

## **EXPLANATORY STATEMENT**

Issued by the Authority of the Australian Fisheries Management Authority

*Fisheries Management Act 1991*

### ***Southern and Eastern Scalefish and Shark Fishery (Closures Variation) Direction 2019***

Subsection 41A(2) of the *Fisheries Management Act 1991* (the Management Act) provides that the Australian Fisheries Management Authority (AFMA) may, after meeting consultation requirements as set out in subsection 41A(2), direct that fishing is not to be engaged in in the fishery, or a particular part of the fishery, during a particular period or periods. A copy of a direction made by AFMA under subsection 41A(2) must be sent to each holder of a fishing concession, scientific permit or foreign master fishing licence to which the direction relates (see subsection 41A(2A) of the Management Act).

Subsection 41A(3) of the 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). A direction given under subsection 41A(3) of the Management Act is not subject to the consultation set out in subsection 41A(2) and the notification requirements set out in subsection 41A(2A).

Pursuant to subsection 41A(4) of the Management Act, if AFMA varies a direction given under subsection 41A(2) it must ensure a copy of the direction given under subsection (3) 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 (Closures) Direction No. 2 2015* (the Direction) was made on 6 May 2015 under subsection 41A(2) of the Management Act. The *Southern and Eastern Scalefish and Shark Fishery (Closures Variation) Direction 2019* (the Variation Direction) varies the Direction under subsection 41A(3) of the Management Act, and is a legislative instrument for the purposes of the *Legislation Act 2003*.

### **The Fishery**

The Southern and Eastern Scalefish and Shark Fishery (the fishery) 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 fishery encompasses almost half of the waters within the Australian Fishing Zone. The fishery operates in both Commonwealth and state waters under complex jurisdictional arrangements, as a number of arrangements under Part 5 of the Management Act have been made to provide for the Commonwealth to exercise jurisdiction in State waters.

The fishery is primarily managed under the *Southern and Eastern Scalefish and Shark Fishery Management Plan 2003* (the Plan), in force under section 17 of the Management Act, which establishes output controls in the form of Total Allowable Catch (TAC) limits. Input controls used include 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.

Certain areas of the fishery are closed to fishing under the Direction (and other instruments made under subsection 41A(2) of the Management Act) to place restrictions on effort to protect spawning grounds, minimise impact on deepwater species, facilitate the recovery of certain species and protect threatened and endangered species.

## Background to the Direction

Pink ling (*Genypterus blacodes*) is a quota species under the Plan which is assessed as two separate stocks; east of longitude 147° East (eastern zone pink ling) and west of longitude 147° East (western zone pink ling). Although they are assessed as separate stocks, the species is currently managed under a single TAC.

AFMA manages eastern zone pink ling by applying regional limits for the eastern zone of the fishery. The aim of these restrictions is to constrain total fishing mortality of pink ling in the eastern zone. In order to further constrain catches in the eastern zone during 2014 AFMA implemented the *Fisheries Management (Southern and Eastern Scalefish and Shark Fishery, Pink Ling) Temporary Order 2015 No. 1* (Temporary Order). The Temporary Order closed fishing grounds at Maria Island, Seiner's Horseshoe and Everard Horseshoe.

Maria Island, Seiner's Horseshoe and Everard Horseshoe have been identified by industry as being areas containing high numbers of pink ling. The closures were part of a suite of arrangements to constrain pink ling catches in the eastern zone to all operators on a "daily catch limit". The Temporary Order expired on 1 May 2015 and was subsequently replaced by the Direction.

The Direction was previously varied in 2016 (see the *Southern and Eastern Scalefish and Shark Fishery (Closures Variation) Direction No. 1 2016*) to:

- (a) make an exception to the closures at Maria Island, Seiner's Horseshoe and Everard Horseshoe, that applies where a concession holder is subject to an existing concession condition restricting total pink ling catches in the eastern zone of the fishery to no more than 25 per cent of their total pink ling quota holdings.
- (b) remove the daily catch limits.

During the 2016-17 fishing season, AFMA and the South East Trawl Fishing Industry Association (SETFIA) trialled an alternative management arrangement for eastern pink ling that involved managing catches at the vessel level. SETFIA negotiated individual catch limits with operators who chose to opt in to this agreement. This agreement caps their combined eastern pink ling catches at or below a specified tonnage.

The SETFIA catch arrangements have successfully restricted the catches of vessels under the arrangement since the 2016-17 season and have been continued for the 2019-20 fishing season.

An updated stock assessment was accepted by the South East Resource Assessment Group (SERAG) in November 2018. It indicated the eastern pink ling stock is at 30 per cent of its unfished biomass (below the target reference point of 48 percent), while the western stock is at 84 per cent of its unfished biomass. At its meeting in March 2019, the AFMA Commission determined a combined east and west TAC of 1288 tonnes for 2019-20 fishing season, with alternative controls to restrict catches in the east to below 428 tonnes.

## **The Variation Direction**

The Variation Direction continues the closures of pink ling grounds at Maria Island, Seiner's Horseshoe and Everard Horseshoe under the Direction, but makes a new exception to the closure that applies where a concession holder has agreed, under management arrangements administered by the South East Trawl Fishing Industry Association (SETFIA), to take a specified amount of pink ling and SETFIA has notified AFMA of that agreement (new paragraph 7(2) of the Direction).

AFMA and SETFIA have not yet entered into formal co-management arrangements, however there are existing arrangements specifically for managing catch restrictions for eastern pink ling.

The new exception to the closures for operators under the SETFIA arrangement facilitates the co-management arrangements that SETFIA will have in place for pink ling. The exception that applies to concession holders where a concession holder is subject to an existing concession condition restricting total pink ling catches in the eastern zone of the fishery to no more than 25 per cent of their total pink ling quota holdings continues to also apply (see subclause 7(1)).

Specific details of the Variation Direction are set out at Attachment A.

## **Consultation**

The Variation Direction is made under subsection 41A(3) of the Management Act. It follows that the consultation requirements outlined in subsection 41A(2) and the notification requirements outlined in subsection 41A(2A) of the Management Act do not need to be met prior to making the Variation Direction.

## **Regulation Impact Statement**

The Office of Best Practice Regulation (OBPR) has previously advised that AFMA is not required to complete a regulatory impact statement for matters of a minor or machinery nature, including directing that fishing is not to be engaged in in part of 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 included at Attachment B.

### Details of the Variation Direction

- Section 1** Provides that the name of the Variation Direction is the *Southern and Eastern Scalefish and Shark Fishery (Closures Variation) Direction 2019*.
- Section 2** Provides that the Variation Direction commences on the day after it is registered on the Federal Register of Legislation.
- Section 3** Provides that the Variation Direction is made under subsection 41A(3) of the *Fisheries Management Act 1991*.
- Section 4** Gives effect to Schedule 1 of the Variation Direction.
- Schedule 1**
- Clause 1** Varies the *Southern and Eastern Scalefish and Shark Fishery (Closures) Direction No. 2 2015* (Direction) by repealing and substituting clause 7 of the Direction.

New subclause 7(1) of the Direction replicates the exception to the closure to fishing (outlined in clause 6 of the Direction) inserted by the *Southern and Eastern Scalefish and Shark Fishery (Closures Variation) Direction No. 1 2016*.

New subclause 7(2) of the Direction inserts a new exception to the closure to fishing that applies where AFMA has been notified by SETFIA that the concession holder has agreed to take a specified amount of pink ling under management arrangements established by SETFIA (paragraph (2)).

This new exception is required because AFMA has agreed to enter into co-management arrangements with SETFIA for the purpose of managing catches of eastern pink ling in the fishery.

Co-management is an important management strategy under which management decisions in a fishery are made by the industry or an industry representative group, such as SETFIA. This allows for extensive industry knowledge to be captured in the decision making process, and enhances the responsibility for the long-term viability of fisheries by industry members. AFMA and SETFIA have not yet entered into formal co-management arrangements, however there are existing arrangements specifically for managing catch restrictions for eastern pink ling.

The new exception to the closures for operators under the SETFIA arrangement facilitates the co-management arrangements that SETFIA will have in place for pink ling.

## 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 (Closures Variation) Direction 2019*

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(2) of the *Fisheries Management Act 1991* (the Management Act) provides that the Australian Fisheries Management Authority (AFMA) may, after such consultation as set out in subsection 41A(2), direct that fishing is not to be engaged in the fishery, or a particular part of the fishery, during a particular period or periods. Subsection 41A(3) of the Management Act provides that AFMA may, at any time, by a further direction in writing, vary or revoke a direction given under subsection (2). A direction given under subsection 41A(3) of the Management Act is not subject to the notification requirements under subsection 41A(2). Pursuant to subsection 41A(4) of the Management Act, if AFMA varies a direction given under subsection 41A(2) it must ensure a copy of the direction given under subsection (3) 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 (Closures Variation) Direction 2019* (the Variation Direction) varies the *Southern and Eastern Scalefish and Shark Fishery (Closures) Direction No. 2 2015* (the Direction), and is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Direction closes areas of the Southern and Eastern Scalefish and Shark Fishery that are sensitive spawning areas for eastern zone pink ling stocks, subject to limited exception.

The Variation Direction inserts an additional exception to provide for the operation of a co-management arrangement by which the South East Trawl Fishing Industry Association (SETFIA) is responsible for certain management decisions in the Southern and Eastern Scalefish and Shark Fishery. With respect to pink ling, that management arrangement will be that a concession holder will agree with SETFIA to take a specified amount of pink ling. The concession holder will be exempt from the fishery closure where AFMA has been notified that the concession holder has agreed with SETFIA to take a specified amount of pink ling.

#### 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.