

EXPLANATORY STATEMENT

Issued by the Authority of the Australian Fisheries Management Authority

Fisheries Management Act 1991
Western Tuna and Billfish Fishery Management Plan 2005

Western Tuna and Billfish Fishery (Overcatch and Undercatch) Determination 2020

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 (the Authority) 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 *Western Tuna and Billfish Fishery Management Plan 2005* (the Plan) provides that the Authority must, during the course of the season, determine a percentage (the ‘determined percentage’) and or weight (the ‘determined weight’) for the purpose of applying the overcatch provisions to individual Statutory Fishing Right (SFR) holders who exceed their quota for the season. Subsection 11(1) of the Plan further provides that the Authority must, during the course of the season, determine a percentage (the ‘determined percentage’), for the purpose of applying the undercatch provisions to individual SFR holders whose catch is less than their quota for the season.

This instrument determines the amounts and percentages for each quota species in relation to undercatch and overcatch for the fishing season commencing on 1 February 2020 and concluding on 31 January 2021. Undercatch and overcatch provides for ‘carry over’ or ‘carry under’ of a small amount of end of season 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 to or from the following season’s quota.

The Fishery

The Western Tuna and Billfish Fishery (WTBF) covers the area of waters in the Australian Exclusive Economic Zone (EEZ) included on the west coast of Australia, westward from Cape York Peninsula (142°30’E) off Queensland to 34°S off the west coast of Western Australia. It also extends eastward from 34°S off the west coast of Western Australia, across the Great Australian Bight to 141°E at the South Australian/Victorian border. The fishery also includes Australian waters outside of 12 nm off Christmas Island and Cocos Keeling Islands. The Plan also applies to Australian boats fishing on the high seas within the Indian Ocean Tuna Commission’s (IOTC) Area of Competence.

Management in the WTBF has been through output controls in the form of individually transferable quotas since the Plan was determined in 2005.

Consultation

There has been extensive consultation to establish the overcatch/undercatch percentages and weights. The WTBF harvest strategy could not be implemented, due to lack of input data, to produce the Recommended Biological Commercial Catch (RBCC) for each quota species. Therefore, the results of the species stock assessments conducted on the Indian Ocean Tuna Commission stock, were considered by the Authority's Commission. The stock assessments provide 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.

Advice from the Tropical Tuna Resource Assessment Group (TTRAG) was considered by the Tropical Tuna Management Advisory Committee (TTMAC). TTMAC discussed the overcatch and undercatch percentages and weights.

The recommended overcatch and undercatch percentages and weights for all species in the WTBF were then sent to the Authority's Commission for determination along with all advice from TTMAC and TTRAG.

Regulation Impact Statement

The Office of Best Practice Regulation has previously identified that decisions by AFMA including on setting total allowable catch (TAC); setting opening and closing dates for a fishing season; and setting undercatch and overcatch provisions in a fishery, do not require a Regulation Impact Statement. Such decisions are considered to be machinery in nature and are included in an approved carve-out (OBPR reference no. 14421) reflecting where AFMA is required to make decisions under current regulatory settings and follow certain procedures when making those decisions.

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 attached as a supporting document.

The Commission's Decision

The Authority's Commission determined the undercatch and overcatch percentages and determined weight at its meeting on 19 May 2020.

The Commission was satisfied that the percentages and amount it determined were consistent with the Authority's obligation to pursue its statutory objectives, specified in section 3 of the Act and section 6 of the *Fisheries Administration Act 1991*.

Details of the Determination are set out below:

- Clause 1** Provides for the Determination to be cited as the *Western Tuna and Billfish Fishery (Overcatch and Undercatch) Determination 2020*.
- Clause 2** Provides that the Determination commences on the day after registration on the Federal Register of Legislation.
- Clause 3** Provides that the Determination is repealed on 1 February 2021.
- Clause 4** Provides that the Determination is made pursuant to paragraph 17(6)(aa) of the *Fisheries Management Act 1991* under subsection 11(1) of the *Western Tuna and Billfish Fishery Management Plan 2005*.
- Clause 5** Provides that a term used in the Determination and in the Plan or Act has the same meaning in the Determination as in the Plan or Act.
- Clause 6** Determines the percentage of overcatch for section 18 of the Plan, determines the percentage of undercatch for section 19 of the Plan and determines the weight for section 18 of the Plan for each quota species in the fishery for the 2020 fishing season beginning on 1 February 2020 and concluding on 31 January 2021.

Statement of Compatibility with Human Rights

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

Western Tuna and Billfish Fishery (Overcatch and Undercatch) 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

This instrument determines the amounts and percentages for each quota species in relation to undercatch and overcatch for the fishing season beginning on 1 February 2020 and concluding on 31 January 2021. Undercatch and overcatch provides for ‘carry over’ or ‘carry under’ of a small amount of end of season 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 to or from the following season’s quota. The instrument ceases on 1 February 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.