

EXPLANATORY STATEMENT

Macquarie Island Toothfish Fishery Management Plan Amendment 2011

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

Subsection 20(1) of the Act provides that AFMA may at any time amend a plan of management.

AFMA has determined the *Macquarie Island Toothfish Fishery Management Plan Amendment 2011* (the Plan amendment) to amend the *Macquarie Island Toothfish Fishery Management Plan 2006* (the Plan).

The Plan amendment is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Macquarie Island Toothfish Fishery (MITF)

The Macquarie Island Toothfish Fishery (the Fishery) is managed under 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 boats and type of gear that can be used in the Fishery).

AFMA determines total allowable catches (TACs), 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.

Need for amendments

Currently toothfish are managed as separate stocks in the Aurora Trough and Macquarie Ridge sectors of the Fishery. Historically, AFMA has determined an annual TAC for toothfish in each sector.

The purpose of the Plan amendment is to amalgamate the two sectors of the Fishery into a single area. This reflects the advice from the Sub-Antarctic Resource Assessment Group (SARAG) that Patagonian Toothfish around Macquarie Island forms a single stock.

Membership of SARAG includes stock assessment scientists from CSIRO and the Australian Antarctic Division which is a Division of the Department of Sustainability, Environment, Water, Population and Communities.

The AFMA Commission is of the view that toothfish should be managed as a single stock at Macquarie Island.

There are 10,000 SFRs in each sector of the fishery. Upon enacting the Plan amendment there will be a combined 20,000 SFRs able to be expended in all areas of the Fishery. Having a single area will result in a single TAC being set for toothfish annually, to apply from the start of the 2012/13 season on 15 April 2012.

The Plan amendment removes reference to the sectors in the Fishery, amends the fishery area definition in Schedule 1 of the Plan, and includes a note in relation to the history of the allocation of SFRs.

Regulation Impact Statement

The Office of Best Practice Regulation (OBPR) advised that a Regulatory Impact Statement was not required for this Plan amendment (OBPR reference: ID 12451)

Statement of Compatibility

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*.

Consultation

The proposed Plan amendment was considered and recommended by the Sub-Antarctic Fisheries Management Advisory Committee (SouthMAC) and SARAG.

Following approval by the AFMA Commission, the draft amendment was released for public comment for a period of 36 days. To inform the community, AFMA placed notices in *The Australian* newspaper, in the *Commonwealth of Australia Gazette* and in AFMA's fortnightly newsletter, *AFMA Update*. AFMA also wrote to all those on a register of persons interested in the development of Management Plans.

No submissions were received.

Contents of the Plan amendment

Details of the Plan amendment are set out below:

Part 1 – provides that the Plan amendment may be cited as the *Macquarie Island Toothfish Fishery Management Plan Amendment 2011*.

Part 2 – provides that the Plan amendment will commence on the day after it is registered on the Federal Register of Legislative Instruments.

Part 3 – provides that Schedule 1 amends the Plan.

Schedule 1 Item 1 – omits the definition of 'sector'.

Schedule 1 Item 2 – omits the words '1 of the sectors of' from the definition of 'statutory fishing right'.

Schedule 1 Item 3 – substitutes the words 'ecologically sustainable stocks' with the words 'an ecologically sustainable stock'.

Schedule 1 Item 4 – omits the words 'each sector of'.

Schedule 1 Item 5 – omits the words ‘ecologically viable stocks of the species and’.

Schedule 1 Item 6 – omits the words ‘ecologically viable stocks of Patagonian toothfish and’.

Schedule 1 Item 7 – omits the words ‘each sector of’.

Schedule 1 Item 8 – omits the words ‘a sector and’.

Schedule 1 Item 9 – substitutes the words ‘(b) the quota allocated to the right for the fishing year; and’.

Schedule 1 Item 10 – omits the words ‘for a sector of the fishery area must not take from that sector of’ and substitutes the words ‘for the fishery area must not take from’.

Schedule 1 Item 11 – substitutes the words:

- (2) The quota allocated to a statutory fishing right for a fishing year is worked out by dividing the total allowable catch in the fishing year by the total number of statutory fishing rights in force at the start of the fishing year.

Schedule 1 Item 12 – substitutes the words:

- (4) For subsection (1), a person may not take fish from the fishery unless the person holds statutory fishing rights with uncaught quota at least equal to the amount of fish taken.
- (5) For subsection (4):
uncaught quota, for a holder and at a time in a season, means the balance of quota, available on all the holder’s statutory fishing rights, that remains after deducting the weight of Patagonian toothfish taken by the holder up to that time.

Schedule 1 Item 13 – substitutes the words:

Note 5 When statutory fishing rights were first granted there were 2 sectors in the fishery. AFMA granted 5,000 statutory fishing rights for each sector under section 17 and 5,000 statutory fishing rights for each sector by tender. AFMA does not propose to grant further statutory fishing rights.

Schedule 1 Item 14 – omits the words ‘(c) the sector of the fishery area for which the right is granted;’.

Schedule 1 Item 15 – substitutes the words:

- (a) delivered to the reception desk at:
Level 6, 73 Northbourne Avenue
Canberra City ACT 2600; or
- (b) posted to:
PO Box 7051
Canberra Business Centre
ACT 2610; or
- (c) sent by fax (from within Australia) to:
(02) 6225 5426; or
- (d) sent by fax (from outside Australia) to:
612 6225 5426; or

Schedule 1 Item 16 – substitutes the words:

‘All areas of the AFZ adjacent to Macquarie Island excluding the waters of the State of Tasmania’.