

EXPLANATORY STATEMENT

Issued by the Authority of the Australian Fisheries Management Authority

Fisheries Management Act 1991

Southern Bluefin Tuna Fishery Management Plan 1995

Fisheries Management (Southern Bluefin Tuna Fishery Undercatch and Overcatch) Determination 2023

Subsection 17(5) of the *Fisheries Management Act 1991* (the Act) provides that a plan of management made under the FM Act may provide for the Australian Fisheries Management Authority (AFMA) to give particular determinations for the purposes of attaining the objectives of the plan of management.

Subsection 17(6)(aa) of the FM Act provides that a plan of management may determine or provide for AFMA to determine the fishing capacity 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.

Subclause 9B.1 of the *Southern Bluefin Tuna Fishery Management Plan 1995* (the Plan) provides that AFMA may determine for a season the determined percentage, the determined amount and the determined additional weight in relation to overcatch.

Subclause 9C.1 of the Plan provides that AFMA may determine for a season the determined percentage of undercatch.

The *Fisheries Management (Southern Bluefin Tuna Fishery Undercatch and Overcatch) Determination 2023* (the Determination) is a legislative instrument for the purposes of the *Legislation Act 2003*.

The Determination determines the amounts and percentages for undercatch and overcatch for the fishing season commencing on 1 December 2023 and ending on 30 November 2024. 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

Southern Bluefin Tuna (SBT) is a highly migratory species and is widely distributed throughout waters of the southern oceans, including the Australian Fishing Zone (AFZ). Internationally the fishery is managed by the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) of which Australia is a member. The Australian Southern Bluefin Tuna Fishery encompasses SBT fishing operations inside the AFZ (i.e., adjacent from 3 to 200 nautical miles around Australia) and on the high seas. Aside from New South Wales, under an Offshore Constitutional Settlement agreement between the Commonwealth and the States/Territories, management of the SBT Fishery to the area of low water mark is the responsibility of the Commonwealth through AFMA.

The Plan was amended in 2020 to implement the government's commitment to set aside five per cent of Australia's CCSBT allocation for recreational fishing mortality. The set aside means that up to 95 per cent of Australia's annual CCSBT allocation will be available to the commercial sector.

The commercial SBT Fishery is managed using Statutory Fishing Rights (SFRs) which allow holders to fish for SBT within the AFZ and the high seas. The majority of SBT are caught live and transferred from a tow cage into a farm where the fish are kept for an approximate six months grow out period. Fishing occurs in offshore waters adjacent to Kangaroo Island, South Australia. The remainder are caught using longline methods, predominantly off south eastern Australia during the winter months. The recreational sector continues to be managed by the relevant states using bag and size limits.

The undercatch/overcatch administrative system allows quota holders the option of having unused quota entitlement (undercatch) or above-quota catch (overcatch - determined percentage, determined amount and determined additional weight) in one year taken into account in the following year's quota entitlement. Undercatch/overcatch arrangements provide concession holders and AFMA with flexibility to manage catches at the end of the fishing season.

In November 2021, the AFMA Commission agreed to implement a change, via a determination, to the long-term undercatch arrangements to allow the undercatch percentage to be conditional upon the total commercial catch in the fishery (at the end of the season) being either above or below Australia's Effective Commercial Catch Limit¹ minus 20 per cent of the Australian National Catch Allocation. If the total commercial catch is above this number, all concession holders would be allowed to carry forward 100 per cent of their uncaught holdings into the next season. If the total commercial catch is below this number then concession holders would only be allowed to carry forward 20 per cent of their uncaught holdings. The change provided options for industry to maximise undercatch allowances while remaining within the parameters set under international treaties.

The undercatch/overcatch arrangements proposed for the season starting on 1 December 2023 and ending on 30 November 2024 are in the same terms as for the previous season.

Consultation

The undercatch/overcatch arrangements have been developed in consultation with the Southern Bluefin Tuna Management Advisory Committee, the Australian Southern Bluefin Tuna Industry Association and the Department of Agriculture, Fisheries and Forestry.

The Commission's Decision

The AFMA Commission determined the undercatch and overcatch percentages, amounts and additional weight at its meeting of 8-9 November 2023. The Commission was satisfied that the percentages, amount and additional weight it determined were consistent with AFMA's obligation to pursue its statutory objectives, specified in section 3 of the Act and section 6 of the *Fisheries Administration Act 1991*.

¹ Effective Commercial Catch Limit = ANCA for the season plus the total undercatch amount for the fishery (if any) from the previous fishing season.

Regulation Impact Statement

The Office of Impact Analysis (formerly the Office of Best Practice Regulation) has previously identified that decisions by AFMA including the setting of a total allowable catch; 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*

AFMA assesses under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* that this legislative instrument is compatible with human rights. AFMA's Statement of Compatibility is outlined below.

Details of the Determination are set out below:

- Clause 1** Provides for the Determination to be cited as the *Fisheries Management (Southern Bluefin Tuna Fishery Undercatch and Overcatch) Determination 2023*.
- Clause 2** Provides that the Determination commences on 1 December 2023.
- Clause 3** Provides that the Determination ceases on 30 November 2024.
- Clause 4** Provides that the Determination is made pursuant to section 17(6)(aa) of the Act under clauses 9B and 9C of the Plan.
- 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 determined percentage, determined amount and determined additional weight for the purposes of subclause 9B.1 of the Plan (Overcatch), and the determined percentage for the purposes of subclause 9C.1 of the Plan (Undercatch) for the fishing season commencing on 1 December 2023 and ending on 30 November 2024.

Statement of Compatibility with Human Rights

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

Fisheries Management (Southern Bluefin Tuna Fishery Undercatch and Overcatch) Determination 2023

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 Determination determines the amounts and percentages for undercatch and overcatch for the fishing season commencing on 1 December 2023 and ending on 30 November 2024. 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.

Assessment of human rights implications

As this legislative instrument is of a mechanical nature, it 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 AFMA’s obligation to pursue its statutory objectives.