



03 AUG 2012

Andrew Wilkie MP
INDEPENDENT MEMBER FOR DENISON

Ms Alison Larkins
Commonwealth Ombudsman
GPO Box 442
CANBERRA ACT 2601

Dear Ms Larkins

I am writing further to my letter of 26 Jul 12 regarding the Australian Fisheries Management Authority's (AFMA) failure to comply with the *Fisheries Administration Act 1991* when it set the Total Allowable Catch (TAC) relevant to the controversial super trawler MV Margiris.

As you would be aware I was concerned there are no minutes available for the 26 Mar 12 teleconference of AFMA's South East Management Advisory Committee (SEMAC), and that the committee member with a direct conflict of interest - super trawler proponent Mr Gerry Geen from Seafish Tasmania Pty Ltd - did not absent himself from the meeting or be specifically authorised to remain in attendance. All three matters are requirements of the Act.

In response to a request from your office AFMA has written to me about my concerns. In that letter AFMA promises the production and promulgation of minutes for the SEMAC teleconference but fails to offer an acceptable explanation for the other matters. A copy of AFMA's letter to me of 1 Aug 12 is attached.

That Mr Geen has a direct conflict of interest in the setting of the TAC for small pelagic fish is not in dispute. Nor is the fact that he participated in the 26 Mar 12 SEMAC teleconference at which time the TAC recommendation was finalised. Mr Geen has said as much publicly and the matter is noted in the chair's summary of the meeting and in AFMA's letter to me.

But for AFMA, in its letter to me, to claim Mr Geen's remaining in the teleconference was justified because "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" is most worrying. Mr Geen clearly had a direct conflict of interest that day many magnitudes greater than any other member and to suggest his conflict of interest was comparable to the recreational and conservation members is patently absurd.

AFMA's explanation for not absenting committee members, that given "the expertise-based nature of the membership [of SEMAC] it is axiomatic that such a literal reading of these sections [of the Act] could preclude almost all members from most decisions" is equally alarming. Of course AFMA should read the Act literally and comply with it because to do otherwise would be unlawful. There is nothing "axiomatic" about a government agency deciding to not take an Act of Parliament literally. What would be axiomatic is an agency taking legal advice on the meaning of an Act, seeking a court judgement or approaching their minister and pressing the case for a parliamentary amendment, none of which AFMA appears to have done in this case.

AFMA also asserts in its letter to me that the Authority has developed some sort of “standing arrangement” to avoid taking the Act literally. But this raises more questions than it answers. When was this “standing arrangement” decided and where is it recorded? Was it by an earlier generation of committee members and is the arrangement acceptable to the current membership? Has the current membership ever discussed the matter? And what right does the membership even have to establish such arrangements when the Act is so clear?

As though all this isn't enough to compromise the TAC, there is also the fact Mr Geen is a member of the Small Pelagic Fishery Resource Advisory Group (SPFRAG) and has been by his own admission for some 10 years. The significance of this is that in setting the current TAC relevant to the Margiris the AFMA Commission received advice from only two bodies other than AFMA management - SEMAC and SPFRAG - and Mr Geen is a member of both. In other words the proponent for one of the biggest fishing boats in the world, and what would be the biggest in Australia, has been a central player in the determination of the quota relevant to that vessel. Yes he declared his interest at the start of meetings and his conduct is not in question. But in both fora he was allowed to remain in meetings which at the very least gave him access to privileged information and conceivably affected the voting patterns of members who had to look Mr Geen in the eye when they spoke up and cast their votes.

When I wrote to you on 26 July 12 I expressed my concern that there was a serious question mark over AFMA and whether or not it has followed proper process when it determined fish numbers relevant to the MV Margiris. I added that unless the matter is cleared up very quickly there is the very real possibility that the basis for the super trawler coming to Australia is unlawful and that the quota granted to Seafish Tasmania should be revoked.

In light of AFMA's 1 Aug 12 letter to me, I am now firmly of the view the Authority failed to comply with the Fisheries Administration Act 1991 when Mr Geen was improperly allowed to remain in the 26 Mar 12 SEMAC teleconference and was not explicitly authorised by the committee to stay. In other words AFMA acted unlawfully in this instance and that makes the associated quotas invalid, including that allocated to Seafish Tasmania which the company is relying on to fill the super trawler Margiris.

Yours sincerely



Andrew Wilkie MP
Independent Member for Denison

cc. The Hon Julia Gillard MP, Prime Minister
Senator the Hon Joe Ludwig, Minister for Agriculture, Fisheries and Forestry
Dr James Findlay, Chief Executive Officer Australian Fisheries Management Authority