

# FISHERIES AMENDMENT ACT 1978

No. 99 of 1978

An Act to amend the *Fisheries Act* 1952.

BE IT ENACTED by the Queen, and the Senate and House of Representatives of the Commonwealth of Australia, as follows:

Short title,  
&c.

1. (1) This Act may be cited as the *Fisheries Amendment Act* 1978.<sup>1</sup>

(2) The *Fisheries Act* 1952<sup>2</sup> is in this Act referred to as the Principal Act.

Commence-  
ment

2. (1) Section 1, this section and section 25 shall come into operation on the day on which this Act receives the Royal Assent.<sup>1</sup>

(2) The remaining provisions of this Act shall come into operation on a date to be fixed by Proclamation.

Interpret-  
ation

3. Section 4 of the Principal Act is amended—

(a) by inserting after the definition of “Australian boat” the following definition:

“ ‘Australian fishing zone’ means—

(a) the waters adjacent to Australia and having as their inner limits the baselines by reference to which the territorial limits of Australia are defined for the purposes of international law and as their outer limits lines seaward from those inner limits every point on each of which is distant 200 international nautical miles from the point on one of those baselines that is nearest to the first-mentioned point; and

(b) the waters adjacent to each external Territory and having as their inner limits the baselines by reference to which the territorial limits of that Territory are defined for the purposes of international law and as their outer limits lines seaward from those inner limits every point on each of which is distant 200 international nautical miles from the point on one of those baselines that is nearest to the first-mentioned point,

but does not include—

(c) waters that are not proclaimed waters;

(d) waters that are excepted waters; or

- (e) waters that are described in an agreement in force between Australia and another country as waters that are not to be taken, for the purposes of this Act, to be within the Australian fishing zone;”;
- (b) by inserting after the definition of “Department” the following definition:
  - “ ‘excepted waters’ means proclaimed waters specified by Proclamation in force under section 7A; ”;
- (c) by inserting after the definition of “foreign boat” the following definition:
  - “ ‘master’, in relation to a boat, means the master or other person in charge of the boat; ”;
- (d) by omitting “Australia” (wherever occurring) from the definition of “officer” and substituting “the Commonwealth”;
- (e) by omitting “to the Department” (wherever occurring) from the definition of “officer”; and
- (f) by omitting the definition of “the declared fishing zone”.

4. Section 5 of the Principal Act is amended by omitting from sub-section (2) “declared” and substituting “Australian”. Application

5. Section 5A of the Principal Act is amended by omitting “Australia” and substituting “the Commonwealth”. Operation of  
certain State  
and  
Territory  
laws

6. Before section 6 of the Principal Act the following section is inserted in Part II:

“5B. In the administration of this Act, the Minister shall have regard to the objectives of— Objectives to  
be pursued

- (a) ensuring, through proper conservation and management measures, that the living resources of the Australian fishing zone are not endangered by over-exploitation; and
- (b) achieving the optimum utilization of the living resources of the Australian fishing zone.”.

7. Section 6A of the Principal Act is amended—

Delegation

- (a) by inserting in sub-section (1) “under sub-section (8B) of section 9 or ” before “under section 9A”;
- (b) by inserting after sub-section (1) the following sub-section:
  - “(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Minister or the Secretary, as the case may be.”;
- (c) by omitting from sub-section (4) “to the Department”; and
- (d) by adding at the end of sub-section (4) the following paragraph:

“(d) power under sub-section (3A) of section 9 to endorse a licence granted under this Act.”.

8. After section 7 of the Principal Act the following section is inserted:

Excepted  
waters

“7A. The Governor-General may, by Proclamation, declare any proclaimed waters to be excepted waters for the purposes of this Act.”.

Licences

9. Section 9 of the Principal Act is amended—

(a) by inserting after sub-section (3) the following sub-section:

“(3A) The Minister or the Secretary may, at any time, endorse a licence granted under this section in respect of a foreign boat so as to extend it—

(a) to authorize the boat to be brought into a specified port in Australia or in an external Territory at such time as is, or at such times as are, specified in the endorsement; or

(b) to authorize the boat to be brought into a specified port in Australia or in an external Territory at such time as is, or at such times as are, specified in the endorsement and to authorize the landing at that port of fish carried on board the boat at the time when the boat is brought into the port.”;

(b) by inserting after sub-section (5) the following sub-section:

“(5A) Without limiting the generality of sub-section (5), the conditions that may be specified in a licence granted under this section in respect of a boat include conditions relating to—

(a) the class or classes of fish that may be taken, processed or carried;

(b) the quantity of fish, or of fish included in a specified class of fish, that may be taken;

(c) the rate at which fish, or fish included in a specified class of fish, may be taken;

(d) the methods or equipment that may be used to take fish, or fish included in a specified class of fish; or

(e) the methods or equipment that may be used to process or carry fish, or fish included in a specified class of fish.”; and

(c) by inserting after sub-section (8) the following sub-sections:

“(8A) Regulations prescribing fees for the purposes of sub-section (8) may prescribe different fees for licences issued in respect of boats included in different classes of boats or issued subject to different conditions.

“(8B) The Minister or the Secretary may, having regard to the terms of any relevant agreement relating to the taking of fish in the Australian fishing zone, being an agreement to which Australia and another country or other countries are parties,

remit, in whole or in part, any fee that would, but for this sub-section, be payable under sub-section (8) in respect of the granting of a licence to a foreign boat or in respect of the endorsement or transfer of a licence granted in respect of a foreign boat.”

**10. Section 10 of the Principal Act is amended—**

Powers of  
officers

- (a) by inserting in paragraph (a) “or in Australia or an external Territory” after “boat in proclaimed waters”;
- (b) by inserting after paragraph (aa) the following paragraph:
  - “(ab) enter any land or premises on or in which, or inspect any vehicle in which, he has reason to believe there are any fish that have been landed in Australia in contravention of section 13BB;”;
- (c) by omitting sub-paragraph (i) of paragraph (c) and substituting the following sub-paragraph:
  - “(i) any fish that the officer has reason to believe has been taken, caught, captured, processed, carried or landed in contravention of this Act; or”;
- (d) by inserting after paragraph (e) the following paragraph:
  - “(ea) require the master of a boat who, in pursuance of a requirement under paragraph (e) or in pursuance of a previous requirement under this paragraph, is in control of the boat at a place in Australia or a Territory, to take the boat to another place in Australia or in a Territory specified by the officer and to remain in control of the boat at that place until an officer permits him to depart from that place;”;
- (e) by inserting in paragraph (f) “(whether or not the boat has previously been brought to another place or other places in Australia or in a Territory by an officer or officers exercising powers under this section)” after “Territory”;
- (f) by inserting after paragraph (i) the following paragraph:
  - “(ia) require a person found on or in any land or premises entered in pursuance of paragraph (ab) or in any vehicle inspected in pursuance of that paragraph—
    - (i) to state his name and place of abode;
    - (ii) to produce any documents in his possession or under his control relating to any fish found on the land or in the premises or vehicle; or
    - (iii) to give information concerning any such fish;”;
- (g) by omitting “declared” (wherever occurring) and substituting “Australian”;
- (h) by omitting “or other person in charge” (wherever occurring); and
- (j) by inserting at the end thereof the following sub-sections:

“(2) The power to enter land or premises conferred by paragraph (ab) of sub-section (1) is not exercisable except with the consent of the owner or occupier of the land or premises or in pursuance of a warrant granted in accordance with this section.

“(3) Where an officer has reason to believe that there are on any land or in any premises fish that have been landed in contravention of section 13BB, he may make application to a Justice of the Peace for a warrant authorizing the officer to enter the land or premises for the purpose of ascertaining whether there are on that land or in those premises fish that have been landed in contravention of section 13BB.

“(4) If, on an application under sub-section (3), the Justice of the Peace is satisfied by information on oath or affirmation that the issue of the warrant is reasonably required for the purposes of this Act, the Justice of the Peace may grant a warrant, in accordance with the prescribed form, authorizing the officer, with such assistance as he thinks necessary, to enter the land or premises specified for the purpose referred to in sub-section (3).”.

**11.** After section 10 of the Principal Act the following section is inserted in Part III:

Release of  
seized  
property

“10A. (1) Where any property is under the control of an officer pursuant to the exercise by an officer of powers under section 10, the Minister or the Secretary may direct that the property be released—

- (a) in the case of a boat—to the owner or the master of the boat; and
- (b) in any other case—to the owner of the property or to the person from whose possession the property was seized, or from whose control the property was removed,

on such conditions (if any) as he thinks fit, including conditions as to the giving of security for payment of the value of the property if it is forfeited and for the payment of any fines that may be imposed under this Act in respect of offences that the Minister or the Secretary, as the case may be, has reason to believe have been committed with the use of, or in relation to, that property.

“(2) For the purposes of this section—

- (a) a reference to property shall be read as including a reference to fish; and
- (b) property shall be taken to be under the control of an officer if any person is, in relation to that property, subject to the directions of the officer.”.

Offences

**12.** Section 13 of the Principal Act is amended—

- (a) by omitting sub-paragraphs (iii) and (iv) of paragraph (b) of sub-section (1) and substituting the following sub-paragraphs:

“(iii) use an Australian boat for carrying fish that have been taken with the use of that boat; or

“(iv) have in his possession or in his charge an Australian boat for taking fish,”;

(b) by omitting from sub-section (1) “Penalty: \$1,000.”; and

(c) by omitting sub-section (2) and substituting the following sub-sections:

“(2) A person who contravenes sub-section (1) is guilty of an offence and is punishable, on conviction, by a fine not exceeding \$1,000.

“(2A) A person who contravenes paragraph (d), (e), (f), (g), (h) or (i) of sub-section (1) with the use of, or in relation to, a foreign boat or in relation to a licence granted in respect of a foreign boat is guilty of an offence and is punishable—

(a) where the person was, at the time when the offence was committed, the master of the boat—

(i) on summary conviction—by a fine not exceeding \$5,000; and

(ii) on conviction on indictment—by a fine not exceeding \$50,000; and

(b) in any other case—

(i) on summary conviction—by a fine not exceeding \$2,000; and

(ii) on conviction on indictment—by a fine not exceeding \$10,000.”.

**13.** Section 13A of the Principal Act is amended by omitting “\$200 or imprisonment for 6 months” and substituting “\$1,000”.

Removing  
fish from  
traps, &c.

**14.** Section 13AA of the Principal Act is amended—

(a) by omitting “declared” and substituting “Australian”; and

(b) by omitting “or imprisonment for 6 months, or both”.

Using  
foreign boat  
for fishing  
for private  
purposes

**15.** Section 13AB of the Principal Act is amended—

(a) by omitting from sub-section (1) “declared” and substituting “Australian”;

(b) by omitting from sub-section (1) “Penalty: \$1,000 or imprisonment for 6 months, or both.”;

(c) by inserting after sub-section (1) the following sub-section:

“(1A) A person who contravenes sub-section (1) is guilty of an offence and is punishable—

(a) on summary conviction—by a fine not exceeding \$5,000; and

(b) on conviction on indictment—by a fine not exceeding \$250,000.”;

Having  
foreign boat  
equipped  
with nets,  
&c.

- (d) by omitting paragraph (b) of sub-section (3) and substituting the following paragraph:

“(b) the boat was travelling through the Australian fishing zone—

- (i) from a point outside the Australian fishing zone to a port in Australia or in an external Territory;
- (ii) from a port in Australia or in an external Territory to a point outside the Australian fishing zone;
- (iii) from a point outside the Australian fishing zone to another point outside the Australian fishing zone by the shortest practical route;
- (iv) from a point outside the Australian fishing zone to a point inside an area that is an authorized area in relation to the boat;
- (v) from a point inside an area that is an authorized area in relation to the boat to a point outside the Australian fishing zone;
- (vi) from a port in Australia or in an external Territory to a point inside an area that is an authorized area in relation to the boat;
- (vii) from a point inside an area that is an authorized area in relation to the boat to a port in Australia or an external Territory; or
- (viii) from a point inside an area that is an authorized area in relation to the boat to a point inside another such area,

and, except in a case to which sub-paragraph (iii) applies, the boat was so travelling through the Australian fishing zone with, and in accordance with, the approval of a prescribed person or authority, being an approval that was obtained in a prescribed manner.”; and

- (e) by adding at the end thereof the following sub-section:

“(4) In this section, ‘authorized area’, in relation to a boat, means an area within the Australian fishing zone within which the use of the boat for taking, processing and carrying fish is authorized by a licence granted under section 9.”.

Using  
foreign boat  
for fishing in  
Australian  
fishing zone

16. Section 13B of the Principal Act is amended—

- (a) by omitting “declared” (wherever occurring) and substituting “Australian”; and
- (b) by omitting sub-sections (5), (6) and (7) and substituting the following sub-section:

“(5) A person who contravenes sub-section (1) or (2) is guilty of an offence and is punishable—

- (a) where the person was, at the time when the offence was committed, the master of the boat with the use of which, or in relation to which, the offence was committed—
  - (i) on summary conviction—by a fine not exceeding \$5,000; and
  - (ii) on conviction on indictment—by a fine not exceeding \$250,000; and
- (b) in any other case—
  - (i) on summary conviction—by a fine not exceeding \$2,000; and
  - (ii) on conviction on indictment—by a fine not exceeding \$10,000.”.

17. After section 13B of the Principal Act the following sections are inserted:

“13BA. (1) A person, being the master of a foreign fishing boat, who, otherwise than in accordance with an endorsement under subsection (3A) of section 9 of a licence granted under that section, brings the boat into a port in Australia or in an external Territory is guilty of an offence and is punishable—

Unlicensed  
foreign boats  
not to enter  
Australian  
ports

- (a) on summary conviction—by a fine not exceeding \$5,000; and
- (b) on conviction on indictment—by a fine not exceeding \$50,000.

“(2) It is a defence to a prosecution for an offence against subsection (1) in relation to the bringing of a foreign fishing boat into a port if the person charged satisfies the court that—

- (a) the boat was brought into the port at a time when the boat was engaged in operations that included the carrying of cargo, in the ordinary course of trade, between Australia and another country, between Australia and an external Territory or between an external Territory and a country other than Australia;
- (b) the boat was brought into the port in accordance with the provisions of a prescribed agreement between Australia and another country;
- (c) the boat was brought into the port under the direction of an officer exercising powers under section 10 or under the direction of a person exercising powers under another law of the Commonwealth or a law of a State or Territory;
- (d) the boat was being lawfully imported into Australia or the external Territory, as the case may be, by or on behalf of a person who was, or by or on behalf of persons each of whom was, at the time when the boat was brought into the port—
  - (i) a resident of Australia or of an external Territory; or
  - (ii) a company incorporated in Australia or in an external Territory; or



- (e) an unforeseen emergency rendered it necessary to bring the boat into a port in Australia or in an external Territory in order to secure the safety of the boat or of human life.

“(3) In this section, ‘foreign fishing boat’ means a foreign boat that is designed and equipped for—

- (a) catching or capturing fish;
- (b) processing fish;
- (c) carrying fish;
- (d) two or more of the purposes mentioned in paragraphs (a), (b) and (c); or
- (e) supporting the operations of a boat that is, or boats that are, designed and equipped for any one or more of the purposes mentioned in paragraphs (a), (b) or (c).

Foreign  
boats not to  
land fish in  
Australia

“13BB. (1) A person, being the master of a foreign boat, who, otherwise than in accordance with an endorsement under sub-section (3A) of section 9 of a licence granted under that section, causes to be landed at any place in Australia any fish that were brought to the place by the boat is guilty of an offence and is punishable—

- (a) on summary conviction—by a fine not exceeding \$5,000; and
- (b) on conviction on indictment—by a fine not exceeding \$10,000.

“(2) It is a defence to a prosecution for an offence against sub-section (1) if the person charged satisfies the court—

- (a) that the fish were imported into Australia and were so imported in accordance with permission in writing granted for the purposes of the Customs (Prohibited Imports) Regulations;
- (b) that the fish had previously been landed in an external Territory or a country other than Australia;
- (c) that, by reason of the operation of section 131A of the *Customs Act* 1901, the fish were not subject to the control of the Customs; or
- (d) that the fish were landed in pursuance of a direction of the Secretary under section 13D.”.

Forfeiture

**18.** Section 13C of the Principal Act is amended—

- (a) by inserting in sub-section (2) “13BA or 13BB,” after “section 13AB,”; and
- (b) by inserting in paragraph (c) of sub-section (2) “or in relation to which the offence is committed” after “time”.

Forfeited  
property

**19.** Section 13D of the Principal Act is amended by omitting “Australia” and substituting “the Commonwealth”.

**20.** Section 14A of the Principal Act is amended by omitting from sub-section (1) “or other person in charge”.

Liability of  
master of  
boat

**21.** Section 15 of the Principal Act is repealed and the following section substituted:

“15. (1) Subject to sub-section (2), an offence against sub-section (2A) of section 13, section 13AB, 13B, 13BA or 13BB may be prosecuted either summarily or on indictment, but a person is not liable to be prosecuted more than once for the same offence.

Trial of  
offences

“(2) Proceedings for an offence to which sub-section (1) applies shall not be heard and determined summarily except with the consent of the defendant.”.

**22.** (1) Section 16 of the Principal Act is amended—

Evidence

(a) by omitting “declared” (wherever occurring) and substituting “Australian”;

(b) by omitting from paragraph (d) of sub-section (2) “or” (last occurring); and

(c) by inserting after paragraph (d) of sub-section (2) the following paragraphs:

“(da) that a person specified in the certificate was, or was not, or no person was, the holder of a licence under section 9 in respect of a boat specified in the certificate, being a licence endorsed under paragraph (a) of sub-section (3A) of that section so as to authorize the boat to be brought into a port specified in the certificate at a time or times specified in the certificate;

“(db) that a person specified in the certificate was, or was not, or no person was, the holder of a licence under section 9 in respect of a boat specified in the certificate, being a licence endorsed under paragraph (b) of sub-section (3A) of that section so as to authorize the boat to be brought into a port specified in the certificate at a time or times specified in the certificate and to authorize the landing at that port of fish carried on board the boat at the time when the boat was brought into the port; or”.

(2) Notwithstanding the amendments made by sub-section (1), section 16 of the Principal Act continues to have effect in relation to proceedings for offences against that Act or regulations under that Act alleged to have been committed before the commencement of that sub-section.

## Regulations

**23. Section 17 of the Principal Act is amended—**

- (a) by omitting from paragraph (a) of sub-section (1) “Two hundred dollars” and substituting “\$200”;
- (b) by omitting from paragraph (e) of sub-section (1) “and” (last occurring); and
- (c) by adding at the end of sub-section (1) the following paragraphs:
  - “(g) for providing for the inspection of foreign boats licensed under this Act and of nets, traps and other equipment belonging to such boats and of fish taken with the use of such boats;
  - “(h) for providing for the reporting of the positions of foreign boats licensed under this Act at times when such boats are in the Australian fishing zone;
  - “(j) for providing procedures to be followed to facilitate the recognition of foreign boats licensed under this Act;
  - “(k) for prescribing short methods of reference to areas of proclaimed waters specified in the regulations and the purposes for which those methods of reference may be used;
  - “(l) for providing for the carrying on board foreign boats licensed under the Act of persons nominated by the Minister or by the Secretary, being persons who are officers or who are engaged in marine research, or are interested in methods of catching, capturing or processing fish; and
  - “(m) for providing for the furnishing of information relating to the use in the Australian fishing zone of foreign boats licensed under this Act.”.

## Savings

**24. Section 8 of the *Acts Interpretation Act* 1901 applies in relation to a provision of the Principal Act that has been amended by this Act in like manner as that section would apply to that provision if it had been repealed by this Act.**

Application  
of Act in  
Gulf of  
Carpentaria

**25. (1) Until the date fixed by Proclamation for the purposes of sub-section 2 (2), the Principal Act has effect as if the reference in sub-section 5 (2) of that Act to proclaimed waters comprised in the declared fishing zone included a reference to waters within the Gulf of Carpentaria.**

**(2) The reference in sub-section (1) to the Gulf of Carpentaria shall be read as not including a reference to waters lying north of a line between a point of latitude 11° 52' South, longitude 136° 33' East and a point of latitude 10° 59' South, longitude 142° 08' East.**

**NOTES**

1. Act No. 99, 1978; assented to 24 August 1978.
2. Act No. 7, 1952, as amended. For previous amendments *see* Act No. 3, 1953; No. 4, 1956; No. 48, 1959; No. 93, 1966; No. 116, 1967; No. 150, 1968; No. 93, 1970; No. 218, 1973 (as amended by No. 7, 1974); No. 3, 1975; and No. 91, 1976.