

EXPLANATORY STATEMENT

(Issued by the Authority of the Minister for Sustainability, Environment, Water, Population and Communities)

Environment Protection and Biodiversity Conservation Act 1999 (Cth)

Interim (Small Pelagic Fishery) Declaration 2012

The *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* (**EPBC Act**) provides for the protection of the environment and the conservation of biodiversity, including the protection of the environment in Commonwealth waters.

Legislative background

Sections 390SA and 390SB of the EPBC Act prohibit a person from engaging in a declared commercial fishing activity in a Commonwealth marine area.

Section 390SD of the EPBC Act enables the Minister, with the agreement of the Minister administering the *Fisheries Management Act 1991 (Cth)* (**Fisheries Minister**), to declare a commercial fishing activity, to be a 'declared commercial fishing activity' on an interim basis (**interim declaration**) while the Minister consults with affected fishing concession holders about a longer-term prohibition for the same specified activity (during which an independent expert panel will conduct an assessment of the impacts of the activity).

Subsection 390SD(2) of the EPBC Act provides that when making an interim declaration, the Minister can characterise the commercial fishing activity by reference to one or more factors including a type of vessel, a method of fishing, processing carrying or transshipping of fish or an area of waters or of seabed.

Effect of the Declaration

The *Interim (Small Pelagic Fishery) Determination 2012* (the **Declaration**) provides that a commercial fishing activity that:

- a) is in the Small Pelagic Fishery;
- b) uses the mid-water trawl method; and
- c) uses a vessel which is greater than 130 metres in length, has an on-board fish processing facility and has storage capacity for fish or fish products in excess of 2000 tonnes (**large mid-water trawl freezer vessel**),

is a declared commercial fishing activity for the purposes of Chapter 5B of the EPBC Act.

The objective of the Declaration is to prohibit fishing by large mid-water trawl freezer vessels in the Small Pelagic Fishery for a period of 60 days while the Minister consults with affected fishing concession holders about the making of a longer-term declaration while an expert panel assesses the environmental impacts of the declared commercial fishing activity.

Consultation with the Fisheries Minister

Subsection 390SD(3) provides that the Minister cannot make an interim declaration unless the Minister and the Fisheries Minister agree that:

- a) there is uncertainty about the environmental impacts of the commercial fishing activity; and

- b) it is appropriate that the commercial fishing activity should be prohibited while consultation occurs with fishing concession holders who consider themselves to be detrimentally affected by the making of a final declaration for the same fishing activity.

Before making the Declaration, the Minister consulted with the Fisheries Minister for the purpose of seeking his agreement as to these matters.

The Fisheries Minister agreed that:

- a) there is uncertainty about the environmental impact of commercial fishing activities undertaken by large mid-water trawl freezer vessels in the Small Pelagic Fishery; and
- b) it is appropriate to prohibit commercial fishing by large mid-water trawl freezer vessels in the Small Pelagic Fishery while consultation occurs with affected fishing concession holders in respect of a final declaration.

The Declaration is a legislative instrument for the purposes of the *Legislative Instruments Act 2003* (Cth).

The Declaration commenced at the end of the day it was registered on the Federal Register of Legislative Instruments.

Details of the Declaration are set out in the Attachment.

Statement of Compatibility with Human Rights

Interim (Small Pelagic Fishery) Declaration 2012

The Interim (Small Pelagic Fishery) Declaration 2012 (the **Declaration**) does not engage any of the applicable rights or freedoms. The Declaration 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* (Cth).

Overview of the Legislative Instrument

The Declaration provides that a commercial fishing activity which:

- a) is in the Small Pelagic Fishery;
- b) uses the mid-water trawl method; and
- c) uses a vessel which is greater than 130 metres in length, has an on-board fish processing facility and has storage capacity for fish or fish products in excess of 2000 tonnes,

is a declared commercial fishing activity for the purposes of Chapter 5B of the EPBC Act. During the period the Declaration is in force (60 days), the declared commercial fishing activity is prohibited.

Human rights implications

The Declaration will facilitate the prohibition of a particular commercial fishing activity subject to criminal and civil penalties. The Declaration does not create a new offence. It defines the scope of an existing offence in the EPBC Act and it does not vary the penalties that may be imposed under the EPBC Act for engaging in a declared commercial fishing activity. The commercial fishing activity specified in the Declaration has been carefully drafted so that it is limited to activity in respect of which there is uncertainty regarding its environmental impact. Accordingly, the Declaration does not engage any human rights.

Conclusion

The Declaration is compatible with human rights as it does not raise any human rights issues.

The Minister for Sustainability, Environment, Water, Population and Communities, the Hon Tony Burke MP

ATTACHMENT

Details of the *Interim (Small Pelagic Fishery) Declaration 2012*

Section 1 – Name of declaration

This section provides that the title of the Declaration is the *Interim (Small Pelagic Fishery) Declaration 2012*.

Section 2 – Interpretation

This section defines terms used in the Declaration.

'Mid-water trawl method' is defined as a method of fishing which involves towing a net behind a boat or boats through the water at a depth below the ocean surface, but higher in the water column than the bottom of the ocean.

'Small Pelagic Fishery' is defined by reference to the definition of the fishery in the *Small Pelagic Fishery Management Plan 2009*.

'Specified vessel' is defined as type of vessel which:

- a) is greater than 130 metres in total length (determined in accordance with section 10 of the *Shipping Registration Act 1981 (Cth)*); and
- b) has an on-board fish processing facility; and
- c) has storage capacity for fish or fish products in excess of 2,000 tonnes.

Section 3 – Period for which this declaration is in force

This section provides that the Declaration is in force for 60 days. Subsection 390SD(4) of the EPBC Act stipulates that an interim declaration can be in force for no longer than 60 days.

Section 4 – Declaration of commercial fishing activity

This section provides that commercial fishing activity that:

- a) is in the Small Pelagic Fishery; and
- b) uses the mid-water trawl method; and
- c) uses a specified vessel,

is a declared commercial fishing activity.