

FISH RESOURCES MANAGEMENT AMENDMENT BILL 2006

EXPLANATORY MEMORANDUM

Purpose of Bill

This Bill amends the *Fish Resources Management Act 1994* to provide for adequate and appropriate State penalties and to strengthen the State forfeiture and seizure provisions in respect of foreign fishing offences committed in State coastal waters.

There has been a significant increase in illegal foreign fishing in the northern parts of Western Australia over the past twelve months and a large number of foreign fishermen have been charged under the existing provisions of the *Fish Resources Management Act 1994*.

In 2005/06 (to date) approximately 450 boats have been intercepted off Northern Australia by Commonwealth and State officers with around 205 being prosecuted and 240 dealt with by Commonwealth legislative forfeiture. This is against a background of foreign fishing vessel sightings increase from about 8 000 in 2004 to over 13 000 in 2005. The current compliance and enforcement program adopted by the Commonwealth appears to have minimal deterrent effect in stopping illegal foreign fishing to date. As a result of the announcements made in the last Commonwealth budget, the rate of apprehension is projected to double with increased prosecutions and destruction of vessels in order to increase the deterrent effect on this activity.

Since October 2005, 12 foreign fishing vessels have been apprehended within State waters (within 3 nautical miles of the baselines). From this, 124 fishermen have been convicted and are serving terms of imprisonment of between 3 and 14 months. Some of these fishermen are repeat offenders with 5 being apprehended twice in the same month.

Foreign fishing is subject to Western Australian law only in the State's coastal waters which, put most simply, is the first three nautical miles from this State's low water mark (normal baseline). However, for all of King Sound and for much of the Kimberleys, the baseline extends a considerable distance outside marine embayments with a result that there are extensive waters in the Kimberleys where illegal foreign fishing takes place. Foreign fishing offences in the next 197 nautical miles of the Australian Fishing Zone are dealt with under Commonwealth legislation.

This Bill implements Government commitments to deal with the risks resulting from the continuing increase in numbers of foreign fishers operating in Australian waters. Many of these foreign fishers are repeat offenders who have not been deterred from reoffending by existing penalties and forfeiture provisions.

This Bill creates a greater deterrent to the commission of foreign fishing offences in State coastal waters.

The problem is not one merely of breach of, and a wanton disregard for, Western Australia and Australia's sovereignty. The objective risks from the increased foreign poaching of Western Australian resources are substantial and growing.

Foreign fishing operations are increasingly coming further south such as near Dampier in Western Australia or on the Great Barrier Reef in Queensland, and further inshore, and are now also targeting resources utilised by coastal indigenous communities specifically the targeting of trochus in King Sound.

Interactions with licensed Western Australian fishers have increased in remote parts of the north of the State. The pearling industry is based in the north of the State and there are legitimate fears held for violent attacks on, and theft from, Western Australians carrying out their legitimate businesses. Local fishermen live on their vessels in fear of their safety.

Aside from the exploitation of fisheries resources, there are consequential threats and risks to Australia's sovereign interests through illegal foreign fishing incursions including the following:

- border security;
- economic viability of domestic fisheries;
- economic viability of remote communities;
- natural resource management interests in marine reserves and protected areas;
- protected and endangered species;
- ecosystem balance;
- biosecurity through the introduction of marine pests and disease outbreak (posing a significant risk to pearling, aquaculture and maritime industries);
- plant, insect and animal disease introduction (posing a significant risk to agriculture, conservation and possibly, human health);
- introduction of high risk infectious human diseases such as Dengue Fever, Malaria, Cholera, Hepatitis and Tuberculosis;
- theft of product and farm gear from pearl culture farms;
- physical threat to domestic fishers, charter operators, recreational fishers, remote communities and government officers;
- increased marine safety, search and rescue and emergency evacuation incidents;
- potential threat posed by terrorism against assets such as oil and gas installations; and
- criminal involvement of fishermen or others to smuggle illegal immigrants, drugs or weapons into remote parts of the country.

Amendments complementary to Commonwealth legislative amendments

The announcement by the Western Australian Government that it intended to introduce a Bill to increase Western Australian penalties for foreign fishing in State coastal waters was followed by the Commonwealth. The Commonwealth recently introduced into the Commonwealth Parliament a Bill to make amendments to its legislation to also increase penalties for foreign fishing offences in waters outside of and adjacent to State coastal waters.

Key Changes Made by Bill

This Bill makes four key amendments to the *Fish Resources Management Act 1994*.

First Key Amendment. The first key amendment is to increase the penalties provided for offences against sections 174 and 175 of the *Fish Resources Management Act 1994*. Section 174 creates the offence of using a foreign boat for fishing or for processing, storing or carrying fish that have been taken by that boat or another boat. Section 175 creates the offence of possessing or having in a person's charge a foreign boat equipped with fishing gear. This Bill increases maximum penalties for offences against these two sections for bodies corporate from \$100,000 to \$300,000. The Bill also increases penalties for individuals from \$50,000 and imprisonment for 2 years to \$150,000 and imprisonment for 4 years.

Second Key Amendment. The second key amendment is to deal with and deter reoffending by inserting a new section which introduces mandatory penalties for individuals convicted of third or subsequent offences under sections 174 and / or 175 of the *Fish Resources Management Act 1994*. Individuals convicted of a third or subsequent offence under section 174 or 175 *Fish Resources Management Act 1994* or a combination of those sections must be sentenced to the maximum period of imprisonment and receive the maximum fine. The mandatory penalties do not apply to individuals under the age of 18 at the time of the offence.

Third Key Amendment. The third key amendment is to amend section 218 of the *Fish Resources Management Act 1994* to introduce compulsory forfeiture of foreign boats and all things on or attached to the foreign boat and related things upon conviction. (Section 218 currently provides a discretion for the court to order forfeiture of the boat and some things on the boat and only if the prosecutor applies for the forfeiture.)

Fourth Key Amendment. The fourth key amendment is to amend section 193 of the *Fish Resources Management Act 1994* to provide fisheries officers who reasonably suspect an offence against section 174 or 175 has been committed with powers to seize the foreign boat and all things that will be forfeited upon conviction. This is a practical power necessary to ensure that compulsory forfeiture on conviction occurs.

Detail of the Bill

The contents of the Bill are examined on a clause by clause basis in this section.

Clause 1. This clause sets out the short title of the Bill.

Clause 2. This clause provides that the Bill shall commence operation on the day on which it receives the Royal Assent.

Clause 3. This clause identifies the *Fish Resources Management Act 1994* as the Act being amended.

Clause 4. This clause replaces the existing penalty provision in section 174 of the *Fish Resources Management Act 1994* with a new penalty provision. This penalty provision replacement increases the penalty for a section 174 offence from:-

- a. in the case of an individual, from \$50,000 and 2 years imprisonment to \$150,000 and 4 years imprisonment; and
- b. in the case of a body corporate, from \$100,000 to \$300,000.

Clause 5. This clause replaces the existing penalty provision in section 175 of the *Fish Resources Management Act 1994* with a new penalty provision. This penalty provision replacement increases the penalty for a section 175 offence from:-

- a. in the case of an individual, from \$50,000 and 2 years imprisonment to \$150,000 and 4 years imprisonment; and
- b. in the case of a body corporate, from \$100,000 to \$300,000.

Clause 6. This clause inserts a new section 175A into the *Fish Resources Management Act 1994*. Section 175A requires the court sentencing an individual convicted of a third or subsequent offence to sentence the individual to a mandatory term of imprisonment of the maximum term of imprisonment (4 years) and impose a fine of the maximum amount (\$150,000). For the purposes of determining whether an individual has been convicted of a third or subsequent offence, a relevant conviction is against section 174 and / or against section 175. The mandatory sentencing provision is subject to section 46 (5a) of the *Young Offenders Act 1994* and therefore mandatory sentencing is not required in respect of young offenders.

Clause 7. This clause amends sections 193 and 220 of the *Fish Resources Management Act 1994*.

Section 193 is amended by splitting the section into discrete subsections and inserting a new subsection. The new subsection provides a Fisheries Officer who has reasonable grounds to suspect an offence against section 174 or 175 with the power to seize any boat, fish or other animal, fishing gear, money, cheque, or other thing that may be forfeited under section 218 (1a) (ie if a conviction against section 174 or 175 occurs).

The changes to section 220 are consequential amendments required as a result of the splitting of section 193 into subsections.

Clause 8. This clause inserts a new subsection into section 218. The new subsection provides for compulsory forfeiture following an offence against section 174 or 175. The court must, in addition to any other penalty, order the compulsory forfeiture to the Crown of the foreign boat, fish or other animal, fishing gear and other things.