

## 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 Quota Species) Determination 2024***

The *Southern and Eastern Scalefish and Shark Fishery (Total Allowable Catch for 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 11(1) of the *Southern and Eastern Scalefish and Shark Fishery Management Plan 2003* (**the Management Plan**) provides that AFMA must determine a Total Allowable Catch (**TAC**) for each quota species for a fishing year no later than 31 March immediately before the commencement of the fishing year.

Prior to making this Instrument, AFMA met the requirements of paragraphs 12(a) to (c) 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 each 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 quota species under subsection 11(1) of the Management Plan, AFMA must have regard to reference points for the species that AFMA has determined as appropriate for maintaining ecologically viable stocks of these species under section 9 of the Management Plan (subsection 11(2)). AFMA may determine specific TACs for a quota species for particular parts of the area of the fishery (subsection 11(3)). Under subsection 11(4), the determination of a TAC under subsection 11(1) must specify the TAC expressed in whole weight or a specified other weight and must specify the particular parts of the fishery 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 Policy<sup>1</sup> and the specific Southern and Eastern Scalefish and Shark Fishery (SESSF) Harvest Strategy Framework (SESSF HSF)<sup>2</sup>. 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

Section 12 of the Management Plan provides that, in determining a TAC 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 12(a)); and take into account advice from the relevant resource assessment group (RAG) about the stock status of a quota species (paragraph 12(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 12(c)). AFMA may also consider the views of any other interested person (paragraph 12(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. SESSFRAG is the key research and scientific committee for management of the 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

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<sup>1</sup> 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](https://www.agriculture.gov.au/agriculture-land/fisheries/domestic/harvest_strategy_policy)

<sup>2</sup> 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>

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)

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 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 at RAG meetings for the Fishery quota species listed in the Instrument. The stock assessments are based on the SESSF 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, primarily taking into account fishing and natural mortality.

Once the RAGs provided advice on the 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, and applying decision rules contained in the SESSF HSF, including discount factors to account for uncertainty in assessment outputs.

Advice from the RAGs and proposed TACs were then considered by SEMAC and GABMAC. SEMAC and GABMAC discussed the TAC recommendations, as well as undercatch and overcatch percentages and determined amounts, which provide for ‘carry over’ or ‘carry under’ of quota between fishing years. SEMAC and GABMAC both supported determining the TACs for the Fishery quota species as prescribed in the Instrument, with the exception of school shark, deepwater flathead and mirror dory. For these species, in making its decision the AFMA Commission considered:

- Regarding school shark, a minor adjustment to the TAC recommended by SEMAC to reflect the reduction in school shark discards expected from the decision to reduce the associated gummy shark TAC.
- Regarding deepwater flathead, that recruitment has been below average for the majority of last ten years and determined a lower TAC than that recommended by GABRAG and GABMAC.
- Regarding mirror dory, application of the large change limiting rule to TACs as outlined in the SESSF HSF and determined a lower TAC than that recommended by SERAG and SEMAC, consistent with the HSF.

Recommendations from the relevant meetings of the RAGs and MACs, species summaries and stakeholder submissions 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 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 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 subsection 11(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.

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

**Section 6** Determines the TAC for quota species of fish, as listed in the Management Plan, where the TAC applies to fish taken across the whole area of the Fishery (as is described as the ‘area of the fishery’ in Part 1 of Schedule 1 to the Management Plan).

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 23 quota species of fish listed in the table. The TAC for 19 of these quota species is determined on the basis of whole weight of fish. The TAC for three species is determined on the basis of ‘trunked weight’ and the TAC for elephant fish is determined on the basis of the weight of those fish ‘trunked, belly flaps removed’.

**Section 7** Determines the TAC for quota species of fish, as listed in the Management Plan, where the TAC applies to fish taken in a part of the area of the Fishery as is permitted under subsection 11(3) of the Management Plan.

Subsection (1) provides that section 7 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:

- deepwater shark, basket, on the basis of trunked weight within the gemfish and deepwater shark eastern zone (item 1) and within the gemfish and deepwater shark western zone (item 2);
- gemfish on the basis of whole weight within the gemfish and deepwater shark eastern zone (item 3) and the gemfish and deepwater shark western zone (item 4);
- orange roughy on the basis of whole weight within the GAB Albany zone and GAB Esperance zone (item 5), the Cascade Plateau zone (item 6), the orange roughy eastern zone (item 7), the orange roughy southern zone (item 8), and the orange roughy western zone (item 9); and
- smooth oreo dory on the basis of whole weight within the Cascade Plateau zone (item 10) and areas of the fishery other than the Cascade Plateau zone (item 11).

**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 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 11 of the *Southern and Eastern Scalefish and Shark Fishery Management Plan 2003* (the Management Plan) provides that AFMA must, no later than 31 March, immediately before the commencement of a fishing year, determine a Total Allowable Catch (TAC) for each quota species for the fishing year. In determining a TAC for a quota species or a quota species in a particular area of the fishery, AFMA must have regard to reference points for the species that AFMA has determined as appropriate for maintaining ecologically viable stocks of these species under section 9 of the Management Plan. The determination of a TAC must specify the TAC expressed in whole weight or a specified other weight and must specify the particular parts of the fishery to which the TAC applies.

Section 12 of the Management Plan provides that, in determining a TAC for a quota species for a fishing year, AFMA must consult with any relevant management advisory committee and have regard to any view expressed in that consultation (paragraph 12(a)); and take into account advice from the relevant resource assessment group about the stock status of a quota species (paragraph 12(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 12(c)). AFMA may also consider the views of any other interested person (paragraph 12(d)).

The Instrument determines the TAC for each 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.