

Explanatory Statement

Fisheries Management Act 1991

Bass Strait Central Zone Scallop Fishery Management Plan Amendment 2019 (No. 1)

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) provides that AFMA may amend a plan of management.

AFMA has determined the *Bass Strait Central Zone Scallop Fishery Management Plan Amendment 2019* (the Plan Amendment) to amend the *Bass Strait Central Zone Scallop Fishery Management Plan 2002* (the Management Plan).

The Bass Strait Central Zone Scallop Fishery

The Bass Strait Central Zone Scallop Fishery (the Fishery) lies in the Bass Strait above the state of Tasmania and extends from the Victorian/New South Wales border, around southern Australia to the Victoria/South Australian border, typically outside 20 nautical miles of the Tasmanian and Victorian coastlines.

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 (TAC) 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) asperrimus*) is common throughout the Bass Strait however is rarely retained. The target species is caught primarily for the domestic market.

The Harvest Strategy for the Fishery contains measures for setting a TAC based on closing areas of the Fishery following research surveys to determine biomass estimates. This measure aims to ensure scallop beds of sufficient size and density are maintained to provide for ongoing recruitment in the Fishery.

The Plan Amendments

The amendments to the Management Plan reduce regulatory burden for industry and increase the efficiency and flexibility of management to adapt to changing circumstances. The amendments relate to three matters: the 'sunsetting' of the *Fisheries Management (Bass Strait Central Zone Scallop Fishery) Regulations 2002* (Scallop Regulations) on 1 October 2019; the definition of fishing season; and the notification period that AFMA must provide Bass Strait Central Zone Scallop Fishery (BSCZSF) concession holders of the Total Allowable Catch (TAC) decision.

Scallop Regulations – Fishing method and doughboy scallop TAC

The Scallop Regulations are due to be repealed automatically on 1 October 2019. There are two operative provisions in the Scallop Regulations that are no longer required, that:

- a. a person may only take scallops using either the dredging or trawling methods. This provision is no longer required because the fishery is managed by quota which limits the total amount that can be taken in a season; and
- b. the TAC for doughboy scallops is not to be increased during a fishing season. This provision is no longer required because the TAC for doughboy scallops is set in accordance with the BSCZSF Harvest Strategy.

Given that the two measures in the regulations are no longer required for effective management of the BSCZSF, the Management Plan has been amended to remove cross references to the Scallop Regulations.

Fishing Season

Section 4 of the Management Plan outlines that:

- a. the fishing year is defined to be the 12 month period starting at 1 February in any given year; and
- b. the fishing season is relevantly the period within a fishing year from 1 April to 31 December, inclusive, in that year.

This means that fishing can only occur in the fishing season (i.e. between 1 April and 31 December), and there is a seasonal closure of the BSCZSF between 1 January and 31 March.

AFMA is amending the Management Plan to allow the results of the pre-season survey, typically run in May, to be taken into account to set TACs before the season commences. Further, the amendments allow for greater flexibility to change fishing season dates to suit the conditions in the fishery.

The proposed approach to remove the definition of 'fishing year' and redefine 'fishing season' by way of a determination creates a simpler, more efficient way for AFMA to give effect to the BSCZSF Harvest Strategy and modify season dates.

Notification period

Subsection 27(4) of the Management Plan requires AFMA to give statutory fishing right holders at least seven days' notice of a TAC decision.

The amendment to the Management Plan reduces the notice period from seven days to 48 hours' notice. This means that fishing could start five days earlier than currently occurs.

Consultation

Section 20 of the Act provides that section 17 of the Act applies in relation to amendments to a plan of management in the same way as it applies to the preparation of a new plan of management. Section 17 of the Act requires that a plan of management can only be determined after consultation with such persons engaged in fishing as appear to AFMA to be appropriate and, after giving due consideration to any representations made to AFMA on the plan of management. Subsection 17(2) of the Act requires that interested persons must be invited, by public notice, to make representations on a draft of the plan of management. Subsection 17(2A) provides that persons and organisations listed in the register, established under section 17A, must also be notified that a draft plan of management is available and that representations may be made in connection with the draft plan of management.

AFMA invited interested persons to comment on a draft of the Plan Amendment by notice in the *Commonwealth of Australia Gazette* and *The Australian* newspaper on 5 July 2019. AFMA also notified, by letter, all persons on AFMA's register of interested persons relating to plans of management, of the terms of the public notices. The public comment period opened on 5 July 2019 and closed on 5 August 2019. BSCZSF Statutory Fishing Right concession holders were sent a copy of the public notice and the exposure draft on 5 July 2019.

AFMA also consulted with the relevant industry associations and the Bass Strait Central Zone Scallop Fishery Management Advisory Committee.

AFMA received one request for clarification on the removal of the requirement to use specified fishing gear during the public notice period but full support for all of the proposed amendments once this had been received.

After drafting the Plan Amendment, in accordance with subsection 18(1) of the Act, AFMA informed the Assistant Minister for Forestry and Fisheries of the consultations it conducted and the nature of

the representations it received before determining the Plan Amendment. The Assistant Minister subsequently accepted the Plan Amendment.

Notification of the determination and acceptance of the Plan Amendment was published in the *Commonwealth of Australia Gazette* in accordance with subsection 19(1) of the Act.

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

Regulation Impact Statement

The main focus of the Plan Amendments are to amend the definition of fishing season and the notification period that AFMA must provide to concession holders associated with TAC setting. Accordingly, the Office of Best Practice Regulation does not require a Regulatory Impact Statement for such minor machinery changes. See OBPR Carve Out - Reference Number 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 the Authority's assessment, this legislative instrument is compatible with human rights.

The Amendments

Details of the Plan Amendment, which commenced on the time that is the later of 1 October 2019; or the day after registration, are set out below.

Section 13 Repeal the section

Subsection 28(2) Repeal the subsection

Details of the Plan Amendment, which commence on 1 March 2020, are set out below.

Section 3 (definition of fishing season) Repeal the definition, substitute: *fishing season* means the period determined by AFMA.

Note Under subsection 17(6B) of the Act, a determination of fishing season is a legislative instrument for the purpose of the *Legislation Act 2003*.

Section 3 (definition of fishing year) Repeal the definition

Section 3 (definition of quota) Omit "year", substitute "season"

Section 3 (definition of quota statutory fishing right) Repeal the definition, substitute: *quota statutory fishing right*, for a fishing season, means a right to take, from the area of the fishery, a particular amount (being the quota allocated to the right for the fishing season) of a species of scallop during the fishing season.

Section 3 (definition of total allowable catch) Omit "year", substitute "season"

Paragraph 8(1)(b)	<p>Repeal the paragraph, substitute:</p> <p>(b) that a total allowable catch is set for each species of scallop for each fishing season and that the amount of scallops taken in a fishing season does not exceed the total allowable catch for the season; and</p>
Subparagraph 8(1)(c)(iii)	Omit “year”, substitute “season”
Subsection 12(1)	<p>Repeal the subsection, substitute:</p> <p>(1) Subject to section 14, in a fishing season, the holder of a quota statutory fishing right must not take from the area of the fishery an amount of scallops of a species greater than the quota allocated to the right in relation to that species for the season.</p>
Subsection 12(2)	Omit “year”, substitute “season”
Subsection 12(2A)	<p>Repeal the subsection, substitute:</p> <p>(2A) If the quota allocated to a quota statutory fishing right decreases during a fishing season, the holder of the right is exempt from subsection (1) if:</p> <p>(a) immediately before the decrease, the amount of scallops of a species taken by the holder during the fishing season was equal to or less than the quota allocated to the right before the decrease; and</p> <p>(b) the holder of the right does not take any more scallops of that species after AFMA gives the holder a notice under subsection 28 (4).</p> <p>Note The quota allocated to a quota statutory fishing right will increase or decrease if AFMA increases or decreases the total allowable catch for a species of scallop under section 28.</p>
Subsection 12(6)	<p>Repeal the subsection, substitute:</p> <p>(6) The quota allocated to a quota statutory fishing right for a fishing season is worked out by dividing the total allowable catch for the species in the fishing season by the total number of quota statutory fishing rights in force for the species at the start of the fishing season.</p>
Subsection 12(7)	Omit “year”, substitute “season”
Subsection 27(1)	Omit “year”, substitute “season”
Subsection 27(3)	Omit “year”, substitute “season”
Subsection 27(4)	<p>Repeal the subsection, substitute:</p> <p>(4) At least 48 hours before the start of a fishing season, AFMA must give the holder of each quota statutory fishing right a notice stating:</p> <p>(a) the total allowable catch for the species to which the right relates for the fishing season; and</p>

(b) the quota allocated to the right for the fishing season.

Subsection 28(1)

Repeal the subsection, substitute:

(1) During a fishing season, AFMA may vary the total allowable catch for a species of scallop for the season.

Subsection 28(5)

Omit “year”, substitute “season”

Statement of Compatibility with Human Rights

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

Bass Strait Central Zone Scallop Fishery Management Plan Amendment 2019 (No. 1)

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 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) provides that AFMA may amend a plan of management.

The *Bass Strait Central Zone Scallop Fishery Management Plan Amendment 2019 (No. 1)* (the Amendment) amends the *Bass Strait Central Zone Scallop Fishery Management Plan 2002* (the Plan), and is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amendment is in relation to three matters: the automatic repeal of the *Fisheries Management (Bass Strait Central Zone Scallop Fishery) Regulations 2002* (the Regulations) on 1 October 2019; the definition of fishing season; and the notification period AFMA must provide concession holders of the Total Allowable Catch decision.

Human rights implications

This legislative instrument does not infringe 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.