

EXPLANATORY STATEMENT

Select Legislative Instrument 2011 No. 135

Issued by the Parliamentary Secretary for Agriculture, Fisheries and Forestry

Fisheries Management Act 1991

Fisheries Legislation (Repeal and Amendment) Regulations 2011 (No. 1)

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.

Section 42B of the Act provides that the regulations may prescribe conditions that apply to fishing concessions or foreign fishing licences and further stipulates that a provision of a plan of management has no effect to the extent that it is inconsistent with regulations made for the purpose of this section.

Prior to the introduction of the Fisheries Legislation (Repeal and Amendment) Regulations 2011 (No. 1) (Regulation), the various rules relating to fishing were applied inconsistently and in many cases were duplicated across several fishery specific plans of management, fishery specific regulations or as conditions on fishing concessions.

The Regulations consolidated, standardised and simplified these general rules that apply across all Commonwealth fisheries. In particular the Regulations deal with rules relating to the nomination of boats to fishing concessions, vessel monitoring systems, the carriage of fishery observers, disposal of fish, catch limits, processing of fish during a trip, impacts on the marine environment and the details required in the registers of fishing concessions.

Commencement

The Regulations commenced on the day after they were registered on the Federal Register of Legislative Instruments.

Regulatory Impact Statement

The Office of Best Practice Regulation advised that a regulation impact statement was not required (ID 12452). The Regulations are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Consultation

Officers from the Australian Fisheries Management Authority and Commonwealth Fisheries Association Inc., the peak industry body, met and discussed the amendments in the Regulations. The Commonwealth Fisheries Association was supportive of regulations being consolidated and standardised.

Details of the Regulations are below:

Regulation 1 Name of Regulations

This regulation provides that the title of the Regulations is the *Fisheries Legislation (Repeal and Amendment) Regulations 2011 (No. 1)*.

Regulation 2 Commencement

This regulation provides that the Regulations commenced on the day after they were registered on the Federal Register of Legislative Instruments.

Regulations 3 to 8 Repeals various Fisheries Management Regulations

Regulations 3 to 8 repealed the following fisheries management regulations:

Fisheries Management (Northern Prawn Fishery) Regulations 1995;

Fisheries Management (Macquarie Island Toothfish Fishery) Regulations 2006;

Fisheries Management (Southern Squid Jig Fishery) Regulations 2006;

Fisheries Management (Western Tuna and Billfish Fishery) Regulations 2006;

Fisheries Management (Eastern Tuna and Billfish Fishery) Regulations 2009; and

Fisheries Management (Small Pelagic Fishery) Regulations 2010.

The Regulations consolidated the information contained in these regulations into the *Fisheries Management Regulations 1992*. To remove duplication, these regulations were repealed.

Regulations 9 to 13 Amends various Fisheries Management Regulations

Regulations 9 to 13 provides that the following schedules amended the following fisheries management regulations:

Schedule 1 amended the *Fisheries Management Regulations 1992*;

Schedule 2 amended the *Fisheries Management (Southern Bluefin Tuna Fishery) Regulations 1995*;

Schedule 3 amended the *Fisheries Management (Bass Strait Central Zone Scallop Fishery) Regulations 2002*;

Schedule 4 amended the *Fisheries Management (Heard Island and McDonald Islands Fishery) Regulations 2002*; and

Schedule 5 amended the *Fisheries Management (Southern and Eastern Scalefish and Shark Fishery) Regulations 2004*.

The Regulations consolidated some of the information contained in these regulations into the *Fisheries Management Regulations 1992*. To remove duplication, these regulations were amended.

Schedule 1 Amendments of Fisheries Management Regulations 1992

Item 1 inserted a definition of ‘concession holder’ by providing that it means the holder of a licence, permit or right that is a fishing concession. This term is used in regulations that are being inserted as part of the amendments to this schedule.

Item 2 substituted the definition of ‘Register of Tenders’ which has become a redundant term in the *Fisheries Management Regulations 1992*. This term is substituted with the terms ‘Nominated boat’ and ‘Operating’. These terms are used by regulations that were inserted into the *Fisheries Management Regulations 1992*. Nominated boat in relation to a fishing concession is provided to mean a boat that has been nominated in accordance with Regulation 9B. Operating, in relation to a vessel monitoring system (VMS), means sending a signal that is in a format approved by the Australian Fisheries Management Authority (AFMA) and identifies accurately the location of the VMS.

Item 3 inserted a new Part 3A *Standard conditions for fishing concessions* including new regulations 9A to 9ZU into the *Fishery Management Regulations 1992*. Part 3A imposes standard conditions on fishing concessions for Commonwealth managed fisheries. The conditions relate to the nomination of a boat to fishing concessions, VMS, the carriage of fishery observers, disposal of fish, catch limits, processing of fish during a trip, impacts on the marine environment and details to be included in the registers of fishing concessions.

Division 1 Introductory

New regulation 9A inserted definitions for ‘Observer’ and ‘Trip’. Observer means a person approved by AFMA to carry out the functions of an Observer. Trip means a voyage in a boat to Australia or from Australia for the purpose of exercising a right under a fishing concession.

New regulation 9B provides that before using a boat under a fishing concession for the first time, the boat must be nominated for the fishing concession and must meet the requirements specified in the Act and the Regulation. The regulation imposes requirements relating to the following; observers, VMS, consent of boat owner, safety standards, and the nomination of a boat that is already nominated to another person.

Division 2 Vessel monitoring system

New regulation 9C prescribes that the requirements prescribed in Division 2 of Part 3A are conditions that apply to fishing concessions.

New regulation 9D requires concession holder to ensure that the VMS on a nominated boat is operational at all times. Concession holders are required to inform AFMA as soon as practicable after they become aware that the VMS has stopped operating correctly.

Division 3 Observers

New regulation 9E prescribes that the requirements prescribed in Division 3 of Part 3A are conditions that apply to fishing concessions.

New regulation 9F provides AFMA with the power to direct a concession holder to carry an observer and their equipment on board their boat. Further, the concession holder is required to safely carry the observer and ensure that the observer is provided with adequate food and accommodation. Observers are required on board a concession

holder's boat so that they can observe compliance with fisheries laws and to record interactions with species.

New regulation 9G imposes obligations on a concession holder to ensure that an observer can perform their functions.

Division 4 Disposal of fish

New regulation 9H prescribes that the requirements prescribed in Division 4 of Part 3A are conditions that apply to fishing concessions.

New regulation 9I provides that for a declared fishery a concession holder must dispose of fish to a fish receiver permit holder. AFMA uses fish receivers to validate the detail of the catch recorded by fishers. This requirement is necessary to underpin the integrity of the quota management system.

Division 5 Catch limits — fishing for tuna in northern waters

New regulation 9J defines northern waters as the area described in Part 1 of Schedule 5 of the *Fisheries Management Regulations 1992*, and defines the term 'tuna'.

New regulation 9K prescribes that for this division any fish that are onboard a boat at the end of the trip will be considered to have been taken during that trip and not on a previous trip.

New regulation 9L prescribes catch limits for tuna as conditions that apply to foreign fishing licences, fishing permits and statutory fishing rights that include the right to take tuna in northern waters.

Division 6 Catch limits for fishing in Victorian waters

New regulation 9M defines eight terms used in Division 6.

New regulation 9N prescribes that for the purpose of Division 6, fish landed in Victoria are to be treated as being taken within Victorian waters. The regulation also prescribes how to interpret the weight of fish within Division 6.

New regulation 9O sets out conditions that apply to foreign fishing licences, fishing permits and statutory fishing rights that include the right to fish in Victorian waters.

New regulation 9P sets out limits the concession holder is subject to when fishing for crustaceans in Victorian waters.

New regulation 9Q sets out limits the concession holder is subject to when fishing for molluscs in Victorian waters.

New regulation 9R sets out limits the concession holder is subject to when fishing for finfish in Victorian waters.

Division 7 Catch limits for fishing in South Australian waters

New regulation 9S defines seven terms used in Division 7.

New regulation 9T states that for the purpose of Division 7 fish landed in South Australia are to be treated as being taken within South Australian waters.

New regulation 9U set outs conditions that apply to foreign fishing licences, fishing permits and statutory fishing rights that include the right to fish in South Australian waters.

New regulation 9V sets out limits the concession holder is subject to when fishing for crustaceans in South Australian waters.

New regulation 9W sets out limits the concession holder is subject to when fishing for molluscs in South Australian waters.

New regulation 9X sets out limits the concession holder is subject to when fishing for finfish in South Australian waters.

Division 8 Catch limits for fishing in Tasmanian waters

New regulation 9Y defines five terms used in Division 8.

New regulation 9Z states that for the purpose of Division 8 fish landed in Tasmania are to be treated as being taken within Tasmanian waters.

New regulation 9ZA sets out conditions that apply to foreign fishing licences, fishing permits and statutory fishing rights that include the right to fish in Tasmanian waters.

New regulation 9ZB sets out limits the concession holder is subject to when fishing for crustaceans in Tasmanian waters.

New regulation 9ZC sets out limits the concession holder is subject to when fishing for molluscs in Tasmanian waters.

New regulation 9ZD sets out limits the concession holder is subject to when fishing for finfish in Tasmanian waters.

New regulation 9ZE sets out limits the concession holder is subject to when fishing for other species in Tasmanian waters.

Division 9 Catch limits for prawn fishery waters

New regulation 9ZF defines eight terms used in Division 9.

New regulation 9ZG states how to interpret landing of fish within prawn fishery waters.

New regulation 9ZH sets out conditions that apply to foreign fishing licences, fishing permits and statutory fishing rights that include the right to fish for prawns in prawn fishery waters.

New regulation 9ZI sets out limits the concession holder is subject to when fishing for crustaceans in prawn fishery waters.

New regulation 9ZJ sets out limits the concession holder is subject to when fishing for molluscs in prawn fishery waters.

New regulation 9ZK sets out limits the concession holder is subject to when fishing for finfish in prawn fishery waters.

New regulation 9ZL sets out limits the concession holder is subject to when fishing for other species in prawn fishery waters.

Division 10 Processing fish during a trip

New regulation 9ZM defines ‘tuna’ for the purpose of Division 10.

New regulation 9ZN prescribes that the requirements recorded in Division 10 are conditions that apply to fishing concessions.

New regulation 9ZO prescribes the prohibited way of processing specified fish. It places an obligation on concession holders to ensure that the way in which a fish is processed complies with the requirements as described.

New regulation 9ZP places an obligation on the concession holder to ensure that on a trip: the shark carcass is retained for as long as the liver from the shark is retained; that the concession holder must ensure that the liver is disposed of at the same time as the carcass; and that the carcass and liver is disposed of to the same fish receiver permit holder.

Division 11 Impacts on the marine environment

New regulation 9ZQ defines three terms used in Division 11.

New regulation 9ZR states that the requirements prescribed in Division 11 are conditions that apply to fishing concessions.

New regulation 9ZS provides that if an observer is on board the boat, a concession holder must report an interaction with a protected community or species to the observer, as soon as practicable.

New regulation 9ZT provides that concession holders should prevent interacting with a protected community or species. In the event of any interactions, concession holders should record these events and if an observer is on board the boat, advise the observer as soon as practicable.

New regulation 9ZU provides that if a concession holder interacts with a protected community or species and injures the organism, the concession holder must ensure that the organism is given as much assistance as is practicable. If an observer is on board the boat, a concession holder must report the injury to the observer, as soon as practicable.

New regulation 9ZV provides that if an observer is on board the boat, a concession holder must report an interaction with a protected community or species that kills the organism to the observer, as soon as practicable.

Division 12 Use of nominated boat

New regulation 9ZW states that the requirements prescribed in Division 12 are conditions that apply to fishing concessions.

New regulation 9ZX prescribes that only the nominated boat can be used for a trip.

Item 4 repealed the words ‘the holder of a fish receiver permit’ from subregulations 10AA (1) and 10AD (2) of the *Fisheries Management Regulations 1992* and inserts in place ‘a fish

receiver permit holder. These changes improve the clarity of these regulations and make it consistent with other references in the regulation.

Item 5 repealed the sentence pertaining to the holder of a fish receiver permit being the agent of the holder of the permit in regulation and inserts a more concise description consistent with regulation 10D of the *Fisheries Management Regulations 1992*.

Item 6 repealed regulation 18 of the *Fisheries Management Regulations 1992*. This regulation related to the carrying of observers on boats. Regulations about observers have been consolidated into the new Part 3A *Standard conditions for fishing concessions* of the *Fisheries Management Regulations 1992*.

Item 7 inserted Part 6A including new regulations 21A to 21C, relating to the registering of information that AFMA may collect, after Part 6 of the *Fisheries Management Regulations 1992*.

New regulation 21A prescribed particulars relating to fishing concessions AFMA may collect relevant to paragraph 45 (1) (f) of the Act.

New regulation 21B prescribed particulars relating to fishing concessions AFMA may collect relevant to paragraph 57B (2) (i) of the Act.

New regulation 21C prescribed particulars relating to fishing concessions AFMA may collect relevant to paragraph 57H (1) (e) of the Act.

Item 8 repealed Part 11 of the *Fisheries Management Regulations 1992* relating to catch restrictions. Items 9 to 15, including a new Schedule 7 were inserted into the *Fisheries Management Regulations 1992*, which consolidated regulations relating to catch restrictions.

Item 9 inserted a new heading for Schedule 5 for ‘Catch limits – fishing for tuna in northern waters’ noting the change in regulation numbering of the *Fisheries Management Regulations 1992* made by Item 3.

Item 10 inserted Part 1A detailing the border between Northern Territory and Queensland waters into the *Fisheries Management Regulations 1992*.

Item 11 repealed the listing of the common and scientific name for Black kingfish and replaced it with a new definition into Schedule 5 of the *Fisheries Management Regulations 1992*.

Item 12 repealed the listing of the common and scientific name for Dolphinfish and replaced it with a new definition into Schedule 5 of the *Fisheries Management Regulations 1992*.

Item 13 defined the areas of waters relevant to Black kingfish and Dolphinfish into Schedule 5 of the *Fisheries Management Regulations 1992*.

Item 14 inserted a new heading for Schedule 6 for catch limits in Victorian, South Australian and Tasmanian Waters, noting the change in regulation numbering in the *Fisheries Management Regulations 1992* made by Item 9

Item 15 inserted a new Schedule 7 into the *Fisheries Management Regulations 1992* detailing the catch limits that apply when fishing in prawn fishery waters.

New part 1 sets out the coordinates within the Australian Fishing Zone for the waters defined as the prawn fishery waters for the purpose of catch limits for which the Schedule relates. The coordinates are taken from the Northern Prawn Fishery Management Plan 1995.

New part 2 lists the common name and scientific name of crustaceans relevant to the prawn fishery.

New part 3 lists the common name and scientific name of molluscs relevant to the prawn fishery.

New part 4 lists the common name and scientific name of finfish relevant to the prawn fishery.

New part 5 lists the common name and scientific name of other species relevant to the prawn fishery.

Schedule 2 Amendment of Fisheries Management (Southern Bluefin Tuna Fishery) Regulations 1995

Item 1 omitted Part 3 relating to the Register of Statutory Fishing Rights from the *Fisheries Management (Southern Bluefin Tuna Fishery) Regulations 1995*.

The Regulations consolidated the information contained in Part 3 into the *Fisheries Management Regulations 1992*. To remove duplication, Part 3 was amended.

Schedule 3 Amendment of Fisheries Management (Bass Strait Central Zone Scallop Fishery) Regulations 2002

Item 1 omitted regulations 6 to 8 relating to the Details to be included in Register; Nomination of a boat; and Cancellation of nomination of a boat, from the *Fisheries Management (Bass Strait Central Zone Scallop Fishery) Regulations 2002*.

The Regulations consolidated the information contained in regulations 6 to 8 into the *Fisheries Management Regulations 1992*. To remove duplication, regulations 6 to 8 were amended.

Schedule 4 Amendments of Fisheries Management (Heard Island and McDonald Islands Fishery) Regulations 2002

Item 1 omitted Subregulation 3 (1) relating to the definition of approved form from the *Fisheries Management (Heard Island and McDonald Islands Fishery) Regulations 2002*.

Item 2 omitted Parts 2 and 3 relating to the Register of Statutory Fishing Rights and Eligible boats from the *Fisheries Management (Heard Island and McDonald Islands Fishery) Regulations 2002*.

Item 3 omitted Division 5.1 relating to the Carriage of observers from the *Fisheries Management (Heard Island and McDonald Islands Fishery) Regulations 2002*.

The Regulations consolidated the information contained in this regulation into the *Fisheries Management Regulations 1992*. To remove duplication, Subregulation 3 (1); Parts 2 and 3; and Division 5.1 were amended.

Schedule 5 Amendments of Fisheries Management (Southern and Eastern Scalefish and Shark Fishery) Regulations 2004

Item 1 omitted Subregulation 3 (1) relating to definitions of automatic location communicator, integrated computer vessel monitoring system and manufacturer's agent from the *Fisheries Management (Southern and Eastern Scalefish and Shark Fishery) Regulations 2004*.

Item 2 omitted Regulations 4 to 7 relating to integrated computer vessel monitoring systems, its requirements, interference and malfunction of this system from the *Fisheries Management (Southern and Eastern Scalefish and Shark Fishery) Regulations 2004*.

Item 3 omitted Regulations 9 and 10 relating to the particulars of a Statutory Fishing Right and of dealing with interests in fishing rights, from the *Fisheries Management (Southern and Eastern Scalefish and Shark Fishery) Regulations 2004*.

The Regulations consolidated the information contained in this regulation into the *Fisheries Management Regulations 1992*. To remove duplication, this regulation was amended.