

NORTHERN TERRITORY OF AUSTRALIA

FISHERIES AMENDMENT ACT 1997

No. 24 of 1997

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NORTHERN TERRITORY OF AUSTRALIA

No. 24 of 1997

AN ACT

to amend the *Fisheries Act*

[Assented to 2 June 1997]

BE it enacted by the Legislative Assembly of the Northern Territory of Australia, with the assent as provided by the *Northern Territory (Self-Government) Act 1978* of the Commonwealth, as follows:

1. SHORT TITLE

This Act may be cited as the *Fisheries Amendment Act 1997*.

2. COMMENCEMENT

This Act comes into operation on the date or dates fixed by the Administrator by notice in the *Gazette*.

3. INTERPRETATION

Section 4(1) of the *Fisheries Act* is amended -

- (a) by inserting before the definition of "Australian fishing zone" the following:

"'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;"

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(b) by omitting from the definition of "licensee" the words "and a person to whom a licence has been transferred under section 12A";

(c) by omitting the definition of "nominated person" and substituting the following:

"'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;";

(d) by inserting after the definition of "sale" the following:

"'short term operator', in relation to a licence, means a person appointed under section 14A(2) in respect of the licence;"; and

(e) by inserting after the definition of "taking" the following:

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

4. REGISTERS

Section 9 of the Principal Act is amended -

(a) by omitting "The Director", "licensees" and "this Act" and substituting "(1) The Director", "licensees and permittees" and "this Act and any interests held in a licence, permit or vessel", respectively; and

(b) by adding at the end the following:

"(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;

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- (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*."

5. LICENCES

Section 11 of the *Fisheries Act* is amended -

- (a) by omitting subsections (3A) and (3B);
- (b) by omitting from subsection (4) "person nominated under subsection (3A) or (3B)" and substituting "a nominated person"; and
- (c) by omitting subsections (13) and (14).

6. NEW SECTION

The *Fisheries Act* is amended by inserting after section 11 the following:

"11A. REVIEW BY DIRECTOR

"(1) Where a decision is made under section 11, 12A, 12B, 14 or 14A 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

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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.".

7. EXPIRY AND RENEWALS

Section 12 of the *Fisheries Act* is amended -

(a) by omitting from subsection (4)(b) all words after "structure of the corporation is" and substituting "that described under section 12C(1)(b)(iii)"; and

(b) by omitting subsection (4)(c) and substituting the following:

"(c) the conditions of the licence have been complied with; and".

8. TEMPORARY TRANSFER OF LICENCE

Section 12A of the *Fisheries Act* is amended -

(a) by omitting from subsection (2) "in writing" and substituting "on the approved form";

(b) by omitting from subsection (4) "The Director" and substituting "Subject to section 12C, the Director";

(c) by omitting subsection (9) and substituting the following:

"(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."; and

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- (d) by inserting in subsection (10) after "on application" the words "on the approved form".

9. PERMANENT TRANSFER OF LICENCE

Section 12B of the *Fisheries Act* is amended -

- (a) by omitting from subsection (2) ", in writing, in an approved form" and substituting "on the approved form";
- (b) by omitting from subsection (3) "Subject to this section" and substituting "Subject to section 12C"; and
- (c) by omitting subsections (4) to (8) (inclusive).

10. NEW SECTION

The *Fisheries Act* is amended by inserting after section 12B the following:

"12C. LICENCE OR PERMIT MAY BE GRANTED, TRANSFERRED, &c., ONLY TO AUSTRALIAN RESIDENTS OR COMPANIES

"(1) The Director is not to grant a licence or permit to, approve the permanent transfer of a licence under section 12B to, or approve a temporary transfer agreement under section 12A in respect of -

- (a) a natural person unless the person is resident in Australia; or
- (b) a corporation unless -
 - (i) the corporation is incorporated in Australia;
 - (ii) every person who is a director or officer of the corporation is resident in Australia; and
 - (iii) not more than 49% of the shares in the corporation are held beneficially, entirely, whether directly or indirectly, including through interposed corporations or trusts or both corporations and trusts, by persons who are not resident in Australia.

"(2) Subject to this section, the Director is not to renew a licence or a temporary transfer agreement under section 12A in respect of a person unless the licence or temporary transfer agreement could have been

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granted to, or approved in respect of, the person in accordance with subsection (1).

"(3) A corporation that holds a licence or permit or that is a temporary transferee must not register the transfer of any share in the corporation that has the effect of causing the share structure to be other than that specified in subsection (1)(b)(iii).

Penalty: \$20,000.

"(4) Where a corporation registers the transfer of any share in the corporation that has the effect of causing the share structure to be other than that specified in subsection (1)(b)(iii), the contract or agreement is unenforceable by either party to it.

"(5) Where a corporation, other than a corporation that is a temporary transferee, contravenes subsection (3), the Director may notify the corporation that it is in contravention of this section and that, within 3 months after receipt of the notice, it is to -

- (a) alter the share structure to conform with the share structure specified in subsection (1)(b)(iii); or
- (b) transfer the licence to a person in accordance with section 12B.

"(6) Where a corporation does not comply with a notice under subsection (5) within 3 months after receipt of the notice, fish or aquatic life may not be taken or sold under the licence or permit to which the notice relates until the corporation complies with the notice.

"(7) Where a corporation that is a temporary transferee contravenes subsection (3), the Director may notify the corporation that it is in contravention of this section and that, within 3 months after receipt of the notice, it is to alter the share structure to conform with the share structure specified in subsection (1)(b)(iii) or the approval of the temporary transfer agreement of the licence under section 12A will be automatically revoked.

"(8) Where a corporation does not comply with a notice under subsection (7) within 3 months after receipt of the notice, the temporary transfer agreement relating to the corporation is automatically revoked.

"(9) For the purposes of this section -

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- (a) 'corporation' and 'share' have the same meaning as in the Corporations Law; and
- (b) a person, including a corporation, is deemed to have a beneficial interest in a share if the person, either alone or together with other persons (including a corporation or corporations), is entitled (other than as a trustee for, on behalf of or on account of, another person) to receive, directly or indirectly, a dividend in respect of the share or to control the exercise of a right attracting to the share."

11. REPEAL AND SUBSTITUTION

Sections 13 and 14 of the *Fisheries Act* are repealed and the following substituted:

"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;

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- (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.

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"(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

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- (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;

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- (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

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(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.

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"(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,

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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

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- (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."

12. SPECIAL PERMITS

Section 17 of the *Fisheries Act* is amended by inserting after subsection (2) the following:

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"(2A) A permit granted for the purposes of subsection (1)(c) may specify that fish taken under it may be sold."

13. REPEAL AND SUBSTITUTION

Sections 34 and 35 of the *Fisheries Act* are repealed and the following substituted:

"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

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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.

"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."

14. CONFIDENTIALITY

Section 36(1) of the *Fisheries Act* is amended by omitting "or of an Act" and substituting "or an Act".

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15. REGULATORY OFFENCES

Section 38(2) of the *Fisheries Act* is amended -

- (a) by omitting "not intended" and substituting "not intend"; and
- (b) by omitting from paragraph (b)(ii) "was not done; and" and substituting "was not done; or".

16. REPEAL

Section 45A of the *Fisheries Act* is repealed.

17. NEW SECTION

The *Fisheries Act* is amended by inserting after section 50 the following:

"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 Accountable Officer's Account, 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."

18. FISHING INDUSTRY RESEARCH AND DEVELOPMENT FUND ADVISORY COMMITTEE

Section 52(1) of the *Fisheries Act* is amended by omitting "trust funds accumulated under section 51" and substituting "moneys in the Fishing Industry Research and Development Fund".

19. SCHEDULE 2

Schedule 2 to the *Fisheries Act* is amended by inserting in item (2), after paragraph (a), the following:

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"(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;".
