

**REPORT OF THE NSW OCEAN HAUL
PURSE SEINE SHARE CLASS
INDEPENDENT ALLOCATION PANEL
IAP Report (Final) – 1st June 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 documents¹ 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 viability² of the commercial fishing industry is not in the same positive condition as the fish stocks. 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 efficiency³.

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 share classes where this small number of fishing businesses accounted for a high proportion of the total recorded landings.

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

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

² *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).

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

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

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

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

The Draft IAP Report was circulated to all eligible shareholders in the *Ocean Haul - Purse Seine Share Class* and other interested stakeholders on 16th April 2018.

The IAP encouraged written submissions from eligible shareholders on the findings, conclusions and recommendations contained in the Draft IAP Report. Submissions were sought by the close of business 7th May 2018. The closing date for submissions was subsequently extended on the request of industry to close of business 14th May 2018.

Following consideration of written submissions to the Draft IAP Report and any further information deemed necessary, the IAP has finalised and submitted a Final IAP Report for the *Ocean Haul - Purse Seine Share Class* to the Minister for Primary Industries on 1st of June 2018.

2. IAP Summary of Recommendations for the *Ocean Haul - Purse Seine Share Class*

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

The IAP recommends that the allocation of quota shares for Australian sardines to Fishing Businesses with shareholdings in the *Ocean Haul – Purse Seine (OHPS) Share Class* be determined based on 20% on the proportion of access shares held + 80% on the proportion of recorded landings for an individual fishing business over the period 2009/10 – 2016/17 (inclusive) but excluding the ‘worst catch year’.

The IAP recommends the use of the sum of recorded landings over the period 2009/10 – 2016/17 and excluding the worst year for all current Fishing Businesses with holdings in the share class.

Expressed as a formula, the IAP recommends that an eligible shareholder’s quota share allocation for Australian sardines will be:

$$(20\% \times \text{Total number of OHPS Shares held by an individual Fishing Business in the share class})$$

Total number of shares in the OHPS Share Class

+

$$(80\% \times \text{Individual Fishing Business's Total Recorded Landings of Australian sardines in the OHPS Share Class excluding the 'worst catch year' for the period 2009/10 to 2016/17 (inclusive)})$$

Sum of the Total Recorded Landings of Australian sardines *excluding the 'worst catch year'* for the period 2009/10 to 2016/17 (inclusive) of all current Fishing Businesses' with OHPS shares

The quota volume (i.e. kg) received in any given year, would therefore be the quota share multiplied by the total annual allowable commercial catch (TACC) for the species.

The IAP notes that setting of the TACC is a separate process and is outside the scope of the IAP ToR.

2.2 IAP recommendations for allocation of quota shares for Blue mackerel:

The IAP recommends that the allocation of quota shares for Blue mackerel to Fishing Businesses with shareholdings in the *Ocean Haul – Purse Seine (OHPS) Share Class* be determined based on 20% on the proportion of access shares held + 80% on the proportion of recorded landings for an individual fishing business over the period 2009/10 – 2016/17 (inclusive) but excluding the ‘worst catch year’.

The IAP recommends the use of the sum of recorded landings over the period 2009/10 – 2016/17 and excluding the worst year for all current Fishing Businesses with holdings in the share class.

Expressed as a formula, the IAP recommends that an eligible shareholder's quota share allocation for Blue mackerel will be:

$$(20\% \times \text{Total number of OHPS Shares held by an individual Fishing Business in the share class})$$

Total number of shares in the OHPS Share Class

+

$$(80\% \times \text{Individual Fishing Business's Total Recorded Landings of Blue mackerel in the OHPS Share Class excluding the 'worst catch year' for the period 2009/10 to 2016/17 (inclusive)})$$

Sum of the Total Recorded Landings of Blue mackerel *excluding the 'worst catch year'* for the period 2009/10 to 2016/17 (inclusive) of all current Fishing Businesses' with OHPS shares

The quota volume (i.e. kg) received in any given year, would therefore be the quota share multiplied by the total annual allowable commercial catch (TACC) for the species.

The IAP notes that setting of the TACC is a separate process and is outside the scope of the IAP ToR.

2.3 IAP recommendations for allocation of quota shares for Yellowtail scad:

The IAP recommends that the allocation of quota shares for Yellowtail scad to Fishing Businesses with shareholdings in the *Ocean Haul – Purse Seine (OHPS) Share Class* be determined based on 20% on the proportion of access shares held + 80% on the proportion of recorded landings for an individual fishing business over the period 2009/10 – 2016/17 (inclusive) but excluding the 'worst year'.

The IAP recommends the use of the sum of recorded landings over the period 2009/10 – 2016/17 and excluding the worst year for all current Fishing Businesses with holdings in the share class.

Expressed as a formula, the IAP recommends that an eligible shareholder's quota share allocation for Yellowtail scad will be:

$$(20\% \times \text{Total number of OHPS Shares held by an individual Fishing Business in the share class})$$

Total number of shares in the OHPS Share Class

+

$$(80\% \times \text{Individual Fishing Business's Total Recorded Landings of Yellowtail scad in the OHPS Share Class excluding the 'worst catch year' for the period 2009/10 to 2016/17 (inclusive)})$$

Sum of the Total Recorded Landings of Yellowtail scad *excluding the 'worst catch year'* for the period 2009/10 to 2016/17 (inclusive) of all current Fishing Businesses' with OHPS shares

The quota volume (i.e. kg) received in any given year, would therefore be the quota share multiplied by the total annual allowable commercial catch (TACC) for the species.

The IAP notes that setting of the TACC is a separate process and is outside the scope of the IAP ToR.

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.⁴

Quota Share – a share that entitles the holder to receive a proportion of the total commercial catch (eg. kg) or effort (eg. days) allocated each year.

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

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 or total allowable commercial catches - 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

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

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 organisations with relevant knowledge and experience.

The NSW Government established an IAP for the *Ocean Haul - Purse Seine Share Class* to provide advice to the Minister for Primary Industries and the Department of Primary Industries (DPI) on the basis for the allocation of quota shares to the holders of *Ocean Haul - Purse Seine Share Class* 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. Written submissions on the Draft IAP Report were received from eligible shareholders and interested stakeholders. Submissions were considered by the IAP, the issues raised were assessed, further information taken into account and the Final IAP Report submitted to the Minister for Primary Industries on 1st June 2018.

This Final 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 recommendations for the basis for the allocation of quota shares to the eligible shareholders in the *Ocean Haul - Purse Seine Share Class*.

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:

- right to participate in the share management fishery and compensation 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

Circa 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 1⁵ share management status. Access criteria varied for each endorsement type.

The *Ocean Hauling Fishery* became a Category 1 share managed fishery in 2007 when the Share Management Plan took effect and share management was fully implemented.

The *Ocean Hauling Fishery* included the *Purse Seine Share Class* 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

⁵ NSW Government Gazette No.75, Official Notices, p2155, 23 April 2004

applied to all other fishing businesses in the *Ocean Haul - Purse Seine Share Class*.

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).

AgEconPlus Consulting (2015)⁶ carried out an economic analysis of NSW Commercial Fisheries Reform Package and outlined that shares were mainly allocated on a flat (equal allocation of shares) basis with no or only partial recognition of catch history. Shares were not linked to output (catch) or inputs (gear/time). This was a culmination of industry demand and what Stevens *et al.* (2012) refer to as Government failure during the share allocation process. The main management use of shares has been in relation to setting minimum shareholdings for fishing businesses to fish in different share classes.

The NSW Government inquiry (February 2017) into commercial fishing in NSW set out that the key impediment to full implementation of share management to fisheries (other than lobster and abalone) and the pressures facing the commercial fishing industry derive partly from the historic over-allocation of shares on a flat basis with little regard to catch history in 2007. This has created significant latent effort, which should have been addressed before any attempt to restructure the industry.

Shares issued at this time were tradable to allow accumulation to the prescribed minimum shareholding level to be eligible for an endorsement. Changes to the minimum shareholding levels were to drive adjustment, which occurred in some fisheries but not others.

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.

In July 2009⁷ the NSW Government announced the Pyrmont 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

⁶ AgEconPlus Consulting, Economic Analysis of NSW Commercial Fisheries Reform Package (June 2015)

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

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 effect to the original intent of the share management system.

In June 2010⁸ 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)⁹ that was completed in May 2012 after a significant industry consultation process.

In 2012 in response¹⁰ 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 endorsements¹¹ to achieve the biological and economic objectives of the Act.

In May 2013 an amount of \$16 million¹² 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 effort and increase the long-term viability and operational flexibility for industry. In September 2015, the SARC¹³ recommended share linkages across 24 separate share class groups (encompassing 103 share classes) using existing access share allocations wherever possible.

In April 2014 a DPI consultation paper¹⁴ 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) or change minimum shareholdings.

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

⁹ Independent Review of Commercial Fisheries Policy, Management and Administration (2012)

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

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

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

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

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

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 and effort).

Use of recorded landings¹⁵ 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 31st May 2016. The \$16 million 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.

AgEconPlus Consulting (2015)¹⁶ set out that with one of the aims of sustainable management of the NSW commercial fisheries being a viable commercial industry, there is a prima facie case for structural reforms. However, proposals to link shareholdings to catch/effort are confounded by the major distortion within most share classes where a flat share allocation does not reflect the fact that only a small proportion of FBs land the majority of the catch. Many individual shareholders would require substantially more than their present number of shares to allow them to maintain their current level of catch. Unless these individuals could afford to buy that many shares, linking shares would effectively force them out of the fishery.

In their final report¹⁷ 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.

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

¹⁶ AgEconPlus Consulting, Economic Analysis of NSW Commercial Fisheries Reform Package (June 2015)

¹⁷ Final Share Linkage Recommendations, NSW Structural Adjustment Review Committee, Ian Cartwright, Sevaly Sen and Mary Lack (30 September 2015)

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 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

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 Share Class* Independent Allocation Panel can be found at Appendix 5.

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

6. Background to the Ocean Haul - Purse Seine Share Class

The *Ocean Haul - Purse Seine Share Class* 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 Share Class* 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 Share Class* 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 Share Class* access shares.

Full details of the IAP ToR for the *Ocean Haul - Purse Seine Share Class* can be found at Appendix 5.

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 4.

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 Share Class*.

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.

There are some common principles and guidelines that should be followed when providing advice to governments on allocation of fish resources, including:

- 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 issues 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 Final 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 Final 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. Documents such as:

- 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 5), the IAP has taken account of published principles and guidelines in support of fisheries inter-sectoral and allocation decisions:

- **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.

- **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.
- **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.
- **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.
- **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.
- **Best available information** - any allocation recommendation should take account of all relevant information.
- **Integrity of fisheries management arrangements** - allocation decisions should be consistent with legislative requirements and other fisheries management objectives.

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. 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 Share Class* 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.

The IAP acknowledges advice from NSW DPI that the Department's data remains subject to ongoing validation, including as a result of the administrative review process for fishing activity summaries that is currently underway, but that it is unlikely that any changes will be significant enough to affect the advice of the Panel.

Provisions of the Act establish obligations on fishers to make and submit accurate fish records.

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 Share Class*;
 - 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 6.
3. Written submissions were encouraged and a closing date initially set for 16th February 2018, which was subsequently extended on request of industry to 23rd 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. A Draft IAP Report, including recommendations was circulated to eligible shareholders and other stakeholders for comment by 7th May 2018. The closing date for submissions was subsequently extended, on the request of industry, to close of business 14th May 2018. Other submissions received in relation to generic issues for quota share allocation were also considered for the Draft Report.
7. Eligible shareholder and other stakeholder feedback on the Draft IAP Report was considered by the IAP together with any other information deemed appropriate.
8. A Final Report from the IAP was presented to the Minister by the closing deadline of 1st June 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 Share Class*. 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 3.

9.2 Written submissions

Correspondence to eligible shareholders in the *Ocean Haul - Purse Seine Share Class* 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 Share Class* 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 Share Class* 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 3.

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 Draft IAP Report

Written notification to all eligible shareholders dated 16th April 2018 was circulated together with the Draft IAP Report and encouraged written submissions to the IAP by 7th May 2018. The closing date for submissions was subsequently extended, at the request of industry, to close of business 14th May 2018.

The IAP received a total of three (3) written submissions (representing seven (7) fishing businesses) in relation to the *Ocean Haul - Purse Seine Share Class* Draft IAP Report and a summary of issues raised from all Round 2 consultations is set out, in no particular order, 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.

9.3 Final IAP Report

The IAP considered the Round 2 written submissions received following circulation of the Draft IAP Report together with further information as appropriate and submitted their Final IAP Report to the Minister for Primary Industries on 1st June 2018.

10. IAP Considerations of Key Issues Raised in Submissions to Draft IAP Report

This section outlines the key issues identified by the IAP from the myriad of issues contained within the written submissions received in relation to the Draft IAP Report for the *Ocean Haul - Purse Seine Share Class*.

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

10.1 Use of Shares as Allocation Criteria.

Despite the fact that the initial criteria for the allocation of purse seine access shares 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 Share Class* 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 criterion 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 catch 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 the 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 validated catch history). The concept of 'validated catch history' was abandoned in February 2007 and no longer transferred with fishing businesses (or access shares).

Fishers highlighted that SARC (2015) noted the acceptance by Government of the recommendations in the Stevens 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.

The IAP notes that the context was very different when Stevens *et al.* did their review in 2012 compared to now. At the time of the Stevens review, the Government's intention was not to issue additional classes of shares, and as such the options for linkage were always going to be limited.

However, the SARC outlined during its review process that it is clearly not a sensible strategy to immediately introduce an allocation of shares in a highly distorted share class in a way that will drive the majority of active fishers from the industry. The SARC and the

Department continued to analyse the impacts of the share linkage options and industry suggestions for variations to those. As a result of this analysis some of the options initially considered were discarded because it was unlikely that the long-term benefits of these options would outweigh the likely short-term investment in additional shares required by active operators.

In their final report in 2015¹⁸, the SARC reached the conclusion that for several species in some share classes (including the *Ocean Haul – Purse Seine Share Class*) 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'*.

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 across shares. 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.

The Government's acceptance of the recommendations in SARC (2015) supported that the fishing industry reform package ensure, as far as practicable, that fishing businesses were 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.

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 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 hearing¹⁹ did not establish that the issue of Quota

¹⁸ Final Share Linkage Recommendations, NSW Structural Adjustment Review Committee, Ian Cartwright, Sevaly Sen and Mary Lack (30 September 2015), p2.

¹⁹ Elliott v Minister administering Fisheries Management Act 1994 [2018] NSWSC 117

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.

During the SARC process, it was established that the two key objectives of the Reform process were to:

- in as far as it is possible, maintain current access to fisheries where fishers have derived most of their catch, and
- reduce the costs to active fishers of any adjustment to shareholdings, where it is necessary to obtain additional shares. This sought to minimise impacts on individual businesses.

On this basis SARC set out that to gain meaningful value for shares and meet the other objectives of the Reform, many fishers may not be able to maintain access to fisheries where they have little or no activity. In other words, it would be inconsistent with the Reform objectives if all fishers sought to maintain the current levels of *potential* access across *all* fisheries in which they may hold shares, since it is that level of potential access that has led to the current latent effort situation. As a result, fishers may have to make a choice about:

- retaining access to those current fisheries that they rely on for income; and

- surrendering, through share sales, access to those fisheries where they have little or no activity, against the chance that they may want to access them at some point.

The SARC recommended that new share classes be established in these particular share classes to deal with the identified distortion that would be created by allocation based entirely on shareholdings. 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.

The establishment of the IAP by the NSW Government confirmed the position that allocation based equally across shares held was not a viable option and other alternatives needed to be considered. The IAP did specifically consider allocation based on shares only, which was more or less an equal allocation approach, however for the reasons discussed it was not recommended. Equal allocation is not considered equitable as the impacts on active fishing businesses are to the extent that their ability to continue catching product at current or close to current levels would be significantly compromised.

The existing shares in the *Ocean Haul – Purse Seine Share Class* are access shares only. Accessing the fishery required a fishing business to have a shareholding above a specified minimum. They do not represent a previous proportional allocation. The IAP was specifically tasked with allocating new quota shares. In allocating new quota shares, the IAP has factored in a weighting to these access shares held, however, this is balanced with the need to ensure that wealth redistribution is minimised (consistent with IAP Guiding Principles 1 and 5) and the objective of the reform program that active fishers can maintain fishing activities at or close to current levels. The latter also potentially minimises disruption to supply chains.

The IAP does not support that 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;
- 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; and
- equal allocation based on shares would result in a windfall gain for low catch operators, at the expense of high catch 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 the 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.

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.

Even if a fishing business holder has seasonally stopped fishing and not fished in another fishery, any allocation that incorporates recorded landings will reflect fishing activity and allow the fishing business holder to continue fishing at more or less the same level they have previously chosen to fish.

Many diversified businesses, particularly in the Estuary General and Ocean Trap and Line fisheries, hold shares in a range of share classes subject to different linkage arrangements (eg. minimum shareholding, effort, quota). Thus regardless of any allocation of new quota shares in specific share classes under consideration by the IAP, the potential for diversification will remain.

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 decision to not transfer catch history with a transfer of shares was a policy decision of the NSW Government in 2007. This is outside the ToR of the IAP. As discussed previously the use of catch history for allocation is widely used in many jurisdictions. The IAP can understand many of the concerns regarding tracing recorded catch when shares have been traded. The NSW approach for tracing catch history differs from other jurisdictions. This difference however in the view of the IAP and in the absence of any other valid approach or data sources for the IAP to use, does not invalidate its use.

While catch history does not typically transfer with the transfer of shares, the IAP noted that the Government has made a specific commitment to assist shareholders in share classes that faced uncertainty during the adjustment buy-out process while still awaiting to go through the Independent Allocation Panel (IAP) process. This uncertainty included a need for clarity around business records and business amalgamations and exactly what information may be available for use by an IAP.

There had been strong interest in these share classes for the fishing business buyouts option with a significant number of applications submitted. However, some shareholders were concerned that if they consolidated their fishing businesses under the buyout phase, the fishing activity/catches associated with the cancelled fishing business would be lost or not able to be taken into account if the future Independent Allocation Panel recommended that fishers' activity forms part of the allocation criteria for issuing new species shares.

In response the Government highlighted that it was unable to pre-empt the Independent Allocation Panel's advice on the criteria for allocating the new species shares. However, the government committed to ensure that the Independent Allocation Panel can consider the fishing activity of businesses that have been cancelled during the fishing business buyout phase by retaining recorded landings of shares transferred during this phase.

The IAP recommendations can be applied if this commitment stands.

The IAP further notes, that where there has been a purchase of a complete Fishing Business and the Fishing Business number is retained, there is a record of catch against that business and the IAP has factored these recorded landings into its recommendations. Fishers who informed the IAP of such purchases were generally new entrants to that particular share class and reported paying a premium for essentially taking over a going concern. This situation was usually distinct from those who had purchased additional shares within an existing share class to meet a required minimum shareholding or acting on their view that future quota allocation decisions would be linked to shareholdings. The latter essentially being a share purchase where participants were aware that historic catch would be lost on transfer.

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 shareholdings 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. This group set out that currently banks will not recognise NSW fishing licences, but they will lend against Commonwealth quota. They highlighted 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.

These fishers submitted that this access certainty would assist meet specific objectives of the NSW Fisheries Act ‘... to conserve, develop and share the fishery resources of the State for the benefit of present and future generations’ and ‘...to provide social and economic benefits for the wider community of New South Wales’

This group of fishers outlined that Australian sardines falls within the intent of the SARC recommendation for allocation of new quota shares (accepted by the Minister) given there has been a substantive increase in the stock assessment and harvest levels for Australian sardines. The fishers highlighted that Australian sardines have historically been harvested by a small number of fishing business operators. The fishers argued that 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 Fishery Management Strategy and therefore catch quota shares for these species must be allocated directly proportionate to the existing access shares.

To be clear the fishers did not suggest that a specific allocation be made to shareholders with vertically integrated processing infrastructure. Their concern was that any failure by the IAP to recognise in the catch history criteria period the increased harvest enabled by the significant value added opportunities in considering has high potential to minimise the economic return to the State and provide a windfall gain to vessel operators who did not invest in the processing sector that enabling the increase in catches.

The IAP supports the view that 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 2016/17. 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 2016/17, data was provided for two distinct time periods, being 1997/98 to 2008/09 and 2009/10 to 2016/17. The IAP was advised that changes in the data structure used by the DPI 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 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.

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.

On balance, the IAP considers that the data provided by the Department for the period 2009/10 to 2016/17 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 shares 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 Panel considered the recorded landings and could not identify any systematic change in the pattern of recorded landings in 2016/17 relative to other years that would be indicative of misreporting to potentially enhance any allocation outcome. The IAP further notes that provisions of the Act establish obligations on fishers to make and submit accurate fish records.

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 in fishing gear, vessels or premises.

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 Share Class* 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 informed 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 Fisheries 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 Share Class*.

The IAP has listed issues raised by fishers for the information of the DPI Fisheries:

- the take of species listed under the ToR for the *Ocean Haul – Purse Seine Share Class* 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 (*it is noted that the ToR 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. 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.

A number of submissions raised the issue of needing to consider exceptional circumstances where fishing activity for a period of time was reduced below a long-term average due to illness or another factor beyond the fishing business holders control.

In the implementation of any allocation arrangements activities that a fishing business operator chooses to take such as periods working in another fishery or working in employment outside the fishing industry is not considered an exceptional circumstance. Neither are factors that may impact the whole fleet, such as weather or currents.

An approach that could be taken in allocation processes to factor in collectively what could be exceptional circumstances is to remove a period of time from the data period under consideration (e.g. the worst year or the worst two years). In doing so, it should be noted that the reason for a nil or low catch in a given year cannot be identified from the data. For example, it may be due to an injury or it may be due to fishing in another fishery. Nonetheless it can address the issue of lost fishing time due to illness or injury, albeit imperfectly. Fishing business holders may overestimate the benefit to them of removing part of the data period which represents their worst catch because the analysis is relative. That is, all fishing business operators have a data period removed, not just one. Nonetheless, changes at the margin of allocation are expected from removing a data period that represents an individual businesses worst year or years for catch.

In response to the written submissions on the draft IAP report, the IAP has undertaken a further analysis (See Appendix 2) to consider:

- allocation based over the whole data period (i.e. 2009-10 to 2016-17);
- allocation based over the period 2009-10 to 2016-17 with the lowest single catch year removed from the analysis for each fishing business in the share class; and
- allocation based over the period 2009-10 to 2016-17 with the two years with the lowest removed from the analysis for each fishing business in the share class.

Using the data available, the IAP has presented outcomes from fishing businesses that represent a range of different catch levels (and where relevant, different shareholdings). An analysis that removes a year representing the worst catch will generally see an allocation:

- reduced for fishing businesses that have consistent high catch across the period examined;
- increased for fishing businesses that have a high overall catch but one that is variable between years; and
- little changed for a fishing business with low catch.

The magnitude of the difference for the first two points directly above further increase the number of “worst catch years” that are removed from the analysis.

For the *Ocean Haul – Purse Seine Share Class*, the magnitude of the changes from the three analyses are compared in Appendix 2.

Overall, the IAP considers that changes in allocations from removing the single worst year from analysis are at the margin for individual businesses but that the approach does provide a systematic way of addressing concerns raised by those who experienced a year of low or below average catch. For that reason, the IAP has recommended the use of recorded landings for the period 2009/10 to 2016/17, but removing the lowest catch year for all fishing businesses. The IAP is not in favour of removing more than one year of catch due to the impact it will start to have on those with consistent recorded landings over the criteria period.

The IAP notes that while this approach may go some way toward addressing exceptional circumstances, there may still be individuals who feel their particular circumstances have not been adequately addressed.

Where these circumstances are outside the purview of the IAP ToR, and in accordance with

best practice in other allocation processes, the IAP has not provided comment. However, the IAP would wish to alert the Minister and Department that a number of individuals are likely to provide personal cases of exceptional or special circumstances when the final decision on allocations are made by Government.

12. Independent Allocation Panel Findings and Recommendations

12.1 Australian Sardines

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

There are fifteen (15) endorsements on fishing businesses holding a total of 1,980 shares in the *Ocean Haul – Purse Seine Share Class* 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 Share Class* 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 Share Class*.

Of the thirteen (13) fishing businesses that caught Australian sardines in the *Ocean Haul – Purse Seine Share Class* 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 Share Class*.

Given the uneven distribution of recorded landings amongst Fishing Businesses, 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 Share Class*.

The IAP investigated several different quota allocation scenarios for Australian sardines involving both shareholdings and recorded landings. The IAP also considered the effects of removing one or more years of the 'worst catch' recorded by fishing businesses.

IAP recommendations for allocation of quota shares for Australian sardines:

The IAP recommends that the allocation of quota shares for Australian sardines to Fishing Businesses with shareholdings in the *Ocean Haul – Purse Seine (OHPS) Share Class* be determined based on 20% on the proportion of access shares held + 80% on the proportion of recorded landings for an individual fishing business over the period 2009/10 – 2016/17 (inclusive) but excluding the 'worst catch year'.

The IAP recommends the use of the sum of recorded landings over the period 2009/10 – 2016/17 and excluding the worst year for all current Fishing Businesses with holdings in the share class.

Expressed as a formula, the IAP recommends that an eligible shareholder's quota share allocation for Australian sardines will be:

$$(20\% \times \text{Total number of OHPS Shares held by an individual Fishing Business in the share class})$$

Total number of shares in the OHPS Share Class

+

$$(80\% \times \text{Individual Fishing Business's Total Recorded Landings of Australian sardines in the OHPS Share Class excluding the 'worst catch year' for the period 2009/10 to 2016/17 (inclusive)})$$

Sum of the Total Recorded Landings of Australian sardines *excluding the 'worst catch year'* for the period 2009/10 to 2016/17 (inclusive) of all current Fishing Businesses' with OHPS shares

The quota volume (i.e. kg) received in any given year, would therefore be the quota share multiplied by the total annual allowable commercial catch (TACC) for the species.

The IAP notes that setting of the TACC is a separate process and is outside the scope of the IAP ToR.

12.2 Blue Mackerel

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

There are fifteen (15) fishing businesses holding a total of 1,980 shares in the *Ocean Haul – Purse Seine Share Class* 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 Share Class* 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 Share Class*.

Of the fourteen (14) fishing businesses that caught blue mackerel in the *Ocean Haul – Purse Seine Share Class* 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 Share Class*.

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 Share Class*.

The IAP investigated several different quota allocation scenarios involving both share holdings and recorded landings. The IAP also considered the effects of removing one or more years of the 'worst catch' recorded by fishing businesses.

IAP recommendations for allocation of quota shares for Blue mackerel:

The IAP recommends that the allocation of quota shares for Blue mackerel to Fishing Businesses with shareholdings in the *Ocean Haul – Purse Seine (OHPS) Share Class* be determined based on 20% on the proportion of access shares held + 80% on the proportion of recorded landings for an individual fishing business over the period 2009/10 – 2016/17 (inclusive) but excluding the ‘worst year’.

The IAP recommends the use of the sum of recorded landings over the period 2009/10 – 2016/17 and excluding the worst year for all current Fishing Businesses with holdings in the share class.

Expressed as a formula, the IAP recommends that an eligible shareholder’s quota share allocation for Blue mackerel will be:

$$(20\% \times \text{Total number of OHPS Shares held by an individual Fishing Business in the share class})$$

$$\text{Total number of shares in the OHPS Share Class}$$
$$+$$
$$(80\% \times \text{Individual Fishing Business's Total Recorded Landings of Blue mackerel in the OHPS Share Class excluding the 'worst catch year' for the period 2009/10 to 2016/17 (inclusive)})$$

$$\text{Sum of the Total Recorded Landings of Blue Mackerel excluding the 'worst catch year' for the period 2009/10 to 2016/17 (inclusive) of all current Fishing Businesses' with OHPS shares}$$

The quota volume (i.e. kg) received in any given year, would therefore be the quota share multiplied by the total annual allowable commercial catch (TACC) for the species.

The IAP notes that setting of the TACC is a separate process and is outside the scope of the IAP ToR.

12.3 Yellowtail Scad

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

There are fifteen (15) fishing businesses spread across fishing businesses holding a total of 1,980 shares in the *Ocean Haul – Purse Seine Share Class* 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 Share Class* 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 Share Class*.

Of the fifteen (15) fishing businesses that caught yellowtail scad in the *Ocean Haul – Purse Seine Share Class* 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 Share Class*.

The IAP investigated several different quota allocation scenarios for involving both share holdings and recorded landings. The IAP also considered the effects of removing one or more years of the ‘worst catch’ recorded by fishing businesses.

IAP recommendations for allocation of quota shares for Yellowtail scad:

The IAP recommends that the allocation of quota shares for Yellowtail scad to Fishing Businesses with shareholdings in the *Ocean Haul – Purse Seine (OHPS) Share Class* be determined based on 20% on the proportion of access shares held + 80% on the proportion of recorded landings for an individual fishing business over the period 2009/10 – 2016/17 (inclusive) but excluding the ‘worst year’.

The IAP recommends the use of the sum of recorded landings over the period 2009/10 – 2016/17 and excluding the worst year for all current Fishing Businesses with holdings in the share class.

Expressed as a formula, the IAP recommends that an eligible shareholder’s quota share allocation for Yellowtail scad will be:

$$(20\% \times \text{Total number of OHPS Shares held by an individual Fishing Business in the share class})$$

$$\text{Total number of shares in the OHPS Share Class}$$

$$+$$

$$(80\% \times \text{Individual Fishing Business's Total Recorded Landings of Yellowtail scad in the OHPS Share Class excluding the 'worst catch year' for the period 2009/10 to 2016/17 (inclusive)})$$

$$\text{Sum of the Total Recorded Landings of Yellowtail scad excluding the 'worst catch year' for the period 2009/10 to 2016/17 (inclusive) of all current Fishing Businesses' with OHPS shares}$$

The quota volume (i.e. kg) received in any given year, would therefore be the quota share multiplied by the total annual allowable commercial catch (TACC) for the species.

The IAP notes that setting of the TACC is a separate process and is outside the scope of the IAP ToR.

13. Example of Application of IAP Recommendations

In response to comments received on its Draft Report, the IAP has provided an example of the application of its recommendations to an eligible shareholder. In doing so, the IAP stresses that these values are hypothetical and for illustrative purposes only.

A simple worked example follows for a hypothetical share class where there is 1,000 shares in total and where the total catch over the period of time considered is 100 tonnes.

- Fishing Business ‘A’ holds 100 of the total of 1,000 shares in the share class, which equates to 10% of the total shares.

- Over the criteria years considered for allocation the fishing business has landed 5 tonnes, which equates to 5% of the total catch.
- The proportion of shares held contributes to 20% of the overall allocation (i.e. 10% times 20%), which in percentage terms is 2%.
- The percentage of the catch contributes to 80% of the total allocation (i.e. 5% times 80%), which contributes in percentage terms 4%.
- The species quota share for Fishing Business 'A' would be 6% (i.e. 2% + 4%).

Thus, Fishing Business 'A' would receive 6% of the TACC in any given year.

Appendix 1 – Summary of Issues raised in Submissions to Draft IAP Report – Ocean Haul – Purse Seine Share Class

Introduction

The Independent Allocation Panel (IAP) released its draft report on the allocation of quota shares to shareholders in the *Ocean Haul – Purse Seine* share class on the 16th April 2018. The IAP invited submissions with the final submission date being 7th May 2018 but extended this to 14th May 2018 at the request of industry to ensure adequate opportunities for submissions from shareholders and any other interested parties.

Overall, three (3) written submissions were received representing seven (7) fishing businesses. The Professional Fishers Association (PFA) also provided a submission with generic information regarding allocation and specifics on the *Ocean Haul – Purse Seine Fishery*.

The Department of Primary Industry provided detailed suggestions for improving the structure of the report.

This response to submissions (RTS) documents the main issues raised in submissions and how the IAP has considered them, and if necessary, addressed them in their final report.

Where possible similar issues have been grouped under ‘themes’ for consideration by the IAP, but the specific individual issues raised have been still been listed.

Many of the issues raised were outside of the ToRs for the IAP and reflected issues relating to fisheries management more broadly – both past and present.

Theme: General Comments

Issue: *The PFA is in a difficult situation to provide representation of its members on an issue that has polarised our industry. The response of the PFA members to the quota allocation discussions has been divided. The arguments are focused on what would be considered fair and legally correct versus whether fishing businesses are able to remain viable and active without requiring to further invest in purchasing additional shares above their allocated quota.*

Issue: *The PFA believes that both sides of the argument are valid and that Government should take a similar path to that adopted in the first stage of the Business Adjustment Process by providing financial assistance for fishers to access more shares to return to previous activity levels.*

Issue: *Many PFA members have argued that the allocation to the shares should have a far heavier weighting than 20%. However, there is also a significant number of PFA active fishers who are content with the proposed allocation model proposed and believe that the 80% will ensure they will continue to be viable and fish their businesses.*

IAP Response : The IAP understands that any allocation process is difficult for a representative body such as the PFA and that it is difficult if not impossible to come to a consensus position on the outcome. The difficulty of coming to any consensus is one of the key reasons why independent allocation panels are convened for the purpose of providing recommendations on initial allocations.

Theme: Using existing shares as allocation criteria

Issue: *The IAP needs to fully review the legal basis for refining Class 1 shares into species shares rather than responding to the references by SARC and DPI ToR as the IAP recommendations are a breach of administrative law. Recommendations by IAP requiring catch history as a qualifying criteria for species quota share allocations will redistribute the wealth as defined in the original statute creating Class 1 shares and constitutes a breach of Commonwealth administrative law. There is no valid power available to government to redistribute wealth among stakeholders.*

Previous legislation prescribed the process for share issue (c50) and how it is distributed among shareholders (c82). Although amended legislation replaces the intent of c82 with c40(Q) providing discretion for Minister to determine share allocation, the principles of wealth redistribution remains under Commonwealth administrative law .

Class 1 shares are the most secure form of fishery entitlement to harvest a resource. The intent of Class 1 shares (issued under c50 of old Act) is to allocate a proportion of a fishery to fishers to provide security to stakeholders in holding or trading shares for future access.

These Class 1 shares established a proportionate share (relative to the total shares issued) of the wealth of a fishery commonly prescribed as the allowable harvest level. The shares can be traded amongst stakeholders to adjust their business plan when circumstances change. This proportionate share remains regardless of the variations of the annual harvest level.

Class 1 shares were created where a Fishery Management Strategy existed setting out an allowable harvest level (ITCAL), performance indicators and management actions to maintain sustainability. The harvest level is a 'total allowable catch' as was prescribed in c82.

Shares issued under c71A could not usurp the certainty of Class 1 shares issued under c50. Where the issue of species shares as a refinement of the Class 1 shares but remaining within the harvest levels and management arrangements in the FMS, the Class 1 shares remain the basis for allocation of the new shares.

Issue: *C71A can be used to create additional shares where there has been a significant change in exploitation of a species (new species discovered, new fishing techniques, changed market circumstances) beyond that described in the FMS and an increased harvest level is approved as sustainable.*

Existing Class 1 Fishery shares must be the full qualifying shares for species shares to the quantum of the species allowable catch in the Fishery Management Strategy, except where there had been substantive change in the agreed harvest level through a reviewed stock assessment since the establishment of the FMS. In this case additional shares should be issued for that species on the basis of:

- *20% of Fishery TACC allocated on the basis of shareholding*
- *80% of Fishery TACC allocated on the basis of catch history*

This represents the intent of SARC's statements about using the existing Class 1 shares to apportion species shares except where only a small number of shareholders had harvested the majority of the catch of a species.

Issue: *Those fishers issued minimum shares by just making the criteria for initial share allocation are now much better off than someone who was issued more shares or has invested in shares over time since.*

Issue: *Purse Seine shares were originally issued based on catch history*

Issue: *Government has issued shares equally in mesh netting, mud crabs, and Blue Swimmer Crabs. DPI won the court case on basis that allocating equally by shares was fair. Why is one fishery discriminated from another? There will be law suits.*

IAP response: Despite the fact that the initial 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.

The access shares were used by the government to manage the fishery through a combination of options including minimum shareholdings and input controls.

NSW DPI has consistently publicly advised of their intention to link shares to catch or effort. Many of these are referred to in section 5 of the IAP's Draft Report.

Fishers making business decisions have had access to public documentation as far back as 2014 that highlighted the option of using recorded landings (catch history) as an allocation criteria in those fisheries where there would be a large distortion in any quota share distribution away from active fishers if the allocation was based equally across shares held.

Catch and effort records have been widely used solely or as a major component of initial allocation in a range of Australian fisheries including various Commonwealth fisheries, the Queensland Spanner Crab Fishery, the Queensland East Coast Trawl Fishery, West Australian Rock Lobster Fishery, and many others. It is a well-known approach to allocation as the draft report documented.

The DPI released the document titled *Public Consultation Paper: General information relating to the reform program and reform options for NSW commercial fisheries* in April 2014 that sets out on page 17 that the use of catch history as an allocation criteria ... *would be limited to sectors demonstrating extreme disparity between shareholdings and catches and where there were no other adequate options for dealing with that disparity.*

In the SARC report (2015) they 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 equal allocation using 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 and that an Independent Allocation Panel (IAP) be established to provide advice on allocation. The recommendations from SARC were publicly available.

The NSW Government has made clear that the primary objective of the Government's Business Adjustment Program (BAP) and the IAP process is to ensure that as far as practicable fishing business are able to keep fishing at current levels. Public commitments to this effect were also made during the Parliamentary Inquiry into Commercial Fishing in NSW.

The establishment of the IAP by the NSW Government confirmed the position that allocation based equally across shares held was not a viable option and other alternatives needed to be considered. The IAP did specifically consider allocation based on shares only, which was more or less an equal allocation approach, however for the reasons discussed in the draft report it was not recommended. Equal allocation is not considered equitable as the impacts on active fishing businesses are to the extent that their ability to continue catching product at current or close to current levels would be significantly compromised.

The decision to recommend an IAP based on the distortion of recorded landings relative to shareholdings was made by the SARC. Analysis by the IAP confirms this distortion. It was not part of the IAP ToR to compare the level of distortion in this share class with other share classes that have already been allocated.

Notwithstanding the conclusion from SARC, the IAP did analyse the available data early in its deliberations and this confirms that an allocation based solely on the distribution of shares would lead to active businesses having insufficient quota to maintain catch at or near current levels, while inactive businesses may receive what could be perceived to be a windfall. As an example, a fishing business with 40 OHPS shares but which had never caught a pilchard over the eight year period considered by the IAP would receive approximately 2% of the pilchard quota. An active fishing business (also with 40 shares) that had caught approximately 1300 tonnes of pilchards over the same period which equates to approximately 30% of the total catch would also receive an allocation of approximately 2%. Thus, a fishing business that had in effect been taking 30% of the catch would see their share reduced to approximately 2%.

Theme: Government policy removed catch history from shares on transfer

Issue. *A fishing business was purchased because it included 60 OHPS Share. During the NSW DPI buyout the 60 OHPS shares were transferred to another company fishing business (the purchased fishing business was cancelled) under the belief that the catch history would also be transferred with the shares. NSW DPI at no point indicated to us that catch history would be lost during the transfer of shares, nor did they advise us that catch history would be used for quota allocation. The ownership of the 60 OHPS shares did not change so we would like the catch history to be transferred to existing fishing business where the shares are now held.*

IAP Response: The decision to not transfer catch history with transfer of shares was a policy decision of the NSW Government in 2007. This is outside the ToR of the IAP.

As discussed in the Draft Report the use of catch history for allocation is widely used. The NSW approach for tracing catch history differs from other jurisdictions. The IAP can understand many of the concerns and practical difficulties regarding tracing recorded catch when shares have been traded.

This difference however in the view of the IAP and in the absence of any other valid approach or data sources for the IAP to use, does not invalidate its use.

Theme: Using catch history as allocation criteria

Issue: *The Small pelagic species harvested by the NSW purse seine fishery are highly variable seasonally, with a wide range of distribution both within and beyond the state. As each species has a slightly different preferred habitat temperature range there is a sequential species mix at the fringes of the preferred temperature ranges as the major aggregations migrate. Using a narrow timeline in criteria period for any allocation of species shares will distort the mix of species necessary for practical operation under varying*

environmental conditions in a longer timeframe. Using a narrow timeline for catch criteria may well suit those operators who choose to target only 1 or 2 species in the fishery but places at risk the viability of other stakeholders with wider ranges of targeting and inherent bycatch issues.

Issue: *The IAP made specific comment on one vessel in the fishery inaccurately & inappropriately. "Appendix 1 – Issue: Use of Catch History as Allocation Criteria*

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

IAP Response:

Choosing which years to use is a balance between having enough years to gain a meaningful understanding of the fishery and ensuring that years reflect contemporary activities. Guiding Principle 6 for the IAP directs the IAP to consider the *best available* information in making its recommendations. In this instance the best available information is from the period 2009/10 to 2016/17. The IAP discussed with the Department the accuracy and completeness of recorded landings prior to 2009/10 and were advised that using records from prior to July 2009 to attribute catch to a share class 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 compromise and complicate any analyses and subsequent interpretation.

If available in a complete, consistent and fit for purpose form the IAP would of considered the use of longer term data however even if it were available it's final use in allocation would still need consideration of how well it reflected contemporary fishing activities.

In terms of the reference to the Tuna Policy, Appendix 1 in the IAP Draft Report outlined comments received from industry at face-to-face consultations or written submissions. The specific comment referred above was made by an industry participant and not by the IAP.

Theme: Explanation of IAP Recommendations

Issue: *The IAP in its discussion at Item 10.3 (Access Certainty for Human Consumption processors.) misconstrues the situation presented by the vertically integrated catching / processing shareholders during consultation.*

The submission presented was that the existing Class 1 Fishery shares must be the full qualifying shares for species shares to the quantum of the species allowable catch in the Fishery Management Strategy. However where there had been substantive change in the harvest & resource assessment since the FMS (eg sardines) additional new shares should be issued for that species on the basis of :-

- *20% of Fishery TACC allocated on the basis of shareholding(this would be a quantum significantly in excess of historical harvest in Ocean waters in the fishery)*
- *80% of Fishery TACC allocated on the basis of catch history*

As only four (4) operators harvest the vast majority of sardines and this represents the intent of SARC's statements about using the existing Class 1 shares to apportion species shares except where only a small number of shareholders had harvested most of the catch of a species.

At no time did the stakeholders with vertically integrated processing infrastructure suggest that a specific allocation be made to processing plants. Merely, that to achieve the objectives of the Act the economic benefits of the value added activities needed to be recognised in the allocation processes of the catching sector.

IAP Response: The IAP has noted the issues raised. The IAP recognises the importance of value adding in the supply chain however reiterates that onshore investment should not be factored into allocation.

Appendix 2 – Analyses of Dealing with Exceptional Circumstances through Allocation Processes

Australian sardine

Shareholding	Record landings for whole period (kg)	No of years with recorded landings between 09-10 to 16-17 (8 max)	20% shares and 80% recorded landings for whole period	20% shares and 80% catch history with lowest year removed	20% shares and 80% catch history with two lowest years removed
40 (2.0%)	3,930 (0.1%)	5	0.5%	0.5%	0.5%
40 (2.0%)	765 (0.0%)	3	0.4%	0.4%	0.4%
40 (2.0%)	1,331,965 (30.1%)	8	24.5%	23.5%	22.5%
180 (9.1%)	1,121,628 (25.4%)	2	22.1%	22.5%	24.0%

Blue mackerel

Shareholding	Record landings for whole period (kg)	No of years with recorded landings between 09-10 to 16-17 (8 max)	20% shares and 80% recorded landings for whole period	20% shares and 80% catch history with lowest year removed	20% shares and 80% catch history with two lowest years removed
40 (2.0%)	4,763 (0.2%)	4	0.6%	0.6%	0.6%
40 (2.0%)	395,783 (17.6%)	8	14.5%	14.1%	13.8%
40 (2.0%)	8,390 (0.4%)	7	0.7%	0.7%	0.7%
180 (9.1%)	150,674 (6.7%)	6	7.2%	7.3%	7.5%

Yellowtail scad

Shareholding	Record landings for whole period (kg)	No of years with recorded landings between 09-10 to 16-17 (8 max)	20% shares and 80% recorded landings for whole period	20% shares and 80% catch history with lowest year removed	20% shares and 80% catch history with two lowest years removed
40 (2.0%)	7,906 (0.3%)	5	0.7%	0.7%	0.7%
40 (2.0%)	491,630 (20.4%)	8	16.8%	16.7%	16.6%
40 (2.0%)	19,711 (0.8%)	8	1.1%	1.1%	1.1%
180 (9.1%)	60,910 (2.5%)	6	3.8%	4.0%	4.1%

Appendix 3 – Summary of Issues raised in Consultation Meetings and Round 1 Submissions – Ocean Haul – Purse Seine Share Class

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 has been dealt with by the IAP.

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 have been no 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 Share Class* was impacted by the creation of Jervis Bay Marine Park and an administrative decision by NSWF 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 Share Class* 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.

Fishery Alternative 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 4 – 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 5 – Terms of Reference for Independent Allocation Panel for *Ocean Haul - Purse Seine Share Class*



Department of
Primary Industries

TERMS OF REFERENCE

OUT17/78647

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 6 – Correspondence and Advice to Eligible Ocean Haul - Purse Seine Share Class Shareholders

Appendix 6.1 - First letter from IAP to eligible Ocean Haul - Purse Seine Share Class 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.

22nd 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.grantthornton.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 16th 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: 14th – 15th December, 2017
- Wollongong: 18th – 20th 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 6.2 - Second Letter from IAP to eligible Ocean Haul - Purse Seine Share Class 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.

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:

Location	Date
Sydney	14 th – 15 th December, 2017
Wollongong	18 th – 20 th December, 2017
Newcastle	9 th – 12 January, 2018
Coffs Harbour	17 th – 19 th January, 2018
Port Macquarie	23 rd – 25 th January, 2018
Eden	30 th – 31 st January, 2018
Ballina	7 th – 9 th February, 2018
Clarence	16 th January 2018, 6 th 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 6.3 - Third Letter from IAP to eligible Ocean Haul - Purse Seine Share Class 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

21st December, 2017

Dear Fishing Business Owners,

A copy of this communication can be found at 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 14th 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 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 th – 12 January, 2018
Coffs Harbour	17 th – 19 th January, 2018
Port Macquarie	23 rd – 25 th January, 2018
Eden	30 th – 31 st January, 2018
Ballina	7 th – 9 th February, 2018
Clarence	16 th January 2018, 6 th 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 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 6.4 - Fourth Letter from IAP to eligible Ocean Haul - Purse Seine Share Class 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.

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.

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 6.5 - Fifth Letter from IAP to eligible Ocean Haul - Purse Seine Share Class shareholders on 12 February 2018

INDEPENDENT ALLOCATION PANEL

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

12th February, 2018

Dear Fishing Business Owners,

A copy of this communication can be found at 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 23rd 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 6.6 - Sixth Letter from IAP to eligible Ocean Haul - Purse Seine Share Class shareholders on 28 February 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 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.grantthornton.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.

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

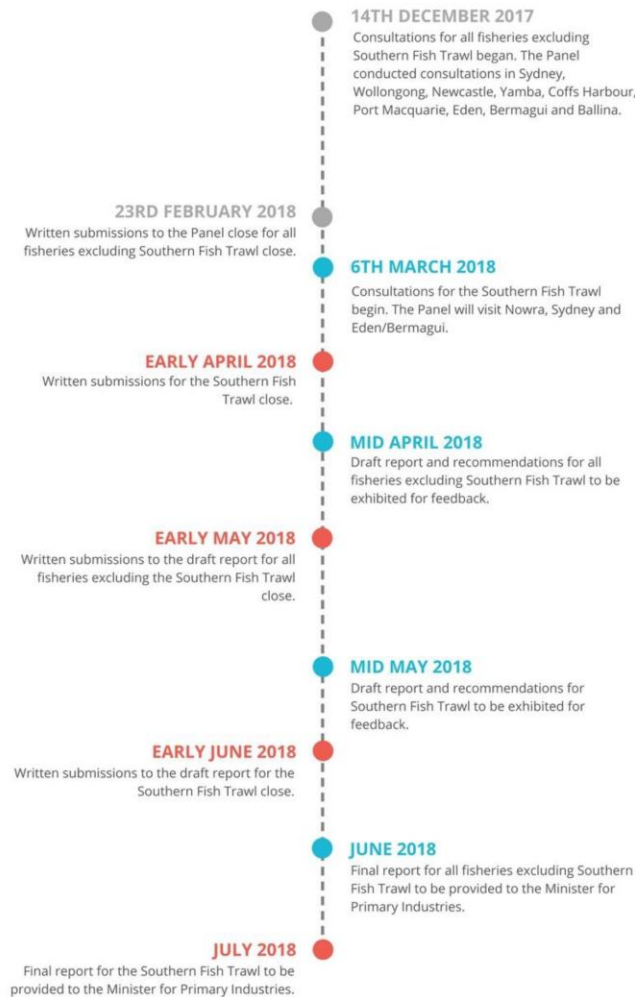


Brett McCallum

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 6.7 - Seventh Letter from IAP to eligible Ocean Haul - Purse Seine Share Class 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 8th 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.

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 6.8 - Eighth Letter from IAP to eligible Ocean Haul - Purse Seine Share Class shareholders on 16 April 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

Monday 16th April 2018

Re: Draft Reports for Ocean Trawl – Fish Northern Zone and Inshore and Offshore Prawn, Ocean Hauling – Purse Seine Net, Ocean Trap and Line – Line Eastern Zone and Estuary General – Hand Gathering

Dear Fishing Business Owners,

A copy of this communication can be found at www.grantthornton.com.au/IAP.

Please be advised that draft reports for Ocean Trawl – Fish Northern Zone and Inshore and Offshore Prawn, Ocean Hauling – Purse Seine Net, Ocean Trap and Line – Line Eastern Zone and Estuary General – Hand Gathering are now available.

Physical copies of the draft reports have been sent out via post to all Fishing Business License Owners. Electronic copies of the reports can be found at:
www.grantthornton.com.au/IAP.

The Independent Allocation Panel is now inviting comment and feedback on the draft reports. Please send all written submissions to iap@au.gt.com or Independent Allocation Panel, c/o The IAP, Grant Thornton Level 17, 383 Kent Street, Sydney 2000.

Submissions for the draft report for Ocean Trawl – Fish Northern Zone and Inshore and Offshore Prawn, Ocean Hauling – Purse Seine Net, Ocean Trap and Line – Line Eastern Zone and Estuary General – Hand Gathering will close at **5pm** on the **7th of May**.

This deadline has been set to ensure we are able to provide timely advice to the Minister of Primary Industries and allow fishermen to have more clarity on the future direction of the fisheries as soon as possible. As such, submissions provided after the 7th of May will not be considered when preparing the final report. Please ensure submissions are provided prior to 5pm on the 7th of May.

The Panel would like to thank all the Fishing Business Owners who took the time to attend consultations and provide submissions. Your input was invaluable to the drafting of the report.

A draft report will be circulated for Southern Fish Trawl on the 30th of April.

We have attached a copy of the timeline for the IAP process below.

For copies of the Terms of Reference for each fishery please visit
<https://www.dpi.nsw.gov.au/fishing/commercial/reform/independent-allocation-panel>.

Yours sincerely,



Dr Daryl McPhee



Susan Madden



Brett McCallum

Independent Allocation Panel TIMELINE

Please find below the 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 6.9 - Ninth Letter from IAP to eligible Ocean Haul - Purse Seine Share Class shareholders on 4 May 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

Friday 4th May 2018

Re: Worked example on the allocation of new quota shares based on the IAPs draft recommendations and extension on submissions for draft reports.

Dear Fishing Business Owners,

A copy of this communication can be found at www.grantthornton.com.au/IAP.

Worked example

Please be advised that the Independent Allocation Panel (IAP) have released a worked example on the allocation of new quota shares based on the IAPs draft recommendations. A copy of the worked example has been attached below and can be found at www.grantthornton.com.au/IAP. The IAP notes that the quota share figures used in this example are for illustrative purposes only.

Draft report submissions

Submissions for Ocean Trawl – Fish Northern Zone and Inshore and Offshore Prawn, Ocean Hauling – Purse Seine Net, Ocean Trap and Line – Line Eastern Zone and Estuary General – Hand Gathering draft reports **have been extended**. Submissions will now close at **5pm** on the **14th of May**.

Submissions for the Ocean Trawl - Southern Fish Trawl draft report will still be closed at **5pm** on the **21st of May**.

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

For copies of the Terms of Reference for each fishery please visit <https://www.dpi.nsw.gov.au/fishing/commercial/reform/independent-allocation-panel>.

Yours sincerely,



Dr Daryl McPhee



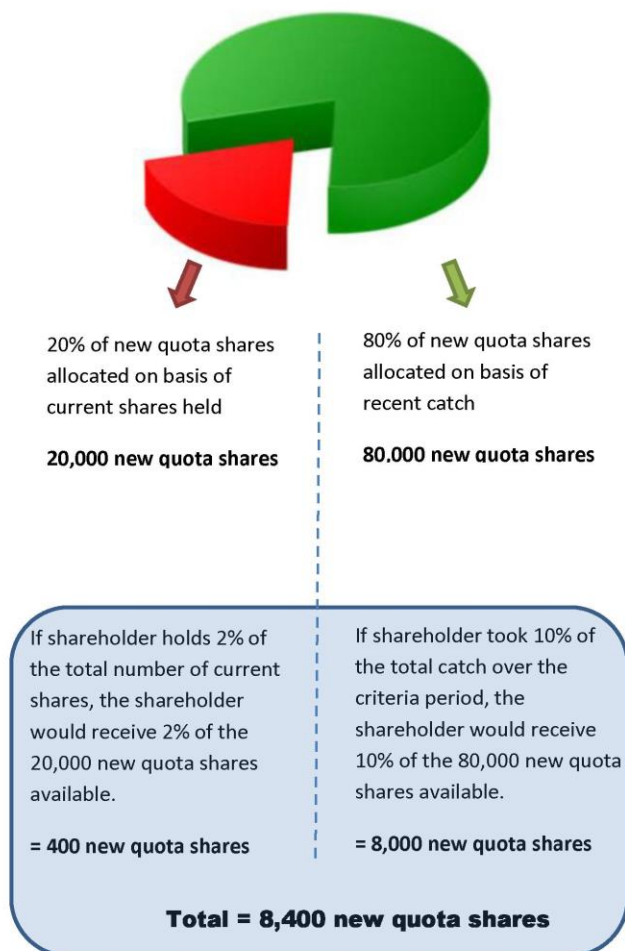
Susan Madden



Brett McCallum

Allocation of new quota shares based on the IAPs draft recommendations:

100,000 new quota shares available
(Nb: It is not the role of the IAP to determine the number of new quota shares)



Note: Fishers holding multiple share classes relevant to a new class of quota shares would receive an allocation based on all of those share classes.

The IAP notes that the quota share figures used in this example are for illustrative purposes only.

Appendix 7 – 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.