

EXPLANATORY STATEMENT

Issued by the Authority of the Australian Fisheries Management Authority

Fisheries Management Act 1991

Small Pelagic Fishery Management Plan 2009

Small Pelagic Fishery (Overcatch and Undercatch) Determination 2020

Section 17 of the *Fisheries Management Act 1991* (the Act) provides for the Australian Fisheries Management Authority (the Authority) to determine plans of management for a fishery.

Paragraph 17(6)(aa) of the Act provides that a plan of management may determine, or provide for the Authority to determine, the fishing capacity, for a fishery measured by that method or those methods, permitted for the fishery or a part of the fishery in respect of a particular period or periods.

Section 29 of the *Small Pelagic Fishery Management Plan 2009* (the Management Plan) provides that the Authority may determine percentages and weights for a quota species, for a sub-area of the Small Pelagic Fishery (the Fishery) for a fishing season. These provisions concern the calculation of overcatch.

Section 30 of the Management Plan provides that the Authority may determine percentages for a quota species for a fishing season. These provisions concern the calculation of undercatch.

The *Small Pelagic Fishery Overcatch and Undercatch Determination 2020* (the Determination) is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Determination determines the percentage for undercatch; and the weight and percentage for overcatch, for each quota species for a sub-area for the 2020-2021 fishing season, commencing 1 May 2020 ending 30 April 2021. Undercatch and overcatch provide for 'carry over' or 'carry under' of quota between fishing seasons thereby allowing fishers the flexibility to catch a certain amount of fish over or under their quota, and debit or credit this from or to their next season's fishing quota. If the determined overcatch percentage is exceeded, the determined weight allows for an additional amount of fish to be taken in excess of fisher's quota holdings, up to the determined weight specified. The amount that exceeds the determined overcatch percentage is decremented against an individual's holdings the following season at twice that amount.

The Fishery

The Fishery is the area of waters, largely outside three nautical miles from the coastline, extending from the Queensland/New South Wales border generally southerly, westerly and northerly to latitude 31° South (near Lancelin, north of Perth). For quota species other than Australian sardine, the Management Plan divides the Fishery into two sub areas (see Schedule 1 to the Management Plan). The eastern sub-area is the area of the Fishery east of longitude 146°30'00" E, and the western sub-area is the area of the Fishery west of that longitude. The Australian sardine sub-area is an area of the Fishery off the coast of New South Wales (see clause 3 of Schedule 1 to the Management Plan).

Management in the Fishery is through output controls in the form of individually transferable quotas derived from the TAC determined for each quota species for each fishing year. The quota species in the Fishery are jack mackerel, blue mackerel, redbait and Australian sardine (see Schedule 4 to the Management Plan).

Consultation

The Small Pelagic Fishery Resource Assessment Group (the RAG) provides advice to the Authority on the recommended biological catch (RBC) for each stock in the fishery. The South East Management Advisory Committee (SEMAC) provides advice to the Authority on the undercatch and overcatch percentages and weights for each stock. Advice on undercatch and overcatch percentages and weights was sought from SEMAC on 4-6 February 2020.

The AFMA Commission considered the advice from SEMAC when determining the undercatch and overcatch for each stock for the 2020-2021 fishing season. The Determination is made consistent with advice received from SEMAC.

Regulation Impact Statement

The Office of Best Practice Regulation does not require a Regulation Impact Statement for this determination consistent with the carve out arrangement with AFMA (OBPR reference 14421) for instruments of a minor or machinery nature and which specifically refers to Total Allowable Catch Determinations for a fishery.

Details of the Determination are set out in **Attachment A**.

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

The Authority assesses under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* that this legislative instrument is compatible with human rights. The Authority's Statement of Compatibility is included in **Attachment B**.

Details on provisions

Small Pelagic Fishery (Overcatch and Undercatch) Determination 2020

- Section 1*** Provides that the Determination is the *Small Pelagic Fishery (Overcatch and Undercatch) Determination 2020*.
- Section 2*** Provides that the Determination commences on 1 May 2020.
- Section 3*** Provides that the Determination ceases to have effect as if it is revoked on 1 May 2021 unless earlier revoked.
- Section 4*** Provides the Determination is made pursuant to paragraph 17(6)(aa) of the Act for the purpose of subsections 29(5) and 30(3) of the Management Plan.
- Section 5*** Subsection 5(1) defines the Act to be the *Fisheries Management Act 1991*; the Management Plan to be the *Small Pelagic Fishery Management Plan 2009*; and Fishing season 2020-2021 to be *the period starting on 1 May 2020 and ending on 30 April 2021*.
Subsection 5(2) provides that a term used in this instrument that is defined for the purposes of the Management Plan has the same meaning in this instrument as it has in the Management Plan.
- Section 6*** Determines the percentage and weight, under section 29 of the Management Plan (Obligation relating to overcatch), and the percentage under section 30 of the Management Plan (Obligation relating to undercatch) for each quota species for a sub-area for the 2020-2021 fishing season commencing on 1 May 2020 and ending on 30 April 2021.

Statement of Compatibility with Human Rights

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

Small Pelagic Fishery (Undercatch and Overcatch) 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(1) of the *Small Pelagic Fishery Management Plan 2009* (the Management Plan) provides that the Australian Fisheries Management Authority (the Authority) must determine a Total Allowable Catch (TAC) for each quota species for a sub-area of the fishery for a season before the start of the season. The determination of a TAC must specify the TAC expressed in whole weight or a specified other weight and must specify the sub-area of the fishery to which the TAC applies, or if the TAC applies to a part of the sub-area, that part of the sub-area (see subsection 17(4) of the Plan).

Section 18 of the Management Plan provides that, before the Authority determines a TAC for a quota species for a sub-area or part of a sub-area for a season, it must consult and consider the views of each relevant management advisory committee. It must take into account advice from the relevant fishery assessment group about the stock status of a quota species and may consider the views of any other interested person. It must also take into account all fishing mortality from all sub-areas 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 *Small Pelagic Fishery (Undercatch and Overcatch) Determination 2020* determines the TAC for each quota species and sub-area for the 2020-2021 fishing season.

Advice from the Small Pelagic Fishery Resource Assessment Group (the RAG) was considered by the South East Management Advisory Committee (SEMAC). Advice on undercatch and overcatch percentages and weights was sought from SEMAC on 4-6 February 2020.

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. The AFMA Commission is satisfied that the instrument is consistent with the Authority's obligation to pursue its statutory objectives. The instrument is machinery in nature and sets the catch limits for quota species in the fishery thereby allowing statutory fishing right holders the ability to take a proportion of the total allowable catch for the 2020-2021 fishing season.