



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

Fisheries Management Act 1991

The AUSTRALIAN FISHERIES MANAGEMENT AUTHORITY determines this amendment to the *Southern and Eastern Scalefish and Shark Fishery Management Plan 2003* under section 20 of the *Fisheries Management Act 1991*.

Dated 12 December 2006

PETER WITHERIDGE

Common seal of the
Australian Fisheries
Management Authority

ERIC ABETZ
Minister for Fisheries, Forestry and Conservation

1 Name of Management Plan Amendment

This Management Plan Amendment is the *Southern and Eastern Scalefish and Shark Fishery Management Plan Amendment 2006 (No. 2)*.

2 Commencement

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

3 Amendment of *Southern and Eastern Scalefish and Shark Fishery Management Plan 2003*

Schedule 1 amends the *Southern and Eastern Scalefish and Shark Fishery Management Plan 2003*.

Schedule 1 Amendments

(section 3)

[1] Section 3, definition of *Commonwealth Trawl Sector*

substitute

Commonwealth South East Trawl Sector means the area described in clause 4 of Part 2 of Schedule 1.

[2] Section 3, definition of *fishery assessment group*

omit

[3] Section 3, definition of *fishing year*

substitute

fishing year means:

- (a) before 1 January 2007 — a calendar year; and
- (b) the period commencing on 1 January 2007 and ending at the end of 30 April 2008; and
- (c) on or after 1 May 2008 — a period of 12 months commencing on 1 May.

[4] Section 3, after definition of *quota statutory fishing right*

insert

resource assessment group means a group, established by AFMA, to give advice in relation to:

- (a) the stock status, research needs, environment and economics of the fishery; and
- (b) any other matter related to the fishery.

[5] Section 3, definition of *trawl boat statutory fishing right*

omit

Commonwealth Trawl Sector.

insert

Commonwealth South East Trawl Sector.

[6] Paragraph 6 (c)

omit

boat SFRs, quota SFRs and fishing permits;

insert

boat statutory fishing rights, quota statutory fishing rights and fishing permits;

[7] Paragraph 6 (e)

omit

fishery assessment groups;

insert

resource assessment groups;

[8] Subsection 11 (1)

substitute

- (1) AFMA must determine a TAC for each quota species for a fishing year no later than:
- (a) for the fishing year specified in paragraph (b) of the definition of fishing year — 5 December 2006; and
 - (b) for each other fishing year — 31 March immediately before the commencement of the fishing year.

[9] Subsection 11 (4), notes 1 and 2

omit

[10] Subsection 20 (3), note

omit

see sections 22 and 23.

insert

see sections 22, 22A and 23.

[11] Before section 22

insert in Division 4.2

21A Definitions for Division

In this Division:

determined amount, for a quota species and a fishing year, means the amount (in kilograms) of that species specified in a determination made by AFMA for section 22A for that species and year.

determined percentage, for a quota species and a fishing year, means a percentage of the quota allocated to the quota statutory fishing rights for that species held by a person for that year, being the percentage specified in a determination made by AFMA for section 22, 22A or 23 for that species and year.

overcatch, in relation to a holder of a quota statutory fishing right and a quota species in a fishing year, is the amount by which the amount of fish of that species taken by the holder in the fishing year exceeds the quota allocated to quota statutory fishing rights for that species held by the holder in the fishing year.

relevant date, for a fishing year, means:

- (a) for the fishing year commencing on 1 January 2006 — 28 February 2007; and
- (b) for the fishing year commencing on 1 January 2007 — 30 June 2008; and
- (c) for a fishing year commencing on or after 1 May 2008 — 30 June of the following fishing year.

[12] Section 22, heading

substitute

22 Overcatch — if determined percentage is not exceeded**[13] Paragraph 22 (1) (b)**

omit

on 28 February of

insert

on the relevant date for

[14] Subsections 22 (3) to (6)

omit

[15] After section 22

insert

22A Overcatch — if determined percentage is exceeded

- (1) Subsection (2) applies to a holder of a quota statutory fishing right if:
- (a) in a fishing year (the *first year*), the holder takes (or is taken, by a previous application of this section, to have taken) an amount of fish of a quota species that exceeds the quota allocated to the quota statutory fishing rights for that species held by the holder in the first year by:
 - (i) a percentage not less than the determined percentage for that species for the first year; and
 - (ii) an amount not greater than the sum of:
 - (A) the result of multiplying the holder's quota in the first year by the determined percentage for that species for the first year; and
 - (B) the determined amount for that species for the first year; and
 - (b) on the relevant date for the following fishing year (the *second year*), the holder holds quota statutory fishing rights that would, in the absence of this section, entitle the holder to take an amount of fish of that species at least equal to the sum of:
 - (i) the result of multiplying the holder's quota for that species in the first year by the determined percentage for that species for the first year; and
 - (ii) twice the amount by which the holder's overcatch in the first year exceeded the determined percentage for that species for the first year.
- (2) For subparagraph 20 (3) (a) (ii), the holder is taken to have taken:
- (a) during the first year, an amount of fish of the species mentioned in paragraph (1) (a) that is equal to the quota allocated to the quota statutory fishing rights for that species held by the holder in the first year; and
 - (b) during the second year, an amount of fish of that species equal to the sum of:
 - (i) the result of multiplying the holder's quota in the first year by the determined percentage for that species for the first year; and

- (ii) twice the amount by which the holder's overcatch in the first year exceeded the determined percentage for that species for the first year;
in addition to the amount actually taken by the holder in the second year.

[16] Paragraph 23 (1) (b)

omit

on 28 February of

insert

on the relevant date for

[17] Subsection 23 (3)

omit

[18] Subsection 24 (1)

substitute

- (1) AFMA must, no later than 31 March immediately before the commencement of a fishing year, determine amounts and percentages for sections 22, 22A and 23 for each quota species for the fishing year.

[19] Subsection 24 (2), note

omit

[20] Subsection 24 (5)

substitute

- (5) A determination made for the purposes of section 22, 22A or 23 is a disallowable instrument for section 6 of the *Legislative Instruments Act 2003*.

[21] Subsection 27 (1)

omit

a quota species mentioned in Part 1 of Schedule 2

insert

a quota species mentioned in items 1 to 20 of Part 1 of Schedule 2

[22] Subsection 27 (4)

omit

a quota species mentioned in items 20 to 24 of Schedule 2

insert

a quota species mentioned in item 20 of Schedule 2

[23] Subsection 27 (5)

substitute

- (5) A person satisfies the condition for registration as an eligible person for the grant of a quota statutory fishing right for a quota species mentioned in items 21 to 24 of Schedule 2 if, immediately before the end of the notice period, the person was authorised to take a number of quota units of that species in the fishery.

[24] Subsection 27 (5A)

omit

a type T quota SFR

insert

a Type T quota statutory fishing right

[25] Subsection 27 (6)

omit

subregulations (1) to (5A)

insert

subsections (1) to (5A)

[26] Paragraph 28 (2) (j)

substitute

- (j) if the person is registered as an eligible person for the grant of a quota statutory fishing right for a quota species because of subsection 27 (5) — 1 quota statutory fishing right for the species for each quota unit of that species that the person was authorised to take in the fishery in accordance with a fishing permit held by the person immediately before the end of the notice period;

[27] Subsection 31 (3)

omit

[28] Paragraph 31 (5) (b)

omit

Act; or

insert

Act.

[29] Paragraph 31 (5) (c)

omit

[30] Subsection 33 (3)

substitute

(3) If the owner of the right wants the transfer to take effect in the fishing year in which the application is made, the application must be received by AFMA on or before:

(a) for the fishing year commencing on 1 January 2006 — 14 December 2006; or

(b) for the fishing year commencing on 1 January 2007 — 5 April 2008; or

(c) for a fishing year commencing on or after 1 May 2008 — 5 April in that fishing year.

[31] Subsection 46 (1)

omit

unless section 22 or 23 applies

insert

unless section 22, 22A or 23 applies

[32] Paragraph 54 (1) (a)

omit

Commonwealth Trawl Sector; or

insert

Commonwealth South East Trawl Sector; or

[33] Paragraph 54 (1) (b)*omit*

Commonwealth Trawl Sector

insert

Commonwealth South East Trawl Sector

[34] Subsection 60 (4)*omit***[35] Section 63***omit***[36] Schedule 1, Part 1, paragraph 1 (d)***omit*

Commonwealth Trawl Sector

insert

Commonwealth South East Trawl Sector

[37] Schedule 1, Part 2, clause 4, heading*substitute***4 Area of Commonwealth South East Trawl Sector****[38] Schedule 1, Part 2, clause 4***omit*

Commonwealth Trawl Sector

insert

Commonwealth South East Trawl Sector

[39] Schedule 2, table, item 16*substitute*

16 Silver warehou

Seriolella punctata

[40] Schedule 2, table, item 23

substitute

- | | | |
|----|---------------|--|
| 23 | Elephant fish | Members of the Families Callorhynchidae and Rhinochimaeridae |
|----|---------------|--|

[41] Schedule 2, table, after item 28

insert

- | | | |
|----|------------------|---|
| 29 | Deepwater shark | <p><i>Centroscymnus coelolepis</i></p> <p><i>Centroscymnus crepidater</i></p> <p><i>Centroscyllium kamoharai</i></p> <p><i>Centroscymnus owstoni</i></p> <p><i>Centroscymnus plunketi</i></p> <p><i>Dalatias licha</i></p> <p><i>Deania calcea</i></p> <p><i>Deania quadrispinosa</i></p> <p><i>Etmopterus bigelowi</i></p> <p><i>Etmopterus brachyurus</i></p> <p><i>Etmopterus dianthus</i></p> <p><i>Etmopterus dislineatus</i></p> <p><i>Etmopterus evansi</i></p> <p><i>Etmopterus fusus</i></p> <p><i>Etmopterus granulosus</i></p> <p><i>Etmopterus Lucifer</i></p> <p><i>Etmopterus molleri</i></p> <p><i>Etmopterus pusillus</i></p> |
| 30 | Oreo | <p><i>Allocyttus niger</i></p> <p><i>Allocyttus verrucosus</i></p> <p><i>Neocyttus rhomboidalis</i></p> <p><i>Neocyttus species</i></p> |
| 31 | Ribaldo cod | <i>Mora moro</i> |
| 32 | Smooth oreo dory | <i>Pseudocyttus maculatus</i> |

[42] Further amendments — resource assessment group

The following provisions are amended by omitting ‘fishery assessment group’ and inserting ‘resource assessment group’:

- paragraph 6 (h)
- subparagraph 7 (1) (a) (i)
- paragraphs 7 (1) (c), 12 (b), 16 (b), 19 (4) (a), 21 (5) (b) and 24 (3) (b).