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Consulting in fisheries management, economics and training.

FISHING RIGHTS BENCHMARKING PROJECT

A report to the:

SOUTH AUSTRALIAN FISHING INDUSTRY COUNCIL

(SAFIC)

by Dominion Consulting Pty Ltd

October 1999.

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Dominion Consulting Pty Ltd is an independent consulting company undertaking projects in fisheries economics, management and training. The report authors are Dr Alistair McIlgorm and Professor Martin Tsamenyi. This report is the SAFIC contribution towards the FRDC project 99/161 "*Sustainable fisheries management through enhancing access rights and resource security, Part I*".

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Acknowledgements

We wish to acknowledge Mr Bob Pennington, Ms Lorraine Rosenberg, the Board of SAFIC and Ms Simone Gribble in the development of the project. Interviews were undertaken with representatives of different sectors of the South Australian fishing industry.

We thank Dr G. Morgan and senior staff at Primary Industry and Resources of South Australia for comments given and legislation provided. We thank Mr Andrew Sedger for assistance with legal documents. A verbal presentation of this paper was made to the South Australian Fishing Industry Day on the 7th July 1999.

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EXECUTIVE SUMMARY

South Australia has a strong history of restructuring in fisheries management. A mixture of input and output regimes exist though the license is basically non-transferable qualified by endorsements. This means the characteristics of fishing rights are restrictive and inhibit economic efficiency to some unknown extent.

Although fisheries licenses are generally regarded as property rights, the legislation used to manage fisheries in South Australia does not sufficiently reflect this. Increasing fishing rights can have a number of beneficial features which lead to greater conservation of the resource. Holders have authority to exploit resources under agreed criteria and become more self regulating.

There are concerns among industry over access security and the identification of the need to “benchmark” where fishing rights are in South Australia relative to other jurisdictions nationally.

The report notes that the Fisheries Act 1982:

- does not sufficiently recognise fishing rights as property;
- has many areas which are discretionary;
- is silent on compensation;
- has limitations on license transfers and third party ownership and;
- only allows for licenses of one year duration.

When compared nationally some of the same areas prove to be deficient relative to other Australian jurisdictions: payment of compensation, duration of licenses and transferability.

The benchmarking report recommends:

- 1) That South Australian fishers should have rights to the same extent as other jurisdictions in Australia. The options include:
 - Increased license duration (5, 10, or even 15+ years);
 - Development of statutory fishing rights linked with management plans analogous to those in the Commonwealth system;
 - Specific compensation legislation as in Western Australia and further extensions of this as part of statutory fishing rights.
- 2) Investigation of other rights enhancement opportunities such as:
 - License tradeability;
 - The New South Wales share management system;
 - Development of fisher contracts with government;
 - Altered governance arrangements.

The report discusses these two major ways forward. These are legal and fishery management system benchmarks from which industry can measure progress in their quest for sustainable harvesting through rights based fisheries regimes.

1.0 INTRODUCTION

This project has been developed from the desires of the fishing industry in South Australia to clarify and enhance their *fishing access rights and resource security*. Investment requires some degree of certainty and many developments taking place in the management of marine resources in South Australia may not assist the investment climate. The benchmarking of fishing rights also comes as a natural progression of the desire of fishers to be more involved in the development of the resource management practices in their industry.

The fishing industry wish to be assured of their current fishing rights and how they can move from this benchmark towards enhanced fishery management arrangements with greater rights as an incentive to stakeholders.

1.1 Background to the benchmarking project

The current project is part of the contractual obligations of the South Australian Fishing Industry Council (SAFIC) to “benchmark” fishing rights in South Australia in the year 1998-99. However it really reflects the growing desires of the fishing and seafood industries for enhanced financial and access security in a fluctuating operational environment.

The project is also a contribution by SAFIC to the Fisheries Research and Development Corporation (FRDC) project 99/161 “*Sustainable fisheries management through enhanced access rights and resource security*” (part I), May-Dec, 1999. This project is a national review of fishing rights to present a paper at the Fish Rights’99 conference in Western Australia in November 1999.

What is a benchmark?

Chambers dictionary describes a bench mark as:

“ a surveyor’s mark on a rock etc...indicating a point of reference in levelling... its horizontal line forming a bench for measuring”

The terms of reference of the study are attached in Appendix one.

Given the time and resources available we see the key reference points for future rights development as:

- the legal appraisal of fishing rights held by fishers
- an appraisal of the current rights management systems and their potential for development

This benchmarking will then enable potential areas and ways of rights strengthening to be identified, and brief comparisons to be made with rights management regimes in other states of Australia and overseas.

The paper being developed as part of the FRDC project (Part I) will also add to this study through a national review of legal and rights analysis.

1.2 Commercial fisheries and management arrangements in South Australian fisheries

South Australia has an established fishing industry with an annual value on first sale of approximately \$ 311 million in the year 1997/98 (PIRSA, 1999) see Appendix 2. The fisheries are managed by the Primary Industry and Resources South Australia (PIRSA) under the Fisheries Act (1982).

Under the Fisheries Act, 1982 the key objectives of fishery management are:

(a) ensuring, through proper conservation, preservation and fisheries management measures, that the living resources of the waters to which this Act applies are not endangered or over-exploited and;

(b) achieving the optimum utilisation and equitable distribution of the resources.

The first objective refers to sustainability and the protection of the stock through time. The second is less explicit and is short of the objective of maximising economic efficiency at the Commonwealth level, the phrase “optimum utilisation” being less measurable than other objectives.

Fishery management in SA is generally by limited entry licensing with input regulations. Several fisheries have output controls. *Many of the advances in fisheries rights have come from past fisheries management initiatives with a development of fisher's rights as a consequence of restructuring and management developments.* An overview of key elements in management and restructuring are given in Appendix 3.

Past fishery management and restructuring initiatives, have given the fishing industry in South Australia a sound resource and management base. The industry wish their access rights and resource security to be recognised in legislation and to progress to enhanced fishery rights. This benchmarking review is to assist these fishermen with this process.

2.0 AN APPRAISAL OF THE FISHING RIGHTS IN SOUTH AUSTRALIA

2.1 Fishing rights in South Australia

Fisheries in South Australia are regulated under several legislative instruments. The *Fisheries Act 1982* No. 58 and regulations provide the primary framework for the management of fisheries in the state. The amendments to the Act include:

- Fisheries Act (Amendment) Act 1984 No 20;
- Fisheries Act (Amendment) Act (No.2) 1984 No 33;
- Fisheries Act (Amendment) Act 1986 No 122;
- Fisheries Act (Amendment) act 1988 No 92;
- Fisheries (Miscellaneous) Amendment Act 1991 No 76;
- Fisheries (Miscellaneous) Amendment Act 1995 No 28.

A reference to the Fisheries Act in this report includes all amendments to the Act in force as at 1 March 1999 and consolidated in Reprint No. 8.

The objectives of the Fisheries Act are very broad and include:

“the conservation and management of fisheries, the regulation of fishing and the protection of certain fish; to provide for the protection of marine mammals and the aquatic habitat; to provide for the control of exotic fish and disease in fish, and the regulation of fish farming and fish processing; and for other purposes.”

The Fisheries Act prohibits any type of commercial fishing activity without a license and provides for the issue of commercial fishing licenses. It also provides for the granting of entitlements on these licenses to fish in certain fisheries and for the allocation of quota to that entitlement. The type of license required depends on the fishery in which a person operates. The Act also makes provision for the issue of an inland commercial fishing license.

In addition to the Fisheries Act 1982 (as amended), there are other related legislation governing fisheries in South Australia. The relevant ones for the purpose of this report include;

- Fisheries (Gulf St Vincent Prawn Fishery Rationalization) Act 1987 No 7; and
- Fisheries (Southern Zone Rock Lobster Fishery Rationalization) Act 1987 No 59.

2.2 Rights characteristics under the Fisheries Act

In terms of rights the major characteristics of the Fisheries Act may be summarised as follows:

Licenses Required

The Fisheries Act prohibits a person, for the purpose of trade or business, engaging in a fishing activity unless the persons holds a license (s.34). An application for a license must be made to the Director in the manner prescribed in relation to the class of license or registration sought (s.35). A separate license is required of the boat used for fishing.

Discretionary Powers

The powers to intervene granted to the Minister and Director to intervene in respect of the grant and cancellation of access rights are significant. For example, the Director may amend a license condition with the approval of the Minister. This discretionary power is qualified further in the regulations for each particular fishery. The Minister may amend the number of pot entitlements attached to all licenses in the lobster fishery if he/she considers it necessary for the good management of the fishery (s36).

Imposition of Conditions

Under s.37, the Director has power to impose any conditions on a license as well as vary or revoke such conditions. Such conditions may relate to any of the following:

- conserving, enhancing or managing the living resources to which the fishery relates; or
- any other matter prescribed by the scheme of management for a particular fishery;

The powers of the Director to impose conditions on licenses require Ministerial approval in the following circumstances:

- where the condition prevents the taking of fish that could otherwise be lawfully taken pursuant to a license; or
- where the condition relates to the use of any device or equipment that could otherwise be lawfully used to take fish pursuant to a license.

Before the Minister gives his or her approval in relation to conditions affecting these two matters, the Minister is required to give notice to the holder of the license or the prescribed fishing industry body (in this case, the South Australian Fishing Industry Council) notice in writing setting out the condition to be imposed or the manner in which the condition is to be varied and the reasons for the proposed action. The Minister is also required to consult the holder of the license or the prescribed fishing industry body within fourteen days after giving the notice.

Transferability of Licenses

Generally, transfers of licenses are permitted subject to the approval of the Director (s.38). The Act also recognises that licenses may be transferable in the event that the holder of the license dies. Where a license is transferable and the holder of the license dies, the license vests in the personal representative of the deceased (whether the personal representative is a natural person or body corporate) as part of the estate of the deceased but cannot be transferred by him or her in the course of the administration of the estate except with the consent of the Director (s.38).

Where a license is transferable, the registration of a boat affected by endorsement of the license may also be transferred. The consent of the Director to transfer a license cannot be granted unless the scheme of management for the fishery permits it. Further, where a register of license includes a notation that a specified person has interest in the license, the consent of the specified person is required before the Director can grant his consent for transfer.

Registration of Authorities

The Fisheries Act makes provision for the registration of authorities. The Director is required to keep a register of all authorities granted under the Act. The Director is required, on application by the holder of a fishery license and payment of the prescribed fee, make a notation on the register that a specified person nominated by the holder of the license has an interest in the license (s. 65(1)).

Cancellation and Suspension of Licenses

The Fisheries Act provides for the suspension or cancellation of an authority (defined as a license, permit, registration or lease-s.5(1)) but only in the case that the holder of such authority is convicted of an offence against the Act (s.56), any other Act (s.57(1)(b)) or if the authority was improperly obtained (s.57(1)(b)).

2.3 Aspects of the Fisheries Act that limit fishing rights

There are a number of areas where the Fisheries Act does not enhance fishing rights. These include:

Nature of licenses

Since the case of *Pennington v McGovern* (1987), followed by *Kelly v Kelly* (1990), licenses issued under the Fisheries Act (SA) have been classified as a type of proprietary interest. However, the exact nature of such interest has not been defined by the courts. The Fisheries Act is also silent on this issue.

Payment of compensation

The Fisheries Act does not make any specific provisions for the payment of compensation in the event that any license is suspended or lost, or if any fishing access right is diminished. (Note however, that, the Fisheries (Gulf of St Vincent Prawn Fisher Rationalisation) Act 1987 provides for the payment of compensation calculated as follows: (a) \$450,000; or (b) amount or value of consideration paid or given by the licensee for transfer of a license; or (c) an amount agreed between the former licensee and the Minister which is greater (s.6).

The Fisheries Act 1982 is also silent on the issue whether a license holder has sufficient interest to claim compensation from a third party as a result of damage to the resource for example as a result of an oil spill. The absence of a clear statement on payment of compensation in the Fisheries Act creates uncertainty and insecurity.

Transferability

The Fisheries Act recognises that licenses may be transferable. However, this does not appear to be the case in practice, as transferability is subject to the particular scheme of management.

Registration of third party interests

Under the Fisheries Act, it is possible, subject to the consent of the Director, for the interests of a specified third person to be noted on a license. It is unclear what such third party interests include. For example, do they include interests such as mortgages and charges? If so what are the rights of the mortgagees?

Duration of licenses

Licenses under the Fisheries Act are issued on an annual basis without any statutory right for renewal; although as a matter of practice, licenses are rolled over from year to year.

2.4 South Australian fishing rights in comparison to other Australian jurisdictions.

Table 1 below compares fishing rights in South Australia with those in other jurisdictions.

It can be seen from the table that in many areas, South Australia is at par with the rest of Australia in terms of current legislative provisions. This is not to say that improvements are not required.

The areas where South Australia falls behind in the national comparison are analysed below. These are benchmarks against which the enhancement of rights can proceed. The development of fishing rights also come with the development of new management regimes.

Duration of licenses

In South Australia, licenses are for one year. This is contrast to 5 years in the Northern Territory, not more than 10 years in Tasmania and 10 years in New South Wales for shares in share managed fisheries. Consideration should be given to increasing the duration of licenses to for example, 5 to 10 years or longer in order to provide for more security.

Payment of compensation

The Fisheries Act is silent on the right to compensation in the event that a license is diminished or loss of access for reasons other than the commission of an offence under the Act. The Fisheries (Gulf St. Vincent Prawn Rationalization) Act 1987, however, provides for the payment of compensation to former license holders in respect of the loss of the license (see s.6).

How does South Australia compares with other Australian jurisdictions in respect of payment of compensation? Generally, like in South Australia, the Fisheries and related Acts of the Commonwealth and states do not permit the payment of compensation as a result of the taking of management measures that diminish entitlements. However, the legislation of other jurisdictions allow for the payment of compensation in specific circumstances. For example:

- *Commonwealth*: Compensation is payable by the Commonwealth if the operation of the Fisheries management act would result in the acquisition of property from a person otherwise than on just terms (s.167, *Fisheries Management Act 1991*).
- *New South Wales*: Compensation is payable if the Minister cancels shares in a share managed fishery (s44, *Fisheries Management Act 1994*).
- *Queensland*: The Fisheries Act provides in several instances that a regulation or management plan may provide for the payment of compensation. In the specific case of quarantine declarations, compensation may be paid for fisheries resources, plants or property destroyed because of action taken under a quarantine or emergency quarantine declaration if the chief executive decides that compensation should be payable in the circumstances of the particular case (s.103 *Fisheries Act 1994*).

- *Victoria*: Compensation is payable to the holder of a license, including any person who holds a registered financial interest in the license as a result of the cancellation of the license. (*Fisheries Act 1995 s.65*).
- *Western Australia*: Under the *Fishing and Related Industries Compensation (Marine Reserves) Act 1997* and the *Acts Amendment (Marine Reserves) Act 1997*, compensation is payable as a result of the declaration of marine parks or reserves.

One way in which rights can be enhanced in South Australia is for provision to be made in legislation providing for the payment of compensation in the event that a license is diminished. The approach in the Western Australian *Fishing and Related Industries Compensation (Marine Reserves) Act 1997* would seem to be appropriate for consideration. Although, the Western Australian Act applies only in the event of the declaration of marine parks and reserves, the general principles in the Act can be adopted and expanded to cover a general compensation regime. Such legislation can also provide for compensation in relation to damage to the resource for example, as a result of an oil spill or other pollution incidents.

Separate compensation legislation or an amendment to the Fisheries Act to incorporate compensation provisions will enhance fisheries rights in a number of ways eg:

- it will provide transparency in fisheries decision-making;
- it will clearly define the legal rights of fishers;
- it will provide for clear procedures and guidelines for assessing compensation and settling compensation disputes.

Transferability and other Dealings

Under the South Australian Fisheries Act, the ability of the licensee to transfer his or her license is severely limited. Under s. 38 of the Act, licenses are transferable only where the scheme of management for a fishery provides that licenses, or a class of licenses, in respect of the fishery are transferable or that the license may be transferable with the consent of the Director.

The Act also recognises that where a license is transferable and the holder of the license dies, the license vests in the personal representative of the deceased as part of the estate of the deceased. However the license cannot be transferred by the personal representative without the consent of the Director. Additionally, the Director cannot consent to the transfer of a license where the register of licenses includes a notation that a specified person has an interest in the license. In relation to the registration of interests, the Fisheries Act requires the Director to, on application by the holder of a fishery license and the payment of the prescribed fee, make a notation on the register that a specified person nominated by the holder of the license has an interest in the license (s.65(3)).

The fisheries legislation in other Australian jurisdictions are less restrictive with respect to the transfer of licenses. For example:

- *New South Wales*: A share in a share managed fishery may be transferred, assigned, transmitted or mortgaged and other interest of a kind prescribed by regulations may be created in the share (s.71, Fisheries Management Act (NSW) 1994).

- *Commonwealth:* The Fisheries Management Act allows the transfer of statutory fishing rights subject to conditions that may be imposed (s. 22(4)). The Act also makes provision for the registration of dealings in a statutory fishing right or a statutory fishing right option. In relation to the latter, the Fisheries Management Authority may only refuse to register the dealing if registration is contrary to a new management plan or a condition of a statutory fishing right (ss.31F(7); 31J and 38).
- *Northern Territory:* The Fisheries Amendment Act 1997 allows for a temporary and permanent transfers of fishing licenses (ss.8 & 9). Under the Fisheries Act 1988, the Director is required to maintain a register or registers which shall contain particulars of licensees and permittees of the grant, renewal, variation of a provision, transfer (in whole or in part), and any interests held in a license, permit or vessel (s.9).
- *Queensland:* The Fisheries Act 1994 permits transfers of licenses (s.65(2)). The Act also recognises the registration of third party interests. Under s.73(3), the holder of an authority may apply to the relevant fisheries agency to have noted on the register an interest that a specified person has in the authority.
- *Tasmania:* The holder of a license may apply to the Minister to transfer the license to another person or a quota or entitlement under the license to another licensee (Living Marine Resources Act 1995 s.82). Similarly the Act allows for the registration of an interest, a deed or agreement with respect to a license (s.101).
- *Victoria:* The Fisheries Act (VIC) 1995 makes detailed provisions with regard to the transfer of, and dealings in licenses. The benefit of a license is deemed to be an asset of the estate of a deceased and the personal representative of the deceased is deemed to be the holder of the license until it is transferred to an eligible person (s.38(7)). The holder of a license or a person with a financial interest in the license may, together with the proposed transferee, apply to the Secretary for the transfer of the license (ss.56&59).

2.5 Summary

We recommend that South Australian fishers should have rights to the same extent as other jurisdictions in Australia. The options include:

- Increased license duration (5, 10, or even 15+ years);
- Development of statutory fishing rights attached to management plans analogous to those in the Commonwealth system;
- Specific compensation legislation as in Western Australia and further extensions of this as part of statutory fishing rights.

There should also be investigation of other rights enhancement opportunities such as:

- License tradeability;
- The NSW share management system;
- Development of fisher contracts with government;
- Altered governance arrangements.

These are legal and fishery management system benchmarks from which industry can measure progress. However to implement change we also need to be aware of the history and context of management and rights development in fisheries management regimes internationally and in Australia.

	SA	NSW	NT	Qld	Tas	Vic	WA	C'th
Fishing license	Yes	Yes	Yes	Yes	Yes	Yes	Yes ¹	SFR ²
Duration of license	As prescribed by the management plan (usu. 1 year)	1 year	A period not more than 5 years	For period specified on the license	For a period not more than 10 years	A period not more than 1 year	For a period of 1 year unless otherwise stated	AFMA's discretion
Is it Transferable	No, unless otherwise allowed under a management plan	No	Yes, subject to conditions on the license and the relevant plan of management	No	Yes, subject to the discretion of the Minister and prescribed conditions	No, unless otherwise allowed under the Regulations	Yes, subject to the relevant management plan	Yes, subject to the conditions of the SFR and the relevant plan of management.
Payment of Compensation -License reduction -Stock reduction	Not specified-under Fisheries Act – permitted under Prawn F.R. Act	Not specified ³	1: S2 schedule 2: the surrender and purchase of licenses relating to that fishery on payment of agreed compensation	If permitted by regulation or management plan	No	1: If license is cancelled by Minister under section 65 2: Yes - if it comes under Land Acquisition & Compensation Act 1986.	No, except when a license is cancelled by the declaration of a marine park	No
Provision for reg. of 3rd party interests	Yes	No ⁴	Yes	Yes	No	Yes	Yes	Yes
Recognition of property rights	Not specified	Yes ⁵	Not specified	Not specified	Not specified	Not specified	Not specified	No

¹ Managed fishery license and Interim managed fishery license

² Statutory Fishing Right

³ Although compensation is payable for cancellation of shares.

⁴ Although a register of 3rd party interests in shares is provided for.

⁵ Limited to shares in a Share Managed Fishery. Subject to conditions.

3.0 MANAGEMENT, RIGHTS AND REGIMES IN SOUTH AUSTRALIA

3.1 Rights based fisheries management

Management by increasing fishing rights is based on the premise that fuller rights for fishers will improve their stewardship of the resource. There is an extensive national and international literature on rights based approaches to fisheries management.

In Australia the Australia Seafood Industry Council (ASIC, 1999) have proposed that :

“Property rights in fisheries have a number of beneficial features which assist the conservation of fisheries resources generally. These include:

- *They provide security of access which in turn provides positive incentives and define time horizons for investment, production and exchange;*
- *They influence the behaviour of resource users by encouraging them to become more conservative and self regulating;*
- *They provide rules for adjusting and accommodating, over time, conflicting demands from different interest groups in society; and;*
- *They provide holders with a powerful, legitimate source of authority to exploit resources under agreed criteria” (ASIC, 1999).*

Rights have developed from limited entry license regimes of the 1960's and the 1970's which gave fishers the rights of access to the fishery with the right to withdraw fish. Most fisheries in Australia have access based management regimes. In the theory of fishing rights, involving fishers in the management of the resource and fuller ownership are the next stages (Schlager and Ostrom, 1992).

The development of fuller rights for fishers have been inhibited by several factors. There is generally over-capacity in fisheries that have come from open access regimes or where technology has led to a rise in effective effort. In the 1980's regulated licensing was found to have led to over-capacity and three approaches were taken:

- i) Unitisation: Units based on different fishing vessel inputs were applied as a measure of vessel capacity and hence effort.
- ii) Buy-back programs (voluntary adjustment schemes): These were to address the over capacity of fishing vessels which had increased effort in many fisheries.
- iii) Output regimes: A change of fisheries management to management regimes based on limiting catch, usually by Individual Transferable Quotas (ITQs).

Some fisheries have been able to implement these changes in regimes and advance their rights.

3.2 Fishery regime comparison in South Australia

The fisheries in South Australia are a mix of regulated input and output regimes. The rights characteristics have been enhanced in fisheries which have undertaken painful restructuring

(adjustment schemes) and implementation of rights based management arrangements, such as ITQs.

An overview of the restrictive characteristics of fish rights is presented in Table 2 below. This follows the National Competition Policy framework (CIER, 1998) which views regulations on the basis of their restricted characteristics. **This is not a legal analysis, but it is attempting to measure the economic attributes and characteristics of the right for each fishery.** It must also be interpreted in the light of the endorsements available on each license.

From Table 2 the key issues in management development and rights enhancement can be seen:

- 1) The major divide is between the current status of wild fisheries management and some fuller rights in aquaculture as represented by the dotted line.
- 2) Access and input controls are more complex than just one measure (i.e. licenses have pot restrictions to contain capacity). These restrictions inhibit economic efficiency. Moving up the table may involve revisiting some of the input controls and capacity issues.
- 3) There are no unencumbered licenses with full transferability. This is a major issue in the development of fuller rights regimes. An increase of transferability and more third party ownership is required, though this is inhibited by over-capacity concerns.

In summary, the analysis of restrictions indicates that some rights may be enhanced directly, but most will come from amending management arrangements with restructuring implications. This confirms the two alternatives raised by appraisal in section two.

4.0 DISCUSSION

4.1 Rights enhancement in South Australia

The analysis to date shows that fisher desire greater security in resource access in the fisheries legislation and more explicit arrangements for compensation arising from license removal to be made more explicit. The fisheries regimes analysis suggests the need to consider the history of management and the degree of restructuring in a fishery when enhancing rights. There are also over-capacity and bio-economic considerations in any future adjustment of management regimes (eg. lifting restrictions and pot numbers).

Other alternatives and routes involve the improvement of license tradeability or development of fisher contracts with government. There is currently interest in altering governance arrangements to enhance fishing rights (See Appendix 4).

The recommendations of the review are to:

i) **Increase duration of license**

Pros: Increases industry ability to plan commercially; increases security in writing to a greater degree than at present; more transparency to banking sector for development and loans;

Cons: Decreases the flexibility for administrators if adjustment is required, particularly if given in perpetuity.

Proposal: Consider a 5 year license as new mark, from the current 1 year benchmark to follow the timing horizons of management plans. The Commonwealth system of statutory fishing rights linked to management plans should be investigated. License can be longer duration in different fisheries. Enhanced license duration (5, 10, or even 15+ years). Beware of waiting for in perpetuity duration.

ii) **Statutory fishing rights**

Pros: This incorporates increased duration but also can have additional characteristics enhanced, such as compensation.

Cons: Going from a license with one year duration and an expectation of renewal to a five year right with lesser expectation may not be attractive. It depends on the terms of the right.

Proposal: Consider adapting the Commonwealth system of statutory fishing rights linked to management plans for South Australia.

iii) **Compensation**

There are several compensation issues:

- Compensation for total removal of vessels/licenses;
- Compensation for damage to the resource by others;
- Compensation to industry for removal of areas, fishing times etc.

Compensation provisions can be made more explicit. Legislation in Western Australia for compensation arising from declaration of marine protected areas can be examined and extended to include polluters or other issues that may impact the resource

Pros: Increases the transparency of compensation letting users know where they potentially stand;

Cons: Conversely, some fishers do not like these mechanisms as their preference is to keep fishing;

Proposal: Compensation legislation similar to Western Australia should be considered and legislation that addresses wider threats investigated. The New South Wales share management system has compensation provisions and should be considered for adaption in South Australia

4.2 Benchmarking and future development of rights: strategic considerations

We recommend a two stage strategy.

STAGE I:

Improvement of rights by increasing license tenure and improving compensation provisions in the fisheries legislation; and

STAGE II:

Considering statutory fishing rights and alternatives, such as contractual arrangements and altered governance arrangements for some fisheries. For example an adaption of the Commonwealth or New South Wales share system may suit South Australian needs.

This two stage strategy would enable the more immediate access security and rights needs to be addressed and more involved alternatives to be commenced.

5.0 CONCLUSIONS

The report has developed a two stage approach to augmenting fishing rights, having benchmarked legislation and rights systems. This benchmarking has indicated that South Australia is in a strong position to consider improved fishing rights.

Rights enhancement involves direct changes in legislation to make licenses of longer duration, more transferable or provide compensation under given circumstances. Improvement of license duration to a five year benchmark for all of industry, is not an unreasonable request in the light of other Australian jurisdictions.

In summary, the rights held by fishers in South Australia are strong and can be enhanced through implementing direct improvements in the short term. However the features desired by fishers through enhanced rights may also be realised through longer term consideration of production contracts and altered governance arrangements.

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Appendix 1**SAFIC Rights Benchmarking Project**

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The following is the outline of points for the "Bench marking" project.

Objective:

To compare the legal and economic characteristics of rights in SA, with rights and regimes in other parts of Australia, indicating current deficiencies and recommending areas in which rights enhancement may be undertaken.

- (i) Overview of rights in SA fisheries.
 - Characteristics and
 - legal status
- (i) National review of fishing rights and alternative rights regimes
- (iii) Comparison of S.A. and national/alternative review
 - Identification of areas that are deficient in regimes and in law.
- (iv) Discussion
- (v) Recommendation for areas in which SA can progress from the current benchmark. ie. areas in which rights can be strengthened.

The draft report to SAFIC is due by 30th June 1999 and will be reported on in early July. The project is part of SAFIC's contribution to the revised FRDC project 1999/161:

"Sustainable fisheries management through enhanced access rights and resource security" (Part 1). - First part of a reduced project to prepare a paper for Rights'99 in WA.

Appendix 2: Value of key commercial fisheries in SA (1997/98). Source: PIRSA

The major fisheries are briefly described below in Box 1 at 1997/98 volumes and values.

The key commercial fisheries, their production and values in South Australia (1997/98).

<i>The marine scale fishery</i> ¹	(11,569 tonnes	\$20.6m)
<i>The blue swimmer crab fishery</i>	(469 tonnes TAC,	\$2.0m)
<i>The prawn fisheries</i>		
<i>Gulf of St. Vincent</i>	(267 tonnes,	\$4.1 m)
<i>Spencer Gulf and</i>	(2,300 tonnes,	\$26.8 m)
<i>West Coast</i>	(192 tonnes,	\$2.3 m)
<i>The Rock lobster fisheries</i>		
<i>Northern Zone and</i>	(942 tonnes,	\$27.7m)
<i>Southern Zone</i>	(1,680 tonnes,	\$50.9m)
<i>Abalone fishery</i>	(812 tonnes,	\$26.9m)
<i>Inland waters</i>		
<i>River Murray and</i>	(2,596 tonnes,	\$3.2m)
<i>Lakes and Coorong fishery</i>		
<i>Aquaculture</i>	(7,285 tonnes,	\$ 99.1m)
of which tuna culture is	(5,140 tonnes	\$87.2m)

Source: SARDI, PIRSA, Fisheries and Aquaculture production figures and MSFI R&D leaflets.

¹ A multi-method, multispecies fishery taking a range of whole fish, crustaceans and molluscs, - mostly fish by net (70% by weight). Of this 6,041 tonnes are pilchards worth \$3.8m.

Appendix 3: Summary of management and restructuring in South Australian fisheries.

The box below gives a management and restructuring overview of fisheries in South Australia.

The Marine Scale fishery

First licensed under the Fibre and Sponges Act, 1909 and became a limited entry fishery in 1968, regulated under the Fisheries Act 1971.

Management tools: limited entry, minimum sizes, seasonal closures, aquatic reserves, prohibitions and gear restrictions etc.

There have been previous reductions in license numbers in the fishery.

Currently: 521 license holders (420 marine scale, 42 marine scale restricted, 38 inland waters and 21 miscellaneous fisheries. There are 254 license holders in Rock lobster. Currently under a restructuring review. Have a 5 year management plan.

(The Pilchard fishery was made limited entry in 1968, has input controls and has 14 license holders.)

The Blue Swimmer Crab fishery

The blue swimmer crab fishery was formerly part of the marine scale fishery, but became an independent fishery in 1998.

Management tools: ITQ regime introduced in 1997.

Currently: Six potters (4 - Spencer Gulf, 2 - St. Vincent Gulf) and 32 scalefish fishers are endorsed to take blue swimmer crabs.

The Prawn fisheries- Gulf of St. Vincent

Began in 1968 when 5 permits were issued, reaching 22 by 1987.

Management tools: Large scale controls to rehabilitate the fishery were introduced in 1984 and a buy-back scheme in 1987. A further license was removed in 1992. Since re-opening in 1994 catch rates have been closely monitored.

Currently: Ten fishers operate for 40 days in the Gulf of St. Vincent under input controls.

Spencer Gulf and West Coast

Management tools: Run by strict time closures and limited entry regime.

Currently: 42 fishers operate for 75 days per year

Rock Lobster fisheries

Rock Lobster - Northern Zone

The area to the north of the Murray was first regulated in 1968.

Management tools: limited entry, legal size, 8 month season, time closures during season, pot dimension limits including weight, limit on pot numbers per vessel, single pulling, prohibition on berried females, vessel size restrictions (18 m and 1,200 hp).

License numbers restricted, two restructures of 10% effort reductions and several time closures. Five year management plan in place, December 1997.

Currently: 74 license holders operate between 1 November and the 31 May.

Rock Lobster - Southern Zone

The area to the south of the Murray was first regulated in 1968 by limiting vessel entry.

Management tools: limited entry, legal size, 7 month season, pot dimension limits including weight, limit on pot numbers per vessel (40-100 per license, with 80 in the water at any one time), single pulling, prohibition on berried females, vessel size restrictions (18 m and 1,200 hp).

License numbers restricted, as of 1975. By 1987 buyback schemes were introduced and seasonal fishery closures were implemented. Individual transferable quota was introduced in 1994 and has been in place since 1995 after initial allocation problems. A five year management plan is in place, as of July 1997.

Currently: 185 licensed boats in 1996/97.

Abalone fishery

Beginning in 1964, limited entry was introduced in 1968 with 100 divers, reduced to 30 by non-transferability.

Management tools: In 1980 licenses became transferable and quotas were introduced in 1985 (West), 1988 (Southern) and 1989 (Central). Legal length, 15% foreign ownership. Quota is issued on a per license basis in each sector and is transferable among divers, but not permanently. Nominated divers can be used. Five year management plan in place as of September 1997.

Currently: License numbers restricted to 35 as of July 1997.

***Inland waters
(River Murray)***

This is an historic fishery which commenced in the 1840s.

Management: Since 1917 the fishery has have been managed by the “Reach system”. Barrages constructed in the 1940s led to the two distinct systems. Net regulations used in management. Licenses are transferable.

Currently: 30 licensed family fishing businesses are located through the region.

***Inland waters
(Lakes and Coorong fishery)***

Again, historic fisheries which commenced last century.

Management: Year round fishery with owner operator policy where skipper must be in attendance. Self managed by input controls. Licenses are transferable.

Currently: 39 licensed fishers employing 114 people.

Appendix 4: Altering fishery governance

Rights and governance

Earlier in the paper we indicated that the property right legal judgements had not been translated into legislation. For rights to come into legislation it is likely that governance arrangements have to alter. What are the different governance arrangements? Rights regimes for common-pool resources have recently been reviewed by Grafton, (1999) dividing them into three categories:

- 1) Private right-based regimes;
- 2) Community based right regimes;
- 3) State based right regimes.

Governance relates the management of the resource to the rights and can be compared between rights alternatives. It requires us to examine institutions and their role in governance. Governance can be centralised and decentralised:

“the paper suggests that the state as a facilitator, or coordinator of the actions of resource users, may be a more desirable form of governance. In this role, and where centralised governance is favoured, the state should recognise its limits and the divergence of rights over the stock and flow from resources, should manage within its capabilities, and should help establish rights and responsibilities for resource users that help match individual incentives with collective interests” (Grafton, 1999).

This is part of the issues in moving from being an approved user with access rights, to more than this, with a role in the long term stock management (Schlager and Ostrom,1992).

The fundamental economic theory for self-governance in fisheries comes from Scott (1988 and 1993). The economic reasons to pursue self-governance are greater economic returns from joint harvesting of species and involvement in long run stock management in order to build up the stock, thus giving a more sustainable higher catch in future years. This would lead to greater resource sustainability. There are several obstacles to self-governance as described by Scott. The key obstacles are:

- government administrators relinquishing control. There need only be a few experimental fisheries to start with.
- fishermen have problems working together (takes time; knowing who is going to get what share of the catch [ITQs help here]; can industry form new co-operative management arrangements that work well?).

International developments

In New Zealand the Quota Management System (QMS) has led to the development of an established co-operatively self-managed scallop enhancement company at Golden Bay. There has also been the development (since 1992) of an orange roughy corporate regime for the co-management of the orange roughy fishery. Currently there are as many as 25 fisheries in which “co-management” arrangements have been introduced or are being introduced (eg. oysters, eels, inshore fin fish etc). The NZ co-management model also gives traditional owners greater self-governance.

Altering governance arrangements in South Australian fisheries.

The South Australian industry wish to enhance rights. This can come through an alteration in the arrangements for governance. The Pivotal report (Pivotal, 1998) reviewed arrangements for fisheries management in South Australia. The report indicated the following for Fishery Management Committees, (FMC)s:

Comments and recommendations from the Pivotal report (Pivotal, 1998).

Most FMCs are working (p 30) well however there is:

- Little emphasis on industry development;
- Structure and cost recovery inhibits "imaginative" decision making;
- Some members view their roles as that of delegate rather than accepting full and joint responsibility as a cohesive FMC;
- Potential to reduce the number of FMC to reduce costs and overheads and improve strategic decision –making;
- Lack of formal involvement of processors and wholesalers environmental/conservation experts.

Recommendations (p 32):

- The structure of the FMCs be amended as described in the tables on the following pages;
- The FMCs take on a more active role in industry development as part of their primary role in fisheries management;
- The composition, skill and competency mix of the FMCs should change to coincide with changing roles. Consideration should be given to increasing industry development skills on the FMCs through member selection and/or training of members;
- That issues associated with the management of the marine scale sector be resolved by industry or if this cannot be achieved then Government intervene.

Pivotal Recommendation

- Industry and government to work together to develop a strategic plan for the further sustainable development and management of South Australian fisheries.

Succession Planning and Management Development (p 46)**Pivotal report Concludes:**

- There appears to be shortage of Fisheries Managers with appropriate technical and communication skills;
- There are few people within the commercial sector with the knowledge and expertise necessary to take on leadership roles in fisheries management.

Structural Options (p 51)

Four models are considered and rate on the six key principles:

Model 1: Division of PIRSA – Preferred model in short-term, with a view to create a statutory authority in the medium term (model 2);

Model 2: Fisheries Resource Management Authority – Preferred model after model 1 has been implemented;

Model 3: Fisheries Resource Management Advisory Board;

Model 4: Fisheries Management Company Pty Ltd (privatised model).

The Pivotal report was examining the delivery of fishery management services. However the findings are also useful in identifying issues to be addressed in the development of alternative governance arrangements in South Australia.

Considering alternative governance arrangements

South Australia is in a prime position to develop a fuller fishery rights regime through altered management and governance arrangements. In this process there are three key principles:

- 1) the fishery must have had a sound restructuring history, as self-governance will open up these issues;
- 2) new regimes are designed and will lead to an altering of management arrangements and the delivery of fisheries management services;
- 3) changes made, will need to be consolidated in legislation.

Developing new rights regimes will involve visiting and revisiting each of these issues.

Secondly, there are major challenges for industry in the development and procurement of resource management expertise. This involves a significant shift in the industry's willingness to take responsibility in the new institutional arrangements that may develop. This is a significant development and training task.

The realities of development of new management options are that industry must regain greater credibility with Government through the following steps:

- *The FMC process*: this is the legislated avenue for management development. The FMC must rise to meet the challenge and take the opportunities which present themselves.
- *Industry unity*: A united front is needed among industry. Any reluctance in the Government to change management arrangements will be furnished an opportunity to appear under the guise "the industry is not united" and "can't agree among itself". This is not a good background for the discussion of stakeholder self-management options. It must be addressed.

Enhancing fishing rights must consider the following:

- 1) While each fishery is under the umbrella legislation this should not limit the ability of individual fisheries to develop alternative management arrangements based on fuller rights. These would be implemented in the future and may cause changes to management plans.
- 2) Moving forward into more autonomous rights based fisheries management arrangements is dependent on the following factors:
 - i) The restructuring history of the fishery and its capacity/economic /biological health.
 - ii) The efficiency merits of the new governance and hence rights arrangements over the old.

- iii) The acceptability of new administrative and governance models to the government, Fisheries dept. and community (*the Release principle*). This will involve payment and stewardship provisos and belief in the credibility of any new management arrangement/body. Industry dis-unity does not enhance this perception.
- iv) The provision of adequate accountability and stewardship measures under any new arrangement (Biological, ecological, economic and community reference points, with independent auditing).
- v) The right political climate for introduction and implementation of the full proposal.

In appraising governance options information is needed on the potential economic benefits of the new regimes. For example:

Bio-economic modelling: Models of new fisheries management arrangements must illustrate the potential economic benefits of newer management regimes. These should be bio-economic with stock development plans under new governance arrangements.

Investigation of Capacity: New self-governance regimes may require adjustment of efficiency retarding gear regulations (pot limits etc). This will enable capacity to adjust to release the economic benefits mentioned above.