

# **Antarctic Marine Living Resources Conservation Regulations 1994 No. 345**

## **EXPLANATORY STATEMENT**

### **STATUTORY RULES 1994 No. 345**

ISSUED BY THE AUTHORITY OF THE MINISTER FOR THE ENVIRONMENT, SPORT AND TERRITORIES

*Antarctic Marine Living Resources Conservation Act 1981*

Antarctic Marine Living Resources Conservation Regulations

Subsection 24(1) of the *Antarctic Marine Living Resources Conservation Act 1981* empowers the Governor-General to 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 for carrying out or giving effect to the Act, the Convention or the conservation measures.

The Act implements the Convention on the Conservation of Antarctic Marine Living Resources (CCAMLR). The Antarctic Marine Living Resources Conservation Regulations (the Regulations) implement the obligations arising from a number of Conservation Measures adopted by the Commission for CAMLR. The Commission is responsible for giving effect to the objective and principles of the Convention. The Regulations provide:

- that permits under section 9 of the Act must not be issued to allow activities contrary to the conservation measures set out in the Schedule;
- for a permit system to regulate entry to, and activities at sites designated under the CCAMLR Ecosystem Monitoring Program (CEMP);
- for all activities at CEMP sites to be undertaken in accordance with the management plan for the site; and
- for penalties for an unauthorised entry and/or activity into a CENT site.

The Regulations commence on gazettal.

Details of the Regulations are as follows:

### **PART 1 - PRELIMINARY**

#### **Regulation 1 - Citation**

This regulation provides for the Regulations to be cited as the Antarctic Marine Living Resources Conservation Regulations.

## **Regulation 2 - Object of the Regulations**

This regulation describes the object of the regulations, which is to implement obligations to which Australia is subject under the Convention on the Conservation of Antarctic Marine Living Resources. The object of the Convention is the conservation, including rational use, of Antarctic marine living resources. The Commission for the CAMLR has adopted a number of conservation measures during its twelve years of operation, many relating to fisheries for specific species or in specific areas, however many are also of general application regarding such matters as net mesh size and other measures to reduce incidental mortality of non-target species.

## **Regulation 3 - Interpretation**

Regulation 3 defines a number of terms used in the regulations:

**'CCAMLR'** means the Commission for the Conservation of Antarctic Marine Living Resources. The Commission is responsible for the implementation of the Convention on the Conservation of Antarctic Marine Living Resources.

**'CCAMLR Convention Area'** is defined to mean the Convention Area. This term is defined in the parent Act, subsection 3(1), to mean the area south of the Antarctic Convergence. This definition reflects the definition in Article 1 of the Convention. The co-ordinates of the Antarctic Convergence are given in Article 1.4 of the Convention; they form a line which approximates the area of ocean where the cold waters to the south meet the warmer waters to the north. The line is always to the north of 60 degrees S, which bounds the Antarctic Treaty area. The Convention Area also encompasses the Territory of Heard Island and McDonald Islands. Although "Convention Area" is defined in the Act, the term "CCAMLR Convention Area" is used in a conservation measure which is reproduced in the Schedule, therefore this further definition is required.

**'CEMP site'** means a monitoring site established for the purposes of the CCAMLR Ecosystem Monitoring Program, the management plan for which has been adopted by the Commission in accordance with Conservation Measure 18/IX. The conservation measure sets out the procedure for the designation of CEMP sites, which involves the adoption of a management plan written in accordance with guidelines contained in the conservation measure. The conservation measure became binding on Australia, and all other parties to CCAMLR, on 7 May 1991. Each time the Commission adopts a new management plan for a CEMP site, the management plan becomes part of Annex B to the conservation measure. The definition of CEMP site therefore includes new sites for which the Commission adopts a management plan after the date on which the Regulations commence.

A note at the end of this regulation provides that the initials "CEMP" refer to the Convention on the Conservation of Antarctic Marine Living Resources Ecosystem Monitoring Program.

**'entry permit'** means a permit to enter a CEMP site, granted under subregulation 6(1).

**'foreign permit'** means a permit issued to a person by another Contracting Party to CCAMLR, authorising the holder to enter a CEMP site. Since the regulations are

implementing Australia's obligations under an international Convention, other members of the Convention will also be implementing its requirements domestically. Under Conservation Measure 18/IX, any CCAMLR member may issue a permit to a person to enter any designated CEMP site in Antarctica. For example if an Argentinian researcher wishes to undertake research at a CEMP site in the Australian Antarctic Territory (none have yet been designated) then he or she may obtain a permit from the relevant Argentinian authority to enter the site.

'permit holder' is defined to mean a person who holds an entry permit, that is a permit issued in accordance with the Regulations and not a foreign permit.

'the Act' is defined to mean the *Antarctic Marine Living Resources Conservation Act 1981*.

## **PART 2 - PERMITS UNDER SUBSECTION 9(1) OF THE ACT**

### **Regulation 4 - Acts not authorised by a permit**

This regulation prescribes classes of acts (as specified in the Schedule) for the purposes as provided for in subsection 9(2) of the Act. Accordingly, permits issued under subsection 9(1) of the Act must not authorise acts which would be in contravention of the conservation measures (CMs) set out in the Schedule. These conservation measures relate to:

- net mesh regulations (CM 2/R1 as amended by CM 19/IX);
- procedures to avoid incidental mortality of seabirds during the use of longlines (CM 29/XII);
- the banning of net monitor cables on fishing vessels, which are also harmful to seabirds (CM 30/X);
- a monthly catch and effort reporting system for all commercial fisheries (CM 40/X);
- reduction in use of plastic packaging bands, which contributes to incidental mortality of fur seals (CM 63/XII); and
- reporting procedures for vessels taking catches for research purposes (CM 64/XII).

Only selected conservation measures are included in the Schedule, as most conservation measures are not relevant to Australian fishing activities. The form of this regulation is dictated by subsection 9(2) of the Act, which provides that a permit shall not be granted under subsection 9(1) authorising a person to do a prescribed act. This is to ensure that no permit will be issued under the Act allowing an act which would be in contravention of a prescribed conservation measure. All relevant conservation measures will also be taken into account by the Minister when setting conditions on permits under the Act, as required by subsection 9(3) of the Act.

## **PART 3 - ENTRY TO CEMP SITES**

### **Regulation 5 - Application for an entry permit**

Regulation 5 provides that a person may apply in writing for an entry permit relating to one or more CEMP sites (subregulation 5(1)), that the applicant must identify in the application the CEMP site to be entered, and the persons under the applicant's control whom the applicant expects to enter the CEMP site (subregulation 5(2)). In addition, if the applicant wishes to carry out an activity at a CEMP site, the application must identify the activity, the CEMP site and the persons under the applicant's control whom the applicant expects to enter the CEMP site to carry out the activity (subregulation 5(3)). This recognises that the applicant will normally be the principal researcher on a CEMP-related project and may be accompanied in the field by at least one other field worker. It also recognises that in some cases the principal researcher may not be carrying out field work at the CEMP site himself or herself. In these cases it is necessary to ensure that the permit authorises whoever will actually be carrying out the field work.

### **Regulation 6 - Issue of entry permits**

Subregulation 6(1) provides that the Minister may give an entry permit to the applicant. Subregulation 6(2) outlines the matters to which the Minister must have regard before giving an entry permit. These relate to the objectives of the Act, the objective and principles of the Convention, the objectives of the conservation measures, and the requirements of the management plan for the CEMP site.

Subregulation 6(3) outlines the requirements for an entry permit. It must be in writing (paragraph (a)), identify the CEMP site to which entry is authorised (paragraph (b)), identify the activities (if any) that the permit holder is authorised to carry out at the site (paragraph (c)), identify the persons (if any) under the permit holder's control who are authorised to enter the site (paragraph (d)), and state the period for which it is in force (paragraph (e)). Paragraph (d) reflects the manner in which research projects are often undertaken by Australians in the Antarctic, that is, the principal researcher applies for the permit, and usually requests the inclusion of a small number of field workers on the permit, in addition to himself or herself. This enables the field workers to be present at the site with or without the permit holder.

Subregulation 6(4) provides that an entry permit will remain in force for the period stated in the permit.

Subregulation 6(5) provides that the Minister must enter details of an entry permit, and any conditions to which the permit is subject, in the register of permits that the Minister is required to keep under subsection 9(7) of the Act.

### **Regulation 7 - Conditions on an entry permit**

Subregulation 7(1) provides that an entry permit will be subject to certain conditions. These are that the activities which the permit holder and other persons identified in the permit carry out at a CEMP site must comply with the management plan for the site, and must avoid affecting adversely the effectiveness of the management plan (subparagraphs (a)(i) and (ii)), and that if an activity authorised in the permit relates to a matter to which a conservation measure in the Schedule relates, the permit holder and other persons included in the permit, must comply with the conservation measure (paragraph (b)). The

reason for subparagraph (a)(ii) is so that any activities which may not be specifically covered by the management plan, but which if carried out would defeat its effectiveness, are covered by the Regulations. Paragraph (b) ensures that any conservation measures in the Schedule relevant to the activities carried out at the site will be automatically included as prescribed conditions in a permit. At present there are no conservation measures relevant to activities at a site on land.

Subregulation 7(2) provides that the Minister may make a permit subject to conditions in addition to those set out in subregulation 7(1). These may include conditions relating to the times and places at which the permit holder may enter a CEMP site (paragraph (a)); the acts a permit holder is authorised to carry out at a CEMP site (paragraph (b)); the acts that the permit holder is not to carry out at the CEMP site (paragraph (c)); or reporting requirements relating to the permit holder's compliance with the entry permit; the condition of the CEMP site; or the work undertaken by the permit holder at the CEMP site (paragraph (d)).

### **Regulation 8 - Variation of entry permits**

Regulation 8 provides for variation of entry permits. Subregulation 8(1) provides that the Minister may vary the list of persons to whom an entry permit applies; the numbers of sites to be visited; the activities to be undertaken; add, vary or revoke conditions of an entry permit; or vary the period for which the permit is in force.

Subregulation 8(2) provides that before acting under subregulation (1) to vary a permit the Minister must have regard to the objectives of the Act (paragraph (a)), the objective and principles of the Convention (paragraph (b)), the objectives of the conservation measures (paragraph (c)) and the requirements of the management plan for the site (paragraph (d)).

The basis for varying a permit and the grounds for variation are comprehensive to take account of the wide range of circumstances in which it may be appropriate to vary a permit. For instance it may be necessary to vary the dates of validity of a permit if weather conditions prevent the permit holder entering the area at the designated time; or to change the names of persons authorised to enter the site.

Subregulation 8(3) provides that the Minister may act to vary a permit at any time (paragraph (a)), without the agreement of the permit holder (paragraph (b)), and if she or he thinks it is necessary to ensure the protection of a CEMP site, or for a reason relating to a purpose for which the permit was given, or to ensure that the objectives of the Act and the objective and principles of the Convention are met (subparagraphs (c)(i), (ii) and (iii)).

The Minister may therefore act at his or her own discretion, in reaction to changed circumstances, or on application of the permit holder, although this is not stated explicitly in subregulation 8(3).

Subregulation 8(4) provides that the Minister must record the details of the variation in the register of permits kept under subsection 9(7) of the Act.

Detailed notification procedures for reviewable decisions identified in this regulation and also regulations 10, 12 and 13 have not been included as section 27A of the *Administrative Appeals Tribunal Act 1975* applies.

### **Regulation 9 - Suspension or revocation of entry permits**

Regulation 9 provides for the suspension or revocation of an entry permit in various circumstances. These are:

- where the Minister believes on reasonable grounds that the permit holder has contravened a condition to which the permit is subject (subregulation 9(1));
- if the permit holder is convicted of an offence against the specified legislation (subregulation 9(2)); or
- if the Minister believes on reasonable grounds that the permit holder is likely to carry out at a CEMP site acts which may conflict with the management plan for the site (paragraph 9(3)(a)), or affect adversely the effectiveness of the management plan (paragraph 9(3)(b)).

Subregulation 9(1) allows the Minister to suspend or revoke the permit if any permit holder actually undermines the management plan, Subregulation 9(3) goes beyond this by allowing the Minister to act before the damage takes place, as long as the damaging conduct is likely to occur.

Subregulation 9(4) provides that before the Minister makes a decision to suspend or revoke a permit under regulation 9, he or she must have regard to the objectives of the Act, the objective and principles of the Convention, the objectives of the conservation measures, and the requirements of the management plan in force in relation to each CEMP site to which the permit applies.

The combined effect of subregulations 9(1) to (4) is that the Minister may suspend or revoke an entry permit in a range of circumstances which may be summarised as circumstances in which the permit holder's behaviour is or may be inconsistent with the continued conservation of the CEMP site or organisms which are associated with the CEMP site.

Subregulation 9(5) provides that the Minister may revoke the suspension of the permit or revoke the permit while it is suspended, thus allowing for action to be taken following investigation of the circumstances which led to the decision to suspend.

Under subregulation 9(6) the Minister is required to record details of suspension or revocation of a permit in the register of permits kept under subsection, 9(77) of the Act.

Subregulation 9(7) provides that the Minister may not suspend the permit for a continuous period longer than 90 days. This provision will ensure that permits are not suspended for long periods without an investigation taking place to assess whether revocation is justified.

Subregulation 9(8) provides that the period of suspension will be included within the period during which the permit is expressed to operate, that is, the period during which the permit

is suspended will not extend the period of operation of the permit, once the period of suspension has expired.

### **Regulation 10 - Review of decisions**

Regulation 10 provides that a person may apply to the Administrative Appeals Tribunal for the review of certain decisions of the Minister under the Regulations. These decisions relate to:

- refusing to grant an entry permit under subregulation 6(1);
- the number of CEMP sites identified under paragraph 6(3)(b);
- imposing conditions on an entry permit under subregulation 7(2);
- adding conditions to an entry permit or varying the conditions to which the permit is subject;
- varying a matter under paragraph 8(1)(c), (d) or (e); or
- suspending or revoking an entry permit under regulation 9.

### **Regulation 11 - Offences**

Regulation 11 provides for offences. Subregulation 11(1) provides that a person must not knowingly or recklessly enter a CEMP site. A person who enters a site in an emergency or, for example, because he or she is lost would not commit an offence, because they would not be entering the site knowingly or recklessly. Contravention of this regulation attracts a penalty of 10 penalty units.

Subregulation 11 (2) provides. that subregulation (1) does not apply if the person is a permit holder (paragraph (a)); is authorised by an entry permit to be at the site (paragraph (b)); or holds a foreign permit in relation to the site (paragraph (c)). These restrictions reflect the requirements of Conservation Measure 18/IX that only persons authorised by permit (given by any Contracting Party) may enter CEMP sites.

Subregulation 11(3) provides that a permit holder must not, without reasonable excuse, act in a manner that is inconsistent with the requirements of the management plan for the site (subparagraph (a)(i)), or in a manner that affects adversely the effectiveness of the management plan (subparagraph (a)(ii)). Similar provisions apply to other persons who are identified in a permit (paragraph (3)(b)), and paragraph (3)(c) provides that a permit holder must prevent persons identified under his or her control from acting in a manner described in the previous paragraph. This subregulation ensures that a permit holder and any person authorised to carry out activities under the permit is held responsible for any acts that are not in accordance with the management plan or otherwise affect adversely the effectiveness of the plan. At the same time, where there is a reasonable excuse for carrying out any such activities these will not constitute an offence. Contravention of this regulation attracts a penalty of 10 penalty units.

Subregulation 11(4) provides that a permit holder, or a person identified in a permit as under the permit holder's control, must not knowingly or recklessly contravene a condition of a permit. This allows for persons to be held responsible for acts carried out in contravention of conditions of a permit which may not be directly covered by the management plan, for example the number of persons in the area, reporting requirements, or the times at which the site is entered. As with subregulation 11(1) a person who contravenes a condition because of an emergency or for other unavoidable circumstances, perhaps caused by bad weather, would not be committing an offence. Contravention of this regulation attracts a penalty of 10 penalty units.

### **Regulation 12 - Communications**

Regulation 12 provides that a person may give a document or copy of a document by communications carried by means of guided or unguided electromagnetic energy or both. This includes communications by, for example, telephone, satellite links, radio and optic fibre or a combination of these means.

### **SCHEDULE**

The Schedule is a copy of certain conservation measures adopted by the Commission for CAMLR. These conservation measures stipulate specific mesh sizes to be used in pelagic and bottom trawls (CM 2/III (as amended in accordance with CM 19/IX) and CM 19/IX); prevent the use of net monitor cables on vessels fishing in the CCAMLR Convention Area (CM 30/X); establish monthly catch reporting procedures (40/X); define methods to be used in longline fishing to minimise the incidental mortality of seabirds (CM 29/XII); provide for a reduction in the use of plastic packaging bands to decrease the incidental mortality of seals caused by entanglement in these bands (CM 63/XII); and establish reporting procedures for vessels taking less than 50 tonnes of catch for research purposes and vessels taking more than 50 tonnes of fin fish for research purposes (CM 64/XII).