



Fishing Legislation Amendment Act 1984

No. 30 of 1984

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Fishing Legislation Amendment Act 1984

No. 30 of 1984

An Act to amend the *Continental Shelf (Living Natural Resources) Act 1968*, the *Fisheries Act 1952* and the *Fishing Industry Research Act 1969*

[Assented to 18 May 1984]

[Date of commencement 15 June 1984]

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

PART I—PRELIMINARY

Short title

1. This Act may be cited as the *Fishing Legislation Amendment Act 1984*.

PART II—AMENDMENT OF THE CONTINENTAL SHELF (LIVING NATURAL RESOURCES) ACT 1968

Principal Act

2. The *Continental Shelf (Living Natural Resources) Act 1968*¹ is in this Part referred to as the Principal Act.

Interpretation

3. Section 5 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(4) A reference in this Act to the continental shelf, in relation to the Coral Sea Islands Territory, shall be read as including a reference to the seabed and subsoil of the submarine areas within the territorial sea of that Territory.”.

PART III—AMENDMENTS OF THE FISHERIES ACT 1952

Principal Act

4. The *Fisheries Act 1952* is in this Part referred to as the Principal Act.

Title

5. The title of the Principal Act is amended by omitting “in certain Australian Waters”.

Interpretation

6. Section 4 of the Principal Act is amended—

- (a) by omitting from sub-section (1) the definition of “fisherman”;
- (b) by inserting after the definition of “master” in sub-section (1) the following definition:

“‘master fisherman’s licence’ means a licence granted under sub-section 9 (1);” and

- (c) by omitting from sub-section (1) the definition of “traditional fishing”.

Application

7. Section 5 of the Principal Act is amended by adding at the end thereof the following sub-section:

“(3) In relation to proclaimed waters beyond the outer limits of the Australian fishing zone, this Act—

- (a) applies to all persons, including foreigners, on Australian boats; and
- (b) does not apply to foreign boats.”.

Delegation

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

- (a) by omitting from sub-section (1) “9A,”; and
- (b) by omitting sub-section (4) and substituting the following sub-section:

“(4) The Minister or the Secretary shall not delegate to a person other than a person holding, or performing the duties of, an office in the Department—

- (a) his power to grant a licence under this Act in respect of a foreign boat;
- (b) his power to transfer a licence granted under sub-section 9 (3);
- (c) his powers under sub-section 16A (4); or

- (d) any of his powers or functions under section 6B, sub-section 9 (3), (3A), (4B) or (5B) or section 9A.”.

9. After section 6A of the Principal Act the following section is inserted in Part II:

Issue of permits for scientific purposes

“6B. (1) The Minister or the Secretary may grant to a person a permit in respect of a boat authorizing that person to engage, for scientific purposes, in such activities by way of fishing with the use of the boat as are specified in the permit in proclaimed waters or in a specified area of proclaimed waters.

“(2) The holder of a permit in force under sub-section (1) or a person acting on behalf of the holder of such a permit is not guilty of an offence against this Act by reason of anything done by him that is authorized by the permit to be done by the holder of the permit.

“(3) A permit granted under sub-section (1) is subject to such conditions as are specified in the permit.

“(4) The Minister or the Secretary may, by notice in writing given to the holder of a permit in force under sub-section (1)—

- (a) revoke the permit; or
- (b) vary or revoke the conditions to which the permit is subject or specify further conditions to which the permit is to be subject.”.

Regulation of fishing

10. (1) Section 8 of the Principal Act is amended—

- (a) by omitting paragraph (1) (a) and substituting the following paragraph:

“(a) prohibit the taking, processing or carrying of fish, or fish included in a class of fish specified in the notice;”;

- (b) by omitting from paragraph (1) (b) “, from an area of proclaimed waters,”;

- (c) by omitting from paragraph (1) (c) “, from proclaimed waters or from an area of proclaimed waters,”;

- (d) by omitting paragraph (1) (d) and substituting the following paragraph:

“(d) prohibit the master of a boat that is included in a class of boats specified in the notice from having on board the boat a number of persons greater than a number specified in, or ascertainable as provided in, the notice for the purpose of engaging in fishing;”;

- (e) by omitting from paragraphs (1) (e) and (f) “in an area of proclaimed waters”;

- (f) by omitting from paragraph (1) (g) “in an area of proclaimed waters to which a notice under paragraph (f) applies,”;

- (g) by omitting from paragraph (1) (h) “, either at all times or during a period specified in the notice,”;
- (h) by omitting from paragraph (1) (h) “in an area of proclaimed waters specified in the notice”; and
- (j) by inserting after sub-section (4) the following sub-sections:

“(4A) A notice under sub-section (1) comes into force on the day on which the notice is published or on such later day as is specified in the notice.

“(4B) A notice under sub-section (1) has effect—

- (a) if an area of proclaimed waters is specified in the notice as being the area in respect of which the notice is to have effect—in that area; and
- (b) in any other case—in any area of proclaimed waters.

“(4C) A prohibition contained in a notice under sub-section (1) has effect—

- (a) if a period is specified in the notice as being the period during which the prohibition is to have effect—during that period; or
- (b) in any other case—at all times.

“(4D) A notice under sub-section (1) may provide that the activities prohibited by the notice are activities in respect of which an endorsement may be made under sub-section 9 (4).

“(4E) Where—

- (a) a notice under sub-section (1) provides that the activities prohibited by the notice are activities in respect of which an endorsement may be made under sub-section 9 (4); and
- (b) an endorsement is made pursuant to sub-section 9 (4) in a licence in force in respect of a boat,

the prohibition contained in that notice under sub-section (1) does not apply in relation to the use of the boat during any period during which the endorsement has effect.”.

(2) A notice in force immediately before the commencement of this section under paragraph 8 (1) (a) of the Principal Act continues to have effect after the commencement of this section as if it were a notice under paragraph 8 (1) (a) of the Principal Act as amended by this Act.

(3) A notice in force immediately before the commencement of this section under paragraph 8 (1) (d) of the Principal Act continues to have effect after the commencement of this section as if it were a notice under paragraph 8 (1) (a) of the Principal Act as amended by this Act and as if the notice provided, pursuant to sub-section 8 (4D) of the Principal Act as amended by this Act, that the activities prohibited by the notice were activities in respect of which an endorsement could be made under sub-section 9 (4) of the Principal Act as amended by this Act.

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

Tabling, disallowance, &c., of notices

“8A. (1) Sections 48 (other than paragraphs 48 (1) (a) and (b) and sub-section 48 (2)), 49 and 50 of the *Acts Interpretation Act 1901* apply in relation to notices published under section 8 by the Minister, and so apply as if, in those sections of the *Acts Interpretation Act 1901*, references to regulations were references to notices published under section 8 by the Minister and references to a regulation were a reference to a provision of a notice published under section 8 by the Minister.

“(2) Notices published under section 8 shall be deemed not to be Statutory Rules within the meaning of the *Statutory Rules Publication Act 1903*.”.

Licences

12. (1) Section 9 of the Principal Act is amended—

(a) by omitting sub-section (1) and substituting the following sub-section:

“(1) The Minister or the Secretary may grant to a person a master fisherman’s licence authorizing the person to be in charge of a boat that is being used for fishing in proclaimed waters or in a specified area of proclaimed waters.”;

(b) by omitting sub-section (4) and substituting the following sub-sections:

“(4) The Minister or the Secretary may endorse a licence granted under sub-section (2) or (3) in respect of a boat so as to extend the licence to authorize the use of the boat, at any time or during a period specified in the endorsement, for activities by way of fishing that are prohibited by a notice in force under sub-section 8 (1), being a notice identified in the endorsement.

“(4A) The Minister or the Secretary may, after being requested in writing to do so by the holder of a licence in respect of which an endorsement under sub-section (4) is in force, revoke the endorsement.

“(4B) The Minister or the Secretary may, by notice in writing given to the holder of a licence in respect of which an endorsement under sub-section (3A) or (4) is in force, revoke the endorsement.”; and

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

“(5B) The Minister or the Secretary may, by notice in writing given to the holder of a licence, vary or revoke a condition of the licence or specify further conditions to which the licence is to be subject.”.

(2) A licence in force immediately before the commencement of this section under sub-section 9 (1) of the Principal Act—

(a) continues in force after the commencement of this section as if it were a licence granted under sub-section 9 (1) of the Principal Act as amended by this Act; and

- (b) remains in force, subject to the Principal Act as amended by this Act, until the expiration of the day specified in the licence as being the day until which it is to remain in force.

(3) Subject to the Principal Act as amended by this Act, a licence in force immediately before the commencement of this section under sub-section 9 (2) or (3) of the Principal Act in respect of a boat, being a licence that was endorsed under sub-section 9 (4) of the Principal Act so as to extend the licence to authorize the use of the boat in an area of proclaimed waters in respect of which a notice under paragraph 8 (1) (d) of the Principal Act was in force at that time for taking, processing or carrying fish to which that notice related, continues to have effect after the commencement of this section as if the licence had been endorsed under sub-section 9 (4) of the Principal Act as amended by this Act so as to extend the licence to authorize the use of the boat for those activities.

Cancellation and suspension of licences

13. Section 9A of the Principal Act is amended by omitting from paragraph (1) (b) “or that Act as amended”.

Powers of officers

14. Section 10 of the Principal Act is amended by omitting paragraph (1) (j) and substituting the following paragraph:

- “(j) require the master of a boat that is being used for fishing in proclaimed waters to state whether he is the holder of a master fisherman’s licence and, if so, to produce the licence and permit the officer to make copies of, or take extracts from, the licence; and”.

Delegation

15. Section 12E of the Principal Act is amended—

- (a) by omitting from sub-section (1) “A Joint Authority” and substituting “Subject to this section, a Joint Authority”;
- (b) by omitting from sub-section (1) “and its powers under section 9A”; and
- (c) by inserting after sub-section (3) the following sub-section:

“(3A) The powers of the Joint Authority under sub-section 12S (4) are not exercisable by a delegate other than a person holding, or performing the duties of, an office in the Department.”.

Arrangements

16. Section 12J of the Principal Act is amended by inserting in sub-sections (7), (8) and (9) “permits,” after “licences,”.

17. After section 12N of the Principal Act the following section is inserted:

Powers of Joint Authority with respect to permits

“12NA. (1) In respect of a Joint Authority fishery, the powers otherwise exercisable by the Minister or the Secretary under section 6B to grant or revoke permits in respect of Australian boats, to revoke or vary conditions to which permits of that kind are subject or to specify further conditions to which such permits are to be subject, are exercisable under that section by the Joint Authority.

“(2) Where a fishery becomes a Joint Authority fishery, permits granted by the Minister or the Secretary under section 6B in respect of Australian boats have no application in relation to that fishery.”

Powers of Joint Authority with respect to licences

18. Section 12P of the Principal Act is amended by inserting in sub-section (2) “or in relation to the imposition, variation or revocation of conditions to which licences are subject” after “licences”.

19. The Principal Act is amended by inserting after section 12R the following section in Part IVA:

Reconsideration and review of decisions by Joint Authority

“12S. (1) In this section, unless the contrary intention appears—

‘decision’ has the same meaning as in the *Administrative Appeals Tribunal Act 1975*;

‘relevant decision’ means a decision of a delegate of the Joint Authority under section 6B, section 9 (other than a decision under sub-section (9) or (10) of that section), sub-section 9A (1) or (4), sub-section 12P (4) or sub-section (2) of this section;

‘reviewable decision’ means a decision of a delegate of the Joint Authority under sub-section (4) of this section.

“(2) A person affected by a relevant decision who is dissatisfied with the decision may, within 21 days after the day on which the decision first comes to the notice of the person, or within such further period as the Joint Authority (either before or after the expiration of that period), by notice in writing served on the person, allows, by notice in writing given to the Joint Authority, request the Joint Authority to reconsider the decision.

“(3) There shall be set out in the request the reasons for making the request.

“(4) The Joint Authority shall within 45 days after the receipt of the request, reconsider the relevant decision and may make a decision—

- (a) in substitution for the relevant decision, whether in the same terms as the relevant decision or not; or
- (b) revoking the relevant decision.

“(5) Where, as a result of a reconsideration under sub-section (4), the Joint Authority makes a decision in substitution for or revoking the relevant

decision, it shall, by notice in writing served, either personally or by post, on the person who made the request under sub-section (2) for the reconsideration, inform the person of the result of the reconsideration, set out findings on material questions of fact, refer to the evidence or other material on which those findings were based and give the reasons for its decision.

“(6) An application may be made to the Administrative Appeals Tribunal for a review of a reviewable decision.

“(7) Where a relevant decision is made and the person who made the relevant decision gives to a person whose interests are affected by the decision notice in writing of the making of the decision, that notice shall include a statement to the effect that a person affected by the decision—

- (a) may, if he is dissatisfied with the decision, seek a reconsideration of the decision by the Joint Authority in accordance with sub-section (2); and
- (b) may, subject to the *Administrative Appeals Tribunal Act 1975*, if a delegate of the Joint Authority reconsiders the decision under sub-section (4) and he is dissatisfied with the decision of the delegate upon that reconsideration, make application to the Administrative Appeals Tribunal for review of the decision of the delegate.

“(8) Where a reviewable decision is made and notice in writing of the making of the decision is given to a person whose interests are affected by the decision, that notice shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates by or on behalf of a person whose interests are affected by the decision.

“(9) Any failure to comply with the requirements of sub-section (7) or (8) in relation to a decision does not affect the validity of the decision.

“(10) A reference in this section to a relevant decision does not include a reference to a decision in relation to the grant, suspension or cancellation of a master fisherman’s licence in respect of a person who is neither an Australian citizen nor a resident of Australia, or in relation to the imposition, variation or revocation of conditions to which a master fisherman’s licence granted to such a person is subject.”.

Offences

20. Section 13 of the Principal Act is amended—

- (a) by omitting paragraph (1) (a) and substituting the following paragraph:
 - “(a) in an area of proclaimed waters, be in charge of a boat that is being used for fishing unless the person is the holder of a master fisherman’s licence that is in force;”;
- (b) by omitting sub-section (3).

Having foreign boat equipped with nets, &c.

21. Section 13AB of the Principal Act is amended—

(a) by omitting sub-section (1) and substituting the following sub-section:

“(1) A person shall not, in the Australian fishing zone, have in his possession or in his charge a foreign boat equipped with nets, traps or other equipment for taking, catching or capturing fish unless there is in force a licence under sub-section 9 (2) authorizing the use of the boat for fishing in that area.”; and

(b) by omitting sub-section (2).

Using foreign boat for fishing in Australian fishing zone

22. Section 13B of the Principal Act is amended by omitting sub-section (4).

Certain foreign boats not to enter Australian ports

23. Section 13BA of the Principal Act is amended by omitting sub-section (1) and substituting the following sub-section:

“(1) A person, being the master of a foreign fishing boat who, otherwise than in accordance with—

(a) in a case where there is a licence in force under section 9 in respect of the boat—an endorsement of that licence made under sub-section 9 (3A); or

(b) in any other case—an authorization granted by the Minister or the Secretary under sub-section 13BAA (1),

brings the boat into a port in Australia or in an external Territory is guilty of an offence and is punishable—

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

(d) on conviction on indictment—by a fine not exceeding \$50,000.”.

24. After section 13BA of the Principal Act the following section is inserted:

Certain foreign boats authorized to enter Australian ports

“13BAA. (1) The Minister or the Secretary may, by notice in writing given to the master of an unlicensed foreign fishing boat or to a person on behalf of the master of an unlicensed foreign fishing boat, authorize the master of that boat, at a time or during a period specified in the notice, to bring the boat, for purposes specified in the notice, into a port in Australia or in an external Territory being a port specified in the notice.

“(2) In this section, ‘unlicensed foreign fishing boat’ means a foreign boat—

(a) that is designed and equipped for—

(i) catching or capturing fish;

(ii) processing fish;

(iii) carrying fish;

- (iv) 2 or more of the purposes mentioned in sub-paragraphs (i), (ii) and (iii); or
- (v) 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 sub-paragraphs (i), (ii) or (iii); and
- (b) in respect of which there is not in force a licence under section 9.”.

25. After section 13D of the Principal Act the following section is inserted:

Court may make certain orders

“13E. (1) Where a court convicts a person of an offence against paragraph 13 (1) (f), (g), (h) or (i), the court may, in addition to imposing a penalty in respect of that offence, order that the person shall not, during such period as the court determines, be on a boat in an area of proclaimed waters for the purpose of engaging in fishing.

“(2) A person who contravenes an order of a court made pursuant to sub-section (1) is guilty of an offence punishable, on conviction, by a fine not exceeding \$2,000 or imprisonment for a period not exceeding 6 months, or both.”.

Evidence

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

- (a) by inserting in paragraphs (2) (a), (b), (c) and (d) “or during a period” after “time”;
- (b) by omitting from paragraph (2) (b) “water” and substituting “waters”;
- (c) by omitting from paragraph (2) (c) “to engage in fishing in an area of proclaimed waters specified in the certificate” and substituting “to be in charge of a boat for fishing in an area of proclaimed waters specified in the certificate”;
- (d) by omitting “or” from the end of paragraph (2) (db);
- (e) by inserting after paragraph (2) (db) the following paragraphs:
 - “(dc) that there was, or was not, in respect of a boat specified in the certificate a notice in force under sub-section 13BAA (1) authorizing the bringing of the boat into a port specified in the certificate at a time or during a period specified in the certificate for a purpose specified in the certificate;
 - (dd) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, the holder of a permit under section 6B authorizing the person to undertake activities specified in the certificate in an area of proclaimed waters specified in the certificate; or”;
- (f) by omitting paragraph (2) (e) and substituting the following paragraph:
 - “(e) that, at a time or during a period specified in the certificate, there was in force in respect of a boat identified in the

certificate a licence under section 9, being a licence specified in the certificate to be one in respect of which an endorsement under sub-section 9 (4) was or was not in force that authorized or that did not authorize the use of the boat for activities specified in the certificate in an area of proclaimed waters specified in the certificate.”.

(2) Notwithstanding the amendments made by sub-section (1), sub-section 16 (2) of the Principal Act continues in operation after the commencement of this section for the purposes of proceedings for an offence against this Act or the regulations, being an offence that was committed before the commencement of this section.

27. The Principal Act is amended by inserting after section 16 the following section:

Reconsideration and review of decisions by the Minister or Secretary

“16A. (1) In this section, unless the contrary intention appears—

‘decision’ has the same meaning as in the *Administrative Appeals Tribunal Act 1975*;

‘relevant decision’ means a decision of a delegate of the Minister or of a delegate of the Secretary under section 6B, section 9 (other than a decision under sub-section (3A), (9) or (10) of that section), sub-section 9A (1) or (4) or sub-section (2) of this section;

‘reviewable decision’ means—

- (a) a decision of the Minister or the Secretary (other than a decision of a delegate of the Minister or of a delegate of the Secretary) under section 6B, section 9 (other than a decision under sub-section (3A), (8B), (9) or (10) of that section), sub-section 9A (1) or (4) or sub-section (2) of this section; or
- (b) a decision of the Minister or the Secretary under sub-section (4) of this section.

“(2) A person affected by a relevant decision who is dissatisfied with the decision may, within 21 days after the day on which the decision first comes to the notice of the person, or within such further period as the Minister or the Secretary (either before or after the expiration of that period), by notice in writing served on the person, allows, by notice in writing given to the Minister or the Secretary, request the Minister or the Secretary, as the case may be, to reconsider the decision.

“(3) There shall be set out in the request the reasons for making the request.

“(4) The Minister or the Secretary shall, within 45 days after the receipt of the request, reconsider the relevant decision and may make a decision—

- (a) in substitution for the relevant decision whether in the same terms as the relevant decision or not; or
- (b) revoking the relevant decision.

“(5) Where, as a result of a reconsideration under sub-section (4), the Minister or the Secretary makes a decision in substitution for or revoking the relevant decision, he shall, by notice in writing served, either personally or by post, on the person who made the request under sub-section (2) for the reconsideration, inform the person of the result of the reconsideration, set out findings on material questions of fact, refer to the evidence or other material on which those findings were based and give the reasons for his decision.

“(6) An application may be made to the Administrative Appeals Tribunal for a review of a reviewable decision.

“(7) Where a relevant decision is made and the person who made the relevant decision gives to a person whose interests are affected by the decision notice in writing of the making of the decision, that notice shall include a statement to the effect that a person affected by the decision—

- (a) may, if he is dissatisfied with the decision, seek a reconsideration of the decision by the Minister or the Secretary in accordance with sub-section (2); and
- (b) may, subject to the *Administrative Appeals Tribunal Act 1975*, if he is dissatisfied with a decision of the Minister or the Secretary upon that reconsideration, make application to the Administrative Appeals Tribunal for review of that decision.

“(8) Where the Minister or the Secretary or a delegate of the Minister or the Secretary makes a reviewable decision and gives to a person whose interests are affected by the decision notice in writing of the making of the decision, that notice shall include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates by or on behalf of a person whose interests are affected by the decision.

“(9) Any failure to comply with the requirements of sub-section (7) or (8) in relation to a decision does not affect the validity of the decision.

“(10) In this section a reference to a relevant decision or a reviewable decision does not include a reference to—

- (a) a decision that relates to a foreign boat; or
- (b) a decision in relation to the grant, suspension or cancellation of a master fisherman's licence in respect of a person who is neither an Australian citizen nor a resident of Australia, or in relation to the imposition, variation or revocation of conditions to which a master fisherman's licence granted to such a person is subject.”.

Regulations

28. Section 17 of the Principal Act is amended—

- (a) by omitting from paragraphs (1) (b) and (e) “fishermen” and substituting “masters of boats that are licensed under this Act”;

- (b) by inserting after paragraph (1) (k) the following paragraph:
 - “(ka) for providing for the furnishing of information relating to persons on board a boat licensed under this Act that is in proclaimed waters;”;
- (c) by omitting sub-section (3) and substituting the following sub-section:
 - “(3) Information derived from returns furnished under regulations made under paragraph (1) (f) is not to be used for purposes other than statistical purposes.”.

PART IV—AMENDMENT OF THE FISHING INDUSTRY RESEARCH ACT 1969

Principal Act

29. The *Fishing Industry Research Act 1969*³ is in this Part referred to as the Principal Act.

Interpretation

30. Section 3 of the Principal Act is amended by inserting after the definition of “nominated member” the following definition:

“ ‘State’ includes the Northern Territory;”.

NOTES

1. No. 149, 1968, as amended. For previous amendments, see No. 219, 1973; No. 91, 1976; No. 100, 1978; No. 155, 1979; Nos. 70 and 94, 1980; No. 182, 1981; and No. 80, 1982.
2. No. 7, 1952, as amended. For previous amendments, see 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; No. 91, 1976; No. 99, 1978; No. 155, 1979; Nos. 70, 86 and 93, 1980; No. 181, 1981; and No. 80, 1982.
3. No. 80, 1969, as amended. For previous amendments, see No. 80, 1982; and No. 39, 1983.