

## **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 2023*

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 2023* (the Amendment Direction) is made under subsection 41A(3) of the Management Act and varies the Principal Direction by:

- providing for an additional five (5) scheduled closures (Schedules 40–44) to trawl methods in the Commonwealth South East Trawl Sector of the Southern and Eastern Scalefish and Shark Fishery. An exception is made to permit the Danish Seine trawl method within Schedule 43 Babel Island Trawl Closure.

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 five (5) scheduled closures applicable to trawl methods within the Commonwealth Trawl Sector of the SESSF to protect at-risk rebuilding species caught as bycatch including Eastern Jackass Morwong and John Dory.

#### **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 Commonwealth Trawl Sector (CTS) extends southward from Barrenjoey (north of Sydney) around the NSW, Victorian and Tasmanian coastlines to Cape Jervis in South Australia. The CTS is managed within the SESSF 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 to mesh size and the amount of fishing gear that may be used.

The CTS within the SESSF is directly impacted by this amendment as it applies to the trawl methods used by this sector.

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, minimize impact on deepwater fish species, facilitate the recovery of certain species and protect threatened and endangered species.

## **Consultation**

Variations made under subsection 41A(3) of the Management 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. SEMAC is the overarching committee that provides management advice to AFMA on the SESSF and includes industry members. SEMAC supports the making of the Amendment Direction. Management Advisory Committees including SEMAC are established under section 54 of the *Fisheries Administration Act 1991*. Prior to consulting with SEMAC, AFMA consulted with all concession holders within the CTS regarding closure details and potential impacts on industry. AFMA refined the shape and size of the closures over six months of consultation with industry to limit the impact on the Gross Value Production (GVP) of the CTS while maintaining conservation benefits for the at-risk species. This is consistent with AFMA's objective to maximise the net economic returns to the Australian community from the management of Australian fisheries.

## **Regulation Impact Statement**

The Office of Impact Analysis, formerly called the Office of Best Practice Regulation (OBPR) has 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 and “*directing that fishing not be engaged in sub-areas of a fishery*” (OBPR ID Number: 04392).

## **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 B**.

The details of the Amendment Direction are set out in **Attachment A**.

**Details of the Fisheries Management (Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery Closures) Amendment Direction No. 1 2023**

- Section 1** Provides that the name of the Amendment Direction is the *Fisheries Management (Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery Closures) Amendment Direction No. 1 2023*.
- Section 2** Provides that the Amendment Direction commences on 1 May 2023.
- Section 3** Provides that the Amendment 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** Repeals clause 6 (k) and substitutes a new clause 6(k) to include, in addition to Schedule 13, new schedules where fishing is not to be engaged in using trawl methods in the Commonwealth South East Trawl Sector of the Southern and Eastern Scalefish and Shark Fishery within the areas described in Schedules 40, 41, 42, and 44.
- Add clause 6(w) which provides that fishing is not to be engaged in using trawl methods in the Commonwealth South East Trawl Sector of the Southern and Eastern Scalefish and Shark Fishery within the areas described in Schedule 43.
- Clause 2** Provides an exemption to clause 6(w) for concession holders using the Danish seine trawl method with a codend mesh size of at least 80mm.
- Clause 3** Inserts a number of additional schedules relevant for the purposes of clauses 6(k), and 6(w). The new schedules are as follows:
- Schedule 40 specifying the Gabo Trawl Closure outlined in the Amendment Direction.
- Schedule 41 specifying the Conran Trawl Closure area outlined in the Amendment Direction.
- Schedule 42 specifying the Flounder/Kingfisher Trawl Closure area outlined in the Amendment Direction.
- Schedule 43 specifying the Babel Island Trawl Closure area outlined in the Amendment Direction.
- Schedule 44 specifying the South East Tasman Trawl Closure area outlined in the Amendment Direction.

## 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 2023**

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 2023* varies the *Fisheries Management (Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery Closures) Direction 2021* to provide for an additional five (5) scheduled closures (Schedules 40–44) for trawl methods within the Commonwealth Trawl Sector of the Southern and Eastern Scalefish and Shark Fishery. An exception is made to permit the Danish Seine trawl method within Schedule 43 Babel Island Trawl Closure.

#### **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.