

FISHERIES ACT 1952

1 The Fisheries Act 1952 as shown in this reprint comprises Act No. 7, 1952 amended as indicated in the

Tables below. act Number and Year	Date of Assent	Date of commencement	Application, saving or transitional provision
Fisheries Act 1952 7, 1952	13 Mar 1952	1 Jan 1955 (see Gazette 1954, p. 3611)	
Fisheries Act 1953 3, 1953	6 Mar 1953	1 Jan 1955 (see Gazette 1954, p. 3611)	S. 5
Fisheries Act 1956 4, 1956	27 Mar 1956	24 Apr 1956	-
Fisheries Act 1959 48, 1959	22 May 1959	19 June 1959	-
Statute Law Revision (Decimal Currency) Act 1966 93, 1966	29 Oct 1966	1 Dec 1966	-
Fisheries Act 1967 116, 1967	17 Nov 1967	30 Jan 1968 (see Gazette 1968, p. 48)	S. 5 (2)
Fisheries Act 1968 150, 1968	9 Dec 1968	S. 3 (1): 15 Apr 1970 (see s. 2 (2) and Gazette 1970, p. 1499) Remainder: Royal Assent	-
Fisheries Act 1970 93, 1970	2 Nov 1970	2 Nov 1970	-
Fisheries Act 1973 218, 1973	20 Dec 1973	Ss. 1, 2, 8, 18 and 20: Royal Assent Remainder: 1 Jan 1975 (see Gazette 1974, No. 98, p. 2) as amended by	Ss. 19 and 20
Fisheries (Papua New Guinea Boats) Act 1974 7, 1974	10 Apr 1974	Ss. 1, 2 and 4: Royal Assent S. 3: 1 Jan 1975 (see s. 2 (2) and Gazette 1974, No. 98, p. 2) S. 4	
Fisheries Act 1975 3, 1975	4 Mar 1975	4 Mar 1975	- administrative Changes
(Consequential Provisions) Act 1976 91, 1976	20 Sept 1976	S. 3: (a)	S. 4
Fisheries Amendment Act 1978 99, 1978	24 Aug 1978	Ss. 1, 2 and 25: Royal Assent Remainder: 1 Nov 1979 (see Gazette 1979, No. S189, p. 1)	Ss. 22 (2), 24 and 25 Australian Federal Police (Consequential
Amendments) Act 1979 155, 1979	28 Nov 1979	19 Oct 1979 (see s. 2 and Gazette 1979, No. S206, p. 1)	- Australian Federal Police
(Consequential Amendments) Act 1980 70, 1980	28 May 1980	28 May 1980	-
Fisheries Amendment Act 1980			

86, 1980	29 May 1980	Ss. 1-11 and 14: Royal Assent Remainder: 14 Feb 1983 (see Gazette 1983, No. S29, p. 1)	Ss. 7 (2) and 8 (2)
Fisheries Amendment (Whale Protection) Act 1980			
93, 1980	6 June 1980	1 Oct 1981 (see s. 2 and Gazette 1981, No. G39, p. 2)	-
Fisheries Amendment Act 1981			
181, 1981	8 Dec 1981	Ss. 1 and 2: Royal Assent S. 8: 1 Nov 1982 (see s. 2 (3) and Gazette 1982, No. G43, p. 2) Remainder: 1 Nov 1982 (see s. 2 (2) and Gazette 1982, No. G43, p. 2)	-
Statute Law (Miscellaneous Amendments) Act (No. 2) 1982			
80, 1982	22 Sept 1982	Part LXXVII (s. 280): Royal Assent (b)	-
Torres Strait Treaty (Miscellaneous Amendments) Act 1984			
22, 1984	26 Apr 1984	15 Feb 1985 (see s. 2 and Gazette 1985, No. S38, p. 1)	-
Fishing Legislation Amendment Act 1984			
30, 1984	18 May 1984	15 June 1984 Ss. 10 (2), (3), 12 (2), (3) and 26 (2)	-
Fishing Legislation Amendment Act (No. 2) 1984			
152, 1984	25 Oct 1984	31 Aug 1985 (see s. 2 and Gazette 1985, No. S347, p. 1)	-
Fishing Legislation Amendment Act 1985			
29, 1985	22 May 1985	31 Aug 1985 (see Gazette 1985, No. S347, p. 1)	Ss. 9 (2) and 10 (2)
Fishing Legislation Amendment Act 1987			
176, 1987	26 Dec 1987	Ss. 20 and 21: (see Note 2) Ss. 27 (2), (3), 32 (2) and 35 (2): 24 Feb 1988 Remainder: 23 Jan 1988	Ss. 17 (2) and 24 (2)
Fisheries Amendment Act 1987			
177, 1987	26 Dec 1987	Ss. 1, 2, 15 (a) and 16: 23 Jan 1988 Remainder: 2 Aug 1988 (see Gazette 1988, No. S230, p.1)	-
Statutory Instruments (Tabling and Disallowance) Legislation Amendment Act 1988			
99, 1988	2 Dec 1988	2 Dec 1988	-

(a) The Fisheries Act 1952 was amended by section 3 only of the Administrative Changes (Consequential Provisions) Act 1976, sub-section 2 (7) of which provides as follows:

“(7) The amendments of each other Act specified in the Schedule made by this Act shall be deemed to have come into operation on 22 December 1975.”

(b) The Fisheries Act 1952 was amended by Part LXXVII (section 280) only of the Statute Law (Miscellaneous Amendments) Act (No. 2) 1982, sub-section 2 (1) of which provides as follows:

“(1) Sections 1, 2, 166 and 195 and Parts III, VI, VII, XVI, XXXVI, XLIV, LI, LIII, LIV, LXI and LXXVII shall come into operation on the day on which this Act receives the Royal Assent.”

Table of Amendments ad.=added or inserted am.=amended rep.=repealed rs.=repealed and substituted

Provisions affected	How affected
S. 3	am. No. 30, 1984 rs. No. 48, 1959 am. No. 93, 1970 rep. No. 218, 1973
S. 4	am. No. 3, 1953; No. 48, 1959; No. 116, 1967; No. 150, 1968; No. 93, 1970; No. 218, 1973 (as am. By No. 7, 1974); No. 3, 1975; No. 91, 1976; No. 99, 1978; No. 155, 1979; Nos. 70 and 86, 1980; No. 80, 1982; No. 30, 1984; No. 29, 1985; No. 177, 1987
S. 4A	ad. No. 86, 1980
S. 5	am. No. 116, 1967; No. 99, 1978; No. 86, 1980; No. 30, 1984
S. 5AA	ad. No. 22, 1984
S. 5A	ad. No. 93, 1970 am. No. 218, 1973; No. 99, 1978; No. 86, 1980
Part II (s. 6)	rep. No. 218, 1973
Part II (ss. 6, 6A)	ad. No. 218, 1973
S. 5B	ad. No. 99, 1978 am. No. 93, 1980
S. 6	rs. No. 218, 1973 am. No. 3, 1975
S. 6A	ad. No. 218, 1973 am. No. 3, 1975; No. 91, 1976; No. 99, 1978; No. 86, 1980; No. 181, 1981; No. 30, 1984; No. 29, 1985 S. 6B ad. No. 30, 1984
S. 7	rs. No. 86, 1980
S. 7A	ad. No. 99, 1978
S. 7B	ad. No. 29, 1985 am. No. 176, 1987
S. 7C	ad. No. 29, 1985 am. No. 99, 1988
S. 8	am. No. 48, 1959; No. 218, 1973; Nos. 86 and 93, 1980; No. 181, 1981; No. 30, 1984; No. 29, 1985; No. 176, 1987
S. 8A	ad. No. 30, 1984 am. No. 29, 1985; No. 99, 1988
S. 9	am. No. 4, 1956; No. 116, 1967 rs. No. 218, 1973 am. No. 3, 1975; No. 91, 1976; No. 99, 1978; No. 181, 1981; Nos. 30 and 152, 1984; No. 29, 1985; No. 176, 1987
S. 9A	ad. No. 218, 1973 am. No. 30, 1984; No. 29, 1985
Ss. 9B-9D	ad. No. 181, 1981
S. 9E	ad. No. 177, 1987
S. 10	am. No. 116, 1967; No. 218, 1973; No. 3, 1975; No. 91, 1976; No. 99, 1978; No. 181, 1981; Nos. 30 and 152, 1984; No. 29, 1985; Nos. 176 and 177, 1987
S. 10A	ad. No. 99, 1978
Ss. 11, 12	am. No. 218, 1973; No. 86, 1980
Part IVA (ss. 12A-12R)	ad. No. 86, 1980
S. 12A	ad. No. 86, 1980 am. No. 29, 1985
Ss. 12B-12D	ad. No. 86, 1980
S. 12E	ad. No. 86, 1980

Ss. 12F, 12G	am. No. 30, 1984; No. 29, 1985
S. 12H	ad. No. 86, 1980
	ad. No. 86, 1980
S. 12J	am. No. 22, 1984
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Ss. 12K-12M	am. No. 30, 1984; No. 29, 1985
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S. 12N	ad. No. 29, 1985
S. 12NA	ad. No. 86, 1980
S. 12P	ad. No. 30, 1984
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S. 12S	ad. No. 86, 1980
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	am. No. 99, 1978; No. 93, 1980, No. 181, 1981; Nos. 30 and 152, 1984; No. 29, 1985; No. 177, 1987
S. 13A	ad. No. 48, 1959
	am. No. 93, 1966
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	ad. No. 116, 1967
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S. 13BAA	ad. No. 30, 1984
S. 13BAB	ad. No. 176, 1987
S. 13BB	ad. No. 99, 1978
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S. 13BC	ad. No. 177, 1987
S. 13C	ad. No. 218, 1973
	am. No. 3, 1975; No. 99, 1978; No. 177, 1987
S. 13D	ad. No. 218, 1973
	am. No. 99, 1978
S. 13E	ad. No. 30, 1984
	am. No. 152, 1984; No. 29, 1985; No. 177, 1987
S. 14	am. No. 93, 1966; No. 218, 1973; No. 181, 1981; No. 152, 1984; No. 29, 1985; No. 176, 1987
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S. 15A	ad. No. 152, 1984
	am. No. 29, 1985
S. 16	rs. No. 48, 1959
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S. 16A	ad. No. 116, 1967
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	ad. No. 30, 1984
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S. 17	am. No. 48, 1959; No. 93, 1966; No. 218, 1973; No. 3, 1975; No. 91, 1976; No. 99, 1978; No. 86, 1980; No. 181, 1981; Nos. 30 and 152, 1984; No. 29, 1985; Nos. 176 and 177, 1987
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SCHEDULE - TREATY ON FISHERIES BETWEEN THE GOVERNMENTS OF CERTAIN PACIFIC ISLAND STATES AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA

LONG TITLE

An Act relating to Fisheries

PART I - PRELIMINARY

Short title

1. This Act may be cited as the Fisheries Act 1952.*1*
SEE NOTES TO FIRST ARTICLE OF THIS CHAPTER .

Commencement

2. This Act shall come into operation on a date to be fixed by Proclamation.*1*
SEE NOTES TO FIRST ARTICLE OF THIS CHAPTER .

Interpretation

4. (1) In this Act, unless the contrary intention appears -

"Administrator" means the person or organisation who or that is the administrator within the meaning of the Treaty;

"Australian boat" means a boat the operations of which are based on a place in Australia or an external Territory and that is wholly owned by a natural person who is a resident of, or by a company incorporated in, Australia or an external Territory, being a boat that -

(a) was built in Australia or an external Territory;

(b) has been lawfully imported into Australia, otherwise than for a limited period, or into an external Territory; or

(c) has been sold, or otherwise disposed of, in Australia or an external Territory after having been forfeited or distrained under this or any other Act or under a law of a State or Territory;

"Australian fishing zone" means -

(a) the waters adjacent to Australia and having as their inner limits the baselines by reference to which the territorial limits of Australia are defined for the purposes of international law and as their outer limits lines seaward from those inner limits every point on each of which is distant 200 nautical miles from the point on one of those baselines that is nearest to the first-mentioned point; and

(b) the waters adjacent to each external Territory and having as their inner limits the baselines by reference to which the territorial limits of that Territory are defined for the purposes of international law and as their outer limits lines seaward from those inner limits every point on each of which is distant 200 nautical miles from the point on one of those baselines that is nearest to the first-mentioned point, but does not include -

(c) waters that are not proclaimed waters;

(d) waters that are excepted waters; or

(e) waters that are described in an agreement in force between Australia and another country as waters that are not to be taken, for the purposes of this Act, to be within the Australian fishing zone;

"boat" means steamer, launch, vessel or floating craft of any description;

“carrying”, in relation to fish, includes preserving for the purpose of carriage or storing for that purpose;

“excepted waters” means proclaimed waters specified by Proclamation in force under section 7A;

“fish” includes -

(a) turtles;

(b) dugong; and

(c) subject to paragraph (e), crustacea and molluscs, but does not include -

(d) any species of whales; or

(e) any organism that is a sedentary organism for the purposes of the Continental Shelf (Living Natural Resources) Act 1968;

“fishing” means the taking of fish, and includes the processing of fish that have been taken or the carrying of fish that have been taken;

“fishing vessel of the United States” has the same meaning as it has when used in the Treaty;

“foreign boat” means a boat other than an Australian boat;

“licence” means a licence granted under section 9;

“managed fishery” means a class of activities by way of fishing, being a class of such activities that is identified in a plan of management as a fishery to which the plan of management applies;

“master”, in relation to a boat, means the master or other person in charge of the boat;

“master fisherman's licence” means a licence granted under sub-section 9 (1);

“net” means a fabric of rope, cord, twine or other material knotted or woven into meshes and designed or fitted to catch fish;

“observer” means a person who is an observer within the meaning of Part 6 of annex I to the Treaty;

“officer” means -

(a) an officer or employee of the Commonwealth, of the administration of a Territory or of an authority of the Commonwealth who is authorized in writing by the Secretary to perform duties under this Act;

(b) an officer or employee of a State who is authorized in writing by the Secretary to perform duties under this Act in pursuance of an arrangement between the Commonwealth and the State;

(c) a member or special member of the Australian Federal Police or a member of the Police Force of a State or Territory; or

(d) a member of the Defence Force;

“Pacific Island party”, in relation to the Treaty, has the same meaning as it has when used in the Treaty;

“Pacific Island party officer” means a person (other than a person referred to in paragraph (a), (b), (c) or (d) of the definition of “officer”) who is authorised by or under the law of a Pacific Island party to perform the functions and duties of an observer on Treaty boats;

“party”, in relation to the Treaty, has the same meaning as it has when used in the Treaty;

“plan of management” means a plan of management determined under sub-section 7B (1);

“private purposes” means purposes other than trading or manufacturing purposes;

“processing”, in relation to fish, includes the work of cutting up, dismembering, cleaning, sorting or packing;

“proclaimed waters” means waters declared by a Proclamation in force under section 7 to be proclaimed waters, and includes, for the purposes referred to in section 12K, waters deemed by that section to be proclaimed waters;

“take”, in relation to fish, means take, catch or capture for trading or manufacturing purposes and “taking” has a corresponding meaning;

“the Secretary” means the Secretary to the Department;

“trap” means an enclosure (not being a net) designed to catch fish, whether fixed to the shore or not.

“Treaty” means the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America that was signed at Port Moresby on 2 April 1987, a copy of which is set out in the Schedule, and, subject to subsection (5), includes that Treaty as amended from time to time;

“Treaty area” has the same meaning as it has when used in the Treaty;

“Treaty boat” means a foreign boat that is a fishing vessel of the United States;

“Treaty licence” means a licence issued, for the purposes of the Treaty, by the Administrator in respect of a Treaty boat;

“Treaty licensing area” means the waters that are within both:

(a) the Australian fishing zone; and

(b) the Treaty area; other than waters within an area that is a closed area in relation to Australia within the meaning of Annex I to the Treaty.

(2) Where a boat has been lawfully imported into Australia for a limited period and the Minister is satisfied that the extent of participation by citizens or residents of Australia, either directly or through the holding of shares in a company or otherwise indirectly, in the control of the operations of the boat in proclaimed waters during that period, and the nature of those operations, will be such as to justify him in so doing, he may, in his discretion, by instrument published in the Gazette, declare that, during that period, the boat is to be deemed to be an Australian boat for the purposes of this Act and, while such an instrument is in force in respect of a boat, the boat shall be deemed to be an Australian boat for the purposes of this Act.

(3) The Minister may -

(a) by reason of a change in circumstances, by instrument published in the Gazette, at any time revoke an instrument under sub-section (2); or

(b) by instrument published in the Gazette, extend the period for which an instrument under sub-section (2) is to remain in force.

(4) A reference in this Act to a relevant Treaty purpose is a reference to the purpose of:

(a) performing the functions and duties of an observer in accordance with Part 6 of Annex I to the Treaty or an observer program conducted in accordance with the Treaty; or

(b) ascertaining whether the provisions of this Act have been or are being complied with on, or in relation to the use of, a Treaty boat while it is in the Australian fishing zone.

(5) An amendment to the Treaty:

(a) does not have effect for the purposes of this Act unless the amendment is declared by the regulations to have effect for the purposes of this Act; and

(b) takes effect for the purposes of this Act on the day on which the regulations referred to in paragraph (a) take effect or such later day as is specified in those regulations.

FISHERIES ACT 1952 - SECT 4A Coastal waters

4A. (1) For the purposes of this Act, the coastal waters of a State or internal Territory are -

(a) the part or parts of the territorial sea of Australia that is or are adjacent to that State or Territory, other than any part referred to in sub-section (2); and

(b) any marine or tidal waters that are on the landward side of any part of the territorial sea of Australia and are adjacent to that State or Territory but are not within the limits of a State or Territory.

(2) If at any time the breadth of the territorial sea of Australia is determined or declared to be greater than 3 nautical miles, the coastal waters of a State or internal Territory do not include, for the purposes of this Act, any part of the territorial sea of Australia that would not be within the limits of that territorial sea if the breadth of that territorial sea had continued to be 3 nautical miles.

(3) Any part of the territorial sea of Australia that is adjacent to the Jervis Bay Territory shall, for the purposes of sub-section (1), be deemed to be adjacent to New South Wales.

Application

5. (1) This Act extends to all of the Territories and has extra-territorial operation according to its tenor.

(2) In relation to proclaimed waters comprised in the Australian fishing zone, this Act applies to all persons, including foreigners, and to all boats, including foreign boats.

(3) In relation to proclaimed waters beyond the outer limits of the Australian fishing zone, this Act -

(a) applies to all persons, including foreigners, on Australian boats; and

(b) does not apply to foreign boats.

Application of Act to Protected Zone

5AA. (1) The provisions of this Act other than this section and sections 10 and 14 do not, except in relation to matters that occurred before the commencement of the Torres Strait Fisheries Act 1984, apply to or in relation to the Protected Zone.

(2) Where there is in force a Proclamation under sub-section 15 (1) or (2) of the Torres Strait Fisheries Act 1984 in relation to an area adjacent to the Protected Zone, the provisions of this Act other than this section and sections 10 and 14 do not, except in relation to matters that occurred before the Proclamation came into force, apply to or in relation to any activities within that area to which the Torres Strait Fisheries Act 1984 applies by virtue of the Proclamation.

(3) In this section, "Protected Zone" has the same meaning as in the Torres Strait Fisheries Act 1984.

Operation of certain State and Territory laws

5A. (1) This Act or any other law of the Commonwealth shall not be taken to exclude the operation of a law of a State or of a Territory in so far as that law of a State or Territory relates to the licensing of persons to use premises for the preparation, processing, storage or examination of fish.

(2) It is the intention of the Parliament that this Act shall apply to the exclusion of any law of a State or Territory relating to the taking, catching, capturing, processing or carrying of fish so far as that law would, but for this Act, apply to -

(a) activities in waters declared by Proclamation in force under section 7 to be proclaimed waters, not being -

(i) activities carried on for private purposes otherwise than by the use of a foreign boat; or

(ii) activities to which, by reason of section 12L, this act does not apply; or

(b) activities in the coastal waters of a State or Territory in respect of a fishery to which an arrangement referred to in section 12K relates, not being activities carried on for private purposes otherwise than by the use of a foreign boat.

PART II - ADMINISTRATION

Objectives to be pursued

5B. In the administration of this Act, the Minister shall have regard to the objectives of -

(a) ensuring, through proper conservation and management measures, that the living resources of the Australian fishing zone are not endangered by over-exploitation; and

(b) achieving the optimum utilization of the living resources of the Australian fishing zone, but shall ensure, so far as practicable, that measures adopted in pursuit of those objectives shall not be inconsistent with the preservation, conservation and protection of all species of whales.

Secretary and delegates subject to directions of Minister

6. The Secretary or his delegate or a delegate of the Minister is, in the exercise of his powers and the performance of his functions under this Act, subject to the directions of the Minister.

Delegation

6A. (1) Subject to this section, the Minister or the Secretary may, by writing under his hand, delegate to a person or authority, either generally or otherwise, all or any of his powers and functions under this Act except this power of delegation and powers and functions under sub-section 9 (8B) or under section 9B, 9C or 9D.

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Minister or the Secretary, as the case may be.

(3) A delegation under this section may be expressed as a delegation to the person from time to time holding, or performing the duties of, a specified office in the Department or a specified office in the service of, in the service of an authority of, or under the law of, a State or the Northern Territory.

(4) The Minister or the Secretary shall not delegate to a person other than a person holding, or performing the duties of, an office in the Department -

- (a) his power to grant a licence under this Act in respect of a foreign boat;
- (b) his power to transfer a licence granted under sub-section 9 (3);
- (c) his powers under sub-section 16A (4); or
- (d) any of his powers or functions under section 6B, sub-section 9 (3), (3A), (4B) or (5B) or section 9A.

(5) The Minister shall not delegate to a person other than the Secretary -

- (a) the Minister's powers to make, vary and revoke determinations under sub-section 7B (1); or
- (b) the Minister's function under sub-section 7C (1).

(6) A delegation under this section is revocable at will and does not prevent the exercise of a power or the performance of a function by the person who gave the delegation.

FISHERIES ACT 1952 - SECT 6B Issue of permits for scientific purposes

6B. (1) The Minister or the Secretary may grant to a person a permit in respect of a boat authorizing that person to engage, for scientific purposes, in such activities by way of fishing with the use of the boat as are specified in the permit in proclaimed waters or in a specified area of proclaimed waters.

(2) The holder of a permit in force under sub-section (1) or a person acting on behalf of the holder of such a permit is not guilty of an offence against this Act by reason of anything done by him that is authorized by the permit to be done by the holder of the permit.

(3) A permit granted under sub-section (1) is subject to such conditions as are specified in the permit.

(4) The Minister or the Secretary may, by notice in writing given to the holder of a permit in force under sub-section (1) -

- (a) revoke the permit; or
- (b) vary or revoke the conditions to which the permit is subject or specify further conditions to which the permit is to be subject.

PART III - REGULATION OF FISHERIES

Proclaimed waters

7. (1) Subject to sub-section (2), the Governor-General may, by Proclamation, declare any marine or tidal waters to be proclaimed waters for the purposes of this Act.

(2) A Proclamation under sub-section (1) shall not extend to the coastal waters of, or waters within the limits of, a State or internal Territory.

Excepted waters

7A. The Governor-General may, by Proclamation, declare any proclaimed waters to be excepted waters for the purposes of this Act.

Management plans

7B. (1) The Minister may, by instrument in writing, determine a plan of management for a fishery in proclaimed waters.

(2) A plan of management for a fishery shall set out -

- (a) the objective of the plan of management; and
- (b) measures by which the objective is to be attained.

(3) Without limiting the generality of sub-section (2), the Minister may, in a plan of management for a fishery -

- (a) determine the manner in which the fishing capacity of the fishery is to be measured; and
- (b) determine the fishing capacity, measured in that manner, permitted for the fishery.

(4) Without limiting the generality of sub-section (2), a plan of management for a fishery may make provision for and in relation to -

- (a) the granting of licences under sub-sections 9 (2) and (3) in relation to the fishery;
- (b) the conditions to which licences granted under sub-sections 9 (2) and (3) in relation to the fishery are to be subject; and
- (c) the duration, transfer, renewal and variation of licences granted under sub-sections 9 (2) and (3) in relation to the fishery.

(5) Where, in a plan of management for a fishery, the Minister determines the fishing capacity permitted for the fishery, then, without limiting the generality of sub-section (2), the plan of management may make provision for and in relation to -

- (a) the division of the fishing capacity permitted for the fishery into units (in this section referred to as "units of fishing capacity");
- (b) the allocation to persons of units of fishing capacity in the fishery;
- (c) the assignment of units of fishing capacity to boats, and the holding, and cessation of holding, of units of fishing capacity in relation to boats;
- (d) requiring units of fishing capacity to be held in relation to boats;
- (e) the determination of the number of units of fishing capacity to be held in relation to boats;
- (f) the holding of units of fishing capacity that are not assigned to a boat, including the number of such units of fishing capacity that may be held by a person and the period during which such units of fishing capacity may be held;
- (g) the duration, variation, re-assignment, transfer, surrender, replacement, renewal of allocation, suspension and cancellation of units of fishing capacity;
- (h) the recording of the allocation, assignment, holding, cessation of holding, variation, re-assignment, transfer, surrender, replacement, renewal of allocation, suspension and cancellation of units of fishing capacity and the manner in which such recording is to be evidenced, including the issue, recall and replacement of certificates and other documents evidencing such recording; and
- (j) the reconsideration of decisions made under the plan of management.

(6) Such fees (if any) as are prescribed are payable in respect of the allocation, assignment, variation, re-assignment, transfer, replacement, and renewal of allocation, of units of fishing capacity and the issue and replacement of certificates and other documents evidencing the recording of the allocation, assignment, holding, cessation of holding, variation, re-assignment, transfer, replacement, and renewal of allocation, of units of fishing capacity.

(7) Regulations made for the purposes of sub-section (6) may specify different fees, or prescribe different methods of calculating fees, in respect of units of fishing capacity included in different classes of units of fishing capacity.

(8) While a plan of management is in force for a fishery, the Minister and the Secretary shall perform their functions, and exercise their powers, under this Act in relation to the fishery in accordance with the plan of management, and not otherwise.

(8A) The Minister and the Secretary shall, in the performance of their functions and the exercise of their powers generally under this Act, have regard to the effects, either direct or indirect, that the performance of the functions and exercise of the powers may have in relation to any plan or plans of management.

(9) In this section -

“decision” has the same meaning as in the Administrative Appeals Tribunal act 1975;

“fishery” means a class of activities by way of fishing, being a class of such activities that is identified in a plan of management as a fishery to which the plan of management applies.

(10) Without limiting the matters by reference to which a fishery may be identified in a plan of management, those matters include all or any of the following:

- (a) a species of fish;
- (b) a description of fish by reference to sex or any other characteristic;
- (c) an area of waters or of seabed;
- (d) a method of fishing;
- (e) a class of boats;
- (f) a class of persons;
- (g) a purpose of activities.

Tabling, disallowance etc. of determinations under sub-section 7B (1)

7C. (1) The Minister shall cause to be published in the Gazette, in respect of each determination, notice of -

- (a) the fact that the determination has been made; and
- (b) the place or places where copies of the determination can be obtained.

(2) A determination may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification -

(a) a provision of any Act or any regulation made under an Act, of any notice published under section 8 or of any other determination as in force at a particular time or as in force from time to time; or

(b) any matter contained in any other instrument or writing as in force or existing at the time when the determination takes effect.

(3) Sections 48 (other than paragraph (1) (a)), 48A, 48B, 49 and 50 of the acts Interpretation Act 1901 apply to determinations as if, in those sections, references to regulations were references to determinations and references to a regulation were references to a provision of a determination.

(4) Determinations are not statutory rules within the meaning of the Statutory Rules Publication Act 1903.

(5) For the purposes of section 5 of the Evidence Act 1905, a determination shall be deemed to be an order made by a Minister.

(6) A determination shall be deemed to be an enactment for the purposes of the Administrative Appeals Tribunal Act 1975.

(7) In this section, "determination" means a determination under sub-section 7B (1).

Regulation of fishing

8. (1) The Minister may, by notice published in the Gazette -

(a) prohibit the taking, processing or carrying of fish, or fish included in a class of fish specified in the notice;

(b) prohibit the taking of fish included in a class of fish specified in the notice that -

(i) are less than a size so specified;

(ii) are not greater than a size so specified;

(iii) have a dimension less than a dimension so specified; or

(iv) have a part with a dimension less than a dimension so specified in relation to that part;

(c) prohibit the taking of fish, or fish included in a class of fish specified in the notice, by a method, equipment or boat of a kind specified in the notice;

(d) prohibit the master of a boat that is included in a class of boats specified in the notice from having on board the boat a number of persons greater than a number specified in, or ascertainable as provided in, the notice for the purpose of engaging in fishing;

(daa) prohibit a person from using, or having in the person's possession or charge in a boat, equipment of a specified kind for taking fish unless that equipment is marked or otherwise identified in a specified manner;

(da) prohibit a person from having in the person's possession or in the person's charge in a boat equipment of a specified kind for taking fish;

(e) prohibit a person from having in his possession or in his charge in a boat equipment of a specified kind for taking fish unless that equipment is stowed and secured or carried in a specified manner;

(f) prohibit a person from using, or having in his possession or in his charge in a boat, a quantity of equipment of a specified kind for taking fish that is a quantity in excess of a quantity specified in, or ascertainable as provided in, the notice;

(g) prohibit a person from using, or having in his possession or in his charge in a boat, equipment of a kind to which the notice applies, unless that equipment is registered, or there is a licence in respect of that equipment, under the law of a State or a Territory specified in the notice; and

(h) prohibit the navigating by any person of a boat in respect of which a licence has been issued under sub-section 9 (2) or (3).

(2) A notice under subsection (1) may do all or any of the following:

(a) contain prohibitions under 2 or more paragraphs of that subsection;

(b) specify the day on which the prohibition or a particular prohibition contained in the notice is to come into force (whether the same as, or different from, a day specified under this paragraph in relation to any other prohibition that may be contained in the notice);

(c) specify the period during which the prohibition or a particular prohibition contained in the notice is to have effect (whether the same as, or different from, a period specified under this paragraph in relation to any other prohibition that may be contained in the notice);

(d) provide for exemptions from the prohibition or prohibitions contained in the notice.

(3) Without limiting the generality of the power conferred by sub-section (1) to prohibit the taking of fish included in a class of fish, that power extends to prohibiting, in the case of rock lobster, the taking of female rock lobster having eggs or spawn attached to them.

(4) In a notice containing a prohibition under paragraph (1) (b), the Minister may also prohibit the cutting up or dismembering, on a boat in proclaimed waters, or in the area of proclaimed waters, as the case may be, of the fish, or of the fish included in the class of fish, specified in the prohibition that are taken from proclaimed waters, or from the area of proclaimed waters, as the case may be.

(4A) A prohibition contained in a notice under sub-section (1) comes into force on the day on which the notice is published or on such later day as is specified in the notice.

(4B) A prohibition contained in a notice under sub-section (1) has effect -

(a) if an area of proclaimed waters is specified in the notice as being the area in respect of which the prohibition is to have effect - in that area; and

(b) in any other case - in any area of proclaimed waters.

(4C) A prohibition contained in a notice under sub-section (1) has effect -

(a) if a period is specified in the notice as being the period during which the prohibition is to have effect - during that period; or

(b) in any other case - at all times.

(4D) A notice under sub-section (1) may provide that the activities to which a prohibition contained in the notice relates are -

(a) activities in relation to a managed fishery specified in the notice that would be authorized by a licence granted by virtue of paragraph 9 (2) (b) or (3) (b) in relation to the managed fishery; or

(b) activities in respect of which an endorsement may be made under sub-section 9 (4).

(4DAA) Where:

(a) a notice (in this subsection referred to as the "subsequent notice") under subsection (1) revokes a previous notice under that subsection; and

(b) the subsequent notice provides that the activities to which a prohibition contained in the notice relates are activities in respect of which an endorsement may be made under subsection 9 (4); the subsequent notice may also provide that endorsements made under subsection 9 (4) that would, but for the revocation of the

previous notice, have had effect in relation to a specified prohibition contained in the previous notice during any period or periods after the revocation are to have effect during that period or those periods in relation to the prohibition contained in the subsequent notice.

(4DA) Where -

(a) a notice under sub-section (1) provides that the activities to which a prohibition contained in the notice relates are activities in relation to a managed fishery specified in the notice that would be authorized by a licence granted by virtue of paragraph 9 (2) (b) or (3) (b) in relation to the managed fishery; and

(b) such a licence is granted in respect of a boat, the prohibition does not apply in relation to the use of the boat during any period during which the licence is in force.

(4E) Where -

(a) a notice under sub-section (1) provides that the activities to which a prohibition contained in the notice relates are activities in respect of which an endorsement may be made under sub-section 9 (4); and

(b) an endorsement is made pursuant to sub-section 9 (4) in a licence in force in respect of a boat, the prohibition does not apply in relation to the use of the boat during any period during which the endorsement has effect.

(4F) Where a notice makes provision as mentioned in subsection (4DAA), the endorsements referred to in the notice have effect in accordance with the notice.

(5) For the purposes of section 5 of the Evidence Act 1905, a notice under this section shall be deemed to be an order within the meaning of that section.

Tabling, disallowance etc. of notices under section 8

8A. (1) Sections 48 (other than paragraphs 48 (1) (a) and (b) and sub-section 48 (2)), 48A, 48B, 49 and 50 of the Acts Interpretation Act 1901 apply in relation to notices published under section 8 by the Minister, and so apply as if, in those sections of the Acts Interpretation Act 1901, references to regulations were references to notices published under section 8 by the Minister and references to a regulation were references to a provision of a notice published under section 8 by the Minister.

(1A) A notice published under section 8 may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification -

(a) a provision of any Act or any regulation made under an Act, of any determination made under sub-section 7B (1) or of any other notice published under section 8 as in force at a particular time or as in force from time to time; or

(b) any matter contained in any other instrument or writing as in force or existing when the notice comes into force.

(2) Notices published under section 8 shall be deemed not to be Statutory Rules within the meaning of the Statutory Rules Publication Act 1903.

Licences

9. (1) Subject to sub-section (8AA), the Minister or the Secretary may grant to a person a master fisherman's licence authorizing the person to be in charge of a boat that is being used for fishing in proclaimed waters or in a specified area of proclaimed waters.

(2) Subject to sub-section (8AA), the Minister or the Secretary may grant to a person a licence in respect of a boat authorizing the use of the boat by that person, or a person acting on that person's behalf, for -

(a) taking fish in proclaimed waters or a specified area of the proclaimed waters; or

(b) a specified managed fishery, and for processing and carrying fish that have been taken as a result of that use of the boat.

(3) Subject to sub-section (8AA), the Minister or the Secretary may grant to a person a licence in respect of a boat authorizing the use of the boat by that person, or a person acting on that person's behalf, for -

(a) carrying, or processing and carrying, in proclaimed waters, or a specified area of proclaimed waters, fish that have been taken with the use of another boat; or

(b) carrying, or processing and carrying, in proclaimed waters, or a specified area of proclaimed waters, fish that have been taken with the use of another boat for a specified managed fishery.

(3AA) Without otherwise limiting the generality of subsections (2) and (3), the Minister or the Secretary may refuse to grant a licence under either of those subsections in respect of a boat if the Minister or the Secretary, as the case may be, has reason to believe that a requirement of a law of the Commonwealth, or of a State or Territory, has not been complied with in relation to the boat.

(3A) Subject to sub-section (8AB), the Minister or the Secretary may, at any time, endorse a licence granted under this section in respect of a foreign boat so as to extend it -

(a) to authorize the boat to be brought into a specified port in Australia or in an external Territory at such time as is, or at such times as are, specified in the endorsement; or

(b) to authorize the boat to be brought into a specified port in Australia or in an external Territory at such time as is, or at such times as are, specified in the endorsement and to authorize the landing at that port of fish carried on board the boat at the time when the boat is brought into the port.

(4) Subject to sub-section (8AB), the Minister or the Secretary may endorse a licence granted by virtue of paragraph (2) (a) or (3) (a) in respect of a boat so as to extend the licence to authorize the use of the boat, at any time or during a period specified in the endorsement, for activities by way of fishing that are prohibited by a prohibition contained in a notice in force under sub-section 8 (1), being a notice identified in the endorsement.

(4A) The Minister or the Secretary may, after being requested in writing to do so by the holder of a licence in respect of which an endorsement under sub-section (4) is in force, revoke the endorsement.

(4B) The Minister or the Secretary may, by notice in writing given to the holder of a licence in respect of which an endorsement under sub-section (3A) or (4) is in force, revoke the endorsement.

(5) A licence granted under this section -

(a) is subject to such conditions as are -

(i) specified in the licence;

(ii) prescribed in relation to -

(A) all licences granted under this section;

(B) a class of licences granted under this section in which the licence is included; and

(iii) in the case of a licence granted by virtue of paragraph (2) (b) or (3) (b) - specified in the plan of management for the managed fishery in relation to which the licence has been granted;

(b) comes into force on the day specified for the purpose in the licence or, if no day is so specified, on the day on which it is granted; and

(c) remains in force, subject to sub-section (6A) and section 9A, until the day specified for the purpose in the licence, being -

(i) in the case of a licence granted under sub-section (1) or by virtue of paragraph (2) (a) or (3) (a) - a day in the period of 12 months commencing on the day on which the licence came into force or, if regulations for the purposes of this subparagraph specify a different period in relation to all licences to which this subparagraph applies, or in relation to a class of those licences that includes the licence, a day in the period so specified; or

(ii) in the case of a licence granted by virtue of paragraph (2) (b) or (3) (b) - a day in the period of 12 months commencing on the day on which the licence came into force or, if a different period is specified for the purpose in the plan of management for the managed fishery in relation to which the licence has been granted, a day in the period so specified.

(5A) Without limiting the generality of sub-section (5), the conditions that may be specified in a licence granted under this section, or, in the case of a licence granted by virtue of paragraph (2) (b) or (3) (b), in the plan of management for the managed fishery in relation to which the licence has been granted, include conditions relating to -

(a) the class or classes of fish that may be taken, processed or carried;

(b) the quantity of fish, or of fish included in a specified class of fish, that may be taken;

(c) the rate at which fish, or fish included in a specified class of fish, may be taken;

(d) the methods or equipment that may be used to take fish, or fish included in a specified class of fish;
or

(e) the methods or equipment that may be used to process or carry fish, or fish included in a specified class of fish.

(5B) The Minister or the Secretary may, by notice in writing given to the holder of a licence, vary or revoke a condition of the licence or specify further conditions to which the licence is to be subject.

(6) Where a licence granted under this section is renewed under sub-section (6B) (whether or not the licence has previously been renewed), the licence remains in force, subject to sub-section (6A) and section 9A, until the day specified for the purpose in the renewal, being -

(a) in the case of a licence granted under sub-section (1) or by virtue of paragraph (2) (a) or (3) (a) - a day in the period of 12 months commencing on the day on which the licence, the renewal of the licence or the last renewal of the licence, as the case requires, ceased to be in force or, if regulations for the purposes of this paragraph specify a different period in relation to all licences to which this paragraph applies, or in relation to a class of those licences that includes the licence, a day in the period so specified; or

(b) in the case of a licence granted by virtue of paragraph (2) (b) or (3) (b) - a day in the period of 12 months commencing on the day on which the licence, the renewal of the licence or the last renewal of the licence, as the case requires, ceased to be in force or, if a different period is specified for the purpose in the plan of management for the managed fishery in relation to which the licence has been granted, a day in the period so specified.

(6A) A licence granted under this section ceases to be in force if the holder of the licence, by notice in writing given to the Minister, surrenders the licence.

(6B) Subject to sub-section (8ABA), the Minister may, upon application being made by the holder of a licence granted under this section not earlier than 2 months, or later than one month, before the expiration of the period for which the licence was granted, renewed or last renewed, as the case requires, renew the licence with effect from the expiration of the last-mentioned period.

(7) Subject to sub-section (8AC), the Minister or the Secretary may, on the application of the holder of a licence in respect of a boat and of another person as proposed transferee, transfer the licence to that other person.

(7A) Subject to sub-section (8AD), the Minister or the Secretary may, on the application of the holder of a licence granted under this section in respect of a boat, vary the licence by omitting the name of the boat and substituting the name of another boat.

(8) Such fees (if any) as are prescribed are payable in respect of the grant of a licence, the endorsement of a licence, the transfer of a licence, or the variation of a licence, under this section.

(8A) Regulations made for the purposes of sub-section (8) may prescribe different fees, or prescribe different methods of calculating fees, in respect of -

- (a) licences included in different classes of licences; or
- (b) endorsements of licences included in different classes of endorsements of licences.

(8AA) Where levy is payable under the Fisheries Levy Act 1984, or a fee is payable under this Act, on or in respect of the grant to a person of a licence under this section, the Minister or the Secretary, as the case requires, shall not grant the licence unless the person tenders the amount of the levy or fee, as the case may be.

(8AB) Where levy is payable under the Fisheries Levy Act 1984, or a fee is payable under this Act, on or in respect of the endorsement under this section of a licence granted under this section, the Minister or the Secretary, as the case requires, shall not endorse the licence unless the holder of the licence tenders the amount of the levy or fee, as the case may be.

(8ABA) Where levy is payable under the Fisheries Levy Act 1984, or a fee is payable under this Act, on or in respect of the renewal under this section of a licence granted under this section, the Minister or the Secretary, as the case requires, shall not renew the licence unless the holder of the licence tenders the amount of the levy or fee, as the case may be.

(8AC) Where a fee is payable under this Act in respect of the transfer under this section of a licence granted under this section, the Minister or the Secretary, as the case requires, shall not transfer the licence unless the holder of the licence, or the proposed transferee, tenders the amount of the fee.

(8AD) Where levy is payable under the Fisheries Levy Act 1984, or a fee is payable under this Act, on or in respect of the variation under this section of a licence granted under this section, the Minister or the Secretary, as the case requires, shall not vary the licence unless the holder of the licence tenders the amount of the levy or fee, as the case may be.

(8AE) Where -

(a) a person has, under sub-section (6A), surrendered a licence granted under this section in respect of a boat; and

(b) the person had, at the time when the person surrendered the licence, notified the Minister that the person intended to apply for another licence under this section in respect of another boat, the Minister may direct, in writing, that the fee that would be payable in respect of the grant of the other licence is to be reduced by an amount that, in the opinion of the Minister, is appropriate, and, where the Minister gives such a direction, the fee shall be reduced by that amount.

(8B) The Minister or the Secretary may, having regard to the terms of any relevant agreement relating to the taking of fish in the Australian fishing zone, being an agreement to which Australia and another country or other countries are parties, remit, in whole or in part, any fee that would, but for this sub-section, be payable under sub-section (8) in respect of the granting of a licence to a foreign boat or in respect of the endorsement or transfer of a licence granted in respect of a foreign boat.

(9) A licence under this section shall be in accordance with a form approved by the Minister.

(10) Registers showing particulars of the licences granted under this section and in force from time to time shall be kept at such places as the Minister directs.

(11) Nothing in this Act prevents a licence under this section and a licence of the same kind under a law of a State or Territory, or a licence under this section and another licence under this section, being combined and issued as one instrument.

(12) Nothing in this Act prevents the exercise of any of the powers, whether express or implied, of a person under this section (other than powers of the Minister or the Secretary) by another person having authority as agent, trustee or otherwise to exercise that power or powers that include that power.

Suspension and cancellation of licences

9A. (1) The Minister or the Secretary may, by notice in writing given to the holder of a licence granted under section 9, suspend the licence if the Minister or the Secretary, as the case may be, has reasonable grounds to believe that -

(a) there has been a contravention of, or a failure to comply with, a condition to which the licence is subject;

(b) a person, being the holder of the licence or a person acting on behalf of the holder of the licence, has done an act that the person was prohibited from doing by a notice in force under sub-section 8 (1); or

(c) in an application under this Act, the regulations or a plan of management relating to the licence, the holder of the licence made a statement or furnished information that was, to the holder's knowledge, false or misleading in a material particular, not being an act or omission in relation to which the Minister or the Secretary, as the case may be, has previously exercised powers under this sub-section.

(2) Where a licence is suspended under sub-section (1), the suspension, unless it is sooner revoked, ceases -

(a) if proceedings for an offence against this Act in relation to the alleged act or omission by reason of which the licence was suspended are instituted against the holder of the licence, or a person who acted on behalf of the holder of the licence, within one month after suspension - on completion of the proceedings; or

(b) in any other case - on the expiration of one month after the suspension.

(3) The Minister may, at any time, by notice in writing given to the holder of a licence suspended under sub-section (1), revoke the suspension.

(3A) The Minister may, by notice in writing given to the holder of a licence granted under section 9, cancel the licence if -

(a) in the case of a master fisherman's licence - the holder of the licence is convicted of an offence against this Act, the regulations or any other law of the Commonwealth relating to fishing or against a law of Papua New Guinea or a State or Territory relating to fishing; and

(b) in the case of a licence granted under sub-section 9 (2) or (3) in respect of a boat -

(i) the holder of the licence is convicted of an offence of a kind referred to in paragraph (a); or

(ii) during any period during which the holder of the licence held a licence in respect of the boat - another person is convicted of an offence of a kind referred to in paragraph (a) in relation to the use of the boat.

(4) The Minister or the Secretary may, by notice in writing expressed to be given under this sub-section given to the holder of a licence under section 9, suspend that licence for a specified period if -

(a) the holder has had a licence relating to a boat or to fishing held by him under the law of a State or Territory suspended or cancelled; and

(b) the Minister or the Secretary, as the case may be, is satisfied, after consulting the relevant authority of the State or Territory, that suspension for that period under this sub-section is necessary for the proper management of fisheries in an area.

(5) A suspension of a licence under sub-section (1) or (4) may be expressed to operate either generally or in so far as the licence applies in relation to a specified area of proclaimed waters.

Agreements to grant licences

9B. (1) In this section and in sections 9C and 9D, "foreign fishing boat" means -

(a) a foreign boat; or

(b) a boat in respect of which an instrument is in force under sub-section 4 (2).

(2) The Minister may, on behalf of the Commonwealth, enter into an agreement with a person that contains a provision under which the Minister agrees to grant a licence or 2 or more licences under sub-section 9 (2) or (3) (whether to that person or to any other person or persons) in respect of a foreign fishing boat or 2 or more foreign fishing boats.

(3) Where the Minister has entered into an agreement that contains a provision of a kind referred to in sub-section (2) with a person, the Minister may enter into a further agreement with the person varying the terms of the provision or varying the terms of the provision as varied pursuant to this sub-section.

(4) Where the Minister enters into an agreement that contains a provision of a kind referred to in sub-section (2) or, pursuant to sub-section (3), enters into a further agreement, the Minister shall cause a copy of the agreement or of the further agreement, as the case may be, to be laid before each House of the Parliament within 15 sitting days of that House after the agreement or the further agreement, as the case may be, is entered into.

(5) Where -

(a) the Minister has entered into an agreement that contains a provision of a kind referred to in sub-section (2) of this section; or

(b) there is in force an agreement between Australia and the government of another country that contains a provision under which licences under sub-section 9 (2) or (3) are agreed to be granted in respect of foreign fishing boats (whether or not the provision also provides for the payment of an amount or amounts to Australia), the Minister or the Secretary shall, in determining whether or not to grant the licence or any of the licences to which the agreement relates, have regard only to the terms of the agreement.

(6) Sub-section (5) has effect only so far as that sub-section is not a law imposing taxation within the meaning of section 55 of the Constitution.

Payment of levy

9C. (1) In this section, "levy" means the levy imposed by the Foreign Fishing Boats Levy Act 1981 on the grant of a licence in respect of a foreign fishing boat.

(2) The Minister or the Secretary may make arrangements with a person by whom an amount of levy is or will become payable in relation to the time for payment of, or the manner of payment of, the amount of levy or any part of that amount.

(3) The Minister may, on behalf of the Commonwealth, enter into an agreement with a body corporate that is incorporated under a law in force in a State or Territory and has applied, or intends to apply, for the grant

of a licence or 2 or more licences under sub-section 9 (2) or (3) in respect of a foreign fishing boat or 2 or more foreign fishing boats, being an agreement that contains a provision under which the Minister agrees, in consideration of the body corporate agreeing to provide a benefit or benefits for Australia within a period or periods specified in the agreement, to exempt the body corporate from the liability to pay the whole or any part of the amount of levy that would, but for this sub-section, be payable in respect of the grant of that licence or those licences and, subject to sub-section (6), where the Minister enters into such an agreement, the body corporate is not liable to pay that amount of levy or that part of that amount, as the case may be.

(4) Where the Minister has entered into an agreement that contains a provision of a kind referred to in sub-section (3) with a body corporate, the Minister may enter into a further agreement with the body corporate varying the terms of the provision or varying the terms of the provision as varied pursuant to this sub-section.

(5) Where the Minister enters into an agreement that contains a provision of a kind referred to in sub-section (3) or, pursuant to sub-section (4), enters into a further agreement, the Minister shall cause a copy of the agreement or a copy of the further agreement, as the case may be, to be laid before each House of the Parliament within 15 sitting days of that House after the agreement or the further agreement, as the case may be, is entered into.

(6) Where the Minister has entered into an agreement that contains a provision of a kind referred to in sub-section (3) with a body corporate and the body corporate fails to provide the benefit or any one or more of the benefits that the body corporate had agreed to provide under the provision or, if the provision has been varied pursuant to sub-section (4), under the provision as so varied, within the period in which the body corporate had agreed to provide that benefit or those benefits -

(a) the amount of levy or the part of the amount of levy from the payment of which the Minister had agreed to exempt the body corporate forthwith becomes due and payable by the body corporate; and

(b) the Minister may, by notice in writing given to the body corporate, suspend the licence or any one or more of the licences granted to the body corporate under sub-section 9 (2) or (3) pursuant to the agreement.

(7) Where the Minister has suspended a licence under sub-section (6), the Minister shall, by notice in writing given to the holder of the licence, revoke the suspension if -

(a) the body corporate pays to the Commonwealth the total amount of levy payable in respect of the grant of the licence and any amount that is payable by way of penalty under sub-section (11) in relation to that amount of levy; or

(b) the Minister is satisfied that the body corporate has provided the benefit or benefits the failure to provide which resulted in the suspension of the licence.

(8) Where a person who is liable to pay an amount of levy on the grant of a licence under sub-section 9 (2) or (3) in respect of a foreign fishing boat (not being a licence granted pursuant to an agreement that contains a provision of a kind referred to in sub-section (3)) fails to pay that amount to the Commonwealth at or before the time when that amount became due and payable, the Secretary may, by notice in writing given to the person, suspend the licence.

(9) Where the Secretary has suspended a licence under sub-section (8), the Secretary shall, by notice in writing given to the holder of the licence, revoke the suspension if the holder of the licence pays to the Commonwealth the unpaid amount of levy on the grant of the licence and any amount that is payable by way of penalty under sub-section (11) in relation to that amount of levy.

(10) An amount of levy on the grant of a licence (not being an amount of levy that becomes due and payable in accordance with sub-section (6)) becomes due and payable -

(a) where the Minister or the Secretary has, pursuant to sub-section (2), made arrangements with a person by whom the amount of levy is or will become payable in relation to the time for payment of, or the manner of payment of, the amount of levy or any part of that amount - in accordance with the arrangements; and

(b) in any other case - upon the expiration of 30 days after the grant of the licence.

(11) Where a person who is liable to pay an amount of levy on the grant of a licence in respect of a foreign fishing boat fails to pay that amount or any part of that amount to the Commonwealth at or before the time when that amount became due and payable, the person is liable to pay to the Commonwealth, by way of penalty, in addition to that amount of levy, an amount calculated at the rate of 10% per month upon the amount of levy from time to time remaining unpaid, computed for the period commencing on the day on which that amount of levy became due and payable and ending on the day specified in the licence as being the day until which the licence is to remain in force.

(12) An amount of levy that is due and payable and any amount that is payable by way of penalty under sub-section (11) may be recovered by the Commonwealth in a court of competent jurisdiction as a debt due to the Commonwealth.

Fisheries agreements

9D. (1) If Australia enters into an agreement with the government of another country that contains a provision under which licences under sub-section 9 (2) or (3) are agreed to be granted in respect of foreign fishing boats (whether or not the provision also provides for the payment of an amount or amounts to australia), the Minister shall cause a copy of the agreement to be laid before each House of the Parliament within 15 sitting days of that House after the agreement is entered into.

(2) Where -

- (a) an agreement that contains a provision of a kind referred to in sub-section (1) is in force;
- (b) the provision provides for the payment of an amount or amounts to australia;
- (c) a licence or licences to which the provision relates has or have been granted under sub-section 9 (2) or (3) in respect of a foreign fishing boat or foreign fishing boats; and
- (d) the amount or amounts specified in the provision or any part of that amount or of those amounts is not paid to Australia in accordance with the terms of the provision, the Minister may, by notice in writing given to the holder of a licence of a kind referred to in paragraph (c), suspend the licence.

(3) Where the Minister has suspended a licence under sub-section (2), the Minister shall, by notice in writing given to the holder of the licence, revoke the suspension if the amount or the amounts the failure to pay which resulted in the suspension of the licence is or are paid to Australia.

(4) Sub-sections (2) and (3) have effect only so far as those sub-sections are not laws imposing taxation within the meaning of section 55 of the Constitution.

Treaty licences

9E. (1) For the purposes of this Act, a Treaty licence shall be taken to be in force in respect of a boat at all times during the period of validity of the Treaty licence stated in the licence, except when the Treaty licence is suspended within the meaning of this section.

(2) A Treaty licence issued in respect of a Treaty boat is suspended when:

(a) each party to the Treaty has been notified in writing by the Minister that an investigation is being conducted in relation to an alleged contravention specified in the notice by a person of a provision of the Treaty with the use of, or in relation to, the boat; or

(b) the Minister is notified in writing by the Administrator that the Treaty licence has been suspended in accordance with paragraph 8 of Article 5 of the Treaty.

(3) A Treaty licence ceases to be suspended:

(a) where the Treaty licence is suspended at a particular time because paragraph (2) (a) applies to the Treaty licence - the Minister has, by writing, notified the Administrator that the investigation referred to in that paragraph has been completed; or

(b) where the Treaty licence is suspended at a particular time because paragraph (2) (b) applies to the Treaty licence - when the Minister is notified in writing by the Administrator that the Treaty licence is no longer suspended.

Powers of officers

10. (1) An officer may -

(a) board or enter upon a boat in proclaimed waters or in Australia or an external Territory or a boat that the officer has reasonable grounds to believe has been used, is being used, or is intended to be used, for fishing in proclaimed waters and may:

(i) search the boat for fish, for equipment that has been used, is being used, is intended to be used or is capable of being used for fishing or for any document relating to the operations of the boat; and

(ii) break open any hold, compartment, container or other receptacle on the boat that the officer has reasonable grounds to believe contains any document, equipment or thing that may afford evidence as to the commission of an offence against this Act;

(aa) board or enter upon a boat that the officer has reasonable grounds to believe -

(i) is a foreign boat; and

(ii) has been used, is being used or is intended to be used for taking, catching or capturing fish for private purposes in the Australian fishing zone or for carrying or processing fish in that zone, and may:

(iii) search the boat for fish, for equipment that has been used, is being used, is intended to be used or is capable of being used for the taking, catching, capturing, processing or carrying of fish or for any document relating to the operations of the boat; and

(iv) break open any hold, compartment, container or other receptacle on the boat that the officer has reasonable grounds to believe contains any document, equipment or thing that may afford evidence as to the commission of an offence against this Act;

(aaa) examine any fish, equipment, document or thing found pursuant to powers exercised under paragraph (a) or (aa);

(ab) where the officer has reasonable grounds to believe that there is on any land or in any premises any document, equipment or thing that may afford evidence as to the commission of an offence against this Act, with the consent of the owner or occupier of the land or premises or pursuant to a warrant issued under sub-section (4A) -

(i) enter the land or premises using such force as is necessary for the purpose;

(ii) search the land or premises and break open and search any cupboard, drawer, chest, trunk, box, package or other receptacle, whether a fixture or not, in which the officer has reasonable grounds to believe that there is a document, equipment or thing of that kind; and

(iii) examine and take possession of, or secure against interference, any document, equipment or thing that the officer has reasonable grounds to believe may afford evidence as to the commission of an offence against this Act;

(ac) where the officer has reasonable grounds to believe that there is in any vehicle any document, equipment or thing that may afford evidence as to the commission of an offence against this Act:

(i) stop and detain the vehicle;

(ii) enter and search the vehicle;

(iii) break open and search any compartment, container or other receptacle in which the officer has reasonable grounds to believe there is a document, equipment or thing of that kind; and

(iv) examine and take possession of, or secure against interference, any document, equipment or thing that the officer has reasonable grounds to believe may afford evidence as to the commission of an offence against this Act;

(b) examine any equipment found in any place, being equipment that the officer has reasonable grounds to believe has been used, is being used, or is intended to be used, for fishing in proclaimed waters;

(ba) examine any equipment found in or on a foreign boat, being equipment that the officer has reasonable grounds to believe has been used, is being used or is intended to be used for taking, catching or capturing fish for private purposes in the Australian fishing zone or for processing or carrying fish in that zone;

(c) seize, detain, remove or secure -

(i) any fish that the officer has reasonable grounds to believe has been taken, caught, captured, processed, carried or landed in contravention of this Act;

(ii) any boat, net, trap or other equipment that the officer has reasonable grounds to believe has been used, is being used or is intended to be used in contravention of this Act; or

(iii) any document or other thing that the officer has reasonable grounds to believe may afford evidence as to the commission of an offence against this Act;

(ca) board or enter upon a boat in respect of which the officer has reasonable grounds to believe levy imposed by the Foreign Fishing Boats Levy Act 1981 may become payable, is payable or has been paid and inspect the boat or any part of the boat;

(cb) board or enter upon a boat that the officer has reasonable grounds to believe is a boat in relation to which levy under the Fisheries Levy Act 1984 may become payable or has been paid and inspect the boat or any part of the boat;

(d) without warrant, arrest a person whom the officer has reasonable grounds to believe has committed an offence against this Act;

(e) require the master of a boat which the officer has reasonable grounds to believe has been used, is being used or is intended to be used in contravention of this Act to bring the boat to a place in Australia or a Territory specified by the officer and to remain in control of the boat at that place until an officer permits him to depart from that place;

(ea) require the master of a boat who, in pursuance of a requirement under paragraph (e) or in pursuance of a previous requirement under this paragraph, is in control of the boat at a place in Australia or a Territory, to take the boat to another place in Australia or in a Territory specified by the officer and to remain in control of the boat at that place until an officer permits him to depart from that place;

(f) bring a boat which the officer has reasonable grounds to believe has been used, is being used or is intended to be used in contravention of this act to a place in Australia or a Territory (whether or not the boat has previously been brought to another place or other places in Australia or in a Territory by an officer or officers exercising powers under this section) and may remain in control of that boat pending the taking and determination of proceedings in respect of that contravention;

(g) require the master of a boat to produce any licence or Treaty licence for or in respect of the boat;

(ga) take copies of, or extracts from, a licence or Treaty licence produced in accordance with a requirement under paragraph (g);

(h) require the master of a boat required to be licensed under this Act or a Treaty boat in respect of which a Treaty licence has been issued to give information concerning the boat and her crew and any person on board the boat;

(ha) require the master of a boat to cause to be lifted from the sea any equipment that the officer has reasonable grounds to believe is being, or has been, used by a person on board the boat in contravention of this Act;

(hb) where, for the purpose of ascertaining whether equipment that is on, or that is being used by or from, a boat is equipment of a kind specified in a notice that is in force under subsection 8 (1), it is necessary to ascertain the dimensions of the equipment - require the master of the boat to provide such reasonable assistance as is requested by the officer in order to ascertain the dimensions of the equipment (including, if the officer so requests, causing the equipment to be placed in the sea or on land, or to be removed from the sea and placed on the boat or on land);

(i) require a person who is on board a boat required to be licensed under this Act, or a Treaty boat in respect of which a Treaty licence has been issued, or who is engaged in fishing in proclaimed waters, or whom he reasonably suspects of having committed an offence against this Act, to state his name and place of abode;

(ia) require a person found on or in any land or premises entered in pursuance of paragraph (ab) or in any vehicle detained or searched under paragraph (ac) -

(i) to state his name and place of abode;

(ii) to produce any documents in his possession or under his control relating to any fish found on the land or in the premises or vehicle; or

(iii) to give information concerning any such fish;

(j) require the master of a boat that is being used for fishing in proclaimed waters to state whether he is the holder of a master fisherman's licence and, if so, to produce the licence and permit the officer to make copies of, or take extracts from, the licence; and

(k) sell any fish seized by him under this Act.

(1A) Subject to subsection (1B), a Pacific Island party officer may, for a relevant Treaty purpose, exercise any of the powers described in paragraphs (1) (a), (aa), (aaa), (ba), (c), (e), (ea), (g), (ga), (h), (ha) and (i) and, where a Pacific Island party officer exercises such a power, he or she shall, for the purposes of this Act, be taken to have exercised the power as an officer.

(1B) Subsections (2) and (3) apply in relation to the exercise of powers under this section by Pacific Island party officers as if:

(a) references in those subsections to an officer were references to a Pacific Island party officer; and

(b) references in those subsections to an officer's identity card were references to a document, issued to a person, being a Pacific Island party officer, by the Pacific Island party that authorised the person to perform the functions and duties of an observer on a Treaty boat, that identifies that person as a person so authorised.

(2) Where an officer (other than a prescribed person who is in uniform) boards or enters upon a boat, the officer shall -

(a) in the case of a prescribed person - produce, for inspection by the master of the boat, written evidence of the fact that the officer is a prescribed person; or

(b) in any other case - produce, for inspection by the master of the boat, the officer's identity card, and, if the officer fails to do so, the officer is not authorized to remain on board the boat.

(2A) Where an officer (other than a prescribed person who is in uniform) proposes to enter and search, or to detain, a vehicle, the officer shall, if there is a person in charge of the vehicle:

(a) where the officer is a prescribed person - produce, for inspection by the person in charge of the vehicle, written evidence of the fact that the officer is a prescribed person; or

(b) in any other case - produce, for inspection by the person in charge of the vehicle, the officer's identity card; and, if the officer fails to do so, the officer is not authorised to enter and search, or to detain, the vehicle.

(3) Where an officer (other than a prescribed person who is in uniform) makes a requirement of a person (in this sub-section referred to as the "relevant person") under sub-section (1), the officer shall -

(a) in the case of a prescribed person - produce, for inspection by the relevant person, written evidence of the fact that the officer is a prescribed person; or

(b) in any other case - produce, for inspection by the relevant person, the officer's identity card, and, if the officer fails to do so, the relevant person is not obliged to comply with the requirement.

(4) Where an officer has reasonable grounds to believe that there is on any land or in any premises any document, equipment or thing that may afford evidence as to the commission of an offence against this Act, the officer may make application to a Justice of the Peace for a warrant authorizing the officer to enter the land or premises for the purpose of ascertaining whether there is on that land or in those premises any such document, equipment or thing.

(4A) If, on application by an officer under sub-section (4), a Justice of the Peace is satisfied, by information on oath or affirmation, that there are reasonable grounds for suspecting that there is, on the land or in the premises to which the application relates, any document, equipment or thing that may afford evidence as to the commission of an offence against this Act, the Justice of the Peace may issue a warrant authorizing the officer, together with any other person named in the warrant, to enter that land or those premises, during such hours of the day or night as the warrant specifies, or, if the warrant so specifies, at any time, and to exercise the powers referred to in sub-paragraphs (1) (ab) (ii) and (iii).

(4B) A warrant issued under sub-section (4A) shall specify a day, being a day not later than 7 days after the day on which the warrant is issued, as the day on which the warrant ceases to have effect, and the warrant shall cease to have effect on the day so specified.

(5) An officer may, for the purpose of exercising his powers under paragraph (1) (ca) or (cb), obtain the assistance of a person (not being an officer) and, where an officer obtains the assistance of such a person, that person shall, for the purpose of the exercise of those powers, be deemed to be an officer.

(5A) A reference in this section to an offence against, or a contravention of, this Act includes a reference to an offence against, or a contravention of:

(a) section 6, 7 or 7A of the Crimes Act 1914; or

(b) subsection 86 (1) of that Act by virtue of paragraph (a) of that subsection; that relates to this Act.

(6) In this section -

“examine” includes count, measure, weigh, grade or gauge;

“prescribed person” means -

(a) a member or special member of the Australian Federal Police or a member of the police force of a State or Territory; or

(b) a member of the Defence Force;

“this Act” includes the regulations.

Release of seized property

10A. (1) Where any property is under the control of an officer pursuant to the exercise by an officer of powers under section 10, the Minister or the Secretary may direct that the property be released -

(a) in the case of a boat - to the owner or the master of the boat; and

(b) in any other case - to the owner of the property or to the person from whose possession the property was seized, or from whose control the property was removed, on such conditions (if any) as he thinks fit, including conditions as to the giving of security for payment of the value of the property if it is forfeited and for the payment of any fines that may be imposed under this Act in respect of offences that the Minister or the Secretary, as the case may be, has reason to believe have been committed with the use of, or in relation to, that property.

(2) For the purposes of this section -

(a) a reference to property shall be read as including a reference to fish; and

(b) property shall be taken to be under the control of an officer if any person is, in relation to that property, subject to the directions of the officer.

PART IV - RESEARCH AND DEVELOPMENT

Exploratory operations

11. The Minister may cause to be carried out operations -

(a) for ascertaining whether fishing in an area of proclaimed waters can be engaged in on a commercial basis; and

(b) for the development of fisheries in proclaimed waters.

Investigations

12. The Minister may cause investigations to be made into economic matters relating to fisheries in proclaimed waters.

PART IVA - CO-OPERATION WITH STATES AND NORTHERN TERRITORY IN MANAGEMENT OF FISHERIES

Division 1 - Preliminary

Interpretation

12A. (1) In this Part, unless the contrary intention appears -

“appropriate Minister”, in relation to a State, means the Minister of the State for the time being administering the laws of the State relating to marine fishing;

“Commonwealth Minister” means the Minister for the time being administering this Act;

“fishery” means a class of activities by way of fishing, being a class of such activities that is identified in an arrangement under this Part as a fishery to which the arrangement applies;

“Joint Authority” means an authority established by or under section 12D;

“Joint Authority fishery” means a fishery in respect of which there is in force an arrangement under this Part under which the fishery is to be under the management of a Joint Authority.

(2) References in this Part to the waters adjacent to a State or States shall be read as references to the coastal waters of the State or States and waters within the Australian fishing zone that are adjacent to the coastal waters of the State or States.

(3) Without limiting the matters by reference to which a fishery may be identified in an arrangement under this Part, those matters include all or any of the following:

- (a) a species of fish;
- (b) a description of fish by reference to sex or any other characteristic;
- (c) an area of waters or of seabed;
- (d) a method of fishing;
- (e) a class of boats;
- (f) a class of persons;
- (g) a purpose of activities.

(4) A reference in this Part to units of fishing capacity is a reference to the units into which, under a plan of management for a fishery, the fishing capacity permitted for the fishing is divided.

Application of Part in relation to Northern Territory

12B. (1) This Part has effect as if the Northern Territory were a State and references in this Part to the States shall be construed accordingly.

(2) A reference in this Part to the Governor of a State shall be read, in relation to the Northern Territory, as a reference to the Administrator of the Territory.

Acting Ministers

12C. (1) The functions and powers of the Commonwealth Minister under this Part, including his functions and powers as a member of a Joint Authority, may be performed and exercised by another Minister of the Commonwealth acting for and on behalf of the Commonwealth Minister, and references in this Part to the Commonwealth Minister shall be read as including references to a Minister so acting.

(2) The functions and powers of the appropriate Minister of a State under this Part as a member of a Joint Authority, may be performed and exercised by a Minister of the State acting for and on behalf of the appropriate Minister, and references in this Part to the appropriate Minister of a State shall be read as including references to a Minister so acting.

Division 2 - Establishment and procedure of Joint Authorities

2D Establishment of Joint Authorities

12D.*2* (1) For the purposes of this Act, there are established 4 authorities, to be known as the South Eastern Fisheries Joint Authority, the Northern Australian Fisheries Joint Authority, the Northern Territory Fisheries Joint Authority and the Western Australian Fisheries Joint authority.

(2) The South Eastern Fisheries Joint Authority consists of the Commonwealth Minister together with the appropriate Ministers of New South Wales, Victoria, South Australia and Tasmania.

(3) The Northern Australian Fisheries Joint Authority consists of the Commonwealth Minister together with the appropriate Ministers of Queensland and the Northern Territory.

(4) The Northern Territory Fisheries Joint Authority consists of the Commonwealth Minister together with the appropriate Minister of the Northern Territory.

(5) The Western Australian Fisheries Joint Authority consists of the Commonwealth Minister together with the appropriate Minister of Western australia.

(6) The Commonwealth may at any time make an arrangement with a State or States for the establishment of a Joint Authority, consisting of the Commonwealth Minister together with the appropriate Minister or Ministers of that State or those States.

(7) Each arrangement under sub-section (6) for the establishment of a Joint authority shall be made by instrument in writing approved by the Governor-General and the Governor or Governors of the State or States represented on the Joint Authority, and the Joint Authority may be abolished by a further such instrument, but an instrument abolishing a Joint Authority shall not take effect while there is in operation an arrangement under Division 3 which provides that the Joint Authority is to have the management of a particular fishery.

(8) The Commonwealth Minister shall cause a copy of every instrument approved in accordance with sub-section (7) to be published in the Gazette, and, subject to that sub-section, such an instrument takes effect on the date of publication.

(9) A Joint Authority has such functions in relation to fisheries in respect of which arrangements are made under Division 3 as are conferred on it by this Part or a law of a State that is represented on the Joint Authority.

(10) A member of a Joint Authority may, by writing under his hand, appoint a person or persons to be his deputy or deputies.

(11) A deputy of a member of a Joint Authority is entitled, in the absence from a meeting of the Joint Authority of the member and of the other deputy or deputies (if any) of the member, to attend that meeting and, when so attending, shall be deemed to be a member.

(12) For the purposes of this Part, a State shall be taken to be represented on a Joint Authority if the appropriate Minister of the State is a member of the Joint Authority.

(13) All courts and persons acting judicially shall take judicial notice of the signature of a person who is or has been a member of a Joint Authority or a deputy of a member of a Joint Authority and of the fact that he is, or was at a particular time, such a member or deputy.

2 Sections 12D and 12H are amended by sections 20 and 21 of the Fishing Legislation Amendment Act 1987. Sections 20 and 21 provide as follows:

“20. Section 12D of the Principal Act is amended by inserting in subsection (3) ‘, Western Australia’ after ‘Queensland’.”

“21. Section 12H of the Principal Act is amended:

(a) by omitting from subsection (1) 'The' and substituting 'Subject to subsection (1A), the';
and

(b) by inserting after subsection (1) the following subsection: '(1A) An arrangement shall not be made under subsection (1) with the States represented on the Northern Australian Fisheries Joint authority if the arrangement relates to the management of a fishery wholly or partly in waters adjacent to the State of Western Australia that are south of the parallel of latitude 16 degrees south.'"

Subsection 2 (2) of the Fishing Legislation Amendment Act 1987 provides as follows:

"(2) Sections 20 and 21 shall come into operation on a day to be fixed by Proclamation."

As at 30 November 1989 no date had been fixed for the commencement of sections 20 and 21 and the amendments are not incorporated in this reprint.

Delegation

12E. (1) Subject to this section, a Joint Authority may, by instrument, either generally or as otherwise provided by the instrument, delegate to a person any of its powers under this Act, other than this power of delegation and its powers to make, vary and revoke determinations under sub-section 7B (1).

(2) A power so delegated, when exercised by the delegate, shall, for the purposes of this Act, be deemed to have been exercised by the Joint authority.

(3) A delegation under this section may be expressed as a delegation to the person from time to time holding, or performing the duties of, a specified office in the Department or a specified office in the service of a State or an authority of a State or under the law of a State.

(3A) The powers of the Joint Authority under sub-section 12S (4) are not exercisable by a delegate other than a person holding, or performing the duties of, an office in the Department.

(4) A delegate of a Joint Authority is, in the exercise of his delegated powers, subject to the directions of the Joint Authority.

(5) A delegation of a power under this section -

(a) may be revoked, by instrument, by the Joint Authority (whether or not constituted by the persons constituting the Joint Authority at the time the power was delegated);

(b) does not prevent the exercise of the power by the Joint Authority; and

(c) continues in force notwithstanding any change in the membership of the Joint Authority.

(6) Section 34A of the Acts Interpretation Act 1901 applies in relation to a delegation under this section as if the Joint Authority were a person.

(7) A certificate signed by a member of a Joint Authority stating any matter with respect to a delegation of a power under this section by the Joint authority is prima facie evidence of that matter.

(8) A document purporting to be a certificate mentioned in sub-section (7) shall, unless the contrary is established, be deemed to be such a certificate and to have been duly given.

(9) Nothing in this Part is intended to prevent the delegation by a Joint authority, in accordance with the law of a State, of powers conferred on the Joint Authority by the law of that State.

Procedure of Joint Authorities

12F. (1) At a meeting of a Joint Authority -

- (a) the Commonwealth Minister shall preside, if he is present;
 - (b) if deputies of members only are present, the deputy of the Commonwealth Minister shall preside;
- and
- (c) if neither paragraph (a) nor paragraph (b) is applicable, the members present shall select one of their number, being a Minister, to preside.
- (2) Meetings of a Joint Authority shall be convened by the Commonwealth Minister, and he shall convene such a meeting at the request of any other member.
- (3) The quorum for a meeting of a Joint Authority is -
- (a) if there are 2 members - 2 members; or
 - (b) if there are more than 2 members - the Commonwealth Minister or his deputy and other members not less in number than 2 and not less in number than half the number of States represented on the Joint Authority.
- (4) If, at a meeting of a Joint Authority, the members present are not agreed as to the decision to be made on a matter, the Commonwealth Minister may, subject to sub-section (5), decide that matter and his decision shall have effect as the decision of the Joint Authority.
- (5) Before deciding a matter in accordance with sub-section (4), the Commonwealth Minister shall submit the matter for consideration by the members of the body of Commonwealth and State Ministers known as the Australian Fisheries Council and shall, for that purpose, if so requested by a member of that Council, convene a meeting of that Council, but a decision of the Commonwealth Minister shall not be called in question in any legal proceedings on a ground arising out of this sub-section.
- (6) A member of a Joint Authority may, by written or other communication, submit a matter within the functions of the Joint Authority for consideration by the other member, or each of the other members, of the Joint Authority and, if all the members of the Joint Authority are agreed as to the decision to be made on the matter, the Joint Authority shall be taken to have made a decision accordingly and the Commonwealth Minister shall, upon being satisfied that the members are so agreed, record the decision as a decision of the Joint authority.
- (7) A Joint Authority may establish advisory committees, consisting of such persons as it thinks fit, to provide information and advice to the Joint authority on scientific, economic and technical matters related to any fishery.
- (8) Subject to this section, a Joint Authority may adopt its own rules of procedure.
- (9) The Commonwealth Minister shall, in respect of each Joint Authority, appoint a person to be the Secretary of the Authority and make arrangements for the provision of appropriate services in respect of the Authority.
- (10) The Commonwealth Minister shall cause written records to be kept of the decisions of a Joint Authority and such a record, if signed by the Commonwealth Minister, or deputy of the Commonwealth Minister, who took part in or made the decision, is prima facie evidence that the decision, as recorded, was duly made.
- (11) In proceedings in any court, an instrument or other document signed, on behalf of a Joint Authority, by a member of that Joint Authority, shall be deemed to be duly executed by the Joint Authority and, unless the contrary is proved, shall be deemed to be in accordance with a decision of the Joint authority.

12G. (1) A Joint Authority shall, as soon as practicable after 31 December in each year, prepare a report on the activities of the Joint Authority in that year and on the condition during that year of the fisheries to which the functions of the Joint Authority apply.

(2) The Commonwealth Minister shall cause a copy of every report under this section to be laid before each House of the Parliament as soon as practicable after the preparation of the report.

Division 3 - Arrangements with respect to management of particular fisheries

Arrangements with States

12H.*2* (1) The Commonwealth may make an arrangement with the State or States that is or are represented on a Joint Authority that the Joint authority is to have the management of a particular fishery in waters adjacent to that State or to those States or any of those States.

(2) An arrangement under sub-section (1) with only one State shall provide either that -

- (a) the fishery is to be managed in accordance with the law of the Commonwealth; or
- (b) the fishery is to be managed in accordance with the law of that State.

(3) An arrangement under sub-section (1) with 2 or more States shall provide that the fishery is to be managed in accordance with the law of the Commonwealth.

(4) The Commonwealth may make an arrangement with a State with respect to a particular fishery in waters adjacent to the State, not being a fishery to which an arrangement under sub-section (1) applies -

(a) that the fishery (being a fishery wholly or partly in the coastal waters of the State) is to be managed in accordance with the law of the Commonwealth; or

(b) that the fishery (being a fishery wholly or partly in waters on the seaward side of the coastal waters of the State) is to be managed in accordance with the law of the State.

(5) An arrangement under this Division may define the fishery in respect of which it is to apply by reference to an organism that is a sedentary organism for the purposes of the Continental Shelf (Living Natural Resources) Act 1968 as if that organism were included in the definition of "fish" in section 4 and, where such an arrangement is in force -

(a) that organism, to the extent that it is the subject of the fishery defined in the arrangement, shall be deemed to be included in the definition of "fish" in section 4; and

(b) the Continental Shelf (Living Natural Resources) Act 1968 does not apply to or in relation to that organism, to the extent that that organism is the subject of that fishery.

(6) An arrangement under this section does not have any effect in relation to -

- (a) any area within the Protected Zone; or
- (b) if there is in force a Proclamation under sub-section 15 (1) or (2) of the Torres Strait Fisheries Act 1984 in relation to an area adjacent to the Protected Zone - any activities within that area to which that Act applies by virtue of the Proclamation.

(7) Nothing in sub-section (6) shall be taken to affect the operation of an arrangement under this section in relation to -

(a) matters that occurred in the Protected Zone before the commencement of the Torres Strait Fisheries Act 1984; or

(b) matters that occurred in an area in respect of which a Proclamation is in force under sub-section 15 (1) or (2) of the Torres Strait Fisheries Act 1984 before the Proclamation came into force.

(8) In sub-sections (6) and (7), "Protected Zone" has the same meaning as in the Torres Strait Fisheries Act 1984.

2 Sections 12D and 12H are amended by sections 20 and 21 of the Fishing Legislation Amendment Act 1987. Sections 20 and 21 provide as follows:

"20. Section 12D of the Principal Act is amended by inserting in subsection (3) ', Western Australia' after 'Queensland'."

"21. Section 12H of the Principal Act is amended:

(a) by omitting from subsection (1) 'The' and substituting 'Subject to subsection (1A), the';
and

(b) by inserting after subsection (1) the following subsection: '(1A) An arrangement shall not be made under subsection (1) with the States represented on the Northern Australian Fisheries Joint authority if the arrangement relates to the management of a fishery wholly or partly in waters adjacent to the State of Western Australia that are south of the parallel of latitude 16 degrees south.'"

Subsection 2 (2) of the Fishing Legislation Amendment Act 1987 provides as follows:

"(2) Sections 20 and 21 shall come into operation on a day to be fixed by Proclamation."

As at 30 November 1989 no date had been fixed for the commencement of sections 20 and 21 and the amendments are not incorporated in this reprint.

Arrangements

12J. (1) An arrangement under this Division shall be made by instrument in writing approved by the Governor-General and the Governor or Governors of the State or States concerned.

(2) An arrangement under this Division may be terminated by instrument in writing approved by the Governor-General and the Governor or Governors of the State or States concerned.

(3) The Commonwealth Minister shall cause a copy of every instrument approved in accordance with sub-section (1) or (2) to be published in the Gazette, and such an instrument takes effect on the date of publication or on a later date specified in the instrument.

(4) A party to an arrangement under this section may -

(a) in the case of the Commonwealth - with the approval of the Governor-General; or

(b) in the case of a State - with the approval of the Governor of the State, give notice in writing to the other party or parties that the party giving the notice desires the arrangement to terminate upon a date specified in the notice or notices, not being earlier than 6 months after the day on which the notice, or the last of the notices, is given.

(5) Where a party has duly given a notice or notices in accordance with sub-section (4), the Commonwealth Minister shall, not less than 3 months before the date specified in the notice or notices, cause to be published in the Gazette a notice stating that, by reason of notice of termination given by that party, the arrangement concerned will cease to have effect on the date specified in the notice or notices given under sub-section (4), and, where the Commonwealth Minister has caused a notice to be so published, the arrangement ceases to have effect on the specified date.

(6) An arrangement under this Division may provide that, for the purposes of the application of sub-section (4) in respect of the arrangement, a longer or shorter period is to be substituted for the period of 6 months

referred to in that sub-section and may further provide that, for the purposes of the application of sub-section (5) in respect of the arrangement, a longer or shorter period is to be substituted for the period of 3 months referred to in that sub-section.

(7) After an arrangement under this Division has been made but before the arrangement takes effect, licences, permits, endorsements or other instruments may be granted or executed, units of fishing capacity may be allocated, and notices may be published, for the purposes of the operation of this Act as affected by the arrangement, as if the arrangement had taken effect, but such an instrument, unit or notice does not have effect before the arrangement takes effect.

(8) Upon the termination of an arrangement under this Division, licences, permits, endorsements, notices and other instruments granted, executed or published, and units of fishing capacity allocated, for the purposes of the operation of this Act as affected by the arrangement cease to have effect.

(9) After action for the purpose of the termination of an arrangement under this Division has been taken, but before the termination takes effect, licences, permits, endorsements or other instruments may be granted or executed, units of fishing capacity may be allocated, and notices may be published, for the purposes of the operation of this Act as affected by the termination of the arrangement, as if the arrangement had been terminated, but such an instrument, unit or notice does not have effect before the termination of the arrangement takes effect.

Extension of operation of this Act in accordance with arrangement

12K. Where there is in force an arrangement under this Division that provides that a particular fishery, being a fishery that is so defined that it is or may be carried on partly within the coastal waters of a State, is to be managed in accordance with the law of the Commonwealth, the coastal waters of that State shall, for the purposes of the application of this Act to and in relation to that fishery, be deemed to be proclaimed waters.

Exclusion of this Act in accordance with arrangement

12L. Where there is in force an arrangement under this Division that provides that a particular fishery is to be managed in accordance with the law of a State, the provisions of this Act other than this Division do not apply to or in relation to that fishery except in relation to foreign boats in proclaimed waters and operations on and from foreign boats, and persons on foreign boats, in proclaimed waters, and in relation to matters that occurred in or in relation to proclaimed waters before the arrangement took effect.

Functions of Joint Authorities under this Act

12M. Where, in respect of a fishery, there is in force an arrangement under this Division under which a Joint Authority has the management of a fishery and the fishery is to be managed in accordance with the law of the Commonwealth, the Joint Authority has the functions of keeping constantly under consideration the condition of the fishery, formulating policies and plans for the good management of the fishery and, for the purposes of the management of the fishery, exercising the powers conferred on it by this Division and co-operating and consulting with other authorities (including other Joint Authorities) in matters of common concern.

Powers of Joint Authority to determine plans of management

12MA. (1) In respect of a Joint Authority fishery, the powers otherwise exercisable by the Minister under sub-section 7B (1) to make, vary or revoke determinations are exercisable by the Joint Authority.

(2) Where a fishery becomes a Joint Authority fishery, plans of management determined by the Minister under sub-section 7B (1) cease to apply to the fishery.

Powers of Joint Authority to regulate fishing

12N. (1) In respect of a Joint Authority fishery, the powers otherwise exercisable by the Minister under section 8 to publish, amend or revoke notices are exercisable under that section by the Joint Authority, and the powers so exercisable by the Joint Authority, so far as they relate to equipment, shall be taken to extend to any equipment of a kind capable of use for the taking of fish in that fishery.

(2) Where a fishery becomes a Joint Authority fishery, notices published by the Minister under section 8 cease to apply to that fishery.

Powers of Joint Authority with respect to permits

12NA. (1) In respect of a Joint Authority fishery, the powers otherwise exercisable by the Minister or the Secretary under section 6B to grant or revoke permits in respect of Australian boats, to revoke or vary conditions to which permits of that kind are subject or to specify further conditions to which such permits are to be subject, are exercisable under that section by the Joint Authority.

(2) Where a fishery becomes a Joint Authority fishery, permits granted by the Minister or the Secretary under section 6B in respect of Australian boats have no application in relation to that fishery.

Powers of Joint Authority with respect to licences

12P. (1) Subject to this section, a licence or endorsement granted or made under this Act otherwise than by virtue of this section does not authorize the doing of any act or thing in or in relation to a Joint Authority fishery.

(2) In relation to a Joint Authority fishery that is to be managed in accordance with the law of the Commonwealth, the powers otherwise exercisable under a provision in Part III by the Minister or the Secretary in relation to the grant, endorsement, renewal, variation, transfer, suspension, cancellation or form of licences or in relation to the imposition, variation or revocation of conditions to which licences are subject are exercisable under that provision by the relevant Joint Authority as if references to the Minister in the relevant provisions of that Part were references to the Joint Authority.

(3) A licence granted under this Act by a Joint Authority shall contain such conditions or limitations that it applies only in relation to a Joint authority fishery or Joint Authority fisheries managed by that Joint authority.

(4) Subject to sub-section (5A), a Joint Authority may endorse a licence granted under this Act (including a licence granted by that Joint Authority or another Joint Authority) so as to extend the operation of the licence to matters to which the licensing powers of the Joint Authority under this Act are applicable and, where such an endorsement is made -

(a) the endorsement ceases to have effect if the licence ceases to have effect; and

(b) the Joint Authority may suspend or cancel the endorsement as if it were a licence granted by the Joint Authority.

(5) Such fee (if any) as is prescribed is payable in respect of the endorsement of a licence under sub-section (4).

(5A) Where levy is payable under the Fisheries Levy Act 1984, or a fee is payable under this Act, on or in respect of the endorsement under sub-section (4) of a licence granted under this Act, a Joint Authority shall not endorse the licence unless the holder of the licence tenders the amount of the levy or fee, as the case may be.

(6) This section does not -

(a) empower a Joint Authority to grant, or to take other action in respect of, a licence in respect of a foreign boat or to endorse such a licence; or

(b) affect the operation of a licence or endorsement granted or made by the Minister or the Secretary in respect of a foreign boat or the power of the Minister or the Secretary to grant, or to take other action in respect of, such a licence or endorsement.

Application of provisions relating to offences

12Q. For the purposes of the prosecution of a person for an offence against section 13 in respect of anything done in relation to fish to which a Joint authority fishery relates or otherwise in relation to a Joint Authority fishery -

(a) any reference in that section to a licence shall be read as a reference to a licence, or an endorsement of a licence, granted or made by the relevant Joint Authority; and

(b) any reference to fish shall be read as a reference to fish to which the Joint Authority fishery relates.

Evidentiary provision

12R. A statement in an arrangement made under this Division that specified waters -

(a) in the case of an arrangement between the Commonwealth and one State - are waters adjacent to that State; or

(b) in the case of any other arrangement - are waters adjacent to the States that are parties to the arrangement or are waters adjacent to a specified State or States, shall, for all purposes of this Act, be conclusively presumed to be correct.

Reconsideration and review of decisions by Joint Authority

12S. (1) In this section, unless the contrary intention appears -

“decision” has the same meaning as in the Administrative Appeals Tribunal act 1975;

“relevant decision” means a decision of a delegate of the Joint Authority under section 6B, section 9 (other than a decision under sub-section (9) or (10) of that section), sub-section 9A (3A) or (4), sub-section 12P (4) or sub-section (2) of this section;

“reviewable decision” means a decision of a delegate of the Joint Authority under sub-section (4) of this section.

(2) A person affected by a relevant decision who is dissatisfied with the decision may, within 21 days after the day on which the decision first comes to the notice of the person, or within such further period as the Joint authority (either before or after the expiration of that period), by notice in writing served on the person, allows, by notice in writing given to the Joint authority, request the Joint Authority to reconsider the decision.

(3) There shall be set out in the request the reasons for making the request.

(4) The Joint Authority shall within 45 days after the receipt of the request, reconsider the relevant decision and may make a decision -

(a) in substitution for the relevant decision, whether in the same terms as the relevant decision or not; or

(b) revoking the relevant decision.

(5) Where, as a result of a reconsideration under sub-section (4), the Joint authority makes a decision in substitution for or revoking the relevant decision, it shall, by notice in writing served, either personally or by post, on the person who made the request under sub-section (2) for the reconsideration, inform the person of the

result of the reconsideration, set out findings on material questions of fact, refer to the evidence or other material on which those findings were based and give the reasons for its decision.

(6) An application may be made to the Administrative Appeals Tribunal for a review of a reviewable decision.

(7) Where a relevant decision is made and the person who made the relevant decision gives to a person whose interests are affected by the decision notice in writing of the making of the decision, that notice shall include a statement to the effect that a person affected by the decision -

(a) may, if he is dissatisfied with the decision, seek a reconsideration of the decision by the Joint Authority in accordance with sub-section (2); and

(b) may, subject to the Administrative Appeals Tribunal Act 1975, if a delegate of the Joint Authority reconsiders the decision under sub-section (4) and he is dissatisfied with the decision of the delegate upon that reconsideration, make application to the Administrative Appeals Tribunal for review of the decision of the delegate.

(8) Where a reviewable decision is made and notice in writing of the making of the decision is given to a person whose interests are affected by the decision, that notice shall include a statement to the effect that, subject to the Administrative Appeals Tribunal Act 1975, application may be made to the administrative Appeals Tribunal for review of the decision to which the notice relates by or on behalf of a person whose interests are affected by the decision.

(9) Any failure to comply with the requirements of sub-section (7) or (8) in relation to a decision does not affect the validity of the decision.

(10) A reference in this section to a relevant decision does not include a reference to a decision in relation to the grant, suspension or cancellation of a master fisherman's licence in respect of a person who is neither an Australian citizen nor a resident of Australia, or in relation to the imposition, variation or revocation of conditions to which a master fisherman's licence granted to such a person is subject.

PART V - MISCELLANEOUS

3 Offences

13. (1) A person shall not -

(a) in an area of proclaimed waters, be in charge of a boat that is being used for fishing unless:

(i) the person is the holder of a master fisherman's licence that is in force in relation to the area; or

(ii) where the boat is a Treaty boat - a Treaty licence is in force in respect of the boat;

(b) in an area of proclaimed waters -

(i) use a boat for taking fish;

(ii) use a boat for processing fish that have been taken with the use of that boat;

(iii) use an Australian boat for carrying fish that have been taken with the use of that boat; or

(iv) have in the person's possession or charge an Australian boat; unless:

(v) the person is, or is acting on behalf of, the holder of a licence under subsection 9 (2) authorising the use of the boat in that area for taking fish; or

(vi) in the case of the use of a Treaty boat as described in subparagraph (i) or (ii) - a Treaty licence is in force in respect of the boat;

(c) in an area of proclaimed waters, use a boat for processing or carrying fish that have been taken with the use of another boat unless he is, or he is acting on behalf of a person who is, the holder of a licence under sub-section 9 (3) authorizing the use of the first-mentioned boat in that area;

(d) in an area of proclaimed waters, trans-ship fish to a boat in respect of which there is no licence under sub-section 9 (3) in respect of that area;

(e) in an area of proclaimed waters, have a fish in his possession or under his control in a boat at a time when the taking of the fish in that area is prohibited by a notice in force under section 8;

(f) being the holder of a licence under this Act, contravene or fail to comply with a condition of the licence;

(g) being the holder of a licence under this Act in respect of a boat, cause or permit a person acting on his behalf to contravene or fail to comply with a condition of the licence;

(h) being a person acting on behalf of the holder of a licence under this act in respect of a boat, contravene or fail to comply with a condition of the licence; or

(i) do an act prohibited by a notice for the time being in force under section 8.

(2) A person who contravenes sub-section (1) in circumstances in which the person is not guilty of an offence against sub-section (2A) is guilty of an offence and is punishable, on conviction, by a fine not exceeding-

(a) if the person is a natural person - \$5,000; or

(b) if the person is a body corporate - \$25,000.

(2A) A person who contravenes paragraph (1) (d), (e), (f), (g), (h) or (i) with the use of, or in relation to, a foreign boat or in relation to a licence granted in respect of a foreign boat is guilty of an offence and is punishable

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(a) on summary conviction - by a fine not exceeding -

(i) if the person is a natural person - \$5,000; or

(ii) if the person is a body corporate - \$25,000; and

(b) on conviction on indictment - by a fine not exceeding -

(i) if the person is a natural person - \$50,000; or

(ii) if the person is a body corporate - \$250,000.

(3) Where -

(a) a person is convicted of an offence against sub-section (2) or (2A) arising out of a contravention of paragraph (1) (b), (c), (e) or (i);

(b) the court before which the person is convicted is satisfied that -

(i) the person contravened paragraph (1) (b), (c), (e) or (i), as the case may be, in an area of proclaimed waters at a particular time by -

(A) using a boat for a particular purpose; or

(B) having in the person's possession, or in the person's charge, a boat for a particular purpose; and

(ii) either of the following sub-sub-paragraphs apply:

(A) a licence under this Act was not in force in respect of the boat at that time;

(B) a licence under this Act was in force in respect of the boat at that time, but the licence did not authorize the use of the boat in that area for that purpose; and

(c) the court is also satisfied that -

(i) in a case to which sub-sub-paragraph (b) (ii) (A) applies - if a licence under this Act had been in force at that time authorizing the use of the boat in that area for that purpose, the licence would have been a leviable licence; and

(ii) in a case to which sub-sub-paragraph (b) (ii) (B) applies - if the licence under this Act in force in respect of the boat had not been in force at that time, but another licence under this Act had been in force authorizing the use of the boat in that area for that purpose, the other licence would have been a leviable licence, the court may, in addition to imposing a penalty on the person, order the person to pay to the Commonwealth an amount not exceeding the amount that is the relevant levy amount in relation to the licence referred to in sub-paragraph (c) (i) or the other licence referred to in sub-paragraph (c) (ii), as the case may be.

(4) It is a defence to a prosecution for an offence arising under paragraph (1) (e) if the person charged satisfies the court -

(a) that the fish was not taken, caught, captured or retained for trading or manufacturing purposes;

(b) that the fish was not taken, caught or captured in the area of proclaimed waters; or

(c) that the taking, catching or capturing of the fish was not in contravention of this Act.

(5) For the purposes of the prosecution of a person for an offence arising under paragraph (1) (i), an act done by an employee or other agent of the person charged shall be deemed to have been done also by that person.

(6) A person does not contravene paragraph (1) (i) by reason of navigating a boat in contravention of a notice for the time being in force under paragraph 8 (1) (h) if it was necessary to do so, by reason of weather or sea conditions, in order to secure the safety of the boat or of human life.

(7) Where levy is payable under the Fisheries Levy Act 1984 on the grant, renewal, variation or endorsement of a licence under this Act -

(a) the licence shall be taken, for the purposes of this section, to be a leviable licence; and

(b) the amount of the levy or the sum of the amounts of the levy, as the case requires, payable with respect to the licence shall be taken, for the purposes of this section, to be the relevant levy amount in relation to the licence.

Removing fish from traps etc.

13A. A person shall not, in proclaimed waters, remove a fish from a net, trap or other equipment for the taking of fish unless he is the owner of the net, trap or other equipment or is acting with the authority of the owner.

Penalty: \$5,000 or imprisonment for 2 years, or both.

Using foreign boat for fishing for private purposes

13AA. A person shall not, in the Australian fishing zone -

(a) use a foreign boat for taking, catching or capturing fish for private purposes; or

(b) use a foreign boat for processing or carrying fish that have been taken, caught or captured for private purposes with the use of that boat or another boat.

Penalty: \$5,000.

Having foreign boat equipped with nets etc.

13AB. (1) A person shall not, in an area of proclaimed waters comprised in the Australian fishing zone, have in his possession or in his charge a foreign boat equipped with nets, traps or other equipment for taking, catching or capturing fish unless:

(a) the use of the boat in that area is authorised by a licence in force under subsection 9 (2); or

(b) a Treaty licence is in force in respect of the boat.

(1A) A person who contravenes sub-section (1) is guilty of an offence and is punishable -

(a) on summary conviction - by a fine not exceeding -

(i) if the person is a natural person - \$5,000; or

(ii) if the person is a body corporate - \$25,000; and

(b) on conviction on indictment - by a fine not exceeding \$250,000.

(3) It is a defence to a prosecution for an offence against sub-section (1A) if the person charged satisfies the court that, at the time of the alleged offence -

(a) the nets, traps or other equipment for taking, catching or capturing fish were stowed and secured;
and

(b) the boat was travelling through the Australian fishing zone -

(i) from a point outside the Australian fishing zone to a port in Australia or in an external Territory;

(ii) from a port in Australia or in an external Territory to a point outside the Australian fishing zone;

(iii) from a point outside the Australian fishing zone to another point outside the Australian fishing zone by the shortest practicable route;

(iv) from a point outside the Australian fishing zone to a point inside an area that is an authorized area in relation to the boat;

(v) from a point inside an area that is an authorized area in relation to the boat to a point outside the Australian fishing zone;

(vi) from a port in Australia or in an external Territory to a point inside an area that is an authorized area in relation to the boat;

(vii) from a point inside an area that is an authorized area in relation to the boat to a port in Australia or an external Territory; or

(viii) from a point inside an area that is an authorized area in relation to the boat to a point inside another such area, and, except in a case to which sub-paragraph (iii) applies, the boat was so travelling through the Australian fishing zone with, and in accordance with, the approval of a prescribed person or authority, being an approval that was obtained in a prescribed manner.

(4) In this section, "authorised area", in relation to a boat means:

(a) where the use of the boat for taking, processing and carrying fish is authorised by a licence - an area within the Australian fishing zone within which the use of the boat is so authorised; or

(b) where the use of the boat for taking fish is authorised by a Treaty licence - the Treaty licensing area.

Using foreign boat for fishing in Australian fishing zone

13B. (1) A person shall not, in an area of proclaimed waters comprised in the Australian fishing zone:

(a) use a foreign boat for taking fish; or

(b) use a foreign boat for processing fish that have been taken with the use of that boat; unless:

(c) there is in force a licence under subsection 9 (2) authorising the use of the boat in that area; or

(d) where the boat is a Treaty boat - a Treaty licence is in force in respect of the boat.

(2) A person shall not, in an area of proclaimed waters comprised in the Australian fishing zone, use a foreign boat for processing or carrying fish that have been taken with the use of another boat unless there is in force a licence under sub-section 9 (3) authorizing the use of the first-mentioned boat in that area.

(5) A person who contravenes sub-section (1) or (2) is guilty of an offence and is punishable -

(a) on summary conviction - by a fine not exceeding \$5,000; and

(b) on conviction on indictment - by a fine not exceeding \$250,000.

Certain foreign boats not to enter Australian ports

13BA. (1) A person, being the master of a foreign fishing boat who, otherwise than in accordance with -

(a) in a case where there is a licence in force under section 9 in respect of the boat - an endorsement of that licence made under sub-section 9 (3A); or

(b) in any other case - an authorization granted by the Minister or the Secretary under sub-section 13BAA (1), brings the boat into a port in Australia or in an external Territory is guilty of an offence and is punishable -

(c) on summary conviction - by a fine not exceeding \$5,000; and

(d) on conviction on indictment - by a fine not exceeding \$50,000.

(2) It is a defence to a prosecution for an offence against sub-section (1) in relation to the bringing of a foreign fishing boat into a port if the person charged satisfies the court that -

(a) the boat was brought into the port at a time when the boat was engaged in operations that included the carrying of cargo, in the ordinary course of trade, between Australia and another country, between Australia and an external Territory or between an external Territory and a country other than Australia;

(b) the boat was brought into the port in accordance with the provisions of a prescribed agreement between Australia and another country;

(c) the boat was brought into the port under the direction of an officer exercising powers under section 10 or under the direction of a person exercising powers under another law of the Commonwealth or a law of a State or Territory;

(d) the boat was being lawfully imported into Australia or the external Territory, as the case may be, by or on behalf of a person who was, or by or on behalf of persons each of whom was, at the time when the boat was brought into the port -

(i) a resident of Australia or of an external Territory; or

(ii) a company incorporated in Australia or in an external Territory; or

(e) an unforeseen emergency rendered it necessary to bring the boat into a port in Australia or in an external Territory in order to secure the safety of the boat or of human life.

(3) In this section, "foreign fishing boat" means a foreign boat that is designed and equipped for -

(a) catching or capturing fish;

(b) processing fish;

(c) carrying fish;

(d) 2 or more of the purposes mentioned in paragraphs (a), (b) and (c); or

(e) supporting the operations of a boat that is, or boats that are, designed and equipped for any one or more of the purposes mentioned in paragraphs (a), (b) or (c).

Certain foreign boats authorised to enter Australian ports

13BAA. (1) The Minister or the Secretary may, by notice in writing given to the master of an unlicensed foreign fishing boat or to a person on behalf of the master of an unlicensed foreign fishing boat, authorize the master of that boat, at a time or during a period specified in the notice, to bring the boat, for purposes specified in the notice, into a port in Australia or in an external Territory being a port specified in the notice.

(2) In this section, "unlicensed foreign fishing boat" means a foreign boat -

(a) that is designed and equipped for -

(i) catching or capturing fish;

(ii) processing fish;

(iii) carrying fish;

(iv) 2 or more of the purposes mentioned in sub-paragraphs (i), (ii) and (iii); or

(v) supporting the operations of a boat that is, or boats that are, designed and equipped for any one or more of the purposes mentioned in sub-paragraphs (i), (ii) or (iii); and

(b) in respect of which there is not in force a licence under section 9.

Taking etc. of fish not an offence in certain circumstances

13BAB. Where:

(a) but for this section, a person would, by reason of the taking, capturing or catching of fish (whether or not by reason also of any other act or any failure to act), be guilty of an offence against this Act; and

(b) the fish was or were returned to the water as soon as was reasonably practicable after being taken, captured or caught; the person is not guilty of the offence.

Foreign boats not to land fish in australia

13BB. (1) A person, being the master of a foreign boat, who, otherwise than in accordance with an endorsement under sub-section 9 (3A) of a licence granted under section 9 or in accordance with an entry under paragraph 21 (2) (b) of the Torres Strait Fisheries Act 1984, causes to be landed at any place in Australia any fish that were brought to the place by the boat is guilty of an offence and is punishable -

(a) on summary conviction - by a fine not exceeding \$5,000; and

(b) on conviction on indictment - by a fine not exceeding \$50,000.

(2) It is a defence to a prosecution for an offence against sub-section (1) if the person charged satisfies the court -

(a) that the fish were imported into Australia and were so imported in accordance with permission in writing granted for the purposes of the Customs (Prohibited Imports) Regulations;

(b) that the fish had previously been landed in an external Territory or a country other than Australia;

(c) that, by reason of the operation of section 131A of the Customs Act 1901, the fish were not subject to the control of the Customs; or

(d) that the fish were landed in pursuance of a direction of the Secretary under section 13D.

Foreign boats not to contravene condition of Treaty licence

13BC. (1) A person shall not, in an area of the Australian fishing zone that is within the Treaty area:

(a) use a Treaty boat; or

(b) do an act or omit to do an act on or in relation to a Treaty boat; in respect of which a Treaty licence is in force, in contravention of a requirement that is, under the Treaty, a condition of the Treaty licence.

(2) A person who contravenes subsection (1) is guilty of an offence and is punishable:

(a) on summary conviction - by a fine not exceeding:

(i) if the person is a natural person - \$5,000; or

(ii) if the person is a body corporate - \$25,000; and

(b) on conviction on indictment - by a fine not exceeding:

(i) if the person is a natural person - \$50,000; or

(ii) if the person is a body corporate - \$250,000.

(3) For the purposes of subsection (1), the use of an aircraft in association with the fishing activities of a Treaty boat shall be taken to be an action taken in relation to the Treaty boat.

Forfeiture

13C. (1) Where a court convicts a person of an offence against section 13 (not being an offence against that section referred to in sub-section (2) of this section), 13AA or 13B the court may order the forfeiture of -

- (a) a boat, net, trap or equipment used in the commission of the offence;
- (b) fish on board such a boat at the time of the offence; or
- (c) the proceeds of the sale of any such fish.

(2) Where a Court convicts a person of an offence against section 13, being an offence arising out of his having in his possession or in his charge a boat for taking fish, or of an offence against section 13AB, 13BA, 13BB or 13BC, the Court may order the forfeiture of -

- (a) the boat in relation to which the offence is committed;
- (b) a net, trap or equipment on board that boat at the time of the offence;
- (c) fish on board that boat at that time or in relation to which the offence is committed; or
- (d) the proceeds of the sale of any such fish.

Forfeited property

13D. Any boat or other property ordered by a court to be forfeited under this Act becomes the property of the Commonwealth and shall be dealt with or disposed of in accordance with the directions of the Secretary.

Court may make certain orders

13E. (1) Where a court convicts a person of an offence arising out of a contravention of paragraph 13 (1) (f), (g), (h) or (i) or subsection 13BC (1), the court may, in addition to imposing a penalty in respect of that offence, order that the person shall not, during such period as the court determines, be on a boat in an area of proclaimed waters for the purpose of engaging in fishing.

(2) A person who contravenes an order of a court made pursuant to sub-section (1) is guilty of an offence punishable, on conviction, by a fine not exceeding \$2,000 or imprisonment for a period not exceeding 12 months, or both.

Obstruction of officers etc.

14. (1) A person shall not -

- (a) fail to facilitate by all reasonable means the boarding of a boat by an officer;
- (b) without reasonable excuse, refuse to allow a search to be made which is authorized by or under this Act;
- (c) without reasonable excuse, refuse or neglect to comply with a requirement made by an officer under section 10;
- (ca) without reasonable excuse, refuse to allow a person to inspect a boat or any part of a boat in pursuance of paragraph 10 (1) (ca) or (cb);
- (d) when lawfully required to state his name and place of abode to an officer, state a false name or place of abode to the officer;

- (f) use abusive or threatening language to an officer;
- (g) assault, resist or obstruct an officer in the exercise of his powers under this Act; or
- (h) impersonate an officer;

Penalty: \$2,000 or imprisonment for 12 months, or both.

(2) A person who -

(a) when lawfully required by an officer to give information, gives information to the officer that is, to the knowledge of the person, false or misleading in a material particular;

(b) in an application under this Act, the regulations or a plan of management, makes a statement or furnishes information that is, to the knowledge of the person, false or misleading in a material particular; or

(ba) in a record, report, return or other document relating to fishing made, given or furnished, or purporting to be made, given or furnished, under this act, the regulations or a plan of management, makes a statement or furnishes information that is, to the knowledge of the person, false or misleading in a material particular; is guilty of an offence punishable, on conviction, by -

(c) if the person is a natural person - a fine not exceeding \$5,000 or imprisonment for a period not exceeding 2 years, or both; or

(d) if the person is a body corporate - a fine not exceeding \$25,000.

Liability of master of boat

14A. (1) The master of a boat on which, or by the use of which, an offence against this Act (in this section referred to as "the primary offence") is committed is guilty of an offence against this section punishable upon conviction as if it were the primary offence.

(2) A person may be convicted of an offence against this section, whether or not the identity of the person who committed the primary offence appears, or has appeared, from the evidence in the proceedings in respect of the offence against this section or in any other proceedings, but a person shall not be convicted both of an offence against this section and of the primary offence.

(3) The provisions of section 13C apply where a person is convicted of an offence against this section in like manner as they would apply if that person had been convicted of the primary offence.

Conduct by directors, servants or agents of bodies corporate

14B. (1) Where, in proceedings for an offence against this Act or the regulations in respect of conduct engaged in by a body corporate, it is necessary to establish the state of mind of the body corporate, it is sufficient to show that a director, servant or agent of the body corporate, being a director, servant or agent by whom the conduct was engaged in within the scope of his or her actual or apparent authority, had that state of mind.

(2) Any conduct engaged in on behalf of a body corporate:

(a) by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority; or

(b) by any other person at the direction or with the consent or agreement (whether express or implied) of a director, servant or agent of the body corporate, where the giving of such direction, consent or agreement is within the scope of the actual or apparent authority of the director, servant or agent; shall be deemed, for the purposes of this Act and the regulations, to have been engaged in also by the body corporate.

(3) A reference in subsection (1) to the state of mind of a person includes a reference to the knowledge, intention, opinion, belief or purpose of the person and the person's reasons for the intention, opinion, belief or purpose.

Certain offences to be indictable offences

15. (1) An offence against sub-section 13 (2A), section 13A or sub-section, 13AB (1A), 13B (5), 13BA (1), 13BB (1), 13BC (2) or 14 (2) is an indictable offence.

(2) Notwithstanding that an offence referred to in sub-section (1) is an indictable offence, a court of summary jurisdiction may hear and determine proceedings in respect of such an offence if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.

(3) An offence against this Act other than an offence referred to in sub-section (1) is punishable on summary conviction.

Certain prosecutions to require consent of Minister

15AA. A prosecution for an offence against this Act or the regulations that is alleged to have been committed on, with the use of, or in relation to, a Treaty boat, shall not be instituted except with the consent in writing of the Minister.

Enforcement of orders for payment

15A. (1) Where -

(a) upon the conviction of a person for an offence against sub-section 13 (2) or (2A), the court before which the person is convicted, in addition to imposing a penalty on the person, orders the person to pay an amount to the Commonwealth; and

(b) the court has civil jurisdiction to the extent of the amount, the order is enforceable in all respects as a final judgment of the court in favour of the Commonwealth.

(2) Where -

(a) upon the conviction of a person for an offence against sub-section 13 (2) or (2A), the court before which the person is convicted, in addition to imposing a penalty on the person, orders the person to pay an amount to the Commonwealth; and

(b) the court -

(i) does not have civil jurisdiction; or

(ii) has civil jurisdiction, but -

(A) does not have civil jurisdiction to the extent of the amount; or

(B) it is more appropriate for the order to be enforceable as a final judgment of another court, the proper officer of the court shall issue to the Secretary a certificate in the prescribed form containing the prescribed particulars.

(3) The certificate may, in the prescribed manner and subject to the prescribed conditions (if any), be registered in a court having civil jurisdiction to the extent of the amount ordered to be paid to the Commonwealth.

(4) Upon registration under sub-section (3), the certificate is enforceable in all respects as a final judgment of the court in favour of the Commonwealth.

(5) The costs of registration of the certificate and other proceedings under this section shall, subject to the prescribed conditions (if any), be deemed to be payable under the certificate.

Evidence

16. (1) Where, in proceedings for an offence against this Act or the regulations -

(a) an officer gives evidence that he suspects that fish to which the charge relates were taken in proclaimed waters or in a particular area of proclaimed waters or were taken for trading or manufacturing purposes, together with evidence of the grounds on which he so suspects; and

(b) the court considers that, having regard to that evidence, the suspicion is reasonable, the fish shall, in the absence of proof to the contrary, be deemed to have been so taken.

(1A) Where in proceedings for an offence against this Act or the regulations

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(a) an officer gives evidence that he suspects that fish to which the charge relates were taken, caught or captured in the Australian fishing zone or were taken, caught or captured for private purposes, together with evidence of the grounds on which he so suspects; and

(b) the court considers that, having regard to that evidence, the suspicion is reasonable, the fish shall, in the absence of proof to the contrary, be deemed to have been so caught or captured.

(1B) For the purposes of the application of subsection (1) or (1A) in relation to an offence alleged to have been committed on, or in relation to, a Treaty boat, a reference in those subsections to an officer includes a reference to a Pacific Island party officer.

(2) The Minister or a person authorized in writing by him to give certificates under this section may give a certificate -

(a) that, at a time or during a period specified in the certificate, a boat specified in the certificate was, or was not, an Australian boat;

(b) that, at a time or during a period specified in the certificate, an area of waters specified in the certificate was part of proclaimed waters or part of the Australian fishing zone;

(c) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, the holder of a licence under sub-section 9 (1) to be in charge of a boat for fishing in an area of proclaimed waters specified in the certificate;

(d) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, or no person was, the holder of a licence under section 9 in respect of a boat specified in the certificate authorizing the use of the boat for a purpose specified in the certificate in an area of proclaimed waters specified in the certificate;

(da) that a person specified in the certificate was, or was not, or no person was, the holder of a licence under section 9 in respect of a boat specified in the certificate, being a licence endorsed under paragraph 9 (3A) (a) so as to authorize the boat to be brought into a port specified in the certificate at a time or times specified in the certificate;

(db) that a person specified in the certificate was, or was not, or no person was, the holder of a licence under section 9 in respect of a boat specified in the certificate, being a licence endorsed under paragraph 9 (3A) (b) so as to authorize the boat to be brought into a port specified in the certificate at a time or times specified in the certificate and to authorize the landing at that port of fish carried on board the boat at the time when the boat was brought into the port;

(dc) that there was, or was not, in respect of a boat specified in the certificate a notice in force under sub-section 13BAA (1) authorizing the bringing of the boat into a port specified in the certificate at a time or during a period specified in the certificate for a purpose specified in the certificate;

(dd) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, the holder of a permit under section 6B authorizing the person to undertake activities specified in the certificate in an area of proclaimed waters specified in the certificate; or

(de) that at a particular time specified in the certificate the Minister had notified all the parties to the Treaty that an investigation of an alleged contravention of the kind referred to in paragraph 9E (2) (a) was being conducted in relation to a Treaty boat specified in the certificate in respect of which a Treaty licence was in force and that the Minister had not, at or before a particular time specified in the certificate, notified the administrator that the investigation had been completed;

(df) that at a particular time specified in the certificate the Minister was notified in writing by the Administrator of the suspension, in accordance with the Treaty, of a Treaty licence issued in respect of a Treaty boat specified in the certificate and either:

(i) that at a particular time specified in the certificate the Minister was notified in writing by the Administrator that the Treaty licence was no longer suspended; or

(ii) that at a particular time specified in the certificate no such notification had been received by the Minister;

(dg) that the document that is attached to the certificate and states:

(i) the date on which a Treaty licence was issued by the administrator, or if more than one such Treaty licence has been issued by the administrator, the date on which the most recent Treaty licence was so issued, in respect of the boat specified in the document and the date at which that Treaty licence expires; or

(ii) that there has been no Treaty licence issued by the administrator in respect of the boat specified in the document; is a copy of a letter, facsimile transmission, telex or cablegram received by an officer or employee of the Commonwealth from the Administrator;

(dh) that the document that:

(i) is attached to the certificate; and

(ii) states that the person named in the document was, at the time or during the period specified in the document, authorised by or under the law of the Pacific Island party specified in the document to perform the functions and duties of an observer on Treaty boats; is a copy of a letter, facsimile transmission, telex or cablegram received by an officer or employee of the Commonwealth from an authority of that Pacific Island party;

(e) that, at a time or during a period specified in the certificate, there was in force in respect of a boat identified in the certificate a licence under section 9, being a licence specified in the certificate to be one in respect of which an endorsement under sub-section 9 (4) was or was not in force that authorized or that did not authorize the use of the boat for activities specified in the certificate in an area of proclaimed waters specified in the certificate.

(2A) Without limiting the operation of sub-section (2), the Minister or a person authorized in writing by him to give certificates under this section may give a certificate certifying as to any matter relating to the making of decisions by a Joint Authority established under Part IVA or relating to instruments (including endorsements) executed by such a Joint Authority.

(3) A person giving a certificate under paragraph (2) (d) or (e) that a person was the holder of a licence may, in the certificate, certify that conditions specified in the certificate were the conditions specified in the licence.

(4) In proceedings for an offence against this Act or the regulations, a certificate given under this section is:

(a) in all cases - prima facie evidence of the matters stated in the certificate; and

(b) in the case of a certificate of the kind referred to in paragraph (2) (dg) or (dh) given in respect of a particular document - prima facie evidence of the matters stated in that document.

(5) For the purposes of this section, a writing purporting to be a certificate given under this section shall, unless the contrary is proved, be deemed to be such a certificate and to have been duly given.

Reconsideration and review of decisions by the Minister or Secretary

16A. (1) In this section, unless the contrary intention appears -

“decision” has the same meaning as in the Administrative Appeals Tribunal act 1975;

“relevant decision” means a decision of a delegate of the Minister or of a delegate of the Secretary under section 6B, section 9 (other than a decision under sub-section (3A), (9) or (10) of that section), sub-section 9A (3A) or (4) or sub-section (2) of this section;

“reviewable decision” means -

(a) a decision of the Minister or the Secretary (other than a decision of a delegate of the Minister or of a delegate of the Secretary) under section 6B, section 9 (other than a decision under sub-section (3A), (8B), (9) or (10) of that section), sub-section 9A (3A) or (4) or sub-section (2) of this section; or

(b) a decision of the Minister or the Secretary under sub-section (4) of this section.

(2) A person affected by a relevant decision who is dissatisfied with the decision may, within 21 days after the day on which the decision first comes to the notice of the person, or within such further period as the Minister or the Secretary (either before or after the expiration of that period), by notice in writing served on the person, allows, by notice in writing given to the Minister or the Secretary, request the Minister or the Secretary, as the case may be, to reconsider the decision.

(3) There shall be set out in the request the reasons for making the request.

(4) The Minister or the Secretary shall, within 45 days after the receipt of the request, reconsider the relevant decision and may make a decision -

(a) in substitution for the relevant decision whether in the same terms as the relevant decision or not; or

(b) revoking the relevant decision.

(5) Where, as a result of a reconsideration under sub-section (4), the Minister or the Secretary makes a decision in substitution for or revoking the relevant decision, he shall, by notice in writing served, either personally or by post, on the person who made the request under sub-section (2) for the reconsideration, inform the person of the result of the reconsideration, set out findings on material questions of fact, refer to the evidence or other material on which those findings were based and give the reasons for his decision.

(6) An application may be made to the Administrative Appeals Tribunal for a review of a reviewable decision.

(7) Where a relevant decision is made and the person who made the relevant decision gives to a person whose interests are affected by the decision notice in writing of the making of the decision, that notice shall include a statement to the effect that a person affected by the decision -

(a) may, if he is dissatisfied with the decision, seek a reconsideration of the decision by the Minister or the Secretary in accordance with sub-section (2); and

(b) may, subject to the Administrative Appeals Tribunal Act 1975, if he is dissatisfied with a decision of the Minister or the Secretary upon that reconsideration, make application to the Administrative Appeals Tribunal for review of that decision.

(8) Where the Minister or the Secretary or a delegate of the Minister or the Secretary makes a reviewable decision and gives to a person whose interests are affected by the decision notice in writing of the making of the decision, that notice shall include a statement to the effect that, subject to the administrative Appeals Tribunal Act 1975, application may be made to the administrative Appeals Tribunal for review of the decision to which the notice relates by or on behalf of a person whose interests are affected by the decision.

(9) Any failure to comply with the requirements of sub-section (7) or (8) in relation to a decision does not affect the validity of the decision.

(10) In this section a reference to a relevant decision or a reviewable decision does not include a reference to -

(a) a decision that relates to a foreign boat; or

(b) a decision in relation to the grant, suspension or cancellation of a master fisherman's licence in respect of a person who is neither an Australian citizen nor a resident of Australia, or in relation to the imposition, variation or revocation of conditions to which a master fisherman's licence granted to such a person is subject.

Regulations

17. (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which are required or permitted to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Act and in particular -

(a) for prescribing penalties not exceeding \$2,000 in the case of a natural person and \$10,000 in the case of a body corporate for offences against the regulations;

(aa) providing for the remission or refund of levy under the Foreign Fishing Boats Levy Act 1981 or the Fisheries Levy Act 1984, or fees under this act, in specified circumstances;

(ab) providing for the replacement of licences, permits and other instruments granted or executed under this Act or the regulations and prescribing fees for such replacement;

(ac) for providing for the return to a person ascertained in accordance with the regulations or a plan of management of:

(i) licences, permits and other instruments granted or executed under this Act or the regulations; or

(ii) certificates and other documents issued to a person under a plan of management; that have been cancelled;

(b) for prescribing signals and rules of navigation to be observed, in proclaimed waters, by masters of boats that are licensed under this Act or under the Treaty;

(c) for providing for the marking of boats licensed under this Act and of nets, traps and other equipment used for taking fish;

(d) for providing for the sale or disposal of unclaimed nets, traps or other fishing equipment found in proclaimed waters;

(e) for regulating the rights of priority as between masters of boats that are licensed under this Act in proclaimed waters and for prescribing the rules of fishing in proclaimed waters;

(ea) for facilitating the exercise by officers of their powers under section 10;

(f) for providing for the furnishing of returns containing information in relation to -

(i) the taking of fish in Australian waters and the sale or disposal of such fish;

(ia) the carrying and transshipping of fish taken in Australian waters; or

(ii) the processing of fish in Australia or in Australian waters and the sale or disposal of fish so processed;

(g) for providing for the inspection of foreign boats licensed under this act or under the Treaty and of nets, traps and other equipment belonging to such boats and of fish taken with the use of such boats;

(h) for providing for the reporting of the positions of foreign boats licensed under this Act at times when such boats are in the Australian fishing zone;

(j) for providing procedures to be followed to facilitate the recognition of foreign boats licensed under this Act;

(k) for prescribing short methods of reference to areas of proclaimed waters specified in the regulations and the purposes for which those methods of reference may be used;

(ka) for providing for the furnishing of information relating to persons on board a boat licensed under this Act that is in proclaimed waters;

(l) for providing for the carrying on board foreign boats licensed under the Act of persons nominated by the Minister or by the Secretary, being persons who are officers or who are engaged in marine research, or are interested in methods of catching, capturing or processing fish; and

(m) for providing for the furnishing of information relating to the use in the Australian fishing zone of foreign boats licensed under this Act.

(2) The Minister shall cause to be compiled, from the returns furnished under regulations made under sub-section (1) and from other sources, statistics in relation to the matters referred to in paragraph (1) (f) and shall publish or make available, in such manner as he thinks fit, such of those statistics as he thinks fit.

(3) Information derived from returns furnished under regulations made under paragraph (1) (f) is not to be used for purposes other than statistical purposes.

(4) A person is not excused from furnishing a return required by regulations made under this section, or including information in such a return, on the ground that the return or information might tend to incriminate him, but his return is not admissible in evidence against him in any proceedings, other than proceedings in respect of false information contained in the return or in respect of a refusal or failure to include information in the return.

(4A) Notwithstanding section 49A of the Acts Interpretation Act 1901, the regulations may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in a plan of management, being a plan of management as in force at a particular time or as in force from time to time.

(5) In this section "Australian waters" means Australian waters, whether within or beyond the outer limits of the territorial sea of Australia, other than waters within the limits of a State or internal Territory, and includes waters adjacent to an external Territory, whether within or beyond the territorial sea adjacent to the Territory.

Orders

18. (1) Subject to subsection (2), the regulations may make provision for or in relation to empowering the Minister to make orders, not inconsistent with this Act, with respect to any matter for or in relation to which provision may be made by the regulations.

(2) An order shall not be made prescribing any penalty.

(3) An order made with respect to a particular matter has the same consequences and effects as it would have if it were a regulation with respect to that matter.

(4) Part XII of the Acts Interpretation Act 1901 applies to orders as if, in those sections, references to regulations were references to orders, references to a regulation were references to a provision of an order, references to repeal were references to revocation and references to an Act were references to regulations.

(5) Orders are not statutory rules within the meaning of the Statutory Rules Publication Act 1903, but subsections 5 (3) to (3C) (inclusive) of that Act apply in relation to orders as they apply in relation to statutory rules.

(6) For the purposes of the application of subsection 5 (3B) of the Statutory Rules Publication Act 1903 in accordance with subsection (5) of this section, the reference to the Minister referred to in the first-mentioned subsection shall be taken to be a reference to the Minister administering this act.

TREATY ON FISHERIES BETWEEN THE GOVERNMENTS OF CERTAIN PACIFIC ISLAND STATES
AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA

The Governments of the Pacific Island States party to this Treaty and the Government of the United States of America: aCKNOWLEDGING that in accordance with international law, coastal States have sovereign rights for the purposes of exploring and exploiting, conserving and managing the fisheries resources of their exclusive economic zones or fisheries zones:

RECOGNISING the strong dependence of the Pacific Island parties on fisheries resources and the importance of the continued abundance of those resources;

BEARING IN MIND that some species of fish are found within and beyond the jurisdiction of any of the parties and range throughout a broad region; and

DESIRING to maximise benefits flowing from the development of the fisheries resources within the exclusive economic zones or fisheries zones of the Pacific Island parties;

HAVE AGREED AS FOLLOWS:

ARTICLE 1
DEFINITIONS AND INTERPRETATION

1.1 In this Treaty:

(a) "Administrator" means that person or organisation designated by the Pacific Island parties to act as such on their behalf pursuant to this Treaty and notified to the Government of the United States;

(b) "final judgment" means a judgment from which no appeal proceedings have been initiated within sixty days;

(c) "fishing" means:

(i) searching for, catching, taking or harvesting fish;

(ii) attempting to search for, catch, take or harvest fish;

(iii) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;

(iv) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;

(v) any operations at sea directly in support of, or in preparation for any activity described in this paragraph; or

(vi) aircraft use, relating to the activities described in this paragraph except for flights in emergencies involving the health or safety of crew members or the safety of a vessel;

(d) "fishing vessel of the United States" or "vessel" means any boat, ship or other craft which is used for, equipped to be used for, or of a type normally used for commercial fishing, which is documented under the laws of the United States;

(e) "Licensing Area" means all waters in the Treaty Area except for:

(i) waters subject to the jurisdiction of the United States in accordance with international law;

and

(ii) waters closed to fishing by fishing vessels of the United States in accordance with Annex I;

(f) "operator" means any person who is in charge of, directs or controls a vessel, including the owner, charterer and master;

(g) "Pacific Island party" means a Pacific Island State party to this Treaty and "Pacific Island parties" means all such States from time to time;

(h) "Pacific Island State" means a party to the South Pacific Forum Fisheries Agency Convention, 1979;

(i) "party" means a State party to this Treaty, and "parties" means all such States, from time to time;

(j) "this Treaty" means this Treaty, its Annexes and Schedules; and

(k) "Treaty Area" means all waters north of 60 degrees South latitude and east of 90 degrees East longitude, subject to the fisheries jurisdiction of Pacific Island parties, and all other waters within rhumb lines connecting the following geographic coordinates, designated for the purposes of this Treaty, except for waters subject to the jurisdiction in accordance with international law of a State which is not a party to this Treaty:

2 degrees 35'39"S	141 degrees 00'00"E
1 degrees 01'35"N	140 degrees 48'35"E
1 degrees 01'35"N	129 degrees 30'00"E
10 degrees 00'00"N	129 degrees 30'00"E
14 degrees 00'00"N	140 degrees 00'00"E
14 degrees 00'00"N	142 degrees 00'00"E
12 degrees 30'00"N	142 degrees 00'00"E
12 degrees 30'00"N	158 degrees 00'00"E
15 degrees 00'00"N	158 degrees 00'00"E
15 degrees 00'00"N	165 degrees 00'00"E
18 degrees 00'00"N	165 degrees 00'00"E
18 degrees 00'00"N	174 degrees 00'00"E
12 degrees 00'00"N	174 degrees 00'00"E
12 degrees 00'00"N	176 degrees 00'00"E
5 degrees 00'00"N	176 degrees 00'00"E
1 degree 00'00"N	180 degrees 00'00"
1 degree 00'00"N	164 degrees 00'00"W
8 degrees 00'00"N	164 degrees 00'00"W
8 degrees 00'00"N	158 degrees 00'00"W
0 degrees 00'00"	150 degrees 00'00"W
6 degrees 00'00"S	150 degrees 00'00"W
6 degrees 00'00"S	146 degrees 00'00"W
12 degrees 00'00"S	146 degrees 00'00"W
26 degrees 00'00"S	157 degrees 00'00"W
26 degrees 00'00"S	174 degrees 00'00"W
40 degrees 00'00"S	174 degrees 00'00"W
40 degrees 00'00"S	171 degrees 00'00"W
46 degrees 00'00"S	171 degrees 00'00"W
55 degrees 00'00"S	180 degrees 00'00"
59 degrees 00'00"S	160 degrees 00'00"E
59 degrees 00'00"S	152 degrees 00'00"E and north along the 152 degrees of East longitude until intersecting the Australian 200 nautical mile limit.

1.2 Nothing in this Treaty shall be deemed to affect the applicability of any provision of a Pacific Island party's law which is not identified or otherwise described in this Treaty.

ARTICLE 2

BROADER CO-OPERATION

2.1 The Government of the United States shall, as appropriate, co-operate with the Pacific Island parties through the provision of technical and economic support to assist the Pacific Island parties to achieve the objective of maximizing benefits from the development of their fisheries resources.

2.2 The Government of the United States shall, as appropriate, promote the maximization of benefits generated for the Pacific

Island parties from the operations of fishing vessels of the United States licensed pursuant to this Treaty, including:

- (a) the use of canning, transshipment, slipping and repair facilities located in the Pacific Island parties;
- (b) the purchase of equipment and supplies, including fuel supplies, from suppliers located in the Pacific Island parties; and
- (c) the employment of nationals of the Pacific Island parties on board licensed fishing vessels of the United States.

ARTICLE 3

ACCESS TO THE TREATY AREA

3.1 Fishing vessels of the United States shall be permitted to engage in fishing in the Licensing Area in accordance with the terms and conditions referred to in Annex I and licences issued in accordance with the procedures set out in Annex II.

3.2 It shall be a condition of any licence issued pursuant to this Treaty that the vessel in respect of which the licence is issued is operated in accordance with the requirements of Annex I. No fishing vessel of the United States shall be used for fishing in the Licensing Area without a licence issued in accordance with Annex II or in waters closed to fishing pursuant to Annex I, except in accordance with paragraph 3 of this article, or unless the vessel is used for fishing albacore tuna by the trolling method in high seas areas of the Treaty Area.

3.3 A Pacific Island party may permit fishing vessels of the United States to engage in fishing in waters under the jurisdiction of that party which are:

- (a) within the Treaty Area but outside the Licensing Area; or
- (b) except for purse seine vessels, within the Licensing area but otherwise than in accordance with the terms and conditions referred to in Annex I, in accordance with such terms and conditions as may be agreed from time to time with the owners of the said vessels or their representatives. In such a case, if the Pacific Island party gives notice to the Government of the United States of such arrangements, and if the Government of the United States concurs, the procedures of Articles 4 and 5.6 shall be applicable to such arrangements.

ARTICLE 4

FLAG STATE RESPONSIBILITY

4.1 The Government of the United States shall enforce the provisions of this Treaty and licences issued thereunder. The Government of the United States shall take the necessary steps to ensure that nationals and fishing vessels of the United States refrain from fishing in the Licensing Area and in waters closed to fishing pursuant to Annex I, except as authorised in accordance with Article 3.

4.2 The Government of the United States shall, at the request of the Government of a Pacific Island party, take all reasonable measures to assist that party in the investigation of an alleged breach of this Treaty by a fishing vessel of the United States and promptly communicate all the requested information to that party.

4.3 The Government of the United States shall ensure that:

- (a) each fishing vessel of the United States licensed pursuant to this Treaty is fully insured against all risks and liabilities;
- (b) all measures are taken to facilitate:
 - (i) any claim arising out of the activities of a fishing vessel of the United States, including a claim for the total market value of any fish taken from the Licensing Area without authorisation pursuant to this Treaty, and the prompt settlement of that claim;
 - (ii) the service of legal process by or on behalf of a national or the Government of a Pacific Island party in any action arising out of the activities of a fishing vessel of the United States;
 - (iii) the prompt and full adjudication in the United States of any claim made pursuant to this Treaty;

(iv) the prompt and full satisfaction of any final judgment or other final determination made pursuant to this Treaty; and

(v) the provision of a reasonable level of financial assurances, if, after consultation with the Government of the United States, all Pacific Island parties agree that the collection of any civil or criminal judgment or judgments or determination or determinations made pursuant to this Treaty has become a serious enforcement problem;

(c) an amount equivalent to the total value of any forfeiture, fine, penalty or other amount collected by the Government of the United States incurred as a result of any actions, judicial or otherwise, taken pursuant to this Article is paid to the Administrator as soon as possible following the date that the amount is collected.

4.4 The Government of the United States shall, at the request of the Government of a Pacific Island party, fully investigate any alleged infringement of this Treaty involving a vessel of the United States, and report as soon as practicable and in any case within two months to that Government on that investigation and on any action taken or proposed to be taken by the Government of the United States in relation to the alleged infringement.

4.5 In the event that a report provided pursuant to paragraph 4 of this Article shows that a fishing vessel of the United States:

(a) while fishing in the Licensing Area did not have a licence to fish in the Licensing Area, except in accordance with paragraph 2 of Article 3; or

(b) was involved in any incident in which an authorised officer or observer was allegedly assaulted with resultant bodily harm, physically threatened, forcefully resisted, refused boarding or subjected to physical intimidation or physical interference in the performance of his or her duties as authorised pursuant to this Treaty; or that there was probable cause to believe that a fishing vessel of the United States:

(c) was used for fishing in waters closed to fishing pursuant to Annex I, except as authorised in accordance with paragraph 3 of Article 3;

(d) was used for fishing in any Limited Area as described in annex I, except as authorised in accordance with that Annex;

(e) was used for fishing by any method other than the purse seine method, except in accordance with paragraph 2 of Article 3;

(f) was used for directed fishing for Southern Bluefin Tuna or for fishing for any kinds of fish other than tunas, except that other kinds of fish may be caught as an incidental by-catch;

(g) used an aircraft for fishing which was not identified on a form provided pursuant to Schedule 1 of Annex II in relation to that vessel; or

(h) was involved in an incident in which evidence which otherwise could have been used in proceedings concerning the vessel has been intentionally destroyed; and that such vessel has not submitted to the jurisdiction of the Pacific Island party concerned, the Government of the United States shall, at the request of that party, take all necessary measures to ensure that the vessel concerned leaves the Licensing Area and waters closed to fishing pursuant to Annex I immediately and does not return except for the purpose of submitting to the jurisdiction of the party, or after action has been taken by the Government of the United States to the satisfaction of that party.

4.6 In the event that a report provided pursuant to paragraph 4 of this Article shows that a fishing vessel of the United States has been involved in a probable infringement of this Treaty, including an infringement of an applicable national law as identified in Schedule 1 of Annex I, other than an infringement of the kind described in paragraph 5 of this Article, and that the vessel has not submitted to the jurisdiction of the Pacific Island party concerned, the Government of the United States shall, at the request of that party, take all necessary measures to ensure that the vessel concerned:

(a) submits to the jurisdiction of that party; or

(b) is penalised by the Government of the United States at such level as may be provided for like violations in United States law relating to foreign fishing vessels licensed to fish in the exclusive economic zone of the United States but not to exceed the sum of US\$250,000.

4.7 Financial assurances provided pursuant to this Treaty may be drawn against by any Pacific Island party to satisfy any civil or criminal judgment or other determination in favour of a national or the Government of a Pacific Island party.

4.8 Prior to instituting any legal proceedings pursuant to this article concerning an alleged infringement of this Treaty in waters within the jurisdiction, for any purpose, as recognised by international law, of a Pacific Island party, the Government of the United States shall notify the Government of that Pacific Island party that such proceedings shall be instituted. Such notice shall include a statement of the facts believed to show an infringement of this Treaty and the nature of the proposed proceedings, including the proposed charges and the proposed penalties to be sought. The Government of the United States shall not institute such proceedings if the Government of that Pacific Island party objects within 30 days of the effective date of such notice.

4.9 The Government of the United States shall ensure that an agent is appointed and maintained in accordance with the requirements of subparagraphs (a) and (b) of this paragraph, with authority to receive and respond to any legal process issued by a Pacific Island party in respect of an operator of any fishing vessel of the United States (identified in the form set out in Schedule 1 of Annex II) and shall notify the administrator of the name and address of such agent, who:

(a) shall be located in Port Moresby for the purpose of receiving and responding to any legal process issued in accordance with this Article; and

(b) shall, within 21 days of notification that legal process has been issued in accordance with this Article, travel to any Pacific Island party, at no expense to that party, for the purpose of receiving and responding to that process.

ARTICLE 5 COMPLIANCE POWERS

5.1 It is recognised that the respective Pacific Island parties may enforce the provisions of this Treaty and licences issued thereunder, including arrangements made pursuant to Article 3.3 and licences issued thereunder, in waters under their respective jurisdictions.

5.2 The Governments of the Pacific Island parties shall promptly notify the Government of the United States of any arrest of a fishing vessel of the United States or any of its crew and of any charges filed or proceedings instituted following the arrest, in accordance with this Article.

5.3 Fishing vessels of the United States and their crews arrested for breach of this Treaty shall be promptly released upon the posting of a reasonable bond or other security. Penalties applied in accordance with this Treaty for fishing violations shall not be unreasonable in relation to the offence and shall not include imprisonment or corporal punishment.

5.4 The Government of the United States shall not apply sanctions of any kind including deductions, however effected, from any amounts which might otherwise have been paid to any Pacific Island party, and restrictions on trade with any Pacific Island party, as a result of any enforcement measure taken by a Pacific Island party in accordance with this Article.

5.5 The Governments of the parties shall adopt and inform the other parties of such provisions in their national laws as may be necessary to give effect to this Treaty.

5.6 Where legal proceedings have been instituted by the Government of the United States pursuant to Article 4, no Pacific Island party shall proceed with any legal action in respect of the same alleged infringement as long as such proceedings are maintained. Where penalties are levied or proceedings are otherwise concluded by the Government of the United States pursuant to Article 4, the Pacific Island party which has received notice of such final determination shall withdraw any legal charges or proceedings in respect of the same alleged infringement.

5.7 During any period in which a party is investigating any infringement of this Treaty involving a fishing vessel of the United States, being an infringement which is alleged to have taken place in waters within the jurisdiction, for any purpose, as recognised by international law, of a Pacific Island party, and if that Pacific Island party so notifies the other parties, any licence issued in respect of that vessel shall, for the purposes of Article 3, be deemed not to authorise fishing in the waters of that Pacific Island party.

5.8 If full payment of any amount due as a result of a final judgment or other final determination deriving from an occurrence in waters within the jurisdiction, for any purpose, of a Pacific Island party, is not made to that party within sixty (60) days, the licence for the vessel involved shall be suspended at the request of that party and that vessel shall not be authorised to fish in the Licensing Area until that amount is paid to that party.

ARTICLE 6 CONSULTATIONS AND DISPUTE SETTLEMENT

6.1 At the request of any party, consultations shall be held with any other party within sixty (60) days of the date of receipt of the request. All other parties shall be notified of the request for consultations and any party shall be permitted to participate in such consultations.

6.2 Any dispute between the Government of the United States and the Government of one or more Pacific Island parties in relation to or arising out of this Treaty may be submitted by any such party to an arbitral tribunal for settlement by arbitration no earlier than one hundred and twenty (120) days following a request for consultations under Article 6.1. Unless the parties to the dispute agree otherwise, the Arbitration Rules of the United Nations Commission on International Trade Law as at present in force, shall be used.

6.3 The Government or Governments of the Pacific Island party or parties to the dispute shall appoint one arbitrator and the Government of the United States shall appoint one arbitrator. The third arbitrator, who shall act as presiding arbitrator of the tribunal, shall be appointed by agreement of the parties to the dispute. In the event of a failure to appoint any arbitrator within the time period provided in the Rules, the arbitrator shall be appointed by the Secretary-General of the Permanent Court of Arbitration at The Hague.

6.4 Unless the parties to the dispute agree otherwise, the place of arbitration shall be Port Moresby. The tribunal may hold meetings at such other place or places within the territory of a Pacific Island party or elsewhere within the Pacific Islands region as it may determine. An award or other decision shall be final and binding on the parties to the arbitration, and, unless the parties agree otherwise, shall be made public. The parties shall promptly carry out any award or other decision of the tribunal.

6.5 The fees and expenses of the tribunal shall be paid half by the Government or Governments of the Pacific Island party or parties to the arbitration and half by the Government of the United States, unless the parties to the arbitration agree otherwise.

ARTICLE 7

REVIEW OF THE TREATY

7. The parties shall meet once each year for the purpose of reviewing the operation of this Treaty.

ARTICLE 8

AMENDMENT OF THE TREATY

8. The following procedures shall apply to the adoption and entry into force of any amendment to this Treaty.

(a) Any party may propose amendments to this Treaty.

(b) A proposed amendment shall be notified to the depositary not less than forty five (45) days before the meeting at which the proposed amendment will be considered.

(c) The depositary shall promptly notify all parties of such proposal.

(d) The parties shall consider proposed amendments to this Treaty at the annual meeting described in Article 7, or at any other time that may be agreed by all parties.

(e) Any amendment to this Treaty shall be adopted by the approval of all the parties, and shall enter into force upon receipt by the depositary of instruments of ratification, acceptance or approval by the parties.

(f) The depositary shall promptly notify all parties of the entry into force of the amendment.

ARTICLE 9

AMENDMENT OF ANNEXES

9. The following procedures may apply to the adoption and entry into force of any amendment to an Annex of this Treaty, at the request of the party proposing the amendment, in lieu of the procedure set out in Article 8, unless otherwise provided in the Annex.

(a) Any party may propose amendment to an Annex of this Treaty at any time by notifying such proposal to the depositary, which shall promptly notify all parties of the proposed amendment.

(b) A party approving a proposed amendment to an Annex shall notify its acceptance to the depositary, which shall promptly notify all the parties of each acceptance. Upon receipt by the depositary of notices of acceptance from all parties, such amendment shall be incorporated in the appropriate Annex and shall have effect from that date, or from such other date as may be specified in such amendment. The depositary shall promptly notify all parties of the adoption of the amendment and its effective date.

ARTICLE 10

NOTIFICATION

10.1 The Administrator and each party shall notify the depositary of their current addresses for the receipt of notices given pursuant to this Treaty, and the depositary shall notify the Administrator and each of the parties of such addresses or any changes thereof. Unless otherwise specified in this Treaty, any notice given in accordance with this Treaty shall be in writing and may be served by hand or sent by telex or, where either method cannot

readily be effected, by registered airmail to the address of the party or the Administrator as currently listed with the depositary.

10.2 Delivery by hand shall be effective when made. Delivery by telex shall be deemed to be effective on the business day following the day when the "answer back" appears on the sender's telex machine. Delivery by registered airmail shall be deemed to be effective twenty-one (21) days after posting.

ARTICLE 11

DEPOSITARY

11. The depositary for this Treaty shall be the Government of Papua New Guinea.

ARTICLE 12

FINAL CLAUSES

12.1 This Treaty shall be open for signature by the Governments of all the Pacific Island States and the Government of the United States of America.

12.2 This Treaty is subject to ratification by the States referred to in paragraph 1 of this Article. The instruments of ratification shall be deposited with the depositary.

12.3 This Treaty shall remain open for accession by States referred to in paragraph 1 of this Article. The instruments of accession shall be deposited with the depositary.

12.4 This Treaty shall enter into force upon receipt by the depositary of instruments of ratification by the Government of the United States and by the Governments of ten Pacific Island States which shall include the Federated States of Micronesia, the Republic of Kiribati and Papua New Guinea.

12.5 This Treaty shall enter into force for any State ratifying or acceding after the entry into force of this Treaty on the thirtieth day after the date on which its instrument of ratification or accession is received by the depositary.

12.6 This Treaty shall cease to have effect at the expiry of one year following the receipt by the depositary of an instrument signifying withdrawal or denunciation by the United States, any of the Pacific Island States named in Article 12.4, or such number of Pacific Island States as would leave fewer than ten such States as parties.

12.7 This Treaty shall cease to have effect for a party at the expiry of the sixth month following the receipt by the depositary of an instrument signifying withdrawal or denunciation by that party, except that where this Treaty would cease to have effect under the last preceding paragraph as the result of the receipt of the said instrument, it shall cease to have effect for that party in the manner provided in the last preceding paragraph.

12.8 Any licence in force pursuant to this Treaty shall not cease to have effect as a result of this Treaty ceasing to have effect either generally or for any party, and Articles 1, 3, 4 and 5 shall be regarded as continuing in force between the United States and the Pacific Island State party in respect of such licence until such licence expires in accordance with its terms.

12.9 No reservations may be made to this Treaty.

12.10 Paragraph 9 of this Article does not preclude a State, when signing, ratifying or acceding to this Treaty, from making declarations or statements, provided that such declarations or statements do not purport to exclude or modify the legal effect of the provisions of this Treaty in their application to that State.

DONE at Port Moresby on the second day of April, 1987.

REPRESENTATIVES OF THE GOVERNMENTS OF:

John Kerin AUSTRALIA

Edward Wolfe

John Negroponte UNITED STATES OF AMERICA

Pupuke Ropati COOK ISLANDS and on Amaraich FEDERATED STATES OF

MICRONESIA

Robin Yarrow FIJI

Teewe Arobati REPUBLIC OF KIRIBATI

Charles Dominick REPUBLIC OF THE MARSHALL ISLANDS

Hammer De Roburt REPUBLIC OF NAURU

Gerald McGhie NEW ZEALAND

NIUE

REPUBLIC OF PALAU

Edward Diro PAPUA NEW GUINEA

Sir Peter Kenilorea SOLOMON ISLANDS

KINGDOM OF TONGA

Lale Seluka TUVALU

REPUBLIC OF VANUATU

Fuimaono Mimio WESTERN SAMOA

ANNEX I

PART I

INTRODUCTORY

1. In this Annex:

(a) "applicable national law" means any provision of a law, however described, of a Pacific Island party which governs the fishing activities of foreign fishing vessels, being a law identified in Schedule 1, and which is not inconsistent with the requirements of this Treaty and shall be taken to exclude any provision which imposes a requirement which is also imposed by this Treaty;

(b) "Closed Area" means an area of a Pacific Island party as described in Schedule 2;

(c) "Limited Area" means an area described in Schedule 3; and

(d) "the vessel" means the vessel in respect of which a licence is issued.

2. Schedule 1 may be amended from time to time by the inclusion by any Pacific Island party of any applicable national law and, for the purposes of this Treaty, except as provided in this paragraph, the amendment shall take effect from the date that the amended Schedule has been notified to the Government of the United States. For the purposes of any obligation on the United States pursuant to paragraphs 4 and 5 of Article 4, the amendment shall take effect sixty (60) days from the date that the amended Schedule has been notified to the Government of the United States. The Government of the Pacific Island party shall use its best endeavours to provide advance notice to the Government of the United States of the amendment.

3. Nothing in this Annex and its Schedules, nor acts or activities taking place thereunder, shall constitute recognition of the claims or the positions of any of the parties concerning the legal status and extent of waters and zones claimed by any party. In the claimed waters and zones, the freedoms of navigation and overflight and other uses of the sea related to such freedoms are to be exercised in accordance with international law.

PART 2

COMPLIANCE WITH APPLICABLE NATIONAL LAWS

4. The operator of the vessel shall comply with each of the applicable national laws, and shall be responsible for the compliance by the vessel and its crew with each of the applicable national laws, and the vessel shall be operated in accordance with those laws.

PART 3

PROHIBITIONS

5. The vessel shall not be used for directed fishing for Southern Bluefin Tuna, or for fishing for any kinds of fish other than tunas, except that other kinds of fish may be caught as an incidental by-catch.

6. The vessel shall not be used for fishing by any method, except the purse seine method.

7. The vessel shall not be used for fishing in any Closed Area.

8. Except for circumstances involving force majeure and other emergencies involving the health or safety of crew members or the safety of the vessel, no aircraft may be used in association with the fishing activities of the vessel unless it is identified in item 6 or 7 of Schedule 1 of Annex II.

9. The vessel shall not be used for fishing in any Limited Area except in accordance with the requirements set out in Schedule 3, which are applicable to that Limited Area.

PART 4

REPORTING

10. Information relating to the position of and catch on board the vessel, as described in Part 1 of Schedule 4, shall be provided by telex to the Administrator at the following times:

(a) before departure from port for the purpose of beginning a fishing trip in the Licensing Area;

(b) each Wednesday while within the Licensing Area or a Closed Area; and

(c) before entry into port for the purpose of unloading fish from any trip involving fishing in the Licensing Area.

11. Information relating to the position of and catch on board the vessel, as described in Part 2 of Schedule 4, shall be provided to each Pacific Island party in the manner notified to the Government of the United States by that party as follows:

(a) at the time of entry into and of departure from waters which are, for any purpose, subject to the jurisdiction of the Pacific Island party;

(b) at least 24 hours prior to the estimated time of entry into any port of that party; and

(c) as otherwise set out in Part 3 of Schedule 4.

12. At the end of each day that the vessel is in the Licensing area, an entry or entries for that day shall be completed on the catch report form as set out in Schedule 5, in accordance with the requirements of that form, and such forms shall be posted by registered airmail to the Administrator within fourteen (14) days following the date of the next entry into a port for the purpose of unloading its fish catch.

13. Immediately following the unloading of any fish from the vessel, a report shall be completed in the form set out in Schedule 6 and shall be posted by registered airmail to the administrator within fourteen (14) days following the date of the completion of that unloading operation, or, in the case of unloading by transshipment, within fourteen (14) days following unloading of that transshipment at the processing site.

PART 5

ENFORCEMENT

14. The master and each member of the crew of the vessel shall immediately comply with every instruction and direction given by an authorised and identified officer of a Pacific Island party, including to stop, to move to a specified location, and to facilitate safe boarding and inspection of the vessel, gear, equipment, records, fish and fish products. Such boarding and inspection shall be conducted as much as possible in a manner so as not to interfere unduly with the lawful operation of the vessel. The operator and each member of the crew shall facilitate and assist in any action by an authorised officer of a Pacific Island party and shall not assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with an authorised officer in the performance of his or her duties.

15. The international distress frequency, 2.182 MHz, and 156.8 MHz (Channel 16, VHF) shall be monitored continuously from the vessel for the purpose of facilitating communication with the surveillance and enforcement authorities of the parties.

16. The international radio call sign of the vessel shall be painted in white on a black background, or in black on a white background, in the following manner:

(a) amidships on both sides immediately below the gunwale, and on a horizontal plane on the superstructure, in letters and figures 20 centimetres apart, with each letter and figure being at least one metre high and 50 centimetres wide and with each line at least 12.5 centimetres wide;

(b) if a helicopter is being carried, on the body of the helicopter in a place clearly visible from sea level, in letters and figures five centimetres apart, with each letter and figure being at least 25 centimetres high, 10 centimetres wide and with each line being at least 2.5 centimetres wide; and

(c) on any other equipment being carried by and intended to be separated from the vessel during normal fishing operations, in letters and figures clearly legible to the naked eye; and at all times while the vessel is within the Licensing Area or a Closed Area, all parts of these markings shall be clear, distinct and uncovered.

17. The licence shall be carried on board the vessel and produced at the request of an authorised enforcement official of any of the parties. Prior to receipt of the licence, the correct citation of the licence number shall satisfy this requirement.

PART 6

OBSERVERS

18. The operator and each member of the crew of the vessel shall allow and assist any person identified as an observer by the Pacific Island parties to:

(a) board the vessel for scientific, compliance, monitoring and other functions at the point and time notified by the Pacific Island parties to the Government of the United States;

(b) have full access to and the use of facilities and equipment on board the vessel which the observer may determine is necessary to carry out his or her duties; have full access to the bridge, fish on board and areas which may be used to hold, process, weigh and store fish; remove samples; have full access to the vessel's records, including its log and documentation for the purpose of inspection and copying; and gather any other information relating to fisheries in the Licensing Area; without interfering unduly with the lawful operation of the vessel;

(c) disembark at the point and time notified by the Pacific Island parties to the Government of the United States; and

(d) carry out his or her duties safely; and no operator or crew member of the vessel shall assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with an observer in the performance of his or her duties.

19. The operator shall provide the observer, while on board the vessel, at no expense to the Pacific Island parties, with food, accommodation and medical facilities of such reasonable standard as may be acceptable to the Pacific Island party whose representative is serving as the observer.

20. Any operator of the vessel from which any fish taken in the Licensing Area is unloaded shall allow, or arrange for, and assist any person authorised for this purpose by the Pacific Island parties to have full access to any place where such fish is unloaded, to remove samples and to gather any other information relating to fisheries in the Licensing Area.

21. An observer programme shall be conducted in accordance with this Treaty and provisions that may be agreed from time to time.

PART 7

MISCELLANEOUS REQUIREMENTS

22. At all times while the vessel is in a Closed Area, the fishing gear of the vessel shall be stowed in such a manner as not to be readily available for fishing. In particular, the boom shall be lowered as far as possible so that the vessel cannot be used for fishing but so that the skiff is accessible for use in emergency situations; the helicopter, if any, shall be tied down; and launches shall be secured.

23. The vessel shall be operated in such a way that the activities of traditional and locally based fishermen and fishing vessels are not disrupted or in any other way adversely affected.

24. Any information required to be recorded, or to be notified, communicated or reported pursuant to a requirement of this Treaty shall be true, complete and correct. Any change in circumstances which has the effect of rendering any such information false, incomplete or misleading shall be notified to the Administrator immediately.

SCHEDULE 1

APPLICABLE NATIONAL LAWS

The following laws and any regulations or other instruments having the force of law which have been implemented pursuant to those laws, as amended at the time this Treaty enters into force, shall be considered as applicable national laws for the purposes of this Treaty. australia antarctic Marine Living Resources Conservation Act, 1981

Continental Shelf (Living Natural Resources) Act, 1968

Continental Shelf (Living Natural Resources) Regulations

Fisheries Act, 1952

Fisheries Regulations

Torres Strait Fisheries Act, 1984

Whale Protection Act, 1980

Cook Islands

Cook Islands Commercial Fishing Regulations, 1951

Exclusive Economic Zone (Foreign Fishing Craft) Regulations, 1979

Fisheries Protection Act, 1976

Fishing Ordinance, 1950

Territorial Sea and Exclusive Economic Zone Act, 1977

Federated States of Micronesia Titles 18 and 24 of the Code of the Federated States of Micronesia, as amended by Public Law Nos. 2-28, 2-31, 3-9, 3-10, 3-34, and 3-80

Fiji

Fisheries Act, 1942

Fisheries Ordinance (Cap 135)

Fisheries Regulations (Cap 135)

Marine Spaces Act, 1978

Marine Spaces (Foreign Fishing Vessels) Regulations, 1979

Kiribati

Fisheries Ordinance, 1979

Fisheries (Amendment) Act, 1984

Marine Zones (Declaration) Act, 1983

Marshall Islands

Marine Resources Jurisdiction Act, 1978

Marine Zones (Declaration) Act, 1984

Nauru

Interpretation Act, 1971

Interpretation Act, 1975
 Marine Resources Act, 1978
 New Zealand antarctic Marine Living Resources Act, 1981
 Continental Shelf Act, 1964
 Exclusive Economic Zone (Foreign Fishing Craft) Regulations, 1978
 Fisheries Act, 1983
 Marine Mammals Protection Act, 1978
 Territorial Sea and Exclusive Economic Zone Act, 1977
 Tokelau (Territorial Sea and Exclusive Economic Zone Act), 1977
 Niue
 Territorial Sea and Exclusive Economic Zone Act, 1978
 Palau
 Palua National Code, Title 27
 Papua New Guinea Fisheries Act (Cap 214)
 Fisheries Regulations (Cap 214)
 Fisheries (Torres Strait Protected Zone) Act, 1984
 Tuna Resources Management (National Seas) Act (Cap 224)
 Whaling Act (Cap 225)
 Solomon Islands
 Delimitation of Marine Waters Act, 1978
 Fisheries Act, 1972
 Fisheries Limits Act, 1977
 Fisheries Regulations, 1972
 Fisheries (Foreign Fishing Vessels) Regulations, 1981
 Tonga Fisheries Protection Act, 1973
 Fisheries Regulation Act, 1923
 Whaling Industry (Amendment) Act, 1979
 Tuvalu
 Fisheries Act (Cap 45)
 Foreign Fishing Vessel Regulations, 1982
 Fisheries (Foreign Fishing Vessel) (Amendment) Regulations, 1984
 Marine Zones (Declaration) Act, 1983
 Vanuatu
 Fisheries Act, 1982
 Fisheries Regulations, 1983
 Maritime Zones Act, 1981
 Western Samoa Exclusive Economic Zone Act, 1977
 Fisheries Protection Act, 1972
 Territorial Sea Act, 1971

SCHEDULE 2

CLOSED AREAS Australia. All waters within the seaward boundary of the Australian Fishing Zone (AFZ) west of a line connecting the point of intersection of the outer limit of the AFZ by the parallel of latitude 25 degrees 30' South with the point of intersection of the meridian of longitude 151 degrees East by the outer limit of the AFZ and all waters south of the parallel of latitude 25 degrees 30' South.

Cook Islands. Territorial Sea.

Federated States of Micronesia. Three nautical mile territorial sea and nine nautical mile exclusive fishery zone and on all named banks and reefs as depicted on the following charts:

DMAHTC NO 81019 (2nd. ed., Mar. 1945; revised 7/17/72. corrected through NM 3/78 of June 21, 1978).

DMAHTC NO 81023 (3rd. ed., Aug. 7, 1976).

DMAHTC NO 81002 (4th. ed., Jan. 26, 1980; corrected through NM 4/80).

Fiji. Internal waters, archipelagic waters and territorial seas of Fiji and Rotuma and its Dependencies.

Kiribati. Within archipelagic waters as established in accordance with Marine Zones Declaration Act 1983; within 12 nautical miles drawn from the baselines from which the territorial sea is measured; within 2 nautical miles of any anchored fish aggregating device for which notification of its location shall be given by geographical coordinates.

Marshall Islands. 12 nautical mile territorial sea and area within two nautical miles of any anchored fish aggregating device for which notification of its location shall be given by geographical coordinates.

Nauru. The territorial waters as defined by Nauru Interpretation act, 1971, Section 2.

New Zealand. Territorial waters; waters within 6 nautical miles of outer boundary of territorial waters; all waters to west of New Zealand main islands and south of 39 degrees South latitude; all waters to east of New Zealand main islands south of 40 degrees South latitude; and in respect of Tokelau: areas within 12 nautical miles of all island and reef baselines; twelve and one half nautical miles either side of a line joining Atafu and Nukunonu and Faka'ofu; and coordinates as follows:

Atafu: 8 degrees 35' 10" S, 172 degrees 29' 30" W

Nukunonu: 9 degrees 06' 25" S, 171 degrees 52' 10" W

9 degrees 11' 30" S, 171 degrees 47' 00" W

Faka'ofu: 9 degrees 22' 30" S, 171 degrees 16' 30" W

Niue. Territorial sea and within 3 nautical miles of Beveridge

Reef, Antiope Reef and Haran Reef as depicted by appropriate symbols on NZ 225F (chart showing the territorial sea and exclusive economic zone of Niue pursuant to the Niue Territorial Sea and Exclusive Economic Zone Act of 1978).

Palau. Within 12 nautical miles of all island baselines in the Palau Islands; within a 50 nautical mile arc measured from the entrance to Malakal Harbour (7 degrees 16' 44" N, 134 degrees 28' 8" E) and extending from where the arc intersects the territorial sea limit to the northeast of Babelthuap Island to the 134 degrees East meridian of longitude, southwest of Angaur Island then due north along the 134 degrees East meridian of longitude to the intersection with the territorial sea limit.

Papua New Guinea. In addition to its territorial sea and internal waters, within the area bounded by the following parallels and meridians - from latitude 0 degrees 30' South to latitude 3 degrees 30' South, and from longitude 149 degrees East to longitude 153 degrees East.

Solomon Islands. All waters within the fishery limits of the Solomon Islands (including internal waters, territorial sea and archipelagic waters) except that part of the fishery limits east and north of the following lines: commencing at a point 161 degrees East, 4 20' South, then extending due south along 161 degrees to a point 6 30' South, then by a line extending due east to a point 165 degrees East, then by a line due south to a point 8 degrees South, then by a line due east to a point 169 degrees 55' East.

Tonga. All waters with depths of not more than 1,000 metres, within the area bounded by the fifteenth and twenty third and one half degrees of south latitudes and the one hundred and seventy third and the one hundred and seventy seventh degrees of west longitudes; also within a radius of twelve nautical miles from the islands of Teleki Tonga and Teleki Tokelau.

Tuvalu. Territorial sea and waters within two nautical miles of all named banks, i.e. Macaw, Kosciusko, Rose, Bayonnaise and Hera, in Tuvalu EEZ, as depicted on the chart entitled "Tuvalu Fishery Limits" prepared by the United Kingdom Hydrographic

Department, Taunton, January 11, 1981.

Vanuatu. Archipelagic waters and the territorial sea, and internal waters.

Western Samoa. Territorial sea; reefs, banks and areas bounded/enclosed by the following parallels and meridians to the extent such areas are within Western Samoa fisheries jurisdiction:

1. From latitude 12 degrees 58' South to latitude 13 degrees 11.5' South and Longitude 174 degrees 5.5' West to longitude 174 degrees 26' West.

2. From latitude 12 degrees 12' South to latitude 12 degrees 38.5' South and longitude 173 degrees 47' West to longitude 174 degrees 25' West.

3. From latitude 13 degrees 7' South to latitude 13 degrees 19' South and longitude 172 degrees 59' West to longitude 173 degrees 38.5' West.

4. From latitude 14 degrees 51' South to latitude 15 degrees 3.4' South and longitude 172 degrees 10.7' West to longitude 172 degrees 19.1' West.

5. From latitude 14 degrees 20.5' South to latitude 14 degrees 28' South and longitude 171 degrees 8' West to longitude 171 degrees 17' West. and within 2 nautical miles of any anchored fish aggregating device within the EEZ for which notification of its location shall be given by geographical coordinates.

Only the Closed Areas, as described above, of Pacific Island States which are parties to this Treaty shall be applicable under the terms of this Treaty.

SCHEDULE 3 LIMITED AREAS

Solomon Islands

1. The Solomon Islands Limited Area is all of the Licensing Area within the fishery limits of Solomon Islands as described in the Fishery Limits Act 1977 of Solomon Islands.

2. "Fishing day" means any day or part of a day of the week in which a vessel is used for fishing in the Solomon Islands Limited Area.

3. There shall be no fishing in the Solomon Islands Limited Area after the expiry of the five hundredth fishing day from the earliest date on which any Licensing Period takes effect in any given year.

SCHEDULE 4
REPORTING DETAILS

PART 1 - LICENSING AREA REPORTS TO THE ADMINISTRATOR

(a) Port departure and entry into port for unloading

- (1) report type (LBEG for port departure to begin fishing and LFIN for port entry for unloading)
- (2) date
- (3) call sign
- (4) port name
- (5) catch on board by species (in short tons)

as: LBEG (or LFIN)/ddmmyy/CALL SIGN/PORT/SJ xxx YF yyy OTH zzz (b) Weekly reports

- (1) report type (WEEK)
- (2) date
- (3) call sign
- (4) position (to one minute of arc)
- (5) catch on board by species

as: WEEK/ddmmyy/CALL SIGN/LA 1111/LO 11111/SJ xxx YF yyy OTH zzz

PART 2 - REPORTS TO NATIONAL AUTHORITIES (a) Zone entry and exit

- (1) report type (ZENT for entry and ZEXT for exit)
- (2) date
- (3) call sign
- (4) position (to one minute of arc)
- (5) catch on board by species

as: ZENT (or ZEXT)/ddmmyy/CALL SIGN/TIME/LA 1111/LO 11111/SJ xxx YF yyy OTH zzz (b) Port entry reports

- (1) report type (PENT)
- (2) date
- (3) call sign
- (4) estimated time of entry into port (GMT)
- (5) port name

as: PENT/ddmmyy/CALL SIGN/TIME/PORT NAME

PART 3 - OTHER NATIONAL REPORTING REQUIREMENTS

1. Australia

- (a) Report of position each two days while within the Australian Fishing Zone;
- (b) 24 hours notice of intention to enter the Australian Fishing Zone; and
- (c) Report of catch by species every six days while within the Australian Fishing Zone.

2. Fiji

(a) While in Fiji fisheries waters, daily position reporting of the name, call sign, and country of registration of the craft, and its position at that specified time; and

- (b) While in Fiji fisheries waters, weekly report of catch by species.

3. Kiribati

While in the Kiribati exclusive economic zone, report on entry into or exit from Closed Areas.

4. New Zealand

(a) While in the New Zealand exclusive economic zone, notification of daily noon positions, to be received no later than noon on the following day;

(b) Notice of catch on board the vessel at the time of entry into the New Zealand exclusive economic zone;

(c) A weekly report of catch taken in the New Zealand exclusive economic zone to cover the period 0001 hours on a Monday to 2400 hours on the following Sunday and to be received by noon on the following Tuesday; and

- (d) 24 hours notice of intention to enter the New Zealand exclusive economic zone.

5. Solomon Islands

Report on:

(a) Expected vessel position, date and time of entry at least 24 hours before entry into the Solomon Islands Fishery Limits;

(b) Entry to or exit from Solomon Islands Limited Area together with the catch on board by weight and volume; and

(c) A weekly report of catch taken and fishing days in the Solomon Islands exclusive economic zone to cover the period 0001 hours on a Monday to 2400 hours on the following Sunday and to be received by noon on the following Tuesday.

6. Tonga While in the Tonga exclusive economic zone, daily position report by radio or telex.

7. Tuvalu

- (a) Report not less than 24 hours before entry into the Tuvalu fishery limits on:

- (i) the name, call sign and country of registration of the vessel;

- (ii) the licence number;

- (iii) position on entry; and

- (iv) catch by species.

SCHEDULE 5 - PURSE SEINE VESSEL CATCH REPORT FORM

NAME YYMMDD

VESSEL NAME LICENSE/PERMIT NUMBER DEPARTURE FROM PORT DATE
 COUNTRY OF REGISTRATION NAME OF CAPTAIN
 REGISTRATION NUMBER LICENSE/PERMIT ARRIVAL AT PORT DATE
 GROSS REGISTERED TONNAGE HOLDER'S SIGNATURE
 NAMES(S) OF FISH CARRIER(S)
 FOR GROUP PURSE-SEINER YEAR MONTH
 NUMBER OF CREW DAY NOON OR SET
 POSITION LAT LONG
 DDMM N - S
 DDMM E - W
 SCHOOL TYPE TIME SET SKIPJACK CATCH
 Short Tons AV. SIZE (lb) YELLOWFIN
 CATCH Short Tons AV. SIZE (lb)
 OTHER SPECIES
 SPECIES NAME CATCH Short Tons AV. SIZE (lb)
 COMMENTS DISCARDS TUNA Short Tons OTHERS (lb)
 REASON FOR DISCARD TOTAL

Numerical expression of school type, comments, and reason for discard

SCHOOL TYPE

- 1 Log
- 2 Surface
- 3 Whale
- 4 Porpoise
- 5 Raft
- 6 Other

COMMENTS

- 1 A full day in transit between fishing grounds or to or from fishing grounds.
- 2 A full day not fishing due to breakdown.
- 3 A full day not fishing due to bad weather.
- 4 A full day searching for fish but no sets made.
- 5 Part of day searching for fish but no sets made.
- 6 Set unsuccessful for any reason, e.g. fish dive, roll up.

REASON FOR DISCARD

- 1 Undesirable species
- 2 Fish too small
- 3 Vessel completely loaded
- 4 Other reason - please specify

SCHEDULE 6 - PURSE SEINE UNLOADING LOGSHEET

Vessel Name Radio Call Sign or Regional Register No. (1) Port or, If at sea, position: Lat Long (2) Dates

(a) At unloading point

Arrival Departure

(b) At unloading

Commencement Completion (3) Partial or complete unloading (4) Unloading to (5) (a) Carrier Vessel Name and Radio call sign or regional Register No.
or

(b) Name and address of company accepting fish (6) Destination of fish (7) Quantity unloaded
Yellowfin Skipjack Bigeye Marlin Other Unit of Measurement accepted

Rejected

Signatures

Vessel Master

Receiving Agent

ANNEX II

1. For the purposes of this Annex:

- (a) "Licensing Period" means the period of validity of licences issued in accordance with this Treaty.
2. The Government of the United States shall make application for a licence in respect of any fishing vessel of the United States intended by the operator to be used for purse seine fishing in the Licensing Area at any time in the Licensing Period by providing to the Administrator a complete application form as set out in Schedule 1.
3. Licences issued pursuant to this Treaty shall not take effect until the Administrator has received payment, free of any charges whatsoever, of the amounts set out in Part 1 of Schedule 2 for that Licensing Period in the manner described in that Schedule. Other financial commitments shall be provided during the Licensing Period pursuant to Part 2 of Schedule 2.
4. Subject to paragraph 5, a licence may be denied:

(a) where the application is not in accordance with the requirements of paragraph 2;

(b) where the owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, unless reasonable financial assurances have been provided to the administrator;

(c) where the vessel in respect of which application for a licence has been made does not have good standing on the Regional Register of Foreign Fishing Vessels, maintained by the South Pacific Forum Fisheries Agency, provided that:

(i) good standing is withdrawn only as a result of:

(A) the commission of a serious offence against fisheries laws or regulations of a Pacific Island State and the operator has not fully complied with any civil or criminal judgment rendered with respect to such an offence;

(B) evidence existing that gives reasonable cause to believe that the operator has committed a serious offence against the fisheries laws or regulations of any Pacific Island State and that it has not been possible to bring the vessel operator to trial; or

(C) the vessel operator has failed to comply with information requirements for registration as notified by the administrator to the Government of the United States;

(ii) the Pacific Island party requesting withdrawal of good standing has first consulted the Government of the United States and has made all reasonable efforts to resolve the dispute in question before utilizing the procedures for withdrawal of good standing;

(iii) in the event of a request for withdrawal of good standing from the Regional Register of Foreign Fishing Vessels of a vessel licensed pursuant to this Treaty, the Pacific Island parties agree to take into consideration that vessel's compliance with the terms of this Treaty in determining whether to approve such a request; and

(iv) following a withdrawal of good standing the Pacific Island party involved promptly advises the Government of the United States in writing of the reason for the withdrawal and the requirements which must be fulfilled to reinstate good standing;

(d) where there has been a failure to satisfy a final judgment or other final determination for a breach of this Treaty by the owner, charterer or master of the vessel in respect of which application for a licence has been made, until such time as the final judgment or other final determination is satisfied, and subsequent change in ownership of a vessel shall not affect the application of this provision; or

(e) where an operator has committed, or the vessel has been used for:

(i) a violation of this Treaty, providing that the Pacific Island parties, following consultation with the Government of the United States, determine that the violation is of a serious nature; or

(ii) any violation of this Treaty on more than one occasion, providing that the Pacific Island parties, following consultation with the Government of the United States, determine that such multiple violations constitute a serious disregard of this Treaty.

5. A maximum number of licences may be issued for any Licensing Period as set out in Schedule 2, and, upon request by the Government of the United States, the Pacific Island parties may agree to vary such number.

6. On receipt of an application for a licence in accordance with this Annex, the Administrator shall take the necessary steps to ensure that:

(a) a licence in the form set out in Schedule 3 in respect of the vessel identified in the application; or

(b) a statement setting out the reasons that a licence in respect of the vessel identified in the application is denied together with a refund of the amount or amounts provided with the application; is promptly provided to the Government of the United States.

SCHEDULE 1 -TREATY ON FISHERIES BETWEEN THE GOVERNMENTS OF CERTAIN PACIFIC ISLAND STATES AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA APPLICATION FORM application is hereby made for a licence authorising the use of the vessel named in this application for fishing in the Licensing Area.

1. FULL NAME OF VESSEL:
2. RADIO CALL SIGN OF VESSEL:
3. REGIONAL REGISTER NUMBER OF VESSEL:
4. FULL NAME AND ADDRESS OF EACH PERSON WHO IS AN OPERATOR OF THE VESSEL, AND STATE WHETHER OWNER, CHARTERER, MASTER OR OTHER. IF OTHER, SPECIFY DETAILS:
5. FULL NAME AND ADDRESS OF INSURER FOR PURPOSES OF ARTICLE 4.3 (a) OF THE TREATY:
6. REGISTRATION NUMBER AND MAKE OF HELICOPTER, IF ANY, TO BE CARRIED ON VESSEL:
7. REGISTRATION NUMBER AND MAKE OF ANY AIRCRAFT TO BE USED IN ASSOCIATION WITH FISHING ACTIVITIES AND NAME AND ADDRESS OF OPERATOR:
8. STATE WHETHER OWNER OR CHARTERER IS THE SUBJECT OF PROCEEDINGS UNDER THE BANKRUPTCY LAWS OF THE UNITED STATES:
9. STATE WHETHER OPERATOR OR VESSEL HAS BEEN INVOLVED IN A VIOLATION OF THIS TREATY. IF YES, SPECIFY DETAILS:

Date of application

Director of the Southwest Region
National Marine Fisheries Service
National Oceanic and Atmospheric
Administration

SCHEDULE 2 - PAYMENTS

The following amounts are payable annually for a period of five (5) years pursuant to paragraph 3 of Annex II.

PART 1

1. The amounts payable as set forth in this paragraph.

(a) Annual industry payments shall be made as follows:

(i) for the first annual Licensing Period, a lump sum of US\$1.75 million for 35 vessels, with the next five licences to be made available for the same pro-rata payment as the first 35 licences, and an additional 10 licences to be made available at US\$60,000 per vessel;

(ii) for subsequent annual Licensing Periods, 40 vessel licences calculated on the same basis as the first 40 vessel licences in sub-paragraph (i) and indexed to the price of fish as set forth below, with 10 additional licences to be made available at US\$60,000 per vessel and indexed to the price of fish as set forth below.

(b) The indexation shall be applied as follows:

(i) DEFINITIONS

A. Base Vessel Payment: The Base Vessel Payment is US\$50,000 for the first 40 vessels to be licensed and US\$60,000 for vessels to be licensed in excess of 40 vessels.

B. Adjusted Individual Vessel Payment: The Adjusted Individual Vessel Payment is the individual vessel payment of each annual Licensing Period after the first annual Licensing Period. The Adjusted Individual Vessel Payment will always apply to the Licensing Period immediately following its calculation.

C. Landed Price: The Landed Price is the published standard price per ton (American Tuna Sales Association) for fish delivered to American Samoa prevailing at the time a United States purse seine vessel arrives in port for the purpose of offloading its catch.

D. Average Landed Price: The Average Landed Price is calculated by averaging the established landed price categories for yellowfin and skipjack tuna in American Samoa. The landed price categories to be used are: over 7.5 pounds, 4 to 7.5 pounds and 3 to 4 pounds for skipjack; over 20 pounds, 7.5 to 20 pounds and 4 to 7.5 pounds for yellowfin.

E. Base Price: The Base Price is the Average Landed Price for the three months prior to the Treaty entering into force.

F. Estimated Landed Value: The Estimated Landed Value is the Average Landed Price in effect at the time of a vessel's landing weighted by the yellowfin/skipjack mix ratio to be calculated from information on Schedule 6 for that vessel.

G. Average Estimated Landed Value: The Average Estimated Landed Value is the Estimated Landed Value for all landings by United States purse seine vessels in American Samoa in the four quarters preceding the final quarter of the applicable Licensing Period divided by the total number of those landings for the same period.

(ii) CALCULATION AND APPLICATION OF INDEXING FACTOR

A. To obtain the indexing factor by which the Adjusted Individual Vessel Payment shall be calculated, divide the average Estimated Landed Value for the preceding four quarters by the Base Price.

B. To obtain the Adjusted Individual Vessel Payment, multiply the Base Vessel Payment by the indexing factor obtained in Paragraph (ii) A.

C. In no case shall the Adjusted Individual Vessel Payment be less than the Base Vessel Payment.

(iii) NOTIFICATIONS

The established prices and any changes shall be supplied to the administrator by the Government of the United States within ten (10) day of their publication. The Administrator shall notify the Government of the United States sixty (60) days before the start of each Licensing Period of the Adjusted Individual Vessel Payment along with the computation used to arrive at the adjusted Individual Vessel Payment. The Adjusted Individual Vessel Payment shall become final thirty (30) days after receipt by the Government of the United States, unless the Government of the United States advises the Administrator otherwise, in which case consultations shall be held.

(iv) CONSULTATIONS

If the established price categories are revised, or if there is a change in the tuna industry structure which makes the price calculations as set forth above inappropriate, the Administrator may consult with representatives of the Government of the United States as necessary to revise the formula.

(c) There shall be no pro-ration of the Base Vessel Payment or the Adjusted Individual Vessel Payment. There shall be no refunds of the Base Vessel Payment or the Adjusted Individual Vessel Payment following licence issuance pursuant to Annex II.

2. Sums payable pursuant to the related Agreement between the South Pacific Forum Fisheries Agency and the Government of the United States.

PART 2

3. Technical assistance, including provision of assistance by technicians, by the United States tuna industry valued at US\$250,000 annually in response to requests co-ordinated through the Administrator.

SCHEDULE 3 - TREATY ON FISHERIES BETWEEN THE GOVERNMENTS OF CERTAIN PACIFIC ISLAND STATES AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA LICENCE FORM
The vessel described in this licence is hereby authorised to engage in fishing in the Licensing Area for the period described in this licence, in accordance with the terms and conditions referred to in Annex I.

Full name of vessel:

Radio call sign of vessel:

Regional register number of vessel:

Helicopter or other aircraft which may be used in association with the fishing activities of the vessel:

Period of validity:

The period of validity of this licence shall be no longer than one year:

From , 19

To , 19

For and on behalf of the Pacific Island parties

Date of issue:

Licence number:

Warning: It is an offence against the laws of many nations, including the United States of America, to violate the requirements of Annex I. Penalties may include substantial fines and vessel forfeiture.