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 TOTAL ALLOWABLE CATCH – QUOTA SPECIES) 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 17 of the *Small Pelagic Fishery Management Plan* *2009* (the Plan) provides that the Authority must determine a Total Allowable Catch (TAC) for each quota species for a sub-area of the fishery for a season before the start of the season. The determination of a TAC must specify the TAC expressed in whole weight or a specified other weight and must specify the sub-area of the fishery to which the TAC applies, or if the TAC applies to a part of the sub-area, that part of the sub-area.

Section 18 of the Plan provides that, before the Authority determines a TAC for a quota species for a sub-area or part of a sub-area for a season, it must consult and consider the views of each relevant management advisory committee. It must take into account advice from the relevant fishery assessment group about the stock status of a quota species and may consider the views of any other interested person. It must also take into account all fishing mortality from all sub-areas within the fishery and overlapping or adjacent fisheries, the ecological implications of harvesting the TAC, the distribution and population structure of the species and the precautionary principle.

The *Fisheries Management (Small Pelagic Fishery Total Allowable Catch – Quota Species) Fishing Capacity Determination 2018* (the Determination) determines the TAC for each quota species and sub-area for the 2018-19 fishing season.

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

**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 year. The main target species in the Fishery are Jack Mackerel, Blue Mackerel, Redbait and Australian Sardine.

**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 TAC for each stock. The TAC is the RBC minus other known sources of fishing mortality. SEMAC members and observers include representatives from industry, policy, conservation, state and territory governments, recreational and research fields. Advice was sought from the Forum, the Panel and SEMAC in December 2017 and January and February 2018 respectively.

The Authority’s Commission considered the advice from the Panel, the Forum and SEMAC when determining the TACs 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 *Fisheries Management (Small Pelagic Fishery Total Allowable Catch – Quota Species) Fishing Capacity Determination 2018*. |
| ***Clause 2*** | Provides that the Determination commences on the day after it is registered on the Federal Register of Legislation |
| ***Clause 3*** | Provides that the Determination ceases 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 total allowable catch (TAC) for each quota species and sub-area in the Fishery for the 2018 fishing season. |

**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 Total Allowable Catch – Quota Species) 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**

Section 17 of the *Small Pelagic Fishery Management Plan* *2009* (the Plan) provides that AFMA must determine a Total Allowable Catch (TAC) for each quota species for a sub-area of the fishery for a season before the start of the season. The determination of a TAC must specify the TAC expressed in whole weight or a specified other weight and must specify the sub-area of the fishery to which the TAC applies, or if the TAC applies to a part of the sub-area, that part of the sub-area.

Section 18 of the Plan provides that, before AFMA determines a TAC for a quota species for a sub-area or part of a sub-area for a season, it must consult and consider the views of each relevant management advisory committee. It must take into account advice from the relevant fishery assessment group about the stock status of a quota species and may consider the views of any other interested person. It must also take into account all fishing mortality from all sub-areas within the fishery and overlapping or adjacent fisheries, the ecological implications of harvesting the TAC, the distribution and population structure of the species and the precautionary principle.

The *Fisheries Management (Small Pelagic Fishery Total Allowable Catch – Quota Species) Fishing Capacity Determination 2018* determines the TAC for each quota species and sub-area for the 2018-19 fishing season.

**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 the catch limits for quota species in the fishery thereby allowing statutory fishing right holders the ability to take a proportion of that total allowable catch for the 2018 fishing season.