

EXPLANATORY STATEMENT

Issued by the authority of the Assistant Minister for Agriculture and Water Resources

Fisheries Management Act 1991

Fisheries Management Amendment (Compliance and Enforcement) Regulations 2017

Legislative Authority

The *Fisheries Management Act 1991* (the Act) provides for the efficient and cost effective management of Commonwealth Fisheries; the exploitation of fisheries resources in a manner consistent with the principles of ecologically sustainable development; the maximising of the net economic returns to the Australian community; the ensuring of accountability to the fishing industry; and the achievement of government targets in relation to the recovery of the costs to Australian Fisheries Management Authority (AFMA).

Section 168 of the Act provides that the Governor-General may make regulations not inconsistent with the Act.

Section 168(2)(a) of the Act provides that the Governor-General may make regulations prescribing penalties, not inconsistent with the Act, provided the prescribed penalties do not exceed 25 penalty units.

Purpose

The purpose of the *Fisheries Management Amendment (Compliance and Enforcement) Regulations 2017* (the proposed Regulations) is to increase the previous penalty units and strengthen AFMA's infringement notice scheme in an effort to further deter non-compliant behaviours and adopt the Infringement Notice scheme of the *Regulatory Powers (Standard Provisions) Act 2014*. Redundant provisions which were covered by other Acts and /or Regulations have been repealed.

Examples of offences in the infringement notice scheme which are subject to increased penalties include: failure to comply with requirements regarding the display of a boat's name and identification number to allow easy identification of potentially offending vessels; the discharge of offal in a manner contrary to Part 12 Division 3 of the *Fisheries Management Regulations 1992* which may result in increased incidental by-catch of seabirds; and failure to provide translations of foreign fishing licences documents to assist in verifying the authenticity of such documents.

Proposed table of Penalty Increases

Provision	Current Penalty Amount	Proposed Penalty Amount	Brief Description of Offence
<u>Subregulation(s) 12(3), (4), and (5)</u>	\$1,700	\$2,550	Relates to the requirement to display and/or removal of identification codes for boats.
<u>Subregulation 13(4)</u>	\$1,700	\$2,550	Relates to the requirement for the

			Master of a foreign boat to provide a translation to an Officer if requested to do so.
<u>Subregulation 15(1) and 16(1)</u>	\$1,700	\$4,250	Relates to the requirement to show the boats internationals call sign and the requirement to show the Boats name.
<u>Subregulation 17(3)</u>	\$850	\$2,550	Relates to the requirement to give names, dates of birth and address and positions of persons on board if asked.
<u>Subregulation 76(1) and (2)</u>	\$1,700	\$4,250	Relates to the discharge of offal while setting and hauling various lines.
<u>Subregulation 77(3)</u>	\$1,700	\$2,550	Relates to the requirement of a holder of a concession or scientific permit holder to take alternative action to minimise risk of incidental catch of seabirds.

Impact and Effect

The increase in penalty units will directly impact those responsible for committing offences and should result in an increase in compliant behaviours. Specifically, the amendment to sub regulation 17(2) to omit “names” and substitute “names, dates of birth, residential addresses” will result in increase in compliance because in the past it was difficult to sufficiently identify persons (and thus issue a fine) simply by their name as many fisherman share very common names.

There will be no increased cost to government as a result of the increases in penalty units because the increase to penalty units applies to existing subregulations and regulations.

Government and stakeholders will benefit through the utilisation of provisions of general application, adopted widely across the Commonwealth Statute books. Specifically, the *Regulatory Powers (Standard Provisions) Act 2014*.

Consultation

AFMA consulted with all peak fishing industry bodies. The Commonwealth Fisheries Association, Great Australian Bight Fishing Industry Association, South East Trawl Fishing Industry Association, Northern Prawn Fishing Industry, Sustainable Shark Fishing Association, Southern Shark Industry Alliance, Australian Southern Bluefin Tuna Industry Association, Tuna Australia and Austral Fisheries were all invited to comment on the proposed amendments.

Of all the industry bodies consulted, only one raised concern regarding the increase in penalty units. AFMA’s Chief Executive Officer responded to reaffirm that the amendments struck an appropriate balance between deterrence and management of penalties against those who failed to fish responsibly.

The proposed Regulations is a legislative instrument for the purposes of the *Legislation Act 2003*.

The proposed Regulations commences on the day after it is registered with the Federal Register of Legislative Instruments.

Details of the proposed Regulations is set out in the Attachment.

ATTACHMENT**Details of the *Fisheries Management Amendment (Compliance and Enforcement) Regulations 2017*****Section 1**

This Section provides that the name of the Regulations is the *Fisheries Management Amendment (Compliance and Enforcement) Regulations 2017*.

Section 2

This Section provides for the Regulations to commence the day after the instrument is registered.

Section 3

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

Section 4

This Section provides for the *Fisheries Management Regulations 1992* to be amended as set out in Schedule 1.

Schedule 1 Amendments**Items 1-3**

Items 1, 2 and 3 amends Subregulation 3(1) to repeal the definitions of “infringement notice”, “relevant offence” and “relevant penalty” and inserts, “provisions subject to an infringement notice means section 93, 95 or 100 of the Act.

Item 4 and 5

Item 4 and 5 amends Regulation 9 to omit “39(c),” and substitute “39(1)(c) of the Act.

Item 6

Item 6 repeals the heading of Part 4 and substitute **Fish receiver permits**.

Item 7

Item 7 repeals Division 1 of part 4.

Item 8

Item 8 repeals the heading of Division 2 of Part 4

Item 9

Item 9 amends Regulation 10A to omit “Division” and substitute “Part”.

Item 10

Item 10 amends Subregulations 12(3), (4) and (5) (penalty) to repeal the penalties and substitute: Penalty: 15 penalty units.

Item 11

Item 11 amends Subregulations 13(4) (penalty) to repeal the penalty and substitute: Penalty: 15 penalty units.

Item 12

Item 12 repeals Regulation 14.

Item 13

Item 13 amends Subregulations 15(1) and 16(1) (penalty) to repeal the penalties and substitute: Penalty: 25 penalty units.

Item 14

Item 14 amends Subregulations 17(2) to omit “names” and substitute “names, dates of birth, residential addresses”.

Item 15

Item 15 amends Subregulation 17(3) (penalty) to repeal the penalty and substitute: Penalty: 15 penalties units.

Item 16

Item 16 repeals Subregulation 29(3).

Item 17

Item 17 repeals Subregulation 30.

Item 18

Item 18 repeals Part 10 and substitute:

Part 10 —Infringement notices.

The part replicates the language and provisions of the *Regulatory Powers (Standard Provisions) Act 2014* with certain modifications, such as the inclusion of reference to the CEO, to more closely align AFMA’s enforcement and penalty regime with other Commonwealth agencies and the *Regulatory Powers (Standard Provisions) Act 2014*.

Item 19

Item 19 repeals Subregulations 76(1) and (2) (penalty) to repeal the penalties and substitute:
Penalty: 25 penalties units.

Item 20

Item 20 amends Subregulation 77(2) to omit “only if the concession is for a boat with an overall length less than 20 metres”.

Item 21

Item 21 amends Subregulation 77(3) to omit ‘Also, if’ and substitute “If”

Item 22

Item 22 amends Subregulation 77(3) (penalty) to repeal the penalty and substitute: Penalty: 25 penalties units.

Regulation Impact Statement

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required (OBPR ID: 20097).

Statement of compatibility prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

The Regulation is compatible with 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.

Statement of Compatibility with Human Rights

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

Fisheries Management Amendment (Compliance and Enforcement) Regulation 2016

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 instrument more closely aligns AFMA's infringement notice scheme and penalty provisions with other Commonwealth Agency regimes.

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 AFMA Commission is satisfied that the instrument is consistent with AFMA's obligation to pursue its statutory objectives.

Senator the Hon. Anne Ruston
Assistant Minister for Agriculture and Water Resources