

EXPLANATORY STATEMENT

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

Fisheries Management Act 1991

Fisheries Management (Heard Island and McDonald Islands Fishery) Amendment (Fishing Gear Requirements) Regulations 2025

Legislative Authority

The *Fisheries Management Act 1991* (the Act) is an Act in relation to fisheries. The Act establishes management plans for fisheries and sets out the legislative basis for statutory fishing rights (SFRs), licences and permits. It also provides for the enforcement powers of the Australian Fisheries Management Authority (AFMA).

Subsection 168(1) of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing all matters required or permitted by the Act to be prescribed, or necessary or convenient to be prescribed in carrying out or giving effect to the Act.

Purpose

The purpose of the *Fisheries Management (Heard Island and McDonald Islands Fishery) Amendment (Fishing Gear Requirements) Regulations 2025* (the Amendment Regulations) is to repeal Part 4 of, and Schedule 1 to, the *Fisheries Management (Heard Island and McDonald Islands Fishery) Regulations 2002* (the Principal Regulations). The Amendment Regulations also insert Part 10 (application, saving and transitional provisions) into the Principal Regulations.

Background

Section 17 of the Act provides for the making of plans of management for fisheries. The *Heard Island and McDonald Islands Fishery Management Plan 2002* (the Management Plan) provides for the management of the Heard Island and McDonald Islands Fishery (the Fishery) under a scheme of SFRs. The Principal Regulations complement the Management Plan by prescribing certain requirements in relation to the Fishery, for example, requirements relating to gear, observers and inspections.

Part 4 of the Principal Regulations provides for requirements relating to the use of certain gear on holders of SFRs in the Fishery. Some of these requirements align with Conservation Measures of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), which are binding under the *Convention on the Conservation of Antarctic Marine Living Resources* (CAMLRL Convention) to which Australia is a party. Part 4 provides for:

- requirements relating to the mesh size of trawl nets used to fish for Patagonian toothfish and mackerel icefish (see Conservation Measures 22-01, 22-02 and 22-03);

- requirements relating to the size of bobbins and rock hopper rubber discs used in the area of the Fishery; and
- the prohibition on the use of a net monitor cable when the holder's nominated boat is in the area of the Fishery (see Conservation Measure 25-03).

Section 22 of the Act provides for AFMA to establish and administer a system of SFRs where a plan of management provides for the management by AFMA of a fishery by means of a system of SFRs. Section 22 of the Act also provides for SFRs to be subject to conditions.

Impact and Effect

The Amendment Regulations remove the requirements relating to the use of certain gear from the Principal Regulations. It is intended that holders of SFRs in the Fishery will still be subject to requirements relating to the use of certain gear in the form of conditions of SFRs under section 22 of the Act. This ensures that requirements can be adjusted by AFMA in a timely manner, as necessary. The ability to adjust requirements quickly is particularly important in order to adapt to changing environmental requirements or to maintain compliance with international obligations including new or updated Conservation Measures of the CCAMLR.

This intended approach aligns with the implementation of fishing gear requirements in other Commonwealth managed fisheries, for example, the Eastern Tuna and Billfish Fishery and Western Tuna and Billfish Fishery where gear specifications are provided as SFR conditions. SFR holders, and those under the instruction of SFR holders, would be subject to the higher penalties for contraventions of the relevant offence provision under section 95 of the Act. That section is subject to the infringement notice regime under the Act, which provides for maximum penalty amounts for an infringement notice that are substantially less than the amount that may be provided under Part 4 of the Principal Regulations repealed by the Amendment Regulations. Imposing gear requirements in SFR conditions, rather than as offences in Part 4 of the Principal Regulations, therefore provides a range of penalties for contraventions of these requirements, allowing greater flexibility to respond appropriately to different circumstances.

The amendments are designed to balance the need for operational implementation of gear requirements with ensuring Australia implements its international obligations under the CAMLR Convention.

Consultation

AFMA has established Resource Assessment Groups (RAGs) and Management Advisory Committees (MACs) to assist AFMA in the performance of its functions. The RAGs include representation from industry, fisheries scientists and economists while industry, state governments, research, recreational, environment and other interested groups are represented on the MACs.

AFMA has conducted extensive external consultation on and trial of alternative gear consistently each year since 2019 until 2024 through the Sub-Antarctic RAG and the Sub-Antarctic MAC. All holders of SFRs in the Fishery have appointed representatives on both the Sub-Antarctic RAG and the Sub-Antarctic MAC. Minutes of all meetings of these groups

are made publicly available on the AFMA website. There was also broader public consultation with all SFR holders in the Fishery in May 2025.

The consultation processes undertaken confirmed that the stakeholders see merit in the operational flexibility that will be provided by imposing gear requirements as conditions of SFRs instead of through Principal Regulations, allowing a more efficient and responsive method of regulating fishing in the Fishery. AFMA also consulted with the SFR holders in the Fishery on the draft SFR conditions that would impose gear requirements and no issues were raised. SFR conditions are applied consistently across all SFR holders in the Fishery and made publicly available on the AFMA website.

The Department consulted with the Office of International Law (OIL) and the Criminal Law Section in the Attorney-General's Department on the Amendment Regulations. The Department also consulted with OIL on the draft new SFR conditions.

Details/ Operation

The Amendment Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amendment Regulations commence on the day after the instrument is registered.

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

Other

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

The Principal Regulations are exempt from sunseting under table item 1 of section 11 of the *Legislation (Exemptions and Other Matters) Regulation 2015* because they constitute a legislative instrument 'a primary purpose of which, is to give effect to an international obligation of Australia'. That is, a primary purpose of the Principal Regulations continues to be the implementation of Australia's international obligations under the CAMLR Convention. Sunseting is inappropriate for the Principal Regulations because of the multilateral obligations to which they give effect.

Details of the *Fisheries Management (Heard Island and McDonald Islands Fishery) Amendment (Fishing Gear Requirements) Regulations 2025*

Section 1 – Name

This section provides that the name of the instrument is the *Fisheries Management (Heard Island and McDonald Islands Fishery) Amendment (Fishing Gear Requirements) Regulations 2025* (the Amendment Regulations).

Section 2 – Commencement

Subsection 2(1) provides that each provision of the Amendment Regulations specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Item 1 in the table provides that the whole of the instrument commences on the day after the instrument is registered.

The note below the table provides that the table relates only to the provisions of the Amendment Regulations as originally made. It will not be amended to deal with later amendments of the Amendment Regulations. The purpose of this note is to clarify that the commencement of any later amendments is not reflected in this table.

Subsection 2(2) provides that any information in column 3 of the table is not part of the instrument. Information may be inserted in this column, or information in it may be edited, in any published version of the Amendment Regulations.

Section 3 – Authority

This section provides that the Amendment Regulations are made under the *Fisheries Management Act 1991* (the Act).

Section 4 – Schedules

This section provides for the amendment or repeal of instruments as set out in a Schedule to the Amendment Regulations. This enables the amendment of the *Fisheries Management (Heard Island and McDonald Islands Fishery) Regulations 2002* (the Principal Regulations).

Schedule 1 – Amendments

Fisheries Management (Heard Island and McDonald Islands Fishery) Regulations 2002

Items [1] to [3] – Subregulation 3(2) (note)

Regulation 3 of the Principal Regulations provides for the interpretation of terms used in the Principal Regulations. Subregulation 3(2) provides that an expression used in the Principal Regulations and in the *Heard Island and McDonald Islands Fishery Management Plan 2002* (the Management Plan) has the same meaning in the Principal Regulations as it has in the Management Plan. The note to subregulation 3(2) lists a number of terms that are defined in section 3 of the Management Plan.

Item 1 omits the bullet point and the term ‘eligible boat’ from the list of terms in the note to subregulation 3(2) of the Principal Regulations.

Item 2 omits the bullet points and the terms ‘holder’, ‘ICVMS’ and ‘identification code’ from the list of terms in the note to subregulation 3(2) of the Principal Regulations.

Item 3 omits the bullet point and the term ‘owner’ from the list of terms in the note to subregulation 3(2) of the Principal Regulations.

The effect of these items is that the relevant terms are removed from the note to subregulation 3(2) of the Principal Regulations. The reason for removing these terms, except for the term ‘identification code’ is because they are no longer defined in the Management Plan. These terms were omitted from the Management Plan by item 1 of Schedule 4 to the *Fisheries Legislation (Management Plans) Amendment 2011 (No. 1)*.

The reason for removing the term ‘identification code’ is because the term is no longer used in the Principal Regulations and therefore reference to it being defined in the Management Plan is made redundant.

Item [4] – Part 4

Part 4 of the Principal Regulations provides requirements relating to the use of certain fishing gear by holders of statutory fishing rights (SFRs) in the Heard Island and McDonald Islands Fishery (the Fishery).

Item 4 repeals Part 4 of the Principal Regulations. The effect of item 4 is that Part 4 is removed from the Principal Regulations.

Part 4 is made up of regulations 8, 9 and 10. Regulation 8 of the Principal Regulations provides that the holder of a SFR may use a trawl net to fish for Patagonian toothfish or mackerel icefish in the Fishery only if the trawl net used has a specific mesh size, or the holder is acting in accordance with a scientific permit granted to them. Regulation 8 includes an offence of strict liability where the holder of a SFR does not comply with these requirements.

Regulation 9 of the Principal Regulations provides requirements relating to the size of bobbins and rock hopper rubber discs that may be used for fishing in the Fishery.

Regulation 9 includes an offence of strict liability where the holder of a SFR does not comply with these requirements.

Regulation 10 of the Principal Regulations prohibits the use of net monitor cables and includes an offence of strict liability where the holder of a SFR uses a net monitor cable when the holder's nominated boat is in the area of the Fishery. Subregulation 10(2) provides that 'net monitor cable' means a cable used to link the nominated boat to a monitor attached to a part of the net.

Subsection 22(1) of the Act provides that where a plan of management provides for the management by the Australian Fisheries Management Authority (AFMA) of a fishery by means of a system of SFRs, AFMA is to establish and administer such a system in accordance with the plan. Part 4 of the Management Plan provides for a system of SFRs in the Fishery. Section 22 also provides that SFRs are:

- granted subject to specific conditions (subsection 22(3));
- subject to any conditions specified in the certificate AFMA is required to issue under subsection 22(2) (see subsection 22(4)); and
- subject to a condition that the SFR holder must comply with a direction given under section 41A of the Act (subsection 22(4A)).

Subsection 22(5) of the Act provides that AFMA may, by written notice given to the holder of a fishing right, whether or not at the request of the holder, vary or revoke certain conditions of the fishing right or specify a condition or a further condition to which the fishing right is to be subject.

Some of the requirements that were provided under Part 4 of the Principal Regulations, as discussed above, are intended instead to be provided as further conditions on holders of SFRs in the Fishery under section 22 of the Act. This will allow AFMA to adjust requirements in a timely manner which is particularly important in order to adapt to changing environmental requirements or to maintain compliance with international obligations including new or updated Conservation Measures of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR).

This approach is consistent with the implementation of fishing gear requirements in other Commonwealth managed fisheries, for example, the Eastern Tuna and Billfish Fishery and Western Tuna and Billfish Fishery—which are subject to Australia's obligations to the Western and Central Pacific Fisheries Commission and Indian Ocean Tuna Commission—where gear specifications are imposed as SFR conditions. The amendments are designed to balance the need for operational implementation of gear requirements with ensuring Australia implements its international obligations under the *Convention on the Conservation of Antarctic Marine Living Resources*.

Item [5] – After Part 9

Item 5 inserts new Part 10 after Part 9 of the Principal Regulations.

New Part 10 provides application, saving and transitional provisions.

New subregulation 35(1) provides that regulation 8, as in force immediately before the commencement of the Amendment Regulations, continues to apply on and after that commencement in relation to the use of a trawl net before that commencement.

New subregulation 35(2) provides that regulation 9, as in force immediately before the commencement of the Amendment Regulations, continues to apply on and after that commencement in relation to the use of a bobbin, or a rock hopper rubber disc, before that commencement.

New subregulation 35(3) provides that regulation 10, as in force immediately before the commencement of the Amendment Regulations, continues to apply on and after that commencement in relation to the use of a net monitor cable before that commencement.

New regulation 35 makes clear that regulations 8 to 10 (as repealed by item 4 of Schedule 1 to the Amendment Regulations) continue to apply to conduct which occurred before the commencement of the Amendment Regulations. This ensures that contravening conduct which occurred before commencement of the Amendment Regulations is still subject to a strict liability offence under regulations 8, 9 or 10 of the Principal Regulations despite the repeal of those regulations.

Item [6] – Schedule 1

Schedule 1 to the Principal Regulations sets out Articles 1 to 6 of the CCAMLR Conservation Measure 22-01 (1986) (Conservation Measure 22-01). Conservation Measure 22-01 relates to the regulation of mesh size measurement and is relevant to regulation 8 of the Principal Regulations.

Item 6 repeals Schedule 1 to the Principal Regulations. This is consequential to the repeal of regulation 8 by item 4 of this Schedule.

Statement of Compatibility with Human Rights

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

***Fisheries Management (Heard Island and McDonald Islands Fishery) Amendment
(Fishing Gear Requirements) Regulations 2025***

This Disallowable Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Disallowable Legislative Instrument

The *Fisheries Management (Heard Island and McDonald Islands Fishery) Amendment (Fishing Gear Requirements) Regulations 2025* (the Amendment Regulations) repeal Part 4 of, and Schedule 1 to, the *Fisheries Management (Heard Island and McDonald Islands Fishery) Regulations 2002* (the Principal Regulations). The Amendment Regulations also insert Part 10 (application, saving and transitional provisions) into the Principal Regulations.

The *Fisheries Management Act 1991* (the Act) establishes management plans for fisheries and sets out the legislative basis for statutory fishing rights (SFRs), licences and permits. It also provides for the enforcement powers of the Australian Fisheries Management Authority (AFMA). Section 17 of the Act provides for the making of plans of management for fisheries. The *Heard Island and McDonald Islands Fishery Management Plan 2002* (the Management Plan) provides for the management of the Heard Island and McDonald Islands Fishery (the Fishery) under a scheme of SFRs. The Management Plan is accompanied by the Principal Regulations which complement the Management Plan by prescribing certain requirements in the Fishery, for example, requirements relating to gear, observers and inspections.

Part 4 of the Principal Regulations provides for requirements relating to the use of certain gear on holders of SFRs in the Fishery. Some of these requirements align with Conservation Measures of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), which are binding under the *Convention on the Conservation of Antarctic Marine Living Resources* to which Australia is a party. Part 4 provides for the following:

- requirements relating to the mesh size of trawl nets used to fish for Patagonian toothfish and mackerel icefish (see Conservation Measures 22-01, 22-02 and 22-03);
- requirements relating to the size of bobbins and rock hopper rubber discs used in the area of the Fishery;
- the prohibition on the use of a net monitor cable when the holder's nominated boat is in the area of the Fishery (see Conservation Measure 25-03).

Section 22 of the Act provides for AFMA to establish and administer a system of SFRs where a plan of management provides for the management by AFMA of a fishery by means of a system of SFRs. Section 22 of the Act also provides for SFRs to be subject to conditions.

The Amendment Regulations remove the requirements relating to the use of certain gear from the Principal Regulations. It is intended that holders of SFRs in the Fishery will still be subject to requirements relating to the use of certain gear in the form of conditions of SFRs under section 22 of the Act. This ensures that requirements such as specifications relating to the mesh size of trawl nets can be adjusted by AFMA in a timely manner, as necessary. The ability to adjust requirements quickly is particularly important in order to adapt to changing environmental requirements or to maintain compliance with international obligations including new or updated Conservation Measures of the CCAMLR.

New regulation 35 makes clear that regulations 8 to 10 (as repealed by item 4 of Schedule 1 to the Amendment Regulations) continue to apply to conduct which occurred before the commencement of the Amendment Regulations. This ensures that contravening conduct which occurred before commencement of the Amendment Regulations is still subject to a strict liability offence under regulations 8, 9 or 10 of the Principal Regulations despite the repeal of those regulations. Consequential to the repeal of regulation 8, the Amendment Regulations also repeal Schedule 1 to the Principal Regulations. Schedule 1 sets out Articles 1 to 6 of the CCAMLR Conservation Measure 22-01 (1986) (Conservation Measure 22-01). Conservation Measure 22-01 relates to the regulation of mesh size measurement as relevant to regulation 8 of the Principal Regulations.

Human rights implications

This Disallowable Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Disallowable Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

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Minister for Agriculture, Fisheries and Forestry