

## EXPLANATORY STATEMENT

Issued by the authority of the Australian Fisheries Management Authority

*Fisheries Management Act 1991*

*Southern and Eastern Scalefish and Shark Fishery Management Plan 2003*

### ***Southern and Eastern Scalefish and Shark Fishery (Overcatch and Undercatch) Determination 2020***

The *Southern and Eastern Scalefish and Shark Fishery (Overcatch and Undercatch) Determination 2020* (the Determination) is a legislative instrument for the purposes of the *Legislation Act 2003*.

Subsection 17(5) of the *Fisheries Management Act 1991* (the Act) provides that a plan of management made under the Act is to set out, amongst other things, the objectives of the plan of management and measures by which the objectives are to be attained.

Paragraph 17(6)(aa) of the Act provides that a plan of management made under the Act may provide for the Australian Fisheries Management Authority (AFMA) to determine the fishing capacity permitted for the fishery or a part of the fishery in respect of a particular period or periods.

Subsection 24(1) of the *Southern and Eastern Scalefish and Shark Fishery Management Plan 2003* (the Management Plan) provides that AFMA must determine amounts and percentages for sections 22, 22A and 23 for each quota species for the fishing year no later than 31 March immediately before the commencement of the fishing year. These provisions concern the calculation of undercatch and overcatch.

Subsection 24(3) of the Management Plan provides that, before AFMA determines an amount or percentage for a quota species for a fishing year, it must consult and consider the views of each relevant management advisory committee (paragraph 24(3)(a) of the Management Plan); it must take into account advice from the relevant resource assessment group about the stock status of a quota species (paragraph 24(3)(b) of the Management Plan); it must also take into account the precautionary principle (paragraph 24(3)(c) of the Management Plan). AFMA may also consider the views (if any) of any interested person (paragraph 24(3)(d)).

Prior to making this Determination, AFMA met the requirements of paragraphs 24(3)(a) to (c) of the Management Plan. Further detail as to how these requirements were met is outlined in detail below.

The Determination determines the amounts and percentages for each quota species in relation to undercatch and overcatch for the 2020 fishing year. Undercatch and overcatch provides for 'carry over' or 'carry under' of quota between fishing seasons thereby allowing fishers the flexibility to catch a certain amount of fish over or under their quota, and debit or credit this to or from their next season's fishing quota.

### **The Fishery**

The Southern and Eastern Scalefish and Shark Fishery (SESSF) covers the area of waters from approximately 80 nautical miles off the coast near Fraser Island in Queensland, south around Tasmania and west to Cape Leeuwin in Western Australia. The area of the SESSF encompasses almost half of the waters within the Australian Fishing Zone. The SESSF operates in both Commonwealth and State waters under complex jurisdictional arrangements made under Part 5 of the Act. Those arrangements vary the application of the Offshore Constitutional Settlement with respect to fisheries jurisdiction.

Management in the SESSF is mainly through output controls in the form of TAC limits set under the Act, pursuant to the Management Plan, and in accordance with the Commonwealth Fisheries Harvest Strategy Policy and the specific SESSF Harvest Strategy Framework (HSF). Input controls are also used, which include a limit on the number of boats that operate in each sector of the fishery, as well as gear restrictions such as limits on mesh size and the amount of fishing gear that may be used.

### **Consultation**

AFMA has established Resource Assessment Groups (RAGs) and Management Advisory Committees (MACs) to assist AFMA in the performance of its functions. Notably, the functions of MACs established by AFMA include the function of being a liaison body between AFMA and persons engaged in a fishery (pursuant to paragraph 57(2)(a) of the *Fisheries Administration Act 1991* (Administration Act)).

Prior to making this Determination, AFMA consulted with the Great Australian Bight Resource Assessment Group (GABRAG), the Shark Resource Assessment Group (SharkRAG), the South East Resource Assessment Group (SERAG), and the SESSF Resource Assessment Group (SESSF-RAG).

First, a series of species stock assessments were considered and advised upon for the SESSF quota species listed in the Determination at RAG meetings. The stock assessments are based on the HSF and provide for a recommended biological catch (RBC). The RBC provides the best scientific advice on what the total mortality should be for each species or stock, taking into account fishing and natural mortality and any ecological implications of harvesting the species.

Once the RAGs provided advice on RBCs for SESSF quota species, AFMA translated the RBCs into proposed TACs. The TAC represents the recommended Commonwealth commercial catch for each species or stock, taking into account the expected mortality from incidental catch, discards, and landings in other jurisdictions from the RBC, and applying decision rules contained in the HSF.

Advice from the RAGs was then considered by the South East Management Advisory Committee (SEM-AC) and the Great Australian Bight Management Advisory Committee (GAB-AC). SEM-AC and GAB-AC both supported determining the TACs for SESSF quota species as well as undercatch and overcatch percentages and determined amounts, which provide for 'carry over' or 'carry under' of quota between fishing seasons.

Recommendations from the relevant meetings of the RAGs and MACs, and species summaries were provided to the AFMA Commission in making the Determination.

## Regulation Impact Statement

The Office of Best Practice Regulation advised on 30 June 2014 that a Regulation Impact Statement is not required for Determinations of a minor, recurrent or machinery nature, specifically including determinations of fishing capacity (OBPR ID No. 14421).

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

AFMA assesses under Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* that this legislative instrument is compatible with human rights. AFMA's Statement of Compatibility at the **Attachment** below.

Details of the Determination are set out below:

**Section 1** This section provides that the name of the Determination is the *Southern and Eastern Scalefish and Shark Fishery (Overcatch and Undercatch) Determination 2020*.

**Section 2** This section provides that the Determination commences on 1 May 2020.

Subsection (1) provides that each provision of the Determination specified in column 1 of the table commences, or is taken to have commenced, in accordance of column 2 of the table.

Subsection (2) provides that any information in column 3 of the table is not part of the instrument and that any information may be inserted or edited in any published version of the Determination.

**Section 3** This section provides for revocation of the Determination on 1 May 2021.

**Section 4** This section provides that the authority to make the Determination is paragraph 17(6)(aa) of the Act, pursuant to subsection 24(1) of the Management Plan.

**Section 5** This section defines relevant terms for the purpose of the Determination.

Subsection (1) provides that the Act is the *Fisheries Management Act 1991* and the Management Plan is the *Southern and Eastern Scalefish and Shark Fishery Management Plan 2003*.

Subsection (2) provides that the terms East and West in the table in Clause 6 in relation to the species 'Deepwater shark' mean:

(i) East – the gemfish eastern zone, as defined in Schedule 1, Part 3 section 1 of the Management Plan.

(ii) West – the gemfish western zone, as defined in Schedule 1,

Part 3 section 2 of the Management Plan.

Subsection (2) provides that the terms 'Cascade Plateau' and 'Other' in the table in clause 6, in relation to the species 'Smooth oreo dory' mean:

(i) Cascade Plateau – the orange roughy Cascade Plateau zone of the fishery, as defined in clause 4 of Part 3 of Schedule 1 of the Management Plan.

(ii) Other – areas of the fishery outside the orange roughy Cascade Plateau zone of the fishery, as defined in clause 4 of Part 3 of Schedule 1 of the Management Plan.

Subsection (4) provides that terms that are defined in the Management Plan have the same meaning in the Determination as they do in the Management Plan.

***Section 6*** This section determines the percentage of overcatch for the purpose of sections 22 and 22A of the Management Plan, the percentage of undercatch for the purpose of section 23 of the Management Plan, and determines the determined amount for the purpose of section 22A of the Management Plan for each quota species across the entire area of the fishery for the 2020 fishing year, commencing on 1 May 2020 and ending on 30 April 2021

## **Statement of Compatibility with Human Rights**

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

### **Southern and Eastern Scalefish and Shark Fishery (Overcatch and Undercatch) Determination 2020**

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**

Subsection 17(5) of the *Fisheries Management Act 1991* (the Act) provides that a plan of management made under the Act is to set out, amongst other things, the objectives of the plan of management and measures by which the objectives are to be attained.

Paragraph 17(6)(aa) of the Act provides that a plan of management made under the Act may provide for the Australian Fisheries Management Authority (AFMA) to determine the fishing capacity permitted for the fishery or a part of the fishery in respect of a particular period or periods.

Subsection 24(1) of the *Southern and Eastern Scalefish and Shark Fishery Management Plan 2003* (the Management Plan) provides that AFMA must, no later than 31 March immediately before the commencement of a fishing year, determine amounts and percentages for sections 22, 22A and 23 for each quota species for the fishing year. These provisions concern the calculation of undercatch and overcatch.

Subsection 24(3) of the Management Plan provides that, before AFMA determines an amount or percentage for a quota species for a fishing year, it must consult and consider the views of each relevant management advisory committee; it must take into account advice from the relevant resource assessment group about the stock status of a quota species; it must also take into account the precautionary principle; and, it may consider the views (if any) of any interested person.

The Determination determines the amounts and percentages for each quota species in relation to undercatch and overcatch for the 2020 fishing year. Undercatch and overcatch provides for 'carry over' or 'carry under' of quota between fishing seasons thereby allowing fishers the flexibility to catch a certain amount of fish over or under their quota, and debit or credit this to or from the next season's fishing quota.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.