

## 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 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.

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 the determined weight or the determined percentage (or both) for the purposes of section 18; and the determined percentage for the purposes of section 19.

Section 18 of the Plan relates to the overcatch provisions applying to individual Statutory Fishing Right (SFR) holders who exceed their quota for the season. Under this section, the determined percentage for a quota species and a fishing season, means a percentage of the quota allocated to the quota SFR for that species held by a person for that season, specified in a determination made by the Authority for the purposes of section 18 of the Plan for that species and season. Section 18 of the Plan further provides that the determined weight, for a quota species and a fishing season, means the weight of that species specified in a determination made by the Authority for the purposes of this section for the species and season.

Section 19 of the Plan relates to the undercatch provisions applying to individual SFR holders whose catch is less than their quota for the season. Under section 19 of the Plan, the determined percentage, for a quota species and a fishing season, is a percentage of the quota allocated to the quota SFRs for that species held by a person for that season, specified in a determination made by the Authority for the purposes of this section for that species and 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 2022 and concluding on 31 January 2023. The instrument is not retrospective in nature as the Plan provides that in relation to overcatch and undercatch these parameters must be set ‘during the course of the season’ and apply to a quota species and ‘a fishing season’.

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 *Western Tuna and Billfish Fishery (Overcatch and Undercatch) Determination 2022* is a legislative instrument for the purposes of the *Legislation Act 2003*.

## **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. The total allowable commercial catch for each quota species for the fishing season commencing on 1 February 2022 and ending on 31 January 2023 was determined by the *Western Tuna and Billfish Total Allowable Commercial Catch Determination 2022*<sup>1</sup>.

## **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 Tropical Tuna Resource Assessment Group (TTRAG) when determining RBCCs for the WTBF commercial species.

AFMA's Resource Assessment Groups (RAGs) are the key research and scientific committees for supporting the management of Commonwealth fisheries. The main function of RAGs is to peer review scientific data and information and provide advice to AFMA on the status of fish stocks, sub-stocks, species (target and non-target species), the economic status of fisheries and the impact of fishing on the marine environment. This advice assists the Authority in its role to regulate commercial fishing of Commonwealth fisheries. 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.

AFMA's Management Advisory Committees (MACs) are statutory bodies that provide AFMA with management advice. TTMAC membership is made up of representatives from the fishing industry, scientists, conservation groups, the recreational fishing sector and AFMA. MAC advice is used to inform AFMA's management decisions including overcatch and undercatch parameters

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<sup>1</sup> In 2022 the *Western Tuna and Billfish Total Allowable Commercial Catch Determination 2022* could be viewed free of charge on the Australian Government's website the Federal Register of Legislation at <https://www.legislation.gov.au/Details/F2021L01614>.

and continues to be the main source of advice on the management of Commonwealth fisheries. Advice from TTRAG was considered by the Tropical Tuna Management Advisory Committee (TTMAC) when it discussed RBCCs, the Total Allowable Commercial Catch, and the overcatch and undercatch percentages and weights in October 2021.

The recommended undercatch and overcatch percentages and weights for all species in the WTBF were then sent to the Authority's Commission for determination along with advice from TTMAC in March 2022.

### **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 15-16 March 2022.

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 *Western Tuna and Billfish Fishery (Overcatch and Undercatch) Determination 2022*.
- Clause 2** Provides that the Instrument commences on the day after registration on the Federal Register of Legislation.
- Clause 3** Provides that the Instrument is repealed on 1 February 2023.
- Clause 4** Provides that the Instrument is made pursuant to paragraph 17(6)(aa) of the Act and under subsection 11(1) of the Plan for the purposes of sections 18 and 19 of the Plan.

**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 the purposes of paragraph 11(1)(a) and subsection 18(5) of the Plan, determines the percentage of undercatch for the purposes of paragraph 11(1)(b) and subsection 19(3) of the Plan and determines the weight for the purposes of paragraph 11(1)(a) and subsection 18(5) of the Plan for each quota species in the fishery for the 2022 fishing season beginning on 1 February 2022 and concluding on 31 January 2023.

## **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 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 February 2022 and concluding on 31 January 2023. 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 2023.

#### **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.