

## **EXPLANATORY STATEMENT**

## **LEGISLATIVE INSTRUMENT**

**Issued by the Australian Fisheries Management Authority, through the Commission  
established under s10B of the *Fisheries Administration Act 1991***

*Fisheries Management Act 1991*  
*Eastern Tuna and Billfish Fishery Management Plan 2005*

ETBF Direction No. 09/01  
Daylight Setting Closure

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.

Section 12 of the Plan provides the details for AFMA to 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 specifies the objectives of the Plan, including to ensure that the exploitation of the resources of the fishery and the carrying on of any related activities are conducted in a manner consistent with the principles of ecologically sustainable development and the exercise of the precautionary principle, and, in particular, the need to have regard to the impact of fishing activities on bycatch species and the long term sustainability of the marine environment.

### **The Fishery**

The fishery includes waters within the Australian fishing zone between Cape York Peninsular and the border of Victoria and South Australia. The fishery is for tuna and billfish species caught by longline and minor line fishing.

ETBF Direction No. 09/01 establishes a closure to daylight setting of longlines in a specified area of the fishery, the boundaries of which are prescribed. Setting is defined as releasing a longline into the sea. The Direction prohibits the releasing of a longline into the sea during daylight hours until 31 August 2009. The Direction will not restrict the setting of longlines between nautical dusk and nautical dawn.

This daylight closure was introduced as a response to an increase in the capture of threatened albatross species in the area between 1 July 2008 and 31 August 2008. In consultation with ETMAC 75 it has been decided that the daylight setting closure will continue for the period 1 July 2009 to 31 August 2009. Longline fishing is considered a key threatening process for seabirds. The *Environment Protection and Biodiversity Conservation Act 1999* has established a Threat Abatement Plan (TAP) for seabird bycatch, which sets a limit of 0.05 bird captures per 1000 hooks that are set.

The daylight closure will provide additional protection during this period of higher albatross interactions.

A similar Direction was in force between 28 July 2008 and 31 August 2008, in the area of the fishery south of latitude 33°S, north of 36°S and west of 156°E, following the capture by longline vessels operating in the fishery of a number of endangered albatross.

## Regulation Impact Statement

At the introduction of the daylight setting closure in 2008 the Office of Best Practice Regulation agreed the proposed action would have a low impact on business, and would appear to impose no or low compliance costs. As a result, no further analysis (in the form of a Business Cost Calculator Report or Regulation Impact Statement (RIS)) was required (ID 9750). After consultation with the Office of Best Practice Regulation this RIS exemption has been extended and continues to be listed under ID 9750.

## Consultation

The risk of breaching the limit catch rate of threatened seabirds requires AFMA to take emergency action to provide additional protection. At the time the limit was breached in 2008 a brief on the issue was provided to the Eastern Tuna Management Advisory Committee (ETMAC) informing them of the closure. A direction (ETBF Direction No. 08/02) was enacted after the instance in 2008 which placed a closure in the above mentioned area of the ETBF. The TAP for seabird bycatch states; if the bycatch limit is exceeded in an area during one season within 12 months of the introduction of new arrangements, then AFMA will close the area of the fishery until the Minister for the Environment and Heritage is satisfied that mitigation methods are available for implementation to enable the Criteria to be achieved (0.05 birds per 1000 hooks). The issue was again discussed at ETMAC 75 on 22 April 2009. Here it was decided that to minimise the risk of bird capture and hence closure of the area, the daylight setting closure should continue until 31 August 2009.

Details of the Direction are set out below:

- Clause 1** Clause 1 provides for the Direction to be cited as ETBF Direction No. 09/01.
- 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 specifies the period in which the Direction will apply.
- Clause 5** Clause 5 defines certain terms used in the Direction and provides these terms used in the Direction that are defined for the purposes of the Plan (such as 'area of the fishery' and 'Eastern Tuna and Billfish Fishery') have the same meanings as they have in the Plan.
- The clause includes a further note that terms used in the Direction that are defined in the Management Act have the same meaning in the Direction
- Clause 6** Clause 6 prohibits setting of longlines in the given area the fishery.
- Clause 7** Clause 7 provides for an exemption to clause 6 if setting is undertaken at night between nautical dusk (sunset) and nautical dawn (sunrise).

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