



Australian Government

Department of the Environment

Assessment of the
COMMONWEALTH SMALL PELAGIC FISHERY

October 2015

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This report should be attributed as '*Assessment of the Commonwealth Small Pelagic Fishery October 2015*, Commonwealth of Australia 2015'.

Disclaimer

This document is an assessment carried out by the Department of the Environment of a commercial fishery against the Australian Government *Guidelines for the Ecologically Sustainable Management of Fisheries – 2nd Edition*. It forms part of the advice provided to the Minister for the Environment on the fishery in relation to decisions under Parts 13 and 13A of the *Environment Protection and Biodiversity Conservation Act 1999*. The views expressed do not necessarily reflect those of the Minister for the Environment or the Australian Government.

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This section contains the Department's assessment of the Small Pelagic Fishery's performance against the Australian Government's *Guidelines for the Ecologically Sustainable Management of Fisheries - 2nd Edition* and outlines the reasons the Department recommends that the fishery be declared an approved wildlife trade operation.

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Table 4 contains a description of the issues identified by the Department with the current management regime for the Small Pelagic Fishery and outlines the proposed conditions and recommendations that would form part of the decision to declare the fishery an approved wildlife trade operation.

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Table 1: Summary of the Small Pelagic Fishery

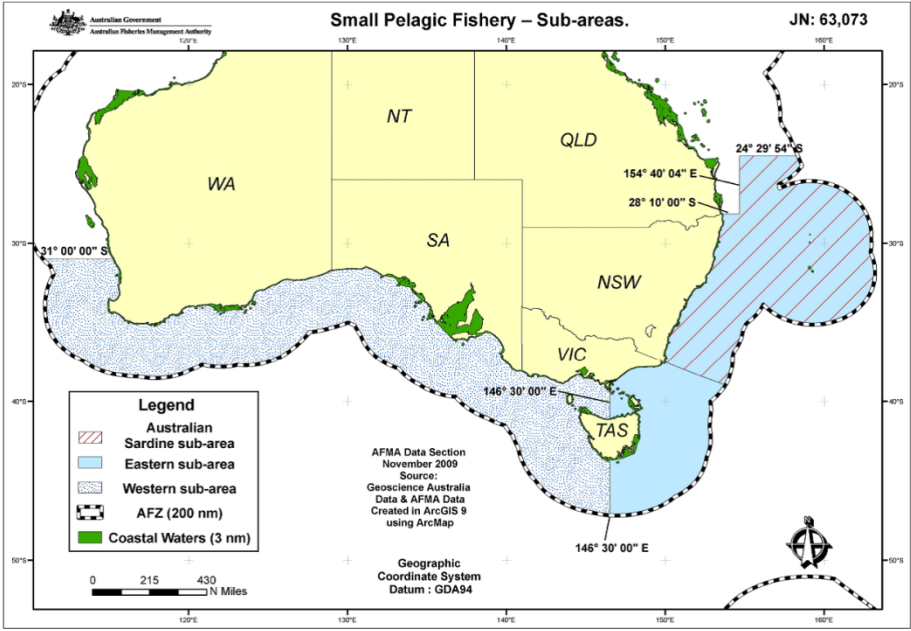
<p>Publicly available information relevant to the fishery</p>	<ul style="list-style-type: none"> • <i>Fisheries Management Act 1991</i> (Commonwealth) • <i>Fisheries Administration Act 1991</i> (Commonwealth) • Fisheries Management Regulations 1992 (Commonwealth) • Small Pelagic Fishery Management Plan 2009 • Small Pelagic Fishery (Closures) Direction No. 1 2015 • Australian Bureau of Agricultural and Resource Economics and Sciences (ABARES) Fishery Status Reports 2013 - 2014 • Australian Fisheries Management Authority's (AFMA) Assessment Report to the Department of the Environment - Small Pelagic Fishery July 2015 • AFMA's Status Report - Small Pelagic Fishery Wildlife Trade Operation 2011 • Department of Sustainability, Environment, Water, Population and Communities' Assessment of the Small Pelagic Fishery 2010 • Report of the Expert Panel on a Declared Commercial Fishing Activity: Final (Small Pelagic Fishery) Declaration 2012 • Report of the Expert Panel on a Declared Commercial Fishing Activity: Final (Small Pelagic Fishery) Declaration (No. 2) 2013 • Vessel Operational Procedures to Minimise Marine Mammal Interactions in the Small Pelagic Fishery – 18 September 2015
<p>Area</p>	

Figure 1. Map of the Small Pelagic Fishery showing Australian sardine sub-areas (Source: AFMA, 2015)

The Small Pelagic Fishery operates in waters offshore of southern Queensland around southern Australia to Lancelin, Western Australia, including around Tasmania. The fishery is divided into two sub-areas (east and west of latitude 146°30' due to evidence of separate stocks of Australian sardine both east and west of Tasmania) (Figure 1). Within the fishery there are seven management zones with catch grids that control the level of take in each grid (Figure 2).

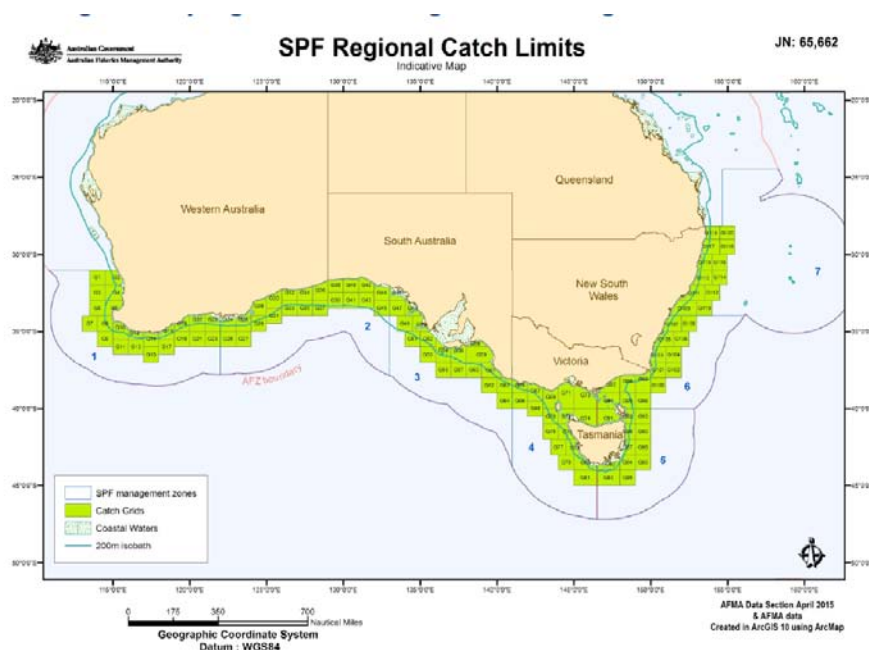


Figure 2. Map of the Small Pelagic Fishery showing seven management zones with catch grids. (Source: AFMA, 2015)

Fishery status

The ABARES Fishery Status Reports 2013 – 2014 list the status of the western redbait stock as ‘uncertain’ due to there being insufficient information available to assess the stock.

No Small Pelagic Fishery stocks have been identified as overfished.

Target Species

Species traditionally targeted in the fishery include: jack mackerels (*Trachurus declivis*, *T. murphyi* and *T. symmetricus*); Australian sardines (*Sardinops sagax*); blue mackerel (*Scomber australasicus*); and redbait (*Emmelichthys nitidus*).

The species targeted are often described as ‘forage fish’ or ‘bait fish’. Forage fish are small fish that live in the open ocean and are preyed

	<p>upon by larger fish, marine mammals and seabirds (Kils, 1992). Forage fish typically feed on plankton and can be found in large numbers (schools) which helps them to efficiently feed on the plankton. Forage fish are highly fecund (have large numbers of young) and grow quickly (Alder <i>et al</i>, 2008).</p> <p>In November 2014 the Report of the Expert Panel on a Declared Commercial Fishing Activity: Final (Small Pelagic Fishery) Declaration 2012 was released. That report found that the target species of the fishery are susceptible to capture but also have characteristics that are likely to reduce the temporal and spatial extent of localised depletion.</p>
Byproduct Species	Barracouta (<i>Thyrsites atun</i>), rubyfish (<i>Plagiogeneion</i> spp), skipjack tuna (<i>Katsuwonus pelamis</i>), spotted warehou (<i>Seriolella punctata</i>) and yellowtail scad (<i>Trachurus novaezelandiae</i>).
Gear	Fishing in the Small Pelagic Fishery is by purse seine and mid water trawl methods only. The minimum size mesh for trawl nets is 30 millimetres.
Season	The Small Pelagic Fishery is open for fishing year round. For management purposes, the fishing season opens on 1 May of each year and closes on 30 April of the following year.

Commercial harvest	Table 5. Small Pelagic Fishery catch for 2011-2015				
		2011-12	2012-13	2013-14	2014-15
	Stock	Catch (t)	Catch (t)	Catch (t)	Catch (t)
	Aust. sardine	23	15	17	161
	Blue mackerel (east)	0	1	0	209
	Blue mackerel (west)	130	0	0	0
	Jack mackerel (east)	0	0	0	272
	Jack mackerel (west)	0	0	0	0
	Redbait (east)	0	0	0	2
	Redbait (west)	0	0	0	0
	Total	153	16	17	644
Value of commercial harvest	Due to the small number of active operators in the Small Pelagic Fishery, this information is not publicly available.				
Take by other sectors	<p>Species targeted in the Small Pelagic Fishery are taken by several other Commonwealth and state-managed fisheries, mainly the trawl sectors of the Commonwealth Southern and Eastern Scalefish and Shark Fishery, the Eastern Tuna and Billfish Fishery, the Commonwealth Western Tuna and Billfish Fishery, the New South Wales Ocean Haul Fishery and state-managed sardine fisheries.</p> <p>Estimates of recreational removals and Indigenous take from the Small Pelagic Fishery stocks are not as reliable as estimates of the commercial catch. There are some programs in place to collect data from the recreational sector in New South Wales (e.g. the Gamefish Tournament Monitoring Program).</p> <p>In August 2003, the National Recreational and Indigenous Fishing Survey was published. This project was a joint initiative of the</p>				

	<p>Commonwealth and State/Territory Governments to obtain fisheries statistics to support the management of non-commercial fishing in Australia. The survey provides estimates of the catch of small pelagic fish species which are targeted/caught incidentally by recreational and Indigenous fishers, key locations of catch and the proportion of each species that is discarded on a state by state basis.</p> <p>Consistent with obligations under the management plan for the fishery and the Australian Government's Harvest Strategy policy, total fishing mortality on stocks are taken into account when determining sustainable catch limits for the Small Pelagic Fishery.</p>
Commercial licences issued	<p>There are 153 licence (statutory fishing right) holders in the Small Pelagic Fishery. Only one mid water trawl vessel and one purse seine vessel are active regularly. Activity from other operators is opportunistic.</p>
Management arrangements	<p>The fishery is currently managed through input and output controls under the Small Pelagic Fishery Management Plan 2009 which is in force under the <i>Fisheries Management Act 1991</i>. Under the Management Plan, and its associated regulations, directions and conditions, management arrangements include:</p> <ul style="list-style-type: none"> • limited entry, no new licences will be issued • two management areas (Eastern and Western sub-areas) which are further broken down into seven zones and catch grids, to reduce the risk of localised overfishing or depletion of target stocks • annual total allowable catch levels for target species • individually transferable quota Statutory Fishing Rights allocated for each species in each management area to eligible persons • size restrictions on the net mesh for mid water trawl gear • seal excluder devices fitted to mid water trawl gear • by-catch action plan in place and regularly reviewed • an AFMA approved vessel management plan for each mid water trawl vessel in the fishery, to minimise the risk of interactions with

	<p>EPBC Act protected species</p> <ul style="list-style-type: none"> • an operational satellite based vessel monitoring system (VMS) • provision for independent observer coverage of fishing operations, and • mandatory reporting of interactions with EPBC Act protected species. <p>In addition, all mid water trawlers must comply with the Small Pelagic Fishery (Closures) Direction No. 1 2015.</p> <p>Under the Small Pelagic Fishery Management Plan 2009, the fishery is managed spatially using Eastern and Western management zones based on the stock structure of Small Pelagic Fishery target species. Separate stock assessments are undertaken to determine total allowable catches for each zone. The total allowable catches are set in accordance with the Australian Government Harvest Strategy policy. Statutory Fishing Rights are granted to licence holders in the form of individually transferable quotas (that is, rights that can be bought, sold or leased).</p> <p>Vessel management plans are required for all mid water trawl fishing boats in the Small Pelagic Fishery. Vessel management plans specify the operational requirements to minimise risks to the marine environment and to minimise interactions with EPBC Act protected species. Vessel management plans are continually updated to take into account on-water experience and any new developments in techniques to further reduce the risk to protected species (Australian Fisheries Management Authority, 2015)</p> <p>The vessel management plan for the single mid water trawl vessel currently operating in the Small Pelagic Fishery sets out environmental management conditions that aim to:</p> <ul style="list-style-type: none"> • minimise interactions with seabirds and marine mammals • reduce the risk of localised depletion of target stocks • specify mandatory operational procedures that the licence holder and crew are required to adhere to whilst conducting fishing operations
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	<ul style="list-style-type: none"> • specify monitoring tools to evaluate the effectiveness of mitigation procedures, and • allow for continued improvements in physical mitigation methods through ongoing observation, information gathering and the review process.
Bycatch	The Small Pelagic Fishery's Bycatch and Discarding Workplan aims to minimise bycatch. Current levels of bycatch in the Small Pelagic Fishery are considered to be low. The fishery's interaction with EPBC Act protected species is discussed below.
Interaction with Protected Species¹	<p>Interactions with protected species are reported in logbooks by fishers and by AFMA's independent observers. Quarterly reports of protected species interactions are published on the AFMA website. Protected species that are known to interact with the fishery include Australian fur seals, dolphins and seabirds. The most prevalent interactions are with seals and dolphins in the mid water trawl sector.</p> <p>In November 2014 the Report of the Expert Panel on a Declared Commercial Fishing Activity: Final (Small Pelagic Fishery) Declaration 2012 was released. That report found that there were 241 protected species that occur in the area of the Small Pelagic Fishery, and that it is inevitable that very large mid water trawl fishing vessels would have direct interactions with some protected species, and some interactions would result in mortalities regardless of the adoption of the best available mitigation and management measures.</p> <p>During the 2015 fishing season to date, the Department understands that there have been 12 mortalities of fur seals, nine mortalities of dolphins and three mortalities of shy albatross reported in the fishery, all in the mid water trawl sector.</p> <p>In May 2015, the Australian Fisheries Management Authority (AFMA) implemented strict conditions for all mid water trawl fishing vessels operating in the Small Pelagic Fishery to further minimise the risk of marine mammal mortalities. The conditions included prohibiting night time fishing, the requirement for additional electronic monitoring</p>

¹ 'Protected species' means all species listed under Part 13 of the EPBC Act, including whales and other cetaceans and threatened, marine and migratory species.

	<p>(cameras), and that six month fishing bans in management zones would be imposed should any further dolphin mortalities occur in the relevant zone. A night time closure was implemented to protect dolphins, which are known to have an increased risk of interacting with mid water trawl gear at night time.</p> <p>In September 2015 AFMA lifted the night time ban on mid water trawling in the Small Pelagic Fishery (SPF), as a trigger limit on dolphin mortalities was in place.</p> <p>Under sections 199, 214, 232 and 256 of the EPBC Act, persons who interact with a protected species must report that interaction within seven days of the incident occurring to the department. A Memorandum of Understanding between AFMA and the Department for the Reporting of Fisheries Interactions with Protected Species (Reporting MOU) is in place. This Memorandum of Understanding streamlines reporting requirements for interactions with protected species, assisting fishers in meeting their requirements under the EPBC Act. As such, the Memorandum of Understanding reduces the administrative reporting burden on individual fishers and provides for regular reporting of protected species interactions. AFMA reports its protected species interactions to the Department on a quarterly basis.</p>
Ecosystem Impacts	<p>The target species in the Small Pelagic Fishery are generally recognised as key prey species in the pelagic food web. In November 2014, the Report of the Expert Panel on a Declared Commercial Fishing Activity: Final (Small Pelagic Fishery) Declaration 2012 was released. That report found that the available ecosystem modelling studies indicate that the SPF target species are not as influential in the southern Australian ecosystem compared to small pelagic species in other more productive, global upwelling systems that support much larger biomasses of similar species.</p> <p>The panel also noted that <i>‘the preliminary findings of the recent review of the SPF Harvest Strategy suggested that current exploitation rates in the SPF are unlikely to cause adverse environmental impacts to the broader ecosystem and that the ‘ecological allocations’ to predators and the broader ecosystem is adequate’.</i></p> <p>Research into the ecosystem role of the target species in the Small</p>

	<p>Pelagic Fishery is taken into consideration in the fishery's Harvest Strategy. For species where stock assessments are not performed, catch-and-effort data and catch age structure are used to determine a precautionary recommended biological catch.</p> <p>The current Bycatch and Discarding Workplan seeks to minimise bycatch and the impact of the fishery on the broader ecosystem. The Bycatch and Discarding Workplan also supports the formation of codes of practice for best conduct fishing operations. The purse seine sector has a voluntary code of practice covering bycatch issues.</p> <p>Ecological risk assessments were completed for both the purse seine and the mid water trawl sectors of the Small Pelagic Fishery in 2010, assessing the risk to target, bycatch and byproduct species as well as risks to the marine environment. Where high risks are identified, management arrangements are required to be in place to reduce these risks. While the majority of ecological risk management actions implemented to date have been species based, future reviews of the AFMA's ecological risk assessment and ecological risk management process are expected to expand in focus to include impact on marine habitats and communities that may be impacted by fishing. The current risk assessments are available on AFMA's website at: http://www.afma.gov.au/sustainability-environment/ecological-risk-management-strategies/</p> <p>The Marine Bioregional Plan for the Temperate East Marine Region 2012 and the Marine Bioregional Plan for the South-west Marine Region 2012 identify a number of key ecological features present in the area of the Small Pelagic Fishery. The extraction of living resources and bycatch by commercial fisheries have been identified as pressures of potential concern to some of these key ecological features. However, the plans also note that these assessments are conservative in the context of active fisheries management, particularly when fisheries are managed at an ecosystem level, as is the case for the Small Pelagic Fishery.</p> <p>The marine bioregional plans also list physical habitat modification as being of potential concern for some key ecological features that are found within the area of the Small Pelagic Fishery. This is a concern</p>
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	<p>where these features are either subject to bottom trawl activities or are inherently vulnerable to habitat disturbance, including shelf rocky reefs and the canyons on the eastern continental slope. As the fishing methods employed in the Small Pelagic Fishery are purse seine and mid water trawl, impacts to the seafloor are considered to be low.</p>
<p>Impacts on CITES listed</p>	<p>No specimens listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora are permitted to be harvested in the fishery. Therefore no assessment of the Small Pelagic Fishery's impact on specimens listed under the Convention on International Trade in Endangered Species of Wild Fauna and Flora has been conducted.</p>

Table 2: Progress in implementing the previous conditions and recommendations for the Small Pelagic Fishery

Condition	Progress	Recommended Action
<p>November 2012</p> <p>Part 13, Condition 1:</p> <p>Prior to fishing, mid water trawl vessels must have in place effective mitigation approaches and devices, to satisfy the Australian Fisheries Management Authority (AFMA), to minimise interactions with dolphins, seals and seabirds.</p>	<p>A new mid water trawl vessel, <i>FV Geelong Star</i>, commenced fishing operations in the Small Pelagic Fishery on 2 April 2015. An AFMA-approved vessel management plan was finalised prior to the start of fishing activities and continues to be updated to minimise interactions with protected species.</p> <p>All mid water trawl vessels are now required to have an AFMA-approved vessel management plan to minimise interactions with dolphins, seals and seabirds.</p>	<p>The Department of the Environment considers that this condition has been met and is ongoing.</p> <p>The Department recommends that this condition be continued (see Part 13 Condition A, Table 4).</p>
<p>November 2012</p> <p>Part 13, Condition 2:</p> <p>The Australian Fisheries Management Authority requires that at least one observer be deployed on each new mid water trawl vessel for the first 10 fishing trips with additional observer coverage or other monitoring implemented as appropriate, following scientific assessment of</p>	<p>AFMA has advised that the baseline observer coverage in the Small Pelagic Fishery is:</p> <ul style="list-style-type: none"> • 10 per cent of days fished in the fishery for the purse seine method; and • 20 per cent of days fished in the fishery for the mid water trawl method. <p>New boats that enter the fishery are required to have observers for the first five trips for purse seine boats and the first 10 trips for mid water trawl boats.</p> <p>The <i>Geelong Star</i> is required to carry an AFMA observer for the first 12 months and then on at least</p>	<p>The Department of the Environment considers that this condition has been met and is ongoing.</p> <p>The Department recommends that this condition be continued (see Part 13 Condition B, Table 4).</p>

Condition	Progress	Recommended Action
the SPF.	<p>20 per cent of trips thereafter. The <i>Geelong Star</i> is also required to have an electronic monitoring (camera) system installed. An AFMA bycatch officer was also deployed on the vessel for the first four trips.</p> <p>AFMA has further advised that these levels may be increased if needed.</p>	

Part 13A Recommendations February 2010	Progress	Recommended Action
1. Operation of the SPF will be carried out in accordance with the management regime made under the <i>Fisheries Management Act 1991</i> (FMA).	AFMA has advised that the fishery has continued to operate in accordance with the Small Pelagic Fishery Management Plan 2009, made under the <i>Fisheries Management Act 1991</i> (FMA).	The Department of the Environment considers that this recommendation has been met. The Department recommends that this action be continued (see Condition 1, Table 4).
2. The Australian Fisheries Management Authority to inform the Department of the Environment of any intended amendments to the management arrangements that may affect the criteria on which EPBC Act decisions are based.	The Department of the Environment was informed of all relevant intended management changes as they occurred.	The Department of the Environment considers that this recommendation has been met. The Department recommends that this action be continued (see Condition 2, Table 4).
3. The Australian Fisheries Management Authority to produce and present reports to the Department of the Environment annually as per Appendix B to the <i>Guidelines for the Ecologically Sustainable Management of Fisheries - 2nd Edition</i> .	AFMA has continued to produce reports on an annual basis. The annual reports contain the necessary information required by the Australian Government <i>Guidelines for the Ecologically Sustainable Management of Fisheries – 2nd Edition</i> .	The Department of the Environment considers that this recommendation has been met. The Department recommends that this action be continued (see Condition 3, Table 4).

Part 13A Recommendations February 2010	Progress	Recommended Action
<p>4. By December 2010, the Australian Fisheries Management Authority to:</p> <p>a) develop and implement appropriate management responses to address and mitigate risks identified in the ERA</p> <p>b) ensure that the ERA and management responses are made publically available once implemented.</p>	<p>AFMA has advised that ecological risk management reports for the purse seine and mid water trawl sectors of the Small Pelagic Fishery were completed in March 2010.</p> <p>Section 3 of the ecological risk management reports outline management responses to address and mitigate risks identified in the ecological risk assessment, through the Small Pelagic Fishery Bycatch and Discarding Workplan.</p> <p>The ecological risk assessments (for both purse seine and mid water trawl sectors) and ecological risk management reports are available on AFMA's website at:</p> <p>www.afma.gov.au/sustainability-environment/ecological-risk-management-strategies/</p>	<p>The Department of the Environment considers that this recommendation has been met.</p>
<p>5. By June 2010, the Australian Fisheries Management Authority to:</p> <p>a) finalise and implement the bycatch and discard workplan for the SPF with particular focus on</p>	<p>AFMA has advised that the Small Pelagic Fishery Bycatch and Discarding Workplan was first agreed in September 2009.</p> <p>An annual review of the 2009 Small Pelagic Fishery Bycatch and Discarding Workplan was completed in</p>	<p>The Department of the Environment considers that this recommendation has been met.</p>

Part 13A Recommendations February 2010	Progress	Recommended Action
<p>seal interactions</p> <p>b) conduct annual reviews, looking at the long term strategic approach in reducing bycatch and discards.</p>	<p>2010 and the plan was renewed in 2011.</p> <p>The 2011 Small Pelagic Fishery Bycatch and Discarding Workplan was subsequently reviewed in 2012 and a final report of the 2011 Small Pelagic Fishery Bycatch and Discarding Workplan was completed in October 2013.</p> <p>The 2014-16 Small Pelagic Fishery Bycatch and Discarding Workplan is available on AFMA's website.</p>	
<p>6. The Australian Fisheries Management Authority to continue to cooperate with relevant jurisdictions to pursue complementary management and research of shared small pelagic stocks.</p>	<p>AFMA has advised that it has held discussions with stakeholders and relevant state fisheries management agencies regarding complementary management and research. AFMA has continued to focus on complementary arrangements on bycatch management with New South Wales, South Australia, Tasmania and Victoria. State representatives have attended previous Small Pelagic Fishery Resource Assessment Group and South East Management Advisory Committee meetings. The Department has been advised that the Small Pelagic Fishery Resource Assessment Group was dissolved in June 2015.</p>	<p>The Department of the Environment considers that this recommendation has been met.</p>

Part 13A Recommendations February 2010	Progress	Recommended Action
<p>7. The Australian Fisheries Management Authority to consider the development of appropriate performance measures capable of responding to future ecosystem changes in the fishery.</p>	<p>AFMA has advised that performance measures relevant to future ecosystem changes in the fishery are contained in section 12 of the Small Pelagic Fishery Management Plan 2009. These include:</p> <ul style="list-style-type: none"> • data collection, research and consultation • reviewing ecological risk assessments to determine the risk to ecological sustainability of the fishery • setting catch limits for quota species in accordance with the Small Pelagic Fishery Harvest Strategy • setting catch limits (or other measures) to ensure the ecological sustainability of non-quota species. <p>The effectiveness of the Small Pelagic Fishery Management Plan 2009 was reviewed against its performance criteria by the South East Management Advisory Committee in May 2014. A summary of the advice is available in the minutes of the meeting at:</p> <p>www.afma.gov.au/wp-</p>	<p>The Department of the Environment considers that this recommendation has been met.</p>

Part 13A Recommendations February 2010	Progress	Recommended Action
	<p>content/uploads/2014/09/Minutes_SEMAC_15.pdf.</p> <p>The Small Pelagic Fishery Resource Assessment Group while it operated monitored the fishery and any ecosystem impacts through the provision of annual data collection and the provision of fishery status reports. The best available information was used when setting conservative total allowable catches for the fishery.</p> <p>AFMA continues to monitor the distribution of catch taken by the <i>Geelong Star</i> in relation to regional catch limits to ensure that effort and data collection is spread widely throughout the fishery.</p>	

Table 3: The Department of the Environment’s assessment of the Small Pelagic Fishery against the requirements of the EPBC Act related to decisions made under Parts 13 and 13A

Please Note – the table below is not a complete or exact representation of the EPBC Act. It is intended as a summary of relevant sections and components of the EPBC Act to provide advice on the fishery in relation to decisions under Parts 13 and 13A. A complete version of the EPBC Act can be found on the Department’s website.

Part 13

Division 1 Listed threatened species Section 208A Minister may accredit plans or regimes	The Department of the Environment’s assessment of the Small Pelagic Fishery Management Plan 2009
<p>(1) Minister may, by instrument in writing, accredit for the purposes of this Division:</p> <p>(a) a plan of management within the meaning of section 17 of the <i>Fisheries Management Act 1991</i>;</p> <p>if satisfied that:</p> <p>(f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that members of listed threatened species (other than conservation dependent species) are not killed or injured as a result of the fishing; and</p>	<p>The Commonwealth Small Pelagic Fishery will be managed under the Small Pelagic Fishery Management Plan 2009 in force under the <i>Fisheries Management Act 1991</i>.</p> <p>The Small Pelagic Fishery Management Plan 2009 was accredited under section 208A for interactions with listed threatened species in April 2015. While there have been amendments to the management arrangements since that time, those amendments do not materially change the requirement to take steps to ensure that members of listed threatened species are not killed or injured as a result of the fishing.</p> <p>The <i>Report of the Expert Panel on a Declared Commercial Fishing Activity: Final (Small Pelagic Fishery) Declaration 2012</i> (the Expert Panel report) noted that there had not been any reported interactions between fishing gear and listed threatened species in the Small Pelagic Fishery, but that the area of the fishery did overlap with the foraging area of Australian sea lions and some listed threatened seabird species. There have since been three shy albatross mortalities recorded to date in 2015. The Expert Panel report also identified</p>

Division 1 Listed threatened species Section 208A Minister may accredit plans or regimes	The Department of the Environment's assessment of the Small Pelagic Fishery Management Plan 2009
	<p>some of the risks that super trawlers and their fishing gear posed to threatened species, and listed some potential mitigation actions.</p> <p>AFMA has reviewed the potential mitigation actions contained in the Expert Panel report (relevant to mid water trawl and purse seine fishing gear) and implemented those it considers appropriate to protect and avoid interacting with listed threatened species. Further, on 21 April 2015 the Government banned super trawlers (fishing vessels of more than 130 metres) from fishing in Australian waters, with the ban implemented under the <i>Fisheries Management Act 1991</i>.</p> <p>The Small Pelagic Fishery Management Plan 2009 requires AFMA to implement a bycatch action plan for the fishery that takes into account the requirements under the EPBC Act for the protection of listed threatened species. The Small Pelagic Fishery Bycatch and Discarding Workplan 2014-2016 includes the testing and implementation of measures to reduce bycatch of protected species in the event of mid water trawl operations in the fishery.</p> <p>As described in table 1, the management plan also provides for:</p> <ul style="list-style-type: none"> • limited entry to the fishery, thereby constraining total fishing effort — fishers must hold statutory fishing rights issued under the management plan and must hold quota for those target species they wish to retain • development of ecological risk assessments and risk management reports • catch limits for key target species (quota and non-quota species). <p>The Fisheries Management Regulations 1992 further require that Commonwealth fishing concession holders must ensure that, as far as practicable, there is no interaction with an EPBC Act protected species during a fishing trip and that all interactions with such species are reported in relevant logbooks. The regulations also make provision for observer monitoring of</p>

Division 1 Listed threatened species Section 208A Minister may accredit plans or regimes	The Department of the Environment's assessment of the Small Pelagic Fishery Management Plan 2009
	<p>fishing activities.</p> <p>Conditions applied under section 22(5) of the <i>Fisheries Management Act 1991</i> on statutory fishing rights issued under the management plan also implement specific management measures which act to reduce the likelihood of capture and mortality of listed threatened species. Some relevant conditions include:</p> <ul style="list-style-type: none"> • gear restrictions • a requirement for individually tailored vessel management plans to protect seabirds and marine mammals for all mid water trawl vessels operating in the fishery. Vessel management plans must contain measures to minimise, and avoid where possible, the discharge of biological material whilst fishing gear is in the water and to use physical mitigation devices in a particular manner to avoid interactions with seabirds, seals and dolphins • having an operational vessel monitoring system. <p>AFMA has advised that the vessel management plans will specify any approved excluder devices and trigger limits in place. Any spatial closures to protect listed threatened species would be enforced through Directions under the <i>Fisheries Management Act 1991</i>.</p> <p>Given the management arrangements in place for the fishery described above and in Table 1, the ban on fishing vessels over 130m in length and the requirements imposed under the Vessel Management Plan for the <i>Geelong Star (Appendix A)</i>, the Department considers that the Small Pelagic Fishery Management Plan 2009 requires persons engaged in fishing under the plan to take all reasonable steps to ensure that members of listed threatened species are not killed or injured as a result of the fishing.</p>

Division 1 Listed threatened species Section 208A Minister may accredit plans or regimes	The Department of the Environment's assessment of the Small Pelagic Fishery Management Plan 2009
<p>(g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the survival or recovery in nature of the species.</p>	<p>Given:</p> <ul style="list-style-type: none"> • the management measures described above and in Table 1, • the low number of interactions with listed threatened species, and • the effect of the ban on vessels greater than 130m <p>the Department considers that the current operation of the Small Pelagic Fishery is not likely to adversely affect the survival or recovery in nature of any listed threatened species.</p> <p>The Department recommends that the Small Pelagic Fishery Management Plan 2009 be accredited under section 208A.</p>

Division 2 Migratory species Section 222A Minister may accredit plans or regimes	The Department of the Environment's assessment of the Small Pelagic Fishery Management Plan 2009
<p>(1) Minister may, by instrument in writing, accredit for the purposes of this Division:</p> <p>(a) a plan of management within the meaning of section 17 of the <i>Fisheries Management Act 1991</i>;</p> <p>if satisfied that:</p> <p>(f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that members of listed migratory species are not killed or injured as a result of the fishing; and</p>	<p>The Commonwealth Small Pelagic Fishery will be managed under the Small Pelagic Fishery Management Plan 2009 in force under the <i>Fisheries Management Act 1991</i>.</p> <p>The Small Pelagic Fishery Management Plan 2009 was accredited under section 222A for interactions with listed migratory species in April 2015. While there have been amendments to the management arrangements since that time, those amendments do not materially change the requirement to take steps to ensure that members of listed migratory species are not killed or injured as a result of the fishing.</p> <p>The <i>Report of the Expert Panel on a Declared Commercial Fishing Activity: Final (Small Pelagic Fishery) Declaration 2012</i> (the Expert Panel report) noted that there had been low reported interactions between fishing gear and listed migratory species in the Small Pelagic Fishery, but that the area of the fishery did overlap with the foraging area of some listed migratory species. There have since been three shy albatross mortalities recorded to date in 2015. The Expert Panel report also identified some of the risks that super trawlers and their fishing gear posed to listed migratory species, and listed some potential mitigation actions.</p> <p>AFMA has reviewed the potential mitigation actions contained in the Expert Panel report (relevant to mid water trawl and purse seine fishing gear) and implemented those it considers appropriate to protect and avoid interacting with listed migratory species. In addition, on 21 April</p>

Division 2 Migratory species Section 222A Minister may accredit plans or regimes	The Department of the Environment's assessment of the Small Pelagic Fishery Management Plan 2009
	<p>2015 the Government banned super trawlers (fishing vessels of more than 130 metres) from fishing in Australian waters, with the ban implemented under the <i>Fisheries Management Act 1991</i>.</p> <p>The Small Pelagic Fishery Management Plan 2009 requires AFMA to implement a bycatch action plan for the fishery that takes into account the requirements under the EPBC Act for the protection of listed migratory species. The Small Pelagic Fishery Bycatch and Discarding Workplan 2014-2016 includes the testing and implementation of measures to reduce bycatch of protected species in the event of mid water trawl operations in the fishery.</p> <p>The management plan also provides for:</p> <ul style="list-style-type: none"> • limited entry to the fishery, thereby constraining total fishing effort — fishers must hold statutory fishing rights issued under the management plan and must hold quota for those target species they wish to retain • development of ecological risk assessments and risk management reports • catch limits for key target species (quota and non-quota species). <p>The Fisheries Management Regulations 1992 further require that Commonwealth fishing concession holders must ensure that, as far as practicable, there is no interaction with an EPBC Act protected species during a fishing trip and that all interactions with such species are reported in relevant logbooks. The regulations also make provision for observer monitoring of fishing activities.</p> <p>Conditions applied under section 22(5) of the <i>Fisheries Management Act 1991</i> on statutory fishing rights issued under the management plan also implement specific management measures which act to reduce the</p>

Division 2 Migratory species Section 222A Minister may accredit plans or regimes	The Department of the Environment's assessment of the Small Pelagic Fishery Management Plan 2009
	<p>likelihood of capture and mortality of listed migratory species. Some relevant conditions include:</p> <ul style="list-style-type: none"> • gear restrictions • a requirement for individually tailored vessel management plans to protect seabirds and marine mammals for all mid water trawl vessels operating in the fishery. Vessel management plans must contain measures to minimise, and avoid where possible, the discharge of biological material whilst fishing gear is in the water and to use physical mitigation devices in a particular manner to avoid interactions with seabirds, seals and dolphins • having an operational vessel monitoring system. <p>AFMA has advised that the vessel management plans would specify any approved excluder devices and trigger limits in place. Any spatial closures to protect listed migratory species would be enforced through Directions under the <i>Fisheries Management Act 1991</i>.</p> <p>Given the management arrangements in place for the fishery described above and in Table 1, the ban on fishing vessels over 130m in length and the requirements imposed under the Vessel Management Plan for the <i>Geelong Star (Appendix A)</i>, the Department considers that the Small Pelagic Fishery Management Plan 2009 requires persons engaged in fishing under the plan to take all reasonable steps to ensure that members of listed migratory species are not killed or injured as a result of the fishing.</p>

Division 2 Migratory species Section 222A Minister may accredit plans or regimes	The Department of the Environment's assessment of the Small Pelagic Fishery Management Plan 2009
<p>(g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the conservation status of a listed migratory species or a population of that species.</p>	<p>Given:</p> <ul style="list-style-type: none"> • the management measures described above • the low level of mortalities with listed migratory species, and • the effect of the ban on vessels greater than 130m <p>the Department considers the current operation of the Small Pelagic Fishery is not likely to adversely affect the conservation status of a listed migratory species or a population of that species.</p> <p>The Department recommends that the Small Pelagic Fishery Management Plan 2009 be accredited under section 222A.</p>

<p>Division 3 Whales and other cetaceans</p> <p>Section 245 Minister may accredit plans or regimes</p>	<p>The Department of the Environment's assessment of the Small Pelagic Fishery Management Plan 2009</p>
<p>(1) Minister may, by instrument in writing, accredit for the purposes of this Division:</p> <p>(a) a plan of management within the meaning of section 17 of the <i>Fisheries Management Act 1991</i>;</p> <p>if satisfied that:</p> <p>(f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that cetaceans are not killed or injured as a result of the fishing; and</p>	<p>The Commonwealth Small Pelagic Fishery will be managed under the Small Pelagic Fishery Management Plan 2009 in force under the <i>Fisheries Management Act 1991</i>.</p> <p>The Small Pelagic Fishery Management Plan 2009 was accredited under section 245 for interactions with whales and other cetaceans in April 2015. While there have been amendments to the management arrangements plan since that time, those amendments do not materially change the requirement to take steps to ensure that cetaceans are not killed or injured as a result of the fishing.</p> <p>The <i>Report of the Expert Panel on a Declared Commercial Fishing Activity: Final (Small Pelagic Fishery) Declaration 2012</i> (the Expert Panel report) noted that there had been rare and sporadic reported interactions between fishing gear and whales and cetaceans in the Small Pelagic Fishery, but that the area of the fishery did overlap with the foraging area of some whale and cetacean species. The Expert Panel report also identified some of the risks that super trawlers and their fishing gear pose to whales and cetaceans, and listed some potential mitigation actions.</p> <p>AFMA has reviewed the potential mitigation actions contained in the Expert Panel report (relevant to mid water trawl and purse seine fishing gear) and implemented those it considers appropriate to protect and avoid interacting with whales and cetaceans. In addition, on 21 April 2015 the Government banned super trawlers (fishing vessels of more</p>

<p>Division 3 Whales and other cetaceans</p> <p>Section 245 Minister may accredit plans or regimes</p>	<p>The Department of the Environment's assessment of the Small Pelagic Fishery Management Plan 2009</p>
	<p>than 130 metres) from fishing in Australian waters, with the ban implemented under the <i>Fisheries Management Act 1991</i>.</p> <p>In addition, the Small Pelagic Fishery Management Plan 2009 requires AFMA to implement a bycatch action plan for the fishery that takes into account the requirements under the EPBC Act for the protection of whales and cetaceans. The Small Pelagic Fishery Bycatch and Discarding Workplan 2014-2016 includes the testing and implementation of measures to reduce bycatch of protected species in the event of mid water trawl operations in the fishery.</p> <p>The management plan also provides for:</p> <ul style="list-style-type: none"> • limited entry to the fishery, thereby constraining total fishing effort — fishers must hold statutory fishing rights issued under the management plan and must hold quota for those target species they wish to retain • development of ecological risk assessments and risk management reports • catch limits for key target species (quota and non-quota species). <p>The Fisheries Management Regulations 1992 further require that Commonwealth fishing concession holders must ensure that, as far as practicable, there is no interaction with an EPBC Act protected species during a fishing trip and that all interactions with such species are reported in relevant logbooks. The regulations also make provision for observer monitoring of fishing activities.</p> <p>Conditions applied under section 22(5) of the <i>Fisheries Management Act 1991</i> on statutory fishing rights issued under the management plan also implement specific management measures which act to reduce the likelihood of capture and mortality of whales and cetaceans. Some</p>

Division 3 Whales and other cetaceans Section 245 Minister may accredit plans or regimes	The Department of the Environment's assessment of the Small Pelagic Fishery Management Plan 2009
	<p>relevant conditions include:</p> <ul style="list-style-type: none"> • gear restrictions • a requirement for individually tailored vessel management plans to protect seabirds and marine mammals for all mid water trawl vessels operating in the fishery. Vessel management plans must contain measures to minimise, and avoid where possible, the discharge of biological material whilst fishing gear is in the water and to use physical mitigation devices in a particular manner to avoid interactions with dolphins • having an operational vessel monitoring system. <p>AFMA has advised that the vessel management plans will specify any approved excluder devices and trigger limits in place. Any spatial closures to protect whales and cetaceans would be enforced through Directions under the <i>Fisheries Management Act 1991</i>.</p> <p>During its first two fishing trips in April/May 2015, the fishing activities of the Geelong Star resulted in eight dolphin mortalities. On 6 May 2015, AFMA announced strict conditions for all mid water trawl fishing vessels operating in the Small Pelagic Fishery which included:</p> <ul style="list-style-type: none"> • a prohibition on night time fishing • a requirement for additional electronic monitoring devices (cameras), and • that six month fishing bans in management zones would be imposed should any further dolphin mortalities occur in the relevant zone. <p>On 16 September 2015 AFMA announced that it had lifted the night time ban on mid-water trawling in the Small Pelagic Fishery, as a</p>

Division 3 Whales and other cetaceans Section 245 Minister may accredit plans or regimes	The Department of the Environment's assessment of the Small Pelagic Fishery Management Plan 2009
	<p>trigger limit on dolphin mortalities was in place.</p> <p>Given the management arrangements in place for the fishery described above and in Table 1, the ban on fishing vessels over 130m in length and the requirements imposed under the Vessel Management Plan for the <i>Geelong Star</i> (Appendix A), the Department considers that the Small Pelagic Fishery Management Plan 2009 requires persons engaged in fishing under the plan to take all reasonable steps to ensure that whales and cetaceans are not killed or injured as a result of the fishing.</p>
<p>(g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the conservation status of a species of cetacean or a population of that species.</p>	<p>Given:</p> <ul style="list-style-type: none"> • the management measures described above • the low level of mortalities with cetaceans, and • the effect of the ban on vessels greater than 130m <p>the Department considers the current operation of the Small Pelagic Fishery is not likely to adversely affect the conservation status of a species of whale or other cetacean or a population of that species.</p> <p>The Department recommends that the Small Pelagic Fishery Management Plan 2009 be accredited under section 245.</p>

Division 4 Listed marine species Section 265 Minister may accredit plans or regimes	The Department of the Environment's assessment of the Small Pelagic Fishery Management Plan 2009
<p>(1) Minister may, by instrument in writing, accredit for the purposes of this Division:</p> <p>(a) a plan of management within the meaning of section 17 of the <i>Fisheries Management Act 1991</i>;</p> <p>if satisfied that:</p> <p>(f) the plan, regime or policy requires persons engaged in fishing under the plan, regime or policy to take all reasonable steps to ensure that members of listed marine species are not killed or injured as a result of the fishing; and</p>	<p>The Commonwealth Small Pelagic Fishery will be managed under the Small Pelagic Fishery Management Plan 2009 in force under the <i>Fisheries Management Act 1991</i>.</p> <p>The Small Pelagic Fishery Management Plan 2009 was accredited under section 265 for interactions with listed marine species in April 2015. While there have been amendments to the management arrangements since that time, those amendments do not materially change the requirement to take steps to ensure that members of listed marine species are not killed or injured as a result of the fishing.</p> <p>The <i>Report of the Expert Panel on a Declared Commercial Fishing Activity: Final (Small Pelagic Fishery) Declaration 2012</i> (the Expert Panel report) noted that there had been reported interactions between fishing gear and listed marine species in the Small Pelagic Fishery, and that the area of the fishery did overlap with the foraging area of some listed marine species. An underwater camera research trial (Lyle and Willcox 2008)² found that seals entered trawl nets on 50 per cent to 70 per cent of all monitored fishing events, resulting in some mortality.</p> <p>The Expert Panel report also identified some of the risks that super trawlers and their fishing gear pose to listed marine species, and listed some potential mitigation actions.</p>

² Lyle, JM and Willcox ST (2008) *Dolphin and seal interactions with mid water trawling in the Small Pelagic Fishery, including an assessment of bycatch mitigation strategies*. Tasmanian Aquaculture and Fisheries Institute, University of Tasmania.

Division 4 Listed marine species Section 265 Minister may accredit plans or regimes	The Department of the Environment's assessment of the Small Pelagic Fishery Management Plan 2009
	<p>AFMA has reviewed the potential mitigation actions contained in the Expert Panel report (relevant to mid water trawl and purse seine fishing gear) and implemented those it considers appropriate to protect and avoid interacting with listed marine species. In addition, on 21 April 2015 the Government banned super trawlers (fishing vessels of more than 130 metres) from fishing in Australian waters, with the ban implemented under the <i>Fisheries Management Act 1991</i>.</p> <p>In addition, the Small Pelagic Fishery Management Plan 2009 requires AFMA to implement a bycatch action plan for the fishery that takes into account the requirements under the EPBC Act for the protection of listed marine species. The Small Pelagic Fishery Bycatch and Discarding Workplan 2014-2016 includes the testing and implementation of measures to reduce bycatch of protected species in the event of mid water trawl operations in the fishery.</p> <p>The management plan also provides for:</p> <ul style="list-style-type: none"> • limited entry to the fishery, thereby constraining total fishing effort — fishers must hold statutory fishing rights issued under the management plan and must hold quota for those target species they wish to retain • development of ecological risk assessments and risk management reports • catch limits for key target species (quota and non-quota species). <p>The Fisheries Management Regulations 1992 further require that Commonwealth fishing concession holders must ensure that, as far as practicable, there is no interaction with an EPBC Act protected species during a fishing trip and that all interactions with such species are reported in relevant logbooks. The regulations also make provision</p>

Division 4 Listed marine species Section 265 Minister may accredit plans or regimes	The Department of the Environment's assessment of the Small Pelagic Fishery Management Plan 2009
	<p>for observer monitoring of fishing activities.</p> <p>Conditions applied under section 22(5) of the <i>Fisheries Management Act 1991</i> on statutory fishing rights issued under the management plan also implement specific management measures which act to reduce the likelihood of capture and mortality of listed marine species. Some relevant conditions include:</p> <ul style="list-style-type: none"> • gear restrictions • a requirement for individually tailored vessel management plans to protect seabirds and marine mammals for all mid water trawl vessels operating in the fishery. Vessel management plans must contain measures to minimise, and avoid where possible, the discharge of biological material whilst fishing gear is in the water and to use physical mitigation devices in a particular manner to avoid interactions with listed marine species • having an operational vessel monitoring system. <p>AFMA has advised that the vessel management plans will specify any approved excluder devices and trigger limits in place. Any spatial closures to protect listed marine species would be enforced through Directions under the <i>Fisheries Management Act 1991</i>.</p> <p>During its first two fishing trips in April/May 2015, the fishing activities of the Geelong Star resulted in four fur seal mortalities. On 6 May 2015, AFMA announced strict conditions for all mid water trawl fishing vessels operating in the Small Pelagic Fishery which included:</p> <ul style="list-style-type: none"> • a prohibition on night time fishing, and • a requirement for additional electronic monitoring devices (cameras)

Division 4 Listed marine species Section 265 Minister may accredit plans or regimes	The Department of the Environment's assessment of the Small Pelagic Fishery Management Plan 2009
	<p>On 16 September 2015 AFMA announced that it had lifted the night time ban on mid-water trawling in the Small Pelagic Fishery. While these conditions were specifically implemented to minimise further interactions with dolphins, it is possible that the closure also reduced the risk of interactions with fur seals.</p> <p>Further to this, the Geelong Star Vessel Operational Procedures to Minimise Marine Mammal Interactions in the Small Pelagic Fishery – 18 September 2015 (<i>Appendix B</i>) stipulates that if three or more seals are captured in one trawl shot, fishing must be suspended until such time as the AFMA observer has determined that the seal excluder devices are operating sufficiently, prior to fishing recommencing.</p> <p>Given the management arrangements in place for the fishery described above and in Table 1, the ban on fishing vessels over 130m in length and the requirements imposed under the Vessel Management Plan for the <i>Geelong Star</i> (<i>Appendix A</i>), the Department considers that the Small Pelagic Fishery Management Plan 2009 requires persons engaged in fishing under the plan to take all reasonable steps to ensure that listed marine species are not killed or injured as a result of the fishing.</p>

Division 4 Listed marine species Section 265 Minister may accredit plans or regimes	The Department of the Environment's assessment of the Small Pelagic Fishery Management Plan 2009
<p>(g) the fishery to which the plan, regime or policy relates does not, or is not likely to, adversely affect the conservation status of a listed marine species or a population of that species.</p>	<p>Given:</p> <ul style="list-style-type: none"> • the management measures described above • the low level of mortalities of listed marine species, and • the effect of the ban on vessels greater than 130m <p>the Department considers the current operation of the Small Pelagic Fishery is not likely to adversely affect the conservation status of a listed marine species or a population of that species.</p> <p>The Department recommends that the Small Pelagic Fishery Management Plan 2009 be accredited under section 265.</p>

Section 303AA Conditions relating to accreditation of plans, regimes and policies	The Department's assessment of the Small Pelagic Fishery Management Plan 2009
(1) This section applies to an accreditation of a plan, regime or policy under section 208A, 222A, 245 or 265.	The Department recommends that the Small Pelagic Fishery Management Plan 2009 be accredited under sections 208A, 222A, 245 and 265 of the EPBC Act.
<p>(2) The Minister may accredit a plan, regime or policy under that section even though he or she considers that the plan, regime or policy should be accredited only:</p> <ul style="list-style-type: none"> a) during a particular period; or b) while certain circumstances exist; or c) while a certain condition is complied with. <p>In such a case, the instrument of accreditation is to specify the period, circumstances or condition.</p>	<p>The Department considers that the Small Pelagic Fishery Management Plan 2009 should be accredited under sections 208A, 222A, 245 and 265, subject to two conditions.</p> <p>Those conditions, discussed in Table 4, are:</p> <ul style="list-style-type: none"> • Prior to fishing, mid-water trawl vessels must have in place effective mitigation approaches and devices to minimise interactions with dolphins, seals and seabirds. • That at least one observer be deployed on each new mid-water trawl vessel for the first 10 fishing trips, with additional observer coverage or other monitoring implemented as appropriate, following scientific assessment of the Small Pelagic Fishery. <p>Further detail on the rationale for these conditions is provided in Table 4.</p>
(7) The Minister must, in writing, revoke an accreditation if he or she is satisfied that a condition of the accreditation has been contravened.	

Part 13A

Section 303BA Objects of Part 13A

(1) The objects of this Part are as follows:

- (a) to ensure that Australia complies with its obligations under CITES³ and the Biodiversity Convention;
- (b) to protect wildlife that may be adversely affected by trade;
- (c) to promote the conservation of biodiversity in Australia and other countries;
- (d) to ensure that any commercial utilisation of Australian native wildlife for the purposes of export is managed in an ecologically sustainable way;
- (e) to promote the humane treatment of wildlife;
- (f) to ensure ethical conduct during any research associated with the utilisation of wildlife; and
- (h) to ensure the precautionary principle is taken into account in making decisions relating to the utilisation of wildlife.

³ Convention on International Trade in Endangered Species of Wild Fauna and Flora

Part 13A

Section 303DC Minister may amend list	The Department's assessment of the Small Pelagic Fishery
<p>(1) Minister may, by instrument published in the Gazette, amend the list referred to in section 303DB (list of exempt native specimens) by:</p> <ul style="list-style-type: none"> (a) including items in the list; (b) deleting items from the list; or (c) imposing a condition or restriction to which the inclusion of a specimen in the list is subject; or (d) varying or revoking a condition or restriction to which the inclusion of a specimen in the list is subject; or (e) correcting an inaccuracy or updating the name of a species. 	
<p>(1A) In deciding whether to amend the list referred to in section 303DB (list of exempt native specimens) to include a specimen derived from a commercial fishery, the Minister must rely primarily on the outcomes of any assessment in relation to the fishery carried out for the purposes of Division 1 or 2 of Part 10.</p>	<p>The Small Pelagic Fishery was assessed under Part 10 of the EPBC Act in August 2009. In conducting this assessment, the Department considered that actions taken in the fishery would not have an unacceptable or unsustainable impact on the environment in a Commonwealth marine area.</p>
<p>(1C) The above does not limit the matters that may be taken into account in deciding whether to amend the list referred to in section 303DB (list of exempt native specimens) to include a specimen derived from a commercial fishery.</p>	<p>It is not possible to list exhaustively the factors that you may take into account in amending the list of exempt native specimens. The objects of Part 13A, which are set out above this table, provide general guidance in determining factors that might be taken into account. A matter that is relevant to determining whether an amendment to the list is consistent with those objects is likely to be a relevant factor.</p> <p>The Department considers that the amendment of the list of exempt native specimens to include product taken in the Small Pelagic</p>

	<p>Fishery wildlife trade operation would be consistent with the provisions of Part 13A (listed above) as:</p> <ul style="list-style-type: none"> ▪ the fishery will not harvest any CITES listed species; ▪ there are management arrangements in place to ensure that the resource is being managed in an ecologically sustainable way (see Table 1); ▪ the operation of the Small Pelagic Fishery is unlikely to be unsustainable and threaten biodiversity within the next 3 years; and ▪ the EPBC Regulations 2000 do not specify fish as a class of animal in relation to the welfare of live specimens.
<p>(3) Before amending the list referred to in section 303DB (list of exempt native specimens), the Minister:</p> <ul style="list-style-type: none"> (a) must consult such other Minister or Ministers as the Minister considers appropriate; and (b) must consult such other Minister or Ministers of each State and self-governing Territory as the Minister considers appropriate; and (c) may consult such other persons and organisations as the Minister considers appropriate. 	<p>The Department considers that the consultation requirements have been met.</p> <p>On 10 August 2004, the then Minister for the Environment and Heritage wrote to all fisheries ministers seeking their views on inclusion of product derived from commercial fisheries in the list of exempt native specimens, while subject to declaration as approved wildlife trade operations. Responses in support of the proposal were received from all state and territory fisheries ministers and the Commonwealth minister.</p> <p>In addition, the application from AFMA was released for public comment from 17 August 2015 to 14 September 2015, a total of 21 business days. The public comment notice sought comment on:</p> <ul style="list-style-type: none"> ▪ the proposal to amend the list of exempt native specimens to include product derived from the Small Pelagic Fishery, and ▪ AFMA's application for the fishery. <p>All comments received have been taken into consideration as part of the Department's advice on amending the list of exempt native specimens.</p>

(5) A copy of an instrument made under section 303DC is to be made available for inspection on the Internet.	The instrument for the Small Pelagic Fishery made under section 303DC will be gazetted and made available through the Department's website.
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Section 303FN Approved wildlife trade operation	The Department's assessment of the Small Pelagic Fishery
(2) The Minister may, by instrument published in the Gazette, declare that a specified wildlife trade operation is an approved wildlife trade operation for the purposes of this section.	
<p>(3) The Minister must not declare an operation as an approved wildlife trade operation unless the Minister is satisfied that:</p> <p>(a) the operation is consistent with the objects of Part 13A of the Act; and</p> <p>(b) the operation will not be detrimental to:</p> <p>i. the survival of a taxon to which the operation relates; or</p> <p>ii. the conservation status of a taxon to which the operation relates; and</p>	<p>The Department considers that the operation of the Small Pelagic Fishery is consistent with the objects of Part 13A (listed above) as:</p> <ul style="list-style-type: none"> ▪ the fishery will not harvest any CITES listed species ▪ there are management arrangements in place to ensure that the resource is being managed in an ecologically sustainable way (see Table 1) ▪ the operation of the Small Pelagic Fishery is unlikely to be unsustainable and threaten biodiversity within the next 3 years, and ▪ the EPBC Regulations 2000 do not specify fish as a class of animal in relation to the welfare of live specimens. <p>The Department considers that the Small Pelagic Fishery will not be detrimental to the survival or conservation status of a taxon to which it relates within the next 3 years, given the extensive management measures currently in place described in Table 1.</p>

(d) such other conditions (if any) as are specified in the regulations have been, or are likely to be, satisfied.	No other conditions are specified in relation to commercial fisheries in the EPBC Regulations.
<p>(4) In deciding whether to declare an operation as an approved wildlife trade operation the Minister must have regard to:</p> <p>(a) the significance of the impact of the operation on an ecosystem (for example, an impact on habitat or biodiversity); and</p> <p>(b) the effectiveness of the management arrangements for the operation (including monitoring procedures).</p>	<p>The Department considers that the Small Pelagic Fishery will not threaten any relevant ecosystem within the next 3 years, given:</p> <ul style="list-style-type: none"> • the extensive management measures currently in place described in Table 1, • the findings of the Report of the Expert Panel on a Declared Commercial Fishing Activity: Final (Small Pelagic Fishery) Declaration 2012, which were that: <ul style="list-style-type: none"> ○ the available ecosystem modelling studies indicate that the SPF target species are not as influential in the southern Australian ecosystem compared to small pelagic species in other more productive, global upwelling systems that support much larger biomasses of similar species; and ○ <i>‘the preliminary findings of the recent review of the SPF Harvest Strategy suggested that current exploitation rates in the SPF are unlikely to cause adverse environmental impacts to the broader ecosystem and that the ‘ecological allocations’ to predators and the broader ecosystem is adequate’.</i> <p>The Department considers that the management arrangements that will be employed for the Small Pelagic Fishery, as outlined in Table 1, are robust and likely to be effective. The arrangements will limit the catch of target species to sustainable levels, and provide effective mechanisms to avoid significant impacts on the broader ecosystem.</p>

<p>(5) In deciding whether to declare an operation as an approved wildlife trade operation the Minister must have regard to:</p> <ul style="list-style-type: none"> (a) whether legislation relating to the protection, conservation or management of the specimens to which the operation relates is in force in the State or Territory concerned; and (b) whether the legislation applies throughout the State or Territory concerned; and (c) whether, in the opinion of the Minister, the legislation is effective. 	<p>The Small Pelagic Fishery will be managed under the Small Pelagic Fishery Management Plan 2009, the <i>Fisheries Management Act 1991</i> and the Fisheries Management Regulations 1992.</p> <p>The <i>Fisheries Management Act 1991</i> applies throughout Commonwealth waters.</p> <p>The Department considers that the legislation is likely to be effective.</p>
<p>(10) For the purposes of section 303FN, an operation is a wildlife trade operation if, and only if, the operation is an operation for the taking of specimens and:</p> <ul style="list-style-type: none"> (d) the operation is a commercial fishery. 	<p>The Small Pelagic Fishery is a commercial fishery.</p>
<p>(10A) In deciding whether to declare that a commercial fishery is an approved wildlife trade operation for the purposes of this section, the Minister must rely primarily on the outcomes of any assessment in relation to the fishery carried out for the purposes of Division 1 or 2 of Part 10.</p> <p>(10B) Subsection (10A) does not limit the matters that may be taken into account in deciding whether to declare that a fishery is an approved wildlife trade operation for the purposes of this section.</p>	<p>The Small Pelagic Fishery was assessed under Part 10 of the EPBC Act in January 2010. In conducting that assessment, the Department considered that actions taken in the fishery would not have an unacceptable or unsustainable impact on the environment in a Commonwealth marine area.</p>

Section 303FR Public consultation	The Department's assessment of the Small Pelagic Fishery
<p>(1) Before making a declaration under section 303FN, the Minister must cause to be published on the Internet a notice:</p> <ul style="list-style-type: none"> (a) setting out the proposal to make the declaration; and (b) setting out sufficient information to enable persons and organisations to consider adequately the merits of the proposal; and (c) inviting persons and organisations to give the Minister, within the period specified in the notice, written comments about the proposal. 	<p>The Department considers that the consultation requirements of the EPBC Act for declaring a fishery an approved wildlife trade operation have been met. A public notice, which set out the proposal to grant export approval to the Small Pelagic Fishery and included the submission for the Small Pelagic Fishery, was released for public comment which closed on 14 September 2015 with two submissions received.</p>
<p>(2) A period specified in the notice must not be shorter than 20 business days after the date on which the notice was published on the Internet.</p>	<p>A public notice, which set out the proposal to grant export approval to the Small Pelagic Fishery and included the submission was released for public comment on 17 August 2015 and closed on 14 September 2015, a total of 21 business days.</p>
<p>(3) In making a decision about whether to make a declaration under section 303FN, the Minister must consider any comments about the proposal to make the declaration that were given in response to the invitation in the notice.</p>	<p>The two public comments received on AFMA's submission are included at Attachments D and E of the brief. The Department's assessment has considered the public comments received on the submission.</p>

Section 303FT Additional provisions relating to declarations	The Department's assessment of the Small Pelagic Fishery
(1) This section applies to a declaration made under section 303FN, 303FO or 303FP.	A declaration for the Small Pelagic Fishery will be made under section 303FN.
<p>(4) The Minister may make a declaration about a plan or operation even though he or she considers that the plan or operation should be the subject of the declaration only:</p> <p>(a) during a particular period; or</p> <p>(b) while certain circumstances exist; or</p> <p>(c) while a certain condition is complied with.</p> <p>In such a case, the instrument of declaration is to specify the period, circumstances or condition.</p>	<p>The standard conditions applied to commercial fishery wildlife trade operation include:</p> <ul style="list-style-type: none"> • operation in accordance with the management regime • notifying the Department of changes to the management regime, and • annual reporting in accordance with the requirements of the Australian Government <i>Guidelines for the Ecologically Sustainable Management of Fisheries – 2nd Edition</i>. <p>The wildlife trade operation instrument for the Small Pelagic Fishery specifies the standard and any additional conditions applied.</p>
(8) A condition may relate to reporting or monitoring.	One of the standard conditions relates to reporting.
(9) The Minister must, by instrument published in the <i>Gazette</i> , revoke a declaration if he or she is satisfied that a condition of the declaration has been contravened.	
(11) A copy of an instrument under section 303FN, or this section is to be made available for inspection on the Internet.	The instrument for the Small Pelagic Fishery made under sections 303FN and the conditions under section 303FT will be gazetted and made available through the Department's website.

Part 16

Section 391 Minister must consider precautionary principle in making decisions	The Department's assessment of the Small Pelagic Fishery
(1) The Minister must take account of the precautionary principle in making a decision under section 303DC and/or section 303FN, to the extent he or she can do so consistently with the other provisions of this Act.	Having regard to the precautionary management measures in place in these fisheries, summarised in Table 1, the Department considers that the precautionary principle has been accounted for in the preparation of advice in relation to a decision under section 303DC and section 303FN.

<p>(2) The precautionary principle is that lack of full scientific certainty should not be used as a reason for postponing a measure to prevent degradation of the environment where there are threats of serious or irreversible environmental damage.</p>	
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Part 12

Section 176 Bioregional Plans	The Department's assessment of the Small Pelagic Fishery
<p>(5) Subject to this Act, the Minister must have regard to a bioregional plan in making any decision under this Act to which the plan is relevant.</p>	<p>The Marine bioregional plan for the Temperate East Marine Region 2012 and the Marine Bioregional Plan for the South-west Marine Region 2012 have been considered in the preparation of advice in relation to decisions under section 303DC and section 303FN.</p> <p>Both plans identify a number of key ecological features present in the area of the Small Pelagic Fishery. The extraction of living resources and bycatch by commercial fisheries have been identified as pressures of potential concern to some of these key ecological features. However, the plans also note that these assessments are conservative in the context of active fisheries management, particularly when fisheries are managed at an ecosystem level, as is the case for the Small Pelagic Fishery.</p> <p>The marine bioregional plans also list physical habitat modification as being of potential concern for some key ecological features that are found within the area of the Small Pelagic Fishery. This is a concern where these features are either subject to bottom trawl activities or are inherently vulnerable to habitat disturbance, including shelf rocky reefs and the canyons on the eastern continental slope. As the fishing methods employed in the Small Pelagic Fishery are purse seine and mid water trawl, impacts to the seafloor are considered to be low.</p>

Final conditions and recommendations to the Australian Fisheries Management Authority (AFMA) for the Small Pelagic Fishery

The material submitted by AFMA demonstrates that the management arrangements for the Small Pelagic Fishery continue to meet most of the requirements of the Australian Government Guidelines for the Ecologically Sustainable Management of Fisheries - 2nd Edition.

Stock Status

The Small Pelagic Fishery principally targets four species of pelagic fish, Australian sardine (*Sardinops sagax*), blue mackerel (*Scomber australasicus*), jack mackerel (*Trachurus declivis*, *T. murphyi*) and redbait (*Emmelichthys nitidus*). The Australian Bureau of Agricultural and Resource Economics and Sciences Fishery Status Report 2013-14 lists all the target species of the Small Pelagic Fishery except redbait (western stock) as 'not overfished' and 'not subject to overfishing'. Redbait (western stock) is listed as 'not being subject to overfishing' and 'uncertain' in terms of whether it is overfished due to limited information on biomass.

The Department considers that overall the management regime for the Small Pelagic Fishery aims to ensure that fishing is conducted in a manner that does not lead to overfishing.

Management measures in place in the fishery include:

- limited entry
- two management areas (Eastern and Western sub-areas) which are broken down into seven zones with catch grids to reduce the risk of localised depletion of target stocks
- annual total allowable catch levels for target species
- individual transferable quota statutory fishing rights allocated for each species in each management area to eligible persons
- mesh size restrictions for mid water trawl gear
- seal excluder devices fitted to mid water trawl gear
- bycatch action plan in place and regularly reviewed
- an AFMA approved vessel management plan in place for each mid water trawl vessel in the fishery, to minimise the risk of interactions with protected species
- an operational vessel monitoring system
- provision for independent observer coverage of fishing operations, and
- mandatory reporting of interactions with protected species.

Ecosystem Impacts

Taking into account the management measures described throughout this assessment report, the Department considers that the management regime for the Small Pelagic Fishery provides for fishing operations to be managed to minimise their impact on the structure, productivity, function and biological diversity of the ecosystem.

While the fishery is relatively well managed, the Department has identified that interactions with protected species, particularly dolphins and fur seals, need to be minimised.

A further challenge for this fishery will be to gather sufficient biological information to conduct a stock assessment for redbait (western) so that its stock status does not remain 'undefined'.

The Department considers that, until it can be demonstrated that these issues have been adequately addressed, declaration of the harvest operations of the Small Pelagic Fishery as an approved wildlife trade operation for three years, until 26 October 2018, is appropriate. The Department considers that the declaration should be subject to the conditions listed in Table 4. To contain and minimise the risks in the longer term the recommendation listed in Table 4 has been made.

Unless a specific time frame is provided, each condition and recommendation must be addressed within the period of the approved wildlife trade operation declaration for the fishery.

Table 4: Small Pelagic Fishery Assessment– Summary of Issues and Recommendations, October 2015

Issue	Part 13A Conditions
<p><u>General Management</u></p> <p>Export decisions relate to the arrangements in force at the time of the decision. To ensure that these decisions remain valid and export approval continues uninterrupted, the Department of the Environment needs to be advised of any changes that are made to the management regime and make an assessment that the new arrangements are equivalent or better, in terms of ecological sustainability, than those in place at the time of the original decision. This includes operational and legislated amendments that may affect sustainability of the target species or negatively impact on byproduct, bycatch, protected species or the ecosystem.</p>	<p>Condition 1</p> <p>Operation of the Small Pelagic Fishery will be carried out in accordance with the management regime under the Commonwealth <i>Fisheries Management Act 1991</i> and the Fisheries Management Regulations 1992.</p> <p>Condition 2</p> <p>The Australian Fisheries Management Authority to inform the Department of the Environment of any intended material changes to the Small Pelagic Fishery management arrangements that may affect the assessment against which <i>Environment Protection and Biodiversity Conservation Act 1999</i> decisions are made.</p>

Issue	Part 13A Conditions
<p><u>Annual Reporting</u></p> <p>It is important that reports be produced and presented to the Department annually in order for the performance of the fishery and progress in implementing the conditions and recommendations in this report and other managerial commitments to be monitored and assessed throughout the life of the declaration. Annual reports should follow Appendix B to the <i>Guidelines for the Ecologically Sustainable Management of Fisheries - 2nd Edition</i> and include a description of the fishery, management arrangements in place, research and monitoring outcomes, recent catch data for all sectors of the fishery, status of target stock, interactions with EPBC Act protected species, impacts of the fishery on the ecosystem in which it operates and progress in implementing the Department's conditions and recommendations. Electronic copies of the guidelines are available from the Department's website at http://www.environment.gov.au/resource/guidelines-ecologically-sustainable-management-fisheries</p>	<p>Condition 3</p> <p>The Australian Fisheries Management Authority to produce and present reports to the Department of the Environment annually as per Appendix B of the <i>Guidelines for the Ecologically Sustainable Management of Fisheries - 2nd Edition</i>.</p>

Issue	Part 13 Condition
<p><u>Interactions with protected species</u></p> <p>A rise in reported mortalities of dolphins and Australian fur seals in the mid water trawl sector of the Small Pelagic Fishery was observed in 2015, with nine dolphin and twelve seal interactions recorded. Far fewer interactions had been reported from 2010 through to 2014.</p> <p>The rise in reported interactions followed the introduction of the Geelong Star, which during its operations had complete independent observer coverage of its fishing operations.</p> <p>In response to the increased reported interactions in 2015, AFMA closed the fishery to the use of mid water trawl nets during night time hours. In September 2015, the night time closure was removed by AFMA as a single dolphin trigger limit was in force in each of the seven areas of the fishery. Any further interaction with a dolphin results in that area of the fishery where the interaction occurred being closed for 6 months.</p> <p>The Geelong Star Vessel Operational Procedures to Minimise Marine Mammal Interactions in the Small Pelagic Fishery – 18 September 2015 (Appendix B) stipulates that if three or more seals are captured in one trawl shot, fishing must be suspended until such time as the AFMA observer has determined that the seal excluder devices are operating efficiently prior to fishing recommencing. The Geelong Star is also required to maintain 100 per cent observer coverage for its first 10 trips.</p> <p>The Department considers it important that AFMA continue to ensure that mid water trawl vessels operating in the fishery have effective mitigation devices to minimise the risk of marine mammal and seabird interactions. The Department also considers it important that AFMA require that observers continue to be deployed on mid water trawl vessels for the first 10 trips and additional observer coverage be deployed as appropriate following scientific assessment of the fishery.</p>	<p>Condition A</p> <p>Prior to fishing, mid-water trawl vessels must have in place effective mitigation approaches and devices to minimise interactions with dolphins, seals and seabirds.</p> <p>Condition B</p> <p>That at least one observer be deployed on each new mid-water trawl vessel for the first 10 fishing trips, with additional observer coverage or other monitoring implemented as appropriate, following scientific assessment of the Small Pelagic Fishery.</p>

Issue	Recommendation
<p><u>Management of target stocks</u></p> <p>The Australian Bureau of Agricultural and Resource Economics and Sciences Fishery Status Report 2013-14 lists all the target species of the Small Pelagic Fishery as not overfished and not subject to overfishing, except for redbait (western stock). Redbait (western stock) is listed as 'not being subject to overfishing' and 'uncertain' in terms of whether it is overfished due to limited information on biomass.</p> <p>The Department considers that the collection of biological information on redbait is important to providing greater confidence that the stock is being managed sustainably. While the Department notes AFMA's total allowable catch setting process is precautionary, further information, including that generated through developmental fishery approaches, would help inform future total allowable catch setting processes.</p>	<p>Recommendation 1</p> <p>The Australian Fisheries Management Authority to consider adopting developmental fishery approaches to data collection for western stocks, including information about their stock status and productivity, to better inform the total allowable catch setting process.</p>

References

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Acronyms

AFMA	Australian Fisheries Management Authority
BAP	Bycatch Action Plan
CITES	Convention on International Trade in Endangered Species of Wild Fauna and Flora
CoP	Code of Practice
DEWHA	Department of the Environment, Water, Heritage and the Arts (former)
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999</i>
EPBC Regulations	Environment Protection and Biodiversity Conservation Regulations 2000
ERA	Ecological Risk Assessment
ERM	Ecological Risk Management
SFR	Statutory Fishing Rights
SPF	Small Pelagic Fishery
t	Tonnes
TAC	Total Allowable Catch
TCL	Trigger Catch Limit