

TERMS OF REFERENCE

SOUTHERN FISH TRAWL 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**

*Note: NSW will be advising the Commonwealth on the apportionment of quota rights between owners of NSW FBs eligible for a southern fish trawl endorsement. That advice will be provided to the Commonwealth for decisions to be made about the allocation of quota fishing concessions as part of a proposed arrangement to cede jurisdiction of the NSW Southern Fish Trawl Restricted Fishery to the Commonwealth.*

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 quota for the following species to the owners of NSW Fishing Businesses ("FBs") eligible for a Southern Fish Trawl ("SFT") endorsement ("eligible endorsement holders").

Eastern school whiting	<i>Sillago flindersi</i>
Silver trevally	<i>Pseudocaranx georgianis</i>
Flathead species combined:	
Bluespotted flathead	<i>Platycephalus caeruleopunctatus</i>
Tiger flathead	<i>Platycephalus richardsoni</i>
Southern bluespotted flathead	<i>Platycephalus speculator</i>
Southern sand flathead	<i>Platycephalus bassensis</i>
Toothy flathead	<i>Platycephalus aurimaculatus</i>
John Dory	<i>Zeus faber</i>
Redfish	<i>Centoberyx affinis</i>
Sawshark species combined:	
Common sawshark	<i>Pristiophorus cirratus</i>
Southern sawshark	<i>Pristiophorus nudipinnis</i>
Blue Warehou	<i>Seriola brama</i>
Gummy Shark	<i>Mustelus antarcticus</i>
Jackass Morwong	<i>Nemadactylus macropterus</i>

School shark	<i>Galeorhinus galeus</i>
Elephant fish	Families Callorhynchidae and Rhinochimaerida
Ocean perch species combined:	
Reef ocean perch	<i>Helicolenus percoides</i>
Bigeye ocean perch	<i>Helicolenus barathri</i>

## Scope

In developing its recommendations on the basis for the allocation of quota fishing concessions the Independent Allocation Panel (“the Panel”) is to consider:

- a) eligible endorsement holders’ FBs and their components (e.g. SFT endorsements) 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 SFT Fishery and criteria for the allocation of quota fishing concessions;
- d) existing rights held by others including shareholders in NSW commercial fisheries and the holders of Commonwealth Statutory Fishing Rights (SFRs);
- e) the possibility for fishers to trade quota rights across jurisdictions in the future; and,
- f) 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 eligible endorsement holders** – 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. **Existing rights and level of activity to be recognised** – this means that management arrangements and in particular allocation processes should have due regard to:
  - a) the historical rights and activity of participants in the SFT fishery, subject to any individual history or catch deemed through enforcement and compliance to be in contravention of regulations (which should be excluded from any allocation decision); and,
  - b) existing rights held by others including shareholders in NSW commercial fisheries and holders of Commonwealth Statutory Fishing Rights (SFRs).
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 the 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 SFT Fishery;
- b) minimise risk of ‘double dipping’ by NSW shareholders / SFT endorsement holders by ensuring the consistent use of reported catch and effort records (and any other data) across share classes or fisheries;
- c) provide an opportunity for eligible endorsement holders to meet with, and make written representations to the Panel in regard to the allocation of quota fishing concessions for the species under Purpose (above);
- d) make a copy of the draft report available to eligible endorsement holders and the Department and consider comments on the draft prior to submitting a final report to the Minister; and
- e) 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 endorsements holders, the Department and the Australian Fisheries Management Authority (“AFMA”) 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 quota to eligible endorsement holders, supporting arguments and explanations or justification for the recommendations.

### **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 and AFMA 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 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).</p>
<p>: 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</p>

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.