

## **EXPLANATORY STATEMENT**

### *Fisheries Management Act 1991*

#### *Bass Strait Central Zone Scallop Fishery Management Plan 2002*

#### *Bass Strait Central Zone Scallop Fishery Management Plan Temporary Order 2010*

Section 43 of the *Fisheries Management Act 1991* (the Management Act) provides for the Australian Fisheries Management Authority (AFMA) to make a temporary order to enable quick action to be taken to deal with circumstances where urgent action is required for purposes related to the management of a fishery. Pursuant to subsection 92(1) of the *Fisheries Administration Act 1991* (the Administration Act), AFMA has delegated its powers and functions under section 43 of the Management Act to the Chief Executive Officer of AFMA.

The purpose of the *Bass Strait Central Zone Scallop Fishery Management Plan Temporary Order 2010* (the Order) was to amend the *Bass Strait Central Zone Scallop Fishery Management Plan 2002* (the Plan) to resolve inconsistencies with the Harvest Strategy for the Bass Strait Central Zone Scallop Fishery (the Fishery). The required changes needed to be in place for the commencement of the fishing season on 1 April 2010.

Harvest Strategies were developed for all Commonwealth 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 Administration Act. The Fishery's Harvest Strategy prescribes a comprehensive management regime for controlling fishing intensity to ensure the Fishery's long term biological and economic sustainability.

The Fishery's Harvest Strategy provides for a flexible fishing season length with a default season of 1 June to 31 January. The Plan prescribed a season of 1 May to 20 December. However, during the implementation of the Harvest Strategy, the Bass Strait Central Zone Scallop Fishery Resource Assessment Group (ScallopRAG) and Bass Strait Central Zone Scallop Fishery Management Advisory Committee (ScallopMAC) recommended the season be amended to be 1 April to 31 December. This is consistent with the intent of the seasonal closure which is to provide protection for Commercial Scallops, *Pecten fumatus*, following peak spawning and spat settlement periods while also providing additional economic opportunities for Fishery operators. The Harvest Strategy will be reviewed in 2010 to reflect this change.

The Fishery's Harvest Strategy also recognises the phenomenon of stunted growth of Commercial Scallops in high density and deep water areas. Contrary to the provisions of the Plan, the Harvest Strategy provides for the harvest of Commercial Scallops smaller than the minimum shell length of 90 mm, where it can be demonstrated that scallops have had the opportunity to experience at least two major spawning events (the rationale behind the minimum shell length requirement). By removing the minimum shell length requirement, the Order will allow the flexibility for fishers to retain Commercial Scallops less than 90 mm when the control rules contained in the Harvest Strategy demonstrate that scallops in that area have had the opportunity to experience at least two major spawning events.

AFMA is currently amending the Plan to give effect to these provisions of the Harvest Strategy. However the process will not be completed in time for the commencement

of the 2010 season. The Order gives effect to these provisions to allow the 2010 fishing season to proceed without delay.

In accordance with subsection 43(4) of the Management Act, the Order will have effect for a maximum period of six months. AFMA anticipates that the amended Plan will commence prior to the cessation of the Order.

### **Consultation**

ScallopRAG and ScallopMAC are the key advisory bodies for AFMA on matters relating to the management of the Fishery. These bodies consist of scientific, industry, State, Commonwealth and environmental representatives. ScallopRAG and ScallopMAC were consulted during the development and implementation of the Harvest Strategy for the Fishery and consequent amendment of the Plan.

The inconsistencies addressed by the Order were discussed at meetings of ScallopRAG on 22 February 2008, 27 February 2009 and 17 December 2009 and ScallopMAC on 18 March 2008, 18-19 March 2009 and 12-13 February 2010. Both ScallopRAG and ScallopMAC supported the amendments to the Plan required to resolve inconsistencies with the Harvest Strategy for the Fishery.

### **Regulation Impact Statement**

The Office of Best Practice Regulation (OBPR) determined that a Regulation Impact Statement was not required for the Order (OBPR ID 11177).

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

Clause 1	Provides that the Order is the <i>Bass Strait Central Zone Scallop Fishery Management Plan Temporary Order 2010</i> .
Clause 2	Provides for the commencement and period of application of the Order.
Clause 3	Provides that Schedule 1 amends the Plan.
Schedule 1 Item 1	Amends the default fishing season to be 1 April to 31 December, inclusive.
Schedule 1 Item 2	Removes the prohibition on the take of Commercial Scallops smaller than the prescribed minimum shell length.
Schedule 1 Item 3	Removes the minimum shell length prescribed in the Schedule.
Schedule 1 Item 4	Removes the Schedule detailing the method of measuring shell length.