

# **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*

## ***Fisheries Management (E-monitoring Southern and Eastern Scalefish and Shark Fishery) Direction 2021***

Subsection 40A of the *Fisheries Management Act 1991* (the Management Act) provides that the Australian Fisheries Management Authority (the Authority) may make a written direction requiring any person who holds a fishing concession, or a scientific permit, of a class prescribed in the direction, to comply with obligations that are prescribed in the direction relating to the electronic monitoring (e-monitoring) of fishing related activity or prescribed restrictions on engaging in fishing if any obligation in the direction has not been, or is not being complied with.

### **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 fishery encompasses almost half of the waters within the Australian Fishing Zone. The fishery operates in both Commonwealth and state waters under complex jurisdictional arrangements, due to different Offshore Constitutional Settlement arrangements with each state.

Management in the SESSF is mainly through output controls in the form of Total Allowable Catch limits set under the Commonwealth Fisheries Harvest Strategy Policy and Guidelines 2018 and the specific fishery Harvest Strategy Framework. Input controls used include a limit on the number of boats that operate in each sector, as well as gear restrictions such as limits on mesh size, the amount of fishing gear that may be used and spatial closures.

Closures serve to place restrictions on effort to protect spawning grounds, minimise impact on deepwater species, facilitate the recovery of certain species and protect Threatened, Endangered and Protected (TEP) species.

### **Background to the Direction**

The Authority is established under the *Fisheries Administration Act 1991* (the FA Act) and the objectives that it must pursue are contained in s3 of the Act and s6 of the FA Act.

Under legislation, AFMA is required to ensure that the exploitation of fisheries resources is ecologically sustainable, to implement efficient and cost-effective fisheries management and to collect information about possible breaches of the law and the management of and research into fisheries and the marine environment. To effectively carry out its legislative objectives and functions, AFMA requires accurate and comprehensive data on fishing activity.

E-monitoring is the electronic recording of fishing and related activities with the use of specialised equipment installed on boats for data collection and compliance purposes. E-monitoring equipment can include cameras, global positioning systems or sensors, and vessel monitoring systems, thereby generating a range of visual and non-visual data. E-monitoring complements other monitoring techniques, such as catch and effort logbooks and human observers.

E-monitoring is widely used in Gillnet, Hook and Trap (GHAT) sector of the SESSF to monitor catch composition including interactions with TEP species. E-monitoring meets the independent monitoring needs in the GHAT.

Since 2015, through the *E-Monitoring (Southern and Eastern Scalefish and Shark Fishery) Direction 2015* (the Original Direction), e-monitoring has been mandatory for prescribed fishing methods fishing more than a specified number of fishing days.

### **The Direction**

The *Fisheries Management (E-monitoring Southern and Eastern Scalefish and Shark Fishery) Direction 2021* (the Direction) directs concession holders in the SESSF to comply with e-monitoring obligations. The Direction requires certain concession holders in the SESSF to have an e-monitoring system installed and operating on a nominated boat by the date specified in the Direction.

The Direction also requires concession holders to monitor the functioning of the e-monitoring system and provide certain information to the Authority.

The Direction revokes the Original Direction and enacts a number of changes:

- extend the requirement to install and operate an e-monitoring system to boats used for dropline fishing in the GHAT for a period of 100 fishing days or more; and
- require boats fishing with a combination of the prescribed fishing methods in the GHAT for a period of 100 fishing days or more to install and operate an e-monitoring system.

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

### **Consultation**

AFMA consulted the South East Management Advisory Committee (SEMAC) in November 2019 before developing this Direction. SEMAC considered and supported the proposed changes to requirements. SEMAC was informed of the proposed making of the direction in March 2021. The consultation for this direction accordingly satisfies the criteria in section 40A(4) of the Act.

### **Regulation Impact Statement**

The Office of Best Practice Regulation (OBPR) advised that a Regulation Impact Statement was not required for this direction consistent with the agreement in place to cover all regulatory changes deemed to be of a minor or machinery nature (ID 25697).

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

The direction 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*. The direction places limitations on the prohibition on interference with privacy and the right to work; however, those limitations are reasonable, necessary and proportionate.

Details of the direction are set out below:

- Clause 1** Provides for the instrument to be cited as the *Fisheries Management (E-monitoring Southern and Eastern Scalefish and Shark Fishery) Direction 2021*.
- Clause 2** Provides that the instrument commences on 1 May 2021.
- Clause 3** Provides that the instrument is made under s40A(1) of the Act.

- Clause 4** Provides for definitions used in the instrument. The *Southern and Eastern Scalefish and Shark Fishery Management Plan 2003* has 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 Commonwealth disallowable legislative instruments can be taken to be references to versions of that instrument as in force from time to time. The *Southern and Eastern Scalefish and Shark Fishery Management Plan 2003* in 2021 is available to view free of charge on the website of the Federal Register of Legislation (<https://www.legislation.gov.au>).
- Clause 5** Provides that each instrument that is specified in a Schedule to the instrument is repealed as set out in the Schedule concerned, and any other item in a Schedule to the instrument has effect according to its terms.
- Clause 6** Provides for the requirement to install and operate an e-monitoring system on boats fishing in the GHAT sector of the SESSF. This clause also provides for concession holder to be exempt from this requirement if a boat is used for fishing with a specified method or combination of methods for less than the prescribed number of fishing days.
- Clause 7** Provides for the requirement to monitor the functioning of an e-monitoring system and to provide e-monitoring data. This clause also provides for requirements where an e-monitoring system stops operating, including the cessation of fishing in defined areas when using the specified methods.
- Clause 8** Provides for the requirement to provide certain information to AFMA.
- Annex 1** Defines the areas for the purpose of Clause 7.
- Schedule 1** Repeals the *E-Monitoring (Southern and Eastern Scalefish and Shark Fishery) Direction 2015*.