

## EXPLANATORY STATEMENT

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

*Fisheries Management Act 1991*

### **Southern Bluefin Tuna Fishery Management Amendment (Recreational Fishing) Plan 2020**

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 Amendment (Recreational Fishing) Plan 2020* (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 *Legislation Act 2003*.

#### **The Fishery**

The Southern Bluefin Tuna Fishery (the Fishery) is managed through a system of output controls in the form of individually transferable quotas that 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 (SBT) for the domestic fishery based upon the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) allocation to Australia. Each SFR entitles the holder to receive an equal portion of the TAC set by the Authority for the 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.

Approximately 88 per cent of Australia's SBT quota is taken by purse seine boats fishing off South Australia for 13-25 kg SBT. These fish are towed alive to static grow-out pontoons off Port Lincoln and grown out for up to 6 months before harvest and export, largely to Japan. The remaining quota is taken by longline boats operating in southern Australian waters. SBT is taken in small amounts by pole and trolling methods. SBT is also an important recreational species caught across a number of Australian states.

#### **Need for amendments**

Historically, Australia only counted its commercial SBT catch towards its CCSBT allocation. In 2014, CCSBT redefined "attributable catch" to include mortality resulting from commercial fishing operations whether primarily targeting SBT or not, releases and/or discards, recreational

fishing, customary and/or traditional fishing, and artisanal fishing. The new definition took effect from the start 2017-18 fishing season.

In 2017, AFMA and the Australian Southern Bluefin Tuna Industry Association (ASBTIA) agreed that ASBTIA would voluntarily withhold 250 tonnes of SBT quota to begin to account for recreational catch. This agreement was also implemented for the subsequent two seasons while a robust estimate of Australia's recreational catch was developed.

To get a better understanding of the nature and extent of recreational fishing mortality in Australia, the government commissioned the University of Tasmania to conduct a 12 month survey of recreational SBT catch. The survey was designed to describe the recreational fishery for SBT in Australia in terms of fishing effort, harvest and released catch, and other sources of fishing-related mortality from South Australia, Victoria, Tasmania and New South Wales. With the inclusion of the most recent SBT catch estimates from the recreational fishery in Western Australia, this study was the first comprehensive national assessment of the recreational SBT fishery. The survey was concluded in November 2019 and estimated the annual recreational catch as 270 tonnes.

To ensure the methodology and analysis of the survey were best practice, the Department of Agriculture, Water and the Environment engaged an independent, overseas expert to peer review the document. The reviewer noted the survey: "Provides a defensibly sound and comprehensive estimation of Australia's recreational SBT harvest in 2018-19, based on pragmatic and appropriate combination of context specific survey methods and other data sources."

Subsequent to the outcomes of the survey, the Assistant Minister for Forestry and Fisheries announced that the Federal Government would now set aside five per cent of the allocation from CCSBT for recreational fishing. This decision was made after considerable consultation with recreational and commercial stakeholders.

Under Australia's current allocation, the five per cent would equate to 308 tonnes. The set aside allows for ebbs and flows in recreational catch between states and between years and also provides room for some growth in the recreational fishery.

AFMA has determined that the *Southern Bluefin Tuna Management Plan 1995* is the best place to reflect this agreement. It is proposed to amend clause 17.2 of the Plan, which currently states that AFMA cannot set the TAC higher than the CCSBT allocation.

Clause 17.2 (and all other relevant clauses) would be amended to state that AFMA cannot set the TAC higher than 95 per cent of the CCSBT allocation. This (set aside) means that 95 per cent of Australia's CCSBT allocation will be set aside for the commercial sector. Effectively this will leave 5 per cent of the CCSBT allocation for recreational catch, which will still be managed by the relevant state governments through bag and possession limits.

A number of other minor amendments relating to changes to the CCSBT reference point due to the agreement of a new management procedure and updating references to the now repealed *Fisheries Management Regulations 1992* have also been included in the process.

## **Consultation**

The Plan amendment is the practical implementation of the Federal Government's commitment to set aside five per cent of Australia's CCSBT allocation for recreational fishing. The commitment

to the set aside was made after considerable consultation with recreational and commercial stakeholders.

In accordance with the requirements of the *Fisheries Management Act 1991*, the Plan amendment was released for public comment on 5 August 2020. Public comments closed on 7 September 2020. A total of twenty seven written submissions were received. All submissions supported the amendments as proposed.

The Southern Bluefin Tuna Management Advisory Committee (SBTMAC) recently considered the Plan amendment and public comments received and recommended to the Authority's Commission that it be considered for approval without amendment.

The Authority's Commission approved the Plan amendment on 22 September 2020.

### **Regulation Impact Statement**

The Office of Best Practice Regulation considered that the proposal is unlikely to have a more than minor regulatory impact and therefore the preparation of a Regulation Impact Statement was not required for the proposal (Exemption ID 42937).

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

This legislative instrument is compatible with the human rights and freedoms under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in **Attachment A**.

### **Contents of the Plan amendment**

**Part 1. Name** - This instrument is the *Southern Bluefin Tuna Fishery Management Amendment (Recreational Fishing) Plan 2020*.

**Part 2. Commencement** - The whole of this instrument commences the day after this instrument is registered.

**Part 3. Authority** - This instrument is made under section 20 of the *Fisheries Management Act 1991*.

**Part 4. Schedules** - 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.

### **Schedule 1—Amendments**

#### ***Southern Bluefin Tuna Fishery Management Plan 1995***

##### **1 Subclause 3.2**

Omit all the words after “AFZ”.

This paragraph will be repealed. It refers to the now repealed *Fisheries Management Regulations 1992* and to sub regulation 4(3) relating to the high sea zone. The sub regulation was removed from the now-redundant regulations in 1998 and has since been replaced by a general provision that gives the *Fisheries Management Act 1991* power over Australian-flagged boats and Australian nationals fishing anywhere on the high seas.

## **2 Clause 6A**

Omit “20%”, substitute “30%”.

This change relates to the adoption of a new reference point by the Commission for the Conservation of Southern Bluefin Tuna. The new Management Procedure (MP) is designed to guide the setting of the global total allowable catch (TAC) for 2021 and onwards. The new MP known as the “Cape Town Procedure” has a 50% probability of achieving a biomass level of 30% of the original spawning stock biomass by 2035. The adoption of the new reference point will ensure the stock remains sustainable into the future.

## **3 Subclause 15.7 (note 5)**

Omit all the words after “the particulars”, substitute “required by subsection 45(1) of the Act”.

This change removes reference to the now repealed *Fisheries Management Regulations 1992*.

## **4 Subclause 17.2**

After “does not exceed”, insert “95 per cent of”.

The change in section 17.2 gives effect to the ninety five – five percent split.

## **5 Subclause 17.5**

Repeal the subclause.

This subclause is redundant as the requirements are picked up in 17.6A.

## **6 Subclause 17.6**

Omit “to be an amount that does not exceed the national catch allocation determined for the previous season”.

## **7 After subclause 17.6**

Insert:

17.6A An allocation determined for a season under subclause 17.4 or 17.6 must not exceed:

(a) if the allocation is for the season commencing on 1 December 2020—95 per cent of Australia’s national catch allocation determined by AFMA for the previous season; or

(b) in any other case—Australia’s national catch allocation determined by AFMA for the previous season.

This amendment sets out what occurs if CCSBT does not make an allocation decision to Australia. In such an event, during the first year of operation of the new amendments (this year), AFMA cannot set more than 95% of the previous (ie current) TAC. Under each subsequent year, if CCSBT does not make an allocation to Australia, AFMA cannot set the commercial TAC at a higher level than in the previous year. Any decision in this circumstance will have already incorporated the 95 per cent rule either through a decision under 17.2 or 17.7.

#### **8 Subclause 17.7**

After “does not exceed” (wherever occurring), insert “95 per cent of”.

The change gives effect to the ninety five – five percent split.

#### **9 Paragraph 24.11(a)**

Repeal the paragraph, substitute:

(a) the *Fisheries Management Regulations 2019*; and

This paragraph references the now redundant *Fisheries Management Regulations 1992* and are replaced with the recently updated version *Fisheries Management Regulations 2019*.

#### **10 Paragraph 25.5(a)**

Repeal the paragraph, substitute:

(a) the *Fisheries Management Regulations 2019*; and

This paragraph references the now redundant *Fisheries Management Regulations 1992* and are replaced with the recently updated version *Fisheries Management Regulations 2019*.

#### **11 Paragraph 26.4(a)**

Repeal the paragraph, substitute: Amendments Schedule 1

(a) the *Fisheries Management Regulations 2019*; and

This paragraph references the now redundant *Fisheries Management Regulations 1992* and are replaced with the recently updated version *Fisheries Management Regulations 2019*.

## Statement of Compatibility with Human Rights

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

### **Southern Bluefin Tuna Fishery Management Amendment (Recreational Fishing) Plan 2020.**

This Disallowable 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 Bill/Disallowable Legislative Instrument**

The management plan amendment is the practical implementation of the Federal Government's commitment to set aside five per cent of Australia's allocation from the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) for recreational fishing. The amendment to Clause 17.2 (and all other relevant clauses) of the *Southern Bluefin Tuna Fishery Management Plan 1995* will provide that the Australian Fisheries Management Authority cannot set the Total Allowable Catch higher than 95 per cent of Australia's CCSBT allocation. This set aside means that 95 per cent of Australia's CCSBT allocation will be set aside for the commercial sector. Effectively this will leave 5 per cent of the CCSBT allocation for recreational catch, which will still be managed by the relevant state governments through bag and possession limits. This is consistent with Australia's obligations under the CCSBT to account for all sources of mortality within its allocation.

#### **Human rights implications**

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

#### **Conclusion**

This Determination 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.