Environment Protection and Biodiversity Conservation Amendment (Declared Commercial Fishing Activities) Act 2012

No. 131, 2012

An Act to amend the Environment Protection and Biodiversity Conservation Act 1999, and for related purposes

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)
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No. 131, 2012

An Act to amend the Environment Protection and Biodiversity Conservation Act 1999, and for related purposes

[Assented to 19 September 2012]

The Parliament of Australia enacts:
1 Short title

This Act may be cited as the *Environment Protection and Biodiversity Conservation Amendment (Declared Commercial Fishing Activities) Act 2012*.

2 Commencement

This Act commences on the day this Act receives the Royal Assent.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Environment Protection and Biodiversity Conservation Act 1999

1 After Chapter 5A

Insert:

Chapter 5B—Declared commercial fishing activities

Part 15B—Declared commercial fishing activities

Division 1—Prohibition

390SA Civil penalty—declared commercial fishing activities

A person must not engage in a declared commercial fishing activity in a Commonwealth marine area.

Civil penalty:

(a) for an individual—5,000 penalty units;
(b) for a body corporate—50,000 penalty units.

Note: If a body corporate is found to have contravened this section, an executive officer of the body may be found to have contravened section 494.

390SB Offence—declared commercial fishing activities

(1) A person commits an offence if:

(a) the person takes an action; and
(b) the action is taken in a Commonwealth marine area; and
(c) the action is a declared commercial fishing activity.

Penalty: Imprisonment for 7 years or 420 penalty units, or both.
Schedule 1  Declared commercial fishing activities

Note 1:  If a body corporate is found to have committed an offence against this section, an executive officer of the body may be found to have committed an offence against section 495.

Note 2:  Subsection 4B(3) of the Crimes Act 1914 lets a court fine a body corporate up to 5 times the maximum amount the court could fine a person under this subsection.

(2)  Strict liability applies to paragraph (1)(b).

Note:  For strict liability, see section 6.1 of the Criminal Code.

Division 2—Declaring a commercial fishing activity

Subdivision A—What is a declared commercial fishing activity?

390SC  What is a declared commercial fishing activity?

(1)  A declared commercial fishing activity is a commercial fishing activity that is specified in:

(a)  an interim declaration that is in force under section 390SD; or

(b)  a final declaration that is in force under section 390SF.

(1A)  A commercial fishing activity is a fishing activity that is engaged in for a commercial purpose, and, to avoid doubt, does not include an activity that constitutes recreational fishing (within the meaning of subsection 212(2)).

Note:  Under subsection 212(2), recreational fishing includes fishing from a charter boat and fishing in a fishing competition.

(2)  A fishing activity means an activity that constitutes fishing.

Subdivision B—Interim declaration

390SD  Interim declaration

Making an interim declaration

(1)  The Minister may, by legislative instrument, make a declaration (an interim declaration) that a specified commercial fishing activity is a declared commercial fishing activity.

Note 1:  For variation of an interim declaration, see subsection 33(3) of the Acts Interpretation Act 1901.
Note 2: For revocation of an interim declaration, see section 390SG.

(2) When making an interim declaration, the Minister may identify a commercial fishing activity by reference to all or any of the following:
   (a) a method of fishing;
   (b) a type of vessel used for fishing;
   (c) a method of processing, carrying or transhipping of fish that have been taken;
   (d) an area of waters or of seabed.

Note: Subsection (2) does not, by implication, limit subsection 33(3A) of the Acts Interpretation Act 1901.

(2A) When making an interim declaration, the Minister may only specify a commercial fishing activity that had not been engaged in before 11 September 2012 in a Commonwealth marine area.

(3) The Minister must not make an interim declaration unless the Minister and the Fisheries Minister agree that:
   (a) there is uncertainty about the environmental impacts of the commercial fishing activity; and
   (b) it is appropriate that the commercial fishing activity be prohibited in a Commonwealth marine area while consultation occurs under section 390SE about whether to make a final declaration in relation to the commercial fishing activity under section 390SF.

When an interim declaration is in force

(4) An interim declaration:
   (a) comes into force at the end of the day on which it is registered in the Federal Register of Legislative Instruments; and
   (b) remains in force until the earlier of the following times:
      (i) the end of the period specified in the declaration as the period for which the declaration is in force;
      (ii) if the declaration is revoked—when the revocation comes into force.
Specified period for which interim declaration is in force

(5) The Minister must specify in an interim declaration the period for which it is to be in force. The period must not be longer than 60 days.

390SE Consultation

(1) As soon as is practicable after making an interim declaration under section 390SD declaring that a specified commercial fishing activity is a declared commercial fishing activity, the Minister must publish a notice on the Department’s website in accordance with subsection (2).

(2) The notice must:
   (a) invite each declaration affected person (see subsection (3)) to make a written submission about the impact on the person’s rights or interests in relation to fishing if a final declaration under section 390SF were made in relation to the commercial fishing activity; and
   (b) specify that written submissions must be lodged during the period specified in the notice; and
   (c) specify the manner in which written submissions are to be lodged.

(3) A declaration affected person, in relation to a commercial fishing activity, means a person who:
   (a) holds a fishing concession or is prescribed by the regulations; and
   (b) considers that the person would be detrimentally affected by the making of a final declaration under section 390SF in relation to the commercial fishing activity.

(4) For the purposes of paragraph (2)(b), the period specified in the notice must be at least 11 business days after the day the notice is published.
Subdivision C—Final declaration

390SF Final declaration

Making a final declaration

(1) The Minister may, by legislative instrument, make a declaration (a final declaration) that a specified commercial fishing activity is a declared commercial fishing activity.

Note 1: For variation of a final declaration, see subsection 33(3) of the Acts Interpretation Act 1901.

Note 2: For revocation of a final declaration, see section 390SG.

(2) The Minister must not make a final declaration unless:

(a) the commercial fishing activity is the same as a commercial fishing activity that is, or was, specified in an interim declaration under section 390SD; and

(b) consultation under section 390SE has occurred in relation to the commercial fishing activity; and

(c) the Minister has considered any written submission that:

(i) was made under section 390SE by a declaration affected person; and

(ii) was lodged during the period referred to in paragraph 390SE(2)(b); and

(d) the Minister and the Fisheries Minister agree that there is uncertainty about the environmental impacts of the commercial fishing activity; and

(e) the Minister and the Fisheries Minister agree that it is appropriate that:

(i) an expert panel be established under section 390SH to conduct an assessment of the commercial fishing activity and report on the matter; and

(ii) the commercial fishing activity be prohibited in a Commonwealth marine area while the expert panel conducts the assessment.

When a final declaration is in force

(3) A final declaration:
Schedule 1  Declared commercial fishing activities

(a) comes into force at the end of the day on which it is registered in the Federal Register of Legislative Instruments; and

(b) remains in force until the earliest of the following times:
   (i) the end of the day on which the report of the expert panel is published on the Department’s website under paragraph 390SL(a);
   (ii) the end of the period specified in the declaration as the period for which the declaration is in force;
   (iii) if the declaration is revoked—when the revocation comes into force.

Specified period for which final declaration is in force

(4) The Minister must specify in a final declaration the period for which it is to be in force. The period must not be longer than 24 months.

Subdivision D—Revoking declarations

390SG  Revoking an interim or final declaration

(1) The Minister may, by legislative instrument, revoke:
   (a) an interim declaration under section 390SD; or
   (b) a final declaration under section 390SF.

(2) A revocation under subsection (1) comes into force at the end of the day on which it is registered in the Federal Register of Legislative Instruments.

Division 3—Expert panel assessment of declared commercial fishing activity

390SH  Establishment of expert panel

(1) As soon as is practicable after making a final declaration under section 390SF declaring that a specified commercial fishing activity is a declared commercial fishing activity, the Minister must:
(a) appoint, in writing, one or more persons (the members) as an expert panel to conduct an assessment and report to the Minister about the commercial fishing activity; and

(b) with the agreement of the Fisheries Minister, specify in writing (the terms of reference):

(i) the matters relating to the commercial fishing activity that are to be the subject of the assessment and report; and

(ii) the date by which the panel must report to the Minister.

Note: The Minister may revoke an appointment: see subsection 33(3) of the Acts Interpretation Act 1901.

(2) The Minister may specify in the terms of reference the manner in which the expert panel is to carry out the assessment.

(3) The Minister may, in writing, vary or revoke the terms of reference with the agreement of the Fisheries Minister.

(4) The Minister must:

(a) publish a copy of the terms of reference on the Department’s website as soon as is practicable after the Minister specifies or varies them; and

(b) cause a copy of the terms of reference to be laid before each House of the Parliament within 15 sitting days of that House after the day the Minister specifies or varies them.

390S Terms and conditions

The Minister must determine, in writing, the terms and conditions applicable to members of the expert panel, including terms and conditions relating to:

(a) term of office; and

(b) remuneration; and

(c) allowances; and

(d) disclosure of interests.

390SJ Procedure for assessment

(1) The expert panel must comply with the terms of reference in conducting the assessment.
(2) Subject to subsection (1), the expert panel may determine the procedure to be followed in its assessment.

390SK Timing of the report

The expert panel must give the Minister the report on the assessment on the date specified by the Minister in the terms of reference.

390SL Publication of the report

The Minister must:

(a) publish a copy of the report on the Department’s website within 20 business days after the day the Minister receives the report; and

(b) cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the day the Minister receives the report; and

(c) comply with any other publication requirements prescribed by the regulations.

Division 4—Sunsetting of this Part

390SM Sunsetting of this Part

New declarations under this Part may not be made 12 months after the day the Environment Protection and Biodiversity Conservation Amendment (Declared Commercial Fishing Activities) Act 2012 commences.

2 Paragraph 494(1)(a)

Repeal the paragraph, substitute:

(a) a body corporate contravenes:

(i) a civil penalty provision of Part 3 (requirements for approval); or

(ii) section 142 (condition of approval); or

(iii) section 390SA (declared commercial fishing activity); and
3 Subparagraph 495(2)(a)(viii)
   Repeal the subparagraph, substitute:
   (viii) section 142A (Offence of breaching conditions on approval); or
   (ix) section 390SB (Offence relating to declared commercial fishing activity); and

3A Section 528
   Insert:

   commercial fishing activity has the meaning given by subsection 390SC(1A).

4 Section 528
   Insert:

   declaration affected person has the meaning given by subsection 390SE(3).

5 Section 528
   Insert:

   declared commercial fishing activity has the meaning given by subsection 390SC(1).

6 Section 528
   Insert:

   Federal Register of Legislative Instruments means the Federal Register of Legislative Instruments established under the Legislative Instruments Act 2003.

7 Section 528
   Insert:

   fish has the same meaning as in the Fisheries Management Act 1991.
Schedule 1  Declared commercial fishing activities

8 Section 528
Insert:

*Fisheries Minister* means the Minister administering the *Fisheries Management Act 1991.*

9 Section 528
Insert:

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

10 Section 528
Insert:

*fishing activity* has the meaning given by subsection 390SC(2).

11 Section 528
Insert:

*fishing concession* has the same meaning as in the *Fisheries Management Act 1991.*

12 Section 528 (definition of terms of reference)
Repeal the definition, substitute:

*terms of reference:*
(a) in relation to an inquiry under Division 7 of Part 8—has the meaning given by paragraph 107(1)(b); and
(b) in relation to an assessment under Division 3 of Part 15B—has the meaning given by paragraph 390SH(1)(b).
Minister’s second reading speech made in—
House of Representatives on 11 September 2012
Senate on 17 September 2012