

1 BACKGROUND

1.1 A History of NSW Advisory Bodies

Until relatively recently, there has been a general absence of interest groups representing commercial fishers. The widespread distribution and independent nature of the commercial fishing industry have been cited as reasons contributing to this general lack of organised representation. To facilitate liaison and consultation between itself and commercial fishers, the Commonwealth Government established fishermen's cooperatives in all States during the 1940s. Since this time, the Commonwealth Department of Primary Industry has also promoted the establishment of a succession of commercial fishing representative bodies, including the present Australian Seafood Industry Council.

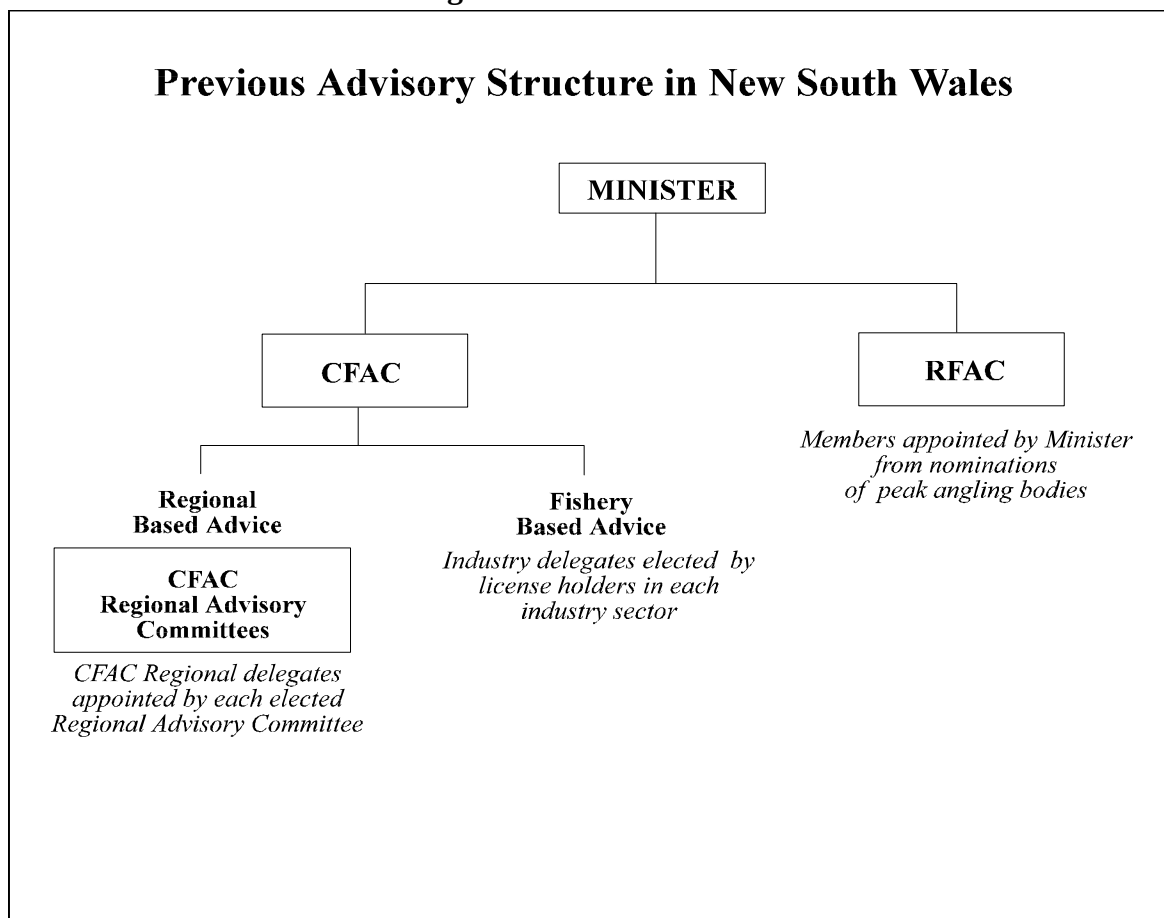
The trend away from smaller, regionally based, multi-method commercial fishing operations to larger species or method-specific fisheries has resulted in the formation of industry-specific associations on an ad hoc basis to represent and lobby on behalf of their particular industry. The South East Trawl Fishing Industry Association is an example of such groups. Increasing pressure on the State's fisheries and structural changes in the commercial industry have coincided with a growing insistence from the recreational fishing sector and the community in general to have a greater role in fisheries management.

Since the turn of the century a variety of interest groups have been formed to represent the interests of recreational fishers and to provide a mechanism for consultation between these groups and government. Angling clubs and trout acclimatisation societies are the earliest examples of these.

In recognition of the need for a formal advisory structure which could provide advice and consultation to assist in the sustainable management of New South Wales' fisheries, the Commercial Fishing Advisory Council (CFAC) and the Recreational Fishing Advisory Council (RFAC) were created by the *Fisheries and Oyster Farms Amendment Act (1989)* to provide a means of communication and advice to the Minister from recreational and commercial fishers.

The Commercial Fishing Advisory Council was supported by Regional Advisory Committees (RACs). The function of Regional Advisory Committees was to provide a forum for the discussion of regional fisheries issues and appoint representatives to the Commercial Fishing Advisory Council.

Figure 1 - Old Structure



In January 1996 a *Review of Fisheries Consultation in NSW* was completed by the Director of Fisheries, Dr John Glaister. The report claimed that the primary problem with the existing advisory structure was that there was a blurring of advisory and representative roles. For example, the *Review* found that the Commercial Fishing Advisory Council had “been unable to discern the difference

between the role of an adviser and that of a partisan advocate.”¹ The *Review* was also critical of the Recreational Fishing Advisory Council for not being representative of the recreational community.

The Review recommended in part:²

- 1 Advisory and representative functions are different and separate structures should be established for each. Advisory bodies should be expert and membership determined on the basis of experience and knowledge.
- 2 Industry interest groups, established to represent fishers and defend their interests, should be independent of government.
- 3 Consultation with fishers on the management of commercial fisheries should be the function of the fishery-specific Management Advisory Committees (in the case of share management fisheries) and similar committees to be established for restricted fisheries.
- 4 The Minister should be advised by the New South Wales Department of Fisheries (NSWF) and four specialised advisory councils, these councils to cover commercial fishing, recreational fishing, aquaculture and fisheries research.
- 5 The new Advisory Council on Commercial Fishing should assume the advisory responsibility for all matters relating to commercial fishing, other than those fishery specific management issues dealt with by Management Advisory Committees, and similar committees should be established for restricted fisheries.
- 6 The Recreational Fisheries Advisory Committee should be modified to ensure that it is also an effective adviser to the Minister. To recognise its revised form it should be known as the Advisory Council

¹ Glaister, J. *Review of Fisheries Consultation in NSW*, NSW Fisheries, January 1996, p. 18.

² Glaister, J. *Review of Fisheries Consultation in NSW*, NSW Fisheries, January 1996, pp. 34-35.

on Recreational Fishing and be composed of experts on specified fields drawn from the organisations now constituting the Recreational Fishing Advisory Council.

- 7 There should be an Advisory Council on Aquaculture in recognition of the particular nature of this growing industry. Its format and membership needs further study.
- 8 There should be an Advisory Council on Fisheries Research (ACFR) in recognition of the vital role that scientific and other analytical studies play in the management of fisheries resources. This Council should be skills based and include members with both research and industry experience. The Advisory Council on Fisheries Research should also fulfil the requirements of the Commonwealth Fishing Industry Research and Development Corporation in New South Wales now carried out by the Fisheries Industry Research Advisory Council. The Total Allowable Catch Committee should be authorised to advise the Advisory Council on Fisheries Research.
- 10 The New South Wales Seafood Industry Council (NSWSIC) should expand its membership to cover all components of the industry, in particular fishermen's cooperatives, seafood importers and seafood restaurateurs. Its commercial fishing sector should be the representative body for that community and defend and promote its interests.

The Minister accepted Dr Glaister's Report and the *Fisheries Management Amendment (Advisory Bodies) Act 1996* was enacted in December 1996. This Act abolished the Commercial Fishing Advisory Council and the Recreational Fishing Advisory Council and provided for the establishment of Ministerial Advisory Councils and Management Advisory Committees in accordance with the associated Regulations.

A degree of industry unrest, particularly in the commercial sector arising from the abolition of the Commercial Fishing Advisory Council, led to the reference from the Legislative Council for this inquiry into the newly created advisory bodies structure.

1.2 The Role of Advisory Bodies

1.2.1 Ministerial Responsibility to Consult Advisory Bodies

S. 58 of the *Fisheries Management Act* (as amended) sets out the responsibilities of the Minister for Fisheries regarding public and industry consultation as follows:

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| 58(1) | The Minister is required to give the public an opportunity to make submissions on any proposed management plan for a fishery (or proposed new plan) and to take any submission that is duly made into account. |
| 58(2) | The Minister is required to consult the Management Advisory Committee for a fishery, and any other relevant commercial or recreational fishing industry bodies, about any proposed management plan for a fishery (or proposed new plan). |

The Standing Committee believes that it is the responsibility of the Minister to ensure that all user groups have an opportunity to provide input into the management of the resource, while it is the role of advisory bodies generally to provide objective advice based on expert opinion in order for government to develop and enact policies.

The quality of advice given to the Minister will be reliant on:

- (a) a clear understanding of the role of advisory bodies; and
- (b) the ability of advisory bodies to effectively consult at all levels.

1.2.2 Advisory versus Representative Role of Advisory Bodies

The 1996 *Review of Fisheries Consultation* emphasised the importance of defining the difference between advisory and consultative groups stating:

Reasons for the failure of Australian fishing industry groups to meet expectations can be found in a tendency to believe that one group can serve both purposes.³

Clearly defining the role of advisory and consultative groups will determine the most appropriate makeup of the committee, that is, experts versus representatives. This would help negate any potential feeling amongst members of the community that they are being denied adequate representation.

Dr John Glaister, Director, NSW Fisheries, reiterated this view to the Standing Committee:

One thing that has not been addressed is that in the consultation review there was an understanding that the different roles needed to be separated. The advisory role, which is embodied in the advisory councils and the management advisory committees, has been established or is in the process of being established. I am confident that will work. As to the other role, that of industry advocate of a peak body or a trade union, whatever description you would like, in any other primary industry, such as grain growers or meat producers, the body is established by the members. It is not a compulsory unionism with a collection of fees by Government departments. It is a body set up by the producers to act as an advocate on their behalf.

The Department has attempted to facilitate that process. The Minister and the Department have deliberately kept at arm's length from the process of establishing a body which will respond to the industry's wishes. The attempt that we

³ Glaister, J. *Review of Fisheries Consultation in NSW*, NSW Fisheries, January 1996, p.40

have made is the Transitional Commercial Fisheries Council and that process has reached the stage where a constitution has been drafted and circulated to the industry for comment. A number of industry bodies, advocates if you like, have sprung up. ... It is inappropriate for the Department to be involved in that process, save for facilitating that to happen.⁴

Representatives of the commercial fishing industry offered differing views on the practicality of separating out the objective advisory and representative functions of advisory bodies. Mr William Baker, Chairman of the Interim Advisory Council on Commercial Fishing, supported the separation of functions:

I think the first thing I would need to get out of the road is the fact of the industry's perspective on advisory and/or lobby. They are two completely different things, as I see it. One of our major stumbling blocks all the way along has been the advisory capacity of a committee as against the lobby capacity of a committee.⁵

Mr Oleh Harasymiw, Chairman, Four Ports Management Committee and former member of the now abolished Commercial Fishing Advisory Council, expressed the opposite view.

Referring to the *Review of Fisheries Consultation*, Mr Harasymiw stated:

[Dr Glaister] felt—and this is the Minister's report by that stage—that the representation and advisory roles should be split. This, to me, is unrealistic to the point of really being laughable. If you accepted that there should be such a division of powers, if you want to call it, then every parliamentary member who, upon election, becomes a representative should technically be disqualified from giving the Government any advice. That includes Opposition people who may offer advice and Independents who may

⁴ Evidence of Dr Glaister, 13 February 1997, pp. 78-79.

⁵ Evidence of Mr Baker, 13 February 1997, p. 40.

wish to offer advice. So, in the parliamentary sphere, representation and advisory roles are together, and it is absolutely incredible that it should not be so in any representative organisation.⁶

The Standing Committee considers that advisory bodies must provide within their statutory framework requirements which ensure that appointments to such bodies are made at “arm’s length” from the political forces which impact on the decision-making of government. The Standing Committee notes that the Commercial Fishing Advisory Council was funded and elected by commercial fishers and suggests that it is inevitable that the Council may act in a partisan way. It is the view of the Standing Committee that, while it is desirable to have within the industry separate bodies that have a clearly identified role to advise, consult and lobby on behalf of each sector, it is inevitable that to some degree there will be a blurring of these roles in that some members of these bodies may appear to be acting in a way which is not totally divorced from their commercial interests.

⁶ Evidence of Mr Harasymiw, 13 February 1997, p. 44.
