

NSW Abalone Fishery
Review of Administrative and Consultation Arrangements

Submitted to the Minister for Primary Industries
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Executive Summary/Recommendations

The NSW abalone industry is facing its most critical period with collapsing production and quotas, declining markets and prices, declining profitability levels and difficulties in meeting management costs. There is a lack of re-structuring in the industry and an absence of trust, good-will and co-operation across industry and with the Department (Industry and Investment New South Wales). This is leading to a breakdown in the effective administration of the abalone fishery under current structures and arrangements.

This review believes that many of the management options that were once available to this fishery have now been lost due to a lack of agreement and leadership and this situation continues to deteriorate.

Administratively, a number of reviews have been completed over recent years to assist with management, but there has been little or no response to the various recommendations adding to the frustrations. Indeed, each review seems to have resulted in further paralysis or resulted in the creation of further disagreement.

Nevertheless, this review believes that all parties now have a desire to “draw a line in the sand” and focus on the future needs to stop the downward spiral and to re-build the resource and the industry. To help achieve this management focus and to restore effective administration of the abalone fishery, “more of the same” is not an option.

Therefore, in light of the objects of the Act and of the need to achieve an immediate focus on the critical management issues, the review makes the following recommendations.

Recommendation 1

The Department take a more assertive role in meeting its core legislative responsibilities in relation to the abalone resource as required under the Act, the Management Plan and the conditions of the wildlife trade operations approval under the Commonwealth EPBC Act.

Recommendation 2

The functioning of AbMAC should be suspended immediately. This will facilitate a direct focus on the necessary and urgent management issues and enable a re-allocation of some resources and funds towards addressing these issues.

Recommendation 3

In place of AbMAC, the Department should establish two mechanisms designed to re-focus all stakeholders on the critical management issues:-

- a. Establish an expertise based Working Group to address the critical resource management issues (eg. data collection, finer scale management, etc).
- b. Establish a dialogue with the whole of industry and other stakeholders through port meetings to progress the outcomes of the Working Group.

The chair of AbMac could be approached to assist with the functioning of the Working Group.

Recommendation 4

The activities and functioning of the Working Group should be targeted at the principal recommendations of recent key reviews, particularly the Special Abalone Recovery Group Report, the Fishery Management Strategy and the recent TAC Committee report. Further, the key issues of the industry members of AbMAC as provided to this review were:-

- a. Management charges;
- b. Access to regions 1 & 2;
- c. Making theft an indictable offence;
- d. Implementing finer scale management and related decisions on size limits.

Recommendation 5

The Department give greater recognition to the TAC Committee's concerns and recommendations, in particular, recommendations that are directly linked to the fishery retaining its export approval under the Commonwealth EPBC Act.

Recommendation 6

With respect to the administrative processes involving the TAC Committee, it is recommended:

- a. The TAC Committee commence its determination process early in the calendar year, with a view to bringing forward the final TAC determination for the subsequent fishing period. This may be possible using calendar year data as opposed to fishing period (financial year) data;
- b. The TAC Committee prepare a "draft" TAC report that, subject to the Minister's consideration, be posted on the Department's web site and followed up by a call for submissions (including correspondence to shareholders and divers advising of such);
- c. The TAC Committee hold its sitting day in a location that will maximise the opportunity for stakeholder participation in commenting on the "draft" report. If necessary consideration be given to holding a sitting day in more than one location.
- d. Subsequent to the above, the TAC Committee can then finalise its report and determination for the Minister's consideration in the full knowledge that every opportunity has been provided for broader stakeholder input into the process. Further, the 'draft' recommendations will have been responded to by industry through the TAC committee rather than directly to the Minister.
- e. Consideration should also be given to setting the TAC for two subsequent fishing periods as opposed to going through the process every year - an accepted practice with some other fisheries within Australia. This would provide opportunities for cost savings for the Department (and the industry) as well as providing a greater level of management certainty for industry to factor into its business planning.

Recommendation 7

The Department should ensure an appropriate level of investment is achieved in managing the commercial abalone fishery and that an internal working group comprising management, research and compliance frame a “notional” budget for this fishery targeted at:

- a. Firstly, line items (tasks) required in meeting the principal objectives of the Act - sections 3(1) and 3(2a, b and c) and that these be identified as non-negotiable;
- b. Secondly, line items (tasks) required in meeting the secondary objectives of the Act – section 3(2d, e, f and g) and that these be negotiable with industry and other key stakeholders;
- c. In determining (a), the recommendations of the TAC Committee report and the Special Abalone Recovery Group (SARG) report be given paramount consideration, in particular, those recommendations directly relevant to maintaining export approval for the fishery under the provisions of the Commonwealth EPBC Act; and
- d. In determining (b) take account of the industry's ability to pay through a negotiation with industry with the view that if not supported by industry, implementation will not occur.

Recommendation 8

The Department develop a policy in relation to the collection of management charges from industry taking into account:

- a. Providing industry with more timely advice on management charges for the upcoming fishing period to enable them to better inform their business planning. (eg, advising industry at least two months before the commencement of the fishing period);
- b. A strategy for recovering the outstanding accumulated debt of industry.
- c. Implementing a benchmark above which attributable management charges will not be recovered from industry to account for periods when industry is under severe financial stress. For example, management charges may not exceed a set percentage of the estimated GVP for the fishery for the relevant fishing period;
- d. Refrain from using industry ballots as a means of determining management services and charges on the basis that taxes and service fees should be determined within a rational policy framework as opposed measuring “popular” opinion.
- e. Give consideration to inserting appropriate provisions in the Act which suspend (not cancel) the right to fish where fees are not paid in a timely manner.

Recommendation 9

With regard to the recommendations raised in previous reviews as well as unresolved issues previously raised through the AbMAC, the Department needs to prioritise and respond to these on a risk management basis and with a focus on resource sustainability and industry growth.

Recommendation 10

Stakeholder- wide communication and consultation should be restored to re-build trust, transparency and co-operation and provide greater certainty for the future. This should focus on “clearing the decks” of unresolved issues – even if the answer is in the negative for many of the proposals – and then targeting the confirmation of key policy positions and proposed management initiatives.

This can occur without significant additional cost, through the conduct of an industry forum held in an appropriate port.

This process has already commenced across the whole industry with the agreement to the aspirations contained in the “Pymont Pact” July 2009 and the conduct of port visits by Mr. George Davey, Deputy Director General, Industry and Investment and his fisheries staff.

It is important that Departmental officers involved in this process, including the port meetings, have sufficient authority to make commitments, make decisions and be able to ensure they are implemented.

Recommendation 11

The possible future role of alternative administrative managements in the fishery (eg. co-management arrangements) should not be discounted. However until such time as the necessary pre-conditions for this are satisfied (ie. trust, responsibility and co-operation among all parties) it will not be possible to develop these arrangements.

It is considered that implementation of these recommendations will provide an avenue to immediately move forward on the critical management measures necessary for the abalone fishery. This can happen without the necessity to firstly address the long list of outstanding issues which have been contaminating relationships – though the recommendations suggest a process to selectively respond to the important issues over time.

Also the recommendations will allow Industry and Investment New South Wales to assert its leadership role and responsibilities in managing the fishery, while allowing the reallocation of staff resources and funds towards improved management and communication across all stakeholders.

Introduction

Sound administrative arrangements and consultative processes are an essential element of good resource management practices. This applies in particular to fisheries resources which, left in a common property state and without sound administration, degenerate to unacceptable levels of resource depletion.

An integral part of sound administration is good communication between those vested with the responsibility for conserving and managing the resource, the resource user groups and other interested stakeholders, including the wider community.

Gone are the days when fishery resource users had open access to fishery stocks and gone are the days when those responsible for the management of fishery resources could undertake their responsibilities effectively in isolation of resource user and community interests.

The breakdown in effective communication and working relationships between the Department and the commercial sector of the NSW abalone fishery has been documented and commented upon in a number of reports and reviews cited by this review. This breakdown in relationships is having a noticeable and detrimental impact on the Department's capacity to implement best practice fishery management as well as upon the future viability of the commercial abalone fishery. This is not a desirable situation for the Government, the Department, the commercial industry and the broader community.

In response to these concerns, the Minister for Primary Industries, the Honorable Ian MacDonald, MLC, approved an independent review to consider and report on the effectiveness of administrative arrangements in meeting the objectives of the *Fisheries Management Act 1994* with respect to the abalone resource, and in particular, the relationship between the Abalone Management Advisory Committee, other abalone shareholders and the Government through Industry and Investment New South Wales (the Department).

As part of the review process, the Minister appointed independent consultants to assist him by providing independent advice on the effectiveness of current administrative arrangements and consultative processes and to provide him with recommendations aimed at resolving the current concerns. A copy of the terms of reference for the review is provided at "Attachment A".

This report provides the outcomes of the work undertaken by the consultants and was developed through consultation with relevant resource management, research and compliance officers within the Department, representatives on the Abalone Management Advisory Committee (AbMAC) and previous chairs, representatives of the Total Allowable Catch Setting and Review Committee (TAC Committee), abalone shareholders, divers and buyers and the chair of the LobsterMAC. In addition to these face-to-face discussions, provision was made for written submissions to the review to be lodged by e-mail. Information provided through these consultations was further supplemented with a review of the legislative instruments and numerous reports and reviews relevant to the management of the NSW abalone fishery.

Setting the Scene

The NSW abalone fishery has been the subject of numerous reports over recent years in response to concerns expressed by resource users (primarily the commercial sector) and the Department over the sustainability of abalone stocks, the economic viability of the industry and future management directions for the fishery. The most comprehensive of these reports are the *Report on the Review of the NSW Abalone Fishery, 1995* (the Keniry Report) and the *Special Abalone Recovery Group Final Report, 2008*. Many of the issues raised in these previous reports are again reflected in the *Total Allowable Catch Committee Report and Determination for 2009/10, May 2009*.

It is not the purpose of this report to revisit the many issues and recommendations raised in previous reports other than to state that there are clearly a number of conflicting forces at play that have resulted in a serious deterioration of the working relationship between the Department and the commercial abalone industry which has negated the influence of these reviews. The key drivers for this conflict are:

- A declining resource base in a fishery that had a peak annual production of around 1,250 tonnes in the 1970's that has progressively declined to less than 100 tonnes today.
- A decline in the fishery gross value of production from \$20 million (in real terms) in 2000 to less than \$3 million today due primarily to reduced production and declining beach prices.
- The move to a share management regime where it is evident that early share trading occurred in an environment which, in hindsight, was overly optimistic and over priced. Those that have invested in the fishery have suffered significant capital losses.
- Implementation of a cost recovery framework that, while affordable in the past, is now beyond the capacity of industry to pay given the current biological and financial circumstances in the fishery.

Essentially, the management strategies required to meet longer term needs of the abalone resource are at odds with the industry's requirement to achieve short term economic survival. This situation is symptomatic of the past decline in abalone fisheries world-wide.

The dilemma for the Department is that it must implement management measures to address the declining state of the abalone resource in the full knowledge that this will have a severe adverse impact on the economic viability of the commercial industry over the shorter term.

The dilemma for the commercial industry is that in supporting the implementation of appropriate management measures, many will not survive financially. For many, their only option to avoiding the short term financial pain is to resist management changes that are in the longer term interest of the resource and their business.

Specific to this report, however, is the collective negative impacts that this situation is having on the working relationship between the Department and the commercial

abalone industry, as well as the Department's capacity to provide the level of effective administration the abalone fishery requires.

In summarising the current state of the relationship between the commercial abalone industry and the Department it is evident that both parties are engaged in a 'zero sum game' within which there will be no winners, only losers. Some examples of this are:

- The Department is unable to focus on providing effective management of the abalone resource because it is being constantly distracted from its core business to deal with on-going complaints from the commercial abalone industry that are mostly focused on addressing the past as opposed to planning the future.
- As a consequence of the above, there is now a poor environment within the Department for attracting the management capacity and commitment that this fishery desperately needs given its current depressed state (biologically and economically).
- The Abalone Fishery Management Advisory Committee (AbMAC) is not delivering on the expectations of the Department or on those of the industry. As an advisory body to the Minister it is essential that AbMAC's deliberations occur in an environment of trust and that there is commitment from all members to acknowledge and address the critical issues facing the resource and its users. Instead, AbMAC seems to be operating in an environment of intractable division.
- The Total Allowable Catch Setting and Review Committee (the TAC Committee) is not being provided with the technical data and related information it requires in undertaking a more complete determination of possible TAC outcomes. As a consequence, it has little option than to take a precautionary approach by setting very conservative TACs.

This situation must change if the abalone resource, the commercial abalone industry and the Department are to move forward.

Legislation

Administrative arrangements for the NSW abalone fishery are set out in the *Fisheries Management Act 1994* and subordinate legislation including the *Fisheries Management (Abalone Share Management Plan) Regulation 2000* and the *Fisheries Management (General) Regulations 2002*.

The *Fisheries Management Act 1994* (the Act) provides the principal legislation (head of power) under which the NSW abalone resource is managed. The objects of the Act are set out in Part 1, Section 3 where it is clear the primary objective of the Act is "to conserve the fishery resources of the State for the benefit of present and future generations" and that this includes each of the following:

- *Conserving fish stocks and key fish habitats, and*
- *Conserving threatened species, populations and ecological communities of fish and marine vegetation, and*
- *Promote ecologically sustainable development, including the conservation of biological diversity*

The remaining objects of the Act are secondary objectives on the basis that they may be achieved only where this is consistent with meeting the primary objective. The secondary objectives of the Act are:

- *To promote viable commercial fishing and aquaculture industries, and*
- *To promote quality recreational fishing opportunities, and*
- *To appropriately share fisheries resources between the users of those resources, and*
- *To provide social and economic benefits for the wider community of New South Wales.*

The Act is clear in that the Department, on behalf of the Minister, has as its primary responsibility the task of conserving the State's fishery resources for the benefit of present and future generations (and how this is to be achieved). Also, that the Department has secondary responsibilities of promoting viable fishing and aquaculture, resource sharing and deriving social and economic benefits, but only where this is consistent with meeting the primary objective.

That is, achievement of the Act's primary objective is paramount and must not be compromised in the pursuit of achieving the Act's secondary objectives.

In order to assist the Department (and the Minister) in achieving their objectives, the Act makes provision for the establishment of a range of subordinate legislation, structures and processes. Specific to the management of the abalone fishery these include, but are not limited to:

- *The Fisheries Management (Abalone Share Management Plan) Regulation 2000;*
- *The Fisheries Management (General) Regulations 2002;*
- *The Abalone Fishery Management Strategy;*
- *A Total Allowable Catch Setting and Review Committee (the TAC Committee); and*
- *The Abalone Management Advisory Committee (AbMAC).*

The Act, management plan and general regulations provide the legislative basis for managing the abalone resource and as such set out the requirements and responsibilities of the Department as well as those of resource users.

The TAC Committee and AbMAC provide the forums within which options relating to the delivery of policy and management requirements for the fishery are considered. Both are appointed by, and report to, the Minister. Each of these structures is discussed in more detail under the relevant sections of this report.

The Act is specific on the requirement for a management plan for a share managed fishery and what must be contained in that plan. In particular, the management plan must contain objectives, performance indicators against each objective and, trigger points that if not met would require the plan to be reviewed. It is worth noting that the management plan applies only to the commercial abalone fishing sector and is not a management plan for the abalone resource *per se*. The same applies to the *Abalone Fishery Management Strategy*.

In addition to meeting the requirements of State fisheries legislation, the abalone fishery is required to meet requirements under Commonwealth law. The *Commonwealth Environmental Protection and Biodiversity Conservation (EPBC) Act 1999* requires that an independent assessment of all export and all Australian Government managed fisheries be undertaken to ensure that, over time, fisheries are managed in an ecologically sustainable way. In short, all wild harvest fisheries with an export component must be subject to an ecological assessment and ongoing review to retain export approval.

Administration of the NSW Abalone Fishery

The legislation relating to the administration (and management) of the NSW abalone fishery makes it clear that responsibility for the sustainable use of the resource rests exclusively with the Minister. As such, the Department must act to deliver on the Minister's responsibilities in this area.

The Department is, in general, attempting to meet its legislative requirements in relation to the management of the abalone resource although there are some areas where it is deficient and these are discussed below.

In relation to the Department's responsibilities under the Act it is evident that the Department has developed and put in place the required subordinate legislation (the Management Plan) and processes (the AbMAC and TAC Committee) to administer the fishery in accordance with law. However, while the Department has put the necessary legal framework and structures in place, it is questionable whether these are delivering the desired results in a timely manner, particularly the primary objects of the Act and the objectives of the Management Plan. Some indicators of this are:

- The status of the NSW abalone resource has been in progressive decline for at least 25 years. This has occurred even with the implementation of more stringent management measures including, progressive reductions in the TAC, closures to some areas (regions) of the fishery and increased size limits;
- Some of the information required in measuring the performance of the Management Plan against its objectives is not available and, where information is available, it is evident that some performance indicators are unlikely to be met. In addition, some of the Plan's economic objectives are beyond the Department's control and are unlikely to be met;
- The TAC Committee now has less capacity to make an informed appraisal on the performance of management arrangements due to the recent reduction in the resources required to obtain critical, fishery independent, scientific information;
- The AbMAC is not functioning in a manner that adds value to the fishery management process. In fact, it is evident that the AbMAC is not taking a strategic view of the fishery and is bogging down on operational matters that are deflecting debate away from the core issue of sustainable resource management;
- There is little evidence that the findings and recommendations of past reports and reviews on the fishery are being attended to in a timely and comprehensive manner and this is, understandably, providing an opportunity for the commercial abalone industry to challenge the Department's administrative performance; and
- The limited human and financial resources of the Department are being diverted from the core business of sustainable resource management to address issues and

complaints from some industry participants who are operating outside of the established management processes.

Each of the above issues is addressed in more detail within this report.

It is also worth noting that under the provisions of the Commonwealth EPBC Act the NSW abalone fishery has approval to export product until November 2010, subject to a number of conditions being met. Meeting these conditions and retaining export approval is critical to the ongoing viability of the NSW abalone fishery due to its high dependence on export markets and, importantly, limited opportunities in domestic markets.

In light of the above, it is of concern that recent budgetary cuts in critical areas such as the fishery independent surveys, compliance capacity and a number of other services critical to best practice fishery administration could ultimately be to the detriment of the commercial fishery retaining its export approval.

It is recommended that the Department take a more assertive role in meeting its core legislative responsibilities in relation to the abalone resource as required under the Act, the Management Plan and the conditions of the wildlife trade operations approval under the Commonwealth EPBC Act.

Total Allowable Catch Setting and Review Committee (TAC Committee)

The Act establishes a Total Allowable Catch Setting and Review Committee (the TAC Committee) and sets out its composition, functions and method of operation. The Act requires that the TAC Committee be an impartial body (determined by its composition) and independent of Ministerial control on its deliberations and determinations. The Minister can request the TAC Committee review its determination.

Section 28 of the Act identifies that *“the TAC Committee is required to determine a specified total allowable catch for a share management fishery if the management plan for the fishery so requires”*. Section 14 of the *Fisheries Management (Abalone Share Management Plan) Regulation 2000* requires that this be done in respect of each fishing period (1 July – 30 June, inclusive).

The review found that the TAC Committee has complied with its legislative requirements to the best of its ability given the gaps in scientific and economic information that it has had to deal with, especially more recently. The TAC Committee reports are very thorough in their analysis of all of the factors they are required to take into consideration and it is evident in the bluntness of some of their recommendations that they are working independently and in the best interests of the resource. This is to be expected given the very high level of expertise and credibility of its members.

However, while many of the TAC Committee's recommendations for this fishery have been adopted, it is disappointing that the concerns they expressed in their previous report over the consequences of scaling down investment in fishery independent surveys, compliance and a number of other critical areas of research were not given appropriate weight. While it is recognised that the administration of this fishery is facing budgetary constraints, independence in the assessment on fish stocks is an essential component of best practice fishery management (and administration). It is also essential to this fishery retaining its export approval under the requirements of the

Commonwealth EPBC Act. This is significant given the commercial abalone fishery is entirely dependent on export markets for its future viability.

Both the Department and the commercial abalone industry (through AbMAC) must take responsibility for this outcome. The industry for pursuing such a short sighted strategy that has now cost them dearly in production losses due to the necessity for a highly conservative TAC, and the Department for not standing its ground on what is a fundamental requirement of best practice in the administration of fisheries.

Without going into detail here, there are other recommendations of the TAC Committee that have also been “negotiated away” by industry for the sole purpose of exercising control and achieving short term (and short sighted) financial gains.

It is recommended that the Department give greater recognition to the TAC Committee’s concerns and recommendations, in particular, recommendations that are directly linked to the fishery retaining its export approval under the Commonwealth EPBC Act.

Discussions with industry AbMAC representatives and other industry participants at the open meeting held in Merimbula raised a number of potential improvements in the TAC setting process worthy of implementation. The most prominent of these relate to the timeliness of determinations and industry input into the determination process and are:

- Industry felt that it was difficult to have constructive and informed input into the TAC setting process at the time written submissions are called for as they have little information upon which to base a submission. That is, they have nothing to respond to, and therefore, little upon which to base a submission;
- Industry felt that their ability to have constructive input on the day that the TAC Committee sits was also hampered by time and travel constraints given that shareholders are dispersed throughout the state (some interstate) and divers are concentrated on the south coast of NSW - yet the TAC Committee sits in Cronulla (Sydney); and
- That it was difficult for industry to factor the TAC into their business requirements for the year when they receive confirmation of the annual TAC so close to the commencement of the fishing period to which it applies. The TAC Committee report and determination for 2009/10 was finalised only one month before commencement of the fishing period.

The review felt that there was merit in the concerns being raised and options for improvements in the TAC setting process that were suggested at the Merimbula meeting and by AbMAC industry representatives and that there were options worthy of implementation.

As a result of this and with respect to the administrative processes involving the TAC Committee, it is recommended:

- a. The TAC Committee commences its determination process early in the calendar year, with a view to bringing forward the final TAC determination for the subsequent fishing period. This may be possible using calendar year data as opposed to fishing period (financial year) data;
- b. The TAC Committee prepare a “draft” TAC report that, subject to the Minister’s consideration, be posted on the Department’s web site and followed up by a call for submissions (including correspondence to shareholders and divers advising of such);

- c. The TAC Committee hold its sitting day in a location that will maximise the opportunity for stakeholder participation in commenting on the “draft” report. If necessary consideration be given to holding a sitting day in more than one location.
- d. Subsequent to the above, the TAC Committee can then finalise its report and determination for the Minister’s consideration in the full knowledge that every opportunity has been provided for broader stakeholder input into the process. Further, the ‘draft’ recommendations will have been responded to by industry through the TAC Committee rather than directly to the Minister.
- e. Consideration should also be given to setting the TAC for two subsequent fishing periods as opposed to going through the process every year - an accepted practice with some other fisheries within Australia. This would provide opportunities for cost savings for the Department (and the industry) as well as providing a greater level of management certainty for industry to factor into its business planning.

The review recognises that the current legislative provisions do not provide for a “draft” report and determination to be provided to the Minister by the TAC Committee. However, in the aim of better meeting community expectations on meaningful stakeholder consultation, there would be value in providing the opportunity for more informed submissions and discussion than is currently the case. This would also allow difficult issues to be debated between industry stakeholders and the TAC Committee prior to formal determination rather than that debate occurring as soon as the Minister makes the announcement each year.

Setting TACs (and related provisions – ie size limits, etc) for a period greater than just one fishing period would also go some way toward reducing opportunities for division (within industry and with the Department) as well as providing a greater lead time for industry in business planning and for collecting and processing fisheries data. Savings achieved could then be applied to assisting the TAC Committee by addressing the lack of fishery independent data available on this fishery.

Abalone Management Advisory Committee (AbMAC)

The AbMAC is formed at the discretion of the Minister, under the *Fisheries Management Act 1994* (s.230) and its subordinate legislation, which prescribe its membership and the following functions:

- to advise the Minister on the preparation of any management plan, fishery management strategy or regulations for the fishery, and
- to monitor whether the objectives of the management plan, the fishery management strategy or those regulations are being attained, and
- to assist in a fishery review in connection with any new management plan, fishery management strategy or regulations, and
- to advise on any other matter relating to the fishery.

It is thus, an advisory committee with a strategic management and advisory focus. To do this effectively, it must provide a forum within which a range of differing management policy views and positions can be proposed and debated on their merits,

with opposing positions brought together to foster agreement on actions and to focus on those matters which are important to managing the fishery.

A key focus of AbMAC, and critical to the administration of the fishery, should be the Abalone Share Management Plan and the associated Fishery Management Strategy, each of which contain objectives, performance measures and trigger points for the fishery.

Essentially the AbMAC requires trust, good co-operation and transparency among its members and a commitment to progress the issues raised among the parties for it to function effectively. It also needs to have good working relationships with the TAC Committee and, of course, the various functional areas of the Department – management, research and compliance.

While the AbMAC has operated in this fashion at times in the past, its record over recent years has led many observers to believe it is currently not capable of fulfilling its legislative purpose. Comments to this effect are contained in a number of recent reviews cited by this current review, together with the reasons for this situation.

The recent history is one of resignation of AbMAC Chairs, cancelled meetings, an atmosphere of mistrust, frustration through lack of progress, an antagonistic and adversarial atmosphere, and a record of actions being taken outside the AbMAC – both legal actions and constant calls for reviews and explanation of previous decisions.

Its “agenda” has stalled and shifted from strategic to operational and it appears incapable of reaching agreement on any issue. It now has a history of industry members passing resolutions by themselves with the Department members abstaining and other members either not becoming involved or not attending meetings. It has degenerated into a forum of argument and accusation with a focus on a long historical list of issues including operational and budget matters, which, while not insignificant, prevent the AbMAC focusing its energies on the critical management and industry development issues. The limited resources available for management should not be dissipated on such matters at this time.

There are many reasons for this, and all parties need to take some responsibility for the current situation. However allocation of blame is not a productive way forward, but a consideration of some of the causes can indicate what needs to be done to move the management of the fishery forward.

The AbMAC operations came under pressure with the introduction of the fishery as a Category 1 share managed fishery with its associated cost recovery policy and the limited re-structuring which occurred at that time. Furthermore, and with the benefit of hindsight, management rules in place at the time were insufficient to prevent a gradual collapse of the quota, illegal poaching, a decline in profitability and also failed to encourage re-structuring over recent years within the fishery.

These pressures spilled over into the AbMAC process and were accompanied by unrealistic expectations on the part of both Government and commercial abalone industry members as to what could be funded and achieved within certain time frames. For example, an expectation that co-management arrangements could be quickly and easily introduced and that these would solve many of the problems facing the fishery.

Changes in the upper management in the Fisheries Group, political changes, Departmental re-structures and downsizing, budget reductions, uncertainty about the

latest policy positions, perceived lack of authority by the Departmental representative on the AbMAC, a lack of information flows both ways, inadequate responses to many reviews and recommendations, all contributed to the increased frustration and lack of goodwill at the AbMAC.

Also with industry members coming to the AbMAC with a single caucused or pre-prepared position on issues, it was left to the Departmental representative to put forward other possible positions which automatically created an adversarial atmosphere.

Despite this, industry members of the AbMAC still hold some optimism for the future growth of the industry and indeed for the operation of the AbMAC itself with a desire to “draw a line in the sand” and move forward. However significant changes will have to be made over a period of time to reach this end point.

The AbMAC cannot function until goodwill, trust, transparency and responsibility are gradually re-built and the above issues addressed. Further, with the fishery continuing to decline and urgent management changes required, it is recommended that the best way forward is to suspend the functioning of the AbMAC and use its financial resources to assist in forming a dedicated working group to focus on the necessary management changes that are now urgently required.

The Department needs to take the initiative in forming this working group which needs to be expertise based rather than representative based (at least initially), to focus on the immediate issues requiring resolution and move the agenda forward. Subsequently there should be engagement by all stakeholders / industry through ‘whole of industry’ meetings in accordance with actions following the ‘Pymont Pact’ discussions. Further the Chair of the AbMAC could be engaged to assist with driving the working group and acting as a conduit between the various parties.

The Fishery Management Strategy, the Special Abalone Recovery Group Report, and the recent reports of the TAC Committee provide sufficient details of the necessary management changes and issues which require immediate attention and which should focus the activities of the working group.

Also the requirements of the Commonwealth Department of Environment, Water, Heritage and the Arts (DEWHA) must be considered as part of this process of working group activities in order to maintain export approvals for the industry and sound sustainable management. DEWHA is an important part of the administration of the fishery and negotiations need to occur to ensure that management changes satisfy these requirements.

The wide range of other issues previously raised through the AbMAC need to be prioritised and a risk management based approach taken to responding to these, remembering always that the focus must be on abalone resource sustainability and industry growth.

Fees, Charges and Budgets

Under the NSW Government’s policy on cost recovery, abalone shareholders are required to pay the attributable costs of managing the commercial abalone fishery. In addition they are required to make a “community contribution” for the exclusive privilege they hold to harvest abalone for commercial purposes.

It is a requirement under the legislation that all fees and charges paid by commercial fishers are paid into the Commercial Fishing Trust Fund (section 238 of Act) which is administered by the Department. The only exception being the community contribution charge which is to be paid into the consolidated fund of the NSW Government. The latter is of no material significance at present as the sliding scale under which this is determined for the commercial abalone fishery currently sets the charge at \$0 (ie abalone beach prices are currently well below the threshold at which a charge can be applied).

A review of past reports on the commercial abalone fishery identifies that total expenditure for the management of this fishery has reduced from almost \$1 million in 2002 to around \$0.6 million for the 2007-08 period – a reduction of over 40 percent. Indications are that this expenditure will reduce even further this year due to the stressed financial state facing the industry. The gross value of production (GVP) from the fishery has declined markedly over recent years as a direct result of significantly reduced TACs and a falling beach price due to competition from aquaculture production overseas – notably China and South Korea. The TAC Committee report identifies that the GVP for the fishery has declined from an estimated \$20.1 million in 2000 to \$3.8 million in 2007-08. – a fall of around 80 percent. Past annual management expenditures represent around 15 percent of the GVP for the fishery. The fishery GVP is likely to fall again this year due to a further reduction in the TAC and further decline in beach prices.

It would be difficult for the Department to demonstrate that it is meeting its legislative objectives given the drastic cuts in expenditures (and hence services) in the fishery that has occurred over the past five years. Just one example of the negative impact these expenditure cuts are having on the management of the resource is identified in the most recent TAC Committee report where the lack of critical resource information prevented a more accurate assessment on the status of abalone stocks. This left the TAC Committee with little option but to set a very conservative and reduced TAC for the 2009/10 fishing period.

It is evident this downward spiral in expenditure (investment) in the management of this fishery is neither in the best interests of the resource, the Department nor the industry, and this situation needs to be addressed as a matter of urgency.

It is recommended that the Department should ensure an appropriate level of investment is achieved in managing this fishery and that an internal working group comprising management, research and compliance frame a “notional” budget for this fishery targeted at:

- a. Firstly, line items (tasks) required in meeting the principal objectives of the Act - sections 3(1) and 3(2a, b and c) and that these be identified as non-negotiable;
- b. Secondly, line items (tasks) required in meeting the secondary objectives of the Act – section 3(2d, e, f and g) and that these be negotiable with industry and other key stakeholders; and
- c. In determining (a), the recommendations of the TAC Committee report and the Special Abalone Recovery Group (SARG) report be given paramount consideration, in particular, those recommendations directly relevant to maintaining export approval for the fishery under the provisions of the Commonwealth EPBC Act.

In addition to the expenditure reductions and budgetary issues identified above, discussions with Departmental staff and commercial abalone industry representatives identified that there are also a number of outstanding matters and other issues relating to fees and charges. These include:

- A very large accumulated debt as a result of the non-payment by some in industry of fees and charges;
- The 2008-09 management charges remain unpaid, with industry advising that they are yet to be advised by the Department on what these charges are;
- The industry remains unaware what management charges apply for the current fishing period which commenced two months ago; and
- There does not seem to be a provision within the Act to suspend (not cancel) a person's right to fish where management fees are not paid. This is most unusual as it essentially provides the industry with an avenue to boycott payment.

It is recommended that the Department develop a policy in relation to the collection of management charges from the commercial abalone industry taking into account:

- a. Providing industry with more timely advice on management charges for the upcoming fishing period to enable them to better inform their business planning. (eg, advising industry at least two months before the commencement of the fishing period);
- b. A strategy for addressing the accumulated debt of industry;
- c. Implementing a benchmark above which attributable management charges will not be recovered from industry to account for periods when industry is under severe financial stress. For example, management charges may not exceed a set percentage of the estimated GVP for the fishery for the relevant fishing period;
- d. Refrain from using industry ballots as a means of determining management services and charges on the basis that taxes and service fees should be determined within a rational policy framework as opposed measuring "popular" opinion.
- e. Give consideration to inserting appropriate provisions in the Act which suspend (not cancel) the right to fish where fees are not paid in a timely manner.

As a final point it needs to be recognised that by not setting management charges at an appropriate level, by not collecting unpaid management charges and by allowing shareholders to exercise their rights to fish where management charges are not paid, the Department is inadvertently impeding structural adjustment in the fishery. It is well recognised that the ratio of business costs against returns is a key driver of structural adjustment, especially in share markets.

Relationships – Communication and Consultation

Critical to fostering and maintaining robust relationships (which are essential among the many stakeholders in fisheries management) are trust, transparency and the two way flow of quality information, among the parties.

The majority of abalone industry members certainly believe that there is little trust left in the relationship between them and the Department and a critical issue is the absence

of timely, quality information flows from the Department. This has in part, led to legal challenges, the questioning of decisions, the undertaking of numerous reviews, calls for responses to reviews, judicial appeals and ombudsman's enquiries.

Although, to date, this has not resulted in any significant findings or outcomes related to management of the fishery, it has diverted resources away from the "main game" of managing the abalone resource and the fishery. It also demonstrates the poor relationships and dysfunctional consultation processes. Further, where there is a vacuum, industry will quickly fill the space with their own perceptions or interpretations of the "facts" - inevitably based on partly-informed opinions and misinformation. Effective communications based on timely, quality information needs to be re-established with the abalone industry and other key stakeholders as a matter of urgency.

Re-establishing relationships will require the Department to take the lead and focus the agenda on the critical issues facing the abalone resource and the industry. The previous example of conducting industry ballots to decide the appropriate level of fishery management services and budgets is not considered appropriate to these circumstances. Again the comments contained in the Special Abalone Recovery Group report on re-building the relationships are very relevant and need to be acted upon and reported to all stakeholders.

Earlier discussions around a different system of administration of management between the Department and industry through a co-management approach have also foundered on a lack of trust and clear direction for the development of the industry. The Marsden Jacob report discussed the transition to co-management in detail, together with the pre-conditions required for success. However, the proposed Abalone Development Council has failed in this regard, while the Abalone Council of NSW has not been able to fulfill this uniting and cohesive drive to lead a co-management approach on behalf of the industry to date.

Virtually none of the necessary pre-conditions for co-management (ref. FRDC report on co-management) exist currently in the fishery. Certainly the most basic requirements of trust, cooperation and transparency in communication and consultation are not present.

Nevertheless, future management arrangements should encourage the involvement of industry operators and the delegation of some functions to industry, but only when an improved relationship is developed and the sharing of management costs is negotiated.

It is recommended that stakeholder-wide communication and consultation occur, targeting initially, the confirmation of key policy positions and proposed management initiatives through the working group proposed in this report.

This can occur without significant additional cost through the conduct of industry/stakeholder forums held in appropriate locations. Such activities and consultation should involve non-industry members currently involved with the AbMAC to ensure that a wide dialogue is continued with Government by all parties.

This process has already commenced across the whole industry with the agreement to the actions and aspirations contained in the "Pyrmont Pact" July 2009 and through the conduct of port visits by Mr. George Davey, Deputy Director General, Industry and Investment and his fisheries staff.

However, it is important that Departmental people involved in this process, port visits and meetings have sufficient authority to make commitments, make decisions and be able to ensure stakeholders they will be implemented. It is also important that false or unrealistic expectations are dealt with and that only achievable outcomes are pursued.

Consultation and communication needs to be on-going and not just occur at formal meetings. A two-way flow of information between the Department and stakeholders also needs to occur between meetings. Without this occurring, “agendas” and issues, if left unaddressed between formal meetings, may grow out of control to become arguments at future meetings.

Previous reviews have also commented on the “paternalistic” style or culture in communications coming from the Department, reflective of a more “command and control” style of management. Clearly to the extent this has occurred, it is not conducive to “drawing a line in the sand”, building good relationships and moving forward.

If both the Department and industry still believe that co-management is a desired outcome to efficiently manage the fishery, plenty of work is required from all parties if the necessary pre-conditions for co-management are to be put in place. This should provide an incentive to all parties to work towards this goal which can offer more cost effective management.

Reference Material

Abalone Fishery Environmental Impact Statement: An Overview; The Ecology Lab Pty Ltd; 2005

Abalone Fishery Environmental Impact Statement: Volumes 1, 2 and 3; The Ecology Lab Pty Ltd; September 2005

Abalone Fishery Management Strategy; April 2007

Abalone Fishery Total Allowable Catch Committee Report and Determination for 2009/10; May 2009

Abalone Management Advisory Committee: Agendas, Minutes and Meeting Outcomes; September 2007, November 2007 and April 2008

An Assessment of Economic and Social Issues in the New South Wales Abalone Fishery Management Strategy; Dominion Consulting Pty Ltd, June 2005

Co-Management: Managing Australia's Fisheries through Partnership and Delegation; June 2008 - Fisheries Research and Development Corporation.

Declaration of an Approved Wildlife Trade Operation, Commonwealth Gazette 28 February 2008.

Fisheries Management Act 1994 No 38

Fisheries Management (Abalone Share Management Plan) Regulation 2000

Fisheries Management (General) Regulation 2002

Future Governance of the NSW Abalone Fishery: Alternative Arrangements; Marsden Jacob Associates, March 2004.

Report on the Review of the NSW Abalone Fishery; December 2005

Special Abalone Recovery Group Final Report; February 2008

Many of the above documents are available electronically at the following web sites:

<http://www.dpi.nsw.gov.au/fisheries/commercial/fisheries/abalone>

<http://www.legislation.nsw.gov.au/maintop/view/inforce/act+38+1994+cd+0+N>

<http://www.legislation.nsw.gov.au/maintop/view/inforce/subordleg+47+2000+cd+0+N>

<http://www.environment.gov.au/coasts/fisheries/nsw/abalone/index.html>

Attachment A: Terms of Reference

Review of the functioning of the Abalone Management Advisory Committee and related issues.

Terms of Reference

The Fisheries Management Act 1994 sets out the objects and responsibilities of the Government in managing the publicly owned fisheries resources of NSW. The Government is responsible for the conservation of fish stocks and adoption of the principles of ecological sustainable development first and foremost, whilst consistently with those objectives, to promote viable commercial fishing and the appropriate allocation of fisheries resources.

As the abalone resource is in need of strategic and responsible actions to facilitate its recovery, it is imperative that engagement between industry and government is optimised and based on a sound collaborative approach. It is proposed to review factors surrounding the administrative and consultative arrangements for the fishery.

The review should consider and report on:

the effectiveness of administration arrangements in meeting the objects of the Fisheries Management Act 1994 with respect to the abalone resource, and in particular the relationship between the Abalone Management Advisory Committee, other abalone shareholders and Government through the Department of Industry and Investment.

The review should include seeking input from relevant people, including but not limited to;

- Industry members and chair of the Abalone Management Advisory Committee,
- Other shareholders within the fishery,
- DPI staff involved in the management and administration of the fishery,
- Members of the Total Allowable Catch Committee.

The final report should be provided to the Minister for Primary Industries by 31 August 2009.