

EXPLANATORY STATEMENT

Issued by authority of the Australian Fisheries Management Authority

Fisheries Management Act 1991

Bass Strait Central Zone Scallop Fishery Management Plan 2002

Bass Strait Central Zone Scallop Fishery (Fishing Season) Determination 2020

Subsection 17(5) of the *Fisheries Management Act 1991* (the Act) provides that a plan of management made under section 17 of the 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.

Section 3.1 of the *Bass Strait Central Zone Scallop Fishery Management Plan 2002* (the Plan) provides that the definition of the term ‘fishing season’ means the period determined by AFMA.

The *Bass Strait Central Zone Scallop Fishery (Fishing Season) Determination 2020* (the Determination) is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Determination determines the 2020 fishing season for the Bass Strait Central Zone Scallop Fishery (the Fishery) as the period commencing on 12 July 2020 and ending on 31 December 2020.

Purpose

The period for the fishing season in the Determination is consistent with the purpose of the Fishery Harvest Strategy, which allows for the Fishery to be opened following a research survey and then closed on 31 December to protect settling or newly-settle commercial scallop spat. While a research survey was not conducted in 2020 due to the logistical and work health and safety issues arising from the Covid-19 pandemic, the proposed period for the 2020 fishing season is the same as for the 2019 fishing season, and is consistent with the intent of the Fishery Harvest Strategy; that is, to promote successful spawning and recruitment.

The 2020 commercial scallop Total Allowable Catch (TAC) and spatial closures are being determined by AFMA at the same time as the making of the Determination (see the *Bass Strait Central Zone Scallop Fishery (Total Allowable Catch) Determination 2020* and *Fisheries Management (Bass Strait Central Zone Scallop Fishery) (Closures) Direction 2020*).

Background

The Fishery lies in the Bass Strait above the State of Tasmania and extends from the Victoria/New South Wales border, around southern Australia to the Victoria/South Australian border, typically outside 20 nautical miles of the Tasmanian and Victorian coastlines.

Management in the Fishery is through a combination of input and output controls in the form of individually transferable quotas with a TAC determined for each quota species for each fishing season. The target species in the Fishery is the commercial scallop (*Pecten fumatus*) and is primarily caught for the Australian domestic market. The doughboy scallop (*Chlamys (Mimachlamys) asperrimus*) is common throughout the Bass Strait however it is rarely retained.

The Fishery Harvest Strategy contains measures for setting a commercial scallop TAC based on closing areas of the Fishery following research surveys to determine biomass estimates.¹ These measures aim to ensure commercial scallop beds of sufficient size and density are maintained to provide for ongoing recruitment in the Fishery. A research survey was not undertaken in 2020 due to the logistical and work health and safety issues arising from the Covid-19 pandemic; rather, a summary of information available for commercial scallop beds surveyed between 2015 and 2019 was used to determine that a sufficient biomass of commercial scallops is protected through spatial closures for the 2020 fishing season to allow for a commercial scallop TAC in excess of 2,000 tonnes, as per the intent of the Fishery Harvest Strategy.

Consultation

AFMA consulted on the dates for the 2020 fishing season with the Bass Strait Central Zone Scallop Fishery Resource Assessment Group (ScallopRAG) on 11 May 2020, and with the Bass Strait Central Zone Scallop Fishery Management Advisory Committee (ScallopMAC) on 12 May 2020. The period for the 2020 fishing season is consistent with the advice provided by both ScallopRAG and ScallopMAC.

Regulation impact statement

The Office of Best Practice Regulation does not require a Regulatory Impact Statement for this determination consistent with carve-out arrangements with AFMA for instruments of a minor or machinery nature such as the setting of opening and closing dates for a fishing season in a fishery (OBPR reference 14421).

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

This legislative instrument does not infringe any of the applicable rights or freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. Accordingly, in AFMA's assessment, this legislative instrument is compatible with human rights. A statement of compatibility is included at Attachment A.

Details of the Determination are set out below:

- Section 1** Provides that the name of the instrument is the *Bass Strait Central Zone Scallop Fishery (Fishing Season) Determination 2020*.
- Section 2** Provides that the Determination commences on 12 July 2020.
- Section 3** Provides that the Determination is made under paragraph 17(6)(aa) of the Act for the purpose of subsection 3.1 of the Plan.
- Section 4** Provides that the Determination ceases as if it was revoked on 1 January 2021.

¹ Available on the AFMA's website: <https://www.afma.gov.au>

Section 5 Provides that a term used in the Determination that is defined in the Act or the Plan has the same meaning as in the Act or the Plan (respectively). Relevantly, this includes ‘fishery’ and ‘fishing season’ as defined in section 3 of the Plan. The geographic area of the Fishery is prescribed in Schedule 1 to the Plan.

Section 6 Determines the period for the 2020 fishing season for the Fishery as the period commencing on 12 July 2020 and ending on 31 December 2020.

Statement of Compatibility with Human Rights

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

Bass Strait Central Zone Scallop Fishery (Fishing Season) 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 section 17 of the 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.

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The Determination determines the 2020 fishing season for the Bass Strait Central Zone Scallop Fishery (the Fishery) as the period commencing on 12 July 2020 and ending on 31 December 2020.

The period for the fishing season determined in the Determination is consistent with the purpose of the Fishery Harvest Strategy, which allows for the Fishery to be opened following a research survey and then closed on 31 December to protect settling or newly-settle commercial scallop spat. While a research survey was not conducted in 2020 due to the logistical and work health and safety issues arising from the Covid-19 pandemic, the proposed period for the 2020 fishing season is considered sufficient to meet the intent of the Fishery Harvest Strategy.

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.