

Session 3 Group Discussion

Question 1. Groups 1 and 5

Have you established what are your own industries' rights to the shared stocks in your zone before entering international (or national) negotiations on the same stock? (Unresolved conflicts within a delegation are seriously prejudicial to the successful outcome of a negotiation). If no, how would you do this?

- It is essential to resolve any domestic conflict before entering into negotiations involving the same stock. Only unified stakeholder involvement can be expected to work towards a successful outcome.
- Where Australian management advisory committees (MACs) exist, the existing process should be used to reach the national position.
- The following general procedures need to be observed:—
 - identify the stakeholders;
 - identify their objectives, including defining trade-offs and parameters — this is a simpler exercise for a single-species fishery with less internal conflict;
 - identify the options for achieving results;
 - negotiate the preferred position; and
 - present it to the political delegation.
- Before commencing negotiations;
 - become acquainted with relevant stock assessment data;
 - acquire an understanding of the current usage and likely expectations of the other party's stakeholders and their cultural background;
 - look for common ground among domestic stakeholders, and establish what are their short- and long-term objectives;
 - propose optimum/minimum levels for compromise among stakeholders (in confidence);
 - endeavour to strike an acceptable balance between transparency and confidentiality;
 - set up a formally recognized advisory body, with an independent chair and relevant expertise, that can talk with the government Minister and his advisors before consultation begins; and
 - advise stakeholders of proposals for their allocations before reaching the (international or national) negotiating table.

Question 2. Groups 10 and 11

What are the respective roles of government and industry in deciding on the resource sharing process and in the negotiations with the other party or parties?

- To ensure a successful outcome, it will be necessary for stakeholders to understand their respective roles. Within the current emphasis on co-management, it is essential for those roles to be decided upon and defined *a priori*, to ensure everyone's ownership of the process.
- It is first necessary to establish who has the "rights":—
 - traditional fishing rights, taking account of historical patterns and stakeholders' values;
 - property rights *versus* access rights;
 - the type of right will determine the role in consultation and negotiation;
 - roles should be defined by an agreed process.
- Once the rights and roles of stakeholders have been determined, the negotiation process can commence, noting:—
 - government maintains ultimate power over management of common property natural resources under its jurisdiction, supported by a back room negotiation process between government and the players to ensure acceptable resolution;
 - successful negotiation requires that government has a mandate to provide that stewardship role; and

- between-government negotiations may involve reconciling different views on resource sharing arising from different political and/or cultural backgrounds.

- Appropriate roles for government are:—
 - identifying boundaries — fishery definition;
 - data collection and analysis;
 - provision of an international negotiator;
 - facilitation of negotiations;
 - legislative responsibility;
 - research, including TAC estimation; and
 - accountability for the process.
- The industry's role is:—
 - to provide information, catch data, anecdotal, technical;
 - keeping those involved in the negotiating process informed and educated;
 - contributing to costs; and
 - facilitation.
- For additional consideration — strategies for future re-allocation.

Question 3. Groups 9 and 12

How would you go about negotiating access rights with other parties, and reconciling longer-term plans for limited licensing and fleet renewal, and are there situations where some limited access for

the other side to your exclusive economic zone may have some mutual advantage?

- Steps in negotiating access rights should be to identify legitimate stakeholders, both internal and external, and establish a working group or committee, whose terms of reference should include identification of rules of negotiation, and objectives, and develop and agree on a negotiating process, acceptable to stakeholders.
- There will be a need to anticipate ambit claims and quickly advance negotiations to minimize them.
- Internal procedures and policies need to be developed by representatives from peak bodies having good contacts with their constituents. The process of internal consultation may be time-consuming for representative constituents, but less so for expert constituents, e.g. assessment advisers.
- It must be recognized that 'outside' agencies, i.e. those representing alternative jurisdictions, may work outside the agreed negotiating framework, and are likely to put self-interests above those of negotiating competitors and, perhaps, long-term stock welfare.
- Factors affecting the success of negotiations include:—
 - appropriate negotiating skills — physical, mental and social;
 - agreement on the status of stock(s), catch and effort, and fleet structure, and knowledge of cultural differences;
 - agreement among internal stakeholders on the level of quota/access and on internal allocation; and
 - the ability to secure a win/win result amongst all parties.
- Reconciliation of longer-term plans for limited licensing and fleet renewal will need to include:—
 - an internal process for competing users to develop agreement about acceptable levels of access, usage and effort;
 - development of management strategy options (e.g. limited entry, quotas, closures);
 - consideration of structural adjustments to the fleet (e.g. buyback);
 - funding (e.g. access fees, cost of buyback, research budgets, enforcement and monitoring costs);
 - contingency plans for a stock decline or any need for economic restructuring; and
 - proposed processes should take into account flow-on effects, e.g. transfer of fishing effort to other fisheries consequent on cut backs.
- Provision of limited access to an EEZ for mutual advantage could apply to:—
 - protection/conservation of migratory stocks;
 - protection of areas of recruits and spawners;

- optimizing the yield/value of a fishery;
 - a trade-off of access to other stocks; and
 - social, economic and other rights.
- Other instances of where such access should be authorized include:—
- where traditional/indigenous fisheries have been conducted historically;
 - where resources traditionally not used by EEZ 'owner' can be used by others;
 - mutual exchange of rights for differentially-valued items;
 - training or other ways of improving mutual goodwill; and
 - legitimizing illegal operations where enforcement of restrictions/prohibitions is not feasible.

Question 4. Groups 2 and 3

What would be your priorities for negotiating harmonized fisheries regulations and common provisions for enforcement that take socio-political differences and differing national objectives of the negotiating parties into account?

- Before negotiations commence it will be necessary to:—
- be sure that all on your side agree;
 - know your limits for compromise;
 - agree on time-scale to achieve objectives;

- become aware of the other party's attitudes and objectives;
- assess potential cultural, financial and political consequences of alternative outcomes to the other party(ies);
- select a capable negotiator — with proven stamina;
- endeavour to separate politics from negotiations with respect to the fishery;
- consider incentives;
- decide on the level of funding;
- understand cultural differences;
- gather together available scientific research and monitoring information relating to the fishery in question; and
- establish national commitments in terms of other treaties/obligations, including the potential to use other "side payments" to enhance negotiating positions.

— The priorities for harmonized negotiations should include:—

- establishment of objectives by both (all) parties;
- stock sustainability;
- equitable sharing;
- resolution of contributions by each party to funding of the management regime;
- recognition of cultural differences between parties;

- sharing information;
- joint/shared management where appropriate;
- transparent processes;
- agreement on responsibilities; and
- provision for sunset or review.

— Successful negotiations are likely to be achieved through:—

- establishment of trust through a willingness to understand the other party's (ies) point of view and to work towards an agreed position;
- agreement on the negotiating process, including resource allocation, and conflict resolution processes;
- agreement on data requirements;
- negotiating ongoing research and monitoring to meet data, stock assessment and enforcement requirements; and
- preparedness to carry financial burden in return for contributions in kind, e.g. labour.

Question 5. Groups 6 and 7

What would be the trade-offs that could resolve socio-political objectives and/or differing state or national objectives to the extent possible, and what side payments may be possible that could best fulfil the requirements of the (two or more) sides?

— The Law of the Sea requires negotiation between nations accessing shared stocks to achieve sustainable development. Traditional allocation methods, where

such exist, often lead to confrontation and are not working effectively to conserve stocks. Trade-offs and side payments between stakeholders provide a mechanism for re-allocating fisheries resources in order to achieve acceptable levels of harvest. Trade-offs were considered preferable to having unsustainable fisheries.

— The issue of allocation, especially between countries, cannot properly be addressed until stocks have first been identified into biological units — without this, determining access rights and management may be difficult.

— The social and political objectives of each nation must be identified first in order to create the parameters surrounding management arrangements.

— The type of trade-off depends on the relative development of the nations or stakeholders. For countries of similar socio-economic status, the negotiations could include access to markets and trade in other sectors. There are also options for sharing fishing grounds and closed areas through fishing agreements to maximize fishery yields. For countries with differing socio-economic status, negotiations could include technology transfer, e.g. for aquaculture, and trade-offs in other primary production or industrial sectors. Exchange of access rights to other fisheries may be useful.

— Assistance with all aspects of fisheries management, including research, monitoring and enforcement, have potential as trade-offs, not only to improve allocation and sustainable use of fisheries resources, but also to improve understanding of biological, economic and social issues,

while fostering trust in, and understanding of, results thereby encouraging their adoption and compliance.

- Establishment of a stake in a resource, by research, exploration or preliminary exploitation, was seen to be an important precursor to successful access negotiations.
- The potential impact of re-allocation of catch on communities was recognized. Negotiations and time-scales for changed access need to take account of cultural values of fisheries resources, and the need for adjustment within the whole community.
- The groups were wary of the possible pitfalls through trade-offs by side payments, favouring technical support for restructuring and community development, and assistance with fishery assessment, monitoring and enforcement, or such political objectives as employment, trade, tourism or defence.
- Vessel registries can assist with the identification of vessels breaching international agreements. Cooperation against pirates or other illegal fishermen can help bilateral fisheries relations. The involvement of defence forces, and mutual observer programmes, can demonstrate a country's serious concern, and avoid further conflict.

Question 6. Groups 4 and 8

Should fisheries negotiations be strictly separated from those on other bilateral issues? If yes, why? If no, why?

- While ideally, it may be desirable to negotiate fisheries issues separately in

order to get the most efficient and effective outcomes with respect to fisheries management, it is often not possible to separate fishery and non-fishery issues in determining the greatest overall community interest or benefits.

- The range of 'other bilateral issues' gets larger as fisheries negotiations shift from regional to national and international levels.
- The advantages of dealing with other bilateral issues separately from fisheries negotiations would include:—
 - fishery matters are the sole focus of negotiations;
 - independence from other (perhaps more important or valuable) issues;
 - maximum simplicity of negotiation;
 - negotiation time is reduced;
 - other issues could magnify the potential size of a problem and affect interactions between countries; and
 - more transparent/accountable processes and outcomes.
- However, in the 'real world' it is usually not possible to separate fisheries issues from other bilateral negotiations. In such cases there are some advantages over separate negotiations of single issues including:—
 - an increased range of options available which can be used to obtain the "best overall outcome"; and
 - increased options for trade-offs through the diversity of negotiations.

- *Regional* bilateral issues relevant to fisheries negotiations include native title/land rights, land/water use impacts, mining and tourism interests.
- *National* (Australian) issues include Offshore Constitutional Settlement arrangements (trade-offs of stocks between Commonwealth and State jurisdictions), inter-jurisdictional water management/allocations (e.g. Murray-Darling Basin, Snowy River), and cross-border impacts on aquatic habitats/

environments of both fishery and non-fishery activities.

- *International* bilateral issues were thoroughly canvassed in Workshop addresses. It is vital that an agreed national position covering scientific inputs, industry views, economic factors and social issues, should be developed before international bilateral discussions commence, noting that fish stocks often end up as "sacrificial lambs".