

EXPLANATORY STATEMENT

SELECT LEGISLATIVE INSTRUMENT No 43, 2015

Issued by the Authority of the Parliamentary Secretary to the Minister for Agriculture

Fisheries Management Act 1991

*Fisheries Management (International Agreements) Amendment (2012 to 2014 Measures)
Regulation 2015*

Section 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 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 section 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 and prescribe IFMOs to which Australia is a party and the IFMMs adopted by them. The Principal Regulations were amended by the *Fisheries Management (International Agreements) Amendment Regulation 2012 (No. 1)* and subsequently amended by the *Fisheries Management (International Agreements) Amendment Regulation 2013 (No. 1)*.

The purpose of the *Fisheries Management (International Agreements) Amendment (2012 to 2014) Regulation 2015* (the Regulation) was to include amendments to the IFMMs that are currently prescribed and prescribe new IFMMs that have come into force as a result of decisions made at meetings of five IFMOs held since between 1 July 2012 and 31 January 2014. These IFMOs are 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), the Commission for the Conservation of Southern Bluefin Tuna (CCSBT) and the South Pacific Regional Fisheries Management Organisation (SPRFMO).

The Regulation prescribes current and new IFMMs that are broadly focused on ensuring that fish stocks, or an IFMO's conservation area, are accessed and exploited sustainably. The Regulation takes account of new IFMOs and IFMMs to strengthen current arrangements for all fisheries and ensure that Australia has the ability to comply with its obligations under international law.

The Principal Regulations enable the Australian Fisheries Management Authority (AFMA), the agency responsible for the management of Commonwealth fisheries, to require foreign boats operating beyond the Australian Fishing Zone and Australian nationals on those boats

to comply with IFMMs. Subject to Part 6, Division 5A of the Act, contravention of an IFMM as prescribed by the Principal Regulations, is an offence.

The Principal Regulations also enable AFMA to authorise officials of a foreign country that participates in a prescribed IFMO to board and inspect an Australian-flagged boat on the high seas if there are reasonable grounds to believe that the boat has been fishing in the waters of a foreign country without authorisation; and to authorise an authority of a foreign country that participates in a prescribed IFMO to investigate an alleged contravention of a prescribed IFMM involving an Australian-flagged boat.

AFMA consulted with the following stakeholders during the development of the Regulation:

- the Department of Agriculture, which has portfolio responsibility and is the lead agency for Australian delegations to WCPFC, IOTC, CCSBT, SPRFMO, and the Southern Indian Ocean Fisheries Agreement;
- the Department of the Environment's Australian Antarctic Division which is the lead for the Australian delegation to the CCAMLR;
- the Department of Foreign Affairs and Trade;
- the Commonwealth Fisheries Association (CFA);
- the Office of Best Practice Regulation (OBPR ID: 17213);
- the Office of Parliamentary Counsel (OPC), which provided legislative drafting services for the amendment to the regulations.

The OBPR advised that the preliminary proposal to amend the Principal Regulations fell outside of the regulation impact analysis framework as the proposal is to regulate foreign fishing vessels operating outside of Australian waters. OBPR further advised that no Regulation Impact Statement was required as this type of decision is machinery of government in nature. For this reason, OBPR added the annual update of the Principal Regulations to the carve out list of regulatory changes of which AFMA would not need to contact the OBPR for in the future.

The details of the Regulation are set out in Attachment A.

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

The Regulation commences on the day after it is registered on the Federal Register of Legislative Instruments, other than the amendments in Schedule 2, which commence on 31 July 2015.

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 Attachment B.

Details of the Fisheries Management (International Agreements) Amendment (2012 to 2014 Measures) Regulation 2015

Section 1 – Name of Regulation

This section provides for the Regulation to be cited as the *Fisheries Management (International Agreements) Amendment (2012 to 2014 Measures) Regulation 2015*.

Section 2 – Commencement

This section provides that the Regulation commences on the day after its registration on the Federal Register of Legislative Instruments, other than the amendments in Schedule 2, which commence on 31 July 2015.

Section 3 – Authority

This section provides that the Regulation is made under the *Fisheries Management Act 1991*.

Section 4 – Schedules

This section provides that each instrument that is specified in a Schedule to the Regulation is amended or repealed as set out in the applicable items in the Schedule concerned, and that any other item in the Schedule has effect according to its terms.

Schedule 1 – Amendments

Schedule 1 amends the *Fisheries Management (International Agreements) Regulations 2009* (the Principal Regulations), to incorporate amendments to international fisheries management measures (IFMMs) that are currently prescribed and prescribe new IFMMs.

Item 1 amends the definitions to include the South Pacific Regional Fisheries Management Organisation (SPRFMO).

Item 2 amends the list of international fisheries management measures to include measures established by SPRFMO.

Items 3 to 18 amend the table in clause 2.2 that identifies the clause in Schedule 1 that gives effect to each Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) measure listed in the table. The amendments take account of changes in the titles of measures that are currently prescribed, new measures prescribed by the Regulation and measures that had been repealed.

Item 19 amends *the* IOTC measure to *an* IOTC measure for clarity.

Items 20 to 23 amend the table in clause 2.3 that identifies the clause in Schedule 2 that gives effect to each Indian Ocean Tuna Commission (IOTC) measure listed in the table. The amendments take account of changes in the titles of measures that are currently prescribed and new measures prescribed by the Regulation.

Items 24 to 27 amend the table in clause 2.4 that identifies the clause in Schedule 3 that gives effect to each Western and Central Pacific Fisheries Commission (WCPFC) measure listed in the table. The amendments take account of changes in the titles of measures that are currently prescribed, and new measures prescribed by the Regulation.

Item 28 amends the table in clause 2.5 that identifies the clause in Schedule 3 that gives effect to each Commission for the Conservation of Southern Bluefin Tuna (CCSBT) measure listed in the table. The amendments take account of new measures prescribed by the Regulation.

Item 29 inserts a table in clause 2.6 that identifies the clause in Schedule 3 that gives effect to each South Pacific Regional Fisheries Management Organisation (SPRFMO) measure listed in the table.

Amendments to Schedule 1 of the Principle Regulations - CCAMLR

Item 30 extends the responsibility to complete, sign and send a *Dissostichus* Catch Document to a person authorised to represent the boat for each transshipment or landing of *Dissostichus* species.

Item 31 repeals the requirement to report the date and port at which the catch is landed as the Regulations only apply to activities on the high seas which includes transshipment, but not activities in port such as the landing of the catch.

Items 32, 33, 35 and 37 define “relevant Convention Area” and amend subclauses 13.1, 13.2, 13.3, 13A.2 and 13A.3 of Schedule 1 to refer to the “relevant” Convention Area.

Item 34 amends subclause 13A.1 to require daily reporting of the total benthos recovered and an indication of the hooks/pots in the water as per the requirements of CCAMLR Conservation Measure (CM) 22-07 and 23-07.

Item 36 re-defines the definition of a ‘line segment’ for clarity.

Item 38 amends clause 14.1 to clarify that the clause gives effect to CCAMLR CM 24-01.

Item 39 adds clauses (c) to (h) in section 14.2 to give effect to various reporting requirements set out in CCAMLR CMs 23-07, 51-04, 23-06, 23-01, 23-04, 23-05 when conducting scientific research in the CCAMLR area. The addition of clause (i) also requires the person conducting the scientific research to cease fishing if the flag State of the boat notifies the person that the fishery has been closed to the person because they have failed to provide the information required by the Five-day Catch and Effort Reporting System.

Item 40 strengthens the offal discharge requirements from simply having a boat *equipped* to discharge offal on the opposite side of the boat to where longlines are set to requiring operators to *only* discharge offal on the opposite side of the boat to where longlines are hauled, and also remove all hooks before it is discharged. This is a requirement of CCAMLR CM 25-02 (2012) *on the Minimisation of the incidental mortality of seabirds in the course of longline fishing or longline fishing research in the Convention Area*.

Items 41 and 42 repeal the majority of clauses that apply for directed fishing species of various finfish species under CCAMLR CM 32-02 (2012) *Prohibition of directed fishing* and replace these with simpler terms. CM 32-02 prohibits directed fishing for *Chaenocephalus aceratus*, *Dissostichus eleginoides*, *Dissostichus species*, *Electrona carlsbergi*, *Gobionotothen gibberifrons*, *Lepidonotothen squamifrons*, *Notothenia rossii*, *Patagonotothen Gunther*, *Pseudochaenichthys georgianus* and other finfish species subject to various conditions for each subarea. The prohibition of directed fishing for these species in certain CCAMLR subareas will aim to protect the species until further information on the stock is available to inform an assessment.

Item 43 amends the current requirement for operators to release skates and rays to requiring the operators to bring skates and rays on board or alongside the boat, retain tagged skates and rays and releasing un-tagged skates and rays if they have a high probability of survival to more accurately reflect the requirements of CCAMLR CM 33-03 (2013) *Limitation of by-catch in new and exploratory fisheries in the 2013/14 season*.

Item 44 updates subclause 37A.1 of Schedule 1 to incorporate all the requirements for exploratory fishing for *Dissostichus* species during a fishing season that have not been included in previous versions of the regulations.

Items 45 and 46 amend the fishing season start date from 1 May to 16 April and will add the requirement for a person fishing for *Dissostichus eleginoides* in Statistical Subarea 48.3 to ensure that at least one scientific observer is onboard at all times respectively as prescribed in CCAMLR CM 41-02 (2013) *Limits on the fishery for Dissostichus eleginoides in Statistical Subarea 48.3 in the 2013/14 and 2014/15 seasons*.

Item 47 amends Subclause 38.3 of Schedule 1 to update the previous requirements under CCAMLR CM 32-15 (2003), which have subsequently been consolidated under 32-02 (2012). This includes removing the reference to latitudinal restrictions if the catch limit for that SSRU has been reached.

Item 48 repeals Subclause 42.4 of Schedule 1 to remove the reporting requirements under CCAMLR CMs 23-01, 23-04 and 23-07 which have been consolidated into a new Regulation at Subclauses 54 to 58. The aim of this is to streamline the reporting requirements in the Regulations (refer to Item 50 of the drafting instructions).

Item 49 amends Subclause 42.5 of Schedule 1 to define the fishing season as starting on 1 December and ending on 31 August the following year.

Item 50 amends Subclause 43.4 of Schedule 1 to remove the specific by-catch limits and rather refer to those limits adopted under CCAMLR CM 41-10, *Limits on the exploratory fishery for Dissostichus spp. in Statistical Subarea 88.2 in the 2013/14 season*. In this case, the clause will not need to be updated if the bycatch limits under CM 41-10 change between seasons.

Item 51 repeals Subclause 44.4 and 44.5 of Schedule 1 to remove the reporting requirements under CCAMLR CMs 23-01, 23-04 and 23-07 which have been consolidated into a new Regulation at Subclauses 54 to 58. The aim of this is to streamline the reporting requirements in the Regulations (refer to Item 50 of the drafting instructions).

Item 52 incorporates the requirements of the Data Collection and Research Plans for Exploratory Krill Fisheries that form annexes to CCAMLR CM 51-04 (2013) *General measure for exploratory Fisheries for Euphausia superba in the Convention Area in the 2013/14 season* into the Regulations.

Item 53 repeals unnecessary subclauses outlining data collection requirements for the exploratory fishery for *Dissostichus* species in Statistical Division 58.4.1.

Item 54 simplifies the observer arrangements from prescribing a sampling target of 20% of hauls to requiring sufficient samples to meet data requirements of the CCAMLR Scientific Observers Manual. This ensures that the Regulations do not need to be updated if the sampling rate is changed.

Item 55 outlines the requirements of the Five-day Catch and Effort Data Reporting System (CCAMLR CM 23-01), the Ten-day Catch and Effort Data Reporting System (CCAMLR CM 23-02), the Monthly Fine-Scale Catch and Effort Data Reporting System (CCAMLR CM 23-04), Monthly Fine-Scale Biological Data Reporting System (CCAMLR CM 23-05) and the Daily Catch and Effort Reporting System for exploratory fisheries (CCAMLR CM 23-07). The purpose of this item is to consolidate and streamline the reporting requirements into four separate regulations for ease of application.

Amendments to Schedule 2 of the Principle Regulations - IOTC

Item 56 corrects the error of ‘charter’ to ‘charterer’ of a boat.

Items 57 and 59 update the reference from IOTC Resolution 12/03 to include Resolution 13/03 that supersedes the previous Resolution on *the recording of catch and effort data by fishing vessels in the IOTC Area of competence*. Resolution 12/03 still applies to India, and therefore this paragraph has been drafted to add the words, ‘whichever is applicable’.

Item 58 updates subclause 9.2 of Schedule 2 to reflect the requirement under IOTC Resolution 13/03 to submit a copy of their logbook to the flag state or, if they have fished in the EEZ of another state, submit a copy of the parts of the logbook relevant to that State.

Item 60 adds Subclauses 15 to 19 to Schedule 2 to reflect new requirements adopted by the IOTC in 2013 under Resolution 13/04 *on the conservation of cetaceans*, Resolution 13/05 *on the conservation of whale sharks (rhincodon typus)*, Resolution 13/06 *on a scientific and management framework on the conservation of shark species caught in association with IOTC managed fisheries*, Resolution 13/08 *Procedures on a fish aggregating devices (fads) management plan, including more detailed specifications of catch reporting from fad sets, and the development of improved fad designs to reduce the incidence of entanglement of non-target species* and Resolution 13/11 *on a ban on discards of bigeye tuna, skipjack tuna, yellowfin tuna, and a recommendation for non-targeted species caught by purse seine vessels in the IOTC area of competence*.

Subclauses 15, 16 and 17 aim to ensure that any interactions with cetaceans, whale sharks and other shark species are released unharmed, to the extent possible, and that interactions with cetaceans and whale sharks are reported. Subclause 18 requires any person fishing on a fish aggregating device to record information about that device in their logbook. Subclause 19 requires a person using a purse seine boat to retain and land all bigeye, skipjack and

yellowfin tuna unless they are unfit for human consumption, or on the final set they do not fit in the well, they are released alive or other tuna are landed or transhipped.

Amendments to Schedule 3 of the Principle Regulations - WCPFC

Item 61 removes the current reference to WCPFC Conservation and Management Measure (CMM) 2006-08 and simplify the sentence to state that a person using a boat licensed to operate in the WCPFC Convention Area must allow an authorised inspector to board and inspect the boat.

Item 62 amends the current options for seabird mitigation measures to reflect the revised measures in WCPFC CMM 2012-07 *to mitigate the impact of fishing for highly migratory fish stocks on seabirds*. Under the revised measure the options for using weighted branch lines and/or an underwater setting chute are removed from the second column.

Item 63 updates the current Subclause 9 in Schedule 1 to ensure consistency with the WCPFC CMM 2013-01 that prescribes measures for 2014-2017 to ensure that bigeye, yellowfin and skipjack tuna stocks are maintained at levels capable of producing their maximum sustainable yield. This includes restrictions on the dates that a person can fish on fish aggregating devices and reporting requirements. The existing restriction on fishing in areas enclosed by EEZs has been removed from this subclause.

Item 64 adds subclauses 17, 18 and 19 at the end of Schedule 3 to incorporate the requirements of WCPFC CMMs 2012-04, CMM for Protection of Whale Sharks, 2013-05 on daily catch and effort reporting and 2013-08 for Silky Sharks.

Subclause 17 specifies that a person must not set on a school if a whale shark is sighted and specifies steps that must be taken if the shark is encircled. Subclause 18 specifies the requirements for daily reporting in their logbook and state that the logbook must be submitted to the flag State. Subclause 19 specifies that a person must release silky sharks as soon as possible and that they must not retain, tranship, store or land silky shark.

Amendments to Schedule 3A of the Principle Regulations - CCSBT

Item 65 incorporates the requirements under the CCSBT Resolutions on the Implementation of a CCSBT Catch Documentation Scheme and on Establishing a List of Vessels Presumed to have Carried out Illegal, Unreported and Unregulated Fishing Activities for Southern Bluefin Tuna (SBT) that were adopted in October 2013. This includes requiring a person to tag each SBT caught, and provide a completed catch tagging form to the flag State and not to use, tranship with, support or resupply a boat that is included on the CCSBT IUU Vessels List.

Amendments to Schedule 3B of the Principle Regulations - SPRFMO

Item 66 inserts Schedule 3B into the Principle Regulations to implement measures adopted by the South Pacific Regional Fisheries Management Organisation including CMM 1.02 for *Gillnets in the SPRFMO Convention Area*, CMM 1.04 for *Establishing a List of Vessels presumed to have carried out IUU fishing in the SPRFMO Convention Area*, CMM 2.01 for *Trachurus murphyi*, CMM 2.02 for *Standards for the collection, reporting, verification and exchange of data*, CMM 2.03 for the *Management of bottom fishing in the SPRFMO*

Convention Area and CMM 2.05 for the Establishment of the Commission record of vessels authorised to fish in the Convention Area.

Clause 2 of Schedule 3B ensures that a person using a boat in the SPRFMO Convention Area must not fish with large scale pelagic driftnets or deepwater gillnets. Clause 3 requires a person fishing in the Convention Area not to use, tranship with, support or resupply a boat that is included on the SPRFMO IUU Vessels List. Clause 4 specifies that a person must not fish for *Trachurus murphyi* (Jack Mackerel) unless authorised by the flag State. Clause 5 requires a person to have an automatic location communicator reporting to the flag State. Clause 6 restricts fishers to a bottom fishing footprint. Clause 7 requires that a person cannot fish unless the boat is registered on the SPRFMO record of vessels.

Part 2 – Amendments commencing on 31 July 2015

Item 67 adds SPRFMO CMM 2.04 on *Minimising the bycatch of seabirds in the SPRFMO Convention Area* to the table that identifies SPRFMO measures at clause 2.6.

Item 68 inserts Clause 8 into Schedule 3B which requires a person fishing to use specified mitigation measures to minimise bycatch of seabirds under CMM 2.04.

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 (2012 to 2014 Measures) Regulation 2015

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 Legislative Instrument amends the *Fisheries Management (International Agreements) Regulations 2009* (the Principal Regulations) to update the international fisheries management organisations (IFMOs) to which Australia is a party and amend or prescribe new international fisheries management measures that have come into force as a result of a number of annual IFMO meetings held between 1 July 2012 and 31 January 2014.

Human rights implications

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

Conclusion

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

**The Hon. Richard Colbeck
Parliamentary Secretary to the Minister for Agriculture**