

STATUTORY FISHING RIGHTS ALLOCATON REVIEW PANEL

**YGO EDEN PTY LTD [No. SPF2010/01-01]
DENIS BROWN [No. SPF2010/02-01]
HARRY K MITCHELSON [No. SPF2010/03-01]**

Applicants

AND

**LUCKY S FISHING PTY LTD
Party**

**AUSTRALIAN FISHERIES MANAGEMENT AUTHORITY (AFMA)
Respondent**

RE: SMALL PELAGIC FISHERY MANAGEMENT PLAN 2009

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RE: SMALL PELAGIC FISHERY MANAGEMENT PLAN 2009

ADMINISTRATIVE LAW – Fisheries – application for review of Allocation of Provisional Grant of Statutory Fishing Rights by Australian Fisheries Management Authority – jurisdiction of the Statutory Fishing Rights Allocation Review Panel – application of the decision in *Australian Fisheries Management Authority v Gilmore* [2009] FCA 1369 (24 November 2009) – Panel bound by Plan.

Coram: C DOOGAN (PRINCIPAL MEMBER)

B YEOH (MEMBER)

N CIFFOLILLI (MEMBER)

DECISION

BACKGROUND

1. By notice published in the Commonwealth of Australian Government Gazette on 15 January 2010, the Australian Fisheries Management Authority (“AFMA”) invited interested persons to apply to be registered for a grant of quota statutory fishing rights (“SFRs”) in the Small Pelagic Fishery (“SPF”) pursuant to the Small Pelagic Fishery Management Plan 2009 (“the Plan”). The Gazette notice advised that

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applications in the approved form needed to be made within the notice period, that period being up to and including 26 February 2010 which became the quota “snapshot date”.

YGO Eden Pty Ltd

2. YGO Eden Pty Ltd applied for registration as a person eligible for a grant of SFRs under the Plan. The application was accepted on the basis that on the snapshot date at the end of the notice period the company held one or more of the instruments listed in section 31(2)(b) of the Plan. Thereafter, when AFMA had completed its determination as to the provisional allocation of SFRs as between eligible persons, the Authority notified YGO Eden Pty Ltd by letter dated 24 May 2010 as to the provisional allocation of SFRs pursuant to section 26 of the Fisheries Management Act 1991 (Cth) (“the Act”) and Part 5 of the Plan.

Denis Brown

3. Similarly to YGO Eden Pty Ltd, Denis Brown applied for registration as a person eligible for a grant of SFRs under the Plan. His application was accepted on the basis that, on the snapshot date, he too held one or more of the instruments listed in section 31(2)(b) of the Plan. By letter dated 24 May 2010 he was advised by AFMA of its decision to grant him a provisional allocation of SFRs pursuant to section 26 of the Act and Part 5 of the Plan.

Harry K Mitchelson

4. As both YGO Eden Pty Ltd and Denis Brown had done, Mr Mitchelson applied to AFMA for registration as a person eligible for a grant of SFRs under the Plan. His application was accepted on the basis that, on the snapshot date, he too held one or more of the instruments listed in section 31(2)(b) of the Plan. By letter dated 24

May 2010 he was advised of the provisional allocation of SFRs available to him pursuant to section 26 of the Act and Part 5 of the Plan.

THE APPLICATIONS FOR REVIEW

5. On 8 June 2010 each of YGO Eden Pty Ltd and Denis Brown filed an *Application for Review of Decision to Grant a Fishing Right* in relation to the provisional allocation of SFRs allocated to them by AFMA. On 16 June 2010 Mr Mitchelson similarly filed an *Application for Review of Decision to Grant a Fishing Right*.
6. Each of the applications were essentially in identical terms and referred to the decision to be reviewed as:
“Allocation of SPF Statutory Fishing Rights for the species Blue Mackerel”.
7. Likewise the reasons for the Applications by each Applicant were in essentially in the same terms namely:
“- Inequitable & discriminatory allocation formulae in the SPF Management Plan in regard to IMFP stakeholders.
- Inequitable application of Zone A, Mackerel “A” & Mackerel “B” harvest rights for Blue Mackerel in the criteria period identified in the SPF Management Plan.
ie
No authorised right to harvest Blue Mackerel prior to 2002 in the criteria period.
- Only 5% by catch authorised 2002 – 2004.
- 10% by catch authorised only post – 2004”.

AFMA REASONS FOR DECISION

8. Subsequent to being served with copies of the Applications, AFMA filed *Reasons for Decision* dated 7 July 2010 in relation to each of the three Applicants. Thereafter, on 11 August 2010, a Telephone Conference between the parties was held with a view to clarifying the issues in dispute as between the Applicants and the Respondent.

TELEPHONE CONFERENCE: 11 AUGUST 2010

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9. Prior to the Telephone Conference, it had been indicated to the Registry that Mr Brown would represent all three Applicants. The Applicants – in filed documents and during the Telephone Conference via Mr Brown – raised issues that the Respondent argued were beyond the jurisdiction of the Panel. At the end of the Telephone Conference the Principal Member issued Directions as to the further conduct of the proceedings. In accordance with those Directions, Mr Brown filed on behalf of all three Applicants *Further and Better Particulars* dated 25 August 2010. Also in accordance with the Directions, AFMA subsequently filed a *Submission in Support of Dismissal of Proceeding* dated 8 September 2010. Thereafter, on behalf of the three Applicants, Mr Brown filed a *Response to AFMA Submission* dated 20 October 2010.
10. The Panel notes at this point that, under the provisions of the Act, once a valid application for review is enlivened, the Panel does not have power to dismiss such an application without proceeding to a hearing. The power to dismiss an application given to the Principal Member of the Panel in section 152 is limited to circumstances where the Principal Member is satisfied on reasonable grounds that an applicant does not intend to proceed with an application.

TELEPHONE CONFERENCE: 22 NOVEMBER 2010

11. A further Telephone Conference was held on 22 November 2010, primarily for the purpose of setting the matter down for a hearing. On the basis of the materials filed by the Applicants and from the discussion that occurred during the Telephone Conferences, it was apparent that a number of the AFMA calculations as to the provisional SFRs were in question. Therefore, the Principal Member issued further Directions in the following terms:
 1. In relation to each of YGO Eden Pty Ltd, Denis Brown and Harry Mitchelson, AFMA is, within 7 days (ie; by 29 November 2010 by 4.00pm), to file and serve copies of the calculations, documents and evidence upon which the AFMA decision-maker relied in order to calculate the provisional allocations of Statutory Fishing Rights summarized in the three AFMA “Reasons for Decision” documents dated 7 July 2010 (being one Reasons for Decision document for each of the three Applicants).
 2. Each of the three Applicants - YGO Eden Pty Ltd, Denis Brown and Harry Mitchelson – are, within 14 days (ie; by 6 December 2010 by 4.00pm), to file and serve copies of their own calculations in respect of any one or more of the Statutory Fishing Rights provisionally allocated to them by AFMA which they claim are incorrect. Further, each

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Applicant is to file and serve within 14 days (ie; by 6 December 2010 by 4.00pm), any other documents upon which they wish to rely at the hearing.

3. In accordance with the notification previously issued by the Registry to the parties, the hearing in this matter will take place at 10.00am on Tuesday, 14 December 2010 in the Federal Magistrates Court, building known as the Nigel Bowen Commonwealth Law Courts Building located on the corner of University Avenue and Childers Street, Canberra City.
12. On 29 November 2010 AFMA filed a bundle of documents which included for each of the three Applicants a document titled *Calculations, Documents & Evidence Upon which the AFMA Decision-Maker Relied*.
13. On 3 December 2010, Mr Brown contacted the Registry and informed the Deputy Registrar that because of a major fire that had broken out in his fish processing plant at Eden, it would not be possible for him to comply with Direction 2 made on 22 November 2010. Thereafter, with the consent of the parties, a requested extension of time was granted and a new hearing date was set down for 10 February 2011. On 19 January 2011 Mr Brown filed on behalf all three Applicants, a bundle of documents titled *Evidence and Particulars Upon which the Applicant Will Rely*.

TELEPHONE CONFERENCE: 9 FEBRUARY 2011

14. Two days prior to the hearing, the Respondent contacted the Registry and indicated that following receipt of copies of the documents filed by Mr Brown, it had identified errors in its calculations of the provisional SFRs and it would not be possible for it to correct the errors and re-issue documentation before the hearing on 10 February 2011. As a consequence of this, on 9 February 2011 the Principal Member issued further Directions in the following terms:

This matter is set down for hearing on 10 February 2011.

By letter dated 8 February 2011, AFMA has informed the Registrar that, inter alia, "... we have established that there are errors in the calculations of the number of permits held by the Applicants that authorised fishing in Zone A, and as falling within section 32. In view of this, when the re-calculations are completed, the Applicants will no doubt wish to respond. It is also the case that if there are found to be errors in the allocations under section 32 to the Applicants, this will require a consequential adjustment to the allocations to all of the other eligible persons given a provisional allocation under that provision, given the way in which the formula is constructed. Further, on the basis of the errors detected thus far, AFMA considers it necessary to check the accuracy of the allocation under section 32 in respect of all of the eligible persons. This could not be completed by 10 February..."

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Having regard to AFMA's late notice as to the errors detected in its calculations, the need to ensure continued procedural fairness to each of the parties and other interested persons, and noting that the Applicants and AFMA consent to the hearing being adjourned, the following Directions are hereby made:

1. The hearing date of 10 February 2011 is vacated to a future date to be fixed in due course.
 2. AFMA is to inform the Registry in writing as soon as possible and in any event no later than 10 March 2011 as to the expected date by which the re-calculations will be completed.
 3. AFMA is to file and serve its re-calculations as soon as possible together with an explanatory statement outlining the reasons for the re-calculations, its findings on material questions of fact in relation to those re-calculations together with an outline of the evidence supporting those findings of fact and indicating which of the documents it previously filed that it no longer relies upon in whole or in part.
 4. The Applicants are to file and serve any Response to AFMA's re-calculations within 14 days of AFMA filing and serving its re-calculations.
 5. AFMA is to file and serve any Reply within 7 days of the Applicants filing any Response.
15. In accordance with Direction 2, on 10 March 2011 AFMA informed the Registrar that recalculations would be completed by 7 April 2011. On 8 April 2011 AFMA filed two bundles of documents which, inter alia, included:
- (a) in the case of the three Applicants, a folder containing all licences, permits and other records AFMA had identified as relevant to each Applicant;
 - (b) within the folder, a diagrammatic representation of the history of the Applicants' licences and permit holdings and the identification of the sequence of Zone A purse seine permits held, as defined in section 6 of the Plan; and
 - (c) a document which provided a chronological explanation of the sequence of the permits the Applicants had each been taken to have held under section 32 of the Plan.
16. In the materials, AFMA also identified the fact that the provisional allocation made to another party, not one of the Applicants – Raptis Fishing Licences Pty Ltd – had been incorrectly calculated and that it was entitled to an additional grant of SFRs under section 35, Zone B for the reason given by it in the *Explanatory Statement*. Subsequent to this latest filing of documents by AFMA, Mr Brown, on behalf of the

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three Applicants, filed on 27 April 2011 a document entitled *Response to AFMA Submission of 8 April 2011*.

17. Concurrent to the then latest filing of documents by AFMA, AFMA wrote to all persons to whom SFRs had been allocated in the provisional grant under the *Small Pelagic Fishery Plan 2009*. It set out the changes it had made and provided each person with a copy of the *Explanatory Statement* along with its recalculations. This triggered an approach to AFMA by a company affected by the new calculations, Lucky S Fishing Pty Ltd ("Lucky S"). A further Telephone Conference then became necessary once AFMA notified the Registry of the Lucky S involvement.

TELEPHONE CONFERENCE: 20 MAY 2011

18. From materials provided to the Registry prior to the Telephone Conference, it became apparent that the Lucky S concern related to Permit Number 25734A. In relation to the Applicants, it was also apparent that Mr Brown was concerned with a Permit numbered 402765 which he stated he had previously held and which he alleged AFMA had failed to take into account when producing its latest calculations.

19. A final set of directions was made by the Principal Member on 20 May 2011 in the following terms:-

Following on from Directions made on 9 February 2011, a further Directions Hearing was held on 20 May 2011.

On 17 May 2011, AFMA informed the SFRARP Registry of correspondence between AFMA and Mr Semi Skoljarev in relation to Lucky S Fishing Pty Ltd concerning SPF Permit 25734A. In order to permit AFMA to determine whether an error has been made in relation to the SFRs granted to Lucky S Fishing Pty Ltd pursuant to the provisional SFRs currently the subject of three Applications for Review, the hearing date has been deferred by consent to 10 June 2011. The following Directions are hereby made:-

1. The hearing date is set down for 10 June 2011 with the hearing to commence at 10.00am in the Nigel Bowen Commonwealth Law Courts Building, Cnr University Ave & Childers Street, Canberra City ACT 2601.
2. AFMA is to review its recalculations of provisional allocations previously made and referred to in its letter to the SFRARP Registrar dated 7 April 2011 and notify Mr Semi Skoljarev, the Applicants and the SFRARP Registrar as soon as possible of any changes made as a result of its review of the recalculations.
3. All parties are to submit any further written submissions to the Registry prior to 3 June 2011.

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4. Following completion of Direction 2 and advice to Mr Skoljarev by AFMA of the outcome of the review, Mr Skoljarev is to notify the Registry as to whether he will be represented at the hearing on 10 June 2011 and, if so, by whom.

**JURISDICTION OF THE STATUTORY FISHING RIGHTS ALLOCATION REVIEW
PANEL**

20. Subsection 142(1) of the Act describes the function of the Panel in the following terms:

“(1) The Panel has the function of reviewing decisions mentioned in subsection 23(1) made by AFMA or a Joint Authority as to the person or persons to whom the grant of a fishing right in a managed fishery is to be made.”

21. For the purpose of conducting its function, the Panel’s powers are identified in section 150 in the following terms:

“(1) The Panel may, for the purposes of reviewing a decision, exercise all the powers and discretions that are conferred by this Act on the person or persons who made the decision.

(2) The Panel may:

(a) affirm the decision; or

(b) vary the decision; or

(c) set the decision aside and substitute a new decision.

(3) If the Panel:

(a) varies the decision; or

(b) sets aside the decision and substitutes a new decision;

the decision as varied or substituted is (except for the purposes of applications to the Panel for review or of appeals from decisions of the Panel) taken to be a decision of AFMA or the Joint Authority, as the case may be.

(4) A decision made by the Panel takes effect when the applicant is notified of the decision under subsection 160(2).”

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22. In effect, the role of the Panel is to conduct a merits review and in so doing to arrive at the correct or preferable decision. Put another way, it stands in the shoes of AFMA.
23. During the course of the Telephone Conferences and the hearing before the Panel there were several references made to a decision in a Federal Court of Australia matter – *Australian Fisheries Management Authority v Gilmore* [2009] FCA1369. An issue that arose in that case was whether or not the Panel could depart from the provisions of a Management Plan, for example, on the basis that unreasonableness or unfairness was arguably present in one or more of the provisions of the Management Plan. For present purposes it is sufficient to note that Besanko J said at paragraph 62 that:
“Neither the Authority, nor the Panel, had a general discretion to depart from the provisions of the Management Plan”. This was said in the context that “The Panel had made its decision on the basis that it was free to depart from the provisions of the Management Plan where it would be unreasonable not to do so.” (at paragraph 69).
24. Accordingly, in conducting its review of the AFMA decision-making in this matter, the Panel has limited itself to determining whether or not AFMA has correctly applied the provisions of the Management Plan in question.
25. For the sake of completeness, the Panel notes that the Act requires the Panel to provide reasons for its decision pursuant to section 160 which is the following terms:-
“(1) Where the Panel makes its decision on a review, the Panel is to prepare a written statement:
(a) setting out the decision of the Panel on the review; and
(b) setting out the reasons for the decision.
(2) The Panel must give each party to the proceeding a copy of the statement as soon as practicable after the decision concerned is made.”

THE HEARING: 10 JUNE 2011

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26. Before hearing oral submissions, the Principal Member on behalf of the Panel reiterated that the Panel has only one role which is to review decisions made by AFMA of the type referred to in Section 23(1) of *the Fisheries Management Act 1991(Cth)*. In other words, the Panel cannot depart from the content of the Management Plan.

Submissions by Mr Brown on behalf of the three Applicants

27. Mr Brown began his submissions by referring to the *Gilmore* decision and in particular referred to paragraphs 55, 56 and 62 of that decision. He offered the view that the Panel has a general discretion. This is, in the view of the Panel, an incorrect reading of the *Gilmore* decision and, as noted earlier, the Panel rejects that view. In paragraphs 55 and 56 of the *Gilmore* decision, Besanko J was in fact referring to inadvertent and unintended errors of a mathematical or numerical kind that were corrected by AFMA when those errors came to light. A comparable type of situation applies in this matter. This is an entirely different situation to one that involves the Panel departing from the provisions of the Plan.
28. The documents to which Mr Brown referred during the course of his oral submissions were as follows:
- (a) *Applicants' response to AFMA Submission;*
 - (b) *Evidence & Particulars upon which the Applicant will Rely; and*
 - (c) *Applicants' response to AFMA submission of 8 April 2011.*
29. The documentation filed by Mr Brown on behalf of the three Applicants and his oral submissions in support of those written submissions can be categorised into three types:
- (a) the background to, and content of, the Plan;
 - (b) the allocation of Permits; and
 - (c) a Constitutional argument that the Commonwealth has exceeded its powers.
30. As to the first argument, Mr Brown has provided the Panel with a great deal of material that relates to the consultations that occurred prior to the Management

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Plan being introduced. The Panel notes again that it does not have jurisdiction to go behind the Plan.

31. Mr Brown's second argument related solely to provisional SFRs allocated to him. In effect, Mr Brown said that within the folder filed by AFMA on 8 April 2011, the diagrammatic representation of the history of his licences and permit holdings (previously referred to in paragraph 15(b)) AFMA had failed to take account of Permit number 402765. This Permit had earlier been the subject of discussion during the Telephone Conference held on 20 May 2011. At that time Mr Brown indicated that he did not have a copy of that Permit but indicated that he had applied for a permit in the relevant year. The AFMA representative indicated during that Telephone Conference that Mr Brown did previously have a Permit with that number but not in one particular year. In effect, it comes down to a question of fact – was Permit number 402765 in force for the entire period which formed the basis on which AFMA provisionally allocated SFRs? At the hearing, Mr Brown sought to rely on the fact that he had applied for a Permit in the relevant year but could not produce any evidence that the application had been acted upon by AFMA and that as a consequence a Permit had been issued to him by AFMA. For its part, AFMA was unable to find any record of the Permit in question having been issued. As such, the Panel was unable to conclude that Mr Brown was legally entitled to the benefit of the Permit in all seven of the years that formed the basis of the SFRs. Rather, it finds that Mr Brown had Permit number 402765 (or its equivalent) in six of the seven years and, as such, the Panel has concluded that six years not seven is the legally correct basis on which to allocate SFRs to Mr Brown.
32. The third argument advanced by Mr Brown on behalf of the Applicants was of a Constitutional nature and, in effect, was along the lines that the Commonwealth – in its legislation – had overridden Tasmanian State legislation and in so doing the Commonwealth had exceeded its Constitutional powers. The Panel simply does not have the power to entertain such an argument. It is beyond the function and powers of the Panel to act on such an argument.

The AFMA Submissions

33. The Respondent was represented by Mr Richard Niall SC. He informed The Panel that AFMA relied on the following documents:-

- (a) *the T Documents*;
- (b) *AFMA's Submission in Support of Dismissal of Proceedings*;
- (c) *Supplementary Submissions of AFMA in relation to Lucky S Fishing Pty Ltd*; and
- (d) the documents filed by AFMA on 8 April 2011 that are referred to earlier in paragraph 15.

For present purposes, the Panel will confine itself to the AFMA response in relation to the Applicants' submissions; and will deal later with Lucky S Pty Ltd in its entirety.

34. Mr Niall provided the Panel with an outline of the relevant provisions of the *Fisheries Management Act 1991(Cth)*. He tendered a number of documents, including two maps titled respectively *Small Pelagic Fishery – Sub-areas* and *Small Pelagic Fishery – Zones*. These were used for the purpose of outlining to the Panel the breakup of the various components within the Small Pelagic Fishery. Mr Niall went on to explain how AFMA had developed the Plan and subsequently referred to the consequences flowing from the *Gilmore* decision so far as it related to the function and powers of the Panel.

35. Mr Niall responded to Mr Brown's three arguments in a detailed way which can be summarised as follows:

- (a) the first limb of Mr Brown's arguments is an impermissible challenge to the Plan and the Panel is not empowered to act upon the challenge to the Plan mounted by Mr Brown;
- (b) in relation to allocation of permits, AFMA has looked at every Permit dating from 1989. Mr Brown says that he had entitlements to seven permits that should have been taken into consideration but AFMA's search can only find six for Mr Brown. Mr Brown did not provide evidence that the seventh permit was ever issued. As such, the evidence suggests that six is the

legally correct number upon which to base calculations for his provisional allocation of SFRs; and

- (c) Mr Brown's Constitutional argument is beyond the power and function of the Panel.

36. As previously indicated in paragraphs 30 to 32, the Panel accepts that it cannot go behind the Plan, that it only has evidence of permits for six of the seven years in Mr Brown's case and it has no power to consider Constitutional arguments.

Reply by the Applicants

37. In reply to Mr Niall's submissions on behalf of AFMA, Mr Brown spoke on behalf of the Applicants and dealt first with the level of consultation. He indicated that there had been extensive consultation for Zones B, C, and D but not for Zone A nor for an area referred to by him as "1 A" north of the NSW/QLD border in waters off southern Queensland. He went on to say that the whole fishing scheme operates on the basis of prohibitions. On the matter of the permit in question, he indicated that AFMA only asked one question, namely, has the person in question got a Permit? He implied that because he had never been prosecuted, this could be construed as meaning that AFMA was satisfied that he could continue to fish irrespective of whether or not he had the relevant Permit; and therefore the fishing actually undertaken without the benefit of a Permit should have been taken into account rather than merely relying upon what Permits were in existence at a particular time. He made his position plain that the policies of AFMA and the principles of equity to which he referred had resulted in deficiencies being present in the Plan. He suggested that the Panel could fix what he referred to as errors in the Plan and he relied on the decision in *Gilmore* as the basis for giving the Panel a general discretion to fix what he further described as errors in consultation and policy as reflected in the Plan. For the reasons previously outlined in this decision – lack of jurisdiction and power – the Panel cannot legally deviate from the provisions of the Plan.

Lucky S Fishing Pty Ltd

38. Lucky S was represented at the hearing by Mr Brian Jeffriess. In response to the supplementary submissions by AFMA on 2 June 2011 (referred to previously in

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paragraph 33 (c)), a document titled *Submission by Lucky S Fishing Pty Ltd dated 2 June 2011* was filed on behalf of Lucky S. This was the primary document upon which Mr Jeffriess relied at the hearing. Also of relevance was Fishing Permit Number 25734A dated 28 June 2007 and an earlier letter dated 13 April 2006 from AFMA to Lucky S Fishing Pty Ltd produced by Lucky S. Of particular relevance was the following extract from that letter:

“for Fishing Permit 25734A and 22136C, condition number 7 entitled “Methods Authorised under this Fishing Permit” has been replaced by the following:

*“This fishing permit allows fishing by the methods known as **purse seine and** mid water trawl, subject to the following midwater trawl gear restriction and the guide to measuring nets as detailed in condition 8.”*

39. At this point, it is relevant to note that at the time when AFMA produced its supplementary submissions dated 2 June 2011 it did not have within its records a copy of the letter dated 13 April 2006.
40. When speaking on behalf of AFMA, Mr Niall tendered a bundle of fishing permits relating to Lucky S Fishing Pty Ltd and, after referring to the various conditions attached to those permits over the years, he went on to draw the Panel’s attention to subsection 32(8) of the Act which authorises AFMA to vary a condition of a permit as occurred in 2006 and which is reflected in the letter dated 13 April 2006. Mr Niall indicated that the Respondent was unable to distinguish Lucky S’s situation in principle from that dealt with in *Gilmore* and submitted it would be open to the Panel to be satisfied that Lucky S is correct in its contentions.
41. There was no evidence before the Panel to indicate that AFMA had altered the authorised methods of fishing for Fishing Permits 25734A and 22136C after 13 April 2006. The Panel was satisfied that the evidence was such that AFMA would need to revise the recalculations previously undertaken in order to give effect to the existence and correct terms of the Permits in question. Further, AFMA would need to undertake a review and recalculation of its latest set of calculations so as

to grant Lucky S Fishing Pty Ltd the additional allocation that Mr Jeffriess sought on its behalf.

CONCLUSIONS REACHED BY THE PANEL

42. After taking into account the materials filed in these proceedings by the various parties and after hearing submissions made on behalf of the Applicants, the Respondent and Lucky S Fishing Pty Ltd as a party to the proceedings, and for the reasons outlined throughout this Decision, the Panel has reached the following conclusions:

- (a) the Panel must follow the provisions of the Plan and it does not have a general discretion to depart from any of the provisions of the Plan;
- (b) subject to paragraphs (e) and (f) below, the recalculations of provisional SFRs for YGO Eden Pty Ltd as reflected in the documents filed by the Respondent on 8 April 2011 are, in principle, correct;
- (c) subject to paragraphs (e) and (f) below, the recalculations of provisional SFRs for Denis Brown as reflected in the documents filed by the Respondent on 8 April 2011 are, in principle, correct;
- (d) subject to paragraphs (e) and (f) below, the recalculations of provisional SFRs for Harry K Mitchelson as reflected in the documents filed by the Respondent on 8 April 2011 are, in principle, correct;
- (e) the recalculations filed by the Respondent on 8 April 2011 are incorrect in relation to Lucky S Fishing Pty Ltd and should be recalculated to take account of the dual gear Permit discussed earlier; and
- (f) all of the recalculations filed by the Respondent on 8 April 2011 needed to be reviewed and recalculated having regard to the adjustment to be made to the allocation of SFRs to Lucky S Fishing Pty Ltd.

DETERMINATION BY THE PANEL

43. Pursuant to subsection 150(2)(c), the Panel hereby sets aside the decision of the Australian Fisheries Management Authority to make a provisional allocation of statutory fishing rights under the *Small Pelagic Fishery Management Plan 2009* published in the Commonwealth of Australia Gazette number S79 on 24 May 2010; and, in lieu thereof, the Panel substitutes its decision that eligible persons are

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entitled to a grant of statutory fishing rights in accordance with the attached table marked "A".

C DOOGAN
PRINCIPAL MEMBER

B YEOH
MEMBER

N CIFFOLILLI
MEMBER

24 June 2011

I, Gabby Cogan, Deputy Registrar of the Statutory Fishing Rights Allocations Review Panel, hereby certify that this page and the preceding 16 pages, together with the attached table marked "A" is a true copy of the decision made by the Statutory Fishing Rights Allocation Review Panel on 24 June 2011.



Gabby Cogan
Deputy Registrar