

SUBMISSION TO THE 2012 COMMONWEALTH FISHERIES POLICY REVIEW

by

GRAHAM PIKE**Member, AFMA's Small Pelagic Fishery Resource Assessment Group (SPFRAG);****Recreational Fishing Consultant;****Co-founder Recfish Australia****About the Author**

I am the Recreational and Charter Fishing Member of the Australian Fisheries Management Authority's Small Pelagic Fishery Resource Assessment Group (SPFRAG); Co-founder in 1983 and Inaugural President for six years of Recfish Australia; a founder member of Native Fish Australia; Member of the Steering Group of the Commonwealth Fisheries Policy Review, 2001 – 2002; Member of the Research and Development Working Group of the Commonwealth Policy Review Steering Group; as National Executive Director of Recfish Australia for 13 years, adviser on recreational fisheries policy concepts, development and implementation and on fisheries resources' management and fisheries management to successive Commonwealth governments.

I have previously advised and undertaken committee work in numerous capacities for the Commonwealth Department of Agriculture, Fisheries and Forestry (DAFF) and the Environment Department. The advisory role and committee work for the Environment Department included consultation on the Commonwealth's network of Marine Protected Areas.

As National Executive Director of Recfish Australia, I led the campaign, starting in 2000, to prevent the development and large scale commercial harvesting of small pelagic fishes in the Commonwealth's Small Pelagic Fishery (SPF) (then known as the Jack Mackerel Fishery) before thorough scientific research was undertaken to understand the biology and population sizes of the target species. As a result, the SPF now has a formal Fisheries Management Plan and is a model Commonwealth fishery, being the first to be developed and formally managed within the Precautionary Principle and only after research established the size and nature of the main small pelagic species in the fishery. Recent events involving the proposed operation of a super trawler in the SPF have threatened the model and the ecological sustainability of the SPF and its associated marine ecosystems.

I have been interacting with AFMA and its precursor, the Australian Fisheries Services, since 1986 and have served on AFMA working groups and management committees and groups in various capacities since 1998.

Note: The statements and facts in this submission can all be supported by documentation which is publicly available or can be provided and/or by sworn testimony if required.

Recent History

1. AFMA's Small Pelagic Fishery Resource Assessment Group (SPFRAG) made the first decision, on 28 February 2012, to double the quota of Jack mackerel in the SPF's eastern zone. That original decision by the Assessment Group is precisely the one subsequently endorsed by AFMA to formally double the quota and the one which paved the way for the arrival in Australian waters in August 2012 of the super trawler, *Margiris* (since renamed the *Abel Tasman*).
2. Together with the Conservation member of the Resource Assessment Group, I strongly opposed the decision at the February meeting but was defeated by the majority of commercial fishers on the Group, including the partner in and director of the company which brought the *Margiris* to Australia.
3. A director of and partner in the Australian commercial fishing company bringing in the *Margiris* is also a member of the SPF Resource Assessment Group. At the February meeting, he invoked a metarule of the SPF Harvest Strategy, a metarule never before used, to support his request for a substantial increase in the quota of Jack mackerel in the SPF's eastern zone to economically justify the introduction of the super trawler.
4. The same member was also present for and participated in all the discussion and the decision-making process about the quota issue which ensued at the meeting. The SPF Harvest Strategy says "Any such request (to invoke the metarule) must be made in writing to AFMA and be accompanied by supporting documentation".¹ I know of no such written request or documentation being received before or at the meeting from the Assessment Group member concerned, in this case the *Margiris* proponent company partner and director.
5. In his 2011 report, the scientist who produced the estimates on which the Resource Assessment Group and AFMA based their decision to double the Jack mackerel east quota, warned that those Jack mackerel biomass estimates he produced "are considered negatively biased and thus largely imprecise, and hence need to be treated with due caution".² He cited a number of shortcomings including a lack of needed data, the absence of a needed scientific model and the fact that sampling was done at the wrong time for the Jack mackerel spawning period.
6. Worse, because the Jack mackerel sampling was only part of a separate survey for another species, the researcher states: "...sampling design during that survey was not optimal to apply (the) Daily Egg Production Method (DEPM) for jack mackerel".³ Here was a scientist stating clearly in writing that the Jack mackerel population estimates which AFMA and the government were using to allow entry of the foreign super trawler were unreliable, imprecise, incomplete and should never have been used for such a purpose.
7. The samples used to produce the Jack mackerel population estimates were collected in October 2002, so not only did the SPF Resource Assessment Group and AFMA base the doubling of the Jack mackerel eastern zone quota for 2012 – 2013 on very shaky, insubstantial and incomplete data, they knew the information was nearly a decade old. AFMA's Harvest Strategy for the Small Pelagic Fishery prohibits the use of such data when setting certain Recommended Biological Catch levels (quotas). It states clearly and simply: "The Daily Egg Production Method (DEPM) survey cannot be used to set the Recommended Biological Catch (or quota) once it exceeds the age 5 category".⁴

8. The data used to set the Jack mackerel east zone quota and to economically justify the *Margiris* are so old that most if not all of the Jack mackerel populations they estimated are no longer in the fishery – they’re gone, dead. This was confirmed by a small pelagic research specialist, Dr Tim Ward, at AFMA’s South East Management Advisory Committee on 26 March 2012.⁵ The Minutes of that meeting also record: “The Committee took some time to understand how a 10-year-old survey could still be relevant and referenced to current settings”.⁶ In truth, the survey was not still relevant.

9. Evidence abounds that AFMA tried to cover up the perverted process and the gross conflict of interest at the meeting of its SPFRAG on 28 February 2012. The minutes of that meeting were not published for seven months, until September 2012, because of the internal contention created by AFMA’s attempts to rewrite the outcomes of the meeting, to soften or eliminate the defects of the February meeting and some of its decision-making, in the many drafts of the meeting record. The SPFRAG Conservation member and I – the only two SPFRAG members to oppose the doubling of the Jack mackerel east quota - fought with AFMA for months to try to have AFMA produce a fair, accurate and unbiased record of the February SPFRAG meeting. Generally, we were only partially successful and are still unhappy with the final version upon which AFMA insisted.⁷

10. The same contention occurred in the drafting of the record of the SPFRAG meeting of 30 and 31 August 2012 as AFMA again tried to rewrite the history of the 28 February meeting and also, this time, to counter the criticism of the agency and the February meeting which I had presented in a Personal Statement issued to members of SPFRAG on 29 August 2012. The contention caused by AFMA’s repeated attempts to whitewash the draft meeting record and to rewrite history, delayed production of the record’s final version until 23 October 2012, two months after the actual meeting.⁸ It belies the angst and the harsh words directed at me personally as I fought again to get AFMA to produce a fair, accurate and unbiased meeting record. A careful comparison of the records of the February and August 2012 SPFRAG meetings provides a glimpse of the inconsistencies which crept into the drafts as AFMA continued to try to defend itself against the criticisms directed at it arising from the February meeting.

11. The Conservation member of the SPFRAG and I were so concerned about the perverted process, use of inadequate data, the conflict of interest evident at the SPFRAG’s February meeting and our subsequent battle with AFMA to try to achieve an accurate and balanced meeting record, we sent a joint letter expressing our concerns to the Chair of AFMA on 26 April 2012. Our main concerns contained in the letter were:

- (i) the way SPFRAG meetings are recorded (or not recorded) and our suggestions for future record-keeping;
- (ii) the largely unprecedented unfair, contorted and contentious process which afflicted the production of the still incomplete meeting record;
- (iii) the reason/purpose for invoking a SPF Harvest Strategy general meta rule to increase one particular RBC for the 2012 – 2013 fishing season;
- (iv) apparent conflicts of interest both in SPFRAG and SEMAC;
- (v) the non-disclosure to the meeting by AFMA staff of information they clearly held, thereby later undermining a substantial amount of discussion and ultimately voiding understandings, statements and decisions made at the meeting;
- (vi) the singling out and criticism to which we were both subjected for objecting to the attempted portrayal in the many iterations of the draft meeting record, being

produced by the SPFRAG Chair working with AFMA staff, that the decision at the meeting on the Jack mackerel East RBC (and related matters of ecological sustainability) was unanimous. Evidence of this singling out remains in part in the italicised sections of the outcomes of the meeting as shown in the attached draft meeting record;

- (vii) our uneasiness that various comments made during the meeting and subsequently by some members of SPFRAG and others point to rigorous attempts being made during the imminent SPF Harvest Strategy review to water down the provisions of the Strategy relating to the need for DEPM surveys on which to base future RBCs for the SPF and to de-emphasise the importance of SPF target species as trophic species, thereby enabling a less precautionary approach in future to the management of the SPF.

12. When neither the Chair of AFMA nor AFMA itself had replied by June, we wrote another joint letter, this time to the Minister for Fisheries, Joe Ludwig, on 21 June 2012. The letter said in part: “We have not received any response to our letter and are referring it to you because we understand moves to seek the approval of the super trawler through AFMA or the Australian Maritime Safety Authority (AMSA) are imminent or have begun.

“Your earliest response would be appreciated given the problems underlying the processes which led to AFMA’s decision to set and approve annual Jack mackerel East catches at the level sought by the super trawler’s proponents to economically justify the ship’s introduction to the Australian SPF.”

13. The SPFRAG Conservation member and I also wrote jointly to AFMA challenging several of the statements of text appearing on its Website from July 2012 in support of the super trawler and the AFMA decision-making which paved the way for it. AFMA was being liberal with the truth. As a result, AFMA made some changes to the text and excised other parts but AFMA’s strong public support for the super trawler venture remained evident.

14. An adverse finding in August 2012 against AFMA by the Commonwealth Ombudsman for AFMA’s failure to prevent a conflict of interest at the March meeting of the South East Management Advisory Committee, when it was rubber-stamping the SPFRAG’s February decision to double the Jack mackerel east quota, seemed to intensify AFMA’s efforts to improve its image in meeting records – at the cost of balance and accuracy. The Ombudsman’s office says it is continuing its investigations of AFMA.

What We’ve Learnt from Recent History

15. In a recent report⁹ of their reanalysis of the original report on which AFMA based its doubling of the 2012 – 2013 Jack mackerel east quota, four scientists, two of them previous supporters of the super trawler venture and the scientific report underpinning AFMA’s quota increase, found serious flaws with the original research. Their report completely vindicates my strong opposition, and that of the Conservation Member of the SPFRAG, to the use of the original (Neira) report for doubling the Jack mackerel quota which paved the way for the super trawler.

16. Further, separate analyses of the Neira report indicate that available data, that of Jack mackerel eggs sampled in 2003, were deliberately omitted from it.¹⁰ Only the egg samples collected in 2002 were analysed. The effect of the exclusion was to inflate by five to seven

times, the biomass, or population, of Jack mackerel in the survey area off the Australian SE coast. In other words, if the data for 2003 had been used, the published estimates of Jack mackerel biomass or population would have been much lower and therefore the super trawler's Jack mackerel quota, based on them, much lower too. The deliberate omission of the available data was never publicly acknowledged or discussed by AFMA or its scientific advisers and it was the substantially inflated figure which was used by the SPFRAG and by AFMA to double the Jack mackerel east quota for 2012 – 2013 in favour of the super trawler.

17. The fact is that we do not know the size, distribution and biology of the Jack mackerel species a super trawler would remove speedily from our waters in single-shot quantities of a magnitude not seen before in Australian commercial fishing.

18. Locally overfished areas or ecosystems (local depletions) could take years to recover if, in fact, they ever recovered and cause commensurate declines in the numbers of other fish species and marine life which had relied for food on the stocks now missing.

19. Neither AFMA nor anyone else can truthfully say that localised depletions will not occur because no one – neither scientist nor fisheries manager – yet knows how to effectively prevent or quickly recognise localised depletions caused by commercial fishing in any Australian fishery, and certainly not the SPF.

20. Just as there is currently no way to prevent localised depletions, particularly in the fishing operations of a super trawler, there is no way to prevent bycatch, the catch of fish species and other marine animals not the target species and quite often for which the fishing vessel has no quota or permit.

21. For example, the director of the *Margiris* super trawler venture said it was possible that it would take by-catches of sardines (pilchards) in South Australian waters where it did not have a sardine permit or quota and where the sardine fishery is a limited entry fishery exclusively for South Australian commercial operators who hold permits to fish for sardines in Commonwealth waters off South Australia.

22. This extract from the record of the SPFRAG August meeting is telling: “Paul Watson asked what the disincentive would be to minimise what his industry believed would be the Abel Tasman's inevitable high volume interaction with the South Australian part of the Sardine fishery. Gerry Geen said he also believed that sardine bycatch was an issue. He said that there was a reciprocal issue, too, because the SA Sardine licence holders catch jack mackerel, blue mackerel and redbait within their fishery which are Commonwealth managed species. He suggested there should be some sort of reciprocal arrangements in place.

“Paul Watson said the risk of SA Sardine fishers taking blue mackerel and redbait as incidental catch was very low and he knew of only two instances of jack mackerel retention.

“Gerry said any bycatch by the Abel Tasman of Sardine off SA would be retained and sold as product by the venture. However, it emerged in further discussion that the rules governing bycatch were not as clear as they should be, particularly in relation to discarding or keeping bycatch. George Day said the expectation was that the Sardine bycatch would be discarded because there is zero bycatch on Sardines and they cannot be retained. Tim Ward requested AFMA to clarify the situation in writing.”

23. Existing scientific data is insufficient to justify the large scale exploitation of our forage fish, those small pelagics essential for the future health and survival of our other fish, seabirds, seals and whales. If large-scale fishing is allowed before comprehensive and adequate research is done, the threat remains that the super trawler will deplete not the fish populations estimated in the old research – they're gone – but the *replacement* stocks.

24. These replacement stocks have not been researched or scientifically surveyed. Therefore, we just do not know the size of the Jack mackerel populations on which AFMA was prepared to unleash the *Margiris/Abel Tasman*.

25. Consequently, without the scientific data, there is every risk that a super trawler or any industrial size trawler would seriously deplete or crash our Australian Jack mackerel stocks, and other small pelagic fishes, just as it has done in other parts of the world.

26. The federal government must ensure that the new research is done before it approves the entry of the *Margiris* or any super trawler. That research, in the form of sound and comprehensive DEPM (Daily Egg Production Method) surveys of all target small pelagic fishes in all areas of the Small Pelagic Fishery, will cost about \$2.5 million and take about two years to complete, but it is essential.

27. There is a strong public perception that AFMA's SPFRAG is currently hopelessly conflicted. Numerous public comments point out that the super trawler venture proponent is still a member of the SPF RAG (and of the South East Management Advisory Committee) and attends meetings and takes part in decision-making in relation to the super trawler venture. The public comments also point out that the two SPF researchers on the SPFRAG undertake paid work for AFMA and until the super-trawler ban came into effect, were going to undertake DEPM surveys of Jack mackerel and Redbait paid for directly by the super trawler venture. Additionally, all commercial fishing members attending recent SPFRAG meetings have said they have leased quota to the super trawler venture or were considering leasing quota to the venture. Three government members, two federal and one state, attending SPFRAG meetings are constrained by public service and AFMA rules and policies and are thereby unable to speak freely on many issues. Only two members of the SPFRAG, the Conservation member and the Recreational and Charter Fishing member do not have conflicts of interest and are unconstrained in discussions.

Issues

28. In the past 18 month or two years, it has become clear that AFMA has lost its way, becoming 'captured' by its commercial fishing clients, upholding the economic provisions of its legislation and increasingly failing to integrate or de-emphasising the ecological, environmental and social imperatives of its legislation in its decision-making.

29. This is demonstrated by AFMA's strong, unwaivering support of the super trawler venture, its refusal to listen to community, conservation and recreational fishing voices warning against the proposal, and AFMA's unquestioning acceptance and approval of the science on which the venture was based – science that has now been shown to be defective and inadequate, as super trawler opponents claimed in the first place.

30. Excluding the Chair, the majority (five) of AFMA's nine Commissioners has economics or financial services degrees or qualifications. There is also a preponderance of Commissioners who list commercial fishing as a major interest or field of expertise.

31. There are only two AFMA Commissioners who have biological or environmental qualifications and one of them is the AFMA CEO.
32. The one AFMA Commissioner with marine biology qualifications publicly sided with the super trawler venture and strongly and publicly supported the science, now shown to be defective, on which a venture catch quota was based.
33. At least in the context of recent history, AFMA's treatment of those who have alternative or opposing views or who advocate an AFMA more in tune with its ecological and social legislation, tend to be dismissed or subtly ostracised for holding what AFMA perceives to be minority opinions.
34. AFMA continues to fail to adequately address serious issues of conflict of interest in the operations of at least two of its committees.
35. At least in low-value commercial fisheries, such as the Small Pelagic Fishery, it has become evident in the past 18 months that the commercial industry is unwilling or unable to fund a level of continuous research necessary to ensure the health and ecological sustainability of the common property resources in such Commonwealth fisheries. At the same time, federal government funding for such research has become scarcer.
36. In the case of the Small Pelagic Fishery, it may well be that the greatest value of the fishery is in leaving its fish species in the water to continue their vitally important trophic function, rather than in their commercial or dollar value.
37. In summary, the current model of Australian fisheries management is broken, largely a result of AFMA's increasing concentration on the economic provisions of its legislation (probably in turn a result of government cost recovery policy) and at the same time its decreasing emphasis on integrating the ecological, environmental and social provisions of its legislation into its management and operations. Management Advisory Committees and Resource Assessment Groups, for example, increasingly concentrate on economically and financially driven outcomes and factors.

Recommendations

The Australian Government should immediately take legislative and administrative action necessary to:

- 1R. Proclaim Part 3 of the *Fisheries Administration Act 1991*, establishing the Fishing Industry Policy Council (or very similar body) with membership and functions as described in the Act and widening the FIPC's responsibilities to advising the Minister for the Environment in addition to the Minister for Fisheries..
- 2R. Reconstitute the membership of the AFMA Commission to ensure there is a balance of expertise and experience fully reflecting *all* the provisions of AFMA's legislation, including a member of the community who can advocate the social imperatives of fisheries management at Commission level and a representative of the national recreational fishing community (even if the size of the Commission has to be increased by one to accommodate this).
- 3R. Change all relevant legislation to ensure that the department of State responsible for environment and climate change, etc. is, in perpetuity, an effective joint partner with the department responsible for Australian fisheries and fisheries management agency/ies, in the

future management of Commonwealth fisheries. This should include environment department members as active participants on all fisheries management committees and resource assessment groups.

4R. Reconstitute the membership of Management Advisory Committees and Resource Assessment Groups so that the commercial fishing industry weighting/bias currently evident on all such committees and groups is balanced by more membership representing recreational fishers and the environmental, community and social provisions of fisheries management legislation.

5R. Commit to and provide funding for Daily Egg Production Method (DEPM) Surveys to be completed on all commercial target species in all areas of the Small Pelagic Fishery by September 2014.

6R. Commit to and provide funding for scientific research to improve the rigour and accuracy of DEPM Surveys and their use in Commonwealth Fisheries Harvest Strategies.

7R. Commit to and fund a study of the way the provisions of the Wallop-Breaux Act and the Sportfish Restoration Program in the US may be adapted and/or applied to a system or program to provide perpetual funding for national recreational fishing administration and funding for recreational fishing-related and other fisheries-related research in Australia.

8R. Require AFMA and/or any other appropriate agency/ies to define and develop policies and action plans to effectively address the potential for Bycatches and Localised Depletions potentially caused in commercial fishing, particularly large-scale commercial fishing.

- **Graham Pike**

26 October 2012

¹ Metarule – General application, in *Small Pelagic Fishery Harvest Strategy*, Australian Fisheries Management Authority (AFMA), Australian Government, Canberra, Revised 2009, p. 7

² Neira, Francisco J. *Application of daily egg production to estimate biomass of jack mackerel, Trachurus declivis – a key fish species in the pelagic ecosystem of south-eastern Australia*, Institute for Marine and Antarctic Studies, University of Tasmania, Hobart, 2011. Executive Summary, p. 6.

³ *Ibid.*, p. 6.

⁴ *Small Pelagic Fishery Harvest Strategy*, Australian Fisheries Management Authority (AFMA), Australian Government, Canberra, Revised 2009, p. 6.

⁵ *Minutes of the Meeting of the South East Management Advisory Committee (SEMAC), 26 March 2012*. Released by AFMA on 15 August 2012. p. 5.

⁶ *Ibid.*, p. 5.

⁷ Small Pelagic Fishery Resource Assessment Group (SPFRAG), Meeting Record, Meeting 13, 28 February 2012, AFMA, Canberra, released September 2012, AFMA Website.

⁹ J. Lyle, K. Hartmann, C. Buxton & C. Gardner, *Re-analysis of mean daily egg production in jack mackerel*, Institute for Marine and Antarctic Studies, Hobart, September 2012,

¹⁰ Dr Andrew Wadsley, Tasmania, personal communication, October 2012.