

REPLACEMENT EXPLANATORY STATEMENT

Issued by the Australian Fisheries Management Authority

Fisheries Management Act 1991

Fisheries Management (Logbooks for Fisheries) Determination 2021

The determination is a legislative instrument for the purposes of the *Legislation Act 2003* and is subject to disallowance and sunseting under sections 42 and 50 of that Act respectively.

Subsection 42(1) of the *Fisheries Management Act 1991* (the Act) provides that ‘AFMA may, by a written determination, in relation to a particular fishery, provide for holders of fishing concessions in respect of that fishery to keep and maintain logbooks containing information in respect of their activities in that fishery’.

Subsection 42(1A) of the Act relevantly provides that ‘without limiting the generality of subsection (1), a determination by AFMA in respect of a particular fishery may cover matters including the form and content of logbooks for that fishery to be kept by the concession holder’.

Subsection 42(1B) provides further detail in relation to the content of a logbook, as:

The content of the logbook kept by the holder of a fishing concession in respect of a particular fishery, and of any return of information from such logbook, may extend to information in relation to:

- (a) the taking of fish under that concession and the sale or disposal of such fish; or*
- (b) the carrying, landing, transshipping or transporting of fish taken under that fishing concession; or*
- (c) the receipt or processing of fish taken under that fishing concession and the sale or disposal of fish so received or processed; or*
- (d) the course, or position at regular intervals, inside or outside the outer limits of the AFZ, of boats to which the fishing concession relates; or*
- (e) any other matter relevant to the fishing concession in that fishery that is specified in the determination.*

The Act does not specify any condition that needs to be met before the power to make the determination may be exercised. Although the Act does not provide a specific power to amend or otherwise vary a determination made under subsection 42(1), this amending determination can be made under subsection 42(1) of the Act by way of subsection 33(3) of the *Acts Interpretation Act 1901*.

Background

The completion of a logbook is a requirement for fishers operating in fisheries managed by the Australian Fisheries Management Authority (AFMA). Logbooks are the primary source of data that AFMA collects on fishing activity. Logbooks provide essential data for the management of fisheries and are the primary source of data on fishing effort and fish catches for stock assessments.

Where a logbook is determined for a particular fishery under subsection 42(1), it becomes a condition of a fishing concession in that fishery that the holder of the fishing concession must comply with the requirements of the determination (see subsection 42(2)).

Logbooks have previously been determined for all fisheries (see the *Logbooks for Fisheries Determination 2018*, which is repealed by this instrument).

Objectives

The instrument amends the form and content of the logbooks to be kept and maintained for concession holders in Commonwealth fisheries. The instrument:

- updates the form and content of all electronic logbooks used in Commonwealth fisheries reflecting technical changes arising from the introduction of updated IT infrastructure.
- extends requirements to report using electronic logbooks to all Commonwealth fishers (excluding those that are formally exempt) in the Eastern Tuna and Billfish Fishery, Western Tuna and Billfish Fishery, Eastern Skipjack Fishery, Western Skipjack Fishery and the Northern Prawn Fishery.
- makes provision for the optional use of electronic logbooks in the Southern Squid Jig Fishery and Bass Strait Central Zone Scallop Fishery.
- makes provision for optional use of electronic Catch Disposal Records (CDRs) in all Commonwealth fisheries where CDRs are used.
- updates the logbook prescribed for the Coral Sea Fishery aquarium sector to the current version being used in the fishery.
- makes other minor technical amendments to aid reading and enforcement.

Consultation with stakeholders

The Office of Best Practice Regulation advised that a Regulation Impact Statement was not required for this Determination (OBPR ID 44634).

With respect to the changes to electronic reporting, extensive consultation has been undertaken with third party electronic logbook vendors and Commonwealth concession holders affected by the updates. This has included written correspondence, advice to Management Advisory Committees and verbal communications. Several fishing businesses have also been involved in the testing phase of the new electronic catch disposal records. There has been a general acceptance of the changes across affected fishers, with the majority of fishers transitioning to the new electronic logbook platforms prior to the proposed implementation dates.

Specific consultation on the formal change to the logbook prescribed for Coral Sea aquarium sector has not been undertaken as the instrument corrects a previous error and prescribes the logbook that fishers are already using in that fishery.

The instrument 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 A.

Determination

The details of this determination are set out below:

- Clause 1** provides that the Determination may be cited as the *Logbooks for Fisheries Determination 2021*.
- Clause 2** provides that the Determination commences on the day after it is registered on the Federal Register of Legislation.
- Clause 3** provides that the Determination is made under section 42 of the Act.
- Clause 4** outlines a number of relevant definitions for the Determination, and notes that certain definitions in the Act similarly apply to the Determination.
- Clause 5** enacts the Schedules to the Determination.
- Clause 6** provides that the Determination may require logbooks to be kept in electronic form (referred to as e-logs) that must have a particular form and content (referred to as electronic schema) (subsection (1)). The electronic schema are ADC EGNET, ADC ELINE, ADC EPRAWN, ADC ESEINE, ADC ETRAWL, ADC SQUID, ADC SCALLOP and ADC ECDR (subsection (2)). The particulars of each electronic schema are prescribed in Schedule 2 (subsection (3)).

Subsection (4) of this clause provides for standard units of measurement that content required to be provided under the electronic schema must be provided in.

Subsection (5) of this clause provides that an e-log must be furnished to AFMA in a form that complies with the specifications published on the AFMA website. As of the date that this instrument commences, the specifications are available at:

www.afma.gov.au

- Clause 7** provides that:
- (1) a reference to a logbook in the determination is a reference to a logbook in an item in column 1 of the table in Schedule 3; and
 - (2) the form and content of the logbooks described in an item in column 1 of the table in Schedule 3 are at the references to the Commonwealth Gazette specified in column 2 of that table.
- Clause 8** provides two exemptions from a requirement to keep and maintain an e-log in the Determination. Those two exemptions apply to the holder of a fishing concession where:
- (1) the holder has fished for a total of less than 50 days in a specified fishery in the current fishing season as well as less than 50 days in the fishery in the preceding fishing season; and/or

- (2) the holder has significant difficulty complying with a requirement to keep and maintain an e-log in accordance with an electronic schema, has provided reasons and evidence of such significant difficulty to an AFMA Licensing Officer, and the holder has received written notice from AFMA that subclause 8(4) of the Determination applies.

Significant difficulty complying with a requirement to keep and maintain an e-log in accordance with an electronic schema may include factors such as:

- a. the physical properties of the boat; for example its small size or lack of covered wheelhouse, preventing the concession holder from being able to effectively protect the e-log equipment from the elements; or
- b. the concession holder having limited IT literacy and as such would either be unable to report, or unable to report accurately, the required information via an e-log.

If an AFMA licensing officer declines to give written notice under subclause 8(4) the concession holder may request a review of the decision by a relevant AFMA Senior Manager.

Clause 9

provides that the holder of a fishing concession authorising the person to fish in the Bass Strait Central Zone Scallop Fishery must keep and maintain specified logbooks, either an e-log or a paper-based logbook, and furnish those logbooks to AFMA:

- for e-logs, before any fish are unloaded from the boat nominated to a fishing concession at the end of a trip (subclause (2)); or
- for paper-based logbooks, within 3 calendar days from the date that fish are unloaded from the boat (subclause (3)).

Clause 10

provides that a holder of a fishing concession authorising the person to fish in the Coral Sea Fishery must keep and maintain specified logbooks, either an e-log or a paper-based logbook depending upon the fishing method being used, and furnish those logbooks to AFMA:

- for e-logs, before any fish are unloaded from the boat nominated to a fishing concession at the end of a trip (subclause (8)); or
- for paper-based logbooks, within 3 calendar days from the date that fish are unloaded from the boat (subclause (9)).

In this clause, a concession holder using line fishing methods must keep and maintain an e-log in a specified electronic schema unless clause 8 applies to the concession holder.

Clause 11 provides that the holder of a fishing concession authorising the person to fish in the Eastern Skipjack Fishery, the Eastern Tuna and Billfish Fishery, the Western Skipjack Fishery or the Western Billfish and Tuna Fishery must keep and maintain specified logbooks, either an e-log or a paper-based logbook depending upon the different fishing method being used, and furnish those logbooks to AFMA:

- for e-logs, before any fish are unloaded from the boat nominated to a fishing concession at the end of a trip (subclause (9)); or
- for paper-based logbooks, within 3 calendar days from the date that fish are unloaded from the boat (subclause (10)).

In this clause, a concession holder using minor line methods only (excluding pole), minor line and gillnet fishing methods and longline fishing methods must keep and maintain an e-log in a specified electronic schema unless clause 8 applies to the concession holder.

Clause 12 provides that a holder of a fishing concession authorising the person to fish in the High Seas Fishery must keep and maintain specified logbooks, either an e-log or a paper-based logbook depending upon the different fishing method being used, and furnish those logbooks to AFMA

- for e-logs, before any fish are unloaded from the boat nominated to a fishing concession at the end of a trip (subclause (5)); or
- for paper-based logbooks, within 3 calendar days from the date that fish are unloaded from the boat (subclause (6)).

In this clause, a concession holder using line fishing methods and trawl fishing methods must keep and maintain an e-log in a specified electronic schema unless clause 8 applies to the concession holder.

Clause 13 provides that a holder of a fishing concession authorising the person to fish in the Northern Prawn Fishery must keep and maintain an e-log in the ADC ETRAWL electronic schema, unless section 8 applies to the holder. The ADC ETRAWL e-log is required to be provided to AFMA before any fish are unloaded from the boat nominated to the fishing concession at the end of a trip (subclause (2)). Where section 8 applies, the holder is required to keep and maintain the Northern and Torres Strait Prawn Fisheries Daily Fishing Log NP16 logbook and furnish that logbook to AFMA within 3 calendar days from the date that fish are unloaded from the boat (subclause (3)).

Clause 14 provides that a holder of a fishing concession authorising the person to fish in the North West Slope Fishery must keep and maintain an e-log in the ADC ETRAWL electronic schema, unless section 8 applies to the holder. The ADC ETRAWL e-log is required to be provided to AFMA before any fish are unloaded from the boat nominated to the fishing concession at the end of a trip (subclause (4)). Where section 8 applies, the holder is required to keep and maintain the North West Slope Daily Fishing Log NWS04

logbook and furnish that logbook to AFMA within 3 calendar days from the date that fish are unloaded from the boat (subclause (5)).

Clause 15 provides that a holder of a fishing concession authorising the person to fish in the Small Pelagic Fishery must keep and maintain specified logbooks, either an e-log or a paper-based logbook depending upon the different fishing method being used, and furnish those logbooks to AFMA:

- for e-logs, before any fish are unloaded from the boat nominated to a fishing concession at the end of a trip (subclause (6)); or
- for paper-based logbooks, within 3 calendar days from the date that fish are unloaded from the boat (subclause (7)).

In this clause, a concession holder using trawl fishing methods must keep and maintain an e-log in the ADC ETRAWL electronic schema unless clause 8 applies to the concession holder.

Clause 16 provides that a holder of a fishing concession authorising the person to fish in the Southern and Eastern Scalefish and Shark Fishery must keep and maintain specified logbooks, either an e-log or a paper-based logbook depending upon the different fishing method being used, and furnish those logbooks to AFMA:

- for e-logs, before any fish are unloaded from the boat nominated to a fishing concession at the end of a trip (subclause (6)); or
- for paper-based logbooks, within 3 calendar days from the date that fish are unloaded from the boat (subclause (7)).

In this clause, a concession holder using gillnet fishing methods, line fishing methods and trawl fishing methods must keep and maintain an e-log in a specified electronic schema unless clause 8 applies to the concession holder.

Clause 17 provides that a holder of a fishing concession authorising the person to fish in the Southern Bluefin Tuna Fishery must keep and maintain specified logbooks, either an e-log or a paper-based logbook depending upon the different fishing method being used, and furnish those logbooks to AFMA:

- for e-logs, before any fish are unloaded from the boat nominated to a fishing concession at the end of a trip (subclause (7)); or
- for paper-based logbooks, within 3 calendar days from the date that fish are unloaded from the boat (subclause (8)).

In this clause, a concession holder using longline and minor line (excluding pole) fishing methods must keep and maintain an e-log in the ADC ELINE electronic schema unless clause 8 applies to the concession holder.

Clause 18 provides that the holder of a fishing concession authorising the person to fish in the Southern Squid Jig Fishery must keep and maintain specified logbooks, either an e-log or a paper-based logbook, and furnish those logbooks to AFMA:

- for e-logs, before any fish are unloaded from the boat nominated to a fishing concession at the end of a trip (subclause (2)); or
- for paper-based logbooks, within 3 calendar days from the date that fish are unloaded from the boat (subclause (3)).

Clause 19 provides that a holder of a fishing concession authorising the person to fish in the Western Deepwater Trawl Fishery must keep and maintain an e-log in the ADC ETRAWL electronic schema, unless section 8 applies to the holder. The ADC ETRAWL e-log is required to be provided to AFMA before any fish are unloaded from the boat nominated to the fishing concession at the end of a trip (subclause (3)). Where section 8 applies, the holder is required to keep and maintain the Western Finfish Trawl Daily Fishing Log SWT01B logbook and furnish that logbook to AFMA within 3 calendar days from the date that fish are unloaded from the boat (subclause (4)).

Clause 20 provides that where:

- (1) the holder of a fishing concession authorises the person to fish in a fishery for which a declaration under subsection 91(1) of the Act is in force; and
- (2) the holder has taken fish from such a declared fishery; and
- (3) the holder transports the fish in more than one consignment;

then the holder is required to keep and maintain the Commonwealth Managed Fisheries Transit form CTF logbook, and furnish that logbook to AFMA within 3 calendar days from the date that fish are unloaded from a boat.

Generally, the records for an entire trip will be captured in logbook entries. This clause applies in the event that fish caught during a trip are separated into different consignments.

Schedule 1 repeals the *Logbooks for Fisheries Determination 2018*.

Schedule 2 provides for the form and content required for e-logs in different electronic schema. Clause 1 of Schedule 2 prescribes form and content that is required for all electronic schema, and clause 2 of Schedule 2 prescribes additional form and content that is required for different electronic schema.

Schedule 3 prescribes the different logbooks and refers to the publication of the form and content required for those logbooks in the Commonwealth Gazette.

Statement of Compatibility with Human Rights

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

Fisheries Management (Logbooks for Fisheries) Determination 2021

This 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 determines the form and content of the logbook to be kept and maintained for concession holders in Commonwealth managed fisheries. The determination provides for the submission of logbooks or the production of a receipt provided by AFMA evidencing the submission of the information contained in the logbook in an electronic format.

Human rights implications

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

Conclusion

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