

EXPLANATORY STATEMENT

Issued by the authority of the Managing Director
of the Australian Fisheries Management Authority

Fisheries Management Act 1991

Bass Strait Central Zone Scallop Fishery Management Plan 2002

Subsection 17(1) of the *Fisheries Management Act 1991* (the Act) provides that the Australian Fisheries Management Authority (AFMA) must determine written plans of management for each fishery that it manages. AFMA has determined the Bass Strait Central Zone Scallop Fishery Management Plan (the Scallop Plan).

Determination and Acceptance

Plans can only be determined after consultation with such persons engaged in fishing as appear to AFMA to be appropriate and after giving due consideration to any representations made to AFMA on the draft plan. Subsection 17(2) of the Act requires that interested persons must be invited, by public notice, to make representations on a draft of the plan. Subsection 17(2A) provides that persons and organisations listed in the register established under section 17A must also be notified that a draft plan is available and that representations may be made in connection with the draft.

AFMA has provided a draft of the Scallop Plan for public comment as prescribed in the Act and has given due consideration to the representations that were received in respect of that draft.

Once determined, a plan is then submitted to the Minister for acceptance in accordance with section 18 of the Act. AFMA must inform the Minister of any representations that were received and of the consultations that were conducted before determining the plan. The Minister must accept the plan if it appears to the Minister that AFMA gave due consideration to any representations received, and conducted adequate consultations. The Minister must also be satisfied that the plan is consistent with AFMA's corporate plan and current annual operational plan.

The Minister has accepted the Scallop Plan. Notification of the determination and acceptance of the Scallop Plan was published in the gazette in accordance with subsection 19(1) of the Act.

Content of Plan

Subsection 17(5) of the Act provides that a plan of management for a fishery is to set out the objectives of the plan, the measures by which the objectives are to be attained and performance criteria against which the measures taken may be assessed.

The objectives of the Scallop Plan reflect the objectives set out in section 3 of the Act.

The measures by which the objectives of the Scallop Plan are to be achieved include the granting of transferable statutory fishing rights (SFRs), the setting of a total allowable catch (TAC), research, data collection, monitoring, compliance and the recovery of costs for management of the fishery. Subsection 17(5A) of the Act provides that the measures to be set out in the plan are to include a facility for AFMA to direct that that fishing is not be engaged in the fishery or part of the fishery. The Scallop Plan gives AFMA a power to make directions in accordance with subsection 17(5A).

The performance criteria against which the measures taken under the Scallop Plan may be assessed relate to the rebuilding of fish stocks, the setting of and compliance with a TAC for each scallop species on an annual basis, the provisions of cost-effective and high quality research, timely and effective data collection and analysis, periodic assessment of improvements in the economic efficiency of the fishery, the achievement of budgetary objectives and the granting of SFRs.

In addition, subsection 17(6D) of the Act provides that a plan of management must contain measures directed at reducing incidental catch of fish and other species to a minimum. The Scallop Plan provides that AFMA must implement a bycatch action plan (BAP), which is to be reviewed at least every second year. The development, implementation and review of the BAP and assessment of the impact of harvesting scallops on the environment are included in the measures that are set out for achieving the objectives of the Scallop Plan, and are included in the performance criteria for assessing those measures.

Details of the Scallop Plan, which commenced on gazettal, are set out below:

Clause 1 provides that the name of the Plan is the *Bass Strait Central Zone Scallop Fishery Management Plan 2001*.

Clause 2 provides that the Plan commences on gazettal.

Clause 3 defines terms used in the Plan, including a “boat statutory fishing right” which is defined as a right to use a nominated boat in the area of the fishery. A “quota statutory fishing right” for a fishing year is defined to mean a right to take, from the area of the fishery, a particular amount (being the quota allocated to the right for the fishing year) of a species of scallop during the fishing year. “Quota”, for a quota statutory fishing right, is defined to mean the amount of scallops of a particular species, expressed in shell weight, that may be taken, in a fishing year, under the fishing right. Unless otherwise stated, a term used in the Plan and in the Act has the same meaning in the Plan as it has in the Act.

Clause 4 sets out the way that the catch of scallops (weight value) is applied against quota statutory fishing rights to work out how many of the quota statutory fishing rights are fully or partly accounted for, and therefore to also work out how much more quota that the holder is entitled to catch. In particular, this clause provides that as scallops are caught, the weight is applied progressively to fully account for each quota statutory fishing right one after the other. This provision is necessary to clarify how many quota statutory fishing rights are not fully or partly accounted for and therefore how many quota statutory fishing rights are able to be transferred or leased during the fishing season in accordance with clauses 24 and 26 respectively. In the event that the total allowable catch for a species of scallop is increased during the fishing season, in accordance with the Plan, and as a result the equivalent weight value of each quota statutory fishing right increases, clause 4 provides that the quantity of scallops already caught (before the value of the quota statutory fishing rights increased) will be re-applied against the quota statutory fishing rights progressively one after the other so there will be some quota statutory fishing rights that are fully accounted for, a maximum of one quota statutory fishing right that is partly accounted for, and the remaining quota statutory fishing rights for which the quota amount is still available to be caught. This recalculation will be done rather than have multiple quota statutory fishing rights that are partly accounted for in the event that the value of those rights increases.

Clause 5 specifies the origin of geographical coordinates used in the Plan.

Clause 6 sets out the objectives of the Plan, which are consistent with the objectives of the Act.

Clause 7 sets out the measures by which the objectives of the Plan are to be achieved.

Clause 8 sets out the performance criteria against which the measures taken under the Plan will be assessed.

Clause 9 provides that AFMA must implement a bycatch action plan to ensure that the incidental catch of scallops and the incidental catch of other species are reduced to, or kept at, a minimum.

Clause 10 states that the Plan applies to persons engaged in fishing for scallops in the area of the fishery and to persons who receive scallops taken from the area of the fishery.

Clause 11 states that a person may engage in fishing for scallops in the area of the fishery prior to 1 February 2007 if the person holds, or is acting on behalf of another person who holds, a boat statutory fishing right and a quota statutory fishing right. After 1 February 2007, it is not necessary to hold a boat statutory fishing right, and a person, or a person acting on their behalf, need only hold a quota statutory fishing right.

Clause 12 provides that the amount of scallop taken on a fishing trip by a boat must not exceed the total of the amount that may be taken under quota statutory fishing rights that nominate that boat. The amount taken on a fishing trip by a boat does not include scallops taken under a scientific permit that authorises the use of that boat or up to 10 kilograms in shell weight or 1.5 kilograms of meat weight taken for private or domestic use. The amount that may be taken under a quota statutory fishing right must not exceed the quota allocated to that right for the fishing season at that time, even if later in the season it does not exceed the quota allocated to the right for the fishing season because there has been an increase in the total allowable catch for the season. The quota allocated to a right is calculated by dividing the total allowable catch for that species by the number of quota statutory fishing rights held under the Plan, including any that are suspended under the Plan or the Act.

Clause 13 states that a person may only use methods mentioned in the relevant parts of the Fisheries Management (Bass Strait Central Zone Scallops Fishery) Regulations 2001 to engage in fishing for scallops in the area of the fishery.

Clause 14 states that that a person may only use a boat to engage in scientific research about the fishery in the area of the fishery if the person holds, or is acting on behalf of another person who holds, a scientific permit that authorises the use of that boat.

Clause 15 provides that a person is eligible to register for the grant of a statutory fishing right, on publication of the relevant notice by AFMA, if the person held a fishing permit for the fishery on 1 March 2001.

Clause 16 provides that AFMA must make a provisional grant to each registered eligible person for each fishing permit they held on 1 March 2001 of 1 boat statutory fishing right and 3500 quota statutory fishing rights for each species of scallops.

Clause 17 provides for an application, on the approved form, to be made to AFMA by a person eligible for the grant of a statutory fishing right for a boat to be nominated against the statutory fishing right. It streamlines the boat nomination process when a person is initially granted a statutory fishing right by enabling an eligible person to make a preliminary boat nomination against a statutory fishing right. The nomination will be entered in the register of statutory fishing rights if the person is subsequently granted a statutory fishing right. However, AFMA must not register the boat as the nominated boat against a statutory fishing right if it is already nominated against a statutory fishing right that is held by another person. Also before 1 February 2007, AFMA must not register the boat as the nominated boat for a quota statutory fishing right if the boat is not the nominated boat for a boat statutory fishing right held by that person. Also AFMA must not register the boat as the nominated boat for a boat statutory fishing right if the boat is already the nominated boat for another boat statutory fishing right and a request to remove the registration has not been received.

Clause 18 provides for AFMA to grant a statutory fishing right to a person if the person has asked AFMA to do so and AFMA's intent to make the grant to that person has been published in the gazette. If an eligible person does not request the grant within 30 days of the publication of the gazette notice, clause 18 provides that AFMA must remind them of the time within which they must apply for the grant. If an eligible person still does not request the grant within the required period, AFMA must send a final notice warning that their registration will be cancelled if they do not make the request and provide an explanation as to why they did not make the request within the required period. Clause 18 then provides for AFMA to cancel the person's registration and amend its records if the person does not make the request and provide a reasonable excuse within 14 days of the final notice.

Clause 19 provides for AFMA to provide a certificate for a statutory fishing right showing particulars, such as a description of the right and any conditions to which the right is subject.

Clause 20 provides for the expiry of boat statutory fishing rights on 1 February 2007.

Clause 21 provides that AFMA, on receipt of an application on the approved form, must enter a boat on the register as the nominated boat against a statutory fishing right, and provide to the holder an extract of the register showing particulars, such as a description of the right and any conditions to which the right is subject. However, AFMA must not register the boat as the nominated boat against a statutory fishing right if it is already nominated against a statutory fishing right that is held by another person. Also before 1 February 2007, clause 17 provides that AFMA must not register the boat as the nominated boat for a quota statutory fishing right if the boat is not the nominated boat for a boat statutory fishing right held by that person. Also AFMA must not register the boat as the nominated boat for a boat statutory fishing right if the boat is already the nominated boat for another boat statutory fishing right and a request to remove the registration has not been received.

Clause 22 sets out further obligations of holders of statutory fishing rights. These obligations are not exhaustive and are primarily designed to ensure that fishing in a fishing year does not lead to catches of scallops that exceed the total allowable catch. They also require holders to minimise incidental catches of other species. Holders of statutory fishing rights also have obligations under relevant legislation including the act, any regulations, directions and statutory fishing right conditions.

Clause 23 provides that AFMA may direct, subject to the relevant parts of the Fisheries Management (Bass Strait Central Zone Scallops Fishery) Regulations 2001, the holders of statutory fishing rights not to fish in the fishery, or parts of the fishery. Except when made in an emergency, AFMA must consult with the Bass Strait Central Zone Scallop Fishery Management Advisory Committee (ScallopMAC), and may consult with others, and must provide the holders of statutory fishing rights with at least 7 days notice of the direction.

Clause 24 provides for the permanent transfer of statutory fishing rights on receipt by AFMA of an application on an approved form and the certificate for that right, subject to the specified circumstances (and conditions stated on the certificate for the rights). If the rights have already been used to take fish during that year, AFMA will transfer the right only after the season has ended.

Clause 25 provides for the grant or amendment of certificates for statutory fishing rights, as appropriate, to reflect the permanent transfer of rights.

Clause 26 provides for the lease of statutory fishing rights for the season, provided all levy payable for that right has been paid and scallops have not already been taken under that right during that fishing season. The holder must give AFMA written notice of the lease on an approved form. Under a lease, the owner of the statutory fishing rights would grant to the lessee the right to use the statutory fishing rights for the remainder of the fishing season: the owner would cease to be the holder of the statutory fishing rights and the lessee would become the holder.

Clause 27 provides for the determination of a total allowable catch for each species before the commencement of the season, subject to the relevant parts of the Fisheries Management (Bass Strait Central Zone Scallops Fishery) Regulations 2001. AFMA must consult with the Bass Strait Central Zone Scallop Fishery Management Advisory Committee (ScallopMAC) prior to determining the total allowable catch. AFMA must give statutory fishing right holders 28 days notice of the total allowable catch and the value of the rights they hold in that season.

Clause 28 provides for an increase in the total allowable catch during the season, subject to the relevant parts of the Fisheries Management (Bass Strait Central Zone Scallops Fishery) Regulations 2001. Except in an emergency, AFMA must consult with the Bass Strait Central Zone Scallop Fishery Management Advisory Committee (ScallopMAC) prior to increasing the total allowable catch. AFMA must give right holders written notice of the increase and the value of the rights they hold in that season.

Clause 29 provides for the replacement or amendment of statutory fishing right certificates.

Clause 30 states that AFMA may delegate to its staff its powers under the plan, except its powers to determine the total allowable catch for the fishing season and direct the holders of statutory fishing rights not to fish in the fishery or parts of the fishery.

Clause 31 provides that the holder of a statutory fishing right may appoint an agent to act on their behalf.

Clause 32 provides for AFMA to contact statutory fishing right holders and statutory fishing right holders to contact AFMA.

Clause 33 provides for fishing to occur under fishing permits under the plan until the first statutory fishing rights granted under the Plan come into effect and a notice is published in the gazette to this effect. These arrangements are required because some time will elapse between the commencement of the plan and the first statutory fishing rights granted under the Plan come into effect.

Schedule 1 describes the area of the fishery.

Schedule 2 states the minimum size of scallop of each species that may be landed.

Schedule 3 illustrates the method of measuring the shell length of a scallop.