

# **NORTHERN TERRITORY OF AUSTRALIA**

## **FISHERIES ACT**

As in force at 22 September 2004

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# NORTHERN TERRITORY OF AUSTRALIA

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As in force at 22 September 2004

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## FISHERIES ACT

**An Act to provide for the regulation, conservation and management of fisheries and fishery resources so as to maintain their sustainable utilisation, to regulate the sale and processing of fish and aquatic life, and for related purposes**

### **Part I                      Preliminary**

#### **1                      Short title**

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

#### **2                      Commencement**

This Act shall come into operation on 14 December 1988.

#### **2A                    Objects**

The objects of this Act are:

- (a) to manage the aquatic resources of the Territory in accordance with the principles of ecologically sustainable development, whether managing a single fish species or an ecosystem, to ensure the promotion of appropriate protection of fish and fish habitats;
- (b) to maintain a stewardship of aquatic resources that promotes fairness, equity and access to aquatic resources by all stakeholder groups, including:
  - (i) indigenous people;
  - (ii) commercial operators and aquaculture farmers;
  - (iii) amateur fishers; and
  - (iv) others with an interest in the aquatic resources of the Territory; and

- (c) by means of a flexible approach to the management of aquatic resources and their habitats, to promote the optimum utilisation of aquatic resources to the benefit of the community.

### 3 Repeals

The Acts listed in Schedule 1 are repealed.

### 4 Interpretation

- (1) In this Act, unless the contrary intention appears:

***amateur fishing*** means fishing for fish or aquatic life otherwise than for sale.

***approved*** means approved by the Director.

***aquaculture*** includes the farming, culturing, or breeding of fish or aquatic life for the purposes of trade, business, or research.

***aquatic life*** means any species of plant or animal life (except species of birds) which, at any time of the life history of the species, must inhabit water, and includes the plant or animal at any stage of its life history, and also includes any part of such plant or animal, but does not include fish, or aquatic life declared by the Minister by notice in the *Gazette* to be aquatic life to which this Act does not apply.

***arrangement*** means an arrangement made under Part VI by the Territory with the Commonwealth whether or not it is also made with a State.

***assistant***, in relation to a licence or permit, means a person notified by the licensee or permit holder in writing to the Director as an assistant in relation to the licence or permit, other than a person whom the Director has been notified by the licensee or permit holder is no longer an assistant.

***Australian fishing zone*** means the Australian fishing zone as defined by the Commonwealth Act.

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

***Commonwealth Act*** means the *Fisheries Management Act 1991* of the Commonwealth or any Act in substitution for that Act.

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

**corporation** has the same meaning as in the Corporations Act 2001.

**Crown lands** has the same meaning as in the *Crown Lands Act*.

**Director** means the Director of Fisheries appointed under section 5, and includes a person who is acting in or performing the duties of the office of Director of Fisheries.

**ecologically sustainable development** means using, conserving and enhancing the community's resources so that ecological processes, on which life depends, are maintained and the total quality of life, now and in the future, can be increased.

**electric fishing device** means a device, engine, or machine designed or used for the taking or killing by means of electric current of any species of fish or aquatic life or for the production of electronarcosis of any species of fish or aquatic life.

**fish** means any species or class of fish including crustaceans, echinoderms, and molluscs, and includes an aquatic animal (except a species of bird) declared by the Minister by notice in the *Gazette* to be a fish for the purposes of this Act, and also includes:

- (a) an egg, fry, spat, or larva of a fish;
- (b) the dead body, or a part of the dead body, of a fish; and
- (c) the shell or exoskeleton, or a part of the shell or exoskeleton, of a crustacean, echinoderm, or mollusc.

**Fisheries Officer** means a person appointed or declared to be a Fisheries Officer under section 7.

**fishery** means one or more stocks or parts of stocks or one or more species, habitats, or locations of fish or aquatic life that can be treated as a unit for the purposes of conservation or management, and includes a fishery referred to by the identifiers specified in subsection (2).

**fishery management area** or **management area** means an area so declared pursuant to section 22.

**fishery management plan** or **management plan** means a management plan under Part III for a fishery.

***fishing*** means the catching, taking, or harvesting of fish or aquatic life and includes any other activity which may reasonably be expected to result in the catching, taking, or harvesting of fish or aquatic life and also includes any action taken in support of or in preparation for an activity specified in this definition.

***foreign boat*** means a vessel that is not an Australian boat within the meaning of the Commonwealth Act.

***indigenous*** does not include the progeny of an introduced species.

***Joint Authority*** means a Joint Authority in existence for the purposes of Part 5 of the Commonwealth Act that includes the Minister as a member.

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

***landed*** means:

- (a) if the fish have been taken without the use of a vessel – taken; and
- (b) if the fish have been taken with the use of a vessel – put ashore at or trans-shipped at a wharf, jetty, pontoon or place, as may be prescribed or as may be specified in a management plan.

***licence*** means an approved licence currently in force granted under this Act or, as the context requires, a licence document issued as a consequence of the grant of a licence.

***licensee*** means the holder of a licence and includes a person who holds a permit.

***licensee's record book*** means a record of information required by the Director to be kept by a licensee under section 34.

***managed fishery*** means a fishery declared to be a managed fishery under section 22.

***nominated person***, in relation to a licence or permit, means a person nominated and approved under section 14(1), (2) or (3) in respect of the licence or permit.

***noxious aquatic life*** means aquatic life that is declared by the Regulations to be noxious aquatic life.



***noxious fish*** means a fish that is declared by the Regulations to be a noxious fish.

***operative management plan*** means a fisheries management plan that has taken effect pursuant to section 49(1).

***owner***, in relation to a vessel, vehicle, gear, or equipment, means a person who has a right to the possession of that vessel, vehicle, gear, or equipment, whether or not that right is subject to the right of another person, but a person shall not be held to be the owner of a vessel, vehicle, gear, or equipment by reason only that the person was in command or charge of it.

***permit*** means an approved permit currently in force granted under this Act.

***person*** includes a partnership.

***plant***, in relation to aquatic life, includes seaweeds, sea-grasses, and algae.

***possession*** means possession of or control over any fish or aquatic life or possession of or control over a vessel, vehicle or other conveyance, fishing gear, container, package, thing, or place in or on which the fish or aquatic life is found, and includes joint possession or control.

***prescribed decision*** means a decision of the Director under a prescribed provision of the Regulations or a fishery management plan.

***processing*** includes cutting, shelling, and the use of all methods of manufacture and preservation.

***registered***, in relation to the registration of vessels, means registered under this Act.

***sale*** includes every method of disposition for valuable consideration, including barter, and includes the disposition to an agent for sale on consignment, and also includes offering or attempting to sell, or receiving or having in possession for sale, or exposing for sale, or sending or delivering for sale, or causing or permitting to be sold, offered, or exposed for sale, and also includes disposal by way of raffle, lottery, or other game of chance.

***short term operator***, in relation to a licence, means a person appointed under section 14A(2) in respect of the licence.

***State*** means a State of the Commonwealth.

**taking** means fishing.

**temporary transferee**, in relation to a licence, means a person permitted under an approved temporary transfer agreement under section 12A to use the licence.

**Territory of the Commonwealth** means a Territory of the Commonwealth within the meaning of the *Acts Interpretation Act 1901* of the Commonwealth.

**trans-ship at sea** does not include:

- (a) trans-ship at a wharf, jetty, pontoon or prescribed place; or
- (b) trans-ship from a tender boat to the boat to which it is a tender boat.

**UTM position** means a position determined by using Universal Transverse Mercator (UTM) grid co-ordinates, which are grid co-ordinates determined by projecting global sections onto a flat surface to measure the position of specific zones or areas.

**vessel** includes every description of craft, vessel, hovercraft, aircraft, or other thing, of whatever size, that is capable of being used in fishing.

- (2) Without limiting the matters by reference to which a fishery (including a fishery subject to an arrangement) may be identified, those matters may include:
  - (a) a description of fish or aquatic life by reference to sex, size, age, or another characteristic;
  - (b) an area of waters or seabed;
  - (c) a method of fishing;
  - (d) a kind or class of vessel;
  - (e) a class of persons; or
  - (f) a purpose of activities,or all or a combination of those matters.
- (3) In this Act, the expression **against this Act** in relation to an offence, includes an offence against the Regulations, a management plan, or other instrument of a legislative or administrative character made under this Act.

## **Part II                      Administration**

### **Division 1                General administration**

#### **5                      Director of Fisheries**

- (1) The Minister may appoint a person to be the Director of Fisheries.
- (2) The Minister shall cause notice of an appointment made under subsection (1) to be published in the *Gazette*.
- (3) Subject to the directions of the Minister, the Director is responsible for the general administration of this Act.

#### **6                      Delegation**

- (1) The Minister or, as the case may be, Director may, by instrument in writing, delegate to a person any of the Minister's or, as the case may be, Director's powers and functions under this Act, other than:
  - (a) in the case of the Minister, the powers under sections 26, 28, and 29, and this power of delegation; and
  - (b) in the case of the Director, this power of delegation.
- (2) A power or function delegated under this section, when exercised or performed by the delegate, shall, for the purposes of this Act, be deemed to have been exercised or performed by the Minister or, as the case may be, Director.
- (3) A delegation under this section does not prevent the exercise of a power or the performance of a function by the Minister or, as the case may be, Director.

#### **7                      Fisheries Officers**

- (1) The Minister may appoint such persons as the Minister thinks fit to be Fisheries Officers.
- (2) The Director is a Fisheries Officer.
- (3) Every member of the Police Force of the Northern Territory is deemed to be a Fisheries Officer.
- (4) A Fisheries Officer who is carrying out functions and duties under this Act has, in addition to the other powers conferred on a Fisheries Officer under this Act, all the powers and protection of a member of the Police Force with the rank of constable.

- (5) A reference in any law in force in the Territory to a member of the Police Force with the rank of constable, or a reference that includes such a reference, includes a reference to a Fisheries Officer acting in the execution of the Officer's duty.

## **8            Identity cards**

- (1) The Director shall issue to each Fisheries Officer appointed under section 7(1) an identity card containing a photograph and the signature of the Fisheries Officer, verified by the signature of the Director.
- (2) On the termination of an appointment under section 7(1), the person whose appointment has been terminated shall surrender the person's identity card to the Director.

## **9            Registers**

- (1) The Director shall maintain or cause to be maintained a register or registers which shall contain particulars of licensees and permittees and of the grant, renewal, variation of a pro-vision, transfer (in whole or part), expiry, suspension, or cancellation of rights, licences, registrations, permits, quotas, or other authorities required or granted under this Act and any interests held in a licence, permit or vessel.
- (2) A person may, on payment of the prescribed fee, if any, examine or obtain a copy of so much of a register kept under subsection (1) as contains the following information:
- (a) the names, addresses, telephone numbers and facsimile numbers of:
- (i) licensees and permittees;
  - (ii) temporary transferees;
  - (iii) nominated persons or short term operators;
  - (iv) persons who hold an interest in a licence or a permit or a vessel registered under this Act;
- (b) the type of licence or permit:
- (i) held by a person;
  - (ii) in respect of which a person is a temporary transferee;
  - (iii) in respect of which a person is a nominated person or a short-term operator;

- (iv) in relation to which an interest exists;
- (c) the name of each registered vessel and the names, addresses, telephone numbers and facsimile numbers of owners of registered vessels or other persons who hold interests in registered vessels;
- (d) other information prescribed by the Director by notice in the *Gazette*.

#### **9A                      Registration of third party interests**

- (1) A person who holds an interest in a licence as security for the payment or repayment of money (a ***third party interest***) may, in the approved form, request the Director to enter on a register maintained under section 9(1) particulars of the third party interest.
- (2) Within 28 days after receiving a request in accordance with subsection (1), the Director must in writing:
  - (a) acknowledge receipt of the request; and
  - (b) notify the licensee that the request has been received and that the licensee has 28 days from the date of the notice within which to lodge in writing with the Director an objection to the registration of the third party interest.
- (3) If the Director receives an objection in accordance with subsection (2)(b), the Director must not register the third party interest unless the objection is subsequently withdrawn in writing by the licensee.
- (4) If the Director:
  - (a) does not receive an objection in accordance with subsection (2)(b); or
  - (b) receives an objection in accordance with subsection (2)(b) that is subsequently withdrawn in accordance with subsection (3),the Director must register the third party interest.
- (5) Once the Director receives a request for registration of a third party interest in accordance with subsection (1), the Director must not approve the permanent transfer of the licence under section 12B or a temporary transfer agreement in relation to the licence under section 12A until the Director has registered or refused to register the third party interest, irrespective of whether the application for approval was received before or after the request for registration was received.

- (6) The Director must remove from a register maintained under section 9(1) particulars of a third party interest:
- (a) if requested to do so in writing by the person who holds the third party interest; or
  - (b) if requested to do so in writing by the licensee in whose licence the third party interest is held and the person who holds the third party interest has consented in writing to the removal.

## **Division 2                Licensing**

### **10                Taking, &c., fish, &c., without licence**

- (1) Subject to this Act or to an instrument of a legislative or administrative character made under it, a person shall not:
- (a) take any fish or aquatic life;
  - (b) farm, breed, culture, or keep live fish or aquatic life for sale or the purposes of aquaculture (whether they are sold or used live or dead) or for the purpose of exhibiting any of them for profit;
  - (c) take live aquatic life, live fish, or any live eggs, fry, spat, or larva of fish, for the purpose of aquaculture or another purpose referred to in paragraph (b);
  - (d) sell live aquatic life, live fish, or any live eggs, fry, spat, or larva of fish;
  - (da) process for sale or sell aquatic life or fish, or eggs, fry, spat or larva of aquatic life or fish; or
  - (e) take any other action where the action is prescribed as being able to be taken only by the holder of a licence,

unless the person does so under and in accordance with a licence.

Penalty:                In relation to paragraph (a), (b), or (c) – \$20,000 or imprisonment for 2 years.

                              In relation to paragraph (d) or (e) – \$10,000 or imprisonment for 1 year.

- (2) Nothing in this section shall apply to the taking of fish or aquatic life by a person for subsistence or personal use only (and not for the purposes of sale), within such limits (if any) relating to numbers, quantity, size, weight, methods, types and amounts of fishing gear,

and periods of time (including closed and open seasons), as may be prescribed for any such fish or aquatic life.

## **11            Licences**

- (1) Subject to this Act, every person who proposes to do any thing specified in section 10(1) shall apply to the Director for an appropriate licence.
- (2) An application for a licence under this section shall be made on an approved form and shall be accompanied by the prescribed fee (if any).
- (3) An approved form under subsection (2) shall, at the least, make provision for the applicant's name and an address for service.
- (3A) The Director must determine an open and public process for:
  - (a) the allocation of licences for a new fishery; and
  - (b) if an existing fishery is expanded – the allocation of additional licences, and the review of the conditions attaching to existing licences, for the fishery.
- (4) In considering an application under this section:
  - (a) the Director's primary regard must be for the sustainability of the fishery; and
  - (b) the Director must also have regard to any requirements or matters prescribed in the Regulations as being relevant to an application or a nominated person, or both, as the case may be, for the type of licence applied for.
- (5) Where an applicant already holds a licence in respect of a fishery or other prescribed matter, any further grant of a licence or licences during the term of that licence may be made by noting the grant on the original licence form.
- (6) Where the Director is satisfied that, in relation to the application, the applicant complies with this Act or an instrument of a legislative or administrative character made under it and the applicant is not otherwise barred from holding a licence, the Director shall grant the appropriate licence.
- (7) Subject to subsection (8), a licence under this section may be granted for a period of not more than 5 financial years on payment of the prescribed fee (if any) for each financial year of the licence and shall be subject to such conditions relating to areas, species, quantities, methods, the use or non-use of vessels and the specific

vessel or types of vessels (if any) that may be used, types and amounts of fishing gear, harvesting, handling, specific ports or places where fish or aquatic life may be landed, and periods of time as the Director, if those matters are not otherwise prescribed, considers appropriate.

- (7A) Where a licence is granted after the commencement of a financial year, the remaining part of the financial year shall be taken as a full financial year for the purposes of this section.
- (8) A licence relating to aquaculture may be granted for such period as the Director thinks fit, including a period related to the term of a lease, and shall be subject to such conditions as the Director considers appropriate or as may otherwise be prescribed.
- (9) The fee payable in respect of a licence granted for more than one financial year may be paid in annual instalments, each instalment being paid before the licence, if it were granted for one year, would expire.
- (10) The Director may from time to time, by written notice to a licence holder, amend or revoke the conditions of the licence or add new conditions.
- (11) The conditions referred to in this section shall be substantially the same for all licences for any fishery management area or Joint Authority fishery or in respect of the same class or species of fish or aquatic life unless the Director is satisfied, on stated grounds, that different conditions are reasonable.
- (12) The Director may, if the Director considers it expedient to do so, require a licensee to return the licence document and the Director shall issue a substitute containing any new conditions in its place.
- (15) Where a licence is cancelled, the registration of a vessel used pursuant to that licence is also cancelled but the Director shall re-register the vessel if the cancellation of the licence is revoked.
- (16) Nothing in subsection (15) shall prevent a vessel being registered in relation to a licence held by a licensee who is not the licensee whose licence is cancelled or is not a partnership or company in which that licensee is a partner or has an interest.

#### **11A        Review by Director**

- (1) If a decision under section 11, 12A, 12B, 14 or 14A or a prescribed decision is made by a person acting under the delegated authority of the Director, the applicant for the licence or permit or the licensee or permittee, as the case may be, is entitled to have the decision reviewed by the Director or by a person designated by the Director



who was not involved in the making of the original decision.

- (2) An application for a review under subsection (1) is to be made by the applicant or the licensee or permittee, as the case may be, to the Director within 28 days after the day on which notice of the original decision relating to the application, the licence or the permit was served on the applicant.
- (3) Where an application for review has been made the Director or the person designated by the Director under subsection (1) may confirm the decision of the Director's delegate or substitute his or her decision for that of the delegate.

## **12                      Expiry and renewals**

- (1) Subject to this Act or the Regulations or a relevant management plan, a licence under this Act expires with 30 June or such other day as may be prescribed or as may be specified in the licence:
  - (a) in the financial year in respect of which it was granted or, if granted for more than 1 financial year, in the last financial year in respect of which it was granted; or
  - (b) in the case of a licence granted for more than 1 financial year and in respect of which the fees are paid by annual instalments, in the financial year in which an instalment for a succeeding financial year is not paid before the commencement of that succeeding financial year,but may be renewed.
- (2) Notwithstanding subsection (1), the Director may receive and process an application for the renewal of a licence at any time before the expiration of the period of 6 months after the licence has expired and:
  - (a) for that purpose;
  - (b) for the purposes of preventing the applicant from committing an offence by being in possession of any proscribed fishing gear without a licence; and
  - (c) for the calculation of any fees payable,

only, but not for the purpose of operating the licence, the licence shall be deemed not to have expired until the expiration of that period of 6 months.

- (4) If the Director is satisfied, on considering an application for the renewal of a licence, that:
- (a) the applicant has a commitment to the fishery in respect of which the applicant is licensed and to the fishing industry generally;
  - (c) the conditions of the licence have been complied with; and
  - (d) nothing in an instrument of a legislative or administrative character made under this Act prevents it,

the Director shall renew the licence on payment of the prescribed fee (if any).

- (4A) The Director may, on the application of a licensee, renew an approval given under section 12A if the Director is satisfied that the person with whom the licensee has entered into the agreement would, if the person was an applicant for the purposes of subsection (4), be entitled to renewal of the licence.
- (5) Every renewal of a licence shall be granted on the same terms and conditions as apply to the original licence, unless the terms and conditions have been or are amended pursuant to section 11.

## **12A        Temporary transfer of licence**

- (1) Subject to the Regulations, a fishery management plan made in respect of the fishery for which a licence has been granted, or a condition of the licence, a licensee may, with the approval of the Director, by agreement in writing (**a temporary transfer agreement**), permit another person to use the licence as if that other person were the licensee.
- (2) A licensee may apply on the approved form to the Director for the Director's approval to enter into a temporary transfer agreement.
- (3) An application under subsection (2) shall be accompanied by the prescribed fee and by such information, if any, as the Director requires, including the proposed period of the temporary transfer agreement.
- (4) The Director may, in the Director's absolute discretion, approve or refuse to approve the proposed agreement.
- (5) If the Director approves a temporary transfer agreement, the Director shall signify the approval by endorsing the agreement to that effect.

- (6) A temporary transfer agreement expires at such date, if any, specified in the agreement or at the end of the financial year in which it was entered into, whichever is the sooner.
- (7) A licensee shall not, except in pursuance of an approval under this section or as permitted by or under this Act or the terms of the licence, purport to permit, or enter into an agreement purporting to permit, another person to use the licensee's licence.  
  
Penalty:        \$20,000.
- (8) A temporary transfer agreement is void unless it is approved by the Director.
- (9) Subject to subsection (9A), a temporary transferee is, in relation to the licence to which the temporary transfer agreement relates, during the period of the transfer, deemed to be a holder of the licence for the purposes of this Act and each instrument of an administrative or legislative character made under it.
- (9A) The Director may, by notice in the *Gazette*, specify that a temporary transferee is not deemed to be the holder of a licence for the purposes of a provision of this Act or of an instrument of an administrative or legislative character made under this Act.
- (10) The Director may, on application by either party to a temporary transfer agreement approved under this section, revoke the approval of the transfer.

## **12B        Permanent transfer of licence**

- (1) Subject to this section, the Regulations or a fishery management plan made in respect of the fishery for which a licence has been granted or a condition of the licence, a licence may be permanently transferred by a licensee to another person and where a licence is so transferred, the person from whom it is transferred ceases to be the licensee in respect of the licence and the person to whom it is transferred becomes the licensee in respect of the licence for the purposes of this Act.
- (2) A licensee may apply on the approved form accompanied by the prescribed fee to the Director for approval to transfer the licence.
- (3) The Director may, in the Director's absolute discretion, approve or refuse to approve an application under this section.

### **13                      Activities under licence or permit to be supervised**

- (1) In this section, ***specified person*** means the following persons:
- (a) the holder of a licence or permit;
  - (b) a temporary transferee, nominated person or short term operator.
- (2) The Minister, as soon as practicable after the commencement of section 11 of the *Fisheries Amendment Act 1997*, must, by notice in the *Gazette*, direct that a specified person:
- (a) must be within a specified distance of;
  - (b) must, within the period specified in the notice, check gear used in; or
  - (c) must exercise such control as is specified in the notice in relation to,
- operations in respect of a licence or permit.

### **13A                    Licensee to exercise direct control**

- (1) A licensee or permit holder must not fail to exercise direct control over operations in respect of the licence or permit.
- Penalty:
- (a) in a case to which subsection (2)(a) or (b) applies – \$20,000;
  - (b) in a case to which subsection (2)(c) applies – \$5,000.
- (2) A licensee or permit holder only contravenes subsection (1):
- (a) where there is in force a notice under section 13 that relates to the licence or permit, if he or she contravenes or fails to comply with the notice;
  - (b) where no notice under section 13 relating to the licence or permit is in force, if he or she is not in the vicinity of operations in respect of the licence or permit; or
  - (c) if an assistant, short term operator, nominated person or temporary transferee commits an offence against this Act during the conduct of operations in respect of the licence or permit.

- (3) In this section, a reference to a licensee or permit holder does not include a person deemed under section 12A, 14 or 14A to be a licensee or permit holder.
- (4) Subsection (2)(b) does not apply in relation to a licensee or permit holder if, at the time he or she was not in the vicinity of the operations, a short term operator, nominated person or temporary transferee in relation to the licence or permit was in the vicinity of the operations.
- (5) Where an assistant, short term operator, nominated person or temporary transferee commits a primary offence, the licensee or permit holder may be found guilty of an offence against subsection (1) on the ground that:
  - (a) the act alleged to constitute an element of the offence is the committal of the primary offence by the assistant, short term operator, nominated person or temporary transferee; or
  - (b) the act alleged to constitute an element of the offence is the committal of an offence by another person an element of which is the committal of the primary offence by the assistant, short term operator, nominated person or temporary transferee,but may not be found guilty of more than one offence against subsection (1) in respect of the same primary offence.
- (6) In this section, **primary offence** means an offence against this Act committed during the conduct of operations in respect of a licence or permit, other than an offence an element of which is the committal of an offence against this Act by another person.

### **13B        Temporary transferee to exercise direct control**

- (1) A temporary transferee must not fail to exercise direct control over operations in respect of the licence.

Penalty:

  - (a) in a case to which subsection (2)(a) or (b) applies – \$20,000;
  - (b) in a case to which subsection (2)(c) applies – \$5,000.
- (2) A temporary transferee only contravenes subsection (1):
  - (a) where there is in force a notice under section 13 that relates to the licence, if he or she contravenes or fails to comply with the notice;

- (b) where no notice under section 13 relating to the licence is in force, if he or she is not in the vicinity of operations in respect of the licence; or
  - (c) if an assistant, short term operator or nominated person commits an offence against this Act during the conduct of operations in respect of the licence.
- (3) Subsection (2)(b) does not apply in relation to a temporary transferee if, at the time he or she was not in the vicinity of the operations, a short term operator or nominated person in relation to the licence was in the vicinity of the operations.
- (4) Where an assistant, short term operator or nominated person commits a primary offence, the temporary transferee may be found guilty of an offence against subsection (1) on the ground that:
  - (a) the act alleged to constitute an element of the offence is the committal of the primary offence by the assistant, short term operator or nominated person; or
  - (b) the act alleged to constitute an element of the offence is the committal of an offence by another person an element of which is the committal of the primary offence by the assistant, short term operator or nominated person,but may not be found guilty of more than one offence against subsection (1) in respect of the same primary offence.
- (5) In this section, **primary offence** means an offence against this Act committed during the conduct of operations in respect of a licence, other than an offence an element of which is the committal of an offence against this Act by another person.

### **13C        Nominated person to exercise direct control**

- (1) A nominated person must not fail to exercise direct control over operations in respect of the licence or permit.

Penalty:

- (a) in a case to which subsection (2)(a) or (b) applies – \$20,000;
- (b) in a case to which subsection (2)(c) applies – \$5,000.

- (2) A person only contravenes subsection (1):
- (a) where there is in force a notice under section 13 that relates to the licence or permit, if:
    - (i) he or she contravenes or fails to comply with the notice; and
    - (ii) the contravention or failure occurs in relation to a place, area or operations in relation to which he or she is the nominated person;
  - (b) where no notice under section 13 relating to the licence or permit is in force, if he or she is not in the vicinity of operations:
    - (i) in the place or area; or
    - (ii) that are the type of operations,in relation to which he or she is the nominated person;
  - (c) if an assistant commits an offence against this Act in a place or area, or during the conduct of operations, in relation to which the person is the nominated person; or
  - (d) if the short term operator commits an offence against this Act in a place or area, or during the conduct of operations, in relation to which the person is the nominated person.
- (3) Subsection (2)(a), (b) and (c) do not apply in relation to a nominated person if, at the time the offence is alleged to have been committed, there is a short term operator in relation to:
- (a) the licence; and
  - (b) the place, area or operations, as the case may be.

**13D        Short term operator to exercise direct control**

- (1) A short term operator must not fail to exercise direct control over operations in respect of the licence.

Penalty:

- (a) in a case to which subsection (2)(a) or (b) applies – \$20,000;
- (b) in a case to which subsection (2)(c) applies – \$5,000.

- (2) A person only contravenes subsection (1):
- (a) where there is in force a notice under section 13 that relates to the licence, if:
    - (i) he or she contravenes or fails to comply with the notice; and
    - (ii) the contravention or failure occurs in relation to a place, area or operations in relation to which he or she is the short term operator;
  - (b) where no notice under section 13 relating to the licence is in force, if he or she is not in the vicinity of operations:
    - (i) in the place or area; or
    - (ii) that are the type of operations,  
  
in relation to which he or she is the short term operator; or
  - (c) if an assistant commits an offence against this Act in a place or area, or during the conduct of operations, in relation to which the person is the short term operator.

**13E                      Defence, &c., in relation to direct control offences**

- (1) It is a defence to a prosecution for an offence against section 13A, 13B, 13C or 13D, where the act alleged to constitute an element of the offence is the commission of an offence by another person, if the defendant establishes that he or she took all reasonable precautions to prevent the other person from committing the offence.
- (2) For the purposes of sections 13A, 13B, 13C and 13D, evidence that an assistant, nominated person, short term operator, temporary transferee, licensee or permit holder:
  - (a) was on a vessel while operations relating to the taking of fish or aquatic life, or in respect of an action that may only be taken under a licence or permit, were being conducted in relation to the licence or permit; or
  - (b) was using, or was in possession of, at a place, gear or equipment that apparently could not conveniently have been transported to the place without the assistance of the licensee or permit holder or a person acting on behalf of the licensee or permit holder,



is evidence that the assistant, nominated person, short term operator, temporary transferee, licensee or permit holder was at that time conducting operations in relation to the licence or permit.

#### **14                      Nominated persons**

- (1) Where a corporation applies for a licence or permit, or 2 or more natural persons apply together for a licence or permit, a natural person must be nominated in the application to be a nominated person in respect of the licence or permit and the Director may approve such a person accordingly.
- (2) The holder of a licence or permit, or an applicant for a licence or permit, who is a natural person may, on the approved form, nominate a natural person to be a nominated person in respect of the licence or permit held by the person or for which an application is made and the Director may approve such a person accordingly.
- (3) The holder of a licence or permit, or an executor or administrator of the estate of a natural person who was the holder of a licence or permit, may, on the approved form, nominate another person in substitution for the person approved under subsection (1) or (2), and the Director may approve the other person to be the nominated person in the place of the person originally approved.
- (4) Where more than one person is, or is to be, a nominated person in respect of a licence or permit, the Director is to specify in each approval under this section in relation to the licence or permit the place, area or type of operations in respect of which the person to whom the approval relates is to be the nominated person in respect of the licence or permit, and the person is, for the purposes of this Act and any instrument of a legislative or administrative character made under this Act, the nominated person in respect of the licence or permit in relation to only those places, areas or types of operations accordingly.
- (5) Where a person intends to cease to act as a nominated person he or she must:
  - (a) notify the holder of the licence or permit in respect of which he or she is the nominated person; and
  - (b) notify the Director in writing,of the date on and from which he or she intends to cease to act as a nominated person.

Penalty:            \$1000.

- (6) A person ceases to be a nominated person in respect of a licence or permit:
- (a) on the date specified by him or her in a notice under subsection (5)(b); or
  - (b) if another person is approved under subsection (3) to be the nominated person in his or her place, on the date the approval takes effect,

whichever occurs first.

- (7) Where a person is no longer acting as a nominated person (whether the person has ceased to be the nominated person under subsection (6)(a) or not), a person must not take or sell fish or aquatic life under the licence or permit:
- (a) in the case of a licence or permit held by a corporation – until the date an approval under subsection (3) of another person to be the nominated person takes effect; or
  - (b) in the case of a licence or permit held by a natural person:
    - (i) until the date an approval under subsection (3) of another person to be the nominated person takes effect; or
    - (ii) unless the licensee or permit holder conducts the operations during which the fish or aquatic life are taken or sold for the purposes of the licence.

Penalty:        \$10,000.

- (8) A nominated person is, subject to subsections (4) and (9), deemed to be a holder of the licence or permit, as the case may be, for the purposes of this Act and each instrument of an administrative or legislative character made under it.
- (9) The Director may, by notice in the *Gazette*, specify that a nominated person is not deemed to be a holder of a licence or permit for the purposes of a provision of this Act or of an instrument of an administrative or legislative character made under this Act.

#### **14A        Short term operators**

- (1) The holder of a licence may apply on the approved form to the Director for the approval of a person for the purposes of subsection (2) and the Director may approve or refuse to approve the person accordingly.

(2) Where a licensee intends:

- (a) to be absent from operations conducted under the licence for a period of not more than 14 days; and
- (b) that operations are to be carried out under the licence during his or her absence,

before that absence he or she must appoint a person who has been approved under subsection (1) to be the short term operator in respect of the licence by:

- (c) writing the person's name in legible English in a record book kept for the purposes of the licence opposite the dates of the beginning and end of the period (not exceeding 14 days) of the intended absence; and
- (d) signing and dating the entry and ensuring the entry is signed and dated by the person whose name is specified in the entry.

Penalty: \$2,000.

- (3) Where more than one person is or is to be the short term operator in respect of a licence, the holder of the licence must specify opposite the person's name in the licensee's record book the places, areas or types of operations in relation to which the person is to be the short term operator in respect of the licence, and the person is the short term operator in respect of the licence in relation to only those places, areas or types of operations accordingly.
- (4) The person appointed under subsection (2) remains the short term operator in respect of the licence for the period specified in the entry in the record book under subsection (2), which period may be shortened by the holder of the licence by altering the anticipated date of his or her return opposite the entry in the record book.
- (5) Subject to subsections (3) and (6), a short term operator in respect of a licence is deemed to be a holder of the licence for the purposes of this Act and each instrument of an administrative or legislative character made under it.
- (6) The Director may, by notice in the *Gazette*, specify that a short term operator is not deemed to be the holder of a licence for the purposes of a provision of this Act or of an instrument of an administrative or legislative character made under this Act.

## **Division 3                Permits**

### **15                Releasing fish, &c., or polluting waters, &c., without permit**

- (1) Subject to this Act or to an instrument of a legislative or administrative character made under it a person shall not:
- (a) bring into, or release in, the Territory any live aquatic life, live fish, or any live eggs, fry, spat, or larva of fish;
  - (b) possess or sell noxious fish or noxious aquatic life;
  - (c) cause or permit a shock, sound, or other vibration, whether by percussion, the use of an explosive, or otherwise, where an effect of the shock, sound, or vibration is, or may be, that fish or aquatic life is stunned, injured, killed, or detrimentally affected;
  - (d) use an electric fishing device; or
  - (e) directly or indirectly introduce, cast, place, discharge, or allow to fall, flow, or percolate or be carried by wind, tide, or current a poisonous, toxic, narcotic, noxious, or other substance (including heavy metal or solid debris) into waters of the Territory where an effect of the substance is, or may be, that fish or aquatic life are stunned, injured, killed, or detrimentally affected, or the habitats, food, or spawning grounds of fish or aquatic life are detrimentally affected,

unless the person does so under and in accordance with a permit.

Penalty:

- (a) In relation to paragraphs (a) or (b) – \$20,000 or imprisonment for 2 years.
- (b) In relation to paragraphs (c) or (d) – For a first offence – \$5,000 or imprisonment for 6 months.  
  
For a second or subsequent offence – \$10,000 or imprisonment for 12 months.
- (c) In relation to paragraph (e) – \$50,000 and, if the offence is a continuing one, \$5,000 for every day or part of a day after the first day on which the offence has continued, or imprisonment for 2 years.

- (2) Where the Director is satisfied that there are reasonable grounds for suspecting that an offence has been committed against this section, a Fisheries Officer may:
- (a) search for and destroy any relevant fish or aquatic life or noxious fish or noxious aquatic life and for that purpose may take whatever action is, in the opinion of the Director, necessary or desirable;
  - (b) seize an electric fishing device; and
  - (c) take whatever action is, in the opinion of the Director, necessary or desirable to limit the consequences of the offence or to ameliorate the damage caused by the offence,
- notwithstanding that the action may constitute a trespass or may cause loss or damage to property.
- (3) Where a person is found guilty of an offence against this section, the court may, in addition to imposing a penalty, order the person to pay to the Director, a person authorized by the Director to receive such payments, or to any other person, such amount as the court thinks fit in respect of action taken under subsection (2) or other loss or damage.

## **16                Permits**

- (1) Subject to this Act, every person who proposes to do any thing specified in section 15 shall apply to the Director for an appropriate permit.
- (2) The provisions of subsections (2) to (4), (9) and (10), and (12) to (14) of section 11, with the necessary changes, shall apply in relation to the granting of a permit as if a reference in those subsections to a licence were a reference to a permit.
- (3) A permit may be issued for such period as the Director thinks fit, and shall be subject to such conditions as the Director considers appropriate or as may otherwise be prescribed.

## **17                      Special permits**

(1) Notwithstanding anything in this Act or an instrument of a legislative or administrative character made under this Act, the Director may grant to a person who applies to the Director in writing a special permit, subject to such conditions as the Director may, from time to time, impose:

- (a) to take fish or aquatic life:
  - (i) of all species or a species specified in the permit;
  - (ii) from any waters (including waters where fishing may for the time being be prohibited or restricted) specified in the permit;
  - (iii) during a time specified in the permit; and/or
  - (iv) using such fishing gear as may be specified in the permit (whether or not the use of the fishing gear is otherwise prohibited or restricted); or
- (b) to be in possession of fishing gear which the person is otherwise not permitted to have in his or her possession by or under this Act or an instrument of a legislative or administrative character made under this Act,

for:

- (c) the purposes of education, research or the carrying out of trials and experiments with fishing vessels or fishing gear or any other apparatus or technique which is capable of being used in connection with the taking of fish or aquatic life;
  - (d) the purposes of sport or recreation in the case of a disabled person who, in the opinion of the Director, would otherwise be unable, by reason of the person's disability, to fish by the methods permitted by this Act; or
  - (e) any other purpose approved by the Minister.
- (2) All fish or aquatic life taken pursuant to this section shall be disposed of as the Director directs, or as may be specified in the permit.
- (2A) A permit granted for the purposes of subsection (1)(c) may specify that fish taken under it may be sold
- (3) The Director may at any time revoke any permit given under subsection (1) by serving a notice in writing to its holder.

## **Division 4                Registration of vessels**

### **18                Registration of fishing vessels**

- (1) Subject to this Act, a person shall not use a vessel for any purpose in relation to which a licence or a permit is required under this Act unless the vessel is registered.

Penalty:            If the vessel is a foreign boat – \$100,000 or imprisonment for 3 years.

                         In any other case – \$20,000 or imprisonment for 2 years.

- (1A) The Director may, by notice in the *Gazette*, direct that subsection (1) does not apply to a vessel used for the purposes of a licence of a type specified in the notice.
- (2) An application for registration shall be made to the Director on an approved form and shall be accompanied by the prescribed fee (if any).
- (3) An approved form under subsection (2) shall, at the least, make provision for the applicant's name and an address for service.
- (4) A registered vessel shall be deemed not to be registered during any period it, or a vessel (being a tender) that is not required under section 19(2) to be registered, is not marked in the prescribed manner.
- (5) A registered vessel marked in the prescribed manner is exempt from any other requirement of a law of the Territory to mark the vessel.

### **19                Tenders**

- (1) Subject to subsection (2), every vessel (being a tender) that is carried by or attached to a vessel and is used or intended to be used for any purpose in relation to which a licence is required under this Act either separately or in conjunction with the vessel by which it is carried or to which it is attached, is a separate vessel for the purposes of registration.
- (2) A vessel (being a tender) that is carried by or attached to a vessel shall be deemed for the purposes of registration to form part of the vessel by which it is carried or to which it is attached if:
- (a) the vessel (being a tender) is used or is intended to be used solely for purposes other than the taking, except by trolling, of fish or aquatic life; or

- (b) where a vessel is engaged in net fishing, the vessel (being a tender) is used or intended to be used solely for the purpose of transporting, setting, clearing and lifting nets that form part of the gear of the vessel and the vessel is close to where the vessel (being a tender) is being used in that manner.

## **Division 5            Cancellation or suspension of licence or registration**

### **20            Cancellation or suspension of licence or registration**

- (1) Where a licensee or the owner of a registered vessel is found guilty of an offence relating to the licence or the registration of the vessel or to an application relating to the licence or registration, the court may, in addition to imposing a penalty or making an order, if any, for forfeiture, cancel or suspend the licence or registration.
- (2) Where a licensee is charged with an offence relating to the licence or to an application relating to the licence, the Director may suspend the licence or, as the case may be, processing the application for a period or until the determination or withdrawal of the charge.
- (3) Where a licensee was the holder of a licence or other authority relating to fishing under an Act of the Commonwealth, a State, or another Territory and that licence or other authority is cancelled or suspended, the Director may cancel or suspend a licence granted to the licensee under this Act.

## **Part III            Fisheries management plans**

### **21            Purposes of Part**

- (1) The purpose of this Part is to conserve, enhance, protect, utilize, and manage the fish and aquatic life resources of the Territory to:
  - (a) promote, develop and maintain commercial and amateur fishing;
  - (b) provide for optimum yields from a fishery and maintain the quality of the yield;
  - (c) ensure that the fisheries of the Territory are not endangered or overexploited;
  - (ca) encourage tourist and scientific interest in fish and aquatic life; and/or



- (d) ensure that the habitats of fish or aquatic life and the general environment is not detrimentally affected.
- (2) For the avoidance of doubt, **manage** in subsection (1) includes, and shall be taken always to have included, a total prohibition against the taking of fish or aquatic life in all or part of a fishery management area or in a fishery.

## **22 Management areas and managed fisheries**

The Minister may, by notice in the *Gazette*, declare:

- (a) an area, place, or any waters to be a fishery management area; or
- (b) a fishery to be a managed fishery.

## **23 Management plans**

Where a management area or managed fishery has been declared pursuant to section 22, the Director shall, as soon as practicable after the declaration, prepare a proposed plan for the whole or part of the management area or managed fishery for the purposes specified in section 21 and having regard to the need for co-ordination between management areas or between managed fisheries or among any of them.

## **24 Fisheries management advisory committees**

- (1) For the purposes of assisting the Director in preparing proposed plans and giving advice in relation to operative plans, the Minister may, as the Minister thinks fit, from time to time establish and, after having due regard to the users of an area or fishery, appoint members to an advisory committee for each management area or managed fishery.
- (2) Each such committee shall be chaired by a person nominated by the Minister and may include members representing commercial, processing, wholesaling, retailing, recreational, consumer, or other interests in the area relating to fishing, fish, or aquatic life.

## **25 Procedure in relation to plans**

- (1) A proposed plan being prepared under section 23 shall contain a description of the management area or managed fishery and make provision in relation to the managed area or the managed fishery with respect to such of the matters specified in Schedule 2 as the Director considers applicable.

- (2) Every proposed plan prepared under section 23 shall be submitted to the Minister, and, if the Minister agrees in principle with the proposed plan, the Minister may give notice in the *Gazette* and such newspapers circulating in the Territory as is thought appropriate of the proposed plan and of the place or places where a copy of it may be inspected.
- (2A) There may be included with each proposed plan prepared under section 23, but so as not to form part of the plan:
  - (a) an outline of the history and status of the fishery;
  - (b) the policy and objectives of the plan; and
  - (c) such other information relating to the fishery,as the Director thinks fit.
- (3) Not less than one month after the date of notification in the *Gazette* under subsection (2), the Minister, after considering any submissions made in respect of the proposed plan, may make such amendments to the plan as the Minister thinks fit, and, after advising any relevant advisory committee of any amendments and the reasons for them, may then approve it.

## **25A Amendments to plans**

- (1) Where the Director is of the opinion that an amendment to a fishery management plan is required, the Director may submit the proposed amendment to the Minister and, if the Minister agrees in principle with the proposed amendment, the Minister may:
  - (a) where the proposed amendment is accompanied by a statement signed by the Director stating that the proposed amendment is, in the Director's opinion, a minor amendment – approve the amendment with such amendment to it as the Minister thinks fit; or
  - (b) where the proposed amendment is not accompanied by a statement referred to in paragraph (a) – give notice in the *Gazette* and such newspapers circulating in the Territory as the Minister thinks fit of the proposed amendment to the plan and of the place or places where a copy of the amendment may be inspected.
- (2) There may be included with a proposed amendment under subsection (1) such explanatory notes as the Director thinks fit, but such notes do not form part of the proposed amendment or an amendment to the plan.

- (3) Where notice of a proposed amendment is given in the *Gazette* under subsection (1)(b), the Minister may, not less than one month after the date of notification and after:

- (a) considering any submissions made in respect of the proposed amendment; and
- (b) advising the relevant advisory committee of any amendment the Minister has made to the amendment as proposed and the reasons for the amendment,

approve the amendment to the fishery management plan.

## **26 Minister may make emergency amendments to plan**

- (1) If at any time an emergency occurs that, in the opinion of the Minister after consultation with the appropriate advisory committee (if any), endangers or may endanger stocks of fish or aquatic life, or any species or class of fish or aquatic life, in any management area or managed fishery in respect of which there is an operative management plan, then, notwithstanding any provision to the contrary in this Act or the management plan, the Minister may, by notice in the *Gazette*, amend the plan to the extent required by the emergency.
- (2) An amendment made pursuant to subsection (1) shall take effect from a date to be specified in the notice, and may remain in effect for not more than 90 days from the date specified.
- (3) A period specified under subsection (2) may be extended for one further period not exceeding 90 days by a subsequent notice given before the expiry of the original notice.
- (4) The particulars of a notice given under this section shall be advertised twice in at least 1 newspaper generally circulating in the area concerned.
- (5) An amendment made pursuant to subsection (1) shall be deemed to be revoked with effect from the expiry of the period as specified in the notice issued pursuant to subsection (1) or any subsequent notice issued pursuant to subsection (3), or it may be revoked by the Minister at any time within the period specified in the notice.

## **27 Management plans enforceable as regulations**

- (1) Every provision of an operative management plan shall have the force and effect of a regulation in force under this Act.

- (2) In the event of an inconsistency between a provision of an operative management plan and the Regulations or a notice given under section 28, the provision of the plan shall prevail to the extent of the inconsistency.
- (3) Where a word or phrase used in a fishery management plan or a notice under section 28 is not defined by this Act or the plan but is defined by the Regulations, it shall have the meaning it has under the Regulations in relation to the management plan or the notice, as the case may be.

## **Part IV            Control and enforcement**

### **Division 1        Powers of Minister**

#### **28                General power of Minister**

- (1) Notwithstanding anything in this Act or the Regulations, the Minister may, in relation to any matter or thing not dealt with in an operative management plan, by notice in the *Gazette*:
  - (a) declare a period to be a period during which the taking of fish or aquatic life or fish or aquatic life of a particular species, sex, size, age, or other characteristic specified in the notice, is prohibited or allowed;
  - (ab) declare that the taking of fish or aquatic life or fish or aquatic life of a specified species, sex, size, age or other characteristic is prohibited or allowed;
  - (b) declare an item of fishing gear to be an item to be used or not to be used in a fishery specified in the notice;
  - (c) declare restrictions relating to:
    - (i) the size;
    - (ii) the design;
    - (iii) the construction materials;
    - (iv) the quantity; or
    - (v) such other specifications as the Minister thinks fit,of fishing gear to be used in or in connection with the taking of fish or aquatic life, or fish or aquatic life of a particular species, specified in the notice;

- (d) vary the prescribed closure lines delineating the mouth of a river within the meaning of the Regulations;
  - (e) vary the boundaries of any area prescribed for the taking of fish or aquatic life or as waters from which fish may not be taken either generally or in a particular manner, however those areas are described, in relation to a fishery; or
  - (f) establish a licence buy-back scheme for a prescribed fishery.
- (2) A declaration under subsection (1)(a), (b) or (c) may be expressed to apply generally or in relation to a particular area or fishery specified in the notice.
- (3) On the publishing of a notice in the *Gazette* varying a closure line referred to in subsection (1)(d) or the boundaries of an area referred to in subsection (1)(e), that line or those boundaries as so varied shall be the line and boundaries in relation to the river or area specified in the notice and this Act and the Regulations shall apply accordingly.

## **29 Minister may impose emergency restrictions**

- (1) If at any time an emergency occurs that, in the opinion of the Minister, endangers or may endanger stocks of fish or aquatic life, or any species or class of fish or aquatic life, in any fishery or part of a fishery where there is no operative management plan, the Minister may, by notice in the *Gazette* after consultation with the appropriate advisory committee (if any) and notwithstanding anything to the contrary in this Act or an instrument of a legislative or administrative character made under it, or in any licence or permit granted under or pursuant to any of them:
- (a) halt all or any fishing in that fishery or any specified part of the fishery;
  - (b) restrict the number of vessels used in relation to fishing in the fishery;
  - (c) restrict the amount of fish or aquatic life which may be taken from that fishery; or
  - (d) restrict the quantity or nature of fishing gear that may be used in the fishery.
- (2) Any such notice shall contain brief reasons for the restrictions, and shall be given for a period of not more than 28 days but may from time to time be amended, revoked, or renewed by the Minister by a subsequent notice.

- (3) The particulars of a notice given under this section shall be advertised twice in at least 1 newspaper generally circulating in the area concerned.
- (4) A notice given under this section shall come into force on a day to be specified, being a day no sooner than the date on which the notice is advertised under subsection (3) for the second time.

## **Division 2                      Powers of Fisheries Officers**

### **30                      Fisheries Officer may question and examine**

- (1) Subject to section 32, a Fisheries Officer may, for the purposes of assisting in the conservation or management of a fishery or for the enforcement of this Act or an instrument of a legislative or administrative character made under it at all reasonable times without warrant:
  - (a) stop, enter and examine any vehicle or vessel, or enter and examine any premises or place, or detain and examine any record, document, article, fishing gear, container, apparatus, or device, or open and examine the contents of an unlocked container, cupboard, drawer, chest, trunk, box, cage, or other receptacle;
  - (b) require a person to unlock any locked vehicle, vessel, premises, or place, or locked container, cupboard, drawer, chest, trunk, box, cage, or other receptacle, if the person is the owner of, is in possession of, or is the person who locked the item required to be unlocked, and is in the immediate vicinity;
  - (c) take samples and conduct tests;
  - (d) question any person and require the master of a vessel, or any other person, to give any explanation or information concerning that vessel or a vehicle, or any place, fish, aquatic life, fishing method, fishing gear, container, apparatus, record, document, article, device, or thing; and
  - (e) require the persons mentioned in paragraph (d) to produce any permit, authority, licence, or certificate issued in respect of that vessel, vehicle, person, or thing, within 7 days after the request, and to produce forthwith evidence of the person's identity,

where that Fisheries Officer has reasonable grounds to believe that any person is or has been engaged in taking, processing for sale, selling, or buying fish or aquatic life, or in aquaculture.

- (2) A person shall comply with and not contravene a requirement made under subsection (1)(b), (d), or (e).

### **31 Search**

- (1) Subject to section 32, where a Fisheries Officer is satisfied that there are reasonable grounds for suspecting that an offence against this Act has been, is being, or is about to be committed and whether after an examination under section 30 or otherwise, the officer may, without warrant:
- (a) enter, with such force as is reasonably necessary, at any time, any vehicle, vessel, premises or place and, for that purpose, stop and detain any vehicle or vessel;
  - (b) search the vehicle, vessel, premises, or place and stop and detain any person found in or on them or it and any person whom the officer reasonably believes to be about to enter or to have recently left the vehicle, vessel, premises, or place;
  - (c) break open and search any container, cupboard, drawer, chest, trunk, box, cage, package or other receptacle, whether a fixture or not, in or on the vehicle, vessel, premises, or place;
  - (d) detain, remove, and secure any vehicle, vessel, or fishing gear, or any plant, motor, appliance, fitting, or equipment in, on, or attached to any vehicle, vessel, premises, or place, or any fish or aquatic life or other thing that is found on any vehicle, vessel, premises, or place if the officer has reasonable grounds for believing that it is evidence of or otherwise relates to an offence that has been, is being, or is about to be committed against this Act;
  - (e) require the master or other person in charge of a vehicle or vessel to cause it to stop or to bring it to a place in the Territory and to remain in control of it at that place until a Fisheries Officer permits the master or other person to depart from that place;
  - (f) order a person to open a locked, barred or otherwise secured container, door, lid, drawer, or other receptacle, or gate; and
  - (g) take such action as is reasonably necessary to prevent the commission of an offence against this Act.
- (2) A person shall comply with and shall not contravene a requirement made under subsection (1)(e) or (f).

## **32 General matters relating to powers of Fisheries Officers**

- (1) The power conferred by sections 30 and 31 to enter any premises or place without a warrant does not include power to enter a room that is used solely for domestic purposes.
- (2) Nothing in sections 30 and 31 shall be construed so as to require any person to answer a question if the answer might tend to incriminate the person.
- (3) For the purpose of exercising a power of examination or search under section 30 or 31 a Fisheries Officer may:
  - (a) order a person who is, or in the opinion of the Fisheries Officer appears to be, the master or other person in control of a vessel or vehicle to take an action, or to desist from an action, to facilitate the entering or boarding of the vessel or vehicle by the Fisheries Officer; or
  - (b) order a person who is, or in the opinion of the Fisheries Officer appears to be, in possession of fishing gear to remove the gear from the water so that the Fisheries Officer can inspect it.
- (4) A person shall comply with and shall not contravene an order given under subsection (3).
- (5) A Fisheries Officer lawfully exercising powers under section 30 or 31 may make or take copies of any relevant record or document, and for this purpose may take possession of and remove from the place where it is kept, for such period of time as is reasonable in the circumstances, any such record or document.
- (6) Every person exercising a power conferred by section 30 or 31 shall produce evidence that the person is a Fisheries Officer to any person on or in the vehicle, vessel, premises, or place or claiming an interest in the things on or in or in respect of which the power is exercised, who questions the right of the Fisheries Officer to exercise that power.
- (7) The production by a Fisheries Officer of an identity card issued under section 8 or evidence that the officer is a member of the Police Force shall, until the contrary is proved, be sufficient authority to do any thing which the officer is authorised by or under this Act to do.
- (8) A Fisheries Officer may, while exercising a power under this Act, be accompanied by any person, and may, if the officer reasonably believes that it is necessary in the circumstances, request any suitable person to assist the officer in exercising that power.



- (9) A person, while assisting a Fisheries Officer in response to a request for assistance under subsection (8), shall have and may exercise all such powers of a Fisheries Officer as are reasonably necessary for the purpose.

### **33 Powers of seizure**

- (1) A Fisheries Officer may seize:
- (a) any vessel, vehicle or other conveyance, fishing gear, implement, appliance, material, container, goods, or equipment which the officer believes on reasonable grounds is being or has been used or is intended to be used in the commission of an offence against this Act;
  - (b) any fish or aquatic life which the officer believes on reasonable grounds are being or have been taken, killed, transported, bought, sold, or found in the possession of any person, in contravention of this Act or an instrument of a legislative or administrative character made under it, or any fish or aquatic life with which such fish or aquatic life have been intermixed.
- (2) A vessel, vehicle or other conveyance, fish or aquatic life or other article seized pursuant to subsection (1) shall be delivered into the custody of the Director or to a person authorized by the Director in that behalf.
- (3) Notwithstanding subsection (2), a vessel, vehicle or other conveyance, fish or aquatic life or other article seized pursuant to subsection (1) may, on application by the person from whom the vessel, vehicle or other conveyance, fish, aquatic life, or article was seized or, if that person is not the owner, by the owner, be released to that person or, as the case may be, owner, under such sureties and conditions, including the entering into of a bond or other financial security to secure the payment of money, as the Director shall specify.
- (4) Where, in the opinion of the Director, any fish, aquatic life or other article seized pursuant to subsection (1) may rot, spoil, or otherwise perish, the Director may arrange for the sale of the fish, aquatic life, or other article, or may otherwise dispose of them as the Director thinks fit.
- (5) Where the ownership of any vessel, vehicle or other conveyance, fishing gear, implement, appliance, material, container, goods, equipment, fish or aquatic life, cannot, at the time of seizure, be ascertained the property seized shall be forfeit to the Crown and be disposed of as directed by the Director after 90 days from the date

of seizure if, within that time, it has not been possible after reasonable enquiry to establish the ownership of the property.

- (6) All property seized pursuant to subsection (1) and the proceeds from the sale of property pursuant to subsection (4), except where the property has been released pursuant to subsection (3) or the property or proceeds have been forfeited to the Crown pursuant to subsection (5), shall be held in the custody of the Director or an authorized person until:
  - (a) a decision is made not to lay any complaint or charge in respect of the alleged offence for which the property was seized; or
  - (b) where a complaint or charge is laid, upon the completion of proceedings in respect of the alleged offence for which the property was seized, or such sooner time as the court may determine.
- (7) The decision whether or not to lay any complaint or charge in respect of an alleged offence for which any property is seized under subsection (1) shall be made no later than 30 days after the day on which the property is seized.
- (8) Neither the Director nor the Crown shall be liable to any person for any spoilage or deterioration in the quality of any fish or aquatic life or, subject to reasonable care being taken, any deterioration in any vessel, vehicle or other conveyance or other article seized under subsection (1).
- (9) Subject to subsection (8), but notwithstanding any other provisions of this section, where property has been seized under subsection (1) then:
  - (a) on a decision being made not to lay a complaint or charge; or
  - (b) on the acquittal of any person charged with an offence,the property, or the proceeds from the sale of the property, shall forthwith be released from the custody of the Director or authorized person to the person from whom they were seized or to their owner.
- (10) A person convicted of an offence against this Act shall be liable to pay to the Crown the reasonable costs of handling, securing, maintaining, and storing property seized under subsection (1) in relation to the offence, which costs may be assessed by the court and collected in like manner to a monetary penalty.
- (11) Notwithstanding any other provision in this section, a Fisheries Officer who, at the time of seizure, returns to the water any fish or

aquatic life seized pursuant to subsection (1) that the officer believes to be alive, shall not be under any civil or criminal liability to the person from whom the fish or aquatic life was seized in the event of a decision being made not to lay a complaint or charge in respect of the fish or aquatic life, or of the person being acquitted of the charge.

## **Division 3            Records and returns**

### **34            Records and returns**

- (1) In this section, **person** means a person who is:
- (a) the holder of a permit, licence, authority or approval granted under this Act;
  - (b) the master of a vessel registered under this Act; or
  - (c) the holder of a licence or permit in relation to, or a nominated person or short term operator in respect of, premises where fish or aquatic life are bred, received, bought, processed, stored, sold by wholesale or retail or are otherwise disposed of.
- (2) The Director may do any of the following to assist the management and conservation of any fish or aquatic life or the development of the fishing industry:
- (a) by notice in writing to a person:
    - (i) require the person to keep accounts, records, returns and information (including records of returns and information to be supplied or that have been supplied under subparagraph (ii));
    - (ii) require the person to supply to the Director accounts, records, returns and information within the time specified in the notice;
    - (iii) specify the manner and form in which the person is to keep the accounts, records, returns and information;
  - (b) by notice in the *Gazette*:
    - (i) require a person to keep accounts, records, returns and information (including records of returns and information to be supplied or that have been supplied under subparagraph (ii));

- (ii) require a person to supply to the Director accounts, records, returns and information within the time specified in the notice;
  - (iii) specify the manner and form in which a person is to keep the accounts, records, returns and information.
- (3) A return, record, account or information supplied under subsection (2) is not to be:
  - (a) disclosed in proceedings other than a prosecution against this Act; or
  - (b) released to a person, except if the person releasing it is authorised to do so under this Act or by the Director.
- (4) A return, record, account or information supplied under subsection (2), is not, except with the written permission of the person making the return, record or account, or supplying the information, to be published in any form unless aggregated so that specific identities of persons or businesses are not revealed.

#### **34A        Movement of fish without proper documents prohibited**

- (1) In this section, **person** has the same meaning as in section 34.
- (2) A person must not move from one place to another place fish or aquatic life of a class prescribed under subsection (4) unless at the time the person moves the fish or aquatic life the person has in his or her possession a document in the approved form specifying the species of fish or aquatic life being moved and the place where the fish or aquatic life was caught, taken or harvested.
- (3) A person must not receive from another person fish or aquatic life of a class prescribed under subsection (4) unless at the time the person receives the fish or aquatic life the person also receives from that other person a document in the approved form specifying the species of fish or aquatic life being received and the place where the fish or aquatic life was caught, taken or harvested.
- (4) The Director may, by notice in the *Gazette*, prescribe a class of fish or aquatic life for the purposes of subsection (2) or (3).
- (5) By way of example only and without limiting subsection (4), fish or aquatic life may be classified under section (4) according to species, number, weight or place caught, taken or harvested.

**35 Neglect or refusal to supply particulars, and improper divulging of information**

- (1) A person must not:
  - (a) fail, neglect or refuse to supply an account, record, return or information, when required to do so by the Director under section 34; or
  - (b) make a false or misleading statement or a material omission in information or in an application, record, account or return, kept or supplied for the purposes of this Act.
- (2) A record or information supplied under section 30, is not, except with the written permission of the person making the record or supplying the information, to be published in any form unless aggregated so that specific identities of persons or businesses are not revealed.

**36 Confidentiality**

- (1) Subject to this section, a person who is a member of the Police Force of the Northern Territory or an employee as defined in the *Public Sector Employment and Management Act* or a Fisheries Officer shall not, either directly or indirectly, except in the performance of their duty as a member or employee or Officer, as the case may be, and either while they are or after they cease to be a member or employee or Officer, make a record of or divulge or communicate to any person any information respecting the affairs of any other person disclosed or obtained under or pursuant to this Act or an Act repealed by this Act.

Penalty: \$5,000 or imprisonment for 12 months.

- (2) For the purposes of subsection (1), the Director shall:
  - (a) hold all records and papers that could be the subject of an offence against subsection (1) in the Director's custody; and
  - (b) ensure that no employee or other person sees them or learns of their contents unless it is necessary or desirable that they do so for the purposes of the administration of this Act or of prosecuting a person for an offence against this Act.
- (3) Without limiting the generality of subsection (2), the Director shall not allow a person to see a record or paper or learn of its contents by reason only that that person is:
  - (a) a Minister or other public official; or

- (b) constituting a court or tribunal or exercising a judicial or administrative power or function.

## **Division 4            Offences and penalties**

### **37            General offences and penalties**

- (1) Every person commits an offence who acts in contravention of or fails to comply with any provision of this Act, or of an instrument of a legislative or administrative character made under it, or any other direction, restriction, requirement, or condition given, made, or imposed under this Act or that instrument.
- (2) A person who commits an offence against this Act for which no other penalty is prescribed shall on being found guilty be liable to a penalty not exceeding \$20 000 and, if the offence is a continuing one, to a further penalty not exceeding \$500 for every day after the first day on which the offence has continued and not exceeding \$50 for each fish or item of aquatic life taken or in possession in excess of a prescribed limit.

### **37A          Infringement offences and notices**

- (1) A Fisheries Officer may serve an infringement notice on a person if it appears to the Fisheries Officer that the person has committed an offence against this Act, being an offence prescribed as an infringement offence.
- (2) An infringement notice is a notice to the effect that:
  - (a) an offence is alleged to have been committed against this Act;
  - (b) if the penalty amount indicated is paid within the time and at the place specified – the alleged offence is expiated and no person is liable for any further proceedings in the matter unless the notice is withdrawn in accordance with section 37B; and
  - (c) the person served with the infringement notice can elect to have the matter dealt with by a court by serving written notice in accordance with the directions given on the infringement notice.
- (3) If the prescribed penalty for an alleged offence is paid under this section, no person is liable to any further proceedings for the alleged offence.

- (4) Payment under this section is not to be regarded as an admission of liability for the purposes of, nor in any way to affect or prejudice, any civil claim, action or proceeding arising out of the same occurrence.
- (5) The penalty prescribed for an infringement offence shall not exceed the maximum penalty that could be imposed for the offence by a court.
- (6) The *Fines and Penalties (Recovery) Act* applies to an infringement notice issued under this section if the amount payable under the infringement notice is not paid within the specified time.

### **37B            Withdrawal of infringement notice**

- (1) An infringement notice issued under section 37A may be withdrawn, whether or not the prescribed penalty has been paid, at any time within 28 days after the service of the notice, by the sending of a notice signed by the Director or a Fisheries Officer, to the alleged offender at his or her last known place of residence or business, advising the alleged offender that the infringement notice has been withdrawn and, in that event, the amount of the prescribed penalty that has been paid shall be refunded.
- (2) Where a prescribed penalty has been paid in pursuance of an infringement notice and the notice has not been withdrawn as provided by subsection (1), proceedings shall not be brought against any person with respect to the offence alleged in the notice.

### **38              Regulatory offences**

- (1) An offence against this Act is a regulatory offence.
- (2) It is a defence to a prosecution for an offence referred to in subsection (1) if the defendant proves on the balance of probabilities that:
  - (a) any contravention or failure to comply constituting the offence occurred in an emergency and was necessary to preserve life or prevent injury or to protect property in the defendant's possession;
  - (b) the defendant did not intend to commit the offence, and that:
    - (i) in any case where it is alleged that anything required to be done was not done, the defendant took all reasonable steps to ensure that it was done; or

- (ii) in any case where it is alleged that anything prohibited was done, that the defendant took all reasonable steps to ensure that it was not done; or
- (c) any contravention or failure to comply constituting the offence was authorized by being:
  - (i) in the exercise of a right granted or recognized by law;
  - (ii) in execution of the law or in obedience to, or in conformity with, the law;
  - (iii) in obedience to the order of a competent authority whom the defendant is bound by law to obey unless the order is manifestly unlawful (the determination of which is a matter of law); or
  - (iv) pursuant to an authority, permission, or licence lawfully granted.
- (3) Subsection (2)(b) applies only to an offence prescribed in the Regulations or a fishery management plan to be an offence to which that subsection applies.

### **39 Obstructing Fisheries Officers**

- (1) A person commits an offence who:
  - (a) resists or obstructs, or incites or encourages any other person to resist or obstruct, any Fisheries Officer while in the execution of the Fisheries Officer's powers or duties, or any person lawfully assisting the Fisheries Officer;
  - (b) uses threatening language or behaves in a threatening manner towards any Fisheries Officer while in the execution of the Fisheries Officer's powers or duties, or any person lawfully assisting the Fisheries Officer;
  - (c) fails to comply with the lawful requirements of any Fisheries Officer;
  - (d) furnishes to any Fisheries Officer any particulars which are false or misleading in any material respect; or
  - (e) personates or falsely claims to be a Fisheries Officer, or who falsely claims to be a person lawfully assisting the Fisheries Officer.



- (2) For the purposes of subsection (1), a person who refuses to allow any Fisheries Officer, or any person lawfully assisting the Fisheries Officer, to exercise any of the powers conferred on the Fisheries Officer by or under this Act shall be deemed to be obstructing that Fisheries Officer or person.

**40                      Liability of owner and person in control of vessel**

A person who is the owner of or person in control of a registered vessel shall not allow the vessel or an item of fishing gear or other equipment on or used with the vessel to be used by a person unless the owner or person in control of the vessel, as the case may be, knows the purpose for which that person wishes to use it and is satisfied that that person may lawfully use it for that purpose.

Penalty:                \$10,000 or imprisonment for 12 months.

**41                      Falsely identifying fish, &c., for sale**

A person shall not sell any fish or aquatic life or a product containing fish or aquatic life in circumstances where the buyer may be deceived as to the true identity of the fish or aquatic life.

Penalty:                For a first offence – \$5,000 or imprisonment for 6 months.

For a second offence – \$10,000 or imprisonment for 12 months.

For a third or subsequent offence – \$20,000 or imprisonment for 2 years.

**42                      Buying, selling, or possessing fish, &c.**

- (1) A person commits an offence who buys, sells, or has in possession any fish or aquatic life taken in contravention of this Act or any instrument of a judicial or administrative character made under it.
- (2) For the purpose of this section, fish or aquatic life shall be deemed to be sold if it forms part of a meal for which payment for that meal or any part of the meal is made or which is supplied to any person (whether in accordance with the terms of a contract of service or otherwise) who is employed by the person by whom the meal is supplied.

**43                      Offences relating to aquaculture**

- (1) In this section ***licensed area*** means land, premises, or waters to which an aquaculture licence relates.

- (2) A person commits an offence who, without lawful authority:
- (a) enters a licensed area that has been marked under section 55(4);
  - (b) takes fish or aquatic life in a licensed area;
  - (c) removes, destroys, damages, or interferes with a beacon, buoy, mark, light, signal, raft, structure, or implement used in relation to a licensed area;
  - (d) removes diseased or contaminated fish or aquatic life from a licensed area; or
  - (e) does any act which causes damage in a licensed area.
- (3) Where a court finds a person guilty of an offence under this section, it may award damages in respect of the offence.

#### **43A        Limitation of time for complaints**

Notwithstanding section 52 of the *Justices Act*, a complaint for an offence against this Act may be brought at any time within 12 months from the time when the matter of the complaint arose.

#### **44        Averments and evidence**

- (1) In a prosecution for an offence against this Act or any other law of the Territory, an averment:
- (a) as to a matter specified in subsection (2);
  - (b) made by notice in writing and certified by the Director; and
  - (c) served on the defendant,
- shall, in the absence of proof to the contrary, be sufficient evidence of the matter averred.
- (2) An averment may be made under this section in relation to the following:
- (a) the latitude and longitude, or the UTM position, of a place;
  - (b) the distance of a place from another place;
  - (c) that a person or thing was at a stated place, or within a stated area or at a stated latitude and longitude or a stated UTM position, at a stated time, or at the time of the taking of a stated action or the occurrence of a stated event;

- (d) an entry in a register kept under section 9;
  - (e) that a place is within a fishery management area, managed fishery, or an aquatic life reserve;
  - (f) that an act alleged to have been done was done within an area of waters which had been declared to be closed or restricted under this Act;
  - (g) that an area of water is water above or below the tidal limit; or
  - (h) the identity of fish or aquatic life or of a substance contained in a product made from or containing fish or aquatic life, or used in the processing of fish or aquatic life.
- (3) An averment shall not be evidence for the purposes of this section unless a copy of the averment has been served on the defendant or the defendant's agent or counsel not less than 7 days before the hearing at which the averment is to be tendered.
- (4) The court shall take judicial notice of the official signature of a person who holds or has held the office of Director and a certificate under subsection (1) purporting to be signed by the Director shall be prima facie evidence of that fact without proof of the signature of the person appearing to have signed it.
- (5) The court may, if the amendments can be made without hardship or injustice to the defendant, allow at the hearing of proceedings such amendments to be made to an averment under this section as appear to it to be desirable or to be necessary to enable the real question in dispute to be determined.
- (6) Evidence that fish or aquatic life (other than commercially processed fish or aquatic life) was under the control of a person:
- (a) in a vessel or in a vehicle that contained fishing gear; or
  - (b) in or in the vicinity of water or swamp,
- is evidence that the person took the fish or aquatic life.
- (7) Where evidence is given that a person had under the person's control:
- (a) in a vessel; or
  - (b) in or in the vicinity of water or swamp,
- fishing gear that could not lawfully be used for fishing at that place at that time in a normal way in which the gear is commonly used

and a Fisheries Officer satisfies the court that the officer reasonably suspected that the person used the gear at that place at that time for fishing, then the evidence is evidence that the person used the gear for fishing at that place at that time.

- (8) Evidence that fish or aquatic life was on display in a shop is evidence that the fish or aquatic life was offered for sale.
- (9) Evidence that a Global Positioning System (GPS) device gave a position in latitude and longitude, or as a UTM position, is evidence of that position.

#### **45                      Liability of directors, managers, and licensees**

- (1) Where a body corporate is found guilty of an offence against this Act, every director and every person concerned in the management of the body corporate shall be guilty of a like offence if it is proved that the act or omission that constituted the offence took place with the person's authority, permission, or consent, or that the person knew the offence was to be or was being committed and failed to take all reasonable steps to prevent or stop it.

#### **46                      Forfeiture of property on finding of guilt**

- (1) On the finding of guilt of any person for any offence against this Act any vessel, vehicle or other conveyance, fishing gear, implement, appliance, material, container, goods, or equipment used in respect of the commission of the offence and any fish or aquatic life in respect of which the offence has been committed, whether or not they have been seized, taken possession of, detained, or released under a surety under section 33(3), and any proceeds from the sale of such property pursuant to section 33(4) shall:
  - (a) where the vessel is a foreign boat – be forfeit to the Crown; and
  - (b) in any other case – be forfeit to the Crown unless the court, for special reasons relating to the offence, thinks fit to order otherwise,

and disposed of as the Director thinks fit.

- (2) A person whose property has been forfeit to the Crown under subsection (1) or a person who, immediately before the forfeiture, had a legal or equitable interest in such property may apply to the Director within 30 days after a finding of guilt for the sale of the property so forfeited; and the Director may order the sale to the applicant of the property on payment to the Crown of such amount as the Director thinks appropriate, being an amount not exceeding the estimated market value of the property.

- (3) Any forfeiture directed or payment imposed pursuant to this section shall be in addition to, and not in substitution for, any other penalty that may be imposed by the court or by this Act.

## **Division 5            Regulations**

### **47            Regulations**

- (1) The Administrator may make regulations, not inconsistent with this Act, prescribing matters:
- (a) required or permitted to be prescribed; or
  - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), the regulations may make provision for or in relation to:
- (a) generally regulating fishing, the selling or trading of fish and aquaculture;
  - (b) prohibiting or regulating the taking (including declaring closed or open seasons), buying, selling, marketing, transporting, processing, preparing or offering for consumption in any public eating-house, acquiring, receiving, disposing of, or having in possession any fish;
  - (c) regulating the provision and maintenance of facilities on vessels, vehicles or other conveyances, or in premises, for the handling, transportation, preservation, preservation alive, storage, or storage in transit of fish; and prescribing measures to protect from sun, weather, or contamination, any fish being handled or transported;
  - (d) regulating the quantity of fish that may at any one time be on board a vessel or vehicle or other conveyance or be conveyed on any vessel or vehicle or other conveyance or animal, or kept in any container, package, or place, or in the possession of any person or of any prescribed number of persons;
  - (e) empowering the Minister or Director to prescribe, by notice in the *Gazette*, fees or levies, and prescribing the method of assessing the fees or levies, the amounts payable, the person liable for payment, and the circumstances in which the Minister or the Director may remit or refund the whole or any part of such fees or levies;

- (f) defining or prescribing the specifications for the vessels or classes or types of vessels to which any regulations are to apply, and providing for the exemption of any vessels or classes or types of vessels from any such regulations;
- (g) regulating, prohibiting, or prescribing the use, size, design, construction materials, or quantity of fishing gear;
- (h) prescribing the method or methods of identifying vessels, specifying identification marks or symbols or distinguishing flags to be carried by vessels and by tenders and similar vessels carried by or attached to or used in conjunction with any vessels, and where any such identification marks shall be placed, and the identification marks on sails, nets or seines, or other fishing gear;
- (j) the conduct of licensees, persons working with or for licensees, lessees, persons who are carrying out amateur fishing, and persons who process, carry, land, trans-ship (whether at sea or otherwise), sell, or buy fish, or make, repair, or sell gill net;
- (k) noxious fish, noxious aquatic life, exotic fish, and other fish;
- (m) hygiene on vessels and in the use of plant, fishing gear, containers, equipment, and vehicles;
- (n) diseases, disease prevention and control, quarantine and quarantine places;
- (p) the granting of permits for the landing or sale of fish lawfully taken in Territory waters or elsewhere under a law of the Commonwealth, a State or another Territory of the Commonwealth;
- (q) registering vessels, and specifying conditions subject to which a vessel may be registered;
- (r) prohibiting or regulating the granting, renewal, or transfer of licences (in whole or in part), determining the number of licences that may be granted in respect of any fishery or the number of persons that may fish in a fishery, and specifying the conditions subject to which a licence may be granted, renewed, or transferred;
- (s) regulating, restricting, or imposing conditions on the canning, smoking, freezing, or other preserving of fish for sale and its possession for sale when canned, smoked, frozen, or otherwise preserved, and providing for the inspection of and imposing conditions of operation on canneries, smoke-houses,

freezing chambers, refrigerating works, and any premises (not being a dwelling-house) where fish are canned, smoked, frozen, pre-served, treated, dressed, or stored, for sale;

- (t) requiring and authorizing the provision of devices and facilities to permit or control the passage of fish through or around any dam or other structure that may impede the natural movement of fish upstream or downstream;
  - (u) prohibiting or regulating the possession, the retention in captivity, or the transfer to or release into any waters, of any live fish;
  - (w) authorizing the Director, subject to such conditions as may be prescribed in the Regulations, to regulate the use of electric fishing devices for taking fish; and
  - (y) prescribing offences in respect of contravention of or non-compliance with any regulations made under this Act or any notice, requirement, or direction given pursuant to any such regulations, and prescribing penalties not exceeding \$20 000 in respect of any offence and, if the offence is a continuing one, prescribing further penalties not exceeding \$500 for each day after the first day during which the offence has continued, and not exceeding \$50 for each fish in excess of any specified limit.
- (3) Regulations under this section may be made with respect to aquatic life as regulations may be made with respect to fish.
  - (4) Regulations under this section may apply special conditions or confer special rights in relation to fishing by or under the authority of specified communities, persons, or classes of persons (including tour operators).
  - (5) Money payable by way of refund under regulations made under subsection (2)(e) is to be paid from the public moneys of the Territory and the Allocation for that purpose is established or increased to the extent necessary.
  - (6) The Regulations may prescribe different penalties for different classes of offender for an offence against the Regulations

#### **48 Special regulations relating to aquaculture**

Regulations may be made under section 47:

- (a) providing for the issue, refusal, variation, suspension, sale, revocation (both with and without compensation), forfeiture, and renewal of licences to engage in aquaculture and for the

conditions applicable to them including methods of farming or the restoration of Crown land;

- (b) regulating the stocking of fish or aquatic life farms and regulating the taking of live fish or aquatic life for that purpose;
- (c) providing for the Minister or Director to prescribe steps to be taken by any aquaculture licensee to keep the farm or premises free from disease, infection, contamination by sewage or other substance, and providing for the licensee to maintain the quality of water (including salinity) which must be used;
- (d) regulating the removal and disposal of waste matter from any area used for aquaculture;
- (e) regulating the types and quantities of food that may be fed;
- (f) authorizing or requiring the taking of a specimen, the testing of anything, or the sampling of a substance present on any aquaculture premises and authorizing or requiring the removal of any specimen or sample, or the destruction of diseased fish or aquatic life whether with or without payment of compensation; and
- (g) regulating or prohibiting the processing of any farmed fish or aquatic life or their sale or other disposal, or possession.

#### **49 Certain notices to have status of regulations**

- (1) Subject to subsection (2), every management plan approved under section 25(3), or amendment to a management plan approved under section 25A and every notice given under this Act and required to be published in the *Gazette*, shall be deemed to be regulations for the purposes of sections 57 and 63 of the Interpretation Act.
- (2) Subsection (1) does not apply to a notice given pursuant to sections 5(2), 25(2), 25A(1)(b) and 64(6) and clause 2(d) of Schedule 2.



**Part V                      Miscellaneous****50                      Review of decisions of Director**

- (1) A person aggrieved by a decision of the Director:
- (a) refusing an application for a licence or permit or the renewal or transfer of a licence, or imposing or varying a condition of a licence or permit;
  - (b) refusing an application under section 33(3); or
  - (c) cancelling or suspending a licence or permit under section 20(2) or (3),

may apply to the Local Court for a review of the decision.

- (1A) Also, a person aggrieved by a prescribed decision may apply to the Local Court for a review of the decision.

- (2) If a person is entitled to have a decision of a delegate reviewed by the Director or a designated person under section 11A, then, before making an application under subsection (1) or (1A), that person shall first exhaust the remedy under section 11A.

- (3) The application for review shall be made within 28 days after the day on which notice of the decision (or in a case referred to in subsection (2), within 28 days after the decision on the review under section 11(13)) was served on the applicant, but the Local Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, extend the time in which the application may be made.

- (4) The Local Court may, on the review:

- (a) confirm the decision subject to review;
- (b) substitute, or make in addition, any decision that should, in the opinion of the court, have been made in the first instance; or
- (c) make any further or other order as to costs or any other matter that the case requires.

- (5) The application shall be made in accordance with the rules of the Local Court.

- (6) The Director shall, if required by any person affected by a decision referred to in subsection (1), state in writing the reasons for the decision.

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- (7) If the reasons of the Director are not given in writing at the time of making a decision and the person in relation to whom it was made then requested the Director to state the reasons in writing, the time for making an application for review shall run from the time of service upon that person of the written statement of those reasons.
  - (8) Where the Director or the Local Court is satisfied that an application for review of a decision mentioned in subsection (1)(c) or (1A) has been instituted or is intended, the Director or the Local Court may suspend the operation of the decision until the completion of the review.
  - (9) Where the Director has suspended the operation of a decision under subsection (8), the Director may terminate the suspension, and where the Local Court has done so, the Local Court may terminate the suspension.
  - (10) No appeal shall lie against a decision of a Local Court made upon a review.

## **51 Fishing Industry Research and Development Fund**

- (1) The Accountable Officer, within the meaning of the *Financial Management Act*, of the Agency to which the administration of this Act is allotted under an Administrative Arrangements Order may establish a fund, in the Agency Operating Account within the meaning of the *Financial Management Act*, to be known as the Fishing Industry Research and Development Fund, for the purpose of ensuring the development of the fishing industry or research into fish, aquatic life, fishing, fisheries, the fishing environment and other related matters.
- (2) The Accountable Officer is to credit to the Fund established under subsection (1):
  - (a) the prescribed fees; and
  - (b) revenues from other sources provided for the purposes of the Fund.

## **52 Trust fund advisory committee**

- (1) The Minister shall establish a committee to advise him on matters relating to the disbursement of the moneys in the Fishing Industry Research and Development Fund.
- (2) The committee shall consist of:
  - (a) the Director as Chairman; and

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- (b) such representatives of the fishing industry and such other persons as the Minister may from time to time appoint.
  - (3) A member of the committee, other than the Chairman, holds office during the pleasure of the Minister.
  - (4) The committee:
    - (a) shall meet as often as the Chairman thinks fit, but so that the interval between 2 consecutive meetings does not exceed 6 months; and
    - (b) shall determine its own rules and procedures.

### **53       Aboriginals**

- (1) Unless and to the extent to which it is expressed to do so but without derogating from any other law in force in the Territory, nothing in a provision of this Act or an instrument of a judicial or administrative character made under it shall limit the right of Aboriginals who have traditionally used the resources of an area of land or water in a traditional manner from continuing to use those resources in that area in that manner.
- (2) Nothing in subsection (1) shall authorize a person to enter any area used for aquaculture, to interfere with or remove fish or aquatic life from fishing gear that is the property of another person, or to engage in a commercial activity.

### **54       Research and development of fisheries**

- (1) The Minister may from time to time enter into agreements or arrangements with any person for the purposes of joint research or development work on fishery resources; and any such agreement or arrangement may include the use of facilities owned by that person or by the Territory.
- (2) An agreement or arrangement entered into under this section may permit any person to take fish or aquatic life that the person would not otherwise be entitled to take from any waters (including waters where fishing may for the time being be lawfully prohibited or restricted) and using fishing gear the use of which may otherwise be lawfully prohibited or restricted, and may permit the person to retain that fish or aquatic life or any other fish or aquatic life taken by the person under the agreement or arrangement.

### **55       Crown land leases for aquaculture**

- (1) In this section **Minister** means the Minister administering the Department allotted the administration of the *Crown Lands Act*.

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- (2) A person may apply to the Minister for a lease of Crown land for the purposes of aquaculture, and the Minister may, if satisfied that a licence for those purposes will be granted under this Act, grant a lease under the *Crown Lands Act* for the purposes to which the licence relates but subject to such terms, conditions, reservations, and covenants as the Minister thinks fit.
  - (3) The Minister, in considering an application under subsection (2), may call for a report from the Director and for this purpose the Director may require the applicant to furnish such information as the Director thinks fit.
  - (4) A lease does not of itself confer upon the lessee the right to exclude a person from passing over the surface of any water, but the conditions of the aquaculture licence may require or authorize the lessee to mark out a lease or part of a lease that indicates that passage through that area is restricted or prohibited.
  - (5) The Minister shall not:
    - (a) refuse or fail to renew a lease; or
    - (b) forfeit or otherwise terminate a lease,unless he has given to the lessee reasonable notice of his intention to do so.
  - (6) In subsection (5), **reasonable notice** is 2 years or such less notice as, in the opinion of the Minister, is fair to the lessee, having regard to what the lessee has on the leased area or elsewhere.
  - (7) Notwithstanding subsection (5), the Minister may forfeit or otherwise terminate a lease forthwith if the aquaculture licence held by the lessee is cancelled or surrendered.
  - (8) The Minister may, after receiving a report from the Director, offer a lease by auction or tender, or advertise that a lease is available.
  - (9) A Fisheries Officer, in relation to a lease granted pursuant to this section, may, at any time, enter on the leased land for the purpose of giving effect to the Crown Lands Act.

## 56 Conversion factors for greenweight of fish

- (1) Except where otherwise expressly provided, a reference in this Act or in an instrument of a legislative or administrative character made under it to the weight of fish or aquatic life shall be construed as a reference to the greenweight of the fish or aquatic life, being the weight of the fish or aquatic life before any processing (other than freezing) commences and before any part of the fish or aquatic life

is removed.

- (2) The Minister may, by notice in the *Gazette*, specify conversion factors which shall, for all purposes and in any proceedings for an offence against this Act, be used to determine the greenweight of fish or aquatic life.

## **57            Service**

- (1) A notice may be served under this Act personally or by post.
- (2) A notice sent by post and addressed to the recipient at the latest address for service known to the Director shall be deemed to be served when, in the ordinary course of post, it is or ought to have been delivered to that address.
- (3) A licensee or the owner of a registered vessel shall advise the Director of any change in the licensee's or owner's address for service within 7 days after the change.

# **Part VI            Fisheries arrangements**

## **Division 1        Joint Authorities**

### **58            Powers and functions of Minister**

- (1) The Minister may exercise a power or perform a function conferred on the Minister by Division 1 of Part 5 of the Commonwealth Act, including a power or function of the Minister as a member of a Joint Authority.
- (2) Where, in the exercise of a power conferred by Part 4A of the Commonwealth Act, the Minister appoints a deputy, the deputy may exercise the powers and perform the functions conferred by that Act on a deputy of a member of a Joint Authority other than the Commonwealth Minister.

### **59            Judicial notice**

All courts and persons acting judicially shall 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.

## **60 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 2 as are conferred on it by the law in accordance with which, pursuant to the arrangement, the fishery is to be managed.

## **61 Delegation**

- (1) A Joint Authority may, by instrument in writing, either generally or as otherwise provided by the instrument, delegate to a person a power under this Act other than this power of delegation.
- (2) Where a power delegated by a Joint Authority under subsection (1) is exercised by a delegate, the power shall, for the purposes of this Act, be deemed 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;
  - (b) in the service of an authority of; or
  - (c) under a law of,the Commonwealth, the Territory, a State or another Territory of the Commonwealth.
- (4) A delegate of a Joint Authority is, when exercising delegated powers, subject to the directions of the Joint Authority.
- (5) A delegation under this section by a Joint Authority:
  - (a) may be revoked, by instrument in writing, by a Joint Authority (whether or not constituted by the persons constituting the Joint Authority at the time the power was delegated);
  - (b) does not prevent the exercise of the power by the Joint Authority; and
  - (c) continues in force notwithstanding a change in the membership of the Joint Authority.
- (6) Where, under this Act, the exercise of a power or performance of a function by a Joint Authority is dependent upon the opinion, belief or state of mind of the members of that Joint Authority in relation to a matter and that power or function has been delegated in pursuance of this section, that power may be exercised or that

function may be performed by a delegate upon the opinion, belief or state of mind of the delegate in relation to that matter.

- (7) A certificate signed by a member of a Joint Authority stating a matter with respect to a delegation under this section by the Joint Authority is prima facie evidence of that matter.
- (8) A document purporting to be a certificate referred to in subsection (7) shall, unless the contrary is proved, be deemed to be such a certificate and to have been duly signed.
- (9) Nothing in this Part is intended to prevent a delegation by a Joint Authority, in accordance with the law of the Commonwealth, of powers conferred on the Joint Authority by that law of the Commonwealth.

## **62 Procedure of Joint Authority**

- (1) The provisions of sections 66 to 68, both 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 the Minister's deputy, who took part in or made the decision, is prima facie evidence that the decision, as recorded, was duly made.
- (3) In proceedings in a court, an instrument or other document signed on behalf of a Joint Authority by a member of the Joint Authority shall be deemed to have been duly executed by the Joint Authority and is prima facie evidence that it was signed in accordance with a decision of the Joint Authority.

## **63 Report of Joint Authority**

The Minister shall cause a copy of a report of a Joint Authority prepared under section 70 of the Commonwealth Act to be laid before the Legislative Assembly as soon as practicable after preparation of the report.

# **Division 2 Arrangements with respect to the management of fisheries**

## **64 Arrangements for management of fisheries**

- (1) The Territory 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 fishery.

- (2) An arrangement made under subsection (1) may be terminated as provided by the Commonwealth Act.
- (3) After an arrangement has been made under subsection (1), but before the arrangement takes effect, licences, endorsements and other instruments may be granted, given or made, and regulations may be made, for the purposes of the operation of this Act as effected 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) Upon the termination of an arrangement, licences, endorsements and other instruments granted, given or made, and regulations made, for the purposes of the operation of this Act as effected 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, given or made, and regulations may be made, for the purposes of the operation of this Act as effected 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.
- (6) Where an arrangement is made under this Act, the Minister shall, by notice in the *Gazette*, give notice that such an arrangement has been made.

## **65      Application of this act to fisheries in accordance with arrangements**

Where there is in force an arrangement that provides that a fishery is to be managed in accordance with the law of the Territory, 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 foreign boats in the Australian fishing zone or operations on or from foreign boats, or persons on foreign boats, in the Australian fishing zone or in relation to matters that occurred in or in relation to the Australian fishing zone before the arrangement took effect.

## **66      Functions and powers, &c., of Joint Authority**

- (1) Where, in respect of a fishery, there is in force an arrangement under which a Joint Authority has the management of the fishery and that fishery is to be managed in accordance with the law of the Territory, the Joint Authority has the function of keeping constantly under consideration the condition of the fishery, formulating policies



and plans for the good management of the fishery and, for the purposes of the management of the fishery, exercising the powers conferred on it by this Act and co-operating and consulting with the 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 the Act applies are not endangered or over-exploited;
  - (b) achieving the optimum utilization and equitable distribution of those resources.

#### **67 Joint Authority to exercise certain powers instead of Director**

- (1) Subject to this section, a licence or endorsement granted, given or made under this Act otherwise than by virtue of this section, does not authorize the doing of an act or a thing by 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 Territory, the powers conferred before or after the commencement of this Part on the Director by or under this Act, other than this Part, or the Regulations, including the Director's powers with respect to the issue, renewal, cancellation and suspension of licences, are exercisable by the Joint Authority to the exclusion of the Director.
- (3) In exercising a power referred to in subsection (2), a Joint Authority:
- (a) is not subject to the direction of the Minister; and
  - (b) shall not exercise a power so that a licence granted, given or made by the Joint Authority applies 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 referred to in section 11 (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, where 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 that Joint Authority.
- (5) Subject to section 70(1)(b) and (c), where, at a time a fishery becomes a Joint Authority fishery, a regulation, notification or order under this Act would, but for this section, 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.

## **68 Application of 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, any reference in the provision creating the offence to an authority of a particular kind shall be read as a reference to such an authority, or an endorsement of such an authority, granted, issued, renewed or made by the relevant Joint Authority.

## **69 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 Territory are the only parties – are waters adjacent to the Territory; and
- (b) in the case of another arrangement – are waters adjacent to the Territory and a State that is a party to the arrangement or are waters adjacent to the Territory, a specified State or Territory of the Commonwealth,

shall, for the purposes of this Act, be conclusive evidence of the fact so stated.

## **70 Regulations and notices**

- (1) Where a Joint Authority is to manage a fishery in accordance with the law of the Territory, the Administrator may, for the purpose of giving effect to a decision of the Joint Authority:
  - (a) make regulations for the management of the fishery;
  - (b) deem a regulation made otherwise than pursuant to this section to be a regulation applying to the fishery; 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 another fishery.
- (2) The power conferred on the Administrator 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) Where a regulation affecting a fishery that is to be managed by a Joint Authority is expressed to be made pursuant to this section, it shall be conclusively presumed that it was made for the purpose of giving effect to a decision of the Joint Authority.

## Part VII Savings and transitional

### 71 Savings and transitional

- (1) In this section, ***Repealed Acts*** are the Acts repealed by section 3.
- (2) The person appointed Director of Fisheries pursuant to the Repealed Acts is deemed to have been appointed Director of Fisheries pursuant to this Act.
- (3) A licence, permit, lease, or other authority issued under the *Fish and Fisheries Act* and in force as at the commencement of this Act shall remain in force as if this Act had not been passed until such time as the licence, permit, or other authority would have otherwise expired, but an application for renewal shall be made pursuant to this Act.
- (4) An action, prosecution, or other proceeding begun under the *Fish and Fisheries Act* as then in force before the commencement of this Act may be continued as if this Act had never commenced.
- (5) An action, prosecution or other proceeding in respect of a thing done or omitted to be done under the *Fish and Fisheries Act* as then in force before the commencement of this Act may be brought, taken, and prosecuted in the same manner as if this Act had never commenced.
- (6) Regulations made under the Repealed Acts and in force as at the commencement of this Act shall continue to remain in force as if they had been made under this Act.
- (7) An arrangement made, a Joint Authority established, or other thing done under Part IIIA of the *Fish and Fisheries Act* and in existence or having effect as at the commencement of this Act shall be

deemed to have been made, established, or done under Part VI of this Act, and shall exist and have effect accordingly.

- (8) Leases granted under the *Pearling and Pearl Culture Ordinance 1964* and saved under section 4(1) of the *Fish and Fisheries Act* and in force as at the commencement of this Act shall remain in force until they would otherwise expire.
- (9) Notices made under the Repealed Acts and in force as at the commencement of this Act shall remain in force according to their tenor or until repealed under this Act.
- (10) Where regulations or notices made under the Repealed Acts continue to exist as regulations or notices under this section and a reference is made in them to a section of the Repealed Acts, that reference shall be construed, where possible, as a reference to an appropriate or relevant provision in this Act.

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**Schedule 1      Acts repealed**

section 3

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Act	Number and year
<i>Fish and Fisheries Act 1979</i>	No. 4, 1980
<i>Fish and Fisheries Amendment Act 1981</i>	No. 38, 1981
<i>Fish and Fisheries Amendment Act (No. 2) 1981</i>	No. 114, 1981
<i>Fish and Fisheries Amendment Act 1982</i>	No. 56, 1982
<i>Fish and Fisheries Amendment Act (No. 2) 1982</i>	No. 74, 1982
<i>Fish and Fisheries Amendment Act 1984</i>	No. 31, 1984
<i>Fish and Fisheries Amendment Act 1985</i>	No. 31, 1985

## **Schedule 2      Matters that may be provided for in a fishery management plan**

section 25(1)

2. A fishery management plan may:

- (a) designate areas, within the fishery management area where, and the periods when, fishing for certain species of fish or aquatic life shall be prohibited or restricted, or permitted only by specified types of vessels or by specified methods or persons, or with specified types or quantities of fishing gear, or subject to such other conditions as may be specified;
- (aa) specify the methods or practices to be used by a class of persons in the supervision of operations conducted for the purposes of a licence or permit;
- (ba) specify the species of fish that may or shall not be taken and/or the restrictions (if any) that apply in relation to the taking of any species of fish;
- (bb) specify the number of licences that may be issued in relation to an area or a fishery, as the case requires, and prohibit or regulate the transfer of licences in respect of a fishery;
- (b) specify ports or places or circumstances where fish or aquatic life may be landed or trans-shipped at sea;
- (c) determine a quota or allowable catch for the fishery or for any designated areas within the fishery for all fish or aquatic life within the fishery or such areas, or for any designated species or type of fish or aquatic life;
- (d) authorize the Minister, by notice in the *Gazette*, to allocate a quota or allowable catch to the person or persons the Minister specifies, and to specify the method (if any) by which a quota or allowable catch may be allocated;
- (e) set limits as to size, number, weight, sex, or other factor, on a catch of fish or aquatic life, or any species or class of fish or aquatic life, from any specified area which are considered necessary or desirable for the conservation and management of the fishery;

- (f) establish a system for limiting access to the fishery to persons who can satisfy the Director of their eligibility having regard to, but not limited to, the following criteria or such criteria as may be specified in the plan:
  - (i) present participation in the fishery;
  - (ii) historical fishing patterns and dependence on the fishery; or
  - (iii) the capability of fishing vessels being used, or intended to be used, in the fishery, to operate in other fisheries;
- (g) provide for offences in respect of contravention of or non-compliance with a provision of the plan or a notice, requirement or direction given under the plan and provide for penalties as follows:
  - (i) a penalty not exceeding \$20 000 for an offence;
  - (ii) a penalty not exceeding \$50 for each fish or item of aquatic life in excess of a specified limit;
  - (iii) a penalty not exceeding \$500 for each item of gear by which a specified limit in respect of the gear is exceeded;
- (h) contain any other measures considered necessary or desirable for the conservation, management or control of the fishery; or
- (j) provide for the establishment and administration of a scheme for the rationalisation of the fishery and for those purposes may provide for:
  - (i) a limitation or reduction in an equitable manner of the number of fishing units licensed to operate in a fishery;
  - (ii) the surrender and purchase of licences relating to that fishery on payment of agreed compensation;
  - (iii) the establishment by the Accountable Officer of a fund within the Agency Operating Account within the meaning of the *Financial Management Act*;
  - (iv) the imposition of levies or other payments for the purposes of funding any compensation to be paid; and

- (v) the repayment of surplus amounts, after payment of any outstanding amounts due, to persons who, on conclusion of a scheme, are holders of licences in respect of fishing units to which the scheme relates.
- 3. A fishery management plan may prescribe different penalties for different classes of offender for an offence against the plan.
- 4. Subject to clause 5, a fishery management plan may provide for the Director to do either or both of the following:
  - (a) revoke an approval for a person to engage in a fishery in a capacity that the Director must approve;
  - (b) refuse, for a specified period not exceeding 5 years, to approve a person to engage in a fishery in a capacity that the Director must approve.
- 5. A provision of a fishery management plan made under clause 4 may authorise the Director to act under the provision only if:
  - (a) the person has been found guilty:
    - (i) on more than one occasion of a prescribed offence under the plan (whether the same type of offence or not); or
    - (ii) of a prescribed offence under the plan and has also been found guilty of a prescribed offence under another fishery management plan; and
  - (b) the later offence was committed after the commencement of that clause.



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## ENDNOTES

**1****KEY**

Key to abbreviations

amd = amended  
 app = appendix  
 bl = by-law  
 ch = Chapter  
 cl = clause  
 div = Division  
 exp = expires/expired  
 f = forms  
 Gaz = Gazette  
 hdg = heading  
 ins = inserted  
 lt = long title  
 nc = not commenced

od = order  
 om = omitted  
 pt = Part  
 r = regulation/rule  
 rem = remainder  
 renum = renumbered  
 rep = repealed  
 s = section  
 sch = Schedule  
 sdiv = Subdivision  
 SL = Subordinate Legislation  
 sub = substituted

**2****LIST OF LEGISLATION*****Fisheries Act 1988 (Act No. 58, 1988)***

Assent date	14 December 1988
Commenced	14 December 1988

***Statute Law Revision Act 1990 (Act No. 33, 1990)***

Assent date	11 June 1990
Commenced	11 June 1990

***Statute Law Revision Act 1991 (Act No. 31, 1991)***

Assent date	25 June 1991
Commenced	25 June 1991

***Pastoral Land (Consequential Amendments) Act 1992 (Act No. 39, 1992)***

Assent date	25 June 1992
Commenced	26 June 1992 (s 2, s 2 <i>Pastoral Land Act 1992</i> (Act No. 17, 1992) and Gaz S33, 26 June 1992)

***Public Sector Employment and Management (Consequential Amendments) Act 1993 (Act No. 28, 1993)***

Assent date	30 June 1993
Commenced	1 July 1993 (s 2, s 2 <i>Public Sector Employment and Management Act 1993</i> (Act No. 11, 1993) and Gaz S53, 29 June 1993)

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***Fisheries Amendment Act 1994 (Act No. 65, 1994)***

Assent date	3 November 1994
Commenced	ss 15, 43 and 44: 3 November 1994; ss 5(a), (b), (c) and (e), 34 – 37: 3 February 1995; rem: 28 November 1994 ( <i>Gaz</i> G47, 23 November 1994, p 4)

**Amending Legislation**

***Fisheries Amendment Act 1994 Amendment Act 1994 (Act No. 74, 1994)***

Assent date	30 December 1994
Commenced	30 December 1994

***Financial Management (Consequential Amendments) Act 1995 (Act No. 5, 1995)***

Assent date	21 March 1995
Commenced	1 April 1995 (s 2, s 2 <i>Financial Management Act 1992</i> (Act No. 4, 1995) and <i>Gaz</i> S13, 31 March 1995)

***Statute Law Revision Act (No. 2) 1995 (Act No. 42, 1995)***

Assent date	13 October 1995
Commenced	13 October 1995

***Sentencing (Consequential Amendments) Act 1996 (Act No. 17, 1996)***

Assent date	19 April 1996
Commenced	s 7: 19 April 1996; rem: 1 July 1996 (s 2, s 2 <i>Sentencing Act 1995</i> (Act No. 39, 1995) and <i>Gaz</i> S15, 13 June 1996)

***Fisheries Amendment Act 1997 (Act No. 24, 1997)***

Assent date	2 June 1997
Commenced	ss 7(a), 8(b), 9(b) and (c) and 10: 3 June 1998 ( <i>Gaz</i> G21, 3 June 1998, p 7); rem: 9 July 1997 ( <i>Gaz</i> G27, 9 July 1997, p 4)

**Amending Legislation**

***Fisheries Amendment Act 1997 Amendment Act 1998 (Act No. 13, 1998)***

Assent date	30 March 1998
Commenced	3 June 1998 (s 2, s 2 <i>Fisheries Amendment Act 1997</i> (Act No. 24, 1997) and <i>Gaz</i> G21, 3 June 1998, p 7)

***Statute Law Revision Act 1999 (Act No. 27, 1999)***

Assent date	18 June 1999
Commenced	18 June 1999

***Fisheries Amendment Act 2000 (Act No. 21, 2000)***

Assent date	6 June 2000
Commenced	20 December 2000 (s 2)

***Corporations Reform (Consequential Amendments NT) Act 2001 (Act No. 17, 2001)***

Assent date	29 June 2001
Commenced	15 July 2001 (s 2, s 2 <i>Corporations Act 2001</i> (Cth Act No. 50, 2001) and <i>Cth Gaz</i> S285, 13 July 2001)

***Fisheries Amendment Act 2001 (Act No. 41, 2001)***

Assent date	19 July 2001
Commenced	19 July 2001

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***Fines and Penalties (Recovery) (Consequential Amendments) Act 2001 (Act No. 60, 2001)***

Assent date	11 December 2001
Commenced	1 January 2002 (s 2, s 2 <i>Fines and Penalties (Recovery) Act 2001</i> (Act No. 60, 2002) and Gaz G50, 19 December 2001, p 3)

***Statute Law Revision Act (No. 2) 2002 (Act No. 59, 2002)***

Assent date	7 November 2002
Commenced	7 November 2002

***Fisheries Amendment Act 2003 (Act No. 7, 2004)***

Assent date	7 January 2004
Commenced	7 January 2004

***Fisheries Amendment Act 2004 (Act No. 32, 2004)***

Assent date	4 June 2004
Commenced	22 September 2004 (Gaz G38, 22 September 2004, p 2)

### 3 SAVINGS AND TRANSITIONAL PROVISIONS

ss 42, 43 and 44 *Fisheries Amendment Act 1994* (Act No. 65, 1994)

### 4 LIST OF AMENDMENTS

It	amd No. 65, 1994, s 4
s 2A	ins No. 32, 2004, s 4
s 4	amd No. 31, 1991, s 3; No. 65, 1994, s 5; No. 24, 1997, s 3; No. 21, 2000, s 4; No. 59, 2002, s 5; No. 7, 2004, s 3; No. 32, 2004, s 5
s 9	amd No. 24, 1997, s 4
s 9A	ins No. 21, 2000, s 5
s 10	amd No. 65, 1994, s 6; No. 42, 1995, s 3
s 11	amd No. 65, 1994, s 7; No. 24, 1997, s 5; No. 32, 2004, s 6
s 11A	ins No. 24, 1997, s 6
	amd No. 7, 2004, s 4
s 12	amd No. 65, 1994, s 8; No. 42, 1995, s 3; No. 24, 1997, s 7; No. 32, 2004, s 7
s 12A	ins No. 65, 1994, s 9
	amd No. 24, 1997, s 8; No. 32, 2004, s 8
s 12B	ins No. 65, 1994, s 9
	amd No. 24, 1997, s 9; No. 32, 2004, s 9
s 12C	ins No. 24, 1997, s 10 as amd No. 13, 1998, s 3
	amd No. 21, 2000, s 6; No. 17, 2001, s 21
	rep No. 32, 2004, s 10
s 13	sub No. 65, 1994, s 10
	amd No. 42, 1995, s 3
	sub No. 24, 1997, s 11
ss 13A – 13E	ins No. 24, 1997, s 11
s 14	amd No. 65, 1994, s 11; No. 42, 1995, s 3
	sub No. 24, 1997, s 11
s 14A	ins No. 24, 1997, s 11
s 15	amd No. 17, 1996, s 6
s 17	amd No. 65, 1994, s 12; No. 24, 1997, s 12
s 18	amd No. 65, 1994, s 13
s 19	amd No. 65, 1994, s 14
s 20	amd No. 17, 1996, s 6
s 21	amd No. 65, 1994, s 15

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s 25	amd No. 31, 1991, s 3; No. 65, 1994, s 16
s 25A	ins No. 65, 1994, s 17
s 27	amd No. 65, 1994, s 18
s 28	amd No. 65, 1994, s 19; No. 41, 2001, s 2
s 30	amd No. 65, 1994, s 20
s 33	amd No. 17, 1996, s 6
s 34	amd No. 65, 1994, s 21 sub No. 24, 1997, s 13 amd No. 21, 2000, s 7
s 34A	ins No. 21, 2000, s 8
s 35	sub No. 24, 1997, s 13
s 36	amd No. 28, 1993, s 3; No. 24, 1997, s 14
s 37	amd No. 65, 1994, s 22; No. 17, 1996, s 6; No. 7, 2004, s 5
s 37A	ins No. 65, 1994, s 23 amd No. 60, 2001, s 8; No. 7, 2004, s 6
s 37B	ins No. 65, 1994, s 23 amd No. 7, 2004, s 7
s 38	amd No. 65, 1994, s 24; No. 24, 1997, s 15
s 40	amd No. 65, 1994, s 25
s 41	amd No. 65, 1994, s 26
s 43	amd No. 17, 1996, s 6
s 43A	ins No. 65, 1994, s 27
s 45	amd No. 65, 1994, s 28; No. 17, 1996, s 6
s 45A	ins No. 65, 1994, s 29 rep No. 24, 1997, s 16
s 46	amd No. 65, 1994, s 30; No. 17, 1996, s 6; No. 7, 2004, s 8
s 47	amd No. 65, 1994, s 31; No. 27, 1999, s 15; No. 7, 2004, s 9
s 49	amd No. 31, 1991, s 3; No. 65, 1994, s 32; No. 42, 1995, s 3
s 50	amd No. 65, 1994, s 33; No. 7, 2004, s 10
s 51	rep No. 5, 1995, s 19 ins No. 24, 1997, s 17 amd No. 27, 1999, s 15
s 52	amd No. 24, 1997, s 18
s 55	amd No. 39, 1992, s 3
s 58	amd No. 65, 1994, s 34; No. 59, 2002, s 5
s 62	amd No. 65, 1994, s 35
s 63	amd No. 65, 1994, s 36
s 64	amd No. 65, 1994, s 37
s 65	amd No. 65, 1994, s 38
s 66	amd No. 65, 1994, s 39
sch 2	amd No. 31, 1991, s 3; No. 65, 1994, s 40; No. 24, 1997, s 19; No. 27, 1999, s 15; No. 7, 2004, s 11
sch 3	amd No. 33, 1990, s 9 rep No. 65, 1994, s 41