

EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 48

Issued by the authority of the Minister for Agriculture, Fisheries and Forestry

Fisheries Management Act 1991

Fisheries Management (Bass Strait Central Zone Scallop Fishery) Amendment Regulations 2009 (No. 1)

Subsection 168(1) of the *Fisheries Management Act 1991* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary, or convenient to be prescribed, in carrying out or giving effect to the Act. Paragraph 168(2)(c) of the Act provides that regulations may be made providing for giving effect to, and enforcing the observance of, plans of management.

Subsection 20 (1) of the Act provides that the Australian Fisheries Management Authority (AFMA) may amend a plan of management. AFMA is currently amending the *Bass Strait Central Zone Scallop Fishery Management Plan 2002* (the Plan) and anticipates that the amended Plan will commence by the end of 2009. The purpose of the proposed amendments to the Plan is to remove redundant or surplus provisions and remove or amend those provisions that are inconsistent with the Harvest Strategy for the Bass Strait Central Zone Scallop Fishery (the Fishery).

Harvest Strategies were developed for all Commonwealth managed fisheries in response to a Ministerial Direction made in December 2005 by the then Minister for Fisheries, Forestry and Conservation under section 91 of the *Fisheries Administration Act 1991*. These Harvest Strategies introduced a new approach for controlling fishing intensity in Commonwealth managed fisheries to ensure their long term economic and environmental sustainability.

The *Fisheries Management (Bass Strait Central Zone Scallop Fishery) Regulations 2002* (the Principal Regulations) complement the Plan and prescribe matters in support of the Act relevant to the Fishery.

The *Fisheries Management (Bass Strait Central Zone Scallop Fishery) Amendment Regulations 2009 (No. 1)* (the Regulations) remove from the Principal Regulations those provisions that were inconsistent with the Harvest Strategy for the Fishery. These changes reflect the proposed amendments to the Plan.

The Regulations remove regulation 9 from the Principal Regulations, which prescribed mandatory area closures and the prohibition of fishing in areas which have a proportion of undersized commercial scallops of greater than 20 per cent of the available biomass. Subregulation 10(1), which prescribed a 1,000 tonne limit on the total allowable catch (TAC) that can be set at the start of each fishing season for commercial scallops, has also been removed from the Principal Regulations.

The Regulations allow for the recognition of an observed phenomenon of the stunted growth of commercial scallops in high density and deep water areas. Under the Regulations, AFMA is able to allow fishing in areas where stunted growth is occurring if it can be demonstrated

that the scallops have completed two major spawning events (the rationale behind the size limit for commercial scallops).

The Regulations also allow AFMA to set the TAC at the start of each season based on the available biomass in the Fishery, as determined through regular surveys, and will no longer be limited by a fixed TAC limit. AFMA is also able to implement area closures consistent with the Harvest Strategy for the Fishery.

In accordance with section 17 of the *Legislative Instruments Act 2003*, the Bass Strait Central Zone Scallop Fishery Resource Assessment Group (ScallopRAG) and Bass Strait Central Zone Scallop Fishery Management Advisory Committee (ScallopMAC) were consulted on the development of the Regulations at meetings on 22 February 2008 and 18 March 2008 respectively. These groups consist of scientific, industry, State, Commonwealth and environmental representatives. ScallopMAC was also involved in providing critical advice during the development of the Harvest Strategy for the Fishery.

The Office of Best Practice Regulation has determined that a Regulation Impact Statement is not required for the Regulations (ID10068).

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Details of the Regulations, which commenced on the day after registration on the Federal Register of Legislative Instruments, are set out below.

Regulation 1

Regulation 1 provides for the Regulations to be cited as the *Fisheries Management (Bass Strait Central Zone Scallop Fishery) Amendment Regulations 2009 (No. 1)*.

Regulation 2

Regulation 2 provides that the Regulations commence on the day after registration on the Federal Register of Legislative Instruments.

Regulation 3

Regulation 3 provides that Schedule 1 amends the Principal Regulations.

Schedule 1 Item 1

Schedule 1 Item 1 omits regulation 9.

Schedule 1 Item 2

Schedule 1 Item 2 omits subregulation 10(1).