**EXPLANATORY STATEMENT**

**LEGISLATIVE INSTRUMENT**

**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) Amendment Direction No. 1 2022*

Subsection 41A(2) of the *Fisheries Management Act 1991* (the Management Act) provides that the Australian Fisheries Management Authority (AFMA) may, after consultation with the Management Advisory Committee for the Fishery, direct that fishing is not to be engaged in in the fishery, or a particular part of the fishery, during a particular period or periods. Prior to making such a direction, AFMA must ensure that each holder of the fishing concession in the relevant fishery is provided with a copy of the direction seven (7) days before that direction takes effect. The *Fisheries Management (Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery Closures) Direction 2021* (the Principal Direction) is a direction made under subsection 41A(2) after consultation with the South East Management Advisory Committee (SEMAC) and notification to Southern and Eastern Scalefish and Shark Fishery (SESSF) and the Small Pelagic Fishery (SPF) concession holders.

Subsection 41A(3) of the Management Act provides that AFMA may, at any time, vary or revoke a direction made under subsection 41A(2). Any variation direction under subsection 41A(3) is not required to be made subject to the Management Advisory Committee consultation process and concession holder notification process as is required for a subsection 41A(2) direction. However, AFMA has consulted with the SEMAC in relation to the amendment of the Principal Direction.

The *Fisheries Management (Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery Closures) Amendment Direction No. 1 2022* (the Amendment Direction) is made under subsection 41A(3) of the Management Act and varies the Principal Direction by:

       providing for an additional area closure to gillnet fishing gear within the SESSF.

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

**Objectives**

The Amendment Direction varies the Principal Direction by providing for an additional area closure to gillnet fishing methods within the Southern and Eastern Scalefish and Shark Fishery (SESSF) to protect an newly identified Australian Sea Lion colony in waters adjacent to South Australia.

**Background on the Fisheries**

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 (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.

The SPF is not directly impacted by this amendment as the gillnet fishing method is not used in this fishery.

**Consultation**

Variations made under subsection 41A(3) of the Act do not require AFMA to consult. However, consistent with section 17 of the Legislation Act*,* AFMA consulted with SEMAC prior to making the Amendment Direction. The SEMAC is the overarching committee that provides management advice to AFMA on the SESSF and contains industry representatives amongst other members. SEMAC supports the making of the Amendment Direction.

**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).

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

This legislative instrument is compatible with the human rights and freedoms under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in the Attachment.

**Direction**

The details of the Amendment Direction are set out below:

***Section 1***                 Provides for the Direction to be cited as the *Fisheries Management (Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery Closures) Amendment Direction No. 1 2022.*

***Section 2***Provides that the Direction commences on 01 March 2022.

***Section 3***Provides that this Direction is made under subsection 41A(3) of the *Fisheries Management Act 1991*.

***Section 4***Gives effect to Schedule 1.

***Schedule 1***               Schedule 1 outlines the amendments to the Principal Direction.

***Clause 1***                   Omits the word “and” from *Schedule 35 11nm radius Australian sea lion gillnet closures paragraph p).*

***Clause 2*** Replaces “east.” with “east; and”into *Schedule 35 11nm radius Australian sea lion gillnet closures paragraph q).*

***Clause 3*** inserts “r) Western Isles located near latitude 35° 22.176’ south, longitude 138° 50.862’ east.” into *Schedule 35 11nm radius Australian sea lion gillnet closures* after paragraph q).

**Statement of Compatibility with Human Rights**

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

**Fisheries Management (Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery Closures) Amendment Direction No. 1 2022**

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 41A(2) of the *Fisheries Management Act 1991* (the Management Act) provides that the Australian Fisheries Management Authority (AFMA) may, after consultation with the Management Advisory Committee for the Fishery, direct that fishing is not to be engaged in the fishery, or a particular part of the fishery, during a particular period or periods. Subsection 41A(3) of the Management Act provides that AFMA may, at any time, vary or revoke a direction made under subsection 41A(2). Any variation direction under subsection 41A(3) is not made subject to the Management Advisory Committee consultation process and concession holder notification process as is required for a subsection 41A(2) direction.

The *Fisheries Management (Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery Closures) Amendment Direction No. 1 2022* (the Amendment Direction) varies the *Fisheries Management (Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery Closures) Direction 2021* (the Principal Direction) toprovide for an additional area closure for specified fishing methods within the Southern and Eastern Scalefish and Shark Fishery

In particular, the Principal Direction is varied by the inclusion of an additional 11 nautical mile radius area being closed to gillnet fishing.

**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.