

2 THE MOVE TO THE NEW ADVISORY BODY SYSTEM

As stated in Chapter One, the precursors to the proposed Advisory Councils were the Commercial Fishing Advisory Council and the Recreational Fishing Advisory Council. This chapter outlines the criticisms expressed in relation to the abolition of these Councils and the move to the new advisory body structure, and includes the Departmental rebuttal of these criticisms.

2.1 Perceived Problems with Previous Advisory Bodies

2.1.1 The Commercial Fishing Advisory Council

The Standing Committee received considerable evidence in relation to the abolition of the Commercial Fishing Advisory Council. NSW Fisheries claimed that the Council's structure was outdated and that the Council itself had lost the confidence of the industry.

The Director of Fisheries, Dr Glaister, referring to his 1996 *Review of Fisheries Consultation in NSW*, told the Standing Committee:

In that review I described the consultation processes in place at the time and, in particular, the shortfalls of the Commercial Fishing Advisory Council. CFAC was designed and established for a fisheries environment of the past. Whilst many of those involved in CFAC contributed much, the overall performance of the organisation was unsatisfactory. CFAC lost the confidence of those who paid for its activities and failed to meet its obligations to advise the Minister. The Council became unable to distinguish between its statutory role of adviser to the Minister and that of an industry lobbyist and, in part, as an advocate. Comments by the Auditor-General suggest that

the Council may not have operated in a cost-effective manner.¹

Dr Glaister later reiterated the conflicting roles that the Commercial Fishing Advisory Council was attempting to play:

The whole problem identified with the existing structure is that the CFAC was acting both as an advisory body to the Minister and in a partisan political way.

... The problem with the way that CFAC had acted in the management of fisheries was such that, in terms of advice, vested interests quite often got in the way of sensible outcomes.²

Mr Harasymiw admitted that there were problems with the structure of the Commercial Fishing Advisory Council but stressed that the major problem was that a lack of funding prevented the Council's Regional Advisory Committees from performing effectively. Mr Harasymiw claimed that the Commercial Fishing Advisory Council had recognised this and was preparing to address the problem when it was abolished.³

In response to criticisms that the new advisory body system did not properly represent the commercial industry, Mr Stephen Dunn, Executive Officer, Policy Unit, NSW Fisheries, stated:

The Commercial Fishing Advisory Council was elected through the Electoral Commission [State Electoral Office]. The Council itself recognised that they were going to go through a fairly significant change in the not too distant future ...

¹ Evidence of Dr Glaister, 13 February 1997, pp. 51-52.

² Evidence of Dr Glaister, 13 February 1997, p. 77.

³ Evidence of Mr Harasymiw, 13 February 1997, p. 48.

... This was a move away from generic fishery management consultation to a process which would rely on fishery specific consultation as we moved to a process of restricted and shared management fisheries. That means that the importance of having a central council—however that council was composed—would diminish, and that the responsibility would pass a lot more back on to Management Advisory Committees.⁴

A number of other witnesses criticised the abolition of the Commercial Fishing Advisory Council, claiming that the move to the Advisory Council on Commercial Fishing would seriously undermine the commercial fishing industry's representation and feeling of ownership over the management process. For example, Mr Snape stated:

For industry to have confidence in management we must have confidence in our elected representatives and in the structures, that they will be representing commercial fishermen's interests.⁵

One of the other criticisms concerning the abolition of the Commercial Fishing Advisory Council was the way in which the collection of industry levies to support the Council was stopped and the Council's assets allegedly seized by the Department. Dr Glaister was questioned in relation to the withdrawal of funding to the Council before it was legally abolished. In reply Dr Glaister stated that "the Minister withdrew the direction to collect funds to support it [the Council]" in early 1996. Following that, the Department assumed the financial commitments of CFAC until the legislation abolishing the Council was passed in December 1996.⁶

⁴ Evidence of Mr Dunn, 13 February 1997, pp. 65-66.

⁵ Evidence of Mr Snape, 14 February 1997, pp. 12-13. See also evidence of Mr Harasymiw, 13 February 1997, p. 44.

⁶ Evidence of Dr Glaister, 13 February 1997, pp. 73-74.

Dr Glaister undertook to provide the Standing Committee with written information in relation these events but the resultant letter from Dr Glaister shed no further light on the matter.⁷

2.1.2 The Recreational Fishing Advisory Council

The move from the Recreational Fishing Advisory Council to the Advisory Council on Recreational Fishing appeared to be far less controversial than the changes to the commercial advisory bodies. The Standing Committee believes that this was largely due to the fact that, apart from the name change, little else changed in the recreational sector, whereas a significant number of decisions made by the Minister and NSW Fisheries impacted on the commercial sector in somewhat controversial circumstances.

Referring to his *Review of Fisheries Consultation in NSW*, Dr Glaister highlighted the relatively narrow advice emanating from the Recreational Fishing Advisory Council and the need to expand its membership as a means of ensuring that the views of the wider community were represented:

The shortfalls of the Recreational Fishing Advisory Council were also discussed. In particular, the structure of RFAC did not match the role of a body to advise the Minister and to act as a liaison body between recreational and commercial fishers. The structure was at risk of expressing the views of the particular bodies comprising the membership rather than the views of the angling public in general. Also, much of the agenda of RFAC concerned attempts to limit commercial fishing rather than dealing with angling issues. RFAC's principal concern appeared to be to get a bigger share of access to fish resources at the

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A letter from Dr John Glaister, Director of Fisheries, to the Chairman, the Hon Patricia Staunton, MLC, dated 15 May 1997, stated only: "The regulation requiring collection of the CFAC levy was revoked and a certificate that the regulation could be legally made was signed by Mr Denis Murphy, Parliamentary Counsel."

expense of the commercial sector, rather than dealing with the full range of matters of interest to anglers.⁸

Mr Bruce Schumacher, Chairman of the Interim Advisory Council on Recreational Fishing, said that he believed there was little difference between the old body and its proposed successor, other than a change in the appointment process that would allow the recreational fishing industry and non-aligned fishermen to nominate to be appointed by the Minister.⁹

2.1.3 Fisheries Research Advisory Bodies

The bulk of fisheries research in Australia is funded through the Commonwealth's Fisheries Research and Development Corporation (FRDC). To advise the Corporation on research priorities, each state has a designated Fisheries Research Advisory Body (FRAB).

The Fishing Industry Research Advisory Committee (FIRAC) was formed in 1993 specifically to act as NSW Fisheries' Research Advisory Body. The Committee, which was set up on a non-statutory basis as a sub-committee of the NSW Seafood Industry Council (NSWSIC), has a membership consisting of:

- an independent Chair - appointed by the NSW Seafood Industry Council;
- government members (2) - appointed by NSW Fisheries;
- fishing industry members (5) - appointed by the NSW Seafood Industry Council;
- independent members (3) - appointed by the NSW Seafood Industry Council; and
- observer members (3) - appointed by the NSW Seafood Industry Council.

⁸ Evidence of Dr Glaister, 13 February 1997, p. 52.

⁹ Evidence of Mr Schumacher, 14 February 1997, pp. 26-27.

The *1996 Review on Fisheries Consultation in NSW* stated that the Fishing Industry Research Advisory Committee's role as the NSW Fisheries Research Advisory Body was untenable because "FIRAC is effectively setting the research agenda for NSW, almost in isolation from the NSW Minister for Fisheries."¹⁰

The *Advisory Body Act*, in conjunction with the draft *Advisory Council Regulations*, provides for the creation of the Advisory Council on Fisheries Research (ACFR). The Minister has withdrawn NSW Government recognition of the Fishing Industry Research Advisory Committee and determined that the Advisory Council on Fisheries Research will act as the NSW Fisheries Research Advisory Body.

The *Review of Fisheries Consultation in NSW* provided the following rationale for nominating the Advisory Council on Fisheries Research as the NSW Fisheries Research Advisory Body:

- under the Fishing Industry Research Advisory Committee, research funding was effectively being determined in isolation from the Minister and the research priorities established by the Fishing Industry Research Advisory Committee were not matching management needs;
- the Fishing Industry Research Advisory Committee structure did not have any process by which Management Advisory Committees could influence research priorities;
- the structure of the Advisory Council on Fisheries Research, composed of scientists and experts, is more responsive to strategic long term plans than the industry-based representation of the Fishing Industry Research Advisory Committee.

The membership of the Advisory Council on Fisheries Research is to consist of:

- 1 person who has expertise in fisheries economics;

¹⁰ Glaister, J. *Review of Fisheries Consultation in NSW*, NSW Fisheries, January 1996, p. 29.

- 2 persons who have an interest in commercial fishing;
- 2 persons who have an interest in recreational fishing;
- 1 person who has an interest in aquaculture;
- 2 persons who have an interest in fisheries habitat and conservation;
- 1 person who has an interest in seafood marketing; and
- 2 persons representing NSW Fisheries.

The Commonwealth's Fisheries Research and Development Corporation has recognised the Advisory Council on Fisheries Research while continuing to recognise the Fishing Industry Research Advisory Committee, but has called for a speedy resolution to the duplication and confusion arising from NSW having two Fisheries Research Advisory Bodies.

The Standing Committee heard divergent views on which body would best serve NSW as its Fisheries Research Advisory Body.

The NSW Seafood Industry Council submission claims that the Minister had been critical of the Fisheries Industry Research Advisory Committee, quoting the Minister as saying:

... FIRAC did not adequately represent the views of industry or Government and its membership lacked the expertise to provide a balanced assessment of research priorities . . .¹¹

The Chairman of the NSW Seafood Industry Council, Mr Richard Roberts, rejected this criticism, suggesting another reason for the Minister's and the Department's attitude towards the Fisheries Industry Research Advisory Committee:

¹¹ Submission 26, NSW Seafood Industry Council, p. 4.

The Hon I Cohen asked why the disagreement occurred. I can only think that it is to enable Dr Glaister or the Department to ensure that most of the money is used to fund projects within New South Wales Fisheries. I have commented before that I believe Fisheries look on some of these external funding sources as maintaining full employment, not increasing the commercial viability of the habitat or whatever the issue is, which the industry believes are the key issues.¹²

Mr Roberts provided the Standing Committee with a specific example where the Department had missed out on some oyster research funding and, as a result, had resolved to bypass the Fisheries Industry Research Advisory Committee system. Mr Roberts also claimed that the Department was attempting to undermine the Fisheries Industry Research Advisory Committee by negotiating a memorandum of understanding between itself and the FRDC, using levy funds collected by the Department as bargaining chips.¹³

Concerns were also raised regarding the Ministerial appointments to the Advisory Council for Fisheries Research and the Director of Fisheries' chairmanship of the Advisory Council for Fisheries Research. Mr Snape suggested that Ministerial appointments to a body that has some power over research funding may allow the Department to influence research application outcomes in its own favour:

The corruption that we were concerned about is that we have universities and other groups seeking research funds. So long as this research advisory committee had ministerial appointees on it, we were concerned that they would not look at other research organisations, universities and the like, in the same light as they would look at projects coming from Fisheries. There is only a certain amount of research dollars available and we were worried that Fisheries would get the lion's share, when there could be

¹² Evidence of Mr Roberts, 13 February 1997, p. 9.

¹³ Evidence of Mr Roberts, 13 February 1997, p. 9.

an equally good project coming from a university. We thought that this had the potential of being corrupt.¹⁴

In response to suggestions that the Chairmanship by the Director of Fisheries of the Advisory Council on Fisheries Research may create any actual or perceived conflicts of interest, Dr Glaister replied:

No, I do not see that as inconsistent. Some of the similar bodies that are set up in other States are chaired by departmental people and some have independent chairs. The chairman of the Victorian equivalent, for example, is the director of research. The reason is that the fisheries departments are generally the major providers of fisheries research. Some States have opted for independent chairs; others have stayed with departmental people. It is simply a question of what has happened in particular areas, but I do not see an inconsistency.¹⁵

When pressed by the Chair on whether external observers or participants might perceive the Advisory Council on Fisheries Research as not being objective and impartial if the Director of Fisheries were also the Chairman of the Council, Dr Glaister stated “You may be right.”¹⁶

However, Dr Peter Young, former Chief, Division of Fisheries, CSIRO and inaugural Australian Fisheries Management Authority Board member, was comfortable with the Director of Fisheries chairing the Advisory Council for Fisheries Research.

Dr Young stated:

I do not see any conflict of interest whatsoever. In fact, I do not really have a problem there. ... I think it is critical that the managers have a deep and intimate involvement

¹⁴ Evidence of Mr Snape, 14 February 1997, p. 19.

¹⁵ Evidence of Dr Glaister, 13 February 1997, p. 80.

¹⁶ Evidence of Dr Glaister, 13 February 1997, p. 80.

with the research. I could go on for hours, but for the six years that I was chief of the CSIRO Division of Fisheries my aim was to make the research relevant to the needs of the fishing industry, and the managers who are managing that industry are the principal users of the research. If you exclude them from those areas of advice the researcher is always under the risk of following up what he finds personally interesting which is perhaps irrelevant to the industry and the needs of the manager.¹⁷

Dr Young later qualified this by adding:

In as much as it may influence the thinking of FRDC when it makes allocations in support or otherwise of proposals, I can see that there could potentially be a conflict of interest. Nevertheless—and this comes up time and time again—if you exclude everybody with an interest in the matters that are under hand you effectively exclude everybody who knows anything about the subject matter. Those conflict of interest issues must be dealt with on a one by one basis.¹⁸

The Standing Committee believes that the current impasse in relation to research advisory bodies in NSW should not continue as the existence of two recognised NSW Fisheries Research Advisory Bodies can only result in the duplication of effort and resources. The Standing Committee considers that the present problems are due in part to strongly held personal views and an apparent inability on both sides to compromise. The Standing Committee supports the view that the State's Fisheries Research Advisory Body should have a formal statutory basis and believes it would be in the best interests of fisheries research in NSW if the draft *Advisory Council Regulations* were altered prior to their gazettal to reflect the recommendations contained in Chapter Six of this report.

¹⁷ Evidence of Dr Young, 14 February 1997, p. 46.

¹⁸ Evidence of Dr Young, 14 February 1997, p. 47.

2.2 Perceived Problems with the New Advisory Body Structure

The Standing Committee also heard a number of general criticisms in relation to the new advisory body system. These centred around the perception that there would be a lack of opportunity for stakeholder input into the fisheries management following the introduction of the new advisory bodies system.

The majority of such criticisms came from members and representatives of the commercial fishing industry. For example, Mr Ronald Snape, former Chairman, Commercial Fishing Advisory Council, was critical of the number of advisory bodies being set up, and stated:

There is nothing incumbent upon these new advisory committees to have port meetings or to disseminate information to the fishermen, or, most importantly, to have the fishermen's will taken up with management. There is absolutely no way of fishermen getting their ideas through to management. At present it is a top-heavy bureaucracy, instead of fishermen's ideas coming in.¹⁹

This view was supported by Mr John Conner, representing the Nature Conservation Council, who suggested that a single advisory body encompassing all interests would allow better advice to flow to fisheries managers.

Mr Conner stated:

The Nature Conservation Council is concerned that a rather fragmented and cumbersome management structure for advice has been established by this Act. The Council would prefer that there be a more inclusive whole group, which brings the interests together, and that from that group a number of subgroups could be established.²⁰

Members of the commercial fishing industry also criticised the new advisory body system for not having better provision for regional input, suggesting that

¹⁹ Evidence of Mr Snape, 14 February 1997, p. 16.

²⁰ Evidence of Mr Conner, 13 February 1997, p. 21.

fishing activities are diverse and, without effective regional consultation, management decisions may not reflect local conditions or methods used²¹. When these concerns were raised with Mr William Baker, Chair of the Interim Advisory Council on Commercial Fishing, Mr Baker agreed that the lack of regional input was a shortcoming of the new advisory body system, stating:

I am aware of the criticism. I cannot see how it will represent regional interests because there is no structure that allows it to represent regional interests.²²

Mr Baker added:

I believe the committee [ACCF] needs to come from a regionalised basis. It does not worry me if it is three regions or ten regions. It needs to come from some regionalised body which would then, to my way of thinking, appoint one of its personnel to move up to some State body to advise the Minister. I feel it is the only way to get some grass roots participation going through to an advisory body to the Minister.

... I think it is of paramount importance that we get the information from the grass roots up. To that extent I think there should be some form of regional council.²³

Mr Richard Roberts, President, Oyster Farmers Association of NSW and Chairman, NSW Seafood Industry Council, stressed the need for industry "to have some form of ownership in the decision-making process as to what is to occur in whatever committee or council has been formed."²⁴

²¹ See evidence of Mr Harasymiw, 13 February 1997, p. 47 and Mr Snape, 14 February 1997, p. 22.

²² Evidence of Mr Baker, 13 February 1997, p. 33.

²³ Evidence of Mr Baker, 13 February 1997, p. 40.

²⁴ Evidence of Mr Roberts, 13 February 1997, p. 3.

Mr John Roach, President, Master Fish Merchants Association of NSW, claimed that industry confidence in the new advisory body system was at present very low, and stated:

The only way to regain that confidence is to set down ground rules, whether it be by setting up non-biased advisory committees to be part of the decision-making process or to give the participants in the industry, which is part of their everyday life, a say about their future so that they have confidence to go on with further investment and further participation.²⁵

NSW Fisheries defended the new advisory body system and rejected suggestions that its consultation with stakeholders was deficient. With respect to consultation generally, Dr Glaister stated:

The Executive and staff of New South Wales Fisheries are totally committed to consultation.²⁶

... I am not immediately aware of any case where the Department has failed to meet our statutory obligations. ... Our major external clients, which traditionally have been commercial fishermen, recreational fishermen and aquaculturalists, are the primary focus of this inquiry into consultation. As well, the Department is now developing and implementing strategies to actively consult with conservationists, indigenous fishers and the broader community.²⁷

In relation to the need to move to a new advisory body system, Dr Glaister said:

It is extremely difficult, if not impossible, to consult with each and every user and stakeholder. As a result, the

²⁵ Evidence of Mr Roach, 13 February 1997, pp. 4-5.

²⁶ Evidence of Dr Glaister, 13 February 1997, p. 50.

²⁷ Evidence of Dr Glaister, 13 February 1997, p. 51.

Minister and the Department have to rely on the formal and informal consultative structures and the advice of representatives of key industry and community groups. It is essential that these structures and processes be periodically reviewed to ensure that they are both effective and appropriate.²⁸

Dr Glaister disagreed with the notion of having just one Advisory Council, as suggested by the Nature Conservation Council, explaining his opposition thus:

It relates back to an experience in Queensland, where I was working with another statutory authority, the Queensland Fisheries Management Authority. It had a single committee of about 26 people. There were enormous disruptions at every meeting. It was chaired by the Minister. It was spectacularly unsuccessful, and still is. What we need to do in New South Wales is go through a process in which commercial fishermen, recreational fishermen, aquaculturalists, and any other interest groups get to a stage of maturity where they are able to debate the issues and not go into partisan political stances straight away. Having a single committee that comprised all those people would be a recipe for disaster.²⁹

The Department also saw distinct disadvantages with a regionalised approach to forming advisory bodies. Dr Glaister stated:

... the role of the Minister's Advisory Council [ACCF] is to range across the whole industry. Its members are made up of representatives of each of the main Management Advisory Committees and the issue of regional management is always going to be contentious in fisheries where you have people who are willing to make a local arrangement that impacts right across the State. Getting into the regional management process I think holds dangers

²⁸ Evidence of Dr Glaister, 13 February 1997, p. 61.

²⁹ Evidence of Dr Glaister, 13 February 1997, pp. 83-84.

for managing the fisheries overall. For example, with a fishery such as the ocean haul fishery that is zoned, the most likely outcome would be a management plan for the ocean haul fishery that would go across the State and then there may be specific local management arrangements that are added on to that generic management plan. That is just my view of how it might work. The idea of having regional management is not unique to New South Wales, it is a view certainly strongly held in Queensland. The danger in it is that you have locally-based fishermen who seek to make rules that will discriminate against fishermen who do not live in that particular area.³⁰

During the course of the Inquiry it became evident to the Standing Committee that the ability of the *Advisory Bodies Act* to be properly implemented required the gazettal of the necessary Regulations. At the time public hearings were held in relation to this Inquiry these Regulations had not been gazetted, nor were they available for the Standing Committee to consider. As advised in the *Interim Report on the Fisheries Management Amendment (Advisory Bodies) Act 1996*, the Standing Committee was concerned to know if any further consultation was to take place with the industry prior to gazettal of the relevant Regulations. In response, Dr Glaister provided the following evidence:

Dr GLAISTER: The regulations for the management advisory committees have been drafted or are being drafted. The regulations for the advisory councils have not yet been drafted. ...

CHAIRMAN: How long will this state of limbo continue, given the legal and practical difficulties that it is clearly creating?

Dr GLAISTER: I understand that the management advisory committee regulations will be available Friday week.

CHAIRMAN: With consultation or to be gazetted?

³⁰ Evidence of Dr Glaister, 13 February 1997, p. 62.

Dr GLAISTER: For gazettal.

CHAIRMAN: So there is not to be any consultation about the regulations before they are gazetted, given your long standing commitment to consultation.

Dr GLAISTER: No. It is necessary to get the management advisory committee regulations in place so that the elections for the management advisory committees can occur as soon as possible. The intent of the regulations is to allow for the preparation of management plans for each of those fisheries as soon as possible.³¹

Following the receipt of this evidence, the draft *MAC Regulations* were released for public comment before being gazetted on 2 May 1997. As of 4 July 1997 the *Advisory Council Regulations* had not been gazetted.

³¹ Evidence of Dr Glaister, 13 February 1997, p. 55.
