

EXPLANATORY STATEMENT

Issued by the Authority of the Australian Fisheries Management Authority

Fisheries Management Act 1991
Small Pelagic Fishery Management Plan 2009

FISHERIES MANAGEMENT (SMALL PELAGIC FISHERY OVERCATCH AND UNDERCATCH) FISHING CAPACITY DETERMINATION 2018

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 (aa) of subsection 17(6) 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 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 Plan provides that the Authority may determine percentages for a quota species for a fishing season. These provisions concern the calculation of undercatch.

The *Fisheries Management (Small Pelagic Fishery Overcatch and Undercatch) Fishing Capacity Determination 2018* (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 2018 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 to or from 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) extends from the Queensland/New South Wales border, typically outside 3 nautical miles, around southern Australia to a line at latitude 31° south (near Lancelin, north of Perth). The fishery is currently divided into two sub-areas East and West of latitude 146°30'00".

Management in the fishery is through output controls in the form of individually transferable quotas with a Total Allowable Catch determined for each quota species for each fishing season. The main target species in the fishery are Jack Mackerel, Blue Mackerel, Redbait and Australian Sardines.

Consultation

The Small Pelagic Fishery Scientific Panel (the Panel) provides advice to the Authority on the recommended biological catch (RBC) for each stock in the fishery. In providing this advice, the Panel considers advice from interested stakeholders, for example recreational fishers, conservation groups, and commercial industry, through the Small Pelagic Fishery Stakeholder Forum (the Forum). 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 6-8 February 2018.

The Authority's Commission considered the advice from SEMAC when determining the undercatch and overcatch for each stock for the 2018-19 fishing season.

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 attached as a supporting document.

Details of the Determination are set out below:

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| Clause 1 | Provides that the name of the Determination is the <i>Fisheries Management (Small Pelagic Fishery Overcatch and Undercatch) Fishing Capacity Determination 2018</i> . |
| 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 May 2019 unless earlier revoked. |
| Clause 4 | Provides the authority under which the Determination is made. |
| 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 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 2018 fishing season commencing on 1 May 2018 and ending on 30 April 2019. |

Statement of Compatibility with Human Rights

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

Fisheries Management (Small Pelagic Fishery Overcatch and Undercatch) Fishing Capacity Determination 2018

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

Sections 29 and 30 of the *Small Pelagic Fishery Management Plan 2009* (the Plan) provide that AFMA may determine a percentage of overcatch and undercatch for a quota species for each sub-area of the Small Pelagic Fishery for a fishing season. The Plan limits AFMA to determining a percentage for overcatch or undercatch no greater than 10 per cent.

Overcatch and undercatch provides for ‘carry over’ or ‘carry under’ of up to the determined percentage of quota between fishing seasons. This allows 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.

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. The AFMA Commission is satisfied that the instrument is consistent with AFMA’s obligation to pursue its statutory objectives. The instrument is machinery in nature and sets undercatch and overcatch values for quota species in the fishery thereby allowing statutory fishing right holders the ability to take a proportion of quota over or under their holdings that can be debited or credited to or from their holdings in the following season.