

Explanatory Statement

Fisheries Management Act 1991

Macquarie Island Toothfish Fishery Management Plan 2006 Temporary Order 2009 (No.1)

Subsection 43 (1)(a)(ii) of the *Fisheries Management Act 1991* (the Act) provides for the Australian Fisheries Management Authority (the Authority) to make a Temporary Order to enable quick action to deal with (inter alia), circumstances where urgent action is required for purposes related to the management of a fishery. Pursuant to section 92(1) of the *Fisheries Administration Act 1991*, AFMA has delegated its powers and functions under section 43 of the Act to the Chief Executive Officer of the Authority.

The Macquarie Island Toothfish Fishery

The Macquarie Island Toothfish Fishery (the fishery) is managed under the *Macquarie Island Toothfish Fishery Management Plan 2006* (the Plan), which defines the fishery area in Schedule 1.

Macquarie Island falls under Tasmanian jurisdiction and is located outside the Antarctic convergence approximately 1500 kilometres south east of Hobart.

The waters surrounding Macquarie Island out to 3 nautical miles are Tasmanian State waters and the Tasmanian Department of Primary Industries, Water and Environment controls fishing in these waters. State waters were closed to fishing and classified as a Nature Reserve under Tasmanian law in July 2000. Waters from the 3 nautical mile boundary out to the 200 nautical mile outer boundary of the Australian fishing zone (AFZ) are under Commonwealth jurisdiction and fishing in these waters is managed by AFMA under the Act.

Patagonian toothfish is the target species. 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).

AFMA 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.

Background to Temporary Order

This Temporary Order anticipates the *Macquarie Island Toothfish Fishery Management Plan Amendment 2009 (No. 1)* being accepted by the Minister. It was determined by the Authority on 12 June 2009. The Temporary Order proposes a shorter fishing season from 1 July 2009 to 14 April 2010 in the fishery for the 2009/2010 period only. Thereafter, the fishing season will be annual, with a commencement date of 15 April.

Purpose of the Temporary Order

The purpose of the Temporary Order is to allow AFMA more time to conduct and review the stock assessment for the fishery. In previous years there have been difficulties in setting the total allowable catches (TACs) by 1 July because of the short timeframe between the completion of trawl fishing operations and analysis and incorporation of the data from the trip in the stock assessment.

Under the proposed approach, the assessment will use the trawl and longline data collected in the previous year, rather than incorporating trawl data collected in the year the assessment is undertaken.

An integrated assessment is being developed for the Fishery which will account for all fishing methods as well as addressing spatial and temporal issues. It is expected that the integrated assessment will be the basis for setting the TACs for the season commencing 15 April 2010. The integrated assessment will utilise all available data.

The proposed season start date would also be suitable should the longline fishing method be approved by AFMA and the Minister for the Environment, Water, Heritage and the Arts in the future in a separate process.

Consultation

The contents of the Temporary Order was considered and accepted by the Sub-Antarctic Fisheries Management Advisory Committee (SouthMAC) and the Sub-Antarctic Resource Assessment Group (SARAG).

The proposed change to the season dates was circulated for public comment on 30 April 2009 and a public notice inviting comments on the draft amendment was placed in the Commonwealth Government Gazette and in *The Australian* on 30 April 2009. A copy of the public notice was also circulated in the AFMA fortnightly publication *AFMA Update* on 6 May 2009. *AFMA Update* is distributed to industry and is also publicly available on the AFMA website.

The closing date for all public comments was 30 May 2009.

AFMA did not receive any submissions or objections to the proposed change.

Regulatory Impact Analysis

The Office of Best Practice Regulation (OBPR) has advised that no regulatory impact analysis, in the form of a Business Cost Calculator Report or Regulation Impact Statement, is required for the amendment (OBPR ID 10285)

Details of the Temporary Order are:

Section 1 – provides that the Temporary Order may be cited as the *Macquarie Island Toothfish Fishery Management Plan Temporary Order 2009 (No. 1)*.

Section 2 – provides that the Temporary Order will commence on 1 July 2009.

Section 3 – provides that the Temporary Order applies as if the Plan is amended by the item in Schedule 1.

Section 4 – provides that the Temporary Order ceases on either the day the *Macquarie Island Toothfish Fishery Management Plan Amendment 2009 (No. 1)* commences or 6 months after the commencement of the Temporary order, whichever comes first.

Schedule 1

Clause 1 – clause 1 amends section 3 by defining the term ‘fishing year’.

New subsection 3(a) – states that the ‘fishing year’ for the 2009/2010 fishing season will commence on 1 July 2009 and will end on 14 April 2010;

New subsection 3(b) – states that for each subsequent fishing season, the commencement date for the ‘fishing year’ will be 15 April.