

## 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 (Fishing Season) Determination 2021***

Subsection 17(5) of the *Fisheries Management Act 1991* (the Act) provides that a plan of management made under section 17 of the Act may provide for the Australian Fisheries Management Authority (AFMA) to give particular determinations for the purposes of attaining the objectives of the plan of management.

Paragraph 17(6)(aa) of the Act provides that a plan of management may determine or provide for AFMA to determine the fishing capacity measured, by that method or those methods permitted for the fishery or a part of the fishery in respect of a particular period or periods.

Section 3 of the *Bass Strait Central Zone Scallop Fishery Management Plan 2002* (the Management Plan) provides that the definition of the term ‘fishing season’ means the period determined by AFMA.

The *Bass Strait Central Zone Scallop Fishery (Fishing Season) Determination 2021* (the Determination) is a legislative instrument for the purposes of the *Legislation Act 2003* (see subsection 17(6B) of the Act).

The Determination determines the 2021 fishing season for the Bass Strait Central Zone Scallop Fishery (the Fishery) as the period commencing on 12 July 2021 and ending on 31 December 2021.

#### **Purpose**

The period for the fishing season in the Determination is consistent with the purpose of the Fishery Harvest Strategy, which allows for the Fishery to be opened following a research survey and then closed on 31 December to protect settling or newly-settled commercial scallop spat.

The 2021 commercial scallop Total Allowable Catch (TAC) and 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 (Total Allowable Catch) 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.

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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/>

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, however it is 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**

AFMA consulted on the dates for the 2021 fishing season with the Bass Strait Central Zone Scallop Fishery Resource Assessment Group (ScallopRAG) on 15 June 2021, and with the Bass Strait Central Zone Scallop Fishery Management Advisory Committee (ScallopMAC) on 18 June 2021. The period for the 2021 fishing season is 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 opening and closing dates for a fishing season in a fishery (OBPR reference 14421).

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

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 (Fishing Season) Determination 2021*.
- Section 2** Provides that the Determination commences on 12 July 2021.
- Section 3** Provides that the Determination ceases on 1 January 2022.
- Section 4** Provides that the Determination is made under paragraph 17(6)(aa) of the Act for the purpose of subsection 3 of the Management Plan.
- Section 5** Provides that a term used in the Determination that is defined in the Act or the Management Plan has the same meaning as in the Act or the Management Plan (respectively). Relevantly, this includes 'fishery' and 'fishing season' as defined

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<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>

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** Determines the period for the 2021 fishing season for the Fishery as the period commencing on 12 July 2021 and ending on 31 December 2021.

## 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 (Fishing Season) 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 section 17 of the Act may provide for the Australian Fisheries Management Authority (AFMA) to give particular determinations for the purposes of attaining the objectives of the plan of management.

Paragraph 17(6)(aa) of the Act provides that a plan of management may determine or provide for AFMA to determine the fishing capacity measured, by that method or those methods permitted for the fishery or a part of the fishery in respect of a particular period or periods.

Section 3 of the *Bass Strait Central Zone Scallop Fishery Management Plan 2002* (the Management Plan) provides that the definition of the term ‘fishing season’ means the period determined by AFMA.

The *Bass Strait Central Zone Scallop Fishery (Fishing Season) Determination 2021* (the Determination) is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Determination determines the 2021 fishing season for the Bass Strait Central Zone Scallop Fishery (the Fishery) as the period commencing on 12 July 2021 and ending on 31 December 2021.

The period for the fishing season determined in the Determination is consistent with the purpose of the Fishery Harvest Strategy, which allows for the Fishery to be opened following a research survey and then closed on 31 December to protect settling or newly-settled commercial scallop spat.

#### 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.