

Fisheries Management Amendment Act 2015

As at 24 November 2015

Note:

Amending Acts and amending provisions are subject to automatic repeal pursuant to sec 30C of the *Interpretation Act 1987 No 15* once the amendments have taken effect.

Long Title

An Act to amend the *Fisheries Management Act 1994* to make further provision for the management of fishery resources.

1 Name of Act

This Act is the *Fisheries Management Amendment Act 2015*.

2 Commencement

This Act commences on a day or days to be appointed by proclamation.

Schedule 1 Amendment of Fisheries Management Act 1994 No 38

[1] The whole Act (other than section 4, Schedule 7 and any provision that is repealed or replaced by this Act)

Omit "Director-General" and "Director-General's" wherever occurring.

Insert instead "Secretary" and "Secretary's" respectively.

[2] Section 4 Definitions

Insert in alphabetical order in section 4 (1):

"advisory council" means an advisory council established by the Minister under section 229. **"advisory group"** means an advisory group established by the Secretary under section 230. **"electronic communication"** has the same meaning as it has in the *Electronic Transactions Act 2000*. **"fisheries management charge"** means a fee, charge or contribution that is required to be paid by or under this Act. **"fishing determination"** means a determination of total allowable catch of fish or total allowable fishing effort made under Part 2A. **"forfeited quota"** --see section 40V. **"possession limit"** means a possession limit (within the meaning of section 17A) imposed by the regulations or by an order under section 17C. **"quota"** --see section 40R. **"trust fund"** means a trust fund established under Division 3 of Part 8.

[3] Section 4 (1), definitions of "category 1 share management fishery", "category 2 share management fishery" and "Management Advisory Committee"

Omit the definitions.

[4] Section 4 (1), definition of "charter fishing boat licence"

Omit the definition. Insert instead:

"charter fishing licence" means a licence issued under Division 2 of Part 4A and in force.

[5] Section 4 (1), definitions of "Department" and "Director-General"

Omit the definitions. Insert in alphabetical order:

"Department" means the Department of Industry, Skills and Regional Development. **"Secretary"** means the Secretary of the Department.

[6] Section 4 (1), definition of "fishing boat licence"

Omit the definition. Insert instead:

"fishing boat licence" means a licence issued under section 107B and in force.

[7] Section 4 (1), definition of "TAC Committee"

Omit the definition. Insert instead:

"TAF Committee" means the Total Allowable Fishing Committee appointed under Schedule 2.

[8] Section 4 (4)

Insert after section 4 (3) and the note:

(4) A reference in this Act to the common name of a species of fish does not limit any scientific description of a species of fish in this Act. If there is any inconsistency between the common name and the scientific description of a species, the scientific description of the species prevails. The common name of a species of fish is generally the standard name for the fish as defined in the Australian Standard entitled *AS SSA 5300--2011, Australian Fish Names Standard* published on 20 October 2011.

[9] Section 7G Management plan not to be made until completion of environmental assessment

Omit section 7G (2). Insert instead:

(2) If the management plan for a share management fishery is not made within the time required by section 42 (3), the Minister is not required to recommend that the description of the fishery be omitted from Schedule 1 if the Minister is satisfied, after having consulted with any relevant advisory group or advisory council, that the fishery should be retained as a share management fishery despite the delay in making the plan.

[10] Section 9 Publication of notification of closures

Omit section 9 (2) and (3). Insert instead:

(2) However, if the Minister considers that the fishing closure is required urgently, the Minister may publish the notification using either or both of the following methods:

- (a) by causing a copy of the notification to be exhibited in a prominent place adjacent to the waters to which the fishing closure applies,
- (b) by publishing the notification on the Department's website.

(3) In any such urgent case, the Minister is to publish the notification in the Gazette as soon as practicable.

(4) The Minister may take any other steps the Minister considers reasonable to publicly notify a fishing closure.

(5) This section applies to an amendment or revocation of a fishing closure in the same way as it applies to a fishing closure.

[11] Section 17 Bag limits--taking of fish

Omit section 17 (6). Insert instead:

(6) The Minister is required to consult any relevant advisory council or advisory group about any proposal to specify or change daily limits under this section.

[12] Sections 17A-17C

Insert after section 17:

17A Bag limits--possession of fish

- (1) Possession limits for fish may be imposed under this Act.
- (2) A "**possession limit**" is the maximum quantity of fish that a person may have in the person's possession in any specified circumstances.
- (3) A possession limit may be imposed in relation to a specified species of fish or fish of a specified class.
- (4) A possession limit may apply generally or be limited to:
 - (a) a particular class of fishers, or
 - (b) fish of a particular size, or
 - (c) particular waters, or
 - (d) any other specified circumstances.
- (5) The possession limit of any fish need not be the same as the daily limit of those fish.
- (6) A possession limit of zero may be imposed.
- (7) This section does not authorise the possession of fish in contravention of any other provision of or made under this Act.

17B How possession limits are imposed

- (1) A possession limit may be imposed:
 - (a) by the regulations, or
 - (b) by Ministerial order.
- (2) If there is any inconsistency between a possession limit imposed by the regulations and a possession limit imposed by Ministerial order, the possession limit imposed by Ministerial order prevails.
- (3) The Minister is required to consult any relevant advisory council or advisory group about any proposal to impose a possession limit by regulation or to change possession limits imposed by the regulations.
- (4) In this section: "**Ministerial order**" means an order of the Minister under section 17C.

17C Ministerial order imposing possession limit

- (1) The Minister may, by order, impose a possession limit.
- (2) The order is to be published in the Gazette.
- (3) However, if the Minister considers that the imposition of a possession limit is required urgently, the Minister may publish notification of the order using either or both of the following methods:
 - (a) by causing a copy of the order to be exhibited in a prominent place adjacent to the waters to which the order applies,
 - (b) by publishing notice of the order on the Department's website.
- (4) In any such urgent case, the Minister is to publish the order in the Gazette as soon as practicable.
- (5) The Minister may take any other steps the Minister considers reasonable to publicly notify an order under this section.
- (6) Subsections (2)-(5) apply to an amendment or revocation of an order under this section in the same way as they apply to the making of an order under this section.
- (7) An order under this section has effect for the period (not exceeding 5 years) specified in the order.
- (8) Subsection (7) does not prevent the making of a further order under this section.
- (9) Sections 40 and 41 of the *Interpretation Act 1987* apply in respect of an order under this section (including an order that amends or revokes an order) in the

same way as they apply in respect of a statutory rule.

(10) For that purpose, a reference in those sections to the day of publication on the NSW legislation website is to be read as a reference to the day of first publication of the order in accordance with this section.

[13] Section 18 Offence of contravening possession limit

Omit section 18 (1) and (3).

[14] Section 18 (2)

Omit "those fish". Insert instead "any fish".

[15] Section 18 (3A)

Omit "The regulations may specify a possession limit of zero for fish of a specified species or of a specified class. In that case,".

Insert instead "If a possession limit of zero is imposed for fish of a specified species or of a specified class,".

[16] Section 18 (4) and (5)

Omit the subsections.

[17] Section 20B

Insert after section 20A:

20B Shark finning and related prohibitions

(1) A person must not, while on board a boat in any waters:

- (a) remove a fin from any species of shark, or
- (b) be in possession of a shark fin that is not naturally attached to the body of a shark, or
- (c) be in possession of any part of a shark.

Maximum penalty:

- (a) in the case of an individual:
 - (i) 200 penalty units or imprisonment for 6 months (or both) for a first offence, or
 - (ii) 400 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence, or
- (b) in the case of a corporation:
 - (i) 1,000 penalty units for a first offence, or
 - (ii) 2,000 penalty units for a second or subsequent offence.

(2) The regulations may provide for circumstances in which a person does not commit an offence against this section.

[18] Part 2, Division 4

Omit the Division.

[19] Section 34M Consultation on proposed acquisition declaration

Omit section 34M (b). Insert instead:

(b) any relevant advisory council or advisory group,

[20] Sections 37 and 37AA

Omit section 37. Insert instead:

37 Defence--special approval for research or other authorised purposes

(1) The Minister may approve the taking and possession of fish or marine vegetation of any kind or of a specified kind for any or all of the following

purposes:

- (a) research,
- (b) aquaculture,
- (c) aquarium collection,
- (d) Aboriginal cultural fishing,
- (e) any purpose prescribed by the regulations,
- (f) any other purpose approved by the Minister that is consistent with the objects of this Act.

(2) An approval may authorise the taking of fish or marine vegetation by any method or by any specified method, from any waters or any specified waters or in any other specified way, despite any provision of or made under this Act to the contrary.

(3) The Minister may grant an approval under this section:

- (a) by issuing a permit to a person that authorises the taking and possession of fish or marine vegetation, or
- (b) by making an order that authorises the taking and possession of fish or marine vegetation.

(4) The Minister is to cause notice of any order made under this section, or the amendment or revocation of such an order, to be published on the Department's website or in the Gazette (or both).

(5) It is a defence to a prosecution for an offence against this Act or the regulations if the person charged satisfies the court that the act or omission of the person constituting the offence was authorised by an approval in force under this section.

(6) An approval under this section:

- (a) is subject to such conditions as are prescribed by the regulations or specified in the permit or order by which the approval is granted, and
- (b) remains in force for the period of one year or such other period as is specified in the permit or order by which the approval is granted.

(7) Without limiting subsection (6), an approval that authorises any fishing activity that involves the use of a boat may specify that the activity is an activity for which a fishing boat licence is required. In such a case, the fishing activity the subject of the approval is taken to be a declared commercial fishing boat activity under Division 2 of Part 4.

(8) The power to grant an approval under this section is limited by section 220ZW (Licence to harm threatened species, population or ecological community or damage habitat).

(9) The Minister is not to grant an approval for Aboriginal cultural fishing if to authorise the fishing activities and practices concerned would be inconsistent with native title rights and interests under an approved determination of native title (within the meaning of the *Native Title Act 1993* of the Commonwealth) or with the terms of an indigenous land use agreement (within the meaning of that Act).

(10) The regulations may make further provision for approvals under this section.

37AA Provisions relating to permits

(1) A person may apply to the Minister, in a form approved by the Minister, for a permit under section 37 (a "**section 37 permit**").

(2) The regulations may make provision for the fees to be paid for an application for a section 37 permit or the issue of a section 37 permit.

(3) In addition to any application fee or issue fee, the regulations may make provision for the payment by a permit holder of a contribution towards one or more of the following costs:

- (a) the costs of managing the activities authorised by the permit,

- (b) the costs of monitoring the activities authorised by the permit,
 - (c) the costs of ensuring compliance with permit conditions and any other fishing regulatory controls relevant to the activity authorised by the permit,
 - (d) the costs of carrying out research into the activity authorised by the permit, or the fishery, species or method associated with that activity.
- (4) A section 37 permit may authorise a specified person or a specified class of persons, in addition to the permit holder, to take and possess fish or marine vegetation as authorised by the permit.
- (5) The Minister may from time to time vary the conditions of a section 37 permit by notice given to the permit holder.
- (6) The Minister may at any time cancel or suspend a section 37 permit by notice given to the permit holder.

[21] Part 2A

Insert after Part 2:

Part 2A – Fishing determinations and quotas

Division 1 – Fishing determinations generally

40A Fishing determinations

- (1) The following determinations may be made under this Part (each of which is a "**fishing determination**"):
- (a) a determination of total allowable catch of fish (a "**TAC determination**"),
 - (b) a determination of total allowable fishing effort (a "**TAE determination**").
- (2) A TAC determination:
- (a) may be made in relation to one or more species of fish, and
 - (b) may relate to any specified fishery, class of shares in a share management fishery, class of persons, fishing method, area or time period.
- (3) A TAE determination:
- (a) may be made in relation to one or more methods of fishing, and
 - (b) may relate to one or more specified species of fish, or any specified fishery, class of shares in a share management fishery, class of persons, area or time period.

40B When fishing determinations are required to be made

- (1) A fishing determination must be made if the regulations require a fishing determination to be made.
- (2) A fishing determination must also be made if the Minister requires a fishing determination to be made.

40C Who makes fishing determinations

- (1) A fishing determination may be made by either the TAF Committee or the Secretary.
- (2) If the regulations require a fishing determination to be made, they may also specify whether the TAF Committee or the Secretary is to make the fishing determination.
- (3) If the regulations do not specify who is to make a fishing determination required by the regulations, the Minister may direct either the TAF Committee or the Secretary to make the fishing determination, subject to this section.
- (4) The Minister is to direct the Secretary to make a fishing determination that is required by the regulations only if the Minister considers it expedient for the Secretary to make the fishing determination because:

(a) there is in existence a scientific assessment of the species of fish, fishery or fishing method concerned that, in the opinion of the Minister, is relevant, robust and sufficiently recent to allow a determination to be made, and

(b) to require the TAF Committee to make the fishing determination would involve an unnecessary duplication of that assessment.

(5) For any fishing determination that is not required by the regulations, the Minister may direct the fishing determination to be made by either the TAF Committee or the Secretary.

Division 2 – Fishing determinations by TAF Committee

40D TAF Committee to make fishing determinations

(1) The TAF Committee is to make a fishing determination when required to do so by or under this Act.

(2) The fishing determination is to be made in accordance with this Division.

40E General considerations for TAF Committee

(1) In making a fishing determination, the TAF Committee is to give effect to the objects of this Act and is to have regard to all relevant scientific, industry, community, social and economic factors.

(2) The TAF Committee is also to have regard to:

(a) the need to ensure that the exploitation of fisheries resources is conducted in a manner that will conserve fish stocks in the long term, and

(b) the impact of fishing activities on all species of fish and the aquatic environment, and

(c) the precautionary principle, namely, that if there are threats of serious or irreversible damage to fish stocks, lack of full scientific certainty should not be used as a reason for postponing measures to prevent that damage.

40F Public consultation by TAF Committee

(1) Before the TAF Committee makes a fishing determination (or reviews any such determination), the TAF Committee is required to call for public submissions on the determination.

(2) When the TAF Committee makes a fishing determination under this Division it is to have regard to any public submissions it receives within the time fixed by it for the making of those submissions.

40G Review of determinations by TAF Committee

(1) The TAF Committee is to keep its fishing determinations under review.

(2) Following a review, the TAF Committee may decide not to alter its existing fishing determination, to revoke its fishing determination or to make a new fishing determination.

(3) A review of a fishing determination made by the TAF Committee (an "**initial determination**") may be carried out without calling for public submissions on the determination if:

(a) the review is conducted, and any new or different fishing determination made as a result of the review is made, within 6 months after the initial determination was made, and

(b) before making the initial determination, the TAF Committee called for public submissions in relation to the initial determination.

(4) However, the TAF Committee must call for public submissions if the Minister directs the TAF Committee to call for public submissions in relation to a review.

(5) If the TAF Committee conducts a review of an initial determination without calling for public submissions, the TAF Committee must, in making any decision in relation to the review, have regard to any public submissions to which it was required to have regard when it made the initial determination.

40H Publication and duration of determinations

- (1) A fishing determination made by the TAF Committee is to be notified by the Minister by publication in the Gazette.
- (2) The determination takes effect on the date (on or after that publication) that is specified in the determination.
- (3) The determination has effect for the period specified in the determination or, if no such period is specified, until it is revoked by another determination.
- (4) However, if the regulations require a fishing determination to be made for a period and no fishing determination has been made by the start of that period, a fishing determination for the immediately preceding period is taken to continue to have effect until a new fishing determination is made.

40I Interim fishing determinations by Secretary

- (1) The Secretary may make an interim fishing determination for a period:
 - (a) if the regulations require the TAF Committee to make a fishing determination for that period, and
 - (b) the TAF Committee has not made a fishing determination for that period 30 days before the start of that period.
- (2) The total allowable catch or total allowable fishing effort permitted by an interim fishing determination must not exceed the total allowable catch or total allowable fishing effort permitted by the fishing determination for the immediately preceding period.
- (3) An interim fishing determination:
 - (a) is a fishing determination and has effect under this Act in the same way as a fishing determination made by the TAF Committee, and
 - (b) is to be notified in the same way as a fishing determination made by the TAF Committee.
- (4) The Secretary may amend or revoke an interim fishing determination made by the Secretary by making a further interim fishing determination.
- (5) Division 3 does not apply to an interim fishing determination.

40J Revocation of fishing determinations

- (1) The TAF Committee must not revoke a fishing determination that it is required to make unless it makes a new fishing determination.
- (2) The TAF Committee may revoke a fishing determination made by the Secretary if:
 - (a) the TAF Committee makes a fishing determination that it is required to make by the regulations or is directed to make by the Minister, and
 - (b) the TAF Committee's determination replaces or supersedes a fishing determination made by the Secretary (including any interim fishing determination).

40K TAF Committee not subject to Ministerial control

- (1) The TAF Committee is not subject to the control or direction of the Minister as to any fishing determination to be made by it.
- (2) However, the Minister may direct the TAF Committee on the procedure to be followed and, subject to this Division, the matters to be taken into account in making a fishing determination.
- (3) The Minister may require the TAF Committee to reconsider a fishing determination.

Division 3 – Fishing determinations by Secretary

40L Secretary to make fishing determinations

- (1) The Secretary is to make a fishing determination when required to do so by or under this Act.
- (2) The fishing determination is to be made in accordance with this Division.

40M Making of fishing determination by Secretary

- (1) In making a fishing determination, the Secretary is to have regard to at least one scientific assessment for that species, fishery or method.
- (2) To avoid doubt, the scientific assessment may be an assessment carried out anywhere in Australia.
- (3) The Secretary may:
 - (a) seek advice from the TAF Committee about a fishing determination, and
 - (b) take into account that advice when making a fishing determination.
- (4) The Secretary may:
 - (a) conduct public consultation in relation to a fishing determination (in any way the Secretary considers appropriate), and
 - (b) take into account the results of that public consultation when making a fishing determination.
- (5) The Secretary may also have regard to any other relevant matters.

40N Publication and duration of determinations

- (1) A fishing determination made by the Secretary is to be notified by publication in the Gazette.
- (2) The determination takes effect on the date (on or after that publication) that is specified in the determination.
- (3) The determination has effect for the period specified in the determination or, if no such period is specified, until it is revoked by another fishing determination.
- (4) However, if the regulations require a fishing determination to be made for a period and no fishing determination has been made by the start of that period, the fishing determination for the immediately preceding period is taken to continue to have effect until a new fishing determination is made.

40O Amendment or revocation of fishing determination

- (1) The Secretary may amend or revoke a fishing determination made by the Secretary.
- (2) This Division applies to any such amendment or revocation in the same way as it applies to the original determination.
- (3) The Secretary must not revoke a determination that is required to be made unless the Secretary makes a new fishing determination.
- (4) The Secretary may revoke a fishing determination made by the TAF Committee if the Secretary makes a fishing determination that:
 - (a) the Secretary is required to make by the regulations or directed to make by the Minister, and
 - (b) the Secretary's determination replaces or supersedes a fishing determination made by the TAF Committee.

Division 4 – Allocation of commercial fishing determinations (quotas)

40P Definitions In this Division: "**commercial fishing authority holder**" means:

- (a) a shareholder in a share management fishery, or
- (b) an owner of a fishing business the components of which include an endorsement in a restricted fishery, or
- (c) any other person, or class of persons, declared by the regulations to be a commercial fishing authority holder.

"**commercial fishing determination**" means a fishing determination that relates to:

- (a) commercial fishing authority holders, or
- (b) the taking of fish for sale, or
- (c) a share management fishery or restricted fishery, or
- (d) a method that is used to take fish for sale, or
- (e) any other commercial fishing activity for which a licence or authority is

required under this Act.

40Q Allocation of fishing determination to commercial fishing authority holders

- (1) The Secretary may allocate a commercial fishing determination among commercial fishing authority holders.
- (2) A commercial fishing determination is to be allocated only if:
 - (a) the regulations require the fishing determination to be allocated, or
 - (b) the Minister directs that the fishing determination be allocated.
- (3) The regulations may provide for and, subject to the regulations, the Minister may direct:
 - (a) the extent to which a commercial fishing determination is to be allocated amongst commercial fishing authority holders (that is, whether the whole or part of a commercial fishing determination is to be allocated), and
 - (b) the commercial fishing authority holders, or class of commercial fishing authority holders, to whom an allocation is to be made, and
 - (c) the manner in which the commercial fishing determination (or any part of the fishing determination) is to be allocated.

A power to make regulations includes a power to include provisions in a management plan for a share management fishery with respect to that matter. See section 57.

40R Notice of allocation--quota

- (1) The Secretary is to notify a commercial fishing authority holder of any allocation of a commercial fishing determination that is made to that commercial fishing authority holder.
- (2) The allocation is referred to in this Part as the commercial fishing authority holder's "**quota**".
- (3) The notice of allocation is to specify particulars of the quota, including (to the extent relevant):
 - (a) the species of fish to which the quota applies, and
 - (b) the fishing method to which the quota applies, and
 - (c) the area to which the quota applies, and
 - (d) the period to which the quota applies (referred to in this Division as the "**fishing period**").
- (4) Notice of the allocation is to be given in writing.

40S Authority holder not to contravene quota

- (1) A commercial fishing authority holder must not:
 - (a) take fish, or use a fishing method, in contravention of the commercial fishing authority holder's quota, or
 - (b) cause or permit any agent of the commercial fishing authority holder to take fish, or use a fishing method, in contravention of the commercial fishing authority holder's quota.

Maximum penalty: 1,000 penalty units (in the case of a corporation) or 500 penalty units (in any other case).

- (2) An agent of a commercial fishing authority holder must not, while acting or purporting to act as agent for the commercial fishing authority holder:
 - (a) take fish, or cause or permit fish to be taken, in contravention of the commercial fishing authority holder's quota, or
 - (b) use a fishing method, or cause or permit a fishing method to be used, in contravention of the commercial fishing authority holder's quota.

Maximum penalty: 500 penalty units.

- (3) To avoid doubt, a contravention of a quota includes the taking of fish, or the use of a fishing method, in excess of the quota for the relevant fishing period.
- (4) In this section, an "**agent**" of a commercial fishing authority holder means:
 - (a) a nominated fisher of the commercial fishing authority holder, or

(b) any employee of the commercial fishing authority holder.

40T Transfer of quota

(1) The regulations may provide for the transfer of quota between commercial fishing authority holders.

(2) A commercial fishing authority holder may transfer to any other commercial fishing authority holder the whole or any part of the authority holder's quota in accordance with the regulations.

(3) Subject to the regulations, a quota for a fishing period is not transferable after the end of the fishing period.

(4) The regulations may authorise a commercial fishing authority holder:

(a) to transfer to the next fishing period any part of the quota for the current fishing period that is not taken during the current period, or

(b) to transfer to the current fishing period part of the quota for the next fishing period.

40U Method for transferring quota

(1) A transfer of quota authorised by or under this Division must be effected:

(a) by electronic transfer (that is, by using the online transfer system), or

(b) by manual transfer (that is, by giving the Secretary notice in writing of the transfer).

(2) The regulations may prescribe fees for the use of the online transfer system.

(3) For a manual transfer, the notice given to the Secretary must be in an approved form and must be accompanied by the prescribed fee (if any) for manual transfers of quota.

(4) A transfer of quota does not take effect until the transfer is confirmed.

(5) An electronic transfer is confirmed if the online transfer system generates a message to the effect that the transfer is confirmed.

(6) A manual transfer is confirmed if the Secretary gives notice in writing to the person lodging the transfer that the transfer has been approved.

(7) In this section: "**online transfer system**" means a facility approved by the Secretary that enables the transfer of quota by electronic communication.

40V Forfeiture of quota--failure to pay fisheries management charge

(1) The Minister may, by order in writing, direct that the quota, or a part of the quota, of a commercial fishing authority holder is forfeited. Quota that is the subject of such an order is "**forfeited quota**".

(2) An order may be made under this section only if the commercial fishing authority holder has failed to pay (in full) a fisheries management charge that is payable by the commercial fishing authority holder.

(3) An order may be made under this section in respect of quota that has not yet been allocated to the commercial fishing authority holder.

(4) The Minister is to give a commercial fishing authority holder notice in writing of his or her intention to make an order under this section. The notice is to be given at least 14 days before the order is made.

(5) Before making an order under this section, the Minister is to estimate the amount of quota that it would be necessary to sell by public tender in order to recover:

(a) any outstanding fisheries management charge payable by the commercial fishing authority holder, and

(b) the reasonable costs that would be incurred by or on behalf of the Minister in respect of such a sale.

(6) The amount of quota forfeited under the order must not exceed that estimate.

40W How forfeited quota is to be dealt with

(1) The Minister may retain, re-allocate or sell forfeited quota.

- (2) Forfeited quota may be re-allocated in any way the Minister considers appropriate.
- (3) Forfeited quota must not be re-allocated to the commercial fishing authority holder by whom it was forfeited unless the outstanding fishing management charges payable by the commercial fishing authority holder have been paid in full.
- (4) Any forfeited quota that is sold by the Minister is to be sold by public tender.
- (5) The purchase price for forfeited quota that is sold is to be applied as follows:
 - (a) if any fisheries management charge payable by the commercial fishing authority holder would, on payment, be paid to the credit of the Consolidated Fund, the outstanding amount of the charge is to be deducted from the purchase price and paid to the credit of the Consolidated Fund,
 - (b) if any fisheries management charge payable by the commercial fishing authority holder would, on payment, be paid into a trust fund, the outstanding amount of the charge is to be deducted from the purchase price and paid to the credit of the trust fund,
 - (c) any reasonable costs incurred by or on behalf of the Minister in connection with the sale of the forfeited quota is to be deducted from the purchase price and paid to the credit of the Consolidated Fund,
 - (d) the balance (if any) remaining after payment of the amounts referred to in paragraphs (a)-(c) is to be paid to the commercial fishing authority holder.
- (6) The Minister may recover from a commercial fishing authority holder, as a debt in any court of competent jurisdiction, any reasonable costs incurred by or on behalf of the Minister in selling forfeited quota, being costs not otherwise recovered as provided by this section.
- (7) If the Minister decides not to sell forfeited quota, or to re-allocate it to the commercial fishing authority holder by whom it was forfeited, the Minister must deduct the sale value of the forfeited quota from the amount owed by the commercial fishing authority holder.
- (8) The "**sale value**" of forfeited quota is the purchase price that the Minister considers would be obtained if the forfeited quota were sold by public tender, minus the reasonable costs that would be incurred in connection with the sale.

40X Implementation of determinations

- (1) The Minister is required to review the regulations and other instruments under this Act in light of any commercial fishing determination and any allocation of that commercial fishing determination.
- (2) If the determination is required under the management plan for a share management fishery, the determination is to be implemented in accordance with this Act and the management plan.

Division 5 – Allocation of non-commercial fishing determinations

40Y Definition In this Division: "**non-commercial fishing determination**" means a fishing determination that relates to:

- (a) the taking of fish by recreational fishers, or
- (b) the taking of fish by recreational fishing methods, or
- (c) the taking of fish during charter fishing activities, or
- (d) the taking of fish for recreational fishing purposes, Aboriginal cultural fishing or any other purpose other than for sale.

40Z Allocation of non-commercial fishing determination

- (1) The Secretary may allocate a non-commercial fishing determination amongst fishers or classes of fishers.
- (2) A non-commercial fishing determination is to be allocated only if:
 - (a) the regulations require the fishing determination to be allocated, or

- (b) the Minister directs that the fishing determination be allocated.
- (3) The regulations may provide for and, subject to the regulations, the Minister may direct:
 - (a) the manner and extent to which a non-commercial fishing determination is to be allocated, and
 - (b) the fishers or classes of fishers amongst whom the non-commercial fishing determination is to be allocated.
- (4) Notice of an allocation is to be published on the website of the Department.

40ZA Implementation of non-commercial fishing determinations

- (1) The Minister is required to review the regulations and other instruments under this Act in light of any non-commercial fishing determination and any allocation of that non-commercial fishing determination.
- (2) In particular, the Minister is required to consider whether any restrictions on non-commercial fishing set by the regulations and other instruments (such as bag limits, fishing method restrictions and fishing closures) remain appropriate, in light of the non-commercial fishing determination and allocation, to give effect to the policy objective of the determination and allocation.

[22] Section 41 Staged implementation of share management fisheries

Omit "an interim Management Advisory Committee for the fishery is established" from section 41 (b).

Insert instead "an advisory group may be established".

[23] Section 41A, Division 2A of Part 3, sections 50 (7), 73A and 77A

Omit the provisions.

[24] Section 44 Omission of share management fishery

Omit section 44 (8). Insert at the end of section 44:

Division 4A permits a fishery to be redefined, without payment of compensation, if the redefinition proposal has majority support.

[25] Part 3, Division 4A

Insert after Division 4:

Division 4A – Redefinition proposals

55A Minister may put forward redefinition proposal

- (1) The Minister may put a redefinition proposal to shareholders in one or more share management fisheries.
- (2) In this Division, a "**redefinition proposal**" is a proposal to do any or all of the following:
 - (a) to change the description of one or more share management fisheries in Schedule 1,
 - (b) to amalgamate 2 or more classes of shares in one or more share management fisheries,
 - (c) to replace one or more classes of shares in one or more share management fisheries with one or more new or existing classes of shares.
- (3) A redefinition proposal may involve the cancellation of shares, the issue of new shares or the reissue of shares.

55B Notice of redefinition proposal

- (1) If the Minister decides to put a redefinition proposal to shareholders, the Minister is to give public notice of the redefinition proposal.

- (2) For the purposes of this section, "**public notice**" is notice:
 - (a) published in the Gazette, and
 - (b) published in any other way the Minister considers appropriate, and
 - (c) given to each shareholder affected by the redefinition proposal.
- (3) The public notice must:
 - (a) describe the redefinition proposal, and
 - (b) specify the redefinition arrangements for the redefinition proposal, and
 - (c) invite shareholders affected by the redefinition proposal to vote on the redefinition proposal, and
 - (d) set out the arrangements for voting on the redefinition proposal, and
 - (e) contain such other information as the Minister considers appropriate.
- (4) A public notice may be varied by further public notice under this section.
- (5) In this Division, "**redefinition arrangements**" are the proposed arrangements for the implementation of a redefinition proposal, including arrangements relating to the issue, cancellation or reissue of shares if the redefinition proposal is proceeded with.

55C Shareholders who are affected by a redefinition proposal For the purposes of this Division, a shareholder is "**affected**" by a redefinition proposal if:

- (a) in the case of a redefinition proposal that involves a change to a description of one or more share management fisheries in Schedule 1--the shareholder is a shareholder in a fishery the description of which will be changed under the proposal, and
- (b) in the case of a redefinition proposal that involves the amalgamation of classes of shares or replacing classes of shares--the shareholder holds a class of shares concerned.

55D Poll on redefinition proposal

- (1) The Secretary may arrange for the conduct of a poll of shareholders affected by a redefinition proposal for the purposes of determining whether there is majority support for the redefinition proposal.
- (2) For the purposes of a poll under this section, each shareholder is entitled to no more than one vote regardless of the number of shares held.
- (3) A corporation that is a shareholder is required to nominate a single individual to vote in the poll on behalf of the corporation. The individual so nominated is taken, for the purposes of the poll, to be the shareholder of the shares held by the corporation.
- (4) Two or more persons who hold a share jointly are required to nominate a single individual to vote in the poll on behalf of the joint shareholders. The individual so nominated is taken, for the purposes of the poll, to be the shareholder of the shares held jointly.
- (5) The regulations may make further provision for or with respect to polls under this Division.

55E Outcome of poll

- (1) Following the conduct of a poll, the Secretary is to determine whether, on the basis of the poll, the redefinition proposal has majority support.
- (2) The question of whether a redefinition proposal has majority support is to be determined in accordance with the regulations.
- (3) The regulations may provide that shareholders who fail to vote in a poll are to be disregarded when determining whether a redefinition proposal has majority support.
- (4) The regulations may provide for the weighting of votes on the basis of the number of shares held by a shareholder affected by a redefinition proposal.
- (5) Following the conduct of a poll, the Secretary may issue a certificate that

specifies:

- (a) the date on which the poll was conducted, and
- (b) the results of the poll, and
- (c) whether, on the basis of those results, the redefinition proposal has majority support.

(6) A certificate issued under this section is admissible in evidence in any proceedings and is prima facie evidence of the matters certified in the certificate.

(7) The Minister is to publicise the results of the poll by giving notice of the results to shareholders affected by the redefinition proposal and in such other manner (if any) as the Minister considers appropriate.

55F Power to implement redefinition proposal that has majority support

(1) If a redefinition proposal has majority support, the Minister may implement the redefinition proposal, including by cancelling shares and issuing or re-issuing shares as contemplated by the redefinition arrangements for the redefinition proposal.

(2) The regulations may make further provision for the implementation of redefinition proposals.

(3) Section 45 does not apply to the redefinition of an existing share management fishery under a redefinition proposal that has majority support.

(4) No compensation (including damages or any other form of compensation) is payable because of the cancellation of shares under this section or anything else that is done to implement a redefinition proposal that has majority support.

(5) Subsection (4) does not apply to compensation (if any) that is expressly offered to shareholders under a redefinition proposal.

55G Power to redefine fishery with shareholder support

(1) The Governor may, by proclamation made on the recommendation of the Minister and published on the NSW legislation website, amend Schedule 1 by inserting or omitting the description of a fishery.

(2) The Minister is to recommend the making of a proclamation under this section only if the Minister has issued a certificate that certifies that the purpose of the proclamation is to give effect to a redefinition proposal that has majority support.

(3) Any defect in the certificate does not affect the validity of a proclamation made under this section.

(4) Section 44 does not apply if a description of a share management fishery is omitted from Schedule 1 under this section.

[26] Section 57 Content of management plan

Insert after section 57 (1):

(1A) To avoid doubt, a provision of this Act that confers power to make regulations for or with respect to a matter also confers power to include provisions in a management plan for a share management fishery for or with respect to that matter.

(1B) Accordingly, a reference in this Act (however expressed) to anything provided for, prescribed by or required by the regulations includes, in relation to a share management fishery, a reference to anything provided for, prescribed by or required by the management plan for the fishery.

[27] Section 58 Public and industry consultation

Omit section 58 (2). Insert instead:

(2) The Minister is to consult on the proposed plan with any advisory councils or advisory groups representing commercial or recreational fishing interests, indigenous interests or conservation interests that the Minister considers to have a sufficient interest in the plan.

[28] Section 58 (3)

Insert after section 58 (2):

(3) This section does not apply to an amendment of a management plan for a fishery or of a supporting plan.

[29] Section 62 Plan prevails over other regulations

Omit "or any fishing closure" from section 62 (1).

[30] Section 62 (2)

Omit "or fishing closure".

[31] Section 62 (3) and (4)

Omit the subsections.

[32] Section 63 Fisheries reviews--new plan

Omit "the Management Advisory Committee for the fishery," from section 63 (3).

Insert instead "any relevant advisory group".

[33] Section 66 Who may fish in share management fisheries

Omit section 66 (b). Insert instead:

(b) if the management plan fixes a minimum shareholding to take fish in the fishery that applies to the holder--the holder has not less than the minimum shareholding required, and

[34] Section 67 Minimum shareholding required to fish

Omit section 67 (1). Insert instead:

(1) The management plan for a share management fishery may fix a minimum shareholding required to take fish in the fishery.

(1A) A person who holds shares in the fishery is not entitled to take fish in the fishery or to nominate another person to do so on his or her behalf unless the person has the minimum shareholding required to take fish in the fishery.

[35] Section 68 Endorsements on licences

Omit "required under this Division," from section 68 (3) (b).

[36] Section 68 (3) (b)

Insert "(if the management plan for the fishery fixes such minimums)" after "concerned".

[37] Section 68 (9)

Omit "the requirement for a minimum shareholding does not apply and".

[38] Section 69 Nomination of commercial fisher by holder of shares

Omit section 69 (2). Insert instead:

(2) If the management plan for the fishery fixes a minimum shareholding required to take fish in the fishery that applies to the holder, the holder may not take fish in the fishery unless the holder has at least the minimum shareholding required to take fish in the fishery.

[39] Section 69 (3)

Insert "prescribed by the regulations or (subject to the regulations)" after "manner".

[40] Section 70 Special endorsements to take fish in share management fishery

Omit "the Management Advisory Committee for the fishery, and with any other relevant commercial or recreational fishing industry bodies" from section 70 (2).

Insert instead "any relevant advisory council or advisory group".

[41] Section 70 (2A)

Insert after section 70 (2):

(2A) The Minister is to issue endorsements under this section in accordance with the criteria (if any) specified in the management plan for the fishery.

[42] Section 70 (4) (b)

Omit "of 6 months or such shorter period as is".

[43] Section 71A Issue of further classes of shares in fishery

Omit section 71A (3) and (4).

[44] Section 71A (6)

Insert after section 71A (5):

(6) To avoid doubt, Division 3 does not apply to the issue of further classes of shares under a management plan.

[45] Section 72 Maximum shareholding permitted

Omit section 72 (1)-(3). Insert instead:

(1) The management plan for a share management fishery may fix a maximum shareholding for the fishery.

(2) Different maximum shareholdings may be fixed for different classes of shares.

[46] Section 73 Duration of shareholding

Omit "category 1" from section 73 (1).

[47] Section 74 Surrender of shares

Omit section 74 (2) and (3). Insert instead:

(2) The Minister may retain, cancel, reissue or sell shares that are surrendered.

(3) If the Minister cancels the shares, new shares are not to be issued in their place.

(4) If the Minister sells surrendered shares, the Minister may pay up to 85% of the purchase price to the holder of the shares. The balance of the purchase price, after deduction of sale expenses and shareholder dues, is to be credited to the Consolidated Fund.

(5) During any period in which surrendered shares are retained by the Minister, the Minister is not liable for any fisheries management charge in respect of those shares.

(6) In this section: "**sale expenses**" means expenses reasonably incurred in connection with a sale of shares. "**shareholder dues**" means any amount owed by a shareholder in connection with shares that would, on payment, be paid into the Commercial Fishing Trust Fund.

[48] Section 75 Forfeiture of shares for certain contraventions of Act

Insert "order of" after "forfeiture of shares by" in section 75 (4).

[49] Section 75 (5)-(10)

Omit the subsections.

[50] Sections 75A and 75B

Insert after section 75:

75A Payment for fish taken in contravention of quota or forfeiture of shares

- (1) A shareholder who, during any period, takes fish in contravention of the shareholder's quota (whether personally or by means of a nominated fisher) is required to pay to the Secretary the value of the fish so taken. The amount paid is to be credited to the Consolidated Fund.
- (2) If the amount required to be paid by the shareholder is not paid within the time specified by the Minister in a written notice to the shareholder, the Minister may direct that the requisite number of shares of the shareholder are forfeited.
- (3) The "**requisite number**" of shares is the number of shares that, if sold by public tender, would in the Minister's opinion raise an amount equivalent to the amount required to be paid by the shareholder.
- (4) If the shareholder does not have sufficient shares, the balance of the amount required to be paid by the shareholder may be recovered by the Minister as a debt in a court of competent jurisdiction.
- (5) The value of fish for the purposes of this section is the value that the Minister considers to be the market value of the fish. If the Minister is satisfied that the shareholder did not intend to contravene the shareholder's quota, the Minister is to reduce the value by the amount the Minister considers appropriate for the costs incurred by the shareholder in taking the fish.
- (6) For the purposes of this section, fish taken by a shareholder include fish taken on behalf of the shareholder by a commercial fisher duly nominated by the shareholder under this Part.
- (7) Nothing in this section precludes proceedings being taken for an offence against this Act or the regulations.
- (8) The management plan for a fishery may provide that this section does not apply in specified circumstances to the taking of fish in the fishery.

75B How forfeited shares are to be dealt with

- (1) The Minister may retain, cancel, reissue or sell shares that are forfeited.
- (2) Any forfeited shares that are sold by the Minister are to be sold by public tender.
- (3) The purchase price for forfeited shares that are sold is to be paid to the credit of the Consolidated Fund, subject to this section.
- (4) If any amount is due under this Part in respect of the forfeited shares that would, on payment, be paid into the Commercial Fishing Trust Fund, that amount is to be deducted from the purchase price and paid to the credit of the Commercial Fishing Trust Fund and the balance after payment is to be paid to the credit of the Consolidated Fund.
- (5) If shares forfeited for a failure by the shareholder to pay a community contribution or other amount due under this Part are sold, the following provisions apply:
 - (a) any community contribution due under this Part is to be deducted from the purchase price and paid to the credit of the Consolidated Fund,
 - (b) any other amount due under this Part that would, on payment, be paid into the Commercial Fishing Trust Fund is to be deducted from the purchase price and paid to the credit of the Commercial Fishing Trust Fund,
 - (c) any reasonable costs incurred by or on behalf of the Minister in connection with the sale of the shares are to be deducted from the purchase price and paid to the credit of the Consolidated Fund,

(d) the balance (if any) remaining after payment of the amounts referred to in paragraphs (a)-(c) is to be paid to the shareholder.

(6) The regulations may authorise or require the payment of any part of the purchase price to a person (other than the shareholder) who had an interest in the shares. Any such payment may be made only after payment of the amounts referred to in subsection (5) (a)-(c).

(7) The Minister may recover from a person, as a debt in any court of competent jurisdiction, any reasonable costs incurred by or on behalf of the Minister in selling shares forfeited by the person, being costs not otherwise recovered as provided by this section.

(8) If shares forfeited for a failure by the shareholder to pay a community contribution or other amount due under this Part are not sold, the Minister is to deduct the sale value of the shares from the amount owed by the shareholder.

(9) The "**sale value**" of shares is the purchase price that the Minister considers would be obtained if the shares were sold by public tender, minus the reasonable costs that would be incurred in connection with the sale.

(10) During any period in which forfeited shares are retained by the Minister, the Minister is not liable for any fisheries management charge in respect of those shares.

[51] Section 76 Management charges

Omit "the Management Advisory Committee for the fishery" from section 76 (8).

Insert instead "any relevant advisory group for the fishery".

[52] Section 77 Community contribution for access to share management fishery

Omit "category 1" from section 77 (1).

[53] Part 3, Division 8

Omit the Division.

[54] Section 88A

Insert before section 89:

88A Definitions In this Division: "**dealing**" in a share means any transaction that purports to have the effect of transferring, assigning, transmitting, mortgaging or otherwise creating any interest in a share in a share management fishery. "**prohibited dealing**" in a share means any dealing that would result in a shareholder acquiring more shares in a fishery than is permitted by this Act or that would otherwise contravene this Act.

[55] Sections 91-91B

Omit section 91. Insert instead:

91 Registration of dealings in shares A dealing in a share does not have effect until it is registered in the Share Register.

91A Online registration of dealings

(1) A party to a dealing may register the dealing by means of the online trading system.

(2) A person must not use the online trading system for the purpose of registering a prohibited dealing. Maximum penalty: 50 penalty units.

(3) The regulations may prescribe the fees payable for use of the online trading system.

(4) In this section: "**online trading system**" means a system or facility for electronic communication approved by the Secretary that enables the registration

of dealings in the Share Register.

91B Paper-based registration of dealings

- (1) A party to a dealing in a share may make an application to the Secretary for the dealing to be registered.
- (2) Such an application must be in a form approved by the Secretary and must be accompanied by:
 - (a) the document that embodies the dealing, and
 - (b) a document setting out such particulars (if any) as are prescribed by the regulations for the purposes of this paragraph, and
 - (c) duplicates of the documents referred to in paragraphs (a) and (b), and
 - (d) such fee (if any) as is prescribed by the regulations.
- (3) If such an application is approved by the Secretary, the Secretary must:
 - (a) register the dealing by entering in the Share Register particulars of the name of the person acquiring the interest and a description of the dealing, and
 - (b) endorse on the document relating to the dealing and the duplicate of that document the fact of the entry having been made, together with the date and time of the making of the entry.
- (4) When those entries in the Share Register have been made:
 - (a) the duplicate of the document relating to the dealing is to be retained by the Secretary and made available for inspection in accordance with this Division, and
 - (b) the original document is to be returned to the person who made the application for registration.
- (5) The Secretary is not to register a dealing in a share in any share management fishery if the dealing is a prohibited dealing.

[56] Section 96 Secretary not concerned as to the effect of documents lodged for registration

Omit "under section 91 (Registration of dealings in shares)".

Insert instead "in connection with an application for registration of a dealing".

[57] Section 97 Inspection of Share Register and registered documents

Omit "in accordance with section 91 (Registration of dealings in shares)" from section 97 (1).

Insert instead "in accordance with section 91B (Paper-based registration of dealings)".

[58] Section 97 (3)

Insert after section 97 (2):

- (3) The Secretary is not required to make information available for inspection under this section if the information is of a type specified by the regulations to be excluded from this section.

[59] Section 98 Evidentiary provisions

Omit "under section 91 (Registration of dealings in shares)" from section 98 (4).

Insert instead "under section 91B (Paper-based registration of dealings)".

[60] Section 99 Correction of Share Register

Insert at the end of the section:

- (2) If a prohibited dealing in a share is registered in the Register, the Secretary may take

any steps necessary to rectify the Register and restore the integrity of the Register.
(3) The actions that the Secretary is authorised to take under this section include the following:

- (a) cancelling or amending the registration of a dealing,
- (b) making a new recording in the Register.

(4) The Secretary may pay compensation to any person who, in the opinion of the Secretary, is unfairly disadvantaged by action taken by the Secretary under this section.

[61] Section 106

Insert after section 105:

106 Use of crew members The holder of a commercial fishing licence must not take fish for sale with the assistance of any other person (a "**crew member**") unless the use of the crew member to assist in the taking of fish for sale is authorised by the holder's commercial fishing licence. Maximum penalty: 50 penalty units.

[62] Part 4, Division 2

Omit the Division. Insert instead:

Division 2 – Fishing boat licences

107 Licence required to use boat for declared commercial fishing boat activities

- (1) A boat may be used for the purpose of a declared commercial fishing boat activity only if a fishing boat licence authorises the use of the boat for declared commercial fishing boat activities.
- (2) For the purposes of this Division, a "**declared commercial fishing boat activity**" is any commercial fishing boat activity declared by the regulations to be a commercial fishing boat activity for which a fishing boat licence is required.
- (3) A "**commercial fishing boat activity**" is any activity involving the use of a boat:
 - (a) to take fish for sale from waters to which this Act applies, or
 - (b) to land fish in New South Wales that were taken from other waters (after the boat departed from a port in New South Wales).
- (4) The regulations may provide that a boat licensed under a law of the Commonwealth or of another State or a Territory is taken to be authorised to be used for the purposes of declared commercial fishing boat activities.

107A Offence of engaging in unlicensed activity

- (1) The master of a boat must not use the boat, or permit the boat to be used, for a declared commercial fishing boat activity unless authorised to do so by a fishing boat licence. Maximum penalty: 100 penalty units.
- (2) The use of a boat for a declared commercial fishing boat activity is authorised by a fishing boat licence only if:
 - (a) the master of the boat is the holder of a fishing boat licence or acting with the consent of the holder of a fishing boat licence, and
 - (b) the boat is being used in accordance with that fishing boat licence.

107B Fishing boat licences

- (1) The Minister may issue to a person a licence (a "**fishing boat licence**") that authorises a boat to be used for declared commercial fishing boat activities.
- (2) A fishing boat licence authorises the use of a single boat for all declared commercial fishing boat activities.
- (3) A fishing boat licence may be issued whether or not the applicant for the licence is able to provide identification details for the boat to be used under the authority of the licence.
- (4) The holder of a fishing boat licence must not use a boat, or permit a boat to be used, for a declared commercial fishing boat activity under the authority of

purported authority of the licence unless the holder has given the Secretary notice of the identification details for the boat to be used. Maximum penalty: 10 penalty units.

(5) The notice must be given in a form approved by the Secretary.

(6) In this section, the "**identification details**" for a boat means such details as the Secretary requires to identify a boat.

108 Provisions relating to fishing boat licences

(1) A person may apply to the Minister for the issue of a fishing boat licence.

(2) An application is to be in the form approved by the Minister.

(3) The Minister is required to issue a fishing boat licence if application for the licence is duly made unless the Minister is authorised by the regulations to refuse the application.

(4) A fishing boat licence:

(a) is subject to such conditions as are prescribed by the regulations or specified in the licence, and

(b) remains in force for such period as is specified in the licence, and

(c) may be renewed from time to time in accordance with the regulations, and

(d) may be cancelled or suspended by the Minister in the circumstances authorised by the regulations.

(5) The regulations may prescribe different classes of fishing boat licences.

(6) The Minister may, at any time by notice in writing to the holder of a fishing boat licence, revoke or vary the conditions of the licence or add new conditions. This subsection does not apply to conditions prescribed by the regulations.

(7) The holder of a fishing boat licence who contravenes any condition of the licence is guilty of an offence. Maximum penalty: 100 penalty units.

(8) The regulations may make provision for or with respect to fishing boat licences. In particular, the regulations may prescribe the fee or fees payable in respect of an application for the issue or renewal of a licence.

109 Boat marking requirements for fishing boats (including boats exempt from licensing)

(1) This section applies to a boat used for a commercial fishing boat activity that has been declared (or that could be but has not been declared) under section 107 as a commercial fishing boat activity for which a fishing boat licence is required.

(2) The master of a boat to which this section applies, must not use the boat, or permit the boat to be used for a commercial fishing boat activity unless the boat is identified, in the manner required by the regulations, as a commercial fishing boat. Maximum penalty: 100 penalty units.

110 Evidentiary provision In any proceedings under this Act, evidence that a boat was being used or purportedly being used under the authority of a fishing boat licence, is evidence that fish taken by the use of the boat, or landed from the boat, were fish taken for sale.

[63] Section 115A Payment of contribution to industry costs

Omit ", if the regulations so require, pay to the Minister an annual contribution" from section 115A (1).

Insert instead "pay to the Minister a contribution".

[64] Section 115A (3)-(4C)

Omit section 115A (3) and (4). Insert instead:

(3) The Minister may, subject to this section, determine the contribution payable by participants in a restricted fishery under this section.

(4) The contribution is to be such amount as the Minister considers necessary to meet the

costs referred to in subsection (1).

(4A) The contribution is not to exceed the amount prescribed by the regulations.

(4B) The contribution is payable annually or as otherwise determined by the Minister.

(4C) The Minister may authorise the payment of a contribution under this section by instalments.

[65] Section 115A (7)

Omit "annual".

[66] Section 121 Records to be made by commercial fishers

Omit section 121 (5). Insert instead:

(5) A commercial fisher who is required to make a record under this section must, if the regulations so require, ensure that a copy of the record is sent to the Secretary:

(a) in a form and manner prescribed by the regulations or (subject to the regulations) approved by the Secretary, and

(b) within such period as the regulations prescribe.

Maximum penalty: 10 penalty units.

[67] Section 122 Records to be made by employers of commercial fishers

Omit section 122 (6). Insert instead:

(6) A fishing employer who is required to make a record under this section must, if the regulations so require, ensure that a copy of the record is sent to the Secretary:

(a) in a form and manner prescribed by the regulations or (subject to the regulations) approved by the Secretary, and

(b) within such period as the regulations prescribe.

Maximum penalty: 10 penalty units.

[68] Section 122A Records to be made by fish receivers

Omit section 122A (4). Insert instead:

(4) A registered fish receiver who is required to make a record under this section must, if the regulations so require, ensure that a copy of the record is sent to the Secretary:

(a) in a form and manner prescribed by the regulations or (subject to the regulations) approved by the Secretary, and

(b) within such period as the regulations prescribe.

Maximum penalty: 10 penalty units.

[69] Section 123 Records to be made by sellers

Insert after section 123 (6):

(7) A record required to be made under this section is to be made in such form and manner as is prescribed by the regulations or (subject to the regulations) approved by the Minister.

(8) A requirement to deliver, obtain or retain a record under this section is satisfied if the record is delivered, obtained or retained in accordance with the regulations or (subject to the regulations) the approval of the Minister.

[70] Section 123A Records of possession of fish

Insert after section 123A (6):

(6A) A record required to be produced under this section is to be produced in such form and manner as is prescribed by the regulations or (subject to the regulations) approved by the Minister.

[71] Part 4, Division 5A

Insert after Division 5:

Division 5A – Fishing reports

124A Real time reporting

- (1) The regulations may require commercial fishers, or any specified class of commercial fishers, to report to the Secretary about any commercial fishing activities or proposed commercial fishing activities.
- (2) In particular, the regulations may require a report to be made of the following:
 - (a) particulars of when and where a commercial fisher proposes to take fish,
 - (b) particulars of when and where a commercial fisher proposes to land the catch and the estimated composition and amount of the catch,
 - (c) particulars of when and where the commercial fisher lands the catch and the composition and amount of the landed catch.
- (3) The report must be made using the real time reporting system:
 - (a) within such period as the regulations prescribe, and
 - (b) in a form and manner approved by the Minister.
- (4) The regulations may provide for an alternative method of making the report in the event that the real time reporting system malfunctions or is not available for any reason.
- (5) A commercial fisher who fails to make a report as required by or under this section is guilty of an offence. Maximum penalty:
 - (a) 200 penalty units or imprisonment for 3 months (or both) for a first offence, or
 - (b) 400 penalty units or imprisonment for 6 months (or both) for a second or subsequent offence.
- (6) In this section: "**real time reporting system**" means a system or facility, approved by the Secretary for the purposes of this section, that enables the making of reports under this section by oral communication or electronic transmission.

124B False reports A person who, in any report provided under this Division, knowingly provides any information that is false or misleading in a material particular is guilty of an offence. Maximum penalty: 200 penalty units or imprisonment for 3 months, or both.

[72] Part 4A, Division 1

Insert before section 127A:

Division 1 – Preliminary

127 Definitions In this Part: "**charter fishing activity**" --see section 127A. "**charter fishing business**" means a business that provides a charter fishing activity. "**charter fishing business transfer rules**" means the rules referred to in section 127J. "**declared charter fishing activity**" --see section 127B. "**employed guide**" means a person employed or engaged to guide, supervise or instruct persons who engage in recreational fishing activities as part of a charter fishing activity. "**guided non-motorised activity**" --see section 127AA. "**recognised charter fishing business**" --see section 127G. "**responsible person**" for a charter fishing activity means:

- (a) the master of a boat being used for the charter fishing activity (if the activity is not a guided non-motorised activity), or
- (b) an employed guide in relation to the charter fishing activity (if the activity is a guided non-motorised activity).

"**seat**" --see section 127AB. "**transfer**" of a recognised charter fishing business or a component of a recognised charter fishing business means the transfer, transmission, conveyance or assignment of a recognised charter fishing business or component of a recognised charter fishing business, and includes any other dealing in a recognised charter fishing business or component of a recognised charter fishing business of a kind prescribed by the regulations.

[73] Section 127A Meaning of "charter fishing activity"

Omit section 127A (1). Insert instead:

(1) A "**charter fishing activity**" is an activity in which a boat is used for recreational fishing activities on a commercial basis.

(1A) The recreational fishing activities need not take place in waters within the limits of the State.

[74] Section 127A (2) (c)

Insert "used or" after "the boat is".

[75] Sections 127AA and 127AB

Insert after section 127A:

127AA Guided non-motorised activity

(1) A "**guided non-motorised activity**" is any charter fishing activity in which one or more manually operated boats are used by one or more persons, in the presence of an employed guide, for recreational fishing activities.

(2) In this section, a "**manually operated boat**" means a canoe, kayak or other boat of a kind prescribed by the regulations.

127AB Seats available for use in charter fishing activities

(1) A "**seat**" is a notional seat or position in a boat that can be used or made available for use by a charter fishing client when the boat is used for a charter fishing activity.

(2) The "**class**" of the seat is the class assigned to the seat by the Secretary, on the basis of the class of charter fishing activities for which the seat may be used or made available.

(3) In this section, a "**charter fishing client**" means any person on board a boat being used for a charter fishing activity, excluding:

- (a) in the case of a guided non-motorised activity--an employed guide, or
- (b) in any other case--the master of the boat or a crew member.

[76] Part 4A, Division 2, heading

Insert before section 127B:

Division 2Â Charter fishing licences

Charter fishing licences

[77] Sections 127B-127CC

Omit sections 127B and 127C. Insert instead:

127B Certain charter fishing activities require licence

(1) A boat may be used for the purpose of a declared charter fishing activity only if that activity is authorised by a charter fishing licence.

(2) For the purposes of this Part, a "**declared charter fishing activity**" is any charter fishing activity declared by the regulations to be a charter fishing activity for which a charter fishing licence is required.

(3) The regulations may provide that a boat licensed or otherwise authorised under a law of the Commonwealth or of another State or a Territory to be used for a charter fishing activity is taken to be authorised under this Part for use in all or any specified declared charter fishing activities.

127C Offence for providing unauthorised charter fishing activity A person must not provide, or hold out that the person is able to provide, a declared charter fishing activity unless the person:

- (a) is the holder of a charter fishing licence or acting with the consent of the

- holder of a charter fishing licence, and
- (b) the licence authorises the charter fishing activity concerned.

Maximum penalty:

- (a) in the case of an individual:
 - (i) 200 penalty units or imprisonment for 6 months (or both) for a first offence, or
 - (ii) 400 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence, or
- (b) in the case of a corporation:
 - (i) 400 penalty units for a first offence, or
 - (ii) 800 penalty units for a second or subsequent offence.

127CA Responsible person to ensure charter fishing activity is authorised by licence

(1) The responsible person for a charter fishing activity that is a declared charter fishing activity must not use a boat, or permit a boat to be used, for that charter fishing activity unless authorised to do so by a charter fishing licence. Maximum penalty:

- (a) in the case of an individual:
 - (i) 200 penalty units or imprisonment for 6 months (or both) for a first offence, or
 - (ii) 400 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence, or
- (b) in the case of a corporation:
 - (i) 400 penalty units for a first offence, or
 - (ii) 800 penalty units for a second or subsequent offence.

(2) The use of a boat for a charter fishing activity is authorised by a charter fishing licence only if:

- (a) the responsible person is the holder of a charter fishing licence or acting with the consent of the holder of a charter fishing licence, and
- (b) the licence authorises the use of a boat for the charter fishing activity concerned, and
- (c) the responsible person is in physical possession of that licence at the time that the boat is used for the charter fishing activity, and
- (d) the boat is being used in accordance with that licence.

(3) An employed guide for a guided non-motorised activity is taken to permit a boat to be used for a guided non-motorised activity when the employed guide acts as an employed guide in relation to that activity.

127CB Provisions relating to charter fishing licences

(1) The Minister may issue to a person a licence (a "**charter fishing licence**") that authorises a boat to be used for any specified declared charter fishing activity.

(2) A charter fishing licence authorises the use of a single boat at any given time for the specified declared charter fishing activity, unless the charter fishing activity is a guided non-motorised activity.

(3) A charter fishing licence that authorises a guided non-motorised activity authorises the use of a specified number of boats for the activity.

(4) The boat or boats to be used for the specified declared charter fishing activity need not be identified by the licence, but must comply with any requirements specified in the licence or in the conditions of the licence.

(5) A charter fishing licence:

- (a) is subject to such conditions as are prescribed by the regulations or specified in the licence, and
- (b) remains in force for such period as is specified in the licence, and
- (c) may be renewed from time to time in accordance with the regulations, and
- (d) may be cancelled or suspended by the Minister in the circumstances authorised by the regulations.

(6) The regulations may prescribe different classes of charter fishing licences.

(7) The Minister may, at any time, by notice in writing to the holder of a charter fishing licence, revoke or vary the conditions of the licence or add new conditions. This subsection does not apply to conditions prescribed by the regulations.

(8) The holder of a charter fishing licence who contravenes any condition of the licence, or causes or permits any condition of the licence to be contravened, is guilty of an offence. Maximum penalty:

(a) in the case of an individual:

(i) 200 penalty units or imprisonment for 6 months (or both) for a first offence, or

(ii) 400 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence, or

(b) in the case of a corporation:

(i) 400 penalty units for a first offence, or

(ii) 800 penalty units for a second or subsequent offence.

(9) The regulations may make provision for or with respect to charter fishing licences. In particular, the regulations:

(a) may make provision for or with respect to permitting, prohibiting or restricting the use of a boat for both declared charter fishing activities and for declared commercial fishing boat activities (within the meaning of Division 2 of Part 4), and

(b) may prescribe the fee or fees payable in respect of an application for the issue or renewal of a licence.

127CC Applications for charter fishing licences

(1) A person may apply to the Minister for the issue of a charter fishing licence.

(2) An application is to be in the form approved by the Minister.

(3) The Minister is required to issue a charter fishing licence if an application for the licence is duly made, unless the Minister is authorised or required by the regulations to refuse the application.

(4) Without limiting subsection (3), the regulations may authorise or require the Minister to refuse an application because of any applicable restriction on the issue of charter fishing licences (including the maximum number that may be issued) under a management plan prescribed by the regulations for the charter fishing industry.

[78] Section 127D Annual contribution to industry costs

Omit "boat licence" wherever occurring in section 127D (1) and (7).

Insert instead "licence".

[79] Section 127E Responsible person to make records of fishing activities

Omit section 127E (1). Insert instead:

(1) The responsible person for a charter fishing activity must make such records as the regulations require about any declared charter fishing activity for which the person is a responsible person.

[80] Section 127E (2)

Omit "master of a charter fishing boat". Insert instead "responsible person".

[81] Section 127E (2) (a)

Omit "recreational fishing activities". Insert instead "declared charter fishing activities".

[82] Section 127E (2) (e)

Omit the paragraph. Insert instead:

(e) any period in which the responsible person did not engage in declared charter fishing activities (that is, use a boat or permit a boat to be used for declared charter fishing activities).

[83] Section 127E (4) and (5)

Omit "master of a charter fishing boat" wherever occurring.

Insert instead "responsible person".

[84] Section 127EA Records of declared charter fishing activities--licence holder

Omit section 127EA (1). Insert instead:

(1) The holder of a charter fishing licence must make such records as the regulations require about declared charter fishing activities that are engaged in under the authority of the licence.

[85] Section 127EA (2) (a)

Omit "recreational fishing activities". Insert instead "declared charter fishing activities".

[86] Section 127EA (2) (e)

Omit the paragraph. Insert instead:

(e) any period in which declared charter fishing activities were not engaged in under the authority of the licence.

[87] Section 127EA (4) and (6)

Omit "boat" wherever occurring.

[88] Section 127EA (5)

Omit the subsection. Insert instead:

(5) The responsible person for a charter fishing activity carried out under the authority of a charter fishing licence must not fail to provide the holder of the licence with such information concerning the charter fishing activity as the licence holder may reasonably require to comply with this section. Maximum penalty: 200 penalty units.

[89] Section 127EA (7)

Omit "boat licence is also master of the boat".

Insert instead "licence is also the responsible person for charter fishing activities carried out under the licence".

[90] Section 127F Appeal rights

Omit "boat licence". Insert instead "licence".

[91] Part 4A, Division 3

Insert after section 127F:

Division 3 – Charter fishing businesses and transfer rules

127G Charter fishing business determinations

(1) The Secretary may, from time to time, determine:

(a) that a business that the Secretary considers to be a separate and identifiable charter fishing business is a recognised charter fishing business, and

(b) the charter fishing licences that are components of that charter fishing

business, and

(c) the number and class of seats that are components of that charter fishing business.

(2) A charter fishing licence is a component of a charter fishing business if the Secretary considers that the charter fishing licence is held in connection with the charter fishing business.

(3) A seat is a component of a charter fishing business if the Secretary considers that the seat is available for use by that business under a charter fishing licence held in connection with the charter fishing business.

(4) For the purposes of this Act:

(a) a "**recognised charter fishing business**" is a business determined by the Secretary to be a recognised charter fishing business under this section, and

(b) the charter fishing business is comprised of those components that are determined by the Secretary to be components of the charter fishing business.

(5) The Secretary may, from time to time, amend or revoke a determination under this section by making a further determination.

(6) A determination by the Secretary under this section is called a "**charter fishing business determination**".

(7) A charter fishing business determination is to be made in accordance with this Act and any requirements of the regulations.

(8) The Secretary may make a charter fishing business determination at any time:

(a) on his or her own initiative, or

(b) on an application made, in a form and manner approved by the Secretary, by the person or persons who own the business in respect of which the determination is sought.

(9) The Secretary is required to give the person or persons who own a business that is the subject of a charter fishing business determination notice in writing of the determination.

(10) A reference in or under this Act to the "**owner of a charter fishing business**" is a reference to the person or persons who, from time to time, own a business that is, or has been, determined to be a recognised charter fishing business by the Secretary under this section.

127H Allocation of charter fishing business number

(1) The Secretary is to allocate a unique identification number to each recognised charter fishing business.

(2) The Secretary may endorse a charter fishing licence that is a component of a recognised charter fishing business with the number allocated to the charter fishing business.

127I Register of charter fishing business determinations

(1) The Secretary is required to keep a register of charter fishing business determinations.

(2) For each charter fishing business determination there is to be recorded in the register:

(a) the name of the person or persons who own the business the subject of the determination, and

(b) the number allocated by the Secretary to the charter fishing business, and

(c) particulars of the components of the charter fishing business, and

(d) such other particulars as are required by the regulations to be recorded in the register in relation to the charter fishing business.

- (3) The register may be kept wholly or partly by means of a computer.
- (4) The register is to be made available for public inspection at the head office of the Department during ordinary business hours.
- (5) If the register is kept wholly or partly by means of a computer, subsection (4) may be complied with by making the contents of the register available on the website of the Department.
- (6) The Secretary may correct any error in or omission from the register.
- (7) A certificate signed or purporting to be signed by the Secretary, or a person employed in the Department who is authorised in writing by the Secretary to exercise the functions conferred by this subsection, that certifies that, on a specified date or during a specified period, the particulars contained in the register as to specified matters were as so specified, is admissible in any proceedings and is evidence of the matters so certified.

127J Charter fishing business transfer rules

- (1) The regulations may make provision for or with respect to the transfer of a recognised charter fishing business (or components of a recognised charter fishing business), including by:
 - (a) prohibiting or restricting any transfer, or specified type of transfer, of a recognised charter fishing business or any component of a recognised charter fishing business, and
 - (b) providing for the recognition of charter fishing rights following the transfer of a recognised charter fishing business or a component of a recognised charter fishing business.
- (2) Such provisions are referred to as "**charter fishing business transfer rules**".
- (3) In particular, the charter fishing business transfer rules may provide that a person to whom a component of a recognised charter fishing business is transferred, or purportedly transferred, does not, as a consequence of that action, acquire any right to hold or be issued with a charter fishing licence unless all components of the recognised charter fishing business are either transferred to the person or surrendered to the Minister for cancellation.
- (4) The charter fishing business transfer rules may authorise the Minister to cancel a charter fishing licence if the licence or any other component of the charter fishing business of which the licence is a component is transferred, or purportedly transferred, in contravention of the charter fishing business transfer rules.
- (5) No compensation is payable by or on behalf of the State for the cancellation of a charter fishing licence in accordance with the charter fishing business transfer rules.

127K Method for transferring charter fishing businesses and their components

- (1) A transfer of a recognised charter fishing business or a component of a recognised charter fishing business must be effected:
 - (a) by electronic transfer (that is, by using the online transfer system), or
 - (b) by manual transfer (that is, by giving the Secretary notice in writing of the transfer).
- (2) The regulations may prescribe fees for the use of the online transfer system.
- (3) For a manual transfer, the notice given to the Secretary must be in an approved form and must be accompanied by the prescribed fee (if any) for manual transfers.
- (4) A transfer of a recognised charter fishing business or a component of a recognised charter fishing business does not take effect until the transfer is confirmed.
- (5) An electronic transfer is confirmed if the online transfer system generates a message to the effect that the transfer is confirmed.
- (6) A manual transfer is confirmed if the Secretary gives notice in writing to the

person lodging the transfer that the transfer has been approved.

(7) If a transfer is confirmed, the Secretary must ensure a new charter fishing business determination is made that recognises the transfer.

(8) This section does not authorise a transfer of a recognised charter fishing business or a component of a recognised charter fishing business contrary to the charter fishing business transfer rules.

(9) In this section: "**online transfer system**" means a facility approved by the Secretary that enables the transfer of recognised charter fishing businesses or their components by electronic communication.

[92] Sections 187B and 187C

Insert after section 187A:

187B Orders to prevent importation of declared diseases from outside State

(1) If the Minister reasonably suspects that a declared disease is present in any premises, place, waters or area outside the State, the Minister may by order (an "**importation order**") absolutely prohibit, or impose conditions on, the entry or importation into the State of any thing specified in the order that, in the opinion of the Minister:

- (a) is or could be a declared disease, or
- (b) is or could be infected with a declared disease, or
- (c) could assist the spread of infection of a declared disease.

(2) An importation order is to be published in the Gazette.

(3) However, if the Minister considers the order is required urgently, the order may be published:

- (a) in a newspaper circulating, or by radio or television broadcast, in the area to which the order applies, or
- (b) on the Department's website.

(4) If an order is published as referred to in subsection (3), the Minister is to publish the order as soon as practicable in the Gazette.

(5) An importation order:

- (a) commences on the day it is published in accordance with this section, or on such later day as may be specified in the order, and
- (b) remains in force for the period (not exceeding 5 years) specified in the order.

(6) Subsection (5) does not prevent the making of a further order under this section.

(7) A person who, without reasonable excuse, causes or permits any thing to enter or be imported into the State in contravention of an importation order is guilty of an offence. Maximum penalty: 200 penalty units or imprisonment for 6 months, or both.

187C Orders to prevent transmission of declared disease

(1) The Minister may, by order, require a live abalone holder to implement specified measures in relation to the waste water or other waste products of a live abalone holding facility, being measures that the Minister considers reasonably necessary to minimise the risk of transmission of a declared disease.

(2) The order may include requirements as to the treatment, storage or disposal of waste water or other waste products.

(3) An order under this section:

- (a) must be served on the live abalone holder, and
- (b) must specify a period by the end of which the measures specified in the order must be taken (the "**compliance period**").

(4) The Minister may, by further order, extend the compliance period.

(5) A person who, without reasonable excuse, fails to comply with an order under

this section within the compliance period is guilty of an offence. Maximum penalty: 200 penalty units or imprisonment for 6 months, or both.

(6) In this section: "**live abalone holder**" means the owner or occupier of premises used as a live abalone holding facility. "**live abalone holding facility**" means premises at which live abalone are held.

[93] Section 199 Circumstances in which a public authority (other than local authority) may carry out dredging or reclamation

Omit "28 days" from section 199 (1) (b). Insert instead "21 days".

[94] Section 201 Circumstances in which a person (other than a public or local government authority) may carry out dredging or reclamation work

Omit "other than" from section 201 (2) (b). Insert instead "including".

[95] Section 203 Minister may order carrying out of certain work

Insert "local government authority or" after "convicts a" in section 203 (2).

[96] Section 203 (2A)

Insert after section 203 (2):

(2A) A local government authority or person who, without reasonable excuse, fails to comply with an order under this section is guilty of an offence. Maximum penalty: In the case of a corporation, 2,000 penalty units or, in any other case, 1,000 penalty units.

[97] Section 203 (6)

Insert after section 203 (5):

(6) For the purposes of this section, a "**conviction**" includes the making of an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999*.

[98] Section 204 Application and interpretation

Omit the definition of "**protected area**" from section 204 (2). Insert instead:

"**protected area**" means any public water land, or any area that is the subject of an aquaculture lease, and includes the foreshore.

[99] Section 213 Destruction of noxious fish or noxious marine vegetation

Omit "take possession of" from section 213 (2). Insert instead "seize, or seize and destroy".

[100] Section 213 (3A)

Insert after section 213 (3):

(3A) An owner or occupier to whom a notice is given must not, without reasonable excuse, fail to comply with the notice. Maximum penalty: In the case of a corporation, 100 penalty units or, in any other case, 50 penalty units.

[101] Section 213 (4)

Omit "such a notice". Insert instead "a notice".

[102] Section 213 (4A)

Insert after section 213 (4):

(4A) Action may be taken against an owner or occupier under subsection (4) regardless of whether the owner or occupier has been charged with failing to comply with a notice under this section.

[103] Section 213 (5A) and (5B)

Insert after section 213 (5):

(5A) Compensation is payable for the seizure and destruction of live fish or live marine vegetation if, after the seizure and destruction, it is determined that the fish or marine vegetation were not noxious.

(5B) The Minister must, if requested to do so by the owner of any fish or marine vegetation seized and destroyed under this section, issue a certificate as to whether or not the fish or marine vegetation were determined to be noxious.

[104] Section 220O Protection measures apart from listing

Omit "bag limits (s 17)" from the note to the section.

Insert instead "prohibitions on recreational fishing (s 20A--fish and waters protected from recreational fishing), bag limits (s 17)".

[105] Section 220O, note

Omit "determination of total allowable catches (ss 26-34)".

Insert instead "fishing determinations and quotas (Part 2A)".

[106] Section 220W Maps of critical habitat

Omit section 220W (3) (a) and (b). Insert instead:

(a) the Secretary of the Department of Planning and Environment,

[107] Section 220ZF Defences

Omit "a permit under section 37" from section 220ZF (1) (a) (iii).

Insert instead "an approval under section 37".

[108] Section 220ZF (1) (f) and (g)

Omit section 220ZF (1) (f). Insert instead:

(f) is identified in, and carried out in accordance with, a property management plan approved by the Secretary under subsection (4) or by the Chief Executive of the Office of Environment and Heritage under section 91 of the *Threatened Species Conservation Act 1995*, or

(g) was an act or omission in relation to which the Secretary issued to the accused a certificate, under section 220ZZ (4), to the effect that a licence was not required for the act or omission concerned.

[109] Section 220ZI Secretary to prepare recovery plans for threatened species, populations and ecological communities

Omit section 220ZI (1) (b). Insert instead:

(b) for each endangered population, and

(b1) for each endangered or critically endangered ecological community, and

[110] Section 220ZJA Joint preparation of recovery and threat abatement plans

Omit section 220ZJA (1) and (2). Insert instead:

(1) The Secretary may, with the prior approval of the Minister and the Minister administering the *Threatened Species Conservation Act 1995*, make arrangements with the Chief Executive of the Office of Environment and Heritage for the joint preparation of a recovery plan or threat abatement plan under this Act and the *Threatened Species Conservation Act 1995*.

(2) In such a case, any function of the Secretary or the Minister under this Part in respect

of the plan may be exercised in conjunction with any corresponding function of the Chief Executive of the Office of Environment and Heritage or the Minister administering the *Threatened Species Conservation Act 1995* in respect of the plan under that Act. For example, the Secretary and the Chief Executive of the Office of Environment and Heritage may jointly publish a notice of the preparation of the plan under section 220ZO of this Act and section 61 or 79 of the *Threatened Species Conservation Act 1995*.

[111] Section 220ZW Licence to harm threatened species, population or ecological community or damage habitat

Omit "A permit under section 37" from section 220ZW (2).

Insert instead "An approval under section 37".

[112] Section 220ZW (2), note

Omit the note. Insert instead:

Section 220ZF provides a defence for offences under Division 4 if the accused proves that the action constituting the alleged offence was a routine fishing, agricultural or aquacultural activity or was authorised by a property management plan approved by the Secretary or by the Chief Executive of the Office of Environment and Heritage.

[113] Section 220ZZ Significant effect on threatened species, populations or ecological communities, or their habitats

Omit "Director" from section 220ZZ (2). Insert instead "Secretary".

[114] Sections 221ZJ (1) (a) and 221ZQ (1) (a)

Omit the paragraphs. Insert instead (in each case):

(a) to the Secretary of the Department of Planning and Environment, and

[115] Section 230

Omit the section. Insert instead:

230 Advisory groups

(1) The Secretary may establish advisory groups under this Act.

(2) The Secretary may:

(a) determine the number of members to be appointed to an advisory group, and

(b) appoint the members of an advisory group, and

(c) determine the functions of an advisory group.

(3) A person may be appointed as a member of an advisory group only if the Secretary is satisfied that the person has skills and experience that are relevant to the functions of the group.

(4) The Secretary may, subject to the regulations, determine the term of office and procedure of an advisory group.

[116] Section 231 Regulations

Omit "committee". Insert instead "group".

[117] Section 231 (2)

Insert at the end of section 231:

(2) The regulations may abolish or provide for the abolition of any advisory council or advisory group established under this Division, including by providing that no remuneration or compensation is payable to a person because of a loss of office arising from that abolition.

[118] Section 233 Establishment of trust funds

Insert after section 233 (1) (d):

(d1) an Aboriginal Fishing Trust Fund,

[119] Section 236 Commercial Fishing Trust Fund

Omit "on commercial fishing established under section 229" from section 236 (3).

[120] Section 236A Charter Fishing Trust Fund

Insert "activities" after "charter fishing" in section 236A (2) (a).

[121] Section 236A (2) (b)

Omit "boat fishing". Insert instead "fishing activities".

[122] Section 236A (2) (c)

Omit "boat operations". Insert instead "activities".

[123] Section 236A (2) (d)

Omit "charter fishing boat regulatory controls".

Insert instead "regulatory controls for charter fishing activities".

[124] Section 236A (2) (e)

Omit "owners and operators of charter fishing boats".

Insert instead "owners of charter fishing businesses and operators of boats used for charter fishing activities".

[125] Section 236A (4)

Insert after section 236A (3):

(4) Expressions used in this section that are defined in Part 4A have the same meanings in this section as they have in that Part.

[126] Section 237A

Insert after section 237:

237A Aboriginal Fishing Trust Fund

(1) There is to be paid into the Aboriginal Fishing Trust Fund:

(a) such amounts as the Minister determines, with the concurrence of the Treasurer, to be paid into the Fund from the following:

(i) fees for services provided by the Department in connection with Aboriginal cultural fishing,

(ii) fees for permits issued under section 37 for Aboriginal cultural fishing,

(iii) the proceeds of the sale of tags, or other identification, to be used on fish taken in connection with Aboriginal cultural fishing,

(iv) money received by the Department for the purposes of enhancing, maintaining or protecting Aboriginal cultural fishing or for the purpose of providing economic development opportunities for Aboriginal communities in relation to fishing or fishing-related activities, and

(b) any gift or bequest of money for the purposes of the Fund, and

(c) any other money appropriated by Parliament for the purposes of the Fund or required by law to be paid into the Fund.

- (2) There may be paid out of that Fund the costs of:
- (a) taking measures to enhance, maintain or protect Aboriginal cultural fishing, and
 - (b) providing economic development opportunities for Aboriginal communities in relation to fishing or fishing-related activities.
- (3) The Minister is to consult any relevant advisory council on Aboriginal cultural fishing about policies and priorities for expenditure from that Fund.

[127] Section 241 Engaging in commercial fishing activities

Omit section 241 (2) (a). Insert instead:

- (a) if the person is in any waters on a boat while it is used, or purportedly used, under the authority of a fishing boat licence, or

[128] Section 242 Construction of powers of search, seizure and related powers

Insert after section 242 (2):

- (3) A power conferred by this Part to search for a record includes a power to search for an electronic recording device.
- (4) A power conferred by this Part to require a record to be produced includes a power to require an electronic recording device to be produced.
- (5) However, a power conferred by this Part to take away a record merely for the purpose of making a copy of the record does not extend to electronic recording devices. However, under section 264 a fisheries officer is permitted to seize anything that is connected with a fisheries offence.
- (6) In this section: "**electronic recording device**" means a computer or other electronic device used or capable of being used for the keeping or transmission of records under this Act.

[129] Section 258 Power to require information

Omit "of a licensed fishing boat" from section 258 (1) (a).

Insert instead "of a boat being used or purportedly being used under the authority of a fishing boat licence".

[130] Section 258B Provisions relating to requirements to provide information or answer questions

Omit "259" from section 258B (3). Insert instead "288D".

[131] Section 259 False information

Omit the section.

[132] Part 9, Division 4B

Insert after Division 4A:

Division 4B – Scientific observer program

275J Definitions

- (1) In this Division: "**charter fishing activity**" has the same meaning as in Part 4A. "**observation authority**" --see section 275M. "**relevant fishing activity**" means:

- (a) a commercial fishing activity, or
- (b) a charter fishing activity.

"**scientific observer**" means a person for the time being appointed under this Division as a scientific observer under the scientific observer program. "**scientific observer program**" means the program referred to in section 275K.

(2) In this Division, a reference to the relevant fishing activities of a person includes a reference to the following:

- (a) any relevant fishing activities that take place under the guidance, supervision or with the assistance of the person,
- (b) any relevant fishing activities that take place on a boat while the person is master of the boat or on board the boat (whether or not the person is involved in the activities).

(3) Accordingly, a power conferred by this Division to observe the relevant fishing activities of a person includes a power to observe the activities referred to in subsection (2).

275K Scientific observer program

(1) The Minister may establish a program (a "**scientific observer program**") for the collection of information about relevant fishing activities.

(2) The purpose of the program is to assist in the administration of this Act.

(3) The following information may be collected under the program:

- (a) information about catch composition,
- (b) information about retained and discarded catch,
- (c) information about species of fish taken,
- (d) information about interactions with endangered species, threatened species or vulnerable species (within the meaning of Part 7A),
- (e) information of a kind prescribed by the regulations,
- (f) information that is ancillary to information referred to in paragraphs (a)-(e), such as information about date, location and time, fishing gear, weather conditions, the boat used (if any) and boat speed.

275L Appointment of scientific observers by Minister

(1) The Minister may appoint any person as a scientific observer under the scientific observer program.

(2) The Minister is to issue an identification document to each scientific observer.

(3) The identification document must state:

- (a) the name of the person to whom it is issued, and
- (b) that the person is a scientific observer under the scientific observer program.

(4) The Minister may, at any time, revoke an appointment of a scientific observer.

275M Authority to observe relevant fishing activities

(1) The Minister may issue an authority (an "**observation authority**") that authorises a scientific observer to observe the relevant fishing activities of any regulated person.

(2) Each of the following persons is a "**regulated person**":

- (a) a commercial fisher,
- (b) a person who holds a fishing boat licence,
- (c) a person who holds a charter fishing licence,
- (d) the master of a boat that is at any time used for relevant fishing activities,
- (e) an employed guide (within the meaning of Part 4A) in relation to a charter fishing activity.

(3) An observation authority is to be in writing.

(4) An observation authority must state:

- (a) the name of the regulated person whose relevant fishing activities the scientific observer is authorised to observe, and
- (b) the period during which the scientific observer is authorised to observe the relevant fishing activities of the regulated person.

(5) The Minister must give the regulated person whose relevant fishing activities

are to be observed notice in writing of his or her intention to issue an observation authority in respect of those activities, at least 14 days before it is issued.

(6) The Minister may, at any time, revoke or vary an observation authority.

275N Power conferred by observation authority

(1) An observation authority confers power on a scientific observer to observe the relevant fishing activities of the specified regulated person during the period specified in the authority.

(2) A power to "**observe**" relevant fishing activities includes a power to obtain, collect and record information about relevant fishing activities that is information that may be collected under the scientific observer program.

(3) The power conferred by an observation authority is subject to any limitations specified in the authority.

275O Ancillary powers During the period in which a scientific observer has power to observe the relevant fishing activities of a regulated person, the scientific observer may:

(a) board and remain on any boat being used for those relevant fishing activities, and

(b) examine any fishing gear or other equipment being used for those relevant fishing activities, and

(c) examine any equipment on a boat being used for those relevant fishing activities that is capable of providing information that may be collected under the program, and

(d) examine any fish taken during those relevant fishing activities, and

(e) require any person engaged in or assisting with those relevant fishing activities, or on board a boat being used for those relevant fishing activities:

(i) to provide any information about the relevant fishing activities that the scientific observer reasonably requires for the purposes of the scientific observer program, or

(ii) to provide any assistance the scientific observer reasonably requires to exercise his or her functions as a scientific observer, and

(f) exercise any other functions conferred by the regulations.

275P Scientific observer to exercise care A scientific observer is to exercise his or her functions under this Division in a manner that does not unreasonably interfere with the relevant fishing activities that he or she is authorised to observe.

275Q Production of instruments of authority

(1) A scientific observer must, on demand by a person in relation to whom the scientific observer is exercising or proposing to exercise functions under this Division, produce his or her identification document and observation authority for inspection by that person.

(2) If the scientific observer fails to produce his or her identification document or observation authority on demand of such a person, the person is not guilty of an offence under this Act of resisting or obstructing a scientific observer or of failing to comply with a requirement of such a scientific observer.

275R Failure to comply with requirement of scientific observer

(1) A person who, without reasonable excuse, fails to comply with a requirement of a scientific observer made under this Division is guilty of an offence. Maximum penalty: 50 penalty units.

(2) A person is not excused from a requirement to provide information to a scientific observer on the ground that the provision of the information might incriminate the person or make the person liable to a penalty.

275S Information provided to scientific observer is protected

(1) Any information provided to a scientific observer by a person in compliance with a requirement made by the scientific observer under this Division is

protected information.

(2) In any criminal proceedings, protected information is not admissible to prove that the person who provided the information, or any other relevant person, has committed an offence other than:

- (a) an offence against this Division, or
- (b) an offence constituted by providing false or misleading information to a scientific observer.

(3) This section does not prevent the admission of:

- (a) any further information (not being protected information) obtained as a result of the provision of protected information, or
- (b) any record required to be kept by or under this or any other Act.

(4) In this section, a "**relevant person**" means:

- (a) a person engaged in or assisting in the relevant fishing activities being observed by the scientific observer, or
- (b) a person on board a boat being used for the relevant fishing activities being observed by the scientific observer, or
- (c) a person on whose behalf the relevant fishing activities being observed by the scientific observer are carried out.

275T Obstructing, impersonating etc scientific observers

(1) A person who, without reasonable excuse, resists or obstructs a scientific observer in the exercise of the scientific observer's functions under this Division is guilty of an offence. Maximum penalty: 200 penalty units or imprisonment for 3 months, or both.

(2) A person who assaults, abuses or threatens a scientific observer, or who encourages another person to do so, is guilty of an offence. Maximum penalty: 200 penalty units or imprisonment for 3 months, or both.

(3) A person who impersonates a scientific observer is guilty of an offence. Maximum penalty: 200 penalty units or imprisonment for 3 months, or both.

[133] Section 281A

Insert after section 281:

281A Record to be kept of instruments published on website

(1) The Secretary is to keep a record of the publication on the Department's website of any instrument made by the Minister under this Act the contravention of which is an offence. For example, this section would apply to a fishing closure published on the website under section 9 (2) or a possession limit published under section 17C (3).

(2) The record must include:

- (a) the date of publication, and
- (b) the web address of publication, and
- (c) the wording of the instrument as published.

(3) In any proceedings for an offence under this Act or the regulations, a certificate signed or purporting to be signed by the Secretary or an authorised person and stating that records kept by the Secretary under this section indicate that an instrument made by the Minister was published on the Department's website on a particular date is admissible and is evidence of the matters stated in the certificate.

(4) The Secretary is not required to keep a record under this section of an instrument published on the Department's website if it is also published in the Gazette on or before the date that it takes effect.

(5) In this section, an "**authorised person**" means a person employed in the Department who is authorised in writing by the Secretary to exercise the functions conferred by this section.

[134] Section 283A Disclosure of information

Omit section 283A (3). Insert instead:

(3) The Department is authorised to disclose to the holder of a charter fishing licence any information provided to the Department by a responsible person (within the meaning of Part 4A) in any record made under this Act that relates to the use of a boat for charter fishing activities that were engaged in, or purportedly engaged in, under the authority of the licence (including information provided before the licence holder acquired the licence).

[135] Section 284 Public consultation procedure

Omit "amendment or" wherever occurring in section 284 (1) (a) and (c).

[136] Section 284 (1) (b)

Omit the paragraph. Insert instead:

(b) the making of a fishing determination by the TAF Committee,

[137] Section 284A

Insert after section 284:

284A Other consultation requirements A requirement under this Act to consult any relevant advisory council or advisory group about a matter is a requirement to consult such advisory councils or advisory groups as the person to whom the requirement applies considers to have a sufficient interest in the matter.

[138] Section 286A Certain licences, leases, permits and other rights not personal property under Personal Property Securities Act 2009 (Cth)

Omit "boat" from section 286A (g).

[139] Section 286A (h)

Omit the paragraph. Insert instead:

(h) quota,

[140] Section 286A (i)

Omit "a permit issued under section 37".

Insert instead "an approval granted under section 37".

[141] Section 288 Service of instruments

Insert at the end of section 288 (c):

, or

(d) by delivering it electronically to an address or location nominated by the person as an address or location for electronic service of notices or other instruments.

[142] Section 288AA

Insert after section 288:

288AA Use of agents

(1) A person may, by notice in writing given to the Secretary, appoint a natural person as his or her agent for the purposes of this Act (who is then taken to be the person's "**appointed agent**").

(2) The notice is to be given in a form and manner approved by the Secretary.

(3) An appointed agent may access and use any online facility, on behalf of the person for whom he or she is appointed agent, in accordance with arrangements

approved by the Secretary.

(4) Any notice or other instrument required to be served on a person by or under this Act, in connection with the use of an online facility, is taken to be served on the person if it is served on the person's appointed agent.

(5) A person may revoke the appointment of an agent by further notice in writing to the Secretary, in a form and manner approved by the Secretary.

(6) The regulations may prescribe fees payable in connection with the appointment of, or revocation of the appointment of, an agent under this section.

(7) In this section: "**online facility**" means any system or facility for electronic communication approved by the Secretary for use in connection with the keeping of records, the making of reports or the registration of transactions under this Act.

[143] Sections 288C and 288D

Insert after section 288B:

288C Recovery of fees and charges Any fee, charge, rental payment or contribution payable under this Act or the regulations may be recovered by the Secretary as a debt due to the Crown in a court of competent jurisdiction.

288D False and misleading information

(1) A person who, in connection with any requirement made under a power conferred by this Act or the regulations, makes any statement, provides any information or produces any document that the person knows is false or misleading in a material particular is guilty of an offence. Maximum penalty: 200 penalty units or imprisonment for 3 months, or both.

(2) A person is not guilty of an offence against this section in respect of a document if, at the time the document is produced, the person informs the person to whom the document is produced that it is false or misleading in a material particular.

[144] Schedule 1 Share management fisheries

Omit the heading to Part 1. Insert instead:

Part 1Â Share management fisheries

Share management fisheries

[145] Schedule 1, Part 2

Omit the Part.

[146] Schedule 2, heading

Omit the heading and the section reference. Insert instead:

Schedule 2Â Total Allowable Fishing Committee

Total Allowable Fishing Committee

[147] Schedule 2, clause 1

Omit "TAC" from the definition of "**member**". Insert instead "TAF".

[148] Schedule 2, clause 1

Omit the definition of "**TAC Committee**".

[149] Schedule 2, clause 1A

Insert after clause 1:

1A Total Allowable Fishing Committee

(1) There is to be a Total Allowable Fishing Committee (the "**TAF Committee**").

- (2) The TAF Committee is to consist of at least 4 members, as follows:
- (a) a person appointed by the Minister as the Chairperson of the TAF Committee, being a person who is neither engaged in the administration of this Act nor engaged in commercial fishing,
 - (b) a person appointed by the Minister who is a natural resource economist not employed by the Government,
 - (c) a person appointed by the Minister who is a fishery scientist not employed by the Government,
 - (d) persons appointed by the Minister who have appropriate fisheries management qualifications.

[150] Schedule 2, clauses 5 (1) (e), 6 (2) and 8-13

Omit "TAC Committee" wherever occurring. Insert instead "TAF Committee".

[151] Schedule 2, clause 6 (2)

Omit "section 27 (1) (d)". Insert instead "clause 1A (2) (d)".

[152] Schedule 7 Savings, transitional and other provisions

Insert after clause 6G:

6H Changes to descriptions of fisheries Sections 44 and 45 do not apply to an amendment made to the description of a share management fishery by the *Fisheries Management Amendment Act 2015*.

6I Special endorsements The amendment made to section 70 (4) by the *Fisheries Management Amendment Act 2015* applies to endorsements issued under that section after the commencement of the amendment.

6J Registration of share dealings Anything done by the Secretary under section 91 before the commencement of section 91B (as inserted by the *Fisheries Management Amendment Act 2015*) that has any ongoing effect is taken, on the commencement of section 91B, to have been done under section 91B.

[153] Schedule 7, clause 12B

Insert after clause 12A:

12B Saving of existing fishing boat licences (2015 amendments)

(1) A fishing boat licence in force under Division 2 of Part 4 immediately before the amendments made to that Division by the *Fisheries Management Amendment Act 2015*, is taken, on the commencement of those amendments, to be a fishing boat licence issued under that Division, as amended.

(2) The licence remains in force for the period specified in the licence, unless sooner cancelled or suspended.

[154] Schedule 7, Part 4A

Insert after Part 4:

Part 4A – Provisions relating to charter fishing

12C Transition to new form of licence (2015 amendments)

(1) A charter fishing boat licence in force under Part 4A immediately before the commencement of section 127CB, as inserted by the *Fisheries Management Amendment Act 2015*, is taken, on that commencement, to be a charter fishing licence issued under that section.

(2) The licence remains in force for the period specified in the licence, unless sooner cancelled or suspended.

(3) The charter fishing licence authorises the use of a boat for any charter fishing

activity specified in the licence that is a declared charter fishing activity.

(4) The charter fishing licence is taken, from that commencement, to authorise the use of any one boat at any given time for that charter fishing activity (not limited to the boat specified in the licence), subject to any requirements relating to the boat that are specified in the licence, the conditions of the licence or in any regulations made under clause 2.

[155] Schedule 7, clause 19D

Insert after clause 19C:

19D Abolition of Management Advisory Committees

(1) Any Management Advisory Committee established by the Minister under section 230 is abolished on the substitution of that section by the *Fisheries Management Amendment Act 2015*.

(2) A person holding office as a member of any such Committee immediately before its abolition:

(a) ceases to hold office as such a member, and

(b) is not entitled to any remuneration or compensation because of the loss of that office.

[156] Schedule 7, clause 25A

Insert after clause 25:

25A Change of name of TAC Committee (2015)

(1) The TAF Committee is a continuation of the TAC Committee constituted under this Act immediately before the commencement of clause 1A of Schedule 2 (as inserted by the *Fisheries Management Amendment Act 2015*).

(2) A member or deputy member of the TAC Committee who held office immediately before that commencement continues to hold office as a member or deputy member of the TAF Committee for the remainder of his or her term of appointment, subject to Schedule 2.

Schedule 2 Amendments to Fisheries Management Act 1994 No 38 relating to fish names

[1] Schedule 1 Share management fisheries

Omit "abalone (*Haliotis rubra*)" from clause 4.

Insert instead "the species *Haliotis rubra* (Blacklip Abalone, Abalone)".

[2] Schedule 1, clause 6

Omit "(*Jasus verreauxi*)". Insert instead " *Sagmariasus verreauxi* ".

[3] Schedule 4 Endangered species, populations and ecological communities

Omit the matter under the heading "Fish" from Part 1. Insert instead:

Archaeophya adamsi Fraser, 1959	Adam's Emerald Dragonfly
Austrocordulia leonardi	Sydney Hawk Dragonfly
* Maccullochella ikei Rowland	Eastern Freshwater Cod
* Maccullochella macquariensis (Cuvier)	Trout Cod
*Macquaria australasica (Cuvier, 1830)	Macquarie Perch
Mogurnda adspersa (Castelnau, 1878)	Southern Purplespotted Gudgeon, Purple Spotted Gudgeon

Nannoperca australis GÄ¼anther, 1861	Southern Pygmy Perch
* Nannoperca oxleyana Whitley	Oxleyan Pygmy Perch
Notopala sublineata (Conrad, 1850)	River Snail
* Prototroctes maraena (GÄ¼anther, 1864)	Australian Grayling
Sphyrna lewini (Griffith & Smith, 1834)	Scalloped Hammerhead Shark
Thunnus maccoyii	Southern Bluefin Tuna

[4] Schedule 4, Part 2, Fish

Insert "Agassiz's glassfish," after "1866," in the matter relating to *Ambassis agassizii*.

[5] Schedule 4, Part 2, Fish

Insert "freshwater catfish," after "1838)," in the matter relating to *Tandanus tandanus*.

[6] Schedule 4, Part 4

Omit the Part. Insert instead:

Part 4 – Species presumed extinct

Fish

Hadrachaeta aspeta Hutchings, 1977	Marine Worm
*Pristis zijsron Bleeker, 1851	Green Sawfish
Metaprotella haswelliana Mayer, 1882	Haswells Caprellid

Marine vegetation

* Vanvoorstia bennettiana (Harvey) Papenfuss (1956)	Bennetts Seaweed
---	------------------

[7] Schedule 4A Critically endangered species and ecological communities

Omit Part 1. Insert instead:

Part 1 – Critically endangered species

Fish

* Carcharias taurus Rafinesque, 1810	Greynurse Shark
*Craterocephalus fluviatilis (McCulloch, 1913)	Murray Hardyhead
Euastacus dharawalus (Morgan, 1997)	Fitzroy Falls Spiny Crayfish
Galaxias rostratus	Flathead Galaxias
Smeagol hilaris Tillier & Ponder, 1992	Marine Slug

Marine vegetation

Nereia lophocladia J. Agardh (1897)	Marine Brown Alga
-------------------------------------	-------------------

[8] Schedule 5 Vulnerable species and ecological communities

Omit the matter under the heading "Fish" from Part 1. Insert instead:

Austropetalia tonyana (Theischinger, 1995)	Alpine Redspot Dragonfly
Bidyanus bidyanus (Mitchell, 1838)	Silver Perch
Branchinella buchananensis Geddes, 1981	Buchanans Fairy Shrimp
* Carcharodon carcharias (Linnaeus, 1758)	White Shark, Great White Shark
Epinephelus daemeli (Günther, 1876)	Black Rockcod, Black Cod
Euastacus armatus (von Martens 1866)	Murray Crayfish
Microrchestia bousfieldi Lowry & Peart, 2010	Bousfields Marsh-hopper
Sphyrna mokarran Ruppell, 1837	Great Hammerhead Shark

Historical notes

The following abbreviations are used in the Historical notes:

Am	amended	LW	legislation website	Sch	Schedule
Cl	clause	No	number	Schs	Schedules
Cll	clauses	p	page	Sec	section
Div	Division	pp	pages	Secs	sections
Divs	Divisions	Reg	Regulation	Subdiv	Subdivision
GG	Government Gazette	Regs	Regulations	Subdivs	Subdivisions
Ins	inserted	Rep	repealed	Subst	substituted

Table of amending instruments *Fisheries Management Amendment Act 2015 No 59*. Assented to 24.11.2015. Date of commencement: not in force.