

EXPLANATORY STATEMENT

Issued by the Authority of the Australian Fisheries Management Authority

Fisheries Management Act 1991

Fisheries Management (Bass Strait Central Zone Scallop Fishery) (Closures) Direction 2023

Subsection 41A(2) of the *Fisheries Management Act 1991* (the Act) provides that the Australian Fisheries Management Authority (AFMA) may 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.

Subsection 41A(2) also provides that, before AFMA issues a direction, it must consult with the management advisory committee for the fishery, in the current context being the Bass Strait Central Zone Scallop Fishery Management Advisory Committee (ScallopMAC), about the content of the direction unless the direction is issued in circumstances of an emergency.

The *Fisheries Management (Bass Strait Central Zone Scallop Fishery) (Closures) Direction 2023* (the Direction) is a legislative instrument for the purposes of the *Legislation Act 2003*, pursuant to subsection 41A(5) of the Act.

Purpose

The Direction directs that holders of fishing concessions or a person acting on the holder's behalf for the Bass Strait Central Zone Scallop Fishery (the Fishery) must not engage in fishing in four specified areas in the vicinity of Apollo Bay, Flinders Island and King Island during the 2023 fishing season, commencing on 8 July 2023 and ending on 31 December 2023.

The Direction closes the four specified areas of the Fishery collectively estimated through previous independent scientific surveys to contain a sufficient tonnage of high-density spawning size commercial scallops (85 millimetres or greater), while allowing for the remaining area of the Fishery to stay open to fishing. Research indicates that closing areas of scallops to fishing promotes recruitment and maintains the stock at a sustainable level.

The 2023 commercial scallop Total Allowable Catch (TAC) and fishing season dates (8 July 2023 to 31 December 2023) have been determined by AFMA at the same time as the making of the Direction (see the *Bass Strait Central Zone Scallop Fishery (Total Allowable Catch) Determination 2023* and *Bass Strait Central Zone Scallop Fishery (Fishing Season) Determination 2023*)¹.

¹ These instruments are available to view free of charge on the website of the Federal Register of Legislation at <https://www.legislation.gov.au>

Background

The Fishery lies in the Bass Strait above the State of Tasmania and extends from the Victoria/New South Wales border, around southern Australia to the Victoria/South Australian border, typically outside 20 nautical miles of the Tasmanian and Victorian coastlines.

Management in the Fishery is through a combination of input and output controls in the form of individually transferable quotas with a TAC determined for each quota species for each fishing season. The target species in the Fishery is the commercial scallop (*Pecten fumatus*) and is primarily caught for the Australian domestic market. The doughboy scallop (*Chlamys (Mimachlamys) asperrimus*) is common throughout the Bass Strait but rarely retained.

The Fishery Harvest Strategy contains measures for setting a TAC based on closing areas of the Fishery following research surveys to determine biomass estimates.² These measures aim to ensure commercial scallop beds of sufficient size and density are maintained to provide for ongoing recruitment in the Fishery.

Consultation

Paragraph 41A(2)(a) of the Act provides that, before giving a direction, AFMA must consult the relevant management advisory committee for the fishery and consider its views.

AFMA consulted on the proposed spatial closures for the 2023 fishing season with the Bass Strait Central Zone Scallop Fishery Resource Assessment Group (ScallopRAG) on 7 June 2023, and with the ScallopMAC on 8 June 2023. Both ScallopRAG and ScallopMAC supported closure of the four areas prescribed in the Direction.

ScallopRAG is the research and scientific committee that contributes to the management of the Fishery and provides advice to ScallopMAC and AFMA. Industry, fishery scientists and economists are represented on ScallopRAG.

ScallopMAC provides management advice to AFMA for the Fishery. ScallopMACs advice is about efficient and cost-effective fisheries management, taking into account scientific advice. ScallopMAC receives advice from ScallopRAG and uses such advice to inform its recommendations. Similar to ScallopRAG, industry, state government, research, environment and other interests are represented on ScallopMAC.

AFMA is satisfied that the Direction is consistent with the objectives of the *Bass Strait Central Zone Scallop Fishery Management Plan 2002* (the Management Plan), the Fishery Harvest Strategy, as well as with its obligation to pursue the objectives set out in Section 3 of the Act, in particular the objective concerned with the sustainability of fisheries resources (paragraph 3(1)(b)).

Regulation Impact Statement

The Office of Best Practice Regulation, renamed the Office of Impact Analysis, advised that a Regulation Impact Statement is not required for instruments directing that fishing not be engaged in sub-areas of a fishery under its standing carve-out arrangements for AFMA (OBPR ID: 14421). This applies to the Direction.

² This document is available to view free of charge on the AFMA's website: <https://www.afma.gov.au/sustainability-environment/harvest-strategies>

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

The Direction does not infringe any of the applicable rights or freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. Accordingly, in AFMA's assessment, this legislative instrument is compatible with human rights. A statement of compatibility is included at Attachment A.

Details of the Direction are set out below:

Section 1 Provides that the name of the Direction is the *Fisheries Management (Bass Strait Central Zone Scallop Fishery) (Closures) Direction 2023*.

Section 2 Provides that the Direction commences on 8 July 2023.

Section 3 Provides the Direction ceases on 1 January 2024.

Section 4 Provides that the Direction is made under subsection 41A(2) of the Act.

Section 5 Subsection 5(1) prescribes relevant definitions for the Direction.

Subsection 5(2) provides that a term used in the Direction and in the Management Plan has the same meaning in the Direction as in the Management Plan. This means that the definition of 'fishery' in section 3 of the Management Plan apply to those terms in section 6 of the Direction.

Section 6 Subsection 6(1) provides that a holder of a quota statutory fishing right, or a person acting on the holder's behalf, must not engage in fishing in the Apollo Bay The Hill North area (paragraph (a), prescribed in clause 1 of Schedule 1 to the Direction), the Flinders Island North of Babel area (paragraph (b), clause 2 of Schedule 1), the Flinders Island 1 area (paragraph (c), clause 3 of Schedule 1), the King Island Three Hummocks Deep area (paragraph (d), clause 4 of Schedule 1).

These four closure areas are particular parts of the Fishery that have been identified as containing a sufficient tonnage of commercial scallops greater than 85 millimetres in size, and of a high density to promote recruitment and maintain the stock at a sustainable level.

The specific application of the Direction in this subsection to holders of relevant fishing rights in the Fishery, or persons acting on their behalf, relies upon subsection 33(3A) of the *Acts Interpretation Act 1901*. That subsection relevantly provides that, where an Act confers a power to make an instrument of legislative character with respect to particular matters, the power shall be construed as including a power to make such an instrument with respect to some only of those matters or with respect to a particular class of matters.

Subsection 6(2) provides that section 6 applies in the period from the commencement of the Direction until 31 December 2023. This is the period in which fishing in the Fishery will be permitted in 2023.

Schedule 1 Clause 1 of Schedule 1 to the Direction describes the part of the Fishery that is the Apollo Bay The Hill North area. This area is closed to commercial scallop fishing under paragraph 6(1)(a) of the Direction.

Clause 2 of Schedule 1 to the Direction describes the part of the Fishery that is the Flinders Island North of Babel area. This area is closed to commercial scallop fishing under paragraph 6(1)(b) of the Direction.

Clause 3 of Schedule 1 to the Direction describes the part of the Fishery that is the Flinders Island 1 area. This area is closed to commercial scallop fishing under paragraph 6(1)(c) of the Direction.

Clause 4 of Schedule 1 to the Direction describes the part of the Fishery that is the King Island Three Hummocks Deep area. This area is closed to commercial scallop fishing under paragraph 6(1)(d) of the Direction.

Statement of Compatibility with Human Rights

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

Fisheries Management (Bass Strait Central Zone Scallop Fishery) (Closures) Direction 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 Act) relevantly provides that the Australian Fisheries Management Authority (AFMA) may, after such consultation as set out in paragraphs 41A(2)(a) and (b), direct that fishing is not to be engaged in the fishery, or a particular part of the fishery, during a particular period or periods.

Paragraph 41A(2)(a) provides that, before AFMA makes any direction, it must consult with the management advisory committee for the fishery, the Bass Strait Central Zone Scallop Fishery Management Advisory Committee (ScallopMAC), about the content of the direction unless the direction is issued in circumstances of an emergency.

The *Fisheries Management (Bass Strait Central Zone Scallop Fishery) (Closures) Direction 2023* closes four parts of the Bass Strait Central Zone Scallop Fishery (the Fishery) which are collectively estimated through independent scientific research to contain a sufficient tonnage of commercial scallops to promote recruitment and maintain the stock at a sustainable level, while allowing for the remaining area of the Fishery to remain open to fishing. The four spatial closures will be in place during the 2023 fishing season from 8 July 2023 until 31 December 2023, from which point the fishery will be closed until the commencement of the 2024 fishing season in order to protect peak spat settlement events.

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