

**REPORT OF THE NSW ESTUARY GENERAL  
HAND GATHERING SHARE CLASS  
INDEPENDENT ALLOCATION PANEL  
IAP Report (Final) – 1st June 2018**

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

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## Table of Contents

1. Executive Summary.....	4
2. IAP Summary of Recommendations for the <i>Estuary General - Hand Gathering Share Class</i> .....	6
2.1 Proportional Allocation of Hand Gathering Species Between Share Classes .....	6
2.2 Pipis.....	6
2.3 Ghost Nippers.....	7
2.4 Beachworms .....	7
2.5 Cockles.....	8
3. Definitions .....	9
4. Introduction .....	9
5. Summary of History of Share Management in NSW .....	10
6. Background to the <i>Estuary General – Hand Gathering Share Class</i> .....	15
7. Establishing the Independent Allocation Panel .....	16
8. Legal Background .....	17
8.1 Legislation/Policy .....	17
8.2 Guiding Principles.....	18
8.3 Ministerial Announcements and Decisions.....	19
8.4 Data Availability and Reliance.....	19
9. Independent Allocation Panel Process .....	19
9.1 IAP Consultation Meetings.....	20
9.2 Written Submissions .....	20
9.3 Final IAP Report.....	21
10. IAP Considerations of key issues raised in submissions to Draft IAP Report.....	21
10.1 Use of Shares as Allocation Criteria.....	21
10.2 Use of Reported Landings as Allocation Criteria .....	25
10.3 Recorded Landings Qualifying Period .....	27
10.4 Use of Investment as Allocation Criteria.....	28
10.5 Management Issues for DPI Consideration .....	29

11. Exceptional/Special Circumstances .....	29
12. Independent Allocation Panel Findings and Recommendations .....	30
12.1 Proportional Allocation of Hand Gathering Species Between Share Classes .....	30
12.2 Pipsis.....	31
12.3 Ghost Nippers.....	32
12.4 Beachworms .....	34
12.5 Cockles.....	35
13. Example of Application of IAP Recommendations .....	36
Appendix 1 – Summary of Issues raised in Submissions to Draft IAP Report – <i>Estuary General – Hand Gathering Share Class</i> .....	38
Appendix 2 – Further Scenario Analyses for Exceptional Circumstances .....	46
Appendix 3 – Summary of Issues raised in Consultation Meetings and Round 1 Submissions - <i>Estuary General – Hand Gathering Share Class</i> .....	47
Appendix 4 – Biographies of Members of the Independent Allocation Panel .....	51
Appendix 5 – Terms of Reference for Independent Allocation Panel for <i>Estuary General - Hand Gathering Share Class</i> .....	52
Appendix 6 – Correspondence and Advice to Eligible Estuary General - Hand Gathering Share Class Shareholders .....	58
Appendix 7 – References - Documentation used.....	77

## 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.

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 from the fishery.

The SARC concluded that this distortion would require specific consideration by an

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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.

Independent Allocation Panel (IAP) with terms of reference seeking the IAP to provide advice to the NSW Minister for Primary Industries on the basis for allocation of 'quota shares' for specific species across the following NSW share classes:

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

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

The ToR for the *Estuary General - Hand Gathering Share Class* sets out the species for which advice on allocation of quota shares would apply, being:

- pipis;
- cockles;
- beachworms; and
- ghost nippers.

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

The IAP has produced a Draft IAP Report after considering the views presented by those eligible shareholders in the *Estuary General - Hand Gathering 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 *Estuary General - Hand Gathering 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 were 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 the *Estuary General - Hand Gathering Share Class* to the Minister for Primary Industries on 1<sup>st</sup> June 2018.

## 2. IAP Summary of Recommendations for the *Estuary General - Hand Gathering Share Class*

### 2.1 Proportional Allocation of Hand Gathering Species Between Share Classes

Where catch quota shares are issued for a particular species in more than one share class (e.g. Region 1) in the *Estuary General - Hand Gathering Share Class* (i.e. pipis, cockles, beachworms, ghost nippers) the IAP recommends that the initial amount of quota shares allocated for each species in each share class is proportional to the recorded landings of that species for each share class compared to the total recorded landings of that species across all share classes within the agreed criteria period (being 2009/10 – 2016/17 (inclusive) for cockles, beachworms and ghost nippers and 2012/13 – 2016/17 (inclusive) for pipis).

Expressed as a formula, the following outlines the way to calculate the quota share allocation proportion for Region 1 using pipis as the example:

Total Recorded Landings of pipis for period 2012/13 to 2016/17 (inclusive) of those Fishing Businesses with current EGHG [Region 1] shares

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Sum of Total Recorded Landings of Pipis for EGHG for the period 2012/13 to 2016/17 (inclusive) of those Fishing Businesses with current EGHG [all Regions] shares

### 2.2 Pipis

The IAP recommends that the allocation of quota shares for pipis to fishing businesses with shareholdings in each regional *Estuary General – Hand Gathering (EGHG) Share Class* be determined based on 20% on the proportion of access shares held + 80% on the proportion of recorded landings for an individual fishing business over the period 2012/13 – 2016/17 (inclusive) but excluding the ‘worst catch year’.

The IAP recommends the use of the sum of recorded landings over the period 2012/13 – 2016/17 (inclusive) and *excluding the worst year* for all current fishing businesses with holdings in each regional share class.

*The IAP recommends that pipi quota shares not be allocated to those shareholders who are currently restricted to catching beachworms only.*

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

(20% x Total number of EGHG Shares held by an individual Fishing Business in [Region X])

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Total number of shares in the EGHG (Region X) Share Class

+

(80% x Individual Fishing Business’s Total Recorded Landings of pipis in the EGHG [Region X] Share Class *excluding the ‘worst catch year’* for the period 2012/13 to 2016/17 (inclusive))

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Sum of the Total Recorded Landings of Pipis *excluding the ‘worst catch year’* for the period 2012/13 to 2016/17 (inclusive) of all current Fishing Businesses with EGHG shares in [Region X]

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 Ghost Nippers**

The IAP recommends that the allocation of quota shares for ghost nippers to fishing businesses with shareholdings in each regional *Estuary General – Hand Gathering (EGHG) Share Class* be determined based on 5% on the proportion of access shares held + 95% on the proportion of recorded landings for an individual fishing business over the period 2009/10 – 2016/17 (inclusive) but excluding the ‘worst catch year’.

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

*The IAP recommends that ghost nipper quota shares not be allocated to those shareholders who are currently restricted to catching beachworms only.*

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

$$(5\% \times \text{Total number of EGHG Shares held by individual Fishing Business in [Region X]})$$

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Total number of shares in the EGHG (Region X) Share Class

+

$$(95\% \times \text{Individual Fishing Business's Total Recorded Landings of ghost nippers in the EGHG [Region X] Share Class excluding the 'worst catch year' for period 2009/10 to 2016/17 (inclusive)})$$

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Sum of Total Recorded Landings of ghost nippers *excluding the ‘worst catch year’* for the period 2009/10 to 2016/17 (inclusive) of all current Fishing Businesses’ with EGHG shares in [Region X]

The quota volume (i.e. kg) received in any given year, would therefore be the quota share multiplied by the total 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 Beachworms**

The IAP recommends that the allocation of quota shares for beachworms to fishing businesses with shareholdings in each regional *Estuary General – Hand Gathering (EGHG) Share Class* be determined based on 5% on the proportion of access shares held + 95% on the proportion of recorded landings for an individual fishing business over the period 2009/10 – 2016/17 (inclusive) but excluding the ‘worst catch year’.

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

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

(5% x Total number of EGHG Shares held by individual Fishing Business in [Region X])

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Total number of shares in the EGHG [Region X] Share Class

+

(95% x Individual Fishing Business's Total Recorded Landings of beachworms in the EGHG [Region X] Share Class *excluding the 'worst catch year'* for period 2009/10 to 2016/17 (inclusive))

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Sum of Total Recorded Landings of beachworms *excluding the 'worst catch year'* for the period 2009/10 to 2016/17 (inclusive) of all current Fishing Businesses with EGHG shares in [Region X]

The quota volume (i.e. kg) received in any given year, would therefore be the quota share multiplied by the total 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.

There are currently only three (3) stand alone, single share hand gathering endorsements that have always been restricted to taking only beachworms. The IAP are of the view that these endorsements should not receive an allocation of cockles, ghost nippers or pipis. Their allocation should be as per the allocation criteria for beachworms for the rest of the eligible fishing businesses (i.e. 5% shares and 95% recorded landings).

## 2.5 Cockles

The IAP recommends that the allocation of quota shares for cockles to fishing businesses with shareholdings in each regional *Estuary General – Hand Gathering (EGHG) Share Class* be determined based on 5% on the proportion of access shares held + 95% on the proportion of recorded landings for an individual fishing business over the period 2009/10 – 2016/17 (inclusive) but excluding the 'worst catch year'.

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

*The IAP recommends that cockle quota shares not be allocated to those shareholders who are currently restricted to catching beachworms only.*

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

(5% x Total number of EGHG Shares held by individual Fishing Business in [Region X])

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Total number of shares in the EGHG [Region X] Share Class

+

(95% x Individual Fishing Business's Total Recorded Landings of cockles in the EGHG [Region X] Share Class *excluding the 'worst catch year'* for period 2009/10 to 2016/17 (inclusive))

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Sum of Total Recorded Landings of cockles *excluding the 'worst catch year'* for the period 2009/10 to 2016/17 (inclusive) of all current Fishing Businesses with EGHG shares in [Region X]



The quota volume (i.e. kg) received in any given year, would therefore be the quota share multiplied by the total allowable commercial catch (TACC) for the species. The IAP notes that setting of the TACC is a separate process and is outside the scope of the IAP ToR.

### **3. Definitions**

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

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

### **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 assessment processes include extensive consultation, consideration 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 (positively or negatively) by allocation decisions. It is important that all fishers who may be directly impacted are afforded the opportunity to present their views, including on any draft recommendations prior to final allocation advice being provided.

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

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

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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)

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

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

The NSW Government established an IAP for the *Estuary General - Hand Gathering Share Class* to provide advice to the Minister for Primary Industries and the Department of Primary Industries on the basis for the allocation of quota shares to the holders of *Estuary General - Hand Gathering Share Class* shares ("eligible shareholders").

The IAP consultation took place primarily through individual meetings with eligible shareholders (i.e. registered fishing business owners), receipt of written submissions and further industry written submissions in response to circulation of the Draft IAP Report. Written submissions on the Draft IAP Report were received from eligible shareholders and interested stakeholders. Submissions received were considered by the IAP, the issues raised assessed, further information taken into account where relevant, and the Final IAP Report submitted to the Minister for Primary Industries on 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 the IAP recommendations for the basis for the allocation of quota shares to the eligible shareholders in the *Estuary General - Hand Gathering 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 *Estuary General Fishery* became a Category 1 share managed fishery in 2007 when the Share Management Plan took effect and share management was fully implemented.

The *Estuary General Fishery* included the *Hand Gathering Share Class* and the access criteria applied for issue of shares was (excluding spanner crabs):

- 100 shares allocated for each endorsement type a Fishing Business is entitled to with following exceptions:
  - a. 50 shares allocated for each Review Panel allocated endorsement where the associated Fishing Business does not satisfy the transfer criteria,
  - b. 50 shares allocated for each restricted hand gathering endorsement held in a region except:
    - 1 share allocated for each restricted endorsement held in a region where the Fishing Business did not contain validated recorded landings

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

- c. 1 share allocated for each class of endorsement held by a Fishing Business is entitled to in a region other than the primary region
- 25 shares allocated for each endorsement where the Fishing Business satisfies current transfer criteria other than for the class of shares issued in accordance with a), b) and c) above.

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

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

AgEconPlus Consulting (2015)<sup>6</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 or previous fishing effort. 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 that 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 been implemented in all of the nominated NSW fisheries, there was now a mechanism in place to readily facilitate structural adjustment over time. The report recommended a limit be set for each fishery and sub-fishery (i.e. a Total Allowable Catch or Total Allowable Effort) and allocated to shareholders in direct proportion to their shareholdings. The report identified that the existence of significant shareholdings held by latent fishing businesses may mean that linking shares to recorded landings and/or effort would result in a degree of distortion and initial disruption to active fishers.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In April 2014 a DPI consultation paper<sup>14</sup> set out that catch quota should be pursued as the preferred option for linking shares to resource access but, if this is not feasible, shares should be linked to fishing effort in the form of transferable time/gear based quota (effort quota) 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 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>15</sup> as a criteria was proposed to be limited to those sectors demonstrating 'extreme disparity' between shareholdings and some shareholders recorded landings, especially where shareholdings were initially issued on a flat basis and/or (as in the majority of such cases) where there is no direct link between the access shares issued and species concerned. The DPI paper recognised that access shares already issued are a legal right that cannot be simply extinguished, whether or not they have been actively used to fish and as such all existing access shares do have some value that must be taken into account in any reforms of the current share managed fisheries structure.

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

AgEconPlus Consulting (2015)<sup>16</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>17</sup> the SARC reached the conclusion that for several species in some

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

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

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

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

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 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 share class 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 *Estuary General – Hand Gathering Share Class* IAP can be found at Appendix 5.

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

## **6. Background to the *Estuary General – Hand Gathering Share Class***

An estuary is a reference to all creeks, rivers, lakes, lagoons and tributaries flowing into or from that estuary. The fishery is divided into 7 regions along the coast.

*Estuary General - Hand Gathering Share Class* endorsements and separate share classes exist in each of the 7 regions.

A hand gathering endorsement authorises the holder to take beachworm, pipi, cockle, cuttlefish, mussel and nippers from estuarine waters and ocean beaches (seaward up to an imaginary line on the beach representing the lowest astronomical tide), within a region of the fishery specified in the endorsement, by the method of hand picking. The fishery targets two distinct markets – the recreational bait market for ghost nippers and beachworms, and human consumption for cockles and pipis<sup>18</sup>.

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<sup>18</sup> Historically pipis were also significantly targeted for the bait market.

The minimum shareholding in relation to estuary general (hand gathering) shares for share class regions 1, 2, 3, 4, 6 or 7 is 125 shares and for share class region 5 it is 100 shares.

The maximum shareholding is 40% of the total number of shares in the fishery.

Daily catch limits exist for pipis and biosecurity requirements place certain additional controls on the take of both cockles and pipis.

In its final report, the SARC (2015) noted that the *Estuary General - Hand Gathering Share Class* is a very distorted share class with high levels of latent effort that can be easily activated, especially for high value species supplying bait to the recreational sector.

The SARC (2015) reported that there were 81 Fishing Businesses as at September 2015, with only 25 Fishing Businesses generating 80% of the gross value of production (GVP).

DPI provided the IAP with updated data for the *Estuary General - Hand Gathering Share Class* in January 2018. Based on this data, the current distribution of fishing businesses and shareholdings by region is shown in the table below.

<b>Estuary General – Hand Gathering</b>	<b>No. FBs</b>	<b>No. Shares</b>
Region 1	12	1675
Region 2	3	127
Region 3*	22	2161
Region 4*	27	3729
Region 5	1	100
Region 6	6	1426
Region 7	4	500
<b>All Regions</b>	<b>75</b>	<b>9718</b>

\* Includes shares held in the surrendered shares repository

Source: NSW DPI Fisheries, January 2018

## **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 *Estuary General - Hand Gathering 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 *Estuary General - Hand Gathering Share Class* access shares.

Full details of the IAP Terms of Reference for the *Estuary General - Hand Gathering Share Class* can be found at Appendix 5.

The members appointed to the IAP are:

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



- Brett McCallum – has 40 years associated with the commercial fishing industry in Western Australia. Commencing with major fishing companies he spent 15 years as CEO of the WA Fishing Industry Council and 15 years as CEO of the Pearl Producers Association (Australia). He is a past Deputy Chair of the Fisheries Research & Development Corporation. He has experience on several fisheries allocation panels across Australia in the past 10 years.

Detailed biographies can be found at Appendix 4.

Grant Thornton Australia Ltd has been appointed by the DPI 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 *Estuary General - Hand Gathering Share Class*.

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

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

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

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

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

## **8. Legal Background**

### **8.1 Legislation/Policy**

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

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

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

The IAP has also taken into account NSW Government statements and documentation designed to guide decision-making. The IAP viewed such documentation as secondary to legislative objectives under the Act and any relevant regulatory controls. 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 5), 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 *Estuary General - Hand Gathering Share Class* as well as broader NSW Government fisheries policy statements.

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

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

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

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

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

The IAP process was as follows:

1. The DPI 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 *Estuary General - Hand Gathering Share Class*;
  - existing fishing businesses and shareholdings within the scope of the fishery; and
  - past correspondence, industry meeting decisions, published management guidelines and other written communication for the fishery.
2. The IAP consulted directly with the holders of shares ("eligible shareholders"), other stakeholders and other person/s or organisations with appropriate knowledge or experience to assist the allocation process. A copy of all written correspondence from the IAP to eligible shareholders up to, and including the Draft IAP Report stage, are listed at Appendix 6.
3. Written submissions were encouraged, and a closing date initially set for 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 7th May 2018. The closing date for submissions was subsequently extended, on the request of industry, to close of business 14th May 2018. Other submissions received in relation to generic issues for quota share allocation were also considered for the Draft Report.
7. Eligible shareholder and other stakeholder feedback on the Draft IAP Report was considered by the IAP together with any other information deemed appropriate.

8. A Final Report from the IAP was presented to the Minister by the closing deadline of 1st June 2018.

### **9.1 IAP Consultation Meetings**

Written notification from the IAP was circulated in December 2018 to all eligible shareholders in the *Estuary General - Hand Gathering Share Class*. Individual face-to-face meetings between the IAP and eligible shareholders were held to discuss the matters set out in the ToR.

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

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

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

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

The issues raised in these face-to-face consultations are included, in no particular order, in the summary of issues raised from all Round 1 consultations set out in Appendix 3.

### **9.2 Written Submissions**

Correspondence to eligible shareholders in the *Estuary General - Hand Gathering Share Class* was provided through a wide range of sources including SMS, email, general postal mail and links to the DPI Fisheries and Grant Thornton Australia Ltd websites.

Addresses for IAP correspondence were obtained from the fishing business contact details for eligible shareholders in the *Estuary General - Hand Gathering Share Class* registered with the DPI Fisheries at the time of writing.

#### **9.2.1 Round 1 – Opening Consultations**

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

The IAP received a total of 12 written submissions in relation to the *Estuary General - Hand Gathering 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 the 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 Draft IAP Report by 7<sup>th</sup>

May 2018. The closing date for submissions was subsequently extended, at the request of industry, to close of business 14th May 2018.

The IAP received a total of fifteen (15) written submissions (representing twenty (20) fishing businesses) in relation to the *Estuary General - Hand Gathering Share Class* Draft IAP Report and a summary of key 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 considered the Round 2 written submissions received following circulation of the Draft IAP Report together with further information as appropriate and submitted their Final IAP Report to the Minister for Primary Industries on 1<sup>st</sup> 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 within written submissions received in relation to the Draft IAP Report for the *Estuary General - Hand Gathering Share Class*.

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

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

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

- not purchased any shares in any market and just maintained their initial parcel issued to them by the Government;
- purchased some shares in a market in addition to the initial parcel issued by the Government; and,
- purchased all of their current shareholding from the market.

It is the view of the IAP that this initial 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. 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 *Estuary General Hand Gathering Share Class* one only had to have an endorsement to be allocated the minimum 125 shares to fish in the share class (100 in Region 5). If you were not fully active in the restricted fishery you still could receive 50 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.

Other fishing business owners put the case that Government advised industry on multiple occasions prior to, and subsequent to, the initial access share allocation that using recorded landings was no longer a required criterion for access and shares were now the only basis for access to fisheries. Some fishers argued that a share guarantees access to a proportion

of the biomass of the fishery, regardless of whether you choose to fish. These fishers are of the view that everyone's investment is on the same basis – a 'share based management system' – and everyone has the ability to use their share investment as they see fit. They believe that it should not matter that one person has used their shares to catch fish and others have not.

Concern was raised by some that there will be a substantial redistribution of wealth as access shares were granted equally and in perpetuity and fishermen were told access shares were all they would ever need for 'full qualification' in the fishery. They were concerned that now 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 controlling fishing capacity through input controls. Eligibility for endorsements was to be determined on the basis of shareholdings (not validated catch history). The concept of 'validated catch history' was abandoned in February 2007 and no longer transferred with fishing businesses (or access shares).

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

The IAP notes that the context was very different when Stevens *et al.* did their review in 2012 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>19</sup>, the SARC reached the conclusion that for several species in some share classes (including the *Estuary General – Hand Gathering Share Class*) the reform program and exit grant would be unable to deal with the level of distortion in those share classes. The SARC concluded that *'an equal allocation based on existing access shares would place an unacceptably high financial impact on a relatively small number of active operators fishing businesses who currently account for a high proportion of the catch of those species'*.

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<sup>19</sup> Final Share Linkage Recommendations, NSW Structural Adjustment Review Committee, Ian Cartwright, Sevaly Sen and Mary Lack (30 September 2015), p2.

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

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

Active fishermen argued they had made large investments in this fishery, in the form of the minimum shares required to go fishing, vessels, vehicles and fishing gear capable of handling the fishing conditions and distances required to access this fishery. Their view was that if the existing active fishers don't 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 catch. Although not quantified, this would have potential flow on impacts to local and regional economies including fish co-operatives, retail food service outlets, service industries and tourism.

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 IAP's ToR. For example, a business that is demonstrably reliant on relatively large recorded landings will be disadvantaged by an equal allocation model. At the opposite end, a business with relatively small or nil recorded landings would potentially receive a windfall gain as they would receive an allocation well above any historical recorded landings or effort levels.

Evidence before the court in a recent NSW hearing<sup>20</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 are 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

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<sup>20</sup> Elliott v Minister administering Fisheries Management Act 1994 [2018] NSWSC 117

notice was given. The court stated that the plaintiff could purchase Quota Shares even at the time of the court case and release of the findings. The plaintiff had submitted that the cost of purchasing Quota Shares would render commercial fishing uncommercial. The court set out that if that be so, the market may soon react by a diminution of the number of commercial fishing operations but that is not a matter for the court. Nor does it render the Quota Shares allocation scheme unreasonable, capricious or an abuse of process.

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

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

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

- in as far as it is possible, maintain current access to fisheries where fishers have derived most of their catch, and
- reduce the costs to active fishers of any adjustment to shareholdings, where it is necessary to obtain additional shares. This sought to minimise impact 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 *Estuary General Hand Gathering Share Class* are access shares only. Accessing the fishery required a fishing business to have a shareholding above a specified minimum. They do not represent a previous proportional allocation. The IAP was specifically tasked with allocating new quota shares. In allocating new quota shares, the IAP has factored in a weighting to these access shares held, however, this is balanced with the need to ensure that wealth redistribution is minimised (consistent with IAP Guiding Principles 1 and 5) and the objective of the reform program that active fishers can maintain fishing activities at or close to current levels. The latter also potentially minimises disruption to supply chains.

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

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

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

Recorded landings and/or fishing effort are the measure of fishing activity. Typically, a fishing business that has a greater economic reliance on a particular fishery has a greater level of fishing activity in that fishery. Recorded landings is 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 share class. 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 if recorded landings was to be a factor, they may have changed their diversified fishing strategy. In their view using recorded landings rewards those who have put pressure on the resources to the point where restrictions are now required.

The IAP view is that fishing business owners make business decisions to maximise the return from their investment and reduce the risk to their overall investment. A diversified fishing strategy is a deliberate decision to spread the risk across a range of fisheries and

take advantage of the best fishing option or maximise efficiency in use of infrastructure in any season. In allocation decisions based on recorded landings, diversified fishing businesses would receive allocations across a number of fisheries that would reflect their diversified fishing activities, which should allow them to continue to fish across a number of fisheries. In contrast, a fishing business that had put in the same amount of investment and fishing activity overall but directed into a single fishery will receive an allocation in that single fishery only.

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

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

The Government made the decision to assess how to allocate new quota shares (by establishing the IAP) to address the distortion that would take place among shareholders if an equal allocation based on existing access share holdings was applied. The identified distortion was that equal allocation would create an unacceptably high financial impact on a relatively small number of endorsement holders who are actively fishing and who currently account for a high proportion of the total recorded landings of those nominated species.

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

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

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

There had been strong interest in these share classes for the fishing business buyouts option with a significant number of applications submitted. However, some shareholders

were concerned that if they consolidated their fishing businesses under the buyout phase, the fishing activity/catches associated with the cancelled fishing business would be lost or not able to be taken into account if the future Independent Allocation Panel recommended that fishers' activity forms part of the allocation criteria for issuing new species shares.

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

The IAP recommendations can be applied if this commitment stands.

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

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

### ***10.3 Recorded Landings Qualifying Period***

The Department provided the IAP with recorded landings and effort data for the period from 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 PI for catch reporting commenced from July 2009. This was the point at which all reports included a direct link between each species landed and the share type that grants the authority to take that fish. DPI Fisheries advised that using records from prior to July 2009 to attribute catch to a share type may have to include consideration of the methods reported, any co-caught species or even the season of fishing and these additional factors would severely weaken and complicate any analyses and interpretation.

In determining any allocations based on recorded landings choosing which years to utilise within the available time series is an important consideration. Too short a time period may not pick up annual variations in recorded landings driven for example by changes in stock size or significant weather events such as 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's 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 for the period 2009/10 to 2016/17 represents the best available data for use by the IAP.

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

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 the 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, 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 issued for a particular species in more than one share class in the *Estuary General - Hand Gathering Share Class* (i.e. pipis, cockles, beachworms, ghost nippers) the IAP recommends that the initial amount of quota shares allocated for each species in each share class is proportional to the recorded landings of that species for each share class compared to the total recorded landings of that species across all share class (regions) within the agreed criteria period. This should be determined using only the records of those with current fishing businesses with holdings in the share class.

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

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

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

It is also important to note that operators may not be profitable despite a considerable investment of time and effort. Consequently, Kaufmann *et al.* (1999) identifies that specifically using investment as a means of allocation can produce redistribution

consequences that are difficult to rationalise. It can lead to overcapitalisation of the catching sector, which may in turn compromise long term sustainability, and may be biased towards businesses that have invested in land-based infrastructure such as processing businesses.

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

### **10.5 Management Issues for DPI Consideration**

Many issues were raised with the IAP during consultations and within written submissions that were outside the ToR for the *Estuary General – Hand Gathering Share Class*.

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

- maintain the regions and regional endorsements. Do not allow people to fish anywhere in the state as this will deplete locations and impact the social licence benefits of spreading the effort;
- allow catch of quota across 12 months of the year to provide commercial flexibility;
- get rid of the regions and allow people to fish anywhere in the state;
- keep the endorsements and quotas within the region allocated;
- do not allow quota transfer across regions; and
- allow quota to be transferred across regions.

## **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 that could be taken in an allocation process to factor in collectively what could be exceptional circumstances is to remove a period of time from the data criteria 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) to consider:

- 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; and
- allocation based over the period 2009-10 to 2016-17 with the worst two catch years removed from the analysis.

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:

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

The magnitude of the difference for the first two points directly above further increases as the number of 'worst catch years' you choose to remove from the analysis.

For the *Estuary General – Hand Gathering Share Class* the magnitude of the changes from the analyses are compared in the tables in Appendix 2.

Overall, the IAP considers that changes in allocations overall 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 respective criteria periods, 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 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 individual 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 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 allocation are made by the Government.

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

### ***12.1 Proportional Allocation of Hand Gathering Species Between Share Classes***

Where catch quota shares are issued for a particular species in more than one share class/region in the *Estuary General - Hand Gathering Share Class* (i.e. pipis, cockles, beachworms, ghost nippers) the IAP recommends that the initial amount of quota shares allocated for each species in each share class/region is proportional to the recorded landings of that species for each share class/region compared to the total recorded landings across all share classes/regions of that species within the agreed criteria period (being 2009/10 – 2016/17 (inclusive) for cockles, beachworms and ghost nippers and 2012/13 – 2016/17 (inclusive) for pipis).

Expressed as a formula, the following example outlines the way to calculate the pipis quota share allocation proportion for share class/region 1 in the EGHG:

Total Recorded Landings of pipis for period 2012/13 to 2016/17 (inclusive) of those Fishing Businesses with current EGHG [Region 1] shares

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Sum of Total Recorded Landings of pipis for EGHG for the period 2012/13 to 2016/17 (inclusive) of those Fishing Businesses with current EGHG [all Regions] shares

This should be determined using only the records of those with current fishing businesses holding shares in the share class.

## **12.2 Pipis**

The IAP findings are based on the information provided by DPI on the recorded landings of pipis and the distribution of those recorded landings amongst fishing businesses in the *Estuary General – Hand Gathering Share Class*.

There are 75 fishing businesses holding a total of 9718 shares in the *Estuary General – Hand Gathering Share Class* as at January 2018. Shareholdings range from 1 up to 750, with the majority of fishing businesses (70%) holding the minimum 125 shares required to access the fishery.

Fifty-three (53) fishing businesses with current shareholdings in the *Estuary General – Hand Gathering Share Class* have reported recorded landings of pipis over the period 2009/10 to 2016/17. Information provided by DPI shows that an additional twenty nine (29) fishing businesses caught pipis over this period, however, they no longer hold shares in the *Estuary General – Hand Gathering Share Class*.

Of the fishing businesses that caught pipis in the *Estuary General – Hand Gathering Share Class* over this period, three fishing businesses each caught between 5% and 10% of the recorded landings, thirty-two (32) fishing businesses each caught between 1% and 5% of the recorded landings, and the remaining eighteen (18) fishing businesses each caught less than 1% of the recorded landings.

Given the uneven distribution of recorded landings, an equal allocation based on shares to the seventy-five (75) fishing businesses shareholders in the pipi fishery, would lead to a distortion between the new allocation and the recorded landings of, and therefore income derived from pipis in the *Estuary General – Hand Gathering Share Class*.

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

The IAP considered a series of recorded landings scenarios and determined to use the most recent 5 years 2012/13 – 2016/17. It was deemed appropriate to use this criteria period as it recognises the period from when industry management was introduced into the fishery and includes the period when stock recovery was well underway.

Many fishers suggested that it would be appropriate to determine quota based on the 40kgs daily limit multiplied by the 6 month season, however, this assumes the TACC will be the same as always. The IAP ToR does not include advice over the TACC process, and therefore cannot simply assume this to be the case. Such an approach would provide a windfall gain to those with minimal or nil reported landings but put at risk the active fishers current level of catch should the TACC be set lower.

## IAP recommendations for allocation of quota shares for Pipsis:

The IAP recommends that the allocation of quota shares for pipsis to fishing businesses with shareholdings in each regional *Estuary General – Hand Gathering (EGHG) Share Class* be determined based on 20% on the proportion of access shares held + 80% on the proportion of recorded landings for an individual fishing business over the period 2012/13 – 2016/17 (inclusive) but excluding the ‘worst catch year’.

The IAP recommends the use of the sum of recorded landings over the period 2012/13 – 2016/17 (inclusive) and *excluding the worst year* for all current fishing businesses with holdings in each regional share class.

*The IAP recommends that pipi quota shares not be allocated to those shareholders who are currently restricted to catching beachworms only.*

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

$$(20\% \times \text{Total number of EGHG Shares held by an individual Fishing Business in [Region X]})$$

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Total number of shares in the EGHG (Region X) Share Class

+

$$(80\% \times \text{Individual Fishing Business's Total Recorded Landings of pipsis in the EGHG [Region X] Share Class excluding the 'worst catch year' for the period 2012/13 to 2016/17 (inclusive)})$$

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Sum of the Total Recorded Landings of Pipsis *excluding the ‘worst catch year’* for the period 2012/13 to 2016/17 (inclusive) of all current Fishing Businesses with EGHG shares in [Region X]

The quota volume (i.e. kg) received in any given year, would therefore be the quota share multiplied by the total annual allowable commercial catch (TACC) for the species. The IAP notes that setting of the TACC is a separate process and is outside the scope of the IAP ToR.

### 12.3 Ghost Nippers

The IAP findings are based on the information provided by DPI on the recorded landings of ghost nippers and the distribution of those recorded landings amongst fishing businesses in the *Estuary General – Hand Gathering Share Class*.

There are seventy-five (75) fishing businesses holding a total of 9718 shares in the *Estuary General – Hand Gathering Share Class* as at January 2018. Shareholdings range from 1 up to 750, with the majority of fishing businesses (70%) holding the minimum 125 shares required to access the fishery.

Just seven of the fishing businesses with current shareholdings in the *Estuary General – Hand Gathering Share Class* have reported catch of ghost nippers over the period 2009/10 to 2016/17. Information provided by DPI shows that an additional two (2) fishing businesses caught ghost nippers over this period, however, they no longer hold shares in the *Estuary General – Hand Gathering Share Class*.

Of the seven (7) fishing businesses that caught ghost nippers in the *Estuary General – Hand Gathering Share Class* over this period, two (2) fishing businesses accounted for



approximately 90% of the catch. These same fishing businesses, however, held less than 5% of the total shareholdings in the *Estuary General – Hand Gathering Share Class*. Given this, an equal allocation based on shares to the seventy-five (75) fishing businesses shareholders in the *Estuary General – Hand Gathering Share Class* would lead to a considerable distortion between the new allocation and the recorded catch of, and therefore income derived from, ghost nippers in the *Estuary General – Hand Gathering Share Class*.

A number of fishing businesses in this fishery that spoke to the IAP identified that they had no historic, current or future interest in harvesting ghost nippers.

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

### **IAP recommendations for allocation of quota shares for Ghost Nippers:**

The IAP recommends that the allocation of quota shares for ghost nippers to fishing businesses with shareholdings in each regional *Estuary General – Hand Gathering (EGHG) Share Class* be determined based on 5% on the proportion of access shares held + 95% on the proportion of recorded landings for an individual fishing business over the period 2009/10 – 2016/17 (inclusive) but excluding the ‘worst catch year’.

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

*The IAP recommends that ghost nipper quota shares not be allocated to those shareholders who are currently restricted to catching beachworms only.*

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

$$(5\% \times \text{Total number of EGHG Shares held by individual Fishing Business in [Region X]})$$

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Total number of shares in the EGHG (Region X) Share Class

+

$$(95\% \times \text{Individual Fishing Business's Total Recorded Landings of ghost nippers in the EGHG [Region X] Share Class excluding the 'worst catch year' for period 2009/10 to 2016/17 (inclusive)})$$

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Sum of Total Recorded Landings of ghost nippers *excluding the ‘worst catch year’* for the period 2009/10 to 2016/17 (inclusive) of all current Fishing Businesses with EGHG shares in [Region X] share class

The quota volume (i.e. kg) received in any given year, would therefore be the quota share multiplied by the total 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.

The IAP has weighted a greater percentage to recorded landings for ghost nippers than pipis recognising the fact that a very small number of shareholdings in the existing share class account for the bulk of the catch and that a higher weighting to access shares would impact their relative economic position in this fishery. Similarly, a higher weighting to access shares would result in a large number of shareholdings receiving a windfall gain in quota shares

when they have little to nil recorded landings of ghost nippers.

#### **12.4 Beachworms**

The IAP findings are based on the information provided by DPI on the recorded landings of beachworms and the distribution of those recorded landings amongst fishing businesses in the *Estuary General – Hand Gathering Share Class*.

There are seventy-five (75) fishing businesses holding a total of 9718 shares in the *Estuary General – Hand Gathering Share Class* as at January 2018. Shareholdings range from 1 up to 750, with the majority of fishing businesses (70%) holding the minimum 125 shares required to access the fishery.

Thirty-one (31) of the fishing businesses with current shareholdings in the *Estuary General – Hand Gathering Share Class* have reported catch of beachworms over the period 2009/10 to 2016/17. Information provided by DPI shows that an additional twenty (20) fishing businesses caught beachworms over this period, however, they no longer hold shares in the *Estuary General – Hand Gathering Share Class*.

Of the thirty-one (31) fishing businesses that caught beachworms in the *Estuary General – Hand Gathering Share Class* over this period, eight (8) fishing businesses each caught between 5% and 10% of the recorded catch, thirteen (13) fishing businesses each caught between 1% and 5% of the recorded catch, and the remaining ten (10) fishing businesses each caught less than 1% of the recorded catch. Given the uneven distribution of catch, an equal allocation based on shares to the seventy five (75) fishing businesses shareholders in the *Estuary General – Hand Gathering Share Class*, would lead to a distortion between the new allocation and the recorded catch of, and therefore income derived from, beachworms in the *Estuary General – Hand Gathering Share Class*.

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

#### **IAP recommendation for Beachworms:**

The IAP recommends that the allocation of quota shares for beachworms to fishing businesses with shareholdings in each regional *Estuary General – Hand Gathering (EGHG) Share Class* be determined based on 5% on the proportion of access shares held + 95% on the proportion of recorded landings for an individual fishing business over the period 2009/10 – 2016/17 (inclusive) but excluding the 'worst catch year'.

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

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

(5% x Total number of EGHG Shares held by individual Fishing Business in [Region X])

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Total number of shares in the EGHG [Region X] Share Class

+

(95% x Individual Fishing Business's Total Recorded Landings of beachworms in the EGHG [Region X] Share Class *excluding the 'worst catch year'* for period 2009/10 to 2016/17 (inclusive))

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Sum of Total Recorded Landings of beachworms *excluding the 'worst catch year'* for the period 2009/10 to 2016/17 (inclusive) of all current Fishing Businesses with EGHG shares in [Region X] share class

The quota volume (i.e. kg) received in any given year, would therefore be the quota share multiplied by the total 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.

The IAP has weighted a greater percentage to recorded landings for beachworms than pipis recognising the fact that a very small number of shareholdings in the existing share class account for the bulk of the catch and that a higher weighting to access shares would impact their relative economic position in this fishery. Similarly, a higher weighting to access shares would result in a large number of shareholdings receiving a windfall gain in quota shares when they have little to nil recorded landings of beachworms.

There are currently only three (3) stand alone, single share hand gathering endorsements that have always been restricted to taking only beachworms. The IAP are of the view that these endorsements should not receive an allocation of cockles, ghost nippers or pipis. Their allocation should be as per the allocation criteria for beachworms for the rest of the eligible fishing businesses (i.e. 5% shares and 95% recorded landings).

### **12.5 Cockles**

The IAP findings are based on the information provided by DPI on the recorded landings of cockles and the distribution of those recorded landings amongst fishing businesses in the *Estuary General – Hand Gathering Share Class*.

There are seventy-five (75) fishing businesses holding a total of 9718 shares in the *Estuary General – Hand Gathering Share Class* as at January 2018. Shareholdings range from 1 up to 750, with the majority of fishing businesses (70%) holding the minimum 125 shares required to access the fishery.

Eleven (11) of the fishing businesses with current shareholdings in the *Estuary General – Hand Gathering Share Class* have reported catch of cockles over the period 2009/10 to 2016/17. Information provided by DPI shows that an additional seven (7) fishing businesses caught cockles over this period, however, they no longer hold shares in the *Estuary General – Hand Gathering Share Class*.

Of the eleven (11) fishing businesses that caught cockles in the *Estuary General – Hand Gathering Share Class* over this period, three (3) fishing businesses accounted for over 75% of the catch. These same fishing businesses, however, held only 10% of the total shareholdings in the *Estuary General – Hand Gathering Share Class*. Given this, an equal allocation based on shares to the seventy five (75) fishing businesses shareholders in the *Estuary General – Hand Gathering Share Class*, would lead to a considerable distortion between the new allocation and the recorded catch of, and therefore income derived from, cockles in the *Estuary General – Hand Gathering Share Class*.

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

#### **IAP recommendation for Cockles:**

The IAP recommends that the allocation of quota shares for cockles to fishing businesses with shareholdings in each regional *Estuary General – Hand Gathering (EGHG) Share Class* be determined based on 5% on the proportion of access shares held + 95% on the proportion of recorded landings for an individual fishing business over the period 2009/10 – 2016/17 (inclusive) but excluding the ‘worst catch year’.

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

*The IAP recommends that cockle quota shares not be allocated to those shareholders who are currently restricted to catching beachworms only.*

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

$$(5\% \times \text{Total number of EGHG Shares held by individual Fishing Business in [Region X]})$$

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$$\text{Total number of shares in the EGHG [Region X] Share Class}$$

+

$$(95\% \times \text{Individual Fishing Business's Total Recorded Landings of cockles in the EGHG [Region X] Share Class excluding the 'worst catch year' for period 2009/10 to 2016/17 (inclusive)})$$

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$$\text{Sum of Total Recorded Landings of cockles excluding the 'worst catch year' for the period 2009/10 to 2016/17 (inclusive) of all current Fishing Businesses with EGHG shares in [Region X]}$$

The quota volume (i.e. kg) received in any given year, would therefore be the quota share multiplied by the total 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.

The IAP has weighted a greater percentage to recorded landings for cockles than pipis recognising the fact that a very small number of shareholdings in the existing share class account for the bulk of the catch and that a higher weighting to access shares would impact their relative economic position in this fishery. Similarly, a higher weighting to access shares would result in a large number of shareholdings receiving a windfall gain in quota shares when they have little to nil recorded landings of cockles.

### **13. Example of Application of IAP Recommendations**

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

A simple worked example follows for a hypothetical share class where there is 1000 shares in total and where the total catch over the period of time considered is 100 tonnes.

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.

- Fishing Business 'A' holds 100 of the total of 1000 shares in the share class, which equates to 10% of the total shares.
- Fishing Business 'A' has landed 5 tonnes over the criteria years considered for allocation, which equates to 5% of the total catch.
- The proportion of shares held contributes to 20% of the overall allocation (i.e. 10% times 20%), which in percentage terms is 2%.
- The proportion of the catch contributes to 80% of the overall allocation (i.e. 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 Submissions to Draft IAP Report – Estuary General – Hand Gathering Share Class**

### **Introduction**

The Independent Allocation Panel (IAP) released its Draft Report on the allocation of quota shares in the *Estuary General - Hand Gathering Share Class* 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 to 14<sup>th</sup> May 2018 on request of industry to ensure adequate opportunities for submissions from shareholders and any other interested parties.

Overall, 15 written submissions were received representing 20 fishing businesses. The Professional Fishers Association (PFA) also provided a submission with generic information regarding allocation and specifics on the *Estuary General - Hand Gathering Share Class*.

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 revisions to 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 response of the PFA members to the quota allocation discussions has been divided.*

**Issue:** *Fishers who have participated for the long term in the Pipi fishery believe that the proposed IAP allocation methodology i.e. 80/20 split is more than fair and takes into account the guiding principles as set out in the IAP terms of reference for the Estuary General – Hand Gathering Fishery.*

### **Theme: Using Existing Shares as Allocation Criteria**

**Issue:** *Since 2010 PFA members were encouraged by government to purchase more shares as more shares meant more access.*

**Issue:** *In the Pipi Fishery, fishers were limited to a 40kg a day pipi quota regardless of shareholding. Which meant anyone who had additional fishing businesses or shares above the minimum was not able to catch anymore then 40kg. Their excess shares were deemed as useless as DPI prevented their use.*

**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.*

**Issue:** *It is important to note that when the initial share allocation was made Fishers were advised by DPI that they would not need to increase their shareholding in order to have full and equal access to the fishery.*

**Issue:** *The use of catch history in the allocation of quota shares in the EG HGF would be contradictory to the long standing and consistent information provided to fishers by NSW DPI and the actions of NSW DPI in operating a subsidised share trading market to assist fishers to buy and sell shares within the structural adjustment process.*

**Issue:** *Fishers invested in HG fishery to ensure a secure future in the fishery following indications how quota shares were allocated in other Estuary General fisheries (crab, eel Eastern Sea Garfish) where there was no consideration to individual's catch history.*

**Issue:** *Fishers were encouraged by government to invest in the fishery as we were aware that there would be limitations placed on each share held. The only way we could ensure our future was to purchase more shares either privately or in the recent reform process. Shares were sold by individuals and then allocated by NSW Fisheries in the reform and had no allocation of history attached. These fishers will have no way of earning enough money from their quota allocation under the IAP recommendations to pay back loans.*

**Issue:** *SARC (2015) commented that Government through its policy statements and commitment to the reform has created a reasonable expectation that share linkage will occur and people have made investments in reliance of those statements. Not proceeding with linking shares could therefore elicit legal challenges. SARC set out that based on reported prices by DPI (extrapolated across shares traded the value of traded shares between Nov 2012 and Sept 2015) was approximately \$17.09m (including stamp duty).*

**Issue:** *Since 2013, NSW DPI has consistently advised of their intention to link shares to catch or effort. Changing to a regime linking catch history to new quota shares is unfair to those that have based their business strategy on the consistent messaging from NSW DPI since 2013. Creation of a new share class, specifically designed to allocate greater rights to one current shareholder while diminishing the rights of another current shareholder is unfair and inequitable and outside IAP ToR guiding principle 1.*

**Issue:** *Shareholders share the costs of managing the resource equally whatever their level of activity and catch. It is fair and equitable that benefits, in this case allocation of quota shares, be shared equally as well.*

**Issue:** *The allocation of a new share class based on criteria other than shareholdings at 30 September 2017 will be a reallocation of entitlements which already link fishing rights to a meaningful proportion of resource allocation within the EG HGF (ie: The fishery is already managed by time based restrictions and daily catch quota).*

**Issue:** *Pre-reform process DPI advised fishers to buy more shares to cover any shortfall into the future. Purchased another 100 HG shares but needed 125 shares to fish. Therefore no catch history for these 100 shares.*

**IAP response:** *Despite the fact that there was an initial share allocation in the Estuary General – Hand Gathering Share Class it is the view of the IAP that this allocation process resulted in only further limiting the number of endorsements that could access the fishery and allowed endorsed fishers to continue to take all catch while operating within the formal input control limits. It was in practicality an access arrangement rather than an allocation of a property right in the strict sense.*

The access shares were used by the government to manage the fishery through a

combination of options including minimum shareholdings and input controls.

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

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 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.

Fishers making business decisions have also had access to public documentation as far back as 2014 that highlighted the option of using recorded landings (catch history) as an allocation criteria in those fisheries where there would be a large distortion in any quota share distribution away from active fishers if the allocation was based equally across shares held. Catch and effort records have been widely used solely or as a major component of initial allocation in a range of Australian fisheries including various Commonwealth fisheries, the Queensland Spanner Crab Fishery, the Queensland East Coast Trawl Fishery, West Australian Rock Lobster Fishery, and many others. It is a well-known approach to allocation as the draft report documented.

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

In the SARC report (2015) they reached the conclusion that for several species in some share classes, (including the Estuary General Hand Gathering) the reform program and exit grant would be unable to deal with the level of distortion in those share classes. The SARC concluded that an allocation based on equal allocation using existing access shares would place an ‘*unacceptable and unintended substantial financial burden on a relatively small number of fishing businesses who currently account for a high proportion of the catch of those species*’. The SARC recommended that new share classes be established in these particular fisheries and that an Independent Allocation Panel (IAP) established to provide advice on allocation. The recommendations from SARC were publicly available.

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

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

As discussed in the Draft and Final Reports, the existing shares in the *Estuary General – Hand Gathering 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.

**Theme: Government policy removed catch history from shares on transfer**

**Issue:** *Taking species off an endorsement for which good money was paid for with no scientific reason is inexplicable. This will cause major financial difficulties for me and my family. Cannot see how it is legal to be able to merely take a species off an endorsement just because there is no catch history for that species. You cannot just take a species from a endorsement that was purchased under the understanding that the particular species would be a part of that endorsement.*

**IAP Response:** 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.

**Theme: Using Catch History as Allocation criteria**

**Issue:** *DPI has supported trading of endorsements and shares and transfer of same to different fishing business. Catch history disappears when shares are traded. What is the % of the total catch that has disappeared due to share and endorsement trading?*

**Issue:** *All of the industry arguments for catch history to be a part of each shareholder allocation were ignored by NSW DPI Fisheries therefore they set a precedent of how quota is to be allocated (ie equal shares). We cannot be expected to keep second guessing how quota allocations are to occur in each fishery.*

**Issue:** *A fishing business on which an endorsement is attached has no catch history as the history for that endorsement is sitting on another fishing business owned by same person. Endorsement transferred due to recent fisheries reforms forcing fishers to consolidate businesses, buy, sell and move shares. Endorsement may have to be transferred back to gain allocation under IAP recommendations.*

**Issue:** *The DPI's Failure to warn of this adverse outcome, when offering shares in the BAP should be seriously considered by the IAP. Landed catch history should be reinstated to the fisher that was lost in the BAP FB number sell back.*

**Issue:** *It is difficult to show catch history prior to 2016 as our catch was channeled through a Co-op.*

**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, recorded landings and fishing effort completed by the fishing business owner. Consistent with IAP Guiding Principle 6, the IAP has taken into account the best available information during its considerations and at the time of drafting reports.

Regardless of the initial destination of product caught by an endorsed fishing business, there is still an onus on accurate recording of catch by a fishing business. The IAP is aware that the Department has embarked on a verification process for recorded landings.

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 preclude its use.

**Issue:** Fisher purchased HG endorsement in August 2015. DPI sent Fishing Business certificate on 18<sup>th</sup> March 2016 - 75 days prior to the start of the 2016 pipi season. Endorsement purchased came from a fisherman who had 3 HG endorsements all with good catch history. To use this endorsement fisher needed a FB number. Purchased a FB from another fisherman and attached it to the HG endorsement which is allowable and has been done so in many cases. Fisher since found out that this purchased FB was mostly for prawning and not hand gathering.

**IAP Response:** Fishers making business decisions have had access to public documentation as far back as 2014 that highlighted the option of using recorded landings (catch history) as an allocation criteria. Just like any business arrangement, fishers need to do due diligence on purchasing of fishing entitlements and contract arrangements between business entities.

**Issue:** How many of the 53 hand gathering business numbers currently have endorsements that are eligible for the 80% allocation. How many have no history attached.

**IAP Response:** DPI provided the IAP with updated data for the respective share classes as at January 2018. As outlined in the draft report, there are 75 current fishing businesses across the seven (7) *Estuary General – Hand Gathering Share Class*. The number of fishing businesses with recorded landings in the criteria period for each species were outlined in section 11 of the Draft Report. Fifty-three (53) of the current fishing businesses have recorded landings of pipis, seven (7) of the current fishing businesses have recorded landings of ghost nippers, thirty-one (31) of the current fishing businesses have recorded landings of beachworms, and eleven (11) of the current fishing businesses have recorded landings of cockles over the criteria period. Under the IAP's recommendations, these fishing businesses will be eligible for a proportionate share of the 80% of the TACC that will be allocated based on recorded landings over the period 2009/10 to 2016/17 (inclusive).

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

**Issue:** It is noted that for species that are shared between the inshore and offshore prawn, northern fish trawl, and line fishing (eastern zone) share classes, the Panel has made a preliminary recommendation to allocate quota shares based on the relative proportion of total landings taken by each share class. Strongly supports this approach because it reflects the importance of the species to each of the share classes concerned (based on historic catch). Would also suggest that the same approach be considered for *Estuary General – Hand Gathering* where there are seven competing share classes and the same issues (variable levels of catch) exist.

**Issue:** To avoid any misunderstanding by Government or industry it would help if the final recommendations include specific formulae and/or calculation criteria. Advice on other issues such as rounding (at the share class or business level) may also be appropriate given that such matters can have an impact at both the individual and cumulative level. Worked examples may also assist.

**Issue:** *What does '80% landed catch 20% shareholding' actually mean? Does an eligible recipient share 80% of the total annual catch? Does an eligible recipient receive 80% of their landed catch history? From my own research this will be wildly distorted as much of the total stated catch history has been lost due to endorsement transfers etc over the time period used.*

**IAP Response:** The IAP takes on board these recommendations and provides further explanation in this document as well as including it in the Final Report.

**Issue:** *It would be helpful if the Panel could expand on its reasons for including this year (2016/17) and any assessment by the Panel of the risk (as raised by the SARC) that some fishers may have misreported catch in an attempt to better position themselves for the subsequent share allocation process.*

**IAP Response:** 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.

**Issue:** *Panel's recommendations relating to pipi, cockle and ghost nipper do not address the 'restricted handgatherers' who entered the industry via Ministerial concession in the late 1990s to take beachworms only. The Panel might consider whether it is appropriate to issue pipi, cockle and ghost nipper quota shares to these shareholders, and note their consideration of this issue in the Panel's final report.*

**IAP Response:** There are currently only three (3) stand alone single share hand gathering endorsements that have always been restricted to taking only beachworms. The IAP are of the view that these endorsements should not receive an allocation of cockles, ghost nippers or pipis. Their allocation should be as per the allocation criteria for beachworms for the rest of the eligible fishing businesses (5% shares and 95% recorded landings).

### **Theme: Fishery should be managed in various ways**

**Issue:** *Shares should not be allowed to transfer between regions to reduce polarization of effort in specific areas.*

**IAP Response:** This is a fisheries management matter and is therefore falls outside the IAP's ToR. There are positives and negatives for transferring effort across regions that needs to take into consideration the potential for local depletion and interactions with other stakeholders.

**Issue:** *There is no need to have a quota for ghost nippers as they are not for food consumption.*

**IAP Response:** This is addressed as government has decided that quota shares will be issued separately for each species.

**Issue:** *Basing annual quota on past returns will result in future annual catch being 15 to 30% below historical levels.*

**Issue:** *The "proposed" kilograms of catch quota have not been included in report making it guess work for fisher to evaluate the impact.*

**IAP Response:** While the IAP understands why fishing business operators would like to see an estimate of quota and quota allocation in kilogram terms in the IAP Report, it is outside the scope of the IAP to do so. The process for setting future annual total allowable catch quotas will be a separate process requiring specific expertise.

**Issue:** *Where is the research that recent total average catch is relevant to determine if individual regions are underfished or overfished?*

**IAP Response:** The IAP is not required to make any determination regarding whether a stock in a region or as a whole is underfished or overfished. The management of the fishery including the regional status of harvested stocks is not within the IAP's ToR.

### **Theme: Diversified Fishing**

**Issue:** *Fisher has historically operated consistently in Pipi fishery as a winter fishery but stopped fishing to let stock repair and for share management to be introduced. IAP recommendations favour those who kept working the beaches reducing stocks to all beaches along the coast rather than those fishers who waited for local beaches to recover. Shares should be allocated equally like mud crabs.*

**IAP Response:** 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 which incorporates catch history 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.

### **Theme: Exceptional Circumstances**

**Issue:** *Provisions or consideration needs to be made available for fishers whose work capacity may have been affected by health issues or other extraordinary issues within any criteria period*

**Issue:** *I have been an active professional fisher person since 1979. For the period 2013-2015 (inclusive) I was involved in the NSW DPI Fisheries Pipi Research limiting considerably the numbers of days I could harvest Pipsis and Beach Worms.*

**Issue:** *Records will show there was from 2009 to 2013 there were virtually no pipsis caught in Zone 1. I think DPI in conjunction with Ballina Council put a temporary closure on at time due to lack of stock. Fisher cannot see how IAP can base a quota on a species when there was none harvested.*

**Issue:** *The criteria years proposed by the IAP (2009/2010 to 2016/2017) are critical years in relation to a huge drop in nipper catch as there was a huge problem with the black market due to there being no bag limit in place. Shops that took black market nippers undercut my wholesale price and drove me out of business.*

**IAP Response:** The IAP has recommended to the Government that individual exceptional circumstances may need to be considered prior to final decisions on allocation. In making this recommendation 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.

This also may be partly addressed by the IAP final recommendation to remove the worst year of catch from recorded landings.

**Theme: Government Financial Support for Adjustment**

**Issue:** *No funding support has been announced by government to compensate owners for the distortion to their property right as was case in BAP process.*

**IAP Response:** This issue is not within the IAP ToR.

**Theme: Legal Status of Access Shares**

**Issue:** *During the BAP, shares offered for sale were placed in a pool and sold to purchasers by DPI. DPI was the vendor of shares that give a 'right to fish'. IAP proposals have changed the 'right' and shares are no longer fit for purpose under Australian Consumer Law and anyone who purchased shares in the BAP should be entitled a full refund.*

**IAP Response:** This issue is not within the IAP's ToR.

## Appendix 2 – Further Scenario Analyses for Exceptional Circumstances

### Beachworms

Shareholding	Record landings for whole period	No of years with recorded landings between 09-10 to 16-17 (8 max)	20% shares and 80% recorded landings for whole period	20% shares and 80% catch history with lowest year removed	20% shares and 80% catch history with two lowest years removed
125 (3.4%)	0 (0.0%)	0	0.7%	0.7%	0.7%
125 (3.4%)	1,150 (6.5%)	5	5.9%	6.0%	6.3%
<b>125 (3.4%)</b>	<b>1,674 (9.5%)</b>	<b>8</b>	<b>8.3%</b>	<b>8.3%</b>	<b>8.2%</b>
315 (8.4%)	0 (0.0%)	0	1.7%	1.7%	1.7%

### Cockles

Shareholding	Record landings for whole period	No of years with recorded landings between 09-10 to 16-17 (8 max)	20% shares and 80% recorded landings for whole period	20% shares and 80% catch history with lowest year removed	20% shares and 80% catch history with two lowest years removed
125 (3.4%)	0 (0.0%)	0	0.7%	0.7%	0.7%
125 (3.4%)	6,212 (20.8%)	2	17.3%	17.3%	17.3%
315 (8.4%)	1,939 (6.5%)	4	6.9%	6.9%	6.9%

### Pipis

Shareholding	Record landings for whole period	No of years with recorded landings between 12-13 to 16-17 (5 max)	20% shares and 80% recorded landings for whole period	20% shares and 80% catch history with lowest year removed	20% shares and 80% catch history with two lowest years removed
<b>125 (3.4%)</b>	5,283 (3.5%)	4	3.5%	3.9%	<b>3.3%</b>
125 (3.4%)	12,015 (7.9%)	3	7.0%	8.0%	7.7%
125 (3.4%)	403 (0.3%)	1	0.9%	0.9%	0.9%
<b>315 (8.4%)</b>	<b>27,494 (18.2%)</b>	<b>5</b>	<b>16.2%</b>	<b>17.4%</b>	<b>14.5%</b>

### Ghost nippers

Shareholding	Record landings for whole period	No of years with recorded landings between 09-10 to 16-17 (8 max)	20% shares and 80% recorded landings for whole period	20% shares and 80% catch history with lowest year removed	20% shares and 80% catch history with two lowest years removed
126 (3.4%)	85 (3.1%)	2	3.2%	3.2%	3.2%
<b>125 (3.4%)</b>	<b>2,621 (96.1%)</b>	<b>8</b>	<b>77.5%</b>	<b>77.5%</b>	<b>77.4%</b>
315 (8.4%)	0 (0.0%)	0	1.7%	1.7%	1.7%

## **Appendix 3 – Summary of Issues raised in Consultation Meetings and Round 1 Submissions - Estuary General – Hand Gathering 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 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.
- Structural adjustment program was to improve the property right held by fishermen.

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

- Currently there are 376 shares missing from the total available for hand gathering in Region 4. Assumed they have been purchased by government in the buy-out. When they originally were involved in the share purchase they were not told they would be in competition with government in the purchase of shares. They believe that HG shares not have been part of buy-out until after IAP process.
- There are people who took the large buy-outs from the government and then used that taxpayers' money to buy back into the industry purchasing cheaper licences and ending up with more licences than they originally had.
- When share management was introduced in 2007 the stated government policy under which industry operated was 'one man operation' for all licences.
- Need for thorough investigation to unearth corruption in share trading scheme and log book information before IAP process can finalise.
- They have been continuously investing in fishing businesses and shares waiting for the reform for the last 5 years. They knew that something would happen because of what they have seen happen elsewhere in the industry (e.g. what happened in the spanner crab fishery). Bought extra shares because pipis is a single species fishery and they made the assumption that the pipis would go to the way of mud crabs (because it's a single species fishery).

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

- Although I agree with the reasoning behind species shares, I think it is unfair and unjust to penalise people who believed the DPI that they had a property right that could never be taken from them. We were also told that catch history would never be used again as the shares now represented your catch history.
- DPI has advised them they will get 1341 kgs per annum quota of cockles per licence.

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

- Hand gathering quota should still incorporate pipis, worms, cockles and nippers regardless of whether or not fishermen have these on their catch returns. As part of the new quota systems within the entire industry fishermen are going to need these to make hand gathering viable.
- Do not really agree with the issuing of species quota shares but can see the rationale that quota would be spread too thin if it was issued to all shareholders equally, including those that had never participated in that species fishery.
- One fisherman explained that knowing he had the minimum shareholding he assumed he would be safe to catch under his hand gathering endorsement any time in the future and only ever needed 125 shares to fish. He advised there had never been any investment warnings that catch history was needed for future allocation.
- During the blue swimmer crab allocation he felt as if all of his catch history was given to everyone else, because it went to equal allocation.

### ***Use of Recorded landings as Allocation Criteria***

- Fishermen have purchased several different fishery endorsements to maintain a diversified fishing business to reduced risk and provide a seasonal fishing strategy. This may have resulted in fishing more in one fishery than another in any year (e.g. blue swimmer crabs vs pipis vs cockles). Now these fishermen will be adversely impacted because they do not have adequate catch history in any of the individual species under consideration.
- Using catch history rewards those who have raped the resources compared to those who have managed the resources by a diversified fishing approach.
- If there must be a quota then allocate cockle and pipi quota shares on catch history by region. Built his business on 40t annual catch and cannot afford to buy back this catch if allocated equally. Government should buy-out inactive licences.
- If catch history is to be used the IAP needs to look at the individual fisher and see what history he has in the fishery regardless of what FB or endorsement he/she was using.
- Catch history is not a true reflection of catch. They have concerns that people have been given a heads up that catch history is to be used for allocation and they are stacking the catch logbooks.

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

- Consideration should be given to issue quota in these fisheries to fishers who have surrendered fishing businesses and endorsements in the past at considerable cost.
- Maintain the regions and regional endorsements. Do not allow people to fish anywhere in the state as this will deplete locations and impact the social licence benefits of spreading the effort.
- Get rid of the regions and allow people to fish anywhere in the state
- Keep the quotas within the region allocated. Do not allow quota transfer across regions.
- Allow quota to be transferred across regions.
- Quota should reflect the regions that pipis are caught and not allocated equally across all regions as was the case in the crab allocation.
- Keep 40kgs/day limit and 45mm minimum size – good for market and social licence purposes. Allocate pipi quota equally across shares – i.e. 40kgs x 6 months = ~ 8 tonne/endorsement. Then allow catch of quota across 12 months of the year. Industry and DPI then determine daily limit.
- Individual businesses could be tailored to needs through buying and selling of days, daily limit still easily policed by fisheries officers and retains current business value.



Days should not be transferable throughout the state thus reducing the ability to overharvest any region.

- Would be appropriate for pipi catch history criteria period of the five years starting from 2011 when management was introduced into the fishery up to and including 2015 when stock recovery was well underway. Criteria should include individual catch records of a minimum 2 tonnes in at least three of those five years.
- Suggest that in order to maintain fairness and equity in the process that there would be 'one weighted allocation' per shareholder (e.g. 70% active/30% inactive). By 'one weighted allocation' per shareholder quota may apply to one fisher only (i.e. one shareholder cannot be allocated a weighted shareholding on his own history or merits and then qualify for another weighted shareholding through history on another shareholding he may have acquired at a later time). The reason I have put this out there is the discrepancies in catch history which may not be totally inaccurate or may have been enhanced in order to obtain advantage for which they don't legitimately qualify. Further to that I also am of the opinion that one weighted quota allocation per qualifying fisher I would think is more than fair.
- In Region 2, quota should be allocated to all endorsement equally based on 40kg/day x 7 days/week x 7 months = 8.4 tonnes/endorsement. In Region 3 there is only one 125 share endorsement and 2 single share endorsements. Catch would be low due to the one 125 share licence being the only one operating. The annual quota in Region 3 should be calculated at 3 x 8.4 tonnes = 25 tonnes and then allocated equally across the 127 shares in the region.
- Could live with allocation based on % for shares (low) / % for catch history (high).
- Tie shares to access and keep trip limit to suit quota abundance without having to go formal stock assessment. Apply a rate for each share = 1.5 day access. 125 shares would give 187.5 days' access. At 40kgs/day gives you 7,500kg which is an overall catch reduction of 12.8%. Only based on existing shareholding not based on history and people who have multiple shareholdings will have them in multitude of 125 shares. Single (1) share people don't get pipi allocation because they do not have access to pipis. This is cost effective, equitable, defensible, fair, consistent, transparent and maintain certainty for the shareholders.
- Day regime of 0.8 days/share or 1:1 day to share ratio. There are 3,352 shares in Region 4, over 25 endorsements and a possible 4,450 days to work. With 99% of the shares activated there is not much latent effort. At 0.8 days/share it drops effort to a total of 2680 days. This cuts effort but also give people incentives to look at buying more shares.

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

- Leave everything as it is.

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

- All the majority of fishers wish for is to be allowed to go about their profession in a respectful manner without any conflicts, stress or worry. This is something we have not experienced in the fishing industry for a very long time.
- There must be a similar subsidy support arrangement to that applied in the BAP for these fisheries being considered by the IAP.
- Total allowable catch should be based on scientific estimate. TAC should not be automatically reduced in following year by amount of quota not caught in current year.
- There is no need to have a quota because there are only three fishers in Regions 6 & 7 – an area over 500 kms.
- Nominated worker requirements of 48hrs notice is inefficient especially for nippers.
- SA pipis sent to SFM at 35mm. NSW minimum size 45mm. SA pipis should be

banned in NSW as undersized. Cannot send legally caught mud crabs from NSW to Brisbane if under the Qld minimum size limit.

- Should be an import quota placed on other states. Otherwise, NSW fishermen should be able to use the same methods other states do (e.g. SA can use a rake).
- A concern is aerial spraying by local government/Dept of Environment. When they spray there are no more pipis. A few months later, the little ones come back but the big ones are gone. Needs government intervention.

### ***Exceptional Circumstances***

- There may be a need to recognise exceptional circumstances.

## **Appendix 4 – Biographies of Members of the Independent Allocation Panel**

### **Daryl McPhee**

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

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

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

### **Susan Madden**

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

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

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

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

### **Brett McCallum**

Brett is currently a director of Bresal Consulting.

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

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

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

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

## Appendix 5 – Terms of Reference for Independent Allocation Panel for *Estuary General - Hand Gathering Share Class*

### TERMS OF REFERENCE

#### ESTUARY GENERAL – HAND GATHERING 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 Department of Primary Industries (“the Department”) on the basis for the allocation of pipi, beachworm, cockle and ghost nipper quota shares to the holders of Estuary general – handgathering shares – Regions 1, 2, 3, 4, 5, 6 and 7 (“eligible shareholders”).

**Scope**

In developing its recommendations on the basis for the allocation of pipi, beachworm, cockle and ghost nipper quota shares the Independent Allocation Panel (“the Panel”) is to consider:

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

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

**Guiding Principles**

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

1. **Fairness and equity** – an overarching principle that should inform an allocation issue or management generally is one of fairness and equity. That is, the resource is to be

allocated and managed in a way that distributes the benefits of use fairly amongst participants and minimises any differential economic impacts such as wealth redistribution arising from an allocation or management generally.

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

#### **Required Activities**

The Panel will be required to:

- a) review 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 for pipi, beachworm, cockle and ghost nippers;
- c) make a copy of the draft report available to eligible shareholders and the Department and consider comments on the draft prior to submitting a final report to the Minister; and
- d) consult with other people or organisations as considered appropriate by the Panel.

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

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

A signed, formal final report outlining the Panel's recommendations is to be provided to the Minister. The report shall provide advice on the allocation of pipi, beachworm, cockle and ghost nipper quota shares to eligible shareholders, supporting arguments and explanations or justification for the recommendations.

Specifically, the report should include advice on the allocation of pipi, beachworm, cockle and ghost nipper quota shares to eligible shareholders under section 71A of the *Fisheries Management Act 1994* (NSW).

### **Timeframe**

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

### **Support**

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

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

### **Background Material**

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

### **Governance and Confidentiality**

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

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

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

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

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

## **Attachment 1 – Selected Legislation**

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

Obligation to protect records

11 Obligation to protect records

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

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

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

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

Retention and security of personal information

12 Retention and security of personal information

A public sector agency that holds personal information must ensure:

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

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

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

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

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

Public interest considerations against disclosure

14 Public interest considerations against disclosure

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

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

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

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

Table

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



<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).</p>
<p>: 5 Environment, culture, economy and general matters There is a public interest consideration against disclosure of information if disclosure of the information could reasonably be expected to have one or more of the following effects:(a) endanger, or prejudice any system or procedure for protecting, the environment,(b) prejudice the conservation of any place or object of natural, cultural or heritage value, or reveal any information relating to Aboriginal or Torres Strait Islander traditional knowledge,(c) endanger, or prejudice any system or procedure for protecting, the life, health or safety of any animal or other living thing, or threaten the existence of any species,(d) damage, or prejudice 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.</p>
<p>: 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.</p>
<p>: 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.</p>

## Appendix 6 – Correspondence and Advice to Eligible Estuary General - Hand Gathering Share Class Shareholders

*Appendix 6.1 - First letter from IAP to eligible Estuary General - Hand Gathering 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.granthornton.com.au/iap](http://www.granthornton.com.au/iap).

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

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

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

#### **Panel Consultation Process**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Yours sincerely,



Dr Daryl McPhee



Susan Madden



Brett McCallum

## IAP Biographies

### **Brett McCallum**

Brett is currently a director of Bresal Consulting.

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

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

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

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

### **Daryl McPhee**

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

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

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

### **Susan Madden**

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

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

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

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

*Appendix 6.2 - Second Letter from IAP to eligible Estuary General - Hand Gathering 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:

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



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

Please book Sydney and Wollongong consultations as soon as possible.

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

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

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

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

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

Yours sincerely,



Dr Daryl McPhee



Susan Madden



Brett McCallum

*Appendix 6.3 - Third Letter from IAP to eligible Estuary General - Hand Gathering 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 6.4 - Fourth Letter from IAP to eligible Estuary General - Hand Gathering 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 6.5 - Fifth Letter from IAP to eligible Estuary General - Hand Gathering 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 6.6 - Sixth Letter from IAP to eligible Estuary General - Hand Gathering 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



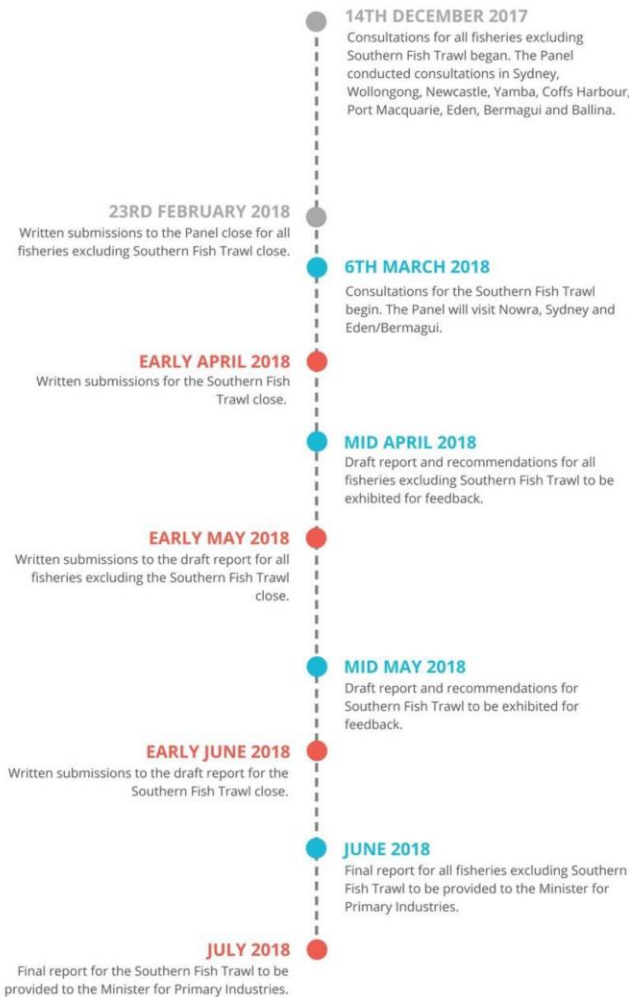
Brett McCallum



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 6.7 - Seventh Letter from IAP to eligible Estuary General - Hand Gathering 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 6.8 - Eighth Letter from IAP to eligible 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



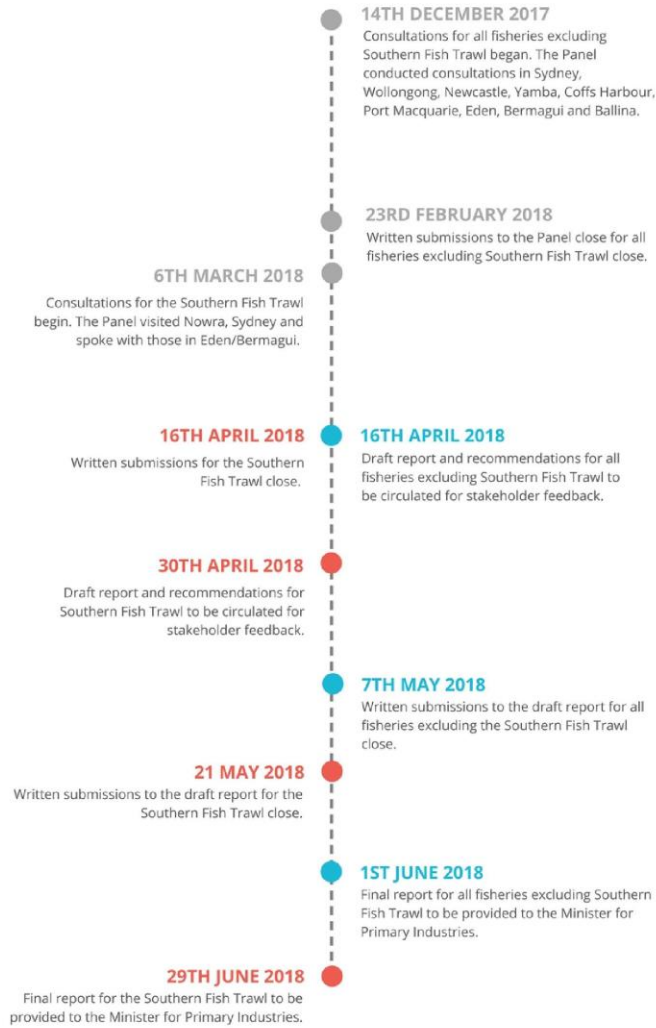
Susan Madden



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 6.9 - Ninth Letter from IAP to eligible 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



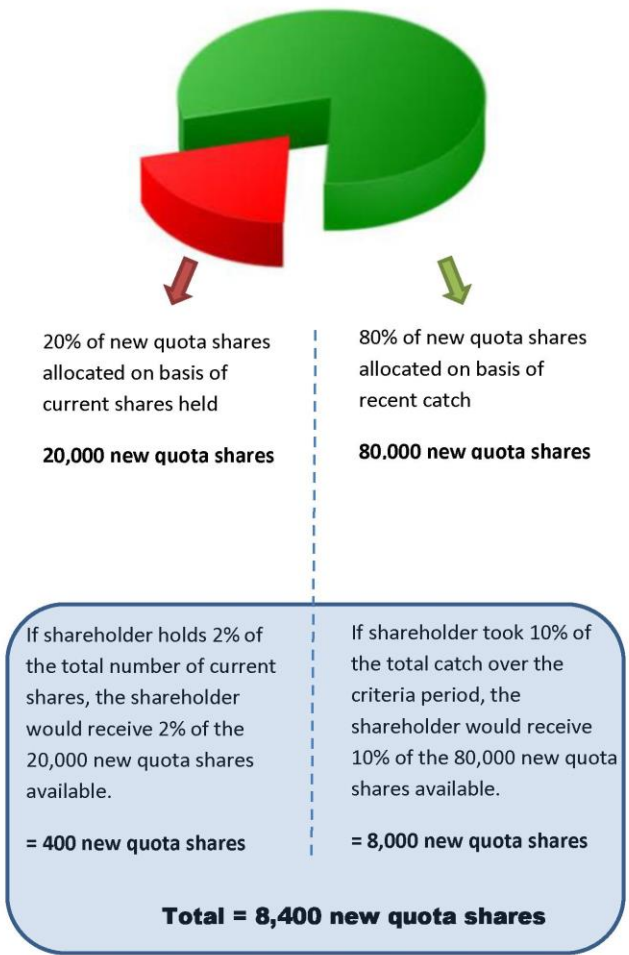
Susan Madden



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 7 – References - Documentation used**

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

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

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

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

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