

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) Determination 2021

Legislative Authority

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 Management Plan) provides that AFMA must, before the beginning of each fishing year, determine the total allowable catch (TAC) for target species and the limits to the amount of other species (including a limit that is a total for a number of species) that may be taken (catch limits) from the Heard Island and McDonald Islands fishery (the Fishery) for the fishing year.

Purpose

The *Heard Island and McDonald Islands Fishery (Total Allowable Catch) Determination 2021* (the Determination) determines the TAC for target species and catch limits for other species in the Fishery for the 2021/2022 fishing year. The target species are Patagonian toothfish (*Dissostichus eleginoides*) and Mackerel icefish (*Champtocephalus gunnari*). Other species listed in the Determination under subsection 6(3) are species that are often caught by fishers as incidental catch while fishing for the target species in the Fishery.

Background

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 Convention Area as described in the Convention on the Conservation of Antarctic Marine Living Resources, which can be found at https://www.ccamlr.org/en/system/files/e-pt1_3.pdf. The waters surrounding the islands out to 200 nautical miles are part of the Australian Fishing Zone, which is managed by AFMA.

The Management Plan provides that access to the Fishery is limited to those operators holding Statutory Fishing Rights (SFRs) granted under the Act. SFRs granted under the Act 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

Subsection 11(3) of the Management Plan provides that before deciding the total allowable catch and any other catch limits for a fishing year, AFMA:

- a) must take into account:
 - i. the TAC (if any) set by the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), and
 - ii. the reference points determined under section 10 of the Management Plan; and
- b) must consult, and consider the views of, the Management Advisory Committee (MAC) and the Resource Assessment Group (RAG).

Pursuant to subsection 11(3) of the Management Plan, AFMA consulted before determining the TAC for target species and catch limits for other species in the Fishery.

At its 40th meeting on 18-29 October 2021, CCAMLR set catch limits for Patagonian toothfish and Mackerel icefish in the Fishery at certain amounts. As indicated above, the islands within the Fishery lie within the CAMLR Convention Area and are also subject to management by CCAMLR.

CCAMLR is an international commission with 26 country members, and a further 10 countries have acceded to the Convention. Based on the best available scientific information, CCAMLR agrees a set of conservation measures that determine the use of marine living resources in the Antarctic.

The relevant MAC and the RAG for the Fishery are the Sub-Antarctic Fisheries Management Advisory Committee (SouthMAC) and the Sub-Antarctic Resource Assessment Group (SARAG) respectively. Government, scientific, industry and conservation members with interests in the sustainable management of the Fishery are members of these committees. Both committees assessed, and provided advice to AFMA on catch limits for target species and other species in the Fishery.

In accordance with section 10 of the Management Plan, AFMA determined the reference points for target species that are appropriate for maintaining ecologically viable stocks of these target species.

AFMA took into account the catch limit set by CCAMLR, the advice of the SouthMAC and SARAG on TAC limits for the target species in the Fishery, and also the reference points mentioned above, to determine the TACs for the target species in the Fishery as set out in the Determination.

Catch limits for species other than target species have remained unchanged since 2015 as no new assessments have been conducted and reference points are not required to be determined for these other species. Accordingly, the catch limits for the other species have been determined as unchanged.

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 (OBPR reference number 14421).

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

The Determination does not infringe any of the applicable rights or freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. Accordingly, in AFMA's assessment, the Determination is compatible with human rights. A statement of compatibility is included at Attachment A.

Details of the Determination are set out below:

Section 1 provides for the Determination is the *Heard Island and McDonald Islands Fishery (Total Allowable Catch) Determination 2021*.

Section 2 provides that the Determination commences on 1 December 2021.

Section 3 provides that the Determination ceases on 1 December 2022.

Section 4 provides that the Determination is made pursuant to section 17(6)(aa) of the Act and under Section 11 of the Management Plan.

Section 5 provides relevant definitions for the Determination.

Note 1 explains a number of expressions used in the Determination are defined in the definitions section, section 3 of the Management Plan, including ***fishing year***; ***fishery***; ***target species***; and ***total allowable catch***.

fishing year means a period of 12 months beginning on 1 December in any year.

fishery means the Heard Island and McDonald Islands Fishery.

target species means any of the following species:

- a) a species mentioned in Schedule 2;
- b) if AFMA makes a declaration under section 20 in relation to a species mentioned in Schedule 3 — that species.

total allowable catch for a target species, means the total weight of fish of that species that may be taken under statutory fishing rights in a fishing year by fishing in the area of the fishery, as determined by AFMA under section 11.

Note 2 explains a number of expressions used in the Determination are defined in the definitions section, section 4 of the Act, including *take*. *take*, in relation to fish, means catch, capture, take or harvest.

Section 6 determines the total allowable catch for target species and the catch limits for other species in the Fishery for the 2021/2022 fishing year.

Attachment A

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) 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

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 2021-22 fishing year. The instrument ceases on 1 December 2022.

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.