

EXPLANATORY STATEMENT

Issued by the Authority of the Parliamentary Secretary to the Minister for Agriculture and Water Resources

Fisheries Management Act 1991

Fisheries Management (International Agreements) Amendment (Other 2014 Measures) Regulation 2016

The *Fisheries Management Act 1991* (the Act) provides the legislative framework governing the management of Commonwealth fisheries.

Section 168 of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act or necessary or convenient to be prescribed giving effect to the Act.

The *Fisheries Management (International Agreements) Regulations 2009* (the Principal Regulations) enable the Australian Fisheries Management Authority (AFMA), the agency responsible for the management of Commonwealth fisheries, to require foreign boats operating beyond the Australian Fishing Zone and Australian nationals on those boats to comply with IFMMs adopted by international fisheries management organisations (IFMOs) to which Australia is a party.

The Principal Regulations also enable AFMA to authorise officials of a foreign country that participates in a prescribed IFMO to board and inspect an Australian-flagged boat on the high seas if there are reasonable grounds to believe that the boat has been fishing in the waters of a foreign country without authorisation; and to authorise an authority of a foreign country that participates in a prescribed IFMO to investigate an alleged contravention of a prescribed IFMM involving an Australian-flagged boat.

Subject to Part 6, Division 5A of the Act, contravention of an IFMM as prescribed by the Principal Regulations, is an offence.

The purpose of the *Fisheries Management (International Agreements) Amendment (Other 2014 Measures) Regulation 2016* (the Regulation) was to include amendments to the IFMMs that are currently prescribed and prescribe IFMMs that have come into force as a result of decisions made at meetings of five IFMOs held between 1 February 2014 and 30 June 2015. These IFMOs are the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), the Indian Ocean Tuna Commission (IOTC), the Western and Central Pacific Fisheries Commission (WCPFC), the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) and the South Pacific Regional Fisheries Management Organisation (SPRFMO).

The Regulation prescribes current and new IFMMs that are broadly focused on ensuring that fish stocks, or an IFMO's conservation area, are accessed and exploited sustainably. The Regulation takes account of new IFMMs to strengthen current arrangements for all fisheries and ensures that Australia has the ability to comply with its obligations under international law.

AFMA consulted with the following stakeholders during the development of the Regulation:

- the Department of Agriculture and Water Resources, which has portfolio responsibility and is the lead agency for Australian delegations to the WCPFC, IOTC, CCSBT, the Southern Indian Ocean Fisheries Agreement and SPRFMO;
- the Department of the Environment's Australian Antarctic Division which is the lead agency for the Australian delegation to CCAMLR;
- the Department of Foreign Affairs and Trade;
- the Attorney General's Department;
- the Commonwealth Fisheries Association.

In 2014 the Office of Best Practice Regulation (OBPR) advised that the preliminary proposal to amend the Principal Regulations fell outside of the regulation impact analysis framework as the proposal is to regulate fishing activity operating outside of Australian waters. OBPR further advised that no Regulation Impact Statement was required as this type of decision is machinery of government in nature. For this reason, OBPR added the annual update of the Principal Regulations to the carve out list of regulatory changes for which AFMA would not need to contact the OBPR in the future.

The details of the Regulation are set out in Attachment A.

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

The Regulation is compatible with the human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in Attachment B.

Details of the Fisheries Management (International Agreements) Amendment (Other 2014 Measures) Regulation 2016

Section 1 – Name of Regulation

This section provides for the Regulation to be cited as the *Fisheries Management (International Agreements) Amendment (Other 2014 Measures) Regulation 2016*.

Section 2 – Commencement

This section provides that the Regulation commences on the day after its registration.

Section 3 – Authority

This section provides that the Regulation is made under the *Fisheries Management Act 1991*.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Regulation is amended or repealed as set out in the applicable items in the Schedule concerned, and that any other item in the Schedule has effect according to its terms.

Schedule 1 – Amendments

Schedule 1 amends the *Fisheries Management (International Agreements) Regulations 2009* (the Principal Regulations), to incorporate amendments to international fisheries management measures (IFMMs) that are currently prescribed and prescribe new IFMMs.

Amendments to Schedule 1 of the Principle Regulations - CCAMLR

Items 1 to 24 amend the table in Regulation 2.2 that identifies the clause in Schedule 1 that gives effect to each Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) measure listed in the table.

Item 25 inserts a transitional provision to prescribe that the 2015-16 fishing season will run from the day that the amending regulation commences to 30 November 2016.

Item 26 updates the vessel marking requirements under CCAMLR conservation measure (CM) 10-01 (2014).

Item 27 inserts the requirement to provide at least 48 hours prior notice of entry into port to the Port State, consistent with the updated requirements of CM 10-03 (2014).

Items 28 to 31 incorporate updated requirements from CM 10-05 (2014) such as the addition of a requirement for a person using the boat in the CCAMLR Convention area to accurately complete either a *Dissostichus* Export Document (DED) or *Dissostichus* Re-Export Document (DRED) when exporting/importing or re-exporting/re-importing *Dissostichus* species caught in the CCAMLR Convention Area. The changes also account for new

requirements reflected in Annex 10-05/A of CM 10-05 (2014) to reflect CCAMLR's move to an electronic catch documentation system.

Item 32 and 33 repeals the clause about the data reporting system for *Euphausia superba* (Krill) fisheries as they are referred to in later clauses and makes relevant amendments to remove a the reference to the deleted clause.

Item 34 and 35 reflect changes to CM 24-02 (2014) including removing the reference to longline fishing only between 'sunrise and sunset' and making boats that meet certain requirements exempt from conducting longline sink rate tests.

Item 36 clarifies that the conservation measure being referred to in clause 15.2 is CCAMLR CM 24-02 (2014).

Item 37 repeals subclause 16.6 due to the removal of the requirement that longlines must only be set at night and to reflect the requirements of 25-02 (2014) that a bird exclusion device shall be employed to the extent allowed by prevailing weather conditions in certain CCAMLR statistical subareas.

Item 38 amends the clause 37B to reflect that longlines shall only be set at night when fishing for *Dissostichus eleginoides* in CCAMLR statistical subarea 48.3.

Items 39 to 47, 50 and 51 require exploratory longline fisheries for *Dissostichus* to be carried out in accordance with the provisions of CM 25-02 (2014) and that if, three or more seabirds are caught in a fishing season for these fisheries, the vessel must change to night setting.

Items 48 and 49 reflects changes in CM 41-10 (2014) regarding the *Dissostichus* tagging rate.

Item 52 defines the fishing season for *Champscephalus gunnari*.

Item 53 inserts text to reflect the data reporting system for *Euphausia superba* fisheries required under CM 23-06 (2012).

Amendments to Schedule 2 of the Principle Regulations - IOTC

Items 54 to 62 amend the table in Regulation 2.3 that identifies the clause in Schedule 2 that gives effect to each Indian Ocean Tuna Commission (IOTC) measure listed in the table.

Item 63 to 66 amend the wording of the Principal Regulations to ensure that the requirements in clause 2.5 and clause 4 apply to a boat that has a length overall of 24 metres or more and boats with a length of less than 24 metres that operate outside their flag State's Exclusive Economic Zone (EEZ).

Item 67 reflects the obligation for *vessels* to be on the Record of Vessels Authorised to Operate in the IOTC Area, as opposed to IOTC contracting parties.

Item 68 repeals the subclause on the conservation and management of tropical tuna stocks in the IOTC area of competence as IOTC Resolution 12/13 has been superseded by Resolution 14/02.

Item 69 amends clause 7 of Schedule 2 to refer to Resolution 14/06 rather than 12/05.

Item 70 removes the requirement to provide the name of the boat to IOTC when transmitting a completed IOTC transshipment declaration because this is already included in the IOTC transshipment declaration documentation.

Item 71 requires operators to provide observers with accommodation to a standard equal to that provided to officers.

Item 72 amends clause 9 of Schedule 2 to apply to a boat of 24 meters or more overall or under 24 meters and fishing outside its flag State's EEZ or within the EEZ of a developed contracting party.

Items 73 and 74 update the existing Resolution references to Resolution 15/01.

Item 75 repeals clause 9.3 of Schedule 2 to require fishing vessels of developing States to record catch and effort data.

Items 76 and 77 amend clause 18.1 of Schedule 2 to clarify to whom the regulations regarding the use of fish aggregating devices apply.

Item 78 adds a new requirement for using only an instrumented buoy after 1 January 2017 for aggregating tuna and tuna-like species and limits the number of instrumented bouys that can be used.

Item 79 changes the use of 'well space' to 'storage capacity' of a vessel to reflect the amended wording in Resolution 15/02.

Item 80 adds a new clause to implement requirements of Resolution 15/07 which prohibit vessels from installing or operating surface or submerged artificial lights for the purpose of aggregating tuna and tuna-like species or associated species.

Amendments to Schedule 3 of the Principle Regulations - WCPFC

Items 81 to 83 amend the table in Regulation 2.4 that identifies the clause in Schedule 3 that gives effect to each Western and Central Pacific Fisheries Commission (WCPFC) measure listed in the table.

Item 84 amends the note in clause 6 of Schedule 3 so that it does not refer to the superseded conservation and management measure (CMM) 2007-02.

Item 85 adds a sub-clause under the section on conservation and management of sharks that obliges a person to either not carry wire trace or not use branch lines that run directly off a longline float or dropline to reflect the requirements of CMM 2014-05.

Amendments to Schedule 3A of the Principle Regulations - CCSBT

Item 86 amends the heading of the Schedule to ‘Extended Commission for *the* Conservation of Southern Bluefin Tuna’

Item 87 amends the note under the section on the establishment of a CCSBT record of vessels with an overall length of 24 meters or more to reflect that in 2015 this record could be accessed on the CCSBT website.

Item 88 amends clause 2.1 to clarify that if transhipping will be undertaken, a copy of any transshipment authorisation must be on board the boat and is made available to a CCSBT regional observer on request.

Item 89 amends a typographical error from ‘operation’ vessel monitoring system to ‘operational’ vessel monitoring system.

Item 90 requires vessels to have an operational vessel monitoring system if they tranship Southern Bluefin Tuna.

Item 91 inserts a note that the CCSBT Vessel Monitoring System Resolution could be viewed on the CCSBT website in 2015.

Items 92 and 93 insert the requirement for vessels to notify the Coastal State, in addition to the flag State, after transshipment occurs.

Item 94 inserts the requirement for vessels not to tranship to another vessel unless the other vessel is participating in the CCSBT program to monitor transshipment at sea and is authorised by the flag State.

Item 95 amends the Principal Regulations to insert a new sub-clause to reflect the prohibition on farming Southern Bluefin Tuna taken from a boat on the CCSBT illegal, unreported and unregulated vessel list.

Amendments to Schedule 3B of the Principle Regulations - SPRFMO

Item 96 amends the table in Regulation 2.6 to prescribe CMM 3.05 that regulates transshipment and other activities in the area of the South Pacific Regional Fisheries Management Organisation (SPRFMO).

Item 97 defines the meaning of the Record of Vessels.

Item 98 fixes a typographical error to remove the hyphen from bentho-pelagic.

Item 99 reflects the requirements of CMM 3.05 such as prohibiting transshipment with a boat that is not included on the Record of Vessels.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Fisheries Management (International Agreements) Amendment (Other 2014 Measures) Regulation 2016

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 Legislative Instrument amends the *Fisheries Management (International Agreements) Regulations 2009* to update the international fisheries management organisations (IFMOs) to which Australia is a party and amend or prescribe new international fisheries management measures that have come into force as a result of a number of annual IFMO meetings held between 1 February 2014 and 30 June 2015.

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.

The Hon. Anne Ruston
Parliamentary Secretary to the Minister for Agriculture and Water Resources