

REPORT ON IN CAMERA PROCEEDINGS BEFORE

GENERAL PURPOSE STANDING COMMITTEE NO. 5

COMMERCIAL FISHING IN NEW SOUTH WALES

CORRECTED PROOF

At Jubilee Room, Parliament House, Sydney on Wednesday, 14 December 2016

The Committee met at 9:45 am

PRESENT

The Hon. R. Brown (Chair)

The Hon. R. Colless

The Hon. S. Farlow

Mr J. Field

The Hon. J. Graham

The Hon. G. Pearce

The Hon. M Veitch

MR DENNIS BROWN:

The CHAIR: Mr Brown, the Committee has resolved that it will take a portion of your evidence in camera. That means that any evidence or any recording of evidence will not be published unless you deem that you wish part of it to be made public. The Committee will send you the transcript of this part of your evidence held separately so that you can review what you said. The Committee will get your views if you want it to remain confidential or you want some, none or any of it published or portions redacted.

Mr BROWN: In terms of general issues, one thing I would like to raise is what is happening in terms of the future with NSW Fisheries and how we move forward in resource sharing with other jurisdictions. New South Wales has made serious efforts to open negotiations with the Commonwealth about renegotiating the Offshore Constitutional Settlement [OCS] agreements.

The CHAIR: Do they have anything to do with the recently failed High Court case brought by abalone fishers on the south coast?

Mr BROWN: No. New South Wales and Queensland entered into OCS agreements with the Commonwealth in 1990. Tasmania, Victoria and South Australia—and I am not 100 per cent sure about the dates for the Western Australia one—were done on block in 1995. Their type of OCS is very different to the ones that Queensland and New South Wales achieved. Our trap and line fishery here in New South Wales was extended out to 4,000 metre isobath but it did not do much about describing fish. It covered the super species of pisces but I happen to be one of the two Commonwealth endorsed trap fishermen. Even though we have got an OCS that says that the State controls out to the 4,000 metre isobath, about 80 nautical miles out, I can operate outside three miles.

The CHAIR: The isobath is a contour line or a depth line?

Mr BROWN: That is correct, but it is roughly 80 nautical miles out to sea. It is just inside the sea mounts that are offshore. For some species the super species of pisces description does not cover everything sadly. There are a number of species which are not covered by that and consequently for those species I can operate into three nautical miles. The trawl fishery has been a real bugbear for both the Commonwealth and the State in terms of managing some of the species in the trawl fishery and it is a very high priority for both the Commonwealth and the State to try to deal with. My understanding is that the State is waiting on the Commonwealth to identify the terms of reference we will be entering into in these negotiations.

I am sorry, but if our State is going to allow the Commonwealth to tell us what it will negotiate on we are not worth being here, guys. There are a number of issues that need to be dealt with upfront. I mentioned sequential criteria earlier. One of the things that I was responsible for back in 1985 was identifying to the Commonwealth that it had no right to continue to provide sequential entry criteria as it was trying to manage some of its resources. The trawl fishery was done in 1985 but it was only around 1990 to 1995 that it started doing things for the non-trawl fishery in Commonwealth waters which was catching the same species.

We had people who sold out their trawl endorsements as management came into trawl and they then went and put lines or traps on and went and caught the same darn fish. Then when we started to get into management further down the track they insisted that now that you were going to manage how you caught them by hooks they had to have a right of entry. They were double dipping. Others were being limited in what they could do in terms of the share of the resource by being stuck with a more recent criteria period where there was less stock because the stock had been knocked down.

I was responsible for identifying that every operator had the right to be assessed under a common entry criteria period. And in some cases when we are doing these OCS's and when you start talking about resource sharing we are not talking about the equity of resource sharing in 2017, we are talking in many cases about the relative equity going back to the Commonwealth entitlements of 1985. So our blue eyed share is not what we are catching today with a much depleted resource, our relative equity share is what our people in our industry were catching back in 1985. We need to be sure as a State that we write that into, and we commit to it, in getting that into the negotiation phase.

The other issue is in terms of ensuring that where we have historical dual endorsement holders, where we have activities that take place in State entitlement and a similar activity in Commonwealth entitlement that our relative share of access to the resource is transferable between the jurisdictions because the fish do not know about this three-mile line; they move across it. In my operations and those of my business partner down at Eden in the pelagic fish processes operation the State entitlement and the Commonwealth entitlement are two totally separate things and where that occurs in most cases in the Commonwealth if you fish in State waters you must come in and unload and then go out and you can fish in Commonwealth waters. They did that to make the process identifiable where people might do the wrong thing, and which entitlement you were working under?

Because of our historical activity in that fishery we were one of the very few operators that were given the right to cross over the lines and we came to an arrangement where if we caught fish in State waters that would be put into a separate hold, and we would identify what was there before we cross over the line, and then we could go out. Otherwise we would be steaming backwards and forwards on an hourly basis. Fish are where you find them. Our fish were migrating out of State waters into Commonwealth waters every morning and coming back every night. It was a nightmare. It was not practical.

From our perspective we got a practical outcome. In the longer term of working out how a business remains viable in this adjustment process we must move forward to something that allows catching entitlements to be transferable across the jurisdictions, otherwise people are not going to be able to survive. One of the things I put forward to the purse seine interim total commercial access level group was that at the present time the value of the Commonwealth quota, which is a large entitlement, is around \$1 per kilo to buy. In the fresh fish market it varies in value between \$3 and \$5. It averages closer to the \$3 mark.

That is not bad if you are going to buy it at a dollar and you can lease it for 10¢. I suggested to the New South Wales department that the amount of fish that we are likely to get as our State resource share, based on our historical catch, is going to be fairly small compared to what people are individually catching. We have a lot of small stakeholders in the fishery who are catching way above their relative resource share based on their shareholding. There are not many shares to trade, there are only 16 stakeholders.

The CHAIR: Is that State off-shore trap and line?

Mr BROWN: No. That is the State purse seine fishery, there are only 16 operators. We need to be a little bit constructive in the way we are going to provide for those people. One of the suggestions is that we identify that there will be transferability across the line between State and Commonwealth and those people can set about over time acquiring Commonwealth entitlement to make up for what they are not going to get from the State.

The CHAIR: Of the 16 purse seine operators how many hold dual entitlements?

Mr BROWN: Only a couple at the present time. If you were going to allow the transferability in the future that is the only way forward to remain economically viable. A lot of them are only minimum 40 share entitlements and they are entitled to 60 tonne a year of combined species.

The Hon. RICK COLLESS: Where do they operate from?

Mr BROWN: Wollongong, Ulladulla or Eden. There are some in the far North Coast in the Clarence area. Mostly from Wollongong, Ulladulla and Eden, with most of the catch coming between Wollongong and Ulladulla. It goes to Sydney and Melbourne markets.

Mr JUSTIN FIELD: Because there are so few fishermen to have the minimum shareholding they require will not give them the entitlement to catch what they are currently catching and there are not enough shares out there to purchase more to get up to the level of catch they are currently catching?

Mr BROWN: Yes, that is correct.

Mr JUSTIN FIELD: I asked questions of the department about this and they indicated that they would, on a business to business level, look at dealing with how they would manage that. They thought there would be so few fishermen effected in that way, that could not access the shares to reach their catch levels. Have you heard anything like that?

Mr BROWN: No. My very clear perception of that is that there is no mechanism within the purse seine fishery to do that. The shares are not being traded. The spread of shareholding is pretty horrendous. It is going to be the subject of legal action. The future for the small holders, in terms of what their likely actual entitlement is going to be down the track is going to be quite small. The problem is, as I indicated before, that the ocean haul fishery which purse seine is part of, argue very strongly to have shares allocated based on catch during the criteria period, 86 to 90, which is when the fisheries were dealt with in the share process. The then director of fisheries restricted the maximum shareholding to 500 shares for an individual. The largest operator in that fishery was catching 1,000 tonne a year and his share entitlement would have been something like 2,500 shares. His business, once we get down to this process, is bankrupt overnight. This was a very unusual situation by the then director, Mr Dunn.

The CHAIR: Steve Dunn?

Mr BROWN: Yes. The end result is we have been hanging off where we go with this to see what sort of an allocation process they come up with. With such a large shareholding going to one operator, roughly half of the fishery, it relates to two species of fish, not across the board of all the five or so.

The Hon. RICK COLLESS: What are the two species?

Mr BROWN: They are salmon and sardines. There are only four people in the State that catch any quantity of sardines and only one purse seiner that catches any salmon. Every year he has caught between 700 up to 1,000 tonne.

The CHAIR: They lock the doors at six.

Mr BROWN: That is the not real issue I wanted to talk about.

The CHAIR: If you want to give us a written submission, it will be treated in exactly the same fashion as an in camera hearing. It will be kept in confidence and the same rules would apply. The Committee would look at it and go back to see whether you want any parts to be made public and if it contains explosive information we would not suggest that be made public. Could I ask you to take that as a question on notice that you give us that additional evidence?

Mr BROWN: Yes.

Mr CHAIR: Yours has been a technical presentation with a huge amount of information. There will be questions.

Mr BROWN: I welcome them. Anything I can do to try and help you guys come to grips with what the real problems are in this I am prepared to do.

The CHAIR: We will write to you with questions on notice and if you could provide that supplementary submission the secretariat will give you the details as to how to send it to us. We will treat it as confidential. Thank you very much for taking the time to come up today and be away from your business. With so long in the industry and having been involved previously with so many issues in the Commonwealth and State we might be able to milk you dry.

Mr BROWN: Could I make a short closing statement?

The CHAIR: Provided it is only three minutes long.

The CHAIR: I am going to have to stop you there.

Mr BROWN: I will put that all in it too.

The CHAIR: Thank you. That will be treated in confidence.

Mr BROWN: Thank you for the opportunity to talk to you. I will do my best to answer any questions.

(The witness withdrew)

(Conclusion of evidence in camera)

(The Committee adjourned at 18:00)