

DECLARING A FOREIGN BOAT TO BE AN “AUSTRALIAN BOAT”

This is a guide to applying to have AFMA declare a boat to be an Australian boat. The subject of these guidelines is set out in subsections 4(1) and 4(2) of the Fisheries Management Act 1991. These guidelines are subject to change without notice and you should contact AFMA and/or read the relevant legislation for further information. You should seek your own legal advice if you are uncertain about your legal situation in regard to boat declarations.

Why do you need to have an Australian boat nominated on your fishing permit or statutory fishing right?

Only an Australian boat is authorised to fish under a fishing permit or statutory fishing right granted by AFMA. A foreign boat is not permitted to enter an Australian port unless it is authorised by a port permit granted by AFMA. A person must not land fish at an Australian port from a foreign boat unless the Minister responsible for fishing has expressly authorised that person to do so.

What happens if a boat is not an “Australian boat”?

If a boat is not an Australian boat, then it is regarded as a foreign boat. If a boat does not satisfy the legal definition of an Australian boat, it is not allowed to be used to fish under a fishing permit or statutory fishing right granted by AFMA, unless allowed under the relevant management plan.

What is the legal definition of an ‘Australian boat’?

A boat is defined as an “Australian boat” if it satisfies any one of the following three conditions (as set out under subsection 4(1) of the *Fisheries Management Act 1991*):

1. The boat is operated from Australia and is wholly owned by an Australian resident or Australian company and was built in Australia;

OR

2. The boat is listed on the *Australian Shipping Register*, except if it is owned by a foreign resident and under a demise charter¹ arrangement;

OR

3. The boat has been declared by AFMA to be an Australian boat under subsection 4(2) of the *Fisheries Management Act 1991*.

¹ Demise charter means "the demise, letting, hire or delivery of the ship to the charterer under a charter party, by virtue of which the charterer has whole possession and control of the ship (including the right to appoint the master and crew of the ship)." (*Shipping Registration Act 1981*)

If a boat does not satisfy any of these three conditions, it is regarded as a foreign boat under the *Fisheries Management Act 1991*.

Can my boat be listed on the Australian Shipping Register?

The Australian Shipping Register is administered by the Shipping Registration Office under the *Shipping Registration Act 1981*.

A boat may be listed on the Australian Shipping Register (or “Australian flagged”) if:

- more than half the shares in it are owned by Australian nationals; or
- it is less than 12 metres in length overall and wholly owned or operated by Australian residents or by Australian nationals and residents together; or
- it is on demise (bare boat) charter to an Australian based operator.

A foreign-owned boat that is chartered under non-demise arrangements is not permitted to be registered.

Applications to list a boat on the Australian Shipping Register must be submitted to the Australian Shipping Registration Office in the Australian Maritime Safety Authority. For further details on the application process, please contact the Australian Shipping Registration Office.

My boat is Australian flagged. Does this mean it is an Australian boat?

Not necessarily.

Even if the boat is flagged to Australia, it is still regarded under the *Fisheries Management Act 1991* as a foreign boat if it is owned by a foreign resident and operated by an Australian under a demise charter.

What can I do if my boat is a foreign boat, and I would like AFMA to declare it to be an “Australian boat”?

AFMA can declare a foreign boat to be an Australian boat on application. If the application is approved by AFMA the boat will be regarded as an Australian boat only for the purposes of the *Fisheries Management Act 1991*. AFMA will consider applications in relation to foreign boats that are foreign-flagged, but additional guidelines apply (see section on “Declaring foreign-flagged boats as Australian boats” below).

Applicants are invited to write to AFMA with full details of the boat, including ownership, skipper and crew details. AFMA may require details of any past ownership of the boat.

Applications should provide AFMA a full fishing plan, including proposed timeframes, locations, landing details, target species, quota holdings (where applicable), destination of product and licensing details. If the boat is operated under a demise charter arrangement, AFMA may need to view a copy of the contractual arrangements between the boat owner and charterer. Applicants should provide full

details of persons and companies involved in the proposal, including shareholdings and directorships.

Applications should also outline the benefits to Australia of the proposal.

Applications should also enclose an outline of the proposal in a public format. AFMA may forward this public outline to key stakeholders for consideration. The proposal outline need not declare confidential financial or contractual information about the proposal, nor identify the applicant or boat. AFMA will respect the confidentiality of sensitive information provided.

How will AFMA assess an application?

AFMA's legislation requires applicants to satisfy two criteria. Briefly the boat must have been lawfully imported into Australia for a limited period of time and AFMA must be satisfied that there is sufficient Australian control of the operations of the boat during that period.

In relation to the lawful importation criteria, AFMA requires supporting documentation showing importation clearance from the Australian Customs Service. An "Authority to Deal" issued by the Australian Customs Service is usually sufficient evidence.

Contractual documentation between an owner and a charterer will be examined to satisfy AFMA that the applicant has sufficient control over the operations of the boat.

In assessing applications, AFMA places a high degree of importance on whether the proposal is in Australia's interest. This includes consideration of the involvement of Australian-based companies and personnel in the catching, processing, marketing and consuming of the product. Consideration is given to whether the product is to be landed in Australia and the extent of value gained by Australian involvement through such matters as expanding Australian knowledge and expertise, and domestic and export net revenues. Approval will only be given where the vessels will operate within the management rules of the particular fishery for which it would be used. AFMA also considers ecological sustainability and economic efficiency issues when assessing an application. Consideration is also given to whether there is any conflict with government legislation and policies, as well as Australia's international obligations and interests.

The extent to which the proposal would contribute to the overall economic efficiency of harvesting the available resource is an important consideration. This would include the provision of specialised assets and services not readily available within Australia.

AFMA's assessment of an application will consider any advice received from other government agencies and key stakeholders.

AFMA may revoke a declaration if there is a change in the circumstances under which the application was approved. Any changes to circumstances should be submitted to AFMA in advance for approval.

Declaring foreign-flagged boats as Australian boats

Applications to declare foreign-flagged boats to be “Australian boats” will be assessed against the general criteria above, as well as additional guidelines specifically for foreign-flagged boats.

In general, AFMA prefers boats operating in Australian fisheries to be flagged to Australia to ensure Australia has flag state responsibility for the boats that AFMA authorises to fish in Australian waters. However, the legislation does not limit AFMA to only declaring Australian-flagged boats. AFMA has been prepared to consider applications for foreign flagged boats to be declared “Australian boats” for limited periods of time in circumstances where alternative arrangements are unavailable or not feasible. AFMA regards a “limited period of time” as being a specific period of generally less than twelve months duration. Longer term or on-going arrangements should use Australian-flagged boats, unless there are special circumstances where it can be clearly identified as being in Australia’s interest.

Applications to declare a foreign-flagged boat to be an “Australian boat” must be consistent with Australia’s obligations under international agreements and the Commonwealth Government’s *Guidelines for applications for the use of Foreign Fishing Vessels in the Australian Fishing Zone*. These Guidelines are currently under review by the Department of Agriculture, Forestry and Fisheries – Australia but a copy of the current guidelines is available on request from AFMA Licensing & Quota Management section, telephone (02) 6272 5284.

Applicants should be aware that AFMA will make inquiries to international authorities about the compliance history of the boat and master, ownership and beneficial interests. AFMA is unlikely to approve applications involving boats that have a history of Illegal, Unreported and Unregulated fishing activities.

A declaration by AFMA will not affect the boat’s flag status and a foreign-flagged boat remains foreign-flagged, notwithstanding an AFMA declaration, for the purposes of international law and flag state responsibilities. If the boat is flagged to a foreign state, a declaration by AFMA under the *Fisheries Management Act 1991* does not mean the boat is re-flagged to Australia.

Can a foreign-flagged Australian boat fish outside the AFZ?

If the boat is foreign-flagged and AFMA has declared it to be an Australian boat, the boat will only be authorised to fish in the Australian Fishing Zone. AFMA will not declare a foreign flagged boat to be an Australian boat if it is to operate on the high seas. All fishing on the high seas by a foreign-flagged boat would have to be undertaken under an authority of the flag state.

How long will AFMA take to assess an application?

Applicants should provide adequate details to address the issues raised above. Applications will be considered on their merits. AFMA may undertake an extensive consultation process in assessing applications. In particular, AFMA will consult with Management Advisory Committees for the relevant fishery or fisheries – this can add to the time required for assessment of an application.

Applicants are advised that it may take four to six weeks to assess applications and this timeframe should be taken into account when developing a proposal. In many cases, AFMA will contact the applicant during this time to request further information about the proposal.

AFMA must also arrange for a declaration to be published in the *Commonwealth Government Gazette*.

How much does an application cost?

AFMA will recover its costs associated with assessing applications to declare boats to be “Australian boats”. In most cases, the costs will be approximately \$2000. This fee is non-refundable.

Where can I get more information?

Further information on applications is available from:

The Manager
Licensing & Quota Management
Australian Fisheries Management Authority
PO Box 7051
CANBERRA BC ACT 2610

Phone (02) 6272 5284
Fax (02) 6272 5426
Email: licensing@afma.gov.au

Contact details for the *Australian Shipping Registration Office*:

GPO Box 2181
CANBERRA CITY ACT 2601
Telephone (02) 6279 5921
Fax (02) 6279 5922
www.amsa.gov.au/sro/

These guidelines take effect from 1 August 2003.