



Eastern Tuna and Billfish Fishery Management Plan 2005

The AUSTRALIAN FISHERIES MANAGEMENT AUTHORITY determines this plan of management under section 17 of the *Fisheries Management Act 1991*.

Dated 24 May 2005

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Common seal of the
Australian Fisheries
Management Authority

Accepted on 12 October 2005

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Contents

Part 1	Preliminary	
	1 Name of Management Plan	5
	2 Commencement	5
	3 Definitions	5
	4 Meaning of <i>effort unit</i>	8
	5 Origin of geographical coordinates	8
	6 Objectives (Act s 17 (5))	8
	7 Measures by which the objectives are to be attained (Act s 17 (5))	9
	8 Performance criteria against which measures taken will be assessed (Act s 17 (5))	11
	9 Persons to whom this Management Plan does not apply	13
Part 2	Specific ecosystem requirements	
	10 By-catch (Act s 17 (6D))	14
	11 Reference points	14
Part 3	Allowable fishing effort	
	12 Directions by AFMA (Act s 17 (5A))	16
	13 Determination of TAE and value of effort unit (Act s 17 (6))	16
	14 Value of SFRS	17
	15 Notice to owners of SFRs	18
Part 4	Statutory fishing rights and fishing permits	
Division 4.1	Who may fish in the fishery	
	16 Australian commercial fishing	19
	17 Foreign commercial fishing	20
	18 Carrying or processing fish	20
	19 Scientific research in the area of the fishery	20
Division 4.2	Expenditure of effort units	
	20 Expenditure of effort units	21
	21 Over-expenditure of effort units	21
	22 Under-expenditure of effort units	23
Division 4.3	Registration of eligible persons for grant of longline SFRs or minor line SFRs	
	23 Applicability of Division	23
	24 Meaning of <i>evidence of fishing</i>	23
	25 Registration as an eligible person — longline SFRs (Act s 26)	24
	26 Registration as an eligible person — minor line SFRs (Act s 26)	24

	Page
Division 4.4	Registration of eligible persons for grant of boat SFRs
27	Applicability of Division 25
28	Registration as an eligible person — boat SFRs (Act s 26) 25
Division 4.5	Availability and grant of SFRs
29	Definitions 25
30	<i>Activity level</i> of old longline permit 25
31	<i>Category</i> of old longline permit 26
32	Availability of grants of longline SFRs (Act s 29 (3)) 27
33	Availability of grants of minor line SFRs (Act s 29 (3)) 28
34	Availability of grants of boat SFRs (Act s 29 (3)) 29
35	Request for grant 29
36	Certificate showing grant (Act s 22 (2)) 29
Division 4.6	Fishing permits
37	Boat permits (Act s 32) 30
38	Coral Sea zone permits 30
39	Permit to fish using another method 31
Division 4.7	Boat nomination
40	Nomination of boat 31
41	Request to cancel boat nomination 32
42	Removal of boat from Register 32
Division 4.8	Transfer and lease of SFRs and fishing permits
43	Meaning of <i>transfer</i> 32
44	Transfer of SFRs (Act s 49) 33
45	Replacement of certificates if SFRs are transferred 34
46	Transfer of fishing permits 34
47	Leases of SFRs 34
Part 5	Obligations of holders of SFRs
48	Clip monitoring method 36
49	Obligations of holders of SFRs 37
50	Obligations relating to interactions with certain species and marine communities 38
Part 6	Miscellaneous
51	Replacement certificates and permits 40
52	Delegation 40
53	Agents 40
54	Notices 41
Part 7	Transitional
55	Transitional 43

		Page
Schedule 1	Area of the fishery	44
Part 1	AFZ area (other than the Coral Sea zone)	44
Part 2	Coral Sea zone	45
Part 3	High seas zone	45
Schedule 2	Primary species of fish	46

Part 1 Preliminary

1 Name of Management Plan

This Management Plan is the *Eastern 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 area of the fishery. However, this Plan requires the take of those species by other users of the fishery, such as recreational fishers, also to be taken into account. There are a number of groups with an interest in the fishery and, under this Plan, their views must be considered when setting the total allowable effort.

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 Eastern 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 give advice about the fishery — that committee.

approved means approved by AFMA.

area of the fishery means:

- (a) for an Australian boat — the area described in Part 1 of Schedule 1, the Coral Sea zone and the high seas zone; and
- (b) in any other case — the Coral Sea zone and the area described in Part 1 of Schedule 1.

boat permit means a fishing permit granted under section 37.

boat SFR means an SFR that is made available under section 34.

branchline clip means a branchline clip used in pelagic longline fishing.

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 10.

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

Section 3

cetacean means a member of the sub-order Mysticeti or Odontoceti of the Order Cetacea.

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

commercial, in relation to fishing, means fishing for which an SFR is required.

Coral Sea zone means the area described in Part 2 of Schedule 1.

Coral Sea zone permit means a fishing permit granted under section 38.

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

effort unit has the meaning given by section 4.

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

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

ETBF Regulations means the *Fisheries Management (Eastern Tuna and Billfish Fishery) Regulations 2005*.

expended, in relation to an effort unit, has the meaning given by section 4.

fishery means the Eastern Tuna and Billfish Fishery.

fishing season has the meaning given in the ETBF Regulations.

high seas zone means the area described in Part 3 of Schedule 1.

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 47; or
 - (ii) the person has, under section 47, 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.

lease, of an SFR, means a lease mentioned in section 47.

longline operation has the meaning given by section 4.

longline SFR means an SFR that entitles the holder to engage in pelagic longline fishing in the fishery.

longline TAE (or ***longline total allowable effort***) for a fishing season, means the total fishing effort that may be expended in pelagic longline fishing in the fishery in the season.

Section 3

minor line means a device consisting of 1 or more hooks that is used in minor line fishing and is capable of catching only 1 fish at a time.

minor line fishing means trolling, or fishing using a rod and reel, handline or pole.

minor line SFR means an SFR that entitles the holder to engage in minor line fishing in the fishery.

minor line TAE (or **minor line total allowable effort**) for a fishing season, means the total fishing effort that may be expended in minor line fishing in the fishery in the season.

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

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

old longline permit means a fishing permit, or another instrument issued under a law of the Commonwealth, that:

- (a) was granted before the commencement day; and
- (b) authorised the holder to engage in pelagic longline fishing in the fishery.

old minor line permit means a fishing permit, or another instrument issued under a law of the Commonwealth, that:

- (a) was granted before the commencement day; and
- (b) authorised the holder to engage in minor line fishing in the fishery.

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 44 of this Management Plan — the most recent transferee of the right under that section.

pelagic longline fishing means pelagic fishing using equipment that comprises 1 mainline and a number of branchlines, each of which has 1 hook and is attached to the mainline by a branchline clip.

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

Note AFMA intends to make a Management Plan for skipjack tuna, but, until the commencement of that Plan, the take of skipjack tuna may be restricted by a direction or under the ETBF Regulations.

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

secondary species means any species of fish, other than a primary species, that may lawfully be taken in the fishery and retained.

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

sub-area of the area of the fishery means a part of the area of the fishery specified by AFMA in a determination under subsection 13 (2).

sub-area factor, for a part of the area of the fishery, means the factor specified by AFMA in a determination under subsection 13 (2) for the part.

Section 4

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 Meaning of *effort unit*

- (1) In this Management Plan, pelagic longline fishing effort is quantified in *effort units*.
- (2) When a person engages in pelagic longline fishing in the fishery by releasing a longline into the sea (a *longline operation*), a particular number of effort units are *expended* by the person.

Note See section 20 for the way to calculate the number of effort units expended in a longline operation.

5 Origin of geographical coordinates

The position of a geographic coordinate mentioned in this Management Plan is to be determined by reference to the Geocentric Datum of Australia (GDA94) as defined in *Gazette* No. GN35, 6 September 1995.

6 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;

Section 7

- (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.

**7 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, every 2 years, 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 account of the impact of fishing on primary species, secondary species, by-catch species and species that are ecologically related to those species, and the marine environment and:
 - (i) determining the status of stocks and the marine environment in relation to the reference points for stocks of primary species, by conducting stock assessments, risk assessments or both; and
 - (ii) reviewing and, if necessary, improving the reference points for stocks of primary species and secondary species; and
 - (iii) developing, publishing and applying decision rules for setting the longline TAE and minor line TAE, and any other related management decisions; and

Section 7

- (iv) reviewing, evaluating, and, if necessary, improving the decision rules mentioned in subparagraph (iii); and
 - (v) implementing, reviewing and, if necessary, updating the by-catch action plan; and
 - (vi) implementing, reviewing and, if necessary, updating other action plans to minimise the impact of fishing on by-catch species and species that are ecologically related to primary species, secondary species and by-catch species;
- (i) setting, for each fishing season, the longline TAE and minor line TAE that are needed to manage the fishery in an ecologically sustainable manner, based on:
- (i) information given by the advisory committee and other interested bodies including international bodies; and
 - (ii) the total estimated catch by the commercial, recreational, indigenous and any other users of the fishery and adjacent or overlapping fisheries; and
 - (iii) information about the sustainability of marine species in the area of the fishery; and
 - (iv) the reference points that are set for the stocks of any primary or secondary species; and
 - (v) any decision rule used for setting the longline TAE and minor line TAE; 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) if necessary, giving directions that fishing is not to be engaged in in the fishery, or a particular part of the fishery, during a particular period or periods;
- (k) if necessary, determining the fishing capacity permitted for the fishery, or a part of the fishery, in respect of a particular period or periods;
- (l) granting transferable SFRs to eligible persons;
- (m) when appropriate, granting permits to eligible persons;
- (n) setting up a research program to support the management of the fishery during the first year of the Management Plan and:
- (i) annually publishing a report about the research program; and
 - (ii) reviewing and, if necessary, improving the program;
- (o) on commencement of the Management Plan, implementing a risk-based compliance program and a catch monitoring program for the fishery;
- (p) reviewing and, if necessary, improving the programs mentioned in paragraph (o);
- (q) each fishing season, evaluating the methods used to monitor compliance with the Management Plan and, if necessary, improving those methods;

Section 8

- (r) gathering information about the economic efficiency of the fishery and implementing long-term management arrangements that pursue economic efficiency for the fishery;
- (s) within 3 years after the day when the first longline SFRs come into effect:
 - (i) conducting a review to decide whether, to effectively manage the fishery, the number of boats in the fishery should be limited; and
 - (ii) if necessary, making an appropriate determination;
- (t) within the first 18 months of the Management Plan, developing and implementing a communication plan for the fishery, providing for the publication of reports about the status of stocks and the management of the fishery;
- (u) after consulting with the advisory committee, preparing (in accordance with the government's cost recovery policy) annual budgets, and recommending levies to recover the costs of management that are attributable to the fishing industry;
- (v) managing the fishery in a way that is compatible with Australia's international obligations;
- (w) at least every 5 years, reviewing the Management Plan and, if necessary, amending the Plan to improve management of the fishery.

8 Performance criteria against which measures taken will be assessed (Act s 17 (5))

- (1) The performance criteria against which the measures taken may be assessed are the following:
 - (a) that:
 - (i) the range, extent and cost of AFMA's services in the fishery are reviewed annually; and
 - (ii) the review is published; and
 - (iii) 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 the data plan is reviewed every 2 years and, if necessary, improved;
 - (d) that data is collected and analysed and used in accordance with the data plan;
 - (e) that, for primary species, secondary species, by-catch species and species that are ecologically related to those species, the necessary stock assessments or risk assessments, or both, are:
 - (i) carried out; and
 - (ii) reviewed;

Section 8

- (f) that the following are published, reviewed, evaluated and, if necessary, improved:
 - (i) decision rules for setting the longline TAE and minor line TAE, and any other related management decisions;
 - (ii) the by-catch action plan and any other action plan;
- (g) that reference points are reviewed and, if necessary, 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 minimise those risks;
- (i) that the method used for any revision of the reference points is published;
- (j) that, for each fishing season, the longline TAE and minor line TAE are set;
- (k) that SFRs are granted to eligible persons;
- (l) that, when appropriate, fishing permits are granted to eligible persons;
- (m) that the research program mentioned in paragraph 7 (n) is operating, and information about the program is published;
- (n) that the compliance program mentioned in paragraph 7 (o) is developed and is effective;
- (o) that methods for monitoring the fishing effort and, if necessary, the catch, are:
 - (i) developed and used; and
 - (ii) reviewed and, if necessary, improved;
- (p) that the minor line TAE and, subject to the provisions relating to overcatch and undercatch, the longline TAE for each fishing season is not exceeded;
- (q) that, if the reference point for a particular species is approached or exceeded, action is taken to ensure that the stock is rebuilt to at least the level that allows a sustainable harvest to be taken;
- (r) that the fishery is managed in a way that is compatible with the decisions of any relevant international body of which Australia is a member;
- (s) that data about the economic efficiency of the fishery has been collected and analysed to enable a periodic assessment of whether the data is consistent with improvements in the economic efficiency of the fishery;
- (t) that any changes to the management of the fishery are assessed in relation to their likely effect on the economic efficiency of the fishery;
- (u) that a review is conducted to decide whether the number of fishing boats in the fishery should be limited, and appropriate action taken as a result of the review;
- (v) that the public and the fishing industry are, in accordance with the communication plan mentioned in paragraph 7 (t), given information about the management of the fishery;

Section 9

- (w) that the costs of the management of the fishery that are attributable to the fishing industry are recovered.

Note 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 must set out stock-specific reference points for the stocks.

- (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.

9 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 in waters outside the AFZ using a foreign boat.

Section 10

Part 2 Specific ecosystem requirements**10 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 of this Management Plan or changes to the conditions imposed on the holders of fishing concessions.

11 Reference points

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

Section 11

- (c) unless it sets reference points at the end of that 12 months — not increase the amount of each of the species mentioned in paragraph (a) expected to be taken under the longline TAE and minor line TAE.
- (3) Within 24 months after the commencement day, AFMA must:
 - (a) carry out an assessment of the risk to the ecological sustainability of each primary species and secondary species posed by fishing in the fishery; and
 - (b) establish reference points for each of those species.
- (4) If no reference points are set, AFMA must set precautionary limits on the catch of the species.

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 Part 4 (Statutory fishing rights and fishing permits) and section 50 (Obligations relating to interactions with certain species and communities).

Note 3 Obligations have been placed on the holders of fishing concessions under section 49 (Obligations of holders of SFRs) to ensure that by-catch is kept to a minimum.

Section 12

Part 3 Allowable fishing effort**12 Directions by AFMA (Act s 17 (5A))**

- (1) AFMA may direct that fishing is not to be engaged in in the fishery, or in a particular 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 particular species or type of fish, a kind or quantity of fishing equipment, a method of fishing, or any 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, fishing permits and scientific permits 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 of SFRs, fishing permits and scientific permits for the fishery, in writing, about the direction as soon as it can practicably do so.

Note 1 The holder of a statutory fishing right 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.

13 Determination of TAE and value of effort unit (Act s 17 (6))

- (1) AFMA must, before the start of each fishing season, and after considering the reference point for each primary species and secondary species, determine the longline TAE and minor line TAE for the fishery for that fishing season and any later period specified in the determination.
- (2) AFMA may also, in the determination, do any or all of the following:
- (a) divide the area of the fishery into specified sub-areas;
 - (b) specify a sub-area factor for each sub-area;
 - (c) set:
 - (i) the determined number or the determined percentage (or both) for section 21; and
 - (ii) the determined percentage for section 22.

Section 14

- (3) If a determination of a TAE for a fishing season is revoked or disallowed, the TAE for the immediately preceding fishing season is taken to be the TAE for the fishing season.
- (4) Before making a determination under this section, AFMA must consider matters including the following:
- (a) information given by the advisory committee and other interested bodies;
 - (b) the total estimated catch by the commercial, recreational, indigenous and any other users of the fishery;
 - (c) information about the sustainability of marine species in the area of the fishery;
 - (d) any decision made by the Minister or an intergovernmental Ministerial Council about resource sharing in the fishery;
 - (e) any decision rule used for the setting of the longline TAE and minor line TAE;
 - (f) the likely effect, for the fishing season, of any over-expenditure of effort units permitted under section 21.

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.

14 Value of SFRS

- (1) The value, in effort units, of a longline SFR for the fishery for a fishing season is:

$$\frac{\text{longline TAE}}{\text{longline SFRs}}$$

where:

longline TAE is the longline TAE for the fishery for the fishing season.

longline SFRs is the total number of longline SFRs in force at the start of the fishing season.

- (2) The value, in minor lines, of a minor line SFR for the fishery for a fishing season is:

$$\frac{\text{minor line TAE}}{\text{minor line SFRs}}$$

where:

minor line TAE is the minor line TAE for the fishery for the fishing season.

Section 15

minor line SFRs is the total number of minor line SFRs in force at the start of the fishing season.

- (3) If the result of a calculation for subsection (1) or (2) is not a whole number of effort units or minor lines, the number is to be increased to the nearest whole number.

15 Notice to owners of SFRs

- (1) At least 28 days before the start of each fishing season, AFMA must send to each longline SFR owner a notice setting out:
 - (a) the longline TAE for the fishery for the season; and
 - (b) the number of longline SFRs held by the owner; and
 - (c) the value of a longline SFR, in effort units, for the season calculated in accordance with section 14; and
 - (d) any sub-area factor that has been determined for the area of the fishery; and
 - (e) the number of effort units to which the owner is entitled for the season.
- (2) At least 28 days before the start of each fishing season, AFMA must send to each minor line SFR owner a notice setting out:
 - (a) the minor line TAE for the fishery for the season; and
 - (b) the maximum number of minor lines that the owner may use in the fishery at any one time in the season.

Part 4 Statutory fishing rights and fishing permits

Division 4.1 Who may fish in the fishery

16 Australian commercial fishing

- (1) A person may use an Australian boat to engage in fishing in the fishery (other than for scientific research about the fishery) only in accordance with this section.
- (2) The person may use the boat to engage in pelagic longline fishing in the fishery, other than in the Coral Sea zone, only if:
 - (a) the person holds a longline SFR for which there are unexpended effort units; and
 - (b) the boat is the nominated boat for the SFR; and
 - (c) the person complies with subsection (4).
- (3) The person may use the boat to engage in pelagic longline fishing in the Coral Sea zone only if:
 - (a) the person holds:
 - (i) a longline SFR for which there are unexpended effort units; and
 - (ii) a Coral Sea zone permit; and
 - (b) the boat is the nominated boat for the SFR; and
 - (c) the person complies with subsection (4).
- (4) For paragraphs (2) (c) and (3) (c), the person must:
 - (a) during the period of 3 years beginning on the day that the first SFR that is granted comes into effect — hold a boat permit; and
 - (b) if, at the end of the period mentioned in paragraph (a), Division 4.4 applies — hold a boat SFR.
- (5) The person may use the boat to engage in minor line fishing in the fishery only if:
 - (a) the person holds a minor line SFR; and
 - (b) the person fishes with no more than the maximum number of minor lines specified in paragraph 15 (2) (b) for the person and the fishing season; and
 - (c) the boat is the nominated boat for the SFR.

Section 17

- (6) The person may use the boat to engage in fishing in the fishery if the person holds a fishing permit that entitles the person to engage in pelagic fishing, other than pelagic longline or minor line fishing, and the person is fishing in accordance with the permit.

Note A fishing permit of a kind mentioned in subsection (6) may be granted by AFMA under section 39.

- (7) The person may use the boat to take fish that are to be used as bait by the person if the person:
- (a) is entitled, under subsection (2), (3) or (5) to fish in the fishery; and
 - (b) acts in accordance with any Commonwealth or State law that applies where the fishing takes place.

Note An SFR or permit holder must also comply with any conditions imposed on the SFR or permit.

17 Foreign commercial fishing

- (1) Subject to subsection (2), a person may use a foreign boat to engage in fishing in the fishery only if:
- (a) the person holds:
 - (i) a foreign fishing licence that authorises the fishing; and
 - (ii) a longline SFR for which there are unexpended effort units; and
 - (b) the boat is the nominated boat for the SFR.
- (2) This section does not apply to a person who uses a foreign boat:
- (a) in the high seas zone; or
 - (b) to engage in scientific research about the fishery.

Note 1 A foreign fishing licence is granted by AFMA under section 34 of the Act.

Note 2 An applicant for a foreign fishing licence must specify the boat that is to be used for the fishing: see subsection 34 (1) of the Act.

18 Carrying or processing fish

A person may use a boat to carry or process fish taken under section 16 or 17 only if:

- (a) the boat is the nominated boat for an SFR holder; or
- (b) the person is the holder of a 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.

19 Scientific research in the area of the fishery

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

Division 4.2 Expenditure of effort units

20 Expenditure of effort units

- (1) During each pelagic longline fishing operation conducted by the holder of a longline SFR in the fishery, the number of effort units expended is:

$$\text{branchline clips} \times \text{SAF}$$

where:

branchline clips is the number of branchline clips that are recorded for the holder by AFMA under section 48.

SAF is the sub-area factor for the sub-area of the fishery where the operation took place or, if the operation took place over more than 1 sub-area, the greater or greatest of the sub-area factors for those sub-areas.

- (2) Subject to section 22, an effort unit that is not expended in the fishing season for which it is allocated expires at the end of that fishing season.

21 Over-expenditure of effort units

- (1) Subsection (2) applies to the holder of a longline SFR if:
- (a) in a fishing season (the *first season*), the holder expends (or is taken, by a previous application of this section, to have expended) a number of effort units that exceeds, by a percentage less than the determined percentage, the holder's effort unit entitlement 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 is entitled to a number of effort units that would, in the absence of this section, exceed the number of effort units by which the holder exceeded the holder's entitlement mentioned in paragraph (a).
- (2) The holder is taken to have expended:
- (a) during the first season, the number of effort units to which the holder was entitled in the first season; and
 - (b) during the second season, a number of effort units that is equal to the number of effort units by which the holder exceeded the holder's entitlement for the first season, in addition to the number of effort units actually expended by the holder in the second season.
- (3) Subsection (4) applies to the holder of a longline SFR if:
- (a) in a fishing season (the *first season*), the holder expends (or is taken, by a previous application of this section, to have expended) a number of effort units that exceeds the holder's effort unit entitlement for the season by:
 - (i) at least the determined percentage; and

Section 21

- (ii) an amount equal to or less than the sum of:
 - (A) the result of multiplying the holder's effort unit entitlement in the first season by the determined percentage; and
 - (B) the determined number; and
- (b) at the end of the last day of the second month of the following fishing season (the *second season*), the holder is entitled to a number of effort units that would, in the absence of this section, be at least equal to the sum of:
 - (i) the result of multiplying the holder's effort unit entitlement in the first season by the determined percentage; and
 - (ii) twice the amount by which the holder's over-expenditure in the first season exceeded the determined percentage.
- (4) The holder is taken to have expended:
 - (a) during the first season, the holder's effort unit entitlement for the first season; and
 - (b) during the second season, the number of effort units equal to the sum of:
 - (i) the result of multiplying the holder's entitlement in the first season by the determined percentage; and
 - (ii) twice the number by which the holder's over-expenditure in the first season exceeded the determined percentage;in addition to the number of effort units actually used by the holder in the second season.

- (5) In this section:

determined number, of effort units, means the number of effort units specified in a determination made by AFMA for the purposes of this section.

determined percentage, in relation to a holder's effort unit entitlements, is the percentage of the holder's effort unit entitlements for a fishing season, specified in a determination made for the purposes of this section.

Note The determined number and determined percentage are zero until AFMA makes a determination for this section.

- (6) For this section, a longline SFR holder's *over-expenditure* of effort unit entitlements in a fishing season is the number of effort units expended by the holder in the season by which the holder exceeds the holder's effort unit entitlement 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.

22 Under-expenditure of effort units

- (1) This section applies to the holder of a longline SFR if:
 - (a) in a fishing season (the *first season*), the holder expends less than the number of effort units to which the holder is entitled for the fishing season (including an expenditure of no effort units); and
 - (b) in the following fishing season (the *second season*), the holder is entitled to effort units.
- (2) The holder may, during the second season, expend the number of effort units that is the sum of:
 - (a) the number of effort units to which the holder is entitled for the second season; and
 - (b) the number of effort units that is the lesser of:
 - (i) the difference between the number of effort units expended by the holder in the first season and the number of effort units to which the holder was entitled in that season; and
 - (ii) the determined percentage for the first season.
- (3) For subparagraph (2) (b) (ii), the *determined percentage* is a percentage of the number of effort units to which a holder of a longline SFR is entitled, specified in a determination made by AFMA for the purposes of this section.

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.

Division 4.3 Registration of eligible persons for grant of longline SFRs or minor line SFRs

23 Applicability of Division

This Division applies if AFMA publishes a notice, under section 24 of the Act, declaring that AFMA intends to grant longline SFRs or minor line SFRs for the fishery.

24 Meaning of evidence of fishing

In this Division:

evidence of fishing, for a person, means documents that show the amount of fish taken by the person, and includes any documents that show the following:

- (a) the course taken by the person's vessel when fishing, or the position of set and haul;
- (b) the amount of fish sold by the person;

Section 25

- (c) the amounts received by the person for the sale of fish;
- (d) the kind and quantity of fishing equipment used by the person.

25 Registration as an eligible person — longline SFRs (Act s 26)

- (1) A person is eligible for the grant of 1 or more longline SFRs if:
 - (a) the person held an old longline permit on 30 November 2002; and
 - (b) the permit was not surrendered or cancelled after that date.
- (2) For paragraph (1) (b), if the holder of a fishing permit that authorised the use of a particular boat surrendered the permit to enable AFMA to grant a replacement permit for a different boat, the holder is not taken to have surrendered the permit.
- (3) A person is also eligible for the grant of 1 or more longline SFRs if the person:
 - (a) used an Australian boat to engage in pelagic longline fishing in the high seas zone between 1 January 1992 and 10 December 2001 (inclusive); and
 - (b) submits evidence of the fishing mentioned in paragraph (a) to AFMA.

26 Registration as an eligible person — minor line SFRs (Act s 26)

- (1) A person is eligible for the grant of 1 or more minor line SFRs if:
 - (a) the person held an old minor line permit on 30 November 2002; and
 - (b) the permit was not surrendered or cancelled after that date.
- (2) For paragraph (1) (b), if the holder of an old minor line permit that authorised the use of a particular boat surrendered the permit to enable AFMA to grant a replacement permit for a different boat, the holder is not taken to have surrendered the permit.
- (3) A person is also eligible for the grant of 1 minor line SFR if the person:
 - (a) used an Australian boat to engage in commercial minor line fishing in the high seas zone between 1 January 1992 and 10 December 2001 (inclusive); and
 - (b) submits evidence of the fishing mentioned in paragraph (a) to AFMA.

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 a statutory fishing right must be made within the period stated in a notice published under section 24 of the Act — see paragraph 25 (f) and subsection 26 (1) 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 Section 165 of the Act provides that a person has a right of review in relation to a **relevant decision**, which includes a decision to register the person as eligible for the grant of a fishing right, or to grant or refuse to grant, a fishing right to the person. Application may be made to the Administrative Appeals Tribunal for review of a decision under that section — see subsection 165 (7).

Division 4.4 Registration of eligible persons for grant of boat SFRs

27 Applicability of Division

This Division applies if AFMA publishes a notice, under section 24 of the Act, declaring that AFMA intends to grant boat SFRs for the fishery.

28 Registration as an eligible person — boat SFRs (Act s 26)

A person is eligible for the grant of 1 or more boat SFRs if, immediately before the end of the period of 3 years beginning on the day when the first SFR that is granted comes into effect, the person was the holder of a boat permit.

Division 4.5 Availability and grant of SFRs

29 Definitions

In this Division:

activity level, of an old longline permit, means the activity level of the permit under section 30.

category, of an old longline permit, means the category of the permit under section 31.

high-seas-only fisher means a person who is eligible for the grant of a longline SFR only under subsection 25 (3).

30 Activity level of old longline permit

- (1) For this Division, and subject to subsection (2), the *activity level* of an old longline permit is:
 - (a) *high level active*, if an average of at least 250 000 hooks per year were set under the permit in the fishery during the relevant period; and
 - (b) *active*, if the old longline permit is not a high level active old longline permit and:
 - (i) the permit applied to areas of the sea described in item 17, 18, 19, 20 or 21 of the table in section 32, and entitled the holder to take an unlimited amount of yellowfin tuna or bigeye tuna; or
 - (ii) the sum of the weights of:
 - (A) whole fish taken under the permit during the relevant period; and
 - (B) whole southern bluefin tuna (that is, fish of the species *Thunnus maccoyii* (Castelnau) or *Thunnus thynnus*) lawfully taken, using a pelagic longline fishing method, by the holder of the permit during the relevant period; was 30 tonnes or more; and

Section 31

- (c) in any other case — *inactive*.
- (2) For paragraph (1) (a) and subparagraph (1) (b) (ii), the calculation of the number of hooks and the weight of fish, respectively, must be made from the logbook records, held by AFMA, kept by each person who held the permit during the relevant periods.
- (3) However, if an old longline permit held by an eligible person would be an inactive old longline permit under subsection (1) because:
- (a) during the relevant period, the eligible person (or any person who previously held the permit) had suffered a serious misfortune that:
- (i) affected the person for more than 3 months; and
- (ii) prevented the person from both fishing in any fishery and arranging another way for fishing to be carried out under the permit; or
- (b) the person's logbook records, that are held by AFMA and relate to the relevant period, are incomplete; or
- (c) during the relevant period, AFMA made an administrative error relating to the permit resulting in the person being unable to fully utilise the permit;
- AFMA may, in giving an activity level to the permit, take into account any evidence submitted by the person that shows the weight of fish:
- (d) that the person would have taken but for the serious misfortune or administrative error; or
- (e) actually taken by the person.
- (4) For this section:
- relevant period*** means the period between 1 January 1992 and 22 December 1996 (inclusive).
- serious misfortune***, for the holder of an old longline permit, includes:
- (a) the loss of, or serious damage to, the boat that was nominated for the permit; or
- (b) a serious illness suffered by, or injury to, the holder.

31 **Category of old longline permit**

- (1) The ***category*** of an old longline permit is the category described in columns 2 and 3 of an item in the table in section 32 that applies to the permit.
- (2) However if more than 1 category described in the table applies to the permit, the category of the permit is the category described in the first occurring item in the table that applies to the permit.

32 Availability of grants of longline SFRs (Act s 29 (3))

- (1) If a person is eligible for the grant of 1 or more longline SFRs under section 25, a grant of the number of longline SFRs calculated in accordance with this section is available to the person.
- (2) If a person is eligible under subsection 25 (1), the number of longline SFRs is, for each old longline permit held by the person:

$$\frac{\text{relative price factor for category of old permit}}{\text{total allocation units}} \times 1\,000\,000$$

where:

relative price factor, for a category of old longline permit held by a person, is the factor set out in column 4 of the item of the table in this section that corresponds to the category of the permit.

total allocation units is the sum of:

- (a) the total number of old longline permits of each category multiplied by the relative price factor for that category; and
- (b) the high seas factor for each high-seas-only fisher, calculated under subsection (4).
- (3) If the person is a high-seas-only fisher, the number of longline SFRs is:

$$\frac{\text{high seas factor for the fisher}}{\text{total allocation units}} \times 1\,000\,000$$

where:

high seas factor for the fisher is the factor calculated under subsection (4).

total allocation units has the same meaning as in subsection (2).

- (4) For subsections (2) and (3), the **high seas factor for a high-seas-only fisher** is:

$$\frac{F}{4\,437} \times \frac{A}{P}$$

where:

F is the average amount received each year between 1992 and 2001 (inclusive) by the fisher for the sale of fish taken in the fishery for each 1 000 hooks set by the fisher to take the fish.

A is the total number of old longline permits in each of categories 2 to 11 (inclusive) multiplied by the relative price factor for that category.

P is the total number of old longline permits in categories 2 to 11 (inclusive).

Section 33

Table
Category of old longline permit

Item	Area of sea to which old longline permit applied	Activity level of old longline permit	Relative price factor
1	Historical	High level active	1.65
2	Historical and Cairns/Townsville Restricted ('Area E')	Active	1.30
3	Historical	Active	1.00
4	Historical and Cairns/Townsville Restricted ('Area E')	Inactive	0.80
5	Northern Inshore and Cairns/Townsville Restricted ('Area E')	Active	0.80
6	Northern Inshore and Cairns/Townsville Restricted ('Area E')	Inactive	0.55
7	Historical	Inactive	0.50
8	Northern Inshore	Active	0.50
9	Northern Inshore	Inactive	0.25
10	Northern Offshore	Active	0.25
11	Northern Offshore	Inactive	0.13
12	Southern Inshore North	Active	0.13
13	Southern Inshore South	Active	0.13
14	Southern Offshore	Active	0.13
15	Southern Offshore West	Active	0.13
16	Area Z	Active	0.13
17	Southern Inshore North	Inactive	0.03
18	Southern Inshore South	Inactive	0.03
19	Southern Offshore	Inactive	0.03
20	Southern Offshore West	Inactive	0.03
21	Area Z	Inactive	0.03

33 Availability of grants of minor line SFRs (Act s 29 (3))

If a person is eligible for the grant of 1 or more minor line SFRs under section 26, a grant of the following is available to the person:

- (a) 1 minor line SFR for each old minor line permit of a kind mentioned in subsection 26 (1) held by the person;
- (b) if the person is eligible under subsection 26 (3) only — 1 minor line SFR.

34 Availability of grants of boat SFRs (Act s 29 (3))

If a person is eligible for the grant of 1 or more boat SFRs under section 28, a grant of 1 boat SFR for each boat permit held by the person is available to the person.

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 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.

35 Request for grant

- (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 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.

36 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;

Section 37

- (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 that:
- (a) states the conditions to which the SFR is subject; and
 - (b) is signed for AFMA by a person having authority to sign it.

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.

Note 3 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 ETBF Regulations prescribe details that must be entered in the Register in relation to a nominated boat.

Division 4.6 Fishing permits

37 Boat permits (Act s 32)

- (1) As soon as practicable after the day when the first SFRs come into effect, AFMA must grant, to a person that held an old longline permit on 30 November 2002, for each old longline permit held by the person, a fishing permit (a *boat permit*) that:
- (a) authorises the use of a specified boat in the fishery; and
 - (b) remains in force for the period of 3 years from the date of the grant.
- (2) However, subsection (1) does not apply if the old longline permit was surrendered or cancelled on or after 30 November 2002.

38 Coral Sea zone permits

- (1) If:
- (a) AFMA grants a longline SFR to a person; and
 - (b) the person held a fishing permit to engage in pelagic longline fishing in the Coral Sea zone on 30 November 2002; and
 - (c) the fishing permit was not surrendered or cancelled on or after that date;
- AFMA must also grant to the person a fishing permit to fish in the Coral Sea zone.
- (2) The holder of a Coral Sea zone permit that ceases to be in force may apply to AFMA for another Coral Sea zone permit, and AFMA may issue the permit to the person.

39 Permit to fish using another method

- (1) During a fishing season, the holder of a longline SFR for which there are unexpended effort units may apply to AFMA for a fishing permit to fish in the fishery using a method other than pelagic longline fishing (the *new method*).
- (2) If AFMA decides to grant the permit:
 - (a) levy that would otherwise have been payable by the holder for the longline SFR is still payable by the holder; and
 - (b) AFMA must give to the holder a document that:
 - (i) lists each primary species of fish; and
 - (ii) for each species, gives a factor (based on the sustainability of fish stocks and the longline TAE and minor line TAE) to convert effort units to a weight of fish; and
 - (c) AFMA must grant to the holder a fishing permit authorising the holder to fish in the fishery using the new method during the fishing season.
- (3) If the holder takes fish of a particular species using the new method, the number of effort units taken to have been expended by the holder in taking those fish is:

$$CF \times W$$

where:

CF is the conversion factor given by AFMA for the species.

W is the weight of fish of that species that was taken.

- (4) A permit granted under this section is not transferable.

Division 4.7 Boat nomination

40 Nomination of boat

- (1) The holder of 1 or more SFRs may apply to AFMA, in an approved form, for a boat to be entered in the Register as the nominated boat, or 1 of the nominated boats, for the SFRs.
- (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 on the boat if AFMA asks the holder to do so; or

Section 41

- (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.
- (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 ETBF 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 an SFR, as if the decision were a relevant decision under section 165 of the Act.

41 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 an approved form, to cancel the nomination.
- (2) On receiving an application, AFMA must cancel the nomination.

42 Removal of boat from Register

- (1) This section applies in relation to a nominated boat, other than a boat to which a statement of a kind mentioned in paragraph 40 (3) (b) applies.
- (2) AFMA may remove the name of the boat from the Register if:
 - (a) an observer asks to be carried on the boat during a fishing trip; and
 - (b) without reasonable excuse, the observer's request is refused by the master of the boat or the holder of the SFR for which the boat is nominated.
- (3) The holder may seek a review of a decision to remove the name of a boat from the Register as if the decision were a reviewable decision under section 165 of the Act.

Division 4.8 Transfer and lease of SFRs and fishing permits

43 Meaning of *transfer*

In this Division:

transfer does not include lease.

44 Transfer of SFRs (Act s 49)

- (1) The owner of an SFR (the *transferor*) may apply to AFMA, in an 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 begun 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 for the SFR and ending when the levy is paid; or
 - (g) if a logbook that relates to the SFR has not been completed and submitted to AFMA by the date of the transfer.
- (4) AFMA may approve the transfer of an SFR despite paragraph (3) (g) if the transferor provides a written statement to AFMA explaining why the logbook information can not be submitted.

Note 1 AFMA may decline to approve the transfer of a statutory fishing right 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 statutory fishing right is subject to a condition stated in the certificate for the right — see paragraph 22 (4) (a) of the Act.

Section 45

45 Replacement of certificates if SFRs are transferred

If AFMA approves the transfer of an SFR, AFMA must:

- (a) if the transferor does not transfer all the rights shown on the certificate showing the grant of the SFR — cancel the certificate and issue to the transferor a new certificate showing the rights owned by the transferor after the transfer; and
- (b) either:
 - (i) if the transferee has lodged with AFMA a certificate showing the grant of a statutory fishing right — cancel the certificate and issue to the transferee a new certificate showing each right owned by the transferee after the transfer; or
 - (ii) in any other case — issue to the transferee a certificate showing that the transferee is the owner of the transferred right.

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

46 Transfer of fishing permits

- (1) The holder of a Coral Sea zone permit or a boat permit may apply to AFMA, in an approved form, for approval to transfer the permit to someone else.
- (2) For subsection (1), an application must be accompanied by:
 - (a) the permit; or
 - (b) a statement, signed by the holder, that the permit is not available, including the reason why the permit is not available.
- (3) AFMA must not approve the transfer of a permit:
 - (a) if a proceeding for an offence under the Act or Regulations has begun against the transferor and has not been decided; or
 - (b) if levy is payable in respect of the permit — within the period beginning 14 days before the issue of a levy invoice for the permit and ending when the levy is paid
- (4) If AFMA approves a transfer, AFMA must send, to the transferee, a permit showing the transferee as its holder.

47 Leases of SFRs

- (1) This section applies if, in a fishing season, the holder of an SFR leases the SFR to someone else.
- (2) The holder must give AFMA written notice about the lease, in an approved form.
- (3) A lease of an SFR has effect only if:
 - (a) it finishes on the last day of the fishing season in which it is granted; and

- (b) before the lease is granted:
- (i) all levy payable for the SFR has been paid; and
 - (ii) in the case of a longline SFR — none of the effort units for the SFR for the fishing season in which the lease is granted has been expended.

Note See section 46 of the Act about the requirement to register a dealing with a statutory fishing right.

Section 48

Part 5 **Obligations of holders of SFRs**

48 **Clip monitoring method**

- (1) In this section:

clip monitoring equipment means equipment that enables AFMA to determine the number of clips that a longline SFR holder uses for each longline operation carried out by the holder in the fishery.

drum monitoring equipment means equipment that enables AFMA to determine the number of longline operations that a longline SFR holder carries out in the fishery.

- (2) Each longline SFR holder must enable AFMA to record the number of clips that the holder uses during each of the holder's pelagic longline fishing operations by choosing:
- (a) the method mentioned in subsection (3) (the *clip nomination method*); or
 - (b) the method mentioned in subsection (6) (the *clip monitoring method*).

Clip nomination method

- (3) A holder chooses the clip nomination method by:
- (a) equipping the holder's boat with approved drum monitoring equipment installed in accordance with the guidelines published by AFMA; and
 - (b) sending AFMA a written notice (a *clip nomination notice*) stating the number of branchline clips that the holder will use to carry out each longline operation.
- (4) A holder is entitled to use the clip nomination method only when the holder receives a written acknowledgment from AFMA that it has received the holder's clip nomination notice.
- (5) A holder that chooses the clip nomination method:
- (a) may leave on a fishing trip if there are, on board the holder's boat, only the stated number of clips or less; and
 - (b) may fish in the fishery using only the stated number of clips or less; and
 - (c) unless AFMA agrees otherwise — must ensure that, while the holder's boat is at sea, the drum monitoring equipment is continuously operating in accordance with the manufacturer's specifications and operating instructions.

Section 49*Clip monitoring method*

- (6) A holder chooses the clip monitoring method by:
 - (a) equipping the holder's boat with approved clip monitoring equipment installed in accordance with the guidelines published by AFMA; and
 - (b) sending AFMA a written notice (an *installation notice*) stating that the equipment has been installed.
- (7) A holder is entitled to use the clip monitoring method only when the holder receives a written acknowledgment from AFMA that it has received the holder's installation notice.
- (8) Unless AFMA agrees otherwise, a holder that chooses the clip monitoring method may engage in pelagic longline fishing in the fishery only if the clip monitoring equipment is continuously operating in accordance with the manufacturer's specifications and operating instructions.
- (9) At any time, a holder may, in accordance with subsection (3) or (6), choose a different clip monitoring method from the one the holder is currently using.
- (10) If a holder sends a written notice to AFMA under this section the notice must be in an approved form and must be posted or sent by fax.

49 Obligations of holders of SFRs

- (1) In this section:

ALC (or *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.
- (2) It is a condition of an SFR that the holder must:
 - (a) comply with any direction made under subsection 12 (1); 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 40 (3) (b) applies to the nominated boat for the SFR — carry an observer and the observer's safety and monitoring equipment on the boat 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 for the SFR a copy of the extract from the Register that states the name of the boat.

Section 50

- (3) The holder of a longline SFR must, unless AFMA determines otherwise, have fitted to the boat a vessel monitoring system that:
- (a) is installed in accordance with guidelines published by AFMA; and
 - (b) has an approved ALC 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.
- (4) Also, 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 of an SFR must not sell (or otherwise dispose of) 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.

Note 1 Other conditions of a statutory fishing right are set out on the certificate for the SFR. These 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 a statutory fishing right must also comply with relevant regulations, including the *Fisheries Management Regulations 1992*, the *ETBF Regulations* and the *Fishing Levy Regulations 2004*.

Note 3 See section 42 of the Act and Part 9 of the *Fisheries Management Regulations 1992* about the requirement to keep a logbook. If the holder of a statutory fishing right does not keep a logbook under Part 9 of those Regulations, AFMA may issue an infringement notice under Part 10 of those Regulations or suspend the operation of the SFR.

Note 4 See also subsections 22 (3), (4) and (5) of the Act for other conditions to which a statutory fishing right is subject.

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

50 Obligations relating to interactions with certain species and marine 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:
- (a) avoid interactions with the following:
 - (i) cetaceans;
 - (ii) marine species listed for section 248 of the EPBC Act;
 - (iii) migratory species listed for section 209 of the EPBC Act;
 - (iv) threatened ecological communities listed for section 181 of the EPBC Act;
 - (v) threatened species listed for section 178 of the EPBC Act; and

Section 50

- (b) ensure that anything that may harm the marine environment (especially an object used to hold a light-emitting chemical) is not disposed of at sea.
- (3) If the activities of the nominated boat for an SFR result in an interaction with a species or community mentioned in subsection (2), the holder of the SFR must:
 - (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, and it is necessary to discharge its carcass from the boat, do so 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 51

Part 6 Miscellaneous**51 Replacement certificates and permits**

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

52 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 12, 13, 21 and 22, and this section.

Note See subsection 17 (11) of the Act about the delegation of powers under sections 12, 13, 21 and 22.

53 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.

Section 54**54 Notices**

- (1) In this section:
- address* means:
- (a) for the holder of an SFR — the holder's address stated in the Register; and
 - (b) for the holder of a fishing permit — the last address recorded by AFMA for the holder of the permit.
- fax number* means:
- (a) for the holder of an SFR — the holder's fax number stated in the Register; and
 - (b) for the holder of a fishing permit — the last fax number recorded by AFMA for the holder of the permit.
- 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 the holder of an SFR or a fishing permit is taken to be given to the holder if it is:
- (a) delivered to the holder's residential or office address; or
 - (b) posted to the holder's postal address; or
 - (c) sent by fax to the holder's fax number; or
 - (d) sent by e-mail to the holder's e-mail address.
- (3) A notice given to the holder of an SFR under this section is taken to have been given to the holder:
- (a) if the notice is delivered to the holder's residential or office address — on the day when it is delivered; and
 - (b) if the notice is sent by fax to the holder's fax number or by e-mail to the holder'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 a person is taken to have been given to the person if it is delivered, or sent by fax or e-mail, to the person's last known address.
- (5) 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

Section 54

- (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
 - (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.
- (6) 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 (5) (a), or posted to the address mentioned in paragraph (5) (b) — on the day when it is delivered; and
 - (b) if the notice is sent by fax to the fax number mentioned in paragraph (5) (c) or (d) or by e-mail to the e-mail address mentioned in paragraph (5) (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 7 Transitional

55 Transitional

- (1) This section ceases to have effect on the day specified in a notice published in the *Gazette* under subsection (2).
- (2) As soon as practicable after 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 16, 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 12.
- (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

Part 1 AFZ area (other than the Coral Sea zone)

(section 3)

The parts of the AFZ that are:

- (a) within the area bounded by a notional line beginning at the intersection of the eastern coastline of the mainland at low water with the meridian of longitude 141° E, in the vicinity of the border between Victoria and South Australia and running:
- south along that meridian to its intersection with the outer limit of the AFZ; and
 - generally southerly, easterly and northerly along that outer limit to its intersection with the meridian of longitude $144^{\circ} 28'$ E that is off the coast of Queensland; and
 - south along that meridian to its intersection with the parallel of latitude $9^{\circ} 54'$ S; and
 - south-westerly along the geodesic to the point of latitude $10^{\circ} 15'$ S, longitude $144^{\circ} 12'$ E; and
 - southerly along the geodesic to the point of latitude $10^{\circ} 28'$ S, longitude $144^{\circ} 10'$ E; and
 - west along that parallel to its intersection with the meridian of longitude $142^{\circ} 31' 49''$ E; and
 - south along that meridian to its intersection with the northern coastline of the mainland at low water, in the vicinity of Cape York; and
 - generally southerly along that coastline at low water to the point where the line began; and
- (b) adjacent to Norfolk Island, except the area bounded by a notional line beginning at the point of latitude $28^{\circ} 35'$ S, longitude $167^{\circ} 25'$ E, and running:
- east along that parallel to its intersection with the meridian of longitude $168^{\circ} 25'$ E; and
 - south along that meridian to its intersection with the parallel of latitude $29^{\circ} 50'$ S; and
 - west along that parallel to its intersection with the meridian of longitude $167^{\circ} 25'$ E; and
 - north along that meridian 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.

Part 2 Coral Sea zone

(section 3)

The part of the AFZ that is within the area bounded by a notional line beginning at the intersection of the eastern coastline of the mainland at low water with the parallel of latitude 12° S, in the vicinity of Shelburne Bay, and running:

- east along that parallel to its intersection with the meridian of longitude 145° E; and
- southerly along the geodesic to the point of latitude 14° S, longitude 147° E; and
- southerly along the geodesic to the point of latitude 17° S, longitude 149° E; and
- south along that meridian to its intersection with the parallel of latitude 18° S; and
- east along that parallel to its intersection with the meridian of longitude 152° E; and
- south along that meridian to its intersection with the parallel of latitude 20° 28' 49" S; and
- west along that parallel to its intersection with the eastern coastline of the mainland at low water, in the vicinity of Proserpine; and
- generally northerly along that coastline at low water to the point where the line began.

Part 3 High seas zone

(section 3)

The part of the Pacific Ocean, other than an area that is within the AFZ or the EEZ of a foreign country, that is within the area bounded by a notional line beginning at the intersection of the south coast of Australia and the meridian of longitude 141° E, and running:

- south to its intersection with the parallel of latitude 55° S; and
- east along that parallel to its intersection with the meridian of longitude 150° E; and
- south along that meridian to its intersection with the parallel of latitude 60° S; and
- east along that parallel to its intersection with the meridian of longitude 130° W; and
- north along that meridian to its intersection with the parallel of latitude 4° S; and
- west along that parallel to its intersection with the meridian of longitude 150° W; and
- north along that meridian.

Note Under international law, the Exclusive Economic Zone (EEZ) of a country generally extends 200 nautical miles from the baseline of a country. However, the presence of islands and reefs may extend this limit. Holders of fishing permits should contact the coastal state (within the meaning it has in the *Seas and Submerged Lands Act 1973*) to determine the exact coordinates of its EEZ boundaries.

Schedule 2 Primary species of fish

(section 3)

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 orientalis</i>
6	Rays bream (or pomfret)	Family Bramidae
7	Skipjack tuna	<i>Katsuwonus pelamis</i>
8	Yellowfin tuna	<i>Thunnus albacares</i>

Note 1 Broadbill swordfish (*Xiphias gladius*) and striped marlin (*Tetrapturus audax*), which are mentioned in paragraph 11 (2) (a), are included in item 3 in the table.

Note 2 The taking of certain species of fish is prohibited: see sections 15 and 15A of the Act.