

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. 2 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 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. The *Fisheries Management (Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery Closures) Amendment Direction No. 2 2024* (**the Amendment Direction**) is made under subsection 41A(3) of the Management Act and it varies the Principal Direction by updating one (1) existing scheduled closure (Schedule 44) applicable to trawl methods in the Commonwealth South East Trawl Sector of the Southern and Eastern Scalefish and Shark Fishery.

The Amendment Direction updates the north-east corner boundary of the scheduled closure with a view to rectifying a minor error in the existing Principal Direction.

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

This is the fourth amendment direction to the Principal Direction. The objective of this Amendment Direction is to correct a minor error in the coordinates of the closure areas that was introduced by *the Fisheries Management (Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery Closures) Amendment Direction No. 1 2023*.

The Amendment Direction amends the Principal Direction by amending one scheduled closure applicable to trawl methods within the Commonwealth South East Trawl Sector (CTS) of the SESSF. The closure is required to protect two at-risk rebuilding species caught as bycatch (Eastern Jackass Morwong and John Dory) in the CTS.

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

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 prior to making the *Fisheries Management (Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery Closures) Amendment Direction No. 1 2023* to initially implement the closure.

SEMAC is the overarching committee that provides management advice to AFMA on the SESSF and includes industry members. SEMAC supported the making of *Fisheries Management (Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery Closures) Amendment Direction No. 1 2023*.

Management Advisory Committees including SEMAC are established under section 54 of the *Fisheries Administration Act 1991*. Prior to consulting with SEMAC, AFMA consulted with all concession holders within the CTS regarding closure details and potential impacts on industry. AFMA refined the shape and size of the closures over six months of consultation with industry to limit the impact on the Gross Value Production (GVP) of the CTS while maintaining conservation benefits for the at-risk species. This is consistent with AFMA's objective to maximise the net economic returns to the Australian community from the management of Australian fisheries.

SEMAC has not been consulted on the making of this Amendment Direction as the purpose is to correct a coordinate placement to ensure that the Principal Direction is an accurate reflection of the intended closure, for which SEMAC was consulted on in 2022.

Impact Analysis

The Office of Impact Analysis does not require a detailed impact analysis for this instrument, consistent with the carve-out agreement in place to cover certain minor regulatory changes made by AFMA including “*setting fishing boundaries; 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. 2 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. 2 2024*.
- Section 2*** Provides that the Direction commences 7 days 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 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*** Schedule 1 outlines the amendments to the Principal Direction.
- Clause 1*** Repeals entire Schedule 44 and substitutes with a new schedule. The new Schedule provides the corrected coordinates for the boundary of the South East Tasman Trawl Closure.

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. 2 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 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. 2 2024* amends the *Fisheries Management (Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery Closures) Direction 2021* by updating one (1) existing scheduled closure (Schedules 44) applicable 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.