EXPLANATORY STATEMENT

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

Imported Food Control Act 1992

Imported Food Control Amendment Order 2007 (No. 1)

Section 43 of the Imported Food Control Act 1992 (the Act) provides that the Governor-General may make regulations prescribing matters required or permitted to be prescribed by the Act or necessary or convenient to be prescribed for carrying out or giving effect to the Act. Subsection 16(1) of the Act provides that regulations may set out particulars of a food inspection scheme applicable to all food to which the Act applies.

Subsection 16(2)(a) of the Act provides that the regulations may empower the Minister, subject to consultation with Food Standards Australia New Zealand (FSANZ), to make orders identifying food of particular kinds as food of a kind that is to be inspected or inspected and analysed, under the food inspection scheme. The Imported Food Control Regulations 1993 (the Regulations) set out the particulars of a food inspection scheme and provide for the Minister to make orders.

The Imported Food Inspection Scheme (the scheme) set out in the Regulations is administered by the Australian Quarantine and Inspection Service (AQIS). The purpose of the scheme is to ensure that food imported into Australia meets the standards set out in the Australia New Zealand Food Standards Code (the Code) as developed by FSANZ. Under the scheme, the rate at which imported food is referred to AQIS by the Australian Customs Service (ACS) and the rate at which AQIS inspects the food that is referred depends on the risk classification given to food in the Regulations and the Orders. FSANZ routinely undertakes risk assessments on imported foods and provides advice to AQIS concerning their classification under the scheme.

The scheme recognises three risk classifications for food. Food considered to be the highest risk is classified as risk food, food considered to be at the next level of risk is classified as active surveillance food while the food that is considered to be the lowest risk is classified as random surveillance food. Under regulation 11 of the Regulations food that is not classified as risk food or as active surveillance food is automatically classified as random surveillance food. The Imported Food Control Order 2001 (the Principal Order) lists food that is ‘risk food’ and ‘active surveillance food’. However, active surveillance food or random surveillance food that is the subject of a holding order made by the Secretary under section 15 of the Act is, pursuant to regulation 23 of the Regulations, treated as risk food. The scheme operates on a risk and performance-based approach to food imports, using end-point inspection and testing to determine the compliance with the Code.

The purpose of the Imported Food Control Amendment Order 2007 (No. 1) (the Amendment Order) is to give effect to recommendations of FSANZ by amending the Principal Order to remove certain foods from Schedule 1 – Risk Food List and to remove Schedule 2 – Active Surveillance Food. In addition, as a result of the removal of Schedule 2, the Amendment Order deletes the reference in subsection 4(2) to ‘active surveillance food’.
AQIS convenes a range of consultative committees as the principal advisory fora for consultation with industry on quarantine and inspection issues. The peak industry bodies nominate industry representatives to their respective committees. The Imported Food Consultative Committee considered the proposed amendments at their meeting on 13 November, and indicated their support for the proposed amendments.

The Minister has consulted with FSANZ about the changes contained in the Amendment Order. No other consultation has occurred because the changes are of a minor or machinery nature and they do not substantially change the law.

The Amendment Order is a legislative instrument for the purposes of the Legislative Instruments Act 2003.

Details of the amendment are set out below:

**Order 1**
This Order names the Order as the *Imported Food Control Amendment Order 2007 (No. 1)*.

**Order 2**
This Order provides for the *Imported Food Control Amendment Order 2007 (No. 1)* to commence on the day after registration.

**Order 3**
This Order provides that Schedule 1 amends the Principal Order.

**Schedule 1 Amendments**

**Item 1** omits subsection 4(2) as there are currently no foods that are required to be considered to be foods inspected or inspected and analysed under the scheme as active surveillance food. The effect of this amendment and item 3 is to remove one of the three risk classifications from the scheme. As a result of these amendments, the scheme recognises only two risk classifications for food: ‘risk food’ and ‘random surveillance food’. The reduction of risk categories is in accordance with the Australian Governments’ response to the National Competition Policy Review of the *Imported Food Control Act 1992*.

**Item 2** substitutes item 7 of Schedule 1. This substitution removes the following foods which are no longer considered to be risk foods;

- Rexea solandri (whether dried or not);
- Shark, including dogfish (whether dried or not)
- Billfish;
- Ling;
- Orange roughy; and
- Rays.

**Item 3** removes Schedule 2 in its entirety as there are no foods that are required to be inspected or inspected and analysed under the scheme as active surveillance food.