

**Statement about the making of an interim declaration under section 390SD of the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act)**

I, the Hon TONY BURKE MP, Minister for Sustainability, Environment, Water, Population and Communities, provide the following statement in relation to my decision of 25 February 2013 to make the *Interim (Small Pelagic Fishery) Declaration (No. 2) 2013* (the **Second Interim Declaration**).

**SUMMARY OF THE SECOND INTERIM DECLARATION DECISION**

1. I formed the view that there is uncertainty about the environmental impacts of the following commercial fishing activities:
  - a. **Mid-water Trawl Activity** – a commercial fishing activity which is in the area of the Small Pelagic Fishery that uses the mid-water trawl method and uses a vessel which has storage capacity for fish or fish products of 1,600 tonnes or greater; and
  - b. **Fish Processing Activity** – a commercial fishing activity which is in the area of the Small Pelagic Fishery that uses a vessel which has storage capacity for fish or fish products of 1,600 tonnes or greater and which consists of receiving or processing fish or fish products that are quota species of, and that have been taken in, the Small Pelagic Fishery.

The background and context to my view in relation to there being uncertainty regarding the environmental impact of the Mid-water Trawl Activity and the Fish Processing Activity are set out below.

2. I have also formed the view that it is appropriate that the Mid-water Trawl Activity and the Fish Processing Activity be prohibited in a Commonwealth marine area (specifically the area of the Small Pelagic Fishery) while consultation occurs about whether to make a final declaration. The background and context to my view in relation to the appropriateness of making the Second Interim Declaration are also set out below.
3. The Minister for Agriculture, Fisheries and Forestry agreed, by a letter dated 19 February 2013, that there is uncertainty about the environmental impacts of the Mid-water Trawl Activity and the Fish Processing Activity and that it is appropriate that they be prohibited in a Commonwealth marine area (specifically the area of the Small Pelagic Fishery) while consultation occurs about whether to make a final declaration.

**BACKGROUND**

4. I made the *Final (Small Pelagic Fishery) Declaration 2012* on 19 November 2012 (the **First Final Declaration**), the effect of which was to prohibit for two years a commercial fishing activity which:
  - a. is in the area of 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 2,000 tonnes.
- 5. In light of my decision to make the First Final Declaration, I have considered whether there is uncertainty about the environmental impacts of the Mid-water Trawl Activity. In light of the proposed assessment by the Australian Fisheries Management Authority (AFMA) of transshipment operations (sometimes known as "mothership operations") in the Small Pelagic Fishery, I have also considered whether there is uncertainty about the environmental impacts of the Fish Processing Activity.
- 6. In making the First Final Declaration, I had before me a number of materials which I consider may also be relevant to my decision in relation to the Second Interim Declaration. Those materials include:
  - a. information provided by my Department on 12 November 2012 in relation to the making of the First Final Declaration; and
  - b. submissions that I considered when making the First Final Declaration.

My decision in relation to the Second Interim Declaration was also informed by information provided by my Department on 12 February 2013 and 14 February 2013.

#### **ENVIRONMENTAL UNCERTAINTY – MID-WATER TRAWL ACTIVITY**

- 7. When making the First Final Declaration, I concluded that there is uncertainty about the environmental impacts of large mid-water trawl freezer vessels operating in the Small Pelagic Fishery. In information provided by my Department on 12 November 2012 in relation to the making of the First Final Declaration, **Large Mid-water Trawl Freezer Vessels** were ones which:
  - a. operated in the area of the Small Pelagic Fishery;
  - b. were greater than 130 metres in total length (determined in accordance with section 10 of the *Shipping Registration Act 1981* (Cth));
  - c. had an on-board fish processing facility; and
  - d. had storage capacity for fish or fish products in excess of 2,000 tonnes.
- 8. In light of the material I considered for the purposes of the making of the First Final Declaration, I concluded that there is uncertainty about the environmental impacts of Large Mid-water Trawl Freezer Vessels, given their ability to stay at sea for longer periods of time pursuing and harvesting small pelagic fish species than has occurred previously.
- 9. I have considered whether there is also uncertainty about the environmental impacts of mid-water trawl vessels which have a smaller storage capacity (namely 1,600 tonnes) and which may or may not have an on-board fish processing facility.



10. I considered information provided by my Department's in relation to the making of the First Final Declaration, which informed me that the available scientific evidence suggests that small pelagic fish species at certain times of the year tend to have regular patterns of forming into schools and then dispersing. The evidence also suggests that even when not forming 'schools', some small pelagic fish species nonetheless form dense aggregations. My Department informed me that the available scientific evidence suggests that these schooling characteristics of small pelagic fish species make them susceptible to fishing as they can be easily detected and caught using modern fishing techniques.
11. My Department informed me on 14 February 2013 that the largest (in terms of storage capacity for fish or fish products) trawl vessel to have previously operated in the Commonwealth marine area was the *Ivan Golubets* which had a fish storage capacity of 1,150 tonnes.
12. Based on this information, I considered that the Mid-water Trawl Activity has significantly greater fish storage capacity than other vessels which have previously operated in the Small Pelagic Fishery. Hence the Mid-water Trawl Activity does not need to return to port as often to offload its catch, and is therefore able to stay at sea for longer periods of time pursuing its catch than other vessels that have previously operated in the area of the Small Pelagic Fishery.
13. Given the ability of the Mid-water Trawl Activity to stay at sea for longer periods of time pursuing their catch than has previously occurred, I considered whether there is uncertainty about the environmental impacts of that activity. In light of the First Final Declaration, I particularly considered whether there was uncertainty about the environmental impacts of that activity in relation to seals and dolphins and the possibility of localised depletion.

#### **Interactions with seals**

14. For the purposes of making the First Final Declaration, I concluded that mid-water trawl vessels (regardless of their storage capacity) interact with seals in the Small Pelagic Fishery and that the target species of these vessels are key prey species of the Australian fur seal. In light of the ability of Large Mid-water Trawl Freezer Vessels to stay at sea for longer periods of time pursuing and harvesting small pelagic fish species than has occurred previously, I considered that there was uncertainty about the environmental impacts on seals from the operation of Large Mid-water Trawl Freezer Vessels.
15. I have considered the information my Department provided me on 12 November 2012 and 12 February 2013. I have concluded that the Mid-water Trawl Activity is likely to give rise to similar uncertainty about the environmental impacts on seals as Large Mid-water Trawl Freezer Vessels, given its ability to stay at sea pursuing and harvesting small pelagic fish species for longer periods than has previously occurred.

#### **Interaction with dolphins**

16. For the purposes of making the First Final Declaration, I noted a range of considerations relevant to the nature and rate of dolphin interactions with mid-water trawl vessels (regardless of their storage capacity), based on information provided by my Department on 12 November 2012. Ultimately, I concluded that there is uncertainty regarding the environmental impacts on dolphins from the operation of Large Mid-water Trawl Freezer Vessels.



17. Given the information provided by my Department that the available science suggests that interactions with dolphins in mid-water trawling in the Small Pelagic Fishery were rare and unpredictable, I have concluded that the Mid-water Trawl Activity is likely to give rise to similar uncertainty about the environmental impacts on dolphins as Large Mid-water Trawl Freezer Vessels, given its ability to stay at sea pursuing and harvesting small pelagic fish species for longer periods than has previously occurred. Therefore, I consider that there is uncertainty about the environmental impacts of the Mid-water Trawl Activity on dolphins given its ability to stay at sea pursuing and harvesting small pelagic fish species for longer periods than has previously occurred.

#### **Localised depletion**

18. In relation to the First Final Declaration, on 12 November 2012 my Department informed me about the available scientific evidence in relation to the possibility of localised depletion. While some scientific evidence indicated that food-web impacts on small pelagic fish species and their predators in the Small Pelagic Fishery are unlikely to result from localised depletion, some evidence also suggested that localised depletion may have an impact on predator species. On 12 November 2012, my Department provided me with information from which I determined that there were some areas of uncertainty in relation to the potential for and possible environmental effects of localised depletion of small pelagic fish species that may result from the introduction of Large Mid-water Trawl Freezer Vessels. Taking into account the information provided by my Department, for the purposes of making the First Final Declaration I concluded that the areas of uncertainty in relation to the environmental impacts resulting from the operation of Large Mid-water Trawl Freezer Vessels were whether:
- a. localised depletion is likely to occur;
  - b. if it did occur, what effect localised depletion would have on the species being fished; and
  - c. if it did occur, what effects localised depletion would have on predator species.
19. After considering that issue afresh, I concluded that the Mid-water Trawl Activity is likely to give rise to similar uncertainty about the environmental impacts of localised depletion as Large Mid-water Trawl Freezer Vessels, given its ability to stay at sea pursuing and harvesting small pelagic fish species for longer periods than has previously occurred. Therefore, I consider that there is uncertainty about the environmental impact of localised depletion resulting from the Mid-water Trawl Activity.

#### **Conclusions about the environmental uncertainty regarding the Mid-water Trawl Activity**

20. Following my consideration of the factors listed above, I concluded that there is uncertainty about the environmental impacts (particularly in relation to seals, dolphins and localised depletion) of the Mid-water Trawl Activity, given its ability to stay at sea pursuing and harvesting small pelagic fish species for longer periods than has previously occurred.
21. In reaching this conclusion, I considered that a vessel with storage capacity for fish or fish products of 1,600 tonnes may have less environmental impact than a vessel with a larger fish storage capacity. Nevertheless, in light of the factors I considered above, I decided that there is uncertainty about the environmental impacts of the Mid-water Trawl Activity.



## **ENVIRONMENTAL UNCERTAINTY – FISH PROCESSING ACTIVITY**

22. I have considered the information provided by my Department on 12 February 2013 in relation to the uncertainty regarding the potential environmental impacts of "mothership" operations in the area of the Small Pelagic Fishery.
23. Mothership operations involve the use of a vessel with a large fish storage capacity to receive, and process at sea, fish taken by other fishing vessels. This in turn allows the other smaller vessels to remain at sea and to fish for longer periods than has previously occurred, as the smaller vessels would otherwise have to return to port more frequently to offload their catch.
24. In light of my consideration of the uncertainty regarding the potential environmental impacts of the Mid-water Trawl Activity, I have considered whether there are any additional factors which are applicable to the Fish Processing Activity. I have concluded that the uncertainty of environmental impacts for the Mid-water Trawl Activity in relation to seal and dolphin interaction and localised depletion are similar to that of the Fish Processing Activity because the Fish Processing Activity allows smaller vessels to remain at sea pursuing and catching small pelagic fish species for longer periods than has previously occurred, as these vessels are able to transfer their catch to the mothership and continue to fish. However, I also considered whether there is likely to be additional environmental uncertainty in relation to seabirds, which I have set out below.

### **Seabird interaction**

25. In considering this issue, I considered afresh the information provided by my Department on 12 November 2012, which noted that the nature of interactions between seabirds and other types of trawl vessel is fairly well known. The Department also provided me with information that based on the advice provided by Seafish about the depth at which the cod-end will be left in the water, together with the application of a seabird management plan, the impact on seabirds of large mid-water trawl freezer vessels entering the fishery may be less than for other trawl methods and therefore there is little or no uncertainty about the potential environmental impacts on seabirds.
26. For the purposes of making the First Final Declaration, I therefore decided that there was no uncertainty about the environmental impacts of seabird interaction resulting from the operation of large mid-water trawl freezer vessels.
27. However, due to the fact that there are a number of possible methods for transferring fish between the fishing vessel(s) and processing vessel, and that some methods may involve greater risk of interactions with seabirds, I have concluded that there is uncertainty about the environmental impact of the Fish Processing Activity in terms of seabird interaction.

### **Conclusion: Environmental uncertainty with the Fish Processing Activity**

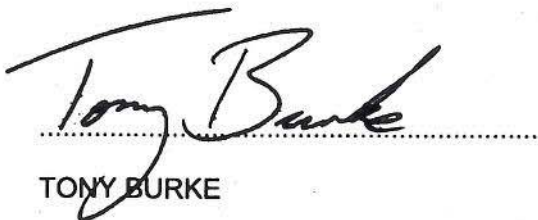
28. Following my consideration of the factors listed above, I concluded that there is uncertainty about the environmental impacts (particularly in relation to seals, dolphins, seabirds and localised depletion) of the Fish Processing Activity in the area of the Small Pelagic Fishery.

## **APPROPRIATENESS OF MAKING THE INTERIM DECLARATION**

29. In considering whether to make the Second Interim Declaration, I have considered the following factors:

- a. the financial implications of the decision, including effects on the fishing industry and in particular on the operators of the *Abel Tasman* from a 60 day prohibition of the activities while consultation occurs;
  - b. the nature and extent of the uncertainties regarding the environmental impacts involved with the commercial fishing activities the subject of the Second Interim Declaration; and
  - c. the objects of the EPBC Act.
30. In considering the financial implications of making an interim declaration, I note the information provided by my Department on 12 November 2012 in relation to the making of the First Final Declaration and the submissions received from declaration affected persons in relation to the making of the First Final Declaration. Where relevant, I have considered those materials for the purposes of making the Second Interim Declaration.
31. I note that there have been costs incurred in transporting and preparing the *Abel Tasman* to operate in Australia, and that it continues to incur costs while it is not used for fishing.
32. I note that in correspondence received from Seafish Tasmania it indicated its proposed Fish Processing Activity would allow Australian fishermen to have a customer (in the form of Seafish Tasmania) to whom they could sell their catch. I also note that Seafish Tasmania advise that the operation of the *Abel Tasman* as a processing vessel would create jobs on the *Abel Tasman* and on other fishing vessels.
33. In deciding whether it is appropriate to make the Second Interim Declaration, I have considered the objects of the EPBC Act. In considering the principle of ecologically sustainable development, I have noted that the principle requires consideration of *'both long-term and short-term economic, environmental, social and equitable considerations.'*
34. In balancing these factors, I have placed emphasis on the objects of the EPBC Act and the nature and extent of the environmental uncertainties identified. I have concluded that these factors outweigh the likely financial impacts of making the Second Interim Declaration, and that it is, on balance, appropriate to make the Second Interim Declaration.

Signed



TONY BURKE

Minister for Sustainability, Environment, Water, Population and Communities

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