

THE PARLIAMENTARY STANDING COMMITTEE ON SUBORDINATE LEGISLATION MET IN COMMITTEE ROOM 2, PARLIAMENT HOUSE, HOBART, ON THURSDAY 13 NOVEMBER 2008.

FISHERIES (SCALEFISH) AMENDMENT RULES 2008 (S.R. 2008, No. 83)

Mr DAVID ANTHONY ALLEN WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR (Ms Forrest) - We will just get you to provide an overview of your concerns in relation to the regulations as they stand.

Mr ALLEN - Specifically, I am here about banded morwong. I am a banded morwong fisherman and have been since 2001. For the first five years, I leased a licence and then purchased my own licence. Unfortunately, I do not fit into the time frame of getting any quota allocation according to the way that they have set up the rules, but I am not specifically here just for myself, it is an industry-wide concern. I will go through the rules.

I have just highlighted a few things about the management objectives: All stakeholders should be treated fairly; the needs of all stakeholders should be considered; necessary fishery research should be provided for; and a management regime should be cost effective, bearing in mind the situation interpretations that relate to the issue of the distribution include that entry to a fishery be possible. I turn to the first of those - all stakeholders should be treated fairly. There are 29 licences. These licences were issued in 1999. People mortgaged homes and went into considerable debt for a species-specific licence and with time frame on the banded morwong allocation you basically have to start qualifying your catch again from 2000. To me, it does not seem fair that if you bought a species-specific licence in 1999 but chose not to fish in the catch windows of 2000 and 2005 that your licence should be massively financially devalued. Second, in this case they need either to relocate to Flinders Island or the west coast to continue fishing.

My fishing has all been done between Bicheno and Eddystone Point. I have never been to Flinders Island and I have never been to the west coast for banded morwong fishing. In the rules you will also notice that the department acknowledges that it is a dinghy fishery, it is not a trawl boat fishery. Most operators in the industry - out of 15 active licences there may be two bigger scale operations that would be within their survey limits and have skipper certificates enabling them to get to the Furneaux Group or the west coast to continue fishing.

CHAIR - Can I ask, Dave, why you did not fish in those periods?

Mr ALLEN - I actually did fish in those periods on a different licence that I did not own. The department stance is that catch history has no financial value attached to it but catch history equates to individual quota units. If I had been able to take my catch history, I would have been allocated about 70 or 80 units. At a minimum, those units would be

around \$2 000 to purchase, they might be \$4 000 to purchase, so to continue catching at the level I have been catching I would have to invest another \$150 000 into the industry, whereas the person that I leased the licence off does not own a boat or any gear. The only thing that he owns is the licence and he has been basically given a \$150 000 windfall with no intention of ever going to sea or to work. For me to get him to sign that catch history to me, I may as well ask him to write me a \$150 000 cheque out of his cheque book. It is not going to happen, which brings me to the validation of catch history.

The rules state that the department records will not qualify as verification of catch - in other words, department records will only be used as the upper limit above which any claimed catch will not be considered. Fishermen are like dogs, they have been taught over a period that if you exaggerate your catch returns then quota and licences get issued off the amount of catch that you have in those periods. The reason that we are in this situation is there are 15 active licences out of 29 and if the latent effort in the industry became active then that would be a threat. If they had made people qualify their catches in 1998 there would not be 29 licences, there would only 15. Now we are back on the same loop again that this quota has been allocated by catch returns with no validation whatsoever.

In my local area, we have a council worker who was last active in the industry in 2002 who is holding two tonnes of quota, although he does not own a boat or any gear anymore and has not been active since that time. We have the same with people working in forestry in the bush who are holding quota. Because this all started in 2006 and here we are in 2008, it took the department 27 months to get to the point that they gazetted it as legislation. None of this quota that they have allocated can be transferred, either by sale or lease, for people to continue working, in case the upper House or Legislative Council or whatever, I am a bit out of my league here -

CHAIR - Subordinate Legislation Committee is a combination of both Houses.

Mr ALLEN - Both, yes. So, if you guys knock it on the head then we are back to the drawing board. From 1 September I have been unable to go to work. There are people holding quotas who are never going to work. That quota will not ever be caught and they cannot hand it on to people who are active with boats and gear and stuff in the industry. There were more cost-effective methods, a simple TAC until all this was legislated and fine to go and then this quota allocated to people who are not active in the industry could have been distributed amongst people who were willing and keen to go to work and geared up to do so.

CHAIR - Is the banded morwong licence not linked to a vessel?

Mr ALLEN - No, anyone can own it. It is an endorsement on the scalefish licence. It is linked only to that. It is called an on-the-shelf licence that can sit at the department and not be allocated to any vessel. If they choose to buy another vessel or use someone else's they can then attach that licence to that vessel and go to work.

CHAIR - Are there any other points that you wanted to raise? Member will have questions for you in a moment, too.

Mr ALLEN - I think the big one that has been written in that has caused a lot of the trouble relates is what is referred to as 'exceptional circumstances'. The rules state that in light of the generously lengthy time frame regarding consideration of catch history, no further provisions are proposed to take account of exceptional circumstances. I think we all know that in every situation, there will be exceptional circumstances and to have a blanket rule against them seems to me unfair. Again, this comes back to these time frames - for example, with banded morwong, you needed to quantify your catch between 2000 and 2006. Taxation records only need to be kept for five years. In this case, eight years later you are being asked to validate your catch from 2000. As I said originally, if you bought a licence in 1999 and then you flick over to calamari that has a completely different time window going back to 1997 and 1998.

You have people who a decade ago caught some squid in Coles Bay and have been issued a licence which has a monetary value. People who might have been fishing in 2006 and 2007, who have just come into the industry, are now expected to relocate out of the areas. There were spawning closures enforced on the calamari fishery only two or three years ago. For banded morwong we have had size limits implemented and spawning closures. There are catch graphs of many fisheries which qualified people interpret as stable and healthy fish stocks.

My other issue is the people. You have people who sit on these advisory committees advising the department and the minister on these implementations, who stand to be financially advantaged by the way that they vote. That is not just on issues pertaining to banded morwong, that is industry-wide. You have people who are abalone divers on the committee who vote for a quota increase and quota increase means that they get more abalone to sell and to broker. It is emerging throughout the industry. I am sure in any other private industry it would be a conflict of interest to be able to vote for the implementation of rules that you stand to gain financial advantage from.

Mrs RATTRAY-WAGNER - Dave, you said that you normally fish off Bicheno and up as far as Eddystone Point and you choose not to go any further. Is that because of the economics of getting over to the island?

Mr ALLEN - Because it is a dinghy fishery the survey limits on my boat are three miles to sea by 30 miles up and down the coast, so it is illegal for me to go any further. It is 11 miles to Clark Island and I would be going outside the jurisdictions of my boat to go there. I am sure I do not need to tell any of you the perils of fishing on the west coast. People in 60-foot boats regularly end up in a watery grave. To suggest that people should go there gill netting in a 5- or 6-metre dinghy is beyond ridiculous.

Mrs RATTRAY-WAGNER - Whereabouts are you based, Dave?

Mr ALLEN - I live at Scamander.

Mrs RATTRAY-WAGNER - So it is a pretty long haul to get any further past Bicheno?

Mr ALLEN - Yes.

Mr GREEN - What other species do you fish for?

Mr ALLEN - Banded morwong, wrasse - which is the other live fish - and then a small amount of by-catch, which might be boar fish or trumpeter. Predominantly my boat is set up for banded morwong fishing and that is my main targeted species.

Mr ROCKLIFF - What effect will this change have on your livelihood and your business?

Mr ALLEN - I have diversified and started deck-handing for abalone and clam divers but, if I had not had that quiver in my bow, I would be bankrupt by now. I have been forced into that situation. The bank would foreclose on my home. I have probably invested \$150 000 into this industry and I did not have family money to write the cheque; it is all stacked up and mortgaged and financed. Basically, I would lose everything if I had not been able to diversify into some other stuff.

Mrs RATTRAY-WAGNER - Do you have family, Dave?

Mr ALLEN - I have two young children and a wife. From these 29 licences, there are 14 or 15 active people. In 2006-07 financial year I paid the local service station \$25 800 for fuel. These little licences and niche markets around the regional coastline of Tasmania that are their lifeblood. Back to my personal opinion, when you see the fiasco that the abalone and the cray industry has turned into, it would be unfortunate to start heading down the same path again and remove all power from the fishers and make it not much more than a stock market share gamble of going to work and trying to place your fish and whatever else.

CHAIR - Dave, if you had to summarise what you believe needs to change in the regulations - and obviously you have some issues about the unused fish licences -

Mr ALLEN - Latent effort.

CHAIR - and the issue around exceptional circumstances? Can you clarify what you think should change because of the negative impact on you personally and others? What would you suggest?

Mr ALLEN - Again, I will borrow from other industries. When a quota was allocated to abalone there were abalone divers who had caught 50 tonnes a year and some who had caught 10 tonnes, but when they allocated licences everyone got 20 tonnes. I think the crayfish quota was upheld in legislative process here and they adopted an APACHE system, where if you had been catching 50 tonnes a year and someone else had been catching 150 tonnes, year after year they were allocated 140, 130, 120 and other ones came up in 5 or 10 tonne increments until it was level across the board. On equal allocation, I totally disagree that the banded morwong industry is large enough or financially buoyant enough to support the system that they are implementing. They tried to bring in an allocated independent quota system in the sea urchin fishery and decided that it was not suitable for that industry. They set a TAC across the industry, and since its implementation the TAC has not been reached on one fishing year. They have not even reached the target. I think for banded morwong that would be a much more suitable model to go through. If the catch has to be capped, cap it and basically first in, best dressed. If the TAC is reached, it is only going to extend the spawning closure for banded morwong fishing, which is currently March and April. A lot of the time we voluntarily finish on 10 or 14 February instead of 28 February if we assess that the fish

are in too heavily spawning condition. If the 40 or 45 tonnes they want allocated was reached in January or early in February, again that would only protect the fishery.

CHAIR - Do you think that the exceptional circumstances provision should be removed?

Mr ALLEN - Yes, I think there should be an avenue. Again that is going back to my personal situation, no-one is just going to sign away their catch history when there is a dollar value attached to it. I think that it is unfair to be involved in a fishery. I started scale fishing in 1997 and have been active in it as an owner-operator since that time. If I do not qualify as an exceptional circumstance I do not understand where there would be an exceptional circumstance.

CHAIR - Thank you for that.

Mr ALLEN - Thank you for your time.

THE WITNESS WITHDREW.

Dr JEREMY MARTIN LYLE, PROGRAM LEADER SUSTAINABLE FISHERIES, TAFI, WAS CALLED, MADE THE STATUTORY DECLARATION AND WAS EXAMINED.

CHAIR - Jeremy, please address the matters of importance to you and we will ask questions either during or at the end.

Mr LYLE - I guess the background to my being here is a request from this committee. I understood it to provide a science perspective.

CHAIR - Sorry about that. I assume you have had a chance to look at the regulations in some form. We are questioning the sustainability of the fisheries and how these regulations sit within that. Perhaps you heard the evidence of the last witness and we have heard similar evidence more focused on the calamari fishery. We would like you to give scientific view on the matter of sustainability.

Mr LYLE - I think in terms of banded morwong, which was being discussed, there is a general acceptance from the industry there is a need for caps. The evidence that we have from our research suggests that the resource is being impacted by the fishery and there is a need to control the catches. The models that we have are suggesting that there is going to be a need to further restrict the catches. I think the management response has been to introduce some sort of outlook controls. I am not sure they really want to go down the track of saying that that is the right way to do it or the wrong way to do it. I think there is a clear need to manage catches. This is one avenue to do it.

CHAIR - The comment made about the latent licences, that potentially they could be acted on at any time should people decide that they want to go out and fish, from what you have said, that could potentially threaten the sustainability of the fishery. Is that right?

Dr LYLE - Certainly, there is, in the banded morwong fishery and the calamari fishery there is a lot more capacity within the industry than there is catch. Certainly, some of that capacity is not active and we see that clearly in the catch returns from fishers. Not everybody who has access to the fishery, even banded morwong where it is a licensed fishery, it is actually active in that fishery. So, there is definitely a latent effort within both sectors. I think the issue, as we see it and the Government's responded to this, has been that there is a need to manage catches. A way of doing that is through controlling outputs, in the case of banded morwong because there are already licences there, and in the case of calamari to introduce some limits on access and, hopefully, then dealing with a known group of fishers and not everyone who has access to that fishery. It is a lot easier to manage a smaller group than it is having, effectively, open access. At the end of the day, from the biological perspective, the stock perspective, it is about managing the catches.

The other side of the fisheries management is then managing the fishers. There are a number of ways you can do it but ultimately I think there is a clear need to be mindful of the viability of particular fishers and the businesses that are involved. Open access is not a particularly good way to manage fisheries, allowing anyone to access them.

CHAIR - Do you see problems with the regulations as they are? The issues that have been raised by other people aren't really related to sustainability, in my mind, but do you think this is appropriate or do you have concerns?

Dr LYLE - In terms of the equitability of how access is being given -

CHAIR - Yes, allocated.

Dr LYLE - which in one case is on catch history and that's your allocation. The other one is catch history to actually have a licence. Personally, I don't see that there's anything fundamentally flawed with it. I mean clearly there are any number of ways that you could actually divvy up the pie, whether it's access in licences or access in terms of catch share. Ultimately, that becomes a management decision but I'm also aware that part of that management decision is taking into consideration the economic viability of the fishery itself and the operators within the fishery. I am sitting on the fence a little bit. As always, there are a number of ways you can actually skin a cat.

CHAIR - Or catch a fish.

Laughter.

Mr GREEN - Can you just explain to us a little about the research that you've been doing into banded morwong and calamari?

Dr LYLE - With banded morwong the main thing that we've been looking at is understanding the population dynamics of the species - how that's changed as a result of fishing.

Mr GREEN - How have those surveys been undertaken?

Dr LYLE - Largely by going out and catching fish and looking at their age structure, their growth rates. We've seen some quite dramatic changes in the population structure. We input that catch information into a model that we've developed to try to describe the stocks. That's clearly showing that the stocks have been impacted, and quite significantly so. They've also, interestingly, become far more productive, which is a compensation effect, the result of reducing the fisheries. You've effectively made the stock itself more productive but the concern we had with banded morwong was that we are now very dependent upon new recruitment coming in. So, if we have a period of poor recruitment then we would expect to see the stocks decline further.

Mr GREEN - So you are saying that the inshore fisheries are recruited from some deeper -

Dr LYLE - No; new recruits as in a spawning event and young then come into the fishery. When that particular fishery started the stocks comprised a very large number of year classes. A large accumulated biomass was already out there. It is like looking at a human population. If you look at the demographics you have a range of young to old. Effectively what the fishery has done, and what fisheries do, is reduce the older segment of the population. You are then dependent upon the younger and potentially more productive in terms of growth rates and things like that to maintain and sustain that population. That is where we are at with banded morwong.

In terms of the calamari it is a completely different scenario because you are dealing with something that lives for around a year so there is potential for fairly catastrophic collapse. If you overdo it, if you take too many fish out before they can spawn, then you can effectively end up with a period where very low abundances will prevail until it is able to rebuild. With the calamari the key thing that we have established is that the east coast area, particularly Great Oyster Bay and Mercury Passage, is a very important spawning ground for the species. We are doing surveys of that area every year during the closures to try to get some signals about how productive they are whilst they are being protected. Are we actually achieving what we set out to achieve - protecting the spawners so they can then contribute to the fishery in the future? So we do that kind of work each year. We are also looking at how the other characteristics of the population change, their growth rates and age and things like that. That is one of the challenges. Something like calamari is very adaptable and very different every year, so it is quite difficult to say that this year is going to be typical of next year because it is driven by a whole lot of factors that are really beyond our control. The management we have in place for that at the moment is to provide adequate protection for the spawning fish. We do know that those spawning fish in the Great Oyster Bay appear to be an important source of the population to the area in the south. So you are always getting this sort of movement from spawning on Great Oyster Bay and Mercury Passage and then those fish recruiting into the south-east area. Presumably as they grow they migrate back up to that area to spawn.

So that basically is what we understand about that species. We do have some idea of what we think the long-term sustainable yield is from that east coast area, particularly Great Oyster Bay and Mercury Passage, but we are dealing with something that is highly variable. So a long-term stable situation is not reality, but it really is the only way we can actually understand it or report it.

Mr GREEN - With banded morwong, there has been a closed season over spawning time. Has there been a noticeable change in the amount of recruitment as a result?

Dr LYLE - It is hard to say whether that has had that effect of increasing recruitment. What we can say, though, is that fish that are not caught immediately before the spawning period are actually available and there to participate in spawning.

Mr GREEN - How long does it take a banded morwong to reach maturity?

Dr LYLE - About three to four years, which is an unusual fact about the species. You have a species that can live to 96-97 - which is the oldest we have actually aged one fish to. Typically a species that would live that long you would expect to spawn at maybe 15-20 years, so these are quite unusual.

Ms FORREST - So they are fertile for quite a long time?

Dr LYLE - Yes. The females are quite slow growing once they maintain maturity. Once they become of legal size they are effectively within the fishery and vulnerable to the fishery for the rest of their lives. The management measures we have in place are to protect those fish that get to spawning so that we are not disturbing them whilst they are spawning. They are very vulnerable to capture at that time. The catch rate certainly

increases whilst they are spawning because they are a lot more active. The downside is that they die; processors can't hold them alive, and it is a live fishery. So there is no value in catching the fish at that time, which is quite fortunate for the species. It has made the implementation of that measure very well supported by all. The industry will often stop fishing before the closure because it is of no value for them to be getting fish that are going to die because they don't get paid for them.

Mrs RATTRAY-WAGNER - That is obviously what Dave just presented to the committee. Dr Lyle, what sort of conversations or consultation process do you have with industry members in your research? Do you get some feedback about what they see on the ground when they are going about their business?

Dr LYLE - Absolutely. We have run a number of projects. The work we do is always working very closely with the industry. They are doing a lot of the fishing for us, so there is a lot of one. We completed a major externally funded project and part of that involved my talking to the fishermen themselves to try to understand what they understood about the dynamics of the fish and the fishery, and what they saw as changing. I tried to understand their perspectives of the species they know a lot about. That was very informative and it highlighted things in our assessment. Part of the banded morwong population we believe was not vulnerable to the fishery in the way other parts are. Fish in the deeper water are not being fished because it is a live-fish fishery. There is no benefit in bringing up fish from deep water. They suffer barotrauma and basically they die. They don't get paid for them so there is no point in that. In a sense there is a refuge. Certainly the modelling and some of the subsequent research we have been doing in trying to understand the species better has been to understand that portion of the population that is less vulnerable to the fishery. If there is movement between deep and shallow water then they obviously would come within the range of the fishery. That is one aspect of the interactions we have had and taken on board in terms of developing models.

Over the years we have had several forums where we have engaged with the various stakeholders. They are usually very well attended by the fishers. We have presented our data and got feedback from the industry. That is why we have come to this point of saying that we need to do something. The industry has said, 'We recognise we need to do something in terms of being able to control catches to certain limits and deal with this whole issue of latent effort'. That is the big fear if those licences are activated. If an opportunity were to become apparent - for instance, if there was an expansion of the market - the price is there so there is certainly incentive for a lot more fishing pressure on these reef areas. All the fishermen I have talked to say that they know that fishing has an impact, that this is not an inexhaustible resource.

Mrs RATTRAY-WAGNER - It is the fairness of the whole licence process.

Mr LYLE - And that is always the hardest part about any allocation situation. It is not so much whether the amount of catch is the right figure or not, it is actually who gets what and what part of that share. That is always the most problematic thing and I would imagine that is the main issue that is being discussed.

Mrs RATTRAY-WAGNER - People's livelihoods.

Mr LYLE - Absolutely.

Mrs JAMIESON - I was going to ask a very practical question. If you, as researchers, are utilising the services of the fishermen do you have a contract with them or pay them anything?

Mr LYLE - When we are doing our research fishing we buy the fish off them. We do that under permit as well of course. It is an interesting point you raise. Under a quota system how we manage that is something that we have not really thought about.

Mrs JAMIESON - Now there is something else to think about.

Mr LYLE - Yes, it is. And we certainly have plans to do some sampling next year.

Mrs RATTRAY-WAGNER - You might be able to help out Dave with a quota.

Mr GREEN - Can't you observe them by diving?

Mr LYLE - You certainly can do that. And we have done the next best thing in using acoustic tags so we are able to track fish. We have found some very interesting things about their underlying behaviour, but in terms of being able to do counts to work out how many fish are there, they are fairly cryptic. They do not tend to be out and about. Fishermen will tell you that they would average about one fish per net. If you see the amount of net that goes out when you go out with these guys, it is not a slaughter of fish. For them to come in from a day's fishing with 30 fish may be a reasonable day's fishing. They are definitely small-scale operations in that regard.

Ultimately the sampling that we do gives us that basic information about the age structure because that is very important. It is telling us whether we are getting good year classes coming through. We have certainly seen evidence, despite all the changes we hear about in terms of climate change, of good recruitment, good year classes coming through and that is most definitely a positive. Unfortunately you can only determine that by sacrificing the fish, so we are very conscious that -

Mrs JAMIESON - Have you noticed any movement of the beds of fish at all?

Mr LYLE - No -

Mrs JAMIESON - I was thinking of climate change.

Mr LYLE - The sort of data that we have available to us would not really be sensitive enough to do that. Those questions will become more and more relevant, but the cost of doing that sort of research and the potential impacts on stocks in terms of sampling would be difficult for us to justify.

Mr GREEN - Have you sampled banded morwong on the west coast of Tasmania?

Mr LYLE - No. In reality, our perception of the stock is that globally there is probably not a major problem because there is very little fishing going on off the west coast. You would say that the banded morwong that do occur there are very lightly exploited whereas on

the east coast, which is where the fishery is, that is not the case. They do not move around much - and again we have quite a lot of tagging data to show that. They will stay within a reef area. Once they are taken out of that reef area you are largely dependent upon young fish coming back in to repopulate.

CHAIR - Thank you for your time.

THE WITNESS WITHDREW.

Mr ROBERT GOTT, DIRECTOR (MARINE RESOURCES); AND **Mr MATTHEW BRADSHAW**, PRINCIPAL FISHERIES MANAGEMENT OFFICER, DEPARTMENT OF PRIMARY INDUSTRIES AND WATER WERE RECALLED AND EXAMINED.

CHAIR (Ms Forrest) - Welcome, gentlemen. Lisa was asking some questions and was rudely cut of by the chair because we had to get to question time. Lisa has informed me that she raised her question with you and that you may have some information for us. I do not know where we got up to last time but you gentlemen might.

Mr BRADSHAW - I am pretty sure I recall Lisa's question. It was a two-part question. One was regarding the number of licence holders for calamari who qualified solely by the second criterion. The second question is related to the first. It is regarding those fishermen who had a scalefish C licence previous to the criterion coming in who might, subsequent to calamari fishing, may have purchased a larger licence. I think that was it.

Mrs RATTRAY-WAGNER - And the answer is?

Mr GOTT - There have been 16 fishing licences for southern calamari granted. Of these, at least five qualified against the earlier criterion - the 1998 criterion - and at least 13 against the late criterion. That adds up to more than 16 and that is due to the fact that applicants applied and qualified against both criteria, so they have been double counted. In addition, others applied against one criterion only when they would have probably qualified against the second criterion as well. They chose not to, but for evidentiary purposes they had the information to supply to us. If you go to the catch history, they may have chosen to fly against one criterion. It is not simple to say, 'This number applied against the first criterion and this number applied against the second'.

It would appear that three successful applicants started off with scalefish C and then at a later stage acquired scalefish B. In at least one case there is a licence holder who still holds both a C and a B class licence and pays the fees for both.

Mr ROCKLIFF - I have a question about north-west beach seine. Apparently there were two licence holders of beach seine on the north-west and my understanding is that neither of them is allowed to sell or transfer those licences, but one apparently was allowed to. Is that correct?

Mr BRADSHAW - Their endorsements are the things that you are referring to. People have referred to endorsement and licences interchangeably. An endorsement is something that is put on. It is a little bit like your driving licence; there might be something that is endorsed on your driving licence to do something additional. It is not its own licence, it gets added in text as an additional authority attached to a licence. The two endorsements you are referring are both attached to personal fishing licences - that is, the licence that the fisherman needs to go fishing, separate from a gear licence, a vessel licence or a species licences. There are two endorsements, they are non-transferable and there are two fishermen who hold these endorsements to use a length of beach seine net on the north-west coast. To operationalise that endorsement you would ordinarily need a gear licence. You would need a licence with a net on it to attach to your personal fishing licence that says you are allowed to be there with your net, catching fish.

You are correct in stating that a number of years ago an application was made to us by one of these endorsement holders to sell their beach seine licence, which they were allowed to do. It is a transferable licence. But what should have occurred at the time, and did not occur, is that their endorsement should have been cancelled because their ability to operationalise that endorsement was being removed. It is a condition that when your ability to use the gear associated with an endorsement is removed, then that endorsement is cancelled and that is well understood in the fishery. However, there was an error, I guess, made by the department and this person applied, as they had the right to do, to sell their beach seine licence off, which they did. At that time their endorsement was not cancelled, as it should have been, and they continued to fish under that endorsement, which mentions an amount of gear and an area et cetera.

This came to our attention a number of years after it had occurred and we were put in a position where that person had been benefiting from an endorsement without any form associated gear licence. We needed to determine how we were going to address that. We entered into negotiations with the individual and entered into a settlement with them which involved their being endorsed. We did not feel we could force them to go out and purchase a beach seine licence. They were endorsed to use a very small amount of beach seine in that area.

So the two individuals remain. One of those individuals has an endorsement which includes a small length of net, based on an original error made by the department which was subsequently reviewed and a settlement or an agreement was reached with that individual. The other individual remains as they were. That is, they have an endorsement plus a beach seine licence. So that is the history behind the situation you are referring to.

Mr ROCKLIFF - That other person, are they permitted to apply to transfer or sell that endorsement?

Mr BRADSHAW - The endorsements remain non-transferable. The only thing that you can sell is the gear licence. So the endorsement itself is not transferable.

CHAIR - Do the fishermen know this?

Mr BRADSHAW - Yes.

CHAIR - But obviously it was overlooked on that occasion.

Mr GREEN - We all know the case that we are talking about here. There has been a long history with respect to this matter. One party thinks it is inequitable. The point of the question is whether there is any possibility of returning some equity to this situation. That would be the blunt question.

Mr ROCKLIFF - Yes, that is where I was going to politely come to.

Mr BRADSHAW - A good question it is.

CHAIR - Bryan, how could the equity be achieved? Do you want to make a suggestion to these gentlemen how they could fix it?

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Mr GREEN - I probably should not say. That would be compromising myself and the department and I certainly would not want to do that. The only thing that I would say is that it is not a huge fishery and there are not many participants and so it would be nice if the matter could be finally resolved.

CHAIR - But it is not included under these regulations, is it? The resolution of this inequity is not addressed in these regulations?

Mr BRADSHAW - No, it is not.

CHAIR - So, is now the right place to be doing it?

Mr GREEN - Probably not.

Mr ROCKLIFF - But now that we have opened up the discussion. Is there any investigation taking place to return equity? Is it possible to discuss it?

Mr GREEN - One party sees it that way and I guess history.

Mr BRADSHAW - What I can say is that we hope that we deal fairly regularly, openly, fairly and reasonably with both parties. We do find that they are in slightly different situations. They started off in similar situations and they now find themselves in slightly different ones for reasons of history. There is a long history to this. It is ongoing, it is still an open question and it is something that, as per the advisory committee and our processes, we continue to address. It is not a book that we have closed; we have not shut up shop on the issue.

Mr GREEN - Would it be reasonable if it were raised formally at the advisory committee as a result of this?

Mr BRADSHAW - It would be quite appropriate.

CHAIR - The committee can write and ask for that.

Mr GREEN - With respect to the calamari fishery, we have heard the science associated effectively with the biomass and particularly the spawning aggregation areas. It seems to me, having listened to a number of the witnesses, that what we are effectively talking about is that those in the appropriate zone are able to fish that particular section of the fishery and those that are not and the problems associated with all of this come about as a result of people conducting their fishing effort outside of the spawning aggregation areas throughout the year and not even necessarily fishing those spawning aggregation areas. Has there been much thought given to issues associated with the lines on the map effectively, in terms of protecting the biomass but allowing what has been a reasonably sustainable fishery outside of that area on an ongoing basis?

Mr GOTT - I think in the development of the plan the issue of that particular region was given significant consideration. We have heard evidence from a number of the witnesses who have presented telling us where the hot spots are, the aggregations -

Mr GREEN - The scientists are telling us that as well.

Mr GOTT - Yes, but these aggregations are in fact spread quite a way down the coast. Interestingly, we have a couple of people who have qualified for their licence who have fished in areas outside the Coles Bay aggregation. The aggregations are at Slopen Main and there are aggregations around Bruny.

Mr BRADSHAW - Yes.

Mr GOTT - This was looked at not only in terms of developing this management framework but also in responding to the fishery as it evolved and actual closures. Initially we were looking at where the fishers had identified hot spot aggregations in the Coles Bay area and we put closures there. They moved out of that and found further aggregations and we chased them down the coast, making longer periods of closures and through that process and developing this framework, it was determined upon the best advice that we could get from the fishing activity and the researchers that this was the area that should be covered. We have heard subsequently from Todd Francis that he has identified a further hot spot which is north of the boundary and so he was proposing that the boundary be moved further.

I guess the answer to the question is that we would argue that in the southern zone we have captured a broad area of aggregations where we want to manage the fishing effort. We would probably disagree with some of the evidence presented that the actual area where all fishing effort and all the spawning aggregation hot spots are in Coles Bay or just around Maria.

Mr GREEN - Before anybody else jumps in, does that not make the argument a bit thin with respect to those very specific areas of aggregation if you are now suggesting that there are other large aggregation areas outside of Coles Bay and -

Mrs RATTRAY-WAGNER - The Mercury Passage.

Mr GOTT - I am not sure what you mean, but my response -

Mr GREEN - We started off with blokes having their tyres let down and various other things happening all around Coles Bay and the Mercury Passage because that was the red-hot hot spot as a result of aggregation. Really what drove all of this was wanting to make sure that we had a sustainable fishery and we took a lot of the angst out of the fishery. Now you are suggesting that there are in the south-east section other significant aggregation areas that effectively have not come under that same sort of pressure, at Bruny, for example. You are saying there is a significant aggregation there.

Mr BRADSHAW - It may be best to speak about that with Jeremy Lyle, who is not at the table. The problem has tended to repeat itself as we have refined the closure. You are 100 per cent right, it presented itself to us at Great Oyster Bay and then moved to Mercury Passage so the first closure was in Great Oyster Bay. That is where the first major aggregations were discovered and the fish in the barrel were easiest to fish as that is where they were. Of course, fishermen being fishermen not all of them like a crowd. They had begun to explore down the Passage. The problem presented itself and we closed the passage.

The problem now repeats itself around Slopem Island where you are starting to get the same sorts of angst and anxiety. There are aggregations there. They are possibly not behaving as densely, if you like, as they might be up in Coles Bay and Mercury Passage but they are clearly schooling, moving in and spawning there. We closed the better part of the fishery for nearly three months and fishermen went somewhere else and they merrily fished squid during that time. They are moving around a bit, the fish are possibly not behaving in exactly the same way as the Coles Bay and the Mercury Passage in terms of density but they are spawning. Jeremy mentioned the fact that it is possible that what we are seeing is a spawning behaviour in Great Oyster Bay and Mercury Passage that it is so large that it is feeding some other behaviours in the south-east but there are also separate spawnings going on in the south-east.

We are conscious of the fact that we were chasing them with this closure and ultimately for the bulk of the fishery in the south-east we were going to end up closing the whole area giving them nowhere to go. What we wanted to be doing was spread the effort, not concentrate the effort in a small area just outside the closure which is what was happening.

CHAIR - The concern that was raised about the latent licences and with the banded morwong particularly that potentially if they were all activated that the fishery could be seriously at risk. This does not seem to address that issue and I believe 15 of the 29 licences are active. Is that an issue that needs to be addressed?

Mr GOTT - We would say that it has been addressed by the way we have set up a quota system. The allocation around that is set up to address the latent effort because we have put a total allowable catch on that fishery.

Mr BRADSHAW - The fishery assessments for the last four or five years have been saying the same thing and Jeremy mentioned the cap on the catch. They put a ceiling on the amount of fish that can come out of the water and in some respects it does not matter how many licences have been issued, once we have capped the catch only so many fish can come out of the water. Whether one licence takes them all or 29 take them, it does not really matter because we have capped the catch. Capping the catch is just the start of the management process. The next question that comes up is, should we race for that amount of fish or should there be some sort of orderly process that is put into place to access those fish?

Industry was very clear about not racing for fish, very clear that it wanted an allocation. This raises the next question, how should that allocation proceed? Should it be equal across all the 29 licences or should it be based upon some form of catch history? We have heard about lobster and abalone fisheries where the process has been to try to be more equal across the licences. The big difference between those fisheries and banded morwong is that nearly all the licences in those fisheries were active, they were being used. With banded morwong, roughly half of them were not being used which means half your fishery has nothing, no participation and no catch. You have the fishery, the people who go out and earn the money and pay \$25 000 a year to service stations, accruing history in whatever form. They are doing what they do. The pie is only so big, so if you allocate across all 29, the risk is that you have 29 unviable morwong licences.

Mr GREEN - Can you explain on the back of that, Dave's situation?

Mr BRADSHAW - As I understand it, anyway. Dave is right, we do not put a value on catch history, it is something that accrues and we keep catch and effort data. In the first instance, it has to default to the holder of the licence because we cannot very well look at an allocation where someone is not the holder of the licence. That is the default position, where we start proceedings. For morwong fishers, I would say we have done our level best to put ourselves in the position where we can acknowledge an agreement, that is, a common law agreement between someone who is leasing a licence and the holder of that licence. This is in the amendments. It says if you present to us an agreement signed by both parties to the satisfaction of the secretary that says the lessee gets the catch history, we will acknowledge that.

CHAIR - So he should be able to acknowledge the catch history as he has not been able to, is that what you are saying?

Mr GREEN - No, he reckons that his licence holder would not let him.

Mr BRADSHAW - As the department, what role do we have in an agreement between -

Mr GREEN - It seems to me that he has subsequently purchased a licence of his own, hasn't he?

Mr BRADSHAW - Yes.

CHAIR - Yes, he was going back.

Mr BRADSHAW - Outside the period.

Mr GREEN - Yes, but the catch history effectively belongs to someone else. But, having said that, the facts speak for themselves in terms of his activity in the fishery, don't they?

Mr BRADSHAW - Yes, and we were conscious of that which is why we have said that without making the requirement too onerous, we have not required that there were agreements at the time. We said that they could be retrospective because we anticipate that not every lessee is going to have the smarts and have an agreement in their contracts to talk about the catch history. We have said it can be retrospective. It can be presented to us now. It can be signed and dated now, but there has to be that agreement. The holder has to agree that they are happy to transfer or to see the catch history go to the benefit of somebody else.

Dave is not in the position where his holder is willing to do that.

Mrs RATTRAY-WAGNER - Wouldn't you class that as an exceptional circumstance?

CHAIR - Exceptional circumstances are not taken into account under the regulations, so even if it were it would not matter.

Ms SINGH - But his other claim is that it was such a long time ago, wasn't it?

Mrs RATTRAY-WAGNER - He just likened it to taxation history, that you only hold taxation data for five years yet you hold this for eight years.

Mr GREEN - I am sure that everyone has given it an enormous amount of thought because it is difficult.

Mr BRADSHAW - The bottom line for us is that we cannot count the history twice and in that situation there are two people who are claiming it; the holder of the licence is claiming it as well as the bloke who did the fishing.

Mr GREEN - What are we talking about in terms of extra kilograms going to the yearly allocation as a result of making a decision along those lines?

Mr BRADSHAW - It feeds into an average-base formula. Dave talked about six years - it is a six-year period and you add up the years and divide the answer by the months to give you an average. You then get a unit for every 40 kilos of that, so Dave's history would add up, he would have an average and a number of units. He has a claim, but he just cannot present an agreement with his holder to us, because his holder has claimed those fish and his holder would have the view that he has invested in the fishery, purchased the licence, entered into a lease agreement with this fellow that did not include the catch history, and that that catch history is his to claim. In effect, we have two people claiming the one thing and there needs to be a rule to decide -

Mrs RATTRAY-WAGNER - With no avenue to address it from your position?

Mr BRADSHAW - Not in the amendments as they stand.

CHAIR - Unless they're two-headed fish it's going to be very difficult.

Mr GREEN - What Tania is saying is the question I asked: his quota allocation would mean an additional five tonnes - or whatever it is - of morwong caught each year?

Mr BRADSHAW - If we could make the pie larger we would need to take it off somebody else.

CHAIR - So some of the latent licences - I appreciate you still have a total allowable catch - but if you not getting up to that, is that a consideration that could be made?

Mr GOTT - The total allowable catch is allocated amongst those with a quota.

Mrs RATTRAY-WAGNER - But it's not being reached.

CHAIR - Nearly half the licences are latent.

Mr GOTT - If they are latent and have no catch history they will have no units.

Mr BRADSHAW - All the total allowable catch is divided into the units that are available, so every fish is allocated. The pie is only so big so, for instance, if Dave has an allocation you can't give him an allocation over and above the cap. It has to be taken from somebody; everybody else would need to be adjusted. These people have also

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qualified and are active fishers. It is a fraught process. It is the most difficult thing we do and it is not something we do lightly. These are people's livelihoods and we know that and it is very difficult. We have reached that point with morwong and calamari. There are some people who don't fit in.

Mrs RATTRAY-WAGNER - You talked about total allowable catch and information tells us that there is no total allowable catch for calamari.

Mr GOTT - There is a different management approach. One is output control and the other is input control, for a whole range of reasons. The department started out and would not use the quota system for banded marwong because we thought it was a relatively low-value fishery and the costs to the industry would be too great. The FAC recommended that that was what was required and so we are using that particular management framework to manage that fishery. We are doing calamari in a different way. We have input controls in terms of limiting those people with licence to access the fishery. We do not place a total allowable catch on that particular fishery. There are two distinct management approaches.

CHAIR - Is there anything else you want to add?

Mr GOTT - Just essentially to reiterate the points that were made in our first presentation. We have an obligation to manage the fishery sustainably. We have been through a consultative process to come up with best-fit management frameworks for the two fisheries, taking into account the various competing interests and the best scientific advice that we have and the input from the affected fishers. As Matt indicated, we are now getting to the pointy end of the process and that is the allocation. Through any allocation process there are going to be people who don't fit. We have attempted, in putting together in the case of calamari, to devise a framework where we have what we think to be fairly generous qualification mechanisms. Below that we have a bycatch for those who catch incidental amounts of fish, so that provides as much access as we possibly can by consistently needing to wind back the fishing effort in that particular fishery. We think this is the best we can get with the rules that are now presented before you. In the event that you determine in your wisdom that we have those disallowed, we will still be confronted with the issue of having to manage the fishery sustainably and we have to take a fresh approach. My concern would be that we wouldn't come up with an overall global perspective for the best outcome. We leave it with you to deliberate and give us your advice.

CHAIR - Thank you very much.

THE WITNESSES WITHDREW.