

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 (Australia's National Catch Allocation) Determination 2022

Subsection 17(5) of the *Fisheries Management Act 1991* (the 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.

Paragraph 17(6)(aa) of the 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.

Subsection 17.2 of the *Southern Bluefin Tuna Fisheries Management Plan 1995* (the Plan) provides that AFMA must determine the amount of Australia's national catch allocation for each season. It further provides that this amount must not exceed ninety five per cent of the allocation to Australia under any decision made under paragraph 3 of article 8 of the Convention for the Conservation of Southern Bluefin Tuna made by the Commission for the Conservation of Southern Bluefin Tuna that applies to that season.

The *Southern Bluefin Tuna Fishery (Australia's National Catch Allocation) Determination 2022* (the Determination) is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Determination determines Australia's national catch allocation for the season commencing 1 December 2021 and ending on 30 November 2022.

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). Internationally the fishery is managed by the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) of which Australia is a member. 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 Plan was amended in 2020 to implement the government's commitment to set aside five per cent of Australia's CCSBT allocation for recreational fishing mortality. The set aside means that up to 95 per cent of Australia's annual CCSBT allocation will be available to the commercial sector.

The commercial SBT Fishery is managed using Statutory Fishing Rights (SFRs) that allow holders to fish for SBT within the AFZ and the high seas. The majority of SBT are caught live and transferred from a tow cage into a farm where the fish are kept for an approximate six months grow-out period. Fishing occurs in offshore waters adjacent to Kangaroo Island, South Australia. The remainder are

caught using longline methods, predominantly off south eastern Australia during the winter months. The recreational sector continues to be managed by the relevant states using bag and size limits.

Consultation

Representatives of the Australian Southern Bluefin Tuna Industry Association, the Department of Agriculture, Water Resources and the Environment, AFMA and the Australian Bureau of Agricultural and Resource Economics and Sciences attended the 28th Annual Commission for the Conservation of Southern Bluefin Tuna meeting (11-13 October 2021) as part of the Australian delegation. The meeting discussed and agreed national catch allocations for Australia and other member countries. Southern Bluefin Tuna Management Advisory Committee members considered catch allocation recommendations out of session and supported those recommendations as proposed.

The Commission's Decision

The AFMA Commission determined Australia's national catch allocation at its meeting of 17-18 November 2021. The Commission was satisfied that the Determination is consistent with AFMA's obligation to pursue its statutory objectives, specified in section 3 of the Act and section 6 of the *Fisheries Administration Act 1991*.

Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) has previously identified that decisions by AFMA including the setting of a 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 outlined below.

Details of the Determination are set out below:

- Clause 1** Provides for the Determination to be cited as the *Southern Bluefin Tuna Fishery (Australia's National Catch Allocation) Determination 2022*.
- Clause 2** Provides that the Determination commences on 1 December 2021.
- Clause 3** Provides that the Determination ceases on 1 December 2022.
- Clause 4** Provides that the Determination is made pursuant to paragraph 17(6)(aa) of the Act under subclause 17.2 of the *Southern Bluefin Tuna Fishery Management Plan 1995*.

Clause 5 Provides that a term used in the Determination and in the Plan or Act has the same meaning in the Determination as in the Plan or Act.

Clause 6 Determines that Australia's national catch allocation for the fishing season commencing on 1 December 2021 and ending on 30 November 2022 to be 5,926,500 kilograms.

Statement of Compatibility with Human Rights

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

Southern Bluefin Tuna Fishery (Australia's National Catch Allocation) Determination 2022

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 Determination determines Australia's national catch allocation for the season commencing on 1 December 2021 and ending on 30 November 2022.

Assessment of human rights implications

As the Determination 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.