



Fisheries Legislation Amendment Act (No. 2) 2010

No. 137, 2010

**An Act to amend various Acts relating to fisheries,
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. 137, 2010

**An Act to amend various Acts relating to fisheries,
and for related purposes**

[Assented to 7 December 2010]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Fisheries Legislation Amendment Act (No. 2) 2010*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	7 December 2010
2. Schedules 1 and 2	The 28th day after this Act receives the Royal Assent.	4 January 2011
3. Schedule 3, Parts 1 and 2	The 28th day after this Act receives the Royal Assent.	4 January 2011
4. Schedule 3, Part 3	The later of: (a) the 28th day after this Act receives the Royal Assent; and (b) the day the Agreement on Cooperative Enforcement of Fisheries Laws between the Government of Australia and the Government of the French Republic in the Maritime Areas Adjacent to the French Southern and Antarctic Territories, Heard Island and the McDonald Islands that was done at Paris on 8 January 2007 comes into force. However, the provision(s) do not commence at all if the event mentioned in paragraph (b) does not occur before 30 June 2011. The Minister must announce by notice in the <i>Gazette</i> the day the Agreement comes into force for Australia.	
Note:	This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.	

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- (2) Any information in Column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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—Amendment of the Fisheries Administration Act 1991

1 Subsection 4(1)

Insert:

co-management arrangement has the meaning given in section 88.

2 Subsection 4(1)

Insert:

primary stakeholder in relation to a fishery means:

- (a) the holder of a fishing concession in the fishery; or
- (b) an incorporated body that represents those holders (including a peak body, for example); or
- (c) a person prescribed by the regulations.

3 Paragraph 7(1)(g)

Repeal the paragraph, substitute:

- (fa) to consult and exchange information with an entity in a State, Territory or foreign country that has similar functions to the Authority's functions;
- (g) to make its expertise in fisheries management available to the following entities (including by providing information technology, services or technical experts, for example):
 - (i) an entity in the Commonwealth, a State, a Territory or a foreign country;
 - (ii) another person;

4 Section 54

Omit “, subject to subsection 56(4),”.

5 Subsection 56(4)

Repeal the subsection.

6 After section 87

Insert:

88 Co-management arrangements

The Authority may enter into an arrangement (a ***co-management arrangement***) with stakeholders in a fishery under which the stakeholders assist the Authority to perform the Authority's functions and powers for the sustainable management of the fishery.

7 After paragraph 93(1)(e)

Insert:

or (f) a primary stakeholder under a co-management arrangement;

Schedule 2—Amendment of the Fishing Levy Act 1991

1 Section 7

Before “Levy”, insert “(1)”.

2 At the end of section 7

Add:

- (2) In this section, *holder* of a fishing concession means:
- (a) the person to whom the fishing concession was granted; or
 - (b) if the fishing concession has been transferred—the person to whom the fishing concession was last transferred.

Schedule 3—Amendment of the Fisheries Management Act 1991

Part 1—Co-management arrangements and other regulatory reforms

1 Subsection 4(1)

Insert:

holder of a licence, permit or right:

(a) means:

- (i) the person to whom the licence, permit or right was granted; or
- (ii) if the permit or right has been transferred—the person to whom the permit or right was last transferred; and
- (b) in the case of a statutory fishing right that is leased to another person by a lease registered under section 46—includes the lessee of the statutory fishing right.

2 Subsection 4(1)

Insert:

primary stakeholder has the meaning given in the *Fisheries Administration Act 1991*.

3 Subsection 17(5)

Omit “is to set out”, substitute “may set out”.

4 Subsections 17(5A) and (5B)

Repeal the subsections.

5 Subsection 17(6B)

Repeal the subsection, substitute:

- (6B) A determination made by AFMA under paragraph (6)(aa) is a legislative instrument.

6 Subsection 17(11)

Repeal the subsection, substitute:

- (11) AFMA may, by writing under its common seal, delegate any powers conferred on it under a plan of management for a fishery in accordance with paragraph (6)(aa) to:
- (a) the CEO; or
 - (b) a primary stakeholder who is to assist AFMA to manage the fishery under a co-management arrangement (within the meaning of the *Fisheries Administration Act 1991*).

7 Subsections 19(2) and (3)

Repeal the subsections.

8 At the end of section 20

Add:

- (6) However, subsection (2) of this section, subsections 17(1B) to (4), and sections 18 and 19 do not apply to an amendment of a plan of management that merely:
- (a) corrects an error in the plan (including a factual, grammatical, mapping or typographical error, for example); or
 - (b) changes the format or presentation of the plan; or
 - (c) changes a matter in the plan to make the plan consistent with:
 - (i) this or another Act; or
 - (ii) the regulations; or
 - (d) removes conditions from the plan if conditions for the plan's fishery about the same subject matter have been prescribed in the regulations, whether or not the conditions are in the same terms.
- (7) Also, subsections 17(1B) to (4) and section 19 do not apply to an amendment of a plan of management to remove a provision from the plan if, within 1 year before the proposed amendment is to take effect, the following entities have been given at least 28 days written notice of the proposed amendment:
- (a) if there is a management advisory committee for the plan's fishery—the management advisory committee;
 - (b) if a peak body represents the holders of statutory fishing rights under the plan—the peak body;

- (c) if there is no management advisory committee or peak body—the holders of the licences, permits or rights for the fishery.
- (8) However, section 18 applies to an amendment mentioned in subsection (7) in the same way as section 18 applies to a plan of management.

9 Subsections 41A(1) and (2)

Repeal the subsections, substitute:

- (1) This section applies to a fishery in respect of which fishing concessions, scientific permits or foreign master fishing licences are in force.
- (2) If, after consultation with:
 - (a) the management advisory committee for the fishery; or
 - (b) if there is no management advisory committee for the fishery—the holders of fishing concessions, scientific permits or foreign master fishing licences for the fishery;AFMA may direct that fishing not be engaged in any part of the fishery, or in a particular part of the fishery, during a period or periods specified in the direction.
- (2A) At least 7 days before the direction takes effect, AFMA must tell the holders of the fishing concessions, scientific permits or foreign master fishing licences, in writing, about the direction.
- (2B) However, if a direction is given in an emergency:
 - (a) subsection (2A) does not apply; and
 - (b) AFMA must tell the holders of the fishing concessions, scientific permits or foreign master fishing licences, in writing, about the direction as soon as it can practicably do so.
- (2C) AFMA may, by writing under its common seal, delegate the power to give a direction under subsection (2) to:
 - (a) the CEO; or
 - (b) a primary stakeholder who is to assist AFMA to manage the fishery under a co-management arrangement (within the meaning of the *Fisheries Administration Act 1991*).

10 After section 42A

Insert:

42B Regulation-making power for conditions

- (1) The regulations may prescribe conditions that apply to fishing concessions or foreign master fishing licences.
- (2) A provision of a plan of management has no effect to the extent that it is inconsistent with regulations made for the purposes of this section.

11 Paragraph 57H(1)(a)

Omit “person to whom the permit is granted”, substitute “holder of the permit”.

Part 2—Illegal transiting of Australian fishing zone

12 Paragraph 101(1)(d)

Repeal the paragraph, substitute:

- (d) the boat's fishing equipment is stowed and the boat is travelling, by the shortest practicable route, through the AFZ from a point beyond the outer limits of the AFZ to another such point; or

13 Paragraph 101A(4)(d)

Repeal the paragraph, substitute:

- (d) the boat's fishing equipment is stowed and the boat is travelling, by the shortest practicable route, through the AFZ from a point beyond the outer limits of the AFZ to another such point; or

14 Paragraph 101AA(2)(d)

Repeal the paragraph, substitute:

- (d) the boat's fishing equipment is stowed and the boat is travelling, by the shortest practicable route, through the AFZ from a point beyond the outer limits of the AFZ to another such point; or

Part 3—Cooperative Enforcement Agreement

15 Subsection 4(1)

Insert:

cooperative enforcement has the meaning given by section 84B.

16 Subsection 4(1)

Insert:

Cooperative Enforcement Agreement has the meaning given by section 84B.

17 Subsection 4(1)

Insert:

international officer has the meaning given by section 84B.

18 After section 84AA

Insert:

84B Cooperative Enforcement Agreement

Purpose

- (1) The purpose of this section is to implement the Agreement on Cooperative Enforcement of Fisheries Laws between the Government of Australia and the Government of the French Republic in the Maritime Areas Adjacent to the French Southern and Antarctic Territories, Heard Island and the McDonald Islands that was done at Paris on 8 January 2007 (the *Cooperative Enforcement Agreement*).

Note 1: In 2010, the text of the Agreement was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

Note 2: The Agreement should be read together with the Treaty between the Government of Australia and the Government of the French Republic on cooperation in the Maritime Areas Adjacent to the French Southern and Antarctic Territories (TAAF), Heard Island and the McDonald Islands, that was done at Canberra on 24 November 2003. The text of

the Treaty is set out in Australian Treaty Series 2005 No. 6 ([2005] ATS 6). In 2010, the text of a treaty in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

International officers

- (2) An international officer may, for the purposes of conducting cooperative enforcement, exercise any of the powers of an officer in this Division. In doing so, the international officer is taken for the purposes of this Act to have exercised the power as an officer.
- (3) The regulations may prescribe conditions for the exercise of a power by an international officer.
- (4) Subsections 84(4) and (6) apply in relation to the exercise of a power by an international officer as if references in those subsections to the officer's identity card were references to a document:
 - (a) issued by an officer; and
 - (b) identifying the international officer as an international officer authorised to conduct cooperative enforcement.
- (5) An international officer is not liable to any civil or criminal proceedings in respect of anything done or omitted to be done in good faith in the exercise or purported exercise of a power conferred on an international officer by subsection (3).

Officers

- (6) An officer may, for the purposes of conducting cooperative enforcement, exercise any powers conferred by the Government of the French Republic on officers in order to give effect to the Cooperative Enforcement Agreement.
- (7) An officer is not liable to any civil or criminal proceedings in respect of anything done or omitted to be done in good faith in the exercise or purported exercise of a power referred to in subsection (6).

Definitions

- (8) In this Act:

cooperative enforcement means cooperative enforcement, as defined in the Cooperative Enforcement Agreement, that is conducted in accordance with that Agreement.

international officer means a person who is authorised to conduct cooperative enforcement by a competent authority of the Government of the French Republic.

19 Subsection 87(1)

Omit “but not within the territorial sea of another country”.

20 After subsection 87(1)

Insert:

- (1AA) Subsection (1) does not apply to a place within the territorial sea of another country, unless the other country has given written permission for the power to be exercised in the other country’s territorial sea (including permission given in a treaty, for example).

*[Minister’s second reading speech made in—
House of Representatives on 29 September 2010
Senate on 27 October 2010]*

(204/10)