

## EXPLANATORY STATEMENT

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

*Fisheries Management Act 1991*

### ***Fisheries Management Regulations 2019***

#### **Legislative authority**

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

#### **Purpose**

The *Fisheries Management Regulations 2019* (the Regulations) is the key legislative instrument made under the Management Act which prescribes the mechanisms and detail by which Commonwealth fisheries are managed and regulated. The Regulations notably:

- prescribe certain geographic areas outside the Australian Fishing Zone (AFZ) in which the Act applies to Australian citizens and corporations. This includes the fishery for southern bluefin tuna and for Antarctic fisheries;
- impose a number of standard conditions on fishing concessions, including in relation to vessel monitoring systems, catch limits for fishing in prescribed areas of waters, interactions with protected species, processing of fish before landing, and the disposal of fish to fish receivers;
- prescribe fees payable in respect of certain services provided by AFMA;
- prescribe certain strict liability offences, and provide for an infringement notice scheme; and
- describe certain areas of waters within the AFZ for fisheries that are not managed under a plan of management.

The purpose of the Regulations is to remake the *Fisheries Management Regulations 1992* (the 1992 Regulations), incorporating the *Fisheries Management (Southern Bluefin Tuna Fishery) Regulations 1995* (the SBT Regulations). Under the *Legislation Act 2003* (Legislation Act), both the 1992 Regulations and the SBT Regulations are due to sunset on 1 October 2019.

The Regulations remake the 1992 Regulations, incorporating the SBT Regulations, and make significant improvements to the provisions of the 1992 Regulations by excluding redundant provisions, and simplifying language and restructuring provisions of the 1992 Regulations that have become difficult to navigate because of multiple amendments. Consistent with the Government's deregulation agenda, the key changes are:

- updating and simplifying the language used in the Regulations consistent with current legislative drafting standards;

- clarifying the nature of conditions and other obligations imposed on fishing concessions;
- providing for greater efficiencies concerning the provision of data held by AFMA to holders of fishing concessions and for research purposes, supporting the whole of government information sharing strategy;
- making minor amendments to provisions to reduce the regulatory burden for holders of fishing concessions, in part reflecting amendments already made to the Management Act; and
- excluding from remaking the provisions of the 1992 Regulations and the SBT Regulations which are no longer in effect as a result of amendments to the Management Act, or are provisions no longer used by AFMA in the management of fisheries under Commonwealth jurisdiction.

## Regulation of Commonwealth fisheries

The Australian Fisheries Management Authority (AFMA) is a Commonwealth government agency established under section 5 of the *Fisheries Administration Act 1991* (the Administration Act). The objectives that must be pursued by AFMA, listed in subsection 6(1) of the Administration Act, are:

- (a) *implementing efficient and cost-effective fisheries management on behalf of the Commonwealth; and*
- (b) *ensuring that the exploitation of fisheries resources and the carrying on of any related activities are conducted in a manner consistent with the principles of ecologically sustainable development (which include the exercise of the precautionary principle), in particular the need to have regard to the impact of fishing activities on non-target species and the long term sustainability of the marine environment; and*
- (ba) *ensuring that:*
  - (i) *the exploitation in the Australian fishing zone (as defined in the Fisheries Management Act 1991) and the high seas of fish stocks in relation to which Australia has obligations under international agreements; and*
  - (ii) *related activities;**are carried on consistently with those obligations; and*
- (bb) *to the extent that Australia has obligations:*
  - (i) *under international law; or*
  - (ii) *under the Compliance Agreement or any other international agreement;**in relation to fishing activities by Australian-flagged boats on the high seas that are additional to the obligations referred to in paragraph (ba)—ensuring that those activities are carried on consistently with those first-mentioned obligations; and*
- (c) *maximising the net economic returns to the Australian community from the management of Australian fisheries; and*
- (d) *ensuring accountability to the fishing industry and to the Australian community in the Authority's management of fisheries resources; and*
- (e) *achieving government targets in relation to the recovery of the costs of the Authority.*

Subsection 6(2) of the Administration Act, recently inserted through the application of the *Fisheries Legislation Amendment (Representation) Act 2017*, also requires AFMA, in the performance of its functions, to have regard to the objective of ensuring that the interests of commercial, recreational and Indigenous fishers are taken into account.

The Regulations provide AFMA with the legislative mechanisms and detail to implement the regulatory regime for Commonwealth fisheries under the Management Act, and provide AFMA with the ability to pursue its objectives outlined in the Administration Act.

The Regulations are compatible with the human rights and freedoms for the purposes of the *Human Rights (Parliamentary Scrutiny) Act 2011*. The statement of the compatibility with human rights is included at [Attachment B](#).

Details of the Regulations are set out in [Attachment A](#), and a list of acronyms and abbreviations is included at [Attachment C](#).

The Regulations commence on 1 October 2019.

The Regulations are a legislative instrument for the purposes of the Legislation Act.

### **Impact and Effect**

The Regulations provide for the efficient and effective management of commercial fisheries under Commonwealth jurisdiction. In particular, the Regulations will allow the Commonwealth to appropriately recover the costs for providing certain services under the Management Act. This will provide a mechanism for the suitable cost recovery of fisheries management services.

It is not anticipated that there will be any adverse impact or effect from the making of the Regulations.

### **Consultation**

Two separate consultation processes were conducted by AFMA with respect to making the Regulations.

Firstly, after the 1992 Regulations had been reviewed, AFMA prepared a consultation package identifying the proposed changes to be made by the Regulations and invited comment from stakeholders between 9 April 2018 and 11 May 2018. The consultation package was sent by the Chief Executive Officer of AFMA to all persons holding fishing concessions issued under the Act, fishing industry bodies,<sup>1</sup> all State and Territory agencies responsible for regulation of fisheries,<sup>2</sup> and Commonwealth agencies who have an interest in the 1992 Regulations. The consultation package was also made available to the general public on the AFMA website, and was announced via a media release published by AFMA on 10 April 2018.

Seven submissions were received by AFMA, which raised minor issues concerning the operation of the 1992 Regulations. For example, the Commonwealth Fisheries Association (CFA) provided support for the removal of scallop tag requirements in the Bass Strait Central Zone Scallop Fishery (in force under regulation 10AD of

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<sup>1</sup> AFMA wrote to the Australian Southern Bluefin Tuna Industry Association, the Great Australian Bight Fishing Industry Association, Northern Prawn Fishery Industry, the Seafood Industry Association, the South East Trawl Fishing Industry Association, the Southern Shark Fishing Association, the Southern Shark Industry Association, members of the Southern Squid Jig Fishery, and Tuna Australia.

<sup>2</sup> Agencies were the Department of Primary Industries (NSW), the Department of Primary Industry and Resources (NT), the Department of Agriculture and Fisheries (Queensland), the Victorian Fisheries Authority, and the Department of Primary Industries and Regional Development (Western Australia).

the 1992 Regulations) and a concession holder in the Coral Sea Fishery supported the removal of the requirement for the aquarium sector of the Coral Sea Fishery to dispose of fish to a fish receiver (in force under regulation 9I of the 1992 Regulations, which is now addressed by operation of subsection 43(2) of the Regulations). All of these responses were taken into account in the drafting of the Regulations.

Secondly, an exposure draft of the Regulations was released to fishing industry associations,<sup>3</sup> including the CFA, and other Commonwealth government agencies, including the Attorney-General's Department, the Department of Home Affairs, the Department of the Environment and Energy and the Department of Infrastructure and Regional Affairs, in January-February 2019. Support for making the Regulations was received from the CFA, Tuna Australia, and the Australian Southern Bluefin Tuna Fishing Industry Association. Other comments that were received, and taken in to account prior to finalisation of the Regulations, included:

- concerns raised by the Attorney-General's Department concerning the imposition of fees, and the use of electronic communications under the *Electronic Transactions Act 1999*. Schedule 6 was appropriately amended to more clearly delineate between the use of AFMA's online portal, GoFish, and communication by other means; and
- advice from the Australian Maritime Safety Authority concerning the identification of boats under the *Shipping Registration Act 1991* was that the requirements for the display of vessel registrations had moved from a prescriptive regime to an outcomes-based requirement for the registration to be displayed clearly and prominently. This was incorporated into the Regulations with respect to the identification of boats (section 80), the identification of the call sign of a foreign boat (section 82) and the identification of the name of a foreign boat (section 83).

In addition, the Australian Banking Association (ABA) was provided with a version of section 107 of the Regulations concerning the placing of a caveat on the transfer of a fishing concession. The ABA stated that they did not object to that provision being made.

### **Regulation impact statement**

The Office of Best Practice Regulation (OBPR) was consulted prior to making the Regulation, and advised that a Regulatory Impact Statement was not required (OBPR ID 23307) as the Regulations remake the 1992 Regulations in a form that is substantially similar, with any differences between the instruments being only of a minor and technical nature.

### **Native title**

The making of the Regulations is a valid future act in respect of any impact it has on native title rights and interests by operation of subsections 24HA(1) and 24HA(3), as well as section 24OA, of the *Native Title Act 1993*.

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<sup>3</sup> The exposure draft was provided to the Australian Southern Bluefin Tuna Industry Association, the Great Australian Bight Fishing Industry Association, Northern Prawn Fishery Industry, the Scallop Fisherman's Association of Tasmania, the Seafood Industry Association, the South East Trawl Fishing Industry Association, the Southern Shark Fishing Association, the Southern Shark Industry Association, members of the Southern Squid Jig Fishery, and Tuna Australia.

**Details on provisions**

***Fisheries Management Regulations 2019***

**Part 1—Preliminary**

The provisions in Part 1 are made as necessary or convenient to be prescribed for the operation of the Regulations pursuant to paragraph 168(1)(b) of the *Fisheries Management Act 1991* (the Management Act).

**Section 1 – Name**

Section 1 provides that the name of the instrument is the *Fisheries Management Regulations 2019* (the Regulations).

**Section 2 – Commencement**

Section 2 provides that the Regulations commence on 1 October 2019.

**Section 3 – Authority**

Section 3 provides that the Regulations are made under the Management Act.

**Section 4 – Simplified outline of this instrument**

Section 4 provides a simplified outline of the Regulations by describing each of the twelve Parts, which affect the operation and administration of the Management Act in various ways. Each Part concerns:

- preliminary matters (Part 1);
- the application of the Management Act to areas outside the AFZ (Part 2 and Schedule 1);
- short ways of referring to certain areas in the AFZ for managing fishing in those areas (Part 3 and Schedule 2);
- limiting the length of boats that may be used for fishing in the AFZ (Part 4);
- special procedures that must be followed in making fishing rights available by tender (Part 5);
- the cancellation of a fishing concession if payments relating to the fishing concession have not been made within a prescribed period (Part 6);
- the prescription of conditions on fishing concessions (Part 7 and Schedules 3 to 5);
- requirements for holders of fish receiver permits to keep records and give information to the Australian Fisheries Management Authority (AFMA) (Part 8);
- the identification of boats, the navigation of boats in closed zones, and the disposal of unclaimed fishing equipment (Part 9);

- rules about identifying and disclosing identifying information about persons detained under Schedule 1A to the Management Act because they are reasonably suspected of having committed an offence using a foreign boat and who are not Australian citizens or Australian residents (Part 10);
- administrative matters (Part 11), including information to be collected on registers (Division 2), the collection and disclosure of information (Division 3), the Statutory Fishing Rights Allocation Review Panel (Division 4), restrictions on the transfers of fishing concessions (Division 5), fees for service (Division 6), and infringement notices (Division 7);
- transitional matters, from the 1992 Regulations to the Regulations upon commencement of the Regulations (Part 12).

## **Section 5 – Definitions**

Subsection 5(1) defines terms used in the Regulations. These definitions are set out below. In addition, it is noted that a number of terms used in the Regulations (but not defined in section 5) are defined in the Management Act.

### ***Act***

This definition provides that the ‘Act’ means the Management Act.

### ***Antarctic Convergence***

This definition defines ‘Antarctic Convergence’ by reference to the meaning of that term in the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR), as in force at the time that the Regulations commence. This term is defined for the purpose of item 2 of the table in Schedule 6 of the Regulations, which prescribes the fee for service for an application for a certain type of high seas fishing permit, issued under section 32 of the Management Act.

### ***approved vessel monitoring system***

This definition provides that a ‘vessel monitoring system’ as defined by section 167B(4) of the Management Act is an ‘approved vessel monitoring system’ when it is within a class approved by AFMA under section 9 of the Regulations.

### ***boat statutory fishing right***

This definition provides that a ‘statutory fishing right’, as defined in subsection 4(1) of the Management Act, is a ‘boat statutory fishing right’ when it is a statutory fishing right of that name granted under:

- the *Eastern Tuna and Billfish Fishery Management Plan 2010* (the ETBF Management Plan);
- the *Southern and Eastern Scalefish and Shark Fishery Management Plan 2003* (the SESSF Management Plan); or
- the *Western Tuna and Billfish Fishery Management Plan 2005* (the WTBF Management Plan).

This definition also captures the statutory fishing right known as a ‘Class B statutory fishing right’ granted under the *Northern Prawn Fishery Management Plan 1995* (the NPF Management Plan).

This definition is included for the purpose of prescribing conditions for fishing concessions in Part 7 of the Regulations. In particular, this definition relates to the nomination of boats in Division 2 of that Part.

### ***closed zone***

This definition refers to the meaning given to ‘closed zone’ in new subsection 85(1) of the Regulations. Further detail is provided at that subsection.

### ***concession holder***

This definition provides that a person is a ‘concession holder’ when they hold a licence, permit, or right that is a ‘fishing concession’. ‘Fishing concession’ is defined in subsection 4(1) of the Management Act to be a statutory fishing right (i.e. a ‘fishing right’ in these Regulations), a fishing permit or a foreign fishing licence. This definition provides a short-hand reference for a number of provisions in the Regulations that apply to persons who hold fishing rights, fishing permits and foreign fishing licences.

### ***Coral Sea Fishery***

This definition provides that ‘Coral Sea Fishery’ means the fishery of that name described in new section 18. Further detail is provided at that section.

### ***crustacean***

This definition provides that a ‘Crustacean’ is a ‘fish’ (defined by subsection 4(1) of the Management Act) within the taxonomic classification of the phylum Crustacea. This definition notably includes species of prawns as defined below in this subsection.

### ***declared fishery***

This definition provides that ‘declared fishery’ means a fishery in respect of which a declaration, made by AFMA, under subsection 91(1) of the Management Act is in force. When AFMA makes a declaration, concession holders is required to dispose of their catch to the holder of a fish receiver permit issued under subsection 91(2) of the Management Act (see section 43 of the Regulations).

Declarations made by AFMA under subsection 91(2) of the Management Act are made as legislative instruments, and are available on the Federal Register of Legislation.<sup>4</sup> It follows that, if the declaration is amended or remade, any fisheries that are added or removed to the declaration by AFMA is reflected in this definition due to the application of paragraph 14(1)(a) of the *Legislation Act 2003* (the Legislation Act).

### ***designated quota statutory fishing right***

This definition is included for the purpose of section 33 of the Regulations, concerning the nomination of boats to fishing concessions. A ‘designated quota statutory fishing right’ includes a quota statutory fishing right issued under:

- the *Bass Strait Central Zone Scallop Fishery Management Plan 2002*;
- the *Heard Island and McDonald Islands Fishery Management Plan 2002* (HIMI Management Plan);
- the *Macquarie Island Toothfish Fishery Management Plan 2006* (MITF Management Plan);
- the *Small Pelagic Fishery Management Plan 2009*; and

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<sup>4</sup> The instrument in force at the time of making the Regulations is the *Fisheries Management (Fish Receiver Permits) Declaration 2018*.

- the *Southern Bluefin Tuna Fishery Management Plan 1995* (SBT Management Plan).

Boats are not required to be nominated to quota statutory fishing rights that are issued pursuant to the ETBF Management Plan, the NPF Management Plan, the SESSF Management Plan and the WTBF Management Plan. This is because there are ‘boat statutory fishing rights’ (as defined elsewhere in this section) issued under those Management Plans and the boat nomination process in Division 2 of Part 7 of the Regulation applies to those ‘boat statutory fishing rights’ as opposed to any quota statutory fishing rights.

### ***Eastern Skipjack fishery***

This definition provides that ‘Eastern Skipjack Fishery’ means the fishery of that name described in new section 18. Further detail is provided at that section.

### ***eligible person***

This definition provides that an ‘eligible person’ is a person who is registered as an eligible person for the grant of a fishing right under section 26 of the Management Act. This definition is included for the purpose of Part 5 of the Regulations.

### ***finfish***

This definition provides that ‘fish’ (as defined in subsection 4(1) of the Management Act) within the taxonomic classification of class Osteichthyes are ‘finfish’. This definition is intended to replicate the definitions in sections 9M, 9S, 9Y and 9ZF of the 1992 Regulations, and relates to the imposition of conditions concerning catch limits for fishing in Victorian, South Australian, Tasmanian and prawn fishery waters (as defined elsewhere in this section).

### ***gear statutory fishing right***

This definition is included for the purpose of section 33 of the Regulations, and provides that a fishing right is a ‘gear statutory fishing right’ when it authorises the use of certain fishing gear under the NPF Management Plan or the *Southern Squid Jig Fishery Management Plan 2005*.

### ***giant crab***

This definition provides that a ‘fish’ (as defined in subsection 4(1) of the Management Act) with the scientific name of *Pseudocarcinus gigas* is a ‘giant crab’. Giant crabs are subject to specific catch limits in sections 52 and 57 of the Regulations. This definition is intended to replicate the definition of ‘giant crab’ in sections 9M, 9S, 9Y and 9ZF of the 1992 Regulations.

### ***Heard Island and McDonald Islands Fishery***

This definition provides that the area of waters that is the ‘Heard Island and McDonald Islands Fishery’ is the ‘area of the fishery’ prescribed in the HIMI Management Plan.

The ‘area of the fishery’ is described in Schedule 1 to the HIMI Management Plan, which is a legislative instrument made by AFMA for the purpose of subsection 17(1) of the Management Act and is available on the Federal Register of Legislation.



### ***interaction***

This definition is intended to replicate the definition in section 9ZQ of the 1992 Regulations. It provides that there is an ‘interaction’ with a protected organism when there is physical contact with the organism that causes distress.

### ***IUU vessel list***

This definition is included for the purpose of Division 3 of Part 7 of the Regulations. It provides that an ‘IUU vessel list’ is an Illegal, Unregulated or Unreported vessel list established by an ‘international fisheries management organisation’ as in force from time to time. Subsection 4(1) of the Management Act defines an ‘international fisheries management organisation’ to be a global, regional or subregional fisheries organisation or arrangement prescribed by the regulations.

These organisations are currently prescribed in the *Fisheries Management (International Agreements) Regulations 2009* (the International Agreements Regulations), which are made specifically for this purpose. As at the time of making these Regulations, the International Agreements Regulations prescribe the following international fisheries management organisations:

- the Convention on 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).

This definition refers to the IUU vessel list ‘established by a governing commission ... as in force from time to time’. Although subsection 14(2) of the Legislation Act limits the ability of the Regulations to incorporate by reference, an IUU vessel list is not a static, single document. Regional fisheries management organisations, including those prescribed in the International Agreements Regulations, consider the activities of different vessels and make individual decisions concerning whether or not those boats are ‘listed’ as IUU at annual commission meetings. It follows that subsection 14(2) does not apply to limit an ‘IUU vessel list’ to a list in time at the commencement of the Regulations, as this is not an incorporation of a matter contained in an instrument.

### ***Macquarie Island Toothfish Fishery***

This definition provides that the area of waters that is the ‘Macquarie Island Toothfish Fishery’ is the ‘fishery area’ prescribed in the MITF Management Plan.

The ‘fishery area’ is described in Schedule 1 of the MITF Management Plan, which is a legislative instrument made by AFMA for the purpose of subsection 17(1) of the Management Act. This means that any amendments made by AFMA to the ‘area of the fishery’ in Schedule 1 of the MITF Management Plan will also take effect in the Regulations by operation of paragraph 14(1)(a) of the Legislation Act.

### ***mollusc***

This definition provides that ‘fish’ (as defined by subsection 4(1) of the Management Act) within the taxonomic classification of phylum Mollusca are ‘molluscs’. This definition is intended to replicate the

definitions in sections 9M, 9S, 9Y and 9ZF of the 1992 Regulations, and relates to the imposition of conditions concerning catch limits for fishing in Victorian, South Australian, Tasmanian and prawn fishery waters (as defined elsewhere in this section).

### ***nominated boat***

This definition provides that a ‘nominated boat’ is a boat that is nominated to, or specified in, a fishing concession. This term is intended to capture:

- boats which are specified in a fishing permit issued pursuant to subsection 32(1A) of the Management Act;
- boats which are nominated to a fishing permit issued without a boat specified pursuant to subsection 32(1B) of the Management Act, after meeting the requirements of section 33 of the Regulations;
- boats that are nominated to a fishing right, after meeting the requirements of section 33 of the Regulations; and
- any boat after the first boat specified or nominated above that is subsequently nominated to a fishing permit or a fishing right after meeting the requirements of section 33 of the Regulations.

### ***Norfolk Island Inshore Fishery***

This definition provides that ‘Norfolk Island Inshore Fishery’ means the fishery of that name described in section 18 of the Regulations. Further detail is provided at that section.

### ***Norfolk Island Offshore Demersal Finfish Fishery***

This definition provides that ‘Norfolk Island Offshore Demersal Finfish Fishery’ means the fishery of that name described in section 18 of the Regulations. Further detail is provided at that section.

### ***Northern Bluefin Tuna***

This definition provides that ‘Northern Bluefin Tuna’ means the species of fish that is Northern Bluefin Tuna, namely *Thunnus thynnus* and including the subspecies *Thunnus orientalis*.

### ***Northern Prawn Fishery target species***

This definition refers to the species of ‘fish’ (as defined by subsection 4(1) of the Management Act) that are ‘Northern Prawn Fishery target species’ for the purpose of Division 11 of Part 7 of the Regulations. The relevant species are ‘prawns’ (as defined elsewhere in this subsection), molluscs of the family Coleoidea (commonly known as shrimp) or of the family Pectinidae (commonly known as scallops).

These species are target species under the NPF Management Plan, and is included for the purposes of Division 11 of Part 7 of the Regulations.

### ***northern waters***

This definition provides that ‘northern waters’ means the area of the AFZ described in clause 1 of Schedule 3 to the Regulations for the purpose of Division 6 of Part 7. Further detail is provided at that Division.

### ***North West Slope Trawl Fishery***

This definition provides that ‘North West Slope Trawl Fishery’ means the fishery of that name described in section 18 of the Regulations. Further detail is provided at that section.

### ***observer***

This definition provides that an ‘observer’ is a person authorised by AFMA to carry out the functions of an observer, and is intended to replicate the definition in section 9A of the 1992 Regulations.

### ***operating***

This definition provides that a vessel monitoring system is considered as ‘operating’ when two requirements are met:

- the signal being transmitted by the vessel monitoring system is in a format approved by AFMA (i.e. where the requirements of section 9 of the Regulations are met); and
- the signal identifies accurately the location of the boat to which the vessel monitoring system is fitted.

### ***outer envelope***

This term is defined by reference to paragraph 23(b) of the Regulations. See further detail at section 23.

### ***possess***

This term is given its natural and ordinary meaning, but also includes, in relation to a fish on a nominated boat, the concept of control.

### ***prawn***

This term refers to prescribed species of crustacean with reference to their taxonomic classification, which are commonly known as prawns, scampi, bugs or shrimp (or carid prawns).

### ***prawn fishery waters***

This definition provides that ‘prawn fishery waters’ means the area of the AFZ described in Part 1 of Schedule 5 for the purpose of Division 10 of Part 7 of the Regulations. Further detail is provided at that Division.

### ***precedence list***

This term is defined by reference to Division 2 of Part 3 of the Management Act.

### ***processed form***

This definition provides that a Southern Bluefin Tuna is in a processed form when it is in either processed form A or processed form B.

### ***processed form A***

This definition is included for the purpose of section 7 of the Regulations, and replicates the definition in section 2 of the *Fisheries Management (Southern Bluefin Tuna Fishery) Regulations 1995* (the SBT Regulations). It provides that a Southern Bluefin Tuna will be in processed form A when the gill plates are removed and the whole of the tail is removed. The conversion factor at subsection 7(2) of the Regulations applies to Southern Bluefin Tuna landed in processed form A.

### ***processed form B***

This definition is included for the purpose of section 7 of the Regulations, and replicates the definition in section 2 of the SBT Regulations. It provides that a Southern Bluefin Tuna will be in processed form A when the gill plates are removed and only part of the tail is removed. The conversion factor at subsection 7(3) of the Regulations applies to Southern Bluefin Tuna landed in processed form B.

### ***protected community***

This term is defined by reference to a ‘listed threatened ecological community’ within the meaning given by the *Environment Protection and Biodiversity Conservation Act 1999* (the EPBC Act).

### ***protected organism***

This definition provides that a ‘protected organism’ is an organism that is a ‘protected species’ or part of a ‘protected community’. This provides a short form of reference for the purpose of Division 13 of Part 7 of the Regulations.

### ***protected species***

This term is defined by reference to a ‘listed threatened species’, a ‘listed marine species’ and a ‘listed migratory species’ within the meaning given by the EPBC Act as well as a ‘whale’ as defined in subsection 4(1) of the Management Act.

### ***provision subject to an infringement notice***

This section provides that sections 93, 95 and 100 of the Management Act are the provisions subject to an infringement notice capable of being issued under Division 6 of Part 11 of the Regulations. These provisions contain offences relating to the failure of the holder of a fish receiver licence to provide returns to AFMA (section 93 of the Management Act), general domestic offences including breach of concession conditions (section 95) and using a foreign boat unlawfully for fishing in the AFZ (section 100).

### ***Queensland waters***

This section provides that ‘Queensland waters’ are those waters that are within the coastal waters of Queensland or those parts of the AFZ that are within the scheduled area for Queensland under Schedule 1 to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*. This definition is included for the purpose of imposing catch limits in prawn fishery waters, as outlined in Division 11 of Part 7 of the Regulations.

### ***quota statutory fishing right***

This term is defined to be a fishing right that is ‘a right to take particular quantity of fish, or to take a particular quantity of fish of a particular species or type, from, or from a particular area in, a managed fishery’ as outlined in paragraph 21(1)(a) of the Management Act.

### ***registration envelope***

This term is defined by reference to paragraph 23(a) of the Regulations. See further detail at section 23.

### ***reserve price***

The ‘reserve price’ is defined with respect to the issue of fishing rights by tender, to be the minimum bid amount that AFMA will accept as a tender. This term is defined for the purpose of Part 5 of the Regulations.

### ***reserve price envelope***

This term is defined by reference to section 26 of the Regulations. See further detail at that section.

### ***scheduled species***

This definition provides that, in relation to a fishing permit, a ‘scheduled species’ is a species for which quota units are specified in an attachment to the permit. This term is defined for the purpose of item 3 of the table in Schedule 6 to the Regulations.

### ***shark***

This definition provides that a ‘shark’ is a species of ‘fish’ (as defined by subsection 4(1) of the Management Act) taxonomically classified to the class Chondrichthyes.

### ***South Australian waters***

This definition refers to the geographic area described in clause 2 of Schedule 4 to the Regulations. This area is prescribed to provide for the prescription of specific conditions, pursuant to section 42B of the Management Act, that relate to fishing concessions issued in respect of that area. Further detail is outlined at Division 8 of Part 7 of the Regulations.

This definition is intended to replicate the definition in regulation 9S of the 1992 Regulations.

### ***Southern Bluefin Tuna***

This definition provides that ‘fish’ (as defined by subsection 4(1) of the Management Act) of the species *Thunnus thunnus* are Southern Bluefin Tuna. This is the target species for the SBT Management Plan, for which the conversion factor in section 7 is prescribed.

### ***South Tasman Rise Fishery***

This definition provides that ‘South Tasman Rise Fishery’ means the fishery of that name described in section 18 of the Regulations. Further detail is provided at that section.

### ***Tasmanian waters***

This definition refers to the geographic area described in clause 3 of Schedule 4 to the Regulations. This area is prescribed to provide specific conditions, pursuant to section 42B of the Management Act, that relate to fishing concessions issued in respect of that area. Further detail about these conditions is outlined at Division 10 of Part 7 of the Regulations.

This definition is intended to replicate the definition in regulation 9Y of the 1992 Regulations.

### ***tender***

This term is given its natural and ordinary meaning, in so far as it relates to the grant of fishing rights by tender as authorised under a relevant plan of management made under section 17 of the Management Act.

### ***tender envelope***

This term is defined by reference to paragraph 23(b) of the Regulations. See further detail at section 23. Paragraph 27(3)(b) of the Management Act also sets out the requirements for tender envelopes.

### ***tender manager***

This is the person appointed by AFMA to manage a tender process under section 22 of the Regulations or, if no such person is appointed, AFMA.

### ***trawling***

‘Trawling’ is defined to be a general reference to the fishing methods known as board trawling, midwater or pelagic trawling and Danish seining. It is included for the purpose of section 49 of the Regulations, concerning catch limits for certain species of finfish in Victorian waters. See further detail at that section.

### ***trip***

This term is defined with reference to the different circumstances in which a voyage on a boat is considered to be on a ‘trip’. A ‘trip’ under the Regulations includes:

- for the Heard Island and McDonald Islands Fishery—a voyage in a boat to or from any port inside or outside Australia for the purpose of exercising a right under a fishing concession (paragraph (a));
- for the Macquarie Island Toothfish Fishery—a voyage in a boat to or from any port inside or outside Australia for the purpose of exercising a right under a fishing concession (paragraph (b));
- for the high seas—a voyage in a boat to or from any port inside or outside Australia for the purpose of exercising a right under a fishing concession (paragraph (c)).

Concession holders in other fisheries are required to depart from, and return to, an Australian port and is captured by paragraph (d) of this definition.

### ***tuna***

This definition refers to prescribed species of ‘fish’ (as defined by subsection 4(1) of the Management Act) with reference to their taxonomic classification, which are commonly known as tuna and tuna-like fish, mackerel, billfish, and pomfrets or Ray’s bream.

This definition is intended to replicate the definition of ‘tuna’ in regulations 9J, 9M and 9ZM, as well as the definition of ‘tuna and tuna-like species’ in regulation 9ZF, of the 1992 Regulations.

### ***unforeseen emergency***

This definition describes the circumstances in which it will be an ‘unforeseen emergency’ for the purpose of section 86 of the Regulations. See further detail at that section.

### ***vessel monitoring system***

This term is defined by reference to subsection 167B(4) of the Management Act.

### ***Victorian waters***

This definition refers to the geographic area described in clause 1 of Schedule 4 to the Regulation. This area is prescribed to provide for the prescription of specific conditions, pursuant to section 42B of the Management Act, that relate to fishing concessions issued in respect of that area. Further detail is outlined at Division 8 of Part 7 of the Regulations below.

This definition is intended to replicate the definition of this term in section 9M of the 1992 Regulations.

### ***Western Deepwater Trawl Fishery***

This definition provides that ‘Western Deepwater Trawl Fishery’ means the fishery of that name described in section 18 of the Regulations. Further detail is provided at that section.

### ***Western Skipjack Fishery***

This definition provides that ‘Western Skipjack Fishery’ means the fishery of that name described in section 18 of the Regulations. Further detail is provided at that section.

### ***WGS84***

This term is defined by reference to subsection 6(2) of the Regulations. Further detail is given at section 6 below.

Subsection (2) of section 5 provides additional information concerning the definition of ‘processed form A’ and ‘processed form B’, and clarifies that the tail of a Southern Bluefin Tuna is wholly removed if it is removed by cutting through the backbone near the base of the tail.

## **Section 6 – Geographic coordinates**

Subsection 6(1) provides that, except as otherwise indicated, the geographic coordinates in the Regulations are expressed in terms of the Geocentric Datum of Australia 1994 (known as GDA94). Subsection 6(2) also provides that if a reference is made in the Regulations to WGS84, this is a reference to the World Geodetic System 1984. WGS84 is the global equivalent of GDA94, which only applies to mainland Australia and surrounding areas. Subsection 6(3) provides that GDA94 and WGS84 are taken to be equivalent in the

Regulations. As some of the areas prescribed are beyond the application of the GDA94, WGS84 is prescribed to be the relevant datum (i.e. for the high seas fishing zone for the Southern Bluefin Tuna Fishery, described in clause 1 of Schedule 1 to the Regulations, and the South Tasman Rise described in clause 2 of Schedule 1).

## **Section 7 – Conversion of weight for Southern Bluefin Tuna in the Southern Bluefin Tuna Fishery**

AFMA determines the amount of Southern Bluefin Tuna in whole weight that can be taken from the Southern Bluefin Tuna Fishery in an annual fishing season (known as Australia's national catch allocation under section 17 of the SBT Management Plan).<sup>5</sup> The weight of Southern Bluefin Tuna that can be taken by a concession holder is then apportioned on the basis of the quota statutory fishing rights that the concession holder holds. It follows that, to allow for a Southern Bluefin Tuna that has been processed to be decremented from the portion of the national catch allocation that a concession holder is entitled to take in whole weight of fish, the equations prescribed in this section apply.

This section replicates section 7 of the SBT Regulations, and prescribes the conversion factors to be used in the Southern Bluefin Tuna Fishery. The processing of Southern Bluefin Tuna prior to landing is permitted in the forms that are prescribed (known as *processed form A* and *processed form B* which are defined in subsection 5(1)). However, as outlined above, the weight of fish that a concession holder may take from the Southern Bluefin Tuna Fishery is calculated as the whole weight of fish. This section prescribes the formulas by which the weight of the two processed forms of Southern Bluefin Tuna are converted to whole weight for this purpose.

Under subsection 7(2), the weight of Southern Bluefin Tuna landed in processed form A is multiplied by 1.176 to determine the whole weight of Southern Bluefin Tuna that is decremented from a concession holder's quota holdings.

Under subsection 7(3), the weight of Southern Bluefin Tuna landed in processed form B is multiplied by 1.12 and then, after this multiplication, the number of fish that are included in the conversion are added. For example, if six fish equating to 1000 kilograms of Southern Bluefin Tuna are landed in processed form B, the weight to be decremented is 1120 kilograms plus six kilograms (i.e. 1126 kilograms).

Both of these conversion factors, for processed form A and processed form B, have been implemented consistent with relevant scientific research and advice and have been approved by the Southern Bluefin Tuna Management Advisory Committee.

This is the only provision of the SBT Regulations being remade, as the other substantive provisions of that instrument (regulations 2B-2F) relate to reporting obligations that are no longer required. Those provisions relate to logbook reporting that is now more appropriately captured in the *Fisheries Management (Logbooks for Fisheries) Determination 2018* (Logbooks Determination) made by AFMA under section 42 of the Management Act.

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<sup>5</sup> The current determination being the *Southern Bluefin Tuna Fishery (Australia's National Catch Allocation) Determination 2018*, available on the Federal Register of Legislation (F2018L01555).



## **Section 8 – Determining length of boat**

This section prescribes how the length of a boat is determined for the purposes of the Regulations (section 20 in particular). The section provides that the length of a boat is the overall length of the boat determined in accordance with section 10 of the *Shipping Registration Act 1981* (the Shipping Registration Act). That section provides that a boat is to be measured in accordance with its ‘length overall’ (commonly known as LOA), which is the length of the boat including any protrusions at the bow or stern. The other common method of measuring the length of a boat, the ‘length at waterline’ (known as LWL) which is the horizontal length of a vessel where it meets the waterline, is not to be used to determine the length of boats in the Regulations as this may be significantly shorter than the LOA.

This reference to section 10 of the Shipping Registration Act is a reference to this section as in force from time to time, which is permitted by operation of subsection 14(1) of the Legislation Act.

## **Section 9 – Approved vessel monitoring systems**

Subsection 9(1) authorises AFMA to approve one or more classes of vessel monitoring systems for the purpose of the Regulations. Such approvals be made by AFMA for the purpose of Division 4 of Part 7 of the Regulations, which prescribe conditions that apply to fishing concessions issued under the Management Act. Subsection 9(2) further provides that AFMA may vary or revoke an approval under section 9. Subsection 9(3) provides that AFMA must ensure that information about an approval, or the variation or revocation of an approval, is published on AFMA’s website.

Upon commencement of the Regulations, AFMA will approve a class, or classes, of vessel monitoring systems for the purpose of section 9.

## **Part 2—Application of Act to areas outside the AFZ**

The sections in Part 2 are made as permitted by subsection 8(1) of the Management Act to be prescribed, pursuant to paragraph 168(1)(a) of that Act, or as otherwise noted for a specific section.

## **Section 10 – Simplified outline of this Part**

This section prescribes a simplified outline of Part 2 of the Regulations, which prescribes six areas of waters outside the Australian Fishing Zone (AFZ) to which the Management Act applies pursuant to subsection 8(1) of the Management Act.

Subsection 8(1) of the Management Act provides that the regulations may provide that, in respect of specified areas outside the AFZ, or in respect of the high seas generally, the Management Act applies to Australian citizens (paragraph (a)), corporations incorporated in Australia or that carry on activities mainly in Australia (paragraph (b)), Australian boats and Australian-flagged boats that are not Australian boats (paragraph (c)), and persons on board such boats (paragraph (d)). The terms ‘AFZ’, ‘Australian boats’ and ‘Australian-flagged boats’ are defined in subsection 4(1) of the Management Act. In addition, subsection 8(2) of the Management Act provides that the Management Act applies to the high seas area subject to any exceptions or modifications specified in the regulations.

The provisions of this Part provide for the application of the Management Act to the boats and persons mentioned in paragraphs 8(1)(a)-(d) of the Management Act in specified areas of the high seas, outside of the AFZ, for the purposes of international agreements that Australia has entered into.

This section is made as necessary and convenient to be prescribed in giving effect to Part 2 of the Regulations and section 8 of the Management Act, for the purpose of paragraph 168(1)(b) of that Act.

### **Section 11 – Antarctic waters**

Section 11 provides that, for the purposes of subsection 8(1) of the Management Act, the Management Act applies in relation to all waters within 200 nautical miles seaward of the baseline of the Australian Antarctic Territory (AAT). As a result, references to the AFZ in the Management Act are to be read as references to this area. The section provides that the Management Act applies in relation to Australian citizens, corporations incorporated in Australia or that carry on activities mainly in Australia, Australian boats and Australian-flagged boats that are not Australian boats, and persons on board such boats in Antarctic waters. In this section, the baseline of the AAT is to be defined by reference to international law, namely the *United Nations Convention on the Law of the Sea* done at Montego Bay on 10 December 1982.

This section is intended to replicate regulation 4 of the 1992 Regulations.

### **Section 12 – High seas fishing zone**

Section 12 provides that, for the purposes of subsection 8(1) of the Management Act, the Management Act applies in relation to the area of waters specified in Part 1 of Schedule 1 to the Regulations (high seas fishing zone). As a result, references to the AFZ in the Management Act are to be read as references to this area. Subsection 12(1) provides that the Management Act applies in relation to Australian citizens, corporations incorporated in Australia or that carry on activities mainly in Australia, Australian boats and Australian-flagged boats that are not Australian boats, and persons on board such boats in the high seas fishing zone. Subsection 12(2) provides that the Management Act does not apply in relation to the high seas fishing zone to persons who are not fishing for Southern Bluefin Tuna or Northern Bluefin Tuna, or boats that are not being used for fishing Southern Bluefin Tuna or Northern Bluefin Tuna. This exception is permitted pursuant to subsection 8(2) of the Management Act.

This section provides for the application of the Management Act with respect to the persons and boats described above who are targeting Southern Bluefin Tuna and Northern Bluefin Tuna under the SBT Management Plan in the high seas fishing zone. The area to be specified in clause 1 of Schedule 1 to the Regulations replicates the area of the ‘high seas fishing zone’ as defined in subsection 3.1 of the SBT Management Plan.

Section 12 of the Regulations is intended to replicate regulation 4AA of the 1992 Regulations.

### **Section 13 – South Tasman Rise**

Section 13 provides that, for the purposes of subsection 8(1) of the Management Act, the Management Act applies in relation to the area of waters described in Part 2 of Schedule 1 to the Regulations. This means that references to the AFZ in the Management Act are to be read as references to this area. The section provides that the Management Act applies in relation to Australian citizens, corporations incorporated in Australia or that carry on activities mainly in Australia, Australian boats and Australian-flagged boats that are not Australian boats, and persons on board such boats in the South Tasman Rise.

This section extends the operation of the Management Act to an area of the Tasman Sea adjacent to the AFZ between Tasmania and New Zealand. This effect of this is that AFMA can support fisheries research and management measures for orange roughy (bony fish of the species *Hoplostethus atalanticus*) in the area of the South Tasman Rise.

Section 13 of the Regulations is intended to replicate regulation 4AC of the 1992 Regulations.

#### **Section 14 – Convention on the Conservation of Antarctic Marine Living Resources**

Section 14 provides that, for the purposes of subsection 8(1) of the Management Act, the Management Act applies in relation to the area of waters covered by the CCAMLR, done at Canberra on 20 May 1980, as in force at the time the Regulations commence. As a result, references to the AFZ in the Management Act are to be read as references to this area.

The CCAMLR is incorporated as in force at the time the Regulations commence. The text of the CCAMLR treaty is included in the Australian Treaty Series 1982 No.9 ([1982] ATS 9). As at the time of making the Regulations this was available free of charge at <http://www.austlii.edu.au>.

Subsection 14(1) provides that the Management Act applies in relation to Australian citizens, corporations incorporated in Australia or that carry on activities mainly in Australia, Australian boats and Australian-flagged boats that are not Australian boats, and persons on board such boats in the area covered by the CCAMLR.

This section extends the operation of the Management Act to the entire area to which the HIMI Management Plan applies, and captures fishing in the Ross Sea off the coast of Antarctica and potential future exploratory fisheries between Heard Island and McDonald Islands and the Antarctic continent. Whilst a number of these areas are closed to fishing, due to historical illegal, unregulated and unreported fishing activities, if the areas were opened to commercial fishing again AFMA has the appropriate authority to issue fishing permits etc. in respect of those areas.

This section is intended to replicate, and expand upon, regulations 4AB and 4AD of the 1992 Regulations.

#### **Section 15 – Southern Indian Ocean Fisheries Agreement**

Section 15 provides that, for the purposes of subsection 8(1) of the Management Act, the Management Act applies in relation to the area of waters covered by the *Southern Indian Ocean Fisheries Agreement* (SIOFA), done at Rome on 29 December 2006, as in force at the time when the Regulations commence.

The SIOFA is incorporated as in force at the time the Regulations commence. The text of the SIOFA treaty is included in the Australian Treaty Series 2012 No.21 ([2012] ATS 21). As at the time of making the Regulations this was available free of charge at <http://www.austlii.edu.au>.

As a result of this section, references to the AFZ in the Management Act are to be read as references to this area. Section 15 provides that the Management Act applies in relation to Australian citizens, corporations incorporated in Australia or that carry on activities mainly in Australia, Australian boats and Australian-flagged boats that are not Australian boats, and persons on board such boats in the area covered by the SIOFA.

This extends the operation of the Management Act to the entire area to which the SIOFA applies, extending into the high seas area to the west of the territorial AFZ across the southern Indian Ocean.

Section 15 of the Regulations is newly inserted, and was not included in the 1992 Regulations.

#### **Section 16 – Convention on the Conservation and Management of High Seas Fishery Resources in the South Pacific Ocean**

Section 16 provides that, for the purposes of subsection 8(1) of the Management Act, the Management Act applies in relation to the area of waters covered by the *Convention on the Conservation and Management of*

*High Seas Fishery Resources in the South Pacific Ocean* (the South Pacific Convention), done at Auckland on 14 November 2009 and managed by the Southern Pacific Regional Fisheries Management Organisation (SPRFMO), as in force at the time when the Regulations commence. As a result, references to the AFZ in the Management Act are to be read as references to this area.

The South Pacific Convention is incorporated as in force at the time the Regulations commence. The text of the CCAMLR treaty is included in the Australian Treaty Series 2012 No.29 ([2012] ATS 29). As at the time of making the Regulations this was available free of charge at <http://www.austlii.edu.au>.

Subsection 16(1) provides that the Management Act applies in relation to Australian citizens, corporations incorporated in Australia or that carry on activities mainly in Australia, Australian boats and Australian-flagged boats that are not Australian boats, and persons on board such boats in the area under SPRFMO jurisdiction.

This section extends the operation of the Management Act to the entire area in which SPRFMO has jurisdiction, extending into the high seas area to the east and north-east of Australia and New Zealand.

Section 16 of the Regulations is newly inserted, and was not included in the 1992 Regulations.

### **Part 3—References to areas of the AFZ**

The sections in Part 3 are made as permitted by paragraph 168(2)(p) of the Management Act to be prescribed, pursuant to paragraph 168(1)(a) of that Act, or as otherwise noted for a specific section.

#### **Section 17 – Simplified outline of this Part**

Section 17 prescribes a simplified outline of Part 3 of the Regulations, which contains section 18 only.

This section is made as necessary or convenient to be prescribed in carrying out or giving effect to Part 3 of the Regulations and paragraph 168(2)(p) of the Management Act, pursuant to paragraph 168(1)(b) of that Act.

#### **Section 18 – Described area of waters within AFZ**

Section 18 prescribes short methods for referring to distinct areas of waters within the AFZ, for the purposes of paragraph 168(2)(p) of the Management Act. The table prescribed in this section contains list of specified areas of waters within the AFZ (and specified in Schedule 2 to the Regulations) and the names by which the specified areas of waters may be referred.

The specified areas describe the fisheries which are not managed under plans of management made by AFMA under section 17 of the Management Act. These fisheries are managed through fishing permits granted under section 32 of the Management Act, which are subject to conditions specified in, or prescribed in relation to, such permits, as permitted under subsection 32(6) of that Act. Such conditions include those prescribed in Part 7 of the Regulations.

The eight fisheries described in this section are the Coral Sea Fishery, Eastern Skipjack Fishery, Norfolk Island Inshore Fishery, Norfolk Island Offshore Demersal Finfish Fishery, North West Slope Trawl Fishery, South Tasman Rise Fishery, Western Deepwater Trawl Fishery and Western Skipjack Fishery.

This section is intended to replicate, and expand upon, regulation 4B of the 1992 Regulations. The Norfolk Island Inshore Fishery has been added to this section, acknowledging that since the changes to governance arrangements for Norfolk Island from 1 July 2016 (upon commencement of Schedule 2 to the *Norfolk Island*

*Legislation Amendment Act 2015*) that AFMA is developing fisheries management in the territory of Norfolk Island in consultation with local stakeholders.

## **Part 4—Regulation of boats to conserve the marine environment**

The sections in Part 4 are made as permitted by subsection 14(1) of the Management Act to be prescribed, pursuant to paragraph 168(1)(a) of that Act, or as otherwise noted for a specific section.

### **Section 19 – Simplified outline of this Part**

Section 19 prescribes a simplified outline of Part 4 of the Regulations. In addition to this section, Part 4 contains section 20 only, which is made for the purpose of subsection 14(1) of the Management Act.

Subsection 14(1) of the Management Act relevantly provides that, for the purpose of conserving the marine environment, the regulations may prohibit the engaging in specified activities, or the use of specified practices, by persons engaged in fishing in the AFZ.

This section is made as necessary or convenient to be prescribed in carrying out or giving effect to Part 4 of the Regulations and subsection 14(1) of the Management Act, pursuant to paragraph 168(1)(b) of that Act.

### **Section 20 – Regulation of boats to conserve the marine environment**

Section 20 provides that a person commits an offence of strict liability if the person uses a boat to engage in fishing in the AFZ and the boat is more than 130 metres in length. This gives effect to a government commitment made in 2015 to ban ‘super-trawlers’ from operating in Commonwealth fisheries.

The government commitment was based on advice from an Expert Panel that found that there was considerable uncertainty about the scale of impact of a very large freezer factory trawler operating in the Commonwealth Small Pelagic Fishery, particularly in relation to impacts on species protected or considered at risk of extinction under the EPBC Act. The section provides that the penalty is 25 penalty units. The reason for imposing a strict liability offence in this section is for specific and general deterrence. To require proof of intention would undermine the regulatory effectiveness of this provision and its objective to conserve the marine environment.

Section 20 of the Regulations is made for the purposes of subsection 14(1) of the Management Act and is consistent with the objectives of AFMA provided in subsection 6(1) of the *Fisheries Administration Act 1991* (Administration Act).

The offence in this section is of strict liability because there is a strong element of specific and general deterrence to the offence to require proof of intention would undermine the regulatory effectiveness of this provision and its objective to conserve the environment (consistent with subsection 14(1) of the Management Act and the objectives of AFMA outlined in subsection 6(1) of the Administration Act).

This section is consistent with all other offences in the Regulations, which are all strict liability offences. In accordance with the *Commonwealth Guide to Framing Offences, Infringement Notices and Enforcement Powers* (the Offences Guide), the penalty of 25 penalty units attached to the offence is well below the 60 penalty unit threshold for an individual. The offence is punishable by fine only (not imprisonment) and no element of the offence is dependent on a subjective or community standard.<sup>6</sup>

Section 20 of the Regulations is intended to replicate regulation 4D of the 1992 Regulations.

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<sup>6</sup> See paragraph 2.2.6 of the Offences Guide.

## **Part 5—Tenders**

The sections in Part 5 are made as required or permitted by subsection 28(1) of the Management Act to be prescribed, pursuant to paragraph 168(1)(a) of the Management Act, or as otherwise noted for a specific section.

### **Division 1—Preliminary**

#### **Section 21 – Simplified outline of this Part**

Section 21 describes that the purpose of Part 5 is to set out for the purpose of section 28 of the Management Act the procedures for selecting, by a tender process, the persons to whom a grant of a fishing right will be made available under section 29 of the Act. In this regard, it is noted that the regulations must prescribe the procedures for allocating fishing rights by tender if a management plan provides for such an allocation (subsection 28(1) of the Act), including the particulars outlined in paragraphs 28(2)(b) and (c).

Procedures required to be prescribed for the purposes of ballot and auction processes are not prescribed in the Regulation. This is because:

- ‘the ballot approach leaves the allocation of rights to chance and, therefore, is potentially arbitrary and unfair, and ... there are alternatives available for allocating access rights to new fishery resources that are more appropriate to use’;<sup>7</sup> and
- the appropriate policy basis upon which measures providing for the grant of fishing rights by an auction process is not fully developed at the time of making of the Regulation. Should there be a desire to grant any fishing rights in the future by an auction process, relevant provisions will need to be prescribed in the Regulation to facilitate this course of action.

This does not preclude AFMA granting fishing rights in other manners, such as based on historical catch data, if this is provided for in the relevant Management Plan (made under section 17 of the Management Act) for the fishery in question.

#### **Section 22 – Administration of tender process**

Section 22 provides that, if a grant of fishing rights is to be made by tender, AFMA may manage the tender process itself or appoint an independent tender manager to manage the tender process on AFMA’s behalf (paragraph 22(a)) and that AFMA may appoint a probity auditor to oversee the tender process (paragraph 22(b)). These provisions increase the transparency of the tender process for fishing rights.

This section is intended to replicate regulation 8A of the 1992 Regulations, and is prescribed as necessary or convenient to give effect to Part 5 of the Regulations and subsection 28(1) of the Management Act, pursuant to paragraph 168(1)(b) of that Act.

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<sup>7</sup> See the Explanatory Memoranda to the Fisheries Legislation Amendment (International Obligations and Other Matters) Bill 2005 which, when brought into force as the *Fisheries Legislation Amendment (International Obligations and Other Matters) Act 2005*, removed references to the grant of a statutory fishing right by way of a ballot. These measures were introduced consistent with the recommendations of the Commonwealth Fisheries Policy Review, released in June 2003.

## **Division 2—Applications and tender process**

### **Section 23 – Applications under subsection 26(1) of the Act**

Section 26 of the Management Act provides for the registration of applicants as eligible persons for the grant of fishing rights. A person may apply to AFMA in the approved form (subsection 26(1) of the Management Act) and, after receiving such an application, AFMA must register the person as an eligible person if the matters listed in subsection 26(2) are satisfied. Additionally, subparagraph 28(2)(b)(i) of the Management Act provides that the Regulations must contain procedures to be followed for ‘opening the envelopes containing the tenders lodged by the persons registered under subsection 26(2) as eligible persons for the grant’. Section 23 is made for this purpose.

This section provides that an application made under subsection 26(1) of the Management Act, by a person wishing to tender for fishing rights, must be:

- firstly, enclosed in a sealed, opaque envelope marked with the word ‘registration’ (known as the ‘registration envelope’); and
- secondly, the registration envelope must be enclosed in a sealed opaque envelope (outer envelope) together with the envelope containing the tender offer (tender enveloped), as referred to in paragraph 27(3)(b) of the Management Act.

Section 23 of the Regulations is intended to replicate regulation 8B of the 1992 Regulations.

### **Section 24 – Opening outer envelopes**

Section 24 prescribes the procedure for the opening of tender envelopes by the tender manager, namely that:

- the tender manager must open each outer envelope as soon as possible after the close of tenders (subsection 24(1)), with a probity auditor present if appointed under section 22 of the Regulations (subsection 24(2));
- the tender manager is to open each registration envelope, containing the approved form for the purpose of subsection 26(1) of the Act, and make prescribed records (paragraph 24(3)(a));
- the tender manager must set aside any envelope containing the tender under subsection 27(3) of the Act, and not open those envelopes (paragraph 24(3)(b));
- the tender manager is to keep the original registration applications, or give them to AFMA, if the tender manager is not AFMA (paragraph 24(3)(c));
- AFMA is to assess the applications to determine the applicant’s eligibility to be registered as an eligible person, against the criteria listed in subsection 26(2) of the Act, and make a list of eligible persons that it registers (paragraph 24(3)(d)); and then
- if the tender manager is not AFMA, AFMA must then give a list of persons registered as eligible persons under subsection 26(2) of the Management Act to the tender manager (subparagraph 24(3)(d)(ii)).

This section is required to be prescribed under subparagraph 28(2)(b)(i) of the Management Act, and is intended to replicate regulation 8C of the 1992 Regulations.





## **Division 3—Recording and ranking of tenders**

### **Section 25 – Application procedures if fishery divided into sectors**

Section 25 provides that, if the fishery in which fishing rights are to be allocated is divided into sectors by a plan of management for the fishery and the fishing rights in two or more sectors of the fishery are to be allocated by one tender process, the tender manager is to carry out the ranking procedure set out in this Division for each sector.

This section is intended to replicate regulation 8D of the 1992 Regulations.

### **Section 26 – Procedures for reserve price**

Section 26 prescribes the procedure to be followed if AFMA sets a reserve price for the tender. Under this section AFMA is required, before the closing time for tenders, to place a written statement of the reserve price in a sealed envelope (known as the reserve price envelope) and, if AFMA is not the tender manager, give the envelope to the tender manager.

This section is intended to replicate regulation 8E of the 1992 Regulations.

### **Section 27 – Tenders—recording and ranking**

Section 27 prescribes the procedure that the tender manager must follow to record and rank tenders. Under this section, the tender manager is required to:

- open the tender envelope for each eligible person (paragraph 27(a)) and record specified details for each eligible person (paragraph 27(b));
- unless the bid is invalid, rank the tenders according to the amount bid per fishing right (paragraph 27(c)), and ranking equally any 2 or more persons who have bid the same amount per fishing right (paragraph 27(d));
- open the reserve price envelope, if AFMA has set one (under section 26 of the Regulations), and record for each tender whether the amount bid is less than, equal to, or above the reserve price (paragraph 27(e));
- if the conditions of tender set out the minimum number of fishing rights that a tenderer may acquire, record, for each tender, whether the minimum amount that the tenderer will accept is equal to or more than the amount specified in the conditions of tender (paragraph 27(f));
- if the conditions of tender set out the maximum number of fishing rights that a tenderer may acquire, record whether the maximum amount that the tenderer is prepared to acquire is equal to or less than the amount specified in the conditions of tender (paragraph 27(g));
- subject to section 28 of the Regulations, prepare a precedence list setting out specified details for each eligible person who tendered (name, contact details, amount per fishing right, and, if provided for, the maximum and minimum numbers the eligible person is prepared to accept) (paragraph 27(h)) and if the conditions of tender allow for a tenderer to acquire less than all available fishing rights—the precedence list must also contain the matters listed in section 29 of the Regulations (paragraph 27(i)); and

- if the tender manager is not AFMA, as AFMA may appoint an independent tender manager under paragraph 22(a) of the Regulations, the tender manager must give to AFMA a report incorporating the precedence list (paragraph 27(j)).

This section is required to be prescribed under subparagraphs 28(2)(b)(ii) and (iii), and paragraph 28(2)(d), of the Management Act, and is intended to replicate regulation 8F of the 1992 Regulations.

### **Section 28 – Certain persons not to be placed on precedence list**

Section 28 prescribes the circumstances in which an eligible person who has tendered is not to be recorded on a precedence list. Under subsection 28(1), an eligible person is not be recorded on the precedence list if they have bid below the reserve price (if any) set by AFMA (under section 25 of the Regulations) or their tender was otherwise invalid.

If a person has made a bid lower than the reserve price, and therefore is ineligible to be placed on the precedence list under subsection 28(1), the tender manager must record the person's name and the reason why the person is not recorded on the precedence list under subsection 28(2). Subsection 28(3) further provides that the fact that a person is not placed on the precedence list does not affect the person's registration as an eligible person.

Section 28 of the Regulations is intended to replicate regulation 8G of the 1992 Regulations.

### **Section 29 – Procedures if tenderer can acquire less than all available rights**

Section 29 applies where, in the conditions of a tender, AFMA specifies that a tenderer is not required to acquire all available fishing rights in a relevant fishery with the result that paragraph 27(i) of the Regulations applies.

This section sets out the procedures by which fishing rights are allocated between different eligible persons on the precedence list, if the conditions of tender provided for a tenderer to acquire less than all the available rights (subsection 29(1)), which applies regardless as to whether the conditions of tender also allow a person to specify the maximum or minimum amount of fishing rights they would accept (subsection 29(2)).

The rules are:

- if a person ranked above another tenderer has tendered for less than all the available fishing rights, the next-highest ranked tenderer is entitled to the lesser of the remaining number of fishing rights and the number of fishing rights that they have tendered for (subsection 29(3));
- if a tenderer nominates a minimum number of fishing rights that the tenderer will accept for an amount bid, and that number is greater than the number of fishing rights remaining after application of subsection 29(3), the tenderer is not entitled to those fishing rights, even if the amount bid per fishing right is higher than that of the next-highest-ranked tenderer (subsection 29(4));
- if a tenderer does not nominate a minimum number of fishing rights that they will accept, the tenderer is taken to have nominated one fishing right or the minimum number that a person may accept as outlined in the conditions of tender (subsection 29(5));
- if two tenderers are equally ranked on the precedence list, their respective entitlements to fishing rights are to be proportional to the maximum number of fishing rights that each is prepared to accept at the amount bid (subsection 29(6)); and

- a tender is to be disregarded if the granting of entitlements in accordance with subsection 29(6) would lead to the tenderer being granted less than the minimum number of fishing rights that the tenderer would accept, or the minimum amount specified in the conditions of tender (subsection 29(7)).

Section 29 of the Regulations is intended to replicate regulation 8F of the 1992 Regulations.

## **Part 6—Prescribed period**

The sections in Part 6 are made as permitted by paragraph 39(1)(c) of the Management Act to be prescribed, pursuant to paragraph 168(1)(a) of the Management Act, or as otherwise noted for a specific section.

### **Section 30 – Simplified outline of this Part**

Section 30 prescribes a simplified outline of Part 6 of the Regulations, which contains section 31 only.

Section 30 is prescribed as necessary or convenient to give effect to Part 6 of the Regulations and paragraph 39(1)(c) of the Management Act, pursuant to paragraph 168(1)(b) of that Act.

### **Section 31 – Period for payment if fishing concession cancelled**

AFMA may, under section 39 of the Management Act, cancel fishing concessions in specified circumstances. One such circumstance includes where a fee, levy, charge or other money relating to the concession is not paid or where the holder of a fishing concession does not enter into an arrangement in relation to the money to AFMA's satisfaction within such period as is prescribed after the time that the fee, levy, charge or other money becomes payable (paragraph 39(1)(c) of the Management Act).

Section 31 prescribes the period of 21 days for the purpose of paragraph 39(1)(c) of the Management Act, and replicates section 9 of the 1992 Regulations. This means that, unless the fee etc. is paid or a satisfactory arrangement is entered into, AFMA may cancel a concession after 21 days after which the fee etc. is due and payable.

This section is intended to replicate regulation 9 of the 1992 Regulations.

## **Part 7—Standard conditions for fishing concessions**

The sections in Part 7 is made as permitted by section 42B of the Management Act to be prescribed, pursuant to paragraph 168(1)(a) of that Act, or as otherwise noted for a specific section. Relevantly, subsection 42B(1) of the Management Act provides that the regulations may prescribe conditions that apply to fishing concessions or foreign fishing licences.

### **Division 1—Preliminary**

#### **Section 32 – Simplified outline of this Part**

Section 32 provides a simplified outline of Part 7 of the Regulations, which prescribes conditions on fishing concessions for the purpose of subsection 42B(1) of the Management Act. Those conditions, are outlined in Divisions 2-13 of Part 7 of the Regulations, concern:

- the nomination of boats for fishing concessions (Division 2) and the operation of vessel monitoring systems on board such nominated boats (Division 4);
- a prohibition against using boats for fishing under the fishing concession if the boat is on an Illegal, Unreported and Unregulated (IUU) vessel list established by an international fisheries management organisation, to which Australia is a party (see further at Division 3 below);
- the carriage of observers on board boats on fishing trips (Division 5);
- the disposal of fish taken in declared fisheries (Division 6);
- catch limits for certain species of fish in specified fisheries (Divisions 7-11);
- restrictions on processing fish before it is landed at the end of a trip (Division 12); and
- obligations relating to interactions with species that are protected under the EPBC Act (Division 13).

This section is prescribed as necessary or convenient to give effect to Part 7 of the Regulations and section 42B of the Management Act, pursuant to paragraph 168(1)(b) of that Act.

### **Division 2—Nominated boats**

#### **Section 33 – Nominated boat must be used on a trip**

Subsection 33(1), for the purposes of section 42B of the Management Act, prescribes conditions that apply to a fishing concession that is a fishing permit (paragraph (1)(a)) or any of the following: a boat statutory fishing right; a gear statutory fishing right; a designated quota statutory fishing right (paragraph (1)(b)). Some quota statutory fishing rights are excluded from this requirement, as they are issued in fisheries in which a person is required to hold both a boat statutory fishing right and quota statutory fishing rights (see the ETBF Management Plan, the WTBF Management Plan and the SESSF Management Plan).

Subsection 33(2) prescribes that a boat must not be used on a trip for the purpose of exercising a right under a fishing permit unless the boat is specified in the permit, as may be the case pursuant to subsection 32(1A) of the Management Act, or the boat has been nominated for the purposes of the permit and the requirements of subsection 33(4) are satisfied.

Subsection 33(3) prescribes that a boat must not be used on a trip for the purpose of exercising a right under a statutory fishing right mentioned in paragraph 33(1)(b) of the Regulations unless the boat is nominated to the statutory fishing right and the requirements of subsection 33(4) are satisfied in relation to the nomination.

Subsection 33(4) prescribes the requirements that a boat must meet for the purpose of subsections 33(2) and 33(3). The requirements in subsection 33(4) substantially maintain the requirements prescribed in sections 9AB and 9B of the 1992 Regulations. The requirements include that:

- the nomination is made by the concession holder by written notice given to AFMA (paragraph 33(4)(a)) and the owner of the boat has consented to the nomination (paragraph 33(4)(b));
- the boat is not nominated by another person for another fishing concession (paragraph 33(4)(c)) and, for fishing concessions that are not designated quota statutory fishing rights, another boat is not nominated for the fishing concession (paragraph 33(4)(d)). Designated quota statutory fishing rights are issued in fisheries that are not limited in the number of vessels that can operate in the fishery, and so more than one boat can operate under those rights;
- the boat has an approved vessel monitoring system that is capable of operating at all times (paragraph 33(4)(e)). This allows AFMA to track the location of a fishing boat whilst on a trip for compliance and enforcement purposes;
- the boat is capable of carrying an observer, as well as an observer's equipment, safely (paragraph 33(4)(f));
- the boat meets any requirements under the Management Act that apply to the boat (paragraph 33(4)(g)). This includes, for example, a requirement to have electronic monitoring equipment installed by operation of section 40A of the Management Act; and
- where a boat that is to replace another boat that has been previously nominated—the fishing concession has not been suspended under section 38 of the Management Act (paragraph 33(4)(h)). This provision is required to prevent concession holders who have been suspended (for example, with reasonable grounds to believe that a condition of their fishing concession has been contravened in relation to the boat, as permitted under subparagraph 38(1)(b)(i) of the Management Act) from moving their boat across to another fishing concession and continuing to fish whilst remaining in breach of the condition on their first-mentioned fishing concession.

Subsection 33(5) provides that it is a condition of the fishing concession that a boat nominated under this section must not be used unless the boat is on the register applicable to the fishing concession.

This section replaces the obligation to nominate a boat to certain fishing concessions that was previously in place under Division 1A of Part 3A of the 1992 Regulations. A specific provision providing the revocation of a nomination has been excluded from the Regulations, but will be continued to be administered by AFMA on a policy basis.

### **Division 3—Vessels on IUU vessel list**

#### **Section 34 – Conditions**

Section 34 provides that the provisions in Division 3 of Part 7 of the Regulations prescribe conditions that apply to fishing concessions for the purposes of section 42B of the Management Act.

## **Section 35 – Concession holders not to use vessels on IUU vessel list**

Section 35 prescribes a condition that applies to fishing concessions that a holder of a fishing concession must not use a boat for fishing if the boat is on an IUU vessel list. ‘IUU vessel list’ is defined in subsection 5(1) of the Regulations to be an ‘Illegal, Unreported and Unregulated vessel list’ established by a governing commission for an international fisheries management organisation. ‘International fisheries management organisation’ (IFMO) is defined in subsection 4(1) of the Management Act to be ‘a global, regional or subregional fisheries organisation or arrangement prescribed by the regulations’. The *Fisheries Management (International Agreements) Regulations 2009* (the International Agreements Regulations) are prescribed for this purpose.

Under the International Agreements Regulations, CCAMLR, the IOTC, the WCPFC, the CCSBT and the SPRFMO are prescribed as IFMOs. Amendments to the International Agreements Regulations are also being prepared to prescribe SIOFA as an IFMO, which are likely to commence before the commencement of the Regulations.

This is a new provision that is not provided for in the 1992 Regulations, but is included in the Regulations to implement Australia’s international obligations.

## **Division 4—Vessel monitoring systems**

### **Section 36 – Conditions**

Section 36 provides that the provisions in Division 4 of Part 7 of the Regulations prescribe conditions that apply to fishing concessions, for the purposes of section 42B of the Management Act.

This section is intended to replicate regulation 9C of the 1992 Regulations.

### **Section 37 – Concession holder to ensure that vessel monitoring system is fitted and operating**

Section 37 prescribes conditions that apply to holders of fishing concessions that:

- the holder must ensure that each nominated boat is fitted with an approved vessel monitoring system (subsection 37(1)). This provides AFMA with the capacity to monitor when a boat is (or is not) on a trip, for which reporting obligations must be met (i.e. the requirement to submit logbooks under a determination made under section 42 of the Management Act);
- the holder must take all reasonable steps to ensure that the approved vessel monitoring system on a nominated boat is operating at all times (subsection 37(2)). This includes when the vessel is alongside at port or at mooring; and
- the holder must ensure, if the approved vessel monitoring system stops operating, that AFMA is informed as soon as practicable after the holder becomes aware that the vessel monitoring system has stopped operating (subsection 37(3)). AFMA needs to be notified when a vessel monitoring system stops working, so that appropriate temporary measures can be put in place or a boat can be required to stop fishing and return to port (under section 69 of the *Maritime Powers Act 2013*).

Under this section, all concession holders (whether or not operating in the AFZ or on the high seas) are required to have an operating vessel monitoring system on the boat that is nominated to their fishing concession at all times.

Section 37 of the Regulations is intended to replicate, and expand upon, regulation 9D of the 1992 Regulations.

## **Division 5—Observers**

### **Section 38 – Conditions**

Section 38 provides, for the purpose of section 42B of the Management Act, that the provisions in Division 5 of Part 7 of the Regulations prescribe conditions that apply to a fishing concession if the nominated boat for the fishing concession is an Australian boat.

In addition to section 42B of the Management Act, section 168 also provides that the Regulations may prescribe provisions providing for the placement of persons as observers onboard boats used for commercial fishing (paragraph 168(2)(ha)) and providing for the carrying of persons on board boats the use of which is authorised by a fishing concession (paragraph 168(2)(r)). Division 4 of Part 7 of the Regulations is also made for these purposes.

### **Section 39 – Requirements for observers**

Subsection 39(1) prescribes a condition that applies to a fishing concession that an observer must be carried for a particular trip if AFMA has decided that an observer should be placed on board the boat in order to assist AFMA to pursue its objectives or in the performance of its functions by undertaking certain activities.

Those activities include:

- to monitor compliance with Australia’s international obligations (paragraph 39(1)(a)). For example, observers collect data relating to fishing for Orange roughy on the South Tasman Rise which is an area of the high seas for which Australia and New Zealand have entered into arrangements with respect to the management of that stock;
- to collect data and samples (paragraph 39(1)(b));
- to monitor the taking of fish that the holder of the concession is authorised to take under the Act or the Regulations (paragraph 39(1)(c)); or
- to monitor the taking of any fish or protected organism as bycatch (paragraph 39(1)(d)). This allows AFMA to obtain relevant data to support the implementation of appropriate bycatch reduction measures. For example, this includes the use of turtle excluder devices (known as TEDs) for the Northern Prawn Fishery. The requirement to use a TED is currently imposed by AFMA under the *Northern Prawn Fishery (Gear Requirements) Direction No. 174*. The TEDs prescribed in that instrument are regularly considered and reviewed to improve their efficacy. Some of the data used to improve their efficacy is obtained by observers placed on boats by the direction of AFMA pursuant to this section.

It is noted that, in the performance of their duties observers do not perform any compliance-related functions, and do not provide advice on how a concession holder could improve or enhance their compliance with statutory obligations.

Subsection 39(2) provides that AFMA may give notice of a decision under subsection 39(1) orally, in writing, or email addressed to the holder of the fishing concession at the holder’s email address registered under the Management Act (see paragraphs 45(1)(f) and 57H(1)(e) for fishing rights and fishing permits respectively).



This section replicates and clarifies the operation of section 9F of the 1992 Regulations by specifying the particular circumstances in which a direction may be issued by AFMA.

#### **Section 40 – Concession holder to ensure provision for observer and equipment**

Section 40 prescribes a condition that applies to a fishing concession that, if an observer is to be carried on a nominated boat for a particular trip, the concession holder must ensure that the observer and his or her safety and monitoring equipment are on board the boat at the commencement of a trip (subsection 40(1)), that the observer is provided with adequate food and accommodation during the trip (subsection 40(2)), and that the observer is carried safely on the boat (subsection 40(3)).

In considering whether or not an observer can be carried safely for the purpose of subsection 40(3), AFMA will liaise with the Australian Maritime Safety Authority to ensure that a fishing boat is appropriately registered and meets their maritime survey requirements. Concession holders, or a master and crew acting on their behalf, will need to be able to produce a survey certificate prior to commencing a trip on which an observer is to be carried.

Subsections (2) and (3) apply regardless as to whether or not AFMA has issued a direction to carry an observer under section 39. This is because, on a number of occasions, observers are carried by consent of the concession holders in line with agreed and published AFMA policies.

This section is intended to replicate regulation 9F of the 1992 Regulations.

#### **Section 41 – Concession holder to ensure observer enabled to perform functions**

Section 41 prescribes conditions that a holder of a fishing concession, in circumstances where an observer is on board a boat for a nominated trip, must:

- ensure that the observer is given assistance by the holder of the concession, the master of the boat and the crew of the boat and is given access to all areas of the boat to the extent reasonably necessary to enable the observer to do anything that applies under subsection 40(1) (subsection 41(1));
- not interfere with, or obstruct, the observer in the course of collecting data or samples (subsection 41(2)); and
- ensure that the master and crew members of the boat do not interfere with, or obstruct, the observer in the course of collecting data or samples (subsection 41(3)).

This condition is required so that observers are not restricted from performing their functions once they are on board a nominated boat. This section applies regardless as to whether or not AFMA has issued a direction to carry an observer under section 39. This is because, on a number of occasions, observers are carried by consent of the concession holders in line with agreed and published AFMA policies.

This section is intended to replicate regulation 9G of the 1992 Regulations.

## **Division 6—Disposal of fish taken in declared fisheries**

### **Section 42 – Conditions**

Section 42 provides that, for the purposes of section 42B of the Management Act, the provisions in Division 6 of Part 7 of the Regulations prescribe conditions that apply to fishing concessions for a declared fishery. A ‘declared fishery’ is defined in subsection 5(1) of the Regulations to be a fishery for which a declaration under subsection 91(1) of the Management Act is in force.

The declaration made by AFMA under section 91 of the Management Act, in force at the time of making the Regulations, is the *Fisheries Management (Fish Receiver Permits) Declaration 2018* (the Fish Receiver Declaration). This instrument declares seven Commonwealth fisheries as fisheries to which the fish receiver permits requirements in Division 2 of Part 6 of the Management Act applies. The effect of this section is that the conditions in Division 6 of Part 7 of the Regulations apply to fishing concessions for those fisheries.

If the Fish Receiver Declaration is remade or amended to include new fisheries, the conditions in this Division will automatically apply to fishing concessions in whichever fisheries are declared by a declaration in force under subsection 91(1) of the Management Act, by operation of subsection 14(1) of the Legislation Act.

Section 42 is intended to replicate regulation 9H of the 1992 Regulations.

### **Section 43 – Fish to be disposed of to a fish receiver permit holder**

Section 43 is intended to replicate, and expand upon, section 9I of the 1992 Regulations. Section 9I was inserted into the 1992 Regulations to provide that, for a ‘declared fishery’ (see definition at section 4), the holder of a fishing concession must dispose of their fish to a fish receiver licence holder, being a person who holds a licence under subsection 91(2) of the Management Act.<sup>8</sup>

AFMA uses fish receivers to validate the detail of catch recorded by fishers. The requirement for fishers to dispose of their catch to a fish receiver licence holder is necessary to ensure that relevant data is captured, and to underpin the integrity of the quota management system.

Subsection 43(1) of the Regulations prescribes a condition that applies to fishing concessions for a declared fishery that holders of such fishing concessions must ensure that any fish that are taken and retained under the concession are disposed of only to a holder of a fish receiver permit.

In addition, however, subsection 43(2) provides that holders of fishing permits for the aquarium sector of the Coral Sea Fishery are not required to dispose of their catch to a licenced fish receiver. The insertion of this exception is supported by submissions received by AFMA during consultation. The aquarium sector of the Coral Sea Fishery is currently described in AFMA’s Management Arrangement Booklet for that fishery as ‘the collection of live species, as identified in the relevant permit, for the purpose of use in aquaria and not for sale for human consumption’.

Subsection 43(2) is included in the Regulations as AFMA considers that logbook reporting by concession holders is sufficient for the aquarium sector of the Coral Sea Fishery. Further, fish in this sector are not taken for human consumption so there is no need to track the movement of fish for human hygiene reasons.

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<sup>8</sup> See the Explanatory Statement to the *Fisheries Legislation (Repeal and Amendment) Regulations 2011 (No. 1)*.

## **Division 7—Catch limits for tuna in northern waters**

This Division prescribes conditions to limit the take of certain species of fish as bycatch for Commonwealth concession holders that are authorised to take tuna in ‘northern waters’ (see subsection 45(1)). The term ‘northern waters’ is defined in subsection 5(1) of the Regulations as the area of waters prescribed in clause 1 of Schedule 3. ‘Northern waters’ are prescribed in Schedule 3 to the Regulations to be the areas of the AFZ and the coastal waters adjacent to South Australia, Western Australia, the Northern Territory and that part of Queensland that is west of Cape York (as provided for in arrangements made between the Commonwealth and these States and Territory under Part 5 of the Management Act).

Catch limits are commonly known as ‘trip limits’ because it limits the number of fish that can be taken in one trip. The catch limits imposed in this Division reflect memoranda of understanding between the Commonwealth and South Australia, Western Australia, the Northern Territory and Queensland about the take of certain fish as bycatch. These memoranda are substantially similar (with one exception outlined in subsection 45(2)), and were entered into subsequent to the abovementioned arrangements made under Part 5 of the Management Act.

### **Section 44 – Conditions**

Subsection 44(1) provides that the conditions in subsections 44(2), 44(3) and 44(4) apply to fishing concessions that authorise the taking of tuna in ‘northern waters’ for the purpose of section 42B of the Management Act. The types of fishing concession to which the conditions apply are prescribed in paragraphs 44(1)(a)-(c) to include a foreign fishing licence that authorises the use of a boat for taking tuna in northern waters, a fishing permit that authorises the use of a boat for taking tuna in foreign waters, and a fishing right that includes the right to take tuna in northern waters. It follows that, if a type of fishing concession provided in subsection 44(1) authorises the taking of tuna in these waters, the conditions in subsections 44(2), 44(3) and 44(4) apply to that fishing concession.

Subsection 44(2) prescribes a catch limit that the concession holder must not possess on the nominated boat more than two fish of the species of fish listed in clause 2 of Schedule 3 to the Regulations (amberjack, yellowtail kingfish, and cobia in waters relevant to Queensland only).

Subsection 44(3) prescribes a catch limit that the concession holder must not possess on the nominated boat more than 10 fish of the species of fish listed in clause 3 of Schedule 3 (23 species of fish are listed for this purpose).

Subsection 44(4) prescribes a catch limit that the concession holder must not possess on the nominated boat more than 20 fish of the species of fish listed in clause 4 of Schedule 3 (butterfly mackerel, rockcod, shark, slender tuna, and wahoo).

This section is intended to replicate, and streamline, regulations 9K and 9L of the 1992 Regulations.

## **Division 8—Catch limits for Victorian waters**

This Division prescribes conditions to limit the take of certain species of fish as bycatch for Commonwealth concession holders authorised to take fish in ‘Victorian waters’ (see subsection 45(1)). The term ‘Victorian waters’ is defined in subsection 5(1) of the Regulations as the area of waters prescribed in clause 1 of Schedule 4. ‘Victorian waters’ are prescribed in Schedule 4 to the Regulations as the areas of the AFZ and the coastal waters adjacent to Victoria (as provided for in arrangements made between the Commonwealth and Victoria under Part 5 of the Management Act).

Catch limits are commonly known as ‘trip limits’ because it limits the number of fish that can be taken during a fishing trip. The catch limits that are imposed reflect memorandum of understanding between the Commonwealth and Victoria about the take of certain fish as bycatch. This memorandum was entered into subsequent to the abovementioned arrangement made under Part 5 of the Management Act.

### **Section 45 – Interpretation**

Section 45 provides that, for the purposes of Division 8 of Part 7:

- the weight of fish is taken to be the weight of the whole fish before it has undergone any preparation (subsection 45(1)). This provision is required because the preparation of fish before landing is permitted in South Australian waters, and conversion factors for prepared fish are currently prescribed in Fisheries Management (Southern and Eastern Scalefish and Shark Fishery) Regulations 2004 (SESSF Regulations). The prepared weight of fish, when landed, has to be converted to whole weight of fish as quota and catch limits are based on whole weight; and
- if a concession holder lands fish at a place on or within the Victorian coastline, the concession holder is treated as having taken the fish in ‘Victorian waters’ (subsection 45(2)). This is a key provision by which AFMA can appropriately exercise its regulatory functions when, for example, doing an inspection of fish upon a boat landing in a port in Victoria as the fish on board the boat can be counted against the catch limits imposed by this Division.

Section 45 of the Regulations is intended to replicate regulation 9N of the 1992 Regulations.

### **Section 46 – Conditions**

Section 46 provides that, for the purposes of section 42B of the Management Act, Division 8 of Part 7 of the Regulations prescribes conditions that apply to fishing concessions which authorise the taking of fish in Victorian waters (for fishing rights) and authorise the use of a boat for fishing in Victorian waters (for fishing permits and foreign fishing licences).

This section is intended to replicate regulation 9O of the 1992 Regulations.

## Section 47 – Crustaceans

Section 47 prescribes catch limits for species of crustaceans in accordance with the memorandum of understanding between the Commonwealth and Victoria, entered in to pursuant to arrangements made under Part 5 of the Management Act.

Subsection 47(1) prescribes a condition that the concession holder must not take school prawns (*Metpenaeus macleayi*) and eastern king prawns (*Melicertus plebejus*) from Victorian waters. The notes to this subsection provide that:

- due to the arrangements made by the Commonwealth and Victoria under Part 5 of the Management Act, as that arrangement exists on the commencement of the Regulations, rock lobster may not be taken under any fishing concession granted under the Management Act.<sup>9</sup> Section 77 of the Management Act provides that, if an arrangement under Division 3 of Part 5 of the Management Act provides that a particular fishery is to be managed in accordance with the law of a State, the Management Act does not apply to that fishery, except in relation to foreign boats (including persons on, and operations on and from, such boats), e-monitoring by AFMA, and matters that occurred prior to the arrangement taking effect. The relevant Part 5 arrangements between the Commonwealth and Victoria provide that the rock lobster fishery, and any bycatch of rock lobster, is exclusively under State jurisdiction. It follows that a fishing concession issued under the Management Act cannot authorise a person to fish commercially for rock lobster in Victorian waters (note 1); and
- the concession holder (captured by section 46) may take any other species of crustacean from Victorian waters (note 2).

Subsection 47(2) prescribes a condition that, for species of crustaceans not mentioned in Part 2 of Schedule 4 to the Regulations (four individual species, as well as prawns of the genus *Aristeus* and carids (family Panadaliidae), the concession holder must not possess on the nominated boat more than 50 kilograms of such crustaceans (paragraph (2)(a)), within which there may not be more than five giant crabs (paragraph (2)(b)(ii)) or 10 kilograms of inshore (or bay) bugs (family Scyllaridae) (paragraph (2)(b)(ii)). The note to this subsection outlines that the species mentioned in Part 2 of Schedule 4 are target species, and are subject to specific management arrangements under Part 3 of the Management Act.

This section is intended to replicate and clarify section 9P of the 1992 Regulations.

The Part 5 arrangement referred by this section been published in the Commonwealth *Gazette*, and are available free of charge at the Federal Register of Legislation website (<http://www.legislation.gov.au>).

## Section 48 – Molluscs

Section 48 prescribes a catch limit for species of molluscs in accordance with the memorandum of understanding between the Commonwealth and Victoria, entered in to pursuant to arrangements made under Part 5 of the Management Act.

The section provides that the concession holder must not possess on the nominated boat more than 50 kilograms of specimen shells or shellfish of the class Gastropoda.

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<sup>9</sup> See the Commonwealth of Australia *Gazette*, No. S 436, 31 October 1997 (pages 19-23).

Section 48 of the Regulations differs from the equivalent provision in the 1992 Regulations (regulation 9Q). Section 48 only imposes a catch limit with respect to the take of specimen shells or shellfish, whereas section 9Q of the 1992 Regulations prescribes a catch limit for all molluscs (with limited exceptions).

This catch limit has been changed because the Commonwealth and Victoria are currently discussing amendments to the memorandum of understanding in relation to the take of molluscs (in particular octopus) in Victorian waters. As section 48 of the Regulations is silent as to the catch limit for molluscs generally, any amendments to the memorandum of understanding concerning molluscs captured in conditions imposed on an administrative basis by AFMA (under subparagraph 32(6)(a)(i) and paragraph 22(4)(a) of the Management Act for fishing permits and fishing rights respectively) until the Regulations can be amended to capture this change.

In addition, notes to section 48 outline that:

- due to the arrangements made by the Commonwealth and Victoria under Part 5 of the Management Act, as that arrangement exists on the commencement of the Regulations, abalone may not be taken under any fishing concession granted under the Management Act.<sup>10</sup> Section 77 of the Management Act provides that, if an arrangement under Division 3 of Part 5 of the Management Act provides that a particular fishery is to be managed in accordance with the law of a State, the Management Act does not apply to that fishery, except in relation to foreign boats (including persons on, and operations on and from, such boats), e-monitoring by AFMA, and matters that occurred prior to the arrangement taking effect. The relevant Part 5 arrangements between the Commonwealth and Victoria provide that the abalone fishery, and any bycatch of abalone, is exclusively under State jurisdiction. It follows that a fishing concession issued under the Management Act cannot authorise a person to fish commercially for abalone in Victorian waters (note 1); and
- a concession holder may take any other species of mollusc from Victorian waters (note 2).

The Part 5 arrangement referred by this section been published in the Commonwealth *Gazette*, and are available free of charge at the Federal Register of Legislation website (<http://www.legislation.gov.au>).

## **Section 49 – Finfish**

Section 49 prescribes catch limits for species of finfish in accordance with the memorandum of understanding between the Commonwealth and Victoria, entered in to pursuant to arrangements made under Part 5 of the Management Act.

This section prescribes conditions that the concession holder must not:

- take any finfish of the species mentioned in clause 7 of Schedule 4 to the Regulations (five individual species, as well as Australian salmon (species of genus *Arripis*) and wrasse (species of family Labridae) (subsection 49(1)). A note to this subsection outlines that the concession holder (captured by section 46) may take any other species of finfish from Victorian waters; and
- possess on the nominated boat more than 200 kilograms of finfish of the species mentioned in clause 8 of Schedule 4 (four individual species, as well as leatherjackets (family Monacanthidae)) (paragraph 49(2)(a)) of which there must be no more than 10 yellowtail kingfish (subparagraph 49(2)(b)(i)), 20

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<sup>10</sup> See the Commonwealth of Australia *Gazette*, No. S 436, 31 October 1997 (pages 19-23).

kilograms of striped trumpeter (subparagraph 49(2)(b)(ii)) or 50 kilograms of snapper (subparagraph 49(2)(b)(iii)).

The catch limits prescribed in subsection 49(2) are known as ‘basket’ catch limits, in that the amount of fish that can be taken is the amount of different species combined and not the amount that can be taken for each individual species.

Subsection 49(3) provides that this section does not apply to fish taken by trawling as defined in section 5(1) of the Regulations. This is required because, under the relevant arrangements between the Commonwealth and Victoria under Part 5 of the Management Act, the Commonwealth has jurisdiction for trawl fishing for finfish in Victorian waters.<sup>11</sup>

This section is intended to replicate and clarify regulation 9R of the 1992 Regulations.

The Part 5 arrangement referred to by this section been published in the Commonwealth *Gazette*, and are available free of charge at the Federal Register of Legislation website (<http://www.legislation.gov.au>).

### **Division 8—Catch limits for South Australian waters**

This Division prescribes conditions to limit the take of certain species of fish as bycatch for Commonwealth concession holders that are authorised to take fish in ‘South Australian waters’ (see subsection 51(1)). The term ‘South Australian waters’ is defined in subsection 5(1) of the Regulations as the area of waters prescribed in clause 2 of Schedule 4. ‘South Australian waters’ are prescribed in clause 3 of Schedule 4 to the Regulations to be the areas of the AFZ and the coastal waters adjacent to Victoria (as provided for in arrangements made between the Commonwealth and South Australia under Part 5 of the Management Act).

Catch limits are commonly known as ‘trip limits’ because it limits the number of fish that can be taken during a single fishing trip. The catch limits imposed in this Division reflect memorandum of understanding between the Commonwealth and South Australia about the take of certain fish as bycatch. This memorandum of understanding was entered into subsequent to the abovementioned arrangements made under Part 5 of the Management Act.<sup>12</sup>

The Part 5 arrangement referred to by this section been published in the Commonwealth *Gazette*, and are available free of charge at the Federal Register of Legislation website (<http://www.legislation.gov.au>).

### **Section 50 – Interpretation**

Section 50 provides that, for the purposes of Division 9:

- the weight of fish is taken to be the weight of the whole fish before it has undergone any preparation (subsection 50(1)). This is required to be included because the preparation of fish before landing is permitted in South Australian waters, and conversion factors for prepared fish are currently prescribed in SESSF Regulations. The prepared weight of fish, when landed, has to be converted to whole weight of fish as quota and catch limits are based on whole weight; and
- if a concession holder lands fish at a place on or within the South Australian coastline, the concession holder is treated as having taken the fish in ‘South Australian waters’ (subsection 50(2)). This is a key provision by which AFMA can appropriately exercise its regulatory functions when, for example,

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<sup>11</sup> See the Commonwealth of Australia *Gazette*, No. S 436, 31 October 1997 (pages 19-23).

<sup>12</sup> For the Part 5 arrangement, see the Commonwealth of Australia *Gazette*, No. S 531, 31 December 1996 (pages 26-30).

doing an inspection of fish upon a boat landing in a port in South Australia as the fish on board the boat can be counted against the catch limits imposed by this Division.

This section is intended to replicate regulation 9T of the 1992 Regulations.

### **Section 51 – Conditions**

Section 51 provides that, for the purposes of section 42B of the Management Act, Division 9 of Part 7 of the Regulations prescribes conditions that apply to fishing concessions which authorise the taking of fish in South Australian waters (for fishing rights) and authorise the use of a boat for fishing in South Australian waters (for fishing permits and foreign fishing licences).

This section is intended to replicate regulation 9U of the 1992 Regulations.

### **Section 52 – Crustaceans**

Section 52 provides for catch limits for species of crustaceans in accordance with the memorandum of understanding between the Commonwealth and South Australia, entered into pursuant to arrangements made under Part 5 of the Management Act.

Subsection 52(1) prescribes a condition that the concession holder must not take, from South Australian Waters, any species of prawns, other than a species mentioned in Part 2 of Schedule 4 (four individual species, as well as species of genus *Aristeus* and carids of family Pandalidae), and must not take more than five giant crabs from South Australian waters per trip.

Notes to subsection 52(1) outline that:

- due to the arrangements made by the Commonwealth and South Australia under Part 5 of the Management Act, as that arrangement exists on the commencement of the Regulations, rock lobster may not be taken under any fishing concession granted under the Management Act. Section 77 of the Management Act provides that, if an arrangement under Division 3 of Part 5 of the Management Act provides that a particular fishery is to be managed in accordance with the law of a State, the Management Act does not apply to that fishery, except in relation to foreign boats (including persons on, and operations on and from, such boats), e-monitoring by AFMA, and matters that occurred prior to the arrangement taking effect. The relevant Part 5 arrangements between the Commonwealth and South Australia provide that the rock lobster fishery, and any bycatch of rock lobster, is exclusively under State jurisdiction. It follows that a fishing concession issued under the Management Act cannot authorise a person to fish commercially for rock lobster in South Australian waters (note 1); and
- the concession holder (captured by section 52) may take any other species of crustacean from South Australian waters (note 2).

Subsection 52(2) prescribes a condition that the concession holder must not possess on the nominated boat more than 200 kilograms of bay bugs (family Scyllaridae).

Subsection 52(3) prescribes a condition that the concession holder must not possess on the nominated boat more than 50 kilograms of crustaceans of the species mentioned in Part 2 of Schedule 4 (four individual species, as well as species of genus *Aristeus* and carids of family Pandalidae). A note to this subsection outlines that the species mentioned in Part 2 of Schedule 4 are target species, subject to specific management arrangements under Part 3 of the Management Act.



This section is intended to replicate and clarify regulation 9V of the 1992 Regulations.

The Part 5 arrangement referred to by this section been published in the *Commonwealth Gazette*, and are available free of charge at the Federal Register of Legislation website (<http://www.legislation.gov.au>).

### **Section 53 – Molluscs**

Section 53 provides for catch limits for species of molluscs in accordance with the memorandum of understanding between the Commonwealth and South Australia, entered in to pursuant to arrangements made under Part 5 of the Management Act.

Subsection 53(1) prescribes conditions that for the species of molluscs that are not mentioned in Part 3 of Schedule 4, the concession holder must not possess on the nominated boat more than 500 kilograms of such molluscs in total and within this amount no more than 50 kilograms of specimen shells of or shellfish (class Gastropoda). Notes to subsection 53(1) outline that:

- the species mentioned in Part 3 of Schedule 4 (four individual species and scallops (family Pectinidae)) are target species, and are subject to specific management arrangements under Part 3 of the Management Act (note 1); and
- due to the arrangements made by the Commonwealth and South Australia under Part 5 of the Management Act, as that arrangement exists on the commencement of the Regulations, abalone may not be taken under any fishing concession granted under the Management Act. Section 77 of the Management Act provides that, if an arrangement under Division 3 of Part 5 of the Management Act provides that a particular fishery is to be managed in accordance with the law of a State, the Management Act does not apply to that fishery, except in relation to foreign boats (including persons on, and operations on and from, such boats), e-monitoring by AFMA, and matters that occurred prior to the arrangement taking effect. The relevant Part 5 arrangements between the Commonwealth and South Australia provide that the abalone fishery, and any bycatch of abalone, is exclusively under State jurisdiction. It follows that a fishing concession issued under the Management Act cannot authorise a person to fish commercially for abalone in South Australian waters (note 2).

Subsection 53(2) prescribes a condition that a concession holder must not take scallops (family Pectinidae) from South Australian waters. A note to this subsection outlines that a concession holder (captured by section 50(2)) may take any other species of molluscs from South Australian waters.

This section is intended to replicate and clarify regulation 9W of the 1992 Regulations.

The Part 5 arrangement referred to by this section been published in the *Commonwealth Gazette*, and are available free of charge at the Federal Register of Legislation website (<http://www.legislation.gov.au>).

### **Section 54 – Finfish**

Section 54 provides for catch limits for species of finfish in accordance with the memorandum of understanding between the Commonwealth and South Australia.

This section prescribes conditions that a concession holder must not take from South Australian waters:

- finfish of a species mentioned in clause 9 of Schedule 4 to the Regulations (18 individual species, as well as Australian salmon (species of genus *Arripis*) and wrasse (species of family Labridae)) (subsection 54(1)) from South Australian waters. A note provides that that concession holder, captured by section 50, may take any other species of finfish from South Australian waters;

- more than 200 kilograms of finfish of one or more species mentioned in clauses 10, 11 and 12 of Schedule 4 (six individual species) per trip by trawling (subsection 54(2));
- more than 200 kilograms of finfish of one or more species mentioned in clauses 10, 11, 12 and 13 of Schedule 4 (10 individual species) per trip by fishing methods other than trawling (subsection 54(3)).

Subsection 54(4) prescribes conditions that a concession holder must not take from South Australian waters more than:

- 20 kilograms of finfish of one or more species of mentioned in clause 10 of Schedule 4 per trip (bastard trumpeter and striped trumpeter (paragraph 54(4)(a));
- 50 kilograms of finfish of one or more species mentioned in clause 11 of Schedule 4 per trip (blue grouper and snapper) (paragraph 54(4)(b));
- 10 yellowtail kingfish per trip (paragraph 54(4)(c)); and
- 100 kilograms of mulloway per trip (paragraph 54(4)(d)).

The specific catch limits prescribed in subsection 54(4) apply within the catch limits prescribed in subsections 54(1), 54(2) and 54(3).

This section is intended to replicate and clarify regulation 9X of the 1992 Regulations.

#### **Division 10—Catch limits for Tasmanian waters**

This Division prescribes conditions to limit the take of certain species of fish as bycatch for Commonwealth concession holders authorised to take fish in ‘Tasmanian waters’ (see subsection 56(1)). The term ‘Tasmanian waters’ is defined in subsection 5(1) of the Regulations as the area of waters prescribed in clause 1 of Schedule 4. ‘Tasmanian waters’ is prescribed in clause 3 of Schedule 4 to the Regulations to be the areas of the AFZ and the coastal waters adjacent to Victoria (as provided for in arrangements made between the Commonwealth and Victoria under Part 5 of the Management Act).

Catch limits are commonly known as ‘trip limits’ because it limits the number of fish that can be taken during a single fishing trip. The catch limits that imposed in this Division reflect memorandum of understanding between the Commonwealth and Tasmania about the take of certain fish as bycatch. This memorandum was entered into subsequent to the abovementioned arrangements made under Part 5 of the Management Act.

#### **Section 55 – Interpretation**

Section 55 provides that, for the purposes of Division 10:

- the weight of fish is taken to be the weight of the whole fish before it has undergone any preparation (subsection 55(1)). This is required to be included because the preparation of fish before landing is permitted for fish taken in Tasmanian waters, with conversion factors for prepared fish currently prescribed in SESSF Regulations. The prepared weight of fish, when landed, has to be converted to whole weight of fish as quota and catch limits are based on whole weight; and
- if a concession holder lands fish at a place on or within the Tasmanian coastline, the concession holder is treated as having taken the fish in ‘Tasmanian waters’ (subsection 55(2)). This is a key provision by which AFMA can appropriately exercise its regulatory functions when, for example, doing an

inspection of fish upon a boat landing in a port in Tasmania as the fish on board the boat can be counted against the catch limits imposed by this Division.

This section is intended to replicate regulation 9Z of the 1992 Regulations.

### **Section 56 – Conditions**

Section 56 provides that, for the purposes of section 42B of the Management Act, Division 10 of Part 7 of the Regulations prescribes conditions that apply to fishing concessions which authorise the taking of fish in Tasmanian waters (for fishing rights) and authorise the use of a boat for fishing in Tasmanian waters (for fishing permits and foreign fishing licences).

This section is intended to replicate regulation 9ZA of the 1992 Regulations.

### **Section 57 – Crustaceans**

This section provides for catch limits for species of crustaceans in accordance with the memorandum of understanding between the Commonwealth and Tasmania, entered in to pursuant to arrangements made under Part 5 of the Management Act.

Subsection 57(1) prescribes a condition that the concession holder must not take any species of prawns, other than a species mentioned in clause 4 of Schedule 4 (four individual species, as well as species of genus *Aristeus*), from Tasmanian waters. Notes to this subsection outline that:

- due to the arrangements made by the Commonwealth and Tasmania under Part 5 of the Management Act, as that arrangement exists on the commencement of the Regulations, rock lobster may not be taken under any fishing concession granted under the Management Act.<sup>13</sup> Section 77 of the Management Act provides that, if an arrangement under Division 3 of Part 5 of the Management Act provides that a particular fishery is to be managed in accordance with the law of a State, the Management Act does not apply to that fishery, except in relation to foreign boats (including persons on, and operations on and from, such boats), e-monitoring by AFMA, and matters that occurred prior to the arrangement taking effect. The relevant Part 5 arrangements between the Commonwealth and Tasmania provide that the rock lobster fishery, and any bycatch of rock lobster, is exclusively under State jurisdiction. It follows that a fishing concession issued under the Management Act cannot authorise a person to fish commercially for rock lobster in Tasmanian waters (note 1); and
- the concession holder (captured by section 55(2)) may take any other species of crustacean from Tasmanian waters (note 2).

Subsection 57(2) prescribes conditions that a concession holder must not:

- possess on the nominated boat more than 50 kilograms of crustaceans of a species not mentioned in Part 2 of Schedule 4 to the Regulations (four individual species, as well as prawns of genus *Aristeus* and carids of family Pandalidae) (paragraph (a)); and
- within the 50 kilograms permitted under paragraph 57(2)(a), no more than five giant crabs.

This section is intended to replicate and clarify regulation 9ZB of the 1992 Regulations.

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<sup>13</sup> See the Commonwealth of Australia *Gazette*, No. S 531, 31 December 1996 (pages 13-16).

The Part 5 arrangement referred to by this section been published in the *Commonwealth Gazette*, and are available free of charge at the Federal Register of Legislation website (<http://www.legislation.gov.au>).

## **Section 58 – Molluscs**

This section provides for catch limits for species of molluscs in accordance with the memorandum of understanding between the Commonwealth and Tasmania, which was entered in to pursuant to arrangements made under Part 5 of the Management Act.

Subsection 58(1) prescribes a condition that the concession holder must not take limpets or keyhole limpets (superfamilies Fissurellacea, Patellacea and Siphonariacea) from Tasmanian waters. Notes to this subsection provide that:

- due to the arrangements under Part 5 of the Management Act, abalone may not be taken under any fishing concession granted under the Management Act. Section 77 of the Management Act provides that, if an arrangement under Division 3 of Part 5 of the Management Act provides that a particular fishery is to be managed in accordance with the law of a State, the Management Act does not apply to that fishery, except in relation to foreign boats (including persons on, and operations on and from, such boats), e-monitoring by AFMA, and matters that occurred prior to the arrangement taking effect. The relevant Part 5 arrangements between the Commonwealth and South Australia provide that the abalone fishery, and any bycatch of abalone, is exclusively under State jurisdiction. It follows that a fishing concession issued under the Management Act cannot authorise a person to fish commercially for abalone in South Australian waters (note 1); and
- the concession holder (captured by section 57) may take any other species of molluscs from Tasmanian waters (note 2).

Subsection 58(2) prescribes conditions that the concession holder must not possess on their nominated boat:

- more than 500 kilograms of the molluscs mentioned in Part 3 of Schedule 4 (four individual species and scallops (family Pectinidae)) (paragraph (2)(a)); and
- within the 500 kilograms permitted under paragraph (2)(a), no more than 50 kilograms of specimen shells and shellfish (class Gastropoda) (paragraph (2)(b)).

The note to subsection 58(2) outlines that the species mentioned in Part 3 of Schedule 4 (four individual species and scallops (family Pectinidae)) are target species, and are subject to specific management arrangements under Part 3 of the Management Act.

This section is intended to replicate and clarify regulation 9ZC of the 1992 Regulations.

The Part 5 arrangement referred to by this section been published in the *Commonwealth Gazette*, and are available free of charge at the Federal Register of Legislation website (<http://www.legislation.gov.au>).

## **Section 59 – Finfish**

Section 59 provides for catch limits for species of finfish in accordance with the memorandum of understanding between the Commonwealth and Tasmania, entered in to pursuant to arrangements made under Part 5 of the Management Act.

The section prescribes conditions that the concession holder must not:

- take any finfish of a species mentioned in clause 14 of Schedule 4 of the Regulations (19 individual species, as well as Australian salmon (genus *Arripis*) and wrasse (family *Labridae*)) (subsection 59(1));
- possess on the nominated boat more than 20 kilograms of finfish of one or more species mentioned in clause 15 of Schedule 4 (bastard trumpeter) (subsection 59(2));
- possess on the nominated boat more than 50 kilograms of blue groper (subsection 59(3)); and
- possess on the nominated boat more than 250 kilograms of finfish of one or more species mentioned in clause 15 of Schedule 4 (snapper, striped trumpeter and yellowtail kingfish), of which there can be no more than 150 kilograms of striped trumpeter (subsection 59(4)(b)).

The catch limits prescribed in subsections 59(2), 59(3) and 59(4) of this section are known as ‘basket’ catch limits, in that the amount of fish that can be taken is the amount of different species combined and not the amount that can be taken for each individual species.

This section is intended to replicate and clarify regulation 9ZD of the 1992 Regulations.

### **Section 60 – Other species**

Section 60 prescribes a condition that the concession holder must not take any other species of fish mentioned in clause 16 of Schedule 4 (selected species of seahorse). This catch limit is in accordance with the memorandum of understanding between the Commonwealth and Tasmania, entered in to pursuant to arrangements made under Part 5 of the Management Act.

This section is intended to replicate regulation 9ZE of the 1992 Regulations.

### **Division 10—Catch limits for prawn fishery waters**

This Division prescribes conditions to limit the take of certain species of fish as bycatch for Commonwealth concession holders authorised to take fish in ‘prawn fishery waters’. The term ‘prawn fishery waters’ is defined in subsection 5(1) of the Regulations as the area of waters prescribed in clause 1 of Schedule 5. ‘Prawn fishery waters’ is prescribed in clause 1 of Schedule 5 to the Regulations to be the coastal waters of Queensland, the Northern Territory and northern Western Australia and adjacent areas of the AFZ. This replicates the area to which the NPF Management Plan applies, and includes the coastal waters of Queensland, the Northern Territory and Western Australia as the Commonwealth has entered into arrangements under Part 5 of the Management Act with these States and Territory which provide for the Commonwealth to have jurisdiction over fishing for prawns in these areas.<sup>14</sup>

The Part 5 arrangement referred to have been published in the Commonwealth *Gazette*, and are available free of charge at the Federal Register of Legislation website (<http://www.legislation.gov.au>).

Catch limits are commonly known as ‘trip limits’ because it limits the number of fish that can be taken in one trip. The catch limits imposed by this Division reflect memoranda of understanding between the Commonwealth and Queensland, the Northern Territory and Western Australia about the take of certain fish

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<sup>14</sup> For Queensland, see the Commonwealth of Australia Gazette, No. S 44, 8 February 1995 (pages 5-8), for the Northern Territory, see the Commonwealth of Australia Gazette, No. GN 4, 1 February 1995 (pages 316-320), and for Western Australia, see the Commonwealth of Australia Gazette, No. GN 4, 1 February 1995 (pages 341-344).

as bycatch. These memoranda are substantially similar, and were entered into subsequent to the abovementioned arrangements made under Part 5 of the Management Act.

### **Section 61 – Conditions**

Section 61 provides that, for the purposes of section 42B of the Management Act, Division 11 of Part 7 of the Regulations prescribes conditions that apply to fishing concessions which authorise the taking of Northern Prawn Fishery target species in prawn fishery waters (for fishing rights) and authorise the use of a boat for fishing for any Northern Prawn Fishery target species in prawn fishery waters (for fishing permits and foreign fishing licences). The term ‘Northern Prawn Fishery target species’ is defined in subsection 5(1) of the Regulations to be prawns, molluscs of the subclass Coleoidea (commonly known as squid) or of the family Pectinidae (commonly known as scallops).

This section is intended to replicate regulation 9ZH of the 1992 Regulations.

### **Section 62 – Crustaceans**

Section 62 prescribes catch limits for species of crustaceans in accordance with the memoranda of understanding between the Commonwealth and separately with Queensland, the Northern Territory and Western Australia. Under this section, a concession holder must not possess on the nominated boat:

- more than six tropical rock lobster (paragraph 62(a)); and
- more than 10 mud crabs of genus *Scylla* (paragraph 62(b)).

### **Section 63 – Molluscs**

Section 63 prescribes a ‘no take’ catch limit, from prawn fishery waters, for species of mollusc mentioned in clause 2 of Schedule 5 (pearl shell, trepang and trochus). This catch limit is imposed in accordance with the memoranda of understanding between the Commonwealth and separately with Queensland, the Northern Territory and Western Australia.

This section is intended to replicate regulation 9ZJ of the 1992 Regulations.

### **Section 64 – Finfish**

Section 64 prescribes catch limits for the take of specified species of finfish in accordance with the memoranda of understanding between the Commonwealth and Queensland, the Northern Territory and Western Australia, entered in to pursuant to arrangements made under Part 5 of the Management Act.

This section prescribes conditions that a concession holder must not:

- take any tuna, other than longtail tuna, from prawn fishery waters (subsection 64(1)) unless in prawn fishery waters that are Queensland waters (subsection 64(3)). Longtail tuna are not permitted to be taken in Queensland waters due to the significant take of that species by recreational fishers in Queensland;
- take any finfish of a species mentioned in clause 3 of Schedule 5 (six individual species) from prawn fishery waters (subsection 64(2));

- possess on the nominated boat more than 10 finfish of one or more species mentioned in clause 4 of Schedule 5 (broad barred Spanish (Grey) mackerel, gold banded snapper, narrow barred Spanish mackerel, (within family Serranidae) and sweet lips (within family Lethrinidae)) (subsection 64(4));
- possess on the nominated boat more than 500 kilograms of finfish mentioned in clause 5 of Schedule 5 (crimson snapper, saddle-tailed snapper and red emperor) if a trip ends in March, April, May or June (paragraph 64(5)(a)); and
- possess on the nominated boat more than 50 kilograms of finfish mentioned in clause 5 of Schedule 5 (crimson snapper, saddle-tailed snapper and red emperor) if a trip ends in any other month (paragraph 64(5)(b)).

The catch limits prescribed in subsections 64(4) and 64(5) are ‘basket’ catch limits, in that the amount of fish that can be taken is the amount of different species combined and not the amount that can be taken for each individual species. Different catch limits are prescribed for crimson snapper, saddle-tailed snapper and red emperor under subsection 64(5) to permit additional catch to be taken during the first banana prawn season opening from March until the end of June.

In addition, as processing of finfish is permitted in this fishery prior to landing, subsection 64(6) prescribes conversion factors by which processed forms of finfish are converted to whole weight. The phrases ‘gilled and gutted’, ‘fillets’ and ‘headed and gutted’ are references to how a fish has been processed in accordance with their ordinary and natural meaning. The conversion factors apply generically to each species of finfish, consistent with scientific advice received by AFMA from the Northern Prawn Fishery Resource Assessment Group. This subsection is required because the catch limits prescribed in subsection 64(5) are based on the whole weight of fish.

This section is intended to replicate and consolidate regulations 9ZG and 9ZK of the 1992 Regulations.

## **Section 65 – Other species**

Section 65 prescribes trip limits for other species of fish in accordance with the memoranda of understanding between the Commonwealth and Queensland, the Northern Territory and Western Australia. This section provides that the holder must not take any fish of a species mentioned in clause 6 of Schedule 5 (coral and any species of sharks, rays and skates of subclass Elasmobranchii) from prawn fishery waters.

This section is intended to replicate regulation 9ZL of the 1992 Regulations.

## **Division 12—Processing fish during a trip**

### **Section 66 – Conditions**

Section 66 provides that the provisions in Division 12 of Part 7 of the Regulations prescribe conditions that apply to all fishing concessions for the purpose of section 42B of the Management Act. The conditions included in this Division (sections 67 and 68) are primarily included in the Regulations to prevent the practice of ‘shark finning’ (i.e. removing the fins from a shark and returning the animal to the water whilst still alive). This is consistent with the 1992 Regulations (see Division 10 of Part 3A) and previous Government commitments made to reduce this practice.

This section is intended to replicate regulation 9ZN of the 1992 Regulations.

### **Section 67 – Prohibited ways of processing fish**

Section 67 prescribes a condition for all fishing concessions that, for the species of fish listed in the table in this section (including species of sharks, skates and rays) that are taken and retained during a trip, the concession holder must ensure that none of the parts of the fish mentioned in the item are removed from the carcass before the fish is landed and disposed of. Under this section, species of fish must only be processed in accordance with the following processing requirements:

- sharks (other than angel sharks (family Squatinidae), rays, skates and spurdogs (genus *Squalus*)), must not have the caudal lobe or the dorsal, pectoral or caudal fins removed (item 1);
- angel sharks (family Squatinidae) and dogfish (family Squalidae) must not have a dorsal or caudal fin removed (item 2);
- rays and skates must not have the skin or a fillet removed (item 3);
- banjo sharks (*Trygonorrhina* spp.) must not have the skin, a fillet, a pectoral fin or the tail removed (item 4);
- elephant fish (families Callorhynchidae, Chimaeridae and Rhinochimaeridae) must not have the second dorsal fin or the tail removed (item 5).

This section is intended to be similar to section 9ZO of the 1992 Regulations, but some processing requirements for tuna and billfish are not included in the Regulations as they are no longer required due to the introduction of electronic monitoring in relevant fisheries (under section 40A of the Management Act).

Electronic monitoring (known as e-monitoring) involves the installation of video cameras and sensors on board fishing vessels, which continuously monitor and transmit data about fishing activities to AFMA. This footage can be reviewed by AFMA to verify what fishers report in their logbooks and how fishing activity is conducted.

Boats operating in the Eastern Tuna and Billfish Fishery (ETBF), the Western Tuna and Billfish Fishery (WTBF), and the Gillnet, Hook and Trap Fishery (GHAT, a sector within the Southern and Eastern Scalefish and Shark Fishery) are all required to have e-monitoring systems installed. E-monitoring is also currently being rolled out to trawl boats in the Southern and Eastern Scalefish and Shark Fishery, and is intended to be introduced for all Commonwealth fisheries over time.

Requirements concerning the processing of tuna and billfish, captured in section 9ZO of the 1992 Regulations, are no longer required because the data collected from e-monitoring in tuna fisheries (the ETBF and WTBF) and the GHAT mean that AFMA can effectively monitor the treatment of those fish without requiring fishers to land those fish prior to processing.

## **Section 68 – Removal of shark liver**

Section 68 provides that, if a shark is taken during a trip and processed during the trip by the removal of its liver (subsection 68(1)), then the concession holder must ensure that:

- the shark's carcass and liver are retained for the duration of the trip (subsection 68(2)); and
- the liver is disposed of at the same time as the shark's carcass is disposed of (paragraph 68(3)(a)) including, if section 44 of the Regulations applies to a concession holder requiring the disposal of fish to a fish receiver, to the same fish receiver permit holder (paragraph 68(3)(b)).



Paragraph 68(3)(a) has the effect that all concession holders are required to retain a shark carcass and liver for a trip, and dispose of them at the same time.

This section is intended to replicate and clarify the operation of regulation 9ZP of the 1992 Regulations.

### **Division 13—Impacts on the marine environment**

This Division prescribes conditions on all fishing concessions concerning interactions with a ‘protected organism’, which is defined in subsection 5(1) of the Regulations to be:

- an organism that is a ‘protected species’. These include, for example, listed marine species listed under section 248 of the EPBC Act and a ‘whale’ as defined by subsection 4(1) of the Management Act; and
- an organism that is a part of a ‘protected community’ as defined by the EPBC Act by reference to a listed threatened ecological community under section 181 of that Act.

### **Section 69 – Conditions**

Section 69 provides that the provisions in Division 13 of Part 7 of the Regulations prescribe conditions that apply to fishing concessions for the purpose of section 42B of the Management Act.

This section is intended to replicate regulation 9ZR of the 1992 Regulations.

### **Section 70 – No interaction with protected organism**

Section 70 prescribes a condition that applies to fishing concessions that a concession holder must ensure that, as far as practicable, there is no interaction during a trip with a protected organism. A concession holder may be able to prevent interactions with a protected organism, for example, by deploying bycatch reduction devices for certain fisheries, such as a turtle excluder device in the Northern Prawn Fishery.

This section is intended to replicate and simplify regulation 9ZS of the 1992 Regulations.

### **Section 71 – Reporting interaction with protected organism**

Section 71 prescribes a condition that applies to fishing concessions that, if there is an interaction during a trip with a protected organism and there is an observer on board the nominated boat, the interaction is reported to the observer as soon as practicable. This enables the observer to observe the interaction, including whether it is consistent with bycatch handling guidelines established by AFMA.

This section is intended to replicate subregulation 9ZT(3) of the 1992 Regulations. The condition previously in force under subregulation 9ZT(2) of the 1992 Regulations, requiring an interaction with a protected organism to be recorded in a logbook, is separately captured under the *Fisheries Management (Logbooks for Fisheries) Determination 2018* (the Logbooks Determination) for all Commonwealth fisheries and therefore not required to be included in the Regulations. That instrument is a legislative instrument made by AFMA under section 42 of the Management Act. To that end, a note in this section provides that, in addition to this section, a concession holder may have an additional obligation to record the interaction in a logbook kept in accordance with a determination made under section 42 of the Management Act.

### **Section 72 – Requirements if protected organism is injured by interaction**

Section 72 prescribes conditions for fishing concessions that, if there is any interaction during a trip with a protected organism that causes injury to that organism, the concession holder must ensure that:

- the organism is given as much assistance as is practicable (subsection 72(1)); and
- the injury is reported as soon as practicable to any observer on board the nominated boat (subsection 72(2)). Akin to section 71, this is to enable the observer to observe the interaction and injury.

A note to subsection 72(2) outlines that, in addition to this section, a concession holder may have an additional obligation to record the injury in a logbook kept in accordance with a determination made under section 42 of the Management Act. The determination currently in force for this purpose, the Logbooks Determination, contains such requirements for all Commonwealth fisheries.

This section is intended to replicate and simplify regulation 9ZU of the 1992 Regulations.

### **Section 73 – Requirements if protected organism killed by interaction**

Section 73 prescribes conditions that, if during a trip there is an interaction with a protected organism that results in the death of that organism and if there is an observer on board the nominated boat:

- the concession holder must ensure that the death is reported to any observer on board the boat (subsection 73(1)). A note in this subsection provides that, in addition to this section, a concession holder may have an additional obligation to record the death in a logbook kept in accordance with a determination made under section 42 of the Management Act. The determination currently in force for this purpose, the Logbooks Determination, contains such requirements for all Commonwealth fisheries; and
- where it is necessary to discharge the organism's carcass, the concession holder must ensure that the carcass is discharged from the boat in a way that does not attract birds or animals to the boat (subsection 73(2)). This is intended to prevent any further interaction with other protected organisms that may cause injury or death to those protected organisms.

This section is intended to replicate and simplify subregulation 9ZT(4) and regulation 9ZV of the 1992 Regulations.

## **Part 8—Fish receiver permits**

The sections in Part 8 are made as permitted by subsection 92(2) of the Management Act to be prescribed, pursuant to paragraph 168(1)(a) of that Act, or as otherwise noted for a specific section.

### **Section 74 – Simplified outline of this Part**

Section 74 provides a simplified outline of Part 8 of the Regulations, which prescribes measures relevant to holders of fish receiver permits issued by AFMA under Division 2 of Part 6 of the Management Act.

This section is made as necessary or convenient to be prescribed in carrying out or giving effect to Part 8 of the Regulations and Division 2 of Part 6 of the Management Act, under paragraph 168(1)(b) of the Management Act.

### **Section 75 – Holder of fish receiver permit to keep records**

Paragraph 92(2)(a) of the Management Act provides that the regulations may make provisions requiring holders of fish receiver permits to make and keep accounts and other records in respect of fish received by them.

Section 75 is made for the purposes of paragraph 92(2)(a) of the Management Act, and replicates and update section 10AA of the 1992 Regulations by maintaining the requirement for the holder of the fish receiver permit to make records (subsection 75(1)), which must:

- be in a form required by a determination by AFMA in force under section 42 of the Act for a logbook in the relevant fishery (paragraph 75(2)(a)); and
- contain the information required by sections 77 and 78 of the Regulations about fish received and fish disposed of (paragraph 75(2)(b)) (see further detail at those sections below).

This section is intended to replace, and expand upon, section 10AA of the 1992 Regulations. AFMA has been moving from a paper-based logbook system to an electronic system to enhance the efficiency of logbook processing. These amendments will ensure that the electronic reporting requirements are extended to fish receiver licence holders from the commencement of the Regulations.

Under subsection 10AA(2) of the 1992 Regulations, records were required to be kept in writing whereas paragraph 75(2)(a) of the Regulations prescribes the form in which records are to be kept by reference to the Logbooks Determination. This provides capacity for records to be made and kept electronically, supporting AFMA's transition to electronic record keeping.

Under subsection 75(3), the fish receiver permit holder is required to keep the record for at least five years at the premises, if any, nominated in the fish receiver permit (paragraph 75(3)(a)) or, in any other case, at the permit holder's business or residential premises (paragraph 75(3)(b)).

#### **Section 76 – Holder of fish receiver permit to provide returns**

Subsection 76(1) prescribes that the holder of a fish receiver permit must give a return in respect of fish received by the holder within three days after receiving fish, for the purposes of paragraph 92(2)(b) of the Management Act. This was not provided for in the 1992 Regulations, but has been required in practice on a policy basis.

Subsection 76(2) prescribes that the return of information to AFMA, referred to in subsection 76(1), must:

- be in a form required by a determination by AFMA in force under section 42 of the Management Act for returns in respect of the relevant fishery (including in an electronic form) (paragraph 77(2)(a)). The determination made under section 42 of the Management Act is the Logbooks Determination. This provides capacity for permit holders to return their records to AFMA electronically for the purpose of this section;
- include certain the information required by sections 77 and 78 of the Regulations (about fish received and fish disposed of) (paragraph 76(2)(b)).

#### **Section 77 – Information about fish received**

Section 77 prescribes the types of information in relation to receiving fish that a holder of a fish receiver permit must make and keep a record of under section 75, and return to AFMA under section 76, of the Regulations. The types of information prescribed in this section are:

- information identifying the permit holder, the person from whom the fish were received and the details of the person receiving the fish (paragraphs 77(1)(a), 77(1)(b) and 77(1)(g)), as well as the name of the boat that caught the fish (paragraph 77(1)(c));

- the name and amount (by weight) of each species of fish, the type (if any) of processing that the fish were subject to, the date on which the fish were received (paragraphs 77(1)(d), 77(1)(e) and 77(1)(f));
- the number (if any) of Southern Bluefin Tuna received, and, for each Southern Bluefin Tuna received in processed form, whether the Southern Bluefin Tuna was received in processed form A or processed form B (as is determined in accordance with section 7 of the Regulations) (subsection 77(2)); and
- the individual number of fish caught of specified species (eight individual species, and fish of the family Bramidae) (subsection 77(3)).

This section is intended to replicate and simplify regulation 10AB of the 1992 Regulations, and is made as permitted by paragraph 92(2)(a) of the Management Act.

### **Section 78 – Information about fish disposed of**

Subsections 78(1), 78(2) and 78(3) of the Regulations prescribe the types of information in relation to the disposal of fish (except for private or domestic use) that a holder of a fish receiver permit must make and keep a record of under section 76, and return to AFMA under section 77, of the Regulations.

The types of information prescribed are:

- information identifying the permit holder and the person to whom the fish were disposed (paragraphs 78(1)(a) and 78(1)(b));
- the name and amount (by weight) of each species of fish, the type (if any) of processing that the fish were subject to, the date on which the fish were disposed of (paragraphs 78(1)(c), 78(1)(d) and 78(1)(e));
- information identifying the person providing the information (paragraph 78(1)(f));
- the number (if any) of Southern Bluefin Tuna disposed of, and, for each Southern Bluefin Tuna disposed of in processed form, whether the Southern Bluefin Tuna was disposed of in processed form A or processed form B (as is determined in accordance with section 7 of the Regulations) (subsection 78(2)); and
- the individual number of fish disposed of that are of specified species (eight individual species, and fish of the family Bramidae) (subsection 77(3)).

Subsection 78(4) provides that, for a record or return that relates to the disposal of fish for domestic or private use, the following information is prescribed:

- information identifying the holder of the fish receiver permit and the month in which the fish were disposed (paragraphs 78(4)(a) and 78(4)(e) respectively);
- a declaration that the fish were disposed of for private or domestic use (paragraph 78(4)(b));
- the name and amount (by weight) of each species of fish that were disposed and the type (if any) of processing to which the fish were subjected before their disposal (paragraphs 78(4)(c) and 78(4)(d) respectively).

This section is intended to replicate and simplify regulation 10AC of the 1992 Regulations, and is made as permitted by paragraph 92(2)(b) of the Management Act.



## **Part 8—Fish receiver permits**

The sections in Part 8 are made as permitted by subsection 92(2) of the Management Act to be prescribed, pursuant to paragraph 168(1)(a) of that Act, or as otherwise noted for a specific section.

### **Section 74 – Simplified outline of this Part**

Section 74 provides a simplified outline of Part 8 of the Regulations, which prescribes measures relevant to holders of fish receiver permits issued by AFMA under Division 2 of Part 6 of the Management Act.

This section is made as necessary or convenient to be prescribed in carrying out or giving effect to Part 8 of the Regulations and Division 2 of Part 6 of the Management Act, under paragraph 168(1)(b) of the Management Act.

### **Section 75 – Holder of fish receiver permit to keep records**

Paragraph 92(2)(a) of the Management Act provides that the regulations may make provisions requiring holders of fish receiver permits to make and keep accounts and other records in respect of fish received by them.

Section 75 is made for the purposes of paragraph 92(2)(a) of the Management Act, and replicates and update section 10AA of the 1992 Regulations by maintaining the requirement for the holder of the fish receiver permit to make records (subsection 75(1)), which must:

- be in a form required by a determination by AFMA in force under section 42 of the Act for a logbook in the relevant fishery (paragraph 75(2)(a)); and
- contain the information required by sections 77 and 78 of the Regulations about fish received and fish disposed of (paragraph 75(2)(b)) (see further detail at those sections below).

This section is intended to replace, and expand upon, section 10AA of the 1992 Regulations. AFMA has been moving from a paper-based logbook system to an electronic system to enhance the efficiency of logbook processing. These amendments will ensure that the electronic reporting requirements are extended to fish receiver licence holders from the commencement of the Regulations.

Under subsection 10AA(2) of the 1992 Regulations, records were required to be kept in writing whereas paragraph 75(2)(a) of the Regulations prescribes the form in which records are to be kept by reference to the Logbooks Determination. This provides capacity for records to be made and kept electronically, supporting AFMA's transition to electronic record keeping.

Under subsection 75(3), the fish receiver permit holder is required to keep the record for at least five years at the premises, if any, nominated in the fish receiver permit (paragraph 75(3)(a)) or, in any other case, at the permit holder's business or residential premises (paragraph 75(3)(b)).

### **Section 76 – Holder of fish receiver permit to provide returns**

Subsection 76(1) prescribes that the holder of a fish receiver permit must give a return in respect of fish received by the holder within three days after receiving fish, for the purposes of paragraph 92(2)(b) of the Management Act. This was not provided for in the 1992 Regulations, but has been required in practice on a policy basis.

Subsection 76(2) prescribes that the return of information to AFMA, referred to in subsection 76(1), must:

- be in a form required by a determination by AFMA in force under section 42 of the Management Act for returns in respect of the relevant fishery (including in an electronic form) (paragraph 77(2)(a)). The determination made under section 42 of the Management Act is the Lobgooks Determination. This provides capacity for permit holders to return their records to AFMA electronically for the purpose of this section;
- include certain the information required by sections 77 and 78 of the Regulations (about fish received and fish disposed of) (paragraph 76(2)(b)).

### **Section 77 – Information about fish received**

Section 77 prescribes the types of information in relation to receiving fish that a holder of a fish receiver permit must make and keep a record of under section 75, and return to AFMA under section 76, of the Regulations. The types of information prescribed in this section are:

- information identifying the permit holder, the person from whom the fish were received and the details of the person receiving the fish (paragraphs 77(1)(a), 77(1)(b) and 77(1)(g)), as well as the name of the boat that caught the fish (paragraph 77(1)(c));
- the name and amount (by weight) of each species of fish, the type (if any) of processing that the fish were subject to, the date on which the fish were received (paragraphs 77(1)(d), 77(1)(e) and 77(1)(f));
- the number (if any) of Southern Bluefin Tuna received, and, for each Southern Bluefin Tuna received in processed form, whether the Southern Bluefin Tuna was received in processed form A or processed form B (as is determined in accordance with section 7 of the Regulations) (subsection 77(2)); and
- the individual number of fish caught of specified species (eight individual species, and fish of the family Bramidae) (subsection 77(3)).

This section is intended to replicate and simplify regulation 10AB of the 1992 Regulations, and is made as permitted by paragraph 92(2)(a) of the Management Act.

### **Section 78 – Information about fish disposed of**

Subsections 78(1), 78(2) and 78(3) of the Regulations prescribe the types of information in relation to the disposal of fish (except for private or domestic use) that a holder of a fish receiver permit must make and keep a record of under section 76, and return to AFMA under section 77, of the Regulations.

The types of information prescribed are:

- information identifying the permit holder and the person to whom the fish were disposed (paragraphs 78(1)(a) and 78(1)(b));
- the name and amount (by weight) of each species of fish, the type (if any) of processing that the fish were subject to, the date on which the fish were disposed of (paragraphs 78(1)(c), 78(1)(d) and 78(1)(e));
- information identifying the person providing the information (paragraph 78(1)(f));
- the number (if any) of Southern Bluefin Tuna disposed of, and, for each Southern Bluefin Tuna disposed of in processed form, whether the Southern Bluefin Tuna was disposed of in processed form

A or processed form B (as is determined in accordance with section 7 of the Regulations) (subsection 78(2)); and

- the individual number of fish disposed of that are of specified species (eight individual species, and fish of the family Bramidae) (subsection 77(3)).

Subsection 78(4) provides that, for a record or return that relates to the disposal of fish for domestic or private use, the following information is prescribed:

- information identifying the holder of the fish receiver permit and the month in which the fish were disposed (paragraphs 78(4)(a) and 78(4)(e) respectively);
- a declaration that the fish were disposed of for private or domestic use (paragraph 78(4)(b));
- the name and amount (by weight) of each species of fish that were disposed and the type (if any) of processing to which the fish were subjected before their disposal (paragraphs 78(4)(c) and 78(4)(d) respectively).

This section is intended to replicate and simplify regulation 10AC of the 1992 Regulations, and is made as permitted by paragraph 92(2)(b) of the Management Act.



## **Part 9—Operation of boats and equipment**

The sections in Part 9 is made as permitted by provisions the Management Act to be prescribed, pursuant to paragraph 168(1)(a) of that Act and as noted for each section, or as otherwise provided.

### **Division 1—Preliminary**

#### **Section 79 – Simplified outline of this Part**

Section 79 provides a simplified outline of Part 9 of the Regulations, which contains provisions:

- concerning the identification of boats operating in Commonwealth fisheries, and the production of documents and information by those boats (Division 2);
- making it an offence to navigate a boat in an area that is a closed zone of a fishery, being an area subject to a direction of AFMA made under section 41A of the Management Act (Division 3); and
- providing for the sale or disposal of unclaimed nets, traps or other fishing equipment found in the AFZ (Division 4).

This section is made as necessary or convenient to be prescribed in carrying out or giving effect to Part 10 of the Regulations, pursuant to paragraph 168(1)(b) of the Management Act.

### **Division 2—Operation of boats**

#### **Section 80 – Identification code for a boat**

Subsection 168(2) of the Management Act relevantly provides that regulations may be made:

- providing for the marking of boats engaged in commercial fishing in the AFZ and of nets, traps and other equipment used for taking fish (paragraph 168(2)(h)); and
- prescribing penalties not exceeding 25 penalty units for offences against the regulations (paragraph 168(2)(a)).

Under section 80 of the Regulations, made as permitted under paragraphs 168(2)(h) and (a) of the Management Act, AFMA is required to allocate an identification code to each boat that is to be used for the purposes of a fishing right or a fishing permit, consisting of either numbers, letters or a combination of these (subsections 80(1) and 80(2)).

Subsection 80(2) is different to the equivalent provision in subregulation 12(1A) of the 1922 Regulations, in that subsection 80(2) of the Regulations allows for the allocation of identification codes in numeric form only, whereas subregulation 12(1A) of the 1922 Regulations requires an identification code to include a letter. Identification codes consisting only of numbers is consistent with commercial shipping registration numbers issued by the Australian Maritime Safety Authority (AMSA).

Subsection 80(3) provides that it is a requirement for the identification code to be displayed clearly and prominently on the boat at all times so that it is visible from the outside of the boat. The 1992 Regulations prescribe specific requirements about the way the boat's identification code must be shown on the boat (subregulation 12(2)). The change to an outcomes-based requirement is consistent with commercial shipping legislation administered by AMSA and the identification number scheme administered by the International

Maritime Organization. If the master or the owner of the boat fails to meet this requirement, this master or owner commits a strict liability offence with a penalty of 15 penalty units (subsection 80(4)).

Subsection 80(5) provides that the identification code must be removed from the boat or obliterated as soon as practicable after the fishing right or fishing permit ceases to apply in relation to the boat and subsection 80(6) provides that, if the master or owner of the boat fails to meet the requirement under subsection 80(5), the master or owner commits a strict liability offence with a penalty of 15 penalty units.

Subsection 80(7) prescribes an exception to the offences in subsections 80(4) and 80(6) that apply where the boat is licenced to be used to take fish under a law of a State or Territory, and the boat displays an identifying marking under that law. A note to subsection 80(7) provides that a defendant bears an evidential burden in relation to the matter in that subsection (with reference to section 13.3 of the Criminal Code outlined in Schedule 1 to the *Criminal Code Act 1995*).

The *Commonwealth Guide to Framing Offences, Infringement Notices and Enforcement Powers* (the Offences Guide) has been consulted in framing the exception in subsection 80(7), which is an offence-specific defence carrying a reverse onus of proof. It is appropriate for subsection 80(7) include such a defence as knowledge as to whether or not a boat is authorised under State or Territory law is knowledge that would be readily available within the knowledge of a defendant, and would require significantly more difficult and cost to be disproved by the prosecution. A defendant would be readily aware of their State or Territory fishing authority and could simply produce a relevant fishing licence or permit.<sup>15</sup>

Subsection 80(8) prescribes a further strict liability offence that applies where the master or owner of a boat, that has been issued an identification code by AFMA under subsection 80(1), and:

- the boat is being used for the purposes of the fishing permit or fishing right for which the identification code was allocated; and
- the boat displays an identification code that is not the code issued by AFMA.

The Offences Guide has also been consulted in relation to the offences in subsections 80(4), 80(6) and 80(8), which are all of strict liability bearing a penalty of 15 penalty units. Imposing a fine of 15 penalty units (as well as the 5 times corporate multiplier under subsection 4B(3) of the *Crimes Act 1914* (the Crimes Act)) is considered an appropriate penalty to impose in this regard because:

- the maximum penalty for an offence permitted to be prescribed in the Regulations is 25 penalty units (see paragraph 168(2)(a) of the Management Act); and
- a fine of \$3,150 (or \$15,750 for a corporation) is a reasonable penalty to impose, as it has a necessary element of deterrence whilst not being an excessive penalty for a strict liability offence.

Considering the guidance within the Offences Guide for offences of strict liability, it is noted that, as strict liability applies to all of the physical elements of this offence:

- the offence is not punishable by imprisonment, and is not dependent upon a subjective or community standard;
- the offence is punishable by a fine of 15 penalty units, which is below the 60 penalty units threshold;

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<sup>15</sup> In accordance with the guidance at subsection 4.3.1 of the Offences Guide.

- there is a strong element of specific and general deterrence to the offence and to require proof of intention would undermine the regulatory effectiveness of this provision and the purpose for which they are enacted to provide AFMA with a primary identification capacity, so that compliance and enforcement functions specified in section 7 of the Administration Act can be properly administered;
- penalising persons without proof of fault is appropriate to apply in this circumstance as the proper identification of fishing boats is a basic factual requirement for masters or owners of fishing boats to comply with, for which they should be well aware before conducting fishing operations; and
- the defence of honest and reasonable mistake of fact is still available for defendants under section 9.2 of the Criminal Code, outlined in Schedule 1 to the *Criminal Code Act 1995*.<sup>16</sup>

This section is intended to replicate, and make the described amendment, to regulation 12 of the 1992 Regulations.

### **Section 81 – Production of documents on a foreign boat**

Paragraph 168(2)(l) of the Management Act provides that regulations may be made facilitating the exercise by officers of their powers under section 84 of that Act. This section for the purpose of paragraph 168(2)(l).

Powers available to officers under section 84 of the Management Act relevantly include the power to require the master of a boat in relation to which a fishing concession (i.e. including a foreign fishing licence) is in force to give information concerning the boat, its crew and any person on board a boat (paragraph 84(1)(p) of the Management Act).

Section 81 of the Regulations provides that officers are given powers, concerning a foreign boat that is being used under a foreign fishing licence or a Treaty licence, to:

- ask the master to give the officer a written translation of a document, into English, if a document in a foreign language is given to an officer (subsection 81(2)); and
- nominate a person to make any such translation (subsection 81(3)). If the master fails to do this as soon as practicable, they commit an offence of strict liability (subsections 81(4) and 81(5)) with a penalty of 15 penalty units.

In addition, subsection 81(6) place obligations on officers if they remove a document from a boat to make a copy of, or take an extract from, the document. An officer is required to keep the document for no longer than is reasonably necessary to take the copy or extract (paragraph 81(6)(a)), and allow the master of the boat, or a person nominated by the master, to accompany the officer while the officer has the document away from the boat (paragraph 81(6)(b)).

The Offences Guide has been consulted in relation to the strict liability offence in subsection 81(4), which bears a 15 penalty unit penalty. Imposing a fine of 15 penalty units (as well as the 5 times corporate multiplier under subsection 4B(3) of the Crimes Act) is considered an appropriate penalty to impose in this regard because:

- the maximum penalty for an offence permitted to be prescribed in the Regulations is 25 penalty units (see paragraph 168(2)(a) of the Management Act); and

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<sup>16</sup> In accordance with the guidance at subsection 2.2.6 of the Offences Guide.

- a fine of \$3,150 (or \$15,750 for a corporation) is a reasonable penalty to impose, as it has a necessary element of deterrence whilst not being an excessive penalty for a strict liability offence.

Considering the guidance within the Offences Guide for offences of strict liability, it is noted that, as strict liability applies to all of the physical elements of this offence:

- the offence is not punishable by imprisonment, and is not dependent upon a subjective or community standard;
- the offence is punishable by a fine of 15 penalty units, which is below the 60 penalty units threshold;
- there is a strong element of specific and general deterrence to the offence and to require proof of intention would undermine the regulatory effectiveness of this provision as failing to provide a translated document within a reasonable timeframe could have a significant impact on AFMA's ability to conduct further compliance and enforcement activities concerning a foreign boat;
- penalising persons without proof of fault is appropriate to apply in this circumstance as the proper identification of fishing boats is a basic factual requirement for masters or owners of fishing boats to comply with, for which they should be well aware before conducting fishing operations; and
- the defence of honest and reasonable mistake of fact is still available for defendants under section 9.2 of the Criminal Code, outlined in Schedule 1 to the *Criminal Code Act 1995*.<sup>17</sup>

This section is intended to replicate regulation 13 of the 1992 Regulations.

## **Section 82 – Identification of the call-sign of a foreign boat**

Subsection 168(2) of the Management Act relevantly provides that regulations may be made:

- providing procedures to be followed to facilitate the recognition of foreign boats the use of which is authorised by a foreign fishing licence (paragraph 168(2)(o)); and
- prescribing penalties not exceeding 25 penalty units for offences against the regulations (paragraph 168(2)(a)).

Section 82 is made for the purposes of paragraphs 168(2)(o) and 168(2)(a) of the Management Act.

Subsection 82(1) provides that the master of a foreign boat that is being used in the AFZ under a foreign fishing licence must display the boat's international radio call sign on the boat in accordance with subsections 82(2) and 82(3). Subsection 82(2) provides that the call sign must be displayed clearly and prominently on the boat at all times so that it is visible from the outside of the boat and subsection 82(3) provides that call sign must be displayed in a position that makes each sign clearly visible from an aircraft or a boat.

The 1992 Regulations prescribe specific requirements for the display of the call sign (subregulations 15(2) to 15(6)). The change to an outcomes based requirement is consistent with commercial shipping legislation administered by AMSA and the identification number scheme administered by the International Maritime Organization.

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<sup>17</sup> In accordance with the guidance at subsection 2.2.6 of the Offences Guide.

Subsection 82(4) provides that an offence against subsection 82(1) is an offence of strict liability, with a penalty of 25 penalty units.

The Offences Guide has been consulted in relation to the strict liability offence in subsection 82(1), which bears a 25 penalty unit penalty. Imposing a fine of 25 penalty units (as well as the 5 times corporate multiplier under subsection 4B(3) of the Crimes Act) is considered an appropriate penalty to impose in this regard because:

- the maximum penalty for an offence permitted to be prescribed in the Regulations is 25 penalty units (see paragraph 168(2)(a) of the Management Act);
- a fine of \$5,250 (or \$26,250 for a corporation) is a reasonable penalty to impose, as it has a necessary element of deterrence whilst not being an excessive penalty for a strict liability offence; and
- a fine greater than that for the identification of a domestic fishing boat (under section 80 of the Regulations), or for failing to produce a translation of documents (under section 81), is suitable to impose because there is a greater deterrence element to this offence in contrast with those other offences. This is, in particular, because AFMA may not otherwise be able to identify a foreign boat or have access to the registration details of foreign governments.

Considering the guidance within the Offences Guide for offences of strict liability, it is noted that, as strict liability applies to all of the physical elements of this offence:

- the offence is not punishable by imprisonment, and is not dependent upon a subjective or community standard;
- the offence is punishable by a fine of 25 penalty units, which is below the 60 penalty units threshold;
- there is a strong element of specific and general deterrence to the offence and to require proof of intention would undermine the regulatory effectiveness of this provision because the protection of Australia's fishing resources from foreign incursion is an identified maritime threat for the Australian government;<sup>18</sup>
- penalising persons without proof of fault is appropriate to apply in this circumstance given the strong specific deterrence element of this offence;
- the defence of honest and reasonable mistake of fact is still available for defendants under section 9.2 of the Criminal Code, outlined in Schedule 1 to the *Criminal Code Act 1995*.<sup>19</sup>

This section is intended to replicate regulation 15 of the 1992 Regulations.

### **Section 83 – Identification of the name of a foreign boat**

Subsection 168(2) of the Management Act relevantly provides that regulations may be made:

- providing procedures to be followed to facilitate the recognition of foreign boats the use of which is authorised by a foreign fishing licence (paragraph (o)); and

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<sup>18</sup> See the maritime threats identified in the *Guide to Australian Maritime Security Arrangements*.

<sup>19</sup> In accordance with the guidance at subsection 2.2.6 of the Offences Guide.

- prescribing penalties not exceeding 25 penalty units for offences against the regulations (paragraph (a)).

Section 83 is made for the purposes of paragraphs 168(2)(o) and (a) of the Management Act.

Subsection 83(1) provides that the master of a foreign boat that is being used in the AFZ under a foreign fishing licence must show the boat's name on the boat in accordance with subsection 83(2). Subsection 83(2) provides that the name must be displayed clearly and prominently on the boat at all times so that it is visible from the outside of the boat.

The 1992 Regulations prescribe specific requirements for the display of the name of a foreign boat (subregulations 16(2) to 16(4)). The change to an outcomes-based requirement is consistent with commercial shipping legislation administered by AMSA and the identification number scheme administered by the International Maritime Organization.

The prescribed penalty for this offence is 25 penalty units and subsection 83(3) provides that an offence against subsection 83(1) is an offence of strict liability. The Offences Guide has been consulted in relation to this offence. Imposing a fine of 25 penalty units (as well as the 5 times corporate multiplier under subsection 4B(3) of the Crimes Act) is considered an appropriate penalty to impose in this regard because:

- the maximum penalty for an offence permitted to be prescribed in the Regulations is 25 penalty units (see paragraph 168(2)(a) of the Management Act);
- a fine of \$5,250 (or \$26,250 for a corporation) is a reasonable penalty to impose, as it has a necessary element of deterrence whilst not being an excessive penalty for a strict liability offence; and
- a fine greater than that for the identification of a domestic fishing boat (under section 80 of the Regulations), or for failing to produce a translation of documents (under section 81), is suitable to impose because there is a greater deterrence element to this offence in contrast with those other offences. This is, in particular, because AFMA may not otherwise be able to identify a foreign boat or have access to the registration details of foreign governments.

Considering the guidance within the Offences Guide for offences of strict liability, it is noted that, as strict liability applies to all of the physical elements of this offence:

- the offence is not punishable by imprisonment, and is not dependent upon a subjective or community standard;
- the offence is punishable by a fine of 25 penalty units, which is below the 60 penalty units threshold;
- there is a strong element of specific and general deterrence to the offence and to require proof of intention would undermine the regulatory effectiveness of this provision because the protection of Australia's fishing resources from foreign incursion is an identified maritime threat for the Australian government;<sup>20</sup>
- penalising persons without proof of fault is appropriate to apply in this circumstance given the strong specific deterrence element of this offence;

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<sup>20</sup> See the maritime threats identified in the *Guide to Australian Maritime Security Arrangements*.

- the defence of honest and reasonable mistake of fact is still available for defendants under section 9.2 of the Criminal Code, outlined in Schedule 1 to the *Criminal Code Act 1995*.<sup>21</sup>

This section is intended to replicate regulation 16 of the 1992 Regulations.

## **Section 84 – Information relating to persons on board a boat**

Subsection 168(2) of the Management Act relevantly provides that regulations may be made:

- providing for the furnishing of information relating to persons on board a boat that is in the AFZ, the use of which is authorised by a fishing concession, and an Australian boat engaged in fishing outside of the AFZ (paragraph (q)); and
- prescribing penalties not exceeding 25 penalty units for offences against the regulations (paragraph (a)).

Section 84 is made for the purposes of paragraphs 168(2)(q) and (a) of the Management Act.

Subsection 84(1) provides that the section applies to a boat that is used in the AFZ under a fishing concession and an Australian boat engaged in fishing outside the AFZ (i.e. those boats referred to in paragraph 168(2)(q) of the Management Act). Subsection 84(3) makes it an offence for a master of a boat to fail to give to AFMA, if AFMA asks for it at any time, certain personal information (names, dates of birth, residential address and positions) about persons on board a boat (as specified in subsection 84(2)) as soon as practicable.

The penalty for an offence against subsection 85(3) is 15 penalty units, and be of strict liability (subsection 84(5)). The Offences Guide has been consulted in relation to this offence. Imposing a fine of 25 penalty units (as well as the 5 times corporate multiplier under subsection 4B(3) of the Crimes Act) is considered an appropriate penalty to impose in this regard because:

- the maximum penalty for an offence permitted to be prescribed in the Regulations is 25 penalty units (see paragraph 168(2)(a) of the Management Act);
- a fine of \$3,150 (or \$15,750 for a corporation) is a reasonable penalty to impose, as it has a necessary element of deterrence whilst not being an excessive penalty for a strict liability offence.

Considering the guidance within the Offences Guide for offences of strict liability, it is noted that, as strict liability applies to all of the physical elements of this offence:

- the offence is not punishable by imprisonment, and is not dependent upon a subjective or community standard;
- the offence is punishable by a fine of 15 penalty units, which is below the 60 penalty units threshold;
- there is a strong element of specific and general deterrence to the offence and to require proof of intention would undermine the viability of further
- penalising persons without proof of fault is appropriate to apply in this circumstance given the strong specific deterrence element of this offence;

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<sup>21</sup> In accordance with the guidance at subsection 2.2.6 of the Offences Guide.

- the defence of honest and reasonable mistake of fact is still available for defendants under section 9.2 of the Criminal Code, outlined in Schedule 1 to the *Criminal Code Act 1995*.<sup>22</sup>

Subsection 84(4) provides that AFMA may only make a request of a master for the purpose of subsection 84(2) once in each 48 hour period. Under this subsection, an additional request may be made by AFMA after 48 hours have elapsed regardless as to whether a response has been provided for the preceding request.

This section is intended to replicate regulation 16 of the 1992 Regulations.

### **Division 3—Closure or partial closure of a fishery**

Subsection 168(2) of the Management Act relevantly provides that regulations may be made:

- prescribing rules of navigation to be observed in the AFZ by masters of fishing boats in respect of which fishing rights, or any licences or permits, are in force under the Management Act (paragraph (g)); and
- prescribing penalties not exceeding 25 penalty units for offences against the regulations (paragraph (a)).

The provisions in Division 3 of Part 9 of the Regulations (sections 86 and 87) are made for the purposes of paragraphs 168(2)(g) and (a) of the Management Act.

### **Section 85 – Meaning of *closed zone***

This section prescribes the meaning of ‘closed zone’ for the purposes of section 86 of the Regulations.

Subsection 85(1) provides that a ‘closed zone’ is any part of a fishery for which a direction made under subsection 41A(2) of the Management Act is in force. Subsection 85(2) provides that a closed zone relates to a boat if the boat may be used to engage in fishing in any part of a closed zone under a fishing concession or a foreign master fishing licence or to engage in fishing in any part of a closed zone under a scientific permit for scientific research.

At the time of making the Regulations, there are 17 directions in force as made by AFMA under subsection 41A(2) of the Management Act. These directions are legislative instruments that are available on the Federal Register of Legislation.

This section is intended to replicate the meaning of ‘closed zone’ regulation 37B of the 1992 Regulations.

### **Section 86 – Navigating in an area that is a closed zone**

Subsection 86(1) prescribes an offence of strict liability if the master of a boat navigates their boat in an area that is a closed zone that relates to the boat for the purpose of paragraph 168(2)(a) of the Management Act. Subsections 86(2) and 86(3) provides the following exceptions:

- if information given by the boat’s vessel monitoring system shows that the boat, whilst in the closed zone, was travelling at a speed of five knots or more or was stationary after being navigated in the closed zone for 30 minutes or more (subsection 86(2)). The speed of the boat is determined in accordance with subsection 86(4). The boat is required to be within the closed zone for a period of 30

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<sup>22</sup> In accordance with the guidance at subsection 2.2.6 of the Offences Guide.



minutes or more to be considered stationary for the purpose of subsection (2) to allow two separate transmissions from the vessel monitoring system for the purpose of determining the speed under subsection (4)); and

- if AFMA had given approval for the boat to be navigated in the closed zone because of an unforeseen emergency, or circumstances beyond the control of the master, and the boat is navigated in accordance with any instructions given by AFMA (subsection 87(3)).

The penalty for the strict liability offence in subsection 86(1) is 25 penalty units. The Offences Guide has been consulted in relation to this offence. Imposing a fine of 25 penalty units (as well as the 5 times corporate multiplier under subsection 4B(3) of the Crimes Act) is considered an appropriate penalty to impose in this regard because:

- the maximum penalty for an offence permitted to be prescribed in the Regulations is 25 penalty units (see paragraph 168(2)(a) of the Management Act);
- a fine of \$5,250 (or \$26,250 for a corporation) is a reasonable penalty to impose, as it has a necessary element of deterrence whilst not being an excessive penalty for a strict liability offence; and
- a fine greater than that for the identification of a domestic fishing boat (under section 80 of the Regulations), or for failing to produce a translation of documents (under section 81), is suitable to impose because there is a greater deterrence element to this offence in contrast with those other offences. This is, in particular, because AFMA may not otherwise be able to identify a foreign boat or have access to the registration details of foreign governments.

Considering the guidance within the Offences Guide for offences of strict liability, it is noted that, as strict liability applies to all of the physical elements of this offence:

- the offence is not punishable by imprisonment, and is not dependent upon a subjective or community standard;
- the offence is punishable by a fine of 25 penalty units, which is below the 60 penalty units threshold;
- there is a strong element of specific and general deterrence to the offence and to require proof of intention would undermine the regulatory effectiveness of this provision because the protection of Australia's fishing resources from foreign incursion is an identified maritime threat for the Australian government;<sup>23</sup>
- penalising persons without proof of fault is appropriate to apply in this circumstance given the strong specific deterrence element of this offence;
- the defence of honest and reasonable mistake of fact is still available for defendants under section 9.2 of the Criminal Code, outlined in Schedule 1 to the *Criminal Code Act 1995*.<sup>24</sup>

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<sup>23</sup> See the maritime threats identified in the *Guide to Australian Maritime Security Arrangements*.

<sup>24</sup> In accordance with the guidance at subsection 2.2.6 of the Offences Guide.

Notes to both of the exceptions in subsections 86(2) and 86(3) provide that a defendant bears an evidential burden in relation to the matter in those subsections, with reference to subsection 13.3(3) of the Criminal Code (see Schedule 1 of the *Criminal Code Act 1995*).

The Offences Guide has also been consulted in framing the exceptions in subsections 86(2) and 86(3), which are offence-specific defences carrying a reverse onus of proof. It is appropriate for the provisions to include such a defence as knowledge concerning the operation of a fishing boat (being either travelling at a speed of 5 knots or more, stationary, or being navigated in accordance with instructions issued by AFMA) is peculiarly in the knowledge of the defendant. As fishing boats operate in areas distant from the shore, which may require aerial surveillance to monitor, this information is more readily available to the defendant (through tendering statements from the boat's master and crew, for example) and may require significant cost and burden to be collected as evidence for the prosecution.<sup>25</sup>

Subsection 86(4) provides that the method for working out the speed of a boat for the purpose of this section is:

- for each consecutive pair of points identified by the boat's vessel monitoring system, identify the shortest distance between the pair of points in a straight line (paragraph 86(4)(a)). As a boat's speed under this section is regulated in terms of knots, the distance will be determined in nautical miles; and
- divide the distance by the time taken by the boat to travel between the two points (paragraph 86(4)(b)).

Subsection 86(5) provides that, for the purposes of section 86, a boat is taken to be stationary if it is travelling at a speed of 0.5 knots or less as worked out under subsection 86(4). This accommodates for the drift of boats under, for example, tidal movements.

This section combines offences provided for in sections 37C and 37D of the 1992 Regulations, which distinguished between areas that are closed for less than 24 hours, and areas that are closed for 24 hours or longer. The different time periods were provided for so as to accommodate boats being stationary during daytime fishing closures in the Northern Prawn Fishery. Under the 1992 Regulations, being stationary is not an exception available for more permanent closures of 24 hours or longer in duration. AFMA has decided to expand this exception, which is provided for closures of all types under the Regulations.

## **Division 4—Unclaimed equipment**

### **Section 87 – Sale or disposal of unclaimed equipment**

Section 87 is made for the purpose of paragraph 168(2)(j) of the Management Act, which provides that regulations may be made providing for the sale or disposal of unclaimed nets, traps or other fishing equipment found in the AFZ.

Subsections 87(1) to 87(7) of the Regulations replicate regulation 19 of the 1992 Regulations, and provide for the disposal of equipment if the owner of the equipment cannot be identified by AFMA where the following retention and notification requirements have been complied with:

- the equipment is kept in safe custody for 30 days after the day on which it was found (subsection 87(2));

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<sup>25</sup> In accordance with the guidance at subsection 4.3.1 of the Offences Guide.

- if the owner has not been identified by the end of 30 days, AFMA must place a notice in a specified newspaper (subsection 87(3)), which describes the equipment, identifies the place where it was found and states that, unless the owner of the equipment is identified within 14 days of publication, the equipment may be sold at public auction (subsection 87(4));
- AFMA may attempt to sell the equipment by public auction if the owner has not been identified at the end of 14 days after the date of publication of the newspaper and the equipment is in saleable condition (subsection 87(5)). The Commonwealth is taken to be the absolute owner of the equipment for the purposes of the auction (paragraph 87(6)(a));
- the public auction may be held by an officer without holding an auctioneer's licence issued under the law of the State or Territory in which the auction is held (paragraph 87(6)(b)) and the proceeds of sale must be paid to AFMA (paragraph 87(6)(c)); and
- if the equipment is not in saleable condition for the purpose of subsection 87(5), or is offered but not sold at auction, AFMA may direct how the equipment is disposed of (subsection 87(7)).

Subsection 87(8) expands upon what was provided for in regulation 19 of the 1992 Regulations. This subsection provides AFMA with authority to dispose of marine debris without having to comply with retention and notification requirements provided in subsections 87(2) to 87(7). Marine debris primarily consists of ghost nets and fish aggregating devices of little residual value, and which in many instances are a hygiene and biosecurity hazard. To minimise this hazard, it is appropriate for these items to be disposed of immediately.

Marine debris collected by, or by partner agencies on behalf of, AFMA primarily consists of ghost nets and fish aggregating devices. In the past three years, 54 items of marine debris have been retrieved from the ocean (15 in 2016, 7 in 2017 and 36 in 2018). These items have limited residual value as it has been adrift in the ocean for some time and significantly degraded due to exposure and inhabited by marine organisms.

Such marine debris is not regularly collected in connection with a particular vessel, which is required to enable the triggering of the immediate disposal power which would otherwise be available under section 70 of the *Maritime Powers Act 2013*. As marine debris is of little residual value once it is collected by AFMA, immediate disposal of the debris prevents development of any health and environment hazard due to on-shore storage for the prescribed period.

If AFMA's actions under this section were to result in the acquisition of property from a person otherwise than on just terms, section 167A of the Management Act provides for the payment of reasonable compensation to the person.

## **Part 10—Detention of suspected illegal foreign fishers**

The sections in Part 10 are made as permitted by provisions of Schedule 1A to the Management Act to be prescribed, pursuant to paragraph 168(1)(a) of that Act and as noted for each section. One exception is section 100(1), which is made as permitted to be prescribed by paragraph 108B(3)(b) of the Management Act.

### **Division 1—Simplified outline of this Part**

#### **Section 88 – Simplified outline of this Part**

The Australian Government's strong stance on foreign illegal fishing is widely known amongst foreign illegal fishers who have been detained. In the past, fishers have purposely misled AFMA officials about their identity

and their age. It is vital that AFMA is able to adequately identify offenders to ensure that foreign illegal fishing can be deterred.

Under international law a person must not be imprisoned for a foreign fishing offence, however recidivists (repeat offenders) can be sentenced to a jail term as a result of breaching a good behaviour bond or defaulting on a fine imposed in a previous prosecution for foreign illegal fishing offences under the Management Act or the *Torres Strait Fisheries Act 1984* (the Torres Strait Act).

Identifying foreign fishers who do not carry documentation and do not want to be identified can be very difficult for AFMA and partner law enforcement agencies. The provisions in Part 10 of the Regulations enable AFMA to use the technology and processes that have been conferred upon other border protection enforcement agencies, particularly the Australian Border Force as part of the Department of Home Affairs.

Section 88 provides simplified outline of Part 10 of the Regulations, which prescribes relevant matters for the purpose of Schedule 1A to the Management Act. Under Schedule 1A, authorised AFMA officers, and migration officers taken to be such authorised officers, have powers to detain and search suspected illegal foreign fishers brought to Australia under a fisheries enforcement visa granted by operation of section 164B of the *Migration Act 1958* (Migration Act). These alleged illegal foreign fishers are referred to in Schedule 1A as ‘detainees’ (see clause 2 of Schedule 1A).

Schedule 1A to the Management Act also authorises the conduct of ‘identification tests’ of detainees and the provision of ‘personal identifiers’. Personal identifiers collected by an identification test, and certain information extracted from that information, is considered to be ‘identifying information’. Part 10 of the Regulations prescribes matters relating to the collection of personal identifiers, and the access to and disclosure of identifying information, for the purpose of Divisions 2, 3 and 4 of Part 5 of Schedule 1A to the Management Act.

The provisions Part 10 of the Regulations are analogous to those in Division 3.4 of Part 3 of the *Migration Regulations 1994* (the Migration Regulations) concerning the conduct of identification tests and the collection of personal identifiers from unlawful non-citizens, and the subsequent access to and disclosure of identifying information, under the Migration Act.

Schedule 1A of the Management Act is also replicated in Schedule 2 of the Torres Strait Act in relation to illegal foreign fishers detained in Torres Strait fisheries. Similarly, Part 3 of the *Torres Strait Fisheries Regulations 1985* also prescribes relevant measures for the purpose of Schedule 2 of the Torres Strait Act. Amendments to the Torres Strait Regulations are being prepared to also bring that instrument in line with the Migration Regulations.

This section is made as necessary or convenient to be prescribed in carrying out or giving effect to Part 10 of the Regulations and Schedule 1A to the Management Act, under paragraph 168(2)(b) of the Management Act.

## **Division 2—Identifying detainees**

### **Section 89 – Personal identifiers**

Section 89 provide that a sample of a person’s handwriting and photographs of identifying marks is a ‘personal identifier’ for the purposes of paragraph (g) of the definition in subclause 26(1) of Schedule 1A to the Management Act. Those additional identifiers are prescribed to assist in the identification of detainees.

Under subclause 26(2) of Schedule 1A to the Management Act, before the Governor General may prescribe additional identifiers for the purposes of paragraph 26(1)(g) of Part 5 of Schedule 1A, the Assistant Minister must be satisfied that:

- obtaining the identifier would not involve the carrying out of an ‘intimate forensic procedure’ (within the meaning given by section 23WA of the Crimes Act); and
- the identifier is an image of, or a measurement or recording of, an external part of the body; and
- obtaining the identifier would promote one or more of the purposes referred to in subclause 26(3).

The purposes referred to in subclause 26(3) of Schedule 1A to the Management Act are to:

- assist in the identification of, and to authenticate the identity of, any person who can be required under the Management Act to provide a personal identifier (paragraph 26(3)(a)),
- assist in identifying any such person in the future (paragraph 26(3)(b)),
- enhance AFMA’s ability to identify non-citizens who have a criminal history relating to fisheries (paragraph 26(3)(c)),
- combat document and identity fraud in fisheries matters (paragraph 26(3)(d)),
- complement anti-people smuggling measures (paragraph 26(3)(e)),
- inform the governments of foreign countries of the identity of non-citizens who have been detained under, or charged with offences against, the Management Act (paragraph 26(3)(f)) and
- facilitate international cooperation to combat fishing activities that involve a breach of the laws of Australia or of a foreign country (paragraph 26(3)(g)).

In relation to paragraph 89(a), which prescribes a sample of a person’s handwriting as an additional identifier:

- obtaining a sample of a person’s handwriting is not an ‘intimate forensic procedure’ within the meaning of section 23WA of the Crimes Act; and
- handwriting is a measurement or recording of an external part of the body; and
- obtaining a sample of the person’s handwriting would promote the purposes referred to in paragraphs 26(3)(a)-(e) of Schedule 1A to the Management Act.

Paragraph 89(b) prescribes a photograph of a tattoo, scar or other identifying mark of a person as an additional identifier if obtaining the photograph does not involve the removal of the person’s clothing or the carrying out of an intimate procedure within the meaning of section 23WA of the Crimes Act. The Minister is satisfied of the matters set out in subsection 26(2) of the Management Act because:

- a photograph of a tattoo, scar or other identifying mark is an image of an external part of a person’s body; and
- obtaining the photograph would promote the purposes referred to in paragraphs 26(3)(a)-(e) of Schedule 1A.

In an operational context it is necessary to have a range of personal identifiers to positively identify detainees. In many situations, a combination of one or more identifiers is needed.

As ships' masters are often charged with summary or indictable offences, it is not uncommon for a master to obscure his identity and ask another to step forward in his place to reduce the risk of being considered as a recidivist. In that instance, a sample of a person's handwriting can be compared to a ship's log in order to positively identify the master.

A photograph of a tattoo, scar or other identifying is particularly useful as these markings are common amongst fisheries detainees, distinctive in location and pattern and are not easily removed. A photograph of a tattoo or scar usefully replaces fingerprints, which cannot positively identify a detainee owing to calluses, scars or other deterioration of the skin which is common amongst fishers.

This section is intended to replicate regulation 19B of the 1992 Regulations.

### **Section 90 – Personal identifiers detainees must provide**

Under subclause 28(1) of Schedule 1A to the Management Act, a non-citizen in detention must provide to an authorised officer one or more personal identifiers. This subclause, in effect, applies to detainees who are not citizens of Australia. An authorised officer must not, for the purpose of subclause 28(1), require a non-citizen to relevantly provide a personal identifier other than those listed in paragraphs 28(2)(a)-(d) and any other personal identifier of a type prescribed for the purposes of paragraph 28(2)(e).

Section 90 prescribes the additional personal identifiers that must be provided by a non-citizen to an authorised officer under subclause 28(1) of Schedule 1A to the Management Act, for the purposes of paragraph 28(2)(e) of Schedule 1A to the Management Act.

The additional personal identifiers that are prescribed are an audio or a video recording of the detainee (other than a video recording under clause 37 of Schedule 1A) (paragraph 90(a)), an iris scan of the detainee's eyes (paragraph 90(b)), a sample of the detainee's handwriting (paragraph 90(c)) and a photograph of a tattoo, scar or other identifying mark of the detainee that does not involve the removal of clothing or the carrying out of an intimate forensic procedure as defined by the Crimes Act (paragraph 90(d)).

When it is not possible to identify the master of a ship, the whole crew must be interviewed. In these circumstances, an audio or video recording is particularly useful as it allows AFMA officers to review and compare crew statements and identification information. An audio or video recording of a detainee (other than a video recording under clause 37 of Schedule 1A to the Act) will also assist AFMA in meeting its obligation to identify persons under the Part 1C of the Crimes Act. In that instance an audio or video recording of an interview with each crew member will assist in positively identifying detainees and ascertaining the true identity of the master.

Under Australia's international obligations, a person must not be imprisoned for a foreign fishing offence; however recidivists (repeat offenders) can be sentenced to a jail term as a result of breaching a good behaviour bond or defaulting on a fine imposed in a previous prosecution for foreign illegal fishing offences under the Act or the Torres Strait Act. Collecting the additional personal identifiers listed by this section will assist in the identification of recidivist fishers for this purpose.

This section is intended to replicate regulation 19C of the 1992 Regulations.

### **Section 91 – Personal identifiers officers must require non-citizens to provide by way of identification tests**

Under subclause 29(1) of Schedule 1A to the Management Act, an authorised officer must require a non-citizen to provide one or more personal identifiers of the type prescribed for the purposes paragraph 29(1)(a) and carry out the identification tests to collect those personal identifiers (paragraph 29(1)(b)).

Section 91 prescribes the following types of personal identifiers for the purpose of paragraph 29(1)(a):

- fingerprints or handprints of the non-citizen (paragraph 91(a));
- a measurement of the non-citizen's height and weight (paragraph 91(b)) and an image of the non-citizen's face and shoulders (paragraph 91(c));
- an audio or a video recording of the non-citizen (paragraph 91(d));
- the non-citizen's signature (paragraph 91(f)) and a sample of the non-citizen's handwriting (paragraph 91(g)); and
- a photograph of a tattoo, scar or other identifying mark of the non-citizen if obtaining the photograph does not involve the removal of clothing or the carrying out of an intimate forensic procedure as defined by the Crimes Act (paragraph 91(h)).

An iris scan of the detainee's eyes is also prescribed (see paragraph 91(e)). Obtaining this information may be necessary where finger prints cannot be taken. Iris scanning technology provides a unique, reliable and portable personal identifier particularly useful for identifying detainees on ships and in remote locations around the Australian coast.

This section is intended to replicate regulation 19D of the 1992 Regulations.

### **Section 93 – Information to be provided before carrying out identification tests**

Before carrying out identification tests on a non-citizen under paragraph 29(1)(b) of Schedule 1A to the Management Act, under subclause 30(1) the authorised officer must relevantly inform the non-citizen of matters as are specified in the regulations for the purpose of paragraph 30(1)(b). Subsection 92(1) of the Regulations prescribes the relevant matters for this purpose, which are:

- why the personal identifier is required to be provided (paragraph 92(1)(a));
- how a personal identifier may be collected (paragraph 92(1)(b)), how any personal identifier that is collected may be used (paragraph 92(1)(c)) and the circumstances in which the personal identifier may be disclosed to a third party (paragraph 92(1)(d)). The requirement to inform the non-citizen about disclosures to a third party are inserted to align this section with regulation 3.20 of the Migration Regulations;
- that a personal identifier may be produced in evidence in a court or tribunal in relation to the person (paragraph 92(1)(e));
- information about how the *Privacy Act 1988* applies to the personal identifier and the *Freedom of Information Act 1982* gives the person access to government documents and information (paragraphs 92(1)(f) and 92(1)(g)); and
- if the non-citizen is a minor or incapable person—how a personal identifier is to be obtained from a minor or incapable person (paragraph 92(1)(h)).

An authorised officer may comply with the requirement to inform the non-citizen under subclause 30(1) of Schedule 1A to the Management Act by giving the non-citizen a form setting out the relevant information specified in the regulations (subclause 30(3)). Subsection 92(2) prescribes that, for the purpose of subclause 30(3) of Schedule 1A, that if a form is to be given to a non-citizen setting out any information mentioned in subsection 92(1), it must be given to the non-citizen at a time that gives the non-citizen enough time to read and understand the form before the identification test is conducted.

This section is intended to replicate section 19E of the 1992 Regulations, and incorporate amendments made to analogous provisions in the Migration Regulations (see regulation 3.20).

### **Section 93 – Authorising access to video recordings**

Under clause 37 of Schedule 1A to the Management Act, an authorised officer may make a video recording of the conduct of identification tests on a non-citizen under paragraph 29(1)(b) of Schedule 1A. Those video recordings, which fall within the definition of ‘identifying information’, must not be accessed without authorisation from AFMA under clause 41 (see paragraph 40(1)(b) of Schedule 1A).

AFMA may in writing authorise a person to access such video recordings (subclause 41(1)), and is required to specify in the authorisation the purposes for which access is authorised which must be one more of the purposes provided in subclause 41(2) of Schedule 1A.

However, AFMA must not specify as a purpose for which access is authorised a purpose that will include or involve the purpose of investigating or prosecuting an offence against a law of the Commonwealth or a State or Territory where the video in question relates to a personal identifier of a type prescribed for the purposes of subclause 41(3) of Schedule 1A.

Section 93 of the Regulations prescribes the types of personal identifiers for the purpose of subclause 41(3) of Schedule 1A to the Management Act to be:

- fingerprints or handprints (paragraph 93(a)) and an iris scan (paragraph 93(e));
- a measurement of height and weight (paragraph 93(b)) and an image of the non-citizen's face and shoulders (paragraph 93(c));
- an audio or a video recording of the non-citizen (paragraph 93(d));
- the non-citizen's signature (paragraph 93(f)) and a sample of the non-citizen's handwriting (paragraph 93(g)); and
- a photograph of a tattoo, scar or other identifying mark (paragraph 93(h)).

This section is an important safeguard against the disclosure of personal identifiers for purposes other than the prosecution of fisheries offences, as the non-citizen has been brought to the Australian mainland and has not come on their own volition.

This section is intended to replicate regulation 19F of the 1992 Regulations.

### **Section 94 – Providing video recordings—permitted provision**

Under subclause 42(1) of Schedule 1A to the Management Act, a person commits an offence if his or her conduct causes a video recording made of an identification test under clause 37 to be provided to another person, and the provision of the recording is not a ‘permitted provision’ within the meaning of subclause 42(2).



A permitted provision relevantly includes circumstances where the provision of the video recording is made to a prescribed body or agency for the purpose of the body or agency inquiring into the operation of provisions of the Management Act relating to carrying out an identification test (paragraph 42(2)(f)).

Section 94 of the Regulations is prescribed for this purpose, and has the effect that it is a ‘permitted provision’ to provide a video recording to the Australian Human Rights Commission for the purpose of that body inquiring into the operation or provisions of the Management Act relating to carrying out of identification tests.

This section is intended to replicate regulation 19G of the 1992 Regulations.

### **Section 95 – Providing video recordings—limitations**

A permitted provision of a video recording, within the meaning of subclause 42(2) of Schedule 1A to the Management Act, is not a permitted provision if it constitutes a disclosure of identifying information relating to a personal identifier of a prescribed type (paragraph 42(3)(a) of Schedule 1A) and it is for the purpose of investigating or prosecuting an offence against a law of the Commonwealth or a State or Territory (other than an offence involving whether an identification test was carried out lawfully) (paragraph 42(3)(b)).

Section 95 of the Regulations prescribes the relevant personal identifiers for the purpose of paragraph 42(3)(a) of Schedule 1A to the Management Act to be:

- fingerprints or handprints of a non-citizen (paragraph 95(a)) and an iris scan of a non-citizen’s eyes (paragraph 95(e));
- a measurement of a non-citizen’s height and weight (paragraph 95(b)) and an image of the non-citizen’s face and shoulders (paragraph 95(c));
- an audio or a video recording of the non-citizen (paragraph 95(d));
- the non-citizen’s signature (paragraph 95(f)) and a sample of the non-citizen’s handwriting (paragraph 95(g)); and
- a photograph of a tattoo, scar or other identifying mark of a non-citizen (paragraph 96(h)).

This section is intended to replicate regulation 19H of the 1992 Regulations.

## **Division 3—Disclosure of identifying information**

### **Section 96 – Authorising access to identifying information**

Under subclause 53(1) of Schedule 1A to the Management Act, a person commits an offence if their conduct causes disclosure of ‘identifying information’ and the disclosure is not a ‘permitted disclosure’. Permitted disclosures are provided in subclause 53(2) of Schedule 1A. However, subclause 53(3) of Schedule 1A provides that a disclosure is not a ‘permitted disclosure’ within the meaning of subclause 53(2) if it is a disclosure relating to a ‘personal identifier’ of a prescribed type (paragraph 53(3)(a)) and the disclosure is for the purpose of investigating or prosecuting an offence against a law of the Commonwealth or a State or Territory (paragraph 53(3)(b)).

Section 96 of the Regulations prescribes the types of personal identifiers for the purposes of subclause 53(2) of Schedule 1A to the Management Act to be:

- fingerprints or handprints of a non-citizen (paragraph 96(a)) and an iris scan of the non-citizen's eyes (paragraph 96(e));
- a measurement of a non-citizen's height and weight (paragraph 96(b)) and an image of the non-citizen's face and shoulders (paragraph 96(c));
- an audio or a video recording of the non-citizen (paragraph 96(d));
- the non-citizen's signature (paragraph 96(f)) and a sample of the non-citizen's handwriting (paragraph 96(g)); and
- a photograph of a tattoo, scar or other identifying mark of a non-citizen (paragraph 96(h)).

This section is intended to replicate regulation 19I of the 1992 Regulations.

### **Section 97 – Authorising disclosure of identifying information**

Under subclause 53(1) of Schedule 1A to the Management Act, a person commits an offence if their conduct causes disclosure of identifying information and the disclosure is not a 'permitted disclosure'. Subclause 53(2) of Schedule 1A relevantly provides that permitted disclosures include a disclosure authorised by clause 54 and is for the purpose, or one or more of the purposes, for which the disclosure is authorised (paragraph 53(2)(c)).

A disclosure will be relevantly authorised by clause 54 of Schedule 1A where AFMA has authorised, in writing, an agency (as defined by the *Public Service Act 1999*) to disclose the identifying information to a specified recipient (subclause 54(1)). Section 98 prescribes, for the purposes of subclause 54(1) of Schedule 1A to the Management Act, the Department of Foreign Affairs and Trade and the Department administered by the Minister administering Part XII of the *Customs Act 1901* (which is currently the Department of Home Affairs) for this purpose. It follows that AFMA may authorise these agencies to disclose identifying information for diplomatic and immigration functions respectively.

This section is intended to replicate regulation 19J of the 1992 Regulations.

### **Section 98 – Disclosure of identifying information to Australian bodies**

Section 98 of the Regulations provides that AFMA may authorise the disclosure of identifying information for the purpose of subclause 54(1)(d) of the Schedule 1A to the Management Act to one or more of the Australian bodies listed in the table.

This section corresponds closely to section 5.34D of the Migration Regulations and, as such, will facilitate the seamless transfer of detainees from fisheries detention to immigration detention with one set of rules applying to the detainee's entire period of detention. This section updates section 19K of the 1992 Regulations to prescribe the updated names of the relevant bodies to which identifying information may be lawfully disclosed.

The bodies prescribed in this section includes 13 Commonwealth agencies, including those responsible for diplomatic, border protection and immigration, and investigation and prosecution functions, as well as the New South Wales, Northern Territory, Queensland, South Australian, Tasmanian, Victorian and Western Australian fisheries agencies and their respective investigative and prosecutorial agencies.

Commonwealth agencies to which AFMA may wish to disclose identifying information are subject to the *Privacy Act 1988* and the restrictions under that Act on the use and further disclosure of personal information. In certain circumstances, the receipting agency may also be subject to additional secrecy and disclosure obligations (for example, the Department of Home Affairs is subject to secrecy obligations under Part 6 of the

*Australian Border Force Act 2015*). For State and Territory bodies named in this section, AFMA will attach a caveat to all transmissions on the use of identifying information to these bodies, prohibiting them from using the identifying information for any purpose other than the purpose for which the information is provided.

## **Section 99 – Disclosure of identifying information to international organisations**

The Management Act provides that AFMA may authorise the disclosure of identifying information for the purpose of subclause 53(1) of the Schedule 1A to the Management Act to one or more of the bodies listed in paragraphs 54(1)(a) to (e). The listed bodies relevantly include ‘one or more prescribed international organisations’ (paragraph 54(1)(e)).

Section 99 of the Regulations prescribe 45 international organisations for the purpose of paragraph 54(1)(e) of the Management Act. The bodies that are prescribed include all currently established regional fisheries management organisations, including those to which Australia is not a party.

This section is intended to replicate upon and update regulation 19L of the 1992 Regulations.

## **Division 4—Disclosures relating to illegal fishing activities**

### **Section 100 – Authorising disclosure of information relating to illegal fishing activities**

Subsection 108B(1) of the Management Act provides that the Minister administering the Management Act may disclose, or authorise a prescribed agency within the meaning of subsection 108B(3) of the Management Act to disclose on the Minister’s behalf, information relating to fishing activities that may involve a breach of the laws of Australia or of a foreign country to a foreign country, to the government of a foreign country or an instrumentality of such a government or an international intergovernmental body.

A prescribed agency, within the meaning of subsection 108B(3) of the Management Act, is an agency within the meaning of section 7 of the *Public Service Act 1999* (paragraph 108B(3)(a)) that is prescribed by the regulations for the purpose of subsection 108B(1) (paragraph 108B(3)(b)).

Section 100 of the Regulations is made for the purposes of paragraph 108B(3)(b) of the Management Act (as provided in subsection 100(1)) and prescribes the Department of Foreign Affairs and Trade and the Department administered by the Minister administering Part XII of the *Customs Act 1901* (currently the Department of Home Affairs) for the purposes of section 100. Both of these Departments are an ‘agency’ within the meaning of section 7 of the *Public Service Act 1999*. It follows that the Minister may authorise these Departments to disclose information to the government of a foreign country or an instrumentality of such a government or an international intergovernmental body about illegal fishing activities for diplomatic and immigration functions respectively.

The Department of Foreign Affairs and Trade is a prescribed agency to allow for the transmission of certain information to the governments of foreign countries using diplomatic channels. The Department of Home Affairs, which includes the Australian Border Force (ABF) as its operational arm, is also a prescribed agency to allow for the transmission of information to enable that Department and the ABF to perform the function of detaining and transporting detainees. Neither Department is allowed to control the information they handle for the purposes of this section for their own purposes.

This section is intended to replicate regulation 19M of the 1992 Regulations.

## **Part 11—Administration**

The sections in Part 11 is made as permitted by provisions the Management Act to be prescribed, pursuant to paragraph 168(1)(a) of that Act and as noted for each section, unless specified otherwise.

### **Division 1—Simplified outline of this Part**

#### **Section 102 – Simplified outline of this Part**

Section 101 provides a simplified outline of Part 11 of the Regulations, which provides for administrative matters. This section is made as necessary or convenient to be prescribed in carrying out or giving effect to the Management Act and Part 11 of the Regulations, pursuant to paragraph 168(1)(b) of the Management Act.

### **Division 2—Registers**

#### **Section 102 – Information to be included in Registers**

AFMA is required to keep a Register of Statutory Fishing Rights, a High Seas Register and a Fishing Permits Register under subsections 44(1), 57A(1) and 57G(1) of the Management Act respectively. In those registers, AFMA must enter substantially identical particulars under subsections 45(1), 57B(1) and 57H(1) of the Management Act for fishing rights, high seas authorisations and fishing permits respectively. Those particulars include any other particulars to be prescribed in regulations (paragraphs 45(1)(f), 57B(2)(i) and 57H(1)(e) respectively).

Section 102 of the Regulations prescribes the additional particulars that need to be entered by AFMA in the Register of Statutory Fishing Rights, the High Seas Register and the Fishing Permits Register for the purposes of paragraphs 45(1)(f), 57B(2)(i) and 57H(1)(e) of the Management Act respectively (as outlined in subsection 102(1)).

Subsection 102(3) includes a table in which the additional particulars are specified, which include:

- details identifying the person to whom the fishing concession is granted and any other holder of the fishing concession (items 1 and 2) and the relevant fishing concession (items 3-6);
- details about what the fishing concession authorises (items 7 and 8);
- whether there are associated fishing concessions (items 9 and 10); and
- information about the boat nominated to the fishing concession (item 11), as well as information about the owner and master of the boat nominated for the fishing concession (items 12 and 13).

Some of the additional particulars do not, however, apply to all fishing concessions. For example, item 9 of the table requires information about whether a gear statutory fishing right has been nominated in relation to a boat statutory fishing right. This particular is only relevant to be captured on the Register of Statutory Fishing Rights for boat statutory fishing rights issued in the Northern Prawn Fishery under the NPF Management Plan. To address this issue, subsection 102(2) provides that a particular mentioned in the table in subsection 102(3) table does not apply if it does not exist in relation to the fishing concession, or it is not necessary for AFMA to collect the particular, either for its own purposes, or in accordance with an international fisheries agreement.

This section is intended to replicate and combine regulations 21A, 21B and 21C of the 1992 Regulations.

## **Division 3—Collection and disclosure of information**

### **Section 103 – Collection of information**

Under paragraph 168(2)(u) of the Management Act, regulations may be made providing (in addition to the collection of information in the exercise or performance of its other powers and functions under the Management Act) for the collection by AFMA of information relating to:

- possible breaches of the laws of Australia or of a foreign country (subparagraph (i));
- the control and protection of Australia's borders (subparagraph (ii));
- the administration and management of fisheries or marine environments (subparagraph (iii)); or
- research or monitoring conducted, or proposed to be conducted, into fisheries or marine environments (subparagraph (iv)).

Section 103 of the Regulations is made for the purpose of paragraph 168(2)(u) of the Management Act, and provides that AFMA may collect information relating to each of the matters that are set out in subparagraphs 168(2)(u)(i) to (iv), described above.

This section is intended to replicate subregulation 78(1) of the 1992 Regulations.

### **Section 104 – Disclosure of information**

Under paragraph 168(2)(v) of the Management Act, regulations may be made providing for the disclosure by AFMA of information, including e-monitoring data and personal information (collected by way of section 40A of the Act and personal information regulated under the Privacy Act 1988), relating to:

- possible breaches of the laws of Australia or of a foreign country (subparagraph (i));
- the control and protection of Australia's borders (subparagraph (ii));
- the administration and management of fisheries or marine environments (subparagraph (iii)); or
- research or monitoring conducted, or proposed to be conducted, into fisheries or marine environments (subparagraph (iv)).

Section 104 of the Regulations is made for the purpose of paragraph 168(2)(v) of the Management Act, and provides that the section applies to information of the kind referred to in that provision (subsection 104(1)).

Subsection 104(2) provides that AFMA may disclose information, of the type referred to in subsection 104(1), to:

- a government entity, if AFMA is satisfied that the information relates to the performance of a function of the entity (paragraph 104(2)(a)). Subsection 104(3) defines a 'government entity' to include Commonwealth, the States and Territories, as well as a foreign country or part of a foreign country. This authority to disclose is currently in place by operation of subsection 78(2) of the 1992 Regulations;
- a person conducting research if AFMA is satisfied that the research is related to, or will support AFMA's functions or objectives (paragraph 104(2)(b)). This is a new authority to disclose

information, which is broader than AFMA's current research disclosure authority (which is limited to AFMA's research priorities, under paragraph 7(1)(e) of the Administration Act);

- the holder of the fishing concession (at the time to which the data or information relates), or their nominee, in the case of data collected from a vessel monitoring system, e-monitoring data or any other information collected from the holder of the fishing concession (paragraph 104(2)(c)). This is a new authority to disclose information, and is limited to information collected at the time whilst the person was the holder of the fishing concession (subparagraph 104(2)(c)(i)). Under AFMA's current legislation, disclosures of this type can currently only be facilitated if the concession holder makes an application under the *Freedom of Information Act 1982* for their information. Inserting this new disclosure authority provides AFMA with a lawful basis to disclose without the formality of a freedom of information request, and reduces red tape for concession holders.

This section is intended to replicate, clarify and expand upon subregulation 78(2) of the 1992 Regulations.

#### **Division 4 – Administration of the Statutory Fishing Rights Allocation Review Panel**

The sections in Division 4 of Part 11 of the Regulations concern the Statutory Fishing Rights Allocation Review Panel (the Panel), which is a body established to review the allocation of fishing rights under plans of management made by AFMA under subsection 17(1) of the Management Act. The Panel has been inactive for a number of years, the latest plan of management having been made in 2010, and a Bill is being prepared to revoke the provisions establishing the Panel in the Management Act (see Part 8). It follows that only the provisions required to be prescribed in the Regulations under Part 8 of the Management Act are being prescribed.

##### **Section 105 – Administrative matters**

Subsection 105(1) provides that, for the purposes of paragraph 137(3)(a) of the Management Act, the Registrar of the Panel must ensure that the Registry of the Panel is open for business between 9:30am and 1:00pm and between 2:00pm and 4:00pm on business days.

Subsection 105(2) provides that the duties of the Registrar of the Panel include dating documents received by the Panel, and acknowledging in writing applications for a review of a decision to grant a fishing right.

This section is intended to replicate sections 22 and 23 of the 1992 Regulations, in subsections (1) and (2) respectively.

##### **Section 106 – Fees and allowances for appearing before Panel**

This section prescribes the fees and allowances payable to persons appearing before the Panel for the purposes of subsection 158(1) of the Management Act (which provides for fees for persons giving evidence before the Panel). Under this section, a person who is summoned under paragraph 146(2)(a) of the Management Act to appear before the Panel to give evidence is entitled to be paid the same fees and allowances for expenses in relation to the appearance as are payable to a person summoned to appear before the Administrative Appeals Tribunal under the *Administrative Appeals Tribunal Regulation 2015*.

This section is intended to replicate section 28 of the 1992 Regulations, and is made for the purpose of subsection 158(1) of the Act.

## **Division 5—Caveats**

### **Section 107 – Caveats**

Subsection 107(1) provides that the Amendment Regulations are made for the purpose of paragraphs 32A(4)(d) and 46(4D)(d) of the Management Act and prescribes circumstances that relate to a fishing permit and a fishing right.

Subsection 107(2) provides the circumstances in which AFMA must not register the transfer of a fishing concession or ownership of a fishing concession, namely if:

- AFMA has received a notification in the approved form for the purpose of regulation 8J (paragraph 107(2)(a));
- the notification was made by the holder of the fishing concession, other than a lessee of a fishing concession (paragraph 107(2)(b)). A ‘holder’ of a fishing concession is defined in subsection 4(1) of the Management Act to relevantly include the person granted a fishing permit or fishing right, or a person subsequently transferred that fishing permit or fishing right, as well as a lessee of fishing right registered under section 46 of the Management Act. Paragraph 107(2)(b) excludes the lessee of a fishing concession from being able to notify AFMA of the placement of a caveat under this section. A holder of a fishing concession, other than the lessee of a fishing concession, will be determined by AFMA by reference to the relevant Register, which contains information concerning all ‘holders’ of fishing concessions as defined by subsection 4(1) of the Management Act. As fishing rights can be leased on a temporary basis, the Register of Statutory Fishing Rights contains entries identifying both the lessor and lessee of those fishing rights (both parties being a holder of the fishing right for the purposes of the Management Act, see item 2 of the table in section 102 of the Regulations);
- the notification is expressed as having the effect of placing a caveat on a transfer of the fishing concession for the benefit of another person (paragraph 107(2)(c));
- either the caveat has not been withdrawn by the person for whose benefit the caveat exists by further notification to AFMA in the approved form (subparagraph 107(2)(d)(i)), or the transfer is not being made with the consent of that person given to AFMA in the approved form (subparagraph 107(2)(d)(ii)); and
- subsection 107(3), described below, does not apply (paragraph 107(2)(e)).

These prescribed circumstances implement a binary caveat system for stakeholders, enabling the owner of the fishing concession to place the caveat on transfer and subsequently enabling the person with the benefit of the caveat to either withdraw the caveat or to provide consent for the transfer to occur.

A caveat that lodged by a concession owner under section 107 does not restrict any other concession holder, or a party to a dealing in a fishing right, from lodging an application for the transfer of a fishing concession with AFMA under subsections 32A(2) and 46(3) of the Management Act, for fishing permits and fishing rights respectively.

Should such an application for a transfer be lodged with AFMA, however, the person lodging the application will be notified that a caveat is placed on the transfer of their concession. The person holding the benefit of the caveat will also be notified of the application for transfer being lodged, and requested to either withdraw the caveat or to provide consent for the transfer. Persons holding the benefit of the caveat is also able to withdraw the caveat prior to a transfer of the relevant concession being lodged.



For the purpose of paragraph 107(2)(e), subsection 107(3) applies if AFMA is satisfied, on the application of the concession holder, other than a lessee of the fishing concession, who made the notification (under paragraph 107(2)(b)), that the transfer should be registered on account of an order made by a court.

A note after subregulation 107(3) provides that sections 54 and 57K of the Management Act (which relate to the Register of Statutory Fishing Rights and the Fishing Permits Register respectively) provide for applications to be made to a prescribed court to rectify the Register. Subsection 54(1) of the Management Act provides that an application to a prescribed court for an order to rectify the Register is available to a person should they be aggrieved by the omission of an entry from the Register, an entry made in the Register without sufficient cause, an entry wrongly existing in the Register, or an error or defect in the Register. A 'prescribed court' is defined in subsection 54(6) of the Management Act to be the Federal Court of Australia, the Supreme Court of a State, the Supreme Court of the Australian Capital Territory, the Supreme Court of the Northern Territory or the Supreme Court of Norfolk Island.

If a person for whose benefit the caveat exists refuses to withdraw the caveat or provide consent for the transfer of a fishing concession, subsection 107(3) has the effect that, should an order be made by a court pursuant to sections 54 or 57K of the Management Act, AFMA is required to register the transfer of a fishing concession despite the person for whose benefit the caveat exists having not withdrawn the caveat, or provided consent for the transfer to occur.

Subregulation 107(4) provides that AFMA is not required to be satisfied as to the accuracy or validity of any information or matter that is notified under regulation 8J. This is intended to clarify that AFMA is not required to make any assessment as to the accuracy or validity of any reason for which the caveat is being lodged by the relevant holder of the fishing concession.

## **Division 6—Fees**

### **Section 108 – Fees**

Under paragraph 168(2)(e) of the Management Act, the regulations may relevantly provide for the imposition and recovery of fees in respect of:

- making applications under the Management Act (subparagraph (ii));
- the lodging and registration of documents (subparagraph (iii));
- giving of a notice to AFMA nominating an Australian boat under paragraph 32(1A)(b) or subsection 32(1B) (subparagraph (iia));
- the issue of a document mentioned in subsection 53(2) of the Management Act (subparagraph (iv)), being an extract of a register wholly or partly kept by use of a computer (as outlined in detail at section 103 of the Regulations above).

The Management Act also provides that the Register of Statutory Fishing Rights, the High Seas Register and the Fishing Permits Register must be available for inspection upon payment of the prescribed fee (see subsections 52(1), 57D(1) and 57J(1) respectively).

Section 108 of the Regulations is made for the purposes of paragraph 168(2)(e), and subsections 52(1), 57D(1) and 57J(1), of the Management Act.

Subsection 108(1) provides that, for the purpose of the abovementioned provisions of the Management Act, the fee payable for an application, registration, inspection or other matters mentioned in an item in the table in clause 1 of Schedule 6 is the fee applicable under that item.

Subsection 108(2) provides that, despite the application of subsection (1), no fee is payable for the application for the grant of a port permit, or for a variation of a condition of a port permit, for a foreign fishing boat that is engaged in fisheries research activities in collaboration with the Commonwealth, a State or a Territory (paragraph (a)) or an agency of the Commonwealth, a State or a Territory (paragraph (b)).

This section is intended to replicate regulation 21 of the 1992 Regulations.

## **Division 7—Infringement notices**

This Division imposes an infringement notice regime for the purposes of paragraph 168(2)(i) of the Management Act, which relevantly provides that regulations may be made enabling a person who is alleged to have contravened sections 93, 95 or 100 to pay to AFMA, as an alternative to prosecution, a specified penalty, not exceeding the maximum penalty by which a contravention of that provision is otherwise punishable. For the purpose of this Division, ‘provision subject to an infringement notice’ is defined to be sections 93, 95 and 100 of the Management Act (see subsection 5(1) of the Regulations).

The infringement notice regime implemented in Division 6 of Part 11 of the Regulations is modelled on Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act).

### **Section 109 – Purpose of Division**

Section 109 outlines the purpose of Division 7 of Part 11 of the Regulations, which provides that the Division is made for the purposes of paragraph 168(2)(i) of the Management Act, which is about paying penalties to AFMA as an alternative to prosecution under the Act.

### **Section 110 – When an infringement notice may be given**

Subsection 110(1) provides that an infringement notice may be given to a person if an officer believes on reasonable grounds that a person has contravened a provision subject to an infringement notice. The section also provides the requirements that need to be met by an officer when issuing an infringement notice, namely that:

- the infringement notice must be given within 12 months after the day on which the contravention is alleged to have taken place (subsection 110(2)); and
- a single infringement notice must relate only to a single contravention of a single provision unless subsection (4) applies (subsection 111(3)).

Subsection 110(4) permits an officer to give a person a single infringement notice relating to multiple contraventions of a single provision if the provision requires the person to do a thing within a particular period or before a particular time (paragraph 110(4)(a)), the person fails or refuses to do that thing within that period or before that time (paragraph 110(4)(b)), the failure or refusal occurs on more than one day (paragraph 110(4)(c)) and each contravention is constituted by the failure or refusal on one of those days (paragraph 110(4)(d)).

A note to subsection 110(4) makes reference, for continuing offences, to subsection 4K(2) of the Crimes Act. That provision provides that, where a refusal or failure to comply with a requirement within a particular period or before a particular time under the law of a Commonwealth is an offence, a person commits an offence in

respect of each day during which the person refuses or fails to comply with that requirement, including the day of a conviction for any such offence.

For example, under the Logbooks Determination, a holder of a fishing concession in the Coral Sea Fishery is required to furnish an e-log to AFMA before unloading any fish at the end of a trip (see subsection 10(5) of the Logbooks Determination). Subsection 42(2) of the Management Act provides that it is a condition of a fishing concession that the holder of the fishing concession will comply with the requirements of the Logbooks Determination, and paragraph 95(1)(d) of the Management Act makes it an offence for a holder of a fishing concession to contravene a condition of their fishing concession.

It follows that, if a Coral Sea Fishery fishing permit holder failed to furnish to AFMA an e-log before unloading any fish at the end of a trip, a concession holder would commit an offence against paragraph 95(1)(d) of the Management Act (being a provision subject to an infringement notice). Because a breach of the concession condition is, in this example, a failure to furnish a logbook to AFMA within the time required by the Logbooks Determination, section 4K of the Crimes Act provides that:

- the obligation to furnish the logbook continues, notwithstanding the period has expired or the time has passed, until the logbook is furnished (subsection 4K(1)); and
- the concession holder would commit an offence for each day during which they fail to furnish the e-log to AFMA (subsection 4K(2)).

Subsection 111(4) of the Regulations provides that a single infringement notice could be issued to the concession holder, containing multiple contraventions of paragraph 95(1)(d) for each day for which their e-log had not been furnished.

This section is directly modelled on section 103 of the Regulatory Powers Act, and is intended to replicate regulation 38 of the 1992 Regulations.

### **Section 111 – Matters to be included in an infringement notice**

Subsections 111(1) and 111(2) prescribes the matters to be included in an infringement notice, replicating section 104 of the Regulatory Powers Act. Subsection 111(3) provides that, if a single infringement notice relates to more than one alleged contravention of the provision by the person, then the penalty payable is also appropriately multiplied by the number of alleged contraventions. This reflects recent amendments made to section 104 of the Regulatory Powers Act by the *Regulatory Powers (Standardisation Reform) Act 2017* (Regulatory Amendments Act).

This section is intended to replicate and update regulation 39 of the 1992 Regulations.

### **Section 112 – Extension of time to pay amount**

Section 112 provides the CEO of AFMA with authority to extend, upon application, the period of time in which an infringement notice is payable, upon application from the person to whom an infringement notice has been given. Under this section, an application is able to be made, and the time period extended, more than once (provided in subsection 112(5)). This section is directly modelled on section 105 of the Regulatory Powers Act, and is intended to replicate section 40 of the 1992 Regulations.

### **Section 113 – Withdrawal of an infringement notice**

Subsection 113(1) provides for a person to whom an infringement notice has been given to make written representations to the CEO of AFMA seeking withdrawal of the notice. Subsection 113(2) provides that the

CEO may withdraw the infringement notice whether or not the person has made written representations seeking the withdrawal. The CEO is required to take into account any written representations seeking the withdrawal that had been made (paragraph 113(3)(a)) and may take into account whether the a court has previously imposed a penalty on the person for a contravention, the circumstances of the alleged contravention and whether the person has paid an amount for a similar contravention (subsection 113(3)). Procedural requirements including issuing a notice of withdrawal and refunding payment are also provided for in subsections 113(4) and 113(5) respectively. This section is directly modelled on section 106 of the Regulatory Powers Act, and is intended to replicate section 41 of the 1992 Regulations.

#### **Section 114 – Effect of payment of amount**

Section 114 prescribes the effect of paying the amount stated in an infringement notice before the end of the period referred to in paragraph 112(1)(h) of the Regulations (being 28 days after the day that the notice was given).

Subsection 114(1) provides that, upon payment of the amount stated in the infringement notice:

- the person's liability for the alleged contravention is discharged (paragraph 114(1)(a));
- the person may not be prosecuted in a court for the alleged contravention (paragraph 114(1)(b));
- the person is not regarded as having admitted guilt or liability for the alleged contravention (paragraph 114(1)(c)); and
- the person cannot be regarded as having been convicted of the alleged offence (paragraph 114(1)(d)).

Subsection 114(2) provides that subsection 114(1) does apply if the infringement notice has been withdrawn. This section is directly modelled on section 107 of the Regulatory Powers Act, and is intended to replicate section 42 of the 1992 Regulations.

#### **Section 115 – Effect of this Division**

Section 115 prescribes the effect of Division 7 of Part 11 of the Regulations, including that the Division does not:

- require an infringement notice to be issued for an alleged contravention of a provision subject to an infringement notice (paragraph 115(a)). The decision whether or not to issue a notice remains at the discretion of AFMA officers;
- affect the liability of a person for an alleged contravention of a provision subject to an infringement notice if the person does not comply with the notice, is not given a notice or an infringement notice is subsequently withdrawn (paragraph 115(b));
- prevent 2 or more infringement notices being given to a person for an alleged contravention of a provision subject to an infringement notice (paragraph 115(c)); and
- limit a court's discretion to determine the amount of penalty to be imposed on a person who is found to have contravened a provision subject to an infringement notice (paragraph 115(d)).

This section is directly modelled on section 108 of the Regulatory Powers Act, and is intended to replicate section 43 of the 1992 Regulations.



## **Section 116 – Delegation by CEO**

Section 116 provides the CEO of AFMA with authority to delegate in writing to an officer the powers and functions under section 112 to extend the period in relation to an infringement notice and under section 113 to withdraw an infringement notice. These are administrative functions only, and are able to be delegated under the Regulations without infringing the principle against sub-delegation.

Any delegation made by the CEO of AFMA under this section is able to be made to the same level of officer authorised to issue the notice, consistent with the Offences Guide.

This section is intended to replicate regulation 44 of the 1992 Regulations.

## **Part 12—Transitional provisions**

The sections in Part 12 is made as necessary or convenient to be prescribed in giving effect to the Management Act and the Regulations, pursuant to paragraph 168(1)(b) of the Management Act.

### **Division 1—Simplified outline of this Part**

#### **Section 117 – Simplified outline of this Part**

Section 117 prescribes a simplified outline of Part 12 of the Regulations, which contain provisions concerning the transitional arrangements from the 1992 Regulations to the Regulations.

### **Division 2—Provisions for this instrument as originally made**

#### **Section 118 – Things done under the *Fisheries Management Regulations 1992* or the *Fisheries Management (Southern Bluefin Tuna Fishery) Regulations 1995***

Section 118 provides that, if a thing was done for a particular purpose under the 1992 Regulations or the SBT Regulations as in force immediately prior to their repeal and if that thing could be done for that purpose under the Regulations, the thing (for example, issuing a notice or making an application) has effect for the purpose of the Regulations as it if had been done for that purpose under the Regulations. This affords for a smooth transition from the 1992 Regulations to the Regulations on the commencement day (1 October 2019).

#### **Section 119 – Infringement notices**

Section 119 provides that Division 7 of Part 11 of the Regulations applies in relation to an alleged contravention of a provision subject to an infringement notice whether the alleged contravention occurs before, on or after the commencement of the Regulations. Subsection 11(2) also provides that, in relation to any infringement notice issued under Part 10 of the 1992 Regulations prior to 1 October 2019, the 1992 Regulations continue to apply to an infringement notice given under that Part before the repeal of the 1992 Regulations.

## **Schedule 1—Application of Act outside the AFZ**

### **Part 1—High seas fishing zone**

#### **Clause 1 – High seas fishing zone**

This clause prescribes the area of the high seas to which section 12 of the Regulations applies. It is intended to replicate the area prescribed in subregulation 4AA(3) of the 1992 Regulations.

### **Part 2—South Tasman Rise**

#### **Clause 2 – South Tasman Rise**

This clause prescribes the area of the high seas to which section 13 of the Regulations applies. It is intended to replicate the area prescribed in subregulation 4AC(2) of the 1992 Regulations.

## **Schedule 2—Described area of waters within the AFZ**

### **Part 1—Area of the Coral Sea Fishery**

#### **Clause 1 – Area of the Coral Sea Fishery**

This clause prescribes the area of the AFZ that is the Coral Sea Fishery for the purpose of section 18 of the Regulations. It is intended to replicate the area prescribed in Part 2 of Schedule 1A to the 1992 Regulations.

### **Part 2—Areas of the Eastern Skipjack Fishery**

#### **Clause 2 – Areas of the Eastern Skipjack Fishery**

This clause prescribes the area of the AFZ that is the Eastern Skipjack Fishery for the purpose of section 18 of the Regulations, which is a fishery for Skipjack tuna.

Subclause (1) prescribes the area of the fishery adjacent to mainland Australia. It is noted that, for the purpose of this subclause, the Commonwealth has entered into arrangements under Part 5 of the Management Act with Queensland, Victoria and South Australia which provide the Commonwealth with jurisdiction over tuna fisheries within three nautical miles of the coastline.

In relation to subclause 2(1), it is noted that:

- the area of the Protected Zone, which is defined in subsection 3(1) of the *Torres Strait Fisheries Act 1984* (the Torres Strait Act), is excluded from the AFZ by operation of section 9 of the Management Act. This means that the northern boundary in the vicinity of Cape York follows the outer limit of the AFZ (which is the outer boundary of the Protected Zone); and
- at the time of making the Regulations, the Commonwealth has entered into arrangements under Part 5 of the Management Act with Queensland, Tasmania and Victoria to the effect that the Commonwealth has jurisdiction for tuna fishing within coastal waters for those States.<sup>26</sup>

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<sup>26</sup> For Queensland, see Commonwealth of Australia *Gazette*, No. S 44, 8 February 1995 (pages 1-4), for Tasmania, see Commonwealth of Australia *Gazette*, No. S 531, 31 December 1996 (pages 1-7), for Victoria, see Commonwealth of Australia *Gazette*, No. S 436, 31 October 1997 (pages 14-18).

The Part 5 arrangements referred to by this clause have been published in the Commonwealth *Gazette*, and are available free of charge at the Federal Register of Legislation website (<http://www.legislation.gov.au>).

Subclause 2(2) prescribes the area of the fishery adjacent to Norfolk Island.

### **Part 3—Area of the Norfolk Island Inshore Fishery**

#### **Clause 3 – Area of the Norfolk Island Inshore Fishery**

This clause prescribes the area of the AFZ that is the Norfolk Island Inshore Fishery for the purpose of section 18 of the Regulations. This is a newly prescribed area, not previously prescribed in the 1992 Regulations.

### **Part 4—Area of the Norfolk Island Offshore Demersal Finfish Fishery**

#### **Clause 4 – Area of the Norfolk Island Offshore Demersal Finfish Fishery**

This clause prescribes the area of the AFZ that is the Norfolk Island Offshore Demersal Finfish Fishery for the purpose of section 18 of the Regulations, and is intended to replicate Part 5A of Schedule 1A to the 1992 Regulations.

### **Part 5—Area of the North West Slope Trawl Fishery**

#### **Clause 5 – Area of the North West Slope Trawl Fishery**

This clause prescribes the area of the AFZ that is the North West Slope Trawl Fishery for the purpose of section 18 of the Regulations, and is intended replicate Part 6 of Schedule 1A to the 1992 Regulations. The area prescribed also captures an amendment made to the boundary of this fishery in 2018. The boundary was amended because, as the boundary follows the 200m isobath, there is better technical data available to describe the relevant bathymetry.

### **Part 6 – Area of the South Tasman Rise Fishery**

#### **Clause 6 – Area of the South Tasman Rise Fishery**

This clause prescribes the area of the AFZ that is the South Tasman Rise Fishery for the purpose of section 18 of the Regulations, and is intended to replicate Part 11A of Schedule 1A to the 1992 Regulations.

### **Part 7—Area of the Western Deepwater Trawl Fishery**

#### **Clause 7 – Area of the Western Deepwater Trawl Fishery**

This clause prescribes the area of the AFZ that is the Western Deepwater Trawl Fishery for the purpose of section 18 of the Regulations, and is intended to replicate Part 12 of Schedule 1A to the 1992 Regulations. The area prescribed also captures an amendment made to the boundary of this fishery in 2018.

### **Part 8 – Area of the Western Skipjack Fishery**

#### **Division 1—Area of the fishery**

#### **Clause 8 – Area of the fishery**

This clause prescribes the area of the AFZ that is the Western Skipjack Fishery for the purpose of section 18 of the Regulations, comprising sub-areas 1 and 2 which are geographically separate. This clause, together with



clauses 9 and 10, are consistent with the area of the Western Skipjack Fishery prescribed in Part 12A of Schedule 1A to the 1992 Regulations.

#### **Clause 9 – Western Skipjack Fishery subarea 1**

This clause describes the area of the Western Skipjack Fishery that is adjacent to the Australian mainland.

In relation to this clause, it is noted that:

- the area of the Protected Zone, which is defined in subsection 3(1) of the *Torres Strait Fisheries Act 1984* (the Torres Strait Act), is excluded from the AFZ by operation of section 9 of the Management Act. This means that the northern boundary in the vicinity of Cape York follows the outer limit of the AFZ (which is the outer boundary of the Protected Zone); and
- at the time of making the Regulations, the Commonwealth has entered into arrangements under Part 5 of the Management Act with Queensland, Western Australia and the Northern Territory to the effect that the Commonwealth has jurisdiction for tuna fishing within coastal waters for those States.<sup>27</sup>

The Part 5 arrangements referred to by this clause have been published in the Commonwealth *Gazette*, and are available free of charge at the Federal Register of Legislation website (<http://www.legislation.gov.au>).

#### **Clause 10 – Western Skipjack Fishery subarea 2**

This clause prescribes the area of the Western Skipjack Fishery that is adjacent to the external territories of Cocos (Keeling) Island and Christmas Island. By operation of subsection 15B(3) of the *Acts Interpretation Act 1901*, this area includes the coastal sea of those external territories.

### **Schedule 3—Catch limits—fishing for tuna in northern waters**

#### **Part 1—Northern waters**

##### **Clause 1 – Northern waters**

This clause prescribes the area of waters in the AFZ that is ‘northern waters’ for the purposes of the definition in subsection 5(1) of the Regulations. The conditions on fishing concessions prescribed in Division 7 of Part 7 of the Regulations apply to fishing concessions which authorise the taking of tuna in these waters.

A note to this clause provides that, at the time of making the Regulations, for the purposes of the definition of ‘northern waters’, the Commonwealth had entered into arrangements under Part 5 of the Management Act which mean that the coastal waters of the Northern Territory, Queensland, Western Australia and South Australia are taken to be in the AFZ. As a result the Commonwealth has jurisdiction over tuna fishing within the coastal waters of these States and the Northern Territory and ‘northern waters’ include these coastal areas.

The Part 5 arrangements referred to by this clause have been published in the Commonwealth *Gazette*, and are available free of charge at the Federal Register of Legislation website (<http://www.legislation.gov.au>).

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<sup>27</sup> For Queensland, see Commonwealth of Australia *Gazette*, No. S 44, 8 February 1995 (pages 1-4), for Western Australia, see Commonwealth of Australia *Gazette*, No. GN 4, 1 February 1995 (pages 336-339), for the Northern Territory, see Commonwealth of Australia *Gazette*, No. GN 4, 1 February 1995 (pages 312-315).

## **Part 2—Restricted species for northern waters**

The clauses in this Part prescribe the species of fish to which the catch limits for species of fish in northern waters, prescribed in subsections 44(2), (3) and (4) of the Regulations, apply.

### **Clause 2 – Species with limit of 2 fish**

This clause provides, for the purpose of subsection 44(2) of the Regulations, that a concession holder must not possess on the nominated boat more than two fish of the species: amberjack, yellowtail kingfish, or cobia (where that cobia are taken in the coastal waters of Queensland) in total per trip.

### **Clause 3 – Species with limit of 10 fish**

This clause provides that, for the purpose of subsection 44(3) of the Regulations, a concession holder must not possess on the nominated boat more than 10 fish of the species of finfish prescribed in the table in this clause (16 individual species and nine families, with some exclusions) in total per trip.

### **Clause 4 – Species with limit of 20 fish**

This clause provides that, for the purpose of subsection 44(4) of the Regulations, a concession holder must not possess on the nominated boat more than 20 fish of the species of finfish prescribed in the table in this clause (3 individual species, as well as rockcod (family Serranidae) and shark (subclass Elasmobranchii)) in total per trip.

### **Clause 5 – Boundary between Northern Territory and Queensland waters**

This clause describes the boundary between Northern Territory and Queensland waters. The relevant boundary is the boundary between the scheduled area for the Northern Territory and the scheduled area for Queensland, under Schedule 1 to the *Offshore Petroleum and Greenhouse Gas Storage Act 2006*.

## **Schedule 4—Catch limits—Victorian, South Australian and Tasmanian waters**

### **Part 1 – Areas of application**

#### **Clause 1 – Victorian waters**

This clause prescribes the area of waters that are ‘Victorian waters’ for the purposes of the definition in subsection 5(1) of the Regulations, a term which is referred to in the conditions on fishing concessions prescribed in Division 8 of Part 7 of the Regulations. A note to subclause 1(1) outlines that, at the time of making the Regulations, the Commonwealth and Victoria had made an arrangement under Part 5 of the Management Act which mean that, for the purposes of the description of ‘Victorian waters’, the coastal waters of Victoria are taken to be in the AFZ.<sup>28</sup>

Subclause 1(2) excludes certain areas from being within ‘Victorian waters’, consistent with exclusions made to the relevant Part 5 arrangement providing for Commonwealth jurisdiction within Victorian coastal waters described above.

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<sup>28</sup> See the Commonwealth of Australia *Gazette*, No. S 436, 31 October 1997 (pages 5-8).

The Part 5 arrangement referred to by this clause has been published in the Commonwealth *Gazette*, and is available free of charge at the Federal Register of Legislation website (<http://www.legislation.gov.au>).

#### **Clause 2 – South Australian waters**

This clause prescribes the area of waters that are ‘South Australian waters’ for the purposes of the definition in subsection 5(1) of the Regulations, a term which is referred to in the conditions on fishing concessions prescribed in Division 9 of Part 7 of the Regulations. A note provides that, at the time of making the Regulations, the Commonwealth and South Australia had made an arrangement under Part 5 of the Management Act which mean that, for the purposes of this description of ‘South Australian waters’, the coastal waters of South Australia are taken to be in the AFZ.<sup>29</sup>

The Part 5 arrangement referred to by this clause has been published in the Commonwealth *Gazette*, and is available free of charge at the Federal Register of Legislation website (<http://www.legislation.gov.au>).

#### **Clause 3 – Tasmanian waters**

This clause prescribes the area of waters that are ‘Tasmanian waters’ for the purpose of the definition in subsection 5(1) of the Regulations, a term referred to in the conditions on fishing concessions prescribed in Division 10 of Part 7 of the Regulations. A note outlines that, at the time of making the Regulations, the Commonwealth and Tasmania had made an arrangement under Part 5 of the Management Act which mean that, for the purposes of this description of ‘Tasmanian waters’, the coastal waters of Tasmania are taken to be in the AFZ.<sup>30</sup>

Subclause 1(2) excludes certain areas from being within ‘Tasmanian waters’, consistent with exclusions made to the relevant Part 5 arrangement providing for Commonwealth jurisdiction within Tasmanian coastal waters described above.

The Part 5 arrangement referred to by this clause has been published in the Commonwealth *Gazette*, and is available free of charge at the Federal Register of Legislation website (<http://www.legislation.gov.au>).

### **Part 2—Crustaceans**

#### **Clause 4 – Prawns**

This clause prescribes the species of prawns to which the conditions imposing catch limits for the take of crustaceans in Victorian, South Australian and Tasmanian waters apply (see subsections 47(2) and 52(3), and section 57 respectively). The species of prawn prescribed by this clause are the species commonly known as deepwater prawn, prawn, red prawn, royal red prawn and scarlet prawn.

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<sup>29</sup> See the Commonwealth of Australia *Gazette*, No. S 531, 31 December 1996 (pages 26-30).

<sup>30</sup> See the Commonwealth of Australia *Gazette*, No. S 531, 31 December 1996 (pages 1-7).

## **Clause 5 – Other crustaceans**

This clause prescribes the additional species of crustacean to which the catch limits for the take of crustaceans in Victorian and South Australian waters apply (see subsections 47(2) and 52(3) of the Regulations respectively). The species of crustacean prescribed by this clause are carids or carid prawns.

## **Part 3—Molluscs**

### **Clause 6 – Molluscs**

This clause prescribes the species of mollusc that are not subject to catch limits in South Australian waters and Tasmanian waters (see subsections 53(1) and 58(2) of the Regulations respectively). The species of mollusc prescribed by this clause are arrow squid, red ocean squid, scallops, southern ocean arrow squid and yellowback squid.

## **Part 4—Finfish**

### **Division 1—Victorian waters**

#### **Clause 7 – Species not to be taken**

This clause prescribe the species of finfish which a concession holder must not take from Victorian waters (under subsection 49(1)). The species of finfish prescribed by this clause are Australian anchovy, Australian salmon, blue sprat, King George whiting, pilchard, sprat and wrasse.

#### **Clause 8 – Species subject to limits**

This clause prescribes the species of finfish of which a concession holder must not take more than 200 kilograms from Victorian waters (under paragraph (49(2)(a))). The species of finfish prescribed by this clause are barracouta, leatherjackets, snapper, striped trumpeter and yellowtail kingfish.

### **Division 2—South Australian waters**

#### **Clause 9 – Species not to be taken**

This clause prescribes the species of finfish which a concession holder must not take from South Australian waters (under subsection 54(1)). The species of finfish prescribed by this clause are Australian anchovy, Australian Salmon/ Tommy ruff, Australian sardine (pilchard), Australian sprat, banded morwong, black bream, bluespotted goatfish, blue sprat, dusky morwong, grassy (rock) flathead, king gar, King George whiting, luderick, magpie morwong, sea sweep, snook, southern garfish, wrasse, yellow eye mullet and yellowfin whiting.

#### **Clause 10 – Species with a combined catch limit of 20 kilograms per trip**

This clause prescribes the species of finfish of which a concession holder must not take from South Australian waters:

- more than 200 kilograms of (in combination with the species prescribed in clauses 11 and 12) per trip by trawling (subsection 54(2));
- more than 200 kilograms of (in combination with the species prescribed in clauses 11, 12 and 13) per trip by fishing methods other than trawling (subsection 54(3));

- more than 20 kilograms in total per trip (paragraph 54(4)(a)).

The species of finfish prescribed by this clause are bastard trumpeter and striped trumpeter.

#### **Clause 11 – Species with a combined catch limit of 50 kilograms per trip**

This clause prescribes the species of finfish of which a concession holder must not take from South Australian waters:

- more than 200 kilograms of (in combination with the species prescribed in clauses 10 and 12) per trip by trawling (subsection 54(2);
- more than 200 kilograms of (in combination with the species prescribed in clauses 10, 12 and 13) per trip by fishing methods other than trawling (subsection 54(3);
- more than 50 kilograms in total per trip (paragraph 54(4)(a)).

The species of finfish prescribed by this clause are blue groper and snapper.

#### **Clause 12 – Other controlled species**

This clause prescribes the species of finfish of which a concession holder must not take more than 200 kilograms of (in combination with the species prescribed in clauses 10, 11 and 13) from South Australian waters per trip by fishing methods other than trawling (subsection 54(3)).

The species of finfish prescribed by this clause are mullet and yellowtail kingfish.

#### **Clause 13 – Other species to be taken into account for total catch limit**

This clause prescribes the species of finfish of which a concession holder must not take more than 200 kilograms of (in combination with the species prescribed in clauses 10, 12 and 13) from South Australian waters per trip by fishing methods other than trawling (subsection 54(3)).

The species of finfish prescribed by this clause are black reef leatherjacket, chinaman leatherjacket, fanbelly leatherjacket and parrotfish (or knifejaw).

### **Division 3—Tasmanian waters**

#### **Clause 14 – Species not to be taken**

This clause prescribes the species of finfish of which a concession holder must not take from Tasmanian waters (subsection 59(1)). The species of finfish prescribed by this clause are Australian anchovy, Australian Salmon/Tommy ruff, Australian sardine (pilchard), Australian sprat, banded morwong, black bream, bluespotted goatfish, blue sprat, dusky morwong, grassy (rock) flathead, king gar, King George whiting, luderick, magpie morwong, mullet, sea sweep, snook, southern garfish, wrasse, yellow eye mullet and yellowfin whiting.

#### **Clause 15 – Species subject to a combined catch limit**

This clause prescribes the species of finfish of which a concession holder must not take more than 250 kilograms of in combination from Tasmanian waters (subsection 59(4)). The species of finfish prescribed by this clause are snapper, striped trumpeter and yellowtail kingfish.



## **Part 5—Other species**

### **Clause 16 – Other species not to be taken from Tasmanian waters**

This clause prescribes the species of fish to which cannot be taken by a concession holder in Tasmanian waters (section 60). The species of fish prescribed by this clause are handfish, seahorses and pipefish, and three-finned blennies.

## **Schedule 5—Catch limits—prawn fishery waters**

### **Part 1—Prawn fishery waters**

#### **Clause 1 – Prawn fishery waters**

This clause prescribes the area of waters that are ‘prawn fishery waters’ for the purposes of the definition in subsection 5(1) of the Regulations, a term which is also referred to in the conditions on fishing concessions prescribed in Division 11 of Part 7 of the Regulations. Notes to this clause provide that:

- the Protected Zone within the meaning of the Torres Strait Fisheries Act 1984 is excluded from the AFZ by operation of section 9 of the Management Act (note 1); and
- at the time of making the Regulations, the Commonwealth and the Northern Territory, Queensland and Western Australia had made arrangements under Part 5 of the Management Act which mean that, for the purposes of the description of the fishery, the coastal waters of Queensland, Western Australia and Northern Territory are to be taken in the AFZ (note 2).

The Part 5 arrangements referred to by this clause have been published in the Commonwealth *Gazette*, and are available free of charge at the Federal Register of Legislation website (<http://www.legislation.gov.au>).

The area of prawn fishery waters reflects the area of waters to which the *Northern Prawn Fishery Management Plan 1995* applies.

### **Part 2—Molluscs**

#### **Clause 2 – Species not to be taken**

This clause prescribes the species of mollusc which a concession holder must not take from prawn fishery waters (section 63). The species of mollusc prescribed by this clause are pearl shell, trepang and trochus.

#### **Clause 3 – Species not to be taken**

This clause prescribes the species of finfish which a concession holder must not take from prawn fishery waters (subsection 64(2)). The species of finfish prescribed by this clause are barramundi, barred javelin, blue (threadfin) salmon, jewfish, king threadfin and queenfish.

#### **Clause 4 – Species limited to 10 fish per trip**

This clause prescribes the species of finfish of which a concession holder must not take 10 individual fish from prawn fishery waters (subsection 64(4)). The species of finfish prescribed by this clause are broad barred Spanish (Grey) mackerel, gold band snapper, narrow barred Spanish mackerel, rockcod and sweet lips.

## **Clause 5 – Catch limits by weight**

This clause prescribes the species of finfish of which a concession holder must not possess on the nominated boat from prawn fishery waters:

- more than 500 kilograms if a trip ends in March, April, May or June (paragraph 64(5)(a)); or
- more than 50 kilograms if a trip ends in any other month (paragraph 64(5)(b)).

The species of finfish prescribed by this clause are crimson snapper, saddle-tailed snapper and red emperor.

## **Part 4—Other species**

### **Clause 6 – Species not to be taken**

This clause prescribes the other species of fish which a concession holder must not take more from prawn fishery waters (section 65). The species of fish prescribed by this clause are coral, sharks, rays and skates.

## **Schedule 6 – Fees**

### **Clause 1 – Fees**

Paragraph 168(2)(e) of the Management Act provides that the Regulations may make provision for the payment of fees in respect of:

- draft plans of management being made available (subparagraph (i));
- the making of applications under the Management Act (subparagraph (ii));
- the lodging and registration of documents (subparagraph (iii));
- the giving of a notice to AFMA nominating an Australian boat under paragraph 32(1A)(b) or subsection 32(1B) of the Management Act (subparagraph (iia));
- the issue of a document mentioned in subsection 53(2) of the Management Act (subparagraph (iv)); and
- the supplying of signed copies of, or extracts from, entries in the Register or instruments evidencing dealings registered in the Register (subparagraph (v)).

This clause contains a table prescribing the various fees that are payable in relation to different services and functions carried out by AFMA under the Act.

A number of these services have a prescribed fee of \$0 if AFMA's online portal is used for the service, consistent with the Australian Government's deregulation and automation agenda. The fees prescribed for these applications reflect the cost to AFMA of providing this service, as there is automated decision making through AFMA's online portal and there are no additional costs incurred.

Fees payable under the 1992 Regulations with respect to the processing and data entry of hard-copy logbooks are not being prescribed, consistent with AFMA's requirements for online reporting and digital recordkeeping under the *Fisheries Management (Logbooks for Fisheries) Determination 2018*.





The fees in Schedule 6 have been calculated based upon:

- the work required to be done in assessing and actioning the service requested;
- which AFMA staff members are required to do that work; and
- the cost to AFMA of having the work performed.

The value of providing the service to the applicant has also been considered in prescribing the fees.

This section is intended to replicate, in part, Schedule 2 to the 1992 Regulations.

#### Item 1 – Application for a fishing permit to operate within the AFZ

Under this item, the fees that are payable for an application under section 32 of the Management Act for the grant of a fishing permit to fish within the AFZ are:

- for a new fishing permit in connection with the expiry of an existing permit – nil if done through AFMA’s online portal, or \$160 if not through the portal;
- for a new fishing permit that is not in connection with the expiry of an existing permit that authorises the carrying or transhipping of fish – nil if done through AFMA’s online portal, or \$160 if not done through the portal.

Automated decision making through AFMA’s online portal is available for this service at no cost to the applicant.

To provide this service other than via the portal, the work required to be done in this regard includes assessing whether the application meets the requirements of the approved form (for the purpose of subsection 32(1) of the Management Act), considering which conditions should be imposed on the permit under subsection 32(8) of the Management Act, submitting the application for consideration by the delegate, and manually uploading the permit to the GoFish system. This work is done by members of the AFMA Licensing section, who are contracted employees.

The \$160 fee represents the cost to AFMA of contracting the services of the Licensing section and any additional costs (printing and mailroom etc.) associated with assessing and actioning the application.

This item is prescribed for the purposes of subparagraph 168(2)(e)(ii) of the Management Act.

#### Item 2 – Application for a fishing permit to operate outside the AFZ

Under this item, the fees that are payable for an application under section 32 of the Management Act for the grant of a new fishing permit (known as a High Seas Permit) to fish in the fishery outside the AFZ that is not in an area of waters south of the Antarctic Convergence are:

- for a new fishing permit in connection with the expiry of an existing permit – nil if done through AFMA’s online portal, or \$160 if not through the portal (paragraph (a));
- if the application is not being made in connection with the expiry of an existing fishing permit - \$160 whether or not done through AFMA’s online portal (paragraph (b)).

In relation to paragraph (a), automated decision making through AFMA’s online portal is available for this service at no cost to the applicant. In relation to paragraph (b), automated decision making through AFMA’s

online portal is not available, and any application of this type via AFMA's online portal will be diverted for manual processing.

To provide this service other than via the portal, the work required to be done in this regard includes assessing whether the application meets the requirements of the approved form (for the purpose of subsection 32(1) of the Management Act), considering which conditions should be imposed on the permit under subsection 32(8) of the Management Act, submitting the application for consideration by the delegate, and manually uploading the permit to AFMA's online portal. This work is done by members of the AFMA Licensing section, who are contracted employees.

The \$160 fee for the services provided under paragraphs (a) and (b) of this item represents the cost to AFMA of contracting the services of the Licensing section to do this work and any additional costs (printing and mailroom etc.) associated with assessing and actioning the application.

This item is prescribed for the purposes of subparagraph 168(2)(e)(ii) of the Management Act.

### Item 3 – Variation, revocation or specification of a condition, or conditions, of a fishing permit

Under this item, the fees that are payable for applying for the variation, revocation or specification, under subsection 32(8) of the Management Act concerning fishing permits, of a condition or conditions of a fishing permit are:

- if the application is for a variation to take account of the transfer of quota units of a scheduled species of fish to that concession holder from another concession in the same fishery – nil if done through AFMA's online portal, or \$115 if not done through the portal (subparagraph (a)(i));
- if the application is for a variation to take account of the transfer of quota units of a scheduled species of fish from that concession holder to another concession for the same fishery – nil if done through AFMA's online portal, or \$115 if not done through the portal (subparagraph (a)(ii));
- in any other case - \$300 whether or not done through AFMA's online portal (paragraph (b)).

In relation to subparagraphs (a)(i) and (a)(ii) of this item, automated decision making through AFMA's online portal is available for this service at no cost to the applicant.

The work to provide this service other than via the portal includes assessment of the application, querying the relevant quota unit holdings as to whether the transfer can be accommodated, submitting the application for approval by the delegate, manually uploading the condition change into AFMA's online portal, and notifying the applicant of the decision. This work is done by members of the AFMA Licensing section, who are contracted employees.

The \$115 fee represents the cost to AFMA of contracting the services of the Licensing section to do this work and any additional costs (printing and mailroom etc.) associated with assessing and actioning the application.

In relation to paragraph (b) of this item, automated decision making through AFMA's online portal is not available, and any application of this type via AFMA's online portal will be diverted for manual processing.

The work required to manually process this application includes assessing the relevant facts and circumstances for the request, which may involve assessment of the application by AFMA compliance officers, relevant fishery managers and other government agencies, submitting a recommendation to the delegate for decision making (who may be, for example, the Executive Manager of Fisheries who is an SES Band 2 employee if there are particular sensitivities or risks associated with the application), manually uploading the condition

change, and notifying the applicant of the decision. This work will ordinarily be led by the AFMA Licensing section, who are contracted employees, but will involve the work of other AFMA staff.

The \$300 fee represents the costs to AFMA of contracting the Licensing section employees, of payment of other AFMA staff involved in assessing the application, and any additional costs (printing and mailroom etc.) associated with assessing and actioning the application.

This item is prescribed for the purposes of subparagraph 168(2)(e)(ii) of the Management Act.

#### Item 4 – Nomination of another Australian boat to a fishing permit

Under this item, the fees that are payable for the processing of a nomination under paragraph 32(1A)(b) of the Management Act of the nomination of another Australian boat in lieu of the boat specified in one or more permits are nil if done through AFMA's online portal, or \$115 if not done through the portal.

Automated decision making through AFMA's online portal is available for this service at no cost to the applicant.

The work to provide this service other than via the portal includes assessment of the nomination to see whether the requirements of subsection 32(1BA) of the Management Act and section 33 of the Regulations are met with respect to the boat, liaising with the Australian Maritime Safety Authority with respect to the registration of the boat if required (being registered under the *Shipping Registration Act 1981* is a ground upon which a boat may be an 'Australian boat' as defined by subsection 4(1) of the Management Act), submitting the application for consideration by the delegate (within the AFMA Licensing section), manually uploading the nomination to AFMA's online portal, and notifying the applicant of the result. This work is done by members of the AFMA Licensing section, who are contracted employees.

The \$115 fee represents the cost to AFMA of contracting the services of the Licensing section to do this work and any additional costs (provision of information technology services, printing and mailroom etc.) associated with assessing and actioning the nomination.

This item is prescribed for the purposes of subparagraph 168(2)(e)(iia) of the Management Act.

#### Item 5 – Nomination of an Australian boat to one or more fishing permits

Under this item, the fees payable for the processing of a nomination under subsection 32(1B) of the Management Act of the nomination of an Australian boat to one or more fishing permits are nil if done through AFMA's online portal, or \$115 if not done through the portal.

Automated decision making through AFMA's online portal is available for this service at no cost to the applicant.

The work to provide this service other than via the portal includes assessment of the nomination to see whether the requirements of subsection 32(1BA) of the Management Act and section 33 of the Regulations are met with respect to the boat, liaising with the Australian Maritime Safety Authority with respect to the registration of the boat if required (being registered under the *Shipping Registration Act 1981* is a ground upon which a boat may be an 'Australian boat' as defined by subsection 4(1) of the Management Act), submitting the application for consideration by the delegate (within the AFMA Licensing section), and notifying the applicant of the result. This work is done by members of the AFMA Licensing section, who are contracted employees.

The \$115 fee represents the cost to AFMA of contracting the services of the Licensing section to do this work and any additional costs (provision of information technology services, printing and mailroom etc.) associated with assessing and actioning the nomination.

This item is prescribed for the purposes of subparagraph 168(2)(e)(iia) of the Management Act.

Item 6 - Nomination of an Australian boat to one or more permits if done at the same time as a nomination of a boat for a fishing right

Under this item, the fees payable for the processing of a nomination under subsection 32(1B) of the Management Act of the nomination of an Australian boat to one or more fishing permits at the same time as a nomination of the boat for a fishing right are nil. In effect, this removes the fee payable under item 5 in relation to the provision of this service other than via AFMA's online portal.

Item 7 – Application for the transfer of one or more fishing permits

Under this item, the fees payable for an application under subsection 32A(2) of the Management Act for the transfer of one or more fishing permits are nil if done through AFMA's online portal, or \$115 if not done through the portal.

Automated decision making through AFMA's online portal is available for this service at no cost to the applicant.

The work to provide this service other than via the online portal includes assessment as to whether the approved form for the purpose of subsection 32A(2) of the Management Act has been used, reviewing whether any of the matters listed in subsection 32A(4) of the Management Act are extant (which may allow for, or require, the transfer to be withheld), submitting the application to the delegate for consideration (within the AFMA Licensing section), manually uploading the application and the transfer into AFMA's online portal, and notifying the applicant of the outcome. This work is done by the AFMA Licensing section, who are contracted employees.

The \$115 fee represents the cost to AFMA of contracting the services of the Licensing section to do this work and any additional costs (provision of information technology services, printing and mailroom etc.) associated with assessing and actioning the application.

This item is prescribed for the purposes of subparagraph 168(2)(e)(ii) of the Management Act.

Item 8 – Nomination of a boat to a statutory fishing right

Under this item, the fees payable for the processing of a nomination of a boat to a statutory fishing right under subsection 33(3) of the Regulations is nil if done through AFMA's online portal, or \$115 if not done through the portal.

Automated decision making through AFMA's online portal is available for this service at no cost to the applicant.

The work to provide this service other than via the portal includes assessment of the nomination to see whether the requirements of section 33 of the Regulations are met with respect to the boat, liaising with the Australian Maritime Safety Authority with respect to the registration of the boat if required (being registered under the *Shipping Registration Act 1981* is a ground upon which a boat may be an 'Australian boat' as defined by subsection 4(1) of the Management Act), submitting the application for consideration by the delegate (within the AFMA Licensing section), manually uploading the nomination to AFMA's online portal, and notifying the

applicant of the result. This work is done by members of the AFMA Licensing section, who are contracted employees.

The \$115 fee represents the cost to AFMA of contracting the services of the Licensing section to do this work and any additional costs (provision of information technology services, printing and mailroom etc.) associated with assessing and actioning the nomination.

This item is prescribed for the purposes of subparagraph 168(2)(e)(ii) of the Management Act.

#### Item 9 – Application for the registration of a transfer or a lease of a fishing right

Under this item, the fees payable for an application under subsection 46(3) of the Management Act to register the transfer or lease of a fishing right are nil if done through AFMA's online portal, or \$115 if not done through the portal.

Automated decision making through AFMA's online portal is available for this service at no cost to the applicant.

The work to provide this service other than via the online portal includes assessment as to whether the approved form for the purpose of subsection 46(4A) of the Management Act has been used, reviewing whether any of the matters listed in subsection 46(4D) of the Management Act are extant (which may allow for, or require, the transfer to be withheld), submitting the application to the delegate for consideration (within the AFMA Licensing section), manually uploading the application and the transfer into AFMA's online portal, and notifying the applicant of the outcome. This work is done by the AFMA Licensing section, who are contracted employees.

The \$115 fee represents the cost to AFMA of contracting the services of the Licensing section to do this work and any additional costs (provision of information technology services, printing and mailroom etc.) associated with assessing and actioning the application.

This item is prescribed for the purposes of subparagraph 168(2)(e)(ii) of the Management Act.

#### Item 10 – Application of the registration of a claim to an interest in a fishing right

Under this item, the fee payable for an application for the registration of a claim in an interest in a fishing right under subsection 46(4A) of the Management Act is \$160. AFMA's online portal is not available for this service.

The work to provide this service includes assessment as to whether the approved form for the purpose of subsection 46(4A) of the Management Act has been used, submitting the application to the delegate for consideration, making an appropriate entry in AFMA's Register of Fishing Rights, and notifying the applicant of the registration. This work is done by the AFMA Licensing section, who are contracted employees.

The \$160 fee represents the cost to AFMA of contracting the services of the Licensing section to do this work and any additional costs (provision of information technology services, printing and mailroom etc.) associated with assessing and actioning the application.

This item is prescribed for the purposes of subparagraph 168(2)(e)(ii) of the Management Act.

#### Item 11 – Cancellation of a claim to an interest in a fishing right

Under this item, the fee payable for an application for the cancellation of a claim in an interest in a fishing right under subsection 46(4B) of the Management Act is \$160. AFMA's online portal is not available for this service.

The work to provide this service includes assessment as to whether the approved form for the purpose of subsection 46(4B) of the Management Act has been used, submitting the application to the delegate for consideration, omitting the relevant entry in AFMA's Register of Fishing Rights, and notifying the applicant of the registration. This work is done by the AFMA Licensing section, who are contracted employees.

The \$160 fee represents the cost to AFMA of contracting the services of the Licensing section to do this work and any additional costs (printing and mailroom etc.) associated with assessing and actioning the application.

This item is prescribed for the purposes of subparagraph 168(2)(e)(ii) of the Management Act.

#### Item 12 – Applying for the extract of a register

Under this item, the fee payable for an application for an extract of a register under the Management Act is nil if done through AFMA's online portal, or \$30 if not done through the portal.

A concession holder can readily obtain an extract of their concession holdings from the relevant register (i.e. the Fishing Permits Register or the Register of Fishing Rights) through accessing AFMA's online portal. It is also noted that the registers are also publically available in electronic form on the AFMA website (<http://www.afma.gov.au>).

The work to provide this service other than via the portal includes consideration of the application, review and extraction from the relevant register, and sending the extract to the applicant. This work is done by the AFMA Licensing section, who are contracted employees.

The \$30 fee for this service represents the cost to AFMA of contracting the services of the Licensing section to do this work and any additional costs (provision of information technology services, printing and mailroom etc.) associated with assessing and actioning the application.

This item is prescribed for the purposes of subparagraph 168(2)(e)(v) of the Management Act.

#### Item 13 – Inspection of a register

Under this item, the fee payable to inspect a register under the Management Act is nil if done through AFMA's online portal, or \$430 if not done through the portal. A concession holder can readily obtain an extract of their concession holdings from the relevant register (i.e. the Fishing Permits Register or the Register of Fishing Rights) through accessing AFMA's online portal. It is also noted that the registers are also publically available in electronic form on the AFMA website (<http://www.afma.gov.au>).

The work to provide this service other than via the portal includes extraction and preparation of an entire register, making appropriate arrangements for the inspection of the register in person, or other arrangements concerning the delivery of a copy of the register to the applicant. A register can be a document of significant length. As at the time of making the Regulations, for example, the Register of Fishing Rights for fishing right holders in the Southern and Eastern Scalefish and Shark Fishery ran to 128 pages in length.

The \$430 fee for this service represents the cost to AFMA of contracting the services of the Licensing section to do this work and any additional costs (provision of information technology services, printing and mailroom etc.) associated with assessing and actioning the application.

This item is prescribed for the purposes of subparagraph 168(2)(e)(v) of the Management Act.

#### Item 14 – Application for a fish receiver permit

Under this item, the fees payable for an application for a fish receiver permit:

- in connection with the expiry of an existing fish receiver permit are nil if done via AFMA's online portal, or \$245 if not done through the portal (paragraph (a)); and
- if not in connection with the expiry of an existing fish receiver permit (i.e. for a new permit) are \$245 whether or not done through the online portal (paragraph (b)).

In relation to paragraph (a) of this item, automated decision making through AFMA's online portal is available for this service at no cost to the applicant.

In relation to paragraph (b) of this item, automated decision making through AFMA's online portal is not available due to the risk assessment and consideration that needs to be given to a new fish receiver permit application, and any application of this type via AFMA's online portal will be diverted to the AFMA Licensing section for manual processing.

The work to provide this service other than via the online portal includes consideration of the application (including whether or not it is in the approved form for the purpose of subsection 91(2) of the Management Act), conducting a risk assessment of the relevant permit premises, consideration as to what conditions should be placed on the permit holder under paragraph 91(5)(a) of the Management Act, submission to the delegate for consideration, manually inputting the permit into AFMA's online portal, and providing an applicant with notice of the outcome including access to the GoFish system.

The \$245 fee to provide this service represents the cost to AFMA of contracting the services of the Licensing section to do this work, the costs associated with review and consideration of the application by AFMA compliance officers, and any additional costs (printing and mailroom etc.) associated with assessing and actioning the application.

This item is prescribed for the purposes of subparagraph 168(2)(e)(ii) of the Management Act.

#### Item 15 – Application for the variation of a fish receiver permit

Under this item, the fee payable for an application for the variation of a condition of a fish receiver permit under subsection 91(6) of the Management Act is \$160.

Automated decision making through AFMA's online portal is not available due to the risk assessment and consideration that needs to be given to changing fish receiver permit conditions, and any application of this type via AFMA's online portal will be diverted to the AFMA Licensing section for manual processing.

The work to provide this service includes consideration of the application, conducting a risk assessment of the proposed condition variation(s), submission to the delegate for consideration (who may be a senior AFMA compliance officer depending upon the risk and sensitivity associated with the requested variation), manually the permit into AFMA's online portal (if the permit is granted), and providing an applicant with notice of the outcome.

The \$160 fee to provide this service represents the cost to AFMA of contracting the services of the Licensing section to do this work, the costs associated with review and consideration of the application by AFMA



compliance officers, and any additional costs (printing and mailroom etc.) associated with assessing and actioning the application.

This item is prescribed for the purposes of subparagraph 168(2)(e)(ii) of the Management Act.

#### Item 16 – Application for a port permit

Under this item, the fee payable for an application under subsection 94(1) of the Management Act for a port permit is \$860. Application via AFMA's online portal is not available, as the applicant for a port permit is a foreign fishing operator who would not ordinarily have access to AFMA's online portal.

AFMA may issue a port permit under subsection 94(1) of the Management Act to allow a foreign fishing boat, not operating under a fishing permit, fishing right or foreign fishing licence, to bring the boat to an Australian port if it appears to AFMA to be appropriate to do so for the purpose of monitoring movements of foreign fishing boats. Providing for port permits is a measure by which Australia's obligations under the *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* (done at Rome, 22 November 2009 and available in the Australian Treaty Series at [2016] ATS 21),

The work to consider an application under subsection 94(1) of the Management Act for a port permit includes the consideration of the application (including whether it is in the approved form for the purpose of subsection 94(1)) which involves a risk assessment concerning the apparent likelihood that the applicant will abide by the conditions of the permit, preparation and liaison concerning the use of a vessel monitoring system by the foreign boat (or providing for manual reporting of the boat whilst in Australian waters), submission to the delegate for consideration (who may be the CEO of AFMA or the Executive Manager of Fisheries, an SES Band 2, if there are elevated risks and sensitivities associated with the permit), and notifying the applicant of the outcome. There is additional work associated with coordinating with other Commonwealth departments about the foreign boat, such as with the Department of Home Affairs concerning issues arising under the *Customs Act 1901*. There may also be further work associated with reporting to relevant Regional Fisheries Management Organisations and the flag state country, via appropriate diplomatic channels.

This work is coordinated by the International Compliance Policy section within AFMA, and also involves other AFMA compliance officers, fisheries managers, and the AFMA Licensing section.

The \$860 fee for this service represents the costs to AFMA of the relevant staff involved with processing the application, including the fees for contracting the services of the AFMA Licensing section, to do this work and any additional costs (printing and mailroom etc.) associated with assessing and actioning the application.

This item is prescribed for the purposes of subparagraph 168(2)(e)(ii) of the Management Act.

#### Item 17 – Applying for the variation of a condition of a port permit

Under this item, the fee payable for an application under subsection 94(5) of the Management Act for the variation of a condition on a port permit is \$400. Application via AFMA's online portal is not available, as the applicant for a port permit is a foreign fishing operator who would not ordinarily have access to AFMA's online portal.

The work to consider an application to vary a condition of a port permit includes the consideration of the application and a risk assessment of the proposed condition variation, liaison with other government agencies if required for the proposed amendment, submission to the delegate for consideration (who may be the CEO of AFMA or the Executive Manager of Fisheries, an SES Band 2, if there are elevated risks and sensitivities associated with the permit), and notifying the applicant of the outcome. There may also be further work

associated with reporting to relevant Regional Fisheries Management Organisations and the flag state country, via appropriate diplomatic channels.

This work is coordinated by the International Foreign Compliance Policy section within AFMA, and also involves other AFMA compliance officers, fisheries managers, and the AFMA Licensing section.

The \$400 fee for this service represents the costs to AFMA of the relevant staff involved with processing the application, including the fees for contracting the services of the AFMA Licensing section, to do this work and any additional costs (printing and mailroom etc.) associated with assessing and actioning the application.

This item is prescribed for the purposes of subparagraph 168(2)(e)(ii) of the Management Act.

#### Item 18 – Applying for a declaration that a foreign boat is taken to be an Australian boat

Under this item, the fee payable for an application under subsection 4(2) of the Management Act for a declaration that a foreign boat is taken to be an Australian boat for the purposes of the Management Act is \$1,790. Due to the detailed consideration that needs to be given to such applications, automated decision making via AFMA's online portal is not available.

The owner of a boat that does not fall within paragraphs (a) and (b) of the definition of 'Australian boat' in subsection 4(1) of the Act can, under subsection 4(2) of the Act, apply to AFMA to have that boat declared to be an 'Australian boat' for a limited period. The applicant must be an Australian citizen, an Australian resident, or an Australian-registered company.

To make such a declaration, the appropriate delegate must be satisfied that:

*... the extent of participation of the citizens or residents of Australia, either directly or indirectly (whether through the holding of shares in a company or otherwise), in the control of the operations of the boat in the AFZ during that period, and the nature of those operations, will be such as to justify [the making of the declaration].*

The work to consider an application for a declaration under subsection 4(2) of the Management Act includes assessment of the application, further investigation of relevant issues concerning the application (for example, obtaining company reports if the applicant is an Australian-registered company), liaison with other relevant government agencies such as the Australian Maritime Safety Authority about relevant issues, submission to relevant delegate for consideration (the only delegates being the CEO of AFMA and the Executive Manager Fisheries, who is an SES Band 2), preparation and registration of a gazettal (required under subsection 4(2)) if granted, and notification to

This work is ordinarily coordinated by the work area responsible for the management of the fishery to which the application relates. For example, if the boat wishes to operate in the Eastern Tuna and Billfish Fishery, the Tuna and International Fisheries Section will coordinate the assessment and actioning of the subsection 4(2) application. Other AFMA officers from International Compliance Policy, Domestic Compliance concerning vessel monitoring requirements, Legal Services, Fisheries Services concerning e-monitoring requirements and the AFMA Licensing section.

The \$1,790 fee for this service represents the costs to AFMA of the relevant staff involved with processing the application, including the fees for contracting the services of the AFMA Licensing section, to do this work and any additional costs (registration of gazettal, printing and mailroom etc.) associated with assessing and actioning the application.

The application fee prescribed in this item is also proportionate to the significant benefit that a person obtains by having a boat declared to be an 'Australian boat'. AFMA's current policy, as of the time of making the

Regulations, is that foreign fishing licences are not being issued. It follows that a boat must be an 'Australian boat' to operate under a fishing concession in the AFZ.

This item is prescribed for the purposes of subparagraph 168(2)(e)(ii) of the Management Act.

#### Item 19 – Applying to validate a European Community catch document

Under this item, the fee payable for applying to AFMA to validate a European Community catch document is \$85. Application via AFMA's online portal is currently not available for this service.

Regulation 1005/2008 of the European Commission was implemented in the European Union (EU) in 2010 to prevent, deter and eliminate illegal, unreported and unregulated (IUU) fishing. Under that regulation, the EU requires AFMA to certify that wild caught fish under Commonwealth jurisdiction were not caught through IUU fishing before goods can be imported into the European Community. AFMA needs to manually generate a validation document for each export of Commonwealth fish for this purpose.

The work required to validate a European Community catch document includes the verification of the catch against logbook records provided by the fisher, verification of the nominated boat, and providing notice of the decision to the applicant. This work is done by the AFMA Licensing section, who are contracted employees.

The \$85 fee for this service represents the cost to AFMA of contracting the services of the Licensing section to do this work and any additional costs (printing and mailroom etc.) associated with assessing and actioning the application.

This item is prescribed for the purposes of subparagraph 168(2)(e)(ii) of the Management Act.

#### Item 20 – Applying to validate a catch report document

Under this item, the fee payable for applying to AFMA to validate a catch report document is \$85. Application via AFMA's online portal is not currently available for this service.

For example a fishery may wish to export a portion of its product to the United States. Similar to the European Commission, the United States has implemented reporting requirements to prevent, deter and eliminate illegal, unreported and unregulated fishing through their Seafood Import Monitoring (SIM) Program. The SIM Program requires importers to provide information and maintain records about the harvest, landing and chain of custody of imported fish and fish products for certain priority species identified as especially vulnerable to IUU fishing and seafood fraud. It follows that, to be imported into the United States, further information concerning the product. AFMA certifies that this information is correct for the purpose of the SIM Program.

The work required to validate catch report document includes the verification of the catch against logbook records provided by the fisher, verification of the nominated boat, and providing notice of the decision to the applicant. This work is done by the AFMA Licensing section, who are contracted employees.

The \$85 fee for this service represents the cost to AFMA of contracting the services of the Licensing section to do this work and any additional costs (printing and mailroom etc.) associated with assessing and actioning the application.

This item is prescribed for the purposes of subparagraph 168(2)(e)(ii) of the Management Act.

#### Item 21 – Applying for an Electronic Dissostichus Document

Under this item, the fee payable for applying to AFMA for an Electronic Dissostichus Catch Document is \$165. Application via AFMA's online portal is not currently available for this service. This document relates to the import or export of toothfish caught by Commonwealth concession holders in the Heard Island and McDonald Islands Fishery.

Conservation measure 10-08, passed by the Commission for the Conservation of Antarctic Marine Living Resources in 2018, requires each movement of toothfish (*Dissostichus* spp.) to be accompanied by catch reporting documents. Relevantly, an Electronic Dissostichus Catch Document contains information relating to the harvest, transshipment and landing of toothfish. Previous iterations of conservation measure 10-08 have included substantially similar requirements.

AFMA administers the production of Electronic Dissostichus Catch Documents on behalf of the Australian government. The work required to produce these documents includes reviewing and extracting relevant catch records, and uploading the relevant information to the electronic Catch Document System administered by CCAMLR. This work is done by the AFMA Licensing section, who are contracted employees.

The \$165 fee for this service represents the cost to AFMA of contracting the services of the Licensing section to do this work and any additional costs (printing and mailroom etc.) associated with assessing and actioning the application.

This item is prescribed for the purposes of subparagraph 168(2)(e)(ii) of the Management Act.

#### Item 22 – Applying for a quota holding statement

Under this item, the fee payable for applying to AFMA for a statement outlining the applicants quota holdings is nil if done via AFMA's online portal, or \$30 if done other than via the portal.

A concession holder can readily obtain a statement of their quota holdings from the relevant register (i.e. the Fishing Permits Register or the Register of Fishing Rights) through accessing AFMA's online portal. It is also noted that the registers are also publically available in electronic form on the AFMA website (<http://www.afma.gov.au>).

The work to provide this service other than via the portal includes consideration of the application, review and extraction from the relevant register, and sending the extract to the applicant. This work is done by the AFMA Licensing section, who are contracted employees.

The \$30 fee for this service represents the cost to AFMA of contracting the services of the Licensing section to do this work and any additional costs (printing and mailroom etc.) associated with assessing and actioning the application.

This item is prescribed for the purposes of subparagraph 168(2)(e)(ii) of the Management Act.

#### Item 23 – Applying for a quota transaction statement

Under this item, the fee payable for applying to AFMA for a quota transaction statement is nil if done via AFMA's online portal, or \$30 if done other than via the portal.

A concession holder can readily obtain a statement of a quota transaction through accessing AFMA's online portal. The work to provide this service other than via the portal includes consideration of the application,

review and extraction from the relevant register, and sending the extract to the applicant. This work is done by the AFMA Licensing section, who are contracted employees.

The \$30 fee for this service represents the cost to AFMA of contracting the services of the Licensing section to do this work and any additional costs (printing and mailroom etc.) associated with assessing and actioning the application.

This item is prescribed for the purposes of subparagraph 168(2)(e)(ii) of the Management Act.

#### Item 24 – Applying to enter into an arrangement to pay a fee, levy, charge or other amount

Under this item, the fee payable for applying to AFMA to enter into an arrangement for the payment of a fee, levy, charge or other amount relating to a fishing concession is \$220. Application via AFMA's online portal is not currently available for this service.

An arrangement to pay is primarily applied for in relation to levy payments. Concession holders under the Management Act are, by operation of the *Fishing Levy Act 1991*, required to pay an annual levy on their concession as is prescribed. AFMA administers the payment of levy over the year in three instalments, payments being due and payable in February, April and May.

The Finance section within administers AFMA payment arrangements, which provides concession holders with the ability to enter into arrangements to pay outstanding levies, and other charges. Entering into an arrangement also limits AFMA's authority to cancel a fishing concession on the account of unpaid levies as is permitted under paragraph 39(1)(c) of the Management Act.

The work done by AFMA's Finance section to provide this service includes negotiation on the terms of the arrangement, drafting a written agreement to reflect those terms, liaising with the concession holder's bank or financial institution to set up direct debit payments, and ongoing administration and monitoring that the terms of the agreement are being met. This work can also involve relevant fishery managers, AFMA domestic compliance officers, Legal Services, as well as the AFMA Licensing section.

The \$220 fee for this service represents the costs to AFMA of the relevant staff involved with processing the application, including the fees for contracting the services of the AFMA Licensing section, to do this work and any additional costs (printing and mailroom etc.) associated with entering into an agreement to pay outstanding charges.

This item is prescribed for the purpose of subparagraph 168(2)(e)(ii) of the Management Act.

#### Item 25 – Any other application

The fee payable for any other application under the Management Act or the Regulations for which a fee is not otherwise prescribed in Schedule 6 is prescribed in this item to be the cost to AFMA of providing the service.

A note to this item provides that the amount of the fee will be calculated on the basis of time taken by AFMA to assess and action the application, multiplied by the hourly cost to AFMA of the staff involved.

This item is prescribed for the purpose of subparagraph 168(2)(e)(ii) of the Management Act.

**Statement of Compatibility with Human Rights**

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

***Fisheries Management Regulations 2019***

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Human Rights Act).

**Overview of the Regulations**

The purpose of *Fisheries Management Regulations 2019* (the Regulations) is to prescribe certain matters for the purpose of the *Fisheries Management Act 1991* (the Management Act). Those matters notably include the prescription of:

- certain geographic areas outside the Australian Fishing Zone (AFZ) in which the Act applies to Australian citizens and corporations. This includes the fishery for southern bluefin tuna and for Antarctic fisheries;
- a number of standard conditions on fishing concessions, including in relation to vessel monitoring systems, catch limits for fishing in prescribed areas of waters, interactions with protected species, processing of fish before landing, and the disposal of fish to fish receivers;
- fees payable in respect of certain services provided by AFMA;
- certain strict liability offences, and provide for an infringement notice scheme; and
- certain areas of waters within the AFZ for fisheries that are not managed under a plan of management.

The Regulations replace the *Fisheries Management Regulations 1992* (the 1992 Regulations), and incorporate the *Fisheries Management (Southern Bluefin Tuna Fishery) Regulations 1995* (the SBT Regulations), which are due to sunset on 1 October 2019 under Part 4 of Chapter 3 of the *Legislation Act 2003*.

Section 168 of the *Fisheries Management Act* (the Management Act) provides that the Governor-General may make regulations prescribing all matters required or permitted by the Management Act to be prescribed or as may be necessary or convenient to be prescribed in carrying out or giving effect to the Management Act.

The Regulations are consistent with the Government's deregulation agenda and redundant provisions that were in the 1992 Regulations have not been remade.

The Regulations commence on 1 October 2019 to provide the Australian Fisheries Management Authority (AFMA) with the opportunity to make associated legislative, regulatory and administrative preparations before the new Regulations come into force.

## Human rights implications

The Regulations engage with the following human rights, as recognised by the Human Rights Act:

- the protection against unlawful or arbitrary interference with privacy (article 17 of the *International Covenant on Civil and Political Rights* (ICCPR));
- the right to a fair trial (article 14 of the ICCPR);
- the right to work and rights in work (article 7 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR)).

The way that the Regulations engage with these human rights is outlined under separate headings below.

### ***Right to freedom from unlawful or arbitrary interferences with privacy***

Article 17 of the ICCPR provides that:

*No one shall be subjected to arbitrary or unlawful interference with his privacy, family, home or correspondence, nor to unlawful attacks on his honour or reputation.*

An interference with privacy will not be arbitrary if it is authorised by law or consistent with the provisions, aims and objectives of the ICCPR and reasonable in the circumstances.

The United Nations Human Rights Committee has interpreted the requirement of ‘reasonableness’ such that any interference with privacy must be proportional to the end sought and be necessary in the circumstances. As such, limitations on the right to privacy must be aimed at a legitimate objective and be reasonable, necessary and proportionate to that objective.

The right to privacy in Australia is, under Commonwealth jurisdiction, governed by the *Privacy Act 1988* (the Privacy Act). The Australian Privacy Principles, outlined in section 14 of that Act, relevantly assist Government department to ensure that the collection, solicitation, storage, access, use and disclosure of personal information has a lawful basis. The provisions in the Regulations that engage with the right to privacy and reputation will be subject to the Australian Privacy Principles.

The Regulations engages the right to privacy and reputation because:

- section 84 of the Regulations gives AFMA the authority to require the master of a boat being used in the Australian Fishing Zone (AFZ) under a fishing concession issued under the Management Act, or an Australian boat engaged in fishing outside the AFZ, to provide information about the persons on board the boat;
- Part 10 of the Regulations prescribe relevant matters for the purpose of Schedule 1A of the Management Act—including matters concerning the collection of personal identifiers, including biometric information, and the disclosure of identifying information to other agencies;
- section 104 of the Regulations provides that AFMA may disclose certain types of information, including personal information, for specified purposes.

These provisions of the Regulations each provide a lawful domestic basis for an interference with an individual’s right to privacy. How each of these provisions are considered to be reasonable, necessary and proportionate interferences with privacy for the purpose of Article 17 of the ICCPR is discussed under separate heading below.

### *Production of information relating to persons on board a boat (section 84)*

AFMA may, under subsection 84(2) of the Regulations, require the master of a boat that is being used for fishing in the AFZ under a fishing concession, or an Australian boat being used for fishing outside the AFZ, to give AFMA the names, dates of birth, residential addresses and positions of persons on board the boat. If AFMA requires this information, the master must produce the information as soon as practicable and failing to do so is a strict liability offence (subsections 84(3) and 84(5)).

The collection of personal information about persons on board boats fishing in the AFZ, or Australian boats fishing outside of the AFZ, is necessary in order for AFMA to conduct its functions under the Management Act.

It is vital that AFMA officers have the power to compel personal information from a master because fishing boats under Commonwealth jurisdiction may be remotely located, a number of nautical miles offshore from the Australian coast, where there is limited other means of contacting those on board the boat directly.

Section 84 provides AFMA with the ability to identify persons on board boats engaged in fishing under Commonwealth jurisdiction. Such a measure is reasonable for AFMA to enable officers to carry out their functions under the Management Act. For example, section 98 of the Management Act provides that a person who is convicted of certain offences against the Management Act may also be subjected to an order that the person not, during such a period as the court determines, be on a boat in the AFZ with the intention of engaging in commercial fishing. Such an order may possibly capture a person who is the member of a fishing boat's crew, who is not ordinarily captured in the information provided to AFMA and recorded on its registers (such information being limited to master of the boat and the holder of the relevant fishing concession). AFMA may also choose to exercise the power in section 84 of the Regulations for personal safety purposes in emergency circumstances, such as where there is an environmental disaster such as an oil spill.

Section 84 of the Regulations is, for the purpose of Article 17 of the ICCPR, considered to be a reasonable, necessary and proportionate interference with the privacy of those on board fishing boats.

It is also noted that subsection 84(4) provides an additional safeguard against excessive use of the power to require information from a master, as such a request may only be made once in every 48 hour period.

### *Suspected illegal foreign fishers (Part 10)*

Part 10 of the Regulations engages with Article 17 of the ICCPR as it provides for:

- matters relating to the compulsory collection of biometric information (eg. iris scans, fingerprints) and other personal information from persons in detention;
- the retention of, and access to, such information; and
- the disclosure of that information to other parties, including to other Commonwealth, State and Territory agencies as well as foreign governments and international organisations.

The deterrence, detection and regulation of illegal foreign fishers is an important function completed by AFMA officers under the Management Act. The collection of personal identifiers, and the use and disclosure of identifying information, pursuant to Schedule 1A of the Management Act and in accordance with Part 10 of the Regulations is an important measure by which this function is performed. In this regard, the Regulations provide for the collection of further personal identifiers in addition to that provided for under the Management Act—this includes a sample of handwriting and photographs of identifying marks on an individual (sections 89 and 91).



Authorised officers must be given lawful authority to collect the prescribed additional personal identifiers (including a sample of handwriting and photographs of identifying marks) from persons detained under Schedule 1A of the Management Act. These additional identifiers need to be collected because, under international law, a person must not be imprisoned for a foreign fishing offence, however recidivists (repeat offenders) can be sentenced to a jail term as a result of breaching a good behaviour bond or defaulting on a fine imposed in a previous prosecution for foreign illegal fishing offences under the Management Act or the *Torres Strait Fisheries Act 1984* (the Torres Strait Act).

Identifying foreign fishers who do not carry documentation and do not want to be identified can be very difficult for AFMA and partner law enforcement agencies. The additional identifiers that can be collected provide significant assistance in the performance of this function.

The collection of personal identifiers by appropriately authorised AFMA officers, or by authorised officers within the Department of Home Affairs who are also authorised to do so (see clause 7 of Schedule 1A to the Management Act), may also be a collection of ‘sensitive information’ as defined by the Privacy Act. The Australian Privacy Principles under the Privacy Act will be adhered to in relation to the collection of such information. In addition, personal identifiers are also subject to Division 4 of Part 5 and Part 6 of Schedule 1A to the Management Act titled ‘Obligations relating to detainees’ identifying information’ and ‘Disclosure of detainees’ personal information’ respectively. Relevantly, Subdivision C of Division 4 of Part 5 of Schedule 1A to the Management Act makes it an offence to disclose personal identifiers (and certain information derived from personal identifiers) without lawful authority. This is consistent with the United Nations Human Rights Committee General Comment 16 in which the Committee states that the gathering and holding of personal information using information technology must be regulated by law and that effective measures must be taken to ensure that the information collected is not accessed by persons who are not authorised by law to receive, process or use it.

Part 10 of the Regulations prescribes an additional safeguard against the improper use of the information collection, use and disclosure powers available under Schedule 1A to the Management Act, as section 94 of the Regulations provides for the disclosure of video recordings of identification tests to the Australian Human Rights Commission for the purpose of an inquiry into the operation of the Management Act relating to carrying out an identification test.

It follows that Part 10 of the Regulations is, for the purpose of article 17 of the ICCPR, considered to be a reasonable, necessary and proportionate interference with the privacy of suspected illegal foreign fishers.

#### *Disclosure of information, including personal information, for specified purposes (section 104)*

Section 104 relevantly provides that AFMA may disclose information, including personal information, in specified circumstances. Relevantly, those circumstances include disclosures to:

- a government entity, including a foreign government or foreign government agency—where the information relates to the performance of a function of the entity (paragraph 104(2)(a)); and
- to a person conducting research—where the research is related to, or will support, AFMA’s functions or objectives (paragraph 104(2)(b)).

Disclosure of information under section 104 is not arbitrary, and may only occur where it is linked to the specified purpose.

Any information disclosed by AFMA under section 104 is done in strict adherence with AFMA’s information disclosure policy (Fisheries Management Paper 12, available on the AFMA website). That policy requires

information to be de-identified unless there is good reason for this not to occur. AFMA also requires deeds of confidentiality to be submitted if any personal, or otherwise sensitive information, is being disclosed.

The disclosure of any personal information by AFMA under these provisions is a disclosure ‘authorised or required by law’ for the purpose of the Privacy Act.

It is noted that any improper use of section 104 of the Regulations may amount to the commission of an offence against section 70 of the *Crimes Act 1914*, and would be inconsistent with the APS Code of Conduct prescribed in section 13 of the *Public Service Act 1999*. This means that the disclosure of information pursuant to section 104 of the Regulations is appropriately regulated.

It follows that section 104 is, for the purpose of Article 17 of the ICCPR, a reasonable, necessary and proportionate interference with the privacy of any individual whose personal information may be disclosed by AFMA pursuant to this section.

### ***Right to a fair trial***

Article 14 of the ICCPR ensures that everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law.

The Regulation engages with the right to a fair trial as there are a number of strict liability offences contained in the Regulations (section 20, as well as subsections 80(4), 80(6), 80(8), 81(4), 82(1), 83(1), 84(3) and 86(1)), some of which provide for a reverse onus of proof with regard to proving an exception to such offences (subsection 80(7) for subsections 80(4) and 80(6), and subsections 86(2) and 86(3) for subsection 86(1)).

The *Commonwealth Guide to Framing Offences, Infringement Notices and Enforcement Powers* (the Offences Guide) was consulted in relation to the framing of these offences. Consistent with the Offences Guide, these offences have been made as strict liability as this is necessary to ensure the integrity of fisheries management. In particular, the strict liability offences concerning the identification of domestic and foreign boats prescribed subsections 80(4), 80(6), 80(8), 82(1) and 83(1) of the Regulations support the maintenance of the integrity of the identification of fishing boats, which is a key regulatory measure. Any inability of AFMA to properly identify a fishing boat may cause significant additional costs for AFMA to conduct other enforcement activities, given the often remote and distant nature of fishing activities.

It is appropriate that the prosecution does not need to prove fault for the elements of the strict liability offences prescribed in the Regulations, on the basis that the state of mind of the defendant is not relevant, the elements of the offence are objective, and the offence is minor and deterrent in nature. It is also reasonable that the defendant bears an evidential burden given the context of the exception and the minor nature of the offence. Firstly, in relation to the strict liability offences in the Regulations, it is noted that:

- the imposition of strict liability removes the obligation for the prosecution in a criminal matter to prove intention to commit an offence, which is inconsistent with section 5.6 of the Criminal Code (see Schedule 1 to the *Criminal Code Act 1995*) and can also be considered a limitation on the presumption of innocence (under art 14(2) of the ICCPR) because the defendant can be found guilty without proof of intent;
- strict liability offences will not necessarily be inconsistent with the presumption of innocence, provided that the removal of the presumption pursues a legitimate objective and is reasonable, necessary and proportionate to achieving that objective; and
- the defence of honest and reasonable mistake of fact is still available for such offences (see section 9.2 of the Criminal Code).

All of the strict liability offences in the Regulations are considered to be a reasonable, necessary and proportionate limitation on the presumption of innocence under article 14(2) of the ICCPR.

For example, under subsection 86(1) of the Regulations the master of a boat commits an offence of strict liability if the boat is navigated in an area that is a closed zone that relates to the boat, carrying a penalty upon conviction of 25 penalty units. A 'closed zone' is defined by reference to an area subject to a direction made by AFMA as a legislative instrument under subsection 41A(2) of the Act. AFMA is required, in the ordinary course, to consult with any relevant management advisory committee for the relevant fishery or, if there is no such committee, with the holders of fishing concessions, scientific permits or foreign master fishing licences for the fishery. AFMA must also, at least 7 days before the direction takes effect, ensure that a copy of the direction is sent to each holder of a fishing concession (subsection 41A(2A) of the Management Act).

As a result of this notification, a master of a boat should reasonably be aware that a closure is in place whilst conducting fishing activities, either as the holder of the relevant fishing concession or as the holder's agent. This means that the imposition of strict liability for subsection 86(1) is a reasonable, necessary and proportionate limitation on the presumption of innocence under article 14(2) of the ICCPR.

The strict liability offences contained in section 20, and subsections 80(4), 80(6), 80(8), 81(4), 82(1), 83(1) and 84(3), of the Regulations are similar in nature to subsection 86(1) in that they have a strong element of specific and general deterrence to the offence and to require proof of intention would undermine the regulatory effectiveness of those provisions. The offences are punishable by fine only, not imprisonment, of less than 60 penalty units and no element of the offence is dependent on a subjective or community standard, consistent with the *Commonwealth Guide to Framing Offences, Infringement Notices and Enforcement Powers* (the Commonwealth Guide).<sup>31</sup>

Secondly, the reverse onus of proof for exceptions to offences as outlined in subsections 80(7), 86(2) and 86(3) of the Regulations also engages with the right to be presumed innocent during a criminal prosecution under article 14(2) of the ICCPR. However, the reverse onus of proof in these instances represents a necessary, reasonable and proportionate engagement of the right for a number of reasons. The legislative objective of the reversal is to ensure that all appropriate evidence is before the court. This is appropriate given that the knowledge as to the person's considerations and beliefs at the time of the conduct is peculiar to that person. Due to the disparate and remote nature of the offending conduct, this evidence would be readily available to the defendant and would require significant cost, and great difficulty, to be disproved by the prosecution.

For example, subsections 80(4) and 80(6) of the Regulations impose strict liability offences if a person, being the master or owner of a boat, fails to display an identification code or fails to remove an identification code once it is no longer used under a Commonwealth fishing concession respectively. Subsection 80(7) provides an exception to these offences which applies where a boat is licensed to take fish under a State or Territory law, and displays an identification in accordance with that licence. This is knowledge that would be readily available within the knowledge of a defendant, who would be readily aware of their State or Territory fishing authority and could simply produce their relevant fishing licence(s) to rely upon the exception.

It follows that it is appropriate that the prosecution does not need to prove fault for the elements of this offence, on the basis that the state of mind of the defendant is not relevant, the elements of the offence are objective, and the offence is minor and deterrent in nature. It is reasonable that the defendant bears an evidential burden given the context of the exception and the minor nature of the offence.

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<sup>31</sup> See paragraph 2.2.6 of the Commonwealth Guide.

In addition, Division 7 of Part 11 of the Regulations creates an infringement notice scheme (see Division 7 of Part 11). The right of a person to a fair and public hearing by a competent, independent and impartial tribunal (under art 14(1) of the ICCPR) is preserved by the Regulations as its provisions do not compel payment of a penalty and allow a person to elect to have the matter heard by a court rather than pay the amount specified in the notice. The Regulations provide that this right must be stated in an infringement notice issued to a person, ensuring that a person issued with an infringement notice is aware of their right to have the matter heard by a court (see paragraph 111(1)(k)).

It is also important to note that infringement notices add to the flexibility of regulatory law by allowing for the punishment of misconduct without the need to impose criminal liability. Infringement notices provide a flexible option for misconduct of a more minor nature, as an alternative to the unnecessary imposition of criminality. They are sufficiently serious to act as a deterrent for misconduct, without necessarily carrying the stigma of criminal conviction. Infringement notices are only a pecuniary penalty, and therefore cannot be considered as criminal in nature. It follows that the imposition of an infringement notice scheme under Division 7 of Part 11 of the Regulations is a reasonable, necessary and proportionate limitation on the right to a fair and public hearing by a competent, independent and impartial tribunal.

### ***Right to work and rights in work***

Article 7(b) of the ICESCR ensures that the right of everyone to the enjoyment of just and favourable conditions of work, which ensure safe and healthy working conditions, is protected.

The Regulations positively engage with, and enhance, article 7(b) of the ICESCR in the following ways:

- Division 5 of Part 7 of the Regulations makes provision for the safe carriage of observers and their equipment, and that observers are given adequate food and accommodation. This means that the working conditions for observers, as AFMA employees, have a statutory protection. This also engages positively with the right to an adequate standard of living, including food, water and housing (see Article 11 of the ICESCR);
- whilst fishing concession holders, the masters of fishing boats and their crew are required to give observers assistance in the conduct of their work, what is required to be provided is only what is reasonably practicable in the circumstances (section 41 of the Regulations). This provides opportunity for assistance to be withheld where a person has safety concerns with respect to other aspects of their work on board a fishing boat;
- the offence relating to the navigation of a boat in a closed zone (under section 86 of the Regulations) is subject to an exception which applies where there is an unforeseen emergency, or circumstances beyond the control of the master of the boat, which mean that a boat cannot be navigated outside a closed zone (paragraph 86(3)(a) in particular). This is an important measure whereby the safety of the workplace for persons on board fishing boats can be preserved without attaching criminal liability.

### **Conclusion**

The Regulations are compatible with human rights because they are consistent with Australia's human rights obligations, including the promotion of the right to work and rights in work, and, to the extent that the Regulations may also limit human rights, those limitations are reasonable, necessary and proportionate.

**Assistant Minister for Agriculture and Water Resources and  
Parliamentary Secretary for Agriculture and Water Resources**

**List of acronyms and abbreviations**

1992 Regulations	<i>Fisheries Management Regulations 1992 (rep.)</i>
Administration Act	<i>Fisheries Administration Act 1991</i>
CCAMLR	Convention on the Conservation of Antarctic Marine Living Resources
Crimes Act	<i>Crimes Act 1914</i>
EPBC Act	<i>Environmental Protection and Biodiversity Conservation Act 1999</i>
Fish Receiver Permits Declaration	<i>Fisheries Management (Fish Receiver Permits) Declaration 2018</i>
International Agreements Regulations	<i>Fisheries Management (International Agreements) Regulations 2009</i>
Legislation Act	<i>Legislation Act 2003</i>
Logbooks Determination	<i>Fisheries Management (Logbooks for Fisheries) Determination 2018</i>
Management Act	<i>Fisheries Management Act 1991</i>
NPF Management Plan	<i>Northern Prawn Fishery Management Plan 1995</i>
Offences Guide	<i>Commonwealth Guide to Framing Offences, Infringement Notices and Enforcement Powers</i>
Privacy Act	<i>Privacy Act 1988</i>
Regulations	<i>Fisheries Management Regulations 2019</i>
SBT Management Plan	<i>Southern Bluefin Tuna Fishery Management Plan 1995</i>
SBT Regulations	<i>Fisheries Management (Southern Bluefin Tuna Fishery) Regulations 1995</i>
SESSF Management Plan	<i>Southern and Eastern Scalefish and Shark Fishery Management Plan 2003</i>
SESSF Regulations	<i>Fisheries Management (Southern and Eastern Scalefish and Shark Fishery) Regulations 2004</i>
SIOFA	<i>Southern Indian Ocean Fisheries Agreement</i> , done at Rome on 29 December 2006, available in the Australian Treaty Series as 2012 No. 21