EXPLANATORY STATEMENT

Issued by the Authority of the Managing Director of the Australian Fisheries Management Authority

Fisheries Management Act 1991
Southern and Eastern Scalefish and Shark Fishery Management Plan 2003

Temporary Order - Southern and Eastern Scalefish and Shark Fishery (Specified Non-Quota Species) Temporary Order 2005

Section 43 of the Fisheries Management Act 1991 (the Management Act) provides for the Australian Fisheries Management Authority (the Authority) to make an order to enable quick action to deal with (inter alia), circumstances where urgent action is required for purposes related to the management of a fishery. Pursuant to section 92(1) of the Fisheries Administration Act 1991, the Authority has delegated it powers and functions under section 43 of the Management Act to the Managing Director of the Authority.

In this instance, the Managing Director of the Authority has exercised his powers to make this Temporary Order to restrict the take of certain non-quota species specified in the Temporary Order to holders of quota permits contrary to section 20(1) of the Southern and Eastern Scalefish and Shark Fishery Management Plan 2003 (the SESSF Plan). Pursuant to the Temporary Order the take of these species will be restricted through conditions on fishing permits relating to the quantity of fish that may be taken.

Pursuant to section 43(9) of the Management Act if an order is inconsistent with a provision of a plan of management the order overrides the provision and, to that extent, the provision has no effect.

The SESSF Plan created the Southern and Eastern Scalefish and Shark Fishery (the SESSF) in late 2003. The SESSF covers an area of waters from around 80nm off the coast near Fraser Island Queensland to Cape Leeuwin, Western Australia. The area of this fishery covers nearly half of the waters within the Australian Fishing Zone of mainland Australia and Tasmania and its component sectors employ a range of fishing gears, which includes line, mesh net, trawl and traps to harvest finfish and sharks.

The SESSF is managed using a mixture of input and output controls. There is a limit on the number of boats that operate in each sector as well as limits on trawl mesh size and the amount of fishing gear that can be used. Individual Transferable Quotas (ITQs) were introduced into the then South East Trawl Fishery (now a SESSF sector) in 1992 for 16 scalefish species. ITQs were introduced for 3 key species in 1998 in the then South East Non-trawl Fishery, and the remaining South East Trawl Fishery scalefish species were introduced in 2002. ITQs for school and gummy shark were introduced to the component SESSF fisheries in 2001, and ITQs for the elephant fish family and saw shark were introduced in 2002 and 2003.

In response to scientifically founded concerns for the stock status of several species of shark and finfish exploited in deepwater areas of the SESSF, and the ability of the fishery to rapidly increase exploitation of these species, the Authority needs to limit catch
for the deepwater species. Even one year’s unrestricted catch could cause a substantial depletion of these deepwater species. The productivity of deepwater species is low and they would take many decades to recover.

In 2005 the Authority managed the deepwater species as quota species under the SESSF Plan pursuant to a temporary order. That temporary order has now expired and because an amendment to the Plan was not finalised in time, the deepwater species can no longer be considered quota species for the purposes of Schedule 2 of the Plan. An amendment to the SESSF Plan will require direct consultation with concession holders in the SESSF, which will be undertaken in 2006.

As catch of non-quota species under the SESSF Plan is unlimited, until such time as an amendment to the SESSF Plan can be made the Authority has decided to make this Temporary Order in order to limit the take of these deepwater species to holders of quota permits which by way of condition will limit the quantity of deepwater species that may be taken.

Catch limits will apply to the following species: smooth dory – Cascade Plateau (management zone); smooth dory – all of SESSF except Cascade Plateau; oreos (mixed ‘basket’ of warty, spiky, rough and black oreo); deepwater sharks (east and west zones); and ribaldo cod (the deepwater species).

By its nature, the Temporary Order is a temporary ‘fix’ to introduce the required management measures for the new deepwater species/species groups under the SESSF Plan. The Temporary Order will have effect for the maximum period allowed, being 6 months.

Whilst the Temporary Order is in force, only one further order, the same in substance as the first order, may be made. What this means is the new management measures for deepwater species under the SESSF Plan can only last for a maximum of 12 months, during which time, the Authority, following consultation with industry, will amend the SESSF Plan to introduce more permanent management measures for these species.

Despite there being no requirement for the Authority to undertake consultation with affected persons in relation to an order made under section 43 of the Management Act, the Authority has undertaken extensive consultation in regard to the need to apply management measures for the species covered by the order. The Authority is satisfied the Temporary Order is a necessary action to ensure the sustainability of additional species in the fishery.

**Regulatory Impact Statement**

The Office of Regulation Review advised AFMA that a Regulation Impact Statement is not required for the *Southern and Eastern Scalefish and Shark Fishery (Specified Non-Quota Species) Temporary Order 2005*. (ORR ID 7883)