EXPLANATORY STATEMENT

Select Legislative Instrument 2009 No. 90

Issued by the Minister for Agriculture, Fisheries and Forestry

Subject: Fisheries Management Act 1991

Fisheries Management Amendment Regulations 2009 (No. 1)

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.

Further, subsection 14(1) of the Act provides that regulations may also be made for the purpose of conserving the marine environment, and may prohibit or make provision for the regulation of specified activities, or the use of specified practices, by persons fishing in the Australian Fishing Zone. In particular regulations may be made in relation to the taking and treatment of by-catches, and the making of returns in relation to by-catches taken.

The purpose of these Regulations is to amend the Fisheries Management Regulations 1992 (the Principal Regulations) to extend the application of limits currently on the taking of non targeted, State regulated, fish species (by-catch) to all holders of fishing concessions. This amendment gives effect to agreements with three States.

The Principal Regulations specified limits on State regulated species that are incidentally caught by Commonwealth regulated permit holders in waters adjacent to Victoria, South Australia and Tasmania. These arrangements, based on fish species, implement the Commonwealth’s agreements with these three States as part of dividing fishing jurisdiction with them under Offshore Constitutional Settlements (OCS). The OCS arrangements with other States mostly apply more geographic criteria. While the by-catch limits had been assumed to cover all holders of Commonwealth fishing concessions, the Principal Regulations as previously drafted did not cover holders of Statutory Fishing Rights (SFRs).

The Office of Regulation Review advised that a Regulation Impact Statement was not required (ID 10135) as the Amendments were of a minor nature and did not substantially alter existing arrangements.

The fishing industry was not consulted about the Regulations, as they are machinery provisions to make the Regulations effective for all concessions. The by-catch limits have been assumed to always have applied to everyone. It was not considered necessary to alert industry of the shortcoming as it may have provided an opportunity for SFR holders to exploit the defect until it was rectified.
The amendments rectify this oversight and extend the application of the existing by-catch limits to all concession holders, which will include Statutory Fishing Right (SFR) holders.

These Regulations also include applicable regulation numbers to a Schedule heading, remove certain inoperative provisions relating to logbook management, and make one spelling correction.

The Office of Regulation Review advised that a Regulation Impact Statement was not required (ID 10133) as the logbook amendments were of a minor nature and did not substantially alter existing arrangements.

The ongoing costs created by the amendment were assessed as nil.

Details of the Amendment Regulations are set out in the Attachment.

The Regulations commenced on the day after they were registered on the Federal Register of Legislative Instruments.
Details of the *Fisheries Management Amendment Regulations 2009 (No. 1)*

**Regulation 1** provides for the Regulations to be cited as the *Fisheries Management Amendment Regulations 2009 (No. 1)*.

**Regulation 2** provides that the Regulations commence on the day after they are registered.

**Regulation 3** provides that Schedule 1 amends the Principal Regulations (*Fisheries Management Regulations 1992*).

**Schedule 1 - Amendments**

**Item [1]** omits the definition of “approved logbook” from subregulation 3(1) as logbooks are now dealt with under s42 of the Act.

Section 42 of the Act was amended in 2004 to overcome the judgment of Mr Justice Blow in the Tasmanian Supreme Court in 2001 finding the logbook regulations ultra vires. The Act now establishes the regime for “determining” logbooks (formerly requirements were to be “prescribed”) and the regulations relating to logbook management are currently inoperative but remained in the Principal Regulations. This has caused unnecessary confusion as to what logbook requirements apply.

**Item [2]** corrects a definition in the subregulation 3(1) by changing “Australia” to “Australian”.

**Item [3]** removes the definition also of “logbook” from subregulation 3(1).

**Item [4]** amends the definition of “relevant offence” in subregulation 3(1) to remove the reference to the provisions relating to logbooks removed by item [5].

**Item [5]** removes current Part 9 - *Logbooks and references to areas* and replaces it with Part 9 - *References to areas of the AFZ* renumbering current regulation 37 as regulation 31. This amendment deletes the inoperative provisions relating to logbooks (current regulations 31 to 36).

The Australian Fisheries Management Authority (AFMA) reviewed the provisions of the *Fisheries Management Regulations 1992* (the Principal Regulations) in relation to the application of the Regulations upon logbook management. This amendment rectifies that confusion and deletes the inoperative provisions, former Regulations 31 to 36 from the Principal Regulations.

This revocation of log Regulations are being made to bring the Regulations into line with the requirements of the Act.
**Item [6]** replaces current Regulations 52 and 53 with new regulations 52, 53 and 53A. This amendment adopts existing catch limits, applying currently only to permit holders in Victorian waters to all “concession holders” including holders of Statutory Fishing Rights. By new Regulation 53A a holder will be taken to have taken the fish landed in Victoria, from Victorian waters as SFR holders are not prevented from taking fish from elsewhere.

**Item [7]** replaces current Regulations 57 and 58 with new regulations 57, 58 and 58A. This amendment adopts existing catch limits, applying currently only to permit holders in South Australian waters to all “concession holders” including holders of Statutory Fishing Rights. By new Regulation 58A a holder will be taken to have taken the fish landed in South Australia, from South Australian waters as SFR holders are not prevented from taking fish from elsewhere.

**Item [8]** replaces current Regulations 62 and 63 with new regulations 62, 63 and 63A. This amendment adopts existing catch limits, applying currently only to permit holders in Tasmanian waters to all “concession holders” including holders of Statutory Fishing Rights. By new Regulation 63A a holder will be taken to have taken the fish landed in Tasmania, from Tasmanian waters as SFR holders are not prevented from taking fish from elsewhere.

**Item [9]** would amend the heading of Schedule 3 to the Principal Regulations as a consequence of the changes made by **item [5]**.

Regulation 37 (relating to references to Australian Fishing Zone areas), currently tacked on to the end of Part 9 will be retained and renumbered 31 with the heading for Part 9 altered to identify that regulation appropriately and distinctively.

**Item [10]** corrects the heading description of Schedule 6, by adding some currently applicable regulation numbers, which regulations also refer to Schedule 6. The relevant waters of particular States have been described in that schedule for the purposes of each of those regulations.