

EXPLANATORY STATEMENT

Issued by the Authority of the
Australian Fisheries Management Authority

Fisheries Management Act 1991

Small Pelagic Fishery Management Plan 2009

Fisheries Management (E-monitoring Small Pelagic Fishery) Direction 2021

Authority

The *Fisheries Management Act 1991* (**the Act**) provides that the Australian Fisheries Management Authority (**AFMA**) may make a written direction under s40A(1), requiring any person who holds a fishing concession, or a scientific permit, of a class prescribed in the direction, to comply with obligations that are prescribed in the direction relating to the electronic monitoring (**e-monitoring**) of fishing related activity or prescribed restrictions on engaging in fishing if any obligation in the direction has not been, or is not being complied with.

The Fishery

The Small Pelagic Fishery (**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".

Management in the SPF is through output controls in the form of individually transferable quotas with a Total Allowable Catch determined for each quota species for each fishing year. The main target species in the SPF are jack mackerel, blue mackerel, redbait and Australian sardines. The target species are caught primarily for the domestic market and are used for fishmeal, bait and human consumption.

Background to Direction

AFMA is established under the *Fisheries Administration Act 1991* (**FA Act**) and the objectives that it must pursue are contained in s3 of the Act and s6 of the FA Act.

Under legislation, AFMA is required to ensure that the exploitation of fisheries resources is ecologically sustainable, to implement efficient and cost-effective fisheries management and to collect information about possible breaches of the law and the management of and research into fisheries and the marine environment. To effectively carry out its legislative objectives and functions, AFMA requires accurate and comprehensive data on fishing activity.

E-monitoring is the electronic recording of fishing and related activities with the use of specialised equipment installed on boats for data collection and compliance purposes. E-monitoring equipment can include cameras, global positioning systems or sensors, and vessel monitoring systems, thereby generating a range of visual and non-visual data. E-monitoring complements other monitoring techniques, such as catch and effort logbooks and human observers.

E-monitoring is currently mandated on two boats in the SPF midwater trawl sector plus the Gillnet Hook and Trap sector of the Southern and Eastern Scalefish and Shark Fishery. E-monitoring is also mandated in the Eastern and Western Tuna and Billfish fisheries. The requirement to comply with e-monitoring obligations in the SPF in 2020 was given effect via the registration of the *Fisheries Management (E-monitoring Small Pelagic Fishery) Direction 2020* (the 2020 Direction). Prior to the introduction of the 2020 Direction, the requirement to comply with e-monitoring obligations in the SPF was contained in concession conditions.

The Direction

The *Fisheries Management (E-Monitoring Small Pelagic Fishery) Direction 2021* directs concession holders in the midwater trawl sector of the SPF to comply with e-monitoring obligations. The direction requires concession holders in the midwater trawl sector of the SPF to have an e-monitoring system installed and operating on a nominated boat within three months of the commencement of this instrument.

The direction also requires concession holders to monitor the functioning of the e-monitoring system and provide certain information to AFMA. This direction repeals and replaces the 2020 Direction and is made in the same terms as that direction save to the commencement date. The direction also removes the previous clause 5(2) from the 2020 Direction which provided the ability for AFMA to provide written exemptions to a concession holder to comply with obligations in the direction. This is considered necessary to provide consistency with e-monitoring directions for other fisheries.

The direction is a legislative instrument for the purposes of the *Legislation Act 2003*.

Consultation

AFMA presented a draft direction to the March 2021 Out of session SEMAC meeting. SEMAC supported the Direction, noting that changes had been made to the 2020 Direction to ensure consistency with e-monitoring Directions in other fisheries.

The consultation for this direction accordingly satisfies the criteria in s40A(4) of the Act.

Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) advised that a Regulation Impact Statement was not required for this direction consistent with the agreement in place to cover all regulatory changes deemed to be of a minor or machinery nature (ID: 25697).

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

The direction is compatible with the human rights and freedoms recognised or declared in the international instruments listed in s3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The direction places limitations on the prohibition on interference with privacy and the right to work; however, those limitations are reasonable, necessary and proportionate.

Details of the direction are set out below:

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| Clause 1 | Provides for the direction to be cited as the <i>Fisheries Management (E-monitoring Small Pelagic Fishery) Direction 2021</i> . |
| Clause 2 | Provides that the direction commences on 1 May 2021. |
| Clause 3 | Provides that the direction is made under s40A(1) of the Act. |
| Clause 4 | Provides definitions for certain terms mentioned in the direction. The <i>Small Pelagic Fishery Management Plan 2009</i> has been incorporated by reference. Section 10 of the <i>Acts Interpretation Act 1901</i> (as applied by section 13(1)(a) of the <i>Legislation Act 2003</i>) has the effect that references to Commonwealth disallowable legislative instruments can be taken to be references to versions of that instrument as in force from time to time. The <i>Small Pelagic Fishery</i> |

Management Plan 2009 in 2021 is available to view free of charge on the website of the Federal Register of Legislation (<https://www.legislation.gov.au>).

- Clause 5** Provides for the requirements to install and operate an e-monitoring system within three months of the commencement of the direction.
- Clause 6** Provides for the requirements to monitor the functioning of an e-monitoring system and to provide e-monitoring data. This clause provides the requirements that a concession holder (or person acting on behalf of the concession holder) must comply with to ensure their e-monitoring system is in good working order.
- Clause 7** Provides for the requirements to provide certain information to AFMA. Under the clause a concession holder (or person acting on behalf of the concession holder) may be required by AFMA to give a statement to AFMA setting out the particulars in clause 7(1)(a)-(e). This statement must be provided in a reasonable time period.
- Schedule 1** Repeals the *Fisheries Management (E-monitoring Small Pelagic Fishery) Direction 2020*.