EXPLANATORY STATEMENT

LEGISLATIVE INSTRUMENT

Issued by the Authority of the
Australian Fisheries Management Authority

Fisheries Management Act 1991

Bass Strait Central Zone Scallop Fishery (Closures) Direction No. 2 2011

The Direction is a legislative instrument for the purposes of the Legislative Instruments Act 2003.

Subsection 41A(2) of the Fisheries Management Act 1991 (the Management Act) provides, inter alia, that the Australian Fisheries Management Authority (AFMA) may, after such consultation as set out in s41A(2), 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 Direction sets out to close the Bass Strait Central Zone Scallop Fishery to fishing and only leaves a certain area of the fishery open to fishing.

The opening of the 2011 fishing season in the Bass Strait Central Zone Scallop Fishery (BSCZSF) was delayed due to insufficient data being collected during the annual eastern region survey in November 2010. A further survey was conducted in January 2011 which identified two potentially viable areas for fishing – viable area 10 and the area known as Fishing Area X which is a subset of the area fished in the 2010 season. The harvest strategy states that where two viable areas are available, the smaller of the areas should be opened, but consideration should be given to the life history stage of the scallops in each area. The Scallop Resource Assessment Group (ScallopRAG) recommended that Fishing Area X should be opened to fishing in 2011. The Scallop Management Advisory Committee (ScallopMAC) endorsed the recommendation.

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 41A(2) of the Management Act provides that, before giving a direction, AFMA must consult with the relevant management advisory committee for the fishery, which in this case is the ScallopMAC.

AFMA consulted with ScallopRAG regarding the opening of a new fishing area at meetings on 19-20 January 2011. ScallopRAG recommended not setting a Total Allowable Catch (TAC) until further data had been collected. After further scientific data was collected, AFMA again consulted ScallopRAG and ScallopMAC. ScallopRAG considered the TAC and areas to be opened for fishing at their meeting of 11 March 2011. ScallopMAC considered the TAC and areas to be opened to fishing at their meeting of 4 April 2011, and endorsed the advice put forward by ScallopRAG.

ScallopRAG and ScallopMAC recommended the following TACs:

i) Commercial Scallop research catch allowance – 150 tonnes;

ii) Commercial Scallops – 2,000 tonnes; and

iii) Doughboy Scallops – 100 tonnes.

The TACs for Commercial Scallops and Doughboy Scallops can only be fished in an area known as Fishing Area X. The Scallop research catch allowance can only be utilised under a research permit.

ScallopMAC also recommended no-navigational areas to protect traditional scallop beds. The whole of the fishery except Fishing Area X is closed by the Direction; however to protect no-navigation areas a further restriction is imposed by new conditions on all BSCZSF concessions prohibiting any navigation in those specified areas. This will be monitored by AFMA using the vessel monitoring systems which are compulsory for all boats.

AFMA is satisfied that the Direction is consistent with the objectives of the Plan; as well as with its obligation to pursue the objectives set out in section 3 of the Act, in particular the objective concerned with the sustainability of fisheries resources (paragraph 3(1)(b)).

The recommended area to be opened to fishing is designed to implement the most efficient and cost-effective management for the BSCZSF. Opening a viable area that has recently been impacted by fishing also allows a precautionary approach. The area to be opened to fishing for the 2011 season is also consistent with the Harvest Strategy for the fishery.

**Regulation Impact Statement**

The Office of Best Practice Regulation (OBPR) advised that a Regulation Impact Statement was not required for this Direction (OBPR ID 12533).

Details of the Direction are set out below:

*Clause 1* Provides for the Direction to be cited as Bass Strait Central Zone Scallop Fishery (Closures) Direction No.2 2011

*Clause 2* Provides for the commencement of the Direction.
| Clause 3 | Specifies the period of application of the Direction. |
| Clause 4 | Specifies to whom the Direction applies. |
| Clause 5 | Provides for the definition of terms used in the Direction. |
| Clause 6 | Directs that fishing is not to be engaged in. |
| Clause 7 | Provides for an exemption to Clause 6. |
| Clause 8 | Provides that it is a condition of all fishing concessions to which this Direction applies that the holder, or a person acting on behalf of the holder, complies with this Direction. |
| Clause 9 | Revokes Bass Strait Central Zone Scallop Fishery (Closures) Direction No.1 2011. |