

Explanatory Statement

Western Tuna and Billfish Fishery Management Plan Amendment 2006 (No. 1)

Subsection 17(1) of the *Fisheries Management Act 1991* (the Act) provides that the Australian Fisheries Management Authority (AFMA) must determine written plans of management for each fishery that it manages.

Subsection 20(1) of the Act provides that AFMA may at any time amend a plan of management.

AFMA has determined the *Western Tuna and Billfish Fishery Management Plan Amendment 2006 (No.1)* (Plan Amendment) to amend the *Western Tuna and Billfish Fishery Management Plan 2005* (the WTBF plan).

The Western Tuna and Billfish Fishery

The Western Tuna and Billfish Fishery (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.

The WTBF plan applies to the area of the Fishery within the AFZ and for Australian boats to the High Seas within the area of competence of the IOTC.

Albacore tuna (*Thunnus alalunga*), bigeye tuna (*Thunnus obesus*), billfish (*Families Istiophoridae and Xiphiidae*), longtail tuna (*Thunnus tonggol*), northern bluefin tuna (*Thunnus thynnus*), rays bream (*Family Bramidae*), skipjack tuna (*Katsuwonus pelamis*) and yellowfin tuna (*Thunnus albacares*) are the primary species in the Fishery.

The WTBF plan was determined by AFMA on 1 July 2005 and accepted by the Minister for Fisheries, Forestry and Conservation on 12 October 2005. The WTBF plan was registered as a legislative instrument on 21 October 2005 and commenced operation on the day after registration.

The Fishery will be managed by output controls on quota species. The four species to be managed under quota are yellowfin tuna, bigeye tuna, broadbill and striped marlin. Access to quota species will be limited to holders of quota statutory fishing rights (SFRs) for those species. A quota SFR for a quota species will allow the holder to take a particular quantity of that species by reference to the total allowable commercial catch (TACC) set before each fishing season for that species. Access to species other than quota species will be limited to holders of boat SFRs. Part 4 of the WTBF plan provides for the allocation and grant of quota and boat SFRs in the Fishery.

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. Until such time as the SFR allocation and grant process is complete the

Fishery will be managed under the transitional provisions in section 45 of the WTBF plan. Essentially, this means that the Fishery will continue to be managed under the previous arrangements.

The process for allocating SFRs under the WTBF plan commenced following the gazettal of a notice of intention to grant fishing rights on 30 October 2005 in accordance with section 24 of the Act. In that notice AFMA called for applications for registration from eligible persons. The registration period closed on 30 November 2005 and AFMA registered eligible persons, being persons who satisfied the conditions for registration in section 23 of the WTBF plan, on 16 December 2005. The period for appeals against the delegates' decision closed on 6 January 2006. No appeals were received.

AFMA was unable to proceed any further with the SFR allocation process, as a number of technical errors were detected in the WTBF plan in early 2006. The Plan Amendment corrects these technical errors.

Content of Plan Amendment

The Plan Amendment amends the WTBF plan and corrects technical errors identified by AFMA early in 2006. Although these are technical errors, they have the effect of rendering the SFR allocation provisions non-functional and preventing AFMA from completing the allocation process.

Fishing permits granted under the Act remain in force for a limited period, being no more than five years after the day they come into force. In the Southern and Western Tuna and Billfish Fisheries, permits were normally issued for periods of one year. As a permit was only in force for a period of one year it is not possible to assess the best two years catch history of that permit, as required by the Management Plan.

Further each fishing permit is an individual entity and does not automatically have a link with any permit that has come before or any which comes after it. In the normal course of business permits are granted on application following the expiry of an existing permit and have come to be thought of by fishers as an on-going right. As the best two years of catch history is assessed over a total period of five years, there were a total of six individual permits in force during that period.

To overcome these problems the concept of a "sequence of permits" has been developed which enables AFMA to connect the various permits that have been granted to an individual in the Fishery over the catch history period to the actual permit held by the eligible person at the close of registration.

The Plan Amendment brings the WTBF plan into line with AFMA's original intention and on which AFMA consulted. The Plan Amendment does not have an effect on how an eligible person's catch history and allocation is intended to be calculated.

While making this amendment AFMA has taken the opportunity to update the date of the Regulations for the Fishery to 2006.

Consultation

AFMA can only determine a management plan after consultation with such persons engaged in fishing as appear to AFMA to be appropriate and, in accordance with

subsection 17(3) of the Act, after giving due consideration to any representations made to AFMA on the draft 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.

AFMA provided a draft of the Plan Amendment for public comment as prescribed in the Act. The period for public comment opened on 30 August 2006, with an advertisement in the Commonwealth of Australia Gazette (No. S168 of 30/8/06), the Australian newspaper (under Public Notices on 30/8/06), and the mailing of letters to all persons on AFMA's register of interested parties for the WTBF. The register includes all permit holders in the Fishery. The period for public comment closed on 4 October 2006.

Four representations were received during the period for public comment and one representation was received six days after the closing date for public comment. AFMA gave due consideration to the representations that were received in respect of the draft Plan Amendment. No negative comments on the Plan Amendment were made in any of the five representations. Consequently, no changes were made to the Plan Amendment circulated for public comment.

The Western Tuna and Billfish Fishery Management Advisory Committee (WTBFMAC) has been consulted throughout the development of the Plan Amendment. After they were consulted about the representations received during the formal round of public consultation, the MAC endorsed AFMA's assessment of the representations received and recommended that AFMA proceed with determining the Plan Amendment.

The Office of Regulation Review (ORR) advised AFMA (ORR ID No. 8087) that a Regulation Impact Statement (RIS) is not mandatory for the Plan Amendment because the proposal is of a minor or machinery nature and does not substantially alter existing arrangements.

AFMA has determined the Plan Amendment to amend the WTBF plan following consultation with such persons engaged in fishing as appear appropriate and following due consideration of the representations received. AFMA is satisfied that the Plan Amendment pursues its objectives and is consistent with its corporate plan and current annual operational plan.

AFMA has informed the Minister of the consultations that were conducted and of representations that were received. The Minister is satisfied that AFMA gave due consideration to the representations received, conducted adequate consultations and that the Plan Amendment is consistent with AFMA's corporate plan and current annual operational plan. The Minister has accepted the Plan Amendment.

The Plan Amendment has been lodged for registration on the Federal Register of Legislative Instruments.

The Amendments

Details of the Plan Amendment, which commences the day after it is registered as a legislative instrument, are set out below:

Section 1 – provides that the Plan Amendment may be cited as the Western Tuna and Billfish Fishery Management Plan Amendment 2006 (No. 1).

Section 2 – provides that the Plan Amendment will commence on the day after it is registered as a legislative instrument.

Section 3 – provides that Schedule 1 amends the WTBF plan.

Schedule 1

Clause 1 – Clause 1 updates the definition of WTBF Regulations in section 3 of the WTBF plan by replacing the year 2005 with the year 2006.

Clause 2 – Clause 2 replaces the existing definition of **best 2 years' catches** at section 20 with a cross reference to a new definition to be inserted at section 20B by Clause 6. The reason for the new definition is outlined at Clause 6 below.

Clause 3 – Clause 3 amends section 20 by inserting a definition of **notice period**. The purpose of the amendment is to clarify that “notice period” has the same meaning given to it in subsection 23(1) of the WTBF plan.

Clause 4 – Clause 4 amends section 20 by inserting a definition of **sequence**. “Sequence” has the meaning given to it in the new section 20A to be inserted by clause 6. The reason for the new definition is outlined at Clause 6 below.

Clause 5 – Clause 5 substitutes the definition of **total of best catches** in section 20 of the WTBF plan with a new definition. The new definition differs from the old definition by replacing references to a permit with references to a sequence of permits. “Total of best catches” means the total of the best 2 years’ of catches for a species taken under a sequence of old longline or old minor line permits. This amendment does not alter the original intent of the old definition in section 20 of the Management Plan.

Clause 6 – Clause 6 amends the Plan by inserting new sections 20A and 20B. Section 20A provides a detailed description of the new concept of a sequence of permits and section 20B provides a new definition of best two years catches, based on the sequence concept.

Section 20A

Subclause (1) defines a sequence of old longline permits as a number of connected old longline permits the earliest of which was in force during the relevant period and the latest of which was held by the eligible person at the end of the notice period. “Relevant period” is defined in section 20 of the WTBF plan. “Notice period” is defined in clause 3.

Subclause (2) defines a sequence of old minor line permits as a number of connected old minor line permits the earliest of which was in force during the relevant period and the latest of which was held by the eligible person at the end of the notice period. “Relevant period” is defined in section 20 of the WTBF plan. “Notice period” is defined in clause 3.

Subclause (3) defines “connected” for the purposes of subclause (1) and (2). Two permits are “connected” if:

- (i) each permit entitled the holder to fish in the same area of the Fishery using the same fishing method; and

- (ii) one permit commenced after the other ceased to have effect; and
- (iii) the later permit was granted to the person that was the holder of the earlier permit when it ceased to have effect; and
- (iv) that person applied to AFMA for the grant of the later permit; and
- (v) the later permit was granted to the person because the person held the earlier permit.

Subclause (4) provides that 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.

Section 20B

Section 20B will provide a new definition of **best two years 'catches** for a species of fish based on the new concept of 'a sequence of permits' instead of the old concept of 'a permit'. This amendment does not alter the intent of the Management Plan. Now, "Best two years catches" is the total calculated weight of a species taken under the sequence, rather than under a permit, in the two years within the relevant period during which the greatest calculated weight of that species was taken under that sequence.

Clause 7 – Clause 7 amends section 24 of the WTBF plan by omitting "held" and inserting "held at the end of the notice period". The amendment clarifies which permit gives rise to the availability of boat SFRs under section 24. Only a permit of the type specified in subsection 23(2) of the WTBF plan held at the end of the notice period gives rise to the availability of boat SFRs.

Clause 8 – Clause 8 amends subsection 25(1) of the WTBF plan by omitting "held" and inserting "held at the end of the notice period". The amendment clarifies which old minor line permit gives rise to the availability of quota SFRs under subsection 25(1). Only a minor line permit held at the end of the notice period gives rise to the availability of quota SFRs.

Clause 9 – Clause 9 amends subsections 25(2) and (3) of the WTBF plan by substituting the formulae to be used for calculating the grant of striped marlin SFRs and bigeye SFRs to be made available to old minor line permit holders. The effect of this amendment is to simply update the formulae so that they will be based on the new concept of a sequence of permits rather than the old concept of a permit (see Clause 6). This amendment does not change the original intent of the Management Plan or how SFRs would be made available for striped marlin and big eye tuna.

Clause 10 – Clause 10 amends subsection 25(4) by substituting the definition of **CH** (or catch history) used in calculating the grant of broadbill SFRs to be made available to old minor line permit holders. The substitution incorporates the concept of a sequence of old minor line permits (see Clause 6). This amendment does not alter the original intent of the Management Plan in calculating the grant of broadbill SFRs to be made available to eligible persons.

Clause 11 – Clause 11 amends subsection 25(5) by substituting the definition of **CH** used in calculating the grant of yellowfin SFRs to be made available to old minor line permit holders. The substitution incorporates the concept of a sequence of old minor line permits (see Clause 6). This amendment does not alter the original intent of the Management Plan.

Clause 12 – Clause 12 amends section 25 of the WTBF plan by inserting a note at the foot of section 25 that 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. The purpose of this amendment is to clarify the original intent of the Management Plan.

Clause 13 - Clause 13 amends subsection 26(1) of the WTBF plan by omitting “held” and inserting “held at the end of the notice period”. The amendment clarifies which old longline permit gives rise to the availability of quota SFRs under subsection 26(1). Only a longline permit held at the end of the notice period gives rise to the availability of quota SFRs.

Clause 14 – Clause 14 amends subsections 26(2) and 26(3) of the WTBF plan by substituting revised formulae for calculating the grant of striped marlin and bigeye SFRs to be made available to old longline permit holders. The substitution incorporates the concept of a sequence of old longline permits. This amendment will not alter the original intent of the Management Plan.

Clause 15 – Clause 15 amends subsection 26(4) of the WTBF plan by substituting the definition of **CH** used for calculating the grant of broadbill SFRs to be made available to old longline permit holders. The substitution incorporates the concept of a sequence of old longline permits (see Clause 6). This amendment will not alter the original intent of the Management Plan.

Clause 16 – Clause 16 amends subsection 26(5) of the WTBF plan by substituting the definition of **CH** used for calculating the grant of yellowfin SFRs to be made available to old longline permit holders. The substitution incorporates the concept of a sequence of old longline permits (see Clause 6). This amendment will not alter the original intent of the Management Plan.

Clause 17 – Clause 17 amends section 26 by inserting a note at the foot of section 26 that 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. The purpose of this amendment is to add clarity to the original intent of the Management Plan.

Clause 18 – Clause 18 substitutes subsection 27(1) of the WTBF plan, with a new subsection that provides AFMA with a mechanism for calculating the SFRs that may be made available to an eligible person that has suffered a serious misfortune. The purpose of the substitution is to incorporate the concept of a sequence of permits in place of the concept of a permit (see Clause 6).

Clause 19 – Clause 19 inserts a note at the foot of section 27 that where the holder of a permit suffered a serious misfortune that affected the holder’s ability to fish under one or more permits the total time of the misfortune is taken into account. The purpose of the amendment is to add clarity to the procedure for addressing a serious misfortune.