EXPLANATORY STATEMENT

Select Legislative Instrument 2005 No. 19

LEGISLATIVE INSTRUMENT

Issued by the authority of the Minister for Fisheries, Forestry and Conservation

*Fisheries Management Act 1991*

*Fisheries Management Amendment Regulations 2005 (No. 1)*

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Subsection 168(1) of the *Fisheries Management Act 1991* (the Act) provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed, in carrying out or giving effect to the Act.

Following a spate of catches of endangered albatrosses off the east coast of Australia at the end of 2004, some north of the parallel of 30º South, the Australian Fisheries Management Authority (AFMA) has reviewed the provisions of the *Fisheries Management Regulations 1992* (the Principal Regulations) in relation to the incidental catch of seabirds. These provisions are contained in Divisions 1 and 2 of Part 12 of the Principal Regulations (comprising Regulations 68 – 74 inclusive). Schedule 3D is also relevant, prescribing certain apparatus for the purposes of Divisions 1 and 2 of Part 12.

The bycatch mitigation practice which most effectively addresses catches of endangered albatrosses is currently prescribed and enforceable only in waters south of latitude 30º South. The practice can only be recommended for use in waters north of that latitude.

In order for AFMA to manage the issue of seabird bycatch more flexibly and responsively it is intended that the relevant measures prescribed by the Principal Regulations be incorporated, as required, as conditions to fishing permits granted under the Act. This will allow AFMA the flexibility to implement immediate mitigation measures when necessary, not only in southern waters, in order to counter the threat of longline fishing to seabirds. In so doing, AFMA Management will have the capacity to manage the issue of seabird bycatch with a far greater degree of responsiveness in accordance with available data and scientific advice.

The Regulations therefore omitted Divisions 1 and 2 of Part 12 and Schedule 3D to the Principal Regulations. The Regulations remove any ambiguity about the operation of the Principal Regulation and facilitate enforcement of bycatch mitigation practices ‘through uniformity of approach. They are not a prerequisite to the inclusion of measures as conditions in fishing permits.
The amendments have been endorsed by the Eastern Tuna Management Advisory Committee and a subset of the Threat Abatement Team, known informally as the Pelagic Bycatch Group. These groups include a wide range of representatives from Commonwealth and State Government Departments, non-government organisations, commercial industry and the recreational sector.

The Office of Regulation Review advised that a Regulation Impact Statement is not mandatory on the basis that the proposal is of a minor or machinery nature and does not substantially alter existing arrangements (ID 7078).

The Act does not specify any conditions as needing to be met before the power to make the proposed Regulations may be exercised.

Details of the Regulations, which are to commence on 1 March 2005, are set out below.

**Regulation 1** provides for the Regulations to be cited as the *Fisheries Management Amendment Regulations 2005 (No. 1)*

**Regulation 2** provides that the Regulations commence on 1 March 2005.

**Regulation 3** provides that Schedule 1 amends the Principal Regulations.

**Schedule 1** Item 1 omits Part 12, Divisions 1 and 2 of the Principal Regulations.

**Schedule 1** Item 2 omits Schedule 3D of the Principal Regulations.