



Heard Island and McDonald Islands Fishery Management Plan 2002

I, FRANK MEERE, Managing Director of the Australian Fisheries Management Authority, acting on behalf of the Authority, make this Management Plan under section 17 of the *Fisheries Management Act 1991*.

Dated 8 May 2002

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Managing Director of the Australian Fisheries Management Authority

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Section 1

Part 1 Preliminary

1 Name of Management Plan

This Management Plan is the *Heard Island and McDonald Islands Fishery Management Plan 2002*.

2 Commencement

This Management Plan commences on gazettal.

Note See subsections 19 (1) and (2) of the Act and section 48 of the *Acts Interpretation Act 1901*.

3 Definitions

In this Management Plan:

1998–2000 Management Policy means the Heard Island and McDonald Islands Fishery Management Policy 1998–2000, first published by AFMA in February 1998 and in force from 25 February 1998 until 30 November 2001.

Act means the *Fisheries Management Act 1991*.

acting for a person means acting with the consent of, and on behalf of, the person.

agent, of the holder of a statutory fishing right, means:

- (a) a person responsible for the affairs and property of the holder under a law of the Commonwealth, a State or a Territory, including a receiver, liquidator, trustee or guardian of the holder, or an executor or administrator of the holder's estate; or
- (b) a person appointed as the holder's agent under section 34.

approved form means the form approved by AFMA for the section in which the term is used.

area of the fishery means the area described in Schedule 1.

bycatch means the incidental catch of marine life other than target species.

CCAMLR means the Commission for the Conservation of Antarctic Marine Living Resources.

certificate, for a statutory fishing right, means a certificate given under subsection 22 (2) of the Act as evidence of the grant of the statutory fishing right.

eligible boat means a boat that meets the requirements set out for the purposes of this definition in the *Fisheries Management (Heard Island and McDonald Islands Fishery) Regulations 2002*.

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eligible person means a person who is registered as an eligible person for a grant of a statutory fishing right under section 26 of the Act.

fishery means the Heard Island and McDonald Islands Fishery.

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

Heard Island and McDonald Islands Fishery means fishing for fish of a target species in the area of the fishery.

holder, at a particular time, in relation to a statutory fishing right or scientific permit, means the person who holds the right or permit at that time because of a grant, lease or transfer, under the Act.

ICVMS means an Integrated Computer Vessel Monitoring System that complies with the standards and requirements specified in Regulations made for the purposes of this definition.

identification code, for a boat, means the identification code allocated by AFMA to the boat under regulation 12 of the *Fisheries Management Regulations 1992*.

Interim Management Policy means the HIMI Exploratory Fishery Interim Management Policy published by AFMA in November 1996 and in force from 2 November 1996 until 31 August 1997.

lease means a lease mentioned in section 27.

nominated boat, for a holder of statutory fishing rights, means a boat whose details are entered in the Register, under section 45 of the Act, as the nominated boat for the holder of the rights.

observer means a person who is authorised by AFMA to carry out the functions of an observer under this Management Plan.

owner, for a statutory fishing right, means:

- (a) the person who is granted the right under section 18; or
- (b) if the right has been transferred under section 25 — the most recent transferee of the right under that section.

quota, for a statutory fishing right, means the amount of fish of a particular target species that may be taken, in a fishing year, under the right.

Note For the determination of the quota for a statutory fishing right, see subsection 13 (3).

SAFAG means the Sub-Antarctic Fisheries Assessment Group established by AFMA to provide advice in relation to the research needs, stock status, environment and economics of Southern Ocean fisheries.

SouthMAC means the Sub-Antarctic Fisheries Management Advisory Committee established under section 54 of the *Fisheries Administration Act 1991*.

statutory fishing right means a right to take, from the area of the fishery, in each fishing year, a particular proportion of the total allowable catch of a target species.

target species means any of the following species:

- (a) a species mentioned in Schedule 2;

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- (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 Unless otherwise stated, a term used in this Management Plan and in the Act has the same meaning in this Management Plan as it has in the Act. The following terms are defined in subsection 4 (1) of the Act:

- AFMA
- AFZ
- Australian boat
- coastal waters
- fish
- fishing
- fishing permit
- officer
- Panel
- precautionary principle
- processing
- Register
- scientific permit
- statutory fishing right
- take.

4 Origin of geographical coordinates

The origin of geographical coordinates used in this Management Plan is the World Geodetic System 1972 (WGS72).

5 Objectives (Act s 17 (5))

The objectives of this Management Plan are:

- (a) to manage the fishery efficiently and cost-effectively for the Commonwealth; and
- (b) to ensure that the exploitation of the resources of the fishery and the carrying on of any related activities are conducted in a manner consistent with the principles of ecologically sustainable development and the exercise of the precautionary principle, and in particular, the need to have regard to the impact of fishing activities on non-target species and the long-term sustainability of the marine environment; and
- (c) to maximise economic efficiency in the exploitation of the resources of the fishery; and
- (d) to ensure AFMA's accountability to the fishing industry and to the Australian community in management of the resources of the fishery; and

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- (e) to reach Government targets for the recovery of the costs of AFMA in relation to the fishery; and
- (f) to ensure, through proper conservation and management, that the living resources of the AFZ are not endangered by over-exploitation; and
- (g) to achieve the best use of the living resources of the AFZ; and
- (h) to ensure that conservation and management measures in the fishery implement Australia's obligations under international agreements that deal with fish stocks, and other relevant international agreements.

6 Measures by which the objectives are to be attained (Act s 17 (5))

The measures by which the objectives of this Management Plan are to be attained include the following:

- (a) determining reference points for maintaining ecologically sustainable stocks of each target species;
- (b) setting the total allowable catch for each target species and each year in the fishery, as needed, to manage the species, taking account of information from SAFAG, SouthMAC and CCAMLR on appropriate harvest levels;
- (c) granting transferable statutory fishing rights for the fishery to eligible persons;
- (d) developing and implementing a management strategy to ensure that fishing is conducted in an ecologically sustainable way;
- (e) implementing long-term management arrangements that pursue economic efficiency for the fishery;
- (f) developing, implementing and reviewing the bycatch action plan mentioned in section 8;
- (g) ensuring that a fisheries assessment plan is developed and reviewed in accordance with section 9;
- (h) monitoring the impact of fishing on target species, species that are caught as bycatch, ecologically-related species and the marine environment, and implementing any related strategies that are necessary to ensure the sustainability of those species and the marine environment, and to ensure that bycatch limitations are not exceeded;
- (i) continually evaluating the mechanisms that have been put into place to monitor fishing against statutory fishing rights and the total allowable catch, and modifying those mechanisms, as necessary, to improve the monitoring;
- (j) periodically checking the accuracy and consistency of information kept in relation to the fishery;
- (k) issuing directions under subsection 31 (1) prohibiting the use of the fishery, or part of the fishery, during specified periods, telling the holders of statutory fishing rights about those directions, and requiring the holders to comply with the directions;

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- (l) preparing an annual budget of costs associated with managing the fishery, and setting and collecting levies and fees for the fishery;
- (m) periodically evaluating whether the range and extent of management services provided by AFMA are consistent with cost-effective management;
- (n) managing fishing operations in the fishery in a way that implements relevant CCAMLR Conservation Measures and complies with other relevant international agreements.

7 Performance criteria against which measures taken may be assessed (Act s 17 (5))

- (1) The performance criteria against which the measures taken may be assessed are:
 - (a) that the target species meet the sustainable reference points set for each target species; and
 - (b) that a total allowable catch is set for each target species for each fishing year, and that (unless provision is made for corresponding reductions in subsequent years) the amount of fish that may be taken in a fishing year is not exceeded in the year; and
 - (c) that transferable statutory fishing rights are granted to eligible persons; and
 - (d) that no more than 3 boats operate in the fishery at any time; and
 - (e) that effective strategies are in place to ensure that stocks of any depleted fish resources are being rebuilt; and
 - (f) that the catch of non-target species is reduced to, or kept at, a minimum, and below a level that will allow stocks of the species to be maintained at ecologically-sustainable levels; and
 - (g) that cost-effective and high quality research is carried out in relation to the fishery in accordance with a 5-year strategic research plan, the results of which are:
 - (i) included in the assessment process of the fishery; and
 - (ii) published in the assessment reports of the fishery; and
 - (iii) taken into consideration in determining the total allowable catch, and other management arrangements, in a fishing year; and
 - (h) that the monitoring required by the fisheries assessment plan developed under section 9 has been undertaken; and
 - (i) that data is collected and analysed in a timely manner to enable:
 - (i) evaluation of the effectiveness of the strategies to maintain or rebuild the resources of the fishery at, or to, an acceptable level; and
 - (ii) modification of those strategies; and
 - (j) that the cost-effectiveness of management is assessed periodically; and

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- (k) that the economic efficiency of the fishery is assessed periodically using economic data provided, on request, by statutory fishing right holders; and
 - (l) that the budgetary objectives of the fishery are achieved.
- (2) AFMA and SouthMAC must, at least once every 5 years, assess the effectiveness of the Plan including the measures taken to achieve the objectives of this Management Plan by reference to the performance criteria mentioned in subsection (1).
- (3) AFMA must include in its annual report for a financial year a statement of the extent to which the performance criteria mentioned in subsection (1) were met in the year.
- (4) Each year, SouthMAC must assess the extent to which the performance criteria mentioned in subsection (1) have been met in that year.

8 Bycatch (Act s 17 (6D))

- (1) AFMA must implement a bycatch action plan to ensure that bycatch is reduced to, or kept at, a minimum.
- (2) The bycatch action plan must ensure that:
 - (a) the total catch of non-target species is kept below a level that will allow stocks of the species to be maintained at an ecologically sustainable level; and
 - (b) all reasonable steps are taken to minimise incidental interactions with seabirds and marine mammals; and
 - (c) the ecological impacts of fishing operations on habitats in the area of the fishery are minimised and kept below an acceptable level.
- (3) 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.

Note Obligations have been placed on the holders of statutory fishing rights under paragraph 29 (1) (c) to ensure that bycatch is kept to a minimum.

9 Fisheries assessment plan

- (1) AFMA must develop and implement a fisheries assessment plan to ensure that an adequate program of monitoring takes place in the fishery.
- (2) The fisheries assessment plan must provide for:
 - (a) an adequate program of monitoring to ensure that reliable fisheries stock estimates can be made for each target species; and
 - (b) adequate monitoring of the direct impact of the fishery on non-target species and the ecosystem in the area of the fishery; and

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- (c) the allocation, before the beginning of each fishing year, of monitoring responsibilities to statutory fishing right holders in proportion to the numbers of statutory fishing rights they are likely to hold at the beginning of that fishing year.
- (3) In developing and implementing a fisheries assessment plan, AFMA must:
 - (a) consult, and have regard to the views of, SouthMAC, SAFAG and the holders of statutory fishing rights; and
 - (b) have regard to the 5-year strategic research plan mentioned in paragraph 7 (1) (g).

Part 2 Total allowable catch

10 Reference points

- (1) As soon as practicable after this Management Plan comes into force, AFMA must determine, for each target species, reference points that are appropriate for maintaining ecologically viable stocks of the target species and an ecologically sustainable fishery.
- (2) Each year, AFMA may review the reference points set under subsection (1) to ensure that they remain appropriate for maintaining ecologically viable stocks of the target species and an ecologically sustainable fishery.

11 Determination of total allowable catch

- (1) Before the beginning of each fishing year, AFMA must determine the total allowable catch for each species of fish for the fishing year.
- (2) Before deciding the total allowable catch for a species for a fishing year, AFMA:
 - (a) must take into account:
 - (i) the total allowable catch (if any) set by CCAMLR; and
 - (ii) the reference points determined under section 10; and
 - (b) must consult, and consider the views of:
 - (i) SouthMAC; and
 - (ii) SAFAG.
- (3) Before the beginning of each fishing year, AFMA must give to the holder of each statutory fishing right a notice stating:
 - (a) the total allowable catch for the species to which the right relates for the fishing year; and
 - (b) the quota allocated to the right for the fishing year.

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Part 3 Right to fish in the fishery

12 Who may fish in the fishery

Subject to section 15, a person may engage in fishing in the fishery only if the person:

- (a) holds, or is acting on behalf of another person who holds, at least 25.5% of the statutory fishing rights; and
- (b) is using the boat that is nominated for the statutory fishing rights.

Note Section 24 deals with the nomination of boats for statutory fishing rights.

13 Quantity of fish that may be taken

- (1) Subject to section 14, in a fishing year, a person who holds, or is acting on behalf of another person who holds, at least 25.5% of the statutory fishing rights must not take from the area of the fishery an amount of fish of a target species greater than the quota allocated to those rights in relation to that species for the fishing year.
- (2) The quota allocated to a statutory fishing right for each target species and fishing year is worked out by dividing the total allowable catch for the species in the fishing year by the total number of statutory fishing rights in force for the species at the start of the fishing year.
- (3) In working out the quota allocation for a statutory fishing right in a fishing year, a statutory fishing right that is suspended under subsection 38 (1) or (3), or paragraph 98 (3) (d), of the Act is taken to be in force.
- (4) For subsection (1), a person may take fish of a target species from the area of the fishery only if, at the time the fish are taken, the person holds statutory fishing rights with a combined uncaught quota at least equal to the amount of fish taken.

14 Overcatch

- (1) This section applies to a person if:
 - (a) in a fishing year (the *first year*), the person takes an amount of fish of a target species that exceeds, by up to 20 tonnes, the quota allocated to the statutory fishing rights held by the person in the fishing year; and
 - (b) at the beginning of the following fishing year (the *second year*), the person holds statutory fishing rights that would, in the absence of this section, entitle the person to take an amount of fish of that species at least equal to twice the amount by which the person exceeded the quota mentioned in paragraph (a).

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- (2) If this section applies to a person, the person is taken to have taken, for section 13:
- (a) during the first year, an amount of fish equal to the quota allocated to the statutory fishing rights held by the person in the first year; and
 - (b) during the second year, an amount of fish of the species mentioned in paragraph (1) (a) equal to twice the amount by which the person exceeded the quota allocated to the statutory fishing rights held by the person in the first year, in addition to the amount of fish actually taken by the person in the second year.

15 Right to use a boat for scientific research

- (1) A person may use a boat in the area of the fishery for scientific research about the fishery only if the person is, or is acting for, the holder of a scientific permit that authorises the use of the boat in the area of the fishery for that purpose.

Note 1 See section 33 of the Act about the grant of a scientific permit.

Note 2 Scientific permits may be issued under the Act to cover research that does not target target species.

- (2) However, a person who holds a scientific permit and a statutory fishing right, or statutory fishing rights, may take fish of a target species from the area of the fishery only in accordance with section 13.

Part 4 Statutory fishing rights

Division 4.1 Registration of eligible persons for grant of statutory fishing rights

16 Conditions for registration — Schedule 2 target species (Act s 26)

- (1) Subsection (2) applies if AFMA publishes a notice, under section 24 of the Act, declaring that AFMA intends to grant statutory fishing rights for the target species mentioned in Schedule 2.
- (2) The conditions for registration as an eligible person for the grant of statutory fishing rights are that the person:
 - (a) applied for a permit under the Interim Management Policy or the 1998–2000 Management Policy; and
 - (b) either:
 - (i) if the person applied under 1 of the policies mentioned in paragraph (a) — met all of the essential requirements for a permit under that policy; or
 - (ii) if the person applied under both of the policies mentioned in paragraph (a) — met all of the essential requirements for a permit under either policy.

- (3) In this regulation:

essential requirements, in relation to either the Interim Management Policy or the 1998–2000 Management Policy, has the meaning given by that Policy.

Note 1 See section 24 of the Act about publication of a notice by AFMA declaring that AFMA intends to grant statutory fishing rights for fishing in a managed fishery.

Note 2 An application for registration as an eligible person for the grant of a statutory fishing right must be made within the period stated in a notice published under section 24 of the Act: see paragraph 25 (f), and subsection 26 (1), of the Act.

Note 3 Under subsection 26 (2) of the Act, AFMA must register as an eligible person an applicant for registration who meets the conditions for registration and who has paid the prescribed fee (if any). At present there is no prescribed fee.

Note 4 A decision under subsection 26 (2) of the Act is subject to reconsideration under section 165 of the Act: see subsection 165 (2). Application may be made to the Administrative Appeals Tribunal for review of a decision under section 165 of the Act: see subsection 165 (7).

Division 4.2 Grant of statutory fishing rights

17 Provisional grants — Schedule 2 target species (Act s 23)

- (1) This section applies to a person who is registered as an eligible person for the grant of statutory fishing rights for the target species mentioned in Schedule 2.
- (2) If the person did not hold a permit under either the Interim Management Policy or the 1998–2000 Management Policy, AFMA must make a provisional grant to the person of 2 700 statutory fishing rights for each target species mentioned in Schedule 2.
- (3) If the person held a permit under the Interim Management Policy, AFMA must make a provisional grant to the person of 6 000 statutory fishing rights for each target species mentioned in Schedule 2.
- (4) If the person held a permit under the 1998–2000 Management Policy, AFMA must, in addition to any grant under subsection (3), make a provisional grant to the person of 7 650 statutory fishing rights for each target species mentioned in Schedule 2.

Note See:

- (a) section 23 of the Act about the provisional grant of a statutory fishing right; and
- (b) Part 8, Division 3 of the Act about review by the statutory fishing rights Allocation Review Panel.

18 Request for grant — Schedule 2 target species (Act s 31)

- (1) AFMA may grant a statutory fishing right for a target species mentioned in Schedule 2 to a person only if:
 - (a) a notice mentioned in subsection 23 (2) of the Act stating that the person is to be granted the right is published in the *Gazette* (the ***Gazette notice***); and
 - (b) the person asks AFMA to make the grant.

Note Under subsection 23 (3) of the Act, AFMA must not grant a statutory fishing right:

- (a) until the end of the period within which applications may be made to the Panel for review of provisional grants; or
 - (b) if an application has been made to the Panel — before the application has been dealt with by the Panel or otherwise disposed of.
- (2) If the person does not make the request within 30 days after the *Gazette notice* is published, AFMA must send a notice (the ***reminder notice***) to the person telling the person that the person must make the request within a period stated in the notice.

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- (3) If the person does not make the request within the period stated in the reminder notice, AFMA must send another notice (the *final notice*) to the person stating that the person's registration will be cancelled if the person does not, within 14 days after the final notice is sent:
 - (a) make the request; and
 - (b) explain why the person did not make the request within the period stated in the reminder notice.
- (4) AFMA must cancel the person's registration as an eligible person if, despite a final notice, the person does not:
 - (a) make the request within 14 days after the final notice is sent; and
 - (b) satisfy AFMA that the person had a reasonable excuse for not making the request within the period stated in the reminder notice.
- (5) If AFMA cancels a person's registration as an eligible person, AFMA must amend its records accordingly.

Note 1 AFMA must grant a statutory fishing right to a person to whom the grant of the right is available if the person asks AFMA to grant the right: see section 31 of the Act.

Note 2 A decision under section 31 of the Act (other than a decision following an auction, tender or ballot) is subject to reconsideration under section 165 of the Act: see subsection 165 (2). Application may be made to the Administrative Appeals Tribunal for review of a decision under section 165 of the Act: see subsection 165 (7).

Note 3 A statutory fishing right ceases to have effect if AFMA revokes this Management Plan: see subsections 20 (4) and 22 (3) of the Act.

Note 4 AFMA must register all statutory fishing rights granted: see section 45 of the Act.

19 Certificate showing grant (Act s 22 (2))

- (1) AFMA must note the following details on the certificate for a statutory fishing right:
 - (a) the name of the person to whom the right is granted;
 - (b) a description of the right;
 - (c) that the right is granted for the fishery;
 - (d) the conditions to which the right is subject.
- (2) A certificate may show the grant of more than 1 statutory fishing right to a person.
- (3) AFMA must give to a person to whom a statutory fishing right is granted an extract of the Register:
 - (a) that states the conditions to which the right is subject; and
 - (b) that is signed for AFMA by a person having authority to sign it.

Note Section 45 of the Act provides that AFMA must enter certain information in the Register for each statutory fishing right that it grants, including such particulars as are prescribed. The *Fisheries Management (Heard Island and McDonald Islands Fishery) Regulations 2002* prescribe details that must be entered in the Register in relation to a nominated boat.

Division 4.3 Additional target species

20 Declaration of additional target species

- (1) Subject to subsection (2), AFMA may, by notice published in the *Gazette*, declare that a species mentioned in Schedule 3 is a target species.
- (2) Before making a declaration, AFMA must:
 - (a) consult, and consider the views of, CCAMLR, SouthMAC and SAFAG; and
 - (b) assess the stock of the species in the area of the fishery, and be satisfied that the species can be harvested in a sustainable manner.

21 Conditions for registration — additional target species (Act s 26)

- (1) Subsection (2) applies if AFMA publishes a notice, under section 24 of the Act, declaring that AFMA intends to grant statutory fishing rights for a species mentioned in Schedule 3.
- (2) The condition for registration as an eligible person for the grant of statutory fishing rights for the species mentioned in the notice is that the person owns a statutory fishing right, or statutory fishing rights, for an existing target species.

Note 1 See section 24 of the Act about publication of a notice by AFMA declaring that AFMA intends to grant statutory fishing rights for fishing in a managed fishery.

Note 2 An application for registration as an eligible person for the grant of a statutory fishing right must be made within the period stated in a notice published under section 24 of the Act: see paragraph 25 (f), and subsection 26 (1), of the Act.

Note 3 Under subsection 26 (2) of the Act, AFMA must register as an eligible person an applicant for registration who meets the conditions for registration and who has paid the prescribed fee (if any). At present there is no prescribed fee.

Note 4 A decision under subsection 26 (2) of the Act is subject to reconsideration under section 165 of the Act: see subsection 165 (2). Application may be made to the Administrative Appeals Tribunal for review of a decision under section 165 of the Act: see subsection 165 (7).

22 Provisional grants — additional target species (Act s 23)

- (1) If AFMA makes a declaration under section 20 in relation to a species, AFMA must make a provisional grant, of the number of statutory fishing rights for that species worked out in accordance with subsections (2) and (3), to each person who holds statutory fishing rights for an existing target species when AFMA makes the declaration.
- (2) The total number of statutory fishing rights granted under this section for a species must equal the average of the total number of statutory fishing rights held for each existing target species when AFMA makes the declaration.

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- (3) The statutory fishing rights for the additional target species must be allocated to each person who holds statutory fishing rights for an existing target species in proportion to the total number of statutory fishing rights that the person holds when AFMA makes the declaration.

23 Request for grant — additional target species (Act s 31)

If AFMA makes a provisional grant of a statutory fishing right to a person under subsection 22 (1), section 18 applies to the right as if it were a right for a target species mentioned in Schedule 2.

Division 4.4 Nomination of boat

24 Nomination of boat

- (1) The holder of a statutory fishing right may apply to AFMA, in the approved form, for an eligible boat to be entered in the Register as the nominated boat for the person.
- (2) If AFMA receives an application under subsection (1) from the holder of a statutory fishing right, AFMA must:
- (a) enter in the Register, in relation to the nominated boat, the details required by the *Fisheries Management (Heard Island and McDonald Islands Fishery) Regulations 2002* to be entered in the Register; and
 - (b) give the holder an extract of the Register that:
 - (i) states the conditions to which the right is subject; and
 - (ii) states the name and identification code of the nominated boat; and
 - (iii) is signed for AFMA by a person having authority to sign it.
- (3) However, AFMA must not register a boat as the nominated boat for a person if:
- (a) the boat is registered as the nominated boat for another person; or
 - (b) the person holds less than 51% of the statutory fishing rights and another boat is registered as the nominated boat for the person; or
 - (c) the person holds 51% or more, but less than 76.5%, of the statutory fishing rights, and 2 other boats are registered as nominated boats for the person; or
 - (d) the person holds 76.5% or more of the statutory fishing rights, and 3 other boats are registered as nominated boats for the person.

Division 4.5 Transfer and lease of statutory fishing rights

25 Approving transfers (Act s 49)

- (1) The owner of a statutory fishing right (the *transferor*) may apply to AFMA, in the approved form, for approval to transfer the right to someone else (the *transferee*).
- (2) An application for approval to transfer a statutory fishing right to someone else must be accompanied by:
 - (a) the certificate for the right; or
 - (b) a statement, signed by the holder, that the certificate is not available, including the reason why the certificate is not available.
- (3) AFMA must not approve the transfer of a statutory fishing right:
 - (a) if proceedings for an offence under the Act, or regulations made under the Act, have begun against the transferor and have not been decided; or
 - (b) if an application for registration of another interest in the right has been received by AFMA before the application for transfer is received, and has not been dealt with; or
 - (c) if a person registered as having an interest in the right has not agreed, in writing, to the transfer; or
 - (d) if the right has been suspended under subsection 38 (1) or (3), or paragraph 98 (3) (d), of the Act; or
 - (e) if AFMA:
 - (i) knows of a ground for suspension of the right under subsection 38 (1) or (3) of the Act or cancellation of the right under section 39 of the Act; and
 - (ii) has not decided whether to suspend or cancel the right; or
 - (f) if AFMA has decided to suspend or cancel the right, and:
 - (i) the period within which review of that decision may be applied for has not ended; or
 - (ii) an application has been made for review of that decision, and the application has not been decided; or
 - (g) within the period beginning 14 days before the issue of a levy invoice and ending when the levy is paid.
- (4) If any monitoring responsibilities allocated to the transferor under paragraph 9 (2) (c) are not fulfilled before the transfer, those responsibilities are transferred to the transferee in proportion to the number of statutory fishing rights of the transferor that are transferred to the transferee.

Section 26

- (5) In this section:

transfer does not include lease.

Note 1 AFMA may decline to approve the transfer of a statutory fishing right only if the transfer would be contrary to this Management Plan or a condition of the right: see subsection 49 (2) of the Act.

Note 2 A decision under section 49 of the Act is subject to reconsideration under section 165 of the Act: see subsection 165 (2). Application may be made to the Administrative Appeals Tribunal for review of a decision under section 165 of the Act: see subsection 165 (7).

Note 3 The right to transfer a statutory fishing right is subject to a condition stated in the certificate for the right: see paragraph 22 (4) (a) of the Act.

26 Amendment of certificates

- (1) This section applies if AFMA approves the transfer of a statutory fishing right under section 25.
- (2) If the transferor has not transferred all of the rights shown on the certificate for the right, AFMA must amend the certificate to show the transfer of the right to the transferee, and return it to the transferor.
- (3) If the transferee has lodged a certificate for a statutory fishing right with AFMA, AFMA must amend the certificate to show the transfer of the right to the transferee, and return it to the transferee.
- (4) If the transferor has not lodged a certificate for a statutory fishing right with AFMA, AFMA must give the transferee a certificate showing that the transferee is the holder of the right.

Note See section 46 of the Act about the requirement to register the transfer of an interest in a statutory fishing right.

27 Leases

- (1) If, in a fishing year, the holder of a statutory fishing right (the ***lessor***) leases the right to someone else (the ***lessee***), the holder must give AFMA written notice about the lease, in the approved form.
- (2) A lease of a statutory fishing right has effect, for this Management Plan, only if all levy payable for the right has been paid.
- (3) The lease has effect, for this Management Plan, only for:
 - (a) the fishing year in which the lease is granted; or
 - (b) if a shorter period is mentioned in the instrument of lease — the period mentioned.

- (4) If any monitoring responsibilities allocated to the lessor under paragraph 9 (2) (c) for the fishing year in which the lease is granted are not fulfilled before the lease is granted, those responsibilities are transferred to the lessee in proportion to the number of statutory fishing rights of the lessor that are leased to the lessee.

Note See section 46 of the Act about the requirement to register a dealing with a statutory fishing right.

Part 5 Fishing in the fishery

Division 5.1 Obligations of holders of statutory fishing rights

28 Environmental requirements

- (1) It is a condition of a statutory fishing right that the holder must, while in the area of the fishery:
- (a) take all reasonable steps to avoid losing any gear or other non-biodegradable items from the boat; and
 - (b) tell AFMA, in writing, about any loss of gear or other non-biodegradable item within 48 hours after the loss (including details of the quantity and description of the lost item, the time, date and position at which it was lost, and the circumstances surrounding the loss); and
 - (c) ensure that no poultry products (including eggs or egg shells) or brassicas (for example, broccoli, cabbage, cauliflower, brussels sprouts or kale) are discharged from the boat; and
 - (d) subject to subsection (4) and any conditions attached to the statutory fishing right, ensure that no offal or bycatch is discharged from the boat; and
 - (e) subject to subsection (5), ensure that no fish meal is discharged from the boat; and
 - (f) ensure that the amount of light showing from the boat does not exceed the amount necessary for the safe operation of the boat; and
 - (g) take all reasonable steps to minimise the risk and severity of collision with sea birds and marine mammals, and comply with any reasonable direction of an observer to minimise such risk; and
 - (h) if asked to do so by AFMA, and if possible, take the carcass, or any parts of the carcass, of a sea bird or marine mammal killed in an incident involving the boat to a place nominated by AFMA; and
 - (i) ensure that, if possible, plastic packing bands are not used to secure items on board the boat, unless the bands are an essential part of the boat's gear; and
 - (j) if items secured by plastic packing bands are brought on board the boat, and those bands are removed, ensure that:
 - (i) they are cut so that they do not form a continuous loop; and
 - (ii) they are incinerated at the earliest opportunity; and
 - (iii) any plastic residue from the incinerator is stored on board the boat and disposed of on reaching port.

Section 29

- (2) It is also a condition of a statutory fishing right that the holder must not, while in the area of the fishery, target species of marine life other than target species.
- (3) For paragraph (1) (b), the holder is not taken to have complied with the paragraph unless AFMA has replied, in writing, saying that the holder's transmission has been fully received and is legible.
- (4) If, because of a mechanical breakdown of the meal plant, it is not practicable to retain all offal and bycatch on board the boat, the holder:
 - (a) may discharge offal or bycatch from the boat; and
 - (b) must:
 - (i) tell AFMA, in writing, about the breakdown and discharge of offal within 48 hours after it becomes necessary to discharge offal; and
 - (ii) take all reasonable steps that are necessary to ensure that birds and mammals are not attracted to the boat during discharge; and
 - (iii) comply with regulations made for the purpose of this subsection; and
 - (c) must, if he or she can practicably do so, discharge the offal or bycatch whole, and at night.
- (5) If a batch of fish meal contains more than 10.5% moisture or the holder reasonably believes that there is a risk that the batch will spontaneously ignite, the holder:
 - (a) may discharge the batch of meal, but not the container in which it is stored, from the boat; and
 - (b) must comply with regulations made for the purpose of this subsection.

29 Contingency arrangements — injury to, or death of, sea bird or marine mammal

- (1) It is a condition of a statutory fishing right that, if the nominated boat is involved in an incident that results in an injury to, or the death of, a sea bird or marine mammal, the holder must:
 - (a) either:
 - (i) if the bird or mammal is injured — do everything that can practicably be done to give aid to the bird or mammal; or
 - (ii) if the bird or mammal is dead — attempt to retrieve its carcass, and carry out the action mentioned in subsection (2); and
 - (b) immediately tell the observer on board the boat about the incident, and allow the observer to observe the consequences of the incident; and
 - (c) tell AFMA, in writing in the approved form, about the incident within 24 hours after the incident.

Section 30

- (2) For subparagraph (1) (a) (ii), the required action is:
- (a) if it is possible to do so without contaminating fish products on board the boat, keep the carcass until it is possible to send it to a place in Australia nominated by AFMA; or
 - (b) otherwise:
 - (i) provide whatever assistance is necessary for the observer to:
 - (A) take photographs or video footage of the dead bird or mammal; and
 - (B) keep whatever parts of the carcass the observer believes are necessary; and
 - (C) collect any other data, or make any other observations, requested by AFMA; and
 - (ii) discharge the remains of the carcass from the boat in a manner that does not attract birds or mammals to the boat.

30 Other obligations of holders of statutory fishing rights

- (1) It is a condition of a statutory fishing right that the holder must:
- (a) comply with this Management Plan, and any Regulations made for the purposes of this Management Plan; and
 - (b) comply with any direction made under subsection 31 (1); and
 - (c) take reasonable measures to ensure that the following are kept to a minimum:
 - (i) the catch of target species not taken in accordance with this Management Plan;
 - (ii) the incidental catch of species other than target species;
 - (iii) the impact of fishing operations on the marine environment; and
 - (d) comply with the fisheries assessment plan developed under section 9; and
 - (e) subject to subsection (2), carry 2 observers on board the nominated boat when taking fish under the statutory fishing right; and
 - (f) if AFMA asks the holder to give AFMA reasonable access to biological, economic or technical information, or biological samples that are available to the holder — give AFMA reasonable access to the information or samples; and
 - (h) carry on board the nominated boat a copy of the extract from the Register mentioned in paragraph 24 (2) (b) that states the name and identification code for the boat; and
 - (i) have an approved ICVMS fitted to the nominated boat, and operating, at all times when the boat is at sea.
- (2) AFMA may give the holder of a statutory fishing right permission to take fish under the statutory fishing right with only 1 observer on board the nominated boat.

- (3) AFMA may give to the holder of a statutory fishing right permission under subsection (2) only if:
 - (a) the requirements set out in Regulations made for the purposes of this subsection are met; and
 - (b) AFMA is satisfied that the holder has operated, and will continue to operate, in an environmentally responsible manner.
- (4) If AFMA gives the holder of a statutory fishing right permission under subsection (2), it is a condition of the statutory fishing right that the holder must carry 1 observer on board the nominated boat when taking fish under the statutory fishing right.

Note 1 Other conditions of a statutory fishing right are set out on the certificate for the right. These include bycatch limits, reporting requirements and conditions regarding AFMA's vessel monitoring system. As new monitoring technologies are developed, the conditions may also include conditions regarding the use of those technologies.

Note 2 The holder of a statutory fishing right must also comply with relevant regulations, including the *Fisheries Management Regulations 1992*, the *Fisheries Management (Heard Island and McDonald Islands Fishery) Regulations 2002* and the annual Levy Regulations.

Note 3 See section 42 of the Act and Part 9 of the *Fisheries Management Regulations 1992* about the requirement to keep a logbook. If the holder of a statutory fishing right does not keep a logbook under Part 9 of those Regulations, AFMA may issue an infringement notice under Part 10 of those Regulations or suspend the operation of the statutory fishing right.

Note 4 See also subsections 22 (3), (4) and (5) of the Act for other conditions to which a statutory fishing right is subject.

Note 5 See section 38 of the Act about AFMA's power to suspend a statutory fishing right if it has reasonable grounds to believe that there has been a contravention of a condition of the right.

Division 5.2 Directions not to engage in fishing

31 Directions by AFMA (Act s 17 (5A))

- (1) AFMA may direct that fishing is not to be engaged in in the fishery, or in a part of the fishery, in a stated period.

Note If AFMA gives a direction for a part of the fishery, the direction may identify the part in any way, including by reference to an area, a target species, a kind or quantity of fishing equipment, a method of fishing, or a combination of those ways: see subsection 17 (5B) of the Act.

- (2) Before giving a direction, AFMA must consult, and consider the views of:
 - (a) SouthMAC; and
 - (b) SAFAG;about the content of the direction.
- (3) At least 7 days before a direction takes effect, AFMA must tell the holders of statutory fishing rights and scientific permits for the fishery, in writing, about the direction.

Section 31

- (4) However, if a direction is made in an emergency:
 - (a) subsections (2) and (3) do not apply; and
 - (b) AFMA must tell the holders of statutory fishing rights and scientific permits for the fishery, in writing, about the direction as soon as it can practicably do so.
- (5) The holder of a statutory fishing right for the fishery must comply with a direction made under this section.

Note The holder of a statutory fishing right must comply with obligations imposed under paragraph 17 (6) (g) of the Act: see sections 22 and 95 of the Act.

Part 6 Miscellaneous

32 Certificates

- (1) If a certificate issued by AFMA for a statutory fishing right is lost, stolen, destroyed or is otherwise not available to the owner of the right, the owner may ask AFMA, in writing, to give to the owner a replacement certificate.
- (2) The request must include:
 - (a) a statement explaining why the certificate is unavailable; and
 - (b) an agreement that the owner will surrender it to AFMA if it becomes available.

33 Delegation

AFMA may, by writing under its common seal, delegate to an employee of AFMA any of its powers or functions under this Management Plan, except its powers under sections 11 and 31, and this section.

Note See subsection 17 (11) of the Act about the delegation of powers under sections 11 and 31.

34 Agents

- (1) If the holder of a statutory fishing right appoints a person to be the holder's agent for a matter to which this Management Plan applies, the holder must give AFMA a notice that states:
 - (a) the name of the agent; and
 - (b) the powers that may be exercised by the agent.
- (2) A notice must be accompanied by the instrument, or a certified copy of the instrument, by which the holder appointed the agent.
- (3) For this Management Plan, the appointment of an agent by the holder of a statutory fishing right is of no effect unless AFMA has been told about the appointment under subsection (1).
- (4) In deciding an application under this Management Plan:
 - (a) AFMA may assume that a notice given under this section is properly given; and
 - (b) AFMA need not verify, by other means, the authority of the agent to make the application.

Section 35

35 Notices

- (1) In this section:
- residential, office, postal or e-mail address*, or *facsimile number*, for the holder of a statutory fishing right, means the holder's residential, office, postal or e-mail address, or facsimile number, stated in the Register.
- notice* means a notice that is required, or allowed, by this Management Plan to be given in writing.
- (2) A notice to the holder of a statutory fishing right is taken to be given to the holder if it is:
- (a) delivered to the holder's residential or office address; or
 - (b) posted to the holder's postal address; or
 - (c) sent by facsimile to the holder's facsimile number; or
 - (d) sent by e-mail to the holder's e-mail address.
- (3) A notice to AFMA must be addressed to the Manager, Antarctic Fisheries, Australian Fisheries Management Authority, and:
- (a) delivered to the reception desk at:
John Curtin House
22 Brisbane Avenue
BARTON ACT; or
 - (b) posted to:
PO Box 7051
Canberra Business Centre
ACT 2610; or
 - (c) sent by fax (from within Australia) to:
(02) 6272 5167; or
 - (d) sent by fax (from outside Australia) to:
612 6272 5167; or
 - (e) sent by e-mail to:
himie@afma.gov.au; or
 - (f) delivered, posted or sent by fax or e-mail to another office address, postal address or facsimile number notified by AFMA by notice published in a newspaper circulating in the State or Territory in which the address or facsimile receiver is located.
- (4) A notice to a person is taken to have been given to the person if it is delivered, or sent by fax or e-mail, to the person's last known address.
- (5) A notice given to the holder of a statutory fishing right under this section is taken to have been given to the holder:
- (a) if the notice is delivered to the holder's residential or office address — on the day when it is delivered; and

Section 35

- (b) if the notice is sent by facsimile to the holder's facsimile number:
 - (i) on a working day between 9 am and 4 pm — 1 hour after the notice is sent; and
 - (ii) otherwise — at 9 am on the next working day after the day when the notice is sent.

Note Under subsection 160 (1) of the *Evidence Act 1995*, it is presumed (unless evidence is sufficient to raise doubt about the presumption is adduced) that a postal article sent by pre-paid post addressed to a person at a specified address in Australia or in an external Territory was received at that address on the fourth working day after having been posted.

- (6) In this section:

working day means a day that is not:

- (a) a Saturday or Sunday; or
- (b) a public holiday or a bank holiday in the place to which the notice is sent.

Section 36

Part 7 Transitional**36 Transitional**

- (1) This section ceases to have effect on the day specified in a notice published in the *Gazette* under subsection (2).
- (2) When the first statutory fishing rights granted under this Management Plan come into effect, AFMA must publish a notice in the *Gazette* stating that this section ceases to have effect on a day specified in the notice.
- (3) The day specified in a notice under subsection (2) must not be earlier than the day on which the notice is published.
- (4) Despite section 12, a person may engage in fishing in the area of the fishery if the person holds a fishing permit that is in force.
- (5) This Management Plan does not affect a fishing permit, or a condition to which the permit is subject.
- (6) This Management Plan does not prevent AFMA from granting or transferring a fishing permit.

Schedule 1 Area of the fishery

(section 3)

That part of the AFZ contained within the area bounded by a line beginning at 53° 14' 07" S, 60° 00' 00" E and running progressively:

- east along the parallel that passes through that point to its intersection with the meridian 67° 03' 20" E;
- north-easterly along the geodesic to 52° 42' 28" S, 68° 05' 31" E;
- north-easterly along the geodesic to 51° 58' 18" S, 69° 44' 02" E;
- north-easterly along the geodesic to 51° 24' 32" S, 71° 12' 29" E;
- north-easterly along the geodesic to 51° 03' 09" S, 72° 28' 28" E;
- north-easterly along the geodesic to 50° 54' 23" S, 72° 49' 21" E;
- north-easterly along the geodesic to 49° 49' 34" S, 75° 36' 08" E;
- north-easterly along the geodesic to 49° 24' 07" S, 76° 42' 17" E;
- east along the parallel that passes through that point to its intersection with the meridian 80° 00' 00" E;
- south along that meridian to its intersection with the parallel 55° 00' 00" S;
- west along that parallel to its intersection with the meridian 60° 00' 00" E;
- north along that meridian to the point of commencement.

Note Fishing in the waters within 12 nautical miles of either Heard Island or the McDonald Islands, except in accordance with a permit under section 15 of the *Environment Protection and Management Ordinance 1987* of the Territory of Heard Island and McDonald Islands, is prohibited by section 14 of that Ordinance. Paragraph 6.12 of the Heard Island Reserve Management Plan, made under section 8 of the Ordinance, states that permits will not be issued for fishing activity within those waters. Fishing in other waters within the area of the fishery may be prohibited by a direction under section 31.

Schedule 2 Target species

(section 3)

Item	Common name	Scientific name
1	Patagonian toothfish	<i>Dissostichus eleginoides</i>
2	Mackerel icefish	<i>Champsocephalus gunnari</i>

Schedule 3 Additional target species subject to declaration by AFMA

(sections 3 and 20)

Item	Common name	Scientific name
1	Grey rockcod	<i>Lepidonotothen squamifrons</i>
2	Unicorn icefish	<i>Channichthys rhinoceratus</i>
3	Rat tails or Grenadiers	<i>Macrourus</i> spp.