**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 2024***

Section 17 of the *Fisheries Management Act 1991* (**the FM Act**) provides for the Australian Fisheries Management Authority (**AFMA)** to determine plans of management for a fishery.

Paragraph 17(6)(aa) of the Act provides that a plan of management for a fishery may determine, or provide for AFMA to determine, the fishing capacity, measured by that method or those methods, permitted for the fishery or part of the fishery in respect of a particular period or periods.

Subsection 11(1) of the *Heard Island and McDonald Islands Fishery Management Plan 2002* (**the Management Plan**) provides that before the beginning of each fishing year, AFMA must determine the total allowable catch (**TAC**) for each species of fish for the fishing year. Subsection 11(2) of the Management Plan states that before the beginning of each fishing year, AFMA may determine a limit to the amount of any other species (including a limit that is a total for a number of species) that may be taken from the Heard Island and McDonald Islands fishery (**the Fishery**) in the fishing year. ‘Fishing year’ is defined in the section 3 of the Management Plan as a period of 12 months beginning on 1 December in any year.

The *Heard Island and McDonald Islands Fishery (Total Allowable Catch) Determination 2024* (**the Determination**) determines the TAC for target species and catch limits for other species for the Fishery for the 2024/2025 fishing year. The target species are Patagonian toothfish (*Dissostichus eleginoides*) and Mackerel icefish (*Champsocephalus 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.

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

**The Fishery**

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.[[1]](#footnote-2) 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 FM Act. SFRs granted under the FM 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 calculated 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 TAC and any other catch limits for a fishing year, AFMA:

a)     must take into account:

1. the TAC (if any) set by the Commission for the Conservation of Antarctic Marine Living Resources (**CCAMLR**), and
2. 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 and considered the views of, the Sub-Antarctic Resource Assessment Group (**SARAG**) and the Sub-Antarctic Management Advisory Committee (**SouthMAC**), before determining the TAC for target species and catch limits for other species in the Fishery.

CCAMLR, at its 43rd meeting convened 14-25 October 2024, set catch limits for Patagonian toothfish and Mackerel icefish for 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 SARAG provides scientific advice on TACs for the Fishery. 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 2024, the Australian Antarctic Division (**AAD**) prepared a stock assessment for Patagonian toothfish and Mackerel icefish for the Fishery. AFMA provided the stock assessment to SARAG and SouthMAC for consideration. SARAG, at its 71st meeting on 28-29 August 2024, recommended the rollover of the current precautionary TAC for Patagonian toothfish to SouthMAC to consider. SARAG recommended a 1,824 t TAC for Mackerel icefish in 2024-25 fishing year and no changes to the current bycatch limits.  Advice from SARAG was considered by SouthMAC (comprising scientific, industry, conservation policy and management stakeholders) when it met on 5 November 2024, which subsequently recommended TACs for each quota species and bycatch limits for other species caught to the AFMA Commission.

SouthMAC took into account broader considerations in order to recommend a TAC. These include the Commonwealth Fisheries Harvest Strategy Policy[[2]](#footnote-3), 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 12-13 November 2024 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.

As required under subsection 11(4) of the Management Plan, before the beginning of the fishing year commencing on 1 December 2024, AFMA will give the holder of each statutory fishing right a notice of this Determination and the quota allocated to the right for the fishing year.

**Impact Analysis**

The Office of Impact Analysis advised that a detailed Impact Analysis is not required for this determination, which is consistent with the carve-out agreement in place to cover all regulatory changes are of a minor or machinery nature (OIA reference no. OIA23-06107).

**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.

**The Commission’s Decision**

At its meeting on 12-13 November 2024, the AFMA Commission determined TACs for two quota species and all other species taken from the Fishery in the 2024-25 fishing year. In making its decision, the Commission took into account each of the matters specified in subsection 11(3) of the Management Plan. The Commission is satisfied that the determination is consistent with AFMA’s obligation to pursue its statutory objectives, specified in section 3 of the FM Act and section 6 of the *Fisheries Administration Act 1991* (**the 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 (paragraphs 3(1)(b) of the FM Act and 6(b) of the FA Act).

Details of the Instrument are set out below:

***Clause 1*** provides that the name of the Determination is the *Heard Island and McDonald Islands Fishery (Total Allowable Catch) Determination 2024.*

***Clause 2*** provides that the Determination commences on 1 December 2024.

***Clause 3*** provides that the Determination is made pursuant to paragraph 17(6) (aa) of the FM Act and

 under section 11 of the Management Plan.

***Clause 4*** provides that a number of the expressions used in this instrument are defined in section 3 of the Management Plan, including the following:

1. **fishing year** means a period of 12 months beginning on 1 December in any year;
2. **Fishery** means the Heard Island and McDonald Islands Fishery**;**
3. **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; and

1. **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*.*

***Clause 5*** provides that the Determination ceases on 30 November 2025.

***Clause 6*** determines the total allowable catch for target species and the catch limits for other species in the Fishery for the 2024-2025 fishing year.

**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 2024***

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**

The Determination determines the Total Allowable Catch for two quota species: Patagonian toothfish and Mackerel icefish for the Fishery for the 2024-25 fishing year. The Instrument also determines the the catch limits for other species taken from the Fishery in the 2024-25 fishing year.

**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.

1. Pursuant to Paragraph 15J(2)(c) of the Legislation Act 2003 this instrument incorporates the Convention on the Conservation of Antarctic Marine Living Resources as it applies on the date this legislative instrument commences. This Convention could in 2024 be viewed free of charge on the Federal Register of Legislation at https://www.ccamlr.org/en/system/files/e-pt1\_3.pdf [↑](#footnote-ref-2)
2. Paragraph 15J(2)(c) of the Legislation Act 2003 this instrument incorporates the document titled “Commonwealth Fisheries Harvest Strategy Policy and Guidelines” as it applies on the date this legislative instrument commences. This document could in 2024 be viewed free of charge on the Department of Agriculture, Fisheries and Forestry website at https://www.agriculture.gov.au/agriculture-land/fisheries/domestic/harvest\_strategy\_policy. [↑](#footnote-ref-3)