



Our ref: 2012-300213

14 September 2012

Mr Andrew Wilkie MP
GPO Box 32
HOBART TAS 7000

Dear Mr Wilkie

I am writing to provide you with an update on our investigation of your complaint about the Australian Fisheries Management Authority (AFMA).

Your specific concerns relate to AFMA's administrative process in setting the Total Allowable Catch (TAC) in the small pelagic fishery for 2012-13, and the failure of its South East Management Advisory Committee (SEMAC) to exclude a committee member, Mr Gerry Geen, from its meeting of 28 February 2012, after Mr Geen declared a 'conflict of interest' in TAC deliberations listed for that meeting. You have also raised concerns about the presentation of dissenting members' views of the Small Pelagic Fishery Resource Assessment Group (SPFRAG) to SEMAC which inform AFMA's formal determination of the TAC.

SEMAC compliance with s64C of the Fisheries Administration Act 1991

The key issue that you have raised is whether SEMAC complied with s.64C of the *Fisheries Administration Act 1991* (the Act) which sets out the procedures that must be followed when a committee member declares a conflict of interest in matters for deliberation by SEMAC. Relevantly, s.64C(4)(a) of the Act requires that "[u]nless the committee otherwise determines, the member must not be present during deliberation by the committee on the matter".

On 28 February 2012, Mr Geen declared a conflict of interest in matters for deliberation by SEMAC. The declaration was formally noted and recorded by the SEMAC chairperson. The chairperson did not seek a final position from Mr Geen on the TAC for jack mackerel (east) due to his declared conflict of interest. However, Mr Geen was allowed to remain in the meeting and to participate in deliberations on the TAC.

In the course of our investigation, AFMA has admitted that the SEMAC failed to comply with s.64C of the Act in this regard. By allowing Mr Geen to remain in the meeting while the TAC matter was deliberated, after noting his conflict of interest as the holder of statutory fishing rights for the fishery, the SEMAC chairperson failed to follow the process set out under s.64C of the Act.

AFMA has accepted that its letter to you of 1 September 2012 advising that SEMAC had standing arrangements in place which permitted members with a conflict of interest to remain in committee meetings in certain circumstances was not correct.

AFMA has also provided our office with information about the steps it is taking to address the breach that occurred, notably:

- AFMA has met with relevant senior managers and directed them, in writing, to ensure the breach of s.64C of the Act is not repeated and to make the legal requirements for dealing with conflicts of interest clear at their next SEMAC meeting
- AFMA is in the process of writing to the chairs, executive officers and members of all MACs in the same terms
- AFMA will conduct audits on SEMAC meetings over the next 12 months to ensure the breach of s.64C has been fully addressed.

AFMA also advise that in August 2012, it provided information to SEMAC about the process required under the Act for the handling of any future conflicts of interest, including the requirement that members with a declared interest must absent themselves from the meeting.

In regards to the dissenting views of SPFRAG members, [REDACTED], information provided to us indicates that these views (in the form of emails from [REDACTED] to AFMA) were attached to the SEMAC meeting papers for 26 March 2012. We note that [REDACTED] joined the SEMAC meeting on 26 March 2012 by teleconference, as an observer, and has confirmed that the emails were included in the relevant meeting papers.

Please note the admission by AFMA regarding the defective procedure at the SEMAC meeting of 26 March 2012, and information from AFMA that the dissenting SPFRAG members' views were included, in due course, in the SEMAC meeting papers of 26 March 2012.

Other matters have come up in the course of our investigation. We are in the process of giving further consideration to these matters before we will be in a position to conclude our investigation.

If you have any questions regarding this letter, please contact the writer.

Yours sincerely



Rodney Lee Walsh
Senior Assistant Ombudsman