



Fisheries Resource Sharing in NSW

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1. Policy Statement

1.1 Introduction

This Policy has been developed by the Ministerial Fisheries Advisory Council (MFAC) in accordance with its terms of reference to guide government decision making on sharing NSW's fisheries resources in accordance with the objects of the *Fisheries Management Act 1994* (the Act) (see Appendix 1). The Policy encompasses a participatory process to deliver factual advice to Government on sharing the State's sustainably exploitable fisheries resources between the various commercial, recreational, charter and Aboriginal cultural fishing sectors. Guiding Principles that will underpin decisions on how best to share fisheries resources between these user groups and criteria to evaluate sharing options are also outlined in the Policy.

A good resource sharing policy is core to appropriate and sustainable management of the State's fisheries and aquatic resources. All significant decisions on sharing the State's fisheries resources will be considered in the context of this Policy, whether arising from specific formal proposals from user groups, fisheries management planning processes or government initiatives.

1.2 Background

Aboriginal communities have strong customary links with our marine and aquatic environments and rely on fish for food, culture and potential economic development opportunities. Commercial and recreational fishing provide a range of social and economic benefits for the State of NSW, including employment for thousands of people. The sectors form the basis of diverse industries, provide lifestyle, enjoyment and professional opportunities, allow the community to enjoy seafood whether they catch their own or purchase it, and add greatly to the social fabric of many regional towns.

Fisheries resources also provide a range of social and economic benefits to the wider community that do not involve the catching or harvesting of fish including dive tourism and other so called "non-use" values. The management of fisheries resources has to consider all of these uses and benefits in order to maximise community wellbeing.

The values and aspirations of the fishing sectors vary but all are valid in consideration of resource sharing issues. They are likely to change over time and at times will not happily coincide with one another. Ultimately, however, all sectors need to share a common vision of sustainability to allow future generations to benefit from healthy fish resources. This Policy provides a transparent process to ensure that each sector's values and aspirations are considered in making resource sharing decisions.

The NSW Government's new approach to the management of the marine estate takes a more holistic view to management of fish stocks and the aquatic environment. A threat and risk assessment approach will be used to identify threats to the State's aquatic resources, thereby ensuring decisions will be based on evidence whenever possible. This new approach will inherently bring together the often divergent views or objectives of the different sectors and the general public

Wild fish stocks are harvested by more than one fishing sector, and the vast majority of the community wants to ensure protection for the aquatic ecosystems, fisheries resource and aquatic habitats. This Policy recognises the importance of the State's fisheries resources to extractive users, those using the resource for pleasure, those who have a spiritual connection with the resources, and those who gain an intrinsic benefit from knowing our aquatic resources are well managed and sustainable.

In contrast with natural living terrestrial resources it is extremely difficult to accurately count assets and our knowledge of the living resources of the aquatic environment and the complexity of ecosystem interactions is limited.

In these days of rapid communication and technological change, managing a natural resource like fisheries is a high-energy activity. It is made all that more challenging by the many unknowns such as:

- What is really happening under the surface of the water?
- What are the real influences on the health and availability of fish stocks?
- Which changes in fish stocks are due to fishing and which changes are due to natural fluctuations/environmental changes?
- What is the relative fishing pressure exerted by the different fishing sectors (commercial, recreational, charter and Aboriginal cultural fishing) on popular eating fish species?
- Shifting societal views on the value of the aquatic environment and fishing.

To these unknowns must be added the ever increasing and readily available new technology which enables fishers (commercial, recreational, charter and Aboriginal cultural fishing) to target fish more effectively. Improvements in boats, gear, electronic equipment and engines are not easy to factor into the assessment of the likely increased effort on fish stocks.

All of these factors mean that a cautious approach often has to be taken to the management of the State's fish resources. However, adaptive fisheries management approaches based on a cycle of information capture, analysis, interpretation and review are appropriate to establish the best information base possible upon which to make recommendations and decisions.

Finally, fish resources are a common property resource shared between extractive and non-extractive users. All stakeholders have a collective responsibility to ensure that these fisheries resources, and the habitats upon which they depend, are ecologically sustainable and used in a manner which optimises community wellbeing for current and future generations.

2. Policy scope

This Policy is intended to:

- i. guide decision making on resource sharing between user groups - the commercial, recreational, charter and Aboriginal cultural fishing sectors;
- ii. provide information for members of the fishing sectors and the wider community about the approach that will be taken in the administration of the Act; and
- iii. assist the development of management plans under the Act;

The Policy does not apply to the determination of the size of the proportion of fish resources available for harvest, or to the allocation of entitlements within a commercial fishery such as the allocation of individual transferable quota or share entitlements. In addition, whilst this Policy does not address allocation decisions and processes associated with sustainability measures, marine parks or aquaculture, this Policy should be taken into consideration when making those resource management decisions and conversely, those processes should be taken into account during the application of this Policy.

Finally, this Policy supplements the *Fisheries Management Act 1994* and the *Marine Estate Management Act 2014* and any regulations made under those Acts. It does not replace them or in any way affect the operation or significance of the legislation and should be read subject to them.

In summary, the Policy provides a strategic, transparent and consistent approach to guide government decision making on sharing the State's sustainably exploitable fisheries resources between the various commercial, recreational, charter and Aboriginal cultural fishing sectors in accordance with the objects of the Act.

3. Requirements

3.1 Guiding principles

There are a number of guiding principles which underpin this Policy on Resource Sharing. In support of these principles, proper processes need to be in place including consultation with affected stakeholders, transitional arrangements and, where appropriate, compensation.

The central principle to be applied in determining and adjusting access to NSW's fisheries resources is that the fishery resources are to be managed consistently with the principles of ecologically sustainable development.

The following additional principles are to guide the determination and adjustment of allocation of resource access and use in order to ensure that the outcome is rigorous, balanced, understood by all parties and achieves the legislated objectives:-

1. **Sustainability** -the on-going sustainability of the resource and the ecosystem on which it depends is paramount. The biological condition, vulnerability and resilience of the fishery must be considered and managed in a precautionary way. The current condition of stocks will be used as the basis for future management.
2. **Fairness and equity** – the overarching principle that should inform a resource sharing issue is one of fairness and equity i.e. the resource is to be allocated in a way that distributes the benefits of use fairly amongst all fishery sectors.
3. **Optimum utilisation** – this means that the resource is to be allocated in a way that achieves the best use of the resource for the community at large, not just best for a particular sector.
4. **Certainty for users** – the resource should be managed in a way that recognises the ongoing needs of all users of the resource.
5. **Transparency:** Relevant stakeholders shall be consulted and have adequate opportunity to be involved in scoping and analysing potential solutions. Outcomes should be made with full transparency and be subject to public consideration.
6. **Existing access rights and arrangements will be respected** – this means that management arrangements must have due regard to Aboriginal cultural fishing rights and existing access rights of each class of concession holder or stakeholder in the fishery (commercial and recreational), but the right to modify access over time will be retained to maximise community benefits.

7. **Compensation** – a reduction of access to any sector needs to be accompanied by appropriate offsets.
8. **Information** - decisions should be based on the best available ecological, cultural, economic and social information. Where information is limited, resource sharing decisions should be made on a risk management basis with the ecologically sustainable use of the resource as the primary objective.
9. **Integrity of fisheries management arrangements** – resource sharing decisions should be consistent with legislative requirements and other fisheries management objectives, including the broader approach to management of the marine estate as provided for in the *Marine Estate Management Act 2014* and its Regulations.

3.2 Application of this Policy

From time to time, circumstances will arise where a decision on resource sharing may be necessary. Examples of such circumstances where this Policy will be applied are as follows:

- i. A fishing sector seeks consideration of a redistribution of the access or fishing effort/harvest allocations on the basis of equity, or to increase overall community benefit and wellbeing.
- ii. A community seeks consideration of a redistribution of localised access or fishing effort for socio-economic reasons.

Examples of circumstances where resource allocation may require change but where this Policy will not be applied are as follows:

- i. Outcomes of a Resource Assessment or new listing under threatened species legislation may trigger the need for a management decision that is made primarily to ensure the sustainability of a fishery. For example, a stock assessment may raise sustainability concerns about a species that is targeted by one or all fishing sectors. A solution may involve reducing the share of one or all sectors by limiting the use of a particular gear type because that gear type has the greatest impact on that species; or the implementation of temporal or spatial closures. In these cases such decisions will follow normal fisheries management legislation, principles and processes, and will not result in compensation to either sector.
- ii. Government makes a decision to revise the allocation of harvestable fishing resources between fishing sectors based on evidence or advice that overall community benefit and wellbeing may be increased under alternative arrangements to those currently in place. The principles outlined in section 3.1 will apply along with a proper consultation process.
- iii. Government has a requirement to adjust access and fishing effort/harvest allocations between fishing sectors based on legal matters (e.g. native title issues) or some other compelling administrative reason.
- iv. The declaration of a Marine Park or an Aquatic Reserve may have the effect of displacing fishing effort by all sectors. Whilst such a declaration may be made for biodiversity conservation purposes, an assessment will then need to be made of the impact on the management of a fishery accessed by commercial, charter, recreational and Aboriginal fishers. In such cases Marine Estate legislation, principles and processes will apply (at www.marine.nsw.gov.au).

It is important to note that the principles outlined earlier in this Policy should apply, wherever possible, during any process or decision by Government to reallocate resources.

4. Process to consider resource sharing proposals

Resource sharing issues can be highly complex, emotive and difficult to resolve. They are dynamic and will require review from time to time so the strategies to manage them need to be adaptive and properly informed by all users and the Government. At the same time, it is important that the fishery resource sharing process is relatively simple, transparent, inclusive,

effective and cost efficient resulting in a considered and evidence based resource sharing decision.

Where individuals or incorporated groups seek changes to resource sharing arrangements the process will be a staged approach involving two or more stages:

Stage One: - the proponent lodges an application underpinned by factual information specified in this Policy and evidence of the views of other key stakeholder groups on the proposed allocation outcome. The application will be considered by a Working Group of stakeholders who will work with the proponent to ensure that adequate information is provided to allow a reasonable assessment of the proposal.

Stage Two: - the Working Group, MFAC and Government consider the application and prepare advice and recommendations for the Minister for Primary Industries. The Minister will then consider this advice and make a decision whether to reject the proposal, accept it as proposed or accept it with modification.

For proposals where there is likely to be significant impact on one or more stakeholder groups, where there is apparent risk of unknown outcomes, or where there are gaps in key areas of information, the Minister may choose to proceed to detailed assessment and consultation.

The Minister will then make a final decision on whether to implement the change to resource sharing arrangements.

5. Procedures

5.1 Stage One application process

Applications must be duly made on the approved [application form](#), accompanied, where applicable, by an appropriate fee and supporting information specified. Supporting information may include (but is not limited to):

- i. Full details of the proposed allocation outcome, target species and fishing methods including areas and timing of operation.
- ii. Resource assessment information for targeted stock, proposed level of exploitation.
- iii. Information on the existing access arrangements including relative catch of each relevant fishing sector and appropriate social and economic data where available (e.g. value of catch, expenditure by participants, flow on impacts, willingness to pay).
- iv. Evidence that the proponent has consulted with key stakeholders and submitted their views on the proposed allocation outcome.

Applicants are encouraged to discuss the proposal with DPI Fisheries staff to assist in determining whether they have provided adequate information to progress to the assessment stage. Applicants also have the opportunity of withdrawing their application prior to full assessment if they determine that preliminary information does not adequately support their proposal.

Notice of applications will be placed on the DPI website and key stakeholders will be notified.

5.2 Stage Two assessment process

The application will be considered by DPI and MFAC. Relevant considerations will include (but are not limited to):

- i. The objects of the Act, including any issues surrounding current and/or potential future sharing of the resource between sectors.
- ii. The likely direct or indirect effects on any existing fisheries, activities or local communities.

- iii. The accuracy and relevance of information provided by the proponent and the identification of critical information gaps.
- iv. Any advice of the stakeholder working group, if established.
- v. Likelihood of the proposal resulting in long term, viable fishery management arrangements including the probable scale, costs and benefits of the proposal.

5.2.1 Establishment of a Working Group

Where a working group including relevant and appropriate stakeholders and representatives is established it should consider the proposal in terms of:

- i. aspirations and needs of each sector.
- ii. overall flow of benefits to the State in terms of:
 - a. contribution to the wellbeing of people of NSW lifestyle (including sport and recreation opportunities, and tourism impacts)
 - b. cultural and/or historical significance
 - c. contribution to the State economy (Gross Value of Product and flow on benefits from fishing activity)
 - d. contribution to employment
 - e. access to fresh seafood
 - f. maintenance and growth of regional communities
 - g. qualitative and (where possible) quantitative assessment of the costs and benefits (ecological, social and cultural) to NSW
 - h. other criteria as relevant to the fishery.

5.2.2 Determination of application

When determining an application the Minister (or delegated officer) will consider advice from MFAC, and may also consider information and advice from other sources such as the applicant, the department, direct stakeholders and the general public.

Following consideration of the application the Minister (or delegated officer) can decide to reject the application, approve the proposal as set out in the application or with modifications, or progress to detailed consultation and assessment.

5.3 Roles and Responsibilities

- The proponent is responsible for drafting and submitting an application which includes adequate supporting information and evidence of consultation with key stakeholders.
- MFAC is responsible for reviewing the information provided regarding the application and preparing advice for the Minister for Primary Industries.
- The department (DPI Fisheries) is responsible for consulting with the applicant, placing the application on the department's website, notifying key stakeholders, organising an independently chaired working group, briefing MFAC on the impact of the proposal, and if required, carrying out additional public consultation, estimating share buy-out costs and implementing the buy-out process.

5.4 Assessment costs

Proponents will be responsible for covering the costs of preparing applications, data acquisition, data analysis and consultation, including the running of a stakeholder working group, associated with any application.

Proponents will be charged an appropriate application and assessment fee to allow Government to recover the costs of determining applications.

5.5 Compensation/financial assistance regarding resource access re-allocation

Where a resource sharing decision results in a re-allocation of the resource, resulting in direct and demonstrable business impacts, the Government may consider the need for adjustment assistance to assist those impacted businesses or individuals adjust to the new management environment. The extent and nature (including who contributes) of such assistance will be determined by Government on a case by case basis and in consultation with all relevant sectors. This may or may not include financial assistance.

6. Legislation

Fisheries Management Act (see Appendix 1)

7. Revision history

Version	Date issued	Notes	By
1	13/04/2015	New Policy	Manager Strategic Review & Workplace Reform

8. Review date

13/04/2018

9. Contact

DPI Fisheries

APPENDIX 1

The Fisheries Management Act 1994

The taking of aquatic resources in New South Wales is regulated by the *Fisheries Management Act 1994* (the Act). The objects of the Act are set out under section 3:

- (1) The objects of this Act are to conserve, develop and share the fishery resources of the State for the benefit of present and future generations.
- (2) In particular, the objects of this Act include:
 - (a) to conserve fish stocks and key fish habitats, and
 - (b) to conserve threatened species, populations and ecological communities of fish and marine vegetation, and
 - (c) to promote ecologically sustainable development, including the conservation of biological diversity,

and, consistently with those objects:

- (d) to promote viable commercial fishing and aquaculture industries, and
- (e) to promote quality recreational fishing opportunities, and
- (f) to appropriately share fisheries resources between the users of those resources, and
- (g) to provide social and economic benefits for the wider community of New South Wales, and
- (h) to recognise the spiritual, social and customary significance to Aboriginal persons of fisheries resources and to protect, and promote the continuation of, Aboriginal cultural fishing.

Note. *At common law, the public has a right to fish in the sea, the arms of the sea and in the tidal reaches of all rivers and estuaries. The public has no common law right to fish in non-tidal waters—the right to fish in those waters belongs to the owner of the soil under those waters. However, the public may fish in non-tidal waters if the soil under those waters is Crown land. In the case of non-tidal waters in rivers and creeks, section 38 declares that the public has a right to fish despite the private ownership of the bed of the river or creek. However, the right to fish in tidal or non-tidal waters is subject to any restriction imposed by this Act.*