

EXPLANATORY STATEMENT

Issued by the Authority of the Australian Fisheries Management Authority

Fisheries Management Act 1991
Eastern Tuna and Billfish Fishery Management Plan 2010

Eastern Tuna and Billfish Fishery (Overcatch and Undercatch) Determination 2022

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. Under section 17(6B) of the Act a determination made by the Authority under paragraph 17(6)(aa) is a legislative instrument.

Section 3.2 of the *Eastern Tuna and Billfish Fishery Management Plan 2010* (the Plan) provides that the Authority must, before the start of each fishing season, determine the determined weight or the determined percentage (or both) for section 4.5 of the Plan and the determined percentage for section 4.6 of the Plan.

Section 4.5 of the Plan provides that AFMA must determine a percentage (the ‘determined percentage’) and weight (the ‘determined weight’) for the purpose of applying the overcatch provisions to individual SFR holders who exceed their quota for the season. Section 4.6 of the Plan provides that AFMA must 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 January 2022 and concluding on 31 December 2022. 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 Eastern Tuna and Billfish Fishery (ETBF) covers the area of waters in the Australian Exclusive Economic Zone (EEZ) included on the east coast of Australia between the South Australia/Victoria border and Cape York in the North. The ETBF also includes a restricted entry zone in the Coral Sea and a high seas zone that provides specific arrangements for fishing in the ETBF beyond the Australian EEZ.

Management in the ETBF is by output controls in the form of individually transferable quotas granted under the Plan.

Consultation

AFMA consulted widely before determining the overcatch/undercatch percentages and weights.

Species stock assessments conducted on the broader western central pacific stock were presented to the Tropical Tuna Resource Assessment Group (TTRAG). This group comprises scientific, industry and management representatives as well as observers.

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

The recommended overcatch and undercatch percentages and weights for all species in the ETBF 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 the 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 17 and 18 November 2021.

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 Instrument are set out below:

Clause 1 Provides for the Instrument to be cited as the *Eastern Tuna and Billfish Fishery (Overcatch and Undercatch) Determination 2022*.

Clause 2 Provides that the Instrument commences on 1 January 2022.

- Clause 3** Provides that the Instrument ceases on 31 December 2022.
- Clause 4** Provides that the Instrument is made pursuant to paragraph 17(6)(aa) of the *Fisheries Management Act 1991* under sections 3.2, 4.5 and 4.6 of the *Eastern Tuna and Billfish Fishery Management Plan 2010*.
- Clause 5** Provides that a term used in the Instrument and in the Plan or Act has the same meaning in the Instrument as in the Plan or Act.
- Clause 6** Determines the percentage of overcatch for sections 4.5 of the Plan, determines the percentage of undercatch for section 4.6 of the Plan and determines the weight for section 4.5 of the Plan for each quota species in the fishery for the 2022 fishing season beginning on 1 January 2022 and concluding on 31 December 2022.

Statement of Compatibility with Human Rights

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

Eastern Tuna and Billfish Fishery (Overcatch and Undercatch) Determination 2022

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 January 2022 and concluding on 31 December 2022. 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 31 December 2022.

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.