

EXPLANATORY STATEMENT

Fisheries Management Act 1991

Temporary Order

Southern and Eastern Scalefish and Shark Fishery Management Plan 2003

Fisheries Management (Southern and Eastern Scalefish and Shark Fishery – Variation of Total Allowable Catch) Temporary Order 2009 (No.2)

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. Under section 92(1) of the *Fisheries Administration Act 1991*, the Commission has delegated its powers and functions under section 43 of the Management Act to the Chief Executive Officer of the Authority.

While a temporary order under section 43 of the Management Act is in force, AFMA may make one further order the same in substance as the first-mentioned order, to deal with the same emergency. A temporary order may be in force for a maximum period of 6 months

On 14 June 2009 the Chief Executive Officer of the Authority made the *Fisheries Management (Southern and Eastern Scalefish and Shark Fishery – Variation of Total Allowable Catch) Temporary Order 2009* (the Former Order). The Former Order commenced on 18 June 2009 and ceases on 17 December 2009.

The *Fisheries Management (Southern and Eastern Scalefish and Shark Fishery – Variation of Total Allowable Catch) Temporary Order 2009 (No.2)*, (the Temporary Order) is in the same terms as the Former Order. It commences upon the Former Order ceasing to have effect on 17 December 2009 and will cease on 30 April 2010, being the end of the 2009/2010 fishing season.

The Southern and Eastern Scalefish and Shark Fishery

The Southern and Eastern Scalefish and Shark Fishery (the Fishery) is a multi-method, multi-species fishery that lands fresh scalefish and shark for the Australian market and for export. The area of the Fishery stretches south from Fraser Island in southern Queensland, around Tasmania to Cape Leeuwin in southern Western Australia. It comprises a number of historically separate fisheries which have substantial overlap in their areas of operation and species targeted. These fisheries are:

- The South East Trawl Fishery;
- The Gillnet, Hook and Trap Fishery (formerly the South East Non-trawl Fishery and the Southern Shark Fishery); and
- The Great Australian Bight Trawl Fishery.

The Fishery also encompasses the Commonwealth Victorian Inshore Trawl Fishery and the East Coast Deepwater Zone which adjoin the area of the Commonwealth South East Trawl Fishery. Together, all of these fisheries produce annual commercial catches with an estimated value of \$90 million.

Most of the commercially important species in the fishery are managed by Total Allowable Catches (TACs) through quota Statutory Fishing Rights (SFRs). Quota SFRs are fully tradeable and can either be permanently transferred or leased.

The Southern and Eastern Scalefish and Shark Fishery Management Plan 2003 (the Plan)

The SESSF Management Plan 2003 (the Plan) was determined by AFMA's Managing Director on 5 September 2003.

The Fishery is managed by a combination of output controls (that limit the amount of fish that can be taken from the fishery) in the form of TACs and input controls (that limit the number of vessels and type of gear than can be used in the fishery). Operators are required to have a boat SFR to fish in the fishery and quota SFRs to cover their catch of all quota species.

Under section 11 of the Plan, AFMA is required to determine a TAC for each quota species for a fishing year no later than 31 March, immediately before the commencement of the next fishing year. A fishing year commences on 1 May of the relevant year. While the Plan provides for the TACs for non-quota species (determined under section 15 of the Plan) to be varied, there is no provision for the variation of the TACs determined for quota species.

Background to the temporary order

At its meeting on 26 - 27 February 2009, the AFMA Commission determined that the TAC for Deepwater Flathead (*Neoplatycephalus conatus*), for the fishing year that commenced on 1 May 2009, was 1,300 tonnes. The Temporary Order, as with the Former Order, increases that TAC to 1,400 tonnes, the level at which it was set for the 2008/2009 fishing year.

The 1,300 tonne TAC was consistent with the Great Australian Bight Industry Association's (GABIA) decision rules on TAC limits for Deepwater Flathead. A TAC of 1,300 tonnes was the default recommendation in the absence of further information from the annual Fishery Independent Survey (FIS), which at the time the TAC was set was unavailable.

The GABIA decision rules follow and are consistent with the GABIA report: *Future Arrangements for TAC-setting, Research, Assessments and Consultation in the GABTF* that was developed in consultation with the Great Australian Bight Management Advisory Committee (GABMAC) (established under section 56 of the *Fisheries Administration Act 1991* to assist AFMA in the management of the Fishery) and the Great Australian Bight Resource Assessment Group (GABRAG). The *GABIA Future Arrangements for TAC Setting* was subsequently endorsed by the then AFMA Board at its February 2008 meeting. The Board also noted that decision rules to determine revised TAC levels for Deepwater Flathead and Bight Redfish would be considered in detail by GABRAG and GABMAC in 2008.

Subsequently, the Deepwater Flathead harvest strategy and decision rules were considered by GABRAG in June 2008. GABRAG agreed that the rules were reasonable based on the stock assessment indicators and other factors relevant to the sustainability of the species. In accordance with the *GABIA Future Arrangements for TAC Setting*, these decision rules included a provision that if the relative abundance index of the 2009 FIS was $\geq 20\%$ higher compared with the previous year then it is GABIA's option to either keep the current TAC the same for the next year or undertake a full stock assessment from which a new TAC may be derived.

On the basis of the 2009 FIS results, which became available on 29 April 2009, GABIA recommended to AFMA that the TAC for 1 May 2009 to 30 April 2010 fishing year remain at 1,400 tonnes as per the previous year.

Section 3 of the Management Act prescribes the objectives that AFMA must pursue in the performance its functions. These objectives include:

3(1)(c): maximising the net economic returns to the Australian community from the management of Australian fisheries;

The recommended TAC of 1,400 tonnes for Deepwater Flathead rather than the TAC of 1,300 tonnes that was determined for the 2008/2009 fishing year, is the optimal TAC level in order for AFMA to best achieve the above objective. The relative biomass estimate from the 2009 FIS reported that the stock size of the species has substantially increased since 2008, in that there has been a 32% increase in relative abundance since 2008, steady historical length and age estimates, low catches against TAC limits in recent years and the stock being relatively healthy at 56% of pre-fishing biomass.

The decision to adjust the TAC for Deepwater Flathead to 1,400 tonnes for the 2009/2010 fishing year is also consistent with, or will better assist AFMA to achieve, its other objectives in section 3 of the Management Act. A TAC set at that level:

- (i) is ecological sustainable, taking into account the precautionary principle;
- (ii) is cost effective because any additional AFMA costs will be met though the co-management budget; and
- (iii) there are only six operators with Deepwater Flathead SFRs, and the TAC is at the same level it was for the 2008/09 fishing season;

Urgent action was required in order to enable AFMA to pursue its function of maximising the net economic returns to the Australian community from the management of the Fishery, given that the current fishing year has already commenced (on 1 May 2009). Therefore, it was essential that action be taken quickly to ensure that the full benefit is received by industry and the Australian community, in the current fishing year. There is no other action that could have been taken to enable the TAC that had been determined to be varied.

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. In general terms, this Temporary Order, as with the Former Order, varies the TAC that has been determined for the quota species Deepwater Flathead (*Neoplatycephalus conatus*) for the fishing year that commenced on 1 May 2009, by increasing the TAC from 1,300 tonnes to 1,400 tonnes. The Temporary Order commences upon Former Order ceasing to have effect on the last day of the fishing year (30 April 2010).

Consultation

The Former Order was made following a request from the industry body that represents the fishers affected by the determination of the TAC for Deepwater Flathead, the Great Australian Bight Industry Association (GABIA) on 29 April 2009. The Temporary Order continues the adjustment in the TAC until the end of the 2009/2010 fishing year.

The order is consistent with the Deepwater Flathead decision rules in the *GABIA Future Arrangements for TAC-setting, Research, Assessments and Consultation in the GABTF* that was developed in consultation with the GABMAC and GABRAG and accepted by the then AFMA Board in February 2008.

Regulatory Impact statement

The Office of Regulation Review has advised that a Regulation Impact Statement (RIS) is not required for this temporary order (RIS exemption number ID 10379).

Details of Temporary order

Clause 1 - Provides that the Order is the *Fisheries Management (Southern and Eastern Scalefish and Shark Fishery - Variation of Total Allowable Catch) Temporary Order 2009 (No.2)*.

Clause 2 - Provides that the Order commences on 18 December 2009 and ceases on 30 April 2010.

Clause 3 - Paragraph 3(a) provides that for the fishing year that commenced on 1 May 2009 in the Southern and Eastern Scalefish and Shark Fishery, the TAC that has been determined under section 11 of the Plan for the quota species Deepwater Flathead (*Neoplatycephalus conatus*), AFMA may be varied once.

Paragraph 3(b) provides that pursuant to paragraph 3(b), the TAC for the said species, that has been determined under section 11 of the Plan for the fishing year that commenced on 1 May 2009, is increased from 1,300 tonnes to 1,400 tonnes.