

Alan Miles,

23<sup>rd</sup> July 2015

Honourable Simon O'Brien,  
Chairman  
Standing Committee on Environment and Public Affairs,  
Parliament House,  
Perth. 6000

Dear Sir,

Thank you for the opportunity to provide the enclosed 2 pages of advice to our petition No. 88 opposing South Coast Crustacean Management Plan 2015

As fishermen in the above fisheries we do not have vast amounts of income to be able to employ expensive lawyers so we very much appreciate your consideration.

We have not taken our complaint to the Parliamentary Commissioner of Administrative Investigations (Ombudsman) as from previous experience he has not been able to be of assistance.

Please contact me as above if you require any further information or clarification.

Thanks you for your assistance.

Yours faithfully,

Alan Miles

## PETITION NO. 88 - Opposing South Coast Crustacean Managed Fishery Management Plan 2015

All fishers like ourselves wholeheartedly and totally support the sustainable harvesting of natural resources. However to have a sustainable fishery you also need a sustainable industry. Allocations like this that put fishers out of business overnight without a right of appeal is not in the best interest of competitive fishing, natural justice or procedural fairness. It also destroys investors confidence and leads to an unsustainable industry, job losses etc.

An allocation process that gives the ownership of a fishery to those that have killed the most crustacean and regulates out those who have fished lesser amounts with more environmental friendliness raises concern in regard to sustainable fishing e.g. Lindsay Jolls comment at the South Coast Crustacean Annual Management Meeting on August 19<sup>th</sup> 2015 – The panels decision reflected individual licence holders economic reliance on the fishery. We believe that the panel may have been independent of the industry but it may not have been independent of the Department of Fisheries .

- **THE PLAN CREATES A REDISTRIBUTION OF WEALTH IN RELATION TO THE EXISTING ROCK LOBSTER POT LICENCES.**

The new management arrangements redistribute entitlements from one fishery to another – therefore a redistribution of wealth. (We believe this is not acceptable in Commonwealth fisheries e.g. Fischer and Australian Fisheries Management Authority (2002) AATA 857 (27<sup>th</sup> September 2002.)

The two (2) fisheries are very different and had different authorisations governing them; they should not have been combined as one fishery!

The Southern Rock Lobster licence was an existing licence with an existing allocation of pots. An effort reduction in this fishery could have easily been managed by a percentage reduction in pots.

The Deep Sea Crab Fishery was a licensed condition (105) and unmanaged. As there was no pot allocation for that fishery an allocation process for that fishery may be acceptable.

- **THE SOUTH COAST ROCK LOBSTER POT LICENCE HAS HAD A TRANSFERABLE POT ALLOCATION FOR SOME CONSIDERABLE TIME. THE CURRENT LICENCES EXPIRE 31ST DECEMBER 2015. THE 2015 MANAGEMENT PLAN CANCELS THOSE LICENCES PRIOR TO DECEMBER, ALLOCATES POTS TO SOMEONE ELSE WITH NO MENTION OF COMPENSATION.**

Our original / existing Rock Lobster pot licences are a document headed 'Rock Lobster Pot Licence' on which is endorsed the number of pots that we have a licence to use with the annual expiry date 31<sup>st</sup> December 2015. These licences have been issued for some years; have been annually renewable and fully transferable. Those that have purchased them in good faith on the basis of willing seller, willing buyer have paid stamp duty on the transfers. The new management plan cancels these licences as at 1<sup>st</sup> July 2015 which were not due for renewal until 31<sup>st</sup> December 2015. As an example in the case of rock lobster pot licence no.1114 which was purchased with 144 pots the new allocation will be in the order of only 7 pots.. This means that we have had the ownership of 137 pots taken from us for the period 1<sup>st</sup> July to 31<sup>st</sup> December and then forever with no compensation.

- **COMPULSORY MONTHLY RETURNS (STATUTORY DECLARATIONS) TO THE DEPARTMENT OF FISHERIES ARE NEVER VALIDATED**

Compulsory monthly returns are the basis for the management plans allocation. The Fisheries Department ensures that all compulsory monthly returns are submitted to the Department by the 15<sup>th</sup> of the following month submitting the weight of fish that have been caught on that licence for that month. To our knowledge the data e.g. weight of fish caught, gear used and number of crew is never validated but these returns are used for the reallocating the wealth.

- **WEST COAST CRAB FISHERY WAS MANAGED WITH DIFFERENT CRITERIA TO THE SOUTH COAST MANAGED FISHERY FOR THE SAME SPECIES.**

As an example in 1999 a Fishing Boat Licence was purchased with two conditions attached (LFB...) to take snow crabs, one on the West Coast Condition (106) one on the South Coast Condition (105).

There were 7 condition 106 licenses in the West Coast Snow Crab fishery. The founder and sole operator of the West Coast fishery was permitted to operate solely in this fishery for 4 years with no competition from the other license holders allowed. At the end of the 4 year period the fishery went to quota and was split 7 ways equally amongst the licensees. No mention of catch history in the allocation process.

In the South Coast Crustacean fishery there were approx 63 licenses having access to this fishery, including 24 condition 105 holders.

These conditions prior to 2005 had no limit on numbers and sizes of crab traps which could have been used in the crab fishery. This fishery in contrast to the West Coast deep sea fishery was allocated differently where catch history was the most important component in the allocation process.

If an operator held a 105 condition only with no history his allocation was one pot, whereas other condition 105 holders received varying allocations according to their catch history. A typical example of the Dept of Fisheries inconsistent method of fishery allocation.

Clearly this was a huge and reckless mistake by Department of Fisheries, who created this excess effort. The Department has now confirmed this was a mistake as quoted by Dr Lindsay Joll's comments at the SCC Annual Management Meeting on August 19<sup>th</sup> 2015 when he said quote 'There is currently 5 to 6 times the amount of effort that this fishery can cope with '.

This license was purchased with these conditions in good faith for a considerable sum of money, paid the Dept annual license fees for 16 years and finished up with one pot without putting any pressure on the crab fishery.

Compensation should be paid for the original price of this license and the licence fees that have paid to the Department for the past 16 years

There are many other licencees who are involved in the plans allocation that are equally aggrieved.

- **THERE ARE CASES THAT SUPPORT THE POSITION THAT EXISTING LICENCES MAINTAIN SOME CONTINUING RIGHTS.**

We believe that there are cases that have been heard by the Administrative Appeals Tribunal of Australia that suggests that licences such as Southern Rock Lobster pot licences and condition 105 and condition 106 that are issued under the Commonwealth Australian Fisheries Management Authority do confer a right especially if they are transferable. Considering the South Coast Crustacean fishery management plan 2015 encompasses Commonwealth waters even though the State may have the jurisdiction to manage that fishery, the State should be bound to take into consideration Commonwealth law. This may raise issues such as procedural fairness and natural justice.

- **THE FEE STRUCTURE IS INEQUITABLE**

We understand that the standard fee charged in Western Australia is based on a percentage of the gross value of the fishery divided by the number of licencees. Given that Augusta zone has had some very beneficial years we find it hard to understand the inaugural fee structure.

- **THERE IS NO PROVISION IN THE PLAN FOR AFFECTED PERSONS TO APPEAL (SAT)**

As in most cases with the West Australian Fish Resources Management Act 1994 there is no opportunity for a right of appeal within this South Coast Crustacean Management Plan 2015. There are various cases that have been put to the WA State Administrative Tribunal and the Tribunal has found that technically it is unable to hear the appeal. A good appeal system we believe would lead to better decision making and much better fisheries management in WA. We also believe that panels appointed by the Fisheries Department for allocation purposes may well be independent of the fishery but not necessarily independent of the Department. Allocation panels should include at least an independent legal person and an independent valuer.

We would like to make the Committee aware that we believe that there are other licencees mentioned in the allocation within the South Coast Crustacean Management Plan 2015 who would appreciate making comment to a Committee such as yours or an appeal tribunal on the way in which their existing livelihoods are going to be adversely affected by this plan. There has been a communication from Crustacean fishers who have purchased licences and developed accesses to the fishery from remote bases in the Great Australian Bight. Their allocation may make them totally unviable on the implementation of this plan and as they are resident in South Australia they don't have access to a petition such as this.

In recent days the Fisheries Department have announced that they are setting up another panel of two (2) to do the allocations for another Management Plan for another fishery which will end up with similar allocation problems as the South Coast Crustacean management plan.

**WE BELIEVE THAT THIS ALLOCATION PROCESS AND SUBSEQUENT COMPENSATION SHOULD BE SUBJECTED TO AN ENQUIRY OR AT A MINIMUM LICENCEES SHOULD BE GIVEN THE RIGHT TO APPEAL TO THE STATE ADMINISTRATION TRIBUNAL AS AN INDEPENDENT ARBITRATOR.**