

Chapter 5

Views on the Small Pelagic Fishery management framework and AFMA's standing among stakeholders

5.1 For a regulatory regime to be successful, it is important that stakeholders and the public have confidence in the performance of the regulator. Likewise, it should be acknowledged that a regulatory agency's task is not easy. Criticisms of the regulator need to be evaluated carefully, with the information asymmetries they encounter, the risk-based environment they operate in and the judgements they necessarily make about how to use their limited resources most effectively all taken into account. As AFMA's Chief Executive Officer, Dr James Findlay, remarked:

Can we address all concerns for all people all the time and make everyone happy? No. That is the nature of natural resource management. It is not dissimilar to forestry issues, farming issues, other land-use management issues—or urban development, climate change or any number of issues—where everyone's concerns cannot be addressed all the time. So, no, I cannot make everyone happy—as much as I would love to.¹

5.2 This chapter explores the evidence received regarding the credibility of the SPF management framework and AFMA. In addressing this topic, the chapter considers two often-interrelated matters: the scientific information and advice relied on in managing the SPF and how AFMA undertakes its responsibilities in ensuring the SPF is used sustainably. The first part of the chapter considers the scientific research programs that support the management of the fishery. The second part considers views on the overall management framework and the approach taken by AFMA when performing its functions. Matters discussed in that part include AFMA's role in informing the public about the fishery and the *Geelong Star*, how recreational fishing interests are taken into account and how AFMA's advisory groups are managed.

Science relied on for the management of the SPF

5.3 It is clear that quality scientific information and advice is needed to support risk-based decisions about the exploitation of Australia's fisheries. As the Department of Agriculture and Water Resources noted, the need for a science-based approach to fisheries management was expressed in the 2005 Ministerial Direction to AFMA. The department explained:

The 2005 Ministerial Direction was issued due to the poor biological and economic status of a number of Commonwealth fisheries and long recovery times facing many stocks. It directed AFMA to take a more strategic, science based approach to setting fisheries catch and effort levels through a

1 Dr James Findlay, Chief Executive Officer, AFMA, *Committee Hansard*, 1 November 2016, p. 22.

'world's best practice Commonwealth Harvest Strategy Policy'. The aim was to manage fish stocks sustainably and profitably, end overfishing and ensure that already overfished stocks were rebuilt within reasonable timeframes.²

5.4 AFMA's submission emphasised that its management approach is science-based: for example, regarding the total allowable catches it determines for each quota species, AFMA submitted that they 'are set consistent with the Commonwealth Harvest Strategy Policy (HSP) under fisheries-specific harvest strategies that utilize the best available science'.³

5.5 AFMA also highlighted the amount of scientific research involving the fisheries it manages, including the SPF. AFMA submitted:

AFMA administers an annual research program of about \$4 million. All major commercial fisheries have a five year research plan to assist in prioritising research; minimising overfishing risks for commercial target species and setting TACs at levels which pursue maximum net economic returns to the Australian community. Also, ecological risk assessment and management are significant and growing components of AFMA's research program. Further, the Commonwealth government and fishing industry have either directly, or through the FRDC, funded a wide range of fisheries research including, reducing uncertainty in stock status, determining stock boundaries and the habitat impacts of commercial fisheries.⁴

5.6 AFMA argued that this 'ongoing investment in science' has resulted in 'a comparatively high level of information about Commonwealth fish stocks and ecosystems than for other jurisdictions in Australia and overseas'.⁵ Attachment 6 to AFMA's submission provides a list of research projects in the SPF for years 2010 to 2015. In November 2016, AFMA provided the committee with an updated list of SPF research projects.⁶

5.7 More generally, AFMA responded to direct and indirect claims made that it does not have sufficient knowledge to manage the SPF well. AFMA submitted:

...based on what we do know a reasonable assessment of the status of Commonwealth commercial fisheries can be made. This has been undertaken almost each year for more than 20 years by the Australian Bureau of Agriculture and Resource Economics and Sciences (ABARES). During this time the science base on which fish stocks are assessed has steadily improved. In the last two assessments ABARES concluded that no

2 Department of Agriculture and Water Resources, *Submission 12*, p. 5.

3 AFMA, *Submission 18*, p. 2.

4 AFMA, *Submission 18*, p. 4.

5 AFMA, *Submission 18*, p. 4.

6 See AFMA, 'Schedule of daily egg production (DEPM) surveys for SPF quota species and Small Pelagic Fishery research projects (tabled by AFMA on 1 November 2016).

fishery solely managed by AFMA was subject to overfishing, including the SPF. Further, five AFMA fisheries have Marine Stewardship Council accreditation—regarded by many as a high standard of independent fishery certification. While there remains work to be done, the independent evidence is that Commonwealth fisheries are comparatively well researched and well managed.⁷

Views of scientific organisations

5.8 Various scientific organisations contribute to research and improving the scientific understanding of the SPF. The committee received evidence from the CSIRO, the Fisheries Research and Development Corporation (FRDC), the Institute for Marine and Antarctic Studies (IMAS) and ABARES on their efforts in this regard.

5.9 The CSIRO, which is the Commonwealth's major research agency, advised that it has a body of work on:

- marine ecosystems;
- the harvest control rules and other management considerations applied in the SPF;
- the economic and ecological performance of Australian fisheries that large fishing vessels operate in; and
- general fisheries and ecosystem-based fisheries management research.⁸

5.10 The FRDC is a Commonwealth statutory corporation that plans and invests in fisheries research, development and extension (RD&E) activities.⁹ Its detailed submission provided 'an overview of FRDC funded or co-funded research used to inform the sustainable use and management of fisheries for small pelagic stocks', as well as fish stocks in other Australian fisheries where large fishing vessels are currently used.¹⁰ The FRDC advised that its RD&E investment 'is largely priority driven'. It explained:

As gaps in research across the four sectors are identified, funds are sourced to address high priority research needs; successful projects are managed by a project team and a FRDC project manager; final reports/papers are peer reviewed; new knowledge is made public to stakeholders; and this information is used by the appropriate end-users to inform management decisions. Knowledge adoption using evidence-based science underpins the effective management of Australian fisheries.¹¹

7 AFMA, Response to *Submission 166*, p. 2.

8 CSIRO, *Submission 23*, p. 6.

9 Fisheries Research and Development Corporation (FRDC), 'About us', www.frdc.com.au/about_frdc/about_us/Pages/default.aspx (accessed 20 July 2016); FRDC, *Submission 20*, p. 2.

10 FRDC, *Submission 20*, p. 2.

11 FRDC, *Submission 20*, p. 2.

5.11 IMAS, which is at the University of Tasmania, is a 'centre of excellence for marine and Antarctic research'. Fisheries and aquaculture is one of the Institute's three core research programs.¹² Professor Craig Johnson, an assistant director at IMAS, stated:

The fisheries science that we do underpins management for both recreational and commercial fisheries. We are also engaged in aquaculture, ecology and ecological dynamics, biogeochemistry, marine physics and oceanography. We do this across all latitudes in both hemispheres, although most of our work is focused on temperate Australia and Southern Ocean and Antarctica. We have quite a unique position among Australian universities in marine science in that sense.¹³

5.12 The committee received evidence indicating that scientific research has resulted in improved practices. For example, the CSIRO advised that the FRDC:

...funded research in 2001 to identify and implement effective measures to reduce interactions and mitigate the risk of injury and mortality. Subsequent implementation of a Code of Fishing Practice and installation of seal exclusion devices on trawl nets halved the incidence of seal bycatch per trawl shot. Seal mitigation measures continue to be improved to further reduce fishery-related injury or mortality to seals. In addition to the Code of Conduct, educational resources were produced to assist fishers to identify seals species and provide guidelines to reporting interactions with seals.¹⁴

5.13 The CSIRO added that a 'significant body of work exists on the ecosystem impacts of fishing in the SPF region', and 'modelling simulations indicate that under current management arrangements any trophic impacts of the SPF on...[Southern Bluefin Tuna] would be small'. However, the CSIRO advised that a 'better understanding of current diets and how they have shifted through time is required in order to increase confidence in past predictions and improve robustness of current and future models and their predictions'.¹⁵ The CSIRO submitted:

The collective knowledge amassed from a range of empirical diet studies of fishes and higher predators in the southern Australian marine ecosystem means that the predator-prey interactions involving SPF target species are generally well-known. However, these trophic data (particularly in the Eastern Zone of the SPF) are more than 20 years old and there is uncertainty around how well they represent current diet connections...Recent small scale studies of fish diets in the region suggest there has been a change in diet...and studies on Australian fur seals and

12 Institute for Marine and Antarctic Studies (IMAS), 'Research', www.imas.utas.edu.au/research (accessed 20 July 2016).

13 Professor Craig Johnson, Head, Ecology and Biodiversity Centre, and Assistant Director, IMAS, *Committee Hansard*, 15 April 2016, p. 41.

14 FRDC, *Submission 20*, p. 5.

15 CSIRO, *Submission 23*, pp. 4, 5 and 12.

little penguins also suggest that diet shifts have occurred in response to environmental changes...¹⁶

5.14 In relation to long-term localised depletion, which the CSIRO explained was 'extremely difficult' to detect in small pelagic species, the CSIRO noted that 'overall, there is little information for predicting with any certainty what patterns of fishing would lead to localised depletion at a level great enough to cause adverse outcomes'.¹⁷ The CSIRO submitted that new observational and modelling approaches would be required to clarify whether small pelagic species have a localised stock structure. In addition, new models would be needed to explore 'the multispecies dynamics of localised depletion', as suitable models do not exist at present.¹⁸

5.15 Scientific organisations also commented on DEPM stock assessments. In its submission, the FRDC noted that DEPM stock assessments 'have been found to provide robust and reliable estimates of stock size for the four main pelagic target species'. The FRDC noted that results from DEPM estimates 'have been used to estimate alternative sustainable annual harvest rates, depending on how much information is available and how current the most recent DEPM estimates are'. The FRDC added that the 'precision and reliability of DEPM estimates has been improved, and current projects continue to pursue options for further improvement'.¹⁹

5.16 As noted in Chapter 3, IMAS advised that DEPM surveys conducted in 2014 provide 'up-to-date biomass assessment for three of the four main target stocks in the Eastern zone (i.e. Jack Mackerel, Blue Mackerel and Australian Sardine)'. However, IMAS acknowledged that 'stock status information for the remaining SPF stocks (Redbait east, Redbait west, Jack Mackerel west and Blue Mackerel west) is either over 10 years old or unassessed using the DEPM approach and thus less certain'. IMAS explained that, in relation to these stocks, 'a more conservative approach to recommending catch limits is taken (at least half the maximum recommended harvest rate)'. It added that biomass surveys for the western zone stocks 'represent a high research priority for the SPF'.²⁰

5.17 In its contribution to the submission from the Department of Agriculture and Water Resources, ABARES similarly noted that the estimated biomass for the redbait west stock 'is currently uncertain due to insufficient availability of information for stock assessment'.²¹ ABARES advised that scientific knowledge for the SPF 'could be strengthened by analysing and improving the precision of biomass estimates'. ABARES stated:

16 CSIRO, *Submission 23*, p. 9 (citations omitted).

17 CSIRO, *Submission 23*, p. 12.

18 CSIRO, *Submission 23*, pp. 5, 12.

19 FRDC, *Submission 20*, p. 3.

20 IMAS, *Submission 19*, p. 5.

21 Department of Agriculture and Water Resources, *Submission 12*, p. 29.

It will be important to consider interannual variability if recommended biological catches are used to set multi-year total allowable catches. For example, a multi-year total allowable catch that represents 5 per cent of total biomass of the stock in year one could represent a larger percentage of the biomass in year two if the biomass in year two is proportionally lower than it was in year one. This highlights the importance of a harvest strategy that can be reactive to stocks that can exhibit substantial interannual variability. The tiered framework in the harvest strategy appears to be sufficiently precautionary to account for this variability, as well as adequately considering the level of uncertainty around the quality of data or the age of stock assessments.²²

5.18 Updated evidence regarding the status of DEPM survey results was provided by AFMA in September and November 2016. AFMA advised that DEPM survey results for east coast stocks of blue mackerel and sardine were published in December 2015. AFMA added that a new DEPM survey of jack mackerel west is planned for 2016–17. AFMA further added:

Research to inform changes to the SPF Harvest Strategy is being undertaken by CSIRO and will be reviewed by the SPF Scientific Panel and stakeholders in late 2016. The work includes a stock assessment for eastern Jack Mackerel and robustness testing to ensure the SPF Harvest Strategy continues to meet sustainability objectives.

AFMA is working with CSIRO to update the Ecological Risk Assessments (ERA) for all major Commonwealth fisheries. The methodology has been revised and two fisheries, the SPF and Eastern Tuna and Billfish Fishery are being put through the revised method to test the new ERA process. The results are expected to be finalised late in 2016.²³

5.19 Overall, Professor Johnson from IMAS observed that 'investment in the science of fishery management is vital'. Professor Johnson stated:

Is it possible to manage fisheries sustainably, robustly and with confidence? That is absolutely the case. The scientists know what to do. It is all very tractable, but it does require some investment.²⁴

22 Department of Agriculture and Water Resources, *Submission 12*, p. 29.

23 AFMA, *Submission 170*, p. 2.

24 Professor Craig Johnson, IMAS, *Committee Hansard*, 15 April 2016, p. 41.

Views of industry stakeholders

5.20 The submissions from Seafish Tasmania, the SPFIA and the Tasmanian Seafood Industry Council provided further insights into how scientific understanding of the SPF has developed.

5.21 The SPFIA provided a list of scientific studies undertaken in 2014 and 2015 that examined the SPF. It argued that the list 'represents a large investment in science' compared to other Commonwealth and state-managed fisheries. The SPFIA added that '[d]espite some inevitable gaps in knowledge that will be progressively closed, the SPF should be looked at as one of our most heavily researched and well understood fisheries'.²⁵

5.22 The submission from Seafish Tasmania—the operator of the *Geelong Star*—acknowledged that in some areas of the SPF 'there is a limited amount of scientific information on distribution and abundance of some species' because these areas have 'experienced little or no fishing effort in the past'.²⁶ However, its submission highlighted how the operations of the *Geelong Star* inform the scientific studies underpinning the management of the fishery. For example, Seafish Tasmania explained how the AFMA observer on board the vessel collects fish samples. These samples:

...will start to reveal important information about location and timing of spawning of the various target species, particularly in the western zone of the fishery, that will enable scientists to pinpoint when and where to carry out egg surveys to estimate the size of the spawning stocks. This is essential information for the effective implementation of egg surveys.²⁷

5.23 Other information collected as a result of the fishing operations will, Seafish Tasmania argued, help 'to build up a more comprehensive picture of the biology, distribution and movements of SPF target species'. From this, scientists and AFMA can 'continue to refine the harvest strategy and other management rules to support the sustainability of the fishery'.²⁸

5.24 Industry stakeholders also demonstrated how vessel operations enable mitigation measures to be tested and refined. In relation to excluder devices for marine mammals such as seals, Seafish Tasmania explained that:

Off the shelf solutions to marine mammal interaction issues are rare. More commonly, industry working with scientists has to develop and

25 Small Pelagic Fishery Industry Association (SPFIA), *Submission 27*, p. 17. Similarly, the Tasmanian Seafood Industry Council outlined the principal research priorities for the SPF and the key research tasks undertaken between 2002 and 2014 to inform these priorities: see *Submission 16*, pp. 6–7.

26 Seafish Tasmania, *Submission 22*, pp. 8–9.

27 Seafish Tasmania, *Submission 22*, p. 9.

28 Seafish Tasmania, *Submission 22*, p. 9.

implement new procedures or devices that have potential to reduce interaction rates. Typically this process of development and testing takes years before an effective and proven method emerges.²⁹

5.25 Seafish Tasmania highlighted how research and technical development since the late 1990s in the blue grenadier fishery off the west coast of Tasmania has resulted in what was a high incidental capture of seals reduced to 'close to zero'. Seafish Tasmania argued:

The point is that it takes years to develop and refine mitigation methods to the point where they are effective and reliable. Although exceptional progress in mitigation methods has been achieved in the SPF in recent months, it is unrealistic to expect that no dolphin or seal mortalities will occur. There is much more work to do and there needs to be scope for research and development and recognition that there are bound to be mortalities while this is in progress.³⁰

5.26 In relation to the *Geelong Star*, Seafish Tasmania explained that an 'underwater camera is being used to monitor the performance of the excluder device and trials of a barrier net situated within the trawl'. The footage from this camera is 'expected, over time, to provide insights into seal and dolphin behaviours in relation to these devices that will help to further modify them to improve their effectiveness'. More generally, Seafish Tasmania noted that information collected as a result of the activities of the *Geelong Star* will help to improve scientific knowledge about the SPF.³¹

5.27 Seafish Tasmania also identified an area it considers requires further research. Seafish Tasmania submitted that there 'is little information on common dolphin abundance in some areas of the fishery'. It suggested that efforts to improve the amount of information on common dolphin abundance 'would help scientists to assess the size of the dolphin populations that would, in turn, provide a scientific basis for the setting of sustainable dolphin mortality triggers for the fishery'.³² Industry concerns about the dolphin mortality trigger were discussed in Chapter 3.

5.28 In September 2016, the FRDC released a report that may be of some relevance to this issue. The report considered knowledge gaps about the number of mortalities linked to human activity that populations of marine mammals in the SPF such as seals, sea lions and dolphins can sustain while still allowing that population to reach or maintain its optimum sustainable population. AFMA advised that it 'will be considering this report consistent with its use of the latest available science to inform decision making about Commonwealth fisheries'. AFMA added:

29 SPFIA, *Submission 27*, p. 15.

30 SPFIA, *Submission 27*, p. 15.

31 Seafish Tasmania, *Submission 22*, p. 9.

32 Seafish Tasmania, *Submission 22*, p. 9.

In particular, AFMA will seek advice from its Marine Mammal Working Group on the outcomes from the report, and how to continue to minimise and avoid Commonwealth fisheries interactions with marine mammals.³³

Views of environmental organisations and recreational fishing groups

5.29 Although scientific and industry stakeholders were generally positive about the science underpinning the management of the SPF, environmental organisations and recreational fishing groups raised questions about it, with a common concern being that particular scientific assessments were lacking or out-of-date. This issue was discussed in Chapter 3, however, it is instructive to revisit it here. For example, Environment Tasmania submitted:

Supporters of the *Geelong Star* and AFMA's management of the SPF suggest that fisheries management is "supported by the science". In fact, much of the information about SPF stocks is very old and gaps in the science mean that concerns about sustainability and localised impacts of fishing cannot be addressed.³⁴

5.30 In support of this argument, Environment Tasmania stated that the assessment of ecosystem effects from factory trawlers in the SPF 'that has been done' was based on modelling 'that may not be accurate given the known, already existing impacts of climate change and fishing pressure on target stocks and pelagic community structure in the south east of the fishery'.³⁵ It added that 'only three of the four' stocks in the eastern zone have been assessed in the last nine years, and that stocks in the western zone 'have never been assessed using best-practice survey methods'.³⁶

5.31 The Western Australian Game Fishing Association expressed concern that fish stock estimates on the south-west coast may be inaccurate as it is of the understanding that 'there is very limited scientific knowledge about baitfish species' in that area.³⁷

5.32 The ARFF argued that the small pelagic fish 'play a critical role in marine food webs'. Given this, the ARFF called for 'further research on the economic, social and environmental characteristics of the Australian SPF' to be undertaken before 'any decisions are made about...if and how it is fished'. Specifically, the ARFF considers more information is required about: the size of the stock; whether there are sub-stocks and movement of the stock spatially and temporally; how long it takes a school to recover from various spatial and temporal intensities of industrial scale

33 AFMA, *Submission 170*, p. 2.

34 Environment Tasmania, *Submission 145*, p. 5.

35 Environment Tasmania, *Submission 145*, p. 2.

36 Environment Tasmania, *Submission 145*, p. 5.

37 Western Australian Game Fishing Association, *Submission 60*, p. 2.

fishing; and the impacts of industrial scale fishing on recreational fishing and other marine use activities.³⁸

Funding arrangements

5.33 The funding arrangements underpinning the science were also examined. Figures provided by AFMA indicate that, in recent years, research projects relating to the SPF totalling approximately \$2.4 million have been contracted by AFMA and the FRDC.³⁹ Mr Ian Thompson, a first assistant secretary at the Department of Agriculture and Water Resources provided the following evidence regarding how the research is funded:

A lot of the research is funded by the Fisheries R&D Corporation. The Fisheries R&D Corporation is predominantly government funded. It receives industry levies and industry voluntary contributions for some of its work; however, I think around 75 per cent is government funded. Some of the research has been funded by the department, so that is government funded.⁴⁰

5.34 Despite the significant proportion of government funding for the research, another departmental officer noted that 'now...the fishery is operational, the advice that I have received is that in fact industry is now investing in the research'. He added:

Clearly, when there was no fishing, there was no capacity for the then auditor to progress the research that was called for. The government did most of the heavy lifting in the beginning but...industry is now beginning to invest in that research as well now that there is actually a viable fishery—or what we believe is a viable fishery.⁴¹

38 Australian Recreational Fishing Foundation (ARFF), *Submission 134*, pp. 3–4.

39 AFMA, 'Schedule of daily egg production (DEPM) surveys for SPF quota species and Small Pelagic Fishery research projects (tabled by AFMA on 1 November 2016).

40 Mr Ian Thompson, First Assistant Secretary, Sustainable Agriculture, Fisheries and Forestry Division, Department of Agriculture and Water Resources, *Committee Hansard*, 1 November 2016, p. 5.

41 Mr Gordon Neil, Assistant Secretary, Fisheries Branch, Sustainable Agriculture, Fisheries and Forestry Division, Department of Agriculture and Water Resources, *Committee Hansard*, 1 November 2016, p. 5.

Evidence regarding the overall regulatory framework

5.35 Some submitters highlighted the precautionary approach taken to fisheries regulation in Australia, such as the CSIRO which argued that Australian regulations are 'amongst the most precautionary globally'.⁴² Nevertheless, as demonstrated in the previous chapters, submissions from environment groups, recreational fishing bodies and members of the public raised various general and specific concerns about AFMA's approach to managing the SPF.

5.36 This section considers evidence received about whether the overall management framework and approach taken to managing the SPF is appropriate. Although this section is limited to the evidence received during this inquiry, it is instructive to note here that the Productivity Commission is currently undertaking an inquiry into the regulatory burden imposed on the Australian marine fisheries and aquaculture sectors. This inquiry is focusing on 'the frameworks for determining access to fishery resources and managing each fishing sector, given that it is these higher-level policies that will influence day-to-day management and have the most significant bearing on outcomes'.⁴³ The Productivity Commission has released a draft report, and is due to present its final report by December 2016.

5.37 The Commonwealth Ombudsman has also examined aspects of AFMA's approach. In correspondence to the committee, AFMA discussed a 2012 investigation by the Ombudsman regarding AFMA's processes, including how conflicts of interest are managed. AFMA provided the committee with the following summary:

The Ombudsman found that the South East Management Advisory Committee had not managed declared conflicts of interest strictly in accordance with the...[*Fisheries Administration Act 1991*], but that this had no effect on the AFMA Commission's decisions regarding the SPF. In concluding the investigation, the Ombudsman noted that 'as a result of this investigation, AFMA has reminded its advisory groups and committees of the correct procedures in relation to handling conflict of interests and reflecting dissenting opinions in meeting summaries' and concluded that, in its view, AFMA's responses have been both necessary and appropriate. Since then, AFMA has further reviewed its policies to clarify and reinforced the conflict of interest procedures and has held a number of MAC/RAG workshops, with specific focus on managing conflicts of interests.⁴⁴

5.38 Another Commonwealth Ombudsman investigation into AFMA's administration of the resource assessment group for the SPF was completed in August 2016. As that review directly examined matters also raised in particular submissions to this inquiry, it is discussed below where relevant.

42 CSIRO, *Submission 23*, p. 15.

43 Productivity Commission, *Marine fisheries and aquaculture: Draft report*, August 2016, p. 7.

44 AFMA, Response to *Submission 143*, p. 2.

Overall regulatory framework and approach

5.39 As discussed in Chapter 1, AFMA's Commission is responsible for decision-making in relation to domestic fisheries management functions and powers. AFMA's Commission receives advice on the management of the fishery from the South East Management Advisory Committee (SEMAC).⁴⁵ AFMA must also take into account advice from the relevant resource assessment group about the stock status of the quota species.

5.40 AFMA's consultation and decision-making framework has undergone changes over time:

- Prior to 2008, the decision-making body for AFMA was a board, which had 'membership along with other experts'. The board was replaced with the Commission following the 2003 review of the corporate governance of statutory authorities and office holders conducted by Mr John Uhrig AC.⁴⁶
- The ability for AFMA to appoint management advisory committees, such as SEMAC, has existed since the *Fisheries Management Act 1991* was enacted. Prior to July 2010, a management committee specifically for the SPF existed; however, after a rationalisation of the various management advisory committees and resource assessment groups, SEMAC was established to provide management advice on the SPF as well as the Southern and Eastern Scalefish and Shark Fishery and the Southern Squid Jig Fishery.⁴⁷
- Changes to the resource assessment group for the SPF have also occurred. AFMA and SEMAC previously received advice from the Small Pelagic Fishery Resource Assessment Group (SPFRAG); however, after the membership terms of the SPFRAG expired on 30 June 2015, AFMA replaced the SPFRAG with a scientific advisory panel and stakeholder forums, a system to be trialled for two years.⁴⁸

45 SEMAC comprises a chairperson, an AFMA officer and up to seven other members. As at June 2016, the other members included one research member, one environment/conservation member, four industry members and one recreational member. An additional four invited participants comprise two industry participants, one scientific participant and one state government participant. AFMA, 'South East Management Advisory Committee', www.afma.gov.au/fisheries/committees/south-east-management-advisory-committee-semac (accessed 29 June 2016); *Fisheries Administration Act 1991*, s. 60; AFMA, *Submission 18*, Attachment 9, p. 3.

46 AFMA, *Submission 18*, Attachment 9, p. 2.

47 M Lack, P Harrison, S Goldworthy and C Bulman, *Report of the Expert Panel on a Declared Commercial Fishing Activity: Final (Small Pelagic Fishery) Declaration 2012*, October 2014, p. 21.

48 AFMA, 'SPFRAG members complete their term', Statement dated 18 June 2015, www.afma.gov.au/spfrag-members-complete-term (accessed 22 July 2016); AFMA, *Submission 18*, Attachment 9, p. 4.

5.41 As noted in Chapter 2, AFMA manages the SPF using output controls based on total allowable catches (TACs) for each quota species and individual transferrable quotas. As also noted in Chapter 2, AFMA implements strategies for minimising the amount of bycatch and the numbers of interactions between vessels and species protected under the EPBC Act. AFMA also oversees fishing activities in the SPF through a variety of compliance and monitoring measures.

5.42 Evidence from state and territory governments supported AFMA's overall approach and the management framework that is in place. The New South Wales government informed the committee that it:

...supports the continued efforts by the relevant Federal Minister and the Australian Fisheries Management Authority to develop and refine measures designed to manage the harvest of fisheries resources on a sustainable basis and reduce the impacts of fishing activities on other components of the ecosystem (including bycatch of non-targeted fish or marine mammals).⁴⁹

5.43 The Northern Territory Department of Primary Industry and Fisheries (NTDPIF) advised that it:

...is of the opinion that effective management frameworks, by definition, consider and address the risks covered by the specific points of reference and that the work of the CSIRO, Australian Department of Agriculture and Water Resources and...AFMA...is transparent and clearly demonstrates that an effective and adaptive management framework is in place.⁵⁰

5.44 The NTDPIF elaborated:

Australia has a comprehensive and detailed framework of management for fisheries resource use. Fisheries management in Australia is ecosystem based and broadly recognised as world class, and in some instances, world leading. The basis for that recognition is Australia's commitment to frameworks for evidence based decision making, adaptation and systemic improvement across the science-management continuum. The national approach to fisheries management is informed by sophisticated scientific programs that are also recognised as being world class.⁵¹

5.45 In addition, the NTDPIF explained why it considers that fishery management based on output controls, which are predominantly used for fisheries management in Commonwealth fisheries, is preferable to input controls. It submitted that 'input controls are generally considered a blunt tool; especially for large scale fisheries based on dynamic stock characteristics'. On the other hand, management frameworks based on output controls 'are sophisticated, economically rational and effective at maintaining harvest at sustainable levels'. The department added:

49 The Hon Niall Blair MLC (New South Wales Minister for Primary Industries; and Minister for Lands and Water), *Submission 26*, p. 2.

50 Northern Territory Department of Primary Industry and Fisheries, *Submission 73*, p. 2.

51 Northern Territory Department of Primary Industry and Fisheries, *Submission 73*, pp. 2–3.

The scientific standards used to inform allowable catch determinations in Australia are world class and often world leading. The science and management strategies used to determine output-based catch allocations are articulate and precautionary in how they handle broader ecosystem impacts such as trophic impact.⁵²

5.46 Industry representatives also expressed overall support for Australia's system of fisheries management and the approach taken by AFMA. The Commonwealth Fisheries Association (CFA) advised that it is 'highly supportive of AFMA's management and compliance arrangements'. The CFA explained:

As evidenced by the ABARES stock status report the great majority of fished stocks are in very good shape and, even more importantly, the outlook for long-term sustainability is extremely positive. AFMA's compliance programs are underpinned by strong fisheries legislation, including strict rules and regulations with clear penalties and sanctions. In the rare event where fishers (and fish buyers) are caught breaking rules, they are subject to on-the-spot fines, suspension of licences to fish or, in the more serious cases, AFMA may prosecute them, have their catch seized, or remove (suspend or cancel) the concession altogether.⁵³

5.47 The CFA also submitted that, over the last decade, the performance of Commonwealth fisheries has improved. The CFA explained it is 'widely acknowledged' that a key driver of these improvements is the *Commonwealth Fisheries Harvest Strategy Policy and Guidelines*. The CFA submitted that this policy framework:

...has cultivated transparent, evidence and risk based approach to setting target and limit reference points for assessing a wide range of species along with decision rules for generating advice for managing key commercial species in Commonwealth fisheries. It is considered an example of world's best practice for managing fisheries, and has nothing to do with the capacity of a vessel.⁵⁴

5.48 The SPFIA also submitted that 'Commonwealth fisheries are well managed by AFMA, which has a proven track record'.⁵⁵

5.49 Austral Fisheries advised that it supports the current regulatory framework. Austral considers the model of AFMA as a regulator headed by a Commission, with policy responsibility within the fisheries division of the Department of Agriculture and Water Resources 'is a demonstrably successful one at ensuring scientifically, and environmentally robust outcomes within an effective management system'. Austral added:

52 Northern Territory Department of Primary Industry and Fisheries, *Submission 73*, p. 4.

53 Commonwealth Fisheries Association (CFA), *Submission 15*, p. 7.

54 CFA, *Submission 15*, p. 6.

55 SPFIA, *Submission 27*, p. 27.

The single example of community concern over the small pelagic fishery and use of a (genuine) super trawler, does not demonstrate a failing of the effectiveness of the current regulatory framework, nor compliance arrangements. Rather, we believe it demonstrates a need to consider how Government should most appropriately respond to community concerns.⁵⁶

5.50 Nevertheless, SPF industry stakeholders expressed some apparent disquiet over aspects of the management arrangements. The operator of the *Geelong Star*, Seafish Tasmania, for example, described the management of the SPF and the conditions applied to the *Geelong Star* as 'extremely strict'.⁵⁷ The SPFIA also remarked that the management arrangements 'are extremely costly, and these costs are largely borne by SPF quota holders'. It explained:

Over the past five years, AFMA's cost recovery levy on SPF quota holders has totaled \$3.06m while catches and revenues from the fishery have been minimal. It is estimated that the gross value of catches has been less than \$1.4m over this period, forcing SPF quota holders to fund their AFMA levies out of earnings from other fisheries or non-fishing sources, rather than from profits derived from fishing in the SPF. This has caused significant economic distress for many quota holders.⁵⁸

5.51 Finally, AFMA's regulatory approach and the outcomes achieved in recent years appears to be supported by evidence from its portfolio department—the Department of Agriculture and Water Resources—which indicated that outcomes have significantly improved in the fishery. The department submitted:

Since 2005, there has been a significant reduction in the number of fish stocks that have been assessed as subject to overfishing (i.e. current levels of harvest are likely to reduce the population below acceptable levels) and/or are overfished (that is, the populations have been reduced below acceptable levels). There has also been a significant decline in the number of fish stocks whose status is uncertain (that is for which there is not enough information to assess whether the stock is overfished or subject to overfishing).⁵⁹

5.52 A contrary perspective was put forward by the Australian Marine Conservation Society (AMCS), which argued that, by allowing vessels such as the *Geelong Star* to operate, the management framework is 'disempowering' key stakeholders, including the general public. The AMCS submitted:

The Australian public owns, and is the key stakeholder in, our fishery resources, which are managed by government on our behalf. We pay for one third of the management costs of our Commonwealth fisheries, and are

56 Austral Fisheries, *Submission 14*, p. 1.

57 Seafish Tasmania, *Submission 22*, p. 14.

58 SPFIA, *Submission 27*, p. 36.

59 Department of Agriculture and Water Resources, *Submission 12*, p. 5.

called upon to underwrite major fishing industry reforms when fisheries management has failed.

It is important to respect the public's expectations of how our marine environment and resources are managed. Australia's strong cultural connection to our oceans has enabled us to gain a strong international reputation for our marine and fisheries management.

Australians expect sustainable, well-managed fisheries that do not damage the marine environment and do not impact on other users of our oceans. The *Geelong Star* does not meet these expectations.⁶⁰

5.53 The AMCS concluded that:

Any move to introduce more environmentally marginal fishing operations and/or reduce transparency of management for fisheries of community concern threatens to erode the wider fishing industry's reputation and the community's likely willingness to pay to support fisheries management.⁶¹

Recreational fishing interests

5.54 Although there is general support for the overall regulatory framework, there is a perception that the current arrangements do not adequately account for recreational fishing interests. As noted in Chapter 4, various groups highlighted the economic activity related to recreational fishing and argued that concerns of the recreational fishing sector are not adequately considered.

5.55 TARFish, for example, is of the view that many of its concerns regarding the management of the *Geelong Star* stem from 'a narrow focus and conflicting objectives for AFMA within its controlling fisheries Acts'. Furthermore, this legislation does not require the government or AFMA to recognise recreational fishing or other key stakeholders groups when making managing fisheries.⁶²

5.56 Similarly, the Victorian Recreational Fishing Peak Body argued that AFMA's objective 'to manage its fisheries in a way that achieves maximum economic returns to the Australian community' is an objective that is 'vague, poorly defined and...open to interpretation'. The Peak Body continued:

The lack of explicit recognition of recreational fishing values prevents AFMA from managing its fisheries to the satisfaction of recreational fisheries. This is not a criticism of AFMA, rather it highlights the policy void and the need for amendments to Commonwealth fisheries legislation.⁶³

60 Australian Marine Conservation Society, *Submission 146*, p. [3].

61 Australian Marine Conservation Society, *Submission 146*, p. [3].

62 Tasmanian Association for Recreational Fishing (TARFish), *Submission 128*, p. 7.

63 Victorian Recreational Fishing Peak Body, *Submission 33*, p. 2.

5.57 The ARFF also highlighted the lack of a legislative requirement for AFMA to recognise recreational fishing (or other key user stakeholder groups) when performing its tasks. The ARFF noted previous calls for this to be addressed. In particular, the ARFF cited the report of the 2012 review of Commonwealth fisheries legislation, policy and management undertaken by Mr David Borthwick AO PSM. Relevantly, that report stated:

...the Review considers that the fisheries Acts should give explicit acknowledgement to the need for AFMA to give consideration to the interests of recreational anglers. They contribute a lot to the economic and social life of our country, all the more so in regional areas.⁶⁴

5.58 During the 2016 election campaign, the Coalition committed to amending the Fisheries Management Act to ensure that AFMA takes into account the interests of all fisheries users, including commercial, recreational and Indigenous fishers. Officers of the Department of Agriculture and Water Resources could not advise when this legislation would be introduced or if draft legislation would be released for consultation. However, they confirmed that 'as it is an election commitment we are working on a priority basis to develop appropriate amendments and have them introduced as soon as possible, and to undertake the necessary consultation around them'.⁶⁵

5.59 Another proposal to enhance consultation with recreational fishing interests is the establishment of a National Recreational Fishing Council. This proposal was an election commitment of the government for the 2013 election.⁶⁶ In July 2015, Senator the Hon Richard Colbeck, then Parliamentary Secretary to the Minister for Agriculture, indicated that the government was 'in the process of finalising the terms of reference and membership' for the Council.⁶⁷ As at 1 November 2016, however, the Council had not been formed.

5.60 Departmental officers were asked why the National Recreational Fishing Council is yet to be established. Mr Ian Thompson, a first assistant secretary, provided the following update regarding developments since the former minister's July 2015 statement:

There have been some changes with how the recreational sector represent themselves and there was discussion with the sector and others. One of the models that was being pursued at that time was to have the council run by

64 D Borthwick, *Review of Commonwealth fisheries: Legislation, policy and management*, December 2012, p. x; cited in ARFF, *Submission 134*, p. 18.

65 Mr Ian Thompson, Department of Agriculture and Water Resources, *Committee Hansard*, 1 November 2016, p. 4.

66 The Council is intended to 'reinvigorate the lines of communication between recreational fishers and government'. *The Coalition's policy for a more competitive and sustainable fisheries sector*, August 2013, p. 7.

67 Senator the Hon Richard Colbeck (Parliamentary Secretary to the Minister for Agriculture), 'Recognising the value of recreational fishing in Australia', *Media Release*, 24 July 2015.

the recreational sector itself, but then that would require money. An alternative model is to have one that is supported by government, which means the government would pay for support, but then funding is not unlimited. So there has been a lot of discussion about the best way of having a council that is able to provide the right sort of advice but still be financially viable.⁶⁸

5.61 In the absence of a formal consultation process, informal negotiations regarding the *Geelong Star* between industry and recreational fishing groups have occurred. Initially, these discussions were brought about following the efforts of recreational fishing groups, as the ARFF explained in its submission:

The *Geelong Star* was approved to fish the SPF by the Commonwealth Government early in 2015. It commenced fishing in March 2015. Noting that the Government did not consult with ARFF or other key stakeholder user groups about the potential impacts of the fishing operations on recreational fishing prior to the vessel gaining approval, ARFF sought to try and limit potential impacts of these operations through discussions with the vessel operators. These discussions commenced in April 2015.⁶⁹

5.62 The ARFF advised that during these initial discussions, the ARFF proposed that the vessel operator would avoid fishing ARFF-identified 'areas of concern' for recreational fishers and the coastal communities recreational fishing activities support 'until more was known about the economic, social and environmental characteristics of the fishery'. However, the ARFF's proposal 'was rejected by the vessel operators and due to a lack of progress, the discussions collapsed'.⁷⁰

5.63 The next phase of negotiations occurred at the invitation of the Assistant Minister for Agriculture and Water Resources, Senator the Hon Anne Ruston. The first meeting occurred on 1 December 2015. At this meeting, Seafish Tasmania voluntarily agreed that the *Geelong Star* would not fish in SPF management zone 7 until the end of the season on 30 April 2016.⁷¹

5.64 In February 2016, the government indicated further progress had been made in negotiations between recreational and commercial fishing interests about the operations of the *Geelong Star*, with voluntary undertakings offered by Seafish Tasmania.⁷² However, by the committee's April 2016 public hearing, negotiations had

68 It was also noted that the possible arrangements will be revisited in a meeting of recreational fishing representatives on 24 November 2016. Mr Ian Thompson, Department of Agriculture and Water Resources, *Committee Hansard*, 1 November 2016, pp. 3–4.

69 ARFF, *Submission 134*, p. [19].

70 ARFF, *Submission 134*, p. [19].

71 Senator the Hon Anne Ruston (Assistant Minister for Agriculture and Water Resources), 'Progress made on Geelong Star negotiations', *Media Release*, 1 December 2015.

72 Senator the Hon Anne Ruston, 'Progress made on Geelong Star negotiations', *Media Release*, 25 February 2016.

again collapsed with the recreational fishing groups deciding to withdraw from further discussions.⁷³ Mr Hansard from the ARFF explained that the recreational fishing groups withdrew from the process as they have 'deeper concerns and issues here in relation to the management of the fishery and the value of the fishery'. Mr Hansard added that the negotiations were 'a bandaid solution to a deeper problem'.⁷⁴

Specific concerns about the management of the SPF by AFMA

5.65 This section follows on from the previous general discussion about the overall regulatory regime that AFMA operates within by examining the specific concerns put forward about matters that appear to be within AFMA's control.

Transparency and accountability of activities in the SPF

5.66 A significant area of concern for various stakeholders is the amount of information about the activities of the *Geelong Star* and the management of the SPF that is released to the public, and the timeliness and quality of the information that is released. The principal concern is the volume of material that is classified as commercial-in-confidence and, therefore, is not available to other stakeholders or the public more generally. When describing its concerns, TARFish drew the committee's attention to the '5 boat rule' used by AFMA. TARFish explained:

There is a significant degree of a lack of transparency and what is perceived to be secrecy surrounding industrial scale fishing in the SPF by the Australian community and this is largely caused by what is known as the 'AFMA 5 boat rule'. This rule precludes the communication by AFMA of a lot of key information that fuels public disquiet and conjecture about the operations of industrial scale fishing operations in the SPF. Whilst TARFish understands the premise of 'commercial and in confidence' the 5 boat rule is much more relevant for a fleet of smaller vessels rather than a fishery where there may be one large vessel that replaces a fleet of smaller vessels.⁷⁵

5.67 Particularly troubling for some environmental groups is the inability of members of the public to monitor where and when the vessel operates, and where and when interactions with protected species occurred.⁷⁶ For example, Environment Tasmania submitted:

There is a high level of secrecy surrounding the small pelagic fishery and freezer factory trawler operations, with no ability for public scrutiny. The public is not being told where or when the vessel has been operating, or

73 See Mr Peter Simunovich, Director, Seafish Tasmania; and Member, SPFIA, *Committee Hansard*, 15 April 2016, p. 2; Mr Allan Hansard, Managing Director, ARFF, *Committee Hansard*, 15 April 2016, p. 28.

74 Mr Allan Hansard, ARFF, *Committee Hansard*, 15 April 2016, p. 28.

75 TARFish, *Submission 128*, p. 8.

76 Environment Tasmania, *Submission 145*, p. 6.

what is being caught. Despite repeated written requests for information, we still do not even know exactly where or when the deaths of seals and dolphins occurred. The recent whale shark incident and an unwillingness to release information have further exacerbated distrust between stakeholders and the AFMA.⁷⁷

5.68 The Tasmanian Conservation Trust also claimed that AFMA provided misleading information to the public when it published 'frequently asked questions' about the management of the SPF. Specifically, the Trust raised concerns about published statements regarding the involvement of recreational fishers and conservationists in the development of the SPF Harvest Strategy and with respect to how a particular recommended biological catch and total allowable catch was set. In addition, in the Tasmanian Conservation Trust's view, AFMA's website 'implied that continuing concerns about past and future localised stock depletions had been addressed when this was not the case'.⁷⁸

5.69 The limited amount of information available about the economic viability of the fishery was also highlighted. The ARFF argued that 'the fact that AFMA does not make publicly available estimates of the gross value of the fishery adds to the doubts about their rationale in justifying that they are indeed "maximising the net economic returns to the Australian community"', as required by the Fisheries Management Act.⁷⁹

5.70 The ARFF also questioned why the amount of bycatch recorded in the logbooks of the *Geelong Star* is not made publicly available. The ARFF submitted that not publicising this information:

...makes it impossible to determine the potential impact of the *Geelong Star's* activities on key recreational species that are non-target species. As these species are high value species for recreational fishing, it could be that the *Geelong Star* is catching, killing and discarding species that potentially exceed the value of the small pelagic fish it is catching for sale from these areas.⁸⁰

5.71 The ARFF recommended that 'all discarded fish species caught in the SPF is recorded for species and weight and that this information is made public'. The ARFF argued that this would inform discussions about the opportunity cost of the vessel's activities with respect to recreational fishers and local communities.⁸¹

77 Environment Tasmania, *Submission 145*, p. 6.

78 Tasmanian Conservation Trust (TCT), *Submission 143*, pp. 22–23. These allegations are outlined in further detail in the TCT's submission.

79 ARFF, *Submission 134*, p. 16. See *Fisheries Management Act 1991*, s. 6.

80 ARFF, *Submission 134*, pp. 13–14.

81 ARFF, *Submission 134*, pp. 13–14.

5.72 Recreational fishing groups also expressed surprise that a map indicating large areas of the east zone of the fishery are closed to the *Geelong Star* was only released to stakeholders in December 2015.⁸² The ARFF explained that the map was provided at a meeting it attended on 1 December 2015 with the vessel operator, AFMA and government representatives at the invitation of the Assistant Minister for Agriculture and Water Resources. Despite what the ARFF described as a 'close association with AFMA over the past 12 months on the small pelagic fishery issue', which included an AFMA officer seconded to the ARFF, this was 'the first time ARFF had been made aware of the mid water trawl closures and their impact on the fishable area of the SPF'.⁸³

5.73 The ARFF questioned why AFMA did not explain the closures clearly prior to 1 December 2015 and why the closures are not explicitly reflected in the vessel management plan for the *Geelong Star*.⁸⁴ Similarly, TARFish questioned why it took AFMA 'over 3 years to present a map of the areas closed to mid-water trawl in the SPF to recreational fishing stakeholders'.⁸⁵

5.74 In correspondence to the committee, AFMA noted that the majority of the closures 'have been in place for many years (and publically available on AFMA's website) as a result of requirement for SPF concession holders to also hold concessions in overlapping fisheries'.⁸⁶ Nevertheless, it is apparent that the inaccessibility of this information has led to stakeholders doubting the basis for other regulatory decisions made by AFMA. Based on the map not being released and not reflected in the vessel management plan, the ARFF questioned whether AFMA has assessed the implications of the closures for potential localised depletion.⁸⁷ Mr Hansard told the committee that the provision of the mid-water trawl maps in December 2015:

...was quite a surprise and did definitely change our perspective in relation to the nature of the fishery.⁸⁸

5.75 Although industry stakeholders did not comment on commercial-in-confidence issues, it is evident that there is industry concern about the quality of the public debate regarding the *Geelong Star* and the information that is circulated to members of the public. The SPFIA submitted:

In recent years the increasing use of social media has led to rapid dissemination of information and, often, misinformation. This has provided

82 This map is also discussed in Chapter 3.

83 ARFF, *Submission 134*, p. 19.

84 ARFF, *Submission 134*, p. 19.

85 TARFish, *Submission 128*, pp. 3–4.

86 AFMA, Response to *Submission 166*, p. 2.

87 ARFF, *Submission 134*, p. 19.

88 Mr Allan Hansard, ARFF, *Committee Hansard*, 15 April 2016, p. 28.

a mechanism for environmental and recreational activists to spread alarmist views about the effects of freezer trawlers to a generally poorly informed public, creating confusion and mistrust of the fishing industry and AFMA as the industry regulator.⁸⁹

5.76 As the above discussion regarding the December 2015 maps illustrating where in the SPF the *Geelong Star* cannot fish indicates, recreational fishing groups were among the most vocal stakeholders with respect to the quality of information made accessible and the timeliness of the release of this information. Potentially, however, evidence from industry stakeholders supports an argument that it would have been beneficial if AFMA explained clearly from the outset where the *Geelong Star* is permitted to fish. Although the SPFIA highlighted several instances of what it considers to be widely distributed misinformation, of particular relevance here is a social media post referred to in its submission. The SPFIA submitted:

The post includes seven regional towns that the *Geelong Star* cannot fish anywhere near because they are in NSW's extended trawl zone from Sydney to the Queensland border. Posts like these (there are several every week) are alarmist, misleading and whip up concern among communities that will never see an SPF freezer trawler because they are nowhere near the Commonwealth SPF.⁹⁰

AFMA's response to concerns about transparency

5.77 Representatives of AFMA commented on a range of matters regarding the transparency of its actions and keeping the public informed at the committee's 1 November 2016 public hearing.

5.78 On the 5 boat rule, AFMA advised that it applies the rule as a policy, not due to a legislative requirement. In explaining the rationale for the rule, AFMA's Chief Executive Officer noted that the information AFMA collects can be 'very useful commercially'. The confidentiality AFMA offers encourages fishers to report accurate information on the understanding that the information 'is not being shared widely in a form that can actually cause them economic or commercial damage'. In turn, this helps to reduce AFMA's costs. Dr Findlay explained that the policy seeks to ensure that AFMA has the information it needs for decision-making while balancing the public interest with individual commercial interests.⁹¹

5.79 Dr Findlay illustrated AFMA's position by using an analogy between AFMA's approach and the privacy and the confidentiality of medical information patients provide to a doctor:

...fishers are required by law to report their catches accurately to AFMA, and we put in various systems and we spend about \$5 million a year making

89 SPFIA, *Submission 27*, p. 19.

90 SPFIA, *Submission 27*, p. 28.

91 Dr James Findlay, AFMA, *Committee Hansard*, 1 November 2016, p. 18.

sure those figures are correct. The issue is that sometimes fishers will not report correctly, and to actually get accurate information from every boat is enormously expensive.

To encourage them to report accurately—it is a bit like...people's medical records. You want them to provide accurate information when they walk into the GP clinic. They may not do so if they thought that information about their medical history was going to be posted by the clinic on their website that afternoon.⁹²

5.80 Dr Findlay noted that AFMA deviates from its 5 boat policy occasionally, such as when international treaty requirements require AFMA to report Australia's catch.⁹³

5.81 AFMA also commented on the information available to the public about the SPF. Dr Findlay stated that, in proportion to other fisheries AFMA manages 'there is a lot more information available about the Small Pelagic Fishery than there is about others'.⁹⁴ Some issues with the quality of the information exist, however. In relation to the February 2016 whale shark incident discussed in Chapter 3, Dr Findlay remarked that the SPFIA 'made a statement which was not consistent with statements made by AFMA'.⁹⁵ As noted in Chapter 3, the whale shark interaction triggered public concern, with questions raised about the accuracy and timeliness of the information made available.

5.82 On the information AFMA releases to the public, Dr Findlay told the committee that he is 'always keen to put out as much information as we can'. The use of AFMA observers on board vessels, however, raises work health and safety issues that can affect when information is disclosed. Dr Findlay explained:

This is a dangerous working environment. One of the reasons we are moving towards cameras and away from human observers is because the operating environment in which these observers operate is not a safe place to be on a daily basis, and some of that risk on some of our boats comes from crew members or skippers. I will be very clear here: we do not put observers into positions where they are, for compliance purposes or other purposes, being seen to be contradicting crews publicly while they are still at sea on board the same boat. That is not a nice place for anyone. If you think about that sort of operating environment, it is not a nice place to be when you have to spend the next number of weeks with these people.⁹⁶

92 Dr James Findlay, AFMA, *Committee Hansard*, 1 November 2016, p. 18.

93 Dr James Findlay, AFMA, *Committee Hansard*, 1 November 2016, p. 18.

94 Dr James Findlay, AFMA, *Committee Hansard*, 1 November 2016, p. 19.

95 Dr James Findlay, AFMA, *Committee Hansard*, 1 November 2016, p. 20.

96 Dr James Findlay, AFMA, *Committee Hansard*, 1 November 2016, p. 21.

5.83 Notwithstanding the above limitations, AFMA has been considering how it communicates information to the public and whether improvements are possible. As a result, Dr Findlay advised that AFMA will soon have a social media presence. Up until now, AFMA was 'reluctant' to use social media as it is a small organisation that regularly dealt with 'a small pool' of people in the commercial fishing industry, scientists, recreational fishers and conservation groups. However, Dr Findlay recognised that various stories 'can spiral very quickly out of control', and as a result AFMA needs 'to get involved in providing information in an accurate and timely way'.⁹⁷

5.84 In addition to participating in social media, Dr Findlay noted the importance of 'a good website'. Dr Findlay stated that AFMA has been 'putting a lot more information up on our website about the facts and realities of some of our fisheries management systems and also the results they deliver'.⁹⁸

Management of the former Small Pelagic Fishery Resource Assessment Group

5.85 As noted in Chapter 2, in setting the TAC, and in managing the fishery more generally, AFMA must undertake consultation with the management advisory committee for the SPF established under the *Fisheries Administration Act 1991*, which is currently SEMAC. AFMA must also take into account, among other things, advice from the resource assessment group for the SPF about the stock status of the quota species.

5.86 Prior to 1 July 2015, the SPFRAG provided advice and recommendations to SEMAC, AFMA management and the AFMA Commission on the status of target stocks, harvest rates and TACs, and the impact of fishing on the marine environment.⁹⁹ The SPFRAG comprised an independent chair, scientific members, industry members, an environment/conservation member, a recreational/charter fishing member and an AFMA member. Observers from Commonwealth and state government departments and agencies also participated.¹⁰⁰

5.87 In October 2015, AFMA announced that a scientific advisory panel and stakeholder forums (at least two per year) would replace the SPFRAG. These arrangements would be trialled for two years.¹⁰¹

97 Dr James Findlay, AFMA, *Committee Hansard*, 1 November 2016, p. 23.

98 Dr James Findlay, AFMA, *Committee Hansard*, 1 November 2016, p. 23.

99 AFMA, 'Small Pelagic Fishery Resource Assessment Group past meetings', www.afma.gov.au/small-pelagic-fishery-resource-assessment-group-past-meetings (accessed 5 April 2016).

100 See, for example, the list of meeting attendees for the 12 February 2015 SPFRAG meeting as recorded in the minutes at: www.afma.gov.au/wp-content/uploads/2015/01/SPFRAG-February-2015-meeting-minutes-PDF-554-KB.pdf (accessed 30 August 2016).

101 AFMA, 'Scientific & economic advice procedures for the Small Pelagic Fishery', www.afma.gov.au/scientific-economic-advice-procedures-small-pelagic-fishery (accessed 5 April 2016).

Concerns about the SPFRAG

5.88 Evidence presented to the committee indicates a degree of dysfunction within the SPFRAG. Much of the controversy stems from the membership on the SPFRAG of Mr Gerry Geen, a director of Seafish Tasmania, the operator of the *Geelong Star*. The clearest example of the controversy is the January 2015 decision of the then chair of the SPFRAG, Dr Kirsten Davies, to resign. In her letter of resignation, Dr Davies explained that her decision is due to 'the different views AFMA and I hold pertaining to the pecuniary interest of one of the current industry members of the RAG'. Dr Davies wrote:

Due to the level of his company's significant quota holding in the Small Pelagic Fishery, I do not believe he should participate in the majority of RAG discussions and the development of recommendations that are referred to SEMAC and the Commission.

While the RAG is an advisory body and not a decision making entity, it does influence policy and activities, such as providing advice on the Total Allowable Catch (TAC). From my perspective as Chair, and, in my interpretation of the guidelines as described in FAP 12 [*Fisheries Administration Paper 12*], this industry member's perceived and/ or actual influence in providing advice on aspects of the management of the Fishery, given his company's quota holding, presents a situation of an unacceptable level of pecuniary interest and conflict. As a result, I do not believe he should hold a position as a SPF RAG member.¹⁰²

5.89 Dr Davies described her position as 'precautionary'.¹⁰³ Furthermore, in a letter to the committee, Dr Davies stressed the importance of industry representatives on government advisory groups and boards; however, Dr Davies called for AFMA to develop 'an objective and quantifiable measure' to help answer questions such as the following:

'When does the level of pecuniary conflict become so high that a members involvement and influence, perceived or real, be deemed to be unacceptable, thus excluding their membership of the group/board?'¹⁰⁴

5.90 Two members of the SPFRAG raised issues related to the operation of the former group: Mr Jon Bryan (through the evidence given on behalf of the Tasmanian Conservation Trust) and Mr Graham Pike. The Tasmanian Conservation Trust in particular devoted much of its submission to the following matters:

102 Dr Kirsten Davies, Letter of resignation to AFMA dated 8 January 2015, included in her response to *Submission 143*, p. [3].

103 Dr Kirsten Davies, Letter of resignation to AFMA dated 8 January 2015, included in her response to *Submission 143*, p. [3].

104 Dr Kirsten Davies, Response to *Submission 143*, p. [2].

- the alleged conflicts of interest within the SPFRAG due to the membership of a Seafish Tasmania director as noted above, including that a chair of the SPFRAG resigned because of concerns about the conflict of interest;
- claims that published minutes of the SPFRAG meetings are inaccurate (as the minutes indicate consensus exists when it does not);
- a claim that 'the TAC setting process in 2015 was...carried out in the SPFRAG without having a formal harvest strategy in place', which was described as 'bizarre';¹⁰⁵ and
- concerns about the confidentiality provisions imposed on SPFRAG members and how this limited the ability of the members to fulfil their role.¹⁰⁶

5.91 Mr Pike also described a situation where, in his opinion, AFMA hindered the SPFRAG's operations by not providing sufficient meeting time to develop a harvest strategy.¹⁰⁷

5.92 AFMA refuted the various claims that were made. Regarding conflicts of interest, AFMA submitted that:

...it is not a question of members having declared conflicts of interests, but how those interests are then managed. It is clear that the rules enable the remaining members to make decisions on, for example, whether conflicted members may or may not be involved in discussions or actually be excluded from discussions of certain matters and the procedures involved to achieve this, if considered appropriate.¹⁰⁸

5.93 On the status of the advice provided by the SPFRAG and how it fed into decision-making, it was emphasised that the AFMA Commission is the decision-making body, and that other groups provide advice to it. Relevantly, AFMA's policy document on the role, functions and administration of the resource assessment groups states:

While RAGs have broad stakeholder membership, their primary role is to provide sound technical advice on an issue, not an outcome based on a majority or unanimous vote. The AFMA Commission considers scientific advice to be paramount when making such decisions. However, the AFMA Commission is not required to make a decision consistent with the advice of the RAG (or MAC or AFMA Management).¹⁰⁹

105 TCT, *Submission 143*, pp. 4–5.

106 See Environment Tasmania, *Submission 145*, p. 7. AFMA provided a written response to this evidence, which the committee has published.

107 Mr Graham Pike, *Submission 166*, p. 14.

108 AFMA, Response to *Submission 143*, p. 2.

109 AFMA, *Fisheries Administration Paper 12: Resource Assessment Groups*, October 2015, p. 10; provided in *Submission 143*, p. [21].

5.94 In a letter to the committee, AFMA added:

...the AFMA Commission must make decisions that pursue AFMA's objectives based on available information, even where it has received conflicting advice from experts and stakeholders (which is often the case). Nowhere is there a requirement for consensus, or resolution to the satisfaction of all stakeholders, which is an impossible standard to achieve.¹¹⁰

5.95 AFMA also specifically refuted Mr Bryan's claim that the TAC setting process was carried out by the SPFRAG without a formal harvest strategy in place. AFMA submitted:

There has been a harvest strategy in place at all times, since 2009. The Commission approved a revised harvest strategy in April 2015, before it set the current fishing season TACs.¹¹¹

5.96 The remainder of AFMA's comments regarding the operation of the SPFRAG can be found in its responses to submissions 143 and 166, which the committee has published alongside the submissions.

5.97 Ultimately, after considering claims about a lack of transparency and conflicts of interest within the SPFRAG, AFMA advised that it decided to trial the aforementioned scientific panel and stakeholder forums as a replacement for the SPFRAG. AFMA submitted that the new system:

...enables a wider range of stakeholders to participate in the advisory process and lessens the possibility of negative perceptions about conflict of interest.¹¹²

5.98 Since these submissions and AFMA's responses were provided to the committee, the Commonwealth Ombudsman has investigated these claims about the SPFRAG. The Ombudsman did not make adverse findings against AFMA. Instead, its report outlined matters for AFMA to consider about how it could assist chairs of these advisory committees to manage meetings better.¹¹³ The Ombudsman also supported AFMA's conclusion that a harvest strategy was in place at all times since 2009—the Ombudsman's report stated it 'is not accurate to say that the fishery ever operated with an incorrect Harvest Strategy'.¹¹⁴

110 AFMA, Response to *Submission 143*, Attachment A, p. 1.

111 AFMA, Response to *Submission 143*, Attachment A, p. 2.

112 AFMA, *Submission 18*, p. 7.

113 Commonwealth Ombudsman, *Investigation into the management of the Small Pelagic Fishery Resource Assessment Group (SPFRAG): A report regarding AFMA's administration from 2012 to 2015*, August 2016, www.ombudsman.gov.au/_data/assets/pdf_file/0015/40326/August-2016-Published-AFMA-Final-Report.pdf (accessed 30 August 2016).

114 Commonwealth Ombudsman, *Investigation into the management of the SPFRAG*, p. 7.

5.99 Among the other matters that the Ombudsman discussed in its report is that it may be useful for AFMA to clarify to members of resource assessment groups 'what it means to be on a committee that is advisory only'. The Ombudsman observed:

It appears to be the case that some members have a view that their input is perhaps more fundamental and determinative than it in fact is. For example, responsibility for revision of the Harvest Strategy and setting the TAC lies with the AFMA Commission not the RAG. The RAG provides commentary and advice and makes decisions on what recommendations to put forward to the AFMA Commission, who then ultimately decides. The RAG was an important advisory body, but it was not a decision-making body.¹¹⁵

5.100 The Ombudsman also suggested that it was 'curious' that the resource assessment groups are described by AFMA as being scientific bodies when they 'are staffed by many more non-scientists than scientists (i.e. industry, recreational, conservation, and AFMA members)'. The Ombudsman added:

It is interesting that AFMA has chosen, after identifying a level of dysfunction in the SPFRAG, to replace it with a panel of experts that are exclusively qualified in a scientific or economic discipline. It would seem that this new model is more consistent with the label 'scientific committee' and in that sense it is not an unsurprising change.¹¹⁶

5.101 The Ombudsman concluded:

We have not found instances of defective administration by AFMA. If anything, we have observed AFMA employees making every effort to assist the RAG to resolve concerns, to ensure that everyone is given a fair hearing, and that there was accurate representation of discussion and what was agreed in the minutes of meetings. The decision by the Commission to discontinue the SPFRAG in June 2015, was a decision that was open to it and not unreasonable in the circumstances because all RAGs are creatures of AFMA policy.¹¹⁷

115 Commonwealth Ombudsman, *Investigation into the management of the SPFRAG*, p. 10.

116 Commonwealth Ombudsman, *Investigation into the management of the SPFRAG*, p. 10.

117 Commonwealth Ombudsman, *Investigation into the management of the SPFRAG*, p. 9.