

EXPLANATORY STATEMENT

Heard Island and McDonald Island 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 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 *Heard Island and McDonald Islands Fishery Management Plan Amendment 2011* (the Plan amendment) to amend the *Heard Island and McDonald Islands Fishery Management Plan 2002* (the Plan).

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

The Heard Island and McDonald Islands Fishery

The Heard Island and McDonald Islands (HIMI) Fishery is managed under the Plan. It lies in waters adjacent to the Islands of the same name. The islands are Australia's most remote sovereign territory and are located on the Kerguelen Plateau in the south Indian Ocean, about 4,000 kilometres south-west of Perth. The fishery extends from 12 nautical miles offshore to the edge of the 200 nautical mile Australian Exclusive Economic Zone around the Islands.

The HIMI Fishery falls within the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) Convention area, and is managed by AFMA in close cooperation with the Australian Antarctic Division (a Division of the Department of Sustainability, Environment, Water, Population and Communities) in accordance with CCAMLR Conservation Measures. The target species are Patagonian Toothfish (*Dissostichus eleginoides*) and Mackerel Icefish (*Champscephalus gunnari*).

The HIMI Fishery is managed by a combination of output controls (that limit the amount of fish that can be taken from the HIMI 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 HIMI 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

AFMA is of the view that the fishery is being effectively managed through the range of output and input controls that are in place.

The amendment will enable industry to operate in the most efficient and cost effective way in accordance with the range of other management measures that will remain in place for the fishery. The amendment will provide industry with greater flexibility to maximise the Patagonian Toothfish catch and value taken by non trawl methods, principally longlining which is currently considered to be the more economically efficient catching method.

There are some minor changes to definitions and specific reference to the Bycatch Action Plan is removed in the proposed amendments. The obligation to manage bycatch remains as part of the Plan but specific reference to the Bycatch Action Plan is removed as it is covered under the broader AFMA ecological risk management approach.

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 12450).

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 the Sub-Antarctic Resource Assessment Group (SARAG).

Following approval by the AFMA Commission, the draft amendment was released for public comment for a period of one month. 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 concerned about plans of management under section 17A of the Act.

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 *Heard Island and McDonald Islands 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 – inserts the definition of 'MAC'.

Schedule 1 Item 2 – substitutes the definition of 'SAFAG' with 'RAG'

Schedule 1 Item 3 – omits the definition of 'SouthMAC'.

Schedule 1 Item 4 – inserts the definition of 'trawl methods'.

Schedule 1 Item 5 – substitutes the term '1972 (WGS72)' with the term '1984 (WGS84)'.

Schedule 1 Item 6 – substitutes the words 'SAFAG, SouthMAC' with the words 'the RAG, the MAC'.

Schedule 1 Item 7 – omits the words '(f) developing, implementing and reviewing the bycatch action plan mentioned in section 8'.

Schedule 1 Item 8 – substitutes the words ‘(d) that no more than 3 boats operate in the fishery at any time’ with the words ‘(d) that the requirements of section 12 are met; and’.

Schedule 1 Item 9 – substitutes the word ‘SouthMAC’ with the words ‘the MAC’.

Schedule 1 Item 10 – substitutes the word ‘SouthMAC’ with the words ‘the MAC’.

Schedule 1 Item 11 – omits the words ‘implement a bycatch action plan to’.

Schedule 1 Item 12 – substitutes the words ‘The bycatch action plan’ with the word ‘AFMA’:

Schedule 1 Item 13 – omits the words ‘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.’.

Schedule 1 Item 14 – substitutes the words ‘SouthMAC, SAFAG’ with the words ‘the MAC, the RAG’.

Schedule 1 Item 15 – substitutes the words ‘(b) must consult, and consider the views of, the MAC and the RAG’.

Schedule 1 Item 16 – provides that AFMA must determine minimum quota for trawl methods and the determination may apply for one or more years. Before the beginning of each fishing year AFMA must give notice to the holders of statutory fishing rights stating the determined minimum quota for trawl methods.

Schedule 1 Item 17 – provides that a person may fish in the fishery using trawl methods if the person holds the minimum quota for trawl methods as determined by AFMA under section 11A(1) and uses a nominated boat. If a person is using non trawl methods the person must hold statutory fishing rights and use a nominated boat.

Schedule 1 Item 18 – omits the words ‘at least 25.5% of the’.

Schedule 1 Item 19 - substitutes the words ‘SouthMAC and SAFAG’ with the words ‘the MAC and the RAG’.

Schedule 1 Item 20 – provides that AFMA must not register a boat as a nominated boat if it does not meet the requirements of an Australian boat and if a nominated surveyor has not conducted a safety assessment and has not issued a statement of compliance that the boat has passed the safety assessment.