

EXPLANATORY STATEMENT

LEGISLATIVE INSTRUMENT

Issued by the Authority of the Australian Fisheries Management Authority

Fisheries Management Act 1991

*Fisheries Management (Southern Bluefin Tuna Fishery Management Plan)
Temporary Order 2009 (No.2)*

The *Fisheries Management (Southern Bluefin Tuna Fishery Management Plan) Temporary Order 2009 (No.2)* (the Temporary Order) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Subsection 43(2) of the *Fisheries Management Act 1991* (the Act) provides that:

If AFMA is satisfied that:

- (a) it is necessary to take action for the purpose of this section; and
- (b) the action contemplated is consistent with AFMA's objectives; and
- (c) no other action is appropriate;

AFMA may make an order, consistent with this Act and the regulations, with respect to:

- (d) any matter directly or indirectly connected with fishing:
 - (i) in a managed fishery; or
 - (ii) in the AFZ but not in a managed fishery; or
 - (iii) that is the subject of an international agreement and occurs outside the AFZ; or
- (e) any other matter relating to a managed fishery, being a matter that may be provided for by a plan of management; or
- (f) any incidental matter.

Background

The Commission for the Conservation of Southern Bluefin Tuna (CCSBT) met on 20th to 23rd October 2009 and determined Australia's Southern Bluefin Tuna national quota allocation of 4015 tonnes for the each of the next two years, commencing on 1 December 2009. This is a reduction of 23.7% from the annual catch level of 5265 tonnes, which has remained unchanged since 1989.

A Resolution of the CCSBT made at the meeting provides the flexibility to split the annual allocation over the two years to provide some flexibility for each nation to decide upon the speed of the reduction. Each member has until 15 November 2009 to advise how it will split its allocation over the two years.

The decision by the CCSBT was made close to the start of the Australian season, which commences on 1 December 2009. The Government is committed to implementing this decision in such a way as to provide flexibility for Australian industry to adjust to the reduction over the next two years.

This *Southern Bluefin Tuna Fishery Management Plan 1995* (the SBT Plan) in its terms is very prescriptive in the procedures to be followed in setting Australia's National catch Allocation and would not allow operators any flexibility as to the timing of adjustment for their own businesses.

The particular the Temporary Order suspends a number of sections of the SBT Plan during the period of the Temporary Order to facilitate this flexible approach. The suspended sections relate to the live weight values of a Statutory Fishing Right (SFR) and the requirement to notify SFR holders of the value. Due to the timing of the CCSBT decision and the need to have the necessary legislative instruments prepared to provide industry with flexibility, AFMA would not have been able to formally determine and then publish before the mandated 30 days prior to the commencement of the season on 1st December 2009. Prior to the CCSBT meeting AFMA anticipated that this could be done within 14 days of the season, and made a Temporary Order to reflect this.

Consultation

The Southern Bluefin Tuna Fishery Management Advisory Committee was consulted on the proposed approach outlined in the Temporary Order (F2009L04004) which was made prior to the CCSBT meeting. At that time AFMA anticipated that notification of the live weight values could be done within 14 days of the season. The new Temporary Order is a response to the situation arising from the CCSBT meeting, where it was necessary to suspend the notification period.

On 2 November 2009, following the AFMA Commission's agreement to approach to provide industry with flexibility, AFMA wrote to all SFR holders advising them of the approach to be adopted. This was followed up by a port visit to Port Lincoln on 10 November 2009 to provide operators with a pre-season briefing.

Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) has advised that no regulatory impact analysis is required for the Temporary Order (OBPR reference ID 10950)

Details of the Temporary Order are set out below:

Paragraph 1

Paragraph 1 provides for the name of the declaration to be the *Fisheries Management (Southern Bluefin Tuna Fishery Management Plan) Temporary Order 2009 (No.2)*.

Paragraph 2

Paragraph 2 provides that the declaration commences on the day after it is registered on the Federal Register of Legislative Instruments.

Paragraph 3

Paragraph 3 outlines the reasons for making the Temporary Order.

Paragraph 4

Paragraph 4 provides the basis for the making of the order as is required by s43(2)(a) (b) and (c) of the Act. Sub-sections 18.2, 18.3, 18.5, 18.8 and 20.1 of the Management Plan are suspended during the term of the Temporary Order.

Paragraph 5

Paragraph 5 advises that the actual live weight of a Statutory Fishing Right to apply for the period 1 December 2009 to 30 November 2011 will be determined in a separate legislative instrument.

Paragraph 6

Paragraph 6 revokes a previous Temporary Order, F2009L04004, registered on 26 October 2009.