

EXPLANATORY STATEMENT

Issued by the authority of the Australian Fisheries Management Authority

Fisheries Management Act 1991

Small Pelagic Fishery Management Plan 2009

Small Pelagic Fishery (Total Allowable Catch) Determination 2021

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 17(6)(aa) 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.

Subsection 17(1) of the *Small Pelagic Fishery Management Plan 2009* (the Management Plan) provides that the Authority must determine a Total Allowable Catch (TAC) for each quota species for a sub-area of the fishery and for a season before the start of the season. Subsection 17(4) of the Management Plan requires the Authority to specify in any such determination the amount of the quota species that may be taken expressed in whole weight or a specified other weight (paragraph 17(4)(a)), the sub-area of the fishery to which the TAC applies (paragraph 17(4)(b)) and, if the TAC applies to a part of the sub-area, that part of the sub-area (paragraph 17(4)(c)).

Section 18 of the Management 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 (paragraph 18(a)), take into account the matters set out in paragraph 18(b). These matters are advice from the relevant fishery assessment group about the stock status of a quota species (subparagraph 18(b)(i)), the Harvest Strategy for the species established under section 15 of the Plan (subparagraph 18(b)(ii)), all fishing mortality of the quota species for which the determination is made from all sub-areas within the fishery and overlapping or adjacent fisheries for the species (subparagraph 18(b)(iii)), the ecological implications of taking the amount of the quota species (subparagraph 18(b)(iv)), the distribution, population and structure of the quota species (subparagraph 18(b)(v)) and the precautionary principle, as defined in subsection 4(1) of the Act (subparagraph 18(b)(vi)). The Commission may also consider the views of any other interested person (paragraph 18(c)).

The *Small Pelagic Fishery (Total Allowable Catch) Determination 2021* (the Determination) determines the TAC for each quota species under the Management Plan for each sub-area for the 2021-22 fishing season.

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

The Fishery

The Small Pelagic Fishery (the Fishery) is the area of waters, largely outside 3 nautical miles from the coastline, extending from the Queensland/New South Wales border generally southerly, westerly and northerly to latitude 31° South (near Lancelin, north of Perth). For quota species other than Australian sardine, the Management Plan divides the Fishery into two sub-areas (see Schedule 1 to the Management Plan). The eastern sub-area is the area of the Fishery east of longitude 146°30'00" E, and the western sub-area is the area of the Fishery west of that longitude. The Australian sardine sub-area is an area of the Fishery off the coast of New South Wales (see clause 3 of Schedule 1 to the Management Plan).

Management in the Fishery is through output controls in the form of individually transferable quotas derived from the TAC determined for each quota species for each fishing year. The quota species in the Fishery are jack mackerel, blue mackerel, redbait and Australian sardine (see Schedule 4 to the Management Plan).

Consultation

The Small Pelagic Fishery Resource Assessment Group (SPFRAG) provides advice to the Authority on the recommended biological catch (RBC) for each stock of quota species in the fishery. The RBC provides 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.

Following advice provided from SPFRAG for the RBCs for SPF quota species, AFMA translated the RBCs into proposed TACs. The TAC represents the recommended Commonwealth commercial catch for each species or stock and is derived by subtracting the expected mortality from incidental catch, discards, and landings in other jurisdictions from the RBC.

The South East Management Advisory Committee (SEMAC) provides advice to the Authority on the TAC for each stock. The TAC being determined in the Determination is the RBC minus other known sources of fishing mortality. Advice was sought from SPFRAG and SEMAC in December 2020 and February 2021 respectively.

The Authority's Commission considered the advice from SPFRAG and SEMAC when determining the TACs for each stock for the 2021-22 fishing season. The Determination is implementing the TACs for the Fishery consistent with this advice.

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 that the Determination is compatible with human rights for the purpose of subsection 9(2) of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The Authority's Statement of Compatibility is for the purpose of subsection 9(1) of that Act is included below.

Details of the Determination are set out below:

Section 1 Provides that the name of the Determination is the *Small Pelagic Fishery (Total Allowable Catch) Determination 2021*.

Section 2 Provides that the Determination commences on the day after registration on the Federal Register of Legislation.

Section 3 Provides that the Determination is made pursuant to paragraph 17(6)(aa) of the Act for the purpose of subsection 17(1) of the Plan.

Section 4 Provides relevant definitions for the purpose of the Determination.

Subsection 4(1) defines the Act to be the *Fisheries Management Act 1991* and the Management Plan to be the *Small Pelagic Fishery Management Plan 2009*.

Subsection 4(2) provides that a term used in the Determination that is defined for the purposes of the Management Plan has the same meaning in the Determination as it has in the Management Plan. Relevantly, this means that the definitions of 'eastern sub-area', 'western sub-area' and 'Australian sardine sub-area' in the Management Plan apply in the Determination.

Section 5 Determines the TAC for each quota species and sub-area in the Fishery for the 2021 fishing season.

Subsection 5(1) includes a table that provides that:

- the TAC for blue mackerel in the eastern sub-area of the Fishery is 11 440 tonnes (item 1);
- the TAC for blue mackerel in the western sub-area of the Fishery is 3 210 tonnes (item 2);
- the TAC for jack mackerel in the eastern sub-area of the Fishery is 18 630 tonnes (item 3);
- the TAC for jack mackerel in the western sub-area of the Fishery is 4 180 tonnes (item 4);
- the TAC for redbait in the eastern sub-area of the Fishery is 3 440 tonnes (item 5);

- the TAC for redbait in the western sub-area of the Fishery is 6 680 tonnes (item 6); and
- the TAC for Australian sardine in the Australian sardine sub-area of the Fishery is 7 980 tonnes (item 7).

The TAC's determined in subsection 5(1) are consistent with advice received from SPFRAG and SEMAC.

Subsection 5(2) provides that the TAC of species determined in the table is expressed in whole weight. This is required to be specified as paragraph 17(4) of the Management Plan allows the TAC to be determined in whole weight or in another weight specified in the determination.

Statement of Compatibility with Human Rights

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

Small Pelagic Fishery (Total Allowable Catch) 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

Subsection 17(1) of the *Small Pelagic Fishery Management Plan 2009* (the Management Plan) provides that the Australian Fisheries Management Authority (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 (see subsection 17(4) of the Management Plan).

Section 18 of the Management 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 *Small Pelagic Fishery (Total Allowable Catch) Determination 2021* determines the TAC for each quota species and sub-area for the 2021-22 fishing season.

Advice from SPFRAG was considered by the SEMAC. The Committee discussed the TAC recommendations at their meeting on 3-5 February 2021. The Determination is consistent with advice received from SPFRAG and SEMAC.

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.