

**REPORT OF THE  
NSW OCEAN TRAWL - INSHORE & OFFSHORE PRAWN  
TRAWL SHARE CLASS  
AND  
NORTHERN FISH TRAWL SHARE CLASS  
INDEPENDENT ALLOCATION PANEL  
IAP Report (Final) – 1<sup>st</sup> 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 documents<sup>1</sup> developed by the NSW Government and various scientific reports set out that fishery management arrangements applied in NSW have ensured that the vast majority of fish stocks are sustainably harvested and that fish stocks that have been subject to commercial (and other sector) harvesting for 50+ years are generally in good shape.

These same documents set out that the economic viability<sup>2</sup> of the commercial fishing industry is not in the same positive condition 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, and diverse views within a stakeholder group.

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

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

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

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

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

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

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

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 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 share class set out above. The respective ToR were approved by the Minister for Primary Industries following consultation with industry stakeholders.

The ToR for the *Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl Share Class* set out that the species for which advice on allocation of quota shares would apply were:

- Inshore and Offshore Prawn Trawl:
  - tiger flathead;
  - blue spotted flathead; and
  - eastern school and stout whiting (combined).
- Northern Fish Trawl:
  - tiger flathead;
  - blue spotted flathead;
  - silver trevally;
  - gemfish; and
  - eastern school and stout whiting (combined).

The ToR for the *Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl Share Class* also required the IAP to provide specific advice on the proposal from Government to introduce inshore/offshore prawn effort quota shares.

The specific advice required was whether:

- Ocean trawl (inshore prawn) and Ocean trawl (offshore prawn) 'shares' held and the 'hull units' allocated to boat licences registered to eligible prawn shareholders should be weighted for the purpose of allocating effort shares and if so how; and
- The 'hull units' allocated to boat licences registered to eligible prawn shareholders should be standardised for the purpose of allocating effort shares and how this standardisation should occur.

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 coastal NSW ports from mid December 2017 until mid February 2018. Written submissions were encouraged and received.

The IAP produced a Draft IAP Report after considering the views presented by those eligible shareholders in the *Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl 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 Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl Share Class* and other interested stakeholders on 16<sup>th</sup> April 2018.

The IAP encouraged written submissions from eligible shareholders on the findings, conclusions and recommendations contained in the Draft IAP Report. Submissions are sought by the close of business 7<sup>th</sup> May 2018. The closing date for submissions was subsequently extended on the request of industry to close of business 14<sup>th</sup> 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 *Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl Share Class* to the Minister for Primary Industries on 1<sup>st</sup> of June 2018.

## **2. IAP Summary of Recommendations for the *Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl Share Class***

### **2.1 Proportional Allocation of Fish Species Between Share Classes and Fisheries**

Where catch quota shares are issued for a particular species in more than one share class or fishery (i.e. flathead, whiting, ocean perch, silver trevally and gemfish) the IAP recommends that the initial amount of quota/quota shares allocated for each species in each fishery or share class is the total of the recorded landings of that species for each fishery or share class as a proportion of the total recorded landings of that species within the agreed criteria period calendar years 2009 - 2017 (inclusive).

Expressed as a formula, the following outlines the way to calculate a specific species quota share allocation proportion using the example of the *Ocean Trawl – Northern Fish Trawl Share Class*:

$$\frac{\text{Sum of Total Recorded Landings of a specific species for NFT Share Class for calendar years 2009 to 2017 (inclusive)}}{\text{Sum of Total Recorded Landings of all NSW fisheries or share classes catching a specific species for calendar years 2009 to 2017 (inclusive)}}$$

Sum of Total Recorded Landings of all NSW fisheries or share classes catching a specific species for calendar years 2009 to 2017 (inclusive)

### **2.2 IAP Recommendations for allocation of Quota Shares for Fish Species in the *Ocean Trawl - Inshore and Offshore Prawn Trawl Share Class***

The IAP recommends that the allocation of quota shares in the *Ocean Trawl - Inshore and Offshore Prawn Trawl Share Class* for each nominated species below:

- tiger flathead;
- blue spotted flathead; and
- eastern school and stout whiting (combined)

should be determined on the basis of 20% on the proportion of access shares held + 80% on recorded landings for an individual fishing business in the *Ocean Trawl - Inshore and Offshore Prawn Trawl Share Class*. The IAP recommends the use of the sum of recorded landings within the period 2009/10 – 2016/17 (inclusive) but with the worst catch in a year removed.

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

(20% x Total number of shares held by an individual Fishing Business in the I/OPT share class)

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Total number of shares in the I/OPT share class

+

(80% x Individual Fishing Business's Total Recorded Landings of a specific species in I/OPT share class *excluding the 'worst catch year'* for the period 2009/10 to 2016/17 (inclusive))

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Sum of the Total Recorded Landings of a specific species *excluding the 'worst catch year'* of all current fishing businesses with I/OPT shares for the period 2009/10 to 2016/17 (inclusive)

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 Fish Species in the Ocean Trawl - Northern Fish Trawl Share Class**

The IAP recommends that the allocation of quota shares in the *Ocean Trawl – Northern Fish Trawl share class* for each nominated species below:

- tiger flathead;
- blue spotted flathead;
- silver trevally;
- gemfish; and
- eastern school and stout whiting (combined)

should be determined on the basis of 20% on the proportion of access shares held + 80% on recorded landings for an individual fishing business in the in the *Ocean Trawl – Northern Fish Trawl share class*. The IAP recommends the use of the sum of recorded landings within the period 2009/10 – 2016/17 (inclusive) but with the worst catch in a year removed.

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

(20% x Total number of shares held by an individual Fishing Business in the NFT share class)

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Total number of shares in the NFT share class

+

(80% x Individual Fishing Business's Total Recorded Landings of a specific species in NFT share class *excluding the 'worst catch year'* for the period 2009/10 to 2016/17 (inclusive))

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Sum of the Total Recorded Landings of a specific species *excluding the 'worst catch year'* of all current fishing businesses in the NFT share class for the period 2009/10 to 2016/17 (inclusive)

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.

#### **2.4 Weighting of 'shares' or 'hull units' in calculation for effort quota shares.**

The IAP recommends that no weighting be applied to either hull units of existing shares for the purpose of allocating the new effort shares.

#### **2.5 Whether hull units be standardised in calculation for effort quota shares.**

The IAP recommends that the DPI make use of the best available information currently for the standardisation of hull units in this fishery undertaken by the CSIRO and included in the Queensland East Coast Trawl Plan.

### **3. Definitions**

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

*Quota Share* - 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 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

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

being provided.

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

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

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

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

The NSW Government established an IAP for the *Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl 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 Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl Share Class* shares (“eligible shareholders”).

The ToR for the *Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl Share Class* also required the IAP to provide specific advice on the proposal from Government to introduce inshore/offshore prawn effort quota shares.

The specific advice required was whether:

- Ocean trawl (inshore prawn) and Ocean trawl (offshore prawn) ‘shares’ held and the ‘hull units’ allocated to boat licences registered to eligible prawn shareholders should be weighted for the purpose of allocating effort shares and if so how; and,
- The ‘hull units’ allocated to boat licences registered to eligible prawn shareholders should be standardised for the purpose of allocating effort shares and if so how.

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 by 1<sup>st</sup> 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 Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl 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 1<sup>5</sup> share management status. Access criteria varied for each endorsement type.

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

The Ocean Trawl Fishery included the Inshore and Offshore Prawn Share Class and the Northern Fish Trawl Share Class and the access criteria applied for issue of shares was:

- **Inshore Prawn**
  - 5 shares allocated for each inshore prawn trawl endorsement a Fishing Business is entitled to; and,
  - 1 share for any monthly catch return during 3 best years between 1986-1990; and,
  - 1 share for any monthly catch return during 2 best years between 1991-1993.
  - 1 share allocated for each Review Panel allocated endorsement where the associated Fishing Business does not satisfy the transfer criteria or was 'non-transferable.
- **Offshore Prawn**
  - 5 shares allocated for to any P1, P2 or P4<sup>6</sup> endorsement a Fishing Business is entitled to; and,
  - 1 share for any monthly catch return during 3 best years between 1986-1990; and
  - 1 share for any monthly catch return during 2 best years between 1991-1993.
  - 1 share allocated where a Fishing Business held a P3 endorsement.
- **Northern Fish Trawl**
  - 5 shares allocated for each inshore prawn trawl endorsement a Fishing Business is entitled to;
  - 1 share for any monthly catch return during 3 best years between 1986-1990; and
  - 1 share for any monthly return during 2 best years 1991-1993.
  - 1 share allocated for each Review Panel allocated endorsement where the associated Fishing Business does not satisfy the transfer criteria or was 'non-transferable.

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,

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<sup>5</sup> NSW Government Gazette No.75, Official Notices, p2155, 23 April 2004

<sup>6</sup> These classifications ceased to apply when the share management plan commenced.

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)<sup>7</sup> 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 2009<sup>8</sup> the NSW Government announced the *Pymont Pact* – an agreement by Government and industry on the elements of a ‘reform program’ proposed for future management of commercial fishing in NSW. This included a range of tools to facilitate restructuring such as changes to minimum shareholdings and use of exit grants to promote trading between shareholders. The Government documents advising of the agreement emphasised that the ‘reform program’ would consider how existing shares could be used to create a system where the more shares held would give more access to the resource thus giving affect to the original intent of the share management system.

In June 2010<sup>9</sup> further NSW Government documentation advised of the imminent commencement of an exit grant program to assist those wanting to leave their fishery, while providing opportunity for those wishing to stay to increase their shareholdings. Industry was

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<sup>7</sup> AgEconPlus Consulting, Economic Analysis of NSW Commercial Fisheries Reform Package (June 2015)

<sup>8</sup> The Pymont Pact to promote strong future for commercial fishers, DPI, 6<sup>th</sup> July 2009 (OUT 09/4754)

<sup>9</sup> Future Directions for the Commercial Fishing Industry, DPI, 18<sup>th</sup> June 2009 (OUT10/8958)

advised that to improve industry viability, the linking of shares to a level of resource access was seen as an important way forward and that in particular, this approach should provide a real benefit to business owners who accumulate more shares.

In September 2011 the NSW Government announced the establishment of the Independent Review of NSW Commercial Fisheries Policy, Management and Administration (2012)<sup>10</sup> that was completed in May 2012 after a significant industry consultation process.

In 2012 in response<sup>11</sup> to the report from the Independent Review of NSW Commercial Fisheries Policy, Management and Administration (2012), the Government announced the establishment of a *Commercial Fisheries Reform Program*. The Government's response included support for the Review recommendation that shares in each fishery be linked directly to resource access in the form of a quantity of catch, a quantity of fishing effort or limiting the number of access endorsements<sup>12</sup> to achieve the biological and economic objectives of the Act.

In May 2013 an amount of \$16 million<sup>13</sup> was announced to assist with structural change and *'instill meaning and value in commercial fishing shares, by linking them to resource access'*.

As part of the reform program the Government established a Structural Adjustment Review Committee (SARC) in early 2013. The SARC was charged with the responsibility to create a stronger link between shares and resource access to instill greater value and security in the tradeable rights (access shares) that was expected to assist reduce latent effort and increase the long term viability and operational flexibility for industry. In September 2015, the SARC<sup>14</sup> 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 paper<sup>15</sup> set out that catch quota should be pursued as the preferred option for linking shares to resource access but, if this is not feasible, shares should be linked to fishing effort in the form of transferable time/gear based quota (effort quota) or change minimum shareholdings. .

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

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<sup>10</sup> Independent Review of Commercial Fisheries Policy, Management and Administration (2012)

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

<sup>12</sup> Response to Recommendation 6.1, (p8), Government Response to the Recommendations of the Independent Review of Commercial Fisheries Policy, Management and Administration (2012)

<sup>13</sup> NSW Commercial Fishing Statement of Intent, Minister for Primary Industries, 31<sup>st</sup> May 2013

<sup>14</sup> Final Share Linkage Recommendations, NSW Structural Adjustment Review Committee, Ian Cartwright, Sevaly Sen and Mary Lack (30 September 2015)

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

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 landings<sup>16</sup> as a criteria was proposed to be limited to those sectors demonstrating 'extreme disparity' between shareholdings and some shareholders recorded landings especially where shareholdings were initially issued on a flat basis and/or (as in the majority of such cases) where there is no direct link between the access shares issued and species concerned. The DPI paper recognised that access shares already issued are a legal right that cannot be simply extinguished, whether or not they have been actively used to fish and as such all existing access shares do have some value that must be taken into account in any reforms of the current share managed fisheries structure.

The Government announced the *NSW Commercial Fisheries Business Adjustment Program* on 31<sup>st</sup> May 2016. The \$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)<sup>17</sup> 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 report<sup>18</sup> the SARC reached the conclusion that for several species in some share classes the reform program and exit grant would be unable to deal with the level of distortion in those share classes. The SARC concluded that an allocation based on existing access shares would place an '*unacceptable and unintended substantial financial burden on a relatively small number of fishing businesses who currently account for a high proportion of the catch of those species*'. The SARC recommended that new share classes be established in these particular fisheries.

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

- a small number of shareholdings in the existing share class account for the bulk of the catch potentially placing an unacceptable and unintended financial burden on these fishing businesses which would be required to purchase a large amount of

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<sup>16</sup> Public Consultation Paper: General information relating to the reform program and reform options for NSW commercial fisheries, DPI, April 2014 (p17)

<sup>17</sup> AgEconPlus Consulting, Economic Analysis of NSW Commercial Fisheries Reform Package (June 2015)

<sup>18</sup> Final Share Linkage Recommendations, NSW Structural Adjustment Review Committee, Ian Cartwright, Sevaly Sen and Mary Lack (30 September 2015)

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 (e.g. 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.

ToR for the *Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl Share Class* IAP can be found at Appendix 6.

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

## **6. Background to the Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl Share Class.**

The *Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl Share Class* consists of the following:

- the use of an otter prawn trawl net to take fish from any of the following waters:
  - inshore waters,
  - offshore waters, and
  - the waters of Coffs Harbour;
- the use of an otter fish trawl net to take fish from ocean waters that are north of a line drawn due east from Barrenjoey Headland (other than any waters in which use of an otter trawl net (fish) is prohibited under the regulations); and
- the use of a danish seine fish trawl net to take fish from ocean waters that are north of a line drawn due east from Barrenjoey Headland.

There are 4 types of endorsement available in the fishery, as follows:

- Inshore prawn endorsement;
- Offshore prawn endorsement;
- Deepwater prawn endorsement (Note: This endorsement is not included in ToR for this IAP report); and
- Fish northern zone endorsement.

A person who does not hold the minimum shareholding required for a class of shares will not be eligible to be given an endorsement that authorises the taking of fish in respect of shares of that class.

<i>Class of shares</i>	<i>Minimum shareholding</i>
Ocean trawl—inshore prawn shares	50

Ocean trawl—offshore prawn shares	50
Ocean trawl—fish northern zone shares	50

The maximum shareholding is 40% of the total number of shares 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 Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl 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 Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl Share Class* access shares.

Full details of the IAP ToR for the *Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl Share Class* can be found at Appendix 6.

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 5.

Grant Thornton Australia Ltd has been appointed by the DPI 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 Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl 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 pressures that the IAP must take into account. These major decisions, and their impact on the management of the fishery, are described and, as appropriate, taken account of in this 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 Draft IAP Report.

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

- 3(1) - the objects of this Act are to conserve, develop and share the fishery resources of the State for the benefit of present and future generations;
- 3(1)(d) - to promote viable commercial fishing and aquaculture industries;
- 3(1)(f) - to appropriately share fisheries resources between the users of those resources; and
- 3(1)(g) - to provide social and economic benefits for the wider community of New South Wales.

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

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

1. **Fairness and equity** - the overarching principle that should inform an allocation issue is one of fairness and equity. That is, the resource is to be allocated in a way that distributes the benefits of use fairly amongst the licence holders and minimises any differential economic impacts such as wealth redistribution arising from allocation.
2. **Optimum utilisation** - this means that the resource is to be allocated in a way that achieves the best use of the resource for the community at large, not just best for a particular sector.
3. **Certainty for users** - the resource should be managed in a way that recognises the needs of users of the resource, particularly those who rely on it for their livelihood.
4. **Opportunity to be heard** - a person with an interest in the fishery has the opportunity to participate in developing the management regime for that fishery through a transparent process.
5. **Rights of existing concession holders to be recognised**- this means that management arrangements must have due regard to the historical access rights of each class of concession holder in the fishery.
6. **Best available information** - any allocation recommendation should take account of all relevant information.
7. **Integrity of fisheries management arrangements** - allocation decisions should be consistent with legislative requirements and other fisheries management objectives.

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

## **8.3 Ministerial Announcements and Decisions**

The IAP considered all Ministerial announcements and decisions made relating to the *Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl 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 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 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 Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl 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 7.
3. Written submissions were encouraged and a closing date initially set for 16<sup>th</sup> February 2018, which was subsequently extended on request of industry to 23<sup>rd</sup> February 2018.
4. Written submissions from industry received in response to the draft ToR were also made available to the IAP as many were relevant to the consultation process.
5. The IAP identified and obtained additional necessary data and documentation to support their considerations.
6. A Draft IAP Report of the IAP, including recommendations was circulated to eligible shareholders and other stakeholders for comment by 7<sup>th</sup> May 2018. The closing date for submissions was subsequently extended on the request of industry to close of business 14<sup>th</sup> 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 1<sup>st</sup> June 2018.

### 9.1 IAP Consultation Meetings

Written notification from the IAP was circulated in December 2018 to all eligible shareholders in the *Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl 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 Terms of Reference 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 Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl Share Class* was provided through a wide range of sources including SMS, email, general postal mail and links to the DPI and Grant Thornton Australia Ltd websites.

Addresses for IAP correspondence were obtained from the fishing business contact details for eligible shareholders in the *Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl Share Class* registered with the DPI 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 seventeen (17) written submissions in relation to the *Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl 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 16<sup>th</sup> April 2018 was circulated together with the Draft IAP Report and encouraged written submissions to the IAP by 7<sup>th</sup> May 2018. The closing date for submissions was subsequently extended at the request of industry to close of business 14<sup>th</sup> May 2018.

The IAP received a total of thirteen (13) written submissions (representing nineteen (19) fishing businesses) in relation to the *Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl Share Class* Draft IAP Report and a summary of issues raised from all Round 2 consultations 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 will consider 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 1<sup>st</sup> of 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 raised during the face-to-face consultation meetings or contained within the Round 1 written submissions received in relation to the Draft IAP Report for the *Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl Share Class*.

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

### **10.1 Weighting of Shares and Hull Units for Prawn Trawl Effort Nights Calculations**

The ToR for the *Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl Share Class* required the IAP to provide specific advice on the proposal from Government to introduce inshore/offshore prawn effort quota shares.

Part 1 of the ToR required specific advice from the IAP as to whether Ocean Trawl (Inshore prawn) and Ocean Trawl (Offshore prawn) 'shares' held and the 'hull units' allocated to boat licences registered to eligible prawn shareholders should be 'weighted' for the purpose of allocating effort shares and, if so, how.

In trawl fisheries hull units are used as a measure of the size of the trawl vessel which is a measure of fishing capacity (catch). In short, hull units are a measure of the underdeck volume of the boat. Hull units are not the only factor that influences fishing capacity. Other key factors include engine size, hull type, ability and experience of the skipper, fish finding technologies, and various gear configurations within what is regulatory permissible (Bishop *et al.*, 2000; Greenville *et al.*, 2006; O'Neill and Leigh, 2007).

The case was put to the IAP that the management rules have allowed people to amalgamate shares purchased from an inactive, small hull unit vessels and put them on active, larger hull unit vessels without penalty and so when the effort shares are introduced these larger hull unit vessels will increase the overall effort in the fishery. At the same time people who have larger hull unit vessels but have not purchased additional shares (which was not a requirement to continue fishing) will lose effort nights compared to their current effort. They argue that DPI should have applied the hull units before the share amalgamation was allowed from a smaller to larger vessel.

The IAP was advised by DPI that the legislated fishing business transfer rules provide for the transfer of inshore and offshore prawn trawl shares between shareholders and that upon transfer no consideration is given to the size of the boats that buyers and sellers own or use. Shareholders have had full knowledge of this since the introduction of share management in 2007.

With respect to the claim that this will result in an "increase in overall effort in the fishery", the fact is that fishing effort can already increase under current management as a result of shareholders working more days per year, purchasing a boat licence that allows for a larger boat to be used or borrowing from someone else a larger licenced fishing boat and then using that boat

DPI advise that under the new day regime fishing effort will be more precisely managed because days fishing and hull capacity will both be managed in a more acute way. Total

effort will also be kept under review (post 2024) and adjusted as needed. This has not been the case in the past

One fisher set out that currently an inshore prawn licence is not subject to hull unit rules. However it is his understanding of the new Government position that inshore and offshore prawns shares will be treated as one and be subject to the hull units rules attached to one's offshore prawn licence. There was no investment warning about this amalgamation and fishermen who have purchased larger vessels on their inshore prawn licence will be disadvantaged. DPI needs to reallocate new hull units based on existing vessels in use. If his original smaller vessel registered on his licence is used to issue the effort nights quota and then applied to his larger vessel he will lose nights as the larger vessel burns more effort nights. He feels he will now have to buy more shares to get back to what he currently does after the fact. Other endorsements are not subject to hull units.

The DPI advises that the inshore prawn and offshore prawn share classes will remain separate share classes and access to each will continue to be determined based on holding the minimum shareholding relevant to each (currently 50). The new day regime (including effort quota shares) will apply across both share classes or sectors. That is, a fisher may use quota in one share class or across both share classes subject to holding the relevant endorsement(s).

Any decision on the hull units used to allocate effort quota shares is a decision for the Government, and the Government has made its decision following consultation with shareholders. However, the Department has indicated that it would be willing to consider any advice that the Panel provides as per the IAP ToR.

With respect to the issues raised in regard to larger vessels, the IAP is advised by DPI that there are a number of fishers who have been approved to upgrade their boats outside the rules applying to the offshore prawn trawl fishery. As part of this approval decision it was determined that for the purpose of allocating prawn effort quota shares the hull units to be used would be those that the vessel owners temporarily surrendered, as opposed to unitising their new upgraded boats. The basis for the decision included:

- fairness to all other fishers endorsed for inshore and offshore prawn trawling who have continued to comply with the boat capacity restrictions applying to the offshore sector; and
- fundamental is the allocation of a new access right based on existing rights, in this case shares held and the hull units allocated to boat licences in the early 1990's

For the *Ocean Trawl – Inshore & Offshore Trawl Fishery*, the Department has very clearly identified and articulated that the future management regime for the fishery will be focused on an effort management system. In effect, the effort management system is analogous to what has been in place in the Queensland East Coast Trawl Fishery for over 15 years.

The IAP in its consultations found that prawn trawl operators had clear awareness of the direction of management in this fishery, and a number had made business investment decisions in response to the future management direction. The IAP consultations with DPI affirmed the Department's commitment to industry that, subject to no change in boat size, one share in the fishery will equate to a minimum of 0.69 of a night of fishing effort.

From consultations with the IAP it was clear that operators were aware of this and had either made investments recognising this or factored this into their business operations.

The IAP in its ToRs was requested to consider the weighting of hull units and shareholdings in the calculation of effort shares.

Hull units and shares both represent investment by a business in the fishery, the former in a boat and the latter in fishing access rights. Currently the information the Department has provided to the fishing industry in regard to the effort night quota calculations (and to the IAP) is unweighted. That is, both factors are used equally in the calculation of effort units by multiplying hull units by existing shareholdings. An example of weighting would be 60% weighting on hull units and 40% weighting on shareholdings and multiplying the weighted parameters together.

The IAP considered that, in the context of allocation in the *Ocean Trawl – Inshore & Offshore Trawl Share Class*, there was no compelling evidence-based reason to weight one parameter more than the other. The effort management system conceptually and practically works whether the input parameters are weighted or unweighted. The IAP identified that investment decisions had been made by fishing businesses in this fishery based on an unweighted combination of hull units and shares.

The IAP recommends that no weighting be applied to either hull units or existing shares for the purpose of allocating the new effort quota shares.

### **10.2 Catch Capacity of Large Hull Unit Prawn Vessel vs Small Hull Unit Prawn Vessel**

The ToR for the *Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl Share Class* required the IAP to provide specific advice on the proposal from Government to introduce inshore/offshore prawn effort quota shares.

Part 2 of the ToR required advice from the IAP was whether ‘hull units’ allocated to boat licences registered to eligible prawn shareholders should be standardised for the purpose of allocating effort shares and if so how.

The relationship between hull units and fishing capacity is recognised as not being linear. That is, the fishing capacity of a 60 hull unit boat, while greater than a 30 hull unit boat, is not necessarily twice that of the 30 hull unit boat.

The IAP in its consultations asked prawn trawl fishers what they thought the relationship between hull units and fishing capacity was in their fishery. They considered that there is positive relationship around the ability to fish more inclement weather and strong current, however other factors such as the skill and experience of the skipper in particular was more significant. The importance of the skills and experience of the skipper in influencing fishing capacity is also recognised in a number of studies (e.g. Pascoe and Coglean, 2002; Tingley *et al.*, 2005). While there was a diversity in responses, there was a general consensus that, all things being equal, the fishing capacity of a 60 hull unit boat was about 20% to 30% higher than a 30 hull unit boat.

The IAP agrees that a standardisation of hull units to reflect the relationship between hull units and fishing capacity is warranted in the context of transitioning the fishery to an effort-based management system. While there is general agreement that there is a relationship between hull units and its fishing capacity, in Queensland, the experience was that researchers, managers and industry struggled to reach agreement on the exact nature of the relationship<sup>19</sup>. In 2000, the Queensland Department of Primary Industries contracted the Commonwealth Scientific and Industrial Research Organisation (CSIRO) to develop a model that quantified the relationship. CSIRO completed this task by comparing the catch rates of given vessels with their attributes. The CSIRO model formed the basis of the “Effort Unit

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<sup>19</sup> [https://www.daf.qld.gov.au/\\_\\_data/assets/pdf\\_file/0006/64068/StockAssessment-ECTrawl-2004-Part11.pdf](https://www.daf.qld.gov.au/__data/assets/pdf_file/0006/64068/StockAssessment-ECTrawl-2004-Part11.pdf)

Conversion Factors” (EUCFs) that are now included in the East Coast Trawl Fishery Management Plan and is applied throughout this fishery. This relationship between hull units and standardised hull units is shown in Figure 1.

While the relationship may appear to be a direct linear relationship, it is in fact not.

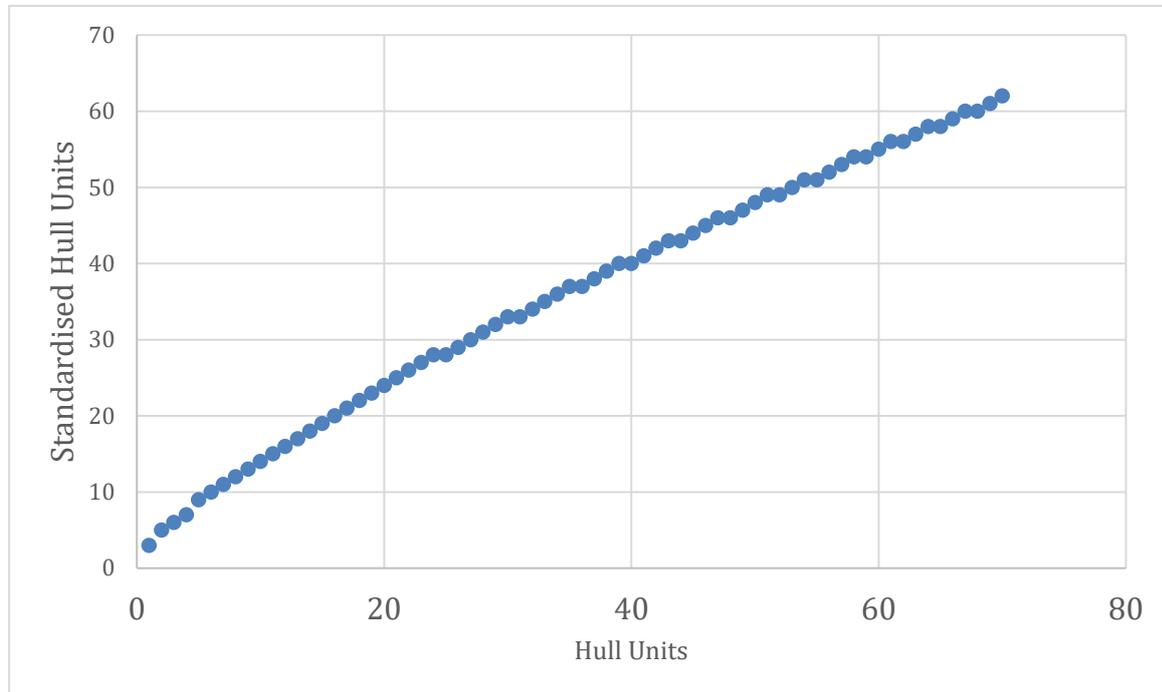


Figure 1 Relationship between Hull Units and Standardised Hull Units as Determined in Queensland by the CSIRO and included in the East Coast Trawl Management Plan.

The standardised hull unit equation defined the relationship between fishing capacity (i.e. catch) and size of the vessel. It was developed by the CSIRO using catch data provided by the Queensland Fisheries Management Authority from only Princess Charlotte Bay.

The IAP reviewed a number of studies with the aim of determining the existence of additional relevant information that could be used for the standardisation of hull units. This included Greenville *et al.* (2006) which examined technical efficiency in the NSW Ocean Prawn Trawl Fishery and Courtney *et al.* (2014) which examined economic efficiency and management strategy evaluation in the eastern king prawn fishery including the NSW component. While both of these studies provide valuable information for the purposes of understanding and managing Australian prawn trawl fisheries, neither provide information that can be used to refine specifically the standardisation of hull units in the NSW Ocean Prawn Trawl Fishery.

The IAP recommends that the DPI make use of the best available information currently for the standardisation of hull units in this fishery undertaken by the CSIRO and included in the Queensland East Coast Trawl Plan.

### **10.3 New Quota Shares for Fish Species in the Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl Share Class**

Part 2 of the ToR seeks the IAP provide advice on the basis for the allocation of tiger flathead, blue spotted flathead and eastern school and stout whiting (whiting combined) quota shares to the holders of *Ocean trawl – Inshore prawn shares and Ocean trawl – Offshore prawn shares* and allocation of tiger flathead, blues potted flathead, silver trevally, gemfish and eastern school and stout whiting (combined) quota shares to the holders of

*Ocean trawl – Northern Fish zone shares.*

### **10.3.1 Use of Shares as Allocation Criteria for Fish Species in Ocean Trawl**

Many fishing business operators put the case that the initial allocation of shares in the early 2000s did not recognise the difference in catch and effort between operators by failing to issue shares in proportion to catch history and only recognising an endorsement's active participation in any month and reaching a minimum catch level. The IAP heard from a number of interviewees that this minimum catch level was very low.

In the *Ocean Trawl - Northern Trawl Share Class* some fishing businesses were allocated the maximum 65 shares, others were allocated the minimum 32 shares required to hold an endorsement to fish and others allocated as few as <10 shares. Despite this difference in shareholding, fishing businesses holding endorsements to fish could catch all they could within the same input controls.

A view was put to the IAP that access shares have been the established management basis in the Northern Fish Trawl since the early 2000's. Given the length of time under share management it has been the basis on which any Northern Fish Trawl license has been able to establish a market value. It has been the tradeable commodity within the fishery and has been traded over the approximately 15 years since its inception. Any move away from access shares renders any trading or value in a Northern Fish Trawl license worthless over this period.

It is the view of the IAP that this initial 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 Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl Share Class* one only had to have an endorsement and been active in the fishery to be allocated the minimum access shares to fish in the fishery. If you were not fully active in the fishery you still could receive shares. Many endorsements were given to people who did not have a reasonable, if any, demonstrated activity in fishery. This has resulted in a lot of endorsements and not a lot of active fishers.

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 landings fish and others have not.

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

criteria requirement.

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

Fishermen highlighted that the Share Management Plans commenced in early 2000s and included fundamental changes to management with a focus on access shares and capacity for fishing (input controls). Eligibility for endorsements was to be determined on the basis of shareholdings (not 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 the SARC (2015) noted the acceptance by Government of the recommendations in the Steven's Review in 2012, sending a clear signal to industry that, as intended in the original introduction of share fisheries, access shares would be the primary mechanism for determining access.

The IAP notes that the context was very different when Stevens *et al.* did their review in 2012 when 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 2015<sup>20</sup>, the SARC reached the conclusion that for several species in some share classes, the reform program and exit grant would be unable to deal with the level of distortion in those share classes. The SARC concluded *that 'an 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 share classes 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

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<sup>20</sup> Final Share Linkage Recommendations, NSW Structural Adjustment Review Committee, Ian Cartwright, Sevaly Sen and Mary Lack (30 September 2015), p2.

minimum shares required to go fishing, vessels, vehicles and fishing gear capable of handling the fishing conditions and distances required to access this fishery. They also argued that they had invested the time and intellectual property in doing so and had also potentially forgone other economic activities. Their view was that if the existing active fishers do not get their current share of the catch in the allocation, it's 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 recorded landings. 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.

Given the relatively flat distribution of shares among shareholders in this share class, allocation based on shareholdings alone would approximate an equal allocation to fishing businesses in this share class. 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 Panel ToR. For example, a business that is demonstrably reliant on relatively large recorded landings will be disadvantaged by an equal allocation model. At the opposite end, a business with relatively small or nil recorded landings would potentially receive a windfall gain as they would receive an allocation well above any historical recorded landings or effort levels.

Evidence before the court in a recent NSW hearing<sup>21</sup> did not establish that the issue of Quota Shares has devalued the Access Shares, even though the evidence established that the issue of the Quota Shares (or more accurately the prohibition on a commercial fishing operation from trapping more than the weight allowed pursuant to those Quota Shares) had restricted the business that the plaintiff operated. That is not synonymous with denying access to the Region for the purpose of trapping mud crabs.

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

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

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<sup>21</sup> Elliott v Minister administering Fisheries Management Act 1994 [2018] NSWSC 117

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 Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl 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 that support new quota share allocation be based solely on equal allocation across existing access shares held based on:

- previous studies mentioned in this section;
- the Government and industry stated focus of the reform package to ensure the ongoing economic viability of those choosing to remain in the industry;
- 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.

#### ***10.4 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 (however defined). That is, when a fishing business purchases the fishing entitlement from another fishing business it also purchases the fishing recorded landings. 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 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 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 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 Panel considered the following. First, and as described previously, the initial share allocation only utilised a coarse and imprecise measure of fishing activity. This initial arrangement 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 IAP 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 IAP's advice on the criteria for allocating the new species shares. However, the Government committed to ensure that the IAP 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 transfer 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 share holdings and recorded landings.

#### **10.5 Recorded Landings Qualifying Period**

The Department provided to the IAP 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 NSW 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.

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

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

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

Where catch quota shares are to be issued for a particular species that is caught in more than one NSW fishery or share class (i.e. flathead, whiting, ocean perch, silver trevally and gemfish) the IAP recommends that the initial amount of quota/quota shares allocated for each species in each fishery or share class is proportional to the recorded landings of that species for each fishery or share class compared to the total recorded landings of that species within the agreed criteria period. The IAP has noted that there is a difference between the criteria period recommended in their respective IAP Draft Reports for the nominated fish trawl species and the DPI public consultation paper on the transition of the *Ocean Trawl - Southern Fish Trawl Restricted Fishery* to Commonwealth management<sup>22</sup>.

The difference is brought about by the NSW data recording is based on financial years and AFMA data recording based on calendar years. IAP position on the criteria period recommended in the IAP Draft Report was based on the quality of the data provided by DPI and the objective of maximizing the opportunity for active fishers to maintain their catch, as far as is practical, to their current levels.

Should DPI be of the opinion that they can provide similar quality data in a calendar year format for the nominated NSW fish trawl species, the IAP preference is to amend the criteria period to calendar years 2009 to 2017 (inclusive) for the *Ocean Trawl – Inshore / Offshore Trawl share class*, the *Northern Fish Trawl share class* and the *Southern Fish Trawl Restricted Fishery* to maximize the opportunity for active fishers to maintain their catch, as

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<sup>22</sup> Public Consultation Paper - Transitioning the NSW Southern Fish Trawl Restricted Fishery to Commonwealth management (NSW DPI, March 2018)

far as is practical, to their current levels. Given this preference the IAP would recommend that the transition process for the *Ocean Trawl - Southern Fish Trawl Restricted Fishery* to Commonwealth management adopt the same criteria periods.

### **10.6 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 and premises.

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

Many issues were raised with the IAP during consultations and within written submissions that were outside the Terms of Reference for the *Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl Share Class*.

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

- people have invested heavily to purchase licences to provide room to improve their business as promoted by government (i.e. larger vessels, hull units, gear etc). Quota shares will take this away with the limitation under quota. Quota will restrict these businesses straight up;
- quotas will see the demise of the fishing industry as has been proved in the SE trawl, there is no need for it. Surveys over the last five years as recorded by renowned marine biologists state that the fisheries are sustainable in their present form and for the next ten years. Just leave things alone for a while; and
- why is there a need to restructure and place the Ocean Trawl – Fish Northern Zone and Inshore/Offshore Prawn Trawl under an IAP program. The fishers have already adjusted their business and shares to maintain an active fishing business. Why the need to readjust them again, force quota on them for products that are documented as sustainable and threaten again their ongoing viability.

## **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 holder's control.

In the implementation of any allocation arrangements activities a fishing business operator who chooses to take periods of time 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 in an allocation process 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 recognised 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 business's worst year or years of catch.

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

- allocation based over the whole data period (2009-10 to 2016-17);
- allocation based over the period 2009-10 to 2016-17 with the 'worst' 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 'worst' two catch years removed from the analysis for each fishing business in the share class.

Using 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:

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

The magnitude of the difference for the first two points directly above further increase the more 'worst' years you choose to remove from the analysis.

For the *Ocean Trawl – Inshore/Offshore Prawn Trawl and Northern Fish Trawl share classes* the magnitude of the changes from the three analyses is compared in the tables 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 Proportional Allocation of Fish Species Between Share Classes and Fisheries**

Where catch quota shares are issued for a particular species in more than one share class or fishery (i.e. flathead, whiting, ocean perch, silver trevally and gemfish) the IAP recommends that the initial amount of quota/quota shares allocated for each species in each fishery or share class is the total of the recorded landings of that species for each fishery or share class as a proportion of the total recorded landings of that species within the agreed criteria period of calendar years 2009 - 2017 (inclusive).

Expressed as a formula, the following outlines the way to calculate a specific species quota share allocation proportion using the example of the *Ocean Trawl – Northern Fish Trawl Share Class*:

$$\frac{\text{Sum of Total Recorded Landings of a specific species for NFT Share Class for calendar years 2009 to 2017 (inclusive)}}{\text{Sum of Total Recorded Landings of all NSW fisheries or share classes catching a specific species for calendar years 2009 to 2017 (inclusive)}}$$

### **12.2 Application of Quota Shares to Fish Species in Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl Share Class**

The IAP investigated several different allocation scenarios involving both share holdings and recorded landings between the period 2009/2010 to 2016/2017 (inclusive) for the following species in the following fisheries:

- Inshore and Offshore Prawn Trawl share class;
  - tiger flathead,
  - blue spotted flathead, and
  - eastern school and stout whiting (combined), and
- Northern Fish Trawl share class:
  - tiger flathead,
  - blue spotted flathead,
  - silver trevally,
  - gemfish, and
  - eastern school and stout whiting (combined).

Overall the scenarios for each species in each share class showed that a greater weighting on shares results in a greater allocation to fishing businesses that have not previously recorded landings for this species or have very low recorded landings and a reduction in

allocation to fishing businesses that have high recorded landings.

Equal allocation based solely on shares for each of the species will potentially create a redistribution of wealth to the extent that fishing businesses with high catch and effort may no longer be viable.

Overall, the IAP considered that allocation for each species in each share class should be determined on the basis of 20% on the proportion of access shares held + 80% on recorded landings for an individual fishing business in the respective fishery. The IAP recommends the use of the sum of recorded landings over the period 2009/10 – 2016/17 (inclusive) but excluding the lowest record landings in any given year.

The IAP noted that for the *Ocean Trawl – Inshore & Offshore Trawl Share Class* the annual catch of flathead species was relatively low but taken by a relatively large number of vessels.

For blue spotted flathead eighty three (83) prawn trawl fishing businesses had recorded landings, but only two (2) businesses had accumulated catch of more than one tonne across the timeframe considered (2009/10 to 2016/17) by the IAP. In contrast in the *Northern Fish Trawl Share Class* 33 businesses had recorded landings and only seven were less than one tonne across the timeframe considered by the IAP.

For tiger flathead, forty nine (49) prawn trawl fishing businesses recorded landings, but not one fishing business had accumulated catch of more than one tonne across the timeframe (2009/10 to 2016/17) considered by the IAP. In contrast in the *Northern Fish Trawl share class* 35 businesses had recorded landings and only fish (5) were less than one tonne across the timeframe considered by the IAP.

These two species are predominantly caught by the *Ocean Trawl - Northern Fish Trawl Share Class* and the *Ocean Trawl - Southern Fish Trawl Share Class* but the IAP considered that their retention in small volumes contributed to the gross income of prawn trawl businesses.

Whiting are caught in large volumes by fishing businesses in the *Ocean Trawl - Northern Fish Trawl Share Class* and the *Ocean Trawl – Inshore & Offshore Trawl Share Class*. With respect to the combined whiting species (eastern school and stout whiting) the results of the consultation process identified that in the *Ocean Trawl – Inshore & Offshore Trawl Share Class* some vessels caught whiting species predominantly or solely as byproduct while targeting prawns. The volume captured as byproduct on any given night was identified as being variable and difficult to predict. A number of vessels in the prawn trawl fishery also deliberately targeted whiting species with the level of targeted fishing influenced by the whiting local abundance and market price, and the market price and abundance of other potential target species such as prawns.

The IAP considered whether prawn trawl vessels that have principally taken whiting as byproduct be treated differently in allocation to those fishing businesses that have a history of targeting them. For example, whether vessels that had principally caught whiting as byproduct should receive no quota at all, but rather manage their catch under a trip limit.

On balance, the IAP rejected this approach because it could not be identified with consistency as to what was or was not targeted catch as opposed to byproduct and trip limits may result in high rates of discards in some instances given the variable whiting volumes taken on any given night.

For the flathead and whiting species, the IAP considered that once quota shares are

allocated, trading of the quota shares in these species groups should be permitted between the fish trawl and the prawn trawl fisheries. That is a fish trawl operator could sell or lease whiting quota to a prawn trawl operator and vice-versa.

### **IAP recommendations for allocation of quota shares**

The IAP recommends that the allocation of quota shares for each species in each fishery should be determined on the basis of 20% on the proportion of access shares held + 80% on recorded landings for an individual fishing business in the respective fishery. The IAP recommends the use of the sum of recorded landings over the period 2009/10 – 2016/17 (excluding the worst catching year).

Expressed as a formula, the following outlines the way to calculate a specific species quota share allocation proportion using the example of the *Ocean Trawl – Northern Fish Trawl Share Class*:

(20% x Total number of shares held by an individual Fishing Business in the NFT share class)

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Total number of shares in the NFT share class

+

(80% x Individual Fishing Business Total Recorded Landings of a specific species in the NFT Share Class  
*excluding the 'worst catch year' for the period 2009/10 to 2016/17 (inclusive)*)

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Sum of the Total Recorded Landings of a specific species *excluding the 'worst catch year'* of all current fishing businesses with shares in the NFT Share Class for the period 2009/10 to 2016/17 (inclusive)

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 IAP recommendations for weightings of hull units and shares for calculation of effort shares in the Ocean Trawl – Inshore & Offshore Trawl Share Class**

The IAP recommends that no weighting be applied to either hull units or existing shares for the purpose of allocating the new effort shares.

### **12.3 IAP recommendations for standardisation of hull units for calculation of effort shares in the Ocean Trawl – Inshore & Offshore Trawl Share Class**

The IAP recommends that the DPI make use of the best available information currently for the standardisation of hull units in this fishery undertaken by the CSIRO and included in the Queensland East Coast Trawl Plan.

## **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. The IAP stresses that these values are hypothetical and for illustrative purposes only.

Please note that the example provided is where there is a weighting of 20% to shares and 80% to recorded landings for the criteria period.

A simple worked example follows in 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.
- During the criteria years considered for allocation the fishing business has landed 5 tonnes annually, which equates to 5% of the total catch.
- The proportion of shares held contributes to 20% of the overall allocation (10% times 20%), which in percentage terms is 2%.
- The proportion of the catch contributes to 80% of the overall allocation (5% times 80%), which in percentage terms is 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 Submission to Draft IAP Report – Ocean Trawl – Inshore & Offshore Prawn Trawl Share Classy and Northern Fish Trawl Share Class**

### **Introduction**

The Independent Allocation Panel (IAP) released its Draft Report on the allocation of quota shares to holders of the *Ocean Trawl – Inshore / Offshore Prawn Trawl and Northern Fish Trawl* shares on the 16<sup>th</sup> April 2018. The IAP invited submissions with the closing date of 7<sup>th</sup> May 2018 but extended this to 14<sup>th</sup> May 2018 on the request of industry to ensure adequate opportunities for submissions from shareholders and any other interested parties.

Overall, thirteen (13) written submissions were received representing nineteen (19) fishing businesses. The Professional Fishers Association (PFA) also provided a submission with generic information regarding allocation and specifics on the *Ocean Trawl – Inshore / Offshore Prawn Trawl and Northern Fish Trawl share classes*.

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 together for consideration, but the specific individual issues raised have 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.

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### **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.*

<p><b>IAP Response:</b> 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.</p>
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## **Theme: Using Existing Shares as Allocation Criteria**

**Issue:** *Shares have been purchased and sold during the share trade market program under the influence of government direction and announcements towards equal allocation across shares held. Some PFA members have argued that the precedent for equal allocation has been set with the equal allocation determination used for Estuary General Mud Crab, Blue Swimmer and Eel Fisheries.*

**Issue:** *People purchased additional shares to bring their holdings up so as to make sure that they held enough to be able to work the number of nights they need to be viable. DPI advised that we would be allocated 0.69 of night per inshore or offshore share with no warning that catch history would be used in later years.*

**Issue:** *The SARC further identified that the “actions” that were proposed to be taken in the subject Fishery “should increase the value and security of the shares, provide ongoing flexibility for operators and help to improve community perceptions of ocean fish trawling (i.e. improve the social licence to operate)”. Accordingly, larger operators such as our company and others actively pursued a strategy, encouraged at all times by the Department and persons within it, and acting for and on behalf of it, to acquire additional access shareholding as part of the commercial fisheries reform process.*

**Issue:** *DPI made clear indications that future management would be by increasing minimum shareholdings from 50 to 60 to 79 shares and further indications to as high as 104 shares. In the environment of continuing Departmental vacillation on future management, investment had to be made by operators in order to safeguard their operations in the event of any potential circumstance arising as part of the reform process.*

**Issue:** *Any fishing business such as our company who at this time has acquired and now holds a level of access shares above the long-term signal for access and endorsement to be maintained, namely, 65 access shares (or above), must have done so in order to ensure that it would be placed in a position to continue and expand its present operations and maintain or enhance its commercial viability as there is no suggestion that any such operators have engaged in mere speculation.*

**Issue:** *The assertion made by the Panel in the Draft Report (on page 23): ‘However, the Government’s intent within the fishing industry reform package was to ensure as far as practicable that fishing businesses are able to keep fishing at current levels’ is viewed by us as an attempt for want of a better word to “whitewash” the history in a manner as would now justify what is seen by a number of participants within this particular Fishery to constitute a complete departure from a prior position that was not only repeatedly stated but which participants, including our company, were encouraged to adopt and did so, apparently to their now detriment and upon which the erroneous “equal allocation” argument has been constructed by the Panel.*

**Issue:** *Our company has always considered that industry reform was about “making things better” not preserving the current situation. If all that happens is a preservation of the status quo there has been and will be no reform. All that has occurred and what will in the end be achieved is that shareholders in the subject Fishery (and in other fisheries) who have acted in a way totally consistent with Government and Departmental pronouncements such as our company and who have invested monies to do so over a significant period in excess of a decade will be left “out of pocket” and “holding the bag” for a protracted period of Government and Departmental failure. The subject Fishery was seen as “not viable” in its then present operation, and that is why reform was initiated and pursued.*

**Issue:** *The existence of both a minimum and a maximum level of access shareholding, implies, and this is also found in Departmental statements made in relation to the Fishery as a shared fishery, that any future commercial right to continue to harvest the resource should any quota be applied within the subject Fishery to one or more fish species, was viewed to be tied or linked directly to the number of access shares held, and that any quota to be introduced within the Fishery was to be determined by, and derived from, an active operator's then total holding of access shares.*

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

The SARC (2015) 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). The NSW Government adopted the SARC recommendation that this distortion would require specific consideration by an Independent Allocation Panel (IAP).

Notwithstanding the conclusion from SARC, the IAP did analyse the available data early in its deliberations, confirming that an allocation based solely on the distribution of shares would lead to active businesses receiving a much lower proportion of quota shares than their relative level of catch. This means that it would be difficult for these businesses 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 NFT 63 shares but which had never caught a whiting over the eight year period considered by the IAP would receive 2.91% of the quota. An active fishing business (also with 63 shares) that had caught approximately 900 tonnes of whiting over the same period which equates to approximately 35% of the total catch would also receive an allocation of 2.91%. Thus, a fishing business that had in effect been taking 35% of the catch would see their share reduced to only 2.91%.

The IAP took the view that this distortion should be addressed as best as possible at the initial allocation stage rather than the fishing business operator having to buy shares from fishing businesses that were inactive in this share class.

The IAP has not ignored shareholdings, but rather has factored them into its allocation formula in conjunction with recorded landings albeit at a lower weighting than recorded landings. The higher weighting attributed to recorded landings reflects the fact that the value derived from the access right is ultimately derived from those who catch and sell the particular fish species.

**Issue:** *Stevens report (2007) recommended the TAC and TAE be allocated to shareholders in direct proportion to their shareholding, not on catch history in the future.*

**IAP response:** 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 fishing and sub-fishery (i.e. a Total Allowable Catch or Total Allowable Effort) and allocated to shareholders in direct proportion to their access shares held.

The Stevens report identified that the existence of significant shareholdings held by latent fishing businesses may mean that linking shares to the total allowable catch and/or effort would result in a degree of distortion and initial disruption to active fishers.

The NSW Government did not implement this recommendation, and subsequently, the SARC (2015) determined that application of a share linkage allocation based only on existing access shares held (i.e. equal allocation across shares) would create a significant distortion (i.e. the disparity between shares held and existing fishing activity levels) for a range of species taken by some NSW fishing endorsements. The SARC was of the view that this distortion would place an unacceptable and unintended substantial financial burden on a relatively small number of fishing businesses in fisheries where this small number of fishing businesses accounted for a high proportion of the total recorded landings from the fishery.

The NSW Government adopted the SARC recommendation that this distortion would require specific consideration by an Independent Allocation Panel (IAP).

**Issue:** *Where is the certainty in having nights to fish and no quota?*

**IAP Response:** Prawn operators made clear during consultations and written submissions that they target prawns and whiting is usually a by-product that contributes to the costs of operations. Effort shares in the prawn fisheries are the primary requirement and quota shares for other by-product species (including whiting) should be available to be purchased in the open market if required.

For the Ocean Trawl Inshore and Offshore Prawn share classes, the IAP considered whether trip limits for whiting and the flathead species could be used in this fishery instead of issuing quota. For whiting in particular many fishing business operators communicated to the panel in face to face meetings that such an approach was highly problematic as the amount of whiting caught as byproduct was highly variable between locations and times.

**Issue:** *The difference in the amount of access shares initially allocated within the Fishery to an operator above the 40 minimum access shares must have represented a de facto allocation of quota by way of proxy based on their fishing history. If this be so, successive transactions and share purchases is a de facto acquisition of further or additional "quota" within the subject Fishery. An operator who was issued with the minimum shares to maintain access on the creation of the shared fishery, namely 40 access shares and who has only increased the holding thereafter to 50 access shares has essentially no right to any "quota share" as none was ever possessed by them on or after the creation of the Fishery as a shared fishery.*

**IAP Response:** In practice access shares initially issued in 2004 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.

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

This approach was not consistent with what was proposed under the original share management framework.

### **Theme: Using Catch History as Allocation Criteria**

**Issue:** *PFA recognises the need for active fishers to remain active and to do so, catch history must be heavily referred to in the allocation process. We are faced with a scenario of survival for our industry that means we must support a process that enables fishers to continue in their operations.*

**Issue:** *I welcome the consideration you have made of the catchers of the majority of the seafood. I believe to support the current catchers can be the only viable solution. In response to your Draft Report dated 16<sup>th</sup> April 2018, I would like to unconditionally support the 80/20 proposal, as equal allocation would immediately make my business unviable.*

**IAP Response:** The IAP has noted the comments provided.

**Issue:** *Prior to this IAP Draft Report and the recommendation made at Subsection 2.3 within the Executive Summary there had been no prior indication to access shareholders that recorded landings for an individual fishing business within the subject Fishery was to be a determinative, let alone the dominant factor in the allocation of any quota and associated quota shares that might in the future be imposed in respect of one or more identified species.*

**IAP Response:** Fishers making business decisions have had access to public documentation as far back as 2014 that highlighted the option of using catch history as a allocation criteria in fisheries where there would be a large distortion in quota distribution away from active fishers if allocated on equal allocation based on shares.

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.

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.

**Issue:** *The last six or seven years the King Prawn fishery has been very good with above average catches and prices, so most effort was put into this fishery, giving little whiting catch history to most prawn fishers. So to use any catch history would disadvantage the majority of prawn shareholders.*

**IAP Response:** Recorded landings identify that the whiting catch in the OPTF are substantial across the years that the IAP has considered. Available information in the Status of Australian Fish Stocks reports for this species and O'Neill *et al.* (2014)<sup>23</sup> do not suggest that catches have increased over the last six or seven years but rather they are stable with some year to year variation evident.

**Issue:** *8-year period is not long enough for a large proportion of species to distinguish fishing activity. Many of the species in the Ocean Trap and Line Fisheries and Ocean Trawl fisheries are heavily subjected to the east current influences that have been experienced of 3-4 years for some species. Due to these fluctuations, it is recommended that the criteria uses 3-4 consecutive years during a set period to indicate individual's catch history proportion rather than the total performance of an individual's catch history over 8 years.*

**Issue:** *As to the range in which the data is to be assessed we cannot understand why an 8-year period from 2009/2010 to 2016/2017 (inclusive) should be proposed or required, and that a shorter period would be more appropriate and reflective of the current harvesting of the available resources within the subject Fishery if historical catch data were to be utilised at all, and in relation to which we say it should not form in any way a part of the final allocation process.*

**Issue:** *I am concerned that the chosen years chosen do not provide a large enough reference and that the seasonality of the targeted fish species and the impact of the east Australian current on species availability can not be reflected by the short period of time used to calculate the catch history. Recommend that the fishers are able to select a set period that provide an accurate overview of their catch history, rather than the total performance of an individual's catch history over 8 years.*

**Issue:** *Many of the species in the Ocean Trawl fisheries are heavily subjected to the east current influences. Northern regions species are heavily subjected to the northern warm flushes of eastern current closer to inshore and southern region impacted by southern cold flushes – these influences have been experienced of 3-4 years for some species.*

**Issue:** *This catch history period very favourably suits the few, more recent entrants, even more so, when it was curiously extended to 2017. The period selected for catch history data is another point I totally disagree with. A period of 8 years is way too small to get a fair idea of actual species abundance. A commonly held belief of fisheries scientists was a roughly 7 year cycle of good & bad years for most species.*

**IAP Response:** The IAP notes that submissions identified that the time series of data for consideration was both too long and too short. 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 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.

<sup>23</sup> O'Neill, M. F., Leigh, G. M., Wang, Y. G., Braccini, J. M., & Ives, M. C. (2014). Linking spatial stock dynamics and economics: evaluation of indicators and fishery management for the travelling eastern king prawn (*Melicertus plebejus*). *ICES Journal of Marine Science*, 71(7), 1818-1834.

If available in an accurate and complete form the IAP would have considered the use of longer term data however even if it were available, its final use in allocation would still need consideration of how well it reflected contemporary fishing activities.

While the IAP fully understands that harvested stocks can show interannual variation in biomass, most scientists do not consider that these variations follow a predictable and exact cyclic pattern. The natural drivers of biomass are complex and include density dependent and density independent biotic and abiotic factors that operate at several different spatial and temporal scales. It is not as simple as a set cyclic pattern and where long term catch information exists (e.g. O'Neill *et al.*, 2014) purported predictable cyclic patterns are not evident.

**Issue:** *IAP recommended period for the catch history criteria means it is more relevant to active fishers rather than those who have reduced their activity in the fishery. However, it has been strongly noted to the PFA that a full-time fisher and a part time fisher can be distinguished through the effort recorded in activity reports (not tonnage).*

**IAP Response:** There is generally a link between catch and effort although individual businesses can differ in their efficiency. A fishing business that has a high proportion of the catch typically has a high proportion of the effort. There can be exceptions such as when a new entrant is beginning to fish in a fishery new to them. Where a quota is to be allocated in terms of a volume of catch, it is usual to consider the volume of landed catch in deliberations regarding allocation.

**Issue:** *PFA cannot support the redistribution of wealth within fisheries or across fisheries. The overarching principle that should inform an allocation issue is one of fairness and equity i.e. the resource is to be allocated in a way that distributes the benefits of use fairly amongst the concession holders and minimizes any differential economic impacts such as wealth redistribution arising from allocation.*

**IAP Response:** In forming its recommendations the IAP has sought to minimize the redistribution of wealth amongst shareholders. As noted in the draft report, equal allocation does not always achieve a fair and equitable outcome.

**Issue:** *Fisher requests that the calendar year to the end of 2017 is used to determine catch history as the actual notification of changes to management arrived mid-December 2017.*

**IAP Response:** The IAP has opted to use financial years consistent with the format of the data provided by the DPI. As the 2017/18 financial year was not complete at the commencement of the IAP process, it is not considered appropriate to incorporate this data.

**Issue:** *Our catch history is affected by the fact that we were attempting to establish the Royal Red prawn fishery in the first half of 2017. Our company caught approximately 450t for their first successful year of operation on Eastern School Whiting and will likely improve catches as operational efficiency grows. We request some assurance that this level of catch would be made available to the company after the allocation process is finalized understanding that this allocation would not necessarily set the quota but the 'proportion' of catch available. A liberal approach would be recommended as this management system changes.*

**IAP Response:** Fishers making business decisions have had access to public documentation as far back as 2014 that highlighted the option of using catch history as a allocation criteria in share classes where there would be a large distortion in quota distribution away from active fishers if allocated on equal allocation based solely on shares.

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.

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.

### **Theme: Explanation of IAP Recommendations**

**Issue:** *In your report, it is not clear how allocation will be made on shares (the 20%). Since the Inshore and Offshore Prawn Fishery shareholders have two lots of shares to run a single business, typically they would have double the shareholding of Northern Fish Trawl Fishery endorsement holders, how would this be allocated? Would prawners get double the allocation? I would suggest that prawn trawl shares to be allocated as 2 for 1.*

**IAP Response:** Where multiple share classes are able to catch the same fish species, the IAP has essentially recommended a two-step allocation process. In the first instance, the species quota should be allocated to each share class based on the proportion of the recorded landings of that species attributable to each share class over the criteria period. As a second step, quota shares should be allocated within each share class on the basis of 20% on the proportion of access shares held + 80% on recorded landings for an individual fishing business in that particular share class.

### **Theme: Lack of Analysis Demonstrated in Draft Report**

**Issue:** *PFA and the Share Linkage Working Groups raised concerns regarding the data used to formulate the ITCALs. The Business Adjustment Process has revealed issues regarding the data logbooks, such as incorrect codes used for catch allocations, misunderstanding of logbook reporting requirements i.e. misinterpretation that "days reported" are days when product is "weighed in" rather than active fishing days. There was minimal pursuit by DPI in validating or correcting these inaccuracies. We recommend that this be taken into consideration when deciding upon the allocation formula and possible criteria for the share classes.*

**IAP Response:** 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. The Department is currently undertaking a data validation process which should ensure that any discrepancies are picked up. The IAP considers it highly unlikely that any inaccuracies are of magnitude that will substantially alter the modelling and its consideration.

**Issue:** *On our reading the justification for this suggested allocation, "split" on a 20:80 basis, is simply not disclosed or ascertainable and appears to be in the absence of the requisite*

transparency, completely arbitrary.

**Issue:** *It is impossible to make comment on the veracity and reliability of the data and to this extent the transparency required under the ToR appears to us to be lacking or lost. Whilst aware that certain commercial in confidence issues might be involved it would be expected that some identification of historical catch, including “current share of the catch” and recorded landings by species would be identified in order to provide a possible basis for the recommendations made in reliance of any such data set. However, this was not done. In our view it represents a significant omission.*

**Issue:** *We have looked in particular for that part of the Draft Report which seeks to justify the “20:80 split” now recommended by the Panel. There is no published data within the Draft Report as would justify this “split” or recommendation in any way at all.*

**Issue:** *In terms of the 80% recognition and weighting to be given to recorded landings of an individual fishing business within the period 2009/10-2016/17 (inclusive) this is, absent transparent disclosure and simply a period which has been “plucked from the air” by the Panel*

**IAP Response:** The IAP has included in the final report a number of the scenarios it considered. This includes the option of allocation based solely on shareholdings, solely on recorded landings and three scenarios that included both. The information provided covers a range of shareholdings of varying sizes and recorded landings, although information is not attributed to individual shareholders for reasons of commercial in-confidence.

#### **Theme: Exceptional Circumstances**

**Issue:** *The PFA recognises the IAP’s comment that it is difficult to determine the difference between a dedicated fisher and a part time fisher. However, our members have expressed concerns regarding years in which they were unable to fish due to boat break downs or illness. These issues highlight the need for a set policy and procedure for Exceptional Circumstances that enables fishers who have suffered hardship due to unforeseen circumstances to receive recognition for this and be provided a supplement.*

**Issue:** *The PFA has been inundated by members who fear that during the recommended 8-year period they had mechanical issues and/or health problems that has resulted in no catches in species that are usually their staple catch.*

**Issue:** *PFA does not recommend an approach like AFMA’s to exceptional circumstances. A criteria policy to identify this event above the normal events that impact a fishery could be developed in conjunction with the industry. It is strongly recommended that discretion should be exercised to approve an application that otherwise does not meet the eligibility criteria.*

**Issue:** *Would catch history to the end of December 2017 be considered under ‘special circumstances’ to determine ‘relevant economic position’ of operators who were recent entrants?*

**IAP Response** The IAP reiterates that exceptional circumstances can exist from factors (e.g. injury or illness) outside a fishing business owners control which may mean catch in for example one year is less than the long term average. It was not the role of the IAP to determine the details of what constitutes an exceptional circumstance or to assess a business holders individual circumstance in this regard. The IAP did however hear face to face a number of circumstances from fishers which would likely be considered exceptional circumstances for the purpose of allocation in other jurisdictions. The IAP also heard some

that would not. The IAP has noted to the Government that individual exceptional circumstances may need to be considered prior to final decisions on allocation. The IAP is cognisant of the need for both industry and the Department to finalise what has been a very long, large and complex reform process. Providing the exact details of a process to consider such circumstances is beyond the scope of the IAP although the IAP has provided some general guidance on what may or may not constitute an exceptional circumstance for an individual.

### **Theme: Government Financial Support for Adjustment**

**Issue:** *In earlier correspondence between the PFA and the Minister, there were commitments made that some form of assistance would be provided if required during this second round of the Business Adjustment Program. As the allocation model does not utilise full catch history there will still be a forced reduction in fishing activity by active fishers.*

*The proposed allocation model will still result in new fishers or the top proportion of active fishers (who take the majority of landed catch) in having to invest in additional shares to attain a commercial level of catch or return to previous harvest levels. The PFA therefore strongly recommends that the NSW Government subsidise fisher's acquisition of quota shares attain a commercial level of catch or to return to recorded harvest levels.*

**Issue:** *With no catch history attached to shares what was the point of purchasing share in the share market trading. I purchased Northern fish shares that with the 80 -20 split those share are not going to equate to much quota for the value that was paid for them. The Government promised monies to all share classes for the reform why not purchase or compensate quota back from endorsements that don't have catch history and re distribute to the ones that do. It would solve all the problems and I think 3 to 4 million dollars would completely fix the problem.*

**IAP Response:** Provision of adjustment funding is a decision of government and outside the ToR for the IAP.

### **Theme: Fishery Management Alternatives**

**Issue:** *The PFA wishes to reaffirm its rejection of the linkage of quota in mixed species fisheries. Catch quota for mixed species leads to socially unacceptable behaviour and fundamental issues regarding the viability of the industry. The Ocean Trawl Fisheries functions well as a simply input control fishery, to create a complex and expensive management linkage such as catch quota cannot be justified.*

**Issue:** *We wish to reaffirm our rejection of quota in our mixed species fishery, especially in the Eastern School Whiting fishery. In 1990 the attached paper said that the Whiting fishery on the Gold Coast in Queensland would be decimated within 3 to 6 months. In the last 27 years thousands of tons of Whiting have been taken from the T4 fishery in a sustainable manner that has created jobs, livelihoods and prosperity. In April 2018, two boats alone have caught nearly 200 tons of Whiting in the T4 fishery. This can be verified by fish returns to the Queensland Fisheries Department. This raises the question as to why species quota shares are needed for Eastern School Whiting?*

**Issue.** *There should be no quota on snout or yellow-gilled whiting. These species are caught in the inshore prawn trawl fishery and if returned to the water there is 100% death rate. They will only wash up on beaches and put more pressure on us from recreation fishers.*

**Issue:** *We are concerned that the ToR and the Draft Report each proceeds upon a basis that a quota will be established and is a “given” for the each of the identified fish species and all that is in issue is the allocation of the quota and associated quota shares.*

**Issue:** *We say that “quota shares” should not be introduced or allocated at this time. At this time “access shares” should be maintained solely as the basis upon which the rights of endorsed and active shareholders to access and harvest the subject Fishery are to be determined.* [SEP]

**Issue:** *There is no right to any “historic” or “current share of the catch” in the Fishery. If there is no “right” to any “current share of the catch” then there can be no arbitrary redistribution of wealth. This is why we advocate in this submission that there should be no allocation of quota shares prior to completion of the rationalisation process within the subject Fishery.*

**IAP Response:** The decision to move a fishery to quota (and the timing of that move) rests with government and is not within the IAP ToR. The IAP is aware that many individual fishing business operators do not support quota arrangements. The IAP has communicated to the Department that management of the fishery needs to ensure that any wastage of harvested fish needs to be minimised but it is not the role or responsibility of the IAP to implement the overall management regime for these fisheries.

**Issue:** *The PFA strongly urges that the Total Commercial Allowable Catch (TCAC) follows the same procedure as those determined by the Structural Adjustment Review Committee (SARC) during the earlier stages of the Business Adjustment Program. The PFA rejects any approach to adopt the Australian Fisheries Management Authority (AFMA) existing Recommended Biological Catch (RBC) process that they employ to calculate their quota for Commonwealth species.*

**Issue:** *There is also a severe lack of detail in the IAP draft report. The 20% / 80% doesn't mean much if we don't know what figure we're starting with. I can't see any reference to TAC or ITCAL figures or how they will be decided.*

**Issue:** *We have no idea what the TAC is so we can't even determine what everything will equate too. Even just a rough idea what our quota would be would give us a better understanding of what's ahead.*

**IAP Response:** The process for setting future annual total allowable catch quotas is not within the IAP ToR.

**Issue:** *It should also be noted that PFA members raised concerns that hull units and the capacity of vessels has not been factored into the allocation consideration, especially in light of DPI's stated intention to remove the 20m vessel licence. Members have expressed concern that this may impact on non-quota species. For example, if some fishers were to upgrade to a 20m boat with minimal restriction of effort allocation (nights) then non-quota species may be at risk and catching capacity for them will increase.*

**Issue:** *Hull units and the capacity of vessels has not been factored into the allocation consideration, especially in light of DPI's stated intention to remove the 20m vessel licence. It is a concern that this may impact on non-quota species.*

**IAP Response:** Management of the non-quota species was not within the IAP ToR.

**Issue:** *PFA members have expressed their frustration in providing comprehensive and practical advice to the IAP's consultation process due to the lack of highly important*

*information in the consultation documents. Information is needed on how the Total Commercial Allowable Catch would be calculated and the breakdown of the quota arrangements to the commercial fishers.*

**Issue.** *Fisher's vessels have small hull units and he believes that his shares have been devalued and will attract less effort quota. He purchased shares during the reform on the belief that they were equal in value (some were purchased from larger hull unit vessels).*

**IAP response:** The IAP in its final report has included additional information on the calculation of its proposed allocation approach. Setting of the TACC is a management issue and not within the IAP ToR.

**Issue:** *The conclusion that the IAP have come up with for the allocation of quota shares in the NFT clearly favours the most ecologically unsustainable operators (large vessels) while penalising the smaller operators that have less impact on fish stocks.*

**IAP Response:** Sustainability impacts of certain sized fishing vessels and gear are management issues and not within the IAP ToR.

**Issue:** *There are a number of "eligible fish shareholders" who hold access shares below the minimum sufficient for an endorsement to fish commercially within the subject Fishery at present. These are the latent effort in the fishery. As such these persons are excluded presently from the subject Fishery and would have no current endorsement or recent fishing history. Our current understanding in relation to these shareholders is that there exists no basis for these persons to now move to become active operators once again within the subject Fishery and that this has been the position which has applied from in or about 2000.*

*The Department should either cancel these access shares or, in the alternative, that the shares be allocated to active operators in line with the current proportion of access shares held and compensation paid.*

**IAP Response:** This matter is a government policy/management decision that is not within the IAP ToR.

## Appendix 2 – Further Scenario Analyses for Exceptional Circumstances

### *NFT Whiting*

Share Holdings	Catch During Whole Period (kg)	No of Years with Catch History Between 09-10 to 16-17 (8 maximum)	100% Allocation Based on Shareholding	100% Allocation Based on Recorded Landings	20% shares and 80% catch history during whole period	20% shares and 80% catch history with worst single catch year removed	20% shares and 80% catch history with worst two (2) catch years removed
55	136459	8	2.541%	4.840%	4.382%	4.440%	4.501%
64	156656	8	2.962%	5.557%	5.038%	4.871%	4.752%
62	150434	7	2.869%	5.337%	4.843%	4.938%	5.159%
52	35216	4	2.406%	1.249%	1.481%	1.503%	1.557%
63	979613	7	2.915%	34.556%	28.308%	28.922%	28.630%
50	1329	7	2.314%	0.047%	0.500%	0.501%	0.502%

### *NFT Blue Spotted Flathead*

Share Holdings	Catch During Whole Period (kg)	No of Years with Catch History Between 09-10 to 16-17 (8 maximum)	100% Allocation Based on Shareholding	100% Allocation Based on Recorded Landings	20% shares and 80% catch history during whole period	20% shares and 80% catch history with worst single catch year removed	20% shares and 80% catch history with worst two (2) catch years removed
84	33186.8	7	3.887%	5.602%	5.260%	5.378%	5.644%
56	7600.9	5	2.591%	1.283%	1.545%	1.572%	1.635%
50	31830	8	2.314%	5.374%	4.762%	4.660%	4.636%
63	47569.2	6	2.915%	8.030%	7.008%	7.177%	7.571%
51	25090	8	2.360%	4.236%	3.861%	3.859%	3.816%
40	3924.8	5	1.851%	0.662%	0.900%	0.914%	0.947%

### ***NFT Tiger Flathead***

Share Holdings	Catch During Whole Period (kg)	No of Years with Catch History Between 09-10 to 16-17 (8 maximum)	100% Allocation Based on Shareholding	100% Allocation Based on Recorded Landings	20% shares and 80% catch history during whole period	20% shares and 80% catch history with worst single catch year removed	20% shares and 80% catch history with worst two (2) catch years removed
128	5251.4	4	5.923%	0.511%	1.593%	1.594%	1.644%
84	53992.3	7	3.887%	5.252%	4.979%	4.988%	5.413%
64	284497	8	2.962%	27.670%	22.730%	20.966%	20.900%
52	3650	4	2.406%	0.355%	0.765%	0.766%	0.805%
181	36736	8	8.376%	3.573%	4.534%	4.372%	4.519%
50	8315	8	2.314%	0.809%	1.110%	1.120%	1.100%

### ***Ocean Prawn Trawl Whiting***

Share Holdings	Catch During Whole Period (kg)	No of Years with Catch History Between 09-10 to 16-17 (8 maximum)	100% Allocation Based on Shareholding	100% Allocation Based on Recorded Landings	20% shares and 80% catch history during whole period	20% shares and 80% catch history with worst single catch year removed	20% shares and 80% catch history with worst two (2) catch years removed
159	5438	6	0.765%	0.146%	0.269%	0.147%	0.156%
516	162933	8	2.481%	4.361%	3.985%	4.235%	4.188%
212	14664	5	1.019%	0.393%	0.518%	0.398%	0.421%
116	147208	6	0.558%	3.940%	3.264%	3.993%	4.230%
277	347949	7	1.332%	9.308%	7.713%	9.443%	9.993%
462	85566	5	2.221%	2.290%	2.277%	2.321%	2.459%

### ***Ocean Prawn Trawl Blue Spotted Flathead***

Share Holdings	Catch During Whole Period (kg)	No of Years with Catch History Between 09-10 to 16-17 (8 maximum)	100% Allocation Based on Shareholding	100% Allocation Based on Recorded Landings	20% shares and 80% catch history during whole period	20% shares and 80% catch history with worst single catch year removed	20% shares and 80% catch history with worst two (2) catch years removed
135	597	8	0.649%	3.353%	2.812%	2.930%	2.981%
225	1235	8	1.082%	6.812%	6.569%	5.471%	4.945%
128	116	5	0.615%	0.652%	0.644%	0.670%	0.686%
122	120	6	0.587%	0.674%	0.657%	0.683%	0.699%
299	911	8	1.436%	5.116%	4.380%	4.491%	3.750%
386	117	5	1.856%	0.657%	0.897%	0.922%	0.939%

### ***Ocean Prawn Trawl Tiger Flathead***

Share Holdings	Catch During Whole Period (kg)	No of Years with Catch History Between 09-10 to 16-17 (8 maximum)	100% Allocation Based on Shareholding	100% Allocation Based on Recorded Landings	20% shares and 80% catch history during whole period	20% shares and 80% catch history with worst single catch year removed	20% shares and 80% catch history with worst two (2) catch years removed
187	57.5	4	0.899%	1.177%	1.121%	1.121%	1.121%
149	831.8	5	0.716%	17.021%	13.760%	13.760%	13.760%
277	581.7	4	1.332%	11.903%	9.799%	9.799%	9.799%
111	10	1	0.534%	0.205%	0.270%	0.270%	0.270%
428	125.5	4	2.106%	2.568%	2.476%	2.476%	2.476%
128	85	2	0.615%	1.739%	1.514%	1.514%	1.514%

## **Appendix 3 – Summary of Issues raised in Consultation Meetings and Round 1 Submissions - Ocean Trawl – Inshore & Offshore Prawn Trawl 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 have 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.

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### **ISSUES**

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

- There are important health benefits for continuous access to fresh local seafood and strong local employment opportunities. NSW fishing industry provides these benefits.
- Proposed DPI changes to shareholder rights are contrary to the charter of the DPI 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.
- Fishermen have made significant investments in vessels and equipment to improve their efficiency and profitability under the encouragement of the government share management policies of the past. Reallocation of catch through new quota shares may mean these fishers have to invest more funds to buy back access (shares) to achieve catch levels required to sustain these vessels and businesses.
- NSW fishing industry is down to 800 commercial fishermen from 4000 in the 1990s. The effect of reform has been quite dramatic since introducing restricted fisheries. Why do we need quota?
- Where are the sustainability issues coming from in these fisheries? Unfair to make these decisions on quota without true science based stock assessments as these decisions will significantly impact people's livelihood and ability to make a living. Stock assessments will assist in managing and understanding why government is going down this process.

#### ***Government Advice Re Share management***

- Government told everyone that shares were the future so people bought shares.
- All fishing businesses issued initial shares and then able to fish on their skills and merits. Future was shares only and people have built their businesses on these promises from government. Government now breaking their promises.
- Purchased my trawler in 1995 at the peak of the reform to move to a share fishery. At the time I could have bought a boat for a quarter of the price but with the DPI advising the share fishery rules would revolve around a catch history and hull units model I paid big money to buy my father's boat that had big catch history and large hull units. Shares were then issued on activity in the fishery not catch history. Then during the BAP we were told a share is a share, and all have the same value – as stated by the rules set out from DPI. Now for some reason a share is going to have no value if it has no catch history which may override the value of a share. If this is

the case then I have been misinformed by DPI and did not need to purchase northern fish trawl shares in the share subsidy program.

- The Fisheries Management Strategy (FMS) was completed and there was talk that the 7 year future plan was to increase minimum shares gradually to eliminate the latent effort. No talk about linking shares to quota at that stage and as such many fishermen unable to make an informed decision to invest in more shares.
- Shares were originally issued in 2004 as an access right to the fishery and they were told that you needed a number of shares for entry to the fishery and that was it. You could go fishing with no further limits other than boat size, gear or closures. No mention of catch history or effort quota shares.
- It was only last year (2016) they were told about the 0.69 nights/share effort quota in the prawn fishery and so some fishermen rushed to purchase more shares.
- When they originally announced that the years to be considered for allocation of shares was 1985-90 Department said to buy licences with good catch history. Fisherman had a good catch history and bought a licence with a good catch history. Then shares allocated on activity not catch. Now DPI want to change the criteria again.
- In May 2015, DPI saying catch history was not important. They were told that the fishery would not go by catch effort but shares and they were promised that small boats would be looked after. Made the decision to purchase a vessel but did not consider catch history at all as it was not important at the time. At the time they purchased their boat, there was no talk about effort shares. Now they have to buy shares to get their current nights back. They are a young family and buying shares costs a lot of money.
- At the time of initial share issue they were told that shares are the currency for the future. Everyone had the same opportunity to purchase more shares. Some people sat on the fence and said that they are not buying their jobs back but now they are making it difficult for those who did buy shares.
- What's the point of buying all the shares if quota not allocated on shares at all?

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

- Commercial fishers have traded shares based on the fact that all shares were believed to hold equal value. In addition, shares were traded during the recent subsidy market at equal value.
- Fishermen who have been continuously active since 2007 with the minimum required number of shares to go to sea will now be massively disadvantaged if effort nights are based on number of shares held rather than catch history. Prior to effort nights everyone could fish same number of nights regardless of shares held.
- Fishing businesses that have not actively fished should not be penalized. These businesses have held legitimate rights allocated to them by government or acquired in a legitimate market and have maintained the validity of that right to fish by paying the necessary annual licence fees. Those that have fished have received their reward in the form of income from the fish caught – at a level higher than they would have if all licences were active. These licences should not be rewarded again by allocating quota based on historical catch.
- Initial shares were promoted as the regulation for the fishery under an input control based management system to determine the number of active vessels in the fishery. These same input management shares cannot now be used to allocate species quota shares under an output based management system.
- We have already had to buy latent and inactive shares, we cannot continue to buy back shares to get back to what we already have. No investment warnings were provided.
- At the moment the fisherman works 200 nights a year but the effort nights per share

- regime will drop him to 89 nights a year based on current shares held.
- A lot of shares were transferred from small inactive inshore/estuary vessels to big boats needing shares to get more effort nights. All this means is that previously inactive shares will now be activated when the nights come in. They gain an effort share without putting in any fishing effort like those who have the minimum shares but went fishing who will now lose effort shares This is opposite to what DPI wants to achieve. The process will just increase the effort in the industry and has disadvantaged the smaller boats. The rules allow larger net sizes but the smaller boats can't tow that size nets.
- Effort shares changes the fact that all shares are equal because a larger vessel now needs more shares to get same number of nights he currently has and a smaller vessel does not.

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

- There will be significant legal considerations regarding the use of catch history and vessel capacity within the allocation model due to the complications caused by Government's early stated commitments that the share held the property right for a fisher and that catch history would not carry weight within further governance arrangements.
- Across the majority of share classes, there were clear statements made by DPI when shares were first issued that catch history would not be a consideration in future management. Catch history has not been a consideration when trading in shares and should not be permitted to be brought into consideration without prior warning and an appropriate introductory period.
- Shares were originally allocated on catch history (less history meant less shares allocated). Fishermen then had to purchase more shares to continue to fish. Using catch history a second time to disadvantage shareholders goes against all DPI investment warnings that were issued before 2007.
- A trawl fisher used the example of meshing shares which were converted from catch history to shares in approximately 2007 and there was no second attempt to use catch history again when allocating catch linkage by the SARC in 2016.
- All the emphasis by government was placed on the shares being of equal value to each fisherman, disregarding their catch history as the share was their future equity. Without shares you would be unable to fish regardless of catch history.
- The IAP ToR set out that historical rights of each fishing business holder must be given due regard. On this basis catch history must go back to the 1986-93 period used for the initial shares allocation.
- Continuous failure of government to meet timelines for proposed management, changes in government direction and failure to provide any indication of future allocation arrangements means businesses have had to press on with development. Using catch history as a basis for allocation has no substance.
- Just because you've invested in a vessel, fishing gear and caught fish doesn't necessarily mean that your past actions should last forever.
- Panel should look back at best 3 years of 10-15 years ago, not after the reform has started.

### ***Use of Hull Units as Allocation Criteria***

- Hull units should be the primary basis for determining effort night quota units
- Panel should go back to when shares were issued. Should establish what the average hull units were at the time including latent shareholders. Establish a base average for hull units. If any additional hull units are acquired above that base line then any additional shares acquired since that base line should be reduced inversely

proportional to the acquisition of the additional hull units. However, all original shares should maintain their original status.

- People have been buying up excess shares. Vessels with 40 hull units are buying shares off 20 hull units and there are no controls in place. This results in an uneven playing field. Generally catching boat capacity (size) has to do with increased catching ability.
- Would like to see hull units and recent catch history (from the year 2000) to be taken into account as he has invested a significant amount of time and money in this larger hull unit vessel and would like to see it recognised
- Inshore prawn is currently not subject to hull units. However understanding of the new government mandate is that inshore prawn will be subject to hull units attached to your licence from the offshore prawn. There was no investment warning about this and fisherman will be disadvantaged. Prior to this, inshore prawn was allowed to use any hull unit. They should reallocate new hull units based on existing vessels (re-unitise vessel they have, not the one on the licence). Other endorsements are not subject to hull units.
- Allocations should be based on hull units because hull units of existing boats on an existing license is theoretically a more accurate representation of potential ability – a more traditional history in the fishery. Hull units is the biggest contributing factor to true effort. Hull units gives fishers ability to go where they want when they want.
- DPI started this system where every share is equal so hull units shouldn't come in to the equation. New rules allow every LFB to be turned in to a much larger boat, it is going to devalue his licence more and smaller boats in general.
- Panel should go back to when shares were issued. Should establish what the average hull units were at the time including latent shareholders. Establish a base average for hull units. That base is to be used, if someone entered afterwards, then the base could be altered to adjust for these new entrants.
- When hull units were originally introduced, it was to create a formula to provided a method to manage maximum net length, horse power and boat length on the licence. They were never intertwined with the shares and had nothing to do with the catch history. These input controls are now removed therefore hull units are irrelevant.
- The only fair way to remedy the potential loss resulting from the revised allocation is for either the calculation for the hull units to be based on the existing fishing business hull capacity (not based on historic offshore prawn licence) and by recalculating hull units for the inshore only prawn.
- The capacity to upgrade a fishing business vessel up to a certain size should not affect their number of nights which presents a disproportionate outcome for fishers.
- Why should industry pay to remove the excessive effort in the fishery created by poor decisions by government leading to over-allocation of shares in early 2000s.

### ***Weighting of Shares and Hull Units for Effort Nights Calculations***

- Supports hull units over shares because they have less shares and not a strong catch history.
- Bigger boat should burn more effort units than a smaller unit vessel. Bigger boats will require more effort units. If a larger boat purchases effort units from a smaller boat, they should have to purchase more so that the smaller boats have the same ability to complete. It needs to be allocated evenly.
- Shares weighting over hull units as people had to actively invest in shares. Hull units were incorporated in the shares since restricted fisheries.
- Fisher has the maximum number of shares to fish for prawns but boat is a small. If a big boat wanted to get fisher's shares, they would have to buy double and therefore he sees that his shares would be worth half as much as a larger boat's share

- It was said for a long time that people should buy shares based on 0.69 nights/ share and in the last year DPI has brought hull units into the calculation which has caused more uncertainty in the fishery.

### ***Catch Capacity of Large Hull Unit vessel to Small Hull Unit Vessel***

- Size of vessel is not significant in level of catch. Larger vessel can fish in worse weather and current. Suggests difference is only 20/30%
- Difference greater between steel vessel and wooden vessel
- No difference as it depends on the experience of the operator
- No need to consider as all vessels can now upgrade to larger vessel and increased horsepower.
- A smaller and larger boat would catch the same. However a larger prawn trawler would be able to work in rougher water.
- A smaller boat can catch just as much whiting as a larger boat. Smaller boats should not be penalised by receiving less quota.

### ***Options for Allocation of Quota Shares***

- Want it to go to nights because it will then allow certainty that the shares have a value and they would be able to borrow against it. Right now they do not have anything of value.
- The overarching principle that should inform an allocation is one of fairness and equity - i.e. the resource is to be allocated in a way that distributes the benefits of use fairly amongst the concession holders and minimizes any differential economic impacts such as wealth redistribution arising from allocation.
- Fisherman in the industry at the time of initial issue of shares in 2007 should be where cut off takes place. At that stage people were becoming more aware they needed to increase shares or vessel size.
- Only way around share vs catch history argument is to allocate 33% shares, 33% hull units and 33% catch history. Then allow a subsidised market to allow buyback of quota for those who need more and relieve any distortion.
- If quota required then must look at catch data over a period of time and work out whiting catch per tonne per month then divide TAC by number of shares.
- Everyone should be allocated 150 nights equally then they can buy nights up to a cap of 180 nights
- Do the quota on the hull units – 80 units, large boat – gets more, if you got less then you get less. 20% shares, 80% hull units.
- 3<sup>rd</sup> allocated for shares / 3<sup>rd</sup> to hull units / 3<sup>rd</sup> catch history – based on last 20yrs
- Give the existing Danish Seiner a whiting quota.
- When mud crab and eel went to quota, extra shares lead to issue of extra traps (Every extra 10 shares over 125 gave you an extra trap). A trawl fisherman should get extra kilos for every set of extra shares they own.

### ***Alternative Options to Allocation Quota Shares***

- If the government's aim is to reduce effort it should offer appropriate compensation to all fishing business owners to acquire their rights.
- Effort has already been reduced. A lot less prawn boats now in the fishery.
- The inclusion of whiting species into quota allocation is unwarranted from a fisheries management perspective as they have only ever been target as bycatch in the past and as such the allocation of the species as a bycatch would underestimate the potential of this developmental targeted fishery. The lack of targeting whiting has been due to poor market prices and ill-equipped vessels to handle the volumes

required to make the whiting fishery viable. Current stock assessment modelling leads to conservative TAC settings and ignores spatial extent data.

- Prefer status quo remains and increase minimum shares as required. Gives people who have shares to sell their business and allows people who are invested to grow to buy shares. At the moment it feels like those who have invested are being restricted.

### ***Management Issues Outside IAP ToR***

- People have invested heavily to purchase licences to provide room to improve their business as promoted by government (i.e. larger vessels, hull units, gear etc). Quota shares will take this away with the limitation under quota. Quota will restrict these businesses straight up.
- Quotas will see the demise of the fishing industry as has been proved in the SE trawl, there is no need for it. Surveys over the last five years as recorded by renowned marine biologists state that the fisheries are sustainable in their present form and for the next ten years. Just leave things alone for a while.
- Why is there a need to restructure and place the Ocean Trawl – Fish Northern Zone and Inshore/Offshore Prawn Trawl under an IAP program. The fishers have already adjusted their business and shares to maintain an active fishing business. Why the need to readjust them again, force quota on them for products that are documented as sustainable and threaten again their ongoing viability.

### ***Exceptional Circumstances***

- Several fishers raised significant medical issues with the Panel and were advised the opportunity to make application for exceptional circumstances will be a recommendation of the IAP

## **Appendix 4 – Summary of Issues raised in Consultation Meetings and Round 1 Submissions – Ocean Trawl - Northern Fish Trawl 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 have 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.

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### **ISSUES**

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

- There are important health benefits for continuous access to fresh local seafood and strong local employment opportunities. NSW fishing industry provides these benefits.
- The DPI charter specifically refers to maintaining a profitable commercial fishing sector yet if the effort quota system is implemented many commercial fishermen will lose significant numbers of fishing nights which would represent losses of significant gross profit per annum.
- I can say without doubt that I have one of the most profitable fish trawl businesses on the coast yet I sit here today after 4 years of 'structural adjustment' and have no idea if my son and I have a job after December 2018.
- The measure of success for the IAP process will be the level of certainty provided for further investment.
- In 2012 Government said they wanted to encourage investment into the industry and we invested after hearing this statement. Now government has started talking about bringing in rules that penalises us for not having a long catch history.
- Government feels forced into a quota system because of the adjacent Commonwealth quota system. However in the Commonwealth there was a fair buyback scheme.

#### ***History of Share Management***

- Shares were originally allocated on catch history (lesser the history meant lesser the shares allocated). Fishermen then had to purchase more shares to continue to fish. Using catch history a second time to disadvantage shareholders goes against all DPI investment warnings that were issued before 2007.
- Fishermen feel that the 2007 allocation of shares was flawed as they caught the most fish but have received less shares than everyone else. Days activity were considered rather than catch and hours and they received less shares even though their catch was higher and hours worked was higher.
- People who had more knowledge of the allocation system were able to complete their paperwork in a way that allowed them to receive more shares.
- Initial share management was deemed by Wilkinson (2006) as an effort limitation (i.e. fix fleet size).

### ***Government Advice Re Share Management***

- All the emphasis by government was placed on the shares being of equal value to each fisherman, disregarding their catch history, as the share was their future equity. Without shares you would be unable to fish regardless of catch history.
- Fishermen made significant investments in vessels and equipment to improve their efficiency and profitability under the encouragement of the government share management policies of the past.
- Department has been telling fishers that it was just the initial access shares (minimum number to maintain endorsement) that was important but people have been buying up excess shares.
- To continue working, they had to purchase more shares (\$1500/fish trawl share). They feel that they are having to buy their own business back. Only 12 serious fishers in the fishery but 34 endorsements. Those who actually work the fishery shouldn't have to buy their jobs back.
- They were told that they needed 70 shares for the first year and then 104 the following year and that without shares they will not be able to operate. Based on that information fishers obtained more shares in anticipation but the DPI have since changed their mind.
- Department advised fishers can only act on information that the Department has put out. Draft reports all spoke about shares and then the final report said they would be going through quota. They were not informed that it would go to quota.

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

- Initial shares were promoted as the regulation for the fishery under an input control based management system to determine the number of active vessels in the fishery. These same input management shares cannot now be used to allocate species quota shares under an output based management system.
- Active fishermen have made significant investments in vessels and equipment to improve their efficiency and profitability under the encouragement of the government share management policies of the past. Redistribution of the current catch through equal allocation across shares may mean these fishers have to invest more funds to buy back access (i.e. shares) to achieve catch levels required to sustain these vessels and businesses at their current levels.
- Investments have been made based on minimum shareholding required at point of entry (2004) and proposed government policy documents and the SARC recommendations (Draft report April 2015) that future management would be to increase minimum shareholding to hold an endorsement.
- Shares have been the established management tool in this fishery since the early 2000's. Given the length of time under this management tool, this has been the basis on which any Northern Fish Trawl license has been able to establish a market value. It has been the tradeable commodity within the fishery and has been traded over the 20 years since its inception. Any move away from shares renders any trading or valuing of a Northern Fish Trawl license as useless and worthless over this period.
- There was no expectation that shares will be linked to catch history when he bought his vessel.
- They have made a huge investment and thus can't be treated equally through shares. There have been no investment warnings from the Government. Government has said one thing and then done another. Form of exceptional circumstance.
- Queensland has gone to effort nights and quota. They have a physical quota right and a property right with a quota and days regime.

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

- Since the initial share allocation fishers have participated in this industry how they have wished. There was no requirement to validate participation in any way other than pay annual fees.
- Some people have focused entirely on fish trawl, while others have chosen to focus on other share classes as a multipurpose fishery strategy (e.g. Fish trawl & Prawn trawl). If fishers had of been informed future allocations may be based on catch history criteria, they would have changed their practices to ensure future viability.
- Meshing shares were converted from catch history to shares in approximately 2007 and there was no second attempt to go use catch history again when allocating catch linkage by the SARC in 2016.
- Continuous failure of government to meet timelines for proposed management, changes in government direction and failure to provide any indication of future allocation arrangements means businesses have had to press on with development. There have been no investment warnings issued. Using catch history as a basis for allocation has no substance.
- Fishing businesses that have not actively fished should not be penalized. These businesses have held legitimate rights allocated to them by government or acquired in a legitimate market and have maintained the validity of that 'right to fish' by paying the necessary annual licence fees. Those that have fished have received their reward in the form of the income from the fish caught. Further they have benefited from catches that have been at a level higher than they would have been if all licences were active. These licences should not be rewarded again by allocating quota based on their historical catch.
- Since the initial share allocation to gain access to the fishery operators have the choice to participate in the way that they want to – operate full time in the fishery or operate in the fishery as part of a diversified fishing business. There was no requirement to validate your participation in the fishery by demonstrating a catch.
- The IAP ToR set out that historical rights of each fishing business holder must be given due regard. On this basis catch history must go back to the 1986-93 period used for the initial shares allocation.
- If the IAP in NFT and SFT use different formulas, some fishermen could lose quota. During any one trip they potentially works both locations. NFT & SFT catches report in one box and they are not sure how much of their history is being allocated to SFT or NFT – they generally reports as lump sum. In the Commonwealth you can nominate which area fish should be recorded. It is important that the criteria is the same for both fisheries and an option is given to which fishery the fisherman reports in (e.g. in Commonwealth or in State).
- If catch history is considered, the panel should go back at least 10 years as people have taken advantage of system by buying more shares, upgrading boats etc.
- They have done all of the pioneering work and under current arrangements someone else can enter the industry and use it.
- As a fish trawler they have a 90mm mesh size and are not allowed to restrict the net. They can put chokers on to allow less escapes but not any restrictive devices. However if a boat goes Danish seining, the mesh size can be reduced from 90ml to 83ml as restrictive devices are allowed. This is why the Panel should not go on catch history. The tonnages are extreme and history would vary significantly.

### ***Use of Quota as Management***

- Quotas will see the demise of the fishing industry as has been proved in the SE trawl, there is no need for it. Surveys over the last five years as recorded by renowned marine biologists state that the fisheries are sustainable in their present form and for

the next ten years. Just leave things alone for a while. Look at the OECD paper submitted by AFMA on the *'Expert Meeting on Human Side of Fisheries Adjustment'*, Frank Meere, FRM Consulting (19/10/06).

- Previous reviews in the NFT have shown low risk to target species which makes it all the more bewildering why a quota is to be introduced for whiting. The number of vessels operating has decreased dramatically in the last 10-15 years.
- The inclusion of whiting species into quota allocation is unwarranted from a fisheries management perspective as they have only ever been target as bycatch in the past and as such the allocation of the species as a bycatch would underestimate the potential of this developmental targeted fishery. The lack of targeting whiting has been due to poor market prices and ill-equipped vessels to handle the volumes required to make the whiting fishery viable. Current stock assessment modeling leads to conservative TAC settings and ignores spatial extent data.
- Massive dumping will be a problem in the NFT as more species are taken in this region than the SFT and sizes are smaller leading to high grading.
- Tiger Flathead, Blue spotted Flathead, Whiting (Stout and Eastern School) and Trevally are all highly valuable species but are within a multispecies fishery. In this fishery, there is not a target species as such. To remain viable, OTFN operators target these multiple species at the same time and move around the fish grounds to minimise impact. Dumping at sea will occur under quota.

### ***Options for Allocation of Quota Shares***

- Species quota shares are 'new shares' and therefore can be allocated without reference to the initial shares that were issued for access allocation only. New shares could be allocated on catch history for best 1, 3 or 5 years prior to December 2017 when the IAP was established.
- Quota shares should be allocated based on 50% shares held and 50% catch history.
- Preference - 50% should go on catch history, 30% capacity of vessel, 20% for holding minimum shares (endorsement).
- It is not equitable in this fishery to apply the standard allocation approach applying a small proportion of the allocation for holding a valid access right and a larger proportion of the allocation based on catch history as a measure of investment. Large investments in northern fish trawl including processing equipment and factories, have been made in recent years in full alignment with the existing management system – i.e. minimum shares to enter fishery and operating within input control limits. This cannot be ignored through the application of a large allocation based on catch history. Such investments should be considered for allocation under special circumstances.
- Fishery basket quota should be established over a three-year period and allow annual quota to be carried over from years 1 and 2 but not beyond year 3.
- Global quota/Competitive TAC - Cap on the total quota. Allow fishermen go and compete against each other. Provides certainty of investment as they will be able to get more fish.
- A catch history period be selected and give ability to the each fishing operation to choose their best catch history years (1, 2 or 3 years). That way everyone will be in 'furious agreement' with everyone putting forward their best foot.
- Blue swimmer and mud crab was allocated on equal allocation. Those who hold licences are still paying fees, and so they are entitled to whatever everyone else gets regardless of whether they fish or not. Precedent is set.

### ***Alterative Options to Allocation Quota Shares***

- If the government's aim is to reduce effort it should offer appropriate compensation to

- all fishing business owners to acquire their rights.
- Apply a global TAC for whiting where keeping whiting once the TAC is reached is banned.
  - Whiting is self-regulated – if you went to quota you could make it a separate fishery. Could almost be called a developmental fishery.
  - Latent effort licence holders – if you don't work it in a certain amount of time your shares should go back into the general pool.

### ***Management Issues Outside IAP ToR***

#### ***Exceptional Circumstances***

- We have paid to date all fees and charges throughout the years since my husband passed away. He had a long active catch history. The vessel would be still fully active if my husband was still alive. The criteria years should be extended to incorporate businesses like mine that have extenuating circumstances like the passing an active fisherman. Alternatively the Government should buy me out at a reasonable price and that way this fishing business would be taken out of the market place. The license and endorsements are only leased out on short-term basis periodically. We should not be penalised due to our situation.
- Fisher had leukemia for several years restricting his fishing effort.

## **Appendix 5 – 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 6 – Terms of Reference for Independent Allocation Panel for Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl Share Class

### TERMS OF REFERENCE

#### OCEAN TRAWL INDEPENDENT ALLOCATION PANEL

**Governing Authority:** Minister for Primary Industries

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

**Panel Members:**

Mr Brett McCallum  
Dr Daryl McPhee  
Ms Susan Madden

**Purpose**

To provide advice to the Minister for Primary Industries and the New South Wales Department of Primary Industries (“the Department”) on:

**(a) Inshore and offshore prawn species quota shares:**

The basis for the allocation of tiger flathead, blue spotted flathead and eastern school and stout whiting (whiting combined) quota shares to the holders of Ocean trawl – inshore prawn shares and Ocean trawl – offshore prawn shares (“eligible prawn shareholders”).

**(b) Inshore and offshore prawn effort quota shares:**

Whether:

- (i) Ocean trawl – inshore prawn and Ocean trawl – offshore prawn shares held and the ‘hull units’ allocated to boat licences registered to eligible prawn shareholders should be weighted for the purpose of allocating effort shares and if so how.
- (ii) The ‘hull units’ allocated to boat licences registered to eligible prawn shareholders should be standardised for the purpose of allocating effort shares and if so how.

**(c) Northern fish trawl species quota shares:**

The basis for the allocation of tiger flathead, blue spotted flathead, silver trevally, gemfish and eastern school and stout whiting (combined) quota shares to the holders of Ocean trawl – fish northern zone shares (“eligible fish shareholders”).

**Scope**

**Species quota shares:**

In developing its recommendations on the basis for the allocation of species 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.

**Effort quota shares:**

In developing its recommendations relating to inshore and offshore prawn effort quota shares the Panel is to consider:

- a) the value of Ocean trawl – inshore prawn shares, Ocean trawl – offshore prawn shares and the access rights known as ‘hull units’;
- b) any relationship between ‘hull units’ and fishing power (or catch); and,
- c) 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 the reported catch and effort records (as required to be made in accordance with sections 121 and 122 of the Act) and any other relevant information relating to policy decisions and management of the share classes 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 under Purpose (above);
- 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:

- a) the allocation of species quota shares to eligible shareholders;
- b) the matters set out alongside (b)(i) and (ii) under Purpose (above); including supporting arguments and explanations or justification for the recommendations.

Specifically, the report should include advice on:

- a) the allocation of species quota shares to eligible shareholders under section 71A of the Act; and
- b) the matters set out alongside (b)(i) and (ii) under Purpose (above) for the purpose of allocating effort quota shares under section 71A of the Act.

#### **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 7 – Correspondence and Advice to Eligible Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl Share Class Shareholders**

### *Appendix 7.1 - First letter from IAP to eligible Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl 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.*

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

Dear Fishing Business Owners,

#### **Independent Allocation Panel**

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

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

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

To ensure independence Grant Thornton Australia has been appointed as project managers of the Panel process. For more information, please visit [www.grantthornton.com.au/iap](http://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 16<sup>th</sup> February 2018.

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

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

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

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

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

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

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

To book a consultation timeslot with the Panel, fishing business owners are requested to go to <https://meetme.so/APBooking>. 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 7.2 - Second Letter from IAP to eligible Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl 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](http://www.grantthornton.com.au/IAP).

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

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

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

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

**Consultations**

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

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

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

Please book Sydney and Wollongong consultations as soon as possible.

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

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

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

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

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

Yours sincerely,



Dr Daryl McPhee



Susan Madden



Brett McCallum

*Appendix 7.3 - Third Letter from IAP to eligible Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl 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

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

Dear Fishing Business Owners,

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

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

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

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

#### **Consultations**

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

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

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

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

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

Consultation dates are as follows:

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

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

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

#### To Book a Consultation

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

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

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

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

Yours sincerely,



Dr Daryl McPhee



Susan Madden



Brett McCallum

*Appendix 7.4 - Fourth Letter from IAP to eligible Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl 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](http://www.grantthornton.com.au/IAP).

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

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

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

**Port Macquarie:**

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

**Eden / Bermagui**

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

**Yamba**

- Tuesday, February 06, 2018

**Ballina:**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Yours sincerely,



Dr Daryl McPhee



Susan Madden



Brett McCallum

*Appendix 7.5 - Fifth Letter from IAP to eligible Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl Share Class shareholders on 12 February 2018*

INDEPENDENT ALLOCATION PANEL

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

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

Dear Fishing Business Owners,

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

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

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

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

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

Yours sincerely,



Dr Daryl McPhee



Susan Madden



Brett McCallum

*Appendix 7.6 - Sixth Letter from IAP to eligible Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl 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.granthornton.com.au/iap/>.

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

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

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

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

**Nowra**

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

**Sydney**

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

**Eden**

- Tuesday, March 13, 2018

### **Bermagui**

- Wednesday, March 14, 2018

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

See booking process below.

### **To Book a Consultation**

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

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

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

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

Yours sincerely,



Dr Daryl McPhee



Susan Madden



Brett McCallum

Independent Allocation Panel

# PROPOSED TIMELINE

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



*Appendix 7.7 - Seventh Letter from IAP to eligible Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl 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 8<sup>th</sup> March 2018

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

Dear Fishing Business Owners.

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

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

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

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

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

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

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

Yours sincerely,



Dr Daryl McPhee



Susan Madden



Brett McCallum

*Appendix 6.9 - Eighth Letter from IAP to eligible Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl 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 16<sup>th</sup> 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](http://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](http://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](mailto: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 **7<sup>th</sup> 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 7<sup>th</sup> of May will not be considered when preparing the final report. Please ensure submissions are provided prior to 5pm on the 7<sup>th</sup> 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 30<sup>th</sup> 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



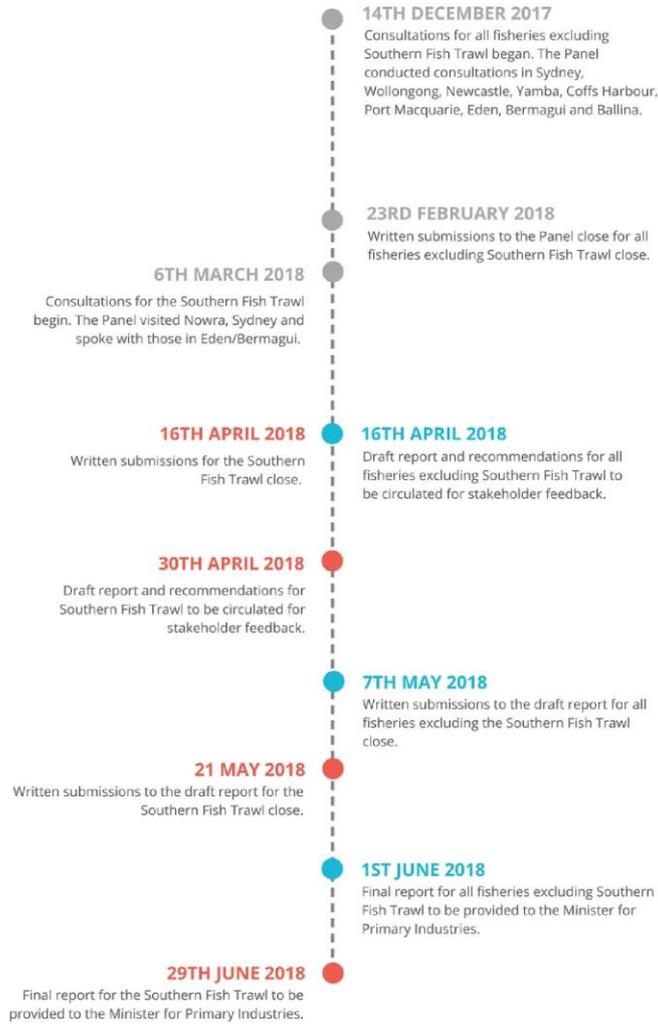
Susan Madden



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 7.9 - Ninth Letter from IAP to eligible Ocean Trawl – Inshore & Offshore Trawl Share Class & Northern Fish Trawl 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 4<sup>th</sup> 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](http://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](http://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 **14<sup>th</sup> of May**.

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

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

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



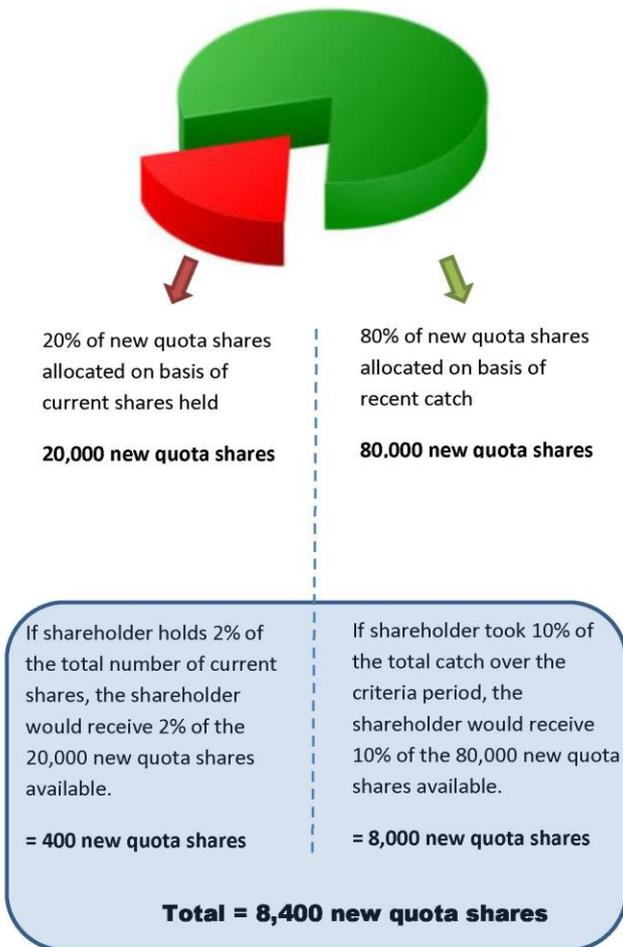
Susan Madden



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 8 – 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.

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Bishop, J., Die, D., & Wang, Y. G. (2000). Applications: A generalized estimating equations approach for analysis of the impact of new technology on a trawl fishery. *Australian & New Zealand Journal of Statistics*, 42(2), 159-177.

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Greenville, J., Hartmann, J., & MacAulay, T. G. (2006). Technical efficiency in input-controlled fisheries: The NSW ocean prawn trawl fishery. *Marine Resource Economics*, 21(2), 159-179.

O'Neill, M. F., & Leigh, G. M. (2007). Fishing power increases continue in Queensland's east coast trawl fishery, Australia. *Fisheries Research*, 85(1-2), 84-92.

Pascoe S., Coglan L. (2002). The contribution of unmeasurable inputs to fisheries production: An analysis of technical efficiency of fishing vessels in the English Channel. *American Journal of Agricultural Economics* 84, 585-597.

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