

# The Recreational Fishing Alliance of NSW

Promoting Sustainable Fishing



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Department of Agriculture, Water and the Environment

Fisheries Branch

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Dear Fisheries Branch

## **RFA Submission — Commonwealth Fisheries Resource Sharing Framework Discussion Paper**

The Recreational Fishing Alliance of NSW (RFA) welcomes the opportunity to provide feedback on the Commonwealth Fisheries Resource Sharing Framework discussion paper (discussion paper). The RFA is hopeful that the development of a strong framework supported by all sectors and the states/territories (states) is achieved and adhered to in any long-term negotiations and allocations of these publically-owned resources across all fishing sectors.

It is hoped that the views of the RFA will help the government better understand the needs and expectations of the NSW stakeholders as part of a broader process. The complexities of resource sharing issues often directly impact upon state-based fishers due to state-based management arrangements, Offshore Constitutional Settlements (OCS) or Memorandums of Understanding (MOUs). Resource sharing between jurisdictions is not as clear-cut as the waters beyond the 3 nautical state-based limit or OCS arrangements.

The comments provided by the RFA with regard to the discussion paper highlight a genuine desire to see that a fair and equitable process surrounding a resource sharing framework is achieved, and that an agreed set of principles and approaches are established. The complexity of the issues and previous experiences in NSW has seen the RFA take an active interest in the Southern Fish Trawl (SFT) Transition to Commonwealth process and seeks to avoid the ongoing issues it has experienced as part of this process. The input provided by the RFA as part of the SFT process show the complexity of the issues in dealing with just one small fishery proposed to go to Commonwealth management and the issues that encompass a resource sharing framework.

Our comments are as follows and have been provided as a constructive and honest contribution to the process;

## **1. What are your thoughts on the proposed objectives for the framework?**

To date, the lack of active engagement of the state-based recreational sectors in a fair and transparent process has not allowed the Australian Government to better understand state-specific resource sharing issues or encouraged greater state-based stakeholder input in the Commonwealth decision-making processes and their impacts on recreational fishing. The RFA is interested in achieving a better cross-jurisdictional resource sharing result for recreational fishers across Australia and is greatly concerned that this process might in fact swing the balance further towards commercial fisheries and how we manage our publicly owned fish stocks under the current unbalanced *Commonwealth Fisheries Management Act 1991*.

There are basic principles that should apply to any new resource sharing agreement and RFA believes these should be as follows:

- Allocations will be species based.
- No allocation will be made until an independent stock assessment has been conducted on each species.
- The level of sustainability must be defined before allocation.
- No allocation will be made until an independent assessment of the social and economic benefits derived from the species is made using agreed methodologies.
- Allocations will be made to maximize the social and economic benefits to Australia.
- No allocations will be made until revised ESD Principles have been agreed.
- Allocations will be made in accord with ESD Principles (particularly intergenerational equity) to rebuild fish stocks by decreasing fishing mortality.
- Where a species is overfished, or stock status is uncertain, the precautionary principle will apply and allocation will favour the sector that minimizes fishing mortality.
- Catch history (past appropriation) will not be the basis for allocation between sectors as these represent the accidents of history reflected in gear type permitted, not the application of good rules or fairness.
- Allocation will recognize the long-term objectives of relevant sectors and their consistency with legislative objectives.

**Allocations will be species based.** The stock must be clearly identified before allocation.

**No allocation will be made until an independent stock assessment has been conducted on each species.** A stock assessment is required to show whether the proposed allocation is appropriate or might damage the fishery. This is especially necessary where an allocation of effort, as opposed to catch, is proposed. If the stock is overfished then measures must be taken to either restore the stock prior to allocation, or allocate in a way that will restore the stock by minimizing fishing mortality.

**The level of sustainability must be defined before allocation.** Simply defining a stock as “sustainable” is meaningless without defining some relative measure (e.g. to MSY, virgin biomass, etc).

**No allocation will be made until an independent assessment of the social and economic benefits derived from the species.** These assessments will provide the basis for optimizing the benefits to be gained through allocation.

**Allocations will be made to maximize the social and economic benefits to Australia.** These would appear to be reasonable alternatives to the maximization of individual profits.

**No allocations will be made until revised ESD Principles have been agreed.** As the Commonwealth is reassessing the ESD definitions it would be unwise to agree to allocation principles made in accord with ESD until the revision is complete.

**Allocations will be made in accord with ESD Principles (particularly intergenerational equity) to rebuild fish stocks by decreasing fishing mortality.** Rebuilding fish stocks should be an objective of the allocation process to maximize the opportunities available to future generations as required under ESD principles.

**Where a species is overfished, or stock status is uncertain, the precautionary principle will apply and allocation will favour the sector that minimizes fishing mortality.** Given the difficulty, expense and uncertainty of stock assessment the precautionary principle will be applied to protect stocks where stock status is uncertain. The most obvious way it apply the precautionary principle is through allocation to minimize fishing mortality on the stock.

**Catch history will not be the basis for allocation between sectors.** Catch history reflects the pattern of fishing using gear available to only one sector in waters only accessible to that sector. Given that the fishing strategies and objectives of the sectors are vastly different (maximum harvest versus minimizing mortality through tag and release), the use of historical landings as the basis for allocation is unsound.

**Allocation will recognize the long-term objectives of relevant sectors and their consistency with legislative objectives.** The stock management objectives of the sectors differ markedly. The commercial fishery is mobile while the recreational fishery is mostly static. The former can pursue different stocks while the latter is dependent on those available close to home port. The commercial fishery seeks to maximize harvest while minimizing operating costs. The recreational fishery seeks to increase fish stocks to maximize strike rates and opportunities of encountering trophy-sized fish. These objectives conflict, but the latter are more compatible with the ESD principles that underpin our statutes and should prevail.

## **2. Are there any principles that should be altered, added or removed from the list?**

### **Principle 1: Australian fisheries are sustainably managed.**

The level of access to updated information has been a challenge from the perspective of the knowledge gaps in the commercial and recreational fishery, and it has not been possible to qualify that our fisheries are sustainability managed as a whole.

Of a total of 238 identified stocks from 68 species, (Flood et al. 2014) assessed 170 stocks across state, territory and Australian Government jurisdictions, focusing predominantly on commercially fished species, but also including recreational catches, where appropriate. Of these stocks, they classified:

- 129 as sustainable
- 7 as recovering from past overfishing

- 19 as being in a state where fishing is too high (but not yet in a state of being overfished)
- 4 as being in a state where environmental processes have reduced the stock to a low point
- 11 as overfished.

Those stocks classified as overfished occurred in both Australian Government, and state and territory jurisdictions. The remaining 68 stocks were unable to be assigned a stock status classification, because insufficient information exists to determine stock status or information is conflicting.<sup>1</sup>

Total bycatch has been estimated for some commercial fisheries and but there has been no national assessment to date, largely because reporting frameworks are not consistent across jurisdictions. A framework for assessing the ecological impacts of fishing has been developed and applied to several Australian commercial fisheries to assess the risks to the many nontarget species taken in fisheries managed by the Australian Government.<sup>2</sup>

However, such assessments and the estimated impacts of fisheries on bycatch species are limited by a general lack of information on bycatch species, resulting in high uncertainty in assessments. Similarly, habitat assessments have been completed for only a small number of fisheries, and these have been mostly semi-quantitative. The cumulative impacts of fishing on marine habitats have not been analysed on a national scale<sup>3</sup>

The risks to sustainability posed by recreational and indigenous fishing to fish stocks currently managed by the Commonwealth are vanishingly small and recreational fishers cannot sell their catch. The word ‘sustainable’ has a range of meanings and should encompass and be measured against the social, environmental and inter-generational sustainability of fish stocks, and a relative measure e.g. to MSY, virgin biomass etc. needs to be applied.

#### Principle 2: Net economic returns to the Australian Community are maximised.

The objective for maximizing the net economic returns to the Australian community is outdated and fails to recognize the growing importance of social and environmental returns to recreational fishers and the community as a whole since 1991. Relying solely on economic returns from the commercial sector as the relevant measure is both outdated and inadequate.

If we were to apply this measure then recreational fishing and its associated tourism industries provide a much greater economic yield than commercial fishing—particularly in the more populous states—and consequently to Australia overall.

Resource sharing principles can be broadly categorised into social, biological, environmental and economic considerations and the objective and discussion should be approached from this perspective and be prioritized this way.

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<sup>1</sup> 2016 Australia State of Environment Report

<sup>2</sup> 2016 Australia State of Environment Report

<sup>3</sup> 2016 Australia State of Environment Report

Nearly 50% of the total production value is exported, with the majority going to Asian markets, while imports account for almost 70% of the fish consumed in Australia.<sup>4</sup>

In contrast, it is fair to assume that 100% of whatever fish species recreational fishers catch for food is consumed in Australia and they cannot sell their catch as an economic return on their effort.

The impact of commercial fisheries on the marine environment varies, with different fishing gear and fishing methods having different impacts on species that might be caught as bycatch and the habitats where fishing takes place. Methods are highly varied, and include the use of small-scale nets, pelagic longlines and large-scale trawl nets. Trophic structure and ecosystem productivity can be affected if target or non-target species are removed at too high a level in the long term<sup>5</sup>.

In contrast, the use of fishing rod/fishing line that almost 100% of fishers use do not have these impacts, especially out beyond 3nm.

In addition to target species, nearly all commercial fisheries catch species that are not the target of the fishery. These are mostly other fish or invertebrate species, but can also include species protected under the *EPBC Act* in threatened, migratory or marine categories, such as sea snakes, marine turtles, seabirds, sharks and marine mammals<sup>6</sup>.

In contrast, nearly all the non-target species or excess catch to state-based bag limits are released by recreational anglers with a very high rate of survival. Citizen science projects that involve tagging show iconic NSW fish species like Kingfish, Snapper and Mulloway having high survival rates post-tagging with many fish being caught multiple times. The same can be said of Kingfish in New Zealand. This contrasts the trawl fishery where any unwanted fish in a net brought to the surface is essentially a dead fish.

These are the fundamental differences that will make resource sharing a very complex process especially where we are not willing to look at the “net economic return to the Australian Community” by leaving a fish in the water, releasing an unwanted fish alive, limiting habitat degradation or even leaving it alone to regenerate. Leaving sensitive seabed habitats untouched also provides a net economic return to Australian economy.

### Principle 3: Decisions are based on the best available information.

Gathering the best information presents challenges as the data required for informed decision making depends on clear exposition of the individually-proposed resource sharing framework scope including the purpose, planned outcomes and proposed timeframe and milestones. It is critical that the stock must be clearly identified before allocation as part of this process.

Basic fisheries data on the recreational/commercial catch composition and catch value, including discards, of quota and non-quota species, and of by-catch, is essential as a minimum.

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<sup>4</sup> 2016 Australia State of Environment Report

<sup>5</sup> 2016 Australia State of Environment Report

<sup>6</sup> 2016 Australia State of Environment Report

#### Principle 4: Decision making will be sound and transparent.

Approaching this from a state-based perspective the RFA believes that a significant outcome for changing management arrangements only be considered if it is advantageous for the states—and especially NSW—in the long term and is consistent with the objects of the *NSW Fisheries Management Act 1994*. Pleasing AFMA or appeasing the Commonwealth is not sufficient reason for change. The challenge has been previously highlighted as below;

*“The different objectives can make harmonising legislation and management approaches between jurisdictions challenging. An instance of this is the different objectives of the Fisheries Management Act 1994 (NSW) and the FM Act (Commonwealth). The former includes objectives such as “provide social and economic benefits for the wider community of New South Wales” and an objective on sharing resources between different users, whereas the Commonwealth legislation refers to “maximising the net economic return to the Australian community” and has no reference to social benefits”<sup>7</sup>*

The comments that the framework will be used by the government and not the states is of great concern considering that some of these decisions will have direct impacts on recreational fishers inside the 3nm state waters limits. As we have seen in NSW, proposed Commonwealth arrangements with the commercial fishing industry inside 3nm has seen recreational anglers intentionally excluded from the initial negotiations.

The disastrous public consultation as part “Transitioning the NSW Southern Fish Trawl Restricted Fishery to Commonwealth Management” is reason enough for NSW to doubt the value AFMA has previously placed on NSW recreational angler input, and is just one example—the RFA strongly believes that basic resource sharing and allocations principles have not been applied as part of this process and the issue is still yet to be resolved. (See Annexure 1)

The RFA’s opposition to the transition of the NSW Southern Fish Trawl to the Commonwealth and its response essentially provides a snapshot of every foreseeable obstacle the Resource Sharing Framework must overcome in the first instance; it must truly be sound and transparent.

#### Principle 5: Existing rights of the fishing sectors will be acknowledged.

The RFA feels that resource sharing cannot be done under an outdated *Fisheries Management Act 1991* which is inadequate and does not have the appropriate scope or power to address the requirements of a suitable framework.

The *Fisheries Management Act 1991* requires comprehensive review and modernization to provide relevant objectives not only for resource sharing but for the management of all fisheries under Commonwealth jurisdiction and those on which they impact. This will require the recognition of statutory rights for all fishers, not just the commercial sector. Resource sharing attempted under this flawed legislation will guarantee failure.

The principle must define the statutory nature of the rights to be assigned to each sector and the rights to compensation or redress if those rights are altered or withdrawn. Obfuscation of this essential point reflects an unwillingness to come to grips with the real

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<sup>7</sup> Submission from the Australian Government—Department of Agriculture and Water Resources Productivity Commission—Inquiry into regulation of the Australian marine fisheries and aquaculture sectors 2016

nature of the redistribution of access rights. It is not only Commonwealth commercial fishers who desire greater security and clarity about the economic value of their fishing rights. Recreational and indigenous fishers do too. Acknowledgement falls short of recognition under the *Act*.

The statutory requirement for AFMA to “have regard for the interests” of recreational fishers *inter alia* is weak and places little, if any, obligation on AFMA to do more than note other users’ interests. There is no statutory requirement to take any action to deliver fair and reasonable access to the fisheries resources under their responsibility.

Principle 6: Regulation is efficient and cost effective.

The risks to sustainability posed by recreational and indigenous fishing to fish stocks currently managed by the Commonwealth are very small and recreational fishers cannot sell their catch.

Principle 7: Cost of resource sharing arrangement are shared.

Recreational fishing is competently managed by the states that carry all management costs and there is no justification for the introduction of any additional costs to other sectors through any proposed resource sharing arrangements.

Principle 8: Contribution of Aboriginal and Torres Strait Islander people to fisheries management is recognised.

The *Fisheries Management Act 1991* requires comprehensive review and modernization to provide relevant objectives not only for resource sharing but for the management of all fisheries under Commonwealth jurisdiction and those on which they impact. This will require the recognition of statutory rights for all fishers, not just the commercial sector.

**3. What factors or indicators should be considered when determining whether a fishery needs a resource sharing arrangement?**

The values and aspirations of the fishing sectors vary but all are valid in consideration of resource sharing issues. They are likely to change over time, and at times will not happily coincide with one another.

In these days of rapid communication and technological change, managing a natural resource like fisheries is a high-energy activity. It is made all the more challenging by many unknowns such as:

- What is really happening under the surface of the water?
- What are the real influences on the health and availability of fish stocks?
- Which changes in fish stocks are due to fishing and which changes are due to natural fluctuations/environmental changes?
- What is the relative fishing pressure exerted by the different fishing sectors (commercial, recreational, charter and indigenous fishing) on popular eating fish species?

- Shifting societal views on the value of the aquatic environment and fishing.<sup>8</sup>

All these are factors that could trigger a resource sharing arrangement, or more importantly, a review of a current arrangement.

One of the outcomes of the resource sharing negotiations in the ETBF in the early 2000s was the summary below which essentially encapsulated the issues that are still relevant and need addressing 20 years later:

*“Different sectors have different objectives in using fisheries resources. By equating these objectives to a level of the virgin biomass, managers can balance the negotiation range limits for resource sharing purposes. In theory, managing the stocks to a specific biomass level to meet all stakeholder objectives would negate the need for further resource sharing arrangements, such as spatial and temporal arrangements. In reality, however, a large part of developing resource sharing arrangements involves managing the perceptions of the various stakeholders. Often this means that decisions are weighted towards the Government objective of avoiding conflict rather than managing the total extraction of fish.”<sup>9</sup>*

Managing conflict could also trigger a review or arrangement being implemented.

In 2004, the Australian Government developed a framework for making resource sharing decisions in Commonwealth fisheries, consisting of: a set of guiding principles; a consultation process; and a Memorandum of Understanding (MOU) between the Australian Government and the states and the Northern Territory.

Inclusion and review of this and all MOUs should be an integral part of this process.

There are currently 59 OCSs in place that determine jurisdictional responsibilities between the Commonwealth and states and the NT. (see Table 1)

**Table 1: State by state breakdown of OCS agreements statistics by number<sup>6</sup>**

	No. OCS arrangements	Areas	Taxa	Methods
New South Wales	18	3	42	7
Tasmania	8	4	93	11
Victoria	10	2	81	9
Western Australia	5	10	35	15
Northern Territory	5	2	29	5
Queensland	6	4	37	6
South Australia	6	2	88	4
TOTAL	59	27	177	20

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<sup>8</sup> NSW Fisheries Resource Sharing Policy

<sup>9</sup> Resource Sharing in Australia’s Tuna and Billfish Fisheries Elizabeth Foster, Department of Agriculture, Fisheries and Forestry,

<sup>10</sup> ABARES

**4. As a stakeholder who may be impacted by a resource sharing arrangement what would be your preferred method of engagement. What level of involvement would you expect during the decision making process.**

To date, the lack of active engagement of the state-based recreational sectors in a fair and transparent process has not allowed the Australian Government to better understand state-specific resource sharing issues or encouraged greater state-based stakeholder input in the decision-making processes and their impacts on recreational fishing. As often is the case, effective state-based recreational fisher representation on management advisory committees and resource assessment groups has been a symbolic gesture with negligible consultation occurring at a state peak body level. Where Commonwealth management issues occur adjacent to a state, the expectation is that a higher level of engagement would occur with a nominated, endorsed and knowledgeable representative engaged.

**5. A lack of data on each sector's catch is one of the main challenges when making a resource sharing arrangement. Do you have any ideas on how this challenge could be overcome**

The lack of sectorial data should not be a challenge if a stock assessment is completed as an initial step to show whether the proposed allocation is appropriate or might damage the fishery. This is especially necessary where an allocation of effort, as opposed to catch, is proposed. If the stock is overfished, then measures must be taken to either restore the stock prior to allocation, or allocate in a way that will restore the stock by minimizing fishing mortality. Once a stock assessment has been completed it is then possible to look at the needs of each sector to determine if additional data is required.

The gathering of data should also include the legal basis for any proposed resource sharing framework and must be clear, including any proposed changes to legislation or inter-governmental agreements such as OCS. Legal opinion on the enforceability of constraints on stakeholders' operators and the efficacy of an MOU must be provided.

The use of such data should also have clearly-defined rules and data sharing should only be allowed only where a strict purpose test is met, and where the data sharing principles have been applied. Where there is a clear public benefit, data custodians must seek to share data in a controlled and approved manner with a range of users, such as government agencies, the academic research community and, in some cases, the private sector, but firstly and most importantly those providing it.

The RFA is also seeking safeguards against the current non-requirement for an individual angler to be advised or actively signify consent to the release of their data that may have been captured by providing input into a survey or something as simple as the tagging of a fish. It is pertinent that respondents and researchers must first agree with the providers or their selected representatives on the data on how it is to be used into the future.

The gathering of best available data must be a collaborative and transparent process with all stakeholders aware of the quality, quantity and how the data is presented, in order to allow continued engagement with the recreational fishers and communicate ongoing outcomes.

**6. Do you have any suggestions that may improve the effectiveness of stakeholder engagement?**

As mentioned previously it is often the case that effective state-based recreational fisher representation on management advisory committees and resource assessment groups has been a symbolic gesture with negligible consultation occurring at a state peak body level. Where Commonwealth management issues occur adjacent to a state the expectation is that a higher level of engagement would occur, and that a nominated and knowledgeable recreational representative is engaged that is unencumbered by ministerial or departmental intervention.

Every state-based representative body maintains a social media profile and network to help communicate any state-based issue. They should remain unfettered to share and reflect the views of their stakeholders in any discussion and the views of the states should carry equal weight in any discussion.

**7. What factors should the government consider when determining allocations (for example ecological or social factors).**

Following is the NSW Fisheries Resource Sharing Policy that sets a good platform for determinations:

*Sustainability—the ongoing sustainability of the resource and the ecosystem on which it depends is paramount. The biological condition, vulnerability and resilience of the fishery must be considered and managed in a precautionary way. The current condition of stocks will be used as the basis for future management.*

*Fairness and equity—the overarching principle that should inform a resource sharing issue is one of fairness and equity, i.e. the resource is to be allocated in a way that distributes the benefits of use fairly amongst all fishery sectors.*

*Optimum utilisation—this means that the resource is to be allocated in a way that achieves the best use of the resource for the community at large, not just best for a particular sector.*

*Certainty for users—the resource should be managed in a way that recognises the ongoing needs of all users of the resource.<sup>11</sup>*

**8. Moving to a quota management may not always be possible. What management controls could be put in place to ensure all relevant factors are constrained and monitored to their allocation?**

Quota management in its current form is incompatible with the proposed framework and cannot provide a sound basis for resource sharing where the statutory basis of the shares to commercial fishers is protected by statute, while that proposed for non-commercial and indigenous fishers is not, and the nature of the ownership of their rights is undefined and the impacts of recreational fishers is negligible. The risks to sustainability posed by recreational and indigenous fishing to fish stocks currently managed by the Commonwealth are very small and management controls are often managed by the states. Targeted

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<sup>11</sup> NSW Fisheries Resource Sharing Policy

research and surveys around high-value species could be considered in the determining of “set-asides” or where conflict between sectors occurs.

**9. Do you have any feedback on the proposed way that the resource sharing arrangements will be implemented?**

Following is the NSW Fisheries Resource Sharing Policy that sets a good platform for determinations around reallocations arise:

*Where a resource sharing decision results in a re-allocation of the resource, resulting in direct and demonstrable business impacts, the Government may consider the need for adjustment assistance to assist those impacted businesses or individuals adjust to the new management environment. The extent and nature (including who contributes) of such assistance will be determined by Government on a case-by-case basis and in consultation with all relevant sectors. This may or may not include financial assistance.<sup>12</sup>*

**10. Are there any other factors that should trigger review of a resource sharing arrangement?**

Following is the NSW Fisheries Resource Sharing Policy that sets a good platform for triggers:

*Outcomes of an assessment or new listing under threatened species legislation may trigger the need for a management decision that is made primarily to ensure the sustainability of a fishery.*

*A stock assessment may raise sustainability concerns about a species that is targeted by one or all fishing sectors. A solution may involve reducing the share of one or all sectors by limiting the use of a particular gear type because that gear type has the greatest impact on that species; or the implementation of temporal or spatial closures.*

*Government makes a decision to revise the allocation of harvestable fishing resources between fishing sectors based on evidence or advice that overall community benefit and wellbeing may be increased under alternative arrangements to those currently in place.*

*Government has a requirement to adjust access and fishing effort/harvest allocations between fishing sectors based on legal matters (e.g. native title issues) or some other compelling administrative reason.*

*The declaration of a Marine Park or an Aquatic Reserve may have the effect of displacing fishing effort by all sectors. Whilst such a declaration may be made for biodiversity conservation purposes, an assessment will then need to be made of the impact on the management of a fishery accessed by commercial, charter, recreational and Aboriginal fishers.<sup>13</sup>*

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<sup>12</sup> NSW Fisheries Resource Sharing Policy

<sup>13</sup> NSW Fisheries Resource Sharing Policy

## RFA Comments on Commonwealth Fisheries Resource Sharing Framework Discussion Paper

### **Introduction**

The RFA feels that resource sharing cannot be done under an outdated *Fisheries Management Act 1991 (FMA Act)* which is inadequate and does not have the appropriate scope or power to address the requirements of a suitable framework.

The basic objectives (1.1) are flawed. The objective to be “consistent with the principles of ecologically sustainable development (ESD)” is too loose to provide a basis for resource sharing as evidenced by the failure of fisheries management plans and arrangements made under the *FMA Act* to date to adequately address cross-sectoral conflict or deliver resource sharing in a meaningful way.

The *FMA Act* requires comprehensive review and modernization to provide relevant objectives not only for resource sharing but for the management of all fisheries under Commonwealth jurisdiction and those on which they impact. This will require the recognition of statutory rights for all fishers, not just the commercial sector. Resource sharing attempted under this flawed legislation will guarantee failure.

#### **1. Why we need a resource sharing framework**

As detailed above “A resource sharing framework...that is equitable and that maximises economic benefits to the Australian community” is patently inadequate in ignoring other important determinants.

Enabling AFMA “to make individual fishery arrangements to share a total sustainable mortality amongst fishing sectors” clearly reflects either management ignorance or willful misunderstanding of the operations in important recreational fishing sectors where catch and release of unwanted bycatch or excess fish has significantly reduced recreational fishing mortality rates.

#### **2. Proposed framework for discussion**

The definition of resource sharing (3.1.1) must define the statutory nature of the rights to be assigned to each sector and the rights to compensation or redress if those rights are altered or withdrawn. Obfuscation of this essential point reflects an unwillingness to come to grips with the real nature of the redistribution of access rights. It is not only Commonwealth commercial fishers who desire greater security and clarity about the economic value of their fishing rights—recreational and indigenous fishers do too.

It is naïve or ingenuous to propose this “framework will not impact the management and resource sharing arrangements of state fisheries that do not involve species fished by Commonwealth fishers” (3.1.3). Environmentally damaging fishing methods such as otter trawling managed by the Commonwealth has had profound and well-documented deleterious effects on non-target fish species and benthic faunal assemblages. The impacts and flow-on effects of Commonwealth managed fisheries cannot be defined as out of scope, and need to be explicitly recognised in any resource sharing framework.

The proposition that fisheries managed under the *FMA Act* by AFMA have been managed sustainably (3.3.1) is patently false. The directive that Commonwealth fisheries be managed under quota has resulted in gross overfishing and fishery collapse, most particularly in

waters off NSW. The imposition of quota management into a complex mixed species and mix gear type fishery has resulted in serial depletion with growth and recruitment overfishing. As a consequence catches of important demersal species have plummeted off NSW (see Dr K. Rowling's recent comprehensive report) with significant reductions in fishing fleets in many ports with flow-on detrimental economic impacts.

The RFA considers that the continued inappropriate application of quota management consequent to the 2005 ministerial directive should be reviewed and terminated. Quota management in its current form is incompatible with the proposed framework and cannot provide a sound basis for resource sharing where the statutory basis of the shares to commercial fishers is protected by statute, while that proposed for non-commercial and indigenous fishers is not, and the nature of the ownership of their rights is undefined.

While there may be little argument with the truism that a well-managed commercial fishery provides economic benefits to the local and broader community (3.3.2), the presumption that the maximum economic yield for commercial fisheries will maximise the net economic returns to the Australian community is a gross over-simplification and false. Recreational fishing and its associated tourism industries provide a much greater economic yield than commercial fishing, particularly in the more populous states, and consequently to Australia overall.

The assertion that there are "Commonwealth fisheries resources" that other sectors, presumably recreational and indigenous, may want to access (3.3.3) clearly implies that these refer to commercial fisheries resources. The two are neither equivalent nor interchangeable. This obvious mindset, that Commonwealth fisheries resources are commercial fisheries resources, provides no confidence that this process will be conducted in a fair or equitable way.

While the assertion regarding decision making (3.3.4) acknowledges that fisheries resources may be valued differently, and in view of the commitment to maximization of the economic benefits as a primary objective of resource allocation, there is no commitment to using a methodology agreed across sectors for determining the relative values. Without an agreed methodology across sectors for assessing relative values or economic returns there can be no agreement on the framework for resource sharing. The commitment to taking the interests of all sectors into account in no way makes up for this deficiency, and provides no assurance that "taking into account" has any heuristic meaning or value.

The RFA believes that given the confusion over what constitutes Commonwealth fisheries resources (see 2 and 3.3.3) the government commitment to recognition of existing rights of users (3.3.5) presumably refers to all users—not just Commonwealth rights holders. If so, how will those existing rights be defined and by what process will they be identified and quantified?

If the reference is not to all users, does the Commonwealth intend to only recognize those rights allocated by AFMA through this process and ignore the rights of other users of the resource, and if so, the RFA asks what is the point of this process?

Costs associated with the "arrangement and ongoing management" are flagged in 3.3.6 and 3.3.7. The risks to sustainability posed by recreational and indigenous fishing to fish stocks currently managed by the Commonwealth are very small and recreational fishers cannot sell their catch. Recreational fishing is competently managed by the states that carry all management costs. Given that the costs of management incurred by the Commonwealth

through its adoption of inappropriate management measures, there is no justification for the introduction of any additional costs to other sectors through any proposed resource sharing arrangements.

The interests of stakeholders (3.4.2) are the business of the relevant management authority. For example in NSW, for recreational and Indigenous fishers, this can be a collaborative effort between government-appointed advocates and state peak body groups that are both representative of their sector, have shown an adequate understanding of fisheries management processes and have the authority to speak on behalf of the sector.

The management goals (3.4.3) have already been agreed under the 2004 MOU which stated “The Australian Government Department of Agriculture, Fisheries and Forestry will take the lead role in resource sharing negotiations in Commonwealth managed fisheries”.

The RFA believes that the lack of acknowledgement of an explicit agreement between the Commonwealth and NSW in the Resource Sharing MOU of 2004 is a failure of the process. The MOU states *“The relevant States and Northern Territory Governments will be directly involved in any resource sharing negotiations, including the development of agreed resource sharing criteria. These negotiations will have regard to ecologically sustainable development objectives and by-catch issues.”* The MOU clearly indicates that the roles of responsibility means the Commonwealth—and not AFMA—will determine which fisheries or stocks require a resource sharing arrangement. The relevant governments have agreed on the process and have agreed that the relevant Commonwealth Department (DAFF), not AFMA, would take charge of the process. AFMA is not the government and this needs to be clarified.

Gathering the best data (3.4.4) presents challenges, as the data required for informed decision making depends on clear exposition of the individually-proposed resource sharing framework scope, including the purpose, planned outcomes and proposed timeframe and milestones.

Basic fisheries data on the catch composition and catch value, including discards, of quota and non-quota species and by-catch is essential as a minimum. Suitably aggregated information on the profitability or otherwise of the relevant vessels in the fishery is also required.

The costs of management to states and the Commonwealth of current management and all new options must be provided. The costs to fish trawl operators of any option must be made available. If there are possible benefits identified from an option then a business case should say how the proposed benefits will be delivered and measured, who is responsible for measuring and reporting on the achievements, and who will conduct future evaluation and post-implementation evaluations.

Unfortunately, determining how the decision will be made (3.4.5) remains opaque other than to indicate that AFMA will decide whether social and economic benefits will or won't be used. This is not acceptable.

**The RFA feels that historical catches cannot form the basis of catch allocations** between sectors. Historical catches represent the appropriation of catch shares under preceding systems which were not based on any agreed allocation rules or procedural fairness. If

they had been, there would be no need for the proposed resource sharing agreement. It is precisely the lack of proper processes and agreements that have produced historical catches that new resource allocation rules are intended to address. Catch history also reflects the disparity in gear types and efficiencies permitted between various sectors and their differing harvest objectives. Catch history may have a role in the division of allocations within an established, defined fishery but has no place in allocation between sectors or across jurisdictions where gear types and fishing rules differ substantially.

The implementation (3.5.1) does not provide any assurance of fairness in how the agreement will be done; it basically says “trust me” and the RFA feels this not good enough. The assurance that the “the economic value of the commercial quota does not reduce without a fair process” is incorrect. The value of quota can vary for many reasons beyond anyone’s control.

Feedback on adjustment (3.5.2) should stress that all sectors should be eligible for adjustment in agreed circumstance. Those circumstances must include where reallocation of a resource between sectors provides best social, environmental and economic outcomes.

In conclusion the RFA believes that considerable progress can be made as there is a genuine desire by the Commonwealth Government for a fair and equitable resource allocation across all sectors. The RFA has already shown a willingness to work directly and support the commercial sector in NSW and the only obstacle to a harmonious outcome for the NSW Southern Fish Trawl has been the unwillingness of AFMA and NSW Department of Primary Industries fisheries managers to support this position. The lack of a suitable framework and suitable policy direction in NSW is part of the problem, the lack of value placed on all stakeholders as part of the process has been the biggest issue we have had to face as recreational fishers.

Yours faithfully,



Stan Konstantaras  
President  
Recreational Fishing Alliance of NSW

## Annexure 1: Transitioning NSW Southern Fish Trawl to the Commonwealth

### **The Recreational Fishing Alliance of NSW** “Promoting Sustainable Fishing”

PO Box 328 Matraville, NSW 2036  
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Website: [www.rfansw.com.au](http://www.rfansw.com.au)



The Hon. Niall Blair MLC  
Minister for Primary Industries  
Minister for Regional Water  
Minister for Trade and Industry  
Parliament House Sydney, Macquarie Street,  
SYDNEY NSW 2000

29<sup>th</sup> July 2018

Dear Minister,

I am writing to you as a follow up to our recent meeting where we expressed the concerns of the Recreational Fishing Alliance of New South Wales (RFA) about the Public Consultation Paper “Transitioning the NSW Southern Fish Trawl Restricted Fishery to Commonwealth Management” recently released by NSW DPI and supported by AFMA. This paper only focused on one option which was the Departments view on what **will** happen, no other option was presented and the narrow Terms of Reference made it exceedingly difficult to engage and continually frustrated the recreational sector.

The RFA believes important stakeholders, including recreational fishers, indigenous, fishers, conservationists, commercial fishers and charter fishers have been ignored and excluded from the process and there have been no genuine attempts at engagement with them on this important issue over the previous 12 months despite repeated calls for inclusion. Reassurances from you at our meeting that no matter what we were told by the NSW DPI and AFMA that you had the final call in this determination were welcomed by the RFA.

Following on from our meeting and your request for more feedback from the RFA, the RFA met with the Commercial Fisheries Managers and four options were discussed.

The following 4 options were shortlisted for detailed analysis in a new business case;

- Exit Grant process which has been pegged at \$24m by the Southern Fish Trawl operators.
- Transitioning the SFT to the Commonwealth
- Reform the SFT and leave under NSW control
- Absorb it into the Northern Ocean Fish Trawl Share Management Fishery

The RFA believes that preparation of **Detailed Analysis of Short-list Options (Final Business Case)** for future management of the SFT is the responsibility of NSW DPI as it may result in changes to government policy or legislation, or have financial implications, and is the core business of the government. The business case and analysis of the full range of options has not been completed to date and until it is completed any NSW Government decision will fail to provide the citizens of NSW with confidence that a robust evaluation process was undertaken.

The RFA has already indicated a willingness to work with NSW DPI, NSW Industry Representatives, and the SFT operators to assist in developing this business case and help deliver the final piece of the NSW Commercial Fishing Reform Process that sets out a sustainable future for both recreational and commercial fishers in NSW.

**A Detailed Analysis of Short-list Options - Final Business Case for the Southern Fish Trawl** needs to be undertaken before any decision is made, the Terms of Reference need to be broad and include the 4 options presented above and access to information needs to be widely available to everyone.

A lot of time and money has been expended investigating the Transitioning option whilst ignoring some basic business case guidelines which I have attached as Annexure 1 below and I have also included some examples of NSW Governments Business Cases and some comments from the RFA of NSW.

Regards

A handwritten signature in black ink, appearing to read 'S. Konstantaras'.

Stan Konstantaras

RFA of NSW President

## **Annexure 1:**

### **The Business Case**

RFANSW believe that preparation of the business case for future management of the SFT is the responsibility of NSW DPI. It may result in changes to government policy or legislation, or have financial implications, and is the core business of the government.

The NSW Premier's Department has provided Business Case Guidelines<sup>1</sup> as a useful tool for improving service delivery and demonstrating accountability throughout the public sector. The Guidelines define a 'business case' as a form of advice to executive decision-makers. It is a substantiated argument for a project, policy or program proposal requiring a resource investment, often including a financial commitment. It sets out:

- the problem or situation addressed by the proposal;
- the features and scope of the proposed initiative;
- the options considered and the rationale for choosing the solution proposed;
- the proposal's conformity with existing policies, etc.;
- the implementation plan;
- the expected costs;
- the anticipated outcomes and benefits; and
- the expected risks associated with the proposal's implementation.

The government's Guidelines are designed to assist public sector organisations with the development of individual business cases by providing a method whereby agencies can assess and demonstrate the viability of proposed initiatives. The Guidelines are applicable whether the case is to be submitted to an internal decision-making body, a central agency, or an external funding source. Indeed, the business case framework itself is a useful method for systematically evaluating the strengths and weaknesses of any proposal that will bring about a major change in practice or funds allocation such as the transfer of fisheries jurisdiction proposed for the SFT.

The Guidelines require that rigorous examination of the options, costs and risks of any initiative must be an integral part of project, program or policy planning, management and evaluation and therefore provide a sound framework for NSW DPI's business case for the future of the SFT.

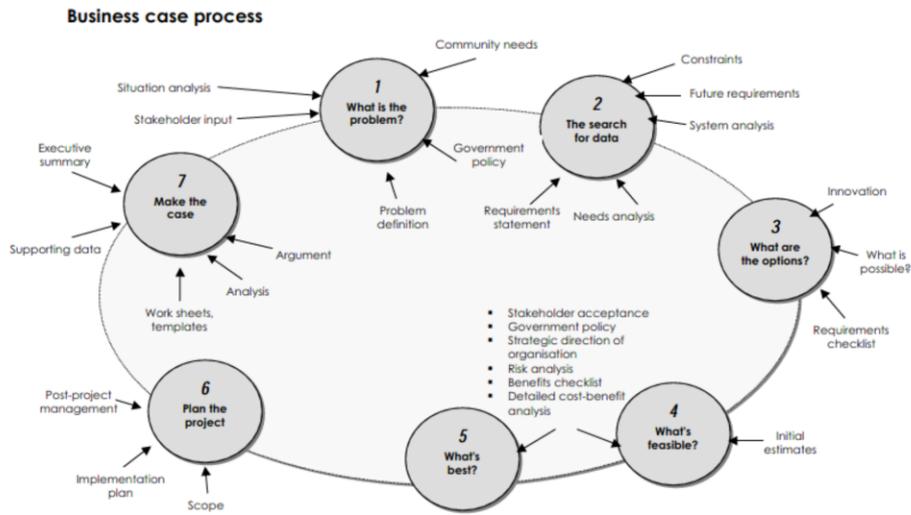
Project proposals, funding submissions, feasibility plans and value management studies are all forms of business cases and are drawn up for a wide variety of proposals including major strategy or policy change proposals for delivery of services to clients. The transfer of management jurisdiction over the SFT to the Commonwealth clearly falls within this scope.

The Guidelines explain why a business case is needed including why each agency, and in turn each of its cost centres, has a responsibility to ensure optimal use of public resources and why rigorous examination of options, costs and risks needs to be an integral part of all project, program or policy planning, management and evaluation. The Guidelines also stress the need to be rigorous, objective and honest in application and the impact on the environment should also be discussed.

The process outlined in the Guidelines diagram below clearly shows the requirement for stakeholder input and recognition of community needs at the very start of the process of identifying the problem.

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<sup>1</sup> <https://www.finance.nsw.gov.au/policy-document/business-case-development-guideline>



RFANSW believes the business case for future management of the SFT should comply with the NSW Government's Business Case Guidelines. RFANSW will work with the Government, NSW DPI and other stakeholders to deliver a robust business case identifying and supporting the best outcome for the environment, the fishers and the people of NSW by providing input into every stage of the business case process.

### 1. What is the Problem

The business case must contain the basic argument for any proposed change, describe the current situation and outline the strategic issues. The case must demonstrate discussion and consultation with all those affected, including participants, collaborators and recipients/users of the proposed policy, program or system. The views of all key stakeholders, such as the community, clients, staff and staff associations need to be made clear. Supporting information, such as evidence of stakeholder consultation, should be provided in an appendix.

RFANSW believes there are **two** significant problems to be addressed. The first is that the process to date has not been transparent. It has not examined all options and has alienated important stakeholders through lack of consultation and engagement, and by withholding relevant information. The NSW Government must ensure that all relevant stakeholders including recreational fishers, charter boat operators, fishing tackle and boating service providers, environmental groups and Indigenous fishers are consulted and that the likely impacts of any proposed changes to management on their activities and businesses are fully

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<sup>2</sup> Business Case Guidelines – NSW Premier's Department Review and Reform Division 2000

addressed. The preparation of a sound business case with thorough stakeholder consultation can address this problem.

Secondly, the reasons for the transfer of jurisdiction of the SFT proposed in the Public Consultation Paper (PCP) "*Transitioning the NSW Southern Fish Trawl Restricted Fishery to Commonwealth Management*" have not been explained. The PCP did not provide any justification for the proposal, did not consider the numerous alternatives and did not provide a cost-benefit analysis of the proposal.

The business case must clearly identify the real problems that beset this fishery in terms of management overlap, management costs, quota rorting, commercial viability, inter-fishery conflict, resource sharing, environmental degradation, sequential depletion and impacts on non-quota species.

Whatever the identified reason/s, changing management arrangements should only be considered if it is advantageous for NSW in the long-term and is consistent with the objects of the FMA 1994. Pleasing AFMA or appeasing the Commonwealth is not sufficient reason for change.

### **The Search for Data**

The data required for informed decision making depends on clear exposition of the proposed transfer of jurisdiction's scope including the purpose, planned outcomes and proposed timeframe and milestones.

#### *Fishery Related Data*

Basic fisheries data on the catch composition and catch value, including discards, of quota and non-quota species and by-catch is essential. Suitably aggregated information on the profitability or otherwise of the relevant vessels in the fishery is also required. The costs of management to NSW and the Commonwealth of current management and all options must be provided. The costs to fish trawl operators of each option must be made available.

If there are possible benefits identified from an option the business case should say how the proposed benefits will be delivered and measured, who is responsible for measuring and reporting on the achievements and who will conduct future evaluation and post-implementation reviews.

#### *Legal Advice*

The legal basis for options must be clear including any proposed changes to legislation or inter-governmental agreements such as OCS. Legal opinion on the enforceability of constraints such as trip limits imposed on operators and the efficacy of Memoranda of Understanding must be provided.

The impact of the entry of non-active vessels into the SFT or latent effort entering the fishery inside 3 nm on other NSW commercial fisheries, recreational fishing and the environment would be severe. Advice should be sought on how or whether this could be prevented under any proposed management regime if management of the area were ceded to the Commonwealth.

#### *Consistency*

Most commercial fisheries in NSW are managed as share management fisheries which provide strong property rights for participants with provisions for compensation in certain circumstances. The future management of SFT should be consistent with that of other NSW commercial fisheries and operators adversely affected by management changes should be treated fairly

### *Community Support*

The impacts of proposals on other fishers and the wider community need to be assessed through consultation with all stakeholders, not just a select group of commercial fishers.

### **Assessment of options**

RFANSW raised four options in discussion with the Minister and Fisheries Management:

- Exit grant process which has been pegged at \$23m by the Southern Fish Trawl operators.
- Transitioning the SFT to the Commonwealth
- Reform the SFT and leave under NSW control
- Absorb it into the Northern Ocean Fish Trawl Share Management Fishery

The “base case” of doing nothing remains as an additional unstated option.

RFANSW believes the business plan should include these and any other feasible options, and describe objectively what would happen if that option were selected. The consequences should contain financial modelling to allow comparison and assessment of feasibility.

The preferred option must include a detailed cost-benefit analysis with projections into the future to allow long-term impacts to be evaluated. A proper risk assessment may be warranted at this point with full stakeholder engagement to ensure all potential risks are identified and assessed.

The preferred option must reflect the best long-term outcome for the people of NSW and the marine environment.

### **What's Feasible**

The assessment of feasibility must balance the likely impacts on other NSW fishers and the environment with the costs and benefits to affected NSW fish trawl operators. The support of fish trawl operators and other stakeholder groups will be a key factor. The likelihood of funds being provided by the NSW and/or the Commonwealth governments will also help dictate what is feasible.

### **What's Best**

While a number of options may be technically achievable, and even feasible, the best option must be chosen taking into account the wider implications of any proposed management changes.

RFANSW is concerned that any transfer of jurisdiction may result in new vessels and gears entering the fishery, increased fishing effort, changed targeting practises, and adverse impacts on target and non-target species and the environment that may detrimentally affect other fisheries including the recreational and charter boat sectors.

These factors must be properly considered and their consequences adequately addressed.

Additionally, RFANSW was approached by representatives of the NSW Southern Fish Trawl Restricted Fishery with the view to work collaboratively to offer the 23 operators a dignified exit from the SFT and to oppose transition of management to the Commonwealth for the following reasons:

- The catch (at an arguable 1.59%) is an insignificant component of the CFT and will not significantly affect fresh fish supplies

- NSW does not need 25m boats inside 3 miles
- NSW does not need any more fish trawlers inside 3 miles
- Closure would be cost effective in the long term
- NSW stakeholders do not want fish trawlers operating along south coast beaches
- Increased fish trawling effort from CFT previously excluded inside 3 miles will damage inshore fish stocks of non-CFT species
- Access inside 3 miles by SESSF operators will allow the use of gears currently prohibited in NSW fisheries and result in targeting of non-CFT species
- Fish trawling inside 3 miles is, and will increasingly be, in conflict with the more economically valuable and socially beneficial recreational and commercial fisheries and unmanageable by NSW
- Fish trawl management off NSW by AFMA has not satisfied the objects of their FMA 1991 and expansion into NSW waters will not satisfy the objects of our FMA 1994.
- No workable mechanism for the future management of important species taken in NSW commercial and recreational fisheries e.g. snapper and kingfish was provided
- No mechanism for the resolution of future conflict or resource sharing between the Commonwealth managed trawl fishery and NSW managed fisheries operating in the same waters was provided.
- All relevant stakeholders including recreational fishers, charter boat operators, fishing tackle and boating service providers, environmental groups and Indigenous fishers would benefit from the removal of this trawl effort.

RFANSW supports the closure of waters inside 3 nm to fish trawling south of Barrenjoey with the provision of fair exit grants to affected fish trawl operators. This will produce the best long-term outcome for the recreational and other commercial fishers of NSW and other users of this area.

**Annexure 2:**

**Business Case Example:**

[https://www.industry.nsw.gov.au/\\_data/assets/pdf\\_file/0011/143030/Broken-Hill-long-term-water-supply-solution-summary-of-final-business-case.pdf](https://www.industry.nsw.gov.au/_data/assets/pdf_file/0011/143030/Broken-Hill-long-term-water-supply-solution-summary-of-final-business-case.pdf)

### Annexure 3:

#### RFA Position on the PCP.

#### Comments on Public Consultation Paper

#### **“Transitioning the NSW Southern Fish Trawl Restricted Fishery to Commonwealth Management”**

#### **Re Introduction**

The *Introduction* presents the transition as a *fiat accompli* i.e. the decision to cede management to AFMA has already been made without consultation with all the relevant stakeholders. The Paper is biased and deficient and does not provide any **justification** for the transition. Presumably the AFMA wishes to remove opportunities for quota sorting by dual endorsed vessels by including all catches of the prescribed SEF quota species within their quota management system. Note that the SFTF has been managed by NSW since the inception of the fishery.

1. What are the reasons for considering the transition?
2. How many boats would be affected, what is their history of catch by species and what NSW and Commonwealth fishing rights do they hold?

Whatever the reason, changing the management arrangements should only be considered if it is advantageous for NSW in the long term and is consistent with the objects of the FMA 1994. Pleasing AFMA or appeasing the Commonwealth is not a good enough reason.

The Paper does not explore the options available. These include:

3. Doing nothing and continuing to manage fish trawling as a restricted fishery
4. Turning the fishery into a share management fishery either by incorporating it into the existing Ocean Fish Trawl Northern Zone (with quota for relevant species) or as a stand-alone SMF fishery (with quota for relevant species)
5. Introducing a QMS for the SEF trawl fish species in a continuing restricted fishery
6. NSW closing the area to fish trawling.

The Paper also does not provide any **pros and cons** for the various other management options. This is, of course, hard to do without any justification being provided. It also does not provide any estimate of the overall **costs** (not just operator costs) of the transition which would allow proper weighing of the options. **No negative impacts** are considered and no **cost benefit analyses** provided.

- What would a negotiated buy-out of all NSW endorsed SFTF vessels cost?
- What would a negotiated buy-out of only dual endorsed SFTF vessels cost?
- What will be the impact of the entry of previously non-SFTF endorsed CTS vessels entering the fishery inside 3 miles on other NSW commercial fisheries, recreational fishing and the environment.
- What will be the costs to currently endorsed SFTF operators in terms of licensing, levees, quota and other costs?

The NSW Ocean Trawl Fish Northern Zone catches many of the same species as those taken in the SFTR e.g. cuttlefish, southern calamari, eastern school whiting, stout whiting, tiger flathead, sand/bluespot flathead, silver trevally, gurnard/latchet, john dory, angel shark, redfish, leatherjackets, ocean perch, mirror dory, rubberlip morwong, and numerous shark spp. And is proceeding to quota management.

- How does NSW intend to manage these cross jurisdictional species in a holistic or ESD framework after the transition when all fish trawl catch levels for the SEF quota species inside 3 miles south of Barrenjoey will be set by AFMA?

The Objectives of the Commonwealth's *FMA 1991* are provided.

- implementing efficient and cost-effective fisheries management on behalf of the Commonwealth;
- ensuring that the exploitation of fisheries resources and the carrying on of any related activities are conducted in a manner consistent with the principles of ecologically sustainable development (which include the exercise of the precautionary principle), in particular, the need to have regard to the impact of fishing activities on non-target species and the long term sustainability of the marine environment;
- maximising the net economic returns to the Australian community from the management of Australian fisheries;
- ensuring accountability to the fishing industry and to the Australian community in AFMA's management of fisheries resources; and
- achieving government targets in relation to the recovery of the costs of AFMA.

The Objects of the NSW FMA 1994 (see below) are not provided as there are glaring inconsistencies between the two Acts e.g. there is no reference to recreational fishing in the FMA 1991; no reference to "appropriately sharing" etc.etc.

#### FISHERIES MANAGEMENT ACT 1994 - SECT 3 Objects of Act

##### 3 OBJECTS OF ACT

(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.

(2) In particular, the objects of this Act include:

- to conserve [fish](#) stocks and key [fish habitats](#), and
- to conserve [threatened species](#), [populations](#) and ecological communities of [fish](#) and [marine vegetation](#), and
- to promote [ecologically sustainable development](#), including the conservation of [biological diversity](#), and, consistently with those objects:
  - to promote viable commercial [fishing](#) and [aquaculture](#) industries, and
  - to promote quality recreational [fishing](#) opportunities, and
  - to appropriately share [fisheries](#) resources between the users of those resources, and
  - to provide social and economic benefits for the wider community of New South Wales, and
  - to recognise the spiritual, social and customary significance to [Aboriginal persons](#) of [fisheries](#) resources and to protect, and promote the continuation of, [Aboriginal cultural fishing](#).

**Note :** At common law, the public has a right to [fish](#) in the sea, the arms of the sea and in the tidal reaches of all rivers and estuaries. The public has no common law right to [fish](#) in non-tidal waters--the right to [fish](#) in those waters belongs to the owner of the soil under those waters. However, the public may [fish](#) in non-tidal waters if the soil under those waters is [Crown land](#). In the case of non-tidal waters in rivers and creeks, section 38 declares that the public has a right to [fish](#) despite the private

ownership of the bed of the river or creek. However, the right to [fish](#) in tidal or non-tidal waters is subject to any restriction imposed by this Act.

Some purported “**benefits of transitioning**” are listed.

- fish trawling activities in south-east Australia will be managed by a single jurisdiction and many fish species will have a cap on how much can be caught each year;
- increased consistency of data collection will allow for an improved understanding of stock status, ensuring sustainable fish stocks and continued supply of local seafood;
- fishers currently operating under two sets of rules will be managed by only one jurisdiction, removing duplication and administrative burden for those fishers, and, where the required concessions are held, fishers will be able to complete a single trip when fishing inside and outside NSW waters;
- security of access for NSW fishers will be increased due to the granting of valuable species-based statutory fishing rights; and
- trip limits that have constrained efficiency and profitability will be removed.

The management benefits are all to AFMA and there are no real benefits to the operators. There nothing to stop NSW placing a cap on the catch of vessels in its waters. In fact you may well ask why this has not been done already either as an ITQ or a TAC. Improved “consistency of data collection” will not ensure continued supply of local seafood. Sorry, it will take much more than that.

The “removing duplication and administrative burden” through management by one jurisdiction is inconsistent with the “immediate operational changes such as the requirement to use Vessel Monitoring Systems (VMS), carry observers and use seabird mitigation devices”. This will increase the costs to operators. No information on the costs of these measures to other current or potential users such recreational fishers is provided.

The suggestion that security of access will be approved is fatuous given that the SFTF was purposely excluded from the valuable now species-based statutory fishing rights system of NSW Share Management Fisheries, presumably to avoid triggering compensation when it was closed.

The suggestion that trip limits would be removed to increase efficiency and profitability in the expanded CTS now accessing new inshore snapper and kingfish grounds and targeting bream, luderick, whiting and mulloway into NSW beaches is management madness.

### **Scope of Transition**

It is important to note that the proposed changes will only relate to the capture of “certain species”. The Paper **does not tell us which species**. This is disingenuous in the extreme. This first paragraph should be read very carefully. The Paper says “These waters and methods will be cede to the Commonwealth for the taking of certain species”. This implies that only otter trawl net (fish) and Danish seine trawl net may be used in the area in the future. However, former operators in the SFTF will be managed as part of the CTS **and the**

**Southern and Eastern Scalefish and Shark Fishery (SESSF).** In the SESSF other gear is allowed including [danish seine](#), [midwater trawl](#), [pair trawl](#), [purse seine](#), [bottom longline](#), [automatic longline](#), [dropline](#), [demersal gillnet](#) and [trap](#). All but two of these methods is currently banned inside 3 miles and trap is included in the NSW Ocean Trap and Line SMF.

- Which species will be ceded to the Commonwealth?
- How will NSW prevent other gear types being allowed inside 3 miles by AFMA through current SESSF operators or the issue of new SESSF entitlements?
- How will all the other species, and there are very many, be managed by NSW in that area?
- How will NSW manage the bycatch of non-CTS species taken by CTS operators?

The numbers provided are rubbery. Of 23 fishing businesses **eligible** for CTS rights under this proposal “around half” do not have any SESSF rights, so around half the others do. They may provide an indicator of the number of vessels who may want to exercise their SESSF rights inside 3 miles. The real question is the number of CTS fish trawl dual entitlement holders.

- How many of the eligible operators (businesses?) have CTS rights?
- What determines “eligibility” under this proposal, it is not stated?
- Does it mean they have an endorsement in the NSW restricted fishery?
- Does it require active participation e.g. through catch history or are inactive endorsements eligible?

## OCS

The OCS cedes the management of certain fish species by certain methods in certain areas off NSW to the Commonwealth. All other species by all other methods in all other waters are to be managed by NSW. It makes no reference to commercial or recreational fishing. The OCS underpins not just commercial fisheries management including our trap and line fisheries, prawn trawl fisheries and recreational fishing for all species. Changing the OCS could irrevocably change the management of fisheries, gears and species off NSW with profound impacts on other sectors.

Given the importance of the OCS to the management of all fisheries in NSW no changes should be made without a thorough understanding of the likely consequences based on sound legal advice and with extensive, informed consultation with all stakeholders.

Resolution of AFMA’s problems with fish trawling inside 3 miles is achievable without changing the OCS.

## Overview of Management of the CTF off NSW

The management of this fishery off NSW has been a disaster from its beginning with sequential overfishing of key species leading to severely damaged fish resources. Despite several substantial buy outs in the mid-nineties and the mid-two thousands the decline has continued. Dr Kevin Rowling provided a succinct assessment of the failings of AFMA management at the Fish Biology Conference in 2016. Below are two slides from his presentation. The failure of the catch of many species to reach their TACs shows a fishery in decline. The depletion of redfish, once an important recreational species, exemplifies the tragic consequences of overfishing by the CTS.

- Why would any competent authority allow AFMA to expand its failed management into sensitive inshore waters?
- How could NSW manage the inevitable conflict between CFT trawlers and NSW commercial and recreational fishers inside 3 miles in the future?

### **The Removal of Trip Limits**

This argument does support the proposed transitioning as NSW is bringing in quota management for the Ocean Trawl and Ocean Trap and Line Fishery. The Paper provides a sound justification for bringing Southern Fish Trawl into the NSW QMS.

### **Size Limits**

Is the Paper arguing that NSW should also remove all size limits when NSW SMFs move to quota management? If so, it ignores the body of science that underpins the size limits that have contributed to the sound management of most species in NSW. The lack of size limits in Commonwealth managed fisheries are one of the reasons for their collapse of NSW.

### **Cost Recovery**

NSW has been trying to implement cost recovery in commercial fisheries since 1994 with little progress.

## **THE POSITION**

The fish trawl restricted fishery within 3 miles south of Barrenjoey should be **closed** for the following reasons:

- The fishery in its current form enables roting of the AFMA QMS
- The catch (at an arguable 1.59%) is an insignificant component of the CFT and will not significantly affect fresh fish supplies
- Fish trawling inside 3 miles is environmentally damaging
- NSW does not need 25m boats inside 3 miles
- NSW does not need any more fish trawlers inside 3 miles
- Closure would be cost effective in the long term
- NSW stakeholders do not want fish trawlers operating along south coast beaches
- Increased fish trawling effort from CFT previously excluded inside 3 miles will damage inshore fish stocks of non-CFT species
- Access inside 3 miles by SESSF operators will allow the use of gears currently prohibited in NSW fisheries and result in targeting of non-CFT species
- It can be achieved without changing the OCS
- Fish trawling inside 3 miles is, and will increasingly be, in conflict with the more economically valuable and socially beneficial recreational fishery and unmanageable by NSW
- Fish trawl management off NSW by AFMA has not satisfied the objects of their FMA 1991 and expansion into NSW waters will not satisfy the objects of our FMA 1994.

The Commonwealth should pay existing dual licensed operators an ex-gratia payment on surrender of their NSW endorsement. That ex-gratia payment should be based on the value of their catch taken in that area according to NSW catch returns. NSW should provide ex-gratia payments to any restricted fishery endorsed operator who does not hold a Commonwealth entitlement. A Memorandum of Understanding with the Commonwealth and an investment warning should outline the intent of NSW and the Commonwealth and co-ordinate the determination of the quantum of ex-gratia payments.

**Objective 1. Conservation of Fisheries Resources - Catch vs TAC 2014/15**

SPECIES	TAC t	2014/15 Landings	%
Ling	1015	967	95
School Whiting	872	798	92
Flathead	3142	2838	90
Ocean Perch	208	188	90
Blue Eye	355	269	76
Redfish	164	78	48
* Orange Roughy (E+W+S)	120	53	44
Royal Red Prawn	372	146	39
Gemfish - east	100	37	37
Gemfish - west	217	72	33
John Dory	242	66	27
Mirror Dory	968	225	23
Jackass Morwong	623	123	20
Blue Grenadier	7205	1381	19
Blue Warehou	118	16	14
Silver Warehou	2553	368	14
Silver Trevally	691	93	13
<b>Total</b>	<b>18965</b>	<b>7718</b>	<b>41</b>

Significantly depleted stocks

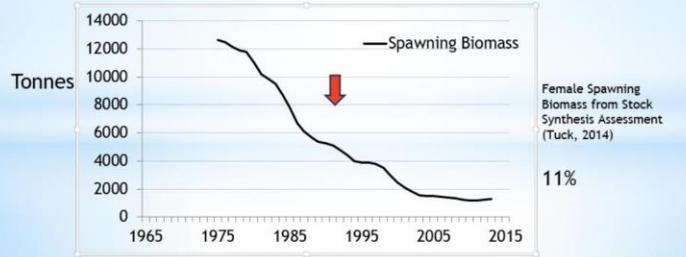
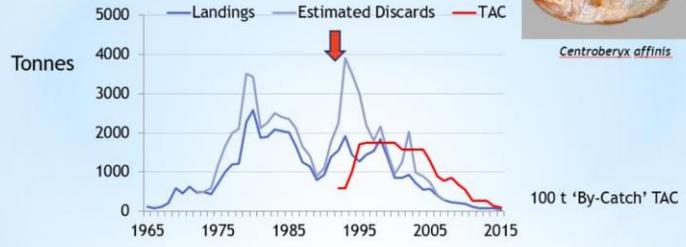


12 Species < 50% of TAC

7 Species < 30% of TAC

\* Note - In 2015/16 a TAC of 500 t was set for Orange Roughy (east) Source: AFMA Catchwatch 2014/15  
 Kevin Rowling - 25 Years of Quota Management of the SEF ASFB 2016 Hobart

**Redfish**



Kevin Rowling - 25 Years of Quota Management of the SEF ASFB 2016 Hobart

**Annexure 4:**

**RFA position on RA**

CARDNO RISK ASSESSMENT (RA)

TRANSITION OF THE NSW SOUTHERN FISH TRAWL RESTRICTED FISHERY TO COMMONWEALTH MANAGEMENT

11<sup>th</sup> April 2018

Please find attached additional comments on the Cardno Risk Assessment for the transition of the NSW Southern Fish Trawl Restricted Fishery to Commonwealth Management.

The Recreational Fishing Alliance of NSW has once again expressed disappointment at the way this whole process has been managed. The RA was made available online technically after the Consultation period closed, the one week extension was not widely publicised and those other stakeholders who took the time to make a submission before the deadline have been left disadvantaged by not having all the documents available.

The Recreational Fishing Alliance has formed a Sub Group and has reviewed the RA and has discussed its recommendations but still cannot understand why anyone would ask for a Risk Assessment that is constrained in such a way as make it virtually useless. A proper Cost Benefit Analysis would have been more useful. The Sub Group has continually challenged the way this process has been delivered and once again this RA looks like a kneejerk reaction and was certainly commissioned without consulting all the stakeholders.

The Sub Group feels that Cardno have not met the Terms of Reference given by DPI, most particularly point 4 of the ToR. Perhaps DPI and AFMA would not allow the data to be accessed, this needs further discussion. The Sub Group also believe that Cardano have not conducted the RA to the required Australian Standard. Their failure to consult, possibly directed by DPI due to a rushed and flawed consultative timeline has rendered the RA useless. Questions need to be asked around value for money in this instance and the process.

The Sub Group were also concerned about the disparity in options canvassed in the Risk Assessment that were not in the Public Consultation Paper. The Partial, Patchwork or Full Closures of the area inside 3 miles appearing in the RA were obviously being considered by DPI so why weren't they provided in the PCP? One might ask, what else is on the table we haven't been told about e.g. adjustment funding which is mentioned in the RA and must be a part of any closures but were not explored in the PCP.

This process needs to be stopped and a serious attempt needs to be made to gets things back on track. The Sub Group needs to see the justification for why it is a restricted fishery now, why it needs to change and what the options are. What's needed is real information on catch, effort, catch composition, catch value, and licence and endorsement values. We also need to know what all the other fisheries in the area take with real data as above. That includes the recreational and charter sectors.

The Sub Group and most of the 850,000 anglers in NSW share a the vision about what we want to see inside 3 miles in the next 10, 50 and 100 years and this is not just about Commercial Fishing as it has historically been, but even more importantly to all sectors it's about the fish and habitat. When this is properly acknowledged then there can be proper, informed consultation and negotiation about the best long-term solution for NSW as a whole.

## **CARDNO RISK ASSESSMENT (RA) TRANSITION OF THE NSW SOUTHERN FISH TRAWL RESTRICTED FISHERY TO COMMONWEALTH MANAGEMENT**

### **Study Aims and Objectives**

This report is deeply flawed by failure to engage relevant stakeholders and does not meet the Cardno's Study Aims of determining "a suitable risk assessment procedure" and "identifying hazards and benefits associated with proposed changes" or the Terms of Reference (ToR) set by DPI.

Cardno's ToR required the consideration of "Commonwealth and NSW licensing data including vessel length; and vessel level of catch and effort data (by species) to determine historical fishing behaviour". Note that these data were not used (see 1.3.2 Data Analysis which lists the data "unavailable" to the RA including licensing data, stratified catch and effort data, and the sale/transfer value of SFTF concessions and SFR values, catch values and management contributions). The failure to consider fundamental extant information delivers a superficial approach and hollow recommendations.

### **Australian Standard**

The risk assessment procedure does not conform to **Standards Australia ISO 31000:2009 Risk Management – Principles and Guidelines** which requires communication and consultation and with stakeholders about the existence of risks, their nature, form, likelihood and significance as well as whether or not risks are acceptable or should be treated, and what treatment options should be considered. Note, a **stakeholder** is a person or an organization that can affect or be affected by a decision or an activity. Stakeholders also include those who have the perception that a decision or an activity can affect them. ISO 31000 distinguishes between external and internal stakeholders and only internal stakeholders were consulted for this RA. External stakeholders were excluded from this RA and it shows.

Consequently significant risks were not identified or considered undermining the ranking of risks, the assessment of risks and benefits associated with the two management scenarios considered, and the options for their mitigation.

Contrary to requirements Cardno did not convene an Expert Panel for the determination and assessment of risks resulting in a flawed report.

### **Risk Management Guidelines (2.1 p3)**

The RA lacks precision by attempting to consider the impacts of relatively small-scale management changes (i.e. within 3 miles) "at a broad area, that is, without particular spatial resolution within the current operating areas of the fishery".

Cardno's risk analysis methodology purports to mainly deal with impacts on the environment but "has also been interpreted to analyse relevant social and economic hazards". This is clearly an overstatement as the RA omits many environmental impacts including impacts on non-target and non-SEF quota species, the negative impacts of trawl gear (including bobbin gear) on sensitive inshore habitats, and the targeting of spawning fish in inshore waters. The economic impacts on the valuable inshore recreational fishery is omitted.

The real impacts of the proposals on other commercial and recreational fisheries are not properly addressed as Cardno admits the RA "focuses on the potential effects on the SFTF".

### **Likelihood and Consequences (p4)**

The Consequences (Environmental) do not consider the impacts on important non-quota species such as snapper and kingfish.

The Consequences (Social) are inappropriate as they fail to consider important flow-on impacts such as depletion of forage or bait species utilised by important species or other fisheries.

The Consequences (Economic) are too narrow. They only consider the profitability of trawl fishers and not the potential economic impacts of the proposals on other commercial fishers, recreational fishers or the industry that supports it, or on the NSW charter boat fishery.

#### **Option 1 (2.2.4 p6)**

To whom would the quota be transferred to under Option 1 prior to the IAP to then transferring it to SFTF endorsement holders?

Commonwealth SFRs and quotas are allocated to people. Under the Commonwealth Fisheries Management Act 1991 the **"holder"** of a licence, permit or right: (a) means: (i) the person to whom the licence, permit or right was granted; or (ii) if the permit or right has been transferred--the person to whom the permit or right was last transferred; and (b) in the case of a [statutory fishing right](#) that is [leased](#) to another person by a [lease registered](#) under [section 46](#)--includes the lessee of the [statutory fishing right](#).

Note that nowhere under the proposed Conditions of NCW Permit of Option 1 is mid-water trawling or pair-trawling prohibited inside 3 miles.

#### **Spatial Closure Scenarios (2.2.5.2 p8)**

What is the point of proposing "patchwork" closures that have as "yet to be determined"? This is nonsense.

#### **Risk of Management Changes Table 3.1 (p14-16)**

The usefulness of this table is nullified by the deficiencies in the risk identification process identifies above. The risk ratings (Likelihood and Consequence) reflect the lack of expertise in the assessment panel. A properly convened expert panel would have produced a very different set of risks and different risk ratings. The use of subjective expressions like "perceived" further weakens the table.

#### **Benefits Table 3.2 (p17)**

Many of the identified benefits are wrong. The first and second Actions, i.e. no change, are not benefits. The third is an environmental cost. The benefit of the sixth Action is identified as "approval from NSW stakeholders". How can this be when none were consulted? The benefit from Action seven, "Increased catch of SFTF (incl. non-quota species)" would result in increased conflict with other fisheries so can't be listed as a benefit. Action seven "Mid-water trawling and pair-trawling would be permitted in NCW is listed under Options 1 and 2 but is precluded under Option 2 (see p 7). The supposed benefit under Action nine, that "Quotas offer greater predictability about catch and earnings" would be news to most long-term operators in the CTS.

On **page 18** no evidence has been provided to justify the first benefit that "combination of CTS quota SFR and NCW Permit or Vessel SFR will have a greater transfer/sale value than NSW SFTF endorsement. The next benefit that "TAC/quota management is potentially more sustainable" is not supported by any evidence. The third benefit on this page concerning the removal of minimum sizes is risible. Any supposed benefit to trawl operators would be heavily outweighed by the negative environmental impact on fish stocks and opposition from other NSW fishers constrained by the NSW limits.

#### **Conclusion and Mitigation**

The only useful recommendation is that the recreational sector be consulted further.