

EXPLANATORY STATEMENT

Issued by the authority of the Australian Fisheries Management Authority

Fisheries Management Act 1991

Southern and Eastern Scalefish and Shark Fishery Management Plan 2003

Southern and Eastern Scalefish and Shark Fishery (Total Allowable Catch for Quota Species) Determination 2020

The *Southern and Eastern Scalefish and Shark Fishery (Total Allowable Catch for Quota Species) Determination 2020* (the Determination) is a legislative instrument for the purposes of the *Legislation Act 2003*.

Subsection 17(5) of the *Fisheries Management Act 1991* (the Act) provides that a plan of management made under the Act is to set out, amongst other things, the objectives of the plan of management and measures by which the objectives are to be attained.

Paragraph 17(6)(aa) of the Act provides that a plan of management made under the Act may provide for the Australian Fisheries Management Authority (AFMA) to determine the fishing capacity permitted for the fishery or a part of the fishery in respect of a particular period or periods.

Subsection 11(1) of the *Southern and Eastern Scalefish and Shark Fishery Management Plan 2003* (the Management Plan) provides that AFMA must determine a Total Allowable Catch (TAC) for a fishing year no later than 31 March immediately before the commencement of the fishing year. In determining a TAC for a quota species under subsection 11(1) of the Management Plan, AFMA must have regard to reference points for the species that AFMA has determined as appropriate for maintaining ecologically viable stocks of these species under section 9 of the Management Plan (subsection 11(2)). AFMA may determine specific TACs for a quota species for particular parts of the area of the fishery (subsection 11(3) of the Management Plan). Under subsection 11(4) of the Management Plan, the determination of a TAC under subsection 11(1) must specify the TAC expressed in whole weight or a specified other weight and must specify the particular parts of the fishery to which the TAC applies.

Section 12 of the Management Plan provides that, before AFMA determines a TAC for a quota species for a fishing year, it must consult and consider the views of each relevant management advisory committee (paragraph 12(a)) and take into account advice from the relevant resource assessment group about the stock status of a quota species (paragraph 12(b) of the Management Plan). AFMA must also take into account all fishing mortality from all sectors within the fishery and overlapping or adjacent fisheries, the ecological implications of harvesting the TAC, the distribution and population structure of the species and the precautionary principle (paragraph 12(c) of the Management Plan). AFMA may also consider the views of any other interested person (paragraph 12(d)).

Prior to making this Determination, AFMA met the requirements of paragraphs 12(a) to (c) of the Management Plan. Further detail as to how these requirements were met is outlined in detail below.

The Determination determines the TAC for each quota species for the 2020 fishing year.

The Fishery

The Southern and Eastern Scalefish and Shark Fishery (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. The SESSF operates in both Commonwealth and State waters under complex jurisdictional arrangements made under Part 5 of the Act. Those arrangements vary the application of the Offshore Constitutional Settlement with respect to fisheries jurisdiction.

Management in the SESSF is mainly through output controls in the form of TAC limits set under the Act, pursuant to the Management Plan, and in accordance with the Commonwealth Fisheries Harvest Strategy Policy and the specific SESSF Harvest Strategy Framework (HSF). Input controls are also used, which include a limit on the number of boats that operate in each sector of the fishery, as well as gear restrictions such as limits on mesh size and the amount of fishing gear that may be used.

Consultation

AFMA has established Resource Assessment Groups (RAGs) and Management Advisory Committees (MACs) to assist AFMA in the performance of its functions. Notably, the functions of MACs established by AFMA include the function of being a liaison body between AFMA and persons engaged in a fishery (pursuant to paragraph 57(2)(a) of the *Fisheries Administration Act 1991* (the Administration Act)).

Prior to making this Determination, AFMA consulted with the Great Australian Bight Resource Assessment Group (GABRAG), the Shark Resource Assessment Group (SharkRAG), the South East Resource Assessment Group (SERAG), and the SESSF Resource Assessment Group (SESSFRAG).

Firstly, a series of species stock assessments were considered and advised upon for the SESSF quota species listed in the Determination at RAG meetings. The stock assessments are based on the HSF and provide for a recommended biological catch (RBC). The RBC provides the best scientific advice on what the total mortality should be for each species or stock, taking into account fishing and natural mortality and any ecological implications of harvesting the species.

Once the RAGs provided advice for the RBCs for SESSF quota species, AFMA translated the RBCs into proposed TACs. The TAC represents the recommended Commonwealth commercial catch for each species or stock, taking into account the expected mortality from incidental catch, discards, and landings in other jurisdictions, and applying decision rules contained in the HSF.

Advice from the RAGs and AFMA's proposed TACs were then considered by the South East Management Advisory Committee (SEMAC) and the Great Australian Bight Management Advisory Committee (GABMAC). SEMAC and GABMAC discussed the TAC recommendations, as well as undercatch and overcatch percentages and determined amounts, which provide for 'carry over' or 'carry under' of quota between fishing seasons. SEMAC and GABMAC both supported determining the TACs for SESSF quota species as prescribed in the Determination.

Recommendations from the relevant meetings of the RAGs and MACs, and species summaries were provided to the AFMA Commission in making the Determination.

Regulation Impact Statement

The Office of Best Practice Regulation advised on 30 June 2014 that a Regulation Impact Statement is not required for Determinations of a minor, recurrent or machinery nature, specifically including determinations of fishing capacity (OBPR ID No. 14421).

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

AFMA assesses under Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* that this legislative instrument is compatible with human rights. AFMA's Statement of Compatibility is included at the **Attachment** below.

Details of the Determination are set out below:

Section 1 This section provides that the name of the Determination is the *Southern and Eastern Scalefish and Shark Fishery (Total Allowable Catch for Quota Species) Determination 2020*.

Section 2 This section provides that the Determination commences on 1 May 2020.

Subsection (1) provides that each provision of the Determination specified in column 1 of the table commences, or is taken to have commenced, in accordance of column 2 of the table.

Subsection (2) provides that any information in column 3 of the table is not part of the instrument and that any information may be inserted or edited in any published version of the Determination.

Section 3 This section provides for the revocation of the Determination on 1 May 2021.

Section 4 This section provides that the authority to make the Determination is paragraph 17(6)(aa) of the Act, pursuant to subsection 11(1) of the Management Plan.

Section 5 This section defines relevant terms for the purpose of the Determination.

Subsection (1) provides that the Act is the *Fisheries Management Act 1991* and the Management Plan is the *Southern and Eastern Scalefish and Shark Fishery Management Plan 2003*.

Subsection (2) provides that terms that are defined in the Management Plan have the same meaning in the Determination as they do in the Management Plan.

The terms that are relevant for this purpose are 'trunked weight' and 'whole weight' as well as the relevant zones listed in sections 6 and 7.

Section 6 This section determines the TAC for quota species of fish, as listed in the Management Plan, where the TAC applies to fish taken across the whole area of the SESSF (as is described as the ‘area of the fishery’ in Part 1 of Schedule 1 to the Management Plan).

Subsection (1) provides that section 6 applies for the 2020 fishing year commencing on 1 May 2020 and ending on 30 April 2021. This is consistent with the definition of ‘fishing year’ provided in section 3 of the Management Plan.

Subsection (2) determines the TAC for 23 species of quota fish listed in the table. The TAC for 19 of these quota species is determined on the basis of whole weight of fish. The TAC for three species is determined on the basis of ‘trunked weight’ and the TAC for elephant fish is determined on the basis of the weight of those fish ‘trunked, bellyflaps removed’.

Section 7 This section determines the TAC for quota species of fish, as listed in the Management Plan, where the TAC applies to fish taken in a part of the area of the SESSF as is permitted under subsection 11(3) of the Management Plan.

Subsection (1) provides that section 7 applies for the 2020 fishing year commencing on 1 May 2020 and ending on 30 April 2021. This is consistent with the definition of ‘fishing year’ provided in section 3 of the Management Plan.

Subsection (2) determines the TAC for:

- deepwater shark, basket, on the basis of trunked weight within the gemfish and deepwater shark eastern zone (item 1) and within the gemfish and deepwater shark western zone (item 2);
- gemfish on the basis of whole weight within the gemfish and deepwater shark eastern zone (item 3) and the gemfish and deepwater shark western zone (item 4);
- orange roughy on the basis of whole weight within the GAB Albany zone and GAB Esperance zone (item 5), the Cascade Plateau zone (item 6), the orange roughy eastern zone (item 7), the orange roughy southern zone (item 8), and the orange roughy western zone (item 9); and
- smooth oreo dory on the basis of whole weight within the Cascade Plateau zone (item 10) and areas of the fishery other than the Cascade Plateau zone (item 11).

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 (Total Allowable Catch for Quota Species) Determination 2020

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(5) of the *Fisheries Management Act 1991* (the Act) provides that a plan of management made under the Act is to set out, amongst other things, the objectives of the plan of management and measures by which the objectives are to be attained.

Paragraph 17(6)(aa) of the Act provides that a plan of management made under the Act may provide for the Australian Fisheries Management Authority (AFMA) to determine the fishing capacity permitted for the fishery or a part of the fishery in respect of a particular period or periods.

Section 11 of the *Southern and Eastern Scalefish and Shark Fishery Management Plan 2003* (the Management Plan) provides that AFMA must no later than 31 March immediately before the commencement of a fishing year, determine a Total Allowable Catch (TAC) for each quota species for the fishing year. In determining a TAC for a quota species or a quota species in a particular area of the fishery, AFMA must have regard to reference points for the species that AFMA has determined as appropriate for maintaining ecologically viable stocks of these species under section 9 of the Management Plan. The determination of a TAC must specify the TAC expressed in whole weight or a specified other weight and must specify the particular parts of the fishery to which the TAC applies.

Section 12 of the Management Plan provides that, before AFMA determines a TAC for a quota species for a fishing year, it must consult and consider the views of each relevant management advisory committee. It must take into account advice from the relevant resource assessment group about the stock status of a quota species and may consider the views of any other interested person. AFMA must also take into account all fishing mortality from all sectors within the fishery and overlapping or adjacent fisheries, the ecological implications of harvesting the TAC, the distribution and population structure of the species and the precautionary principle.

The Determination determines the TAC for each quota species for the 2020 fishing year.

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.