

EXPLANATORY STATEMENT

Export Control (Fish and Fish Products) Amendment Orders 2011 (No. 1)

Made under the *Export Control (Orders) Regulations 1982*
(under the *Export Control Act 1982*)

Issued by the authority of the Minister for the Department of Agriculture, Fisheries and Forestry

Legislative Authority

Section 7 of the *Export Control Act 1982* (**Act**) provides that the regulations may prohibit the export of prescribed goods from Australia. Section 25(1) of the Act provides that the Governor-General may make regulations. Regulation 3 of the *Export Control (Orders) Regulations 1982* (**Regulations**) provides that the Minister may, by instrument in writing, make orders in respect to any matter for or in relation to which provision may be made by the regulations.

Under section 3 of the Act, prescribed goods can be declared by regulation. Section 3 defines “prescribed goods” to mean goods, or goods included in a class of goods, that are declared by the regulations to be prescribed goods for the purposes of the Act.

The *Export Control (Fish and Fish Products) Orders 2005* (**Principal Orders**) regulate the export of fish and fish products from Australia and Order 9 declares fish and fish products to be prescribed goods.

Purpose

The purpose of the *Export Control (Fish and Fish Products) Amendment Orders 2011 (No. 1)* (**Amendment Orders**) is to make various minor amendments to the Principal Orders. These amendments are largely to correct grammatical errors that have been identified. An amendment will be made to Order 8 of the Principal Orders to substitute the definition of *Australian Fish Name* with the new definitions of *Australian Fish Name* and *Australian Fish Names Standard*. The definition for *Australian Fish Names Standard* incorporates by reference the Australian Fish Names Standard AS SSA 5300. An amendment will be made to Schedule 4 of the Principal Orders so that protective clothing will not be required to be worn in designated food handling areas for handling and storage of packaged fish and packaged fish products. An amendment will also be made to Schedule 5 to add *Pinctada* spp as being permitted to be harvested for export as food.

Consultation

As part of the collaborative approach with industry, the department consulted with the Fish Ministerial Task Force (**Fish MTF**) - consisting of the Seafood Export Consultative

Committee and the Tuna Boat Owner's Association – in the identification of these amendments. In relation to the amendment to Schedule 5, the Australian Shellfish Quality Assurance Advisory Committee was also consulted. These bodies support the amendments.

The Office of Best Practice Regulation (OBPR) determined that the amendments are of a minor or machinery nature and do not substantially alter existing arrangements (ID 12469).

Details

Details of the Amendment Orders are set out below:

Section 1 provides that the name of the Amendment Order is the *Export Control (Fish and Fish Products) Amendment Orders 2011*.

Section 2 provides that the Amendment Orders commence the day after registration on the Federal Register of Legislative Instruments.

Section 3 provides that Schedule 1 amends the *Export Control (Fish and Fish Products) Orders 2005*.

Schedule 1 Amendments

Item 1 omits the definition of *Australian Fish Name* in Order 8 of the Principal Orders and inserts

- a new definition of *Australian Fish Name* and
- a new definition of *Australian Fish Names Standard*.

The new definition of *Australian Fish Name* provides that a reference to an Australian Fish Name, in relation to a fish species produced in Australia or imported to Australia, is a reference to the standard fish name for the species in the Australian Fish Names Standard. Prior to this amendment, the definition for *Australian Fish Name* provided that this was a reference to the name for the fish as listed in the *Australian Seafood Handbook Domestic Species* (CSIRO, 2001).

The item also inserts a new definition which provides that a reference to *the Australian Fish Names Standard* in these Orders is a reference to the publication titled the Australian Standard AS SSA 5300-2009. This standard is authored by Seafood Service Australia, Fish Names Committee. The effect of the new definition is to incorporate by reference the Australian Fish Name Standard into the definition of *Australian Fish Name*, which directly refers to the Australian Fish Name Standard.

Item 2 amends the definition of *occupier* in Order 8 of the Principal Orders. The item omits the words 'registered; and' at the end of paragraph (a) of the definition of *occupier* and inserts in its place the words 'registered; or'.

The purpose of the amendment is to correct a drafting and grammatical error in paragraph (a) of the definition of *occupier* in the Principal Orders.

Item 3 amends the definition of *occupier* in Order 8 of the Principal Orders. The item omits the words ‘the person’ after ‘if that person cannot be ascertained —’ and inserts in its place the words ‘is the person’.

The effect of the amendment is to make clear that where the operator of a business preparing fish and fish products for export as food cannot be ascertained then it is deemed to be the person in charge of the operations. Paragraph (b) as it is currently worded does not make it clear that there are two individuals being described.

The purpose of the amendment is to correct a drafting and grammatical error in paragraph (b) of the definition of *occupier* in the Principal Orders.

Item 4 amends order 69 of the Principal Orders by renumbering suborders 63.1 and 63.2 as suborders 69.1 and 69.2. The purpose of the amendment is to correct incorrect numbering of the suborders in the Principal Orders.

Item 5 inserts a new subclause 25.1A in Schedule 4 of the Principal Orders. Clause 25 of Schedule 4 provides for protective clothing to be worn in a food handling area.

The effect of the new subclause 25.1A is to make clear that where fish and fish products are already packaged and they are handled or stored in a food handling area set aside solely for that purpose, subclause 25.1 does not apply.

The purpose of the amendment is to waive the requirement for a person to wear protective clothing in a food handling area in establishments that store packaged fish and packaged fish products, as the risk of contamination is low.

Item 6 replaces subclause 3.2 of Schedule 5 of the Principal Orders. The new subclause provides that the prohibition on the harvest of shellfish as export for food from prescribed harvest areas in subclause 3.1 does not apply to:

- scallops or *Pinctada* spp where the final product is only the adductor muscle; or
- to shellfish harvested from offshore locations.

Prior to this amendment, the exemption did not include the adductor muscle of *Pinctada* spp.

Subclause 3.2 has also been redrafted in line with Plain English drafting principles.

The purpose of the amendment is to reflect the department’s assessment that *Pinctada* spp. does not pose the same food-safety risk as a bivalve mollusc where the final product for export is only the adductor muscle.

Item 7 omits at the start of subparagraph 11.2(b)(iii) of Schedule 9 the words ‘designates a person’ and inserting the words ‘the designation of a person’.

The purpose of the amendment is to correct a grammatical error and to make the language of the subparagraph consistent with the preceding two subparagraphs.