

EXPLANATORY STATEMENT

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 2024

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) 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 and the AFMA Commission 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 2024* (**the Amendment Direction**) is made under subsection 41A(3) of the Management Act and varies the Principal Direction by updating two (2) existing scheduled closures (Schedules 42 and 43) to trawl methods in the Commonwealth South East Trawl Sector of the Southern and Eastern Scalefish and Shark Fishery.

The closure amendments update the boundaries of the scheduled closures to reduce the closure areas on the eastern boundary to align more closely with the 210 metre isobath.

Pursuant to subsection 41A(5) of the Management Act, the Amendment Direction is a legislative instrument for the purposes of the *Legislation Act 2003* (**the Legislation Act**).

Objectives

The Amendment Direction amends the Principal Direction by amending two scheduled closures applicable to trawl methods within the Commonwealth South East Trawl Sector (CTS) of the SESSF. The closures serve to protect two at-risk rebuilding species caught as bycatch (Eastern Jackass Morwong and John Dory) in the CTS. The rebuilding-species are primarily found shallower than the 210 metre isobath and are infrequently caught as bycatch deeper than 210 metres. The amendment was proposed by the South East Trawl Fishing Industry Association (SETFIA) to update the closure boundary to align more closely with the 210 metre isobath. The objective of updating the trawl closure boundaries is to increase the fishing area within the CTS while still maintaining effective protection for the rebuilding species.

Background on the Fisheries

The SESSF covers the area of waters from approximately 80 nautical miles off the coast near K'gari (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 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.

Closures in the SESSF serve to place restrictions on effort to protect fish spawning grounds, minimise impact on deepwater fish species, facilitate the recovery of certain species and protect threatened and endangered species.

Consultation

AFMA consulted with the industry body, SETFIA, regarding updating the two trawl closure areas and potential impacts on industry. AFMA consulted with the Australian Bureau of Resource Economics and Science (ABARES) on catch rates and economic value within the scheduled closures. After considering the recent structural adjustment, recent catch rates and the ABARES' analyses, AFMA considers that modifying the two closure boundaries is unlikely to result in additional catch that would exceed the level required to enable rebuilding of Jackass Morwong according to the projected catch scenarios (in line with the Harvest Strategy Policy).

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 and the AFMA Commission prior to making the Amendment Direction.

Management Advisory Committees including SEMAC are established under section 54 of the *Fisheries Administration Act 1991*. SEMAC comprises an independent Chair, the AFMA manager, scientific members, an environment conservation member, industry members, a recreational fishing member and an economics member. SEMAC is the overarching committee that provides management advice to AFMA on the SESSF. SEMAC considered the proposal at its meeting on 24 April 2024 and supports the making of the Amendment Direction.

This is consistent with AFMA's objective to maximise the net economic returns to the Australian community from the management of Australian fisheries.

Impact Analysis

The Office of Impact Analysis does not require an Impact Analysis 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*" (OIA23 - 06107).

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**.

ATTACHMENT A

Details of the Fisheries Management (Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery Closures) Amendment Direction No. 1 2024

- Section 1*** Provides that the name of the Direction is the *Fisheries Management (Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery Closures) Amendment Direction No. 1 2024*.
- Section 2*** Provides that the Direction commences the day after the instrument is registered.
- Section 3*** Provides that the Direction is made under subsection 41A(3) of the Act.
- Section 4*** Provides that each instrument that is specified in a schedule to the instrument is amended or repealed as set out in the Schedule.
- Schedule 1*** Schedule 1 outlines the amendments to the Principal Direction.
- Clause 1*** Repeals entire Schedule 42 and substitutes with a new schedule. The new Schedule provides the new closures boundaries for the Flounder/Kingfisher Trawl Closure. The Flounder/Kingfisher Trawl Closure area outlined in the Direction.
- Clause 2*** Repeals entire Schedule 43 and substitutes with a new schedule. The new Schedule provides the new closures boundaries for the Babel Island Trawl Closure. The Babel Island Trawl Closure area outlined in the Direction.

ATTACHMENT B

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 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 41A(2) of the *Fisheries Management Act 1991* 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 2024* amends the *Fisheries Management (Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery Closures) Direction 2021* by updating two (2) existing scheduled closures (Schedules 42 and 43) to trawl methods in the Commonwealth South East Trawl Sector of the Southern and Eastern Scalefish and Shark Fishery.

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.