



Macquarie Island Toothfish Fishery Management Plan 2006

The AUSTRALIAN FISHERIES MANAGEMENT AUTHORITY determines this plan of management under section 17 of the *Fisheries Management Act 1991*.

Dated 25 January 2006

PETER WITHERIDGE
Common seal of the
Australian Fisheries
Management Authority

Accepted on 9 February 2006

ERIC ABETZ
Minister for Fisheries, Forestry and Conservation

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Section 1

Part 1 Introduction**1 Name of Management Plan**

This Management Plan is the *Macquarie Island Toothfish Fishery Management Plan 2006*.

2 Commencement

This Management Plan commences on the day after it is registered.

3 Definitions

In this Management Plan:

Act means the *Fisheries Management Act 1991*.

acting for a person means acting with the consent of, and on behalf of, the person.

agent, of the holder of a statutory fishing right, means:

- (a) a person responsible for the affairs and property of the holder under a law of the Commonwealth, a State or a Territory, including a receiver, liquidator, trustee or guardian of the holder, or an executor or administrator of the holder's estate; or
- (b) a person appointed as the holder's agent under section 33.

approved form means the form approved by AFMA for the purposes of the section in which the term is used.

bycatch means the incidental catch of marine life other than Patagonian toothfish.

certificate, for a statutory fishing right, means a certificate given under subsection 22 (2) of the Act as evidence of the grant of the statutory fishing right.

eligible person means a person who is registered as an eligible person for a grant of a statutory fishing right under section 26 of the Act.

fishery means the Macquarie Island Toothfish Fishery.

fishery area means the area described in Schedule 1.

fishery observer means a person who is authorised by AFMA to carry out the functions of a fishery observer under this Management Plan.

fishing year means a period of 12 months beginning on 1 July in any year.

holder of a fishing concession means, at any particular time:

- (a) in relation to a statutory fishing right — a person whose name appears on the Register in relation to that statutory fishing right if the person is entitled, whether by original grant, transfer, lease or other dealing, to exercise rights mentioned in section 21 of the Act in relation to that statutory fishing right at that time; or

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- (b) in any other case — the person to whom the fishing concession is granted or transferred under the Act.

ICVMS means an Integrated Computer Vessel Monitoring System that complies with the standards and requirements specified in statutory fishing rights for this Plan.

identification code, for a boat, means the identification code allocated by AFMA to the boat under regulation 12 of the *Fisheries Management Regulations 1992*.

Macquarie Island Toothfish Fishery means fishing for Patagonian toothfish in the fishery area.

nominated boat, for a holder of statutory fishing rights, means a boat whose details are entered in the Register, under section 45 of the Act, as the nominated boat for the holder of the rights.

owner, for a statutory fishing right, means:

- (a) the person who is granted the right; or
- (b) if the right has been transferred and the transfer has been approved by AFMA — the person to whom the right has been most recently transferred.

Patagonian toothfish means fish of the species *Dissostichus eleginoides*.

quota, for a statutory fishing right, means the amount of Patagonian toothfish that may be taken, in a fishing year, under the right.

Note For the determination of the quota for a statutory fishing right, see subsection 13 (3).

SARAG means the Sub-Antarctic Resource Assessment Group established by AFMA to provide advice in relation to the research needs, stock status, environment and economics of Southern Ocean fisheries.

sector, of the fishery, means either of the 2 areas of the fishery described in Schedule 1.

SouthMAC means the Sub-Antarctic Fisheries Management Advisory Committee established under section 54 of the *Fisheries Administration Act 1991*.

statutory fishing right means a right to take, from 1 of the sectors of the fishery area, in each fishing year, a particular proportion of the total allowable catch of Patagonian toothfish.

total allowable catch, for Patagonian toothfish, means the total weight of fish of that species that may be taken under statutory fishing rights in a fishing year by fishing in the fishery area, as determined by AFMA under section 11.

Note Unless otherwise stated, a term used in this Management Plan and in the Act has the same meaning in this Management Plan as it has in the Act. The following terms are defined in subsection 4 (1) of the Act:

- AFMA
- AFZ
- Australian boat
- coastal waters
- fish

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- fishing
- fishing permit
- officer
- Panel
- precautionary principle
- processing
- Register
- scientific permit
- statutory fishing right
- take.

4 Origin of geographical coordinates

The origin of geographical coordinates used in this Management Plan is the Geodetic Datum Australia 1994 (GDA94).

5 Objectives (Act s 17 (5))

The objectives of this Management Plan are:

- (a) to manage the fishery efficiently and cost-effectively for the Commonwealth; and
- (b) to ensure that the exploitation of the resources of the fishery and the carrying on of any related activities are conducted in a manner consistent with the principles of ecologically sustainable development and the exercise of the precautionary principle, and in particular, the need to have regard to the impact of fishing activities on non-target species and the long-term sustainability of the marine environment; and
- (c) to maximise economic efficiency in the exploitation of the resources of the fishery; and
- (d) to ensure AFMA's accountability to the fishing industry and to the Australian community in management of the resources of the fishery; and
- (e) to reach Government targets for the recovery of the costs of AFMA in relation to the fishery; and
- (f) to ensure, through proper conservation and management, that the living resources of the AFZ are not endangered by over-exploitation; and
- (g) to achieve the best use of the living resources of the AFZ; and
- (h) to ensure that conservation and management measures in the fishery implement Australia's obligations under international agreements that deal with fish stocks, and other relevant international agreements.

6 Measures by which the objectives are to be attained (Act s 17 (5))

The measures by which the objectives of this Management Plan are to be attained include the following:

- (a) undertaking an annual evaluation of the services required to manage the fishery (including, for example, management, enforcement, compliance, register maintenance, data collection, research and consultation services);
- (b) revising the number, range and cost of those services evaluated under paragraph (a) as shown to be necessary by the evaluation;
- (c) determining reference points for maintaining ecologically sustainable stocks of Patagonian toothfish;
- (d) setting the total allowable catch for Patagonian toothfish for each sector of the fishery and, each year in the fishery, as needed, to manage the species, taking account of information from SARAG and SouthMAC on appropriate harvest levels;
- (e) if any stocks of target or bycatch species are considered depleted, implementing a strategy to meet stock recovery targets;
- (f) granting statutory fishing rights for the fishery to eligible persons;
- (g) limiting the number of boats operating in the fishery to 3 initially;
- (h) developing and implementing a management strategy to ensure that fishing is conducted in an ecologically sustainable way;
- (i) developing and implementing a 5-year strategic research program to support assessment and management of the fishery and reviewing the program annually;
- (j) developing, implementing and reviewing the bycatch action plan mentioned in section 8;
- (k) ensuring that a fishery assessment plan is developed and reviewed in accordance with section 9;
- (l) monitoring the impact of fishing on Patagonian toothfish, species that are caught as bycatch, ecologically-related species and the marine environment, and implementing any related strategies that are necessary to ensure the sustainability of those species and the marine environment, and to ensure that bycatch limitations are not exceeded;
- (m) continually evaluating the mechanisms that have been put into place to monitor fishing against statutory fishing rights and the total allowable catch, and modifying those mechanisms, as necessary, to improve the monitoring;
- (n) periodically checking the accuracy and consistency of information kept in relation to the fishery;
- (o) issuing directions prohibiting the use of the fishery, or part of the fishery, during specified periods, telling the holders of statutory fishing rights about those directions, and requiring the holders to comply with the directions;
- (p) implementing long-term management arrangements that pursue economic efficiency for the fishery;

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- (q) periodically evaluating whether the range and extent of management services provided by AFMA are consistent with cost-effective management;
- (r) preparing an annual budget of costs associated with managing the fishery, and setting and collecting levies and fees for the fishery;
- (s) developing management measures each year including measures having regard for the conservation measures developed by the Commission for the Conservation of Antarctic Marine Living Resources;
- (t) implementing the management measures mentioned in paragraph (s) by imposition of appropriate conditions on statutory fishing rights or by appropriate legislative means.

7 Performance criteria against which measures taken may be assessed (Act s 17 (5))

- (1) The performance criteria against which the measures taken may be assessed are:
 - (a) that AFMA includes in its annual report details of the range and cost of services provided by AFMA in that year; and
 - (b) that AFMA's management of the fishery is assessed periodically and is acknowledged by government and key stakeholders to be pursuing a cost-effective service; and
 - (c) that Patagonian toothfish population numbers must not fall below the sustainable reference point set; and
 - (d) that a total allowable catch is set for Patagonian toothfish for each fishing year, and that (unless provision is made for corresponding reductions in subsequent years) the amount of fish that may be taken in a fishing year is not exceeded in the year; and
 - (e) that statutory fishing rights are granted to eligible persons; and
 - (f) that no more than 3 boats operate in the fishery at any time unless AFMA has authorised more; and
 - (g) that effective strategies are in place to ensure that stocks of any depleted fish resources are being rebuilt; and
 - (h) that the catch of species other than Patagonian toothfish is reduced to, or kept at, a minimum, and below a level that will allow stocks of the other species to be maintained at ecologically-sustainable levels; and
 - (i) that cost-effective and high quality research is carried out in relation to the fishery in accordance with a 5-year strategic research plan, the results of which are:
 - (i) included in the assessment process of the fishery; and
 - (ii) published in the assessment reports of the fishery; and
 - (iii) taken into consideration in determining the total allowable catch, and other management arrangements, in a fishing year; and
 - (j) that the bycatch action plan is reviewed each 6 months and a report about the operation of the plan is prepared for the AFMA Board; and

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- (k) that the monitoring required by the fishery assessment plan developed under section 9 has been undertaken; and
 - (l) that data is collected and analysed in a timely manner to enable:
 - (i) evaluation of the effectiveness of the strategies to maintain or rebuild the resources of the fishery at, or to, an acceptable level; and
 - (ii) modification of those strategies; and
 - (m) that the economic efficiency of the fishery is assessed periodically using economic data provided, on request, by statutory fishing right holders; and
 - (n) that the management measures implemented for the fishery allow the holders of statutory fishing rights to pursue practices consistent with maximising economic efficiency in the fishery; and
 - (o) that AFMA has prepared annual budgets, and recommendations for levies have been agreed by the AFMA board; and
 - (p) that the government's targets for cost recovery have been achieved through AFMA's cost recovery policy; and
 - (q) that the budgetary objectives of the fishery are achieved.
- (2) AFMA and SouthMAC must, at least once every 5 years, assess the effectiveness of the Management Plan including the measures taken to achieve the objectives of this Management Plan by reference to the performance criteria mentioned in subsection (1).
- (3) AFMA must include in its annual report for a financial year a statement of the extent to which the performance criteria mentioned in subsection (1) were met in the year.
- (4) Each year, SouthMAC must assess the extent to which the performance criteria mentioned in subsection (1) have been met in that year.

8 Bycatch (Act s 17 (6D))

- (1) AFMA must implement a bycatch action plan to ensure that bycatch is reduced to, or kept at, a minimum.
- (2) The bycatch action plan must ensure that:
- (a) the total catch of species other than Patagonian toothfish is kept below a level that will allow stocks of the other species to be maintained at an ecologically sustainable level; and
 - (b) all reasonable steps are taken to minimise incidental interactions with seabirds and marine mammals; and
 - (c) the ecological impacts of fishing operations on habitats in the fishery area are minimised and kept below an acceptable level.
- (3) AFMA must review the bycatch action plan at least once every second year after the commencement of this Management Plan to ensure that it is appropriate for ensuring that bycatch is reduced to, or kept at, a minimum.

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Note The holders of statutory fishing rights are obliged to ensure that bycatch is kept to a minimum — see paragraph 29 (1) (c).

9 Fishery assessment plan

- (1) AFMA must develop and implement a fishery assessment plan to ensure that an adequate program of monitoring takes place in the fishery.
- (2) The fishery assessment plan must provide for:
 - (a) an adequate program of monitoring to ensure that reliable stock estimates can be made for Patagonian toothfish; and
 - (b) adequate monitoring of the direct impact of the fishery on species other than Patagonian toothfish and the ecosystem in the fishery area; and
 - (c) the allocation, before the beginning of each fishing year, of monitoring responsibilities to statutory fishing right holders in proportion to the numbers of statutory fishing rights they are likely to hold at the beginning of that fishing year.
- (3) In developing and implementing a fishery assessment plan, AFMA must:
 - (a) consult, and have regard to the views of, SouthMAC, SARAG and the holders of statutory fishing rights; and
 - (b) have regard to the 5-year strategic research plan mentioned in paragraph 6 (i).

Part 2 Total allowable catch

10 Reference points

- (1) As soon as practicable AFMA must determine population reference points for Patagonian toothfish that are appropriate for maintaining ecologically viable stocks of the species and an ecologically sustainable fishery.
- (2) Each year, AFMA must review the reference points set under subsection (1) to ensure that they remain appropriate for maintaining ecologically viable stocks of Patagonian toothfish and an ecologically sustainable fishery.

11 Determination of total allowable catch and other catch limits

- (1) Before the beginning of each fishing year, AFMA must determine the total allowable catch for Patagonian toothfish for each sector of the fishery for the fishing year.
- (2) Before the beginning of each fishing year, AFMA may determine the limit to the amount of any other species (including a limit that is a total for a number of species) that may be taken from the fishery in the fishing year.
- (3) Before deciding the total allowable catch and any other catch limits for a sector and a fishing year, AFMA:
 - (a) must take into account the reference points determined under section 10; and
 - (b) must consult, and consider the views of:
 - (i) SouthMAC; and
 - (ii) SARAG.
- (4) Before the beginning of each fishing year, AFMA must give to the holder of each statutory fishing right for the fishery a notice stating:
 - (a) the total allowable catch for Patagonian toothfish for the fishing year; and
 - (b) the quota allocated to each statutory fishing right of the holder that is a statutory fishing right for the Aurora Trough sector; and
 - (c) the quota allocated to each statutory fishing right of the holder that is a statutory fishing right for the Macquarie Ridge sector; and
 - (d) any catch limits for other species that may be taken from the fishery in that fishing year.

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Part 3 Right to fish in the fishery**12 Who may fish in the fishery**

Subject to section 15, a person may engage in fishing in the fishery only if the person:

- (a) holds, or is acting on behalf of another person who holds, at least 25.5% of all the statutory fishing rights issued for the fishery; and
- (b) is using the boat that is nominated for the statutory fishing rights.

Note Section 21 deals with the nomination of boats for statutory fishing rights.

13 Quantity of fish that may be taken

- (1) In a fishing year, a person who holds, or is acting on behalf of another person who holds, statutory fishing rights for a sector of the fishery area must not take from that sector of the fishery area an amount of Patagonian toothfish greater than the quota allocated to those rights for the fishing year.
- (2) The quota allocated to a statutory fishing right for a sector for a fishing year is worked out by dividing the total allowable catch in the fishing year for that sector by the total number of statutory fishing rights for the sector in force at the start of the fishing year.
- (3) In working out the quota allocation for a statutory fishing right in a fishing year, a statutory fishing right that is suspended under subsection 38 (1) or (3), or paragraph 98 (3) (d), of the Act is taken to be in force.
- (4) For subsection (1), a person may not take fish from either sector of the fishery unless the person holds statutory fishing rights with uncaught quota, for the sector where the fish are taken, at least equal to the amount of fish taken by the person in that sector.
- (5) For subsection (4):
uncaught quota means:
 - (a) for a holder; and
 - (b) at a time in a season; and
 - (c) for a sector;
the balance of quota available on all statutory fishing rights of the holder, for that sector, that remains after deducting the weight of Patagonian toothfish taken by the holder from that sector up to that time.

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14 Overcatch

- (1) This subsection applies to a person if:
- (a) in a fishing year (the *first year*), the person takes an amount of Patagonian toothfish that exceeds, by no more than 10 tonnes, the quota allocated to the statutory fishing rights held by the person in the fishing year; and
 - (b) at the beginning of the following fishing year (the *second year*), the person holds statutory fishing rights that would, in the absence of this section, entitle the person to take an amount of fish at least equal to the amount by which the person exceeded the quota mentioned in paragraph (a).
- (2) If subsection (1) applies to a person, the person is considered, for section 13, to have taken:
- (a) during the first year, an amount of fish equal to the quota allocated to the statutory fishing rights held by the person in the first year; and
 - (b) during the second year, an amount of fish, in tonnes, according to the formula:

$$\text{amount} = (\text{1st year take} - \text{1st year quota}) + \text{2nd year take}$$

where:

amount is the amount of fish, in tonnes, the person is considered to have taken in the second year.

1st year take is the amount of fish, in tonnes, actually taken in the first year.

1st year quota is the quota, in tonnes, allocated to the statutory fishing rights held by the person in the first year.

2nd year take is the amount of fish, in tonnes, actually taken in the second year.

- (3) This subsection applies to a person if:
- (a) the person exceeds the person's quota, in the manner described in subsection (1), by more than 10 tonnes but not more than 20 tonnes; and
 - (b) at the beginning of the following fishing year (the *second year*), the person holds statutory fishing rights that would, in the absence of this section, enable the person to take an amount of fish, in tonnes, at least equal to the amount computed according to the formula:

$$\text{amount} = [3 \times (\text{1st year take} - 10 - \text{1st year quota})] + 10$$

where:

amount is the amount computed according to the formula.

1st year take has the same meaning as in subsection (2).

1st year quota has the same meaning as in subsection (2).

2nd year take has the same meaning as in subsection (2).

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- (4) A person to whom subsection (3) applies is considered, for section 13, to have taken:
- (a) during the first year, an amount of fish equal to the quota allocated to the statutory fishing rights held by the person in the first year; and
 - (b) during the second year, an amount of fish, in tonnes, according to the formula:

$$\text{amount} = [3 \times (\text{1st year take} - 10 - \text{1st year quota})] + 10 + \text{2nd year take}$$

where:

amount has the same meaning as in subsection (2).

1st year take has the same meaning as in subsection (2).

1st year quota has the same meaning as in subsection (2).

2nd year take has the same meaning as in subsection (2).

- (5) This subsection applies to a person if the person exceeds the person's quota, in the manner described in subsection (1), by more than 20 tonnes.
- (6) A person to whom subsection (5) applies is considered, for section 13, during the second year, to have taken an amount of fish according to the formula set out in paragraph (4) (b).
- (7) To avoid any doubt, in a case to which subsection (5) applies the person is still considered to have taken, in the first year, the amount of fish actually taken in that year, as well as being considered to have taken an additional amount in the second year.

15 Right to use a boat for scientific research

- (1) A person may use a boat in the fishery area for scientific research about the fishery only if the person is, or is acting for, the holder of a scientific permit that authorises the use of the boat in the fishery area for that purpose.

Note 1 See section 33 of the Act about the grant of a scientific permit.

Note 2 Scientific permits may be issued under the Act to cover research that does not target target species.

- (2) However, a person who holds a scientific permit and a statutory fishing right, or statutory fishing rights, must not take more fish from the fishery area than is allowed for the statutory fishing rights by section 13.

Part 4 Statutory fishing rights

Division 4.1 Registration of eligible persons for grant of statutory fishing rights

16 Conditions for registration (Act s 26)

- (1) Subsection (2) applies if AFMA publishes a notice under section 24 of the Act:
 - (a) declaring that AFMA intends to grant statutory fishing rights for Patagonian toothfish other than by tender; and
 - (b) specifying a date (the *notice date*) for the purposes of subsection (2).
- (2) A person satisfies the conditions for registration as an eligible person for the grant of a statutory fishing right for Patagonian toothfish if, on the notice date, the person is the holder of a fishing concession that allows the holder to fish for Patagonian toothfish in either sector of the fishery.
- (3) Subsection (4) applies if AFMA publishes a notice under section 24 of the Act calling for tenders in respect of the grant of statutory fishing rights for the taking of Patagonian toothfish in a sector of the fishery area.
- (4) Subject to subsections (5) and (6), a person satisfies the conditions for registration as an eligible person for the grant of a statutory fishing right for Patagonian toothfish in a sector of the fishery area if the person has made an application for registration accompanied by a tender in accordance with subsection 27 (3) of the Act.
- (5) A person convicted of any breach of a fisheries regulation law, whether in Australia or elsewhere, is not entitled to register under subsection (4) unless the conviction is disclosed and the written approval of AFMA to register is obtained.

Note For offences in relation to making false or misleading statements in applications, see section 136.1 of the *Criminal Code*.

- (6) A person associated with a vessel on any IUU vessel list is not entitled to register under subsection (4) unless the association is disclosed in full and the written approval of AFMA to register is obtained.

Note 1 Australia, as a signatory to the Convention on the Conservation of Antarctic Marine Living Resources, and as a member of the Commission established under the Convention, has resolved to support Conservation Measures 10-06 (2005) and 10-07 (2005) of the Commission which seek to minimise illegal, unregulated and unreported fishing in Sub-Antarctic and Antarctic fisheries. The Convention and the Conservation Measures may be viewed on, or downloaded from, the internet site for the Commission, www.ccamlr.org.

Note 2 For offences in relation to making false or misleading statements in applications, see section 136.1 of the *Criminal Code*.

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(7) For subsection (6):

associated with a vessel means any of the following:

- (a) being, or having been, an owner of the vessel;
- (b) having, or having had, a proprietary or beneficial interest in the vessel, whether directly or through an intervening entity (within the meaning given by Chapter 2E of the *Corporations Act 2001*);
- (c) being, or having been, a member of its crew.

IUU vessel list means any of the lists maintained by the Commission for the Conservation of Antarctic Marine Living Resources of vessels known, or presumed from available evidence, to have been engaged in, or used as support for, illegal, unregulated or unreported fishing in Sub-Antarctic or Antarctic fisheries.

Note The IUU vessel lists may be viewed on, or downloaded from, the internet site for the Commission, www.ccamlr.org.

(8) AFMA may refuse to register a person under subsection (4) if AFMA reasonably suspects that the person may undertake, or direct the undertaking of, illegal, unregulated or unreported fishing or may otherwise undermine the attainment of the marine resource conservation objectives of the Convention on the Conservation of Antarctic Marine Living Resources.

Note 1 See section 24 of the Act about publication of a notice by AFMA declaring that AFMA intends to grant statutory fishing rights for fishing in a managed fishery.

Note 2 An application for registration as an eligible person for the grant of a statutory fishing right must be made within the period stated in a notice published under section 24 of the Act: see paragraph 25 (f), and subsection 26 (1), of the Act.

Note 3 Under subsection 26 (2) of the Act, AFMA must register as an eligible person an applicant for registration who meets the conditions for registration and who has paid the prescribed fee (if any).

Note 4 A decision under subsection 26 (2) of the Act is subject to reconsideration under section 165 of the Act: see subsection 165 (2). Application may be made to the Administrative Appeals Tribunal for review of a decision under section 165 of the Act: see subsection 165 (7).

Note 5 The present intention of AFMA is to grant 5,000 statutory fishing rights for Patagonian toothfish for each sector of the fishery to currently authorised fishers. A further 5,000 statutory fishing rights for each sector of the fishery will be made available by tender. See Division 4 of the Act about ways of granting statutory fishing rights.

Division 4.2 Grant of statutory fishing rights

17 Provisional grants (Act s 23)

AFMA must make a provisional grant of 5,000 statutory fishing rights for each sector of the fishery for the taking of Patagonian toothfish to a person who is registered under subsection 16 (2) as an eligible person for the grant of statutory fishing rights for the fishery.

Note See:

- (a) section 23 of the Act about the provisional grant of a statutory fishing right; and

- (b) Part 8, Division 3 of the Act about review by the statutory fishing rights Allocation Review Panel.

18 Request for grant of statutory fishing rights after provisional grant (Act s 31)

- (1) AFMA must send a notice (the *reminder notice*) to a person entitled to a provisional grant under section 17 telling the person that he or she must make a request within the period stated in the notice if the person has not made a request for the grant within 30 days after the Gazette notice is published under subsection 23 (2) of the Act.

Note 1 AFMA must grant a statutory fishing right for the taking of Patagonian toothfish in a sector of the fishery area to a person if:

- (a) a notice mentioned in subsection 23 (2) of the Act stating that the person is to be granted the right is published in the *Gazette* (the *Gazette notice*); and
(b) the person asks AFMA to make the grant. See section 31 of the Act.

Note 2 Under subsection 23 (3) of the Act, AFMA must not grant a statutory fishing right:

- (a) until the end of the period within which applications may be made to the Panel for review of provisional grants; or
(b) if an application has been made to the Panel — before the application has been dealt with by the Panel or otherwise disposed of.

- (2) If the person does not make the request within the period stated in the reminder notice, AFMA must send another notice (the *final notice*) to the person stating that the person's registration will be cancelled if the person does not, within 14 days after the final notice is sent:

- (a) make the request; and
(b) explain why the person did not make the request within the period stated in the reminder notice.

- (3) AFMA must cancel the person's registration as an eligible person if, despite a final notice, the person does not:

- (a) make the request within 14 days after the final notice is sent; and
(b) satisfy AFMA that the person had a reasonable excuse for not making the request within the period stated in the reminder notice.

- (4) If AFMA cancels a person's registration as an eligible person, AFMA must amend its records accordingly.

Note 1 AFMA must grant a statutory fishing right to a person to whom the grant of the right is available if the person asks AFMA to grant the right: see section 31 of the Act.

Note 2 A decision under section 31 of the Act (other than a decision following an auction, tender or ballot) is subject to reconsideration under section 165 of the Act: see subsection 165 (2). Application may be made to the Administrative Appeals Tribunal for review of a decision under section 165 of the Act: see subsection 165 (7).

Note 3 A statutory fishing right ceases to have effect if AFMA revokes this Management Plan: see subsections 20 (4) and 22 (3) of the Act.

Note 4 AFMA must register all statutory fishing rights granted: see section 45 of the Act.

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19 Request for grant of statutory fishing right – successful tender

- (1) AFMA must send a notice to a person entitled, under subsection 29 (2) of the Act, to the grant of a statutory fishing right for the taking of Patagonian toothfish, informing the person that:
- (a) the person must make a request for the grant; and
 - (b) the person must tender the amount required by subsection 30 (2) of the Act in relation to the right within 30 days after the grant became available.

- (2) For paragraph (1) (a), a person who tenders the amount required by paragraph (1) (b) within the specified time is also taken to have made a request for the grant.

Note 1 AFMA must grant a statutory fishing right for the taking of Patagonian toothfish in a sector of the fishery area to a person if the person has been ranked highest on the precedence list prepared for the grant of the statutory fishing right by tender.

Note 2 Sections 28 and 29 of the Act describe the preparation of a *precedence list*.

Note 3 AFMA proposes to offer all available statutory fishing rights, that are to be made available by tender, for tender at the same time. If the highest bidder has bid for less than all the available statutory fishing rights, the next highest bidder will be entitled to the number of remaining rights that he or she has bid for, and so on — see sections 28 and 29 of the Act.

Note 4 Subsection 30 (2) of the Act provides that if payment is not received within 30 days the grant ceases to be available to the person and the grant then becomes available to the next person on the precedence list.

20 Certificate showing grant (Act s 22 (2))

- (1) AFMA must note the following details on the certificate for a statutory fishing right:
- (a) the name of the person to whom the right is granted;
 - (b) a description of the right;
 - (c) the sector of the fishery area for which the right is granted;
 - (d) the conditions to which the right is subject.
- (2) A certificate may show the grant of more than 1 statutory fishing right to a person.
- (3) AFMA must give to a person to whom a statutory fishing right is granted an extract of the Register:
- (a) that states the conditions to which the right is subject; and
 - (b) that is signed for AFMA by a person having authority to sign it.

Note Section 45 of the Act provides that AFMA must enter certain information in the Register for each statutory fishing right that it grants, including such particulars as are prescribed.

Division 4.3 Nomination of boat

21 Nomination of boat

- (1) AFMA may enter a boat in the Register as the nominated boat for a person if:
 - (a) the person is the holder of a statutory fishing right and applies in the approved form for AFMA to do so; and
 - (b) the boat is an eligible boat under Regulations made for the purposes of this subsection.
- (2) An application under subsection (1) must be accompanied by:
 - (a) both:
 - (i) a statement by the holder, in an approved form, that the boat can safely and lawfully carry 2 fishery observers and the fishery observers' safety and monitoring equipment; and
 - (ii) a written undertaking by the holder, in an approved form, to carry 2 fishery observers and the fishery observers' safety and monitoring equipment on the boat if AFMA asks the holder to do so; or
 - (b) a written statement by the holder explaining why it is not safe to carry 2 fishery observers and the fishery observers' safety and monitoring equipment on the boat.
- (3) AFMA may refuse an application if the boat is incapable of carrying 2 fishery observers and the fishery observers' safety and monitoring equipment.
- (4) AFMA must not register a boat as the nominated boat for a person if:
 - (a) the boat is registered as the nominated boat for another person; or
 - (b) the person holds less than 51% of the statutory fishing rights in the fishery and another boat is registered as the nominated boat for the person; or
 - (c) the person holds 51% or more, but less than 76.5%, of the statutory fishing rights in the fishery, and 2 other boats are registered as nominated boats for the person; or
 - (d) the person holds 76.5% or more of the statutory fishing rights in the fishery, and 3 other boats are registered as nominated boats for the person.
- (5) If AFMA approves an application under subsection (1) from the holder of a statutory fishing right, AFMA must:
 - (a) enter in the Register, in relation to the nominated boat, the name of the boat and, if the boat is registered under a law of the Commonwealth or a State or Territory, its identification code; and

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- (b) give the holder an extract of the Register that:
 - (i) states the conditions to which the right is subject; and
 - (ii) states the name and identification code of the nominated boat; and
 - (iii) is signed for AFMA by a person having authority to sign it.
- (6) An applicant may seek a review of a decision not to enter a boat in the Register as the nominated boat for a statutory fishing right, as if the decision were a relevant decision under section 165 of the Act.

22 Request to cancel boat nomination

- (1) The holder of a statutory fishing right for which a boat is the nominated boat may apply in writing to AFMA, in an approved form, to cancel the nomination.
- (2) On receiving the application, AFMA must cancel the nomination.

23 Removal of boat from Register

- (1) AFMA may remove the name of a boat from the Register if:
 - (a) a fishery observer asks to be carried on the boat during a fishing trip; and
 - (b) without reasonable cause, the fishery observer's request is refused by the master of the boat or the holder of the statutory fishing right for which the boat is nominated.
- (2) AFMA may remove the name of a boat from the Register if any of the circumstances set out in a paragraph of subsection 21 (4) begins to apply after the boat is entered on the Register.
- (3) The holder may seek a review of a decision to remove the name of a boat from the Register as if the decision were a reviewable decision under section 165 of the Act.

Division 4.4 Transfer and lease of statutory fishing rights

24 Approving transfers (Act s 49)

- (1) The owner of a statutory fishing right (the *transferor*) may apply to AFMA, in the approved form, for approval to transfer the right to someone else (the *transferee*).
- (2) An application for approval to transfer a statutory fishing right to someone else must be accompanied by:
 - (a) the certificate for the right; or
 - (b) a statement, signed by the holder, that the certificate is not available, including the reason why the certificate is not available.

- (3) AFMA must not approve the transfer of a statutory fishing right:
- (a) if proceedings for an offence under the Act, or regulations made under the Act, have begun against the transferor and have not been decided; or
 - (b) if an application for registration of another interest in the right has been received by AFMA before the application for transfer is received, and has not been dealt with; or
 - (c) if a person registered as having an interest in the right has not agreed, in writing, to the transfer; or
 - (d) if the right has been suspended under subsection 38 (1) or (3), or paragraph 98 (3) (d), of the Act; or
 - (e) if AFMA:
 - (i) knows of a ground for suspension of the right under subsection 38 (1) or (3) of the Act or cancellation of the right under section 39 of the Act; and
 - (ii) has not decided whether to suspend or cancel the right; or
 - (f) if AFMA has decided to suspend or cancel the right, and:
 - (i) the period within which review of that decision may be applied for has not ended; or
 - (ii) an application has been made for review of that decision, and the application has not been decided; or
 - (g) within the period beginning 14 days before the issue of a levy invoice and ending when the levy is paid.
- (4) If any monitoring responsibilities allocated to the transferor under paragraph 9 (2) (c) are not fulfilled before the transfer, those responsibilities are transferred to the transferee in proportion to the number of statutory fishing rights of the transferor that are transferred to the transferee.

- (5) In this section:

transfer does not include lease.

Note 1 AFMA may decline to approve the transfer of a statutory fishing right only if the transfer would be contrary to this Management Plan or a condition of the right: see subsection 49 (2) of the Act.

Note 2 A decision under section 49 of the Act is subject to reconsideration under section 165 of the Act: see subsection 165 (2). Application may be made to the Administrative Appeals Tribunal for review of a decision under section 165 of the Act: see subsection 165 (7).

Note 3 The right to transfer a statutory fishing right is subject to a condition stated in the certificate for the right: see paragraph 22 (4) (a) of the Act.

25 Amendment of certificates

- (1) This section applies if AFMA approves the transfer of a statutory fishing right.

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- (2) If the transferor has not transferred all of the rights shown on the certificate for the right, AFMA must amend the certificate to show the transfer of the right to the transferee, and return it to the transferor.
- (3) If the transferee has lodged a certificate for a statutory fishing right with AFMA, AFMA must amend the certificate to show the transfer of the right to the transferee, and return it to the transferee.
- (4) If the transferor has not lodged a certificate for a statutory fishing right with AFMA, AFMA must give the transferee a certificate showing that the transferee is the holder of the right.

Note See section 46 of the Act about the requirement to register the transfer of an interest in a statutory fishing right.

26 Leases

- (1) If, in a fishing year, the holder of a statutory fishing right (the *lessor*) leases the right to someone else (the *lessee*), the holder must give AFMA written notice about the lease, in the approved form.
- (2) A lease of a statutory fishing right has effect, for this Management Plan, only if:
 - (a) there remains uncaught quota in relation to the statutory fishing right for the period in which the lease is to take effect; and
 - (b) all levy payable for the right has been paid.
- (3) The lease has effect, for this Management Plan, only for:
 - (a) the fishing year in which the lease is granted; or
 - (b) if a shorter period is mentioned in the instrument of lease — the period mentioned.
- (4) If any monitoring responsibilities allocated to the lessor under paragraph 9 (2) (c) for the fishing year in which the lease is granted are not fulfilled before the lease is granted, those responsibilities are transferred to the lessee in proportion to the number of statutory fishing rights of the lessor that are leased to the lessee.

Note See section 46 of the Act about the requirement to register a dealing with a statutory fishing right.

Part 5 Fishing in the fishery

Division 5.1 Obligations of holders of statutory fishing rights

27 Environmental requirements

- (1) It is a condition of a statutory fishing right that the holder must, while in the fishery area:
 - (a) take all reasonable steps to avoid losing any gear or other non-biodegradable items from the boat; and
 - (b) tell AFMA, in writing, about any loss of gear or any other non-biodegradable item within 48 hours after the loss (including details of the quantity and description of the lost item, the time, date and position at which it was lost, and the circumstances surrounding the loss); and
 - (c) ensure that no poultry products (including eggs or egg shells) or brassicas (for example, broccoli, cabbage) are discharged from the boat; and
 - (d) subject to subsection (4) and any conditions attached to the statutory fishing right, ensure that no offal or bycatch is discharged from the boat; and
 - (e) subject to subsection (5), ensure that no fish meal is discharged from the boat; and
 - (f) ensure that the amount of light showing from the boat does not exceed the amount necessary for the safe operation of the boat; and
 - (g) take all reasonable steps to minimise the risk and severity of collision with sea birds and marine mammals, and comply with any reasonable direction of a fishery observer to minimise that risk; and
 - (h) ensure that, if possible, plastic packing bands are not used to secure items on board the boat, unless the bands are an essential part of the boat's gear; and
 - (i) if items secured by plastic packing bands are brought on board the boat, and those bands are removed, ensure that:
 - (i) they are cut so that they do not form a continuous loop; and
 - (ii) they are incinerated at the earliest opportunity; and
 - (iii) any plastic residue from the incinerator is stored on board the boat and disposed of on reaching port.
- (2) It is also a condition of a statutory fishing right that the holder must not target marine life other than Patagonian toothfish.
- (3) For paragraph (1) (b), the holder is not taken to have complied with the paragraph unless AFMA has replied, in writing, saying that the holder's transmission has been fully received and is legible.

Section 28

- (4) If, because of a mechanical breakdown of the meal plant, it is not practicable to retain all offal and bycatch on board the boat, the holder:
- (a) may discharge offal or bycatch from the boat; and
 - (b) must:
 - (i) tell AFMA, in writing, about the breakdown and discharge of offal within 48 hours after it becomes necessary to discharge offal; and
 - (ii) take all reasonable steps that are necessary to ensure that birds and mammals are not attracted to the boat during discharge; and
 - (iii) comply with regulations made for the purpose of this subsection; and
 - (c) must, if he or she can practicably do so, discharge the offal or bycatch whole, and at night.
- (5) If a batch of fish meal contains more than 10.5% moisture or the holder reasonably believes that there is a risk that the batch will spontaneously ignite, the holder:
- (a) may discharge the batch of meal, but not the container in which it is stored, from the boat; and
 - (b) must comply with regulations made for the purpose of this subsection.

28 Contingency arrangements — injury to, or death of, sea bird or marine mammal

- (1) It is a condition of a statutory fishing right that, if the nominated boat is involved in an incident that results in an injury to, or the death of, a sea bird or marine mammal, the holder must:
- (a) either:
 - (i) if the bird or mammal is injured — do everything that can practicably be done to give aid to the bird or mammal; or
 - (ii) if the bird or mammal is dead — attempt to retrieve its carcass, and carry out the action mentioned in subsection (2); and
 - (b) immediately tell any fishery observer on board the boat about the incident, and allow the fishery observer to observe the consequences of the incident; and
 - (c) tell AFMA, in writing in the approved form, about the incident within 24 hours after the incident.
- (2) For subparagraph (1) (a) (ii), the required action is:
- (a) if it is possible to do so without contaminating fish products on board the boat, keep the carcass until it is possible to send it to a place in Australia nominated by AFMA; or
 - (b) otherwise:
 - (i) provide whatever assistance is necessary for the fishery observer to:
 - (A) take photographs or video footage of the dead bird or mammal; and

- (B) keep whatever parts of the carcass the fishery observer believes are necessary; and
 - (C) collect any other data, or make any other observations, requested by AFMA; and
- (ii) discharge the remains of the carcass from the boat in a manner that does not attract birds or mammals to the boat.

29 Other obligations of holders of statutory fishing rights

- (1) It is a condition of a statutory fishing right that the holder must:
- (a) comply with this Management Plan, and any Regulations made for the purposes of this Management Plan; and
 - (b) comply with any direction made under subsection 31 (1); and
 - (c) take reasonable measures to ensure that the following are kept to a minimum:
 - (i) the catch of Patagonian toothfish not taken in accordance with this Management Plan;
 - (ii) the incidental catch of species other than Patagonian toothfish;
 - (iii) the impact of fishing operations on the marine environment; and
 - (d) comply with the fishery assessment plan developed under section 9; and
 - (e) subject to subsection (2), carry 2 fishery observers on board the nominated boat when taking fish under the statutory fishing right; and
 - (f) if AFMA asks the holder to give AFMA reasonable access to biological, economic or technical information, or biological samples that are available to the holder — give AFMA reasonable access to the information or samples; and
 - (g) carry on board the nominated boat a copy of the extract from the Register mentioned in paragraph 21 (5) (b); and
 - (h) have an approved ICVMS fitted to the nominated boat, and operating, at all times when the boat is at sea.
- (2) AFMA may give the holder of a statutory fishing right permission to take fish under the statutory fishing right with only 1 fishery observer on board the nominated boat.
- (3) AFMA may give to the holder of a statutory fishing right permission under subsection (2) only if:
- (a) the requirements set out in Regulations made for the purposes of this subsection are met; and
 - (b) AFMA is satisfied that the holder has operated, and will continue to operate, in an environmentally responsible manner.
- (4) If AFMA gives the holder of a statutory fishing right permission under subsection (2), it is a condition of the statutory fishing right that the holder must carry 1 fishery observer on board the nominated boat when taking fish under the statutory fishing right.

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Note 1 Other conditions of a statutory fishing right are set out on the certificate for the right. These include bycatch limits, reporting requirements and conditions regarding AFMA's vessel monitoring system. As new monitoring technologies are developed, the conditions may also include conditions regarding the use of those technologies.

Note 2 The holder of a statutory fishing right must also comply with relevant regulations, including the *Fisheries Management Regulations 1992* and the annual Levy Regulations.

Note 3 See section 42 of the Act and Part 9 of the *Fisheries Management Regulations 1992* about the requirement to keep a logbook. If the holder of a statutory fishing right does not keep a logbook under Part 9 of those Regulations, AFMA may issue an infringement notice under Part 10 of those Regulations or suspend the operation of the statutory fishing right.

Note 4 See also subsections 22 (3), (4) and (5) of the Act for other conditions to which a statutory fishing right is subject.

Note 5 See section 38 of the Act about AFMA's power to suspend a statutory fishing right if it has reasonable grounds to believe that there has been a contravention of a condition of the right.

Division 5.2 Directions not to engage in fishing

30 Directions by AFMA (Act s 17 (5A))

- (1) AFMA may direct that fishing is not to be engaged in in the fishery, or in a part of the fishery, during a stated period.

Note If AFMA gives a direction for a part of the fishery, the direction may identify the part in any way, including by reference to an area, a species, a kind or quantity of fishing equipment, a method of fishing, or a combination of those ways: see subsection 17 (5B) of the Act.

- (2) In particular, AFMA may issue a direction to restrict or prohibit further fishing in a fishing year if the total allowable catch of Patagonian toothfish, or a catch limit for any other species, of which holders of statutory fishing rights were given notice under paragraph 11 (4) (a) or (d) in that fishing year, is reached.
- (3) Before giving a direction, AFMA must consult, and consider the views of:
 - (a) SouthMAC; and
 - (b) SARAG;about the content of the direction.
- (4) At least 7 days before a direction takes effect, AFMA must tell the holders of statutory fishing rights and scientific permits for the fishery, in writing, about the direction.
- (5) However, if a direction is made in an emergency:
 - (a) subsections (3) and (4) do not apply; and
 - (b) AFMA must tell the holders of statutory fishing rights and scientific permits for the fishery, in writing, about the direction as soon as it can practicably do so.

- (6) The holder of a statutory fishing right for the fishery must comply with a direction made under this section.

Note The holder of a statutory fishing right must comply with obligations imposed under paragraph 17 (6) (g) of the Act: see sections 22 and 95 of the Act.

Section 31

Part 6 Miscellaneous**31 Certificates**

- (1) If a certificate issued by AFMA for a statutory fishing right is lost, stolen, destroyed or is otherwise not available to the owner of the right, the owner may ask AFMA, in writing, to give to the owner a replacement certificate.
- (2) The request must include:
 - (a) a statement explaining why the certificate is unavailable; and
 - (b) an agreement that the owner will surrender it to AFMA if it becomes available.

32 Delegation

AFMA may, by writing under its common seal, delegate to an employee of AFMA any of its powers or functions under this Management Plan, except its powers under sections 11 and 30 and this section.

Note See subsection 17 (11) of the Act about the delegation of powers under sections 11 and 30.

33 Agents

- (1) If the holder of a statutory fishing right appoints a person to be the holder's agent for a matter to which this Management Plan applies, the holder must give AFMA a notice that states:
 - (a) the name of the agent; and
 - (b) the powers that may be exercised by the agent.
- (2) A notice must be accompanied by the instrument, or a certified copy of the instrument, by which the holder appointed the agent.
- (3) For this Management Plan, the appointment of an agent by the holder of a statutory fishing right is of no effect unless AFMA has been told about the appointment under subsection (1).
- (4) In deciding an application under this Management Plan:
 - (a) AFMA may assume that a notice given under this section is properly given; and
 - (b) AFMA need not verify, by other means, the authority of the agent to make the application.

Section 34**34 Notices**

- (1) In this section:
residential, office, postal or e-mail address, or *facsimile number*, for the holder of a statutory fishing right, means the holder's residential, office, postal or e-mail address, or facsimile number, stated in the Register.
notice means a notice that is required, or allowed, by this Management Plan to be given in writing.
- (2) A notice to the holder of a statutory fishing right is taken to be given to the holder if it is:
- (a) delivered to the holder's residential or office address; or
 - (b) posted to the holder's postal address; or
 - (c) sent by facsimile to the holder's facsimile number; or
 - (d) sent by e-mail to the holder's e-mail address.
- (3) A notice to AFMA must be addressed to the Manager, Antarctic Fisheries, Australian Fisheries Management Authority, and:
- (a) delivered to the reception desk at:
John Curtin House
22 Brisbane Avenue
BARTON ACT; or
 - (b) posted to:
PO Box 7051
Canberra Business Centre
ACT 2610; or
 - (c) sent by fax (from within Australia) to:
(02) 6272 5167; or
 - (d) sent by fax (from outside Australia) to:
612 6272 5167; or
 - (e) sent by e-mail to:
himie@afma.gov.au; or
 - (f) delivered, posted or sent by fax or e-mail to another office address, postal address or facsimile number notified by AFMA by notice published in a newspaper circulating in the State or Territory in which the address or facsimile receiver is located.
- (4) A notice to a person is taken to have been given to the person if it is delivered, or sent by fax or e-mail, to the person's last known address.
- (5) A notice given to the holder of a statutory fishing right under this section is taken to have been given to the holder:
- (a) if the notice is delivered to the holder's residential or office address — on the day when it is delivered; and

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- (b) if the notice is sent by facsimile to the holder's facsimile number:
 - (i) on a working day between 9 am and 4 pm — 1 hour after the notice is sent; and
 - (ii) otherwise — at 9 am on the next working day after the day when the notice is sent.

Note Under subsection 160 (1) of the *Evidence Act 1995*, it is presumed (unless evidence is sufficient to raise doubt about the presumption is adduced) that a postal article sent by pre-paid post addressed to a person at a specified address in Australia or in an external Territory was received at that address on the fourth working day after having been posted.

- (6) In this section:

working day means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a public holiday or a bank holiday in the place to which the notice is sent.

Part 7 Transitional

35 Transitional

- (1) This section ceases to have effect on the day specified in a notice published in the *Gazette* for that purpose.
- (2) The day specified in the notice must not be earlier than the day on which the notice is published.
- (3) Despite section 12, a person may engage in fishing in the fishery area if the person holds a fishing permit that is in force.
- (4) This Management Plan does not affect a fishing permit, or a condition to which the permit is subject.
- (5) This Management Plan does not prevent AFMA from granting or transferring a fishing permit.

Schedule 1 Fishery area

(section 3)

That part of the AFZ adjacent to Macquarie Island made up of the following 2 sectors:

Aurora Trough sector

The area of waters as follows (falling within the Aurora Trough):

- (a) the eastern boundary is the 3 mile limit off the western side of Macquarie Island;
- (b) the western boundary is the meridian of longitude 158° 40' East;
- (c) the southern boundary is the parallel of latitude 54° 49' South;
- (d) the northern boundary is the parallel of latitude 54° 33' South.

Macquarie Ridge sector

All areas of the AFZ adjacent to Macquarie Island, excluding the Aurora Trough sector and the waters of the State of Tasmania.

Note No commercial fishing is permitted within the Macquarie Island Marine Park. The Marine Park was proclaimed on 27 October 1999 and is continued as if the proclamation had been made under the *Environment Protection and Biodiversity Conservation Act 1999*.

Note

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See www.frli.gov.au.