

EXPLANATORY STATEMENT

Issued by the authority of the Australian Fisheries Management Authority

Fisheries Management Act 1991

Heard Island and McDonald Islands Fishery Management Plan 2002

Heard Island and McDonald Islands Fishery Total Allowable Catch and Trawl Fishing Capacity Determination 2015

Section 17 of the *Fisheries Management Act 1991* (the Act) provides for the Australian Fisheries Management Authority (AFMA) to determine plans of management for a fishery.

Paragraph (aa) of subsection 17(6) of the Act provides that a plan of management may determine, or provide for AFMA to determine, the fishing capacity, for a fishery measured by that method or those methods, permitted for the fishery or a part of the fishery in respect of a particular period or periods.

Section 11 of the *Heard Island and McDonald Islands Fishery Management Plan 2002* (the Plan) provides that AFMA must, before the beginning of each fishing year, determine the total allowable catch (TAC) and catch limits for each species of fish for the fishing year. 'Fishing year' is defined in the Plan as a period of 12 months beginning on 1 December in any year.

Section 11A of the Plan provides that AFMA must determine the minimum quota for trawl methods, expressed as a percentage of statutory fishing rights for a fishing year.

The instrument determines the TAC for target species and catch limits for other species in the fishery, and the trawl fishing capacity, for the 2015/2016 season. The target species are Patagonian Toothfish and Mackerel Icefish.

Background

The Heard Island and McDonald Islands Fishery (the Fishery) includes external territories of Australia located in the Southern Indian Ocean about 4,000 km south-west of Perth. The islands lie within the Antarctic Convergence. The waters surrounding the islands out to 200 nautical miles are part of the Australian Fishing Zone which is managed by AFMA.

The Plan provides that access to the Fishery is limited to those operators holding statutory fishing rights (SFRs) granted under the Plan.

SFRs granted under the Plan allow a quantity of Patagonian Toothfish or Mackerel Icefish to be taken in the Fishery. The weight allocated to an SFR for each target species for the fishing year is worked out by dividing the TAC for the species by the total number of SFRs in force for the species at the start of the fishing year.

Consultation

In determining the TACs AFMA must have regard to reference points for the species determined under section 10 of the Plan and consider the views of the Sub-Antarctic Fisheries Management Advisory Committee (SouthMAC) and the Sub-Antarctic Resource Assessment Group (SARAG).

The Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) prescribed the TACs and catch limits which were reviewed by SARAG and SouthMAC. SARAG and SouthMAC both provided TAC recommendations which were accepted by the AFMA Commission and are reflected in the Determination.

Regulation Impact Statement

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required for this Determination consistent with the agreement in place to cover all regulatory changes deemed to be of a minor or machinery nature.

Statement of compatibility prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

AFMA assesses under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* that this legislative instrument is compatible with human rights. AFMA's Statement of Compatibility is attached as a supporting document.

Details of the Determination are set out below:

- Clause 1** provides for the Determination to be cited as the Heard Island and McDonald Islands Fishery Total Allowable Catch and Trawl Fishing Capacity Determination 2015.
- Clause 2** provides that the Determination commences on the day after it is registered on the Federal Register of Legislative Instruments.
- Clause 3** provides for the Determination to cease on 30 November 2016 unless earlier revoked.
- Clause 4** defines the particular terms used in the Determination.
- Clause 5** specifies the total allowable catch for target species and the catch limits for other species in the Fishery for the 2015/2016 fishing year.
- Clause 6** specifies the minimum quota holding for trawl methods to be 25.5% of the statutory fishing rights held in the Fishery for each trawler for the 2015/2016 fishing year.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Heard Island and McDonald Islands Fishery Total Allowable Catch and Trawl Fishing Capacity Determination 2015

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*.

Overview of the Legislative Instrument

This instrument determines the total allowable catch for the target species (Patagonian Toothfish and Mackerel Icefish) and catch limits for other species in the Heard Island and McDonald Islands Fishery for the 2015/16 fishing year. The instrument further determines the trawl fishing capacity for the 2015/16 fishing year. The instrument ceases on 30 November 2016, unless earlier revoked.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues. The AFMA Commission is satisfied that the instrument is consistent with AFMA's obligation to pursue its statutory objectives. The instrument is machinery in nature and sets the trawl fishing capacity, and catch limits for quota species and other species in the fishery thereby allowing statutory fishing right holders the ability to take a proportion of that total allowable catch for the 2015/2016 fishing year.