

EXPLANATORY STATEMENT

Australian Fisheries Management Authority

Fisheries Management Act 1991

Southern Bluefin Tuna Fishery Management Plan Amendment 2012 (No. 1)

Subsection 17(1) of the *Fisheries Management Act 1991* (the Act) provides that the Australian Fisheries Management Authority (the Authority) is to determine plans of management for all fisheries.

Subsection 20(1) of the Act provides that the Authority may at any time amend a plan of management.

The Authority has determined the *Southern Bluefin Tuna Fishery Management Plan Amendment 2012 (No. 1)* (the Plan amendment) to amend the *Southern Bluefin Tuna Fishery Management Plan 1995* (the Plan).

The Plan amendment is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Southern Bluefin Tuna Fishery

The Southern Bluefin Tuna Fishery (the Fishery) is managed through a system of output controls in the form of individually transferable quotas which are allocated as statutory fishing rights (SFRs) under the Plan. Prior to the commencement of each season (1 December to 30 November) the Authority determines a Total Allowable Catch (TAC) of Southern Bluefin Tuna for the domestic fishery based upon Australia's national allocation from the Commission for the Conservation of Southern Bluefin Tuna (CCSBT). The national allocation is the portion of the global TAC set by the CCSBT that is allocated to member countries. Each SFR entitles the holder to receive an equal portion of the TAC set by the Authority for this period.

Australia is a member of the CCSBT which is responsible for the international management of the global SBT stock. The objectives of CCSBT are to ensure, through appropriate management, the conservation and optimum utilisation of the global SBT fishery. Management arrangements agreed to at CCSBT are implemented in the domestic fishery through the Plan and associated legislative instruments.

Around 96% of Australia's SBT quota is taken by approximately 5 purse seine boats fishing in the Great Australian Bight for 13-25 kg SBT. These are towed alive to static grow out pontoons off Port Lincoln in South Australia and grown out for up to 6 months before harvest and export largely to Japan. SBT is also a valuable and largely incidental catch for longline boats operating in southern Australian waters. They are also taken in small amounts by pole and line, and trolling methods.

Need for amendments

Broadly, the Plan is being amended to accommodate changes to quota monitoring arrangements, streamline the workings of the Plan and allow the inclusion of undercatch arrangements as agreed to by CCSBT.

Specifically, the Plan is being amended to include undercatch provisions. Undercatch is a management arrangement which allows SFR holders to carry forward unused quota into the

following year. In October 2011 the CCSBT passed a resolution allowing member countries to carry forward up to 20% undercatch under certain circumstances. Provisions in the Plan afford the Authority's Commission the ability to determine a percentage if they so desire by the registration of a disallowable legislative instrument.

The Plan is also being amended to streamline overcatch provisions. Overcatch is a management arrangement which allows for SFR holders to reconcile an end of season surplus catch amount using quota allocated in the following season. The overcatch provisions provide flexibility for the Authority to determine the allowable overcatch percentage, overcatch amount and the rate at which penalties are applied by the registration of disallowable legislative instruments. By providing for the Authority to determine overcatch amounts, the need for provisions allowing approved restricted overcatch as part of a specified trial period within the Plan are redundant; therefore those provisions are being repealed.

The Plan is further being amended to give the Authority the flexibility to determine the method for estimating the weight of fish transferred from a cage into a farm pontoon. These provisions repeal and replace the sample process that is used to determine an average weight and subsequently determine the amount of quota deducted from holders in the purse seine sector of the Fishery.

The Plan is also being amended to allow for the determination of fishing season dates by the registration of a disallowable legislative instrument. The fishing season is currently provided for in Regulation. Allowing for the determination of the fishing season date provides for flexibility and is consistent with arrangements in other fishery Management Plans.

Lastly, the Plan is being amended to streamline the setting of the Total Allowable Catch (TAC). Provisions preventing the Authority from determining the national catch allocation until 7 months into the fishing season should the CCSBT delay its decision to set a global quota TAC are being repealed. These provisions are being replaced with provisions allowing for the Authority to set a national catch allocation or a provisional national catch allocation 1 month after the commencement of the season should CCSBT delay its decision to set a global TAC. Replacing these provisions will allow the Authority the flexibility to determine a provisional live weight value or the actual live weight value for an SFR (depending on the circumstances that prevail at the time) earlier in the Australian SBT fishing season. The requirement for the Authority to publish the actual live weight value of an SFR in a national newspaper is also being repealed. The determination of the actual live weight value will be by the registration of a disallowable legislative instrument which will be registered with the Federal Register of Legislative Instruments and will therefore be publically available.

Other minor amendments are being made as described in further detail below.

Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) advised that a Regulation Impact Statement was not required for this Plan amendment (OBPR reference: ID 13852).

Statement of compatibility prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

The Authority assesses under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* that this legislative instrument is compatible with human rights. The Authority's Statement of Compatibility is attached as a supporting document.

Consultation

The Plan amendment has been developed in consultation with the Australian Southern Bluefin Tuna Industry Association (ASBTIA) and the Department of Agriculture, Fisheries and Forestry. The Department of Sustainability, Environment, Water, Population and Communities have also been advised of the Authority's intent to amend the Plan.

The Southern Bluefin Tuna Management Advisory Committee (SBTMAC) recently considered the Plan amendment and recommended to the Authority's Commission that it be released for public comment.

The Authority's Commission considered the Plan amendment at its meeting of 27/28 August 2012 and approved the release for public comment for a period of 30 days.

The Authority's Commission approved the Plan amendment on 21 November 2012.

Contents of the Plan amendment

Details of the Plan amendment are set out below:

Part 1 – provides that the Plan amendment may be cited as the *Southern Bluefin Tuna Fishery Management Plan Amendment 2012 (No. 1)*.

Part 2 – provides that the Plan amendment will commence on the day after it is registered on the Federal Register of Legislative Instruments.

Part 3 – provides that Schedule 1 amends the Plan.

Schedule 1 Item 1 – omits the definition of 'by-catch action plan'.

Schedule 1 Item 2 – inserts the definition of 'ecological risk management plan'.

Schedule 1 Item 3 – inserts the words 'of a statutory fishing right' in the definition of 'live weight value'.

Schedule 1 Item 4 – omits the definition of 'public notice'.

Schedule 1 Item 5 – substitutes the definition of 'season'.

Schedule 1 Item 6 – inserts the definition of 'transfer weight'.

Schedule 1 Item 7 – omits the definition of 'unused quota'.

Schedule 1 Item 8 – omits the definition of 'verified count'.

Schedule 1 Item 9 – omits the words 'a by-catch action plan' and inserts the words 'an ecological risk management plan'.

Schedule 1 Item 10 – omits the words 'a by-catch action plan' and inserts the words 'an ecological risk management plan'.

Schedule 1 Item 11 – inserts the obligation for AFMA to establish an ecological risk management plan for the fishery and prescribes the action the ecological risk management plan must contain.

Schedule 1 Item 12 – substitutes the description of ‘reference point’ for Southern Bluefin Tuna.

Schedule 1 Item 13 – substitutes the heading ‘Take in excess of quota’ with the heading ‘Quota reconciliation’.

Schedule 1 Item 14 – inserts the words ‘or minor line’.

Schedule 1 Item 15 – omits the words ‘verified count’ and inserts the words ‘transfer weighing’.

Schedule 1 Item 16 – substitutes provisions relating to overcatch and undercatch.

Schedule 1 Item 17 – omits a provision preventing the setting of Australia’s national catch allocation before the end of 7 months after the commencement of the season.

Schedule 1 Item 18 – substitutes provisions relating to the setting of Australia’s national catch allocation.

Schedule 1 Item 19 - omits and inserts provisions relating to the setting of Australia’s national catch allocation.

Schedule 1 Item 20 – substitutes provisions relating to the determination of the actual live weight value of a statutory fishing right.

Schedule 1 Item 21 – omits the word ‘calculated’ and inserts the word ‘determined’.

Schedule 1 Item 22 – substitutes provisions relating to the determination of AusCatch and the determination of an actual live weight.

Schedule 1 Item 23 – omits provision made redundant by Items 20 and 22 relating to the details required for the factors of AusCatch and the actual live weight value of a statutory fishing right.

Schedule 1 Item 24 – omits the words ‘calculate and publish’ and inserts the word ‘determine’.

Schedule 1 Item 25 – substitutes provision relating to the determination of a provisional national catch allocation and the provisional live weight value of a statutory fishing right.

Schedule 1 Item 26 – omits the words ‘calculate and publish’ and inserts the word ‘determine’.

Schedule 1 Item 27 – omits the word ‘specifies’ and inserts the word ‘determines’.

Schedule 1 Item 28 – substitutes provisions relating to the determination of an interim live weight value of a statutory fishing right and the determination of a provisional live weight value of a statutory fishing right.

Schedule 1 Item 29 – omits provision relating to the notification of actual, interim and provisional live weight values of statutory fishing rights to holders.

Schedule 1 Item 30 – omits the words ‘by facsimile,’.

Schedule 1 Item 31 – omits provision made redundant by Item 30.

Schedule 1 Item 32 – substitutes the heading ‘Verified count of fish – purse seine method of fishing’ with the heading ‘Transfer weighing of fish – purse seine method of fishing’.

Schedule 1 Item 33 – omits the words ‘verified count’ and inserts the words ‘transfer weighing’.

Schedule 1 Item 34 – omits the words ‘verified count.’ and inserts the words ‘transfer weighing.’.

Schedule 1 Item 35 – substitutes the heading ‘Restricted overcatch – approved by AFMA’ with the heading ‘Release approved by AFMA’.

Schedule 1 Item 36 – omits definitions made redundant by Item 35.

Schedule 1 Item 37 – omits the words ‘who, in the 2011 trial period, 2012 trial period or 2013 trial period:’ and inserts the word ‘who:’.

Schedule 1 Item 38 – substitutes provision relating to a holder applying to AFMA for approval to release a quantity of Southern Bluefin Tuna.

Schedule 1 Item 39 – omits the words ‘paragraph 22CA.3 (a) or (b),’ and inserts the words ‘subclause 22CA.3,’.

Schedule 1 Item 40 – omits provision relating to contravening a condition of the holder’s statutory fishing right if more than 25 tonnes of Southern Bluefin Tuna are retained as overcatch.

Schedule 1 Item 41 – omits the words ‘a reviewable decision under’ and inserts the words ‘a relevant decision within the meaning of’.

Schedule 1 Item 42 – substitutes the heading ‘Verified count to be substituted’ with the heading ‘Transfer weight to be substituted’.

Schedule 1 Item 43 – omits the words ‘verified count’ and inserts the words ‘transfer weighing’.

Schedule 1 Item 44 – omits the words ‘verified count.’ and inserts the words ‘transfer weight.’.

Schedule 1 Item 45 – omits the words ‘a decision of AFMA to which section 165 of the Act applied.’ and inserts the words ‘a relevant decision within the meaning of section 165 of the Act.’

Schedule 1 Item 46 – inserts provisions relating to giving and receiving of notice if the holder of a statutory fishing right intends to unload Southern Bluefin Tuna from the boat outside of Australia.

Schedule 1 Item 47 – inserts provisions relating to giving and receiving of notice if the holder of a fishing permit intends to unload Southern Bluefin Tuna from the boat outside of Australia.

Schedule 1 Item 48 – amends various provisions of the Plan omitting the word ‘cage’ and inserting the word ‘pontoon’.