

EXPLANATORY STATEMENT

Issued by Authority of the Assistant Minister for Forestry and Fisheries
Parliamentary Secretary to the Minister for Agriculture, Drought and Emergency
Management

Fisheries Management Act 1991

Fisheries Management Amendment (Infringement Notices) Regulations 2021

Legislative Authority

Subsection 168(1) of the *Fisheries Management Act 1991* (the Management Act) provides that the Governor-General may make regulations not inconsistent with this Act prescribing all matters required or permitted by this Act to be prescribed or as may be necessary or convenient to be prescribed in carrying out or giving effect to the Act.

Purpose

The purpose of the *Fisheries Management Amendment (Infringement Notices) Regulations 2021* (the Amendment Regulations) is to repeal the provisions of the *Fisheries Management Regulations 2019* (the Regulations) in Division 7 of Part 11 that deal with infringement notices. The Amendment Regulations are consequential to the amendments to the Management Act contained in Schedule 4 to the *Regulatory Powers (Standardisation Reform) Act 2021* (the Reform Act). These amendments provide that subsection 93(1) and subsection 95(5) of the Management Act are subject to an infringement notice issued under Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014* (the Regulatory Powers Act).

Background

Schedule 4 to the Reform Act amends the Management Act to trigger the infringement notice provisions in Part 5 of the Regulatory Powers Act for the offences in subsection 93(1) and subsection 95(5) of the Management Act.

The Regulatory Powers Act provides for a standard suite of provisions in relation to monitoring and investigation powers, as well as civil penalties, infringement notices, enforceable undertakings and injunctions. The Regulatory Powers Act commenced on 1 October 2014, but only has effect where Commonwealth Acts are drafted or amended to trigger its provisions. The Reform Act amends six Commonwealth Acts to trigger the provisions in Part 5 of the Regulatory Powers Act, including the Management Act.

Section 92 of the Management Act requires a person who is the holder of a fish receiver permit to give a return or information in relation to fish received by the person and to verify any such return or information by statutory declaration. Section 93 provides that the holder of a fish receiver permit must not refuse or fail to give a return or information that the person is required to give under section 92 or under the regulations made for the purposes of that section.

The amendments in Schedule 4 to the Reform Act restructured the offence in section 93 to, among other things, amend the penalty of 6 months imprisonment to a pecuniary penalty of 30 penalty units.

Subsection 95(1) in Division 4 of Part 6 to the Management Act contains offences in relation to:

- Engaging in commercial fishing in the Australian Fishing Zone (AFZ) without a fishing concession or scientific permit or a Treaty Licence (for a Treaty boat) authorising the commercial fishing at that place;
- Being in possession of fish in a boat at a time when the taking of the fish was not authorised by a fishing concession or scientific permit;
- Contravening, or causing another person to contravene, a condition of a fishing concession, permit or licence or a provision of a temporary order;
- Keep or furnish a logbook in respect of a particular fishery knowing that the logbook contains a statement that is false or misleading in a material particular.

The effect of subsection 95(2) of the Management Act is that a person who uses a Treaty boat to engage in commercial fishing without a Treaty licence with the use of a foreign boat or in relation to a foreign fishing licence commits an offence punishable on conviction by a fine not exceeding 500 penalty units. Under subsection 95(5), a person who contravenes subsection 95(1) without committing an offence against subsection 95(2) commits an offence punishable, on conviction, by a fine not exceeding 250 penalty units.

Impact and Effect

The Amendment Regulations, together with the amendments to the Management Act by the Reform Act, have the effect that an infringement notice for an alleged contravention of subsection 93(1) or subsection 95(5) of the Management Act will be issued under Part 5 of the Regulatory Powers Act rather than under the Regulations. This is consistent with the objectives of the Regulatory Powers Act, which are to streamline the regulatory powers across the statute book and ensure greater consistency between different regulatory regimes.

Consultation

The general obligation to consult under section 17 of the *Legislation Act 2003* was considered. The Assistant Minister for Forestry and Fisheries was satisfied that consultation was not necessary as the Amendment Regulations are machinery in nature and consequential to the amendments to the Management Act by the Reform Act.

Similarly, the Assistant Minister for Forestry and Fisheries was satisfied that consultation was not necessary on the amendments to the Management Act by the Reform Act, given the infringement notice scheme already existed in the Regulations and no new regulatory burden was identified for licence holders. Further, consultation was considered unnecessary as amendments to existing offence provisions in the Management Act had the effect of lessening the severity of the applicable sanction from imprisonment to a fine, and therefore considered less intrusive on the rights of an alleged offender.

The Office of Best Practice Regulation (OBPR) was consulted prior to making of the Amendment Regulations and advised that a Regulation Impact Statement was not required (OBPR reference 43791).

Details

Details of the Amendment Regulations are set out in [Attachment A](#).

Other

The Amendment Regulations are 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.

The Amendment Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

Details of the *Fisheries Management Amendment (Infringement Notices) Regulations 2021*

Section 1 – Name

This section provides that the name of the instrument is the *Fisheries Management Amendment (Infringement Notices) Regulations 2021* (the Amendment Regulations).

Section 2 – Commencement

The section provides that the Amendment Regulations commence at the same time as the commencement of Schedule 4 to the *Regulatory Powers (Standardisation Reform) Act 2021*. Schedule 4 to the Reform Act commences on 26 September 2021, that is 6 months after receiving Royal Assent on 26 March 2021.

Section 3 – Authority

This section provides that the Amendment Regulations are made under the *Fisheries Management Act 1991*.

Section 4 - Schedules

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

Schedule 1 – Amendments

Fisheries Management Regulations 2019

Item [1] – Section 4

This item repeals the paragraphs (e) and (f) of the paragraph beginning with “Part 11 provides” relating to fees and infringement notices and substitutes paragraph (e).

This amendment reflects that Part 11 of the Regulations no longer deals with infringement notices providing for payment to the Australian Fisheries Management Authority (AFMA) as an alternative to prosecution for contraventions of sections 93 and 95. Rather, subsection 98A(1) of the Reform Act provides that subsection 93(1) and subsection 95(5) of the Management Act are subject to an infringement notice under Part 5 of the Regulatory Powers Act.

Item [2] – Section 101

This item repeals the paragraph in section 101 relating to the administration of infringement notices.

This paragraph previously stated that if an officer is satisfied that a person has contravened section 93, 95 or 100 of the Act, he or she may issue the person responsible for the contravention an infringement notice allowing the person to pay an amount to AFMA as an alternative to prosecution.

This is a consequential amendment to the amendments made to the Regulatory Powers Act by Schedule 4 to the Reform Act and to item 3 below, the effect of which is that the giving of an infringement notice for an alleged contravention of subsection 93(1) or subsection 95(5) of the Management Act is governed by Part 5 of the Regulatory Powers Act.

Item [3] – Division 7 of Part 11

This item repeals Division 7 of Part 11 of the Regulations, which provides for the giving of infringement notices in relation to contraventions of provisions subject to an infringement notice in the Management Act.

This item is consequential to the amendments made to the Regulatory Powers Act by Schedule 4 to the Reform Act. Schedule 4 to the Reform Act will require an infringement notice for an alleged contravention of subsection 93(1) or subsection 95(5) of the Management Act to be given under Part 5 of the Regulatory Powers Act.

Statement of Compatibility with Human Rights

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

Fisheries Management Amendment (Infringement Notices) Regulations 2021

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 purpose of the *Fisheries Management Amendment (Infringement Notices) Regulations 2021* (the Amendment Regulations) is to repeal the infringement notice scheme in Division 7 of Part 11 of the *Fisheries Management Regulations 2019* (the Regulations).

The Amendment Regulations are consequential to the amendments made to the *Fisheries Management Act 1991* (the Management Act) made by Schedule 4 to the *Regulatory Powers (Standardisation Reform) Act 2021* (the Reform Act). These amendments provide that subsection 93(1) and subsection 95(5) of the Management Act are subject to an infringement notice under Part 5 of the *Regulatory Powers (Standard Provisions) Act 2014* (the Regulatory Powers Act).

The Regulatory Powers Act provides for a standard suite of provisions in relation to monitoring and investigation powers, as well as civil penalties, infringement notices, enforceable undertakings and injunctions. The Regulatory Powers Act commenced on 1 October 2014, but only has effect where Commonwealth Acts are drafted or amended to trigger its provisions. The Reform Act amended six Commonwealth Acts to trigger the provisions in Part 5 of the Regulatory Powers Act, including the Management Act.

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- Keep or furnish a logbook in respect of a particular fishery knowing that the logbook contains a statement that is false or misleading in a material particular.

The effect of subsection 95(2) of the Management Act is that a person who uses a Treaty boat to engage in commercial fishing without a Treaty licence with the use of a fishing boat or in relation to a foreign fishing licence commits an offence punishable, on conviction, by a fine not exceeding 250 penalty units.

The Amendment Regulations, together with the amendments to the Management Act by the Reform Act, have the effect that an infringement notice for an alleged contravention of subsection 93(1) or subsection 95(5) of the Management Act will be issued under Part 5 of the Regulatory Powers Act rather than under the Regulations. This would be consistent with the objectives of the Regulatory Powers Act, which are to streamline the regulatory powers across the statute book and ensure greater consistency between different regulatory 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.

Senator the Hon. Jonathon Duniam
Assistant Minister for Forestry and Fisheries
Parliamentary Secretary to the Minister for Agriculture, Drought and Emergency
Management