

2010

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

Presented and read a first time

**Fisheries Legislation Amendment Bill
(No. 2) 2010**

No. , 2010

(Agriculture, Fisheries and Forestry)

**A Bill for an Act to amend various Acts relating to
fisheries, and for related purposes**

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1 **A Bill for an Act to amend various Acts relating to**
2 **fisheries, 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 Act*
6 *(No. 2) 2010*.

7 **2 Commencement**

8 (1) Each provision of this Act specified in column 1 of the table
9 commences, or is taken to have commenced, in accordance with
10 column 2 of the table. Any other statement in column 2 has effect
11 according to its terms.
12

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.	
2. Schedules 1, 2 and 3	The 28th day after this Act receives the Royal Assent.	

1 Note: This table relates only to the provisions of this Act as originally
2 enacted. It will not be amended to deal with any later amendments of
3 this Act.

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

7 **3 Schedule(s)**

8 Each Act that is specified in a Schedule to this Act is amended or
9 repealed as set out in the applicable items in the Schedule
10 concerned, and any other item in a Schedule to this Act has effect
11 according to its terms.

1
2 **Schedule 1—Amendment of the Fisheries**
3 **Administration Act 1991**
4

5 **1 Subsection 4(1)**

6 Insert:

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

8 **2 Subsection 4(1)**

9 Insert:

10 *primary stakeholder* in relation to a fishery means:

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

15 **3 Paragraph 7(1)(g)**

16 Repeal the paragraph, substitute:

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

26 **4 Section 54**

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

28 **5 Subsection 56(4)**

29 Repeal the subsection.

30 **6 After section 87**

31 Insert:

1 **88 Co-management arrangements**

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

7 **7 After paragraph 93(1)(e)**

8 Insert:
9 or (f) a primary stakeholder under a co-management arrangement;

1
2 **Schedule 2—Amendment of the Fishing Levy**
3 **Act 1991**
4

5 **1 Section 7**

6 Before “Levy”, insert “(1)”.

7 **2 At the end of section 7**

8 Add:

9 (2) In this section, **holder** of a fishing concession means:

- 10 (a) the person to whom the fishing concession was granted; or
11 (b) if the fishing concession has been transferred—the person to
12 whom the fishing concession was last transferred.

1
2 **Schedule 3—Amendment of the Fisheries**
3 **Management Act 1991**
4

5 **1 Subsection 4(1)**

6 Insert:

7 *holder* of a licence, permit or right:

8 (a) means:

9 (i) the person to whom the licence, permit or right was
10 granted; or

11 (ii) if the permit or right has been transferred—the person to
12 whom the permit or right was last transferred; and

13 (b) in the case of a statutory fishing right that is leased to another
14 person by a lease registered under section 46—includes the
15 lessee of the statutory fishing right.

16 **2 Subsection 4(1)**

17 Insert:

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

20 **3 Subsection 17(5)**

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

22 **4 Subsections 17(5A) and (5B)**

23 Repeal the subsections.

24 **5 Subsection 17(6B)**

25 Repeal the subsection, substitute:

26 (6B) A determination made by AFMA under paragraph (6)(aa) is a
27 legislative instrument.

28 **6 Subsection 17(11)**

29 Repeal the subsection, substitute:

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

8 **7 Subsections 19(2) and (3)**

9 Repeal the subsections.

10 **8 At the end of section 20**

11 Add:

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

1 (c) if there is no management advisory committee or peak
2 body—the holders of the licences, permits or rights for the
3 fishery.

4 (8) However, section 18 applies to an amendment mentioned in
5 subsection (7) in the same way as section 18 applies to a plan of
6 management.

7 **9 Subsections 41A(1) and (2)**

8 Repeal the subsections, substitute:

9 (1) This section applies to a fishery in respect of which fishing
10 concessions, scientific permits or foreign master fishing licences
11 are in force.

12 (2) If, after consultation with:

13 (a) the management advisory committee for the fishery; or

14 (b) if there is no management advisory committee for the
15 fishery—the holders of fishing concessions, scientific permits
16 or foreign master fishing licences for the fishery;

17 AFMA may direct that fishing not be engaged in any part of the
18 fishery, or in a particular part of the fishery, during a period or
19 periods specified in the direction.

20 (2A) At least 7 days before the direction takes effect, AFMA must tell
21 the holders of the fishing concessions, scientific permits or foreign
22 master fishing licences, in writing, about the direction.

23 (2B) However, if a direction is given in an emergency:

24 (a) subsection (2A) does not apply; and

25 (b) AFMA must tell the holders of the fishing concessions,
26 scientific permits or foreign master fishing licences, in
27 writing, about the direction as soon as it can practicably do
28 so.

29 (2C) AFMA may, by writing under its common seal, delegate the power
30 to give a direction under subsection (2) to:

31 (a) the CEO; or

32 (b) a primary stakeholder who is to assist AFMA to manage the
33 fishery under a co-management arrangement (within the
34 meaning of the *Fisheries Administration Act 1991*).

1 **10 After section 42A**

2 Insert:

3 **42B Regulation-making power for conditions**

4 (1) The regulations may prescribe conditions that apply to fishing
5 concessions or foreign master fishing licences.

6 (2) A provision of a plan of management has no effect to the extent
7 that it is inconsistent with regulations made for the purposes of this
8 section.

9 **11 Paragraph 57H(1)(a)**

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