

EXPLANATORY STATEMENT

LEGISLATIVE INSTRUMENT

Fisheries Management Act 1991

Heard Island and McDonald Islands Fishery Management Plan Amendment 2006 (No.1)

Subsection 17(1) of the *Fisheries Management Act 1991* (the Act) provides that the Australian Fisheries Management Authority (AFMA) is to determine plans of management for all Fisheries.

Subsection 20(1) provides that AFMA may amend a plan of management. The following provides background and an explanation for amendments to the Plan made under subsection 20(1) of the Act.

The Heard Island and McDonald Islands Fishery

Fishing in the Heard Island and McDonald Islands (HIMI) Fishery is managed under the provisions of the *Heard Island and McDonald Islands Fishery Management Plan 2002* (the Plan) and associated legislative instruments.

The HIMI Fishery lies in waters adjacent to the sub-Antarctic Heard Island and McDonald Islands. The Islands are Australia's most remote sovereign territory and are located on the Kerguelen Plateau in the south Indian Ocean, about 4000 kilometres south-west of Perth. As the Islands lie to the south of the Antarctic convergence, they also fall under the jurisdiction of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR).

Patagonian toothfish and mackerel icefish are the target species in the Fishery. The Fishery is managed by a combination of output controls (that limit the amount of fish that can be taken from the Fishery) in the form of quota statutory fishing rights (SFRs) and input controls (that, for example, limit the number of vessels and type of gear that can be used in the Fishery).

CCAMLR determines total allowable catches, which are set to protect the target and non-target fish stocks. Strict operating conditions are imposed to minimise negative effects on the environment, including effects on non-target species.

The amendments do not result in any new fees or payments being owed by operators.

The amendments

The Plan is being amended to improve the management arrangements for the Fishery through changes to the timing of monitoring responsibilities under the Fisheries Assessment Plan; to overcatch provisions; to allow AFMA to make catch determinations in line with its international obligations under CCAMLR and to improve the practical workings of the Fishery.

In general terms, the amendments:

1. amend the date for allocating monitoring responsibilities, under the Fisheries Assessment Plan, from 1 December to 1 March;
2. provide AFMA with the capacity to determine catch limits for non-target species;
3. alter the overcatch provisions to make them consistent with the overcatch provisions proposed for the Macquarie Island Toothfish Fishery; and
4. specify the number of SFRs for Patagonian toothfish and mackerel icefish.

Details of the Plan Amendment are set out below:

Section 1 provides that the Plan Amendment be cited as the *Heard Island and McDonald Islands Fishery Management Plan Amendment 2006*.

Section 2 provides that the Plan Amendment commences on the day after it is registered.

Section 3 provides that Schedule 1 amends the *Heard Island and McDonald Islands Fishery Management Plan 2002*.

Item 1

Changing the date for finalising monitoring responsibilities under the Fisheries Assessment Plan

The amendment to subsection 9(2)(c) changes the dates for finalising monitoring responsibilities under the Fisheries Assessment Plan. The Fisheries Assessment Plan is a document prepared annually that specifies the monitoring requirements for the Fishery, to ensure that reliable stock assessments can be made for each target species and an assessment made of the impact of the fishery on non-target species and the ecosystem in the area of the Fishery.

Under the Fisheries Assessment Plan, SFR holders are required to undertake an adequate program of monitoring known as 'monitoring responsibilities'. Historically, AFMA has required approximately 20 days of research and monitoring of fish stocks to meet this requirement.

Previously, the subsection prescribed that a Fisheries Assessment Plan must provide that monitoring responsibilities be allocated before the beginning of each fishing year (the fishing season commences on 1 December). The amendment to the subsection requires that monitoring responsibilities be allocated by 1 March of each fishing year.

The date of 1 December has proven to be impractical, as the personnel involved in developing the monitoring requirements are involved in annual meetings of CCAMLR and the Sub-Antarctic Resource Assessment Group (SARAG) and the Sub-Antarctic Fisheries Management Advisory Committee (SouthMAC) meetings until mid November. These meetings determine a number of the management arrangements for the HIMI Fishery and can dictate the fishery monitoring work. It is not practical to finalise the monitoring arrangements before 1 December, as the Fisheries Assessment Plan needs to be developed and signed by all statutory fishing right holders in the HIMI Fishery, who are located in different parts of Australia.

As the monitoring work is not undertaken until later in the fishing year, more time is required for the monitoring requirements to be developed and agreed to by stakeholders. Section 9(2)(c) now specifies a more appropriate finalisation date of 1 March.

Item 2

Capacity for AFMA to determine catch limits for non-target species

The amendments to subsections 11(2) and 11(3) allow AFMA to determine catch limits for non-target species. Previously, the Plan defined the Fishery in terms of target species alone. The amendments were required because CCAMLR sets bycatch limits for all non-target fish species, and AFMA is required to ensure these limits are not exceeded. When the Plan was originally drafted the intention was to give AFMA the ability to determine catch limits for non-target species but due to an oversight it was not included under section 11.

The amended subsection 11(2) now states that before the beginning of each fishing year, AFMA may determine a limit to the amount of any other species (meaning non-target species) which may be taken from the Fishery in the fishing year.

The amended subsection 11(3) allows AFMA to take into account the Total Allowable Catch (TAC) (if any) set by CCAMLR when determining TAC and any other catch limits for a fishing year.

The amended subsection 11(4)(c) prescribes that AFMA must now, before the beginning of the fishing year, give to the holder of each SFR a notice stating any catch limits for other species that may be taken from the Fishery in that fishing year.

Subsection 31(1A) has been inserted to allow AFMA to issue a direction to restrict or prohibit further fishing in a fishing year if the total allowable catch of a species of fish (meaning target species), or catch limit for any other species, for which holders of SFRs were given a notice under subsections 11(4)(a) or (c), is reached.

Items 3 - 6

Amendments to Overcatch provisions

The amendments to subsection 14(1), paragraph 14(1)(a), paragraph 14(1)(b) and subsection 14(2) bring the overcatch provisions into line with those determined in the *Macquarie Island Toothfish Fishery Management Plan 2006*.

Consistency between the HIMI Fishery and Macquarie Island Toothfish Fishery Management Plans is desirable as there is a requirement that management measures adopted for Macquarie Island (which is outside the CCAMLR area) do not undermine Conservation Measures which are applied by CCAMLR for the HIMI Fishery (which is inside the CCAMLR area).

Overcatch from 0 – 10 tonnes will come off the following season's quota on a one for one basis, and any overcatch from 10 – 20 tonnes will come off the following season's quota on a three for one basis. Any overcatch above 20 tonnes will be subject to the three for one reduction and possible prosecution. This amends the existing provision which has any catch taken above the quota allocation coming off the following year's quota on a three for one basis.

The overcatch provision is included to allow for any inadvertent catch above the quota allocation which may be taken on the last operation for a boat in the season.

Item 7

Number of statutory fishing rights

The amended section 19 now includes an additional note (note 2). Note 2 states that the grant process for SFRs is complete. AFMA has granted 30,000 SFRs for each of the quota (target) species mentioned in schedule 2 of the Plan (Patagonian toothfish and mackerel icefish) and does not intend to grant any further SFRs for these species.

Regulation Impact Statement

The Office of Regulation Review has advised that a Regulation Impact Statement is not required for the amendments (reference ORR ID 7454).

Consultation

The AFMA Board has endorsed the amendment to the plan.

Section 20 of the Act prescribes that section 17 of the Act applies in relation to amendments to a plan of management in the same way as it applies to the preparation of a new plan of management. Section 17 requires that AFMA must consult with such persons engaged in fishing whom appear to be appropriate, and must give due consideration to any representations made to AFMA in connection with the draft plan. AFMA has met all consultation requirements required of it in the preparation of this instrument.

AFMA notified its intention to make amendments to the Plan in 'The Australian', in a Special Gazette and on the AFMA website, on 21 February 2006. The consultation period on the draft Plan amendment ended after four weeks on 21 March 2006. No comments or representations were received.

The amendments were discussed and supported by the Sub-Antarctic Fisheries Management Advisory Committee (SouthMAC). SouthMAC has representatives from a range of stakeholder groups, including industry representation from the two companies that operate in the HIMI Fishery.

The Department of the Environment and Heritage has advised that the amendment does not require additional assessment under the *Environment Protection and Biodiversity Conservation Act 1999* and it will table a Notice of Intent to accredit the amended Plan.