

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 2022

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 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 2022* (the Determination) is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Determination determines the amounts and percentages for each quota species for a sub-area in relation to undercatch and overcatch for the 2022-23 fishing season. Undercatch and overcatch provides 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, noting that the determined weight is decremented against their holdings the following season at twice the rate.

The Fishery

The Small Pelagic Fishery (the Fishery) is the area of waters, largely outside 3 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 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 8-10 February 2022.

The Authority's Commission considered the advice from SEMAC when determining the undercatch and overcatch for each stock for the 2022-23 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 Regulatory 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.

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 below.

Details of the Determination are set out below:

- Section 1** Provides for the Determination to be cited as the *Small Pelagic Fishery (Overcatch and Undercatch) Determination 2022*.
- Section 2** Provides that the Determination commences on the day after registration on the Federal Register of Legislation.
- Section 3** Provides that the Determination ceases on 1 May 2023.
- Section 4** Provides that the Determination is made under paragraph 17(6)(aa) of the Act for the purpose of subsections 29(5) and 30(3) of the Management Plan.
- Section 5** Provides relevant definitions for the purpose of the Determination.

Subsection 5(1) defines the Act to be the *Fisheries Management Act 1991* and the Management Plan to be the *Small Pelagic Fishery Management Plan 2009*.

Subsection 5(2) provides that a term used in the Determination that is defined for the purposes of the Management Plan has the same meaning in the Determination as it has in the Management Plan. Relevantly, this means that the definitions of 'eastern sub-area', 'western sub-area' and 'Australian sardine sub-area' in the Management Plan apply in the Determination.

Section 6 Determines the percentage and weight, under section 29 of the Plan (Obligation relating to overcatch), and the percentage under section 30 of the Plan (Obligation relating to undercatch) for each quota species for a sub-area for the 2022-23 fishing season commencing on 1 May 2022 and ending on 30 April 2023.

Statement of Compatibility with Human Rights

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

Small Pelagic 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

The *Small Pelagic Fishery (Overcatch and Undercatch) Determination 2022* determines the TAC for each quota species and sub-area for the 2022-23 fishing season.

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 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.

Advice from the Small Pelagic Fishery Resource Assessment Group was considered by the South East Management Advisory Committee (SEMAC). Advice on undercatch and overcatch percentages and weights was provided by SEMAC on 8-10 February 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.