

## EXPLANATORY STATEMENT

Issued by authority of the Australian Fisheries Management Authority

*Fisheries Management Act 1991*

*Bass Strait Central Zone Scallop Fishery Management Plan 2002*

### ***Bass Strait Central Zone Scallop Fishery (Total Allowable Catch) Determination 2021***

Subsection 17(5) of the *Fisheries Management Act 1991* (the Act) provides that a plan of management made under the Act is to set out, amongst other things, the objectives of the plan of management and measures by which the objectives are to be attained.

Paragraph 17(6)(aa) of the Act provides that a plan of management made may provide for the Australian Fisheries Management Authority (AFMA) to determine the fishing capacity permitted for the fishery or a part of the fishery in respect of a particular period or periods. The *Bass Strait Central Zone Scallop Fishery (Total Allowable Catch) Determination 2021* (the Determination) is a legislative instrument for the purposes of the *Legislation Act 2003* (see subsection 17(6B) of the Act).

Subsection 27(1) of the *Bass Strait Central Zone Scallop Fishery Management Plan 2002* (the Management Plan) provides that, prior to the start of the fishing season, AFMA must determine the total allowable catch (TAC) for each species of scallop for the fishing season.

#### **Purpose**

The Determination determines the TAC for each species of scallop in the Management Plan for the 2021 fishing season in the Bass Strait Central Zone Scallop Fishery (the Fishery). The TAC for the commercial scallop (*Pecten fumatus*) is determined to be 3,905 tonnes (whole weight including shells) and for the doughboy scallop (*Chlamys (Mimachlamys) asperrimus*) is determined to be 100 tonnes (whole weight including shells) for the 2021 fishing season.

The TACs determined in section 6 of the Determination are consistent with the purpose of the Fishery Harvest Strategy, which provides for a commercial scallop TAC in excess of 2,000 tonnes be set if commercial scallop bed(s) containing a total of at least 3,000 tonnes of commercial scallops of a minimum size limit of 85 millimetres and high density are located and closed to fishing.

The TAC for doughboy scallops is set at 100 tonnes as a default TAC as outlined in the Fishery Harvest Strategy, as a relevant survey has not been conducted for that species; however, AFMA may determine a different TAC in any year. This species is not commonly targeted or retained in the Fishery.

The 2021 fishing season dates (12 July 2021 to 31 December 2021) and the 2021 spatial closures are being determined by AFMA at the same time as the making of the Determination (see the *Bass Strait Central Zone*

*Scallop Fishery (Fishing Season) Determination 2021 and Fisheries Management (Bass Strait Central Zone Scallop Fishery) (Closures) Direction 2021*<sup>1</sup>.

## **Background**

The Fishery lies in the Bass Strait above the State of Tasmania and extends from the Victoria/New South Wales border, around southern Australia to the Victoria/South Australian border, typically outside 20 nautical miles of the Tasmanian and Victorian coastlines.

Management in the Fishery is through a combination of input and output controls in the form of individually transferable quotas with a TAC determined for each quota species for each fishing season. The target species in the Fishery is the commercial scallop (*Pecten fumatus*) and is primarily caught for the Australian domestic market. The doughboy scallop (*Chlamys (Mimachlamys) asperrimus*) is common throughout the Bass Strait but rarely retained.

The Fishery Harvest Strategy contains measures for setting a commercial scallop TAC based on closing areas of the Fishery following research surveys to determine biomass estimates.<sup>2</sup> These measures aim to ensure commercial scallop beds of sufficient size and density are maintained to provide for ongoing recruitment in the Fishery.

## **Consultation**

Paragraph 27(3)(a) of the Management Plan provides that, before setting a TAC for a fishing season, AFMA must consult the Bass Strait Central Zone Scallop Fishery Management Advisory Committee (ScallopMAC) and consider its views. Under paragraph 27(3)(b), AFMA may also consider the views of other interested persons.

AFMA consulted on the proposed TACs for the 2021 fishing season with the Bass Strait Central Zone Scallop Fishery Resource Assessment Group (ScallopRAG) on 15 June 2021 and with the ScallopMAC on 18 June 2021. The TACs, spatial closures and season dates are consistent with the advice provided by both ScallopRAG and ScallopMAC.

## **Regulation impact statement**

The Office of Best Practice Regulation does not require a Regulatory Impact Statement for this determination consistent with carve-out arrangements with AFMA for instruments of a minor or machinery nature such as the setting of a total allowable catch for a fishery (OBPR reference 14421).

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

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<sup>1</sup> These instruments are available to view free of charge on the website of the Federal Register of Legislation at <https://www.legislation.gov.au/>

<sup>2</sup> This document is available to view free of charge on the AFMA's website: <https://www.afma.gov.au/sustainability-environment/harvest-strategies>

This legislative instrument does not infringe 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 AFMA's assessment, this legislative instrument is compatible with human rights. A statement of compatibility is included at Attachment A.

Details of the Determination are set out below:

**Section 1** Provides that the name of the instrument is the *Bass Strait Central Zone Scallop Fishery (Total Allowable Catch) Determination 2021*.

**Section 2** Provides that the Determination commences on 12 July 2021.

**Section 3** Provides that the Determination is revoked on 1 January 2022.

**Section 4** Provides that the Determination is made under paragraph 17(6)(aa) of the Act for the purpose of section 27 of the Management Plan.

**Section 5** Provides that any term that is defined in the Management Plan has the same meaning in the Determination. Relevantly, this includes 'fishery' and 'fishing season' as defined in section 3 of the Management Plan. The geographic area of the Fishery is prescribed in Schedule 1 to the Management Plan. The Management Plan has been incorporated by reference. Section 10 of the *Acts Interpretation Act 1901* (as applied by section 13(1)(a) of the *Legislation Act 2003*) has the effect that references to Commonwealth disallowable legislative instruments can be taken to be references to versions of that instrument as in force from time to time. The Management Plan in 2021 is available to view free of charge on the website of the Federal Register of Legislation (<https://www.legislation.gov.au>).

**Section 6** Subsection 6(1) provides that section 6 applies to the 2021 fishing season in the Fishery commencing on 12 July 2021 (as 'fishing season' is defined in the Management Plan as the period determined by AFMA).

Subsection 6(2) determines the TAC for the two target species in the Fishery, as prescribed by the Management Plan. The TAC for commercial scallops is 3,905 tonnes (see item 1 of the table) and for doughboy scallops is 100 tonnes (see item 2 of the table). As mentioned above, these TACs are being determined in accordance with the Fishery Harvest Strategy and consistent with advice received from the ScallopRAG and ScallopMAC.

## Statement of Compatibility with Human Rights

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

### ***Bass Strait Central Zone Scallop Fishery (Total Allowable Catch) Determination 2021***

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

Subsection 17(5) of the *Fisheries Management Act 1991* (the Act) provides that a plan of management made under the Act is to set out, amongst other things, the objectives of the plan of management and measures by which the objectives are to be attained.

Paragraph 17(6)(aa) of the Act provides that a plan of management made under the Act may provide for the Australian Fisheries Management Authority (AFMA) to determine the fishing capacity permitted for the fishery or a part of the fishery in respect of a particular period or periods.

Subsection 27(1) of the *Bass Strait Central Zone Scallop Fishery Management Plan 2002* (the Management Plan) provides that, prior to the start of the fishing season, AFMA must determine the total allowable catch (TAC) for each species of scallop for the fishing season.

The *Bass Strait Central Zone Scallop Fishery (Total Allowable Catch) Determination 2021* (the Determination) sets the TAC for the commercial scallop, *Pecten fumatus*, at 3,905 tonnes (whole weight) and for the doughboy scallop, *Chlamys (Mimachlamys) asperrimus*, at 100 tonnes (whole weight) for the 2021 fishing season.

The TACs prescribed are consistent with the intent of the Harvest Strategy for the Bass Strait Central Zone Scallop Fishery (the Fishery), which provides for a commercial scallop TAC of at least 2,000 tonnes to be set should a research survey illustrate that commercial scallop bed(s) containing at least 3,000 tonnes of commercial scallops of a minimum size limit of 85 millimetres and high density have been located and subsequently closed to fishing.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.