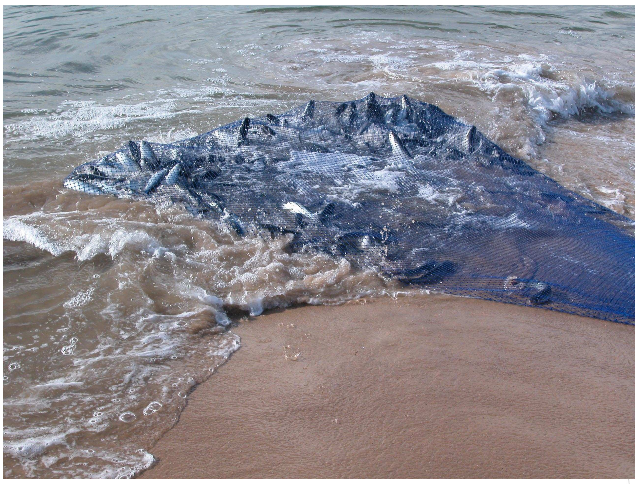
PUBLIC CONSULATION PAPER:

General information relating to the reform program and reform options for NSW commercial fisheries



Published by the NSW Department of Primary Industries

Public Consultation Paper:
General information relating to the reform program and reform options for NSW commercial fisheries

First published April 2014

More information

www.dpi.nsw.gov.au/fisheries/commercial/reform

OUT14/10076

Contents

Acronyms

Act	Fisheries Management Act 1994
DPI	NSW Department of Primary Industries
EGF	Estuary General Share Management Fishery
EPTF	Estuary Prawn Trawl Share Management Fishery
FMS	Fisheries Management Strategy
IT	Information Technology
ITQ	Individually Transferable Quota
IVR	Integrated Voice Response system
GVP	Gross value of production[1]
MFAC	Ministerial Fisheries Advisory Council
OHF	Ocean Hauling Share Management Fishery
OTF	Ocean Trawl Share Management Fishery
OTLF	Ocean Trap and Line Share Management Fishery
PFA	Professional Fishermen's Association
RAF	Resource Assessment Framework
SARC	Structural Adjustment Review Committee
SFT	Southern Fish Trawl Restricted Fishery
SLWG	Share Linkage Working Group
TAC	Total Allowable Catch
TACC	Total Allowable Commercial Catch
TACE	Total Allowable Commercial Effort
VMS	Vessel Monitoring System

[1] Calculated at first point of sale only and using Sydney Fish Market average prices.

Introduction

The fishing industry and need for reform

The seafood industry, which includes aquaculture (e.g. oyster farming), is an important part of our primary industries, generating over half a billion dollars of economic activity each year and employing more than 4,000 people. Of this, the NSW wild harvest commercial fishing industry is worth around $80-90 million dollars at the first point of sale.

The NSW wild harvest fishing industry is part of a dynamic network of commercial fishers, wholesalers, processors and retailers. These sectors work together with the restaurant and catering industry to deliver fresh local seafood to communities across the State, as well as to interstate and overseas markets.

The industry is made up of a mix of small family businesses and larger scale operations, many of whom have been in operation for generations. Fishers rely on considerable skills and knowledge accumulated over time and regularly adapt to the many changes in fish abundance, markets and other challenging conditions. Fishing underpins the economy of many coastal towns providing wealth and employment.

Current fishery management arrangements have been designed to ensure that NSW's fish stocks are sustainably harvested. Apart from a small number of species that are classified as overfished and subject to recovery action, fish stocks that have been subject to commercial (and other sector) harvesting for 50+ years are generally in good shape. The economic viability of the commercial fishing industry however, is not in the same condition. While some fishers individually are profitable, the overall viability of the industry has been squeezed by many factors, including:

- loss of some significant fishing grounds through the introduction of recreational fishing havens and marine parks (in the early-mid 2000s);
- an increased range and volume of cheap seafood imports (85% of seafood sold in NSW is imported);
- increasing operating costs, especially fuel prices which have increased substantially compared with pre-2000 levels;
- excess fishing capacity which has been present in both active and inactive forms. The inactive or "latent" effort is mainly a problem when fish prices or stock abundance rise (such that it becomes attractive to start fishing in a particular fishery). Available returns are then spread amongst many and the long-term/full time fishers miss out on the "cream of the crop" to help them through the lean times;
- a build up over many decades of regulations that restrict the way fishers operate. Many of these have been necessary because of the number of commercial fishing entitlements available and because total catch and fishing effort levels have been uncapped; and
- many of the fishing rights (shares) that were issued to fishers in 2007 were not linked to any meaningful form of resource access.

An *Independent Review of NSW Commercial Fisheries Policy, Management and Administration* carried out in 2011/12 confirmed the above issues, identified others and considered a range of options for rebuilding viability within the commercial fishing sector and creating a stronger future for the industry[2]. This paper does not repeat the issues and findings, and anyone who has not read the report of the Review should do so before reading this paper.

[2] A full copy of the independent review, the Government's response to the review and a range of documents prepared as the reform program rolls out can be viewed at www.dpi.nsw.gov.au/fisheries/commercial/reform

Commercial Fisheries Reform Program

Having considered the Independent Review report the NSW Government approved the current Commercial Fisheries Reform Program, which involves a structural adjustment component as well as changes to the consultation and governance arrangements. The key objectives of the reform are to:

- improve the long-term viability of the NSW commercial fishing industry;
- improve the strength and value of shareholders' access rights (i.e. shares); and
- provide shareholders with improved opportunities and flexibility to tailor their access.

The structural adjustment part of the reforms includes:

- linking shares in each fishery to either catch or fishing effort, meeting the original intention of share management when the *Fisheries Management Act 1994* first commenced;
- providing a way for some fishers to exit the industry and others to help set up their businesses for the future through the allocation of a $16 million structural adjustment package; and
- removing unnecessary fishing controls which have hindered fishing efficiency[3].

What is meant by viability?

Viability refers to the economic viability of the entire commercial wild harvest sector, <u>not</u> the viability of an individual. There are many economic and other factors that influence whether an individual business is viable or profitable and it is not possible for government to ensure that this is the outcome for each fisher. The role of the government is to develop the broad management framework within which the fishing industry can sustainably operate and prosper.

Scope of the reform program

The commercial fisheries subject to the reform program <u>include</u>:

Ocean Trap and Line (OTLF)	Estuary General (EGF)
Ocean Trawl (OTF)[4]	Estuary Prawn Trawl (EPTF)
Ocean Hauling (OHF)	

In terms of capacity to streamline existing restrictions and controls, the closures to commercial fishing that were implemented through marine park zoning plans and the previous recreational fishing haven process fall <u>outside</u> of the scope of this reform program[5].

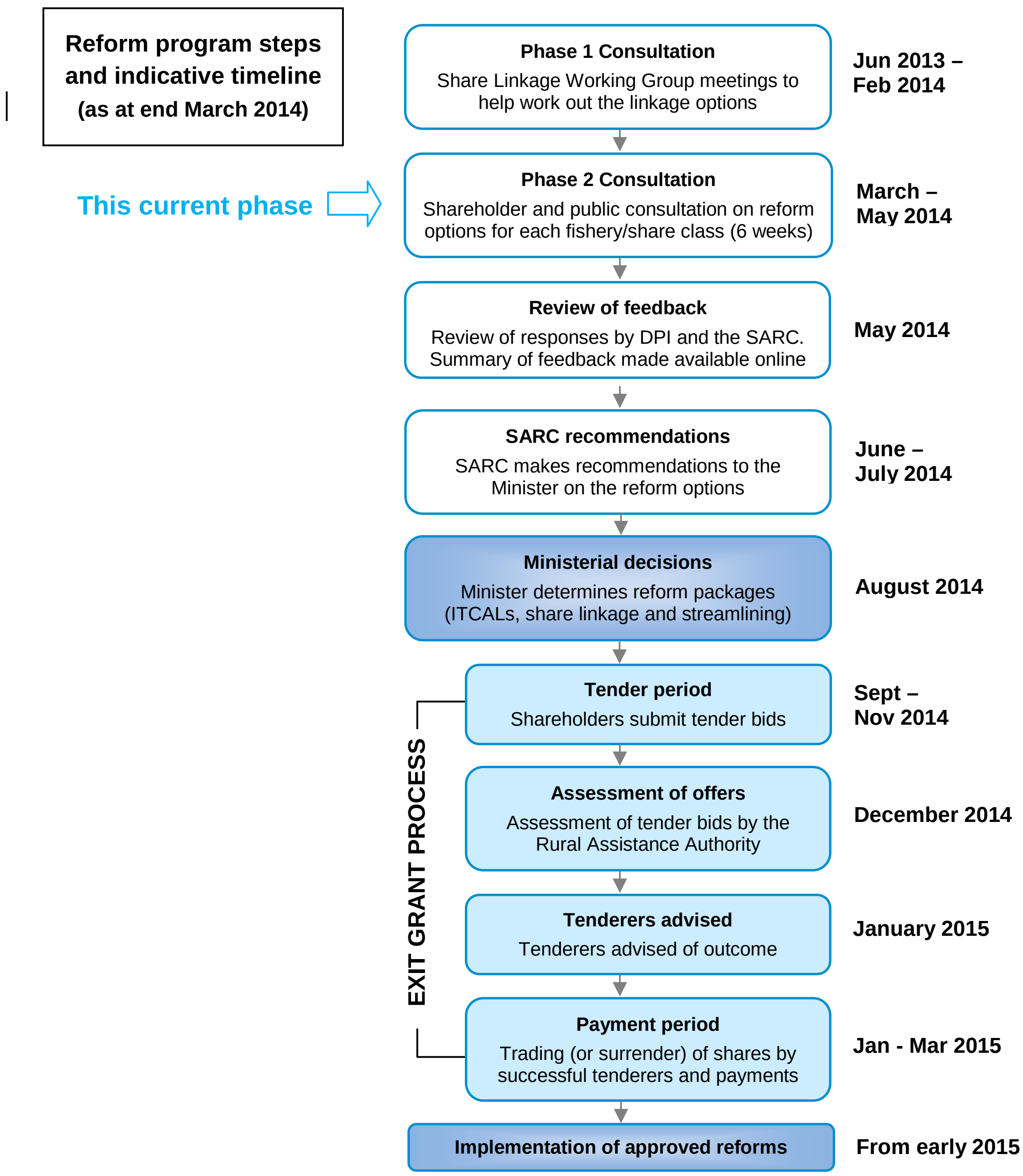
Reform steps and timeline

The indicative timeline for the remainder of the reform program is outlined in the flow chart on the next page. Lots of additional information on the work done to this point, such as the working group process and the advice provided by the Structural Adjustment Review Committee can be found on the reform program webpage: www.dpi.nsw.gov.au/fisheries/commercial/reform

[3] Extracted from the Minister for Primary Industries media release announcing the reform program on 14 November 2012.

[4] Some reform proposals for the OTF also extend to the Southern Fish Trawl (SFT) – when this is the case it is so specified.

[5] For further information on the Marine Estate (marine park) initiatives, see www.marine.nsw.gov.au



Input into the process and options

The Structural Adjustment Review Committee (SARC)

The SARC is an independent committee formed to oversee the structural adjustment component of the reform program being implemented by DPI and provides advice and recommendations to the government. Its members are Mr Ian Cartwright (Chair), Ms Mary Lack (fisheries management) and Ms Sevaly Sen (fisheries economist). No members are employees of the NSW Government, nor do they have any pecuniary interests in the NSW fishing industry.

The SARC provides advice to the Department and industry throughout the reform process, will consider all submissions received during the consultation process and will make final recommendations to the Minister for Primary Industries.

The agendas and outcomes from the SARC meetings can be viewed at: www.dpi.nsw.gov.au/fisheries/commercial/reform/sarc

Commercial fisher involvement

All commercial fishers have had earlier opportunities to submit ideas for linkage options and changes to the current management arrangements. As a result:

- many regulation streamlining proposals from the earlier 'Pyrmont Pact'[6] process have been rolled over into the current options papers;
- some written suggestions were received in response to a March 2013 invitation sent to all commercial fishers; and
- ideas have been forthcoming through the SLWGs and in day-to-day discussions between fishers and fisheries managers.

Share Linkage Working Groups

Following an industry-wide call for expressions of interest in 2013, DPI established nine specific working groups. For smaller share classes, such as school and gummy shark and purse seine, shareholders were engaged directly.

DPI has worked with the Share Linkage Working Groups (SLWGs) and the SARC to help identify a shortlist of linkage options and related issues for each share class, including the advantages and disadvantages of each.

It is important to note that the role of SLWGs has not been and will not be to provide final recommendations to the Department, the SARC or the Minister. Individual working group members are not responsible for the final recommendations made.

Public consultation phase

All stakeholder groups including recreational fishers and other fisheries stakeholders, seafood consumers, other government agencies and anyone else with an interest in the management of NSW fisheries resources can have constructive input into the reform process through the current public comment phase.

What papers are out for comment?

It is important that everyone who holds shares in the above fisheries understands and, where possible, provides feedback on the options presented. To make it easier to digest, the information has been broken down into a number of separate papers:

General information paper This paper you are reading	Provides general information about the reform program and issues applicable to all reform fisheries. **A 'must read' for everyone to understand the background.**
Fisheries options papers	These contain information about the options that have been shortlisted for specific fisheries or share classes. They include possible linkages, total catch/effort levels and potential changes to existing restrictions, along with the advantages and disadvantages of each option. **A 'must read' if you hold shares in, or have an interest in, these fisheries.**
Technical paper	A separate paper has been prepared detailing how the proposed total catch/effort levels have been calculated. The paper is titled "*Setting the Interim Total Commercial Access Level (ITCALs)*".
Submission forms	Submission forms are available for each of the fisheries options papers. Relevant forms will be mailed to all shareholders and will also be available on the reform webpage: www.dpi.nsw.gov.au/fisheries/commercial/reform

[6] The Pyrmont Pact, developed in 2009, is a list of eight reform principles including reviewing fishing closures and streamlining regulations. Many regulation streamlining suggestions were identified by fishers at that time.

Submission forms are available for each of the fisheries options papers and can be downloaded from the reform webpage: www.dpi.nsw.gov.au/fisheries/commercial/reform. Alternatively, people can put in a submission in their own format. Details about how to lodge a submission are included in the fisheries options papers and the submission forms. Note that the closing time for submissions is 8am on Monday, 19 May 2014.

Note that submissions may suggest variations to the options presented in the fisheries options papers, provided they are within the broad scope of what the NSW Government approved and announced in November 2012[7] and are consistent with the reform program objectives described above.

Development of the fisheries options papers

There are many different views amongst the industry on what needs to be done to improve the viability of fisheries. Some advocate for no change, but that is not an option if the industry is to have a viable future. Understandably, many fishers are concerned about the impacts the reforms might have on them and their future.

DPI and the SARC are aware that different reform options will have different impacts on shareholders. Different approaches have been considered to minimise short-term financial burden on active fishers, including the following:

- staged implementation (i.e. instead of moving straight to a strong linkage, starting with a weaker form of linkage and moving to a stronger linkage at a later point);
- delayed commencement of share linkages (where practical);
- setting ITCALs at higher than average recent catch/effort levels (where there are no sustainability issues)[8]; and
- timing the steps to take full advantage of the lower share prices expected during the exit grant process.

The options in the final papers include those considered by SLWGs as appropriate for comment by the broader industry, but also some that the SLWGs were divided over or where DPI can see overall benefit despite reservations being raised by the respective SLWG. Most importantly, in preparing the options, DPI has focussed on ensuring that the options presented align with the reform program objectives.

Important reform components

Share linkages

One of the most important parts of the reform program is to link shares to resource access to give greater meaning and value to shares. In considering the options, shareholders are encouraged to have regard to the following hierarchy of linkage options recommended by the Independent Review[9] (ordered from strongest to the weakest form of linkage):

1. Where catch quota is a feasible proposition for a species, it should be pursued as the preferred option for linking shares to resource access. In multi-species share classes where species-specific catch quotas do not form the bulk of the catch taken, the alternative linkage options below may need to be pursued for non-quota species;

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[7] See www.dpi.nsw.gov.au/__data/assets/pdf_file/0005/448187/Govt-response-to-independent-comm-fisheries-review.pdf

[8] More information on ITCALs follows, but it is important to note that they are proposed to be set at levels to help the adjustment phase and they do not:

(i) purport to be biologically based limits, or

(ii) lock in those levels as the commercial fisheries share of the State's fisheries resources. The implementation of future cross-sector resource sharing arrangements will be subject to the development of a new Resource Sharing policy.

[9] Extracted from the *Independent Review of NSW Commercial Fisheries Policy, Management and Administration* report (page 71).

2. If species-specific catch quotas are not feasible, shares should be linked to fishing effort in the form of transferable time/gear based quota;
3. In the event that the two approaches above are not feasible (i.e. the financial and other costs heavily outweigh the benefits), shares should be linked to resource access at the endorsement level where eligibility for an endorsement is determined by holding a minimum number of shares.

Strength of linkage options	Catch quotas………….	
	Effort quotas…………..	
	Endorsement numbers..	

Interim Total Commercial Access Levels (ITCALs)

Understanding ITCALs is important because they are a key element of the options included in the fisheries options papers. An "ITCAL" is a *temporary* total limit on catch or effort set during the period of significant industry adjustment.

ITCALs apply to all forms of share linkage, whether it's to a species catch quota, a more refined effort quota (such as days, trap numbers, net length, etc.), or the number of endorsements in a fishery. It should be noted that controls on effort (e.g. days, trap numbers) are really just other, less direct, ways of controlling catch.

The detailed principles and methods for setting the proposed ITCALs are outlined in the separate technical paper (titled "*Setting the Interim Total Commercial Access Levels*") and the results are included within each of the fisheries options papers.

It should be noted that the ITCALs do not, by default, lock in the commercial fishing sector's share of the overall resource. A Resource Sharing Policy will be developed by the government over the coming years and future resource allocation decisions will be subject to the provisions of that policy. All key stakeholder groups will be consulted during the development of that policy.

ITCALs for catch or effort quotas

Once set, an ITCAL for a catch or effort quota operates in the same way as a Total Allowable Commercial Catch (TACC) or a Total Allowable Commercial Effort (TACE). However, it serves a different purpose and is set in a different way to a standard TACC/TACE.

Earlier in the reform process it was proposed to set the ITCALs at current catch or effort levels (as suggested in the Independent Review[10]). The first bit of modelling work done by DPI used *average* total catch/effort levels over the *three* most recent years of data, however, this proved problematic in that:

- it was likely to reduce or unnecessarily constrain production in fisheries and for species where there is no concern over the status of the stock (this is not the intention of the reform program);
- the short time frame did not account for the effect of climatic (or other) variations on fishing activity – e.g. floods on the north coast; and
- the most recent three years covered a new catch and effort reporting format for fishers. Therefore, there could be issues with data owing to different reporting approaches by fishers (NB: examples of over-reporting as well as under-reporting have arisen).

[10] *Independent Review of NSW Commercial Fisheries Policy, Management and Administration* report, page 72.

Equally, setting the ITCALs too far above recent catch and effort levels would be inappropriate because the shares would not grow in meaning and value as they should. The Queensland East Coast Trawl fishery is one example where excess effort quota units ('nights') within the fishery has contributed to limiting their market value. It also risks setting the shareholders up for a further adjustment phase down the track.

The SARC considered the issue of how ITCALs should be set and noted that:

- minimising the short-term impact of the reforms on active fishers remains central to the consideration of future options [including the setting of ITCALs][11]. Setting ITCALs too low may have social and financial implications that will be too harsh for fishers, particularly the active fishers. Setting them higher than recent levels (but not excessive) will help to reduce the short-term impact on some individuals;
- setting ITCALs higher than recent levels should not in itself stimulate more fishing effort or higher catch, noting that past total catch/effort levels weren't directly constrained; and
- it is important that the long-term aims of the process (rationalisation, increased economic efficiency and certainty, meaning and value of shares) continue to be the focus of the reforms.

The following principle was recommended by the SARC for setting ITCALs: "*Unless there are sustainability concerns or concerning trends in the data, ITCALs should be set at the maximum catch level over the last 10-15 years".* It was acknowledged that this will not be appropriate in all cases, such as for overfished species, where there are concerning trends in the data or where a fishery has changed significantly (e.g. in the EGF because the area available to that fishery declined substantially in 2002 when recreational fishing havens started).

For the following reasons and to alleviate the cost, complexity and subjective decision making associated with providing for the reimbursement of effort quota (upon application), the proposed ITCALs have been increased by 10% for ocean based activities and 5% for estuary and beach hauling activities to account for:

- steaming to and from fishing grounds;
- time spent searching for fish or conducting test shots (when no fish are found);
- setting gear such as traps for retrieval another day;
- occasions when the gear cannot be retrieved (e.g. the current is holding down trap floats);
- misadventure (e.g. boat breakdowns, gear failure or unpredicted adverse weather or sea conditions).

ITCALs under a minimum shareholding scheme

The most basic linkage option is setting a minimum shareholding required to go fishing (to control the number of endorsements). This can be used as:

1. a stand-alone option (i.e. as the main or only link for that share class); or
2. a first step toward a stronger link to catch or effort in the medium to longer term; or
3. a supporting measure alongside a stronger catch or effort link (as is the case in the existing Abalone and Lobster fisheries).

[11] Note that it is not possible to simply reallocate existing shares based on recent participation (though some options propose using recent participation to issue *additional* species-based shares), nor is it possible, as some have suggested, to simply cancel shares that have been unused for a long period. The reform program is working within that constraint and trying to maximise the long-term benefits to the industry while minimising the short-term impact on individuals.

If minimum shareholdings are used as the main linkage tool (as in point 1 above), the longer term limit should ideally be set at, or close to, the maximum number of endorsements that the share class could sustain (biologically and economically) if all were full time. The ITCALs proposed have been calculated based on the number of endorsement holders who took the large majority of the fish production in recent years – e.g. the number of fishers who took 95%, 97% or 99% of the total value of catches in a share class.

Two approaches have been applied (where appropriate) to minimise the short-term financial burden on shareholders, including:

a) using a formula which accepts that not every shareholder will trade shares to the minimum level (i.e. some shareholders will continue to hold more and some less). This has the effect of reducing the minimum shareholding level while still achieving the same maximum number of endorsements; and
b) implementing any large increases in minimum shareholdings in two stages.

The methods used for determining the ITCALs and more about the two approaches mentioned directly above can be found in the separate technical paper titled "*Setting the Interim Total Commercial Access Levels*".

Moving from ITCALs to Total Allowable Commercial Catch and Effort levels

To help give some period of certainty for shareholders, it is proposed to set the ITCALs for a <u>three year period</u>. It is proposed to only modify them within this period if a sustainability problem arises, or if the shareholders themselves request for them to be reduced. After that time, as resources become available the ITCALs will be progressively converted to TACCs/TACEs.

The medium to long-term goal is to replace all ITCALs with TACCs/TACEs set in accordance with the requirements of the Act[12]. When setting these under the Act, the independent TAC Setting and Review Committee must consider a wide range of matters including the Act's objects and relevant scientific, industry, community, social and economic factors. Depending on the available information, the process can result in the levels being adjusted (up or down) over time.

DPI is unable to forecast the future TACC/TACE levels because of the wide variety of factors that must be taken into account and the independence of the TACC/TACE setting process. However, the Independent Review observed, and the SARC has foreshadowed too, that the initial ITCALs may need to be scaled back over time to ensure optimum productivity of the resource. At its 7th meeting held in January 2014, the SARC advised there is a "*…probability that these [TACCs/TACEs] are likely to be lower than ITCALs for most fisheries. This is because SARC has accepted the advice of the Share Linkage Working Groups, the PFA and DPI, to set ITCALs at higher than average historical catch/effort levels, wherever this does not jeopardize sustainability in order to assist the adjustment process*".

Streamlining current controls

Another important part of the reform program is streamlining the current management arrangements to improve industry viability. This would occur through increasing operational efficiency and removing controls/processes which become redundant due to stronger share linkage.

The stronger the linkage, the greater the likelihood that management controls can be streamlined. Each major linkage option set out in the fisheries options papers includes relevant streamlining proposals. In most cases these were proposed by shareholders or the SLWGs, and tailored by DPI to complement the linkage option.

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[12] Refer to Part 2, Division 4 of the Act.

Public exhibition of the options papers will provide shareholders, other fisheries stakeholders and the public an opportunity to comment on the streamlining proposals.

Reporting, monitoring and compliance

Monitoring quota usage

Under a catch or effort quota, additional reporting will be needed to allow for cost-effective compliance and ensure the integrity of the scheme. Tighter reporting and compliance means that each shareholder's rights will be better protected. The value of shares in a fishery where non-compliance is common is likely to be less than if a good system of reporting and compliance is in place.

For quota management fisheries, the system will have three options for fishers to report: (i) their intention to go fishing (a pre-fishing report), (ii) their intention to land at port following a fishing event (a pre-landing report), and (iii) the product weight once it is landed (a post-landing report). These reports will be available through an Interactive Voice Response (IVR) system (like when you pay a credit card bill over the phone), the computer-based FishOnline system and a Smartphone App (being developed).

Not all three of the above reports will be needed for all options. The actual reports needed for each fishery or share class will have to be tailored to suite the final linkages that are determined. The basic principles proposed include:

Catch quota only: a pre-fishing, pre-landing and post landing report would be needed. Quota would be deducted based on the weight of product reported through the post-landing report. The pre-fishing and pre-landing reports contribute towards cost-effective compliance and the integrity of the quota scheme by minimising the risk of quota evasion.

Effort quota (e.g. days) only: a pre-fishing report is all that would be needed, so that one day of quota can be deducted from the individual's quota allocation.

Combination of catch quota and effort quota (e.g. days): a pre-fishing, pre-landing and post landing report would be needed. The pre-fishing report would be used to deduct one day from the effort quota allocation and the post-landing report would be used to deduct quota for any quota species taken during the fishing event.

While fishers may see extra reporting as a burden, the added efficiency and effectiveness it gives Fisheries Compliance officers will reduce longer term costs to industry and provide good security for each business owner's investments. It means officers will be able to target compliance operations to where the risk of illegal activities is greatest rather than spending large amounts of time and resources searching for fishers and guessing about places and times of landing fish.

Monitoring catch and effort levels

Monitoring catches under a catch quota scheme is crucial. It tracks the portion of each individual's quota used and how much of the ITCAL has been taken at any point in time. It also looks at catches of the same species in other fisheries where a catch quota may not apply (e.g. because it is taken in such small amounts). It is important to ensure catches in other fisheries do not unduly expand and undermine the security and value of the shares in the fishery subject to the catch quota.

The SARC[13] has noted that under an effort link (whether an effort quota or link to endorsement numbers), it is particularly important to monitor catch and effort because opportunities will exist for improved fishing efficiency ("effort creep"). This is not a concern unless it leads to catch

[13] During its 7th meeting in January 2014.

levels that threaten the sustainability of a stock or have implications for resource sharing (within the commercial fishing sector or with other harvest sector groups)[14]. To keep tabs on this, the SARC recommended that the Fishery Management Strategy performance indicators and trigger points be reviewed to ensure they are able to detect, in a timely way, significant changes in catch and effort by share class and that the management arrangements are responsive to such changes is needed.

Selling or buying quota

Under any of the catch or effort quota options, shareholders could:

- use their quota during the course of the fishing period; or
- transfer their quota to other shareholders to use during the course of the fishing period[15].

Acquiring additional quota could be achieved in two ways, by either:

- transferring the relevant *shares* from other shareholders, which would result in an ongoing right to a greater portion of the ITCAL for future fishing periods. Note that if all (or the last) share of the relevant class is transferred from a business, any quota remaining (i.e. quota that has not been used or not already transferred to another shareholder) would be transferred along with the last share to the new shareholder; or
- transferring *quota* from other shareholders, which may be used during the rest of the fishing period[15].

Share and quota transfers will be possible at minimal to no cost using FishOnline or for a fee if done via a paper-based application. FishOnline will provide real-time quota balances and the capacity for online transactions including the transfer of shares and quota. More information about FishOnline is available at: www.dpi.nsw.gov.au/fisheries/commercial/info/fishonline

Penalty points for offences

The integrity of the new management scheme will rely on fair, but strong deterrents for non-compliance. A penalty point scheme, similar to that used for car driver's licences, will be developed to provide a transparent and consistent approach to sanctions for commercial fishers who do the wrong thing (and thus undermine the rights of others).

Under this scheme, the penalty points applicable for certain offences will be clear, as will the consequences of accruing a certain number of penalty points. The points will be scaled to whether the offences are minor or major. The sanctions (consequences) can also be scaled, starting from endorsement suspension through to licence suspension and ultimately (if penalty points continue to be accrued) share forfeiture and cancellation.

Note that under a catch or effort quota system, any shares that are cancelled lead to increased allocations for the remaining shareholders.

The penalty point scheme will be applicable to all NSW fisheries including those not subject to the current reform process.

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[14] As noted earlier, a Resource Sharing Policy will be developed and this policy will guide the future approach to resource sharing between sector groups.

[15] Subject to any restrictions that might apply to quota transfers, initially or on an ongoing basis.

New share classes

When would it be appropriate to create a new share class?

A number of share linkage options included in the fisheries options papers involve creating a new class of share. Reasons include:

- to implement a catch quota for species that are one of many species taken by a share class(es) – e.g. kingfish in the OTLF, where the current shares bear no relationship to the catch of that species; and
- to implement a catch quota for a species taken across numerous share classes or an effort quota that applies across multiple share classes and where the full transferability of rights between participants in those sectors is desired – e.g. school whiting and the ‘hull unit days’ option in the OTF.

In the majority of cases, any new ‘species shares’ or ‘effort shares’ would be in addition to the ‘access shares’ currently allocated. The current ‘access shares’ would still govern the methods used and waters fished, but they would not control the amount of catch/effort that could be taken/used.

The SARC discussed the concept of new share classes and noted[16] that:

> *The complexities of allocation should not be taken lightly. Allocation processes are difficult, costly, time consuming and subject to legal appeal processes. Their use in the context of the NSW structural reform process must be considered carefully and in a benefit-cost context. Of utmost importance is that the structural adjustment sought under the reform process is not unnecessarily delayed. The SARC is of the view that the creation of new share classes, particularly if recent participation was to be taken into account, has the potential to cause significant delays. For example, full tradability of catch quota shares in the Commonwealth shark fishery was delayed by years due to appeals over the allocation process. During this time operators were subjected to considerable uncertainty about the final allocation formula including what percentage would be based on participation and what percentage based on the value of the entitlement. They were also unable to transfer quota during this extended period. This essentially stymied autonomous adjustment in the fishery.*
>
> *Given the likely complexity and cost of the new allocation processes, the SARC recommends that new share classes should only be considered under certain criteria. Such criteria may include:*
>
> *a) a small number of shareholdings in the existing share class account for the bulk of the catch potentially placing an unacceptable and unintended financial burden on these fishing businesses which would be required to purchase a large amount of shares to continue their fishing operation having significant impacts on their economic viability;*
>
> *b) no other suitable linkage options and associated measures are available or feasible for the existing share class (e.g. staged implementation or delaying the commencement of the ITCAL) to minimise the financial burden on those operators;*
>
> *c) the benefits of moving to a new share class clearly outweigh the costs; and*
>
> *d) the proposed new share class must have the strongest form of share linkage feasible (i.e. a catch quota or if that is not feasible, a very tight effort quota).*

[16] During its 7th meeting in January 2014.

The general process for allocating shares in a new share class is included in Appendix 1. Note that the additional costs of any new share allocation process and appeals process would be recovered by DPI via application fees from prospective shareholders.

Options for allocating shares in new share classes

A number of specific options have been identified for allocating shares in new share classes, including:

- using current shareholdings;
- ‘swapping’ current shares;
- monetary tenders; and
- using recent participation (catch history).

Further details on each of these options can be found in Appendix 1.

Management costs

A key consideration for shareholders will undoubtedly be the costs associated with the various linkage options. The cost of management is also an issue for government given current industry subsidies and the Act’s [secondary] objective to promote a viable commercial fishing industry.

While it would be ideal to have firm costings for each linkage option throughout the fisheries options papers, NSW DPI cannot provide definitive advice on the actual costs that would be payable. This is because the costs will be influenced by a wide range of things including:

- the final design of the linkage options;
- the number of shareholders who choose to remain (generally speaking, the more participants in a fishery/share class, the higher the administrative, monitoring and compliance costs, although these are spread across a larger number of participants);
- the adoption of cost saving technologies (e.g. IVR, smart phone Apps, VMS, etc.);
- the existing controls able to be streamlined (e.g. removing the requirement to licence fishing boats in some fisheries will save future administration costs for DPI and therefore licence fees for fishers);
- the level (if any) of investment industry may wish to put into additional research to reduce the uncertainties surrounding the impacts of harvesting[17]; and
- the new cost recovery policy that will be developed over the next year or two in conjunction with the new Ministerial Fisheries Advisory Council and involving consultation with all key stakeholder groups. This policy will tackle a range of key issues including:
    - which costs are attributable to industry;
    - the case for a ‘public good’ subsidy;
    - what (if any) efficiency savings should apply?;
    - the process for setting project/expenditure priorities;
    - systems and processes needed for government accountability and reporting; and
    - opportunities for outsourcing and/or co-management.

Given all these variables, speculating on specific management costs payable by shareholders at this point in time would be misleading.

[17] Referred to in fisheries management publications as the risk-cost-catch framework.

The approach adopted in the fisheries options papers has been to give a general indication of the relative costs of the various linkage options having regard to the likely future research, management and compliance needs associated with each.

Important caveats

In providing its final advice to the SARC and the Minister, DPI will consider:

- the stakeholder feedback received during this current consultation phase, as well as the administrative requirements and relative costs of implementing the range of options proposed across the various fisheries;
- that while it is recognised a “one size fits all” approach won’t work, it would be unaffordable (for both government and industry) if there were many different management frameworks were set up and the cost of implementing them outweighed the capacity to pay. As such, consideration will need to be given to how the various options can work together in a cost-effective way;
- the cost, if any, of any enhancements that will be needed to current administrative/IT systems, including the recently developed FishOnline system and the smart phone App currently under development; and
- the cumulative impacts of the options on diversified fishers, as many fishers in NSW operate in a diverse way and hold shares/endorsements across many different fisheries and share classes.

Legislative and policy requirements

Changes to management arrangements to implement the reform outcomes will require changes to the following pieces of legislation:

- *Fisheries Management Act 1994;*
- *Fisheries Management (Share Management Plan) Regulations 2006* (various)*;*
- *Fisheries Management (Supporting Plan) Regulation 2006;* and
- *Fisheries Management (General Regulation) 2010.*

The proposed Act amendments are under development and the bulk of the Regulation changes will need to be made once the Ministerial decisions are made on the form of linkages to be applied, the ITCAL levels and the existing controls that can be streamlined.

Ultimately, the reform options have to be consistent with the objects of the Act and should also:

- be consistent with the objectives of other relevant NSW legislation, where necessary;
- assist each fishery to maintain its export approval under the Commonwealth’s *Environment Protection and Biodiversity Conservation Act 1999* administered by the Australian Government;
- not seek or act to extinguish native title rights for traditional owners under the *Native Title Act 1993* to take, use or keep fisheries resources in accordance with Aboriginal tradition or under Torres Strait Islander custom; and
- promote the Government’s commitment to cut red tape and create an effective and efficient regulatory environment.

Have your say

A key part of the Reform Program is getting valuable feedback and ideas from industry and interested stakeholders. Constructive feedback to help work out the best overall approach will assist in shaping future management arrangements.

The complexity of the options laid out in this paper are acknowledged, as is the difficulty some people may have in working through the issues covered. If you require assistance in understanding the options presented or in developing a submission please contact the relevant Fisheries Manager, or the Industry Liaison Manager on the contact details provided below.

DPI staff will be visiting regional ports over the consultation period, during which time commercial fishers will have one-on-one opportunities to discuss questions and issues.

Submission forms are available to provide comments. Alternatively, you may submit your comments in another form, such as a letter or summary of your views on each of the reform options presented in this paper.

Note that submissions may suggest variations to the options presented in the fisheries options papers, provided they are within the broad scope of what the NSW Government approved and announced in November 2012[18] and are consistent with the reform program objectives described below.

However you choose to provide comment, it is important to note that subsequent decisions will be based on merit, rather than numbers for and against particular options.

The closing time for comments is 8am Monday 19th May, 2014.

Send your response to:

Mail: PO Box 4291, Coffs Harbour, NSW, 2450

Fax: (02) 6391 4726

Email: commfish.wg@dpi.nsw.gov.au

Following the closing date, a summary of the submissions will be prepared and made available on the DPI website. In arriving at decisions, the Minister will consider the issues raised in submissions, the views of key stakeholder groups, DPI's advice and final recommendations from the independent Structural Adjustment Review Committee (SARC).

For more information on the NSW Commercial Fisheries Reform Program visit www.dpi.nsw.gov.au/fisheries/commercial/reform

18 See www.dpi.nsw.gov.au/__data/assets/pdf_file/0005/448187/Govt-response-to-independent-comm-fisheries-review.pdf

Appendix 1: Process and options for allocating shares in new share classes

This section provides more information on options that would involve allocating shares within a new share class. It covers the general process for doing such an allocation and outlines the various options that have been identified along with the advantages and disadvantages of each.

Process for issuing shares in new share classes

The actual timeframe and costs associated with a new share allocation process would depend heavily on the process used, the criteria determined for allocating the new shares and the time to hear and deal with the appeals process. A description of the general process for allocating shares in a new share class is outlined below.

General process for allocating shares in new share classes

Step 1: Consult with all existing shareholders in the relevant share classes on the proposed criteria for allocating new shares.

> **Step 1a:** If there is considerable disagreement or controversy surrounding the proposed criteria, an independent allocation panel may need to be formed to consider the various issues and arguments and recommend a final criteria (as is common in allocation processes used in many other Australian and overseas jurisdictions).

Step 2: Finalise and seek Ministerial approval for the criteria for allocating shares and invite applications.

Step 3: Process the share applications against the approved criteria.

> **Step 3a:** In the case of a criterion involving recent participation, this step will take considerable time and resources depending on whether opportunities are given for applicants to submit records additional to the catch and effort returns already held by DPI.

Step 4: Notify applicants of their provisional share allocation and provide an opportunity for applicants to seek an administrative review, the grounds for which would be limited to any *administrative errors* made.

Step 5: Establish a Share Appeals Panel and invite formal *substantive* appeals against the provisional share allocation.

Step 6: Comply with any findings of the Share Appeals Panel and issue final shares (note that an amendment to the relevant Share Management Plan regulation is required at this point).

Options for allocating shares in new share classes

The information below outlines the main options for allocating shares in new share classes along with the advantages and disadvantages that should be considered when deciding whether they are favourable.

Note that not all options are suitable for each fishery; the fisheries options papers highlight the options identified as relevant for each fishery/share class. Indeed, some options, such as the ‘Monetary tender’ option, are not proposed in any paper, but are included here to give shareholders the chance to consider them.

Using current shareholdings

This approach involves allocating new catch or effort shares proportional to the number of existing shares held. For example, in the OTF, this could involve allocating new school whiting catch quota shares based on the number of existing inshore and offshore prawn trawl shares held by a current shareholder. If it involved shares from more than one existing share class, then a decision would be needed on whether to weight the calculation in favour of one share class over another.

Advantages	Disadvantages
Administratively simple, which means a quick and low cost process	May cause significant disruption to the fishery because: (i) the relatively few shareholders who take the bulk of the species catch would receive allocations significantly less than their recent catches, and (ii) shareholders who had never taken that species would be allocated a portion of the ITCAL.

'Swapping' current shares

To link several key species in a share class to a catch quota, one option is to provide shareholders with a once-off opportunity to swap some or all of their existing shares for an allocation of catch quota shares for those species. This approach would be mainly suited to sectors with a small number of primary target species (e.g. OTLF line east, OH purse seine and EG hand gathering).

Under this approach the new species shares would be issued proportionally to the number of existing shares offered by the shareholder to be 'swapped'. The removal of the existing shares from the system (i.e. those that are swapped) would constitute an indirect form of compensation for others in the fishery who would no longer be able to take the species concerned. The 'compensation' arises because fewer existing shares in the system would mean that for the remainder of the fishery:

- the minimum shareholding requirements (if any) would not need to be as high; or
- if an effort quota scheme was used (e.g. a hull unit day scheme in the OTF), each shareholder would receive a greater proportion of the ITCAL.

Some rules might need to be developed to ensure a shareholder could only swap shares for species that the shareholder has actively fished in the past (to prevent purely speculative claims).

This approach cannot be modelled across the various fisheries because DPI cannot predict who may swap shares or how many they would swap.

Advantages	Disadvantages
Reasonably simple administrative process, which means only a moderate time scale and cost would be involved.	The number of new quota shares allocated to a shareholder would be influenced by the decisions of other shareholders – that is, the number of shares that each shareholder attributes towards the new species quota shares.
Based on current property rights (i.e. shares) as opposed to some other variable such as recent participation.	Upon commencement of the exit grant process in late 2014, definitive advice would not be available on the shares/quota that each shareholder would be eligible for.
Recognises regional differences in species abundances (blue-eye off the south coast versus hapuku on the mid north coast) and the fact that different shareholders target different species.	Some shareholders (particularly those who are less active) may seek to swap their shares for the species they consider will be the most valuable – potentially impacting the shares available to specialist high catch operators who target/rely on those species.
Reduced risk of high catch operators exiting, thereby jeopardising short or longer term production levels (and the associated multiplier benefits).	The protracted uncertainty may be a cause for concern for some shareholders.

Advantages	Disadvantages
	All potential future catch quota species would need to be identified upfront as shareholders would need to know the full picture before deciding which shares to swap – this could limit future management initiatives or opportunities.

Monetary tenders (note this is different to the exit grant tender process)

This approach involves providing shareholders a once-off opportunity to submit a monetary tender for new catch quota shares. The shares would be allocated to the highest tenderers and the proceeds would be used to:

- compensate other shareholders (directly or indirectly) for loss of access to the species; and/or
- help offset the cost of managing the new catch quota scheme(s).

This approach cannot be modelled because DPI cannot predict who would submit a tender and for what amount.

Advantages	Disadvantages
Reasonably simple administrative process, which means only a moderate time scale and cost would be involved.	Could be a significant upfront cost to the shareholders who take the bulk of the species catch.
	No guarantee that the fishers who have historically taken those species would be successful with their tenders.

Using recent participation (catch history)

With respect to quota-managing a species that is one of many taken in a share class, there has been interest in some fisheries in considering shareholders' recent participation. This approach has been suggested in response to major disparities between shareholdings and some shareholders' catch, especially where shareholdings were initially issued on a flat basis and/or (as in the majority of such cases) there is no direct link between the shares and species concerned.

It must be recognised that the shares already issued are a legal right that cannot be simply extinguished, whether or not they have been actively fished. All existing shares do have some value which must be taken into account in any reforms of the current share structure.

It is proposed that if recent participation was to be entertained for allocating shares in any new share classes, it be limited to catch quota or very tight effort linkage scenarios only. This is to ensure that the additional time, cost and uncertainty associated with the process results in a strong linkage/fishing right. It is also proposed that it would be limited to sectors demonstrating extreme disparity between shareholdings and catches and where there were no other adequate options for dealing with that disparity.

It should be noted that if recent participation was to be used to allocate new classes of shares in one or more sectors, this might affect the exit grant weightings allocated to the share class in question which in turn might impact on the ranking of tender bids. That is, if the distortion problem is largely fixed through the new share allocation, it would not be a wise use of taxpayer money to then use the limited exit grant funding within that share class.

Advantages	Disadvantages
Should satisfy high catch operators, particularly where the cost to buy shares is otherwise high (which would depend on the number of shares required to maintain current access, the market value of those shares and the success of the exit grant process)	There would be significant debate about the criteria to use for allocating shares in the new share classes (% shares versus catch records, criteria years, etc.).

Advantages	Disadvantages
Reduced risk of production loss compared with if current shareholdings were used and a number of active fishers exited within a short period of time.	Assessing recent participation will be time consuming, resource intensive and costly. In addition to the costs associated with the share allocation process, additional costs will be incurred if validation of the catch and effort records is needed before the preliminary allocation process.
Helps to redress the original misallocation of shares for the species in question.	May unfairly advantage shareholders who have over-reported or fished illegally (e.g. used excess gear) in recent years.
Opportunity to pursue stronger linkage options rather than defaulting to weaker linkage options (i.e. endorsement numbers).	Risk of shareholders seeking to modify already submitted catch and effort records in an attempt to be eligible for more shares, although there are ways to manage this.
	Upon commencement of the exit grant process, definitive advice would not be available on the shares/quota that each shareholder will be eligible for (depending on the ease of determining appropriate share allocation criteria and its level of complexity - if straight forward, shareholders may be able to speculate with some accuracy the shares/quota that they would be allocated).
	The protracted uncertainty could be a cause for concern for some shareholders.
	The quality of the records relied upon to determine past participation could be questionable in some cases.
	Risk of legal challenge if a shareholder is not satisfied with the shares allocated or if they lose access to a species concerned and perceive their existing property rights to have been devalued.