EXPLANATORY STATEMENT

**Issued by the Authority of the Australian Fisheries Management Authority**

*Fisheries Management Act 1991*

***Fisheries Management (Heard Island and McDonald Islands Fishery) (Closures) Direction 2019***

Subsection 41A(2) of the *Fisheries Management Act 1991* (the Management Act) relevantly provides that the Australian Fisheries Management Authority (AFMA) may, after such consultation as set out in subsection 41A(2), direct that fishing is not to be engaged in the fishery, or a particular part of the fishery, during a particular period or periods.

Paragraph 41A(2)(a) of the Management Act specifically provides that, before AFMA issues a Direction, it must consult with the management advisory committee for the relevant fishery. For the Direction, applicable to Heard Island and McDonald Islands Fishery (the Fishery), this means that the Sub-Antarctic Fisheries Management Advisory Committee (SouthMAC) about the content of the Direction unless the Direction is issued in circumstances of an emergency.

The *Fisheries Management (Heard Island and McDonald Islands Fishery) (Closures) Direction 2019* (the Direction) is a legislative instrument for the purposes of the *Legislation Act 2003*.

**The Fishery**

The Fishery surrounds the 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 Direction**

The Direction prohibits fishing targeting mackerel icefish (*Champsocephalus gunnari*) in any area of the Fishery outside of the Heard Island Plateau as defined in the Schedule to the Direction. This closure was agreed to by the Commission for the Conservation of Antarctic Marine Living Resources, of which Australia is a member, because mackerel icefish stocks are not considered sufficient to support commercial harvest outside the Heard Island Plateau.

The Direction also prohibits fishing in waters between 12 and 13 nautical miles of the Heard Island and McDonald Islands. This area is a buffer zone adjacent to the Inner Marine Zone of the Heard Island and McDonald Islands Marine Reserve.

The Direction repeals the Heard Island and McDonald Islands Fishery Direction (HIMIFD) Nos. 1 and 2 (the Previous Directions). The Direction continues the prohibition to targeting mackerel icefish contained within HIMIFD No.1 and the prohibition to fishing in the same area contained within HIMIFD No.2.

**Regulation Impact Statement**

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required for this Direction (OBPR ID: 14421).

**Statement of compatibility with human rights**

In accordance with section 9 of the *Human Rights (Parliamentary Scrutiny) Act 2011*, AFMA assesses that this legislative instrument is compatible with human rights. AFMA’s Statement of Compatibility is included at Attachment A below.

**Consultation**

In accordance with paragraph 41A(2)(a) of the Management Act, AFMA consulted with the SouthMAC on the Direction. SouthMAC was supportive of the Direction and its contents, as it did not make any changes from the previous HIMIFD No. 1 and HIMIFD No. 2.

Details of the Direction are set out below:

Section 1 Provides for the Direction to be cited as the *Fisheries Management (Heard Island and McDonald Islands Fishery) (Closures) Direction 2019*.

Section 2 Provides that the Direction commences on the day after registration on the Federal Register of Legislation.

Section 3 Provides that the Direction is made under subsection 41A(2) of the Management Act.

Section 4 Prescribes relevant definitions for the purpose of the Direction.

Section 5 Provides authority for the Schedules to the Direction.

Section 6 Provides that fishing:

* is not to be engaged in, targeting mackerel icefish, outside the part of the Fishery that is the Heard Island Plateau as described in Schedule 2 (subsection (1)); and
* is not to be engaged in waters between 12 and 13 nautical miles of the Heard Island and McDonald Islands (a buffer zone adjacent to the Inner Marine Zone of the Heard Island and McDonald Islands Marine Reserve) (subsection (2)).

Schedule 1 Revokes HIMIFD No. 1 and HIMIFD No. 2 from the date of commencement of the Direction.

Schedule 2 Describes the area of the Heard Island Plateau as relevant to the direction in subsection 6(1) of the Direction.

**Attachment A**

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

**Issued by authority of the Australian Fisheries Management Authority**

***Fisheries Management (Heard Island and McDonald Islands Fishery) (Closures) Direction 2019***

This legislative instrument is compatible with 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**

The *Fisheries Management (Heard Island and McDonald Islands Fishery) (Closures) Direction 2019* establishes the closure of parts of the Heard Island and McDonald Islands Fishery, as defined by the *Heard Island and McDonald Islands Fishery Management Plan 2002*.

Specifically, the instrument directs that fishing is not to be engaged in:

* targeting mackerel icefish in any area of the Fishery outside of the Heard Island Plateau as defined in Schedule 2 to the Direction. This closure was recommended by the Commission for the Conservation of Antarctic Marine Living Resources because mackerel icefish stocks are not considered sufficient to support commercial harvest outside the Heard Island Plateau (subsection 6(1) of the legislative instrument); and
* in the area between 12 and 13 nautical miles from the coastline of the Heard Island and McDonald Islands (subsection 6(2)).

The legislative instrument also revokes the *Heard Island and McDonald Islands Fishery (Closures) Direction No. 1 2014* and the *Heard Island and McDonald Islands Fishery (Closures) Direction No. 2 2014*.

**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.