

EXPLANATORY STATEMENT

Issued by the Authority of the
Australian Fisheries Management Authority

Fisheries Management Act 1991

Fisheries Management (Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery Closures) Direction 2021

Subsection 41A(2) of the *Fisheries Management Act 1991* (the Management Act) provides that the Australian Fisheries Management Authority (the Authority) may, after such consultation as set out in s41A(2), direct that fishing is not to be engaged in the fishery, or a particular part of the fishery, during a particular period or periods.

The Direction is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Fisheries

The Southern and Eastern Scalefish and Shark Fishery (the 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 (as defined by subsection 4(1) of the Management Act). The SESSF operates in both Commonwealth (3-200nm) and state (0-3nm) waters under complex jurisdictional arrangements, due to different arrangements with relevant states under Part 5 of the Management Act.

The SESSF is managed under the *Southern and Eastern Scalefish and Shark Fishery Management Plan 2003*, in force under section 17 of the Management Act, mainly through output controls in the form of total allowable catch (TAC) limits. Input controls are also used, including a limit on the number of boats that operate in each sector, as well as gear restrictions such as limits on mesh size and the amount of fishing gear that may be used.

The Small Pelagic Fishery (the SPF) extends from the Queensland/New South Wales border, typically outside 3 nautical miles, around southern Australia to a line at latitude 31° south (near Lancelin, north of Perth). The SPF is currently divided into two sub areas East and West of latitude 146°30'00".

The SPF is managed under the *Small Pelagic Fishery Management Plan 2009*, also in force under section 17 of the Management Act, and management of the SPF is achieved through output controls in the form of individually transferable quotas with TAC limits determined for each quota species for each fishing year. The target species in the SPF are Australian sardine, blue mackerel, jack mackerel and redbait.

Closures in both the SESSF and SPF serve to place restrictions on effort to protect fish spawning grounds, minimise impact on deepwater fish species, facilitate the recovery of certain species and protect threatened and endangered species.

The Direction

The *Fisheries Management (Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery Closures) Direction 2021* replaces the *Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery (Closures) Direction 2016*. The Direction applies to all Statutory Fishing Right holders in the SESSF and the SPF and those operating on behalf of these concession holders. The Direction incorporates all of the closures of the previous Direction with the following amendment.

Schedule 13 – South East Trawl Deepwater Closure western boundary from north of Montague Island to south-east of Tathra has been amended (points 105 to 135 in the schedule) to more closely align with the 700 metre depth contour boundary. The proposed amendment to the Deepwater Closure boundary is consistent with the original intent of the Deepwater Closure – to afford protection to orange roughy – as orange roughy generally occur in south-eastern Australia in waters deeper than 700 metres.

This Direction is consistent with the Authority's objectives. This includes the objective of ensuring that the exploitation of fisheries resources is conducted in a manner consistent with the principles of ecologically sustainable development (which include the exercise of the precautionary principle) as well as maximising the net economic returns to the Australian community from the management of Australian fisheries.

Regulation Impact Statement

The Office of Best Practice Regulation has previously advised that a Regulation Impact Statement is not required for this instrument, consistent with the carve-out agreement in place to cover certain regulatory changes by AFMA including opening and closing a fishery (OBPR ID 14421).

Consultation

In developing the original closure network that continues to be implemented under this closure direction, the Authority consulted extensively with scientific experts, the fishing industry, CSIRO, the then Department of Agriculture and the then Department of the Environment.

Subsection 41A(2) of the Management Act provides that, before giving a direction, the Authority must consult the Management Advisory Committee for the fishery and consider its view. The Authority consulted on the contents of the Direction with the: South East Management Advisory Committee (SEMAC), at its meeting on 24 March 2021; and the Great Australian Bight Management Advisory Committee, at its meeting on 25 March 2021. Regarding the boundary realignment, SEMAC was also consulted at its meeting in November 2020, which supported adjusting the boundary of the South East Trawl Deepwater Closure (Schedule 13). Following consultation with SEMAC, CSIRO was also consulted on the boundary re-alignment and provided technical support for its delineation.

Details of the Direction are set out below:

- Clause 1** Provides for the Direction to be cited as the *Fisheries Management (Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery Closures) Direction 2021*.
- Clause 2** Provides that the Direction commence on 1 May 2021.
- Clause 3** Provides the authority under which this Direction is made.
- Clause 4** Provides definitions for certain terms mentioned in the Direction and that terms used in the Direction that are defined in the Plan and the Management Act. The *Offshore Petroleum and Greenhouse Gas Storage Act 2006*, the *Southern and Eastern Scalefish and Shark Fishery Management Plan 2003* and the *Small Pelagic Fishery Management Plan 2009* have been incorporated by reference. Section 10 of the *Acts Interpretation Act 1901* (as applied by section 13(1)(a) of the *Legislation Act 2003*) has the effect that references to the Act and Commonwealth disallowable legislative instruments can be taken to be references to versions of that Act and those instruments as in force from time to time.
- Clause 5** Specifies the persons to whom the Direction applies.
- Clause 6** Directs that fishing is not to be engaged in using specific methods in specified areas as detailed in Schedules 1 through 39.
- Clause 7** Specifies the schedules to which exemptions apply in relation to holders of Small Pelagic Fishery concessions.
- Clause 8** Specifies the schedules to which exemptions apply in relation to orange roughy.
- Clause 9** Specifies the schedules to which exemptions apply in relation to the hydraulic hand reel droplining method.
- Schedule 1** Prescribes the area of the Murat Bay Closure. Prohibits gillnet methods to protect stocks of Australian sea lions, bronze whalers, pink snapper and mulloway.
- Schedule 2** Prescribes the area of the Bass Strait – Trawl Closure. Prohibits demersal otter trawl methods to protect school and gummy shark habitat.
- Schedule 3** Prescribes the area of the Head of the Great Australian Bight Closure. Prohibits all fishing methods to protect breeding school shark and Australian sea lion populations.
- Schedule 4** Prescribes the area of the East Coast Deepwater Trawl Sector Exclusion Zone. Prohibits trawl methods to protect benthic habitats.
- Schedule 5** Prescribes the area of the South Australian Gillnet Closure – Backstairs Passage. Prohibits gillnet methods to protect breeding school shark and Australian sea lion populations.

- Schedule 6** Prescribes the area of the South Australian Shark Closure – Kangaroo Island. Prohibits all fishing methods to protect breeding school shark and Australian sea lion populations.
- Schedule 7** Prescribes the area of the South Australian Shark Closure – Victor Harbor to the Victorian Border. Prohibits all fishing methods to protect breeding school shark and Australian sea lion populations.
- Schedule 8** Prescribes the area of the Freycinet Commonwealth Marine Reserve Closure. Instated to protect upper–slope dogfish. If the Harrison’s and southern dogfish triggers are met, then all fishing methods (excluding hydraulic hand reel droplining) are prohibited for the concession holder for 12 months within this area. 100 per cent observer coverage required. Please note that demersal (bottom) trawl, Danish seine and scallop dredge are prohibited under the Commonwealth Marine Reserve Closure.
- Schedule 9** Prescribes the area of the Murray Commonwealth Marine Reserve Closures. Instated to protect upper–slope dogfish. If the Harrison’s and southern dogfish triggers are met, then all fishing methods (excluding hydraulic hand reel droplining) are prohibited for the concession holder for 12 months within this area. 100 per cent observer coverage required. Please note that demersal (bottom) trawl, Danish seine and scallop dredge are prohibited under the Commonwealth Marine Reserve Closure.
- Schedule 10** Prescribes the area of the Commonwealth Gulper Shark Closure – Southern Dogfish. Prohibits all fishing methods to protect upper-slope dogfish.
- Schedule 11** Prescribes the area of the Gulper Shark Closure – Endeavour dogfish. Prohibits hook and trawl methods to protect upper-slope dogfish.
- Schedule 12** Prescribes the area of the Gulper Shark Closure – Harrison’s dogfish. Prohibits all fishing methods to protect upper-slope dogfish.
- Schedule 13** Prescribes the area of the South East Trawl Deepwater Closure. Prohibits trawl methods to protect orange roughy stocks.
- Schedule 14** Prescribes the area of the Eastern South Australia Trawl Closure. Prohibits demersal otter trawl methods to reduce the catch of juvenile scalefish and protect structured benthic habitat.
- Schedule 15** Prescribes the area of the Portland Area Trawl Closure. Prohibits demersal otter trawl methods to reduce the catch of juvenile scalefish and protect structured benthic habitat.
- Schedule 16** Prescribes the area of the GAB Deepwater Closure – Central East Zone. Prohibits demersal otter trawl methods to protect deepwater species and orange roughy stocks.
- Schedule 17** Prescribes the area of the GAB Deepwater Closure – Salisbury Canyon. Prohibits demersal otter trawl methods to protect deepwater species and orange roughy stocks.
- Schedule 18** Prescribes the area of the GAB Deepwater Closure – Far West. Prohibits demersal otter trawl methods to protect deepwater species and orange roughy stocks.
- Schedule 19** Prescribes the area of the GAB Orange Roughy Zone – Albany Closure. Prohibits trawl methods to protect orange roughy stocks.
- Schedule 20** Prescribes the area of the GAB Orange Roughy Zone – Bremmer Closure. Prohibits trawl methods to protect orange roughy stocks.
- Schedule 21** Prescribes the area of the GAB Orange Roughy Zone – Humdinger West Closure. Prohibits trawl methods to protect orange roughy stocks.
- Schedule 22** Prescribes the area of the GAB Orange Roughy Zone – Humdinger/Magic Closure. Prohibits trawl methods to protect orange roughy stocks.
- Schedule 23** Prescribes the area of the GAB Orange Roughy Zone – Lomvar Gully Closure. Prohibits trawl methods to protect orange roughy stocks.
- Schedule 24** Prescribes the area of the GAB Orange Roughy Zone – United Nations Closure. Prohibits trawl methods to protect orange roughy stocks.
- Schedule 25** Prescribes the area of the GAB Orange Roughy Zone – The Knob Closure. Prohibits trawl methods to protect orange roughy stocks.

- Schedule 26** Prescribes the area of the GAB Orange Roughy Zone – Racetrack/Hamburger Closure. Prohibits trawl methods to protect orange roughy stocks.
- Schedule 27** Prescribes the area of the GAB Orange Roughy Zone – Kangaroo Island Hill Closure. Prohibits trawl methods to protect orange roughy stocks.
- Schedule 28** Prescribes the area of the GAB Far West Gulper Shark Closure. Prohibits trawl methods to protect upper-slope dogfish.
- Schedule 29** Prescribes the area of the Barcoo and Taupo Seamounts’ Closure. Instated to protect upper–slope dogfish. If the Harrison’s and southern dogfish triggers are met, then all fishing methods (excluding hydraulic hand reel droplining) are prohibited for the concession holder for 12 months within this area. 100 per cent observer coverage is required.
- Schedule 30** Prescribes the area of the Queensland and Britannia Seamounts’ Closure. Prohibits all fishing methods, except hydraulic hand reel droplining to protect upper-slope dogfish.
- Schedule 31** Prescribes the area of the Derwent Hunter Seamount Closure. Prohibits all fishing methods to protect upper-slope dogfish.
- Schedule 32** Prescribes the area of the Port MacDonnell Closure. Prohibits all fishing methods to protect upper-slope dogfish.
- Schedule 33** Prescribes the area of the Murray Dogfish Closure. Instated to protect upper-slope dogfish. Prohibits trawl methods and if the Harrison’s and southern dogfish triggers are met, then all fishing methods (excluding hydraulic hand reel droplining) are prohibited for the concession holder for 12 months within this area. 100 per cent observer coverage is required.
- Schedule 34** Prescribes the area of the Pedra Branca Orange Roughy Management Area. Allows for targeted fishing of orange roughy using trawl methods.
- Schedule 35** Prescribes the area of the Australian Sea Lion Closures. Prohibits gillnet methods to protect Australian sea lions.
- Schedule 36** Prescribes the area of the Gillnet Deepwater Closure. Prohibits gillnet methods to protect school shark populations.
- Schedule 37** Prescribes the area of the Automatic Longline Shallow Water Closure. Prohibits the use of automatic baiting equipment to protect school and gummy sharks.
- Schedule 38** Prescribes the area of the Western Deepwater Shark Closure. Instated to provide access for demersal otter trawl method to deepwater shark basket (west). However, if 25 tonnes of orange roughy (western) is taken during the fishing season, all trawl methods will be prohibited in this area for the remainder of that season.
- Schedule 39** Prescribes the area of the Flinders Research Zone Closure. Prohibits all fishing methods to protect upper-slope dogfish.

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

The Authority assesses under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* that this legislative instrument is compatible with human rights.