

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 2023

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. 'Fishing year' is defined in the Management Plan as a period of 12 months beginning on 1 December in any year.

Purpose

The *Heard Island and McDonald Islands Fishery (Total Allowable Catch) Determination 2023* (the Determination) determines the TAC for target species and catch limits for other species in the Fishery for the 2023/2024 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 42nd meeting on 16-27 October 2023, 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 27 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 Sub-Antarctic Resource Assessment Group (SARAG) provides scientific advice on TACs for Australia's sub-Antarctic fisheries. SARAG comprises scientific, industry and management stakeholders who are appointed following a public application process through a defined AFMA Policy. Casual observers, together with Invited Participants, also attend SARAG meetings. In 2023, the Australian Antarctic Division (AAD) prepared a stock assessment for Patagonian toothfish and Mackerel icefish in the Fishery. AFMA provided the stock assessment to SARAG and SouthMAC for consideration. SARAG recommended a range of precautionary Patagonian toothfish TAC options for Sub-Antarctic Management Advisory Committee (SouthMAC) to further consider in the context of their economic implications. SARAG recommended a 714t TAC for mackerel icefish in 2023/24 and no changes to the current bycatch limits. Advice from SARAG was considered by SouthMAC (comprising science, industry, conservation, policy and management stakeholders), which subsequently recommended TACs for each quota species to the AFMA Commission.

SouthMAC took into account broader considerations in order to recommend a TAC. These include the Commonwealth Fisheries Harvest Strategy Policy, any relevant whole of government position on catch, total catch across all sectors in the sub-Antarctic fisheries, and economic considerations.

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.

The AFMA Commission determined the TACs for all quota species at its meeting on 8-9 November 2023 after considering decisions of CCAMLR and advice from SARAG and SouthMAC.

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.

Further, the AFMA Commission determined the fishery season to commence on 1 December 2023 and end on 30 November 2024, based on obligations under CCAMLR and consistent with previous years.

AFMA's Objectives

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 is 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(1)(b) of the FA Act).

Regulation Impact Statement

The Office of Impact Analysis 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 (OIA Ref 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 2023*.

Section 2 Provides that the Determination commences on 1 December 2023.

Section 3 Provides that the Determination ceases on 30 November 2024.

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 2023/2024 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 2023

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 2023-24 fishing year. The instrument ceases on 30 November 2024.

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.