



# Bass Strait Central Zone Scallop Fishery Management Plan 2002

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I, FRANK MEERE, Managing Director of the Australian Fisheries Management Authority, make this Management Plan under section 17 of the *Fisheries Management Act 1991*.

Dated 3 September 2002

FRANK MEERE  
Managing Director of the Australian Fisheries Management Authority

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## Part 1 Preliminary

### 1 Name of Management Plan

This Management Plan is the *Bass Strait Central Zone Scallop Fishery Management Plan 2002*.

### 2 Commencement

This Management Plan commences on gazettal.

*Note* See subsections 19 (1) and (2) of the Act and section 48 of the *Acts Interpretation Act 1901*.

### 3 Definitions

In this Management Plan:

*Act* means the *Fisheries Management Act 1991*.

**acting for** a person, means acting with the consent of, and on behalf of, the person.

**adjacent area**, in relation to a State, has the same meaning as it has in the *Petroleum (Submerged Lands) Act 1967*.

**agent**, of the holder of a statutory fishing right, means:

- (a) a person responsible for the affairs and property of the holder under a law of the Commonwealth, a State or a Territory, including a receiver, liquidator, trustee or guardian of the holder, or an executor or administrator of the holder's estate; or
- (b) a person appointed as the holder's agent under section 31.

**approved form** means the form approved by AFMA for the purposes of the section in which the term is used.

**area of the fishery** means the area described in Schedule 1.

**Bass Strait Central Zone Scallop Fishery** means fishing for scallops in the area of the fishery.

**boat statutory fishing right** means a right to use a nominated boat in the area of the fishery.

**certificate**, for a statutory fishing right, means a certificate given under subsection 22 (2) of the Act as evidence of the grant of the statutory fishing right.

**Committee** means the Bass Strait Central Zone Scallop Fishery Management Advisory Committee established under section 54 of the *Fisheries Administration Act 1991*.

**eligible person** means a person who is registered as an eligible person for a grant of a statutory fishing right under section 26 of the Act.

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**fishery** means the Bass Strait Central Zone Scallop Fishery.

**fishing season** means the period in a fishing year beginning and ending on the dates specified for the purposes of this definition in the *Fisheries Management (Bass Strait Central Zone Scallop Fishery) Regulations 2002*.

**fishing year** means a period of 12 months beginning on 1 February in any year.

**fish receiver permit** means a fish receiver permit that authorises the holder of the permit to receive scallops from a person mentioned in section 10.

**holder**, at a particular time, for a statutory fishing right or scientific permit, means the person who holds the right or permit at that time because of a grant, lease or transfer, under the Act.

**identification code**, for a boat, means the identification code allocated by AFMA to the boat under regulation 12 of the *Fisheries Management Regulations 1992*.

**interested person**, in relation to a direction or determination, means:

- (a) a person who is able to show a continuing connection with the fishery that is likely to be affected by the direction or determination; or
- (b) an organisation or association (whether incorporated or not) whose objects or purposes include, or whose activities largely relate to, the fishery.

*Examples* Interested persons could include the following:

- (a) environmental organisations with an interest in the area of the fishery;
- (b) persons carrying out other activities in the area of the fishery;
- (c) persons involved in processing scallops from the fishery.

**lease** means a lease mentioned in section 26.

**nominated boat**, for a boat statutory fishing right, means a boat of which the details are entered in the Register, under section 45 of the Act, as a nominated boat for the right.

**owner**, for a statutory fishing right, means:

- (a) the person who is granted the right under section 18; or
- (b) if the right has been transferred under section 24 — the most recent transferee of the right under that section.

**quota**, for a quota statutory fishing right, means the amount of scallops of a particular species, expressed in shell weight, that may be taken, in a fishing year, under the fishing right.

**quota statutory fishing right**, for a fishing year, means 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.

**scallop** means a scallop of a species mentioned in Schedule 2.

**shell weight** means the weight of a scallop before processing (other than chilling or freezing) and before any part of the scallop has been removed.

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***total allowable catch***, for a species of scallop, means the total shell weight of scallops of that species that may be taken under quota statutory fishing rights in a fishing year by fishing in the area of the fishery, as determined by AFMA under Part 3.

***trip*** means a voyage by boat that:

- (a) begins at a place in Australia; and
- (b) proceeds to and from, or through, the area of the fishery; and
- (c) ends at a place in Australia where scallops taken using the boat are unloaded.

*Note* Unless otherwise stated, a term used in this Management Plan and in the Act has the same meaning in this Management Plan as it has in the Act. The following terms are defined in subsection 4 (1) of the Act:

- AFMA
- AFZ
- Australian boat
- fish receiver permit
- fishing
- fishing permit
- Panel
- precautionary principle
- processing
- Register
- scientific permit
- statutory fishing right
- take.

#### **4 Application of catch to statutory fishing rights**

- (1) For the purposes of this Management Plan, scallops taken by, or on behalf of, the holder of 2 or more quota statutory fishing rights are applied against the quota statutory fishing rights in accordance with subsection (2).
- (2) For the purposes of subsection (1), the scallops are applied progressively against each quota statutory fishing right, in turn, so that each quota statutory fishing right is fully accounted for before any scallops are applied against the next quota statutory fishing right.
- (3) For the purposes of this Management Plan, if AFMA increases the quantity of scallops that may be taken under a statutory fishing right during a fishing season, the application of any scallops taken by, or on behalf of, a person who holds 2 or more statutory fishing rights must be recalculated so that:
  - (a) the greatest possible number of quota statutory fishing rights is fully accounted for; and
  - (b) no more than 1 statutory fishing right is partly accounted for.

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(4) For the purposes of this section:

- (a) a quota statutory fishing right is *fully accounted for* if the maximum permissible quantity of scallops has been applied against it; and
- (b) a quota statutory fishing right is *partly accounted for* if a quantity of scallops less than the maximum permissible quantity has been applied against it.

**5 Geographical coordinates**

The origin of geographical coordinates used in this Management Plan is the Geodetic Datum of Australia 1994 (GDA94).

**6 Objectives (Act s 17 (5))**

The objectives of this Management Plan are as follows:

- (a) to manage the fishery efficiently and cost-effectively for the Commonwealth;
- (b) to ensure that the exploitation of the resources of the fishery and the carrying on of any related activities are conducted in a manner consistent with the principles of ecologically sustainable development and the exercise of the precautionary principle, and in particular, the need to have regard to the impact of fishing activities on non-target species and the long-term sustainability of the marine environment;
- (c) to maximise economic efficiency in the exploitation of the resources of the fishery;
- (d) to ensure AFMA's accountability to the fishing industry and to the Australian community in management of the resources of the fishery;
- (e) to reach Government targets for the recovery of the costs of AFMA in relation to the fishery;
- (f) to ensure, through proper conservation and management, that the living resources of the AFZ are not endangered by over-exploitation;
- (g) to achieve the best use of the living resources of the AFZ.

**7 Measures by which the objectives are to be achieved (Act s 17 (5))**

The measures by which the objectives of this Management Plan are to be achieved include the following:

- (a) granting transferable statutory fishing rights for the fishery to eligible persons;
- (b) directing statutory fishing right holders, as necessary, not to engage in fishing to ensure the sustainability of the resources of the fishery;
- (c) setting the total allowable catch for each species of scallop each year in the fishery, as necessary, to maximise the economic efficiency of the fishery;

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- (d) implementing a program of research, data collection and monitoring relevant to the assessment and management of the fishery;
- (e) establishing an effective program of catch monitoring and surveillance of the fishery to ensure compliance with the Management Plan;
- (f) developing a series of biological, economic and other data that can be used to assess the fishery;
- (g) developing, implementing and reviewing the bycatch action plan mentioned in section 9;
- (h) supporting the Committee in facilitating the development of sound, cost-effective fisheries management for the fishery;
- (i) preparing an annual budget of costs associated with managing the fishery, and setting and collecting levies and fees for the fishery;
- (j) publishing information about the fishery;
- (k) using the results of research to ensure fishing is conducted in an economically efficient and ecologically sustainable way;
- (l) checking accuracy and consistency of information kept in relation to the fishery.

## **8 Performance criteria against which measures taken may be assessed (Act s 17 (5))**

- (1) The performance criteria against which the measures taken may be assessed are:
  - (a) that effective strategies are in place to ensure that stocks of any depleted fish resources are being rebuilt; and
  - (b) that a total allowable catch is set for each species of scallop for each fishing year and that the amount of scallops taken in a fishing year does not exceed the total allowable catch for the year; and
  - (c) that cost-effective and high quality research is carried out in relation to the fishery in accordance with a 5-year strategic research plan, the results of which are:
    - (i) included in the assessment process for the fishery; and
    - (ii) published in the assessment reports for the fishery; and
    - (iii) taken into consideration in determining the total allowable catch in a fishing year; and
  - (d) that data is collected and analysed in a timely manner to enable:
    - (i) evaluation of the effectiveness of the strategies to maintain or rebuild the resources of the fishery at, or to, an acceptable level; and
    - (ii) modification of those strategies; and
  - (e) that a bycatch action plan is implemented and reviewed in accordance with section 9, and data is collected to enable an assessment of the impact of harvesting scallops in the fishery; and

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- (f) that data on the current and potential net economic returns of the fishery has been collected and analysed to enable:
    - (i) a periodic assessment of whether the data is consistent with improvements in the economic efficiency of the fishery; and
    - (ii) modification of institutional arrangements to allow improvements in the economic efficiency of the fishery; and
  - (g) that the budgetary objectives of the fishery are achieved; and
  - (h) that statutory fishing rights are granted.
- (2) AFMA and the Committee must, from time to time, assess the effectiveness of the measures taken to achieve the objectives of this Management Plan by reference to the performance criteria.
- (3) AFMA must include in its annual report for a financial year a statement of the extent to which the performance criteria were met in the year.

**9 Bycatch (Act s 17 (6D))**

- (1) AFMA must implement a bycatch action plan to ensure that:
- (a) the incidental catch of scallops not taken under, and in accordance with, this Management Plan; and
  - (b) the incidental catch of other species; are reduced to, or kept at, a minimum.
- (2) The bycatch action plan must provide for:
- (a) assessment of the impact of harvesting scallops in the fishery; and
  - (b) implementation of measures to minimise any adverse effects of fishing on the environment.
- (3) AFMA must review the bycatch action plan at least once every second year after the commencement of this Management Plan to ensure that it is appropriate for ensuring that the incidental catch of species other than scallops is reduced to a minimum.

**10 Persons to whom the Management Plan applies**

This Management Plan applies to a person who:

- (a) engages in fishing for scallops in the area of the fishery; or
- (b) receives scallops taken from the area of the fishery.

*Note* Paragraph 22 (1) (a) of the *Acts Interpretation Act 1901* provides that **person** includes a body politic or corporate as well as an individual.



## **Part 2                      Statutory fishing rights**

### **Division 1                Right to fish in the fishery**

#### **11                      Who may fish in the fishery**

- (1) Before 1 February 2007, a person may engage in fishing for scallops of a particular species in the area of the fishery only if the person:
  - (a) holds, or is acting on behalf of another person who holds, a quota statutory fishing right that allows the person to take scallops of that species and a boat statutory fishing right; and
  - (b) is using a boat that is registered as a nominated boat for the boat statutory fishing right and the quota statutory fishing right; and
  - (c) is acting in accordance with the statutory fishing rights.
- (2) On or after 1 February 2007, a person may engage in fishing for scallops of a particular species in the area of the fishery only if the person:
  - (a) holds, or is acting on behalf of another person who holds, a quota statutory fishing right that allows the person to take scallops of that species; and
  - (b) is using the nominated boat for the quota statutory fishing right; and
  - (c) is acting in accordance with the statutory fishing right.

*Note* Sections 17 and 21 deal with the nomination of boats for statutory fishing rights.

#### **12                      Quantity of scallops that may be taken**

- (1) Subject to section 14, in a fishing year, the holder of a quota statutory fishing right must not take from the area of the fishery an amount of scallops of a species greater than the quota allocated to the right in relation to that species for the fishing year.
- (2) The holder of a quota statutory fishing right is taken to contravene subsection (1) if, at any time during a fishing year, the amount of scallops of a species taken by the holder since the beginning of the fishing year is greater than the quota allocated to the right for the fishing year, even if the quota allocated to the right for the fishing year is subsequently increased.
- (3) On a trip, the holder of a quota statutory fishing right must not take from the area of the fishery an amount of scallops greater than the total amount that may be taken under:
  - (a) the right; and
  - (b) any other quota statutory fishing rights for which the boat is a nominated boat.

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- (4) For the purposes of subsections (1) to (3), the following scallops are not included as part of the amount taken:
  - (a) scallops taken under a scientific permit granted under section 14;
  - (b) scallops taken by the holder and kept for private or domestic use under subsection (5).
- (5) For the purposes of paragraph (4) (b), after a trip, the holder of a quota statutory fishing right may keep, for private or domestic use, a maximum of 10 kilograms per boat in total shell weight of scallops, or 1.5 kilograms of scallop meat, taken during the trip.
- (6) The quota allocated to a quota statutory fishing right for a fishing year is worked out by dividing the total allowable catch for the species in the fishing year by the total number of quota statutory fishing rights in force for the species at the start of the fishing year.
- (7) In working out the quota allocation for a quota statutory fishing right in a fishing year, a quota statutory fishing right that is suspended under subsection 38 (1) or (3), or paragraph 98 (3) (d), of the Act is taken to be in force.

## 13            Fishing methods

A person may take scallops from the area of the fishery only by a method mentioned in the *Fisheries Management (Bass Strait Central Zone Scallop Fishery) Regulations 2002* for the purposes of this section.

## 14            Right to use a boat for scientific research

A person may use a boat in the area of the fishery for scientific research about the fishery only if the person is, or is acting for, the holder of a scientific permit that authorises the use of the boat in the area of the fishery for that purpose.

*Note* See section 33 of the Act about the grant of a scientific permit.

## Division 2                      Registration of eligible persons for grant of statutory fishing rights

## 15            Conditions for registration (Act s 26)

- (1) Subsection (2) applies if AFMA publishes a notice, under section 24 of the Act, declaring that AFMA intends to grant statutory fishing rights for the fishery.
- (2) A person satisfies the conditions for registration as an eligible person for the grant of a statutory fishing right if the person held a fishing permit for the fishery on 1 March 2001.

*Note 1* See section 24 of the Act about publication of a notice by AFMA declaring that AFMA intends to grant fishing rights for fishing in a managed fishery.

*Note 2* An application for registration as an eligible person for the grant of a statutory fishing right must be made within the period stated in a notice published under section 24 of the Act: see paragraph 25 (f), and subsection 26 (1), of the Act.

*Note 3* Under subsection 26 (2) of the Act, AFMA must register as an eligible person an applicant for registration who meets the conditions for registration and who has paid the prescribed fee.

*Note 4* A decision under subsection 26 (2) of the Act is subject to reconsideration under section 165 of the Act: see subsection 165 (2). Application may be made to the Administrative Appeals Tribunal for review of a decision under section 165 of the Act: see subsection 165 (7).

## **Division 3                      Grant of statutory fishing rights**

### **16                      Provisional grants (Act s 23)**

If a person is registered as an eligible person for the grant of a statutory fishing right, AFMA must make a provisional grant to the person, for each fishing permit for the fishery held by the person on 1 March 2001, of:

- (a) 3 500 quota statutory fishing rights for each species of scallop; and
- (b) 1 boat statutory fishing right.

*Note* See:

- (a) section 23 of the Act about the provisional grant of a statutory fishing right; and
- (b) Part 8, Division 3 of the Act about review by the Statutory Fishing Rights Allocation Review Panel.

### **17                      Nomination of a boat when applying for registration**

- (1) A person who applies for registration as an eligible person for the grant of a boat statutory fishing right may apply to AFMA, in the approved form, for an Australian boat to be entered in the Register as the nominated boat for the right.
- (2) If AFMA receives an application under subsection (1), AFMA must, on the grant of a boat statutory fishing right to the person, enter in the Register, in relation to the nominated boat, the details required by the *Fisheries Management (Bass Strait Central Zone Scallop Fishery) Regulations 2002* to be entered in the Register.
- (3) A person who applies for registration as an eligible person for the grant of a quota statutory fishing right may apply to AFMA, in the approved form, for 1 or more Australian boats to be entered in the Register as nominated boats for the right.
- (4) If AFMA receives an application under subsection (3), AFMA must, on the grant of a statutory fishing right to the person, enter in the Register, in relation to each nominated boat, the details required by the *Fisheries Management (Bass Strait Central Zone Scallop Fishery) Regulations 2002* to be entered in the Register.

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- (5) However, AFMA must not register a boat as a nominated boat for a statutory fishing right if the boat is a nominated boat for another person who holds a statutory fishing right.
- (6) Also, AFMA must not register a boat as the nominated boat for a boat statutory fishing right if another boat (the *already-nominated boat*) is registered as the nominated boat for the right, unless the holder asks AFMA to remove the registration of the already-nominated boat.
- (7) Before 1 February 2007, a person who is the holder of a quota statutory fishing right may nominate a boat for that right under this section only if:
  - (a) the person is the holder of the boat statutory fishing right for which the boat is the nominated boat; or
  - (b) the person has applied for the boat to be registered as the nominated boat for a boat statutory fishing right.

## 18 Request for grant (Act s 31)

- (1) AFMA may grant a statutory fishing right to a person only if:
  - (a) a notice mentioned in subsection 23 (2) of the Act stating that the person is to be granted the right is published in the *Gazette* (the *Gazette notice*); and
  - (b) the person asks AFMA to make the grant.

*Note 1* Under subsection 23 (3) of the Act, AFMA must not grant a statutory fishing right:

- (a) until the end of the period within which applications may be made to the Panel for review of provisional grants; or
- (b) if an application has been made to the Panel — before the application has been dealt with by the Panel or otherwise disposed of.

*Note 2* Subsection 30 (2) of the Act provides that a grant ceases to be available to a person if the person does not tender the amount of charge due and payable under the *Statutory Fishing Rights Charge Act 1991* within 30 days after the grant becomes available to the person. At the time when this Management Plan was made, there was no charge payable under that Act for statutory fishing rights granted other than by auction or tender.

- (2) If the person does not make the request within 30 days after the *Gazette* notice is published, AFMA must send a notice (the *reminder notice*) to the person telling the person that the person must make the request within a period stated in the notice.
- (3) If the person does not make the request within the period stated in the reminder notice, AFMA must send another notice (the *final notice*) to the person stating that the person's registration will be cancelled if the person does not, within 14 days after the final notice is sent:
  - (a) make the request; and
  - (b) explain why the person did not make the request within the period stated in the reminder notice.

- (4) AFMA must cancel the person's registration as an eligible person if, despite a final notice, the person does not:
  - (a) make the request within 14 days after the final notice is sent; and
  - (b) satisfy AFMA that the person had a reasonable excuse for not making the request within the period stated in the reminder notice.
- (5) If AFMA cancels a person's registration as an eligible person, AFMA must amend its records accordingly.

*Note 1* AFMA must grant a statutory fishing right to a person to whom the grant of the right is available if the person asks AFMA to grant the right: see section 31 of the Act.

*Note 2* A decision under section 31 of the Act (other than a decision following an auction, tender or ballot) is subject to reconsideration under section 165 of the Act: see subsection 165 (2). Application may be made to the Administrative Appeals Tribunal for review of a decision under section 165 of the Act: see subsection 165 (7).

*Note 3* A statutory fishing right ceases to have effect if AFMA revokes this Management Plan: see subsections 20 (4) and 22 (3) of the Act.

*Note 4* AFMA must register all statutory fishing rights granted: see section 45 of the Act.

## **19 Certificate showing grant (Act s 22 (2))**

- (1) AFMA must note the following details on the certificate for a statutory fishing right:
  - (a) the name of the person to whom the right is granted;
  - (b) a description of the right;
  - (c) that the right is granted for the fishery;
  - (d) the conditions to which the right is subject.
- (2) A certificate may show the grant of more than 1 statutory fishing right to a person.
- (3) AFMA must give, to a person to whom a statutory fishing right is granted, an extract of the Register:
  - (a) that states:
    - (i) the conditions to which the right is subject; and
    - (ii) the name and identification code of each nominated boat for the right; and
  - (b) that is signed for AFMA by a person having authority to sign it.

*Note* Section 45 of the Act provides that AFMA must enter certain information in the Register for each statutory fishing right that it grants, including such particulars as are prescribed. The *Fisheries Management (Bass Strait Central Zone Scallop Fishery) Regulations 2002* prescribe details that must be entered in the Register in relation to each nominated boat for a statutory fishing right.

## **20 Expiry of boat statutory fishing rights**

Boat statutory fishing rights cease to have effect on 1 February 2007.

## **Division 4 Obligations of holders of statutory fishing rights**

### **21 Nomination of a boat by holder of a statutory fishing right**

- (1) The holder of a boat statutory fishing right may apply to AFMA, in the approved form, for an Australian boat to be entered in the Register as the nominated boat for the right.
- (2) If AFMA receives an application under subsection (1), AFMA must:
  - (a) enter in the Register, in relation to the nominated boat, the details required by the *Fisheries Management (Bass Strait Central Zone Scallop Fishery) Regulations 2002* to be entered in the Register; and
  - (b) give to the holder an extract of the Register that:
    - (i) states the conditions to which the right is subject; and
    - (ii) states the name and identification code of the nominated boat; and
    - (iii) is signed for AFMA by a person having authority to sign it.
- (3) The holder of a quota statutory fishing right may apply to AFMA, in the approved form, for 1 or more Australian boats to be entered in the Register as nominated boats for the right.
- (4) If AFMA receives an application under subsection (3), AFMA must:
  - (a) enter in the Register, in relation to each nominated boat, the details required by the *Fisheries Management (Bass Strait Central Zone Scallop Fishery) Regulations 2002* to be entered in the Register; and
  - (b) give to the holder an extract of the Register that:
    - (i) states the conditions to which the right is subject; and
    - (ii) states the name and identification code of each nominated boat for the right; and
    - (iii) is signed for AFMA by a person having authority to sign it.
- (5) However, AFMA must not register a boat as a nominated boat for a statutory fishing right if the boat is a nominated boat for another person who holds a statutory fishing right.
- (6) Also, AFMA must not register a boat as the nominated boat for a boat statutory fishing right if another boat (the ***already-nominated boat***) is registered as the nominated boat for the right, unless the holder asks AFMA to remove the registration of the already-nominated boat.
- (7) Before 1 February 2007, a person who is the holder of a quota statutory fishing right may nominate a boat for that right under this section only if:
  - (a) the person is the holder of the boat statutory fishing right for which the boat is the nominated boat; or
  - (b) the person has applied for the boat to be registered as the nominated boat for a boat statutory fishing right.

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## **22 Other obligations of holders of statutory fishing rights**

- (1) Subject to section 14, the holder of a statutory fishing right may engage in fishing for scallops in the fishery only during the fishing season.
- (2) It is a condition of a quota statutory fishing right that the holder must:
  - (a) comply with this Management Plan; and
  - (b) comply with any direction made under subsection 23 (1); and
  - (c) take reasonable precautions to ensure that the incidental catch of a species that the holder is not entitled to take is kept to a minimum; and
  - (d) sell, or otherwise dispose of, all fish taken from the fishery (except fish kept only for private or domestic use) to the holder of a fish receiver permit; and
  - (e) if AFMA asks the holder to allow a person nominated by AFMA to travel as an observer on board a nominated boat that is being used to take fish under the quota statutory fishing right — allow the person to do so; and
  - (f) if AFMA asks the holder to give AFMA biological, economic or technical information, or biological samples available to the holder — give AFMA the information or samples; and
  - (g) not take scallops smaller than the minimum shell length mentioned in Schedule 2, measured as shown in Schedule 3; and
  - (h) on and after 1 February 2007, carry on board each nominated boat for the right a copy of the extract from the Register mentioned in subsection 19 (3) or 21 (4) that states the name and identification code for the boat.
- (3) It is a condition of a boat statutory fishing right that the holder must carry on board the nominated boat for the right a copy of the extract from the Register mentioned in subsection 19 (3) or 21 (2) that states the name and identification code for the boat.

*Note 1* Other conditions of a statutory fishing right are set out on the certificate for the right. These include reporting requirements and conditions regarding AFMA's vessel monitoring system.

*Note 2* The holder of a statutory fishing right must also comply with relevant Regulations, including the *Fisheries Management Regulations 1992*, the *Fisheries Management (Bass Strait Central Zone Scallop Fishery) Regulations 2002* and the annual levy Regulations.

*Note 3* See section 42 of the Act and Part 9 of the *Fisheries Management Regulations 1992* about the requirement to keep a logbook. If the holder of a statutory fishing right does not keep a logbook under Part 9 of those Regulations, AFMA may issue an infringement notice under Part 10 of the Regulations or suspend the operation of the statutory fishing right.

*Note 4* See also subsections 22 (3), (4) and (5) of the Act for other conditions to which a statutory fishing right is subject.

*Note 5* See section 38 of the Act about AFMA's power to suspend a statutory fishing right if it has reasonable grounds to believe that there has been a contravention of a condition of the right.

**Section 23**

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*Note 6* Subsections 19 (3) and 21 (4) require AFMA to give to the holder of a statutory fishing right an extract from the Register of Statutory Fishing Rights (see section 44 of the Act) that states the conditions to which the right is subject and the name and identification code of each nominated boat for the right, and that is signed for AFMA by a person having authority to sign it. Until the expiry of boat statutory fishing rights, under subsection (3) it is a condition of a boat statutory fishing right that the holder of the right carry this extract on board the nominated boat. After the expiry of boat statutory fishing rights, this requirement is a condition of a corresponding quota statutory fishing right.

## **Division 5                      Directions not to engage in fishing**

### **23                      Directions by AFMA (Act s 17 (5A))**

- (1) AFMA may direct that fishing is not to be engaged in in the fishery, or in a part of the fishery, during a stated period.

*Note* If AFMA gives a direction for a part of the fishery, the direction may identify the part in any way, including by reference to an area, a species of scallop, a kind or quantity of fishing equipment, a method of fishing, or a combination of those ways: see subsection 17 (5B) of the Act.

- (2) In giving directions under subsection (1), AFMA must ensure that the requirements (if any) set out in the *Fisheries Management (Bass Strait Central Zone Scallop Fishery) Regulations 2002* for the purposes of this subsection are met.
- (3) Before giving a direction, AFMA:
- (a) must consult the Committee about the content of the direction, and consider the Committee's views; and
  - (b) may consider the views of other interested persons.
- (4) At least 7 days before a direction takes effect, AFMA must tell the holders of statutory fishing rights and scientific permits for the fishery, in writing, about the direction.
- (5) However, if a direction is made in an emergency:
- (a) subsections (3) and (4) do not apply; and
  - (b) AFMA must tell the holders of statutory fishing rights and scientific permits for the fishery, in writing, about the direction as soon as it can practicably do so.
- (6) The holder of a statutory fishing right for the fishery must comply with a direction made under this section.

*Note* The holder of a statutory fishing right must comply with obligations imposed under paragraph 17 (6) (g) of the Act: see sections 22 and 95 of the Act.



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## Division 6                      Transfer and lease of statutory fishing rights

### 24                      Approving transfers (Act s 49)

- (1) In this section:  
*transfer* does not include lease.
- (2) The owner of a statutory fishing right (the *transferor*) may apply to AFMA, in the approved form, for approval to transfer the right to someone else (the *transferee*).
- (3) An application for approval to transfer a statutory fishing right to someone else must be accompanied by the certificate for the right.
- (4) If:
  - (a) an application to transfer a quota statutory fishing right is received during a fishing season; and
  - (b) scallops have been taken under the right during the fishing season;AFMA must not approve the transfer of the right until the end of the fishing season.
- (5) AFMA must not approve the transfer of a statutory fishing right:
  - (a) if proceedings for an offence under the Act or any Regulations made under the Act have begun against the transferor and have not been decided; or
  - (b) if an application for registration of another interest in the right has been received by AFMA before the application for transfer is received, and has not been dealt with; or
  - (c) if a person registered as having an interest in the right has not agreed, in writing, to the transfer; or
  - (d) if the right has been suspended under subsection 38 (1) or (3), or paragraph 98 (3) (d), of the Act; or
  - (e) if, under section 98 of the Act, a court has ordered the transferor not to be on a boat in the AFZ for commercial fishing; or
  - (f) if AFMA:
    - (i) knows of a ground for suspension of the right under subsection 38 (1) or (3) of the Act or cancellation of the right under section 39 of the Act; and
    - (ii) has not decided whether to suspend or cancel the right; or
  - (g) if AFMA has decided to suspend or cancel the right, and:
    - (i) the period within which review of that decision may be applied for has not ended; or
    - (ii) an application has been made for review of that decision, and the application has not been decided; or

## Section 25

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- (h) within the period beginning 14 days before the issue of a levy invoice and ending when the levy is paid.
- (6) AFMA may decide not to approve the transfer of a statutory fishing right if AFMA:
  - (a) knows of:
    - (i) a ground for suspension of the right under subsection 38 (1) or (3) of the Act; or
    - (ii) a ground for cancellation of the right under section 39 of the Act; and
  - (b) has decided not to suspend or cancel the right.

*Note 1* AFMA may decline to approve the transfer of a statutory fishing right only if the transfer would be contrary to this Management Plan or a condition of the right: see subsection 49 (2) of the Act.

*Note 2* A decision under section 49 of the Act is subject to reconsideration under section 165 of the Act: see subsection 165 (2). Application may be made to the Administrative Appeals Tribunal for review of a decision under section 165 of the Act: see subsection 165 (7).

*Note 3* The right to transfer a statutory fishing right is subject to a condition stated in the certificate for the fishing right: see paragraph 22 (4) (a) of the Act.

## 25 Amendment of certificates

- (1) This section applies if AFMA approves the transfer of a statutory fishing right under section 24.
- (2) If the transferor has not transferred all of the rights shown on the certificate for the right, AFMA must amend the certificate to show the transfer of the right to the transferee, and return it to the transferor.
- (3) If the transferee has lodged a certificate for a statutory fishing right with AFMA, AFMA must amend the certificate to show the transfer of the right to the transferee, and return it to the transferee.
- (4) If the transferor has not lodged a certificate for a statutory fishing right with AFMA, AFMA must give the transferee a certificate showing that the transferee is the holder of the right.

*Note* See section 46 of the Act about the requirement to register the transfer of an interest in a statutory fishing right.

## 26 Leases

- (1) If, in a fishing year, the holder of a statutory fishing right leases the right to someone else, the holder must give AFMA written notice about the lease, in the approved form.

- (2) A lease of a statutory fishing right has effect, for the purposes of this Management Plan, only if:
- (a) all levy payable for the right has been paid; and
  - (b) before the lease is granted, scallops have not been taken under the statutory fishing right in the fishing year in which the lease is granted.
- (3) The lease has effect, for the purposes of this Management Plan, only for the fishing year in which the lease is granted.

*Note* See section 46 of the Act about the requirement to register a dealing with a statutory fishing right.

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**Section 27**

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## **Part 3                      Total allowable catch**

### **27                      Determination of total allowable catch**

- (1) Before the beginning of the fishing season, AFMA must determine the total allowable catch for each species of scallop for the fishing year.
- (2) The total allowable catch determined under subsection (1) for a species of scallop must not be greater than an amount specified in the *Fisheries Management (Bass Strait Central Zone Scallop Fishery) Regulations 2002* for the purposes of this subsection.
- (3) Before deciding the total allowable catch for a species for a fishing year, AFMA:
  - (a) must consult the Committee and consider the Committee's views; and
  - (b) may consider the views of other interested persons.
- (4) For a fishing year, AFMA must give the holder of each quota statutory fishing right, at least 28 days before the fishing season, a notice stating:
  - (a) the total allowable catch for the species to which the right relates for the fishing year; and
  - (b) the quota allocated to the right for the fishing year.

### **28                      Amendment of total allowable catch**

- (1) During a fishing season in a fishing year, AFMA may increase the total allowable catch for a species of scallop for the fishing year.
- (2) In increasing the total allowable catch for a species of scallop under subsection (1), AFMA must ensure that the requirements (if any) set out in the *Fisheries Management (Bass Strait Central Zone Scallop Fishery) Regulations 2002* for the purposes of this subsection are met.
- (3) Before increasing the total allowable catch for a species of scallop, AFMA:
  - (a) must consult the Committee and consider the Committee's views; and
  - (b) may consider the views of other interested persons.
- (4) If AFMA increases the total allowable catch for a species of scallop under subsection (1), AFMA must give, to each holder of a quota statutory fishing right for the species to which the increase relates, written notice of the increase.
- (5) The notice must also state the quota allocated to the right for the fishing year.

## Part 4                      Miscellaneous

### 29                      Certificates

- (1) If a certificate issued by AFMA for a statutory fishing right is lost, stolen, destroyed or is otherwise not available to the owner of the right, the owner may ask AFMA, in writing, to give to the owner a replacement certificate.
- (2) The request must include:
  - (a) a statement explaining why the certificate is unavailable; and
  - (b) an agreement that the owner will surrender it to AFMA if it becomes available.
- (3) AFMA may amend a certificate only if the owner shown on the certificate gives the certificate to AFMA for that purpose.

### 30                      Delegation

AFMA may, by writing under its common seal, delegate to an officer of AFMA any of its powers or functions under this Management Plan, except its powers under sections 23, 27 and 28 and this section.

*Note* See subsection 17 (11) of the Act about the delegation of powers under sections 23, 27 and 28.

### 31                      Agents

- (1) If the holder of a statutory fishing right appoints a person to be the holder's agent for a matter to which this Management Plan applies, the holder must give AFMA a notice that states:
  - (a) the name of the agent; and
  - (b) the powers that may be exercised by the agent.
- (2) A notice must be accompanied by the instrument, or a certified copy of the instrument, by which the holder appointed the agent.
- (3) For the purposes of this Management Plan, the appointment of an agent by the holder of a statutory fishing right is of no effect unless AFMA has been told about the appointment under subsection (1).
- (4) In deciding an application under this Management Plan:
  - (a) AFMA may assume that a notice given under this section is properly given; and
  - (b) AFMA need not verify, by other means, the authority of the agent to make the application.

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**Section 32**

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**32 Notices**

- (1) In this section:
- address* or *facsimile number*, for the holder of a statutory fishing right, means the holder's address, or facsimile number, stated in the Register.
- notice* means a notice that is required, or allowed, by this Management Plan to be given in writing.
- working day* means a day that is not:
- (a) a Saturday or Sunday; or
  - (b) a public holiday in the place to which the notice is sent.
- (2) A notice to the holder of a statutory fishing right is taken to be given to the holder if it is:
- (a) delivered to the holder's residential or office address; or
  - (b) posted to the holder's postal address; or
  - (c) sent by facsimile to the holder's facsimile number.
- (3) A notice to AFMA must be addressed to the General Manager, Fisheries, Australian Fisheries Management Authority, and:
- (a) delivered to the reception desk at:
    - John Curtin House
    - 22 Brisbane Avenue
    - BARTON ACT; or
  - (b) posted to:
    - Box 7051
    - Canberra Mail Centre
    - ACT 2610; or
  - (c) sent by fax to:
    - (02) 6272 4614; or
  - (d) sent by e-mail to:
    - generalmanager.fisheries@afma.gov.au; or
  - (e) delivered, posted or sent by fax or e-mail to another office address, postal address or facsimile number notified by AFMA by notice published in a newspaper circulating in the State or Territory in which the address or facsimile receiver is located.
- (4) A notice to a person is taken to have been given to the person if it is delivered to the person's last known address.
- (5) A notice given to the holder of a statutory fishing right under this section is taken to have been given to the holder:
- (a) if the notice is delivered to the holder's residential or office address — on the day when it is delivered; and

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**Section 32**

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- (b) if the notice is sent by facsimile to the holder's facsimile number:
  - (i) 24 hours after the notice is sent; or
  - (ii) if that period does not end between 9 am and 5 pm on a working day in the place to which the notice is sent — at 9 am on the next working day in that place.

*Note* Under subsection 160 (1) of the *Evidence Act 1995*, it is presumed (unless evidence is sufficient to raise doubt about the presumption is adduced) that a postal article sent by pre-paid post addressed to a person at a specified address in Australia or in an external Territory was received at that address on the fourth working day after having been posted.

**Section 33**

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**Part 5                      Transitional****33                      Transitional**

- (1) This section ceases to have effect on the day specified in a notice published in the *Gazette* under subsection (2).
- (2) When the first statutory fishing rights granted under this Management Plan come into effect, AFMA must publish a notice in the *Gazette* stating that this section ceases to have effect on a day specified in the notice.
- (3) The day specified in a notice under subsection (2) must not be earlier than the day on which the notice is published.
- (4) Despite section 10, a person may engage in fishing for scallops in the area of the fishery if the person holds a fishing permit that is in force.
- (5) This Management Plan does not affect a fishing permit, or a condition to which the permit is subject.
- (6) This Management Plan does not prevent AFMA from granting or transferring a fishing permit.



## Schedule 1      Area of the fishery

(section 3)

That part of the AFZ contained within the area bounded by a line beginning at 40° 45' 00" S, 140° 57' 57" E and running progressively:

- east along the parallel 40° 45' 00" S to its intersection with the meridian 144° 15' 00" E;
- north along that meridian to its intersection with the parallel 40° 20' 00" S;
- north-easterly along the geodesic that runs through 40° 04' 00" S, 144° 47' 00" E to its intersection with the line, every point on which is 20 nautical miles seaward of the baseline from which the coastal waters of Tasmania are measured;
- generally easterly along that line to its intersection north of Tasmania with the meridian 146° 47' 00" E;
- south-easterly along the geodesic to 40° 37' 00" S, 146° 59' 00" E;
- north-easterly along the geodesic to 40° 30' 00" S, 147° 16' 00" E;
- north-easterly along the geodesic to 40° 29' 00" S, 147° 25' 00" E;
- north-westerly along the geodesic to 40° 18' 00" S, 147° 22' 00" E;
- north-westerly along the geodesic to 40° 04' 00" S, 147° 19' 00" E;
- north along the meridian 147° 19' 00" E to its intersection with the parallel 39° 53' 00" S;
- north-easterly along the geodesic to 39° 36' 00" S, 147° 32' 00" E;
- south-easterly along the geodesic that runs through 39° 44' 00" S, 147° 51' 00" E to its intersection with the outer limit of coastal waters adjacent to, and north-west of, Flinders Island;
- generally north-easterly and south-easterly along that outer limit to its intersection east of Flinders Island with the parallel 39° 56' 00" S;
- east along that parallel to its intersection with the meridian 150° 25' 00" E;
- north along that meridian to its intersection with the boundary between the adjacent areas in relation to Victoria and New South Wales;
- north-westerly along that boundary to its intersection with the outer limit of the coastal waters of Victoria;
- generally south-westerly along that outer limit to its intersection with the meridian 149° 59' 00" E;
- south along that meridian to a point 20 nautical miles seaward of the nearest point of the baseline from which the coastal waters of Victoria are measured;

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- generally south-westerly along the line, every point on which is 20 nautical miles seaward of the nearest point of the baseline from which the coastal waters of Victoria are measured, to its intersection with the parallel 39° 00' 00" S;
  - west along that parallel to its intersection with the outer limit of the coastal waters of Victoria east of Wilson's Promontory;
  - generally southerly along that outer limit to its intersection with the boundary between the adjacent areas in relation to Victoria and Tasmania;
  - west along that boundary to its westernmost intersection with the outer limit of the coastal waters of Victoria;
  - generally northerly and westerly along that outer limit to its intersection with the meridian 146° 00' 00" E;
  - south along that meridian to a point 20 nautical miles seaward of the nearest point of the baseline from which the coastal waters of Victoria are measured;
  - generally westerly along the line, every point on which is 20 nautical miles seaward of the nearest point of the baseline from which the coastal waters of Victoria are measured, to its intersection with the meridian 140° 57' 57" E;
  - south along that meridian to the point of commencement;

but excluding all areas that are part of the coastal waters of Tasmania or Victoria.

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## Schedule 2      Species of scallop

(sections 3 and 22)

Item	Common name	Scientific name	Marketing name	Minimum shell length
1	Commercial scallop	<i>Pecten fumatus</i>	Scallop	80 mm
2	Doughboy scallop	<i>Chlamys</i> ( <i>Mimachlamys</i> ) <i>asperrimus</i>	Doughboy scallop	none

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## **Schedule 3      Method of measuring shell length**

(section 22)

