

## EXPLANATORY STATEMENT

**Issued by the Authority of the Australian Fisheries Management Authority**

*Fisheries Management Act 1991*

### **Fisheries Management Legislation Amendment (Minor Updates to Management Plans) Instrument 2024**

Subsection 17(1) of the *Fisheries Management Act 1991* (**the Act**) provides that the Australian Fisheries Management Authority (**AFMA**) is to determine plans of management for all fisheries.

Subsection 20(1) of the Act provides that AFMA may at any time amend a plan of management.

Sections 17, 18 and 19 of the Act apply in relation to an amendment of a plan of management in the same way as they apply to a plan of management prepared under section 17 of the Act (sub section 20(5) of the Act).

However, subsection 20(2), subsections 17(1B) to (4), and sections 18 and 19 of the Act do not apply to an amendment of a plan of management that, amongst other things, merely changes a matter in the plan to make the plan consistent with the Act or another Act, or the *Fisheries Management Regulations 2019* (**2019 Regulations**) (paragraph 20(6)(c) of the Act).

AFMA is established under section 5 of the *Fisheries Administration Act 1991* (**FA Act**). Under subsection 10B(2) of the FA Act, the Commission is responsible for performing and exercising the domestic fisheries management functions and powers of the Authority.

AFMA has determined the *Fisheries Management Legislation Amendment (Minor Updates to Management Plans) Instrument 2024* (**the Instrument**) to make minor updates to the management plans determined by AFMA under section 17 of the Act.

The Instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

### **Management Plans**

The following management plans, determined by AFMA under section 17 of the Act, are amended by the Instrument:

- 1) *Bass Strait Central Zone Scallop Fishery Management Plan 2002*;
- 2) *Eastern Tuna and Billfish Fishery Management Plan 2010*;
- 3) *Heard Island and McDonald Islands Fishery Management Plan 2002*;
- 4) *Macquarie Island Toothfish Fishery Management Plan 2006*;
- 5) *Northern Prawn Fishery Management Plan 1995*;
- 6) *Small Pelagic Fishery Management Plan 2009*;
- 7) *Southern and Eastern Scalefish and Shark Fishery Management Plan 2003*;
- 8) *Southern Bluefin Tuna Fishery Management Plan 1995*;

- 9) *Southern Squid Jig Fishery Management Plan 2005*; and
- 10) *Western Tuna and Billfish Fishery Management Plan 2005*.

### **The Amendments**

On 14 October 2024, the Administrative Appeals Tribunal (AAT) will be replaced by the Administrative Review Tribunal (ART). The 3 Acts that establish the ART are now in force, namely:

- 1) *The Administrative Review Tribunal Act 2024*; and
- 2) *The Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024*; and
- 3) *The Administrative Review Tribunal (Consequential and Transitional Provisions No. 2) Act 2024*.

The Instrument makes consequential amendments to management plans, determined by AFMA under section 17 of the Act, to replace references to the AAT with references to the ART.

Further, the instrument makes minor and consequential amendments by correcting existing references in the management plans where references are made to the “*Fisheries Management Regulations 1992*” (**1992 Regulations**) (repealed) and substituting these references with “*Fisheries Management Regulations 2019*” (in force). This includes correcting the cross references in those provisions to reflect the correct provisions of Acts and Regulations. Finally, the Instrument corrects existing references in the management plans referring to ‘regulation’ or ‘clause’ to “section” to ensure the management plans align with legislative drafting standards.

The amendments are minor and technical in nature and do not impose or amend any existing fisheries management rules. Further, the amendments are consequential and mandatory, ensuring the AFMA’s Management Plans are up to date and consistent with other Acts and Regulations. The amendments fall within paragraph 20(6)(c) of the Act.

### **Consultation**

AFMA engaged with the Attorney General’s Department (AGD) and the Department of Agriculture, Fisheries and Forestry (DAFF) regarding the consequential amendments as a result of the replacement of the AAT with the new ART.

As the amendments to the management plans are pursuant to paragraph 20(6)(c) of the Act as set out above, consultation with the fishing industry is not considered necessary as these are consequential amendments to reflect the new ART arrangements. The other amendments are consequential, minor, and merely amend existing references (and cross-references) in the management plans to the 2019 Regulations and other Acts already in force.

In accordance with consultation under section 17 of the *Legislation Act 2003*, as the Instrument does not impose or amend any existing fisheries management rules, AFMA considers that engaging with AGD and DAFF regarding the amendments is appropriate consultation in these circumstances.

### **Impact Analysis**

The Office of Impact Analysis (**OIA**) was consulted in preparation of this instrument. The OIA has advised AFMA that a detailed impact analysis is not required under the Australian Government's Policy Impact Analysis Framework for this Instrument (Reference OIA24-08027).

**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 **Attachment B**.

Details of the Instrument are set out at **Attachment A**.

## Details of the Instrument

**Section 1. Name** - This instrument is the *Fisheries Management Legislation Amendment (Minor Updates to Management Plans) Instrument 2024*.

**Section 2. Commencement** - The whole of this instrument commences on 14 October 2024.

**Section 3. Authority** - This instrument is made under section 20 of the *Fisheries Management Act 1991* and subsection 10B(2) of the *Fisheries Administration Act 1991*.

**Section 4. Schedules** - Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

## Schedule 1—Amendments

### *Bass Strait Central Zone Scallop Fishery Management Plan 2002*

#### **1 Section 3 (definition of identification code)**

This section is amended to reference the correct section of the 2019 Regulations as opposed to the now repealed 1992 Regulations.

#### **2 Subsection 15(2) (note 4)**

This subsection note is amended to omit “Administrative Appeals Tribunal”, and substitute “Administrative Review Tribunal”.

#### **3 Subsection 18(5) (note 2)**

This subsection note is amended to omit “Administrative Appeals Tribunal”, and substitute “Administrative Review Tribunal”.

#### **4 Subsection 22(2) (note 2)**

This subsection note is amended to omit “Fisheries Management Regulations 1992”, and substitute “Fisheries Management Regulations 2019”.

#### **5 Subsection 22(2) (note 3)**

This subsection note is amended to omit the reference to the repealed logbook and infringement provisions in the 1992 Regulations and substitutes the correct references, so the note references the logbook provisions in the Act and the infringement notice regime in the Regulatory Powers Act (as applied by section 98A of the Act).

### *Eastern Tuna and Billfish Fishery Management Plan 2010*

#### **6 Subsection 4.15(4) (note 1)**

This subsection note is amended to omit “Administrative Appeals Tribunal”, and substitute “Administrative Review Tribunal”.

#### ***Heard Island and McDonald Islands Fishery Management Plan 2002***

#### **7 Section 3 (definition of identification code)**

This section is amended to reference the correct section of the 2019 Regulations as opposed to the now repealed 1992 Regulations.

#### **8 Subsection 16(3)**

This subsection is amended to omit “this regulation”, and substitute “this section” to comply with drafting standards.

#### **9 Subsection 16(3) (note 4)**

This subsection note is amended to omit “Administrative Appeals Tribunal”, and substitute “Administrative Review Tribunal”.

#### **10 Subsection 18(5) (note 2)**

This subsection note is amended to omit “Administrative Appeals Tribunal”, and substitute “Administrative Review Tribunal”.

#### **11 Subsection 21(2) (note 4)**

This subsection note is amended to omit “Administrative Appeals Tribunal”, and substitute “Administrative Review Tribunal”.

#### **12 Section 30 (note 2)**

This section note is amended to correct the reference from the repealed 1992 Regulations to the 2019 Regulations.

#### **13 Section 30 (note 3)**

This subsection note is amended to omit the reference to the repealed logbook and infringement provisions in the 1992 Regulations and substitutes the correct references, so the note references the logbook provisions in the Act and the infringement notice regime in the Regulatory Powers Act (as applied by section 98A of the Act).

#### ***Macquarie Island Toothfish Fishery Management Plan 2006***

#### **14 Section 3 (definition of identification code)**

This section is amended to reference the correct section of the 2019 Regulations as opposed to the now repealed 1992 Regulations.

**15 Subsection 16(8) (note 4)**

This subsection note is amended to omit “Administrative Appeals Tribunal”, and substitute “Administrative Review Tribunal”.

**16 Subsection 18(4) (note 2)**

This subsection note is amended to omit “Administrative Appeals Tribunal”, and substitute “Administrative Review Tribunal”.

**17 Section 29 (note 2)**

This section note is amended to correct the reference from the repealed 1992 Regulations to the 2019 Regulations.

**18 Section 29 (note 3)**

This subsection note is amended to omit the reference to the repealed logbook and infringement provisions in the 1992 Regulations and substitutes the correct references, so the note references the logbook provisions in the Act and the infringement notice regime in the Regulatory Powers Act (as applied by section 98A of the Act).

***Northern Prawn Fishery Management Plan 1995***

**19 Section 30 (heading)**

This section heading is amended to omit “Administrative Appeals Tribunal”, and substitute “Administrative Review Tribunal”.

**20 Subsections 32(2) and (3)**

These subsections are amended to omit “this clause”, and substitute “this section” to comply with drafting standards.

***Small Pelagic Fishery Management Plan 2009***

**21 Section 3 (definition of Regulations)**

This section is amended to repeal the definition to the 1992 Regulations as it is no longer in force.

**22 Subsection 31(2) (note 4)**

This subsection note is amended to omit “Administrative Appeals Tribunal”, and substitute “Administrative Review Tribunal”.

**23 Subsection 42(3) (note)**

This subsection note is amended to omit “The SPF Regulations prescribe details that must be entered in the Register for a nominated boat.” as the *Fisheries Management (Small Pelagic Fishery) Regulations 2010* (SPF Regulations) are repealed.

**24 Subsection 50(2) (note 4)**

This subsection note is amended to omit “regulations” and substitute “provisions of the *Fisheries Management Regulations 2019*”.

**25 Subsection 51(3)**

This subsection is amended to omit “subregulation” and substitute “subsection” to comply with drafting standards.

***Southern and Eastern Scalefish and Shark Fishery Management Plan 2003***

**26 Section 3 (definition of identification code)**

This section is amended to reference the correct section of the 2019 Regulations as opposed to the repealed 1992 Regulations.

**27 Subsection 20(9) (note 2)**

This subsection note is amended to omit the reference to the “*Fisheries Management Regulations 1992*”, and substitute the “*Fisheries Management Regulations 2019*”.

**28 Subsection 26(6) (note 4)**

This subsection note is amended to omit “Administrative Appeals Tribunal”, and substitute “Administrative Review Tribunal”.

**29 Subsection 29(5) (note 2)**

This subsection note is amended to omit “Administrative Appeals Tribunal”, and substitute “Administrative Review Tribunal”.

**30 Subsection 46(3) (note 3)**

This subsection note is amended to omit “*Fisheries Management Regulations 1992*”, and substitute “*Fisheries Management Regulations 2019*”.

**31 Subsection 53(2)**

This subsection is amended to omit “Division 10 of Part 3A of the *Fisheries Management Regulations 1992*”, and substitute “Division 6 of Part 7 of the *Fisheries Management Regulations 2019*”.

***Southern Bluefin Tuna Fishery Management Plan 1995***

**32 Clause 32 (heading)**

This clause heading is amended to omit “Administrative Appeals Tribunal”, and substitute “Administrative Review Tribunal”.

***Southern Squid Jig Fishery Management Plan 2005***

**33 Subsection 19(2) (note 4)**

This subsection note is amended to omit “Administrative Appeals Tribunal”, and substitute “Administrative Review Tribunal”.

**34 Section 30 (note 2)**

This section note is amended to omit “*Fisheries Management Regulations 1992*”, and substitute “*Fisheries Management Regulations 2019*”.

***Western Tuna and Billfish Fishery Management Plan 2005***

**35 Subsection 23(2) (note 4)**

Amend this subsection note to omit “Administrative Appeals Tribunal”, and substitute “Administrative Review Tribunal”.

**36 Division 4.2 of Part 4 (note 2 after the heading)**

Amend this Division note to omit “Administrative Appeals Tribunal”, and substitute “Administrative Review Tribunal”.

**37 Section 38 (note 2)**

Amend this section note to omit “*Fisheries Management Regulations 1992*”, and substitute “*Fisheries Management Regulations 2019*”.



## **Statement of Compatibility with Human Rights**

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

### **Fisheries Management Legislation Amendment (Minor Updates to Management Plans) Instrument 2024**

This disallowable 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 Disallowable Legislative Instrument**

The new Administrative Review Tribunal (**ART**) will commence on 14 October 2024, replacing the Administrative Appeals Tribunal (**AAT**). This Instrument amends, under section 20 of the *Fisheries Management Act 1991* and subsection 10B(2) of the *Fisheries Administration Act 1991* ten (10) plans of management made by AFMA under section 17 of the FM Act to replace references to the AAT with references to the ART, as well as making other minor and technical amendments.

The other minor and technical amendments correct existing references in the management plans where references are made to the “*Fisheries Management Regulations 1992*” (repealed) and substituting it with the “*Fisheries Management Regulations 2019*” (in force) and correct cross-references in the management plans referring to ‘regulation’ or ‘clause’ to “section”.

#### **Human rights implications**

As the legislative instrument is of a mechanical nature, it does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Instrument is compatible with human rights as it does not raise any human rights issues.