

EXPLANATORY STATEMENT

LEGISLATIVE INSTRUMENT

Issued by the Authority of the Australian Fisheries Management Authority

Fisheries Management Act 1991

Fisheries Management (Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery Closures) Amendment Direction No. 1 2025

Subsection 41A(2) of the *Fisheries Management Act 1991* (the Management Act) provides that the Australian Fisheries Management Authority (AFMA) may, after consultation with the Management Advisory Committee for the fishery, 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.

Prior to making such a direction, AFMA must ensure that each holder of the fishing concession in the relevant fishery is provided with a copy of the direction seven (7) days before that direction takes effect.

The *Fisheries Management (Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery Closures) Direction 2021* (the Principal Direction) is a direction made under subsection 41A(2) after consultation with the South East Management Advisory Committee (SEMAC) and notification to Southern and Eastern Scalefish and Shark Fishery (SESSF) and the Small Pelagic Fishery (SPF) concession holders.

Subsection 41A(3) of the Management Act provides that AFMA may, at any time, vary or revoke a direction made under subsection 41A(2). Any variation direction under subsection 41A(3) is not required to be made subject to the Management Advisory Committee consultation process and concession holder notification process as is required for a subsection 41A(2) direction. However, AFMA has consulted with SEMAC in relation to the amendment of the Principal Direction.

The *Fisheries Management (Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery Closures) Amendment Direction No. 1 2025* (the Amendment Direction) is made under subsection 41A(3) of the Management Act and varies the Principal Direction by allowing concession holders to use hydraulic hand reel droplines or modified dropline gear to fish in six closure areas established to protect threatened upper-slope dogfish species (i.e. Schedules 10, 12, 30, 31, 32 and/or 39) provided that they have an electronic monitoring (EM) system onboard that is compliant with the *Fisheries Management (E-monitoring Southern and Eastern Scalefish and Shark Fishery) Direction 2021* and functioning for the continued monitoring of the vessel. Further, fishing in these areas will be subject to move on rules should interactions between hook methods and dogfish be reached.

The Amendment Direction is a legislative instrument for the purposes of the *Legislation Act 2003* (the Legislation Act).

Objectives

The Amendment Direction varies the Principal Direction by

- defining daylight hours and the modified dropline method;
- removing the exemption to hydraulic hand reel droplines in Schedules 8, 9, 29, and 33;

- allowing concession holders that use hydraulic hand reel droplines or modified droplines to fish within the areas specified in Schedules 10, 12, 30, 31, 32 and/or 39 under a fishing concession, provided that they have an EM system onboard and that is compliant with the *Fisheries Management (E-monitoring Southern and Eastern Scalefish and Shark Fishery) Direction 2021* and functioning for the continued monitoring of the vessel;
- prohibiting fishing by a concession holder using hydraulic hand reel droplines and modified droplines within the areas specified in Schedules 10, 12, 30, 31, 32 and/or 39 for 12 months if three Harrison's dogfish (*C. harrissoni*), three southern dogfish (*C. zeehaani*) or three Harrison's dogfish (*C. harrissoni*) and southern dogfish (*C. zeehaani*) combined are taken under a fishing concession in a fishing season within, commencing from the date the third dogfish was caught; and
- prohibiting all fishing within the areas specified in Schedules 8, 9, 10, 12, 29, 30, 31, 32, 33 and/or 39 for 12 months if ten Harrison's dogfish (*C. harrissoni*), ten southern dogfish (*C. zeehaani*) or ten Harrison's dogfish (*C. harrissoni*) and southern dogfish (*C. zeehaani*) combined are taken under any fishing concession in a fishing season, commencing from the date the tenth dogfish was caught.

Background on the Fisheries

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 5 of the Management Act.

The Gillnet, Hook and Trap (GHAT) sector of the SESSF includes all waters off South Australia, Victoria and Tasmania from 3 nm to the extent of the Australian Fishing Zone. It also includes waters off southern Queensland (south of Sandy Cape) and New South Wales from approximately the 4000 m depth contour (60–80 nm from the coast) to the extent of the AFZ. The GHAT is managed within the SESSF under the *Southern and Eastern Scalefish and Shark Fishery Management Plan 2003*, 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 the amount of fishing gear that may be used.

The GHAT sector of the SESSF is directly impacted by this amendment as it applies to the hook methods (droplines) used by this sector.

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, minimize impact on deepwater fish species, facilitate the recovery of certain species and protect threatened and endangered species such as Harrison's dogfish (*C. harrissoni*) and southern dogfish (*C. zeehaani*).

Consultation

Variations of Directions made under subsection 41A(3) of the Management Act do not require AFMA to consult. However, consistent with section 17 of the Legislation Act, AFMA consulted with SEMAC prior to making the Amendment Direction. SEMAC is the overarching committee that provides management advice to AFMA on the SESSF and includes industry members. SEMAC was established under section 54 of the *Fisheries Administration Act 1991*, and it supported the making of the Amendment Direction, as it is expected to have economic benefits for operators that use these types of droplines through greater access to productive fishing grounds for blue-eye trevalla. Trials have proven that fishing for blue-eye trevalla in these areas using modified gear can avoid interactions with threatened dogfish species. Providing positive economic benefits for operators by modifying regulations is consistent with AFMA's objective to maximise the net economic returns to the Australian community from the management of Australian fisheries.

SEMAC was consulted on the proposal to allow the use of modified droplines and expansion of the use of hydraulic handreel droplines in dogfish closures with conditions. The conditions include the adoption of a 12-month fishing ban within the areas specified in Schedules 8, 9, 10, 12, 29, 30, 31, 32, 33 and/or 39 if ten or more individual upper-slope dogfish are taken during a fishing season, by all operators combined, and 100 per cent monitoring. SEMAC agreed to ensure that fishing activities are conducted in a manner consistent with the principles of ecologically sustainable development. This is also consistent with the objectives of the *Fisheries Management Act 1991*.

Prior to consulting with SEMAC, AFMA informed the Threatened Species Scientific Committee (TSSC) on the intention to collect data via scientific trials to help inform the decision on whether to provide access to the dogfish closures under amended conditions.

Regulation Impact Statement

The Office of Impact Analysis (OIA) has advised that a Regulation Impact Statement is not required for this instrument, consistent with the list in Table 1 of the OIA's Approved Carve-outs as at 12 March 2024 for AFMA (OIA23-06107) for instruments of a machinery nature.

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

This legislative instrument is compatible with the human rights and freedoms under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

ATTACHMENT A

Details of the Fisheries Management (Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery Closures) Amendment Direction No. 1 2025

- Section 1** Provides that the name of the Amendment Direction is the *Fisheries Management (Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery Closures) Amendment Direction No. 1 2025*.
- Section 2** Provides that the Amendment Direction commences the day after it is registered on the Federal Register of Legislation.
- Section 3** Provides that the Amendment Direction is made under subsection 41A(3) of the *Fisheries Management Act 1991*.
- Section 4** Gives effect to Schedule 1.
- Schedule 1** Schedule 1 outlines the amendments to the Principal Direction.
- Clause 1** Adds definition for daylight hours and modified dropline gear.
- Clause 2** Deletes clause 6(j) and adds clause 6(j) where fishing is not to be engaged in Schedule 11, and 6(jA) where fishing is not to be engaged in schedule 12.
- Clause 3** Adds a new clause 6 (x) where fishing is not be engaged within the areas specified in Schedules 8, 9, 10, 12, 29, 30, 31, 32, 33 and/or 39 for 12 months if ten or more Harrison's dogfish (*C. harrissoni*), ten or more southern dogfish (*C. zeehaani*) or ten or more Harrison's dogfish (*C. harrissoni*) and southern dogfish (*C. zeehaani*) combined are taken in the area described by the relevant Schedule. The 12 month ban will commence from the date the tenth dogfish was caught.
- Clause 4** Delete 7(1) and adds a new clause
- Clauses 6(d), 6(i), 6(j), 6(jA), 6(k), 6(m), 6(o), 6(p), 6(q), 6(u) and 6(v) do not apply to holders fishing under a concession granted in accordance with the *Small Pelagic Fishery Management Plan 2009* using the mid-water trawl method.
- Clause 5** Deletes clause 9(1) and -
- adds clause 9(1) which provides an exemption to Clauses 6(i), 6(jA), 6(o), 6(p) and 6(v) for concession holders using the hydraulic hand reel method, provided that approved electronic monitoring equipment is installed and used in compliance with the *E-Monitoring (Southern and Eastern Scalefish and Shark Fishery) Direction 2021*.
- and

adds 9(2) where fishing is not to be engaged if a concession holder takes three Harrison's dogfish (*C. harrissoni*), three southern dogfish (*C. zeehaani*) or three Harrison's dogfish (*C. harrissoni*) and southern dogfish (*C. zeehaani*) combined in the areas specified in Schedules 10, 12, 30, 31, 32 and/or 39 under a fishing concession in a fishing season, commencing from the date the third dogfish was caught.

Clause 6

Adds 11(1) which provides an exemption to Clauses 6(i), 6(jA), 6(o), 6(p) and 6(v) for concession holders using the modified dropline method, provided that approved electronic monitoring equipment is installed and used in compliance with the *E-Monitoring (Southern and Eastern Scalefish and Shark Fishery) Direction 2021*.

and

Adds 11(2) where fishing is not be engaged using the hydraulic hand reel method and modified dropline method within the areas specified in Schedules 10, 12, 30, 31, 32 and/or 39 for 12 months if three Harrison's dogfish (*C. harrissoni*), three southern dogfish (*C. zeehaani*) or three Harrison's dogfish (*C. harrissoni*) and southern dogfish (*C. zeehaani*) combined are taken under a fishing concession in a fishing season, commencing from the date the third dogfish was caught.

Statement of Compatibility with Human Rights

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

Fisheries Management (Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery Closures) Amendment Direction No. 1 2025

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 consultation with the Management Advisory Committee for the Fishery, 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, vary or revoke a direction made under subsection 41A(2). Any variation direction under subsection 41A(3) is not made subject to the Management Advisory Committee consultation process and concession holder notification process as is required for a subsection 41A(2) direction.

The *Fisheries Management (Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery Closures) Amendment Direction No. 1 2025* varies the *Fisheries Management (Southern and Eastern Scalefish and Shark Fishery and Small Pelagic Fishery Closures) Direction 2021*.

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.