

FISHERIES MANAGEMENT ACT 1994 No. 38

NEW SOUTH WALES



SUMMARY OF TABLE OF PROVISIONS

PART 1—PRELIMINARY

PART 2—GENERAL FISHERIES MANAGEMENT

- Division 1—Fishing closures
- Division 2—Prohibited size fish, bag limits and protected fish
- Division 3—Fishing gear
- Division 4—Total allowable catches
- Division 5—General

PART 3—COMMERCIAL SHARE MANAGEMENT FISHERIES

- Division 1—Summary of staged implementation
- Division 2—Declaration of share management fisheries
- Division 3—Issue of shares
- Division 4—Limited access to fishery after issue of shares
- Division 5—Management plans
- Division 6—Fishing and other shareholding rights
- Division 7—Management charges and community contributions
- Division 8—Allocation of total allowable commercial catch among shareholders
- Division 9—Share Management Fisheries Appeal Panel
- Division 10—Share Management Fisheries Register

PART 4—LICENSING AND OTHER COMMERCIAL FISHERIES MANAGEMENT

- Division 1—Commercial fishing licences
- Division 2—Commercial fishing boats
- Division 3—Exploratory, developmental and other restricted fisheries
- Division 4—Fish receivers

Fisheries Management Act 1994 No. 38

- Division 5—Fish records
- Division 6—Appeals to District Court

PART 5—CO-OPERATION WITH COMMONWEALTH AND OTHER STATES IN FISHERIES MANAGEMENT

- Division 1—Preliminary
- Division 2—Joint Authorities
- Division 3—Arrangements with respect to the management of particular fisheries

PART 6—AQUACULTURE MANAGEMENT

- Division 1—Preliminary
- Division 2—Aquaculture permits
- Division 3—Leases of public water land for aquaculture
- Division 4—Diseased fish and marine vegetation
- Division 5—Miscellaneous provisions

PART 7—PROTECTION OF AQUATIC HABITATS

- Division 1—Habitat protection plans
- Division 2—Aquatic reserves
- Division 3—Dredging and reclamation
- Division 4—Protection of mangroves and certain other marine vegetation
- Division 5—Protection of spawning of salmon, trout and certain other fish
- Division 6—Noxious fish
- Division 7—Release or importation of fish
- Division 8—Miscellaneous provisions

PART 8—ADMINISTRATION

- Division 1—The Minister and Director
- Division 2—NSW Commercial Fishing Advisory Council and CFAC Regional Advisory Committees
- Division 3—NSW Recreational Fishing Advisory Council

PART 9—ENFORCEMENT

- Division 1—Preliminary
- Division 2—Appointment of fisheries officers
- Division 3—Powers of entry, search etc. of fisheries officers
- Division 4—Seizure
- Division 5—Criminal proceedings

PART 10—MISCELLANEOUS

SCHEDULE 1—SHARE MANAGEMENT FISHERIES

SCHEDULE 2—PROVISIONS RELATING TO MEMBERS AND PROCEDURE OF TAC COMMITTEE

Fisheries Management Act 1994 No. 38

SCHEDULE 3—PROVISIONS RELATING TO MEMBERS OF THE SHARE
MANAGEMENT FISHERIES APPEAL PANEL

SCHEDULE 4—PROVISIONS RELATING TO MEMBERS AND PROCEDURE OF
THE NEW SOUTH WALES COMMERCIAL FISHING ADVISORY COUNCIL

SCHEDULE 5—PROVISIONS RELATING TO MEMBERS AND PROCEDURE OF
CFAC REGIONAL ADVISORY COMMITTEES

SCHEDULE 6—PROVISIONS RELATING TO MEMBERS AND PROCEDURE OF
THE NEW SOUTH WALES RECREATIONAL FISHING ADVISORY COUNCIL

SCHEDULE 7—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

SCHEDULE 8—AMENDMENT OF OTHER ACTS

FISHERIES MANAGEMENT ACT 1994 No. 38

NEW SOUTH WALES



TABLE OF PROVISIONS

PART 1—PRELIMINARY

1. Short title
2. Commencement
3. Objects of Act
4. Definitions
5. Definition of “fish”
6. Definition of “fishery”
7. Waters to which Act applies

PART 2—GENERAL FISHERIES MANAGEMENT

Division 1—Fishing closures

8. Closure of waters to fishing
9. Publication of notification of closures
10. Duration of closures
11. Amendment or revocation of closures
12. General provisions relating to closures
13. Regulations relating to closures
14. Offences relating to closures

Division 2—Prohibited size fish, bag limits and protected fish

15. Declaration of prohibited size fish
16. Offences relating to prohibited size fish
17. Bag limits—taking of fish
18. Bag limits—possession of fish
19. Protected fish
20. Fish protected from commercial fishing
21. Defences

Fisheries Management Act 1994 No. 38

Division 3—Fishing gear

22. Registration of fishing gear
23. Regulations relating to fishing gear
24. Lawful use of nets or traps
25. Possession of illegal fishing gear

Division 4—Total allowable catches

26. Establishment of TAC Committee
27. Composition and procedure of TAC Committee
28. Function of TAC Committee
29. TAC Committee not subject to Ministerial control
30. General considerations for TAC Committee
31. Public consultation by TAC Committee
32. Review of determinations by TAC Committee
33. Publication and duration of determinations
34. Implementation of determinations

Division 5—General

35. Possessing fish illegally taken
36. Defence for accidental etc. taking of fish
37. Defence—special permits for research or other authorised purposes
38. Right to fish in certain inland waters
39. Obstruction of recognised fishing grounds
40. Regulations relating to general management of fisheries

PART 3—COMMERCIAL SHARE MANAGEMENT FISHERIES

Division 1—Summary of staged implementation

41. Staged implementation of share management fisheries

Division 2—Declaration of share management fisheries

42. Declaration of share management fisheries
43. Consultation with industry
44. Omission of share management fishery
45. Redefinition of share management fishery

Division 3—Issue of shares

46. Invitation for shares
47. Application for shares
48. Provisional issue of shares to applicants
49. Who may hold shares
50. Method of determining eligibility and entitlement to shares
51. Catch history
52. Final issue of shares

Division 4—Limited access to fishery after issue of shares

53. Commencement of limited access to fishery
54. Limiting access to shareholders etc. before commencement of management plan
55. Fishery that is existing restricted fishery

Fisheries Management Act 1994 No. 38

Division 5—Management plans

56. Preparation of draft management plan
57. Content of management plan
58. Public and industry consultation
59. Management Advisory Committees for fisheries
60. Making of plan by regulation
61. Commencement of management plan
62. Plan prevails over other regulations and closures
63. Fisheries reviews—new plan
64. Amendment of plan
65. Contravention of plan

Division 6—Fishing and other shareholding rights

66. Who may fish in share management fisheries after commencement of management plan
67. Minimum shareholding required to fish after commencement of management plan
68. Endorsements on licences
69. Nomination of commercial fisher by holder of shares
70. Special endorsements to take fish in share management fishery
71. Transfer and other dealings in shares
72. Maximum shareholding permitted
73. Duration of shareholding
74. Surrender of shares
75. Forfeiture of shares for certain contraventions of Act

Division 7—Management charges and community contributions

76. Management charges
77. Community contribution by shareholders for access to fishery

Division 8—Allocation of total allowable commercial catch among shareholders

78. Allocation of total allowable catch among shareholders in fishery
79. Transfer of allocations
80. Carry over to, or borrowing from, future allocations
81. Payment for fish caught in excess of allocation or forfeiture of shares

Division 9—Share Management Fisheries Appeal Panel

82. Establishment of Panel
83. Composition and procedure of Panel
84. Making of appeals
85. Hearing and determination of appeals
86. Procedure at appeals
87. Power to summon witnesses and take evidence
88. Power to obtain documents

Division 10—Share Management Fisheries Register

89. Establishment and keeping of Share Register
90. Registration of shares
91. Registration of dealings in shares
92. Trusts not registrable
93. Power of holder to deal with shares

Fisheries Management Act 1994 No. 38

94. Surrender of shares to be noted in Share Register
95. Cancellation or forfeiture of shares to be noted in Share Register
96. Director not concerned as to the effect of documents lodged for registration
97. Inspection of the Share Register and registered documents
98. Evidentiary provisions
99. Correction of Share Register
100. Exculpation for liability for anything done under this Division
101. Offences under the Division

PART 4—LICENSING AND OTHER COMMERCIAL FISHERIES
MANAGEMENT

Division 1—Commercial fishing licences

102. Commercial fishers required to be licensed
103. Who may hold licence
104. Provisions relating to licensing of commercial fishers
105. Evidentiary provision
106. Annual contribution to cost of research and to other industry costs

Division 2—Commercial fishing boats

107. Commercial fishing boat to be licensed
108. Provisions relating to licensing of boats
109. Evidentiary provision
110. Crew of fishing boats

Division 3—Exploratory, developmental and other restricted fisheries

111. Declaration of restricted fisheries
112. Commercial fishing licence to be endorsed for restricted fishery
113. Restriction on the number of licences endorsed for restricted fishery
114. Endorsements not transferable
115. Compensation not payable
116. Other regulations

Division 4—Fish receivers

117. Fish receiver to be registered
118. Provisions relating to registration
119. Fish receiver to supply information
120. Evidentiary provision

Division 5—Fish records

121. Commercial fishers to keep records of catch
122. Commercial fishers to furnish records to Director
123. Records of sale and possession of fish
124. False records

Division 6—Appeals to District Court

125. Definition of “relevant authority”
126. Rights of appeal
121. Hearing and determination of appeals

Fisheries Management Act 1994 No. 38

PART 5—CO-OPERATION WITH COMMONWEALTH AND OTHER STATES
IN FISHERIES MANAGEMENT

Division 1—Preliminary

128. Definitions

Division 2—Joint Authorities

129. Powers and functions of Minister

130. Judicial notice

131. Functions of Joint Authority

132. Delegation

133. Procedure of Joint Authorities

134. Report of Joint Authority

Division 3—Arrangements with respect to the management of particular
fisheries

135. Arrangement for management of certain fisheries

136. Application of this Act to fisheries in accordance with arrangements

137. Functions of Joint Authority

138. Joint Authority to exercise certain powers instead of Minister

139. Application of certain provisions relating to offences

140. Presumption relating to certain statements

141. Regulations

PART 6—AQUACULTURE MANAGEMENT

Division 1—Preliminary

142. Definition of “aquaculture”

143. Aquaculture industry development plans

Division 2—Aquaculture permits

144. Aquaculture prohibited except in accordance with a permit

145. Applications for permits

146. Issue or refusal of permit

147. Permit to specify area and type of aquaculture

148. Variation of permits

149. Authority to take fish

150. Inconsistency with lease

151. Duration of permits

152. Conditions of permits

153. Holder of permit to provide information to the Minister

154. Register of permits

155. Change in particulars to be notified

156. Annual contribution to cost of administration or research or to other industry costs

157. Annual contributions to be held in trust accounts

158. Overdue contribution

159. Power to cancel or suspend a permit without a hearing

160. Power to cancel or suspend a permit after a hearing

161. Power to declare person to be a disqualified person for the purposes of this Part

162. Permit area to be maintained in a tidy condition

Fisheries Management Act 1994 No. 38

Division 3—Leases of public water land for aquaculture

- 163. Grant of aquaculture lease
- 164. Rights conferred by lease
- 165. Leaserentals
- 166. Overduerental
- 167. Renewal of lease
- 168. Preferentialrights
- 169. Survey of leased area
- 170. Lessee may fence leased area in certain cases
- 171. Improvements on an expired lease
- 172. Subletting with Minister's consent
- 173. Transfer with Minister's consent
- 174. Surrender of lease
- 175. Minister can determine access way
- 176. Power to withdraw land from lease
- 177. Power of Minister to cancel leases in certain cases
- 178. Areas of public water land may be excluded from leasing
- 179. Protection of leased areas
- 180. Leased area under Real Property Act 1900

Division 4—Diseased fish and marine vegetation

- 181. Definitions
- 182. Diseases declared for the purposes of this Division
- 183. Minister may, declare quarantine area
- 184. Intentional orreckless communication of declared disease to live fish or marine vegetation
- 185. Sale of diseased fish or marine vegetation prohibited
- 186. Diseased fish or marine vegetation not to be deposited in New South Wales waters
- 187. Regulations relating to diseased fish and marine vegetation

Division 5—Miscellaneous provisions

- 188. Minister may order restoration work to be carried out in relation to illegal operations on aquaculture farm
- 189. When aquaculture operations can be closed
- 190. Special provisions relating to oysters on public water or other land
- 191. Regulations

PART 7—PROTECTION OF AQUATIC HABITATS

Division 1—Habitat protection plans

- 192. Preparation of habitat protection plans
- 193. Implementation of habitat protection plans

Division 2—Aquatic reserves

- 194. Declaration of aquatic reserves
- 195. Consent required for declarations
- 196. Revocation or variation of declaration
- 197. Regulations relating to aquatic reserves

Fisheries Management Act 1994 No. 38

Division 3—Dredging and reclamation

- 198. Application of Division
- 199. Circumstances in which a public authority (other than local authority) may carry out dredging or reclamation
- 200. Circumstances in which a local government authority may carry out dredging or reclamation
- 201. Circumstances in which a person may carry out dredging or reclamation
- 202. Appeal to the Land and Environment Court
- 203. Minister may order carrying out of certain work

Division 4—Protection of mangroves and certain other marine vegetation

- 204. Marine vegetation to which Division applies
- 205. Permit required to cut etc. marine vegetation

Division 5—Protection of spawning of salmon, trout and certain other fish

- 206. Protection of spawning areas of salmon, trout and certain other fish
- 207. Prohibition on taking or disturbing salmon, trout and certain other fish while spawning
- 208. Defence for authorised activities

Division 6—Noxious fish

- 209. Declaration of noxious fish
- 210. Sale of noxious fish prohibited
- 211. Possession of noxious fish prohibited
- 212. Use of aquaculture permit to control noxious fish
- 213. Destruction of noxious fish
- 214. Search warrant

Division 7—Release or importation of fish

- 215. Purpose of Division
- 216. Releasing live fish into waters prohibited
- 217. Importation of live fish

Division 8—Miscellaneous provisions

- 218. Fishways to be provided in the construction of dams and weirs
- 219. Passage of fish not to be blocked
- 220. Provisions relating to permits under this Part

PART 8—ADMINISTRATION

Division 1—The Minister and Director

- 221. Minister and Director to administer Act in accordance with its objects
- 222. Fisheries Administration Ministerial Corporation
- 223. Minister may acquire land
- 224. Acquisition of land for purposes of a future lease grant
- 225. Minister may carry out or assist research
- 226. Minister may accept gifts etc.
- 227. Delegation by Minister
- 228. Delegation by Director

Fisheries Management Act 1994 No. 38

Division 2—NSW Commercial Fishing Advisory Council and CFAC Regional
Advisory Committees

- 229. Constitution of the NSW Commercial Fishing Advisory Council
- 230. Membership and procedure of CFAC
- 231. Functions of CFAC
- 232. Powers of CFAC
- 233. CFAC Regional Advisory Committees
- 234. Functions of CFAC Regional Advisory Committees
- 235. Funds of CFAC
- 236. Investment
- 237. Annual contributions towards CFAC's costs

Division 3—NSW Recreational Fishing Advisory Council

- 238. Establishment of NSW Recreational Fishing Advisory Council
- 239. Functions of RFAC

PART 9—ENFORCEMENT

Division 1—Preliminary

- 240. Definitions
- 241. Engaging in commercial fishing activities
- 242. Power of seizure

Division 2—Appointment of fisheries officers

- 243. Appointment of fisheries officers by Minister
- 244. Police officers to be fisheries officers
- 245. Fisheries officers to have instruments of authority
- 246. Production of instruments of authority
- 247. Obstructing, impersonating etc. fisheries officers

Division 3—Powers of entry, search etc. of fisheries officers

- 248. Power to board and search boats
- 249. Power to require gear to be removed from water
- 250. Power to enter and search premises
- 251. Power to detain and search vehicles
- 252. Entry into waters, and along banks etc.
- 253. Entry into and examination of aquaculture farms
- 254. Entry into residential premises
- 255. Power to examine fishing gear or other equipment
- 256. Production of records relating to commercial fishing activities and fish receivers
- 257. Power to require production of fishing authority
- 258. Power to require information
- 259. False information
- 260. Issue of search warrants
- 261. Hot pursuit of persons and boats beyond coastal waters of New South Wales
- 262. Power of arrest
- 263. Care to be taken

Fisheries Management Act 1994 No. 38

Division 4—Seizure

- 264. Seizure of things (other than boats) connected with fisheries offence found as a result of search
- 265. Seizure of boats
- 266. Seizure of fishing gear and other things (other than boats or fish)
- 267. Seizure of fish
- 268. Reasonable cause for seizure a bar to action
- 269. Forfeiture of boats by order of the court
- 270. Return of boat if relevant offence proceedings not taken
- 271. Conviction to operate as forfeiture of things (other than boats)
- 272. Forfeiture of things (other than boats) where no relevant offence proceedings taken
- 273. Return of things seized
- 274. Disposal of perishable things
- 275. Forfeited things to become the property of the State

Division 5—Criminal proceedings

- 276. Penalty notices
- 277. Nature of proceedings for offences
- 278. Time within which proceedings may be commenced
- 279. Offences by corporations
- 280. Evidence relating to fishing authorities
- 281. Proof of lawful or reasonable excuse

Division 6—Civil enforcement

- 282. Restraint of breaches of Act

PART 10—MISCELLANEOUS

- 283. Annual reporting
- 284. Public consultation procedure
- 285. Notes in the text
- 286. Act binds Crown
- 287. Native title rights and interests
- 288. Service of instruments
- 289. Regulations
- 290. Review of Act
- 291. Savings, transitional and other provisions
- 292. Amendment of other Acts

SCHEDULE 1—SHARE MANAGEMENT FISHERIES

SCHEDULE 2—PROVISIONS RELATING TO MEMBERS AND PROCEDURE OF TAC COMMITTEE

SCHEDULE 3—PROVISIONS RELATING TO MEMBERS OF THE SHARE MANAGEMENT FISHERIES APPEAL PANEL

SCHEDULE 4—PROVISIONS RELATING TO MEMBERS AND PROCEDURE OF THE NEW SOUTH WALES COMMERCIAL FISHING ADVISORY COUNCIL

SCHEDULE 5—PROVISIONS RELATING TO MEMBERS AND PROCEDURE OF CFAC REGIONAL ADVISORY COMMITTEES

Fisheries Management Act 1994 No. 38

SCHEDULE 6—PROVISIONS RELATING TO MEMBERS AND PROCEDURE
OF THE NEW SOUTH WALES RECREATIONAL FISHING ADVISORY
COUNCIL

SCHEDULE 7—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS

SCHEDULE 8—AMENDMENT OF OTHER ACTS

FISHERIES MANAGEMENT ACT 1994 No. 38

NEW SOUTH WALES



Act No. 38, 1994

An Act relating to the management of fishery resources. [Assented to
2 June 1994]

The Legislature of New South Wales enacts:**PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Fisheries Management Act 1994.

Commencement

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

Objects of Act

3. (1) The objects of this Act are to conserve, develop and share the fishery resources of the State for the benefit of present and future generations.

(2) In particular, this Act has the following objects:

- (a) to conserve fish stocks and protect key fish habitats;
- (b) to promote viable commercial fishing and aquaculture industries;
- (c) to provide quality recreational fishing opportunities;
- (d) to appropriately share fisheries resources between the users of those resources;
- (e) to promote ecologically sustainable development.

Note: At common law, the public has a right to fish in the sea, the arms of the sea and in the tidal reaches of all rivers and estuaries. The public has no common law right to fish in non-tidal waters—the right to fish in those waters belongs to the owner of the soil under those waters. However, the public may fish in non-tidal waters if the soil under those waters is Crown land. In the case of non-tidal waters in rivers and creeks, section 38 declares that the public has a right to fish despite the private ownership of the bed of the river or creek. However, the right to fish in tidal or non-tidal waters is subject to any restriction imposed by this Act.

Definitions

4. In this Act:
 - “**aquaculture**” is defined in Part 6;
 - “**aquaculture lease**” means an aquaculture lease granted or renewed under Part 6;
 - “**aquaculture permit**” means an aquaculture permit issued and in force under Part 6;
 - “**Australian fishing zone**” has the same meaning as it has in the Commonwealth Act;

- “boat”** means any kind of vessel, however navigated;
- “CFAC”** means the New South Wales Commercial Fishing Advisory Council established under Part 8;
- “commercial fisher”** means a person who holds a commercial fishing licence;
- “commercial fishing licence”** means a commercial fishing licence issued under Division 1 of Part 4 and in force;
- “Commonwealth Act”** means the Fisheries Management Act 1991 of the Commonwealth;
- “Crown land”** means Crown land within the meaning of the Crown Lands Act 1989;
- “cultivate”** includes propagate, hatch, breed, rear and farm;
- “Director”** means the Director of NSW Fisheries;
- “examine”** includes count, measure, weigh and grade;
- “exercise”** a function includes perform a duty;
- “fish”** is defined in section 5;
- “fisheries officer”** means a person for the time being appointed under Part 9 as a fisheries officer for the purposes of this Act;
- Note: Under Part 9, a police officer is also a fisheries officer for the purposes of this Act.
- “fishery”** is defined in section 6;
- “fishing activity”** means the activity of taking fish, including:
- (a) searching for fish; or
 - (b) any activity that can reasonably be expected to result in the locating, aggregating or taking of fish; or
 - (c) carrying fish by boat from the place where they are taken to the place where they are to be landed;
- “fishing boat licence”** means a licence for a boat issued under Division 2 of Part 4 and in force;
- “fishing closure”** is defined in section 8;
- “fishing gear”** means any equipment (other than a boat or aircraft) used for fishing activities;
- “foreign boat”** has the same meaning as it has in the Commonwealth Act;
- “function”** includes a power, authority or duty;
- “leased area”** means the area that is the subject of an aquaculture lease;

Fisheries Management Act 1994 No. 38

“Management Advisory Committee” means a Management Advisory Committee for a share management fishery established under section 59;

“management plan” for a share management fishery means a management plan for the fishery made under Division 5 of Part 3;

“marine vegetation” means any species of plant that at any time in its life must inhabit water (other than fresh water);

“master” of a boat means the master or other person for the time being in charge or command of the boat;

“net” includes anything attached to a net;

“noxious fish” means fish declared under Division 6 of Part 7 to be noxious fish;

“oyster” means any bivalve mollusc of the family Ostreidae;

“possession” of a thing includes having the thing under control at any place, even though some other person has physical possession of the thing;

“premises” includes any structure, building or place, whether built on or not;

“prohibited size fish” means a fish declared by the regulations under Division 2 of Part 2 to be a prohibited size fish;

“public authority” means a person or body established or constituted by an Act for a public purpose, and includes a local government authority or a state-owned corporation;

“public water land” means land submerged by water (whether permanently or intermittently), being:

- (a) Crown land; or
- (b) land vested in a public authority; or
- (c) land vested in trustees for public recreation or for any other public purpose; or
- (d) land acquired by the Minister under Division 1 of Part 8,

but does not include land which is the subject of an aquaculture lease or land of which a person has exclusive possession under a lease under any other Act;

“records” includes documents containing financial or any other kind of information;

Note: The Interpretation Act 1987 defines “document” to include not only paper but also computer or other electronic records.

“registered fish receiver” means a fish receiver registered under Division 4 of Part 4;

“restricted fishery” means an exploratory, developmental or other restricted fishery declared under Division 3 of Part 4;

“RFAC” means the New South Wales Recreational Fishing Advisory Council established under Division 3 of Part 8;

“sell” includes:

- (a) sell by wholesale, retail, auction or tender; or
- (b) barter or exchange; or
- (c) supply for profit; or
- (d) offer for sale, receive for sale or expose for sale; or
- (e) consign or deliver for sale; or
- (f) have in possession for sale; or
- (g) cause or allow any of the above to be done;

“Share Appeal Panel” means the Share Management Fisheries Appeal Panel constituted under Division 9 of Part 3;

“share management fishery” means a fishery specified in Schedule 1;

“Share Register” means the Share Management Fisheries Register kept in accordance with Division 10 of Part 3;

“species of fish” includes fish that are of variety, domesticated form or hybrid of the species;

“TAC Committee” means the Total Allowable Catch Setting and Review Committee established under Division 4 of Part 2;

“take” fish includes:

- (a) catch or kill fish; or
- (b) gather or collect fish; or
- (c) remove fish from any rock or other matter, or attempt to do so;

“vehicle” includes aircraft, caravan or trailer.

Note: Penalties for offences are expressed in penalty units. Under the Interpretation Act 1987, the amount of a penalty unit is currently \$100.

Definition of “fish”

5. (1) In this Act, “fish” means marine, estuarine or freshwater fish or other aquatic animal life at any stage of their life history (whether alive or dead).

(2) In this Act, “fish” includes:

- (a) oysters and other aquatic molluscs; and
- (b) crustaceans; and

- (c) echinoderms; and
- (d) beachworms and other aquatic polychaetes.

(3) In this Act, “fish” also includes any part of a fish.

(4) However, in this Act, “fish” does not include whales, marine mammals, reptiles, birds, amphibians or other things excluded from the definition by the regulations.

Definition of “fishery”

6. (1) In this Act, “fishery” means a class of fishing activity.

(2) For the purposes of this Act, a fishery may be identified by reference to any one or more of the following:

- (a) a species or other class of fish;
- (b) an area of waters or seabed;
- (c) a method of fishing;
- (d) a class of boat;
- (e) a class of persons;
- (f) a purpose of activities.

Waters to which Act applies

7. (1) This Act applies:

- (a) in relation to all waters that are within the limits of the State; and
- (b) except for purposes relating to a fishery that is to be managed in accordance with the law of the Commonwealth pursuant to an arrangement under Division 3 of Part 5 and except for purposes prescribed by paragraph (d)—in relation to any waters of the sea not within the limits of the State that are on the landward side of waters adjacent to the State that are within the Australian fishing zone; and
- (c) for purposes relating to a fishery that is managed in accordance with the law of the State pursuant to an arrangement under Division 3 of Part 5—in relation to any waters to which the legislative powers of the State extend with respect to that fishery, whether pursuant to section 5 of the Coastal Waters (State Powers) Act 1980 of the Commonwealth or otherwise; and
- (d) for purposes relating to recreational fishing activities engaged in otherwise than by use of a foreign boat (other than recreational activities prohibited or regulated under a plan of management determined under section 17 of the Commonwealth Act)—in relation to any waters to which the legislative powers of the State extend with respect to such activities.

(2) This section is subject to any express limitations in this Act.

Note: Section 7 and Part 5 implement Commonwealth/State arrangements with respect to fisheries and are in the same form as the fisheries legislation of other States and Territories.

PART 2—GENERAL FISHERIES MANAGEMENT

Division 1—Fishing closures

Closure of waters to fishing

8. (1) The Minister may from time to time, by notification, prohibit, absolutely or conditionally, the taking of fish, or of a specified class of fish, from any waters or from specified waters.

(2) Any such prohibition is called a fishing closure.

Publication of notification of closures

9. (1) The notification of a fishing closure is to be published in the Gazette.

(2) However, if the Minister considers that the fishing closure is required urgently, the Minister may publish the notification:

- (a) in a newspaper circulating, or by radio or television broadcast, in the area adjacent to the waters to which the fishing closure applies; or
- (b) by causing a copy of the notification to be exhibited in a prominent place adjacent to the waters to which the fishing closure applies.

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

Duration of closures

10. (1) A fishing closure takes effect on the publication of the notification or on a later date specified in the notification.

(2) A fishing closure remains in force, subject to this Act, for the period (not exceeding 5 years) specified in the notification.

Amendment or revocation of closures

11. The Minister may from time to time amend or revoke a fishing closure by a further notification published in accordance with this Division.

General provisions relating to closures

12. Sections 42–45 of the Interpretation Act 1987 apply to notifications of fishing closures in the same way as they apply to statutory rules within the meaning of that Act.

Note: The above provisions of the Interpretation Act 1987 relate to standard provisions authorising the adoption of other publications by reference, the making of differential closures, the amendment or repeal of closures and judicial notice and presumptions as to validity for closures.

Regulations relating to closures

13. The regulations may make provision for or with respect to giving effect to fishing closures or to any other matter relating to fishing closures.

Offences relating to closures

14. (1) A person who takes fish in contravention of a fishing closure is guilty of an offence.

Maximum penalty: In the case of a corporation, 1,000 penalty units or, in any other case, 200 penalty units or imprisonment for 6 months, or both.

(2) A person who is in possession of fish taken in contravention of a fishing closure is guilty of an offence.

Maximum penalty: In the case of a Corporation, 500 penalty units or, in any other case, 100 penalty units or imprisonment for 3 months, or both.

(3) It is a defence to a prosecution for an offence under subsection' (2) if the person charged satisfies the court that the person did not know and could not reasonably have known that the fish had been taken in contravention of a provision of or made under this Act.

Division 2—Prohibited size fish, bag limits and protected fish**Declaration of prohibited size fish**

15. (1) The regulations may declare that fish of a specified species that do not comply with a minimum size, maximum size or range of sizes specified for fish of that species are prohibited size fish.

(2) The regulations may prescribe the method of determining the size of any class of fish.

(3) In this section, “size” means measurement or weight, or measurement and weight.

Offences relating to prohibited size fish

16. (1) A person who has prohibited size fish in the person's possession is guilty of an offence.

(2) A person who sells prohibited size fish is guilty of an offence.

Maximum penalty: In the case of a corporation, 500 penalty units or, in any other case, 100 penalty units or imprisonment for 3 months, or both.

Bag limits—taking of fish

17. (1) The regulations may specify the maximum quantity of fish of a specified species that a person may take on any one day (the "daily limit").

(2) A person who takes on any one day more fish than the daily limit of those fish is guilty of an offence.

Maximum penalty: In the case of a corporation, 500 penalty units or, in any other case, 100 penalty units or imprisonment for 3 months, or both.

(3) The regulations may specify different daily limits for commercial fishers or other classes of fishers or in any other circumstances specified in the regulations. The regulations may also include restrictions as to size or otherwise in respect of any daily limit of fish.

(4) This section does not authorise the taking of fish in contravention of a fishing closure or other provision of or made under this Act.

(5) The regulations may provide that the maximum quantity of any fish that may be taken applies to a period other than one day. In that case, a reference in this section to any one day is to be read as a reference to that other period.

(6) The Minister is required to consult RFAC about any proposal to specify or change daily limits under this section or possession limits under section 18.

Bag limits—possession of fish

18. (1) The regulations may specify the maximum quantity of fish of a specified species that a person may have in possession in any specified circumstances (the "possession limit").

(2) A person who has in the person's possession in any such circumstances more than the possession limit of those fish is guilty of an offence. This subsection applies irrespective of the period over which the fish were taken.

Maximum penalty: In the case of a corporation, 500 penalty units or, in any other case, 100 penalty units or imprisonment for 3 months, or both.

(3) The regulations may specify different possession limits for commercial fishers or other classes of fishers or in any other circumstances specified in the regulations. The regulations may also include restrictions as to size or otherwise in respect of any possession limit of fish.

(4) The possession limit of any fish need not be the same as the daily limit of those fish.

(5) This section does not authorise the possession of fish in contravention of any other provision of or made under this Act.

Protected fish

19. (1) The regulations may declare that fish of a specified species are protected fish.

(2) A person who takes protected fish is guilty of an offence.

(3) A person who has protected fish in the person's possession is guilty of an offence.

Maximum penalty: In the case of a corporation, 500 penalty units or, in any other case, 100 penalty units or imprisonment for 3 months, or both.

Fish protected from commercial fishing

20. (1) The regulations may declare that fish of a specified species are protected from commercial fishing.

(2) A person who takes any such declared fish for sale is guilty of an offence.

(3) A person who sells any such declared fish is guilty of an offence.

Maximum penalty: In the case of a corporation, 500 penalty units or, in any other case, 100 penalty units or imprisonment for 3 months, or both.

Defences

21. It is a defence to a prosecution for an offence under this Division if the person charged satisfies the court that:

- (a) the fish were lawfully taken from waters to which this Act does not apply; or
- (b) the fish were cultivated under the authority conferred by an aquaculture permit; or
- (c) the fish were taken or in possession under the authority conferred by any other permit under this Act; or
- (d) the person has any other defence that is prescribed by the regulations.

Division 3—Fishing gear**Registration of fishing gear**

22. (1) The regulations may make provision for or with respect to the registration of specified classes of fishing gear.

(2) If a class of fishing gear is registrable, a person who uses unregistered gear of that class to take fish is guilty of an offence.

Maximum penalty: In the case of a corporation, 50 penalty units or, in any other case, 25 penalty units.

Regulations relating to fishing gear

23. The regulations may make provision for or with respect to fishing gear (including the classes of nets or traps that may lawfully be used for taking fish).

Lawful use of nets or traps

24. (1) A person must not use a net or trap for taking any fish unless its use by the person for taking those fish is declared by the regulations to be a lawful use of the net or trap.

Maximum penalty: In the case of a corporation, 1,000 penalty units or, in any other case, 200 penalty units or imprisonment for 6 months, or both.

(2) This section does not affect any other prohibition of the use of a net or trap under a fishing closure or other provision of or made under this or any other Act.

Possession of illegal fishing gear

25. (1) A person who is in possession of any fishing gear in, on or adjacent to any waters is guilty of an offence if:

- (a) the use by that person of that fishing gear for taking fish from those waters is, at that time, prohibited by or under this Act; or
- (b) the taking of fish from those waters is, at that time, prohibited by or under this Act.

Maximum penalty: In the case of a corporation, 1,000 penalty units or, in any other case, 200 penalty units or imprisonment for 6 months, or both.

(2) A person who is on board a boat is taken to be in possession of any fishing gear found in the boat.

(3) It is a defence to a prosecution for an offence under this section if the person charged satisfies the court that the fishing gear was being transported, in accordance with the written authority of a fisheries officer, to waters where the person could lawfully take fish with that gear.

(4) It is a defence to a prosecution for an offence under this section if the person charged satisfies the court that the fishing gear was in his or her possession for a lawful purpose.

Division 4—Total allowable catches

Establishment of TAC Committee

26. A Total Allowable Catch Setting and Review Committee (the “TAC Committee”) is established.

Composition and procedure of TAC Committee

27. (1) The TAC Committee is to consist of at least 4 members, as follows:

- (a) a person appointed by the Minister as the Chairperson of the TAC Committee, being a person who is neither engaged in the administration of this Act nor engaged in commercial fishing;
- (b) a person appointed by the Minister who is a natural resource economist not employed by the Government;
- (c) a person appointed by the Minister who is a fishery scientist not employed by the Government;
- (d) persons appointed by the Minister who have appropriate fisheries management qualifications.

(2) Schedule 2 has effect with respect to the members and procedure of the TAC Committee.

Function of TAC Committee

28. (1) The TAC Committee may determine, in accordance with this Division, the total allowable catch of fish in any fishery for the commercial fishing sector.

(2) The TAC Committee is required to determine a specified total allowable catch for a share management fishery if the management plan for the fishery so requires.

(3) The TAC Committee is required to determine any other total allowable catch if (and only if) required to do so by the Minister.

TAC Committee not subject to Ministerial control

29. (1) The TAC Committee is not subject to the control or direction of the Minister as to any determination to be made by it.

(2) However, the Minister may direct the TAC Committee on the procedure to be followed and, subject to this Division, the matters to be taken into account in making a determination.

(3) The Minister may require the TAC Committee to reconsider a determination.

General considerations for TAC Committee

30. (1) In determining total allowable catches under this Division, the TAC Committee is to give effect to the objects of this Act and is to have regard to all relevant scientific, industry, community, social and economic factors.

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

- (a)** the need to ensure that the exploitation of fisheries resources is conducted in a manner that will conserve fish stocks in the long term; and
- (b)** the impact of fishing activities on all species of fish and the aquatic environment; and
- (c)** the precautionary principle, namely, that if there are threats of serious or irreversible damage to fish stocks, lack of full scientific certainty should not be used as a reason for postponing measures to prevent that damage.

Public consultation by TAC Committee

31. (1) Before the TAC Committee determines a total allowable catch under this Division (or reviews any such determination), the TAC Committee is required to call for public submissions on the appropriate total allowable catch.

(2) When the TAC Committee determines a total allowable catch under this Division it is to have regard to any public submissions it receives within the time fixed by it for the making of those submissions.

Review of determinations by TAC Committee

32. (1) The TAC Committee is to keep its determinations of total allowable catches under review.

(2) Following a review, the TAC Committee may decide not to alter its existing determination, to determine a different total allowable catch or to revoke its determination of a total allowable catch.

(3) However, the TAC Committee may not revoke a determination that it is required to make by a management plan for a share management fishery or by the Minister, unless it is replaced by a new determination.

Publication and duration of determinations

33. (1) A determination of the TAC Committee of a total allowable catch is to be published in the Gazette by the Minister.

(2) The determination takes effect on the date (on or after that publication) that is specified in the determination.

(3) The determination has effect for the period specified in the determination or, if no such period is specified, until it is revoked by another determination.

(4) However, if the determination relates to a total allowable catch required under a management plan for a share management fishery, the determination does not cease to have effect until revoked by a new determination of that total allowable catch.

Implementation of determinations

34. (1) The Minister is required to, review, in the light of any determination of the TAC Committee, the regulations and other instruments under this Act regulating the taking of fish by commercial fishers and other fishers.

(2) If the determination relates to a total allowable catch required under the management plan for a share management fishery, the determination is to be implemented in accordance with this Act and the management plan.

Division 5—General

Possessing fish illegally taken

35. (1) A person who is in possession of fish which were taken in contravention of a provision of or made under this Act is guilty of an offence.

Maximum penalty: In the case of a corporation, 500 penalty units or, in any other case, 100 penalty units or imprisonment for 3 months, or both.

(2) It is a defence to a prosecution for an offence under this section if the person charged satisfies the court that the person could not reasonably have known that the fish had been taken in contravention of a provision of or made under this Act.

Defence for accidental etc. taking of fish

36. (1) It is a defence to a prosecution for an offence against this Act or the regulations relating to the taking of fish if the person charged satisfies the court that, on becoming aware of the taking of the fish, the person took immediate steps to return the fish to its natural environment with the least possible injury.

(2) The defence provided under subsection (1) extends to fish taken and immediately released in the course of a sport fishing activity (being an activity conducted in accordance with any requirements of the regulations).

Defence—special permits for research or other authorised purposes

37. (1) The Minister may issue to any person a permit which authorises the person to take and possess fish of any kind or of a specified kind for any or all of the following purposes:

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

(2) A permit may authorise the holder to take fish by any method or by any specified method, from any waters or any specified waters or in any other specified way, despite any provision of or made under this Act to the contrary.

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

(4) A permit under this section:

- (a) is subject to such conditions as are prescribed by the regulations or specified in the permit; and
- (b) remains in force for the period of 1 year or such other period as is specified in the permit; and
- (c) may be cancelled or suspended by the Minister at any time by notice given to the permit holder.

(5) The Minister may from time to time, by notice given to the permit holder, vary the conditions of a permit under this section.

(6) The regulations may make provision for or with respect to permits under this section. In particular, the regulations may prescribe the fee payable for the issue of a permit.

Right to fish in certain inland waters

38. (1) A person may take fish from waters in a river or creek that are not subject to tidal influence despite the fact that the bed of those waters is not Crown land if, for the purpose of taking those fish, the person is in a boat on those waters or is on the bed of the river or creek.

(2) The right conferred by this section is subject to the other provisions of this Act.

(3) In this section, “bed” of a river or creek includes any part of the bed of the river or creek which is alternatively covered and left bare with an increase or decrease in the supply of water (other than during floods).

Obstruction of recognised fishing grounds

39. (1) A commercial fisher may request a person to remove anything which has been placed or left by the person, without lawful excuse, on a recognised fishing ground and which is obstructing the lawful net fishing activities of the commercial fisher.

(2) A person who fails to remove any such obstruction after being directed by a fisheries officer to do so is guilty of an offence.

Maximum penalty: In the case of a corporation, 100 penalty units or, in any other case, 50 penalty units.

(3) A court that convicts a person of an offence against this section may order the person to remove the obstruction. If the obstruction is not removed in accordance with the order, the Minister may cause it to be removed and recover the cost of the removal from the person as a debt in a court of competent jurisdiction.

(4) In this section, “recognised fishing ground” means any area of the sea or of other public water land used regularly or intermittently for net fishing by commercial fishers, being an area identified by or in accordance with the regulations as a recognised fishing ground.

Regulations relating to general management of fisheries

40. (1) The regulations may make provision for or with respect to any matter relating to the management of fishery resources.

(2) In particular, the regulations may make provision for or with respect to the following:

- (a) the development of plans for the management of fishery resources and the establishment of planning committees for that purpose;
- (b) preventing interference with the fishing activities of fishers;
- (c) preventing interference with set fishing gear;
- (d) determining the priority between fishers engaged in fishing activities in the same area;
- (e) prohibiting the use of explosives, electrical devices or other dangerous substances for the purpose of taking fish and regulating the use of explosives, electrical devices and other dangerous substances in any waters;
- (f) the identification of fishing boats;
- (g) the tagging or other identification of fish taken from any waters;
- (h) the identification of containers of fish consigned for sale;
- (i) the shucking, cutting or other processing of fish before they are landed or sold;
- (j) the taking and use of bait for fishing;
- (k) the measurement of fishing gear;
- (1) the period and manner of any consultation required to be undertaken under this Act so that the persons concerned are fully consulted.

PART 3—COMMERCIAL SHARE MANAGEMENT FISHERIES**Division 1—Summary of staged implementation****Staged implementation of share management fisheries**

41. This Part provides for the implementation of share management fisheries in the following stages:

- (a) Stage 1 (Consultation)—the first stage when the Minister consults CFAC and other industry representatives about which fisheries should become share management fisheries.
- (b) Stage 2 (Identification of fishery and shareholders)—the second stage when a fishery is identified as a share management fishery by the inclusion of a description of the fishery in Schedule 1. During the second stage, an interim Management Advisory Committee for

the fishery is established by CFAC, the criteria for the allocation of shares in the fishery are determined, eligible persons are invited to apply for shares and shares are issued provisionally.

- (c) **Stage 3 (Access to fishery limited to shareholders)**—the third stage when access to the fishery is limited to provisional shareholders (and also to any person claiming to be eligible to receive shares). During the third stage, appeals against the provisional issue of shares are determined and a draft management plan for the fishery is prepared.
- (d) **Stage 4 (Full implementation)**—the fourth and final stage when the management plan for the fishery commences and the fishing, share transfer and other rights of shareholders are fully identified and exercisable and subject to review.

Division 2—Declaration of share management fisheries

Declaration of share management fisheries

42. (1) Schedule 1 specifies share management fisheries for the purposes of this Act.

(2) The Governor may, by proclamation on the recommendation of the Minister, amend Schedule 1 by inserting or omitting the description of any fishery.

(3) The Minister is required to recommend to the Governor that the description of a fishery be omitted from Schedule 1 if the management plan for the fishery has not commenced within 5 years after the description was inserted in Schedule 1.

Note: On the commencement of this Act, Schedule 1 will not contain the description of any fishery.

Consultation with industry

43. (1) The Minister is required to consult CFAC and other representatives of the commercial fishing industry about which fisheries should become share management fisheries.

(2) The Minister is also required to consult CFAC and other representatives of the commercial fishing industry before a fishery ceases to be a share management fishery.

Omission of share management fishery

44. (1) This section has effect if the description of a share management fishery is omitted from Schedule 1, including an omission for the purpose of redefining an existing share management fishery.

(2) When the description of the fishery is omitted, all shares in the fishery are cancelled.

(3) If the description of the fishery is omitted after the commencement of the management plan for the fishery, the holders of the cancelled shares are entitled to compensation from the State for the market value before the cancellation of the shares they held.

(4) The amount of compensation payable is to be determined by agreement between the Minister and the person entitled to compensation. If the amount of compensation is not agreed, it is to be determined by the Valuer-General.

(5) A person entitled to compensation may agree to accept instead shares in another share management fishery which replaces the omitted fishery wholly or partly.

(6) A person who is dissatisfied with the amount of Compensation offered to the person under this section or with any delay in the payment of compensation may appeal to the Land and Environment Court.

(7) The regulations may make provision for or with respect to the payment of compensation in accordance with this section.

Redefinition of share management fishery

45. (1) This Part applies to the redefinition of an existing share management fishery by the replacement, wholly or partly, of the description of that fishery in Schedule 1, subject to any modifications of this Part prescribed by the regulations.

(2) The regulations may, in particular, combine any of the stages of implementation of the new share management fishery.

Division 3—Issue of shares

Invitation for shares

46. (1) **Giving public notice.** As soon as practicable after a fishery becomes a share management fishery, the Minister must give public notice of that fact and invite applications for shares by eligible persons.

(2) **How given.** For the purposes of this section, public notice is notice:

- (a) published in the Gazette, in a newspaper circulating throughout New South Wales and in such other publications as the Minister considers appropriate; and

(b) given to each holder of a commercial fishing licence or, in the case of a restricted fishery, to each person authorised to take fish in the fishery.

(3) Content. The public notice must:

(a) describe the share management fishery; and

(b) state that after the issue of shares in the fishery access to the fishery will be restricted to shareholders; and

(c) set out the criteria for the allocation of shares in the fishery (giving full particulars of the method of determining the persons eligible to apply for those shares and their entitlement to shares under this Division); and

(d) provide information on the rights and obligations relating to dealings in the shares before the commencement of the management plan for the fishery; and

(e) invite applications for shares by eligible persons (and specify the manner and time within which applications are to be made and any application fee); and

(f) contain such other information as is prescribed by the regulations or as the Minister considers appropriate.

(4) Amendment. A public notice may be varied by a further public notice under this section.

Application for shares

47. (1) An eligible person may apply to the Minister for the issue of shares in a share management fishery if an invitation for applications has been given by public notice under this Division.

(2) The application is to be in writing in the form approved by the Minister and lodged with the Minister within the time specified in the public notice.

(3) The application is to be accompanied by the application fee specified in the public notice. Any such fee is not to exceed any maximum fee prescribed by the regulations.

(4) The Minister may require the applicant to supply additional information to support the application. The Minister may reject the application if the additional information is not supplied within the time required by the Minister.

(5) The Minister may also obtain information from other sources in relation to the application.

Provisional issue of shares to applicants

48. (1) The Minister is to consider each application for shares that has been duly made and issue shares to eligible applicants in accordance with their entitlement to shares under this Division. If the applicant is not eligible to apply for shares, the Minister is to refuse the application.

(2) The shares are to be issued on a provisional basis pending the commencement of the management plan for the fishery.

(3) The Minister must, as soon as practicable:

- (a)** notify each applicant of the result of the application; and
- (b)** give to each applicant a statement in writing of the names of the applicants who were provisionally issued with shares and of the number of shares issued to each such applicant, together with a statement of any rights of appeal by the applicant to the Share Appeal Panel.

(4) Any shares issued as a result of a decision of the Share Appeal Panel are also to be issued on a provisional basis under this section.

(5) The Minister may set aside shares available for issue to an eligible person who does not apply for the issue of the shares. The Minister may issue any such shares as the Minister sees fit, including by their issue to other applicants or by their sale by auction, tender or ballot.

Who may hold shares

49. (1) The persons eligible to hold shares are not limited to the holders of commercial fishing licences or natural persons.

(2) However, the regulations may prohibit a class of persons from holding shares. For example, the regulations may prohibit persons from holding shares if they have a record of offences against this Act or if they are individuals not resident in Australia or they are companies in which any such individuals have a controlling interest.

(3) Two or more persons may jointly hold the same share.

(4) This section does not affect any disqualification from holding shares under this Act.

Method of determining eligibility and entitlement to shares

50. (1) The determination of the persons eligible to apply for shares in a share management fishery and their entitlement to shares is to be made in accordance with this Division and the criteria specified in the public notice inviting applications for shares.

(2) Shares in a fishery are (subject to this section) to be allocated to persons who are the holders of current commercial fishing licences or fishing boat licences and who lawfully took fish for sale in the fishery before it became a share management fishery. If the fish were taken as an employee of some other person, the allocation is to be made to that other person.

(3) Shares are (subject to this section) to be allocated to eligible persons in proportion to their catch history in the fishery. If more than one class of fish was caught in the fishery, the allocation is to take into account the value of each class of fish that was part of the catch history.

(4) If a restricted fishery becomes a share management fishery, the persons entitled to shares in the fishery are the persons who, immediately before it became a share management fishery, were entitled to take fish for sale in the restricted fishery. The allocation of shares to any such persons may be made having regard to existing entitlements in the restricted fishery.

(5) However, if a restricted fishery is described as an exploratory or developmental fishery, the entitlement to shares in the fishery is to be determined in accordance with the regulations.

(6) If a share management fishery is redefined, the entitlement to shares is to be determined in such manner as the Minister considers equitable having regard to the proportion of shares held in an existing fishery being redefined, the proportion of the redefined fishery to which the old shares applied, the catch history of shareholders and any other factor the Minister considers relevant.

Catch history

51. (1) The catch history of a person is (subject to the regulations) to be determined under and in accordance with the criteria specified by the Minister in the public notice inviting eligible persons to apply for shares.

(2) The criteria are to specify the period before the fishery becomes a share management fishery during which the catch history of a person is to be determined. The criteria may allow persons to choose their best catch history for a specified part of the relevant period.

(3) The criteria are to provide for the recognition of catch history in connection with the transfer of fishing boat licences.

(4) The catch history of a person is, subject to any appeal under this Part, to be determined by the Minister having regard to the records, kept by the Director, of fish taken by the person or such other documents as are prescribed by the regulations.

(5) The Minister may increase the catch history of a person for any period during which the person was unable to engage in the person's usual fishing activities because of the person's duties as a representative of the commercial fishing industry.

Final issue of shares

52. (1) After all appeals to the Share Management Fisheries Appeal Panel have been disposed of in connection with a share management fishery, the Minister is to make the final issue of shares to eligible persons with effect from the commencement of the management plan for the fishery.

(2) For that purpose, the Minister may redetermine the provisional issue of shares and cancel shares so issued or issue new shares.

(3) The Minister must, as soon as practicable:

(a) notify each applicant for shares of the final result of the application; and

(b) give to each applicant a statement in writing of the names of the persons who were finally issued with shares and of the number of shares issued to each such person.

(4) The Minister must also, as soon as practicable, publish in the Gazette the names of all the persons who were finally issued with shares and the number of shares issued to each such person.

(5) A person who was the holder of provisional shares in a fishery is not entitled to compensation because of a redetermination of the provisional issue of shares (whether under this section or as a result of any legal proceedings).

(6) Shares are to be in such form as the Minister approves.

Division 4—Limited access to fishery after issue of shares

Commencement of limited access to fishery

53. (1) Shares issued provisionally in a share management fishery do not take effect until a day appointed by the Minister by order published in the Gazette for the commencement of shareholding in the fishery and for limited access to the fishery.

(2) The day so appointed is to be at least 6 months after the fishery became a share management fishery, except in the circumstances prescribed by the regulations.

Limiting access to shareholders etc. before commencement of management plan

54. (1) After the day appointed for the commencement of limited access to a share management fishery and until the commencement of the management plan for the fishery, the fishery is a limited access fishery.

(2) A commercial fishing licence does not authorise a person to take fish in a limited access fishery unless:

- (a) the licensee is the holder of shares in the fishery (irrespective of the number of shares held) or is an applicant for shares who has duly lodged an appeal to the Share Management Fisheries Appeal Panel and whose appeal is pending; or
- (b) the licensee is duly nominated in the Share Register by that holder or applicant to take fish on behalf of that holder or applicant,

and the licence is duly endorsed under this Part for the taking of fish in the fishery.

(3) A holder of shares is not entitled to have his or her licence endorsed to take fish in a limited access fishery (or to nominate another person to do so) if all the shares held by the person were acquired by dealings after the initial issue of shares in the fishery, unless the acquisition is declared by the regulations to be an authorised acquisition for the purposes of this section.

Note: An example of an acquisition that may be authorised by the regulations is an acquisition in a fishery that was previously a restricted fishery to which access could previously have been obtained by other fishers.

Fishery that is existing restricted fishery

55. (1) A share management fishery that is also a restricted fishery ceases to be a restricted fishery when it becomes a limited access fishery.

(2) The endorsement of a commercial fishing licence to take fish in such a restricted fishery becomes, on the fishery so ceasing to be a restricted fishery, an endorsement under this Part to take fish in the share management fishery. This subsection applies only if the person concerned is entitled under this Part to have the licence so endorsed.

Division 5—Management plans**Preparation of draft management plan**

56. (1) The Minister is to arrange for the preparation of a draft management plan for a share management fishery as soon as practicable after the fishery becomes a limited access fishery.

(2) The Minister may arrange for the preparation of a new draft management plan for the fishery following a fishery review in accordance with this Part,

Content of management plan

57. (1) The management plan for a share management fishery may make provision for or with respect to the following:

- (a) the objectives of the plan;
- (b) the classes of shares in the fishery and the provisions of the plan applicable to each such class;
- (c) the rights of shareholders to take fish or nominate others to take fish in the fishery;
- (d) the fish that may be taken in the fishery;
- (e) the area for taking fish in the fishery;
- (f) the times or periods for taking fish in the fishery;
- (g) the use of boats and fishing gear in the fishery;
- (h) the conduct of fishery reviews for the purposes of the preparation of a new plan;
- (i) the species or group of species of fish taken in the fishery that are to be subject to a total allowable catch for the commercial fishing sector;
- (j) the protection of the habitats of the species of fish that may be taken in the fishery (including habitats at all stages of the life history of any such species);
- (k) the taking of bait for use in the fishery;
- (l) the matters expressly authorised by this Act to be included in the plan;
- (m) any other matters relating to the management of the fishery that are consistent with this Act and its objects.

(2) A management plan must:

- (a) include performance indicators to monitor whether the objectives of the plan and ecologically sustainable development are being attained; and
- (b) specify at what point a review of the management plan is required when a performance indicator is not being satisfied.

Public and industry consultation

58. (1) The Minister is required to give the public an opportunity to make submissions on any proposed management plan for a fishery (or proposed new plan) and to take any submission that is duly made into account.

(2) The Minister is required to consult the Management Advisory Committee for a fishery, CFAC and RFAC about any proposed management plan for a fishery (or proposed new plan).

Management Advisory Committees for fisheries

59. (1) CFAC may, with the approval of the Minister, establish a Management Advisory Committee for a share management fishery or any such proposed fishery.

(2) A Management Advisory Committee is to comprise commercial fishers who represent shareholders, or persons likely to be shareholders, in the fishery. The Director (or the Director's nominee) may attend meetings of any such Committee but is not entitled to vote at any such meeting.

(3) The functions of a Management Advisory Committee for a fishery are:

- (a) to advise the Minister through CFAC on the preparation of any management plan for the fishery; and
- (b) to monitor whether the objectives of the management plan are being attained; and
- (c) to assist in a fishery review in connection with any new management plan; and
- (d) to advise on any other matter relating to the fishery.

(4) A copy of any advice to the Minister is to be given to RFAC when it is submitted to the Minister.

Making of plan by regulation

60. (1) A management plan for a fishery (including any amendment or new plan) is to be made by a regulation.

(2) Any such regulation is not repealed by the operation of Part 3 of the Subordinate Legislation Act 1989.

Commencement of management plan

61. A management plan for a fishery commences when the regulation making the plan commences.

Plan prevails over other regulations and closures

62. (1) If a provision of the management plan for a fishery is inconsistent with any other regulation under this Act or any fishing closure, the management plan prevails.

(2) However, the management plan does not prevail over a provision of a regulation or fishing closure which is expressed to have effect despite the management plan.

(3) Before a provision referred to in subsection (2) is made, the Minister is required to consult with the Management Advisory Committee for the fishery and certify in writing to the Governor that the matter cannot be delayed until a new management plan is made. Any such provision in a fishing closure must be approved by the Governor.

(4) Subsection (3) does not apply to a provision that deals with an environmental emergency and which has effect for a period not exceeding 8 weeks.

Fisheries reviews—new plan

63. (1) A management plan for a fishery is not to be replaced by a new plan until at least 5 years after the existing plan was made, unless the existing plan otherwise provides.

(2) The Director is to arrange a review into each share management fishery at such times as the management plan for the fishery provides and, subject to that plan, at such other times as the Minister determines. A review must be held before the term of the shares in the fishery is due to expire.

(3) The Director is to constitute a representative group of persons to assist in the conduct of the review. The group is to include representatives of the Management Advisory Committee for the fishery, CFAC and RFAC, as appropriate.

(4) The Director is to report to the Minister on the review.

(5) The Minister is to consider the report of the review and take such action (including the preparation of a new management plan) under this Act with respect to the fishery the subject of the review as the Minister considers appropriate.

Amendment of plan

64. A management plan for a fishery may not be directly amended unless the amendment is of a kind authorised by the plan.

Contravention of plan

65. (1) A shareholder in a share management fishery is guilty of an offence if the shareholder (or a person nominated by the shareholder to take fish in the fishery) contravenes a provision of the management plan for the fishery, being a contravention that is designated by the plan as an offence.

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

(2) The management plan may also designate whether any such offence is an offence for which the shares of the shareholder are liable to forfeiture under this Act.

Division 6—Fishing and other shareholding rights**Who may fish in share management fisheries after commencement of management plan**

66. After the commencement of the management plan for a share management fishery, a commercial fishing licence does not authorise a person to take fish in the fishery unless:

- (a) the licensee is the holder of shares in the fishery or is duly nominated in the Share Register by that holder to take fish on behalf of that holder; and
- (b) that holder has not less than the minimum shareholding in the fishery required under this Division; and
- (c) the licence is duly endorsed, in accordance with this Division, for the taking of fish in the fishery.

Minimum shareholding required to fish after commencement of management plan

67. (1) A person who holds shares in a share management fishery is not entitled, after the commencement of the management plan for the fishery, to take fish in the fishery or to nominate another person to do so on his or her behalf unless the person has the minimum shareholding for that fishery fixed by the management plan.

(2) A separate minimum shareholding may be fixed in respect of a person who acquires shares after the initial issue of shares or a different minimum shareholding may be fixed for any such shareholding. Different minimum shareholdings may also be set for different classes of shares.

(3) Minimum shareholdings may be fixed so that the minimum is increased during subsequent periods.

(4) A management plan may provide that the requirement for a minimum shareholding may be satisfied by taking into account the shareholder's shares in other share management fisheries or shareholder's entitlements or catch history in other fisheries.

Endorsements on licences

68. (1) The Minister may endorse a commercial fishing licence for the taking of fish in a share management fishery during a specified fishing period for the fishery.

(2) The relevant fishing period is to be determined by the Minister in accordance with the management plan for the fishery.

(3) A licence may be so endorsed only if:

- (a) the licensee is the holder of shares in the share management fishery or is duly nominated in the Share Register by that holder to take fish on behalf of that holder; and
- (b) that holder has not less than the minimum shareholding in the share management fishery required under this Division; and
- (c) any community contribution, management charge or other amount due and payable by the holder under this Part. has been paid.

(4) The licence of the holder of shares may not be endorsed if the holder has duly nominated some other commercial fisher to take fish on behalf of that holder. This subsection is subject to the management plan for the fishery.

(5) An application for endorsement is to be made in the form and manner approved by the Minister and accompanied by the fee prescribed by the regulations.

(6) An endorsement expires at the end of the fishing period to which it relates, but the licence may be endorsed for a further period or periods.

(7) An endorsement may be suspended or cancelled by the Minister:

- (a) if the holder of the licence ceases to be eligible to have the licence endorsed; or
- (b) if the shareholder fails to pay any community contribution, management charge or other amount due under this Part; or
- (c) for any other reason authorised by the management plan for the fishery.

(8) If an endorsement of a shareholder is suspended or cancelled, the shareholder is not entitled to nominate another person to take fish on the shareholder's behalf.

(9) Until the commencement of the management plan for a fishery, the Minister may determine the matters required by this section to be determined by the plan. During that period, the requirement for a minimum shareholding does not apply and this section has effect subject to any other necessary modification.

Nomination of commercial fisher by holder of shares

69. (1) The holder of shares in a share management fishery may nominate a commercial fisher to take fish in the fishery on behalf of that holder.

(2) After the commencement of the management plan for the fishery, the holder may not do so unless the holder has at least the minimum shareholding in the fishery required under this Division.

(3) The nomination is to be made in writing and served on the Director. The nomination is to be accompanied by the written consent of the nominee to the nomination.

(4) The holder may nominate 2 or more commercial fishers in respect of the same shareholding if authorised to do so under the management plan for the fishery.

(5) The holder may nominate a commercial fisher who is a shareholder in the same fishery. In that case, the shares of the nominated fisher do not, while the fisher is so nominated and unless the management plan for the fishery otherwise provides, confer any entitlement to take fish in the fishery.

(6) However, the holder may not nominate a commercial fisher who is nominated by another shareholder in the same fishery.

(7) The holder may revoke a nomination by notice in writing served on the Director.

(8) The Director is to record any nomination under this section, or any revocation of a nomination, in the Share Register. The nomination or revocation has effect when it is so recorded.

Special endorsements to take fish in share management fishery

70. (1) The Minister may endorse a commercial fishing licence for taking fish for sale in a share management fishery even though the commercial fisher is not entitled under this Part to have the licence so endorsed.

(2) The Minister may do so only if the Minister is satisfied, after consultation with the Management Advisory Committee for the fishery and with CFAC and RFAC, that an available fisheries resource would not otherwise be utilised.

(3) A commercial fishing licence endorsed under this section authorises the holder to take fish in accordance with the authority conferred by the endorsement.

(4) An endorsement under this section:

- (a) is subject to such conditions as are prescribed by the regulations or specified in the endorsement; and
- (b) remains in force for the period of 6 months or such shorter period as is specified in the endorsement; and
- (c) may be cancelled or suspended by the Minister at any time.

(5) The regulations may make provision for or with respect to endorsements under this section. In particular, the regulations may prescribe the fee payable for such an endorsement.

Transfer and other dealings in shares

71. (1) A share in a share management fishery may be transferred, assigned, transmitted or mortgaged and any other interest of a kind prescribed by the regulations may be created in the share.

(2) Without limiting subsection (1), shares may be transferred for the purpose of enabling 2 or more shareholders to hold their shares jointly.

(3) A transaction that transfers, assigns, transmits, mortgages or otherwise creates an interest in a share in a share management fishery is required to be registered in the Share Register under Division 10.

(4) This section is subject to any restriction imposed by the management plan for the fishery.

(5) Before the commencement of the management plan for the fishery, this section applies only to the extent authorised by the regulations.

Maximum shareholding permitted

72. (1) The maximum shareholding in a share management fishery is the maximum shareholding fixed in the management plan for the fishery.

(2) If no maximum shareholding is fixed in the plan, the maximum shareholding is 5% of the number of shares in the fishery at the commencement of the plan.

(3) The maximum shareholding in a fishery fixed under this section does not apply to or affect the provisional issue of shares or the final issue of shares on the commencement of the management plan for the fishery, or the transfer of those shares to another person.

(4) If the maximum shareholding is changed at any time after it is fixed, the change in that maximum does not affect an existing shareholder. While any such existing shareholder continues to hold those shares, the maximum shareholding in respect of that shareholder is the previous maximum shareholding.

(5) Shares in a share management fishery in excess of the maximum shareholding may not be issued to a person by the Minister or recorded in the Share Register.

(6) Any excess shares are to be cancelled by the Minister. However, the Minister may allow a person who has acquired excess shares to dispose of those shares in accordance with this Part.

(7) For the purposes of this section, the shareholding of a person is taken to include the shareholding of any other person who has an interest in the shares of the first-mentioned person (within the meaning of the Banks (Shareholdings) Act 1972 of the Commonwealth).

Duration of shareholding

73. (1) Shares in a share management fishery are to be issued initially for a period of 10 years (calculated from the commencement of the management plan for the fishery).

(2) If during that 10-year period (or any subsequent period for which the shares are renewed) a fishery review is not conducted and a new management plan is not made under this Part, the shares are taken to be renewed, at the end of their current period, for a further period of 10 years.

(3) If during that 10-year period (or any subsequent period for which the shares are renewed) a fishery review is conducted and a new management plan is made under this Part, the shares are taken to be renewed (from the date the new plan commences) for a further period of 10 years and the balance of the current period is terminated.

Surrender of shares

74. (1) The holder of shares in a share management fishery may surrender those shares to the Minister.

(2) The Minister is, if requested by the shareholder, to sell those shares by public tender and pay 85% of the purchase price to that holder. The balance of the purchase price (after deduction of the expenses reasonably incurred in connection with the sale) is to be credited to the Consolidated Fund.

(3) However, if that holder does not request the Minister to sell the shares, the shares are to be cancelled and new shares are not to be issued in their place.

Forfeiture of shares for certain contraventions of Act

75. (1) For the purposes of this section, an offence against this Act or the regulations is a share forfeiture offence for a fishery if it is designated in the management plan for the fishery as such an offence.

(2) A court which convicts a shareholder in a share management fishery, or a commercial fisher taking fish in the fishery on behalf of the shareholder, of a share forfeiture offence may order that the shares (or any of the shares) of the shareholder be forfeited.

(3) A court which orders the forfeiture of any such shares may also order that the holder of the shares is not eligible to hold shares in the fishery for the period specified by the court.

(4) The regulations may also provide for the forfeiture of shares by the Minister:

- (a) for any record of convictions of a shareholder in a share management fishery, or a commercial fisher taking fish in the fishery on behalf of the shareholder, for share forfeiture offences; or
- (b) for any failure by the shareholder to pay a community contribution or other amount due under this Part (but only to the extent of the amount due).

(5) The Minister is to sell forfeited shares to which this section applies by public tender and pay the purchase price to the credit of the Consolidated Fund. The regulations after deduction of the expenses reasonably incurred in connection with the sale may authorise or require the payment of any part of the purchase price to a person (other than the shareholders) who had an interest in the shares.

Division 7—Management charges and community contributions

Management charges

76. (1) The Minister may, subject to this section, determine the management charges payable by the holders of shares in a share

management fishery for each fishing period during which the commercial fishing licences of the holders (or their nominees) are endorsed to take fish in that fishery.

(2) The management charge is to be such amount as the Minister considers necessary to meet the costs of management for that fishery, being costs of management that are attributed to industry by the management plan for the fishery.

(3) The management charge is not to exceed the amount prescribed by the management plan for the fishery.

(4) The management charge is payable by shareholders in proportion to their shareholding.

(5) The management plan may authorise the payment of management charges by instalments. If an instalment is not paid by the due date, the balance then becomes due and payable (together with any interest for late payment prescribed by the management plan).

(6) Until the commencement of the management plan for a fishery, the Minister may (after consultation with the Management Advisory Committee for the fishery) determine the matters required by this section to be determined by the plan.

Community contribution by shareholders for access to fishery

77. (1) Shareholders in a share management fishery are required to make a periodic contribution for their right of access to the fishery (a "community contribution").

(2) The community contribution is payable after the commencement of, and in accordance with, the management plan for the fishery.

(3) The community contribution is to be credited to the Consolidated Fund.

(4) The community contribution is to be based OR the size of the shareholding in the fishery.

(5) The rate of the community contribution, method of its payment and other matters concerning its payment are to be prescribed by the management plan, and not otherwise.

(6) The management plan for the fishery may exempt a shareholder from making the community contribution (or reduce any such contribution) if the full rights to take fish in the fishery in accordance with the shareholding have not been exercised during the relevant period.

(7) The Treasurer's concurrence is required before any provisions relating to community contributions are inserted in a management plan.

Division 8—Allocation of total allowable commercial catch among shareholders**Allocation of total allowable catch among shareholders in fishery**

78. (1) This section applies to any determination of the total allowable catch of fish for the commercial fishing sector that is required under the management plan for a share management fishery.

(2) The Minister is to allocate among shareholders in all relevant share management fishery the whole total allowable catch of fish for the commercial fishing sector.

(3) An allocation among shareholders in a particular fishery is to be made in proportion to the shareholdings of the persons concerned.

(4) If 2 or more fisheries are involved in the allocation, the total amount allocated to each fishery is to be determined by the TAC Committee having regard to the relative composition of the catch of fish for each fishery concerned.

(5) An allocation is to be made to all shareholders, whether or not they hold the minimum shareholding required to fish in the fishery.

(6) The Minister may delay making an allocation and not restrict the catch of shareholders.

(7) However, if it appears that the total allowable catch may be exceeded because of any such delay, the Minister is to allocate the balance of the total allowable catch during the remaining fishing period to which it applies in accordance with this section. A shareholder is not entitled to any such allocation if the shareholder would become entitled to take more fish than the shareholder would have been entitled to take if the allocation had not been delayed.

(8) If any shares have been forfeited or surrendered, but not yet sold, an allocation is to be made in respect of those shares and dealt with in such manner as the Minister thinks fit.

(9) An allocation is to be notified in writing to each shareholder concerned.

Transfer of allocations

79. (1) A shareholder in a share management fishery may transfer to any other shareholder in that fishery the whole or any part of his or her allocation under this Division of the total allowable catch concerned in accordance with the management plan for the fishery.

(2) Subject to the management plan:

- (a) a shareholder may not acquire by any such transfers more than twice the amount of the shareholder's actual allocation; and
- (b) a transfer may not be made after the end of the fishing period to which the allocation relates.

(3) A transaction that purports to have the effect of transferring the whole or any part of an allocation does not have effect until it is notified in writing to the Director.

Carry over to, or borrowing from, future allocations

80. (1) The management plan for a share management fishery may authorise a shareholder in the fishery:

- (a) to transfer to the next fishing period any part of the allocation of the total allowable catch for the current fishing period that is not taken during the current period; or
- (b) to transfer to the allocation of the total allowable catch for the current fishing period part of the allocation for the next fishing period.

(2) Subject to any such management plan, a transfer under this section takes effect when it is notified to the Director in writing by the shareholder.

Payment for fish caught in excess of allocation or forfeiture of shares

81. (1) A shareholder who, during any period, takes more fish than the shareholder's allocation under this Division (whether personally or by means of a nominated fisher) is required to pay to the Director the value of the excess fish so caught. The amount paid is to be credited to the Consolidated Fund.

(2) If the amount required to be paid by the shareholder is not paid within the time specified by the Minister in a written notice to the shareholder, the requisite number of shares of the shareholder specified in that notice are forfeited.

(3) The requisite number of shares is the number of shares that, if sold by public tender, would in the Minister's opinion raise an amount equivalent to the amount required to be paid by the shareholder.

(4) If the shareholder does not have sufficient shares, the balance of the amount required to be paid by the shareholder may be recovered by the Minister as a debt in a court of competent jurisdiction.

(5) The value of fish for the purposes of this section is the value that the Minister considers to be the market value of the fish. If the Minister is satisfied that the shareholder did not intend to exceed the shareholders' allocation, the Minister is to reduce the value by the amount the Minister considers appropriate for the costs incurred by the shareholder in taking the fish.

(6) The Minister is to sell any shares forfeited under this section by public tender. The purchase price (after deduction of the expenses reasonably incurred in connection with the sale) is to be credited to the Consolidated Fund.

(7) Before finally selling any such share by public tender, the Minister is required to offer to sell the share to the original holder for the tender price.

(8) For the purposes of this section, fish taken by a shareholder include fish taken on behalf of the shareholder by a commercial fisher duly nominated by the shareholder under this Part.

(9) Nothing in this section precludes proceedings being taken for an offence against this Act or the regulations.

(10) The management plan for a fishery may provide that this section does not apply in specified circumstances to the taking of fish in the fishery.

Division 9—Share Management Fisheries Appeal Panel

Establishment of Panel

82. A Share Management Fisheries Appeal Panel (the “**Share Appeal Panel**”) is established.

Composition and procedure of Panel

83. (1) The Share Appeal Panel is to consist of 3 members, as follows:

- (a) a person appointed by the Minister as the Chairperson of that Panel, being a person who is neither engaged in the administration of this Act nor in commercial fishing;
- (b) the Director or a nominee of the Director;
- (c) a person appointed by the Minister on the nomination of CFAC, being a person with extensive practical experience in the commercial fishing industry.

(2) The Minister may constitute that Panel with different members for different share management fisheries.

(3) A person who has a financial interest in a commercial fishery to which an appeal relates is not eligible to be appointed under subsection (1) (c) to that Panel for the purpose of hearing that appeal.

(4) Schedule 3 has effect with respect to the members of the Panel.

Making of appeals

84. (1) An applicant for shares in a share management fishery may appeal to the Share Appeal Panel against a decision under this Part relating to the provisional issue of shares in the fishery.

(2) The regulations may provide for other appeals to that Panel against decisions under this Part relating to a share management fishery.

(3) An appeal is to be made within the time and in the manner prescribed by the regulations.

(4) An appeal is to be accompanied by such fee or deposit as is prescribed by the regulations.

Hearing and determination of appeals

85. (1) The Share Appeal Panel is to hear each appeal duly made to it.

(2) The Panel may, for the purpose of the appeal, exercise the functions of the person who made the decision concerned.

(3) That Panel may:

(a) uphold the decision; or

(b) vary the decision; or

(c) set the decision aside and substitute a new decision.

(4) A decision as varied or substituted is to be given effect to under this Part.

Note: See sections 48 and 52.

(5) That Panel is to give to each party to an appeal a written statement of its determination and of the reasons for its determination.

Procedure at appeals

86. (1) In proceedings before the Share Appeal Panel:

(a) the procedure of that Panel is, subject to this Act and the regulations, to be determined by the Panel; and

(b) the proceedings are to be conducted with as little formality and technicality, and as quickly, as the requirements of this Act and the proper consideration of the matter permit; and

(c) that Panel is not bound by the rules of evidence but may inform itself on any matter in any way it thinks appropriate.

(2) The time, date and place for the hearing of an appeal is to be fixed by the Chairperson of that Panel and notified in writing by the Chairperson to each party to the appeal.

(3) The Chairperson of that Panel is to preside at any hearing of an appeal.

(4) At the hearing of an appeal, a party to the appeal may appear in person or be represented by a legal practitioner or any other person.

(5) Hearings may be conducted in public or in private.

(6) The Panel may, with the approval of the appellants, hear 2 or more appeals together.

(7) An appeal may be heard and determined despite the absence or vacancy in the office of one of its members (other than the Chairperson). This subsection applies only if the appellant consents to the continuation of the hearing.

(8) An appeal may continue to be heard and determined despite a change in the membership of the Panel (other than the Chairperson).

(9) An appeal and any question concerning the appeal are to be determined according to the opinion of the majority of the members of the Panel hearing the appeal. If there are only 2 members, they are to be determined according to the opinion of the Chairperson.

Power to summon witnesses and take evidence

87. (1) The Chairperson of the Share Appeal Panel may summon a person to appear at a hearing of an appeal to give evidence and to produce such documents (if any) as are referred to in the summons.

(2) The Chairperson of that Panel may require a person appearing at the hearing of an appeal to produce a document.

(3) That Panel may, at a hearing, take evidence on oath or affirmation and, for that purpose:

(a) the Chairperson of that Panel may require a person appearing at the hearing to give evidence either to take an oath or to make an affirmation in a form approved by the Chairperson; and

(b) the Chairperson may administer an oath or affirmation to a person so appearing at the hearing.

(4) A person served with a summons to appear at a hearing to give evidence must not, without reasonable excuse:

- (a) fail to attend as required by the summons; or
- (b) fail to attend from day to day unless excused, or released from further attendance, by the Chairperson of that Panel.

Maximum penalty: 20 penalty units.

(5) A person appearing at a hearing to give evidence must not, without reasonable excuse:

- (a) when required to take an oath or make an affirmation—refuse or fail to comply with the requirement; or
- (b) refuse or fail to answer a question that the person is required to answer by the Chairperson of that Panel; or
- (c) refuse or fail to produce a document that the person is required to produce by a summons served under this section.

Maximum penalty (subsection (5)): 20 penalty units.

Power to obtain documents

88. (1) The Chairperson of the Share Appeal Panel may, by notice in writing served on a person, require the person:

- (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being the Chairperson or a person authorised by the Chairperson in that behalf; and
- (b) to produce, at that time and place, to the person so specified a document specified in the notice.

(2) A person must not, without reasonable excuse, refuse or fail to comply with a notice served on the person under this section.

Maximum penalty: 20 penalty units.

Division 10—Share Management Fisheries Register

Establishment and keeping of Share Register

89. (1) The Director is required to establish and keep a Share Management Fisheries Register (the “Share Register”).

(2) The Share Register may be kept wholly or partly by means of a computer.

(3) If the Share Register is kept wholly or partly by means of a computer:

- (a) references in this Act to an entry in the Share Register are to be read as including references to a record of particulars kept by means of the computer and comprising the Share Register or part of the Share Register; and
- (b) references in this Act to particulars being registered, or entered in the Share Register, are to be read as including references to the keeping of a record of those particulars as part of the Share Register by means of the computer; and
- (c) references in this Act to the rectification of the Share Register are to be read as including references to the rectification of the record of particulars kept by means of the computer and comprising the Share Register or part of the Share Register.

Registration of shares

90. (1) The Director must register any shares in a share management fishery issued by the Minister by entering in the Share Register the following particulars:

- (a) the name of the person to whom the shares are issued;
- (b) the number of shares issued;
- (c) the share management fishery for which the shares are issued;
- (d) the period for which the shares are issued;
- (e) such other particulars (if any) as are prescribed by the regulations.

The Director must register any renewal of shares in a share management fishery by entering in the Share Register the following particulars:

- (a) the fact that the shares have been renewed;
- (b) the period for which the shares are renewed;
- (c) such other particulars (if any) as are prescribed by the regulations.

Registration of dealings in shares

91. (1) A transaction that purports to have the effect of transferring, assigning, transmitting, mortgaging or otherwise creating an interest in a share in any share management fishery does not have that effect until it is registered in the Share Register.

(2) A party to such a transaction may make an application to the Director for the transaction to be registered.

(3) Such an application must be in a form approved by the Director and must be accompanied:

- (a) by the document that embodies the transaction; and
- (b) by a document setting out such particulars (if any) as are prescribed by the regulations for the purposes of this paragraph; and
- (c) by duplicates of the documents referred to in paragraphs (a) and (b); and
- (d) by such fee (if any) as is prescribed by the regulations.

(4) When such an application is made to the Director, the Director must:

- (a) register the transaction by entering in the Share Register particulars of the name of the person acquiring the interest and a description of the transaction; and
- (b) endorse on the document relating to the transaction and the duplicate of that document the fact of the entry having been made, together with the date and time of the making of the entry.

(5) When those entries in the Share Register have been made:

- (a) the duplicate of the document relating to the transaction is to be retained by the Director and made available for inspection in accordance with this Division; and
- (b) the original document is to be returned to the person who made the application for registration.

(6) The Director is not to register a dealing in a share in any share management fishery if the dealing would result in a shareholder acquiring more shares in the fishery than is permitted by this Act or if the dealing would otherwise contravene this Act.

Trusts not registrable

92. (1) The Director is taken not to have notice of any kind of trust relating to shares in a share management fishery.

(2) Notice of any such trust must not be registered by the Director.

Power of holder to deal with shares

93. (1) The holder of any share in a share management fishery may, subject to this Part, deal with the share as its absolute owner and give good discharges for any consideration for any such dealing.

(2) Subsection (1):

- (a) is subject to any rights appearing in the Share Register to belong to another person; and
- (b) only protects a person who deals with the holder of the share as a purchaser in good faith for value and without notice of any fraud on the part of the holder.

(3) Equities in relation to a share in a share management fishery may be enforced against the holder of the right except to the prejudice of a person protected by subsection (2).

Surrender of shares to be noted in Share Register

94. If a share in a share management fishery is surrendered, the Director must make an entry in the Share Register to that effect.

Cancellation or forfeiture of shares to be noted in Share Register

95. (1) If a share in a share management fishery is cancelled, forfeited or otherwise ceases to have effect, the Director must make an entry in the Share Register to that effect and cancel the registration of the share.

(2) If, because of a decision made by the Minister or a court, an entry made by the Director under subsection (1) is no longer correct the Director must rectify the Share Register.

(3) If:

- (a) the Director makes an entry in the Share Register under subsection (1), or rectifies the Share Register under subsection (2), concerning a share; and
- (b) a person other than the holder of the share has an interest in the share; and
- (c) the interest is one in relation to which a transaction has been registered under section 91 (Registration of dealings in shares),

the Director must give the person written notice of the entry or rectification.

Director not concerned as to the effect of documents lodged for registration

96. The Director is not concerned with the effect in law of any document lodged under section 91 (Registration of dealings in shares) and the registration of the transaction concerned does not give to the document any effect that it would not have if this Division had not been enacted.

Inspection of the Share Register and registered documents

97. (1) On payment by a person of the prescribed fee (if any), the Director must, during the ordinary business hours of the Director's office, make available for inspection the Share Register and all copies of registered documents retained by the Director in accordance with section 91 (Registration of dealings in shares).

(2) If the Share Register is kept wholly or partly by means of a computer, this section is taken to be complied with by providing a computer print-out or providing access to a computer terminal that can be used to view the Share Register.

Evidentiary provisions

98. (1) The Share Register is evidence of any particulars registered in it.

(2) If the Share Register is wholly or partly kept by means of a computer, a document issued by the Director producing in writing particulars included in the Share Register, or the part kept by means of a computer, is admissible in legal proceedings as evidence of those particulars.

(3) A copy of the Share Register or an entry in the Share Register is, if purporting to be signed by the Director, admissible in evidence in legal proceedings as if the copy were the original.

(4) A copy of a document, or part of a document, retained by the Director under section 91 (Registration of dealings in shares) is, if purporting to be signed by the Director, admissible in evidence in legal proceedings as if the copy were the original.

(5) The Director must, on application made by a person in a form approved by the Director, provide the person with a document or copy that is admissible in legal proceedings because of this section.

Correction of Share Register

99. The Director may correct any error or mistake in the Share Register.

Exculpation for liability for anything done under this Division

100. The Minister, the Director and other persons employed in the administration of this Division are not liable in any civil proceedings for anything done or omitted to be done in good faith in the exercise or purported exercise of any function imposed or conferred by this Division.

Offences under the Division

101. A person must not:

- (a) make, or cause to be made or concur in making, an entry in the Share Register knowing it to be false or misleading in a material respect; or
- (b) produce or tender in legal proceedings a document knowing that it falsely purports to be an instrument (or copy of an instrument) lodged with the Director under this Division or a copy of the Share Register or of an entry in the Share Register.

Maximum penalty: 50 penalty units.

**PART 4—LICENSING AND OTHER COMMERCIAL
FISHERIESMANAGEMENT**

Division 1—Commercial fishing licences

Commercial fishers required to be licensed

102. (1) A person must not take fish for sale from waters to which this Act applies unless the person is authorised to do so by a commercial fishing licence.

Maximum penalty: 100 penalty units.

(2) This section does not apply to a member of the crew of a boat licensed under Division 2 who takes fish as an employee or agent of the master of the boat.

Note: A Commercial fishing licence will, under other provisions of this Act, require an endorsement if the holder is to take fish in a share management fishery or in a restricted fishery.

Who may hold licence

103. (1) A corporation may not hold a commercial fishing licence.

(2) An individual may hold a commercial fishing licence only if:

- (a)** the individual is a shareholder in a share management fishery or is duly nominated by the shareholder under Part 3 to take fish on behalf of the shareholder; or
- (b)** the individual held a fisherman's licence under section 25 of the Fisheries and Oyster Farms Act 1935 immediately before the repeal of that section by this Act; or
- (c)** the individual is otherwise authorised by the regulations to hold a commercial fishing licence.

(3) If an individual is only entitled to a licence under subsection (2) (a), the licence must be restricted to the taking of fish in the share management fishery concerned.

Provisions relating to licensing of commercial fishers

104. (1) Any eligible person may apply to the Minister for a commercial fishing licence.

(2) An application is to be in the form approved by the Minister and is to be accompanied by such fee (if any) as is prescribed by the regulations.

(3) The Minister is required to issue a licence to an eligible applicant unless the Minister is authorised by the regulations to refuse the application.

(4) A commercial fishing licence:

- (a) is subject to such conditions as are prescribed by the regulations or specified in the licence; and
- (b) remains in force for the period of 1 year or such other period as is specified in the licence; and
- (c) may be renewed from time to time in accordance with the regulations; and
- (d) is not transferable; and
- (e) may be cancelled or suspended by the Minister in the circumstances authorised by the regulations.

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

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

(7) The holder of a commercial fishing licence who contravenes any condition of the licence is guilty of an offence.

Maximum penalty: 100 penalty units.

(8) The regulations may make provision for or with respect to commercial fishing licences. In particular, the regulations may prescribe the qualifications relating to fishing activities required for the issue of a licence.

Evidentiary provision

105. The fact that a person holds a commercial fishing licence is evidence that fish taken by the person or in the person's possession were fish taken or in possession for sale.

Annual contribution to cost of research and to other industry costs

106. (1) A commercial fisher must, if the regulations so require, pay to the Minister an annual contribution towards:

- (a) the cost of carrying out research into commercial fisheries; or
- (b) any other costs relating to the commercial fishing industry.

(2) The amount of the contribution is to be specified in or determined under the regulations.

(3) The payment required by this section is taken to be a condition of every commercial fishing licence.

(4) If a contribution is unpaid after the due date for its payment, the amount payable is to be increased by an amount calculated at the rate of 10% per annum simple interest or, if some other rate is prescribed by the regulations, at that prescribed rate.

(5) A calculation under subsection (4) is to be made for each day that has elapsed between the date on which payment is due and the date of payment.

(6) An increase of the amount of an annual contribution under subsection (4) is taken to be part of the contribution.

(7) The Minister may:

- (a) waive payment of the whole or any part of an increase of a contribution under subsection (4); or
- (b) grant an extension of time for the payment of the whole or any part of such an increase; or
- (c) remit the payment of the whole or any part of such an increase.

Division 2—Commercial fishing boats**Commercial fishing boat to be licensed**

107. (1) The master of a boat must not use the boat for any of the following purposes unless the boat is licensed under this Division:

- (a) to take fish for sale from waters to which this Act applies;
- (b) to land fish in New South Wales that were taken from other waters (after the boat departed from a port in New South Wales).

Maximum penalty: 100 penalty units.

(2) The regulations may provide that a boat licensed under a law of the Commonwealth or of another State or a Territory is taken to be licensed under this Division.

Provisions relating to licensing of boats

108. (1) The owner of a boat (or a person authorised by the owner) may apply to the Minister for the issue of a licence for the boat.

(2) An application is to be in the form approved by the Minister and is to be accompanied by such fee (if any) as is prescribed by the regulations.

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

(4) The licence for a boat:

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

(b) remains in force for the period of 1 year or such other period as is specified in the licence; and

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

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

(5) The regulations may prescribe different classes of licences for boats.

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

(7) The holder of the licence for a boat who contravenes any condition of the licence is guilty of an offence.

Maximum penalty: 100 penalty units.

(8) The regulations may make provision for or with respect to licences for boats.

Evidentiary provision

109. The fact that a boat is a licensed fishing boat is evidence that fish taken by use of the boat, or landed from the boat, were fish taken for sale.

Crew of fishing boats

110. (1) Each member of the crew of a licensed fishing boat which is being used to take fish must (subject to this section) be registered by the Director.

(2) A person who is not registered may act as a member of the crew of a boat if a registered crew member is not available when the boat leaves port.

(3) Registration is not limited to any particular boat.

(4) A crew member is not required to be registered if he or she holds a commercial fishing licence.

(5) A commercial fishing licence or the licence for a boat may authorise the use of persons who are not registered as crew members on a boat.

(6) Application for registration may be made to the Director by the crew member or by the master of the boat.

(7) Application for registration is to be in the form approved by the Director and accompanied by such fee (if any) as is prescribed by the regulations.

(8) The Director is required to register a crew member if application is duly made for that registration.

(9) If a member of the crew of a licensed fishing boat is not registered when required by this section, the master of the Boat is guilty of an offence.

Maximum penalty: 50 penalty units.

(10) The regulations may make provision for or with respect to the registration of crew members, the maximum number of crew members to be used on a boat and the records to be kept about crew members.

Division 3—Exploratory developmental and other restricted fisheries

Declaration of restricted fisheries

111. (1) The regulations may declare that a fishery (not being a share management fishery) is a restricted fishery for the purposes of this Act during the period specified in the declaration.

(2) The fishery may be described in the declaration as an exploratory, developmental or other class of restricted fishery.

(3) Before a fishery is declared to be a restricted fishery, the Minister is required to consult CFAC and RFAC about the proposed declaration and to notify the proposal publicly.

(4) A fishery that is declared to be a restricted fishery ceases to be a restricted fishery if the declaration is revoked by the regulations.

Note: A fishery also ceases to be a restricted fishery if it becomes a limited access share management fishery—see section 55

Commercial fishing licence to be endorsed for restricted fishery

112. (1) A commercial fishing licence does not authorise a person to take fish for sale in a restricted fishery unless the holder is authorised by the Minister, by an endorsement on the licence, to do so.

(2) The authority conferred by such an endorsement is subject to such conditions as are prescribed by the regulations or attached to the endorsement by the Minister.

Restriction on the number of licences endorsed for restricted fishery

113. (1) The regulations may fix the maximum number of commercial fishing licences that may be endorsed in respect of a specified restricted fishery.

(2) Eligibility for endorsement of commercial fishing licences is to be determined in accordance with the regulations.

Endorsements not transferable

114. An endorsement of a commercial fishing licence under this Division is not transferable, unless authorised by the regulations.

Compensation not payable

115. Compensation is not payable by or on behalf of the State because a fishery ceases to be a restricted fishery at the end of the period for which it was declared to be a restricted fishery or at any time during that period.

Other regulations

116. The regulations may make provision for or with respect to:

- (a) the endorsement of commercial fishing licences and the cancellation, suspension or transfer of those endorsements; and
- (b) imposing restrictions on the quantity of fish taken in a restricted fishery or on the method or times for taking those fish; and
- (c) otherwise giving effect to this Division.

Division 4—Fish receivers**Fish receiver to be registered**

117. (1) A person who receives fish, for resale or other commercial use, from a person whom he or she knows or reasonably suspects to be a commercial fisher (or a person acting on behalf of such a commercial fisher) is guilty of an offence unless the fish receiver is registered under this Division.

Maximum penalty: In the case of a corporation, 500 penalty units or, in any other case, 100 penalty units or imprisonment for 3 months, or both.

- (2)** The person is not required to be registered under this Division if:
- (a) the person holds an authority under the Fisheries Act 1935 of a class designated by the regulations under this Act; or
 - (b) the person has received from all commercial fishers (or persons acting on their behalf) less than the minimum quantity of fish prescribed by the regulations during the period so prescribed; or
 - (c) the fish are received in the person's capacity as an employee or agent of another fish receiver; or
 - (d) the fish are received for the purpose only of transporting them on behalf of the owner of the fish; or
 - (e) the regulations otherwise provide.

Provisions relating to registration

118. (1) Any person may apply to the Minister to be registered under this Division as a fish receiver.

(2) An application is to be in the form approved by the Minister and is to be accompanied by such fee (if any) as is prescribed by the regulations.

(3) The Minister is required to register an applicant as a fish receiver unless the Minister is authorised by the regulations to refuse the application.

(4) The regulations may prescribe different classes of registered fish receivers.

- (5)** The registration of a fish receiver:
- (a) is subject to such conditions as are prescribed by the regulations or specified in the certificate of registration; and
 - (b) remains in force for the period of 1 year or such other period as is specified in the certificate of registration; and

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

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

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

(7) A registered fish receiver who contravenes any condition of the registration is guilty of an offence.

Maximum penalty: 100 penalty units.

(8) The regulations may make provision for or with respect to the registration of fish receivers.

Fish receiver to supply information

119. (1) A fisheries officer may, by written notice to a registered fish receiver, require the fish receiver:

(a) to give the fisheries officer, within such reasonable time as is specified in the notice, such information relating to fish received by the fish receiver as is specified in the notice; and

(b) to verify that information by statutory declaration.

(2) The regulations may make provision for or with respect to records to be kept by, and information to be given by, registered fish receivers.

(3) A registered fish receiver must not, without reasonable excuse, refuse or fail to give information, or keep records, required by or under this section.

Maximum penalty: In the case of a corporation, 500 penalty units or, in any other case, 100 penalty units or imprisonment for 3 months, or both.

Evidentiary provision

120. The fact that a person is a registered fish receiver is evidence that fish in the person's possession were fish taken or in possession for sale.

Division 5—Fish records

Commercial fishers to keep records of catch

121. (1) A commercial fisher must make a record of all fish taken by the commercial fisher.

(2) If the commercial fisher is the master of a boat used to take fish, a record of all fish taken by the use of the boat must be made. In that case, any other commercial fisher who assisted in the taking of those fish is not required to keep a record of those fish.

(3) The record must be made in such form and manner as are prescribed by the regulations or (subject to the regulations) as are approved by the Minister.

(4) A commercial fisher who contravenes this section is guilty of an offence.

Maximum penalty: 200 penalty units.

Commercial fishers to furnish records to Director

122. A commercial fisher who makes a record under this Division must send a copy of the record to the Director within such period as the regulations prescribe.

Maximum penalty: 10 penalty units.

Records of sale and possession of fish

123. (1) A person who sells a quantity of fish which is not less than the quantity prescribed by the regulations and:

- (a) who fails to make and deliver to the purchaser, on or before the sale, a prescribed record concerning the sale by the person of the fish; or
- (b) who fails to retain a copy of the record for not less than 12 months after the fish are sold; or
- (c) who fails, during the 12-month period, to produce the copy of the record when requested to do so by a fisheries officer,

is guilty of an offence.

(2) A person who sells a quantity of fish which is not less than the quantity prescribed by the regulations and:

- (a) who fails:
 - (i) to make, before the sale; or
 - (ii) to obtain, on or before the sale, from any other person from whom the person acquired the fish,
- (b) a prescribed record concerning the possession by the person of the fish;
 - who fails to retain the record for not less than 12 months after the fish are sold; or

Fisheries Management Act 1994 No. 38

- (c) who fails, during the 12-month period, to produce the record when requested to do so by a fisheries officer,

is guilty of an offence.

(3) A person who has possession of a quantity of fish which is not less than the quantity prescribed by the regulations and who fails to produce a prescribed record concerning the possession by the person of the fish when requested to do so by a fisheries officer is guilty of an offence.

(4) It is a defence to a prosecution for an offence under subsection (3) if the defendant (not being a person who carries on the business of selling or processing fish or fish products) proves that the fish were in the defendant's possession otherwise than for the purpose of sale or storage for reward.

(5) This section does not apply to oysters or to any other fish excluded by the regulations.

Maximum penalty: 200 penalty units.

False records

124. A person who makes an entry in a record, or copy, kept for the purposes of this Division knowing that the entry is false or misleading in a material particular is guilty of an offence.

Maximum penalty: 200 penalty units or imprisonment for 3 months, or both.

Division 6—Appeals to District Court

Definition of “relevant authority”

125. In this Division, “relevant authority” means:

- (a) a commercial fishing licence; or
- (b) an endorsement on a commercial fishing licence; or
- (c) a fishing boat licence; or
- (d) the registration of a member of the crew of a boat; or
- (e) a fish receiver's registration.

Rights of appeal

126. (1) A person who is dissatisfied with any of the following decisions under this Part may appeal against the decision to the District court:

Fisheries Management Act 1994 No. 38

- (a) the refusal to issue a relevant authority to the person or to renew the person's relevant authority;
- (b) the imposition of conditions on the person's relevant authority (otherwise than by regulation);
- (c) the suspension or cancellation of the person's relevant authority-

(2) An appeal is to be made within the time prescribed by the regulations.

(3) For the purposes of this section, an application for the issue or renewal of a relevant authority is taken to have been refused if the authority is not issued or renewed within 60 days after the application was duly made.

(4) An appeal is to specify the grounds of the appeal.

(5) An appeal may be withdrawn at any time before it is determined.

Hearing and determination of appeals

127. (1) After hearing an appeal under this Division against a decision, the District Court may:

- (a) confirm the decision; or
- (b) vary the decision; or
- (c) set aside the decision and substitute a new decision.

(2) The District Court may, in hearing an appeal under this Division, exercise the powers and discretions that are conferred on the Minister or other person who made the decision the subject of the appeal.

(3) An appeal is to be by way of new hearing and fresh evidence, or evidence in addition to or substitution for the evidence on which the decision was made, may be given on the appeal.

(4) The decision of the District Court on an appeal is to be given effect to by the Minister or other relevant person.

PART 5—CO-OPERATION WITH COMMONWEALTH AND OTHER STATES IN FISHERIES MANAGEMENT

Division 1—Preliminary

Definitions

128. In this Part:

“arrangement” means an arrangement made by the State with the Commonwealth under Division 3, whether or not it is also made with another State or other States;

“**coastal waters**”, in relation to the State, has the same meaning as it has in the Commonwealth Act;

“**Commonwealth Minister**” means the Minister for the time being administering the Commonwealth Act and any other Minister performing and exercising functions and powers under section 60 of the Commonwealth Act;

“**fishery**”, in relation to an arrangement under this Part, means a class of fishing activities identified in the arrangement as a fishery to which the arrangement applies;

“**Joint Authority**” means a Joint Authority established under section 61 of the Commonwealth Act of which the Minister is a member;

“**Joint Authority fishery**” means a fishery in respect of which there is in force an arrangement under Division 3 under which the fishery is to be under the management of a Joint Authority.

Division 2—Joint Authorities

Powers and functions of Minister

129. (1) The Minister may exercise and perform any power or function conferred on the Minister by Part 5 of the Commonwealth Act, including any power or function of the Minister as a member of a Joint Authority.

(2) If, in the exercise of the power conferred by Part 5 of the Commonwealth Act, the Minister appoints a deputy, the deputy may exercise and perform the powers and functions conferred by that Act on the deputy of a member of a Joint Authority other than the Commonwealth Minister.

Judicial notice

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

Functions of Joint Authority

131. A Joint Authority has such functions in relation to a fishery in respect of which an arrangement is in force under Division 3 as are conferred on it by the law in accordance with which, under the arrangement, the fishery is to be managed.

Delegation

132. (1) A Joint Authority may, by instrument in writing, either generally or as otherwise provided by the instrument, delegate to a person any of its powers under this Act other than this power of delegation.

(2) If a power delegated under subsection (1) is exercised by the delegate, the power is, for the purposes of this Act, taken to have been exercised by the Joint Authority.

(3) A delegation under this section may be expressed as a delegation to the person from time to time holding or performing the duties of a specified office, including an office:

- (a) in the service of; or
- (b) in the service of an authority of, or
- (c) under the law of,

the Commonwealth, another State or a Territory of the Commonwealth.

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

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

- (a) may be revoked, by instrument in writing, by the Joint Authority (whether or not constituted by the persons constituting the Joint Authority at the time the power was delegated); and
- (b) does not prevent the exercise of the power by the Joint Authority; and
- (c) continues in force despite any change in the membership of the Joint Authority.

(6) A certificate signed by a member of a Joint Authority stating any matters with respect to a delegation under this section by the Joint Authority is evidence of that matter.

(7) A document purporting to be a certificate referred to in subsection (6) is, unless the contrary is established, taken to be such a certificate and to have been duly given.

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

Procedure of Joint Authorities

133. (1) The provisions of sections 66–68 (inclusive) of the Commonwealth Act apply to and in relation to the performance by a Joint Authority of its functions under this Act.

(2) A written record of a decision of a Joint Authority, if signed by the Commonwealth Minister, or that Minister's deputy, who took part in or made the decision is evidence that the decision, as recorded, was duly made.

(3) In proceedings in any court, an instrument or other document signed, on behalf of a Joint Authority, by a member of the Joint Authority is taken to have been duly executed by the Joint Authority and, unless the contrary is proved, is taken to be in accordance with a decision of the Joint Authority.

Report of Joint Authority

134. The Minister must cause a copy of a report of a Joint Authority prepared under section 70 of the Commonwealth Act to be laid before each House of Parliament as soon as practicable after the report is prepared.

Division 3—Arrangements with respect to the management of particular fisheries

Arrangement for management of certain fisheries

135. (1) The State may, in accordance with section 74 of the Commonwealth Act, make an arrangement referred to in section 71 or 72 of that Act for the management of a particular fishery.

(2) An arrangement may be terminated as provided by the Commonwealth Act.

(3) After an arrangement has been made, but before the arrangement takes effect, licences, endorsements and other instruments may be granted, issued, renewed, made or executed, and regulations may be made, for the purposes of the operation of this Act as affected by the arrangement, as if the arrangement had taken effect, but such a licence, endorsement, instrument or regulation does not have effect before the arrangement takes effect.

(4) On the termination of an arrangement, licences, endorsements and other instruments granted, issued, renewed, made or executed, and regulations made, for the purpose of the operation of this Act as affected by the arrangement cease to have effect.

(5) After action for the purpose of the termination of an arrangement has been taken, but before the termination takes effect, licences, endorsements and other instruments may be granted, issued, renewed, made or executed, and regulations may be made, for the purposes of the

operation of this Act as affected by the termination of the arrangement, as if the arrangement had been terminated, but such a licence, endorsement, instrument or regulation does not have effect before the termination of the arrangement takes effect.

Application of this Act to fisheries in accordance with arrangements

136. If there is in force an arrangement that provides that a particular fishery is to be managed in accordance with the law of the State, the provisions of this Act apply to and in relation to the fishery except that those provisions do not apply to or in relation to that fishery in respect of:

- (a) foreign boats or operations on or from foreign boats or persons on foreign boats; or
- (b) matters that occurred before the arrangement took effect.

Functions of Joint Authority

137. (1) If, in respect of a fishery, there is in force an arrangement under which a Joint Authority has the management of the fishery and the fishery is to be managed in accordance with the law of the State, the Joint Authority has the functions of keeping constantly under consideration:

- (a) the condition of the fishery; and
- (b) formulating policies and plans for the good management of the fishery; and
- (c) for the purposes of the management of the fishery, exercising the powers conferred on it by this Act and co-operating and consulting with other authorities (including other Joint Authorities within the meaning of the Commonwealth Act) in matters of common concern.

(2) A Joint Authority has the following objectives in the performance of its functions under subsection (1):

- (a) ensuring, through proper conservation, preservation and fisheries management measures, that the living resources of the waters to which this Act applies are not endangered or overexploited; and
- (b) achieving the optimum utilisation and equitable distribution of those resources.

Joint Authority to exercise certain powers instead of Minister

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

(2) In respect of a Joint Authority fishery that is to be managed in accordance with the law of the State, the powers conferred on the Minister or the Minister's delegate by or under this Act (this Part excepted) or the regulations (including powers with respect to the issue, renewal, cancellation and suspension of licences) are exercisable by the Joint Authority to the exclusion of the Minister and the Minister's delegate.

(3) A licence granted under this Act by a Joint Authority is required to contain conditions and limitations that it does not apply in relation to a Joint Authority fishery, or Joint Authority fisheries, not managed by that Joint Authority.

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

- (a) the endorsement ceases to have effect if the licence ceases to have effect; and
- (b) the Joint Authority may suspend or cancel the endorsement as if it were a licence granted by the Joint Authority.

(5) Subject to section 141 (1) (b) and (c), if, at a time a fishery becomes a Joint Authority fishery, a regulation, notification or order under this Act would, but for this subsection, apply to the fishery, the regulation, notification or order, as the case may be, ceases so to apply.

(6) This section does not empower a Joint Authority to grant, or to take other action in respect of, a licence in respect of a foreign boat or to endorse such a licence.

Application of certain provisions relating to offences

139. For the purposes of the prosecution of a person for an offence under this Act in respect of anything done to or in relation to fish to which a Joint Authority fishery relates or otherwise in relation to a Joint Authority fishery, a reference to an authority of a particular kind is to be read as a reference to such an authority granted, issued or renewed by the relevant Joint Authority.

Presumption relating to certain statements

- 140.** A statement in an arrangement to the effect that specified waters:
- (a) in the case of an arrangement to which the Commonwealth and the State are the only parties— are waters adjacent to the State; and

- (b) in the case of any other arrangement — are waters adjacent to the States that are parties to the arrangement or are waters adjacent to a specified State or States,

is, for the purposes of this Act, to be conclusively presumed to be correct.

Regulations

141. (1) If a Joint Authority is to manage a fishery in accordance with the law of the State, the Governor may, for the purpose of giving effect to a decision of the Joint Authority:

- (a) make regulations for the management of the fishery; or
- (b) make a regulation applying to the fishery a regulation made otherwise than pursuant to this section; or
- (c) amend a regulation made otherwise than pursuant to this section so that it is expressed to apply to the fishery, whether or not it also applies to any other fishery.

(2) The power conferred on the Governor to make regulations otherwise than under subsection (1) does not extend to the making of a regulation of a kind referred to in subsection (1) (a) or (b) or the amendment of a regulation in the manner referred to in subsection (1) (c).

(3) If a regulation affecting a fishery that is to be managed by a Joint Authority is expressed to be made under this section, it is to be conclusively presumed that it was made for the purpose of giving effect to a decision of the Joint Authority.

PART 6—AQUACULTURE MANAGEMENT

Division 1—Preliminary

Definition of “aquaculture”

142. In this Act:

“**aquaculture**” means:

- (a) cultivating fish or marine vegetation for the purposes of harvesting the fish or marine vegetation or their progeny with a view to sale; or
- (b) keeping fish or marine vegetation in a confined area for a commercial purpose (such as a fish-out pond),

but does not include:

- (c) keeping anything in a pet shop for sale or in an aquarium for exhibition (including an aquarium operated commercially); or

- (d) anything done for the purposes of maintaining a collection of fish or marine vegetation otherwise than for a commercial purpose; or
- (e) any other thing prescribed by the regulations.

Aquaculture industry development plans

143. (1) The Minister may, in accordance with this section, determine plans for the development of the commercial aquaculture industry (“development plans”).

(2) A development plan may relate to any aspect of the commercial aquaculture industry, including aquaculture of a particular species of fish or marine vegetation or aquaculture in a particular area.

(3) The Minister is to have regard to any relevant development plan in the exercise of the Minister’s functions under this Part.

(4) A development plan may contain the following:

- (a) the objectives of the Minister in the administration of this Part or any provision of this Part;
- (b) the description of areas suitable for aquaculture and the type of aquaculture for which any such area is suitable;
- (c) suitable methods for undertaking aquaculture or any type of aquaculture;
- (d) suitable species of fish or marine vegetation for aquaculture in a particular area;
- (e) any other matter concerning aquaculture that the Minister considers appropriate.

(5) A development plan must:

- (a) include performance indicators to monitor whether the objectives set out in the plan and ecologically sustainable development are being attained; and
- (b) specify at what point a review of the development plan is required when a performance indicator is not being satisfied.

(6) The Minister may amend or replace a development plan.

(7) A development plan (including any amendment or new plan) is to be published in the Gazette.

(8) Before the Minister determines a development plan (including any amendment or new plan), the Minister is required to give the commercial

aquaculture industry and the public an opportunity to make submissions on the proposed plan (or proposed amendment or new plan) and to take any submission that is duly made into account.

(9) The exercise of a function under this Part is not invalid merely because it is inconsistent with a development plan.

Division 2—Aquaculture permits

Aquaculture prohibited except in accordance with a permit

144. (1) A person must not undertake aquaculture except under the authority of an aquaculture permit.

Maximum penalty: In the case of a corporation, 200 penalty units or, in any other case, 100 penalty units.

(2) Aquaculture permits may be of such different classes as are prescribed by the regulations.

(3) This section applies to aquaculture undertaken in a leased area or in any other area.

(4) However, this section does not apply to aquaculture undertaken by the Minister under Part 8 or to persons of a class excluded by the regulations from the operation of this section.

Applications for permits

145. (1) Any person may apply to the Minister for an aquaculture permit.

(2) An application for a permit must:

- (a) be in a form approved by the Minister; and
- (b) be accompanied by a commercial farm development plan describing the manner in which the applicant proposes to undertake the aquaculture; and
- (c) be accompanied by the fee prescribed by the regulations.

(3) If different classes of aquaculture permits have been prescribed, the application must specify the class or classes of permits for which application is made.

(4) The Minister may require an applicant to provide such further information in relation to the application as the Minister thinks necessary and may decline to deal further with the application if such a requirement is not complied with.

Issue or refusal of permit

146. (1) The Minister may issue or refuse to issue an aquaculture permit to an applicant for the permit.

(2) The Minister may only refuse to issue the permit if:

- (a) the application was not duly made; or
- (b) in the case of an individual—~~the~~ applicant is disqualified under section 161 from holding an aquaculture permit; or
- (c) in the case of a corporation—~~the~~ applicant or any of the directors or other persons concerned in the management of the corporation is disqualified under section 161 from holding an aquaculture permit; or
- (d) the Minister is not satisfied that the applicant has prepared an appropriate commercial farm development plan; or
- (e) the Minister is not satisfied that the applicant has the expertise necessary to undertake the aquaculture successfully; or
- (f) the area where the applicant proposes to undertake aquaculture is not available or suitable for that purpose; or
- (g) the application is inconsistent with any relevant aquaculture industry development plan; or
- (h) the Minister is otherwise authorised or required by the regulations, or by this or any other Act, to refuse to issue the permit.

(3) Before refusing to issue a permit under this section, the Minister is required to give the applicant an opportunity to be heard on the matter or to make written submissions on the matter.

(4) An applicant may appeal to the District Court against a refusal of the Minister to issue a permit under this section. Division 6 of Part 4 (Appeals to District Court) applies to an appeal under this subsection.

Permit to specify area and type of aquaculture

147. (1) An aquaculture permit must specify the area or areas within which the holder is authorised to undertake aquaculture and the species of fish or marine vegetation authorised to be cultivated within any such area.

(2) The aquaculture permit may specify separate leased or other areas, whether or not they are adjoining.

Variation of permits

148. (1) The Minister may, at any time by notice in writing to the holder of an aquaculture permit:

- (a) vary the area or areas within which the holder is authorised to undertake aquaculture; or
- (b) vary the species of fish or marine vegetation authorised to be cultivated within any such area.

This subsection applies whether or not the variation has been requested by the permit holder.

(2) The Minister must not, at the request of a permit holder, vary the area or areas within which the holder is authorised to undertake aquaculture if the Minister would have refused under section 146 (2) an application for an aquaculture permit in relation to the area or areas (as proposed to be varied).

Note: This section will enable a single permit to be issued in respect of all the leased areas held by the permit holder.

Authority to take fish

149. (1) The holder of an aquaculture permit is not required to hold a commercial fishing licence or any other licence or permit under this Act for the purpose of taking fish or marine vegetation cultivated under the authority of the aquaculture permit.

(2) The holder of the aquaculture permit may use any fishing gear for the purpose of taking any fish or marine vegetation cultivated under the authority of the aquaculture permit, whether or not the fishing gear may lawfully be used for that purpose.

(3) This section is subject to the other provisions of this Part and the conditions of the aquaculture permit.

Inconsistency with lease

150. An aquaculture lease or a provision of an aquaculture lease does not authorise anything to be done which is contrary to this Division or the terms or conditions of an aquaculture permit relating to the leased area.

Duration of permits

151. (1) An aquaculture permit remains in force, unless otherwise provided in the permit, until it is cancelled or replaced with another permit under this Part.

(2) The permit does not have effect while it is suspended under this Part.

Conditions of permits

152. (1) An aquaculture permit is subject to:

- (a) such conditions as are prescribed by the regulations; and
- (b) such conditions as are specified in the permit or as the Minister notifies to the permit holder while the permit is in force.

(2) Without limiting subsection (1), conditions may include:

- (a) conditions regulating the cultivation of the species of fish or marine vegetation to which the permit relates; and
- (b) conditions relating to the erection of structures on the area to which the permit relates; and
- (c) conditions relating to the escape of fish, effluent or any other thing from the area to which the permit relates; and
- (d) conditions requiring the permit holder to enter into a bond or guarantee or other financial arrangement for the due performance of the holder's obligations under this Act (including for the destruction of noxious fish and the restoration of, or removal of material from, the area in which the aquaculture has been undertaken); and
- (e) conditions requiring the permit holder to maintain public liability insurance and to indemnify the State and its agents in connection with the undertaking of the aquaculture; and
- (f) conditions relating to the review of the commercial farm development plan of the permit holder.

(3) The holder of an aquaculture permit is guilty of an offence if, without lawful excuse, a condition of the permit is contravened.

Maximum penalty: In the case of a corporation, 100 penalty units or, in any other case, 50 penalty units.

(4) The Minister may, at any time by notice in writing to the holder of the permit, revoke or vary the conditions of an aquaculture permit (other than conditions prescribed by the regulations)..

(5) The regulations may make provision for or with respect to bonds, guarantees and other financial arrangements entered into under a condition of an aquaculture permit.

Holder of permit to provide information to the Minister

153. (1) The Minister may, by notice in writing served on the holder of an aquaculture permit, require the holder to give to the Minister any specified written information in connection with aquaculture under the permit.

(2) The regulations and the conditions of an aquaculture permit may also require the holder of an aquaculture permit to give the Minister periodic or other information in connection with aquaculture under the permit.

(3) It is a condition of every aquaculture permit that the holder complies with a requirement in a notice or regulation under this section.

Register of permits

154. (1) The Minister is required to keep a register of aquaculture permits for the purposes of this Part.

(2) The Minister is required to enter in the register, in relation to each permit:

- (a) the name and business address of the permit holder; and
- (b) the date on which the permit was issued; and
- (c) the class or classes (if any) of the permit; and
- (d) the address or description of the area to which the permit applies; and
- (e) the species of fish or marine vegetation authorised to be cultivated by the permit within any such area; and
- (f) the conditions of the permit imposed by the Minister; and
- (g) particulars of any suspension or cancellation of the permit; and
- (h) any other matters prescribed by the regulations or determined by the Minister.

(3) Particulars may be entered in the register by including in the register a copy of an aquaculture permit and any document that imposes conditions on the permit, or revokes or varies conditions of the permit, after the permit is issued.

(4) The register may be kept wholly or partly by means of a computer.

(5) Any person who attends the place where the register is kept during ordinary business hours is entitled to inspect the register.

(6) If the register is kept wholly or partly by means of a computer, this section is taken to be complied with by providing a computer print-out or providing access to a computer terminal that can be used to view the register.

Change in particulars to be notified

155. The holder of an aquaculture permit must, within 28 days after there is a change in the business address of the permit holder, any director

of the body corporate (if the holder is a body corporate) or any other matter prescribed by the regulations, give the Minister particulars in writing of that change.

Maximum penalty: 20 penalty units.

Annual contribution to cost of administration or research or to other industry costs

156. (1) A permit holder must, if the regulations so require, pay to the Minister an annual contribution towards any of the following costs:

- (a) the cost of administration of this Part, being a cost that is identified in the regulations as a cost directly attributable to industry;
- (b) the cost of monitoring the quality of the environment in which aquaculture is undertaken and of testing the quality of the fish or marine vegetation cultivated;
- (c) the cost of carrying out research into aquaculture;
- (d) any other costs relating to the aquaculture industry.

(2) The amount of the contribution is to be specified in or determined by the regulations. The regulations may provide for the contribution to be based on the size of the area available for aquaculture or on any other basis and for the payment of the contribution by instalments or otherwise.

(3) The payment required by this section is taken to be a condition of every aquaculture permit.

(4) A contribution payable under this section is in addition to any rental payable by the permit holder for an aquaculture lease.

(5) A contribution is payable under this section even if the aquaculture permit is suspended.

(6) The Minister is to appoint a committee of persons to advise the Minister about the level of services provided to the aquaculture industry for the purposes referred to in subsection (1) (a) and about the amount of contributions for the costs of administration directly attributable to the aquaculture industry. The Minister is to ensure that a majority of the members of such a committee are relevant representatives of the aquaculture industry.

Annual contributions to be held in trust accounts

157. (1) The Minister is to establish and operate trust accounts for annual contributions made by permit holders (except those referred to in section 156 (1) (a)).

(2) The Minister may establish separate trust accounts for the different purposes for which the contributions are made.

(3) Money in a trust account is, subject to the regulations, to be used only for the purpose for which the relevant contributions were made.

(4) The Minister is to appoint a committee of persons to advise the Minister on the amount of contributions payable into any trust account and the expenditure of money in the trust account.

(5) The Minister must not approve of any expenditure from a trust account without the concurrence of the committee appointed in respect of the account.

(6) A single committee may be appointed in respect of 2 or more trust accounts.

(7) The Minister is to ensure that a majority of the members of each committee are representatives of the aquaculture industry.

(8) A committee is not subject to the control and direction of the Minister. However, the Minister may require a committee to reconsider any decision made by it.

(9) The Minister may remove any member or all members of a committee from office.

(10) The regulations may make provision for or with respect to:

- (a) the establishment and operation of trust accounts under this section; and
- (b) the establishment, membership and procedure of committees under this section.

Overdue contribution

158. (1) If an annual contribution by a permit holder is unpaid after the due date for its payment, the amount payable is to be increased by an amount calculated at the rate of 10% per annum simple interest or, if some other rate is prescribed by the regulations, at that prescribed rate.

(2) A calculation under this section is to be made for each day that has elapsed between the date on which payment is due and the date of payment.

(3) An increase of the amount of an annual contribution under this section is taken to be part of the contribution.

Power to cancel or suspend a permit without a hearing

159. The Minister may cancel or suspend an aquaculture permit if the holder of the permit:

- (a) dies or otherwise ceases to exist; or
- (b) asks the Minister to cancel or suspend the permit.

Power to cancel or suspend a permit after a hearing

160. (1) The Minister may, by notice in writing to the holder of an aquaculture permit, cancel or suspend the permit if:

- (a) the application for the permit was false or misleading in a material particular; or
- (b) the permit holder has contravened this Part or the regulations under this Part; or
- (c) the permit holder has contravened Division 6 of Part 7 (Noxious fish) in the area to which the permit relates; or
- (d) the permit holder has contravened a condition of the permit; or
- (e) the permit holder has been convicted of stealing fish or marine vegetation; or
- (f) the permit holder is not undertaking aquaculture in accordance with the holder's current commercial farm development plan; or
- (g) the area to which the permit relates has been varied since the issue of the permit and the Minister is satisfied that an application for an aquaculture permit would have been refused under section 146 (2) if made in relation to the area (as varied); or
- (h) in the case of a permit for an area subject to an aquaculture lease—the area is not being used for the purposes for which the lease was granted; or
- (i) in the case of a permit for an area subject to an aquaculture lease—the area is being so mismanaged that the production of fish or marine vegetation in that area or any surrounding area has been prejudicially affected or that the suitability of that area or any surrounding area for aquaculture is threatened; or
- (j) the Minister is otherwise authorised by the regulations to cancel the permit.

(2) Before cancelling or suspending a permit under this section, the Minister is required to give the-permit holder an opportunity to be heard on the matter or to make written submissions on the matter.

(3) The Minister may at any time, by notice in writing to the holder of the permit, revoke a suspension under this section.

(4) Nothing in this section affects any powers of the Minister to cancel an aquaculture lease.

(5) A permit holder may appeal to the District Court against the cancellation or suspension of the holder's permit under this section. That Court may, pending the determination of the appeal, suspend the operation of the suspension or cancellation of the permit. Division 6 of Part 4 (Appeals to District Court) applies to an appeal under this subsection.

Power to declare person to be a disqualified person for the purposes of this Part

161. (1) If an aquaculture permit issued to a person who is not a corporation is cancelled otherwise than at the request of the permit holder or is suspended, the Minister may, by notice in writing, declare the person to be a disqualified person for the purposes of this Part.

(2) If an aquaculture permit issued to a corporation is cancelled otherwise than at the request of the permit holder or is suspended, the Minister may, by notice in writing, also declare the corporation or any director or other person concerned in the management of the corporation to be a disqualified person for the purposes of this Part.

(3) A notice under this section may declare a person to be a permanently disqualified person or to be a disqualified person for a specified period or until the happening of a specified contingency.

(4) The Minister may, either on the application of the person concerned or on the Minister's own initiative, vary or revoke a declaration under this section.

(5) A notice under this section takes effect when it is served on the person to whom it relates.

(6) Before making a declaration under this section, the Minister is required to give the person concerned an opportunity to be heard on the matter or to make written submissions on the matter.

(7) The person concerned may appeal to the District Court against a declaration under this section. Division 6 of Part 4 (Appeals to District Court) applies to an appeal under this subsection.

Permit area to be maintained in a tidy condition

162. (1) It is a condition of an aquaculture permit that the area to which the permit applies is, if it is subject to an aquaculture lease, to be maintained in a tidy condition.

(2) The Minister may, by notice in writing served on the holder of such a permit, require the holder, within the period specified in the notice:

- (a) to carry out such work (including the removal of posts or any other thing from the area concerned) as the Minister considers to be necessary to achieve compliance with the condition referred to in subsection (1); or
- (b) to remove from land (other than the area concerned) anything that has been left by the holder on that land or that has come from the area and become deposited on that land.

(3) A permit holder who fails to comply with such a notice is taken to have contravened a condition of the permit.

(4) If such a notice is not complied with, the Minister or an agent of the Minister may:

- (a) enter the area concerned and, with the owner's consent, the land concerned; and
- (b) carry out such work as is necessary to achieve compliance with the requirements of the notice.

(5) The Minister may sell or otherwise dispose of anything removed from the area concerned or the land concerned in accordance with subsection (4).

(6) The proceeds of such a sale are to be applied towards the costs and expenses of:

- (a) the sale; and
- (b) the disposal of anything removed but not sold; and
- (c) the carrying out of the work.

If the proceeds of sale (and of any forfeited bond or other security) are insufficient to enable those costs and expenses to be recouped, the balance can be recovered as a debt by the Minister by proceedings brought in a court of competent jurisdiction.

(7) Compensation is not payable to a permit holder in respect of anything done under this section.

Division 3—Leases of public water land for aquaculture

Grant of aquaculture lease

163. (1) Subject to this Part, the Minister may, on application or by auction, public tender or ballot, lease an area of public water land for use for aquaculture.

(2) A lease of an area may be of the whole area or may be limited to a stratum of the area.

(3) A lease must specify the species of fish or marine vegetation authorised to be cultivated within the leased area. This subsection does not authorise the use of a lease without an aquaculture permit.

(4) The regulations may prescribe or provide for the form of an aquaculture lease granted or renewed under this Part and may provide in the form for the inclusion of such additional covenants and conditions as the Minister may determine,

(5) The term of any lease granted under this section must not exceed 15 years.

(6) The Minister may lease land under this section by auction, public tender or ballot even though an application has been made for a lease of the land.

(7) If the land to which an application is made appears to the Minister to be available for lease and the Minister is satisfied that the application is consistent with any relevant aquaculture industry development plan under this Part, the Minister:

- (a) must cause to be published 'in the Gazette and in a newspaper circulating in the area in which the land is situated, a notice of receipt of the application, specifying in the notice that written objections to the granting of the lease may be lodged with the Director before the expiration of a period specified in the notice; and
- (b) must not make a decision in respect of the application to which the notice relates until the time limited for lodging objections to the granting of the lease has expired and the Minister has considered any objections that have been lodged.

The Minister is not required to comply with this subsection if the person to whom the lease is to be granted has obtained a development consent under Part 4 of the Environmental Planning and Assessment Act 1979 to carry out development on the proposed leased area for the purposes of the aquaculture concerned.

(8) The regulations may make provision for or with respect to applications for aquaculture leases or to auctions, public tenders and ballots for aquaculture leases.

Rights conferred by lease

164. (1) An aquaculture lease vests in the lessee, the lessee's executors, administrators, and assigns:

- (a) the exclusive right during the currency of the lease to cultivate within, and to take from, the leased area the species of fish or marine vegetation specified in the lease, subject to the provisions of or made under this Act and the provisions of the lease; and
 - (b) the ownership of all fish or marine vegetation specified in the lease that are within the leased area.
- (2) An aquaculture lease does not confer the right of exclusive possession of the leased area.
- (3) An aquaculture lease is subject to the public right of fishing and to any right recognised by the regulations, except as provided by subsection (1) and the other provisions of or made under this Act.
- (4) Nothing in this section authorises a person to interfere with or damage anything on the leased area.

Lease rentals

165. (1) The Minister is required to determine the rental of an aquaculture lease granted or renewed under this Division on the basis of the area of the lease.

(2) The Minister may redetermine the rental of an aquaculture lease at such periods, being not less than 1 year, as the Minister thinks fit.

(3) The amount paid in connection with an auction or a public tender for an aquaculture lease does not constitute the rental payable for the lease.

(4) The regulations may make provisions for or with respect to the rental for aquaculture leases.

(5) In particular, the regulations may prescribe a minimum rental for an aquaculture lease, either in respect of leases generally or leases of a particular class.

Overdue rental

166. (1) If the rental of an aquaculture lease remains unpaid 3 months after the date on which payment was due, the amount payable is to be increased by an amount calculated at the rate of 10% per annum simple interest or, if some other rate is prescribed by the regulations, at that prescribed rate.

(2) A calculation under this section is to be made for each day that has elapsed between the date on which payment is due and the date of payment.

(3) An increase of the rental of an aquaculture lease under this section is taken to be part of the rental.

Renewal of lease

167. (1) The Minister may, on application by the lessee, renew an aquaculture lease for a term not exceeding 15 years.

(2) The Minister may renew the lease if satisfied the area should continue to be available for aquaculture.

(3) However, a lessee is entitled to the renewal of the lease if it is the first renewal of the lease (under this Act or its predecessor) after the grant of the lease.

(4) Subject to this Part, the covenants and conditions on which a renewal of an aquaculture lease may be granted under this section are the same as the covenants and conditions on which the Minister could, at the time of the renewal, grant such a lease.

(5) The Minister is to notify a lessee, at least 90 days before the lease is due to expire, of the date of expiry. The Minister may accept an application for the renewal of a lease that is made after the date of expiry.

(6) If an application is made for the renewal of an aquaculture lease and the renewal is not granted before the end of the lease:

- (a) the lease continues in force until the renewal is granted or refused; and
- (b) the renewal may be granted even though the lease would, but for this subsection, have come to an end.

(7) The regulations may make provision for or with respect to applications for the renewal of aquaculture leases.

Preferential rights

168. (1) If a lessee duly applies for a renewal of an aquaculture lease of an area, the lessee has a preferential right to a lease of the area, as against any applicant or other person.

(2) Even though a former lessee has not duly applied for a renewal of an aquaculture lease of an area, the former lessee has a preferential right to such a lease of the area, as against any applicant or other person, if that lessee applies for an aquaculture lease of the area within 30 days after the end of the expired lease.

(3) A preferential right does not arise under this section unless the Minister is satisfied the lessee or former lessee has substantially observed and performed the covenants and conditions of the lease and is satisfied the area should continue to be available for aquaculture.

(4) Nothing in this section requires the Minister to grant or renew an aquaculture lease.

Survey of leased area

169. (1) The Minister may require as a condition of granting or renewing a lease, or of granting consent to the surrender of a part of a lease, that the lessee have a survey of the area carried out to a standard approved by the Minister.

(2) The Minister:

(a) may, by notice in writing served on the lessee of a leased area, require the lessee to have a survey of the area carried out to a standard approved by the Minister within such period as may be specified in the notice; or

(b) may, if the lessee fails to comply with the notice, arrange for a survey of the area to be carried out to such a standard at the lessee's expense.

(3) The lessee of a leased area must not obstruct a survey carried out for the purposes of subsection (2) (b).

(4) A failure to comply with a notice served under subsection (2) (a), or a contravention of subsection (3), is a breach of a condition of the aquaculture lease concerned.

(5) The cost of carrying out a survey under subsection (2) (b) is to be regarded as an additional amount of rental payable by the lessee on demand by the Minister.

(6) The Minister may enter into arrangements with representatives of the commercial aquaculture industry for the payment of the cost of carrying out surveys under this section by lessees or on their behalf.

Lessee may fence leased area in certain cases

170. (1) The Minister may, on the application of the lessee of a leased area, authorise the lessee to erect a fence on the area subject to such conditions as may be specified in the authority.

(2) The Minister must not authorise the erection of a fence unless the Minister has had regard to any interference to navigation that could be caused by the erection of the fence.

(3) If a fence is erected on a leased area otherwise than in accordance with an authority granted under this section or a condition to which such an authority is subject is contravened, the lessee:

- (a) is taken to have contravened a condition of the lease; and
- (b) is guilty of an offence.

Maximum penalty: 50 penalty units.

(4) If a fence is erected on a leased area otherwise than in accordance with an authority granted under this section or a condition to which such an authority is subject is contravened, the Minister or an agent of the Minister may:

- (a) enter the area; and
- (b) carry out such work as is necessary to remove the fence or to achieve compliance with the condition.

(5) The Minister may sell or otherwise dispose of anything removed in accordance with subsection (4). The proceeds of such a sale are to be applied towards the costs and expenses of:

- (a) the sale; and
- (b) the disposal of anything removed but not sold; and
- (c) the carrying out of the work concerned.

If the proceeds of sale (and of any forfeited bond or other security) are insufficient to enable those costs and expenses to be recouped, the balance can be recovered as a debt by the Minister by proceedings brought in a court of competent jurisdiction.

(6) Compensation is not payable to a lessee in respect of anything done under this section.

Improvements on an expired lease

171. (1) All improvements on leased areas vest in the State when the term of the lease expires or is otherwise terminated under this Part.

(2) The Minister may allow the former lessee to remove any such improvements.

(3) The Minister may, within 1 year after the termination of a lease, require the former lessee to remove any such improvements within the period notified in writing to the former lessee. The former lessee is guilty of an offence if the former lessee fails, without reasonable excuse, to do so.

Maximum penalty: 100 penalty units.

(4) If the former lessee fails to remove improvements in accordance with a notice under subsection (3), the Minister or an agent of the Minister may:

- (a) enter the area; and
- (b) carry out such work as is necessary to remove the improvements.

(5) The Minister may sell or otherwise dispose of anything removed in accordance with subsection (4). The proceeds of such a sale are to be applied towards the costs and expenses of

- (a) the sale; and
- (b) the disposal of anything removed but not sold; and
- (c) the carrying out of the work concerned.

If the proceeds of sale (and of any forfeited bond or other security) are insufficient to enable those costs and expenses to be recouped, the balance can be recovered as a debt by the Minister by proceedings brought in a court of competent jurisdiction.

(6) A lessee who has applied for a renewal of the lease of a leased area cannot be required; as a condition of the granting of the renewal, to pay for any improvements to the area.

Subletting with Minister's consent

172. (1) The lessee of a leased area may sublet the area or a part of the area, but only with the consent in writing of the Minister.

(2) The giving of such a consent may be made subject to the payment of such fee as may be prescribed by the regulations.

Transfer with Minister's consent

173. (1) The lessee of a leased area may transfer the lease, but only with the consent in writing of the Minister.

(2) The giving of such a consent may be subject to conditions and to the payment of such fee as may be prescribed by the regulations.

Surrender of lease

174. (1) The lessee of a leased area may, with the consent in writing of the Minister, surrender the lease or a part of the leased area to the Minister.

(2) The giving of such a consent may be made subject to conditions and to the payment of such fee as may be prescribed by the regulations.

(3) A surrender under this section does not operate to extinguish my debt to the Crown or Minister relating to the lease concerned, except to the extent the Minister directs.

(4) On surrender of part of the leased area, the Minister may, with the agreement of the lessee, redetermine the rental of the lease.

Minister can determine access way

175. (1) The lessee of a leased area, or the owner or occupier of any land adjoining the area, may apply in writing to the Minister for the determination of an access way over the area.

(2) On receiving such an application, the Minister must either:

- (a) determine an access way over the area concerned; or
- (b) refuse the application.

Before determining an access way, the Minister must, in the case of an application made by the owner or occupier of adjoining land, serve on the lessee notice of the application.

(3) In determining an access way, the Minister may:

- (a) specify what notice of the access way is to be given; and
- (b) impose such conditions on the lessee, and direct the lessee to carry out such work for facilitating access by such way, as the Minister considers reasonable.

(4) The Minister may refuse an application by the owner or occupier of adjoining land unless satisfactory arrangements are made for the payment by the owner or occupier of the cost of the work required to be carried out for the access way, and of the cost of compensation for the withdrawal from the lease of land for the access way.

(5) The Minister may determine an access way without an application, but only after giving notice to the lessee concerned.

(6) The Minister may vary or rescind a determination, condition or direction made, imposed or given under this section.

(7) A failure to comply with a condition imposed on, or a direction given to, a lessee under this section is taken to be a breach of a condition of the lease of the area to which the condition or direction relates.

(8) The Minister may under section 176 withdraw from an aquaculture lease any part of the leased area determined under this section to be an access way.

(9) An access way determined under this section affects land brought under the provisions of the Real Property Act 1900 only when the Registrar-General has made an appropriate recording in the folio for the land.

(10) A public authority or trustees in which a leased area is vested may exercise the functions of the Minister under this section.

(11) An access way determined under this section is not affected by any renewal or transfer of the lease.

Power to withdraw land from lease

176. (1) The Minister may, by notice published in the Gazette, withdraw from an aquaculture lease any land (whether the whole or any part of the leased area) required for a public purpose.

(2) A public purpose is any public purpose for which land may, under section 136 of the Crown Lands Act 1989, be withdrawn from a lease under that Act.

(3) On publication of the notice, the lessee becomes entitled to compensation. The provisions of the Land Acquisition (Just Terms Compensation) Act 1991 relating to the payment of compensation for land acquired by compulsory process apply (with such modifications as are prescribed by the regulations) to the payment of compensation under this section.

(4) Compensation under this section:

- (a) is payable from money to be provided by Parliament; or
- (b) if the area concerned is withdrawn at the request of a public authority—ispayable by that public authority.

(5) The Minister may, by notice published in the Gazette, revoke or modify a withdrawal under this section.

(6) A withdrawal under this section does not operate to extinguish any debt to the Crown or Minister relating to the land withdrawn, except to the extent the Minister directs.

(7) On withdrawal of land from a lease under this section, the Minister is to redetermine the rental of the lease in accordance with this Part.

(8) A provision of this section does not apply to an aquaculture lease to the extent that it is inconsistent with a special condition of the lease relating to the withdrawal of land from the lease for a public purpose.

Power of Minister to cancel leases in certain cases

177. (1) The Minister may, by notice served on the lessee under an aquaculture lease, call on the lessee to show cause why the lease should not be cancelled on any one or more of the following grounds:

- (a) the leased area is not being used for the purposes for which the lease was granted;
- (b) the leased area is so polluted that fish or marine vegetation on the area are unfit for human consumption and the pollution is likely to continue indefinitely;
- (c) the lessee has not paid any rental or other amount due under the lease and the amount has remained unpaid for at least 2 years;
- (d) the lessee is in breach of any other condition of the lease for which the lease authorises its cancellation under this section.

(2) After 1 month from the date of service of the notice the Minister may, by notice published in the Gazette, cancel the lease.

(3) Before cancelling a lease, the Minister must consider any representations made by the lessee.

(4) A lessee may appeal to the District Court against the cancellation of the lease. That Court may, pending the determination of the appeal, suspend the operation of the cancellation of the permit. Division 6 of Part 4 (Appeals to District Court) applies to an appeal under this subsection.

Areas of public water land may be excluded from leasing

178. (1) The Minister may exclude any public water land from being leased under this Part.

(2) The Minister is to publish details of any such excluded area in such manner as the Minister thinks fit.

Protection of leased areas

179. (1) A person, other than the lessee or the lessee's agents or employees, must not:

- (a) remove, or in any way injure or interfere with, any fish or marine vegetation cultivated within the leased area or any thing used for the purpose of aquaculture on a leased area, without the consent of the lessee; or

- (b) deposit anything on a leased area or dredge or dig within a leased area, except in accordance with Division 3 of Part 7 or, if that Division does not apply, by direction or authority of the lessee or the Minister.

Maximum penalty: In the case of a corporation, 100 penalty units or, in any other case, 50 penalty units.

(2) This section does not apply to the placing of any thing on a leased area for the purpose of navigation.

(3) A person who is found guilty of an offence against this section is liable to compensate the lessee for all damage that the lessee has sustained as a result of the person's unlawful act. The lessee may, by proceedings brought in a court of competent jurisdiction, recover as a debt the amount of that compensation.

(4) If the Minister fails to authorise an act referred to in subsection (1) (b) at the request of a public authority or trustees in whom the land concerned is vested, the matter may be referred to the Premier for resolution by the Minister responsible for the authority or trustees.

Leased area under Real Property Act 1900

180. When the land comprised in an aquaculture lease has been brought under the provisions of the Real Property Act 1900, any dealing with the lease must be effected in accordance with that Act.

Division 4—Diseased fish and marine vegetation

Definitions

181. In this Division:

“**declared disease**” means any disease to which this Division is applied under section 182 (Diseases declared for the purposes of this Division);

“**marine vegetation**” includes any species of aquatic plant prescribed by the regulations;

“**quarantine area**” means an area declared to be a quarantine area by an order in force under section 183 (Minister may declare quarantine area).

Diseases declared for the purposes of this Division

182. (1) The regulations may declare a disease of fish or marine vegetation to be a disease in respect of which this Division applies.

(2) A declaration may be made under this section in respect of a disease (including a pest or parasite) that kills or causes illness in fish or marine vegetation (or a particular species of fish or marine vegetation) or that kills or causes illness in people who eat the infected fish or marine vegetation.

(3) A declaration under this section may provide for different classes of declared diseases and exclude specified provisions of this Division in respect of any class of those diseases. The declaration has effect according to its tenor.

(4) In the case of an emergency, a declaration under this section may be made by the Minister by order published in the Gazette. Any such order has the same effect as a regulation and remains in force (unless sooner revoked by another order) for the period, not exceeding 6 months, specified in the order.

Minister may declare quarantine area

183. (1) The Minister may, by order, declare any area specified in the order to be a quarantine area because of the presence or suspected presence of a declared disease.

(2) An area may be declared a quarantine area if it is subject to an aquaculture permit or it is an area of water or in the immediate vicinity of an area of water.

(3) An order declaring a quarantine area is to be published in the Gazette. The order is not required to be so published if served on the owner or occupier of the area concerned.

(4) An order declaring a quarantine area may:

- (a) prohibit the taking of fish or marine vegetation or specified fish or marine vegetation in or from the quarantine area; and
- (b) in the case of an area subject to an aquaculture permit—require the holder to take such action as is specified in the order or directed by a fisheries officer (including the destruction or treatment of fish or marine vegetation cultivated or located in the area); and
- (c) contain any other provisions authorised by the regulations.

If the order is not published in the Gazette, the provisions of the order apply only to the persons on whom the order is served.

(5) A person who, without reasonable excuse, contravenes a provision of an order declaring a quarantine area is guilty of an offence.

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

(6) If the holder of an aquaculture permit fails to take any action required by an order declaring a quarantine area, a fisheries officer may enter the area to which the permit relates and take the required action.

(7) If the fisheries officer takes such action:

- (a) the holder of the aquaculture permit is not entitled to any compensation for any loss reasonably caused in taking that action; and
- (b) the Minister may recover from the holder the costs of taking that action as a debt in a court of competent jurisdiction.

Intentional or reckless communication of declared disease to live fish or marine vegetation

184. A person must not intentionally or recklessly communicate a declared disease to live fish or marine vegetation.

Maximum penalty: In the case of a corporation, 500 penalty units or, in any other case, 100 penalty units.

Sale of diseased fish or marine vegetation prohibited

185. A person must not sell any fish or marine vegetation (whether live or dead) if the person knows or has reason to suspect that it is infected with a declared disease.

Maximum penalty: In the case of a corporation, 500 penalty units or, in any other case, 100 penalty units.

Diseased fish or marine vegetation not to be deposited in New South Wales waters

186. A person must not deposit in any waters any fish or marine vegetation (whether live or dead) if the person knows or has reason to suspect that it is infected with a declared disease.

Maximum penalty: In the case of a corporation, 500 penalty units or, in any other case, 100 penalty units.

Regulations relating to diseased fish and marine vegetation

187. (1) The regulations may make provision for or with respect to eliminating or preventing the spread of declared diseases.

(2) In particular, the regulations may make provision for or with respect to:

- (a) the destruction or treatment of fish or marine vegetation that is infected or suspected of being infected with a declared disease; and

- (b) the examination, testing and treatment of fish or marine vegetation in a quarantine area; and
- (c) the notification to the Minister or a fisheries officer of the infection or suspected infection with a declared disease of fish or marine vegetation in an area subject to an aquaculture permit, pet shop, aquarium or other place.

Division 5—Miscellaneous provisions

Minister may order restoration work to be carried out in relation to illegal operations on aquaculture farm

188. (1) If a person, not being the holder of an aquaculture permit, erects structures or carries out other works on public water land for the purpose of aquaculture, the Minister may, by order in writing given to the person, require the person to remove the structures or carry out other remedial works within such period as is specified in the order.

(2) If a person, being the holder of an aquaculture permit, erects structures or carries out other works in contravention of the conditions of the permit, the Minister may, by order in writing given to the person, require the person, within such period as is specified in the order:

- (a) to remove the structures from the area concerned; or
- (b) to relocate them within that area; or
- (c) to carry out other remedial works,

(3) If a person fails to comply with an order given under this section, the Minister:

- (a) may cause the work specified in the order to be carried out; and
- (b) may, by proceedings brought in a court of competent jurisdiction, recover from the person as a debt the cost of carrying out the work.

(4) The Minister may give an order under this section whether or not any person has been charged with or convicted of an offence in respect of the matter.

When aquaculture operations can be closed

189. (1) The Minister may, by a fishing closure under Part 2, prohibit during a specified period the taking of fish or marine vegetation cultivated under an aquaculture permit from the area to which the permit applies if satisfied:

- (a) that the area is in such a condition that the taking of fish or marine vegetation from the area ought to be suspended; or

(b) that the fish or marine vegetation are, or are likely to be, unfit for human consumption.

(2) Any such fishing closure does not prevent the taking of fish or marine vegetation for any purpose authorised by the regulations or the fishing closure.

(3) This section does not limit the application of a fishing closure under Part 2 to the taking of fish or marine vegetation from an area subject to an aquaculture permit and to which the permit does not apply.

Special provisions relating to oysters on public water or other land

190. (1) All oysters on public water land, or on any area from which the taking of oysters is prohibited under this Act, and all oysters taken from any such land or area without lawful authority, are the property of the Crown.

(2) A person who, without lawful authority, takes oysters from any public water land is guilty of an offence.

Maximum penalty: 50 penalty units.

(3) A person has lawful authority to take oysters from public water land for personal consumption. However, this subsection is subject to any other prohibition or restriction imposed by or under this Act on the taking of oysters.

Regulations

191. The regulations may make provision for or with respect to the following:

- (a) the cultivation of fish or marine vegetation or the keeping of fish or marine vegetation in a confined area (whether or not it constitutes aquaculture within the meaning of this Part);
- (b) the taking of oysters and other shellfish from public water land and the protection of any such oysters and other shellfish;
- (c) the gathering or collection of marine vegetation, including the prohibition of the gathering or collection of marine vegetation for commercial purposes except under the authority of a permit;
- (d) the tagging or other identification of fish or marine vegetation cultivated under the authority of an aquaculture permit;
- (e) the marking of boundaries of areas used for aquaculture;
- (f) preventing holders of aquaculture leases from obstructing access to areas adjoining their leased area;

- (g) mortgages, charges and other interests with respect to aquaculture leases;
- (h) the consolidation of leased areas;
- (i) the protection of the interests of holders of aquaculture permits;
- (j) the method of determining priority among applications for aquaculture leases in cases not specifically provided for by this Part;
- (k) the fixing, levying and collection of rents, charges and fees for the purposes of this Part;
- (l) the contents and review of commercial farm development plans;
- (m) the method of determining whether or not aquaculture is undertaken or able to be undertaken on a commercial basis, for example by reference to production levels or the size of the area available for aquaculture;
- (n) any other matter relating to the management or development of aquaculture.

PART 7—PROTECTION OF AQUATIC HABITATS

Division 1—Habitat protection plans

Preparation of habitat protection plans

192. (1) The Minister may, in accordance with this section, determine plans for the protection of any habitat of fish (“habitat protection plans”), whether the habitat is critical for the survival of the species or required to maintain harvestable populations of the species.

(2) A habitat protection plan:

- (a) may relate to habitat that is critical for spawning, shelter or other reason; and
- (b) may apply generally or to particular areas or fish; and
- (c) is to describe the importance of particular habitat features to which it applies; and
- (d) may set out practical methods for the protection of any such habitat features; and
- (e) may contain any other matter concerning the protection of the habitat of fish that the Minister considers appropriate.

(3) The Minister may amend or replace a habitat protection plan.

(4) A habitat protection plan (including any amendment or new plan) is to be published in the Gazette.

(5) Before the Minister determines a habitat protection plan (including any amendment or new plan), the Minister is required to give the public an opportunity to make submissions on the proposed plan (or proposed amendment or new plan) and to take any submission that is duly made into account.

Implementation of habitat protection plans

193. (1) The Minister is to have regard to any relevant habitat protection plan in the exercise of the Minister's functions under this Part.

(2) Public authorities are to have regard to any habitat protection plan that is relevant to the exercise of their functions.

(3) A public authority is to notify the Minister of any function it proposes to exercise that is inconsistent with a habitat protection plan. The Minister may refer any dispute to the Minister responsible for the public authority. If the dispute cannot be resolved by those Ministers, it is to be referred to the Premier for resolution.

(4) Any such resolution of a dispute is to be given effect to despite anything to the contrary in this section.

(5) The exercise of a function is not invalid merely because it is inconsistent with a habitat protection plan.

(6) This section:

(a) does not render the exercise of a function invalid merely because it is inconsistent with a habitat protection plan; and

(b) does not require or authorise action that is inconsistent with any statutory or other legal obligation of a Minister or a public authority.

Division 2—Aquatic reserves

Declaration of aquatic reserves

194. (1) The Minister may, by notice published in the Gazette, declare an area specified in the notice to be an aquatic reserve.

(2) The purpose of declaring an area to be an aquatic reserve is to enhance the protection of fish and fish habitat in the area concerned.

(3) Land that is the subject of an aquaculture lease may be declared to be an aquatic reserve. However, nothing in this Division prevents the lessee from undertaking aquaculture in accordance with this Act in the area concerned during the currency of the lease.

(4) Land that is dedicated for a public purpose may be declared to be an aquatic reserve. However, nothing in this Division prevents the land from being used for the purpose for which it is dedicated or permits the land to be used contrary to the provisions of any Act or statutory instrument applying to the land.

Consent required for declarations

195. (1) The Minister is required to obtain the appropriate consent before declaring an area to be an aquatic reserve.

(2) The appropriate consent for an area (other than an area of public water land) is the consent of the owner of the land concerned.

(3) The appropriate consent for an area of public water land is:

(a) in the case of public water land that is within a dam or reservoir used primarily for domestic water supply or within an area designated by or under an Act as a catchment area in respect of such a dam or reservoir—the consent of:

(i) the authority controlling the dam or reservoir; and

(ii) the Ministers respectively administering the Public Health Act 1991 and the Public Works Act 1912; and

(b) in the case of public water land that is Crown land—the consent of the Minister administering the Crown Lands Act 1989; and

(c) in the case of public water land (other than that referred to in paragraph (a)) that is vested in a public authority or in trustees for a public purpose—the consent of that authority or those trustees.

(4) This section does not apply to an area vested in the Minister or to an area subject to an aquaculture lease.

Revocation or variation of declaration

196. (1) The Minister may, subject to this section, revoke or vary the declaration of an aquatic reserve by notice published in the Gazette.

(2) Before a declaration is revoked or varied, the Minister must cause notice of the proposed revocation or variation to be tabled in both Houses of Parliament.

(3) Either House of Parliament may pass a resolution disallowing the proposed revocation or variation at any time after notice of the proposal is tabled in that House, but only if notice of the resolution was given within 15 sitting days of that House after notice of the proposal was so tabled.

(4) If notice of a resolution to disallow a proposed revocation or variation is duly given, the Minister may not revoke or vary the declaration unless the resolution is not passed or it is withdrawn or lapses.

Regulations relating to aquatic reserves

197. The regulations may:

- (a) prohibit or regulate the taking of fish or marine vegetation from aquatic reserves; and
- (b) provide for the management, protection and development of aquatic reserves; and
- (c) classify areas within an aquatic reserve for different uses (such as recreational uses or as a sanctuary).

Division 3—Dredging and reclamation

Application of Division

198. This Division applies to and in respect of all dredging and reclamation work carried out in any waters, other than dredging or reclamation work carried out:

- (a) for the purpose of removing material under a law relating to mining; or
- (b) with the approval of the Minister administering the Public Works Act 1912, for the restoration or maintenance of a navigation channel; or
- (c) on land vested in or under the control of the Maritime Services Board, if the work is:
 - (i) for the passage or accommodation of seagoing vessels; or
 - (ii) for the removal of accumulated silt from a stormwater channel.

Circumstances in which a public authority (other than local authority) may carry out dredging or reclamation

199. (1) A public authority (other than a local government authority) must, before it carries out or authorises the carrying out of dredging or reclamation work in any waters:

- (a) give the Minister written notice of the proposed work; and

(b) consider any matters concerning the proposed work that are raised by the Minister within 28 days after the giving of the notice (or such other period as is agreed between the Minister and the public authority).

(2) Any such public authority is to notify the Minister of any dredging or reclamation work that it proposes to carry out or authorise despite any matter raised by the Minister. The Minister may, within 14 days after being so notified, refer any dispute to the Minister responsible for the public authority. If the dispute cannot be resolved by those Ministers, it is to be referred to the Premier for resolution.

(3) In this section, “**public authority**” includes the Minister administering the Crown Lands Act 1989,

Circumstances in which a local government authority may carry out dredging or reclamation

200. (1) A local government authority must not carry out dredging or reclamation work in any waters except under the authority of a permit issued by the Minister.

Maximum penalty: 500 penalty units.

(2) This section does not apply to:

- (a) work authorised under the Crown Lands Act 1989; or
- (b) work authorised by a relevant public authority (other than a local government authority).

(3) This section has effect irrespective of any other Act to the contrary.

Circumstances in which a person may carry out dredging or reclamation

201. (1) A person must not carry out dredging or reclamation work in any waters except under the authority of a permit issued by the Minister.

Maximum penalty: In the case of a corporation, 500 penalty units or, in any other case, 100 penalty units.

(2) This section does not apply to:

- (a) work authorised under the Crown Lands Act 1989; or
- (b) work carried out, or authorised, by a relevant public authority (other than a local government authority).

Appeal to the Land and Environment Court

202. A person (including a local government authority) who is dissatisfied with a decision of the Minister under this Division concerning a dredging or reclamation work may appeal to the Land and Environment Court against the decision.

Minister may order carrying out of certain work

203. (1) If dredging or reclamation work is carried out in contravention of section 200 or 201, the Minister may, by order in writing given to the local government authority or person concerned, require that authority or person to carry out, within a period specified in the order, such remedial work as the Minister considers necessary to rectify the damage caused by the dredging or reclamation work to fisheries and fish habitats.

(2) A court that convicts a person of an offence against section 200 or 201 may also make an order of the kind referred to in subsection (1).

(3) If the requirements of an order under this section are not complied with within the period specified in it, the Minister:

- (a) may cause the work specified in the order to be carried out; and
- (b) may, by proceedings brought in a court of competent jurisdiction, recover as a debt from the local government authority or person to whom the order was given the cost of complying with those requirements.

(4) Action may be taken against a local government authority or person in respect of a dredging or reclamation work under this section regardless of whether the local government authority or person has been charged with having committed an offence against this Division in relation to the same work.

Division 4—Protection of mangroves and certain other marine vegetation**Marine vegetation to which Division applies**

204. This Division applies to:

- (a) mangroves; and
- (b) sea grasses; and
- (c) any other marine vegetation prescribed by the regulations.

Permit required to cut etc. marine vegetation

205. A person must not cut, remove, damage or destroy marine vegetation on public water land or an aquaculture lease, or on the foreshore of any such land or lease, except under the authority of a permit issued by the Minister under this Part or of an aquaculture permit.

Maximum penalty: In the case of a corporation, 500 penalty units or, in any other case, 100 penalty units.

Division 5—Protection of spawning of salmon, trout and certain other fish**Protection of spawning areas of salmon, trout and certain other fish**

206. (1) A person who damages gravel beds in any waters knowing that it is a place where salmon or trout spawn or are likely to spawn is guilty of an offence.

Maximum penalty: 100 penalty units.

(2) The regulations may make other provision for or with respect to preventing damage to any place where fish of any species spawn or are likely to spawn.

Prohibition on taking OF disturbing salmon, trout and certain other fish while spawning

207. (1) This section applies to salmon and trout and to any other fish of a species prescribed by the regulations.

(2) A person who wilfully takes or disturbs fish to which this section applies knowing that they are spawning or are on or near their spawning beds is guilty of an offence.

Maximum penalty: 50 penalty units.

Defence for authorised activities

208. It is a defence to any prosecution for an offence against this Division if the defendant proves that the act constituting the alleged offence was authorised by an environmental planning instrument (or a development consent or other approval) under the Environmental Planning and Assessment Act 1979.

Division 6—Noxious fish**Declaration of noxious fish**

209. (1) The regulations may declare fish of a specified species to be noxious fish for the purposes of this Act.

(2) The regulations may limit any such declaration to fish located in any specified waters.

(3) A declaration under this section may provide for different classes of noxious fish and exclude specified provisions of this Division in respect of any class of those fish. The declaration has effect according to its tenor.

(4) In the case of an emergency, a declaration under this section may be made by the Minister by order published in the Gazette. Any such order has the same effect as a regulation and remains in force (unless sooner revoked by another order) for the period, not exceeding 6 months, specified in the order.

Sale of noxious fish prohibited

210. (1) A person who sells live noxious fish otherwise than under the authority of a permit issued by the Minister is guilty of an offence.

Maximum penalty: In the case of a corporation, 100 penalty units or, in any other case, 50 penalty units.

(2) This section applies even if the fish are only noxious fish for the purposes of this Division when in particular waters.

Possession of noxious fish prohibited

211. (1) A person who has possession of live noxious fish otherwise than under the authority of a permit issued by the Minister under this Part or an aquaculture permit is guilty of an offence.

Maximum penalty: In the case of a corporation, 100 penalty units or, in any other case, 50 penalty units.

(2) It is a defence to a prosecution for an offence under this section if the person charged satisfies the court that the person neither introduced the noxious fish into the waters concerned nor maintained them in those waters.

(3) This section does not apply if the fish are in waters in which they are not noxious fish for the purposes of this Division.

Use of aquaculture permit to control noxious fish

212. Conditions may be included in an aquaculture permit for the purpose of the destruction or control of noxious fish.

Destruction of noxious fish

213. (1) A fisheries officer may seize and destroy any live noxious fish.

(2) A fisheries officer may take possession of any fish the officer suspects are noxious fish in order to determine whether they are noxious fish.

(3) The Minister may, by notice in writing given to the owner or occupier of premises on which noxious fish are located, require the owner or occupier to take such measures as are specified in the notice to destroy the fish within a specified period.

(4) If the owner or occupier to whom such a notice is given fails within the period specified in the notice to comply with any of the requirements of the notice, a fisheries officer may:

- (a) enter the premises where live noxious fish are believed to be located; and
- (b) take such measures to destroy those fish as the fisheries officer considers appropriate.

This subsection does not authorise a fisheries officer to enter any premises used for residential purposes.

(5) Compensation is not payable for the seizure or destruction of live noxious fish under this section or for the destruction of other live fish if, in destroying the noxious fish, the destruction of the other fish could not reasonably be avoided.

(6) The Minister may, by proceedings brought in a court of competent jurisdiction, recover as a debt from an owner or occupier to whom a notice has been given under this section the costs incurred in taking the measures referred to in subsection (4).

Search warrant

214. (1) A fisheries officer may apply to an authorised justice for a search warrant if the fisheries officer believes on reasonable grounds that live noxious fish are located on any specified premises.

(2) An authorised justice to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a fisheries officer named in the warrant:

- (a) to enter the premises; and
- (b) to search the premises for, and to seize and destroy, any noxious fish on the premises.

(3) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) In this section, “**authorised justice**” has the same meaning it has in the Search Warrants Act 1985.

Division 7—Release or importation of fish

Purpose of Division

215. The purpose of this Division is to prevent the spread of diseases in fish and to prevent any adverse affect on existing fish and fish habitats by introduced species of fish.

Releasing live fish into waters prohibited

216. (1) A person must not release into any waters any live fish except under the authority of a permit issued by the Minister or an aquaculture permit.

Maximum penalty: In the case of a corporation, 100 penalty units or, in any other case, 50 penalty units.

(2) This section does not apply to the immediate return of fish to waters from which they were taken.

(3) This section applies only to the release of fish into the sea, into a river, creek or other naturally flowing stream of water or into a lake.

(4) In this section, “**release**” a fish, includes depositing them or permitting them to escape.

Importation of live fish

217. (1) A person must not bring into New South Wales live fish of a species not taken from New South Wales waters except under the authority of a permit issued by the Minister.

Maximum penalty: In the case of a corporation, 100 penalty units or, in any other case, 50 penalty units.

(2) A person who sells or buys or has possession of fish knowing that the fish has been brought into New South Wales in contravention of this section is guilty of an offence.

Maximum penalty: In the case of a corporation, 100 penalty units or, in any other case, 50 penalty units.

Division 8—Miscellaneous provisions

Fishways to be provided in the construction of dams and weirs

218. (1) The Minister may, by order in writing, require a person (other than a public authority) who constructs, alters or modifies a dam, weir or reservoir on a waterway to carry out, within the period specified in the order, such works as may be so specified to enable fish to pass through or over the dam, weir or reservoir.

(2) The Minister may also, by order in writing, require a person responsible for the management or control of a dam, weir or reservoir to carry out repairs to a fishway or fish by-pass.

(3) A person who fails to comply with an order under this section is guilty of an offence.

Maximum penalty: 100 penalty units.

(4) If a person fails to carry out the work specified in an order under this section within the period so specified, the Minister:

- (a) may cause the work to be carried out; and
- (b) may, by proceedings brought in a court of competent jurisdiction, recover from the person as a debt the cost of carrying out the work.

(5) A public authority that proposes to construct, alter or modify a dam, weir or reservoir on a waterway (or to approve of any such construction, alteration or modification):

- (a) must notify the Minister of the proposal; and
- (b) must, if the Minister so requests, include as part of the works for the dam, weir or reservoir, or for its alteration or modification, a suitable fishway or fish by-pass.

(6) In this section, “**waterway**” means a river, creek or other naturally flowing stream of water.

Passage of fish not to be blocked

219. (1) A person who, except as permitted by or under this or any other Act, sets a net, netting or other material or otherwise creates an obstruction:

- (a) across or within a bay, inlet, river or creek; or
- (b) across or around a flat,

so that:

- (c) fish will or could be blocked and left stranded; or
- (d) immature fish will or could be destroyed; or
- (e) the free passage of fish will or could be obstructed,

is guilty of an offence.

Maximum penalty: 100 penalty units.

(2) A court convicting a person of an offence under this section may order the person to remove, within a specified period, the obstruction involved in the commission of the offence.

(3) If such an order is not complied with within the specified period, the Minister:

- (a) may cause the obstruction concerned to be removed; and
- (b) may, by proceedings brought in a court of competent jurisdiction, recover the cost of removal as a debt from the person against whom the order was made.

(4) An order made by a court under section 75B of the Justices Act 1902 or section 556A of the Crimes Act 1900 in any proceedings for an offence under this section is taken, for the purposes of this section, to be a conviction for the offence.

Provisions relating to permits under this Part

220. (1) A permit under this Part:

- (a) is subject to such conditions as are prescribed by the regulations or specified in the permit; and
- (b) remains in force for such period as is specified in the permit; and may be cancelled or suspended by the Minister at any time by notice given to the permit holder.

(2) The Minister may from time to time, by notice given to the permit holder, vary the conditions of a permit.

(3) The regulations may make provision for or with respect to permits under this Part. In particular, the regulations may prescribe the fee payable for the issue of a permit.

PART 8—ADMINISTRATION**Division 1—The Minister and Director****Minister and Director to administer Act in accordance with its objects**

221. In the administration of this Act, the Minister and the Director are to give effect to the objects of this Act.

Fisheries Administration Ministerial Corporation

222. (1) There is constituted by this section a corporation with the corporate name of the Fisheries Administration Ministerial Corporation for the purpose of the Minister exercising the functions conferred under the following sections:

- (a) section 223 (Minister may acquire land);
- (b) section 224 (Acquisition of land for purposes of a future lease grant);
- (c) section 225 (Minister may carry out or assist research);
- (d) section 226 (Minister may accept gifts etc.).

(2) The Fisheries Administration Ministerial Corporation has such other functions as are conferred by or under this or any other Act.

(3) The affairs of the Fisheries Administration Ministerial Corporation are to be managed by the Minister.

(4) Any act, matter or thing done in the name of, or on behalf of, the Fisheries Administration Ministerial Corporation by the Minister, or with the authority of the Minister, is taken to have been done by that Corporation.

Minister may acquire land

223. (1) The Minister may, for the purposes of this Act, acquire land (including an interest in land) by agreement or compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

(2) The Minister may not give a proposed acquisition notice under the Land Acquisition (Just Terms Compensation) Act 1991 in respect of public water land without the appropriate consent.

- (3) For the purposes of subsection (2), the appropriate consent is:
- (a) in relation to public water land that is within a dam or reservoir used primarily for domestic water supply or within an area

designated by or under an Act as a catchment area in respect of such a dam or reservoir—the consent of:

- (i) the authority controlling the dam or reservoir; and
 - (ii) the Ministers respectively administering the Public Health Act 1991 and the Public Works Act 1912; and
- (b) in relation to public water land that is Crown land—the consent of the Minister administering the Crown Lands Act 1989; and
- (c) in relation to public water land (other than that referred to in paragraph (a)) that is vested in a public authority or in trustees for a public purpose—the consent of that authority or those trustees.

(4) For the purposes of the Public Works Act 1912, any such acquisition of land is taken to be for an authorised work, and the Minister is, in relation to that authorised work, taken to be the Constructing Authority.

(5) Sections 34, 35, 36 and 37 of the Public Works Act 1912 do not apply in respect of works constructed under this Act.

Acquisition of land for purposes of a future lease grant

224. (1) The Minister may also, on behalf of the Crown, acquire land (including an interest in land) for the purposes of a future lease grant by agreement or compulsory process in accordance with the Land Acquisition (Just Terms Compensation) Act 1991.

(2) An acquisition for a future lease grant is an acquisition to enable the grant of an aquaculture lease.

(3) In the case of an acquisition of public water land that is not vested in the Minister, the Minister must first obtain the appropriate consent referred to in section 223.

(4) On the publication in the Gazette of an acquisition notice for a purpose that is described as an acquisition for a future lease grant, the land described in the notice:

- (a) if Crown land, remains Crown land; or
- (b) if held by trustees for public recreation or for any other public purpose, vests in the Minister but subject to the trusts on which it was held immediately before that publication.

(5) Nothing in this section is to be taken to mean that the Minister cannot exercise functions in relation to land under this Act unless the Minister first compulsorily acquires the land concerned.

(6) Section 223 (4) and (5) apply to an acquisition under this section.

Minister may carry out or assist research

225. The Minister may undertake research for the purposes of this Act and, in particular, may:

- (a) establish and maintain, or assist in establishing or maintaining, scientific stations at which the research may be undertaken; and
- (b) carry out, or assist in the carrying out of, investigations into any biological or other problem associated with fisheries; and
- (c) carry out, or assist in the carrying out of, investigations into aquaculture.

Minister may accept gifts etc.

226. (1) The Minister has power to acquire by gift, devise or bequest, any property for the purposes of this Act.

(2) The Minister may agree to the condition to which any such gift, devise or bequest is subject.

(3) The rule of law relating to perpetuities does not apply to any condition to which the Minister has agreed under this section.

(4) Any property acquired under this section is, to the extent to which it has not been applied in conformity with any such gift, devise or bequest, to pass to and devolve on the successors in office of the Minister.

(5) If the Minister has agreed to the condition of any such gift, devise or bequest, that condition binds the property in the hands of any successor in office of the Minister in whom the property may be vested.

Delegation by Minister

227. The Minister may delegate to the Director any function of the Minister under this Act, other than this power of delegation.

Delegation by Director

228. (1) The Director may delegate to any authorised person any function of the Director under this Act, other than this power of delegation.

(2) The Director may subdelegate to any authorised person any function delegated to the Director by the Minister if the Director is authorised to do so by the Minister.

(3) In this section, “**authorised person**” means a public servant, or any person authorised by the regulations.

**Division 2—NSW Commercial Fishing Advisory Council and
CFAC Regional Advisory Committees**

Constitution of the NSW Commercial Fishing Advisory Council

229. There is constituted by this Act a corporation with the corporate name of the New South Wales Commercial Fishing Advisory Council (“CFAC”).

Membership and procedure of CFAC

230. (1) CFAC is, subject to the regulations, to consist of such number of members as the Minister determines.

(2) The members of CFAC are:

- (a) a chairperson appointed by the Minister; and
- (b) regional members, with 2 members representing each of the regions prescribed by the regulations; and
- (c) industry sector members, with 1 member representing each of the sectors of the fishing industry prescribed by the regulations.

(3) A regional member is to be appointed by the elected members of the CFAC Regional Advisory Committee for the region (whether or not from their number) for the period specified in the regulations. A regional member must hold a current commercial fishing licence and have such other qualifications (if any) as are prescribed by the regulations.

(4) An industry sector member:

- (a) is to be elected in accordance with the regulations to represent the relevant sector of the fishing industry; and
- (b) is to be elected by persons holding current commercial fishing licences and having the qualifications for the relevant sector of the fishing industry as are prescribed by the regulations.

An industry sector member must hold a current commercial fishing licence and have such other qualifications (if any) for the relevant sector of the fishing industry as are prescribed by the regulations.

(5) The Director is entitled to attend and speak at meetings of CFAC, but is not entitled to vote at any such meeting.

(6) Schedule 4 has effect with respect to the members and procedure of CFAC.

Functions of CFAC

231. (1) The functions of CFAC are:

- (a) to act as a liaison body between the Minister and commercial fishers; and
- (b) to advise the Minister on matters referred to it by the Minister concerning commercial fishing; and
- (c) to advise the Minister on other matters relating to commercial fishing as it thinks fit.

(2) CFAC must provide the Minister with such minutes, reports and statements of account arising out of CFAC's activities as the Minister may require.

(3) CFAC has such other functions as are conferred or imposed on it by or under this Act.

Powers of CFAC

232. CFAC may:

- (a) appoint such staff as CFAC considers necessary to carry out its functions; and
- (b) pay any expenses and charges, and perform any obligations, that it has incurred or undertaken in the exercise of its functions; and
- (c) pay any expenses and charges, and perform any obligations, of a type specified in guidelines issued by the Minister, that a CFAC Regional Advisory Committee or a Management Advisory Committee for a fishery has incurred or undertaken.

CFAC Regional Advisory Committees

233. (1) There is to be a CFAC Regional Advisory Committee for each region referred to in section 230 (2) (b).

(2) Each CFAC Regional Advisory Committee is to consist of 10 members (or such other number as is prescribed by the regulations) elected in accordance with the regulations by persons holding current commercial fishing licences and having the qualifications prescribed by the regulations.

(3) A member must hold a current commercial fishing licence and hold such other qualifications (if any) as are prescribed by the regulations.

(4) Schedule 5 has effect with respect to the members and procedure of a CFAC Regional Advisory Committee.

Functions of CFAC Regional Advisory Committees

234. The functions of a CFAC Regional Advisory Committee are:

- (a) to provide a forum for discussion of regional fisheries issues; and
- (b) to appoint the representatives of the region on CFAC; and
- (c) to provide direction and advice to the persons representing the region on CFAC.

Funds of CFAC

235. (1) CFAC is required to establish an account to be known as the “New South Wales Commercial Fishing Advisory Council Account”.

(2) The funds of CFAC are to be paid to the credit of the account and are to consist of:

- (a) any money appropriated by Parliament for the purposes of CFAC; and
- (b) all annual contributions received under section 237; and
- (c) all other money received from any source by CFAC.

(3) The funds of CFAC are to be applied only:

- (a) in payment of the expenses and charges or in discharge of the obligations incurred or undertaken by CFAC in the exercise of its functions; and
- (b) in payment of the expenses and charges or in discharge of the obligations, of a type specified in guidelines issued by the Minister, incurred or undertaken by a CFAC Regional Advisory Committee; and
- (c) in payment of allowances (if any) payable to members of CFAC or a CFAC Regional Advisory Committee or to members of Management Advisory Committees or other committees appointed by CFAC.

(4) The funds in the account may be kept with one or more financial institutions.

(5) The account does not form part of the Consolidated Fund.

Investment

236. CFAC may invest its funds:

- (a) in such manner as may be authorised by the Public Authorities (Financial Arrangements) Act 1987; or

- (b) if that Act does not confer power to invest funds held by CFAC:
- (i) in any manner authorised for the investment of trust funds; and
 - (ii) in any other manner approved by the Minister with the concurrence of the Treasurer.

Annual contributions towards CFAC's costs

237. (1) The regulations may prescribe an annual or other periodic contribution to the funds of CFAC by commercial fishers, shareholders in share management fisheries and members of the crew of licensed fishing boats.

(2) The regulations may provide that a fishing authority is not to be issued to a person or renewed unless the relevant contribution of the person has been paid, or may provide for other means of recovery of any relevant contribution.

Division 3—NSW Recreational Fishing Advisory Council

Establishment of NSW Recreational Fishing Advisory Council

238. (1) The Minister may establish a New South Wales Recreational Fishing Advisory Council (“**RFAC**”).

(2) The Minister is to appoint the members of RFAC in accordance with the regulations.

(3) The members of RFAC are to be appointed by the Minister from organisations specified in the regulations. The regulations may provide for the appointment of members from panels of persons nominated by each such organisation.

(4) The Minister is to appoint one of the members to be the chairperson of RFAC.

(5) Schedule 6 has effect with respect to the members and procedure of RFAC.

Functions of RFAC

239. (1) The principal functions of RFAC are:

- (a) to act as a liaison body between the Minister and recreational fishers; and
- (b) to advise the Minister on matters referred to it by the Minister concerning recreational fishing; and

(c) to advise the Minister on other matters relating to recreational fishing as it thinks fit.

(2) RFAC may apply any money appropriated by Parliament for its purposes or received by it from any other source in the payment of the expenses or charges or in discharge of the obligations incurred or undertaken by RFAC in the exercise of its functions.

(3) RFAC is required to prepare such minutes, reports and statements of account relating to RFAC's affairs and activities as the Minister requires.

(4) RFAC has such other functions as are conferred or imposed on it by or under this Act.

PART 9—ENFORCEMENT

Division 1—Preliminary

Definitions

240. (1) In this Part:

“**boat**” includes any trailer used to transport the boat;

“**fisheries offence**” means an offence against this Act or the regulations, and includes any such offence that there are reasonable grounds for believing has been, or is to be, committed;

“**fishing authority**” means any licence, permit, share certificate, certificate of registration or other authority relating to fishing activities or receiving fish issued or given under this Act.

(2) For the purposes of this Part, a thing is **connected with a fisheries offence** if it is:

- (a) a thing with respect to which the offence has been committed; or
- (b) a thing that will afford evidence of the commission of the offence; or
- (c) a thing that was used, or is intended to be used, for the purpose of committing the offence.

Engaging in commercial fishing activities

241. (1) In this Part, “**commercial fishing activities**” means fishing activities for commercial purposes.

(2) For the purposes of this Part, a person is presumed to be engaged in commercial fishing activities (unless the person proves the contrary):

- (a) if the person is in any waters on a licensed fishing boat; or

- (b) if the person is in possession of a quantity of fish in any particular circumstances that exceed the quantity of fish that a person who is not a commercial fisher is entitled to be in possession of in similar circumstances; or
- (c) if the person is in possession in any particular circumstances of fishing gear or other equipment (or any quantity of fishing gear or other equipment) that can be lawfully used only by a commercial fisher in any circumstances or in similar circumstances; or
- (d) in any other case provided by the regulations.

Power of seizure

242. (1) A power conferred by this Part to search for a thing includes a power to examine or inspect the thing and, in the case of a record, a power to make a copy of the record.

(2) A power conferred by this Part to seize a thing includes:

- (a) a power to remove the thing from the place where it is found; and
- (b) a power to guard the thing in or on that place or to secure the thing from interference.

Division 2—Appointment of fisheries officers**Appointment of fisheries officers by Minister**

243. (1) The Minister may appoint any of the following fisheries officers for the purposes of this Act:

- (a) a statutory officer;
- (b) a public servant;
- (c) a person employed by a public or local authority;
- (d) a person belonging to a class of persons prescribed by the regulations.

(2) The Minister may, in and by the instrument of the officer's authority under this Division, limit the functions that a fisheries officer may exercise under this Act (including limiting the purposes for which or the area in which those functions may be exercised).

(3) A reference in this Act or in an instrument under this Act to a fisheries officer is to be construed subject to any such limitation.

(4) The Minister may, at any time, revoke an appointment of a fisheries officer or revoke or vary any limitation of the functions of a fisheries officer.

Police officers to be fisheries officers

244. A police officer has the functions of a fisheries officer and is taken to be such an officer for the purposes of this Act.

Fisheries officers to have instruments of authority

245. (1) The Minister is to issue an instrument of authority to each fisheries officer (other than a police officer).

(2) The instrument of authority must:

- (a)** state the name of the person to whom it is issued and the fact that the person is a fisheries officer under this Act; and
- (b)** contain a statement of any limitation on the person's functions.

(3) In the case of a fisheries officer whose functions are not limited, the instrument of authority may take the form of a badge with an identifying number instead of the name of the officer.

Production of instruments of authority

246. (1) A fisheries officer must, on demand by a person in relation to whom the officer is exercising or proposing to exercise functions under this Act, produce his or her instrument of authority for inspection by that person.

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

(3) This section does not apply to a fisheries officer who is a police officer or to the exercise of a function in pursuance of a search warrant.

Obstructing, impersonating etc. fisheries officers

247. (1) A person who, without reasonable excuse, resists or obstructs a fisheries officer in the exercise of the officer's functions under this Act is guilty of an offence.

(2) A person who assaults, abuses or threatens a fisheries officer, or who encourages another person to do so, is guilty of an offence.

(3) A person who impersonates a fisheries officer is guilty of an offence.

Maximum penalty: 200 penalty units or imprisonment for 3 months, or both.

Division 3—Powers of entry, search etc. of fisheries officers**Power to board and search boats**

248. (1) A fisheries officer may:

- (a) stop and detain a boat; and
- (b) board and search the boat for fish, fishing gear or any record relating to the fishing activities of the boat; and
- (c) break open and search any hold or container on the boat that the officer has reason to believe contains fish, fishing gear or any such record.

(2) A fisheries officer may require the master of a boat to assist the fisheries officer to board the boat.

(3) A fisheries officer may require the master of a boat connected with a fisheries offence to take the boat to a specified place in New South Wales or at sea and to remain in control of the boat at that place until a fisheries officer allows the boat to leave the place.

(4) A person who, without reasonable excuse, fails to comply with a requirement of a fisheries officer made under this section is guilty of an offence.

Maximum penalty: 50 penalty units.

Power to require gear to be removed from water

249. (1) A fisheries officer may require the master of a boat to remove from the water any fishing gear that is being used by a person on board the boat.

(2) A fisheries officer may require a person to remove from the water any fishing gear that is being used by the person.

(3) A person who, without reasonable excuse, fails to comply with a requirement of a fisheries officer made under this section is guilty of an offence.

Maximum penalty: 50 penalty units.

Power to enter and search premises

250. (1) A fisheries officer who has reason to believe that there is in any premises anything connected with a fisheries offence may:

- (a) enter the premises; and
- (b) search the premises for any such thing; and

(c) break open and search any container in the premises that the officer has reason to believe contains any such thing.

(2) A fisheries officer may enter any premises that the officer has reason to believe are commercial premises for the purpose of ascertaining whether a person has contravened or is contravening this Act or the regulations and may:

(a) search the premises for fish, fishing gear or records relating to fishing activities or to the receipt, possession or disposal of fish; and

(b) break open and search any container in the premises that the officer has reason to believe contains fish, fishing gear or any such record.

(c) Entry into premises under this section may only be made at a reasonable time in the daytime or at any hour when work is carried on or is usually carried on in the premises.

(4) The Director or a fisheries officer is to give the occupier of premises reasonable notice of an intention to enter the premises under this section unless:

(a) the entry is made with the consent of the occupier; or

(b) the entry is made to a part of the premises open to the public; or

(c) the entry is required urgently; or

(d) the giving of notice would defeat the purpose for which it is intended to exercise the power of entry.

(5) Reasonable force may be used for the purpose of gaining entry to premises under this section but only if authorised by the Director or in cases of emergency. The authority of the Director must be in writing and given in respect of the particular entry concerned.

(6) The Director is to give written notice of the use of force to enter those premises to such persons as appear to the Director to be appropriate in the circumstances.

(7) In this section, “**commercial premises**” means any premises occupied by the holder of a fishing authority, or by a person who should be the holder of an appropriate fishing authority, or any market or premises in which fish are sold or any other premises in which any commercial activity is conducted relating to fish.

Power to detain and search vehicles

251. (1) A fisheries officer who has reason to believe that there is in a vehicle anything connected with a fisheries offence may:

(a) stop and detain the vehicle; and

- (b) enter and search the vehicle; and
- (c) break open and search any container in the vehicle that the officer has reason to believe contains any such thing.

(2) A fisheries officer may require the person in control of the vehicle to take the vehicle to a specified place for the purpose of any such search if it is not reasonably practicable to carry out the search where the vehicle is stopped. A person who does not comply with any such requirement is guilty of an offence.

Maximum penalty: 50 penalty units.

Entry into waters, and along banks etc.

252. A fisheries officer may, at any time, enter into and pass along (with a boat or otherwise) any waters or the banks or borders of any waters or within a reasonable distance of high water mark on land adjoining any waters.

Entry into and examination of aquaculture farms

253. A fisheries officer may, at any time of the day, enter any area the subject of an aquaculture permit and examine the area and the aquaculture undertaken in the area.

Entry into residential premises

254. This Part does not authorise entry into any part of premises that is being used for residential purposes except with the consent of the occupier or under the authority of a search warrant.

Power to examine fishing gear or other equipment

255. A fisheries officer may examine any fishing gear or other equipment that the officer finds anywhere if the officer has reason to believe that the gear or equipment is being, has been or will be used for fishing in waters to which this Act applies.

Production of records relating to commercial fishing activities and fish receivers

- 256.** (1) A fisheries officer may require a person:
- (a) to produce records under the control of the person relating to:
 - (i) commercial fishing activities; or
 - (ii) the receipt, possession or disposal of fish in connection with carrying on a business; or

- (iii) financial transactions of a specified person whom the officer has reason to believe is engaged in commercial fishing activities or has received, possessed or disposed of fish in the course of carrying on a business; and
- (b) if any such records are not in the English language—~~to~~ produce a statement in writing in the English language setting out particulars of those records; and
- (c) to answer any question that the person is able to answer relating to:
 - (i) any such records under the person's control; or
 - (ii) any activity, business or financial transaction referred to in paragraph (a); or
 - (iii) any statement produced in accordance with paragraph (b).

(2) A fisheries officer may:

- (a) make copies of any records or statements produced in accordance with this section; and
- (b) for the purpose of making copies of those records or statements, take away and retain them for such period as may be reasonably necessary; and
- (c) if the officer has reason to believe that those records or statements are evidence of an offence against this Act or the regulations, take away and retain them until proceedings for the offence have been heard and determined.

(3) Before taking away records or statements, a fisheries officer must tender a receipt to the person from whose custody they are taken. The fisheries officer must give that person access to the documents during ordinary business hours.

(4) A person who fails to comply with a requirement of a fisheries officer made under this section is guilty of an offence.

Maximum penalty: 50 penalty units.

Power to require production of fishing authority

257. (1) A fisheries officer may require a person whom the officer has reason to believe is or has been engaged, or is about to engage, in any fishing activity to produce for inspection by the officer the appropriate fishing authority for such an activity.

(2) A fisheries officer may seize any fishing authority that has been cancelled or otherwise ceased to have effect or that the officer has reason to believe is false.

(3) A fisheries officer may allow a person who is required under this section to produce a fishing authority to produce the authority within a period and at a place specified by the officer. If the authority is so produced, the person is taken to have complied with the requirement.

(4) A person who, without reasonable excuse, fails to comply with a requirement of a fisheries officer made under this section is guilty of an offence.

Maximum penalty: 25 penalty units.

Power to require information

258. (1) A fisheries officer may:

- (a) require the master of a licensed fishing boat, or any boat connected with a fisheries offence, to provide information concerning the boat or its crew; and
- (b) require a person whom the officer finds on board any such boat or in any premises or vehicle entered under this Part:
 - (i) to state the person's name and address; and
 - (ii) to provide information concerning any fish, fishing gear or fishing records found on the boat, premises or vehicle that the person is able to provide; and
- (c) require a person whom the officer has reason to believe is engaged in commercial fishing activities or is committing, has committed or is about to commit a fisheries offence to state the person's name and address.

(2) A person who, without reasonable excuse, fails to comply with a requirement of a fisheries officer made under this section is guilty of an offence.

Maximum penalty: 50 penalty units.

False information

259. (1) A person who, in connection with a requirement under this Part, makes any statement, provides any information or produces any document that the person knows is false or misleading in a material particular is guilty of an offence.

Maximum penalty: 200 penalty units or imprisonment for 3 months, or both.

(2) A person is not guilty of an offence against this section in respect of a document if the person informs a fisheries officer when the document is produced that it is false or misleading in a material particular.

Issue of search warrants

260. (1) A fisheries officer may apply to an authorised justice for a search warrant if the officer has reason to believe that there is or, within 72 hours, will be in or on any premises, boat or vehicle anything connected with a fisheries offence.

(2) An authorised justice to whom an application has been made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a fisheries officer named in the warrant:

- (a) to enter or board the premises, boat or vehicle; and
- (b) to exercise the powers, or any specified powers, of the fisheries officer under this Part.

(3) Part 3 of the Search Warrants Act 1985 applies to a search warrant issued under this section.

(4) This section does not require a fisheries officer to obtain a search warrant in order to exercise the officer's powers under this Part.

(5) In this section, “**authorised justice**” has the meaning it has in the Search Warrants Act 1985.

Hot pursuit of persons and boats beyond coastal waters of New South Wales

261. (1) A fisheries officer may exercise with respect to a person or boat at a place at sea outside the coastal waters of New South Wales (but not within the territorial sea of another country) a power conferred on a fisheries officer by this Part if:

- (a) one or more fisheries officers (whether or not including the officer exercising the power) have pursued the person or boat from a place within those waters to the place; and
- (b) the pursuit was not stopped or interrupted at any time before the officer concerned arrived at the place for the purpose of exercising the power.
- (c) For the purposes of this section, a pursuit of a person or boat is not to have stopped or to have been interrupted only because the fisheries officer or officers concerned have temporarily lost sight of the person or boat.

(3) A reference in this section to having lost sight of a person or boat includes losing output from a radar or other sensing device.

Power of arrest

262. A fisheries officer may, without warrant, arrest a person whom the officer:

- (a) finds committing a fisheries offence; or
- (b) has reason to believe has committed a fisheries offence.

Care to be taken

263. In the exercise of a function under this Part, a fisheries officer is to do as little damage as possible.

Division 4—Seizure**Seizure of things (other than boats) connected with fisheries offence found as a result of search**

264. A fisheries officer may seize anything (other than a boat) that is found by the officer in any search under this Part and that the officer has reason to believe is connected with a fisheries offence.

Seizure of boats

265. (1) A fisheries officer may seize any boat that the officer has reason to believe has been used by a person engaged in commercial fishing activities for the purpose of committing a boat forfeiture offence.

(2) A boat forfeiture offence is a fisheries offence that is declared by the regulations to be a boat forfeiture offence.

Seizure of fishing gear and other things (other than boats or fish)

266. (1) A fisheries officer may seize any fishing gear or other thing if it is:

- (a) used by, or in the possession of, a person; or
- (b) in or on or adjacent to any waters,

contrary to this Act or the regulations.

- (2)** This section does not apply to boats or fish.

Seizure of fish

267. (1) A fisheries officer may seize any fish if the fisheries officer has reason to believe that the fish are taken, sold or in the possession of a person contrary to this Act or the regulations.

(2) A container of fish (including all its contents) may be so seized if at least 10% of the fish in the container are taken, sold or in the possession of a person contrary to this Act or the regulations.

Reasonable cause for seizure a bar to action

268. The State, a fisheries officer or any other person is not liable for a seizure under this Part for which there was reasonable cause.

Forfeiture of boats by order of the court

269. (1) A court may order forfeiture of a boat that has been seized under this Part in connection with a fisheries offence if the court:

- (a) convicts a person of the offence; or
- (b) makes an order under section 75B of the Justices Act 1902 in respect of the offence; or
- (c) makes an order under section 556A of the Crimes Act 1900 in respect of the offence.

(2) A Local Court must not order any such forfeiture if it is satisfied that the value of the boat exceeds \$10,000.

Return of boat if relevant offence proceedings not taken

270. If:

- (a) any boat has been seized under this Part in connection with a fisheries offence; and
- (b) proceedings for the offence are not commenced within 28 days after the seizure,

the Minister must return the boat to its owner.

Conviction to operate as forfeiture of things (other than boats)

271. (1) If a thing (other than a boat) is seized under this Part in connection with a fisheries offence, any of the following operates as a forfeiture of the thing:

- (a) the conviction of a person of the offence;
- (b) the making, under section 75B of the Justices Act 1902, of an order imposing on a person a penalty in respect of the offence;
- (c) the payment under section 276 (Penalty notices) of a penalty in respect of the offence;
- (d) the making of an order under section 100L of the Justices Act 1902 in respect of the offence;
- (e) the making of an order under section 556A of the Crimes Act 1900 in respect of the offence.

(2) This section does not apply to anything seized which the court concerned orders to be returned to its owner because it was merely evidence of the commission of the offence or for any other reason the court considers appropriate.

Forfeiture of things (other than boats) where no relevant offence proceedings taken

272. (1) This section applies to anything seized under this Part, other than a boat.

(2) If a thing has been seized under this Part, a fisheries officer must notify the owner of the thing in writing of the seizure if the owner was not present at the seizure and the owner's business or residential address is known to or can be readily ascertained by the officer.

(3) The notice must be given by delivering it to the owner personally or by delivering it or sending it by post to the owner's business or residential address.

(4) An owner of a thing seized under this Part may dispute the seizure by giving the Minister notice in writing to that effect:

- (a) not later than 28 days after notification of the seizure has been given to the owner in accordance with this section; or
- (b) in a case where the owner is not notified of the seizure, not later than 28 days after seizure.

(5) If:

- (a) the owner of a thing seized under this Part does not dispute the seizure in accordance with this section; and
- (b) no relevant proceedings have been commenced in connection with the alleged offence within 28 days after seizure,

the thing is forfeited.

(6) If:

- (a) the owner of any thing seized under this Part disputes the seizure in accordance with this section; and
- (b) no relevant proceedings have been commenced in connection with the alleged offence within 28 days after seizure,

a fisheries officer must, unless relevant proceedings are brought, bring proceedings before a Local Court for an order that the thing be forfeited.

(7) If proceedings are brought before a Local Court for an order that the thing be forfeited, the Local Court must:

- (a) if satisfied that the thing seized is liable to be forfeited, order that the thing be forfeited; or
- (b) if not so satisfied, order that the thing be returned to its owner.

(8) In this section, “**relevant proceedings**” means proceedings which could result in the forfeiture of a thing under section 271 (Conviction to operate as forfeiture of things (other than boats)).

Return of things seized

273. (1) If a person disputes the seizure of a thing under this Part, the Minister may allow the thing to be delivered to the person disputing the seizure, subject to the person’s giving security to pay its value to the Minister should it be forfeited.

(2) The Minister may, at any time, direct that a thing seized under this Part be returned to its owner on such conditions (if any) as the Minister thinks fit. This subsection has effect whether forfeiture has taken place or not.

(3) A person who contravenes a condition under subsection (2) is guilty of an offence.

Maximum penalty: 25 penalty units.

(4) A thing seized is returned to its owner for the purposes of this Division if it is returned to the person who owns it or a person from whose possession it was seized.

(5) If the owner of the thing or any such person has died, the thing may be returned to the legal personal representative of the owner or person.

Disposal of perishable things

274. (1) At any time after fish or any other perishable things are seized under this Part, a fisheries officer may sell them and may retain the proceeds of sale pending the result of any proceedings that may be taken for their forfeiture.

(2) If any such fish or other perishable things cannot lawfully be sold, the fisheries officer may donate them to a hospital or other charitable institution or dispose of them in any other way.

Forfeited things to become the property of the State

275. (1) A thing forfeited, or ordered by a court to be forfeited, under this Part (or the proceeds of sale of any such thing) becomes the property of the State.

(2) Any such thing may (subject to the regulations) be sold or disposed of in such manner as the Minister thinks fit.

Division 5—Criminal proceedings

Penalty notices

276. (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations.

(2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.

(3) A penalty notice may be served personally or by post.

(4) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

(5) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.

(6) The regulations may:

- (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence; and
- (b) prescribe the amount of penalty for an offence if dealt with under this section; and
- (c) prescribe different amounts of penalty for different offences or classes of offences.

(7) The amount of penalty prescribed under this section for an offence may not exceed the maximum amount of penalty which could be imposed for the offence by a court.

(8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.

(9) In this section, “**authorised officer**” means a police officer or, in relation to a particular offence, a person belonging to a class of persons specified in the regulations in relation to that offence.

Nature of proceedings for offences

277. (1) Proceedings for an offence under this Act or the regulations may be dealt with:

- (a) summarily before a Local Court constituted by a Magistrate sitting alone; or
- (b) summarily before the Supreme Court in its summary jurisdiction; or
- (c) in the case of an offence under Part 7 or the regulations under that Part—summarily before the Land and Environment Court.

(2) If proceedings are brought in a Local Court, the maximum penalty that the Local Court may impose for the offence is, despite any other provision of this Act, \$10,000.

Time within which proceedings may be commenced

278. Despite the Justices Act 1902 or any other Act, proceedings for an offence under this Act or the regulations may be commenced not later than 2 years after the date alleged to be the date on which the offence was committed.

Offences by corporations

279. (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.

(2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.

(3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

Evidence relating to fishing authorities

280. In any proceedings for an offence under this Act or the regulations, a certificate signed or purporting to be signed by the Director or prescribed officer and stating that:

- (a) a person named in the certificate was or was not at a specified time the holder of a fishing authority of a specified kind; or

(b) a fishing authority held by a specified person was or was not subject to a specified condition,
is admissible and is evidence of the matters stated in the certificate.

Proof of lawful or reasonable excuse

281. If any act or omission is, by this Act or the regulations, made an offence when done or omitted without lawful excuse or reasonable excuse, proof of the lawful or reasonable excuse lies on the accused.

Division 6—Civil enforcement

Restraint of breaches of Act

282. (1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that breach.

(2) Proceedings under this section may be brought by a person on the person's own behalf or on behalf of another person (with their consent), or a body corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests.

(3) Any person OR whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.

PART 10—MISCELLANEOUS

Annual reporting

283. (1) The Director must include in the annual report of NSW Fisheries information indicating how the objects of this Act have been and are proposed to be achieved.

(2) In particular, the information must include information on the matters required by the regulations to be included in the report.

(3) The Director must also supply the information referred to in this section to the Environment Protection Authority in sufficient time for it to be included in the state of the environment reports the Authority is required to make under section 10 of the Protection of the Environment Administration Act 1991.

Public consultation procedure

284. (1) This section applies to the requirement under this Act for the Minister to give the public an opportunity to make submissions on the following:

- (a) a fisheries management plan (including any amendment or new plan);
- (b) the determination of a total allowable catch by the TAC Committee;
- (c) a commercial fisheries share management plan (including any amendment or new plan);
- (d) an aquaculture industry development plan (including any amendment or new plan);
- (e) a habitat protection plan (including any amendment or new plan).

(2) In order to give the public an opportunity to make submissions on any such matter, the Minister must:

- (a) exhibit the matter at the Head Office of NSW Fisheries and at its regional offices; and
- (b) allow a period of not less than 30 days for public comment; and
- (c) before the matter is exhibited, advertise the dates and places of exhibition and the period allowed for public comment in a newspaper circulating throughout the State and (if the matter relates to a particular area only) in a local newspaper circulating in or near that area.

Notes in the text

285. Notes included in this Act are explanatory notes and do not form part of this Act.

Act binds Crown

286. This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

Native title rights and interests

287. This Act does not affect the operation of the Native Title Act 1993 of the Commonwealth or the Native Title (New South Wales) Act 1994 in respect of the recognition of native title rights and interests within the meaning of the Commonwealth Act or in any other respect.

Service of instruments

288. Any notice or other instrument issued, made or given for the purposes of this Act may be served:

- (a) by delivering it personally to the person to whom it is addressed; or
- (b) by delivering it to the place of residence or business of the person to whom it is addressed and by leaving it there with some person for him or her; or
- (c) by posting it duly stamped and addressed to the person to whom it is addressed at the place last shown in the records of the Director as his or her place of residence or business.

Regulations

289. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) A regulation may create an offence punishable by a penalty not exceeding 100 penalty units.

(3) The regulations may incorporate by reference, wholly or in part and with or without modification, any standards, rules, codes, specifications or methods, as in force at a particular time or as in force from time to time, prescribed or published by an authority or body (whether or not it is a New South Wales authority or body).

Review of Act

290. (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

Savings, transitional and other provisions

291. Schedule 7 has effect.

Amendment of other Acts

292. The Acts specified in Schedule 8 are amended as set out in that Schedule.

SCHEDULE 1—SHARE MANAGEMENT FISHERIES

(Secs. 4, 42)

[Note: Descriptions of fisheries may be added to this Schedule by proclamation.]

**SCHEDULE 2—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF TAC COMMITTEE**

(Sec. 27)

Definitions

1. In this Schedule:

“**member**” means a member of the TAC Committee;

“**TAC Committee**” means the Total Allowable Catch Setting and Review Committee constituted by Division 4 of Part 2.

Deputy members

2. (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and may at any time revoke any such appointment.

(2) In the absence of a member, the member’s deputy:

(a) may, if available, act in the place of the member; and

(b) while so acting, has all the functions of the member and is to be taken to be the member.

(3) A person while acting in the place of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

Terms of office of member

3. Subject to this Schedule, a member holds office for such term (not exceeding 3 years) as is specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Allowances for member

4. A member is entitled to be paid such allowances as the Minister from time to time determines in respect of the member.

SCHEDULES 2—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF TAC COMMITTEE— *continued***Vacancy in office of member**

5. (1) The office of a member becomes vacant if the member:
- (a) dies; or
 - (b) completes a term of office and is not re-appointed; or
 - (c) resigns the office by instrument in writing addressed to the Minister; or
 - (d) is removed from office by the Minister under this clause; or
 - (e) is absent from 3 consecutive meetings of the TAC Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings; or
 - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (g) becomes a mentally incapacitated person; or
 - (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove a member from office at any time.

Filling of vacancy in office of member

6. If the office of a member becomes vacant, a person is, subject to this Act, required to be appointed to fill the vacancy.

Effect of certain other Acts

7. If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or

SCHEDULE 2—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF TAC COMMITTEE—*continued*

- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

Disclosure of pecuniary interests

8. (1) A member of the TAC Committee:

- (a) who has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the TAC Committee; and
(b) whose interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the TAC Committee.

(2) A disclosure by a member of the TAC Committee at a meeting of the Committee that the member:

- (a) is a member, or is in the employment, of a specified company or other body; or
(b) is a partner, or is in the employment, of a specified person; or
(c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under this clause.

(3) Particulars of any disclosure made under this clause must be recorded by the members of the TAC Committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the members of the TAC Committee.

(4) After a member of the TAC Committee has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the other members of the TAC Committee otherwise determine:

**SCHEDULE 2—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF TAC COMMITTEE—*continued***

- (a) be present during any deliberation of the TAC Committee with respect to the matter; or
- (b) take part in any decision of the TAC Committee with respect to the matter.

(5) For the purposes of the making of a determination by the members of the TAC Committee under subclause (4), a member of the TAC Committee who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:

- (a) be present during any deliberation of the other members of the TAC Committee for the purpose of making the determination; or
- (b) take part in the making by the other members of the TAC Committee of the determination.

(6) A contravention of this clause does not invalidate any decision of the TAC Committee.

Personal liability of members etc.

9. A matter or thing done by the TAC Committee, a member of the TAC Committee or any person acting under the direction of the TAC Committee does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the member or a person so acting personally to any action, liability, claim or demand.

General procedure for calling and holding meetings of the TAC Committee

10. The procedure for the calling and holding of meetings of the TAC Committee is, subject to the regulations, to be determined by the TAG Committee.

Quorum

11. The quorum for a meeting of the TAC Committee is a majority of its members.

SCHEDULE 2—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF TAC COMMITTEE—*continued*

Presiding member and voting rights

12. (1) The Chairperson of the TAC Committee or, in the absence of the Chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of the TAC Committee.

(2) The person presiding at a meeting of the TAC Committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

Voting

13. A decision supported by a majority of the votes cast at a meeting of the TAC Committee at which a quorum is present is the decision of the TAC Committee.

**SCHEDULE 3—PROVISIONS RELATING TO MEMBERS OF
THE SHARE MANAGEMENT FISHERIES APPEAL PANEL**

(Sec. 83)

Definitions

1. In this Schedule:

“**appointed member**” means a member of the Panel other than the Director or the Director’s nominee;

“**member**” means a member of the Panel;

“**Panel**” means a Share Management Fisheries Appeal Panel constituted by Division 9 of Part 3.

Deputy Chairperson

2. (1) The Minister may, from time to time, appoint a person to be the deputy of the Chairperson of a Panel, and may at any time revoke any such appointment.

(2) In the absence of the Chairperson, the deputy:

(a) may, if available, act in the place of the Chairperson; and

(b) while so acting, has all the functions of the Chairperson and is to be taken to be the Chairperson.

SCHEDULE 3—PROVISIONS RELATING TO MEMBERS OF
THE SHARE MANAGEMENT FISHERIES APPEAL PANEL—
continued

(3) A person while acting in the place of the Chairperson is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

Terms of office of appointed member

3. Subject to this Schedule, an appointed member holds office for such term (not exceeding 3 years) as is specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

Allowances for appointed member

4. An appointed member is entitled to be paid such allowances as the Minister from time to time determines in respect of the member.

Vacancy in office of appointed member

5. (1) The office of an appointed member becomes vacant if the member:

- (a) dies; or
- (b) completes a term of office and is not re-appointed; or
- (c) resigns the office by instrument in writing addressed to the Minister; or
- (d) is removed from office by the Minister under this clause; or
- (e) is absent from 3 consecutive meetings of the Panel of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings; or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or

SCHEDULE 3—PROVISIONS RELATING TO MEMBER OF
THE SHARE MANAGEMENT FISHERIES APPEAL PANEL—
continued

- (g) becomes a mentally incapacitated person; or
- (h) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove an appointed member from office for misbehaviour, incapacity or incompetence.

Filling of vacancy in office of appointed member

6. If the office of an appointed member becomes vacant, a person is, subject to this Act, required to be appointed to fill the vacancy.

Effect of certain other Acts

7. If by or under any Act provision is made:
- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
 - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

Personal liability of members etc.

8. A matter or thing done by a Panel, a member of a Panel or any person acting under the direction of a Panel does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the member or a person so acting personally to any action, liability, claim or demand.

**SCHEDULE 4—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE NEW SOUTH WALES COMMERCIAL
FISHING ADVISORY COUNCIL**

(Sec. 230)

Definition

1. In this Schedule:

“**member**” means a member of CFAC.

Deputies of members

2. (1) A member (other than the Chairperson) may, from time to time appoint a person to be the deputy of the member, and may at any time revoke any such appointment.

(2) In the absence of a member, the member's deputy:

(a) may, if available, act in the place of the member; and

(b) while so acting, has all the functions of the member and is to be taken to be the member.

(3) A person while acting in the place of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

Term of office

3. Subject to this Schedule, a member holds office for a term of 3 years but is eligible (if otherwise qualified) for re-election or re-appointment.

Allowances

4. A member is entitled to be paid such allowances as the Minister from time to time determines in respect of the member.

Vacancy in office of member

5. (1) The office of a member becomes vacant if the member:

(a) dies; or

(b) completes a term of office and is not re-elected or re-appointed; or

(c) resigns the office by instrument in writing addressed to the Minister; or

(d) in the case of the member who is Chairperson, is removed from office by the Minister under this clause; or

SCHEDULE 4—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE NEW SOUTH WALES COMMERCIAL
FISHING ADVISORY COUNCIL—*continued*

- (e) in the case of a member appointed by a CFAC Regional Advisory Committee, is removed from office by the elected members of that Committee under this clause; or
 - (f) is absent from 3 consecutive meetings of CFAC of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by CFAC or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by CFAC for having been absent from those meetings; or
 - (g) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (h) becomes a mentally incapacitated person; or
 - (i) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or
 - (j) except in the case of the member who is Chairperson, ceases to be the holder of a commercial fishing licence.
- (2) The Minister may remove the member who is the Chairperson from office at any time.
- (3) The elected members of a CFAC Regional Advisory Committee may remove the member appointed by that Committee from office at any time.

Filling of vacancy in office of member

6. (1) If the office of a member becomes vacant, a person is, subject to this Act, required to be elected or appointed to fill the vacancy.
- (2) If a vacancy occurs in the office of an elected industry sector member otherwise than because the term of the office has ended, the Minister may appoint a person to fill the office for the remainder of that term, being a person who the Minister decides, after consultation with the relevant industry sector, is appropriate for that office.

SCHEDULE 4—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE NEW SOUTH WALES COMMERCIAL
FISHING ADVISORY COUNCIL—*continued*

Effect of certain other Acts

7. If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

Personal liability of members etc.

8. A matter or thing done by CFAC, a member of CFAC or any person acting under the direction of CFAC does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the member or a person so acting personally to any action, liability, claim or demand.

General procedure for calling and holding meetings of Council

9. The procedure for the calling and holding of meetings of WAC is, subject to the regulations, to be determined by CFAC.

Quorum

10. The quorum for a meeting of CFAC is a majority of its members for the time being.

Presiding member and voting rights

11. (1) The Chairperson of CFAC or, in the absence of the Chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of CFAC.

(2) The Chairperson of CFAC does not have the right to vote.

(3) The member elected to preside at meetings in the absence of the Chairperson retains any voting rights which the member has as a member.

SCHEDULE 4—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE NEW SOUTH WALES COMMERCIAL
FISHING ADVISORY COUNCIL—*continued*

Voting

12. A decision supported by a majority of the votes cast at a meeting of CFAC at which a quorum is present is the decision of CFAC.

SCHEDULE 5—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF CFAC REGIONAL ADVISORY
COMMITTEES

(Sec. 233)

Definitions

1. In this Schedule:

“**CFAC Regional Advisory Committee**” means a CFAC Regional Advisory Committee constituted by section 233;

“**member**”, in relation to a CFAC Regional Advisory Committee, means a member of the Committee.

Chairperson

2. (1) A CFAC Regional Advisory Committee is required to elect one of its members to be Chairperson of the Committee.

(2) A CFAC Regional Advisory Committee may at any time remove a person from the office of Chairperson.

(3) A person who is Chairperson vacates that office if the person:

- (a) is removed from that office by the Committee; or
- (b) resigns that office by instrument in writing addressed to the Committee; or
- (c) ceases to be a member.

(4) The Committee may, from time to time, appoint a person to be the deputy of the Chairperson, and the Committee may at any time revoke any such appointment.

(5) In the absence of the Chairperson, the Chairperson’s deputy:

- (a) may, if available, act in the place of the Chairperson; and
- (b) while so acting, has all the functions of the Chairperson and is to be taken to be the Chairperson.

SCHEDULE 5—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF CFAC REGIONAL ADVISORY
COMMITTEES— *continued*

(6) A person while acting in the place of the Chairperson is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

Terms of office

3. Subject to this Schedule, a member holds office for a term of 3 years but is (if otherwise qualified) eligible for re-election at the end of each such term.

Allowances

4. A member is entitled to be paid such allowances as the Minister from time to time determines in respect of the member.

Vacancy in office of member

5. The office of a member becomes vacant if the member:
- (a) dies; or
 - (b) completes a term of office and is not re-elected; or
 - (c) resigns the office by instrument in writing addressed to the Committee; or
 - (d) is absent from 3 consecutive meetings of the Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Committee or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Committee for having been absent from those meetings; or
 - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (f) becomes a mentally incapacitated person; or
 - (g) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable; or
 - (h) ceases to be the holder of a commercial fishing licence.

SCHEDULE 5—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF CFAC REGIONAL ADVISORY
COMMITTEES —*continued*

Filling of vacancy in office of elected member

6. (1) If the office of a member becomes vacant, a person is, subject to this Act, required to be elected to fill the vacancy.

(2) If a vacancy occurs in the office of a member of a CFAC Regional Advisory Committee otherwise than because the term of the office has ended, the Minister may appoint a person nominated by the Committee to fill the office for the remainder of that term.

Effect of certain other Acts

7. If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

Personal liability of members etc.

8. A matter or thing done by a CFAC Regional Advisory Committee, a member of a CFAC Regional Advisory Committee or any person acting under the direction of a CFAC Regional Advisory Committee does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the member or a person so acting personally to any action, liability, claim or demand.

General procedure

9. The procedure for the calling of meetings of a CFAC Regional Advisory Committee and for the conduct of business at those meetings is, subject to this Act and the regulations, and to any directions given by CFAC, to be determined by the Committee.

**SCHEDULE 5—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF CFAC REGIONAL ADVISORY
COMMITTEES —continued**

Quorum

10. The quorum for a meeting of a CFAC Regional Advisory Committee is a majority of the members for the time being of the Committee.

Presiding member

11. The Chairperson of a CFAC Regional Advisory Committee or the Chairperson's deputy or, in the absence of both, another member elected to chair the meeting by the members present is required to preside at a meeting of the Committee.

Voting

12. A decision supported by a majority of the votes cast at a meeting of a CFAC Regional Advisory Committee at which a quorum is present is the decision of the Committee.

**SCHEDULE 6—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE NEW SOUTH WALES
RECREATIONAL FISHING ADVISORY COUNCIL**

(Sec. 238)

Definition

1. In this Schedule:

“**member**” means a member of RFAC.

Deputies of members

2. (1) A member may, from time to time, appoint a person to be the deputy of the member, and may at any time revoke any such appointment.

(2) In the absence of a member, the member's deputy:

(a) may, if available, act in the place of the member; and

(b) while so acting, has all the functions of the member and is to be taken to be the member.

SCHEDULE 6—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE NEW SOUTH WALES RECREATIONAL
FISHING ADVISORY COUNCIL—continued

(3) A person while acting in the place of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

Term of office

3. Subject to this Schedule, a member holds office for such period, not exceeding 5 years, as may be specified in the member's instrument of appointment and is eligible for re-appointment.

Allowances

4. A member is entitled to be paid such allowances as the Minister from time to time determines in respect of the member.

Vacancy in office of member

5. (1) The office of a member becomes vacant if the member:
- (a) dies; or
 - (b) resigns the office by instrument in writing addressed to the Minister; or
 - (c) is removed from office by the Minister under this clause; or
 - (d) is absent from 3 consecutive meetings of RFAC of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by RFAC or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by RFAC for having been absent from those meetings; or
 - (e) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit; or
 - (f) becomes a mentally incapacitated person; or
 - (g) is convicted in New South Wales of an offence which is punishable by penal servitude or imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence which, if committed in New South Wales, would be an offence so punishable.
- (2) The Minister may remove a member from office at any time.

SCHEDULE 6—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE NEW SOUTH WALES RECREATIONAL
FISHING ADVISORY COUNCIL—continued

Vacancy to be filled

6. If the office of a member becomes vacant, a person is, subject to this Act, required to be appointed to fill the vacancy.

Effect of certain other Acts

7. If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office; or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

Personal liability of members etc.

8. A matter or thing done by RFAC, a member of WAC or any person acting under the direction of RFAC does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the member or a person so acting personally to any action, liability, claim or demand.

General procedure for calling and holding meetings of RFAC

9. The procedure for the calling and holding of meetings of RFAC is, subject to the regulations, to be determined by WAC.

Quorum

10. The quorum for a meeting of WAC is a majority of the members for the time being of WAC.

Presiding member and voting rights

11. (1) The Chairperson of RFAC or, in the absence of the Chairperson, another member elected to chair the meeting by the members present is to preside at a meeting of RFAC.

SCHEDULE 6—PROVISIONS RELATING TO MEMBERS AND
PROCEDURE OF THE NEW SOUTH WALES RECREATIONAL
FISHING ADVISORY COUNCIL—continued

(2) The Chairperson or other member presiding at a meeting has a casting vote.

Voting

12. A decision supported by a majority of the votes cast at a meeting of RFAC at which a quorum is present is the decision of RFAC.

**SCHEDULE 7—SAVINGS, TRANSITIONAL AND OTHER
PROVISIONS**

(Sec. 291)

Part 1—Preliminary

Definition

1. In this Schedule:

“the 1935 Act” means the Fisheries and Oyster Farms Act 1935.

Part 2—Regulations

Regulations

2. (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act.

(2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to this Act or from a later date.

(3) To the extent that a provision referred to in subclause (1) takes effect from a date that is earlier than its date of publication in the Gazette, the provision does not operate:

- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of the person existing before the date of publication; or
- (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of publication.

SCHEDULE 7—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Part 3—Provisions relating to fishing closures etc.****Saving of existing fishing closures under s. 18 of 1935 Act**

3. (1) A notification made under section 18 of the 1935 Act and in force immediately before the repeal of that section by this Act is taken to be a notification of a fishing closure under Division 1 of Part 2 of this Act.

(2) Any such fishing closure remains in force, subject to this Act, for the balance of the period of the notification under section 18 of the 1935 Act or for the period of 5 years from the commencement of Division 1 of Part 2 of this Act, whichever is the shorter.

Saving of existing net fishing closure under section 19 of 1935 Act (Brisbane Waters, Port Hacking etc.)

4. (1) The prohibitions contained in section 19 of the 1935 Act immediately before the repeal of that section by this Act are taken to be a fishing closure under Division 1 of Part 2 of this Act in the terms set out in that section.

(2) That fishing closure does not expire and may not be amended or revoked by a further fishing closure under Division 1 of Part 2 of this Act.

(3) The regulations may prohibit or regulate net fishing in waters to which that fishing closure applies and, in that case, may revoke that fishing closure.

Saving of existing closures under section 21 of the 1935 Act (close seasons)

5. On the repeal of section 21 of the 1935 Act, a fishing closure in the terms set out in that section is taken to have been notified under Division 1 of Part 2 of this Act. That closure expires, and may be amended or revoked, in accordance with that Division.

Saving of existing scientific permits

6. A permit issued under section 15 of the 1935 Act and in force immediately before the repeal of that section is taken to be a permit issued under section 37 of this Act.

SCHEDULE 7—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Part 4—Provisions relating to commercial fishing licences, boat licences, restricted fisheries and fishing records****Continuation of existing commercial fishing licences**

7. A fishing licence issued to an individual under section 24C of the 1935 Act and in force immediately before the repeal of that section by this Act is taken to be a commercial fishing licence issued to that individual under this Act.

Continuation of existing criteria for obtaining commercial fishing licences

8. Until the regulations under this Act otherwise provide, a person who was eligible to be issued with a fishing licence under section 24C of the 1935 Act, immediately before the repeal of that section by this Act, is taken to be eligible to be issued with a commercial fishing licence under this Act.

Continuation of existing fishing boat licences

9. A boat licence under section 23 or 24 of the 1935 Act immediately before the repeal of that section by this Act is taken to be a fishing boat licence issued under this Act.

Transitional provisions relating to existing restricted fisheries under section 22A of 1935 Act

10. (1) A fishery which was a declared restricted fishery under section 22A of the 1935 Act immediately before the repeal of that section by this Act is taken to be a restricted fishery declared under Division 3 of Part 4 of this Act until the declaration is revoked by a regulation under that Division or it otherwise ceases to be a restricted fishery in accordance with this Act.

(2) The maximum number of restricted fishery permits fixed under that section immediately before the repeal of that section is taken to be the maximum number of commercial fishing licences that may be endorsed in respect of the restricted fishery concerned (subject to the regulations under that Division).

SCHEDULE 7—SAVINGS, TRANSITIONAL AND QTHER
PROVISIONS— *continued*

(3) A restricted fishery permit issued under that section and in force immediately before the repeal of that section is taken to be an endorsement on the commercial fishing licence of the holder of the permit, conferring the same authority and subject to the same conditions as the permit.

(4) The regulations in force under that section immediately before its repeal are taken to be regulations made under this Act. A reference in those regulations to a permit is taken to be a reference to an appropriate endorsement.

(5) As soon as practicable after the commencement of this clause, the Minister is to issue a replacement commercial fishing licence for licencees to which this clause applies.

Transitional provisions relating to other existing restricted fisheries

11. (1) This section applies to fisheries comprising prawn trawling in each of the waters in which a fishing closure continued in force under this Schedule prohibits prawn trawling except by the use of a boat whose licence contains a condition authorising its use for prawn trawling in those waters.

(2) Each of the fisheries to which this section applies is taken to be a restricted fishery declared under Division 3 of Part 4 of this Act until the declaration is revoked by a regulation under that Division or it otherwise ceases to be a restricted fishery in accordance with this Act.

(3) The relevant condition of a licence with respect to such a fishery is taken to be an endorsement with respect to the restricted fishery under that Division.

(4) The number of licences so endorsed with respect to such a fishery immediately before the repeal of section 23 of the 1935 Act is taken to be the maximum number of commercial fishing licences that may be endorsed in respect of that restricted fishery (subject to the regulations under that Division).

(5) The Minister may extend this clause to a licence previously in force under section 23 of the 1935 Act if the licence ceased to be in force because of the loss of the boat or for other good cause.

SCHEDULE 7—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued***Existing fishing records**

12. A record made or kept under section 40DA or 42 of the 1935 Act before the repeal of that section by this Act is taken to be a record made or kept under Division 5 of Part 4 of this Act.

Part 5—Provisions relating to arrangements between Commonwealth and States on fisheries management**Existing Commonwealth and State arrangements**

13. An arrangement in force under Division 3 of Part 1A of the 1935 Act immediately before the repeal of that Division by this Act is taken to be an arrangement made under Division 3 of Part 5 of this Act.

Commencement of Commonwealth Act

14. If Part 5 of the Commonwealth Act has not commenced before the commencement of Part 5 of this Act, a reference in Part 5 of this Act to a provision of the Commonwealth Act is to be construed as a reference to the corresponding provision of Part IVA of the Fisheries Act 1952 of the Commonwealth.

Part 6—Provisions relating to aquaculture management**Transitional—existing leases and permits**

15. (1) A lease granted under section 58 or 90D of the 1935 Act (including any such renewed lease) and in force immediately before the repeal of that section by this Act is taken to be an aquaculture lease granted under Part 6 of this Act.

(2) A permit to operate a fish farm issued under section 90C of the 1935 Act and in force immediately before the repeal of that section by this Act is taken to be an aquaculture permit issued under Part 6 of this Act.

(3) An oyster lease that is continued in force under this clause as an aquaculture lease also constitutes (subject to the clause) an aquaculture permit issued under Part 6 of this Act in respect of the operations authorised by the lease.

Fisheries Management Act 1994 No. 38

SCHEDULE 7—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

(4) As soon as practicable after the commencement of this clause, the Minister is to grant a replacement aquaculture lease and issue a replacement aquaculture permit in accordance with Part 6 of this Act for leases and permits to which this clause applies.

Part 7—Provisions relating to protection of aquatic habitats**Continuation of existing aquatic reserves**

16. (1) Any land that was, immediately before the commencement of Division 2 of Part 7 of this Act, an aquatic reserve under section 16A of the 1935 Act is taken to be an aquatic reserve declared under that Division.

(2) Any such declaration is not invalid merely because the area that was declared to be an aquatic reserve comprised an area leased as an oyster farm or fish farm under the 1935 Act.

Existing authorisations relating to dredging and reclamation

17. Any consent issued by the Minister under Part 5B of the 1935 Act before the repeal of that Part by this Act is taken to be a permit issued by the Minister under Division 3 of Part 7 of this Act if the work to which the consent relates has not been completed before that repeal.

Part 8—Provisions relating to administration**Transitional provisions relating to Commercial Fishing Advisory Council and Regional Advisory Committees**

18. (1) The New South Wales Commercial Fishing Advisory Council under Part 8 of this Act (“CFAC”) is a continuation, and the same legal entity as, the Council constituted by section 17G of the 1935 Act before the repeal of that section by this Act.

(2) The persons holding office as members of CFAC under that section immediately before its repeal are taken to be members of CFAC under this Act for the balance of their terms of office.

(3) A Regional Advisory Committee constituted by section 17L of the 1935 Act before the repeal of that section by this Act is taken to have been constituted under Part 8 of this Act.

SCHEDULE 7—SAVINGS, TRANSITIONAL AND OTHER PROVISIONS—*continued*

(4) The persons holding office as members of a Regional Advisory Committee under that section immediately before its repeal are taken to be members of the Committee under Part 8 of this Act for the balance of their terms of office,

Transitional provisions relating to Recreational Fishing Advisory council

19. (1) The New South Wales Recreational Fishing Advisory Council (“RFAC”) constituted by section 17C of the 1935 Act before the repeal of that section by this Act is taken to have been constituted under Part 8 of this Act.

(2) The persons holding office as members of RFAC under that section immediately before its repeal are taken to be members of RFAC under this Act for the balance of their terms of office.

Part 9—Provisions relating to enforcement**Existing inspectors**

20. A person who was, immediately before the repeal of section 6 of the 1935 Act, appointed as an inspector for the purposes of the 1935 Act is taken on that repeal to have been appointed as a fisheries officer under Part 9 of this Act.

Existing seizures

21. Anything seized under the 1935 Act and which has not been forfeited or returned under the 1935 Act is to continue to be dealt with under the provisions of the 1935 Act and, for that purpose, the relevant provisions of that Act continue to have effect.

Part 10—Miscellaneous**References to 1935 Act**

22. A reference in an Act (other than this Act or the 1935 Act), in any instrument made under an Act or in any document to the Fisheries and Oyster Farms Act 1935 is to be read:

- (a) as a reference to this Act, unless it relates to a matter that continues to be dealt with by the 1935 Act; or
- (b) if it relates to such a matter—as a reference to the 1935 Act.

SCHEDULE 7—SAVINGS, TRANSITIONAL AND) OTHER
PROVISIONS— *continued*

General saving

23. (1) If anything done or commenced under a provision of the 1935 Act before the repeal of that provision by this Act and still having effect or not completed immediately before that repeal could have been done or commenced under this Act if this Act had been in force when the thing was done or commenced:

- (a) the thing done continues to have effect; or
 - (b) the thing commenced may be completed,
- as if it had been done or commenced under this Act.

(2) This clause is subject to any express provision of this Act on the matter.

SCHEDULE 8—AMENDMENT OF OTHER ACTS

(Sec. 292)

Crown Lands Act 1989 No. 6

Sections 103 (4), 108 (3), 116 (1) 128 (7):

Omit “Fisheries and Oyster Farms Act 1935” wherever occurring, insert instead “Fisheries Management Act 1994”.

Fisheries and Oyster Farms Act 1935 No. 58

(1) Section 1 (**Short title, commencement and construction**):

From section 1 (1), omit “and Oyster Farms”.

(2) Section 4 (**Definitions**):

(a) From section 4 (1), omit all definitions except the following:
“Authority”, “District”, “Market”, “Oyster”, “Sell”,
“This Act”, “Trading society”,

(b) In section 4 (1), insert the following definitions in alphabetical order:

“**Director General**” means the Director of NSW Fisheries.

“**Fish**” has the same meaning as it has in the Fisheries Management Act 1994.

“**Fisherman**” means a commercial fisher within the meaning of the Fisheries Management Act 1994.

Fisheries Management Act 1994 No. 38

SCHEDULE 8—AMENDMENT OF OTHER ACTS—*continued*

“Inspector” means a fisheries officer within the meaning of the Fisheries Management Act 1994.

- (c) Omit section 4 (3).
- (3) Parts 1A, 2, 2A, 2B, 5, 5A, 5B:
Omit the Parts.
- (4) Part 3:
Omit all Divisions in Part 3, except Divisions 6, 6A and 7 .
- (5) Section 36:
Omit the section.
- (6) Section 40DA:
Omit the section.
- (7) Section 42 (**Returns**):
Omit section 42 (2) (a) and (b).
- (8) Part 4:
Omit Divisions 6 and 7.
- (9) Part 6:
Omit all sections in Part 6 (except sections 91 and 108A), insert instead:
- Application of enforcement provisions of Fisheries Management Act 1994**
- 119A. (1) Part 9 (Enforcement) of the Fisheries Management Act 1994 applies for the purposes of this Act and the regulations under this Act.
- (2) Accordingly, references in that Part to that Act, the regulations under that Act or anything done under that Act extend to this Act, the regulations under this Act or anything done under this Act.
- (10) Section 120 (**Regulations**):
Omit section 120 (2) (c), (e)–(n), (p)–(v), (aa)–(ff), (jj)–(ss), (eee), (rrr)–(www), (3) and (4).
- (11) Section 122:
Omit the section.

SCHEDULE 8—AMENDMENT OF OTHER ACTS—*continued*

- (12) Schedules A, B, C, D and E:
Omit the Schedules.

Justices Act 1902 No. 27Section 100I (**Interpretation**):

From the definition of “penalty notice” in section 100I (1), omit “Fisheries and Oyster Farms Act 1935, section 91A (1)”, insert instead:

Fisheries Management Act 1994, section 276

Land and Environment Court Act 1979 No. 204

- (1) Section 19 (**Class 3—land tenure, valuation, rating and compensation matters**):

After section 19 (g), insert:

(g1) section 44 or 202 of the Fisheries Management Act 1994;

- (2) Section 20 (**Class 4—environmental planning and protection and development contract civil enforcement**):

After section 20 (1) (a), insert:

(aa) proceedings under section 282 of the Fisheries Management Act 1994;

Local Government Act 1993 No. 30

- (1) Section 515 (**Categorisation as farmland**):

From section 515 (1), omit “, oyster farming, or fish farming within the meaning of the Fisheries and Oyster Farms Act 1935”, insert instead “or aquaculture within the meaning of the Fisheries Management Act 1994”.

- (2) Section 555 (**What land is exempt from all rates**):

From section 555 (1) (h), omit “oyster farming within the meaning of the Fisheries and Oyster Farms Act 1935”, insert instead “any aquaculture (within the meaning of the Fisheries Management Act 1994) relating to the cultivation of oysters”.

SCHEDULE 8—AMENDMENT OF OTHER ACTS—*continued*(3) Dictionary (**Definition of “rural land”**):

From paragraph (b) of the definition, omit “an oyster farm, or a fish farm within the meaning of the Fisheries and Oyster Farms Act 1935”, insert instead “an area which is wholly or mainly used for aquaculture within the meaning of the Fisheries Management Act 1994”.

Lord Howe Island Act 1953 No. 39Section 38 (**Regulations**):

From section 38 (2A) (s), omit “Fisheries and Oyster Farms Act 1935”, insert instead “Fisheries Management Act 1994”.

Maritime Services Act 1935 No. 47(1) Section 13JF (**Investigation of future installations for use by trading vessels etc.**):

From section 13JF (7), omit “a lease of an oyster farm under Part 5 of the Fisheries and Oyster Farms Act 1935”, insert instead “an aquaculture lease under Part 6 of the Fisheries Management Act 1994”.

(2) Section 13Z (**Leases and licences under other Acts**):

From section 13Z (1A), omit “any lease under Part 5 of the Fisheries and Oyster Farms Act 1935”, insert instead “any aquaculture lease under Part 6 of the Fisheries Management Act 1994”.

National Parks and Wildlife Act 1974 No. 80

(1) Sections 5 (1) (Definition of “animal”), 34 (1), 39 (4), 44, 47C (b), 47H (4), 50, 58B, 80, 112A (3) (a), 155 (2) (y) and Schedule 9A (clauses 15 and 19):

Omit “Fisheries and Oyster Farms Act 1935” wherever occurring, insert instead “Fisheries Management Act 1994”.

SCHEDULE 8—AMENDMENT OF OTHER ACTS—*continued*(2) Section 16 (**Ex-officio rangers**):

From section 16 (1), omit “each inspector within the meaning of the Fisheries and Oyster Farms Act 1935”, insert instead “each fisheries officer within the meaning of the Fisheries Management Act 1994”.

Non-Indigenous Animals Act 1987 No. 166Section 4 (**Application of Act**):

Omit “Fisheries and Oyster Farms Act 1935”, insert instead “Fisheries Management Act 1994”.

Real Property Act 1900 No. 25Section 28F (**Qualified title for holders of aquaculture leases**):

Omit “Part 5 of the Fisheries and Oyster Farms Act 1935”, insert instead “Part 6 of the Fisheries Management Act 1994”.

Schedule 2:

Omit “Fisheries and Oyster Farms Act 1935”, insert instead “Fisheries Management Act 1994”.

Search Warrants Act 1985 No. 37Section 10 (**Definitions**)

Omit “section 20G of the Fisheries and Oyster Farms Act 1935”, insert instead “section 260 of the Fisheries Management Act 1994”.

*[Minister's second reading speech made in—
Legislative Assembly on 21 April 1994
Legislative Council on 12 May 1994]*