

EXPLANATORY STATEMENT

Issued by the Authority of the Assistant Minister for Agriculture and Water Resources

Fisheries Management Act 1991

*Fisheries Management (International Agreements) Amendment (2015 and 2016 measures)
Regulations 2017*

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 international fisheries management measures (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 (2015 and 2016 Measures) Regulation 2017* (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 July 2015 and 30 June 2016. 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 exploited sustainably. The Regulation takes account of new IFMMs to strengthen current fisheries management arrangements and ensure that Australia has the ability to comply with its obligations under international law. The

Regulations impose no additional requirements on operators who are authorised to fish under a Commonwealth fishing concession.

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 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 carve out list of regulatory changes of which AFMA would not need to contact the OBPR for 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 *Legislation 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 (2015 and 2016 Measures) Regulation 2017*

Section 1 – Name of Regulation

This section provides for the Regulation to be cited as the *Fisheries Management (International Agreements) Amendment (2015 and 2016 Measures) Regulation 2017*.

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.

Part 1 – CCAMLR conservation measures

Items 1 to 9 amend the table in Regulation 2.2 that identifies the clause in Schedule 1 that gives effect to each CCAMLR measure listed in the table.

Item 10 updates the requirements for automatic location communicators, including in relation to the frequency of data reporting, to reflect amendments in CCAMLR conservation measure (CM) 10-04 (2015).

Item 11 inserts definitions of relevant vessel monitoring system terms used in the regulations, consistent with those used in CCAMLR CM 10-04 (2015).

Item 12 removes the prescriptive list of what information a *Dissostichus* Catch Document (DCD) must include as this is already captured in clause 5.1A of Schedule 1 that states that DCD must be completed as described in Annex 10-05/A of CM 10-05.

Item 13 inserts the requirement for a boat's streamer-line to be in accordance with Annex 25-02/A of CCAMLR CM 41-01.

Item 14 requires a person to ensure that toothfish are tagged and released at the rate specified in Annex 41-01/C for each fishery.

Item 15 updates the fishing season dates for Statistical Subarea 48.3 consistent with those in CCAMLR CM 41-02 (2015).

Item 16 inserts the bycatch limits that have been agreed in CCAMLR CM 41-02 (2015) that apply to boats fishing for Patagonian toothfish in CCAMLR Statistical Subarea 48.3

Item 17 updates the note at the end of clause 48.2 to indicate that relevant documents could be viewed on the CCAMLR website in 2017.

Part 2 – Indian Ocean Tuna Commission

Items 18 to 21 amends the table in Regulation 2.2 that identifies the clause in Schedule 2 that gives effect to each IOTC measure listed in the table.

Item 22 inserts the requirement for boats in the IOTC area to provide observers on boats with appropriate gear and equipment necessary to carry out their duties as per IOTC Resolution 11/04.

Item 23 reduces the number of instrumented buoys that are permitted to be used in the IOTC area by a person using a purse seine boat, giving effect to new requirements in IOTC Resolution 16/01.

Item 24 adds a subclause reflecting the ban on fishing around or near artificial lights that are designed to attract tuna and tuna-like species, as required by IOTC Resolution 16/07.

Items 25 to 27 clarify the wording in the regulations that ban the use of artificial lights to attract fish to drifting fish aggregating devices, as required by IOTC Resolution 16/07.

Item 28 inserts a prohibition on the use of aircraft or unmanned aerial vehicles by fishing or support vessels as a fishing aid, giving effect to the new requirements in IOTC Resolution 16/08.

Part 3 – Western and Central Pacific Fisheries Commission

Items 29 to 31 amend the table in Regulation 2.4 that identifies the clauses in Schedule 3 that give effect to each WCPFC measure listed in the table.

Item 32 clarifies the different mitigation measure requirements that apply, whether a boat is greater than, or less than 24 metres in length and is fishing in an area north of 23°N as required by WCPFC conservation and management measure (CMM) 2015-03.

Item 33 clarifies that if the boat is side setting with a bird curtain and using weighted branch lines, the boat is considered to be using two separate mitigation measures.

Item 34 inserts an additional clause that gives effect to WCPFC CMM 2011-03 and CMM 2011-04 for the protection of cetaceans from purse seine fishing operations and the conservation of oceanic whitetip sharks.

Part 4 – Commission for the Conservation of Southern Bluefin Tuna

Items 35 and 38 removes the definition of ‘IMO’ (i.e. International Maritime Organization) from Schedule 4 and inserts the definition in the ‘Interpretation’ section of the body of the Regulation.

Items 36 and 37 amend the table at clause 2.5 that refer to the CCSBT measures.

Item 39 amends the title of the schedule to remove the reference to the ‘Extended’ Commission.

Items 40 and 41 amend clause 2 to more closely reflect the wording used in the *CCSBT Record of Vessels authorised to fish for Southern Bluefin Tuna*.

Item 42 requires boats that are not wooden or made of fibreglass and that have a gross tonnage or gross registered tonnage of 100 or more to have an IMO number.

Item 43 amends the date reference to state that in 2017 the CCSBT Record of vessels could be accessed on CCSBT’s website.

Item 44 adds a new clause to implement the requirements of the *Resolution for a CCSBT Scheme for Minimum Standards for Inspection in Port*, which requires a person to provide a minimum set of information to the port State before the boat arrives in port.

Part 5 – South Pacific Regional Fisheries Management Organisation

Item 45 amends the table in Regulation 2.6 that identifies the clause in Schedule 3B that gives effect to each SPRFMO measure listed in the table.

Item 46 inserts a definition for ‘exploratory fishing’.

Items 47 and 48 reflect an exemption for a person to apply the mitigation measures outlined in sub-clause 8.2 if the boat has not had any bird mortalities in the past year and has maintained 100% observer coverage for the last five years with less than one recorded bird mortality per year.

Item 49 corrects a numbering error by re-numbering the second clause 8 in Schedule 3B to clause 9.

Item 50 incorporates the requirement to conduct exploratory fishing in line with a Fishery Operations Plan approved by the SPRFMO Commission as per SPRFMO CMM 13-2016, or in accordance with CMM 14-2016 in the case of exploratory fishing for toothfish.

Part 6 – Transitional provisions

Item 51 provides that:

- (1) the by-catch limits specified in subclause 37B.6A of Schedule 1 include by-catch caught in the 2016/2017 season before the commencement of the amending

regulations; with the exception that if any one of those by-catch limits has been exceeded before the commencement of the amending regulations a person contravenes subclause 37B.6A only if the person uses a boat to fish for *Dissostichus species* on or after that commencement;

- (2) if the limit in paragraph 18.4(b) of Schedule 2 on the number of instrumental buoys that may be acquired in relation to a boat in relation to 2017 is exceeded before the commencement of the amending regulations, a person contravenes subclause 18.4 only if at least one more instrumental buoy is acquired for the boat in 2017.

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 (2015 and 2016 Measures) Regulation 2017

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 July 2015 and 30 June 2016.

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.

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