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**NSW Fishing Industry:  
Changes and Challenges in the  
Twenty-First Century**

**John Wilkinson**

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**NSW Fishing Industry:  
Changes and Challenges in the  
Twenty-First Century**

**by**

**John Wilkinson**

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## EXECUTIVE SUMMARY

The NSW commercial fishing industry has typically been a small-scale industry composed of small family businesses (pp.3-4).

Many NSW fishing people have earned only a modest income and, in the past, have needed the assistance of government to remain viable (pp.4-5, 22-23).

Imports compose the largest portion of fish eaten in New South Wales. Local catch accounts for only a small percentage of the fish consumed in the state (pp. 23-24).

Overfishing has often occurred amongst fish stocks in New South Wales, and has re-emerged as an issue with the 'super trawler' *Veronica* (pp.1-2, 30-31).

Recovery of fisheries' administration costs has recently become a major consideration in government policy (pp.25-27).

A share managed approach, to fisheries operation, has been adopted by recent state governments: both as a mechanism to facilitate cost recovery, and as a means to conserve the resource (pp.31-34, 39-44).

Recreational fishing has been concurrently elevated in government policy: partly because of its capacity to stimulate the tourism and retailing sectors of the economy (pp.34-38).

Oyster production is the state's most important form of aquaculture, earning nearly half the worth of the state's conventional commercial fisheries (pp.45-47).

Indigenous Australians have concerns over the arrival share management: particularly as it impacts on their traditional status as fishers, and as it affects their involvement in the beach hauling sector of the industry (pp.47-51).





## 1. INTRODUCTION

In April 2004 fundamental changes to the fishing industry, in New South Wales, were finally inaugurated with the completed transformation of all commercial fisheries into share managed fisheries. This process was set in motion, in the mid-1990s, when the Fahey government obtained passage of the *Fisheries Management Act 1994*. The administrative aim of the Act – the transfer of commercial fisheries in NSW on to a share managed basis – was initially delayed by the Carr government’s election to office in 1995: the new fisheries minister (Bob Martin) introducing an administrative compromise by transferring the fisheries on to a restricted basis. Nevertheless the Carr’s government’s most recent fisheries ministers (Eddie Obeid and Ian Macdonald) have jointly overseen the completion of process.

This paper sets out to examine the contours of the industry in New South Wales: the nature of the resource, who consumes it and who is involved in the industry. The paper further examines some of the driving forces behind share management, and the concerns of some of those who may be affected.

## 2. STRUCTURE AND NATURE OF COMMERCIAL FISHING IN NSW

### (a) Availability of the Resource

The extent of commercial fishing in New South Wales is qualified by a fundamental factor. While there are fewer species of fish in the colder waters of the world, this smaller number of species exists in great numbers where they are found (such as the North Sea and the seas off Japan). In the warmer waters of the world, by contrast, there exists a greater number of species: but these varied species exist in far fewer numbers.<sup>1</sup> Shelley and Gary Underwood observed, in 1995, that “Australia’s annual catch is ranked 55<sup>th</sup> in the world. This represents just over 200,000 tonnes of fish. This is small compared to. . .Japan’s 10 to 12 million tonnes.”<sup>2</sup>

Because of the limited number of fish in Australian waters, there has always been a possibility of grounds becoming fished out. The basic reason for overfishing was the use of small mesh nets which caught a great number of young fish, as well as older ones, and so left almost no young fish for breeding. This situation arose around Sydney as early as the mid 1800s. A select committee of the NSW Legislative Assembly, which examined the matter around this time, was told, according to Godden McKay Consultants’ recent summary of the inquiry, that the “general custom was to work with nets of  $\frac{3}{4}$ ” (20mm) which caught and destroyed enormous numbers of fry”.<sup>3</sup> The outcome of the inquiry was

<sup>1</sup> See Michael Lorimer, *The Technology and Practices of the New South Wales Fishing Industry 1850-1930* (MA Thesis, University of Sydney, 1984), p.24.

<sup>2</sup> Shelley and Gary Underwood, *Fishing* (Cardigan Street Publishers, Melbourne, 1995), p.28.

<sup>3</sup> Godden McKay Consultants, *NSW Fisheries Heritage and Conservation Register* (Godden McKay Consultants, Sydney, 1997), p.19.

the passage of the *Fisheries Act 1865*. This Act, amongst other matters, specified the description of nets which could be used for fishing. Over the next twenty years, however, there was little change in the situation. An 1879-1880 NSW royal commission on fisheries reported that “The wholesale destruction within the harbour caused by. . .nets. . .with meshes almost small enough for a naturalist’s hand has of course produced its natural effect on the outside grounds, where the snapper can now only be taken in very small quantities”.<sup>4</sup>

The issue of over fishing has continued on to the present day. In 1953, for instance, a NSW committee on fish marketing (made up of officials appointed by the chief secretary) noted that, “A major problem of the NSW fishing industry may be accepted as conservation and protection of the fishing grounds. This involves a degree of oversight and control over the operations of. . .fishermen”<sup>5</sup> Just under thirty years later, these same problems of “conservation and protection” became evident in the decline in stocks in the tuna and gemfish grounds. This is indicated by the figures for the catch in the early 1980s:

#### *Tuna Fish Catch in NSW: early 1980s*<sup>6</sup>

1981-1982	3,267 tonnes
1982-1983	1,648 tonnes
1983-1984	899 tonnes

#### *Gemfish Catch in NSW: early 1980s*<sup>7</sup>

1980	5,059 tonnes
1984	2,800 tonnes

Just recently, in 2003, the federal minister for fisheries (Ian McDonald) declared that he regarded overfishing “as extremely important, particular as the number of. . .[fish species] under threat has increased by five since. . .last year.”<sup>8</sup>

#### **(b) Industry Participants**

<sup>4</sup> NSW Parliament, *Royal Commission on Fisheries 1878-1880* (NSW Parliament, Sydney, 1880), p.23.

<sup>5</sup> NSW Parliament, *Committee on Fish Marketing 1953* (NSW Parliament, Sydney, 1953), p.12.

<sup>6</sup> A. Caton, K. McLoughlin and M.J. Williams, *Southern Bluefin Tuna: The Scientific Background to the Debate* (Bureau of Resource Sciences, Department of Primary Industry Industries and Energy, Canberra, 1990), pp.12-13.

<sup>7</sup> K.R. Rowling, “Gemfish” in Richard Tilzey (ed.), *The South East Fishery: A Scientific Review with particular reference to Quota Management* (Bureau of Resource Sciences, Department of Primary Industries and Energy, Canberra, 1994), p.118.

<sup>8</sup> Amanda Hodge, “16 Fish Species Now on the Endangered List” in *The Australian*, 5 September 2003, p.5.

Because of the size of the resource, the number of people in the industry, and the means of production utilised, exist on a relatively small scale. The Australia National Audit Office has commented that, until the middle of the twentieth century, “Australian fisheries were basically a cottage-type industry, based on fishing ports close to domestic markets for fresh fish and using simple technology.”<sup>9</sup> The nature of people’s involvement in the industry became characterised, around the early 1900s, through the advent of the petrol engine boat. Michael Lorimer wrote that, “The advent of the single cylinder petrol engine allowed a boat small enough to be handled by two men. . .[but also to be] fast enough to reach the outside fishing grounds and return in one day. . .A petrol motor fishing boat [in the early 1900s] was not cheap. . .[and] cost 180 to 230 pounds in 1911”.<sup>10</sup> The introduction of the Danish seine trawl net into NSW commercial fishing, in the 1930s, only consolidated the nature of way in which the industry operated. The 1953 inquiry, mentioned above, remarked that the vessels using seine trawling “Usually . . .are diesel-powered and manned by a crew of two or three.”<sup>11</sup> Most of the commercial fishing, in the state, is still conducted either around the sea shores or close to them. Dominion Consulting has observed that, “in NSW. . .the fishers by number are predominantly estuarine with small scale inshore operations.”<sup>12</sup>

By the late 1970s the NSW commercial fishing industry had taken a definite form: based around small family businesses. Sloane Cook and Company, in 1978, gave the following examples of such businesses in New South Wales:

***Instances of Family Fishing Business in New South Wales: late 1970s***

Cowen Family (Clarence) – Owners of the *Mystic* and the *Life Line*

Dobbin Family (Clarence) – Owners of the *C. Wanderer* and the *Arrawarra*

Stewart Family (Macleay) – Owners of the *Jo Ann* and the *Bundagen*

Thompson Family (Port Stephens) – Owners of the *Dawn* and the *Tarana*

Stace Family (Laurieton) – Owners of the *Dual* and the *Heather D*

Mitchell Family (Hunter) – Owners of the *Liawenee* and the *Girl Pat*

Kelly Family (Wollongong) – Owners of the *Miss Antonia* and the *Belbara*

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<sup>9</sup> Australian National Audit Office, *Commonwealth Fisheries Management: Australian Fisheries Management Authority* (Australian Government Publishing Service, Canberra, 1996), p.1.

<sup>10</sup> Lorimer, op.cit., pp.48-52.

<sup>11</sup> Parliament of New South Wales, *Parliamentary Committee on Fish Marketing 1953* (NSW Parliament, Sydney, 1953), p.6.

<sup>12</sup> Dominion Consulting, *Changing the Management of Fisheries in NSW* (Dominion Consulting, Sydney, 2000), p.2.

Innes Family (Shoalhaven) – Owners of the *Ajax* and the *Ajax II*

Puglisi Family (Ulladulla) – Owners of the *Julieanne*, the *Gracie P*, the *Joseph Star*, the *Santa Lucia* and the *Charissa*<sup>13</sup>

Even in the early 1990s this pattern in the NSW fishing industry remained. Shelly and Gary Underwood have observed that, “The majority of the vessels [engaged in commercial fishing in Australia] are small and operated by one or two persons. Fishing boats less than ten metres long represented 65 per cent of the fleet in 1990. . .New South Wales has the highest number of fishing boats but they are smaller in size.”<sup>14</sup> As recently as 2003, NSW Fisheries has remarked (in a departmental publication) that “The NSW fishing fleet is primarily made up of small family businesses”.<sup>15</sup>

A significant number of fishing people, in New South Wales, earn only a modest living from their activities. In the early 1990s, income for many NSW commercial fishing people was either equivalent to the basic wage or less. In the late 1990s the Independent Pricing and Regulatory Tribunal (IPART) produced a table for catch value and income by region, for the year 1992-1993, as follows:

***Catch Value and Income for NSW Fishing People by Region: 1992-1993***<sup>16</sup>

<i>Region</i>	<i>Catch Weight (approx.)</i>	<i>Catch Value (approx.)</i>	<i>No. of Fishers</i>	<i>Average Gross Revenue</i>	<i>Average No. Days Spent Fishing</i>
Tweed-Richmond	1,753 tonnes	\$8.5 million	240	\$33,573	98
Richmond-Wooli	2,214 tonnes	\$11 million	336	\$32,841	126
Ararawarra-Macleay	1,556 tonnes	\$7.8 million	232	\$33,859	141
Bonville Creek – Manning River	1,146 tonnes	\$4.5 million	179	\$25,124	150
Tuncurry-	4,477 tonnes	\$14.5	553	\$26,193	114

<sup>13</sup> Sloane, Cook and Company, *The Demersal Fishing Industry of New South Wales*, vol.II (Sloane, Cook and Company, Sydney, 1978), pp.166-168.

<sup>14</sup> Underwood, op.cit., p.20.

<sup>15</sup> NSW Fisheries, *A Vision for the NSW Seafood Industry: Ensuring a Sustainable and Viable Seafood Industry* (NSW Fisheries, Sydney, 2003).

<sup>16</sup> Independent Pricing and Regulatory Tribunal (IPART), *Pricing Principles for Management Charges in NSW Commercial Fisheries* (IPART, Sydney, 1998), p.60. The relatively high levels of earnings, by fishing people in the far south of NSW, is due to the opportunity they have to catch high value species: particularly abalone.

Hunter		million			
Swansea-Botany Bay	3,339 tonnes	\$12 million	551	\$21,927	110
Port Hacking – Greenwell Point	2,558 tonnes	\$8.2 million	235	\$35,028	92
Jervis Bay – Coila Lake	3,751 tonnes	\$13.7 million	346	\$39,642	59
Tuross Lake - Merimbula	2,262 tonnes	\$9.8 million	214	\$45,961	57
Eden – Southern NSW border	10,517 tonnes	\$24.4 million	122	\$199,898	82

In 2002 Dominion Consulting produced the following table of gross income for 160 (out of approximately 400) fishers in the ocean haul sector of the state's commercial fishing industry:

***Gross Individual Income of 160 Operatives in NSW Ocean Haul Fishery: 2002<sup>17</sup>***

Amount Earned	Number of Operatives	Percentage of 160 Fishers
Less than \$6,000	1	0%
Between \$6,000 and \$9,999	3	2%
Between \$10,000 and \$19,999	8	5%
Between \$20,000 and \$29,999	22	13%
Between \$30,000 and \$39,999	22	13%
Between \$40,000 and \$49,999	20	12%
Between \$50,000 and \$59,999	26	16%
Between \$60,000 and \$69,999	8	5%
Between \$70,000 and \$79,999	11	7%
Between \$80,000 and \$89,999	7	4%
Between \$90,000 and \$99,999	3	2%
Over \$100,000	29	18%

<sup>17</sup> NSW Fisheries, *Ocean Hauling Fishery: Environmental Impact Statement*, vol.IV, *Consultants Reports* (NSW Fisheries, Sydney, 2002), p.15.

### (c) Nature, and Location, of the Fish Caught

As described by the Centre for International Economics, the main fisheries of the state and the people operating in them, in 1997-1998, can be outlined as follows:

#### *NSW Commercial Fisheries and Industry Operatives: 1997-1998<sup>18</sup>*

<i>Fishery</i>	<i>Fish Caught by Type</i>	<i>Fish Caught by Weight</i>	<i>Number of Operatives</i>
Estuary General	Bream, Mullet, Sand Whiting, Flathead, Luderick	4,175 tonnes	724
Ocean Haul	Mullet, Australian Salmon, Bream, Luderick, Garfish	3,200 tonnes	217
Trap and Line	Snapper, Kingfish, Morwong, Leatherjacket, Trevally, Mulloway	1,860 tonnes	600
Ocean Prawn Trawl	Prawns	954 tonnes	262
Estuary Prawn Trawl	Prawns	414 tonnes	312
Ocean Fish Trawl	Tiger Flathead, Trevally, Redfish	413 tonnes	104
Abalone		333 tonnes	37
Rock Lobster		103 tonnes	177

The greatest individual species catch in New South Wales is sea mullet: pursued either in estuaries or along the ocean beaches of the state. As K.A. Smith and K. Deguara have written, in financial year 1999-2000 “sea mullet landings were the highest (2,413 t) of all species taken by NSW fishers.”<sup>19</sup> The two most productive areas for sea mullet catch (in recent years) have been the Clarence River and Myall Lakes-Port Stephens regions. This is shown by the following table:

<sup>18</sup> Centre for International Economics, *Fisheries in New South Wales: NCP Review of the Fisheries Management Act 1994* (Centre for International Economics, Sydney and Canberra, 2001), pp.6-7.

<sup>19</sup> K.A. Smith and K. Deguara, *Review of Biological Information and Stock Assessment for the NSW Sea Mullet Resource* (NSW Fisheries, Sydney, 2002), p.20.

***Clarence River and Myall Lakes-Port Stephens: Yearly Mullet Catch 1994-1998<sup>20</sup>***

Clarence River	454 tonnes
Myall Lakes-Port Stephens	241 tonnes

A summary, of the largest amounts of the other types of fish caught in New South Wales, landed at the 35 ports in the state, can be presented as follows:

***Largest Amounts of Ocean Catch Fish: 1999-2000 (excluding abalone and rock lobster, and catch from ocean hauling and beach hand-gathering)***

Prawns	1,053 tonnes
School Whiting	762 tonnes
Snapper	264 tonnes
Flathead	242 tonnes
Octopus	228 tonnes
Silver Trevally	222 tonnes
Bonito	220 tonnes
Spanner Crabs	198 tonnes
Cuttlefish	189 tonnes
Shark	175 tonnes
Yellowtail Kingfish	125 tonnes
Leatherjacket	102 tonnes
Blue Eye	101 tonnes
Ocean Perch	82 tonnes
Gemfish	78 tonnes
Squid	61 tonnes
Crabs	59 tonnes
Southern Calamari	53 tonnes
Redfish	53 tonnes
Spotted Mackerel	47 tonnes
Yellowtail	40 tonnes
Mulloway	38 tonnes
Balmain Bugs	15 tonnes

<sup>20</sup> *ibid.*, p.27.

The amount of ocean catch, as landed at the various ports in the state (from northern to southern New South Wales), is as follows:

**NSW Ocean Catch by Port of Landing: 1999-2000 (excludes abalone and rock lobster, and catch from ocean/beach hauling)**

*Tweed Heads*<sup>21</sup>

<i>Main Species Caught</i>	<i>Catch by weight 1999-2000 (approx.)</i>
Eastern King Prawns	67 tonnes
Spanner Crabs	40.5 tonnes
Snapper	9 tonnes
Octopus	2.7 tonnes
Bonito	2.6 tonnes
Balmain Bugs	2.5 tonnes
Mulloway	2.2 tonnes
Sand Flathead	1.5 tonnes
Carpet Shark	1.2 tonnes
School Whiting	1.1 tonnes
Squid	1 tonne
Blue Swimmer Crabs	1 tonne

*Brunswick Heads*<sup>22</sup>

<i>Main Species Caught</i>	<i>Catch by Weight 1999-2000 (aprox.)</i>
Spanner Crabs	17.9 tonnes
Eastern King Prawns	11.9 tonnes
Octopus	13.3 tonnes
Snapper	6.3 tonnes
Yellowtail Kingfish	1.6 tonnes
Sand Flathead	1.2 tonnes

*Byron Bay*<sup>23</sup>

<i>Main Species Caught</i>	<i>Catch by Weight 1999-2000 (approx.)</i>
Spanner Crabs	12 tonnes
Snapper	7.3 tonnes

<sup>21</sup> M. Tanner and G.W. Liggins, *NSW Commercial Fisheries Statistics 1999-2000* (NSW Fisheries, Cronulla, 2001), p.10.

<sup>22</sup> *ibid.*

<sup>23</sup> *ibid.*



Mulloway	1.9 tonnes
Rubberlip Morwong	1 tonne

*Ballina*<sup>24</sup>

<i>Main Species Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
Spanner Crabs	127.8 tonnes
Eastern King Prawns	69.2 tonnes
Octopus	17.7 tonnes
Snapper	10.2 tonnes
Crabs (Sand and Blue Swimmer)	5.7 tonnes
Spotted Mackerel	5 tonnes
Squid (including Arrow Squid)	4.4 tonnes
Sand Flathead	3.9 tonnes
School Whiting	3.7 tonnes
Shark (including Fiddler and Carpet Shark)	3.2 tonnes
Cuttlefish	3.1 tonnes
Balmain Bugs	2.9 tonnes
School Prawns	2.3 tonnes
Leatherjacket	1.1 tonnes

*Evans Head*<sup>25</sup>

<i>Main Species Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
Prawns (Eastern King and School Prawns)	52.8 tonnes
Snapper	16.2 tonnes
Octopus	13.5 tonnes
School Whiting	9 tonnes
Spotted Mackerel	8 tonnes
Crabs (Blue Swimmer, Spanner and Sand)	7.5 tonnes
Mulloway	7.3 tonnes
Leatherjacket	2.9 tonnes
Rubberlip Morwong	2.8 tonnes
Sand Flathead	2.5 tonnes
Silver Trevally	1.8 tonnes
Squid	1.7 tonnes
Cuttlefish	1.6 tonnes

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<sup>24</sup> *ibid.*

<sup>25</sup> *ibid.*

*Iluka*<sup>26</sup>

<i>Main Species Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
Eastern King Prawns	319 tonnes
School Whiting	312 tonnes
Octopus	124 tonnes
Cuttlefish	51 tonnes
Bonito	37 tonnes
School Prawns	27.5 tonnes
Squid	24.6 tonnes
Spotted Mackerel	19 tonnes
Sand Crabs	15.6 tonnes
Snapper	15 tonnes
Balmain Bugs	6.8 tonnes
Shark	5.7 tonnes
Leatherjacket	4 tonnes
Shells	2.8 tonnes
Blue Swimmer Crabs	2.5 tonnes
Shark (Fiddler and Carpet)	2.5 tonnes
Southern Calamari	1.7 tonnes
Mulloway	1.3 tonnes
Yellowtail	1.2 tonnes
Rubberlip Morwong	1.2 tonnes

*Wooli*<sup>27</sup>

<i>Main Species Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
Snapper	20.7 tonnes
Spotted Mackerel	7.6 tonnes
Mulloway	4.7 tonnes
Leatherjacket	1.6 tonnes
Rubberlip Morwong	1.6 tonnes
Shark (Carpet Shark)	1.6 tonnes

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<sup>26</sup> *ibid.*

<sup>27</sup> *ibid.*

*Arararra*<sup>28</sup>

<i>Main Species Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
Yellowtail Kingfish	8.9 tonnes
Snapper	5.5 tonnes
Bonito	4.8 tonnes
Spotted Mackerel	3.9 tonnes
Silver Trevally	2.9 tonnes
Mulloway	1.4 tonnes

*Coffs Harbour*<sup>29</sup>

<i>Main Species Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
Prawns (Eastern King, School, Ocean, Royal Red )	118.2 tonnes
Cuttlefish	37.8 tonnes
School Whiting	23 tonnes
Bonito	18 tonnes
Octopus	14.6 tonnes
Leatherjacket	13.2 tonnes
Shark (including Carpet and Fiddler Shark)	9.6 tonnes
Sand Flathead	9.2 tonnes
Squid (including Arrow Squid)	8 tonnes
Yellowtail Kingfish	7.8 tonnes
Rubberlip Morwong	4.1 tonnes
Mulloway	3.8 tonnes
Yellowtail	2.6 tonnes
Silver Trevally	2 tonnes
Ocean Perch	1.3 tonnes
Spotted Mackerel	1.1 tonnes

*Nambucca Heads*<sup>30</sup>

<i>Main Fish Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
Snapper	13.8 tonnes
Bonito	8 tonnes
Spotted Mackerel	2.5 tonnes
Leatherjacket	2.1 tonnes

<sup>28</sup> *ibid.*<sup>29</sup> *ibid.*<sup>30</sup> *ibid.*

*South West Rocks*<sup>31</sup>

<i>Main Species Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
Prawns (Eastern King and School Prawns)	23 tonnes
School Whiting	15.8 tonnes
Leatherjacket	5.2 tonnes
Shark (including Carpet and Fiddler Shark)	5.2 tonnes
Snapper	4.2 tonnes
Cuttlefish	4.1 tonnes
Octopus	4.1 tonnes
Rubberlip Morwong	3.4 tonnes
Mulloway	3.4 tonnes
Bonito	3 tonnes
Sand Flathead	2.7 tonnes
Yellowtail Kingfish	2 tonnes
Sand Crabs	1.2 tonnes

*Port Macquarie*<sup>32</sup>

<i>Main Species Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
Prawns (Eastern King and School Prawns)	14.8 tonnes
Bonito	11.8 tonnes
School Whiting	9.9 tonnes
Snapper	7.5 tonnes
Shark (including Carpet and Fiddler Shark)	5.4 tonnes
Leatherjacket	4.7 tonnes
Mulloway	4.1 tonnes
Rubberlip Morwong	2.9 tonnes
Blue Eye	2.7 tonnes
Sand Flathead	1.7 tonnes
Octopus	1.3 tonnes

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<sup>31</sup> *ibid.*

<sup>32</sup> *ibid.*

*Laurieton*<sup>33</sup>

<i>Main Species Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
Shark (including Carpet and Fiddler Shark)	11.2 tonnes
Snapper	4.4 tonnes
Leatherjacket	2.9 tonnes
Rubberlip Morwong	1.2 tonnes
Prawns (Eastern King and School Prawns)	1.7 tonnes

*Crowdy Head*<sup>34</sup>

<i>Main Species Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
School Whiting	78 tonnes
Prawns (including Eastern King, Royal Red, School and Ocean)	76.3 tonnes
Bonito	30 tonnes
Snapper	16 tonnes
Cuttlefish	15.4 tonnes
Shark (including Carpet and Fiddler Shark)	13.2 tonnes
Octopus	6.8 tonnes
Flathead (including Tiger and Sand Flathead)	6.6 tonnes
Leatherjacket	5.3 tonnes
Silver Trevally	4.8 tonnes
Rubberlip Morwong	4.2 tonnes
Balmain Bugs	3.2 tonnes
Squid (including Arrow Squid)	2.3 tonnes
Southern Calamari	2 tonnes
Blue Swimmer Crabs	2 tonnes
Mulloway	1 tonne

*Tuncurry*<sup>35</sup>

<i>Main Species Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
School Whiting	92.7 tonnes
Bonito	30 tonnes
Silver Trevally	21.5 tonnes
Shark (including Carpet and Fiddler Shark)	17.3 tonnes
Prawns (Eastern King, Royal Red, School)	14.8 tonnes
Flathead (Sand Flathead and Tiger Flathead)	14.3 tonnes

<sup>33</sup> Ibid.<sup>34</sup> Tanner and Liggins, op.cit., p.11.<sup>35</sup> Ibid.

Snapper	10.9 tonnes
Rubberlip Morwong	7.8 tonnes
Cuttlefish	6.8 tonnes
Blue Swimmer Crabs	4.6 tonnes
Leatherjacket	4.5 tonnes
Southern Calamari	4 tonnes
Octopus	3.3 tonnes
Redfish	1.9 tonnes
Yellowtail Kingfish	1.3 tonnes
Yellowtail	1 tonne

*Smiths Lake*<sup>36</sup>

<i>Main Species Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
Bonito	4 tonnes
Rubberlip Morwong	2.1 tonnes
Snapper	1.9 tonnes
Silver Trevally	1.3 tonnes

*Port Stephens*<sup>37</sup>

<i>Main Species Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
Prawns (Eastern King and Royal Red)	136.2 tonnes
Flathead (Sand and Tiger Flathead)	69.2 tonnes
Shark (including Carpet and Fiddler Shark)	40.2 tonnes
Silver Trevally	36.3 tonnes
Ocean Perch	35.3 tonnes
School Whiting	33 tonnes
Rubberlip Morwong	21.5 tonnes
Southern Calamari	17.5 tonnes
Cuttlefish	17.3 tonnes
Redfish	13.2 tonnes
Snapper	12.1 tonnes
Squid (including Arrow Squid)	6 tonnes
Leatherjacket	5.9 tonnes
Yellowtail	4.7 tonnes
Octopus	4.5 tonnes
Mulloway	1.5 tonnes
Blue Swimmer Crabs	1.2 tonnes
Gemfish	1.2 tonnes

<sup>36</sup> *ibid.*

<sup>37</sup> *ibid.*

*Newcastle*<sup>38</sup>

<i>Main Species Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
Prawns (including Eastern King, Royal Red)	73.7 tonnes
School Whiting	73.2 tonnes
Silver Trevally	53.4 tonnes
Flathead (Sand Flathead and Tiger Flathead)	40.6 tonnes
Cuttlefish	36.2 tonnes
Ocean Perch	35.8 tonnes
Snapper	33.6 tonnes
Shark (including Carpet and Fiddler Shark)	26 tonnes
Octopus	20.2 tonnes
Southern Calamari	19 tonnes
Cuttlefish	17.6 tonnes
Octopus	14.7 tonnes
Yellowtail	6.5 tonnes
Redfish	5.8 tonnes
Blue Swimmer Crabs	4.6 tonnes
Blue Eye	3.8 tonnes
Mulloway	3.6 tonnes
Bonito	3.5 tonnes
Balmain Bugs	3.4 tonnes
Leatherjacket	3.3 tonnes
Yellowtail Kingfish	2.9 tonnes
Squid (including Arrow Squid)	2.5 tonnes
Rubberlip Morwong	1.5 tonnes
Gemfish	1.3 tonnes

*Swansea*<sup>39</sup>

<i>Main Species Caught</i>	<i>Fish Catch by Weight</i>
Snapper	3.2 tonnes
Silver Trevally	3.1 tonnes
Rubberlip Morwong	1.4 tonnes

<sup>38</sup> *ibid.*<sup>39</sup> *ibid.*

*The Entrance*<sup>40</sup>

<i>Main Fish Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
Silver Trevally	9.8 tonnes
Snapper	2.9 tonnes
Bonito	2.6 tonnes
Shark (including Carpet and Fiddler Shark)	2.3 tonnes
Yellowtail Kingfish	1.3 tonnes
Leatherjacket	1.1 tonnes
Rubberlip Morwong	1.1 tonnes

*Terrigal*<sup>41</sup>

<i>Main Species Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
Silver Trevally	21.4 tonnes
Snapper	12.1 tonnes
Rubberlip Morwong	7.1 tonnes
Bonito	3.8 tonnes
Leatherjacket	2.6 tonnes

*Brisbane Water*<sup>42</sup>

<i>Main Species Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
Snapper	9.7 tonnes
Silver Trevally	5.5 tonnes
School Whiting	4.3 tonnes
Mulloway	2.8 tonnes
Yellowtail Kingfish	2.2 tonnes
Yellowtail	2.1 tonnes
Leatherjacket	1.7 tonnes
Cuttlefish	1.5 tonnes
Rubberlip Morwong	1.2 tonnes
Southern Calamari	1.2 tonnes

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<sup>40</sup> *ibid.*

<sup>41</sup> *ibid.*

<sup>42</sup> *ibid.*



*Hawkesbury*<sup>43</sup>

<i>Main Species Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
Carpet Shark	2.7 tonnes
Yellowtail Kingfish	1.1 tonnes
Rubberlip Morwong	1 tonne

*Sydney Harbour*<sup>44</sup>

<i>Main Fish Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
School Whiting	80.4 tonnes
Prawns (Royal Red)	42.4 tonnes
Flathead (Sand and Tiger Flathead)	28.3 tonnes
Blue Eye	25 tonnes
Redfish	19.1 tonnes
Silver Trevally	16.6 tonnes
Cuttlefish	13.4 tonnes
Shark (mainly Fiddler Shark)	12 tonnes
Ocean Perch	5.8 tonnes
Southern Calamari	5.2 tonnes
Gemfish	3.7 tonnes
Squid (including Arrow Squid)	2.9 tonnes
Leatherjacket	2.8 tonnes
Rubberlip Morwong	2.4 tonnes
Yellowtail Kingfish	2 tonnes
Yellowtail	2 tonnes
Snapper	1.8 tonnes
Octopus	1.7 tonnes

*Botany Bay*<sup>45</sup>

<i>Main Species Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
Silver Trevally	7.3 tonnes
Yellowtail Kingfish	6.5 tonnes
Snapper	6.3 tonnes
Bonito	3.2 tonnes
Rubberlip Morwong	2.9 tonnes
Octopus	1.4 tonnes

*Wollongong*<sup>46</sup><sup>43</sup> *ibid.*<sup>44</sup> *ibid.*<sup>45</sup> *ibid.*

<i>Main Species Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
Snapper	21.5 tonnes
Silver Trevally	6.6 tonnes
Rubberlip Morwong	5.1 tonnes
Bonito	1.8 tonnes
Leatherjacket	1.4 tonnes

*Kiama*<sup>47</sup>

<i>Main Species Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
Gemfish	63.3 tonnes
Leatherjacket	18 tonnes
Blue Eye	8.1 tonnes
Rubberlip Morwong	4.3 tonnes
Snapper	4.1 tonnes
Hermit Crabs	1.9 tonnes
Redfish	1.8 tonnes
Silver Trevally	1.4 tonnes

*Greenwell Point*<sup>48</sup>

<i>Main Species Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
Yellowtail Kingfish	33.8 tonnes
Bonito	33.1 tonnes
Silver Trevally	30.3 tonnes
School Whiting	22.7 tonnes
Prawns (Royal Red and School Prawns)	21.4 tonnes
Flathead (Sand and Tiger Flathead)	18.1 tonnes
Blue Eye	13 tonnes
Shark (including Fiddler Shark)	8.3 tonnes
Yellowtail	7.9 tonnes
Snapper	4.2 tonnes

<sup>46</sup>ibid., p.11.<sup>47</sup> Tanner and Liggins, op.cit., p.12.<sup>48</sup> ibid.

Rubberlip Morwong	3 tonnes
Gemfish	2.1 tonnes
Southern Calamari	2.1 tonnes
Leatherjacket	1.2 tonnes
Cuttlefish	1.2 tonnes

*Huskisson*<sup>49</sup>

<i>Main Species Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
Hermit Crabs	7.9 tonnes
Bonito	2.1 tonnes
Rubberlip Morwong	1.2 tonnes
Yellowtail Kingfish	1.1 tonnes

*Ulladulla*<sup>50</sup>

<i>Main Species Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
Silver Trevally	13.6 tonnes
Yellowtail Kingfish	10.1 tonnes
Flathead (Tiger Flathead)	10.1 tonnes
Leatherjacket	8.6 tonnes
School Whiting	3.7 tonnes
Snapper	3.5 tonnes
Hermit Crabs	3.5 tonnes
Shark (including Carpet and Fiddler Shark)	3.2 tonnes
Redfish	2.9 tonnes
Rubberlip Morwong	2.6 tonnes
Blue Eye	1.9 tonnes
Bonito	1.2 tonnes

*Batemans Bay*<sup>51</sup>

<i>Main Species Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
Prawns (School and Eastern King Prawns)	8.4 tonnes
Yellowtail Kingfish	7.8 tonnes
Silver Trevally	2.7 tonnes
Snapper	2.2 tonnes

<sup>49</sup> *ibid.*<sup>50</sup> *ibid.*<sup>51</sup> *ibid.*

Shark (including Carpet and Fiddler Shark)	1.8 tonnes
Rubberlip Morwong	1.4 tonnes
Tiger Flathead	1.1 tonnes
Leatherjacket	1 tonne

*Moruya*<sup>52</sup>

<i>Main Species Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
Shark (including Carpet and Fiddler Shark)	2.2 tonnes
Rubberlip Morwong	1.2 tonnes
Leatherjacket	1 tonnes
Hermit Crabs	0.9 tonnes

*Narooma*<sup>53</sup>

<i>Main Species Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
Yellowtail Kingfish	35.7 tonnes
Bonito	15.5 tonnes
Yellowtail	12.6 tonnes
Shark (Carpet Shark)	2 tonnes
Gemfish	1.1 tonnes

*Bermagui*<sup>54</sup>

<i>Main Species Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
Blue Eye	22.8 tonnes
Gemfish	3.2 tonnes
Yellowtail Kingfish	1.6 tonnes
Ocean Perch	1.6 tonnes
Shark (including Carpet and Fiddler Shark)	1.2 tonnes
Silver Trevally	1 tonne

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<sup>52</sup> *ibid.*

<sup>53</sup> *ibid.*

<sup>54</sup> *ibid.*

*Eden*<sup>55</sup>

<i>Main Species Caught</i>	<i>Fish Catch by Weight 1999-2000 (approx.)</i>
Tiger Flathead	31.1 tonnes
Blue Eye	23.5 tonnes
Redfish	8.3 tonnes
Squid (including Arrow Squid)	8 tonnes
Leatherjacket	5.9 tonnes
Shark (including Carpet and Fiddler Shark)	5.2 tonnes
Bonito	3.7 tonnes
Ocean Perch	2.8 tonnes
Gemfish	2.3 tonnes
Sand Crabs	1.6 tonnes
Eastern King Prawns	1.3 tonnes

#### (d) Australian Public's Reluctance to Eat Fish

Another factor influencing the scope of commercial fishing, in New South Wales, is a general reluctance of the Australian public to eat fish in substantial amounts. This had become an observable characteristic of the NSW community as early as the late 1880s. A New South Wales royal commission on fisheries, held between 1894 and 1895, noted that "Opinion has been expressed that our people are not a fish eating community."<sup>56</sup> Just under twenty years later, another royal commission observed that, "There is undoubtedly, amongst nearly all classes of consumers, a strong prejudice against what are known as common fish such as mullet, blackfish, tailor etc. Large numbers of people will not buy these fish".<sup>57</sup> While consumption of fish became popularised through the advent of the fish and chip shop, during the 1920s, Australians (on an overall level) have nevertheless remained averse to fish. Meryl Williams and Phillip Stewart wrote in the early 1990s that, "Results have shown that consumption of seafood by Australians at home increased only slightly between 1977 and 1991. The annual average consumption was 7 kg per person in 1977, rising to 7.5 kg in 1991."<sup>58</sup> On the assumption that the average weight of a piece of fish, bought in a fish and chip shop, weighs around 200 to 250 grams, the average consumption of fish by Australians amounts to around half a piece of cooked fish once a week. PA Consulting Group remarked, in a report prepared in 1992, that "Australians' per

<sup>55</sup> *ibid.*

<sup>56</sup> NSW Parliament, *Royal Commission on Fisheries 1894-1895* (NSW Government, Sydney, 1895), p.48.

<sup>57</sup> NSW Parliament, *Royal Commission on Food Supplies and Prices 1911-1912* (NSW Government, Sydney, 1912), p.40.

<sup>58</sup> Meryl Williams and Phillip Stewart, "Australia's Fisheries" in Patricia Kailola, Christina Grieve, Russell Reichelt, Phillip Stewart and Meryl Williams, *Australian Fisheries Resources* (Bureau of Resource Sciences, Canberra, 1993), p.14.

capita fish/seafood consumption still ranks as one of the lowest in the developed world.”<sup>59</sup>

### (e) Viability of the Industry and Government Assistance

Because of the limited nature of the resource, and also because of the small-scale nature of the operators themselves and the public’s partial aversion to fish, the returns to commercial fishermen have often been marginal. In turn, complaints were often directed, by the latter, to other participants in the industry whom commercial fishermen felt were contributing to their (often) meagre returns. The 1911-1912 NSW royal commission on food supplies and prices, referred to in the previous sub-section, heard complaints from fishing people that fish marketing agents’ fees “were excessive, and frequently involved such a large deduction from the amount realised by the sale of fish as to leave the fisherman a very inadequate return for his labour.”<sup>60</sup>

As a means of addressing these complaints, thirty years later the McKell government obtained passage of the *Fisheries and Oyster Farms (Amendment) Act 1942*. As later summarised by the 1953 NSW inquiry into fish marketing, the legislation “provided. . .for the cancellation of agents’ licences and the conduct of markets by the chief secretary as a corporation sole.”<sup>61</sup> Just twenty years afterwards, the Heffron government obtained passage of a further amendment to the legislation by means of which the NSW Fish Marketing Authority (FMA) was established in December 1963 and, in April 1964, took over from the chief secretary as the manager of fish markets in the state. Seven years later the NSW Fish Marketing Authority, in its own history of commercial fishing in the state, remarked that the establishment of the FMA had helped to lift “fishermen from a poor income. . .to. . .a more remunerative livelihood. . .than formerly.”<sup>62</sup>

On an overall level, however, the actual value of the fish, taken in New South Wales, remains relatively small. The Centre for International Economics observed in 2001 that, “The commercial [fishing] sector [in New South Wales]. . .produces an annual catch worth about \$70 million at first point of sale.”<sup>63</sup> In fact it is Western Australia and South Australia which are the great fish producing states, as the following table illustrates:

<sup>59</sup> P.A. Consulting Group, *National Seafood Consumption Study: Summary Report* (P.A. Consulting Group, Perth, 1992), p.3.

<sup>60</sup> *Royal Commission on Food Supplies and Prices 1911-1912*, pp.36-37.

<sup>61</sup> *Parliamentary Committee on Fish Marketing 1953*, p.5.

<sup>62</sup> See NSW Fish Marketing Authority, *Fish Marketing in New South Wales: Historical Summary* (NSW Fish Marketing Authority, Sydney, 1971), pp.2-5.

<sup>63</sup> Centre for International Economics, *op.cit.*, p.4.

***Value of Australian Fisheries Production (Ocean Catch and Aquaculture): 2001-02***<sup>64</sup>

Western Australia	\$614,718,000
South Australia	\$489,777,000
Tasmania	\$327,410,000
Queensland	\$277,385,000
New South Wales	\$135,725,000
Victoria	\$116,976,000
Northern Territory	\$36,585,000

**(f) Competition from Imports**

As well as commercial fishing people being faced with the constrained nature of the resource, they are also confronted with the fact that many suppliers of fish in New South Wales prefer to obtain imports. This was already observable in the later years of the 1800s. In 1900 the NSW government official statistician reported that, for the financial year 1898-1899, there was “an import of preserved fish. . . which amounted to £106,500.”<sup>65</sup> Ten years later, imports of fish had nearly doubled. The 1911-1912 royal commission on food supplies and prices noted that “In 1910 there was imported into this state. . . nearly 7,000,000 lb. of preserved or dried fish. This represented a value of about £200,000”.<sup>66</sup> Even in the late twentieth century, the situation tended to remain the same. A NSW parliamentary committee on the fishing industry, which looked into the industry in the late 1970s, observed that “Australia imported \$70,937,000 of fish products in 1974-75.”<sup>67</sup> Sloane Cooke and Company, in their 1978 study of the NSW fishing industry, remarked that,

Both in terms of volume and value, imports of fish into Australia have significantly exceeded local production. . . the dominant item is catering packs, exceeding 500 grams, of filleted, skinned or boned fish, which represented 46 per cent of all fish imports in 1975/76. Japan supplied almost 9,000 tonnes. . . the UK 2,100 tonnes. . . New Zealand 1,800 tonnes. . . and South Africa 1,200 tonnes. The main markets for these fish are fish and chip shops, restaurants and processors. . . Fish finger imports totalled 5,400 tonnes for 1975/76, of which 3,400 were in retail packs of less than 500 grams, supplied by the UK, South Africa and Norway.<sup>68</sup>

<sup>64</sup> Australian Bureau of Agricultural and Resource Economics (ABARE), *Australian Fisheries Statistics 2002* (ABARE, Canberra, 2003).

<sup>65</sup> T.A. Coghlan, *The Wealth and Progress of New South Wales 1898-1899* (NSW Government, Sydney, 1900), p.202-203.

<sup>66</sup> *Royal Commission on Food Supplies and Prices 1911-1912*, p.44.

<sup>67</sup> NSW Parliament, *Parliamentary Committee on the Fishing Industry 1975-1976* (NSW Parliament, Sydney, 1976), p.8.

<sup>68</sup> Sloane Cooke and Company, *The Demersal Fishing Industry of New South Wales*, vol.I (Sloane Cooke and Company, Sydney, 1978), pp.94-95; Leisa Scott, “Seeking Golden Ponds” in *The Australian*, 21 August 2003, p.11.

During the 1980s imports accounted for at least 50% of the fish consumed locally in Australia.<sup>69</sup> In the fifteen years between 1975 and 1990, Australian imports of fish increased even more: by over three times the 1975 figure. Shelley and Gary Underwood wrote that, “In 1989-90 Australia spent. . . \$422 million on imported fish. . . Most of the fish was frozen or imported in cans. Seventy per cent of prawns consumed in Australia are not Australian, but are cheaper imported prawns”. By financial year 1995-1996, the amount of fish imported into Australia had increased to \$670 million and by financial year 2002-2003 had reached \$1.2 billion.<sup>70</sup> The situation, with regard to imports of fish into NSW, has recently been aptly summarised by the previous minister for fisheries (Eddie Obeid) in a radio interview in 2002,

Generally in New South Wales we import over 87% of our consumption. . . In New South Wales our commercial catch is only about 18½ thousand tonnes. Our consumption is over 130,000 tonnes.<sup>71</sup>

### **(g) Fish Quality and Below Standard Substitution**

A further issue, associated with the trading of fish rather than the capture of it, is that of the substitution of lesser quality fish for those of prime quality. Just under a year ago, the television program *Today Tonight* broadcast an item which claimed that Australian seafood retailers had been selling Chinese and Thai farmed prawns under the guise of locally captured produce. The program interviewed a fish farmer, Martin Breen, from the Australian Prawn Farmers’ Association, who stated that retailers were “not calling them Chinese prawns, they’re calling them Queensland prawns.” The same fish farmer claimed that the prawns were being marked up, in the shops, from \$7 a kilogram to \$20 a kilogram. Two nights later, the same program broadcast an interview with Clare Hughes: a food policy officer with the Australian Consumers Association. Ms Hughes declared that there is “intentional mislabelling and substitution of fish”. She stated that, on occasions, fish sold as cod had actually been hoki (a type of shark) and Nile perch had been substituted, by retailers, for barramundi. Ms Hughes also observed that, “Hake is the most commonly imported fish into Australia yet, when you look in the fish shops, there is no fish being sold under the name of hake”. Just over a week after these two items were broadcast, the program undertook sampling tests, in all the capital cities in Australia, to test substitution rates for two of the most popular types of fish: barramundi and snapper. The survey found that, in Sydney, 20% of the fillets of barramundi and snapper (purchased by the survey team) were actually fillets of poorer-quality fish.<sup>72</sup>

The above ruses, in the trading of fish, have led the current minister for fisheries (Ian

<sup>69</sup> Peter Williamson, *Growth and Management of the NSW Demersal Fisheries* (M.Ec. Thesis, University of Sydney, 1984), p.34.

<sup>70</sup> Underwood, op.cit., p.30; Australian Bureau of Agricultural and Resource Economics (ABARE), *Australian Fisheries Statistics 1996* (ABARE, Canberra, 1996), p.3.

<sup>71</sup> NSW Minister for Fisheries (Eddie Obeid) interview with John Laws. 2UE. 7 March 2002.

<sup>72</sup> See *Today Tonight*, transcripts, 24 and 26 September, and 6 October, 2003.



Macdonald) to emphasise the state government's poor view of such practices and its determination to eliminate them. In May 2004 the minister declared, in parliament, that "fish substitution is an issue that must be addressed". He added that, under the *Food Act 2003*, penalties for substitution had been increased to the following levels: \$55,000 for individuals and \$275,000 for companies.<sup>73</sup>

### 3. GOVERNMENT ADMINISTRATION AND INDUSTRY RE-ORGANISATION

#### (a) Cost of Administration

As far back as the 1930s (if not before), various governments in New South Wales have pointed to the discrepancy between the amount of revenue raised and the cost of government administration of commercial fishing. In 1935 the Stevens government decided to replace the previous fisheries and oyster farms legislation with the *Fisheries and Oyster Farms Act 1935*. In introducing the legislation the colonial secretary (Frank Chaffey) remarked that "Right throughout the history of fisheries in this state the revenues derived have, in some years, been many thousands of pounds short of the expenditure". In the late 1990s the average yearly expenditure of government revenue, on administering NSW fisheries, has amounted to around \$25 million a year.<sup>74</sup>

Recovering the costs of administering commercial fishing in the state, from those participating in the industry, has become an aim of government at both a national level and in New South Wales itself. After its election in 1988, the Greiner Government began to take steps to change the industry so that, in the long term, it could contribute to its own administration. To achieve this objective, the Greiner government began by setting out to secure the co-operation of the more successful operatives in the NSW commercial fishing industry. A year after taking office, Greiner obtained passage of the *Fisheries and Oyster Farms (Amendment) Act 1989* by means of which it established the Commercial Fishing Advisory Council (CFAC). Two years after the CFAC was established, the federal ALP government (led by Paul Keating) directed the Industry Commission (IC) to inquire into cost recovery in Australian fisheries. In its draft report, the IC declared that, "The fishing industry is overwhelmingly the beneficiary of fishing industry management and therefore should pay for it."<sup>75</sup>

Three years later, in 1994, the subsequent Fahey government replaced the basic legislation for the industry (the *Fisheries and Oyster Farms Act 1935*) by obtaining passage of the *Fisheries Management Act 1994*. Section 76 of the new legislation specified that "The minister may. . .determine. . management charges payable" by those commercial fishing

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<sup>73</sup> NSW Parliamentary Debates. Legislative Council. 5 May 2004.

<sup>74</sup> See Council on the Cost and Quality of Government, *Performance Reports: Fisheries 01, NSW Fisheries in Context* (Council on the Cost and Quality of Government, Sydney, 2004), p.11.

<sup>75</sup> Industry Commission, *Cost Recovery for Managing Fisheries*, draft report (Industry Commission, Melbourne, 1991), p.xiv.

people operating under the new legislation. Section 77 specified that commercial fishing people would be required to “make a periodic contribution for their right of access” to a particular fishery.<sup>76</sup> After the election of an ALP government, in 1995, this policy has been maintained. In a speech in parliament, two years after the election of the current Carr government, the then fisheries minister (Bob Martin) declared that, “the costs of fishery management. . .are not insubstantial . . .the Act clearly requires both management charges and a community contribution”.<sup>77</sup>

A year after Martin’s speech, the Carr government requested the Independent Pricing and Regulatory Tribunal (IPART) to examine the charges that could be levied so that commercial fishing people would effectively pay for their own administration. In the report, that it subsequently produced, IPART listed the charges paid by NSW commercial fishing people (in the late 1990s) as follows:

***Charges Paid by NSW Commercial Fishing People (per person): 1996-1997***<sup>78</sup>

<i>Charged Item</i>	<i>Amount</i>
Commercial Fishing Licences and Fees	\$479
Boat Licences and Transfer Fees	\$442
Boat Transfer	\$21
Certificates of Exemption	\$46
Consent To Sell Fish Locally	\$43
Sale of Lobster Tags	\$202
Abalone Quota Management Fees	\$176
Fisheries Management Charge	\$375
Permits	\$46
Registration of Nets	\$20
Abalone Licences and Permits	\$102
User Charges from Commercial Fishing People	\$352
Industry Contributions from Commercial Fishing People	\$350
<b>ESTIMATED CURRENT REVENUE</b>	<b>\$2,654</b>

IPART then prepared a table, contrasting the costs of administering NSW Fisheries against the above revenue obtained:

<sup>76</sup> See sections 76 and 77 of the *Fisheries Management Act 1994*.

<sup>77</sup> Second Reading Speech. Fisheries Management (Amendment) Bill 1997. NSW Parliamentary Debates. Legislative Assembly. 22 October 1997, p.1205.

<sup>78</sup> IPART, op.cit., p.22.

***Cost of Administering NSW Commercial Fisheries (per person) versus Revenue Obtained (per person): 1996-1997***<sup>79</sup>

Cost of Administration Per Fishing Person	\$7,898
<i>Less</i> Cost Savings	\$1,806
<i>Less</i> Amount to Reflect Recreational Catch	\$1,267
<i>Estimated Current Revenue</i>	\$2,654
<b>EXTRA AMOUNT REQUIRED FROM COMMERCIAL FISHERS</b>	<b>\$4,825</b>

Significantly IPART then observed that, if increased administration levies were imposed on NSW commercial fishers, “70 per cent. . . will encounter problems in their capacity to pay higher management charges.”<sup>80</sup>

**(b) Organising Commercial Fishing to Fund Administration**

Aims of making commercial fishing fund its own administration were not possible unless a significant number of those in the industry became relatively prosperous. To achieve this, both Liberal and ALP state governments have considered it necessary to transform the operation of commercial fishing in NSW from a relatively informal undertaking to a more conventionally prosperous commercial industry. This has been seen as involving both changing the relationship of the resource vis a vis those enjoying its benefits, and facilitating the departure of people who were less capable of making a prosperous living. As the IPART remarked, in 1998, “Many commercial fishers are ‘lifestyle’ fishers who do not make a commercial return for their efforts. . . there are great disparities between very profitable and very unprofitable fishers”.<sup>81</sup>

Traditionally fish have not been seen as belonging to anyone individually. Gerry Green and his colleagues have explained the background to this as follows:

It is sometimes argued that fishing entitlements are antecedent to any statutory right and are a common law property right known as a ‘profit a prendre’. A ‘profit a prendre’ is a right to take part of the soil, minerals, natural produce including fish and wild animals. The person does not own the thing gathered whilst it is on the land, but has a right to gather it<sup>82</sup>

In the 1801 case of *Baggott v. Orr*, which concerned the right of a member of the public to

<sup>79</sup> *ibid.*, p.23.

<sup>80</sup> *ibid.*, p.63.

<sup>81</sup> IPART, *op.cit.*, p.24.

<sup>82</sup> Garry Green, Barry Kaufman and Sevaly Sen, “ITQs and Property Rights: A Review of Australian Case Law”, paper presented at the *International Institute of Fisheries Economics and Trade Conference*, Oregon State University, 2000.

take fish lying on the foreshore, the judge hearing the case, according to D.E. Fisher, decided that a person “was entitled to take fish lying upon the foreshore: apparently a right ancillary to the right to fish in the sea flowing above the foreshore when the tide is in.”<sup>83</sup>

In 1881 however, when the then NSW colonial government (led by Henry Parkes) obtained passage of the *Fisheries Act* of that year, control of the right to take fish for commercial purposes (at least in New South Wales) was placed in the hands of the government: through the requirement that a person catching fish for sale had first to obtain a licence. Section 19 of the *Fisheries Act 1881* declared that, “Every boat used. . .for catching for sale. . .fish whether marine or fresh water. . .shall be licensed.” Nevertheless until the mid-1970s the approach generally taken by state governments was that it ought to be, relatively speaking, open to anyone to become a commercial fishing person. Donald Francois, NSW state director of fisheries in 1980, remarked in a paper, which he delivered in the same year, that in his opinion leaving “natural forces” to operate freely was the best *modus operandi* for commercial fishing in the state.<sup>84</sup> However, a year before the director of fisheries had voiced these thoughts, the then NSW government (led by Neville Wran) had already embarked on initiatives to reduce the number of people, in the state, holding commercial fishing licences. This was undertaken by amending the current fisheries legislation through the *Fisheries and Oyster Farms (Amendment) Act 1979*. In introducing the bill, the then minister for water resources and conservation (ARL Gordon) declared that the new legislation would,

Amend section 25 of the Act by rearranging. . .the provisions relating to the licensing of professional fishermen. . .Many persons who are not genuine commercial fishermen have been granted licences in the past. . .in the general interests of the industry, it would appear to be necessary to clamp down on the part-time. . .fisherman, who wishes to fish only during the lucrative prawn and crayfish seasons. . .section 25 of the Act is amended to provide that a fisherman’s licence shall not be issued to a person. . .unless he proposes to derive the major part of his income from. . .the taking and sale of fish. . .<sup>85</sup>

Eight years after the Wran government began changing the conditions of licences, the following Unsworth government introduced a freeze on the number of licences on issue. In 1987 the then minister for fisheries (Jack Hallam) declared in parliament that,

the number of professional fishing licence has been frozen. I think there are approximately 3,000 such licences. . .However there is nothing to prevent a professional fisherman. . .who owns a boat from selling that boat. He may sell it to

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<sup>83</sup> See D.E. Fisher, *Natural Resources Law in Australia: A Macro-Legal System in Operation* (Law Book Company, Sydney, 1987), pp.57-58.

<sup>84</sup> Donald Francois, “The New South Wales Abalone Fishery”, paper presented to the seminar on *Economic Aspects of Limited Entry and Associated Fisheries Management Measures*, Melbourne, 1980.

<sup>85</sup> Second Reading Speech. Fisheries and Oyster Farms (Amendment) Bill 1979. NSW Parliamentary Debates. Legislative Assembly. 28 February 1979, pp.2584-2585.

whomever he wishes – to another professional fisherman or to someone who is not necessarily a professional fisherman. But that person would need to hold a professional fisherman’s licence to operate that boat.<sup>86</sup>

By means of closer scrutiny of the issuing of licences, the number of licensed commercial fishing people, in the state, was reduced as follows:

***Commercial Fishing Licences Held in New South Wales: 1984-2000***<sup>87</sup>

1984	3,259
1994	2,100
2000	1,686

To lay the basis for the prosperity of viable operators in the industry, and to prepare a means of exit for those who were not, recent Liberal and ALP state governments have considered it necessary to facilitate a kind of ownership of the resource. This above objective was undertaken parallel with the abolition of the Fish Marketing Authority. During the same year that the Fahey government obtained passage of the *Fisheries Management Act 1994*, it also obtained passage of the *Fish Marketing Act 1994* under which the sale of fish was returned to agents (the very people that commercial fishermen had complained about in the early 1900s). A parent company was established, Sydney Fish Market Pty Ltd, which is 50% owned by Sydney Fish Market merchants and tenants (market tenants, seafood wholesalers and retailers) and the NSW Fishermen’s Holding Company (fishing people and fishing co-operatives across the state).<sup>88</sup>

Reintroduction of the agents (these days, concerns such as De Costi’s and Claudio’s) into fish acquisition, was to develop a situation where, once commercial fishing people had gained ownership of a right to fish, only those that could tolerate the amount of commission that the fish agents would charge, *and* still make a profit, would survive in the industry. The question was, however, how to give fishing people such a right.

<sup>86</sup> NSW Parliamentary Debates. Legislative Council. 12 November 1987, pp.15877-15878.

<sup>87</sup> Gerard Carter, *Fisheries Law in New South Wales* (NSW Department of Agriculture, Sydney, 1986), forward; Tony Battaglione, Debbie Brown, Drew Collins, Padma Lal, Paul Morris, Patrick Power, Chris Reid, Heather Roper, Michelle Scoccimarro, Michael Stephens, Jeremy Witham and Doug Young, *The Use of Economic Instruments in Coastal Zone Management* (Resource Assessment Commission, Canberra, 1993), p.47; Centre for International Economics, op.cit., p.2.

<sup>88</sup> Sean Nicholls, “Catch of the Day” in the *Sydney Morning Herald*, 18 April 2003, p.29.

### (c) Ownership of the Right to Fish and Conservation of the Resource

Deliverance of fish in NSW waters, to a large-scale (state-owned) company, had already been attempted in the early years of the twentieth century. In Britain trawling for fish had expanded into a major industry with the advent of steam powered vessels. The Great Grimsby Steam Trawling Company had launched the first steam vessel, especially designed for trawling, in the 1880s. By 1909 there were 1,614 steam trawlers operating in Britain. Impressed by what had happened in the UK, the state ALP government (under Holman) decided in 1914 to establish the State Trawling Industry. As Michael Lorimer has described it, the aim in establishing this enterprise was that of supplying “the cities of Sydney and Newcastle with large quantities of cheap fish.”<sup>89</sup> To set up the enterprise, the Holman government sent David Stead (scientific assistant to the NSW superintendent of fisheries investigations) to Britain for the purpose of acquiring the necessary ships and crews. In Lorimer’s words, “Stead was able to locate three ships being built by Smith’s dock at Middlesborough. . . These ships were crewed with English masters and seamen with extensive experience on the North Sea trawlers and on 5 June 1915 made their first trawling cruise [off the coast of NSW] . From the beginning they caught fish in large quantities”.<sup>90</sup>

Although the State Trawling Industry was dismantled by the Fuller government, in 1923, the trawlers, which were at first bought by New Zealand concerns, were soon re-purchased by NSW operators such as Red Funnel Trawlers. Other commercial concerns, which attempted to take over in the late 1920s from where the State Trawling Industry had left off, included Cam and Sons and A.A. Murrell.

Beyond the question of method of operation, however, the foremost consideration which emerged out of the attempts (by both the state-owned and the commercially-owned operations) to engage in large-scale trawling off the coast of New South Wales, was the effect on the resource. While the annual catch, in some years in the 1920s, was relatively high (around 4,000 tonnes), the effect on tiger flathead (the main object of the trawling) became quite marked. Sloane Cook and Company observed that, “Catches fell rapidly and progressively after 1931 however, resulting in the voluntary restriction of the fleet to 13 boats (down from a maximum of 17) in 1935.”<sup>91</sup>

Just at this time of writing, the issue of overfishing has re-emerged with attempts, by Irish and Tasmanian concerns, to bring one of the world’s largest trawlers (the *Veronica*) to Australia to operate from the South Australian waters of the Great Australian Bight around to the southern waters of New South Wales: prospects of fish-stocks being drastically reduced (as in the case of tiger flathead in the 1930s, and gemfish and tuna fish in the 1980s) leading the federal body responsible for fishing in Commonwealth waters (the Australian Fisheries Management Authority – AFMA) to freeze boat nominations for fisheries that the *Veronica* might have operated in. In commending AFMA’s decision, the federal minister for fisheries endorsed the fact that “AFMA by its decision has reconfirmed

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<sup>89</sup> Lorimer, op.cit., p.72.

<sup>90</sup> *ibid.*, pp.72-74.

<sup>91</sup> Sloane Cook and Company, op.cit., vol.II. p.4.

its commitment to precautionary principles in the sustainable management of the fish stock.”<sup>92</sup>

Devising a scheme, for delivering a form of ownership of fish to commercial fishing operators, was therefore undertaken (in the 1990s) against the background of what had happened at least sixty years before and against the background of what had happened in the 1980s. Between 1992-1994 the then Fahey government established a Fishing Property Rights Working Group (FPRWG). The FPRWG consisted of representatives from the cabinet office, the treasury and NSW Fisheries.<sup>93</sup> It subsequently met with a large group of commercial fishing people to consider the government’s intention to introduce a property rights system into New South Wales commercial fishing. In 1994 the principal recommendations of the FPRWG were then published in a report. Both ownership and conservation issues were dealt in the report’s suggestions. With regard to ownership the report recommended the following:

- Commercial fishing people would operate in the industry by obtaining shares in fisheries. These shares would be proportional to each operator’s catch history.
- Shares would be valid for ten years, with a guaranteed right of renewal every five years.
- Shares would be fully transferable.
- A commercial fishing operator would have to hold a minimum number of shares, to operate in a fishery.<sup>94</sup>

With regard to conservation questions, the report advised the following:

- Total Allowable Catches (TACs) to be set for specified fish by an independent committee.
- Monitoring and compliance programs to enable the catch to be tracked from point of landing to point of sale.<sup>95</sup>

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<sup>92</sup> See Robert Wainwright, “Irish King Fisher Pays \$1.6m for a Licence to Kill in Australian Waters” in the *Sydney Morning Herald*, 13 September 2004, p.3 and “No Entry: Fishing Giant Told to Sail On” in *ibid.*, 15 September 2004, p.3. The states control waters out to 3 kilometres from the shore. The other 197 kilometres, further out, are under the control of the federal government.

<sup>93</sup> Michael Young, “The Design of Fishing-Rights Systems – the New South Wales Experience” in *Ocean and Coastal Management*, vol.28, no.1-3, 1995, p.46.

<sup>94</sup> NSW Fisheries, *Sharing the Fisheries of NSW: Proposals of the Fisheries Property Rights Working Group* (NSW Fisheries, Sydney, 1994), p.4.

<sup>95</sup> *ibid.*

These proposals then became part of the new *Fisheries Management Act 1994*. Whereas, up until 1994, commercial fishing people were licensed each year to take fish for sale, under section 41 (b) of the new Act a fishery would be “identified as a share management fishery by the inclusion of the description of a fishery in schedule 1” of the legislation. Essentially that would mean that a fishery would be declared a share managed fishery by the Governor, on the recommendation of the minister. From then on, commercial fishing people operating in that fishery would have to do so by means of obtaining shares in that fishery. These shares would give the person obtaining them a portion of a right to fish in the fishery. This process, however, was intended to be undertaken via consultation with the industry. Section 58 of the Act provided that “The minister is required to give the public an opportunity to make submissions on any proposed management plan for a fishery”.<sup>96</sup>

The fisheries for abalone and rock lobster were soon transformed into share managed fisheries. To manage the system of share management in fisheries, new bodies were established. Section 26 of the *Fisheries Management Act 1994* provided for the establishment of a total allowable catch (TAC) committee which would determine a TAC in each of the commercial fisheries in New South Wales. Section 78(2) of the same Act provided for the minister to “allocate amongst shareholders in all relevant share management fishery the whole total allowable catch of fish for the commercial fishing sector.” A year after its 1995 election, the Carr government obtained passage of the *Fisheries Management Amendment (Advisory Bodies) Act 1996* under which CFAC was abolished and management advisory committees (MACs) established for the fisheries. Total allowable catch (TAC) regimes were then established in the rock lobster and abalone fisheries. The total allowable catches for these two species in 2000, and the tonnes available per share in each fishery, were as follows:

***Total Allowable Catches: Abalone and Rock Lobster (2000 and 2000-2001)***<sup>97</sup>

<i>Species</i>	<i>Total Allowable Catch</i>	<i>Tonnes per Share</i>
Abalone	305 tonnes (for calendar year 2001)	82.43 tonnes/share
Rock Lobster	150 tonnes (for financial year 2000-2001)	14.65 tonnes/share

The long-run course of the changes, to the way in which fishing people operated in the abalone fishery, have been described in the *Abalone Share Management Fishery Annual Report* as follows:

Access to the fishery [had already] changed in 1985 under a management initiative known as the “2 for 1” scheme. A new fisher could enter the industry if they secured the surrender of two permits issued in 1980. An industry buy-back scheme also operated between 1990 and mid-1996. These two schemes reduced the number of commercial divers from 59 to 37. A quota scheme was implemented in 1989. All divers were given an initial quota of 10 tonnes of abalone. In 1995 the abalone

<sup>96</sup> See sections 41, 42 and 58 of the *Fisheries Management Act 1994*.

<sup>97</sup> Centre for International Economics, op.cit., p.20.



fishery was included in schedule 1 of the Fisheries Management Act 1994. . . All 37 fishers in the . . . fishery were granted shares on a provisional basis with quota allocated in proportion to the shareholdings. . . On 18 February 2000 the *Fisheries Management (Abalone Share Management Plan) Regulation 2000* commenced, bringing the fishery into the final stage of share management. A number of new provisions commenced, with the introduction of the management plan, including trading shares in packages as small as 10 shares. At the commencement of the management plan, there were 37 holders of 100 equal shares.<sup>98</sup>

While the abalone and rock lobster fisheries were immediately changed into share management fisheries, the other fisheries were transformed more gradually. Just before the election of the Carr government in 1995, the Fahey government, by issuing an amendment to the *Fisheries Management (General) Regulation 1995* (section 212B), changed the Ocean Haul Fishery (essentially a fishery for mullet) into a restricted fishery. Two years later, the other commercial fisheries were declared to be “restricted fisheries”. This was done through the issuing of the *Fisheries Management (General) Amendment (Restricted Fisheries) Regulation 1997*. Under sections 175, 184, 191B, 191K, 191T the Ocean Prawn Trawl Fishery, the Ocean Fish Trawl Fishery, the Ocean Trap and Line Fishery, the Estuary General Fishery and the Estuary Prawn Trawl Fishery were all declared to be restricted.<sup>99</sup> As described by the Centre for International Economics, “There. . . [could] now be no more entry into any of these fisheries that. . . [increased] fishing effort, though mobility in and out of them. . . [could] occur by trading entitlements within certain limits.” Essentially anyone wishing to engage in commercial fishing, in a restricted fishery, had to buy out an existing fishing business.<sup>100</sup>

Just over three years later, the Carr government began the transfer of these restricted fisheries into the category of share managed fisheries. This was achieved by obtaining passage of the *Fisheries Management and Environmental Assessment Legislation (Amendment) Act 2000* which introduced an amendment to the *Fisheries Management Act 1994*. As mentioned above, section 41(b), of the 1994 Act states that “a fishery is identified as a share managed fishery by the inclusion of the description in Schedule 1” of the Act. Schedule 3 of the *Fisheries Management and Environmental Assessment Legislation (Amendment) Act 2000* proceeded to place the former restricted fisheries in schedule 1 of the *Fisheries Management Act 1994*. As described by the Centre for International Economics, under the amending legislation,

The. . . six restricted commercial fisheries. . . [became] category 2 share management fisheries, but rather than fishers within them owning shares which are automatically renewed every ten years [as in the case of category 1 share managed fisheries, such as those for abalone and rock lobster] category 2 fishers will have rights of access, analogous to a lease, for 15 years. If shares to the fishery are terminated during the period of the shares, compensation would be payable, but not if termination occurs

<sup>98</sup> *Abalone Share Management Fishery Annual Report 2001-2002*.

<sup>99</sup> See the *Fisheries Management (General) Amendment (Restricted Fisheries) Regulation 1997*.

<sup>100</sup> Centre for International Economics, op.cit., pp.8,19.

after the period of the shares has lapsed. However shares would normally be renewable.<sup>101</sup>

#### 4. ELEVATION OF RECREATIONAL FISHING

##### (a) Enhancement of Recreational Fishing in Government Policy

During the 1980s and the 1990s, recreational fishers in Australia began to push for a greater share of consideration in government policy. In 1986 the first national conference on recreational fishing was convened. Four years later, under the Keating government, a national recreational fisheries working group was established under the auspices of the Australian and New Zealand Fisheries and Aquaculture Council.<sup>102</sup> In 1992 (the same year that the working group was established) the following estimates, for the value of recreational fishing, were produced:

##### *Economic Activity and Benefits Associated with Recreational Fishing in Australia: 1992 (estimated)*<sup>103</sup>

Retailers of Fishing Tackle	2,220
Manufacturers of Fishing Tackle	249
Employment Associated with Recreational Fishing	60,000 - 80,000 people
Estimated Value of All Associated Economic Activity	\$2 billion

At the same time that share management was being introduced into NSW fisheries, the NSW government began to elevate the status of recreational fishing within government policy. In January 2000 the then minister for fisheries (Eddie Obeid) released a discussion paper entitled *Sustaining Our Fisheries*. The minister particularly highlighted the department's view of the importance of recreational fishing:

The government's role in fisheries is to . . .develop and share our fisheries resources. . .Consistent with those objects. . .The value and importance of recreational fishing is recognised. . .Recreational fishing creates a flow of wealth from towns and cities to country areas. . .The best estimates are that 2.5 million

<sup>101</sup> Ibid., p.17.

<sup>102</sup> Stephen Dovers, "Recreational Fishing in Australia: Review and Policy Issues" in *Australian Geographical Studies*, vol.32, no.2, October 1994, p.106.

<sup>103</sup> Ibid., p.103. In 1992 the biggest manufacturer of fishing gear in Australia, Jarvis Walker, was owned by the Japanese company Ryobi. Between 1992 and 1992, Jarvis Walker became a joint American-Australian company but still manufactured Ryobi equipment under licence. According to Alan Stokes, writing in *The Australian*, Daiwa-Seiko, the world's largest manufacturer of fishing tackle, sold \$620 million worth of equipment in Australia between 1998 and 1999. See Alan Stokes, "Nation of Fish-Eaters Tackles Hobby on a Bigger Scale" in *The Australian*, 30 April 1999, p.25.

people fish at least once a year in New South Wales. . .It is now time to . . .[enhance] saltwater recreational fishing. The stimulus to regional economies flowing from promoting better recreational fishing. . .is expected to encourage local businesses and tourism.<sup>104</sup>

Two months after the release of *Sustaining Our Fisheries*, the Carr government initiated a state-wide survey of recreational fishing. In an outline of the purpose of the survey, provided in parliament the year before, Eddie Obeid described the components of it as follows:

A state-wide telephone survey of many thousands of people will obtain basic information on the level of participation in recreational fishing. . .Subsequently households will be asked to complete a fishing diary. . .to gather data on fish catch. . .Clearly it will deliver a large volume of information on recreational fishing which will ultimately provide a range of benefits for anglers.<sup>105</sup>

Between 2000 and 2001, NSW Fisheries interviewed 3,700 recreational fishers. From the survey, NSW Fisheries deduced the following levels of expenditure by the state's anglers:

***Expenditure by NSW Anglers (Freshwater and Seawater): 2000-2001 (estimated)***<sup>106</sup>

Boats and Trailers	\$276 million
Vehicle and other Related Travel Costs	\$118 million
Fishing Trip Accommodation	\$54 million
Fishing Gear	\$46 million
Bait etc.	\$12 million
TOTAL	\$506 million

**(b) Charter Boat Fishing**

As well as a large number of people (on more modest incomes) who fish recreationally, there exists a smaller number of people (on more substantial incomes) who hire charter boats for game fishing. Between 1997 and 1998, Douglas Chapman and his colleagues undertook a survey of the charter fishing industry in New South Wales. Their study produced the following basic statistics:

***Charter Boat Fishing Industry in New South Wales: 1997-1998***<sup>107</sup>

<sup>104</sup> NSW Fisheries, *Sustaining Our Fisheries* (NSW Fisheries, Sydney, 2000), pp.4,5,8.

<sup>105</sup> NSW Parliamentary Debates. Legislative Council. 24 June 1999, pp.1283-1284.

<sup>106</sup> See the Eighth Meeting of the Recreational Fishing Saltwater Trust Expenditure, Final Minutes, 13 February 2003.

<sup>107</sup> Douglas Chapman, Jeff Murphy and Aldo Steffe, *A Description of the Charter Fishing Boat*

Number of Charter Fishing Boats	249
Number of Individuals/Companies Owning Boats	211

Chapman and his colleagues also produced the following figures for the main ports, where charter fishing boats are moored, in the state:

***Main Port Centres for Charter Fishing Boat Hire in NSW: 1997-1998 (north to south)***<sup>108</sup>

<i>Port Centre</i>	<i>Number of Charter Fishing Boats</i>
Tweed Heads	15
Coffs Harbour	8
Port Macquarie	7
South West Rocks	6
Port Stephens	17
Broken Bay	19
Port Jackson	9
Botany Bay	13
Port Hacking	12
Wollongong	9
Kiama	6
Shoalhaven/Crookhaven Rivers	11
Batemans Bay	7
Bermagui	16
Merimbula	14
Narooma	9

Hire of charter boats can amount to at least \$1,000 a day, if not more. In 1997 some of the charter boats operating in New South Wales, and some of their hiring fees, were as follows:

***Instances of Charter Fishing Boat Hire Fees: 1997***<sup>109</sup>

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*Industry Operating in the Coastal and Estuarine Water of New South Wales during 1997-1998* (NSW Fisheries, Sydney, 1999), p.13.

<sup>108</sup> *ibid.*, p.14.

<sup>109</sup> David Lockwood, "A Catchy Tuna" in the *Sydney Morning Herald*, 17 May 1997, Travel Supplement, p.10T.

Name of Boat	Home Port	Capacity (People)	Day Hire Rate
<i>Yakatoon</i>	Sydney	8	\$1,400
<i>Fishfinder</i>	Sydney	8	\$1,200
<i>Reel Easy</i>	Sydney	6	\$1,100
<i>Broadbill</i>	Botany Bay	6	\$1,100
<i>Blue Horizon</i>	Port Hacking	6	\$700

Between 2000 and 2001, NSW game fishers spent an estimated \$26 million on the hire of charter boats.<sup>110</sup> Annual charter fishing boat licence fees range from between \$500 to around \$760 a year.

**(c) Introduction of Freshwater and Seawater Recreational Fishing Licences, and the Establishment of Fishing Havens**

Two years after it had introduced licence requirements for freshwater fishing (in 1998), the Carr government obtained passage of the above-mentioned *Fisheries Management and Environmental Assessment Legislation (Amendment) Act 2000*. This legislation, in addition to the provisions for commercial fishing (referred to above), removed Lake Macquarie and Botany Bay from commercial fishing (as of 1 May 2002).

In March 2001, the Carr government introduced licence requirements for seawater recreational fishing. The fees for a licence were \$25 for one year and, in the eleven months following, 429,000 fishing licences were sold in the state: bringing in around \$9 million.<sup>111</sup> In March 2002 the minister announced the establishment of 29 fishing havens for recreational fishing people: these have been established in the following rivers and lakes:

- Tweed River
- Clarence River
- Richmond River
- Bellinger River
- Hastings River
- Camden Haven River

<sup>110</sup> See the Eighth Meeting of the Recreational Fishing Saltwater Trust Expenditure Committee, 13 February 2003.

<sup>111</sup> Malcolm Brown, "Angry, and it's All to Do with the Price of Fish" in the *Sydney Morning Herald*, 29 March 2002, p.9.

- Manning River
- Lake Macquarie
- Botany Bay
- St. George's Basin
- Lake Conjola
- Burrill Lake
- Narrawallee Inlet
- Tuross Lake
- Dalmeny Lake
- Lake Tabourie
- Meroo Lake
- Lake Brunderee
- Tomago River
- Back Lake
- Bega River
- Bermagui River
- Kiah River
- Little Lake
- Nelson Lake
- Nullica River
- Pambula River
- Wonboyn River and Wonboyn Lake
- Yowaka River<sup>112</sup>

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<sup>112</sup> NSW Fisheries, *Protecting Areas From Commercial Fishing* (NSW Fisheries, Sydney, 2002).

## 5. INDUSTRY RE-ORGANISATION AND THE ARRIVAL OF SHARE MANAGEMENT

### (a) Introduction of Share Management into All Commercial Fisheries in NSW

Shortly after April 2003, following the re-election of his government, the Premier announced that Ian Macdonald would be the new minister for fisheries. In July 2003 the minister produced a vision statement for the industry in which he stated that some of the government's key objectives included

charging fairly for the costs of management. . .and. . .developing a better approach to structural adjustment. . .across the commercial fishing. . .groups.<sup>113</sup>

On 27 March 2004, under the provisions of section 42(2) of the Act, the Governor proclaimed the other fisheries of the state (aside from the already share-managed abalone and rock lobster fisheries) to be transformed from category 2 share-managed fisheries into category 1. This decision begins the finalisation of the initiatives inaugurated via the Fahey government's *Fisheries Management Act 1994*.

### (b) Implementation of Share Management

On 23 April 2004, shortly after the proclamation of the Governor, the director-general of NSW Fisheries (Steve Dunn) placed an official notice, in the government gazette, inviting commercial fishing people to apply for shares in the fisheries and explaining how the process of application would work. The notice provided the following application details for the following fisheries:

#### *Estuary General Fishery*

- Shares will be allocated on the basis of the primary region designated to a fishing business.
- A class of share will be issued for each endorsement type held in each region.
- 100 shares will be allocated for each endorsement type a fishing business is entitled to with the following exceptions
- 50 shares will be allocated for each Review Panel allocated endorsement where the associated fishing business does not satisfy the transfer criteria.

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<sup>113</sup> NSW Minister for Fisheries, *A Vision for the NSW Seafood Industry* (NSW Fisheries, Sydney, 2003).

- 50 shares will be allocated for each restricted hand gathering endorsement held in a region (except 1 share will be allocated for each restricted hand gathering endorsement that is held in a region where the associated fishing business does not contain a validated catch history).
- 1 share will be allocated for each class of endorsement a fishing business is entitled to in a region other than the primary region.

#### *Estuary Prawn Trawl Fishery*

- One class of share will be allocated for any estuary prawn trawl endorsement type held by a fishing business as follows:
- Port Jackson Prawn Trawl. 100 shares will be allocated for each Port Jackson endorsement a fishing business is entitled to.
- Hawkesbury River Prawn Trawl. 100 shares will be allocated for each Hawkesbury River endorsement a fishing business is entitled to, *and* 10 shares will be allocated for each year of operation (between 1986 and 1993) where the validated history of the fishing business contains two or more catch returns indicating estuary prawn trawl as a fishing method in the Hawkesbury River – up to a maximum of 50 shares.
- Hunter River Prawn Trawl. 100 shares will be allocated for each Hunter River endorsement a fishing business is entitled to.
- Clarence River Prawn Trawl. 100 shares will be allocated for each endorsement a fishing business is entitled to (*with the exception that* 10 shares will be allocated for each year of operation, between 1986 and 1993, where the validated catch history of the fishing business contains two or more catch returns indicating estuary prawn trawl as a method of fishing in the Clarence River – up to a maximum of 50 shares, *and* that 10 shares only will be allocated for each Lake Wooloweyah endorsement a fishing business is entitled to).

#### *Ocean Hauling Fishery*

- All shares, with the exception of purse seine shares, will be allocated on the basis of the primary fishing region designated to a fishing business.
- General and Net classes of shares will be allocated as follows:
- General Ocean Hauling Shares. 40 shares will be allocated for each Class A (skipper) endorsement a fishing business is entitled to *and* 20 additional shares will be allocated where the fishing business satisfies the transfer criteria for at least one net type. 20 shares will be allocated for each Class B endorsement a fishing business is entitled to *and* 20 additional shares will be allocated where the fishing



business satisfies the transfer criteria.

- Net Shares (General Purpose Net Shares). 10 shares will be allocated to those fishing businesses authorised to use a general purpose hauling net *and* 20 shares will be allocated where the fishing business satisfies the transfer criteria for the net, *and* 10 shares will be allocated for each 10 tonnes of combined total weight of mullet, bream, Australian salmon, luderick, dart and sand whiting taken by the ocean hauling method as indicated in the validated catch history of the fishing business.
- Garfish Net Shares. 10 shares will be allocated to those fishing businesses authorised to use a garfish bullringing or hauling net *and* 20 shares will be allocated where the associated fishing business satisfies the transfer criteria for the net *and* 10 shares will be allocated for each 1 tonne of sea garfish taken by the ocean hauling method as indicated in the validated catch history of the fishing business.
- Pilchard, Anchovy and Bait Net Shares. 10 shares will be allocated to those fishing businesses authorised to use a pilchard, anchovy and bait net *and* 20 shares will be allocated where the associated fishing business satisfies the transfer criteria for the net *and* 10 shares will be allocated for each 10 tonnes of combined weight of anchovies, yellowtail, blue mackerel, sandy sprat (whitebait) and pilchards taken by the ocean hauling method as indicated in the validated catch history of the fishing business.
- Purse Seine Net Shares. 40 shares will be allocated for each class C or D endorsement a fishing business is entitled to *and* 10 shares will be allocated for each 10 tonnes of combined weight of pilchard, anchovy, sandy sprat (whitebait), blue mackerel, jack mackerel, yellowtail, silver trevally, bonito, sweep and Australian salmon taken by the purse seine method as indicated in the validated catch history of the fishing business, up to a maximum of 500 shares (20 shares only will be allocated where a fishing business has a review panel allocated endorsement, and that fishing business does not satisfy the transfer criteria).

#### *Ocean Prawn Trawl Fishery*

- The following classes of shares will be issued:
- Inshore Prawn Trawl Shares. Inshore prawn trawl monthly catch returns are identified by the method prawn trawl undertaken in all ocean waters with indicator species including school prawns, king prawns, greasyback prawns or “prawns unspecified”.
- 5 shares will be allocated for each inshore prawn trawl endorsement a fishing business is entitled to *and* 1 share will be allocated for any inshore prawn trawl monthly catch return during the 3 best years between 1986 and 1990 *and* 1 share will be allocated for any inshore prawn trawl monthly catch return during the 2 best years between 1991 and 1993 inclusive.

- An overall exception to the above arrangements is that, in the case of situations where a fishing business has a Review Panel allocated endorsement and does not satisfy the transfer criteria for the endorsement, or has an endorsement subject to a condition rendering the endorsement “non transferable, in these situations 1 share only will be allocated.
- Offshore Prawn Trawl Shares. Offshore prawn trawl monthly catch returns are identified by the method prawn trawl undertaken in all ocean waters *excluding* those catches from ocean zones 7,8,9 and 10 after January 1992 inclusive. Indicator species include king prawns or “prawns unspecified” .<sup>114</sup>
- 5 shares will be allocated with respect to any P1, P2 or P4 endorsement a fishing business is entitled to *and* 1 share will be allocated for any offshore prawn trawl monthly catch return during the 3 best years between 1986 and 1990 *and* 1 share will be allocated for any offshore prawn trawl monthly catch return during the 2 best years between 1991 and 1993. Where a fishing business has a P3 endorsement, 1 share only will be allocated.
- Deepwater Prawn Trawl Shares. Deepwater prawn trawl monthly catch returns are identified by the method prawn trawl undertaken in the ocean zones 1,2,3,4,5 and 6 where the following indicator species are recorded: royal red, scarlet and “prawn unspecified”. If a fishing business holds an inshore or offshore endorsement, catch returns that only indicate “prawn unspecified” are excluded.
- 5 shares will be allocated for each deepwater prawn trawl endorsement a fishing business is entitled to *and* 1 share will be allocated for any deepwater prawn trawl monthly catch return during the 3 best years between 1986 and 1990 *and* 1 share will be allocated for any deepwater prawn trawl monthly catch return during the 2 best years between 1991 and 1993 inclusive.
- 1 share only will be allocated for each Review Panel allocated endorsement where the associated fishing business does not satisfy the transfer criteria.
- Northern Fish Trawl Shares. Northern fish trawl monthly catch returns are identified by the method fish trawl undertaken in ocean zones 4,5 and 6. Indicator species include redfish, ling, mirror dory, john dory, ocean perch, tiger flathead, gemfish, ribbon fish, silver trevally, sand flathead, leatherjacket, smaller tarwhine, yellowfin bream, mulloway, morwong, boarfish, moonfish, angel shark, gummy shark, school shark, hammerhead shark, endeavour dogfish, roughskin shark and saw shark.
- 5 shares will be allocated for each northern fish trawl endorsement a fishing business is entitled to *and* 1 share will be allocated for each northern fish trawl

<sup>114</sup> Waters off the NSW, for commercial fishing purposes, are divided (north to south) into 10 zones. Zones 1 to 6 cover the area from Tweed Heads to Sydney.

monthly catch return during the 3 best years between 1986 and 1990 *and* 1 share will be allocated for each northern fish trawl monthly catch return during the 2 best years between 1991 and 1993 inclusive.

- 1 share only will be allocated for each Review Panel allocated endorsement where the fishing business does not satisfy the transfer criteria.
- Fishery Trawl Shares. 5 fishery trawl shares will be allocated to each fishing business endorsed in the fishery (*except* 1 share will be allocated where the fishing business only has a Review Panel allocated endorsement and where the fishing business does not satisfy the transfer criteria).
- 1 fishery trawl share will be allocated to each fishing business endorsed in the fishery for any month where any ocean trawling (as defined above) is recorded as an activity on the monthly catch return in the 3 best years between 1986 and 1990 and the 2 best years between 1991 and 1993 inclusive.

#### *Ocean Trap and Line Fishery*

- A class of shares will be issued for each endorsement held.
- Ocean Trap and Line Shares (excluding spanner crab – northern zone). 25 shares will be allocated for each endorsement type a fishing business is entitled to.
- 15 shares will be allocated for each endorsement type a fishing business is entitled to where the fishing business satisfies the following criterion: possession of not less than \$20,000 value of catch history for the fishing business (*excluding* spanner crab catches, if the fishing business does not hold a spanner crab southern or northern endorsement, *and excluding* prawn catches) during the 2 best years between 1986 to 1990 *and* in the best 1 year between 1991 to 1993.
- 20 shares only will be allocated for each Review Panel allocated endorsement - where the fishing business does not satisfy the transfer criteria.
- Spanner Crab (Northern Zone) Shares. 5 shares will be allocated for each 1,200 kilogram range of spanner crab weight as indicated in the validated catch history of the fishing business during the 3 best years between 1986 and 1990.<sup>115</sup>

In late May 2004, NSW Fisheries issued a press release stating the following:

More than 1,300 NSW commercial fishers have been formally invited to apply for shares under the government's new share management fishery scheme. . . NSW Fisheries recently held information sessions for commercial fishers in nine major ports to discuss the proposed share criteria and how the scheme will work. . . Commercial fishers in the estuary general, estuary prawn trawl, ocean hauling,

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<sup>115</sup> See the *NSW Government Gazette*, 23 April 2004, pp.2155-2162.

ocean trawl, and ocean trap and line fisheries have now been sent application forms, which include details of the type and number of shares for which they are eligible. . .Shares will be allocated provisionally in the first instance. Fishers will then have a further option of having decisions on their share allocations independently reviewed. . .Final shares will be allocated once share management plans for each fishery are completed. . .<sup>116</sup>

### (c) Outcomes of Share Management

Given that higher charges appear destined to become a feature of fisheries management, and given IPART's estimation that only 30% of NSW commercial fishing people are in a position to pay such imposts, it seems inevitable that a number of fishers will leave the industry when those charges are implemented. The introduction of share management appears, in many ways, a means of achieving this. In the above-mentioned discussion paper, *Sustaining Our Fisheries* (released by the then minister for fisheries, Eddie Obeid in January 2000) section three, dealing with commercial fishing, observes that,

The Australian economy has been passing through a period of major adjustment. . . The New South Wales fishing industry still contains many small-scale enterprises. . .[which supply] the crucial component of the seafood dining business of which the state is justly proud. . .Nevertheless, both the community and the commercial fishing industry will benefit from some industry restructuring. . .<sup>117</sup>

Two years later, Dominion Consulting (consultants to NSW Fisheries) produced a report on the Ocean Hauling (OH) sector of the industry. As far as the minister's efforts to restructure the industry – and the introduction of share management – were concerned, Dominion Consulting made the following observation:

The move to shareholdings will enable fishers to exit the industry with a payment. . .Estimates of adjustment in the OH fishery. . .indicate that 55 businesses may be removed by share trading in the 2001-2006 period.<sup>118</sup>

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<sup>116</sup> Media Release. NSW Fisheries. *Commercial Fishers Invited To Apply For Shares Under New Share Management Fishery Scheme*. 20 May 2004.

<sup>117</sup> *Sustaining Our Fisheries*, p.13.

<sup>118</sup> NSW Fisheries, *Ocean Hauling Fishery: Environmental Impact Statement*, vol.IV, *Consultants Reports*, pp.H25-H26.

## 6. OYSTER PRODUCTION

### (a) Origins of Oyster Farming

Indigenous Australians harvested oysters, from naturally occurring oyster beds, for thousands of years prior to the arrival of people from Britain. British arrivals, in Australia, likewise turned to the natural oyster beds to catch the shellfish. The predominant variety of oyster, in New South Wales, was the rock oyster. By the 1870s, however, the newcomers had exhausted the stocks of oysters in the naturally occurring beds and they were forced to turn to farming methods. At first British fishermen, according to John Nell, “began. . .by dredging. . .oyster beds. . .and harvesting. . .oysters by hand from intertidal beds”. However, as Nell, points out, “As dredge beds. . .[became] depleted, problems with silt accumulation attracting the invasive mudworm. . .which kills oysters, increased.” Consequently, according to Nell, “the industry progressively adopted stick and tray culture on intertidal racks in the early 1900s. To a large extent, this farming system protects oysters from the mudworm.”<sup>119</sup>

### (b) Growth of the Industry in the Twentieth Century

Production of oysters expanded rapidly in the twentieth century: until the 1970s. By that stage there were around 1,900 oyster farmers in the state and, because of the favourable geographical and climatic conditions in New South Wales, the state was producing almost the entire Australian crop.<sup>120</sup> Currently there are 3,200 aquaculture leases in New South Wales (covering a total of 4,300 hectares). Commercial production is conducted in 41 estuaries: between the Tweed River and Eden.<sup>121</sup> In recent years, the estuaries and lakes that have come to contribute most, to the state’s oyster production, are as follows:

#### *Ranking of Estuaries and Lakes by Contribution to NSW Oyster Production: 1995-2000*<sup>122</sup>

<i>Estuary or Lake</i>	<i>Percentage Contribution to Oyster Production</i>
Wallis Lake	30.3%
Hawkesbury River	12.7%
Brisbane Water	11.1%
Port Stephens	8.5%

<sup>119</sup> John Nell, “The History of Oyster Farming in Australia” in the *Marine Fisheries Review*, vol.63, no.3, 2001.

<sup>120</sup> NSW Parliament, *Parliamentary Committee on the Fishing Industry 1975-1976* (NSW Parliament, Sydney, 1976), p.26.

<sup>121</sup> See NSW Fisheries, *The Oyster Industry of New South Wales* (NSW Fisheries, Sydney, 2004).

<sup>122</sup> Ian White and Jack Beale, *Safeguarding Environmental Conditions for Oyster Cultivation in New South Wales* (Centre for Resource and Environmental Studies, Australian National University, Canberra, 2001), p.46.

Clyde River	7.7%
Wagonga River	3.5%
Hastings River	3.3%
Manning River	3.2%
Merimbula Lake	2.8%
Crookhaven River	2.4%
Nambucca River	2.1%
Camden Haven	1.9%
Tuross Lake	1.7%
Pambula River	1.3%
Wonboyn Lake and Nullica River	1.2%

Following the peak of production in the 1970s, the oyster catch has declined, as the accompanying table illustrates:

***NSW Rock Oyster Production: mid-1970s to late 1990s***<sup>123</sup>

	<i>Dozens of Oysters Produced</i>	<i>Equivalent Weight</i>	<i>Dollar Value</i>
mid-1970s	13 million	7,800 tonnes	\$34 million
1999-2000	7.9 million	4.2 tonnes	\$28 million

A crisis, in oyster production, occurred in early 1997 when 405 people contracted Hepatitis A as a result of eating contaminated oysters from Wallis Lake. In March 1997 the state government activated the NSW Shellfish Quality Assurance Program. The program is designed to protect the health of shellfood consumers and has the following aims:

- (1) ensure that shellfish are taken from estuaries, to be sold, only if either (a) the shellfish meet the standard specified and (b) the waters, in which they are farmed, meet specified environmental standards
- (2) arrange the development of local programs on each estuary
- (3) ensure that the local programs meet the objectives specified in (1)<sup>124</sup>

In December 2001 the NSW Shellfish Quality Assurance Program was taken over by SafeFood NSW and expanded under a new title: the NSW Shellfish Program. According to the NSW Healthy Rivers Commission, the program's more extensive aims are as follows:

- assessment of the risk of shellfish contamination by bacteria, viruses, biotoxins or

<sup>123</sup> *ibid.* See also Nell, *op.cit.*, p.23. The mid-1970s original value of \$8 million has been converted to the 1999 value of \$34 million.

<sup>124</sup> White and Beale, *op.cit.*, pp.22-23.

chemicals derived from the growing area

- control of the harvest of shellfish in accordance with the assessed risk
- protection of shellfish from contamination after harvesting<sup>125</sup>

## 7. INDIGENOUS FISHING

### (a) Indigenous Fishing in the Past and in Recent Times

Just as referred to in section 3(b) above, indigenous inhabitants of Australia have, for generations, assumed an uninhibited right “to gather” fish. NSW Fisheries, in a draft indigenous fisheries strategy, has acknowledged that “Fishing has been an integral part of the cultural and economic life of coastal and inland Aboriginal communities since they have been in this land.”<sup>126</sup> Many years after Britain’s occupation of Australia, large numbers of the indigenous fishing people in NSW moved into beach hauling. A NSW Aboriginal fisherman recently described (to a state parliamentary committee) the transition in indigenous fishing, during the nineteenth and twentieth centuries:

Several generations back the Aboriginal people were forced by the government of the day into the beach haul fishery. . . At that time the reservations or missions were set up along the coast, and there were boats and nets provided to the Aboriginal people in these settlements to work in the beach haul fishery. From that time the business has been handed down from father to son.<sup>127</sup>

A typical example of indigenous fishing, in the first half of the twentieth century, is provided by the activities of the Aboriginal community at Wreck Bay. Umwelt (Australia), in a paper prepared for NSW Fisheries, have described the community’s fishing operations as follows:

When the Commonwealth took over administration of Jervis Bay, in 1922, there were 25 Aboriginal people living in a fishing village at Wreck Bay. . . [the community conducted] Net fishing from small boats for mullet, blackfish, jewfish, kingfish, whiting and bream. 200 to 300 cases of fish could be caught at a single shot [of the net]. . . Fish were carted to the railway at Bomaderry for transport to markets. . . In the 1940s and 1950s there were seven to eight crews of Aboriginal

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<sup>125</sup> NSW Healthy Rivers Commission, *Independent Review of the Relationship between Healthy Oysters and Healthy Rivers* (NSW Healthy Rivers Commission, Sydney, 2003), p.9.

<sup>126</sup> NSW Fisheries, *Indigenous Fisheries Strategy and Implementation Plan* (NSW Fisheries, Sydney, 2002).

<sup>127</sup> Standing Committee on State Development (NSW Parliament), *Fisheries Management and Resource Allocation in New South Wales* (Parliament of New South Wales, Sydney, 1997), p.322.

fishermen operating at Wreck Bay.<sup>128</sup>

Between the 1960s and the 1990s, however, many indigenous fishing people consider that they have been pressured to vacate areas of fishing that they have previously viewed as their own. Daniel Chapman, an advocate for NSW indigenous fishing people, made the following observation on the effects, on Aboriginal fishers, of share management in the abalone fishery:

In the space of approximately 15 years, Aboriginal abalone divers went from a situation where we were the only people fishing for abalone, to having our traditional practices outlawed. Our current status, under the current regulatory scheme, is the same as any other recreational diver. We are limited to 10 abalone per day, while the average licence holder is entitled to 9. . . [tonnes] per diver per year.<sup>129</sup>

### (b) Indigenous Concerns regarding Share Management

In 1983 the Wran government attempted to affirm indigenous fishing rights, in a legislative manner, by obtaining passage of the *Aboriginal Land Rights Act 1983*. In his introduction to the legislation, the minister responsible (Frank Walker) declared that,

the government. . . believes the essential task is to ensure an equitable and viable amount of land is returned to Aborigines. . . Land rights also involves. . . fishing rights. . . [these] are to be implemented through. . . agreements between the parties for access rights, court settlements of disputes and a watchdog role for the National Parks and Wildlife Service.<sup>130</sup>

In practice, however, the actual provisions of the *Aboriginal Land Rights Act 1983*, at least in relation to fishing, were relatively restrictive. The relevant sections of the Act were as follows:

47. Subject to the provisions of any other Act and any rule, by-law, regulation, ordinance or like instrument, a Local Aboriginal Land Council may negotiate agreements with the owner, occupier or person in control of any land to permit any specified Aborigines or group of Aborigines to have access to the land for the purpose of. . . fishing. . . 48. (1) Where a Local Aboriginal Land Council – (a) desires to obtain rights of access for any specified Aborigines or groups of Aborigines for the purpose of. . . fishing. . . and (b) has been unable to negotiate an agreement to obtain those rights, the Council may apply to the [Land and

<sup>128</sup> Umwelt (Australia), *NSW Ocean Hauling Fishery Management Strategy: Assessment of Impacts on Heritage and Indigenous Issues* (NSW Fisheries, Sydney, 2002), p.25.

<sup>129</sup> *ibid.*, p.325.

<sup>130</sup> NSW Parliamentary Debates. Legislative Assembly. 24 March 1983, pp.5089-5090.



Environment] Court for a permit conferring those rights.<sup>131</sup>

As Professor Martin Tsamenyi has observed, “There is no recognition for indigenous people, in legislation or in court decisions, of a legal right to participate as distinctive commercial actors in Australia’s commercial fisheries.”<sup>132</sup> This was certainly the position taken in the licensing provisions of the Fahey government’s *Fisheries Management Act 1994* in relation to taking fish in commercial fisheries (although amendments to the Act did make exemptions for indigenous Australians in the realm of recreational fishing):

**34C.** . . (1) A fishing fee is payable by all recreational fishers, unless. . . (2). . . the fisher is an Aboriginal person. . . **102.** . . (1) A person must not take fish for sale, from waters to which this Act applies, unless the person is authorised to do by a commercial fishing licence.<sup>133</sup>

As share management loomed as an inevitability, indigenous fishing people (particularly those involved in the ocean/beach hauling sector of the industry) began to voice their concerns to representatives of the state parliament. During the debate on the *Fisheries Management and Environmental Assessment Legislation (Amendment) Bill 2000*, in November of that year, MLCs presented the opinions of at least two prominent indigenous leaders, as follows:

- Rod Towney (chair of the NSW Aboriginal Land Council): “we remain outsiders to the process. We are often treated with hostility by NSW Fisheries staff and have all but been eradicated from the commercial sector.”
- Ron Snape (indigenous fisher from the south coast): “Under the present Fisheries Act. . . Indigenous Australians are brought before court almost on a weekly basis. . . [on] 13 of November 2000 a koorie lad is up for sentencing on a fisheries offence at Batemans Bay court. On Friday last another was before Milton Court.”<sup>134</sup>

### (c) The Indigenous Fishing Strategy

NSW Fisheries had already established an indigenous policy unit in the mid-1990s.<sup>135</sup> Responding to the kind of criticisms by indigenous identities, mentioned above, during the debate over (what became) the *Fisheries Management and Environmental Assessment*

<sup>131</sup> *Aboriginal Land Rights Act 1983*, sections 47 and 48.

<sup>132</sup> Martin Tsamenyi and Kwame Mfodwo, *Towards Greater Indigenous Participation in Australian Commercial Fisheries: Some Policy Issues* (Aboriginal and Torres Strait Islander Commission, Canberra, 2000), p.6.

<sup>133</sup> *Fisheries Management Act 1994*, sections 34 and 102.

<sup>134</sup> NSW Parliamentary Debates. Legislative Council. 21 November 2000, pp.10369-10379,10387.

<sup>135</sup> Standing Committee on State Development, op.cit., p.328.

*Legislation (Amendment) Act*, in late 2000 NSW Fisheries released an indigenous fisheries strategy working paper. The then minister for fisheries (Eddie Obeid) described the process, leading up to the issuing of the paper, in a speech in parliament:

The government is currently developing an indigenous fisheries strategy to address the specific fishing needs of Aboriginal people in New South Wales. . . The development of this strategy includes conducting workshops. . . The first round of workshops provided two days in. . . [varying] location[s] for Aboriginal people to inform the New South Wales government of fisheries issues that may effect them. . . My department will be distributing a working document to indigenous representatives. . .<sup>136</sup>

In June 2001 the NSW Aboriginal Land Council published a position paper on the indigenous fisheries strategy. The NSW ALC suggested, on an general level, that a new sub-section be inserted in section 3 of the *Fisheries Management Act 1994* (“Objects of the Act”). The council suggested that the new subsection should read “to promote and protect indigenous fishing practices, technologies and knowledge”.<sup>137</sup> In July 2002 NSW Fisheries approached the NSW Aboriginal Land Council to invite the latter to liaise with it on the indigenous fisheries strategy. As Bill Jonas pointed out, this contact

did not involve, advice, negotiation, or direct input into the future direction of the [indigenous fisheries strategy]. . . [it] involved the NSW ALC organising and administering, by way of \$20,000 worth of funds provided by NSW Fisheries, venue hire, catering and travel assistance. . . for attendees to the meetings.<sup>138</sup>

At present the thrust of NSW Fisheries’ own input, into the indigenous fishing strategy, is to argue that indigenous fishing people ought to be encouraged from coastal fishing into aquaculture. In December 2002 NSW Fisheries released an *Indigenous Fisheries Strategy and Implementation Plan*. The section “Key Strategies” states that,

In implementing the strategy 2002-2004 NSW Fisheries will. . . Actively promote indigenous involvement in aquaculture. . .<sup>139</sup>

While NSW Fisheries appears to intend that indigenous fishers should move into aquaculture, Aboriginal people themselves perceive this as taking them further away from their own culture. In a paper on indigenous fishing, produced for the Aboriginal Justice Advisory Council, the author (Scott Hawkins) interviewed a number of indigenous fishing people living on the south coast of NSW. One remarked that,

<sup>136</sup> NSW Parliamentary Debates. Legislative Council. 12 October 2000, pp.9181-9182.

<sup>137</sup> New South Wales Aboriginal Land Council, *Position Paper: NSW Indigenous Fisheries Strategy* (NSW Aboriginal Land Council, Sydney, 2001).

<sup>138</sup> Bill Jonas, *Partnership Agreement Report* (NSW Aboriginal Land Council, Sydney, 2002).

<sup>139</sup> NSW Fisheries, *Indigenous Fisheries Strategy and Implementation Plan* (NSW Fisheries, Sydney, 2002), p.2.

they were always being asked to show children – both Aboriginal and non-Aboriginal – the culture and practices around traditional fishing, but they were unable to.<sup>140</sup>

Even as the indigenous fisheries strategy is in the process of being worked out, however, some indigenous fishers have decided to unilaterally test their position under the law. This year, as reported by the ABC TV program *Landline*, members of an Aboriginal family decided to fish abalone without a licence. According to a transcript of the item,

The Narooma Magistrate's Court has been told the [11] men exceeded the daily abalone bag limit of 10 per person by hundreds, in some cases, took many under the legal size limit and cleaned them at the water's edge against regulations. . . The 11 accused have admitted the allegations against them, but argue they were exercising their religious rights.<sup>141</sup>

The 11 indigenous fishers have retained a barrister specialising in constitutional rights and human rights law. According to *Landline*, the barrister concerned believes that there may be avenues for appeal under section 115 of the constitution (which may afford the men the right to fish as part of their traditional beliefs).<sup>142</sup>

## 8. CONCLUSION

Up until the 1980s, successive governments in New South Wales appear to have accepted a welfare role in the administration of fisheries in the state. Because many of the state's fishing people could only earn a modest income, government policy appears to have been one of facilitating their staying in employment by keeping licence fees relatively low and making up the (administrative) difference from public funds.

From the 1980s onwards, policy has changed and the governmental aim is now one of making fishers pay the entire cost of their administration. With only a relatively small number of fishing people in a position to do this, government has had to find a means whereby those unable to cope with increased levies could leave the industry with some form of recompense. Share management appears to be one way in which - having obtained shares at the introduction of the scheme - those unable to meet subsequent increases in government charges could sell their shares, and depart the industry with some reward.

Meanwhile, however, there has also been a shift in government policy as regards the fishing industry overall. Recreational fishing has been elevated in policy, because of its perceived

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<sup>140</sup> Scott Hawkins, *Caught, Hook Line and Sinker: Incorporating Aboriginal Fishing Rights into the Fisheries Management Act* (Aboriginal Justice Advisory Committee, Sydney, 2003), p.19.

<sup>141</sup> *Landline*. ABC TV. 11 July 2004.

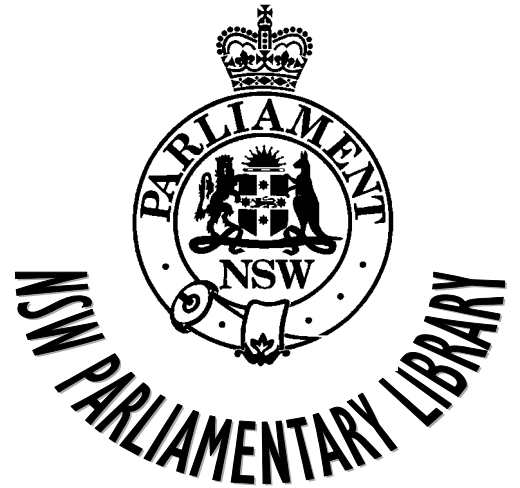
<sup>142</sup> *Ibid*.

capacity to stimulate other sectors of production: particularly the tourism and retailing sectors.

Not all fishers, however, consider themselves to be beneficiaries of the share management scheme. Indigenous fishers in particular (many long involved in the beach haul sector) believe that they are being driven out of coastal fishing. While NSW Fisheries has indicated aquaculture as an alternative, a number of indigenous fishers consider that this will only take them further away from their heritage and culture.

Invitations to purchase shares, in the remaining majority of the state's fisheries, have only recently been issued and the outcome of the process remains to be seen. However, if subsequent developments in the abalone fishery are an indication (after its re-organisation on a share-managed basis), there will undoubtedly be a degree of adjustment in the industry as a whole in the years to come.

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