

## **EXPLANATORY STATEMENT**

### **Select Legislative Instrument 2005 No. 91**

Issued by the authority of the Minister for Fisheries, Forestry and Conservation

*Fisheries Management Act 1991*

*Fisheries Management (Heard Island and McDonald Islands Fishery)  
Amendment Regulations 2005 (No. 1)*

The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Subsection 168(1) of the *Fisheries Management Act 1991* (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. Paragraph 168(2)(c) provides that regulations may be made providing for giving effect to, and enforcing the observance of, plans of management.

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 Plan) came into existence on 8 May 2002. The Plan provides for the management of the Heard Island and McDonald Islands (HIMI) Fishery (the fishery) under a scheme of statutory fishing rights (SFRs). The Plan was accompanied by the *Fisheries Management (Heard Island and McDonald Islands Fishery) Regulations 2002* (the Principal Regulations) which complement the Plan by prescribing particulars of the SFRs that must be entered on the Register of Statutory Fishing Rights (the Register) kept by the Australian Fisheries Management Authority (AFMA) under section 44 of the Act.

The purpose of the *Fisheries Management (Heard Island and McDonald Islands Fishery) Amendment Regulations 2005 (No. 1)* (the Regulations) is to prescribe additional measures as conditions on SFRs. These measures are a result of extensive consultation with relevant bodies including the Sub-Antarctic Fisheries Management Advisory Committee and meet our international obligations under the Convention for the Conservation of Antarctic Marine Living Resources (CCAMLR). The new requirements covered by regulations 7 to 34 and Schedule 1 include requirements for eligible boats, gear and fish measurements, requirements for observers and contingency arrangements.

The Office of Regulation Review has advised that a Regulatory Impact Statement is not required on the basis that the regulations are of a minor or machinery nature and does not substantially alter existing arrangements (ID 7131).

The Act does not specify any conditions as needing to be met before the power to make the Regulations may be exercised.

Details of the Regulations, which commenced on the day after they were registered on the Federal Register of Legislative Instruments, are set out below.

**Regulation 1** provides for the Regulations to be cited as the *Fisheries Management (Heard Island and McDonald Islands Fishery) Amendment Regulations 2005 (No. 1)*.

**Regulation 2** provides that the Regulations commence on the day after they are registered on the Federal Register of Legislative Instruments.

**Regulation 3** provides that Schedule 1 amends the *Fisheries Management (Heard Island and McDonald Islands Fishery) Regulations 2002* (the Principal Regulations).

### **Schedule 1 – Amendments**

Item 1 inserts a new heading “Part 1 Introduction” in the Principal Regulations.

Item 2 substitutes new regulations 3 to 34 in place of existing regulations 3 to 6. Item 2 also inserts a new Schedule 1 to the Principal Regulations.

#### **Part 1 - Introduction**

**Regulation 3** defines the terms used in the Principal Regulations. Regulation 3 expands on the list of terms previously defined in Regulation 3 and also provides additional cross references to terms defined in the Management Plan, to have the same meaning in the Regulations. The terms included are: Act, approved form, ICRS, Management Plan, nominated surveyor, office hours and safety assessment.

#### **Part 2 - Register of Statutory Fishing Rights**

**Regulation 4** sets out the details of each statutory fishing right holder that are to be included in the Register for the Fishery. The proposed Regulation has only been changed minimally from the existing Regulation 4, to record an ABN rather than an Australian Company Number.

**Regulation 5** sets out the details that are to be entered in the Register for each boat that is nominated by the statutory fishing right holder. This replicates the existing Regulation exactly. A boat nomination allows AFMA to identify which boats are operating in the HIMI Fishery.

**Regulation 6** provides that the holder of a statutory fishing right may apply to AFMA to cancel an entry in the Register, and that AFMA must accept that cancellation. This Regulation replicates the existing Regulation.

#### **Part 3 – Eligible boats**

**Regulation 7** defines the requirements for a boat to be eligible to operate in the Fishery. The Regulation defines an ‘eligible boat’ for the purpose of the Management Plan. An eligible boat must meet certain requirements before it is able to operate in the fishery: for example, the boat must be Australian-flagged and have had a safety assessment.

## **Part 4 – Use of certain gear**

**Regulation 8** defines the mesh size of trawl nets when fishing for Patagonian toothfish and mackerel icefish in the Fishery. The mesh sizes are specified in the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) Conservation Measures and apply to trawl operations in the CCAMLR region and are implemented to allow for the escape of juvenile fish. Australia is a signatory to the CCAMLR Convention. Non compliance with Regulation 8 is a strict liability offence punishable by 25 penalty units. Strict liability is thought appropriate in this instance as the use of a particular trawl net is within the power of the operator of a boat.

**Regulation 9** defines trawl fishing gear that must not be used in the Fishery. The gear specified is designed to reduce the impact trawl gear has on benthic organisms (for example coral and sponges) on the seabed. Non compliance with Regulation 9 is a strict liability offence punishable by 25 penalty units. Strict liability is thought appropriate in this instance as the use of the trawl gear is within the power of the operator of a boat.

**Regulation 10** prohibits the use of net monitor cables in the Fishery. This measure is adopted by CCAMLR in Conservation Measure 25-03 (2003) and is implemented to avoid situations of seabirds flying into the cable. Non compliance with Regulation 10 is a strict liability offence punishable by 25 penalty units. Strict liability is thought appropriate in this instance as the use of the equipment is within the power of the operator of a boat.

## **Part 5 - Requirements for observers**

### **Division 5.1 – Carriage of observers**

**Regulation 11** defines the procedures for obtaining an observer for the nominated boat. An observer and a data collection officer are present on all voyages to collect biological information, monitor any interactions with wildlife and ensure compliance with the Management Plan, Regulations and conditions on Statutory Fishing Rights.

**Regulation 12** requires the holder of a statutory fishing right to assist observers on board the nominated boat to carry out their duties. Non compliance with Regulation 12 is a strict liability offence punishable by 25 penalty units. Strict liability is thought appropriate in this instance as it is necessary that the observers collect the specified information and the operator of a boat is able to provide the necessary assistance.

**Regulation 13** outlines the accommodation standards which the holder of a statutory fishing right must provide to observers when on board the nominated boat. Non compliance with Regulation 13 is a strict liability offence punishable by 25 penalty units. Strict liability is thought appropriate in this instance as it is within the holder's power to provide the required standard of accommodation.

**Regulation 14** requires the holder of a statutory fishing right to ensure that before each trip the master or mate of the nominated boat completes a safety checklist with each observer carried on board. Non compliance with Regulation 14 is a strict liability offence punishable by 25 penalty units. Strict liability is thought appropriate in this instance as it is within the holder's power to complete the necessary safety check.

## **Division 5.2 – Data collection officers**

**Regulation 15** provides for the appointment of a data collection officer as an observer on the nominated boat in accordance with AFMA standards. Accreditation of the data collection officers ensures they have the necessary experience and disposition to undertake the duties in a harsh and remote environment in safety. Non compliance with Regulation 15 is a strict liability offence punishable by 25 penalty units. Strict liability is thought appropriate in this instance as it is within the holder’s power to meet the necessary requirements and standards for appointment of a data collection officer.

**Regulation 16** outlines the duties to be performed by, and the role of, the data collection officer when on board the nominated boat. It requires the data collection officer to provide any information collected to AFMA. It also requires that holders of a statutory fishing right ensure that the duties of data collection officers can be carried out. The data collection officer is employed by the holder, and the measures are aimed at ensuring the work is carried out independently and to the requirements determined by AFMA. Non compliance with Regulation 16 is a strict liability offence punishable by 25 penalty units. Strict liability is thought appropriate in this instance as it is within the data collection officer’s and holder’s knowledge and capacity to meet the necessary requirements.

**Regulation 17** provides for payment of the data collection officer by the holder of the statutory fishing right at a fixed daily rate. The data collection officer is employed by the holder, and the measures are aimed at ensuring the work is carried out independently. Non compliance with Regulation 17 is a strict liability offence punishable by 25 penalty units. Strict liability is thought appropriate in this instance as it is within the holder’s knowledge to meet the necessary requirements.

## **Division 5.3 – Safety assessment**

**Regulation 18** defines the term ‘relevant boat’ for safety assessment purposes. The safety assessment is undertaken to ensure the operating conditions are safe and meet occupational health and safety standards. The boats operate in remote and harsh environments and are away from port for several months.

**Regulation 19** requires the holder of the statutory fishing right for the relevant boat to allow the nominated surveyor to inspect the boat against specified safety standards.

**Regulation 20** requires the owner or operator of a relevant boat to make a written declaration that the relevant boat satisfies specified survey requirements.

## **Part 6 – Boat and fishing gear marking requirements**

**Regulation 21** outlines the requirement for the holder of the statutory fishing right to ensure the nominated boat displays the IRCS (International Telecommunications Union Radio/Call Sign) in accordance with specified standards. The IRCS meets international standards and enables identification of vessels which are legally operating in the HIMI Fishery and the CCAMLR region. Non compliance with Regulation 21 is a strict liability offence punishable by 25 penalty units. Strict liability

is thought appropriate in this instance as the marking requirements are within the power of the operator of a boat.

**Regulation 22** requires that marker buoys or similar objects are clearly marked with the nominated boat's IRCS. The IRCS meets international standards and enables identification of fishing gear from boats which are legally operating in the HIMI Fishery and CCAMLR region. Non compliance with Regulation 22 is a strict liability offence punishable by 25 penalty units. Strict liability is thought appropriate in this instance as the marking requirements are within the power of the operator of a boat.

## **Part 7 – Contingency arrangements in certain events**

### **Division 7.1 – Contingency arrangements – breakdown of meal plant**

**Regulation 23** outlines the applicability of Division 7.1 if the meal plant breaks down and it is not practical to retain offal and bycatch on board the boat. Offal is retained onboard to mitigate against seabirds and marine mammals being attracted to the boats. This reduces the risk of wildlife interactions with the fishing gear and boat. The retention of offal has been shown to be very successful in minimising interactions, and is a practice recommended by CCAMLR.

**Regulation 24** outlines the procedures the holder must comply with if there is a mechanical breakdown of the meal plant. This makes provision for discharge of offal away from the fishing area. Non compliance with the various aspects of Regulation 24 are strict liability offences punishable by 25 penalty units. Strict liability is thought appropriate in this instance as the requirements are within the power of the operator of a boat and follow a set procedure.

**Regulation 25** requires the holder of a statutory fishing right to report to AFMA in a prescribed format if the meal plant breaks down. The format includes the date, time and location, the circumstances of the breakdown and the actions taken when the breakdown occurred.

**Regulation 26** outlines the procedures when the holder of a statutory fishing right has been given approval by AFMA to adopt contingency arrangements in the event of a breakdown of the meal plant. It outlines the procedures to discharge offal and requires the observer to observe the procedure. The observation includes the date, time, location, the amount discharged and any wildlife interactions with the discharge. Non compliance with Regulation 26 is a strict liability offence punishable by 25 penalty units. Strict liability is thought appropriate in this instance as the requirements are within the power of the operator of a boat and follow a set procedure.

**Regulation 27** outlines the circumstances when the contingency arrangements in the event of a breakdown of the meal plant do not apply. This requires that the boat returns to port without discharging offal if the master of the boat was aware before leaving port that the meal plant was not, or was not likely to be, working. Non compliance with Regulation 27 is a strict liability offence punishable by 25 penalty units. Strict liability is thought appropriate in this instance as the requirements are within the power of the operator of a boat.

### **Division 7.2 – Contingency arrangements – disposal of fish meal**

**Regulation 28** outlines the applicability of Division 7.2 for the disposal of fish meal. Fish meal can be disposed where a batch of fish meal contains more than 10.5% moisture or where there is a reasonable expectation that the batch may spontaneously ignite.

**Regulation 29** outlines the procedures the holder of a statutory fishing right must take if a batch of fish meal contains more than 10.5% moisture or the holder reasonably believes that there is a risk that the batch will spontaneously ignite. It outlines the procedures to discharge a batch of fish meal and requires the observer to observe the procedure. The records must indicate the date, time and location, the sea conditions, the amount of fish meal discharged and the reasons for the discharge, and interactions of seabirds and marine mammals with the discharge. Non compliance with the procedures or notice requirements in Regulation 29 are strict liability offences punishable by 25 penalty units. Strict liability is thought appropriate in this instance as the requirements are within the power of the operator of a boat and follow a set procedure.

### **Part 8 – Inspection requirements**

**Regulation 30** requires the holder of a statutory fishing right to allow an inspector authorised by CCAMLR to conduct an inspection of the boat and make a report to AFMA within 48 hours of such an inspection. Australia is a signatory to the CCAMLR Convention and supports the system of inspection. Non compliance with subregulations 30(1) and (2) are strict liability offences punishable by 25 penalty units. Strict liability is thought appropriate in this instance as the requirements are within the power of the operator of a boat and follow a set procedure.

**Regulation 31** requires the holder of a statutory fishing right to allow an authorised person to conduct an inspection of the boat when in port. It also requires the holder to make a report to AFMA within 48 hours of such an inspection if the inspection is conducted in a country other than Australia. Non compliance with either aspect of Regulation 31 constitutes a strict liability offence punishable by 25 penalty units. Strict liability is thought appropriate in this instance as the requirements are within the power of the operator of a boat and follow a set procedure.

**Regulation 32** outlines the format for reporting the inspection to AFMA.

### **Part 9 – Packaging and unloading requirements**

**Regulation 33** outlines the packaging and labelling requirements the holder of a statutory fishing right has to adopt for fish taken by the boat. This procedure assists in determining the amount of the catch to be decremented from the total allowable catch set by CCAMLR and AFMA. Non compliance with Regulation 33 is a strict liability offence punishable by 25 penalty units. Strict liability is thought appropriate in this instance as the requirements are within the power of the operator of a boat and follow a set procedure.

**Regulation 34** requires the holder of a statutory fishing right to give AFMA and the relevant authority if in a country other than Australia at least 72 hours written notice in advance of an intended unload, and the requirements to be included in the written notice. This enables authorities to organise to monitor the unload of product and ensure the catch is verified in accordance with the procedures of CCAMLR's Catch

Documentation Scheme. Non compliance with Regulation 34 is a strict liability offence punishable by 25 penalty units. Strict liability is thought appropriate in this instance as the requirements are within the power of the operator of a boat and follow a set procedure.

**Schedule 1 – CCAMLR Conservation Measure 22-01(1986): Regulation on mesh size measurement**

**Schedule 1** is the CCAMLR Conservation Measure which relates to the measurement of mesh sizes. Subregulation 8(2) provides that the mesh sizes of trawl nets must be measured in accordance with the CCAMLR Conservation Measure.

**Article 1** describes the gauges used for determining mesh sizes.

**Article 2** describes how the gauge shall be used to measure mesh sizes.

**Article 3** describes the selection of meshes to be measured.

**Article 4** describes the measurement of each mesh.

**Article 5** describes how to determine the mesh size of the net.

**Article 6** describes the inspection procedures when determining the mesh size of the net.