

# Fisheries Management Act 1994 No 38

[1994-38]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Does not include amendments by**
  - [Law Enforcement \(Powers and Responsibilities\) Act 2002 No 103](#) (not commenced — to commence on 1.12.2005)
  - [Threatened Species Legislation Amendment Act 2004 No 88](#), Sch 2 [2]-[26] [28]-[38] [41] [42] [44]-[51] (not commenced)
- **See also**
  - [Fisheries Management Amendment \(Catch History\) Bill 2005](#) [Non-government Bill: Mr A J Constance, MP]

### Authorisation

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# Fisheries Management Act 1994 No 38



New South Wales

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# Fisheries Management Act 1994 No 38



New South Wales

An Act relating to the management of fishery resources.

## Part 1 Preliminary

### 1 Name of Act

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

### 2 Commencement

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

### 3 Objects of Act

- (1) The objects of this Act are to conserve, develop and share the fishery resources of the State for the benefit of present and future generations.
- (2) In particular, the objects of this Act include:
  - (a) to conserve fish stocks and key fish habitats, and
  - (b) to conserve threatened species, populations and ecological communities of fish and marine vegetation, and
  - (c) to promote ecologically sustainable development, including the conservation of biological diversity,and, consistently with those objects:
  - (d) to promote viable commercial fishing and aquaculture industries, and
  - (e) to promote quality recreational fishing opportunities, and
  - (f) to appropriately share fisheries resources between the users of those resources, and
  - (g) to provide social and economic benefits for the wider community of New South Wales.

**Note—**

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

#### **4 Definitions**

(1) In this Act:

**Aboriginal person** means a person who:

- (a) is a member of the Aboriginal race of Australia, and
- (b) identifies as an Aboriginal person, and
- (c) is accepted by the Aboriginal community as an Aboriginal person.

**aquaculture** is defined in Part 6.

**aquaculture lease** means an aquaculture lease granted or renewed under Part 6.

**aquaculture permit** means an aquaculture permit issued and in force under Part 6.

**Australian fishing zone** has the same meaning as it has in the Commonwealth Act.

**biological diversity** means the diversity of life and is made up of the following 3 components:

- (a) genetic diversity—the variety of genes (or units of heredity) in any population,
- (b) species diversity—the variety of species,
- (c) ecosystem diversity—the variety of communities or ecosystems.

**boat** means any kind of vessel, however navigated.

**category 1 share management fishery** means a fishery specified in Part 1 of Schedule 1.

**category 2 share management fishery** means a fishery specified in Part 2 of Schedule 1.

**charter fishing boat licence** means a licence for a boat issued under Part 4A and in force.

**commercial fisher** means a person who holds a commercial fishing licence.

**commercial fishing licence** means a commercial fishing licence issued under



Division 1 of Part 4 and in force.

**Commonwealth Act** means the *Fisheries Management Act 1991* of the Commonwealth.

**Crown land** means Crown land within the meaning of the *Crown Lands Act 1989*.

**cultivate** includes propagate, hatch, breed, rear and farm.

**Director-General** means the Director-General of NSW Fisheries.

**ecologically sustainable development** has the same meaning as under section 6 (2) of the *Protection of the Environment Administration Act 1991*.

**examine** includes count, measure, weigh and grade.

**exercise** a function includes perform a duty.

**fish** is defined in section 5.

**fisheries officer** means a person for the time being appointed under Part 9 as a fisheries officer for the purposes of this Act.

**Note—**

Under Part 9, a police officer is also a fisheries officer for the purposes of this Act.

**fishery** is defined in section 6.

**fishing activity** means the activity of taking fish, including:

- (a) searching for fish, or
- (b) any activity that can reasonably be expected to result in the locating, aggregating or taking of fish, or
- (c) carrying fish by boat from the place where they are taken to the place where they are to be landed.

**fishing boat licence** means a licence for a boat issued under Division 2 of Part 4 and in force.

**fishing business** is defined in section 34Q.

**fishing business determination** is defined in section 34Q.

**fishing business transfer rules** is defined in section 34T.

**fishing closure** is defined in section 8.

**fishing gear** means any equipment (other than a boat or aircraft) used for fishing activities.

**foreign boat** has the same meaning as it has in the Commonwealth Act.

**freshwater** means water in a river or creek that is not subject to tidal influence:

- (a) including any body of freshwater that is naturally or artificially stored (such as a freshwater lake, lagoon, dam, reservoir, pond, canal, channel or waterway), but
- (b) not including any coastal lake that is intermittently open to tidal influence.

The regulations may, for the purpose of avoiding doubt about the application of this definition, specify the point at which any river, creek or other body of water becomes subject to tidal influence.

**function** includes a power, authority or duty.

**habitat** means any area occupied, or periodically or occasionally occupied, by fish or marine vegetation (or both), and includes any biotic or abiotic component.

**leased area** means the area that is the subject of an aquaculture lease.

**Management Advisory Committee** means a Management Advisory Committee for a fishery established under section 230.

**management plan** means:

- (a) in relation to a share management fishery—a management plan for the fishery made under Division 5 of Part 3, or
- (b) in relation to any other fishery—a management plan under the regulations referred to in section 40 (2) (a).

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

**master** of a boat means the master or other person for the time being in charge or command of the boat.

**native title holder** has the same meaning as it has in the [Native Title Act 1993](#) of the Commonwealth.

**net** includes anything attached to a net.

**noxious fish** means fish declared under Division 6 of Part 7 to be noxious fish.

**noxious marine vegetation** means marine vegetation declared under Division 6 of Part 7 to be noxious marine vegetation.

**oyster** means any bivalve mollusc of the family *Ostreidae*.

**possession** of a thing includes having the thing under control at any place, even

though some other person has physical possession of the thing.

**premises** includes any structure, building or place, whether built on or not.

**process fish** means cut up, break up, shell, skin, shuck, purge, cook, pack, chill, freeze, can, preserve or otherwise treat or process fish.

**prohibited size fish** means a fish declared by the regulations under Division 2 of Part 2 to be a prohibited size fish.

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

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

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

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

**records** includes documents containing financial or any other kind of information.

**Note—**

The [Interpretation Act 1987](#) defines **document** to include not only paper but also computer or other electronic records.

**recreational fisher** means a fisher who takes fish by any method, otherwise than for sale.

**registered fish receiver** means a fish receiver registered under Division 4 of Part 4.

**registered native title body corporate** has the same meaning as it has in the [Native Title Act 1993](#) of the Commonwealth.

**registered native title claimant** has the same meaning as it has in the [Native Title Act 1993](#) of the Commonwealth.

**restricted fishery** means an exploratory, developmental or other restricted fishery declared under Division 3 of Part 4.

**sell** includes:

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

**Share Appeal Panel** means the Share Management Fisheries Appeal Panel constituted under Division 9 of Part 3.

**share management fishery** means a fishery specified in Schedule 1.

**Share Register** means the Share Management Fisheries Register kept in accordance with Division 10 of Part 3.

**species of fish** includes fish that are of variety, domesticated form or hybrid of the species.

**supporting plan**, in relation to a share management fishery, means a supporting plan made under Division 5 of Part 3.

**TAC Committee** means the Total Allowable Catch Setting and Review Committee established under Division 4 of Part 2.

**take** fish includes:

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

**vehicle** includes aircraft, caravan or trailer.

- (2) In this Act, a reference to taking fish for sale includes a reference to taking fish for use as bait in taking fish for sale.

**Note—**

Penalties for offences are expressed in penalty units. Under the [Crimes \(Sentencing Procedure\) Act 1999](#), the amount of a penalty unit is currently \$110.

## 5 Definition of “fish”

- (1) In this Act, **fish** means marine, estuarine or freshwater fish or other aquatic animal life at any stage of their life history (whether alive or dead).
- (2) In this Act, **fish** includes:
  - (a) oysters and other aquatic molluscs, and
  - (b) crustaceans, and
  - (c) echinoderms, and
  - (d) beachworms and other aquatic polychaetes.
- (3) In this Act, **fish** also includes any part of a fish.
- (4) However, in this Act, **fish** does not include whales, mammals, reptiles, birds, amphibians or other things excluded from the definition by the regulations.

## 6 Definition of “fishery”

- (1) In this Act, **fishery** means a class of fishing activity.
- (2) For the purposes of this Act, a fishery may be identified by reference to any one or more of the following:
  - (a) a species or other class of fish,
  - (b) an area of waters or seabed,
  - (c) a method of fishing,
  - (d) a class of boat,
  - (e) a class of persons,
  - (f) a purpose of activities.

## 7 Waters to which Act applies

- (1) This Act applies:
  - (a) in relation to all waters that are within the limits of the State, and
  - (b) except for purposes relating to a fishery that is to be managed in accordance with the law of the Commonwealth pursuant to an arrangement under Division 3 of Part 5 and except for purposes prescribed by paragraph (d)—in relation to any waters of the sea not within the limits of the State that are on the landward side of waters adjacent to the State that are within the Australian fishing zone, and

- (c) for purposes relating to a fishery that is managed in accordance with the law of the State pursuant to an arrangement under Division 3 of Part 5—in relation to any waters to which the legislative powers of the State extend with respect to that fishery, whether pursuant to section 5 of the *Coastal Waters (State Powers) Act 1980* of the Commonwealth or otherwise, and
- (d) for purposes relating to recreational fishing activities engaged in otherwise than by use of a foreign boat (other than recreational activities prohibited or regulated under a plan of management determined under section 17 of the Commonwealth Act)—in relation to any waters to which the legislative powers of the State extend with respect to such activities.

**Note—**

In many cases the legislative powers of the State will extend beyond three nautical miles, particularly in relation to recreational fishing.

- (2) This section is subject to any express limitations in this Act.
- (3) This Act is intended to have extraterritorial application in so far as the legislative powers of the State permit.

**Note—**

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

## Part 1A Fishery management strategies

### 7A Definitions

In this Part:

**designated fishing activity** means a fishing activity described in Schedule 1A.

**EPA Act** means the *Environmental Planning and Assessment Act 1979*.

**fishing activity** includes any activity that may be the subject of environmental assessment under Division 5 of Part 5 of the EPA Act.

**fishing regulatory controls** has the same meaning it has in Division 5 of Part 5 of the EPA Act.

### 7B Declaration of designated fishing activities

- (1) Schedule 1A describes designated fishing activities for the purposes of this Part.
- (2) The Governor may, by proclamation on the recommendation of the Minister, amend Schedule 1A by inserting, omitting or amending the description of a fishing activity.

- (3) The regulations may make provisions of a savings or transitional nature consequent on the amendment of Schedule 1A.

### **7C Fishery management strategy for designated activities**

- (1) The Minister is to arrange for the preparation of a draft fishery management strategy for each designated fishing activity.
- (2) The Minister may, from time to time, revise the existing strategy for an activity or arrange for the preparation of a new draft strategy for the activity (whether or not a review of the existing strategy is required because performance indicators are not being met).
- (2A) An existing strategy may be revised by including provisions in a subsequent strategy (whether or not relating to the same activity) that are expressed to amend, replace or otherwise revise the provisions of the existing strategy.
- (2B) The Minister may set priorities, or revise priorities, for the implementation of any action contemplated by an existing strategy, in particular, for the purpose of co-ordinating the implementation of actions that are common to 2 or more strategies.
- (3) (Repealed)
- (4) A draft fishery management strategy becomes the existing fishery management strategy when it is approved by the Minister. However, the first fishery management strategy to be approved in respect of a designated fishing activity must be approved in accordance with section 7F.

### **7D Purpose of fishery management strategy**

- (1) A fishery management strategy is the strategy for achieving the objectives of this Act with respect to the designated fishing activity for which it is prepared. The draft strategy is the basis for environmental assessment under Division 5 of Part 5 of the EPA Act of that activity.
- (2) A draft strategy is to be prepared (in accordance with guidelines agreed between the Minister administering this Act and the Minister administering the EPA Act) so as to enable:
  - (a) an environmental assessment consistent with the principles on which assessments of activities are undertaken under Part 5 of the EPA Act, and
  - (b) the cumulative environmental impact of fisheries approvals under this Act to be assessed.

#### **Note—**

Division 5 of Part 5 of the EPA Act makes special provision for the environmental assessment of designated fishing activities. Section 115I of that Act requires the preparation of a draft fishery management strategy for

any fishing activity that is subject to environmental assessment under that Division. The draft strategy is subject to public consultation in conjunction with the environmental impact statement for the assessment.

#### **7E Content of fishery management strategy**

A fishery management strategy is to:

- (a) describe the designated fishing activity for which it is prepared, and
- (b) incorporate any management plan or draft management plan for the fishery concerned, and
- (c) outline the fishing regulatory controls or proposed fishing regulatory controls applicable to the designated fishing activity, and
- (d) outline the likely interaction of the designated fishing activity with other fishing activities, and
- (e) include performance indicators to monitor whether the objectives of the strategy (and the management plan) and ecologically sustainable development are being attained, and
- (f) describe how the designated fishing activity is to be monitored, and
- (g) specify at what point a review of the strategy is required when a performance indicator is not being satisfied.

**Note—**

See section 57 for content of a management plan for a share management fishery.

#### **7F Revision of draft strategy and publication of approved strategy following environmental assessment**

- (1) Following a determination under Division 5 of Part 5 of the EPA Act, the Minister is to revise the draft fishery management strategy for the designated fishing activity concerned and make any amendment that is necessary to reflect the result of the determination.
- (2) (Repealed)
- (3) The Minister is to publish the approved strategy (as so revised) in connection with the publication of the determination under Division 5 of Part 5 of the EPA Act.

#### **7G Management plan not to be made until completion of environmental assessment**

- (1) Until a determination is made under Division 5 of Part 5 of the EPA Act with respect to a designated fishing activity, the first management plan for the fishery concerned cannot be made.



- (2) If the management plan for a share management fishery has not been made within the time required by section 42 (3), the Minister is not required to recommend that the description of the fishery be omitted from Schedule 1 if the Management Advisory Committee for the fishery approves of the retention of the fishery as a share management fishery.

## **Part 2 General fisheries management**

### **Division 1 Fishing closures**

#### **8 Closure of waters to fishing**

- (1) The Minister may from time to time, by notification, prohibit, absolutely or conditionally, the taking of fish, or of a specified class of fish, from any waters or from specified waters.
- (2) Any such prohibition is called a ***fishing closure***.

#### **9 Publication of notification of closures**

- (1) The notification of a fishing closure is to be published in the Gazette.
- (2) However, if the Minister considers that the fishing closure is required urgently, the Minister may publish the notification:
  - (a) in a newspaper circulating, or by radio or television broadcast, in the area adjacent to the waters to which the fishing closure applies, or
  - (b) by causing a copy of the notification to be exhibited in a prominent place adjacent to the waters to which the fishing closure applies.
- (3) In any such urgent case, the Minister is to publish the notification in the Gazette as soon as practicable.

#### **10 Duration of closures**

- (1) A fishing closure takes effect on the publication of the notification or on a later date specified in the notification.
- (2) A fishing closure remains in force, subject to this Act, for the period (not exceeding 5 years) specified in the notification.

#### **11 Amendment or revocation of closures**

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

## 12 General provisions relating to closures

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

### Note—

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

## 13 Regulations relating to closures

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

## 14 Offences relating to closures

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

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

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

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

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

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

### 15 Declaration of prohibited size fish

- (1) The regulations may declare that fish of a specified species that do not comply with a minimum size, maximum size or range of sizes specified for fish of that species are prohibited size fish.
- (2) The regulations may prescribe the method of determining the size of any class of fish.
- (3) In this section, **size** means measurement or weight, or measurement and weight.

### 16 Offences relating to prohibited size fish

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

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

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

### **17 Bag limits—taking of fish**

- (1) The regulations may specify the maximum quantity of fish of a specified species, or of a specified class, that a person may take on any one day (the **daily limit**).

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

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

- (3) The regulations may specify different daily limits for commercial fishers or other classes of fishers or in any other circumstances specified in the regulations. The regulations may also include restrictions as to size or otherwise in respect of any daily limit of fish.
- (4) This section does not authorise the taking of fish in contravention of a fishing closure or other provision of or made under this Act.
- (5) The regulations may provide that the maximum quantity of any fish that may be taken applies to a period other than one day. In that case, a reference in this section to any one day is to be read as a reference to that other period.
- (6) The Minister is required to consult the Advisory Council on Recreational Fishing about any proposal to specify or change daily limits under this section or possession limits under section 18.

### **18 Bag limits—possession of fish**

- (1) The regulations may specify the maximum quantity of fish of a specified species, or of a specified class, that a person may have in possession in any specified circumstances (the **possession limit**).

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

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

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

possession limit of fish.

- (4) The possession limit of any fish need not be the same as the daily limit of those fish.
- (5) This section does not authorise the possession of fish in contravention of any other provision of or made under this Act.

## **19 Protected fish**

- (1) The regulations may declare that fish of a specified species are protected fish.
- (2) A person who takes protected fish is guilty of an offence.
- (3) A person who has protected fish in the person's possession is guilty of an offence.
- (4) Subsection (3) applies whether or not the fish were taken from waters to which this Act applies.

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

## **20 Fish and waters protected from commercial fishing**

- (1) The regulations may declare that fish of a specified species are protected from commercial fishing.
- (2) The regulations may declare specified waters to be waters in which all or a class of commercial fishing is prohibited absolutely or conditionally.
- (3) A person who:
  - (a) takes fish of a species declared under subsection (1), or
  - (b) sells fish of a species declared under subsection (1), or
  - (c) takes fish from waters declared under subsection (2) in breach of a declaration,is guilty of an offence.

Maximum penalty: In the case of a corporation, 2,000 penalty units or, in any other case, 1,000 penalty units or imprisonment for 6 months, or both.

- (4) Subsection (3) (b) applies whether or not the fish were taken from waters to which this Act applies.
- (5) Nothing in this section limits the power of the Minister to make a fishing closure in relation to commercial fishing.

## **21 Defences**

- (1) It is a defence to a prosecution for an offence under this Division if the person charged

satisfies the court that:

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

(2) Subsection (1) (a) does not apply to offences under section 19 (3) or 20 (3) (b).

## **Division 3 Fishing gear**

### **22 Registration of fishing gear**

- (1) The regulations may make provision for or with respect to the registration of specified classes of fishing gear.
- (2) If a class of fishing gear is registrable, a person who uses unregistered gear of that class to take fish is guilty of an offence.

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

### **23 Regulations relating to fishing gear**

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

### **24 Lawful use of nets or traps**

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

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

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

### **25 Possession of illegal fishing gear**

- (1) A person who is in possession of any fishing gear in, on or adjacent to any waters is guilty of an offence if:
  - (a) the use by that person of that fishing gear for taking fish from those waters is, at that time, prohibited by or under this Act, or

(b) the taking of fish from those waters is, at that time, prohibited by or under this Act.

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

- (2) A person who is on board a boat is taken to be in possession of any fishing gear found in the boat.
- (3) It is a defence to a prosecution for an offence under this section if the person charged satisfies the court that the fishing gear was being transported, in accordance with the written authority of a fisheries officer, to waters where the person could lawfully take fish with that gear.
- (4) It is a defence to a prosecution for an offence under this section if the person charged satisfies the court that the fishing gear was in his or her possession for a lawful purpose.

## **Division 4 Total allowable catches**

### **26 Establishment of TAC Committee**

A Total Allowable Catch Setting and Review Committee (the **TAC Committee**) is established.

### **27 Composition and procedure of TAC Committee**

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

### **28 Function of TAC Committee**

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

- (2) The TAC Committee is required to determine a specified total allowable catch for a share management fishery if the management plan for the fishery so requires.
- (3) The TAC Committee is required to determine any other total allowable catch if (and only if) required to do so by the Minister.
- (4) The TAC Committee may also determine, in accordance with this Division, any other matter relating to fishing effort in a share management fishery if (and only if) required to do so by the Minister. This Division applies to the determination of any such matter in the same way as it applies to the determination of a total allowable catch.

### **29 TAC Committee not subject to Ministerial control**

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

### **30 General considerations for TAC Committee**

- (1) In determining total allowable catches under this Division, the TAC Committee is to give effect to the objects of this Act and is to have regard to all relevant scientific, industry, community, social and economic factors.
- (2) The TAC Committee is also to have regard to:
  - (a) the need to ensure that the exploitation of fisheries resources is conducted in a manner that will conserve fish stocks in the long term, and
  - (b) the impact of fishing activities on all species of fish and the aquatic environment, and
  - (c) the precautionary principle, namely, that if there are threats of serious or irreversible damage to fish stocks, lack of full scientific certainty should not be used as a reason for postponing measures to prevent that damage.

### **31 Public consultation by TAC Committee**

- (1) Before the TAC Committee determines a total allowable catch under this Division (or reviews any such determination), the TAC Committee is required to call for public submissions on the appropriate total allowable catch.
- (2) When the TAC Committee determines a total allowable catch under this Division it is to have regard to any public submissions it receives within the time fixed by it for the making of those submissions.

### **32 Review of determinations by TAC Committee**

- (1) The TAC Committee is to keep its determinations of total allowable catches under review.
- (2) Following a review, the TAC Committee may decide not to alter its existing determination, to determine a different total allowable catch or to revoke its determination of a total allowable catch.
- (3) However, the TAC Committee may not revoke a determination that it is required to make by a management plan for a share management fishery or by the Minister, unless it is replaced by a new determination.

### **33 Publication and duration of determinations**

- (1) A determination of the TAC Committee of a total allowable catch is to be published in the Gazette by the Minister.
- (2) The determination takes effect on the date (on or after that publication) that is specified in the determination.
- (3) The determination has effect for the period specified in the determination or, if no such period is specified, until it is revoked by another determination.
- (4) However, if the determination relates to a total allowable catch required under a management plan for a share management fishery, the determination does not cease to have effect until revoked by a new determination of that total allowable catch.

### **34 Implementation of determinations**

- (1) The Minister is required to review, in the light of any determination of the TAC Committee, the regulations and other instruments under this Act regulating the taking of fish by commercial fishers and other fishers.
- (2) If the determination relates to a total allowable catch required under the management plan for a share management fishery, the determination is to be implemented in accordance with this Act and the management plan.

## **Division 4A Recreational fishing fee**

### **34A Definitions**

In this Division:

***fishing fee*** means a recreational fishing fee payable under this Division.

***fishing fee exemption certificate*** means a certificate issued under section 34I and in force.



**official receipt** means a receipt issued under this Division for payment of a recreational fishing fee.

**34AA Purpose of fishing fees**

The purpose of fishing fees is to provide revenue to assist activities supported through the recreational fishing trust funds established under Division 3 of Part 8, including the following:

- (a) enhancing recreational fishing,
- (b) carrying out research into fish and their ecosystems,
- (c) managing recreational fishing,
- (d) ensuring compliance with recreational fishing regulatory controls.

**34B Recreational fishing fee**

A recreational fishing fee is payable by recreational fishers as required by this Division.

**34C Recreational fishers required to pay fishing fee**

- (1) A fishing fee is payable by all recreational fishers, unless exempted by or under this section.
- (2) A fisher is exempt from paying a fishing fee:
  - (a) if the fisher is under 18 years of age, or
  - (b) if the fisher is of or over 18 years of age and is only assisting a fisher under 18 years of age to take fish by means of a single rod or line, or
  - (c) if the fisher holds a licence, permit or other authority under this Act or the regulations and is taking fish in accordance with that licence, permit or other authority, or
  - (d) if the fisher is engaging in recreational fishing activities that are exempt from payment of a fishing fee by virtue of a fishing fee exemption certificate that is in force, or
  - (e) if the fisher is taking fish from water subject to an aquaculture permit and is taking fish to which the permit relates, or
  - (f) if the fisher is an Aboriginal person and:
    - (i) is taking fish from freshwater, or
    - (ii) is taking fish from other waters pursuant to a native title right or interest that is the subject of an approved determination of native title or of a claim entered

on the Register of Native Title Claims (within the meaning of the *Native Title Act 1993* of the Commonwealth), or

(g) if the fisher is taking fish from an aquarium, or from a body of water of a class exempted by the regulations, or

(h) if the fisher is a fisher of a class exempted by the regulations.

(3) The regulations may require recreational fishers to produce evidence that they are exempt from paying a fishing fee.

#### **34D Periods for which fishing fee payable**

(1) A fishing fee is payable for any period during which a recreational fisher takes fish from any waters otherwise than for sale.

(2) A fishing fee may be paid for any of the following periods:

(a) a period of 3 days,

(b) a period of 1 month,

(c) a period of 12 months,

(d) a period of 3 years.

(3) The regulations may prescribe other periods for which a fishing fee may be paid (whether in addition to, or substitution for, the periods referred to in subsection (2)).

#### **34E Amount of fishing fee**

(1) The amount of the fishing fee is (subject to this section):

(a) for a period of 3 days—\$5, or

(a1) for a period of 1 month—\$10, or

(b) for a period of 12 months—\$25, or

(c) for a period of 3 years—\$70.

(2) The regulations may prescribe a different amount for any such period and may prescribe the amount for any other period for which a fishing fee may be paid.

#### **34F Reductions in fishing fee payable**

The regulations may provide for reductions in the amount of the fishing fee otherwise payable by persons of a specified class.

### **34G Issue of receipt on payment of fishing fee**

- (1) A person who pays a fishing fee is entitled to be issued with an official receipt for the payment.
- (2) A receipt is evidence of the payment of the fishing fee and not an authority to take fish, and accordingly cannot be refused or made subject to any conditions.
- (3) A receipt is to be in a form approved by the Minister.
- (4) The regulations may make provision for the issue of replacement receipts for receipts that are lost, destroyed or damaged.
- (5) A receipt is not transferable.

### **34H Arrangements for collection of fishing fees and issue of receipts**

- (1) The Director-General may enter into arrangements with any person for the collection of fishing fees and the issue of official receipts. A person who enters into such an arrangement is an authorised agent for the purposes of this Act.
- (2) The Director-General is to ensure that sufficient arrangements are made to enable the payment of fishing fees in convenient locations throughout the State.
- (3) An arrangement may make provision for the payment of a commission to the authorised agent, whether by way of the retention of a percentage of the amount of fishing fees paid or by way of a separate payment.
- (4) An arrangement may make provision for the authorised agent to make specified records, and follow specified procedures, with respect to the collection and remittance of fishing fees and the issue of official receipts.

### **34I Fishing fee exemption certificates**

- (1) The Minister may issue a fishing fee exemption certificate in respect of any recreational fishing activities.
- (2) A certificate exempts persons carrying out those recreational fishing activities from the obligation to pay a fishing fee under this Division.
- (3) A certificate may be issued:
  - (a) to a person in respect of recreational fishing activities that are carried out under the supervision or guidance of the person (or an employee or agent of the person),  
or
  - (b) to the owner of a boat (or another person authorised by the owner) in respect of recreational fishing activities that are carried out on the boat, or

(c) to such other persons or class of persons, and in respect of such other activities, as the regulations may prescribe.

- (4) The fee (if any) payable for the certificate and other matters concerning the certificate are to be prescribed by the regulations. The fee for the certificate is taken to be a fishing fee paid under this Division for the purposes of Division 3 of Part 8.

### **34J Offences**

- (1) A recreational fisher who is required by this Division to pay a fishing fee is guilty of an offence if the fisher fails to pay the fishing fee.

Maximum penalty: 20 penalty units.

- (2) A recreational fisher who is required by this Division to pay a fishing fee is guilty of an offence if the fisher does not have an official receipt for the payment of the fishing fee in his or her possession when taking fish from any waters.

Maximum penalty: 20 penalty units.

- (3) For the purposes of proceedings under this section, a person who is in possession of fishing gear on, in or adjacent to any waters is presumed conclusively to be taking fish from those waters (even though the person takes or proposes to take fish only from other waters outside the State). The regulations may provide exemptions from this subsection.

- (4) In this section, **official receipt** includes any evidence of the payment of a fishing fee recognised by the regulations for the purposes of this section.

## **Division 4B Acquisition of commercial fishing entitlements**

### **34K Purpose of Division**

The purpose of this Division is to provide an equitable mechanism for the reallocation of fisheries resources and for the payment of compensation to commercial fishers for the acquisition of their fishing entitlements.

### **34L Declaration by Minister of acquisition of entitlements**

- (1) The Minister may, by order published in the Gazette:
- (a) declare that any fishery (or part of a fishery) specified in the order is a fishery to which this Division applies, and
  - (b) specify the relevant commercial fishing entitlements that are to be acquired under this Division.
- (2) For the purposes of this Division:

- (a) any such declaration is an **acquisition declaration**, and
- (b) the fishery (or the part of a fishery) to which the declaration relates is the **declared fishery**, and
- (c) the specified commercial fishing entitlements are the **acquired entitlements**.

#### **34M Consultation on proposed acquisition declaration**

The Minister is required to give the following persons and bodies an opportunity to make submissions on any proposed acquisition declaration and to take any submission that is duly made into account:

- (a) the persons whose commercial fishing entitlements are proposed to be acquired,
- (b) any advisory council on recreational fishing and any relevant advisory council on commercial fishing established under section 229,
- (c) the local community in the area affected by the proposed declaration.

**Note—**

Section 284 sets out the public consultation procedure.

#### **34N Termination of commercial fishing entitlements following declaration of acquisition**

- (1) As soon as practicable after an acquisition declaration, the Minister is to cancel the acquired entitlements.
- (2) For that purpose, the Minister may do any one or more of the following:
  - (a) cancel any shares in a share management fishery,
  - (b) cancel a commercial fishing licence,
  - (c) take any other action available to the Minister.

#### **34O Entitlement to compensation for acquired entitlements**

- (1) The persons who held acquired entitlements that are cancelled under this Division are entitled (subject to this Division) to compensation from the State for the market value of the entitlements they held:
  - (a) as at 19 January 2000, subject to paragraph (b), or
  - (b) as at a later date notified in the acquisition declaration.
- (2) If the amount of the compensation is not agreed between the Minister and the person entitled to compensation, the Minister is to determine the amount after a review of the matter by a panel constituted by the Minister in accordance with the regulations.

- (3) If the person entitled to compensation is not satisfied with the review of the matter by the panel, the Minister may (at the person's request) refer the matter to the Valuer-General for advice as to the amount of compensation required to be paid under this section.
- (4) A person who is dissatisfied with the amount of compensation offered to the person under this Division or with any delay in the payment of compensation may appeal to the Land and Environment Court.
- (5) The regulations may make provision for or with respect to the payment of compensation in accordance with this Division.

## **Division 4C Acquisition of fishing businesses**

### **34P Definitions**

In this Division:

**fishing authority** means a licence, permit, share, endorsement or any other authority relating to fishing activities issued or given under this Act or any other law (whether or not of this State).

**NSW fishing authority** means a fishing authority issued or given under this Act.

**transfer** of a fishing business or a component of a fishing business means the transfer, transmission, conveyance or assignment of a fishing business or component of a fishing business, and includes any other dealing in a fishing business or component of a fishing business of a kind prescribed by the regulations.

### **34Q Fishing business determinations**

- (1) The Director-General may, from time to time:
  - (a) determine that a business that the Director-General considers to be a separate and identifiable fishing business is a fishing business, and
  - (b) determine the components of that fishing business.
- (2) Such of the following as the Director-General considers to be owned, used, held or acquired in connection with a fishing business may be determined to be a component of the fishing business:
  - (a) one or more fishing boats,
  - (b) fishing gear,
  - (c) any fishing authority held by a person,
  - (d) the catch history of any person (determined in accordance with this Act and the

regulations).

- (3) For the purposes of this Act:
  - (a) a **fishing business** is a business determined by the Director-General to be a fishing business under this section, and
  - (b) the fishing business is comprised of those components that are determined by the Director-General to be components of the fishing business.
- (4) The Director-General may, from time to time, amend or revoke a determination under this section by making a further determination.
- (5) A determination by the Director-General under this section is called a **fishing business determination**.
- (6) A fishing business determination is to be made:
  - (a) in accordance with such provisions (if any) relating to the making of fishing business determinations as may be contained in the regulations or a management plan for a fishery (or both), and
  - (b) in a manner consistent with any guidelines relating to transfers of fishing businesses, approved by the Director-General before the commencement of this section, that had effect in relation to any transfer made before the fishing business transfer rules took effect.
- (7) The Director-General may make a fishing business determination at any time:
  - (a) on his or her own initiative, or
  - (b) on an application made, in a form and manner approved by the Director-General, by the person (or persons) who own the business in respect of which the determination is sought.
- (8) The Director-General is required to give the person (or persons) who own a business that is the subject of a fishing business determination notice in writing of the determination.

### **34R Allocation of fishing business number**

- (1) The Director-General is to allocate a unique identification number to each fishing business.
- (2) The Director-General may endorse a NSW fishing authority that is a component of a fishing business with the number allocated to the fishing business.

### **34S Register of fishing business determinations**

- (1) The Director-General is required to keep a register of fishing business determinations.
- (2) For each fishing business determination there is to be recorded in the register:
  - (a) the name of the person (or persons) who own the business the subject of the determination,
  - (b) the number allocated by the Director-General to the fishing business,
  - (c) particulars of the components of the fishing business,
  - (d) such other particulars as are required by the regulations to be recorded in the register in relation to a fishing business.
- (3) The register may be kept wholly or partly by means of a computer.
- (4) The register is to be made available for public inspection at the head office of NSW Fisheries during ordinary business hours.
- (5) If the register is kept wholly or partly by means of a computer, subsection (4) may be complied with by making the contents of the register available on the website of NSW Fisheries.
- (6) The Director-General may correct any error in or omission from the register.
- (7) A certificate signed or purporting to be signed by the Director-General, or an officer of NSW Fisheries authorised in writing by the Director-General to exercise the functions conferred by this subsection, that certifies that, on a specified date or during a specified period, the particulars contained in the register as to specified matters were as so specified, is admissible in any proceedings and is evidence of the matters so certified.

### **34T Fishing business transfer rules**

- (1) The regulations or the management plan for a fishery (or both) may make provision for or with respect to the transfer of a fishing business (or components of a fishing business) and provide for the recognition, or restriction, of fishing rights following any such transfer. Such provisions are referred to as ***fishing business transfer rules***.
- (2) In particular, the fishing business transfer rules may provide that a person to whom a component of a fishing business is transferred does not, as a consequence of that transfer, acquire any right to be issued with or given a NSW fishing authority unless all components of the fishing business are either transferred to the person or surrendered to the Minister for cancellation.

**Note—**

Some components of a fishing business, for example, endorsements in a restricted fishery, may not be



transferable (see section 114). The fishing business transfer rules may require such endorsements to be surrendered to the Minister for cancellation if other components of the fishing business are transferred to another person.

- (3) The fishing business transfer rules may authorise the Minister to cancel a NSW fishing authority that is a component of a fishing business if any other component of the fishing business is transferred in contravention of the fishing business transfer rules.
- (4) No compensation is payable by or on behalf of the State for the cancellation of a NSW fishing authority in accordance with the fishing business transfer rules.

## **Division 5 General**

### **35 Possessing fish illegally taken**

- (1) A person who is in possession of fish which were illegally taken is guilty of an offence.

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

- (2) It is a defence to a prosecution for an offence under this section if the person charged satisfies the court that the person could not reasonably have known that the fish had been illegally taken.

- (3) In this section:

***illegally taken*** means taken in contravention of a provision of or made under:

- (a) this Act, or
- (b) a law of another State or Territory, or of the Commonwealth, relating to fisheries.

### **36 Defence for accidental etc taking of fish**

- (1) It is a defence to a prosecution for an offence against this Act or the regulations relating to the taking of fish if the person charged satisfies the court that, on becoming aware of the taking of the fish, the person took immediate steps to return the fish to its natural environment with the least possible injury.
- (2) The defence provided under subsection (1) extends to fish taken and immediately released in the course of a sport fishing activity (being an activity conducted in accordance with any requirements of the regulations).

### **37 Defence—special permits for research or other authorised purposes**

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

- (b) aquaculture purposes,
  - (c) aquarium collection purposes,
  - (d) any purpose prescribed by the regulations,
  - (e) any other purpose approved by the Minister that is consistent with the objects of this Act.
- (2) A permit may authorise the holder to take fish or marine vegetation by any method or by any specified method, from any waters or any specified waters or in any other specified way, despite any provision of or made under this Act to the contrary.
- (3) It is a defence to a prosecution for an offence against this Act or the regulations if the person charged satisfies the court that the person was the holder of a permit under this section that authorised the act or omission constituting the offence.
- (4) A permit under this section:
- (a) is subject to such conditions as are prescribed by the regulations or specified in the permit, and
  - (b) remains in force for the period of 1 year or such other period as is specified in the permit, and
  - (c) may be cancelled or suspended by the Minister at any time by notice given to the permit holder.
- (5) The Minister may from time to time, by notice given to the permit holder, vary the conditions of a permit under this section.
- (6) The regulations may make provision for or with respect to permits under this section. In particular, the regulations may prescribe the fee payable for the issue of a permit.
- (7) The power to issue permits under this section is limited by section 220ZW (Licence to harm threatened species etc).

### **38 Right to fish in certain inland waters**

- (1) A person may take fish from waters in a river or creek that are not subject to tidal influence despite the fact that the bed of those waters is not Crown land if, for the purpose of taking those fish, the person is in a boat on those waters or is on the bed of the river or creek.
- (2) The right conferred by this section is subject to the other provisions of this Act.
- (3) In this section, **bed** of a river or creek includes any part of the bed of the river or creek which is alternatively covered and left bare with an increase or decrease in the supply of water (other than during floods).

### 39 Obstruction of recognised fishing grounds

- (1) A commercial fisher may request a person to remove anything which has been placed or left by the person, without lawful excuse, on a recognised fishing ground and which is obstructing the lawful net fishing activities of the commercial fisher.
- (2) A person who fails to remove any such obstruction after being directed by a fisheries officer to do so is guilty of an offence.

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

- (3) A court that convicts a person of an offence against this section may order the person to remove the obstruction. If the obstruction is not removed in accordance with the order, the Minister may cause it to be removed and recover the cost of the removal from the person as a debt in a court of competent jurisdiction.
- (4) In this section, **recognised fishing ground** means any area of the sea or of other public water land used regularly or intermittently for net fishing by commercial fishers, being an area identified by or in accordance with the regulations as a recognised fishing ground.

### 40 Regulations relating to general management of fisheries

- (1) The regulations may make provision for or with respect to any matter relating to the management of fishery resources.
- (2) In particular, the regulations may make provision for or with respect to the following:
  - (a) the development of plans for the management of fishery resources and the establishment of planning committees for that purpose,
  - (b) preventing interference with the fishing activities of fishers,
  - (c) preventing interference with set fishing gear,
  - (d) determining the priority between fishers engaged in fishing activities in the same area,
    - (d1) regulating recreational fishing competitions (including requiring a permit for any such competition and prescribing a fee for the issue of a permit),
    - (d2) prohibiting the possession or receipt of fish illegally taken, processed or dealt with in any place outside the State,
  - (e) prohibiting the use of explosives, electrical devices or other dangerous substances for the purpose of taking fish and regulating the use of explosives, electrical devices and other dangerous substances in any waters,

- (f) the identification of fishing boats,
- (g) the tagging or other identification of fish taken from any waters,
- (h) the identification of containers of fish consigned for sale,
- (i) the shucking, cutting or other processing of fish before they are landed or sold,
- (j) the taking and use of bait for fishing,
- (k) the measurement of fishing gear,
- (l) the period and manner of any consultation required to be undertaken under this Act so that the persons concerned are fully consulted.

## **Part 3 Commercial share management fisheries**

### **Division 1 Overview**

#### **41 Staged implementation of share management fisheries**

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

(a) **Stage 1 (Consultation)**

the first stage when the Minister consults relevant industry bodies about which fisheries should become share management fisheries.

(b) **Stage 2 (Identification of fishery and shareholders)**

the second stage when a fishery is identified as a share management fishery by the inclusion of a description of the fishery in Schedule 1. During the second stage, an interim Management Advisory Committee for the fishery is established, the criteria for the allocation of shares in the fishery are determined, eligible persons are invited to apply for shares and shares are issued provisionally.

(c) **Stage 3 (Access to fishery limited to shareholders)**

the third stage when access to the fishery is limited to provisional shareholders (and also to any person claiming to be eligible to receive shares). During the third stage, appeals against the provisional issue of shares are determined and a draft management plan for the fishery is prepared.

(d) **Stage 4 (Full implementation)**

the fourth and final stage when the management plan for the fishery commences and the fishing, share transfer and other rights of shareholders are fully identified and exercisable and subject to review.

#### **41A Categories of share management fishery**

There are 2 categories of share management fishery, as follows:

- (a) category 1 share management fisheries,
- (b) category 2 share management fisheries.

**Note—**

The principal differences between category 1 and category 2 share management fisheries are as follows:

- (a) Shares in a category 1 share management fishery are issued for a 10-year period and are automatically renewed. If the share management fishery is terminated, all the shares in the fishery are cancelled and compensation is payable to the shareholders. Shareholders in the fishery are liable to pay a community contribution for their right of access to the fishery.
- (b) Shares in a category 2 share management fishery are issued for a 15-year period and are renewable. If the share management fishery is terminated by the Minister, the shares expire at the end of the 15-year period for which they were issued or renewed. Compensation is payable for the termination of the fishery (by its omission from Schedule 1) before the expiry of the current term of the shares, but is not payable for a termination by the Minister after that expiry. Shareholders in the fishery are not liable for a community contribution, but must pay a rental charge for their right of access to the fishery.

### **Division 2 Declaration of share management fisheries**

#### **42 Declaration of share management fisheries**

- (1) Schedule 1 specifies share management fisheries for the purposes of this Act.
- (2) The Governor may, by proclamation on the recommendation of the Minister, amend Schedule 1 by inserting or omitting the description of any fishery.
- (3) The Minister is required to recommend to the Governor that the description of a fishery be omitted from Schedule 1 if the management plan for the fishery has not commenced within 5 years after the description was inserted in Schedule 1.

**Note—**

The first management plan for a fishery cannot be made until the completion of environmental assessment—see section 7G.

#### **43 Consultation with industry**

- (1) The Minister is required to consult relevant commercial fishing industry bodies about which fisheries should become share management fisheries.
- (2) The Minister is also required to consult relevant commercial fishing industry bodies before a fishery ceases to be a share management fishery.

#### **44 Omission of share management fishery**

- (1) This section has effect if the description of a share management fishery is omitted

from Schedule 1, including an omission for the purpose of redefining an existing share management fishery.

- (2) When the description of the fishery is omitted, all shares in the fishery are cancelled.
- (3) If the description of the fishery is omitted after the commencement of the management plan for the fishery, the holders of the cancelled shares are entitled to compensation from the State for the market value before the cancellation of the shares they held.
- (4) The amount of compensation payable is to be determined by agreement between the Minister and the person entitled to compensation. If the amount of compensation is not agreed, it is to be determined by the Valuer-General.
- (5) A person entitled to compensation may agree to accept instead shares in another share management fishery which replaces the omitted fishery wholly or partly.
- (6) A person who is dissatisfied with the amount of compensation offered to the person under this section or with any delay in the payment of compensation may appeal to the Land and Environment Court.
- (7) The regulations may make provision for or with respect to the payment of compensation in accordance with this section.
- (8) This section does not apply:
  - (a) if a description of a fishery is omitted from Part 2 of Schedule 1 after the fishery is terminated in accordance with Division 2A, or
  - (b) if a description of a fishery is omitted from Part 2 of Schedule 1 and inserted in Part 1 of Schedule 1 (that is, the fishery is converted in accordance with Division 2A).

#### **45 Redefinition of share management fishery**

- (1) This Part applies to the redefinition of an existing share management fishery by the replacement, wholly or partly, of the description of that fishery in Schedule 1, subject to any modifications of this Part prescribed by the regulations.
- (2) The regulations may, in particular, combine any of the stages of implementation of the new share management fishery.

### **Division 2A Termination and conversion of category 2 share management fisheries**

#### **45A Termination of category 2 share management fishery**

- (1) The Minister may, by order published in the Gazette, terminate a category 2 share

management fishery.

- (2) The termination takes effect when the current term of the shares in the fishery expires.

**Note—**

Shares in a category 2 share management fishery are issued for 15-year periods. Under section 73A, if a new management plan is not made by the end of the first 10 years of that 15-year period, and an order has not been made terminating the fishery, the shares are automatically renewed for a further 15 years. The effect of that provision is that shareholders must be given at least 5 years' notice of the termination of the fishery.

- (3) When the termination takes effect, the fishery is taken to cease to be a share management fishery.
- (4) The Minister is to recommend to the Governor that the description of the fishery be omitted from Schedule 1 after the termination takes effect.

**45B Regulations relating to terminated fisheries**

- (1) The regulations may make provision for or with respect to the regulation and management of a category 2 share management fishery that is terminated under this Division.
- (2) Without limiting subsection (1), the regulations may declare the fishery to be a restricted fishery from the date the termination takes effect.

**45C Conversion of category 2 share management fishery to category 1**

- (1) A category 2 share management fishery may be converted to a category 1 share management fishery.
- (2) A category 2 share management fishery is converted to a category 1 share management fishery if Schedule 1 is amended so as to omit the description of the fishery from Part 2 of Schedule 1 and insert that description of the fishery in Part 1 of Schedule 1.
- (3) A category 2 share management fishery cannot be redefined at the time of its conversion to a category 1 share management fishery, but the fishery may be redefined before or after its conversion.

**45D Poll of shareholders**

- (1) The Management Advisory Committee for a category 2 share management fishery may request the Minister to hold a poll of shareholders on the question of whether the fishery should be converted to a category 1 share management fishery.
- (2) Within 60 days after the request is made, the Minister is to:
  - (a) direct that the poll be taken, or

(b) refer the matter back to the Management Advisory Committee for reconsideration.

If the Committee confirms its request, the Minister must, within 60 days, direct that the poll be taken.

(3) For the purposes of a poll under this section:

(a) shareholders are entitled to one vote irrespective of the number of shares they hold, and

(b) 2 or more persons who hold shares jointly are entitled to only one vote, and

(c) a corporation that holds shares is required to nominate an individual to vote in the poll.

(4) The conversion of the fishery is supported at a poll if the number of votes in support of the conversion constitutes a majority of the persons eligible to vote in the poll.

(5) If the conversion of the fishery is supported at the poll, the Minister is, within 90 days, to recommend to the Governor that the appropriate amendment be made to Schedule 1 to effect the conversion.

(6) A poll in respect of a fishery is not to be conducted under this section more than twice during the period in which the management plan for the fishery remains in force.

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

(a) the conduct of polls under this section, and

(b) the recovery of the costs of or in connection with a poll from shareholders in the fishery.

#### **45E General provisions relating to conversion**

(1) If a category 2 share management fishery is converted to a category 1 share management fishery:

(a) the fishery is taken, subject to the regulations, to continue to be a category 2 share management fishery for the purposes of this Part until the commencement of the management plan for the category 1 share management fishery, and

(b) the management plan for the category 2 share management fishery continues in force until that commencement (subject to any amendment of that plan in accordance with this Part), and

(c) any entitlement to compensation under section 44 for the omission of the fishery from Schedule 1 before that commencement is to be determined on the basis that the fishery remains a category 2 share management fishery.



- (2) When the management plan for the category 1 share management fishery commences, all shares in the category 2 share management fishery are cancelled.
- (3) The regulations may make provision for or with respect to the conversion of a category 2 share management fishery to a category 1 share management fishery, including by modifying the application of this Part to the implementation of the category 1 share management fishery.

## **Division 3 Issue of shares**

### **46 Invitation for shares**

- (1) **Giving public notice** As soon as practicable after a fishery becomes a share management fishery, the Minister must give public notice of that fact and invite applications for shares by eligible persons.
- (2) **How given** For the purposes of this section, **public notice** is notice:
  - (a) published in the Gazette, in a newspaper circulating throughout New South Wales and in such other publications as the Minister considers appropriate, and
  - (b) given to each holder of a commercial fishing licence or, in the case of a restricted fishery, to each person authorised to take fish in the fishery.
- (3) **Content** The public notice must:
  - (a) describe the share management fishery, and
  - (b) state that after the issue of shares in the fishery access to the fishery will be restricted to shareholders, and
  - (c) set out the criteria for the allocation of shares in the fishery (giving full particulars of the method of determining the persons eligible to apply for those shares and their entitlement to shares under this Division), and
  - (d) provide information on the rights and obligations relating to dealings in the shares before the commencement of the management plan for the fishery, and
  - (e) invite applications for shares by eligible persons (and specify the manner and time within which applications are to be made and any application fee), and
  - (f) contain such other information as is prescribed by the regulations or as the Minister considers appropriate.
- (4) **Amendment** A public notice may be varied by a further public notice under this section.

### **47 Application for shares**

- (1) An eligible person may apply to the Minister for the issue of shares in a share

management fishery if an invitation for applications has been given by public notice under this Division.

- (2) The application is to be in writing in the form approved by the Minister and lodged with the Minister within the time specified in the public notice.
- (3) The application is to be accompanied by the application fee specified in the public notice. Any such fee is not to exceed any maximum fee prescribed by the regulations.
- (4) The Minister may require the applicant to supply additional information to support the application. The Minister may reject the application if the additional information is not supplied within the time required by the Minister.
- (5) The Minister may also obtain information from other sources in relation to the application.

#### **48 Provisional issue of shares to applicants**

- (1) The Minister is to consider each application for shares that has been duly made and issue shares to eligible applicants in accordance with their entitlement to shares under this Division. If the applicant is not eligible to apply for shares, the Minister is to refuse the application.
- (2) The shares are to be issued on a provisional basis pending the commencement of the management plan for the fishery.
- (3) The Minister must, as soon as practicable:
  - (a) notify each applicant of the result of the application, and
  - (b) give to each applicant a statement in writing of the names of the applicants who were provisionally issued with shares and of the number of shares issued to each such applicant, together with a statement of any rights of appeal by the applicant to the Share Appeal Panel.
- (4) Any shares issued as a result of a decision of the Share Appeal Panel are also to be issued on a provisional basis under this section.
- (5) The Minister may set aside shares available for issue to an eligible person who does not apply for the issue of the shares. The Minister may issue any such shares as the Minister sees fit, including by their issue to other applicants or by their sale by auction, tender or ballot.

#### **49 Who may hold shares**

- (1) The persons eligible to hold shares are not limited to the holders of commercial fishing licences or natural persons.
- (2) However, the regulations may prohibit a class of persons from holding shares. For

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

- (3) Two or more persons may jointly hold the same share.
- (4) This section does not affect any disqualification from holding shares under this Act.

#### **50 Method of determining eligibility and entitlement to shares**

- (1) The determination of the persons eligible to apply for shares in a share management fishery and their entitlement to shares is to be made in accordance with this Division and the criteria specified in the public notice inviting applications for shares.
- (2) Shares in a fishery are (subject to this section) to be allocated to persons who are the holders of current commercial fishing licences or fishing boat licences and who lawfully took fish for sale in the fishery before it became a share management fishery. If the fish were taken as an employee of some other person, the allocation is to be made to that other person.
- (3) Shares are (subject to this section) to be allocated to eligible persons in proportion to their catch history in the fishery. If more than one class of fish was caught in the fishery, the allocation is to take into account the value of each class of fish that was part of the catch history.
- (4) If a restricted fishery becomes a share management fishery, the persons entitled to shares in the fishery are the persons who, immediately before it ceased to be a restricted fishery, were entitled to take fish for sale in the restricted fishery or, if a person is entitled to take fish for sale in the restricted fishery as the employee or nominee of some other person, that other person. The allocation of shares to any such persons may be made having regard to existing entitlements in the restricted fishery.
- (5) However, if a restricted fishery is described as an exploratory or developmental fishery, the entitlement to shares in the fishery is to be determined in accordance with the regulations.
- (6) If a share management fishery is redefined, the entitlement to shares is to be determined in such manner as the Minister considers equitable having regard to the proportion of shares held in an existing fishery being redefined, the proportion of the redefined fishery to which the old shares applied, the catch history of shareholders and any other factor the Minister considers relevant.
- (7) If a category 2 share management fishery is converted to a category 1 share management fishery after the commencement of limited access to the fishery, the persons entitled to shares in the fishery are the persons who are shareholders in the category 2 share management fishery. The allocation of shares to any such person is to be made having regard to the shares held by the person in the category 2 share

management fishery.

- (8) For the purpose of allocating shares in a share management fishery, if the catch history of a person is a component of a fishing business, the catch history of the person is taken to be the catch history of the person (or persons) who own that fishing business when shares are allocated.

## **51 Catch history**

- (1) The catch history of a person is (subject to the regulations) to be determined under and in accordance with the criteria specified by the Minister in the public notice inviting eligible persons to apply for shares.
- (2) The criteria are to specify the period before the fishery becomes a share management fishery during which the catch history of a person is to be determined. The criteria may allow persons to choose their best catch history for a specified part of the relevant period.
- (3) (Repealed)
- (4) The catch history of a person is, subject to any appeal under this Part, to be determined by the Minister having regard to the records, kept by the Director-General, of fish taken by the person or such other documents as are prescribed by the regulations.
- (5) The Minister may increase the catch history of a person for any period during which the person was unable to engage in the person's usual fishing activities because of the person's duties as a representative of the commercial fishing industry.

## **52 Final issue of shares**

- (1) After all appeals to the Share Management Fisheries Appeal Panel have been disposed of in connection with a share management fishery, the Minister is to make the final issue of shares to eligible persons with effect from the commencement of the management plan for the fishery.
- (2) For that purpose, the Minister may redetermine the provisional issue of shares and cancel shares so issued or issue new shares.
- (3) The Minister must, as soon as practicable:
  - (a) notify each applicant for shares of the final result of the application, and
  - (b) give to each applicant a statement in writing of the names of the persons who were finally issued with shares and of the number of shares issued to each such person.
- (4) The Minister must also, as soon as practicable, publish in the Gazette the names of all

the persons who were finally issued with shares and the number of shares issued to each such person.

- (5) A person who was the holder of provisional shares in a fishery is not entitled to compensation because of a redetermination of the provisional issue of shares (whether under this section or as a result of any legal proceedings).
- (6) Shares are to be in such form as the Minister approves.

#### **52A Shares subject to appeal**

- (1) Despite section 52, the Minister may cancel provisional shares or issue final shares in a share management fishery, and the management plan for that fishery may be made, even if any appeal relating to the issue of provisional shares is still outstanding.
- (2) If the Minister considers that a person's entitlement to shares may be affected by any such appeal, the Minister may issue shares in the fishery as **shares subject to appeal**.
- (3) Shares subject to appeal are subject to the following special conditions:
  - (a) the transfer of, or any other registrable dealing in, the shares is only permitted with the consent of the Minister,
  - (b) no compensation is payable by or on behalf of the State for cancellation of the shares for any reason, including:
    - (i) cancellation by the Minister resulting from a determination in relation to the appeal, or
    - (ii) cancellation due to the termination of the fishery as a share management fishery,
  - (c) any other conditions prescribed by the regulations.
- (4) On completion of the relevant appeal:
  - (a) the Minister must cancel the shares subject to appeal, and
  - (b) the Minister may, if appropriate, issue a person with shares in accordance with this Act.

### **Division 4 Limited access to fishery after issue of shares**

#### **53 Commencement of limited access to fishery**

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

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

#### **54 Limiting access to shareholders etc before commencement of management plan**

- (1) After the day appointed for the commencement of limited access to a share management fishery and until the commencement of the management plan for the fishery, the fishery is a **limited access fishery**.
- (2) A commercial fishing licence does not authorise a person to take fish in a limited access fishery unless:
  - (a) the licensee is the holder of shares in the fishery (irrespective of the number of shares held) or is an applicant for shares who has duly lodged an appeal to the Share Management Fisheries Appeal Panel and whose appeal is pending, or
  - (b) the licensee is duly nominated in the Share Register by that holder or applicant to take fish on behalf of that holder or applicant,and the licence is duly endorsed under this Part for the taking of fish in the fishery.
- (3) A holder of shares is not entitled to have his or her licence endorsed to take fish in a limited access fishery (or to nominate another person to do so) if all the shares held by the person were acquired by dealings after the initial issue of shares in the fishery, unless the acquisition is declared by the regulations to be an authorised acquisition for the purposes of this section.

#### **Note—**

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

#### **55 Fishery that is existing restricted fishery**

- (1) A share management fishery that is also a restricted fishery ceases to be a restricted fishery when it becomes a limited access fishery.
- (2) The endorsement of a commercial fishing licence to take fish in such a restricted fishery becomes, on the fishery so ceasing to be a restricted fishery, an endorsement under this Part to take fish in the share management fishery. This subsection applies only if the person concerned is entitled under this Part to have the licence so endorsed.
- (3) Any provisions of the regulations that apply to such a restricted fishery apply (with any necessary modifications) as provisions of the regulations that apply to the limited access fishery, until those provisions are repealed.

## **Division 5 Management plans**

### **56 Preparation of draft management plan**

- (1) The Minister is to arrange for the preparation of a draft management plan for a share management fishery as soon as practicable after the fishery becomes a limited access fishery.
- (2) The Minister may arrange for the preparation of a new draft management plan for the fishery following a fishery review in accordance with this Part.

### **57 Content of management plan**

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

ecologically sustainable development are being attained, and

- (b) specify at what point a review of the management plan is required when a performance indicator is not being satisfied.

#### **57A Supporting plan**

- (1) The Minister may arrange for the preparation of a draft plan relating to management of all or any specified class of share management fisheries (a **supporting plan**).
- (2) A supporting plan may make provision for or with respect to any matter for which a fishery management plan may make provision, but cannot contain any provision that could not be contained in a management plan.
- (3) A management plan for a fishery may adopt by reference any of the provisions of a supporting plan as in force at a particular time or as in force from time to time and with or without modification.
- (4) Any provisions so adopted are taken to form part of the management plan for the fishery.
- (5) A provision of a supporting plan has no effect in relation to a share management fishery except to the extent that the provision is adopted by the management plan for the fishery under this section.
- (6) The Minister may arrange for the preparation of a new supporting plan following a fishery review under this Part or at such other times as the Minister considers appropriate.

#### **58 Public and industry consultation**

- (1) The Minister is required to give the public an opportunity to make submissions on any proposed management plan or supporting plan (or proposed new plan) and to take any submission that is duly made into account.
- (2) The Minister is required to consult relevant commercial or recreational fishing bodies, and bodies representing indigenous and conservation interests, about any such proposed plan, including, in the case of a proposed management plan (or proposed new management plan), the Management Advisory Committee for the fishery to which it relates.

#### **59 (Repealed)**

#### **60 Making of plan by regulation**

- (1) A management plan for a fishery, or a supporting plan, including any amendment or new plan, is to be made by a regulation.
- (2) Any such regulation is not repealed by the operation of Part 3 of the *Subordinate*



*Legislation Act 1989.*

**61 Commencement of management plan or supporting plan**

- (1) A management plan for a fishery commences when the regulation making the plan commences.
- (2) A supporting plan commences when the regulation making the plan commences.

**62 Plan prevails over other regulations and closures**

- (1) If a provision of the management plan for a fishery (or a provision of a supporting plan adopted by the management plan) is inconsistent with any other regulation under this Act or any fishing closure, the management plan prevails.
- (2) However, the management plan does not prevail over a provision of a regulation or fishing closure which is expressed to have effect despite the management plan.
- (3) Before a provision referred to in subsection (2) is made, the Minister is required to consult with the Management Advisory Committee for the fishery and certify in writing to the Governor that the matter cannot be delayed until a new management plan is made. Any such provision in a fishing closure must be approved by the Governor.
- (4) Subsection (3) does not apply to a provision that deals with an environmental emergency and which has effect for a period not exceeding 8 weeks.

**63 Fisheries reviews—new plan**

- (1) A management plan for a fishery is not to be replaced by a new plan until at least 5 years after the existing plan was made, unless the existing plan otherwise provides.
- (2) The Director-General is to arrange a review into each share management fishery at such times as the management plan for the fishery provides and, subject to that plan, at such other times as the Minister determines. A review must be held before the term of the shares in the fishery is due to expire.
- (3) The Director-General is to constitute a representative group of persons to assist in the conduct of the review. The group is to include representatives of the Management Advisory Committee for the fishery, and any other relevant commercial or recreational fishing industry bodies, as appropriate.
- (4) The Director-General is to report to the Minister on the review.
- (5) The Minister is to consider the report of the review and take such action (including the preparation of a new management plan) under this Act with respect to the fishery the subject of the review as the Minister considers appropriate.

#### **64 Amendment of plan**

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

#### **65 Contravention of plan**

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

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

(2) A **designated contravention** is a contravention of a provision of a management plan that is designated as an offence by:

- (a) the management plan, or
- (b) a supporting plan (if adopted by the management plan).

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

### **Division 6 Fishing and other shareholding rights**

#### **66 Who may fish in share management fisheries after commencement of management plan**

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

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

#### **67 Minimum shareholding required to fish after commencement of management plan**

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

- (2) A separate minimum shareholding may be fixed in respect of a person who acquires shares after the initial issue of shares or a different minimum shareholding may be fixed for any such shareholding. Different minimum shareholdings may also be set for different classes of shares.
- (3) Minimum shareholdings may be fixed so that the minimum is increased during subsequent periods.
- (4) A management plan may provide that the requirement for a minimum shareholding may be satisfied by taking into account the shareholder's shares in other share management fisheries or shareholder's entitlements or catch history in other fisheries.

### **68 Endorsements on licences**

- (1) The Minister may endorse a commercial fishing licence for the taking of fish in a share management fishery during a specified fishing period for the fishery.
- (2) The relevant fishing period is to be determined by the Minister in accordance with the management plan for the fishery.
- (3) A licence may be so endorsed only if:
  - (a) the licensee is the holder of shares in the share management fishery or is duly nominated in the Share Register by that holder to take fish on behalf of that holder, and
  - (b) that holder has not less than the minimum shareholding in the share management fishery required under this Division, and
  - (c) any community contribution, management charge or other amount due and payable by the holder under this Part has been paid.
- (4) The licence of the holder of shares may not be endorsed if the holder has duly nominated some other commercial fisher to take fish on behalf of that holder. This subsection is subject to the management plan for the fishery.
- (4A) The licence of the holder of shares (or of a person nominated by the holder) may not be endorsed if the holder is not eligible for an endorsement as a consequence of a contravention of the fishing business transfer rules.
- (5) An application for endorsement is to be made in the form and manner approved by the Minister and accompanied by the fee prescribed by the regulations.
- (6) An endorsement expires at the end of the fishing period to which it relates, but the licence may be endorsed for a further period or periods.
- (6A) The authority conferred by an endorsement is subject to such conditions as are prescribed by the regulations or attached to an endorsement by the Minister.

- (7) An endorsement may be suspended or cancelled by the Minister:
  - (a) if the holder of the licence ceases to be eligible to have the licence endorsed, or
  - (b) if the shareholder fails to pay any community contribution, management charge or other amount due under this Part, or
  - (c) for any other reason authorised by the management plan for the fishery or the fishing business transfer rules.
- (8) If an endorsement of a shareholder is suspended or cancelled, the shareholder is not entitled to nominate another person to take fish on the shareholder's behalf.
- (8A) An endorsement may be given by the Minister in the form of a document that is separate from the commercial fishing licence of the person authorised by the endorsement to take fish in the fishery. In such a case, references in this Act to an endorsement on a commercial fishing licence, or to endorsing a commercial fishing licence, extend to an endorsement, or the giving of an endorsement, in that form.
- (9) Until the commencement of the management plan for a fishery, the Minister may determine the matters required by this section to be determined by the plan. During that period, the requirement for a minimum shareholding does not apply and this section has effect subject to any other necessary modification.

#### **69 Nomination of commercial fisher by holder of shares**

- (1) The holder of shares in a share management fishery may nominate a commercial fisher to take fish in the fishery on behalf of that holder.
- (2) After the commencement of the management plan for the fishery, the holder may not do so unless the holder has at least the minimum shareholding in the fishery required under this Division.
- (3) The nomination is to be made in a form and manner approved by the Director-General.
- (4) The holder may nominate 2 or more commercial fishers in respect of the same shareholding if authorised to do so under the management plan for the fishery.
- (5) The holder may nominate a commercial fisher who is a shareholder in the same fishery. In that case, the shares of the nominated fisher do not, while the fisher is so nominated and unless the management plan for the fishery otherwise provides, confer any entitlement to take fish in the fishery.
- (6) However, the holder may not nominate a commercial fisher who is nominated by another shareholder in the same fishery.
- (7) The holder may revoke a nomination by notice in writing served on the Director-

General.

- (8) The Director-General is to record any nomination under this section, or any revocation of a nomination, in the Share Register. The nomination or revocation has effect when it is so recorded.
- (9) Until the commencement of the management plan for a fishery, the Minister may determine the matters that, under this section, may be provided for by the plan.

#### **70 Special endorsements to take fish in share management fishery**

- (1) The Minister may endorse a commercial fishing licence for taking fish for sale in a share management fishery even though the commercial fisher is not entitled under this Part to have the licence so endorsed.
- (2) The Minister may do so only if the Minister is satisfied, after consultation with the Management Advisory Committee for the fishery, and with any other relevant commercial or recreational fishing industry bodies, that an available fisheries resource would not otherwise be utilised.
- (3) A commercial fishing licence endorsed under this section authorises the holder to take fish in accordance with the authority conferred by the endorsement.
- (4) An endorsement under this section:
  - (a) is subject to such conditions as are prescribed by the regulations or specified in the endorsement, and
  - (b) remains in force for the period of 6 months or such shorter period as is specified in the endorsement, and
  - (c) may be cancelled or suspended by the Minister at any time.
- (5) The regulations may make provision for or with respect to endorsements under this section. In particular, the regulations may prescribe the fee payable for such an endorsement.

#### **71 Transfer and other dealings in shares**

- (1) A share in a share management fishery may be transferred, assigned, transmitted or mortgaged and any other interest of a kind prescribed by the regulations may be created in the share.
- (2) Without limiting subsection (1), shares may be transferred for the purpose of enabling 2 or more shareholders to hold their shares jointly.
- (3) A transaction that transfers, assigns, transmits, mortgages or otherwise creates an interest in a share in a share management fishery is required to be registered in the Share Register under Division 10.

- (4) This section is subject to any restriction imposed by the management plan for the fishery.
- (5) Before the commencement of the management plan for the fishery, this section applies only to the extent authorised by the regulations.

#### **71A Issue of further classes of shares in fishery**

- (1) A management plan for a share management fishery may provide for the creation and issue of further classes of shares in the share management fishery.
- (2) Any such further classes of shares in the fishery are to be allocated to shareholders on the basis of criteria provided for by the management plan.
- (3) The criteria are to provide for the recognition of catch history of persons in the fishery during the period from 1986 to 1993 (both years inclusive) or during such other period as the plan provides.
- (4) For the purpose of allocating shares in the fishery, if the catch history of a person is a component of a fishing business, the catch history of the person is taken to be the catch history of the person (or persons) who own that fishing business when shares are allocated.
- (5) If a management plan provides for the issue of further classes of shares in a share management fishery, it is to include provision for the making of appeals to the Share Appeal Panel against decisions made under the plan in relation to the allocation of the shares.

#### **72 Maximum shareholding permitted**

- (1) The maximum shareholding in a share management fishery is the maximum shareholding fixed in the management plan for the fishery.
- (2) If no maximum shareholding is fixed in the plan, the maximum shareholding is 5% of the number of shares in the fishery at the commencement of the plan.
- (3) The maximum shareholding in a fishery fixed under this section does not apply to or affect the provisional issue of shares or the final issue of shares on the commencement of the management plan for the fishery, or the transfer of those shares to another person.
- (4) If the maximum shareholding is changed at any time after it is fixed, the change in that maximum does not affect an existing shareholder. While any such existing shareholder continues to hold those shares, the maximum shareholding in respect of that shareholder is the previous maximum shareholding.
- (5) Shares in a share management fishery in excess of the maximum shareholding may not be issued to a person by the Minister or recorded in the Share Register.

- (6) Any excess shares are to be cancelled by the Minister. However, the Minister may allow a person who has acquired excess shares to dispose of those shares in accordance with this Part.
- (7) For the purposes of this section, the shareholding of a person is taken to include the shareholding of any other person who has an interest in the shares of the first-mentioned person (within the meaning of the *Banks (Shareholdings) Act 1972* of the Commonwealth).

### **73 Duration of shareholding—category 1 share management fishery**

- (1) Shares in a category 1 share management fishery are to be issued initially for a period of 10 years (calculated from the commencement of the management plan for the fishery).
- (2) If during that 10-year period (or any subsequent period for which the shares are renewed) a fishery review is not conducted and a new management plan is not made under this Part, the shares are taken to be renewed, at the end of their current period, for a further period of 10 years.
- (3) If during that 10-year period (or any subsequent period for which the shares are renewed) a fishery review is conducted and a new management plan is made under this Part, the shares are taken to be renewed (from the date the new plan commences) for a further period of 10 years and the balance of the current period is terminated.

### **73A Duration of shareholding—category 2 share management fishery**

- (1) Shares in a category 2 share management fishery are to be issued initially for a period of 15 years (calculated from the commencement of the management plan for the fishery).
- (2) If by the end of the first 10 years of that 15-year period (or any subsequent period for which the shares are renewed):
  - (a) a new management plan has not been made under this Part, and
  - (b) there is no order in force under Division 2A that terminates the fishery at the end of current term of the shares in the fishery,the shares are taken to be renewed for a further period of 15 years and the balance of the current period is terminated.
- (3) If by the end of the first 10 years of that 15-year period (or any subsequent period for which the shares are renewed) a fishery review has been conducted and a new management plan has been made under this Part, the shares are taken to be renewed (from the date the new plan commences) for a further period of 15 years and the balance of the current period is terminated.

#### **74 Surrender of shares**

- (1) The holder of shares in a share management fishery may surrender those shares to the Minister.
- (2) The Minister is, if requested by the shareholder, to sell those shares by public tender and pay 85% of the purchase price to that holder. The balance of the purchase price (after deduction of the expenses reasonably incurred in connection with the sale) is to be credited to the Consolidated Fund.
- (3) However, if that holder does not request the Minister to sell the shares, the shares are to be cancelled and new shares are not to be issued in their place.

#### **75 Forfeiture of shares for certain contraventions of Act**

- (1) For the purposes of this section, an offence against this Act or the regulations is a **share forfeiture offence** for a fishery if it is designated in the management plan for the fishery as such an offence.
- (2) A court which convicts a shareholder in a share management fishery, or a commercial fisher taking fish in the fishery on behalf of the shareholder, of a share forfeiture offence may order that the shares (or any of the shares) of the shareholder be forfeited.
- (3) A court which orders the forfeiture of any such shares may also order that the holder of the shares is not eligible to hold shares in the fishery for the period specified by the court.
- (4) The regulations may also provide for the forfeiture of shares by the Minister:
  - (a) for any record of convictions of a shareholder in a share management fishery, or a commercial fisher taking fish in the fishery on behalf of the shareholder, for share forfeiture offences, or
  - (b) for any failure by the shareholder to pay a community contribution or other amount due under this Part (but only to the extent of the amount due).
- (5) The Minister is to sell forfeited shares to which this section applies by public tender and pay the purchase price to the credit of the Consolidated Fund. The regulations after deduction of the expenses reasonably incurred in connection with the sale may authorise or require the payment of any part of the purchase price to a person (other than the shareholders) who had an interest in the shares.

### **Division 7 Management charges and community contributions**

#### **76 Management charges**

- (1) The Minister may, subject to this section, determine the management charges



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

- (2) The management charge is to be such amount as the Minister considers necessary to meet the costs of management for that fishery, being costs of management that are attributed to industry by the management plan for the fishery.
- (3) The management charge is not to exceed the amount prescribed by the management plan for the fishery.
- (4) The management charge is payable by shareholders in proportion to their shareholding or as otherwise provided by the management plan.
- (5) The management plan may authorise the payment of management charges by instalments.
- (6) If a management charge, or an instalment of a management charge, is unpaid after the due date for its payment, the Minister may charge interest on the overdue amount at the rate payable from time to time in respect of judgments of the Supreme Court or, if some other rate is prescribed by the management plan for the fishery, that rate.
- (7) Interest may be charged under subsection (6) for each day that has elapsed between the date on which payment is due and the date of payment.
- (8) Until the commencement of the management plan for a fishery, the Minister may (after consultation with the Management Advisory Committee for the fishery) determine the matters that may be provided for by the plan.

#### **77 Community contribution for access to category 1 share management fishery**

- (1) Shareholders in a category 1 share management fishery are required to make a periodic contribution for their right of access to the fishery (a **community contribution**).
- (2) The community contribution is payable after the commencement of, and in accordance with, the management plan for the fishery.
- (3) The community contribution is to be credited to the Consolidated Fund.
- (4) The community contribution is to be based on the size of the shareholding in the fishery, or as otherwise provided by the management plan for the fishery.
- (5) The rate of the community contribution, method of its payment and other matters concerning its payment are to be prescribed by the management plan, and not otherwise.
- (6) The management plan for the fishery may exempt a shareholder from making the

community contribution (or reduce any such contribution) if the full rights to take fish in the fishery in accordance with the shareholding have not been exercised during the relevant period.

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

**77A Rental charge for access to category 2 share management fishery**

- (1) Shareholders in a category 2 share management fishery are required to pay a rental charge for their right of access to the fishery.
- (2) The amount of the rental charge, the method of its payment and other matters concerning its payment are to be provided for by the management plan.
- (3) The maximum rental charge is \$100 for a 12-month period.
- (4) The management plan for a fishery may provide for the adjustment of the maximum rental charge to take into account changes in the consumer price index. In that case, the maximum rental charge is the amount so adjusted.
- (5) A person is exempt from paying the rental charge:
- (a) if the person holds shares in another category 2 share management fishery and has paid a rental charge for the same period in respect of that other fishery (unless the management plan otherwise provides), or
  - (b) in such other circumstances as may be provided for by the management plan.
- (6) This section applies in respect of a category 2 share management fishery:
- (a) if the fishery is, before the commencement of limited access to the fishery, also a restricted fishery—on and from the day the fishery becomes a share management fishery, or
  - (b) in any other case—on and from the day appointed for the commencement of limited access to the fishery.
- (7) Until the commencement of the management plan for the fishery, the Minister may determine the matters that under this section may be provided for by the plan.
- (8) For the purposes of this section:
- (a) an applicant for shares in a category 2 share management fishery who has duly lodged an appeal to the Share Appeal Panel, and whose appeal is pending, is taken to be a shareholder in the fishery, and
  - (b) if a category 2 share management fishery is also a restricted fishery—a person authorised to take fish in the fishery or, if a person is authorised to take fish in the

fishery as the employee or nominee of some other person, that other person is taken to be a shareholder in the fishery.

## **Division 8 Allocation of total allowable commercial catch among shareholders**

### **78 Allocation of total allowable catch among shareholders in fishery**

- (1) This section applies to any determination of the total allowable catch of fish for the commercial fishing sector that is required under the management plan for a share management fishery.
- (2) The Minister is to allocate among shareholders in all relevant share management fishery the whole total allowable catch of fish for the commercial fishing sector.
- (3) An allocation among shareholders in a particular fishery is to be made in proportion to the shareholdings of the persons concerned.
- (3A) The management plan for a fishery that includes different kinds of fish may, for the purposes of this section, provide for different classes of shareholders in the fishery having regard to the kind of fish taken by the shareholders (including in connection with any catch history on which the criteria for shareholding in the fishery was based). The management plan may provide (despite subsection (3)) for the allocation of the total allowable catch of a particular kind of fish among the relevant class of shareholders only.
- (4) If 2 or more fisheries are involved in the allocation, the total amount allocated to each fishery is to be determined by the TAC Committee having regard to the relative composition of the catch of fish for each fishery concerned.
- (5) An allocation is to be made to all shareholders, whether or not they hold the minimum shareholding required to fish in the fishery.
- (6) The Minister may delay making an allocation and not restrict the catch of shareholders.
- (7) However, if it appears that the total allowable catch may be exceeded because of any such delay, the Minister is to allocate the balance of the total allowable catch during the remaining fishing period to which it applies in accordance with this section. A shareholder is not entitled to any such allocation if the shareholder would become entitled to take more fish than the shareholder would have been entitled to take if the allocation had not been delayed.
- (8) If any shares have been forfeited or surrendered, but not yet sold, an allocation is to be made in respect of those shares and dealt with in such manner as the Minister thinks fit.

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

#### **79 Transfer of allocations**

- (1) A shareholder in a share management fishery may transfer to any other shareholder in that fishery the whole or any part of his or her allocation under this Division of the total allowable catch concerned in accordance with the management plan for the fishery.
- (2) Subject to the management plan:
- (a) a shareholder may not acquire by any such transfers more than twice the amount of the shareholder's actual allocation, and
  - (b) a transfer may not be made after the end of the fishing period to which the allocation relates.
- (3) A transaction that purports to have the effect of transferring the whole or any part of an allocation does not have effect until it is notified in writing to the Director-General.

#### **80 Carry over to, or borrowing from, future allocations**

- (1) The management plan for a share management fishery may authorise a shareholder in the fishery:
- (a) to transfer to the next fishing period any part of the allocation of the total allowable catch for the current fishing period that is not taken during the current period, or
  - (b) to transfer to the allocation of the total allowable catch for the current fishing period part of the allocation for the next fishing period.
- (2) Subject to any such management plan, a transfer under this section takes effect when it is notified to the Director-General in writing by the shareholder.

#### **81 Payment for fish caught in excess of allocation or forfeiture of shares**

- (1) A shareholder who, during any period, takes more fish than the shareholder's allocation under this Division (whether personally or by means of a nominated fisher) is required to pay to the Director-General the value of the excess fish so caught. The amount paid is to be credited to the Consolidated Fund.
- (2) If the amount required to be paid by the shareholder is not paid within the time specified by the Minister in a written notice to the shareholder, the requisite number of shares of the shareholder specified in that notice are forfeited.
- (3) The requisite number of shares is the number of shares that, if sold by public tender, would in the Minister's opinion raise an amount equivalent to the amount required to be paid by the shareholder.

- (4) If the shareholder does not have sufficient shares, the balance of the amount required to be paid by the shareholder may be recovered by the Minister as a debt in a court of competent jurisdiction.
- (5) The value of fish for the purposes of this section is the value that the Minister considers to be the market value of the fish. If the Minister is satisfied that the shareholder did not intend to exceed the shareholders' allocation, the Minister is to reduce the value by the amount the Minister considers appropriate for the costs incurred by the shareholder in taking the fish.
- (6) The Minister is to sell any shares forfeited under this section by public tender. The purchase price (after deduction of the expenses reasonably incurred in connection with the sale) is to be credited to the Consolidated Fund.
- (7) Before finally selling any such share by public tender, the Minister is required to offer to sell the share to the original holder for the tender price.
- (8) For the purposes of this section, fish taken by a shareholder include fish taken on behalf of the shareholder by a commercial fisher duly nominated by the shareholder under this Part.
- (9) Nothing in this section precludes proceedings being taken for an offence against this Act or the regulations.
- (10) The management plan for a fishery may provide that this section does not apply in specified circumstances to the taking of fish in the fishery.

## **Division 9 Share Management Fisheries Appeal Panel**

### **82 Establishment of Panel**

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

### **83 Composition and procedure of Panel**

- (1) The Share Appeal Panel is to consist of 3 members, as follows:
  - (a) a person appointed by the Minister as the Chairperson of that Panel, being a person who is neither engaged in the administration of this Act nor in commercial fishing,
  - (b) the Director-General or a nominee of the Director-General,
  - (c) a person appointed by the Minister on the nomination of such relevant commercial fishing industry bodies as the Minister determines, being a person with extensive practical experience in the commercial fishing industry.
- (2) The Minister may constitute that Panel with different members for different share

management fisheries.

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

#### **84 Making of appeals**

- (1) An applicant for shares in a share management fishery may appeal to the Share Appeal Panel against a decision under this Part relating to the provisional issue of shares in the fishery under section 48.
- (1A) An appeal cannot be made to that Panel under subsection (1) after the making of a share management plan for the fishery to which the appeal relates. However, the making of a share management plan does not affect any appeal that was made, but not finally determined, before the making of the plan.
- (2) The regulations may provide for other appeals to that Panel against decisions under this Part relating to a share management fishery.
- (3) An appeal is to be made within the time and in the manner prescribed by the regulations.
- (4) An appeal is to be accompanied by such fee or deposit as is prescribed by the regulations.

#### **85 Hearing and determination of appeals**

- (1) The Share Appeal Panel is to hear each appeal duly made to it.
- (2) The Panel may, for the purpose of the appeal, exercise the functions of the person who made the decision concerned.
- (3) That Panel may:
  - (a) uphold the decision, or
  - (b) vary the decision, or
  - (c) set the decision aside and substitute a new decision.
- (4) A decision as varied or substituted is to be given effect to under this Part.

**Note—**

See sections 48 and 52.

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

## **86 Procedure at appeals**

- (1) In proceedings before the Share Appeal Panel:
  - (a) the procedure of that Panel is, subject to this Act and the regulations, to be determined by the Panel, and
  - (b) the proceedings are to be conducted with as little formality and technicality, and as quickly, as the requirements of this Act and the proper consideration of the matter permit, and
  - (c) that Panel is not bound by the rules of evidence but may inform itself on any matter in any way it thinks appropriate.
- (2) The time, date and place for the hearing of an appeal is to be fixed by the Chairperson of that Panel and notified in writing by the Chairperson to each party to the appeal.
- (3) The Chairperson of that Panel is to preside at any hearing of an appeal.
- (4) At the hearing of an appeal, a party to the appeal may appear in person or be represented by a legal practitioner or any other person.
- (5) Hearings may be conducted in public or in private.
- (6) The Panel may, with the approval of the appellants, hear 2 or more appeals together.
- (7) An appeal may be heard and determined despite the absence or vacancy in the office of one of its members (other than the Chairperson). This subsection applies only if the appellant consents to the continuation of the hearing.
- (8) An appeal may continue to be heard and determined despite a change in the membership of the Panel (other than the Chairperson).
- (9) An appeal and any question concerning the appeal are to be determined according to the opinion of the majority of the members of the Panel hearing the appeal. If there are only 2 members, they are to be determined according to the opinion of the Chairperson.

## **87 Power to summon witnesses and take evidence**

- (1) The Chairperson of the Share Appeal Panel may summon a person to appear at a hearing of an appeal to give evidence and to produce such documents (if any) as are referred to in the summons.
- (2) The Chairperson of that Panel may require a person appearing at the hearing of an appeal to produce a document.
- (3) That Panel may, at a hearing, take evidence on oath or affirmation and, for that purpose:

- (a) the Chairperson of that Panel may require a person appearing at the hearing to give evidence either to take an oath or to make an affirmation in a form approved by the Chairperson, and
  - (b) the Chairperson may administer an oath or affirmation to a person so appearing at the hearing.
- (4) A person served with a summons to appear at a hearing to give evidence must not, without reasonable excuse:
- (a) fail to attend as required by the summons, or
  - (b) fail to attend from day to day unless excused, or released from further attendance, by the Chairperson of that Panel.

Maximum penalty: 20 penalty units.

- (5) A person appearing at a hearing to give evidence must not, without reasonable excuse:
- (a) when required to take an oath or make an affirmation—refuse or fail to comply with the requirement, or
  - (b) refuse or fail to answer a question that the person is required to answer by the Chairperson of that Panel, or
  - (c) refuse or fail to produce a document that the person is required to produce by a summons served under this section.

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

## **88 Power to obtain documents**

- (1) The Chairperson of the Share Appeal Panel may, by notice in writing served on a person, require the person:
- (a) to attend, at a time and place specified in the notice, before a person specified in the notice, being the Chairperson or a person authorised by the Chairperson in that behalf, and
  - (b) to produce, at that time and place, to the person so specified a document specified in the notice.
- (2) A person must not, without reasonable excuse, refuse or fail to comply with a notice served on the person under this section.

Maximum penalty: 20 penalty units.



## **Division 10 Share Management Fisheries Register**

### **89 Establishment and keeping of Share Register**

- (1) The Director-General is required to establish and keep a Share Management Fisheries Register (the **Share Register**).
- (2) The Share Register may be kept wholly or partly by means of a computer.
- (3) If the Share Register is kept wholly or partly by means of a computer:
  - (a) references in this Act to an entry in the Share Register are to be read as including references to a record of particulars kept by means of the computer and comprising the Share Register or part of the Share Register, and
  - (b) references in this Act to particulars being registered, or entered in the Share Register, are to be read as including references to the keeping of a record of those particulars as part of the Share Register by means of the computer, and
  - (c) references in this Act to the rectification of the Share Register are to be read as including references to the rectification of the record of particulars kept by means of the computer and comprising the Share Register or part of the Share Register.

### **90 Registration of shares**

- (1) The Director-General must register any shares in a share management fishery issued by the Minister by entering in the Share Register the following particulars:
  - (a) the name of the person to whom the shares are issued,
    - (a1) if the shares are a component of a fishing business, the number allocated to the fishing business by the Director-General under this Act,
  - (b) the number of shares issued,
  - (c) the share management fishery for which the shares are issued,
  - (d) the period for which the shares are issued,
  - (e) such other particulars (if any) as are prescribed by the regulations.
- (2) The Director-General must register any renewal of shares in a share management fishery by entering in the Share Register the following particulars:
  - (a) the fact that the shares have been renewed,
  - (b) the period for which the shares are renewed,
  - (c) such other particulars (if any) as are prescribed by the regulations.

## **91 Registration of dealings in shares**

- (1) A transaction that purports to have the effect of transferring, assigning, transmitting, mortgaging or otherwise creating an interest in a share in any share management fishery does not have that effect until it is registered in the Share Register.
- (2) A party to such a transaction may make an application to the Director-General for the transaction to be registered.
- (3) Such an application must be in a form approved by the Director-General and must be accompanied:
  - (a) by the document that embodies the transaction, and
  - (b) by a document setting out such particulars (if any) as are prescribed by the regulations for the purposes of this paragraph, and
  - (c) by duplicates of the documents referred to in paragraphs (a) and (b), and
  - (d) by such fee (if any) as is prescribed by the regulations.
- (4) When such an application is made to the Director-General, the Director-General must:
  - (a) register the transaction by entering in the Share Register particulars of the name of the person acquiring the interest and a description of the transaction, and
  - (b) endorse on the document relating to the transaction and the duplicate of that document the fact of the entry having been made, together with the date and time of the making of the entry.
- (5) When those entries in the Share Register have been made:
  - (a) the duplicate of the document relating to the transaction is to be retained by the Director-General and made available for inspection in accordance with this Division, and
  - (b) the original document is to be returned to the person who made the application for registration.
- (6) The Director-General is not to register a dealing in a share in any share management fishery if the dealing would result in a shareholder acquiring more shares in the fishery than is permitted by this Act or if the dealing would otherwise contravene this Act.

## **92 Trusts not registrable**

- (1) The Director-General is taken not to have notice of any kind of trust relating to shares in a share management fishery.
- (2) Notice of any such trust must not be registered by the Director-General.

### **93 Power of holder to deal with shares**

- (1) The holder of any share in a share management fishery may, subject to this Part, deal with the share as its absolute owner and give good discharges for any consideration for any such dealing.
- (2) Subsection (1):
  - (a) is subject to any rights appearing in the Share Register to belong to another person, and
  - (b) only protects a person who deals with the holder of the share as a purchaser in good faith for value and without notice of any fraud on the part of the holder.
- (3) Equities in relation to a share in a share management fishery may be enforced against the holder of the right except to the prejudice of a person protected by subsection (2).

### **94 Surrender of shares to be noted in Share Register**

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

### **95 Cancellation or forfeiture of shares to be noted in Share Register**

- (1) If a share in a share management fishery is cancelled, forfeited or otherwise ceases to have effect, the Director-General must make an entry in the Share Register to that effect and cancel the registration of the share.
- (2) If, because of a decision made by the Minister or a court, an entry made by the Director-General under subsection (1) is no longer correct, the Director-General must rectify the Share Register.
- (3) If:
  - (a) the Director-General makes an entry in the Share Register under subsection (1), or rectifies the Share Register under subsection (2), concerning a share, and
  - (b) a person other than the holder of the share has an interest in the share, and
  - (c) the interest is one in relation to which a transaction has been registered under section 91 (Registration of dealings in shares),the Director-General must give the person written notice of the entry or rectification.

### **96 Director-General not concerned as to the effect of documents lodged for registration**

The Director-General is not concerned with the effect in law of any document lodged under section 91 (Registration of dealings in shares) and the registration of the transaction concerned does not give to the document any effect that it would not have if

this Division had not been enacted.

### **97 Inspection of Share Register and registered documents**

- (1) On payment by a person of the prescribed fee (if any), the Director-General must, during the ordinary business hours of the Director-General's office, make available for inspection the Share Register and all copies of registered documents retained by the Director-General in accordance with section 91 (Registration of dealings in shares).
- (2) If the Share Register is kept wholly or partly by means of a computer, this section is taken to be complied with by making the contents of the Share Register available for inspection on the website of NSW Fisheries.

### **98 Evidentiary provisions**

- (1) The Share Register is evidence of any particulars registered in it.
- (2) If the Share Register is wholly or partly kept by means of a computer, a document issued by the Director-General producing in writing particulars included in the Share Register, or the part kept by means of a computer, is admissible in legal proceedings as evidence of those particulars.
- (3) A copy of the Share Register or an entry in the Share Register is, if purporting to be signed by the Director-General, admissible in evidence in legal proceedings as if the copy were the original.
- (4) A copy of a document, or part of a document, retained by the Director-General under section 91 (Registration of dealings in shares) is, if purporting to be signed by the Director-General, admissible in evidence in legal proceedings as if the copy were the original.
- (5) The Director-General must, on application made by a person in a form approved by the Director-General, provide the person with a document or copy that is admissible in legal proceedings because of this section.

### **99 Correction of Share Register**

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

### **100 Exculpation for liability for anything done under this Division**

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

### **101 Offences under the Division**

A person must not:

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

Maximum penalty: 50 penalty units.

## **Part 4 Licensing and other commercial fisheries management**

### **Division 1 Commercial fishing licences**

#### **102 Commercial fishers required to be licensed**

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

Maximum penalty: In the case of a corporation, 2,000 penalty units or, in any other case, 1,000 penalty units.

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

**Note—**

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

#### **103 Who may hold licence**

- (1) A corporation may not hold a commercial fishing licence.
- (2) An individual may hold a commercial fishing licence only if:
  - (a) the individual is a shareholder in a share management fishery or is duly nominated by the shareholder under Part 3 to take fish on behalf of the shareholder, or
  - (b) the individual held a fisherman's licence under section 25 of the *Fisheries and Oyster Farms Act 1935* immediately before the repeal of that section by this Act, or
  - (c) the individual is otherwise authorised by the regulations to hold a commercial fishing licence.
- (3) If an individual is only entitled to a licence under subsection (2) (a), the licence must be restricted to the taking of fish in the share management fishery concerned.

#### **104 Provisions relating to licensing of commercial fishers**

- (1) Any eligible person may apply to the Minister for a commercial fishing licence.
- (2) An application is to be in the form approved by the Minister.
- (3) The Minister is required to issue a licence to an eligible applicant unless the Minister is authorised by the regulations to refuse the application.
- (4) A commercial fishing licence:
  - (a) is subject to such conditions as are prescribed by the regulations or specified in the licence, and
  - (b) remains in force for such period as is specified in the licence, and
  - (c) may be renewed from time to time in accordance with the regulations, and
  - (d) is not transferable, and
  - (e) may be cancelled or suspended by the Minister in the circumstances authorised by the regulations.
- (5) The regulations may prescribe different classes of licences.
- (6) The Minister may, at any time by notice in writing to the holder of a commercial fishing licence, revoke or vary the conditions of or endorsements on the licence or add new conditions or endorsements. This subsection does not apply to conditions prescribed by the regulations.
- (7) The holder of a commercial fishing licence who contravenes any condition of the licence is guilty of an offence.  
  
Maximum penalty: 100 penalty units.
- (8) The regulations may make provision for or with respect to commercial fishing licences. In particular, the regulations may prescribe the qualifications relating to fishing activities required for the issue of a licence and the fee or fees payable in respect of an application for the issue or renewal of a licence.

#### **105 Evidentiary provision**

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

#### **106 Annual contribution to cost of research and to other industry costs**

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

- (a) the cost of carrying out research into commercial fisheries, or
  - (b) any other costs relating to the commercial fishing industry.
- (2) The amount of the contribution is to be specified in or determined under the regulations.
  - (3) The payment required by this section is taken to be a condition of every commercial fishing licence.
  - (4) If a contribution is unpaid after the due date for its payment, the Minister may charge interest on the overdue amount at the rate payable from time to time in respect of judgments of the Supreme Court or, if some other rate is prescribed by the regulations, that rate.
  - (5) Interest may be charged for each day that has elapsed between the date on which payment is due and the date of payment.
  - (6) Interest charged on an overdue annual contribution under subsection (4) is taken to be part of the contribution.
  - (7) (Repealed)

## **Division 2 Commercial fishing boats**

### **107 Commercial fishing boat to be licensed**

- (1) The master of a boat must not use the boat for any of the following purposes unless the boat is licensed under this Division:
  - (a) to take fish for sale from waters to which this Act applies,
  - (b) to land fish in New South Wales that were taken from other waters (after the boat departed from a port in New South Wales).

Maximum penalty: 100 penalty units.

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

### **108 Provisions relating to licensing of boats**

- (1) The owner of a boat (or a person authorised by the owner) may apply to the Minister for the issue of a licence for the boat.
- (2) An application is to be in the form approved by the Minister.
- (3) The Minister is required to issue a licence for a boat if application for the licence is duly made unless the Minister is authorised by the regulations to refuse the

application.

(4) The licence for a boat:

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

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

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

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

Maximum penalty: 100 penalty units.

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

### **109 Evidentiary provision**

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

### **110 Crew of fishing boats**

- (1) Each member of the crew of a licensed fishing boat which is being used to take fish must (subject to this section) be registered by the Director-General.
- (2) A person who is not registered may act as a member of the crew of a boat if a registered crew member is not available when the boat leaves port.
- (3) Registration is not limited to any particular boat.
- (4) A crew member is not required to be registered if he or she holds a commercial fishing licence.
- (5) A commercial fishing licence or the licence for a boat may authorise the use of persons who are not registered as crew members on a boat.



- (6) Application for registration may be made to the Director-General by the crew member or by the master of the boat.
- (7) Application for registration is to be in the form approved by the Director-General and accompanied by such fee (if any) as is prescribed by the regulations.
- (8) The Director-General is required to register a crew member if application is duly made for that registration.
- (9) If a member of the crew of a licensed fishing boat is not registered when required by this section, the master of the boat is guilty of an offence.

Maximum penalty: 50 penalty units.

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

### **Division 3 Exploratory, developmental and other restricted fisheries**

#### **111 Declaration of restricted fisheries**

- (1) The regulations may declare that a fishery (not being a share management fishery in respect of which shares issued in the fishery have taken effect) is a restricted fishery for the purposes of this Act during the period specified in the declaration.
- (2) The fishery may be described in the declaration as an exploratory, developmental or other class of restricted fishery.
- (3) Before a fishery is declared to be a restricted fishery, the Minister is required to consult relevant commercial or recreational fishing industry bodies about the proposed declaration and to notify the proposal publicly.
- (4) A fishery that is declared to be a restricted fishery ceases to be a restricted fishery if the declaration is revoked by the regulations.

**Note—**

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

#### **112 Commercial fishing licence to be endorsed for restricted fishery**

- (1) A commercial fishing licence does not authorise a person to take fish for sale in a restricted fishery unless the holder is authorised by the Minister, by an endorsement on the licence, to do so.
- (2) The authority conferred by such an endorsement is subject to such conditions as are prescribed by the regulations or attached to the endorsement by the Minister.

### **113 Restriction on the number of licences endorsed for restricted fishery**

- (1) The regulations may fix the maximum number of commercial fishing licences that may be endorsed in respect of a specified restricted fishery.
- (2) Eligibility for endorsement of commercial fishing licences is to be determined in accordance with the regulations.

### **114 Endorsements not transferable**

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

### **115 Compensation not payable**

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

### **116 Other regulations**

The regulations may make provision for or with respect to:

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

## **Division 4 Fish receivers**

### **117 Fish receiver to be registered**

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

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

- (2) The person is not required to be registered under this Division if:
  - (a) the person holds an authority under the *Fisheries Act 1935* of a class designated by the regulations under this Act, or
  - (b) the person has received from all commercial fishers (or persons acting on their behalf) less than the minimum quantity of fish prescribed by the regulations

during the period so prescribed, or

- (c) the fish are received in the person's capacity as an employee or agent of another fish receiver, or
- (d) the fish are received for the purpose only of transporting them on behalf of the owner of the fish, or
- (e) the regulations otherwise provide.

### **118 Provisions relating to registration**

- (1) Any person may apply to the Minister to be registered under this Division as a fish receiver.
- (2) An application is to be in the form approved by the Minister and is to be accompanied by such fee (if any) as is prescribed by the regulations.
- (3) The Minister is required to register an applicant as a fish receiver unless the Minister is authorised by the regulations to refuse the application.
- (4) The regulations may prescribe different classes of registered fish receivers.
- (5) The registration of a fish receiver:
  - (a) is subject to such conditions as are prescribed by the regulations or specified in the certificate of registration, and
  - (b) remains in force for the period of 1 year or such other period as is specified in the certificate of registration, and
  - (c) may be renewed from time to time in accordance with the regulations, and
  - (d) may be cancelled or suspended by the Minister in the circumstances authorised by the regulations.
- (6) The Minister may, at any time by notice in writing to a registered fish receiver, revoke or vary the conditions of the registration or add new conditions. This subsection does not apply to conditions prescribed by the regulations.
- (7) A registered fish receiver who contravenes any condition of the registration is guilty of an offence.

Maximum penalty: 100 penalty units.

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

### **119 Fish receiver to supply information**

- (1) A fisheries officer may, by written notice to a registered fish receiver, require the fish receiver:
  - (a) to give the fisheries officer, within such reasonable time as is specified in the notice, such information relating to fish received by the fish receiver as is specified in the notice, and
  - (b) to verify that information by statutory declaration.
- (2) The regulations may make provision for or with respect to records to be kept by, and information to be given by, registered fish receivers.
- (3) A registered fish receiver must not, without reasonable excuse, refuse or fail to give information, or keep records, required by or under this section.

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

### **120 Evidentiary provision**

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

## **Division 5 Fish records**

### **121 Commercial fishers to keep records of catch**

- (1) A commercial fisher must make a record of all fish taken by the commercial fisher.
- (2) If the commercial fisher is the master of a boat used to take fish, a record of all fish taken by the use of the boat must be made. In that case, any other commercial fisher who assisted in the taking of those fish is not required to keep a record of those fish.
- (3) The record must be made in such form and manner as are prescribed by the regulations or (subject to the regulations) as are approved by the Minister.
- (4) A commercial fisher who contravenes this section is guilty of an offence.

Maximum penalty: 200 penalty units.

### **122 Commercial fishers to furnish records to Director-General**

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

Maximum penalty: 10 penalty units.

### **123 Records of sale and possession of fish**

- (1) A person who sells a quantity of fish which is not less than the quantity prescribed by the regulations and:
- (a) who fails to make and deliver to the purchaser, on or before the sale, a prescribed record concerning the sale by the person of the fish, or
  - (b) who fails to retain a copy of the record for not less than 5 years after the fish are sold, or
  - (c) who fails, during the 5-year period, to produce the copy of the record when requested to do so by a fisheries officer,

is guilty of an offence.

- (2) A person who sells a quantity of fish which is not less than the quantity prescribed by the regulations and:
- (a) who fails:
    - (i) to make, before the sale, or
    - (ii) to obtain, on or before the sale, from any other person from whom the person acquired the fish,a prescribed record concerning the possession by the person of the fish,
  - (b) who fails to retain the record for not less than 5 years after the fish are sold, or
  - (c) who fails, during the 5-year period, to produce the record when requested to do so by a fisheries officer,

is guilty of an offence.

(2A) The offence under subsection (1) or (2) applies whether or not the fish were sold to a purchaser within the State.

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

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

(4A) The offence under subsection (3) applies whether or not the fish were taken from

waters to which this Act applies.

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

Maximum penalty: 200 penalty units.

#### **124 False records**

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

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

### **Division 6 Reviews by Administrative Decisions Tribunal**

#### **125 Definition of “relevant authority”**

In this Division, **relevant authority** means:

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

#### **126 Applications to Administrative Decisions Tribunal for reviews of certain decisions**

- (1) A person who is dissatisfied with any of the following decisions under this Part may apply to the Administrative Decisions Tribunal for a review of the decision concerned:
  - (a) the refusal to issue a relevant authority to the person or to renew the person’s relevant authority,
  - (b) the imposition of conditions on the person’s relevant authority (otherwise than by regulation),
  - (c) the suspension or cancellation of the person’s relevant authority.
- (2) For the purposes of this section, an application for the issue or renewal of a relevant authority is taken to have been refused if the authority is not issued or renewed within 60 days after the application was duly made.

#### **127 (Repealed)**

### **Part 4A Charter fishing management**

### **127A Meaning of charter fishing boat**

For the purposes of this Part, a boat is a **charter fishing boat** if:

- (a) the boat is used for recreational fishing activities under an arrangement made with or on behalf of the persons using the boat, and
- (b) a payment or other consideration is required to be made or given by or on behalf of all or any of those persons for the right to fish from the boat, and
- (c) the boat is used for recreational fishing activities in any waters (whether or not within the limits of the State).

### **127B Certain charter fishing boats to be licensed**

- (1) The regulations may declare that all or any specified class of charter fishing boats are required to be licensed under this Part.
- (2) The master of a boat must not use the boat as a charter fishing boat if:
  - (a) it is required by such a regulation to be licensed, and
  - (b) the boat is not licensed under this Part.

Maximum penalty: 100 penalty units.

- (3) The owner of a boat must not permit the boat to be used as a charter fishing boat if:
  - (a) it is required by such a regulation to be licensed, and
  - (b) the boat is not licensed under this Part.

Maximum penalty: 100 penalty units.

- (4) The regulations may provide that a boat licensed under a law of the Commonwealth or of another State or a Territory as a charter fishing boat is taken to be licensed under this Part.

### **127C Provisions relating to licensing of charter fishing boats**

- (1) The owner of a boat (or a person authorised by the owner) may apply to the Minister for the issue of a licence for the boat under this Part.
- (2) An application is to be in the form approved by the Minister.
- (3) The Minister is required to issue a charter fishing boat licence if an application for the licence is duly made, unless the Minister is authorised by the regulations to refuse the application. Without limiting this subsection, the Minister may refuse the application because of any applicable restriction on charter fishing boats under a management plan prescribed by the regulations for the charter fishing industry.

- (4) A charter fishing boat licence:
  - (a) is subject to such conditions as are prescribed by the regulations or specified in the licence, and
  - (b) remains in force for such period as is specified in the licence, and
  - (c) may be renewed from time to time in accordance with the regulations, and
  - (d) may be cancelled or suspended by the Minister in the circumstances authorised by the regulations.
- (5) The regulations may prescribe different classes of charter fishing boat licences.
- (6) The Minister may, at any time, by notice in writing to the holder of a charter fishing boat licence, revoke or vary the conditions of the licence or add new conditions. This subsection does not apply to conditions prescribed by the regulations.
- (7) The holder of a charter fishing boat licence who contravenes any condition of the licence is guilty of an offence.

Maximum penalty: 100 penalty units.
- (8) The regulations may make provision for or with respect to charter fishing boat licences. In particular, the regulations:
  - (a) may make provision for or with respect to permitting, prohibiting or restricting the use of a boat as both a charter fishing boat and a commercial fishing boat licensed under Division 2 of Part 4, and
  - (b) may prescribe the fee or fees payable in respect of an application for the issue of a licence or the renewal of a licence.

**127D (Repealed)**

**127E Charter fishing boat operators to keep records of catch**

- (1) The master of a boat that is a licensed charter fishing boat must make such records as the regulations require of fish taken by persons on the boat when it is used for recreational fishing activities for which it is required to be licensed. The regulations may require the masters of other charter fishing boats to make records of fish taken by persons on the boats when they are used for recreational fishing activities.
- (2) The record must be made in such form and manner as are prescribed by the regulations or (subject to the regulations) as are approved by the Minister.
- (3) The master of a boat who makes a record under this section is required to send a copy of the record to the Director-General within such period as the regulations prescribe.



(4) The master of a boat who contravenes this section is guilty of an offence.

Maximum penalty: 100 penalty units.

(5) A person who makes an entry in a record, or copy, for the purposes of this section knowing that the entry is false or misleading in a material particular is guilty of an offence.

Maximum penalty (subsection (5)): 200 penalty units or imprisonment for 3 months, or both.

### **127F Appeal rights**

Division 6 of Part 4 applies to a charter fishing boat licence as if the licence were a relevant authority for the purposes of that Division.

## **Part 5 Co-operation with Commonwealth and other States in fisheries management**

### **Division 1 Preliminary**

#### **128 Definitions**

In this Part:

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

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

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

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

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

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

**this Act** includes Division 5 of Part 5 of the [Environmental Planning and Assessment Act 1979](#).

## **Division 2 Joint Authorities**

### **129 Powers and functions of Minister**

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

### **130 Judicial notice**

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

### **131 Functions of Joint Authority**

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

### **132 Delegation**

- (1) A Joint Authority may, by instrument in writing, either generally or as otherwise provided by the instrument, delegate to a person any of its powers under this Act other than this power of delegation.
- (2) If a power delegated under subsection (1) is exercised by the delegate, the power is, for the purposes of this Act, taken to have been exercised by the Joint Authority.
- (3) A delegation under this section may be expressed as a delegation to the person from time to time holding or performing the duties of a specified office, including an office:
  - (a) in the service of, or
  - (b) in the service of an authority of, or
  - (c) under the law of,the Commonwealth, another State or a Territory of the Commonwealth.
- (4) A delegate of a Joint Authority is, in the exercise of the delegated powers, subject to the directions of the Joint Authority.

- (5) A delegation of a power under this section:
- (a) may be revoked, by instrument in writing, by the Joint Authority (whether or not constituted by the persons constituting the Joint Authority at the time the power was delegated), and
  - (b) does not prevent the exercise of the power by the Joint Authority, and
  - (c) continues in force despite any change in the membership of the Joint Authority.
- (6) A certificate signed by a member of a Joint Authority stating any matters with respect to a delegation under this section by the Joint Authority is evidence of that matter.
- (7) A document purporting to be a certificate referred to in subsection (6) is, unless the contrary is established, taken to be such a certificate and to have been duly given.
- (8) Nothing in this Part is intended to prevent the delegation by a Joint Authority, in accordance with the law of the Commonwealth, of powers conferred on the Joint Authority by that law.

### **133 Procedure of Joint Authorities**

- (1) The provisions of sections 66–68 (inclusive) of the Commonwealth Act apply to and in relation to the performance by a Joint Authority of its functions under this Act.
- (2) A written record of a decision of a Joint Authority, if signed by the Commonwealth Minister, or that Minister's deputy, who took part in or made the decision is evidence that the decision, as recorded, was duly made.
- (3) In proceedings in any court, an instrument or other document signed, on behalf of a Joint Authority, by a member of the Joint Authority is taken to have been duly executed by the Joint Authority and, unless the contrary is proved, is taken to be in accordance with a decision of the Joint Authority.

### **134 Report of Joint Authority**

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

## **Division 3 Arrangements with respect to the management of particular fisheries**

### **135 Arrangement for management of certain fisheries**

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

- (2) An arrangement may be terminated as provided by the Commonwealth Act.
- (3) After an arrangement has been made, but before the arrangement takes effect, licences, endorsements and other instruments may be granted, issued, renewed, made or executed, and regulations may be made, for the purposes of the operation of this Act as affected by the arrangement, as if the arrangement had taken effect, but such a licence, endorsement, instrument or regulation does not have effect before the arrangement takes effect.
- (4) On the termination of an arrangement, licences, endorsements and other instruments granted, issued, renewed, made or executed, and regulations made, for the purpose of the operation of this Act as affected by the arrangement cease to have effect.
- (5) After action for the purpose of the termination of an arrangement has been taken, but before the termination takes effect, licences, endorsements and other instruments may be granted, issued, renewed, made or executed, and regulations may be made, for the purposes of the operation of this Act as affected by the termination of the arrangement, as if the arrangement had been terminated, but such a licence, endorsement, instrument or regulation does not have effect before the termination of the arrangement takes effect.

### **136 Application of this Act to fisheries in accordance with arrangements**

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

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

### **137 Functions of Joint Authority**

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

- (2) A Joint Authority has the following objectives in the performance of its functions under subsection (1):
- (a) ensuring, through proper conservation, preservation and fisheries management measures, that the living resources of the waters to which this Act applies are not endangered or overexploited, and
  - (b) achieving the optimum utilisation and equitable distribution of those resources.

**138 Joint Authority to exercise certain powers instead of Minister**

- (1) Subject to this section, a licence or endorsement granted, issued, renewed or made under this Act otherwise than by virtue of this section does not authorise the doing of any act or thing in or in relation to a Joint Authority fishery.
- (2) In respect of a Joint Authority fishery that is to be managed in accordance with the law of the State, the powers conferred on the Minister or the Minister's delegate by or under this Act (this Part excepted) or the regulations (including powers with respect to the issue, renewal, cancellation and suspension of licences) are exercisable by the Joint Authority to the exclusion of the Minister and the Minister's delegate.
- (3) A licence granted under this Act by a Joint Authority is required to contain conditions and limitations that it does not apply in relation to a Joint Authority fishery, or Joint Authority fisheries, not managed by that Joint Authority.
- (4) A Joint Authority may endorse a licence under this Act (including such a licence granted by that Joint Authority or another Joint Authority) so as to extend the operation of the licence to matters to which the licensing powers of the Joint Authority under this Act are applicable and, if such an endorsement is made:
- (a) the endorsement ceases to have effect if the licence ceases to have effect, and
  - (b) the Joint Authority may suspend or cancel the endorsement as if it were a licence granted by the Joint Authority.
- (5) Subject to section 141 (1) (b) and (c), if, at a time a fishery becomes a Joint Authority fishery, a regulation, notification or order under this Act would, but for this subsection, apply to the fishery, the regulation, notification or order, as the case may be, ceases so to apply.
- (6) This section does not empower a Joint Authority to grant, or to take other action in respect of, a licence in respect of a foreign boat or to endorse such a licence.

**139 Application of certain provisions relating to offences**

For the purposes of the prosecution of a person for an offence under this Act in respect of anything done to or in relation to fish to which a Joint Authority fishery relates or otherwise in relation to a Joint Authority fishery, a reference to an authority of a particular

kind is to be read as a reference to such an authority granted, issued or renewed by the relevant Joint Authority.

#### **140 Presumption relating to certain statements**

A statement in an arrangement to the effect that specified waters:

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

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

#### **141 Regulations**

- (1) If a Joint Authority is to manage a fishery in accordance with the law of the State, the Governor may, for the purpose of giving effect to a decision of the Joint Authority:
  - (a) make regulations for the management of the fishery, or
  - (b) make a regulation applying to the fishery a regulation made otherwise than pursuant to this section, or
  - (c) amend a regulation made otherwise than pursuant to this section so that it is expressed to apply to the fishery, whether or not it also applies to any other fishery.
- (2) The power conferred on the Governor to make regulations otherwise than under subsection (1) does not extend to the making of a regulation of a kind referred to in subsection (1) (a) or (b) or the amendment of a regulation in the manner referred to in subsection (1) (c).
- (3) If a regulation affecting a fishery that is to be managed by a Joint Authority is expressed to be made under this section, it is to be conclusively presumed that it was made for the purpose of giving effect to a decision of the Joint Authority.

### **Division 4 State agreements**

#### **141A Power to enter into agreements**

- (1) The Minister may enter into an agreement with a Minister administering an Act of another State relating to fisheries, or with an authority of another State concerned in the administration of that Act, for the purpose of co-operation in carrying out the objects of this Act (whether in this State or in that other State).
- (2) In this section:

**State** includes a Territory.

#### **141B Functions under agreements**

- (1) For the purposes of this Division, the Minister may exercise any function conferred on the Minister under the other Divisions of this Part as if the Commonwealth Act applied under this Division.
- (2) The other Divisions of this Part apply in respect of agreements under this Division, with such modifications as are prescribed by the regulations or as are necessary.

## **Part 6 Aquaculture management**

### **Division 1 Preliminary**

#### **142 Definition of “aquaculture”**

In this Act:

**aquaculture** means:

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

but does not include:

- (c) keeping anything in a pet shop for sale or in an aquarium for exhibition (including an aquarium operated commercially), or
- (d) anything done for the purposes of maintaining a collection of fish or marine vegetation otherwise than for a commercial purpose, or
- (e) any other thing prescribed by the regulations.

#### **143 Aquaculture industry development plans**

- (1) The Minister may, in accordance with this section, determine plans for the development of the commercial aquaculture industry (**development plans**).
- (2) A development plan may relate to any aspect of the commercial aquaculture industry, including aquaculture of a particular species of fish or marine vegetation or aquaculture in a particular area.
- (3) The Minister is to have regard to any relevant development plan in the exercise of the Minister’s functions under this Part.
- (4) A development plan may contain the following:

- (a) the objectives of the Minister in the administration of this Part or any provision of this Part,
  - (b) the description of areas suitable for aquaculture and the type of aquaculture for which any such area is suitable,
  - (c) suitable methods for undertaking aquaculture or any type of aquaculture,
  - (d) suitable species of fish or marine vegetation for aquaculture in a particular area,
  - (e) any other matter concerning aquaculture that the Minister considers appropriate.
- (5) A development plan must:
- (a) include performance indicators to monitor whether the objectives set out in the plan and ecologically sustainable development are being attained, and
  - (b) specify at what point a review of the development plan is required when a performance indicator is not being satisfied.
- (6) The Minister may amend or replace a development plan.
- (7) A development plan (including any amendment or new plan) is to be published in the Gazette.
- (8) Before the Minister determines a development plan (including any amendment or new plan), the Minister is required to give the commercial aquaculture industry and the public an opportunity to make submissions on the proposed plan (or proposed amendment or new plan) and to take any submission that is duly made into account.
- (9) The exercise of a function under this Part is not invalid merely because it is inconsistent with a development plan.

## **Division 2 Aquaculture permits**

### **144 Aquaculture prohibited except in accordance with a permit**

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

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

- (2) Aquaculture permits may be of such different classes as are prescribed by the regulations.
- (3) This section applies to aquaculture undertaken in a leased area or in any other area.
- (4) However, this section does not apply to aquaculture undertaken by the Minister under



Part 8 or to persons of a class excluded by the regulations from the operation of this section.

#### **145 Applications for permits**

- (1) Any person may apply to the Minister for an aquaculture permit.
- (2) An application for a permit must:
  - (a) be in a form approved by the Minister, and
  - (b) be accompanied by a commercial farm development plan describing the manner in which the applicant proposes to undertake the aquaculture, and
  - (c) be accompanied by the fee prescribed by the regulations.
- (3) If different classes of aquaculture permits have been prescribed, the application must specify the class or classes of permits for which application is made.
- (4) The Minister may require an applicant to provide such further information in relation to the application as the Minister thinks necessary and may decline to deal further with the application if such a requirement is not complied with.

#### **146 Issue or refusal of permit**

- (1) The Minister may issue or refuse to issue an aquaculture permit to an applicant for the permit.
- (1A) The issue of an aquaculture permit in relation to integrated development within the meaning of section 91 of the *Environmental Planning and Assessment Act 1979* is subject to Division 5 of Part 4 of that Act.
- (2) The Minister may only refuse to issue the permit if:
  - (a) the application was not duly made, or
  - (b) in the case of an individual—the applicant is disqualified under section 161 from holding an aquaculture permit, or
  - (c) in the case of a corporation—the applicant or any of the directors or other persons concerned in the management of the corporation is disqualified under section 161 from holding an aquaculture permit, or
  - (d) the Minister is not satisfied that the applicant has prepared an appropriate commercial farm development plan, or
  - (e) the Minister is not satisfied that the applicant has the expertise necessary to undertake the aquaculture successfully, or
  - (f) the area where the applicant proposes to undertake aquaculture is not available or

suitable for that purpose, or

- (g) the application is inconsistent with any relevant aquaculture industry development plan, or
- (h) the Minister is otherwise authorised or required by the regulations, or by this or any other Act, to refuse to issue the permit.

- (3) Before refusing to issue a permit under this section, the Minister is required to give the applicant an opportunity to be heard on the matter or to make written submissions on the matter.
- (4) An applicant may apply to the Administrative Decisions Tribunal for a review of a refusal of the Minister to issue a permit under this section.

#### **147 Permit to specify area and type of aquaculture**

- (1) An aquaculture permit must specify the area or areas within which the holder is authorised to undertake aquaculture and the species of fish or marine vegetation authorised to be cultivated within any such area.
- (2) The aquaculture permit may specify separate leased or other areas, whether or not they are adjoining.

#### **148 Variation of permits**

- (1) The Minister may, at any time by notice in writing to the holder of an aquaculture permit:
  - (a) vary the area or areas within which the holder is authorised to undertake aquaculture, or
  - (b) vary the species of fish or marine vegetation authorised to be cultivated within any such area.

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

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

#### **Note—**

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

#### **149 Authority to take fish**

- (1) The holder of an aquaculture permit is not required to hold a commercial fishing

licence or any other licence or permit under this Act for the purpose of taking fish or marine vegetation cultivated under the authority of the aquaculture permit.

- (2) The holder of the aquaculture permit may use any fishing gear for the purpose of taking any fish or marine vegetation cultivated under the authority of the aquaculture permit, whether or not the fishing gear may lawfully be used for that purpose.
- (3) This section is subject to the other provisions of this Part and the conditions of the aquaculture permit.

#### **150 Inconsistency with lease**

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

#### **151 Duration of permits**

- (1) An aquaculture permit remains in force, unless otherwise provided in the permit, until it is cancelled or replaced with another permit under this Part.
- (2) The permit does not have effect while it is suspended under this Part.

#### **152 Conditions of permits**

- (1) An aquaculture permit is subject to:
  - (a) such conditions as are prescribed by the regulations, and
  - (b) such conditions as are specified in the permit or as the Minister notifies to the permit holder while the permit is in force.
- (2) Without limiting subsection (1), conditions may include:
  - (a) conditions regulating the cultivation of the species of fish or marine vegetation to which the permit relates, and
  - (b) conditions relating to the erection of structures on the area to which the permit relates, and
  - (c) conditions relating to the escape of fish, effluent or any other thing from the area to which the permit relates, and
  - (d) conditions requiring the permit holder to enter into a bond or guarantee or other financial arrangement for the due performance of the holder's obligations under this Act (including for the destruction of noxious fish and the restoration of, or removal of material from, the area in which the aquaculture has been undertaken), and

(e) conditions requiring the permit holder to maintain public liability insurance and to indemnify the State and its agents in connection with the undertaking of the aquaculture, and

(f) conditions relating to the review of the commercial farm development plan of the permit holder.

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

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

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

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

### **153 Holder of permit to provide information to the Minister**

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

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

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

### **154 Register of permits**

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

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

(a) the name and business address of the permit holder, and

(b) the date on which the permit was issued, and

(c) the class or classes (if any) of the permit, and

(d) the address or description of the area to which the permit applies, and

(e) the species of fish or marine vegetation authorised to be cultivated by the permit

within any such area, and

- (f) the conditions of the permit imposed by the Minister, and
  - (g) particulars of any suspension or cancellation of the permit, and
  - (h) any other matters prescribed by the regulations or determined by the Minister.
- (3) Particulars may be entered in the register by including in the register a copy of an aquaculture permit and any document that imposes conditions on the permit, or revokes or varies conditions of the permit, after the permit is issued.
- (4) The register may be kept wholly or partly by means of a computer.
- (5) Any person who attends the place where the register is kept during ordinary business hours is entitled to inspect the register.
- (6) If the register is kept wholly or partly by means of a computer, this section is taken to be complied with by providing a computer print-out or providing access to a computer terminal that can be used to view the register.

#### **155 Change in particulars to be notified**

The holder of an aquaculture permit must, within 28 days after there is a change in the business address of the permit holder, any director of the body corporate (if the holder is a body corporate) or any other matter prescribed by the regulations, give the Minister particulars in writing of that change.

Maximum penalty: 20 penalty units.

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

- (1) A permit holder must, if the regulations so require, pay to the Minister an annual contribution towards any of the following costs:
- (a) the cost of administration of this Part, being a cost that is identified in the regulations as a cost directly attributable to industry,
  - (b) the cost of monitoring the quality of the environment in which aquaculture is undertaken and of testing the quality of the fish or marine vegetation cultivated,
  - (c) the cost of carrying out research into aquaculture,
  - (d) any other costs relating to the aquaculture industry.
- (2) The amount of the contribution is to be specified in or determined by the regulations. The regulations may provide for the contribution to be based on the size of the area available for aquaculture or on any other basis and for the payment of the contribution by instalments or otherwise.

- (3) The payment required by this section is taken to be a condition of every aquaculture permit.
- (4) A contribution payable under this section is in addition to any rental payable by the permit holder for an aquaculture lease.
- (5) A contribution is payable under this section even if the aquaculture permit is suspended.
- (6) The Minister is to appoint a committee of persons to advise the Minister about the level of services provided to the aquaculture industry for the purposes referred to in subsection (1) (a) and about the amount of contributions for the costs of administration directly attributable to the aquaculture industry. The Minister is to ensure that a majority of the members of such a committee are relevant representatives of the aquaculture industry.

#### **157 Annual contributions to be held in trust accounts**

- (1) The Minister is to establish and operate trust accounts for annual contributions made by permit holders (except those referred to in section 156 (1) (a)).
- (2) The Minister may establish separate trust accounts for the different purposes for which the contributions are made.
- (3) Money in a trust account is, subject to the regulations, to be used only for the purpose for which the relevant contributions were made.
- (4) The Minister is to appoint a committee of persons to advise the Minister on the amount of contributions payable into any trust account and the expenditure of money in the trust account.
- (5) The Minister must not approve of any expenditure from a trust account without the concurrence of the committee appointed in respect of the account.
- (6) A single committee may be appointed in respect of 2 or more trust accounts.
- (7) The Minister is to ensure that a majority of the members of each committee are representatives of the aquaculture industry.
- (8) A committee is not subject to the control and direction of the Minister. However, the Minister may require a committee to reconsider any decision made by it.
- (9) The Minister may remove any member or all members of a committee from office.
- (10) The regulations may make provision for or with respect to:
  - (a) the establishment and operation of trust accounts under this section, and
  - (b) the establishment, membership and procedure of committees under this section.

**157A Minister may appoint advisory council as committee**

- (1) The Minister may, if the Minister considers it appropriate to do so, appoint any advisory council established under section 229 for the aquaculture sector of the fishing industry as either or both of the following:
  - (a) the committee required to be appointed under section 156 (6),
  - (b) the committee required to be appointed under section 157 (4).
- (2) An advisory council may be so appointed only if its membership meets the requirement of section 156 (6) or 157 (7), as the case may be, with respect to the majority of members of the committee.

**158 Overdue contribution**

- (1) If an annual contribution by a permit holder is unpaid after the due date for its payment, the Minister may charge interest on the overdue amount at the rate payable from time to time in respect of judgments of the Supreme Court or, if some other rate is prescribed by the regulations, at that rate.
- (2) Interest may be charged for each day that has elapsed between the date on which payment is due and the date of payment.
- (3) Interest charged on an overdue annual contribution under this section is taken to be part of the contribution.

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

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

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

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

- (1) The Minister may, by notice in writing to the holder of an aquaculture permit, cancel or suspend the permit if:
  - (a) the application for the permit was false or misleading in a material particular, or
  - (b) the permit holder has contravened this Part or the regulations under this Part, or
  - (c) the permit holder has contravened Division 6 of Part 7 (Noxious fish) in the area to which the permit relates, or
  - (d) the permit holder has contravened a condition of the permit, or
  - (e) the permit holder has been convicted of stealing fish or marine vegetation, or

- (f) the permit holder is not undertaking aquaculture in accordance with the holder's current commercial farm development plan, or
  - (g) the area to which the permit relates has been varied since the issue of the permit and the Minister is satisfied that an application for an aquaculture permit would have been refused under section 146 (2) if made in relation to the area (as varied), or
  - (h) in the case of a permit for an area subject to an aquaculture lease—the area is not being used for the purposes for which the lease was granted, or
  - (i) in the case of a permit for an area subject to an aquaculture lease—the area is being so mismanaged that the production of fish or marine vegetation in that area or any surrounding area has been prejudicially affected or that the suitability of that area or any surrounding area for aquaculture is threatened, or
  - (j) the Minister is otherwise authorised by the regulations to cancel the permit.
- (2) Before cancelling or suspending a permit under this section, the Minister is required to give the permit holder an opportunity to be heard on the matter or to make written submissions on the matter.
  - (3) The Minister may at any time, by notice in writing to the holder of the permit, revoke a suspension under this section.
  - (4) Nothing in this section affects any powers of the Minister to cancel an aquaculture lease.
  - (5) A permit holder may apply to the Administrative Decisions Tribunal for a review of the cancellation or suspension of the holder's permit under this section.

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

- (1) If an aquaculture permit issued to a person who is not a corporation is cancelled otherwise than at the request of the permit holder or is suspended, the Minister may, by notice in writing, declare the person to be a disqualified person for the purposes of this Part.
- (2) If an aquaculture permit issued to a corporation is cancelled otherwise than at the request of the permit holder or is suspended, the Minister may, by notice in writing, also declare the corporation or any director or other person concerned in the management of the corporation to be a disqualified person for the purposes of this Part.
- (3) A notice under this section may declare a person to be a permanently disqualified person or to be a disqualified person for a specified period or until the happening of a specified contingency.



- (4) The Minister may, either on the application of the person concerned or on the Minister's own initiative, vary or revoke a declaration under this section.
- (5) A notice under this section takes effect when it is served on the person to whom it relates.
- (6) Before making a declaration under this section, the Minister is required to give the person concerned an opportunity to be heard on the matter or to make written submissions on the matter.
- (7) The person concerned may appeal to the Administrative Decisions Tribunal for a review of a declaration under this section.

**162 Permit area to be maintained in a tidy condition**

- (1) It is a condition of an aquaculture permit that the area to which the permit applies is, if it is subject to an aquaculture lease, to be maintained in a tidy condition.
- (2) The Minister may, by notice in writing served on the holder of such a permit, require the holder, within the period specified in the notice:
  - (a) to carry out such work (including the removal of posts or any other thing from the area concerned) as the Minister considers to be necessary to achieve compliance with the condition referred to in subsection (1), or
  - (b) to remove from land (other than the area concerned) anything that has been left by the holder on that land or that has come from the area and become deposited on that land.
- (3) A permit holder who fails to comply with such a notice is taken to have contravened a condition of the permit.
- (4) If such a notice is not complied with, the Minister or an agent of the Minister may:
  - (a) enter the area concerned and, with the owner's consent, the land concerned, and
  - (b) carry out such work as is necessary to achieve compliance with the requirements of the notice.
- (5) The Minister may sell or otherwise dispose of anything removed from the area concerned or the land concerned in accordance with subsection (4).
- (6) The proceeds of such a sale are to be applied towards the costs and expenses of:
  - (a) the sale, and
  - (b) the disposal of anything removed but not sold, and
  - (c) the carrying out of the work.

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

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

## **Division 3 Leases of public water land for aquaculture**

### **163 Grant of aquaculture lease**

- (1) Subject to this Part, the Minister may, on application or by auction, public tender or ballot, lease an area of public water land for use for aquaculture.
- (2) A lease of an area may be of the whole area or may be limited to a stratum of the area.
- (3) A lease must specify the species of fish or marine vegetation authorised to be cultivated within the leased area. This subsection does not authorise the use of a lease without an aquaculture permit.
- (4) The regulations may prescribe or provide for the form of an aquaculture lease granted or renewed under this Part and may provide in the form for the inclusion of such additional covenants and conditions as the Minister may determine.
- (5) The term of any lease granted under this section must not exceed 15 years.
- (6) The Minister may lease land under this section by auction, public tender or ballot even though an application has been made for a lease of the land.
- (7) If the land to which an application is made appears to the Minister to be available for lease and the Minister is satisfied that the application is consistent with any relevant aquaculture industry development plan under this Part, the Minister:
  - (a) must cause to be published in the Gazette and in a newspaper circulating in the area in which the land is situated, a notice of receipt of the application, specifying in the notice that written objections to the granting of the lease may be lodged with the Director-General before the expiration of a period specified in the notice, and
  - (b) must not make a decision in respect of the application to which the notice relates until the time limited for lodging objections to the granting of the lease has expired and the Minister has considered any objections that have been lodged.

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

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

#### **164 Rights conferred by lease**

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

#### **165 Lease rentals**

- (1) The Minister is required to determine the rental of an aquaculture lease granted or renewed under this Division on the basis of the area of the lease.
- (2) The Minister may redetermine the rental of an aquaculture lease at such periods, being not less than 1 year, as the Minister thinks fit.
- (3) The amount paid in connection with an auction or a public tender for an aquaculture lease does not constitute the rental payable for the lease.
- (4) The regulations may make provisions for or with respect to the rental for aquaculture leases.
- (5) In particular, the regulations may prescribe a minimum rental for an aquaculture lease, either in respect of leases generally or leases of a particular class.

#### **166 Overdue rental**

- (1) If the rental of an aquaculture lease remains unpaid 3 months after the date on which payment was due, the Minister may charge interest on the overdue amount at the rate payable from time to time in respect of judgments of the Supreme Court or, if some other rate is prescribed by the regulations, at that rate.

- (2) Interest may be charged for each day that has elapsed between the date on which payment is due and the date of payment.
- (3) Interest charged on the overdue rental of an aquaculture lease under this section is taken to be part of the rental.

### **167 Renewal of lease**

- (1) The Minister may, on application by the lessee, renew an aquaculture lease for a term not exceeding 15 years.
- (2) The Minister may renew the lease if satisfied the area should continue to be available for aquaculture.
- (3) However, a lessee is entitled to the renewal of the lease if it is the first renewal of the lease (under this Act or its predecessor) after the grant of the lease.
- (4) Subject to this Part, the covenants and conditions on which a renewal of an aquaculture lease may be granted under this section are the same as the covenants and conditions on which the Minister could, at the time of the renewal, grant such a lease.
- (5) The Minister is to notify a lessee, at least 90 days before the lease is due to expire, of the date of expiry. The Minister may accept an application for the renewal of a lease that is made after the date of expiry.
- (6) If an application is made for the renewal of an aquaculture lease and the renewal is not granted before the end of the lease:
  - (a) the lease continues in force until the renewal is granted or refused, and
  - (b) the renewal may be granted even though the lease would, but for this subsection, have come to an end.
- (7) The regulations may make provision for or with respect to applications for the renewal of aquaculture leases.

### **168 Preferential rights**

- (1) If a lessee duly applies for a renewal of an aquaculture lease of an area, the lessee has a preferential right to a lease of the area, as against any applicant or other person.
- (2) Even though a former lessee has not duly applied for a renewal of an aquaculture lease of an area, the former lessee has a preferential right to such a lease of the area, as against any applicant or other person, if that lessee applies for an aquaculture lease of the area within 30 days after the end of the expired lease.
- (3) A preferential right does not arise under this section unless the Minister is satisfied

the lessee or former lessee has substantially observed and performed the covenants and conditions of the lease and is satisfied the area should continue to be available for aquaculture.

- (4) Nothing in this section requires the Minister to grant or renew an aquaculture lease.

### **169 Survey of leased area**

- (1) The Minister may require as a condition of granting or renewing a lease, or of granting consent to the surrender of a part of a lease, that the lessee have a survey of the area carried out to a standard approved by the Minister.
- (2) The Minister:
- (a) may, by notice in writing served on the lessee of a leased area, require the lessee to have a survey of the area carried out to a standard approved by the Minister within such period as may be specified in the notice, or
  - (b) may, if the lessee fails to comply with the notice, arrange for a survey of the area to be carried out to such a standard at the lessee's expense.
- (3) The lessee of a leased area or any other person must not obstruct a survey carried out for the purposes of subsection (2) (b).

Maximum penalty: 50 penalty units.

- (4) A failure to comply with a notice served under subsection (2) (a), or a contravention of subsection (3), is a breach of a condition of the aquaculture lease concerned.
- (5) The cost of carrying out a survey under subsection (2) (b) is to be regarded as an additional amount of rental payable by the lessee on demand by the Minister.
- (6) The Minister may enter into arrangements with representatives of the commercial aquaculture industry for the payment of the cost of carrying out surveys under this section by lessees or on their behalf.

### **170 Lessee may fence leased area in certain cases**

- (1) The Minister may, on the application of the lessee of a leased area, authorise the lessee to erect a fence on the area subject to such conditions as may be specified in the authority.
- (2) The Minister must not authorise the erection of a fence unless the Minister has had regard to any interference to navigation that could be caused by the erection of the fence.
- (3) If a fence is erected on a leased area otherwise than in accordance with an authority granted under this section or a condition to which such an authority is subject is contravened, the lessee:

- (a) is taken to have contravened a condition of the lease, and
- (b) is guilty of an offence.

Maximum penalty: 50 penalty units.

- (4) If a fence is erected on a leased area otherwise than in accordance with an authority granted under this section or a condition to which such an authority is subject is contravened, the Minister or an agent of the Minister may:
- (a) enter the area, and
  - (b) carry out such work as is necessary to remove the fence or to achieve compliance with the condition.
- (5) The Minister may sell or otherwise dispose of anything removed in accordance with subsection (4). The proceeds of such a sale are to be applied towards the costs and expenses of:
- (a) the sale, and
  - (b) the disposal of anything removed but not sold, and
  - (c) the carrying out of the work concerned.

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

- (6) Compensation is not payable to a lessee in respect of anything done under this section.

### **171 Improvements on an expired lease**

- (1) All improvements on leased areas vest in the State when the term of the lease expires or is otherwise terminated under this Part.
- (2) The Minister may allow the former lessee to remove any such improvements.
- (3) The Minister may, within 1 year after the termination of a lease, require the former lessee to remove any such improvements within the period notified in writing to the former lessee. The former lessee is guilty of an offence if the former lessee fails, without reasonable excuse, to do so.

Maximum penalty: 100 penalty units.

- (4) If the former lessee fails to remove improvements in accordance with a notice under subsection (3), the Minister or an agent of the Minister may:
- (a) enter the area, and

(b) carry out such work as is necessary to remove the improvements.

(5) The Minister may sell or otherwise dispose of anything removed in accordance with subsection (4). The proceeds of such a sale are to be applied towards the costs and expenses of:

(a) the sale, and

(b) the disposal of anything removed but not sold, and

(c) the carrying out of the work concerned.

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

(6) A lessee who has applied for a renewal of the lease of a leased area cannot be required, as a condition of the granting of the renewal, to pay for any improvements to the area.

#### **172 Subletting with Minister's consent**

(1) The lessee of a leased area may sublet the area or a part of the area, but only with the consent in writing of the Minister.

(2) The giving of such a consent may be made subject to the payment of such fee as may be prescribed by the regulations.

#### **173 Transfer with Minister's consent**

(1) The lessee of a leased area may transfer the lease, but only with the consent in writing of the Minister.

(2) The giving of such a consent may be subject to conditions and to the payment of such fee as may be prescribed by the regulations.

#### **174 Surrender of lease**

(1) The lessee of a leased area may, with the consent in writing of the Minister, surrender the lease or a part of the leased area to the Minister.

(2) The giving of such a consent may be made subject to conditions and to the payment of such fee as may be prescribed by the regulations.

(3) A surrender under this section does not operate to extinguish any debt to the Crown or Minister relating to the lease concerned, except to the extent the Minister directs.

(4) On surrender of part of the leased area, the Minister may, with the agreement of the lessee, redetermine the rental of the lease.

### **175 Minister can determine access way**

- (1) The lessee of a leased area, or the owner or occupier of any land adjoining the area, may apply in writing to the Minister for the determination of an access way over the area.
- (2) On receiving such an application, the Minister must either:
  - (a) determine an access way over the area concerned, or
  - (b) refuse the application.

Before determining an access way, the Minister must, in the case of an application made by the owner or occupier of adjoining land, serve on the lessee notice of the application.

- (3) In determining an access way, the Minister may:
  - (a) specify what notice of the access way is to be given, and
  - (b) impose such conditions on the lessee, and direct the lessee to carry out such work for facilitating access by such way, as the Minister considers reasonable.
- (4) The Minister may refuse an application by the owner or occupier of adjoining land unless satisfactory arrangements are made for the payment by the owner or occupier of the cost of the work required to be carried out for the access way, and of the cost of compensation for the withdrawal from the lease of land for the access way.
- (5) The Minister may determine an access way without an application, but only after giving notice to the lessee concerned.
- (6) The Minister may vary or rescind a determination, condition or direction made, imposed or given under this section.
- (7) A failure to comply with a condition imposed on, or a direction given to, a lessee under this section is taken to be a breach of a condition of the lease of the area to which the condition or direction relates.
- (8) The Minister may under section 176 withdraw from an aquaculture lease any part of the leased area determined under this section to be an access way.
- (9) An access way determined under this section affects land brought under the provisions of the *Real Property Act 1900* only when the Registrar-General has made an appropriate recording in the folio for the land.
- (10) A public authority or trustees in which a leased area is vested may exercise the functions of the Minister under this section.
- (11) An access way determined under this section is not affected by any renewal or



transfer of the lease.

### **176 Power to withdraw land from lease**

- (1) The Minister may, by notice published in the Gazette, withdraw from an aquaculture lease any land (whether the whole or any part of the leased area) required for a public purpose.
- (2) A public purpose is any public purpose for which land may, under section 136 of the *Crown Lands Act 1989*, be withdrawn from a lease under that Act.
- (3) On publication of the notice, the lessee becomes entitled to compensation. The provisions of the *Land Acquisition (Just Terms Compensation) Act 1991* relating to the payment of compensation for land acquired by compulsory process apply (with such modifications as are prescribed by the regulations) to the payment of compensation under this section.
- (4) Compensation under this section:
  - (a) is payable from money to be provided by Parliament, or
  - (b) if the area concerned is withdrawn at the request of a public authority—is payable by that public authority.
- (5) The Minister may, by notice published in the Gazette, revoke or modify a withdrawal under this section.
- (6) A withdrawal under this section does not operate to extinguish any debt to the Crown or Minister relating to the land withdrawn, except to the extent the Minister directs.
- (7) On withdrawal of land from a lease under this section, the Minister is to redetermine the rental of the lease in accordance with this Part.
- (8) A provision of this section does not apply to an aquaculture lease to the extent that it is inconsistent with a special condition of the lease relating to the withdrawal of land from the lease for a public purpose.

### **177 Power of Minister to cancel leases in certain cases**

- (1) The Minister may, by notice served on the lessee under an aquaculture lease, call on the lessee to show cause why the lease should not be cancelled on any one or more of the following grounds:
  - (a) the leased area is not being used for the purposes for which the lease was granted,
  - (b) the leased area is so polluted that fish or marine vegetation on the area are unfit for human consumption and the pollution is likely to continue indefinitely,

- (c) the lessee has not paid any rental or other amount due under the lease and the amount has remained unpaid for at least 2 years,
  - (d) the lessee is in breach of any other condition of the lease for which the lease authorises its cancellation under this section.
- (2) After 1 month from the date of service of the notice the Minister may, by notice published in the Gazette, cancel the lease.
  - (3) Before cancelling a lease, the Minister must consider any representations made by the lessee.
  - (4) A lessee may apply to the Administrative Decisions Tribunal for a review of the cancellation of the lease.

**178 Areas of public water land may be excluded from leasing**

- (1) The Minister may exclude any public water land from being leased under this Part.
- (2) The Minister is to publish details of any such excluded area in such manner as the Minister thinks fit.

**179 Protection of leased areas**

- (1) A person, other than the lessee or the lessee's agents or employees, must not:
  - (a) remove, or in any way injure or interfere with, any fish or marine vegetation cultivated within the leased area or any thing used for the purpose of aquaculture on a leased area, without the consent of the lessee, or
  - (b) deposit anything on a leased area or dredge or dig within a leased area, except in accordance with Division 3 of Part 7 or, if that Division does not apply, by direction or authority of the lessee or the Minister.

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

- (2) This section does not apply to the placing of any thing on a leased area for the purpose of navigation.
- (3) A person who is found guilty of an offence against this section is liable to compensate the lessee for all damage that the lessee has sustained as a result of the person's unlawful act. The lessee may, by proceedings brought in a court of competent jurisdiction, recover as a debt the amount of that compensation.
- (4) If the Minister fails to authorise an act referred to in subsection (1) (b) at the request of a public authority or trustees in whom the land concerned is vested, the matter may be referred to the Premier for resolution by the Minister responsible for the authority or trustees.

### **180 Leased area under [Real Property Act 1900](#)**

When the land comprised in an aquaculture lease has been brought under the provisions of the [Real Property Act 1900](#), any dealing with the lease must be effected in accordance with that Act.

## **Division 4 Diseased fish and marine vegetation**

### **181 Definitions**

In this Division:

**declared disease** means any disease to which this Division is applied under section 182 (Diseases declared for the purposes of this Division).

**marine vegetation** includes any species of aquatic plant prescribed by the regulations.

**quarantine area** means an area declared to be a quarantine area by an order in force under section 183 (Minister may declare quarantine area).

### **182 Diseases declared for the purposes of this Division**

- (1) The regulations may declare a disease of fish or marine vegetation to be a disease in respect of which this Division applies.
- (2) A declaration may be made under this section in respect of a disease (including a pest or parasite) that kills or causes illness in fish or marine vegetation (or a particular species of fish or marine vegetation) or that kills or causes illness in people who eat the infected fish or marine vegetation.
- (3) A declaration under this section may provide for different classes of declared diseases and exclude specified provisions of this Division in respect of any class of those diseases. The declaration has effect according to its tenor.
- (3A) A declaration under this section may specify:
  - (a) the circumstances in which, or
  - (b) the conditions on which,any specified provisions of this Division do not apply in relation to a particular declared disease or class of declared diseases.
- (4) If the Minister considers that a declaration under this section is required urgently, the declaration may be made by the Minister by publishing notification of the declaration in a newspaper circulating generally in the State, or by radio or television broadcast.
- (5) In any such urgent case, the Minister is to publish the declaration in the Gazette as soon as practicable after it is made.

- (6) A declaration made by the Minister under this section has the same effect as a regulation and remains in force (unless sooner revoked by another declaration) for the period, not exceeding 6 months, specified in the declaration.

**183 Minister may declare quarantine area**

- (1) The Minister may, by order, declare any area specified in the order to be a quarantine area because of the presence or suspected presence of a declared disease.
- (2) An area may be declared a quarantine area if it is subject to an aquaculture permit or it is an area of water or in the immediate vicinity of an area of water.
- (3) An order declaring a quarantine area is to be published in the Gazette. The order is not required to be so published if served on the owner or occupier of the area concerned.
- (4) An order declaring a quarantine area may:
- (a) prohibit the taking of fish or marine vegetation or specified fish or marine vegetation in or from the quarantine area, and
  - (a1) exclude specified provisions of this Division in respect of any fish or marine vegetation, or specified fish or marine vegetation, taken from or deposited in the quarantine area or any part of the quarantine area, and
  - (b) in the case of an area subject to an aquaculture permit—require the holder to take such action as is specified in the order or directed by a fisheries officer (including the destruction or treatment of fish or marine vegetation cultivated or located in the area), and
  - (c) contain any other provisions authorised by the regulations.

If the order is not published in the Gazette, the provisions of the order apply only to the persons on whom the order is served.

- (5) A person who, without reasonable excuse, contravenes a provision of an order declaring a quarantine area is guilty of an offence.

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

- (6) If the holder of an aquaculture permit fails to take any action required by an order declaring a quarantine area, a fisheries officer may enter the area to which the permit relates and take the required action.
- (7) If the fisheries officer takes such action:
- (a) the holder of the aquaculture permit is not entitled to any compensation for any loss reasonably caused in taking that action, and

- (b) the Minister may recover from the holder the costs of taking that action as a debt in a court of competent jurisdiction.

**184 Intentional or reckless communication of declared disease to live fish or marine vegetation**

A person must not intentionally or recklessly communicate a declared disease to live fish or marine vegetation.

Maximum penalty: In the case of a corporation, 500 penalty units or, in any other case, 100 penalty units.

**185 Sale of diseased fish or marine vegetation prohibited**

A person must not sell any fish or marine vegetation (whether live or dead) if the person knows or has reason to suspect that it is infected with a declared disease.

Maximum penalty: In the case of a corporation, 500 penalty units or, in any other case, 100 penalty units.

**186 Diseased fish or marine vegetation not to be deposited in New South Wales waters**

A person must not deposit in any waters any fish or marine vegetation (whether live or dead) if the person knows or has reason to suspect that it is infected with a declared disease.

Maximum penalty: In the case of a corporation, 500 penalty units or, in any other case, 100 penalty units.

**187 Regulations relating to diseased fish and marine vegetation**

- (1) The regulations may make provision for or with respect to eliminating or preventing the spread of declared diseases.
- (2) In particular, the regulations may make provision for or with respect to:
  - (a) the destruction or treatment of fish or marine vegetation that is infected or suspected of being infected with a declared disease, and
  - (b) the examination, testing and treatment of fish or marine vegetation in a quarantine area, and
  - (c) the notification to the Minister or a fisheries officer of the infection or suspected infection with a declared disease of fish or marine vegetation in an area subject to an aquaculture permit, pet shop, aquarium or other place.

**Division 5 Miscellaneous provisions**

**188 Minister may order restoration work to be carried out in relation to illegal operations**

**on aquaculture farm**

- (1) If a person, not being the holder of an aquaculture permit, erects structures or carries out other works on public water land for the purpose of aquaculture, the Minister may, by order in writing given to the person, require the person to remove the structures or carry out other remedial works within such period as is specified in the order.
- (2) If a person, being the holder of an aquaculture permit, erects structures or carries out other works in contravention of the conditions of the permit, the Minister may, by order in writing given to the person, require the person, within such period as is specified in the order:
  - (a) to remove the structures from the area concerned, or
  - (b) to relocate them within that area, or
  - (c) to carry out other remedial works.
- (3) If a person fails to comply with an order given under this section, the Minister:
  - (a) may cause the work specified in the order to be carried out, and
  - (b) may, by proceedings brought in a court of competent jurisdiction, recover from the person as a debt the cost of carrying out the work.
- (4) The Minister may give an order under this section whether or not any person has been charged with or convicted of an offence in respect of the matter.

**189 When aquaculture operations can be closed**

- (1) The Minister may, by a fishing closure under Part 2, prohibit during a specified period the taking of fish or marine vegetation cultivated under an aquaculture permit from the area to which the permit applies if satisfied:
  - (a) that the area is in such a condition that the taking of fish or marine vegetation from the area ought to be suspended, or
  - (b) that the fish or marine vegetation are, or are likely to be, unfit for human consumption.
- (2) Any such fishing closure does not prevent the taking of fish or marine vegetation for any purpose authorised by the regulations or the fishing closure.
- (3) This section does not limit the application of a fishing closure under Part 2 to the taking of fish or marine vegetation from an area subject to an aquaculture permit and to which the permit does not apply.

**190 Special provisions relating to oysters on public water or other land**

- (1) All oysters on public water land, or on any area from which the taking of oysters is

prohibited under this Act, and all oysters taken from any such land or area without lawful authority, are the property of the Crown.

- (2) A person who, without lawful authority, takes oysters from any public water land is guilty of an offence.

Maximum penalty: 50 penalty units.

- (3) A person has lawful authority to take oysters from public water land for personal consumption. However, this subsection is subject to any other prohibition or restriction imposed by or under this Act on the taking of oysters.

### **191 Regulations**

The regulations may make provision for or with respect to the following:

- (a) the cultivation of fish or marine vegetation or the keeping of fish or marine vegetation in a confined area (whether or not it constitutes aquaculture within the meaning of this Part),
- (b) the taking of oysters and other shellfish from public water land and the protection of any such oysters and other shellfish,
- (c) the gathering or collection of marine vegetation, including the prohibition of the gathering or collection of marine vegetation for commercial purposes except under the authority of a permit,
- (d) the tagging or other identification of fish or marine vegetation cultivated under the authority of an aquaculture permit,
- (e) the marking of boundaries of areas used for aquaculture,
- (f) preventing holders of aquaculture leases from obstructing access to areas adjoining their leased area,
- (g) mortgages, charges and other interests with respect to aquaculture leases,
- (h) the consolidation of leased areas,
- (i) the protection of the interests of holders of aquaculture permits,
- (j) the method of determining priority among applications for aquaculture leases in cases not specifically provided for by this Part,
- (k) the fixing, levying and collection of rents, charges and fees for the purposes of this Part,
- (l) the contents and review of commercial farm development plans,
- (m) the method of determining whether or not aquaculture is undertaken or able to be

undertaken on a commercial basis, for example by reference to production levels or the size of the area available for aquaculture,

(n) any other matter relating to the management or development of aquaculture.

## **Part 7 Protection of aquatic habitats**

### **Division 1 Habitat protection plans**

#### **192 Preparation of habitat protection plans**

(1) The Minister may, in accordance with this section, determine plans for the protection of any habitat of fish (***habitat protection plans***), whether the habitat is essential for the survival of the species or required to maintain harvestable populations of the species.

(1A) Without limiting subsection (1), a habitat protection plan may be determined for the protection of critical habitat declared under Part 7A.

(2) A habitat protection plan:

(a) may relate to habitat that is essential for spawning, shelter or other reason, and

(b) may apply generally or to particular areas or fish, and

(c) is to describe the importance of particular habitat features to which it applies, and

(d) may set out practical methods for the protection of any such habitat features, and

(e) may contain any other matter concerning the protection of the habitat of fish that the Minister considers appropriate.

(3) The Minister may amend or replace a habitat protection plan.

(4) A habitat protection plan (including any amendment or new plan) is to be published in the Gazette.

(5) Before the Minister determines a habitat protection plan (including any amendment or new plan), the Minister is required to give the public an opportunity to make submissions on the proposed plan (or proposed amendment or new plan) and to take any submission that is duly made into account.

#### **193 Implementation of habitat protection plans**

(1) The Minister is to have regard to any relevant habitat protection plan in the exercise of the Minister's functions under this Part.

(2) Public authorities are to have regard to any habitat protection plan that is relevant to the exercise of their functions.



- (3) A public authority is to notify the Minister of any function it proposes to exercise that is inconsistent with a habitat protection plan. The Minister may refer any dispute to the Minister responsible for the public authority. If the dispute cannot be resolved by those Ministers, it is to be referred to the Premier for resolution.
- (4) Any such resolution of a dispute is to be given effect to despite anything to the contrary in this section.
- (5) The exercise of a function is not invalid merely because it is inconsistent with a habitat protection plan.
- (6) This section:
  - (a) does not render the exercise of a function invalid merely because it is inconsistent with a habitat protection plan, and
  - (b) does not require or authorise action that is inconsistent with any statutory or other legal obligation of a Minister or a public authority.

## **Division 2 Aquatic reserves**

### **Subdivision 1 Declaration of aquatic reserves**

#### **194 Declaration of aquatic reserves**

- (1) The Minister may, by notice published in the Gazette, declare an area specified in the notice to be an aquatic reserve.
- (2) The purpose of declaring an area to be an aquatic reserve is to conserve the biodiversity of fish and marine vegetation and, consistently with that purpose:
  - (a) to protect fish habitat in the reserve, or
  - (b) to provide for species management in the reserve, or
  - (c) to protect threatened species, populations and ecological communities (within the meaning of Part 7A) in the reserve, or
  - (d) to facilitate educational activities and scientific research.
- (3) Land that is the subject of an aquaculture lease may be declared to be an aquatic reserve. However, nothing in this Division prevents the lessee from undertaking aquaculture in accordance with this Act in the area concerned during the currency of the lease.
- (4) Land that is dedicated for a public purpose may be declared to be an aquatic reserve. However, nothing in this Division prevents the land from being used for the purpose for which it is dedicated or permits the land to be used contrary to the provisions of any Act or statutory instrument applying to the land.

### **195 Consent required for declarations**

- (1) The Minister is required to obtain the appropriate consent before declaring an area to be an aquatic reserve.
- (2) The appropriate consent for an area (other than an area of public water land) is the consent of the owner of the land concerned.
- (3) The appropriate consent for an area of public water land is:
  - (a) in the case of public water land that is within a dam or reservoir used primarily for domestic water supply or within an area designated by or under an Act as a catchment area in respect of such a dam or reservoir—the consent of:
    - (i) the authority controlling the dam or reservoir, and
    - (ii) the Ministers respectively administering the *Public Health Act 1991* and the *Public Works Act 1912*, and
  - (b) in the case of public water land that is Crown land—the consent of the Minister administering the *Crown Lands Act 1989*, and
  - (c) in the case of public water land (other than that referred to in paragraph (a)) that is vested in a public authority or in trustees for a public purpose—the consent of that authority or those trustees.
- (4) This section does not apply:
  - (a) to an area of water (other than freshwater) and the land submerged by that water below mean high water mark, or
  - (b) to an area vested in the Minister, or
  - (c) to an area subject to an aquaculture lease.

### **195A Consent of owners**

If an owner of land whose consent is required under section 195 to the declaration of an area as an aquatic reserve cannot, after diligent inquiry, be found or identified, the declaration may be made without the consent of that owner.

### **195B Meaning of “diligent inquiry”**

- (1) For the purposes of section 195A, ***diligent inquiry*** to identify a person is the taking of the following actions:
  - (a) the searching of the following registers:
    - (i) the Register kept under the *Real Property Act 1900*, and

- (ii) the General Register of Deeds kept under the *Conveyancing Act 1919*, and
  - (iii) the National Native Title Register kept under the *Native Title Act 1993* of the Commonwealth,
- (b) placing, on a board or other structure in a conspicuous place on the land concerned, a notice:
- (i) stating that it is intended to declare the land as part of an aquatic reserve, and
  - (ii) inviting the owner of the land to contact the Minister at a specified address,
- (c) publishing a notice referred to in paragraph (b) in a newspaper circulating in the vicinity of the land concerned and in a newspaper circulating generally in New South Wales.
- (2) For the purposes of section 195A, a person who is a native title holder is taken to have been unable, after diligent inquiry, to be found or identified if:
- (a) notice of the proposed declaration is served by the Minister in accordance with section 288A, and
  - (b) at the expiration of the period of 4 months commencing on service of the notice, the person is neither a registered native title claimant nor a registered native title body corporate in relation to the land concerned.

### **195C Existing interests and changes in ownership**

- (1) A declaration of an aquatic reserve in relation to an area is not affected by:
- (a) an existing interest in respect of land in the area, or
  - (b) a change of ownership of land in the area.
- (2) Subject to this Act, a provision of this Act or the regulations has effect in relation to an area of an aquatic reserve despite any such existing interest or change of ownership, unless the provision otherwise specifies.

### **196 Revocation or variation of declaration**

- (1) The Minister may, subject to this section, revoke or vary the declaration of an aquatic reserve by notice published in the Gazette.
- (2) Before a declaration is revoked or varied, the Minister must cause notice of the proposed revocation or variation to be tabled in both Houses of Parliament.
- (3) Either House of Parliament may pass a resolution disallowing the proposed revocation or variation at any time after notice of the proposal is tabled in that House, but only if notice of the resolution was given within 15 sitting days of that House after notice of

the proposal was so tabled.

- (4) If notice of a resolution to disallow a proposed revocation or variation is duly given, the Minister may not revoke or vary the declaration unless the resolution is not passed or it is withdrawn or lapses.
- (5) The provisions of sections 195 to 195C apply to a variation of a declaration that adds an area to an aquatic reserve in the same way as those provisions apply to the declaration of an aquatic reserve.

### **197 Regulations relating to aquatic reserves**

The regulations may:

- (a) prohibit or regulate the taking of fish or marine vegetation from aquatic reserves, and
- (b) provide for the management, protection and development of aquatic reserves, and
- (c) classify areas within an aquatic reserve for different uses (such as recreational uses or as a sanctuary).

### **197A Management plans for aquatic reserves**

- (1) The Minister may arrange for the preparation of a draft management plan for an aquatic reserve.
- (2) The management plan for an aquatic reserve may make provision for or with respect to the following:
  - (a) the objectives of the aquatic reserve,
  - (b) the regulation of activities in the aquatic reserve in order to achieve those objectives,
  - (c) performance indicators to monitor whether the objectives of the reserve are being attained,
  - (d) reviews of the management plan,
  - (e) any other matter for or with respect to which regulations may be made under this Act in respect of an aquatic reserve.
- (3) The Minister is required to give the public an opportunity to make submissions on any proposed management plan (including any proposed amendment to the plan or new plan) and to take any submission that is duly made into account.
- (4) A management plan for an aquatic reserve (including any amendment or new plan):
  - (a) is to be made by regulation, and

- (b) may create an offence punishable by a penalty not exceeding 1,000 penalty units.
- (5) The management plan commences when the regulation making the plan commences.
- (6) If a provision of a management plan for an aquatic reserve is inconsistent with any other regulation under this Act relating to aquatic reserves, the management plan prevails.

## **Subdivision 2 Development and activities within aquatic reserves**

### **197B Mining in aquatic reserve prohibited**

- (1) It is unlawful to prospect or mine for minerals in an aquatic reserve, except as expressly authorised by an Act of Parliament.
- (2) The *Offshore Minerals Act 1999*, the *Mining Act 1992*, the *Petroleum (Onshore) Act 1991* and the *Petroleum (Submerged Lands) Act 1982* do not apply to or in respect of any area within an aquatic reserve.
- (3) This section does not apply to or in respect of any licence, permit, authorisation or lease in force under any of those Acts at the commencement of this section. However, no renewal or extension of such a licence, permit, authorisation or lease may be granted after that commencement except as expressly authorised by an Act of Parliament.

### **197C Development within aquatic reserve—application of EPA Act**

- (1) Before determining a development application under Part 4 of the *Environmental Planning and Assessment Act 1979* for the carrying out of development within an aquatic reserve, a consent authority must:
  - (a) take into consideration:
    - (i) the objects of this Act specified in section 3, and
    - (ii) if a management plan for the aquatic reserve has been made under section 197A, the objectives of the aquatic reserve, and
    - (iii) the permissible uses of the area concerned under this Act, and
  - (b) if the consent authority intends to grant consent to the carrying out of the development, obtain the concurrence of the Minister to the granting of the consent.
- (2) A Minister who is a determining authority must not carry out, or grant approval to carry out, an activity (within the meaning of Part 5 of the *Environmental Planning and Assessment Act 1979*) within an aquatic reserve unless the Minister has:
  - (a) taken into consideration:

- (i) the objects of this Act specified in section 3, and
    - (ii) if a management plan for the aquatic reserve has been made under section 197A, the objectives of the aquatic reserve, and
    - (iii) the permissible uses of the area concerned under this Act, and
  - (b) in the case of an activity for which an environmental impact statement is required to be prepared under Division 3 of that Part, consulted with the Minister on the carrying out of the activity or the granting of approval.
- (3) A determining authority (not being a Minister) must not carry out, or grant approval to carry out, an activity (within the meaning of Part 5 of the *Environmental Planning and Assessment Act 1979*) within an aquatic reserve unless the determining authority has:
- (a) taken into consideration:
    - (i) the objects of this Act specified in section 3, and
    - (ii) if a management plan for the aquatic reserve has been made under section 197A, the objectives of the aquatic reserve, and
    - (iii) the permissible uses of the area concerned under this Act, and
  - (b) in the case of an activity for which an environmental impact statement is required to be prepared under Division 3 of that Part, obtained the concurrence of the Minister to the carrying out of the activity or the granting of approval.
- (4) In deciding whether or not concurrence should be granted under this section, the Minister must take into consideration:
- (a) the objects of this Act specified in section 3, and
  - (b) if a management plan for the aquatic reserve has been made under section 197A, the objectives of the aquatic reserve, and
  - (c) the permissible uses of the area concerned under this Act.
- (5) The provisions of section 79B (8)–(11) of the *Environmental Planning and Assessment Act 1979*, and the regulations under that Act, apply to and in respect of a requirement under this section to obtain the concurrence of the Minister in the same way as they apply to a requirement to obtain concurrence imposed on a consent authority by an environmental planning instrument under that Act.
- (6) For the purposes of applying those provisions, a reference in those provisions to the matters stated pursuant to section 30 (3) of the *Environmental Planning and Assessment Act 1979* (however expressed) is to be read as a reference to the objects of this Act specified in section 3 and the permissible uses of the area concerned under the regulations.

### **197D Development affecting aquatic reserve—application of EPA Act**

- (1) In determining a development application under Part 4 of the *Environmental Planning and Assessment Act 1979* for the carrying out of development on land that is in the locality of an aquatic reserve, the consent authority must take into consideration the objects of this Act, the permissible uses of the area concerned under this Act and any advice given to it by the Director-General about the impact on the aquatic reserve of development in the locality.
- (2) If the consent authority is of the opinion that development proposed in the development application is likely to have an effect on the plants or animals within the aquatic reserve and their habitat, the consent authority must consult with the Minister before finally determining the application.
- (3) A determining authority must not carry out, or grant an approval to carry out, an activity on land that is in the locality of an aquatic reserve in purported compliance with Part 5 of the *Environmental Planning and Assessment Act 1979* unless:
  - (a) the determining authority has taken into consideration the objects of this Act, the permissible uses of the area concerned under this Act and any advice given to it by the Director-General on the impact on the aquatic reserve of the carrying out of an activity in the locality, and
  - (b) if the determining authority is of the opinion that the proposed activity is likely to have an effect on the plants or animals within the aquatic reserve or their habitat, the determining authority has consulted with the Minister.

## **Subdivision 3 Aquatic reserve notifications**

### **197E Prohibition of activities in aquatic reserves**

- (1) The Minister may from time to time, by notification, prohibit the carrying out of any specified activity (including the taking of fish) in an aquatic reserve or part of an aquatic reserve.
- (2) Any such prohibition is called an ***aquatic reserve notification***.
- (3) An aquatic reserve notification:
  - (a) may apply absolutely or subject to conditions, and
  - (b) must specify the activities that are prohibited and the area or areas to which it applies, and
  - (c) may only apply to the aquatic reserve specified in the notification, and
  - (d) has effect despite any provision of the regulations.

### **197F Publication of aquatic reserve notification**

- (1) An aquatic reserve notification is to be published:
  - (a) in the Gazette, and
  - (b) in a newspaper circulating, or by radio or television broadcast, in the area adjacent to the aquatic reserve to which the notification applies, and
  - (c) by causing a copy of the notification to be exhibited in a prominent place or places adjacent to the aquatic reserve to which the notification applies.
- (2) However, if the Minister considers that the aquatic reserve notification is required urgently, the Minister may publish the notification in accordance with subsection (1) (b) or (c) so long as the notification is published in the Gazette as soon as practicable.

### **197G General provisions relating to aquatic reserve notifications**

- (1) An aquatic reserve notification takes effect on the first publication of the notification or on a later date specified in the notification.
- (2) An aquatic reserve notification remains in force, subject to this Act, for the period (not exceeding 5 years) specified in the notification, but may be remade (with or without modification) by a further notification in accordance with this Subdivision.

### **197H Amendment or revocation of notification**

The Minister may from time to time amend or revoke an aquatic reserve notification by a further notification published in accordance with this Subdivision.

### **197I General provisions relating to notification**

Sections 42, 43 and 45 of the *Interpretation Act 1987* apply to aquatic reserve notifications in the same way as they apply to statutory rules within the meaning of that Act.

#### **Note—**

The above provisions of the *Interpretation Act 1987* contain standard provisions that will authorise the adoption of other publications by reference, the making of differential notifications, the amendment or repeal of notifications and judicial notice and presumptions as to validity for notifications.

### **197J Regulations relating to notifications**

The regulations may make provision for or with respect to giving effect to aquatic reserve notifications or to any other matter relating to aquatic reserve notifications.

### **197K Offence provisions**

- (1) A person who carries out any activity in contravention of an aquatic reserve notification is guilty of an offence.



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

- (2) A person who is in possession of any animal, plant, rock, sand or other thing that has been taken in contravention of an aquatic reserve notification is guilty of an offence.

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

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

## Division 3 Dredging and reclamation

### 198 Objects of Division

The objects of this Division are to conserve the biodiversity of fish and aquatic vegetation and to protect fish habitat by providing for the management of dredging and reclamation work, consistent with the objectives of ecologically sustainable development.

### 198A Definitions

In this Division:

**dredging work** means:

- (a) any work that involves excavating water land, or
- (b) any work that involves the removal of material from water land that is prescribed by the regulations as being dredging work to which this Division applies.

**farm dam** means the backed up waters of any dam, or impoundment, located on land that is not public water land.

**reclamation work** means any work that involves:

- (a) using any material (such as sand, soil, silt, gravel, concrete, oyster shells, tyres, timber or rocks) to fill in or reclaim water land, or
- (b) depositing any such material on water land for the purpose of constructing anything over water land (such as a bridge), or
- (c) draining water from water land for the purpose of its reclamation.

**water land** means land submerged by water:

- (a) whether permanently or intermittently, or

(b) whether forming an artificial or natural body of water,

and includes wetlands and any other land prescribed by the regulations as water land to which this Division applies.

**wetlands** includes marshes, mangroves, swamps, or other areas that form a shallow body of water when inundated intermittently or permanently with fresh, brackish or salt water, and where the inundation determines the type and productivity of the soils and the plant and animal communities.

### **198B Application of Division**

This Division applies to any dredging work or any reclamation work, except the following:

- (a) any dredging work or reclamation work carried out in respect of an artificial body of water, unless the body of water is permanently or intermittently connected to a natural body of water or unless the regulations otherwise provide,
- (b) any dredging work or reclamation work carried out in respect of a farm dam, unless the regulations otherwise provide,
- (c) anything permitted by or under this Act (such as digging for bait),
- (d) anything exempted from this Division by the regulations.

### **199 Circumstances in which a public authority (other than local authority) may carry out dredging or reclamation**

- (1) A public authority (other than a local government authority) must, before it carries out or authorises the carrying out of dredging or reclamation work:
  - (a) give the Minister written notice of the proposed work, and
  - (b) consider any matters concerning the proposed work that are raised by the Minister within 28 days after the giving of the notice (or such other period as is agreed between the Minister and the public authority).
- (2) Any such public authority is to notify the Minister of any dredging or reclamation work that it proposes to carry out or authorise despite any matter raised by the Minister. The Minister may, within 14 days after being so notified, refer any dispute to the Minister responsible for the public authority. If the dispute cannot be resolved by those Ministers, it is to be referred to the Premier for resolution.
- (3) In this section, **public authority** includes the Minister administering the [Crown Lands Act 1989](#).

### **200 Circumstances in which a local government authority may carry out dredging or**

### **reclamation**

- (1) A local government authority must not carry out dredging or reclamation work except under the authority of a permit issued by the Minister.

Maximum penalty: 2,000 penalty units.

- (2) This section does not apply to:

- (a) work authorised under the *Crown Lands Act 1989*, or
- (b) work authorised by a relevant public authority (other than a local government authority).

- (3) This section has effect irrespective of any other Act to the contrary.

### **201 Circumstances in which a person may carry out dredging or reclamation work**

- (1) A person must not carry out dredging or reclamation work except under the authority of a permit issued by the Minister.

Maximum penalty: In the case of a corporation, 2,000 penalty units or, in any other case, 1,000 penalty units.

- (2) This section does not apply to:

- (a) work authorised under the *Crown Lands Act 1989*, or
- (b) work carried out, or authorised, by a relevant public authority (other than a local government authority), or
- (c) work excluded from the operation of this section by the regulations.

### **202 Appeal to the Land and Environment Court**

A person (including a local government authority) who is dissatisfied with a decision of the Minister under this Division concerning a dredging or reclamation work may appeal to the Land and Environment Court against the decision.

### **203 Minister may order carrying out of certain work**

- (1) If dredging or reclamation work is carried out in contravention of section 200 or 201, the Minister may, by order in writing given to the local government authority or person concerned, require that authority or person to carry out, within a period specified in the order, such remedial work as the Minister considers necessary to rectify the damage caused by the dredging or reclamation work to fisheries and fish habitats.
- (2) A court that convicts a person of an offence against section 200 or 201 may also make an order of the kind referred to in subsection (1).

- (3) If the requirements of an order under this section are not complied with within the period specified in it, the Minister:
  - (a) may cause the work specified in the order to be carried out, and
  - (b) may, by proceedings brought in a court of competent jurisdiction, recover as a debt from the local government authority or person to whom the order was given the cost of complying with those requirements.
- (4) Action may be taken against a local government authority or person in respect of a dredging or reclamation work under this section regardless of whether the local government authority or person has been charged with having committed an offence against this Division in relation to the same work.
- (5) This section extends to a contravention of Division 4 or 5 and to damage caused by any such contravention. Accordingly, a reference to section 200 or 201 includes a reference to that Division and a reference to dredging or reclamation work includes a reference to work to which that Division applies.

## **Division 4 Protection of mangroves and certain other marine vegetation**

### **204 Application and interpretation**

- (1) This Division does not apply to a threatened species, population or ecological community of marine vegetation within the meaning of Part 7A.
- (2) In this Division:

**foreshore** means any land adjacent to public water land, or adjacent to an area that is the subject of an aquaculture lease, that is below the highest astronomical tide level of the waters by which the land or area is submerged.

**harm**, in relation to marine vegetation, means gather, cut, pull up, destroy, poison, dig up, remove, injure, prevent light from reaching or otherwise harm the marine vegetation, or any part of it.

**marine vegetation** means marine vegetation, whether living or dead.

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

- (a) that part of the foreshore of any public water land or area that is the subject of an aquaculture lease that is below the mean high water mark of the waters by which the land or area is submerged, and
- (b) any other part of the foreshore of any public water land or area that is the subject of an aquaculture lease that is declared by the Minister, by order published in the

Gazette, to be a protected area.

**204A Marine vegetation protected from any harvesting or other harm**

- (1) This section applies to any marine vegetation declared by the regulations to be protected marine vegetation.
- (2) A person must not harm any such protected marine vegetation in a protected area.

Maximum penalty: In the case of a corporation, 2,000 penalty units or, in any other case, 1,000 penalty units.

**204B Marine vegetation protected from any commercial harvesting**

- (1) This section applies to any marine vegetation declared by the regulations to be protected from commercial harvesting.
- (2) A person must not gather or collect for commercial purposes any such protected marine vegetation in a protected area.

Maximum penalty: In the case of a corporation, 2,000 penalty units or, in any other case, 1,000 penalty units.

**Note—**

Permits for the commercial harvesting of other marine vegetation may be required by regulations under section 191.

**205 Marine vegetation—regulation of harm**

- (1) This section applies to:
  - (a) mangroves, or
  - (b) seagrasses, or
  - (c) any other marine vegetation declared by the regulations to be marine vegetation to which this section applies,

but does not apply to protected marine vegetation under section 204A.

- (2) A person must not harm any such marine vegetation in a protected area, except under the authority of a permit issued by the Minister under this Part.

Maximum penalty: In the case of a corporation, 2,000 penalty units or, in any other case, 1,000 penalty units.

**205A Exemptions**

- (1) This Division does not apply to any marine vegetation that is being cultivated or kept in accordance with the authority conferred by an aquaculture permit.

- (2) The regulations may exempt any activity, class of activities, or area from the operation of this Division or from specified provisions of this Division.

#### **205B Activities harmful to marine vegetation**

- (1) For the purposes of this Division, a person is presumed to have harmed marine vegetation if the person carries out an activity prescribed for the purposes of this section by the regulations, unless the person establishes that the particular activity caused no actual harm to marine vegetation.
- (2) The regulations may prescribe an activity in relation to one or more of the following:
  - (a) all protected areas,
  - (b) a specific protected area,
  - (c) part of a protected area.

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

#### **206 Protection of spawning areas of salmon, trout and certain other fish**

- (1) A person who damages gravel beds in any waters knowing that it is a place where salmon or trout spawn or are likely to spawn is guilty of an offence.

Maximum penalty: 100 penalty units.

- (2) The regulations may make other provision for or with respect to preventing damage to any place where fish of any species spawn or are likely to spawn.

#### **207 Prohibition on taking or disturbing salmon, trout and certain other fish while spawning**

- (1) This section applies to salmon and trout and to any other fish of a species prescribed by the regulations.
- (2) A person who wilfully takes or disturbs fish to which this section applies knowing that they are spawning or are on or near their spawning beds is guilty of an offence.

Maximum penalty: 50 penalty units.

#### **208 Defence for authorised activities**

A defence to a prosecution for an offence of damaging critical habitat under Part 7A is also available as a defence to a prosecution for an offence against this Division.

### **Division 6 Noxious fish and noxious marine vegetation**

## **209 Declaration of noxious fish and noxious marine vegetation**

- (1) The regulations may declare:
  - (a) fish of a specified species to be noxious fish, or
  - (b) marine vegetation of a specified species to be noxious marine vegetation,for the purposes of this Act.
- (2) The regulations may limit any such declaration to fish or marine vegetation located in any specified waters.
- (3) A declaration under this section may provide for different classes of noxious fish or noxious marine vegetation and exclude specified provisions of this Division in respect of any class of those fish or that vegetation. The declaration has effect according to its tenor.
- (3A) A class of noxious fish declared under subsection (3) may be designated in the declaration as a pest species or a controlled species or by any other name.
- (4) In the case of an emergency, a declaration under this section may be made by the Minister by order published in the Gazette. Any such order has the same effect as a regulation and remains in force (unless sooner revoked by another order) for the period, not exceeding 6 months, specified in the order.

## **210 Sale of noxious fish or noxious marine vegetation prohibited**

- (1) A person who sells live noxious fish or noxious marine vegetation otherwise than under the authority of a permit issued by the Minister is guilty of an offence.

Maximum penalty: In the case of a corporation, 100 penalty units or, in any other case, 50 penalty units.
- (2) This section applies even if the fish are only noxious fish, or the marine vegetation is only noxious marine vegetation, for the purposes of this Division when in particular waters.

## **211 Possession of noxious fish or noxious marine vegetation prohibited**

- (1) A person who has possession of live noxious fish or noxious marine vegetation otherwise than under the authority of a permit issued by the Minister under this Part or an aquaculture permit is guilty of an offence.

Maximum penalty: In the case of a corporation, 100 penalty units or, in any other case, 50 penalty units.
- (2) It is a defence to a prosecution for an offence under this section if the person charged satisfies the court that the person neither introduced the noxious fish or noxious

marine vegetation into the waters concerned nor maintained the noxious fish or marine vegetation in those waters.

- (3) This section does not apply if the fish are in waters in which they are not noxious fish, or the marine vegetation is in waters in which it is not noxious marine vegetation, for the purposes of this Division.

### **212 Use of aquaculture permit to control noxious fish or noxious marine vegetation**

Conditions may be included in an aquaculture permit for the purpose of the destruction or control of noxious fish or noxious marine vegetation.

### **213 Destruction of noxious fish or noxious marine vegetation**

- (1) A fisheries officer may seize and destroy any live noxious fish or noxious marine vegetation.
- (2) A fisheries officer may take possession of:
- (a) any fish the officer suspects are noxious fish in order to determine whether they are noxious fish, or
  - (b) any marine vegetation the officer suspects is noxious marine vegetation in order to determine whether it is noxious marine vegetation.
- (3) The Minister may, by notice in writing given to the owner or occupier of premises on which noxious fish are, or noxious marine vegetation is, located, require the owner or occupier to take such measures as are specified in the notice to destroy the fish or marine vegetation within a specified period.
- (4) If the owner or occupier to whom such a notice is given fails within the period specified in the notice to comply with any of the requirements of the notice, a fisheries officer may:
- (a) enter the premises where live noxious fish are, or noxious marine vegetation is, believed to be located, and
  - (b) take such measures to destroy those fish or that marine vegetation as the fisheries officer considers appropriate.

This subsection does not authorise a fisheries officer to enter any premises used for residential purposes.

- (5) Compensation is not payable for the seizure or destruction of live noxious fish or live noxious marine vegetation under this section or for the destruction of other live fish or live marine vegetation if, in destroying the noxious fish or the noxious marine vegetation, the destruction of the other fish or marine vegetation could not reasonably be avoided.



- (6) The Minister may, by proceedings brought in a court of competent jurisdiction, recover as a debt from an owner or occupier to whom a notice has been given under this section the costs incurred in taking the measures referred to in subsection (4).

#### **214 Search warrant**

- (1) A fisheries officer may apply to an authorised justice for a search warrant if the fisheries officer believes on reasonable grounds that live noxious fish are, or live noxious marine vegetation is, located on any specified premises.
- (2) An authorised justice to whom an application is made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant authorising a fisheries officer named in the warrant:
- (a) to enter the premises, and
  - (b) to search the premises for, and to seize and destroy, any noxious fish or noxious marine vegetation on the premises.
- (3) Part 3 of the [Search Warrants Act 1985](#) applies to a search warrant issued under this section.
- (4) In this section, **authorised justice** has the same meaning it has in the [Search Warrants Act 1985](#).

### **Division 7 Release or importation of fish**

#### **215 Purpose of Division**

The purpose of this Division is to prevent the spread of diseases in fish and to prevent any adverse affect on existing fish and fish habitats by introduced species of fish.

#### **216 Releasing live fish into waters prohibited**

- (1) A person must not release into any waters any live fish except under the authority of a permit issued by the Minister or an aquaculture permit.
- Maximum penalty: In the case of a corporation, 100 penalty units or, in any other case, 50 penalty units.
- (2) This section does not apply to the immediate return of fish to waters from which they were taken.
- (3) This section applies only to the release of fish into the sea, into a river, creek or other naturally flowing stream of water or into a lake.
- (4) In this section, **release** a fish, includes depositing them or permitting them to escape.

### **217 Importation of live fish**

- (1) A person must not bring into New South Wales live fish of a species, or class, to which this section applies except under the authority of a permit issued by the Minister.

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

- (2) A person who sells or buys or has possession of fish knowing that the fish has been brought into New South Wales in contravention of this section is guilty of an offence.

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

- (3) This section applies to any species, or class, of fish other than:

- (a) fish that is indigenous to the waters of the State or of the waters of the sea adjacent to the State that are within the Australian fishing zone, or
- (b) fish of a class or species, or class of species, exempted from the operation of this section by the regulations.

For the purposes of this section, **fish indigenous** to those waters is fish of a species that was established in those waters before European settlement.

## **Division 8 Miscellaneous provisions**

### **218 Fishways to be provided in construction of dams and weirs**

- (1) The Minister may, by order in writing, require a person (other than a public authority) who constructs, alters or modifies a dam, weir or reservoir on a waterway to carry out, within the period specified in the order, such works as may be so specified to enable fish to pass through or over the dam, weir or reservoir.

- (2) The Minister may also, by order in writing, require a person responsible for the management or control of a dam, weir or reservoir to carry out repairs to a fishway or fish by-pass.

- (3) A person who fails to comply with an order under this section is guilty of an offence.

Maximum penalty: In the case of a corporation, 2,000 penalty units or, in any other case, 1,000 penalty units.

- (4) If a person fails to carry out the work specified in an order under this section within the period so specified, the Minister:

- (a) may cause the work to be carried out, and
- (b) may, by proceedings brought in a court of competent jurisdiction, recover from the person as a debt the cost of carrying out the work.

- (5) A public authority that proposes to construct, alter or modify a dam, weir or reservoir on a waterway (or to approve of any such construction, alteration or modification):
- (a) must notify the Minister of the proposal, and
  - (b) must, if the Minister so requests, include as part of the works for the dam, weir or reservoir, or for its alteration or modification, a suitable fishway or fish by-pass.
- (5A) This section does not apply to or in respect of any work or waters of a kind exempted from the operation of this section by the regulations.

- (6) In this section:

**dam, weir or reservoir** includes a floodgate.

**waterway** means a river, creek or other naturally flowing stream of water, whether flowing regularly or intermittently, and includes any lagoon or other body of water that is intermittently subject to tidal influence or that intermittently flows into a river, creek or stream.

## **219 Passage of fish not to be blocked**

- (1) A person who:

- (a) sets a net, netting or other material, or
- (b) constructs or alters a dam, floodgate, causeway or weir, or
- (c) otherwise creates an obstruction,

across or within a bay, inlet, river or creek, or across or around a flat, so that:

- (d) fish will or could be blocked or left stranded, or
- (e) immature fish will or could be destroyed, or
- (f) the free passage of fish will or could be obstructed,

is guilty of an offence.

Maximum penalty: In the case of a corporation, 2,000 penalty units or, in any other case, 1,000 penalty units.

- (2) A court convicting a person of an offence under this section may order the person to remove, within a specified period, the obstruction involved in the commission of the offence.
- (3) If such an order is not complied with within the specified period, the Minister:
- (a) may cause the obstruction concerned to be removed, and

- (b) may, by proceedings brought in a court of competent jurisdiction, recover the cost of removal as a debt from the person against whom the order was made.
- (4) An order made by a court under section 10 of the *Crimes (Sentencing Procedure) Act 1999* in any proceedings for an offence under this section is taken, for the purposes of this section, to be a conviction for the offence.
- (5) This section does not apply to or in respect of the following:
  - (a) any activity that is otherwise permitted by or under this Act or any other Act,
  - (b) any activity that is done in accordance with a permit issued by the Minister under this Part,
  - (c) any activity or waters of a kind exempted from the operation of this section by the regulations.

## **220 Provisions relating to permits under this Part**

- (1) A permit under this Part:
  - (a) is subject to such conditions as are prescribed by the regulations or specified in the permit, and
  - (b) remains in force for such period as is specified in the permit, and
  - (c) may be cancelled or suspended by the Minister at any time by notice given to the permit holder.
- (1A) The issue of a permit referred to in section 201, 205 or 219 in relation to integrated development within the meaning of section 91 of the *Environmental Planning and Assessment Act 1979* is subject to Division 5 of Part 4 of that Act.
- (1B) Without limiting subsection (1), conditions of a permit may include conditions requiring the permit holder to enter into a bond or guarantee or other financial arrangement for the due performance of the holder's obligations under this Act.
- (2) The Minister may from time to time, by notice given to the permit holder, vary the conditions of a permit.
- (3) The regulations may make provision for or with respect to permits under this Part. In particular, the regulations may prescribe the fee payable for the issue of a permit.

## **Part 7A Threatened species conservation**

### **Division 1 Preliminary**

## 220A Objects of Part

The objects of this Part are as follows:

- (a) to conserve biological diversity of fish and marine vegetation and promote ecologically sustainable development and activities,
- (b) to prevent the extinction and promote the recovery of threatened species, populations and ecological communities of fish and marine vegetation,
- (c) to protect the critical habitat of those threatened species, populations and ecological communities that are endangered,
- (d) to eliminate or manage certain processes that threaten the survival or evolutionary development of threatened species, populations and ecological communities of fish and marine vegetation,
- (e) to ensure that the impact of any action affecting threatened species, populations and ecological communities of fish and marine vegetation is properly assessed,
- (f) to encourage the conservation of threatened species, populations and ecological communities of fish and marine vegetation by the adoption of measures involving co-operative management.

### Note—

In furtherance of the objects of this Part, the responsibilities of the Minister and the Director-General extend to biological diversity of fish and marine vegetation—see the other provisions of this Part and the provisions relating to the Biological Diversity Advisory Council and the Biological Diversity Strategy in relation to fish and marine vegetation under Part 9 of the [Threatened Species Conservation Act 1995](#).

## 220B Definitions

(1) In this Part:

**BDAC** means the Biological Diversity Advisory Council established under the [Threatened Species Conservation Act 1995](#).

**catchment action plan** or **CAP** means a catchment action plan approved under Part 4 of the [Catchment Management Authorities Act 2003](#).

**critical habitat** means habitat declared to be critical habitat under Division 3.

**critically endangered ecological community** means an ecological community specified in Part 2 of Schedule 4A.

**critically endangered species** means a species specified in Part 1 of Schedule 4A.

**critically endangered species and ecological communities** means species and ecological communities specified in Schedule 4A and **critically endangered species**

**or ecological community** means a species or ecological community respectively specified in that Schedule.

**Department** means the Department of Primary Industries.

**ecological community** means an assemblage of species of fish or marine vegetation (or both) occupying a particular area.

**endangered ecological community** means an ecological community specified in Part 3 of Schedule 4.

**endangered population** means a population specified in Part 2 of Schedule 4.

**endangered species** means a species specified in Part 1 of Schedule 4.

**endangered species, populations and ecological communities** means species, populations and ecological communities specified in Schedule 4 and **endangered species, population or ecological community** means a species, population or ecological community respectively specified in that Schedule.

**environmental planning instrument** or **EPI** means an environmental planning instrument under the [Environmental Planning and Assessment Act 1979](#).

**fish** means any fish (as defined in section 5) that is indigenous to New South Wales, but does not include any fish declared to be a species of animal for the purposes of the [Threatened Species Conservation Act 1995](#) by order in force under section 5A of that Act.

**Note—**

Animals may be listed under the [Threatened Species Conservation Act 1995](#).

**Fisheries Scientific Committee** means the Fisheries Scientific Committee constituted under Division 9.

**harm** means:

- (a) in the case of fish—take, injure or otherwise harm the fish, or
- (b) in the case of marine vegetation—gather, cut, pull up, destroy, poison, dig up, remove, injure or otherwise harm the marine vegetation, or any part of it,

but in any such case does not include harm by changing the habitat of the fish or marine vegetation.

**joint management agreement** means an agreement entered into under Division 8.

**key threatening process** means a threatening process specified in Schedule 6.

**land** includes:

- (a) land covered with water, whether regularly or intermittently, and
- (b) the sea or an arm of the sea, and
- (c) a bay, inlet, lagoon, lake or body of water, whether inland or not and whether tidal or not, and
- (d) a river, stream or watercourse, whether tidal or not.

**landholder** of land means a person who owns land or who, whether by reason of ownership or otherwise, is in lawful occupation or possession, or has lawful management or control, of land.

**list** means a list set out in Schedules 4–6, and includes a list in one or more of those Schedules that does not contain any entries.

**marine vegetation** means any marine vegetation (as defined in section 4) that is indigenous to New South Wales, but does not include any marine vegetation declared to be a species of plant for the purposes of the [Threatened Species Conservation Act 1995](#) by order in force under section 5A of that Act.

**Note—**

Plants may be listed under the [Threatened Species Conservation Act 1995](#).

**NPW Act** means the [National Parks and Wildlife Act 1974](#).

**NRC** means the Natural Resources Commission established under the [Natural Resources Commission Act 2003](#).

**population** means a group of organisms, all of the same species of fish or marine vegetation, occupying a particular area.

**Priorities Action Statement** means a Threatened Species Priorities Action Statement under Division 5A.

**public authority** means a public authority (as defined in section 4), and includes a person exercising any function on behalf of the authority and any person prescribed by the regulations to be a public authority.

**recovery plan** means a recovery plan prepared and approved under Division 5.

**region** means a region within the meaning of the [Threatened Species Conservation Act 1995](#).

**SEAC** means the Social and Economic Advisory Council established under the [Threatened Species Conservation Act 1995](#).

**species** means a species of fish or marine vegetation, and includes any defined sub-species and taxon below a sub-species and any recognisable variant of a sub-species

or taxon.

**species impact statement** means a statement referred to in Subdivision 2 of Division 6 and includes an environmental impact statement, prepared under the [Environmental Planning and Assessment Act 1979](#), that contains a species impact statement.

**species presumed extinct** means a species specified in Part 4 of Schedule 4.

**threat abatement plan** means a threat abatement plan prepared and approved under Division 5.

**threatened ecological community** means an ecological community specified in Part 3 of Schedule 4, Part 2 of Schedule 4A or Part 2 of Schedule 5.

**threatened species** means a species specified in Part 1 (Endangered species) or Part 4 (Species presumed extinct) of Schedule 4 or in Schedule 5 (Vulnerable species).

**threatened species, populations and ecological communities** means species, populations and ecological communities specified in Schedules 4 and 5 and **threatened species, population or ecological community** means a species, population or ecological community respectively specified in either of those Schedules.

**Threatened Species Scientific Committee** means the Scientific Committee constituted under the [Threatened Species Conservation Act 1995](#).

**threatening process** means a process that threatens, or that may threaten, the survival or evolutionary development of species, populations or ecological communities of fish or marine vegetation.

**vulnerable ecological community** means an ecological community specified in Part 2 of Schedule 5.

**vulnerable species** means a species specified in Schedule 5.

- (2) A reference in this Part to fish or marine vegetation indigenous to New South Wales is a reference to fish or marine vegetation of a species that was established in New South Wales before European settlement.
- (3) A reference in this Part to New South Wales includes a reference to the coastal waters of the State.

**Note—**

**Coastal waters of the State** is defined in section 58 of the [Interpretation Act 1987](#). Generally speaking, coastal waters extend to the waters of the sea within 3 nautical miles of the coast.



## **220BA Relationship of Part to *Threatened Species Conservation Act 1995***

- (1) The Minister may, by order made with the concurrence of the Minister administering the *Threatened Species Conservation Act 1995*:
  - (a) declare a species of animal to be a species of fish for the purposes of this Act if it is an invertebrate and it is a species that may inhabit water at some stage of its biological development, or
  - (b) declare a species of plant to be a species of marine vegetation for the purposes of this Act if it is a species that may inhabit water (other than freshwater) at some stage of its biological development.
- (2) Any species of animal or plant that is the subject of an order in force under this section is taken to be a species of fish or marine vegetation for the purposes of this Part, in accordance with the terms of the order.
- (3) The Minister and the Minister administering the *Threatened Species Conservation Act 1995* may at any time consult with each other for the purpose of determining whether an order under this section should be made and the terms of the order.
- (4) The Ministers may also consult with the Chairperson of the Fisheries Scientific Committee, the Chairperson of the Threatened Species Scientific Committee and any other person or body before making an order under this section.
- (5) If the Ministers are unable to resolve any dispute between them as to the making or the terms of an order under this section, the matter is to be referred to the Premier for resolution. The decision of the Premier in relation to the matter is to be given effect to by the Ministers.
- (6) An order under this section is to be published in the Gazette.
- (7) For avoidance of doubt, an order under this section does not require the species concerned to be listed under this Part.
- (8) In this section:

***animal*** means any animal-life that is indigenous to New South Wales or is known to periodically or occasionally migrate to New South Wales, in any stage of biological development, but does not include humans.

***plant*** means any plant-life that is indigenous to New South Wales, whether vascular or non-vascular and in any stage of biological development, and includes fungi and lichens.

## **Division 2 Listing of threatened species, populations and ecological communities and key threatening processes**

## Subdivision 1 Listing

### 220C Lists

- (1) **Endangered species** Part 1 of Schedule 4 contains a list of endangered species for the purposes of this Part.
- (2) **Endangered populations** Part 2 of Schedule 4 contains a list of endangered populations for the purposes of this Part.
- (3) **Endangered ecological communities** Part 3 of Schedule 4 contains a list of endangered ecological communities for the purposes of this Part.
- (4) **Species presumed extinct** Part 4 of Schedule 4 contains a list of species presumed extinct for the purposes of this Part.
- (5) **Vulnerable species** Schedule 5 contains a list of vulnerable species for the purposes of this Part.
- (6) **Key threatening processes** Schedule 6 contains a list of key threatening processes for the purposes of this Part.

### 220D Amendment of lists

- (1) The Minister may, by order published in the Gazette, amend Schedule 4, 5 or 6:
  - (a) by inserting the name or description of a species, population, ecological community or threatening process, or
  - (b) by omitting the name or description of a species, population, ecological community or threatening process, or
  - (c) by amending the name or description of a species, population, ecological community or threatening process.
- (2) The Minister may, by order published in the Gazette, amend this Act by omitting Schedule 4, 5 or 6 and by inserting instead a Schedule containing the names or descriptions of species, populations, ecological communities or threatening processes.
- (3) A new species, population, ecological community or threatening process may not be listed, nor any such listing changed or omitted, unless the Fisheries Scientific Committee has made a recommendation to the Minister about the matter under Subdivision 2.
- (4) An order under this section is not invalid because of a contravention of the requirements of Subdivision 2 relating to the order.

## **220E Identification of nationally threatened species and ecological communities**

- (1) A species or ecological community listed in Schedule 4 or 5 that is also listed under Schedule 1 or 2 to the *Endangered Species Protection Act 1992* of the Commonwealth is shown in Schedule 4 or 5 to this Act marked with an asterisk to show its national status.
- (2) As soon as practicable after a species or ecological community that is or was indigenous to New South Wales is inserted in Schedule 1 or 2 to the *Endangered Species Protection Act 1992* of the Commonwealth, the Fisheries Scientific Committee is to consider whether, in accordance with this Division, the species or ecological community should be listed in Schedule 4 or 5 to this Act.
- (3) If a species or ecological community is omitted from Schedule 1 or 2 to the *Endangered Species Protection Act 1992* of the Commonwealth:
  - (a) Schedule 4 or 5 to this Act may be amended to omit the asterisk showing its national status, and
  - (b) the Fisheries Scientific Committee is to consider, in accordance with this Division, whether the species or ecological community should be omitted from Schedule 4 or 5 to this Act.

## **220F Eligibility for listing**

- (1) **Endangered species** A species is eligible to be listed as an endangered species if:
  - (a) it is likely to become extinct in nature in New South Wales unless the circumstances and factors threatening its survival or evolutionary development cease to operate, or
  - (b) its numbers have been reduced to such a critical level, or its habitats have been so drastically reduced, that it is in immediate danger of extinction, or
  - (c) it might already be extinct, but is not presumed extinct.
- (2) **Endangered populations** A population is eligible to be listed as an endangered population if it is a reproducing population but its numbers have been reduced to such a critical level, or its habitat has been so drastically reduced, that it is in immediate danger of extinction, and:
  - (a) it is a population of a vulnerable species listed in Schedule 5, or
  - (b) it is disjunct and at or near the limit of its geographic range and it is or is likely to be genetically distinct.
- (3) **Endangered ecological communities** An ecological community is eligible to be listed as an endangered ecological community if it represents a type of ecological community

that is likely to become extinct in nature in New South Wales unless the circumstances and factors threatening its survival or evolutionary development cease to operate.

- (4) **Species presumed extinct** A species is eligible to be listed as a species that is presumed extinct at a particular time if, to the knowledge of the Fisheries Scientific Committee, it has not been definitely located in nature during the preceding 50 years despite searching of known and likely habitats during that period.
- (5) **Vulnerable species** A species is eligible to be listed as a vulnerable species if it is likely to become endangered unless the circumstances and factors threatening its survival or evolutionary development cease to operate.
- (6) **Key threatening processes** A threatening process is eligible to be listed as a key threatening process if it:
  - (a) adversely affects 2 or more threatened species, populations or ecological communities, or
  - (b) could cause species, populations or ecological communities that are not threatened to become threatened.

## **Subdivision 2 Procedure for listing**

### **220G Fisheries Scientific Committee responsible for recommending listing**

- (1) The Fisheries Scientific Committee is responsible for recommending to the Minister the species, populations, ecological communities or threatening processes that should be listed in Schedule 4, 5 or 6.
- (2) Accordingly, the Fisheries Scientific Committee must keep the lists in those Schedules under review and recommend any changes to the lists that it considers necessary.

### **220H Who may initiate action for listing**

The Fisheries Scientific Committee may make a recommendation for listing:

- (a) on its own initiative, or
- (b) following a request by the Minister, or
- (c) on a nomination, duly made, of any other person.

### **220I How nominations made**

- (1) Any person may nominate an amendment of Schedule 4, 5 or 6.
- (2) A nomination must be in writing addressed to the Chairperson of the Fisheries Scientific Committee and must include any information prescribed by the regulations.
- (3) The Fisheries Scientific Committee may request a person who makes a nomination to

provide additional information about the subject-matter of the nomination within a specified period.

- (4) A person must not deliberately and wilfully make a vexatious nomination.

Maximum penalty (subsection (4)): 20 penalty units.

#### **220IA Referral of nomination to Threatened Species Scientific Committee**

- (1) If, in the opinion of the Chairperson of the Fisheries Scientific Committee, a nomination of a key threatening process relates to a threatening process that is likely to have an impact on both terrestrial and aquatic environments, the Chairperson may consult with the Chairperson of the Threatened Species Scientific Committee for the purpose of determining whether the nomination should also be considered by that Committee under the *Threatened Species Conservation Act 1995*.
- (2) If the Chairpersons agree that the nomination should also be considered by the Threatened Species Scientific Committee under the *Threatened Species Conservation Act 1995*, the nomination is to be referred to the Threatened Species Scientific Committee for consideration.
- (3) In such a case:
- (a) the nomination is taken also to be a nomination for the amendment of Schedule 3 to that Act, made to the Threatened Species Scientific Committee in accordance with Division 3 of Part 2 of that Act on the date the Chairpersons agree that the nomination should be referred to that Committee for consideration, and
- (b) Division 3 of Part 2 of that Act applies in relation to the nomination (in addition to this Part).
- (4) For the purposes of this section, a ***nomination of a key threatening process*** means a nomination of an amendment to Schedule 6.

#### **Note—**

There is a reciprocal process in the *Threatened Species Conservation Act 1995* for the referral of nominations made under that Act to the Fisheries Scientific Committee in appropriate cases.

#### **220J Consideration of nomination by Fisheries Scientific Committee**

- (1) The Fisheries Scientific Committee is to consider each nomination as soon as practicable after it is made or, if additional information has been requested, after that information has been provided or the period specified for its provision has expired.
- (2) The Fisheries Scientific Committee may consider different nominations about the same subject together, and may consider different matters in the same nomination separately.

- (3) The Fisheries Scientific Committee may reject a nomination if:
- (a) the Committee determines not to recommend the amendment nominated having regard to the eligibility requirements of this Part for listing, or
  - (b) the subject of the nomination has already been dealt with, or
  - (c) the nomination is vexatious, or
  - (d) the nomination is not accompanied by the information prescribed by the regulations, or
  - (e) any additional information requested by the Committee is not provided within the period specified for its provision or any such additional information provided is inadequate.
- (4) If the Fisheries Scientific Committee rejects a nomination, it is to notify the Minister and the person who made the nomination and is to give reasons for the rejection.

**Note—**

Section 220O enables the Committee to recommend other measures to protect the fish or marine vegetation even if it rejects a nomination.

**220K Notification and consultation with respect to proposed recommendation of Fisheries Scientific Committee**

Before it makes a recommendation for the amendment of Schedule 4, 5 or 6, the Fisheries Scientific Committee must:

- (a) notify the Minister of the proposed recommendation and, if it was made in response to a nomination, also notify the person who made the nomination, and
- (b) give the public an opportunity to make submissions on the proposed recommendation and the reasons for it, and
- (c) have regard to any written submissions received by the Committee on or before the date specified for the receipt of public submissions about the proposed recommendation.

**Note—**

Section 284 regulates the public consultation procedure. It requires copies of the proposed recommendation and reasons to be publicly exhibited and a period of at least 30 days for public comment.

Section 220N provides for provisional listings of endangered species without the need for compliance with this section.

**220L Fisheries Scientific Committee's recommendation**

- (1) The Fisheries Scientific Committee may, in accordance with this Subdivision, make a

recommendation to the Minister for the amendment of Schedule 4, 5 or 6. The Committee must give reasons for its recommendation.

- (2) In a case involving a nomination, the Fisheries Scientific Committee must make a recommendation or reject the nomination within 6 months:
  - (a) after the making of the nomination, or
  - (b) if additional information has been requested by the Committee, after that information has been provided or the period specified for its provision has expired.

That period of 6 months may be extended by the Minister, at the request of the Committee, by a further period not exceeding 3 months.

- (3) The Fisheries Scientific Committee must, as soon as practicable after making a recommendation in a case involving a nomination, notify the person who made the nomination of the recommendation and the reasons for it.
- (4) In a case involving a request by the Minister, the Fisheries Scientific Committee must make a recommendation or decide not to do so within such period as the Minister specifies in the request or such further period as the Minister allows. If the Committee decides not to make a recommendation for amendment, it is to notify the Minister and is to give reasons for its decision.

#### **220M Decision by Minister or Committee on listing**

- (1) The Minister must, as soon as practicable (and in any event within 2 months) after receiving a recommendation by the Fisheries Scientific Committee for the amendment of Schedule 4, 5 or 6:
  - (a) accept the recommendation, or
  - (b) refer the recommendation back to the Committee for further consideration.
- (2) The Minister may only refer a matter back to the Committee for reasons of a scientific nature provided to the Committee. In the case of a nomination, the Committee is to notify the person who made the nomination that the matter has been referred back to the Committee and of the Minister's reasons for doing so.
- (3) If the recommendation is referred back to the Committee for further consideration:
  - (a) the Committee may decide to proceed with the recommendation, to change the recommendation or not to proceed with the recommendation, and
  - (b) the Committee is to make that decision within 3 months, and
  - (c) the Minister cannot refer the matter back to the Committee again after it has made that decision.

- (4) The Minister must make an order to give effect to a recommendation of the Committee:
  - (a) immediately after the Minister accepts the recommendation under subsection (1) (a), or
  - (b) if the matter has been referred back to the Committee for further consideration, immediately after the Minister is notified of the Committee's decision (unless the Committee decides not to proceed with the matter).

### **220N Provisional listing**

- (1) This section applies to the provisional listing, on an emergency basis, of a species in Part 1 of Schedule 4 as an endangered species, being a species that:
  - (a) although not previously known to have existed in New South Wales, is believed on current knowledge to be indigenous to New South Wales, or
  - (b) was presumed to be extinct in New South Wales but has been rediscovered.
- (2) The Fisheries Scientific Committee may recommend the provisional listing of any such endangered species without complying with section 220K (Notification and consultation with respect to proposed recommendation of Fisheries Scientific Committee). The other provisions of this Subdivision (including sections 220H and 220I) apply to any such recommendation, except that the Minister is not entitled to refer a recommendation for a provisional listing back to the Committee under section 220M (1) (b).
- (3) An order made for the purpose of provisionally listing the endangered species must provide, in the matter inserted in Schedule 4, that the listing has effect for a specified period (not exceeding 12 months).
- (4) The Fisheries Scientific Committee must review the status of any such endangered species in accordance with this Subdivision (including section 220K) as soon as practicable after the species is provisionally listed.

### **220O Protection measures apart from listing**

- (1) The Fisheries Scientific Committee may, if of the opinion that a species, population or ecological community should be protected but does not satisfy the criteria for listing, recommend to the Minister that other measures should be taken under this Act to protect the species, population or ecological community.
- (2) The Minister is to give the Committee the reasons for any rejection of such a recommendation of the Committee.

#### **Note—**

The measures that could be taken to protect an unlisted species, population or ecological community include



fishing closures (s 8), prohibitions on the taking of specified species of fish (s 19—protected fish), prohibitions on the taking of specified species of fish for sale or taking fish from specified waters (s 20—fish and waters protected from commercial fishing), bag limits (s 17), declaration of prohibited size of fish (s 15), restrictions on the lawful use of fishing gear (s 24), determination of total allowable catches (ss 26–34), declaration of share management fishery (ss 41–101), declaration of restricted fishery (ss 111–116), habitat protection plans (s 192), declaration of aquatic reserves (ss 194–197) and protection of marine vegetation (ss 204–205A).

### **Division 3 Critical habitat of endangered species, populations and ecological communities**

#### **220P Habitat eligible to be declared critical habitat**

- (1) The whole or any part of the habitat of an endangered species, population or ecological community that is critical to the survival of the species, population or ecological community is eligible to be declared under this Division to be the critical habitat of the species, population or ecological community.
- (2) The regulations may provide that a specified habitat, or habitat of a specified kind, may, or may not, be declared to be critical habitat for the purposes of this Division.

**Note—**

For the purposes of this section, **habitat** means any area occupied, or periodically or occasionally occupied, by fish or marine vegetation (or both), and includes any biotic or abiotic component—see section 4.

#### **220Q Identification of critical habitat**

- (1) The Minister is to identify (where this is possible) the critical habitat of each endangered species, population and ecological community.
- (2) The Minister must consult the Fisheries Scientific Committee about the identification of any such critical habitat and must not make a preliminary identification until the Minister has considered the advice of the Committee on the matter.

#### **220R Publication of preliminary identification and consultation with other Ministers**

- (1) After making a preliminary identification of critical habitat, the Minister must:
  - (a) give details of the preliminary identification to the Fisheries Scientific Committee, and
  - (b) give a copy of the notice of the preliminary identification that is required to be published under section 284 to all affected persons, and
  - (c) give the public an opportunity to make submissions about the preliminary identification.

**Note—**

Section 284 regulates the public consultation procedure. It requires copies of the preliminary identification to be publicly exhibited and a period of at least 30 days provided for public comment.

- (2) If a submission from a public authority indicates that the declaration of the area concerned as critical habitat is likely to affect the exercise of functions by the public authority, the Minister is to consult with the responsible Minister for the public authority before making a decision on the matter.
- (3) For the purposes of this Division, an **affected person** is any of the following persons who (to the knowledge of the Minister after the making of reasonable searches and inquiries) would be affected by the declaration of critical habitat:
  - (a) landholders (including public authorities who are landholders) of the land concerned,
  - (b) other public authorities known to the Minister to exercise relevant functions in relation to the land concerned,
  - (c) if the land concerned is subject to a mortgage, charge or positive covenant—the mortgagee, chargee or person entitled to the benefit of the covenant,
  - (d) holders of leases and other interests granted by the Crown over the land concerned.

#### **220S Matters to which Minister to have regard in declaring critical habitat**

- (1) Before deciding whether an area identified by the Minister should be declared critical habitat, the Minister must have regard to the following:
  - (a) the likely social and economic consequences of a declaration of the area as critical habitat,
  - (b) without limiting paragraph (a), the likely consequences of a declaration of the area as critical habitat for landholders of, or other persons having an interest in, or in lawful uses of, the land concerned,
  - (c) the advice of the Fisheries Scientific Committee on the matter,
  - (d) any written submissions received by the Minister on or before the date specified for the receipt of public submissions about the preliminary identification of the area and, in particular, any submissions received from public authorities exercising relevant functions in relation to the area.
- (2) In so doing, the Minister must also consider whether, consistent with the principles of ecologically sustainable development, the area identified might be amended to avoid or lessen any adverse consequences of its declaration as critical habitat.

#### **220T Declaration of critical habitat by Minister**

- (1) The Minister may, by notification published in the Gazette, declare an area described in the notification to be the critical habitat of a specified endangered species,

population or ecological community.

**Editorial note—**

For notification of critical habitat see Gazette No 237 of 29.11.2002, p 10137.

- (2) The Minister must not do so until the Minister has made a preliminary identification of the area as critical habitat and complied with the other requirements of this Division with respect to the declaration of that area as critical habitat.
- (3) The Minister may declare the area the subject of the preliminary identification to be critical habitat without amendment or with any amendments that the Minister considers appropriate.
- (4) The Minister may refuse to declare the area the subject of the preliminary identification to be critical habitat (on the basis of one or more of the factors referred to in section 220S or otherwise).
- (5) The Minister must make a decision on whether to declare a particular area as critical habitat within 6 months after the date specified for the receipt of public submissions about the preliminary identification of the area.
- (6) As soon as practicable after the declaration of critical habitat, the Minister must:
  - (a) give notice of the declaration to all affected persons, and
  - (b) publish notice of the declaration in a newspaper circulating generally throughout the State and in a newspaper circulating generally in the area declared to be critical habitat.

**Note—**

See section 220W for requirements with respect to the publication of a map of the critical habitat.

**220U Amendment or revocation of declaration of critical habitat**

- (1) The Minister may amend or revoke a declaration of critical habitat by a further notification published in the Gazette.
- (2) However, the Minister must not amend or revoke a declaration unless the Minister:
  - (a) has consulted the Fisheries Scientific Committee about the matter, and
  - (b) has given notice of the proposed amendment or revocation to affected persons and given the public an opportunity to make submissions as if it were a preliminary identification of critical habitat, and
  - (c) has had regard to the matters the Minister would be required to have regard to if it were a decision to declare critical habitat.
- (3) The Minister must give notice of the amendment or revocation to all affected persons

as if it were a declaration of critical habitat.

- (4) The Minister must, in a notification amending or revoking a declaration of critical habitat and in a notice under subsection (3), give the reasons for the amendment or revocation of the declaration.

#### **220V Public authorities to have regard to critical habitat**

A public authority must have regard to the existence of critical habitat declared under this Division:

- (a) in relation to the use of any of the land concerned of which it is a landholder, or
- (b) in exercising its functions in relation to any of the land concerned.

#### **Note—**

The *Environmental Planning and Assessment Act 1979* contains a number of significant provisions with respect to critical habitat (and also certain other habitat of threatened species, populations and ecological communities of fish and marine vegetation), including in connection with the preparation of environmental planning instruments, the granting of development consents and environmental assessment under Part 5 of that Act. Section 192 of this Act also enables habitat protection plans to be made for the protection of critical habitat.

#### **220W Maps of critical habitat**

- (1) Before any critical habitat is declared or any declaration of critical habitat is amended, the Minister must arrange for the preparation of a map that shows the location of the critical habitat proposed to be declared or amended.
- (2) A copy of the map is to be published in the Gazette and the description in a notification of the area declared to be critical habitat, or any amendment of that area, is to be provided by or by reference to that map.
- (3) The Minister must serve a copy of a map of critical habitat on the following:
  - (a) the Director-General of the Department of Land and Water Conservation,
  - (b) the Director-General of the Department of Urban Affairs and Planning,
  - (c) each local council within whose area the whole or part of the critical habitat is located,
  - (d) any other affected persons as the Minister considers appropriate.

#### **220X Minister to keep register of critical habitat**

- (1) The Minister must keep a register containing copies of declarations of critical habitat as in force from time to time, and maps of the critical habitat that are published in the Gazette.
- (2) The register is to be made available to public authorities.

- (3) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Minister.

**220Y Discretion not to disclose location of critical habitat**

- (1) Despite the other provisions of this Division, the Minister may decline to disclose the precise location of critical habitat (or proposed critical habitat) in accordance with this Division to the public or to any class of affected persons. This subsection extends to the notification of a preliminary identification of critical habitat, the declaration of critical habitat, any public or other notice of any such declaration, the service of a copy of any map or the keeping of any register under this Division.
- (2) The Minister may decline to disclose the precise location of critical habitat (or proposed critical habitat) only if the Minister is satisfied that:
  - (a) the disclosure would be likely to expose the habitat and the endangered species, population or ecological community that occupies it to a significant threat, and
  - (b) each landholder of land concerned agrees that the precise location should not be disclosed, and
  - (c) it is in the public interest that the precise location should not be disclosed.
- (3) This section does not prevent the Minister from disclosing the precise location of critical habitat (or proposed critical habitat) to particular persons, including:
  - (a) landholders or other persons having an interest in, or in lawful uses of, the land, or
  - (b) public authorities exercising functions in relation to the land, or
  - (c) persons entitled by law to notice of the existence of interests in or proposals affecting the land.

**220Z Effect of failure to comply with procedural requirements**

A declaration of critical habitat (or any amendment or revocation of the declaration) is not open to challenge, because of a failure to comply with the procedural requirements of this Division, after notification of the declaration (or of the amendment or revocation) has been published in the Gazette.

**Division 4 Offences**

**220ZA Harming threatened species, populations or ecological communities**

A person must not harm any fish or marine vegetation of a threatened species, population or ecological community.

Maximum penalty:

- (a) in the case of any endangered species, population or ecological community—2,000 penalty units or imprisonment for 2 years, or both, or
- (b) in the case of any vulnerable species—500 penalty units or imprisonment for 1 year, or both.

**220ZB Buying, selling or possessing threatened species**

- (1) A person must not buy, sell or have in possession any fish or marine vegetation of a threatened species.

Maximum penalty:

- (a) in the case of any endangered species—2,000 penalty units or imprisonment for 2 years, or both, or
  - (b) in the case of any vulnerable species—500 penalty units or imprisonment for 1 year, or both.
- (2) The following are exempt from this section:
    - (a) fish or marine vegetation that has been cultivated or kept under the authority of an aquaculture permit,
    - (b) any class of fish or marine vegetation exempted by the regulations, subject to such conditions as may be specified in the regulations.

**220ZC Damage to critical habitat**

- (1) A person must not, by an act or omission, do anything that causes damage to any critical habitat.

Maximum penalty: 2,000 penalty units or imprisonment for 2 years, or both.

- (2) If a map of the critical habitat has been duly published in the Gazette, it is not necessary for the prosecution to prove that the person knew that the habitat was declared as critical habitat or that the accused knew that it was the habitat of an endangered species, population or ecological community.
- (3) It is a defence to a prosecution for an offence against this section in relation to an area of critical habitat that the Minister has declined to disclose its precise location under section 220Y and that the accused did not know and could not reasonably be expected to have known that the area was critical habitat.

**220ZD Damage to habitat of threatened species, population or ecological community**

- (1) A person must not, by an act or omission, do anything that causes damage to any habitat (other than critical habitat) of a threatened species, population or ecological community if the person knows that the area concerned is habitat of that kind.

Maximum penalty: 1,000 penalty units or imprisonment for 1 year, or both.

- (2) In proceedings for an offence under this section in respect of an act or an omission of a person that causes damage to any habitat (other than critical habitat) of a threatened species, population or ecological community, it is to be conclusively presumed that the person knew that the land concerned was habitat 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.

**220ZE Regulations may prohibit certain actions on critical habitat**

- (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, on specified critical habitat.
- (2) Any such regulation may create an offence punishable by a penalty not exceeding 100 penalty units.

**220ZF Defences**

- (1) It is defence to a prosecution for an offence against this Division if the accused proves that the act or omission constituting the offence:
  - (a) was authorised by, and was done or omitted in accordance with:
    - (i) a licence granted under this Part, or
    - (ii) a Ministerial order or interim order made under Subdivision 1A of Division 6, or
    - (iii) a permit under section 37, or
    - (iv) an aquaculture permit, or
  - (b) was essential for the carrying out of:
    - (i) development in accordance with a development consent within the meaning of the *Environmental Planning and Assessment Act 1979*, or
    - (ii) an activity, whether by a determining authority or pursuant to an approval of a determining authority within the meaning of Part 5 of that Act, if the determining authority has complied with that Part, or
    - (iii) a project approved under Part 3A of the *Environmental Planning and*

*Assessment Act 1979*, or

- (c) was authorised by or under the *State Emergency and Rescue Management Act 1989* and was reasonably necessary in order to avoid a threat to life or property, or
  - (d) was a routine activity in connection with the lawful taking of fish or marine vegetation other than a threatened species, population or ecological community of fish (unless it was an activity of a kind that the regulations declare is not a routine activity for the purposes of this paragraph), or
  - (e) was a routine agricultural or aquacultural activity (unless it was an activity of a kind that the regulations declare is not a routine activity for the purposes of this paragraph), or
  - (f) is identified in, and carried out in accordance with, a property management plan approved by the Director-General under subsection (4) or by the Director-General of National Parks and Wildlife under section 91 of the *Threatened Species Conservation Act 1995*.
- (2) If the provisions of any other Act or law or of any instrument made under any other Act or law authorise or require anything to be done that would constitute an offence under this Part:
- (a) this Part prevails (except in relation to a matter referred to in subsection (1) (b) or (c)), and
  - (b) a person is not to be convicted of an offence against the other Act, law or instrument because of the person's failure to comply with the other Act, law or instrument if compliance with the other Act, law or instrument would constitute an offence under this Part.
- (3) The Minister must not recommend the making of any regulation under subsection (1) (e) unless the Minister certifies that the Director-General has consulted with the Director-General of the Department of Agriculture concerning the making of the regulation.
- (4) The Director-General may, for the purposes of subsection (1) (f), approve of a property management plan for land prepared by a landholder. Any such plan may identify an activity even if it is declared not to be a routine agricultural or aquacultural activity for the purposes of subsection (1) (e).
- (5) This section does not apply in relation to 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.



### **220ZG Court may order offender to restore critical habitat**

- (1) If a court convicts a person of an offence against section 220ZC (Damage to critical habitat), 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 critical habitat.
- (2) The court may specify the actions to be taken to mitigate the damage or restore the habitat and may order the person to maintain the habitat 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) For the purposes of this section, a **conviction** includes the making of an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999*.

## **Division 5 Recovery plans and threat abatement plans**

### **220ZH Application of Division**

- (1) This Division applies to the preparation, approval and implementation of:
  - (a) recovery plans for threatened species, populations and ecological communities, and
  - (b) threat abatement plans to manage key threatening processes.
- (2) In this Division, **plan** means any such recovery plan or threat abatement plan.

### **220ZI Director-General to prepare recovery plans for threatened species, populations and ecological communities**

- (1) The Director-General must prepare a recovery plan:
  - (a) for each endangered species (other than a species presumed extinct), and
  - (b) for each endangered population or endangered ecological community, and
  - (c) for each vulnerable species,as soon as practicable after it is listed, to promote the recovery of the species, population or ecological community to a position of viability in nature.
- (2) A recovery plan may contain provisions relevant to more than one species, population or ecological community and more than one recovery plan may be prepared for a species, population or ecological community.

**220ZJ Director-General to prepare threat abatement plans**

- (1) The Director-General must prepare a threat abatement plan for each key threatening process to manage the threatening process so as to abate, ameliorate or eliminate its adverse effects on threatened species, populations or ecological communities.
- (2) A threat abatement plan may contain provisions dealing with more than one key threatening process and more than one threat abatement plan may be prepared for a key threatening process.

**220ZJA Joint preparation of recovery and threat abatement plans**

- (1) The Director-General may, with the prior approval of the Minister and the Minister administering the *Threatened Species Conservation Act 1995*, make arrangements with the Director-General of National Parks and Wildlife for the joint preparation of a recovery plan or threat abatement plan under this Act and the *Threatened Species Conservation Act 1995*.
- (2) In such a case, any function of the Director-General or the Minister under this Part in respect of the plan may be exercised in conjunction with any corresponding function of the Director-General of National Parks and Wildlife or the Minister administering the *Threatened Species Conservation Act 1995* in respect of the plan under that Act.

**Note—**

For example, the Director-General and the Director-General of National Parks and Wildlife may jointly publish a notice of the preparation of the plan under section 220ZO of this Act and section 61 or 79 of the *Threatened Species Conservation Act 1995*.

- (3) The Minister may exercise his or her functions under section 220ZP of this Act in respect of any such plan only with the concurrence of the Minister administering the *Threatened Species Conservation Act 1995*.
- (4) If the Minister administering this Act and the Minister administering the *Threatened Species Conservation Act 1995* are unable, following consultation, to resolve any dispute as to the exercise of any function under section 220ZP of this Act in respect of any such plan, the matter is to be referred to the Premier for resolution. The decision of the Premier in relation to the matter is to be given effect to by the Ministers.
- (5) Except as otherwise provided by this section, this Part applies in respect of a recovery plan or threat abatement plan that is jointly prepared as provided for by this section in the same way as it applies in respect of any other recovery plan or threat abatement plan.

**220ZK Priorities for recovery or threat abatement plans**

- (1) The Director-General must, after consulting with the Fisheries Scientific Committee, determine priorities in the preparation of plans.

- (2) In the case of recovery plans, the highest priority is to be given to the preparation of plans for species, populations and ecological communities that are identified by asterisks in Schedule 4 as being endangered nationally.
- (3) After complying with subsection (2), priorities in the preparation of recovery plans are to be determined in accordance with the following criteria and any other criteria that the Director-General, after consultation with the Fisheries Scientific Committee, considers relevant:
  - (a) likelihood of extinction—whether the species, population or ecological community has a greater likelihood of extinction than other species, populations or ecological communities,
  - (b) likelihood of recovery—whether the species, population or ecological community is more likely to recover, if it is the subject of a recovery plan, than other species, populations or ecological communities,
  - (c) keystone species—whether many other species are dependant for survival on the species,
  - (d) indicator species—whether the relative abundance of the species is a measure of the overall health of its ecosystem.

**220ZL Deadlines for preparation of recovery or threat abatement plans**

Recovery plans and threat abatement plans must be prepared within the same time limits as recovery plans or threat abatement plans (within the meaning of the *Endangered Species Protection Act 1992* of the Commonwealth) must be prepared under that Act.

**220ZM Guidelines for recovery or threat abatement plans**

- (1) The Director-General must, in preparing a plan and in deciding which measures to include in it, have regard to the following:
  - (a) the objects of this Part,
  - (b) the likely social and economic consequences of the making of the plan,
  - (c) the most efficient and effective use of available resources for the conservation of threatened species, populations and ecological communities,
  - (d) the desirability of minimising any significant adverse social and economic consequences.
- (2) The Director-General is to consider, when preparing a plan, any measures by which the public may co-operate:
  - (a) in the conservation of the threatened species, population or ecological community, or

- (b) in the abatement, amelioration or elimination of the adverse effects of the key threatening process on threatened species, populations or ecological communities.

## **220ZN Contents of recovery or threat abatement plans**

### **(1) Recovery plans** A recovery plan must:

- (a) identify the threatened species, population or ecological community to which it applies, and
- (b) identify any critical habitat declared in relation to the threatened species, population or ecological community, and
- (c) identify any threatening process or processes threatening the threatened species, population or ecological community, and
- (d) identify methods by which adverse social and economic consequences of the making of the plan can be minimised, and
- (e) state what must be done to ensure the recovery of the threatened species, population or ecological community, and
- (f) state what must be done to protect the critical habitat (if any) identified in the plan, and
- (g) state, with reference to the objects of this Part:
  - (i) the way in which those objects are to be implemented or promoted for the benefit of the threatened species, population or ecological community, and
  - (ii) the method by which progress towards achieving those objects is to be assessed, and
- (h) identify the persons or public authorities who are responsible for the implementation of the measures included in the plan, and
- (i) state the date by which the recovery plan should be subject to review by the Director-General.

### **(2) Threat abatement plans** A threat abatement plan must:

- (a) state the criteria for assessing the achievement of the objective, and
- (b) identify the actions needed to abate, ameliorate or eliminate the effects of the key threatening process, and
- (c) identify the persons or public authorities who are responsible for the implementation of the measures included in the plan, and
- (d) where practicable, provide a proposed timetable for the implementation of the

plan, and

- (e) state the estimated cost of the measures included in the plan, and
- (f) state the date by which the plan should be subject to review by the Director-General, and
- (g) include any other matter relating to the impact of the plan as the Director-General considers appropriate.

**220ZO Public and other consultation concerning draft recovery or threat abatement plan**

- (1) **Publication of draft plans** As soon as practicable after preparing a draft plan, the Director-General must:
  - (a) give a copy of the draft plan to the Fisheries Scientific Committee, and
  - (b) give a copy of the draft plan to any public authority that the Director-General knows is likely to be affected by the plan, and
  - (c) give the public an opportunity to make submissions on the draft plan.

**Note—**

Section 284 regulates the public consultation procedure. It requires copies of the draft plan to be publicly exhibited and a period of at least 30 days for public comment.

- (2) **Consideration of submissions by Director-General** The Director-General must consider all written submissions received by the Director-General on or before the date specified for the receipt of public submissions about the draft plan. The Director-General may amend the draft plan to take account of those submissions or any advice given by the Fisheries Scientific Committee.
- (3) **Consultation between Ministers** If the Director-General informs the Minister that the Director-General considers that a public authority should be responsible for the implementation of a measure to be included in a plan:
  - (a) the Minister must consult with the Minister responsible for the public authority before completing the preparation of the draft plan, and
  - (b) a measure must not be included in a plan for implementation by the public authority unless the Minister responsible for the public authority approves of the inclusion of the measure.

**220ZP Approval of recovery or threat abatement plan by Minister**

- (1) After considering the submissions and making amendments (if any) to the draft plan, the Director-General must:
  - (a) forward the draft plan to the Minister, and

- (b) provide the Minister with a summary of any advice given by the Fisheries Scientific Committee and of all submissions received about the draft plan, and details of any amendments made to the draft plan by the Director-General to take account of that advice or those submissions.
- (2) In considering whether to approve or to refuse to approve a draft plan, the Minister must have regard to the likely social and economic consequences of the approval of the plan.
- (3) The Minister may:
- (a) approve a draft plan without amendment or with any amendments that the Minister considers appropriate, or
  - (b) refuse to approve the plan (on the basis of the likely social or economic consequences of the plan or otherwise), or
  - (c) refer the plan back to the Director-General for further consideration (whether with or without a request for the amendment of the plan).

**220ZQ Recovery and threat abatement plans to be published**

- (1) As soon as practicable after the Minister approves a draft plan, the Director-General must:
- (a) give a copy of the plan to the Fisheries Scientific Committee, and
  - (b) publish notice of the approval of the plan in a newspaper circulating generally throughout the State and in such local newspapers (if any) as the Director-General considers appropriate, and
  - (c) notify any public authority that the Director-General knows is likely to be affected by the plan, and
  - (d) publish notice of the approval of the plan in the Gazette.
- (2) The Director-General must also make a copy of the plan available for public inspection, without charge, during ordinary business hours and copies of or extracts from the plan are to be made available to the public on request, on payment of the fee fixed by the Director-General.

**220ZR Review of recovery and threat abatement plans**

- (1) The Director-General is required to keep each plan under review and, if a date by which a plan is to be reviewed is stated in it, is to review the plan by that date.
- (2) The Director-General is also to consider any submissions about plans received from public authorities or the public.

- (3) If the Director-General considers that any change (other than a minor change) should be made to a plan, the Director-General is to prepare a new plan in accordance with this Division.

**220ZS Ministers and public authorities to implement recovery and threat abatement plans**

- (1) Ministers and public authorities are to take any appropriate action available to them to implement those measures included in a plan for which they are responsible and must not make decisions that are inconsistent with the provisions of a plan.
- (2) If the implementation of a plan affects a statutory discretion of a Minister or public authority, this section does not operate to exclude the discretion, but the Minister or public authority must take the plan into account.
- (3) This section does not operate to require or authorise any action by a Minister or public authority that is inconsistent with any statutory or other legal obligation of the Minister or public authority.

**220ZT Public authorities to report on implementation of recovery and threat abatement plans**

- (1) A public authority (other than a local council) identified in a plan as responsible for the implementation of measures included in the plan must report on action taken by it to implement those measures in its annual report to Parliament.
- (2) A local council identified in a plan as responsible for the implementation of measures included in the plan must report on action taken by it to implement those measures in its annual report as to the state of the environment of its area.

**220ZU Notification of, and consultation concerning, proposed departures from recovery or threat abatement plan**

- (1) A public authority must not exercise a function in a manner that is inconsistent with the implementation of measures included in a plan unless the public authority has given notice of the proposed exercise of the function to the Director-General.
- (2) The Director-General must, on receiving notice of a proposed departure from a plan from a public authority, advise the Minister whether the exercise of the function in the manner proposed is acceptable or whether it is likely to jeopardise the effective implementation of the plan.
- (3) If the Minister (having regard to that advice) considers that the departure is acceptable, the Director-General must notify the public authority accordingly.
- (4) If the Minister (having regard to that advice) considers that the departure is likely to jeopardise the effective implementation of the plan, the Director-General must consult with the public authority in an endeavour to resolve the matter by modification of the action proposed or by other mutually acceptable means.

- (5) This section does not apply in relation to anything authorised to be done by or under the *State Emergency and Rescue Management Act 1989* that is reasonably necessary in order to avoid a threat to life or property.
- (6) This section does not apply in relation to 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.

#### **220ZV Reference of matters concerning departures to Ministers and Premier for settlement**

- (1) A matter that has not been resolved after consultation between the Director-General and the public authority concerned must be referred by the parties to their respective Ministers.
- (2) In the case of a local council, the reference is to be made to the Minister administering the *Local Government Act 1993* unless the matter relates, in whole or in part, to the exercise of functions under the *Environmental Planning and Assessment Act 1979*. In that event, the reference is to be made to the Minister administering the *Environmental Planning and Assessment Act 1979*.
- (3) The Ministers, on receiving a reference, are to consult in an endeavour to resolve the matter by means that the Ministers consider to be appropriate.
- (4) If the Ministers are unable to resolve the matter after consultation, it is to be referred to the Premier for resolution.
- (5) A public authority must give effect to any decision of, or directions made or given by, the Premier on the matter and is, despite the requirements of any other Act or law, empowered to comply with any such decision or directions.

### **Division 5A Threatened Species Priorities Action Statements**

#### **220ZVA What the Statement provides for**

A Threatened Species Priorities Action Statement (also called a Priorities Action Statement) is a statement that:

- (a) sets out the strategies (**recovery and threat abatement strategies**) to be adopted for promoting the recovery of each threatened species, population and ecological community to a position of viability in nature and for managing each key threatening process as provided by section 220ZJ (1), and
- (b) establishes relative priorities for the implementation of recovery and threat abatement strategies, and
- (c) establishes performance indicators to facilitate reporting on achievements in implementing recovery and threat abatement strategies and their effectiveness, and



(d) contains a status report on each threatened species, where information is available, and

(e) sets out clear timetables for recovery and threat abatement planning and achievement.

**220ZVB Director-General to prepare and adopt Priorities Action Statement**

(1) The Director-General is to prepare and adopt a Priorities Action Statement for the purposes of this Part.

(2) The Priorities Action Statement must be completed as soon as practicable and no later than 12 months after the date of assent to the *Threatened Species Legislation Amendment Act 2004*.

(3) The Director-General is to review the Priorities Action Statement every 3 years and may make changes to the Priorities Action Statement pursuant to any such review by adopting amendments to the Statement.

(4) In preparing or reviewing a Priorities Action Statement, the Director-General is to seek advice from the NRC, the Fisheries Scientific Committee, BDAC, SEAC and such other State government agencies as the Director-General considers appropriate.

**220ZVC Public consultation on draft statement or amendments**

Before adopting a Priorities Action Statement or any amendment to the statement, the Director-General must first prepare a draft of the statement or amendment and give the public an opportunity to make submissions on the draft statement or amendment.

**Note—**

Section 284 regulates the public consultation procedure. It requires copies of the draft statement to be publicly exhibited and a period of at least 30 days for public comment.

**220ZVD Consideration of submissions by Director-General**

(1) The Director-General must consider all written submissions received by the Director-General on or before the date specified in the notice.

(2) The Director-General may alter the draft statement or amendment to take account of those submissions.

(3) The Director-General must adopt the Priorities Action Statement or amendment (with or without alterations) within 4 months after the end of the period allowed for the public comment on the draft statement or amendment.

**220ZVE Review to include report on achievements**

As part of each review of the Priorities Action Statement, the Director-General is to include in the Priorities Action Statement a report on achievements in implementing the strategies

established by the Priorities Action Statement during the period to which the review applies.

## **Division 6 Licensing and Ministerial orders**

### **Subdivision 1 Grant of licences**

#### **220ZW Licence to harm threatened species, population or ecological community or damage habitat**

- (1) The Director-General may grant a licence authorising a person to take action that is likely to result in one or more of the following:
  - (a) harm to a threatened species, population or ecological community,
  - (b) damage to a critical habitat,
  - (c) damage to a habitat of a threatened species, population or ecological community.
- (2) A permit under section 37 may only be issued for a purpose referred to in subsection (1):
  - (a) for scientific purposes, or
  - (b) for the welfare of fish or marine vegetation, or
  - (c) if there is a threat to life or property.

#### **Note—**

Section 220ZF provides a defence for offences under Division 4 if the accused proves that the action constituting the alleged offence was a routine fishing, agricultural or aquacultural activity or was authorised by a property management plan approved by the Director-General or by the Director-General of National Parks and Wildlife.

#### **220ZX Application for licence**

- (1) An application for a licence must be in a form approved by the Director-General and be accompanied by any processing fee payable under this Division.
- (2) If the action proposed to be taken under the authority of the licence is on land that is critical habitat, the application must be accompanied by a species impact statement prepared in accordance with Subdivision 2.
- (3) If the action proposed is not on land that is critical habitat, the application must include the following:
  - (a) details of the types, and condition, of habitats in and adjacent to the land to be affected by the action,
  - (b) particulars of any known records of a threatened species in the same or similar known habitats in the locality,

- (c) details of any known or potential habitat for a threatened species on the land to be affected by the action,
  - (d) details of the amount of such habitat to be affected by the action proposed in relation to the known distribution of the species and its habitat in the locality and region,
  - (e) an assessment of the likely nature and intensity of the effect of the action on the life cycle and habitat of the species,
  - (f) details of possible measures to avoid or ameliorate the effect of the action.
- (4) An applicant may lodge a species impact statement with an application even if the action proposed is not on land that is critical habitat. In that event, the application need not include the information referred to in subsection (3).
- (5) The Director-General may request the applicant to provide additional information in support of an application for a licence.

**220ZY Payment of licence processing fee**

- (1) The Director-General is to levy a processing fee, being not more than the costs (including on-costs) incurred by NSW Fisheries in the assessment and processing of a licence application (whether or not the application is successful).
- (2) The fee is recoverable by the Director-General as a debt due to the Crown in a court of competent jurisdiction.
- (3) The Director-General may, before dealing with an application, require the applicant to pay an amount not exceeding one-half of the estimated processing fee.
- (4) The Director-General may reduce the amount of a processing fee levied for any licence application having regard to the following:
  - (a) the extent of scientific examination necessary for the processing of the application,
  - (b) the adequacy of any species impact statement or environmental impact statement that includes a species impact component supplied by the applicant,
  - (c) the capacity of the applicant or persons with whom the applicant is associated to meet the fee levied,
  - (d) whether and to what extent the activity sought to be licensed may confer a commercial benefit on the applicant if the licence is granted.
- (5) Before a prospective applicant for a licence lodges an application, the Director-General must advise the applicant of the maximum fee payable in respect of the

application.

**220ZZ Significant effect on threatened species, populations or ecological communities, or their habitats**

- (1) If the action proposed to be taken by the applicant is not on land that is critical habitat and the application is not accompanied by a species impact statement, the Director-General must determine whether the action proposed is likely to significantly affect threatened species, populations or ecological communities, or their habitats.
- (2) For that purpose, the Director must take into account the following:
  - (a) each of the factors listed in subsection (2A),
  - (b) any assessment guidelines issued and in force under section 220ZZA.
- (2A) The following factors must be taken into account in making a determination under this section:
  - (a) in the case of a threatened species, whether the action proposed is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction,
  - (b) in the case of an endangered population, whether the action proposed is likely to have an adverse effect on the life cycle of the species that constitutes the endangered population such that a viable local population of the species is likely to be placed at risk of extinction,
  - (c) in the case of an endangered ecological community or critically endangered ecological community, whether the action proposed:
    - (i) is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or
    - (ii) is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction,
  - (d) in relation to the habitat of a threatened species, population or ecological community:
    - (i) the extent to which habitat is likely to be removed or modified as a result of the action proposed, and
    - (ii) whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed action, and
    - (iii) the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species, population or ecological

community in the locality,

- (e) whether the action proposed is likely to have an adverse effect on critical habitat (either directly or indirectly),
- (f) whether the action proposed is consistent with the objectives or actions of a recovery plan or threat abatement plan,
- (g) whether the action proposed constitutes or is part of a key threatening process or is likely to result in the operation of, or increase the impact of, a key threatening process.

- (3) If the Director-General determines that an action proposed by an applicant for a licence is likely to significantly affect threatened species, populations or ecological communities, or their habitats, the Director-General must notify the applicant that, if the application is to proceed, a species impact statement prepared in accordance with Subdivision 2 must be provided.
- (4) If the Director-General determines that an action proposed is not likely to significantly affect threatened species, populations or ecological communities, or their habitats, a licence under this Part is not required and the Director-General must, as soon as practicable after making the determination, issue to the applicant a certificate to that effect.

**Note—**

An action that is not required to be licensed under this Part may however be required to be authorised by other provisions of this Act or may otherwise constitute an offence under this Act.

**220ZZA Assessment guidelines**

- (1) The Minister may, by order published in the Gazette, issue guidelines (**assessment guidelines**) relating to the determination of whether an action is likely to significantly affect threatened species, populations or ecological communities, or their habitats.
- (2) An order under this section (including any order that amends, revokes or replaces such an order) may be made only with the concurrence of the Minister for Planning.

**221 Publication of licence application**

On the receipt of a licence application accompanied by a species impact statement or a species impact statement provided in response to a notification from the Director-General that a statement is required, the Director-General must cause to be placed in a newspaper circulating throughout the State a notice:

- (a) outlining the nature of the application, and
- (b) specifying the address of the place at which copies of the species impact statement may be inspected or purchased, and

- (c) inviting written submissions within a period of not less than 30 days after the date of the notice.

**221A Matters that Director-General must take into account**

- (1) In considering whether to grant or to refuse to grant a licence application, the Director-General must take into account the following:
  - (a) any species impact statement,
  - (b) any written submissions received concerning the application within the period, and at the address for submissions, specified in the notice,
  - (c) the factors specified in section 220F (Eligibility for listing),
  - (d) any relevant recovery plan or threat abatement plan,
  - (e) the principles of ecologically sustainable development,
  - (f) whether the action proposed is likely to irretrievably reduce the long-term viability of the species, population or ecological community in the region,
  - (g) whether the action proposed is likely to accelerate the extinction of the species or ecological community or place it at risk of extinction.
- (2) The Director-General must also consider the likely social and economic consequences of granting or refusing to grant a licence application.

**221B Determination of licence application**

- (1) After considering an application for a licence and accompanying material, the Director-General may:
  - (a) grant the application, unconditionally or subject to conditions or restrictions, or
  - (b) refuse the application.
- (2) The Director-General must, subject to subsection (3), make a decision about an application within 120 days after the Director-General receives a species impact statement or within such further period as may be agreed with the applicant for the licence.
- (3) The Director-General must not grant an application until the processing fee levied in respect of it has been paid.
- (4) A licence may authorise specified persons in addition to the person to whom the licence is granted to do the things authorised by the licence. In any such case, the specified persons are taken to be the holders of the licence for the purposes of this Part.

- (5) For the avoidance of doubt, it is declared that the Director-General is not a determining authority for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979* when granting a licence.

**221C Deemed approval**

If the Director-General fails to grant, but does not refuse, a licence application by the time the Director-General is required by this Division to make a decision on the application, the application is taken to have been granted.

**221D Conditions and restrictions to licence**

- (1) Without limiting section 221B (1) (a), the Director-General may grant an application for a licence subject to a condition that the applicant:
- (a) make specified modifications to the action proposed, whether in relation to the area of land proposed to be affected or otherwise, or
  - (b) make a monetary contribution towards the cost of preparation of a recovery plan for any threatened species, population or ecological community, or any of their habitats, likely to be affected by the action proposed.
- (2) The Director-General may, by notice in writing served on the holder of a licence:
- (a) attach any conditions or restrictions to the licence after its issue, or
  - (b) vary or remove any conditions or restrictions attached to any licence, or
  - (c) otherwise vary the licence.
- (3) The holder of a licence must not contravene or fail to comply with a condition or restriction attached to the licence.

Maximum penalty: 40 penalty units.

**221E Proposed variation of licence to be publicly notified**

- (1) The Director-General must, before removing or varying any condition or restriction attached to a licence:
- (a) cause to be placed in a newspaper circulating throughout the State a notice:
    - (i) outlining the nature of the proposed variation to the licence, and
    - (ii) specifying the address of the place at which copies of any species impact statement relating to the licence may be inspected or purchased, and
    - (iii) inviting written submissions within a period of not less than 30 days after the date of the notice, and

(b) take into account the matters required by this Division to be taken into account by the Director-General when considering whether to grant or refuse to grant a licence.

(2) This section does not apply if the proposed variation to the licence constitutes a minor amendment only of that licence.

#### **221F Notification of licence determination**

The Director-General is to notify an applicant and any person who has made submissions of the Director-General's determination of a licence application.

#### **221G Cancellation of licence**

(1) A licence granted under this Division may be cancelled by the Director-General.

(2) The Director-General is to notify the holder of a licence of its cancellation and is to include the reasons for the cancellation in that notification.

#### **221H Director-General to keep register of licences**

(1) The Director-General must keep a register containing copies of licences issued under this Subdivision as in force from time to time.

(2) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Director-General.

#### **221I Appeal by applicant or person commenting on licence application**

(1) An applicant for a licence or a person who has made written submissions (within the period specified in this Subdivision) about an application for a licence, or a person to whose licence conditions or restrictions have been attached or whose licence has been varied or cancelled may, if dissatisfied with the Director-General's decision, appeal to the Land and Environment Court.

(2) In determining an appeal about an application for a licence, the Court must take into account the matters required by this Division to be taken into account by the Director-General when considering whether to grant or refuse to grant a licence, but this requirement does not limit the operation of section 39 of the [Land and Environment Court Act 1979](#).

(3) An appeal is to be made by a person within 28 days after the Director-General notifies the person of the matter concerned or, if the appellant is dissatisfied with any condition or restriction attached to a licence when it is granted, within 28 days after the licence is granted.

(4) If an appeal relates to the grant of a licence, the licence has no operation until the



expiration of the period within which a person entitled to lodge an appeal may do so or, if an appeal has been lodged, until the appeal is finally determined.

- (5) If no written submissions about an application of a licence are received at the specified place and by the specified date and the applicant informs the Director-General in writing that the applicant does not wish to lodge an appeal but that the applicant wishes the licence to commence, the licence is to operate from a date stipulated by the Director-General.

## **Subdivision 1A Ministerial orders**

### **221IA Ministerial order to permit harm to threatened species etc**

- (1) The Minister may make an order authorising a class of persons to carry out an activity that may result in one or more of the following:
  - (a) harm to a threatened species, population or ecological community,
  - (b) damage to a habitat of a threatened species, population or ecological community.
- (2) Such an order may be made only if the Minister complies with the requirements of this Subdivision.
- (3) An order may be made subject to conditions or restrictions.
- (4) Before making an order, the Minister must provide:
  - (a) the Fisheries Scientific Committee, and
  - (b) any advisory council established under section 229 that, in the opinion of the Minister, has an interest in the proposed order,with a copy of the proposed order, and must invite the Committee and any such council to provide advice, within such period as the Minister may specify (being a period of not less than 30 days), on the proposed order.

### **221IB Minor amendments**

- (1) For the purposes of this Subdivision, ***making an order*** includes varying an existing order but does not include making a minor amendment to an existing order.
- (2) An amendment to an existing order that the Minister considers to be a minor amendment may be made by publishing the amended order in the Gazette.
- (3) The Minister is not obliged to comply with any other requirements of this Subdivision in relation to a minor amendment.

### **221IC Species impact statement**

Before the Minister makes an order, a person appointed by the Minister must prepare a

species impact statement in relation to the activity the subject of the proposed order in accordance with Subdivision 2.

**221ID Public consultation**

- (1) After the species impact statement is prepared and before making an order, the Minister must give the public an opportunity to make written submissions on the proposed order.
- (2) For the purposes of that public consultation procedure, a copy of the species impact statement and a copy of any advice received by the Minister under section 221A is to be exhibited with the proposed order as provided by section 284.

**Note—**

Section 284 regulates the public consultation procedure.

**221IE Matters that Minister must take into account**

- (1) In determining whether to make an order, the Minister must take into account the following:
  - (a) the species impact statement,
  - (b) any advice of the Fisheries Scientific Committee, and any advice of any advisory council established under section 229 that, in the opinion of the Minister, has an interest in the proposed order, received under section 221A.
  - (c) any written submissions concerning the order received within the period allowed for public comment,
  - (d) the factors specified in section 220F (Eligibility for listing),
  - (e) any relevant recovery plan or threat abatement plan,
  - (f) the principles of ecologically sustainable development,
  - (g) whether the action proposed is likely to irretrievably reduce the long-term viability of the species, population or ecological community in the region,
  - (h) whether the action proposed is likely to accelerate the extinction of the species or ecological community or place it at risk of extinction.
- (2) The Minister must also consider the likely social and economic consequences of making or not making an order.

**221IF Making an order**

- (1) The Minister makes an order by publication of the order in the Gazette.

- (2) For the avoidance of doubt, it is declared that the Minister is not a determining authority for the purposes of Part 5 of the *Environmental Planning and Assessment Act 1979* when making an order or an interim order.

#### **221IG Interim orders**

- (1) The Minister may make an interim order to permit the continuation of an existing activity if the Minister considers that the making of the interim order is reasonably necessary to reduce social or economic impacts during the assessment of a proposed order under this Subdivision.
- (2) The Minister makes an interim order by publishing the order in the Gazette.
- (3) An interim order remains in force for such period, not exceeding 6 months, as the Minister specifies in the order, but the order may be remade.
- (4) The Minister is not obliged to comply with any other requirements of this Subdivision in relation to an interim order.
- (5) An interim order may be made subject to conditions or restrictions.

#### **221IH Director-General to keep register of orders**

- (1) The Director-General must keep a register containing copies of all orders and interim orders in force under this Subdivision.
- (2) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Director-General.

#### **221II Revocation of an order**

An order or interim order made under this Subdivision may be revoked by the Minister at any time by notification in the Gazette.

#### **221IJ Breaching conditions or restrictions**

A person must not contravene or fail to comply with a condition or restriction attached to an order or interim order.

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

#### **221IK (Repealed)**

### **Subdivision 2 Species impact statements**

#### **221J Form of species impact statements**

- (1) A species impact statement must be in writing.

- (2) A species impact statement must be signed by the principal author of the statement and by the **sponsor** who, for the purposes of this Subdivision, is one of the following:
- (a) if the species impact statement is prepared for the purposes of a licence application under Subdivision 1—the applicant for the licence,
  - (b) if the species impact statement is prepared for the purposes of an order under Subdivision 1A—the person appointed by the Minister in accordance with section 221C,
  - (c) if the species impact statement is prepared for the purposes of the *Environmental Planning and Assessment Act 1979*—the applicant for development consent or the proponent of the activity to be carried out (as the case requires),
  - (d) if the species impact statement is prepared for the purposes of the *Plantations and Reafforestation Act 1999*, the applicant for authorisation under that Act.

**221K Content of species impact statement**

- (1) A species impact statement must include a full description of the action proposed, including its nature, extent, location, timing and layout and, to the fullest extent reasonably practicable, the information referred to in this section.
- (2) A species impact statement must include the following information as to threatened species and populations:
  - (a) a general description of the threatened species or populations known or likely to be present in the area that is the subject of the action and in any area that is likely to be affected by the action,
  - (b) an assessment of which threatened species or populations known or likely to be present in the area are likely to be affected by the action,
  - (c) for each species or population likely to be affected, details of its local, regional and State-wide conservation status, the key threatening processes generally affecting it, its habitat requirements and any recovery plan or threat abatement plan applying to it,
  - (d) an estimate of the local and regional abundance of those species or populations,
  - (e) a full description of the type, location, size and condition of the habitat (including critical habitat) of those species and populations and details of the distribution and condition of similar habitats in the region,
  - (f) a full assessment of the likely effect of the action on those species and populations, including, if possible, the quantitative effect of local populations in the cumulative effect in the region,

- (g) a description of any feasible alternatives to the action that are likely to be of lesser effect and the reasons justifying the carrying out of the action in the manner proposed, having regard to the biophysical, economic and social considerations and the principles of ecologically sustainable development,
  - (h) a full description and justification of the measures proposed to mitigate any adverse effect of the action on the species and populations, including a compilation (in a single section of the statement) of those measures,
  - (i) a list of any approvals that must be obtained under any other Act or law before the action may be lawfully carried out, including details of the conditions of any existing approvals that are relevant to the species or population.
- (3) A species impact statement must include the following information as to ecological communities:
- (a) a general description of the ecological community present in the area that is the subject of the action and in any area that is likely to be affected by the action,
  - (b) for each ecological community present, details of its local, regional and State-wide conservation status, the key threatening processes generally affecting it, its habitat requirements and any recovery plan or any threat abatement plan applying to it,
  - (c) a full description of the type, location, size and condition of the habitat of the ecological community and details of the distribution and condition of similar habitats in the region,
  - (d) a full assessment of the likely effect of the action on the ecological community, including, if possible, the quantitative effect of local communities in the cumulative effect in the region,
  - (e) a description of any feasible alternatives to the action that are likely to be of lesser effect and the reasons justifying the carrying out of the action in the manner proposed, having regard to the biophysical, economic and social considerations and the principles of ecologically sustainable development,
  - (f) a full description and justification of the measures proposed to mitigate any adverse effect of the action on the ecological community, including a compilation (in a single section of the statement) of those measures,
  - (g) a list of any approvals that must be obtained under any other Act or law before the action may be lawfully carried out, including details of the conditions of any existing approvals that are relevant to the ecological community.
- (4) A species impact statement must include details of the qualifications and experience in threatened species conservation of the person preparing the statement and of any

other person who has conducted research or investigations relied on in preparing the statement.

- (5) The requirements of subsections (2) and (3) in relation to information concerning the State-wide conservation status of any species or population, or any ecological community, are taken to be satisfied by the information in that regard supplied to the principal author of the species impact statement by NSW Fisheries, which information NSW Fisheries is by this subsection authorised and required to provide.

#### **221L Director-General's requirements**

- (1) The sponsor must request from the Director-General and must, in preparing the species impact statement, comply with any requirements notified to the person by the Director-General concerning the form and content of the statement.
- (2) The Director-General must notify any requirements under this section within 28 days after having been requested to provide them.
- (3) Despite the other provisions of this Subdivision, the Director-General may, having regard to the circumstances of a particular case, limit or modify (or limit and modify) the matters to be included in a species impact statement in such manner as may be specified by the Director-General in the particular case.
- (4) Despite anything in this Part or the *Environmental Planning and Assessment Act 1979* or the *Plantations and Reafforestation Act 1999*, the Director-General may, having regard to the circumstances of a particular case, dispense with the requirement for a species impact statement in the particular case if the Director-General is satisfied that the impact of the activity concerned will be trivial or negligible.

#### **221M Regulations**

The regulations may make further provision for or with respect to the form and content of species impact statements.

#### **221N Director-General may accredit persons to prepare assessments of species impact statements**

- (1) The Director-General is to institute arrangements for the accreditation of suitably qualified and experienced persons to prepare assessment reports on species impact statements for the purposes of this Part.
- (2) An applicant for accreditation must furnish the Director-General with such information as the Director-General requires to effectively determine the application and must be accompanied by the fee fixed by the Director-General for the consideration of the application.
- (3) An accreditation is to be for the period specified by the Director-General in the instrument of accreditation, and the accreditation (or any renewal of it) may be given

subject to the conditions and restrictions (if any) specified in the instrument of accreditation.

- (4) The Director-General may vary conditions or restrictions (if any) attaching to an accreditation and may suspend or cancel an accreditation.

### **221NA Regulations**

- (1) The regulations may provide that development or an activity of a specified type constitutes, or does not constitute, development that is likely to significantly affect threatened species, populations or ecological communities, or their habitats.
- (2) Any such regulation has effect (despite the provisions of this Act or any other Act) for the purposes of the operation of:
  - (a) Division 6 (Licensing and Ministerial orders) of Part 7A of this Act, and
  - (b) Parts 4 and 5 of the *Environmental Planning and Assessment Act 1979* (including the operation of those Parts as applying under any other Act).

#### **Note—**

Exceptions for the carrying out of routine agricultural management activities are provided for in section 220ZFA.

- (3) A regulation that provides that development or an activity of a specified type does not constitute development that is likely to significantly affect threatened species, populations or ecological communities, or their habitats, is not to be made unless the Minister has certified in writing that the development or activity is of minimal environmental impact on threatened species, populations and ecological communities, and their habitats.

## **Division 7 Stop work orders**

### **221O 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 that is likely to result in one or more of the following:
  - (a) harm to a threatened species, population or ecological community,
  - (b) damage to critical habitat,
  - (c) damage to habitats of threatened species, populations or ecological communities,the Director-General may order that the action is to cease and that no action, other than such action as may be specified in the order, is to be carried out in or in the vicinity of the critical habitat or the habitat of the threatened species, population or ecological community 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 critical habitat or other habitat the subject of the order, or
  - (b) the person performing or about to perform the action is notified that the order has been made,whichever is the sooner.
- (3) This section does not apply in relation to anything that (under section 220ZF) constitutes a defence to an offence under Division 4.
- (4) In this Division, a reference to action being, or about to be, carried out includes a reference to action that should be, but is not being, carried out and the Director-General may make an order, in accordance with this Division, that any such action is to be carried out.
- (5) A person who does not comply with an order in force under this section is guilty of an offence and is liable, on conviction:
  - (a) in the case of a corporation, to a penalty not exceeding 2,000 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 1,000 penalty units for each day the offence continues, or
  - (b) in the case of an individual, to a penalty not exceeding 1,000 penalty units and, in the case of a continuing offence, to a further penalty not exceeding 500 penalty units for each day the offence continues.

**221P Prior notification of making of stop work order not required**

The Director-General is not required, before making an order under this Division, to notify any person who may be affected by the order.

**221Q Appeal to Minister**

- (1) A person against whom an order is made under this Division may appeal to the Minister against the making of the order.
- (2) After hearing an appeal, the Minister may:
  - (a) confirm the order, or
  - (b) modify or rescind the order, but only if this is consistent with the principles of ecologically sustainable development.

**221R Extension of stop work order**

The Director-General may extend an order under this Division for such further period or periods of 40 days as the Director-General thinks fit.



### **221S Consultation about modification of proposed detrimental action**

- (1) After making an order under this Division, the Director-General must immediately consult with the person proposing to perform the action to determine whether any modification of the action may be sufficient to protect the threatened species, populations or ecological communities, critical habitat or other habitat concerned.
- (2) The Director-General may, for the purposes of making any such determination and considering whether the adoption of any other steps (such as the grant of a licence under Division 6) may be appropriate, request the person proposing to perform the action to provide the information referred to in section 220ZX (3).
- (3) After considering any information provided under subsection (2) in accordance with the requirements of section 220ZZ, the Director-General may, if appropriate and if the person concerned wishes to apply for a licence under Division 6, request the person to provide an application for a licence and a species impact statement for determination under that Division.

### **221T Recommendations for further protective measures**

The Director-General is to recommend to the Minister the taking of other protective measures under this Act if, after consulting the person proposing to perform the action, the Director-General is of the opinion that satisfactory arrangements cannot be made to protect the threatened species, population or ecological community, critical habitat or other habitat that is the subject of the order under this Division.

**Note—**

See note to section 2200 for examples of other protective measures.

### **221U Stop work order prevails over other instruments**

- (1) An approval, notice, order or other instrument made or issued by or under any other Act or law that requires or permits critical habitat, the subject of an order in force under this Division, to be significantly affected is inoperative to the extent of any inconsistency with the order under this Division.
- (2) This section has effect whether the approval, notice, order or other instrument concerned was made or issued before or after the making of the order under this Division.

## **Division 8 Joint management agreements**

### **221V Joint management agreements**

- (1) The Minister may enter into a joint management agreement with one or more public authorities for the management, control, regulation or restriction of an action that is jeopardising the survival of a threatened species, population or ecological community.

- (2) The parties may amend a joint management agreement, but only by a further joint management agreement.

### **221W Contents of joint management agreements**

- (1) A joint management agreement is to contain terms, binding on all parties, that:
  - (a) identify the threatened species, population or ecological community to which the agreement applies, and
  - (b) identify the action that it manages, controls, regulates or restricts, and
  - (c) state its objective (for example, maintenance of a habitat in a state that will contribute to the long-term survival of the species, population or ecological community), and
  - (d) state the way in which the objective is to be achieved, and
  - (e) specify the measures by which progress towards achieving the objective is to be assessed, and
  - (f) identify the parties who are responsible for the implementation of those measures.
- (2) A joint management agreement entered into with a local council or a consent authority (within the meaning of the *Environmental Planning and Assessment Act 1979*) is void to the extent to which it fetters any discretion of the local council or consent authority in the granting or refusal of a consent or approval under the *Environmental Planning and Assessment Act 1979* or the *Local Government Act 1993*.

### **221X Publication of draft joint management agreement**

The Minister must, before entering into a joint management agreement:

- (a) give a copy of the draft agreement to the Fisheries Scientific Committee for review, and
- (b) give the public an opportunity to make submissions on the draft agreement.

#### **Note—**

Section 284 regulates the public consultation procedure. It requires copies of the draft agreement to be publicly exhibited and a period of at least 30 days for public comment.

### **221Y Role of Fisheries Scientific Committee**

- (1) Before a joint management agreement is entered into, the Fisheries Scientific Committee must review the draft joint management agreement and provide the Minister with comments on the review by the date specified for the making of public submissions on the draft agreement.

- (2) The Fisheries Scientific Committee must also:
  - (a) conduct an annual review of the performance of all parties to a joint management agreement, and
  - (b) advise the Minister of any deficiencies in implementation of any joint management agreement by any party to it.
- (3) The Fisheries Scientific Committee's advice on the annual review of joint management agreements is to be set out in the annual report to Parliament of NSW Fisheries or is to be available for public inspection at a place specified in that annual report.

#### **221Z Consideration of submissions by Minister**

- (1) The Minister must consider all written submissions received by the Minister on or before the date specified for the making of public submissions about the draft agreement.
- (2) The Minister may, with the consent of the other parties to the agreement, amend the draft joint management agreement to take into account any of those submissions and any comments made by the Fisheries Scientific Committee about the draft agreement.

### **Division 9 Fisheries Scientific Committee**

#### **221ZA Establishment of Fisheries Scientific Committee**

There is established by this Act a body corporate with the corporate name of the Fisheries Scientific Committee.

#### **221ZB Functions of Fisheries Scientific Committee**

- (1) The Fisheries Scientific Committee has the functions conferred or imposed on it by or under this or any other Act or law.
- (2) The principal functions of the Fisheries Scientific Committee are as follows:
  - (a) the functions relating to the listing of species, populations, ecological communities of fish and marine vegetation and key threatening processes as are conferred on it by this Act,
  - (b) to advise the Minister on the identification of critical habitat of endangered species, populations or ecological communities,
  - (c) to review draft joint management agreements and the performance of parties under executed joint management agreements,
  - (d) to advise the Director-General on the exercise of the Director-General's functions under this Part,

- (e) to advise the Minister on any matter relating to the conservation of threatened species, populations or ecological communities that is referred to the Committee by the Minister or that the Committee considers appropriate.
- (3) The Fisheries Scientific Committee may, in the exercise of its functions, make use of consultants or obtain assistance or advice from other persons.
- (4) The Fisheries Scientific Committee and the Scientific Committee under the *Threatened Species Conservation Act 1995* are required to consult each other on matters that affect the exercise of their respective functions.

#### **221ZC Members of Fisheries Scientific Committee**

- (1) The Fisheries Scientific Committee is to consist of 7 members appointed by the Minister.
- (2) Of the members of the Fisheries Scientific Committee:
  - (a) two are to be scientists employed in NSW Fisheries nominated by the Director-General,
  - (b) one is to be a scientist nominated by the Australian Society for Fish Biology,
  - (c) one is to be a scientist employed and nominated by the Australian Museum Trust,
  - (d) one is to be a scientist employed and nominated by the Royal Botanic Gardens and Domain Trust,
  - (e) one is to be a scientist who is employed by a tertiary educational institution and who is selected by the Minister,
  - (f) one is to be a scientist with expertise in fisheries science and natural resource management who is selected by the Minister.
- (3) A person appointed as a member of the Fisheries Scientific Committee is to have expertise in one or more of the following areas of study:
  - (a) fish biology,
  - (b) aquatic invertebrate biology,
  - (c) marine vegetation biology,
  - (d) population dynamics,
  - (e) aquatic ecology,
  - (f) genetics of small populations.

**221ZD Fisheries Scientific Committee not subject to Ministerial control**

The Fisheries Scientific Committee is not subject to the control or direction of the Minister.

**221ZE Provisions relating to members and procedure of Fisheries Scientific Committee**

Schedule 6A has effect.

**Division 10 Biodiversity certification of native vegetation reform package**

**221ZF Native vegetation reform package**

For the purposes of this Division, the **native vegetation reform package** is the package of reforms comprising the following:

- (a) the *Native Vegetation Act 2003* and the regulations under that Act,
- (b) State-wide standards and targets for natural resource management issues recommended under the *Natural Resources Commission Act 2003* and adopted by the Government,
- (c) catchment action plans under the *Catchment Management Authorities Act 2003*,
- (d) protocols and guidelines adopted or made under the regulations under the *Native Vegetation Act 2003*, the *Catchment Management Authorities Act 2003* and the *Natural Resources Commission Act 2003*.

**221ZG Biodiversity certification of native vegetation reform package**

- (1) The Minister may by order published in the Gazette confer biodiversity certification on the native vegetation reform package for the purposes of this Part.
- (2) The Minister may confer biodiversity certification even if the native vegetation reform package does not comprise all the elements of the package.
- (3) The Minister may, by order published in the Gazette, suspend biodiversity certification of the native vegetation reform package if the composition of the package changes after its certification (for instance by any amendment of the *Native Vegetation Act 2003* or regulations under that Act, or by the approval or amendment of a State-wide standard or target or of a catchment action plan). The Minister may by order published in the Gazette lift any suspension under this subsection.
- (4) The Minister may, in an order conferring biodiversity certification or in another order published in the Gazette, exclude from the certification of the native vegetation reform package any specified class of activity.
- (5) In deciding on any action under this section, the Minister is to have regard to the likely impact of the native vegetation reform package (or any relevant aspect of its

operation) on the achievement of the objects of this Part.

### **221ZH Effect of biodiversity certification**

While biodiversity certification of the native vegetation reform package is in force, any activity on land within the area of operations of each catchment management authority has the benefit of that biodiversity certification (except any activity excluded from certification under section 221ZG (4)).

**Note—**

Biodiversity certification has the following effects:

- (a) the clearing of native vegetation as authorised by a property vegetation plan that is approved while the clearing has the benefit of biodiversity certification is a defence to a prosecution for certain offences under Part 8A of the NPW Act, and
- (b) development consent to clearing of native vegetation that has the benefit of biodiversity certification does not require the preparation of a species impact statement or consultation between Ministers. (See section 14 (4) of the *Native Vegetation Act 2003*.)

### **221ZI Suspension of certification in connection with implementation of package**

- (1) The Minister may by order published in the Gazette suspend biodiversity certification of the native vegetation reform package in its application to a particular catchment management authority if the Minister is of the opinion that the catchment management authority:
  - (a) has failed to properly exercise its functions under the native vegetation reform package, or
  - (b) has otherwise failed to exercise its functions in a manner that promotes the conservation of threatened species, populations and ecological communities.
- (2) During the suspension of biodiversity certification of the native vegetation reform package in its application to a particular catchment management authority, land within the area of operations of the catchment management authority does not have the benefit of the biodiversity certification of the native vegetation reform package.
- (3) The Minister is only entitled to form an opinion for the purposes of this section:
  - (a) based on the outcomes of any audit undertaken by the NRC, or
  - (b) based on the results of an investigation conducted by the Director-General, or
  - (c) in such other circumstances as may be prescribed by the regulations.

### **221ZJ Notification of certification, variation or suspension**

- (1) Notice of the grant of biodiversity certification under this Division or of any suspension of that certification under this Division is to be given within 14 days:

- (a) to the Director-General of the Department of Infrastructure, Planning and Natural Resources, and
  - (b) on the website of the Department of Primary Industries.
- (2) The Minister is to keep a register containing copies of each notice of the grant of biodiversity certification under this Division and of any suspension or revocation of that certification.
- (3) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Minister.

## **Division 11 Biodiversity certification of environmental planning instruments**

### **221ZK Biodiversity certification**

- (1) The Minister may by order published in the Gazette confer biodiversity certification on an EPI if satisfied that the EPI, in addition to any other relevant measures to be taken, will lead to the overall improvement or maintenance of biodiversity values. Biodiversity values include threatened species, populations and ecological communities and their habitats.
- (2) In deciding whether to confer biodiversity certification on an EPI the Minister must also have regard to the following considerations:
- (a) the likely social and economic consequences of implementation of the EPI,
  - (b) the most efficient and effective use of available resources for the conservation of threatened species, populations and ecological communities,
  - (c) the principles of ecologically sustainable development,
  - (d) conservation outcomes resulting from any reservation or proposed reservation of land under Part 4 of the NPW Act or the entering into of a conservation agreement relating to the land under that Act, or resulting from any other action to secure the protection of land for conservation purposes,
  - (e) conservation outcomes resulting from the operation outside the area of operation of the EPI of strategies, plans, agreements and other instruments (whether or not they are EPIs).
- (3) In deciding any matter under this section the Minister is to have regard to the objects of this Part.
- (4) An EPI cannot be biodiversity certified unless:

- (a) notice is given of proposed biodiversity certification of the EPI in the course of the public exhibition of a draft of the EPI under section 66 of the *Environmental Planning and Assessment Act 1979* or by public exhibition following a procedure that substantially accords with the procedure for public exhibition required by that section, and
  - (b) copies of submissions made in response to an invitation for submissions in the course of that public exhibition have been provided to the Minister.
- (5) The Minister may issue guidelines for the purpose of assisting in the preparation of EPIs for biodiversity certification.

**221ZL Certification can be conditional**

- (1) Biodiversity certification of an EPI can be subject to conditions, including conditions that limit the certification to specified threatened species, populations and communities or to a specified part of the land to which the EPI applies.
- (2) Unless limited by the conditions of certification, biodiversity certification of an EPI applies to the whole of the land to which the EPI applies, and to all threatened species, populations and ecological communities.

**221ZM Effect of biodiversity certification**

- (1) Any development for which development consent is required under the provisions of a biodiversity certified EPI is, for the purposes of Part 4 of the *Environmental Planning and Assessment Act 1979* taken to be development that is not likely to significantly affect any threatened species, population or ecological community, or its habitat.
- (2) An activity to which Part 5 of the *Environmental Planning and Assessment Act 1979* applies that a biodiversity certified EPI provides can be carried out without the need for development consent is, for the purposes of that Part, taken to be an activity that is not likely to significantly affect any threatened species, population or ecological community, or its habitat.
- (3) This section applies only to development or an activity on land to which the certification of the EPI applies and only to threatened species, populations or ecological communities (and their habitat) to which the certification applies.

**221ZN Period of certification and extension**

- (1) Biodiversity certification of an EPI remains in force for such period as the Minister determines and specifies in the certification. If no period is specified, biodiversity certification remains in force for 10 years.
- (2) Prior to the expiration of biodiversity certification of an EPI, the Minister may by order published in the Gazette extend by a period of up to 10 years the period for which that



certification remains in force, but only if the Minister has reviewed the EPI to take account of any new listing of a species, population or ecological community or the discovery of a species, population or ecological community not previously known in an area.

- (3) The Minister must not extend the period of biodiversity certification of an EPI unless, prior to granting the extension, the Minister:
  - (a) by notice published in a newspaper circulating generally throughout the State, invites persons to make written submissions to the Minister on the proposed extension, and
  - (b) considers any written submissions received before the closing date specified in the notice for the making of submissions (being a date that is not less than 30 days after the date the notice is first published under this subsection).
- (4) This section does not prevent further biodiversity certification of an EPI under this Division.

#### **221ZO Reassessment of biodiversity certification**

- (1) The Minister is to reassess the grant of biodiversity certification in respect of an EPI following any review of the EPI under the *Environmental Planning and Assessment Act 1979*, or any rezoning of land to which the EPI applies, to determine whether biodiversity certification should be maintained or modified.
- (2) If a local council undertakes a review of a biodiversity certified EPI that applies to land in its area, the council is to notify the Minister of the commencement of that review, and the outcome of that review, as soon as practicable.

#### **221ZP Suspension and revocation of certification**

The Minister may by order published in the Gazette suspend or revoke the certification of an EPI if the Minister is of the opinion that:

- (a) the EPI fails (or will, as a result of any proposed amendment of the EPI, fail) to make appropriate provision for the conservation of threatened species, populations and ecological communities, or
- (b) the consent authority under the EPI has failed to adequately comply with a direction by the Minister to review the EPI in response to any new listing of a species, population or ecological community or the discovery of a species, population or ecological community not previously known in an area.

#### **221ZQ Notification of certification, suspension or revocation**

- (1) Notice of the grant of biodiversity certification under this Division or of the extension, suspension or revocation of that certification is to be given within 21 days:

- (a) to the Director-General of the Department of Infrastructure, Planning and Natural Resources, and
  - (b) on the website of the Department of Primary Industries, and
  - (c) to each local council that is the council of an area of which land to which the EPI applies forms part.
- (2) The Minister is to keep a register containing copies of each notice of the grant of biodiversity certification under this Division and of any extension, suspension or revocation of that certification.
- (3) The register is to be open for public inspection, without charge, during ordinary business hours, and copies of or extracts from the register are to be made available to the public on request, on payment of the fee fixed by the Minister.

**221ZR Concurrence can be conditional on voluntary conservation action**

- (1) The Director-General may grant concurrence under section 79B or 112C of the *Environmental Planning and Assessment Act 1979* conditional on the taking of specified action (**voluntary action**, as provided by subsection (2)) that the Director-General considers will significantly benefit threatened species conservation, but only if the Director-General is satisfied that the person who proposes to carry out the development or activity to which the concurrence relates has agreed to take the voluntary action and agrees to the imposition of the condition.
- (2) The voluntary action that can be required by a condition imposed under this section is any one or more of the following:
- (a) the reservation of land under Part 4 of the NPW Act or the entering into of a conservation agreement relating to the land under that Act,
  - (b) action to secure the protection of land for conservation purposes by a method that the Director-General considers satisfactory,
  - (c) action to restore threatened species habitat on land referred to in paragraph (a) or (b),
  - (d) the contribution of money for a purpose referred to in paragraph (a)-(c).
- (3) In determining whether to confer biodiversity certification on an EPI, the Minister is entitled to have regard to the conservation benefits that will result from the taking of action in accordance with a condition proposed to be imposed under this section (as if those benefits would result from the implementation of the EPI).
- (4) When such a condition is imposed as a condition of concurrence in respect of development, the consent authority for the development must also impose the condition on its consent for the development.

- (5) The annual report of the Department is to include an assessment of how any voluntary action taken pursuant to a condition imposed under this section has benefited or is likely to benefit the adversely affected threatened species, including details of how any land or money contributed pursuant to such a condition has benefited or is likely to benefit threatened species.

**221ZS Director-General may accredit persons to prepare assessments and surveys**

- (1) The Director-General is to institute arrangements for the accreditation of suitably qualified and experienced persons to undertake and prepare surveys and assessments for use in connection with:
  - (a) biodiversity certification of EPIs under this Division, or
  - (b) any assessment of the matters referred to in section 5A (Significant effect on threatened species, populations or ecological communities, or their habitats) of the *Environmental Planning and Assessment Act 1979*.
- (2) An applicant for accreditation must furnish the Director-General with such information as the Director-General requires to effectively determine the application and the application must be accompanied by the fee fixed by the Director-General for the consideration of the application.
- (3) An accreditation is to be for the period (not exceeding 3 years) specified by the Director-General in the instrument of accreditation, and the accreditation (or any renewal of it) may be given subject to the conditions and restrictions (if any) specified in the instrument of accreditation.
- (4) Without limiting subsection (3), an accreditation is to include conditions that require surveys and assessments to be undertaken and prepared in accordance with standards approved from time to time by the Director-General by order published in the Gazette.
- (5) The Director-General may vary conditions or restrictions (if any) attaching to an accreditation and may suspend or cancel an accreditation.

**Part 8 Administration**

**Division 1 The Minister and Director-General**

**222A Minister and Director-General to administer Act in accordance with its objects**

In the administration of this Act, the Minister and the Director-General are to give effect to the objects of this Act.

**222B Fisheries Administration Ministerial Corporation**

- (1) There is constituted by this section a corporation with the corporate name of the

Fisheries Administration Ministerial Corporation for the purpose of the Minister exercising the functions conferred under the following sections:

- (a) section 223 (Minister may acquire land),
  - (b) section 224 (Acquisition of land for purposes of a future lease grant),
  - (c) section 225 (Minister may carry out or assist research),
  - (d) section 226 (Minister may accept gifts etc).
- (2) The Fisheries Administration Ministerial Corporation has such other functions as are conferred by or under this or any other Act.
- (3) The affairs of the Fisheries Administration Ministerial Corporation are to be managed by the Minister.
- (4) Any act, matter or thing done in the name of, or on behalf of, the Fisheries Administration Ministerial Corporation by the Minister, or with the authority of the Minister, is taken to have been done by that Corporation.

### **223 Minister may acquire land**

- (1) The Minister may, for the purposes of this Act, acquire land (including an interest in land) by agreement or compulsory process in accordance with the [Land Acquisition \(Just Terms Compensation\) Act 1991](#).
- (2) The Minister may not give a proposed acquisition notice under the [Land Acquisition \(Just Terms Compensation\) Act 1991](#) in respect of public water land without the appropriate consent.
- (3) For the purposes of subsection (2), the appropriate consent is:
- (a) in relation to public water land that is within a dam or reservoir used primarily for domestic water supply or within an area designated by or under an Act as a catchment area in respect of such a dam or reservoir—the consent of:
    - (i) the authority controlling the dam or reservoir, and
    - (ii) the Ministers respectively administering the [Public Health Act 1991](#) and the [Public Works Act 1912](#), and
  - (b) in relation to public water land that is Crown land—the consent of the Minister administering the [Crown Lands Act 1989](#), and
  - (c) in relation to public water land (other than that referred to in paragraph (a)) that is vested in a public authority or in trustees for a public purpose—the consent of that authority or those trustees.

- (4) For the purposes of the *Public Works Act 1912*, any such acquisition of land is taken to be for an authorised work, and the Minister is, in relation to that authorised work, taken to be the Constructing Authority.
- (5) Sections 34, 35, 36 and 37 of the *Public Works Act 1912* do not apply in respect of works constructed under this Act.

#### **224 Acquisition of land for purposes of a future lease grant**

- (1) The Minister may also, on behalf of the Crown, acquire land (including an interest in land) for the purposes of a future lease grant by agreement or compulsory process in accordance with the *Land Acquisition (Just Terms Compensation) Act 1991*.
- (2) An acquisition for a future lease grant is an acquisition to enable the grant of an aquaculture lease.
- (3) In the case of an acquisition of public water land that is not vested in the Minister, the Minister must first obtain the appropriate consent referred to in section 223.
- (4) On the publication in the Gazette of an acquisition notice for a purpose that is described as an acquisition for a future lease grant, the land described in the notice:
  - (a) if Crown land, remains Crown land, or
  - (b) if held by trustees for public recreation or for any other public purpose, vests in the Minister but subject to the trusts on which it was held immediately before that publication.
- (5) Nothing in this section is to be taken to mean that the Minister cannot exercise functions in relation to land under this Act unless the Minister first compulsorily acquires the land concerned.
- (6) Section 223 (4) and (5) apply to an acquisition under this section.

#### **225 Minister may carry out or assist research**

The Minister may undertake research for the purposes of this Act and, in particular, may:

- (a) establish and maintain, or assist in establishing or maintaining, scientific stations at which the research may be undertaken, and
- (b) carry out, or assist in the carrying out of, investigations into any biological or other problem associated with fisheries, and
- (c) carry out, or assist in the carrying out of, investigations into aquaculture.

#### **226 Minister may accept gifts etc**

- (1) The Minister has power to acquire by gift, devise or bequest, any property for the

purposes of this Act.

- (2) The Minister may agree to the condition to which any such gift, devise or bequest is subject.
- (3) The rule of law relating to perpetuities does not apply to any condition to which the Minister has agreed under this section.
- (4) Any property acquired under this section is, to the extent to which it has not been applied in conformity with any such gift, devise or bequest, to pass to and devolve on the successors in office of the Minister.
- (5) If the Minister has agreed to the condition of any such gift, devise or bequest, that condition binds the property in the hands of any successor in office of the Minister in whom the property may be vested.

### **227 Delegation by Minister**

- (1) The Minister may delegate to the Director-General any function of the Minister under this Act, other than this power of delegation.
- (2) The Minister may also delegate to the Director-General any function of the Minister under Division 5 of Part 5 of the [Environmental Planning and Assessment Act 1979](#) (other than the function of making a determination under that Division with respect to a designated fishing activity).

### **228 Delegation by Director-General**

- (1) The Director-General may delegate to any authorised person any function of the Director-General under this Act, other than this power of delegation.
- (2) The Director-General may subdelegate to any authorised person any function delegated to the Director-General by the Minister if the Director-General is authorised to do so by the Minister.
- (3) In this section, **authorised person** means a public servant, or any person authorised by the regulations.

## **Division 1A**

### **228A-228C (Repealed)**

## **Division 2 Advisory bodies**

### **229 Ministerial advisory bodies**

- (1) The Minister may, subject to and in accordance with the regulations, establish advisory councils, including advisory councils for the commercial, recreational, research and aquacultural sectors of the fishing industry.

- (2) The members of any such advisory council are to be appointed by the Minister in accordance with the regulations.
- (3) The functions of any such advisory council are:
  - (a) to advise the Minister on any matter that is referred to it by the Minister, and
  - (b) to advise the Minister on any other matter it considers relevant to the fishing industry sector for which it is established.

### **230 Management Advisory Committees for fisheries**

- (1) The Minister may, subject to and in accordance with the regulations, establish a Management Advisory Committee for a share management fishery or restricted fishery, or any such proposed fishery.
- (2) The members of a Management Advisory Committee are to be appointed by the Minister and are to be:
  - (a) commercial fishers (or other prescribed persons) elected in accordance with the regulations by shareholders or commercial fishers, or persons who are likely to be shareholders or commercial fishers, in the fishery, and
  - (b) persons representing other interested groups determined by the Minister in accordance with the regulations, and
  - (c) a person appointed as chairperson of the Committee, being a person who is neither engaged in the administration of this Act nor engaged in commercial fishing in the fishery.
- (3) The chairperson of a Management Advisory Committee is entitled to attend and chair meetings of the Committee but is not entitled to vote at any such meeting.
- (4) The functions of a Management Advisory Committee for a fishery are:
  - (a) to advise the Minister on the preparation of any management plan, fishery management strategy or regulations for the fishery, and
  - (b) to monitor whether the objectives of the management plan, the fishery management strategy or those regulations are being attained, and
  - (c) to assist in a fishery review in connection with any new management plan, fishery management strategy or regulations, and
  - (d) to advise on any other matter relating to the fishery.

### **231 Regulations**

The regulations may make provision for or with respect to the establishment, composition,

functions and procedure of any advisory council or committee under this Division.

### **Division 3 Special fisheries trust funds**

#### **232 Definitions**

In this Division:

**recreational fishing fees** means the fishing fees paid under Division 4A of Part 2 and any other fees or payments received in connection with the administration of that Division.

**trust fund** means an account in the Special Deposits Account established by section 233.

#### **233 Establishment of trust funds**

- (1) The following accounts are established in the Special Deposits Account:
  - (a) a Recreational Fishing (Freshwater) Trust Fund,
  - (b) a Recreational Fishing (Saltwater) Trust Fund,
  - (c) a Commercial Fishing Trust Fund,
  - (c1) a Charter Fishing Trust Fund,
  - (d) a Fish Conservation Trust Fund,
  - (e) an Aquaculture Trust Fund.
- (2) Money in a trust fund is under the control of the Minister and can be expended by the Minister only for the purposes authorised by this Division.

#### **234 Recreational Fishing (Freshwater) Trust Fund**

- (1) There is to be paid into the Recreational Fishing (Freshwater) Trust Fund:
  - (a) any amount or proportion of the recreational fishing fees that is allocated to that Fund by the Minister under this section, and
  - (a1) all other payments received in connection with the administration of Part 2 (including fees and charges paid under Part 2 or the regulations made under that Part) that are not required to be paid into any other trust fund, and
  - (b) the proceeds of the sale of tags, or other identification, to be used on fish taken by recreational freshwater fishers, and
  - (c) any gift or bequest of money for the purposes of that Fund, and
  - (d) any other money appropriated by Parliament for the purposes of that Fund or required by law to be paid into that Fund.



- (2) There may be paid out of that Fund:
- (a) the costs of stocking freshwater with fish, or taking other measures, to enhance recreational fishing, and
  - (b) the costs of carrying out research into freshwater fish and their ecosystems, and
  - (c) the costs of management and administration of recreational freshwater fishing (including commission for authorised agents collecting recreational freshwater fishing fees), and
  - (d) the costs of ensuring compliance with recreational freshwater fishing regulatory controls, and
  - (e) the costs of providing third-party insurance coverage for landowners where recreational fishers use private land (or water over private land) for freshwater fishing, and
  - (f) the costs of consultative arrangements with freshwater recreational fishers.
- (3) The Minister may, from time to time, determine the amount or proportion of the recreational fishing fees to be allocated to that Fund.
- (4) The Minister is to consult a relevant advisory council on recreational fishing established under section 229 about:
- (a) the allocation of recreational fishing fees to that Fund, and
  - (b) policies and priorities for expenditure from that Fund.

### **235 Recreational Fishing (Saltwater) Trust Fund**

- (1) There is to be paid into the Recreational Fishing (Saltwater) Trust Fund:
- (a) all fees paid for the registration of fishing gear used for recreational estuarine and marine fishing, and
  - (b) the proceeds of the sale of tags, or other identification, to be used on fish taken by recreational estuarine and marine fishers, and
  - (c) all recreational fishing fees, other than any amount or proportion of those fees allocated to the Recreational Fishing (Freshwater) Trust Fund, and
  - (d) any gift or bequest of money for the purposes of that Fund, and
  - (e) any other money appropriated by Parliament for the purposes of that Fund or required by law to be paid into that Fund.
- (2) There may be paid out of that Fund:

- (a) the costs of taking measures to enhance recreational estuarine and marine fishing, and
  - (b) the costs of carrying out research into estuarine and marine fish and their ecosystems, and
  - (c) the costs of management and administration of recreational estuarine and marine fishing, and
  - (d) the costs of ensuring compliance with recreational estuarine and marine fishing regulatory controls, and
  - (e) the costs of consultative arrangements with recreational estuarine and marine fishers.
- (3) The Minister is to consult any relevant advisory council on recreational fishing established under section 229 about policies and priorities for expenditure from that Fund.

### **236 Commercial Fishing Trust Fund**

- (1) There is to be paid into the Commercial Fishing Trust Fund:
- (a) all fees paid for commercial fishing licences, fishing boat licences and the registration of fishing gear used by commercial fishers, and
  - (b) all fees and charges paid under Parts 3 and 4 and the regulations made under those Parts (other than community contributions by shareholders under section 77), and
  - (c) the proceeds of the sale of tags, or other identification, to be used on fish taken by commercial fishers, and
  - (d) fees for services provided by NSW Fisheries to commercial fishers, and
  - (e) any gift or bequest of money for the purposes of that Fund, and
  - (f) any other money appropriated by Parliament for the purposes of that Fund or required by law to be paid into that Fund.
- (2) There may be paid out of that Fund:
- (a) the costs of taking measures to enhance the effective management of commercial fishing, and
  - (b) the costs of carrying out research into commercial fishing, and
  - (c) the costs of management and administration of commercial fishing, and
  - (d) the costs of ensuring compliance with commercial fishing regulatory controls, and

(e) the costs of consultative arrangements with commercial fishers.

(3) The Minister is to consult any relevant advisory council on commercial fishing established under section 229 about policies and priorities for expenditure from that Fund.

### **236A Charter Fishing Trust Fund**

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

(a) all fees and charges paid under Part 4A and the regulations under that Part, and

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

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

(2) There may be paid out of that Fund:

(a) the costs of taking measures to enhance charter fishing, and

(b) the costs of carrying out research into charter boat fishing, and

(c) the costs of management and administration of charter fishing boat operations, and

(d) the costs of ensuring compliance with charter fishing boat regulatory controls, and

(e) the costs of consultative arrangements with owners and operators of charter fishing boats.

(3) The Minister is to consult any relevant advisory council established under section 229 about policies and priorities for expenditure from that Fund.

### **237 Fish Conservation Trust Fund**

(1) There is to be paid into the Fish Conservation Trust Fund:

(a) all fees and charges paid under Part 7 or 7A and the regulations made under those Parts, and

(b) all fees and charges for inspections and reports by NSW Fisheries relating to development proposals affecting fish habitat, and

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

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

(2) There may be paid out of that Fund:

- (a) the costs of taking measures to enhance fish habitat, and
  - (b) the costs of carrying out research into fish habitat, and
  - (c) the costs of management and administration of Part 7 or 7A and the regulations under those Parts, and
  - (d) the costs of ensuring compliance with the regulatory controls under Part 7 or 7A and the regulations under those Parts.
- (3) The Minister is to consult any relevant advisory council on conservation established under section 229 about policies and priorities for expenditure from that Fund.

### **238 Aquaculture Trust Fund**

- (1) There is to be paid into the Aquaculture Trust Fund:
- (a) all fees for aquaculture permits and all payments of rent for aquaculture leases, and
  - (b) all other fees and charges paid under Part 6 and the regulations made under that Part (except annual contributions payable into the trust funds established under section 157), and
  - (c) fees and charges for services provided by NSW Fisheries to persons engaged in aquaculture, and
  - (d) any gift or bequest of money for the purposes of that Fund, and
  - (e) any other money appropriated by Parliament for the purposes of that Fund or required by law to be paid into that Fund.
- (2) There may be paid out of that Fund:
- (a) the costs of taking measures to enhance the management of aquaculture, and
  - (b) the costs of carrying out research into aquaculture, and
  - (c) the costs of management and administration of Part 6 and the regulations under that Part, and
  - (d) the costs of ensuring compliance with the regulatory controls on aquaculture under Part 6 and the regulations under that Part, and
  - (e) the costs of consultative arrangements with persons engaged in aquaculture.
- (3) The Minister is to consult any relevant advisory council on aquaculture established under section 229 about policies and priorities for expenditure from that Fund.

### **238A General provisions relating to consultation on expenditure from trust funds**

The following provisions apply for the purposes of consultation with an advisory council that is required under this Division with respect to expenditure from a trust fund:

- (a) the Minister is to provide the advisory council with a draft expenditure budget,
- (b) the Minister is to give the advisory council at least 1 month to make any recommendations about the draft budget,
- (c) the Minister is to take any such recommendation into account before finalising the expenditure budget, and give the advisory council reasons for the rejection of any such recommendation.

### **238B Use of money in trust funds for environmental assessment and related expenses**

The costs incurred in connection with environmental assessment under Division 5 of Part 5 of the *Environmental Planning and Assessment Act 1979* in respect of a fishery (including in connection with the preparation of a fishery management strategy) may be paid or reimbursed from the trust fund that relates to the fishery.

### **238C Use of money in trust funds for species impact statements**

The costs incurred in connection with a species impact statement, prepared in relation to a Ministerial order made under Subdivision 1A of Division 6 of Part 7A in respect of a fishery, may be paid or reimbursed from a trust fund that relates to the fishery.

### **239 Report to Parliament on use of trust funds**

The annual report of the Department responsible to the Minister for the administration of this Act is to include a report on the application of money in each trust fund during the reporting year.

### **239A Investment of money in trust funds**

- (1) The Minister is to invest money in a trust fund:
  - (a) in the manner authorised by the *Public Authorities (Financial Arrangements) Act 1987*, or
  - (b) if that Act does not confer power on the Minister to invest the money—in any manner authorised for the investment of trust funds or approved by the Treasurer.
- (2) The proceeds of investment of money in a trust fund is to be paid into that fund.
- (3) Money in the trust funds may be invested as a common pool. The proceeds of investments are to be distributed rateably among the trust funds that contributed money to the common pool according to the amount contributed.
- (4) In subsection (3), **trust fund** includes the trust fund established under section 157.

### **239B Separate accounting for research**

The Minister may establish a separate account in, or separate part of, a trust fund in connection with the payment of money into or out of that fund for the purposes of research.

## **Part 9 Enforcement**

### **Division 1 Preliminary**

#### **240 Definitions**

(1) In this Part:

**boat** includes any trailer used to transport the boat.

**fisheries offence** means an offence against this Act or the regulations, and includes any such offence that there are reasonable grounds for believing has been, or is to be, committed.

**fishing authority** means any licence, permit, share certificate, certificate of registration or other authority relating to fishing activities or receiving fish issued or given under this Act.

(2) For the purposes of this Part, a thing is **connected with a fisheries offence** if it is:

- (a) a thing with respect to which the offence has been committed, or
- (b) a thing that will afford evidence of the commission of the offence, or
- (c) a thing that was used, or is intended to be used, for the purpose of committing the offence.

#### **241 Engaging in commercial fishing activities**

(1) In this Part, **commercial fishing activities** means fishing activities for commercial purposes.

(2) For the purposes of this Part, a person is presumed to be engaged in commercial fishing activities (unless the person proves the contrary):

- (a) if the person is in any waters on a licensed fishing boat, or
- (b) if the person is in possession of a quantity of fish in any particular circumstances that exceed the quantity of fish that a person who is not a commercial fisher is entitled to be in possession of in similar circumstances, or
- (c) if the person is in possession in any particular circumstances of fishing gear or other equipment (or any quantity of fishing gear or other equipment) that can be lawfully used only by a commercial fisher in any circumstances or in similar

circumstances, or

(d) in any other case provided by the regulations.

#### **242 Power of seizure**

- (1) A power conferred by this Part to search for a thing includes a power to examine or inspect the thing and, in the case of a record, a power to make a copy of the record.
- (2) A power conferred by this Part to seize a thing includes:
  - (a) a power to remove the thing from the place where it is found, and
  - (b) a power to guard the thing in or on that place or to secure the thing from interference.

#### **242A Access to information by fisheries officers**

The Roads and Traffic Authority is authorised and required to provide a fisheries officer, on request, with the following information, if available, relating to a person whom the fisheries officer has reason to believe has contravened or is contravening this Act or the regulations:

- (a) the address of the person,
- (b) details of any licences for vehicles held by the person,
- (c) details of any vehicle registered in the name of the person.

### **Division 2 Appointment of fisheries officers**

#### **243 Appointment of fisheries officers by Minister**

- (1) The Minister may appoint any of the following persons as fisheries officers for the purposes of this Act:
  - (a) a statutory officer,
  - (b) a public servant,
  - (c) a person employed by a public or local authority,
  - (d) a person belonging to a class of persons prescribed by the regulations.
- (2) The Minister may, in and by the instrument of the officer's authority under this Division, limit the functions that a fisheries officer may exercise under this Act (including limiting the purposes for which or the area in which those functions may be exercised).
- (3) A reference in this Act or in an instrument under this Act to a fisheries officer is to be

construed subject to any such limitation.

- (4) The Minister may, at any time, revoke an appointment of a fisheries officer or revoke or vary any limitation of the functions of a fisheries officer.

#### **244 Police officers to be fisheries officers**

A police officer has the functions of a fisheries officer and is taken to be such an officer for the purposes of this Act.

#### **245 Fisheries officers to have instruments of authority**

- (1) The Minister is to issue an instrument of authority to each fisheries officer (other than a police officer).
- (2) The instrument of authority must:
  - (a) state the name of the person to whom it is issued and the fact that the person is a fisheries officer under this Act, and
  - (b) contain a statement of any limitation on the person's functions.
- (3) In the case of a fisheries officer whose functions are not limited, the instrument of authority may take the form of a badge with an identifying number instead of the name of the officer.

#### **246 Production of instruments of authority**

- (1) A fisheries officer must, on demand by a person in relation to whom the officer is exercising or proposing to exercise functions under this Act, produce his or her instrument of authority for inspection by that person.
- (2) If the fisheries officer fails to produce his or her instrument of authority on demand of such a person, the person is not guilty of an offence under this Act of resisting or obstructing a fisheries officer, or failing to comply with a requirement of such an officer.
- (3) This section does not apply to a fisheries officer who is a police officer or to the exercise of a function in pursuance of a search warrant.

#### **247 Obstructing, impersonating etc fisheries officers**

- (1) A person who, without reasonable excuse, resists or obstructs a fisheries officer in the exercise of the officer's functions under this Act is guilty of an offence.
- (2) A person who assaults, abuses or threatens a fisheries officer, or who encourages another person to do so, is guilty of an offence.
- (3) A person who impersonates a fisheries officer is guilty of an offence.



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

### **Division 3 Powers of entry, search etc of fisheries officers**

#### **248 Power to board and search boats**

- (1) A fisheries officer may:
  - (a) stop and detain a boat, and
  - (b) board and search the boat for fish, fishing gear or any record relating to the fishing activities of the boat, and
  - (c) break open and search any hold or container on the boat that the officer has reason to believe contains fish, fishing gear or any such record.
- (2) A fisheries officer may require the master of a boat to assist the fisheries officer to board the boat.
- (3) A fisheries officer may require the master of a boat connected with a fisheries offence to take the boat to a specified place in New South Wales or at sea and to remain in control of the boat at that place until a fisheries officer allows the boat to leave the place.
- (4) A person who, without reasonable excuse, fails to comply with a requirement of a fisheries officer made under this section is guilty of an offence.

Maximum penalty: 50 penalty units.

#### **249 Power to require gear to be removed from water**

- (1) A fisheries officer may require the master of a boat to remove from the water any fishing gear that is being used by a person on board the boat.
- (2) A fisheries officer may require a person to remove from the water any fishing gear that is being used by the person.
- (3) A person who, without reasonable excuse, fails to comply with a requirement of a fisheries officer made under this section is guilty of an offence.

Maximum penalty: 50 penalty units.

#### **250 Power to enter and search premises**

- (1) A fisheries officer who has reason to believe that there is in any premises anything connected with a fisheries offence may:
  - (a) enter the premises, and
  - (b) search the premises for any such thing, and

- (c) break open and search any container in the premises that the officer has reason to believe contains any such thing.
- (2) A fisheries officer may enter any premises that the officer has reason to believe are commercial premises for the purpose of ascertaining whether a person has contravened or is contravening this Act or the regulations and may:
  - (a) search the premises for fish, fishing gear or records relating to fishing activities or to the receipt, possession or disposal of fish, and
  - (b) break open and search any container in the premises that the officer has reason to believe contains fish, fishing gear or any such record.
- (3) Entry into premises under this section may only be made at a reasonable time in the daytime or at any hour when work is carried on or is usually carried on in the premises.
- (4) The Director-General or a fisheries officer is to give the occupier of premises reasonable notice of an intention to enter the premises under this section unless:
  - (a) the entry is made with the consent of the occupier, or
  - (b) the entry is made to a part of the premises open to the public, or
  - (c) the entry is required urgently, or
  - (d) the giving of notice would defeat the purpose for which it is intended to exercise the power of entry.
- (5) Reasonable force may be used for the purpose of gaining entry to premises under this section but only if authorised by the Director-General or in cases of emergency. The authority of the Director-General must be in writing and given in respect of the particular entry concerned.
- (6) The Director-General is to give written notice of the use of force to enter those premises to such persons as appear to the Director-General to be appropriate in the circumstances.
- (7) In this section, **commercial premises** means any premises occupied by the holder of a fishing authority, or by a person who should be the holder of an appropriate fishing authority, or any market or premises in which fish are sold or any other premises in which any commercial activity is conducted relating to fish.

## 251 Power to detain and search vehicles

- (1) A fisheries officer who has reason to believe that there is in a vehicle anything connected with a fisheries offence may:
  - (a) stop and detain the vehicle, and

(b) enter and search the vehicle, and

(c) break open and search any container in the vehicle that the officer has reason to believe contains any such thing.

(2) A fisheries officer may require the person in control of the vehicle to take the vehicle to a specified place for the purpose of any such search if it is not reasonably practicable to carry out the search where the vehicle is stopped. A person who does not comply with any such requirement is guilty of an offence.

Maximum penalty: 50 penalty units.

### **252 Entry into waters, and along banks etc**

A fisheries officer may, at any time, enter into and pass along (with a boat or otherwise) any waters or the banks or borders of any waters or within a reasonable distance of high water mark on land adjoining any waters.

### **253 Entry into and examination of aquaculture farms**

A fisheries officer may, at any time of the day, enter any area the subject of an aquaculture permit and examine the area and the aquaculture undertaken in the area.

### **254 Entry into residential premises**

This Part does not authorise entry into any part of premises that is being used for residential purposes except with the consent of the occupier or under the authority of a search warrant.

### **255 Power to examine fishing gear or other equipment**

A fisheries officer may examine any fishing gear or other equipment that the officer finds anywhere if the officer has reason to believe that the gear or equipment is being, has been or will be used for fishing in waters to which this Act applies.

### **256 Production of records relating to commercial fishing activities and fish receivers**

(1) A fisheries officer may require a person:

(a) to produce records under the control of the person relating to:

(i) commercial fishing activities, or

(ii) the receipt, possession or disposal of fish in connection with carrying on a business, or

(iii) financial transactions of a specified person whom the officer has reason to believe is engaged in commercial fishing activities or has received, possessed or disposed of fish in the course of carrying on a business, and

- (b) if any such records are not in the English language—to produce a statement in writing in the English language setting out particulars of those records, and
- (c) to answer any question that the person is able to answer relating to:
  - (i) any such records under the person's control, or
  - (ii) any activity, business or financial transaction referred to in paragraph (a), or
  - (iii) any statement produced in accordance with paragraph (b).

(2) A fisheries officer may:

- (a) make copies of any records or statements produced in accordance with this section, and
- (b) for the purpose of making copies of those records or statements, take away and retain them for such period as may be reasonably necessary, and
- (c) if the officer has reason to believe that those records or statements are evidence of an offence against this Act or the regulations, take away and retain them until proceedings for the offence have been heard and determined.

(3) Before taking away records or statements, a fisheries officer must tender a receipt to the person from whose custody they are taken. The fisheries officer must give that person access to the documents during ordinary business hours.

(4) A person who fails to comply with a requirement of a fisheries officer made under this section is guilty of an offence.

Maximum penalty: 50 penalty units.

### **257 Power to require production of fishing authority**

- (1) A fisheries officer may require a person whom the officer has reason to believe is or has been engaged, or is about to engage, in any fishing activity to produce for inspection by the officer the appropriate fishing authority for such an activity.
- (2) A fisheries officer may seize any fishing authority that has been cancelled or otherwise ceased to have effect or that the officer has reason to believe is false.
- (3) A fisheries officer may allow a person who is required under this section to produce a fishing authority to produce the authority within a period and at a place specified by the officer. If the authority is so produced, the person is taken to have complied with the requirement.
- (4) A person who, without reasonable excuse, fails to comply with a requirement of a fisheries officer made under this section is guilty of an offence.

Maximum penalty: 25 penalty units.

- (5) In this section, ***fishing authority*** includes, in the case of any fishing activity for which a person is required to pay a recreational fishing fee, an official receipt for the fee under Division 4A of Part 2.

## **258 Power to require information**

- (1) A fisheries officer may:
- (a) require the master of a licensed fishing boat, or any boat connected with a fisheries offence, to provide information concerning the boat or its crew, and
  - (b) require a person whom the officer finds on board any such boat or in any premises or vehicle entered under this Part:
    - (i) to state the person's name and address, and
    - (ii) to provide information concerning any fish, fishing gear or fishing records found on the boat, premises or vehicle that the person is able to provide, and
  - (c) require a person whom the officer has reason to believe is engaged in commercial fishing activities or is committing, has committed or is about to commit a fisheries offence to state the person's name and address.
- (2) A person who, without reasonable excuse, fails to comply with a requirement of a fisheries officer made under this section is guilty of an offence.

Maximum penalty: 50 penalty units.

## **259 False information**

- (1) A person who, in connection with a requirement under this Part, makes any statement, provides any information or produces any document that the person knows is false or misleading in a material particular is guilty of an offence.

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

- (2) A person is not guilty of an offence against this section in respect of a document if the person informs a fisheries officer when the document is produced that it is false or misleading in a material particular.

## **260 Issue of search warrants**

- (1) A fisheries officer may apply to an authorised justice for a search warrant if the officer has reason to believe that there is or, within 72 hours, will be in or on any premises, boat or vehicle anything connected with a fisheries offence.
- (2) An authorised justice to whom an application has been made under this section may, if satisfied that there are reasonable grounds for doing so, issue a search warrant

authorising a fisheries officer named in the warrant:

(a) to enter or board the premises, boat or vehicle, and

(b) to exercise the powers, or any specified powers, of the fisheries officer under this Part.

(3) Part 3 of the *Search Warrants Act 1985* applies to a search warrant issued under this section.

(4) This section does not require a fisheries officer to obtain a search warrant in order to exercise the officer's powers under this Part.

(5) In this section, **authorised justice** has the meaning it has in the *Search Warrants Act 1985*.

### **261 Hot pursuit**

(1) A fisheries officer may exercise with respect to a person or boat at a place at sea outside the waters to which this Act applies (but not within the territorial sea of another country) a power conferred on a fisheries officer by this Part if:

(a) one or more fisheries officers (whether or not including the officer exercising the power) have pursued the person or boat from a place within those waters to the place, and

(b) the pursuit was not stopped or interrupted at any time before the officer concerned arrived at the place for the purpose of exercising the power.

(2) For the purposes of this section, a pursuit of a person or boat is taken not to have stopped or to have been interrupted only because the fisheries officer or officers concerned have temporarily lost sight of the person or boat.

(3) A reference in this section to having lost sight of a person or boat includes losing output from a radar or other sensing device.

(4) Nothing in this section limits the application of this Act as provided by section 7.

### **262 Power of arrest**

A fisheries officer may, without warrant, arrest a person whom the officer:

(a) finds committing a fisheries offence, or

(b) has reason to believe has committed a fisheries offence.

### **263 Care to be taken**

In the exercise of a function under this Part, a fisheries officer is to do as little damage as possible.

## **Division 4 Seizure**

### **264 Seizure of things (other than boats and motor vehicles) connected with fisheries offence**

A fisheries officer may seize anything (other than a boat or motor vehicle) that is found by the officer in any search under this Part and that the officer has reason to believe is connected with a fisheries offence.

### **265 Seizure of boats and motor vehicles**

- (1) A fisheries officer may seize a boat or motor vehicle that the officer has reason to believe has been used by a person engaged in commercial fishing activities for the purposes of committing a forfeiture offence.
- (2) For the purposes of this section, a **forfeiture offence** is a fisheries offence that is declared by the regulations to be a forfeiture offence.

### **266 Seizure of fishing gear and other things (other than boats, motor vehicles or fish)**

- (1) A fisheries officer may seize any fishing gear or other thing if it is:
  - (a) used by, or in the possession of, a person, or
  - (b) in or on or adjacent to any waters,contrary to this Act or the regulations.
- (2) This section does not apply to boats, motor vehicles or fish.

### **267 Seizure of fish**

- (1) A fisheries officer may seize any fish if the fisheries officer has reason to believe that the fish are taken, sold or in the possession of a person contrary to this Act or the regulations.
- (2) A container of fish (including all its contents) may be so seized if at least 10% of the fish in the container are taken, sold or in the possession of a person contrary to this Act or the regulations.

### **268 Reasonable cause for seizure a bar to action**

The State, a fisheries officer or any other person is not liable for a seizure under this Part for which there was reasonable cause.

### **269 Forfeiture of boats and motor vehicles by order of court**

- (1) A court may order forfeiture of a boat or motor vehicle that has been seized under this Part in connection with a fisheries offence if the court:

- (a) convicts a person of the offence, or
- (b) (Repealed)
- (c) makes an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* in respect of the offence.

(2) A Local Court must not order any such forfeiture if it is satisfied that the value of the boat or motor vehicle exceeds \$10,000.

**270 Return of boat or motor vehicle if relevant offence proceedings not taken**

If:

- (a) any boat or motor vehicle has been seized under this Part in connection with a fisheries offence, and
  - (b) proceedings for the offence are not commenced within 28 days after the seizure,
- the Minister must return the boat or motor vehicle to its owner.

**271 Conviction to operate as forfeiture of things (other than boats and motor vehicles)**

- (1) If a thing (other than a boat or motor vehicle) is seized under this Part in connection with a fisheries offence, any of the following operates as a forfeiture of the thing:
- (a) the conviction of a person of the offence,
  - (b) (Repealed)
  - (c) the payment under section 276 (Penalty notices) of a penalty in respect of the offence,
  - (d) the making of an order under Division 4 of Part 3 of the *Fines Act 1996* in respect of the offence,
  - (e) the making of an order under section 10 of the *Crimes (Sentencing Procedure) Act 1999* in respect of the offence.
- (2) This section does not apply to anything seized which the court concerned orders to be returned to its owner because it was merely evidence of the commission of the offence or for any other reason the court considers appropriate.

**272 Forfeiture of things (other than boats and motor vehicles) where no relevant offence proceedings taken**

- (1) This section applies to anything seized under this Part, other than a boat or motor vehicle.
- (2) If a thing has been seized under this Part, a fisheries officer must notify the owner of



the thing in writing of the seizure if the owner was not present at the seizure and the owner's business or residential address is known to or can be readily ascertained by the officer.

- (3) The notice must be given by delivering it to the owner personally or by delivering it or sending it by post to the owner's business or residential address.
- (4) An owner of a thing seized under this Part may dispute the seizure by giving the Minister notice in writing to that effect:
  - (a) not later than 28 days after notification of the seizure has been given to the owner in accordance with this section, or
  - (b) in a case where the owner is not notified of the seizure, not later than 28 days after seizure.
- (5) If:
  - (a) the owner of a thing seized under this Part does not dispute the seizure in accordance with this section, and
  - (b) no relevant proceedings have been commenced in connection with the alleged offence within 28 days after seizure,the thing is forfeited.
- (6) If:
  - (a) the owner of any thing seized under this Part disputes the seizure in accordance with this section, and
  - (b) no relevant proceedings have been commenced in connection with the alleged offence within 28 days after seizure,a fisheries officer must, unless relevant proceedings are brought, bring proceedings before a Local Court for an order that the thing be forfeited.
- (7) If proceedings are brought before a Local Court for an order that the thing be forfeited, the Local Court must:
  - (a) if satisfied that the thing seized is liable to be forfeited, order that the thing be forfeited, or
  - (b) if not so satisfied, order that the thing be returned to its owner.
- (8) In this section, **relevant proceedings** means proceedings which could result in the forfeiture of a thing under section 271 (Conviction to operate as forfeiture of things (other than boats and motor vehicles)).

### **273 Return of things seized**

- (1) If a person disputes the seizure of a thing under this Part, the Minister may allow the thing to be delivered to the person disputing the seizure, subject to the person's giving security to pay its value to the Minister should it be forfeited.
- (2) The Minister may, at any time, direct that a thing seized under this Part be returned to its owner on such conditions (if any) as the Minister thinks fit. This subsection has effect whether forfeiture has taken place or not.
- (3) A person who contravenes a condition under subsection (2) is guilty of an offence.  
Maximum penalty: 25 penalty units.
- (4) A thing seized is returned to its owner for the purposes of this Division if it is returned to the person who owns it or a person from whose possession it was seized.
- (5) If the owner of the thing or any such person has died, the thing may be returned to the legal personal representative of the owner or person.

### **274 Disposal of perishable things**

- (1) At any time after fish or any other perishable things are seized under this Part, a fisheries officer may sell them and may retain the proceeds of sale pending the result of any proceedings that may be taken for their forfeiture.
- (2) If any such fish or other perishable things cannot lawfully be sold, the fisheries officer may donate them to a hospital or other charitable institution or dispose of them in any other way.
- (3) If any such fish are live, the fisheries officer may return the fish to the water.

### **275 Forfeited things to become the property of the State**

- (1) A thing forfeited, or ordered by a court to be forfeited, under this Part (or the proceeds of sale of any such thing) becomes the property of the State.
- (2) Any such thing may (subject to the regulations) be sold or disposed of in such manner as the Minister thinks fit.

## **Division 4A Compliance audits**

### **275A Application of Division**

- (1) This Division applies to:
  - (a) fishing activities, and
  - (b) aquaculture, and

- (c) other activities regulated by Part 7.
- (2) A reference in this Division to:
  - (a) a fishing activity includes a reference to aquaculture or to any such other activity, and
  - (b) a fishing authority includes a reference to an aquaculture permit or to a permit under Part 7 to carry out any such other activity.
- (3) This Division does not apply to any fishing activity carried out, or to any document produced, before the commencement of this Division.
- (4) This Division does not affect other provisions of this Act, which provide for:
  - (a) conditions on fishing authorities, and
  - (b) functions exercisable by fisheries officers for the purpose of auditing compliance with this Act and the regulations.

#### **275B Nature of compliance audit**

A compliance audit is a periodic or particular documented evaluation of the fishing activity to which a fishing authority relates for either or both of the following purposes:

- (a) to provide information to the persons carrying out or managing the fishing activity and to the persons administering this Act on compliance with legal requirements and relevant policies under this Act relating to the fishing activity,
- (b) to enable those persons to determine whether the way the activity is carried on can be improved in order to promote the objects of this Act.

#### **275C Accreditation and regulation of compliance auditors**

The regulations may make provision for or with respect to the following:

- (a) the accreditation of compliance auditors for the purposes of this Division,
- (b) the fees payable for accreditation and the trust funds under Part 8 into which they are to be paid,
- (c) the carrying out of compliance audits by compliance auditors.

#### **275D Minister may require compliance audits by imposition of conditions on fishing authority**

The Minister may, by the imposition of conditions on a fishing authority, require a compliance audit or audits to be undertaken to the satisfaction of the Minister by either or both of the following:

- (a) by the holder of the fishing authority,

- (b) by a compliance auditor.

**275E Provisions relating to conditions for compliance audits**

- (1) A condition requiring a compliance audit may be imposed at the time the fishing authority is issued or renewed or at any other time by notice in writing to the holder of the fishing authority. Such a condition may be varied or revoked by a similar notice.
- (2) Such a condition must specify the purpose of the audit.
- (3) Such a condition may require:
  - (a) appointment of a compliance auditor to undertake the audit (either periodically or on particular occasions), and
  - (b) approval by the Minister or other person of the compliance auditor before being appointed, and
  - (c) preparation of written documentation during the course of the audit, and
  - (d) preparation of an audit report, and
  - (e) production to the Minister of the audit report.
- (4) Such a condition may specify the format and level of detail required for the audit.

**275F Certification of audit report**

The audit report for a compliance audit is taken not to have been duly produced to the Minister unless it is accompanied by:

- (a) a declaration signed by the holder of the fishing authority certifying that the holder has not knowingly provided any false or misleading information to the compliance auditor and has provided all relevant information to the auditor, and
- (b) a declaration signed by the compliance auditor:
  - (i) setting out the auditor's qualifications, and
  - (ii) certifying that the report is accurate, and that the auditor has not knowingly included any false or misleading information in it or failed to include any relevant information in it.

**275G Offences**

- (1) **False or misleading information to auditor** A person who provides information to a compliance auditor in connection with a compliance audit, knowing the information to be false or misleading in a material respect, is guilty of an offence.
- (2) **Information not provided to auditor** The holder of a fishing authority who fails to provide

information to a compliance auditor in connection with a compliance audit being carried out in relation to the fishing authority, knowing the information to be materially relevant to the audit, is guilty of an offence.

- (3) **False or misleading information in audit report** A compliance auditor who includes information in an audit report produced to the Minister in connection with a compliance audit, knowing the information to be false or misleading in a material respect, is guilty of an offence.
- (4) **Information not included in audit report** A compliance auditor who fails to provide information in an audit report produced to the Minister in connection with a compliance audit, knowing the information to be materially relevant to the audit, is guilty of an offence.
- (5) **Retention of audit documentation** The holder of a fishing authority who:
- (a) fails to retain any written documentation required to be prepared by the holder in connection with a compliance audit for a period of at least 5 years after the audit report concerned was produced to the Minister (or such other period as is prescribed by the regulations), or
  - (b) fails to produce during that period any such documentation to a fisheries officer on request,
- is guilty of an offence.

Maximum penalty: In the case of a corporation, 2,000 penalty units or, in any other case, 1,000 penalty units.

#### **275H Self-incriminatory information not exempt**

Information must be supplied by a person in connection with a compliance audit, and this Division applies to any such information that is supplied, whether or not the information might incriminate the person.

#### **275I Use of information**

- (1) Any information in an audit report or other documentation supplied to the Minister in connection with a compliance audit may be taken into consideration by the Minister and used for the purposes of this Act.
- (2) Without limiting the above, any such information is admissible in evidence in any prosecution of the holder of a fishing authority for any offence (whether under this Act or otherwise).

## Division 5 Criminal proceedings

### 276 Penalty notices

- (1) An authorised officer may serve a penalty notice on a person if it appears to the officer that the person has committed an offence against this Act or the regulations, being an offence prescribed by the regulations.
- (2) A penalty notice is a notice to the effect that, if the person served does not wish to have the matter determined by a court, the person may pay, within the time and to the person specified in the notice, the penalty prescribed by the regulations for the offence if dealt with under this section.
- (3) A penalty notice may be served personally or by post.
- (4) If the amount of the penalty prescribed for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.
- (5) Payment under this section is not an admission of liability for the purposes of, and does not affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (6) The regulations may:
  - (a) prescribe an offence for the purposes of this section by specifying the offence or by referring to the provision creating the offence, and
  - (b) prescribe the amount of penalty for an offence if dealt with under this section, and
  - (c) prescribe different amounts of penalty for different offences or classes of offences.
- (7) The amount of penalty prescribed under this section for an offence may not exceed the maximum amount of penalty which could be imposed for the offence by a court.
- (8) This section does not limit the operation of any other provision of, or made under, this or any other Act relating to proceedings which may be taken in respect of offences.
- (9) In this section, **authorised officer** means a police officer or, in relation to a particular offence, a person belonging to a class of persons specified in the regulations in relation to that offence.

### 277 Nature of proceedings for offences

- (1) Proceedings for an offence under this Act or the regulations may be dealt with:
  - (a) summarily before a Local Court, or
  - (b) summarily before the Supreme Court in its summary jurisdiction, or

(c) in the case of an offence under Part 7 or 7A or the regulations under those Parts—summarily before the Land and Environment Court.

(2) If proceedings are brought in a Local Court, the maximum monetary penalty that the Local Court may impose for the offence is, despite any other provision of this Act, \$10,000.

### **278 Time within which proceedings may be commenced**

Despite the *Criminal Procedure Act 1986* or any other Act, proceedings for an offence under this Act or the regulations may be commenced not later than 2 years after the date alleged to be the date on which the offence was committed.

### **279 Offences by corporations**

- (1) If a corporation contravenes, whether by act or omission, any provision of this Act or the regulations, each person who is a director of the corporation or who is concerned in the management of the corporation is taken to have contravened the same provision if the person knowingly authorised or permitted the contravention.
- (2) A person may be proceeded against and convicted under a provision pursuant to this section whether or not the corporation has been proceeded against or been convicted under that provision.
- (3) Nothing in this section affects any liability imposed on a corporation for an offence committed by the corporation against this Act or the regulations.

### **280 Evidence relating to fishing authorities**

In any proceedings for an offence under this Act or the regulations, a certificate signed or purporting to be signed by the Director-General, or an officer of NSW Fisheries authorised in writing by the Director-General to exercise the functions conferred by this section, and stating that:

- (a) a person named in the certificate was or was not at a specified time the holder of a fishing authority of a specified kind, or
- (b) a fishing authority held by a specified person was or was not subject to a specified condition,

is admissible and is evidence of the matters stated in the certificate.

### **281 Proof of lawful or reasonable excuse**

If any act or omission is, by this Act or the regulations, made an offence when done or omitted without lawful excuse or reasonable excuse, proof of the lawful or reasonable excuse lies on the accused.

## **Division 6 Civil enforcement**

### **282 Restraint of breaches of Act**

- (1) Any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of this Act, whether or not any right of that person has been or may be infringed by or as a consequence of that breach.
- (2) Proceedings under this section may be brought by a person on the person's own behalf or on behalf of another person (with their consent), or a body corporate or unincorporated (with the consent of its committee or other controlling or governing body), having like or common interests.
- (3) Any person on whose behalf proceedings are brought is entitled to contribute to or provide for the payment of the legal costs and expenses incurred by the person bringing the proceedings.
- (4) (Repealed)

### **282A Enforcement of environmental assessment and management planning requirements**

- (1) This section applies to:
  - (a) proceedings under section 282 of this Act or section 123 of the EPA Act, or
  - (b) judicial review proceedings or any other proceedings,to remedy or restrain a breach or apprehended breach of Part 1A or Division 5 of Part 3 of this Act or of Division 5 of Part 5 of the EPA Act.
- (2) A relevant fishing regulatory control (or proposed control) that prohibits or restricts the carrying out of fishing activities cannot, in any such proceedings, be invalidated, suspended, prevented from being made or taking effect or otherwise affected because of any such breach or apprehended breach unless:
  - (a) a reasonable period is provided by the court to enable compliance with the provision of this Act or the EPA Act concerned (including if necessary the preparation of a new fishery management strategy or a re-assessment under that Act), and
  - (b) the provision has not been complied with after the end of that period.
- (3) Words and expressions in this section have the same meaning as they have in Part 1A.

## **Division 7 Prohibition orders**

### **282B Definitions**

In this Division:



**prohibition order** means an order made under section 282C.

**repeat offender** means a person who has been convicted of no fewer than 3 fisheries offences (occurring on separate occasions) whether of the same or of a different kind.

**282C Prohibition orders may be made against repeat offenders**

- (1) A court that convicts a repeat offender of a fisheries offence may, on application by the prosecutor, make an order that prohibits the repeat offender from:
  - (a) engaging in specified commercial fishing activities, and
  - (b) being on any boat, or in any premises, of a kind specified in the order that are associated with those commercial fishing activities.
- (2) The order may be made only if the court is satisfied that the order is necessary to prevent a threat to the sustainable management of a fisheries resource and that the threat justifies the restrictions to be imposed on the repeat offender.

**282D Provisions relating to making of prohibition order**

- (1) A prohibition order may only be made within 6 months after the repeat offender is convicted of the fisheries offence giving rise to the order.
- (2) A prohibition order may be made even if the person against whom the order is made has a legal or equitable interest in any boat or premises to which the prohibition order relates, or an entitlement to use the boat or premises to carry out fishing or other activities.
- (3) A court may not make a prohibition order unless:
  - (a) it has given the repeat offender written notice of the application to make the order and of the proposed terms of the order that has been sought, and
  - (b) it has given the repeat offender a reasonable opportunity to make submissions to the court on the matter.
- (4) A prohibition order under this section takes effect:
  - (a) if the person to whom it relates is present in court when it is made, at the time it is made, or
  - (b) in any other case, when it is served on the person to whom it relates.

**282E Duration, variation and revocation of prohibition order**

- (1) A prohibition order remains in force, unless it is sooner revoked, for the period specified in the order, not exceeding 5 years.
- (2) The court that made a prohibition order may, on application of the person against

whom it was made, vary or revoke the order.

### **282F Appeal**

- (1) An appeal may be made against a prohibition order as if the order were part of the sentence for the fisheries offence giving rise to the order.
- (2) A prohibition order is suspended during any period that an appeal (or application for leave to appeal) is pending against the conviction for the fisheries offence giving rise to the order.
- (3) A prohibition order is revoked if the fisheries offence giving rise to the order is quashed.
- (4) The appeal court may vary or revoke a prohibition order even if the conviction for the fisheries offence is not quashed.

### **282G Offence of contravening order**

- (1) A person who knowingly contravenes a prohibition order made against the person is guilty of an offence.

Maximum penalty: 200 penalty units or imprisonment for 1 year, or both.

- (2) It is a sufficient defence to a prosecution under this section if the accused person establishes that he or she had a reasonable excuse for contravening the order.

## **Part 10 Miscellaneous**

### **283 Annual reporting**

- (1) The Director-General must include in the annual report of NSW Fisheries information indicating how the objects of this Act have been and are proposed to be achieved.
- (2) In particular, the information must include:
  - (a) information on the operation of Part 7A (including information required by that Part to be included in the report), and
  - (b) information required by the regulations to be included in the report.
- (3) The Director-General must also supply the information referred to in this section to the Environment Protection Authority in sufficient time for it to be included in the state of the environment reports the Authority is required to make under section 10 of the [Protection of the Environment Administration Act 1991](#).

### **284 Public consultation procedure**

- (1) This section applies to the requirement under this Act for the Minister to give the public an opportunity to make submissions on the following:

- (a) a fisheries management plan (including any amendment or new plan),
  - (b) the determination of a total allowable catch by the TAC Committee,
  - (b1) an acquisition declaration under Division 4B of Part 2,
  - (c) a commercial fisheries share management plan (including any amendment or new plan),
  - (d) an aquaculture industry development plan (including any amendment or new plan),
  - (e) a habitat protection plan (including any amendment or new plan),
  - (e1) a management plan for an aquatic reserve (including any amendment or new plan),
  - (f) a recommendation for listing, a declaration of critical habitat, a recovery plan, a threat abatement plan or a joint management agreement under Part 7A,
  - (g) a Ministerial order (but not an interim order) made under Subdivision 1A of Division 6 of Part 7A.
- (2) In order to give the public an opportunity to make submissions on any such matter, the Minister must:
- (a) exhibit the matter at the Head Office of NSW Fisheries and at its regional offices, and
  - (b) allow a period of not less than 30 days for public comment, and
  - (c) before the matter is exhibited, advertise the dates and places of exhibition and the period allowed for public comment in a newspaper circulating throughout the State and (if the matter relates to a particular area only) in a local newspaper circulating in or near that area.
- (3) A requirement under this Act to consult relevant commercial or recreational fishing industry bodies in connection with any such public opportunity to make submissions on a matter is a requirement to consult such bodies as the Minister considers have a sufficient interest in the matter.

### **285 Notes in the text**

Notes included in this Act are explanatory notes and do not form part of this Act.

### **286 Act binds Crown**

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

## **287 Native title rights and interests**

This Act does not affect the operation of the *Native Title Act 1993* of the Commonwealth or the *Native Title (New South Wales) Act 1994* in respect of the recognition of native title rights and interests within the meaning of the Commonwealth Act or in any other respect.

## **288 Service of instruments**

Any notice or other instrument issued, made or given for the purposes of this Act may be served:

- (a) by delivering it personally to the person to whom it is addressed, or
- (b) by delivering it to the place of residence or business of the person to whom it is addressed and by leaving it there with some person for him or her, or
- (c) by posting it duly stamped and addressed to the person to whom it is addressed at the place last shown in the records of the Director-General as his or her place of residence or business.

## **288A Service of documents on native title holders**

- (1) If a document is authorised or required by this Act or the regulations to be served on a person who is a native title holder in relation to an area, service of the document is taken to be effected in accordance with section 288 if the document is served on a registered native title body corporate in relation to the area.
- (2) If no approved determination of native title (within the meaning of the *Native Title Act 1993* of the Commonwealth) exists in relation to the area concerned, a document authorised or required by this Act or the regulations to be served on a person who is a native title holder who cannot be identified may be served on any such person by serving it, in a manner authorised by section 288 on:
  - (a) any representative Aboriginal/Torres Strait Islander bodies for an area that includes the area concerned, and
  - (b) any registered native title claimants in relation to the area concerned.

## **289 Regulations**

- (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) A regulation may create an offence punishable by a penalty not exceeding 100 penalty units.
- (3) The regulations may incorporate by reference, wholly or in part and with or without modification, any standards, rules, codes, specifications or methods, as in force at a

particular time or as in force from time to time, prescribed or published by an authority or body (whether or not it is a New South Wales authority or body).

## **290 Review of Act**

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.
- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report of the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## **291 Savings, transitional and other provisions**

Schedule 7 has effect.

## **292 (Repealed)**

# **Schedule 1 Share management fisheries**

(Sections 4, 42)

## **Part 1 Category 1 share management fisheries**

### **1-3 (Repealed)**

#### **4 Abalone fishery**

##### **Description of fishery**

The abalone fishery consists of abalone (*Haliotis rubra*) taken by any method from any waters.

#### **5 (Repealed)**

#### **6 Lobster fishery**

##### **Description of fishery**

The lobster fishery consists of eastern rock lobster (*Jasus verreauxi*), southern rock lobster (*Jasus edwardsii*) and tropical rock lobster (*Panulirus longipes* and *Panulirus ornatus*) taken by any method from any waters.

#### **6A Ocean trawl fishery**

##### **Description of fishery**

The ocean trawl fishery consists of the following:

- (a) the use of an otter trawl net (prawns) to take fish from any of the following waters
  - (i) inshore waters,
  - (ii) offshore waters,
  - (iii) the waters of Coffs Harbour and Jervis Bay,
- (b) the use of an otter trawl net (fish) to take fish from ocean waters that are north of a line drawn due east from Barrenjoey Headland (other than the waters in which use of an otter trawl net (fish) is prohibited under the regulations under this Act).

### **6B Ocean hauling fishery**

#### Description of fishery

- (1) The ocean hauling fishery consists of the use of a hauling net or purse seine net to take fish from any of the following waters:
  - (a) ocean waters within 3 nautical miles of the natural coast line,
  - (b) the waters of Jervis Bay,
  - (c) the waters of Coffs Harbour.
- (2) The ocean hauling fishery extends to the use of any net by the method of hauling to take fish from any of the waters referred to in subclause (1).

### **6C Ocean trap and line fishery**

#### Description of fishery

- (1) The ocean trap and line fishery consists of the following:
  - (a) the use of a fish trap to take fish from ocean waters,
  - (b) the use of a line with hooks attached to take fish from ocean waters,
  - (c) the use of a spanner crab net to take spanner crabs from ocean waters that are north of a line drawn due east from Korogoro Point (Hat Head).
- (2) In this clause, **ocean waters** does not include the waters within 3 nautical miles of:
  - (a) the high water mark on Lord Howe Island, or
  - (b) Balls Pyramid.

### **6D Estuary general fishery**

#### **Description of fishery**

The estuary general fishery consists of:

- (a) the taking of fish from estuarine waters by any lawful method other than by use of an otter trawl net (prawns), and
- (b) the taking of fish from ocean beaches by the method of hand picking.

## **6E Estuary prawn trawl fishery**

### **Description of fishery**

The estuary prawn trawl fishery consists of the use of an otter trawl net (prawns) to take fish from estuarine waters.

## **Part 2 Category 2 share management fisheries**

### **7-12 (Repealed)**

## **Part 3 Interpretation**

### **13 Definitions**

- (1) In this Schedule:

**estuarine waters** means waters ordinarily subject to tidal influence (other than ocean waters).

**inshore waters** means ocean waters that are not more than 3 nautical miles from the natural coast line.

**natural coast line**, in relation to a fishery described in this Schedule, means the natural coast line as defined in Schedule 1 to the [Fisheries Management \(General\) Regulation 1995](#), as in force at the date the description of the fishery was inserted in this Schedule.

**ocean waters** means waters east of the natural coast line.

**offshore waters** means ocean waters that are more than 3 nautical miles from the natural coast line and north of a line drawn due east from Barrenjoey Headland.

- (2) A reference in the description of a fishery to a net or a trap is a reference to a net or trap of that description that may lawfully be used by a commercial fisher to take fish from the waters to which the fishery applies, as prescribed by the regulations from time to time in force under this Act.
- (3) A reference in this Schedule to ocean waters extends to ocean waters that are managed in accordance with the law of the State under an arrangement referred to in section 135, but only while that arrangement has effect.

## Schedule 1A Designated fishing activities

(Section 7B)

### 1 Share management fisheries

Fishing activities for commercial purposes in a share management fishery specified in Schedule 1.

**Note—**

On the enactment of this Schedule, the abalone fishery and the lobster fishery were share management fisheries. On the commencement of Schedule 3 to the *Fisheries Management and Environmental Assessment Legislation Amendment Act 2000*, the ocean prawn trawl fishery, the ocean fish trawl fishery, the ocean hauling fishery, the ocean trap and line fishery, the estuary general fishery and the estuary prawn trawl fishery become share management fisheries.

### 2 Charter boat fishery

Recreational fishing activities comprising the use of charter fishing boats (within the meaning of Part 4A).

### 3 Recreational fishery

Recreational fishing activities (except in the charter boat fishery referred to in clause 2).

### 4 Fish stocking

Fishing activities comprising the stocking of waters with fish:

- (a) for which a permit of the Minister is required under section 216 of the Act, or
- (b) by the Minister.

### 5 Shark meshing

Fishing activities comprising the placing of nets by the Minister around beaches and other waters to protect the public from sharks.

## Schedule 2 Provisions relating to members and procedure of TAC Committee

(Section 27)

### 1 Definitions

In this Schedule:

**member** means a member of the TAC Committee.

**TAC Committee** means the Total Allowable Catch Setting and Review Committee constituted by Division 4 of Part 2.



## **2 Deputy members**

- (1) The Minister may, from time to time, appoint a person to be the deputy of a member, and may at any time revoke any such appointment.
- (2) In the absence of a member, the member's deputy:
  - (a) may, if available, act in the place of the member, and
  - (b) while so acting, has all the functions of the member and is to be taken to be the member.
- (3) A person while acting in the place of a member is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

## **3 Terms of office of member**

Subject to this Schedule, a member holds office for such term (not exceeding 3 years) as is specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

## **4 Allowances for member**

A member is entitled to be paid such allowances as the Minister from time to time determines in respect of the member.

## **5 Vacancy in office of member**

- (1) The office of a member becomes vacant if the member:
  - (a) dies, or
  - (b) completes a term of office and is not re-appointed, or
  - (c) resigns the office by instrument in writing addressed to the Minister, or
  - (d) is removed from office by the Minister under this clause, or
  - (e) is absent from 3 consecutive meetings of the TAC Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings, or
  - (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
  - (g) becomes a mentally incapacitated person, or

(h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove a member from office at any time.

## **6 Filling of vacancy in office of member**

(1) If the office of a member becomes vacant, a person is, subject to this Act, required to be appointed to fill the vacancy.

(2) A person is not required to be so appointed to fill a vacancy in the case of a member who was appointed under section 27 (1) (d) if there are at least 4 remaining members of the TAC Committee.

## **7 Effect of certain other Acts**

If by or under any Act provision is made:

(a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or

(b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

## **8 Disclosure of pecuniary interests**

(1) A member of the TAC Committee:

(a) who has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the TAC Committee, and

(b) whose interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the TAC Committee.

(2) A disclosure by a member of the TAC Committee at a meeting of the Committee that the member:

(a) is a member, or is in the employment, of a specified company or other body, or

(b) is a partner, or is in the employment, of a specified person, or

(c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under this clause.

- (3) Particulars of any disclosure made under this clause must be recorded by the members of the TAC Committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee determined by the members of the TAC Committee.
- (4) After a member of the TAC Committee has disclosed the nature of an interest in any matter, the member must not, unless the Minister or the other members of the TAC Committee otherwise determine:
  - (a) be present during any deliberation of the TAC Committee with respect to the matter, or
  - (b) take part in any decision of the TAC Committee with respect to the matter.
- (5) For the purposes of the making of a determination by the members of the TAC Committee under subclause (4), a member of the TAC Committee who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the other members of the TAC Committee for the purpose of making the determination, or
  - (b) take part in the making by the other members of the TAC Committee of the determination.
- (6) A contravention of this clause does not invalidate any decision of the TAC Committee.

## **9 Personal liability of members etc**

A matter or thing done by the TAC Committee, a member of the TAC Committee or any person acting under the direction of the TAC Committee does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the member or a person so acting personally to any action, liability, claim or demand.

## **10 General procedure for calling and holding meetings of the TAC Committee**

The procedure for the calling and holding of meetings of the TAC Committee is, subject to the regulations, to be determined by the TAC Committee.

## **11 Quorum**

The quorum for a meeting of the TAC Committee is a majority of its members.

## **12 Presiding member and voting rights**

- (1) The Chairperson of the TAC Committee or, in the absence of the Chairperson, another

member elected to chair the meeting by the members present is to preside at a meeting of the TAC Committee.

- (2) The person presiding at a meeting of the TAC Committee has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### 13 Voting

A decision supported by a majority of the votes cast at a meeting of the TAC Committee at which a quorum is present is the decision of the TAC Committee.

## Schedule 3 Provisions relating to members of the Share Management Fisheries Appeal Panel

(Section 83)

### 1 Definitions

In this Schedule:

**appointed member** means a member of the Panel other than the Director-General or the Director-General's nominee.

**member** means a member of the Panel.

**Panel** means a Share Management Fisheries Appeal Panel constituted by Division 9 of Part 3.

### 2 Deputy Chairperson

- (1) The Minister may, from time to time, appoint a person to be the deputy of the Chairperson of a Panel, and may at any time revoke any such appointment.
- (2) In the absence of the Chairperson, the deputy:
- (a) may, if available, act in the place of the Chairperson, and
  - (b) while so acting, has all the functions of the Chairperson and is to be taken to be the Chairperson.
- (3) A person while acting in the place of the Chairperson is entitled to be paid such allowances as the Minister may from time to time determine in respect of the person.

### 3 Terms of office of appointed member

Subject to this Schedule, an appointed member holds office for such term (not exceeding 3 years) as is specified in the instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

#### **4 Allowances for appointed member**

An appointed member is entitled to be paid such allowances as the Minister from time to time determines in respect of the member.

#### **5 Vacancy in office of appointed member**

(1) The office of an appointed member becomes vacant if the member:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is removed from office by the Minister under this clause, or
- (e) is absent from 3 consecutive meetings of the Panel of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Minister or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Minister for having been absent from those meetings, or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) becomes a mentally incapacitated person, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Minister may remove an appointed member from office for misbehaviour, incapacity or incompetence.

#### **6 Filling of vacancy in office of appointed member**

If the office of an appointed member becomes vacant, a person is, subject to this Act, required to be appointed to fill the vacancy.

#### **7 Effect of certain other Acts**

If by or under any Act provision is made:

- (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
- (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Act as a member.

## 8 Personal liability of members etc

A matter or thing done by a Panel, a member of a Panel or any person acting under the direction of a Panel does not, if the matter or thing was done in good faith for the purposes of executing this or any other Act, subject the member or a person so acting personally to any action, liability, claim or demand.

## Schedule 4 Endangered species, populations and ecological communities

(Section 220C)

### Part 1 Endangered species

#### Fish

<i>Austrocordulia leonardi</i>	Sydney Hawk dragonfly
* <i>Carcharias taurus</i> Rafinesque, 1810	grey nurse shark
<i>Craterocephalus fluviatilis</i> (McCulloch, 1913)	Murray hardyhead
* <i>Maccullochella ikei</i> Rowland	eastern freshwater cod
* <i>Maccullochella macquariensis</i> (Cuvier)	trout cod
* <i>Nannoperca oxleyana</i> Whitley	Oxleyan pygmy perch
<i>Notopala sublineata</i> (Conrad, 1850)	river snail
<i>Pristis zijsron</i> Bleeker, 1851	Green sawfish
<i>Thunnus maccoyii</i>	southern bluefin tuna

#### Marine vegetation

### Part 2 Endangered populations

#### Fish

*Ambassis agassizii* Steindachner, 1866, olive perchlet, western New South Wales population  
*Mogurnda adspersa* (Castelnau, 1878) purple spotted gudgeon, western New South Wales population

#### Marine vegetation

### Part 3 Endangered ecological communities

Aquatic ecological community in the natural drainage system of the lower Murray River catchment (as described in the recommendation of the Fisheries Scientific Committee to list the ecological

community)

Aquatic ecological community in the natural drainage system of the lowland catchment of the Darling River (described in the recommendation of the Fisheries Scientific Committee to list that aquatic ecological community, as the area covered by that recommendation)

## Part 4 Species presumed extinct

### Fish

#### Marine vegetation

*Vanvoorstia bennettiana* (Harvey) Papenfuss  
(1956)

Bennetts seaweed

## Schedule 5 Vulnerable species

(Section 220C)

### Fish

*Archaeophya adamsi* Fraser, 1959

Adams emerald dragonfly

*Bidyanus bidyanus* (Mitchell, 1838)

silver perch

*Branchinella buchananensis* Geddes, 1981

Buchanans fairy shrimp

\**Carcharodon carcharias* (Linnaeus, 1758)

great white shark

*Epinephelus daemeli* (Günther, 1876)

black cod

*Macquaria australasica* (Cuvier, 1830)

Macquarie perch

*Nannoperca australis* Günther, 1861

southern pygmy perch

#### Marine vegetation

*Nereia lophocladia* J. Agardh (1897)

marine brown alga

## Schedule 6 Key threatening processes

(Section 220C)

Degradation of native riparian vegetation along New South Wales water courses

Hook and line fishing in areas important for the survival of threatened fish species

Installation and operation of instream structures and other mechanisms that alter natural flow regimes of rivers and streams

Introduction of fish to waters within a river catchment outside their natural range

Removal of large woody debris from New South Wales rivers and streams

The current shark meshing program in New South Wales waters

## **Schedule 6A Provisions relating to members and procedure of Fisheries Scientific Committee**

(Section 221ZE)

### **1 Definition**

In this Schedule:

**member** means a member of the Fisheries Scientific Committee.

### **2 Term of office**

Subject to this Schedule, a member holds office for such period (not exceeding 3 years) as is specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

### **3 Remuneration**

A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine in respect of the member.

### **4 Vacation of office**

(1) The office of a member becomes vacant if the member:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is removed from office by the Minister under this section or by the Governor under Part 8 of the *Public Sector Management Act 1988*, or
- (e) is absent from 4 consecutive meetings of the Fisheries Scientific Committee of which reasonable notice has been given to the member personally or in the ordinary course of post, except on leave granted by the Fisheries Scientific Committee or unless, before the expiration of 4 weeks after the last of those meetings, the member is excused by the Fisheries Scientific Committee for having been absent from those meetings, or
- (f) becomes a mentally incapacitated person, or
- (g) ceases to have the qualifications required for the member's appointment.

(2) The Minister may remove a member from office.



## **5 Application of other Acts**

- (1) Part 2 of the *Public Sector Management Act 1988* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,

the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any remuneration payable to the person under this Schedule as a member.

## **6 Chairperson and Deputy Chairperson**

A Chairperson and a Deputy Chairperson of the Fisheries Scientific Committee are to be appointed by the Minister from among the members of that Committee.

## **7 Disclosure of pecuniary interests**

- (1) If:
  - (a) a member has a direct or indirect pecuniary interest in a matter being considered or about to be considered at a meeting of the Fisheries Scientific Committee, and
  - (b) the interest appears to raise a conflict with the proper performance of the member's duties in relation to the consideration of the matter,

the member must, as soon as possible after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Fisheries Scientific Committee.

- (2) A disclosure by a member at a meeting of the Fisheries Scientific Committee that the member:
  - (a) is a member, or is in the employment, of a specified company or other body, or
  - (b) is a partner, or is in the employment, of a specified person, or
  - (c) has some other specified interest relating to a specified company or other body or to a specified person,

is a sufficient disclosure of the nature of the interest in any matter relating to that company or other body or to that person which may arise after the date of the disclosure and which is required to be disclosed under subclause (1).

- (3) Particulars of any disclosure made under this clause must be recorded by the Fisheries Scientific Committee in a book kept for the purpose and that book must be open at all reasonable hours to inspection by any person on payment of the fee (if any) determined by the Fisheries Scientific Committee.
- (4) After a member has disclosed the nature of an interest in any matter, the member must not, unless the Fisheries Scientific Committee otherwise determines:
  - (a) be present during any deliberation of the Fisheries Scientific Committee with respect to the matter, or
  - (b) take part in any decision of the Fisheries Scientific Committee with respect to the matter.
- (5) For the purposes of the making of a determination by the Fisheries Scientific Committee under subclause (4), a member who has a direct or indirect pecuniary interest in a matter to which the disclosure relates must not:
  - (a) be present during any deliberation of the Fisheries Scientific Committee for the purpose of making the determination, or
  - (b) take part in the making by the Fisheries Scientific Committee of the determination.
- (6) A contravention of this clause does not invalidate any decision of the Fisheries Scientific Committee.

## **8 Procedure of Fisheries Scientific Committee**

- (1) The procedure for the calling of meetings of the Fisheries Scientific Committee and for the conduct of business at those meetings is, subject to this Act and the regulations, to be as determined by the Fisheries Scientific Committee.
- (2) The quorum for a meeting of the Fisheries Scientific Committee is 5 members.
- (3) The Chairperson of the Fisheries Scientific Committee or, in the absence of the Chairperson, the Deputy Chairperson or, in the absence of both the Chairperson and the Deputy Chairperson, another member elected to chair the meeting, is to preside at a meeting of the Fisheries Scientific Committee. The person presiding at a meeting has a deliberative vote but not a casting vote.
- (4) A decision supported by a majority of the votes cast at a meeting of the Fisheries Scientific Committee at which a quorum is present is the decision of the Fisheries Scientific Committee.
- (5) The Fisheries Scientific Committee may invite suitably qualified persons to attend meetings to advise or inform the Fisheries Scientific Committee on any matter.

## **9 Transaction of business outside meeting or by telephone or other means**

- (1) The Fisheries Scientific Committee may, if it thinks fit, transact any of its business by the circulation of papers among all the members for the time being, and a resolution in writing approved in writing by a majority of those members is taken to be a decision of the Fisheries Scientific Committee.
- (2) The Fisheries Scientific Committee may, if it thinks fit, transact any of its business at a meeting at which members (or some members) participate by telephone, closed-circuit television or other means, but only if any member who speaks on a matter before the meeting can be heard by the other members.
- (3) For the purposes of:
  - (a) the approval of a resolution under subclause (1), or
  - (b) a meeting held in accordance with subclause (2),the Chairperson and each other member have the same voting rights as they have at an ordinary meeting of the Fisheries Scientific Committee.
- (4) A resolution approved under subclause (1) is, subject to the regulations, to be recorded in the minutes of the meeting of the Fisheries Scientific Committee.
- (5) Papers may be circulated among the members for the purposes of subclause (1) by facsimile or other transmission of the information in the papers concerned.

## **10 Service of documents on Fisheries Scientific Committee**

For the purposes of this Act, a nomination for listing under this Act or any other document is made, issued or given to the Fisheries Scientific Committee if it is addressed to the Fisheries Scientific Committee and is:

- (a) lodged at the head office of NSW Fisheries, or
- (b) sent by post to the head office of NSW Fisheries, or
- (c) sent by facsimile transmission or other electronic means notified by the Fisheries Scientific Committee as being an available means of communication, or
- (d) sent by any means provided for the service of documents by another Act or law.

## Schedule 7 Savings, transitional and other provisions

(Section 291)

### Part 1 Preliminary

#### 1 Definition

In this Schedule:

**the 1935 Act** means the *Fisheries and Oyster Farms Act 1935*.

### Part 2 Regulations

#### 2 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

This Act

*Fisheries Management Amendment (Advisory Bodies) Act 1996*

*Fisheries Management Amendment Act 1997*

*Fisheries Management and Environmental Assessment Legislation Amendment Act 2000*

*Fisheries Management Amendment Act 2001*

*Threatened Species Conservation Amendment Act 2002*

*Fisheries Management Amendment Act 2004*

- (2) A provision referred to in subclause (1) may, if the regulations so provide, take effect from the date of assent to the Act concerned or from a later date.
- (3) To the extent that a provision referred to in subclause (1) takes effect from a date that is earlier than its date of publication in the Gazette, the provision does not operate:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of the person existing before the date of publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of publication.

## **Part 3 Provisions relating to fishing closures etc**

### **3 Saving of existing fishing closures under sec 18 of 1935 Act**

- (1) A notification made under section 18 of the 1935 Act and in force immediately before the repeal of that section by this Act is taken to be a notification of a fishing closure under Division 1 of Part 2 of this Act.
- (2) Any such fishing closure remains in force, subject to this Act, for the balance of the period of the notification under section 18 of the 1935 Act or for the period of 5 years from the commencement of Division 1 of Part 2 of this Act, whichever is the shorter.

### **4 Saving of existing net fishing closure under section 19 of 1935 Act (Brisbane Waters, Port Hacking etc)**

- (1) The prohibitions contained in section 19 of the 1935 Act immediately before the repeal of that section by this Act are taken to be a fishing closure under Division 1 of Part 2 of this Act in the terms set out in that section.
- (2) That fishing closure does not expire and may not be amended or revoked by a further fishing closure under Division 1 of Part 2 of this Act.
- (3) The regulations may prohibit or regulate net fishing in waters to which that fishing closure applies and, in that case, may revoke that fishing closure.

### **5 Saving of existing closures under section 21 of the 1935 Act (close seasons)**

On the repeal of section 21 of the 1935 Act, a fishing closure in the terms set out in that section is taken to have been notified under Division 1 of Part 2 of this Act. That closure expires, and may be amended or revoked, in accordance with that Division.

### **6 Saving of existing scientific permits**

A permit issued under section 15 of the 1935 Act and in force immediately before the repeal of that section is taken to be a permit issued under section 37 of this Act.

### **6A Payment of recreational freshwater fishing fee before extension to saltwater fishing**

- (1) A recreational freshwater fishing fee paid under Division 4A of Part 2 of this Act before the substitution of that Division by the *Fisheries Management and Environmental Assessment Legislation Amendment Act 2000* is taken to be a recreational fishing fee paid under that Division, as so substituted, for the balance of the period after that substitution for which the recreational freshwater fishing fee was paid.
- (2) The official receipt issued for the payment of the recreational freshwater fishing fee is taken to be an official receipt under that Division, as so substituted, for the balance of that period.

### **6AA Continuation of fishing business determinations made before commencement**

- (1) Any determination made by the Director-General in respect of a fishing business that would have been validly made under section 34Q, had that section been in force at the time that it was made, is taken to have been made under that section and, accordingly, has effect as a fishing business determination.
- (2) The Director-General is not required to comply with section 34Q (8) in respect of such a determination if notice of the determination has already been given to the person or persons who, at the time of the determination, owned the business the subject of the determination.
- (3) Any number allocated to a fishing business pursuant to such a determination is taken to have been allocated under section 34R.

## **Part 3A Provisions relating to share management fisheries**

### **6B Appeals to Share Appeal Panel**

- (1) This clause applies in respect of a restricted fishery that becomes a category 2 share management fishery as a result of the amendments made to Schedule 1 by the *Fisheries Management and Environmental Assessment Legislation Amendment Act 2000*.
- (2) Despite section 84, there is no appeal to the Share Appeal Panel in relation to any matter that was determined by the Minister before the restricted fishery became a share management fishery (such as a determination as to the catch history of a person) if the determination could have been made the subject of a review request under Division 6 of Part 8 of the *Fisheries Management (General) Regulation 1995*.
- (3) The Share Appeal Panel is to refuse to hear an appeal in relation to any such matter.

### **6C Entitlement to shares—new category 1 share management fisheries**

- (1) This clause applies in respect of the following share management fisheries, as described in Schedule 1:
  - (a) the ocean trawl fishery,
  - (b) the ocean hauling fishery,
  - (c) the ocean trap and line fishery,
  - (d) the estuary general fishery,
  - (e) the estuary prawn trawl fishery.
- (2) If the Minister is satisfied, in relation to a restricted fishery that becomes a share management fishery, that a person would have been entitled to an endorsement in

the restricted fishery (otherwise than as the nominee or employee of another person) had the person applied for an endorsement before that fishery ceased to be a restricted fishery, the person is taken, for the purposes of section 50 (4), to have been entitled to take fish for sale in the fishery immediately before it ceased to be a restricted fishery.

- (3) The allocation of shares in the share management fishery to any such person is to be made having regard to what the Minister considers the entitlements of the person would have been had the person applied for an endorsement.
- (4) This clause ceases to apply in relation to a share management fishery when one of the following occurs (whichever happens first):
  - (a) the management plan for the fishery commences,
  - (b) all appeals to the Share Appeal Panel in connection with the issue of shares in the share management fishery are disposed of,
  - (c) the period of 12 months from the commencement of this clause elapses.
- (5) In this clause:

**endorsement** means an endorsement on a commercial fishing licence that authorises a person to take fish for sale in a restricted fishery.

#### **6D Continuation of rental charge for access to new category 1 share management fisheries**

- (1) Section 77A is taken to apply in respect of each of the following share management fisheries, as described in Schedule 1, as if the fishery were a category 2 share management fishery:
  - (a) the ocean trawl fishery,
  - (b) the ocean hauling fishery,
  - (c) the ocean trap and line fishery,
  - (d) the estuary general fishery,
  - (e) the estuary prawn trawl fishery.
- (2) A shareholder in such a fishery (within the extended meaning of that expression given by section 77A (8)) is required to pay the rental charge provided for by that section on and from 27 March 2004, but only until the commencement of the management plan for the fishery.
- (3) For avoidance of doubt, a person is not required to pay a rental charge under section 77A (as applied by this clause) because the person is authorised to take fish, or to

nominate a person to take fish, in the southern region of the ocean fish trawl restricted fishery.

(4) Section 45E does not apply to a fishery to which this clause applies.

(5) This clause has effect as if it had commenced on 27 March 2004.

(6) In this clause:

***ocean fish trawl restricted fishery*** means the restricted fishery of that name declared by regulations under section 111.

***southern region*** of the ocean fish trawl restricted fishery means that part of the fishery that is comprised of the use of an otter trawl net (fish) to take fish from ocean waters that are not more than 3 nautical miles from the natural coast line and are south of a line drawn due east from Barrenjoey Headland.

**Note—**

Under section 77A a rental charge is payable for access to a category 2 share management fishery. On 27 March 2004 various category 2 share management fisheries were converted to category 1 share management fisheries. A new category 1 share management fishery called the ocean trawl fishery was also created. It is an amalgamation of the ocean prawn trawl fishery and part of the ocean fish trawl fishery. All the new category 1 fisheries are restricted fisheries in respect of which a rental charge was, before the changes, payable under section 77A. This clause continues the requirement to pay that rental charge until the commencement of the management plan for the fishery. (This clause does not apply in respect of the southern region of the ocean fish trawl restricted fishery because that part of the fishery has ceased to be a share management fishery.)

## **6E Validation**

Anything done or omitted to be done, on or after 26 March 2004, in relation to a share management fishery that would have been validly done or omitted had the amendments made to this Act by the *Fisheries Management Amendment Act 2004* been in force at the time that the thing was done or omitted, is validated.

## **Part 4 Provisions relating to commercial fishing licences, boat licences, restricted fisheries and fishing records**

### **7 Continuation of existing commercial fishing licences**

A fishing licence issued to an individual under section 24C of the 1935 Act and in force immediately before the repeal of that section by this Act is taken to be a commercial fishing licence issued to that individual under this Act.

### **8 Continuation of existing criteria for obtaining commercial fishing licences**

Until the regulations under this Act otherwise provide, a person who was eligible to be issued with a fishing licence under section 24C of the 1935 Act, immediately before the repeal of that section by this Act, is taken to be eligible to be issued with a commercial fishing licence under this Act.



## **9 Continuation of existing fishing boat licences**

A boat licence under section 23 or 24 of the 1935 Act immediately before the repeal of that section by this Act is taken to be a fishing boat licence issued under this Act.

## **10 Transitional provisions relating to existing restricted fisheries under section 22A of 1935 Act**

- (1) A fishery which was a declared restricted fishery under section 22A of the 1935 Act immediately before the repeal of that section by this Act is taken to be a restricted fishery declared under Division 3 of Part 4 of this Act until the declaration is revoked by a regulation under that Division or it otherwise ceases to be a restricted fishery in accordance with this Act.
- (2) The maximum number of restricted fishery permits fixed under that section immediately before the repeal of that section is taken to be the maximum number of commercial fishing licences that may be endorsed in respect of the restricted fishery concerned (subject to the regulations under that Division).
- (3) A restricted fishery permit issued under that section and in force immediately before the repeal of that section is taken to be an endorsement on the commercial fishing licence of the holder of the permit, conferring the same authority and subject to the same conditions as the permit.
- (4) The regulations in force under that section immediately before its repeal are taken to be regulations made under this Act. A reference in those regulations to a permit is taken to be a reference to an appropriate endorsement.
- (5) As soon as practicable after the commencement of this clause, the Minister is to issue a replacement commercial fishing licence for licences to which this clause applies.

## **11 Transitional provisions relating to other existing restricted fisheries**

- (1) This section applies to fisheries comprising prawn trawling in each of the waters in which a fishing closure continued in force under this Schedule prohibits prawn trawling except by the use of a boat whose licence contains a condition authorising its use for prawn trawling in those waters.
- (2) Each of the fisheries to which this section applies is taken to be a restricted fishery declared under Division 3 of Part 4 of this Act until the declaration is revoked by a regulation under that Division or it otherwise ceases to be a restricted fishery in accordance with this Act.
- (3) The relevant condition of a licence with respect to such a fishery is taken to be an endorsement with respect to the restricted fishery under that Division.
- (4) The number of licences so endorsed with respect to such a fishery immediately before the repeal of section 23 of the 1935 Act is taken to be the maximum number of

commercial fishing licences that may be endorsed in respect of that restricted fishery (subject to the regulations under that Division).

- (5) The Minister may extend this clause to a licence previously in force under section 23 of the 1935 Act if the licence ceased to be in force because of the loss of the boat or for other good cause.

## **12 Existing fishing records**

A record made or kept under section 40DA or 42 of the 1935 Act before the repeal of that section by this Act is taken to be a record made or kept under Division 5 of Part 4 of this Act.

## **Part 5 Provisions relating to arrangements between Commonwealth and States on fisheries management**

### **13 Existing Commonwealth and State arrangements**

An arrangement in force under Division 3 of Part 1A of the 1935 Act immediately before the repeal of that Division by this Act is taken to be an arrangement made under Division 3 of Part 5 of this Act.

### **14 Commencement of Commonwealth Act**

If Part 5 of the Commonwealth Act has not commenced before the commencement of Part 5 of this Act, a reference in Part 5 of this Act to a provision of the Commonwealth Act is to be construed as a reference to the corresponding provision of Part IVA of the *Fisheries Act 1952* of the Commonwealth.

## **Part 6 Provisions relating to aquaculture management**

### **15 Transitional—existing leases and permits**

- (1) A lease granted under section 58 or 90D of the 1935 Act (including any such renewed lease) and in force immediately before the repeal of that section by this Act is taken to be an aquaculture lease granted under Part 6 of this Act.
- (2) A permit to operate a fish farm issued under section 90C of the 1935 Act and in force immediately before the repeal of that section by this Act is taken to be an aquaculture permit issued under Part 6 of this Act.
- (3) An oyster lease that is continued in force under this clause as an aquaculture lease also constitutes (subject to the clause) an aquaculture permit issued under Part 6 of this Act in respect of the operations authorised by the lease.
- (4) As soon as practicable after the commencement of this clause, the Minister is to grant a replacement aquaculture lease and issue a replacement aquaculture permit in accordance with Part 6 of this Act for leases and permits to which this clause applies.

## **Part 7 Provisions relating to protection of aquatic habitats**

### **16 Continuation of existing aquatic reserves**

- (1) Any land that was, immediately before the commencement of Division 2 of Part 7 of this Act, an aquatic reserve under section 16A of the 1935 Act is taken to be an aquatic reserve declared under that Division.
- (2) Any such declaration is not invalid merely because the area that was declared to be an aquatic reserve comprised an area leased as an oyster farm or fish farm under the 1935 Act.

### **16A Management plans for aquatic reserves**

Section 197A, as inserted by the *Fisheries Management and Environmental Assessment Legislation Amendment Act 2000*, extends to any aquatic reserve that was declared before the commencement of that section.

### **17 Existing authorisations relating to dredging and reclamation**

Any consent issued by the Minister under Part 5B of the 1935 Act before the repeal of that Part by this Act is taken to be a permit issued by the Minister under Division 3 of Part 7 of this Act if the work to which the consent relates has not been completed before that repeal.

### **17A Preservation of regulations under section 204 (marine vegetation for which permit required for cutting etc)**

- (1) A regulation under section 204 that prescribes any marine vegetation for the purposes of Division 4 of Part 7 of the Act and that is in force immediately before the substitution of that Division by Schedule 1 to the *Fisheries Management Amendment Act 1997* is taken to be a regulation prescribing that marine vegetation for the purposes of section 205.
- (2) This clause does not prevent the regulation from being amended or repealed.

### **17AA Change to definition of "harm" in section 204**

- (1) The amendment made to section 204 (2) by the *Fisheries Management Amendment Act 2004* does not render unlawful the continuation of any activity (including a use of land) commenced before that amendment, and carried out under the authority of an approval, consent or other authority given under any law of the State, that would be lawful but for that amendment.
- (2) Without limiting subclause (1), the amendment made to section 204 (2) by the *Fisheries Management Amendment Act 2004* does not render unlawful the continuation of any other activity commenced before that amendment, that would be lawful but for the amendment, for a period of 5 years after that commencement, if the

scale of the activity is not increased.

## **Part 7A Provisions relating to conservation of threatened species**

### **17B Savings in respect of planning matters**

- (1) The amendments made to the *Environmental Planning and Assessment Act 1979* by Schedule 6 to the *Fisheries Management Amendment Act 1997* (**the relevant amendments**) do not affect:
  - (a) any development consent granted before the commencement of the relevant amendments or any development carried out in accordance with such a consent, or
  - (b) any activity to which Part 5 of the *Environmental Planning and Assessment Act 1979* applies (or any approval for the carrying out of any such activity) if the provisions of that Part were complied with for that activity before the commencement of the relevant amendments.
- (2) If an application for development consent has not been finally determined on the commencement of the relevant amendments, the relevant amendments do not apply to the determination of the application or to any development carried out in accordance with a development consent granted on the determination of the application. However, the Minister for Urban Affairs and Planning may, by notice served on the consent authority, direct that all or any specified relevant amendments apply to the determination of the application.
- (3) If, in respect of any activity to which Part 5 of the *Environmental Planning and Assessment Act 1979* applies (or any approval for carrying out any such activity):
  - (a) an environmental impact statement was duly obtained before the commencement of the relevant amendments, but the provisions of that Part had not been fully complied with before that commencement, or
  - (b) the Director-General of the Department of Urban Affairs and Planning had duly notified the person preparing an environmental impact statement before the commencement of the relevant amendments of requirements with respect to the form and contents of the statement, but the statement had not been obtained before that commencement,

then the following provisions apply:

- (c) the statement (so long as it is obtained in accordance with the provisions of that Act as in force immediately before that commencement) is taken to have been obtained in accordance with that Act, as amended by the relevant amendments,
- (d) the relevant amendments do not apply to the carrying out of the activity or any approval for the carrying out of the activity.

- (4) Subclause (3) does not apply to an activity that has not been carried out before the commencement of the relevant amendments to the extent that the Minister for Urban Affairs and Planning (by notice served on the person obtaining the statement concerned) so directs.
- (5) This clause applies to amendments made to Schedule 4, 5 or 6 to this Act (by order or otherwise) in the same way as it applies to the relevant amendments made to the *Environmental Planning and Assessment Act 1979*.

## **Part 8 Provisions relating to administration**

### **18 Abolition of CFAC, CFAC Regional Advisory Committees and RFAC**

- (1) The following bodies established under this Act are abolished on the commencement of Schedule 1 [12] to the *Fisheries Management Amendment (Advisory Bodies) Act 1996*:
  - (a) the New South Wales Commercial Fishing Advisory Council,
  - (b) each CFAC Regional Advisory Committee,
  - (c) the New South Wales Recreational Fishing Advisory Council.
- (2) A person who held office as a member of any such body immediately before its abolition ceases to hold office and is not entitled to any remuneration, or compensation, for loss of that office. However, any such person is eligible (if otherwise qualified) to be appointed as a member of an advisory body established under Part 8 of this Act.
- (3) Any assets or liabilities of any such body immediately before its abolition become the assets or liabilities of the Crown. The Minister may transfer any such assets to any representative body of the fishing industry that has assumed the functions of any such abolished body.

### **19 Continuation of Management Advisory Committees for share management fisheries**

A Management Advisory Committee in existence on the commencement of Schedule 1 [7] to the *Fisheries Management Amendment (Advisory Bodies) Act 1996* is taken to have been established under this Act, as amended by that Act. Until the membership of any such Committee is determined in accordance with this Act as so amended, the persons holding office as members of any such Committee on that commencement continue to hold office as members of the Committee.

### **19A Saving of arrangements relating to MACs consequent on amendments made by Fisheries Management and *Environmental Assessment Legislation Amendment Act 2000***

- (1) A Management Advisory Committee established for a restricted fishery that becomes a category 2 share management fishery under the amendments made to Schedule 1

by the *Fisheries Management and Environmental Assessment Legislation Amendment Act 2000* is taken to have been established for the share management fishery.

- (2) A Management Advisory Committee established by the Director under section 230 before the amendment of that section by the *Fisheries Management and Environmental Assessment Legislation Amendment Act 2000* is taken to have been established by the Minister.
- (3) The members of the Management Advisory Committee are taken to have been appointed by the Minister.
- (4) In the case of the Management Advisory Committee for the lobster fishery, the chairperson may (until 1 January 2005) be engaged in commercial fishing in that fishery (despite section 230 (2)).

### **19B Change in name of Trust Fund**

The Recreational Fishing (Saltwater) Trust Fund is a continuation of, and the same Fund as, the Recreational Fishing (Estuarine and Marine) Trust Fund.

## **Part 9 Provisions relating to enforcement**

### **20 Existing inspectors**

A person who was, immediately before the repeal of section 6 of the 1935 Act, appointed as an inspector for the purposes of the 1935 Act is taken on that repeal to have been appointed as a fisheries officer under Part 9 of this Act.

### **21 Existing seizures**

Anything seized under the 1935 Act and which has not been forfeited or returned under the 1935 Act is to continue to be dealt with under the provisions of the 1935 Act and, for that purpose, the relevant provisions of that Act continue to have effect.

## **Part 10 Miscellaneous**

### **22 References to 1935 Act**

A reference in an Act (other than this Act or the 1935 Act), in any instrument made under an Act or in any document to the *Fisheries and Oyster Farms Act 1935* is to be read:

- (a) as a reference to this Act, unless it relates to a matter that continues to be dealt with by the 1935 Act, or
- (b) if it relates to such a matter—as a reference to the 1935 Act.

### **23 General saving**

- (1) If anything done or commenced under a provision of the 1935 Act before the repeal of

that provision by this Act and still having effect or not completed immediately before that repeal could have been done or commenced under this Act if this Act had been in force when the thing was done or commenced:

- (a) the thing done continues to have effect, or
- (b) the thing commenced may be completed,

as if it had been done or commenced under this Act.

(2) This clause is subject to any express provision of this Act on the matter.

#### **24 Saving of certain orders**

An order made under section 220D before the commencement of the amendment made to that section by Schedule 1 to the [Statute Law \(Miscellaneous Provisions\) Act \(No 2\) 1999](#) is taken to have been made under the section as so amended.

#### **25 References to Director of NSW Fisheries**

In any regulation or other instrument made under this Act, a reference to the Director within the meaning of section 4 (1) (before the definition of that expression was omitted by the [Fisheries Management Amendment Act 2004](#)) is taken to be a reference to the Director-General of NSW Fisheries.

### **Schedule 8 (Repealed)**