



Western Tuna and Billfish Fishery Management Plan 2005

as amended

made under section 17 of the

Fisheries Management Act 1991

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Management Plan Amendment 2006 (No. 1)*

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Section 1

Part 1 Preliminary**1 Name of Management Plan**

This Management Plan is the *Western Tuna and Billfish Fishery Management Plan 2005*.

Note This Management Plan, made under the *Fisheries Management Act 1991*, manages only commercial fishing for tuna and billfish species in the fishery. However, the Plan requires the take of these species by other users of the fishery, such as recreational fishers, to also be taken into account. There are a number of groups with an interest in the fishery and, under the Plan, their views must be considered when setting the total allowable commercial catch.

2 Commencement

This Management Plan commences on the day after it is registered.

3 Definitions

In this Management Plan:

Act means the *Fisheries Management Act 1991*.

advisory committee means:

- (a) the Western Tuna and Billfish Fishery Management Advisory Committee; or
- (b) if another committee of a kind mentioned in section 56 of the *Fisheries Administration Act 1991* is established by AFMA under section 54 of that Act to advise AFMA about the fishery — that committee.

approved form means the form approved by AFMA for the section in which the term is used.

area of the fishery means:

- (a) for an Australian boat — the areas described in clauses 1, 2 and 3 of Schedule 1; and
- (b) in any other case — the areas described in clauses 1 and 2 of Schedule 1.

boat SFR means an SFR that is made available under section 24.

by-catch means marine life that is:

- (a) taken in the fishery and returned to the sea for any reason; or
- (b) affected by interacting with fishing equipment in the fishery, but not taken.

by-catch action plan means the plan mentioned in section 9.

certificate, for an SFR, means a certificate given under subsection 22 (2) of the Act as evidence of the grant of the SFR.

commencement day means the day on which this Management Plan commences.

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eligible person means a person who is registered as an eligible person for a grant of an SFR under section 26 of the Act.

EPBC Act means the *Environment Protection and Biodiversity Conservation Act 1999*.

fishery means the Western Tuna and Billfish Fishery.

fishing season has the meaning given in the WTBF Regulations.

holder, at a particular time, means:

- (a) in relation to an SFR — the person that holds the right at that time because:
 - (i) the person is the owner of the right and has not leased the right to another person under section 37; or
 - (ii) the person has, under section 37, leased the right from another person and not further leased the right under that section; and
- (b) in relation to a fishing permit:
 - (i) the person who is granted the permit under section 32 of the Act; or
 - (ii) if the permit has been transferred under subsection 32 (10) of the Act — the most recent transferee of the permit; and
- (c) in relation to a scientific permit — the person who is granted the permit under section 33 of the Act.

IOTC means the Indian Ocean Tuna Commission set up by the Agreement for the Establishment of the Indian Ocean Tuna Commission done at Rome on 25 November 1993.

lease, of an SFR, means a lease of a kind mentioned in section 37.

nominated boat, for an SFR, means a boat the details of which are entered in the Register, under section 45 of the Act, as the nominated boat for the SFR.

non-quota species means:

- (a) a primary species other than a quota species; and
- (b) a secondary species.

observer means a person who is authorised by AFMA to carry out the functions of an observer under this Management Plan.

owner, in relation to an SFR, means:

- (a) the person who is granted the right under section 31 of the Act; or
- (b) if the right has been transferred under section 35 of this Management Plan — the most recent transferee of the right under that section.

primary species means a species of fish mentioned in Part 1 of Schedule 2.

quota, for an SFR and a quota species, means the weight of fish of that species that may be taken, in a fishing season, under the SFR.

quota SFR means an SFR that authorises the holder to take a particular quota species.

quota species means a primary species that is subject to a quota.

reference point has the same meaning as it has in the Fish Stocks Agreement.

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secondary species means a species of fish mentioned in Part 2 of Schedule 2.

SFR, or *statutory fishing right*, means a statutory fishing right granted under this Management Plan.

TACC, or *total allowable commercial catch*, for a quota species and a fishing season, means the total weight of fish of that species that, under this Management Plan, may be taken during that season.

Western Tuna and Billfish Fishery means fishing for fish of primary species, secondary species or both, in the area of the fishery.

WTBF Regulations means the *Fisheries Management (Western Tuna and Billfish Fishery) Regulations 2006*.

Note Unless otherwise stated, a term used in this Management Plan and in the Act has the same meaning in this Management Plan as it has in the Act. The following terms are defined in subsection 4 (1) of the Act:

- AFMA
- AFZ
- Australian boat
- charter boat
- fish
- fishing
- fishing permit
- Fish Stocks Agreement
- officer
- precautionary principle
- Register
- scientific permit
- take.

4 Origin of geographical coordinates

If, for the purposes of this Management Plan, it is necessary to determine the position on the surface of the earth of a point, line or area, that position is to be determined by reference to the Geocentric Datum of Australia (GDA) as defined in the *Gazette* No. GN35, 6 September 1995.

5 Objectives (Act s 17 (5))

The objectives of this Management Plan, and the objectives for AFMA to pursue when it is administering the Plan, are as follows:

- (a) to manage the fishery efficiently and cost-effectively for the Commonwealth;
- (b) to ensure that the exploitation of the resources of the fishery and the carrying on of any related activities are conducted in a manner consistent with the principles of ecologically sustainable development and the exercise of the precautionary principle, and in particular, the need to have regard to the impact of fishing activities on by-catch species and the long-term sustainability of the marine environment;
- (c) to maximise economic efficiency in the exploitation of the resources of the fishery;

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- (d) to ensure AFMA's accountability to the fishing industry and to the Australian community in managing the resources of the fishery;
- (e) to reach Government targets for the recovery of the costs of AFMA in relation to the fishery;
- (f) to ensure that conservation and management measures taken in relation to the fishery implement Australia's obligations under relevant international agreements.

**6 Measures by which the objectives are to be attained
(Act s 17 (5))**

The measures by which the objectives of this Management Plan are to be attained include the following:

- (a) providing the services needed to manage the fishery, including:
 - (i) data collection, research and consultation; and
 - (ii) services to ensure compliance with the Plan;
- (b) annually evaluating and, if necessary, revising the range, extent and cost of the services mentioned in paragraph (a);
- (c) in the first year of the Management Plan, developing and implementing a data plan to collect, verify, analyse and manage data that is related to the management of the fishery, including data about:
 - (i) the catch and the effort required to achieve the catch; and
 - (ii) the biological and ecological state of the fishery; and
 - (iii) the technical and economic issues related to fishing in the fishery;
- (d) publishing and biennially reviewing the data plan mentioned in paragraph (c);
- (e) if relevant information about the fishery is received — reviewing ecological risk assessments of marine communities, primary species and secondary species to determine the risk to the maintenance of an ecologically sustainable fishery;
- (f) developing, in cooperation with stakeholders, a plan to strategically address any high risks identified during an ecological risk assessment;
- (g) setting catch limits, or designing other measures, for species of fish that are managed under State or Territory law;
- (h) periodically taking into account the impact of the fishery on primary species, secondary species, by-catch species and ecologically-related species, and the marine environment:
 - (i) reviewing and, if necessary, improving the reference points for stocks of primary species and secondary species; and
 - (ii) determining the status of stocks in relation to the reference points for the stocks, by conducting stock assessments, risk assessments or both; and
 - (iii) developing, publishing and applying decision rules for setting the TACC and any other related management decisions; and
 - (iv) reviewing, evaluating and, if necessary, improving the decision rules mentioned in subparagraph (iii); and

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- (v) implementing, reviewing and, if necessary, updating the by-catch action plan and any other action plans;
- (i) setting the TACC for each year that is needed to manage the fishery in an ecologically sustainable manner, based on:
 - (i) information given by the advisory committee and other interested Australian and international bodies; and
 - (ii) the total estimated catch by the commercial, recreational, indigenous and any other users of the fishery; and
 - (iii) information about the sustainability of marine species in the area of the fishery; and
 - (iv) the reference points set for the stocks of any quota species; and
 - (v) any decision rule used for the setting of the TACC; and
 - (vi) the precautionary principle; and
 - (vii) any decision made by the Minister or an intergovernmental Ministerial Council about resource sharing in the fishery;
- (j) granting quota SFRs (and, for a period, boat SFRs) to eligible persons;
- (k) in relation to a primary species that is not a quota species, annually determining whether the species should be subject to a quota, and if it should, commencing the process to make the species subject to a quota;
- (l) setting up a research program to support the management of the fishery during the first year of the Management Plan, annually reviewing the program and, if necessary, improving the program;
- (m) on commencement of the Management Plan, implementing a risk-based compliance program and a catch monitoring program for the fishery;
- (n) periodically reviewing and, if necessary, improving the programs mentioned in paragraph (m);
- (o) each fishing season, evaluating the methods used to monitor compliance with the Management Plan and, if necessary, improving the methods;
- (p) within the first 18 months of the Management Plan, developing and implementing a communication plan for the fishery, providing for the publication of regular reports about the status of stocks and the management of the fishery;
- (q) in accordance with the government's cost recovery policy, preparing annual budgets and recommending levies to recover the costs of management that are attributable to the fishing industry;
- (r) managing the fishery in a way that is compatible with Australia's international obligations;
- (s) at least every 5 years, reviewing the Management Plan and, if necessary, amending the Plan to improve management of the fishery.

7 Performance criteria against which measures taken may be assessed (Act s 17 (5))

- (1) The performance criteria against which the measures taken may be assessed are the following:

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- (a) that the range and cost of AFMA's services in the fishery are reviewed annually and:
 - (i) the review is published; and
 - (ii) the management of the fishery has been carried out cost-effectively;
- (b) that the method used to collect data is published in accordance with the data plan;
- (c) that data is collected, analysed and used in accordance with the data plan;
- (d) that the data plan is reviewed, and, if necessary, improved;
- (e) that the necessary stock assessments or risk assessments, or both, are carried out for primary species, secondary species, by-catch species and ecologically-related species affected by fishing;
- (f) that the following are published, reviewed, evaluated and, if necessary, improved:
 - (i) decision rules for setting the TACC and any other related management decisions;
 - (ii) the by-catch action plan and any other action plan;
- (g) that reference points are established for quota species, and monitored, reviewed and, if appropriate, improved;
- (h) that the status of stocks is assessed in relation to the reference points for those stocks, and, if a risk to the sustainability of a species is discovered, steps are taken to manage those risks;
- (i) that, each fishing season, the TACC is set for each quota species;
- (j) that SFRs for each quota species are granted to eligible persons;
- (k) that the research program mentioned in paragraph 6 (l) is operating, and information about the program is published;
- (l) that the compliance program and catch monitoring program mentioned in paragraph 6 (m) are implemented, reviewed periodically and, if necessary, improved;
- (m) that, subject to the provisions relating to overcatch and undercatch, the TACCs for each species are not exceeded;
- (n) that the fishery is managed in a way that is compatible with relevant decisions of the IOTC and other relevant international agreements;
- (o) that the economic efficiency of the fishery is assessed periodically using relevant information;
- (p) that any changes to the management of the fishery are assessed in relation to their likely effect on the economic efficiency of the fishery;
- (q) that the public and the fishing industry are, in accordance with the communication plan mentioned in paragraph 6 (p), given information about the management of the fishery;
- (r) that the costs of the management of the fishery that are attributable to the fishing industry are recovered.

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- (2) AFMA must, at least once every 5 years after the commencement day, assess the effectiveness of this Management Plan, including the measures taken to achieve the objectives of this Management Plan, by:
- (a) reference to the performance criteria mentioned in subsection (1); and
 - (b) taking into account the advice of the advisory committee.

8 Persons to whom this Management Plan does not apply

This Management Plan does not apply to a person who:

- (a) is engaged in recreational fishing (whether from a charter boat or otherwise); or
- (b) is fishing in the AFZ in accordance with an agreement between the Commonwealth and the government of a foreign country; or
- (c) is fishing from a foreign boat outside the AFZ.

Part 2 Specific ecosystem requirements

9 **By-catch (Act s 17 (6D))**

- (1) AFMA must prepare and implement a by-catch action plan, or by-catch action plans, for the fishery.
- (2) AFMA must review each by-catch action plan at least once every second year, while it is in force.
- (3) A by-catch action plan must require action to ensure that:
 - (a) information is gathered about the impact of the fishery on by-catch species; and
 - (b) all reasonable steps are taken to minimise interactions with seabirds, marine reptiles, marine mammals and fish of a kind mentioned in sections 15 and 15A of the Act; and
 - (c) the ecological impacts of fishing operations on habitats in the area of the fishery are minimised and kept at an acceptable level; and
 - (d) by-catch is reduced to, or kept at, a minimum, and below a level that might threaten by-catch species.
- (4) In developing a by-catch action plan, AFMA must take into account:
 - (a) the protection given to whales and other cetaceans under Division 3 of Part 13 of the EPBC Act; and
 - (b) the requirements under the EPBC Act for the protection of:
 - (i) listed threatened species; and
 - (ii) listed threatened ecological communities; and
 - (iii) listed migratory species; and
 - (iv) listed marine species;within the meanings given in that Act.
- (5) If information gathered under a by-catch action plan shows it is necessary to do so, AFMA must consider making appropriate amendments to this Management Plan or changes to the conditions imposed on the holders of fishing concessions.

10 **Reference points (Act s 17 (5C))**

- (1) This section sets out provisional reference points for primary species and secondary species.
- (2) Within 12 months after the commencement day, AFMA must:
 - (a) collate all available information about the stocks of fish of the key species in the fishery; and
 - (b) assess the risks to the ecological sustainability of those stocks; and

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- (c) unless it sets precautionary limits or target reference points at the end of that 12 months — not increase the TACC for that species.
- (3) Within 24 months after the commencement day, AFMA must:
 - (a) carry out an assessment of the risk to the ecological sustainability of the primary species and secondary species posed by fishing in the fishery; and
 - (b) establish precautionary limits or target reference points for those species.
- (4) If no reference points are set, AFMA must set precautionary limits on the catch.
- (5) In this section:
key species means any of the following primary species:
 - (a) bigeye tuna (*Thunnus obesus*);
 - (b) broadbill swordfish (*Xiphias gladius*);
 - (c) striped marlin (*Tetrapturus audax*);
 - (d) yellowfin tuna (*Thunnus albacares*).

Note 1 Subsection 17 (5C) of the Act provides that a plan of management for a fishery affecting straddling fish stocks, highly migratory fish stocks or ecologically related fish stocks (within the meaning of the Fish Stocks Agreement) must set out stock-specific reference points (within the meaning of that Agreement) for the stocks. Information to determine reference points is currently poor, and, until reliable information is available, provisional reference points are being used. When improved monitoring yields more accurate information, the provisional reference points will be revised.

Note 2 Other ecosystem requirements in this Management Plan are included in section 38 (Obligations of holders of SFRs) and section 39 (Obligations relating to interactions with certain species and communities).

11 AFMA to determine TACC (Act s 17 (6))

- (1) AFMA must, before the start of each fishing season, determine the TACC for each quota species for the season, and during the course of the season, must determine:
 - (a) the determined weight or the determined percentage (or both) for the purposes of section 18; and
 - (b) the determined percentage for the purposes of section 19.
- (2) Before determining any of the matters referred to in subsection (1), AFMA must consider:
 - (a) information given by the advisory committee, other interested Australian and international bodies and other interested persons; and
 - (b) the total estimated catch by the commercial, recreational, indigenous and any other users of the fishery; and
 - (c) information about the sustainability of marine species in the area of the fishery; and
 - (d) the reference points set for the stocks of quota species; and
 - (e) the precautionary principle; and

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- (f) any decision made by the Minister or an intergovernmental Ministerial Council about resource sharing in the fishery; and
 - (g) any decision rule used for setting the TACC; and
 - (h) the likely effect, for the fishing season, of any overcatch permitted under section 18.
- (3) A determination of a TACC must specify the TACC, expressed as:
- (a) whole weight; or
 - (b) another weight, as specified in the determination.
- (4) If a determination of a TACC for a quota species and a fishing season is revoked or disallowed, the TACC for that species for the immediately preceding fishing season is taken to be the TACC for that species for the fishing season.

Note 1 AFMA may determine the fishing capacity permitted for the fishery — see paragraph 17 (6) (aa) of the Act.

Note 2 Subsection 17 (6B) of the Act provides that a determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. Although section 46A of the *Acts Interpretation Act 1901* has been repealed, section 6 of the *Legislative Instruments Act 2003* provides that such an instrument is a disallowable instrument.

12 Quantity of fish that may be taken

The quota for an SFR for a quota species for a fishing season is:

$$\frac{T}{S}$$

where:

T is the TACC for the species for the fishing season.

S is the total number of SFRs in force for the species at the start of the fishing season.

13 AFMA to notify TACC and quota

Before the start of each fishing season, AFMA must send a notice to each owner of a quota SFR setting out, for the relevant quota species:

- (a) the TACC for the fishery and that species for the season; and
- (b) the number of quota SFRs for that species held by the owner; and
- (c) the quota that applies to an SFR for that species for the season; and
- (d) the owner's quota for the season.

14 Directions not to engage in fishing (Act s 17 (5A))

- (1) AFMA may direct that fishing is not to be engaged in in the fishery, or in a part of the fishery, in a particular period or periods.

Note If AFMA gives a direction for a part of the fishery, the direction may identify the part in any way, including by reference to an area, a primary species, a secondary species, a

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kind or quantity of fishing equipment, a method of fishing, or a combination of those ways — see subsection 17 (5B) of the Act.

- (2) Before giving a direction, AFMA must consult, and consider the views of, the advisory committee about the content of the direction.
- (3) At least 7 days before a direction takes effect, AFMA must tell the holders of SFRs, scientific permits and foreign fishing licences for the fishery, in writing, about the direction.
- (4) However, if a direction is given in an emergency:
 - (a) subsections (2) and (3) do not apply; and
 - (b) AFMA must tell the holders mentioned in subsection (3), in writing, about the direction as soon as it can practicably do so.

Note 1 The holder of an SFR must comply with a direction — see sections 22 and 95 of the Act.

Note 2 Subsection 17 (6B) of the Act provides that a direction under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. Although section 46A of the *Acts Interpretation Act 1901* has been repealed, section 6 of the *Legislative Instruments Act 2003* provides that such an instrument is a disallowable instrument.

Part 3 Fishing in the fishery

15 Who may engage in commercial fishing in the fishery

(1) In this section:

commercial fishing means fishing, other than for scientific research about a primary species, a secondary species or a fishing method, using any of the following kinds of equipment:

- (a) pelagic longline equipment;
- (b) another kind of pelagic hook and line fishing equipment;
- (c) purse seine equipment;
- (d) any other kind of equipment allowed by AFMA in a condition specified in the certificate for the SFR that authorises the fishing.

Note 1 For paragraph (d), another kind of equipment will be included in a condition only after its ecological impact has been assessed.

Note 2 This Management Plan does not apply to a person who is engaged in recreational fishing: see section 8.

(2) A person may use an Australian boat in a fishing season to engage in commercial fishing in the fishery only if the person satisfies subsections (3), (4) and (8).

(3) Unless, under subsection 30 (1), all boat SFRs have ceased to have effect:

- (a) the person must be the holder of a boat SFR that authorises the use of the boat in the fishery; and
- (b) the boat must be a nominated boat for the boat SFR.

(4) If the person takes a quota species:

- (a) the person must be the holder of a quota SFR for that species; and
- (b) the SFR must have unused quota for that species for the season; and
- (c) the boat must be a nominated boat for the SFR.

Note To take southern bluefin tuna in the area of the fishery, the holder must also hold statutory fishing rights granted under the *Southern Bluefin Tuna Fishery Management Plan 1995*.

(5) A person may use a foreign boat in a fishing season to engage in commercial fishing in the part of the fishery that lies within the AFZ only if the person satisfies subsections (6), (7) and (8).

(6) The person must be the holder of a foreign fishing licence that authorises the use of the boat for the fishing.

(7) If the person takes a quota species:

- (a) the person must be the holder of quota SFR; and
- (b) the SFR must have unused quota for that species for the season.

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- (8) A person must not take skipjack tuna using purse seine equipment.

16 Carrying or processing fish

A person may use a boat to carry or process fish taken under section 15 only if the person is the holder of a fishing permit that authorises the carrying or processing.

Note AFMA may grant a fishing permit authorising the use of a boat in a fishery for activities including the carrying or processing of fish: see section 32 of the Act.

17 Scientific research in the fishery

A person may use a boat in the fishery for scientific research about the fishery only if the person is the holder of a scientific permit that authorises the use of the boat in the fishery for that purpose.

Note Section 33 of the Act provides that AFMA may grant permits for scientific research in a specified fishery.

18 Obligation relating to overcatch

- (1) Subsection (2) applies to the holder of a quota SFR for a quota species if:
- (a) in a fishing season (the *first season*), the holder takes (or is taken, by a previous application of this section, to have taken) a weight of fish of the quota species that exceeds, by a percentage less than the determined percentage, the holder's quota for that species for the season; and
 - (b) at the end of the last day of the second month of the following fishing season (the *second season*), the holder holds quota SFRs that would, in the absence of this section, entitle the holder to take a weight of fish of that species at least equal to the weight by which the holder exceeded the quota mentioned in paragraph (a).
- (2) The holder is taken to have taken:
- (a) during the first season, a weight of fish of the quota species mentioned in paragraph (1) (a) that is equal to the quota allocated to the holder in the first season; and
 - (b) during the second season, a weight of fish of that species equal to the weight by which the holder exceeded the holder's quota of that species in the first season, in addition to the weight actually taken by the holder in the second season.
- (3) Subsection (4) applies to the holder of a quota SFR for a quota species if:
- (a) in a fishing season (the *first season*), the holder takes (or is taken, by a previous application of this section, to have taken) a weight of fish of the quota species that exceeds the holder's quota for that species in the season by:
 - (i) at least the determined percentage; and
 - (ii) an amount equal to or less than the sum of:
 - (A) the result of multiplying the holder's quota in the first season by the determined percentage; and
 - (B) the determined weight; and

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- (b) at the end of the last day of the second month of the following fishing season (the *second season*), the holder holds quota SFRs that would, in the absence of this section, entitle the holder to take a weight of fish of that species at least equal to the sum of:
- (i) the result of multiplying the holder's quota in the first season by the determined percentage; and
 - (ii) twice the amount by which the holder's overcatch in the first season exceeded the determined percentage.
- (4) The holder is taken to have taken:
- (a) during the first season, a weight of fish of the quota species mentioned in paragraph (3) (a) that is equal to the quota allocated to the quota SFRs held by the holder in the first season; and
 - (b) during the second season, a weight of fish of that species equal to the sum of:
 - (i) the result of multiplying the holder's quota in the first season by the determined percentage; and
 - (ii) twice the amount by which the holder's overcatch in the first season exceeded the determined percentage;
 in addition to the weight actually taken by the holder in the second season.
- (5) In this section:
- determined percentage***, for a quota species and a fishing season, means a percentage of the quota allocated to the quota SFR for that species held by a person for that season, specified in a determination made by AFMA for the purposes of this section for that species and season.
- determined weight***, for a quota species and a fishing season, means the weight of that species specified in a determination made by AFMA for the purposes of this section for the species and season.
- (6) For this section, a quota SFR holder's ***overcatch*** of a quota species in a fishing season is the weight of fish of that species taken by the holder in the season that exceeds the holder's quota for that species for the season.

Note Subsection 17 (6B) of the Act provides that a determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. Although section 46A of the *Acts Interpretation Act 1901* has been repealed, section 6 of the *Legislative Instruments Act 2003* provides that such an instrument is a disallowable instrument.

19 Obligation relating to undercatch

- (1) This section applies to the holder of a quota SFR if:
- (a) in a fishing season (the *first season*), the holder takes:
 - (i) an amount of a quota species that is less than the quota for that species allocated to the SFRs held by the holder in the fishing season; or
 - (ii) no fish of a quota species; and

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- (b) in the following fishing season (the *second season*), the holder holds 1 or more quota SFRs for that species.
- (2) The holder may, during the second season, take a weight of fish of the quota species mentioned in paragraph (1) (a) that is the sum of:
 - (a) the quota allocated to SFRs held by the holder in the second season; and
 - (b) an amount equal to the lesser of:
 - (i) the difference between the weight of fish of that species taken by the holder in the first season and the quota allocated to the holder's SFRs in that season; and
 - (ii) the result of multiplying the holder's quota for that species in the first year by the determined percentage for that species and year.
- (3) For subparagraph (2) (b) (ii), the *determined percentage*, for a quota species and a fishing season, is a percentage of the quota allocated to the quota SFRs for that species held by a person for that season, specified in a determination made by AFMA for the purposes of this section for that species and season.

Note Subsection 17 (6B) of the Act provides that a determination under this section is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*. Although section 46A of the *Acts Interpretation Act 1901* has been repealed, section 6 of the *Legislative Instruments Act 2003* provides that such an instrument is a disallowable instrument.

Part 4 Grant of SFRs

Division 4.1 Availability of SFRs

20 Definitions for Division 4.1

In this Division:

BBS means broadbill swordfish.

best 2 years' catches has the meaning given by section 20B.

BET means bigeye tuna.

bigeye SFR means a quota SFR that authorises the holder to take bigeye tuna.

broadbill SFR means a quota SFR that authorises the holder to take broadbill swordfish.

high seas only permit means a fishing permit that authorises the holder to engage in longline fishing for a primary species in the area described in clause 3 of Schedule 1.

notice period has the meaning given by subsection 23 (1).

old longline permit means a fishing permit, other than a high seas only permit, that authorised the holder to engage in longline fishing in the old Southern Tuna and Billfish Fishery or the old Western Tuna and Billfish Fishery.

old minor line permit means a fishing permit that:

- (a) authorises the holder to engage in minor line fishing in the old Southern Tuna and Billfish Fishery or the old Western Tuna and Billfish Fishery; and
- (b) does not authorise the holder to engage in longline fishing in either fishery.

old purse seine permit means a fishing permit that authorises the holder to engage in purse seine fishing in the old Southern Tuna and Billfish Fishery or the old Western Tuna and Billfish Fishery.

old Southern Tuna and Billfish Fishery means fishing activity engaged in in the area set out in Part 11 of Schedule 1A to the *Fisheries Management Regulations 1992* as in force immediately before the commencement day.

old Western Tuna and Billfish Fishery means fishing activity engaged in in the area that is made up of the sub-areas set out in Divisions 1 and 2 of Part 13 of Schedule 1A to the *Fisheries Management Regulations 1992* as in force immediately before the commencement day.

relevant period means the period between 1997 and 2001 (inclusive).

sequence has the meaning given by section 20A.

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striped marlin SFR means a quota SFR that authorises the holder to take striped marlin.

total of best catches, for a species of fish and a sequence of old longline permits or a sequence of old minor line permits, means the total of the best 2 years' catches of that species taken in the fishery under all sequences of old longline permits or old minor line permits, as the case may be.

yellowfin SFR means a quota SFR that authorises the holder to take yellowfin tuna.

YFT means yellowfin tuna.

20A Sequence of permits

- (1) For this Division, a **sequence** of old longline permits means a number of those permits:
 - (a) each of which is connected to another of them; and
 - (b) the earliest of which was in force during the relevant period and the latest of which was held by an eligible person at the end of the notice period.
- (2) For this Division, a **sequence** of old minor line permits means a number of those permits:
 - (a) each of which is connected to another of them; and
 - (b) the earliest of which was in force during the relevant period and the latest of which was held by an eligible person at the end of the notice period.
- (3) For subsections (1) and (2), two permits are **connected** if:
 - (a) each entitled the holder to fish in the same area of the fishery using the same fishing method; and
 - (b) one permit commenced after the other ceased to have effect; and
 - (c) the later permit was granted to the person that:
 - (i) was the holder of the earlier permit when it ceased to have effect; and
 - (ii) applied to AFMA for the grant; and
 - (d) the later permit was granted because the person held the earlier permit.
- (4) In this Division, a reference to fish taken or caught, or longlines set, **under a sequence of permits** is a reference to fish taken or caught, or longlines set, under a permit or permits that form part of the sequence.

20B Meaning of **best 2 years' catches**

For this Division, the **best 2 years' catches** for a species of fish and a sequence of old longline permits or a sequence of old minor line permits is determined as follows:

Step 1. Determine the 2 years, within the relevant period, during which the greatest calculated weight of fish of the species was taken under the sequence of permits.

Step 2. The best 2 years' catches is the total calculated weight of that species taken under the sequence in the 2 years.

21 Calculated weight

- (1) For this Division, this section sets out how the *calculated weight* of a species of fish taken during the relevant period under an old longline permit or an old minor line permit is determined.
- (2) AFMA must:
 - (a) calculate the total weight of fish by referring to the catch history for the period recorded in the AFMA Daily Fishing Logbook completed by or on behalf of the permit holder and held by AFMA on or before 31 August 2002; and
 - (b) give a notice of the calculated weight to the eligible person.
- (3) The eligible person may, within 28 days of receiving a notice of the calculated weight, give to AFMA a notice stating that the person disagrees with the calculated weight.
- (4) If AFMA receives a notice sent under subsection (3), AFMA may ask the eligible person to give AFMA:
 - (a) documents that show any or all of the following for the period:
 - (i) the weight and species of the fish taken;
 - (ii) the date when the fish were taken;
 - (iii) the price paid for the fish;
 - (iv) that payment was received for the fish; and
 - (b) a means of identifying the holder of the permit under which the fish were taken.
- (5) The *calculated weight* is:
 - (a) the weight calculated under paragraph (2) (a); or
 - (b) if the eligible person gives a notice to AFMA under subsection (3) — the weight determined by AFMA using the documents mentioned in subsection (4), or the permit holder's logbook or both.

22 Application of Division 4.1

This Division applies in relation to an applicant for registration, under section 26 of the Act, as an eligible person for a grant of an SFR.

23 Conditions for registration as an eligible person (Act s 26)

- (1) This section applies if AFMA publishes a notice, under section 24 of the Act:
 - (a) declaring that AFMA intends to grant SFRs for the fishery; and
 - (b) specifying a period (the *notice period*) for the purposes of this section.

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- (2) For paragraph 26 (2) (a) of the Act, a person satisfies the conditions for registration if, at the end of the notice period, the person is the holder of:
- (a) an old minor line permit; or
 - (b) an old longline permit; or
 - (c) an old purse seine permit; or
 - (d) a high seas only permit.

Note 1 See section 24 of the Act about publication of a notice by AFMA declaring that AFMA intends to grant SFRs for fishing in a managed fishery.

Note 2 An application for registration as an eligible person for the grant of an SFR must be made within the period stated in a notice published under section 24 of the Act — see paragraph 25 (f) of the Act.

Note 3 Under subsection 26 (2) of the Act, AFMA must register as an eligible person an applicant for registration who meets the conditions for registration and who has paid the prescribed fee (if any). At present there is no prescribed fee.

Note 4 A decision under subsection 26 (2) of the Act is subject to reconsideration under section 165 of the Act — see subsection 165 (2). Application may be made to the Administrative Appeals Tribunal for review of a decision under section 165 of the Act — see subsection 165 (7).

24 Availability of grants of boat SFRs

For each permit mentioned in a paragraph of subsection 23 (2) that an eligible person held at the end of the notice period, a grant of 1 boat SFR is available to the person.

25 Availability of grants of SFRs to old minor line permit holders (Act s 23)

- (1) For each old minor line permit that an eligible person held at the end of the notice period, grants of the following SFRs are available to the person:
- (a) the number of striped marlin SFRs calculated in accordance with subsection (2);
 - (b) the number of bigeye SFRs calculated in accordance with subsection (3);
 - (c) the number of broadbill SFRs calculated in accordance with subsection (4);
 - (d) the number of yellowfin SFRs calculated in accordance with subsection (5).
- (2) For paragraph (1) (a), the number of striped marlin SFRs is:

$$\frac{\text{total number of striped marlin SFRs to be granted}}{\text{total number of sequences of old minor line and sequences of old longline permits held}}$$

- (3) For paragraph (1) (b), the number of bigeye SFRs is:

$$(RPV + CH \times M:F) \times \text{total bigeye SFRs to be granted} \times 0.5$$

where:

CH (or *catch history*) is:

$$\frac{\text{best 2 years' catches of BET under the person's sequence of old minor line permits}}{\text{total of best 2 years' catches of BET under all sequences of old minor line permits}}$$

M:F (or *minor line – fishery ratio*) is:

$$\frac{\text{sum of best 2 years' catches under all sequences of old minor line permits}}{\text{sum of best 2 years' catches under all sequences of old minor line and all sequences of old longline permits}}$$

RPV (or *relative permit value*) is:

- (a) 0.001215; or
(b) if the sequence of old minor line permits applied only to the old Southern Tuna and Billfish Fishery or only to the old Western Tuna and Billfish Fishery — 0.000911.

- (4) For paragraph (1) (c), the number of broadbill SFRs is:

$$(RPV + CH \times M:F) \times \text{total broadbill SFRs to be granted} \times 0.5$$

where:

CH is:

$$\frac{\text{best 2 years' catches of BBS under the person's sequence of old minor line permits}}{\text{total of best 2 years' catches of BBS under all sequences of old minor line permits}}$$

M:F has the meaning given in subsection (3).

RPV has the meaning given in subsection (3).

- (5) For paragraph (1) (d), the number of yellowfin SFRs is:

$$(RPV + CH \times M:F) \times \text{total yellowfin SFRs to be granted} \times 0.5$$

where:

CH is:

$$\frac{\text{best 2 years' catches of YFT under the person's sequence of old minor line permits}}{\text{total of best 2 years' catches of YFT under all sequences of old minor line permits}}$$

M:F has the meaning given in subsection (3).

RPV has the meaning given in subsection (3).

Note The last in a sequence of old minor line permits or old longline permits is held by an eligible person at the end of the notice period: see section 20A.

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**26 Availability of grants of SFRs to old longline permit holders
(Act s 23)**

- (1) For each old longline permit that an eligible person held at the end of the notice period, grants of the following SFRs are available to the person:
- (a) the number of striped marlin SFRs calculated in accordance with subsection (2);
 - (b) the number of bigeye SFRs calculated in accordance with subsection (3);
 - (c) the number of broadbill SFRs calculated in accordance with subsection (4);
 - (d) the number of yellowfin SFRs calculated in accordance with subsection (5).

- (2) For paragraph (1) (a), the number of striped marlin SFRs is:

$$\frac{\text{total number of striped marlin SFRs to be granted}}{\text{total number of sequences of old minor line and sequences of old longline permits held}}$$

- (3) For paragraph (1) (b), the number of bigeye SFRs is:

$$(\text{RPV} + (\text{CH} \times 0.7 + \text{SH} \times 0.3) \times \text{L:F}) \times \text{total bigeye SFRs to be granted} \times 0.5$$

where:

CH (or *catch history*) is:

$$\frac{\text{best 2 years' catches of BET under the person's sequence of old longline permits}}{\text{total of best 2 years' catches of BET under all sequences of old longline permits}}$$

L:F (or *longline – fishery ratio*) is:

$$\frac{\text{sum of best 2 years' catches under all sequences of old longline permits}}{\text{sum of best 2 years' catches under all sequences of old minor line and old longline permits}}$$

RPV (or *relative permit value*) is:

- (a) 0.013164; or
- (b) if the sequence of old longline permits applied only to the old Southern Tuna and Billfish Fishery or only to the old Western Tuna and Billfish Fishery — 0.008101.

SH (or *set history*) is calculated as follows:

Step 1. Determine the 2 years, within the relevant period, during which a longline was set under the sequence of old longline permits the greatest number of times.

Step 2. Count, from logbook records held by AFMA, the total number of times a longline was set under the sequence in the 2 years determined in Step 1, giving the best 2 years' sets for the sequence.

Step 3. Calculate the total number of best 2 years' sets for all sequences of old longline permits.

Step 4. Divide the best 2 years' sets for the sequence of old longline permits by the result of Step 3, giving the set history for the sequence of permits.

- (4) For paragraph (1) (c), the number of broadbill SFRs is:

$$(RPV + (CH \times 0.7 + SH \times 0.3) \times L:F) \times \text{total broadbill SFRs to be granted} \times 0.5$$

where:

CH is:

$$\frac{\text{best 2 years' catches of BBS under the person's sequence of old longline permits}}{\text{total of best 2 years' catches of BBS under all sequences of old longline permits}}$$

L:F has the meaning given in subsection (3).

RPV has the meaning given in subsection (3).

SH has the meaning given in subsection (3).

- (5) For paragraph (1) (d), the number of yellowfin SFRs is:

$$(RPV + (CH \times 0.7 + SH \times 0.3) \times L:F) \times \text{total yellowfin SFRs to be granted} \times 0.5$$

where:

CH is:

$$\frac{\text{best 2 years' catches of YFT under the person's sequence of old longline permits}}{\text{total of best 2 years' catches of YFT under all sequences of old longline permits}}$$

L:F has the meaning given in subsection (3).

RPV has the meaning given in subsection (3).

SH has the meaning given in subsection (3).

Note 1 If under subsection 29 (4) of the Act, SFRs are made available to a person, AFMA must notify the person (and each other person who registered under section 26 of the Act) about that fact and give a statement of reasons.

Note 2 Section 30 of the Act provides that, within 30 days of SFRs being available to a person, the person must pay the amount of any charge due and payable under the *Statutory Fishing Rights Charge Act 1991*. For this Management Plan, there is no charge.

Note 3 The last in a sequence of old minor line permits or old longline permits is held by an eligible person at the end of the notice period: see section 20A.

Section 27

27 Serious misfortune affecting availability of SFRs

- (1) If:
- (a) an eligible person holds a sequence of permits; and
 - (b) but for this section, fewer SFRs would be available to the eligible person under section 25 or 26 because of a serious misfortune suffered, during the relevant period, by the eligible person or a previous holder of a fishing permit in the sequence;

AFMA may:

- (c) in calculating the number of SFRs to be available to the eligible person under section 25 or 26, as the case requires, calculate the best 2 years' catches of a species of fish under the sequence of permits by using, for the period of the serious misfortune, the average catch of the species in the fishery under all sequences of that kind (old longline or old minor line, as the case may be) during that period; and
 - (d) in calculating the number of SFRs to be available to the eligible person under section 26, calculate the best 2 years' sets for the relevant sequence of permits for Step 1 of the definition of SH in subsection 26 (3), by using, for the period of the serious misfortune, the average number of times a longline was set in the fishery under all sequences of old longline permits during that period.
- (2) For subsection (1), *serious misfortune*, for the holder of an old longline permit or old minor line permit, means a misfortune that, for more than 3 months, prevented the holder:
- (a) obtaining income from fishing under the holder's permit; and
 - (b) arranging another way for fishing to be carried out under the permit; for example, the loss of, or serious damage to, the boat that was nominated for the permit, or a serious illness of, or injury to, the holder.

Note If the holder of an old longline permit or old minor line permit suffered a serious misfortune that affected the holder's ability to fish under more than 1 permit, the total time of the misfortune is taken into account.

Division 4.2 Grant of SFRs

Note 1 AFMA must grant a statutory fishing right to a person to whom the grant of the right is available if the person asks AFMA to grant the right — see section 31 of the Act.

Note 2 A decision under section 31 of the Act (other than a decision following an auction, tender or ballot) is subject to reconsideration under section 165 of the Act — see subsection 165 (2). Application may be made to the Administrative Appeals Tribunal for review of a decision under section 165 of the Act — see subsection 165 (7).

Note 3 Under subsection 23 (3) of the Act, AFMA must not grant a statutory fishing right to a person:

- (a) until the end of the period within which applications may be made to the Statutory Fishing Rights Allocation Review Panel for review of decisions in relation to grants; or
- (b) if an application has been made to the Panel — before the application has been dealt with by the Panel or otherwise disposed of.

28 Request for grant (Act s 31)

- (1) If a person to whom grant of an SFR is available does not make a request for the grant of the SFR within 30 days after AFMA sends a notice to the person under paragraph 29 (4) (a) of the Act, AFMA must send a notice (a *reminder notice*) to the person telling the person that the person must make the request within a period stated in the notice.
- (2) If the person does not make the request within the period stated in the reminder notice, AFMA must send another notice (a *final notice*) to the person stating that the SFR will cease to be available to the person 14 days after the final notice is sent unless the person:
 - (a) makes the request; and
 - (b) explains why the person did not make the request within the period stated in the reminder notice.
- (3) If, within 14 days after the final notice is sent to the person, the person does not:
 - (a) make the request; and
 - (b) satisfy AFMA that the person had a reasonable excuse for not making the request within the period stated in the reminder notice;then:
 - (c) the grant ceases to be available to the person; and
 - (d) AFMA must amend its records accordingly.

Note 1 An SFR ceases to have effect if AFMA revokes this Management Plan — see subsections 20 (4) and 22 (3) of the Act.

Note 2 AFMA must register all SFRs granted — see section 45 of the Act.

29 Certificate showing grant (Act s 22 (2))

- (1) AFMA must note the following details on the certificate for an SFR:
 - (a) the name of the person to whom the SFR is granted;
 - (b) a description of the SFR;
 - (c) that the SFR is granted for the fishery;
 - (d) the conditions to which the SFR is subject.
- (2) A certificate may show the grant of more than 1 SFR to a person.
- (3) AFMA must give to a person to whom an SFR is granted an extract of the Register:
 - (a) that states the conditions to which the SFR is subject; and
 - (b) that is signed for AFMA by a person having authority to sign it.

Note Section 45 of the Act provides that AFMA must enter certain information in the Register for each SFR that it grants, including such particulars as are prescribed. The WTBF Regulations prescribe details that must be entered in the Register in relation to a nominated boat.

Section 30

30 Boat SFRs — condition

- (1) A boat SFR is granted subject to the condition that it ceases to have effect on a day specified in a notice published in the *Gazette* as the day on which all boat SFRs cease to have effect.
- (2) AFMA must not publish a notice under subsection (1) less than 5 years after the commencement day.
- (3) Also, AFMA must not publish a notice under subsection (1) unless AFMA:
 - (a) carries out an assessment of the catch of non-quota species; and
 - (b) consults with the advisory committee about the assessment; and
 - (c) is satisfied that it is not commercially viable for a person to fish only for non-quota species.

Part 5 Boats used in the fishery

31 Nomination of boat

- (1) The holder of an SFR may apply to AFMA, in the approved form, for a boat to be entered in the Register as the nominated boat, or 1 of the nominated boats, for the SFR.
- (2) A boat may be a nominated boat for only 1 holder.
- (3) An application under subsection (1) must be accompanied by:
 - (a) both:
 - (i) a statement by the holder, in an approved form, that the boat can safely and lawfully carry an observer and the observer's safety and monitoring equipment; and
 - (ii) a written undertaking by the holder, in an approved form, to carry an observer and the observer's safety and monitoring equipment if AFMA asks the holder to do so; or
 - (b) a written statement by the holder explaining why it is not safe to carry an observer and the observer's safety and monitoring equipment on the boat.
- (4) AFMA may refuse an application if the boat is incapable of carrying an observer and the observer's safety and monitoring equipment on the boat.
- (5) If AFMA approves an application under subsection (1), AFMA must:
 - (a) enter in the Register, in relation to the nominated boat, the details required by the WTBF Regulations to be entered in the Register; and
 - (b) give to the holder an extract of the Register that:
 - (i) states the conditions to which the SFR is subject; and
 - (ii) states the name of the nominated boat; and
 - (iii) is signed for AFMA by a person having authority to sign it.
- (6) An applicant may seek a review of a decision not to enter a boat in the Register as the nominated boat for the SFR, as if the decision were a relevant decision under section 165 of the Act.

32 Removal of boat from Register

- (1) This section applies in relation to a nominated boat unless a statement of a kind mentioned in paragraph 31 (3) (b) applies to the boat.
- (2) AFMA may cancel the entry in the Register of the boat if:
 - (a) AFMA asks for an observer to be carried, either with or without the observer's safety and monitoring equipment, during a fishing trip; and
 - (b) without reasonable excuse, the request is refused by the master of the boat or the holder of the SFR for which the boat is nominated.

Section 33

- (3) The holder may seek a review of a decision to cancel the entry in the Register of the boat, as if the decision were a relevant decision under section 165 of the Act.

33 Request to cancel boat nomination

- (1) The holder of an SFR for which a boat is the nominated boat may apply in writing to AFMA, in the approved form, to cancel the nomination.
- (2) On receiving an application, AFMA must cancel the nomination.

Part 6 Transfer and lease of SFRs

34 **Meaning of *transfer***

In this Part:

transfer does not include lease.

35 **Transfer of SFR (Act s 49)**

- (1) The owner of an SFR (the *transferor*) may apply to AFMA, in the approved form, for approval to transfer the SFR to someone else (the *transferee*).
- (2) For subsection (1), an application must be accompanied by:
 - (a) the certificate for the SFR; or
 - (b) a statement, signed by the transferor, that the certificate is not available, including the reason why the certificate is not available.
- (3) AFMA must not approve the transfer of an SFR:
 - (a) if a proceeding for an offence under the Act or Regulations has been brought against the transferor and has not been decided; or
 - (b) if an application for registration of another interest in the SFR has been received by AFMA before the application for transfer is received, and has not been dealt with; or
 - (c) if the SFR has been suspended under subsection 38 (1) or (3), or paragraph 98 (3) (d), of the Act; or
 - (d) if AFMA:
 - (i) knows of a ground for suspension of the SFR under subsection 38 (1) or (3) of the Act or cancellation of the SFR under section 39 of the Act; and
 - (ii) has not decided whether to suspend or cancel the SFR; or
 - (e) if AFMA has decided to suspend or cancel the SFR, and:
 - (i) the period within which an application for review of that decision may be made has not ended; or
 - (ii) an application has been made for review of that decision, and the application has not been decided; or
 - (f) within the period beginning 14 days before the issue of a levy invoice and ending when the levy is paid.

Note 1 AFMA may decline to approve the transfer of an SFR only if the transfer would be contrary to this Management Plan or a condition of the right — see subsection 49 (2) of the Act.

Note 2 A decision under section 49 of the Act is subject to reconsideration under section 165 of the Act — see subsection 165 (2). Application may be made to the Administrative Appeals Tribunal for review of a decision under section 165 of the Act — see subsection 165 (7).

Note 3 The right to transfer a fishing right is subject to a condition stated in the certificate for the right — see paragraph 22 (4) (a) of the Act.

Section 36

36 Issue of certificates for transferred SFRs

- (1) If AFMA approves the transfer of 1 or more SFRs under section 35, AFMA must send to the transferee a certificate showing the transferee as the owner of the appropriate number of SFRs.
- (2) If the transferor has not transferred all the SFRs held by the transferor, AFMA must also send to the transferor a certificate showing the transferor as the owner of the appropriate number of SFRs.

Note See section 46 of the Act about the requirement to register the transfer of an interest in a statutory fishing right.

37 Leases of SFRs

- (1) The holder of an SFR that has unused quota for a fishing season may, subject to this section, lease the SFR to another person (the *lessee*).
- (2) The holder must, before the lease of an SFR takes effect, give AFMA written notice about the lease, in the approved form.
- (3) The lease entitles the lessee to take only the amount and species of fish represented by the unused quota of the leased SFR.
- (4) A lease of an SFR has effect:
 - (a) only if all levy payable for the SFR has been paid; and
 - (b) only for the fishing season in which the lease is granted.

Note See section 46 of the Act about the requirement to register a dealing with an SFR.

Part 7 Obligations of holders of SFRs

38 Obligations of holders of SFRs

- (1) The holder of an SFR must:
 - (a) comply with:
 - (i) this Management Plan; and
 - (ii) any Regulations made for the purposes of this Management Plan; and
 - (iii) any applicable provisions of the Act; and
 - (iv) any direction made under section 14; and
 - (v) any condition imposed on the SFR; and
 - (b) retain any by-catch if:
 - (i) AFMA makes a reasonable request of the holder to do so; or
 - (ii) a law of the Commonwealth obliges the holder to do so; and
 - (c) unless a statement of a kind mentioned in paragraph 31 (3) (b) applies to the nominated boat for the SFR — carry an observer and the observer's safety and monitoring equipment if AFMA asks the holder to do so; and
 - (d) if AFMA asks the holder to give AFMA reasonable access to biological, economic or technical information, or biological samples that are available to the holder — give AFMA reasonable access to the information or samples; and
 - (e) carry on board the nominated boat a copy of the extract from the Register that states the name of the boat.
- (2) The holder of an SFR must, unless AFMA determines otherwise, have fitted to the boat a vessel monitoring system (*VMS*) that:
 - (a) is installed in accordance with guidelines published by AFMA; and
 - (b) has an automatic location communicator, of a kind approved by AFMA, as part of the system; and
 - (c) has a personal computer capable of receiving e-mail as part of the system; and
 - (d) is operated continuously unless otherwise agreed by AFMA; and
 - (e) is operated in accordance with the manufacturer's specifications and operating instructions.
- (3) Unless AFMA approves otherwise, the holder must ensure that the VMS is operating in accordance with the manufacturer's instructions at all times.
- (4) It is a condition of an SFR that, if AFMA has declared, under section 91 of the Act, that the fishery is a fishery to which Division 2 of Part 6 of the Act applies, the holder must not sell (or otherwise dispose of, other than solely for transportation) fish that the holder takes and retains for trade or business in Australia except to the holder of a fish receiver permit for the fishery.

Section 39

- (5) For paragraph (2) (b), *automatic location communicator* means a device on a boat that transmits information about the location of the boat and, in conjunction with one or more other devices, transmits additional information about fishing activities being undertaken by the boat.

Note 1 Other conditions of an SFR are set out on the certificate for the SFR. These may include by-catch limits, reporting requirements and conditions regarding AFMA's vessel monitoring system. As new monitoring technologies are developed, the conditions may also include conditions regarding the use of those technologies.

Note 2 The holder of an SFR must also comply with the Act and relevant regulations, including the *Fisheries Management Regulations 1992*, the *WTBF Regulations* and the *Fishing Levy Regulations 2001*.

Note 4 See also subsections 22 (3), (4) and (5) of the Act for other conditions to which an SFR is subject.

Note 5 See section 38 of the Act about AFMA's power to suspend an SFR if it has reasonable grounds to believe that there has been a contravention of a condition of the SFR.

39 Obligations relating to interactions with certain species and communities

- (1) The holder of an SFR must take all reasonable steps to ensure that by-catch and the impact of fishing operations on the marine environment are kept to a minimum.
- (2) In particular, the holder must take all reasonable steps to avoid interactions with the following:
- (a) cetaceans;
 - (b) marine species listed for section 248 of the EPBC Act;
 - (c) migratory species listed for section 209 of the EPBC Act;
 - (d) threatened ecological communities listed for section 181 of the EPBC Act;
 - (e) threatened species listed for section 178 of the EPBC Act.
- (3) The holder must, if the activities of the boat being used for fishing result in an interaction with a species or community mentioned in subsection (2):
- (a) record details of the interaction in a logbook kept for that purpose; and
 - (b) if there is an observer on the boat:
 - (i) immediately tell the observer about the interaction, and allow the observer to observe its consequences; and
 - (ii) give whatever assistance is necessary for the observer to collect any data, or make any observations, requested by AFMA; and
 - (c) if the interaction results in an injury to a member of the species or community, do everything that can practicably be done to give aid to it; and
 - (d) if the interaction results in the death of a member of the species or community, discharge its carcass from the boat in a way that does not attract birds or mammals to the boat; and
 - (e) if the interaction results in the death of, or an injury to, a member of the species or community, report the interaction in accordance with regulations made for the purposes of this section.

Section 40**40 Obligations of holder of foreign fishing licence (Act s 34)**

- (1) It is a condition of a foreign fishing licence granted under section 34 of the Act for the fishery that, subject to any obligations imposed by the Act, the holder must comply with the obligations imposed on an SFR holder by this Management Plan as if the licence holder were an SFR holder.
- (2) However, the obligation imposed by subsection 38 (4) applies to the holder only in the case of fish sold (or otherwise disposed of, other than solely for transportation) in Australia or in the AFZ.

Section 41

Part 8 Miscellaneous**41 Replacement certificates**

- (1) If a certificate for an SFR is lost, stolen, destroyed or otherwise not available to the owner of the SFR, the owner may ask AFMA, in writing, to give to the owner a replacement certificate.
- (2) The request must include:
 - (a) a statement explaining why the certificate is unavailable; and
 - (b) an undertaking that the owner will surrender it to AFMA if it becomes available.

42 Delegation

AFMA may, by writing under its common seal, delegate to an officer of AFMA any of its powers or functions under this Management Plan, except its powers under sections 11, 14, 18 and 19, and this section.

Note See subsection 17 (11) of the Act about the delegation of powers under sections 11, 14, 18 and 19.

43 Agents

- (1) If the holder of an SFR appoints a person to be the holder's agent for a matter to which this Management Plan applies, the holder must give AFMA a notice that states:
 - (a) the name of the agent; and
 - (b) the powers that may be exercised by the agent.
- (2) A notice must be accompanied by the instrument, or a certified copy of the instrument, by which the holder appointed the agent.
- (3) For this Management Plan, the appointment of an agent by the holder of an SFR is of no effect unless AFMA has been notified of the appointment under subsection (1).
- (4) In making a decision on an application under this Management Plan:
 - (a) AFMA may assume that a notice given under this section is properly given; and
 - (b) AFMA need not verify, by other means, the authority of the agent to make the application.

44 Notices

- (1) In this section:

address means:

 - (a) for the holder of an SFR — the holder's address stated in the Register; and

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(b) for an eligible person — the address given to AFMA by the person.

e-mail address, of a person, means the e-mail address (if any) given to AFMA by the person.

fax number means:

- (a) for the holder of an SFR — the holder's fax number stated in the Register; or
- (b) for an eligible person — the fax number (if any) given to AFMA by the person.

notice means a notice that is required, or allowed, by this Management Plan to be given in writing.

working day, in a place, means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a public holiday in the place.

- (2) A notice to an eligible person or a person who is the holder of an SFR is taken to be given to the person if it is:
 - (a) delivered to the person's residential or office address; or
 - (b) posted to the person's postal address; or
 - (c) sent by fax to the person's fax number; or
 - (d) sent by e-mail to the person's e-mail address.
- (3) A notice given, under this section, to an eligible person or a person who is the holder of an SFR is taken to have been given to the person:
 - (a) if the notice is delivered to the person's residential or office address — on the day when it is delivered; and
 - (b) if the notice is sent by fax to the person's fax number or by e-mail to the person's e-mail address:
 - (i) on a working day between 9 am and 4 pm — 1 hour after the notice is sent; and
 - (ii) otherwise — at 9 am on the next working day after the day when the notice is sent.
- (4) A notice to AFMA must be addressed to the Manager, Business and Licensing, Australian Fisheries Management Authority, and:
 - (a) delivered to the reception desk at:
 - John Curtin House
 - 22 Brisbane Avenue
 - BARTON ACT; or
 - (b) posted to:
 - Box 7051
 - Canberra Business Centre
 - ACT 2610; or
 - (c) sent by fax (from within Australia) to:
 - (02) 6272 4614; or
 - (d) sent by fax (from outside Australia) to:
 - 612 6272 4614; or

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- (e) sent by e-mail to:
 - licensing@afma.gov.au; or
 - (f) delivered, posted or sent by fax or e-mail to another office address, postal address, fax number or e-mail address notified by AFMA by notice published in a newspaper circulating in the State or Territory in which the address or fax receiver is located.
- (5) A notice given to AFMA under this section is taken to have been given to AFMA:
- (a) if the notice is delivered to the address mentioned in paragraph (4) (a), or posted to the address mentioned in paragraph (4) (b) — on the day when it is delivered; and
 - (b) if the notice is sent by fax to the fax number mentioned in paragraph (4) (c) or (d) or by e-mail to the e-mail address mentioned in paragraph (4) (e):
 - (i) on a working day between 9 am and 4 pm — 1 hour after the notice is sent; and
 - (ii) otherwise — at 9 am on the next working day after the day when the notice is sent.

Note Under subsection 160 (1) of the *Evidence Act 1995*, it is presumed (unless evidence sufficient to raise doubt about the presumption is adduced) that a postal article sent by pre-paid post addressed to a person at a specified address in Australia or in an external Territory was received at that address on the fourth working day after it was posted.

Part 9 Transitional

45 Transitional

- (1) This section ceases to have effect on the day specified in a notice published in the *Gazette* under subsection (2).
- (2) On, or as soon as practicable after, the day that the first SFRs granted under this Management Plan come into effect, AFMA must publish a notice in the *Gazette* stating that this section ceases to have effect on a day specified in the notice.
- (3) The day specified in a notice under subsection (2) must not be earlier than the day on which the notice is published.
- (4) Despite section 15, a person may engage in fishing in the fishery if:
 - (a) the person holds a fishing permit authorising fishing in the fishery; and
 - (b) the permit is in force.
- (5) This Management Plan does not affect a fishing permit that authorises fishing in the fishery, or a condition to which the permit is subject.
- (6) However, subsection (5) does not affect AFMA's power to give a direction under section 14.
- (7) This Management Plan does not prevent AFMA from granting or transferring a fishing permit that authorises fishing in the fishery.

Schedule 1 Area of the fishery

(section 3)

1 Area within the AFZ

The area bounded by a notional line:

- commencing at the intersection of the northern coastline of Australia with the meridian of longitude 142° 09' E
- then running north along that meridian to the intersection with the parallel of latitude 10° 28' S
- then running west along that parallel to the intersection with the meridian of longitude 141° 20' E
- then running north along that meridian to the intersection with the outer limit of the AFZ
- then running generally westerly, southerly and easterly along the outer limit of the AFZ to the intersection with the meridian of longitude 141° E
- then running north along that meridian to its first intersection with the southern coastline of Australia
- then running generally westerly, northerly and easterly along that coastline to the point where the line began.

Note If an arrangement about a particular fishery is made under Division 3 of Part 5 of the Act, State coastal waters may be taken to be part of the AFZ for the purposes of the management of the fishery: see section 76 of the Act.

2 Areas adjacent to Christmas and Cocos (Keeling) Islands

Those parts of the AFZ that:

- (a) surround Christmas Island and the Cocos (Keeling) Islands; and
- (b) extend toward the outer limit of the AFZ from a line every point of which is 12 nautical miles from the Australian territorial sea baseline.

3 High seas area

Those parts of the high seas that are within the area of competence of the IOTC and west of 141° E.

Note See the Agreement for the Establishment of the Indian Ocean Tuna Commission for details about the area mentioned in this clause.

Schedule 2 Primary species and secondary species

(section 3)

Part 1 Primary species

Item	Common name	Scientific name
1	Albacore tuna	<i>Thunnus alalunga</i>
2	Bigeye tuna	<i>Thunnus obesus</i>
3	Billfish	Families Istiophoridae and Xiphiidae
4	Longtail tuna	<i>Thunnus tonggol</i>
5	Northern bluefin tuna	<i>Thunnus thynnus</i>
6	Rays bream (or pomfret)	Family Bramidae
7	Skipjack tuna	<i>Katsuwonus pelamis</i>
8	Yellowfin tuna	<i>Thunnus albacares</i>

Note Item 3 in the table includes broadbill swordfish (*Xiphias gladius*) and striped marlin (*Tetrapturus audax*).

Part 2 Secondary species

Any species of fish, other than primary species, that may lawfully be taken in the area of the fishery and retained.

Note 1 At the commencement of this Management Plan, fishing for secondary species of fish is managed under the law of a State or Territory. If any secondary species is later to be managed under Commonwealth law, Schedule 2 will be amended to include the species in Part 1 of this Schedule.

Note 2 Secondary species of fish managed under the law of a State or Territory may be subject to catch limits, or other management measures, under an arrangement between the Commonwealth and the State or Territory. The measure or measures have effect under this Management Plan.

Table of Instruments

Notes to the *Western Tuna and Billfish Fishery Management Plan 2005***Note 1**

The *Western Tuna and Billfish Fishery Management Plan 2005* (in force under section 17 of the *Fisheries Management Act 1991*) as shown in this compilation is amended as indicated in the Tables below.

Table of Instruments

Title	Date of FRLI registration	Date of commencement	Application, saving or transitional provisions
<i>Western Tuna and Billfish Fishery Management Plan 2005</i>	21 Oct 2006 (see F2005L03187)	22 Oct 2006	—
<i>Western Tuna and Billfish Fishery Management Plan Amendment 2006 (No. 1)</i>	10 Nov 2006 (see F2006L03669)	11 Nov 2006	—

Table of Amendments**Table of Amendments**

ad. = added or inserted am. = amended rep. = repealed rs. = repealed and substituted

Provision affected	How affected
Part 1	
S. 3.....	am. 2006 No. 1
Part 4	
Division 4.1	
S. 20.....	am. 2006 No. 1
S. 20A	ad. 2006 No. 1
S. 20B	ad. 2006 No. 1
S. 24.....	am. 2006 No. 1
S. 25.....	am. 2006 No. 1
Note to s. 25.....	ad. 2006 No. 1
S. 26.....	am. 2006 No. 1
Note 3 to s. 26.....	ad. 2006 No. 1
S. 27.....	am. 2006 No. 1
Note to s. 27.....	ad. 2006 No. 1