



Fisheries Legislation Amendment (International Obligations and Other Matters) Act 2005

No. 99, 2005

**An Act to amend legislation about fisheries, and for
related purposes**

Note: An electronic version of this Act is available in SCALEplus
(<http://scaleplus.law.gov.au/html/comact/browse/TOCN.htm>)

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No. 99, 2005

An Act to amend legislation about fisheries, and for related purposes

[Assented to 6 July 2005]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Fisheries Legislation Amendment (International Obligations and Other Matters) Act 2005*.

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 on which this Act receives the Royal Assent.	6 July 2005
2. Schedule 1, items 1 to 4	The day after this Act receives the Royal Assent.	7 July 2005
3. Schedule 1, item 5	A single day to be fixed by Proclamation. However, if any of the provision(s) do not commence within the period of 2 years beginning on the day on which this Act receives the Royal Assent, the provisions are repealed on the first day after the end of that period.	
4. Schedule 1, items 6 to 23	The day after this Act receives the Royal Assent.	7 July 2005
5. Schedule 1, items 24 to 33	At the same time as the provision(s) covered by table item 3.	
6. Schedule 1, items 34 to 36	The day after this Act receives the Royal Assent.	7 July 2005
7. Schedule 1, items 37 to 41	At the same time as the provision(s) covered by table item 3.	
8. Schedule 1, items 42 to 47	The day after this Act receives the Royal Assent.	7 July 2005

Commencement information		
Column 1	Column 2	Column 3
Provision(s)	Commencement	Date/Details
9. Schedule 1, items 48 to 58	<p>The later of:</p> <p>(a) immediately after the commencement of Part 2 of Schedule 1 to the <i>Border Protection Legislation Amendment (Deterrence of Illegal Foreign Fishing) Act 2005</i>; and</p> <p>(b) immediately after the commencement of the provision(s) covered by table item 3.</p> <p>However, the provision(s) do not commence at all unless both of the events mentioned in paragraphs (a) and (b) occur.</p>	
10. Schedule 1, item 59	<p>The later of:</p> <p>(a) immediately after the commencement of Part 1 of Schedule 2 to the <i>Border Protection Legislation Amendment (Deterrence of Illegal Foreign Fishing) Act 2005</i>; and</p> <p>(b) immediately after the commencement of the provision(s) covered by table item 3.</p> <p>However, the provision(s) do not commence at all unless both of the events mentioned in paragraphs (a) and (b) occur.</p>	

Note: This table relates only to the provisions of this Act as originally passed by the Parliament and assented to. It will not be expanded to deal with provisions inserted in this Act after assent.

- (2) Column 3 of the table contains additional information that is not part of this Act. Information in this column may be added to or 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—Amendments

Part 1—Main amendments

Fisheries Administration Act 1991

1 After paragraph 7(1)(ga)

Insert:

- (gb) to disclose, or to authorise a prescribed agency within the meaning of subsection (4) to disclose on its behalf, information relating to fishing activities that may involve a breach of the laws of Australia or of a foreign country, including personal information relating to the fishing activities of individuals that may involve such a breach;

2 At the end of section 7

Add:

- (3) In disclosing information in the course of an activity referred to in paragraph (1)(g), (ga), (gb) or (ma), or in authorising the disclosure of such information, the Authority may require that the information:
 - (a) not be disclosed by the body to which it is provided; or
 - (b) be disclosed only for such purposes, and on such conditions, as the Authority specifies.
- (4) An agency is a prescribed agency for the purposes of paragraph (1)(gb) if:
 - (a) it is an agency within the meaning of section 7 of the *Public Service Act 1999*; and
 - (b) it is declared by the regulations to be a prescribed agency for the purposes of that paragraph.

Fisheries Management Act 1991

3 Subsection 4(1)

Insert:

Convention area has the same meaning as in Article 3 of the WCPFC.

4 Subsection 4(1)

Insert:

party to the WCPFC includes a fishing entity that has agreed to be bound by the regime established by the WCPFC in accordance with the provisions of Annex I to the WCPFC.

5 Subsection 4(1) (definition of *seriously violate*)

Repeal the definition, substitute:

seriously violate:

- (a) in relation to an Australian regional management measure in relation to a boat—has the meaning given by subsection 87E(4); and
- (b) in relation to a WCPFC conservation and management measure in relation to a boat—has the meaning given by subsection 87FC(5).

6 Subsection 4(1)

Insert:

WCPFC means the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean done at Honolulu on 5 September 2000.

Note: The English text of the Convention is set out in the Australian Treaty Series at [2004] ATS 15. In 2005 this was available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible on the Internet through that Department's world-wide web site.

7 Subsection 4(1)

Insert:

WCPFC boat means a boat registered under the laws of a foreign country that is a party to the WCPFC.

8 Subsection 4(1)

Insert:

WCPFC conservation and management measure means a measure that is:

- (a) established by the Commission as defined in the WCPFC to conserve or manage one or more WCPFC fish stocks in all or a part of the Convention area; and
- (b) set out in regulations made for the purposes of this definition.

9 Subsection 4(1)

Insert:

WCPFC fish stock means any stock of highly migratory fish of a species listed in Annex I to the United Nations Convention on the Law of the Sea, except sauries.

Note: The English text of the Convention is set out in the Australian Treaty Series at [1994] ATS 31. In 2005 this was available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible on the Internet through that Department's world-wide web site.

10 Subsection 10(2)

After "law of a State or Territory relating to", insert "fish or".

11 Paragraph 10(2)(c)

After "fishing permit", insert "by prohibiting such landing or"

12 At the end of section 10

Add:

- (4) The reference in paragraph 10(2)(c) to prohibiting the landing in a State or Territory of fish taken under a statutory fishing right or fishing permit includes a reference to:
 - (a) directly prohibiting the landing of such fish in the State or Territory; or
 - (b) directly prohibiting or regulating the possession or processing of, or other dealing with, such fish in the State or Territory in any respect that would be likely to substantially discourage the landing of such fish in the State or Territory.
 - (5) For the avoidance of doubt, the reference in subsection (2) to a law of a State or Territory relating to fish or fishing does not include such a law that is for the protection of public health, for ensuring safety or for any similar objective.
-

13 Paragraph 17(5)(c)

Repeal the paragraph, substitute:

- (c) performance criteria against which, and time frames within which, the measures taken under the plan of management may be assessed.

14 After subsection 17(5)

Insert:

- (5AA) The objectives to be set out under paragraph (5)(a) must be consistent with, but are not limited to, the objectives set out in section 3.

15 Subparagraphs 17(6)(d)(ii) and (iii)

Repeal the subparagraphs, substitute:

- (ii) the calling of tenders; and

16 Paragraphs 23(1)(b) and (c)

Repeal the paragraphs, substitute:

- (b) the calling of tenders in respect of the grant;

17 Paragraph 25(b)

Omit “, tender or ballot”, substitute “or tender”.

18 Subsection 28(1)

Omit “, tender or ballot”, substitute “or tender,”.

19 Paragraph 28(2)(c)

Repeal the paragraph.

20 Paragraph 28(2)(d)

Omit “or a ballot conducted”.

21 Subsection 29(2)

Omit “, or a ballot conducted,”.

22 Subsection 38(2)

Omit “subsection (3)”, substitute “subsections (3) and (3A)”.

23 After subsection 38(3)

Insert:

(3A) If:

- (a) a serious violation of a WCPFC conservation and management measure has led to the imposition on the holder of a fishing concession of sanctions by Australia or a foreign country; and
 - (b) those sanctions have not been complied with;
- AFMA may, by written notice given to the holder of the concession, suspend the fishing concession until the sanctions are fully complied with.

24 Before section 83

Insert:

Subdivision A—General surveillance and enforcement powers of officers

25 After section 87

Insert:

Subdivision B—Surveillance and enforcement powers of officers concerning FSA boats

26 After section 87F

Insert:

Subdivision C—Surveillance and enforcement powers of officers concerning WCPFC boats

87FA Officers' powers: WCPFC boat illegally fishing on the high seas

- (1) The provisions of section 84 listed in the table (and the other provisions of that section so far as they relate to the listed provisions) apply, with the modifications (if any) set out in the table, to:

- (a) a WCPFC boat equipped for fishing that is on the high seas in a part of the Convention area covered by a WCPFC conservation and management measure; and
- (b) the master of the boat; and
- (c) a person on the boat; and
- (d) a thing on the boat.

Provisions of section 84 applying to WCPFC boats on high seas

Item	Applied provision	Modifications
1	Paragraph 84(1)(aa)	None
2	Paragraph 84(1)(a)	Applies as if: <ul style="list-style-type: none"> (a) the reference to a boat in the AFZ were a reference to a WCPFC boat equipped for fishing that is on the high seas in a part of the Convention area covered by a WCPFC conservation and management measure; and (b) the reference to an offence against this Act were a reference to an offence against section 105H or 105I
3	Paragraph 84(1)(c)	None
4	Paragraph 84(1)(fa)	Applies as if it allowed the officer to require the master of a boat to give the officer such help as the officer reasonably requires for the purpose of measuring equipment, regardless of whether a fishing concession is in force
5	Paragraph 84(1)(g)	Applies as if: <ul style="list-style-type: none"> (a) the reference to subsection (1A) included a reference to section 87FC; and (b) a reference to contravention of this Act were a reference to an offence against section 105H or 105I
6	Paragraph 84(1)(j)	Applies: <ul style="list-style-type: none"> (a) subject to section 87FC; and (b) as if a reference to an offence against this Act were a reference to an offence against section 105H or 105I

Schedule 1 Amendments
Part 1 Main amendments

Provisions of section 84 applying to WCPFC boats on high seas

Item	Applied provision	Modifications
7	Paragraph 84(1)(k)	Applies: (a) subject to section 87FC; and (b) as if a reference to contravention of this Act were a reference to an offence against section 105H or 105I; and (c) as if subparagraph 84(1)(k)(i) were omitted; and (d) as if the reference in subparagraph 84(1)(k)(ii) to such a place included a reference to a port in a foreign country
8	Paragraph 84(1)(l)	Applies: (a) subject to section 87FC; and (b) as if the reference to a place in Australia included a reference to a port in a foreign country
9	Paragraph 84(1)(m)	Applies: (a) subject to section 87FC; and (b) as if a reference to contravention of this Act were a reference to an offence against section 105H or 105I; and (c) as if the reference to a place in Australia included a reference to a port in a foreign country
10	Paragraph 84(1)(n)	Applies as if a reference to a fishing concession included a reference to an authorisation (however described) by a foreign country to use the boat for fishing on the high seas
11	Paragraph 84(1)(o)	None
12	Paragraph 84(1)(p)	Applies as if there were a fishing concession under this Act in force in relation to the boat
13	Paragraph 84(1)(q)	Applies as if a reference to contravention of this Act were a reference to an offence against section 105H or 105I
14	Paragraph 84(1)(r)	Applies as if a reference to an offence against this Act were a reference to an offence against section 105H or 105I
15	Subsection 84(1A)	Applies as if the reference to the owner of the boat were a reference to the master of the boat at the time the officer believes the offence against section 105H or 105I occurred

Note: Section 87FD imposes certain requirements if an officer exercises powers on a WCPFC boat under section 84 as applied by this section.

- (2) This section does not limit the extra-territorial operation that section 84 has apart from this section, except in relation to offences against section 105H or 105I.

87FB Officers' powers: WCPFC boat in Australian waters

WCPFC boats that have been fishing on the high seas

- (1) This section operates in relation to a WCPFC boat in the AFZ, Australia or an external Territory, but only if:
- (a) the WCPFC boat is equipped for fishing; and
 - (b) an officer has reasonable grounds to believe that the boat is on a fishing trip; and
 - (c) the officer has reasonable grounds to believe that, in the course of the fishing trip:
 - (i) the boat has been used on the high seas in contravention of a WCPFC conservation and management measure; and
 - (ii) the boat entered the AFZ after the contravention.

Note: Sections 105H and 105I make it an offence to use a WCPFC boat in certain areas of the high seas in contravention of a WCPFC conservation and management measure.

Officers' powers

- (2) Subsection 87FA(1) applies in relation to the boat (and to its master, a person on it and a thing on it) in the same way as it applies to a boat, master, person and thing described in paragraphs 87FA(1)(a), (b), (c) and (d).

Note 1: This gives an officer the powers described in section 84 (as modified by section 87FA) in relation to the boat, its master, a person on it and a thing on it.

Note 2: Section 87FD imposes certain requirements if an officer exercises powers on a WCPFC boat under section 84 as applied by this section.

Modifications of powers

- (3) However, subsection 87FA(1) applies as if the following paragraphs in the column headed "Modifications" of the table in that subsection were omitted:

- (a) paragraph (a) in item 2 of the table;
- (b) paragraph (c) in item 7 of the table.

Relationship with section 84

- (4) This section does not prevent an officer from exercising powers under section 84 as it applies of its own force, except in relation to a contravention of, or offence against, section 105H or 105I.

87FC Limits on exercising certain powers in relation to WCPFC boats

- (1) An officer must not do any of the following unless the requirements of subsection (2) are met:
 - (a) seize, detain or remove a thing that is, or is on, a WCPFC boat under paragraph 84(1)(g) as it applies because of section 87FA or 87FB; or
 - (b) detain under paragraph 84(1)(ia) a person whom the officer has reasonable grounds to believe was on a WCPFC boat when it was used in the commission of an offence against section 105H or 105I; or
 - (c) take from one place to another under paragraph 84(1)(ib) a person detained under paragraph 84(1)(ia) because an officer had reasonable grounds to believe the person was on a WCPFC boat when it was used in the commission of an offence against section 105H or 105I; or
 - (d) arrest without warrant a person on a boat under paragraph 84(1)(j) as it applies because of section 87FA or 87FB; or
 - (e) require the master of a WCPFC boat to remain in control of a boat at a place in Australia or a Territory under subparagraph 84(1)(k)(i) as it applies because of section 87FB; or
 - (f) require the master of a WCPFC boat to bring the boat to a place under subparagraph 84(1)(k)(ii) or paragraph 84(1)(l) as it applies because of section 87FA or 87FB; or
 - (g) bring a WCPFC boat to a place under paragraph 84(1)(m) as it applies because of section 87FA or 87FB.
- (2) The requirements are that:
 - (a) an officer must believe on reasonable grounds that a person has committed an offence against section 105H or 105I involving the use of the boat; and

- (b) an officer must have notified the appropriate authority of the country of nationality of the boat of that belief; and
 - (c) either:
 - (i) the officer taking the action described in subsection (1) must reasonably believe that the appropriate authority of the country of nationality of the boat has authorised the action (specifically or in general terms); or
 - (ii) the circumstances described in subsection (4) exist.
 - (3) If a notification referred to in paragraph (2)(b) is made by an instrument, the instrument is not a legislative instrument.
 - (4) The circumstances are that:
 - (a) the country of nationality of the boat has not acted in accordance with its international obligations arising from the notification; and
 - (b) an officer has reasonable grounds to believe that a person has seriously violated a WCPFC conservation and management measure in relation to the boat.
- Note: Article 25 of the WCPFC requires the country of nationality of the WCPFC boat to do certain things if it is notified.
- (5) A person *seriously violates* a WCPFC conservation and management measure in relation to a boat if:
 - (a) the person commits an offence against section 105H or 105I by:
 - (i) using the boat to fish; or
 - (ii) failing to maintain accurate records of fish taken using the boat; or
 - (iii) failing to provide accurate information about fish taken, carried, transhipped or processed using the boat; or
 - (iv) taking, carrying, transhipping or processing fish using the boat without an authorisation (however described) to do so; or
 - (v) taking, carrying, transhipping or processing more fish using the boat than the person is authorised to do; or
 - (vi) changing or hiding the markings of the boat; or
 - (vii) a prescribed act or omission, or a prescribed series of acts or omissions, relating to the boat; or

- (b) the person conceals, tampers with or disposes of evidence of an offence against section 105H or 105I involving the boat; or
 - (c) the person commits an offence relating to the boat against a prescribed provision of this Act or the regulations.
- (6) Subsection (1) does not limit an officer's power under paragraph 84(1)(ia) or (ib) in relation to a person if the officer has reasonable grounds to believe that the person was on a WCPFC boat when it was used in the commission of an offence against section 99, 100, 100A, 101, 101A or 101B.

Note: Section 84A affects the officer's power in that situation.

87FD Procedures relating to exercise of powers on WCPFC boat

Overview

- (1) This section applies if an officer on a WCPFC boat exercises powers under section 84 as it applies because of section 87FA or 87FB.

Showing documents to master

- (2) When, or as soon as practicable after, an officer first exercises a power on the boat relating to an offence against section 105H or 105I in relation to a WCPFC conservation and management measure, an officer must show the master of the boat:
- (a) a copy of the text of the measure; and
 - (b) a copy of the provisions of this Act and the regulations that relate to the measure.

Giving notice to flag state for boat

- (3) When, or as soon as practicable after, an officer first exercises a power on the boat, an officer must give notice to the country of nationality that an officer has boarded and is inspecting the boat.

Leaving quickly after finding no evidence

- (4) The officer must leave the boat as soon as reasonably practicable after exercising the powers on the boat and finding no evidence that a person has seriously violated a WCPFC conservation and management measure in relation to the boat.

Giving report of exercise of powers

- (5) After one or more officers have finished exercising powers on the boat, an officer must give the master and the country of nationality of the boat a report of the exercise of the powers on the boat during the period while one or more officers were on the boat.

Legislative instruments

- (6) If a notice under subsection (3) or a report under subsection (5) is made by an instrument, the notice or report is not a legislative instrument.

Report to note master's statements

- (7) A report under subsection (5) must include a note of any objection or statement the master of the boat asked an officer to include in the report.

Minimising duplication

- (8) This section does not require the master to be shown a document more than once, or more than one notice or report to be given, in relation to the exercise of a power or powers during the period for which one or more officers are on the boat (even if the same officer is not on the boat throughout the period).

Officers to comply with regulations

- (9) The officer must comply with any other requirements prescribed by the regulations in relation to the exercise of the powers.

27 Before section 87G

Insert:

**Subdivision D—Miscellaneous provisions relating to
surveillance and enforcement powers of officers**

28 Subsection 87H(1) (note)

Repeal the note, substitute:

- Note 1: If the officer discovers after boarding that the boat is in fact an FSA boat, section 87B will apply section 84 to allow the officer to exercise powers on the boat.

Schedule 1 Amendments
Part 1 Main amendments

Note 2: If the officer discovers after boarding that the boat is in fact a WCPFC boat, section 87FA will apply section 84 to allow the officer to exercise powers on the boat.

Note 3: If the officer discovers after boarding that the boat is in fact an Australian-flagged boat, section 87G will apply section 84 to allow the officer to exercise powers on the boat.

29 Paragraph 87H(5)(b)

After “section 87F”, insert “or 87FD”.

30 Subsection 87H(5) (note)

Repeal the note, substitute:

Note 1: Section 87F will require a report to be given to the master if the boat is in fact an FSA boat (despite there having been reasonable grounds to believe it was without nationality).

Note 2: Section 87FD will require a report to be given to the master if the boat is in fact a WCPFC boat (despite there having been reasonable grounds to believe it was without nationality).

31 Subsections 87J(1) and 88(1)

After “87D”, insert “, 87FA, 87FB”.

32 Subsection 88A(1)

Repeal the subsection, substitute:

(1) This section applies to an FSA boat, or a WCPFC boat, that is under the control of an officer (the *controlling officer*) because of the exercise of a power under section 84 by an officer (whether the controlling officer or not) who is or has been investigating whether the boat has been used in an offence against:

(a) in the case of an FSA boat—section 105E or 105F; or

(b) in the case of a WCPFC boat—section 105H or 105I.

33 Subsection 88A(4)

Omit “or 87D”, substitute “, 87D, 87FA or 87FB”.

Note: The heading to section 88A is altered by inserting “and WCPFC boats” after “FSA boats”.

34 At the end of subsection 103(1B)

Add:

Note: The defendant bears an evidential burden in relation to the matter in subsection (1B). See subsection 13.3(3) of the *Criminal Code*.

35 Subsection 103(1A) (the subsection (1A) inserted by item 208 of Schedule 1 to the *Agriculture, Fisheries and Forestry Legislation Amendment (Application of Criminal Code) Act 2001*)

Repeal the subsection.

36 After section 105A

Insert:

105AA Person fishing for WCPFC fish stock on high seas without a concession—strict liability

- (1) A person is guilty of an offence if:
 - (a) the person uses a boat for fishing; and
 - (b) the fishing is for a WCPFC fish stock; and
 - (c) the boat is an Australian-flagged boat; and
 - (d) the boat is on the high seas in a part of the Convention area; and
 - (e) the fishing is not authorised by a fishing concession.
- (2) The offence is punishable on conviction by a fine of not more than 60 penalty units.
- (3) An offence under this section is an offence of strict liability.

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

105AB Person fishing for WCPFC fish stock on high seas without a concession

- (1) A person is guilty of an offence if:
 - (a) the person uses a boat for fishing; and
 - (b) the fishing is for a WCPFC fish stock; and
 - (c) the boat is an Australian-flagged boat; and
 - (d) the boat is on the high seas in a part of the Convention area; and
 - (e) the fishing is not authorised by a fishing concession.

- (2) The offence is punishable on conviction by a fine of not more than 500 penalty units.

37 Subsection 105D(1)

After “to the Fish Stocks Agreement”, insert “or the WCPFC”.

38 At the end of paragraph 105D(1)(c)

Add “or the WCPFC, as the case requires”.

39 After subsection 105D(2)

Insert:

Investigating breaches of WCPFC conservation and management measures

- (2A) On behalf of Australia, AFMA may authorise an authority of a foreign country that is party to the WCPFC to investigate an alleged contravention of a WCPFC conservation and management measure involving an Australian-flagged boat if:
- (a) an official of the foreign country has boarded the boat on the high seas in a part of the Convention area; and
 - (b) the appropriate authority of the foreign country has notified AFMA or Australia that the official has reasonable grounds for believing that the boat has been used in contravention of the WCPFC conservation and management measure; and
 - (c) AFMA is satisfied that the investigation will be carried out in accordance with the WCPFC.

40 Subsection 105D(5)

Repeal the subsection, substitute:

Enforcement action

- (5) On behalf of Australia, the Attorney-General may authorise in writing an authority of a foreign country to take specified action to enforce a law of the foreign country against a contravention of a WCPFC conservation and management measure, or of another regional management measure, on the high seas involving an Australian-flagged boat if:

- (a) AFMA has authorised an authority of the foreign country under subsection (2) or (2A) to investigate the alleged contravention; and
- (b) the appropriate authority of the foreign country has communicated the results of the investigation to Australia; and
- (c) the Attorney-General is satisfied that the action will be taken in accordance with:
 - (i) in the case of an alleged contravention of a WCPFC conservation and management measure—the WCPFC; and
 - (ii) in the case of an alleged contravention of another regional management measure—the Fish Stocks Agreement.

41 Saving provision

Despite the repeal of subsection 105D(5) of the *Fisheries Management Act 1991*, any authorisation given by the Attorney-General before the repeal of that subsection continues in force as if it had been given by the Attorney-General under subsection 105D(5) of that Act as amended by this Act.

42 After section 105D

Insert:

Subdivision AA—Australian citizens fishing in foreign boats beyond the AFZ

105DA Australian citizen fishing for WCPFC fish stock in foreign waters—strict liability

- (1) A person is guilty of an offence if:
 - (a) the person uses a boat for fishing; and
 - (b) the fishing is for a WCPFC fish stock; and
 - (c) the person contravenes a WCPFC conservation and management measure in relation to the fishing; and
 - (d) the person is an Australian citizen; and
 - (e) the boat is a foreign boat; and

- (f) the boat is in the Convention area in the exclusive economic zone, territorial sea, archipelagic waters (as defined in the United Nations Convention on the Law of the Sea) or internal waters, of a foreign country; and
- (g) if the fishing itself is the act that contravenes the WCPFC conservation and management measure—the fishing is not authorised by an authorisation (however described) issued under the law of the foreign country referred to in paragraph (f).

Note: The English text of the United Nations Convention on the Law of the Sea is set out in the Australian Treaty Series at [1994] ATS 31. In 2005 this was available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible on the Internet through that Department's world-wide web site.

- (2) The offence is punishable on conviction by a fine of not more than 60 penalty units.
- (3) An offence under this section is an offence of strict liability.
Note: For strict liability, see section 6.1 of the *Criminal Code*.
- (4) If the person has been convicted or acquitted in the foreign country of an offence involving fishing, the person cannot be convicted of an offence under this section involving the same fishing.

105DB Australian citizen fishing for WCPFC fish stock in foreign waters

- (1) A person is guilty of an offence if:
 - (a) the person uses a boat for fishing; and
 - (b) the fishing is for a WCPFC fish stock; and
 - (c) the person contravenes a WCPFC conservation and management measure in relation to the fishing; and
 - (d) the person is an Australian citizen; and
 - (e) the boat is a foreign boat; and
 - (f) the boat is in the Convention area in the exclusive economic zone, territorial sea, archipelagic waters (as defined in the United Nations Convention on the Law of the Sea) or internal waters, of a foreign country; and
 - (g) if the fishing itself is the act that contravenes the WCPFC conservation and management measure—the fishing is not authorised by an authorisation (however described) issued

under the law of the foreign country referred to in paragraph (f).

Note: The English text of the United Nations Convention on the Law of the Sea is set out in Australian Treaty Series at [1994] ATS 31. In 2005 this was available in the Australian Treaties Library of the Department of Foreign Affairs and Trade, accessible on the Internet through that Department's world-wide web site.

- (2) The offence is punishable on conviction by a fine of not more than 500 penalty units.
- (3) If the person has been convicted or acquitted in the foreign country of an offence involving fishing, the person cannot be convicted of an offence under this section involving the same fishing.

105DC Australian citizen contravening conservation and management measure on high seas—strict liability

- (1) A person is guilty of an offence if:
 - (a) the person uses a boat for fishing; and
 - (b) the fishing is for a WCPFC fish stock; and
 - (c) the person contravenes a WCPFC conservation and management measure in relation to the fishing; and
 - (d) the person is an Australian citizen; and
 - (e) the boat is a foreign boat other than a WCPFC boat; and
 - (f) the boat is on the high seas in a part of the Convention area.
- (2) The offence is punishable on conviction by a fine of not more than 60 penalty units.
- (3) An offence under this section is an offence of strict liability.

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

105DD Australian citizen contravening conservation and management measure on high seas

- (1) A person is guilty of an offence if:
 - (a) the person uses a boat for fishing; and
 - (b) the fishing is for a WCPFC fish stock; and
 - (c) the person contravenes a WCPFC conservation and management measure in relation to the fishing; and
 - (d) the person is an Australian citizen; and

- (e) the boat is a foreign boat other than a WCPFC boat; and
 - (f) the boat is on the high seas in a part of the Convention area.
- (2) The offence is punishable on conviction by a fine of not more than 500 penalty units.

43 At the end of Division 5A of Part 6

Add:

Subdivision C—WCPFC boats on high seas

105H WCPFC boat contravening conservation and management measure on high seas—strict liability

- (1) A person is guilty of an offence if:
- (a) the person uses a boat for fishing; and
 - (b) the fishing is for a WCPFC fish stock; and
 - (c) the person contravenes a WCPFC conservation and management measure in relation to the fishing; and
 - (d) the boat is a WCPFC boat; and
 - (e) the boat is on the high seas in a part of the Convention area; and
 - (f) if the fishing itself is the act that contravenes the WCPFC conservation and management measure—the fishing is not authorised by an authorisation (however described) issued under the law of the country of nationality of the boat.
- (2) The offence is punishable on conviction by a fine of not more than 60 penalty units.
- (3) An offence under this section is an offence of strict liability.

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

105I WCPFC boat contravening conservation and management measure on high seas

- (1) A person is guilty of an offence if:
- (a) the person uses a boat for fishing; and
 - (b) the fishing is for a WCPFC fish stock; and
 - (c) the person contravenes a WCPFC conservation and management measure in relation to the fishing; and
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- (d) the boat is a WCPFC boat; and
 - (e) the boat is on the high seas in a part of the Convention area; and
 - (f) if the fishing itself is the act that contravenes the WCPFC conservation and management measure—the fishing is not authorised by an authorisation (however described) issued under the law of the country of nationality of the boat.
- (2) The offence is punishable on conviction by a fine of not more than 500 penalty units.

105J Attorney-General's consent required for prosecution

- (1) The Attorney-General's written consent is required before a charge of an offence against this Subdivision can proceed to hearing or determination.
- (2) A consent under subsection (1) is not a legislative instrument.
- (3) Before granting such a consent, the Attorney-General must take into account any views expressed:
 - (a) by the government of the country of nationality of the boat alleged to be involved in the offence; or
 - (b) by the fishing entity under the laws of which the boat alleged to be involved in the offence is registered.
- (4) Even though the Attorney-General has not granted such a consent, the absence of consent is not to prevent or delay:
 - (a) the arrest of the suspected offender or proceedings relating to the arrest (such as proceedings for the issue and execution of a warrant); or
 - (b) the laying of a charge against the suspected offender; or
 - (c) proceedings for the extradition to Australia of the suspected offender; or
 - (d) proceedings for remanding the suspected offender in custody or on bail.
- (5) If the Attorney-General declines to grant consent, the court in which the suspected offender has been charged with the offence must permanently stay proceedings on the charge.

- (6) In any proceedings, an apparently genuine document purporting to be a copy of a written consent granted by the Attorney-General in accordance with this section will be accepted, in the absence of proof to the contrary, as proof of such consent.

44 At the end of Division 6 of Part 6

Add:

Subdivision G—Disclosures relating to illegal fishing activities

108B Minister may disclose information relating to illegal fishing activities

- (1) The Minister may disclose, or authorise a prescribed agency within the meaning of subsection (3) to disclose on the Minister's behalf, information relating to fishing activities that may involve a breach of the laws of Australia or of a foreign country, including personal information relating to the fishing activities of individuals that may involve such a breach, to:
- (a) the government of a foreign country; or
 - (b) an instrumentality of such a government; or
 - (c) an international intergovernmental body.
- (2) In disclosing the information, or in authorising its disclosure, the Minister may require that it:
- (a) not be disclosed by the government, instrumentality or body to which it is provided; or
 - (b) be disclosed only for such purposes, and on such conditions, as the Minister specifies.
- (3) An agency is a prescribed agency for the purposes of subsection (1) if:
- (a) it is an agency within the meaning of section 7 of the *Public Service Act 1999*; and
 - (b) it is declared by the regulations to be a prescribed agency for the purposes of that subsection.

45 Subsection 165(1) (definition of *relevant decision*)

Omit “, tender or ballot”, substitute “or tender”.

46 Paragraph 168(2)(i)

Omit “or 95”, substitute “, 95 or 100”.

47 After paragraph 168(2)(n)

Insert:

- (na) providing for the use of systems for reporting the position of Australian-flagged boats when on the high seas in a part of the Convention area for a purpose related to fishing for a WCPFC fish stock; and

Part 2—Contingent amendments

Fisheries Management Act 1991

48 Subsection 87FA(1) (after table item 2)

Insert:

2A	Paragraph 84(1)(aaa)	Applies as if: (a) a reference to an offence against subsection 95(2) or section 99, 100, 100A, 101 or 101A were a reference to an offence against section 105H or 105I; and (b) the reference to a foreign boat used as the support boat in an offence against section 101B were omitted; and (c) subparagraph 84(1)(aaa)(v) were omitted
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49 Paragraph 87FC(1)(b)

Omit “paragraph 84(1)(ia)”, substitute “Schedule 1A”.

50 Paragraph 87FC(1)(c)

Omit “paragraph 84(1)(ib) a person detained under paragraph 84(ia)”, substitute “Schedule 1A a person detained under that Schedule”.

51 Subsection 87FC(6)

Omit “paragraph 84(1)(ia) or (ib)”, substitute “Schedule 1A”.

52 Subclause 8(1) of Schedule 1A

Omit “or 105F”, substitute “, 105F, 105H or 105I”.

53 Subclause 8(3) of Schedule 1A

Omit “section 87E”, substitute “sections 87E and 87FC”.

54 Subclause 8(3) of Schedule 1A (note)

Repeal the note, substitute:

Note: Sections 87E and 87FC set limits on the exercise of certain powers in relation to FSA boats and WCPFC boats respectively.

55 Subclause 10(1) of Schedule 1A

Omit “or 105F”, substitute “,105F, 105H or 105I”.

56 Subclause 12(4) of Schedule 1A

Omit “section 87E”, substitute “sections 87E and 87FC”.

57 Subclause 12(4) of Schedule 1A (note)

Repeal the note, substitute:

Note: Sections 87E and 87FC set limits on the exercise of certain powers in relation to FSA boats and WCPFC boats respectively.

58 Subparagraph 15(2)(b)(i) of Schedule 1A

Omit “or 105F”, substitute “,105F, 105H or 105I”.

Migration Act 1958

59 Subsection 5(1) (paragraph (a) of the definition of *fisheries detention offence*)

Repeal the paragraph, substitute:

- (a) an offence against section 99, 100, 100A, 101, 101A, 101B, 105E, 105F, 105H or 105I of the *Fisheries Management Act 1991*; or

[*Minister’s second reading speech made in—*
Senate on 17 March 2005
House of Representatives on 23 June 2005]

(37/05)