EXPLANATORY STATEMENT

**Issued by the Authority of the Australian Fisheries Management Authority**

*Fisheries Management Act 1991*

*Southern Bluefin Tuna Fishery Management Plan 1995*

**Southern Bluefin Tuna Fishery Undercatch and Overcatch Determination No. 2 of 2020**

Subsection 17(5) of the *Fisheries Management Act 1991* (the FM Act) provides that a plan of management made under the FM Act may provide for the Australian Fisheries Management Authority (AFMA) to give particular determinations for the purposes of attaining the objectives of the plan of management.

Subsection 17(6)(aa) of the FM Act provides that a plan of management may determine or provide for AFMA to determine the fishing capacity measured, by that method or those methods permitted for the fishery or a part of the fishery in respect of a particular period or periods.

Subclause 9B.1 of the *Southern Bluefin Tuna Fishery Management Plan* *1995* (the Plan) provides that AFMA may determine for a season the determined percentage, the determined amount and the determined additional weight in relation to overcatch.

Subclause 9C.1 of the Plan provides that AFMA may determine for a season the determined percentage of undercatch.

The *Southern Bluefin Tuna Fishery Undercatch and Overcatch Determination No.2 of 2020* (the Determination) is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Determination determines the amounts and percentages for undercatch and overcatch for the 2020 fishing season commencing on 1 December 2019 and ending on 30 November 2020. Undercatch and overcatch provides for ‘carry over’ or ‘carry under’ of a small amount of end of season quota between fishing seasons thereby allowing fishers the flexibility to catch a certain amount of fish over or under their quota, and debit or credit this to or from the following season’s quota.

**The Fishery**

Southern Bluefin Tuna (SBT) is a highly migratory species and is widely distributed throughout waters of the southern oceans, including the Australian Fishing Zone (AFZ). The Australian Southern Bluefin Tuna Fishery encompasses SBT fishing operations inside the AFZ (i.e. adjacent from 3 to 200 nautical miles around Australia) and on the high seas. Aside from New South Wales, under an Offshore Constitutional Settlement (OCS) agreement between the Commonwealth and the States/Territories, management of the SBT Fishery to the area of low water mark is the responsibility of the Commonwealth through AFMA.

The SBT Fishery is primarily managed using Statutory Fishing Rights (SFRs) that allow holders to fish for SBT within the AFZ and the high seas. The key areas where SBT is caught are the Great Australian Bight using the purse seine method and to a lesser extent the west and east coasts of Australia using longline. The majority of SBT are caught live and transferred from a tow cage into a farm where the fish are kept for an approximate 6 months grow out period. A verified count is conducted at the time of transfer to determine the weight of fish transferred. This weight is used for quota decrementation purposes. Quota is decremented in the longline sector by weighing the dead fish at the premises of an AFMA licensed fish receiver. A conversion factor is then applied to bring the processed weight to a whole weight.

**Consultation**

The undercatch/overcatch arrangements have been developed in consultation with the Southern Bluefin Tuna Management Advisory Committee, the Australian Southern Bluefin Tuna Industry Association (ASBTIA), Tuna Australia and the Department of Agriculture, Water and the Environment.

**The Commission’s Decision**

The AFMA Commission determined the undercatch and overcatch percentages, amounts and additional weight at its meeting of 21 November 2019. The Commission was satisfied that the percentages, amount and additional weight it determined were consistent with AFMA’s obligation to pursue its statutory objectives, specified in section 3 of the FM Act and section 6 of the *Fisheries Administration Act 1991*.

Subsequent to this decision the AFMA Commission agreed in July 2020 to revisit the setting of undercatch provisions to allow concession holders affected by the impact of COVID-19 on markets and fishing operations an increased level of flexibility to choose how and when to fish their quota.

It should be noted that the changes were to undercatch provisions only and the Determination will only take effect once the total catch in the Southern Bluefin Tuna Fishery reaches 4700 tonnes or greater for the season.

The revised undercatch provisions remain consistent with Australia’s obligations to the Commission for the Conservation of Southern Bluefin Tuna.

**Regulation Impact Statement**

The Office of Best Practice Regulation has previously identified that decisions by AFMA including on setting total allowable catch (TAC); setting opening and closing dates for a fishing season; and setting undercatch and overcatch provisions in a fishery, do not require a Regulation Impact Statement. Such decisions are considered to be machinery in nature and are included in an approved carve-out (OBPR reference no. 14421) reflecting where AFMA is required to make decisions under current regulatory settings and follow certain procedures when making those decisions.

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

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

Details of the Instrument are set out below:

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| ***Clause 1*** | Provides for the instrument to be cited as the *Southern Bluefin Tuna Fishery Undercatch and Overcatch Determination No. 2 of 2020*. |
| ***Clause 2*** | Provides that the instrument commences on the day after it is registered. |
| ***Clause 3*** | Provides that this instrument is made pursuant to paragraph 17(6)(aa) of the Act and clauses 9B and 9C of the Management Plan. |
| ***Clause 4*** | Provides for the definition of terms used in the instrument. |
| ***Clause 5***  ***Clause 6***  ***Clause 7***  ***Schedule 1*** | Provides that each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.  Provides that the instrument is revoked on 1 December 2020 unless earlier revoked  Determines the determined percentage, determined weight and determined additional weight for the purposes of subclause 9B.1 of the Plan (Overcatch), and the determined percentage for the purposes of subclause 9C.1 of the Plan (Undercatch) for the fishing season commencing on 1 December 2019 and ending on 30 November 2020.  Repeals the Southern Bluefin Tuna Fishery (Overcatch and Undercatch) Determination 2020 F2019L01497 |

**Statement of Compatibility with Human Rights**

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

**Southern Bluefin Tuna Fishery Undercatch and Overcatch Determination No.2 of 2020**

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

**Overview of the Legislative Instrument**

The instrument determines the amounts and percentages for undercatch and overcatch for the 2020 fishing season commencing on 1 December 2019 and ending on 30 November 2020. Undercatch and overcatch provides for ‘carry over’ or ‘carry under’ of a small amount of end of season quota between fishing seasons thereby allowing fishers the flexibility to catch a certain amount of fish over or under their quota, and debit or credit this to or from the following season’s quota.

**Assessment of human rights implications**

As this instrument is of a mechanical nature, it does not engage any of the applicable rights or freedoms.

**Conclusion**

This instrument is compatible with human rights as it does not raise any human rights issues. The AFMA Commission is satisfied that the instrument is consistent with AFMA’s obligation to pursue its statutory objectives.