**EXPLANATORY STATEMENT**

Issued by the Authority of the

Australian Fisheries Management Authority

*Fisheries Management Act 1991*

**Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery (Variation of Closures) Direction 2018**

Subsection 41A(3) of the *Fisheries Management Act 1991* (the Management Act) provides that the Australian Fisheries Management Authority (AFMA) may, at any time, by a further direction in writing, vary or revoke a direction given under subsection 41A(2) of the Management Act. A direction under subsection 41A(2) of the Management Act may be made to direct that fishing is not to be engaged in in the fishery, or in a particular part of the fishery, during a period or periods specified in the direction. A direction given under subsection 41A(3) of the Management Act is not subject to the notification requirements that are required for a direction under subsection 41A(2), as prescribed by subsections 41A(2) and 41A(2A).

Pursuant to subsection 41A(4) of the Management Act, if AFMA varies a direction given under subsection 41A(2) by way of subsection 41A(3) it must ensure a copy of the variation is sent to the holder of a fishing concession in respect of the fishery as soon as practicable.

The *Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery (Variation of Closures) Direction 2018* (the Variation Direction) is made under subsection 41A(3) of the Management Act to vary the *Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery (Closures) Direction 2016* (the Original Direction) and to revoke the *Southern and Eastern Scalefish and Shark Fishery (Closures) Direction No. 6 of 2013* (the First Revoked Direction) and the *Southern and Eastern Scalefish and Shark Fishery (Closures) Direction No. 11 of 2013* (the Second Revoked Direction). The Variation Direction is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act).

**The Fisheries**

The Southern and Eastern Scalefish and Shark Fishery (the 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 (as defined by subsection 4(1) of the Management Act). The SESSF operates in both Commonwealth (3-200nm) and State (0-3nm) waters under complex jurisdictional arrangements, due to different arrangements with relevant States under Part V of the Management Act.

The SESSF is managed under the *Southern and Eastern Scalefish and Shark Fishery Management Plan 2003* (the SESSF Plan), in force under section 17 of the Management Act, mainly through output controls in the form of Total Allowable Catch (TAC) limits. Input controls are also used, including a limit on the number of boats that operate in each sector, as well as gear restrictions such as limits on mesh size and the amount of fishing gear that may be used.

The Small Pelagic Fishery (the SPF) extends from the Queensland/New South Wales border, typically outside 3 nautical miles, around southern Australia to a line at latitude 31° south (near Lancelin, north of Perth). The SPF is currently divided into two sub areas East and West of latitude 146°30’00”.

The SPF is managed under the *Small Pelagic Fishery Management Plan 2009*, also in force under section 17 of the Management Act, and management of the SPF is achieved through output controls in the form of individually transferable quotas with TAC limits determined for each quota species for each fishing year. The target species in the SPF are Australian Sardine, Blue Mackerel, Jack Mackerel and Redbait.

Closures in both the SESSF and SPF serve to place restrictions on effort to protect fish spawning grounds, minimise impact on deepwater fish species, facilitate the recovery of certain species and protect threatened and endangered species.

**The Variation Direction**

The Variation Direction:

* amends the Original Direction to incorporate the spatial closures which are given effect to under the First and Second Revoked Directions, and to extend the application of exemptions to further fishing methods; and
* as consequent to the amendment of the Original Direction, revokes the First and Second Revoked Directions.

The Variation Direction reduces the amount of legislative instruments that a concession holder in the SESSF and SPF need to be aware of when conducting fishing operations. The closures currently in force in the First and Second Revoked Directions are being incorporated in the Closure Direction without variation (new paragraphs 6(u) and 6(v) of the Original Direction.

The Direction exempts holders of SPF fishing concessions using the mid-water trawl and purse seine methods from certain closures. These closures not applicable to these methods, but does not explicitly exempt holders of a SPF fishing concessions from using the mid-water pair trawl, jigging or minor line methods.

The Variation Direction variation ensures consistent arrangements across both trawling methods by exempting SPF fishing concession holders using the mid-water pair trawl method, from the prohibition on fishing relating to several areas, where the SPF mid-water trawl method is already exempt. The Variation Direction also ensures closures are not unintentionally applied to jigging and minor line methods (recently approved as permitted fishing methods in the SPF) by explicitly exempting SPF fishing concession holders using jigging and minor line methods from the prohibition on fishing relating to several areas.

The measures imposed by the Direction commence on the day after registration on the Federal Register of Legislation.

**Background to the Original Direction, the First Revoked Direction and the Second Revoked Direction**

In pursuing its objectives, the AFMA is required to ensure that the exploitation of fisheries resources and the carrying on of any related activities are conducted in a manner consistent with the principles of ecologically sustainable development (which includes the exercise of the precautionary principle), in particular the need to have regard to the impact of fishing activities on non-target species and the long term sustainability of the marine environment.

Spatial closures are a fisheries management tool used to provide protection to a range of fish species and/or their habitat. A large number of spatial closures have been implemented to date in the SESSF and SPF and, as time progresses, new closures are developed and redundant ones are removed.

In May 2016, under subsection 41A(2) of the Management Act, AFMA made the Original Direction to give legal effect to a number of spatial closures that have been implemented in the SESSF and SPF. There were, however, separate spatial closures implemented by the First and Second Revoked Directions including closures to protect Upper Slope Dogfish and Orange Roughy.

The First and Second Revoked Directions are due to cease on 1 December 2018. To reduce the number of legislative instruments relative to the SESSF and SPF, the substantial closures in those Directions are now being captured in the Original Direction. Background information relevant to the First and Second Revoked Directions are set out under separate heading below.

*The First Revoked Direction*

Deepwater sharks are caught on the Continental slope either as a targeted catch or incidental to fishing operations for other target species in the fishery. Deepwater sharks are managed as a quota basket under the Plan. Eighteen species of deepwater sharks are currently included as quota under the deepwater shark basket in the Plan. The stock levels of these species are assessed using Tier 4 methodology consistent with the Harvest Strategy framework in place for the fishery.

The First Revoked Direction currently allows for targeting of western deepwater shark but closes the western deepwater shark area of the fishery to trawling should a 25 tonne aggregate amount of Orange Roughy be taken in the area (to be prescribed in proposed Schedule 38 of the Original Direction) in a fishing season. This limits the amount of orange roughy that can be caught as bycatch.

This closure is consistent with the Authority’s objectives of ensuring that the exploitation of deepwater shark stocks are conducted in a manner consistent with the principles of ecologically sustainable development and long term sustainability of the stock.

*The Second Revoked Direction*

The Second Revoked Direction closes the area in the Flinders Research Zone (to be prescribed in proposed Schedule 39 of the Original Direction), to protect Harrisson’s Dogfish and Southern Dogfish.

Harrisson’s Dogfish (*Centrophorus harrissoni*) and Southern Dogfish (*C. zeehaani*) are considered to be significantly depleted in south east Australia and have been listed as ‘conservation dependent’ under the *Environment Protection and Biodiversity Conservation Act 1999*.

AFMA has revised the Upper-Slope Dogfish Management Strategy to promote the recovery of the Harrisson’s Dogfish and Southern Dogfish, which relies primarily on a network of spatial closures complemented by a range of non-spatial operational measures. The closure network includes the along-slope and across-slope depth range (200m to 1000m for Harrisson’s Dogfish, and 200m to 900m for Southern Dogfish) of the dogfish to account for their movement within their home range.

The Flinders Research Zone closure was implemented as part of this closure network in February 2013. Subsequent to the implementation of the closure, industry queried the alignment of the western border of the closure to the 200m depth contour.

In July 2013, AFMA sought further advice and was provided with revised geographical data. Using this advice, AFMA has revised the closure to more closely align with the 200m depth contour. This had the impact of reducing the overall size of the closure while still maintaining protection to Upper-Slope Dogfish.

The area prescribed in proposed Schedule 39 is the Flinders Research Zone Closure, implemented to protect Harrisson’s Dogfish and Southern Dogfish.

**Consultation**

The Variation Direction is made under subsection 41A(3) of the Management Act meaning that the prescribed consultation requirements in subsection 41A(2), to consult with the relevant Management Advisory Committees for the relevant fisheries, do not apply.

Despite this, and in light of section 17 of the Legislation Act, the South East Management Advisory Committee (SEMAC) has been consulted on the making of the Variation Direction. SEMAC is the Management Advisory Committee established to provide management advice to AFMA for the SESSF, SPF and Southern Squid Jig Fishery. At its meeting on 23-24 February 2017, SEMAC supported consistent management across both the mid-water trawl and mid-water pair trawl fishing methods, where possible. SEMAC was consulted on the use of jigging and minor line methods within the SPF at its meeting on 6-8 February 2018, supporting the use of these methods in the SPF and did not identify any specific closures that should apply to these methods. At its meeting on 11-12 July 2018, SEMAC supported exempting midwater trawl, midwater pair trawl, and jigging and minor line methods from the prohibition on fishing relating to several areas, where the SPF mid-water trawl method is already exempt.

**Regulation Impact Statement**

The Office of Best Practice Regulation has previously advised that a Regulation Impact Statement is not required for this instrument, consistent with the carve-out agreement in place to cover certain regulatory changes by AFMA including opening and closing a fishery (OBPR ID 14421)

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

This legislative instrument does not infringe any of the applicable rights or freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Accordingly, in AFMA’s assessment, this legislative instrument is compatible with human rights and a declaration is attached.

Details of the Direction are set out below:

**Clause 1** Provides for the Direction to be cited as the *Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery (Closures Variation) Direction 2018.*

**Clause 2** Provides that the Direction commences on the day after it is registered on the Federal Register of Legislation.

**Clause 3** Provides the authority under which this Direction is made.

**Clause 4** Provides that the instrument is amended as specified in a Schedule to this instrument as set out in the applicable items in the Schedule.

**Schedule 1** Amendments to the Closure Direction.

**Item 1** Adds two additional directions to section 6 of the Closure Direction namely a closure for Orange Roughy (western) in new paragraph 6(u) and for the Flinders Research Zone Closure in new paragraph 6(v).

**Item 2** Provides that SPF concessions for mid-water trawling and mid-water pair trawling are exempt from the directions in paragraphs 6(d), 6(i), 6(j), 6(k), 6(m), 6(o), 6(p) and 6(q).

**Item 3** Provides that the directions in section 6 do not apply to fishing by the purse seine, jigging or minor line methods.

**Item 4** Inserts Schedules 38 and 39 which contain geographic descriptions relevant to new paragraphs 6(u) and 6(v).

**Schedule 2** Revokes the First and Second Revoked Directions.

**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 and Small Pelagic Fishery (Closures Variation) Direction 2018**

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**

Subsection 41A(3) of the *Fisheries Management Act 1991* (Management Act) provides that AFMA may, at any time, by a further direction in writing, vary or revoke a direction given under subsection 41A(2).

The *Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery (Closures Variation) Direction 2018* (the Variation Direction) is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Variation Direction amends the *Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery (Closures) Direction 2016* (the Original Direction), made under subsection 41A(2) of the Management Act, to continue to prohibit fishing in the areas of waters as described in the Schedules to the Direction to provide protection to various species and their habitat including Upper-Slope Dogfish and Orange Roughy. Two other Directions made under subsection 41A(2) of the Management Act are revoked.

All other aspects of the Original Direction continue in their original terms.

**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. AFMA is satisfied that the instrument is consistent with AFMA’s obligation to pursue its statutory objectives.