

EXPLANATORY STATEMENT

LEGISLATIVE INSTRUMENT

**Issued by the Authority of the
Australian Fisheries Management Authority**

Fisheries Management Act 1991

Fisheries Management (Bass Strait Central Zone Scallop Fishery Management Plan 2002) Temporary Order 2013 No. 1

Subsection 43 (2) of the *Fisheries Management Act 1991* (the Management Act) provides for the Australian Fisheries Management Authority (the Authority) to make a Temporary Order to enable quick action to deal with circumstances where urgent action is required for purposes related to the management of a fishery. Pursuant to section 92(1) of the *Fisheries Administration Act 1991* (the Administration Act), the Authority has delegated the powers and functions under section 43 of the Management Act to the Chief Executive Officer of the Authority.

Pursuant to section 43(9) of the Management Act, if an order is inconsistent with a provision of a plan of management, or a fishing concession, the order overrides the provision and, to that extent, the provision has no effect.

The Fishery

The Bass Strait Central Zone Scallop Fishery (the Fishery) lies in the Bass Strait above the State of Tasmania and extends from the Victoria/New South Wales border, typically outside 3 nautical miles, around southern Australia to the Victoria/South Australian border.

Management in the Fishery is through a combination of input and output controls in the form of individually transferable quotas with a total allowable catch determined for each quota species for each fishing year. The main target species in the Fishery is the Commercial Scallop (*Pecten fumatus*). The Doughboy Scallop (*Chlamys (Mimachlamys) asperimus*) is common throughout the Bass Strait however it is rarely retained. The target species are caught primarily for the domestic market.

The scallop resource is naturally sporadic and the fluctuating availability and intermittent recruitment make the concept of unfished biomass problematic. Commercial Scallops aggregate in sub-populations (beds) which have a commercially viable rate some years and not others. The aim of maintaining the Fishery at a nominated target reference point is difficult to attain given the nature of the species. This is achieved through a harvest strategy for the Fishery which contains measures for setting a total allowable catch and requires all parts of the fishery to be closed to fishing other than those recognised as a viable fishing area.

The Fishery is managed under the *Bass Strait Central Zone Scallop Fishery Management Plan 2002* (the Management Plan).

Background to the Temporary Order

The fishing season is set for the Fishery by the registration of a closure Direction under section 41A of the Management Act. This closure Direction closes the Fishery to fishing while allowing for a small area to remain open to fishing for a specified period, therefore establishing the fishing season.

Prior to the fishing season, the total allowable catch is determined by the Authority under subsection 17(6)(aa) of the Management Act and subsection 27(1) of the Management Plan. Subsection 27(4) of the Management Plan provides:

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.

The notice period contained within the subsection effectively limits the opening of the fishing season until 28 days after the registration of the total allowable catch Determination. The Authority registered the total allowable catch Determination on 8 August 2013.

The majority of concession holders in the Fishery are endorsed to operate in the state managed Tasmanian Scallop Fishery. Pre-season surveys of the White Rock area of the Tasmanian Scallop Fishery suggested this area would yield between 1,000 to 1,500 tonnes of high quality scallops. However, since the fishery in the White Rock area first opened on 1 July 2013 the scallops harvested have been in poor condition. Tasmanian industry has implemented a series of voluntary closures in the White Rock area to prevent poor quality scallops being supplied to market, which effects both market price and the long term retention of markets.

On 8 August 2013 the Department of Primary Industries, Parks, Water and Environment (DPIPWE) released an urgent message to Tasmanian scallop fishermen and processors advising that testing had detected the presence of Paralytic Shellfish Poisoning (PSP) at a mussel farm in close proximity to the White Rock area. The testing showed a reading of 1.5 milligrams per kilogram which is nearly double the maximum permissible health limit of 0.8 mg/kg.

The urgent message from DPIPWE also recommended that Tasmanian industry implement a voluntary closure of the White Rock area until such time as further testing is undertaken. Tasmanian industry enacted the voluntary closure on 9 August 2013. The Tasmanian Scallop Fishery had similar issues with PSP in December last year which resulted in the fishery being closed three weeks early at an estimated catch loss of \$1 million.

The Order sets out to override the minimum notice period in subsection 27(4) of the Management Plan allowing the Authority to open the fishing season approximately 14 days prior to the original scheduled start of the season. An early start to the season will alleviate the economic impact of PSP concerns and the poor condition of scallops in the Tasmanian fishery. Furthermore, an early season opening reduces the risk of a natural mortality die off event as has occurred in some areas in previous fishing seasons.

The Order is consistent with the Authority's legislative obligation to pursue its objectives. By opening the fishing season and allowing fishers to fish prior to the 28 day notice period specified in subsection 27(4) of the Management Plan, the action is consistent with the Authority's objective of maximising the net economic returns to the Australian community from the management of Australian fisheries (Part 1 Section 3(1)(c) of the Management Act).

The measures imposed by this Temporary Order commence on the day after registration on the Federal Register of Legislative Instruments. In view of the urgency, the Authority considered that no other action was appropriate.

Consultation

Section 43 of the Management Act does not require the Authority to consult with the relevant management advisory committee (ScallopMAC) or provide any set period of notice prior to making a Temporary Order. However, the Authority sought advice from both ScallopMAC and the Authority's Commission prior to the making of the Temporary Order. Both ScallopMAC and the Authority's Commission supported the early opening of the fishing season by registering the Temporary Order which overrides the notification period set out in the Management Plan.

Regulation Impact Statement

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required for this legislative instrument (ID: 15270).

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

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

Terms of the Order

In general terms, this Temporary Order overrides the provision in subsection 27(4) of the Management Plan which provides the Authority must give the holder of a statutory fishing right a notice stating the total allowable catch for the species to which the right relates and the quota allocated to the right for the fishing year at least 28 days before the start of the fishing season.

Details of the Temporary Order are set out below:

Clause 1 provides the Order is to be cited as the *Fisheries Management (Bass Strait Central Zone Scallop Fishery Management Plan 2002) Temporary Order 2013 No. 1*.

Clause 2 provides that the Order commences on the day after registration on the Federal Register of Legislative Instruments.

Clause 3 defines the terms used in the Order.

Clause 4 provides that subsection 27(4) of the Management Plan has no effect.

Clause 5 provides, for the avoidance of doubt, that the Order does not affect any direction in force that fishing is not to be engaged in the fishery, or a part of the fishery.