



**Australian Government**  
**Australian Fisheries Management Authority**

Ref: MNMC 2012-00515

1 August 2012

Mr Andrew Wilkie MP  
Member for Denison  
GPO Box 32  
HOBART Tasmania 7000

Dear Mr Wilkie

I write regarding your letter of 26 July 2012 to the Commonwealth Ombudsman in which you raise concerns about AFMA's process for setting the Total Allowable Catch (TAC) limits in the Small Pelagic Fishery (SPF).

As you have not previously raised these concerns with AFMA or the Minister for Agriculture Fisheries and Forestry, Senator the Hon, Joe Ludwig, I would like to take this opportunity to respond to the matters you have raised.

TACs in the SPF are decided by the AFMA Commission. The AFMA Commission is a group of independent experts appointed by the Minister for Agriculture, Fisheries and Forestry to take fisheries management decisions as set out in the *Fisheries Management Act 1991* and *Fisheries Administration Act 1991*. Details on the current AFMA Commissioners can be found in AFMA's 2010/2011 Annual Report and on the AFMA website. Importantly, there are no industry members on the AFMA Commission and holders of commercial fishing entitlements are explicitly precluded from being an AFMA Commissioner. Furthermore, no stakeholders took part in the meeting of the AFMA Commission at which the SPF TACs were set.

In making its decisions on TACs, the AFMA Commission is required to set them at the level that is consistent with the pursuit of AFMA's legislative objectives, in particular, the objective of ensuring that the exploitation of fisheries resources is conducted in a manner that is consistent with the principles of ecologically sustainable development, including the exercise of the precautionary principle (see section 3(b) of the *Fisheries Management Act 1991*). As required by legislation, the AFMA Commission consults with the fishing industry and other stakeholders. Please note that the legislation (e.g. s9 on consultation in the *Fisheries Administration Act 1991*) repeatedly highlights the importance of consultation specifically with the fishing industry but does not exclude other stakeholders.

In setting the current TACs in the SPF, the Commission received advice from AFMA Management, the Small Pelagic Fishery Resource Advisory Group (SPFRAG) and the South East MAC (SEMAC).

The SPFRAG is a scientific and economic advisory group comprised of fisheries scientists, commercial and recreational fishers, conservation group members and fisheries managers from both Commonwealth and State governments. SPFRAG is independently chaired by Assoc. Prof Tim Ward, a respected fisheries scientist from the South Australian Government's South Australian Research and Development Institute. SPFRAG provides technical advice directly to the AFMA Commission based on annual stock assessments prepared by scientists and other information provided by scientists, economists, fishers and conservation groups who have expertise in small pelagic fish stocks and/or their environment.

SEMAC is one of seven Management Advisory Committees with the functions set out under ss56-67 of the *Fisheries Administration Act 1991*. In accordance with s60 of that Act, the AFMA Commission

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has established that SEMAC is to be comprised of both commercial and recreational fishers and a conservation group member as well as fisheries managers and scientists. The individual members of SEMAC are appointed by the AFMA Commission on the basis of their expertise and in accordance with s62 of the *Fisheries Administration Act 1991*, which requires that the management advisory committee, who make recommendations on management arrangements and the setting of total allowable catches, include members who have experience in the fishing industry and the fishery. SEMAC has an independent Chair and Executive Officer.

SEMAC considers the recommendations of SPFRAG and makes parallel recommendations to the AFMA Commission as to the levels at which TACs should be set along with other advice in-line with the relevant sections of the *Fisheries Administration Act 1991* set out above.

Section 64C of the *Fisheries Administration Act 1991* requires members of MACs to disclose any interests to a meeting of the MAC. As the detailed Chair's report published on the AFMA website shows, Mr Gerry Geen of Seafish Tasmania specifically updated his declaration to note his interests in the Small Pelagic Fishery during the meeting of 26 March 2012. Updated interests were also received from other industry members who hold rights in the fishery. No updates on interests were received from recreational fishing or environmental members although standing declarations of interest had been provided at previous meetings by these members and recorded in the minutes. As also recorded in the detailed Chair's report from the meeting, Mr Geen did not participate in the forming of the TAC recommendations to the AFMA Commission. Please note that the recreational fishing and conservation members of SEMAC did participate in making the TAC recommendations to the AFMA Commission.

I note that s64C(1) of the *Fisheries Administration Act 1991* requires that 'a member of a management advisory committee who has an interest, whether *pecuniary or otherwise* (my emphasis), in a matter being considered or about to be considered by the committee must disclose the nature of the interest to a meeting of the committee'. Section 64c(4) requires that unless the committee otherwise determines, the member must not be present during any deliberation by the committee on the matter; and must not take part in any decision of the committee with respect to the matter.

In-line with the concerns raised in your letter regarding Mr Geen, it could be argued that a wide range of SEMAC members in addition to Mr Geen also had interests that would require they did not participate in the decision of SEMAC on the SPF TACs (e.g. recreational and even conservation members very clearly have an interest in the setting of the TACs). Given the expertise-based nature of the membership it is axiomatic that such a literal reading of these sections could preclude almost all members from most decisions. Given this potential and the obvious impacts on the ability of the MAC to both operate efficiently and provide management advice, it is my understanding that the SEMAC Chair had established, with the agreement of members, a standing arrangement in line with s64C(4) that members would be allowed to remain within the meeting unless a member requested a review of the standing arrangement. For the meeting of 26 March 2012, the SEMAC Chair asked Mr Geen to respond to questions from the other members during the discussion regarding the TACs but Mr Geen was asked not to otherwise participate in the discussion or the decision and Mr Geen complied with this request. No SEMAC members raised concerns with this approach.

The advice provided by SPFRAG, SEMAC and AFMA management was that the recommended SPF TACs for 2012-2013, were conservative and consistent with the provisions of the SPF Harvest Strategy. The SPF harvest strategy specifies decision rules for setting sustainable TACs based on the level of information known about the stocks. All of the 2012-13 SPF TACs are set at or below 10% of the spawning fish stock, which is more precautionary than the general biological target reference points in the Commonwealth Fisheries Harvest Strategy Policy. This reflects the importance of SPF species in the ecosystem including as a food source for predators targeted by recreational fishers. The SPF harvest strategy is also considered conservative when compared to international standards for small pelagic fishes.

A number of TACs recommended to the AFMA Commission by SEMAC and AFMA Management were lower than those recommended by SPFRAG. Please also note that those recommendations included both TAC increases and TAC decreases from the previous year. The decision of the AFMA Commission on the SPF TACs was in-line with the advice provided by SPFRAG, SEMAC and AFMA Management.


The SPF TACs that have been set in 2012-13 have been strongly supported by a number of independent scientific experts. For example, Dr Bob Kearney, Emeritus Professor in Fisheries Management at the University of Canberra and Professor Colin Buxton Director of Fisheries at Tasmania's Institute for Marine and Antarctic Studies have clearly supported AFMA's position that the fishery is managed in a sustainable and precautionary way, based on the best available science.

The quota that is issued in the Small Pelagic Fishery is owned by a range of concession holders and gives the holder the right to a fixed share of the total allowable catch. All fishers who hold quota in the Small Pelagic Fishery have benefited from the increases in the TACs and this includes prominent Tasmania fishing concession holders, in addition to Seafish Tasmania. There is no basis on which to revoke the quota of Seafish Tasmania without also revoking the quota holding of other fishers operating in Tasmania and elsewhere.

In relation to minutes of the meeting of 26 March, a comprehensive Chair's report of the meeting was circulated on 28 March as the meeting record and has been published on the AFMA website for sometime. Detailed minutes are not normally finalised and published until they have been considered and agreed by the MAC. The Minutes will be made available on AFMA's website once this has occurred.

I trust that the above answers your concerns. I understand that the office of the Minister for Agriculture Fisheries and Forestry, Senator the Hon Joe Ludwig has contacted you offering to arrange a briefing for you to answer any questions you may have regarding management of the SPF. I would like to repeat this offer and can be contacted on 02 6225 5555 or at [james.findlay@afma.gov.au](mailto:james.findlay@afma.gov.au).

Yours sincerely

A handwritten signature in black ink, appearing to read 'James Findlay', written over a white background.

Dr James Findlay  
Chief Executive Officer.

