainty as to the total allowable catch.

The bill gives the committee some discretion as to whether a second round of public submissions is necessary but nevertheless ensures that the committee is to have regard to earlier submissions.

Clause 33 of the bill makes a small change to the description of the ocean trawl fishery to provide for the use of a Danish seine trawl net.

This legitimate fishing gear is used by a small number of commercial fishers and its use has been considered in the environmental impact statement and draft fishery management strategy for the ocean trawl fishery.

The final amendment concerns the issue of permits for fish auctions for charitable purposes. Honourable members may be aware of the revenue these fish auctions provide to assist charities.

The amendment simply removes any ambiguities that permits may be issued for fish auctions.

The issue of specific permits for this purpose is provided by clause 5 of the bill. Implementation of these provisions will be subject to any advice arising from the recent bag and size limits review paper, and from the New South Wales Food Authority. It is already a specific permit condition that the permit holder must notify the Food Authority and the local Fisheries office before undertaking a fish auction.

Other permit conditions include that any fish caught must be kept on ice; that the fish are suitable for human consumption; and that appropriate records are kept of all fish sold at the auction.

The bill currently before the House covers some ground. The changes are not being made just for the sake of themselves but to provide a fairer, more consistent and efficient approach to the regulation of fishing activities.

Overall, the aim of this bill is to make the Fisheries Management Act more efficient from an administrative and operational point of view, a move that I'm sure all members would see as the sensible way to go.

The Iemma Government is committed to ensuring that there is a sustainable, viable commercial fishing industry in New South Wales.

I commend the bill to the House.