EXPLANATORY STATEMENT

Fisheries Management Act 1991
Bass Strait Central Zone Scallop Fishery Management Plan 2002
Bass Strait Central Zone Scallop Fishery (Closures) Direction No. 2 2009

The Bass Strait Central Zone Scallop Fishery (Closures) Direction No. 2 2009 (the Direction) is a legislative instrument for the purposes of the Legislative Instruments Act 2003.

Subsection 17(5A) of the Fisheries Management Act 1991 (the Act) provides that a plan of management made under the Act may provide for the Australian Fisheries Management Authority (AFMA) to direct that fishing is not to be engaged in the fishery, or a particular part of the fishery, during a particular period or periods. The subsection also requires that the directions be made after such consultations (if any) as are set out in the plan of management.

Subsection 23(1) of the Bass Strait Central Zone Scallop Fishery Management Plan 2002 (the Plan) provides that AFMA may direct that fishing is not to be engaged in the Bass Strait Central Zone Scallop Fishery (the Fishery), or a part of the Fishery, during a stated period.

Subsection 23(2) of the Plan provides that in giving directions, AFMA must ensure that the requirements (if any) set out in the Fisheries Management (Bass Strait Central Zone Scallop Fishery) Regulations 2002 (the Regulations) for the purposes of this subsection are met. There are currently no Regulations relevant to this subsection of the Plan.

The Direction sets the area of the Fishery that can be fished during the 2009 fishing season with the remainder of the Fishery closed to fishing. Under the Harvest Strategy for the Fishery, the entire Fishery area remains closed with an area opened that is commensurate with the quantity of scallops permitted to be taken under the Total Allowable Catch (TAC). Both the TAC and area of the Fishery to be open to fishing are consistent with the Harvest Strategy for the Fishery, which provides that the Fishery is to remain closed under a zero TAC unless surveys indicate that adequate biomass is available for harvest. A survey undertaken in late 2008 indicated that scallop stocks were sufficient to commence commercial fishing in 2009. The results of the survey were then applied to Harvest Strategy for the Fishery and additional stakeholder consultation also considered.

The Direction revokes Bass Strait Central Zone Scallop Fishery (Closures) Direction No. 1 2009 (the previous Direction) and increases the area that can be fished in the 2009 season by approximately 15 square nautical miles. This increase in area was necessary as the area open under the previous Direction was considered insufficient to yield the TAC at economically viable catch rates.

The Direction also defines two protected zones which are areas where high densities of scallop populations occur. Illegal fishing activities in these areas will impact on the abundance of scallops available in future seasons. Navigation through these areas is prohibited unless AFMA has given approval for a boat to navigate in the protected zones. If approval is granted, a boat must act in accordance with any instructions provided by AFMA.

Consultation

AFMA's management philosophy (as foreshadowed in its governing legislation) involves a partnership approach to the management of marine resources under its jurisdiction. Cooperation with relevant stakeholders, such as the fishing industry, government agencies,
the community and others with an interest in the sustainable management of the Commonwealth’s fisheries resources, is a vital part of this approach.

This approach provides opportunities for stakeholders to have input into the management process through, in the case of the Fishery, the Bass Strait Central Zone Scallop Fishery Resource Assessment Group (ScallopRAG) and the Bass Strait Central Zone Scallop Fishery Management Advisory Committee (ScallopMAC).

Subsection 23(3) of the Plan provides that, before giving a direction, AFMA must consult ScallopMAC and consider their views. AFMA may also consider the views of other interested persons. AFMA consulted with ScallopMAC and ScallopRAG members at meetings on 4 and 9 September 2009 respectively where there was unanimous support for an increase in the area that can be fished in the 2009 season.

**Regulation Impact Statement**

The Office of Best Practice Regulation (OBPR) advised that a Regulation Impact Statement was not required for Direction (OBPR ID 10677).

Details of the Direction are set out below:

**Clause 1** Provides for the Direction to be cited as BSCZSF Direction No. 2 2009.

**Clause 2** Provides for the commencement of the Direction.

**Clause 3** Revokes BSCZSF (Closures) Direction No. 1 2009.

**Clause 4** States to whom the Direction applies.

**Clause 5** States the period of application of the Direction.

**Clause 6** Provides for the interpretation of the Direction. In particular, the clause provides a definition for the term “boat” and that terms used in the Direction that are also used in the Act and the Plan have the same meaning in the Direction as in the Act and the Plan. The clause also states that the coordinates contained in the Direction are in terms of the Geocentric Datum of Australia 1994.

**Clause 7** Prohibits fishing in the area of the Fishery for the period of the Direction.

**Clause 8** Provides exemption for a prescribed area of the Fishery from the prohibition of fishing provision in Clause 7.

**Clause 9** Provides exemption for navigation in the area of the Fishery except for two areas (referred to as protected zones) prescribed in Clauses 10 and 11.

**Clause 10** Prohibits navigation in a prescribed area (referred to as the Western Protected Zone).

**Clause 11** Prohibits navigation in a prescribed area (referred to as the Eastern Protected Zone).

**Clause 12** Provides that the prohibition of navigation in the areas prescribed in Clauses 7, 10 and 11 may not apply under certain circumstances.