EXPLANATORY STATEMENT

Issued by the authority of the Australian Fisheries Management Authority

Fisheries Management Act 1991
Southern and Eastern Scalefish and Shark Fishery Management Plan 2003

Southern and Eastern Scalefish and Shark Fishery (Minimum Gear Requirements) Direction No. 1 2012

The Southern and Eastern Scalefish and Shark Fishery (Minimum Gear Requirements) Direction No. 1 2012 (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 subsection 41A(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 Fishery

The Southern and Eastern Scalefish and Shark Fishery (SESSF) covers the area of waters from approximately 80 nautical miles off the coast near 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. The SESSF operates in both Commonwealth and state waters under complex jurisdictional arrangements, due to different Offshore Constitutional Settlement arrangements with each state.

Management in the SESSF is mainly through output controls in the form of TAC limits set under the Commonwealth Harvest Strategy Policy and the specific SESSF Harvest Strategy Framework (HSF). Input controls used include a limit on the number of boats that operate in each sector due to a finite amount of fishing concessions authorising fishing in the fishery, as well as gear restrictions such as limits on mesh size and the amount of fishing gear that may be used.

Boarfish and Orange Roughy in the East Coast Deepwater Trawl (ECDWT) Sector are the only remaining species for which non-quota TACs are set (Orange Roughy in the eastern, southern and western zones, as defined in Part 3 of Schedule 1 of the Southern and Eastern Scalefish and Shark Fishery Management Plan 2003; are quota species and subject to the Southern and Eastern Scalefish and Shark Fishery Total Allowable Catch (Quota Species) Determination 2012). The non-quota TACs for these two species act as a trigger limit with the main management strategy being to limit targeting of Boarfish and Orange Roughy in this sector. If catches exceed the non-quota TACs for the season the ECDWT fishery sector will be closed.

The Direction

The Direction revokes and replaces the Southern and Eastern Scalefish and Shark Fishery (Minimum Gear Requirements) Direction 2010 (the Previous Direction). The Direction replicates the requirements of the Previous Direction for all sectors other than the Commonwealth Gillnet Sector where an amendment has been made allowing for the use of longer gillnets in waters other than South Australian waters.
The Direction is in pursuit of AFMA’s objectives and in particular the objective of ensuring that the exploitation of fisheries resources is conducted in accordance with the principles of ecologically sustainable development and has regard to the impact of fishing activities on non-target species. Further, the Direction implements measures required by the Ministerial Direction (S234, 20 December 2005) to the extent that it requires AFMA to implement measures to manage the broader environmental impacts of fishing, including minimising the levels of interactions with threatened or protected species under the *Environmental Protection and Biodiversity Conservation Act 1999*.

The Direction specifies minimum gear requirements for fishing within the Commonwealth South East Trawl Sector, East Coast Deepwater Trawl Sector, Commonwealth GAB Trawl Sector, Commonwealth Gillnet Sector, Commonwealth Scalefish Hook and Commonwealth Shark Hook Sectors (together the Gillnet Hook and Trap fishery) of the SESSF.

The gear requirements specified in the Direction will improve the selective properties of fishing gear used in the SESSF, and therefore, will result in significant reductions in bycatch of small and juvenile fish. This is expected to result in improvements over time in fish stocks, and in turn, to an increase in potential revenue from fishing.

**Consultation**

The gear requirements specified in the Direction are the result of past consultation with, and recommendations from, SESSF Management Advisory Committees including the South East Trawl Management Advisory Committee (SETMAC), the Gillnet Hook and Trap Management Advisory Committee (GHATMAC) and the Great Australian Bight Management Advisory Committee (GABMAC).

Before making the Direction, AFMA consulted with SEMAC and GABMAC in meetings held in 2012.

**Regulation Impact Statement**

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required for this Direction consistent with the agreement in place to cover all regulatory changes deemed to be of a minor or machinery nature.

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

AFMA assesses under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* that this legislative instrument is compatible with human rights. AFMA’s Statement of Compatibility is attached as a supporting document.
Details of the Direction are set out below:

Clause 1 Provides for the Direction to be cited as the Southern and Eastern Scalefish and Shark Fishery (Minimum Gear Requirements) Direction No. 1 2012.

Clause 2 Provides that the Direction commences on the day after registration on the Federal Register of Legislative Instruments.

Clause 3 Provides that the Direction ceases on 30 June 2013 unless earlier revoked.

Clause 4 Defines terms used in the Direction and provides that a term used in the Direction and in the Plan or the Act has the same meaning in the Direction as in the Plan or Act.

Clause 5 Provides that the Direction applies to a holder of fishing concession in the SESSF, and to a person acting on behalf of a holder.

 Clause 6 Specifies the minimum gear requirements for the Commonwealth South East Trawl Sector and the East Coast Deepwater Trawl Sector.

Clause 7 Specifies the minimum gear requirements for the Commonwealth GAB Trawl Sector.

Clause 8 Specifies the minimum gear requirements for the Commonwealth Gillnet Sector.

Clause 9 Specifies the minimum gear requirements for the Commonwealth Scalefish Hook Sector and the Commonwealth Shark Hook Sector.

Clause 10 Provides an exemption to Clauses 6 -9 enabling AFMA to authorise a person to use particular fishing gear, contrary to the requirements of the Direction, if this is warranted in the circumstances – by authorising the use of the gear as a condition attached to a boat SFR held by the person in the SESSF.

Clause 11 Provides for the revocation of the Southern and Eastern Scalefish and Shark Fishery (Minimum Gear Requirements) Direction 2010.