



Fisheries Legislation Amendment (Foreign Fishing Offences) Act 2006

No. 61, 2006

**An Act to amend the law 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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An Act to amend the law relating to fisheries, and for related purposes

[Assented to 22 June 2006]

The Parliament of Australia enacts:

1 Short title

This Act may be cited as the *Fisheries Legislation Amendment
(Foreign Fishing Offences) Act 2006*.

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.	22 June 2006
2. Schedules 1 and 2	The day after this Act receives the Royal Assent.	23 June 2006

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Part 1—Main amendments

1 After section 100A

Insert:

100B Using foreign boat for fishing in territorial sea within AFZ

- (1) A person commits an offence if:
- (a) the person intentionally uses a boat; and
 - (b) the boat is a foreign boat and the person is reckless as to that fact; and
 - (c) the use of the boat is for commercial fishing and the person is reckless as to that fact; and
 - (d) the boat is at a place that is, at the time of the use, in a part of the territorial sea of Australia that is in the AFZ, and the person is reckless as to that fact.

Penalty:

- (a) if the boat involved in the offence has a length of, or exceeding, 24 metres—7,500 penalty units or 3 years imprisonment, or both; or
 - (b) if the boat involved in the offence has a length of less than 24 metres—5,000 penalty units or 2 years imprisonment, or both.
- (2) The reference to the AFZ in paragraph (1)(d) does not include a reference to coastal waters taken to be in the AFZ because of section 76.
- (3) For the purposes of the penalty at the end of subsection (1), the length of a boat is the overall length of the boat determined in accordance with section 10 of the *Shipping Registration Act 1981*.
- (4) Subsection (1) does not apply if:
- (a) a foreign fishing licence is in force authorising the use of the boat at the place; or

- (b) the boat is a Treaty boat and a Treaty licence is in force in respect of the boat authorising the use of the boat at the place.

Note: The defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

2 After section 101A

Insert:

101AA Having foreign boat equipped for fishing in territorial sea within AFZ

- (1) A person commits an offence if:
- (a) the person intentionally has in his or her possession or charge a boat; and
 - (b) the boat is a foreign boat and the person is reckless as to that fact; and
 - (c) the boat is equipped with nets, traps or other equipment for fishing and the person is reckless as to that fact; and
 - (d) the boat is at a place that is in a part of the territorial sea of Australia that is in the AFZ, and the person is reckless as to that fact.

Penalty: 5,000 penalty units or 2 years imprisonment, or both.

- (2) Subsection (1) does not apply if:
- (a) the use or presence of the boat at the place is authorised by a foreign fishing licence or port permit; or
 - (b) a Treaty licence is in force in respect of the boat; or
 - (c) the boat's nets, traps and other equipment for fishing are stored and secured and the boat is at the place in accordance with the approval of AFMA given under, and in accordance with, the regulations made for the purposes of paragraph 101(1)(c); or
 - (d) the boat's nets, traps and other equipment for fishing are stored and secured and the boat is travelling through the AFZ from a point outside the AFZ to another point outside the AFZ by the shortest practicable route; or
 - (e) the use of the boat for scientific research purposes in the place is authorised under a scientific permit.

Note: The defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) A reference to the AFZ in this section does not include a reference to coastal waters taken to be in the AFZ because of section 76.

3 After paragraph 166(2)(b)

Insert:

- (ba) that, at a time or during a period specified in the certificate, an area of waters specified in the certificate:
- (i) was part of the territorial sea of Australia that was, at the time or during the period, in the AFZ; and
 - (ii) was not part of coastal waters taken to be in the AFZ because of section 76; or

Part 2—Consequential and technical amendments

4 Subparagraph 84(1)(aaa)(i)

Omit “101 or 101A”, substitute “100B, 101, 101A or 101AA”.

5 Subparagraph 84(1)(aaa)(v)

Omit “101, 101A or 101B”, substitute “100B, 101, 101A, 101AA or 101B”.

6 At the end of subsection 100A(4)

Add:

Note: The defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

7 Subsection 100A(5)

Repeal the subsection.

8 Paragraph 101A(4)(e)

Omit “that area”, substitute “the place”.

9 At the end of subsection 101A(4)

Add:

Note: The defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

10 Subsection 101A(5)

Repeal the subsection.

11 Subparagraph 101B(3)(a)(ii)

Omit “101 or 101A”, substitute “100B, 101, 101A or 101AA”.

12 Subsection 103(1E)

Repeal the subsection.

13 Subparagraphs 106A(a)(v) and (vi)

Repeal the subparagraphs, substitute:
(v) section 100B; or

- (vi) section 101; or
- (vii) section 101A; or
- (viii) section 101AA;

14 Subparagraphs 106A(c)(ii) and (d)(ii)

Omit “101, 101A or 101B”, substitute “100B, 101, 101A, 101AA or 101B”.

15 Subclauses 8(1) and 10(1) of Schedule 1A

Omit “101, 101A,”, substitute “100B, 101, 101A, 101AA,”.

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

Omit “101, 101A”, substitute “100B, 101, 101A, 101AA”.

Schedule 2—Amendment of the Torres Strait Fisheries Act 1984

Part 1—Main amendments

1 After section 46

Insert:

46A Commercial fishing by foreign boat in territorial sea within an area of Australian jurisdiction—general

- (1) A person commits an offence if:
- (a) the person engages in taking fish on a boat; and
 - (b) the boat is a foreign boat; and
 - (c) the fish are taken in the course of commercial fishing; and
 - (d) the boat is at a place that is, at the time the person engages in taking the fish, in a part of the territorial sea of Australia that is in an area of Australian jurisdiction.

Penalty:

- (a) if the offender was the master of the boat at the time the offence was committed—2,500 penalty units or 3 years imprisonment, or both; or
 - (b) in any other case—500 penalty units or 2 years imprisonment, or both.
- (2) The reference to an area of Australian jurisdiction in paragraph (1)(d) does not include a reference to Protected Zone coastal waters of Queensland.

Note: For what are Protected Zone coastal waters of Queensland, see section 4.

- (3) Subsection (1) does not apply if:
- (a) the fishing is community fishing; or
 - (b) a licence under subsection 19(2) is in force authorising the use of the boat; or
 - (c) a Treaty endorsement is in force authorising the use of the boat for taking fish.

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

46B Commercial fishing by foreign boat in territorial sea within an area of Australian jurisdiction—unlicensed master

- (1) A person commits an offence if:
- (a) the person is in charge of a boat; and
 - (b) the boat is a foreign boat; and
 - (c) the boat is a boat that is being used for commercial fishing; and
 - (d) the boat is at a place that is, at the time of the use, in a part of the territorial sea of Australia that is in an area of Australian jurisdiction.

Penalty: 2,500 penalty units or 3 years imprisonment, or both.

- (2) The reference to an area of Australian jurisdiction in paragraph (1)(d) does not include a reference to Protected Zone coastal waters of Queensland.

Note: For what are Protected Zone coastal waters of Queensland, see section 4.

- (3) Subsection (1) does not apply if:
- (a) a master fisherman's licence is in force authorising the person to be in charge of the boat; or
 - (b) a Treaty endorsement is in force authorising the use of the boat; or
 - (c) the use of the boat is for community fishing.

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

46C Commercial fishing by foreign boat in territorial sea within an area of Australian jurisdiction—processing or carrying fish

- (1) A person commits an offence if:
- (a) the person uses a boat; and
 - (b) the boat is a foreign boat; and
 - (c) the use of the boat is for processing or carrying fish that are taken with the use of another boat; and

- (d) the fish are processed or carried in the course of commercial fishing; and
- (e) the boat used for processing or carrying fish is at a place that is, at the time of the use, in a part of the territorial sea of Australia that is in an area of Australian jurisdiction.

Penalty:

- (a) if the offender was the master of the boat at the time the offence was committed—2,500 penalty units or 3 years imprisonment, or both; or
 - (b) in any other case—500 penalty units or 2 years imprisonment, or both.
- (2) The reference to an area of Australian jurisdiction in paragraph (1)(e) does not include a reference to Protected Zone coastal waters of Queensland.

Note: For what are Protected Zone coastal waters of Queensland, see section 4.

- (3) Subsection (1) does not apply if:
- (a) a licence under subsection 19(3) is in force authorising the use of the boat for processing or carrying fish (as the case may be) that are taken with the use of another boat; or
 - (b) a Treaty endorsement is in force authorising the use of the boat for processing or carrying fish (as the case may be) that are taken with the use of another boat.

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

46D Commercial fishing by foreign boat in territorial sea within an area of Australian jurisdiction—trans-shipping fish

- (1) A person commits an offence if:
- (a) the person uses a boat; and
 - (b) the boat is a foreign boat; and
 - (c) the use of the boat is for trans-shipping fish to another boat; and
 - (d) the boat used for trans-shipping fish is at a place that is, at the time of the use, in a part of the territorial sea of Australia that is in an area of Australian jurisdiction.

Penalty:

- (a) if the offender was the master of the boat at the time the offence was committed—2,500 penalty units or 3 years imprisonment, or both; or
 - (b) in any other case—500 penalty units or 2 years imprisonment, or both.
- (2) The reference to an area of Australian jurisdiction in paragraph (1)(d) does not include a reference to Protected Zone coastal waters of Queensland.

Note: For what are Protected Zone coastal waters of Queensland, see section 4.

- (3) Subsection (1) does not apply if:
- (a) a licence under subsection 19(3) is in force authorising the use of the other boat; or
 - (b) a Treaty endorsement is in force authorising the use of the other boat for carrying, or for processing or carrying, fish that are taken with the use of another boat.

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

2 After section 49

Insert:

49A Bringing foreign boats into territorial sea within an area of Australian jurisdiction

- (1) A person commits an offence if:
- (a) the person is the master of a boat; and
 - (b) the boat is a foreign boat; and
 - (c) the boat is a fishing boat; and
 - (d) the person causes the boat to be brought into a place; and
 - (e) the place is, at the time boat is brought into it, in a part of the territorial sea of Australia that is in an area of Australian jurisdiction.

Penalty: 500 penalty units or 2 years imprisonment, or both.

- (2) The reference to an area of Australian jurisdiction in paragraph (1)(e) does not include a reference to Protected Zone coastal waters of Queensland.

Note: For what are Protected Zone coastal waters of Queensland, see section 4.

- (3) It is a defence to a prosecution for an offence against subsection (1) if the person charged proves that an unforeseen emergency rendered it necessary to bring the boat into that place in order to secure the safety of human life or of the boat.

Note: The defendant bears a legal burden in relation to the matter in subsection (3). See section 13.4 of the *Criminal Code*.

- (4) Subsection (1) does not apply if:

- (a) an entry under subsection 21(2) in a licence granted under subsection 19(2) or (3) is in force authorising the boat to be brought into the place; or
- (b) an entry under subsection 21(2) in a Treaty endorsement is in force authorising the boat to be brought into the place; or
- (c) at the time the boat is brought into the place, the boat is being used for traditional fishing.

Note: The defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

- (5) In this section:

fishing boat means a boat that is designed and equipped for:

- (a) catching or capturing fish; or
- (b) processing fish; or
- (c) carrying fish; or
- (d) 2 or more of the purposes mentioned in paragraphs (a), (b) and (c); or
- (e) supporting the operations of a boat that is, or boats that are, designed and equipped for any one or more of the purposes mentioned in paragraphs (a), (b) and (c).

Note: The heading to section 49 is replaced by the heading “**Bringing foreign boats and Papua New Guinea boats into the Australian part of the Protected Zone**”.

3 At the end of Division 2 of Part VI

Add:

51A Having foreign boat equipped for fishing in territorial sea within an area of Australian jurisdiction

- (1) A person commits an offence if:
- (a) the person has a boat in his or her possession, or under his or her control; and
 - (b) the boat is a foreign boat; and
 - (c) the boat is equipped with nets, traps or other equipment for taking fish; and
 - (d) the boat is at a place that is in a part of the territorial sea of Australia that is in an area of Australian jurisdiction.

Penalty:

- (a) if the offender was the master of the boat at the time the offence was committed—2,500 penalty units or 3 years imprisonment, or both; or
 - (b) in any other case—500 penalty units or 2 years imprisonment, or both.
- (2) It is a defence to a prosecution for an offence against subsection (1) if the person charged proves that, at the time of the alleged offence:
- (a) the boat's nets, traps and other equipment for taking fish were stowed and secured; and
 - (b) the boat was travelling through an area of Australian jurisdiction from a point outside an area of Australian jurisdiction to another point outside an area of Australian jurisdiction by the shortest practicable route.

Note: The defendant bears a legal burden in relation to the matters in subsection (2). See section 13.4 of the *Criminal Code*.

- (3) Subsection (1) does not apply if:
- (a) a licence under section 19 is in force in respect of the boat; or
 - (b) a Treaty endorsement is in force in respect of the boat; or
 - (c) the boat is being used for traditional fishing or community fishing.

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

- (4) A reference to an area of Australian jurisdiction in this section does not include a reference to Protected Zone coastal waters of Queensland.

Note: For what are Protected Zone coastal waters of Queensland, see section 4.

Note: The heading to section 51 is replaced by the heading “**Having boat equipped for fishing—general**”.

4 At the end of paragraphs 57(2)(a), (b) and (c)

Add “or”.

5 At the end of subparagraph 57(2)(d)(ii)

Add “or”.

6 At the end of subsection 57(2)

Add:

; or (g) that, at a time or during a period specified in the certificate, an area of waters specified in the certificate:

- (i) was a part of the territorial sea of Australia that was, at the time or during the period, in an area of Australian jurisdiction; and
- (ii) was not part of the Protected Zone coastal waters of Queensland.

Note: For what are Protected Zone coastal waters of Queensland, see section 4.

Part 2—Consequential and technical amendments

7 Subsection 3(1)

Insert:

territorial sea, in relation to Australia, has the same meaning as in Division 1 of Part II of the *Seas and Submerged Lands Act 1973*.

8 Subparagraphs 42(1)(aa)(i) and (v)

Omit “48, 49 or 51”, substitute “46A, 48, 49, 49A, 51 or 51A”.

9 Subsection 49(2)

Omit “satisfies the court”, substitute “proves”.

10 At the end of subsection 49(2)

Add:

Note: The defendant bears a legal burden in relation to the matter in subsection (2). See section 13.4 of the *Criminal Code*.

11 Subsection 51(4)

Omit “satisfies the court”, substitute “proves”.

12 At the end of subsection 51(4)

Add:

Note: The defendant bears a legal burden in relation to the matter in subsection (4). See section 13.4 of the *Criminal Code*.

13 Subsection 52(1)

Omit “48, 49, 50 or 51”, substitute “46A, 46B, 46C, 46D, 48, 49, 49A, 50, 51 or 51A”.

14 Subparagraphs 52A(a)(ii), (iii) and (iv)

Repeal the subparagraphs, substitute:

- (ii) section 46A; or
- (iii) section 48; or
- (iv) section 49; or
- (v) section 49A; or

- (vi) section 51; or
- (vii) section 51A;

15 Subparagraphs 52A(b)(ii) and (c)(ii)

Omit “48, 49 or 51”, substitute “46A, 48, 49, 49A, 51 or 51A”.

16 Subsection 55(3)

Repeal the subsection, substitute:

- (3) An offence against this Act, other than an offence referred to in subsection (1) or an offence against section 46A, 46B, 46C, 46D, 49A or 51A, is punishable summarily.

Note: Offences against the sections 46A, 46B, 46C, 46D, 49A and 51A are indictable offences because they are punishable by imprisonment for a period exceeding 12 months: see section 4G of the *Crimes Act 1914*.

17 Subclauses 8(1) and 10(1) of Schedule 2

Omit “48, 49 or 51”, substitute “46A, 46B, 46C, 46D, 48, 49, 49A, 51 or 51A”.

18 Subclause 13(3) of Schedule 2 (note)

After “45”, insert “, 46A, 46B, 46C, 46D”.

19 Subparagraph 15(2)(b)(i) of Schedule 2

Omit “48, 49 or 51”, substitute “46A, 46B, 46C, 46D, 48, 49, 49A, 51 or 51A”.

*[Minister's second reading speech made in—
House of Representatives on 25 May 2006
Senate on 13 June 2006]*

(63/06)