

EXPLANATORY STATEMENT

Bass Strait Central Zone Scallop Fishery Management Plan Amendment 2014

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

Fisheries Management Act 1991

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) of the Act provides that AFMA may at any time amend a plan of management.

AFMA has determined the *Bass Strait Central Zone Scallop Fishery Management Plans Amendment 2014* (the Plan Amendment) to amend the *Bass Strait Central Zone Scallop Fishery Management Plan 2002* (the Management Plan).

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

Need for Amendment

Subsection 27(4) of the Management Plan provides that after determining the Total Allowable Catch (TAC) AFMA must notify all Statutory Fishing Right holders of the TAC at least 28 days prior to the start of the fishing season.

The fishing season in the Bass Strait Central Zone Scallop Fishery (BSCZSF) is managed by the registration of a closure Direction. Each year AFMA closes the BSCZSF to fishing for a defined period which gives effect to setting the season dates. The Direction provides an exemption to the closure for a small defined area should the area be shown to have sufficient scallop beds for harvesting as a result of pre-season surveys.

Subsection 27(4) restricts AFMA to registering the closure Direction until 28 days has passed after the registration of the TAC Determination. This restriction means industry cannot commence fishing until the 28 day notice period has concluded and the season is opened.

Delays in opening viable fishing areas have historically resulted in scallops losing condition and in 2011 a natural mortality event occurred during the 28 day period preventing any harvesting. This loss in harvesting opportunity has resulted in decreased profits for concession holders.

In October 2013 AFMA registered a Temporary Order as a one-off departure from the requirement to open the BSCZSF before the completion of the 28 day notice period. The Temporary Order overrode subsection 27(4) of the Management Plan and allowed AFMA to register a closure Direction as soon as practicable after the determination of the TAC. The primary purpose of the Temporary Order was to provide industry the opportunity to operate

in the fishery immediately following the closure of the Tasmanian scallop fishery as a result of Paralytic Shellfish Toxin levels above the safe human consumption level of 0.8 mg/kg. This action resulted in continuity of supply to domestic markets and enabled operators with concessions in both the Commonwealth and Tasmanian fisheries to continue to fish for scallops without a break before the completion of the 28 day notice period. The early opening of the BSCZSF was well received by industry.

Historically the intention of the 28 day notice period has been to allow concession holders to structure their businesses in readiness for the commencement of the fishing season. With only a small number of committed operators remaining in the fishery, the 28 day notice period now restricts the flexibility of the industry to commence fishing following the Determination of the TAC. Further, industry have explained at the Scallop Management Advisory Committee (ScallopMAC) meetings during 2012 and 2013 that the 28 day rule needs to be removed to ensure harvesting can take place as soon as possible, should commercial scallops be viable for harvesting.

The Plan Amendment reduces the notification period from 28 days to 7 days, therefore allowing greater flexibility for industry by allowing concession holders to commence fishing 7 days after the setting of the TAC.

Consultation

Section 17 of the Act requires that before determining a plan of management for a fishery (or an amendment) AFMA must prepare a draft of the plan and publish it by public notice. The notice must invite interested persons to make representations in connection to the draft plan.

The draft amendment was released for public comment in March 2014. To inform the community, AFMA placed notices in *The Australian* newspaper, in the *Commonwealth of Australia Gazette* and in AFMA's fortnightly newsletter, *AFMA Update*. AFMA also wrote to all those on a register of persons interested in the development of management plans.

Three submissions were received which were replied to by AFMA and forwarded to the AFMA Commission before determination of the Plan Amendment.

Regulation Impact Statement

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required for this legislative instrument (ID: 16656).

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 Plan Amendment are set out below:

Part 1 provides for the Plan Amendment to be known as the *Bass Strait Central Zone Scallop Fishery Management Plan Amendment 2014*.

Part 2 provides that the Plan Amendment commences on the day after it is registered.

Part 3 provides that the *Bass Strait Central Zone Scallop Fishery Management Plan 2002* is to be amended in accordance with Schedule 1.

Schedule 1 Item 1 substitutes subsection 27(4) in the Management Plan by removing the 28 day notification period and substituting it with a 7 day notification period.