

**IMPORT RISK ANALYSIS APPEAL PANEL—FINDINGS REPORT**  
**FINAL GENERIC IMPORT RISK ANALYSIS REPORT FOR PRAWNS AND PRAWN PRODUCTS**

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**INTRODUCTION**

The Import Risk Analysis Appeal Panel (IRAAP) was convened in accordance with the *Import Risk Analysis Handbook 2003*<sup>1</sup> (the handbook) published by the Australian Government Department of Agriculture, Fisheries and Forestry.

The IRAAP considered four appeals lodged in response to the release of the *Final generic import risk analysis (IRA) report for prawns and prawn products* (final prawn IRA report) from:

- the Department of Fisheries, Thailand
- the Australian Prawn Farmers Association
- the Seafood Importers Association of Australasia Inc
- the Ministry of Agriculture and Rural Development of Vietnam, National Agro-Forestry-Fisheries Quality Assurance Department.

The IRAAP comprised of:

- Mr John Crosby, Chair (Chair—Quarantine and Exports Advisory Council)
- Mr Stephen Morris (Quarantine and Exports Advisory Council)
- Mr Allen Grant (Executive Manager—Department of Agriculture, Fisheries and Forestry)
- Dr Andy Carroll (the Chief Veterinary Officer).

Consistent with the handbook, the IRAAP considers appeals, supported by a statement of reasons, based on the following grounds:

- there was a significant deviation from the process set out in the handbook that adversely affected the interests of a stakeholder
- a significant body of scientific information relevant to the outcome of the IRA was not considered.

The IRAAP does not consider matters relating to:

- issues falling within the ambit of the appeal in step 8 (see section 4) of the handbook
- the scientific merits of the IRA, other than in relation to a claim that a significant body of scientific information was not considered
- the merits of the risk management recommendations made by an IRA team or of the risk management conclusions reached by Biosecurity Australia.

Regarding an appeal, the IRAAP may make one of three findings:

- *allow* a claim
- *disallow* a claim, or
- find it *outside the grounds of appeal set out in the handbook that can be considered by the IRAAP*.

## **PRAWNS AND PRAWN PRODUCTS IRAAP FINDINGS**

To facilitate deliberations, the IRAAP were provided multiple documents relating to the prawn IRA process, which included:

- the *Import Risk Analysis Handbook 2003*
- the 2006 *Revised draft generic IRA report for prawns and prawn products* (Part A and B)
- the 51 submissions from stakeholders received during the formal period of consultation on the draft generic prawn IRA report
- a summary table setting out all stakeholder comments and Biosecurity Australia's responses to those comments
- the report of the Eminent Scientists Group, dated April 2009
- copies of all Biosecurity Australia advices available on the Biosecurity Australia website
- the *Final generic import risk analysis report for prawns and prawn products*.

The IRAAP's assessment of the appeals follows.

*Appellant*

Department of Fisheries, Thailand

CLAIM ONE

Ground of Appeal 2

A significant body of scientific information relevant to the outcome of the IRA was not considered.

*Summary of claim*

The appellant claimed that the literature review ‘Review of disease transmission risks from prawn products exported for human consumption, by T.W. Flegel (2009)’, may not have been considered by Biosecurity Australia during the process.

*Finding*

Claim disallowed

*Reasons*

- The IRAAP was advised that Biosecurity Australia had seen a copy of the draft document, ‘Review of disease transmission risks from prawn products exported for human consumption’. In addition, Biosecurity Australia advised the IRAAP that the author of the document—Professor Flegel—presented details of his work contained in the draft document at a meeting in Sydney on 11 and 12 May 2007.
- At the request of a stakeholder, Biosecurity Australia provided a copy of the final published document, ‘Review of disease transmission risks from prawn products exported for human consumption, by T.W. Flegel (2009)’, to the Eminent Scientists Group (ESG) on 23 April 2009 as part of the ESG’s consideration/review of stakeholder comments in line with its original terms of reference. The ESG concluded in its report that:

*Beyond these matters, [matters of crabs and ballast water, the Darwin incident and the inclusion of a table to demonstrate the ratio of cooked to uncooked prawns being imported into Australia] the ESG concludes unanimously that Biosecurity Australia has properly considered the 51 submissions received from stakeholders on the draft final generic Import Risk Analysis Report for Prawns and Prawn Products.<sup>2</sup>*
- IRAAP noted that the Flegel document was one of the 51 submissions reviewed by the ESG.
- IRAAP was satisfied, on the basis of advice it received from Biosecurity Australia and on the conclusions of the report of the ESG, that the document ‘Review of disease transmission risks from prawn products exported for human consumption, by T.W. Flegel (2009)’ had been considered during the IRA process.
- Therefore, **the IRAAP concluded that the information had been considered and the claim was disallowed.**
- As the IRAAP found that this information had been considered, an assessment of whether the document, ‘Review of disease transmission risks from prawn products exported for human consumption, by T.W. Flegel (2009)’, constitutes a significant body of scientific information relevant to the outcomes of the IRA was not necessary.

**Appellant**

**Australian Prawn Farmers Association**

**CLAIM ONE**

**Ground of Appeal 2**

A significant body of scientific information relevant to the outcome of the IRA was not considered.

**Full extract of claim**

*'The IRA recommends that imported prawns 'be highly processed', that is head and shell-off (except for the last segment and tail fans), and coated for human consumption by being breaded or battered, marinated in a wet or dry marinade, marinated and placed on skewers or processed into dumpling, spring roll, samosa, roll, ball or dim-sum-type product.*

It is evident that viable prawn viruses are found in the flesh of dead, raw prawns.

It is not evident that marination in a wet or dry marinade serves to denature viruses in the flesh of dead, raw prawns nor that washing the flesh of dead, raw prawns free of marinade serves to denature viruses in that flesh.

Washed prawn flesh, especially but not necessarily if it was previously marinated in flavourless dry marinade, serves as an attractive, extremely cost effective bait for fishermen and so provides a rapid pathway of infection to Australia's native crustacean population.

Therefore, import of prawns marinated in a wet or dry marinade constitutes an unacceptable risk to Australia's biosecurity.'

**Finding**

The claim is outside the grounds of appeal that can be considered by the IRAAP.

**Reasons**

- The IRAAP considered that, in this claim, the appellant is questioning both the scientific merits of the IRA and the merits of the risk management recommendations and conclusions; rather than identifying a specific body of scientific information that was not considered.
- On this matter the handbook states:
  - 'The IRAAP does not consider matters relating to:
    - ...the scientific merits of the IRA, other than in relation to a claim that a significant body of scientific information was not considered
    - the merits of the risk management recommendations made by an IRA team or of the risk management conclusions reached by Biosecurity Australia' (pages 25-26).
- Accordingly, the IRAAP did not consider the scientific merits of the IRA, the merits of the risk management recommendations made, or the conclusions reached by Biosecurity Australia with respect to highly processed prawns.

Because the IRAAP considered that the claim related to the scientific merits of the IRA and the merits of the risk management recommendations and conclusions, and was not made on the basis that a

## PRAWNS AND PRAWN PRODUCTS IRAAP FINDINGS

significant body of scientific information was not considered, **the IRAAP concluded that the claim was outside the grounds of appeal that can be considered by the IRAAP.**

### CLAIM TWO

#### Ground of Appeal 2

A significant body of scientific information relevant to the outcome of the IRA was not considered.

#### Full extract of claim

‘The IRA has removed risk management measures for IHHNV.

It has been established that the pathological strain of IHHNV is not endemic to Australia.

The basis of removing the risk management measures for IHHNV was that the pathological strain of IHHNV was present in Australia.

The basis of that conclusion is that IHHNV has been found in prawns sampled on farms and caught in the Northern Territory.

It is not evident that the pathological strain of IHHNV exists in natural populations in East Coast prawn stocks nor that there is exchange between the populations of the Northern Territory and the East Coast. Therefore, import of prawns without risk management measures for IHHNV constitutes an unacceptable risk to Australia’s biosecurity.’

#### Finding

The claim is outside the grounds of appeal that can be considered by the IRAAP.

#### Reasons

- The IRAAP considered that, in this claim, the appellant is questioning both the scientific merits of the IRA and the merits of the risk management recommendations and conclusions; rather than identifying a specific body of scientific information that it claims was not considered.
- On this matter the handbook states:
  - ‘The IRAAP does not consider matters relating to:
    - ...the scientific merits of the IRA, other than in relation to a claim that a significant body of scientific information was not considered
    - the merits of the risk management recommendations made by an IRA team or of the risk management conclusions reached by Biosecurity Australia’ (pages 25-26).
- Accordingly, the IRAAP did not consider the scientific merits of the IRA, the merits of the risk management recommendations made, or the conclusions reached by Biosecurity Australia with respect to IHHNV.
- Because the IRAAP considered that the claim related to the scientific merits of the IRA and the merits of the risk management recommendations and conclusions, and was not made on the basis that a significant body of scientific information was not considered, **the IRAAP concluded that the claim was outside the grounds of appeal that can be considered by the IRAAP.**

### CLAIM THREE

#### Ground of Appeal 2

A significant body of scientific information relevant to the outcome of the IRA was not considered.

#### Full extract of claim

*'The IRA recommends that prawns have the head and shell removed (except for the last segment and tail fans) and, if not from a disease free source, have each batch tested on arrival with negative results for WSSV, and YHV;*

It is evident that WSSV, YHV and TSV constitute unacceptable risk to Australia's biosecurity. The implication of the IRA is that if a shipment tests free of WSSV and YHV, it will also be free of TSV. It is not evident that a shipment that tests free of WSSV and YHV is also free of TSV. Therefore, import of prawns from other than a disease free source without testing each batch to be free of TSV constitutes an unacceptable risk to Australia's biosecurity.'

#### Finding

The claim is outside the grounds of appeal that can be considered by the IRAAP.

#### Reasons

- The IRAAP considered that, in this claim, the appellant is questioning both the scientific merits of the IRA and the merits of the risk management recommendations and conclusions; rather than identifying a specific body of scientific information that it claims was not considered.
- On this matter the handbook states:
  - 'The IRAAP does not consider matters relating to:
    - ...the scientific merits of the IRA, other than in relation to a claim that a significant body of scientific information was not considered
    - the merits of the risk management recommendations made by an IRA team or of the risk management conclusions reached by Biosecurity Australia' (pages 25-26).
- Accordingly, the IRAAP did not consider the scientific merits of the IRA, the merits of the risk management recommendations made, or the conclusions reached by Biosecurity Australia with respect to WSSV, YHV and TSV.
- Because the IRAAP considered that the claim related to the scientific merits of the IRA and the merits of the risk management recommendations and conclusions, and was not made on the basis that a significant body of scientific information was not considered, **the IRAAP concluded that the claim was outside the grounds of appeal that can be considered by the IRAAP.**

***Appellant***

**The Seafood Importers Association of Australasia Inc**

**CLAIM ONE**

**Ground of Appeal 1**

There was a significant deviation from the regulated IRA process that adversely affected the interests of a stakeholder.

***Summary of claim***

‘The risk analysis fails to comply with the requirements of the World Trade Organization Sanitary and Phytosanitary (SPS) Agreement (specified to be a requirement in the IRA Handbook 2003) by inadequately determining whether autochthonous infection with specific prawn pathogens occurs in Australia, yet proposing to apply risk management measures to these pathogens.....

***...Remedy Sought***

Withdrawal of the risk management measures for Yellow Head-Like viruses, on the grounds that their imposition is incompatible with Australia’s obligations under the WTO SPS Agreement. The available scientific evidence is consistent with this agent being endemic in Australia, and the IRA fails to demonstrate that measures can be justified which are compatible with the SPS Agreement.’

***Finding***

Claim disallowed

***Reasons***

- The IRAAP noted that the basis of the appellant's claim was that it did not believe that freedom testing had been conducted for Yellow head virus (YHV) and that applying risk management measures to it would be inconsistent with the SPS agreement.
- Biosecurity Australia informed the IRAAP that ‘testing for both Yellow head virus (YHV) and gill-associated virus (GAV) was conducted in parallel to the national survey for white spot syndrome virus (WSSV) published in 2004 (East et al., 2004). In the final survey, a total of 1585 samples were collected and tested for YHV. All samples tested negative for YHV’.
- The IRAAP was satisfied with Biosecurity Australia’s advice and determined that because testing had been done for YHV the appellant's claim was not valid and was therefore **disallowed**.
- The IRAAP must not consider the scientific merits of an IRA (other than in relation to a claim that a significant body of scientific information was not considered), or merits of the risk management recommendations made by an IRA team or of the risk management conclusions reached by Biosecurity Australia. Accordingly, the IRAAP did not consider the scientific merits of the IRA, the merits of the risk management recommendations made, or the conclusions reached by Biosecurity Australia with respect to this claim.

## PRAWNS AND PRAWN PRODUCTS IRAAP FINDINGS

### CLAIM TWO A

#### Ground of Appeal 2

A significant body of scientific information relevant to the outcome of the IRA was not considered.

#### *Summary of claim*

‘That the import risk analysis failed to adequately consider the scientific evidence relating to global experience with transfer of prawn diseases in prawn products for human consumption.....

....This Association commissioned a scientific peer review of the draft IRA, which involved a world authority on prawn diseases (Professor Tim Flegel), an internationally recognized authority on risk analysis and disease control (Professor Roger Morris), and additional experts in aquatic animal diseases and risk analysis.....

.....Subsequently Professor Tim Flegel has published an important peer-reviewed scientific paper “Review of disease transmission risks from prawn products exported for human consumption” in *Aquaculture* (2009) 290: 179-189’.....‘This paper [Review of disease transmission risks from prawn products exported for human consumption] was actively drawn to the attention of the IRA team over the year before it completed its work, but the IRA report does not cite the paper, and no attempt was made in the IRA to counter the very strong evidence provided by this paper to challenge many of the unsupported assumptions made in the IRA to justify risk management measures. The IRA also failed to draw directly on the range of empirical scientific literature sources used by Professor Flegel to prepare his review....

....Remedy Sought:

The IRA should be revised to take account of the empirical evidence on the question of whether in reality prawn diseases have been transmitted through products packaged for commercial scale. This important area has not been adequately considered in the IRA. The complete IRA should be subjected to independent scientific peer review by technical experts before it is released and used as the basis for risk management measures...’

#### *Finding*

Claim disallowed

#### *Reasons*

- The peer review papers by T.W. Flegel and R.S. Morris et al<sup>3</sup>, provided by the appellant in its submission on the draft prawn IRA report, were presented to the Eminent Scientists Group (ESG) in April 2009. An additional paper, which Biosecurity Australia had seen draft versions of, called ‘Review of disease transmission risks from prawn products exported for human consumption, by T.W. Flegel (2009)’, was provided to Biosecurity Australia by the appellant with the request that it too be passed to the ESG. The paper by T.W.Flegel was passed to the ESG on 23 April 2009.
- The IRAAP noted that, following the ESG’s consideration of the 51 stakeholder submissions against the draft, in line with its original terms of reference, the ESG concluded:

*Beyond these matters, [matters of crabs and ballast water, the Darwin incident and the inclusion of a table to demonstrate the ratio of cooked to uncooked prawns being imported into Australia] the ESG concludes unanimously that Biosecurity Australia has properly considered the 51*



## PRAWNS AND PRAWN PRODUCTS IRAAP FINDINGS

*submissions received from stakeholders on the draft final generic Import Risk Analysis Report for Prawns and Prawn Products.*<sup>4</sup>

- IRAAP noted that the peer review papers by Flegel and Morris and the Flegel document were part of the 51 submissions reviewed by the ESG.
- The IRAAP was satisfied, on the basis of advice it received from Biosecurity Australia and on the conclusions of the report of the ESG, that the appellant's submission against the draft prawn IRA report and the document 'Review of disease transmission risks from prawn products exported for human consumption, by T.W. Flegel (2009)', had been considered during the IRA process.
- The **IRAAP concluded that the information had been considered and the claim was disallowed.**
- As the IRAAP found that this information had been considered, a detailed assessment of whether the appellant's submission constitutes a significant body of scientific information relevant to the outcomes of the IRA was not necessary.

### CLAIM TWO B

#### Ground of Appeal 2

A significant body of scientific information relevant to the outcome of the IRA was not considered.

#### **Summary of claim**

The appellant claims the 'Darwin incident' has been used 'to justify the claim that transmission of WSSV has occurred from retail prawns' but the 'evidence concerning the incident has not been presented in the peer-reviewed scientific literature despite the fact that it happened a decade ago'. The appellant requests that the appendix describing the 'Darwin incident' should be removed from the IRA.

#### **Finding**

The claim is outside the grounds of appeal that can be considered by the IRAAP.

#### **Reasons**

- The appellant made this claim under ground of appeal two which is that 'a significant body of scientific information relevant to the outcome of the IRA was not considered'.
- Rather than identifying a significant body of information that was not considered, the appellant suggested that information that was considered should be removed from the IRA.
- The IRAAP determined that to consider the exclusion of the Darwin incident (as proposed by the applicant) would be to consider the scientific merits of that information in the IRA, and that this would be outside of its terms of reference.
- On this matter the handbook states:

'The IRAAP does not consider matters relating to:

- ...the scientific merits of the IRA, other than in relation to a claim that a significant body of scientific information was *not* considered.....' (pages 25-26).

[Emphasis added]

## PRAWNS AND PRAWN PRODUCTS IRAAP FINDINGS

- As such, **the IRAAP concluded that the claim was outside the grounds of appeal that can be considered by the IRAAP.**

### CLAIM THREE

#### Ground of Appeal 1

There was a significant deviation from the regulated IRA process that adversely affected the interests of a stakeholder.

#### *Summary of claim*

‘That the Eminent Scientists Group failed to follow the operating procedures defined for it in examining the IRA.’

#### *Finding*

Claim disallowed

#### *Reasons*

- The Chair of the IRAAP sought a response from the Chair of the ESG, Dr John Radcliffe, on the matters raised in the appellant’s claim. Dr Radcliffe’s response to the Chair of the IRAAP, which was endorsed by all members of the ESG for prawns, has been drawn upon in the IRAAP’s assessment of the claim.
- The appellant refers to the ESG’s current terms of reference in the *Import Risk Analysis Handbook 2007 (update 2009)*. These terms of reference are not applicable in this case as the ESG was required to report under its original terms of reference.
- In its April 2009 report, the ESG outlined:
  - ‘This report by the ESG is made in accordance with its original terms of reference, which are to:
    - review the draft final IRA report prepared by the IRA team to ensure that the IRA team has properly considered all technical submissions received from stakeholders during the formal consultation period on the draft IRA, and
    - within 60 days of being presented with the draft final IRA report, prepare a report to the Director of Animal and Plant Quarantine on their findings and recommend any action considered necessary to overcome any identified deficiencies. The ESG will provide a copy of the report to the Chief Executive of Biosecurity Australia.
  - The Secretary of the Department of Agriculture, Fisheries and Forestry has additionally sought any advice the ESG considers may be of assistance beyond these formal terms of reference on matters relating to the science within this IRA’.
- The ESG was established in 2004 and its terms of reference were communicated to stakeholders in Biosecurity Australia Advice 2004/15 & 2004/22<sup>5</sup>.
- Stakeholders were advised in Biosecurity Australia policy memorandum 2007/20<sup>6</sup> dated 12 September 2007, which deals with *Transitional Arrangements for Biosecurity Australia’s Import Work Program*, that the prawns IRA was one of three to be completed under the pre-regulated process. Therefore, the ESG operated under its original terms of reference and not terms of reference in the *Import Risk Analysis Handbook 2007 (update 2009)*.

## PRAWNS AND PRAWN PRODUCTS IRAAP FINDINGS

- The appellant has claimed that the ESG could not have fairly and objectively considered the documents in the time between receiving the documents and when its two page report was submitted on 30 April 2009.
  - On this matter, Dr Radcliffe informed the Chair of the IRAAP that this assertion was incorrect and that the ESG's report was not submitted on 30 April 2009. Dr Radcliffe outlined that following the ESG's two day meeting on 28 and 29 April 2009, drafts of the report and covering letter to the Director of Animal and Plant Quarantine were prepared and circulated between ESG members for 'development, correction and editorial changes'. Dr Radcliffe circulated the 'final integrated drafts of the documents' on 30 May 2009 and 'the formal report was sent to the Director of Animal and Plant Quarantine [from Dr Radcliffe] under a covering letter dated 2 June 2009'.
- The appellant also claimed that the ESG failed to consider the review by Flegel entitled 'Review of disease transmission risks from prawn products exported for human consumption'.
  - On this matter Dr Radcliffe informed the Chair of the IRAAP:  
'It is incorrect to suggest that the ESG failed to consider the review by TW Flegel. An uncorrected proof of the paper by Flegel, TW (2009) "Review of disease transmission risks from Prawn products exported for human consumption" *Aquaculture* (in press) submitted as a supplement to Submission 15 from the Seafood Importers Association of Australasia was considered at length by the ESG. Flegel's work was also alluded to in several other submissions and where those submissions were in French, translations were provided, though it might be pointed out that at least one member of the ESG is fluent in French. Dr Flegel's work was considered in relation to each submission.'
- The appellant claims that 'although the matters covered in this IRA and the submissions are in a very specialist area where expert knowledge is essential for interpretation of the information, no external independent advice was sought by the Group'.
  - Dr Radcliffe informed the Chair of the IRAAP that the ESG did exercise its right to co-opt additional expertise in Dr Mark Crane to assist with its review. Dr Radcliffe said that 'Dr Mark Crane has been a Principal Research Scientist in CSIRO since 1993 and is Officer-in-Charge of the Australian Animal Health Laboratory Fish Diseases Laboratory in Geelong. He has been funded for research and subsequently published over 80 papers in projects involving finfish, crustaceans including prawns and molluscs including abalone.'
- The appellant claims that the action of the ESG meeting with the prawn IRA team seriously undermined its independence, and represented a major source of bias in its proceedings. In his response, Dr Radcliffe explained the details of the two meetings with the prawn IRA team and stated in his response that 'the discussions with and questions asked of the IRA team members involved clarification of issues discussed in the report and did not constitute opportunities for scientific debate. The ESG does not consider such interaction in any way compromised or otherwise affected its independence'.
- The IRAAP determined that the ESG has met its requirements as outlined in its original terms of reference. Therefore, **the IRAAP concluded that there was no significant deviation from the process set out in the handbook.**
- As such, the claim was **disallowed**.

## PRAWNS AND PRAWN PRODUCTS IRAAP FINDINGS

### CLAIM FOUR

#### Ground of Appeal 1

There was a significant deviation from the regulated IRA process that adversely affected the interests of a stakeholder.

#### *Summary of claim*

‘That the IRA Team could not be unbiased in its deliberations due to the participation of a team member [Dr Leigh Owens] who had a conflict of interest between his role in the team and his involvement with interested parties’.

#### *Finding*

Claim disallowed

#### *Reasons*

- Biosecurity Australia invited comments on the proposed appointment of Dr Leigh Owens to the risk analysis panel (RAP) via Animal Quarantine Policy Memorandum 1999/20<sup>7</sup> on 11 March 1999. Animal Quarantine Policy Memorandum 2000/19<sup>8</sup>, dated 7 March 2000, notified stakeholders that Dr Owens had been appointed to the RAP and that three submissions in support of his appointment had been received. According to the final prawn IRA report, Dr Owens has served on the RAP (or IRA team as it's now known) up until now.
- The IRAAP was advised by Biosecurity Australia that Dr Owens was appointed to the prawn IRA team under a contract with James Cook University of North Queensland. The contract was not signed by Dr Owens but by an official representing the University. The IRAAP was shown an extract of the contract, pertaining to conflict of interest disclosure and notification, and advised by Biosecurity Australia that this contract was renewed and re-signed by an official representing the University on multiple occasions. Biosecurity Australia advised the IRAAP that ‘at the beginning of each IRA team meeting it is standard practice to ask whether there any attendee has a conflict of interest’. The IRAAP was advised that Dr Owens did not notify a conflict of interest, real or potential, to the respective Chairs of the IRA team.
- The IRAAP noted that because Dr Owens' contract was re-signed when the IRA Handbook 2003 was in force, a reasonable person would assume that the 2003 rules for IRA team membership as outlined at Annex 2 of the handbook, and extracted below, would apply to the renewal of his contract. The relevant extract states:

‘In finalising IRA team membership, Biosecurity Australia assesses prospective team members against the following criteria:....

- absence of conflict of interest; it being essential that:
  - prospective external team members do not, and are perceived not to, have a conflict of interest
  - they declare that their sources of income and/or representational responsibilities and/or personal or other interests do not compromise their capacity to provide impartial and independent advice? (page 22)

[Emphasis added]

## PRAWNS AND PRAWN PRODUCTS IRAAP FINDINGS

- In the IRAAP's opinion, Biosecurity Australia was aware from 2007 that, among stakeholders, there were perceptions that a member (or members) of the prawn IRA team had a potential conflict of interest, yet did not take any action to address this or alleviate stakeholder's concerns. The IRAAP remarked that even if a conflict of interest is only perceived, steps to address such a conflict need to be taken and clearly communicated to stakeholders.
- The IRAAP considered that the absence of any conflict of interest declarations that met the criteria in the 2003 handbook, specifically, that prospective IRA team members 'declare that their sources of income and/or representational responsibilities and/or personal or other interests do not compromise their capacity to provide impartial and independent advice', was a deviation from the process set out in the handbook and that the deviation was significant.
- As such, **the IRAAP determined that there had been a significant deviation from the process set out in the handbook.**
- However, for the following reasons, the IRAAP concluded that while the deviation was significant it could not conclude that the appellant's interests had been adversely affected by the deviation.
- In the IRAAP's opinion, the outcome of the IRA was not biased by Dr Owens' participation on the IRA team. The IRA team had a number of other members over the course of the prawn IRA process that, while they may not have specifically been experts in prawn diseases, are appropriately qualified and experienced in the field and in conducting import risk analyses.
- In addition, the IRAAP noted that all 51 technical stakeholder submissions, including that of the Seafood Importers Association of Australasia Inc, were reviewed by the ESG and were determined to have been properly considered by Biosecurity Australia. The additional ESG member, Dr Mark Crane (who was co-opted specifically as an additional and independent eminent scientist with relevant expertise) gave the IRAAP confidence that the opinions of one particular member of an IRA team could not have influenced the outcomes of an IRA.
- As such, the claim is **disallowed**.
- Finally, the IRAAP emphasised that while it disallows this claim it has made recommendations to the Director of Animal and Plant Quarantine (relating specifically to IRAs) about the future management of conflict of interest in specialist areas, such as prawn and crustacean diseases, where only a small pool of relevant expertise is available for Biosecurity Australia to draw upon.

*Appellant*

**Ministry of Agriculture and Rural Development of Vietnam, National Agro-Forestry-Fisheries Quality Assurance Department**

**CLAIM ONE**

**Ground of Appeal**

The appellant did not specifically identify a ground on which it was appealing.

**Summary of claim**

The appellant claims:

*The disease status and disease prevalence of prawn are different upon each country therefore it is impossible to apply a common risk analysis measure for prawns imported from different countries. So far, Necrotising Hepatopancreatitis (NHP) has not been available in Vietnam. Besides, it is acknowledged the only presence of Gill Associated Virus (GAV), not Yellow Head Virus (YHV) in Vietnam by surveillance data. That is why Australia should carry out independent risk assessment data for prawns imported from each country (according to the OIE guidelines) in order to set up the appropriate risk management measures for each exporting country.*  
[As extracted]

**Finding**

The claim is outside the grounds of appeal that can be considered by the IRAAP.

**Reasons**

- The IRAAP noted that while the appellant had not specifically identified the ground under which this claim falls, the IRAAP considered that the appellant is commenting on the merits of the risk management recommendations and conclusions and on the scientific merits of the IRA.
- On this matter the handbook states:
  - ‘The IRAAP does not consider matters relating to:
    - ...the scientific merits of the IRA, other than in relation to a claim that a significant body of scientific information was not considered
    - the merits of the risk management recommendations made by an IRA team or of the risk management conclusions reached by Biosecurity Australia’ (pages 25-26).
- The IRAAP concluded that, because the claim relates to issues regarding the scientific merits of the IRA, the merits of the risk management recommendations made, or the conclusions reached by Biosecurity Australia the issues raised in the appellant’s claim are **outside the grounds of appeal that can be considered by the IRAAP**.
- The IRAAP noted that the prawn IRA is generic, covering prawns from all countries. However, upon receipt of an import permit request from a particular country, import conditions will be developed specific to that country based on its aquatic animal health status.

## PRAWNS AND PRAWN PRODUCTS IRAAP FINDINGS

### CLAIM TWO

#### Ground of Appeal

The appellant did not specifically identify a ground on which it was appealing.

#### Summary of claim

The appellant claims:

*....it is not necessary for Australia to apply the stronger quarantine measures for White Spot Syndrome Virus (WSSV) and Yellow Head Virus (YHV) because since 2001, Australia has applied strict quarantine measures (such as import prawn size must be larger than 15gr/piece, certificates issues by competent authority of exporting country declaring “non-early harvest due to diseases and non WSSV and YHV clinical signs”) and it is resulted that WSSV, YHV have not yet occurred in Australia so far.*

#### Finding

The claim is outside the grounds of appeal that can be considered by the IRAAP.

#### Reasons

- The IRAAP noted that while the appellant had not specifically identified the ground under which this claim falls, the IRAAP considered that the appellant’s claim relates to the merits of the risk management recommendations and conclusions and to the scientific merits of the IRA.
- On this matter the handbook states:
  - ‘The IRAAP does not consider matters relating to:
    - ...the scientific merits of the IRA, other than in relation to a claim that a significant body of scientific information was not considered
    - the merits of the risk management recommendations made by an IRA team or of the risk management conclusions reached by Biosecurity Australia’ (pages 25-26).
- The IRAAP concluded that, because the claim relates to issues regarding the scientific merits of the IRA, the merits of the risk management recommendations made, or the conclusions reached by Biosecurity Australia the issues raised in the appellant’s claim are **outside the grounds of appeal that can be considered by the IRAAP**.

## PRAWNS AND PRAWN PRODUCTS IRAAP FINDINGS

### CLAIM THREE

#### Ground of Appeal

The appellant did not specifically identify a ground on which it was appealing.

#### Summary of claim

The appellant claims the *inclusion of risk management measures for Necrotising Hepatopancreatitis Bacterium (NHPB) is not scientific-based because:*

*- So far, NHP has only been reported in Litopenaeus vannamei, L. stylirostris, L. setiferus, farfantepenaeus aztecus and F. californiensis, not in Penaeus monodon, non-Penaeidae family prawns and freshwater prawns. Therefore, risk management measures for NHPB applied for unfrozen products of all prawns species are not based on scientific evidence.*

*- In addition, OIE is researching NHPB and has not published guidelines and criteria for a country or zone that is recognized to be free of NHPB. Consequently, it is difficult to identify whether “imported prawns are sourced from free-NHPB country or zone”.*

#### Finding

The claim is outside the grounds of appeal that can be considered by the IRAAP.

#### Reasons

- The IRAAP noted that while the appellant had not specifically identified the ground under which this claim falls, the IRAAP considered that the appellant is commenting on the merits of the risk management recommendations and conclusions and on the scientific merits of the IRA.
- On this matter the handbook states:
  - ‘The IRAAP does not consider matters relating to:
    - ...the scientific merits of the IRA, other than in relation to a claim that a significant body of scientific information was not considered
    - the merits of the risk management recommendations made by an IRA team or of the risk management conclusions reached by Biosecurity Australia’ (pages 25-26).
- The IRAAP concluded that, because the claim relates to issues regarding the scientific merits of the IRA, the merits of the risk management recommendations made, or the conclusions reached by Biosecurity Australia the issues raised in the appellant’s claim are **outside the grounds of appeal that can be considered by the IRAAP**.



## PRAWNS AND PRAWN PRODUCTS IRAAP FINDINGS

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<sup>1</sup> The *Import Risk Analysis Handbook 2003* can be accessed from Biosecurity Australia's website, at: <http://www.daff.gov.au/ba/ira/process-handbook>.

<sup>2</sup> The ESG's report can be accessed through its webpage:

[http://www.daff.gov.au/corporate\\_policy/eminent\\_scientists\\_group](http://www.daff.gov.au/corporate_policy/eminent_scientists_group)

<sup>3</sup> The submission from the Seafood Importers Association of Australasia Inc (including the peer review papers by T.W.Flegel and R.S.Morris et al) can be accessed through Biosecurity Australia's website:

[http://www.daff.gov.au/ba/ira/current-animal/prawns/prawn\\_submissions](http://www.daff.gov.au/ba/ira/current-animal/prawns/prawn_submissions)

<sup>4</sup> The ESG's report can be accessed through its webpage:

[http://www.daff.gov.au/corporate\\_policy/eminent\\_scientists\\_group](http://www.daff.gov.au/corporate_policy/eminent_scientists_group)

<sup>5</sup> Biosecurity Australia Advice 2004/15 & 2004/22—*New arrangements to strengthen import risk analysis*, can be accessed from Biosecurity Australia's website, at:

[http://www.daff.gov.au/\\_\\_data/assets/word\\_doc/0015/11742/2004-15.doc](http://www.daff.gov.au/__data/assets/word_doc/0015/11742/2004-15.doc)

<sup>6</sup> Biosecurity Australia Advice 2007/20—*Transitional Arrangements for Biosecurity Australia's Import Work Program*, can be accessed from Biosecurity Australia's website, at:

[http://www.daff.gov.au/\\_\\_data/assets/word\\_doc/0006/399381/2007\\_20.doc](http://www.daff.gov.au/__data/assets/word_doc/0006/399381/2007_20.doc)

<sup>7</sup> Animal Quarantine Policy Memorandum 1999/20, can be accessed from Biosecurity Australia's website, at:

[http://www.daff.gov.au/\\_\\_data/assets/word\\_doc/0003/16662/99-020.doc](http://www.daff.gov.au/__data/assets/word_doc/0003/16662/99-020.doc)

<sup>8</sup> Animal Quarantine Policy Memorandum 2000/19, can be accessed from Biosecurity Australia's website, at:

[http://www.daff.gov.au/\\_\\_data/assets/word\\_doc/0019/16624/00-019.doc](http://www.daff.gov.au/__data/assets/word_doc/0019/16624/00-019.doc)