

FIRST NATIONS AND UNDERWATER CULTURAL HERITAGE

Last updated in December 2024

[Underwater Cultural Heritage Act 2018](#)

[Underwater Cultural Heritage Rules 2018](#)



What is Underwater Cultural Heritage?

The *Underwater Cultural Heritage Act 2018* (Cth) (**the Act**) recognises and seeks to protect underwater cultural heritage located in Commonwealth waters.

Underwater cultural heritage includes any trace of human existence that has a cultural, historical or archaeological character and is located partially or totally under water, either periodically or continuously.

Commonwealth waters means the sea extending from the end of State or Territory waters (usually around 5-6km from the shore), out to the end of the continental shelf. Depending on the location, the continental shelf can extend anywhere between 10km and 200km from the coastline.

Does the Act apply to First Nations underwater cultural heritage?

The Act applies to First Nations underwater cultural heritage which is associated with dry land habitation on the submerged landscapes of the Australian continental shelf.

The Act only applies to **physical cultural heritage**, such as artefacts or sites, and does not apply to intangible cultural heritage, such as traditions, stories, songlines or social practices.

You can search for underwater cultural heritage on the [Australasian Underwater Cultural Heritage Database](#).

Examples of underwater cultural heritage include:

- Sites
- Structures
- Buildings
- Aircraft
- Human and animal remains
- Vessels, including remains of boats and canoes
- Other vehicles
- Articles associated with vessels, aircraft or other vehicles
- Artefacts, such as fish traps



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How is First Nations underwater cultural heritage protected?

1. Automatic protection of watercraft

The Act automatically protects the remains of vessels that have been in Australian waters for at least 75 years. This includes the remains of First Nations boats and canoes.

2. Declaration of protected underwater cultural heritage

The Minister may declare First Nations underwater cultural heritage to be **protected** if satisfied that it is of **heritage significance**. The Minister must consider certain criteria set out in the *Underwater Cultural Heritage Rules 2018* when assessing heritage significance.

3. Declaration of protected zone

The Minister may declare an area containing protected underwater cultural heritage as a **protected zone**. This may prohibit entry into the area, trawling or fishing, underwater activity, anchoring or mooring vessels and releasing or depositing objects or materials.

4. Notification of underwater cultural heritage

Anyone who locates or discovers underwater cultural heritage in Australian waters must notify the Minister within 21 days.

5. Offence to adversely impact protected underwater cultural heritage

It is an offence to engage in conduct that has an **adverse impact** on protected underwater cultural heritage without a permit. A person may apply to the Minister for a permit, who must have regard to criteria set out in the *Underwater Cultural Heritage Rules 2018* in deciding whether to grant a permit.

6. Archaeological assessment is recommended

The *Guidelines on the application of the Underwater Cultural Heritage Act 2018* strongly recommend that a suitably qualified and experienced underwater archaeologist is engaged early within a project's lifetime to assess impacts on underwater cultural heritage. However, this is not a requirement under the Act.

7. Offshore petroleum and gas consultation

Community engagement is not a requirement under the Act. However, companies that are planning offshore petroleum and gas projects must consult with Traditional Owners who have a connection to Sea Country under the *Offshore Petroleum and Greenhouse Gas Act 2006*. Visit EDO's factsheet on [What you need to know about offshore oil and gas \(petroleum\)](#) for more information.



You can call the Environmental Defenders Office on **1800 626 239** for free legal advice.



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