



# **Antarctic Marine Living Resources Conservation Regulations 1994**

**Statutory Rules No. 345, 1994**

made under the

*Antarctic Marine Living Resources Conservation Act 1981*

## **Compilation No. 4**

**Compilation date:** 23 September 2015

**Includes amendments up to:** SLI No. 160, 2015

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Prepared by the Office of Parliamentary Counsel, Canberra

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## About this compilation

### This compilation

This is a compilation of the *Antarctic Marine Living Resources Conservation Regulations 1994* that shows the text of the law as amended and in force on 23 September 2015 (the *compilation date*).

This compilation was prepared on 1 October 2015.

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on ComLaw ([www.comlaw.gov.au](http://www.comlaw.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on ComLaw for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on ComLaw for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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## Part 1—Preliminary

### 1 Name of Regulations

These Regulations are the *Antarctic Marine Living Resources Conservation Regulations 1994*.

### 2 Object of the Regulations

The object of these Regulations is to implement obligations to which Australia is subject under the Convention.

Note: The Convention is the Convention on the Conservation of Antarctic Marine Living Resources: see subsection 3(1) of the Act.

### 3 Interpretation

In these Regulations, unless the contrary intention appears:

**CCAMLR** means the Commission for the Conservation of Antarctic Marine Living Resources.

**CCAMLR Convention Area** means the Convention area.

**CEMP site** means a monitoring site:

- (a) established for the purposes of the Ecosystem Monitoring Program conducted by the parties to the Convention; and
- (b) the management plan for which has been adopted by the Commission for the Conservation of Antarctic Marine Living Resources in accordance with Conservation Measure 18/IX:
  - (i) that was adopted by the Commission; and
  - (ii) that became binding on Australia on 7 May 1991; and
  - (iii) as in force on the day on which these Regulations commence.

**entry permit** means a permit given under subregulation 6(1).

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***foreign permit*** means a permit issued to a person, by another Contracting Party, that allows the person to enter the site.

***permit holder*** means a person to whom an entry permit is given.

***the Act*** means the *Antarctic Marine Living Resources Conservation Act 1981*.

Note: The initials ***CEMP*** refer to the Convention on the Conservation of Antarctic Marine Living Resources Ecosystem Monitoring Program.

## **Part 2—Permits under subsection 9(1) of the Act**

### **4 Acts not authorised by a permit**

For the purposes of subsection 9(2) of the Act, an act that would contravene a conservation measure must not be authorised in a permit issued under subsection 9(1) of the Act.

Note: Conservation measures are certain measures adopted by the Commission for the Conservation of Antarctic Marine Living Resources, and accepted by Australia, from time to time (see the definition of *conservation measures* in subsection 3(1) of the Act).

## Part 3—Entry to CEMP sites

### 5 Application for an entry permit

- (1) A person may apply in writing to the Minister for an entry permit relating to 1 or more CEMP sites referred to in the application.
- (2) If the applicant wishes to enter a CEMP site, he or she must identify in the application:
  - (a) the CEMP site; and
  - (b) the individuals under the applicant's control whom the applicant expects to enter the CEMP site.
- (3) If the applicant wishes to carry out an activity at a CEMP site, he or she must identify in the application:
  - (a) the activity; and
  - (b) the CEMP site; and
  - (c) the individuals under the applicant's control whom the applicant expects to enter the CEMP site to carry out the activity.

### 6 Issue of an entry permit

- (1) The Minister may give an entry permit to the applicant under subregulation 5(1).
- (2) Before the Minister gives an entry permit, he or she must have regard to:
  - (a) the objectives of the Act; and
  - (b) the objective and principles of the Convention; and
  - (c) the objectives of the conservation measures; and
  - (d) the requirements of the management plan in force in relation to each CEMP site named in the application.
- (3) An entry permit must:
  - (a) be in writing; and

- (b) identify each CEMP site to which it applies; and
  - (c) identify, for each CEMP site, the activities (if any) that the permit holder is authorised to carry out at the site; and
  - (d) identify, for each CEMP site, the individuals (if any) under the permit holder's control who are authorised to enter the site; and
  - (e) state the period for which it is in force.
- (4) An entry permit remains in force for the period stated in the permit.
- (5) The Minister must enter details of an entry permit, and any conditions to which the permit is subject under subregulation 7(2), in the register of permits kept under subsection 9(7) of the Act.

### **7 Conditions to which an entry permit is subject**

- (1) An entry permit is subject to the following conditions:
- (a) the activities that the permit holder and the individuals identified in the permit carry out at a CEMP site to which the permit applies must:
    - (i) comply with the management plan applicable to the CEMP site; and
    - (ii) avoid affecting adversely the effectiveness of the management plan;
  - (b) if an activity identified in the permit relates to a matter to which a conservation measure relates, the permit holder and the individuals identified in the permit must comply with the conservation measure.

Note: The conservation measures that must be complied with are certain measures adopted by the Commission for the Conservation of Antarctic Marine Living Resources, and accepted by Australia, from time to time (see the definition of *conservation measures* in subsection 3(1) of the Act).

- (2) The Minister may make an entry permit subject to conditions in addition to those set out in subregulation (1), including conditions relating to:

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- (a) the times and places at which the permit holder or an individual identified in the permit may enter a CEMP site; or
- (b) the activities that the permit holder or an individual identified in the permit is authorised to carry out at a CEMP site; or
- (c) the activities that the permit holder or an individual identified in the permit is not to carry out at a CEMP site; or
- (d) giving the Minister information relating to:
  - (i) the permit holder's compliance with the permit; or
  - (ii) the condition of the CEMP site to which the permit relates; or
  - (iii) the work undertaken by the permit holder and the individuals identified in the permit at the CEMP site to which the permit relates.

### 8 Amendment of an entry permit

- (1) The Minister may amend an entry permit:
  - (a) by adding conditions to the permit; or
  - (b) by varying or revoking the conditions to which the permit is subject; or
  - (c) by varying the list of persons to whom the permit applies; or
  - (d) by varying the number of sites that an individual identified in the permit may enter; or
  - (e) by varying the description of the activities to which the permit applies; or
  - (f) by varying the period for which the permit is in force.
- (2) Before the Minister acts under subregulation (1), he or she must have regard to:
  - (a) the objectives of the Act; and
  - (b) the objective and principles of the Convention; and
  - (c) the objectives of the conservation measures; and
  - (d) the requirements of the management plan in force in relation to each CEMP site to which the permit applies.
- (3) The Minister may act under subregulation (1):

- (a) at any time; and
  - (b) without the agreement of the permit holder; and
  - (c) if he or she considers it necessary:
    - (i) to ensure the protection of a CEMP site; or
    - (ii) for a reason relating to a purpose for which the permit was given; or
    - (iii) to ensure that the objectives of the Act and the objective and principles of the Convention are met.
- (4) If the Minister acts under subregulation (1), he or she must enter the details of the addition or variation in the register of permits kept under subsection 9(7) of the Act.

### **9 Suspension or revocation of an entry permit**

- (1) The Minister may suspend or revoke an entry permit if he or she believes on reasonable grounds that the permit holder, or an individual identified in the permit, has contravened a condition to which the permit is subject.
- (2) The Minister may suspend or revoke an entry permit if the permit holder, or an individual identified in the permit, is convicted of an offence against:
  - (a) the Act; or
  - (b) these Regulations; or
  - (c) the *Antarctic Mining Prohibition Act 1991*; or
  - (d) the *Antarctic Treaty (Environment Protection Act) 1980*; or
  - (e) regulations made under the *Antarctic Treaty (Environment Protection Act) 1980*; or
  - (f) the *Continental Shelf (Living Natural Resources) Act 1968*; or
  - (g) the *Environment Protection and Management Ordinance 1987* of the Territory of Heard Island and McDonald Islands; or
  - (h) the *Fisheries Management Act 1991*; or
  - (i) the *Whale Protection Act 1980*.

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- (3) The Minister may suspend or revoke an entry permit if he or she believes on reasonable grounds that an act that the permit holder, or an individual identified in the permit, is likely to carry out at a CEMP site may:
  - (a) conflict with the management plan applicable to the site; or
  - (b) affect adversely the effectiveness of the management plan.
- (4) Before the Minister takes action under this regulation, he or she must have regard to:
  - (a) the objectives of the Act; and
  - (b) the objective and principles of the Convention; and
  - (c) the objectives of the conservation measures; and
  - (d) the requirements of the management plan in force in relation to each CEMP site to which the permit applies.
- (5) The Minister may:
  - (a) revoke the suspension of the permit; or
  - (b) revoke the permit while it is suspended.
- (6) If the Minister suspends or revokes an entry permit, he or she must enter the details of the action in the register of permits kept under subsection 9(7) of the Act.
- (7) The Minister must not suspend the permit for a continuous period longer than 90 days.
- (8) The period for which the permit is expressed to operate includes a period during which the permit is suspended.

### **10 Review of decisions**

Application may be made to the Administrative Appeals Tribunal for the review of a decision of the Minister:

- (a) refusing to give an entry permit under subregulation 6(1); or
- (b) relating to the number of CEMP sites identified under paragraph 6(3)(b) in an entry permit; or
- (c) imposing conditions on an entry permit under subregulation 7(2); or

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- (d) adding conditions to an entry permit, or varying the conditions to which the permit is subject; or
- (e) varying a matter under paragraph 8(1)(c), (d), (e) or (f); or
- (f) suspending or revoking an entry permit under regulation 9.

**11 Offences**

- (1) A person must not enter a CEMP site.

Penalty: 10 penalty units.

- (2) However, it is a defence to a prosecution under subregulation (1) if the person:
  - (a) is a permit holder; or
  - (b) is identified in an entry permit as a person under the permit holder's control; or
  - (c) holds a foreign permit in relation to the site.

Note: A defendant bears an evidential burden in relation to the matters mentioned in paragraphs 2(a), (b) and (c) (see section 13.3 of the *Criminal Code*).

- (3) If an entry permit is issued in relation to a CEMP site:
  - (a) the permit holder must not, unless he or she has a reasonable excuse, act in a manner that:
    - (i) is inconsistent with the requirements of the management plan in force in relation to the site; or
    - (ii) affects adversely the effectiveness of the management plan; and
  - (b) an individual identified in the permit as an individual under the permit holder's control must not, unless he or she has a reasonable excuse, act in a manner that:
    - (i) is inconsistent with the requirements of the management plan in force in relation to the site; or
    - (ii) affects adversely the effectiveness of the management plan; and
  - (c) the permit holder must not, unless he or she has a reasonable excuse, allow a person identified in the permit as a person

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under the permit holder's control to act in a manner described in paragraph (b).

Penalty: 10 penalty units.

Note: A defendant bears an evidential burden in relation to whether or not he or she had a reasonable excuse (see section 13.3 of the *Criminal Code*).

- (4) A person who holds a permit, or an individual identified in a permit as an individual under the permit holder's control, must not engage in conduct that contravenes a condition of the permit.

Penalty: 10 penalty units.

## **12 Communications**

For the purposes of these Regulations, a person may give a document, or a copy of a document, to another person by communications carried by means of guided or unguided electromagnetic energy or both.

## **Part 4—Application, savings and transitional provisions**

### **13 Transitional—amendments made by the *Antarctic Marine Living Resources Conservation Amendment (Conservation Measures) Regulation 2015***

A permit under subsection 9(1) of the Act that was in force immediately before the commencement of Schedule 1 to the *Antarctic Marine Living Resources Conservation Amendment (Conservation Measures) Regulation 2015* does not, on and after that commencement, authorise a person to do an act that would contravene a conservation measure, despite any terms or conditions to which the permit was subject immediately before that commencement.

## Endnotes

### Endnote 1—About the endnotes

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## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Endnotes about misdescribed amendments and other matters are included in a compilation only as necessary.

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

## Endnote 2—Abbreviation key

**Endnote 2—Abbreviation key**

A = Act	o = order(s)
ad = added or inserted	Ord = Ordinance
am = amended	orig = original
amdt = amendment	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
c = clause(s)	pres = present
C[x] = Compilation No. x	prev = previous
Ch = Chapter(s)	(prev...) = previously
def = definition(s)	Pt = Part(s)
Dict = Dictionary	r = regulation(s)/rule(s)
disallowed = disallowed by Parliament	Reg = Regulation/Regulations
Div = Division(s)	reloc = relocated
exp = expires/expired or ceases/ceased to have effect	renum = renumbered
F = Federal Register of Legislative Instruments	rep = repealed
gaz = gazette	rs = repealed and substituted
LI = Legislative Instrument	s = section(s)/subsection(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sch = Schedule(s)
(md) = misdescribed amendment can be given effect	Sdiv = Subdivision(s)
(md not incorp) = misdescribed amendment cannot be given effect	SLI = Select Legislative Instrument
mod = modified/modification	SR = Statutory Rules
No. = Number(s)	Sub-Ch = Sub-Chapter(s)
	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnotes

### Endnote 3—Legislation history

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### Endnote 3—Legislation history

<b>Number and year</b>	<b>FRLI registration or gazettal</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
345, 1994	18 Oct 1994	18 Oct 1994 (r 1)	
6, 1997	12 Feb 1997	12 Feb 1997 (r 1)	—
40, 1998	25 Mar 1998	25 Mar 1998 (r 1.1)	—
8, 2002	21 Feb 2002	Sch 1: 21 Feb 2002 (r 2)	—
160, 2015	22 Sept 2015 (F2015L01470)	23 Sept 2015 (s 2(1) item 1)	—

## Endnote 4—Amendment history

**Endnote 4—Amendment history**

<b>Provision affected</b>	<b>How affected</b>
<b>Part 1</b>	
r 1 .....	rs No 8, 2002
<b>Part 2</b>	
r 4 .....	am No 160, 2015
<b>Part 3</b>	
r 7 .....	am No 160, 2015
r 11 .....	am No 8, 2002
<b>Part 4</b>	
Part 4 .....	ad No 160, 2015
r 13 .....	ad No 160, 2015
Schedule .....	am No 6, 1997; No 40, 1998 rep No 160, 2015