

Explanatory Statement

Fisheries Management Act 1991

Bass Strait Central Zone Scallop Fishery Management Plan Amendment 2010 (No. 1)

Subsection 17(1) of the *Fisheries Management Act 1991* (the Act) provides that the Australian Fisheries Management Authority (AFMA) is to determine plans of management for all fisheries. Subsection 20(1) provides that AFMA may amend a plan of management.

AFMA has determined the *Bass Strait Central Zone Scallop Fishery Management Plan Amendment 2010 (No. 1)* (the Plan Amendment) to amend the *Bass Strait Central Zone Scallop Fishery Management Plan 2002* (the Plan).

The Bass Strait Central Zone Scallop Fishery

Commercial scallop fishing in the Bass Strait commenced in the early 1970s and is managed under three jurisdictions. AFMA manages the Bass Strait Central Zone Scallop Fishery (the Fishery) and, Victoria and Tasmania manage zones generally out to 20 nautical miles off their respective coastlines. The principal harvest method is by a scallop harvester (or dredge). Under the Plan, access to the Fishery is limited to holders of quota statutory fishing rights (SFRs). The Fishery's primary quota species is the Commercial Scallop, *Pecten fumatus*. The Doughboy Scallop, *Chlamys (Mimachlamys) asperimus*, is also managed under quota, but is rarely retained.

The Fishery is managed under the Plan, *Fisheries Management (Bass Strait Central Zone Scallop Fishery) Regulations 2002* (the Regulations) and Harvest Strategy which prescribe a precautionary closed area spatial management regime, where the majority of the Fishery is closed to commercial fishing and only discrete areas are open to harvesting on a rotational or staged basis. By targeting areas where large scallops are in high densities, harvesting efficiency is maximised and impacts on the marine environment are minimised.

Content of the Plan Amendment

The purpose of the Plan Amendment is to remove redundant or surplus provisions and remove or amend those provisions that are inconsistent with the Harvest Strategy for the Fishery. Harvest strategies were developed for all AFMA 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 AFMA managed fisheries to ensure their long term economic and environmental sustainability.

The Plan Amendment amends the default fishing season to 1 April to 31 December retaining the current facility as prescribed in the Plan to vary these dates to shorten the season. This allows AFMA to shorten the season should more accurate information concerning spat settlement dynamics or scallop condition become available. This amendment is consistent with the intent of the seasonal closure which is to protect recently settled spat from physical disturbance and optimise scallop condition for harvesting. Economically it will potentially provide operators and markets with an improved continuity of supply of scallops throughout the year, assist in the prevention of market gluts and allow access to peak market prices over Easter and Christmas providing for a better economic return for the Fishery and potentially an improvement in the value of quota SFR holdings.

The Plan Amendment also allows AFMA to increase or decrease the total allowable catch (TAC) for quota species within a fishing year. This amendment is consistent with the intent of the Harvest Strategy and allows for more flexible management. AFMA will now be able to respond to circumstances which require an immediate management response to protect the sustainability of

the Fishery.

The Plan Amendment removes the 90 mm minimum shell length requirement for the Commercial Scallop. This allows for the recognition of an observed phenomenon of the stunted growth of scallops in high density and deep water areas. Under the Plan Amendment, AFMA is able to allow commercial fishing in areas where stunted growth is occurring if it can be demonstrated that the scallops are at least three years old and have experienced at least two major spawning events (the rationale behind the minimum shell length requirement). The minimum shell length requirement will be retained within the Harvest Strategy but the rules around its application will recognise this phenomenon.

The Plan Amendment also provides a definition for the term *harvest strategy*, removes a redundant provision relating to the Regulations and removes a surplus provision relating to contact details in the case of addressing a notice to AFMA. The last amendment was necessary as AFMA's contact details are not static and to keep the Plan up to date on this matter would require regular amendment.

Consultation

Section 20 of the Act provides that section 17 of the Act applies in relation to amendments to a plan of management in the same way as it applies to the preparation of a new plan of management. Section 17 of the Act requires that a plan of management 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 plan of management. 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 of management. Subsection 17(2A) provides that persons and organisations listed in the register, established under section 17A, must also be notified that a draft plan of management is available and that representations may be made in connection with the draft plan of management.

AFMA has met all of the consultation and notification processes required under legislation. AFMA invited interested persons to comment on a draft of the plan amendment by notice in the *Commonwealth of Australia Gazette* (No. GN 10 of 18 March 2009) and *The Australian* newspaper (under Public Notices on 18 March 2009). AFMA also notified, by letter, all persons on AFMA's register of interested persons relating to plans of management, of the terms of the public notices. The public comment period opened on 18 March 2009 and closed on 20 April 2009.

Three submissions were received during the public comment period. Many of the issues raised in the submissions, relating to marine protected areas, the consolidation of the management of the Bass Strait scallop fisheries under one jurisdiction and a request to grant additional quota SFRs, were outside the scope of the Plan Amendment. One concern raised over the removal of the minimum shell length requirement from the Plan is addressed through the Fishery's Harvest Strategy.

Throughout the development of the Plan Amendment, AFMA also consulted with the Bass Strait Central Zone Scallop Fishery Resource Assessment Group and Bass Strait Central Zone Scallop Fishery Management Advisory Committee, both of which were supportive of the Plan Amendment.

The AFMA Commission determined the Plan Amendment on 4 March 2010.

After determining the Plan Amendment, in accordance with subsection 18(1) of the Act, AFMA informed the Minister for Agriculture, Fisheries and Forestry (the Minister) of the consultations it conducted and the nature of the representations it received before determining the Plan Amendment. The Minister subsequently accepted the Plan Amendment.

Notification of the determination and acceptance of the Plan Amendment was published in the

Commonwealth of Australia Gazette in accordance with subsection 19(1) of the Act.

The Plan Amendment is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Regulation Impact Statement

A Regulation Impact Statement (RIS) was prepared for the Plan Amendment and assessed by the Office of Best Practice Regulation (OBPR). OBPR advised AFMA on 8 February 2010 that the RIS satisfied the Australian Government's RIS requirements (OBPR ID 9414).

The Amendments

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

Section 1	Provides for the Plan Amendment to be cited as the <i>Bass Strait Central Zone Scallop Fishery Management Plan Amendment 2010 (No. 1)</i> .
Section 2	Provides that the Plan Amendment commences on the day after it is registered on the Federal Register of Legislative Instruments.
Section 3	Provides that the Plan is amended as per schedule 1.
Schedule 1 Item 1	Amends section 3 of the Plan, definition of <i>fishing season</i> with a default fishing season of 1 April to 31 December.
Schedule 1 Item 2	Inserts a definition for the term <i>harvest strategy</i> .
Schedule 1 Item 3	Amends paragraph 7(c) of the Plan to announce that the TAC will be set each year in accordance with the Fishery's Harvest Strategy and introduce the facility to vary the TAC within a fishing year.
Schedule 1 Item 4	Amends subsection 12(2) of the Plan to allow for the variation of the TAC within a fishing year.
Schedule 1 Item 5	Removes paragraph 22(2)(g) of the Plan prohibiting quota SFR holders from taking scallops smaller than the minimum shell length of 90 mm.
Schedule 1 Item 6	Amends section 22, note 1 of the Plan referring to the minimum shell length requirement. The amendment states that the minimum shell length requirement may be imposed as a condition on quota SFRs.
Schedule 1 Item 7	Removes subsection 27(2) of the Plan referring to a provision in the Regulations that was removed previously.
Schedule 1 Item 8	Amends subsection 28(1) of the Plan to allow for the variation of the TAC within a fishing year.
Schedule 1 Item 9	Amends subsection 28(2) of the Plan to allow for the variation of the TAC within a fishing year.
Schedule 1 Item 10	Amends subsection 28(3) of the Plan to allow for the variation of the TAC within a fishing year.

- Schedule 1 Item 11** Amends subsection 28(4) of the Plan to allow for the variation of the TAC within a fishing year.
- Schedule 1 Item 12** Removes subsection 32(3) of the Plan providing contact details in the case of addressing a notice to AFMA.
- Schedule 1 Item 13** Amends schedule 2 of the Plan to remove references to the minimum shell length requirement.
- Schedule 1 Item 14** Removes schedule 3 of the Plan providing the method of measuring shell length.