

2004-2005

The Parliament of the
Commonwealth of Australia

THE SENATE

Presented and read a first time

**Fisheries Legislation Amendment
(Cooperative Fisheries Arrangements
and Other Matters) Bill 2005**

No. , 2005

(Fisheries, Forestry and Conservation)

**A Bill for an Act to amend the *Fisheries
Management Act 1991*, and for related purposes**

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1 **A Bill for an Act to amend the *Fisheries***
2 ***Management Act 1991, and for related purposes***

3 The Parliament of Australia enacts:

4 **1 Short title**

5 This Act may be cited as the *Fisheries Legislation Amendment*
6 *(Cooperative Fisheries Arrangements and Other Matters) Act*
7 2005.

8 **2 Commencement**

9 This Act commences on the day on which it receives the Royal
10 Assent.

1

3 Schedule(s)

2

Each Act that is specified in a Schedule to this Act is amended or

3

repealed as set out in the applicable items in the Schedule

4

concerned, and any other item in a Schedule to this Act has effect

5

according to its terms.

1
2
3

Schedule 1—Objectives

4

Fisheries Administration Act 1991

5

1 Subsection 4(1)

6 Insert:

7 *principles of ecologically sustainable development* has the
8 meaning given by section 6A.

9

2 Paragraph 6(b)

10 Omit “and the exercise of the precautionary principle”, substitute
11 “(which include the exercise of the precautionary principle)”.

12

3 Paragraph 6(c)

13 Repeal the paragraph, substitute:

- 14 (c) maximising the net economic returns to the Australian
15 community from the management of Australian fisheries; and

16

4 After section 6

17 Insert:

18

6A Principles of ecologically sustainable development

19 The following principles are *principles of ecologically sustainable*
20 *development*:

- 21 (a) decision-making processes should effectively integrate both
22 long-term and short-term economic, environmental, social
23 and equity considerations;
- 24 (b) if there are threats of serious or irreversible environmental
25 damage, lack of full scientific certainty should not be used as
26 a reason for postponing measures to prevent environmental
27 degradation;
- 28 (c) the principle of inter-generational equity—that the present
29 generation should ensure that the health, diversity and
30 productivity of the environment is maintained or enhanced
31 for the benefit of future generations;

- 1 (d) the conservation of biological diversity and ecological
2 integrity should be a fundamental consideration in
3 decision-making;
4 (e) improved valuation, pricing and incentive mechanisms
5 should be promoted.

6 ***Fisheries Management Act 1991***

7 **5 Paragraph 3(1)(b)**

- 8 Omit “and the exercise of the precautionary principle”, substitute
9 “(which include the exercise of the precautionary principle)”.

10 **6 Paragraph 3(1)(c)**

11 Repeal the paragraph, substitute:

- 12 (c) maximising the net economic returns to the Australian
13 community from the management of Australian fisheries; and

14 **7 After section 3**

15 Insert:

16 **3A Principles of ecologically sustainable development**

17 The following principles are *principles of ecologically sustainable*
18 *development*:

- 19 (a) decision-making processes should effectively integrate both
20 long-term and short-term economic, environmental, social
21 and equity considerations;
22 (b) if there are threats of serious or irreversible environmental
23 damage, lack of full scientific certainty should not be used as
24 a reason for postponing measures to prevent environmental
25 degradation;
26 (c) the principle of inter-generational equity—that the present
27 generation should ensure that the health, diversity and
28 productivity of the environment is maintained or enhanced
29 for the benefit of future generations;
30 (d) the conservation of biological diversity and ecological
31 integrity should be a fundamental consideration in
32 decision-making;

1 (e) improved valuation, pricing and incentive mechanisms
2 should be promoted.

3 **8 Subsection 4(1)**

4 Insert:

5 *principles of ecologically sustainable development* has the
6 meaning given by section 3A.

1
2
3
Schedule 2—Cooperative arrangements

4
Fisheries Administration Act 1991

5
1 At the end of section 4

6 Add:

- 7 (3) If an arrangement under Division 3 of Part 5 of the *Fisheries*
8 *Management Act 1991* is varied, a reference in this Act to the
9 arrangement is a reference to the arrangement as varied.

10
2 Subsection 91(5)

11 Repeal the subsection, substitute:

- 12 (5) If, in respect of a fishery, there is in force an arrangement under
13 Division 3 of Part 5 of the *Fisheries Management Act 1991* under
14 which:

- 15 (a) a Joint Authority has the management of the fishery; and
16 (b) the fishery, or a part of the fishery identified in the
17 arrangement, is to be managed in accordance with the law of
18 the Commonwealth;

19 references in this section to the Minister are taken, in relation to the
20 fishery or the part of the fishery, to be references to the Joint
21 Authority.

22
Fisheries Management Act 1991

23
3 At the end of section 4

24 Add:

- 25 (8) If an arrangement under Division 3 of Part 5 is varied, a reference
26 in this Act to the arrangement is a reference to the arrangement as
27 varied.

28
4 Subsection 45(1)

29 Omit “or a Joint Authority managing a fishery in accordance with the
30 law of the Commonwealth”, substitute “, or a Joint Authority managing
31 a fishery that is (or part of which is) managed in accordance with the
32 law of the Commonwealth,”.

1 **5 Subsection 60(2)**

2 After “this Part” (first occurring), insert “, including the Minister’s
3 functions and powers”.

4 **6 Subsections 71(2) and (3)**

5 Repeal the subsections, substitute:

6 (2) An arrangement with only one State must provide that:

7 (a) the fishery is to be managed in accordance with the law of
8 the Commonwealth; or

9 (b) the fishery is to be managed in accordance with the law of
10 the State; or

11 (c) the fishery is to be managed in accordance with the law of
12 the Commonwealth and the law of the State.

13 (3) An arrangement with 2 or more States must provide that:

14 (a) the fishery is to be managed in accordance with the law of
15 the Commonwealth; or

16 (b) the fishery is to be managed in accordance with the law of
17 one or more of the States concerned; or

18 (c) the fishery is to be managed in accordance with the law of
19 the Commonwealth and the law of one or more of the States
20 concerned.

21 (4) An arrangement that provides that a fishery is to be managed in
22 accordance with the law of more than one jurisdiction must
23 identify, by reference to areas that do not overlap, the parts of the
24 fishery that are to be managed in accordance with each law.

25 (5) If, under an arrangement:

26 (a) a fishery is to be managed in accordance with the law of a
27 State; or

28 (b) a part of a fishery is to be managed in accordance with the
29 law of a State;

30 the arrangement may, if required by the Commonwealth, provide
31 for giving effect to Australia’s obligations under international law
32 (including international agreements) in relation to the fishery or
33 part of the fishery.

34 **7 Section 72**

1 Before “The”, insert “(1)”.

2 **8 At the end of section 72**

3 Add:

4 (2) If, under an arrangement, a fishery is to be managed in accordance
5 with the law of a State, the arrangement may, if required by the
6 Commonwealth, provide for giving effect to Australia’s obligations
7 under international law (including international agreements) in
8 relation to the fishery.

9 **9 Subsection 74(1)**

10 Repeal the subsection, substitute:

11 (1) An arrangement under this Division is to be made by instrument
12 approved by:
13 (a) the Commonwealth Minister on behalf of the
14 Commonwealth; and
15 (b) the appropriate Minister or Ministers of the State or States
16 concerned.

17 **10 At the end of section 74**

18 Add:

19 (4) An instrument approved under subsection (1) is not a legislative
20 instrument.

21 **11 After section 74**

22 Insert:

23 **74A Arrangements—how varied etc.**

24 (1) An arrangement under this Division is to be varied by instrument
25 approved by:
26 (a) the Commonwealth Minister on behalf of the
27 Commonwealth; and
28 (b) the appropriate Minister or Ministers of the State or States
29 concerned.
30 (2) The Commonwealth Minister must cause a copy of every
31 instrument so approved to be published in the *Gazette*, and the

1 instrument takes effect on the date of publication or on a later date
2 specified in the instrument.

3 (3) Subject to the requirements of section 23, after an arrangement
4 under this Division has been varied but before the variation takes
5 effect, the following things may be done for the purposes of the
6 operation of this Act as affected by the variation as if the variation
7 had taken effect:

8 (a) plans of management, permits or other instruments may be
9 determined, granted or executed;

10 (b) fishing rights may be granted;

11 but such a plan, instrument or right does not have effect before the
12 variation takes effect.

13 (4) Upon the variation of an arrangement under this Division:

14 (a) plans of management, fishing permits, scientific permits and
15 other instruments determined, granted, executed or
16 published; and

17 (b) statutory fishing rights granted;

18 for the purposes of the operation of this Act as affected by the
19 variation cease to have effect to the extent (if any) they are
20 inconsistent with the arrangement as varied.

21 (5) An instrument approved under subsection (1) is not a legislative
22 instrument.

23 **12 Subsection 75(1)**

24 Repeal the subsection, substitute:

25 (1) An arrangement under this Division may be terminated by
26 instrument approved by:

27 (a) the Commonwealth Minister on behalf of the
28 Commonwealth; and

29 (b) the appropriate Minister or Ministers of the State or States
30 concerned.

31 **13 Paragraph 75(3)(a)**

32 Omit “Governor-General”, substitute “Commonwealth Minister”.

33 **14 Paragraph 75(3)(b)**

1 Omit “Governor of the State”, substitute “ appropriate Minister of the
2 State”.

3 **15 At the end of section 75**

4 Add:

5 (9) An instrument approved under subsection (1) is not a legislative
6 instrument.

7 **16 Section 76**

8 Before “Where”, insert” (1)”.

9 **17 At the end of section 76**

10 Add:

11 (2) If an arrangement under this Division provides that:
12 (a) a part of a fishery is to be managed in accordance with the
13 law of the Commonwealth; and
14 (b) that part of the fishery is so identified that it is, or may be,
15 carried on partly within the coastal waters of a State;
16 the coastal waters of that State are taken to be in the AFZ for the
17 purposes of the application of this Act in relation to that part of the
18 fishery.

19 **18 Section 77**

20 Repeal the section, substitute:

21 **77 Exclusion of this Act (except this Division)**

22 If an arrangement under this Division provides that:
23 (a) a particular fishery is to be managed in accordance with the
24 law of a State; or
25 (b) a part of a particular fishery is to be managed in accordance
26 with the law of a State;
27 this Act, other than this Division, does not apply in relation to that
28 fishery, or that part of the fishery, except in relation to:
29 (c) foreign boats; and
30 (d) operations on and from foreign boats; and
31 (e) persons on foreign boats; and
32 (f) matters that occurred before the arrangement took effect.

1 **19 Section 78**

2 Before “If”, insert “(1)”.

3 **20 At the end of section 78**

4 Add:

5 (2) If:

6 (a) an arrangement is in force under this Division under which a
7 Joint Authority has the management of a fishery; and

8 (b) a part of the fishery is to be managed in accordance with the
9 law of the Commonwealth;

10 then:

11 (c) AFMA has the same powers in relation to the part of the
12 fishery as it would have if the part of the fishery were under
13 the management of AFMA; and

14 (d) references in sections 18 and 20 to the Minister are taken, in
15 relation to the part of the fishery, to be references to the Joint
16 Authority.

17 **21 Section 163**

18 Omit “and 20”, substitute “, 20, 74, 74A and 75”.

19 **22 Savings and application provision**

20 (1) Subject to subitem (2), an arrangement in force under section 71 or 72
21 of the *Fisheries Management Act 1991* immediately before the
22 commencement of this item:

23 (a) continues in force after that commencement as if it had been
24 made under section 71 or 72 (as the case may be) of that Act
25 as amended by this Act; and

26 (b) may be varied or terminated in the same way as an
27 arrangement made under that section after that
28 commencement may be varied or terminated.

29 (2) The amendments made by this Schedule do not start to apply to a
30 participating State until the day specified, in relation to the State, in a
31 notice referred to in subitem (5).

32 (3) For the purposes of this item, a State is a *participating State* if there is a
33 declaration in force under subitem (4) in relation to the State.

Schedule 2 Cooperative arrangements

- 1 (4) The Minister may, in writing, declare in relation to a State that a law of
2 the State corresponds to Division 3 of Part 5 of the *Fisheries*
3 *Management Act 1991*.
- 4 (5) The Minister must announce by notice in the *Gazette* the day on which
5 the amendments made by this Schedule start to apply in relation to a
6 participating State specified in the notice.
- 7 (6) A declaration under subitem (4) is not a legislative instrument.
- 8 (7) A notice under subitem (5) is not a legislative instrument.