

6 CONCLUSIONS AND RECOMMENDATIONS

The Standing Committee experienced difficulty in completing this Inquiry as a result of delays in the drafting and gazetting of the necessary Regulations associated with the *Advisory Bodies Act*. This delay was highlighted in the *Interim Report on the Fisheries Management Amendment (Advisory Bodies) Act 1996*, which is reproduced in Appendix 3. The final batch of draft Regulations in relation to Advisory Councils were not made available to the Standing Committee until 12 June 1997.

While the proposed advisory body structure is a step in the right direction, the Standing Committee considers that it would be improved by the following recommendations.

6.1 Advisory Councils

The Standing Committee believes that it is essential for the Minister to have access to unbiased expert advice upon which the Government's fisheries management decisions can be based. Equally, it is important for stakeholders in the fishery to be involved in the management process.

6.1.1 Establishment of Advisory Councils

The Standing Committee notes that the *Advisory Bodies Act* and draft *Advisory Council Regulations* provides for the exercise of Ministerial discretion as to whether or not any or all of the proposed Advisory Councils will in fact be established. The Standing Committee considers that it would be in the best interests of fisheries management in NSW if the Minister for Fisheries had a clear statutory responsibility to establish specific Advisory Councils. Accordingly, the Standing Committee recommends that the discretionary *may* be replaced by the obligatory *shall* in the *Advisory Bodies Act* as follows:

Recommendation 1

That subsection 229(1) of the *Advisory Bodies Act* be omitted and replaced with:

229(1) The Minister *shall*, subject to and in accordance with the regulations, establish the following Advisory Councils:

- (a) Advisory Council on Commercial Fishing;**
- (b) Advisory Council on Recreational Fishing;**
- (c) Advisory Council on Aquaculture;**
- (d) Advisory Council on Fisheries Conservation; and**
- (e) Advisory Council on Fisheries Research.**

6.1.2 Ministerial Responsibility to Consult Advisory Bodies

The Standing Committee considers that amendments five, six, eight, nine, ten, and eleven made to the *Fisheries Management Act* by the *Advisory Bodies Act* render the amended sections ambiguous with regard to the bodies the Minister and Director are required to consult in relation to the subject matter of these sections. The Standing Committee recommends:

Recommendation 2

That the *Fisheries Management Act* (as amended) be amended as follows:

[1] Section 4 Definitions

Insert the following:

“peak industry body” means such body (whether incorporated or otherwise) representative generally of persons engaged in the industry as is prescribed for the purposes of this definition;

[2] Section 43 Consultation with industry

Omit “consult relevant commercial fishing industry bodies” wherever occurring.

Insert instead “consult the Advisory Council on Commercial Fishing and the peak commercial fishing industry representative body”...

**[3] Section 58 Public and industry consultation
Section 63 Fisheries reviews - new plan**

Omit “and any other relevant commercial or recreational fishing industry bodies” from sections 58(2) and 63(3).

Insert instead “, and relevant Advisory Councils”...

[4] Section 70 Special endorsements to take fish in share management fishery

Omit “, and with any other relevant commercial or recreational fishing industry bodies” from section 70(2).

Insert instead “and relevant Advisory Councils”...

[5] Section 83 Composition and procedure of Panel

Omit “on the nomination of such relevant commercial fishing industry bodies as the Minister determines” from 83(1)(c).

Insert instead “on the nomination of the Advisory Council on Commercial Fishing”...

[6] Section 111 Declaration of restricted fisheries

Omit “consult relevant commercial or recreational fishing industry bodies” from section 111(3).

Insert instead “consult all relevant Advisory Councils”...

6.1.3 Appointments to Advisory Councils

The Standing Committee is concerned that all appointments to Ministerial advisory bodies be made at arm's length from the Minister in a way that is transparent and has the widespread support of stakeholders. This would help ensure the independence of such advisory bodies and minimise the opportunity for appointments to be perceived as political. Therefore, the Standing Committee recommends:

Recommendation 3

That draft *Advisory Council Regulations 229D (Membership of Advisory Council on Commercial Fishing)* and *229H (Membership of Advisory Council on Fisheries Conservation)* be amended prior to gazettal as follows:

Omit “within the time required by the Minister” from regulations 229D(4) and 229H(3).

Insert instead “within 30 days of the request being made in writing by the Minister”...

Recommendation 4

That the draft *Advisory Council Regulation 229D(5)* be omitted prior to gazettal and replaced with:

229D(5) The Minister shall appoint to the Advisory Council one of two persons nominated by each of the following groups:

- (a) Nature Conservation Council;**
- (b) NSW Aboriginal Lands Council; and**
- (c) Master Fish Merchants Association.**

Recommendation 5

That draft *Advisory Council Regulations* 229E(1), 229F(1), 229G(1), and 229H(4) be amended prior to gazettal as follows:

**Omit wherever it occurs “the Minister considers to have”.
Insert instead “is/are¹ recognised as having”...**

Recommendation 6

That draft *Advisory Council Regulations* 229D(6), 229E(2), 229F(2), 229G(2)(b), and 229H(4) be amended prior to gazettal as follows:

The Minister *shall*, by advertisement published in a newspaper circulating throughout the State, call for expressions of interest in membership of the Advisory Council and take any nomination that is duly made into account.

6.1.4 Provisions Relating to Meetings and Procedure of Advisory Councils

The Standing Committee considers that the draft *Advisory Council Regulations* in relation to meetings and procedure of Advisory Councils are at times ambiguous. The standing Committee believes that transparent guidelines for the operation of the proposed Advisory Councils are essential for the general acceptance of the new advisory body structure and therefore recommends:

Recommendation 7

That draft *Advisory Council Regulation* 229L (Allowances for members) be omitted prior to gazettal and replaced with:

¹ Whichever applies.

A member is entitled to be paid such allowances as the Premier's Department determines in respect of Advisory Council members.

Recommendation 8

That draft *Advisory Council Regulation 229M(2)* be omitted prior to gazettal and replaced with:

The Minister may remove a member from office after consulting with the Advisory Council concerned and not less than 30 days after giving notice in writing to the Advisory Council concerned.

Recommendation 9

That draft *Advisory Council Regulation 229O(1)* be amended prior to gazettal as follows:

**Omit "no pecuniary interest".
Insert instead "no direct or indirect pecuniary interest"...**

Recommendation 10

That draft *Advisory Council Regulation 229P* (General procedure for calling and holding meetings of advisory council) be omitted prior to gazettal and replaced with:

- 1. The procedure for the calling and holding of meetings of an Advisory Council is to be determined by each Advisory Council at their first meeting.**
- 2. An Advisory Council is to hold at least 4 meetings each calender year.**

3. The date, time, and location of the first meeting of an Advisory Council is to set by the Minister.

Recommendation 11

That draft *Advisory Council Regulation 229Q* (Quorum) be amended prior to gazettal as follows:

Omit “for the time being”.
Insert “as constituted”.

6.2 Management Advisory Committees

6.2.1 Establishment of Management Advisory Committees

The Standing Committee considers that the *Advisory Bodies Act* provides for the exercise of Directorial discretion as to whether or not any or all of the proposed Management Advisory Committees will in fact be established. For this reason the Standing Committee recommends that the discretionary *may* be replaced by the obligatory *shall* in the *Advisory Bodies Act* as follows:

Recommendation 12

That subsection 230(1) of the *Advisory Bodies Act* be amended to read as follows:

- 230(1) The Director *shall*, subject to and in accordance with the regulations, establish a Management Advisory Committee for a share management fishery or restricted fishery, or any such proposed fishery.

6.2.2 Appointment of Management Advisory Committee Members

It must be stated that the Standing Committee has a number of concerns regarding the election of industry representatives to Management Advisory Committees. It is the Standing Committee's view that the purpose of such Committees is to advise and assist the Department in the management of the fishery with the best quality advice - not lobby the Minister and Department on behalf of the commercial fishing sector as would be the case with elected members. Given the Department's efforts to establish the Commercial Fishers Representative Council as the elected lobby group representing the commercial industry, the Standing Committee is surprised that the Department decided to have elected commercial fishing representatives on Management Advisory Committees. The Standing Committee believes that the planned Management Advisory Committee postal ballots are bureaucratically cumbersome, time consuming, expensive given the small number of eligible voters, and, as with all voluntary postal ballots, capable of being rorted. Notwithstanding those concerns, the Standing Committee accepts that the industry, by and large, perceives the election of industry representatives as an intrinsic part of the representative structure for the commercial fishing sector. Accordingly the Standing Committee recommends:

Recommendation 13

That the provision for elected industry representatives to the Management Advisory Committees be kept under review in any future amendment to the *Fisheries Management Act*.

6.3 Zonal Advisory Committees

The Standing Committee considers current mechanisms for regional advice and input to the Department, namely Regional Industry Conveners, Habitat Monitors and Regional Liaison Committees for Recreational Fishing, to be inadequate. These groups do not appear to be formalised in the Departmental structure but rather are used on an ad hoc basis without regular meetings between themselves or with the Department. The Standing Committee believes that a system of Zonal Advisory Committees, based on the committees of the same name in Queensland, would enable more effective regionally-based advice and

input to reach the Department. Accordingly, the Standing Committee recommends:

Recommendation 14

That NSW Fisheries replace the current network of Regional Industry Conveners, Habitat Monitors, and Regional Liaison Committees for Recreational Fishing with Zonal Advisory Committees as outlined below.

Recommendation 15

That the *Fisheries Management Act* be amended to provide for the establishment of eight Zonal Advisory Committees, with one in each of the seven NSW Fisheries administrative fishing zones and one for inland New South Wales. The purpose of these Committees would be to advise NSW Fisheries on local issues relating to fisheries management, habitat, research, and enforcement, and to provide fisheries-related information and education to the public. The Terms of Reference for these Committees should be:

- a. to provide a forum for discussion of matters relevant to the management of regional fisheries and fish habitat;
- b. to enable a two-way flow of information between stakeholders in local fisheries issues;
- c. to provide a mechanism for the communication of management plans and to assist in the process of their development;
- d. to undertake an education and information role to increase public awareness on fisheries management; and
- e. to facilitate improved relations between fisheries stakeholders, NSW Fisheries, and other relevant bodies on fisheries issues at a regional level.

Zonal Advisory Committees should receive administrative support from NSW Fisheries, with members appointed by the Director of Fisheries on a part-time basis following a call for expressions of interest advertised in a newspaper circulating throughout each zone. Every such Committee should be required to meet at least twice every calendar year, with provision for more meetings as required.

Each Zonal Advisory Committee should comprise at least six members, including at least one person recognised to have expertise in one or more of the following categories (so that each Committee collectively has the full range of expertise listed):

- **habitat conservation;**
- **commercial fishing;**
- **recreational fishing; and**
- **aboriginal culture.**

In addition, each Zonal Advisory Committee should have at least one representative of the wider local community and be Chaired by an officer of NSW Fisheries nominated by the Director.

6.4 NSW Fisheries Research Advisory Body

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 as provided for under the current draft *Advisory Council Regulations*. It would be in the best interests of fisheries research in NSW if these draft Regulations were altered prior to their gazettal to reflect the following recommendations:

Recommendation 16

That the Fishing Industry Research Advisory Council be wound up and the Advisory Council on Fisheries Research, as reconstituted below, act as the sole Fisheries Research Advisory Body in NSW.

Recommendation 17

That the Chairman of the Advisory Council on Fisheries Research be an independent person, with no direct or indirect pecuniary or other interest in fisheries.

Recommendation 18

That draft *Advisory Council Regulation 229F(1)* be deleted prior to gazettal and replaced with:

The persons appointed as members of the Advisory Council on Fisheries Research shall include the following:

- (a) an independent Chair (in accordance with recommendation 17);**
- (b) the Director of Fisheries or his nominee;**
- (c) 1 person who is recognised as having expertise in fisheries economics;**
- (d) 1 person who is recognised as having expertise in commercial fishing;**
- (e) 1 person who is recognised as having expertise in recreational fishing;**
- (f) 1 person who is recognised as having expertise in aquaculture;**
- (g) 1 person who is recognised as having expertise in fisheries habitat and conservation;**

- (h) **2 persons who are nominated by the NSW Seafood Industry Council.**