

EXPLANATORY STATEMENT

Issued by the Authority of the Australian Fisheries Management Authority

Fisheries Management Act 1991

Eastern Tuna and Billfish Fishery Management Plan 2010

Eastern Tuna and Billfish Fishery (Total Allowable Commercial Catch) (Undercatch/Overcatch) Determination 2021

Section 17 of the *Fisheries Management Act 1991* (the FM Act) provides for the Australian Fisheries Management Authority (AFMA) to determine plans of management for a fishery.

Paragraph (aa) of subsection 17(6) of the FM Act provides that a plan of management may determine, or provide for AFMA 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.

Subsection 3.2(1) of the *Eastern Tuna and Billfish Fishery Management Plan 2010* (the Plan) provides that AFMA must determine a total allowable commercial catch (TACC) for each quota species for the fishing season before the fishing season commences.

A determination of a TACC must specify the TACC expressed in whole weight or a specified other weight. The quota for each statutory fishing right (SFR), for a quota species, is determined by dividing the TACC for the species by the number of SFRs in force at the start of the fishing season.

Subsection 3.2(4) of the Plan provides that, before AFMA determines a TACC for a quota species for a fishing season, it must consider information given by the advisory committee (established under section 56 of the *Fisheries Administration Act 1991* (the FA Act) to assist the Commission in the performance of its functions), other interested Australian and international bodies, and other interested persons. AFMA must also take into account all fishing mortality from all sectors including commercial, recreational, indigenous and other users of the fishery. AFMA must abide by the Commonwealth Harvest Strategy Policy and the Eastern Tuna and Billfish Fishery Harvest Strategy and consider information about the sustainability of marine species in the area of the fishery, the precautionary principle, any decision made by the Minister or intergovernmental ministerial council about resource sharing and the likely effect of any overcatch or undercatch provisions.

Section 3.2 of the Plan provides that AFMA must determine the weight or the percentage (or both) for section 4.5 of the Plan and determine the percentage for section 4.6 of the Plan.

Section 4.5 of the Plan provides that AFMA must determine a percentage (the 'determined percentage') and weight (the 'determined weight') for the purpose of applying the overcatch provisions to individual SFR holders who exceed their quota for the season. Section 4.6 of the Plan provides that AFMA must determine a percentage (the 'determined percentage') for the purpose of applying the undercatch provisions to individual SFR holders whose catch is less than their quota for the season.

This instrument determines the TACC, and the amounts and percentages for each quota species in relation to undercatch and overcatch for the 2021 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 Fishery

The Eastern Tuna and Billfish Fishery (ETBF) covers the area of waters in the Australian Exclusive Economic Zone (EEZ) included on the east coast of Australia between the South Australia/Victoria border and Cape York in the North. The ETBF also includes a restricted entry zone in the Coral Sea and a high seas zone that provides specific arrangements for fishing in the ETBF beyond the Australian EEZ.

Management in the ETBF is by output controls in the form of individually transferable quotas granted under the Plan.

Consultation

AFMA consulted widely before determining the TACCs and the overcatch and undercatch amounts.

Species stock assessments conducted on the broader western central pacific stock, were presented to the Tropical Tuna Resource Assessment Group (TTRAG). This group comprises scientific, industry and management representatives as well as observers.

Advice from TTRAG was considered by the Tropical Tuna Management Advisory Committee, (TTMAC) which recommended TACCs, undercatch and overcatch amounts for each quota species to the AFMA Commission.

The AFMA Commission considered advice from both TTRAG and TTMAC in making its decision.

AFMA also consulted with individual fishing concession holders, and the Eastern Tuna and Billfish Fishery industry association; Tuna Australia.

Regulation Impact Statement

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required for this Determination consistent with the agreement in place to cover all regulatory changes deemed to be of a minor or machinery nature.

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 attached as a supporting document.

The Commission's Decision

The AFMA Commission determined the TACC, undercatch amounts and overcatch amounts for each quota species on 12 November 2020. In making its decision, the Commission took into account each of the matters specified in subsection 3.2(4) of the Plan.

The Commission is satisfied that the Instrument is consistent with AFMA's obligation to pursue its statutory objectives, specified in section 3 of the FM Act and section 6 of the FA Act. The Commission considered that significant weight should be given to the objective of ensuring that the exploitation of fisheries resources are conducted in a manner consistent with the principles of ecologically sustainable development, which includes the exercise of the precautionary principle (subsections 3(1)(b) of the FM Act and 6(b) of the FA Act).

Details of the Instrument are set out below:

- Clause 1** provides for the Determination to be cited as the Eastern Tuna and Billfish Fishery (Total Allowable Commercial Catch) (Undercatch/Overcatch) Determination 2021.
- Clause 2** provides for the commencement of the Instrument.
- Clause 3** Provides that the instrument is made pursuant to paragraph 17(6)(aa) of the FM Act and sections 3.2, 4.5 and 4.6 of the Plan.
- Clause 4** provides that terms used in the Instrument have the meaning given to them in the Plan.
- Clause 5** provides that the Instrument ceases on 1 January 2022.
- Clause 6** determines the Total Allowable Commercial Catch for each of the five quota species: Albacore Tuna, Bigeye Tuna, Broadbill Swordfish, Striped Marlin and Yellowfin Tuna for the 2021 season.
- Clause 7** determines the percentage and weight, under section 4.5 of the Plan (Obligations relating to overcatch), and the percentage under section 4.6 of the Plan (Obligations relating to undercatch) for each quota species for the 2021 season.

Statement of Compatibility with Human Rights

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

The Eastern Tuna and Billfish Fishery (Total Allowable Commercial Catch) (Undercatch/Overcatch) Determination 2021

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 instrument determines the total allowable commercial catch, undercatch amounts and overcatch amounts for quota species in the Eastern Tuna and Billfish Fishery for the:

- 2021 fishing season commencing on 1 January 2021 and concluding on 31 December 2021.

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.