

EXPLANATORY STATEMENT

Select Legislative Instrument 2012 No. 98

Issued by the Authority of the Parliamentary Secretary for Agriculture, Fisheries and Forestry

Fisheries Management Act 1991

Fisheries Management (International Agreements) Amendment Regulation 2012 (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.

Subsection 4(1) of the Act defines an international fisheries management measure (IFMM) to mean a measure prescribed by the regulations to give effect to a measure established by an international fisheries management organisation (IFMO). An IFMO is defined under subsection 4(1) to mean a global, regional or subregional fisheries organisation or arrangement prescribed by the regulations.

The *Fisheries Management (International Agreements) Regulations 2009* (the Principal Regulations) were made in October 2009. The Principal Regulations prescribe the IFMOs to which Australia is a party and the IFMMs adopted by them. This enables the Australian Fisheries Management Authority, the agency responsible for the management of Commonwealth fisheries, to require domestic and foreign boats operating in the Australian Fishing Zone to comply with these measures and ensures that Australia complies with its obligations under international law. These measures are enforced by fisheries officers from Australia and other IFMO member countries. Other member countries similarly implement these provisions through their own domestic legislation.

The *Fisheries Management (International Agreements) Amendment Regulation 2012 (No. 1)* (the Regulation) updates the list of IFMOs to which Australia is a party, to include the Commission for the Conservation of Southern Bluefin Tuna (CCSBT). The Regulation also amends and prescribes new IFMMs that have come into force as a result of decisions made at meetings of the Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR), the Indian Ocean Tuna Commission (IOTC), the Western and Central Pacific Fisheries Commission (WCPFC) and the CCSBT, since 2009. The new IFMMs are broadly focused on ensuring that fish stocks or areas within the IFMOs' competence are accessed and exploited sustainably. Examples include restrictions on fishing with certain gear or in specified areas; stronger reporting requirements; obligations to allow inspectors on boats; and limitations on what boats can fish, tranship fish or supply fishing boats.

The new and amended IFMMs adopted by the Regulation are independent elements of offences under Division 5A of the Act. An element of each of these offences is that a person commits an offence if the person contravenes an IFMM. As domestic boats are currently regulated through conditions on statutory fishing rights, having the conditions prescribed in the Regulation will strengthen current arrangements.

The Regulation was developed by the Australian Fisheries Management Authority and the Department of Agriculture, Fisheries and Forestry. The following agencies were consulted in the preparation of the Regulation:

- the Department of Sustainability, Environment, Water, Population and Communities (SEWPaC). SEWPaC's Australian Antarctic Division (AAD) is the lead agency for the Australian delegation to CCAMLR;
- the Department of Foreign Affairs and Trade;
- the Australian Customs and Border Protection Service;
- the Attorney-General's Department; and
- the Department of Finance and Deregulation Office of Best Practice Regulation.

The Commonwealth Fisheries Association, which is the peak industry body for representing fishers operating in Commonwealth managed fisheries, was also consulted.

The Regulation is 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 is set out in the Attachment.

The Regulation is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

The Regulation commenced on the day after it was registered on the Federal Register of Legislative Instruments.

The Regulation

Details of the Regulation are set out below:

Section 1 – Name of Regulation

This section provides for the Regulation to be cited as the *Fisheries Management (International Agreements) Amendment Regulation 2012 (No. 1)*.

Section 2 – Commencement

This section provides that the Regulation commences on the day after registration on the Federal Register of Legislative Instruments.

Section 3 – Amendment of the *Fisheries Management (International Agreements) Regulations 2009*

This section provides that Schedule 1 amends the *Fisheries Management (International Agreements) Regulations 2009* (the Principal Regulations).

Schedule 1 – Amendments

Schedule 1 updates the international fisheries management organisations (IFMOs) to which Australia is a party and amends and prescribes new international fisheries management measures (IFMMs).

Items 1 and 2 provide for a definition of terms relevant to Part 2 of the Principal Regulations.

Items 3 and 4 provide that Schedule 3A prescribes the IFMMs of the Commission for the Conservation of Southern Bluefin Tuna (CCSBT).

Item 5 provides summary tables detailing the IFMMs of each IFMO with reference to the clause which gives effect to each IFMM.

Item 6 corrects a minor editorial error in the Principal Regulations.

Item 7 amends *Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) Conservation Measure 10-07 (2008): Scheme to promote compliance by non-Contracting Party vessels with CCAMLR conservation measures*, to prescribe a new requirement that a person using a non-Contracting Party boat (a boat registered to a country not party to CCAMLR) outside the CCAMLR Convention Area for fishing must not participate in a transshipment (the direct transfer of catch or other goods from one fishing vessel to another) or a joint fishing operation supporting or resupplying a boat that is listed on the non-Contracting Party illegal, unreported and unregulated vessel list.

Item 8 removes a duplication error in the Principal Regulations.

Items 9 and 10 amends *CCAMLR Conservation Measure 10-09 (2008): Notification scheme for transshipment within the Conservation Area*, to prescribe that when transshipping catch from a new and exploratory fishery (a fishery about which no scientific or catch information is held by CCAMLR, or a fishery about which sufficient scientific or catch information is being gathered by CCAMLR to undertake appropriate stock assessments, respectively), or a fishery as listed, information such as the boat's identity, the location and the catch being transhipped must be provided to CCAMLR or to the country to which the boat is registered. These clauses also prescribe that a person using a boat to tranship goods other than harvested marine living resources is to provide two hours prior notification of and information about the transshipment to the CCAMLR Secretariat.

Item 11 inserts three new measures:

- *CCAMLR Conservation Measure 22-07: Interim measure for bottom fishing activities subject to Conservation Measure 22-06 Encountering potential vulnerable marine ecosystems in the Convention Area*, prescribes that a person using a boat for bottom fishing activities in the CCAMLR Convention Area must use specified fishing gear and report on and cease fishing in potential vulnerable marine ecosystem areas.
- *CCAMLR Conservation Measure 22-08: Prohibition on fishing for *Dissostichus* spp. in depths shallower than 550m in exploratory fisheries*, prescribes that a person using a boat in the CCAMLR Convention Area for fishing in exploratory fisheries for *Dissostichus* species, is prohibited from fishing in waters shallower than 550 metres, with an exception for scientific research purposes. This IFMM supersedes all other mentions of this requirement in previous IFMMs, which are removed as part of the amendments.
- *CCAMLR Conservation Measure 23-06: Data reporting system for *Euphausia superba* fisheries*, prescribes that a person using a boat to fish for *Euphausia superba* in the CCAMLR Convention Area must advise the Secretariat of an entry, exit or movement between Statistical Subareas and Statistical Divisions of the Convention Area no more than 24 hours after the entry, exit or movement.

Items 12 to 14 amends *CCAMLR Conservation Measure 26-01 (2008): General environmental protection during fishing*, prescribing a new requirement to prohibit the dumping or discharging of fish or other benthic organisms unless they are dead, or alive but unlikely to survive if returned to the sea.

Item 15 amends *CCAMLR Conservation Measure 32-09 (2008): Prohibition of directed fishing for *Dissostichus* spp. except in accordance with specific conservation measures in the 2008/09 season*, removing the limitation on the period for which the clause applies.

Item 16 inserts a new IFMM, *CCAMLR Conservation Measure 41-01: General measures for exploratory fisheries for *Dissostichus* spp. in the Convention Area in a fishing season*. This clause prescribes recording and reporting requirements for a person using a boat in the CCAMLR Convention Area for exploratory fishing for *Dissostichus* species. This item also prescribes that a person using a boat in this way must also carry one scientific observer on the boat and must not fish for the species if the CCAMLR Secretariat has announced that the overall catch limit for the species has been exceeded.

Item 17 amends *CCAMLR Conservation Measure 41-04 (2008): Limits on the exploratory fishery for *Dissostichus* spp. in Statistical Subarea 48.6 in the 2008/09 season*, allowing boats registered to South Africa to fish for *Dissostichus* species in Statistical Subarea 48.6 of the CCAMLR Convention Area in the exploratory longline fishery. This item also prohibits the discharge of offal in the Convention Area and prohibits a person fishing in the Statistical Subarea 48.6 if another flagged boat of the same country as the boat the person is using is engaged in fishing in the Subarea.

Items 18 and 19 amends *CCAMLR Conservation Measure 41-05 (2008): Limits on the exploratory fishery for *Dissostichus* spp. in Statistical Division 58.4.2 in the 2008/09 season*, to permit boats registered to Uruguay, rather than New Zealand, to fish for *Dissostichus* species in Statistical Division 58.4.2 of the CCAMLR Convention Area in the exploratory longline fishery.

Items 20 and 21 amends *CCAMLR Conservation Measure 41-06 (2008): Limits on the exploratory fishery for *Dissostichus* spp. on Elan Bank (Statistical Division 58.4.3a) outside areas of national jurisdiction in the 2008/09 season*, removing the limitation on the depth of fishing (this measure is now prescribed under *CCAMLR Conservation Measure 22-08: Prohibition on fishing for *Dissostichus* spp. in depths shallower than 550m in exploratory fisheries*) and amending the fishing season to end on 31 August.

Items 22 to 24 amends *CCAMLR Conservation Measure 41-07 (2008): Limits on the exploratory fishery for *Dissostichus* spp. on BANZARE Bank (Statistical Division 58.4.3b) outside areas of national jurisdiction in the 2008/09 season*, to disallow boats registered to Spain and Uruguay to fish for *Dissostichus* species in Statistical Division 58.4.3b of the CCAMLR Convention Area in the exploratory longline fishery. These items also remove the limitation on the depth of fishing (this measure is now prescribed under *CCAMLR Conservation Measure 22-08: Prohibition on fishing for *Dissostichus* spp. in depths shallower than 550m in exploratory fisheries*).

Items 25 and 26 amends *CCAMLR Conservation Measure 41-09 (2008): Limits on the exploratory fishery for *Dissostichus* spp. in Statistical Subarea 88.1 in the 2008/09 season*, to disallow boats registered to Argentina, Chile and South Africa and allow boats registered to

Japan to fish for *Dissostichus* species in Statistical Subarea 88.1 of the CCAMLR Convention Area in the exploratory longline fishery. These items also remove the limitation on the depth of fishing (this measure is now prescribed under *CCAMLR Conservation Measure 22-08: Prohibition on fishing for Dissostichus spp. in depths shallower than 550m in exploratory fisheries*) and prescribe new reporting requirements.

Item 27 amends *CCAMLR Conservation Measure 41-10 (2008): Limits on the exploratory fishery for Dissostichus species in Statistical Subarea 88.2 in the 2008/09 season*, to disallow boats registered to Argentina, Chile and South Africa to fish for *Dissostichus* species in Statistical Subarea 88.2 of the CCAMLR Convention Area in the exploratory longline fishery. This item also removes the limitation on the depth of fishing (this measure is now prescribed under *CCAMLR Conservation Measure 22-08: Prohibition on fishing for Dissostichus spp. in depths shallower than 550m in exploratory fisheries*).

Item 28 amends *CCAMLR Conservation Measure 41-11 (2008): Limits on the exploratory fishery for Dissostichus species in Statistical Division 58.4.1 in the 2008/09 season*, to disallow boats registered to Uruguay to fish for *Dissostichus* species in Statistical Division 58.4.1 of the CCAMLR Convention Area in the exploratory longline fishery. This item also removes the limitation on the depth of fishing (this measure is now prescribed under *CCAMLR Conservation Measure 22-08: Prohibition on fishing for Dissostichus spp. in depths shallower than 550m in exploratory fisheries*) and prescribe new reporting requirements.

Item 29 amends *CCAMLR Conservation Measure 51-04 (2008): General Measure for exploratory fisheries for Euphausia superba in the Convention Area in the 2008/09 season*, to define the ‘fishing season’ to which the measure relates.

Item 30 inserts two new measures to replace *CCAMLR Conservation Measure 51-05 (2008): Limits on the exploratory fishery for Euphausia superba in Statistical Subarea 48.6 in the 2008/09 season*:

- *CCAMLR Conservation Measure 51-06: General measure for scientific observation in fisheries for Euphausia superba*, prescribes that a person using a boat to fish for *Euphausia superba* in the CCAMLR Convention Area must report the total weight of krill caught and brought on board the boat.
- *CCAMLR Conservation Measure 51-07: Interim distribution of the trigger level in the fishery for Euphausia superba in the Statistical Subareas 48.1 to 48.4*, prescribes a catch limit for *Euphausia superba* for Statistical Subareas 48.1 to 48.4 and prohibit a person using a boat from fishing for *Euphausia superba* when that catch limit has been reached.

Items 31 and 32 amends *CCAMLR Conservation Measure 52-01 (2008): Limits on the fishery for crab in Statistical Subarea 48.3 in the 2008/09 season*, prescribing a new definition of ‘fishing season’ and new reporting requirements.

Item 33 inserts a new measure, *CCAMLR Conservation Measure 91-03: Protection of the South Orkney Islands southern shelf*, which prohibits fishing (other than for specified research purposes), the dumping or discharge of waste product from a boat, and participation in transshipment activity in the South Orkney Islands southern marine shelf area.

Item 34 inserts a new measure, *IOTC Resolution: For the conservation and management of tropical tuna stocks*, which prohibits boats greater than 24 meters in length that are within the exclusive economic zone (EEZ) of the country to which the boat is registered or boats less than 24 metres in length that are outside the EEZ of the country to which the boat is registered, from fishing for tuna and tuna-like species in specified areas for specified periods.

Items 35 to 39 amends *IOTC Resolution 08/03: On reducing the incidental bycatch of seabirds in longline fisheries*, substituting a new definition for ‘hookline’ and increase the area to which the resolution applies, from south of 30° to south of 25°.

Item 40 inserts a new measure, *IOTC Resolution: On the Conservation of Thresher Sharks (Family Alopiidae) caught in Association with Fisheries in the IOTC Agreement Area*, to prohibit the retention on board, storage, landing, transshipment, offering for sale or selling of any part or whole carcass of all species of the *Family Alopiidae*, by a person using a boat that is recorded by IOTC as authorised to fish in the IOTC area.

Items 41 to 44 amends *Western and Central Pacific Fisheries Commission (WCPFC) Conservation and Management Measure (CMM) 2004-01 Record of Fishing Vessels and Authorisation to Fish*, to prohibit transshipment between boats not included on either the WCPFC Record of Fishing Vessels or the WCPFC Interim Register of non-Member Carrier and Bunker Vessels. These items also prescribe a new requirement prohibiting a person from bunkering (supplying or receiving fuel) or receiving supplies from a boat that does not appear on the WCPFC Interim Register of non-Member Carrier and Bunker Vessels.

Item 45 amends *WCPFC CMM 2006-08 Western and Central Pacific Fisheries Commission Boarding and Inspection Procedures*, to prescribe that a boat must allow an authorised inspector to board and inspect the boat if it is licensed and operating on the high seas of the WCPFC Convention Area.

Item 46 amends *WCPFC CMM 2007-01 Conservation and Management Measure for the Regional Observer Programme*, to simplify the provision by removing the reference to Guidelines on the Rights and Responsibilities of Vessel Operators, Captain and Crew, set out in Annex B to *WCPFC Conservation and Management Measure 2007-01*.

Item 47 amends *WCPFC CMM 2007-02 Commission Vessel Monitoring System*, to clarify the minimum standard for vessel monitoring systems on boats fishing on the high seas of the WCPFC Convention Area.

Item 48 amends *WCPFC CMM 2007-04 Conservation and Management Measure to Mitigate the Impact of Fishing for Highly Migratory Fish Stocks on Seabirds*, removing the number reference from the title of the IFMM.

Items 49 to 51 amends *WCPFC CMM 2008-01 Conservation and Management Measure for Bigeye and Yellowfin Tuna in the Western and Central Pacific Ocean*, to remove a date reference and to add Tuvalu to the list of EEZs within the WCPFC Convention Area where on and after 1 January 2010, a person is prohibited to fish for highly migratory fish stocks using a purse seine boat.

Items 52 and 53 amends *WCPFC CMM 2008-03 Conservation and Management of Sea Turtles*, to remove a date reference and to prescribe a new requirement that a person using a

purse seine boat to fish for highly migratory fish stocks in the WCPFC Convention Area must carry and use dip nets if handling turtles.

Item 54 inserts three new measures:

- *WCPFC CMM 2009:02: Application of High Seas FAD Closure and Catch Retention*, prohibits a person using a purse seine boat from conducting certain fishing activities around a fish aggregating device (FAD) within specified areas of the WCPFC Convention Area within specified periods. The prohibited activities include conducting a set within one nautical mile of a FAD; not allowing the boat to be used to aggregate fish; and prohibiting the retrieval of a FAD. This item also prescribes scenarios in which fish caught by a purse seine boat should be released or discarded.
- *WCPFC CMM: Prohibiting Fishing on Data Buoys*, prohibits a person using a boat for fishing within the WCPFC Convention Area from fishing within one nautical mile of a data buoy.
- *WCPFC CMM: Regulation of Transshipment*, prescribes the requirements a person must meet to tranship highly migratory fish stocks in the WCPFC Convention Area. These include completing a transshipment declaration, requiring that an observer be on board the boat receiving the fish product and that a boat can only receive product from one boat at a time. This item also allows for transshipments in the event of *force majeure* or serious mechanical breakdown which may threaten the safety of the crew or result in significant financial loss as a result of the fish spoiling. Purse seine boats will be prohibited from transshipping fish products unless the WCPFC has granted an exemption.

Item 55 inserts a new schedule, *Prescribed measures - Extended Commission for Conservation of Southern Bluefin Tuna*. This schedule prescribes three new measures:

- *Illegal, Unregulated and Unreported Fishing and Establishment of CCSBT Record of Vessels over 24 metres Authorised to Fish for Southern Bluefin Tuna*, prohibits a person using a boat for fishing for Southern Bluefin Tuna unless the boat is recorded on the CCSBT Record of Vessels. It also requires that a boat's certificate of registration is in force and on board; that an authorisation to fish is in force for the boat and on board; that if transshipping is to be undertaken on a fishing trip that the boat is authorised to tranship and the authorisation is on board; and that the person does not engage in activities with another boat fishing for Southern Bluefin Tuna that is not recorded on the CCSBT Record of Vessels.
- *CCSBT Resolution on Establishing the CCSBT Vessel Monitoring System*, requires a person using a boat for fishing for Southern Bluefin Tuna to have an operational vessel monitoring system (VMS) that accords with VMS measures of CCAMLR, IOTC, WCPFC, and the International Commission for the Conservation of Atlantic Tunas, when fishing in the area of competence of the respective IFMO.
- *CCSBT Resolution on establishing a program for Transshipment by Large-Scale Fishing Vessels*, requires a person using a boat equipped with longlines and freezing capacity to only tranship to a boat recorded on the CCSBT Record of Carrier Vessels and that any such transshipment has to be notified to the national fisheries authority of the country to which the boat is registered. Notification requirements include the names of boats, tonnage of catch to be transhipped and location. Notification must occur no later than 15 days after transshipment.

Items 56 and 57 prescribe a list of further amendments which are largely editorial and minor in nature including spelling corrections and the removal of references to the 2008/09 fishing

season. These items also provide for the removal of number references from the titles of IFMMs throughout the Principal Regulations.

Statement of Compatibility with Human Rights

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

Fisheries Management (International Agreements) Amendment Regulation 2012 (No. 1)

This 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 Legislative Instrument

The *Fisheries Management (International Agreements) Amendment Regulation 2012 (No. 1)* makes amendments to the *Fisheries Management (International Agreements) Regulations 2009* to update the list of international fisheries management organisations to which Australia is a party and amend or prescribe new international fisheries management measures which have come into force since the Principal Regulations were made.

Human rights implications

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

- *International Covenant on Civil and Political Rights* – the Legislative Instrument does not affect anyone’s civil or political freedoms; those affected by the amendments remain free to determine their political status and freely pursue their economic, social and cultural development.
- *International Covenant on Economic, Social and Cultural Rights* – the Legislative Instrument does not prevent anyone from working and earning a living or pursuing social or cultural activities.
- *International Covenant on the Elimination of All Forms of Racial Discrimination; Convention on the Elimination of All Forms of Discrimination against Women; Convention on the Rights of Persons with Disabilities* – the Legislative Instrument does not concern race, gender or disability and affects all persons equally.
- *Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment* – the Legislative Instrument does not implement any form of torture or other cruel, inhuman or degrading treatment or punishment.
- *Convention on the Rights of the Child* – the Legislative Instrument does not concern children.

Conclusion

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