



NATIONAL SEAFOOD INDUSTRY ALLIANCE

PO Box 9022 Deakin ACT 2600 T: 02 90041101 E: nsia09@gmail.com

Fisheries Adjustment Assistance Package for new Commonwealth Marine Reserves: Discussion paper

NSIA Submission

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MEMBERS OF NATIONAL SEAFOOD INDUSTRY ALLIANCE



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1. Executive summary

In addition to responding directly to the *Fisheries Adjustment Assistance Package for new Commonwealth Marine Reserves – Discussion paper*, the National Seafood Industry Alliance Incorporated (NSIA) seeks the following assurances from Government:

- a. To improve consultation and engagement, including clarifying timeframes and processes, for development of a Fisheries Adjustment Assistance Package (FAAP), with involvement of the fishing industry and other experts;
- b. to ensure the FAAP includes elements as announced in the joint media release issued by the Hon. Tony Burke and the Hon. Minister Ludwig, dated 14 June 2012;
- c. to ensure the FAAP incorporates the full requirements of the *Fisheries Adjustment Policy* document, released in May 2011;
- d. to ensure the marine reserves networks do not come into effect before the FAAP is finalised and funds are available to assist those impacted; and
- e. to respond to concerns raised in our letters and submissions in August and September over deficiencies in the draft Regulatory Impact Statement (RIS), and the lack of effective socio-economic assessment in assessing the impacts of the final proposed networks of marine reserves. Industry has been repeatedly assured that the ABARES work was not to be considered a comprehensive socio-economic assessment for development of the adjustment assistance package.

In responding directly to the Discussion Paper, NSIA considers the process to develop a FAAP is flawed because (and not limited to):

1. There has been minimal consultation with industry and other relevant experts. This involvement is essential to achieve best possible outcomes for Government, industry and the community.
2. Expecting individual fishers to be able to “absorb impacts” is inequitable, unacceptable and inconsistent with Government policy.
3. Vertically integrated businesses are not clearly or adequately considered.
4. Decline in fishery asset values does not appear to have been considered.
5. Prospectivity is not considered.
6. Upstream and downstream impacts are not considered.
7. The proposed appeal mechanisms do not provide for a genuine merit based review.
8. There is no special circumstances category for businesses that can demonstrate a significant impact but fall outside the guidelines.

This submission provides further detail and elaborates on these and other concerns.

Without clarification on these elements, NSIA cannot support the proposed marine reserves networks and believes a number of key legislative, policy and other commitments will not be met.

2. Background - Over-arching issues of process, involvement and timing

The *Fisheries Adjustment Assistance Package for new Commonwealth Marine Reserves – Discussion paper* (the Discussion Paper) was released on 12 September 2012. Industry sought an extension to the initial 2 October 2012 deadline and a revised deadline for comments of 16 October was agreed.

This submission responds directly to the discussion paper. However, it should be noted that industry remains very concerned about the process so far, which has not adequately involved the fishing industry and other experts in working through the proposed Adjustment Assistance guidelines. As such, given the truncated timelines, this submission does not represent or consolidate the views of the entire fishing industry. It is a response developed through NSIA and industry communication networks within the tight timeframes provided. It in no way replaces or diminishes all previous fishing industry submissions, including regional submissions in relation to the draft marine reserve networks, the national response to the final proposals¹ (including the attached independent reviews undertaken by Dr Daryl McPhee and Ernst & Young), and previous correspondence sent to Government through letters and submissions in relation to the development of the *Fisheries Adjustment Policy 2011* (FAP 2011). Individual operators and businesses will also likely put in submissions.

A robust process to facilitate development of a considered and constructive position on adjustment assistance, involving the fishing industry and other experts, simply hasn't occurred. Our concerns have been raised with the Environment Minister the Hon. Tony Burke and SEWPAC. However, no written response has been received to the issues raised.

As such, the industry only submitted a "holding response" to the original, in our view grossly inadequate, 2 October adjustment assistance comments deadline. The fishing industry has repeatedly highlighted significant issues about the development of the adjustment assistance package in letters (8 & 16 August and 21 September 2012) to Minister Burke and SEWPAC, and suggested an appropriate future course of action. Importantly, matters relating to the need for an appropriate social and economic impact assessment of the Government's marine reserves network proposal and concerns about the RIS, which have not been completed to adequately inform the adjustment assistance process, have as yet not been formally responded to. We note industry concerns have been supported by independent reviews by Dr Darryl McPhee and Ernst & Young, who state, among other things, the RIS has not fully met Government requirements and that the ABARES reports are likely to significantly underestimate the economic impacts associated with the marine reserves network proposals. In relation to adjustment assistance, the Ernst & Young review states:

Moreover, the ABARES studies did not consider the cost of any industry assistance package in their assessment. It is unclear how the recently announced \$100 million assistance package was developed and whether, if at all, the ABARES analysis was used to inform its development. If it has been used by the Commonwealth Government to infer the quantum of any adjustment assistance, it is likely to be insufficient for that purpose also.

NSIA and industry members have met with the Department of Sustainability, Environment, Water, Population and Communities (SEWPAC) on a number of occasions, at which an indicative process

¹ NSIA (2012). Commercial Fishing Industry Submission on the Proposed Commonwealth Marine Reserve Network. Submission to SEWPAC, 10 September 2012.

with defined timeframes and involvement of key expertise was agreed to ensure effective development of an appropriate fisheries adjustment package, in line with the *Fisheries Adjustment Policy 2011*. A range of issues, requiring clarification before moving forward, were also identified.

3. Involvement of fishing industry and experts crucial

Government policy, in the form of the FAP 2011, specifically outlines, among other things, that:

“In the event of a decision to provide adjustment assistance, management agencies, industry and the community will be involved in program design”

The joint media release of 14 June 2012², by Minister’s Burke and Ludwig, further cemented the need for and commitment to involvement of key experts, stating that:

“...the Government will work with industry to develop measures...” and

“Government and industry will work together to establish an assistance package”.

The fishing industry welcomes these statements and has the long-held position that one of the most important aspects of marine reserve network declaration is to follow due process, as identified in the FAP 2011. The first critical step is conducting a socio-economic assessment of impacts on fishers and communities, of the final proposals, to be used to inform decision making. At a minimum, this would then allow the fishing industry a realistic opportunity to be “involved”, along with experts and others, in effective design and implementation of an assistance package to address the identified impacts. Obviously, such a process would go a long way to minimising angst and clarifying process up to the end of the year, and beyond into 2013. Further, as stated in recent industry letters, it also maximises getting the best result and value for money for Government and in addition, fairness to the community and industry.

In developing and finalising adjustment assistance package guidelines, and equally importantly in bedding down the detail and implementation aspects of any package, the fishing industry has a strong expectation that the principle of involvement of the fishing industry and other experts, with reasonable and clear timelines and due process, will be adhered to.

² Tony Burke and Joe Ludwig (2012) Industry assistance to precede marine reserves, Media Release

4. Response to the “Fisheries Adjustment Assistance Package for new Commonwealth Marine Reserves – Discussion paper”

Below, we systematically work through the Discussion Paper and, among other things, address the questions posed. In the same context that the Discussion Paper was released, all comments are provided on a no prejudice basis for further discussion and consideration with SEWPAC, the Minister and other relevant stakeholders, in finalising adjustment package guidelines, component details and implementation arrangements.

The Discussion paper has been considered in the context of FAP 2011 and the press releases of Minister Burke and Minister Ludwig of 14 June 2012. NSIA’s submission supplements its earlier paper on this topic of 28 May 2010 and research paper by MRAG dated August 2010.

NSIA notes that the Discussion Paper does not present a fully worked out package of measures. Rather, it presents a tentative set of further policy principles and questions relevant to the development of such a package. The comments of the NSIA below need to be read in the context that significant further work needs to be done in order to develop up a comprehensive package that meets the government’s policy commitments as well as the commitments made in the press releases referred to above. NSIA welcomes the recent commitment by Minister Burke and SEWPAC, at the meeting held 10 October 2012, to further develop the package guidelines and detail on a cooperative basis with industry and experts.

4.1.Overview

The document indicates that submissions will be taken into account in finalising the package, eligibility criteria and program guidelines. It goes on to indicate that the proposed package, associated components and their implementation arrangements are anticipated by the end of 2012. However, the fishing industry has recently been advised in meetings with SEWPAC and the Minister that only guidelines and package components are likely to be decided by the end of 2012. Further, commitments have been made to ensure the fishing industry and relevant experts are involved in finalising both package guidelines (by the end of 2012) and component details, including implementation, during January to June 2013. At the technical meeting on 3 October, advice was received from SEWPAC on indicative timing of implementation of the measures. The NSIA welcomes the Minister’s alter commitment at our meeting on 10 October to a full timetable being presented by SEWPAC in the near future.

Recommendation 1: *That as agreed at recent meetings, clear timelines, process and key milestones, including where the fishing industry and other experts will have the opportunity for further input to the package development and implementation, are made available, prior to any decisions being made by Government.*

4.2. Privacy and confidentiality

In the interests of an open and transparent process, the fishing industry supports submissions on this document being made public, as indicated in paragraph two, page two. It is unclear how submissions will be treated as public documents, which “may” be published on the Department’s website.

Recommendation 2: *Comments and submissions on the Discussion Paper should be made publicly available to assist package development.*

4.3. Introduction

The second paragraph in our view incorrectly refers to the final proposal being “informed by comprehensive analyses...of the direct and indirect impacts of the reserves networks on individual fisheries and regions”. The fishing industry, as stated in detail in the 10 September 2012 NSIA submission and associated independent reviews, does not accept this statement. Whilst the ABARES work may identify the “scale of impact” at the fisheries level, the use of GVP is inadequate to assess the direct and indirect impacts at the individual level, which is presumably required to effectively apply the adjustment assistance on a “case by case” basis. Further, industry has specifically, throughout the entire process, advised that its involvement in the ABARES work and the data collected is no sound basis for developing a fair and comprehensive adjustment assistance package.

To get best value for money and to avoid perverse outcomes, MRAG found that assessments should be undertaken by competent professionals with the process and scope agreed through a process involving stakeholder participation. Assessments should be comprehensive, examining both direct and indirect impacts (e.g. level of fishing effort displaced; potential impacts on catching sector businesses remaining in fishery; impacts on fishery related businesses, crew, and affected communities). The outcomes of the assessment should inform the mix and magnitude of assistance measures required.³

Recommendation 3: *Consistent with FAP 2011, any decision on adjustment assistance should only be made after a robust assessment of all the impacts is undertaken.*

Paragraph three indicates that measures will be in place to support fishers directly impacted, yet no definition of “directly impacted” is given. It's not acceptable to confine compensation/adjustment assistance to only rights holders. Any scheme should ensure recompense is available to ameliorate all identified impacts. There are numerous examples highlighting significant social costs and inequities which can result for fishers through declaration of MPAs⁴. There is also a significant body of evidence demonstrating that social impacts associated with their declaration have historically

³ MRAG (2010). Adjustment Assistance for Public Good Marine Conservation: A review of past Australian practice and implications for future measures to offset impacts on the seafood industry.

⁴ King T.J. (2005). Crisis of meanings. Divergent experiences and perceptions of the marine environment in Victoria, Australia. *The Journal of Anthropology*. 16(3): 350365.

been poorly recognised⁵⁶. GBRRAP was a classic example, where initial impacts were significantly underestimated.

Recommendation 4: *As stated in Attachment 1, the industry has a long-held view that both direct and indirect impacts should be addressed.*

The fishing industry strongly supports Government advice, reiterated in paragraph five, that the assistance measures will be in place and flowing before fishers are displaced from the new marine reserves. This has been a consistent position of the fishing industry since the outset (Attachment 1).

Paragraph six identifies that the success of the package is dependent on the support of state and territory governments and fisheries management agencies. The fishing industry strongly contends that the success of the package is also dependent on it too being involved in “developing and delivering the most appropriate assistance for impacted fisheries to adjust”. Government and industry should work together to establish the assistance package(s). It is clear from past experience that it is essential to have transparency and involvement of stakeholders. In relation to any scheme, it is industry that has a deep knowledge of economic drivers. Exclusion of this expertise is likely to inflate the costs of any package. Inequitable and potential undesirable outcomes are more likely if private consultations, inevitably associated with the political process surrounding marine reserve networks, dominate over a clear and transparent process of involvement of the industry as a whole. Paragraph seven recognises the need for and value of ongoing industry involvement, but this seems to be directed at implementation.

Recommendation 5: *As agreed in recent meetings, the fishing industry should be involved, along with experts and others, in effective design and implementation of an assistance package to address the identified impacts, in line with a clear process, yet to be defined, as per Recommendation 1*

4.4. Fisheries Adjustment Assistance Package objectives and design principles

The fishing industry believes that one of the key factors that “typically may be considered” has been overlooked in the Discussion Paper. That is, “any structural adjustment scheme should be designed and implemented such as to avoid the distortion of the orderly operation of the market for fishing access entitlements” (FAP 2011). This is an important factor that should be recognised up front in any adjustment package. Such a consideration would be consistent with FAP 2011, which recognises government commitment to a system of secure and tradable fisheries access entitlements, to encourage capital investment, maximize value from and conserve fisheries resources, and maximise resource stewardship through improved tenure.

⁵ Agardy T., Bridgewater P., Crosby M.P., Day J., Dayton P.K., Kenchington R., Laffoley D., McConney P., Murray P.A., Parks J.E. and Peau L. (2003). Dangerous targets? Unresolved issues and ideological clashes around marine protected areas. *Aquatic Conservation: Marine and Freshwater Ecosystems* 13. 353367

⁶ Jones P. (2006). Collective action problems posed by no-take zones. *Marine Policy* 30: 143156

Recommendation 6: Any adjustment package should explicitly address the need to take into account impacts on fishery asset values, either through a specific component to address this impact, or, less desirably, through direct acknowledgement that other components of the package will be comprehensive and adequate to ensure such impacts do not occur

A new concept, “the ability of fishers to ‘absorb’ impacts” is introduced in the objectives, and detailed and repeated on page six. This shifts the language away from ‘flexibility to respond’, stated in the key factors on page four, and would provide for compensation based not on losses but on a firm’s ability to absorb those losses. This is a shift in language to a welfare based approach and away from a market/business approach. The emphasis should be on the loss actually suffered, which is consistent with the proportionality principle on page five, not on the relative ability of a business to ‘absorb’ a loss. This confusion is absent from the Government’s FAP 2011, which makes the difference clear between losses (negative impacts) suffered by fishers and the welfare issues surrounding the ability of local communities to ‘absorb...’ flow-on negative impacts.

Recommendation 7: To remove confusion about the intent of the package, any reference to fishers “ability to absorb impacts” should be removed from the objectives. Such a notion is inconsistent with FAP 2011, the Ministers’ media release of 14 June 2012 and past practice.

Objectives and Design Principles questions

1. Noting the Fisheries Adjustment Policy are there any alternative or additional objectives that should be considered for the Fisheries Adjustment Assistance Package? Please provide a rationale.

Yes. See Recommendation 7 and Recommendation 10.

2. Are there alternatives or additions to the proposed design principles which should be considered?

Yes.

“Inclusivity” should be added. The package should be comprehensive in the context of offsetting demonstrated impacts. The need for an inclusive approach to dealing with the impacts of MPAs is acknowledged in FAP 2011, which notes it is “intended to address concerns about fairness and equity regarding the impacts on individual fishers and those reliant on the fishing industry”, and is further evident in the policy questions guiding the case-by-case assessment of adjustment assistance under the policy such as: “are there significant and demonstrable negative impacts on local communities where those impacts cannot be readily absorbed?”.

The current “Relevance” principle should be replaced by “Stakeholder Participation”. Affected stakeholders are often well placed to provide advice on effective mitigation strategies and can often assist in delivering best value for money. Likewise, the need to consider fishers’ behaviour in a given fishery is identified as being critical in avoiding unequal and unintended impacts from marine park implementation.⁷ Further, other relevant experts in technical fields such as social science/assessment, community development should be involved in design and implementation.

⁷ Holland, D.S. (2000) A bioeconomic model of marine sanctuaries on Georges Bank. Canadian Journal of Fisheries and Aquatic Sciences. 57: 1307-1319.

“Efficiency” should be deleted, as this principle is captured under the existing proposed “Cost effectiveness” principle.

The “Managed” principle requires amendment. “...including any potential for fraud” needs to be deleted (such issues are covered under “Equity”, eg, transparency etc) and replaced by “...such as upholding integrity of management arrangements”.

“Reasonable flexibility” should be added as a principle. MRAG found that there needs to be a balance in the development of adjustment schemes between providing certainty to affected stakeholders that legitimate impacts will be offset, and providing for sufficient flexibility in the guidelines to allow for ‘unforeseen’ impacts to be addressed and for refinements to the scheme if improvements can be made to more effectively meet the scheme’s objectives.⁸ This is important for development of the national reserves networks, where all possible impacts may not be obvious upfront. Any changes to the scheme should be informed, where possible, by a pre-agreed monitoring and evaluation framework, as discussed further below.

The “Targeted” principle appears to be an attempt at minimising liability, at the cost of fairness and equity considerations and contrary to Government policy. Firstly, nowhere in the document is “direct impact” defined, so it is difficult to know whether this means only displaced fishers, vertically integrated companies/businesses, direct impacts on processors due to reduced supply or any other potential scenario. Secondly, all reference to consideration of “...their ability to adapt to displacement” should be removed from this principle, based on the same rationale as for Recommendation 7 above.

NSIA also suggests “Fairness” be added to the proposed design principles, based on the rationale that this is a key element of the FAP 2011.

4.4.1. Package components under consideration

At face value, the proposed components for the adjustment package appear to be reasonable at addressing the FAP 2011 and subsequent statements from Ministers’ Burke and Ludwig in relation to fishery level impacts of the creation of the new marine reserves. However, in terms of understanding what are “direct impacts” and responding to impacts on vertically integrated businesses, the Discussion Paper is lacking the necessary detail to allow a properly considered response.

Recommendation 8: “Direct impacts” must be defined at future meetings, through industry involvement and expert input, including how vertically integrated businesses will be treated under the package.

⁸ MRAG (2010). Adjustment Assistance for Public Good Marine Conservation: A review of past Australian practice and implications for future measures to offset impacts on the seafood industry.

There are five principal components to adjustment in the discussion paper; the most substantial are transitional business assistance, removal of effort and sectoral measures. Our comments focus on these three key elements.

In relation to the three substantial components of the package, the implementation of these elements does not follow the logical structure suggested by MRAG⁹. Entitlement buyouts and sectoral measures would ideally be considered and resolved before business restructure assistance. The NSIA recognises the government's desire to stick to a tight timetable and that accordingly, the Government has decided to provide transitional business assistance prior to resolution of effects on entitlements from reserves coming into effect. Given this order of the provision of assistance, it is difficult for businesses to assess in advance as to whether a combination of transitional business assistance, removal of effort and sectoral measures will in fact address the impacts of the Commonwealth marine reserves on their businesses. It is important that the government restate its commitments made in the fisheries policy paper and ministerial press releases on the scope and adequacy of adjustment arrangements, consistent with Recommendation 6. This will provide the necessary guidance for the further work that is required at both a policy and implementation level in developing up a suitable overall package.

The NSIA welcomes recent clarifications given about the relationship of the proposed package components in the technical meeting with SEWPAC on 3 October. In particular, it was clarified that individual components are independent of each other and eligibility for one will not affect eligibility for other components of the package.

Recommendation 9: *Government should clearly remove any ambiguity from adjustment assistance documents, making clear that individual package components are independent of each other and eligibility for one will not affect eligibility for other components of the package.*

4.4.2. Transitional business assistance

Presumably on the basis of the design principle cost effectiveness (relating to transaction costs), a broad basis of calculation has been adopted in the discussion paper. Advice in meetings has already been provided by the fishing industry that the use of the term 'profit' is misleading in this context.

In addition, as advised above, it would be preferable if transitional business assistance was resolved after removal of effort was finalised. It is acknowledged that the timetable the government has adopted does not allow for that. In this context, it is fair that fishers receive transitional assistance prior to final resolution of programs for effort removal and sectoral measures.

Questions 3 to 6 in the discussion paper pose specific questions relating to formula including eligibility periods and calculation periods. The diversity of fisheries involved means that any broad measure will be unfair and inequitable for at least some fisheries. It is likely that this diversity will be

⁹ MRAG (2010). Adjustment Assistance for Public Good Marine Conservation: A review of past Australian practice and implications for future measures to offset impacts on the seafood industry.

reflected in individual fisheries' submissions to SEWPAC on the Discussion Paper. It is more important that the mechanisms for resolution of these issues are identified rather than an inflexible formula be adopted. Posing such very specific questions in the context of a paper that is very general in nature reflects the inadequacy of consultation to date.

The use of a formula driven approach needs to take into account the highly variable nature of the fisheries affected and the potential for exceptions to be developed in agreed circumstances. Three possible exceptions that are immediately obvious include:

- highly variable fisheries (i.e recruitment driven or other);
- developing fisheries with increasing values in later years; and
- high margin fisheries for whom the assumed 20% margin would not likely be reasonable.

Recommendation 10: *Any formula driven package component (eg, Transitional Business Assistance) will need to take into account exceptions, and NSIA suggests that a longer potential "qualifying period" should be used.*

Such details should be developed as part of industry and expert involvement at future meetings.

4.4.3. Removal of commercial fishing effort

A set of priorities should be developed, which take into account "percentage affected" as a key factor for priority effort removal. Priority in this context should refer only to timing and not to sufficiency of payment. It would be inequitable for fisheries involved in early round buyouts to be paid in full and fisheries later in the process (if this occurs) to find out that insufficient money is available to pay for adjustment. Any attempt to limit overall payments to a specified budget amount will inevitably lead to potentially inequitable outcomes (Principle 5, Attachment 1).

In relation to question eight, there is a lack of clarity between the role of a technical advisory committee with broader sectoral consultation. There is a specific technical role required in relation to assessment of effort reduction and a broader question of consultation for overall management changes. The first requires a more narrowly defined technical committee albeit with some fisher participation, the second requires a broader stakeholder approach. This broader stakeholder approach would be appropriate for both removal of commercial fishing effort and any restructuring that takes place in the context of sectoral measures (see below).

Some issues that will need to be resolved via technical/expertise based input include:

- how we determine the level of effort/catch reduction required on a fishery by fishery basis from both stock sustainability and economic perspectives;
- how we ensure any effort reduction can be secured (i.e. ensuring that fisheries management arrangements don't allow activation of latent effort if we remove effort as part of the adjustment package); and
- how we support adjustment when fisheries managers indicate the displacement in any given fishery is not of a scale that warrants reductions in catch levels.

4.4.4. Sectoral measures

For effective development of sectoral measures, a broad stakeholder approach should be taken as recommended by MRAG. Both merit and needs should be taken into account in assessing sectoral measures. Merit is an important consideration in encouraging fishers to come up with innovative proposals that generate the greatest benefit at the lowest cost to be government. As noted elsewhere in this submission, a broad stakeholder committee would be required to develop such a set of measures.

It is acknowledged there is a risk of the States/Territory attempting to cost shift to the Commonwealth, but this risk should not be used to justify a greater burden on fishers.

In relation to eligibility for sectoral measures, the diverse nature of fisheries involved makes specific criteria beyond those of merit and needs difficult to determine. In any event the criteria should be kept broad to encourage as innovative an approach by stakeholders as possible. Whereas formula driven approaches (with exceptions provided for) may be appropriate for effort reduction and transitional assistance, it is not appropriate for development of sectoral measures.

The questions in the Discussion paper imply Sectoral Measures are to be an alternative component to other components of the package. NSIA strongly disagrees with this suggestion, which we believe has been clarified (not alternative, but additive to other components – Recommendation 9) at the 3 and 10 October 2012 meetings.

What criteria should be considered to determine which fisheries are eligible for sectoral measures?

This development of such criteria needs further discussion with the industry and expert based working group.

What criteria should be considered to ensure that the greatest funding is available for those fisheries facing the greater needs or which have developed expenditure proposals with the greatest merit for public funding (or both)?

To identify the appropriate criteria further discussion and development with the involvement of industry and expert based working group.

4.4.5. Business advice assistance and Assistance for employees

It is presumed that business assistance advice and assistance for employees are relatively uncontroversial and, although requiring some further work, will be resolved at a later meeting. For example, the business advice assistance might allow fishers to group their assistance payments in order to achieve the most effective and efficient outcomes under this component of the package.

In relation to the question “What benefit would there be in extending the provision of business advice to directly impacted fishers ineligible for the effort removal component of the package?”. Firstly, it is unclear why effort removal would not be addressed if there are direct impacts (noting some input controlled fisheries may fit this category). Secondly, there may be a range of benefits,

from helping the operator or group of operators seek guidance on Sectoral Measures proposals, to legal advice about the process, appeals options etc.

4.4.6. Appeals

As previously stated in prior submissions, NSIA strongly believes that as part of the legal duty to act fairly, merit appeal rights must be an inherent part of any policy.

Clear schemes should be set up, access to the Administrative Appeals Tribunal should be preserved, and no attempt made to forestall the ability of a merit based review. It is believed that with a well-designed scheme, merit appeals are a lot less likely to happen/be successful compared to a departmental process for example. A two tiered approach could be adopted to try and resolve issues at “least cost” in the first instance. SEWPAC (or preferably independent body) could be tasked with internal review in the first instance, which might enable them to eliminate obvious anomalies or resolve issues. The final appeal rights on the merits would then be through the AAT.

As a matter of good public policy privative clauses should be avoided. Given the High Court’s dim view of privative clauses in *Kirk v Industrial Relations Commission* [2010] HCA 1 (3 February 2010), such an approach should not be pursued. As noted above careful design, with the transparent involvement of industry expertise will lead to superior outcomes.

Recommendation 11: Any appeal mechanisms must provide for a genuine merit based review

5. Other matters relevant to package development

5.1. Exclusion of related industries – upstream and downstream impacts

The exclusion of businesses elsewhere in the fishing industry value chain is unjust, and is not consistent with the policy statements (FAP 2011):

“Any decision on whether adjustment assistance will be provided to fishers or fishing dependent communities as a result of an MPA declaration or re-zoning will be made on a case by case basis. The decision will be made only after an assessment of all the impacts is undertaken.” and

“...intended to address concerns about fairness and equity regarding the impacts on individual fishers and those reliant on the fishing industry.”

The statement in the Discussion paper (page 4) that “Such businesses have a demonstrated capacity to adjust to changing market conditions without government intervention” is somewhat astounding. How this statement could be applied to businesses in local communities having little diversification in their economies, reduced socio-economic opportunities, or no short-term offsetting of impacts through benefits (as per FAP 2011) is highly questionable.

As stated above, we contend, based on the findings of independent advice, that the Government has not fulfilled its commitment to undertaking an assessment of impacts to allow reasonable case by case assessment of impacts on the fishing industry, fishing related businesses and communities to be made. It is not for NSIA to speak on behalf of other industries (eg boat repairs, seafood processing). That said, the Discussion Paper clearly fails to address the impacts on communities. Those affected by the marine reserves will apparently need to pursue their claims through other mechanisms outside this package and accordingly those impacts are not specifically addressed in NSIA submission.

However, we would like to make clear our disagreement with the Government’s decision to exclude them from the current process.

Recommendation 12: *To meet the Government’s own policies in relation to fairness and equity, negative economic impacts on both fishers and “those reliant on the fishing industry” must be assessed and included in calculations for adjustment assistance, whether within the proposed fisheries adjustment package, or other Government programs.*

5.2. Special circumstances, including Prospectivity considerations

Currently, there is no special circumstances category for businesses that can demonstrate a significant impact but fall outside the “guidelines”. This is critical, to ensure flexibility, fairness and equity principles (among others) are met.

NSIA strongly believes that prospectivity must remain open as a potential impact for assessment and adjustment assistance. Industry is commissioning a report, to provide specific examples and methodology for assessment of prospectivity impacts.

5.3. Monitoring and Evaluation

NSIA believes that this is a very important component of a national adjustment assistance package, especially considering that various components will likely need to be designed to address specific issues at the regional level. An appropriate monitoring and evaluation framework will help to ensure the package is meeting its defined objectives, and could be used to make any necessary adjustments as the package is rolled out.

5.4. Stakeholder/technical Steering Committee

As stated in Section 3, in developing and finalising adjustment assistance package guidelines, and equally importantly in bedding down the detail and implementation aspects of any package, the fishing industry has a strong expectation that the principle of involvement of the fishing industry and other experts, with reasonable and clear timelines and due process, will be adhered to.

MRAG found that participation of stakeholder groups affected by the rezoning (or their representatives), as well as technical experts in relevant fields (e.g. fisheries management in jurisdictions affected, social impact assessment, community development), is critical in the design and implementation of adjustment assistance schemes.¹⁰ This ensures appropriate knowledge, data and expertise is at the table, assists with meeting transparency and maintaining support and ultimately is most likely to help structure the package to ensure most effective delivery.

5.5. Communication

An effective communication strategy should be developed to ensure, among other things, stakeholders understand the package details, requirements, where information and assistance can be sourced and timing and process issues.

¹⁰ MRAG (2010). Adjustment Assistance for Public Good Marine Conservation: A review of past Australian practice and implications for future measures to offset impacts on the seafood industry.

Fishing industry summary - framework for an appropriate Adjustment Assistance Package

The first principle of adjustment assistance that was provided to Government in development of the displaced activity policy, and then again many times during the process of consultation on the reserves was:

- *Comprehensive socio-economic impact assessment is undertaken prior to the declaration of marine reserve networks to assist in informing the design and implementation of any adjustment assistance package.*

This was not undertaken (or not publicly advised if there has been something undertaken) and has created much concern within the fishing industry, associated industries, and local communities. It requires urgent redressing by formulating an appropriate, effective framework for adjustment assistance that is clear to all who are likely to be impacted.

NSIA believe the following principles are critical elements of a framework for an Adjustment Assistance package.

- 1. That no reserves will come into effect until adjustment assistance is in place and provided to those impacted.**

Media release 14 June 2012 from Minister Burke and Minister Ludwig states that "...Government and industry will work together to establish an assistance package. I want to make it clear that reserves will not come into effect until industry assistance is in place and flowing," Minister Burke said..."

- 2. Adjustment assistance that identifies and accounts for:**

- **Restrictions on fishing activities** from the declaration, zoning and management of marine reserve networks (eg a multiplier on lost income per annum; effective cover for lost asset value and factor for lost opportunities);
- **Impacts:**
 - **On individual fishers, integrated fishing businesses, fishing concession holders** (for example to cover direct loss of value of fishing rights/licenses/permits and assets including at sea, on shore, and future prospectivity)
 - **At the fishery level** where there are significant impacts on economic returns or the sustainability of the fishery
 - **On fisheries management** including adjustment to effort and fishers behaviour/catch/costs and impacts on overall fishery levy distribution for operators (eg less operators, same levy charge).
 - **On scientific information and programs** necessarily changed as a result of shifts in fishers' behaviour, possible loss of access into marine reserves (eg for surveys, steaming etc) and catch trends: impacts on stock assessment

assumptions, indicators such as CPUE, RBC outcomes, MEY calculations etc which will require additional research funding and support for scientific investigation

- **On local communities.**

3. The adjustment scheme should include all those impacted in the industry and broader - direct and indirect impacts must be taken into account.

It's not acceptable to confine compensation/adjustment assistance to only rights holders. Any scheme should ensure recompense is available to ameliorate all identified impacts.

4. Adjustment assistance to be considered on a case by case basis.

Legal rights to compensation must be met, however, impacts that extend beyond this must also be addressed. Flexibility is required to develop appropriate programs.

5. Adjustment assistance should not be “capped”, either at the scheme level or for individual claims.

Compensation costs should “be what they are”, based on identified socio-economic impacts and within agreed guidelines.

6. An independent advisory group should be created to recommend appropriate adjustment assistance levels.

This puts the Minister and Department at arms-length from the process and avoids allegations of bias being levelled at government.

7. Merit appeal rights must be an integral part of any policy.

A two tiered approach could be adopted to try and resolve issues at “least cost” in the first instance.