

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 (Overcatch and Undercatch) Determination 2024

The *Southern and Eastern Scalefish and Shark Fishery (Overcatch and Undercatch) Determination 2024 (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 24(1) of the *Southern and Eastern Scalefish and Shark Fishery Management Plan 2003 (the Management Plan)* provides that AFMA must determine amounts and percentages for sections 22, 22A and 23 for each quota species for the fishing year, no later than 31 March, immediately before the commencement of the fishing year. These provisions concern the calculation of undercatch and overcatch.

Prior to making this Instrument, AFMA met the requirements of paragraphs 24(3)(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 amounts and percentages for each quota species in relation to undercatch and overcatch for the 2024-25 fishing year. Undercatch and overcatch provides for 'carry over' or 'carry under' of quota between fishing years thereby allowing fishers the flexibility to catch a certain amount of fish over or under their quota, and debit or credit this to or from their next year's fishing quota.

Background

The Southern and Eastern Scalefish and Shark Fishery (**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 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 Total Allowable Catch (TAC) limits set under the Act, pursuant to the Management Plan, and in accordance with the Commonwealth Fisheries

Harvest Strategy Policy¹ and the specific Southern and Eastern Scalefish and Shark Fishery Harvest Strategy Framework (HSF)². 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.

Consultation

Subsection 24(3) of the Management Plan provides that, in determining an amount or percentage for a quota species for a fishing year, AFMA must consult with any relevant management advisory committee (MAC) and have regard to any view expressed in that consultation (paragraph 24(3)(a)); take into account advice from the relevant resource assessment group (RAG) about the stock status of a quota species (paragraph 24(3)(b)); and must take into account the precautionary principle (paragraph 24(3)(c)). AFMA may also consider the views (if any) of any interested person (paragraph 24(3)(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* (Administration Act)).

RAGs provide advice and recommendations to MACs, AFMA management, the AFMA Commission and the AFMA Research Committee, on the status of fish stocks, substocks, species (target and non-target), fishery economics and on the impact of fishing on the marine environment. The Southern and Eastern Scalefish and Shark Fishery RAG (SESSFRAG) is the key research and scientific committee for management of the Southern and Eastern Scalefish and Shark Fishery (SESSF). The group reviews the previous year's assessments for quota species, general research priorities for the fishery and provides fishery-wide advice. The group provides oversight and recommendations to the South East RAG (SERAG), SharkRAG and the Great Australian Bight RAG (GABRAG). Industry, fisheries scientists and economists are represented on SESSFRAG, SERAG, SharkRAG and GABRAG.

These groups provide general recommendations on fishery related research and recommended biological catches for the following species:

- SERAG – alfonsino, blue-eye trevella, blue grenadier, blue warehou, deepwater sharks, gemfish (east/west), jackass morwong, John dory, mirror dory, ocean perch, orange roughy (all zones except Albany/ Esperance), pink ling, redfish, ribaldo, royal red prawn, oreo (basket and smooth cascade/ non cascade), school whiting, silver trevally, silver warehou and tiger flathead.
- SharkRAG – elephantfish, gummy shark, saw shark and school shark.
- GABRAG – Bight redfish, deepwater flathead and orange roughy (Albany/ Esperance).

¹ Commonwealth Fisheries Harvest Strategy means the document titled “Commonwealth Fisheries Harvest Strategy Policy” published by then Department of Agriculture and Water Resources, now the Department of Agriculture, Fisheries, and Forestry in 2018. Note: the Commonwealth Fisheries Harvest Strategy could in 2024 be viewed on the Department’s website https://www.agriculture.gov.au/agriculture-land/fisheries/domestic/harvest_strategy_policy

² Southern and Eastern Scalefish and Shark Fishery Harvest Strategy Framework means the document titled “Harvest Strategy Framework for the Southern and Eastern Scalefish and Shark Fishery” published by the Authority in 2009 and last revised in 2021. Note: the Harvest Strategy Framework for the Southern and Eastern Scalefish and Shark Fishery could in 2024 be viewed on the Authority’s website <https://www.afma.gov.au/sites/default/files/2023-02/Southern%20and%20Eastern%20Scalefish%20and%20Shark%20Fishery%20Harvest%20Strategy%20%28amended%202021%29.pdf>

MACs provide management advice to AFMA on the scientific and economic status of fish stocks, substocks, species (target and non-target species) and the impacts of fishing on the marine environment. Membership generally consists of industry, economists, conservationists, state governments, recreational fishers and other interested groups.

The South East MAC (**SEMAC**) is the overarching committee that provides management advice to AFMA for the SESSF (excluding the Great Australian Bight Trawl Sector (**GABTS**)); Small Pelagic Fishery (**SPF**) and the Southern Squid Jig Fishery (**SSJF**). SEMAC receives advice from SERAG, SharkRAG, SESSFRAG, the Small Pelagic Fishery Resource Assessment Group (**SPFRAG**) and the Southern Squid Jig Fishery Resource Assessment Group (**SquidRAG**).

The Great Australian Bight MAC (**GABMAC**) provides management advice to AFMA for the GABTS and receives scientific advice from GABRAG.

Prior to making this Instrument, AFMA consulted with SERAG on 26-27 September and 2-3 November 2023, SharkRAG on 10-11 October and 4 December 2023, GABRAG on 17 October and 22 November 2023, GABMAC on 30 November 2023 and SEMAC on 6-7 February 2024.

First, a series of species stock assessments were considered and advised upon for the SESSF quota species listed in the Instrument at RAG meetings. The stock assessments are based on the HSF and provide for a recommended biological catch (**RBC**). The RBC provides the best scientific advice on what the total mortality should be for each species or stock, taking into account fishing and natural mortality.

Once the RAGs provided advice on RBCs for the Fishery quota species, AFMA translated the RBCs into proposed TACs. The TAC represents the recommended Commonwealth commercial catch for each species or stock, taking into account the expected mortality from incidental catch, discards, and landings in other jurisdictions from the RBC, and applying decision rules contained in the SESSF HSF, including discount factors to account for uncertainty in assessment outputs.

Advice from the RAGs was then considered by the SEMAC and the GABMAC. SEMAC and GABMAC both supported determining the TACs for the Fishery quota species as well as undercatch and overcatch percentages and determined amounts, which provide for 'carry over' or 'carry under' of quota between fishing years.

Recommendations from the relevant meetings of the RAGs and MACs, and species summaries were provided to the AFMA Commission in making the Instrument.

Impact Analysis

The Office of Impact Analysis (**OIA**) does not require an Impact Analysis for this determination consistent with the carve out arrangement with AFMA for instruments of a minor or machinery nature and which specifically refers to the setting undercatch and overcatch provisions in a fishery (OIA reference 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 (Overcatch and Undercatch) Determination 2024*.

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 2025.

Section 4 Provides that the authority to make the Instrument is subsection 24(1) of the Management Plan for the purpose of paragraph 17(6)(aa) of the Act.

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.

Section 6 This section determines the percentage of overcatch for the purpose of sections 22 and 22A of the Management Plan, the percentage of undercatch for the purpose of section 23 of the Management Plan, and determines the determined amount for the purpose of section 22A of the Management Plan, for each quota species across the entire area of the fishery for the 2024-25 fishing year, commencing on 1 May 2024 and ending on 30 April 2025.

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 (Overcatch and Undercatch) Determination 2024

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

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The Instrument determines the amounts and percentages for each quota species in relation to undercatch and overcatch for the 2024-25 fishing year. Undercatch and overcatch provides for 'carry over' or 'carry under' of quota between fishing years thereby allowing fishers the flexibility to catch a certain amount of fish over or under their quota, and debit or credit this to or from the next fishing year's fishing quota.

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.