



2009
Parliament of Tasmania

**Parliamentary Standing Committee on
Subordinate Legislation**

**S.R. NO. 83 – FISHERIES (SCALEFISH) AMENDMENT
RULES 2008**

The Committee was appointed under the provisions of Section 3 of the *Subordinate Legislation Committee Act 1969* (No. 44 of 1969). Section 8 of the said Act stated the functions of the Committee to be –

- (a) to examine the provisions of every regulation, with special reference to the question whether or not –
 - (i) the regulation appears to be within the regulation-making power conferred by, or in accord with the general objects of, the Act pursuant to which it is made;
 - (ii) the form or purport of the regulation calls for elucidation;
 - (iii) the regulation unduly trespasses on personal rights and liberties;
 - (iv) the regulation unduly makes rights dependent on administrative decisions and not on judicial decisions; or
 - (v) the regulation contains matters that, in the opinion of the Committee, should properly be dealt with by an Act and not by regulation; and
- (b) to make such reports and recommendations to the Legislative Council and the House of Assembly as it thinks desirable as the result of any such examination.

MEMBERS OF THE COMMITTEE

Legislative Council

Ms Ruth Forrest (Chair)
Mrs Norma Jamieson
Mrs Tania Rattray-Wagner

House of Assembly

Mr Ross Butler
Mr Bryan Green
Mr Jeremy Rockliff

The Committee has the honour to report as follows:

Schedules 10 and 11 of the Fisheries (Scalefish) Amendment Rules 2008 provide for the granting of southern calamari fishing licences and the allocation of banded morwong quota units.

Section 1(3) of Schedule 10 states –

“In determining whether a person has an eligible catch history for southern calamari, the Minister is not to take into account the exceptional circumstances, if any, of the person”.

Section 2(2)(b) of Schedule 11 states –

“In making a decision under subclause (1), the Minister is not to take into account – (b) the exceptional circumstances, if any, of the licence holder”.

The Committee received written and verbal evidence from several fishermen and the Department of Primary Industries and Water, particularly relating to the above sections.

At its meeting on Thursday, 12 March 2009 the Committee resolved that the Rules be passed as examined.

After further consideration, the Chair called a special meeting to reconsider the Rules as she believed the Committee had not been fully informed, particularly in relation to the Appeal provisions in the *Living Marine Resources Management Act 1995*, prior to making its decision.

The Committee met for this purpose on Thursday, 26 March 2009 and resolved to rescind the previous resolution to allow further consideration of the Rules.

The Committee appreciates the importance of maintaining a sustainable fishery and that that this should be the basis for any regulation of the industry. It is noted that the consultation has been broad and ongoing from 2000 for the banded morwong fishery and from 2003 for calamari.

It is further acknowledged that these Rules have been operational since 1 October 2008 and that any contrary decision could have a negative impact on other fishermen.

The Committee believes, however, that there are fishermen who may be disadvantaged by the sections in the Rules that preclude exceptional circumstances being taken into account. Several examples were given to the Committee that demonstrate special reasons why it was not possible for the required catch history to be achieved.

For these reasons, the Committee recommends that provision be made in the Rules for exceptional circumstances to be considered by an independent appeal process.

Accordingly, the Committee resolved at its meeting on Thursday, 26 March 2009
– That :

1. Schedule 10, Section 1(3) and Schedule 11, Section 2(2)(b) of the Fisheries (Scalefish) Amendment Rules 2008 (No. 83) “unduly trespass on personal rights and liberties”;
2. The Committee recommend that Schedule 10, Section 1(3) and Schedule 11, Section 2(2)(b) of the Fisheries (Scalefish) Amendment Rules 2008 (No. 83) be disallowed; and that
3. The Chair place a Notice of Motion (Disallowance Motion) on the Legislative Council Notice Paper.

Ruth Forrest MLC
CHAIR

7 April 2009