

EXPLANATORY STATEMENT

Issued by the authority of the Australian Fisheries Management Authority

Fisheries Management Act 1991

Southern and Eastern Scalefish and Shark Fishery Management Plan 2003

Southern and Eastern Scalefish and Shark Fishery Overcatch and Undercatch Determination 2013

The *Southern and Eastern Scalefish and Shark Fishery Overcatch and Undercatch Determination 2013* (the Determination) is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Subsection 17(5) of the *Fisheries Management Act 1991* (the Act) provides that a plan of management made under the Act is to set out, amongst other things, the objectives of the plan of management and measures by which the objectives are to be attained.

Paragraph 17(6)(aa) of the Act provides that a plan of management made under the Act may provide for the Australian Fisheries Management Authority (AFMA) to determine the fishing capacity permitted for the fishery or a part of the fishery in respect of a particular period or periods.

Subsection 24(1) of the *Southern and Eastern Scalefish and Shark Fishery Management Plan 2003* (the Plan) provides that AFMA must, no later than 31 March immediately before the commencement of a fishing year, determine amounts and percentages for sections 22, 22A and 23 for each quota species for the fishing year. These provisions concern the calculation of undercatch and overcatch.

Section 24 (3) of the Plan provides that, before AFMA determines an amount or percentage for a quota species for a fishing year, it must consult and consider the views of each relevant management advisory committee; it must take into account advice from the relevant fishery assessment group about the stock status of a quota species; it must also take into account the precautionary principle; and, it may consider the views (if any) of any interested person.

The Determination determines the amounts and percentages for each quota species in relation to undercatch and overcatch for the 2013 fishing year. Undercatch and overcatch provides for 'carry over' or 'carry under' of quota between fishing seasons thereby allowing fishers the flexibility to catch a certain amount of fish over or under their quota, and debit or credit this to or from their next season's fishing quota.

The Fishery

The Southern and Eastern Scalefish and Shark Fishery (SESSF) covers the area of waters from approximately 80 nautical miles off the coast near Fraser Island in Queensland, south around Tasmania and west to Cape Leeuwin in Western Australia. The area of the SESSF encompasses almost half of the waters within the Australian Fishing Zone. The SESSF operates in both Commonwealth and state waters under complex jurisdictional arrangements, due to different Offshore Constitutional Settlements arrangements with each state.

Management in the SESSF is mainly through output controls in the form of total allowable catch (TAC) limits set under the Commonwealth Harvest Strategy Policy and the specific SESSF Harvest Strategy Framework (HSF). Input controls used include a limit on the number of boats that operate in each sector due to a finite amount of fishing concessions authorising fishing in the fishery, as well as gear restrictions such as limits on mesh size and the amount of fishing gear that may be used.

Consultation

The AFMA consultation process was initiated by relevant species stock assessments, which were presented by scientific members to industry, management members and observers for discussion at Resource Assessment Groups (RAGs). The stock assessments are based on the HSF and include a recommended biological catch (RBC). The RBC provides the best scientific advice on what the total mortality should be for each species or stock, taking into account fishing and natural mortality and any ecological implications of harvesting the species.

Advice from the RAGs was then considered by the South East Management Advisory Committees, Great Australian Bight Management Advisory Committee, and the Great Australian Bight Industry Association under co-management arrangements. The undercatch and overcatch percentages and determined amounts were then sent to the AFMA Commission for determination along with all comments received.

Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) advised that a Regulation Impact Statement was not required for this Determination consistent with the agreement in place to cover all regulatory changes deemed to be of a minor or machinery nature.

Statement of compatibility prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

AFMA assesses under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* that this legislative instrument is compatible with human rights. AFMA's Statement of Compatibility is attached as a supporting document.

Details of the Determination are set out below:

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| Clause 1 | Provides for the Determination to be cited as the <i>Southern and Eastern Scalefish and Shark Fishery Overcatch and Undercatch Determination 2013</i> . |
| Clause 2 | Provides that the Determination commences on the day after registration on the Federal Register of Legislative Instruments. |
| Clause 3 | Provides that the Determination ceases as if it was revoked on 1 May 2014 unless earlier revoked. |
| Clause 4 | Provides that a term used in the Determination and in the Plan or Act has the same meaning in the Determination as in the Plan or Act. |

Clause 5 Determines the percentage of overcatch for section 22 and 22A of the Plan, determines the percentage of undercatch for section 23 of the Plan and determines the amount for section 22A of the Plan for each quota species in the fishery for the 2013 fishing year commencing on 1 May 2013 and ending on 30 April 2014.