

## **EXPLANATORY STATEMENT**

### **Issued by the Authority of the Australian Fisheries Management Authority**

*Fisheries Management Act 1991*

Southern and Eastern Scalefish and Shark Fishery

### **Southern and Eastern Scalefish and Shark Fishery (Closures) Direction No. 7 2013**

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 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 (the fishery) 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 fishery encompasses almost half of the waters within the Australian Fishing Zone. The fishery operates in both Commonwealth and state waters under complex jurisdictional arrangements, due to different Offshore Constitutional Settlement arrangements with each state.

The fishery is managed 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 limits set under the Commonwealth Fisheries Harvest Strategy Policy and the specific fishery Harvest Strategy Framework. Input controls used include a limit on the number of boats that operate in each sector, as well as gear restrictions such as limits on mesh size and the amount of fishing gear that may be used.

#### **Background to the Direction**

In June 2010 the Authority put in place the Australian Sea Lion Management Strategy (the Strategy). The Strategy was developed to reduce and monitor the interactions between Australian sea lions and gillnets used by Commonwealth shark fishers in the area of the fishery off South Australia. Australian sea lions are classified as a threatened (vulnerable) species under the *Environment Protection and Biodiversity Conservation Act 1999*.

The Strategy followed a report by the South Australian Research and Development Institute that assessed that high levels of sea lion by-catch mortality were limiting the recovery of most colonies in South Australia. Accordingly, the purpose of the

Strategy was to significantly reduce the impact of gillnet fishing on Australian sea lions so as to enable colonies to recovery.

The measures implemented under the Strategy included formal closures around more than 40 sea lions in South Australian waters; the setting of sea lion mortality limits that would trigger additional closures if unacceptable levels of ongoing Australian sea lion interaction occurred; and a review of gillnet fishing practices. The Strategy included a commitment by South Australia industry representatives to develop a Gillnetting Code of Conduct, with assistance from the Authority and the Commonwealth Fisheries Association within three months of the Strategy being implemented. The Strategy also noted that observer coverage (being the proportion of boats carrying an AFMA observer) had been significantly increased in 2009, and was further increased under the Strategy. There were two quarterly reviews of the strategy, in which industry members and other stakeholders participated, and the South East Management Advisory Committee (the Committee) appointed under section 56 of the *Fisheries Administration Act 1991* was briefed on the results of the reviews.

Despite those measures, the Authority assessed on the basis of data received that some gillnet boats had not been accurately reporting interactions with protected species, including Australian sea lions, and that the actual mortality of sea lions and other protected species (such as birds and dolphins) was likely to be significantly greater than the mortality that was being reported. In addition external scientific reviews questioned the effectiveness of the Strategy in protecting sea lions and monitoring the fishery's interactions with them.

The Authority considered that urgent, short term, action was required to protect these species. It therefore made the *Fisheries Management (Southern and Eastern Scalefish and Shark Fishery Management Plan 2003) Temporary Order 2011* (the ASL temporary order), which commenced on 1 May 2011. The ASL temporary order closed additional areas of the fishery to fishing by gillnets, allowed the use of hooks by affected eligible concession holders in the closed areas and the Australian Sea Lion Management Zone and required mandatory monitoring through onboard observers or cameras if fishing was undertaken by gillnets in the areas of waters adjacent to the closed areas. Two additional policy measures were also implemented: bycatch triggers under the Australian Sea Lion management Strategy were reduced and 10 percent observer coverage was instituted across the gillnet hook and trap fishery in areas other than the Australian Sea Lion Management Zone.

The ASL temporary order expired on 31 October 2011. The Authority's Commission determined that a continuation of measures to minimise interactions with Australian sea lions was required and the *Southern and Eastern Scalefish and Shark Fishery (Closures) Direction No. 2 2011* was registered. The Direction came into force on 1 November 2011, to replace the measures implemented by the ASL temporary order. The Direction closed the same areas to gillnet fishing which were closed under the ASL temporary order.

The *Southern and Eastern Scalefish and Shark Fishery (Closures) Direction No. 2 2011* expires on 30 April 2013. The Authority determines that the gillnet fishing closures should be continued for a further period of two years. The *Southern and Eastern Scalefish and Shark Fishery (Closures) Direction No. 7 2013* continues the

spatial closures around known Australian sea lion colonies, and includes three newly identified radial closure areas.

The Authority 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 Management Act, in particular the objective concerned with the sustainability of fisheries resources (paragraph 3(1)(b)).

### **Consultation**

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

The Authority has been working with stakeholders for some time to develop strategies to reduce the level of interactions in the Gillnet Hook and Trap Sector of the fishery with threatened, endangered and protected species. This culminated initially in the development of the Strategy in June 2010, followed by the ASL temporary order implemented which commenced on 1 May 2011 and the *Southern and Eastern Scalefish and Shark Fishery (Closures) Direction No. 2 2011* which commenced on 1 November 2011.

Since then, the Authority has consulted on the continuation of closures with industry, environment groups and scientists, including through the Shark Resource Assessment Group (Shark RAG) and the Committee. Shark RAG comprises scientists, experts, industry and the Authority's representatives and provides scientific advice to the Authority and the Authority's Commission. The Committee is comprised of the Authority, industry, scientific, recreational fishery, conservation, and State members.

In consultation with Shark RAG, the Authority noted that no additional information was available that would cause the Authority to dis-continue the gillnet closures around known Australian sea lion colonies. The Committee supported continuing, in substance, the closures contained in the *Southern and Eastern Scalefish and Shark Fishery (Closures) Direction No. 2 2011* to protect Australian sea lions.

The Authority will continue to consult with the Committee, Shark RAG, industry members and other stakeholders, in developing long term strategies to achieve the objectives of these measures.

### **Regulation Impact Statement**

A Regulation Impact Statement (RIS) has been prepared and has been approved by the Office of Best Practice Regulation (OBPR ID 14921).

### **Terms of the Direction**

Details of the Direction are set out below:

**Clause 1** provides for the Direction to be cited as *Southern and Eastern Scalefish and Shark Fishery (Closures) Direction No. 7 2013*.

**Clause 2** provides that the Direction commences on 1 May 2013.

**Clause 3** provides that the Direction ceases as if it was revoked on 1 May 2015, unless earlier revoked.

**Clause 4** specifies the persons to whom the Direction applies.

**Clause 5** provides that terms used in the Direction that are defined in the Management Plan or Management Act, have the same meanings they have in the Management Plan or Management Act.

**Clause 6** directs that fishing is not to be engaged in in the areas of the Southern and Eastern Scalefish and Shark Fishery by gillnet methods described in Schedule 1.

**Clause 7** provides that this Direction does not affect any other Direction in force that closes a part of the fishery to fishing, which Directions continue in force according to their terms.

**Schedule 1** describes the area of the fishery closed to gillnet fishing.