

Explanatory Statement

Fisheries Management Act 1991

Southern and Eastern Scalefish and Shark Fishery Management Plan Amendment 2006 (No. 2)

Subsection 17(1) of the *Fisheries Management Act 1991* (the Act) provides that the Australian Fisheries Management Authority (AFMA) is to determine plans of management for all fisheries. Subsection 20(1) provides that AFMA may amend a plan of management.

AFMA has determined the *Southern and Eastern Shark Fishery Management Plan Amendment 2006 (No.2)* (the Plan Amendment) to amend the *Southern and Eastern Scalefish and Shark Fishery Management Plan 2003* (the Plan).

The Southern and Eastern Scalefish and Shark Fishery

The Southern and Eastern Scalefish and Shark Fishery (SESSF) is managed under the Plan. It is a multi-method multi-species fishery that lands fresh scalefish and shark for the Australian market and for export. The area of the Fishery stretches south from Fraser Island in southern Queensland, around Tasmania to Cape Leeuwin in southern Western Australia. It comprises a number of historically separate fisheries which had substantial overlap in their areas of operation and species targeted. These fisheries were:

- the South East Trawl Fishery;
- the Gillnet, Hook and Trap Fishery (formerly the South East Non-trawl Fishery and the Southern Shark Fishery); and
- the Great Australian Bight (GAB) Trawl Fishery.

SESSF also encompasses the Commonwealth Victorian Inshore Trawl Fishery and the East Coast Deepwater Zone which adjoined the area of the South East Trawl Fishery. Together, all of these fisheries produce annual commercial catches with an estimated value of \$90 million.

The SESSF is managed by a combination of output controls (that limit the amount of fish that can be taken from the fishery) in the form of quota statutory fishing rights (SFRs) and input controls (that limit the number of vessels and type of gear that can be used in the fishery). Operators are required to have a boat SFR to fish in the fishery and quota SFRs to cover their catch of all quota species. Most of the commercially important species in the fishery are managed by total allowable catches through quota SFRs. Quota SFRs are fully tradable and can either be permanently transferred or leased.

Content of Plan Amendment

In general terms, the Plan Amendment:

1. facilitates the implementation of e-licensing arrangements, and consequential amendments to reflect changes in the names of (fishing) sectors and assessment groups;
2. introduces new arrangements for the trading and movement of quota SFR's within the SESSF;
3. implements management measures to give effect to the objectives of the Ministerial Direction issued on 16 December 2005 to AFMA under section 91 the *Fisheries Administration Act 1991* (Ministerial Direction);
4. changes the start date for the fishing year away from peak fishing period for the SESSF; and
5. makes minor and machinery changes to facilitate and streamline the grant of quota SFRs for species 21-24 of Schedule 2 (School shark, Gummy shark, Elephant fish and Saw shark).

The first set of amendments are of an administrative nature and include amendments to sections 31 and 33 of the Plan to assist in the implementation of e-licensing, change the name of the Commonwealth Trawl Sector to better reflect the area of waters associated with it and to substitute the name “resource assessment group” with “fishery assessment group,” which better reflects their purpose.

The second set of amendments introduces improved management arrangements for the movement of quota throughout the fishery in preparation for the introduction of e-licensing and reduce the cost attributed to operators for the management of licensing and quota holdings. This includes the removal of inconsistencies within the processes for the return of certificates relating to licensing transactions for boat nomination, transfer and leases.

The amendments are aimed at decreasing the administrative costs to SESSF operators imposed by the Licensing and Quota Management branch of AFMA by removing some of the incidental checks which staff undertake. Removing or amending these sections of the Plan does not decrease the powers of AFMA to manage the fishery. Moreover, it gives operators increased flexibility to manage their business under the new arrangements.

The third set of amendments relates to the Ministerial Direction. In response to the Ministerial Direction, AFMA explicitly stated that management arrangements in the SESSF would be amended to include management of deepwater species. In light of this, AFMA has amended Schedule 2 of the Plan to add the species currently managed under the *Southern and Eastern Scalefish and Shark Fishery Non-Specified Quota Species Temporary Order 2006 (No.2)* to provide more permanent management arrangements for these deepwater species.

The fourth set of amendments change the definition of a fishing year. The fishing year was described as a 12 month period which follows a calendar year. After broad consultation AFMA has changed the fishing season in the SESSF as follows:

- (a) the 12 month period between 1 May – 30 April;
- (b) a transitional year of 1 January 2007 – 30 April 2008.

The fifth set of amendments set out the conditions for registration of eligible persons for quota species in items 21-24 (School shark, Gummy shark, Elephant fish and Saw shark) of Schedule 2 for all SESSF operators and the procedures for making the grant of SFRs to those persons deemed eligible. These changes are necessary as the previous provisions were incapable of application to future SFR grants. This is because the previous provisions referenced permits granted in relation to historical fisheries. Rather the take of species 21-24 is now managed by permits issued for the SESSF. The amendment does not depart from the allocation formulae in the Plan in that quota holders are entitled to one quota SFR of that species for every quota unit held at the end of the notice period.

Consultation

Section 20 of the Act prescribes that section 17 of the Act applies in relation to amendments to a plan of management in the same way as it applies to the preparation of a new plan of management. Section 17 requires that AFMA must consult with such persons engaged in fishing as appear to be appropriate, and must give due consideration to any representations made to AFMA in connection with the draft plan. AFMA has met all consultation requirements required of it in the preparation of this instrument.

AFMA provided a draft of the Plan Amendment for public comment as prescribed in the Act. The period for public comment opened on 20 September 2006, with an advertisement in the Commonwealth of Australia Gazette (No.37 of 20/9/2006) the Australian newspaper (under Public Notices on 20/9/2006) and the mailing of letters to all persons on AFMA's register of interested parties for the SESSF. The register includes all permit holders in the SESSF. The period for public

comment closed on 20 October 2006.

One representation was received during the period for public comment. These comments related to the fourth set of amendments. AFMA gave due consideration to this representation, however on the balance considered the proposal suited the majority of operators and no changes were made to the Plan Amendment as a result of this representation.

The three SESSF MACs (GAB Management Advisory Committee, South East Trawl Management Advisory Committee and Gillnet Hook and Trap Management Advisory Committee) were consulted throughout the development of the Plan Amendment. Following the close of public consultation they were further consulted about the representations received. The MACs endorsed AFMA's assessment of the representations received and recommended that AFMA proceed with determining the Plan Amendment.

AFMA has determined the Plan Amendment to amend the 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 does not lead to any new fees and charges being imposed.

The Plan Amendment is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Plan Amendment commenced on the day after registration on the Federal Register of Legislative Instruments.

Regulation Impact Statement

The Office of Regulation Review (ORR) advised AFMA that a Regulation Impact Statement (RIS) was not required for the Plan Amendment (Reference RIS IDs 8470, 8471, 8472, 8473).

The Amendments

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

Section 1 - Provides that the Plan Amendment is cited as the *Southern and Eastern Scalefish and Shark Fishery Management Plan Amendment 2006 (No.2)*.

Section 2 - Provides that the Plan Amendment commences on the day after it is registered as a legislative instrument.

Section 3 - Provides that Schedule 1 amends the Plan.

Schedule 1

Clause 1 – Clause 1 substitutes the name of the “Commonwealth Trawl Sector” with “Commonwealth South East Trawl Sector” in section 3. The change was requested by operators to better differentiate the Sector from the GAB Trawl Sector. Subsequent clauses substitute all other

references to the Commonwealth Trawl Sector in the Plan.

Clause 2 - Clause 2 omits the name “fishery assessment group” in section 3. After the Plan was determined in 2003 the name “fisheries assessment group” was changed to “resource assessment group” to better reflect the group’s purpose. Clause 4 below inserts the name “resource assessment group.”

Clause 3 - Clause 3 substitutes the definition of fishing year in section 3 of the Plan from a calendar year to a 12 month period commencing on 1 May from 1 May 2008 to avoid the peak Christmas/New Year fishing period in the fishery. The clause further provides for an extended fishing year in the transitional period from 1 January 2007 to 30 April 2008, resulting in a 16 month transitional fishing season.

This amendment moves the responsibility of the final reconciliation period for operators away from the Christmas and New Year period.

Clause 4 - Clause 4 inserts the definition of “resource assessment group” in alphabetical order in section 3 of the Plan. This definition replaces the definition of fishery assessment group omitted by clause 2.

Clause 5 – Clause 5 substitutes the reference to “Commonwealth Trawl Sector” with “Commonwealth South East Trawl Sector” in section 3 (see Clause 1).

Clause 6 - Clause 6 omits the reference to the acronym SFRs in paragraph 6(c) of the Plan as it is not defined in section 3. The acronym is replaced with the term statutory fishing right which is defined in the Act.

Clause 7 - Clause 7 substitutes the reference to “fishery assessment group” with “resource assessment group” in paragraph 6(e) (see Clause 2).

Clause 8 – Clause 8 changes the date in subsection 11(1) which required AFMA to determine a Total Allowable Catch (TAC) for each quota species from previously 5 December to 31 March. This amendment is required due to the change to the definition of the fishing season and also allows for arrangements during the transitional year.

Clause 9 - Clause 9 omits the notes in subsection 11(4). The notes in this section are being omitted as the notes make reference to fishing season and determination date that have been changed by the Plan Amendment.

Clause 10 - Clause 10 amends the note to subsection 20(3) to include a reference to section 22A which is inserted by clause 15.

Clause 11 - Clause 11 inserts a new definition section, 21A, into Division 4.2. These definitions were previously found in subsections 22(5) and (6) which are omitted by Clause 14. Clause 11 also inserts a new definition of “relevant date” which indicates the date in which an operator must reconcile their catch. For the 2006 fishing year concession holders must reconcile catches by 28 February 2007 and by 30 June 2008 in each subsequent year. The definitions now apply across Division 4.2. These changes facilitate the reorganisation of Division 4.2 to conceptually separate the treatment of overcatch where the determined percentage is exceeded and not exceeded.

Clause 12 - Clause 12 substitutes the renamed heading for section 22 to reflect the reorganisation of Division 4.2.

Clause 13 - Clause 13 substitutes “on 28 February of” with “on the relevant date for” in paragraph 22(1)(b) (see clause 11).

Clause 14 - Clause 14 omits subsections 22(3) to (6) of the Plan. These changes facilitate the reorganising of Division 4.2. Subsections 22(3) and (4) have been replaced by a new section 22A (clause 15) and subsections 22(5) and (6) by a new section 21A (clause 11). The effect of the omission is that section 22 now only applies to overcatch where the determined percentage has not been exceeded.

Clause 15 - Clause 15 inserts a new section 22A Overcatch – if determined percentage is exceeded, after section 22 of the Plan. Section 22A places all provisions relating to overcatch if the determined percentage is exceeded in one section. These were previously contained in subsections 22(3) and (4).

Clause 16 - Clause 16 substitutes “on 28 February of” with “on the relevant date for” in paragraph 23(1)(b) (see clause 11).

Clause 17 - Clause 17 omits subsection 23(3) as these provisions are relocated in the new 21A (clause 11). Subsection 23(3) had provided a section specific definition of determined percentage. This subsection is no longer needed due to the Division wide definitions inserted by clause 11.

Clause 18 - Clause 18 changes the date in subsection 24(1) which required AFMA to determine amounts and percentages before 5 December before the commencement of each fishing year. Given the change in the definition of fishing year (clause 3) clause 18 requires the determinations to be made by 31 March.

Clause 19 - Clause 19 omits the note in subsection 24(2). The note is no longer required as AFMA must determine the amounts for overcatch and undercatch no later than 31 March immediately before the commencement of the fishing year as defined in clause 3 (clause 18). Accordingly the reference to a determination date of 4 December is no longer accurate.

Clause 20 - Clause 20 inserts the reference to section 22A (see clause 15) into subsection 24(5).

Clause 21, 22 and 23

Clauses 21, 22 and 23 amend the provisions which set out who is eligible for the grant of statutory fishing rights that apply to quota species. These amendments have been made in order to facilitate the grant of SFRs in the fishery and remove reference to old fisheries under which permits are no longer granted.

Clause 21 restricts the application of subsection 27(1) to the quota species mentioned in items 1-20 of Schedule 2 that is quota species for which SFRs have already been granted in the SESSF from the old Gillnet Hook and Trap Fishery. This amendment is necessary as AFMA no longer grants permits for the old Gillnet Hook and Trap Fishery.

Clause 22 restricts the application of subsection 27(4) to the quota species mentioned in item 20 of Schedule 2 (Orange roughy (Cascade Plateau)). This amendment is necessary as AFMA no longer issues permits for the old South East Trawl Fishery. SFRs for Orange roughy (Cascade Plateau) have already been granted in the SESSF from the old South East Trawl Fishery.

Clause 23 substitutes subsection 27(5) which had set out the conditions for registration of eligible persons for the quota species in items 21-24 of Schedule 2 (School shark, Gummy shark, Elephant fish and Saw shark). These are for persons with historical access to the old GAB Trawl Fishery. No SFRs has been granted under that subsection. An amendment is necessary as AFMA no longer issues permits for the old GAB Trawl Fishery.

The new subsection 27(5) sets out the conditions for registration of eligible persons for quota species in items 21-24 of Schedule 2 for all SESSF operators. Operators will satisfy the conditions

for registration if they were authorised to take a number of quota units of that species in the fishery before the end of the notice period. "Notice period" is defined in subsection 27(6) of the Plan. The amendment will not depart from the allocation formulae in the Plan in that quota holders will be entitled to one quota SFR of that species for every quota unit held at the end of the notice period.

Following the commencement of this Plan Amendment AFMA intends to publish a notice of intention to grant SFRs for these species as required by section 24 of the Act.

Clause 24 - Clause 24 omits the acronym SFR and substitutes it with "statutory fishing right" in subsection 27(5A) (see clause 6).

Clause 25 - Clause 25 substitutes the reference to "subregulations (1) to (5A)" with "subsections (1) to (5A)" in subsection 27(6) to correct an original drafting error.

Clause 26 - Clause 26 amends paragraph 28(2)(j) which had set out the procedures for making the grant of SFRs available for species 21-24 for eligible persons registered in accordance with subsection 27(5), being 1 Type T SFR for each quota unit of that species held by the person in the GAB Trawl Fishery before the end of the notice period. SFRs have not been granted for these species 21-24. This is a consequential amendment following from clause 23, allowing for the grant of SFRs for these species 21-24.

The new paragraph 28(2)(j) sets out the procedures for making the grant of SFRs available for species 21-24 for eligible persons registered in accordance with clause 23. Operators registered as eligible persons because of subsection 27(5) will have available to them 1 quota SFR for the species for each quota unit of that species the person is authorised to take in accordance with a permit held by that person immediately before the end of the notice period.

Clause 27 – Clause 27 omits subsection 31(3) of the Plan which required a concession holder to return the certificate of grant to AFMA upon the nomination of a boat. The removal of this subsection will stream line AFMA's licensing procedures. It facilitates the implementation of e-licensing and movement of quota.

Clause 28 – Clause 28 amends paragraph 31(5)(b) and is a consequential amendment arising from clause 29. It facilitates the implementation of e-licensing and movement of quota.

Clause 29 - Clause 29 omits paragraph 31(5)(c) of the Plan. That paragraph had prevented AFMA from registering a boat as a nominated boat for the purposes of a SFR held by one person if the boat was registered as a nominated boat, in relation to another person, for any authorisation given under State or Territory law. This change will assist AFMA in the efficient processing of boat nominations during peak periods, the smooth transition to e-licensing and facilitate the movement of quota.

Clause 30 – Clause 30 is a consequential amendment to subsection 33(3) arising from the change in the definition of fishing year (clause 3) which changes the dates in which an application for transfers must be made. Clause 30 provides that for the 2006 fishing year all applications for the transfer of SFRs must be made before 14 December in relation to the current fishing year and before 5 April for every subsequent fishing year. December 14 was the original date in which applications for transfers needed to be made and remained the date for the 2006 fishing year. Clause 30 facilitates the implementation of e-licensing and movement of quota.

Clause 31 - Clause 31 is a consequential amendment to subsection 46(1) arising from the insertion of section 22A (clause 15).

Clause 32 - Clause 32 substitutes the reference to "Commonwealth Trawl Sector" with "Commonwealth South East Trawl Sector" in paragraph 54 (1)(a) (see clause 1).

Clause 33 - Clause 33 substitutes the reference to “Commonwealth Trawl Sector” with “Commonwealth South East Trawl Sector” in paragraph 54 (1)(b) (see clause 1).

Clause 34 – Clause 34 omits subsection 60(4), which had set out the address to which notices were to be provided to AFMA. These particulars are no longer accurate as AFMA has moved to premises. AFMA has written to all operators advising them of its new contact details.

Clause 35 - Clause 35 omits section 63. This section ceased to have effect on 23 September 2003, when the Great Australian Trawl Fishery Management Plan was revoked.

Clause 36 - Clause 36 substitutes the reference to “Commonwealth Trawl Sector” with “Commonwealth South East Trawl Sector” in Schedule 1, Part 1, paragraph 1(d) (see clause 1).

Clause 37 - Clause 37 substitutes the reference to “Commonwealth Trawl Sector” with “Commonwealth South East Trawl Sector” in Schedule 1, Part 2, clause 4, heading (see clause 1).

Clause 38 - Clause 38 substitutes the reference to “Commonwealth Trawl Sector” with “Commonwealth South East Trawl Sector” in Schedule 1, Part 2, clause 4 (see clause 1).

Clause 39 - Clause 39 substitutes the common name of Spotted warehou for Silver warehou in Schedule 2, table, item 16. This substitution reflects the change of market name for this species.

Clause 40 - Clause 40 removes the family Chimaeridae from list of scientific names for item 23 Elephant fish in Schedule 2, table of the Plan. This is due to the low market value of the species causing increased discarding of Elephant fish from this family. AFMA will manage this family of Elephant fish under its bycatch action plan. No SFRs have been granted for Elephant fish. This amendment implements the Ministerial Direction.

Clause 41 – Clause 41 inserts Deepwater shark, Oreo, Ribaldo cod and Smooth oreo dory (items 29-32) as quota species in Schedule 2, table of the Plan. These species have been previously managed under the *Southern and Easter Scalefish and Shark Fishery (specified non-quota) Temporary Order 2006* which commenced on 21 June 2006. AFMA will continue to manage these species under the current permit arrangements until such time as spatial arrangements can be finalised in across all sectors of the SESSF. This implements the Ministerial Direction.

Clause 42 - Clause 44 substitutes references to fishery assessment group with resource assessment group into paragraphs 6 (h) 7 (1) (c), 12 (b), 16 (b), 19 (4) (a), 21 (5) (b) and 24 (3) (b), subparagraph 7 (1) (a) (i) (see clause 2).