



# **Fisheries Legislation Amendment (High Seas Fishing Activities and Other Matters) Act 2004**

**Act No. 29 of 2004 as amended**

This compilation was prepared on 18 July 2005

**[This Act was amended by Act No. 100 of 2005]**

**Amendment from Act No. 100 of 2005**

[Schedule 2 (items 17 and 18) amended item 9 of Schedule 2

Schedule 2 (items 17 and 18) commenced immediately after 20 August 2004]

Prepared by the Office of Legislative Drafting and Publishing,  
Attorney-General's Department, Canberra







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# **An Act to amend legislation about fisheries, and for related purposes**

[Assented to 2 April 2004]

The Parliament of Australia enacts:

## **1 Short title**

This Act may be cited as the *Fisheries Legislation Amendment (High Seas Fishing Activities and Other Matters) Act 2004*.

## **2 Commencement**

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day on which this Act receives the Royal Assent.	2 April 2004

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## Section 3

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<b>Commencement information</b>		
<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provision(s)</b>	<b>Commencement</b>	<b>Date/Details</b>
2. Schedule 1	<p>A single day to be fixed by Proclamation.</p> <p>A Proclamation must not specify a day that occurs before the day on which the Compliance Agreement enters into force for Australia.</p> <p>However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which the Compliance Agreement enters into force for Australia, they commence on the first day after the end of that period.</p> <p>If the provision(s) commence in this way, the Minister must announce by notice in the <i>Gazette</i> the day on which the provision(s) commenced.</p>	20 August 2004 (s 2(1); <i>Gazette</i> 2004, S343)
3. Schedule 2	<p>A single day to be fixed by Proclamation.</p> <p>However, if any of the provision(s) do not commence within the period of 6 months beginning on the day on which this Act receives the Royal Assent, they commence on the first day after the end of that period.</p>	20 August 2004 (s 2(1); <i>Gazette</i> 2004, S343)

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or edited in any published version of this Act.

### 3 Schedule(s)

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

## **Schedule 1—Implementation of the Compliance Agreement in Australia**

### *Fisheries Administration Act 1991*

#### **1 Subsection 4(1)**

Insert:

*Australian-flagged boat* has the same meaning as in the *Fisheries Management Act 1991*.

#### **2 Subsection 4(1)**

Insert:

*Compliance Agreement* has the same meaning as in the *Fisheries Management Act 1991*.

#### **3 After paragraph 6(ba)**

Insert:

(bb) to the extent that Australia has obligations:

- (i) under international law; or
- (ii) under the Compliance Agreement or any other international agreement;

in relation to fishing activities by Australian-flagged boats on the high seas that are additional to the obligations referred to in paragraph (ba)—ensuring that those activities are carried on consistently with those first-mentioned obligations; and

#### **4 After paragraph 7(1)(aa)**

Insert:

(ab) to the extent that Australia has obligations:

- (i) under international law; or
- (ii) under the Compliance Agreement or any other international agreement;

in relation to fishing activities by Australian-flagged boats on the high seas that are additional to the obligations referred to

in paragraph (aa)—to devise and implement management regimes in relation to those activities that are consistent with those first-mentioned obligations; and

#### **5 Paragraph 7(1)(ga)**

After “with”, insert “and, where obliged under this Act or any associated law or under international law or international agreements to do so, to give information to,”.

### ***Fisheries Management Act 1991***

#### **6 After paragraph 3(2)(c)**

Insert:

and (d) to the extent that Australia has obligations:

- (i) under international law; or
- (ii) under the Compliance Agreement or any other international agreement;

in relation to fishing activities by Australian-flagged boats on the high seas that are additional to the obligations referred to in paragraph (c)—ensuring that Australia implements those first-mentioned obligations;

#### **7 Subsection 4(1)**

Insert:

***Compliance Agreement*** means the Agreement to promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas done at Rome on 24 November 1993, a copy of the English text of which is set out in Schedule 3.

#### **8 Subsection 4(1)**

Insert:

***FAO*** means the Food and Agriculture Organization of the United Nations.

#### **9 Subsection 4(1)**

Insert:

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***international conservation and management measure*** means a measure to conserve and manage one or more species of living marine resources that is adopted and applied, in accordance with the relevant rules of international law as reflected in the 1982 United Nations Convention on the Law of the Sea:

- (a) by a global, regional or subregional fisheries organisation; or
- (b) by treaty or other international agreement.

Note: The English text of the United Nations Convention on the Law of the Sea is set out in Australian Treaty Series 1994 No. 31.

#### **10 Subsection 7(3) (first sentence)**

Repeal the sentence, substitute:

In relation to fishing activities on waters outside the AFZ, this Act applies:

- (a) to Australian boats and to Australian-flagged boats that are not Australian boats; and
- (b) to all persons (including foreigners) on boats to which paragraph (a) applies.

#### **11 Subsection 8(1)**

Omit all the words before paragraph (a), substitute:

The regulations may provide that, in respect of specified areas outside the AFZ, or in respect of the high seas generally, this Act applies to:

#### **12 Paragraphs 8(1)(c) and (d)**

Repeal the paragraphs, substitute:

- (c) Australian boats and Australian-flagged boats that are not Australian boats; and
- (d) persons on board boats to which paragraph (c) applies.

#### **13 After section 16A**

Insert:

**16B Australian-flagged boats that have previously undermined conservation and management measures**

- (1) Subject to subsection (5), AFMA must not, under this Part, grant a fishing concession authorising the use for fishing activities on the high seas of an Australian-flagged boat that was previously registered in a foreign country and authorised by that country for such fishing activities if:
    - (a) AFMA believes, on reasonable grounds, that the boat is a boat to which subsection (2) or (3) applies; and
    - (b) subsection (4) does not apply.
  - (2) This subsection applies to an Australian-flagged boat that was previously registered in a foreign country that is a party to the Compliance Agreement if:
    - (a) that foreign country has, because the owner or operator of that boat has undermined international conservation and management measures, suspended the authority to use that boat on the high seas for a period and that period has not expired; or
    - (b) that foreign country has, because the owner or operator of that boat has undermined international conservation and management measures, cancelled the authority to use that boat on the high seas and a period of 3 years has not elapsed since that cancellation.
  - (3) This subsection applies to an Australian-flagged boat that was previously registered in a foreign country that is not a party to the Compliance Agreement if, on the basis of information available to it, AFMA is satisfied that:
    - (a) the foreign country has, because the owner or operator of that boat has undermined international conservation and management measures, suspended the authority to use that boat on the high seas for a period and that period has not expired; or
    - (b) the foreign country has, because the owner or operator of that boat has undermined international conservation and management measures, cancelled the authority for use of that boat on the high seas and a period of 3 years has not elapsed since that cancellation.
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- (4) If the person seeking the grant of a fishing concession authorising the use of a boat to which subsection (2) or (3) applies for fishing activities on the high seas satisfies AFMA that the owner or operator of the boat at the time the authority to use it was suspended or cancelled has no present legal, beneficial or financial interest in, or control of, the boat, AFMA may grant such a fishing concession authorising the use of the boat despite the application of subsection (2) or (3).
- (5) Despite subsection (1), AFMA may grant a fishing concession authorising the use of an Australian-flagged boat to which subsection (2) or (3) applies for fishing activities on the high seas if, having regard to the circumstances in which a foreign country's authorisation for the use of that boat for fishing activities on the high seas was suspended or cancelled, AFMA is satisfied that the grant of that fishing concession will not be likely to undermine international conservation and management measures.
- (6) Nothing in this section implies that AFMA may not take other matters into consideration when deciding whether or not to grant a fishing concession authorising the use of an Australian-flagged boat for fishing activities on the high seas.

#### **14 After subsection 22(5)**

Insert:

- (5A) After the commencement of this subsection and without limiting the generality of subsection (5), if a statutory fishing right authorises an Australian-flagged boat to fish on the high seas, AFMA may attach a further condition to that right to the effect that another boat may not be substituted for the first-mentioned boat without AFMA's prior written agreement to the substitution.

#### **15 After subsection 32(1B)**

Insert:

- (1BA) After the commencement of this subsection, a boat may not be nominated under subsection (1A) or (1B):
  - (a) without AFMA's written agreement to the nomination; and
  - (b) for the purposes of a permit to fish in a specified fishery on the high seas—unless it is an Australian-flagged boat.

## 16 At the end of section 39

Add:

- (2) If a fishing concession authorises the use of an Australian-flagged boat for fishing activities in waters wholly or partly beyond the AFZ—the concession is taken, by force of this subsection, to have been cancelled if the boat ceases to be an Australian-flagged boat.

## 17 Section 57

Repeal the section, substitute:

### 57 Offences

A person is guilty of an offence if:

- (a) the person produces or tenders a document in evidence; and
- (b) that document falsely purports to be:
  - (i) an instrument, or a copy of or extract from an instrument, lodged with AFMA under this Part; or
  - (ii) a copy of or extract from an entry in the Register.

Maximum penalty: Imprisonment for 2 years.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Subsections 137.1(1) and 137.2(1) of the *Criminal Code* create offences for the provision of false or misleading documents or information in purported compliance with Commonwealth legislation.

## 18 After Part 4

Insert:

## **Part 4A—Register of vessels authorised to fish on high seas**

### **57A The High Seas Register**

- (1) AFMA must establish and must maintain a separate register, to be called the High Seas Register, containing particulars of all

Australian-flagged boats that are authorised from time to time to engage in fishing activities on the high seas.

- (2) The Register may be kept wholly or partly by use of a computer.
- (3) If the Register is kept wholly or partly by use of a computer:
  - (a) references in this Act to an entry in the Register are to be read as including references to a record of particulars kept by use of the computer and comprising the Register or a part of the Register; and
  - (b) references in this Act to particulars being entered in the Register are to be read as including references to the keeping of a record of those particulars as part of the Register by use of the computer; and
  - (c) references in this Act to the rectification of the Register are to be read as including references to the rectification of the record of particulars kept by use of the computer and comprising the Register or part of the Register.

#### **57B Information to be included in the High Seas Register**

- (1) AFMA must include in the Register:
  - (a) the identifying particulars of each Australian-flagged boat that is authorised by a fishing concession to be used for fishing activities on the high seas; and
  - (b) the name and address of the owner or owners of the boat; and
  - (c) the nature of the fishing concession, how it covers fishing activities on the high seas and the period for which it is granted.
- (2) For the purposes of paragraph (1)(a), the identifying particulars of an Australian-flagged boat are:
  - (a) its name and any previous name or names (if known to AFMA); and
  - (b) its registration number; and
  - (c) its port of registry; and
  - (d) any previous flag under which it has sailed; and
  - (e) its international radio call sign (if any); and
  - (f) the place where, and the period when, it was built; and

- (g) its type; and
  - (h) its length; and
  - (i) such other particulars (if any) as are prescribed.
- (3) Subject to subsections (4) and (5), if any of the particulars required to be recorded under subsection (1) or (2) in relation to an Australian-flagged boat changes, AFMA must, as soon as it becomes aware of that change, alter the Register to record that change.
- (4) If, in relation to an Australian-flagged boat that is included in the Register:
- (a) the fishing concession covering that boat is suspended or the suspension is revoked; or
  - (b) the fishing concession covering that boat is cancelled or ceases to have effect;
- AFMA must record in the Register the fact of that suspension, revocation, cancellation or cessation and also the reason for it.
- (5) If, because of a decision made by AFMA, a Joint Authority, the Administrative Appeals Tribunal or a court, a record made by AFMA under subsection (4) is no longer correct, AFMA must rectify the Register accordingly.
- (6) If an Australian-flagged boat that is included in the Register:
- (a) ceases to be an Australian-flagged boat; or
  - (b) is decommissioned or lost;
- AFMA must record that fact in the Register.

### **57C Notification obligations**

- (1) AFMA must:
- (a) on the establishment of the High Seas Register—notify the FAO of its contents; and
  - (b) whenever there is:
    - (i) an addition to, or a change in the particulars on, the Register; or
    - (ii) a record placed on the Register as required under subsection 57B(4) or (6); or

- (iii) a rectification of the Register as required under subsection 57B(5);  
notify the FAO of that addition, change, record or rectification and of the reason for it.
- (2) If the reason for suspending or cancelling a fishing concession authorising the use of an Australian-flagged boat for fishing activities on the high seas is that AFMA is satisfied that the boat has been used in any activities that undermine international conservation and management measures—the notification to the FAO must specify particulars of the activities giving rise to AFMA’s action.
- (3) If AFMA grants a fishing concession authorising the use of an Australian-flagged boat to fish on the high seas in the circumstances set out in subsection 16B(5), AFMA must notify the FAO:
  - (a) of the fact that the concession has been granted, despite the prior suspension or cancellation of an authority granted by a foreign country; and
  - (b) of all data known to AFMA that is relevant to the identification of the boat and of its current owners and operators; and
  - (c) of all matters relevant to AFMA’s decision to grant the concession.
- (4) If AFMA believes, on reasonable grounds, that a boat flying the flag of a foreign country has been used in any activities that undermine international conservation and management measures:
  - (a) AFMA must notify the foreign country of its belief and provide the foreign country with the evidence that supports its belief; and
  - (b) AFMA may notify the FAO of its belief and give it a summary of the supporting evidence.

### **57D Inspection of the High Seas Register**

- (1) The High Seas Register must be available for inspection in accordance with the regulations and on payment of the prescribed

fee by any person during the hours that AFMA is open for business.

- (2) If the High Seas Register is kept wholly or partly by use of a computer, subsection (1) is taken to have been complied with, to the extent that the Register is so kept, by giving members of the public access to a computer terminal so that they can inspect the Register, either on a screen or in the form of a computer print-out.

### **57E Application of sections 53 to 56**

Sections 53, 54, 55 and 56 apply to the High Seas Register in like manner as they apply to the Register established and maintained under Part 4.

### **57F Offence**

A person is guilty of an offence if:

- (a) the person produces or tenders a document in evidence; and
- (b) that document falsely purports to be:
  - (i) an instrument, or a copy of or extract from an instrument, lodged with AFMA under this Part; or
  - (ii) a copy of or extract from an entry in the High Seas Register.

Maximum penalty: Imprisonment for 2 years.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Subsections 137.1(1) and 137.2(1) of the *Criminal Code* create offences for the provision of false or misleading documents or information in purported compliance with Commonwealth legislation.

## **19 At the end of the Act**

Add:

## **Schedule 3—Compliance Agreement**

Note: See subsection 4(1) (definition of *Compliance Agreement*).

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### **AGREEMENT TO PROMOTE COMPLIANCE**

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**WITH INTERNATIONAL CONSERVATION AND MANAGEMENT  
MEASURES BY FISHING VESSELS ON THE HIGH SEAS**

**PREAMBLE**

**The Parties to this Agreement,**

Recognizing that all States have the right for their nationals to engage in fishing on the high seas, subject to the relevant rules of international law, as reflected in the United Nations Convention on the Law of the Sea,

Further recognizing that, under international law as reflected in the United Nations Convention on the Law of the Sea, all States have the duty to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas,

Acknowledging the right and interest of all States to develop their fishing sectors in accordance with their national policies, and the need to promote cooperation with developing countries to enhance their capabilities to fulfil their obligations under this Agreement,

Recalling that Agenda 21, adopted by the United Nations Conference on Environment and Development, calls upon States to take effective action, consistent with international law, to deter reflagging of vessels by their nationals as a means of avoiding compliance with applicable conservation and management rules for fishing activities on the high seas,

Further recalling that the Declaration of Cancun, adopted by the International Conference on Responsible Fishing, also calls on States to take action in this respect,

Bearing in mind that under Agenda 21, States commit themselves to the conservation and sustainable use of marine living resources on the high seas,

Calling upon States which do not participate in global, regional or subregional fisheries organizations or arrangements to join or, as appropriate, to enter into

understandings with such organizations or with parties to such organizations or arrangements with a view to achieving compliance with international conservation and management measures,

Conscious of the duties of every State to exercise effectively its jurisdiction and control over vessels flying its flag, including fishing vessels and vessels engaged in the transshipment of fish,

Mindful that the practice of flagging or reflagging fishing vessels as a means of avoiding compliance with international conservation and management measures for living marine resources, and the failure of flag States to fulfil their responsibilities with respect to fishing vessels entitled to fly their flag, are among the factors that seriously undermine the effectiveness of such measures,

Realizing that the objective of this Agreement can be achieved through specifying flag States' responsibility in respect of fishing vessels entitled to fly their flags and operating on the high seas, including the authorization by the flag State of such operations, as well as through strengthened international cooperation and increased transparency through the exchange of information on high seas fishing,

Noting that this Agreement will form an integral part of the International Code of Conduct for Responsible Fishing called for in the Declaration of Cancun,

Desiring to conclude an international agreement within the framework of the Food and Agriculture Organization of the United Nations, hereinafter referred to as FAO, under Article XIV of the FAO Constitution,

**Have agreed as follows:**

## **Article I**

### **DEFINITIONS**

For the purposes of this Agreement:

- (a) "fishing vessel" means any vessel used or intended for use for the purposes of the commercial exploitation of living marine

resources, including mother ships and any other vessels directly engaged in such fishing operations;

- (b) “international conservation and management measures” means measures to conserve or manage one or more species of living marine resources that are adopted and applied in accordance with the relevant rules of international law as reflected in the 1982 United Nations Convention on the Law of the Sea. Such measures may be adopted either by global, regional or subregional fisheries organizations, subject to the rights and obligations of their members, or by treaties or other international agreements;
- (c) “length” means
  - (i) for any fishing vessel built after 18 July 1982, 96 percent of the total length on a waterline at 85 percent of the least moulded depth measured from the top of the keel, or the length from the foreside of the stem to the axis of the rudder stock on that waterline, if that be greater. In ships designed with a rake of keel the waterline on which this length is measured shall be parallel to the designed waterline;
  - (ii) for any fishing vessel built before 18 July 1982, registered length as entered on the national register or other record of vessels;
- (d) “record of fishing vessels” means a record of fishing vessels in which are recorded pertinent details of the fishing vessel. It may constitute a separate record for fishing vessels or form part of a general record of vessels;
- (e) “regional economic integration organization” means a regional economic integration organization to which its member States have transferred competence over matters covered by this Agreement, including the authority to make decisions binding on its member States in respect of those matters;

- (f) “vessels entitled to fly its flag” and “vessels entitled to fly the flag of a State”, includes vessels entitled to fly the flag of a member State of a regional economic integration organization.

## Article II

### APPLICATION

1. Subject to the following paragraphs of this Article, this Agreement shall apply to all fishing vessels that are used or intended for fishing on the high seas.
2. A Party may exempt fishing vessels of less than 24 metres in length entitled to fly its flag from the application of this Agreement unless the Party determines that such an exemption would undermine the object and purpose of this Agreement, provided that such exemptions:
  - (a) shall not be granted in respect of fishing vessels operating in fishing regions referred to in paragraph 3 below, other than fishing vessels that are entitled to fly the flag of a coastal State of that fishing region; and
  - (b) shall not apply to the obligations undertaken by a Party under paragraph 1 of Article III, or paragraph 7 of Article VI of this Agreement.
3. Without prejudice to the provisions of paragraph 2 above, in any fishing region where bordering coastal States have not yet declared exclusive economic zones, or equivalent zones of national jurisdiction over fisheries, such coastal States as are Parties to this Agreement may agree, either directly or through appropriate regional fisheries organizations, to establish a minimum length of fishing vessels below which this Agreement shall not apply in respect of fishing vessels flying the flag of any such coastal State and operating exclusively in such fishing region.

## Article III

### FLAG STATE RESPONSIBILITY

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1. (a) Each Party shall take such measures as may be necessary to ensure that fishing vessels entitled to fly its flag do not engage in any activity that undermines the effectiveness of international conservation and management measures.
  - (b) In the event that a Party has, pursuant to paragraph 2 of Article II, granted an exemption for fishing vessels of less than 24 metres in length entitled to fly its flag from the application of other provisions of this Agreement, such Party shall nevertheless take effective measures in respect of any such fishing vessel that undermines the effectiveness of international conservation and management measures. These measures shall be such as to ensure that the fishing vessel ceases to engage in activities that undermine the effectiveness of the international conservation and management measures.
  2. In particular, no Party shall allow any fishing vessel entitled to fly its flag to be used for fishing on the high seas unless it has been authorized to be so used by the appropriate authority or authorities of that Party. A fishing vessel so authorized shall fish in accordance with the conditions of the authorization.
  3. No Party shall authorize any fishing vessel entitled to fly its flag to be used for fishing on the high seas unless the Party is satisfied that it is able, taking into account the links that exist between it and the fishing vessel concerned, to exercise effectively its responsibilities under this Agreement in respect of that fishing vessel.
  4. Where a fishing vessel that has been authorized to be used for fishing on the high seas by a Party ceases to be entitled to fly the flag of that Party, the authorization to fish on the high seas shall be deemed to have been cancelled.
  5. (a) No Party shall authorize any fishing vessel previously registered in the territory of another Party that has undermined the effectiveness of international conservation and management measures to be used for fishing on the high seas, unless it is satisfied that
    - (i) any period of suspension by another Party of an authorization for such fishing vessel to be used for fishing on the high seas has expired; and
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- (ii) no authorization for such fishing vessel to be used for fishing on the high seas has been withdrawn by another Party within the last three years.
  - (b) The provisions of subparagraph (a) above shall also apply in respect of fishing vessels previously registered in the territory of a State which is not a Party to this Agreement, provided that sufficient information is available to the Party concerned on the circumstances in which the authorization to fish was suspended or withdrawn.
  - (c) The provisions of subparagraphs (a) and (b) shall not apply where the ownership of the fishing vessel has subsequently changed, and the new owner has provided sufficient evidence demonstrating that the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the fishing vessel.
  - (d) Notwithstanding the provisions of subparagraphs (a) and (b) above, a Party may authorize a fishing vessel, to which those subparagraphs would otherwise apply, to be used for fishing on the high seas, where the Party concerned, after having taken into account all relevant facts, including the circumstances in which the fishing authorization has been withdrawn by the other Party or State, has determined that to grant an authorization to use the vessel for fishing on the high seas would not undermine the object and purpose of this Agreement.
6. Each party shall ensure that all fishing vessels entitled to fly its flag that it has entered in the record maintained under Article IV are marked in such a way that they can be readily identified in accordance with generally accepted standards, such as the FAO Standard Specifications for the Marking and Identification of Fishing Vessels.
7. Each Party shall ensure that each fishing vessel entitled to fly its flag shall provide it with such information on its operations as may be necessary to enable the Party to fulfil its obligations under this Agreement, including in particular information pertaining to the area of its fishing operations and to its catches and landings.

8. Each Party shall take enforcement measures in respect of fishing vessels entitled to fly its flag which act in contravention of the provisions of this Agreement, including, where appropriate, making the contravention of such provisions an offence under national legislation. Sanctions applicable in respect of such contraventions shall be of sufficient gravity as to be effective in securing compliance with the requirements of this Agreement and to deprive offenders of the benefits accruing from their illegal activities. Such sanctions shall, for serious offences, include refusal, suspension or withdrawal of the authorization to fish on the high seas.

#### **Article IV**

##### **RECORDS OF FISHING VESSELS**

Each Party shall, for the purposes of this Agreement, maintain a record of fishing vessels entitled to fly its flag and authorized to be used for fishing on the high seas, and shall take such measures as may be necessary to ensure that all such fishing vessels are entered in that record.

#### **Article V**

##### **INTERNATIONAL COOPERATION**

1. The Parties shall cooperate as appropriate in the implementation of this Agreement, and shall, in particular, exchange information, including evidentiary material, relating to activities of fishing vessels in order to assist the flag State in identifying those fishing vessels flying its flag reported to have engaged in activities undermining international conservation and management measures, so as to fulfil its obligations under Article III.

2. When a fishing vessel is voluntarily in the port of a Party other than its flag State, that Party, where it has reasonable grounds for believing that the fishing vessel has been used for an activity that undermines the effectiveness of international conservation and management measures, shall promptly notify the flag State accordingly. Parties may make arrangements regarding the undertaking by port States of such investigatory measures as may be considered necessary to establish whether the fishing vessel has indeed been used contrary to the provisions of this Agreement.

3. The Parties shall, when and as appropriate, enter into cooperative agreements or arrangements of mutual assistance on a global, regional, subregional or bilateral basis so as to promote the achievement of the objectives of this Agreement.

## **Article VI**

### **EXCHANGE OF INFORMATION**

1. Each Party shall make readily available to FAO the following information with respect to each fishing vessel entered in the record required to be maintained under Article IV:

- (a) name of fishing vessel, registration number, previous names (if known), and port of registry;
- (b) previous flag (if any);
- (c) International Radio Call Sign (if any);
- (d) name and address of owner or owners;
- (e) where and when built;
- (f) type of vessel;
- (g) length.

2. Each Party shall, to the extent practicable, make available to FAO the following additional information with respect to each fishing vessel entered in the record required to be maintained under Article IV:

- (a) name and address of operator (manager) or operators (managers) (if any);
- (b) type of fishing method or methods;
- (c) moulded depth;

- (d) beam;
- (e) gross register tonnage;
- (f) power of main engine or engines.

3. Each Party shall promptly notify to FAO any modifications to the information listed in paragraphs 1 and 2 of this Article.

4. FAO shall circulate periodically the information provided under paragraphs 1, 2, and 3 of this Article to all Parties, and, on request, individually to any Party. FAO shall also, subject to any restrictions imposed by the Party concerned regarding the distribution of information, provide such information on request individually to any global, regional or subregional fisheries organization.

5. Each Party shall also promptly inform FAO of -

- (a) any additions to the record;
- (b) any deletions from the record by reason of -
  - (i) the voluntary relinquishment or non-renewal of the fishing authorization by the fishing vessel owner or operator;
  - (ii) the withdrawal of the fishing authorization issued in respect of the fishing vessel under paragraph 8 of Article III;
  - (iii) the fact that the fishing vessel concerned is no longer entitled to fly its flag;
  - (iv) the scrapping, decommissioning or loss of the fishing vessel concerned; or
  - (v) any other reason.

6. Where information is given to FAO under paragraph 5 (b) above, the Party concerned shall specify which of the reasons listed in that paragraph is applicable.
7. Each Party shall inform FAO of
- (a) any exemption it has granted under paragraph 2 of Article II, the number and type of fishing vessel involved and the geographical areas in which such fishing vessels operate; and
  - (b) any agreement reached under paragraph 3 of Article II.
8. (a) Each Party shall report promptly to FAO all relevant information regarding any activities of fishing vessels flying its flag that undermine the effectiveness of international conservation and management measures, including the identity of the fishing vessel or vessels involved and measures imposed by the Party in respect of such activities. Reports on measures imposed by a Party may be subject to such limitations as may be required by national legislation with respect to confidentiality, including, in particular, confidentiality regarding measures that are not yet final.
- (b) Each Party, where it has reasonable grounds to believe that a fishing vessel not entitled to fly its flag has engaged in any activity that undermines the effectiveness of international conservation and management measures, shall draw this to the attention of the flag State concerned and may, as appropriate, draw it to the attention of FAO. It shall provide the flag State with full supporting evidence and may provide FAO with a summary of such evidence. FAO shall not circulate such information until such time as the flag State has had an opportunity to comment on the allegation and evidence submitted, or to object as the case may be.
9. Each Party shall inform FAO of any cases where the Party, pursuant to paragraph 5 (d) of Article III, has granted an authorization notwithstanding the provisions of paragraph 5 (a) or 5 (b) of Article III. The information shall include pertinent data permitting the identification of the fishing vessel and the
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owner or operator and, as appropriate, any other information relevant to the Party's decision.

10. FAO shall circulate promptly the information provided under paragraphs 5, 6, 7, 8 and 9 of this Article to all Parties, and, on request, individually to any Party. FAO shall also, subject to any restrictions imposed by the Party concerned regarding the distribution of information, provide such information promptly on request individually to any global, regional or subregional fisheries organization.

11. The Parties shall exchange information relating to the implementation of this Agreement, including through FAO and other appropriate global, regional and subregional fisheries organizations.

### **Article VII**

#### **COOPERATION WITH DEVELOPING COUNTRIES**

The Parties shall cooperate, at a global, regional, subregional or bilateral level, and, as appropriate, with the support of FAO and other international or regional organizations, to provide assistance, including technical assistance, to Parties that are developing countries in order to assist them in fulfilling their obligations under this Agreement.

### **Article VIII**

#### **NON-PARTIES**

1. The Parties shall encourage any State not party to this Agreement to accept this Agreement and shall encourage any non-Party to adopt laws and regulations consistent with the provisions of this Agreement.

2. The Parties shall cooperate in a manner consistent with this Agreement and with international law to the end that fishing vessels entitled to fly the flags of non-Parties do not engage in activities that undermine the effectiveness of international conservation and management measures.

3. The Parties shall exchange information amongst themselves, either directly or through FAO, with respect to activities of fishing vessels flying the flags of non-Parties that undermine the effectiveness of international conservation and management measures.

## **Article IX**

### **SETTLEMENT OF DISPUTES**

1. Any Party may seek consultations with any other Party or Parties on any dispute with regard to the interpretation or application of the provisions of this Agreement with a view to reaching a mutually satisfactory solution as soon as possible.

2. In the event that the dispute is not resolved through these consultations within a reasonable period of time, the Parties in question shall consult among themselves as soon as possible with a view to having the dispute settled by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.

3. Any dispute of this character not so resolved shall, with the consent of all Parties to the dispute, be referred for settlement to the International Court of Justice, to the International Tribunal for the Law of the Sea upon entry into force of the 1982 United Nations Convention on the Law of the Sea or to arbitration. In the case of failure to reach agreement on referral to the International Court of Justice, to the International Tribunal for the Law of the Sea or to arbitration, the Parties shall continue to consult and cooperate with a view to reaching settlement of the dispute in accordance with the rules of international law relating to the conservation of living marine resources.

## **Article X**

### **ACCEPTANCE**

1. This Agreement shall be open to acceptance by any Member or Associate Member of FAO, and to any non-member State that is a member of the United Nations, or of any of the specialized agencies of the United Nations or of the International Atomic Energy Agency.

2. Acceptance of this Agreement shall be effected by the deposit of an instrument of acceptance with the Director-General of FAO, hereinafter referred to as the Director-General.

3. The Director-General shall inform all Parties, all Members and Associate Members of FAO and the Secretary-General of the United Nations of all instruments of acceptance received.

4. When a regional economic integration organization becomes a Party to this Agreement, such regional economic integration organization shall, in accordance with the provisions of Article II.7 of the FAO Constitution, as appropriate, notify such modifications or clarifications to its declaration of competence submitted under Article II.5 of the FAO Constitution as may be necessary in light of its acceptance of this Agreement. Any Party to this Agreement may, at any time, request a regional economic integration organization that is a Party to this Agreement to provide information as to which, as between the regional economic integration organization and its Member States, is responsible for the implementation of any particular matter covered by this Agreement. The regional economic integration organization shall provide this information within a reasonable time.

#### **Article XI**

##### **ENTRY INTO FORCE**

1. This Agreement shall enter into force as from the date of receipt by the Director-General of the twenty-fifth instrument of acceptance.

2. For the purpose of this Article, an instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such an organization.

#### **Article XII**

##### **RESERVATIONS**

Acceptance of this Agreement may be made subject to reservations which shall become effective only upon unanimous acceptance by all Parties to this Agreement. The Director-General shall notify forthwith all Parties of any reservation. Parties not having replied within three months from the date of the notification shall be deemed to have accepted the reservation. Failing such acceptance, the State or regional economic integration organization making the reservation shall not become a Party to this Agreement.

### **Article XIII**

#### **AMENDMENTS**

1. Any proposal by a Party for the amendment of this Agreement shall be communicated to the Director-General.
2. Any proposed amendment of this Agreement received by the Director-General from a Party shall be presented to a regular or special session of the Conference for approval and, if the amendment involves important technical changes or imposes additional obligations on the Parties, it shall be considered by an advisory committee of specialists convened by FAO prior to the Conference.
3. Notice of any proposed amendment of this Agreement shall be transmitted to the Parties by the Director-General not later than the time when the agenda of the session of the Conference at which the matter is to be considered is dispatched.
4. Any such proposed amendment of this Agreement shall require the approval of the Conference and shall come into force as from the thirtieth day after acceptance by two-thirds of the Parties. Amendments involving new obligations for Parties, however, shall come into force in respect of each Party only on acceptance by it and as from the thirtieth day after such acceptance. Any amendment shall be deemed to involve new obligations for Parties unless the Conference, in approving the amendment, decides otherwise by consensus.
5. The instruments of acceptance of amendments involving new obligations shall be deposited with the Director-General, who shall inform all Parties of the receipt of acceptance and the entry into force of amendments.

6. For the purpose of this Article, an instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such an organization.

#### **Article XIV**

#### **WITHDRAWAL**

Any Party may withdraw from this Agreement at any time after the expiry of two years from the date upon which the Agreement entered into force with respect to that Party, by giving written notice of such withdrawal to the Director-General who shall immediately inform all the Parties and the Members and Associate Members of FAO of such withdrawal. Withdrawal shall become effective at the end of the calendar year following that in which the notice of withdrawal has been received by the Director-General.

#### **Article XV**

#### **DUTIES OF THE DEPOSITARY**

The Director-General shall be the Depositary of this Agreement. The Depositary shall:

- (a) send certified copies of this Agreement to each Member and Associate Member of FAO and to such non-member States as may become party to this Agreement;
- (b) arrange for the registration of this Agreement, upon its entry into force, with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations;
- (c) inform each Member and Associate Member of FAO and any non-member States as may become Party to this Agreement of:
  - (i) instruments of acceptance deposited in accordance with Article X;

- (ii) the date of entry into force of this Agreement in accordance with Article XI;
- (iii) proposals for and the entry into force of amendments to this Agreement in accordance with Article XIII;
- (iv) withdrawals from this Agreement pursuant to Article XIV.

**Article XVI**

**AUTHENTIC TEXTS**

The Arabic, Chinese, English, French, and Spanish texts of this Agreement are equally authentic.

## **Schedule 2—Miscellaneous amendments of the Fisheries Management Act 1991**

### **Part 1—Logbooks for fisheries**

#### **1 Subsection 42(1)**

Repeal the subsection, substitute:

- (1) 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.
- (1A) Without limiting the generality of subsection (1), a determination by AFMA in respect of a particular fishery may cover matters including:
  - (a) the form and content of logbooks for that fishery to be kept by the concession holder; and
  - (b) the secure storage of such logbooks; and
  - (c) the period for which retention of such logbooks is required; and
  - (d) the furnishing to AFMA of such logbooks or of returns of information contained in them.
- (1B) 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 a logbook, may extend to information in relation to:
  - (a) the taking of fish under that fishing 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.
- (1C) The obligations arising under this section from a determination made under subsection (1) in relation to a particular fishery override any provision to the contrary, in force immediately before the making of the determination:
- (a) in a plan of management for that fishery; or
  - (b) in a condition to which a fishing concession in respect of that fishery is subject.

## **2 Subsection 42(2)**

Omit “regulations made by virtue of”, substitute “determination made under”.

## **3 At the end of section 42**

Add:

- (3) A determination made under subsection (1) is a disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

Note: The heading to section 42 is replaced by the heading “**Determinations relating to logbooks and the furnishing of returns**”.

## **4 Paragraph 95(1)(g)**

Repeal the paragraph, substitute:

- (g) keep or purport to keep a logbook, or furnish or purport to furnish a logbook or return, relating to a matter specified in subsection 42(1B) knowing that the logbook so kept or the logbook or return so furnished contains a statement in respect of that matter that is false or misleading in a material particular.

## **5 Subsection 106(2A)**

Omit all the words after paragraph (b), substitute:

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in respect of a logbook kept or purported to be kept, or a logbook or return furnished or purported to be furnished, under section 42 of this Act, the court may order the forfeiture of all or any of the following:

- (c) if the logbook or return related, in whole or in part, to the taking, carrying, landing, transshipping, transporting or processing of fish—any boat employed in that activity;
- (d) if the logbook or return related, in whole or in part, to the taking or processing of fish—any net, trap or equipment on board a boat employed in that taking or processing for purposes related to that taking or processing;
- (e) if the logbook or return related, in whole or in part, to the taking, carrying, landing, transshipping, transporting or processing of fish—any fish on board a boat employed in that activity that were, or should have been, covered by the logbook or return;
- (f) if the logbook or return related, in whole or in part, to the taking, carrying, landing, transshipping, transporting, receipt or processing of fish—the proceeds of the sale of the fish that were, or should have been, covered by the logbook or return.

## **6 Subsection 167(1)**

Repeal the subsection, substitute:

- (1) AFMA must cause to be compiled, from logbooks or returns furnished under section 42 or from other sources, statistics in relation to matters mentioned in subsection 42(1B).
- (1A) AMFA may publish or make available, in any way it thinks fit, any of the statistics compiled under subsection (1).

## **7 Paragraph 168(2)(i)**

Omit “regulations”, substitute “a determination”.

## **8 Saving provision**

Despite the amendments of section 42 of the *Fisheries Management Act 1991* made by this Schedule, any condition attaching to a fishing concession:

- (a) that was in force immediately before the making of a determination under section 42 as amended by this Act in respect of a particular fishery; and
- (b) that relates:
  - (i) to the keeping of logbooks concerning fishing activities in that fishery undertaken before the making of that determination; or
  - (ii) to the production of those logbooks to AFMA;

continues to apply, on and after the making of that determination, in relation to those fishing activities as if the amendments had not been made.

## **Part 2—Power to stop and detain vehicles and aircraft**

### **9 Paragraph 84(1)(e)**

Omit “with the consent of the owner or the person in charge of the vehicle or aircraft or under a warrant issued under section 85”, substitute “and subject to subsections (1AA) and (1AB)”.

### **10 After subsection 84(1)**

Insert:

(1AA) Subject to subsection (1AB), the powers of an officer under paragraph (1)(e) in respect of any vehicle or aircraft must not be exercised without either:

- (a) the consent of the owner or person in charge of the vehicle or aircraft to the exercise of those powers; or
- (b) the obtaining of a warrant under section 85 or 86 authorising the exercise of those powers.

(1AB) If:

- (a) the owner or person in charge of a vehicle or aircraft referred to in subsection (1AA) refuses to consent to the exercise by an officer of powers under paragraph (1)(e); and
- (b) an officer seeking to exercise those powers believes, on reasonable grounds:
  - (i) that there is in the vehicle or aircraft anything that may afford evidence of an offence against this Act; and
  - (ii) that the delay that would occur if an application for a warrant were made (either in person or under section 86) would frustrate the effective execution of the warrant;

those powers may be exercised without a warrant but, if that is done, the officer must:

- (c) if it is practicable to do so, notify the owner or person in charge of a vehicle or aircraft that the officer will be exercising powers under paragraph (1)(e) without a warrant

and that the reasons for the exercise of those powers may be requested; and

- (d) as soon as reasonably practicable, record the reasons for the exercise of those powers without a warrant; and
- (e) upon request by the owner or person in charge of the vehicle or aircraft—provide the record of those reasons to the person affected by the exercise of those powers.

## **Part 3—Charter fishing**

### **11 Subsection 4(5)**

Repeal the subsection, substitute:

- (5) For the purposes of this Act, a charter boat, the person in charge of the boat and any other person fishing from the boat are taken to be engaged in recreational fishing.

### **12 Paragraph 10(3)(a)**

After “recreational fishing” (first occurring), insert “(whether from a charter boat or otherwise) that is”.

### **13 Paragraph 10(3)(b)**

After “recreational fishing” (first occurring), insert “(whether from a charter boat or otherwise) that is”.

### **14 Paragraph 15A(1)(b)**

Repeal the paragraph, substitute:

- (b) takes the fish in the course of recreational fishing (whether from a charter boat or otherwise).

### **15 Paragraphs 32(4)(b) and (c)**

Repeal the paragraphs, substitute:

- (b) for recreational fishing generally (whether from a charter boat or otherwise); or

## **Part 4—Amendment of the Treaty**

### **16 Subsection 4(7)**

After “the Treaty” insert “that alters the Treaty area that is within the AFZ or that alters a condition of a Treaty licence in a way that affects fishing by Treaty boats within the AFZ under a Treaty licence”.