

## **Bass Strait Central Zone Scallop Fishery – SFR Conditions – 2020**

### **Area of waters**

This concession is granted for the area of waters described as the area specified in Schedule 1 of the *Bass Strait Central Zone Scallop Fishery Management Plan 2002*.

### **Conditions applying to this Statutory Fishing Right**

In addition to the conditions specified by sub section 22(3) of the *Fisheries Management Act 1991* (The Act), and the condition in sub section 42(2) to comply with any log book determination, the following conditions are specified for the purposes of sub section 22(4) paragraph (a).

*Note: Under sub section 22(5) of the Act these conditions may be varied, revoked or a further condition specified by written notice from AFMA.*

In addition to the above, the holder must comply with all the obligations prescribed in the *Bass Strait Central Zone Scallop Fishery Management Plan 2002* in particular:

Section 11:	Who may fish in the fishery
Section 12:	<i>Quantity of scallops that may be taken</i>
Section 13:	<i>Fishing methods</i>
Section 22:	<i>Other obligations of holders of statutory fishing rights.</i>

By section 42B(1) of the Act, Regulations may prescribe conditions that apply to fishing concessions. Regulations have been prescribed in the *Fisheries Management Regulations 2019* (the Regulations) providing conditions that apply to this fishing concession in particular:

Regulation 33:	Nominated boat must be used on trip.
Regulation 37:	Concession holder to ensure that vessel monitoring system is fitted and operating.
Regulation 39:	Requirement to carry observer.
Regulation 40:	Concession holder to ensure provision for observer and equipment.
Regulation 41:	Concession holder to ensure observer is able to perform functions.
Regulation 43:	Fish to be disposed of to fish receiver permit holder.*
Regulation 44–65:	Catch limits.*
Regulation 66–68:	Fish processing during a trip.
Regulation 70:	No interaction with protected organism.

- Regulation 71: Reporting interaction with protected organism.
- Regulation 72: Requirements if protected organism is injured by interaction.
- Regulation 73: Requirements if protected organism killed by interaction.

*\* not applicable to some concessions*

### **Closed Zones**

1. The holder must not fish under this concession outside the area of waters described in Schedule 1 of the *Bass Strait Central Zone Scallop Fishery Management Plan 2002*.
2. Entering or navigating is prohibited in the area of waters described in Schedules 1, 2, 3, 4, 5 and 6 of the *Fisheries Management (Bass Strait Central Zone Scallop Fishery) (Closure) Direction 2020*.
3. The prohibition of entering or otherwise navigating in the areas of waters closed by this condition does not apply if:
  - (a) AFMA has given approval for the boat to navigate in the area under the Regulations because of an unforeseen emergency, or circumstances beyond the control of the master of the boat; or
  - (b) The boat navigates in the area in accordance with any instructions given by AFMA.
4. AFMA may suspend this concession in accordance with this condition, pursuant to section 38(1)(c) of the Act, if it reasonably appears by VMS transmission from the nominated boat, that there is a failure by that boat while in a closed zone for the purposes of regulation 85 of the Regulations, to meet the exempting provisions of regulations 86(2), or (3). Such suspension will then continue until the concession holder provides a full written explanation, to the satisfaction of the delegate responsible for issuing that suspension, of the lawful reason for the boat being in that closed zone at that time, or until the expiration of the suspension under section 38(2) and 38(3) of the Act; whichever is the earlier.

### **Landing/ Disposal Obligations**

5. The holder must not:
  - (a) process scallops on board the boat or within 50 metres of the boat (including splitting the shell but excluding chilling or freezing) except for the purpose of testing the quality of scallop meat;
  - (b) retain or land scallop meat that is not in its enclosing shell;
  - (c) possess on board the boat scallops taken under a State authorisation;
  - (d) transfer scallops taken under this concession to another boat;
  - (e) possess on board the boat scallops taken with the use of another boat;

- (f) possess a species, or part of a species, other than scallops; and
  - (g) depart for the next fishing trip with scallops on board the boat.
6. At the end of every fishing trip and prior to any scallop consignment being moved from within the immediate proximity of the boat; the holder must:
- (a) accurately weigh all scallops at the point of unload; and
  - (b) complete Part A and Part B of the Catch Disposal Record (CDR) for that consignment;

*Note: To avoid any doubt, this means that scallops must not be transported before they are accurately weighed at the point of unload and a CDR must be completed. If an unload is split into multiple consignments a CDR (all parts) must be completed for each consignment, before the consignment to which the CDR relates is moved from within the immediate proximity of the boat and regardless of whether the consignments are transported to the same destination.*

*In this condition:*

**Accurately weigh** means weighing scallops on an approved and verified/certified weighing instrument in accordance with the National Measurement Act 1960.

7. At the end of a trip, all scallops taken under this concession must be unloaded at the port of landing.

*In this condition:*

**Port of Landing** means a single port where all scallops are unloaded.

### **Quota Balancing Obligations**

8. The holder must not be over quota for any quota species.
9. The holder is not considered to be over quota for a species if, within 28 days of landing an amount (by weight) in excess of their uncaught quota recorded in the Register, the holder acquires a further amount of quota for that species which is equal to or greater than the excess.
10. If the holder is over quota for any quota species AFMA may suspend this concession in accordance with this condition, pursuant to section 38(1)(c) of the Act. In deciding whether to suspend or lift the suspension of this concession AFMA must take account of any written explanation from the holder detailing any exceptional circumstances as to why the holder was over quota.
11. Any dealing in a quota SFR by the holder of a boat SFR or Fishing Permit for the purpose of complying with this condition must be lodged with AFMA duly executed and in the form

approved by AFMA, on or before the 28th day from which the excess quota species was landed. For the purpose of determining if the holder is over quota under this condition, any acquisition of quota for a species may only be deemed to have been acquired up to 28 days prior to the date of registration of that acquisition of that quota species.

12. If this concession is suspended, unless the holder has acquired and AFMA has then recorded in the Register (but may not deem) an amount of uncaught quota for which the holder is over quota, this concession may, under this condition, again be suspended upon expiration of the earlier suspension.

In this condition:

**Acquire** means receiving statutory fishing rights by registering a dealing by which an amount of statutory fishing rights are permanently or seasonally transferred to the holder; and **acquisition** has a comparable meaning.

**Quota species** has the same meaning as quota species in the applicable management plan for which this concession has been granted and established under the Act.

**Over quota** means when the holder lands an amount of quota species in excess of the available uncaught amount recorded for that species in the holder's name on the Register.

**Register** means the Register of Statutory Fishing Rights kept by AFMA pursuant to section 44 of the Act.

**Uncaught Quota** means the holder has uncaught quota during a season, for a species of scallop, if the total amount of scallop of the species taken in the fishery by the holder during the season is less than the total of the quota for the species of scallop and season allocated to SFRs held by the holder.

### **Other Obligations**

13. If a boat is nominated to this concession, at all times when the boat is being used under this concession, the holder must have provided to AFMA a current emergency contact facility for the nominated boat.
14. An emergency contact facility must enable AFMA to contact the boat immediately and directly at any time when the boat is at sea, including in the event of an emergency.
15. AFMA must be notified immediately of any change in contact details, by fax sent to (02) 6225 5426 or by email to [licensing@afma.gov.au](mailto:licensing@afma.gov.au) and the boat must not depart on a fishing trip unless AFMA has been so notified of the change in contact details.

*Note: The emergency contact facility may take the form of a satellite phone number, or skipper or crew member's mobile phone number - any number that may be used by AFMA to contact the boat while it is at sea at any time, including in the event of an emergency.*

## **Agent Obligations**

16. The holder accepts concurrent liability for all conduct by its servants or agents infringing the Act (or the Regulations, Management Plans or concession conditions made by virtue of that Act) who may be engaged by the holder to conduct on the holder's behalf activity under this concession.
17. Liability for the conduct of the holder's servants or agents arises, even if the conduct may be, or actually is, beyond the scope of the servant or agent's actual or apparent authority where it is a breach that occurs during the conduct of activity authorised by this concession.
18. The holder may avoid concurrent liability for conduct whilst conducting activity under this concession if, but only if, the holder can establish that the infringing conduct could not possibly have been prevented by any action or precaution that the holder might have reasonably taken.
19. The giving of an indemnity by the servant or agent to the holder for any penalties incurred by the holder, for infringing conduct by the servant or agent is not, of itself, a reasonable precaution to prevent infringing conduct.
20. The holder must ensure the master of the boat fishing under the authority of this concession is nominated as an authorised agent for the holder before any fishing operation may take place:
  - (a) The holder must ensure the authorised agent signing the determined \*Daily Fishing logbook page was the master of the boat (skipper) at the time the recorded fishing operation took place.
  - (b) The holder may sign the determined \*Daily Fishing logbook page if they were the master of the boat (skipper) when the recorded fishing operation took place.
  - (c) If more than one master of the boat is on board the boat during the fishing trip, each master must complete and sign a separate determined \*Daily Fishing logbook page for each of the fishing operations for which they had control over.

*\*These instructions are for all determined Daily Fishing Logs including e-Logs.*

## **Temporary Orders Obligations**

21. The holder must comply with any Temporary Order made under sub section 43(2) of the Act and to the extent that any provision herein is inconsistent with such Temporary Order sub section 43(9) provides that the provision herein is overridden by the Temporary Order until the Temporary Order ceases to have effect.

## **Mandatory AFMA Supplied VMS**

### Direction to Fit

22. When directed by AFMA in writing, the concession holder (or a person acting on the holder's behalf) must:
- (a) make available, within 14 days of the date of the written direction, the boat nominated to this concession for the purposes of installation of an AFMA Vessel Monitoring System unit (AFMA VMS unit) by an AFMA approved technician, and
  - (b) provide all reasonable assistance to the AFMA approved technician including (but not limited to);
    - i. the provision of an un-interrupted connection to the boat's main power source, and
    - ii. an appropriate position for the mounting of the AFMA VMS unit.
23. When directed by AFMA in writing, the concession holder (or a person acting on the holder's behalf) must:
- (a) make available, within 14 days of the date of the direction, the boat nominated to this concession for the purposes of removal of the AFMA VMS unit by an AFMA approved technician, and
  - (b) Provide all reasonable assistance to the AFMA approved technician.

Concession holder must not interfere with AFMA VMS Unit

24. The concession holder (or a person acting on the holder's behalf) must not interfere, or attempt to interfere, with the operation of the AFMA VMS Unit.

In these conditions

**AFMA VMS Unit** means a Vessel Monitoring System (VMS) unit wholly owned by AFMA, marked with AFMA identifications and supplied by AFMA and fitted by an AFMA approved technician.

**Interfere** includes, but is not limited to:

- (a) Physical obstruction or removal of the AFMA VMS unit, or
- (b) Deliberately disconnecting or otherwise interfering with the power supply to the AFMA VMS unit, or
- (c) Deliberate physical interference with the casing or any external or internal components of the AFMA VMS unit.

**Notes:**

***Must make boat available***

*Where the boat is not made available in accordance condition 53 (a) or 54 (a), AFMA may suspend this concession pursuant to section 38(1)(c) of the Act.*

**Must maintain VMS Unit**

*Regardless of AFMA's decision to fit an AFMA VMS unit, the holder must continue to maintain a VMS unit in accordance with regulation 37 of the Regulations.*

**Remains the property of AFMA**

*At all times the AFMA VMS unit remains the sole property of AFMA. The holder is liable for any costs incurred as a result of loss or damage to the unit.*

**Handling and treatment of Bycatch**

25. The concession holder (or a person acting on the holder's behalf) must not mistreat bycatch.

In these conditions

**Mistreat** means taking, or failing to take, any reasonable action or actions, which results, or is likely to result, in the:

- (a) death of, or
- (b) injury to, or
- (c) causing of physiological stress to any bycatch.

**Bycatch** means any species that physically interact with fishing vessels and/or fishing gear (including auxiliary equipment) and which are not usually kept by commercial fishers.

**Bycatch** species may include fish, crustaceans, sharks, molluscs, marine mammals, reptiles and birds. **Bycatch** includes listed protected species under the *Environment Protection and Biodiversity Conservation Act 1999*.

**Notes:** *For the purposes of this condition 'mistreat' does not include the taking, or failing to take, action where it is reasonably necessary to take, or not take, the action:*

- (a) *to ensure the safety of the boat and or its crew, or*
- (b) *to comply with the requirements of any AFMA approved bycatch management plan(s) (these may include Seabird Management Plans, Vessel Management Plans etc.).*