

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) Determination 2024

The *Southern and Eastern Scalefish and Shark Fishery (Total Allowable Catch for Non-Quota Species) 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 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 non-quota species for the 2024-25 fishing year in the Southern and Eastern Scalefish and Shark Fishery (**the Fishery**).

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 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 Policy¹ and the specific Southern and Eastern Scalefish and Shark Fishery Harvest Strategy Framework (**SESSF 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. Boarfish and orange roughy in the East Coast Deepwater Trawl (**ECDWT**) sector are two of the remaining species for which non-quota TACs are set (orange roughy in the eastern, southern and western zones, as defined in Part 3 of Schedule 1 of the Management Plan, are quota species and subject to the *Southern and Eastern Scalefish and Shark Fishery (Total Allowable Catch for Quota Species) Determination 2024*). The non-quota TACs for these two species act as catch limits with the main management strategy being to limit targeting of boarfish and orange roughy in this sector. If catches exceed the non-quota TACs for the fishing year, the ECDWT sector will be closed to fishing.

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*).

RAGs provide advice and recommendations to management advisory committees, 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.

Prior to making this Instrument, AFMA consulted with the South East Resource Assessment Group (**SERAG**) on 26-27 September and 2-3 November 2023 and the South East Management Advisory Committee (**SEMAC**) on 6-7 February 2024 which supported the non-quota TACs outlined in the Instrument. Recommendations from

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>

the relevant meetings of the RAG and MAC, and species summaries were provided to the AFMA Commission in making the Instrument.

SERAG is the research and scientific committee which contributes to the management of the ECDWT sector and provides advice to SEMAC and the AFMA Commission. Industry, fisheries scientists and economists are represented on SERAG.

SEMAC is an overarching committee that provides management advice to AFMA for the Fishery, the Small Pelagic Fishery and the Southern Squid Jig Fishery. SEMAC receives advice from SERAG and uses such advice to inform its recommendations. Similar to SERAG, industry, state government, research, recreational, environment and other interested groups are represented on SEMAC.

Impact Analysis

The Office of Impact Analysis (**OIA**) does not require an Impact Analysis for this instrument consistent with the carve out arrangement with AFMA for instruments of a minor or machinery nature and which specifically refers to the setting of a TAC 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 (Total Allowable Catch for Non-Quota Species) 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 subsections 15(1) and 15(3) 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.

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

- Section 6** Determines the TAC for each non-quota species in the ECDWT sector of the Fishery for the 2024-25 fishing year.

Subsection (1) provides that section 6 applies for the 2024-25 fishing year commencing on 1 May 2024 and ending on 30 April 2025. This is consistent with the definition of ‘fishing year’ provided in section 3 of the Management Plan.

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

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) 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

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).

The Instrument determines the TAC for non-quota species for the 2024-25 fishing year.

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.