

EXPLANATORY STATEMENT

Issued by 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 (Total Allowable Catch for Non-Quota Species – Common Hagfish) Determination 2022

The *Southern and Eastern Scalefish and Shark Fishery (Total Allowable Catch for Non-Quota Species – Common Hagfish) Determination 2022* (the Instrument) 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 15(1) of the *Southern and Eastern Scalefish and Shark Fishery Management Plan 2003* (the Management Plan) provides that AFMA may determine a total allowable catch (TAC) for a non-quota species for a period specified in the Instrument.

Prior to making this Instrument, AFMA met the requirements of paragraphs 16(a) to (d) of the Management Plan. Further detail as to how these requirements were met is outlined in detail below.

Purpose

The Instrument determines the TAC for a non-quota species, common hagfish, *Eptatretus cirrhatus*, in the Southern and Eastern Scalefish and Shark Fishery (the Fishery) for the 2022 fishing year commencing on 1 May 2022 and ending on 30 April 2023.

In determining a TAC for a non-quota species (subsection 15(1) of the Management Plan) or a specific TAC for a non-quota species fished with a particular method or in a particular area of the fishery (subsection 15(3)), AFMA must have regard to reference points for the species determined under section 9 of the Management Plan (subsection 15(2)). Under subsection 15(4) of the Management Plan, the determination of a non-quota TAC under subsection 15(1) or subsection 15(3) must specify the TAC expressed in whole weight or a specified other weight and must specify the particular parts of the fishery area to which the TAC applies and fishing methods to which the TAC applies.

Background

The Fishery 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 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 Fishery 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 Southern and Eastern Scalefish and Shark Fishery (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.

Common hagfish has been commercially targeted since 2015 in the Fishery by the trap method. The 2022 fishing year will be the second time a catch limit has been set for this species. If catches reach the non-quota TAC for the fishing year, no further fishing for common hagfish will be permitted.

Consultation

Section 16 of the Management Plan provides that, in determining a TAC for a non-quota species, AFMA must consult with any relevant management advisory committee (MAC) and have regard to any view expressed in that consultation (paragraph 16(a)); and take into account advice from the relevant resource assessment group (RAG) about the stock status of a non-quota species (paragraph 16(b)). AFMA must also take into account all fishing mortality from all sectors within the fishery and overlapping or adjacent fisheries, the ecological implications of harvesting the TAC, the distribution and population structure of the species and the precautionary principle (paragraph 16(c)). AFMA may also consider the views of any other interested person (paragraph 16(d)).

AFMA has established RAGs and 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*).

Prior to making this Instrument, AFMA consulted with the South East Resource Assessment Group (SERAG) and the South East Management Advisory Committee (SEMAC). Pursuant to paragraph 16(d), the single operator that has reported catching and exporting common hagfish was invited to observe those discussions and provided written submissions. The industry views, as well as recommendations from the relevant meetings of the RAG and MAC, were provided to the AFMA Commission in making the Instrument.

Regulation Impact Statement

The Office of Best Practice Regulation advised on 30 June 2014 that a Regulation Impact Statement is not required for Instruments 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*

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

Details of the Instrument are set out below:

Section 1 Provides for the Instrument to be cited as the *Southern and Eastern Scalefish and Shark Fishery (Total Allowable Catch for Non-Quota Species – Common Hagfish) Determination 2022*.

Section 2 Provides that the Instrument commences on the day after registration on the Federal Register of Legislation.

Section 3 Provides that the Instrument ceases on 1 May 2023.

Section 4 Provides that the authority to make the Instrument is paragraph 17(6)(aa) of the Act, pursuant to subsection 15(1), 15(3) of the Management Plan.

Section 5 Defines relevant terms for the purpose of the Instrument.

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 terms that are defined in the Management Plan have the same meaning in the Instrument as they do in the Management Plan.

Terms defined in the Act have the same meanings in this Instrument.

Section 6 Determines the TAC for common hagfish in a specified area of the Fishery, for the 2022 fishing year commencing on 1 May 2022 and ending on 30 April 2023.

Subsection (1) provides that section 6 applies for the 2022 fishing year commencing on 1 May 2022 and ending on 30 April 2023. This is consistent with the definition of ‘fishing year’ provided in section 3 of the Management Plan.

Subsection (2) determines the TAC for the species of non-quota fish from the area listed in the table. The TAC for this species is determined on the basis of whole weight of fish.

The Tasmanian *Fisheries Rules 2019* has been incorporated by reference. Section 10A of the *Acts Interpretation Act 1901* (as applied by section 13(1)(a) of the *Legislation Act 2003*) has the effect that references to laws of States and Territories can be taken to be references to versions of that instrument as in force from time to time. The Tasmanian *Fisheries Rules 2019* in 2022 are available to view free of charge on the Tasmanian Government’s Tasmanian Legislation Website (<https://www.legislation.tas.gov.au/view/html/asmade/sr-2019-067#JS1@EN>).

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 (Total Allowable Catch for Non-Quota Species – Common Hagfish) Determination 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

The Instrument determines the TAC for a non-quota species, common hagfish, *Eptatretus cirrhatus*, in the Southern and Eastern Scalefish and Shark Fishery (the Fishery) for the 2022 fishing year.

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.

Section 15 of the *Southern and Eastern Scalefish and Shark Fishery Management Plan 2003* (the Management Plan) provides that AFMA may determine a total allowable catch (TAC) for a non-quota species for a period specified in the Instrument. In determining a TAC for a non-quota species or a non-quota species fished with a particular method or in a particular area of the fishery, AFMA must have regard to reference points for the species determined under section 9 of the Management Plan. The determination of a non-quota TAC must specify the TAC expressed in whole weight or a specified other weight and must specify the particular parts of the fishery area to which the TAC applies and fishing methods to which the TAC applies.

Section 16 of the Management Plan provides that, in determining a TAC for a non-quota species, AFMA must consult with any relevant management advisory committee and have regard to any view expressed in that consultation (paragraph 16(a) of the Management Plan); and take into account advice from the relevant resource assessment group about the stock status of a non-quota species (paragraph 16(b) of the Management Plan). AFMA must also take into account all fishing mortality from all sectors within the fishery and overlapping or adjacent fisheries, the ecological implications of harvesting the TAC, the distribution and population structure of the species and the precautionary principle (paragraph 16(c) of the Management Plan).

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.