



New South Wales

Fisheries Management Amendment Act 2009 No 114

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Fisheries Management Amendment Act 2009 No 114

Act No 114, 2009

An Act to amend the *Fisheries Management Act 1994* to make further provision for the management of fishery resources; and to make related amendments to other Acts. [Assented to 14 December 2009]

The Legislature of New South Wales enacts:

1 Name of Act

This Act is the *Fisheries Management Amendment Act 2009*.

2 Commencement

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

Schedule 1 **Amendment of Fisheries Management Act 1994 No 38**

[1] **Section 3 Objects of Act**

Insert at the end of section 3 (2) (g):

, and

- (h) to recognise the spiritual, social and customary significance to Aboriginal persons of fisheries resources and to protect, and promote the continuation of, Aboriginal cultural fishing.

[2] **Section 4 Definitions**

Insert in alphabetical order in section 4 (1):

Aboriginal cultural fishing means fishing activities and practices carried out by Aboriginal persons for the purpose of satisfying their personal, domestic or communal needs, or for educational, ceremonial or other traditional purposes, and which do not have a commercial purpose.

share management plan means a management plan for a share management fishery.

[3] **Section 4 (1)**

Omit the definitions of *noxious fish* and *noxious marine vegetation*.

Insert instead:

noxious fish—see section 209.

noxious marine vegetation—see section 209.

[4] **Section 4 (3)**

Insert after section 4 (2) (before the note):

- (3) For the purposes of any provision of this Act that provides for an increased maximum penalty for a second or subsequent offence, an offence is to be regarded as a second or subsequent offence in relation to another offence only if:
 - (a) a conviction was recorded in relation to the other offence, and
 - (b) the other offence occurred on a separate occasion.

[5] **Section 7 Waters to which Act applies**

Insert “, or a part of a fishery,” after “a fishery” wherever occurring in section 7 (1) (b) and (c).

[6] Section 14 Offences relating to closures

Omit the maximum penalties from section 14 (1) and (2). Insert instead:

Maximum penalty:

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

[7] Part 2, Division 2, heading

Omit the heading. Insert instead:

Division 2 Offences relating to size, quantity and particular species of fish

[8] Section 14A

Insert before section 15:

14A Definitions

- (1) In this Division:

commercial quantity of a priority species of fish means:

- (a) in relation to an offence against section 16—the quantity specified as a commercial quantity of fish for the species concerned in Column 3 of Part 1 of Schedule 1B, or
- (b) in relation to an offence against section 17 or 18—the quantity specified as a commercial quantity of fish for the species concerned in Column 3 of Part 2 of Schedule 1B.

priority species of fish means:

- (a) in relation to an offence against section 16—a species of fish specified in Column 1 of Part 1 of Schedule 1B, or
- (b) in relation to an offence against section 17 or 18—a species of fish specified in Column 1 of Part 2 of Schedule 1B.

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- (2) If the commercial quantity of a priority species of fish is specified by reference to the total weight of the fish concerned, the total weight of the fish is to be determined in accordance with the regulations.
 - (3) The common name of a species of fish specified in Column 2 of Schedule 1B is for information purposes only and does not limit the description of the species of fish in Column 1.
 - (4) The Governor may, by regulation made on the recommendation of the Minister, amend Schedule 1B to insert, alter or omit any matter in that Schedule.

[9] Section 15 Declaration of prohibited size fish

Insert after section 15 (1):

- (1A) The regulations may declare different prohibited size fish for different classes of persons or for different circumstances.

[10] Section 15 (3)

Omit the subsection. Insert instead:

- (3) The regulations may specify the size of fish by reference to measurement or weight (or both), or by reference to the number of individuals in any specified weight.

[11] Section 16

Omit the section. Insert instead:

16 Prohibited size fish

- (1) A person who has prohibited size fish in the person's possession is guilty of an offence.
Maximum penalty:
 - (a) in the case of an individual:
 - (i) 200 penalty units or imprisonment for 6 months (or both) for a first offence, or
 - (ii) 400 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence, or
 - (b) in the case of a corporation:
 - (i) 1,000 penalty units for a first offence, or
 - (ii) 2,000 penalty units for a second or subsequent offence.

- (2) A person who has prohibited size fish in the person's possession, in circumstances of aggravation, is guilty of an offence.

Maximum penalty:

- (a) in the case of an individual:
- (i) 400 penalty units or imprisonment for 12 months (or both) for a first offence, or
 - (ii) 800 penalty units or imprisonment for 18 months (or both) for a second or subsequent offence, or
- (b) in the case of a corporation:
- (i) 2,000 penalty units for a first offence, or
 - (ii) 4,000 penalty units for a second or subsequent offence.

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

Maximum penalty:

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

- (4) A person who sells prohibited size fish, in circumstances of aggravation, is guilty of an offence.

Maximum penalty:

- (a) in the case of an individual:
- (i) 400 penalty units or imprisonment for 12 months (or both) for a first offence, or
 - (ii) 800 penalty units or imprisonment for 18 months (or both) for a second or subsequent offence, or
- (b) in the case of a corporation:
- (i) 2,000 penalty units for a first offence, or
 - (ii) 4,000 penalty units for a second or subsequent offence.

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- (5) For the purposes of subsections (2) and (4), a person has possession of prohibited size fish, or sells prohibited size fish, in *circumstances of aggravation* if:
- (a) the prohibited size fish in possession or sold by the person are a priority species of fish, and
 - (b) the quantity of prohibited size fish in possession or sold by the person is a commercial quantity of that species of fish.

[12] Section 17 Bag limits—taking of fish

Omit the maximum penalty from section 17 (2). Insert instead:

Maximum penalty:

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

[13] Section 17 (2A) and (2B)

Insert after section 17 (2):

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

Maximum penalty:

- (a) in the case of an individual:
 - (i) 400 penalty units or imprisonment for 12 months (or both) for a first offence, or
 - (ii) 800 penalty units or imprisonment for 18 months (or both) for a second or subsequent offence, or
- (b) in the case of a corporation:
 - (i) 2,000 penalty units for a first offence, or
 - (ii) 4,000 penalty units for a second or subsequent offence.

(2B) For the purposes of subsection (2A), a person takes fish in *circumstances of aggravation* if:

- (a) the fish taken are a priority species of fish, and
- (b) the quantity of fish taken is a commercial quantity of that species of fish.

[14] Section 17 (3A)

Insert after section 17 (3):

(3A) The regulations may specify a daily limit of zero for fish of a specified species or of a specified class. In that case, a reference in this section to taking more fish than the daily limit of those fish is to be read as a reference to taking any of those fish.

[15] Section 18 Bag limits—possession of fish

Omit “in any such circumstances” from section 18 (2).

[16] Section 18 (2)

Omit the maximum penalty. Insert instead:

Maximum penalty:

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

[17] Section 18 (2A) and (2B)

Insert after section 18 (2):

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

Maximum penalty:

- (a) in the case of an individual:
 - (i) 400 penalty units or imprisonment for 12 months (or both) for a first offence, or

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- (ii) 800 penalty units or imprisonment for 18 months (or both) for a second or subsequent offence, or
 - (b) in the case of a corporation:
 - (i) 2,000 penalty units for a first offence, or
 - (ii) 4,000 penalty units for a second or subsequent offence.
- (2B) For the purposes of subsection (2A), a person has possession of fish in *circumstances of aggravation* if:
- (a) the fish in the person's possession are a priority species of fish, and
 - (b) the quantity of fish in the person's possession is a commercial quantity of that species of fish.

[18] Section 18 (3A)

Insert after section 18 (3):

- (3A) The regulations may specify a possession limit of zero for fish of a specified species or of a specified class. In that case, a reference in this section to being in possession of more than the possession limit of those fish is to be read as a reference to being in possession of any of those fish.

[19] Section 18A

Insert after section 18:

18A Additional monetary penalty for bag limit offences involving priority species

- (1) A court that finds a person guilty of an offence against section 17 or 18 in respect of any species of fish that is a priority species of fish in relation to the offence concerned may impose an additional penalty for the offence of up to 10 times the market value of the fish the subject of the offence.
- (2) The *market value* of the fish the subject of the offence is the amount determined by the court as the price at which the fish might reasonably have been expected to be sold by the person who committed the offence at the time the offence was committed.
- (3) In determining the market value of the fish the subject of the offence, the court may have regard to the following:
 - (a) the price for which fish of that species were being sold at the time of the offence (whether or not to purchasers within this State and whether or not legally),

- (b) the price for which the fish were sold, or for which fish of that species have previously been sold, by the person who committed the offence,
- (c) any other matters it considers appropriate.
- (4) The court may determine the market value of the fish the subject of the offence by reference to the weight of the fish the subject of the offence, the number of fish the subject of the offence or by any other method it considers appropriate.
- (5) The penalty provided for by this section is in addition to the maximum penalty provided for by this Act in respect of the particular offence concerned.

[20] Section 19 Protected fish

Omit section 19 (4). Insert instead:

- (4) The regulations may declare the possession of any protected fish to be prohibited absolutely.
- (5) If the possession of protected fish is prohibited absolutely, subsection (3) applies whether or not the fish are taken from waters to which this Act applies.

[21] Section 19, maximum penalty

Omit the maximum penalty. Insert instead:

Maximum penalty:

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

[22] Section 20 Fish and waters protected from commercial fishing

Omit section 20 (1). Insert instead:

- (1) The regulations may declare that fish of a specified species are protected, absolutely or conditionally, from all or a class of commercial fishing.

[23] Section 20 (3)–(8)

Omit section 20 (3), (4) and (5). Insert instead:

- (3) A person who:
- (a) takes fish of a species declared under subsection (1) in breach of the declaration, or
 - (b) takes fish from waters declared under subsection (2) in breach of the declaration, or
 - (c) sells fish taken in breach of a declaration under subsection (1) or (2),
- is guilty of an offence.
- Maximum penalty:
- (a) in the case of an individual:
 - (i) 1,000 penalty units or imprisonment for 6 months (or both) for a first offence, or
 - (ii) 2,000 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence, or
 - (b) in the case of a corporation:
 - (i) 2,000 penalty units for a first offence, or
 - (ii) 4,000 penalty units for a second or subsequent offence.
- (4) The regulations may declare the sale of any species of fish that is protected from commercial fishing under subsection (1) to be prohibited absolutely.
- (5) A person who sells fish of a species declared under subsection (4) is guilty of an offence.
- Maximum penalty:
- (a) in the case of an individual:
 - (i) 1,000 penalty units or imprisonment for 6 months (or both) for a first offence, or
 - (ii) 2,000 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence, or
 - (b) in the case of a corporation:
 - (i) 2,000 penalty units for a first offence, or
 - (ii) 4,000 penalty units for a second or subsequent offence.
- (6) Subsection (5) applies whether or not the fish were taken from waters to which this Act applies.

- (7) A person cannot be found guilty of both an offence against subsection (1) (c) and an offence against subsection (5) in respect of the same sale.
- (8) Nothing in this section limits the power of the Minister to make a fishing closure in relation to commercial fishing.

[24] Section 20A

Insert after section 20:

20A Fish and waters protected from recreational fishing

- (1) The regulations may declare that fish of a specified species are protected, absolutely or conditionally, from all or a class of recreational fishing.
- (2) The regulations may declare specified waters to be waters in which all or a class of recreational fishing is prohibited absolutely or conditionally.
- (3) A person who:
 - (a) takes fish of a species declared under subsection (1) in breach of the declaration, or
 - (b) takes fish from waters declared under subsection (2) in breach of the declaration,is guilty of an offence.
Maximum penalty:
 - (a) in the case of an individual:
 - (i) 200 penalty units or imprisonment for 6 months (or both) for a first offence, or
 - (ii) 400 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence, or
 - (b) in the case of a corporation:
 - (i) 1,000 penalty units for a first offence, or
 - (ii) 2,000 penalty units for a second or subsequent offence.
- (4) Nothing in this section limits the power of the Minister to make a fishing closure in relation to recreational fishing.

[25] Section 21 Defences

Insert “or lawfully cultivated in” after “taken from” in section 21 (1) (a).

[26] Section 21 (2)

Omit the subsection. Insert instead:

- (2) Subsection (1) (a) does not apply to the following offences:
 - (a) an offence under section 19 (3), if the possession of the protected fish is prohibited absolutely by the regulations,
 - (b) an offence under section 20 (5).

[27] Section 21AA

Insert after section 21:

21AA Special provision for Aboriginal cultural fishing

- (1) An Aboriginal person is authorised to take or possess fish, despite section 17 or 18, if the fish are taken or possessed for the purpose of Aboriginal cultural fishing.
- (2) The authority conferred by this section is subject to any regulations made under this section.
- (3) The regulations may make provision for the management of Aboriginal cultural fishing as authorised by this section.
- (4) Without limiting the above, the regulations may:
 - (a) prescribe the circumstances in which the taking or possession of fish by Aboriginal persons for the purpose of Aboriginal cultural fishing is authorised by this section, and
 - (b) specify restrictions as to the quantity of fish of a specified species or of a specified class that may be taken by or be in the possession of Aboriginal persons for the purposes of Aboriginal cultural fishing as authorised by this section.
- (5) The Minister must not recommend the making of a regulation under this section unless an advisory council for the Aboriginal sector of the fishing industry has been established under section 229 and the Minister certifies that the advisory council has been consulted on the proposed regulation.
- (6) A person does not commit an offence against section 17 or 18 in respect of the taking or possession of fish if the taking or possession of the fish is authorised under this section.
- (7) This section does not prevent the issue of a permit under section 37 for Aboriginal cultural fishing purposes.

- (8) This section does not authorise an Aboriginal person to do anything that is inconsistent with native title rights and interests under an approved determination of native title (within the meaning of the *Native Title Act 1993* of the Commonwealth) or with the terms of an indigenous land use agreement (within the meaning of that Act).

[28] Part 2, Division 2A

Insert after Division 2:

Division 2A Trafficking in fish

21A Definitions

- (1) In this Division:
indictable quantity of a species of fish means the quantity specified as an indictable quantity of fish for the species concerned in Column 3 of Schedule 1C.
indictable species of fish means a species of fish specified in Column 1 of Schedule 1C.
- (2) If an indictable quantity of a species of fish is specified by reference to the total weight of the fish concerned, the total weight of the fish is to be determined in accordance with the regulations.
- (3) The common name of a species of fish specified in Column 2 of Schedule 1C is for information purposes only and does not limit the description of the species of fish in Column 1.
- (4) The Governor may, by regulation made on the recommendation of the Minister, amend Schedule 1C to insert, alter or omit any matter in that Schedule.

21B Trafficking in fish

- (1) A person must not traffic in an indictable species of fish.
Maximum penalty: Imprisonment for 10 years.
- (2) For the purposes of this Division, a person *traffics* in an indictable species of fish if:
- (a) the person dishonestly takes, sells, receives or possesses fish of an indictable species, and
 - (b) the taking, selling, receiving or possession of the fish by the person contravenes another provision of this Act or of the regulations, and

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- (c) the quantity of fish of an indictable species taken, sold, received or possessed is not less than an indictable quantity of the species concerned.
 - (3) Any defence that is applicable to proceedings for an offence in respect of a contravention of another provision of this Act or of the regulations also applies to proceedings for an offence against this section in respect of the same contravention.
 - (4) A person may be found guilty of an offence against this section in relation to a contravention of another provision of this Act whether or not the person has been found guilty of an offence against another provision of this Act in relation to that contravention.

21C Additional monetary penalty may be imposed

- (1) A court that finds a person guilty of an offence against section 21B may impose an additional penalty for the offence of up to 10 times the market value of the fish the subject of the offence.
- (2) The *market value* of the fish the subject of the offence is the amount determined by the court as the price at which the fish might reasonably have been expected to be sold by the person who committed the offence at the time the offence was committed.
- (3) In determining the market value of the fish the subject of the offence, the court may have regard to the following:
 - (a) the price for which fish of that species were being sold at the time of the offence (whether or not to purchasers within this State and whether or not legally),
 - (b) the price for which the fish were sold, or for which fish of that species have previously been sold, by the person who committed the offence,
 - (c) any other matters it considers appropriate.
- (4) The court may determine the market value of the fish the subject of the offence by reference to the weight of the fish the subject of the offence, the number of fish the subject of the offence or by any other method it considers appropriate.
- (5) The penalty provided for by this section is in addition to the maximum penalty provided for by this Act in respect of the offence concerned.

[29] Section 24 Lawful use of nets or traps

Omit the maximum penalty from section 24 (1). Insert instead:

Maximum penalty:

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

[30] Section 25 Possession of illegal fishing gear

Omit the maximum penalty from section 25 (1). Insert instead:

Maximum penalty:

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

[31] Section 34A Definitions

Omit the definition of *official receipt*. Insert instead:

official receipt means a receipt issued under this Division for payment of a recreational fishing fee, being:

- (a) if the fishing fee was paid in person—the hard copy receipt issued as evidence of payment (or a copy of that receipt), or
- (b) if the fishing fee was paid over the telephone or by electronic means—the receipt number issued as evidence of payment, or
- (c) any other evidence of payment of a fishing fee prescribed by the regulations.

[32] Section 34AA Purpose of fishing fees

Insert “, maintaining or protecting” after “enhancing” in section 34AA (a).

[33] Section 34C Recreational fishers required to pay fishing fee

Omit section 34C (2) (f). Insert instead:

(f) if the fisher is an Aboriginal person, or

[34] Section 34G Issue of receipt on payment of fishing fee

Insert after section 34G (3):

(3A) The Director-General is to make appropriate arrangements to ensure that a person who pays a fishing fee is issued with an official receipt for the payment.

[35] Section 34J Offences

Insert “immediate” after “his or her” in section 34J (2).

[36] Section 34J (4)

Omit the subsection. Insert instead:

(4) For the purposes of this section, a person has an official receipt in his or her *immediate possession* only if the person is able to immediately produce the official receipt if required.

[37] Section 35 Possessing fish illegally taken

Omit the maximum penalty from section 35 (1). Insert instead:

Maximum penalty:

(a) in the case of an individual:

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

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

(b) in the case of a corporation:

(i) 1,000 penalty units for a first offence, or

(ii) 2,000 penalty units for a second or subsequent offence.

[38] Section 36 Defence for accidental etc taking of fish

Insert after section 36 (2):

- (3) The defence provided under subsection (1) is not available in proceedings for an offence under Part 7A.

Note. See Division 4 of Part 7A for defences to offences under that Part.

[39] Section 37 Defence—special permits for research or other authorised purposes

Insert after section 37 (1) (c):

- (c1) Aboriginal cultural fishing purposes,

[40] Section 37 (2A)

Insert after section 37 (2):

- (2A) A permit may authorise a specified person or a specified class of persons, in addition to the permit holder, to take and possess fish or marine vegetation as authorised by the permit.

[41] Section 37 (3)

Omit “that the person was the holder of a permit under this section that authorised the act or omission constituting the offence”.

Insert instead “that the act or omission of the person constituting the offence was authorised by a permit under this section”.

[42] Section 37 (3A)

Insert after section 37 (3):

- (3A) An application for a permit under this section is to be in a form approved by the Minister.

[43] Section 37 (6)

Omit “In particular, the regulations may prescribe the fee payable for the issue of a permit.”.

[44] Section 37 (8)

Insert after section 37 (7):

- (8) The Minister is not to issue a permit to a person for Aboriginal cultural fishing purposes if to authorise the fishing activities and practices concerned would be inconsistent with native title rights and interests under an approved determination of native title (within the meaning of the *Native Title Act 1993* of the

Commonwealth) or with the terms of an indigenous land use agreement (within the meaning of that Act).

[45] Section 40 Regulations relating to general management of fisheries

Insert after section 40 (2) (l):

- (m) the fees payable in respect of an application for, or the issue of, a permit under this Act.

[46] Section 68 Endorsements on licences

Omit section 68 (1) and (2). Insert instead:

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

[47] Section 68 (6)

Omit the subsection. Insert instead:

- (6) An endorsement:
 - (a) remains in force for the period specified in the endorsement, and
 - (b) may be renewed by the grant of an endorsement for a further period.

[48] Section 68 (6C)

Omit the maximum penalty. Insert instead:

Maximum penalty:

- (a) 200 penalty units or imprisonment for 6 months (or both) for a first offence, or
- (b) 400 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence.

[49] Section 72 Maximum shareholding permitted

Omit “changed” from section 72 (4). Insert instead “decreased”.

[50] Section 72 (4)

Omit “change”. Insert instead “decrease”.

[51] Section 73 Duration of shareholding—category 1 share management fishery

Omit section 73 (2) and (3). Insert instead:

- (2) 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.
- (3) If a new management plan is not made by the end of that 10-year period (or any subsequent period for which the shares are renewed), the shares are taken to be renewed, at the end of their current period, for a further period of 10 years.

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

Omit section 75 (5). Insert instead:

- (5) The Minister may cancel or sell forfeited shares to which this section applies.
- (5A) Any forfeited shares sold by the Minister are to be sold by public tender.

[53] Section 75 (7)–(11)

Omit section 75 (7) and (8). Insert instead:

- (7) If any amount is due under this Part in respect of the forfeited shares that would, on payment, be paid into the Commercial Fishing Trust Fund, that amount is to be deducted from the purchase price and paid to the credit of the Commercial Fishing Trust Fund, and the balance after payment is to be paid to the credit of the Consolidated Fund.
- (8) If shares are forfeited for a failure by the shareholder to pay a community contribution or other amount due under this Part, the following provisions apply:
 - (a) any community contribution due under this Part is to be deducted from the purchase price and paid to the credit of the Consolidated Fund,
 - (b) any other amount due under this Part that would, on payment, be paid into the Commercial Fishing Trust Fund, is to be deducted from the purchase price and paid to the credit of the Commercial Fishing Trust Fund,

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- (c) any reasonable costs incurred by or on behalf of the Minister in connection with the sale of the shares are to be deducted from the purchase price and paid to the credit of the Consolidated Fund,
 - (d) the balance (if any) remaining after payment of the amounts referred to in paragraphs (a)–(c) is to be paid to the shareholder.
- (9) The regulations may authorise or require the payment of any part of the purchase price to a person (other than the shareholder) who had an interest in the shares. Any such payment may be made only after payment of the amounts referred to in subsection (8) (a)–(c).
 - (10) The Minister may recover from a person, as a debt in any court of competent jurisdiction, any reasonable costs incurred by or on behalf of the Minister in selling shares forfeited by the person, being costs not otherwise recovered as provided by this section.
 - (11) The Minister is not liable to pay any community contribution or other amount under this Act that becomes payable in respect of forfeited shares following the forfeiture.

[54] Section 91 Registration of dealings in shares

Omit “When such an application is made to the Director-General,” from section 91 (4).

Insert instead “If such an application is approved by the Director-General,”.

[55] Section 95 Cancellation or forfeiture of shares to be noted in Share Register

Omit “and cancel the registration of the share” from section 95 (1).

[56] Section 102 Commercial fishers required to be licensed

Omit the maximum penalty from section 102 (1). Insert instead:

Maximum penalty:

- (a) in the case of an individual:
 - (i) 1,000 penalty units for a first offence, or
 - (ii) 2,000 penalty units for a second or subsequent offence, or
- (b) in the case of a corporation:
 - (i) 2,000 penalty units for a first offence, or
 - (ii) 4,000 penalty units for a second or subsequent offence.

[57] Section 111 Declaration of restricted fisheries

Omit “during the period specified in the declaration” from section 111 (1).

[58] Section 111 (4)

Insert “or if the period (if any) specified by the regulations as the period during which the fishery is a restricted fishery expires” after “regulations”.

[59] Section 112 Commercial fishing licence to be endorsed for restricted fishery

Omit the maximum penalty from section 112 (4). Insert instead:

Maximum penalty:

- (a) 200 penalty units or imprisonment for 6 months (or both) for a first offence, or
- (b) 400 penalty units or imprisonment for 12 months (or both) for a second or subsequent offence.

[60] Sections 115A (1) (a), 127D (1) (a), 234 (2) (a), 235 (2) (a), 236 (2) (a), 236A (2) (a), 237 (2) (a) and 238 (2) (a)

Insert “, maintain or protect” after “enhance” wherever occurring.

[61] Section 117 Fish receiver to be registered

Omit section 117 (2) (a).

[62] Sections 123 and 123A

Omit section 123. Insert instead:

123 Records to be made by sellers

- (1) A person who sells any fish must make and deliver to the purchaser, on or before the sale, a record concerning the sale by the person of the fish in accordance with the regulations.

Maximum penalty:

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

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- (2) A person who sells any fish (*the seller*) must:
- (a) make, before the sale, or
 - (b) obtain, on or before the sale, from any other person from whom the person acquired the fish,
a record concerning the seller's acquisition of the fish in accordance with the regulations.
- Maximum penalty:
- (a) in the case of an individual:
 - (i) 200 penalty units for a first offence, or
 - (ii) 400 penalty units for a second or subsequent offence, or
 - (b) in the case of a corporation:
 - (i) 1,000 penalty units for a first offence, or
 - (ii) 2,000 penalty units for a second or subsequent offence.
- (3) A person who is required to make or obtain a record under this section must:
- (a) retain a copy of the record for not less than 5 years after the fish are sold by the person, and
 - (b) during that 5-year period, produce the copy of the record when requested to do so by a fisheries officer.
- Maximum penalty:
- (a) in the case of an individual:
 - (i) 200 penalty units for a first offence, or
 - (ii) 400 penalty units for a second or subsequent offence, or
 - (b) in the case of a corporation:
 - (i) 1,000 penalty units for a first offence, or
 - (ii) 2,000 penalty units for a second or subsequent offence.
- (4) An offence under this section applies whether or not the fish were sold to a purchaser within the State.
- (5) This section does not apply in respect of oysters.
- (6) The regulations may provide that this section does not apply in respect of the sale of fish:
- (a) if the fish are sold in circumstances specified in the regulations, or

- (b) if the quantity of fish sold does not exceed a quantity specified by the regulations in respect of the fish or class of fish concerned, or
- (c) in any other circumstances prescribed by the regulations.

123A Records of possession of fish

- (1) A person in possession of fish must produce a prescribed record concerning the possession of the fish when requested to do so by a fisheries officer if:
 - (a) the person is a fishing industry participant, or
 - (b) the quantity of fish in the person's possession is equal to, or more than, a commercial quantity of fish.Maximum penalty:
 - (a) in the case of an individual:
 - (i) 200 penalty units for a first offence, or
 - (ii) 400 penalty units for a second or subsequent offence, or
 - (b) in the case of a corporation:
 - (i) 1,000 penalty units for a first offence, or
 - (ii) 2,000 penalty units for a second or subsequent offence.
- (2) It is a defence to a prosecution for an offence under this section in respect of a defendant who is not a fishing industry participant if the defendant proves that the fish were in the defendant's possession otherwise than for the purpose of sale, transportation for reward or storage for reward.
- (3) It is a defence to a prosecution for an offence under this section in respect of a defendant who is a fishing industry participant if:
 - (a) the defendant was in possession of less than a commercial quantity of fish, and
 - (b) the defendant proves that the fish were in the defendant's possession otherwise than for the purpose of sale, transportation for reward or storage for reward.
- (4) An offence under this section applies whether or not the fish were taken from waters to which this Act applies.
- (5) This section does not apply:
 - (a) to the possession of fish on any premises, or part of premises, occupied solely for residential purposes, or
 - (b) to the possession of oysters.

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- (6) The regulations may provide that this section does not apply in respect of the possession of fish:
- (a) if the fish are in possession in circumstances specified in the regulations, or
 - (b) if the quantity of fish in possession does not exceed a quantity specified by the regulations in respect of the fish or class of fish concerned, or
 - (c) in any other circumstances prescribed by the regulations.
- (7) In this section:
- commercial quantity* of fish means the quantity prescribed by the regulations as the commercial quantity for the species of fish, or class of fish, concerned.
- fishing industry participant* means:
- (a) the holder of a fishing authority (within the meaning of Part 9), or
 - (b) a person who carries on the business of selling or processing fish or fish products.

[63] Section 127A Meaning of charter fishing boat

Omit section 127A (b). Insert instead:

- (b) the boat is used for recreational fishing activities on a commercial basis, and

[64] Section 127A (2) and (3)

Insert at the end of section 127A:

- (2) A boat is used for recreational fishing activities on a *commercial basis* if:
 - (a) a payment or other consideration is required to be made or given by or on behalf of all or any of the persons using the boat for the right to fish from the boat or for any other activity or service (such as accommodation) provided in connection with the arrangement under which the boat is used, or
 - (b) the boat is made available for recreational fishing activities by a commercial organisation and all or any of the persons using the boat for the recreational fishing activities are members of that commercial organisation, or

(c) the boat is made available for recreational fishing activities under any other arrangement of a kind specified by the regulations to be a commercial charter fishing arrangement.

(3) In this section, a *commercial organisation* means a club or other organisation that provides services (whether or not for profit) and that charges a fee for membership.

[65] Section 128 Definitions

Insert “and, if the arrangement is varied, means the arrangement as varied” after “States” in the definition of *arrangement*.

[66] Section 135 Arrangement for management of certain fisheries

Insert “varied or” after “may be” in section 135 (2).

[67] Section 135 (3) and (3A)

Omit section 135 (3). Insert instead:

(3) After an arrangement has been made or varied, but before the arrangement or variation 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 or variation, as if the arrangement or variation had taken effect, but such a licence, endorsement, instrument or regulation does not have effect before the arrangement or variation takes effect.

(3A) On the variation 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 variation cease to have effect to the extent (if any) that they are inconsistent with the arrangement as varied.

[68] Section 136 Application of this Act to fisheries in accordance with arrangements

Insert “, or a part of a particular fishery,” after “particular fishery”.

[69] Section 136

Insert “, or the part of the fishery,” after “the fishery”.

[70] Section 136

Insert “, or that part of the fishery,” after “that fishery”.

[71] Section 137 Functions of Joint Authority

Insert “, or part of the fishery,” after “and the fishery” in section 137 (1).

[72] Section 138 Joint Authority to exercise certain powers instead of Minister

Insert “or part of which is to be managed in accordance with the law of the State,” after “the law of the State,” in section 138 (2).

[73] Section 141 Regulations

Insert “, or a part of a fishery,” after “manage a fishery” in section 141 (1).

[74] Section 141 (1) (a), (b) and (c)

Insert “or the part of the fishery” after “the fishery” wherever occurring.

[75] Section 142 Definitions

Insert in alphabetical order:

development plan has the meaning given by section 143.

[76] Section 144 Aquaculture prohibited except in accordance with a permit

Omit section 144 (4). Insert instead:

- (4) However, this section does not apply:
- (a) to aquaculture undertaken by the Minister under a development plan or under Part 8, or otherwise for the purposes of the administration of this Act, or
 - (b) to persons of a class excluded by the regulations from the operation of this section.

[77] Section 147 Permit to specify area and type of aquaculture

Omit “and the species of fish or marine vegetation authorised to be cultivated within any such area” from section 147 (1).

Insert instead “and the type of aquaculture authorised to be undertaken within any such area”.

[78] Section 147 (3)

Insert after section 147 (2):

- (3) The aquaculture permit may specify the type of aquaculture authorised by the permit by specifying all or any of the following:
- (a) the species of fish or marine vegetation that may be cultivated or kept (including any hybrid or polyploid form of species),

- (b) the things that may be cultivated from fish or marine vegetation kept under the permit,
- (c) the part of the life cycle of a species during which the species may be cultivated or kept.

[79] Section 148 Variation of permits

Omit section 148 (1) (b). Insert instead:

- (b) vary the type of aquaculture that may be undertaken within any such area.

[80] Sections 149 (1) and (2), 156 (1) (b), 179 (1) (a), 189 (1) and 191 (d)

Insert “or kept” after “cultivated” wherever occurring.

[81] Section 152 Conditions of permits

Omit “cultivation of the species of fish or marine vegetation to which the permit relates” from section 152 (2) (a).

Insert instead “type of aquaculture that may be undertaken under the authority of the permit”.

[82] Section 154 Register of permits

Omit section 154 (2) (e). Insert instead:

- (e) the type of aquaculture authorised by the permit within any such area, and

[83] Section 163 Grant of aquaculture lease

Omit “species of fish or marine vegetation authorised to be cultivated” from section 163 (3).

Insert instead “type of aquaculture authorised to be undertaken”.

[84] Section 163 (7)–(7B)

Omit section 163 (7). Insert instead:

- (7) The Minister must not grant a lease on an application unless satisfied that:
 - (a) the land to which the application relates is available for lease, and
 - (b) the application is consistent with any relevant development plan.

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- (7A) Before granting a lease on an application, the Minister must:
- (a) 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-General before the expiration of a period specified in the notice, and
 - (b) consider any objections to the granting of the lease that are lodged within the period specified in the notice for the making of written objections.
- (7B) The Minister is not required to comply with subsection (7A) if:
- (a) the area to which the application relates is the subject of a development plan and the type of aquaculture proposed is a type that the development plan provides is suitable in that area, or
 - (b) 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*, or approval under Part 3A of that Act, to carry out development on the proposed leased area for the purposes of the aquaculture concerned.

[85] Section 164 Rights conferred by lease

Omit “to cultivate within, and to take from, the leased area the species of fish or marine vegetation specified in the lease” from section 164 (1) (a).

Insert instead “to undertake the type of aquaculture specified in the lease”.

[86] Section 166 Overdue rental

Omit “remains unpaid 3 months” from section 166 (1).

Insert instead “is unpaid”.

[87] Section 177 Power of Minister to cancel leases in certain cases

Omit “and the amount has remained unpaid for at least 2 years” from section 177 (1) (c).

[88] Section 181 Definitions

Insert in alphabetical order:

disease means 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.

[89] Section 181, definition of “declared disease”

Omit the definition. Insert instead:

declared disease means a disease in respect of which this Division applies under section 182 or 182A.

[90] Sections 182 and 182A

Omit section 182. Insert instead:

182 Declared diseases

- (1) Each disease specified in Schedule 6B is a disease in respect of which this Division applies.
- (2) The common name of a species specified in Part 2 of Schedule 6B is for information purposes only and does not limit a description of species in that Schedule.
- (3) The Governor may, by regulation made on the recommendation of the Minister, amend Schedule 6B to insert, alter or omit any matter in that Schedule.

182A Urgent declarations by Minister

- (1) If the Minister considers that urgent action is required in respect of a particular disease, the Minister may, by notice published in a newspaper circulating generally in the State, or by radio or television broadcast, declare that disease to be a disease in respect of which this Division applies.
- (2) In such an urgent case, the Minister is to publish the declaration in the Gazette as soon as practicable after it is made.
- (3) A declaration made by the Minister under this section may provide that specified provisions of this Division do not apply in respect of the disease or apply only in the circumstances specified in the declaration.
- (4) A declaration has effect according to its terms and remains in force (unless sooner revoked by another declaration) for the period, not exceeding 6 months, specified in the declaration.

[91] Section 183 Minister may declare quarantine area

Omit section 183 (2). Insert instead:

- (2) An area may be declared a quarantine area if:
 - (a) it is subject to an aquaculture permit, or
 - (b) it is an area of water, or

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- (c) it is an area in the immediate vicinity of an area of water, or
 - (d) it is a pet shop or an aquarium kept for commercial purposes.

[92] Section 183 (4) (b)

Omit “in the case of an area subject to an aquaculture permit—require the holder”.

Insert instead “require a relevant person”.

[93] Section 183 (4A)

Insert after section 183 (4):

- (4A) For the purposes of this section, a *relevant person* means:
 - (a) the holder of an aquaculture permit in respect of a quarantine area or part of a quarantine area, or
 - (b) the owner or occupier of any land or premises within a quarantine area.

[94] Section 183 (6) and (6A)

Omit section 183 (6). Insert instead:

- (6) If a relevant person fails to take any action required by an order declaring a quarantine area, a fisheries officer may enter the quarantine area and take the required action.
- (6A) Subsection (6) does not authorise a fisheries officer to enter any premises used for residential purposes.

[95] Section 183 (7) (a)

Omit “holder of the aquaculture permit”. Insert instead “relevant person”.

[96] Section 183 (7) (b)

Omit “holder”. Insert instead “relevant person”.

[97] Section 187A

Insert after section 187:

187A Exemptions

- (1) The Minister may, by order published in the Gazette, declare that any specified provisions of this Division do not apply in respect of a declared disease or apply only in the circumstances specified in the order.
- (2) Such an order has effect according to its terms.

[98] Section 202

Omit the section. Insert instead:

202 Appeal to the Land and Environment Court

- (1) A person (including a local government authority) who is dissatisfied with a decision of the Minister concerning dredging or reclamation work may appeal against the decision to the Land and Environment Court within 30 days of receiving notice of the decision.
- (2) The lodging of an appeal does not, except to the extent that the Land and Environment Court otherwise directs in relation to the appeal, operate to stay the decision appealed against.

[99] Section 206 Protection of spawning areas of salmon, trout and certain other fish

Omit “100” from the maximum penalty in section 206 (1).

Insert instead “1,000”.

[100] Section 206 (1A) and (1B)

Insert after section 206 (1):

- (1A) In proceedings for an offence under this section in respect of an act or an omission of a person that causes damage to gravel beds in any waters where salmon or trout spawn or are likely to spawn, it is to be conclusively presumed that the person knew that the waters were waters of that kind if it is established that:
 - (a) the act or omission occurred in the course of the carrying out of development or an activity for which development consent under Part 4 of the *Environmental Planning and Assessment Act 1979*, or an approval to which Part 5 of that Act applies, was required but not obtained, or
 - (b) the act or omission constituted a failure to comply with any such development consent or approval.
- (1B) A person is not guilty of an offence against this section if the act or omission that constitutes the offence was done or omitted under the authority of a permit issued under this Part.

[101] Sections 209–209B

Omit section 209. Insert instead:

209 Definitions

For the purposes of this Act:

noxious fish means a species of fish that is noxious fish for the purposes of this Act under section 209A or 209B.

noxious marine vegetation means a species of marine vegetation that is noxious marine vegetation for the purposes of this Act under section 209A or 209B.

209A Noxious fish and noxious marine vegetation

- (1) Column 1 of Schedule 6C specifies the species of fish and marine vegetation that are noxious fish and noxious marine vegetation for the purposes of this Act.
- (2) If Column 3 of Schedule 6C specifies particular waters in relation to which a particular species of fish or marine vegetation is noxious fish or noxious marine vegetation, the species is noxious fish or noxious marine vegetation only when located in those specified waters.
- (3) The common name of a species of fish or marine vegetation specified in Column 2 of Schedule 6C is for information purposes only and does not limit the description of the species of fish or marine vegetation in Column 1.
- (4) The Governor may, by regulation on the recommendation of the Minister, amend Schedule 6C to insert, alter or omit any matter in that Schedule.

209B Urgent declarations by Minister

- (1) In the case of an emergency, the Minister may, by order published in the Gazette, declare any specified species of fish or marine vegetation to be noxious fish or noxious marine vegetation for the purposes of this Act.
- (2) An order made by the Minister under this section may:
 - (a) limit the declaration to fish or marine vegetation located in any specified waters, and
 - (b) declare that specified provisions of this Division do not apply in respect of the relevant species of fish or marine vegetation or apply only in the circumstances specified in the declaration.

- (3) An order has effect according to its terms and remains in force (unless sooner revoked by another order) for the period, not exceeding 6 months, specified in the order.

[102] Section 214A

Insert after section 214:

214A Exemptions

- (1) The Minister may, by order published in the Gazette, declare that any specified provisions of this Division do not apply in respect of specified noxious fish or noxious marine vegetation or apply only in the circumstances specified in the order.
- (2) Such an order has effect according to its terms.

[103] Part 7, Division 7, heading

Omit the heading. Insert instead:

Division 7 Protection of fish and marine vegetation from disease

[104] Section 215

Omit the section. Insert instead:

215 Purposes of Division

The purposes of this Division are:

- (a) to prevent the spread of diseases in fish and marine vegetation, and
- (b) to prevent any adverse effect on existing fish and marine vegetation and their habitats by introduced species of fish and marine vegetation.

[105] Section 216 Releasing live fish into waters prohibited

Omit “naturally” from section 216 (3).

[106] Sections 217 and 217A

Omit section 217. Insert instead:

217 Importation of live exotic fish

- (1) A person must not bring into New South Wales any live fish of a species or class prescribed by the regulations 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, 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.

- (3) This section does not apply in respect of any species of fish that was established in the waters of the State, or in the waters of the sea adjacent to the State within the Australian fishing zone, before European settlement.

217A Importation of live exotic marine vegetation

- (1) A person must not bring into New South Wales any live marine vegetation of a species or class prescribed by the regulations 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, buys or has possession of marine vegetation knowing that it 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.

- (3) This section does not apply in respect of any species of marine vegetation that existed in the State before European settlement.

[107] Section 218 Fishways to be provided in construction of dams and weirs

Insert after section 218 (5A):

- (5B) A person (other than a public authority) must not construct, alter or modify a dam, weir or reservoir on a waterway unless the person ensures that the Minister is given notice in writing of the

proposed works at least 28 days before the commencement of the works.

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

- (5C) Subsection (5B) does not apply in respect of any works approved by a public authority or approved by the Minister administering the *Environmental Planning and Assessment Act 1979* under Part 3A of that Act.

[108] Section 218 (6), definition of “waterway”

Omit “naturally” from the definition.

[109] Section 220 Provisions relating to permits under this Part

Omit “In particular, the regulations may prescribe the fee payable for the issue of a permit.” from section 220 (3).

[110] Section 220AA

Insert after section 220:

220AA Director-General may make stop work order

- (1) If the Director-General is of the opinion that any action is being, or is about to be, carried out in contravention of Division 3 or 4, or section 219, and that the action is likely to cause damage to fish habitat or obstruct the free passage of fish, the Director-General may order that such action is to cease and that no further action, other than such action as may be specified in the order, is to be carried out in or in the vicinity of the waters concerned within a period of 40 days after the date of the order.
- (2) An order takes effect on and from the date on which:
 - (a) a copy of the order is affixed in a conspicuous place in the vicinity of the waters the subject of the order, or
 - (b) the person carrying out or about to carry out the action is notified that the order has been made,whichever is the sooner.
- (3) A person who does not comply with an order in force under this section is guilty of an offence.

Maximum penalty:

 - (a) in the case of an individual, 1,000 penalty units and an additional 500 penalty units for each day the offence continues, or

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- (b) in the case of a corporation, 2,000 penalty units and an additional 1,000 penalty units for each day the offence continues.
 - (4) The Director-General may, by making a further order under this section, extend an order for such further period or periods of 40 days as the Director-General thinks fit.
 - (5) The Director-General is not required, before making an order under this section, to notify any person who may be affected by the order.
 - (6) An order of the Director-General under this section has effect despite any consent, approval, notice, order or other instrument made or issued by or under any other Act or law that requires or permits the action prohibited by the order.
 - (7) This section does not apply to the following:
 - (a) any thing authorised by or under the *State Emergency and Rescue Management Act 1989* that is reasonably necessary to avoid a threat to life or property,
 - (b) any thing authorised to be done by or under the *Rural Fires Act 1997* in relation to any emergency fire fighting act within the meaning of that Act.
 - (8) A person who is dissatisfied with a decision of the Director-General to take action under this section may appeal against the decision to the Land and Environment Court within 30 days of receiving notice of the decision.
 - (9) The lodging of an appeal does not, except to the extent that the Land and Environment Court otherwise directs in relation to the appeal, operate to stay the decision appealed against.

[111] Section 220ZE Regulations may prohibit certain actions

Omit section 220ZE (1). Insert instead:

- (1) The regulations may prohibit or regulate, for the purposes of this Part, the carrying out of specified actions, or actions of a specified class or description:
 - (a) in specified waters, or
 - (b) within a prescribed distance of any fish or marine vegetation of a threatened species, or
 - (c) within a prescribed distance of the habitat of any fish or marine vegetation of a threatened species, or
 - (d) on specified critical habitat.

[112] Section 220ZF Defences

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

- (d) was a routine fishing activity (unless it was an activity of a kind that the regulations declare is not a routine fishing activity for the purposes of this paragraph), or

[113] Section 220ZF (4)

Omit “routine agricultural or aquacultural activity for the purposes of subsection (1) (e)”.

Insert instead “routine fishing activity or routine aquacultural activity for the purposes of subsection (1) (d) or (e)”.

[114] Section 220ZF (6) and (7)

Insert after section 220ZF (5):

- (6) In this section, a *routine fishing activity* means a routine activity carried out in connection with the lawful taking of fish or marine vegetation other than a threatened species, population or ecological community.
- (7) A defence that the act or omission constituting the offence was a routine fishing activity or routine aquaculture activity is available in proceedings for an offence against this Division only if the person charged satisfies the court that, on becoming aware of taking any fish of a threatened species, population or ecological community, the person took immediate steps to return the fish to its natural environment with the least possible injury.

[115] Section 220ZG Court may order offender to mitigate damage or restore habitat

Omit section 220ZG (1). Insert instead:

- (1) If a court convicts a person of an offence against this Part and is satisfied the offence has caused damage to any threatened species, population or ecological community or to the habitat of any threatened species, population or ecological community, the court may, in addition to or in substitution for any pecuniary penalty for the offence, direct the person to take any action to mitigate the damage or to restore the habitat.

[116] Section 220ZG (3A)

Insert after section 220ZG (3):

- (3A) 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 actions specified in the order to be carried out, and
 - (b) may claim or realise any security provided under this section by the person against whom the order was made to meet the reasonable costs of carrying out the actions specified in the order, and
 - (c) may, by proceedings brought in a court of competent jurisdiction, recover as a debt from the person against whom the order was made the reasonable costs of carrying out the actions specified in the order (or the balance of those costs after claiming or realising any security provided by the person).

[117] Section 220ZGA

Insert after section 220ZG:

220ZGA Community service orders

- (1) If a court makes a community service order in respect of a person convicted of an offence against this Part, the court may recommend that the community service work to be performed by the person include work the purpose of which is to restore damage to habitat (whether or not caused by the person) or to otherwise assist in achieving the objects of this Part.
- (2) This section does not limit the powers of a court under the *Crimes (Sentencing Procedure) Act 1999*.
- (3) In this section:
community service order has the same meaning as it has in the *Crimes (Sentencing Procedure) Act 1999*.
community service work has the same meaning as it has in the *Crimes (Sentencing Procedure) Act 1999*.

[118] Part 7A, Division 4A

Insert after Division 4 of Part 7A:

Division 4A Interfering with fish of threatened species

220ZGB Interfering with fish of threatened species

- (1) A person must not interfere with any fish of a threatened species.
Maximum penalty: 1,000 penalty units or imprisonment for 2 years, or both.
- (2) In this section, *interfere with* includes harass, chase, tag or mark the fish or engage in any activity for the purposes of attracting or repelling the fish or any other activity prescribed by the regulations.
- (3) A reference in section 220ZW, 221IA or 221O to harming any threatened species includes interfering with the threatened species.
- (4) A person is not guilty of an offence under this section if the act or omission constituting the offence was authorised by, and was done or omitted in accordance with:
 - (a) a licence granted under this Part, or
 - (b) a Ministerial order or interim order made under Subdivision 1A of Division 6, or
 - (c) a permit under this Act, or
 - (d) a licence under Part 6 of the *Threatened Species Conservation Act 1995*.
- (5) A person is not guilty of an offence under this section if the act or omission constituting the offence was:
 - (a) an action taken or omitted by the person that was reasonably necessary to prevent a risk to human health or to deal with a serious threat to human life or property, or
 - (b) done in accordance with a direction given to the person by a fisheries officer.
- (6) The regulations may provide for exceptions to this Division or for defences to the prosecution of an offence against this Division.

[119] Section 229 Ministerial advisory bodies

Insert “, Aboriginal” after “research” in section 229 (1).

[120] Section 241 Engaging in commercial fishing activities

Insert at the end of section 241 (2) (c):

- (c1) if the person is in possession in any particular circumstances of fishing gear or other equipment that cannot be lawfully used by either a commercial fisher or recreational fisher (in any circumstances or in the particular circumstances) and the fishing gear or other equipment is reasonably capable of being used in those circumstances to take a quantity of fish that exceeds the quantity of fish that a recreational fisher is entitled to take in the waters concerned, or

[121] Section 250 Power to enter and search premises

Insert “(other than a public place)” after “into premises” in section 250 (3).

[122] Section 250 (4) (e)

Insert at the end of section 250 (4) (d):

, or

- (e) the premises entered are a public place.

[123] Section 250 (7)

Omit the subsection. Insert instead:

- (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.

public place has the meaning given by the *Law Enforcement (Powers and Responsibilities) Act 2002*.

[124] Section 256 Production of records relating to commercial fishing activities and fish receivers

Insert “, either orally or by notice in writing,” after “may” in section 256 (1).

[125] Section 256 (1) (a)

Insert “, immediately or within a specified period and at a specified place,” after “produce”.

[126] Section 256 (1) (b)

Insert “, within a specified period and at a specified place,” after “produce”.

[127] Section 256 (1) (c)

Insert “, immediately or within a specified period,” after “answer” where firstly occurring.

[128] Section 256 (4)

Omit the maximum penalty. Insert instead:

Maximum penalty: In the case of a corporation, 1,000 penalty units or, in any other case, 200 penalty units.

[129] Section 258 Power to require information

Insert after section 258 (2):

- (3) A person fails to comply with a requirement to provide information (including a requirement to state a name and address) made by a fisheries officer under this section if the person fails to provide that information immediately or within such period as the fisheries officer may allow.

[130] Sections 258A and 258B

Insert after section 258:

258A Special power to require information—Parts 7 and 7A

- (1) A fisheries officer may require any person whom the fisheries officer suspects on reasonable grounds to have knowledge of matters in respect of which information is reasonably required for the purposes of Part 7 or 7A to answer questions in relation to those matters.
- (2) A fisheries officer may, by notice in writing, require a corporation to nominate, in writing within the time specified in the notice, a director or officer of the corporation to be the corporation’s representative for the purpose of answering questions under this section.
- (3) Answers given by a person nominated under subsection (2) bind the corporation.
- (4) A fisheries officer may, by notice in writing, require a person to attend at a specified place and time to answer questions under this section if attendance at that place is reasonably required in order that the questions can be properly put and answered.
- (5) The place and time at which a person may be required to attend under subsection (4) is to be:
 - (a) a place and time nominated by the person, or

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- (b) if a place or time nominated is not reasonable in the circumstances or a place or time is not nominated by the person, a place and time nominated by the fisheries officer that is reasonable in the circumstances.
- (6) 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: In the case of a corporation, 1,000 penalty units or, in any other case, 200 penalty units.

258B Provisions relating to requirements to provide information or answer questions

- (1) **Warning to be given on each occasion**
- A person is not guilty of an offence of failing to comply with an information requirement unless the person was warned on that occasion that a failure to comply is an offence.
- (2) **Self-incrimination not an excuse**
- A person is not excused from an information requirement on the ground that the record, information or answer might incriminate the person or make the person liable to a penalty.
- (3) **Information or answer not admissible if objection made**
- However, any information furnished or answer given by a natural person in compliance with an information requirement is not admissible in evidence against the person in criminal proceedings (except proceedings for an offence under section 258, 258A or 259) if:
- (a) the person objected at the time to doing so on the ground that it might incriminate the person, or
- (b) the person was not warned on that occasion that the person may object to furnishing the information or giving the answer on the ground that it might incriminate the person.
- (4) **Records admissible**
- Any record furnished by a person in compliance with an information requirement is not inadmissible in evidence against the person in criminal proceedings on the ground that the record might incriminate the person.

(5) **Further information**

Further information obtained as a result of a record or information furnished or of an answer given in compliance with an information requirement is not inadmissible on the ground:

- (a) that the record or information had to be furnished or the answer had to be given, or
- (b) that the record or information furnished or answer given might incriminate the person.

- (6) For the purposes of this section, an *information requirement* is a requirement made by a fisheries officer under section 258 or 258A.

[131] Section 269 Forfeiture of boats and motor vehicles by order of court

Omit section 269 (2). Insert instead:

- (2) A Local Court must not order any such forfeiture if it is satisfied that the value of the boat or motor vehicle exceeds the jurisdictional limit of the Local Court sitting in its General Division within the meaning of the *Local Courts Act 1982*.
- (3) To avoid doubt, a forfeiture order is not a monetary penalty for the purposes of any provision of this Act that provides for the maximum monetary penalty that may be imposed by a Local Court in proceedings for an offence under this Act or the regulations.

[132] Section 277 Nature of proceedings for offences

Insert “(other than an indictable offence)” after “under this Act” in section 277 (1).

[133] Section 277 (2)

Omit “\$10,000” from section 277 (2). Insert instead “200 penalty units”.

[134] Section 277 (3) and (4)

Insert after section 277 (2):

- (3) An indictable offence is to be prosecuted on indictment. However, Chapter 5 of the *Criminal Procedure Act 1986* (which relates to the summary disposal of certain indictable offences unless an election is made to proceed on indictment) applies to and in respect of any such offence.
- (4) In this section, an *indictable offence* means an offence against section 21B.

[135] Section 279A

Insert after section 279:

279A Duty of master of boat to prevent contraventions of Act

- (1) A person commits an offence if:
 - (a) the person is master of a boat while it is used for any fishing activities, and
 - (b) another person (the *principal offender*) on board the boat commits a serious fisheries offence while the boat is being used for fishing activities.
- (2) The maximum penalty for an offence against this section is the maximum penalty for the serious fisheries offence committed by the principal offender.
- (3) It is a defence to proceedings for an offence against this section if the person charged proves that:
 - (a) the person issued proper instructions and took reasonable precautions to ensure compliance with this Act, and
 - (b) the serious fisheries offence occurred without the person's knowledge, and
 - (c) the person could not by the exercise of reasonable diligence have prevented the commission of the serious fisheries offence.
- (4) A person may be proceeded against and convicted under this section whether or not the principal offender has been proceeded against or been convicted for the serious fisheries offence committed by the principal offender.
- (5) In this section:
serious fisheries offence means an offence against section 14, 16, 17, 18, 19, 20, 20A, 24, 25, 35, 68, 102 or 112.

[136] Section 282C Prohibition orders may be made against repeat offenders

Omit section 282C (1). Insert instead:

- (1) A court that convicts a repeat offender of a fisheries offence may, on application by the prosecutor, make an order that prohibits the offender from doing any or all of the following:
 - (a) engaging in specified fishing activities,
 - (b) being in possession of specified fishing gear,
 - (c) being in possession of fish or marine vegetation of a specified species,

- (d) being on a boat of a kind specified in the order while on or adjacent to any waters or waters specified in the order,
- (e) being on any specified premises (that are premises in which fish are sold or in which any commercial fishing activity is conducted).

[137] Part 9, Division 8

Insert after Division 7 of Part 9:

Division 8 Restoration orders and other actions

282H Definitions

In this Division:

fishery resource includes fish stock and fish habitat.

serious fisheries offence means an offence against section 14, 16, 17, 18, 19, 20, 20A, 21B, 24, 25, 35, 68, 102 or 112.

282I Power of Minister to make restoration order

- (1) If the Minister is satisfied that a person has contravened this Act and, as a result of the contravention, caused damage to any fishery resource, the Minister may, by order in writing given to the person, require the person to carry out, within a period specified in the order, such actions as the Minister reasonably considers to be necessary to mitigate or rectify the damage.
- (2) The Minister may make an order against a person under this section only if satisfied that the person's contravention of this Act amounted to a serious fisheries offence.
- (3) However, the Minister may make the order regardless of whether the person has been charged with, or found guilty of, having committed a serious fisheries offence.
- (4) 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 actions 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 person against whom the order was made the reasonable costs of carrying out the actions specified in the order.

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- (5) A person against whom an order is made may appeal to a Local Court against the making of the order within 30 days after the order is given to the person.
 - (6) A Local Court may determine the appeal by confirming the order, revoking the order or revoking the order and making a new order.

282J Power of court to make restoration order

- (1) A court that convicts a person of a serious fisheries offence may, if satisfied that the offence has caused damage to a fishery resource, order the person to carry out such actions as the court considers necessary to mitigate or rectify the damage.
- (2) The court may specify the actions to be carried out and may order the person to maintain the area the subject of the actions until those actions have been fully performed.
- (3) The court may order the person to provide security for the performance of any obligation imposed under this section.
- (4) A court may make an order under this section in addition to or in substitution for any monetary penalty for the offence.
- (5) 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 actions specified in the order to be carried out, and
 - (b) may claim or realise any security provided under this section by the person against whom the order was made to meet the reasonable costs of carrying out the actions specified in the order, and
 - (c) may, by proceedings brought in a court of competent jurisdiction, recover as a debt from the person against whom the order was made the reasonable costs of carrying out the actions specified in the order (or the balance of those costs after claiming or realising any security provided by the person).

282K Community service orders in respect of serious fisheries offences

- (1) If a court makes a community service order in respect of a person convicted of a serious fisheries offence, the court may recommend that the community service work to be performed by the person include work the purpose of which is to restore damage to any fishery resource (whether or not caused by the person) or to otherwise enhance, maintain or protect fishery resources.

(2) This section does not limit the powers of a court under the *Crimes (Sentencing Procedure) Act 1999*.

(3) In this section:
community service order has the same meaning as it has in the *Crimes (Sentencing Procedure) Act 1999*.
community service work has the same meaning as it has in the *Crimes (Sentencing Procedure) Act 1999*.

[138] Section 288B

Insert after section 288A:

288B Waiver and refund of fees, charges and contributions

The Minister may waive or refund payment of all or part of any fee, charge, rental payment or contribution payable under this Act or the regulations, if the Minister considers it is appropriate to do so.

[139] Schedules 1B and 1C

Insert after Schedule 1A:

Schedule 1B Priority species and commercial quantities of fish

(Section 14A)

Part 1 Prohibited size fish offences

Division 1 Fish—marine or estuarine

Column 1	Column 2	Column 3
Species of fish	Common name	Commercial quantity
<i>Achoerodus viridis</i>	Groper, blue, red or brown	5
<i>Seriola lalandi</i>	Kingfish, yellow tail	10
<i>Scomberomorus commerson</i>	Mackerel, Spanish or narrow barred	10 comprised wholly of a single species or a combination of species
<i>Scomberomorus munroi</i>	Mackerel, spotted	

Column 1	Column 2	Column 3
Species of fish	Common name	Commercial quantity
<i>Argyrosomus japonicus</i>	Mulloway	10
<i>Atractoscion aequidens</i>	Teraglin	10
<i>Pagrus auratus</i>	Snapper	20

Division 2 Fish—freshwater or estuarine

Column 1	Column 2	Column 3
Species of fish	Common name	Commercial quantity
<i>Macquaria ambigua</i>	Golden perch	20
<i>Maccullochella peeli</i>	Murray cod	10
<i>Anguilla reinhardtii</i>	Eel, longfinned	20 comprised wholly of a single species or a combination of species
<i>Anguilla australis</i>	Eel, shortfinned	

Division 3 Invertebrates

Column 1	Column 2	Column 3
Species of fish	Common name	Commercial quantity
<i>Haliotis rubra</i>	Abalone	10
<i>Scylla serrata</i>	Crab, mud, black or mangrove	10
<i>Jasus verreauxi</i>	Lobster, eastern rock	5 comprised wholly of a single species or a combination of species
<i>Jasus edwardsii</i>	Lobster, southern rock	

Division 4 Invertebrates—freshwater

Column 1	Column 2	Column 3
Species of fish	Common name	Commercial quantity
<i>Euastacus armatus</i>	Murray crayfish	20

Part 2 Bag limit offences**Division 1 Fish—marine or estuarine**

Column 1	Column 2	Column 3
Species of fish	Common name	Commercial quantity
<i>Rexea solandri</i>	Gemfish	5
<i>Polyprion oxygenios</i>	Hapuka	6 comprised wholly of a single species or a combination of species
<i>Hyperoglyphe</i>	Trevalla	
<i>Epinephelus ergastularius</i>	Banded rockcod	
<i>Polyprion americanus</i>	Bass grouper	
<i>Achoerodus viridis</i>	Groper, blue, red or brown	5
<i>Seriola lalandi</i>	Kingfish, yellow tail	10
<i>Scomberomorus commerson</i>	Mackerel, Spanish or narrow barred	10 comprised wholly of a single species or a combination of species
<i>Scomberomorus munroi</i>	Mackerel, spotted	
<i>Argyrosomus japonicus</i>	Mulloway	10
<i>Atractoscion aequidens</i>	Teraglin	10

Column 1	Column 2	Column 3
Species of fish	Common name	Commercial quantity
All species of shark (other than wobbegong shark)	Shark (other than wobbegong shark)	(a) 2 tiger sharks, 2 mako sharks, 2 blue sharks, 2 hammerhead sharks or 2 whaler sharks, or
		(b) 10 comprised wholly of a single species of shark not referred to in paragraph (a) (other than wobbegong shark), or
		(c) 10 comprised of a combination of any species of shark (other than wobbegong shark)
<i>Pagrus auratus</i>	Snapper	20
<i>Thunnus alalunga</i>	Tuna, albacore	10 comprised wholly of a single species or a combination of species
<i>Thunnus obesus</i>	Tuna, bigeye	
<i>Thunnus tonggol</i>	Tuna, longtail	
<i>Thunnus maccoyii</i>	Tuna, southern bluefin	
<i>Thunnus albacares</i>	Tuna, yellowfin	

Division 2 Fish—freshwater or estuarine

Column 1	Column 2	Column 3
Species of fish	Common name	Commercial quantity
<i>Macquaria ambigua</i>	Golden perch	20
<i>Maccullochella peeli</i>	Murray cod	10

Column 1	Column 2	Column 3
Species of fish	Common name	Commercial quantity
<i>Anguilla reinhardtii</i>	Eel, longfinned	20 comprised wholly of a single species or a combination of species
<i>Anguilla australis</i>	Eel, shortfinned	

Division 3 Invertebrates

Column 1	Column 2	Column 3
Species of fish	Common name	Commercial quantity
<i>Haliotis rubra</i>	Abalone	10
<i>Scylla serrata</i>	Crab, mud, black or mangrove	10
<i>Jasus verreauxi</i>	Lobster, eastern rock	5 comprised wholly of a single species or a combination of species
<i>Jasus edwardsii</i>	Lobster, southern rock	

Division 4 Invertebrates—freshwater

Column 1	Column 2	Column 3
Species of fish	Common name	Commercial quantity
<i>Euastacus armatus</i>	Murray crayfish	20

Schedule 1C Indictable species and indictable quantities

(Section 21A)

Column 1	Column 2	Column 3
Species of fish	Common name	Indictable quantity
<i>Haliotis rubra</i>	Abalone	50
<i>Jasus verreauxi</i>	Lobster, eastern rock	20

[140] Schedules 6B and 6C

Insert after Schedule 6A:

Schedule 6B Diseases affecting fish and marine vegetation

(Section 182)

Part 1 Class A diseases

Division 1 Diseases affecting finfish

Epizootic haematopoietic necrosis—EHN virus
Epizootic haematopoietic necrosis—European catfish virus, European sheatfish virus
Infectious haematopoietic necrosis
Oncorhynchus masou virus disease
Spring viraemia of carp
Viral haemorrhagic septicaemia
Channel catfish virus disease
Viral encephalopathy and retinopathy
Infectious pancreatic necrosis
Infectious salmon anaemia
Epizootic ulcerative syndrome (*Aphanomyces invadans*)
Bacterial kidney disease (*Renibacterium salmoninarum*)
Enteric septicaemia of catfish (*Edwardsiella ictaluri*)
Piscirickettsiosis (*Piscirickettsia salmonis*)
Gyrodactylosis (*Gyrodactylus salaris*)
Red sea bream iridoviral disease
White sturgeon iridoviral disease
Furunculosis (*Aeromonas salmonicida* subsp. *salmonicida*)
Aeromonas salmonicida—atypical strains
Whirling disease (*Myxobolus cerebralis*)
Enteric redmouth disease (*Yersinia ruckeri*—Hagerman strain)
Koi herpesvirus disease
Grouper iridoviral disease

Division 2 Diseases affecting crustaceans

Taura syndrome
White spot disease
Yellowhead disease—yellowhead virus
Gill-associated virus
Tetrahedral baculovirosis (*Baculovirus penaei*)
Spherical baculovirosis (*Penaeus monodon*-type baculovirus)
Infectious hypodermal and haematopoietic necrosis

Crayfish plague (*Aphanomyces astaci*)
 Spawner-isolated mortality virus disease
 Necrotising hepatopancreatitis
 Baculoviral midgut gland necrosis
 White tail disease
 Infectious myonecrosis
 Milky lobster disease
Monodon slow growth syndrome

Division 3 Diseases affecting molluscs

Infection with *Bonamia ostreae*
 Infection with *Bonamia* species
 Infection with *Bonamia exitiosa*
 Infection with *Bonamia roughleyi*
 Infection with *Mikrocytos mackini*
 Infection with *Marteilia refringens*
 Infection with *Marteilia sydneyi*
 Infection with *Perkinsus marinus*
 Infection with *Perkinsus olseni*
 Infection with *Haplosporidium nelsoni*
 Infection with *Haplosporidium costale*
 Abalone viral ganglioneuritis
 Abalone viral mortality
 Infection with *Marteilioides chungmuensis*
 Infection with *Xenohaliotis californiensis*
 Akoya oyster disease
 Iridoviroses

Part 2 Class B diseases (Pests or parasites)

Division 1 Finfish

Species	Common name
<i>Oreochromis mossambicus</i>	Mozambique mouthbrooder
<i>Tilapia zillii</i>	Redbelly tilapia
<i>Tilapia mariae</i>	Black mangrove cichlid
<i>Neogobius melanostomus</i>	Round goby
<i>Siganus rivulatus</i>	Marbled spinefoot

Division 2 Crustaceans

Species	Common name
<i>Eriocheir</i> spp	Chinese mitten crab
<i>Charybdis japonica</i>	Lady crab
<i>Hemigrapsus sanguineus</i>	Japanese shore crab, Asian shore crab
<i>Hemigrapsus takanoi</i>	Pacific crab, brush-clawed shore crab
<i>Hemigrapsus penicillatus</i>	Pacific crab, brush-clawed shore crab
<i>Carcinus maenas</i>	European green crab, green shore crab
<i>Balanus improvisus</i>	Barnacle

Division 3 Molluscs

Species	Common name
<i>Mytilopsis sallei</i>	Black-striped mussel
<i>Perna viridis</i>	Asian green mussel
<i>Perna perna</i>	Brown mussel
<i>Perna canaliculus</i>	New Zealand green lipped mussel
<i>Musculista senhousia</i>	Asian bag mussel, Asian date mussel
<i>Potamocorbula amurensis</i>	Asian clam, brackish-water corbula
<i>Varicorbula gibba</i>	European clam
<i>Mya arenaria</i>	Soft shell clam
<i>Ensis directus</i>	Jack-knife clam
<i>Rapana venosa</i>	Rapa whelk
<i>Crepidula fornicata</i>	American slipper limpet, slipper limpet
<i>Maoricolpus roseus</i>	New Zealand screw shell

Division 4 Echinoderms

Species	Common name
<i>Asterias amurensis</i>	Northern Pacific seastar

Division 5 Ascidians

Species	Common name
<i>Didemnum vexillum</i>	Colonial sea squirt

Division 6 Polychaetes

Species	Common name
<i>Marenzelleria</i> spp.	Red gilled mudworm
<i>Sabella spallanzanii</i>	European fan worm

Division 7 Ctenophores

Species	Common name
<i>Mnemiopsis leidyi</i>	Comb jelly, sea walnut

Division 8 Marine vegetation

Species	Common name
<i>Undaria pinnatifida</i>	Japanese seaweed, wakame
<i>Grateloupia turuturu</i>	Red macroalga
<i>Sargassum muticum</i>	Asian seaweed
<i>Codium fragile</i> spp. <i>tomentosoides</i>	Green macroalga, dead man's fingers

Division 9 Holoplankton

Species	Common name
<i>Pfiesteria piscicida</i>	Toxic dinoflagellate
<i>Pseudo-nitzschia seriata</i>	Pennate diatom
<i>Dinophysis norvegica</i>	Toxic dinoflagellate
<i>Alexandrium monilatum</i>	Toxic dinoflagellate

Species	Common name
<i>Chaetoceros concavicornis</i>	Centric diatom
<i>Chaetoceros convolutus</i>	Centric diatom

Schedule 6C Noxious fish and noxious marine vegetation

(Section 209A)

Part 1 Noxious fish

Division 1 Class 1 Noxious fish

Column 1	Column 2	Column 3
Species	Common name	Waters
<i>Acestrorhynchus microlepis</i> (Acestrorhynchidae family)		All waters
<i>Hydrocynus</i> spp. (Alestiidae family)	Pike characin, giant tigerfish	All waters
<i>Amia calva</i> (Amiidae family)	Bowfin	All waters
<i>Anabas testudineus</i> (Anabantidae family)	Climbing perch	All waters
<i>Anaspidoglanis macrostoma</i> (Bagridae family)	Flatnose catfish	All waters
<i>Bagrus ubangensis</i> (Bagridae family)	Ubangi shovelnose catfish	All waters
<i>Procambarus clarkii</i> (Cambaridae family)	Red swamp crayfish	All waters
Centrarchidae family		All waters
<i>Centropomus</i> spp. (Centropomidae family)	Snook	All waters
<i>Lates microlepis</i> (Centropomidae family)	Forktail lates	All waters
<i>Lates niloticus</i> (Centropomidae family)	Nile perch	All waters

Fisheries Management Amendment Act 2009 No 114

Schedule 1 Amendment of Fisheries Management Act 1994 No 38

Column 1	Column 2	Column 3
Species	Common name	Waters
<i>Chaca chaca</i> (Chacidae family)	Angler, frogmouth and squarehead catfish	All waters
<i>Channa</i> spp. (Channidae family)	Snake head	All waters
<i>Colossoma</i> spp. (Characidae family)		All waters
<i>Serrasalmus</i> spp. (Characidae family)	Redeye piranha	All waters
<i>Pygocentrus</i> spp. (Characidae family)	Red piranha	All waters
<i>Boulengerochromis microlepis</i> (Cichlidae family)	Giant cichlid, yellow belly cichlid	All waters
<i>Oreochromis</i> spp. (Cichlidae family)	Tilapia	All waters
<i>Hemichromis fasciatus</i> (Cichlidae family)	Banded jewelfish	All waters
<i>Sargochromis</i> spp. (Cichlidae family)	Pink, slender, greenwood, mortimer, cunean, green happy	All waters
<i>Sarotherodon</i> spp. (Cichlidae family)	Blackchin tilapia	All waters
<i>Serranochromis</i> spp. (Cichlidae family)		All waters
<i>Tilapia</i> spp. (except <i>T. buttikoferi</i>) (Cichlidae family)	Redbelly tilapia	All waters
<i>Ichthyborinae</i> subfamily (Citharinadae family)	African pike-characin, tubenose poacher, fin eater	All waters
<i>Clarias</i> spp. (Clariidae family)	Walking catfish	All waters
<i>Misgurnus anguillicaudatus</i> (Cobitidae family)	Weatherloach, oriental weatherloach	All waters
<i>Aristichthys nobilis</i> (Cyprinidae family)	Bighead carp	All waters
<i>Barbodes hexagonolepis</i> (Cyprinidae family)	Copper mahseer	All waters
<i>Catla catla</i> (Cyprinidae family)	Catla	All waters

Column 1	Column 2	Column 3
Species	Common name	Waters
<i>Catlocarpio siamensis</i> (Cyprinidae family)	Giant barb	All waters
<i>Cirrhinus cirrhosus</i> (Cyprinidae family)	Mrigal	All waters
<i>Ctenopharyngodon idella</i> (Cyprinidae family)	Grass carp	All waters
<i>Labeo calabasu</i> (Cyprinidae family)	Orange fin labeo	All waters
<i>Labeo rohita</i> (Cyprinidae family)	Rohu	All waters
<i>Zacco platypus</i> (Cyprinidae family)	Freshwater minnow	All waters
<i>Hypophthalmichthys molitrix</i> (Cyprinidae family)	Silver carp	All waters
<i>Tor</i> spp. (Cyprinidae family)	River carp, deccan, high backed, jungaha, putitor, Thai mahseer	All waters
<i>Notropis</i> spp. (Cyprinidae family)	Shiner	All waters
<i>Phoxinus erythrogaster</i> (Cyprinidae family)	Southern redbelly dace	All waters
<i>Oxydoras</i> spp. (Doradidae family)	Ripsaw catfish, black doras, black shielded catfish	All waters
<i>Mytilopsis</i> spp. (Dreissenidae family)	Black striped mussel	All waters
<i>Elassoma</i> spp. (Elassomatidae family)	Pygmy sunfish	All waters
<i>Oxyeleotris marmorata</i> (Eleotridae family)	Marble goby	All waters
<i>Erythrinus</i> spp. (Erythrinadae family)		All waters
<i>Hoplerythrinus</i> spp. (Erythrinadae family)	Aimira	All waters
<i>Hoplias</i> spp. (Erythrinadae family)	Trahira	All waters
<i>Esox</i> spp. (Esocidae family)	Pike	All waters

Fisheries Management Amendment Act 2009 No 114

Schedule 1 Amendment of Fisheries Management Act 1994 No 38

Column 1	Column 2	Column 3
Species	Common name	Waters
<i>Pungitius pungitius</i> (Gasterosteidae family)	Ninespine stickleback	All waters
<i>Apeltes quadracus</i> (Gasterosteidae family)	Four spined stickleback	All waters
<i>Culaea inconstans</i> (Gasterosteidae family)		All waters
<i>Acanthogobius flavimanus</i> (Gobiidae family)	Yellow fin goby	All waters
<i>Tridentiger trignocephalus</i> (Gobiidae family)	Chameleon goby, striped goby, Japanese goby	All waters
<i>Gymnarchus niloticus</i> (Gymnarchidae family)	Aba aba	All waters
<i>Electrophorus electricus</i> (Gymnotidae family)	Electric eel	All waters
<i>Hepsetus odoe</i> (Hepsetidae family)	African pike	All waters
<i>Heteropneustes fossilis</i> (Heteropneustidae family)	Stinging catfish	All waters
<i>Atractosteus</i> spp.(Lepisosteidae family)	American gar, armoured gar, alligator gar	All waters
<i>Malapterurus</i> spp. (Malapteruridae family)	Electric catfish	All waters
<i>Mormyrops anguilloides</i> (Mormyridae family)	Bottlenose, cornish jack	All waters
<i>Belonesox belizanus</i> (Poeciliidae family)	Pike minnow, pike killifish	All waters
<i>Gambusia</i> spp. (excluding <i>Gambusia holbrooki</i>) (Poeciliidae family)	Mosquitofish	All waters
<i>Polyodon spathula</i> (Polyodontidae family)	Mississippi paddlefish	All waters
<i>Psephurus gladius</i> (Polyodontidae family)	Chinese swordfish	All waters
<i>Protopterus annectens</i> (Protopteridae family)	African lungfish	All waters

Column 1	Column 2	Column 3
Species	Common name	Waters
<i>Schilbe mystus</i> (Schilbeidae family)	African butter catfish	All waters
<i>Silurus</i> spp. (Siluridae family)	European catfish, wels catfish	All waters
<i>Paravandelia oxyptera</i> (Trichomycteridae family)	Parasitic catfish	All waters
<i>Valencia hispanica</i> (Valenciidae family)	Valencia toothcarp	All waters

Division 2 Class 2 Noxious fish

Column 1	Column 2	Column 3
Species	Common name	Waters
<i>Amniataba percooides</i> (Terapontidae family)	Banded grunter	All waters
<i>Crassostrea gigas</i> (Ostreidae family)	Pacific oyster	Estuarine and ocean waters (other than Port Stephens)
<i>Phalloceros caudimaculatus</i> (Poeciliidae family)	Speckled mosquitofish, dusky millions fish	All waters

Division 3 Class 3 Noxious fish

Column 1	Column 2	Column 3
Species	Common name	Waters
<i>Gambusia holbrooki</i> (Poeciliidae family)	Plague minnow, eastern gambusia	Waters in the local government areas of Ashfield, Auburn, Bankstown, Baulkham Hills, Blacktown, Botany Bay, Burwood, Camden, Campbelltown, Canada Bay, Canterbury, City of Sydney, Fairfield, Gosford, Holroyd, Hornsby, Hunters Hill, Hurstville, Kogarah, Ku-ring-gai, Lake Macquarie, Lane Cove, Leichhardt, Liverpool, Manly, Marrickville, Mosman, Newcastle, North Sydney, Parramatta, Penrith, Pittwater, Randwick, Rockdale, Ryde, Strathfield, Sutherland, Warringah, Waverley, Willoughby, Wollongong, Woollahra and Wyong
<i>Cyprinus carpio</i> (Cyprinidae family)	European carp, common carp, carp, ornamental Koi carp	All waters

Part 2 Noxious marine vegetation

Division 1 Class 1 Noxious marine vegetation

Column 1	Column 2	Column 3
Species	Common name	Waters
<i>Caulerpa taxifolia</i> (Caulerpaceae family)	Caulerpa	All waters

[141] Schedule 7 Savings, transitional and other provisions

Insert at the end of clause 2 (1):

Fisheries Management Amendment Act 2009

[142] Schedule 7, clause 6AB

Insert after clause 6AA:

6AB Changes to maximum penalties

An amendment made to this Act by the *Fisheries Management Amendment Act 2009* that provides for an increased maximum penalty for a second or subsequent offence against this Act applies to a second or subsequent offence that occurs after that amendment (including in a case where the previous offence occurred before the amendment).

[143] Schedule 7, clause 14A

Insert after clause 14:

14A Changes to co-operative arrangements

The amendments made to section 7 and Part 5 of this Act by the *Fisheries Management Amendment Act 2009* extend to arrangements made under Division 3 of that Part before the commencement of those amendments.

[144] Schedule 7, clauses 15A–15C

Insert after clause 15:

15A Applications for aquaculture leases

The amendments made to section 163 by the *Fisheries Management Amendment Act 2009* apply only to applications for aquaculture leases that are made on or after the commencement of the amendments.

15B Overdue rental

The amendment made to section 166 by the *Fisheries Management Amendment Act 2009* applies only to rental payments that first become due on or after the commencement of the amendment.

15C Cancellation of leases by Minister

The amendment made to section 177 by the *Fisheries Management Amendment Act 2009* extends to leases that were entered into before the commencement of the amendment and to any rental or other payments that are overdue on the commencement of the amendment.

[145] Schedule 7, clause 17AB

Insert after clause 17AA:

17AB Requirement to notify construction, alteration or modification of dams, weirs and reservoirs

Section 218 (5B), as inserted by the *Fisheries Management Amendment Act 2009*, applies in respect of any works for the construction, alteration or modification of a dam, weir or reservoir on a waterway that are first commenced after the commencement of that subsection.

[146] Schedule 7, clauses 21A–21C

Insert after clause 21:

21A Local court forfeiture powers

The amendment made to section 269 by the *Fisheries Management Amendment Act 2009* applies only in respect of an offence committed on or after the commencement of the amendment.

21B Prohibition orders (2009 changes)

- (1) A court has power to make an order under section 282C, as in force after the substitution of section 282C (1) by the *Fisheries Management Amendment Act 2009*, if the court convicts a repeat offender of a fisheries offence committed on or after that substitution (it does not matter that the other fisheries offences of which the repeat offender has been convicted were committed before that substitution).
- (2) A court continues to have power to make an order under section 282C, as in force immediately before the substitution of section 282C (1) by the *Fisheries Management Amendment Act 2009*, if the court convicts a repeat offender of a fisheries offence committed before that substitution.

21C Restoration orders

Division 8 of Part 9, as inserted by the *Fisheries Management Amendment Act 2009*, applies only in respect of offences committed on or after the commencement of that Division.

[147] Schedule 7, clause 26

Insert after clause 25:

26 References to Local Court

On the date on which the *Local Courts Act 1982* is repealed by the *Local Court Act 2007* a reference in this Act:

- (a) to a Local Court is to be read as a reference to the Local Court constituted by the *Local Court Act 2007*, and
- (b) to the *Local Courts Act 1982* is to be read as a reference to the *Local Court Act 2007*.

Schedule 2 Amendment of other Acts

2.1 Criminal Procedure Act 1986 No 209

Schedule 1 Indictable offences triable summarily

Insert after clause 10B in Part 6 of Table 2:

10C Trafficking in fish

An offence under section 21B of the *Fisheries Management Act 1994*.

2.2 Land and Environment Court Act 1979 No 204

Section 19 Class 3—land tenure, valuation, rating and compensation matters

Omit “or 202” from section 19 (g1). Insert instead “, 202 or 220AA”.

2.3 Local Court Act 2007 No 93

Section 3 Definitions

Insert after paragraph (h) of the definition of *criminal proceedings* in section 3 (1):

- (i) proceedings on an appeal against an order under section 2821 of the *Fisheries Management Act 1994*.

2.4 Local Courts Act 1982 No 164

Section 36 Proceedings to which Part does not apply

Insert after section 36 (2) (e):

- (f) proceedings on an appeal against an order under section 2821 of the *Fisheries Management Act 1994*.

2.5 Marine Parks Act 1997 No 64

[1] Section 36 Application of Fisheries Management Act 1994

Insert at the end of section 36 (2) (d):

, and

- (e) a reference to a forfeiture offence is to be read as a reference to an offence against this Act or the regulations that is declared by the regulations to be a forfeiture offence.

[2] Section 39 Proceedings for offences

Omit “\$20,000” from section 39 (2). Insert instead “\$22,000”.

[3] Schedule 3 Savings, transitional and other provisions

Insert at the end of clause 1 (1):

Fisheries Management Amendment Act 2009

[4] Schedule 3, Part 5

Insert after clause 11:

**Part 5 Provision consequent on enactment of
Fisheries Management Amendment Act
2009**

12 Penalties imposed by Local Court

The amendment made to section 39 (2) by the *Fisheries Management Amendment Act 2009* applies only in respect of an offence committed on or after the commencement of the amendment.

[Agreement in principle speech made in Legislative Assembly on 26 June 2009
Second reading speech made in Legislative Council on 2 December 2009]

BY AUTHORITY