

**REPORT OF THE NSW OCEAN HAUL  
PURSE SEINE FISHERY  
INDEPENDENT ALLOCATION PANEL**

**Draft IAP Report for Consultation – 16<sup>th</sup> April 2018**

**Report to the  
Minister for Primary Industries (NSW)**

**Report prepared by the Independent Allocation Panel  
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## 1. Executive Summary

Public consultation documents<sup>1</sup> developed by the NSW Government and various scientific reports set out that fishery management arrangements applied in NSW have ensured that the vast majority of fish stocks are sustainably harvested and that fish stocks that have been subject to commercial (and other sector) harvesting for 50+ years are generally in good shape.

These same documents set out that the economic viability<sup>2</sup> of the commercial fishing industry is not in the same positive condition. The Government recognises that some individual fishers are profitable but the overall viability of the industry has been negatively impacted by many factors - loss of fishing grounds, competition from cheap imports, increasing costs, excess fishing capacity, restrictive fishing regulations and the failure to issue fishing rights (shares) during 2004-07 with any link to a meaningful proportion of resource allocation. While some of these relate to the broader competitive business environment that the industry operates in, others are the cumulative impacts of managing a finite common property resource with competing stakeholder groups.

Following consideration of an Independent Review report in 2012 the NSW Government established the Commercial Fisheries Reform Program including a *structural adjustment component* to:

- link shares in each fishery to either recorded landings or fishing effort to meet the original intention of share management when the *Fisheries Management Act 1994* first commenced;
- provide a way for some fishers to exit the industry and others to help set up their businesses for the future through the application of a \$16 million structural adjustment package; and
- remove unnecessary fishing controls which have hindered fishing efficiency<sup>3</sup>.

A conclusion reached by the Government established Structural Adjustment Review Committee (SARC), was that the acceptance by the Government of the 2012 Independent Review findings sent a clear signal to industry that, as intended in the original introduction of share fisheries, shares would be the primary mechanism for determining access.

However, the SARC determined that application of a share linkage allocation based only on existing access shares held (i.e. equal allocation across shares) would create a significant distortion (i.e. the disparity between shares held and existing fishing activity levels) for a range of species taken by some NSW fishing endorsements. The SARC was of the view that this distortion would place an unacceptable and unintended substantial financial burden on a relatively small number of fishing businesses in fisheries where this small number of fishing businesses accounted for a high proportion of the total recorded landings from the fishery.

The SARC concluded that this distortion would require specific consideration by an Independent Allocation Panel (IAP), with terms of reference seeking the IAP provide advice

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<sup>1</sup> Public Consultation Paper: Generic information relating to the reform program and reform options for NSW commercial fisheries (NSW DPI, April 2014, OUT 14/10076).

<sup>2</sup> *Viability* refers to the economic viability of the entire commercial wild harvest sector, not the viability of an individual – p2, Public Consultation Paper: Generic information relating to the reform program and reform options for NSW commercial fisheries (NSW DPI, April 2014, OUT14/10076).

<sup>3</sup> Extracted from the Minister for Primary Industries media release announcing the reform program on 14 November 2012.

to the Minister for Primary Industries on the basis for allocation of 'quota shares' for specific species across the following NSW fisheries:

- *Ocean Trawl – Inshore & Offshore Prawn Fishery and Northern Trawl Fishery;*
- *Estuary General – Hand Gathering Fishery;*
- *Ocean Haul – Purse Seine Fishery;*
- *Ocean Trap & Line – Line East Fishery; and*
- *Ocean Trawl – Southern Fish Trawl Fishery.*

The IAP was established by the NSW Government in October 2017 under a series of Terms of Reference (ToR) for each fishery set out above. The respective ToR were approved by the Minister for Primary Industries following consultation with industry stakeholders.

The ToR for the *Ocean Haul - Purse Seine Fishery* set out that the species for which advice on allocation of quota shares would apply are:

- Australian sardine;
- blue mackerel; and
- yellowtail scad.

The IAP communicated directly with all eligible shareholders advising of the establishment of the IAP, providing access to the ToR, and providing the necessary information to enable eligible shareholders to book an individual or group face-to-face consultation with the IAP and/or to make a written submission to the IAP.

The IAP embarked on an extensive face-to-face consultative process throughout NSW from mid December 2017 until mid February 2018. Written submission were encouraged and received.

The IAP has produced a Draft IAP Report after considering the views presented by those eligible shareholders in the *Ocean Haul - Purse Seine Fishery* attending consultation meetings and those contained in written submissions, as well as taking into consideration information from relevant background documentation.

The Draft IAP Report has been circulated to all eligible shareholders in the *Ocean Haul - Purse Seine Fishery* and other interested stakeholders.

The IAP is now seeking written submissions from eligible shareholders on the findings, conclusions and recommendations contained in this Draft IAP Report. Submissions are sought by the close of business 7<sup>th</sup> May 2018.

Following consideration of written submissions to the Draft IAP Report and any further information deemed necessary, the IAP will submit a Final Report to the Minister for Primary Industries by the end of May 2018.

#### **How to Make a Submission on the Draft Report of the Independent Allocation Panel for the *Ocean Haul - Purse Seine Fishery***

Please send all written submissions to [iap@au.gt.com](mailto:iap@au.gt.com) or Independent Allocation Panel, c/o The IAP, Grant Thornton Level 17, 383 Kent Street, Sydney 2000.

Submissions are sought by the close of business 7<sup>th</sup> May 2018.

## **2. IAP Summary of Recommendations**

### **2.1 IAP recommendations for allocation of quota shares for Australian Sardines:**

The IAP recommends that the allocation of quota shares for Australian sardines be calculated based on 20% on the proportion of access shares held + 80% on recorded landings for an individual fishing business in the *Ocean Haul – Purse Seine Fishery* within the period 2009/10 – 2016/17 (inclusive).

The IAP recommends the use of the sum of recorded landings within the period 2009/10 – 2016/17 (inclusive).

### **2.2 IAP recommendations for allocation of quota shares for Blue Mackerel:**

The IAP recommends that the allocation of quota shares for blue mackerel be calculated based on 20% on the proportion of access shares held + 80% on recorded landings for an individual fishing business in the *Ocean Haul – Purse Seine Fishery* within the period 2009/10 – 2016/17 (inclusive).

The IAP recommends the use of the sum of recorded landings within the period 2009/10 – 2016/17 (inclusive).

### **2.3 IAP recommendations for allocation of quota shares for Yellowtail Scad:**

The IAP recommends that the allocation of quota shares for Yellowtail Scad be calculated based on 20% on the proportion of access shares held + 80% on recorded landings for an individual fishing business in the *Ocean Haul – Purse Seine Fishery* within the period 2009/10 – 2016/17 (inclusive).

The IAP recommends the use of the sum of recorded landings within the period 2009/10 – 2016/17 (inclusive).

## **3. Definitions**

*Access* – the legally based right to take fish from the common property resource for particular purposes. For a commercial fisher, the access right is usually a commercial fishing licence, endorsement or authority.

*Allocation* – the legally based level of activity to be exercised by an individual or class of individuals. This level of allocation is subject to a range of fisheries management laws and controls designed to protect the fishery and achieve the objectives of the legislation. Examples of these management controls include individual catch or effort quotas, effort limits, bag limits, area or time restrictions.<sup>4</sup>

*Quota Share* – quota can be based on allocated catch limits (kgs/tonnes), effort (days, nights, gear) or a limited number of access endorsements<sup>5</sup>.

*Recorded Landings* – reflects the recorded catch landings contained in official logbook data provided by the NSW Department of Primary Industries.

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<sup>4</sup> Principles and Guidelines in Support of Fisheries Inter-Sectoral Access and Allocation Decisions (P.Neville, D.McPhee, M.Barwick 2012)

<sup>5</sup> Response to Recommendation 6.1, (p8), Government Response to the Recommendations of the Independent Review of Commercial Fisheries Policy, Management and Administration (2012)

#### 4. Introduction

Commercial fisheries with well defined and allocated access rights have a proven track record of long-term biological and economic outcomes from formal management.

The legislative responsibility for decisions on allocation of rights to public resources such as commercial fisheries rests with government. However, experience in Commonwealth fisheries management, and some States, is that commercial fishing licensees will have greater confidence in resource share allocation decisions where recommendations on how to allocate access rights are developed through a process 'independent' of government.

Such independent review processes include extensive consultation, an independent assessment of the range of possible allocation mechanisms, taking into account fishery and individual licensees circumstances, and eventual recommendations to the government on the preferred basis for allocation. This independent process allows allocation advice to be one step removed from both the government making the decision and the vested interests of the fishers that may be directly impacted by allocation decisions. It is important that all fishers who may be directly impacted are afforded the opportunity to present their views, including on any draft recommendations prior to final allocation advice being provided.

To address these requirements many fisheries managers across Australia use independent allocation panels (IAPs).

Allocation is about determining harvesting rights in a fishery. It does not involve making recommendations on stock sustainability - this remains largely a biological/ecological fisheries management issue. Allocation means working out what individual proportion of total annual catch allowed for the fishery (kilograms or tonnes) or proportion of the total effort allowed in the fishery (days to be fished, pot/nets to be used) is to be allocated between those operators who have already been granted access rights to a fishery and the species within that fishery.

IAPs only provide advice. Fisheries management agencies or the Minister of the Crown are ultimately responsible under legislation for determining the final allocation formulae and associated matters. Examples exist, albeit rare, when government has not accepted some, or all, of the recommendations presented by an IAP.

An IAP works to a Terms of Reference (ToR) approved by the government. The ToR usually require the IAP to consider appropriate background material, receive briefings from the Department responsible for managing commercial fisheries, and to consult extensively with holders of fishing endorsements/units/shares, any associated stakeholders and organizations with relevant knowledge and experience.

The NSW Government established an IAP for the *Ocean Haul - Purse Seine Fishery* to provide advice to the Minister for Primary Industries and the Department of Primary Industries – Fisheries (DPI Fisheries) on the basis for the allocation of quota shares to the holders of *Ocean Haul - Purse Seine Fishery* shares ("eligible shareholders").

The IAP consultation took place primarily through individual meetings with eligible shareholders (i.e. registered fishing business owners), receipt of written submissions and an industry review of the Draft IAP Report with the opportunity to comment through a written submission process. The IAP will then review and consider response to the Draft IAP Report and finalise their report to the Minister for Primary Industries.

This Draft IAP Report sets out the background for establishing the IAP, the issues raised through the various consultation stages, the IAP considerations of the relevant issues and the IAP recommendations for the basis for the allocation of quota shares to the holders in the

## **5. Summary of History of Share Management in NSW**

Initially, fishing access in NSW fisheries was 'open access', with access authorised by merely holding a fishing boat licence and fishing licence. A series of management decisions were applied over time:

- a permanent cap on the number of fishing boat licences was established in 1984;
- a freeze on the issue of new fishing licences in 1987 (with the exception of new hand-gathering licences in 1991);
- agreement in 1991 between NSW and the Commonwealth (Offshore Constitutional Settlement) ceding jurisdiction to the State for specific methods/species in waters outside 3nm;
- introduction of hull, engine and net units in some fisheries around 1994; and
- introduction of policy in 1994 to commence recorded landings validation for registered fishing businesses.

New fisheries management legislation and regulations were introduced in NSW in 1995 and were developed on the principles of 'share management' that set out as follows:

- fishers would have strong fishing rights and would be compensated if that right was cancelled;
- promote greater husbandry of the resource;
- cost recovery would be introduced;
- a community contribution for the privileged access to a public resource would be payable; and
- shares would be the structural adjustment tool.

The Fisheries Management Act 1994 provided the enabling legislation to introduce a fishery share management system. Young (1995) described the initial reasons and intent of the introduction of the system. The system was designed to give fishers security within the context of an adaptive resource management system designed to ensure that fishery use is sustainable and consistent with social objectives as they change through time. It was designed to replace the annual renewal of a licence, which provided no real tangible property right and could, in theory at least, not be renewed. The system was designed to enshrine rights (within sustainability bounds) to harvest specific amounts of fish or to use certain classes of boats and gear issued in proportion to the number of shares held in each fishery (fishery being flexibly defined by region and habitat, with or without further specification by gear-type, species group or single species).

A review of share management implementation in NSW commercial fisheries was carried out in 1995 resulting in the rock lobster and abalone fisheries proceeding directly to share management by late 1996 with access shares directly linked to a proportion of the total allowable catch established for the fishery. All remaining fisheries agreed to be progressed to share management through a multi-stage process. The intent of the NSW Government using a multi-stage process was to implement meaningful restructuring rules at a later stage once the challenge of defining the number of participants in each sub-fishery was finalised and frameworks to support a sustainable and economically viable industry were assessed and developed.

The first stage of that process was the introduction of a restricted fishery management framework across a series of defined fisheries – estuary general, estuary prawn trawl, ocean hauling, ocean trawl and ocean trap and line. Within each defined fishery were sub-fisheries identified through specific 'access endorsements'.



It is understood that an investment warning was issued after 1996 advising new entrants to purchase fishing businesses with good verified recorded landings as the access and allocation criteria may change in the future. There appeared to be no identified period of time after which the investment warning ceased to be in operation, beyond the finalisation of management reforms and changes

In approximately 2000, the NSW Government amended legislation to provide for Category 2 share management fisheries resulting in a stronger fishing right but still only providing an access endorsement capable of cancellation without compensation.

Between 2004 and 2007 the NSW Government moved all remaining fisheries to Category 1<sup>6</sup> share management status. Access criteria varied for each endorsement type.

The *Ocean Haul - Purse Seine Fishery* became a Category 1 share managed fishery on 26<sup>th</sup> March 2004 and the access criteria applied for issue of shares was:

- 40 shares allocated for each Class C or D endorsement a Fishing Business is entitled to (except only 20 shares were allocated if a Review Panel allocated an endorsement where the fishing business did not meet current transfer criteria); and
- 10 shares allocated for each 10 tonnes of combined total weight of nominated species (including Australian salmon) as per validated catch history up to a maximum 500 shares.

One fishing business was subject to the artificial cap of allocated shares (500) compared to the estimated total of ~2500 shares that should have been allocated under the criteria applied to all other fishing businesses in the *Ocean Haul - Purse Seine Fishery*.

In practice for these remaining fisheries, shares functioned as an access right rather than as an allocation, analogous to an Individual Transferable Quota (ITQ) system and to operate in the fishery an operator was required to merely hold a minimum number of access shares and meet regulated input controls such as vessels size, gear and seasonal closures. The number of access shares held by a business did not influence the level of fishing activity (recorded landings and/or effort) that could be undertaken. For example, if one fishing business held the minimum shareholding and another held twice the minimum shareholding, the level of permissible fishing activity that the two fishing businesses could undertake did not differ.

This approach was not consistent with what was proposed under the original share management framework described in Young (1995).

Shares issued at this time were tradable to allow accumulation to the required level of the minimum access shares to secure the grant of a fishing endorsement.

A report on the need for structural adjustment in the NSW commercial fisheries (Stevens, 2007) suggested that given share management had now been implemented in all of the nominated NSW fisheries, there was now a mechanism in place to readily facilitate structural adjustment over time. The report recommended a limit be set for each fishery and sub-fishery (i.e. a Total Allowable Catch or Total Allowable Effort) and allocated to shareholders in direct proportion to their shareholdings. The report identified that the existence of significant shareholdings held by latent fishing businesses may mean that linking shares to recorded landings and/or effort would result in a degree of distortion and initial disruption to active fishers.

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<sup>6</sup> NSW Government Gazette No.75, Official Notices, p2155, 23 April 2004

In July 2009<sup>7</sup> the NSW Government announced the Pymont Pact – an agreement by Government and industry on the elements of a ‘reform program’ proposed for future management of commercial fishing in NSW. This included a range of tools to facilitate restructuring such as changes to minimum shareholdings and use of exit grants to promote trading between shareholders. The Government documents advising of the agreement emphasised that the ‘reform program’ would consider how existing shares could be used to create a system where the more shares held would give more access to the resource thus giving affect to the original intent of the share management system.

In June 2010<sup>8</sup> further NSW Government documentation advised of the imminent commencement of an exit grant program to assist those wanting to leave their fishery, while providing opportunity for those wishing to stay to increase their shareholdings. Industry was advised that to improve industry viability, the linking of shares to a level of resource access was seen as an important way forward and that in particular, this approach should provide a real benefit to business owners who accumulate more shares.

In September 2011 the NSW Government announced the establishment of the Independent Review of NSW Commercial Fisheries Policy, Management and Administration (2012)<sup>9</sup> that was completed in May 2012 after a significant industry consultation process.

In 2012 in response<sup>10</sup> to the report from the Independent Review of NSW Commercial Fisheries Policy, Management and Administration (2012), the Government announced the establishment of a Commercial Fisheries Reform Program. The Government’s response included support for the Review recommendation that shares in each fishery be linked directly to resource access in the form of a quantity of catch, a quantity of fishing effort or limiting the number of access endorsements<sup>11</sup> to achieve the biological and economic objectives of the Act.

In May 2013 an amount of \$16m<sup>12</sup> was announced to assist with structural change and ‘instill meaning and value in commercial fishing shares, by linking them to resource access’.

As part of the reform program the Government established a Structural Adjustment Review Committee (SARC) in early 2013. The SARC was charged with the responsibility to create a stronger link between shares and resource access to instill greater value and security in the tradeable rights (access shares) that was expected to assist reduce latent fishing pressure and increase the long term viability and operational flexibility for industry. In September 2015, the SARC<sup>13</sup> recommended share linkages across 24 separate share class groups (encompassing 103 share classes) using existing access share allocations wherever possible.

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<sup>7</sup> The Pymont Pact to promote strong future for commercial fishers, DPI, 6<sup>th</sup> July 2009 (OUT 09/4754)

<sup>8</sup> Future Directions for the Commercial Fishing Industry, DPI, 18<sup>th</sup> June 2009 (OUT10/8958)

<sup>9</sup> Independent Review of Commercial Fisheries Policy, Management and Administration (2012)

<sup>10</sup> Government Response to the Recommendations of the Independent Review of Commercial Fisheries Policy, Management and Administration (2012)

<sup>11</sup> Response to Recommendation 6.1, (p8), Government Response to the Recommendations of the Independent Review of Commercial Fisheries Policy, Management and Administration (2012)

<sup>12</sup> NSW Commercial Fishing Statement of Intent, Minister for Primary Industries, 31<sup>st</sup> May 2013

<sup>13</sup> Final Share Linkage Recommendations, NSW Structural Adjustment Review Committee, Ian Cartwright, Sevaly Sen and Mary Lack (30 September 2015)

In April 2014 a DPI consultation paper<sup>14</sup> set out that catch quota should be pursued as the preferred option for linking shares to resource access but, if this is not feasible, shares should be linked to fishing effort in the form of transferable time/gear based quota (effort quota).

The DPI paper outlined that a number of share linkage options included in the respective fisheries options papers involved creating a new class of share to:

- implement a catch quota for a species that is one of many species taken by a particular share class and where the current allocated access shares bear no direct relationship to the catch of that species; and
- implement a catch or effort quota for a species taken across multiple share classes and where the full transferability of rights between participants in those sectors is desired.

The DPI paper advised there were a number of specific options identified for allocating shares in new share classes, including using current access share held, 'swapping' current access shares and using shareholders recent participation (recorded landings).

Use of recorded landings<sup>15</sup> as a criteria was proposed to be limited to those sectors demonstrating 'extreme disparity' between shareholdings and some shareholders recorded landings especially where shareholdings were initially issued on a flat basis and/or (as in the majority of such cases) where there is no direct link between the access shares issued and species concerned. The DPI paper recognised that access shares already issued are a legal right that cannot be simply extinguished, whether or not they have been actively used to fish and as such all existing access shares do have some value that must be taken into account in any reforms of the current share managed fisheries structure.

The Government announced the *NSW Commercial Fisheries Business Adjustment Program* on 31<sup>st</sup> May 2016. The \$16m provided by the Government was to support 'exit grant' funding to help share the cost between those buyers and sellers trading access shares on the market.

In their final report<sup>16</sup> the SARC reached the conclusion that for several species in some share classes the reform program and exit grant would be unable to deal with the level of distortion in those share classes. The SARC concluded that an allocation based on existing access shares would place an '*unacceptable and unintended substantial financial burden on a relatively small number of fishing businesses who currently account for a high proportion of the catch of those species*'. The SARC recommended that new share classes be established in these particular fisheries.

Given the likely complexity and cost of the new share allocation processes, the SARC recommended that new share classes should only be considered under certain criteria. Such criteria included:

- a small number of shareholdings in the existing share class account for the bulk of the catch potentially placing an unacceptable and unintended financial burden on

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<sup>14</sup> Public Consultation Paper: General information relating to the reform program and reform options for NSW commercial fisheries, DPI, April 2014

<sup>15</sup> Public Consultation Paper: General information relating to the reform program and reform options for NSW commercial fisheries, DPI, April 2014 (p17)

<sup>16</sup> Final Share Linkage Recommendations, NSW Structural Adjustment Review Committee, Ian Cartwright, Sevaly Sen and Mary Lack (30 September 2015)

these fishing businesses which would be required to purchase a large amount of shares to continue their fishing operation having significant impacts on their economic viability;

- no other suitable linkage options and associated measures are available or feasible for the existing share class (eg. staged implementation or delaying the commencement of the ITCAL) to minimise the financial burden on those operators;
- the benefits of moving to a new share class clearly outweigh the costs; and
- the proposed new share class must have the strongest form of share linkage feasible (i.e. a catch quota or if that is not feasible, a very tight effort quota).

Even taking into account the potential for the exit grant to mitigate those impacts, the implementation of significantly stronger share linkages in some share classes would, in the SARC's view, have resulted in an unacceptably high financial impact on active operators.

The SARC recommended that the Government establish an IAP. In developing the terms of reference for the IAP, the SARC recommended that mitigating impacts on active operators be clearly articulated to the IAP as a key objective of the allocation process. (IAP Note: See Guiding Principle 1).

The NSW Government established the IAP in October 2017. The IAP is charged with the responsibility to consult with fishing business operators and other stakeholders in this fishery and provide advice to the Minister for Primary Industries on the basis for the allocation of quota shares across a range of species across a range of share classes.

Terms of Reference for the *Ocean Haul - Purse Seine Fishery* Independent Allocation Panel can be found at Appendix 3

Details of the process applied by the IAP can be found in section 9.

## **6. Background to the Ocean Haul - Purse Seine Fishery.**

The *Ocean Haul - Purse Seine Fishery* is currently managed by input controls including restrictions on the number of endorsements, the amount, design and dimensions of fishing gear, vessel size limits and waters that may be worked.

A net length not exceeding 1000m and 150mm mesh in ocean waters within 3 nautical miles of the coast and a net length not exceeding 275m and 150mm mesh in Jervis Bay and Twofold Bay west of a line drawn from Warong Point (North Head) southerly to Red Point (South Head).

Purse seine fisheries can support significant onshore investment in onshore infrastructure such as handling and processing facilities, but they can also supply volumes of fish direct to the whole fresh fish market.

In its final report, the SARC (2015) noted that all 15 purse seine endorsed Fishing Businesses were active but there remains scope for increased effort with only five of those fishing businesses responsible for 80% of the GVP. Blue mackerel, Yellowtail scad and Australian sardine are taken from stocks shared with Commonwealth fisheries. The Commonwealth manages blue mackerel and Australian sardine under ITQs.

DPI Fisheries provided the IAP with updated data for the *Ocean Haul – Purse Seine Fishery* in January 2018. Based on this data, there remain 15 Fishing Businesses with 1980 access shares currently allocated in the fishery.

## 7. Establishing the Independent Allocation Panel

The Independent Allocation Panel (IAP) was established in October 2017 under formal Terms of Reference (ToR) to consult with eligible shareholders in the *Ocean Haul - Purse Seine Fishery* and to provide advice to the Minister for Primary Industries on the basis for the allocation of nominated species quota shares to the holders of *Ocean Haul - Purse Seine Fishery* access shares.

Full details of the IAP ToR for the *Ocean Haul - Purse Seine Fishery* can be found at Appendix 3.

The members appointed to the IAP are:

- Associate Professor Daryl McPhee – Head of Higher Degree Research at Bond University and a current director of the Fisheries Research and Development Corporation (FRDC). He has been involved with the commercial fishing industry for 30 years. He is internationally recognised as a leader in fisheries management and research. He has experience on several fisheries allocation panels across Australia in the past 10 years.
- Susan Madden - Susan Madden is Principal Economist, Natural Resources and Agriculture, at GHD Pty Ltd. She has a range of experience in resource allocation and pricing processes, including for water, forestry and native vegetation. She is a Member of the Murray-Darling Basin Authority, Chair of the Central West Local Land Services and member of the NSW Local Land Services Board.
- Brett McCallum – has 40 years associated with the commercial fishing industry in Western Australia. Commencing with major fishing companies he spent 15 years as CEO of the WA Fishing Industry Council and 15 years as CEO of the Pearl Producers Association (Australia). He is a past Deputy Chair of the Fisheries Research & Development Corporation. He has experience on several fisheries allocation panels across Australia in the past 10 years.

Detailed biographies can be found at Appendix 2.

Grant Thornton Australia Ltd has been appointed by the DPI Fisheries as independent project managers for the IAP process. All correspondence and documentation forwarded to the IAP will be held on behalf of the IAP, in confidence, at the Sydney office of Grant Thornton Australia Ltd. All information held is for use solely by the IAP.

All IAP members have made declarations they have no real or perceived conflict of interest or bias relating to *Ocean Haul - Purse Seine Fishery*.

In providing advice the IAP has taken account of, amongst other things, the following:

- consistency with relevant legislative objectives of the *NSW Fisheries Management Act (1994)*;
- guiding principles outlined in the ToR, such as those of fairness and equity;
- previous access and allocation decisions in this fishery;
- existing licensing arrangements and previous management decisions;
- fishing and investment history in the fishery including current level of shares held by fishing business (FB) holders;
- stakeholders' views via face-to-face meetings with fishing business holders and written submissions;
- previous allocation working group considerations in Australia; and
- other published principles and guidelines in support of fisheries inter-sectoral and allocation decisions.
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There are some common principles and guidelines that should be followed when providing advice to governments on allocation of fish resources:

- natural justice;
- governance; and
- fisheries legislation.

Determining allocation for a fishery does not usually start with a blank sheet. In the majority of cases there is a history of government and fisheries management decisions taken over time in response to a variety of pressures that the IAP must take into account. These major decisions, and their impact on the management of the fishery, are described and, as appropriate, taken account of in this Draft IAP Report.

## **8. Legal Background**

### **8.1 Legislation/Policy**

In providing advice, the IAP considers that the allocation method proposed must have primary regard to whether that allocation will contribute to the pursuit of the objectives of the *NSW Fisheries Management Act (1994)* as amended at the time of releasing our Draft IAP Report.

The IAP has been mindful of the *NSW Fisheries Management Act (1994)* relating to the sharing and allocation of fish resources and viability of commercial fisheries under Clause 3 - Objects of the Act, including:

- 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;
- 3(1)(d) - to promote viable commercial fishing and aquaculture industries;
- 3(1)(f) - to appropriately share fisheries resources between the users of those resources; and
- 3(1)(g) - to provide social and economic benefits for the wider community of New South Wales.

The IAP has also taken into account NSW Government statements and documentation designed to guide decision-making. The IAP viewed such documentation as secondary to legislative objectives under the Act and any relevant regulatory controls.

- Fisheries Management Strategies;
- Pyrmont Pact (2009);
- Future Directions for the Future of the Commercial Fishing Industry (June 2010);
- NSW Commercial Fishing Statement of Intent (May 2013); and
- Public Consultation Papers on Reform Options for Fisheries.

### **8.2 Guiding Principles**

As noted in the ToR (see Appendix 3), the IAP has taken account of published principles and guidelines in support of fisheries inter-sectoral and allocation decisions:

1. **Fairness and equity** - the overarching principle that should inform an allocation issue is one of fairness and equity. That is, the resource is to be allocated in a way that distributes the benefits of use fairly amongst the licence holders and minimises any differential economic impacts such as wealth redistribution arising from allocation.
2. **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.

3. **Certainty for users** - the resource should be managed in a way that recognises the needs of users of the resource, particularly those who rely on it for their livelihood.
4. **Opportunity to be heard** - a person with an interest in the fishery has the opportunity to participate in developing the management regime for that fishery through a transparent process.
5. **Rights of existing concession holders to be recognised** - this means that management arrangements must have due regard to the historical access rights of each class of concession holder in the fishery.
6. **Best available information** - any allocation recommendation should take account of all relevant information.
7. **Integrity of fisheries management arrangements** - allocation decisions should be consistent with legislative requirements and other fisheries management objectives.

Any allocation process raises an expectation that shares will be specified in future management arrangements for all classes of licensees. One of the most important considerations when designing an allocation arrangement is to seek to minimise impacts on the relative economic position of each class of eligible shareholder holder. It may not be possible to design an allocation formula that has no impact on the relative economic positions of operators, but a conscious attempt should be made to implement this principle. Generally accepted allocation principles outline that management agencies must develop a reasonable and justifiable approach to the issue of minimising wealth redistribution effects.

### **8.3 Ministerial Announcements and Decisions**

The IAP considered all Ministerial announcements and decisions made relating to the *Ocean Haul - Purse Seine Fishery* as well as broader NSW Government fisheries policy statements.

### **8.4 Data Availability and Reliance**

In the absence of any other comprehensive data set, the IAP has relied on the data provided by the Department, which reflects the information in official logbooks, recorded landings and fishing effort, in developing its advice on recommended quota share allocations.

## **9. Independent Allocation Panel Process**

The IAP process was as follows:

1. The DPI Fisheries provided reference to background papers and presented a technical brief in October and December 2017 that included details on:
  - Government policy decisions over time in relation to share management in NSW;
  - Existing management arrangements (including available data) in the *Ocean Haul - Purse Seine*;
  - Existing fishing businesses and shareholdings within the scope of the fishery; and
  - Past correspondence, industry meeting decisions, published management guidelines and other written communication for the fishery.
2. The IAP consulted directly with the holders of shares ("eligible shareholders"), other stakeholders and other person/s or organisations with appropriate knowledge or experience to assist the allocation process. A copy of all written correspondence from the IAP to eligible shareholders up to, and including the Draft IAP Report stage, are listed at Appendix 4.
3. Written submissions were encouraged and a closing date initially set for 16<sup>th</sup> February 2018, which was subsequently extended on request of industry to 23<sup>rd</sup> February 2018.
4. Written submissions from industry received in response to the draft ToR were also made available to the IAP as many were relevant to the consultation process.

5. The IAP identified and obtained additional necessary data and documentation to support their considerations.
6. This initial Draft IAP Report of the IAP, including recommendations has been circulated to eligible shareholders and other stakeholders for comment by 7<sup>th</sup> May 2018. Other submissions received in relation to generic issues for quota share allocation have also been considered for this Draft Report.
7. Eligible shareholder and other stakeholder feedback on the Draft IAP Report will be considered by the IAP together with any other information deemed appropriate.
8. A Final Report from the IAP will be presented to the Minister by the closing deadline of 31<sup>st</sup> May 2018.

### **9.1 IAP Consultation Meetings**

Written notification from the IAP was circulated in December 2018 to all eligible shareholders in the *Ocean Haul - Purse Seine Fishery*. Individual face-to-face meetings between the IAP and eligible shareholders were held to discuss the matters set out in the ToR.

Consultation meetings were held over several days in each of the following locations across NSW – Sydney, Wollongong, Newcastle, Yamba, Coffs Harbour, Port Macquarie, Nowra, Eden, Bermagui and Ballina from mid December 2017 until mid-February 2018. Several teleconferences were held with individual fishing business holders where a face-to-face consultation was not possible.

All persons attending were provided access to copies of the approved ToR and given the opportunity to participate in discussions, make oral submissions and table documentation or written submissions.

All persons attending were informed that a draft written record would be made of the meeting and would be provided to them subsequent to the meeting seeking their confirmation of the content or any required amendments. The confirmed/amended record was provided to the IAP.

Approval was also sought from persons attending to allow for an electronic recording of the meeting to assist the IAP with greater accuracy in the preparation of the written record of the discussions. Attendees were also offered a copy of the recording.

The issues raised in these face-to-face consultations are included, in no particular order, in the summary of issues raised from all Round 1 consultations set out in Appendix 1.

### **9.2 Written submissions**

Correspondence to eligible shareholders in the *Ocean Haul - Purse Seine Fishery* was provided through a wide range of sources including SMS, email, general postal mail and links to the DPI Fisheries and Grant Thornton Australia Ltd websites.

Addresses for IAP correspondence were obtained from the fishing business contact details for eligible shareholders in the *Ocean Haul - Purse Seine Fishery* registered with the DPI Fisheries at the time of writing.

**9.2.1 Round 1 – Opening Consultations** - Written notification to all eligible shareholders dated 23rd November 2017 invited written submissions to the IAP by 16th February 2018. Upon receiving a request from several industry sources the closing date was extended to 23rd February 2018.



The IAP received a total of fourteen (14) written submissions in relation to the *Ocean Haul - Purse Seine Fishery* quota share allocation ToR and the issues raised in these submissions is included, in no particular order, in the summary of issues raised from all Round 1 consultations set out in Appendix 1.

The written submissions are held on behalf of the IAP, under strict confidence, at the Sydney office of Grant Thornton Australia Ltd.

### **9.2.2 Round 2 – Written Submissions responding to this Draft IAP Report**

Eligible shareholders are encouraged to provide written submissions in response to this Draft IAP Report by 7<sup>th</sup> May 2018.

### **9.3 Final IAP Report**

The IAP will consider the Round 2 written submissions received following circulation of the Draft IAP Report and submit their Final IAP Report to the Minister for Primary Industries by end of May 2018.

## **10. IAP Considerations of key issues raised through consultation process**

This section outlines the key issues identified by the IAP from the myriad of issues raised during the face-to-face consultation meetings or contained within the Round 1 written submissions received in relation to the *Ocean Haul - Purse Seine Fishery*.

The issues have been grouped below, summarised and IAP comments included:

### **10.1 Use of Shares as Allocation Criteria.**

Many fishing business operators put the case that the initial allocation of access shares in the early 2000s did not recognise the difference in recorded landings and effort between operators by failing to issue the shares in proportion to recorded landings and only recognising an endorsement's active participation in any month and reaching a minimum catch level.

Despite the fact that the purse seine allocation criteria provided additional shares for every 10 tonnes of combined total weight of nominated species it is the view of the IAP that this allocation process resulted in only further limiting the number of endorsements that could access the fishery and allowed endorsed fishers to continue to take all catch while operating within the formal input control limits. It was in practicality an access arrangement rather than an allocation of a property right in the strict sense. Beyond being able to afford to purchase it, it was the view of a number of fishers that they did not see the capital value and the capital growth of their share investment being of paramount importance. Rather the paramount value of the shares is as a mechanism to continue to go fishing for the purpose of generating income, as well as for lifestyle reasons.

In the *Ocean Haul - Purse Seine Fishery* one only had to have an endorsement to be allocated the minimum 40 shares to fish in the fishery. If you were not fully active in the fishery you still could receive 20 shares. Many endorsements were given to people who did not have a reasonable, if any, demonstrated activity in the fishery. This has resulted in a lot of endorsements and not a lot of active fishers.

Other fishing business owners put the case that Government advised industry on multiple occasions prior to, and subsequent to, the initial access share allocation that using recorded landings was no longer a required criteria for access and shares were now the only basis for access to fisheries. Some fishers argued that a share guarantees access to a proportion of the biomass of the fishery, regardless of whether you choose to fish. These fishers are of the view that everyone's investment is on the same basis – a 'share based management system' – and everyone has the ability to use their share investment as they see fit. They believe that

it should not matter that one person has used their shares to recorded landings fish and others have not.

Concern was raised by some that there will be a substantial redistribution of wealth as access shares were granted equally and in perpetuity and fishermen were told access shares were all they would ever need for 'full qualification' in the fishery. They were concerned that now government is telling fishers they may no longer qualify without some recorded landings. It was their view there was no warning that recorded landings would be a criteria requirement.

Fishermen explained that knowing they had the minimum shareholding it was assumed they would be safe to catch under their endorsement any time in the future and only ever needed the minimum number of access shares to fish.

Fishermen highlighted that the Share Management Plans commenced in early 2000s and included fundamental changes to management with a focus on access shares and capacity for fishing (input controls). Eligibility for endorsements was to be determined on the basis of shareholdings (not recorded landings). The concept of 'verified catch history' was abandoned in February 2007 and no longer transferred with fishing businesses (or access shares).

Fishers highlighted the SARC (2015) noted the acceptance by Government of the recommendations in the Steven's Review in 2012, sending a clear signal to industry that, as intended in the original introduction of share fisheries, access shares would be the primary mechanism for determining access.

However, the Government's intent within the fishing industry reform package was to ensure as far as practicable that fishing businesses are able to keep fishing at current levels.

Active fishermen argued they had made large investments in this fishery, in the form of the minimum shares required to go fishing, vessels, vehicles and fishing gear capable of handling the fishing conditions and distances required to access this fishery. Their view was that if the existing active fishers do not get their current share of the catch in the allocation, it is not going to be caught at all in the future because there is not enough money in the fishery for them to buy the necessary quota to get back to their current levels of catch. Although not quantified, this would have potential flow on impacts to local and regional economies including fish co-operatives, retail food service outlets, service industries and tourism.

In their final report in 2015<sup>17</sup> the SARC reached the conclusion that for several species in some share classes (including the *Ocean Haul – Purse Seine Fishery*) the reform program and exit grant would be unable to deal with the level of distortion in those share classes. The SARC concluded that *'an equal allocation based on existing access shares would place an unacceptably high financial impact on a relatively small number of active operators fishing businesses who currently account for a high proportion of the catch of those species'*.

Equal allocation among participants can be used, typically where fishing history (recorded landings and effort) is more or less equal among participants and where all participants agree (Lynham, 2012). Lynham (2012) identified that equal allocation is a de-facto form of historical recorded landings and effort information, since the approach is typically adopted when historical recorded landings and effort is more or less equal across participants. While it can be considered counter-intuitive, equal allocation of a resource among participants is

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<sup>17</sup> Final Share Linkage Recommendations, NSW Structural Adjustment Review Committee, Ian Cartwright, Sevaly Sen and Mary Lack (30 September 2015), p2.

not necessarily equitable and this is established in contexts wider than just fisheries (e.g. McDermott et al., 2013; Pullen, 2013). Where fishing history is variable between participants, equal allocation potentially causes an arbitrary redistribution of wealth, and voids this principle set out within the IAP's ToR. For example, a business that is demonstrably reliant on relatively large recorded landings will be disadvantaged by an equal allocation model. At the opposite end, a business with relatively small or nil recorded landings would potentially receive a windfall gain as they would receive an allocation well above any historical recorded landings or effort levels.

Evidence before the court in a recent NSW hearing<sup>18</sup> did not establish that the issue of Quota Shares has devalued the Access Shares, even though the evidence established that the issue of the Quota Shares (or more accurately the prohibition on a commercial fishing operation from trapping more than the weight allowed pursuant to those Quota Shares) had restricted the business that the plaintiff operated. That is not synonymous with denying access to the Region for the purpose of trapping mud crabs.

The court found that it is clear that property and rights created by legislation are always capable of regulatory change, which may have the effect of lessening the value of the property so conferred or altering the rights that attached to it.

The court outlined that it seems clear, from the pre-existing Management Plan, that the intention of the legislature and the intention of the Minister was that the licensing system and the Management Plan was not to be permanent and could be changed on notice and that notice was given. The court stated that the plaintiff could purchase quota shares even at the time of the court case and release of the findings. The plaintiff had submitted that the cost of purchasing quota shares would render commercial fishing uncommercial. The court set out that if that be so, the market may soon react by a diminution of the number of commercial fishing operations but that is not a matter for the court. Nor does it render the Quota Shares allocation scheme unreasonable, capricious or an abuse of process.

The court went on to say that Access Shares continue to be held by the plaintiff (and, for that matter, all other persons who held Access Shares prior to the issue of Quota Shares). The Access Shares allowed a commercial fishing operation to gain access to the Region to which they relate for the purpose of catching fish of the species identified. That situation continues. The Quota Shares were issued together with the setting of a total allowable fishing limit and allocated limits that were dependent on the number of Quota Shares held. In that respect, the Quota Shares were a method by which the fishery resources of the State were shared between commercial fishing operators. If shares are to be considered as the right to receive certain benefits (usually from a Corporation), then the Quota Shares are a different class of share, entitling the holder to different benefits from those benefits obtained by the possession of Access Shares.

Access Shares and Quota Shares, the rights and obligations relating to each category of share is sufficiently distinguishable from the other and, therefore, can properly be described as an "additional class" or "further class" of shares in the share management fishery.

The SARC recommended that new share classes be established in these particular fisheries to deal with the identified distortion that would be created by equal allocation. The SARC recommended that in developing the terms of reference for the IAP, the mitigation of impacts on active operators be clearly articulated as a key objective of the allocation process.

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<sup>18</sup> Elliott v Minister administering Fisheries Management Act 1994 [2018] NSWSC 117

The IAP does not support new quota share allocation be based solely on equal allocation across existing access shares held based on:

- previous studies mentioned in this section;
- the Government and industry stated focus of the reform package to ensure the ongoing economic viability of those choosing to remain in the industry; and
- the SARC and the IAP assessment that an equal allocation based on existing shares would place an unacceptably high financial impact on a relatively small number of active operators.

### ***10.2 Use of Reported Landings as Allocation Criteria***

Recorded landings and/or fishing effort are the measure of fishing activity. Typically, a fishing business that has a greater economic reliance on a particular fishery has a greater level of fishing activity in that fishery. Recorded landings are a typical tool for allocating access to fisheries. In most jurisdictions recorded landings is “attached” to the fishing entitlement (sometimes term used is ‘catch history’). That is, when a fishing business purchases the fishing entitlement from another fishing business it also purchases the historical fishing recorded landings for that entitlement. The fishing recorded landings have a value in the market and that value is not extinguished through trading.

It is the clear understanding of the IAP that, in NSW, recorded landings are not attached to the access share allocations that are the tradeable property right in the fishery. When a fishing business purchases access shares the value of the share is equal regardless of whether recorded landings obtained from those fishing under those access shares is high, low or absent. There is no market premium or discount for recorded landings levels on transfer of shares.

As mentioned earlier some fishing business owners put the case to the IAP that Government advised industry on multiple occasions prior to, and subsequent to, the initial share allocation that using recorded landings was no longer a required criteria and access shares were now the only basis for access to fisheries.

Other groups of fishers working to a diversified fishing strategy (i.e. fish in multiple fisheries over a season) to spread the fishing effort and financial risk were concerned they may now be at a disadvantage if recorded landings is applied as the sole criteria in a species. These fishing businesses also argue that they held the required minimum access shares to gain endorsement to operate in a fishery and there was no indication from Government that recorded landings was to be a criteria for future access to each fishery. They argue that if it was known that recorded landings was to be a factor they may have changed their diversified fishing strategy. In their view using recorded landings rewards those who have put pressure on the resources to the point where restrictions are now required.

The IAP view is that fishing business owners make business decisions to maximise the return from their investment and reduce the risk to their overall investment. A diversified fishing strategy is a deliberate decision to spread the risk across a range of fisheries and take advantage of the best fishing option or maximise efficiency in use of infrastructure in any season. In allocation decisions based on recorded landings, diversified fishing businesses would receive allocations across a number of fisheries that would reflect their diversified fishing activities which should allow them to continue to fish across a number of fisheries. In contrast, a fishing business that had put in the same amount of investment and fishing activity overall but directed into a single fishery will receive an allocation in that single fishery only.

The Government made the decision to assess how to allocate new quota shares (by establishing the IAP) to address the distortion that would take place among shareholders if

an equal allocation based on existing access share holdings was applied. The identified distortion was that equal allocation would create an unacceptably high financial impact on a relatively small number of endorsement holders who are actively fishing and who currently account for a high proportion of the total recorded landings of those nominated species.

A case was made to the IAP that recorded landings should not be taken into consideration for the current allocation as it had already been factored into the initial access share allocation. In response to this the IAP considered the following. First, and as described previously, the initial share allocation only utilised a coarse and imprecise measure of fishing activity. This initial allocation did not utilise the amount of an individual's recorded landings in its determination. Second, the initial allocation is now very dated. Fishing businesses may have changed substantially during this period for a number of reasons, and the historic access share allocation may not reflect contemporary fishing activity. These two points do not invalidate the incorporation of existing access shareholding in the IAP's allocation decisions in this fishery, but it further mitigates, in the opinion of the IAP, the sole use of existing access shares in allocation in the present instance.

The IAP recognises recorded landings will assist with distinguishing the relative economic position of fishers over a period of time but does not support the sole use of recorded landings as criteria in a new quota share allocation either. The IAP concluded that allocation in this fishery should be on a combination of both share holdings and recorded landings.

### ***10.3 Access Certainty for Human Consumption Processors***

The case was put by a group of fishers that Government has encouraged adding value through human consumption but current fishers will need the certainty of enough quota to keep the human consumption investment options alive to go back and get it going again. This group set out that currently banks will not recognise NSW fishing licences, but they will lend against Commonwealth quota. They highlight that industry are prepared to make the investment in value-added human products (especially Australian sardine) but require the NSW fishing endorsements to have a realisable value.

This group of fishers outlined that Australian sardines falls within the intent of the SARC recommendation (accepted by the Minister) that given Australian sardines have historically been harvested by a small number of fishing business operators directly associated with supply for value adding processing (through vertically integrated fishing & processing entities) any new species quota allocation should provide for this substantive change in the harvest levels allowed and new shares issued (under clause 71A). For the other species under review (blue mackerel and yellowtail scad) there has been no substantive changes in the harvest levels allowed under the Ocean Haul FMS and therefore catch quota shares for these species must be allocated directly proportionate to the existing access shares.

The IAP has reviewed the SARC's 'Final Share Linkage Recommendations' report to the Minister for Fisheries dated 30 September 2015 and is unable to find any reference to a recommendation relating specifically to the point raised by this group of fishers that the SARC identified that it was appropriate to provide not just security to fishers, but also to provide security to processing plants and their employees. The DPI Fisheries has confirmed that it is not the Government's intention to allocate species quota shares to individuals within the post harvest sector. Of course, well managed fisheries with strong security of access can present benefits to the community, post-harvest sector and consumers generally.

### ***10.4 Recorded Landings Qualifying Period***

The Department provided the IAP with recorded landings and effort data for the period 1997/98 to 2017/18. The data provided information on the recorded landings and effort (to the species level) linked to a fishing business number and the number of access shares currently held by a fishing business.

It is noted that due to changes in the format of the data compiled between 1997/98 and 2017/18, data was provided for two distinct time periods, being 1997/98 to 2008/09 and 2009/10 to 2017/18. The IAP was advised that changes in the data structure used by NSW DPI Fisheries for catch reporting commenced from July 2009. This was the point at which all reports included a direct link between each species landed and the share type that grants the authority to take that fish. DPI Fisheries advised that using records from prior to July 2009 to attribute catch to a share type may have to include consideration of the methods reported, any co-caught species or even the season of fishing and these additional factors would severely weaken and complicate any analyses and interpretation.

In determining any allocations based on recorded landings choosing which years to utilise within the available time series is an important consideration. Too short a time period may not pick up annual variations in recorded landings driven for example by changes in stock size or significant weather events (e.g. flooding). However, it can also be argued that the effect of such annual factors is reduced because allocation decisions using recorded landings examine proportions rather than catch volume *per se*. In a good fishing year, recorded landings by an individual business is likely to be higher than in a poorer fishing year, however the proportion of that individual recorded landings relative to the overall recorded landings in a fishery as a whole in any year may not substantially differ.

Recorded landings and effort data from a long time ago may not wholly reflect contemporary activity in a fishery including changes to seafood markets, changes to fisheries management (e.g. trip limits, size limits, recreational fishing havens) and environmental considerations impacting fisheries (e.g. marine parks). Likewise very recent recorded landings and effort data may be influenced by knowledge of fishermen of an impending allocation process or other significant structural reform in the fishery.

On balance, the IAP considers that the data provided by the Department represents the best available data for use by the IAP.

The IAP recognises that independent of its process, the Department is undertaking a data validation process. The IAP is comfortable that it can make recommendations on the data provided which currently represents the best available data. However, when the Department does formally allocate the quota in this fishery, it will presumably be on the updated data following this validation process.

In September 2015 the SARC recommended that the Government announce the latest date that would be used as a qualifying period to be used by the IAP when determining eligible catch or effort history. The SARC recommended the date should precede the initiation of the SARC Working Groups in 2013/14 when government proposed that future share linkages would come into effect. Any recorded landings after this period could only be considered as speculative.

The IAP considers that the time difference between the SARC report and the establishment of the IAP warrants the inclusion of recorded landings ending in 2016/17. Further, the IAP assessment of the data did not reveal substantial increases in annual recorded landings in the latter period of the time series across the species under consideration.

The case was put to the IAP that very few of the existing access shares in the past were allocated based on the catch of Australian sardines. On this basis these fishers believe that the IAP is advising on allocation of new quota shares for a new species and therefore it has to go on the most recent catch history of Australian sardines and not combined tonnages of other species.

### **10.5 Use of Investment as Allocation Criteria**

Some fishermen and stakeholders suggested that investment in the fishery should be considered in the allocation decision. In some cases, this discussion was directly linked to investment by some to increase shareholdings, as discussed above, but in other cases the issue was raised in relation to investment in boat capacity and fishing gear.

Kaufmann et al. (1999) critically reviewed alternative allocation approaches, including whether allocation should be based on the share of an operator's profit in the fishery or investment. It was identified that there was difficulty in obtaining relevant factual information on profitability and/or investment. This is consistent with the IAP's consultation findings.

It is also important to note that operators may not be profitable despite a considerable investment of time and effort. Consequently, Kaufmann et al. (1999) identifies that specifically using investment as a means of allocation can produce redistribution consequences that are difficult to rationalise. It can lead to overcapitalisation of the catching sector, which may in turn compromise long term sustainability, and may be biased towards businesses that have invested in land-based infrastructure such as processing businesses.

While the IAP has discussed the relative levels of investment amongst operators in the fisheries, it does not consider it appropriate or practical to have a specific allocation criteria based on investment.

### **10.6 Bait for Tuna Longline Operations**

An issue raised with the IAP is the take of species listed under the ToR for the Ocean Haul – Purse Seine Fishery for 'bait for own use' by vessels in the Commonwealth tuna longline fishery under the NSW DPI Tuna Bait Policy (1996).

These fishers are:

- authorised to take bait by permits issued under s37 of the FMA (NSW);
- required to be licensed in NSW - because they are taking fish for sale (includes taking bait for use when taking of fish for sale); and
- required to use a boat that is licensed by NSW - because they are taking fish for sale (includes taking bait for use when taking of fish for sale).

The DPI Fisheries informs the IAP that the 'bait for own use' policy relates to a class of person. These vessels are not part of any NSW Share Management Fishery (i.e. have not been allocated access shares) and they are not part of any NSW Restricted Fishery.

It is the view of the IAP that they are not "eligible shareholders" as defined in the *Ocean Hauling – Purse Seine Fishery ToR* for the IAP.

However, the IAP has listed this issue for DPI Fisheries consideration within section 10.7.

### **10.7 Management Issues for DPI Consideration**

Many issues were raised with the IAP during consultations and within written submissions that were outside the ToR for the *Ocean Haul - Purse Seine Fishery*.

The IAP has listed these issues here for the information of the DPI Fisheries:

- the take of species listed under the ToR for the *Ocean Haul – Purse Seine Fishery* for 'bait for own use' by vessels in the Commonwealth tuna longline fishery under the NSW DPI Tuna Bait Policy (1996);

- a 20%/80% allocation should apply for Australian salmon as is proposed for sardines and an appropriate criteria period for the catch history would be 2007 – 2010 inclusive (*Note from IAP: The Terms of Reference for the IAP does not include Australian salmon. The issue raised above is included here for completeness of highlighting issues raised during this process*);
- industry only catches what can be sold - catches do not reflect the stock levels in the ocean. Proper TAC science needs to be applied; and
- the Commonwealth is doing a good job at their stock assessment – that stock assessment should be used for the NSW fishery, rather than doing their own assessment.

## **11. Independent Allocation Panel Findings and Recommendations**

### **11.1 Australian Sardines**

The IAP findings are based on the information provided by DPI Fisheries on the recorded landings of Australian sardines and the distribution of those recorded landings amongst fishing businesses in the *Ocean Haul – Purse Seine Fishery*.

There are fifteen (15) endorsements on fishing businesses holding a total of 1,980 shares in the *Ocean Haul – Purse Seine Fishery* as at January 2018. Shareholdings range from 40 up to 540, with the average shareholding per fishing business at 132 shares.

Of the fifteen (15) fishing businesses with current shareholdings in the *Ocean Haul – Purse Seine Fishery* thirteen (13) fishing businesses have recorded landings of Australian sardines over the period 2009/10 to 2016/17 (inclusive). Information provided by DPI Fisheries shows that an additional two (2) fishing businesses caught Australian sardines over this period, however, they no longer hold shares in the *Ocean Haul – Purse Seine Fishery*.

Of the thirteen (13) fishing businesses that caught Australian sardines in the *Ocean Haul – Purse Seine Fishery* over this period, four (4) fishing businesses between them recorded landings of 97% of the total recorded landings. However these four (4) fishing businesses account for only 45% of the total access shareholdings in the *Ocean Haul – Purse Seine Fishery*.

Given the uneven distribution of recorded landings, an equal allocation based on access shares to the fishing businesses in the fishery, would lead to a significant distortion between the new catch quota share allocation and the recorded landings of Australian sardines. The four (4) fishing businesses currently taking the vast majority of the recorded landings of Australian sardines will suffer an adverse impact to their relative economic position in the *Ocean Haul – Purse Seine Fishery*.

The IAP investigated several different quota allocation scenarios for Australian sardines involving both share holdings and recorded landings.

The IAP considered a series of recorded landings scenarios and determined to use criteria period 2009/10 – 2016/17 (inclusive) and to use the sum of recorded landings over the selected criteria period.

### **IAP recommendations for allocation of quota shares for Australian sardines:**

The IAP recommends that the allocation of quota shares for Australian sardines be calculated based on 20% on the proportion of access shares held + 80% on recorded landings for an individual fishing business in the *Ocean Haul – Purse Seine Fishery* within the period 2009/10 – 2016/17 (inclusive).



The IAP recommends the use of the sum of recorded landings within the period 2009/10 – 2016/17 (inclusive).

### **11.2 Blue Mackerel**

The IAP findings are based on the information provided by DPI Fisheries on the recorded landings of blue mackerel and the distribution of those recorded landings amongst fishing businesses in the *Ocean Haul – Purse Seine Fishery*.

There are fifteen (15) fishing businesses holding a total of 1,980 shares in the *Ocean Haul – Purse Seine Fishery* as at January 2018. Shareholdings range from 40 up to 540 with the average shareholding per fishing business at 132 shares.

Of the fifteen (15) fishing businesses with current shareholdings in the *Ocean Haul – Purse Seine Fishery* fourteen (14) have recorded landings of blue mackerel over the period 2009/10 to 2016/17. Information provided by DPI Fisheries shows that an additional two (2) fishing businesses caught blue mackerel over this period, however, they no longer hold shares in the *Ocean Haul – Purse Seine Fishery*.

Of the fourteen (14) fishing businesses that caught blue mackerel in the *Ocean Haul – Purse Seine Fishery* over this period, three (3) fishing businesses between them recorded landings of 61% of the total recorded landings. However these three (3) fishing businesses account for only 10% of the total access shareholdings in the *Ocean Haul – Purse Seine Fishery*.

Given the uneven distribution of recorded landings, an equal allocation based on access shares to the fishing businesses in the fishery, would lead to a distortion between the new catch quota share allocation and the recorded landings of blue mackerel. The three (3) fishing businesses currently taking the vast majority of the recorded landings of blue mackerel will suffer an adverse impact to their relative economic position in the *Ocean Haul – Purse Seine Fishery*.

The IAP investigated several different quota allocation scenarios involving both share holdings and recorded landings.

The IAP considered a series of recorded landings scenarios and determined to use 2009/10 – 2016/17.

#### **IAP recommendations for allocation of quota shares for Blue Mackerel:**

The IAP recommends that the allocation of quota shares for blue mackerel be calculated based on 20% on the proportion of access shares held + 80% on recorded landings for an individual fishing business in the *Ocean Haul – Purse Seine Fishery* within the period 2009/10 – 2016/17 (inclusive).

The IAP recommends the use of the sum of recorded landings within the period 2009/10 – 2016/17 (inclusive).

### **11.3 Yellowtail Scad**

The IAP findings are based on the information provided by DPI Fisheries on the recorded landings of yellowtail scad and the distribution of those recorded landings amongst fishing businesses in the *Ocean Haul – Purse Seine Fishery*.

There are fifteen (15) fishing businesses spread across fishing businesses holding a total of 1,980 shares in the *Ocean Haul – Purse Seine Fishery* as at January 2018. Shareholdings range from 40 up to 540 with the average shareholding per fishing business at 132 shares.

All fifteen (15) fishing businesses with current shareholdings in the *Ocean Haul – Purse Seine Fishery* have reported recorded landings of yellowtail scad over the period 2009/10 to 2016/17. Information provided by DPI Fisheries shows that an additional two (2) fishing businesses caught yellowtail scad over this period, however, they no longer hold shares in the *Ocean Haul – Purse Seine Fishery*.

Of the fifteen (15) fishing businesses that caught yellowtail scad in the *Ocean Haul – Purse Seine Fishery* over this period, one (1) fishing business caught 50% of the recorded landings but only holds 5% of the total shareholdings in the fishery.

Given the uneven distribution of recorded landings, an equal allocation based on access shares to the fishing businesses in the fishery, would lead to a significant distortion between the new catch quota share allocation and the recorded landings of yellowtail scad. The one (1) fishing business currently taking the vast majority of the recorded landings of yellowtail scad will suffer an adverse impact to their relative economic position in *Ocean Haul – Purse Seine Fishery*.

The IAP investigated several different quota allocation scenarios for involving both share holdings and recorded landings.

The IAP considered a series of recorded landings scenarios and determined to use 2009/10 – 2016/17.

The IAP used the sum of recorded landings over the selected criteria period.

#### **IAP recommendations for allocation of quota shares for Yellowtail Scad:**

The IAP recommends that the allocation of quota shares for yellowtail scad be calculated based on 20% on the proportion of access shares held + 80% on recorded landings for an individual fishing business in the *Ocean Haul – Purse Seine Fishery* within the period 2009/10 – 2016/17 (inclusive).

The IAP recommends the use of the sum of recorded landings within the period 2009/10 – 2016/17 (inclusive).

#### **12. Exceptional/Special Circumstances**

The IAP was notified of several personal circumstances that, in the view of the individuals concerned, may have a real bearing on the allocation process as it relates to those individuals. The IAP notes that irrespective of the final form of allocation process, there will be differences in outcomes at the individual level.

Where these circumstances are outside the purview of the IAP ToR, and in accordance with best practice in other allocation processes, the IAP did not provide comment. However, the IAP would wish to alert the Minister and Department that a number of individuals are likely to provide cases of exceptional or special circumstances when the final decision on allocations are made by Government.

## **Appendix 1 - Summary of Issues raised in Consultation Meetings and Round 1 Submissions – Ocean Haul – Purse Seine Fishery**

**Purpose:** This document sets out the many issues presented to the Independent Allocation Panel (IAP) by stakeholders attending individual consultation meetings, written submissions in response to the draft Terms of Reference and the first round of written submissions.

Issues have been grouped in subject headings for ease of comparison.

The IAP has considered the issues raised and has made specific comment in the draft report on those issues determined by the IAP to require detailed explanation of how the issue dealt with by the IAP.

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### **ISSUES**

#### *Objectives of Share Management and Structural Adjustment*

There are important health benefits for continuous access to fresh local seafood and strong local employment opportunities. NSW fishing industry provides these benefits.

Proposed DPI Fisheries changes to shareholder rights are contrary to the charter of the DPI Fisheries to maintaining a profitable commercial fishing sector. Revised allocations will result in significant reductions in nights fished for many long time fishers with commensurate loss in gross profit per annum based on current market conditions.

The intent of the creation of shares in NSW Fisheries was to provide commercial security to the then fishing industry stakeholders.

Fisheries shares are a commodity derivative type of security and are far more powerful as they are a prescribed statutory right and deliver a prescribed benefit (share of available annual harvest) in perpetuity.

Government has encouraged adding value through human consumption but current fishers will need enough quota to keep the human consumption investment options alive to go back and get it going again. Currently the bank won't recognise NSW fishing licences, but they will lend on Commonwealth quota. Want to see the NSW fishing assets have a realisable value.

He wants to see the government consider where they want the fishery to be in 10 years' time and start working towards that idea. Protein exports is the way to go from Australia (e.g. live cattle etc) and fish will need to be a big part of this.

#### *History of Share Management*

Initial shares were issued in early 2000s under clause 50 of the share management enabling legislation. Each fishery was subject to the harvest limitations identified under a fishery management strategy (FMS). The initial shares for the Ocean Haul Fishery (incl purse seine) were allocated based on catch history of all species. The catch per share entitlement was allocated under clause 82 using the interim total allowable catch (ITCAL) set out in the Ocean Haul FMS. Thus relative wealth per fisher within the purse seine fishery was established at that time. Any arbitrary reassignment of wealth to stakeholders within the fishery (benchmarked by the FMS) would be a breach of administrative law.

Important to recall that original shares in 2004 were issued on total purse seine catch – not separated into species.

Where there has been no substantive change in a fishery the approved total allowable catch quota for the fishery must be distributed in accordance with the legislation. The more specific terms of the initial clauses 82 and 78(3) have been repealed but are now provided under more broad powers in the amended Act under clause 40(x).

The original clause 50 shares should be used as qualifying shares when refining species access rights and while not as clearly expressed in the current version of the Act as in the past, the requirement remains for shares being issued to be relative to the performance indicators and management actions of the FMS as the defacto TAC for the species management. Two anomalies to this requirement exist in the purse seine fishery - sardines and salmon. Both species fall within the intent of the SARC's recommendation (accepted by the Minister) that given they have historically been harvested by a small number of fishing business operators directly associated with supply for value adding processing (through vertically integrated fishing & processing entities) any species quota allocation should provide for this substantive change in the harvest allowed and new shares issued (under clause 71A). Other than these two species (salmon and sardines) there has been other substantive changes in the harvest of other species allowed under the Ocean Haul FMS and therefore species quota shares must be allocated directly proportionate to the existing shares.

The *Ocean Haul – Purse Seine Fishery* was impacted by the creation of Jervis Bay Marine Park and an administrative decision by NSWFW to allow fishing businesses that were purse seining in that estuary the option to transition into the OHF external to Jervis Bay or accept compensation for removal of their business from Jervis Bay. Most of those fishing businesses chose to transition into the OHF external to Jervis Bay and were subsequently purchased by new operators. All but one of those businesses have not subsequently harvested any significant quantity of sardines but enjoy a significant shareholding and catch history across other species (blue mackerel and yellowtail scad) in the fishery since the transition from Jervis Bay.

The exception to this is an operator who primarily used his purse seine catches for 'bait for own use' as live bait and whose catches qualified for a 'restricted fishery endorsement in the initial share issue. His shares did not meet the validated weight entry criteria and he had to purchase a fishing business with a purse seine entitlement to continue to do what he had done continuously for two generations. Special care must be taken to ensure that this operator is not again disadvantaged in species allocation.

#### *Use of Shares as Allocation Criteria*

In the *Ocean Haul – Purse Seine Fishery* the basis of initial share allocation was historical catches. The Director of Fisheries amended the concept to place an arbitrary cap on the number of shares that could be issued to any individual fishing business. Only one operator in the entire OHF was affected by this arbitrary rule. Concern that this action unreasonably redistributed the wealth of this operator (to the extent that he should have received ~ 2500 shares based on his catch history and was restricted to ~ 500 shares). Government argued his relative wealth position was not impacted because he could still fish without any limits. He was told his shares were capped because if not his share allocation would diminish the catch available for all other shareholders for scad and blue mackerel. It must be noted that a high proportion of the sardine harvest and all of the salmon harvest described in the purse seine FMS was taken by this fisherman. The use of only the initial (Clause 50) shares to now allocate species shares will extensively diminish this fisherman's economic situation while at the same time provide unreasonably huge windfall gains to the other stakeholders in the fishery who have not targeted these 2 species since they have entered the NSW ocean purse seine fishery.

### *Use of Catch History as Allocation Criteria*

Catch history was taken into account when shares were first introduced. Should not go back to history again now. Shares are a proxy of history anyway.

A ministerial inquiry was held to determine if some purse seine fishers were operating in an expectation that they would be creating catch history to their advantage in future management arrangements. The purse seine fishers were formally advised that future catch history would not be considered in future management arrangements. In another formal DPI Fisheries advisory notice industry was encouraged to avoid glutting the fresh fish markets out of concern for meeting criteria for future entitlements - fishers were advised that they did not have to continually harvest under their entitlements to maintain their entitlement into the future.

Very few of the shares in the past were allocated based on the catch of sardines. The IAP is advising on allocation for issuing new quota shares for specific species and therefore it has to go on recent catch history of sardines.

One fisherman has a really large boat and was able to move from catching 100 tonne a year to catching 800 tonne a year for about 5 years. He was able to do this through a Tuna policy loophole with Commonwealth (ocean trap and line). None of this fish was for human consumption.

The catch history that the DPI Fisheries has recorded seems very low at an average of 200-300 tonne/pa.

### *Use of Quota as Management*

The resource has never been overexploited. Questioning why it is going to quota when the fishery is so small and there is only a small total shareholding in the fishery within NSW. If the catch allowance is going up and up in the Commonwealth fishery where an egg count is done, they must have a pretty healthy fishery

### *Options for Allocation of Quota Shares*

Mackerel can be caught in many other fisheries and is also being caught as bait for Tuna. Catch from all other methods need to be limited as well.

Whilst it is rarely possible to implement action that does not alter everyone's wealth it is critical in defence of a breach of this principle that the actions taken to allocate quota shares provide the most reasonable application for avoiding an arbitrary redistribution of wealth.

Provision for restructure of share management for an existing fishery requires either:

Dissolution of existing shares with compensation and creation of a new fishery description (FMS) and requirement to acquire of new shares in the fishery under the new management conditions; or

Sequential adjustment of entitlements providing for existing shares as qualifying criteria for any new shares in the re-described fishery.

Allocate 50t to all purse seine endorsement holders + allocate balance of TAC on shares

Allocate sardines amongst the shareholders as follows:

Allocation of quota shares to the general purse seine sector to maintain relative equity in the fishery prescribed in the FMS. Proposed that 20% of quota shares be allocated (this is estimated to be greater than the harvest limit described in the FMS & should be greater than the historical incidental catches).

Allocation quota shares to the fishers harvesting species that underpin economic viability and security to processing infrastructure in accordance with the SARC specific recommendation (approved by the Minister). Proposed that 80% of quota shares be allocated.

Shares should be allocated based on catch history with the appropriate criteria period for the catch history based shares would be 2007 – 2010 inclusive. It is inappropriate to consider any catch criteria period later than 2010 as this represents the commencement of implementation of notification of impending active share management by DPI Fisheries.

People should be able to select the best 5 years out of the past 15 years if catch history is used.

If you use catch history the allocation will not be fair - everyone should be given an equal percentage of TAC and then after that the rest of the quota should be allocated based on shareholdings. (e.g. 50% allocated equally between the 15 endorsements and the rest of the 50% goes based shares held by a fishing business). Allocating it this way will allow people to be able to go and lease or swap quota.

### *Management Matters*

- A 20%/80% allocation should apply for salmon as is proposed for sardines and an appropriate criteria period for the catch history would be 2007 – 2010 inclusive. (*Note from IAP: The Terms of Reference for the IAP does not include salmon. The issue raised above is included here for completeness of highlighting issues raised during this process*).
- Industry only catches what can be sold. Catches do not reflect the stock levels in the ocean. Proper TAC science needs to be applied.
- The Commonwealth is doing a good job at their stock assessment – that stock assessment should be used for NSW fishery as well rather than doing their own assessment.

### *Exceptional Circumstances*

The Director Fisheries amended the allocation concept for initial shares in the purse seine fishery to place an arbitrary cap on the number of shares that could be issued to any individual fishing business. Only one operator in the entire OHF was affected by this arbitrary rule. Concern that this action unreasonably redistributed the wealth of this operator (to the extent that he should have received ~ 2500 shares based on his catch history and was restricted to ~ 500 shares). Successive Ministers have assured this fisher that his resource access would not be unreasonably reduced and have instructed DPI Fisheries to fix the problem.

A pathway to resolve this fisher's situation and provide historical economic viability and resource security to all of the purse seine stakeholders is to provide security to the affected fisher and the supporting processing infrastructure by issuing quota for salmon. The fisher would accept his initial purse seine shares remain as is (540) if he would qualify under the SARC specific recommendation (approved by the Minister) to issue new shares to those fishers harvesting species to underpin economic viability and security to new processing infrastructure.

## **Appendix 2 – Biographies of Members of the Independent Allocation Panel**

### **Daryl McPhee**

Dr Daryl McPhee is a Director of the Fisheries Research and Development Corporation and Associate Professor of Environmental Science and Management at Bond University.

His early career was spent working directly for the Queensland commercial fishing industry. Among his publications is the book Fisheries Management in Australia, which remains the only book solely dedicated to the topic.

He has an extensive understanding of NSW commercial fisheries and has been a panel member for the allocation of a number of commercial fisheries in Western Australia.

### **Susan Madden**

Susan Madden is currently Principal Economist, Natural Resources and Agriculture, at GHD Pty Ltd.

She has more than 15 years' experience working in agricultural and natural resource management roles in both the public and private sectors.

Throughout her career, she has been involved in the development, implementation and review of a wide range of policy and program initiatives relating to resource allocation and pricing reforms. These processes have involved extensive communication and engagement with government, industry and community stakeholders.

Susan is a Part-Time Member of the Murray-Darling Basin Authority, Chair of the Central West Local Land Services and member of the NSW Local Land Services Board.

### **Brett McCallum**

Brett is currently a director of Bresal Consulting.

From 2001 to 2015 Brett was the Executive Officer of the Pearl Producers Association, the peak representative body for the pearling industry operating within WA and NT.

Brett was the Chief Executive of the Western Australian Fishing Industry Council (WAFIC) for 14 years from 1987. He has held senior managerial positions with leading Australian fishing companies from 1979 -1986.

He is the immediate past Deputy Chair of the Fisheries Research & Development Corporation, Chairman of the NT Offshore Snapper Fishery Management Committee and Chairman of the Australian Aquatic Animal Welfare Strategy Working Group.

He has experience on a number of on state and federal government working groups and committees including several access and allocation panels.



## Appendix 3 - Terms of Reference for Independent Allocation Panel for Ocean Haul (Purse Seine Fishery)



### Department of Primary Industries

OUT17/78647

#### TERMS OF REFERENCE

#### OCEAN HAUL – PURSE SEINE INDEPENDENT ALLOCATION PANEL

**Governing Authority:** Minister for Primary Industries

**Agency:** New South Wales Department Primary Industries

**Panel Members:**

Mr Brett McCallum  
Dr Daryl McPhee  
Ms Susan Madden

**Purpose**

To provide advice to the Minister for Primary Industries and the New South Wales Department of Primary Industries (“the Department”) on the basis for the allocation of Australian sardine, blue mackerel and yellowtail scad quota shares to the holders of Ocean hauling – purse seine net shares (“eligible shareholders”).

**Scope**

In developing its recommendations on the basis for the allocation of Australian sardine, blue mackerel and yellowtail scad quota shares the Independent Allocation Panel (“the Panel”) is to consider:

- a) eligible shareholders’ Fishing Businesses (“FBs”) and their components (e.g. shares) as determined in accordance with section 34Q of the *Fisheries Management Act 1994* (the Act);
- b) reported fishing catch and effort records (as required to be made in accordance with sections 121 and 122 of the Act). The period to be considered will be that deemed appropriate by the Panel;
- c) key changes in management arrangements that are relevant to the share class and criteria for the allocation of new quota shares; and
- d) any other matter that is considered relevant by the Panel.

The Panel shall take all steps it considers reasonable in developing its final advice. The Panel may seek further advice from the Department on the scope of activities and other questions in response to issues that arise in considering the Terms of Reference or otherwise during the course of its activities.

**Guiding Principles**

In developing its recommendations the Panel is to take into account, where relevant, the following guiding principles:



1. **Fairness and equity** – an overarching principle that should inform an allocation issue or management generally is one of fairness and equity. That is, the resource is to be allocated and managed in a way that distributes the benefits of use fairly amongst participants and minimises any differential economic impacts such as wealth redistribution arising from an allocation or management generally.
2. **Consistency and transparency** – management arrangements, including any allocation process, should be developed or implemented in a consistent and transparent manner.
3. **Certainty for shareholders** – the resource should be managed and fishing rights allocated in a way that recognises the needs of users of the resource, particularly those who rely on it for their livelihood.
4. **Opportunity to be heard** – participants in a fishery should have an opportunity to participate in developing management arrangements (including any allocation criteria) for a fishery through a transparent process.
5. **Rights of existing shareholders and level of activity to be recognised** – this means that management arrangements and in particular allocation processes should have due regard to the historical rights and activity of participants in a fishery, subject to any individual history deemed through enforcement and compliance to be in contravention of regulations (which should be excluded from any allocation decision).
6. **Best available information** – fisheries management and in particular allocation arrangements should take account of the best available information at the time the fisheries management or allocation arrangement is developed.
7. **Integrity of fisheries management arrangements** – fisheries management arrangements, including allocation decisions, should be consistent with legislative requirements and other fisheries management objectives.

#### **Required Activities**

The Panel will be required to:

- a) review reported catch and effort records (as required to be made in accordance with sections 121 and 122 of the Act) and any other relevant information relating to policy decisions and management of the share class under Purpose (above);
- b) provide an opportunity for eligible shareholders to meet with, and make written representations to the Panel in regard to the allocation of quota shares for Australian sardine, blue mackerel and yellowtail scad;
- c) make a copy of the draft report available to eligible shareholders and the Department and consider comments on the draft prior to submitting a final report to the Minister; and
- d) consult with other people or organisations as considered appropriate by the Panel.

#### **Minimum Required Outputs (Deliverables)**

A draft report will be made available to eligible shareholders and the Department for a period during which written submissions will be received. The Panel will consider submissions before their report is finalised.

A signed, formal final report outlining the Panel's recommendations is to be provided to the Minister. The report shall provide advice on the allocation of Australian sardine, blue

mackerel and yellowtail scad quota shares to eligible shareholders, supporting arguments and explanations or justification for the recommendations.

Specifically, the report should include advice on the allocation of Australian sardine, blue mackerel and yellowtail scad quota shares to eligible shareholders under section 71A of the *Fisheries Management Act 1994* (NSW).

#### **Timeframe**

The final report is to be completed by the end of May 2018.

#### **Support**

The Department will provide the Panel with required support (e.g. secretarial services, travel and meeting arrangements and responses to requests for additional information) on an agreed basis.

The Department has engaged Grant Thornton Australia Ltd ("the Project Manager") to act as independent project managers for the Panel.

#### **Background Material**

The Department will provide the Panel with relevant background information and access to the Department's files regarding relevant matters. The Department will also provide any additional relevant information requested by the Panel where such information exists.

#### **Governance and Confidentiality**

To the extent that they apply, the Panel will be required to comply with requirements of the Act, the *Government Information (Public Access) Act 2009* (NSW) and related regulations.

All written representations made by key stakeholders to the Panel will become public records and be subject to the *Privacy and Personal Information Protection Act 1998* (NSW) and *Government Information (Public Access) Act 2009* (NSW).

Any information provided to the Panel during the allocation process will only be for this purpose. Confidential information such as reported catch and effort information will not be identified or revealed through the report.

#### **Intellectual Property and Retention of Records**

All documents and other materials other than Panel members' personal documents (such as receipts, invoices, diaries etc.) used and produced by the Panel in the course of its activities remains the property of the Department. At the completion of the Panel's activities all documents and other materials will be retained by the Project Manager on behalf of the Department in accordance with the *State Records Act 1998* (NSW) and *Privacy and Personal Information Protection Act 1998* (NSW).

## **Attachment 1 – Selected Legislation**

### **STATE RECORDS ACT 1998 - SECT 11**

Obligation to protect records

#### **11 Obligation to protect records**

(1) Each public office must ensure the safe custody and proper preservation of the State records that it has control of.

(2) A public office must ensure that arrangements under which a State record that it has control of but that is in the possession or custody of some other person include arrangements for the safe keeping, proper preservation and due return of the record.

(3) A public office must take all reasonable steps to recover a State record for which the public office is responsible and that the public office does not have control of, unless the record is under the control of the Authority or of some other person with lawful authority.

### **PRIVACY AND PERSONAL INFORMATION PROTECTION ACT 1998 - SECT 12**

Retention and security of personal information

#### **12 Retention and security of personal information**

A public sector agency that holds personal information must ensure:

(a) that the information is kept for no longer than is necessary for the purposes for which the information may lawfully be used, and

(b) that the information is disposed of securely and in accordance with any requirements for the retention and disposal of personal information, and

(c) that the information is protected, by taking such security safeguards as are reasonable in the circumstances, against loss, unauthorised access, use, modification or disclosure, and against all other misuse, and

(d) that, if it is necessary for the information to be given to a person in connection with the provision of a service to the agency, everything reasonably within the power of the agency is done to prevent unauthorised use or disclosure of the information.

### **GOVERNMENT INFORMATION (PUBLIC ACCESS) ACT 2009 - SECT 14**

Public interest considerations against disclosure

#### **14 Public interest considerations against disclosure**

(1) It is to be conclusively presumed that there is an overriding public interest against disclosure of any of the government information described in Schedule 1.

(2) The public interest considerations listed in the Table to this section are the only other considerations that may be taken into account under this Act as public interest considerations against disclosure for the purpose of determining whether there is an overriding public interest against disclosure of government information.

(3) The Information Commissioner can issue guidelines about public interest considerations against the disclosure of government information, for the assistance of agencies, but cannot add to the list of considerations in the Table to this section.

(4) The Information Commissioner must consult with the Privacy Commissioner before issuing any guideline about a privacy-related public interest consideration (being a public interest consideration referred to in clause 3 (a) or (b) of the Table to this section).

Table

<p>: 1 Responsible and effective government There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects (whether in a particular case or generally):(a) prejudice collective Ministerial responsibility,(b) prejudice Ministerial responsibility to Parliament,(c) prejudice relations with, or the obtaining of confidential information from, another government,(d) prejudice the supply to an agency of confidential information that facilitates the effective exercise of that agency's functions,(e) reveal a deliberation or consultation conducted, or an opinion, advice or recommendation given, in such a way as to prejudice a deliberative process of government or an agency,(f) prejudice the effective exercise by an agency of the agency's functions,(g) found an action against an agency for breach of confidence or otherwise result in the disclosure of information provided to an agency in confidence,(h) prejudice the conduct, effectiveness or integrity of any audit, test, investigation or review conducted by or on behalf of an agency by revealing its purpose, conduct or results (whether or not commenced and whether or not completed).</p>
<p>: 2 Law enforcement and security There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects (whether in a particular case or generally):(a) reveal or tend to reveal the identity of an informant or prejudice the future supply of information from an informant,(b) prejudice the prevention, detection or investigation of a contravention or possible contravention of the law or prejudice the enforcement of the law,(c) increase the likelihood of, or prejudice the prevention of, preparedness against, response to, or recovery from, a public emergency (including any natural disaster, major accident, civil disturbance or act of terrorism),(d) endanger, or prejudice any system or procedure for protecting, the life, health or safety of any person,(e) endanger the security of, or prejudice any system or procedure for protecting, any place, property or vehicle,(f) facilitate the commission of a criminal act (including a terrorist act within the meaning of the Terrorism (Police Powers) Act 2002 ),(g) prejudice the supervision of, or facilitate the escape of, any person in lawful custody,(h) prejudice the security, discipline or good order of any correctional facility.</p>
<p>: 3 Individual rights, judicial processes and natural justice There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects:(a) reveal an individual's personal information,(b) contravene an information protection principle under the Privacy and Personal Information Protection Act 1998 or a Health Privacy Principle under the Health Records and Information Privacy Act 2002 ,(c) prejudice any court proceedings by revealing matter prepared for the purposes of or in relation to current or future proceedings,(d) prejudice the fair trial of any person, the impartial adjudication of any case or a person's right to procedural fairness,(e) reveal false or unsubstantiated allegations about a person that are defamatory,(f) expose a person to a risk of harm or of serious harassment or serious intimidation,(g) in the case of the disclosure of personal information about a child--the disclosure of information that it would not be in the best interests of the child to have disclosed.</p>
<p>: 4 Business interests of agencies and other persons There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects:(a) undermine competitive neutrality in connection with any functions of an agency in respect of which it competes with any person or otherwise place an agency at a competitive advantage or disadvantage in any market,(b) reveal commercial-in-confidence provisions of a government contract,(c) diminish the competitive commercial value of any information to any person,(d) prejudice any person's</p>

legitimate business, commercial, professional or financial interests,(e) prejudice the conduct, effectiveness or integrity of any research by revealing its purpose, conduct or results (whether or not commenced and whether or not completed).

: 5 Environment, culture, economy and general matters There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects:(a) endanger, or prejudice any system or procedure for protecting, the environment,(b) prejudice the conservation of any place or object of natural, cultural or heritage value, or reveal any information relating to Aboriginal or Torres Strait Islander traditional knowledge,(c) endanger, or prejudice any system or procedure for protecting, the life, health or safety of any animal or other living thing, or threaten the existence of any species,(d) damage, or prejudice the ability of the Government or an agency to manage, the economy,(e) expose any person to an unfair advantage or disadvantage as a result of the premature disclosure of information concerning any proposed action or inaction of the Government or an agency.

: 6 Secrecy provisions (1) There is a public interest consideration against disclosure of information if disclosure of the information by any person could (disregarding the operation of this Act) reasonably be expected to constitute a contravention of a provision of any other Act or statutory rule (of this or another State or of the Commonwealth) that prohibits the disclosure of information, whether or not the prohibition is subject to specified qualifications or exceptions.(2) The public interest consideration under this clause extends to consideration of the policy that underlies the prohibition against disclosure.

: 7 Exempt documents under interstate Freedom of Information legislation (1) There is a public interest consideration against disclosure of information communicated to the Government of New South Wales by the Government of the Commonwealth or of another State if notice has been received from that Government that the information is exempt matter within the meaning of a corresponding law of the Commonwealth or that other State.(2) The public interest consideration under this clause extends to consideration of the policy that underlies the exemption.(3) In this clause, a reference to a corresponding law is a reference to:(a) the Freedom of Information Act 1982 of the Commonwealth, or(b) a law of any other State that is prescribed by the regulations as a corresponding law for the purposes of this clause.

## **Appendix 4 - Correspondence and Advice to Eligible Ocean Haul (Purse Seine Fishery) Shareholders**

### *Appendix 4.1 - First letter from IAP to eligible Ocean Haul (Purse Seine Fishery) shareholders on 22 November 2017*

#### **OCEAN TRAWL – FISH NORTHERN ZONE, OCEAN HAULING – PURSE SEINE NET, OCEAN TRAP AND LINE – LINE EASTERN ZONE AND ESTUARY GENERAL – HAND GATHERING INDEPENDENT ALLOCATION PANEL**

c/o The IAP, Grant Thornton  
Level 17, 383 Kent Street, Sydney 2000

*Please Note: As the Terms of Reference are still in draft form, this document is subject to amendment based on feedback received during the current Department of Primary Industries consultation period with industry on the Terms of Reference for the Independent Allocation Panel. We have sent this letter in an effort to start making arrangements for the Panel consultation with industry during December, January and February.*

**22<sup>nd</sup> November, 2017**

Dear Fishing Business Owners,

#### **Independent Allocation Panel**

The Minister of the New South Wales Department of Primary Industries has established an Independent Allocation Panel (Panel) to provide advice on the basis for the allocation catch entitlement in the following fisheries:

- Ocean Trawl – Fish Northern Zone
- Ocean Hauling – Purse Seine Net
- Ocean Trap and Line – Line Eastern Zone
- Estuary General – Hand Gathering

The Panel consists of Dr Daryl McPhee, Susan Madden and Brett McCallum. Biographies of IAP members are set out below. All IAP members have made declarations they have no real or perceived conflict of interest or bias relating to these fisheries.

To ensure independence Grant Thornton Australia has been appointed as project managers of the Panel process. For more information, please visit [www.granthornton.com.au/iap](http://www.granthornton.com.au/iap).

The Minister is in the process of establishing Terms of Reference for the Panel after a formal consultation process with industry stakeholders during November 2017. A copy of the Draft Terms of Reference is available at <https://www.dpi.nsw.gov.au/fishing/commercial/reform/independent-allocation-panel>.

The Panel shall provide advice complete with supporting arguments and explanations or justification for their recommendations.

The Panel commenced its review in November 2017 and agreed, as a first step, to provide all license holders with this letter of advice of the process and the details of the first phase of consultation to seek license holders and their representative's views on allocation of catch entitlement for this fishery.

#### **Panel Consultation Process**

The Panel expects to hold consultation meetings with fishing business owners in the nominated fisheries above during December 2017 and January/February 2018.



There is the opportunity for individual fishing business owners or small groups of fishing business owners to meet with the Panel.

The Panel will also accept first round written submissions until close of business 16<sup>th</sup> February 2018.

The Panel will then consider all views received through the consultation meeting and written submission, together with other information as deemed necessary, to formulate our initial recommendations into a 'draft report'. The 'draft report' will be circulated to all fishing business owners. Written submissions will be encouraged. The Panel will also consider if there is a need for further consultation depending on response to the 'draft report'.

The Panel will then complete their considerations and submit a Final Report to the Minister by mid-2018.

#### **How to Set Up a Meeting with the Panel**

**PLEASE NOTE:** Bookings for consultations will initially be open only for the Sydney and Wollongong regions as follows:

- Sydney: 14<sup>th</sup> – 15<sup>th</sup> December, 2017
- Wollongong: 18<sup>th</sup> – 20<sup>th</sup> December, 2017

Throughout January and February 2018, fishing business owners will be able to book consultation sessions with the panel in other regions of the state. We will send additional correspondence in mid-December to advise you of these booking dates and regions.

#### **For a Sydney or Wollongong consultation in December 2017:**

To book a consultation timeslot with the Panel, fishing business owners are requested to go to <https://meetme.so/IAPBooking>. Once here you will be prompted to select your preferred consultation location and indicate if you wish to meet the Panel individually or as a small group with other fishing business owners. You will be required to select 3 options for session times and once a timeslot has been allocated, you will receive a confirmation email with details of your final consultation time and location. The booking form will ask you to provide us with information including your contact details and fishing business license number(s).

Alternatively, you may call Grant Thornton on 02 9286 5800 to book a time and location.

The panel will be available for consultations in Sydney, Wollongong, Newcastle, Coffs Harbour, Port Macquarie, Eden and Ballina.

If none of these locations are suitable, please call Grant Thornton on 02 9286 5800 to discuss.

Yours sincerely,



Dr Daryl McPhee



Susan Madden



Brett McCallum

## **IAP Biographies**

### **Brett McCallum**

Brett is currently a director of Bresal Consulting.

From 2001 to 2015 Brett was the Executive Officer of the Pearl Producers Association, the peak representative body for the pearling industry operating within WA and NT.

Brett was the Chief Executive of the Western Australian Fishing Industry Council (WAFIC) for 14 years from 1987. He has held senior managerial positions with leading Australian fishing companies from 1979 -1986.

He is the immediate past Deputy Chair of the Fisheries Research & Development Corporation, Chairman of the NT Offshore Snapper Fishery Management Committee and Chairman of the Australian Aquatic Animal Welfare Strategy Working Group.

He has experience on a number of on state and federal government working groups and committees including several access and allocation panels.

### **Daryl McPhee**

Dr Daryl McPhee is a Director of the Fisheries Research and Development Corporation and Associate Professor of Environmental Science and Management at Bond University.

His early career was spent working directly for the Queensland commercial fishing industry. Among his publications is the book Fisheries Management in Australia, which remains the only book solely dedicated to the topic.

He has an extensive understanding of NSW commercial fisheries and has been a panel member for the allocation of a number of commercial fisheries in Western Australia.

### **Susan Madden**

Susan Madden is currently Principal Economist, Natural Resources and Agriculture, at GHD Pty Ltd.

She has more than 15 years' experience working in agricultural and natural resource management roles in both the public and private sectors.

Throughout her career, she has been involved in the development, implementation and review of a wide range of policy and program initiatives relating to resource allocation and pricing reforms. These processes have involved extensive communication and engagement with government, industry and community stakeholders.

Susan is a Part-Time Member of the Murray-Darling Basin Authority, Chair of the Central West Local Land Services and member of the NSW Local Land Services Board.



## *Appendix 4.2 - Second Letter from IAP to eligible shareholders on 8 December 2017*

### **OCEAN TRAWL – FISH NORTHERN ZONE, OCEAN HAULING – PURSE SEINE NET, OCEAN TRAP AND LINE – LINE EASTERN ZONE AND ESTUARY GENERAL – HAND GATHERING**

#### **INDEPENDENT ALLOCATION PANEL**

**c/o The IAP, Grant Thornton Level 17, 383 Kent Street, Sydney 2000**

#### **UPDATE Friday 8th December 2018**

Dear Fishing Business Owners,

A copy of this communication can be found at [www.grantthornton.com.au/IAP](http://www.grantthornton.com.au/IAP).

Feedback on the draft Terms of Reference closed on 1 December 2017. The Terms of Reference for Ocean Trawl, Ocean Haul and Estuary General have been amended and finalised by the Minister in response to industry consultation, issues raised by Panel and issues identified by Department. Thank you to all who provided submissions.

The finalised Terms of Reference for each sector can be found below this communication.

The NSW Department of Primary Industries will be updating their website with these finalised Terms of Reference in the near future. Please check their website at <https://www.dpi.nsw.gov.au/fishing/commercial/reform/independent-allocation-panel>.

The Minister has decided that a separate Terms of Reference will be required for the Southern Fish Trawl Fishery. Draft Terms of Reference are currently being developed for the Southern Fish Trawl fishery by the DPI in collaboration with the Australian Fisheries Management Authority. When this is completed, DPI will communicate with Fishing Business Owners to request feedback on the draft Terms of Reference for the Southern Fish Trawl fishery. The Panel will be provided the approved ToR by the Minister and at that time will arrange additional time to speak with the Fishing Business Owners involved in the Southern Fish Trawl.

#### **Consultations**

Please be advised that bookings for consultations at all locations are now open. Consultation dates are as follows:

<b>Location</b>	<b>Date</b>
Sydney	14 <sup>th</sup> – 15 <sup>th</sup> December, 2017
Wollongong	18 <sup>th</sup> – 20 <sup>th</sup> December, 2017
Newcastle	9 <sup>th</sup> – 12 January, 2018
Coffs Harbour	17 <sup>th</sup> – 19 <sup>th</sup> January, 2018
Port Macquarie	23 <sup>rd</sup> – 25 <sup>th</sup> January, 2018
Eden	30 <sup>th</sup> – 31 <sup>st</sup> January, 2018
Ballina	7 <sup>th</sup> – 9 <sup>th</sup> February, 2018
Clarence	16 <sup>th</sup> January 2018, 6 <sup>th</sup> February 2016

PLEASE NOTE: Bookings will close 48 hours prior to the first date at each location.

Please book Sydney and Wollongong consultations as soon as possible.

#### **To Book a Consultation**

To book a consultation timeslot with the Panel, fishing business owners are requested to go to <https://meetme.so/IAPBooking>. Once here you will be prompted to select your preferred consultation location and indicate if you wish to meet the Panel individually or as a small group with other fishing business owners. You will be required to select 3 options for session times and once a timeslot has been allocated, you will receive a confirmation email with details of your final consultation time and location. The booking form will ask you to provide us with information including your contact details and fishing business license number(s).

Alternatively, you may call Grant Thornton on 02 9286 5800 to book a time and location.

PLEASE NOTE: Bookings will close 48 hours prior to the first date at each location.

If none of the above locations are suitable, please call Grant Thornton on 02 9286 5800 to discuss.

Yours sincerely,



Dr Daryl McPhee



Susan Madden



Brett McCallum

### *Appendix 4.3 - Third Letter from IAP to eligible shareholders on 21 December 2018*

OCEAN TRAWL – FISH NORTHERN ZONE, OCEAN HAULING – PURSE SEINE NET,  
OCEAN TRAP AND LINE – LINE EASTERN ZONE AND ESTUARY GENERAL – HAND  
GATHERING

#### INDEPENDENT ALLOCATION PANEL

c/o The IAP, Grant Thornton Level 17, 383 Kent Street, Sydney 2000

**21<sup>st</sup> December, 2017**

Dear Fishing Business Owners,

A copy of this communication can be found at [www.grantthornton.com.au/IAP](http://www.grantthornton.com.au/IAP).

Feedback from industry on the draft Terms of Reference for the basis of the allocation of particular species quota shares in the fisheries outlined above closed on 1 December 2017. The Minister finalised the Terms of Reference after considering the feedback from industry together with issues raised by the Independent Allocation Panel and the Department of Primary Industries (the Department). Thank you to all who provided feedback.

The NSW Department of Primary Industries has updated their website with the finalised Terms of Reference. Please check their website at <https://www.dpi.nsw.gov.au/fishing/commercial/reform/independent-allocation-panel>.

The Minister has decided that a separate Terms of Reference will be required for the Southern Fish Trawl Fishery. Draft Terms of Reference are currently being developed for the Southern Fish Trawl Fishery by the Department in collaboration with the Australian Fisheries Management Authority. When this is completed, DPI will communicate with Fishing Business Owners within the Southern Fish Trawl Fishery to request feedback on the draft Terms of Reference. The Panel will be provided the approved Terms of Reference by the Minister and at that time will arrange additional time to consult with the Fishing Business Owners involved in the Southern Fish Trawl. This is expected to be in February 2018.

#### **Consultations**

The consultation process began on the 14<sup>th</sup> of December 2017 and the Panel has consulted with Fishing Business Owners in Sydney and Wollongong who have provided their perspective as to the basis of the allocation of particular species quota shares in their Fisheries.

To provide you the best opportunity to have your say, you are invited to provide a written submission regarding your perspective and/or meet with the Panel face-to-face for a consultation at any of the locations set out below.

Written submissions can be sent via email to [IAP@au.gt.com](mailto:IAP@au.gt.com) or mail your submission c/o The IAP, Grant Thornton Level 17, 383 Kent Street, Sydney 2000.

Please be advised that bookings for consultations at all locations are now open.

PLEASE NOTE: Bookings will close 48 hours prior to the first date at each location.

Consultation dates are as follows:

Location	Date
Newcastle	9 <sup>th</sup> – 12 January, 2018
Coffs Harbour	17 <sup>th</sup> – 19 <sup>th</sup> January, 2018
Port Macquarie	23 <sup>rd</sup> – 25 <sup>th</sup> January, 2018
Eden	30 <sup>th</sup> – 31 <sup>st</sup> January, 2018
Ballina	7 <sup>th</sup> – 9 <sup>th</sup> February, 2018
Clarence	16 <sup>th</sup> January 2018, 6 <sup>th</sup> February 2016

There will be the opportunity for the Southern Fish Trawl fishers to have additional consultation outside these dates once the Terms of Reference have been finalised. We will communicate with the industry once this has occurred.

If you would like a consultation but none of the listed locations are suitable, please call the Project Managers of this process, Grant Thornton Australia Limited on 02 9286 5800 to discuss.

#### To Book a Consultation

To book a consultation timeslot with the Panel, Fishing Business Owners are requested to go to <https://meetme.so/IAPBooking>. Once here you will be prompted to select your preferred consultation location and indicate if you wish to meet the Panel individually or as a small group with other Fishing Business Owners. You will be required to select three options for session times and once a timeslot has been allocated, you will receive a confirmation email with details of your final consultation time and location. The booking form will ask you to provide us with information including your contact details and Fishing Business license number(s).

Alternatively, you may call Grant Thornton on 02 9286 5800 to book a time and location, email us at [IAP@au.gt.com](mailto:IAP@au.gt.com) or request a consultation via mail c/o The IAP, Grant Thornton Level 17, 383 Kent Street, Sydney 2000.

PLEASE NOTE: Bookings will close 48 hours prior to the first date at each location.

If none of the above locations are suitable, please call Grant Thornton on 02 9286 5800 to discuss.

Yours sincerely,



Dr Daryl McPhee



Susan Madden



Brett McCallum



## *Appendix 4.4 - Fourth Letter from IAP to eligible shareholders on 18 January 2018*

OCEAN TRAWL, OCEAN HAULING – PURSE SEINE NET, OCEAN TRAP AND LINE –  
LINE EASTERN ZONE AND ESTUARY GENERAL – HAND GATHERING

### INDEPENDENT ALLOCATION PANEL

c/o The IAP, Grant Thornton Level 17, 383 Kent Street, Sydney 2000

#### **UPDATE Wednesday 18th January 2018**

Dear Fishing Business Owners,

A copy of this communication can be found at [www.grantthornton.com.au/IAP](http://www.grantthornton.com.au/IAP).

Please note that the Terms of Reference for the Ocean Trawl Fishery includes Fish Northern Zone, Inshore Prawn and Offshore Prawn. This was not explicitly stated in previous communications and we apologise for any confusion.

At this stage, the Panel have conducted consultations in Sydney, Wollongong, Newcastle, Yamba and Coffs Harbour. Thank you to all who have attended and provided submissions.

The Panel is still scheduled to visit the following locations. We encourage the fishers of NSW to book consultations and have your say regarding the process.

#### **Port Macquarie:**

- Tuesday, January 23, 2018
- Wednesday, January 24, 2018
- Thursday, January 25, 2018 (Potentially, if high demand by fishers)

#### **Eden / Bermagui**

- Tuesday, January 30, 2018
- Wednesday, January 31, 2018

#### **Yamba**

- Tuesday, February 06, 2018

#### **Ballina:**

- Wednesday, February 07, 2018
- Thursday, February 08, 2018
- Friday, February 09, 2018

Please book a consultation with the Panel as soon as possible to ensure you have your say.

Bookings close 48 hours prior to the first date at each location. See booking process below.

Please note that there will be additional consultations for the Southern Fish Trawl fishing business owners once the Terms of Reference for that fishery is finalised. The NSW Department of Primary Industries will seek submissions from industry on the draft Terms of Reference for the Southern Fish Trawl through their website at

<https://www.dpi.nsw.gov.au/fishing/commercial/reform/independent-allocation-panel>.

#### **Hull Units Clarification for Inshore and Offshore Prawn Effort Quota Shares:**

The IAP would like to highlight to those business owners in the inshore and offshore prawn fishery that the Terms of Reference ask the Panel to advise on the following:

- Should there be a different weighting for shares held versus hull units on a vessel in calculating 'effort shares' (see Ocean Trawl IAP ToR point b(i));
- Should there be a different weighting applied to vessels with varying hull units to recognise potential differences in effort applied by each vessel (see Ocean Trawl IAP ToR, point b(ii)).

The Panel encourages prawn fishing business owners to provide comment regarding these two issues during face to face consultations and in written submissions. If you have previously had a face to face consultation but not provided a perspective on these issues, please do so in your written submission.

#### **To Book a Consultation**

To book a consultation timeslot with the Panel, fishing business owners are requested to go to <https://meetme.so/IAPBooking>. Once here you will be prompted to select your preferred consultation location and indicate if you wish to meet the Panel individually or as a small group with other fishing business owners. You will be required to select 3 options for session times and once a timeslot has been allocated, you will receive a confirmation email with details of your final consultation time and location. The booking form will ask you to provide us with information including your contact details and fishing business license number(s).

Alternatively, you may call Grant Thornton on 02 9286 5800 to book a time and location.

If you wish to provide a written submission to the Panel, please email [iap@au.gt.com](mailto:iap@au.gt.com).

PLEASE NOTE: Bookings will close 48 hours prior to the first date at each location.

If none of the above locations are suitable, please call Grant Thornton on 02 9286 5800 to discuss.

Yours sincerely,



Dr Daryl McPhee



Susan Madden



Brett McCallum

*Appendix 4.5 - Fifth Letter from IAP to eligible shareholders on 12 February 2018*

**INDEPENDENT ALLOCATION PANEL**

**c/o The IAP, Grant Thornton Level 17, 383 Kent Street, Sydney 2000**

**12<sup>th</sup> February, 2018**

Dear Fishing Business Owners,

A copy of this communication can be found at [www.grantthornton.com.au/IAP](http://www.grantthornton.com.au/IAP).

This communication refers to the independent Allocation Panel Terms of Reference for the following fisheries:

**OCEAN TRAWL (INSHORE/OFFSHORE PRAWN & FISH NORTHERN ZONE)  
OCEAN HAULING (PURSE SEINE NET),  
OCEAN TRAP AND LINE (LINE EASTERN ZONE)  
ESTUARY GENERAL (HAND GATHERING)**

Following consultation with industry, the Independent Allocation Panel has extended the cut-off date for written submissions to the 23<sup>rd</sup> February, 2018.

Please note that this does not apply to the Southern Fish Trawl. Final terms of reference have yet to be approved by the Minister. A separate consultation process for Southern Fish Trawl, including a deadline for written submissions, will be communicated to eligible stakeholders.

Yours sincerely,



Dr Daryl McPhee



Susan Madden



Brett McCallum

**OCEAN TRAWL– FISH NORTHERN ZONE AND INSHORE AND OFFSHORE  
PRAWN, OCEAN HAULING – PURSE SEINE NET, OCEAN TRAP AND LINE – LINE  
EASTERN ZONE, ESTUARY GENERAL – HAND GATHERING AND SOUTHERN FISH  
TRAWL**

**INDEPENDENT ALLOCATION PANEL**

**c/o The IAP, Grant Thornton Australia Ltd, Level 17, 383 Kent Street, Sydney 2000**

**UPDATE Wednesday 28th February 2018**

Dear Fishing Business Owners,

Thank you to the many people with whom we have had face-to-face consultations over the last two months for the Ocean Trawl – Fish Northern Zone and Inshore and Offshore Prawn, Ocean Haul – Purse Seine Net, Ocean Trap and Line – Line Eastern Zone, and Estuary General – Hand Gathering Fisheries.

Thank you to all who provided submissions – the deadline for which closed on 23rd February 2018.

Please see the attached timeline (below) regarding next steps in the IAP process.

The final Terms of Reference for the Southern Fish Trawl is now available. You can find the final Terms of Reference in the IAP webpage at <https://www.granthornton.com.au/iap/>.

The NSW Department of Primary Industries will be updating their website with these finalised Terms of Reference in the near future. Please check their website at <https://www.dpi.nsw.gov.au/fishing/commercial/reform/independent-allocation-panel>.

Please note that the Southern Fish Trawl final report will be completed by the end of June 2018 (the draft report will be available for industry consultation in May 2018).

Southern Fish Trawl Fishing Business Owners are encouraged to book a consultation with the Panel as soon as possible. Please visit <https://meetme.so/IAPBooking> or alternatively call 02 9286 5800 to **book a consultation meeting** to have your say regarding the allocation of quota shares in the Southern Fish Trawl fishery.

The dates the Panel will be available to hold consultation meetings are:

**Nowra**

- Tuesday, March 6, 2018
- Wednesday, March 7, 2018

**Sydney**

- Thursday, March 8, 2018
- Friday, March 9, 2018

**Eden**



- Tuesday, March 13, 2018

#### **Bermagui**

- Wednesday, March 14, 2018

Please book a consultation with the Panel as soon as possible to ensure you have your say.

See booking process below.

#### **To Book a Consultation**

To book a consultation timeslot with the Panel, fishing business owners are requested to go to <https://meetme.so/IAPBooking>. Once here you will be prompted to select your preferred consultation location and indicate if you wish to meet the Panel individually or as a small group with other fishing business owners. You will be required to select 3 options for session times and once a timeslot has been allocated, you will receive a confirmation email with details of your final consultation time and location. The booking form will ask you to provide us with information including your contact details and fishing business license number(s).

Alternatively, you may call Grant Thornton Australia Ltd on 02 9286 5800 to book a time and location.

If you wish to provide a written submission to the Panel, please email [iap@au.gt.com](mailto:iap@au.gt.com).

If none of the above locations are suitable, please call Grant Thornton Australia Ltd on 02 9286 5800 to discuss.

Yours sincerely,



Dr Daryl McPhee



Susan Madden

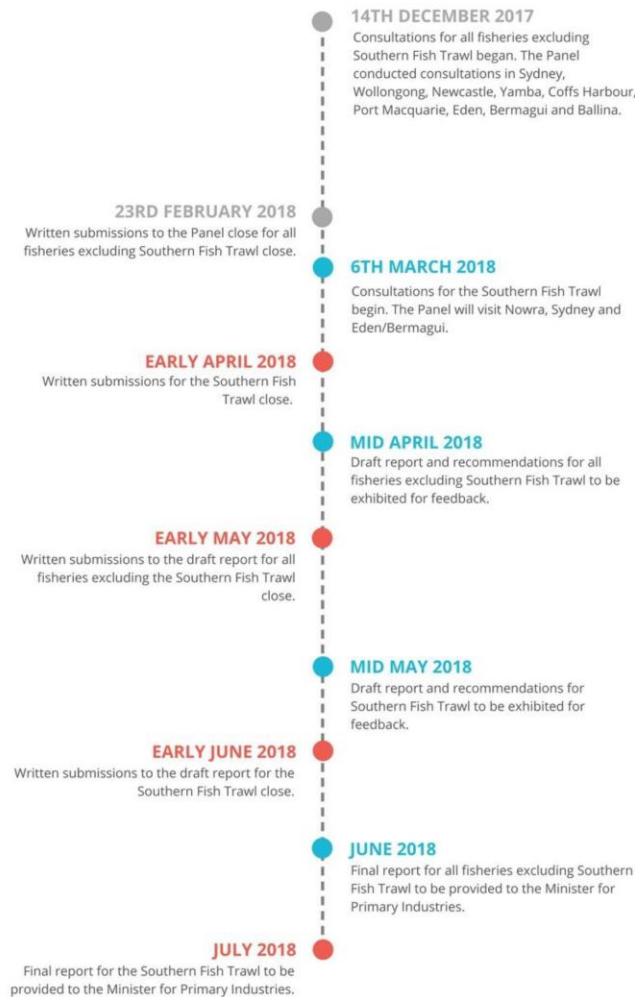


Brett McCallum

Independent Allocation Panel

# PROPOSED TIMELINE

Please find below the proposed timeline for the Independent Allocation Panel to provide advice to the NSW Government on species shares for Ocean Trap & Line – Line Eastern Zone, Ocean Haul–Purse Seine Net, Ocean Trawl – Fish Northern Zone and Inshore and Offshore Prawn, Estuary General – Hand Gathering and Southern Fish Trawl.



*Appendix 4.7 - Seventh Letter from IAP to eligible shareholders on 8 March 2018*

OCEAN TRAWL– FISH NORTHERN ZONE AND INSHORE AND OFFSHORE PRAWN,  
OCEAN HAULING – PURSE SEINE NET, OCEAN TRAP AND LINE – LINE EASTERN  
ZONE, ESTUARY GENERAL – HAND GATHERING AND SOUTHERN FISH TRAWL

INDEPENDENT ALLOCATION PANEL

c/o The IAP, Grant Thornton Level 17, 383 Kent Street, Sydney 2000

Thursday 8<sup>th</sup> March 2018

Re: Communication regarding DPI letter dated 27/2/18

Dear Fishing Business Owners.

A copy of this communication can be found at [www.grantthornton.com.au/IAP](http://www.grantthornton.com.au/IAP).

It has been brought to the attention of the Independent Allocation Panel (IAP) that a letter from the Department of Primary Industry (dated 27/2/18) has been circulated to eligible shareholders for species under consideration by the IAP process. The letter seeks fishing business owners to review catch data records and advise of discrepancies to remove any data entry errors in the DPI records.

As advised in the DPI letter the IAP **may or may not** use catch and effort information reported to the Department.

The IAP wishes to confirm that the process to check catch data records has been initiated by the DPI and as such, any questions relating to this letter should be directed to the Department.

The IAP would like to stress that it is still in the process of consulting with eligible stakeholders and considering the many written submissions it has received as part of this process.

The **IAP has made no recommendations at this stage** in relation to the ToR for any of the fisheries under review as part of this process.

As previously advised, the IAP will issue a 'draft report' that will be circulated to eligible shareholders for their consideration by mid-April 2018 (a little later for the Southern Fish Trawl fishery).

Yours sincerely,



Dr Daryl McPhee



Susan Madden



Brett McCallum

*Appendix 4.8 - Eighth Letter from IAP to eligible shareholders on 12 February 2018*

**INDEPENDENT ALLOCATION PANEL**

**c/o The IAP, Grant Thornton Level 17, 383 Kent Street, Sydney 2000**

**12<sup>th</sup> February, 2018**

Dear Fishing Business Owners,

A copy of this communication can be found at [www.grantthornton.com.au/IAP](http://www.grantthornton.com.au/IAP).

This communication refers to the independent Allocation Panel Terms of Reference for the following fisheries:

**OCEAN TRAWL (INSHORE/OFFSHORE PRAWN & FISH NORTHERN ZONE)  
OCEAN HAULING (PURSE SEINE NET),  
OCEAN TRAP AND LINE (LINE EASTERN ZONE)  
ESTUARY GENERAL (HAND GATHERING)**

Following consultation with industry, the Independent Allocation Panel has extended the cut-off date for written submissions to the 23<sup>rd</sup> February, 2018.

Please note that this does not apply to the Southern Fish Trawl. Final terms of reference have yet to be approved by the Minister. A separate consultation process for Southern Fish Trawl, including a deadline for written submissions, will be communicated to eligible stakeholders.

Yours sincerely,



Dr Daryl McPhee



Susan Madden



Brett McCallum

## **Appendix 5 – References - Documentation used**

Kaufmann, B., Geen, G. and Sen, S. (1999) Fish Futures: Individual Transferable Quotas in Fisheries. Fisheries Research and Development Corporation.

Lynham, J. (2012) How Have Catch Shares Been Allocated? University of Hawai'i at Mānoa Department of Economics Working Paper Series No. 12-19.

McDermott, M., Mahanty, S. and Schreckenberg, K. (2013) Examining equity: A multidimensional framework for assessing equity in payments for ecosystem services. Environmental Science and Policy, 33:416-427.

Pullen, J. (2012) An essay on distributive justice and the equal ownership of natural resources. American Journal of Economics and Sociology, 72(5):1044-1074.

Shotton, R. (2001) Case studies on the allocation of transferable quota rights in fisheries. FAO Fisheries Technical Paper. No. 411.