

The Tribunal notes that:

- (a) On 21 December 2006, the then Minister for the Environment and Heritage declared the operations for the harvesting of certain specimens that are, or are derived from, fish or invertebrates taken in the Southern and Eastern Scalefish and Shark Fishery (as defined in the *Southern and Eastern Scalefish and Shark Management Plan 2003* made under the *Fisheries Management Act 1991*) to be an approved wildlife trade operation in accordance with s 303FN(2) of the *Environment Protection and Biodiversity Conservation Act 1999* ("the EPBC Act") (the "decision under review"). [*Commonwealth of Australia Gazette* No. S 237, 22 December 2006.]
- (b) Pursuant to s 303FT(4)(c) of the EPBC Act, the decision under review was made subject to conditions contained in the Schedule to that decision.
- (c) On 12 December 2007, a delegate of the Minister for the Environment, Heritage and the Arts, acting pursuant to s 303FT(7) of the EPBC Act, varied the decision under review by substituting an amended Schedule of conditions. [*Commonwealth of Australia Gazette* No. GN 50, 19 December 2007, pages 3595-3596.]

Pursuant to subsection 34D(2) of the *Administrative Appeals Tribunal Act 1975*, the Tribunal decides that:

1. The decision under review is varied by adding the following conditions to the Schedule to that decision:

Eastern Gemfish

Condition 7:

AFMA to:

- (1) investigate and report back to the DEWHA by 30 June 2008 on methods of reducing the capture and subsequent discard of the juvenile eastern gemfish within the Commonwealth Trawl Sector, including particular consideration of gear modifications and spatial closures, and review the utility of bycatch quotas; and
- (2) implement by 1 May 2009 effective measures identified in paragraph (1) to ensure the take of juvenile eastern gemfish is not impeding the rebuilding of the stock.

Australian sea lions

Condition 8:

AFMA, after considering advice from relevant experts, to develop and implement management measures, including fishery closures, that take account of site-specific issues and which seek to minimise

the risks of interaction between fisheries regulated by AFMA and sea lions by 21 December 2009.

Seabirds

Condition 9:

AFMA to:

- (1) investigate and report back to DEWHA by 31 December 2008 on the extent and nature of seabird interactions in the trawl sectors of the SESSF and effective mitigation measures, including offal management;
- (2) in accordance with the findings of the report required by paragraph (1), develop and implement effective seabird mitigation measures to minimise interactions in the trawl sectors of the SESSF by 30 June 2009; and
- (3) operate the SESSF in accordance with the *2006 Threat Abatement Plan for the incidental catch (or bycatch) of seabirds during oceanic longline fishing operations*.

Observers

Condition 10:

By 31 December 2008, AFMA to ensure statistically robust levels of ongoing observer effort (or other reliable method) to validate the nature and level of interactions by area, season and fishery for all bycatch species that are identified as high risk through ecological risk assessment processes.

Harrisson's dogfish

Condition 11:

AFMA to:

- (1) investigate and report back to DEWHA by 31 December 2008 on the extent and nature of Harrisson's dogfish interactions in all sectors of the SESSF; and
- (2) in accordance with the findings of the report required by paragraph (1) develop and implement effective mitigation measures including consideration of additional closures, to minimise interactions with each sector of the SESSF by 30 June 2009.

[sgd]
Ms G Ettiner
Senior Member

