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Living Marine Resources Management Act 1995

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Living Marine Resources Management Act 1995

Version current from 4 December 2017 to date (accessed 16 October 2018 at 16:43)



Living Marine Resources Management Act 1995

An Act to promote the sustainable management of living marine resources, to provide for management plans relating to fish resources, to protect marine habitats and to repeal the Fisheries Act 1959

[Royal Assent 15 September 1995]

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 - Preliminary

Division 1 - Definitions and applications

1. Short title

This Act may be cited as the Living Marine Resources Management Act 1995 .

2. Commencement

The provisions of this Act commence on a day or days to be proclaimed.

3. Interpretation

In this Act –

abalone quota unit means one-3500th of the total allowable catch set for the commercial abalone fishery for a quota period;

Aboriginal activity means –

- (a) the non-commercial use of the sea and its resources by Aborigines; and
- (b) the taking of prescribed fish by Aborigines for the manufacture, by Aborigines, of artefacts for sale; and
- (c) manufacturing of the kind referred to in paragraph (b) ;

Aborigine means an Aboriginal person within the meaning of the Aboriginal Lands Act 1995 ;

adult means a natural person who has attained the age of 18 years;

apparatus includes –

- (a) any net, dilly, crab pot, rock lobster pot, rock lobster ring, rake, spade, dredge, implement, gear, equipment, contrivance, device, trap, pitch fork, spear or spear gun used, or capable of being used, in connection with fishing; and
- (b) any hook, rod or line used, or capable of being used, for fishing; and
- (c) any buoy, float, raft or dredge used, or capable of being used, in connection with fishing; and
- (d) anything else used, or capable of being used, in connection with fishing;

Appeal Tribunal means the Resource Management and Planning Appeal Tribunal established under the Resource Management and Planning Appeal Tribunal Act 1993 ;

approved means approved by the Secretary;

aquatic observation means an activity on, in or under water relating to the observation of fish and their habitat;

arrangement means an arrangement under Part 7 ;

authorisation means a permit, licence or other authority permitting a person to undertake an activity;

Australian fishing zone means the Australian fishing zone as defined in the Commonwealth Act;

coastal waters means –

- (a) any part of the territorial sea of Australia adjacent to the State within 3 nautical miles of the baseline by reference to which the territorial limits of Australia are defined for the purposes of international law; and
- (b) the marine or tidal waters on the landward side of any territorial sea of Australia adjacent to the State but not within the limits of the State;

Commonwealth Act means the Fisheries Management Act 1991 of the Commonwealth or an Act enacted in substitution of that Act;

Commonwealth Minister means the Minister administering the Commonwealth Act and any other Minister exercising powers and performing functions under that Act;

commercial purposes means the purpose of sale, processing, manufacture, marine farming or any other purpose that is directed to gain or reward;

commercially protected fish means fish referred to in section 100 ;

consult includes to seek information, advice, opinion and representation;

control order means an order referred to in Division 7 of Part 9 ;

conviction includes –

- (a) a plea of guilty; or
- (b) a finding by a court that a person committed an offence for which the person was charged even though a conviction was not recorded; or
- (c) a finding of guilty by a court even though a conviction is not recorded;

corresponding law means –

- (a) the Commonwealth Act; and
- (b) the Export Control Act 1982 of the Commonwealth; and
- (c) a law of another State or a Territory of the Commonwealth that relates to the management or protection of living marine resources;

deed of agreement means a deed of agreement referred to in section 99 ;

demerit point means a demerit point referred to in Division 6 of Part 9 ;

document includes –

- (a) any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise; and
- (b) anything on which any material has been recorded in a manner that, by the use of any device or instrument, it may be reproduced in a manner suitable for human perception;

draft management plan means a draft management plan referred to in Division 2 of Part 3 ;

examine includes count, measure, weigh and grade;

export means to transport beyond State waters;

finfish farming has the same meaning as it has in the Environmental Management and Pollution Control Act 1994 ;

fish means fish referred to in section 4 ;

fish habitat means an area of the natural environment of fish which has particular importance to the life cycle of fish;

fish hatchery means a place or premises where fish are bred for marine farming or sale or for placement or introduction into State waters;

fish processing licence means a fish processing licence in force under Part 4 ;

fisheries officer means –

- (a) the Secretary; and
- (b) a police officer; and
- (c) a person appointed as a fisheries officer under section 164 ; and

(d) an officer referred to in section 171 ;

fishery means anything referred to in section 6 ;

fishing includes any of the following activities, other than an activity authorised under a marine farming licence:

(a) searching for, attempting to take, catching, taking or harvesting fish;

(b) any other activity which may reasonably be expected to result in catching, taking or harvesting fish;

fishing body means a body corporate or an association certified as a fishing body under section 25 ;

fishing certificate means a fishing certificate referred to in section 63 ;

fishing licence means a fishing licence in force under Part 4 ;

fishing vessel means a vessel that is equipped for, or used for, fishing or transporting fish for a commercial purpose;

foreign boat means a foreign boat as defined in the Commonwealth Act;

habitat protection plan means a plan approved under Division 3 of Part 5 ;

handling licence means a handling licence in force under Part 4 ;

import means to transport from beyond State waters to within State waters;

infringement notice means an infringement notice referred to in Division 5 of Part 9 ;

inland waters means waters within the meaning of the Inland Fisheries Act 1995 ;

introduced fish means –

(a) fish which were brought into the State; and

(b) any progeny or subsequent progeny of those fish unless prescribed to be otherwise;

Joint Authority means a Joint Authority established under the Commonwealth Act of which the Minister is a member;

Joint Authority fishery means a fishery under the management of a Joint Authority;

licence means any licence specified in Part 4 ;

licensee means a person holding a licence;

living marine resources means fish and their environment;

management plan means a management plan approved under Part 3 ;

managing authority, in relation to a marine resources protected area, means –

(a) the Minister; or

(b) a body or association declared to be the managing authority under section 115 ;

marine farm means an area to which a marine farming licence relates within which marine farming is carried out;

marine farming includes the farming, culturing, enhancement or breeding of fish for trade, business or research;

marine farming development plan means a marine farming development plan approved under Part 3 of the Marine Farming Planning Act 1995 ;

marine farming licence means a marine farming licence in force under Part 4 ;

marine resources protected area means an area established as a marine resources protected area under Part 5 ;

marine resources protected area management plan means a marine resources protected area management plan approved under Part 5 ;

master, in relation to a vessel, means the person having command, charge or management of the vessel;

native title rights and interests means native title rights and interests recognised under the Native Title Act 1993 of the Commonwealth;

non-exploitative use of fish includes the viewing, photographing or feeding of fish and the feelings associated with knowing fish are in State waters but does not include the removal, killing or injuring of fish;

noxious fish means –

- (a) any fish of a species prescribed as noxious fish; or
- (b) any fish declared to be noxious fish under section 127 ;

noxious matter means any matter which is harmful to fish or fish habitat;

objectives of resource management means the objectives set out in Schedule 1 ;

permit means a permit under Division 2 of this Part;

place includes –

- (a) any land whether covered by water or not; and
- (b) any building or structure, whether permanent or temporary; and
- (c) any vessel, aircraft, vehicle or trailer; and
- (d) any tent, camp or caravan;

possession – see section 6A ;

protected fish means fish declared to be protected fish under section 135 ;

process, in relation to any fish, means to –

- (a) void or purge the fish; or
- (b) break up, cut up, skin or fillet the fish; or
- (c) shell or shuck the fish; or
- (d) dry, cure, smoke or cook the fish; or
- (e) chill the fish (either dead or alive); or
- (f) freeze the fish; or
- (g) pack the fish (either dead or alive); or
- (h) can the fish; or
- (i) treat the fish by any other means; or
- (j) hold the fish in readiness for processing by any means;

public authority means –

- (a) a person or body established or constituted by an Act for a public purpose; and
- (b) a council;

public notice means a notice which is published in the *Gazette* and a daily newspaper circulating generally in the State;

purchase includes –

- (a) take in exchange; and

- (b) agree or offer to take in exchange; and
- (c) receive, accept or take delivery under an agreement to take in exchange;

quota period means –

- (a) in relation to the commercial abalone fishery, a period of one year; and
- (b) in relation to any other fishery, the period during which a total allowable catch may be taken;

recreational fishing means fishing carried out other than –

- (a) for a commercial purpose; or
- (b) as part of an Aboriginal activity;

regulations means regulations made under this Act;

repealed Act means the Fisheries Act 1959 ;

rock lobster quota unit, for a quota period, means a unit that is an entitlement to one 10 507th of the total allowable catch set for the commercial rock lobster fishery for that quota period;

sale includes –

- (a) any method of disposition for valuable consideration or in the expectation of receiving any kind of reward; and
- (b) barter; and
- (c) the disposition to an agent for sale on consignment; and
- (d) offering or attempting to sell; and
- (e) receiving or having in possession for sale; and
- (f) exposing for sale; and
- (g) sending or delivering for sale; and
- (h) causing or permitting to be sold, offered or exposed for sale; and
- (i) disposal by way of raffle, lottery or other game of chance; and
- (j) resale;

Secretary means the Secretary of the Department;

size, in relation to fish, includes prescribed measurement of length or breadth, or of other linear measurement or of weight;

special penalty means a special penalty referred to in Division 10 of Part 9 ;

species means a species, subspecies, hybrid, variant, race, mutation or separate population of any fish;

supervisor means a person referred to in section 89 ;

structure includes a platform, pontoon, jetty, building or any other thing used in connection with fishing or marine farming;

total allowable catch means the total quantity of a kind or species of fish that may be taken from a fishery;

take, in relation to fish, includes any of the following activities (except where the activity is authorised under a marine farming licence or fish processing licence):

- (a) capture, carry away, catch, collect, destroy, dredge or fish for, gather, kill, raise, remove or in any other way obtain the fish (whether from water, land under water or the foreshore);
- (b) land the fish from a vessel or in any other way bring the fish ashore;
- (c) transfer the fish from one fishing vessel to another fishing vessel;

(d) attempt, cause or permit an act referred to in paragraph (a) , (b) or (c) ;

vary includes substitute, add or delete;

vehicle includes any vehicle designed to move or be moved on one or more wheels or revolving runners;

vessel includes –

(a) a boat, ship, craft, hovercraft, aircraft or platform and any trailer used to transport any of them; and

(b) a vehicle that is capable of use in or on water whether floating, partly submersible or submersible and whether or not self propelled;

waters include –

(a) the bed and subsoil under any waters; and

(b) the airspace above any waters;

waters relevant to the State means –

(a) the coastal waters of the State; and

(b) the Australian fishing zone.

4. Meaning of fish

(1) Fish is any aquatic organism of any species, whether dead or alive, which, in the normal course of events, spends part or all of its life in the aquatic environment.

(2) Fish includes –

(a) bony fishes of the class *Osteichthyes*; and

(b) sharks, rays, lampreys and other cartilaginous fishes of the classes *Chondrichthyes* and *Agnatha*; and

(c) aquatic reptiles; and

(d) sea squirts and other aquatic chordates; and

(e) sea-stars, sea-urchins, sea-cucumbers and other echinoderms; and

(f) lobsters, crabs, prawns and other aquatic arthropods; and

(g) bristle worms, fan worms, arrowworms and other aquatic annelids, chaetognaths, nematodes, nemertean and platyhelminths; and

(h) squid, oysters, abalone and other aquatic molluscs and brachiopods; and

(i) seafans, sponges, corals, jelly-fish, salps and other bryozoans, poriferans, coelenterates and ctenophores; and

(j) protozoans and bacteria; and

(k) seagrass, seaweed and other aquatic vascular plants, algae, diatoms, euglenoids and any other marine plants.

(3) A reference to fish includes –

(a) the eggs, spat, spawn, seeds, spores, larvae or other offspring of an aquatic organism; and

(b) a shell containing fish or any other part derived from an aquatic organism; and

(c) raw, cooked, dismembered, frozen, preserved, salted or otherwise processed fish; and

(d) any other saltwater product declared by the regulations to be a fish for the purpose of any provision of this Act.

(4) Fish does not include –

(a) a whale as defined in the Whales Protection Act 1988 ; or

- (b) any aquatic mammal or aquatic bird; or
- (c) freshwater fish as defined in the Inland Fisheries Act 1995 , other than freshwater fish that –
 - (i) is of a kind or species declared not to be freshwater fish in an order made and in force under section 4(1)(b) of that Act; and
 - (ii) is in, or has been taken from, State waters that are not excepted waters as defined in that Act.

5. Meaning of State waters

- (1) State waters are –
 - (a) any waters of the territorial sea of Australia that are –
 - (i) within 3 nautical miles of the baseline by reference to which the territorial limits of Australia are defined for the purposes of international law; and
 - (ii) adjacent to the State; and
 - (b) any marine or tidal waters that are on the landward side of that baseline and are adjacent to the State, except inland waters; and
 - (c) any land which is swept by those waters to the highest landward extent; and
 - (d) in relation to a fishery managed under a law of Tasmania under an arrangement, any waters to which the arrangement relates; and
 - (e) in relation to recreational fishing to which the Commonwealth Act does not apply, any waters to which the legislative powers of Tasmania extend.
- (2) In relation to a fishery managed under a law other than a law of Tasmania under an arrangement, State waters do not include any waters to which the arrangement relates.

6. Meaning of fishery

- (1) A fishery includes activities by way of fishing identified by reference to any or all of the following:
 - (a) a species, type or class of fish;
 - (b) a description of fish by reference to sex, size or another characteristic;
 - (c) an area of water, seabed or land;
 - (d) a method of fishing;
 - (e) a class or type of vessel;
 - (f) a class of persons;
 - (g) a purpose of an activity;
 - (h) a season.
- (2) A fishery includes the activity of processing or handling fish.

6A. Meaning of possession

- (1) A person is taken to be in possession of something for the purposes of this Act if the person has, either alone or jointly with others, actual possession or actual custody of the thing.
- (2) A person is also taken to be in possession of something for the purposes of this Act if –
 - (a) the thing is at or in a place that the person, either alone or jointly with others, occupies; or
 - (b) the person, either alone or jointly with others, enjoys the thing at or in any place; or
 - (c) the person has, whether it is exercised for the person's own benefit or for the benefit of others, any control over the thing.
- (3) Subsection (2) applies whether or not any other person has actual possession or actual custody of the thing.

(4) However, subsection (2)(a) does not apply if the person proves that the person had no knowledge of the thing.

7. Purpose and objectives

(1) The purpose of this Act is to achieve sustainable development of living marine resources having regard to the need to –

- (a) increase the community's understanding of the integrity of the ecosystem upon which fisheries depend; and
- (b) provide and maintain sustainability of living marine resources; and
- (ba) take account of a corresponding law; and
- (c) take account of the community's needs in respect of living marine resources; and
- (d) take account of the community's interests in living marine resources.

(2) A person must perform any function or exercise any power under this Act in a manner which furthers the objective of resource management.

8. Act binds Crown

(1) This Act binds the Crown in right of Tasmania and, in so far as the legislative power of Parliament permits, in all its other capacities.

(2) The Crown is not liable for prosecution for an offence under this Act, but an officer, employee or agent of the Crown is liable for prosecution for an offence under this Act.

9. Ownership of living marine resources

(1) All living marine resources present in waters referred to in section 5 (1) (a) , (b) and (c) are owned by the State.

(2) Any fish specifically provided for under a marine farming licence are not owned by the State but are the property of the holder of that licence.

10. Effect of Act

(1) An authorisation under this Act takes precedence over any other public or private fishing rights.

(2) Subsection (1) does not –

- (a) extinguish or impair any native title rights and interests; or
- (b) preclude Aborigines from engaging in Aboriginal activities.

Division 2 - Permits and exemptions

11. Exemption from Act

(1) The Minister, by instrument in writing, may exempt a person or a class of persons from any provision of this Act.

(1A) The Minister must not, under subsection (1) , exempt a person or a class of persons from a requirement to hold a licence in relation to an activity, referred to in section 64(1)(a) or (c) , that relates to finfish farming.

(2) The exemption may be granted on the Minister's own initiative or consequent on an application made by or on behalf of the person or class of persons.

(3) The Minister, having regard to any relevant considerations, may grant the exemption –

- (a) for such period not exceeding 3 years as the Minister thinks fit; and
- (b) on such conditions, if any, as the Minister thinks fit.

(4) The Minister, by instrument in writing, may at any time –

(a) vary the conditions of the exemption, if any; or

(b) revoke the exemption.

(5) The Minister is to ensure that each person who has the benefit of the exemption is given adequate advance notice of the variation of its conditions or of its revocation.

(6) However, in the case of a class exemption where not all members of the class are individually known, notice under subsection (5) may be given by means of a public notice.

(7) The exemption remains in force until the first of the following occurs:

(a) the period for which the exemption has been granted expires;

(b) the exemption is revoked.

(8) A person must not contravene a condition of an exemption granted under this section.

Penalty: Fine not exceeding 500 penalty units or imprisonment for a term not exceeding 6 months, or both, and a daily fine not exceeding 5 penalty units.

(9) In this section –

relevant consideration, in relation to the granting of an exemption, includes –

(a) the reasons for, and the nature and scope of, the exemption; and

(b) the purpose and objectives of this Act set out in section 7 ; and

(c) whether the exemption is likely to yield any commercial, educational, environmental, economic, scientific or other benefit (either locally, nationally or internationally) having particular regard to fisheries or allied industries; and

(d) whether the exemption is likely to involve any risk to the State's fisheries or allied industries; and

(e) whether the objects of the exemption are reasonably capable of being attained by other means; and

(f) the likely impact of the exemption, if any, on the operation of any management plan; and

(g) whether the exemption will be fair having regard to the interests and obligations of any existing licence and permit holders; and

(h) the character and antecedents of any person who will have the benefit of the exemption; and

(i) the Crown's experience with any exemptions of a similar kind; and

(j) compliance monitoring requirements.

12. Permits

(1) A person may apply to the Minister for a permit to take any action which otherwise would contravene a provision of this Act for the following purposes:

(a) scientific research;

(b) the promotion of fishing or fish products;

(c) the development of fisheries;

(d) the development of fishing technology;

(e) educational and community awareness programs;

(f) fish stock depletion or enhancement;

(g) the collection, keeping, breeding, hatching or cultivating of rare or endangered fish;

- (h) sport or recreation purposes by a person who, in the opinion of the Minister, would otherwise be unable by reason of that person's disability to engage in fishing by methods permitted under this Act;
 - (i) Aboriginal cultural and ceremonial activities;
 - (j) the development of marine farming;
 - (k) law enforcement;
 - (l) environmental monitoring;
 - (m) bio-prospecting.
- (2) An application for a permit is to –
- (a) be in an approved form; and
 - (b) contain any details the Minister requires; and
 - (c) be accompanied by a fee determined by the Minister; and
 - (d) be lodged with the Minister.
- (3) The Minister may require an applicant to provide further information or a declaration relating to the application or operation of a permit.
- (4) The Minister, without any applications being made, may –
- (a) issue permits authorising the taking of actions which would otherwise contravene provisions of this Act; and
 - (b) determine to whom any such permit is to be issued; and
 - (c) determine the system by which the Minister is to make a determination under paragraph (b) ; and
 - (d) determine the conditions of any such permit.

13. Grant of permit

- (1) The Minister may –
- (a) grant an application for a permit; or
 - (b) refuse to grant the application.
- (2) Before granting an application for a permit, the Minister is to consult with the relevant fishing body if –
- (a) the Minister considers that granting the application is likely to have a significant effect on the fishing body; or
 - (b) the Minister intends to grant the application for any of the purposes specified in section 12(1)(b) , (c) , (d) , (f) or (j) .
- (3) However, subsection (2) does not apply to a permit for the purpose specified in section 12(1)(k) .

14. Issue of permit

- (1) If the Minister grants an application for a permit, the Minister, on payment of any fee the Minister determines, is to issue the permit.
- (2) The permit is to be in an approved form.

15. Condition of permit

- (1) The Minister may grant an application for a permit subject to any reasonable condition the Minister determines.
- (2) A person must not contravene a condition of a permit.

Penalty: Fine not exceeding 1 000 penalty units or imprisonment for a term not exceeding 1 year, or both, and a daily fine not exceeding 10 penalty units.

(3) The Minister may vary any condition of a permit by notice in writing served on the person who holds the permit.

16. Duration of permit

A permit remains in force for the period, not exceeding 12 months, specified in the permit unless the Minister sooner revokes it.

17. Revocation of permit

The Minister may revoke a permit by notice in writing served on the person who holds the permit.

PART 2 - Administration

Division 1 - General matters

18. Function of Minister

The Minister must ensure that this Act is administered in a way which promotes the sustainable management of living marine resources.

19. Powers of Minister

The Minister may do any one or more of the following in order to promote the sustainable management of living marine resources:

- (a) enter into a joint venture arrangement with another person;
- (b) buy shares or take an interest in a company;
- (c) enter into an agreement of any kind.

20. Delegation

(1) The Minister, in writing, may delegate to a person any of the Minister's functions or powers, other than –

- (a) this power of delegation; or
- (b) any power conferred under sections 19 , 47 (2) , 110 (2) , Division 3 of Part 5 , Parts 6 and 7 and section 279 .

(2) The Secretary, in writing, may delegate to a person any of the Secretary's functions or powers other than –

- (a) this power of delegation; or
- (b) any power conferred under section 164 .

21. Consultation with police

(1) The Secretary must meet with the Commissioner of Police at least 4 times each year to discuss –

- (a) any matter relevant under this Act; and
- (b) the following matters in connection with the enforcement of this Act:
 - (i) past activities of the Police Service;
 - (ii) future activities of the Police Service;
 - (iii) any activities of the Department which may affect that enforcement.

(2) The Commissioner of Police must provide the Secretary at least 4 times each year with a report containing the following matters:

- (a) past enforcement and prosecution activities under way or completed;
- (b) measurement of the appropriateness, effectiveness and efficiency of enforcement activities;
- (c) any other matter in relation to enforcement;
- (d) any other matter agreed to at a meeting referred to in subsection (1) or requested by the Secretary.

22. Inquiries

(1) The Minister, by instrument in writing, may direct a qualified person to conduct an inquiry into a matter under this Act.

(2) Sections 8 and 33 , and Part 3 of the Commissions of Inquiry Act 1995 (other than sections 17 , 18 , 19 and 23 of that Part) apply to the inquiry as if –

- (a) the qualified person conducting it were a Commission established under section 4 of that Act; and
- (b) the subject of the inquiry were the matter into which that Commission had been directed to inquire under that Act.

(3) In this section –

qualified person means –

- (a) the Secretary; or
- (b) a person who, in the Minister's estimation, has qualifications, expertise or experience relevant to the subject of the inquiry.

23. Bequests and donations

- (1) The Minister may acquire by bequest or donation any property for the purposes of this Act.
- (2) The Minister may agree to a condition to which any bequest or donation is subject if it is consistent with the purposes of this Act.
- (3) The rule of law relating to perpetuities does not apply to any condition to which the Minister has agreed.
- (4) Any property acquired under this section, to the extent to which it has not been applied in conformity with any bequest or donation, passes to, and devolves on, the successors in office of the Minister.
- (5) If the Minister has agreed to a condition, that condition binds the property in the hands of any successor in office of the Minister in whom the property may be vested.

24. Immunity from liability

- (1) The following persons are not personally liable for an honest act done or omission made in the exercise or purported exercise of a power or the performance or purported performance of a function under this Act:
 - (a) the Minister;
 - (b) the Secretary;
 - (c) a fisheries officer;
 - (d) an assistant fisheries officer;
 - (e) a person employed in the Department.
 - (f)
- (2) Subsection (1) does not preclude the Crown from incurring liability that a person referred to in that subsection would, but for that subsection, incur.

Division 2 - Associations and codes of practice

25. Fishing bodies

- (1) The Minister may issue a certificate certifying that a body corporate is a fishing body if satisfied that it represents the interests of participants in –
 - (a) the fishing industry or part of the fishing industry; or
 - (b) a fishery; or
 - (c) the marine farming industry or part of the marine farming industry; or
 - (d) any combination of these.
- (2) The Minister may issue a certificate certifying that an association is a fishing body if satisfied that it represents the interests of participants in –
 - (a) the fishing industry or part of the fishing industry; or

- (b) a fishery; or
- (c) the marine farming industry or part of the marine farming industry; or
- (d) any combination of these.

(3) The Minister may revoke a certificate if no longer satisfied as to the matters referred to in this section.

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27. Advisory committees

- (1) The Minister may establish advisory committees to provide information and advice to the Minister on matters related to the administration of this Act.
- (2) The Minister may appoint any person as a member of an advisory committee on any terms and conditions the Minister determines.
- (3) The Minister may abolish an advisory committee at any time.

28. Preparation of draft code of practice

- (1) Any of the following bodies may prepare a draft code of practice for the purpose of this Act:
 - (a) a fishing body;
 - (b) an advisory committee established under this Act.
- (2) Before preparing a draft code of practice, a body must consult in writing with –
 - (a) any person or body likely to be affected by the code of practice; and
 - (b) any other person or body the Minister determines.
- (3) A body must submit to the Minister –
 - (a) a copy of the draft code of practice; and
 - (b) a copy of any submission or representation received from a person or body referred to in subsection (2) (a) or (b) ; and
 - (c) its response to the submission or representation.

29. Matters included in a draft code of practice

- (1) A draft code of practice may provide for any or all of the following:
 - (a) the preservation of good order amongst fishers;
 - (b) the conduct of persons engaged in commercial or recreational fishing, marine farming activities and handling fish;
 - (c) the efficient utilisation of fishing resources catching strategies;
 - (d) the use of fishing equipment in a safe manner and in particular circumstances or locations;
 - (e) the handling, storage, processing, transport, marketing and presentation of fish for sale;
 - (f) the equipment on fishing boats for the handling and storage of fish;
 - (g) the storage or holding of fish for human consumption;
 - (h) the manner of preparing fish for marketing or sale;
 - (i) the restoration or rehabilitation of fish habitat;
 - (j) the common names of fish to be used in the marketing and sale of fish;
 - (k) any other prescribed matter.

(2) A draft code of practice may –

- (a) include any standards, prescriptions, guidelines, protocols, procedures or other specifications; and
- (b) apply generally, specifically or in a limited manner or circumstance; and
- (c) contain different provisions according to differences in time, places or circumstances; and
- (d) apply to a particular fishery.

30. Approval of code of practice

(1) On receipt of a draft code of practice, the Minister, by public notice, must state –

- (a) the purpose and general effect of the draft code of practice; and
- (b) the place at which a copy of the draft code of practice may be obtained; and
- (c) the cost, if any, of obtaining a copy of the draft code of practice; and
- (d) that any person may submit written representations in relation to the draft code of practice within the period, not less than 45 days, specified in the notice.

(2) The Minister must consider any representations received under subsection (1) .

(3) The Minister may amend a draft code of practice to remove any inconsistency with this Act, regulations, a management plan or any other Act.

(4) The Minister may –

- (a) approve the draft code of practice; or
- (b) refuse to approve the draft code of practice.

(5) The Minister must not approve a draft code of practice if it contains any provision which is inconsistent with this Act, the regulations, a management plan or any other Act.

(6) If the Minister approves a draft code of practice, the Secretary, by public notice, is to notify that approval.

31. Commencement of code of practice

A code of practice or a provision of a code of practice takes effect –

- (a) on the day on which the code of practice is approved by the Minister; or
- (b) on a later day specified in the code of practice as the day on which it takes effect.

PART 3 - Fisheries Management

Division 1 - Rules relating to fisheries

32. Management plan

A management plan consists of rules relating to a specified fishery.

33. Rules

(1) The Minister may make rules in respect of –

- (a) a management plan; or
- (b) a fishery in respect of which there is no management plan; or
- (c) any other matter under this Act.

(2) Rules in respect of a management plan take effect on a date specified in the rules that is a date after the provisions of Division 2 of this Part have been complied with.

(3) The Minister must –

- (a) consult with the relevant fishing body before making any rules under subsection (1)(b) or (c) ; and
- (b) notify any proposed rules by public notice.

34. Fishing licence rules

Rules may be made in relation to the following matters relating to fishing licences:

- (a) different classes of licences;
- (b) the number of licences to be granted;
- (c) the criteria and qualifications for the granting of a licence;
- (d) the procedure or system for determining who are to be granted or issued licences;
- (e) objections to the granting of licences;
- (f) endorsement of licences;
- (g) conditions of licences;
- (h) the grounds on which the Minister may cancel, suspend or refuse to renew or transfer a licence;
- (i) the period for which a licence is in force;
- (j) the criteria for a variation of a licence;
- (k) the requirement for a licensee to, and the method by which a licensee is to, nominate any area, port or place or period specified in the management plan in or during which fishing is to be undertaken, any vessel is to be used or fish are to be unloaded;
- (l) the prohibition of more than a specified number of persons from operating under a licence and specifying the functions of those persons.

35. Fishery capacity rules

Rules may be made in relation to the following matters relating to the capacity of a fishery:

- (a) the quantity of fish that may be taken;
- (b) the apparatus that may be used;
- (c) the number of vessels and persons in that fishery;
- (d) the method by which capacity is to be determined.

35A. Rock lobster quota unit rules

The Minister may make rules in relation to the taking of rock lobster for commercial purposes in respect of incompletely caught rock lobster quota units in subsequent years.

36. Entitlement rules

Rules may be made in relation to the following matters relating to entitlements under a licence:

- (a) the manner in which any entitlement is to be expressed, fixed, allocated or specified;
- (ab) the number and nature of an entitlement;
- (b) the period during which an entitlement arises;
- (c) the suspension of an entitlement;
- (d) the manner in which any entitlement is to be increased or reduced;
- (e) the conversion of one kind of entitlement into another kind of entitlement;
- (f) the prohibition on doing anything in excess of any entitlement;
- (g) the authorisation of the transfer or temporary transfer of any entitlement.

37. Prohibited and permitted fishing rules

Rules may be made in relation to the following matters:

- (a) the prohibition of all fishing activities in a fishery or part of a fishery;
- (b) the prohibition of any fishing activity of a specified class in a fishery;
- (c) the period during which any fishing activity is permitted or prohibited;
- (d) the method by which, and circumstances in which, the Minister may—
 - (i) prohibit all fishing activities or any fishing activity of a specified class in a fishery; or
 - (ii) permit in a fishery or in any part of a fishery, fishing or any fishing activity of a specified class that is otherwise prohibited.

38. Rules relating to vessels and apparatus

Rules may be made in relation to the following matters relating to vessels and apparatus:

- (a) the prohibition or regulation of the use of any vessel in a fishery;
- (b) the registration, marking or identification of any vessel used in a fishery;
- (c) the reporting of the position of any vessel;
- (d) the prohibition or regulation of the carrying or use of apparatus in a fishery;
- (e) the registration or identification of apparatus used in a fishery;
- (f) the installation, carriage or use of any apparatus on vessels used in a fishery;
- (g) vessels used for fishing for commercial purposes;
- (h) vessels used for carrying fish for commercial purposes;
- (i) charter vessels used for recreational fishing;
- (j) charter vessels used for non-exploitative use of fish;
- (k) the use of any vessel for any of the purposes referred to in paragraphs (g) , (h) , (i) and (j) ;
- (l) the use of vessels for storing, dealing, processing or treating fish;
- (m) the carrying of any firearm, explosive or toxic or poisonous substance on any vessel used for fishing.

39. Rules relating to fish and fishing

Rules may be made in relation to the following matters relating to fish and fishing:

- (a) the regulation of fishing in a fishery;
- (b) the possession of fish taken in a fishery;
- (c) requirements relating to any accidental or incidental taking of fish in a fishery;
- (d) the identification of fish by any means;
- (e) the checking, measuring, grading, counting or weighing of fish taken in a fishery;
- (f) the prohibition of the purchase or sale of fish taken or dealt with in contravention of a management plan;
- (g) the prohibition of fish being unloaded outside the port, place or area nominated by the holder of a licence;
- (h) the notification of the time and place of arrival at a place to land fish;
- (i) the measures to limit accidental or incidental catches;
- (j) the measures to offset arrangements to compensate for damage to the environment done by fishing or damage to kinds or species of fish which is prohibited or restricted by a management plan;
- (k) the prohibition in any specified period of taking or bringing fish onto land or into State waters;
- (l) the possession of a greater quantity, weight or volume of fish of a specified species than the quantity, weight or volume specified in a management plan in respect of that species of fish;
- (m) the area, port or place in which, or at which, fish may be unloaded or delivered.

40. Miscellaneous matters

(1) Rules may be made in relation to the following matters:

- (a) the obligations on licensees, persons acting for those licensees or masters of vessels;
- (b) the keeping of records and submissions of returns by –
 - (i) any person acting under a licence; or
 - (ii) any other person who handles, unloads, lands, stores, packs, consigns, transports, processes, sells or purchases fish;
- (ba) giving effect to any agreement under section 162 ;
- (c) the participation in research programs and the requirement in that research to carry scientific equipment;
- (d) the requirement to carry observers or research personnel to research, monitor or ensure compliance with this Act.

(2) Rules may provide that the Minister may determine–

- (a) any opening or closing dates of seasons; and
- (b) the opening or closure of any part of a fishery; and
- (ba) the limits for taking or possessing fish; and
- (bb) the manner in which fish containers and receptacles are to be marked, tagged and notified; and
- (bc) the type, volume and marking of containers and receptacles containing fish; and
- (bd) the marking of fish; and
- (c) any other specified matter relating to the characteristics of fish.

(3) If the rules provide for the Minister to make a determination, the rules must specify how that determination is to be notified.

40A. Rules relating to fish processing

Rules may be made in respect of the following:

- (a) fish processing;
- (b) the manner in which, and the means by which, fish may be unloaded, delivered, consigned or transported for processing;
- (c) the manner in which fish are received, transported or stored;
- (ca) the notification of the receipt, dispatch, import or export of fish;
- (cb) the notification of the time and manner of –
 - (i) taking possession of fish at any place; and
 - (ii) the arrival or departure of fish from a place where the fish are processed or stored; and
 - (iii) the transport of fish to or from a place; and
 - (iv) the transfer of possession of fish to any person at any place;
- (d) the marking and labelling of receptacles and containers in which fish are transported, exported, received or stored;
- (e) the dimensions of those receptacles and containers;
- (f) the treatment of, and dealing with, processed fish;
- (g) the processing of fish;
- (h) any premises, place, vessel or vehicle on or in which fish are stored;
- (i) the quality and quantity of fish for sale within the State or for export.

40B. Rules relating to handling

Rules may be made in respect of the following:

- (a) the manner in which, and the means by which, fish may be unloaded, delivered, consigned or transported by handlers;
- (b) the manner in which fish are received or stored by handlers;
- (c) the manner in which fish may be exported;
- (ca) the notification of the receipt, dispatch, import or export of fish;
- (cb) the notification of the time and manner of –
 - (i) taking possession of fish at any place; and
 - (ii) the arrival or departure of fish from a place where the fish are processed or stored; and
 - (iii) the transport of fish to or from a place; and
 - (iv) the transfer of possession of fish to any person at any place;
- (d) the type of receptacle or container in which fish may be exported;
- (e) the marking and labelling of receptacles and containers in which fish are transported, exported, received or stored;
- (f) the dimensions of those receptacles and containers;
- (g) the composition of water or other packing material in which fish are placed when being exported.

40C. Rules relating to fish and fishing

Rules may be made in respect of the following:

- (a) reporting or notifying the landing and receiving of any fish;
- (b) the non-exploitative use of fish;
- (c) the possession of –
 - (i) the flesh or other part of any specified class of fish; and
 - (ii) any specified class of mutilated or disfigured fish;
- (d) the prevention of destruction or wastage of fish;
- (e) any activities that interfere with, or obstruct, fishing;
- (f) the size, number, weight or any other characteristics of fish which may be taken, possessed, offered for sale, sold or purchased;
- (g) the sale and purchase of fish;
- (h) the landing, surrender to the Crown and sale of fish taken in contravention of this Act;
- (i) the naming of fish and prohibiting of the sale of fish except under specified names.

40D. General provisions relating to rules

- (1) Rules may be made so as to apply differently according to any matter, condition, limitation, restriction, exception or circumstance specified in the rules.
- (2) Rules may adopt or incorporate the whole or any part of any document, standard, rule, code, specification or method, with or without modification, issued, prescribed or published by any person or body before or after the rules take effect.
- (3) Rules may authorise any matter to be from time to time determined, applied or regulated by –
 - (a) the Minister; or
 - (b) the Secretary or another fisheries officer.
- (4) Rules that are made wholly or partly in substitution for other rules may contain provisions of a savings and transitional nature.

41. Rules prevail

Any provision of rules made under this Division which is inconsistent with a provision of any regulations prevails over the latter provision to the extent of that inconsistency.

41A. Management plan prevails

Any provision of a management plan which is inconsistent with any provision of any rules made under this Division prevails over the latter provision to the extent of that inconsistency.

42. Offences and penalties

- (1) Rules made under this Division may provide that –
 - (a) a contravention of any of the rules is an offence; and
 - (b) in respect of any such offence, provide for the imposition of –
 - (i) a penalty of either or both of the following:
 - (A) imprisonment for a term not exceeding 2 years;
 - (B) a fine not exceeding 5 000 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues; or
 - (ii) a penalty specified in the regulations.

(2) Rules made under this Division may –

- (a) provide that an offence under the rules is a prescribed offence for the purposes of Division 5 of Part 9 (an offence in respect of which an infringement notice may be served); and
- (b) prescribe the penalty or special penalty, or both, for that prescribed offence.

Division 2 - Procedures for management plans

43. Decisions to prepare management plan

- (1) The Minister may determine that a management plan is to be prepared relating to a fishery within State waters.
- (2) As soon as practicable after the Minister determines that a management plan is to be prepared, the Secretary, after consultation with any appropriate person, must prepare a draft management plan.

44. Public exhibition of draft management plan

- (1) As soon as possible after a draft management plan has been prepared, the Secretary must refer it to the Minister for approval for it to be publicly exhibited.
- (2) The Minister may –
 - (a) give approval to the public exhibition of the draft management plan; or
 - (b) refuse to give approval.
- (3) If the Minister gives approval to the public exhibition of a draft management plan, the Secretary, by public notice, must notify –
 - (a) that a draft management plan has been prepared; and
 - (b) the fishery to which the draft management plan relates; and
 - (c) that a person may submit written representations in relation to the draft management plan; and
 - (d) the period during which representations may be made; and
 - (e) the address to which representations may be sent; and
 - (f) the place at which a copy of the draft management plan may be obtained; and
 - (g) the cost, if any, of obtaining a copy of the draft management plan; and
 - (h) the place at which the draft management plan is exhibited; and
 - (i) the period during which the draft management plan is to be exhibited.
- (4) The period during which representations may be made and the period during which the draft management plan is to be exhibited is to be each at least 60 days from the date on which the notice is first published.
- (5) The Secretary may make available –
 - (a) the history of the fishery or area to which a draft management plan relates; and
 - (b) policies considered relevant in the preparation of the draft management plan; and
 - (c) any other information the Secretary considers necessary or advisable to consider the draft management plan.

45. Interim management plan

- (1) The Minister, by notice published in the *Gazette*, may declare any rules, regulations, orders or a draft management plan referred to in a public notice under section 44 to constitute an interim management plan.
- (2) A notice under subsection (1) must state the date on which the interim management plan is to take effect.
- (3) An interim management plan has effect as if it were a management plan approved under section 47 .

(4) An interim management plan which relates to any matter that was the subject of the repealed Act must be generally consistent with that Act.

(5) An interim management plan ceases to take effect on the earlier of the following:

- (a) a date 12 months or later as the Minister determines after it took effect;
- (b) the date on which a management plan covering the fishery takes effect.

46. Consideration of representations

After considering any representations received in relation to a draft management plan, the Secretary –

- (a) may amend the draft management plan to take account of the representations; and
- (b) must prepare a report in relation to the representations received.

47. Approval of draft management plan

(1) The Secretary must submit to the Minister –

- (a) the draft management plan with any amendments made under section 46 ; and
- (b) the report prepared under that section.

(2) The Minister must approve a draft management plan if satisfied that –

- (a) the plan promotes and develops commercial or recreational fishing without detriment to the fish habitat and environment; and
- (b) the Secretary has taken appropriate action in relation to any representation made in respect of the plan.

(3) If the Minister is not satisfied under subsection (2) , the Minister must –

- (a) advise the relevant fishing body accordingly; and
- (b) refer the draft management plan to the Secretary; and
- (c) specify any matter which requires action before the Minister may be satisfied under subsection (2) .

(4) The Minister is to make available at the request of any person and on payment of a fee determined by the Minister a copy of a report prepared under section 46 .

48. Notification of approval of draft management plan

If the Minister approves a draft management plan, the Secretary, by public notice, must notify –

- (a) that the draft management plan has been approved; and
- (b) that the plan as approved is a management plan; and
- (c) the date on which the management plan takes effect; and
- (d) the period during which the management plan is in force; and
- (e) the place at which a copy of the management plan may be obtained; and
- (f) the cost of obtaining a copy of the management plan; and
- (g) any other information the Secretary considers relevant to the management plan.

48A. Correction of management plan

(1) The Minister, after consultation with the relevant fishing body and by order published in the *Gazette*, may change a management plan if satisfied that the change is –

- (a) to correct any error in the management plan; or
- (b) to remove any anomaly in the management plan; or
- (c) to clarify or simplify the management plan; or

(d) to remove any inconsistency between management plans or between a management plan and any Act; or

(e) to make procedural changes to a management plan; or

(f) for any other prescribed purpose.

(2) The Secretary is to –

(a) specify the change by public notice; and

(b) notify the change to any person holding a licence for commercial purposes affected by the order by notice served on the licensee.

Division 3 - Changes, review and revocation

49. Order changing management plan

(1) The Minister, by order published in the *Gazette*, may change a management plan by amending, substituting or adding any provision of the management plan if satisfied that an emergency has arisen, or is likely to arise, making it necessary or advisable to change the management plan.

(2) The Minister may change a management plan for one or more of the following purposes:

(a) to safeguard the fish being covered by the management plan from the outbreak of disease or the introduction of exotic kinds or species of fish or other things that are harming, or capable of harming, the fish;

(b) to safeguard the quality and quantity of fish covered by the management plan;

(c) to protect the fish covered by the management plan or other fish or their habitat from actual or anticipated damage or injury.

(2A)

(3) An order may provide for any one or more of the following:

(a) the suspension of fishing;

(b) the prohibition, restriction or variation of the controls or the kinds of fishing methods that may be employed;

(c) the alteration to the quantity, ages, sizes, sex, kinds or species of fish that may be taken;

(d) emergency provisions to safeguard fish;

(e) that a contravention of, or failure to comply with, a provision of the order is an offence;

(f) the imposition of a penalty in respect of any offence.

50. Notification of changes to management plan

(1) Before the Minister makes an order under section 49 –

(a) the Minister must consult with the relevant fishing body; and

(b) the Secretary, by public notice, must specify the changes that are proposed to be made to a management plan by the order.

(2) After the Minister makes an order under section 49, the Secretary, by notice in writing, must notify any person holding a licence for commercial purposes affected by the order of–

(a) the contents of the order; and

(b) the period during which the order is in force.

(3) The Secretary, by public notice, may publish a notice referred to in subsection (2) .

51. Period of order

- (1) An order under section 49 is in force for the period, not exceeding 90 days, specified in the order.
- (2) The Minister, by notice published in the *Gazette*, may extend an order once only for a further period not exceeding 90 days if satisfied that there is likely to be a significant risk to living marine resources if the order is not extended.

52. Suspension of substituted provision

The application of a provision of a management plan which is substituted by an order under section 49 –

- (a) is suspended for the period during which the order is in force; and
- (b) has effect the day after that period ends.

53. Review of management plan

- (1) The Minister may direct the Secretary to conduct a review of a management plan if satisfied that it is necessary or desirable to do so because of biological, economic or other factors relating to the fishery to which the management plan relates.
- (2) In conducting a review, the Secretary is to consult with –
 - (a) the relevant fishing body; and
 - (b) any person the Secretary considers appropriate.
- (3) As a result of a review, the Secretary may recommend to the Minister any alterations the Secretary considers should be made to the management plan.
- (4) The Minister may –
 - (a) approve any alteration to the management plan the Secretary recommends; or
 - (b) refuse to approve any alteration.
- (5) The Minister is to make available at the request of a person and on payment of a fee determined by the Minister a copy of the review.

54. Notification of proposed alteration

- (1) If the Minister approves any alteration to a management plan recommended by the Secretary under section 53, the Secretary, by public notice, must notify –
 - (a) that the management plan is to be altered; and
 - (b) that a person may submit written representations in relation to any proposed alteration; and
 - (c) the place at which particulars of the alteration may be obtained; and
 - (d) the address to which representations may be sent; and
 - (e) the period during which representations may be made.
- (2) The period during which representations may be made is to be at least one month from the date on which the notice is first published.

55. Recommendations after review

- (1) After considering any representation and within 60 days after the period specified in a public notice under section 54, the Secretary must forward to the Minister a report.
- (2) A report is to contain –
 - (a) a summary of each representation received; and
 - (b) a summary of any action taken by the Secretary in relation to any representation; and
 - (c) a recommendation as to whether the management plan –
 - (i) should be altered in a particular way; or

(ii) should not be altered; and

(d) a statement of the reasons for that recommendation.

(3) The Minister is to make available at the request of a person and on payment of a fee determined by the Minister a copy of the report.

56. Acceptance of recommendation

(1) The Minister must accept any recommendation of the Secretary following a review if satisfied that the Secretary –

(a) has conducted the review in a satisfactory and thorough manner; and

(b) has taken appropriate action in relation to any representation.

(2) If the Minister is not satisfied under subsection (1), the Minister must –

(a) refer the recommendation to the Secretary; and

(b) require the Secretary to re-consider the recommendation and any representation.

57. Notification of alteration of management plan

(1) If the Minister accepts the recommendation of the Secretary, the Secretary, by public notice, must notify –

(a) that as a result of a review, the Minister has accepted a recommendation to alter or not to alter a management plan; and

(b) the details of any alteration; and

(c) the date on which any alteration takes effect.

(2) The Secretary, by notice in writing, must notify any person holding a licence for commercial purposes who is affected by any alteration to a management plan.

58. Revocation of management plan

(1) The Minister, after receiving advice from the Secretary, by order, may revoke a management plan if satisfied that it is necessary or desirable to do so because biological, economic or other factors make it impossible, difficult or unsafe for fishing to be conducted in the fishery to which the management plan relates.

(2) Before revoking a management plan, the Minister is to consult with the relevant fishing body.

59. Emergency order

(1) The Minister, if satisfied that an emergency exists and after consulting with the relevant fishing body if practicable, may, by public notice, make an order in relation to any of the following:

(a) a closed season for a fishery;

(b) the closure or opening of State waters or a part of State waters for a particular fishery;

(c) the prohibition of taking, having, possessing or selling a species of fish by any person or class of person.

(2) An order has effect, unless sooner revoked, for the period, not exceeding 3 months, specified in the notice.

(3) A provision of an order which is inconsistent with a provision of a management plan prevails over the latter provision to the extent of that inconsistency.

(4) The Secretary, by notice in writing served on the licensee, must notify any licensee affected by an order.

(5) A person must not contravene an order.

Penalty: Fine not exceeding 5 000 penalty units or imprisonment for a term not exceeding 1 year, or both, and a daily fine not exceeding 5 penalty units.

PART 4 - Licences, Quotas and Agreements

Division 1 - Fishing licences

60. Fishing licence

(1) A person without a fishing licence must not in State waters –

- (a) participate in fishing; or
- (b) take fish; or
- (c) use any apparatus for the purpose of fishing; or
- (d) take any other action which may be taken only by the holder of a fishing licence.

Penalty: Fine not exceeding 5 000 penalty units or imprisonment for a term not exceeding 2 years, or both, and a daily fine not exceeding 50 penalty units.

(2) This section does not apply to –

- (a) a person who is fishing for recreational purposes and is not required to be licensed under a management plan for that fishing; or
- (b) a person who uses a licence with the Minister's approval under section 87 ; or
- (ba) a person who carries out an activity specified in subsection (1) , other than taking fish with a spear or by diving, under the close direct supervision of –
 - (i) a natural person who is the holder of a fishing licence; or
 - (ii) a supervisor; or
- (c) an Aborigine who is engaged in an Aboriginal activity.

(3) A person is to apply for a fishing licence in accordance with section 77 .

61. Authority of fishing licence

A fishing licence authorises the holder of the licence to carry out fishing in accordance with the licence.

62. Conditions of fishing licence

A fishing licence is subject to –

- (a) the rules of a management plan applicable to that licence; and
- (b) any condition specified in the licence.

63. Fishing certificate

(1) The Secretary is to maintain a certificate or certificates for a person in respect of a fishing licence or fishing licences held by the person.

(2) The Secretary may determine which fishing certificate specifies which fishing licence.

(3) A fishing certificate is to specify –

- (a) the name of the holder of the fishing licence; and
- (b) the fishing licence or fishing licences to which it relates; and
- (c) any other detail the Secretary determines.

Division 2 - Marine farming licence

64. Marine farming licence

- (1) A person without a marine farming licence must not –
- (a) carry out any marine farming in State waters; or
 - (b) take live fish for the purpose of marine farming in State waters; or
 - (c) operate a fish hatchery or breed, culture or farm fish –
 - (i) in inland waters if the fish in the normal course of events would be transferred to State waters or waters sourced from State waters; or
 - (ii) on land if State waters are used as a growing medium or the waters in which the fish are normally kept has characteristics similar to any State waters.

Penalty: Fine not exceeding 500 penalty units or imprisonment for a term not exceeding 12 months, or both.

- (1A) Subsection (1) does not apply to –
- (a) a person who carries out any activity specified in that subsection under the supervision of the holder of a marine farming licence or a supervisor at a place specified on that licence; or
 - (b) a person who is authorised to use a marine farming licence by means of a sublease under section 74 of the Marine Farming Planning Act 1995 at a place specified on that licence; or
 - (c) a person who is under the supervision of a person referred to in paragraph (b) .
- (2) Subsection (1) (c) (i) does not apply to a person operating a fish hatchery for freshwater fish under a licence under the Inland Fisheries Act 1995 .
- (3) A person is to apply for a marine farming licence in accordance with section 77 .
- (4) An application for a marine farming licence must not be granted to a person –
- (a) for an area in State waters unless the person holds a lease under the Marine Farming Planning Act 1995 in respect of the area to which that licence is to relate; or
 - (b) for any area unless it contains the conditions and restrictions imposed under a marine farming development plan in relation to that area; or
 - (c) for an area within inland waters unless the marine farm obtains water from State waters.
- (4A) Subsection (4)(a) does not apply to a person who is the owner of the area to which the application for the marine farming licence relates.
- (5) This section does not apply to breeding, rearing or keeping alive fish –
- (a) for domestic purposes; or
 - (b) for display purposes.

65. Authority of marine farming licence

A marine farming licence authorises the holder of the licence to carry out marine farming in accordance with the licence.

66. Conditions of marine farming licence

A marine farming licence is subject to –

- (a) the marine farming development plan to which the licence relates; and
- (b) any condition specified in the licence.

66A. Marine farming licence depends on marine farming lease

- (1) The Minister must cancel a marine farming licence if the holder of the licence –
- (a) ceases for any reason to hold a lease under the Marine Farming Planning Act 1995 for the area to which the licence relates; and

- (b) is not, under that Act, being granted a new lease for that area.
- (2) The cancellation takes effect as soon as the holder of the licence is given written notice of it by the Minister.
- (3) In this section –

lease means a lease of any kind within the meaning of the Marine Farming Planning Act 1995 .

Division 3 - Fish processing licences

67. Fish processing licence

- (1) A person who does not hold a fish processing licence must not, for commercial purposes, process –
- (a) abalone, giant crab, rock lobster or scallop; or
 - (b) more than a prescribed quantity of prescribed fish during a prescribed period.

Penalty: Fine not exceeding 500 penalty units and a daily fine not exceeding 10 penalty units.

- (2) Subsection (1) does not apply to the processing of fish –
- (a) on any vessel used to take the fish by a person authorised to take the fish with that vessel; or
 - (b) for sale by retail to the public or served as meals to the public in, or from, a place; or
 - (c) by the holder of a marine farming licence if the fish are produced by the holder under that licence; or
 - (ca) by the holder of a marine farming licence if the fish have been produced under the authority of any marine farming licence and are being packed live, or being held in readiness to be packed live, for sale; or
 - (d) by the holder of a fishing licence if the fish are caught by the holder under that licence; or
 - (e) by a person under the supervision of the holder of a fish processing licence at the place at which the fish may be processed under the licence; or
 - (f) by an Aborigine who is engaged in an Aboriginal activity.
- (3) A person is to apply for a fish processing licence in accordance with section 77 .
- (4) In this section –

abalone means fish of the genus *Haliotis*;

giant crab means crab of the species *Pseudocarcinus gigas*;

rock lobster means rock lobster of the genus *Jasus*;

scallop means fish of the species –

- (a) *Equichlamys bifrons* (commonly known as queen scallop); or
- (b) *Pecten fumatus* (commonly known as commercial scallop); or
- (c) *Mimachlamys asperrimus* (commonly known as doughboy scallop).

68. Processing fish

- (1) A fish processing licence is to specify the places where the fish that it authorises to be processed may be processed.
- (2) Under subsection (1) , a place may be specified as –
- (a) a place where fish of any kind may be processed; or
 - (b) a place where only fish of a particular kind may be processed.
- (3) The holder of a fish processing licence must not process fish at a place other than the place specified for that purpose in the licence.

Penalty: Fine not exceeding 500 penalty units.

(4) The holder of a fish processing licence must not –

- (a) have, at a place specified in the licence pursuant to subsection (1) , fish that have been taken illegally; or
- (b) cause or allow another person to have, at a place specified in the licence pursuant to subsection (1) , fish that have been taken illegally.

Penalty: Fine not exceeding 500 penalty units or imprisonment for a term not exceeding 2 years, or both.

69. Storing fish

The holder of a fish processing licence must not hold or store live or dead fish of a prescribed class that have been, are being or are to be processed under the licence at a place other than–

- (a) the place at which the fish are to be processed under the licence; or
- (b) any place specified for that purpose in the licence.

Penalty: Fine not exceeding 200 penalty units.

70. Conditions of fish processing licence

A fish processing licence is subject to –

- (a) the rules of a management plan applicable to that licence; and
- (b) any condition specified in the licence relating to any one or more of the following matters:
 - (i) returns and records to be kept and provided;
 - (ii) the alteration of premises at which fish are processed;
 - (iii) any other matter the Minister determines.

Division 4 - Handling licences

71. Handling licence

(1) The Minister may require a person or class of persons who does any of the following to hold a handling licence:

- (a) receive fish from a licensee;
- (b) transport or store fish received from a licensee;
- (c) otherwise deal with fish received from a licensee.

(1A) Subsection (1) does not apply to a person who carries out any activity specified in that subsection under the supervision of the holder of a handling licence.

(2) A person who is required to hold a handling licence must not do any of the activities specified in subsection (1) without holding a handling licence.

Penalty: Fine not exceeding 500 penalty units or imprisonment for a term not exceeding one year and a daily fine not exceeding 10 penalty units.

(3) A person is to apply for a handling licence in accordance with section 77 .

72. Authority of handling licence

A handling licence authorises the holder to carry out any activity referred to in section 71 and specified in the licence.

73. Conditions of handling licence

A handling licence is subject to –

- (a) the rules applicable to that licence; and
- (b) any condition specified in the licence.

74. Records and information

(1) The Minister may require any person or class of persons who carries out any activity referred to in section 71 to keep records and information relating to any one or more of the following matters:

- (a) the person from whom fish were received;
- (b) any authorisation of that person to be in possession of the fish;
- (c) the person to whom fish were delivered or consigned;
- (d) the date on which fish were received;
- (e) the quantity and species or class of fish.

(2) A person must provide the Secretary with any records and information kept under subsection (1) .

(3) A person, without reasonable cause, must not fail to keep records or give information as required.

Penalty: Fine not exceeding 100 penalty units.

Division 5 - General provisions relating to licences

75. Guidelines

(1) The Minister may issue guidelines consistent with this Act in respect of any matter relating to a licence or licensing.

(2) The Minister may amend or revoke any guidelines.

(3) In performing a function or exercising a power relating to a licence, the Secretary is to take into account –

- (a) any guidelines issued by the Minister; and
- (b) any other matter the Secretary considers relevant.

76. Management plan prevails

(1) Any provision of a management plan which is inconsistent with any provision of this Part prevails over the latter provision to the extent of that inconsistency.

(2) Subsection (1) does not apply to a provision of a management plan that relates to any matter referred to in Division 6A .

77. Applications

(1) An application for the grant, renewal, variation or transfer of a licence or quota or entitlement under a licence is to –

- (a) be in an approved form; and
- (b) contain any information the Secretary requires; and
- (c) be accompanied by the prescribed fee; and
- (d) be lodged with the Secretary.

(2) A partnership, a corporation or a trustee is to nominate an adult as the nominated person for the purposes of a licence.

(2A) Subsection (2) does not apply in respect of a marine farming licence held by a partnership, corporation or trustee.

- (3) A nominated person is not entitled to any rights conferred by, or interest in, a licence only because the person is a nominated person.
- (4) The Secretary, on written application, may amend any particulars entered in relation to a nominated person.
- (5) The Secretary may require a person to –
 - (a) provide any further information the Secretary determines; and
 - (b) verify by statutory declaration any information given in connection with an application.

78. Grant of licence

- (1) The Minister may grant an application for a licence, subject to any condition the Minister determines, if satisfied that –
 - (a) the applicant has complied with this Act; and
 - (b) the applicant, within 5 years before the date of the application, has not been convicted of any offence under this Act, any other Act or a corresponding law which the Minister considers relevant to the holding of a licence; and
 - (c) the applicant is not disqualified from holding the licence; and
 - (d) granting the application is not likely to contravene a management plan; and
 - (e) there are no environmental or resource constraints in granting the application; and
 - (f) the applicant is a fit and proper person to hold the licence; and
 - (fa) the applicant is, in the case of a natural person who is applying for a licence for commercial purposes, an adult; and
 - (g) the applicant has paid the appropriate, levies, fees and charges; and
 - (h) it is appropriate to do so.
- (2) The Minister may refuse to grant a licence if not satisfied as required under subsection (1) .
- (2A) The Minister must not grant a licence under this section if the application is for a licence to replace a licence that has been surrendered or cancelled or has ceased to be in force under section 247 .
- (3) The Minister may delegate to any person the power to grant or refuse an application for particular types or classes of licences.

78A. Grant of licence previously cancelled

- (1) Despite section 78(2A) , the Minister may grant an application for a licence, subject to any condition the Minister determines, if satisfied that –
 - (a) the licence is to replace a former licence of the same kind; and
 - (b) it has been at least 5 years since the date of the offence that resulted in the 200th demerit point being allocated to the licence; and
 - (c) the former licence ceased to be in force before the commencement of the Living Marine Resources Management (Miscellaneous Amendments) Act 2007 ; and
 - (d) the applicant –
 - (i) was the holder of the former licence at the time the licence ceased to be in force; and
 - (ii) was not the person convicted of any of the offences that resulted in the demerit points being allocated to the former licence; and
 - (iii) is a fit and proper person to hold the licence; and
 - (iv) has satisfied the Minister that he or she has not received, and is unlikely to receive, compensation for the former licence through any other action; and

- (v) has complied with this Act; and
 - (vi) within 5 years before the date of the application, has not been convicted of any offence under this Act, any other Act or a corresponding law which the Minister considers relevant to the holding of a licence; and
 - (e) granting the application is unlikely to contravene a management plan; and
 - (f) there are no environmental or resource constraints in granting the application; and
 - (g) the applicant is, in the case of a natural person who is applying for a licence for commercial purposes, an adult; and
 - (h) the applicant has paid the appropriate levies, fees and charges; and
 - (i) it is appropriate to do so.
- (2) The Minister may refuse to grant a licence if not satisfied as required under subsection (1) .
- (3) The Minister may delegate to any person the power to grant or refuse an application under this section for particular types or classes of licences.
- (4) For the purposes of Division 3 of Part 10 , a decision to grant or refuse an application for a licence under this section is a prescribed decision.
- (5) This section expires one year after the Living Marine Resources Management Amendment (Licensing) Act 2009 commences.
- (6) In this section –
- former licence* means a licence that ceased to be in force under section 247 , as in force at the time the licence ceased to be in force, as a result of having 200 demerit points allocated to it.

79. Issue of licence

- (1) A licence is to be in an approved form.
- (2) A licence may be issued –
- (a) as a separate instrument; or
 - (b) as an endorsement on a fishing certificate.

80. Term of licence

- (1) A licence is in force for the period, not exceeding 10 years, specified in the licence.
- (2) Subject to this Act or a management plan, a licence ceases to be in force –
- (a) on a day specified in the licence; or
 - (b) if a date is not specified, on 28 February –
 - (i) in the last year in respect of which it was granted; or
 - (ii) if fees are paid by annual instalments, in the year in which an instalment for a succeeding year is not paid before the commencement of that succeeding year.

81. Renewal of licence

- (1) The holder of a licence may, before it ceases to be in force, apply to the Minister for the renewal of the licence.
- (2) The Minister, on payment of the prescribed fee, must renew the licence if satisfied that–
- (a) the applicant has complied with the conditions of the licence in the previous 5 years; and
 - (b) the holder of the licence has not been convicted of any offence under this Act, any other Act or a corresponding law which the Minister considers relevant to the holding of a licence; and

- (c) the applicant is not disqualified from holding the licence; and
 - (d) there are no environmental or resource constraints on doing so; and
 - (e) the applicant is a fit and proper person to hold the licence; and
 - (ea) the applicant is, in the case of a natural person who is applying for the renewal of a licence for commercial purposes, an adult; and
 - (f) the applicant has paid the appropriate, levies, fees and charges; and
 - (g) it is appropriate to do so.
- (3) If the Minister is not satisfied as required under subsection (2) , the Minister may –
- (a) renew the licence subject to any condition the Minister considers appropriate; or
 - (b) refuse to renew the licence.
- (4) Also, in the case of a fish processing licence, the Minister may refuse to renew the licence if–
- (a) the Minister is satisfied that any place, vessel or vehicle to which the licence relates has not been used to process fish within the previous 2 years; or
 - (b) the Secretary of a Department administering any Act relating to public health advises the Minister not to renew the licence.
- (5) If the application for the renewal of the licence is not determined by the Minister before the day on which it ceases to be in force, it is, despite section 80 , taken to continue in force until it is renewed or its renewal is refused under this section.

82. Transfer of licence

- (1) The holder of a licence may apply to the Minister to transfer –
- (a) the licence to another person; or
 - (b) a quota or entitlement under the licence to another licensee.
- (2) The Minister may grant an application for the transfer of a licence to another person if satisfied that –
- (a) the other person has complied with this Act; and
 - (b) the other person, within 5 years before the date of the application, has not been convicted of any offence under this Act, any other Act or a corresponding law which the Minister considers relevant to the holding of the licence; and
 - (c) the other person is not disqualified from holding the licence; and
 - (d) granting the application is not likely to contravene a management plan; and
 - (e) there are no environmental or resource constraints in granting the application; and
 - (f) the other person is a fit and proper person to hold the licence; and
 - (faa) the other person is, if a natural person, an adult; and
 - (fa) granting the application is consistent with guidelines issued under section 75 ; and
 - (fb) in respect of a relevant licence within the meaning of the Fishing (Licence Ownership and Interest) Registration Act 2001 , an application has been made under that Act by the owner of that licence to cancel all entries in the register under that Act relating to that licence; and
 - (g) the applicant has paid the appropriate fees and charges.
- (3) The Minister may refuse to grant an application under subsection (1)(a) if not satisfied as required under subsection (2) .
- (3A) The Minister may grant an application under subsection (1)(b) if satisfied that –

- (a) granting the application is not likely to contravene a management plan; and
- (b) there are no environmental or resource constraints in granting the application; and
- (c) granting the application is consistent with guidelines issued under section 75 ; and
- (ca) in respect of a relevant licence within the meaning of the Fishing (Licence Ownership and Interest) Registration Act 2001 , an application under that Act has been made by the owner of that licence and the other licensee to vary an entry in the register relating to the quota or entitlement under the licence; and
- (d) the applicant has paid the appropriate fees and charges.

(3B) The Minister may refuse to grant the application if not satisfied as required under subsection (3A) .

(4) The Minister may defer a decision on an application under subsection (1) pending the determination or discontinuation of any proceedings against the applicant, the proposed transferee or an associate of the proposed transferee for an offence against –

- (a) this Act; or
- (b) any other Act that the Minister considers relevant to the making of the decision; or
- (c) a corresponding law.

(5) For the purposes of subsection (4) , a person is an associate of the proposed transferee if the person –

- (a) holds or will hold any relevant financial interest, or is or will be entitled to exercise any relevant power (whether in their own right or on behalf of any other person), in a business of the proposed transferee and, by virtue of that interest or power, is able or will be able to exercise a significant influence over or in respect of the management or operation of that business; or
- (b) holds or will hold any relevant position (whether in their own right or on behalf of any other person) in a business of the proposed transferee; or
- (c) is a relative of the proposed transferee.

(6) In this section –

relative means –

- (a) the spouse, parent, child or sibling (whether of the full or half blood); or
- (b) the person with whom a person is in a personal relationship within the meaning of the Relationships Act 2003 ;

relevant financial interest, in relation to a business, means –

- (a) any share in the capital of the business; or
- (b) any entitlement to receive any income derived from the business;

relevant position, in relation to a business, means the position of director, manager or other executive position or secretary, however that position is designated in that business;

relevant power means any power, whether exercisable by voting or otherwise and whether exercisable alone or in association with others –

- (a) to participate in a directorial, managerial or executive decision; or
- (b) to elect or appoint any person to any relevant position.

83. Variation of licence

(1) The Minister may vary a licence –

- (a) on application and payment of a prescribed fee; or
- (b) if the Minister considers it necessary or desirable to do so.

(1A) The Minister may vary a licence under subsection (1)(a) if satisfied that –

- (a) the holder of the licence has complied with this Act; and
 - (b) the holder of the licence, within 5 years before the date of the application, has not been convicted of any offence under this Act, any other Act or a corresponding law which the Minister considers relevant to the holding of the licence; and
 - (c) varying the licence is not likely to contravene a management plan; and
 - (d) varying the licence is not likely to contravene a marine farming development plan under the Marine Farming Planning Act 1995 ; and
 - (da) varying the licence will not, if it includes matters provided for under a deed of agreement, be inconsistent with that deed of agreement; and
 - (e) there are no environmental or resource constraints in varying the licence; and
 - (ea) varying the licence is consistent with guidelines issued under section 75 ; and
 - (f) the holder of the licence has paid the appropriate fees and charges.
- (1B) The Minister may refuse to vary a licence –
- (a) if not satisfied as required under subsection (1A) ; or
 - (b) for any other reason the Minister considers appropriate.
- (1C) The Minister may defer a decision on an application under subsection (1) pending the determination or discontinuation of any proceedings against the applicant for an offence against –
- (a) this Act; or
 - (b) any other Act that the Minister thinks is relevant to the making of that decision; or
 - (c) a corresponding law.
- (1D) In exercising power under subsection (1)(b) , the Minister is to ensure that –
- (a) a marine farming licence is not varied in a way that is inconsistent with a marine farming development plan; and
 - (b) a licence that includes matters provided for under a deed of agreement is not varied in a way that is inconsistent with that deed of agreement.
- (2) If the Minister varies a licence, the Minister –
- (a) may require the holder to return it; and
 - (b)
 - (c) is to issue a substitute licence.
- (3) A variation of a licence which is inconsistent with any provision of a management plan is of no effect.
- (4) A variation of a licence takes effect on the day on which the substitute licence is issued.
- (5) In this section –
- vary a licence*** includes vary the conditions of the licence by doing one or more of the following:
- (a) omitting a subsisting condition;
 - (b) amending a subsisting condition;
 - (c) adding a new condition.

84. Damages in respect of transfer or variation of licence

A person who has a legal or equitable interest in a licence is not entitled to bring any action for damages against the Crown in respect of the transfer of the licence or any quota or entitlement under the licence or the variation of the licence.

85. Effectiveness of licences

A licence is of no effect for any period during which any fees, charges or royalties payable in respect of the licence are not paid by the due date or by the due date as extended under section 275 .

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86A. Compliance with conditions

A person must not contravene a condition of a licence.

Penalty: Fine not exceeding 500 penalty units or imprisonment for a term not exceeding 2 years, or both, and a daily fine not exceeding 50 penalty units.

87. Prohibition on use of licence by other persons

(1) A holder of a licence, without the Minister's approval, must not allow another person to use the licence –

- (a) by means of leasing, subleasing or lending; or
- (b) by acting as a supervisor; or
- (c) by any other arrangement or agreement.

Penalty: Fine not exceeding 100 penalty units.

(2) The Minister may grant the approval if satisfied that –

- (a) it is reasonable to do so; and
- (b) the person for whom the approval is sought –
 - (i) has complied with this Act; and
 - (ii) has not been convicted of any offence under this Act, any other Act or a corresponding law that the Minister considers relevant; and
 - (iii) is not disqualified from holding a licence under this Act; and
 - (iv) is a fit and proper person; and
 - (v) is, if a natural person, an adult; and
- (c) granting the approval is not likely to contravene a management plan or guidelines issued under section 75 .

(2A) The Minister may defer a decision in respect of an approval if –

- (a) the person for whom the approval is sought has been charged with an offence under this Act, a corresponding law or any other Act the Minister considers relevant; and
- (b) the charge has not been determined at the time the application was made –

until the charge is determined.

(3) It is a defence in proceedings under subsection (1) if the defendant establishes that he or she–

- (a) was no longer the holder of the relevant licence because the licence has been transferred; or
- (b) is otherwise authorised to do so.

(4) Unless the Minister otherwise determines, any agreement which allows a person to use a licence held by another person is unenforceable –

- (a) for the purposes of this Act or any other Act; and
- (b) in any legal proceedings initiated by any of the parties to the agreement.

88. Substitute licensee

(1) Unless otherwise provided, the Minister may approve a suitable person nominated by the licensee or the personal representative of the licensee to be a substitute licensee to execute any documents in respect of the licence –

- (a) during any period the licensee is unable to execute the document; or
- (b) if the licensee has died.

(2) The executor or administrator of the estate of a deceased licensee is a substitute licensee for any period the Minister determines.

89. Supervision of activities

(1) The holder of a licence must ensure that any activity carried out under the authority of the licence is supervised by a supervisor, a person designated under subsection (7) or under a form of supervision approved under subsection (5) .

Penalty: Fine not exceeding 500 penalty units or imprisonment for a term not exceeding 2 years, or both, and a daily fine not exceeding 50 penalty units.

(2) A supervisor is –

- (a) if the licence is granted to a natural person, the licensee; or
- (b) if the licence is granted to a partnership or corporation, the person nominated under section 77 (2) ;
or
- (ba) a person approved to use a licence under section 87 ; or
- (c) a person approved as substitute licensee under section 88 .

(3) A person may be a supervisor in respect of activities carried out under one marine farming licence or under more than one specified marine farming licence.

(4) A supervisor must ensure that any activity carried out under a licence complies with this Act as if the supervisor were the holder of the licence.

Penalty: Fine not exceeding 500 penalty units or imprisonment for a term not exceeding 2 years, or both, and a daily fine not exceeding 50 penalty units.

(5) If for any reasonable reason the supervisor is unable to supervise an activity, the Minister may approve another form of supervision that is acceptable in the circumstances.

(6) Subsection (2)(b) does not apply to the holder of a marine farming licence that is a partnership, corporation or trustee.

(7) If the holder of a marine farming licence is a partnership, corporation or trustee the holder must –

- (a) designate a person to supervise any activity for which the licence is required; and
- (b) if required by a fisheries officer to do so, identify that person.

Penalty: Fine not exceeding 500 penalty units or imprisonment for a term not exceeding 2 years, or both, and a daily fine not exceeding 50 penalty units.

90. Cancellation or suspension of licence

(1) The Secretary may apply to a magistrate for an order to cancel a licence, or to suspend it for a period of 5 years, if –

- (a) the holder, or a supervisor or approved user, of the licence is convicted of an offence against this Act, another Act or a corresponding law, being an offence of a kind that is –
 - (i) relevant to the holding, supervision or use of the licence; and

- (ii) of such character as to merit the cancellation or suspension of the licence; or
 - (b) the holder, or a supervisor or approved user, of the licence is convicted of an offence, against a corresponding law or a New Zealand law, that is the equivalent of an offence under this Act; or
 - (c) the holder, or a supervisor or approved user, of the licence contravenes a condition of the licence; or
 - (d) the holder, or a supervisor or approved user, of the licence contravenes a provision of this Act relating to the keeping or supply of any records, accounts or other information; or
 - (e) a fee or charge or other money payable in respect of the licence is not paid by the due date.
- (2) Only the following persons may be a party to the proceedings on the application:
- (a) the Secretary;
 - (b) the holder of the licence;
 - (c) a supervisor of the licence;
 - (d) an approved user of the licence.
- (3) Subject to subsections (4) and (5), the magistrate may grant or dismiss the application.
- (4) The magistrate may grant the application and order the cancellation or suspension of the licence if –
- (a) the Secretary has given the magistrate, either orally or by affidavit, any information the magistrate requires concerning the grounds on which the order is sought; and
 - (b) the prescribed requirements, if any, relating to the making or hearing of the application have been met; and
 - (c) the magistrate is satisfied that there are reasonable grounds for making the order.
- (5) The authority conferred by a licence is of no effect while it is suspended.
- (6) In this section –
- approved user***, of a licence, means a person who is allowed to use the licence pursuant to an approval under section 87.

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92. Surrender of licence

- (1) The holder of a licence may, by notice in writing to the Secretary, surrender it at any time.
- (2) The surrender takes effect –
 - (a) on the date specified in the notice; or
 - (b) if no date is specified in the notice, on the day the Secretary receives the notice.
- (3) The licence is cancelled as soon as the surrender takes effect.

92A. Notification of Director, EPA of certain matters

- (1) In this section –

Director, EPA means the Director, Environment Protection Authority, appointed under section 18 of the Environmental Management and Pollution Control Act 1994.
- (2) The Secretary is to notify the Director, EPA of –
 - (a) an application for the grant, renewal, or transfer, of a licence in relation to finfish farming; and
 - (b) a decision of the Minister to grant, or to refuse to grant, a licence in relation to finfish farming; and
 - (c) a decision of the Minister to renew, or to refuse to renew, a licence in relation to finfish farming; and

- (d) a decision of the Minister to transfer, or to refuse to transfer, a licence in relation to finfish farming; and
- (e) a decision of the Minister to vary, or to refuse to vary, a licence in relation to finfish farming; and
- (f) a decision of the Minister to cancel or suspend a licence in relation to finfish farming; and
- (g) the surrender of a licence in relation to finfish farming.

Division 6 - Allocation arrangements

93. Declaration of a quota management

- (1) The Minister, by notice published in the *Gazette*, may declare –
 - (a) that any species or class of fish in a fishery or part of a fishery is to be subject to quota management under a management plan; and
 - (b) a date after which the quantity of fish caught as specified in records kept under Part 6 is not relevant to any determination of an allocation of quota.
- (2) Before making a declaration, the Minister is to consult with the relevant fishing body.
- (3) A declaration does not affect the taking of any fish under a management plan.
- (4) The Minister must not make a declaration which affects the operation of a marine farming licence.

94. Total allowable catch provisions

- (1) A management plan may specify –
 - (a) the quota period for a fishery, other than the commercial abalone fishery; and
 - (b) the period during which any other catch limits for any purpose under this Act may be taken; and
 - (c) the process by which a total allowable catch, other than in relation to the commercial abalone fishery, is allocated.
- (2) The Minister, after consultation with the relevant fishing body and by public notice, may –
 - (a) set the total allowable catch for a fishery; and
 - (b) determine the part or parts of the fishery from which the total allowable catch is to be taken; and
 - (c) determine the portion of the total allowable catch to be taken from each part of the fishery.
- (3) The Minister is to determine the amount of abalone to be taken pursuant to an abalone quota unit from each part of the fishery.
- (4) The Minister may exercise a power under subsections (2)(b) , (2) (c) and (3) in relation to a fishery even if it results in any inconsistency with any provision of a deed of agreement under this Act or the repealed Act.
- (5) If a total allowable catch is not set before the start of a quota period, the total allowable catch set for the preceding quota period applies, and the provisions of subsections (2)(b) , (2) (c) and (3) apply, until a new total allowable catch is set.
- (6) Compensation is not payable to a party to a deed of agreement relating to the abalone fishery made under this Act or the repealed Act or to any other person for any loss or damage suffered by the party or person because of the application of subsection (2)(b) , (2) (c) or (3) .
- (7) The Minister is to allocate to each abalone quota unit a number from 1 to 3 500 inclusive.
- (8) Any abalone quota unit number allocated before the commencement of the Fishing (Licence Ownership and Interest) Registration Act 2001 is taken to be a number allocated under subsection (7) .

95. Determination of total allowable catch

- (1) Before setting or varying a total allowable catch under a management plan, the Minister must consult with any person, body or organisation the Minister considers to be representative of those having an interest in the amount that might be set as the total allowable catch.
- (2) The Minister must determine a total allowable catch having regard to the purposes of this Act.
- (3) The Minister, by public notice, must notify the quantity determined as a total allowable catch under this section.

96. Allocation of total allowable catch

A management plan that incorporates a total allowable catch for a species or class of fish may provide for that catch to be allocated among any or any combination of the following:

- (a) persons holding a licence to take fish of that species or class;
- (b) persons holding another kind of licence;
- (c) persons engaging in recreational fishing;
- (d) Aborigines engaging in Aboriginal activities.

97. Appeals against allocations of total allowable catch

(1) The holder of a fishing licence may appeal to the Appeal Tribunal against a decision to allocate part of a total allowable catch to a person under a management plan only on –

- (a) the facts of the case; or
- (b) the grounds of natural justice.

(2) An appeal is to be instituted within 60 days after the decision is made.

(3) For the purpose of an appeal, the Appeal Tribunal is to be constituted by more than one member, one of whom must possess expertise in fishing or the fishing industry.

97A. Confirmation of total allowable catches for giant crab and rock lobster

Notwithstanding any other provision of this Division or anything done or caused to be done under such a provision, Schedule 4 has effect with regard to the total allowable catches for the giant crab and rock lobster fisheries.

98. Licence allocations

(1) The Minister, without any applications being made and after consultation with any appropriate fishing body, may issue –

- (a) a fishing licence in respect of a fishery; or
- (b) a new fishing licence in place of a fishing licence which has been cancelled or surrendered.

(2) The Minister may determine to whom a licence is to be issued as follows:

- (a) for a licence referred to in subsection (1) (a) if a fishery is subject to a management plan –
 - (i) by any system specified in that plan; or
 - (ii) if a system is not specified, by any system the Minister considers appropriate;
- (b) for a licence referred to in subsection (1) (a) if a fishery is not subject to a management plan, by any system the Minister considers appropriate;
- (c) for a licence referred to in subsection (1) (b), by any system the Minister considers appropriate.

(3) Notwithstanding any other provision of this Act, the Minister may issue a special abalone licence on such licensing management conditions as he or she considers appropriate and may, by notice, vary or revoke any such condition.

(4) A licensing management condition may be inconsistent with any provision of Part 4 , or of any management plan or regulations, that provides for the variation, renewal, transfer or termination (however described) of –

- (a) fishing licences; or
- (b) any rights, quota entitlements or other benefits (however described) conferred by fishing licences; or
- (c) any duties imposed by fishing licences; or
- (d) any catch restrictions, prohibitions or other detriments (however described) imposed by fishing licences –

and, in that event, the licensing management condition prevails to the extent of the inconsistency.

(5) A decision by the Minister to issue a special abalone licence subject to licensing management conditions or to vary or revoke such a condition is –

- (a) not capable of being made a prescribed decision under Division 3 of Part 10 ; and
- (b) not reviewable or appealable under the Judicial Review Act 2000 or any other law of the State; and
- (c) not a matter in respect of which a declaratory judgment may be given; and
- (d) not a matter in respect of which any other action or proceeding may be brought.

(6) However, for special abalone licences issued before the changeover day, paragraphs (b) , (c) and (d) of subsection (5) do not apply if the relevant proceedings were commenced before that day.

(7) In this section –

changeover day means the day of commencement of the Living Marine Resources Management Amendment Act 2007 ;

licensing management condition means a condition of a special abalone licence that provides for or regulates in any way the variation, renewal, transfer or termination (however described) of –

- (a) the licence; or
- (b) any rights, quota entitlements or other benefits (however described) conferred by the licence; or
- (c) any duties imposed by the licence; or
- (d) any catch restrictions, prohibitions or other detriments (however described) imposed by the licence;

special abalone licence means a fishing licence issued under subsection (1) , whether before, on or after the changeover day, that authorises a person to have a share of the total allowable catch for the abalone fishery.

Division 6A - Rock lobster quota

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98C. Allocation of rock lobster quota units

(1) The Minister is to allocate rock lobster quota units to the holders of fishing licences that entitle the taking of rock lobster for commercial purposes.

(2) The Minister may only allocate up to a total of 10 507 rock lobster quota units.

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Division 7 - Specified agreements

99. Deed of agreement

(1) The Minister may enter into a deed of agreement for the right to take and acquire commercially protected fish in State waters during a period specified in the deed.

(2) A deed of agreement is not unenforceable only because it does not fix with sufficient certainty the fee payable for future terms of the deed.

(3) The Secretary, by notice in the *Gazette* and in accordance with a deed of agreement, may determine any fees payable under the deed of agreement.

99A. Exclusion of rule against perpetuities

The rule of law commonly known as the rule against perpetuities does not apply, and is taken to have never applied, to an interest created by a deed of agreement.

99B. Right of certain persons holding abalone quotas to transfer to new deed of agreement

(1) A person who is entitled to an abalone quota unit, under an abalone deed of agreement in force immediately before the commencement of the Living Marine Resources Management Amendment Act 2005, may, by notice in writing given to the Secretary on or before 1 November 2005, elect that the deed of agreement set out in Schedule 3 is to apply to him or her in respect of that abalone quota unit.

(2) On an election under this section, the following provisions apply in respect of the relevant abalone quota unit:

(a) the person making the election is taken for all legal purposes to have entered into the deed of agreement set out in Schedule 3 and to have been granted a licence under this Act to take abalone in accordance with the provisions of the deed;

(b) the licensee has all the rights and obligations arising from that deed of agreement;

(c) those rights and obligations continue with modifications the rights and obligations that the licensee had under any previous deed of agreement and the latter rights and obligations cease to have effect.

(3) Nothing in this section affects –

(a) any civil liability of a licensee that was not discharged before the election under subsection (1) ; or

(b) any criminal liability of a licensee arising from any failure to comply with any previous deed of agreement or any requirement of this Act.

(4) On an election under subsection (1) , the licensee is liable with effect from 1 January 2005 to pay –

(a) the access charge provided by clause 5.1 of the deed of agreement set out in Schedule 3 ; and

(b) any fees payable under clause 5.2 of that deed.

99C. Fee payable under new deed of agreement

On and from the commencement of section 4 of the Living Marine Resources Management Amendment Act 2015 , the fee payable under clause 5.2 of the deed of agreement set out in Schedule 3 is to be calculated as if the percentage of the beach price specified in clauses 5.5 and 5.6 of that deed were 7%.

100. Commercially protected fish

(1) Commercially protected fish are fish or classes of fish prescribed as such for the purposes of this Division.

(2) Fish or a class of fish may be prescribed as commercially protected fish by reference to any one or more of the following:

(a) a species or type of fish;

(b) a description of fish by reference to sex, size, weight, reproductive cycle or any other characteristics;

(c) an area of State waters from which fish are taken or can be taken.

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PART 5 - Protection of Marine Areas and Habitats

Division 1 - Rules relating to certain areas and habitats

104. Rules

- (1) The Minister may make rules for –
 - (a) marine resources protected area management plans; and
 - (b) habitat protection plans.
- (2) Without limiting the generality of subsection (1), rules may be made in relation to the following matters:
 - (a) the prohibition of all or any fishing;
 - (b) the restriction of any fishing to any season, class of person, time, area, fishing method, apparatus, species, size, quantity, class of fish or for any purpose;
 - (c) the possession of any species, size, class or quantity of fish;
 - (d) the use and possession of any apparatus or other matter, equipment, contrivance or vessel;
 - (e) the granting of an approval under section 132 ;
 - (f) reporting, notification, marking, identification, landing or monitoring requirements in respect of any activity likely to have a detrimental effect on the environment;
 - (g) any other matter the Minister considers necessary or convenient to achieve the objectives of the marine resources protected area management plan or the habitat protection plan.
- (3) Rules may –
 - (a) provide that a contravention of any of the rules is an offence; and
 - (b) in respect of any offence, provide for the imposition of –
 - (i) a penalty of either or both of the following:
 - (A) imprisonment for a term not exceeding 2 years;
 - (B) a fine not exceeding 5 000 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues; or
 - (ii) a penalty specified in the regulations.
- (4) Rules may be made so as to apply differently according to any matter, condition, limitation, restriction, exception or circumstance specified in the rules.
- (5) Rules may adopt or incorporate the whole or any part of any document, standard, rule, code, specification or method, with or without modification, issued, prescribed or published by any person or body before or after the rules take effect.
- (6) Rules may authorise any matter to be from time to time determined, applied or regulated by –
 - (a) the Minister; or
 - (b) the Secretary or another fisheries officer.
- (7) Rules that are made wholly or partly in substitution for other rules may contain provisions of a savings and transitional nature.

Division 2 - Marine resources protected areas

105. Marine resources protected area

- (1) The Minister may establish a marine resources protected area for any or all of the following purposes:
 - (a) the protection of representative samples of marine and estuarine habitats and ecosystems;
 - (b) the maintenance of fish species and genetic diversity;
 - (c) the protection of sites of ecological significance or fragility;
 - (d) the protection of the biological productivity of fish species through enhanced egg production and settlement within, and propagation from, the area;
 - (e) the protection of vulnerable fish species and their habitats;
 - (f) the establishment of scientific reference areas;
 - (g) public education in the resources, protection and use of the marine environment.
- (2) Before the Minister establishes a marine resources protected area for any purpose referred to in subsection (1) (a) , (c) or (g) , the Minister is to consult with the Minister responsible for the administration of the Nature Conservation Act 2002 and the Minister responsible for the administration of the National Parks and Reserves Management Act 2002 .

106. Marine resources protected area management plan

- (1) Before the Minister establishes a marine resources protected area, a draft marine resources protected area management plan in respect of that marine resources protected area is to be prepared.
- (2) A draft marine resources protected area management plan consists of rules made under section 104 and may –
 - (a) state the purpose for which, or the manner in which, the marine resources protected area is to be used, developed or managed; and
 - (b) state the manner in which any power of the managing authority is to be exercised; and
 - (c) prohibit or restrict the exercise of any such power.
- (3) A restriction imposed under this section on the exercise of a statutory power may –
 - (a) specify any condition subject to which the power may be exercised; or
 - (b) specify any circumstance in which the power may not be exercised; or
 - (c) require the promotion, or the carrying out, of any works or operations during or after the exercise of the power; or
 - (d) require a contract or arrangement to be made in relation to the carrying out of those works or operations.

107. Public exhibition of draft marine resources protected area management plan

- (1) The Secretary, by public notice, must notify –
 - (a) that it is intended to create a marine resources protected area in a specified area; and
 - (b) that a draft management plan has been prepared in respect of a marine resources protected area; and
 - (c) that any person may submit written representations in relation to –
 - (i) the establishment of the proposed marine resources protected area; and
 - (ii) the location of the proposed marine resources protected area; and
 - (iii) the conditions to be included in a management plan for the marine resources protected area; and
 - (d) the period during which representations may be made; and
 - (e) the address to which representations may be sent; and

- (f) the place at which a copy of the draft management plan may be obtained; and
- (g) the cost, if any, of obtaining a copy of the draft management plan; and
- (h) the place at which the draft management plan is exhibited; and
- (i) the period during which the draft management plan is to be exhibited; and
- (j) any other information the Secretary considers relevant to the establishment of the marine resources protected area.

(2) The period during which representations may be made and the period during which the draft management plan is to be exhibited is to be each at least 60 days and not more than 90 days from the date on which the notice is first published.

108. Restriction on powers under other Act

(1) If the Secretary considers that a draft marine resources protected area management plan may restrict the exercise of a power under any Act, the Secretary, by written notice to the person or authority responsible for administering that Act, is to –

- (a) advise that the power may be restricted; and
- (b) request that person or authority to provide a written statement of their assessment of the impact of the marine resources protected area management plan on them or their operations; and
- (c) specify the period within which the statement is to be made.

(2) The period referred to in subsection (1) (c) must be at least 30 days and not more than 90 days after the date of the notice.

109. Consideration of representations

After considering any representation received under section 107 and any statement received under section 108 , the Secretary –

- (a) may amend the relevant draft marine resources protected area management plan and the boundary of the proposed marine resources protected area to take account of the representations; and
- (b) must prepare a report in relation to the representations received.

110. Approval of draft marine resources protected area management plan

(1) The Secretary must submit to the Minister –

- (a) the draft marine resources protected area management plan with any amendment made under section 109 ; and
- (b) the report prepared under that section.

(2) The Minister must approve a draft marine resources protected area management plan if satisfied that –

- (a) the plan promotes the conservation of the marine environment; and
- (b) the plan prevents the introduction of, or removes, introduced fish and noxious fish; and
- (c) the plan assists in the enjoyment of, and access to, the living marine resources by the community; and
- (d) the Secretary has taken appropriate action in relation to any representation made in respect of the plan.

(3) If the Minister is not satisfied as required under subsection (2) , the Minister must –

- (a) refer the draft marine resources protected area management plan to the Secretary; and
- (b) specify any matter which requires action before the Minister may be satisfied under subsection (2) .

111. Notification of approval of draft marine resources protected area management plan

If the Minister approves a draft marine resources protected area management plan, the Secretary, by public notice, must notify –

- (a) that a draft management plan has been approved; and
- (b) the date on which the management plan takes effect; and
- (c) the period during which the management plan is in force; and
- (d) the place at which a copy of the management plan may be obtained; and
- (e) the cost of obtaining a copy of the management plan; and
- (f) the name of the marine resources protected area; and
- (g) any other information the Secretary considers relevant to the management plan and the marine resources protected area.

112. Marine resources protected area

(1) If the Minister approves a draft marine management plan in respect of a proposed marine resources protected area, the Minister may –

- (a) establish that marine resources protected area; and
- (b) give a name to that marine resources protected area.

(2) A person, without the consent of the Minister, must not use any of the following terms alone or in combination with other words to name any area which is not a marine resources protected area:

- (a) marine nature resources protected area;
- (b) marine park;
- (c) marine protected area;
- (d) marine sanctuary;
- (e) marine resources protected area.

Penalty: Fine not exceeding 50 penalty units.

(3)

113. Compliance with marine management plan

A person must not contravene a provision of a marine resources protected area management plan.

Penalty: Fine not exceeding 5 000 penalty units.

114. Inconsistent management plan

A provision of a marine resources protected area management plan which is inconsistent with a provision of a management plan prevails over the latter provision to the extent of that inconsistency.

115. Managing authority for marine resources protected area

(1) Subject to subsection (2) , the Minister is the managing authority for any marine resources protected area.

(2) The Minister, by order published in the *Gazette* and with the consent of a body or association, may declare that body or association to be the managing authority for a specified marine resources protected area or a specified part of a marine resources protected area.

(3) The Minister, by order referred to in subsection (2) , may provide for –

- (a) the defraying of any expenses incurred in relation to the marine resources protected area; and
- (b) the application of any money received in relation to the marine resources protected area.

- (4) The provisions of an order under this section prevail over any provision of this or any other Act.
- (5) The Minister, by order published in the *Gazette*, may –
 - (a) revoke an order made under this section in respect of a marine resources protected area; and
 - (b) declare that on a specified date, the Minister is the managing authority of that marine resources protected area.

116. Functions of managing authority

The managing authority of a marine resources protected area is to manage and maintain it –

- (a) in a manner which promotes the purposes for which it is to be used, developed or managed; and
- (b) in accordance with the provisions of the relevant marine resources protected area management plan.

117. Powers of managing authority

The managing authority of a marine resources protected area may –

- (a) erect or construct, or cause to be erected or constructed, any building or other works; and
- (b) purchase or acquire anything required to carry out its functions; and
- (c) provide and maintain facilities and conveniences for the use or benefit of any persons entering the marine resources protected area; and
- (d) charge for the use of those facilities and conveniences; and
- (e) sell, let on hire or otherwise provide for the use by those persons any goods and articles; and
- (f) obtain and use any produce of, or materials in, the area; and
- (g) make arrangements with any other person to do anything referred to in this section; and
- (h) do anything necessary or convenient to perform its functions.

Division 3 - Habitat protection plans

118. Habitat protection plan

- (1) The Minister may develop and approve plans after consultation with the relevant fishing body for the protection of the habitat of fish.
- (2) A habitat protection plan consists of rules made under section 104 and –
 - (a) may relate to a habitat that is critical for spawning, shelter or any other reason; and
 - (b) is to describe the importance of particular habitat features to which it applies; and
 - (c) may set out practical methods for the protection of any habitat features; and
 - (d) may apply generally or to particular areas or particular fish; and
 - (e) may contain any other matter concerning the protection of the habitat of fish that the Minister considers appropriate.

119. Public exhibition of habitat protection plan

Before the Minister approves a habitat protection plan, the Secretary, by public notice, must notify –

- (a) that a proposed habitat protection plan has been prepared; and
- (b) that a person may submit written representations in relation to the proposed habitat protection plan; and
- (c) the period during which representations may be made; and
- (d) the address to which representations may be sent; and

- (e) the place at which a copy of the proposed habitat protection plan may be obtained; and
- (f) the cost, if any, of obtaining a copy of the proposed habitat protection plan; and
- (g) the place at which the proposed habitat protection plan is exhibited; and
- (h) the period during which the proposed habitat protection plan is to be exhibited; and
- (i) any other information the Secretary considers relevant to the consideration of the proposed habitat protection plan.

120. Approval of habitat protection plan

- (1) The Minister may –
 - (a) approve a habitat protection plan as proposed; or
 - (b) approve a habitat protection plan with changes to take into account any representations received.
- (2) The Minister, by notice published in the *Gazette*, is to notify the contents of the habitat protection plan approved under subsection (1) .

121. Amendment of habitat protection plan

- (1) The Minister may amend, vary or substitute a habitat protection plan.
- (2) Before the Minister takes any action under subsection (1) , the Secretary, by public notice, must notify –
 - (a) the intention to do so and any proposed amendment, variation or substitution; and
 - (b) that a person may submit written representations within the period specified in the notice; and
 - (c) the matters referred to in section 118 in relation to any proposed amendment, variation or substitution.

122. Approval of amended habitat protection plan

- The Minister may –
- (a) approve the amendment, variation or substitution of a habitat protection plan as proposed; or
 - (b) approve the amendment, variation or substitution with changes to take into account any representations received.

123. Revocation of habitat protection plan

The Minister may revoke a habitat protection plan if satisfied that it is necessary or desirable to do so.

124. Inconsistency of habitat protection plan

A provision of a habitat protection plan which is inconsistent with a provision of a management plan prevails over the latter provision to the extent of that inconsistency.

Division 4 - Release and importation of fish

125. Release into waters

- (1) Unless otherwise authorised, a person must not release or deposit or allow to escape into State waters any introduced fish.

Penalty: Fine not exceeding 1 000 penalty units.

- (2) The holder of a marine farming licence must take reasonable precautions to prevent the release, deposit or escape into State waters of any introduced fish.

Penalty: Fine not exceeding 5 000 penalty units.

126. Importation of live fish

(1) Unless otherwise authorised, a person must not bring live fish into the State.

Penalty: Fine not exceeding 1 000 penalty units.

(2) A person must not sell, buy or possess fish brought into the State in contravention of subsection (1) .

Penalty: Fine not exceeding 1 000 penalty units.

(3) It is a defence in proceedings under subsection (2) if the defendant establishes that he or she did not know, or could not have reasonably known, that the fish were brought into the State in contravention of subsection (1) .

(4) This section does not apply to a species of fish prescribed for the purposes of this section.

Division 5 - Noxious fish

127. Declaration of noxious fish

(1) In addition to prescribed noxious fish, the Minister, by order published in the *Gazette*, may declare fish of a specified species to be noxious fish if satisfied that an emergency exists which requires the order to be made.

(2) An order remains in force for a period, not exceeding 6 months, specified in the order, unless it is sooner revoked.

128. Sale of noxious fish

(1) Unless otherwise authorised, a person must not sell live noxious fish.

Penalty: Fine not exceeding 1 000 penalty units or imprisonment for a term not exceeding one year, or both.

(2) This section applies even if the fish are prescribed as noxious fish only in respect of specified waters.

129. Possession of noxious fish

(1) Unless otherwise authorised, a person must not possess live noxious fish.

Penalty: Fine not exceeding 1 000 penalty units or imprisonment for a term not exceeding one year, or both.

(2) It is a defence in proceedings under subsection (1) if the defendant establishes that he or she—

(a) did not introduce the noxious fish into any waters; and

(b) did not maintain the noxious fish in any waters.

(3) This section does not apply if the fish are in waters in respect of which they are not prescribed as noxious fish.

130. Destruction of noxious fish

(1) A fisheries officer may —

(a) seize and destroy any live noxious fish; and

(b) take possession of any fish the fisheries officer reasonably suspects are noxious fish.

(2) The Minister, by notice in writing, may require the owner or occupier of premises on which noxious fish are found to take any specified measures to destroy the fish within a specified period.

(3) If a person fails to comply with a notice, a fisheries officer may —

(a) enter the premises, if they are not used for residential purposes; and

(b) take any appropriate measures to destroy any live noxious fish found on those premises.

(4) Compensation is not payable for —

(a) the seizure or destruction of live noxious fish; or

(b) the destruction of other live fish if that destruction could not reasonably be avoided in destroying the noxious fish.

(5) Any costs reasonably incurred in taking any measures –

(a) are payable by the owner or occupier of the premises; and

(b) are recoverable as a debt due to the Crown by the owner or occupier in a court of competent jurisdiction.

Division 6 - General provisions

131. Prohibition of certain activities

A person must not engage in any activity in a marine resources protected area which is likely to have a detrimental effect on its environment except –

(a) with an approval under section 132 ; or

(b) in accordance with a marine resources protected area management plan.

Penalty: Fine not exceeding 1 000 penalty units.

132. Approvals for activities

(1) A person may apply for an approval to –

(a) engage in a specified activity within a marine resources protected area; or

(b) do a specified act within a marine resources protected area.

(2) An application is to –

(a) be in a form approved by the Minister; and

(b) contain any information the Minister requires; and

(c) be accompanied by the prescribed fee; and

(d) be lodged with the Minister.

(3) The Minister may –

(a) grant the application for an approval if satisfied to do so is not inconsistent with this Part; or

(b) refuse to grant the application if not so satisfied.

133. Conditions of approval

(1) The Minister may grant an application for an approval under section 132 subject to any condition the Minister considers appropriate.

(2) The Minister may –

(a) vary, revoke or substitute a condition of an approval; or

(b) add a condition to an approval.

(3) A person must not contravene a condition of an approval.

Penalty: Fine not exceeding 1 000 penalty units.

134. Revocation of approval

The Minister may revoke an approval granted to a person under section 132 if the person contravenes a condition of the approval.

135. Protection of species

(1) The Minister, by a notice in the *Gazette*, may declare any species of fish to be protected.

(2) A person must not take any protected fish.

Penalty: Fine not exceeding 500 penalty units.

136. Notice to restore fish habitat

(1) The Minister, by notice in writing, may require a person to take any specified action in a manner and within a period specified in the notice –

(a) if the person is suspected on reasonable grounds to have put any litter, soil, noxious matter, refuse or other matter on any land or in any water relating to a fish habitat, to protect or restore –

(i) a species or class of fish; and

(ii) the physical integrity of the fish habitat; and

(iii) the quality of the fish habitat; and

(b) if the person is suspected on reasonable grounds to have removed any soil, rocks, sand or other material from the seabed to replace the soil, rocks, sand or other material.

(2) The Minister may only give a notice if satisfied that –

(a) the litter, soil, noxious matter, refuse or other matter –

(i) has obstructed, or is likely to obstruct, the use of a fishery; or

(ii) has had, or is likely to have, an adverse effect on a fishery or the quality and integrity of a fish habitat; and

(b) it is necessary or desirable that action be taken to protect or restore –

(i) the species or class of fish; or

(ii) the physical integrity of the fish habitat; or

(iii) the quality of the fish habitat; and

(c) it is necessary or desirable that action be taken to replace any soil, rocks, sand and other material removed from the seabed.

(3) A person must not contravene a notice.

Penalty: Fine not exceeding 1 000 penalty units or imprisonment for a term not exceeding one year, or both, and a daily fine not exceeding 10 penalty units.

(4) It is a defence in proceedings under subsection (3) if the defendant establishes that he or she–

(a) was not the person who carried out any activity referred to in subsection (1) (a) or (b) ; or

(b) carried out any activity with lawful authority.

137. Minister may take action

(1) If a person contravenes a notice under section 136 , the Minister may take any action specified in the notice.

(2) In taking any action, the Minister may authorise any person to –

(a) enter and remain on any land or in any water relating to a fish habitat; and

(b) take any vehicle, machinery, plant and equipment from the land or water; and

(c) do any thing reasonably necessary for that purpose.

(3) Any costs reasonably incurred in taking any action under this section –

(a) are payable by the person who contravened a notice under section 136 ; and

(b) are recoverable from that person as a debt to the Crown in a court of competent jurisdiction.

138. Activities causing detrimental effect

Unless otherwise authorised, a person must not carry out any activity which is likely to have a serious effect on the marine environment and involves or results in—

- (a) the disturbance of the bed of any State waters; or
- (b) the removal of, or interference with, fish or marine or benthic flora or fauna in any State waters; or
- (c) the discharge, release or deposit of any matter in any State waters.

Penalty: Fine not exceeding 5 000 penalty units or imprisonment for a term not exceeding 2 years, and a daily fine not exceeding 50 penalty units.

139. Protection of marine plant

(1) Unless otherwise authorised, a person must not cut, remove, damage or destroy any prescribed marine plant.

Penalty: Fine not exceeding 500 penalty units.

(2) It is a defence in proceedings for an offence under this section if the defendant establishes that he or she—

- (a) did not know the offence had been committed; and
- (b) could not reasonably be expected to have known that the offence had been committed.

140. Conflict of power

(1) A public authority is to —

- (a) have regard to any habitat protection plan or marine resources protected area management plan in exercising any of its powers or performing any of its functions; and
- (b) notify the Minister if any power or function conflicts, or is inconsistent with, any provision of a habitat protection plan or marine resources protected area management plan.

(2) The Minister is to refer any matter relating to any conflicting or inconsistent powers or functions to the Minister responsible for administering the Act under which the public authority is exercising those powers or performing those functions.

(3) If the matter is not resolved under subsection (2) , it is to be referred to the Premier for resolution.

(4) Any resolution under this section prevails over any conflict or inconsistency.

PART 6 - Research, Records and Development

Division 1 - Research

141. Research into living marine resources

- (1) The Minister is to ensure that research into living marine resources is carried out –
- (a) as organised by the Secretary; or
 - (b) under an arrangement with any other person; or
 - (c) in any other manner the Minister thinks fit.
- (2) The Minister may cause to be carried out any research, exploration, experiments, works or operations for the purposes of this Act.

142. Research priorities and co-operation

The Minister is to ensure that –

- (a) appropriate arrangements are in place to identify priorities for research into living marine resources; and
- (b) any research is undertaken with the maximum cooperation and the minimum duplication.

143. Research areas

- (1) The Minister, by order, may declare any part of State waters to be a research area.
- (2) The Minister, by order, may declare that specified restrictions on entry, fishing or any other matter apply in a research area.
- (3) A person must comply with an order made under subsection (2) .

Penalty: Fine not exceeding 50 penalty units.

Division 2 - Records

144. Collection of information

The Secretary is to make arrangements for the collection of information relating to the fishing industry and the protection of the marine environment –

- (a) to assess fish stocks and the amount of fish caught, processed and exported; and
- (b) to provide details about the effect of any activity under a licence on the marine environment; and
- (c) to assist in the detection of offences under this Act; and
- (d) for any other purpose of this Act.

145. Records

(1) The following persons must keep records, accounts and other information in a manner and form approved by the Secretary:

- (a) the holder of an authorisation;
- (b) the master of a vessel;
- (c) the owner or person in charge of premises where fish are received, bought, processed, stored, sold or otherwise disposed of;
- (d) a person in charge of a vehicle which contains fish for sale;
- (e) any other prescribed person.

Penalty: Fine not exceeding 200 penalty units.

(2) A person referred to in subsection (1) must supply to the Secretary any records, accounts and other information the Secretary requires within any reasonable period the Secretary determines.

Penalty: Fine not exceeding 200 penalty units.

(3) A person is to ensure that any records, accounts and other information kept or supplied under this section is maintained –

- (a) in a legible manner; and
- (b) in the English language; and
- (c) in accordance with any other prescribed matter.

Division 3 - Scientific observer scheme

146. Scientific observer scheme

There is established a scientific observer scheme for the following purposes:

- (a) to collect information relating to catch, fish and fisheries for the purpose of research;
- (b) to increase the accuracy of information relating to fish and fisheries for the purpose of research.

147. Scientific observers

(1) The Secretary, by instrument in writing, may authorise persons to be scientific observers for the purposes of the scientific observer scheme.

(2) Persons holding authorisations under subsection (1) are not subject to the State Service Act 2000 but a State Service officer or State Service employee may hold such an authorisation in conjunction with his or her State Service employment.

(3) However, the Secretary must not authorise any of the following to be scientific observers:

- (a) a fisheries officer;
- (b) an assistant fisheries officer;
- (c) a person who has any of the powers of a fisheries officer.

148. Notice of intention to place scientific observer on fishing vessel

(1) The Secretary, by notice in writing, must give notice to the owner or master of a fishing vessel of the intention to place a scientific observer on the vessel.

(2) A notice must specify a date which is not earlier than 14 days after the date of the notice on or after which the fishing vessel is not to put to sea without a scientific observer on board.

(3) The owner or master of the fishing vessel may agree to a scientific observer being placed on board before the date specified in the notice.

(4) The owner or master of a fishing vessel to whom a notice has been given must not put the vessel to sea after the date specified in the notice –

- (a) without a scientific observer on the vessel; or
- (b) otherwise than with the Secretary's approval and subject to any conditions imposed by the Secretary.

Penalty: Fine not exceeding 50 penalty units.

149. Powers of scientific observer

(1) A scientific observer, having regard to the fishing operations of the fishing vessel, may at all reasonable times –

- (a) have access to the apparatus and the storage and processing facilities on the vessel; and
- (b) have access to the catch on the vessel; and
- (c) have access to the bridge and navigation and communications equipment of the vessel; and
- (d) have access to any logs and records of the vessel; and
- (e) receive and transmit messages and communicate with the shore and other vessels.

(2) A master of a fishing vessel must not hinder, delay, obstruct, impede or interfere with a scientific observer exercising any power under subsection (1) .

Penalty: Fine not exceeding 50 penalty units.

150. Functions of scientific observer

A scientific observer, if requested by the Secretary, is to report to the Secretary on –

- (a) the species, number, size, sex, age and condition of fish taken; and
- (b) the methods by which, the areas in which and the depths at which those fish are taken; and
- (c) the effects on fish of the methods used to take them; and
- (d) the operations of the fishing vessel; and
- (e) any other matter that may assist the Secretary to obtain, analyse or verify information for research purposes.

151. Food and accommodation

(1) The owner of a fishing vessel must provide food and accommodation for a scientific observer placed on that vessel at a standard specified by the Secretary.

(2) The Secretary is to pay the owner of a fishing vessel for the provision of food and accommodation for a scientific observer placed on that vessel –

- (a) at an agreed amount; or
- (b) if an amount is not agreed, at the prescribed amount.

PART 7 - Joint Management of Certain Fisheries

Division 1 - Joint Authorities

152. Management of fishery by Joint Authority

- (1) The Minister may enter into an arrangement with the Commonwealth under the Commonwealth Act for the management by a Joint Authority of a particular fishery in State waters.
- (2) Before an arrangement entered into by the Minister takes effect –
 - (a) any authorisation or other instrument may be issued, renewed or executed as affected by the arrangement; and
 - (b) regulations, rules, orders or notices may be made for the purpose of the arrangement.
- (3) Any authorisation, instrument, regulations, rules, orders or notices issued, renewed, executed or made under subsection (2) do not take effect until the arrangement takes effect.
- (4) Subject to sections 153(6) and 292(2), if a fishery becomes a Joint Authority fishery under an arrangement, any regulation, rule, order or notification in force under this Act ceases to apply to that fishery.

153. General functions and powers of Joint Authority

- (1) A Joint Authority has any function relating to the management of the fishery for which an arrangement is in force.
- (2) In managing a fishery, the Joint Authority is to –
 - (a) consider the condition of the fishery; and
 - (b) formulate policies and plans for the good management of the fishery; and
 - (c) exercise the powers conferred on it by this Act; and
 - (d) co-operate and consult with other authorities, including other Joint Authorities within the meaning of the Commonwealth Act, in matters of common concern.
- (3) A Joint Authority is to –
 - (a) ensure, through proper conservation, preservation and fisheries management measures, that fish resources are not endangered by over-exploitation; and
 - (b) achieve efficient use of those resources.
- (4) A Joint Authority is to perform its functions and exercise its powers in accordance with the Commonwealth Act.
- (5) A Joint Authority may exercise the powers of the Minister and any other person under this Act.
- (6) Any rules made by a Joint Authority in the exercise of a power under subsection (5) may provide that any rules made under Part 3 apply to a fishery managed by the Joint Authority.

154. Powers relating to licence

- (1) A licence or permit issued under this Act by a Joint Authority applies only in relation to a Joint Authority fishery or Joint Authority fisheries managed by that Joint Authority.
- (2) A Joint Authority may endorse a licence or permit issued under this Act, or a licence or permit issued by that Joint Authority or by another Joint Authority, to extend the operation of the licence or permit to any matter to which the powers of the Joint Authority are applicable.
- (3) An endorsement ceases to have effect if the licence or permit to which it relates ceases to have effect.
- (4) A Joint Authority may cancel or suspend the endorsement.

(5) A Joint Authority must not issue or endorse a licence or take any action in relation to licences in respect of a foreign vessel.

(6) A licence or permit issued or renewed under this Act otherwise than under this section does not authorise the doing of any act or thing in, or in relation to, a Joint Authority fishery.

155. Delegation

(1) A Joint Authority, by instrument in writing, may delegate to a person any of its powers or functions under this Act, other than this power of delegation.

(2) A delegation may be to a person holding or performing the functions of –

(a) a specified office; or

(b) an office in the service of an authority of, or under the law of, the Commonwealth, another State or a Territory of the Commonwealth.

(3) A delegate, in the exercise of any delegated powers or functions, is subject to the directions of the Joint Authority.

(4) A delegation continues despite any change in the membership of the Joint Authority.

156. Termination of arrangement

(1) Upon the termination of an arrangement under the Commonwealth Act, any authorisation, other instrument and regulations issued, renewed, executed or made under the arrangement cease to have effect.

(2) After action to terminate an arrangement has been taken but before it takes effect –

(a) any authorisation or other instrument may be issued or renewed under the arrangement for the purpose of the termination; and

(b) regulations may be made under the arrangement for the purpose of the termination.

(3) Any authorisation, other instrument or regulations issued, renewed, executed or made as referred to in subsection (2) do not take effect until the termination takes effect.

157. Application of provisions relating to offences

Any provision of this Act relating to offences, enforcement and legal proceedings applies in relation to a Joint Authority fishery as if –

(a) a reference to a licence or permit were a reference to a licence or permit issued or renewed by the relevant Joint Authority; and

(b) a reference to fish were a reference to fish to which the Joint Authority fishery relates.

158. Report of a Joint Authority

The Minister is to cause a copy of a report of a Joint Authority prepared under the Commonwealth Act to be laid before each House of Parliament as soon as practicable after preparation of the report.

159. Documents

In any legal proceedings, an instrument or other document signed on behalf of a Joint Authority by a member of the Joint Authority is taken to be –

(a) duly executed by the Joint Authority; and

(b) in accordance with a decision of the Joint Authority.

160. Judicial notice of membership of Joint Authority

Any court or person acting judicially is to take judicial notice of –

(a) the signature of a person who is, or has been, a member of a Joint Authority or a deputy member of a Joint Authority; and

(b) the fact that the person is, or was at the particular time, a member of a Joint Authority or a deputy member of a Joint Authority.

Division 2 - Arrangements with Commonwealth

161. Arrangements with Commonwealth

- (1) The State may enter into an arrangement with the Commonwealth under the Commonwealth Act for the management of a particular fishery in State waters other than a fishery to which an arrangement under section 152 applies.
- (2) A fishery under subsection (1) is to be managed –
 - (a) under the law of the Commonwealth in the case of a fishery wholly or partly in coastal waters of the State; or
 - (b) under the law of Tasmania in the case of a fishery wholly or partly in waters on the seaward side of the coastal waters of the State.
- (3) The Minister may exercise any power under this Act in relation to a fishery referred to in subsection (2) (b).
- (4) The power of the State to enter into an arrangement with the Commonwealth under subsection (1) includes the power to vary or terminate the arrangement.
- (5) If an arrangement entered into under subsection (1) is varied, a reference to the arrangement in any legislative or other instrument is, unless the context expressly or impliedly indicates otherwise, a reference to the arrangement as so varied.

Division 3 - Agreements with Commonwealth and other States

162. Agreements with Commonwealth and other States

- (1) The Minister may make an agreement with a relevant Minister of the Commonwealth, another State or a Territory of the Commonwealth for any of the following purposes:
 - (a) the good management of a fishery;
 - (b) the execution of any arrangement entered into by a State or Territory of the Commonwealth in accordance with a decision of a Joint Authority under the Commonwealth Act which excludes the Minister and any arrangement made under this Part;
 - (c) the recognition, for the purposes of this Act, of documents provided under a corresponding law;
 - (ca) the obtaining of any document or record required to be kept under a corresponding law relating to the possession, transportation, import, export, processing or handling of fish;
 - (cb) the inspection within any other State or Territory of the Commonwealth of any fish taken, processed, handled, transported, possessed or otherwise dealt with in State waters;
 - (d) any other purpose which is consistent with this Act or a corresponding law.
- (2) An agreement made under subsection (1) (a) or (c) –
 - (a) is to specify the powers and functions of the Minister and Secretary; and
 - (b) is enforceable by the Minister or the Secretary as specified in the agreement.
- (3) An agreement made under subsection (1) (b) has the same effect as if it were an arrangement under this Part.

Division 4 - General

163. Non-application of Part

(1) If a fishery partly or wholly in waters outside coastal waters is managed under an arrangement under the law of Tasmania, those waters are taken to be State waters.

(2) This Part does not apply in respect of a fishery managed under an arrangement under the law of Tasmania in respect of any of the following:

- (a) a foreign boat in the Australian fishing zone;
- (b) any operations on and from a foreign boat in the Australian fishing zone;
- (c) any person on a foreign boat in the Australian fishing zone;
- (d) any matter that occurred in, or in relation to, the Australian fishing zone before the arrangement took effect.

PART 8 - Fisheries Officers

Division 1 - Appointment of fisheries officers and assistant fisheries officers

164. Appointment of fisheries officer

- (1) The Secretary, by instrument in writing, may appoint a person as a fisheries officer for the period, not exceeding 3 years, specified in the instrument.
- (2) The Secretary may appoint a person who is a fisheries officer, fisheries inspector or similar officer in another State or a Territory of the Commonwealth under any law relating to fisheries in that State or Territory as a fisheries officer for the purpose of this Act.
- (3) The Secretary is to issue to a fisheries officer an identity card in an approved form which –
 - (a) certifies the appointment as a fisheries officer for the purpose of this Act; and
 - (b) specifies the period of the appointment; and
 - (c) contains a recent photograph of the fisheries officer.
- (4)

165. Appointment of assistant fisheries officer

- (1) The Secretary, by instrument in writing, may appoint a person as an assistant fisheries officer for the period, not exceeding 3 years, specified in the instrument.
- (2) An appointment as assistant fisheries officer may be for the whole or a part of the State.
- (3) The Secretary is to issue to an assistant fisheries officer –
 - (a) a copy of the instrument of appointment; and
 - (b) an identity card in an approved form which –
 - (i) certifies the appointment as an assistant fisheries officer for the purpose of this Act; and
 - (ii) specifies the period of the appointment; and
 - (iii) specifies the part of the State to which the appointment relates; and
 - (iv) contains a recent photograph of the assistant fisheries officer.
- (4) A person ceases to be an assistant fisheries officer –
 - (a) if the Secretary revokes the appointment of that person, on the date of that revocation; or
 - (b) if the person resigns, on the date of the resignation.

166. Production of identity card

- (1) A fisheries officer or assistant fisheries officer, if required by a person in relation to whom the officer is exercising or intends to exercise a power under this Act, must produce his or her identity card for inspection by that person.
- (2) If a fisheries officer or an assistant fisheries officer fails to produce his or her identity card when required by a person to do so, the person is not guilty of resisting or obstructing the fisheries officer or failing to comply with a requirement of the fisheries officer.
- (3) This section does not apply to the exercise of a power under a warrant issued under Division 6 .

167. Return of identity card

On ceasing to be a fisheries officer or an assistant fisheries officer, a person must return his or her identity card to the Secretary or any other person authorised by the Secretary.

Penalty: Fine not exceeding 50 penalty units.

168. Interests of fisheries officers

- (1) A fisheries officer or assistant fisheries officer, without the consent of the Minister, must not –
- (a) have a proprietary or pecuniary interest in a business, company or trust that has an interest in a business involving the taking of fish or dealing in or with fish; or
 - (b) act as agent for a person who has such a proprietary or pecuniary interest.

Penalty: Fine not exceeding 50 penalty units.

- (2) A fisheries officer or assistant fisheries officer who is convicted of an offence under subsection (1) ceases to hold office on the date of that conviction.

Division 2 - General powers

169. Limited police powers

A fisheries officer, in performing any functions under this Act, has the powers and protection of a police officer with the rank of constable.

170. Police officer

- (1)
- (2) It is not necessary for a police officer exercising any power as a fisheries officer under this Act to produce any authority other than what is required as a police officer.

171. Naval officer

- (1) An officer in command of a vessel of the defence force of Australia is a fisheries officer only in respect of–
- (a) any foreign boat; and
 - (b) any operations on or from a foreign boat; and
 - (c) any person on a foreign boat.
- (2) An officer may delegate to a person under his or her command any of the powers he or she has as a fisheries officer.
- (3) It is not necessary for an officer exercising any power as a fisheries officer under this Act to produce any authority other than what is required as an officer.

172. Assistant fisheries officer

An assistant fisheries officer has the powers of a fisheries officer specified in the instrument of appointment.

173. Minimising damage

In exercising any power under this Part, a person, as far as is practicable, is to minimise damage to property.

Division 3 - Entry, inspection and search

174. Entry and inspection of land and premises

- (1) For the purpose of this Act, a fisheries officer may at any reasonable time –
- (a) enter and pass through land; and
 - (b) enter and inspect any land or premises to ascertain if this Act or the conditions of any authorisation are being complied with; and
 - (c) enter and inspect any land or premises used to sell fish or store fish for a commercial purpose to ascertain if this Act is being complied with; and

(d) enter any land or premises used to manufacture, repair or sell vessels, apparatus, gear or equipment used for marine farming and inspect the vessels, apparatus, gear and equipment; and

(e) enter any land or premises where records are required to be kept under this Act or a corresponding law and inspect those records.

(2) A fisheries officer may enter and search land which is not appurtenant to any premises if the fisheries officer reasonably believes that –

(a) an offence under this Act or a corresponding law has been, is being or is about to be committed on the land; or

(b) there is on the land any evidence of the commission of an offence under this Act or a corresponding law.

175. Search of non-residential premises

A fisheries officer who reasonably believes that an offence under this Act has been, is being or is about to be committed in or on premises not used as a residence may enter and search those premises –

(a) under a warrant issued under Division 6 ; or

(b) with the consent of the owner or occupier of the premises.

176. Search of residential premises

A fisheries officer who reasonably believes that a person has committed an offence under this Act may enter and search any premises used as a residence –

(a) under a warrant issued under Division 6 ; or

(b) with the consent of the occupier of the premises; or

(c) if the officer has pursued the person without interruption from the place, or near the place, where the offence was believed to have been committed to the premises being searched.

177. Entry and search of train and aircraft

(1) A fisheries officer may enter and search a train or aircraft if the fisheries officer reasonably believes that –

(a) an offence under this Act has been, is being or is about to be committed on the train or aircraft; or

(b) there is on the train or aircraft any evidence of the commission of an offence under this Act or a corresponding law.

(2) A fisheries officer may signal or direct a person apparently in charge of a train or an aircraft not to move the train or aircraft for a reasonable period if the fisheries officer believes that –

(a) an offence under this Act has been, is being or is about to be committed on the train or aircraft; or

(b) there is on the train or aircraft any evidence of the commission of an offence under this Act or a corresponding law.

178. Entry into waters

For the purpose of this Act, a fisheries officer may enter into, and pass along, by any means any State waters or the banks or borders of any State waters.

179. Search of place

A fisheries officer may enter and search any place if the fisheries officer reasonably believes that it contains any fish or apparatus.

Division 4 - Vessels and vehicles

180. Boarding and searching vessel

For the purpose of this Act, a fisheries officer may –

- (a) board a vessel; and
- (b) enter a vehicle on board a vessel; and
- (c) search a vessel or vehicle on board a vessel.

181. Stopping vessel or vehicle

- (1) A fisheries officer may signal or direct a person apparently in charge of a vessel or vehicle –
 - (a) to stop the vessel or vehicle; or
 - (b) not to move the vessel or vehicle for a reasonable period.
- (2)
- (3) A person is not required to comply with a signal or direction under subsection (1) if the person –
 - (a) reasonably believes that to comply would endanger the person, another person, the vessel or the vehicle; and
 - (b) complies with the signal or direction as soon as it is practicable to do so.

182. Securing vessel, vehicle, land and premises

A fisheries officer, by notice in writing, may require –

- (a) the master of a vessel to secure the vessel; or
- (b) the owner or person apparently in charge of a vehicle to secure the vehicle; or
- (c) the owner or occupier of any land or premises to secure the land or premises.

183. Detaining vessel

- (1) A fisheries officer may require the master of a vessel which the fisheries officer reasonably believes has been used, is being used or is about to be used in contravention of this Act or a corresponding law–
 - (a) to bring the vessel to a specified place; and
 - (b) not to move that vessel from that place until directed by the fisheries officer to do so.
- (2) A fisheries officer must direct the master of a vessel to move the vessel within a reasonable period.

184. Use of vessel or vehicle

- (1) For the purpose of exercising a power under this Act, a fisheries officer may require the master of a vessel or the person apparently in charge of a vehicle to allow the fisheries officer to use the vessel or vehicle.
- (2) The Secretary is to pay compensation to any person entitled to use a vessel or vehicle at the time a fisheries officer used the vessel or vehicle.
- (3) Compensation is payable –
 - (a) for any reasonable loss incurred –
 - (i) in respect of the vessel or vehicle because of its use by a fisheries officer; or
 - (ii) for any other reason the Minister considers appropriate; and
 - (b) at an amount the Minister considers appropriate.

185. Fisheries officer on board vessel

A fisheries officer, by notice in writing, may –

- (a) require the master of a vessel to carry on the vessel a fisheries officer; and
- (b) direct that the vessel not go to sea unless a fisheries officer is on board.

186. Pursuit of vessel or person

(1) A fisheries officer may exercise a power under this Part in respect of a vessel or person at a place at sea outside State waters if –

- (a) the fisheries officer or another fisheries officer has pursued the person or vessel from within those waters to that place; and
- (b) the pursuit was not stopped or interrupted before the fisheries officer arrived at the place.

(2) The pursuit of a vessel or person is not stopped or interrupted only because –

- (a) the fisheries officer has temporarily lost sight of the person or vessel; or
- (b) a radar or other sensing device was not working or was not working properly.

Division 5 - Miscellaneous powers

187. Examination of fish

For the purpose of this Act, a fisheries officer may –

- (a) examine any fish and anything in which fish are kept; and
- (b) take samples of any fish and any medium in which fish are kept.

188. Apparatus and equipment

(1) For the purpose of this Act, a fisheries officer may –

- (a) haul, pull, draw, reel in, bring onto land or otherwise recover any apparatus or equipment used in connection with marine farming, fishing or aquatic observation or require a person to do so; and
- (b) direct a person who has possession of any apparatus or equipment to wait for a reasonable period at a specified place for an inspection of the apparatus or equipment; and
- (c) require, by notice in writing, the master of a vessel or a person apparently in charge of a vehicle to deliver any fish, apparatus or equipment used in connection with marine farming, fishing or the non-exploitative use of fish to a place specified in the notice; and
- (d) inspect any apparatus or equipment used in connection with processing, marine farming or the non-exploitative use of the fish.

(2) For the purpose of this Act, a fisheries officer may –

- (a) mark any apparatus or equipment; and
- (b) secure any apparatus or equipment.

189. Opening and unlocking vessel, door or container

(1) For the purpose of this Act, a fisheries officer may require a person to open or unlock any vehicle, vessel, door, gate, package, receptacle or other container.

(2) A fisheries officer may break open and search any vehicle, vessel, door, gate, package, receptacle or other container –

- (a) in searching or inspecting a place; or
- (b) if the fisheries officer reasonably believes that it contains fish or any evidence of the commission of an offence under this Act or a corresponding law.

190. Production of things

A fisheries officer may require a person to produce for inspection any thing in the person's possession if the fisheries officer reasonably believes that it may disclose evidence of the commission of an offence under this Act or a corresponding law.

191. Production of records and documents

- (1) A fisheries officer may require a person to produce, within a specified period—
 - (a) any record or document required to be kept under this Act or a corresponding law; or
 - (b) any document relating to the sale or purchase of fish.
- (2) A fisheries officer may —
 - (a) examine any record or document; and
 - (b) remove any record or document for the purpose of paragraph (c) ; and
 - (c) take extracts from, or copies of, any record or document by any means.
- (3) A person must —
 - (a) provide reasonable facilities and assistance to a fisheries officer exercising any power under this section; and
 - (b) remove any physical or other obstruction which may hinder or prevent a fisheries officer from exercising a power under this section.

Penalty: Fine not exceeding 20 penalty units.

192. Production of authorisation

A fisheries officer may —

- (a) require a person to produce for inspection any authorisation the person holds or should hold within a specified period; and
- (b) require the master of a vessel to produce for inspection any licence in respect of that vessel within a specified period; and
- (c) examine, remove and take photographs or copies of, or extracts or notes from, any authorisation.

193. Photographs, sketches, measurements and recordings

For the purpose of this Act, a fisheries officer may —

- (a) take any photograph; and
- (b) take any measurements; and
- (c) make any sketches or drawing; and
- (d) make any recording by any means.

194. Examination and inquiry

A fisheries officer may carry out any examination and inquiry the fisheries officer considers necessary to ascertain if any provisions of this Act or a corresponding law or any conditions imposed under this Act or a corresponding law have been complied with.

195. Assistance

- (1) For the purpose of exercising a power under this Act, a fisheries officer may require a person to assist the fisheries officer in any way the fisheries officer considers necessary.
- (2) A person is not liable for anything done or omitted to be done by that person in good faith in assisting a fisheries officer.

196. Information requirements

- (1) A fisheries officer may require —

(a) any of the following persons to give his or her full name and residential address and details of his or her function:

- (i) any person on board a vessel or vehicle in which fish are transported;
- (ii) any person in or on premises where fish are processed, stored or located;
- (iii) any person whom the fisheries officer reasonably believes is committing or has committed an offence under this Act; and

(b) a person apparently engaged in a fishing activity, fish processing activity, fish transportation activity or marine farming activity, or an activity that involves receiving fish, to do one or more of the following:

- (i) give details of the activity;
- (ii) give details of any authorisation or exemption held under this Act or a corresponding law;
- (iii) give details of the person's functions;
- (iv) state whether the activity is an Aboriginal activity; and

(c) the master of a vessel to give –

- (i) details of any licence in respect of the vessel; and
- (ii) the full name and residential address of any person on board the vessel; and
- (iii) details of the functions of the person.

(2) A fisheries officer may require any person to give information about that person's or another person's activities in respect of any matter under this Act or a corresponding law.

Division 6 - Warrants

197. Application and issue of warrant

(1) A fisheries officer may apply to a justice for a warrant to enter and search land, premises or places.

(2) A justice may issue a warrant if satisfied –

- (a) that there are reasonable grounds for suspecting that there is on the land or on or in any premises or place any evidence of the commission of an offence under this Act; or
- (b) that the issue of a warrant is reasonably required to ascertain if a person has not complied with this Act.

(3) A warrant is to authorise a fisheries officer –

- (a) to enter and search the land, premises or place specified in the warrant; and
- (b) to do any acts authorised under this Part –
 - (i) with any assistance, and by any force, reasonably necessary; and
 - (ii) on the date and during the hours or at any time the warrant specifies.

(4) A warrant is to specify the date on which, and time at which, the warrant ceases to have effect.

198. Urgent situations

(1) A fisheries officer may apply to a justice for a warrant by telephone, facsimile or other prescribed means if the fisheries officer considers the urgency of a situation requires it.

(2) The justice may complete and sign a warrant in the terms referred to in section 197 (3) if satisfied that there are reasonable grounds for issuing the warrant urgently.

(3) The justice is to –

- (a) tell the fisheries officer –

- (i) the terms of the warrant; and
 - (ii) the date on which, and the time at which, the warrant was signed; and
 - (iii) the date on which, and the time at which, the warrant ceases to have effect; and
 - (b) record on the warrant the reasons for granting the warrant.
- (4) The fisheries officer is to –
- (a) complete a form of warrant in the same terms as the warrant signed by the justice; and
 - (b) write on the form –
 - (i) the name of the justice; and
 - (ii) the date on which, and the time at which, the warrant was signed; and
 - (c) send the justice the completed form of warrant not later than the day after the warrant ceases to have effect or is executed, whichever is the earlier.
- (5) On receipt of the form of warrant, the justice is to attach it to the warrant the justice signed.
- (6) A form of warrant completed by a fisheries officer under subsection (4) has the same force as a warrant signed by the justice under subsection (2) .

Division 7 - Arrest and seizure

199. Arrest

A fisheries officer may arrest a person without warrant if –

- (a) the person does not give the information or details required under section 196 ; or
- (b) the fisheries officer reasonably believes that the person has given a false name or address; or
- (c) the fisheries officer reasonably believes that the person has committed an offence under this Act and that –
 - (i) the offence is likely to continue or recur if the person is not arrested; or
 - (ii) any other procedure for dealing with the offence would not be effective; or
- (d) the fisheries officer reasonably believes that the person has contravened a control order.

200. Seizure of fish, vessels and other things

A fisheries officer may seize –

- (a) any fish the fisheries officer reasonably believes has been the subject of an offence under this Act or a corresponding law; and
- (b) any noxious fish and any receptacle or container containing noxious fish; and
- (c) any fish in a vessel, vehicle, receptacle or container or any vessel, vehicle, receptacle or container containing the fish if the fisheries officer reasonably believes that–
 - (i) more than 1/20th of the total number of fish contained in the vessel, vehicle, receptacle or container are fish which have been taken illegally; or
 - (ii) any of the fish are of a prescribed species which have been illegally taken; and
- (d) any vessel, vehicle, apparatus or equipment the fisheries officer reasonably believes has been used, is being used or is about to be used in the commission of an offence under this Act; and
- (e) any money or cheque the fisheries officer reasonably believes is the proceeds of the unlawful sale of any fish; and
- (f) any document or thing the fisheries officer reasonably believes may be evidence of the commission of an offence under this Act or a corresponding law.

201. Seizure of abandoned apparatus and fish

(1) A fisheries officer may seize –

(a) any apparatus or equipment unattended in, or adjacent to, any waters which –

(i) does not conform with any requirement of this Act; or

(ii) appears to have been lost or abandoned; and

(b) any fish in, or adjacent to, any waters which appear to have been abandoned.

(2) The fisheries officer may destroy or render inoperative any net, line or other apparatus used for taking or holding fish if, in the opinion of the fisheries officer, it is not practicable to seize them.

202. Interference with seized property

(1) A person must not interfere with, remove or damage any fish, vessel, vehicle, apparatus, equipment or other thing seized under this Part unless authorised to do so by a fisheries officer.

Penalty: Fine not exceeding 200 penalty units.

(2) A court, in addition to imposing a penalty on a person under subsection (1), may order the person to pay compensation for any damage or loss to any other person.

Division 8 - Offences

203. Offences against fisheries officer

A person must not –

(a) assault, abuse or threaten a fisheries officer exercising a power or performing a function under this Act; or

(b) hinder, mislead, obstruct or delay a fisheries officer exercising a power or performing a function under this Act; or

(c) incite or encourage another person to anything referred to in paragraphs (a) and (b).

Penalty: Fine not exceeding 200 penalty units.

204. Contravention of requirement, direction or signal

A person, without reasonable excuse, must not contravene a requirement, direction or signal made or given under this Part.

Penalty: Fine not exceeding 50 penalty units.

205. Refusing search

A person, without reasonable excuse, must not refuse to allow a search to be made under this Part.

Penalty: Fine not exceeding 50 penalty units.

206. Impersonation of fisheries officer

A person must not –

(a) impersonate a fisheries officer; or

(b) hold himself or herself out as a fisheries officer.

Penalty: Fine not exceeding 50 penalty units.

PART 9 - Enforcement

Division 1 - General provisions

207. Legal proceedings

- (1) Proceedings under this Act may be instituted by –
 - (a) a police officer; or
 - (b) the Secretary; or
 - (c) a person authorised by the Secretary.
- (2) In any proceedings under this Act, the authority of a person to prosecute is presumed in the absence of proof to the contrary.
- (3) A fisheries officer authorised by the Secretary may appear on behalf of the Secretary or a person authorised under subsection (1) (c) in any proceedings under this Act in a court of petty sessions.

208. Limitation of time for complaints

Despite the Justices Act 1959, a complaint for an offence under this Act may be brought at any time within 5 years from the date on which the matter of the complaint arose.

209. Defence for accidental taking of fish

It is a defence in proceedings relating to the taking of fish if the defendant establishes that, on becoming aware of the taking of the fish, the defendant immediately returned the fish to the waters from where it came with the least possible injury.

Division 2 - Responsibilities of certain persons

210. Liability of master of vessel

- (1) If a person commits an offence under this Act, the master of the vessel on which, or by the use of which, the offence was committed—
 - (a) is taken to have committed that offence; and
 - (b) may be proceeded against for that offence whether or not the person is proceeded against for that offence.
- (2) It is a defence in proceedings for an offence under subsection (1) if the defendant establishes that he or she—
 - (a) did not know the offence had been committed; and
 - (b) could not reasonably have prevented the commission of the offence; and
 - (c) took reasonable steps to minimise the impact of the offence on fish and the marine environment.

211. Liability of employer

- (1) If an employee commits an offence under this Act, the employer of that employee—
 - (a) is taken to have committed that offence; and
 - (b) may be proceeded against for that offence whether or not the employee is proceeded against for that offence.
- (2) It is a defence in proceedings for an offence under subsection (1) if the defendant establishes that the defendant –
 - (a) did not know the offence had been committed; and
 - (b) could not reasonably have prevented the commission of the offence; and

(c) had, before the offence occurred, taken reasonable steps to have the employee comply with this Act; and

(d) took reasonable steps to minimise the impact of the offence on fish and the marine environment.

212. Liability of person concerned in management of body corporate

(1) If a body corporate commits an offence against this Act, each person concerned in the management of the body corporate is taken to have also committed the offence and may be convicted of the offence unless the person establishes that –

(a) the act or omission constituting the offence took place without the person's knowledge or consent; or

(b) the person used all due diligence to prevent that act or omission by the body corporate.

(2) A person referred to subsection (1) may be convicted of an offence against this Act whether or not the body corporate is charged with or convicted of the offence.

213. Liability of holder of authorisation regarding offence by agent

(1) If an agent of a holder of an authorisation commits an offence under this Act, the holder of the authorisation –

(a) is taken to have committed that offence; and

(b) may be proceeded against for that offence whether or not the agent is proceeded against for that offence.

(2) It is a defence in proceedings for an offence under subsection (1) if the defendant establishes that he or she –

(a) did not know the offence had been committed; and

(b) could not reasonably have prevented the commission of the offence; and

(c) had, before the offence occurred, taken reasonable steps to have the agent comply with this Act; and

(d) took reasonable steps to minimise the impact of the offence on fish and the marine environment.

213A. Liability of holder of licence regarding offence by supervisor

(1) If the supervisor of an activity carried out under the authority of a licence commits an offence under section 89(4) in respect of that activity, the holder of the licence –

(a) is taken to have committed that offence; and

(b) may be proceeded against for that offence whether or not the supervisor is proceeded against for that offence.

(2) It is a defence in proceedings for an offence under subsection (1) if the defendant establishes that he or she –

(a) did not know the offence had been committed; and

(b) could not reasonably have prevented the commission of the offence; and

(c) had, before the offence occurred, taken reasonable steps to have the supervisor comply with this Act; and

(d) took reasonable steps to minimise the impact of the offence on fish and the marine environment.

214. Liability of supervisors

(1) If a person commits an offence under this Act in relation to any activity supervised under section 89, the supervisor –

(a) is taken to have committed that offence; and

(b) may be proceeded against for that offence whether or not the person is proceeded against for that offence.

(2) It is a defence in proceedings for an offence under subsection (1) if the defendant establishes that he or she –

- (a) did not know the offence had been committed; and
- (b) could not reasonably have prevented the commission of the offence; and
- (c) had, before the offence occurred, taken reasonable steps to have the person comply with this Act; and
- (d) took reasonable steps to minimise the impact of the offence on fish and the marine environment.

Division 3 - Evidentiary provisions

215. Proof of certain facts

In any proceedings for an offence under this Act, the onus of proving any of the following statements is on the person making the statement:

- (a) that at the time of the alleged offence a person was exempted from the relevant provision of the Act relating to that offence;
- (b) that the person –
 - (i) is an Aborigine; and
 - (ii) at the time of the alleged offence was engaged in an Aboriginal activity;
- (c) that a person, vessel or thing referred to in the complaint was not in State waters;
- (d) that fish were taken from waters other than State waters;
- (e) that an activity occurred in waters other than State waters.

215A. Receipt of documents

Any document, authority, notification, record, return, certificate or other information maintained or issued in relation to any matter under this Act and sent to any person at his or her usual or last known address is taken to be received by that person in the ordinary course of post.

216. Evidence relating to place and fish

In any proceedings for an offence under this Act, any of the following allegations in the complaint is evidence of the facts contained in them:

- (a) that a person, vessel, vehicle or other thing referred to in the complaint was in a particular area of land or waters;
- (b) that fish were taken from a particular area of land or waters;
- (c) that an activity occurred in a particular area of land or waters;
- (d) that fish is of a certain kind or species.

217. Evidence vessel was a foreign boat

In any proceedings for an offence under this Act, an allegation in the complaint that at the time of the alleged offence a vessel was a foreign boat is evidence of that fact.

218. Evidence of contents of package

In any proceedings for an offence under this Act, evidence that a package, receptacle or container had a mark or label indicating that the package, receptacle or container –

- (a) contained fish or a particular class of fish is evidence of that fact; or
- (b) contained a specified quantity of fish is evidence of that fact; or

(c) was packed or consigned by or for a particular person is evidence of that fact.

219. Proof fish were taken for sale

(1) In any proceedings for an offence under this Act, evidence that any fish taken by a person were subsequently sold by, or on behalf of, the person is evidence that the fish was taken for the purpose of sale.

(2) In any proceedings for an offence under this Act, evidence that any fish in a person's possession were subsequently sold by, or on behalf of, the person is evidence that the person possessed the fish for the purpose of sale.

220. Presumption of purpose of sale

(1) In any proceedings for an offence under this Act, if it is proved that –

(a) any fish were on a fishing vessel; and

(b) the fish were taken by, or were in the possession of, any person on that vessel –

it is presumed that the person took or possessed the fish for the purpose of sale.

(2) In any proceedings for an offence under this Act, if it is proved that –

(a) any fish were at a place specified in a fish processing licence as a place at which fish may be processed under the licence; and

(b) the fish were in the possession of a person –

it is presumed that the person possessed the fish for the purpose of sale.

(3) In any proceedings for an offence under this Act, if it is proved that –

(a) any fish were at a place in, on or from which fish were normally sold or were sold during a period of 6 months before the offence was allegedly committed; and

(b) the fish were in the possession of a person, other than a customer –

it is presumed that the person possessed the fish for the purpose of sale.

221. Certificates relating to licensing and statistical matters

(1) In any proceedings for an offence under this Act, the production of a certificate purporting to be signed by the Secretary stating any of the following facts is evidence of those facts:

(a) that on any date or during any period a person was or was not authorised to do anything under an authorisation or was, or was not, exempted from this Act or a specified provision of this Act;

(b) that on any date or during any period any place or thing was or was not the subject of an authorisation or exemption;

(c) that on any date or during any period an authorisation or exemption was cancelled, suspended or for any other reason of no effect;

(d) that on any date or during any period an authorisation or exemption was subject to any specified condition or conditions;

(e) that the holder of an authorisation had taken, received, despatched or sold a quantity, form or type of fish as recorded from records, dockets and returns required to be provided under the Act, regulations or rules;

(f) that on any date or during any period the holder of an authorisation had made a report required to be provided under the Act, regulations or rules and that the information recorded is the information that was reported;

(g) that on any date or during any period the holder of an authorisation had not made a report required to be provided by the Act, regulations or rules;

(h) that a holder of an authorisation had submitted returns indicating particular levels of production or catches of fish over particular periods of time or similar statistical information;

(i) that on any date or during any period a person was or was not –

(i) a supervisor for a particular licence; or

(ii) a supervisor for any licence;

(j) that on any date or during any period a natural person was or was not, for the purposes of a licence, a nominated person under section 77 .

(2) In any proceedings for an offence under this Act, the production of a document purporting to have been prepared in the Department, for or on behalf of the Minister, is evidence of the matters contained in the document.

222. Evidence of scientific matters

(1) The Minister, by notice in the *Gazette*, may declare a person to be an authorised person for the purposes of this section.

(2) In any proceedings for an offence under this Act, the production of a certificate purporting to be signed by an authorised person stating any of the following facts is evidence of those facts:

(a) that a fish was a particular species or type or had a particular characteristic;

(b) that a species or type of fish is, or is not, found in a particular area;

(c) that any apparatus is of a particular type or is designed, used or capable of being used for a particular purpose or for taking a particular species of fish.

(3) In addition to making any order as to costs, the court before which proceedings are held may make any order it thinks fit as to the expenses and remuneration payable for the services of an authorised person.

223. Accuracy of measuring equipment

In any proceedings for an offence under this Act, in which evidence is given as to any information compiled by a fisheries officer or the weight, size, direction or location as determined by a fisheries officer, any scales, callipers, computer hardware or software, rule, compass or other navigational or measuring equipment used by the fisheries officer in compiling the information or making the determination are, unless the contrary is proven–

(a) taken to be accurate; and

(b) taken to have been operated properly.

224. Amendments

In any proceedings for an offence under this Act, a court may allow any amendments to be made to any allegation or certificate it considers desirable or necessary to enable the matter in dispute to be determined if to do so is not likely to cause hardship or injustice to the defendant.

Division 4 - Forfeiture

225. Forfeiture on conviction

(1) If a court convicts a person of an offence under this Act, any of the following is forfeited to the Crown:

(a) any fish to which the offence relates;

(b) any apparatus or equipment used or intended to be used in, or in connection with, the commission of the offence;

(c) any vessel, vehicle, aircraft or other thing used in, or in connection with, the commission of the offence.

- (2) A person may apply to the court during proceedings leading to the conviction or associated with the relevant offence for an order that forfeiture is not to be carried out.
- (3) The court, if satisfied that special reasons exist, may –
 - (a) make the order applied for; and
 - (b) make any other order it considers appropriate.
- (4) In addition to any penalty imposed for an offence under this Act, a court, on application of the complainant, may order the forfeiture to the Crown of any money, cheque or other thing that is the proceeds of the sale of any fish, vessel, apparatus or equipment in contravention of this Act.

226. Forfeiture on acceptance of infringement notice

- (1) If a person is taken under section 20 of the Monetary Penalties Enforcement Act 2005 to have been convicted of an offence, any of the following seized under this Act is forfeited to the Crown:
 - (a) any fish to which the offence relates;
 - (b) any apparatus or equipment used or intended to be used in, or in connection with, the commission of the offence;
 - (c) any vessel, vehicle, aircraft or other thing used in, or in connection with, the commission of the offence.
- (2) Forfeiture takes effect –
 - (a) if an application is not made under subsection (3) , 108 days after service of the infringement notice; or
 - (b) if an application is made under subsection (3) and a court under subsection (7) (b) refuses to make an order, on the date of that refusal.
- (3) The owner of anything forfeited under subsection (1) (c) may apply to a court for an order for its return.
- (4) An application is to –
 - (a) be in writing; and
 - (b) be made within 108 days after service of the infringement notice; and
 - (c) state the reasons for the application.
- (5) A person must serve a copy of the application on the Secretary.
- (6) The Secretary, or a person authorised by the Secretary, may appear before the court at the hearing of the application.
- (7) A court, if satisfied that special reasons exist, may –
 - (a) make the order applied for; or
 - (b) refuse to make the order applied for; or
 - (c) make any other order it considers appropriate.

227. Forfeiture on seizure

- (1) Any of the following seized under this Act is forfeited to the Crown:
 - (a) any fish seized under section 200 (a) ;
 - (b) any noxious fish or receptacle or container seized under section 200 (b) ;
 - (c) any live fish or receptacle or container containing live fish illegally imported into the State.
- (2) Forfeiture takes effect on the date of the seizure.

228. Forfeiture if owner is not found

- (1) If the owner of anything seized under this Act cannot be found at the time of the seizure, the Secretary, by notice in the *Gazette*, is to notify that the Secretary has possession of it.
- (2) If within 6 weeks after the date of notice the owner is not found, the Secretary may determine that the thing to which the notice relates is forfeited to the Crown.
- (3) Forfeiture takes effect on the date determined by the Secretary.

229. Sale or disposal

- (1) The Secretary may sell, destroy or otherwise dispose of anything forfeited to the Crown under this Act.
- (2) Any proceeds of a sale or disposal are payable to the Crown.

230. Application to buy a forfeited thing

- (1) A person who owned anything forfeited, or who had any legal or equitable interest in anything forfeited, under this Act immediately before the forfeiture may apply to the Minister to buy it.
- (2) An application is to be –
 - (a) in writing; and
 - (b) made within 30 days after the forfeiture.
- (3) The Minister may –
 - (a) approve the application; or
 - (b) refuse to approve the application.
- (4) If the Minister approves the application, the Minister is to order the sale of the forfeited thing to the applicant on payment of an amount equal to its estimated market value.
- (5) Any proceeds of a sale are payable to the Crown.

231. Release of seized property

- (1) The Secretary may authorise the release of anything seized but not forfeited under this Act to –
 - (a) the owner; or
 - (b) the person entitled to the possession of the thing; or
 - (c) the person from whom the thing was seized.
- (2) The Secretary may authorise the release of anything subject to –
 - (a) any condition relating to the payment of a bond; or
 - (b) any condition relating to the provision of any other security; or
 - (c) any other condition the Secretary determines.
- (3) The amount of payment of a bond or the provision of a security is to be equivalent to the current market value of the thing.
- (4) A person must not contravene a condition imposed under subsection (2) .

Penalty: Fine not exceeding 100 penalty units.

- (5) In addition to a penalty imposed on a person for an offence under subsection (4) , a court may order the person to pay compensation for any damage or loss caused by the offence.

232. Return of seized things

- (1) A person may apply to the Secretary for the return of any thing seized from the person.
- (2) An application is to be –

- (a) in writing; and
- (b) made within –
 - (i) 3 months after the seizure; or
 - (ii) 6 weeks after proceedings are discontinued or the person is acquitted.
- (3) The Secretary may –
 - (a) approve an application if satisfied that –
 - (i) proceedings for an alleged offence in respect of which any thing was seized were not instituted and are not to be instituted; and
 - (ii) the circumstances warrant the approval; or
 - (b) refuse to approve the application if not so satisfied.
- (4) The Secretary must approve an application by a person if proceedings are discontinued or the person is acquitted.
- (5) If a thing seized is sold before an application for its return is approved, the applicant is to be paid the proceeds of the sale of the thing less any reasonable costs incurred in maintaining, storing and selling it.
- (6) If an application for the return of any seized thing is not made within the period referred to in subsection (2), the thing is forfeited to the Crown.
- (7) This section does not apply to any fish forfeited under this Act.

233. Live fish returned to water

- (1) If, in the opinion of a fisheries officer, it is practicable to return any fish seized under this Act to State waters, the fisheries officer may do so.
- (2) If, in the opinion of a fisheries officer, any fish seized under this Act is likely to deteriorate or rot if no action is taken to preserve it, the fisheries officer may sell, preserve or otherwise dispose of the fish.
- (3) A person is not entitled to any compensation in respect of any action taken under this section.
- (4) This section does not apply to fish forfeited under section 227(1)(b) and (c) .

Division 5 - Infringement notices

234. Infringement notices

- (1) A fisheries officer or a person authorised by the Secretary may serve an infringement notice on a person, other than a person under the age of 16 years, if of the opinion that the person has committed a prescribed offence.
- (2) An infringement notice is not to relate to 4 or more offences.
- (3) An infringement notice is to be in accordance with section 14 of the Monetary Penalties Enforcement Act 2005 .

235. Payments into Consolidated Fund

Any payments in respect of an infringement notice are payable into the Consolidated Fund.

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Division 6 - Demerit points

242. Allocation of demerit points on conviction

(1) If a court convicts a person of a fisheries offence, the prescribed number of demerit points are allocated to each of the following:

- (a) the person;
- (b) the licence under which the person was operating when the offence was committed;
- (c) the fishing certificate on which the licence is specified.

(2) For the purposes of subsection (1), the prescribed number of demerit points is the aggregate of the following:

- (a) one demerit point for each penalty unit that the court imposes on the convicted person by way of a fine;
- (b) 50 demerit points for each month of suspended imprisonment, of each term of imprisonment, that the court imposes on the convicted person;
- (c) 100 demerit points for each month of actual imprisonment, of each term of imprisonment, that the court imposes on the convicted person.

(3) However, for the purposes of subsection (2) –

- (a) terms of suspended imprisonment that are ordered to be served concurrently with each other are taken to be a single term of suspended imprisonment; and
- (b) terms of actual imprisonment that are ordered to be served concurrently with each other are taken to be a single term of actual imprisonment.

(4) In this section –

actual imprisonment, in relation to a term of imprisonment, means such part of the term as is not suspended at the time of sentencing;

fine includes a fine by way of special penalty;

fisheries offence means –

- (a) an offence against this Act; or
- (b) an offence against any rules or regulations made under this Act; or
- (c) an indictable offence, relating to fish or fish processing, or the keeping of records relating to fish or fish processing, punishable under the Criminal Code ;

month includes part of a month;

penalty unit means a penalty unit within the meaning of the Penalty Units and Other Penalties Act 1987 ;

suspended imprisonment, in relation to a term of imprisonment, means such part of the term as is suspended at the time of sentencing.

243.

244. **Allocation of demerit points**

(1)

(2) Any demerit point allocated under the Marine Farming Planning Act 1995 to a person to whom this Act applies is to be treated as if it were a demerit point allocated to that person under this Division.

245. **Period for which demerit points remain in force**

A demerit point allocated under this Division remains in force for a period of 5 years from the date of the conviction that causes it to be allocated.

246. **Permanent disqualification from obtaining licence**

(1) The following are permanently disqualified from obtaining or holding a licence:

(a) a person to whom 200 or more demerit points have been allocated consequent on one or more serious convictions;

(b) a person who is or has been a partner in a partnership or a major shareholder in a body corporate to which 200 or more demerit points have been allocated consequent on one or more serious convictions;

(c) a partnership or body corporate which has or had a partner or major shareholder—

(i) to whom 200 or more demerit points have been allocated consequent on one or more serious convictions; or

(ii) who has been a partner of another partnership or major shareholder in another body corporate to which 200 or more demerit points have been allocated consequent on one or more serious convictions.

(2) A major shareholder is a person who holds more than 10% of the issued shares in a body corporate.

(3) The Secretary, by notice in writing, must notify a person of —

(a) any disqualification under this section; and

(b) the date on which the disqualification takes effect.

(4) A person must transfer, to a person other than their associate, a licence to which a disqualification under this section relates—

(a) within 6 months after receipt of a notice under subsection (3) ; and

(b) in accordance with Division 5 of Part 4 .

(4A) For the purposes of section 82 , a person who is obligated to transfer a licence by subsection (4) is taken to remain the holder of that licence until the transfer is effected.

(5) The Minister must cancel a licence which is not transferred under subsection (4) .

(6) For the avoidance of doubt, the operation of this section prevails over the operation of section 246A .

(7) In this section —

associate, of the transferor of a licence, has the same meaning as in section 82 ;

serious conviction means a conviction for an indictable offence tried before the Supreme Court.

246A. **Temporary disqualification from obtaining licence**

(1) The following are disqualified, for a period of 5 years, from obtaining or holding a licence:

- (a) a person to whom 200 or more demerit points have been allocated in any 5-year period;
- (b) a person who is or has been a partner in a partnership or a major shareholder in a body corporate to which 200 or more demerit points have been allocated in any 5-year period;
- (c) a partnership or body corporate which has or had a partner or major shareholder –
 - (i) to whom 200 or more demerit points have been allocated in any 5-year period; or
 - (ii) who has been a partner of another partnership or major shareholder in another body corporate to which 200 or more demerit points have been allocated in any 5-year period.
- (2) A major shareholder is a person who holds more than 10% of the issued shares in a body corporate.
- (3) The Secretary, by notice in writing, must notify a person of –
 - (a) any disqualification under this section; and
 - (b) the date on which the disqualification takes effect.
- (4) A person is to transfer, to a person other than their associate, a licence to which a disqualification under this section relates –
 - (a) within 6 months after receipt of a notice under subsection (3) ; and
 - (b) in accordance with Division 5 of Part 4 .
- (5) For the purposes of section 82 , a person who is obligated to transfer a licence by subsection (4) is taken to remain the holder of that licence until the transfer is effected.
- (6) If a person fails to transfer a licence pursuant to subsection (4) , the Minister must suspend the licence until the expiration of the person's 5-year period of disqualification.
- (7) In this section –

associate, of the transferor of a licence, has the same meaning as in section 82 .

247. Accumulation of demerit points suspends licence, &c.

- (1) A licence is suspended if, under this Division, during any 5-year period, 200 or more demerit points are allocated to –
 - (a) the licence; or
 - (b) a fishing certificate on which the licence is specified.
- (2) The suspension is for a period of 5 years.
- (3) The Secretary, by notice in writing served on the holder of a licence, must notify the holder of the date on which the licence is suspended.
- (4) The date on which a marine farming licence is suspended is whichever is the earlier of the following:
 - (a) 6 months after service of a notice under subsection (3) ;
 - (b) the date on which the lease to which the marine farming licence relates is transferred under section 124 of the Marine Farming Planning Act 1995 .
- (5) In this section, *licence* includes a licence which has been renewed, transferred, varied or substituted.

248. Transfer of demerit points

- (1) Any demerit point allocated to a licence which is transferred under Division 5 of Part 4 continues in force in relation to that licence.
- (2) Any demerit point allocated to a fishing certificate continues in force in relation to that certificate whether or not any licence specified on that certificate is transferred under Division 5 of Part 4 .

249. Register of demerit points

- (1) The Secretary is to keep a register of the particulars of any demerit point allocated to a person, licence or fishing certificate.
- (2) Any person, on payment of the prescribed fee, may –
 - (a) examine the register so far as it relates to any demerit point allocated to that person, a licence held by that person or a fishing certificate maintained in respect of any fishing licence held by that person; or
 - (b) by instrument in writing, authorise another person to do so.

250. Correction of register

- (1) A person may apply to a magistrate for an order to correct a register kept under section 249 in respect of that person.
- (2) The magistrate –
 - (a) if satisfied that the register is incorrect, may order the Secretary to correct the register as specified in the order; or
 - (b) if not so satisfied, may dismiss the application.
- (3) The magistrate may make any order the magistrate considers appropriate in respect of costs of the application.

Division 7 - Control orders

251. Application for control order

- (1) The Secretary may apply to the Supreme Court for a control order against a person –
 - (a) in respect of whom 200 or more demerit points are in force and who the Secretary reasonably believes is likely to commit further offences under this Act; or
 - (b) who has been convicted under any law of Tasmania or another State or Territory of the Commonwealth of an offence which the Secretary considers relevant to the making of the order.
- (2) An application for a control order must be accompanied by –
 - (a) a draft control order in accordance with section 252 ; and
 - (b) any evidence and argument to justify the making of the control order.
- (3) An application is to be made in accordance with Rules of Court in force under the Supreme Court Civil Procedure Act 1932 .

252. Draft control order

A draft control order must –

- (a) specify the person to whom it is to apply; and
- (b) describe the activities which are proposed to be restricted or prohibited; and
- (c) specify the period during which the control order is to be in force; and
- (d) describe any relevant circumstances.

253. Issue of control order

- (1) The Supreme Court –
 - (a) may issue the control order applied for; or
 - (b) if satisfied that to do so would be unreasonably harsh and unjust, may –
 - (i) amend the control order; or
 - (ii) refuse to issue the control order.

- (2) A person must not contravene a control order.

Penalty: Fine not exceeding 1 000 penalty units or imprisonment for a term not exceeding 1 year.

254. Variation or revocation of control order

- (1) The Secretary may apply to the Supreme Court to vary or revoke a control order.
- (2) An application for the variation of a control order is to be accompanied by –
- (a) a draft of any variation being sought; and
 - (b) any evidence and argument to justify the variation of the control order.
- (3) The Supreme Court may –
- (a) revoke the control order; or
 - (b) vary the control order if satisfied that to do so would not be unreasonably harsh and unjust; or
 - (c) refuse to vary the control order if not so satisfied.

Division 8 - Miscellaneous offences

255. Use of explosives and substances

- (1) For the purpose of taking fish, a person must not in State waters –
- (a) use or attempt to use any explosive or any toxic or poisonous substance; or
 - (b) use or attempt to use any substance which may render fish incapable of movement; or
 - (c) cause or permit a shock, sound or vibration by the use of any means which is likely to stun, injure, kill or detrimentally affect any fish.

Penalty: Fine not exceeding 5 000 penalty units or imprisonment for a term not exceeding 2 years, or both.

- (2) In addition to imposing a penalty on a person for an offence under subsection (1), a court may order the person to pay compensation for any damage or loss caused to any other person as a result of that offence.

255A. Possession and use of trawl nets

- (1) In this section –

board trawl net means a funnel-shaped, or cone-shaped, net that –

- (a) uses trawl doors or otter boards to assist in holding the net mouth open when towed through the water; and
- (b) ends with a bag or cod end; and
- (c) when in use, is towed by a fishing vessel;

pair trawl net means a funnel-shaped, or cone-shaped, net that –

- (a) has a mouth that, when towed through the water, is held open by warps or lines that are connected to 2 fishing vessels; and
- (b) ends with a bag or cod end; and
- (c) when in use, is towed by 2 fishing vessels;

trawl net means the following nets:

- (a) board trawl net;
- (b) pair trawl net.

(2) A person must not be in possession of a trawl net on a fishing vessel in State waters, unless the possession of the trawl net on that fishing vessel is authorised under the law of another jurisdiction.

Penalty: Fine not exceeding 5 000 penalty units or imprisonment for a term not exceeding 2 years, or both.

(3) A person must not use a trawl net in State waters.

Penalty: Fine not exceeding 5 000 penalty units or imprisonment for a term not exceeding 2 years, or both.

256. Interfering with fishing

A person, without reasonable excuse, must not –

- (a) prevent a person from lawfully fishing; or
- (b) hinder or obstruct any person who is lawfully fishing.

Penalty: Fine not exceeding 100 penalty units.

257. Interfering with apparatus

(1) A person must not –

- (a) remove fish from any equipment used or intended to be used in connection with marine farming or any apparatus; or
- (b) interfere with any such equipment or apparatus.

Penalty: Fine not exceeding 200 penalty units or imprisonment for a term not exceeding 1 year.

(2) It is a defence in proceedings for an offence under subsection (1) if the defendant establishes that at the time of the alleged offence he or she–

- (a) was the owner of the equipment or apparatus; or
- (b) was acting with the consent of the owner of the equipment or apparatus; or
- (c) was a fisheries officer.

258. Use of foreign boat

(1) A person must not use a foreign boat for fishing in State waters.

Penalty: Fine not exceeding 5 000 penalty units or imprisonment for a term not exceeding 2 years, or both.

(2) It is a defence in proceedings for an offence under subsection (1) if the defendant establishes that at the time of the alleged offence an authorisation was in force for the use of the foreign boat in State waters or that the defendant was using the foreign boat for recreational fishing.

259. Foreign boat equipped with apparatus

(1) A person must not have possession or control of a foreign boat in State waters which is equipped with any apparatus for fishing.

Penalty: Fine not exceeding 1 000 penalty units or imprisonment for a term not exceeding 1 year.

(2) It is a defence in proceedings for an offence under subsection (1) if the defendant establishes that at the time of the alleged offence–

- (a) an authorisation was in force for the use of the foreign boat in State waters; or
- (ab) the apparatus was for recreational fishing use only; or
- (b) the foreign boat's apparatus for fishing was stored and secured and the boat was at anchor or in port or was travelling by the shortest practicable route–

- (i) to or from anchorage or port in the State; or
- (ii) from a point outside State waters to another point outside those waters.

260. Interfering with licensee

A person, without lawful authority, must not obstruct, hinder or prevent a licensee or a person acting under the authority of a licensee from carrying out any activity authorised by the licence.

Penalty: Fine not exceeding 500 penalty units.

261. Permitting use of premises

A person must not knowingly permit any of the following to be used to commit an offence under this Act:

- (a) any premises used for fish processing;
- (b) any vessel, apparatus or structure to which a fishing licence relates;
- (c) any vehicle;
- (d) any area, vessel, apparatus or structure used in relation to a marine farming licence.

Penalty: Fine not exceeding 1 000 penalty units.

262. Possession, purchase or sale of illegally taken fish

(1) A person must not purchase, sell or have possession of any fish taken or possessed in contravention of this Act or a corresponding law.

Penalty: Fine not exceeding 2 000 penalty units or imprisonment for a term not exceeding 1 year, or both.

(2) It is a defence in proceedings for an offence under subsection (1) if the defendant establishes that at the time of the alleged offence he or she did not know and could not reasonably be expected to have known that the fish were taken in contravention of this Act or a corresponding law.

263. False and misleading statements

A person, in making any application, giving any document or stating anything to a fisheries officer, must not –

- (a) make a statement knowing it to be false or misleading; or
- (b) omit any matter from a statement knowing that without that matter the statement is false or misleading.

Penalty: Fine not exceeding 500 penalty units.

Division 9 - Indictable offences

263A. Prosecution of offences

- (1) An offence against this Division is an indictable offence.
- (2) However, a court of summary jurisdiction may hear and determine proceedings for an offence against this Division if the court is satisfied that it is proper to do so and the defendant and the prosecutor consent.
- (3) Where, in accordance with subsection (2), a court of summary jurisdiction convicts a person of an offence against this Division, the penalty that the court may impose is a fine not exceeding 5 000 penalty units or imprisonment for a term not exceeding 2 years, or both.

264. Unlawful possession of fish

A person must not have possession of fish without lawful excuse.

264A. Trafficking in fish

- (1) A person must not traffic in fish without lawful excuse.
- (2) For the purposes of subsection (1), a person is taken to traffic in fish without lawful excuse if –
 - (a) the fish have been taken unlawfully or possessed unlawfully; and
 - (b) on one or more occasions, the person –
 - (i) possesses the fish; or
 - (ii) conceals the fish; or
 - (iii) processes the fish; or
 - (iv) sells or otherwise disposes of the fish; or
 - (v) receives or delivers the fish from or to another person; or
 - (vi) transports the fish from one place to another; or
 - (vii) otherwise deals with the fish; or
 - (viii) carries out any combination of the activities referred to in this paragraph.
- (3) For the purposes of subsection (2) –
 - (a) it does not matter whether the fish referred to in that subsection are all of one species or a mixture of different species; and
 - (b) a person is taken to have carried out an activity if the person –
 - (i) carries out, or participates in the carrying out of, the activity; or
 - (ii) directs, controls or supervises the carrying out of the activity; or
 - (iii) provides finance, facilities or other resources to enable the activity to be carried out or to facilitate it; or
 - (iv) is knowingly concerned in the carrying out of the activity.

265. False or misleading records

A person must not, in keeping any records, accounts or other information under this Act –

- (a) make a statement knowing it to be false or misleading; or
- (b) omit any matter from a statement knowing that without that matter the statement is false or misleading.

266. Application of certain Act

The Crime (Confiscation of Profits) Act 1993 applies to an indictable offence under this Division as if fish were property within the meaning of that Act.

Division 10 - Special penalties

267. Illegally taking or possessing fish, &c.

- (1) On a finding of guilt for an offence under this Act or regulations or rules made under this Act relating to the taking, possession, purchase, sale or trafficking of fish, a court must impose a special penalty equal to 10 times the value of the fish.
- (2) A court must not reduce or suspend a special penalty for any reason.

268. Illegal use of apparatus

- (1) On a finding of guilt for an apparatus offence committed entirely or partially in a special protected area, a court must impose a special penalty equal to –
 - (a) 2 penalty units for each rock lobster pot used or possessed in the commission of the offence; and

(b) 2 penalty units for each 50 metres of net used or possessed in the commission of the offence.

(1A) On a finding of guilt for an apparatus offence committed entirely in an area that is not a special protected area, a court must impose a special penalty equal to 2 penalty units for –

- (a) each unauthorised rock lobster pot used or possessed in the commission of the offence; and
- (b) each 50 metres of unauthorised net used or possessed in the commission of the offence; and
- (c) each unauthorised prescribed apparatus used or possessed in the commission of the offence.

(2) A court must not reduce or suspend a special penalty for any reason.

(3) In this section –

apparatus offence means an offence under this Act or rules or regulations made under this Act relating to the use or possession of apparatus;

protected area means –

- (a) a marine resources protected area; or
- (b) reserved land under the Nature Conservation Act 2002 ; or
- (c) a prescribed area of State waters;

special protected area, in relation to an apparatus offence, means a protected area in which –

- (a) fishing of any kind is unlawful; or
- (b) fishing that is ordinarily carried out by means of apparatus of the kind used or possessed in connection with the offence is unlawful;

unauthorised, in relation to the use or possession of apparatus, means use or possession that is not sanctioned by an authorisation.

269. Value of fish

(1) For the purpose of this Division, a court must determine the value of any fish –

- (a) by multiplying the weight of the fish by the value of each unit of weight declared for fish of that class or species; or
- (b) by multiplying the number of fish by the value of each fish declared for fish of that class or species.

(2) The Minister, by order, may declare –

- (a) the value of each unit of weight for fish of a specified class or species; or
- (b) the value of each fish of a specified class or species.

PART 10 - Miscellaneous

Division 1 - Disease and pests

270. Biosecurity – dealing with marine pests and diseases

- (1) The Minister, by order published in the *Gazette*, may issue directions aimed at –
- (a) preventing the introduction or re-introduction into State waters of any harmful disease or harmful pest; or
 - (b) preventing any harmful disease or harmful pest present in State waters from spreading to the waters of any other jurisdiction; or
 - (c) controlling or eradicating any harmful disease or harmful pest.

- (2) A person must not contravene a direction under subsection (1) .

Penalty: Fine not exceeding 2 000 penalty units or imprisonment for a term not exceeding 12 months.

- (3) An order under subsection (1) –
- (a) takes effect on the day on which it is published in the *Gazette* or on such later day as is specified in the order; and
 - (b) is to specify the pest or disease in respect of which it has been made; and
 - (c) is to indicate why it has been made; and
 - (d) may provide for any matter by incorporating, either specifically or by reference and either wholly or in part and with or without modification, any codes, standards, guidelines, rules or specifications relevant to the prevention, control or eradication of harmful pests or harmful diseases, whether as in force at a particular time or as from time to time amended and whether published or issued before or after the commencement of this section; and
 - (e) may, in addition to directions, contain such explanatory and ancillary provisions as the Minister considers necessary or expedient.
- (4) A direction under subsection (1) may be inconsistent with a management plan and, in such a case, the direction prevails to the extent of the inconsistency.
- (5) An order under subsection (1) expires 12 months after the day on which it takes effect or at such earlier time as is specified in the order but this subsection is not to be taken as preventing the Minister from making, on or after that expiry, a further order under subsection (1) in the same or similar terms as the expired order if the Minister reasonably considers that circumstances require it.

- (6) In this section –

control includes monitor;

harmful means –

- (a) known to be harmful or potentially harmful to any fish, any fishery or any part of the marine environment; or
- (b) reasonably suspected by the Minister of posing any kind of biological, ecological or other threat to any fish, any fishery or any part of the marine environment;

prevent includes slow and restrict.

271. Order relating to diseased areas

- (1) The Minister, by order, may declare any area of State waters, a marine farm or part of a marine farm to be diseased or infected by any pest if satisfied that the pest is likely to adversely affect –

- (a) the taking of fish in the area or marine farm; or
- (b) the activities of marine farming in the marine farm or in any other area.

(2) Before making an order, the Minister, if practicable, is to consult with the relevant fishing body.

272. Requirements made by order

(1) An order under section 271 is to specify the period during which the order is in force.

(2) An order may –

- (a) require that fish are not to be taken from a specified area, specified marine farm or specified part of a marine farm; and
- (b) require that any fish that may be taken are to be removed only under conditions specified in the order; and
- (c) require the holder of a marine farming licence to take steps specified in the order to –
 - (i) treat fish in the marine farm; or
 - (ii) eradicate from the marine farm the disease or pests specified in the notice; or
 - (iii) destroy fish in the marine farm.

(3) A person must not contravene any requirement made by an order.

Penalty: Fine not exceeding 1 000 penalty units.

273. Notification of order

Before an order under section 271 affecting the holder of a marine farming licence comes into force, the Minister, by notice in writing, is to notify the holder of the proposed order.

Division 2 - Fees, charges and royalties

274. Fees, charges and royalties

(1) The Minister may impose a fee in respect of the grant or issue of an authorisation at an amount or rate the Minister determines.

(2) The Minister, by notice in writing to the holder of an authorisation, may vary any fee imposed under subsection (1) .

(3) A fee imposed under subsection (1) may be determined so as to apply differently according to any matter the Minister considers appropriate.

(4) The Minister may impose a fee, charge or royalty in respect of an authorisation at a prescribed amount or prescribed rate.

(5) The Minister, with the agreement of the holder of an authorisation or an applicant for an authorisation, may impose a fee, charge or royalty in respect of the authorisation at an amount or a rate greater than the amount or rate prescribed under subsection (4) .

275. Variation of fees, charges and royalties

(1) The Minister, if of the opinion that it is necessary or desirable to do so, may –

- (a) extend the time for payment of any fee, levy, charge or royalty; or
- (b) waive the whole or part of any fee, charge or royalty; or
- (c) refund the whole or part of any fee, charge or royalty; or
- (d) accept a lesser amount in place of the full fee, charge or royalty.

- (2) A licensee may apply to the Minister to extend the time for payment of any fee, levy, charge or royalty payable in respect of a licence held by that person.
- (3) An application is to be –
 - (a) in writing; and
 - (b) stating the reasons for the application.
- (4) The Minister may –
 - (a) grant the application; or
 - (b) refuse to grant the application.

276. Recovery of unpaid fees, charges and royalties

- (1) A levy, fee, charge or royalty or a penalty referred to in subsection (2) not paid by the due date is recoverable from the person liable to pay it as a debt due to the Crown.
- (2) The Minister, by notice in the *Gazette*, may impose a penalty as determined by the Treasurer for the non-payment of any levy, fee, charge or royalty.

277. Payments into Consolidated Fund

The following are to be paid into the Consolidated Fund:

- (a) any fees, charges and royalties paid under this Act, unless the Minister determines otherwise under section 278 ;
- (b) any penalties paid under this Act;
- (c) any money received from the sale of forfeited property;
- (d) any other money received under this Act other than levies paid under section 279 .

278. Special trust fund

- (1) The Minister may establish a special trust fund in Treasury into which fees, charges and royalties are to be paid.
- (2) The Minister may determine that any specific fee, charge or royalty or fees, charges or royalties in general are to be paid into the special trust fund.

279. Industry levy

- (1) The Minister, at the request of a fishing body, may determine that a levy is payable by persons undertaking any activity under an authorisation if satisfied that the majority of persons likely to be affected are in favour of the levy.
- (1A) The Minister, after consultation with the relevant fishing body, may determine –
 - (a) that a levy is payable by persons undertaking any activity under an authorisation for the purpose of –
 - (i) research; or
 - (ii) any approved services provided by an approved entity; and
 - (b) that a levy under paragraph (a) is no longer payable.
- (2) The Minister may determine the amount of levy payable.
- (2A) The amount of levy determined to be payable under subsection (2) may be expressed in fee units as if it were a fee within the meaning of the Fee Units Act 1997 .
- (3) A levy –
 - (a) is due and payable as prescribed; and
 - (b) may be paid by instalments in the prescribed manner.

- (4) If any instalment of a levy is not paid by the date on which it is due, the whole amount of the unpaid levy is due and payable on that date.
- (5) If a levy is not paid by the date on which it is due, the person liable to pay the levy is liable to a penalty calculated at the rate of 20% a year of the unpaid levy as from that date.
- (6) The Minister, by notice in writing, may exempt a person from payment of all or part of a levy if satisfied that the payment would cause the person undue hardship.
- (7) Any money received under this section in respect of a fishing body is payable into a Fishery Levy Fund for that fishing body.
- (8) Any money standing to the credit of a Fishery Levy Fund in respect of a fishing body is to be applied after consultation with the fishing body for the benefit of the fishing body.
- (9) A fishing body may request the Minister to determine that a levy is no longer payable in respect of that fishing body.
- (10) In this section –
- entity* includes –
- (a) a government department or instrumentality of a State, a Territory or the Commonwealth; and
- (b) an international organisation.

Division 3 - Reviews of decisions

280. Notification of right of review

Any person who makes a prescribed decision, by notice served on a person whose interests may be affected by that decision, must notify the person –

- (a) of the decision; and
- (b) that the person may apply for a review of the decision.

281. Application for review of decision

- (1) A person may apply to the Minister to review a prescribed decision made by a delegate of the Minister.
- (2) A person may apply to the Secretary to review a prescribed decision made by a delegate of the Secretary.
- (3) A person may apply to the Minister to review a prescribed decision made by the Minister or the Secretary.
- (4) An application is to –
- (a) be made in writing within 21 days after the date of service of a notice under section 280 ; and
- (b) specify the reasons for the application.
- (5) The Minister or Secretary may extend the period referred to in subsection (4) for making an application.

282. Review of decision

- (1) The Minister or Secretary, within 45 days after receiving an application under section 281 for a review of a decision, is to make a determination –
- (a) substituting the decision with another decision; or
- (b) confirming the decision; or
- (c) revoking the decision.
- (2) The Minister or Secretary, by notice served on the applicant, must notify the applicant of –
- (a) the determination made; and
- (b) the findings on material questions of fact; and

- (c) the evidence or other material on which the findings are based; and
- (d) the reasons for the determination; and
- (e) the right to appeal to the Appeal Tribunal against the determination.

283. Appeal to Appeal Tribunal

- (1) A person may appeal to the Appeal Tribunal against a prescribed determination of the Minister or Secretary under section 282 .
- (2) The Appeal Tribunal is to hear and determine an appeal under the Resource Management and Planning Appeal Tribunal Act 1993 .

284. Validity of decision

A failure to comply with section 280 or 282 (2) in relation to a decision does not affect the validity of the decision.

Division 4 - Regulations

285. Regulations in general

- (1) The Governor may make regulations for the purpose of this Act.
- (2) Regulations may be made so as to apply differently according to any matter, condition, limitation, restriction, exception or circumstance specified in the regulations.
- (3) The regulations may –
 - (a) provide that a contravention of, or a failure to comply with, any regulations or rules made under Part 3 or 5 is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a penalty of either or both of the following:
 - (i) imprisonment for a term not exceeding 2 years;
 - (ii) a fine not exceeding 5 000 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.
- (3A) The regulations may specify penalties that are to be imposed for offences against regulations or rules made under Part 3 or 5 .
- (3B) A penalty specified in the regulations pursuant to subsection (3A) may be either or both of the following:
 - (a) imprisonment for a term not exceeding 2 years;
 - (b) a fine not exceeding 5 000 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.
- (4) The regulations may authorise any matter to be determined, applied or regulated by any person or body.
- (5) The regulations may confer a power and impose a duty on a specified person or a specified class of persons.
- (6) The regulations may adopt or incorporate the whole or any part of any document, standard, rule, code, specification or method, with or without modification, issued, prescribed or published by any person or body before or after the regulations take effect.

286. Regulations relating to vessels

The Governor may make regulations in respect of –

- (a) vessels used for fishing for commercial purposes; and
- (b) vessels used for carrying fish for commercial purposes; and
- (c) charter vessels used for recreational fishing; and

- (d) charter vessels used for non-exploitative use of fish; and
- (e) the use of any vessel for any of the purposes referred to in paragraphs (a) , (b) , (c) and (d) ; and
- (f) the use of vessels for storing, dealing with and processing and treating fish; and
- (g) any apparatus to be installed in, or carried on, vessels used for fishing; and
- (h) reporting or notifying the position of any vessel used for fishing; and
- (i) carrying any firearm, explosive or toxic or poisonous substance on any vessel used for fishing.

287. Regulations relating to fish processing

The Governor may make regulations in respect of –

- (a) fish processing; and
- (b) the manner in which, and the means by which, fish may be unloaded, delivered, consigned or transported for processing; and
- (c) the manner in which fish are received, transported and stored; and
- (d) the marking and labelling of receptacles and containers in which fish are received and stored; and
- (e) the dimensions of those receptacles and containers; and
- (f) the treatment of, and dealing with, processed fish; and
- (g) the processing of fish; and
- (h) any premises, place, vessel or vehicle on or in which fish are stored before they are transferred to be processed; and
- (i) the quality and quantity of fish for sale within the State or for export.

288. Regulations relating to handling

The Governor may make regulations in respect of –

- (a) the manner in which, and the means by which, fish may be unloaded, delivered, consigned or transported by handlers; and
- (b) the manner in which fish are received and stored by handlers; and
- (c) the manner in which fish may be exported; and
- (d) the type of receptacle or container in which fish may be exported; and
- (e) the marking and labelling of receptacles and containers in which fish are received and stored; and
- (f) the dimensions of those receptacles and containers; and
- (g) the composition of water or other packing material in which fish are placed when being exported.

289. Regulations relating to marine resources protected areas

The Governor may make regulations in respect of –

- (a) the taking of fish from a marine resources protected area; and
- (b) the management, protection and development of a marine resources protected area; and
- (c) entry to a marine resources protected area; and
- (d) any activity carried on in a marine resources protected area; and
- (e) any dealing with a species of protected fish in a marine resources protected area.

290. Regulations relating to fish habitats

The Governor may make regulations in respect of –

- (a) the taking of fish from fish habitats; and
- (b) the management, protection and development of fish habitats; and
- (c) entry to fish habitats; and
- (d) any activity carried on in fish habitats; and
- (e) any dealing with a species of protected fish.

291. Regulations relating to noxious fish

The Governor may make regulations in respect of –

- (a) the waters which apply in relation to noxious fish; and
- (b) different classes of noxious fish; and
- (c) the exclusion of any specified provision of Division 5 of Part 5 to a class of noxious fish.

292. Regulations relating to arrangements

- (1) The Governor may make regulations in respect of a fishery managed under an arrangement under the law of Tasmania.
- (2) Regulations made under this section may provide that a regulation made otherwise than under this section applies to a fishery referred to in subsection (1) .

293. Regulations relating to disease

The Governor may make regulations in respect of –

- (a) the measures to be taken to prevent and control disease in fish; and
- (b) the requirement to notify the Secretary of the occurrence of any disease or symptoms of disease in fish; and
- (c) the importation or possession of fish that may be affected by disease; and
- (d) the destruction of fish affected by disease and of any receptacle or container containing such fish; and
- (e) the recovery of the cost of any measure taken to prevent or control disease in fish.

294. Regulations relating to fees, charges and royalties

- (1) The Governor may make regulations prescribing fees, charges and royalties in respect of –
 - (a) the purchase of any tag, buoy, ticket or other identification required to be displayed or affixed to a vessel, container, bag, apparatus or fish; and
 - (b) any services provided under this Act; and
 - (c) the quantity, dimensions or type of fish that may be taken; and
 - (d) the quantity, dimensions or type of apparatus that may be used; and
 - (e) the period during which a person may take fish or use apparatus; and
 - (f) any contract or agreement between the Minister and any person for the right to take fish; and
 - (g) vessels used for fishing.
- (2) Regulations under this section may prescribe a fee, charge or royalty by –
 - (a) specifying a set amount; or
 - (b) specifying a rate or proportion by which the fee, charge or royalty is to be calculated; or
 - (c) any other method of calculating the fee, charge or royalty.
- (3) Regulations under this section may provide for –

- (a) any fee, charge or royalty to be paid by instalments; and
- (b) any fee, charge or royalty to be paid in advance or in arrears; and
- (c) any additional charge if a fee, charge or royalty is paid by instalments; and
- (d) any matter relating to the payment, collection and recovery of fees, charges and royalties.

295. Regulations relating to fish and fishing

The Governor may make regulations in respect of –

- (a) reporting or notifying the landing of any fish; and
- (b) the non-exploitative use of fish; and
- (c) the possession of –
 - (i) the flesh or other part of any specified class of fish; and
 - (ii) any specified class of mutilated or disfigured fish; and
- (d) the prevention of destruction and wastage of fish; and
- (e) any activities that interfere with, or obstruct, fishing; and
- (f) the size, number, weight or any other characteristics of fish which may be taken, possessed, offered for sale, sold or purchased; and
- (g) the sale and purchase of fish; and
- (h) the landing, surrender to the Crown and sale of fish taken in contravention of this Act; and
- (i) the naming of fish and prohibiting the sale of fish except under specified names.

296. Regulations relating to miscellaneous matters

The Governor may make regulations in respect of –

- (a) the deposit of any refuse or waste in any State waters or the pollution by other means of any State waters; and
- (b) the removal of plastic and other forms of binding used on bait packages from the bait and from a vessel before the vessel is put to sea; and
- (c) the carrying of licences, permits or exemptions; and
- (d)
- (e) any matter relating to an agreement under section 162 ; and
- (f) the offences in respect of which infringement notices may be served; and
- (g) the penalties and special penalties applicable to those offences.

Division 5 - Miscellaneous matters

297. Evidence

(1) A statement in an arrangement –

- (a) that specified waters are waters relevant to the State which is a party to the arrangement with the Commonwealth is evidence of that fact; and
- (b) that specified waters are waters relevant to the States that are parties to the arrangement or are waters adjacent to a specified State or States is evidence of that fact.

(2) A certificate signed by a member of a Joint Authority stating any matter relating to a delegation by the Joint Authority is evidence of that matter.

- (3) A record of a decision of a Joint Authority signed by the Commonwealth Minister or a deputy who took part in, or made, the decision is evidence that the decision, as recorded, was duly made.
- (4) In any proceedings under this or any other Act, production of an identity card issued, or instrument of appointment made, under Part 8 is evidence of any fact appearing in it.

298. Register of authorisations

- (1) The Secretary is to keep a register containing –
- (a) the names and addresses of persons holding authorisations and fishing certificates; and
 - (b) any details of the grant, renewal, variation, transfer, expiry, suspension and cancellation of authorisations the Secretary considers appropriate; and
 - (c) any details of any fishing certificates.
- (2) The Secretary may allow a person, on payment of any prescribed fee and during normal business hours, to obtain a copy of, or an extract from, an entry in the register.
- (3) The Secretary may amend an entry in the register if satisfied that the entry was incorrect due to any accidental or inadvertent error, omission or misstatement.

299. Rewards to informers

- (1) The Minister may make any payment the Minister considers appropriate to any person who –
- (a) supplies information leading to a conviction under this Act; or
 - (b) assists in obtaining a conviction under this Act.
- (2) Any payment is to be made from money appropriated by Parliament for that purpose.

300. Compensation not payable

- (1) Unless otherwise provided for in a management plan or under this Act, compensation is not payable to the holder of an authorisation –
- (a) if a management plan is amended or revoked; or
 - (b) if any limitations are prescribed for fishing or other activities; or
 - (c) if there is a reduction in the total allowable catch; or
 - (d) if the Minister takes any other reasonable action for the purpose of this Act; or
 - (e) as a result of any requirement complied with under an order made under section 272 .
- (2) Subsection (1) does not apply if the Minister takes any action which is not consistent with the purpose of this Act.
- (3) Compensation is not payable in respect of anything done or omitted to be done by the Secretary under section 298 .

301. Whole weight of fish

- (1) Except if otherwise expressly provided, the weight of fish is the whole weight of fish as referred to in subsection (2) .
- (2) The whole weight of fish is the weight of fish –
- (a) before any processing, other than freezing, starts; and
 - (b) before any part of the fish is removed.
- (3) The Minister, by notice in the *Gazette*, may specify any factor to be used in calculating the weight of fish from whole weight to processed weight or from processed weight to whole weight.

302. Geocentric Datum of Australia

- (1) Where, on or after 1 September 2007, it is necessary to determine the position on the earth's surface of a point, line or area for the purposes of this Act or an allied enactment, then, unless the Minister determines otherwise, the position is to be determined by reference to the GDA.
- (2) For the avoidance of doubt, subsection (1) has effect even if the determination is being made in respect of something that occurred before 1 September 2007.
- (3) However, for the purposes of pre-existing subordinate legislation, the position is to be determined by reference to the superseded datum.
- (4) Subsection (3) has effect regardless of whether –
- (a) the pre-existing subordinate legislation contains any amendments effected on or after 1 September 2007; or
 - (b) the determination is in respect of any provision inserted in the pre-existing subordinate legislation on or after that date.
- (5) A Ministerial determination under subsection (1) –
- (a) is to be made by instrument in writing; and
 - (b) may be of general application or limited in its application according to matters, criteria or restrictions (whether as to time, area, circumstance or otherwise) as are specified in the determination; and
 - (c) is invalid if it purports to have retrospective effect.
- (6) The Minister may –
- (a) by instrument in writing revoke a determination under subsection (1) ; and
 - (b) cause any such determination or its revocation to be published in such ways as the Minister thinks fit.
- (7) In any proceedings for an offence under this Act or an allied enactment, a document purporting to be signed by the Minister and to be a copy of a determination under subsection (1) is evidence of the determination.
- (8) In this section –
- allied enactment*** means an enactment that –
- (a) is contained in an Act that regulates any matters relating to sea fisheries or marine farming; and
 - (b) incorporates this section;
- GDA*** means the Geocentric Datum of Australia (also known as "the GDA" or "GDA94") as defined in the *Commonwealth Gazette* No. GN 35, 6 September 1995;
- legislative instrument*** includes a public notice that has the effect of regulating, either directly or indirectly, any matters relating to sea fisheries or marine farming;
- pre-existing subordinate legislation*** means a statutory rule or other legislative instrument made under this Act or an allied enactment before 1 September 2007;
- statutory rule*** means a statutory rule within the meaning of the Rules Publication Act 1953 ;
- superseded datum*** means the provisions of this section as in force immediately before 1 September 2007.

303. Identification of boundaries

Subject to section 302 , the boundaries of any place or area may be described –

- (a) by reference to any post, stake, buoy, mark or natural feature; or
- (b) by reference to any point or area identified from any satellite navigation data, latitude, longitude or map grid reference; or

(c) in another manner that is reasonably adequate to identify the place or area.

304. Disclosure of interest by employees

(1) A person employed in the Department who has an interest as referred to in subsection (2) in a matter relating to fish must disclose the interest to the Secretary as soon as practicable after the person becomes aware of that fact.

Penalty: Fine not exceeding 100 penalty units.

(2) A person has an interest in a matter relating to fish if –

(a) the person has, or has a reasonable expectation of having, a direct or indirect financial benefit in the matter; and

(b) the benefit is likely to conflict with any power or function of that person in relation to that matter.

(3) A person has an indirect financial benefit in a matter if the person –

(a) is a member of a company or body which has a financial interest in the matter; or

(b) is a partner, agent or consultant of a person who has a financial interest in the matter.

305. Fish taken commercially

Fish that are taken as bait or taken accidentally or incidentally during fishing for commercial purposes are fish taken for commercial purposes.

306.

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307. Orders not statutory rules

(1) An order under this Act is not a statutory rule within the meaning of the Rules Publication Act 1953 .

(2) The provisions of the Acts Interpretation Act 1931 apply to an order under this Act as if the order were a regulation.

308.

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309. Repeals

The Acts specified in Schedule 2 are repealed.

310.

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SCHEDULE 1 - Objectives of the Resource Management and Planning System of Tasmania

Section 3

1. The objectives of the resource management and planning system of Tasmania are –

- (a) to promote the sustainable development of natural and physical resources and the maintenance of ecological processes and genetic diversity; and
- (b) to provide for the fair, orderly and sustainable use and development of air, land and water; and
- (c) to encourage public involvement in resource management and planning; and
- (d) to facilitate economic development in accordance with the objectives set out in paragraphs (a) , (b) and (c) ; and
- (e) to promote the sharing of responsibility for resource management and planning between the different spheres of Government, the community and industry in the State.

2. In clause 1 (a) , ***sustainable development*** means managing the use, development and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic and cultural well-being and for their health and safety while –

- (a) sustaining the potential of natural and physical resources to meet the reasonably foreseeable needs of future generations; and
- (b) safeguarding the life-supporting capacity of air, water, soil and ecosystems; and
- (c) avoiding, remedying or mitigating any adverse effects of activities on the environment.

SCHEDULE 2 - Acts Repealed

Section 309

Fisheries Act 1959

Fisheries Amendment (Sea Fisheries) Act 1988

Fisheries Amendment (Inland Fisheries) Act 1988

Fisheries Amendment Act 1989

Fisheries Amendment Act (No. 2) 1989

Fisheries Amendment (Licensing) Act 1991

Fisheries Amendment Act 1992

Fisheries Amendment (Evidentiary Provisions) Act 1993

Fisheries Amendment (Penalties) Act 1993

Fisheries Amendment (Marine Farm Utilization) Act 1994

Fisheries Amendment (Contracts) Act 1994

Fisheries Amendment Act 1994

Fisheries Amendment Act (No. 2) 1994

Section 99B(1) and (4)

- A. The *Living Marine Resources Management Act 1995* ("the Act") provides that the Minister for Primary Industries, Water and Environment may enter into a deed of agreement for the right to take and acquire commercially protected fish in State waters.
- B. The Act and Regulations made under it abrogate the common law right to take and acquire Abalone for commercial purposes in State Fishing Waters.
- C. The Licensee is the holder of a Licence and authority under a Deed of Agreement dated _____ ("the Deed of Agreement") which licenses him to enter and take abalone in State waters to the extent of the number of abalone quota units specified in that Licence.
- D. The Minister for Primary Industries, Water and Environment has pursuant to section 20 of the Act delegated to the Secretary the power to enter into this Deed of Agreement ("this Deed").
- E. This Deed continues and renews the rights and obligations conferred by the Deed of Agreement as if the Deed of Agreement for which it is substituted were limited to taking and acquiring abalone under one abalone quota unit but subject always to the terms and conditions of this Deed.

- F. The Secretary enters into this Deed to allow the Licensee to take and acquire abalone in State waters in accordance with the terms and conditions contained in this Deed.

WHEREBY IT IS AGREED as follows:

1. INTERPRETATION

In this Deed unless the contrary intention appears:

- 1.1 a reference to this Deed is a reference to this agreement as varied from time to time or any renewal of it;
- 1.2 a reference to the Act is a reference to the *Living Marine Resources Management Act 1995* and to any other Act for the time being regulating living marine resources in State waters;
- 1.3 a reference to the Regulations is a reference to the *Fisheries (General and Fees) Regulations 1996* or to any other regulations or rules for the time being regulating living marine resources in State waters;
- 1.4 words bear the same meaning as in the Act and the Regulations;
- 1.5 the masculine gender shall include each other gender;
- 1.6 the singular shall include the plural;
- 1.7 "abalone" means fish of the genus *Haliotis*;
- 1.8 "abalone industry" means any person or group who satisfies the Secretary that it represents more than 50% of persons holding Licences to take and acquire abalone in State waters;
- 1.9 "Department" means the Department for the time being responsible for the administration of living marine resources legislation in Tasmania;
- 1.10 "fee" is the fee referred to in clause 5.2:

- 1.11 "Licence" means and refers to all and any of the rights, benefits and entitlements conferred by the Secretary upon the Licensee by this Deed to take and acquire abalone in State waters;
- 1.12 "Licensee" includes the personal representatives, successors and assigns of the Licensee;
- 1.13 "registered interest" means an interest recorded on the Register established in accordance with the provisions of the *Fishing (Licence Ownership and Interest) Registration) Act 2001*;
- 1.14 "Secretary" means the Secretary of the Department.

2. THE LICENCE

- 2.1 Subject to the provisions of this Deed the Secretary hereby confers upon the Licensee a Licence and full authority to enter State waters and to take and acquire therein one abalone quota unit per annum, such abalone being of a size not less than that specified in the Regulations.
- 2.2 The Secretary acknowledges that any decision made to alter the total allowable catch of abalone will take account of the best biological advice available from the Department on the conservation of abalone in State waters (with the intent that the maximum sustainable yield of the resource will be realised within these conservation restraints) and that a reasonable level of consultation with the abalone industry will occur prior to making that decision.
- 2.3 The right to physically take abalone is exercisable only by the holder of a fishing licence (abalone dive) and therefore for the purposes of this Deed any abalone taken by any such licence holder under the quota unit the subject of the Licence are taken and acquired on behalf of the Licensee.
- 2.4 The Licence is property which amongst other things the Licensee may with the prior written approval of the Secretary (which shall not be unreasonably withheld) assign in whole provided always that a person having a legal interest in the Licence may assign that interest, subject to the provisions of this clause, to the extent that the assignment does not cause the Licence to be split and does not create any right or authority in

the assignee to take or acquire abalone otherwise than under this Deed and further provided that in the case of any assignment the Secretary is first satisfied that any assignee is a fit and proper person to be a licensee and, if the assignment is made to a company, that the officers of it are fit and proper to be responsible for the management of it as a licensee and further provided that the Secretary will not be obliged to consent to an assignment of a Licence where the Licensee is at the time of the proposed assignment in default of a payment hereby required to be made to the Secretary.

- 2.5 The Licence may devolve to another person upon the death of the Licensee or may be sold by a person having a registered interest in the Licence or otherwise entitled to sell property of the Licensee subject always to the right of the Secretary not to give effect to a transfer under this clause to any person whom the Secretary is satisfied is not a fit and proper person to be a Licensee.
- 2.6 This Deed continues and renews the rights and obligations conferred by the Deed of Agreement as if the Deed of Agreement for which it is substituted were limited to taking and acquiring abalone under abalone quota unit No. only, but subject always to the terms and conditions of this Deed.
- 2.7 The Secretary covenants with the Licensee that during the term of this Deed and any subsequent terms the abalone quota unit shall remain 1/3500th of the total allowable catch of abalone in any year.
- 2.8 The Licensee acknowledges that the weight comprised in the quota unit may not remain constant throughout the term of this Deed.

3. TERM OF THE DEED

- 3.1 This Deed will be deemed to have commenced on 1 January 2005 and will expire on 31 December 2033 unless sooner terminated.
- 3.2 If this Deed is renewed as provided in clause 4, each term of this Deed as so renewed will be for a period of twenty (20) years.

4. OPTION TO RENEW

- 4.1 The Licensee will have a continuing option exercisable in writing not more than nine (9) months nor less than three (3) months prior to the expiration of this Deed to renew this Deed for a further term on the same terms and conditions other than the fee when the fee is due for revision under clause 4.4.
- 4.2 The Secretary agrees, on his own behalf and on behalf of the Crown in right of the State of Tasmania, that neither he nor the Crown will challenge the validity of this option on the basis that it does not fix with sufficient certainty the fee for further terms of this Deed.
- 4.3 The option conferred by clause 4.1 may not be exercised if this Deed has been lawfully terminated by the Secretary or if the Licensee is in default of a payment hereby required to be made to the Secretary.
- 4.4 The Secretary will undertake a reasonable level of consultation with the abalone industry during the first six (6) months of the 27th year of the first term of this Deed and thereafter during the first six months of the 18th year of each further term of this Deed for the purposes of reaching agreement in that year on the fee to be paid by the Licensee during the next term of this Deed. Upon agreement being reached between the Secretary and the abalone industry the Secretary shall announce the fee within twenty one (21) days of such agreement and, if the Licensee renews this Deed, the Licensee will pay to the Secretary that fee during the next term.
- 4.5 If the Secretary and the abalone industry are unable to agree during the period stipulated in clause 4.4 upon the fee to be paid during the next term of this Deed, the fee will be the fee fixed by or determined in accordance with the Regulations in the second half of the 27th year of the first term of this Deed and thereafter during the second half of the 18th year of each further term of this Deed.

5. PAYMENT OF CHARGE AND FEE

- 5.1 The Licensee will pay to the Secretary in the first month of each calendar year of the operation of this Deed, an annual access charge which is subject to the provisions of the *Fee Units Act*

and calculated as if it were in the year 2004 a fee set by an enactment and expressed as 45 fee units.

5.2 The Licensee will also pay to the Secretary a fee to take and acquire abalone under the Licence during a billing period.

5.3 The fee will be payable in respect of the following billing periods:

1 January - 31 March - (Billing period 1)
1 April - 30 June - (Billing period 2)
1 July - 30 September - (Billing period 3)
1 October - 31 December - (Billing period 4)

5.4 The fee payable in respect of each billing period will be due and payable as follows:

Billing period 1	30 April
Billing period 2	31 July
Billing period 3	31 October
Billing period 4	31 January

5.5 The fee payable in respect of billing periods 1, 2 and 3 respectively is the product of the number of kilograms of abalone taken and acquired by the Licensee under this Deed in that billing period and 8.125% of the beach price.

5.6 The fee payable in respect of billing period 4 is the product of the number of kilograms of the abalone quota unit for which no fee has been paid for the relevant calendar year and 8.125% of the beach price.

5.7 The definition of "beach price" contained in the Regulations will not be changed without a reasonable level of prior consultation with the abalone industry in relation to the proposed change and then only in the event that the Secretary has reasonable grounds for believing that the price as defined does not reflect the true return to licensees, who may include the Licensee from the disposal of abalone. In the event that the Secretary proposes to change the beach price he will first publish in writing the reasons for his belief that the existing beach price does not reflect the true return to licensees and the reasons for determining the new beach price.

6. TERMINATION

- 6.1 This Deed may be terminated or suspended by the Secretary for any one or more of the following acts, matters or things:
- (a) non-payment of any part of the access charge when specified in clause 5.1 or fee by the date specified in clause 5.4;
 - (b) an accumulation by the Licensee of fines and special penalties totalling more than two hundred (200) penalty units in any consecutive period of three years or more than three convictions in a like period for offences arising under the Act or Regulations arising out of separate incidents involving the taking, possession, processing or offering for sale of abalone or the management, administration or operation of the quota system administered by the Department where by reason of the conduct constituting such offences the Licensee has in the opinion of the Secretary (which shall not be unreasonably held) shown himself not to be a fit and proper person to hold the Licence.
 - (c) the Licensee has entered into a contract or arrangement in breach of the covenant in clause 15.
- 6.2
- (a) Before terminating or suspending this Deed in reliance upon the ground specified in clause 6.1(a), the Secretary will send a notice of demand to the Licensee for payment of the access charge or fee (as the case may be). If payment is not made within fourteen (14) days of delivery of the notice of demand the Secretary may exercise the power to terminate or suspend providing that he has first served upon the Licensee a further notice in which he furnishes particulars of the unpaid amount and affords to the Licensee an opportunity to pay such amount within twenty one (21) days of the service of such notice.
 - (b) Before terminating or suspending this Deed in reliance upon a ground specified in clause 6.1(b) or 6.1(c), the Secretary will serve upon the Licensee notice in which he furnishes particulars of the matters upon which he relies upon as constituting that ground and will afford

the Licensee a period of 21 days from the date of service within which to provide the Secretary with written submissions. Upon receiving the written submissions, the Secretary will consider them and, after doing so may resolve to either terminate or suspend this Deed or withdraw the notice and shall so advise the Licensee in writing. If the Licensee does not make any written submissions, the Secretary may proceed to terminate or suspend this Deed if he so wishes.

- 6.3 Notwithstanding that the Secretary has served a notice under clause 6.2 the Secretary will not terminate or suspend the Licence if the Licensee can and does remedy the situation which constitutes his misconduct or makes reparation prior to the Secretary serving notice to terminate or suspend as provided in clause 6.4.
- 6.4 If the Secretary resolves to terminate this Deed he will serve upon the Licensee and any person having a registered interest notice of termination and if he resolves to suspend this Deed, he will serve upon the Licensee notice of suspension.
- 6.5 Upon termination or suspension of this Deed by the Secretary, neither party will have any claim against the other except in respect of any rights or liabilities which accrued to either of them prior to the termination or suspension and in the case of termination the Secretary may proceed to dispose of the Licence by selling it.
- 6.6 Notwithstanding service upon the Licensee as hereinbefore provided of notice of termination of this Deed, a person holding a registered interest ("the holder") may within fourteen (14) days of service upon him of notice of termination pursuant to clause 6.4 elect by written notice to the Secretary to exercise any power of sale conferred upon the holder by the instrument which gives rise to the registered interest. For three (3) months after service of the last-mentioned notice the right of the Secretary to sell the Licence shall be postponed in favour of the exercise by the holder of his power of sale, during which time the holder will be at liberty to exercise the powers conferred by the Licence and will be subject to it as if the holder were the Licensee. From the proceeds of any sale of the Licence by the holder the holder will immediately discharge in order of their priority all debts of the Licensee which are the subject of a registered interest and

the reasonable costs incurred by him in effecting the sale, and shall forthwith thereafter pay the balance of the proceeds to the Secretary. In the event that the balance exceeds 20% of the total sale price, the Secretary will pay the amount by which the balance exceeds 20% of that paid to the Licensee.

- 6.7 This Deed may be terminated by the Licensee on one (1) month's notice to the Secretary in writing.
- 6.8 Notwithstanding clause 6.7 this Deed may be terminated by the Licensee on ten (10) days notice to the Secretary in writing if the weight of abalone the Licensee may take under the quota unit has been reduced to an amount which is unacceptable to him.
- 6.9 In the event of the Licensee terminating this Deed under clause 6.8, the Secretary will not offer the Licence to another person on terms and conditions more favourable than those in this Deed without first offering the Licence to the Licensee on those terms and conditions.
- 6.10 Subject to clause 6.9 upon termination of this Deed by the Licensee neither party will have any claim against the other except in respect of any rights or liabilities which accrued to either of them prior to the date of termination.
- 6.11 Notwithstanding clause 6.5 and subject to clause 6.6, following a lawful termination of this Deed the Secretary will pay no less than 80% of the proceeds of sale of the Licence to the Licensee and the remainder (if any) into the Consolidated Fund.

7. NOTICES

- 7.1 Any notice to be given under this Deed shall be in writing and shall be duly given when hand delivered or sent by prepaid post or by facsimile transmission to the party to which such a notice is to be given under this Deed at the last address of that party known to the other party.
- 7.2 Any notice shall have been received:
 - (a) in the case of hand delivery when delivered;

- (b) if sent by prepaid post on the third day after the date of posting;
- (c) if sent by facsimile transmission (provided that the sending facsimile machine produces a print out of the time, date and uninterrupted transmission record of the sending of the notice) at 9.00 am on the next following ordinary business day in such place.

7.3 Notwithstanding the provisions of clause 8.1 any notice under clauses 6.2 and 6.4 must be personally served on the Licensee or upon any person notified by the Licensee in writing to the Secretary as his agent for the purpose of receiving notices or if that is not reasonably practicable be served by substituted service by delivering it to the Licensee's last known address and by advertising it in a newspaper circulating generally in Tasmania.

8. FORCE MAJEURE

If by reason of any fact, circumstances, matter of thing beyond the reasonable control of the Secretary or the Licensee either party is unable to perform in whole or in part any obligation under this Deed such party shall be relieved of that obligation to the extent and for the period that he is so unable to perform it and shall not be liable to the other party in respect of such liability provided that the party asserting the existence of a force majeure:

- (a) gives the other party prompt notice of that force majeure with reasonably full particulars thereof and, insofar as is known, the probable extent to which he will be unable to perform or be delayed in performing that obligation; and
- (b) uses reasonable diligence to remove the force majeure as quickly as practicable.

9. VARIATION OF THIS DEED

The parties may vary this Deed provided such variation does not conflict with or breach any provisions of the Act or Regulations and that such variation is in writing signed by each of them.

10. OBLIGATIONS JOINT AND SEVERAL

If there is more than one Licensee, the covenants and agreements of the Licensee under this Deed shall bind them jointly and each of them severally.

11. ASSURANCES

The parties shall execute and deliver all such documents, instruments and writings and shall do and procure to be done all such acts and things as are necessary or desirable to give effect to the Deed.

12. SEVERABILITY

In the event of any part of the Deed other than a part relating to the payment of the fee being or becoming void or unenforceable or being illegal then that part shall be severed from the Deed to the intent and so as to leave intact all parts that shall not be or become void or unenforceable or illegal and those parts shall remain in full force and effect and be unaffected by such severance.

13. APPLICABLE LAW

The Deed shall be governed by the law for the time being in force in the State of Tasmania and the parties submit to the jurisdiction of the Courts of the State of Tasmania.

14. TRANSITIONAL PROVISIONS

The Licensee agrees and covenants that all fees payable for abalone taken by the Licensee under the Deed of Agreement will be paid as if the Deed of Agreement were still in force.

15. DIVERS NOT TO PAY ACCESS CHARGE OR FEE

The Licensee agrees and undertakes not to enter into any contract or arrangements with the holder of a fishing licence (abalone dive) whereby the holder of the fishing licence (abalone dive) is required directly or indirectly to pay all or any part of the access charge or fee as

provided in clause 5. This clause does not apply to contracts or arrangements entered into prior to the Deed.

EXECUTED as a Deed.

By Kim Ronald Evans being and as the]
Secretary of the Department of Primary]
Industries, Water and Environment in the]
presence of:]

Signature of witness:
Occupation:
Address:

By]
in the presence of:]

Signature of witness:
Occupation:
Address:

SCHEDULE 4 - Confirmation of total allowable catches for giant crab and rock lobster

Section 97A

1. Interpretation

In this Schedule –

TAC means total allowable catch;

year means the period of 12 months commencing on 1 March in any year and ending at midnight on the following 28 February or, in the case of a leap year, 29 February.

2. Confirmation of total allowable catches for commercial giant crab fishery

(1) The TAC for the commercial giant crab fishery for the period 13 November 1999 to 29 February 2000, inclusive of both of those days, is taken to have been and always been 104 tonnes.

(2) The TAC for the commercial giant crab fishery for each of the years specified in column 1 of the following table is taken to have been and always been the TAC specified for that year in column 2 of the table:

Year	TAC
1. Year commencing 1 March 2000	100 tonnes
2. Year commencing 1 March 2001	103.5 tonnes
3. Year commencing 1 March 2002	103.5 tonnes
4. Year commencing 1 March 2003	103.5 tonnes
5. Year commencing 1 March 2004	62.1 tonnes
6. Year commencing 1 March 2005	62.1 tonnes
7. Year commencing 1 March 2006	62.1 tonnes

(3) The TAC for the commercial giant crab fishery for the year commencing 1 March 2007 is taken to be and to have always been 62.1 tonnes.

3. Confirmation of total allowable catch for rock lobster fishery

(1) The TAC for the commercial rock lobster fishery for each of the years specified in column 1 of the following table is taken to have been and always been the TAC specified for that year in column 2 of the table:

Year	TAC
1. Year commencing 1 March 1999	1 502.5 tonnes
2. Year commencing 1 March 2000	1 502.5 tonnes
3. Year commencing 1 March 2001	1 502.5 tonnes
4. Year commencing 1 March 2002	1 523.5 tonnes
5. Year commencing 1 March 2003	1 523.5 tonnes
6. Year commencing 1 March 2004	1 523.5 tonnes
7. Year commencing 1 March 2005	1 523.5 tonnes
8. Year commencing 1 March 2006	1 523.5 tonnes

(2) The TAC for the commercial rock lobster fishery and the recreational rock lobster fishery for the year commencing 1 March 2007 is taken to be and to have always been 1 693.5 tonnes.