

## **EXPLANATORY STATEMENT**

### **Southern and Eastern Scalefish and Shark Fishery Management Plan Amendment 2016**

Issued by the authority of the Minister for Agriculture and Water Resources

*Fisheries Management Act 1991*

Subsection 17(1) of the *Fisheries Management Act 1991* (the FM 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 *Southern and Eastern Scalefish and Shark Fishery Management Plans Amendment 2016* (the Plan Amendment) to amend the *Southern and Eastern Scalefish and Shark Fishery Management Plan 2003* (the Management Plan).

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

#### **Need for Amendment**

The purpose of the Management Plan is to pursue AFMA's legislative objectives whilst providing a comprehensive framework for the regulation of scalefish and shark fishing in the fishery. Specifically this amendment furthers the objective of implementing efficient and cost-effective fisheries management on behalf of the Commonwealth by simplifying the regulatory impost on the fishing industry.

There are two key changes contained in the Plan Amendment; granting Statutory Fishing Rights (SFRs) for six species groups and simplifying undercatch provisions.

The SESSF is managed under two quota systems: Individual Transferable Quota units (ITQs) and SFRs. Both systems entitle the holder to a percentage of the total allowable catch of a specified species or group of species in the fishery. Apart from the inconvenience and cost of administering two quota management systems, the key difference between the systems relates to their perpetuity.

SFRs are rights that remain in force for the duration of the management plan under which they are granted. Should the management plan be revoked, holders of the SFRs are entitled to commensurate access in any future management arrangements. ITQs are administered as a condition on a fishing permit granted in accordance with s32 of the FM Act. As such, ITQs are only in force for the length of the permit (which is currently set at one year). The permit is administrative in nature only and does not allow fishing by itself. Should the permit be revoked or not granted, the holder is not automatically entitled to future access based on any historic holding of the permit or associated ITQs.

Each year a number of fishers fail to apply for the grant of their permits to which their ITQ units are attached. Without an active permit the ITQ units are not in force, therefore operators may inadvertently be fishing without authorisation.

As a measure to reduce the complexity in management arrangements for the fishery and to increase the security of access to fishers, the Management Plan is being amended to transition the remaining ITQ managed species to SFR managed species. Sections 27 to 29 of the Management Plan provides for the granting of SFRs for the remaining species managed by permits and ITQs. Holders of fishing permits that authorise the take of ITQ species are eligible for the grant of one SFR for each ITQ unit they own.

Section 23 of the Management Plan provides for a concession holder who has not caught their entire allocated quota in a fishing season to catch a proportion of it in the following season. This additional catch is known as ‘undercatch’. To receive this undercatch, the criteria specified in section 23 of the Management Plan must be met, including the requirement for the holder to hold one SFR for the uncaught species on the relevant date in the following season. The purpose of this provision is to ensure that the holder holds a valid authorisation to fish before they commence any fishing activity, including any fishing for an undercatch amount.

The FM Act provides that a concession holder must have a valid authorisation to fish prior to the commencement of any fishing activity. As such, the requirement to hold one SFR on the relevant date under paragraph 23(1)(b) of the Management Plan was deemed a redundant provision.

Each year a small proportion of concession holders forego the receipt of undercatch as they do not hold the required one SFR on the relevant date, despite meeting the other criteria.

As it was identified as a redundant provision, and one which occasionally prevents concession holders from receiving what they would otherwise be entitled to, the Management Plan is being amended to remove paragraph 23(1)(b).

Further amendments are required to the Management Plan to:

- Correct typographical errors;
- Insert quota species names and correct inaccurate species names;
- Rename certain zones in the fishery to align with the renaming of species;
- Remove redundant provisions such as spent granting provisions and references to historical dates; and
- Streamline the process for the grant of SFRs under the Management Plan.

## **Consultation**

The FM 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 amendments were released for public comment in October 2015. 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 is also required to write to all those on the register of persons interested in the development of management plans. At the time of the consultation no persons were listed on the register. During the consultation period no formal submissions were received.

The draft amendment was presented to the South East Management Advisory Committee (SEMAC) and the Great Australian Bight Management Advisory Committee (GABMAC) at their November 2015 meetings. Both SEMAC and GABMAC supported the amendment. The Commonwealth Fisheries Association also supported the amendment.

### **Regulation Impact Statement**

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required for this legislative instrument (ID: 19537 and ID: 16921).

### **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 *Southern and Eastern Scalefish and Shark Fishery Management Plan Amendment 2016*.

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

**Part 3** provides that the Management Plan is to be amended in accordance with Schedule 1.

**Schedule 1 Item 1** amends section 3 of the Management Plan to insert a definition for the cascade plateau zone.

**Schedule 1 Item 2** amends section 3 of the Management Plan to insert definitions for deepwater shark (eastern) and deepwater shark (western).

**Schedule 1 Item 3** amends section 3 of the Management Plan to insert definitions for the gemfish and deepwater shark (eastern) zone and the gemfish and deepwater shark (western) zone.

**Schedule 1 Item 4** amends section 3 of the Management Plan to substitute the definition of fishing year.

**Schedule 1 Item 5** amends section 3 of the Management Plan to substitute definitions for gemfish (eastern) and gemfish (western).

**Schedule 1 Item 6** amends section 3 of the Management Plan to substitute the definition for orange roughy (Cascade Plateau).

***Schedule 1 Item 7*** amends section 3 of the Management Plan to insert definitions for smooth oreodory (Cascade Plateau) and smooth oreodory (other).

***Schedule 1 Item 8*** amends section 3 of the Management Plan to omit the definition for Type N quota statutory fishing right.

***Schedule 1 Item 9*** amends section 3 of the Management Plan to omit the definition for Type T quota statutory fishing right.

***Schedule 1 Item 10*** amends subsection 11(1) of the Management Plan by substituting text which removes redundant provisions relating to past season dates.

***Schedule 1 Item 11*** amends section 23 of the Management Plan by substituting text which removes the requirement to hold one SFR on the relevant date in order to receive undercatch.

***Schedule 1 Item 12*** amends section 27 of the Management Plan by substituting text which sets out eligibility criteria for the grant of SFRs for quota species in items 29 through 34 of Schedule 2.

***Schedule 1 Item 13*** amends section 28 of the Management Plan by substituting text which provides for the grant of SFRs for quota species in items 29 through 34 of Schedule 2.

***Schedule 1 Item 14*** amends subsection 29(3) of the Management Plan by substituting text which removes the requirement for a person to explain why they did not apply for the grant of SFRs.

***Schedule 1 Item 15*** amends section 29(4) of the Management Plan by substituting text which removes the requirement for AFMA to be satisfied as to the reason a person has not applied for the grant of SFRs.

***Schedule 1 Item 16*** amends Schedule 1 Part 3 Clause 1 of the Management Plan by omitting the description of the gemfish eastern zone and inserting a description for the gemfish and deepwater shark eastern zone.

***Schedule 1 Item 17*** amends Schedule 1 Part 3 Clause 2 of the Management Plan by omitting the description of the gemfish western zone and inserting a description for the gemfish and deepwater shark western zone.

***Schedule 1 Item 18*** amends Schedule 1 Part 3 Clause 4 of the Management Plan by omitting the description of the orange roughy Cascade Plateau zone and inserting a description for the cascade plateau zone.

***Schedule 1 Item 19*** amends Schedule 2 of the Management Plan by substituting the table listing the quota species to provide for new species names and the correction of inaccurate species names.

## **Statement of Compatibility with Human Rights**

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

### **Southern and Eastern Scalefish and Shark Fishery**

#### **Management Plan Amendment 2016**

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

#### **Overview of the Legislative Instrument**

The instrument amends the *Southern and Eastern Scalefish and Shark Fishery Management Plan 2003* primarily to provide for the granting of Statutory Fishing Rights and to simplify the provisions relating to undercatch.

#### **Human rights implications**

This Legislative Instrument does not engage any of the applicable rights or freedoms.

#### **Conclusion**

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

**Senator the Hon. Anne Ruston**  
**Parliamentary Secretary to the Minister for Agriculture and Water Resources**