EXPLANATORY STATEMENT

LEGISLATIVE INSTRUMENT

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

Fisheries Management Act 1991
Eastern Tuna and Billfish Fishery Management Plan 2005
ETBF Direction No. 2 of 2006
Closure of Northern Waters to Longline Fishing

The Direction is a legislative instrument for the purposes of the Legislative Instruments Act 2003.

Subsection 17(5A) of the Fisheries Management Act 1991 (the Management Act) provides that a plan of management made under the Management Act may provide for the Australian Fisheries Management Authority (AFMA) to give particular directions for the purposes of attaining the objectives of the plan of management. The subsection also requires that the directions be made after the consultations (if any) that are set out in the plan of management.

Subsection 12(1) of the Plan provides that AFMA may direct that fishing is not to be engaged in the fishery, or a part of the fishery, during a particular period or periods.

Section 6 of the Plan provides objectives of the Plan, including ensuring maximum economic efficiency in the exploitation of the resources of the fishery. Section 3 of the Management Act also prescribes objectives for the management of all Commonwealth fisheries, including maximising the net economic return to the Australian community from the exploitation of fisheries resources.

Section 92 of the Fisheries Administration Act 1991 provides for AFMA to delegate its powers and functions to, among others, the Managing Director of AFMA. Subsection 17 (11) of the Management Act permits AFMA to delegate its powers to make directions (among other things) only to the Managing Director. AFMA has delegated its power to make directions to the Managing Director.

The Fishery
The fishery includes waters within the Australian Fishing Zone between Cape York Peninsular and the border of Victoria and South Australia. For management and administration, the fishery is managed in several zones, within these zones there are some areas that are closed to fishing. The fishery targets tuna and billfish species by longline and minorline fishing methods.

ETBF Direction No. 2 of 2006 establishes a closure to longline fishing in a specified area in the north of the fishery. The Direction sets out closure boundaries and prevents fishing in that area from 25 August 2006 until 31 December 2006. The Direction also provides an exemption for fishers to continue to operate in the area under a permit that is “exempted from the Closure of Northern Waters to Longline Fishing”. Eligible permits will be amended to include this classification according to the following criteria:

- There must be a boat nominated on the permit for the ETBF on 1 August 2006; and
- The boat must have been used in accordance with the permit to catch fish using longlines in the ETBF at some stage between 1 January 2006 and 1 August 2006 (as evidenced by a Catch Disposal Record).

This closure has been introduced as an initial response to a significant increase in the targeting of albacore tuna in the area. International experience has repeatedly demonstrated that rapid
expansion in catch and effort for albacore can cause significant declines in catch rates, resulting in decreased economic returns and localised depletion.

International experience has shown that management of albacore must be focussed on economic sustainability. This is because the large size of targeted fish compared to the relatively small size at maturity means that fishing at high rates becomes unprofitable well before it has any long-term impact on stock recruitment. AFMA is therefore seeking to introduce management measures to maximise the long term economic returns from this sector of the fishery.

A key component in delivering economic sustainability is balancing the level of financial return from fishing with the level of capital investment required to derive those returns. The closure seeks to prevent the mobilisation of currently inactive permits to fish for albacore. Such mobilisation is considered inappropriate as the level of capital expenditure required to begin fishing may not be balanced by long-term economic returns from the fishery.

Using the criteria above, those permits that have been actively fishing in the ETBF throughout 2006 will remain free to access the “albacore area”. Permits that have not been active during 2006 may still be activated, and could still fish for albacore, but not in the closed area. Approximately 79% of albacore catches in 2006 have been taken in the closed area, which also provides room for the expected north-south migration of albacore. A large proportion of the ETBF fishery area remains open to fishing, allowing development potential for albacore and other species in the fishery.

Australia also has a binding commitment under the Western and Central Pacific Fisheries Convention that it will not allow increased numbers of vessels to target albacore during 2006. This Direction will help to ensure compliance with that commitment.

**Regulation Impact Statement**

The Office of Regulation Review has advised that a Regulation Impact Statement is mandatory on the basis of the Direction’s impact on small business, including a restriction on competition (ID 8555).

**Consultation**

Under subsection 12(2) of the Plan, AFMA is required to consult with the relevant advisory committee (in this case – the Eastern Tuna Management Advisory Committee) prior to making a Direction. This Direction is a direct result of a unanimous decision of the Eastern Tuna Management Advisory Committee at its 65th meeting on 3 and 4 August 2006.

Details of the Direction are set out below:

**Clause 1**  Clause 1 provides for the Direction to be cited as ETBF Direction No. 2 of 2006.

**Clause 2**  Clause 2 provides for the commencement of the Direction.

**Clause 3**  Clause 3 states to whom the Direction applies.

**Clause 4**  Clause 4 sets out the period of application of this Direction.

**Clause 5**  Clause 5 defines certain terms used in the Direction and provides that terms used in the Direction that are defined for the purposes of the Plan have the same meanings as they have in the Plan. The note indicates that terms defined in the Management Act have the same meaning in the Direction.

**Clause 6**  Clause 6 prohibits commercial fishing in the given area the fishery.

**Clause 7**  Clause 7 provides for an exemption to clause 6 if fishing is undertaken via a permit that has a condition stating it is a “2006 active permit” for the purposes of the Direction.

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