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. 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 (the Authority) 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.

Subsection 41A(2) also provides that, before the Authority issues a Direction, it must consult the management advisory committee for the fishery, the Bass Strait Central Zone Scallop Fishery Management Advisory Committee (ScallopMAC), about the content of the Direction unless the Direction is issued in circumstances of an emergency.

The Fishery

The Bass Strait Central Zone Scallop Fishery (the Fishery) lies in the Bass Strait above the State of Tasmania and extends from the Victoria/New South Wales border, typically outside 3 nautical miles, around southern Australia to the Victoria/South Australian border.

Management in the Fishery is through a combination of input and output controls in the form of individually transferable quotas with a Total Allowable Catch determined for each quota species for each fishing year. The main target species in the Fishery is the Commercial Scallop (Pecten fumatus). The Doughboy Scallop (Chlamys (Mimachlamys) asperrimus) is common throughout the Bass Strait however it is rarely retained. The target species are caught primarily for the domestic market.

The scallop resource’s naturally sporadic and fluctuating availability and intermittent recruitment make the concept of unfished biomass problematic. Commercial Scallops aggregate in sub-populations (beds) which have a commercially viable rate some years and not others. The aim of maintaining the fishery at a nominated target reference point is difficult to attain given the nature of the species. This is achieved through a harvest strategy for a fishery which contains measures for setting a total allowable catch and requires parts of the fishery to be closed to fishing to protect an area of spawning biomass.

The Direction

The Direction closes the Bass Strait Central Zone Scallop Fishery to fishing while allowing the Eastern Zone of the fishery to remain open to fishing for a specified amount of time.

The area open to fishing has been identified to contain known viable fishing areas through industry surveys. A viable area is an area where scallop density is high enough to enable commercial harvesting of the area. Opening the Eastern Zone will also provide operators the opportunity to search new areas and provide useful and reliable data to determine the status of the scallop resource.

The Direction revokes and replaces the Bass Strait Central Zone Scallop Fishery (Closures) Direction No.3 2011.

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

This legislative instrument does not engage any of the applicable rights or freedoms recognised or declared in the international instruments listed in section 3 of the Human Rights (Parliamentary Scrutiny) Act 2011. Accordingly, in the Authority’s assessment, this legislative instrument is compatible with human rights.

Consultation

Subsection 41A(2) of the Management Act provides that, before giving a direction, the Authority must consult the ScallopMAC and consider their views. The Authority may also consider the views of other interested persons.

The Authority consulted with the Scallop Resource Assessment Group (ScallopRAG) regarding opening a new fishing area for the 2012 fishing year at a meeting on 6 July 2012. ScallopRAG recommended the area to be opened to fishing for the 2012 fishing season. The Authority consulted ScallopMAC who endorsed the advice put forward by ScallopRAG out-of-session during July 2012. The Direction reflects the recommendations from these meetings.

The Authority is satisfied that the Direction is consistent with the objectives of the Bass Strait Central Zone Scallop Fishery Management Plan 2002; as well as with its obligation to pursue the objectives set out in Section 3 of the Management Act, in particular the objective concerned with the sustainability of fisheries resources (paragraph 3(1)(b)).

Details of the Direction are set out below:

Clause 1 Provides for the Direction to be cited as the Bass Strait Central Zone Scallop Fishery (Closures) Direction No.1 2012.

Clause 2 Provides that the Direction commences on 22 August 2012.

Clause 3 Provides that the Direction ceases on 31 December 2013 unless earlier revoked.

Clause 4 Provides that a term used in the Direction and in the Plan or Act has the same meaning in the Determination as in the Plan or Act.

Clause 5 States to whom the Direction applies.

Clause 6 Prohibits fishing in the Bass Strait Central Zone Scallop Fishery.

Clause 7 Provides for an exemption to the prohibition in clause 6.

Clause 8 Provides for the revocation of Bass Strait Central Zone Scallop Fishery (Closures) Direction No.3 2011.