

Explanatory Statement

Western Tuna and Billfish Fishery Management Plan 2005

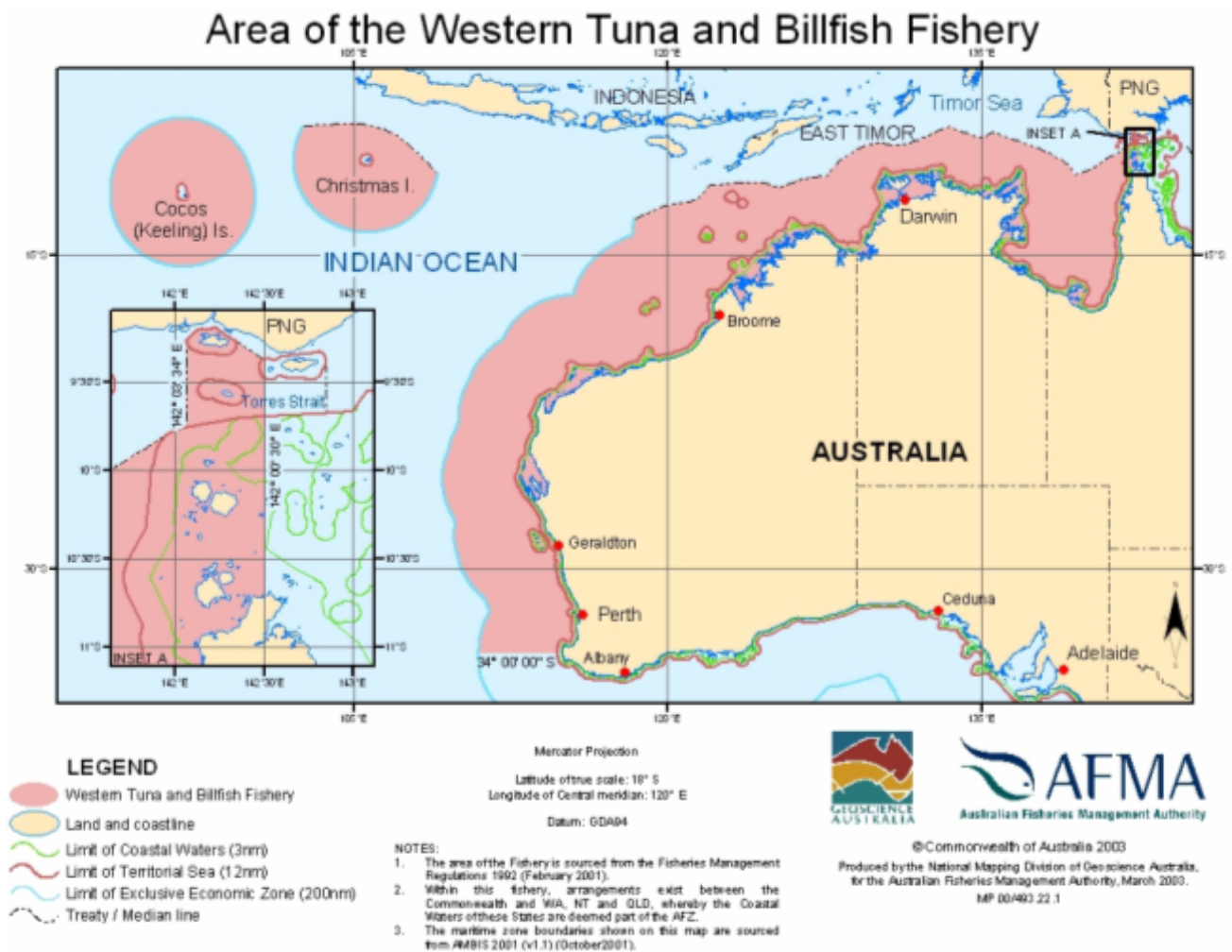
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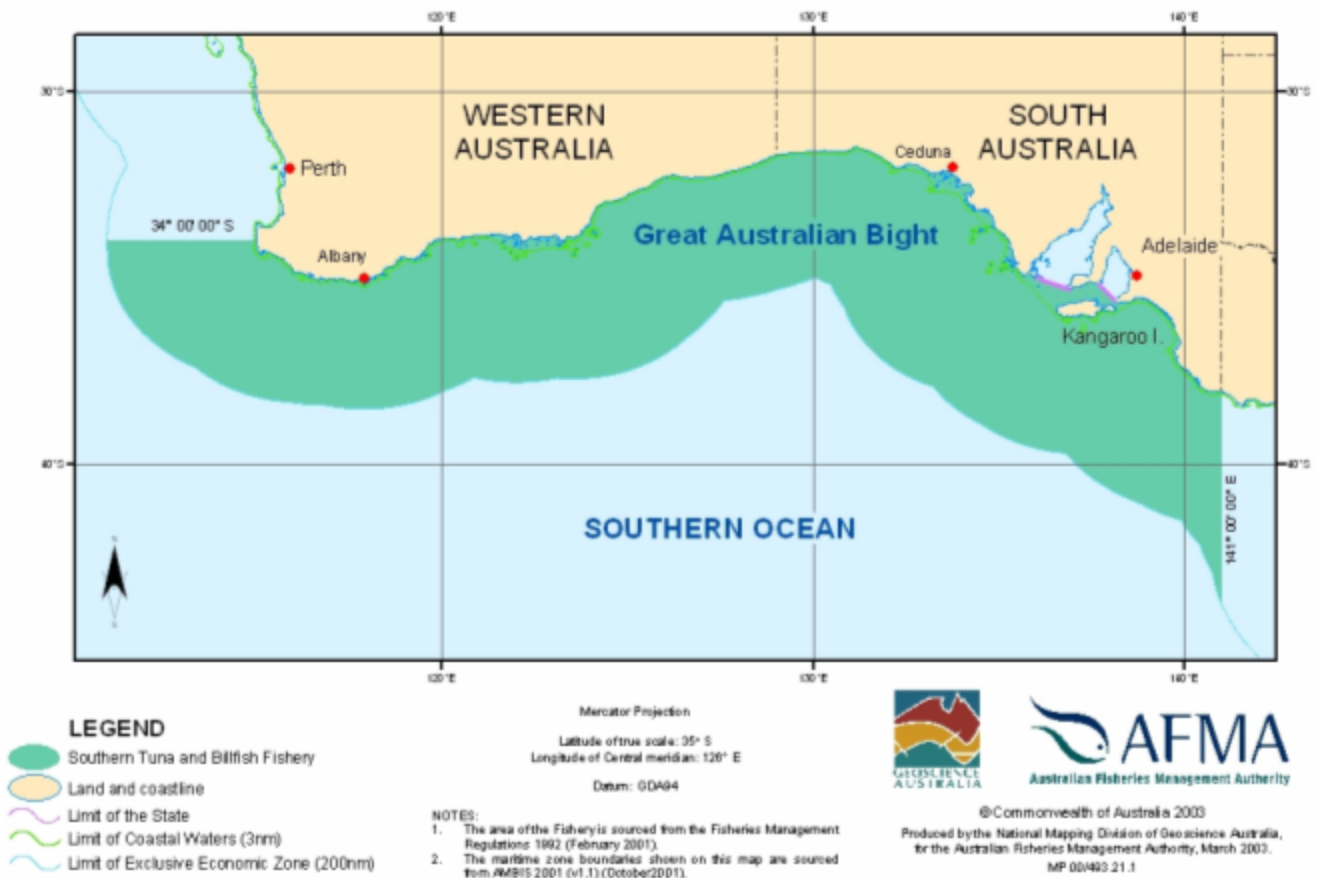
The Western Tuna and Billfish Fishery

The Western Tuna and Billfish Fishery (the Fishery) is located throughout the Australian Fishing Zone (AFZ) west of Cape York in Queensland to the South Australia/Victoria border and High Seas areas throughout the Indian Ocean consistent with the area of competency of the Indian Ocean Tuna Commission (IOTC) but west of 141° E at its southern part. The Fishery includes waters seaward of territorial waters (outside 12 nautical miles from the baselines) adjacent to Christmas and Cocos (Keeling) Islands. The AFZ is defined consistently with the Exclusive Economic Zone (EEZ) and extends out to 200 nautical miles from the baselines, except where overlaps exist between Australian and EEZs of other countries [Inset A in the figure below shows the negotiated boundary between Australia's and Papua New Guinea's EEZs]. The Plan covers the area of the Fishery within the AFZ and High Seas within the area of competence of the IOTC.

The waters of the Fishery comprise the combined areas of the Western Tuna and Billfish Fishery and the Southern Tuna and Billfish Fishery (as shown in the maps below). An internal barrier at latitude 34°S separates these two fisheries, although these fisheries are essentially managed as one single fishery. Under the Plan, the internal barrier at 34°S will be removed and the whole area of the two fisheries will be called the 'Western Tuna and Billfish Fishery'.



Area of the Southern Tuna and Billfish Fishery



Broadbill swordfish (*Xiphias gladius*), yellowfin tuna (*Thunnus albacares*), bigeye tuna (*Thunnus obesus*), and striped marlin (*Tetrapturus audax*) are the key species in the Fishery for which quotas will be determined. Fishing for all scheduled (Schedule 2) species is permitted by means of pelagic longline, rod and reel, hand line, pole and line and purse seine (except for skipjack tuna). Other methods may be declared by the Australian Fisheries Management Authority (AFMA) in accordance with the Plan.

The Fishery was previously managed under fishing permits granted to operators on an annual basis. Management measures were included on fishing permits by way of conditions.

Determination and acceptance

AFMA has developed the *Western Tuna and Billfish Fishery Management Plan 2005* (the Plan) in accordance with section 17 of the *Fisheries Management Act 1991* (the Act). An independent Allocation Advisory Panel (AAP) was established to advise the AFMA Board on the most appropriate allocation system for Statutory Fishing Rights (SFRs) in the Fishery. This process sought to maintain the relative economic position of participants in the Fishery by reflecting the relative historic value of their permits and relative catch history for the relevant period.

It is Commonwealth Government policy (*Looking to the Future – A Review of Commonwealth Fisheries Policy*, June 2003) to implement management plans for all Commonwealth fisheries. Management plans provide secure access rights to fishers and

market-based incentives for operators to improve and conserve fisheries resources, and best achieve AFMA's legislative objectives. A more detailed analysis of the likely impacts on industry of the type of fishing rights introduced under the Plan is provided in the attached Regulation Impact Statement (Appendix A).

There are no strict liability provisions within the Plan. However, the Plan is fully consistent with the provisions of the Act, and participants in the Fishery are subject to the standard sanctions found in the Act.

Fees raised from industry for management of the Fishery (as required under AFMA's cost recovery policy) are raised under separate legislation. The quantum of fees raised is unlikely to be affected by the Plan.

Section 17 of the Act requires that the Plan can only be determined after consultation with such persons engaged in fishing as appear to AFMA to be appropriate and, after giving due consideration to any representations made to AFMA on the Plan. Subsection 17(2) of the Act requires that interested persons must be invited, by public notice, to make representations on a draft of the plan. Subsection 17(2A) provides that persons and organisations listed in the register, established under section 17A, must also be notified that a draft Plan is available and that representations may be made in connection with the draft Plan. AFMA has met all of the consultation and notification processes required under legislation, including four rounds of public consultation and subsequent improvements to the draft Plan.

AFMA has informed the Minister of the consultations that were conducted and of representations that were received before determining the plan. The Minister was then in a position to judge if AFMA gave due consideration to any representations received and conducted adequate consultations when accepting the plan in accordance with the Act.

The AFMA Board determined the Plan on 1 July 2005.

The Minister has accepted the Plan. Notification of the determination and acceptance of the Plan was published in the *Gazette* in accordance with subsection 19(1) of the Act.

Content of the Plan

The Plan lists objectives for the Plan, measures by which the objectives are to be attained and performance criteria against which the measures taken may be assessed, as required under subsection 17(5) of the Act. These elements of the Plan are designed to accord with Australia's obligations under the IOTC and the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act). In addition, reporting and review mechanisms are incorporated into the performance criteria.

The objectives of the Plan reflect the objectives set out in section 3 of the Act.

The measures by which the objectives are to be achieved are set out in section 6 of the Plan. These include the determination of reference points for maintaining the sustainability of the Fishery, granting of transferable statutory fishing rights (SFRs), the setting of total allowable commercial catches (TACCs), the development of management strategies, research, data

collection, monitoring, compliance and the recovery of the costs of managing the Fishery in accordance with the Government's cost recovery policy.

Subsection 17(5A) of the Act provides that the measures to be set out in the Plan are to include a facility for AFMA to direct that fishing is not to be engaged in (in) the Fishery or part of the Fishery, in a particular period or periods. Section 14 of the Plan gives AFMA such a power.

In addition, subsection 17(6D) of the Act provides that a plan of management must contain measures directed at reducing incidental catch of fish and other species to a minimum. Section 9 of the Plan provides that AFMA must implement a by-catch action plan (BAP), which is to be reviewed at least every second year. The development, implementation and review of the BAP are included as a measure by which objectives of the Plan will be achieved (subsection 6(h)(v)). The assessment of the impact of catch on non-target species is included in the performance criteria for assessing those measures.

The Plan provides for a system of individual transferable quota (ITQ) statutory fishing rights (SFRs). SFRs will be issued for each of the quota species, on the basis of the allocation formula in part 4 of the Plan. The quota species will initially be bigeye tuna, yellowfin tuna, striped marlin and broadbill swordfish. For a season, each SFR entitles the holder of that SFR to take an equal share of the total allowable commercial catch (TACC) for the relevant species. TACCs will be determined annually by AFMA in accordance with the Plan (section 11). The SFRs persist for the duration of the Plan itself, unless they are surrendered or cancelled, in which case they will expire.

The Plan also allows persons to fish in the Fishery for the purposes of scientific research, if they hold a scientific permit granted under the Act.

Under the Plan, TACCs for a season are to be determined by AFMA prior to the commencement of the season. AFMA will take into account, among other things, information from the IOTC and the advice of the Western Tuna Management Advisory Committee (WTMAC) and the Western Tuna Scientific Assessment Group (WTSAG), and any decisions of the Minister on resource sharing. The WTMAC and WTSAG include members who are engaged in industry, environmental groups, research and government.

Specific obligations on holders of SFRs are set out in the Plan. These obligations are primarily designed to ensure that the fishing that takes place in the Fishery:

- does not result in the catch of the Fishery exceeding the TACC,
- can be independently observed, and
- is done in accordance with all relevant legislation, including the Act, Regulations, Directions, conditions on SFRs and other laws as they apply from time to time.

Section 14 of the Plan provides for AFMA to make Directions consistent with the objectives of the Plan that will prohibit holders of SFRs from carrying on activities specified in those Directions. Except in an emergency, AFMA must consult with the WTMAC and the WTSAG before making a Direction.

The Plan allows for the leasing of SFRs. Under a lease, the owner of the SFR would grant to the lessee of the SFR the right to use the SFR for the period of the lease. Therefore the owner would cease to be the holder of the SFR and the lessee would become the holder.

The Plan provides a number of other mechanisms designed to focus, and provide for, the management of the Fishery.

The Plan will be supported by the *Fisheries Management (Western Tuna and Billfish Fishery) Regulations*. The Regulations will set out matters in support of the Plan that must be included in the SFR Register, and also prescribe matters, such as the timing of the fishing season, that are more conveniently specified in the Regulations than in the Plan.

Regulation Impact Statement

A Regulation Impact Statement (RIS) was prepared for the *Western Tuna and Billfish Fishery Management Plan 2005* and assessed by the Office of Regulation Review (ORR). The ORR advised AFMA on 5 October 2004 that the RIS satisfied the Australian Government's RIS requirements (the ORR identification number for the RIS is 3099). The RIS is attached at Appendix A.

The Plan commences on the day after it is registered. A detailed description of the Plan is set out below.

PART 1: Preliminary

Section 1 provides that the Plan may be cited as the *Western Tuna and Billfish Fishery Management Plan 2005*. The Fishery is the combination of two fisheries, the 'Western Tuna and Billfish Fishery' and the 'Southern Tuna and Billfish Fishery'. The internal barrier separating these fisheries will be removed under the Plan. Formally redefining the two fisheries as one and changing the name also removes ambiguity with the Southern Bluefin Tuna Fishery Plan.

Under the Plan, only commercial fishing for tuna and billfish species in the Fishery is managed. The take of species by other users of the Fishery must be taken into account when TACCs are set.

Section 2 provides that the Plan commences on the day after it is registered.

Section 3 sets out the definitions of technical words used in the Plan, including:

- "Quota" which means the weight of fish of a particular quota species that may be taken, in a fishing season, under SFRs.
- "Total allowable commercial catch" (TACC) for a quota species, which means the total weight of the fish of that species that may be taken under SFRs in a season by fishing in the area of the Fishery, as determined by AFMA under section 11 of the Plan.
- "Quota SFR" which means a right to take from the area of the Fishery, in each fishing season, a particular proportion of the TACC of a quota species.
- "Boat SFR" which means a right to use a boat in the Fishery for fishing activities.

- “Holder” which means the owner of an SFR that has not been leased, or the lessee of an SFR that has not been further leased; and, the grantee of a fishing permit or most recent transferee of a fishing permit.
- “Owner” which means, for an SFR, the grantee of the SFR or most recent transferee of the SFR.

Section 4 sets out the origin for geographical coordinates used within the Plan.

Sections 5, 6 and 7 set out the objectives of the Plan, measures by which AFMA will attain the objectives and the performance criteria for assessing its achievement against the objectives.

The objectives, which are consistent with the Act, provide for the sustainable use of fisheries resources and set management, ecological and economic objectives.

The measures for achieving the objectives are set out in section 6 and address the key issues of sustainability, economic efficiency, impacts on non-target species and the marine environment, the collection and use of fishery data, efficient and cost-effective management and consistency with international obligations. These measures include the basis for setting the annual TACCs, setting catch limits for species of fish managed under State or Territory law, a risk-based compliance regime, a catch monitoring program, a review of the Plan at least every 5 years, determining levies to recover the costs of management, and the determination of reference points for maintaining ecologically sustainable stocks of each quota species as required by the United Nations Fish Stocks Agreement.

The performance criteria against which the measures taken under the Plan may be assessed are set out in section 7. They include meeting the reference points (stock-specific reference values used to determine impacts of fishing activity) set for each quota species, compliance with TACCs, the granting of SFRs, the operation of a research plan, reviewing the range and cost of AFMA’s services in the Fishery annually, and other ongoing assessments of the Fishery.

Section 8 indicates the persons and their activities to which the Plan does not apply. This includes persons engaged in recreational fishing and charter fishing or a person fishing in the AFZ under a bilateral agreement between the Commonwealth and another country or in a foreign boat outside the AFZ. Any catches of species managed under the Plan by the above persons, however, will be taken into account in setting TACCs as stated in section 6 of the Plan.

PART 2: Specific ecosystem requirements

Section 9 requires AFMA to develop and implement a BAP to ensure that the by-catch of the Fishery is reduced to, or kept at, a minimum and below a level that might threaten by-catch species. AFMA must review this BAP at least every two years to ensure that it is achieving its objectives of minimising impacts on habitats and minimisation of interactions with by-catch species listed in sections 15 and 15A of the Act. Subsection 9(4) of the Plan requires AFMA to take into account certain provisions of the EPBC Act when developing a BAP. Subsection 9(5) provides that if information gathered under a BAP shows that it is necessary,

AFMA must consider making changes to the Plan or changes to the conditions imposed on the holders of fishing concessions.

Section 10 sets out the provisional reference points for the species managed under the Plan. AFMA must, within 12 months after the commencement day of the Plan, collate fish stock information about key species in the Fishery (bigeye tuna, broadbill swordfish, striped marlin and yellowfin tuna), assess the risks to the ecological sustainability of those stocks, and not increase the TACC for those species unless it sets precautionary limits or target reference points. A reference point is a point at which AFMA can review the impact, or otherwise, of fishing activity under the Plan. Where no reference points have been determined, AFMA must set precautionary catch limits. AFMA must carry out a risk assessment on the ecological sustainability of species managed under the Plan within 24 months of the commencement of the Plan and establish reference points for each species.

Section 11 sets out the process, including consultation, which AFMA must undertake in determining the total amount of each quota species that may be taken from the Fishery each season and the method for allocating quota among SFR holders. SFR holders must not take fish in excess of the quota allocated to their SFRs. AFMA may also include in the determination details of the degree to which quota units may be deducted from or carried over to the following fishing season. The section also provides for the matters that AFMA must consider in making a determination, including information from the WTMAC, estimated catches from other users of the resource, sustainability information, reference points set for quota species, the precautionary principle, Ministerial decisions about resource sharing, TACC setting decision rules, and the likely effect of over catch on the Fishery. Where the determination of a TACC is revoked or disallowed, the TACC for the immediately preceding fishing season will apply.

Section 12 provides that the quota for each SFR for quota species is the TACC for the species divided by the total number of SFRs for the species at the start of the fishing season.

Section 13 requires AFMA to notify SFR holders, prior to the commencement of the season, of the quota which will be assigned to their SFRs for the fishing year. The notices must include details on the TACC available for the Fishery and on the species for the season and the quota available to the SFR holder for the season.

Section 14 states that AFMA may give a written Direction that fishing is not to be engaged in (in) the Fishery, or in a part of the Fishery or during a specified time period. It also specifies that AFMA must consult with WTMAC prior to making such a Direction, the period of time before a Direction comes into force as well as specifying the process that will be adopted should an emergency direction be required. An emergency is defined as a calamity of some sort, for example, an interaction with protected species, habitat destruction or a stock collapse.

PART 3: Fishing in the Fishery

Section 15 defines commercial fishing in relation to fishing methods and states that only SRF holders that are using an Australian boat that is a nominated boat may fish in the Fishery. This section also requires the SFR holders to hold a fishing permit that authorises the take of non-quota species. To take a quota species, a person must hold SFRs for that species and

must have unused quota for that species for the season. The boat used to take that species must be nominated for the SFR held.

A person may use a foreign boat to engage in commercial fishing in the part of the Fishery that lies within the AFZ only if the person holds a foreign fishing license and unused quota for the Fishery, but must not take skipjack tuna using the purse seine method.

Section 16 allows a person to carry or process fish only if the person is the holder of a permit authorising the carrying or processing.

Section 17 allows scientific fishing activities to be carried out in the Fishery, but only in accordance with a scientific permit.

Section 18 allows SFR holders to take more catch than their SFRs allow in one season. The over catch is deducted from the SFR holders' entitlements in the next season. AFMA specifies the degree to which this can occur for each species each season. It also determines how AFMA will determine the overcatch.

Section 19 allows SFR holders, where they have not used their entire quota allowed by their SFRs in a season, to carry over up to a certain percentage of SFRs into the following season. AFMA specifies the degree to which this can occur for each species each season. It also explains how the carryover amount is determined.

PART 4: Grant of SFRs

Division 4.1 Availability of SFRs

Quota SFRs are granted for each species, in relation to each permit (longline or minor line), on the basis of the permit's relative value in the Fishery and the catch taken under the permits. Each SFR entitles access to a proportion of the TACC available for each species.

Only species under Commonwealth jurisdiction that are likely to be taken in significant numbers are subject to ITQs in the first instance (i.e. yellowfin tuna, bigeye tuna, broadbill swordfish and striped marlin), with a mechanism available in the Plan to bring other species under ITQs.

Section 20 sets out the definitions of technical words used in this division, including:

- "Best 2 years' catches" is the greatest calculated weight for a species taken during two years within the relevant period [see next] under an old longline or minor line permit.
- "Relevant period" means the period between 1997 and 2001 inclusive.
- "Total of best catches" means the total of the best 2 years' of catches for a species taken under all old longline or old minor line permits.

Section 21 sets out how the calculated weight of a species of fish taken during the relevant period is determined. In the first instance, this is determined by AFMA from logbook records. There is an appeals process available, where a person eligible for a grant of SFRs disagrees with AFMA's assessment of their activity status, to provide documentation of catch

taken under a valid permit during the relevant period. The eligible person must notify AFMA of his/her disagreement within 28 days of receiving a notice of their calculated weight.

Section 22 states that this Division only applies to applicants registered as eligible persons under section 26 of the Act.

Section 23 states that a person who, at the end of a notice period published under section 24 of the Act, holds an old longline, minor line, purse seine or high seas only permit, can be registered as eligible for a grant of SFRs.

Section 24 provides that AFMA must make available a grant of 1 boat SFR for each old longline, minor line, purse seine and high seas only permit indicated in subsection 23(2).

Section 25 sets out the process by which AFMA must make available a grant of SFRs for old minor line permits for striped marlin, bigeye tuna, broadbill swordfish and yellowfin tuna. TACCs will be set annually for each of these species. For bigeye tuna, broadbill swordfish and yellowfin tuna, the number of SFRs for each species that will be available to an eligible person is determined by their best 2 years' catch for that species during the relevant period, the total of all best 2 years' catch for the species, the relative permit value, and the total number of old minor line permits held in the Fishery. SFRs for striped marlin will be equally allocated amongst the eligible persons.

Section 26 sets out the process by which AFMA must make available a grant of SFRs for old longline permits for striped marlin, bigeye tuna, broadbill swordfish and yellowfin tuna. TACCs will be set annually for each of these species. For bigeye tuna, broadbill swordfish and yellowfin tuna, the number of SFRs for each species that will be available to an eligible person is determined by their best two years' catch for that species during the relevant period, the total of all best 2 years' catch for the species, the relative permit value, the best 2 years' set history, and the total number of old longline permits held in the Fishery. SFRs for striped marlin will be equally allocated amongst the eligible persons.

Section 27 allows that, where the eligible person or a previous holder of the relevant permit who suffered serious misfortune (defined in subsection 27(2)) during the relevant period which results in fewer SFRs being available to the eligible person, AFMA may use an average catch and average number of times a longline was set in the Fishery when calculating the number of SFRs available to the eligible person. The average catch and/or number of longline sets must relate to the Fishery during the period of misfortune.

Division 4.2 Grant of SFRs

Section 28 provides specific details for the process of granting SFRs in the Fishery including the procedures for requesting the grant and the consequences of non-compliance with time lines. If, after receiving 2 notices from AFMA, an eligible person does not request a grant of SFRs, then the grant ceases to be available to that person.

Section 29 sets out the information about the SFRs to be included in the certificate evidencing the grant of the SFRs and subsection 29(2) allows for more than one SFR to be listed on the one certificate. AFMA must give to a person to whom an SFR is granted a signed extract of the SFR Register that states the conditions to which the SFR is subject.

Section 30 provides that AFMA may publish a notice in the *Gazette*, no sooner than 5 years from the commencement date, notifying that Boat SFRs cease to have effect. AFMA may only publish this notice where it has carried out an assessment of the catch of non-quota species, consulted the WTMAC about that assessment, and is satisfied that it is not commercially viable to fish only for non-quota species.

PART 5: Boats used in the Fishery

Section 31 sets out the process for SFR holders applying to have a boat nominated as an eligible boat on the Register and sets out the information to be included on the Register, such as the name of the nominated boat. This section permits a boat to be nominated to only one SFR holder. The application nominating a boat must include a statement as to the suitability of the boat to carry an observer. If AFMA approves an application to nominate a boat, it must enter that nomination onto the Register and provide the applicant with a signed extract of the registered nomination. AFMA can refuse an application if the boat cannot carry an observer safely.

A decision made by AFMA to not enter a boat in the Register as the nominated boat for the SFR is a reviewable decision under Section 165 of the Act.

Section 32 allows AFMA to remove a boat from the Register where the boat nominated is determined safe for carrying an observer and the master of the boat or the holder of the SFR for which the boat is nominated refuses to carry an observer. A decision made by AFMA to remove a boat from the Register is a reviewable decision under section 165 of the Act.

Section 33 provides that AFMA must cancel a boat nomination when requested in writing from the holder of an SFR for which the boat is the nominated boat.

PART 6: Transfer and lease of SFRs

Section 34 provides that a transfer is not a lease.

Section 35 sets out the administrative procedure for applying for and processing applications for the transfer of an SFR. An application for transfer of an SFR must be accompanied by the certificate for the SFR or statement as to why it is unavailable. AFMA must not approve the transfer of an SFR:

- where proceedings for an offence under the Act or Regulations are underway, or
- 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
- where the SFR has been suspended or pending a decision or application for review relating to suspension or cancellation, or
- during a period from 14 days before issuing a levy notice to when the levies are paid, or
- if logbooks relating to the SFRs are incomplete.

Section 36 requires that if AFMA approves the transfer of an SFR, it must amend the SFR certificate to reflect the transfer and must send to the relevant parties a certificate showing the transferee as the owner of the appropriate number of SFRs.

Section 37 sets out the administrative procedures relating to the lease of an SFR.

PART 7: Obligations of holders of SFRs

Section 38 sets out obligations on the holders of SFRs. These include, among other things, a requirement to:

- comply with the Plan and any Regulation made under the Plan;
- comply with any direction made under subsection 14(1) of the Plan;
- retain by-catch if required, and take steps to minimise by-catch and the impact of fishing on the environment;
- carry a vessel monitoring system;
- carry an observer(s);
- when required, provide AFMA access to biological, economic or technical information or samples;
- carry on board an extract of the SFR Register relevant to that boat; and
- sell (or otherwise dispose of) fish only to persons holding a fish receiver permit

Section 39 sets out the obligations on the holder of an SFR relating to interactions with certain species and marine communities. These obligations include taking all reasonable steps to avoid interactions with certain species and communities, such as threatened species and threatened ecological communities and, where an interaction results in the death of one of these species or communities, not disposing of the carcass in a way that attracts other birds or mammals. This section also sets out what should be done if any such interactions occur, including recording (in logbooks) and reporting any interactions with listed species or communities, and taking all practical steps to aid an injured member of the listed species.

Section 40 imposes on holders of a foreign fishing licence any obligations imposed on SFR holders by the Act and the obligations in the Plan. The obligation to dispose of fish taken in the Fishery with holders of fish receiver permits only applies in this instance to fish disposed of solely within Australia or in the AFZ.

PART 8: Miscellaneous

Section 41 sets out the procedure for issuing replacement certificates in the event of their loss.

Section 42 provides for AFMA to delegate, in writing, certain powers or functions under the Plan to an officer of AFMA.

Section 43 sets out the procedure for SFR holders to appoint an agent to exercise certain powers in respect of their SFRs.

Section 44 sets out the details for the dispatch and receipt of notices required under the Plan and when the notice is deemed to have been given to AFMA or to an eligible person, or to the holder of an SFR or of a fishing permit.

PART 9: Transitional

Section 45 sets out the transitional arrangements, which will take effect on commencement of the Plan and continue until ceased through a public notice in the *Gazette*. These arrangements will allow for fishing to continue during this transition period under a system of fishing permits.

SCHEDULES

***Schedule 1* Area of the Fishery**

This Schedule defines the area of the Fishery, that is, that part of Australia's EEZ west of Cape York in Queensland and west of 141°E being the border between South Australia and Victoria and high seas areas within the area of competency of the Indian Ocean Tuna Commission (west of 141°E at the south-eastern part).

***Schedule 2* Scheduled species**

Part 1 of this Schedule lists the species that may be caught in the Fishery for which there are either TACCs set and SFRs granted or for which access is granted by way of a fishing permit under the Plan. Part 2 lists incidental catch species that are also caught in the Fishery but for which limits apply through Memoranda of Understanding made under the Offshore Constitutional Settlement Agreements between the Commonwealth and South Australia, Western Australia, Northern Territory and Queensland.

Long tail tuna is listed as a primary species under the Plan. During the 2004 Federal election, the Government announced a policy that long tail tuna will be a recreational-only species. Retaining long tail tuna as a primary species in the Plan is the most effective means of giving effect to this policy and is consistent with the Commonwealth Government's OCS responsibilities. The Plan may require amendment at a later date to give effect to any new arrangements.

APPENDIX A:

**Western Tuna and Billfish Fishery
Regulation Impact Statement**

(October 2004)