

REPLACEMENT EXPLANATORY STATEMENT

Australian Fisheries Management Authority

Fisheries Management Act 1991

Macquarie Island Toothfish Fishery Management Plan 2006

Macquarie Island Toothfish Fishery (Total Allowable Catch) Determination 2021

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 *Macquarie Island Toothfish Fishery Management Plan 2006* (the Plan) provides that AFMA must, before the beginning of each fishing year, determine the total allowable catch (TAC) for Patagonian toothfish and may determine catch limits for other species for the fishing year. 'Fishing year' is defined in the Plan as the period determined by AFMA. The period has been determined to be the period of 12 months beginning on 15 April in any year and ending on 14 April of the following year.

The instrument determines the TAC for Patagonian toothfish and catch limits for other species in the Macquarie Island Toothfish Fishery (the Fishery) for the 2022/23 and 2023/24 fishing years. The instrument ceases on 15 April 2024, unless earlier revoked.

The Determination is a legislative instrument for the purposes of the *Legislation Act 2003*.

Background

The Fishery lies in waters adjacent to Macquarie Island. Macquarie Island falls under Tasmanian jurisdiction and is located outside the Antarctic convergence, approximately 1500 kilometres south east of Hobart. The waters surrounding the Island 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 to be taken in the Fishery. Under the Plan, a person must hold at least 25.5% of the total SFRs to fish in the Fishery. The weight allocated to an SFR for Patagonian toothfish for the fishing year is worked out by dividing the TAC by the total number of SFRs in force at the start of the fishing year.

Until 2015, the Macquarie Island Toothfish Fishery Patagonian toothfish TAC and bycatch catch limits were determined on an annual basis. In 2015, AFMA agreed the Fishery TAC and bycatch catch limits would be determined every two years.

In 2021, CSIRO prepared a stock assessment for Patagonian toothfish in the Fishery. AFMA provided the stock assessment to the Sub-Antarctic Fisheries Resource Assessment Group (SARAG) and the Sub-Antarctic Fisheries Management Advisory Committee (SouthMAC) for consideration. SouthMAC recommended a TAC for Patagonian toothfish for consideration by the AFMA Commission. SouthMAC did not recommend a change to the bycatch catch limits for the fishery. SARAG and SouthMAC comprise scientific, industry, conservation group and management representatives as well as observers. The stock assessment provides the best scientific advice on total mortality for Patagonian Toothfish, taking into account fishing and natural mortality. A 635 tonne TAC for the Fishery was the most precautionary of a range of sustainable options presented in the CSIRO stock assessment. The 50 tonne catch limits for other species taken in the fishery is

consistent with catch limits set for these species in previous years and is considered by SARAG, SouthMAC and the AFMA Commission to be precautionary.

The AFMA Commission was satisfied that the TAC and catch limits it determined were consistent with AFMA's obligation to pursue its statutory objectives, specified in section 3 of the Act and section 6 of the *Fisheries Administration Act 1991* (FA Act). The Commission considered that significant weight should be given to the objective of ensuring that the exploitation of fisheries resources are conducted in a manner consistent with the principles of ecologically sustainable development, which includes the exercise of the precautionary principle (paragraph 3(1)(b) of the Act and 6(b) of the FA Act).

Consultation

SARAG and SouthMAC were consulted in the making of this instrument and comprise of industry, government, expert scientific, conservation and management representatives.

SARAG and SouthMAC industry members represent all persons likely to be affected by the making of the instrument.

Regulation Impact Statement

The Office of Best Practice Regulation has advised that a Regulation Impact Statement was not required for this Determination consistent with the carve-out agreement with AFMA (OBPR reference. 14421) for instruments of a minor or machinery nature and which specifically refers to the setting of TACs for a fishery.

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:

- Section 1** Provides for the Determination to be cited as the *Macquarie Island Toothfish Fishery (Total Allowable Catch) Determination 2021*.
- Section 2** Provides that the Determination commences on 15 April 2022
- Section 3** Provides that this instrument is made pursuant to paragraph 17(6)(aa) of the *Fisheries Management Act 1991* under section 11 of the *Macquarie Island Toothfish Fishery Management Plan 2006*.
- Section 4** Provides the Determination ceases on 15 April 2024.
- Section 5** Defines the particular terms used in the Determination.
- Section 6** Specifies the total allowable catch for Patagonian toothfish and the catch limits for other species in the Fishery for the 2022/23 and 2023/24 fishing years.

Statement of Compatibility with Human Rights

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

Macquarie Island Toothfish Fishery (Total Allowable Catch) Determination 2021

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

Section 11 of the *Macquarie Island Toothfish Fishery Management Plan 2006* (the Plan) provides that AFMA must, before the beginning of each fishing year, determine the total allowable catch (TAC) for Patagonian toothfish and catch limits for other species for the fishing year. ‘Fishing year’ is defined in the Plan as the period determined by AFMA. The period has been determined to be the period of 12 months beginning on 15 April in any year and ending on 14 April of the following year.

The instrument determines the TAC for Patagonian toothfish and catch limits for other species in the Macquarie Island Toothfish Fishery (the Fishery) for the 2022/23 and 2023/24 fishing years. The instrument ceases on 15 April 2024, 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 TAC for Patagonian toothfish in the Fishery and catch limits for other species thereby allowing statutory fishing right holders the ability to take a proportion of the TAC for the 2022/23 and 2023/24 fishing years.