

(Reprint No. 2)

SOUTH AUSTRALIA

FISHERIES ACT 1982

This Act is reprinted pursuant to the Acts Republication Act, 1967, and incorporates all amendments in force as at 19 December 1991.

It should be noted that the Act was not revised (for obsolete references, etc.) by the Commissioner of Statute Revision prior to the publication of this reprint.

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FISHERIES ACT 1982

being

Fisheries Act 1982 No. 58 of 1982 [Assented to 1 July 1982]¹

as amended by

Fisheries Act Amendment Act 1984 No. 20 of 1984 [Assented to 10 May 1984]²

Fisheries Act Amendment Act (No. 2) 1984 No. 33 of 1984 [Assented to 17 May 1984]¹

Fisheries Act Amendment Act 1986 No. 122 of 1986 [Assented to 18 December 1986]³

Fisheries (Gulf St. Vincent Prawn Fishery Rationalization) Act 1987 No. 7 of 1987 [Assented to 9 April 1987]⁴

Fisheries Act Amendment Act 1988 No. 92 of 1988 [Assented to 15 December 1988]⁵

Fisheries (Miscellaneous) Amendment Act 1991 No. 76 of 1991 [Assented to 12 December 1991]⁶

Note: Asterisks indicate repeal or deletion of text. For further explanation see Appendix 1.

An Act to provide for the conservation, enhancement and management of fisheries, the regulation of fishing and the protection of certain fish; to provide for the protection of the aquatic habitat; to provide for the control of exotic fish and disease in fish, and the regulation of fish farming and fish processing; and for other purposes.

The Parliament of South Australia enacts as follows:

PART I PRELIMINARY

Short title

1. This Act may be cited as the *Fisheries Act 1982*.

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¹Came into operation 1 July 1984: *Gaz.* 14 June 1984, p. 1564.

²Came into operation 1 July 1984: *Gaz.* 14 June 1984, p. 1566.

³Came into operation 18 December 1986: *Gaz.* 18 December 1986, p. 1876.

⁴Came into operation 9 April 1987: *Gaz.* 9 April 1987, p. 904.

⁵Came into operation 15 December 1988: *Gaz.* 15 December 1988, p. 2010.

⁶Came into operation (except ss. 9, 13, 16(c), 18, 20(a), 23 and 24) 19 December 1991: *Gaz.* 19 December 1991, p. 1911; remainder of Act had not been brought into operation at the date of, and the amendments effected by those provisions have not been included in, this reprint.

N.B. The amendments effected to this Act by the Marine Environment Protection Act 1990 had not been brought into operation at the date of, and have not been included in, this reprint.

Interpretation

5. (1) In this Act, unless the contrary intention appears—

“aquatic reserve” means any waters, or land and waters, declared by proclamation under Division II of Part IV to be an aquatic reserve:

“authority” means a licence, permit, registration or lease provided for by or under this Act:

“boat” means any means of transportation on or under water:

“Commonwealth Act” means the *Fisheries Act 1952* of the Commonwealth as amended by subsequent Acts of the Commonwealth whether enacted before or after the commencement of this Act:

“Commonwealth proclaimed waters” means waters that are by virtue of a proclamation in force under the Commonwealth Act, proclaimed waters within the meaning of that Act:

“device” means any implement, apparatus, device or substance for taking or facilitating the taking of fish:

“the Director” means the person for the time being holding or acting in the office of the Director of Fisheries under Part III:

“exotic fish” means fish of a class declared by regulation to be exotic fish:

“expiable offence” means an offence of a kind declared by regulation to be an expiable offence for the purposes of this Act:

“farm fish” means fish propagated or kept for the purpose of trade or business, the control or eradication of the aquatic or benthic flora or fauna or consumption as food:

“fish” means an aquatic organism of any species and includes the eggs, spat or spawn, or the body, or part of the body (including the shell) of such an organism:

“fish farming” means propagating or keeping stocks of fish for the purpose of trade or business, the control or eradication of the aquatic or benthic flora or fauna or consumption as food:

“fish farming licence” means a licence to engage in fish farming granted under Division III of Part IV:

“fisheries officer” means a person who is a fisheries officer under Part III either by virtue of appointment as such or *ex officio*:

“the Fisheries Research and Development Fund” means the Fisheries Research and Development Fund continued in existence under Division IV of Part III:

“fishery” means a class of fishing activities declared by regulation to constitute a fishery under Division I of Part IV:

“fishery licence” means a licence granted in respect of a fishery under Division I of Part IV and includes a duplicate copy of such a licence:

“fishing activity” means the act of taking fish, or an act preparatory to, or involved in, the taking of fish:

“fish processor” means a person who for the purpose of trade or business processes or purchases or obtains fish:

“foreign boat” has the same meaning as it has in the Commonwealth Act:

“marine park” means any waters, or land and waters, constituted a marine park by proclamation under Division II of Part IV:

“processing” in relation to fish, means scaling, gilling, gutting, filleting, freezing, chilling, packing or any other activity involved in preparing fish for sale:

“purchase” means—

(a) purchase or take in exchange;

(b) agree or offer to purchase or take in exchange;

(c) receive, or accept or take delivery, under an agreement to purchase or take in exchange;

or

(d) cause, suffer or permit an act referred to in paragraph (a), (b) or (c):

“registered boat”—

(a) means a boat registered by endorsement of a fishery licence under Division I of Part IV;

and

(b) includes a boat used in the place of a boat referred to in paragraph (a) with the consent of the Director and in accordance with the conditions (if any) of that consent:

“registered fish processor” means a person registered as a fish processor under Division V of Part IV:

“registered master”—

(a) means a person registered by endorsement of a fishery licence under Division I of Part IV as master of a boat that may be used pursuant to the licence;

and

(b) includes a person acting in the place of a person referred to in paragraph (a) with the consent of the Director and in accordance with the conditions (if any) of that consent:

“registered owner”—

(a) in relation to a registered boat means, subject to paragraph (b), the holder of the fishery licence on which is endorsed the registration of that boat;

or

(b) in relation to a boat being used by the holder of a fishery licence pursuant to this Act in place of a boat registered by endorsement on that licence—means the holder of that licence:

“the repealed Act” means the *Fisheries Act 1971* repealed by this Act:

“sell” means—

(a) sell or give in exchange;

(b) agree or offer to sell or give in exchange;

(c) have in possession or control, expose, store, consign or deliver for sale or exchange;

or

(d) cause, suffer or permit an act referred to in paragraph (a), (b) or (c):

“species” includes sub-species or variety:

“take” in relation to fish means catch, take or obtain fish (whether alive or dead) from any waters or kill or destroy fish in any waters:

“this Act” includes a regulation, proclamation, arrangement or other instrument under this Act:

“waters” means—

(a) any sea or inland waters including any body of water or watercourse of any kind whether occurring naturally or artificially created;

or

(b) the bed of such waters.

(2) A class of fishing activities may be defined in any regulation, proclamation, arrangement or other instrument under this Act by reference to all or any of the following factors:

(a) a species of fish;

(b) a description of fish by reference to sex, size, weight or any other characteristic;

(c) a number or quantity of fish;

(d) a period of time;

(e) an area of waters or a place;

(f) a method of fishing;

(g) a class or number of boats;

(h) a class of persons;

(i) a purpose of activities;

or

(j) any other factor.

(3) In this Act, a reference to engaging in a fishing activity of a class is to be construed as a reference to doing an act that falls within the defined class and as including a reference to—

(a) using a device for the purpose of the activity;

(b) using a boat for the purpose of the activity;

(c) being in charge of, or acting as a member of the crew of, a boat that is being used for the purpose of the activity;

(d) diving in waters for the purpose of the activity;

or

(e) causing, assisting, suffering or permitting a person to do an act referred to in this subsection.

(4) For the purposes of this Act, a fish will not be regarded as having been taken if it is taken but forthwith returned to the water unencumbered in any way and with as little injury as possible.

(5) This Act does not apply in relation to any activity (other than fish farming, the taking of fish for the purpose of trade or business or the introduction of exotic fish or fish disease) engaged in in relation to inland waters if those waters are surrounded by land that is in the ownership, possession or control of the same person (being a person other than the Crown or an instrumentality of the Crown).

(6) Subject to any limitations expressly prescribed in this Act, this Act applies—

(a) in relation to all waters that are within the limits of the State;

(b) except for purposes relating to a fishery that is to be managed in accordance with the law of the Commonwealth pursuant to an arrangement under Division III of Part II and except for purposes prescribed by paragraph (d)—in relation to any waters of the sea not within the limits of the State that are on the landward side of waters adjacent to the State that are Commonwealth proclaimed waters;

(c) for purposes relating to a fishery that is to be managed in accordance with the law of the State pursuant to an arrangement under Division III of Part II—in relation to any waters to which the legislative powers of the State extend, with respect to that fishery, whether pursuant to section 5 of the *Coastal Waters (State Powers) Act 1980* of the Commonwealth or otherwise;

and

(d) for purposes relating to activities to which this Act applies, being activities that are, within the meaning of the Commonwealth Act, carried on for private purposes otherwise than by the use of a foreign boat—in relation to any waters to which the legislative powers of the State extend with respect to those activities.

Note: For definition of divisional penalties see Appendix 2.

PART II
COMMONWEALTH-STATE ARRANGEMENTS
DIVISION I—PRELIMINARY

Interpretation

6. In this Part, unless the contrary intention appears—

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

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

“Commonwealth Minister” means the Minister for the time being administering the Commonwealth Act and any other Minister performing and exercising functions and powers pursuant to section 12C of the Commonwealth Act:

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

“Joint Authority” means—

(a) the South-Eastern Fisheries Joint Authority established under section 12D(1) of the Commonwealth Act;

and

(b) any other Joint Authority established under section 12D(6) of that Act of which the Minister is a member:

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

DIVISION II—JOINT AUTHORITIES

Powers and functions of Minister

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

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

Judicial notice

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

Functions of Joint Authority

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

Delegation

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

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

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

(a) in the service of;

(b) in the service of an authority of;

or

(c) under the law of,

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

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

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

(a) may be revoked, by instrument in writing, by the Joint Authority (whether or not constituted by the persons constituting the Joint Authority at the time the power was delegated);

(b) does not prevent the exercise of the power by the Joint Authority;

and

(c) continues in force notwithstanding any change in the membership of the Joint Authority.

(6) A certificate signed by a member of a Joint Authority stating any matter with respect to a delegation under this section by the Joint Authority will, in the absence of proof to the contrary, be accepted as proof of the matter stated.

(7) In any legal proceedings an apparently genuine document purporting to be a certificate referred to in subsection (6) will, in the absence of proof to the contrary, be taken to be such a certificate and to have been duly given.

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

Procedure of Joint Authorities

11. (1) The provisions of section 12F(1) to (8) 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 a deputy of that Minister, who took part in or made the decision will, in the absence of proof to the contrary, be accepted as proof that the decision, as recorded, was duly made.

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

Report of Joint Authority

12. The Minister must cause a copy of a report of a Joint Authority prepared under section 12G of the Commonwealth Act to be laid before each House of Parliament as soon as practicable after preparation of the report.

DIVISION III—ARRANGEMENTS WITH RESPECT TO THE MANAGEMENT OF PARTICULAR FISHERIES

Arrangement for management of certain fisheries

13. (1) The State may, in accordance with section 12J of the Commonwealth Act, make an arrangement referred to in section 12H of that Act for the management of a particular fishery.

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

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

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

(5) After action for the purpose of the termination of an arrangement has been taken, but before the termination takes effect, authorities, endorsements and other instruments may be granted, issued, renewed, made or executed, and regulations, proclamations and notices may be made, for the purposes of the operation of this Act as affected by the termination of the arrangement, as if the arrangement had been terminated, but such an authority, endorsement, instrument, regulation, proclamation or notice does not have effect before the termination of the arrangement takes effect.

Application of this Act to fisheries in accordance with arrangements

14. Subject to this section, where there is in force an arrangement that provides that a particular fishery is to be managed in accordance with the law of the State, the provisions of this Act apply to and in relation to the fishery except that those provisions do not apply to or in relation to that fishery in respect of foreign boats in Commonwealth proclaimed waters or operations on or from foreign boats, or persons on foreign boats, in Commonwealth proclaimed waters or in relation to matters that occurred in or in relation to Commonwealth proclaimed waters before the arrangement took effect.

Application of Commonwealth law within limits of State in accordance with arrangements

14a. Where there is in force an arrangement that provides that a particular fishery is to be managed in accordance with the law of the Commonwealth, that law applies within the limits of the State as a law of the State.

Functions of Joint Authority

15. Where, in respect of a fishery, there is in force an arrangement under which a Joint Authority has the management of the fishery and the fishery is to be managed in accordance with the law of the State, the Joint Authority has the functions of keeping constantly under consideration 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 other authorities (including other Joint Authorities within the meaning of the Commonwealth Act) in matters of common concern.

Joint Authority to exercise certain powers instead of Minister or Director

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

(2) In respect of a Joint Authority fishery that is to be managed in accordance with the law of the State, the powers conferred before or after the commencement of this Part on the Minister or the Director or the delegate of the Minister or Director by or under this Act (this Part excepted) or the regulations (including powers with respect to the grant, renewal, revocation and suspension of authorities) are exercisable by the Joint Authority to the exclusion of the Minister or the Director or the delegate of the Minister or Director.

(3) An authority granted under this Act by a Joint Authority will contain such conditions and limitations that it does not apply in relation to a Joint Authority fishery, or Joint Authority fisheries, not managed by that Joint Authority.

(4) A Joint Authority may endorse an authority granted under this Act (including an authority granted by that Joint Authority or another Joint Authority) so as to extend the operation of the authority to matters to which the 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 authority ceases to have effect;

and

(b) the Joint Authority may suspend or revoke the endorsement as if it were an authority granted by the Joint Authority.

(5) Subject to section 19(1)(b) and (c), where, at a time a fishery becomes a Joint Authority fishery, a regulation, proclamation or notice under this Act would, but for this subsection, apply to the fishery, the regulation, proclamation or notice, 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, an authority in respect of a foreign boat or to endorse such an authority.

Application of certain provisions relating to offences

17. 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 is to 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.

Presumption relating to certain statements

18. A statement in an arrangement to the effect that specified waters—

(a) in the case of an arrangement to which the Commonwealth and the State are the only parties—are waters adjacent to the State;

and

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

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

Regulations

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

(a) make regulations for the management of the fishery;

(b) make a regulation applying to the fishery a regulation made otherwise than pursuant to this section;

or

(c) amend a regulation made otherwise than pursuant to this section so that it is expressed to apply to the fishery, whether or not it also applies to any other fishery.

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

(3) 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 will be conclusively presumed that it was made for the purpose of giving effect to a decision of the Joint Authority.

PART III
ADMINISTRATION
DIVISION I—OBJECTIVES

Objectives

20. In the administration of this Act, the Minister and the Director have as their principal objectives:

(a) ensuring, through proper conservation, preservation and fisheries management measures, that the living resources of the waters to which this Act applies are not endangered or overexploited;

and

(b) achieving the optimum utilization and equitable distribution of those resources.

DIVISION II—THE MINISTER AND THE DIRECTOR

The Minister

21. (1) The Minister—

(a) is a body corporate;

and

(b) has full juristic capacity to exercise any powers that are by their nature capable of being exercised by a body corporate.

(2) Where a document appears to bear the common seal of the Minister, it will be presumed, in the absence of proof to the contrary, that the document was duly executed by the Minister.

The Director

22. (1) The office of the Director of Fisheries continues in existence.

(2) The Director of Fisheries is a Public Service employee.

Delegation

23. (1) The Minister may, by instrument in writing, either generally or otherwise, delegate to the Director or any other Public Service employee any of his or her powers under this Act other than this power of delegation.

(2) The powers conferred on the Minister by section 57 cannot be the subject of any delegation.

(3) The Director may, by instrument in writing, either generally or otherwise, delegate to any Public Service employee any of his or her powers under this Act other than this power of delegation.

(4) Where a power delegated under this section by the Minister or the Director is exercised by the delegate, the power will, for the purposes of this Act, be taken to have been exercised by the Minister or, as the case may be, the Director.

(5) 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 position in the Public Service of the State.

(6) A delegate of the Minister or the Director is, in the exercise of delegated powers, subject to the directions of the Minister or the Director.

- (7) A delegation of a power by the Minister or the Director under this section—
- (a) may be revoked, by instrument in writing, by the Minister or the Director;
- and
- (b) does not prevent the exercise of the power by the Minister or the Director.

(8) A certificate signed by the Minister or the Director stating any matter with respect to a delegation under this section by the Minister or, as the case may be, the Director will, in the absence of proof to the contrary, be accepted as proof of the matter stated.

(9) In any legal proceedings, an apparently genuine document purporting to be a certificate referred to in subsection (8) will, in the absence of proof to the contrary, be taken to be such a certificate and to have been duly given.

Annual report

24. (1) The Director must, on or before 31 December in each year, submit to the Minister a report on the administration of this Act during the year ending on the preceding 30 June.

(2) The Minister must, as soon as practicable after receipt of a report under subsection (1), cause copies of the report to be laid before both Houses of Parliament.

DIVISION III—FISHERIES OFFICERS

Fisheries officers

25. (1) The Minister may appoint any of the following persons to be fisheries officers for the purposes of this Act:

- (a) Public Service employees;
- (b) officers under the Commonwealth Act;
- (c) persons authorized under a law of another State or a Territory of the Commonwealth related to fishing to exercise powers or discharge duties related to the enforcement of that law.

(2) The Director and each member of the police force are fisheries officers for the purposes of this Act.

(3) An appointment under subsection (1) may be made subject to conditions limiting the area within which, or the purposes for which, the appointee may exercise the powers of a fisheries officer.

- (4) The Minister may, by notice in writing served on a fisheries officer—
- (a) vary or revoke a condition of an appointment imposed under subsection (3);
- or
- (b) revoke the appointment.

Identity cards and their production

26. (1) The Minister must, subject to subsection (2), issue to every fisheries officer an identity card stating the name of that person and the fact that he or she is a fisheries officer under this Act.

(1a) Where the powers of a fisheries officer have been limited pursuant to section 25(3), the identity card issued to the officer must contain a statement of the limitation on the officer's powers.

(2) The issue of an identity card is not required in the case of a fisheries officer who is a member of the police force of the State.

(3) A fisheries officer must, on demand by any person in relation to whom the officer is exercising or proposing to exercise any powers under this Act, produce his or her identity card, or where the fisheries officer is a member of the police force not in uniform, his or her warrant card, for the inspection of that person.

Restriction on interests of fisheries officers

27. (1) A fisheries officer must not, without the consent of the Minister—

(a) have any proprietary or pecuniary interest in a business, or a company or trust that has an interest in a business, involving the taking of fish or dealing in or with fish;

or

(b) act as agent for a person who has any such proprietary or pecuniary interest in any matter connected with such a business.

Penalty: Division 7 fine.

(2) Where a fisheries officer appointed under section 25(1) is convicted of an offence against subsection (1), the officer ceases, on that conviction to hold office as a fisheries officer under this Act.

(3) A person (other than a fisheries officer) engaged in the administration of this Act must, if he or she has an interest of a kind referred to in subsection (1)(a), declare the interest to the Minister.

Penalty: Division 7 fine.

Powers of fisheries officers

28. (1) Subject to this section, a fisheries officer may for the purposes of the administration or enforcement of this Act—

(a) where he or she reasonably suspects that any premises, land, waters, boat or vehicle is being, has been or is intended to be, used for, or in connection with, an activity regulated by or under this Act—at any time, enter and search and inspect and, where necessary for the purpose, break into or open any part of, or thing in, the premises, land, waters, boat or vehicle;

(b) where he or she reasonably suspects that anything has been done or omitted to be done in contravention of this Act in relation to any fish, boat, vehicle, device, equipment, document, record or other thing, or that it affords evidence of an offence against this Act—seize and retain the fish, boat, vehicle, device, equipment, document, record or other thing;

(c) give any directions to the person in charge of, or any person in or on, any premises, land, waters, boat or vehicle that are reasonably necessary in order to facilitate the exercise of the powers conferred by paragraph (a) or (b), including, without limiting the generality of the foregoing, directions with respect to the stopping or moving of a boat or vehicle;

(d) where he or she reasonably suspects that a person is engaging, is intending to engage, or has engaged in an activity regulated by or under this Act—require the person to state his or her full name and the address of his or her usual place of residence;

(e) where he or she reasonably suspects that a boat is being, is intended to be, or has been, used for the purpose of taking fish—require the person in charge of the boat to give information concerning the boat, the boat's crew and any person on board the boat;

or

(f) require any person required to hold an authority or to have an authority in his or her possession to produce the authority, and take copies of or extracts from the authority.

(2) A fisheries officer cannot exercise the power conferred by subsection (1)(a) in relation to any premises except upon the authority of a warrant issued by a justice unless—

(a) the power is exercised in relation to registered premises of a registered fish processor;

or

(b) the fisheries officer has reason to believe that in the circumstances urgent action is required.

(3) Where fish that are liable to seizure pursuant to subsection (1)(b) are contained in any receptacle or container, the receptacle or container and all its contents may be seized and retained pursuant to that subsection.

(4) A person must not—

(a) fail to comply with a requirement made of him or her, or direction given to him or her, by a fisheries officer under this section;

or

(b) hinder or use abusive, threatening or insulting language to a fisheries officer, a person accompanying or assisting a fisheries officer, or any other person engaged in the administration or execution of this Act.

Penalty: Division 6 fine.

(5) A person must not assault a fisheries officer, a person accompanying or assisting a fisheries officer, or any other person engaged in the administration or execution of this Act.

Penalty: Division 5 fine or division 5 imprisonment, or both.

(6) A fisheries officer may arrest without warrant any person—

(a) who hinders or assaults a fisheries officer, a person accompanying or assisting a fisheries officer or any other person engaged in the administration or execution of this Act;

or

(b) where he or she has reason to believe that the person has committed an offence against this Act and—

(i) failed to state truthfully his or her name or the address of his or her usual place of residence when required to do so under this section;

(ii) would fail to attend court in answer to a summons issued in respect of the offence;

or

(iii) would continue or repeat the offence if not arrested.

(7) Upon arresting any person in pursuance of this section, a fisheries officer must forthwith convey the person, or cause him or her to be conveyed, to the nearest police station.

(8) A person arrested in pursuance of this section who escapes from lawful custody is guilty of an offence.

Penalty: Division 5 fine or division 5 imprisonment, or both.

(9) Where anything has been seized under this section, the following provisions apply:

(a) the thing seized is to be held by the Crown pending proceedings for an offence against this Act related to the thing seized, unless the Minister—

(i) upon application, authorizes its release to the person from whom it was seized or any person who had legal title to it at the time of its seizure subject to such conditions as the Minister thinks fit, including conditions as to the giving of security for satisfaction of an order under paragraph (b)(i)(B);

or

(ii) in the case of fish or any other perishable thing, orders that it be forfeited to the Crown;

(b) where proceedings for an offence against this Act related to the thing seized are instituted within six months of its seizure and the person charged is found guilty of the offence, the court must consider the question of forfeiture and—

(i) where the thing seized has not been forfeited by order of the Minister—

(A) order that it be forfeited to the Crown;

(B) where it has been released pursuant to paragraph (a)(i), order that it be forfeited to the Crown or order that the person to whom it was released pay to the Minister an amount equal to its market value at the time of its seizure, as the court thinks fit;

or

(C) make no order for forfeiture;

or

(ii) where the thing seized has been forfeited by order of the Minister—

(A) confirm the order for forfeiture;

or

(B) quash the order for forfeiture,

as the court considers appropriate in the circumstances;

(c) where—

(i) the thing seized has not been released pursuant to paragraph (a)(i);

and

(ii) proceedings for an offence against this Act related to the thing seized—

(A) are not instituted within six months of its seizure;

(B) are instituted within six months of its seizure and the person charged is not found guilty of the offence;

or

(C) are instituted within six months of its seizure and the person charged is found guilty of the offence but either no order for forfeiture is made under paragraph (b)(i) or an order is made under paragraph (b)(ii) quashing the order for forfeiture,

the person from whom the thing was seized or any person who had legal title to it at the time of its seizure is entitled to recover, by action in any court of competent jurisdiction—

(iii) where the thing seized has not been forfeited by order of the Minister—the thing itself, or, if it has deteriorated or been destroyed, compensation of an amount equal to its market value at the time of its seizure;

or

(iv) where the thing seized has been forfeited by order of the Minister—compensation of an amount equal to its market value at the time of its seizure or, if it has been sold, the amount realized by its sale;

(ca) notwithstanding paragraph (c), where any fish or other perishable thing is seized in relation to an expiable offence and the offence is expiated pursuant to this Act—

(i) the fish or other perishable thing is, if it has not already been forfeited to the Crown by order of the Minister, forfeited to the Crown by force of this paragraph;

and

(ii) whether it has been forfeited by order of the Minister or under this paragraph, no compensation may be recovered in respect of the fish or other perishable thing by any person;

(d) where the thing seized is forfeited to the Crown under this section, it may be disposed of by sale, destruction or otherwise as the Minister directs;

(e) any proceeds of sale under paragraph (d) and any amount recovered under an order under paragraph (b)(i)(B) must be paid into the Fisheries Research and Development Fund;

(f) where any compensation is payable under this subsection, the money required for that purpose must be paid out of the Fisheries Research and Development Fund.

(10) Notwithstanding subsection (9), where—

(a) a fisheries officer finds any device for taking fish unattended and, pursuant to this section, seizes the device and any fish caught or trapped by the device;

and

(b) the owner of the device is unknown,

the following provisions apply:

(c) the Minister may order that the fish (if any) be forfeited to the Crown, in which case the fish may be disposed of by sale, destruction or otherwise as the Minister directs and any proceeds of sale must be paid into the Fisheries Research and Development Fund;

(d) notice of the seizure of the device must be given in accordance with the regulations;

and

(e) if, after the expiration of one month from the giving of the notice, the owner remains unknown and the Minister determines that there is reason to believe that the device had been, was being, or was intended to be, used in contravention of this Act, the Minister may order that it be forfeited to the Crown, in which case it may be disposed of by sale, destruction or otherwise as the Minister directs and any proceeds of sale must be paid into the Fisheries Research and Development Fund.

(11) A fisheries officer may, while acting in the exercise of powers or functions under this Act, be accompanied by any person, and, if he or she reasonably believes that it is necessary in the circumstances, request any suitable person to assist him or her in the exercise of those powers or functions.

(12) A person, while assisting a fisheries officer in response to a request for assistance, has and may exercise all such powers of a fisheries officer as are reasonably necessary for the purpose.

(13) A fisheries officer may, if he or she believes that it is necessary for the purpose of enforcing any of the provisions of this Act, request the person in charge of any boat or vehicle to make the boat or vehicle available for his or her use.

(14) Where a fisheries officer makes use of a boat or vehicle pursuant to subsection (13), the Minister may pay to the person who would otherwise have been entitled to the use of the boat or vehicle at that time such compensation as the Minister considers proper for any loss incurred as a result of the boat or vehicle being made available for use by the fisheries officer.

False representation

29. A person must not, by words or conduct, falsely represent that he or she is a fisheries officer.

Penalty: Division 6 fine.

Immunity from personal liability

30. (1) No personal liability shall attach to a fisheries officer, or any person lawfully assisting a fisheries officer, for any act or omission by him in good faith and in the exercise or discharge, or purported exercise or discharge, of the powers, duties or functions of a fisheries officer under this Act.

(2) A liability that would, but for subsection (1), lie against a fisheries officer or other person shall lie against the Crown.

DIVISION IV—RESEARCH AND DEVELOPMENT

Research and development

31. The Minister may carry out any research, exploration, experiments, works or operations of any kind for the conservation, management or enhancement of living resources found in waters to which this Act applies or the advancement or promotion of any fishing, fish farming or fish processing activity and for that purpose make and carry out any arrangement with any other authority or person.

Research and Development Fund

32. (1) The *Fisheries Research and Development Fund* ("the Fund") continues in existence.

(1a) The Fund will continue to be kept in the Treasury.

(2) The Fund consists of the following:

- (a) the money in the Fund immediately before the commencement of this Act;
 - (b) any charges and fees paid under this Act;
 - (c) any money required to be paid into the Fund under any other provision of this Act or under any other Act;
 - (d) any money received by way of grant, gift or bequest for the purposes of the Fund;
 - (e) any income from investment of money belonging to the Fund;
- and
- (f) any money appropriated by Parliament for the purposes of the Fund.

(3) The Fund may be applied by the Minister (without further appropriation than this subsection)—

- (a) for the purpose of carrying out any research, exploration, experiments, works or operations of a kind referred to in section 31;
- and
- (b) in making any payment required by any other provision of this Act or by any other Act to be made from the Fund.

(4) The Minister may, with the approval of the Treasurer, invest any money belonging to the Fund not immediately required for the purposes of this Act in such manner as may be approved by the Treasurer.

PART IV
REGULATION OF FISHING, ETC.
DIVISION I—FISHERIES AND FISHING

Interpretation

33. In this Division—

“licence” means a fishery licence under this Division:

“registration” means registration of a boat by endorsement of a fishery licence, or registration of the master of a boat by endorsement of a fishery licence, under this Division.

Persons and boats engaged or used in fisheries to be licensed

34. (1) A person must not, for the purpose of trade or business, engage in a fishing activity of a class that constitutes a fishery unless—

(a) the person holds a licence in respect of the fishery;

or

(b) the person is acting as an agent of a person holding a licence in respect of the fishery.

Penalty: Division 5 fine.

(2) Subject to the regulations, a person must not, for the purpose of trade or business, use a boat, or cause, suffer or permit a boat to be used, for the purpose of engaging in a fishing activity of a class that constitutes a fishery unless—

(a) the boat—

(i) is registered by endorsement of a licence in respect of the fishery held by him or her or a person of whom he or she is acting as an agent;

or

(ii) is being used in the place of a boat referred to in subparagraph (i) with the consent of the Director and in accordance with the conditions (if any) of that consent;

and

(b) the boat is in the charge of a natural person who—

(i) is registered by endorsement of the licence as the master of a boat that may be used pursuant to the licence;

or

(ii) is acting in the place of a person referred to in subparagraph (i) with the consent of the Director and in accordance with the conditions (if any) of that consent.

Penalty: Division 5 fine.

* * * * *

Applications for licences or registration

35. (1) An application for a licence or registration must be made to the Director in such manner and form, contain such information and be accompanied by such papers and documents (including photographs) as are prescribed in relation to the class of licence or registration sought.

- (2) An applicant for a licence or registration must, if the Director so requires—
- (a) furnish the Director with such further information, papers or documents as the Director specifies;

and

- (b) verify by statutory declaration any information furnished for the purposes of the application.

(3) An applicant for a licence or registration must at the time of making the application pay to the Director such application fee (if any) as may be prescribed.

Grant of licences or registration

36. (1) Subject to this Act, an application—

- (a) for a licence shall be determined by the Director subject to and in accordance with the provisions of the scheme of management prescribed for the fishery;

- (b) for registration of a boat must not be granted by the Director unless he or she is satisfied—

(i) that the applicant is the holder of a licence that is in force;

and

(ii) as to the matters prescribed by the scheme of management for the fishery;

- (c) for registration of a person as the master of a boat must not be granted by the Director unless he or she is satisfied—

(i) that the applicant is the holder of a licence that is in force;

(ii) that a boat is registered in the name of the applicant by endorsement of the licence;

(iii) that the person nominated as the proposed master is a fit and proper person to be master of the boat;

and

(iv) that no person other than the person nominated as the proposed master is registered as the master of the boat.

(2) Notwithstanding the provisions of subsection (1)(c), where the scheme of management prescribed for the fishery provides that only the holder of a licence in respect of the fishery may be registered as the master of a boat used pursuant to the licence, the person nominated as the proposed master must be the holder of the licence.

(3) A licence or registration must not be granted by the Director except upon payment of the licence or registration fee, or, upon payment, in accordance with the regulations, of an instalment of the licence or registration fee, prescribed under this Act.

(4) The Director must, upon granting an application for registration, effect the registration by an endorsement of the licence in relation to which the registration was granted.

(5) The Director may, upon application in the prescribed manner and form by the holder of the licence on which any registration is endorsed, revoke the registration.

Conditions of licences

37. (1) Subject to subsection (2a), the Director may upon granting a licence, or at any other time, impose a condition of the licence, being a condition—

(a) directed towards conserving, enhancing or managing the living resources to which the fishery relates;

or

(b) related to any other matter prescribed by the scheme of management for the fishery.

(1a) The Director may impose a condition of a licence notwithstanding that the effect of the condition is to prevent for a specified period—

(a) the taking of one or more species of fish that could otherwise be lawfully taken pursuant to the licence;

or

(b) the use of any device or equipment that could otherwise be lawfully used to take fish pursuant to the licence.

(2) Subject to subsection (2a), the Director may, at any time, revoke or vary a condition of a licence.

(2a) The Director must not—

(a) impose a condition that has the effect described in subsection (1a)(a) or (b);

or

(b) vary a condition so that it has that effect,

except with the approval of the Minister.

(2b) Before giving his or her approval under subsection (2a), the Minister must—

(a) give the holder of the licence and the prescribed fishing industry body notice in writing setting out the condition to be imposed or the manner in which a condition is to be varied, as the case may be, and the reasons for the proposed action;

and

(b) not later than 14 days after giving notice, consult or use his or her best endeavours to consult with the holder of the licence and the prescribed fishing industry body in relation to the matter.

(2c) In subsection (2b)—

“prescribed fishing industry body” means—

(a) the South Australian Fishing Industry Council;

or

(b) if the Council ceases to exist, such fishing industry body as is prescribed by regulation for the purposes of this definition.

(3) The conditions of a licence must be endorsed on the licence.

(4) The holder of a licence must not contravene, or fail to comply with, a condition of the licence.

Penalty: For a first offence—division 7 fine; for a second offence—division 6 fine; for a subsequent offence—division 5 fine.

Transfer of licences

38. (1) Subject to this section, a licence is not transferable.

(2) Where the scheme of management prescribed for a fishery provides that licences, or a class of licences, in respect of the fishery are transferable, a licence in respect of the fishery, or a licence of the class prescribed, may be transferred with the consent of the Director.

(3) The Director shall not give his consent to the transfer of a licence unless he is satisfied as to the matters prescribed by the scheme of management.

(4) Where a licence is transferable, the registration of a boat effected by endorsement of the licence, may also be transferred.

(5) Where—

(a) a licence is transferable;

and

(b) the holder of the licence dies,

the licence vests in the personal representative of the deceased (whether the personal representative is a natural person or body corporate) as part of the estate of the deceased but cannot be transferred by him or her in the course of the administration of the estate except with the consent of the Director.

(6) If a deceased licence holder was immediately before death registered as the master of a boat that may be used pursuant to the licence—

(a) such a boat may, while the licence remains vested in the personal representative of the deceased, continue to be used for the purpose of engaging in fishing activities pursuant to the licence if it is in the charge of a person who is acting with the consent of the Director and in accordance with the conditions of that consent;

and

(b) a person so acting will be taken to be acting pursuant to section 34(2)(b)(ii).

(7) A licence that vests in the personal representative of a deceased licence holder is, if it is not transferred (with the consent of the Director) within two years after the death of the licence holder or such further period as may be approved by the Minister, suspended pending such transfer.

(8) In this section—

“personal representative” means—

(a) the executor of the will or administrator of the estate of the deceased licence holder;

or

(b) in relation to any period for which there is not an executor or administrator, the Public Trustee.

Licences and registration run together

39. (1) A licence and any registration effected by endorsement of the licence will, subject to this Act, remain in force until the expiration of the term prescribed for licences in respect of the fishery.

(2) Where—

(a) a licence is cancelled or surrendered under this Act, any registration endorsed on the licence will be taken to have been cancelled or surrendered;

or

(b) a licence is suspended under this Act for any period, any registration endorsed on the licence will be taken to have been suspended for the same period.

Licences to be carried during the course of fishing activities, etc.

40. (1) The holder of a licence (being a natural person) must carry the licence with him or her at all times when he or she is engaging in any fishing activity pursuant to the licence.

Penalty: Division 8 fine.

(2) Where a registered boat is being used upon any waters for any purpose, the person in charge of the boat must carry with him or her the licence pursuant to which the boat may be used for the purpose of taking fish.

Penalty: Division 8 fine.

Offence of engaging in certain fishing activities

41. A person must not engage in a fishing activity of a prescribed class.

Penalty: For a first offence—division 7 fine; for a second offence—division 6 fine; for a subsequent offence—division 5 fine.

Offence of taking protected fish

42. A person must not take a fish of a class declared by regulation to be protected.

Penalty: For a first offence—division 6 fine; for a subsequent offence—division 5 fine.

Temporary prohibition of certain fishing activities

43. (1) The Minister may, by notice published in the *Gazette*—

(a) declare that it is unlawful for a person to engage in a fishing activity of a specified class during a specified period;

and

(b) vary or revoke such a declaration.

(2) Where, in the opinion of the Minister, it is necessary to take urgent action to safeguard public health or protect living resources of the waters to which this Act applies, the Minister, or a fisheries officer authorized by the Minister, may—

(a) direct any person or any persons of a specified class to not engage in a fishing activity of a specified class during a specified period;

(b) vary or revoke such a direction.

* * * * *

(3) A direction or authorization under subsection (2) must be given in written form unless the Minister or fisheries officer considers that impracticable by reason of the urgency of the situation, in which case it may be given orally.

(4) Where an authorization is given under subsection (2), written notice of the authorization must be given to the person to whom it relates as soon as practicable.

(5) Where a direction is given under subsection (2), notice of the direction must be published in the *Gazette* as soon as practicable.

(6) A person must not engage in a fishing activity in contravention of a declaration or direction under this section.

Penalty: For a first offence—division 7 fine; for a second offence—division 6 fine; for a subsequent offence—division 5 fine.

Offences with respect to sale, purchase or possession of fish

44. (1) Subject to this section, if a person sells or purchases fish taken in waters to which this Act applies but not pursuant to a licence, the person is guilty of an offence.

Penalty: Division 5 fine.

(2) Subject to this section, if a person sells or purchases, or has possession or control of—

(a) fish taken in contravention of this Act;

(ab) fish of a class declared to be protected for the purposes of section 42;

or

(b) fish of a prescribed class,

the person is guilty of an offence.

Penalty: Division 5 fine.

(2a) Regulations made for the purposes of subsection (2)(b) may prescribe a class of fish comprised of or including fish taken elsewhere than in waters to which this Act applies.

(3) In proceedings for an offence against subsection (1) or (2), it is a defence if the defendant proves—

(a) —

(i) that the fish to which the proceedings relate—

(A) were purchased from a person whose ordinary business was the selling of such fish;

and

(B) were purchased in the ordinary course of that business;

or

(ii) that the defendant did not take the fish in contravention of this Act;

and

(b) that the defendant did not know, and had no reason to believe, that the fish were, as the case may be—

(i) fish taken in waters to which this Act applies but not pursuant to a licence;

(ii) fish taken in contravention of this Act;

(iii) fish of a class declared to be protected for the purposes of section 42;

or

(iv) fish of a prescribed class.

(4) In proceedings for an offence against subsection (2)(a) relating to fish of a class prescribed for the purposes of this subsection, if it is proved—

(a) that the defendant was not—

(i) the holder of a licence authorizing the taking of fish of that class;

or

(ii) a registered fish processor;

and

(b) that the defendant sold or purchased or had possession or control of more than the prescribed quantity of fish of that class,

the offence is proved unless the defendant establishes the defence under subsection (3).

Interference with lawful fishing activities

45. (1) A person must not, without reasonable excuse—

(a) obstruct or interfere with a lawful fishing activity;

or

(b) interfere with fish taken in the course of any lawful fishing activity.

Penalty: Division 7 fine.

(2) Where a person is obstructing or interfering with a lawful fishing activity in contravention of subsection (1), the person must, at the request of a person engaged in the lawful fishing activity, cease or discontinue the obstructive conduct or interference or remove the obstruction.

Penalty: Division 7 fine.

(3) A court convicting a person of an offence against this section may, whether or not a penalty is imposed, order the person convicted to pay to any person affected by the commission of the offence such compensation as the court considers proper for loss or damage suffered by that person as a result of the commission of the offence.

Regulations relating to fisheries and fishing

46. The Governor may make regulations for the conservation, enhancement and management of the living resources of the waters to which this Act applies, the regulation of fishing and the protection of certain fish, and, without limiting the generality of the foregoing, may by such regulations—

(a) declare that any prescribed class of fishing activities constitutes a fishery;

(b) prescribe a scheme of management for a fishery and for that purpose (without limiting the matters which may be provided for in the scheme)—

(i) limit the applications for licences in respect of the fishery that may be considered by the Director to those made during a specified period or to those made during a specified period after a call by the Director for applications or otherwise;

(ii) prescribe the maximum number of licences that may be in force in respect of the fishery or that may be granted in relation to applications made during a specified period or during a specified period after a call for licence applications in respect of the fishery;

- (iii) prescribe qualifications that applicants for licences in respect of the fishery must possess to be eligible to be granted the licences and any other matters to which the Director must have regard in determining eligibility for licences in respect of the fishery;
 - (iv) prescribe a procedure of competitive tendering or ballots under which applicants for licences in respect of the fishery who are eligible to be granted licences may be selected for the available number of licences;
 - (v) prevent or restrict the granting to bodies corporate of licences in respect of the fishery or the granting of licences to be held by more than one person;
 - (va) provide that no further licences may be granted in respect of the fishery;
 - (vi) provide that only the holder of a licence in respect of the fishery may be registered as the master of a boat used pursuant to the licence;
 - (vii) prescribe matters of which the Director must be satisfied before granting the registration of a boat;
 - (viii) prescribe matters that may be the subject of conditions of licences in respect of the fishery;
 - (viii a) in respect of a miscellaneous fishery provide for licences of different kinds by empowering the Director to impose licence conditions limiting the class of fishing activities that may be engaged in pursuant to a licence, limiting the term for which a licence may remain in force or imposing any other limitation or restriction;
 - (ix) prescribe and provide for any security to be given by the holder of a licence in respect of the fishery for due compliance with the provisions of this Act;
 - (x) prescribe the term of licences granted in respect of the fishery and provide for the renewal of such licences;
 - (xi) authorize the transfer of licences or a class of licences in respect of the fishery;
 - (xii) prescribe matters of which the Director must be satisfied before consenting to the transfer of a licence in respect of the fishery;
 - (xiii) prescribe fees for applications for the granting or transfer of licences in respect of the fishery;
 - (xiv) prescribe fees for the granting, renewal or transfer of a licence in respect of the fishery, being fees of amounts fixed by reference to the estimated total value of production by the licence holders in respect of the fishery during an antecedent period or otherwise (which fees may vary according to the term, or unexpired period of the term, of the licence or any other prescribed factor);
 - (xv) provide for the payment, refund and recovery of fees or parts of fees payable in respect of fishery licences;
- (c) require and regulate the application or affixing of a mark or other distinguishing feature to registered boats and other boats of a prescribed class;

- (d) require and regulate the removal of prescribed marks or other distinguishing features from boats that have ceased to be registered under this Act and other boats of a prescribed class;
- (e) prescribe and provide for the payment, recovery or refund of fees for registration of boats or registration of masters of boats, being fees which may vary according to prescribed factors;
- (f) prohibit, restrict or regulate the carrying or possession of devices;
- (g) require and provide for the registration of devices and prescribe fees for such registration which may vary according to prescribed factors;
- (h) require and regulate the application or affixing of marks or other distinguishing features to devices and equipment used for or in connection with fishing activities;
- (i) prescribe and regulate the devices and equipment to be installed in or carried on boats used for fishing activities;
- (j) prescribe methods for determining the size or weight of fish;
- (k) restrict or regulate the treatment, handling, storage, movement or dealing by persons engaged in fishing activities of or with fish taken in the course of those fishing activities;
- (l) require persons engaging in fishing activities of a prescribed class to furnish the Director with returns in the form fixed by the Minister setting out the prescribed information relating to those fishing activities and any matters ancillary or incidental to or connected with those fishing activities;
- (m) prescribe and provide for penalties not exceeding a division 6 fine for any contravention of, or failure to comply with, any regulation made under this section.

DIVISION II—PROTECTION OF AQUATIC HABITAT

Declaration of aquatic reserves, controlled aquatic reserves and declared waters

47. (1) The Governor may, by proclamation, declare any waters, or land and waters, specified in the proclamation to be an aquatic reserve.

(2) Any waters that were immediately before the commencement of this Act a controlled aquatic reserve will be taken to be an aquatic reserve declared by proclamation under subsection (1).

(3) Land cannot form part of an aquatic reserve unless the land has been placed under the care, control and management of the Minister.

(4) The Governor may, by proclamation, vary or revoke a proclamation under subsection (1).

Constitution of marine parks

48. (1) The Governor may, by proclamation—

- (a) constitute as a marine park any waters, or land and waters, specified in the proclamation, that the Governor considers to be of national significance by reason of the aquatic flora or fauna of those waters or the aquatic habitat;

and

- (b) assign a name to the marine park so constituted.

- (2) The Governor may, by subsequent proclamation—
- (a) abolish a marine park constituted under this section;
 - (b) alter the boundaries of a marine park constituted under this section;
- or
- (c) alter the name of a marine park constituted under this section.
- (3) The Minister must—
- (a) submit any proposal to constitute, or alter the boundaries of, a marine park—
 - (i) where the marine park includes, or is to include, land under the jurisdiction of the Minister of Lands to that Minister for approval;
 - (ii) where the marine park includes, or is to include, land under the jurisdiction of the Minister of Marine to that Minister for approval;
 - (b) submit any such proposal to the Minister of Mines and Energy and consider the views of that Minister in relation to the proposal.
- (4) A proclamation must not be made under subsection (1) or (2)(b) without the approval or approvals required by this section.
- (5) A proclamation must not be made under subsection (2)(a) or (b) except in pursuance of a resolution passed by both Houses of Parliament.
- (6) Notice of a motion for a resolution under subsection (5) must be given at least 14 sitting days before the motion is passed.

Control and administration of marine parks

- 48a.** (1) The Minister has the control and administration of all marine parks constituted under this Act.
- (2) The Minister may grant on appropriate terms and conditions a lease or licence entitling a person to rights of entry, use or occupation in respect of a marine park.
- (3) Any lease or licence granted in respect of waters or land and waters constituted as a marine park under this Act, and in force immediately before the waters or land and waters are so constituted continues, subject to its terms and conditions, in force for the remainder of the term for which it was granted as if it had been granted by the Minister under this section.

Plans of management for marine parks

- 48b.** (1) The Minister must, within two years after the constitution of a marine park, propose a plan of management in relation to the marine park.
- (2) The Minister may, at any time, prepare an amendment to a plan of management, or prepare a plan of management to be substituted for a previous plan.
- (3) Before preparing a plan of management the Minister must—
- (a) by public advertisement, invite members of the public to make representations to the Minister (within a period of not less than two months following publication of the advertisement) as to matters that should be addressed by the plan of management;

and

- (b) in the case of a marine park that is adjacent to, or contiguous with, a reserve constituted under the *National Parks and Wildlife Act 1972* or land that the Minister administering that Act has informed the Minister is proposed to be constituted as a reserve under that Act, consult with the Minister administering that Act as to matters that should be addressed by the plan of management,

and the Minister must, when preparing the plan of management, consider all representations made by members of the public in response to the advertisement and the views of the Minister administering the *National Parks and Wildlife Act 1972*.

- (4) The plan of management must—

- (a) set forth proposals of the Minister in relation to the management of the marine park;

and

- (b) set forth any other proposals by which the Minister proposes to accomplish the objectives of this Act in relation to the marine park.

(5) The Minister must incorporate in the plan of management for a marine park such measures as the Minister considers necessary or appropriate for—

- (a) the protection, conservation and preservation of the flora and fauna of the waters included in the marine park and their habitat;

- (b) regulation of fishing, mining and research activities in, public access to, and other use of, the marine park to prevent or minimize adverse effect on the flora and fauna and their habitat;

- (c) co-ordination of the management of the marine park with the management of any adjacent reserve, park or conservation zone or area established under the law of this or any other State or of the Commonwealth;

- (d) the promotion of public understanding of the purposes and significance of the marine park.

(6) When a plan of management has been prepared, the Minister must give notice of that fact by public advertisement.

- (7) The notice must—

- (a) specify an address at which copies of the plan of management may be inspected;

and

- (b) specify an address to which representations in connection with the plan of management may be forwarded.

(8) Any person may within three months after publication of the notice, or such longer period as may be specified in the notice, make representations to the Minister in connection with the plan of management.

(9) The Minister must make copies of all representations made under subsections (3) and (8) available for public inspection or purchase (except in the case of a representation that was made in confidence) and for that purpose the Minister must, by public advertisement, give notice of the place or places at which the copies are available.

(10) The Minister may adopt a plan of management—

(a) without alteration;

or

(b) with such alterations as the Minister thinks reasonable in view of the representations made by members of the public.

(11) When the Minister adopts a plan of management, notice of that fact must be given by public advertisement.

(12) The Director must, on application and payment of the prescribed fee, furnish the applicant with a copy of a plan of management adopted under this section.

(13) In this section—

“plan of management” includes an amendment to a plan of management:

“public advertisement” means an advertisement published in the *Gazette* and in a newspaper circulating throughout the State.

Non-application of Planning Act 1982, etc.

48c. (1) The *Planning Act 1982* does not apply to development undertaken in, or in relation to, a marine park pursuant to a plan of management adopted by the Minister in relation to that marine park.

(2) In this section—

“development” has the same meaning as in the *Planning Act 1982*.

Implementation of plans of management

48d. (1) Subject to subsection (2), where the Minister has adopted a plan of management in relation to a marine park—

(a) the provisions of the plan must be carried out in relation to that marine park;

and

(b) activities must not be undertaken in relation to that marine park unless those activities are in accordance with the plan of management.

(2) Where a mining tenement has been granted in relation to land that forms part of, or has, since the tenement was granted, become part of, a marine park, the management of the marine park is subject to the exercise by the holder of the tenement of rights under the tenement.

Agreement as to conditions

48e. (1) The Minister administering this Act and the Minister of Mines and Energy may enter into an agreement with the holder of a mining tenement in relation to land that forms part of a marine park imposing conditions limiting or restricting the exercise of rights under the tenement by the holder of the tenement and by his or her successors in title.

(2) If a person contravenes, or fails to comply with, a condition imposed by agreement under subsection (1) in relation to a mining tenement, the Minister of Mines and Energy must, at the request of the Minister administering this Act, serve notice on the holder of the tenement requiring the holder to rectify the contravention or failure in the manner and in the period (which must not exceed three months) set out in the notice.

(3) If the holder of a tenement on whom a notice has been served under subsection (2) fails to comply with the notice, the Minister of Mines and Energy may cancel the tenement.

Rights of prospecting and mining

48f. (1) Subject to subsection (2), rights of entry, prospecting, exploration or mining cannot be acquired or exercised pursuant to the *Mining Act 1971*, the *Petroleum Act 1940* or the *Petroleum (Submerged Lands) Act 1982* in respect of land forming part of a marine park.

(2) The Governor may, by proclamation, declare that subject to any conditions specified in the proclamation, rights of entry, prospecting, exploration or mining may be acquired and exercised in respect of land forming part of a marine park.

(3) A person must not contravene or fail to comply with a condition of a proclamation under this section.

Penalty: Division 5 fine.

(4) A proclamation under subsection (2) has effect according to its terms.

(5) The Governor may, by proclamation, vary or revoke a proclamation under subsection (2).

(6) Rights of entry, prospecting, exploration or mining acquired by virtue of a proclamation under subsection (2) must be exercised subject to the plan of management for the marine park except—

(a) where those rights were vested in the person seeking to exercise them before the commencement of this section;

or

(b) where those rights are exercised pursuant to an agreement with the Minister (or with the Minister and the Minister of Mines and Energy), in which case implementation of the plan of management is subject to the agreement.

Protection of aquatic habitat

48g. (1) Except as provided by the regulations or pursuant to a permit under this section, a person must not—

(a) enter or remain in an aquatic reserve or marine park;

or

(b) engage in any fishing activity in an aquatic reserve or marine park.

Penalty: For a first offence—division 7 fine; for a second offence—division 6 fine; for a subsequent offence—division 5 fine.

(2) Except as provided by the regulations or pursuant to a permit under this section, a person must not engage in an operation involving or resulting in—

(a) disturbance of the bed of any waters;

or

(b) removal of or interference with aquatic or benthic flora or fauna of any waters.

Penalty: For a first offence—division 7 fine; for a second offence—division 6 fine; for a subsequent offence—division 5 fine.

(3) The Director may—

- (a) issue a permit to any person authorizing that person to engage in any activity, or do any act specified in the permit, in an aquatic reserve, during such period and subject to such conditions as may be specified in the permit;
- (b) vary or revoke a condition of such a permit or impose a further condition.

(4) If a condition of a permit under subsection (3) is contravened or not complied with, the Director may, by notice in writing served on the holder of the permit, revoke the permit.

(5) The Minister may, if satisfied that the carrying out of a particular activity or the doing of a particular act in a marine park is in accordance with the plan of management adopted in relation to the marine park, issue a permit to any person authorizing that person to engage in that activity or do that act in the marine park during such period and subject to such conditions as may be specified in the permit.

(6) The Minister may, if he or she thinks fit, vary or revoke a condition of a permit under subsection (5), or impose a further condition.

(7) If a condition of a permit under subsection (5) is contravened or not complied with, the Minister may, by notice in writing served on the holder of the permit, revoke the permit.

(8) The holder of a permit under this section must not contravene, or fail to comply with, a condition of the permit.

Penalty: For a first offence—division 7 fine; for a second offence—division 6 fine; for a subsequent offence—division 5 fine.

(9) In this section—

- “aquatic or benthic flora or fauna” includes mangroves but does not include those species of fin fish, sharks, crustaceans, molluscs, echinoderms, coelenterata and annelids prescribed for the purposes of this section.

Regulations

48h. The Governor may make regulations prescribing, and providing for the recovery of, fees or charges payable for entry to a marine park or for the use of facilities provided in a marine park.

DIVISION III—EXOTIC FISH, FISH FARMING AND DISEASE IN FISH

Offence to import, sell, etc., certain exotic fish

49. (1) A person must not—

- (a) bring, or cause to be brought, into the State;
- or
- (b) sell, purchase, deliver, possess or control,

any exotic fish to which this section applies except as authorized by a permit granted by the Director under this section.

Penalty: Division 6 fine.

(1a) The Director must, on application made by any person for a permit for the purposes of this section, determine the application in accordance with the regulations.

* * * * *

(4) A permit under this section will be subject to such conditions as may be specified in the permit.

(5) The Director may, if the Director thinks fit, vary or revoke a condition of the permit, or impose a further condition.

(6) The holder of a permit under this section must not contravene, or fail to comply with, a condition of the permit.

Penalty: Division 6 fine.

(7) This section does not apply to exotic fish of a prescribed class.

Offence to release certain fish into natural waters

50. (1) Subject to this section, a person must not release or permit to escape into, or deposit in, any waters—

(a) any exotic fish;

(b) any farm fish;

or

(c) any fish that have been kept apart from their natural habitat.

Penalty: Division 6 fine.

(2) The Director may, upon application by any person, issue a permit authorizing the person to release fish of a prescribed class into waters specified in the permit subject to such conditions as may be specified in the permit.

(3) The Director may, if the Director thinks fit, vary or revoke a condition of the permit, or impose a further condition.

(4) The holder of a permit under subsection (2) must not contravene, or fail to comply with, a condition of the permit.

Penalty: Division 6 fine.

Regulations relating to exotic fish, fish farming and disease in fish

51. The Governor may make regulations for the control of exotic fish, the regulation of fish farming, and the control of disease in fish, and, without limiting the generality of the foregoing, may by such regulations—

(a) prescribe the measures to be taken for the prevention, elimination or control of disease in farm fish, or the prevention of the escape of farm fish or water used for the purpose of fish farming;

(b) require any person operating a fish farm or keeping any fish to notify the Director of the occurrence of disease or symptoms of disease in the fish farmed or kept by that person;

(c) prohibit, restrict or regulate the sale or processing of farm fish;

(d) prohibit, restrict or regulate the bringing into the State or possession or control of fish that may be affected by disease;

(e) prescribe the powers of fisheries officers for the detection, prevention, elimination or control of disease in fish;

(f) regulate the disposal of the water in which fish have been kept;

- (g) prescribe and provide for the measures to be taken and the powers of the Director and other fisheries officers for the recovery, eradication or containment of exotic fish or other fish that have been released or have escaped into any waters, or for the treatment of waters contaminated by water in which such fish have been kept;
- (h) prescribe and provide for penalties not exceeding a division 6 fine for any breach of, or failure to comply with, any regulation made under this section.

DIVISION IV—LEASES OR LICENCES TO FARM OR TAKE FISH

Interpretation

52. In this Division—

“fish” includes the fibre of sea grass and sponges.

Leases or licences to farm or take fish

53. (1) Subject to this section and section 76 of the *Harbors Act 1936*, the Minister may, upon application and payment of such fee as he or she thinks appropriate, grant to any person a lease or licence for a term not exceeding ten years in respect of any area consisting of land or of waters, or of land and adjacent waters, conferring rights to occupy and use the area for fish farming or to take fish from the area.

(2) Land cannot be included in a lease or licence under this section conferring rights to occupy and use an area for fish farming unless the land has been placed under the care, control and management of the Minister.

(3) The terms, covenants, conditions, limitations, rights of renewal and cancellation, reservations and restrictions in any lease or licence granted under this section (whether by way of renewal or otherwise) will be as determined by the Minister.

(4) The Director must cause notice of the granting of a lease or licence under this section to be published in the *Gazette*.

(5) Any franchise to take fish granted under the repealed Act and in force immediately before the commencement of this Act—

(a) continues in force subject to and in accordance with its terms and conditions;

(b) cannot be transferred except with the consent of the Minister;

and

(c) may be revoked by the Minister upon any contravention of or failure to comply with a condition of the franchise.

(6) Any lease or licence to use and occupy an area for fish farming granted under the repealed Act and in force immediately before the commencement of this Act continues in force subject to and in accordance with its terms, covenants, conditions, limitations, rights, reservations and restrictions.

DIVISION V—FISH PROCESSING

Fish processors required to be registered

54. (1) Subject to the regulations, a person must not act as a fish processor unless he or she is registered under this section as a fish processor.

Penalty: Division 6 fine.

(2) A registered fish processor must not use any premises, place, boat or vehicle for, or in connection with, processing, storing or dealing with fish unless the premises, place, boat or vehicle is specified in the certificate of registration.

Penalty: Division 6 fine.

(3) The Director may, subject to this Act, upon application made by any person in the prescribed manner and form and upon payment of the registration fee, or, upon payment, in accordance with the regulations, of an instalment of the registration fee, register that person as a fish processor and specify in the certificate of registration the premises, places, boats and vehicles proposed to be used by the applicant for or in connection with processing, storing or dealing with fish.

(4) Registration under this section will, subject to this Act, remain in force until the expiration of the term specified in the certificate of registration and may, from time to time, upon application in the prescribed manner and form and upon payment of the registration fee, or upon payment, in accordance with the regulations, of an instalment of the registration fee, be renewed for successive terms of such period as may be specified in the certificate.

(5) The Director may, upon application at any time by any person registered under this section as a fish processor and payment of the prescribed fee, specify in the certificate of registration any additional premises, place, boat or vehicle mentioned in the application that the person proposes to use for or in connection with processing, storing or dealing with fish.

(6) Where a person registered under this section ceases to use for or in connection with processing or storing or dealing with fish any premises, place, boat or vehicle specified in the certificate of registration, the person must within fourteen days after the cessation, give the Director notice in writing of the cessation.

Penalty: Division 9 fine.

(7) Subject to the regulations, a registered fish processor must not process fish of a prescribed class unless authorized to do so by the Director.

(8) An authorization under subsection (7) must be endorsed on the certificate of registration.

(9) An authorization under subsection (7) remains in force for such period as may be specified on the certificate of registration.

(10) The Director may, in an authorization under subsection (7), limit the species of fish that may be processed pursuant to the authorization and may vary or revoke any such limitation.

(11) The Director may refuse to grant an authorization under subsection (7) unless satisfied as to the matters prescribed in the regulations.

(12) If the Minister is satisfied that a person to whom an authorization under subsection (7) has been granted has been convicted of an offence against this Act or an offence related to fishing against any other Act (including an Act of the Commonwealth or another State or a Territory of the Commonwealth), the Minister may, by notice in writing to the person—

(a) revoke the authorization;

and

(b) require the person to return the certificate of registration at a place and within a period specified in the notice.

(13) A person must not fail to comply with a requirement imposed by notice under subsection (12)(b).

Penalty: Division 8 fine.

Regulations relating to fish processing

55. The Governor may make regulations for the regulation of fish processing and matters ancillary or incidental to or connected with fish processing, and, without limiting the generality of the foregoing, may by such regulations—

- (a) prescribe the records to be kept by fish processors;
- (b) require fish processors to furnish the Director with returns in the form determined by the Minister setting out the prescribed information relating to the sale, purchase, processing, storage or movement of fish;
- (c) regulate the manner in which and the means by which fish may be delivered, consigned or transported for processing;
- (d) regulate the manner in which fish are received and stored by fish processors including the labelling of receptacles in which they are received and stored and the treatment of and dealing with processed fish;
- (e) prohibit or regulate the use of boats in relation to the storage, processing, treatment of and dealing with fish;
- (f) prescribe the fees for registration of fish processors or the specification of additional premises, places or boats in certificates of registration, being fees which may vary according to prescribed factors;
- (g) provide for the payment of fees for registration of fish processors and their recovery;
- (h) provide for the refund of a fee for registration of a fish processor or a part of such fee;
- (i) empower the Director to issue, and prescribe fees to be paid for the issue of, seals and other marks for the labelling, and packages for the consignment, of processed fish;
- (j) prescribe fees in respect of an application for authorization to process fish of a prescribed class;
- (k) empower fisheries officers to take samples of any products of fish of a prescribed class for the purpose of analysis and provide that no compensation is payable for the taking of such samples;
- (l) prescribe fines (not exceeding a division 6 fine) for contravention of, or non-compliance with, any regulation made under this section.

DIVISION VI—SUSPENSION OR CANCELLATION OF AUTHORITIES

Suspension or cancellation of authorities by courts

56. (1) A court convicting a person of an offence against this Act may, if it thinks fit, in addition to imposing any other penalty, make an order—

- (a) suspending for a period or periods specified by the court, or until the further order of the court, any specified authority held by the person;

or

- (b) cancelling any specified authority held by the person.

(2) Subject to this section, where a court convicts the holder of a fishery licence of a prescribed offence, the Director must cause the conviction to be recorded on that licence.

(3) Subject to this section, where a court convicts the holder of a fishery licence of a prescribed offence, the court must, in addition to imposing any other penalty—

(a) if the holder has one previous conviction for a prescribed offence, suspend the licence for a period or periods specified by the court (being a period of not less than three months, or periods totalling not less than three months, during which fishing pursuant to the licence would otherwise have been lawful);

or

(b) if the holder has two previous convictions for prescribed offences, cancel the licence.

(4) For the purposes of subsection (3)—

(a) previous convictions for prescribed offences must be taken into account whether or not recorded on the licence;

(b) a conviction for a prescribed offence that is recorded on a licence will be attributed to the holder of the licence whether the offence was committed by the holder of the licence or a previous holder of the licence;

(c) two or more convictions for prescribed offences arising out of events taking place on the same day will be regarded as a single conviction for a prescribed offence;

and

(d) a conviction for a prescribed offence committed more than three years before the offence under consideration was committed will be disregarded.

(5) If a court by which a person is convicted of a prescribed offence is satisfied by evidence given on oath forthwith upon conviction that the offence is trifling, the court must certify accordingly.

(6) Where a court certifies that a prescribed offence is trifling—

(a) the conviction must not be recorded on a fishery licence held by the convicted person;

(b) the court must not make an order under subsection (3) in consequence of the conviction;

(c) the conviction must not be taken into account for the purposes of subsection (3) upon conviction for any other prescribed offence.

(7) In any proceedings for a prescribed offence an apparently genuine document purporting to be a fishery licence on which there is recorded a conviction for a prescribed offence will, in the absence of proof to the contrary, be taken to be a fishery licence on which the conviction was duly recorded in accordance with the provisions of this section.

(8) Where an authority has been suspended under this section, the authority may be renewed but remains subject to suspension until the expiration of the period of suspension.

(9) Where an appeal has been instituted against a conviction, any order made under this section by the convicting court is suspended until the determination of the appeal.

(10) In this section "prescribed offence" means—

(a) an offence against section 28, 34(2), 37, 41, 42, 43 or 44;

or

(b) an offence against section 69 where the principal offence was an offence referred to in paragraph (a).

Suspension or cancellation of authorities by Minister

57. (1) The Minister may, after calling upon a person who holds an authority to show cause why an order under this section should not be made against him or her, make an order under this section if satisfied—

(a) that the authority was obtained improperly;

or

(b) that the person has been convicted of an offence against any other Act (including an Act of the Commonwealth or another State or a Territory of the Commonwealth), being an offence related to fishing or involving violent or threatening behaviour and the offence is of such a nature that, in the opinion of the Minister, an order under this section should be made against the person.

(2) Subject to subsection (1), the Minister may, by notice published in the *Gazette*, make an order—

(a) suspending for a period specified by the Minister, or until the further order of the Minister, any specified authority held by the person;

or

(b) cancelling any specified authority held by the person.

(3) Where an authority has been suspended under this section, the authority may be renewed but remains subject to suspension until the expiration of the period of suspension.

DIVISION VII—REVIEW OF DECISIONS OF MINISTER OR DIRECTOR

Review of decisions relating to authorities

58. (1) A person aggrieved—

(a) by a decision of the Director refusing an application for an authority or the transfer of an authority or imposing or varying a condition of an authority;

(b) by a decision of the Minister refusing an application under section 28(9)(a)(i);

(ba) by a decision of the Minister under section 54(12) to revoke an authorization;

or

(c) by an order of the Minister made under section 57,

may apply to a District Court for a review of the decision or order.

(2) The application for review must be made within one month of the making of the decision or order to be reviewed, but the District Court may, if it is satisfied that it is just and reasonable in the circumstances to do so, dispense with the requirement that the application be so made.

(3) The District Court may, on the review, do one or more of the following, according to the nature of the case:

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

(4) The powers conferred by section 28 of the *Local and District Criminal Courts Act 1926* include power to make rules regulating the practice and procedure on such reviews.

(5) The Director or the Minister must, if so required by any person affected by a decision or order referred to in subsection (1) made by him or her, state in writing the reasons for the decision or order.

(6) If the reasons of the Director or the Minister are not given in writing at the time of making a decision or order and the person in relation to whom it was made then requested the Director or the Minister to state his or her reasons in writing, the time for making an application for review runs from the time of service upon that person of the written statement of those reasons.

(7) Where the Minister or the District Court is satisfied that an application for review of an order of the Minister has been instituted, or is intended, the Minister or the District Court may suspend the operation of the order until the completion of the review.

(8) Where the Minister has suspended the operation of an order under subsection (7), the Minister may terminate the suspension, and where the District Court has done so, the District Court may terminate the suspension.

(9) No appeal lies against a decision of a District Court made upon a review.

DIVISION VIII—EXPIATION OF OFFENCES

Preliminary

58a. In this Division, unless the contrary intention appears—

“child”, in relation to an offence, means a person who was under the age of 16 years at the time the offence is alleged to have been committed:

“expiation fee” in relation to an expiable offence, means the expiation fee prescribed for that offence:

“expiation notice” means a notice under this Act for the expiation of an expiable offence.

Expiation notice may be issued

58b. (1) Subject to this Act, if a person is alleged to have committed an expiable offence, or a number of expiable offences arising out of the same incident, then, before a prosecution is commenced, an expiation notice may be given to the alleged offender stating that the offence or offences may be expiated by payment of the expiation fee or fees to the Director before the expiration of 60 days from the date of the notice.

(2) For the purpose of subsection (1), two or more offences arise out of the same incident if they are committed contemporaneously, or in succession, one following immediately upon another.

(3) An expiation notice—

- (a) must be in a form approved by the Minister;
 - (b) may relate to no more than three offences;
 - (c) may not be given to a child;
 - (d) may be issued only by a fisheries officer;
- and
- (e) may be given—
 - (i) personally;
 - or
 - (ii) by post addressed to the alleged offender's last known place of business or residence.

Effect of expiation

58c. (1) Subject to this Act, where the offence or offences to which an expiation notice relates are expiated in accordance with the notice, the alleged offender is not liable to prosecution for that offence or those offences.

(2) Where—

- (a) an expiation notice relates to more than one offence;
- and

(b) the alleged offender expiates one or more of those offences but not all of them, the alleged offender is liable to prosecution for any offence that is not expiated.

(3) The payment of an expiation fee does not constitute an admission of guilt or of any civil liability and will not be regarded as evidence tending to establish guilt or any civil liability.

Expiation notice may be withdrawn

58d. (1) The Minister may withdraw an expiation notice if—

- (a) the Minister is of the opinion that the notice should not have been given;
- or
- (b) the Minister decides that the alleged offender should be prosecuted for an offence to which the notice relates.

(2) An expiation notice may be withdrawn under subsection (1) notwithstanding payment of an expiation fee but in that event the expiation fee must be refunded.

(3) An expiation notice cannot be withdrawn under subsection (1)(b) after the expiration of 60 days from the date of the notice.

(4) The withdrawal of an expiation notice under subsection (1) is effected by giving written notice of the withdrawal, personally or by post, to the person to whom the expiation notice was given.

(5) Where an expiation notice is withdrawn, a prosecution for an offence to which the notice related may be commenced, but the fact that the defendant paid an expiation fee is not admissible in those proceedings as evidence against the defendant.

PART V
MISCELLANEOUS

Exemptions

59. (1) The Minister may, by notice published in the *Gazette*, exempt any person or class of persons from any specified provisions of this Act.

(2) An exemption under this section may be made subject to such conditions as the Minister thinks fit and specifies in the notice.

(3) The Minister may, if he or she thinks fit, by notice published in the *Gazette*, vary or revoke an exemption or a condition of an exemption under this section or impose a further condition.

(4) A person to whom an exemption under this section applies must not contravene, or fail to comply with, a condition of the exemption.

Penalty: Division 6 fine.

Return of authorities

60. (1) The Director may, by notice in writing, require the holder of an authority to return the authority at a place and within a period specified in the notice—

(a) if the authority is suspended or cancelled;

(b) for the purpose of varying or revoking a condition of the authority or imposing a further condition;

or

(c) in the case of a fishery licence, for the purpose of enabling a conviction for an offence to be recorded on the licence.

(2) A person given a notice under this section must not fail to comply with the notice.

Penalty: Division 8 fine.

(3) Where the Director has required the return of an authority under subsection (1) but has not received the authority within the period specified in the notice, the authority is, if it has not already been suspended or cancelled, suspended from the expiration of that period until it is returned to the Director.

Surrender of authorities

61. (1) The holder of an authority may at any time surrender the authority to the Director.

(2) Where an authority is surrendered to the Director the authority shall cease to have any force or effect.

Copies of authorities

62. The Director may issue a duplicate copy of an authority if satisfied (upon the basis of evidence verified by statutory declaration, if the Director so requires) that the authority previously issued has been lost or destroyed or that some other proper cause exists.

Misuse of authorities

63. A person must not—

- (a) except as contemplated by this Act or without other reasonable excuse, give any other person the possession or control of an authority that is not in the name of that other person;
 - (b) except as contemplated by this Act or without other reasonable excuse, have in his or her possession or control an authority that is not in his or her name;
- or
- (c) falsely represent himself or herself to be the person named in an authority.

Penalty: Division 7 fine.

Certain authorities may be held jointly

64. (1) Subject to this Act, an authority may be granted to two or more natural persons who propose to engage jointly in the activity authorized by the authority.

(2) An application for an authority to be granted to two or more persons must be made as a joint application by those persons in the manner and form prescribed in relation to the kind of authority sought.

(3) Where an authority is granted under this Act to two or more persons—

- (a) only one authority will be granted;
 - (b) each person granted the authority will be specified in the authority;
- and
- (c) each person specified in the authority will be taken to be the holder of the authority.

(4) Where an authority is held jointly by two or more persons under this Act, the authority is liable to be suspended or cancelled pursuant to Part IV for an offence committed or an act done or an omission made by one of the holders of the authority whether or not the other holder, or each of the other holders, of the authority was also guilty of the offence or act or omission.

Director to keep register of authorities

65. (1) The Director must keep a register of all authorities granted under this Act in such form and containing such information as the Director thinks fit.

(2) The register referred to in subsection (1) must be made available for public inspection.

Additional penalty based on value of fish taken unlawfully

66. (1) Where a person is convicted of an offence against this Act involving the taking of fish, the court must, in addition to imposing any other penalty prescribed by this Act, impose a penalty equal to—

- (a) five times the amount determined by the convicting court to be the wholesale value of the fish at the time at which they were taken;
- or
- (b) \$30 000,

whichever is the lesser amount.

(2) For the purposes of subsection (1), a fish taken in contravention of this Act is taken to have a wholesale value equivalent to that of a fish of the same species taken not in contravention of this Act.

Confidentiality

66a. (1) A person must not divulge information obtained (whether by that person or some other person) in the administration of this Act except—

- (a) as authorized by or under this Act;
 - (b) with the consent of the person from whom the information was obtained or to whom the information relates;
 - (c) in connection with the administration of this Act;
- or
- (d) for the purposes of any legal proceedings arising out of the administration of this Act.

Penalty: Division 6 fine.

(2) Notwithstanding any other law to the contrary, the Minister or Director cannot be required by subpoena or otherwise to produce to a court any information contained in a return furnished by a licensee to the Director under this Act.

Evidentiary provisions

67. (1) In proceeding for an offence against this Act, an apparently genuine document purporting to be a certificate signed by the Director certifying—

- (a) that a person named in the certificate was or was not at a specified time the holder of a specified authority;
- (b) that a provision set out in the certificate was at a specified time a condition of a specified authority;
- (c) that a boat specified in the certificate was or was not at a specified time a registered boat;
- (d) that a person specified in the certificate was or was not at a specified time a registered master in relation to a specified boat,

is, in the absence of proof to the contrary, proof of the matters certified.

(2) In proceedings for an offence against this Act, an allegation in the complaint—

- (a) that a person named in the complaint was at a specified time a fisheries officer;
- (b) that any fish in relation to which any act or omission is alleged to have been done or made was a fish of a specified species, sex, size or weight, or was a fish having any other specified characteristic;
- (c) that any purpose specified in the complaint was the purpose for which any act was done,

is, in the absence of proof to the contrary, proof of the matter alleged.

(3) In proceedings for an offence against this Act, if it is proved that a fish was in the possession or control of a person on a particular day in proximity to waters to which this Act applies, or an area of such waters specified in the complaint, it will be presumed, in the absence of proof to the contrary, that the fish was taken by that person from such waters or area of waters on that day.

(4) In proceedings for an offence against this Act, if it is proved that on a particular day in proximity to waters to which this Act applies, or an area of such waters specified in the complaint, a person had in his or her possession or control any fish and a device capable of being used for taking such fish, it will be presumed, in the absence of proof to the contrary, that the person took the fish by means of that device on that day from such waters or area of waters.

(5) In proceedings for an offence against this Act, if it is proved that a fish was in a boat on a particular day in proximity to waters to which this Act applies, or an area of such waters specified in the complaint, it will be presumed in the absence of proof to the contrary, that the boat was used for the purpose of taking the fish from such waters or area of waters on that day.

(6) In proceedings for an offence against this Act, if it is proved that on a particular day in proximity to waters to which this Act applies, or an area of such waters specified in the complaint, a person had in his or her possession or control a device that is prohibited under this Act or the use of which is prohibited in such waters or area of waters, it will be presumed, in the absence of proof to the contrary, that the person had used that device for the purpose of taking fish in such waters or area of waters on that day.

(7) In proceedings for an offence against this Act, evidence of a distance, height, depth or position as determined by the use of an electronic, sonic, optical, mechanical or other device by a fisheries officer or any other competent person will, in the absence of proof to the contrary, be accepted as proof of the distance, height, depth or position.

(8) In proceedings for an offence against this Act, a statement made in evidence by a fisheries officer that a place or area described or indicated by him or her was within waters specified by or under this Act will, in the absence of proof to the contrary, be accepted as proof of the matter so stated.

(9) In proceedings for an offence against this Act, a statement made in evidence by a fisheries officer that any packaging, label, slip or mark on the outside or inside of a receptacle, container, box or package of fish consigned for or on sale was marked with or contained the name or brand of any person will, in the absence of proof to the contrary, be accepted as proof that that person consigned those fish for or on sale.

(10) In proceedings for an offence against this Act, a statement made in evidence by a fisheries officer that any packaging, label, slip or mark on the outside or inside of a receptacle, container, box or package of fish was marked with the name or brand of any person will, in the absence of proof to the contrary, be accepted as proof that the fish were in the possession or control of that person.

False or misleading information

68. A person must not, in furnishing information in or in connection with any application or otherwise in pursuance of this Act make or cause to be made any statement that is false or misleading in a material particular.

Penalty: Division 7 fine.

Offences committed by bodies corporate or agents or involving registered boats

69. (1) Where a body corporate is guilty of an offence against this Act, every member of the governing body of the body corporate is guilty of an offence and liable to the same penalty as is prescribed for the principal offence unless the member proves that he or she exercised all reasonable diligence to prevent the commission of the offence.

(2) Where a person is guilty of an offence against this Act committed while he or she was acting as the agent of another person, that other person is guilty of an offence and liable to the same penalty as is prescribed for the principal offence.

(3) Where a registered boat is used in or in connection with the commission of an offence against this Act, the registered owner of the boat is guilty of an offence and liable to the same penalty as is prescribed for the principal offence.

Summary offences

70. (1) Offences against this Act are summary offences.

(2) Proceedings in respect of an offence against this Act may be commenced within 12 months of the day on which the offence is alleged to have been committed.

Service of documents

71. (1) Any notice or document required or authorized by this Act to be given to or served on any person will be taken to have been duly served if it has been—

(a) served on that person personally;

or

(b) in the case of the holder of any authority, sent by certified mail addressed to the person at his or her address for service, or left for the person at that address with a person apparently over the age of 16 years.

(2) The address for service of the holder of an authority is the last address for service of that person of which notice has been given in accordance with the regulations.

Regulations

72. (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.

(2) Any regulations made under this or any other section of this Act may—

(a) be of general application or limited according to the persons or things, classes of persons or things, times, places or circumstances to which they are expressed to apply;

(ab) declare specified kinds of offences against this Act or the regulations under this Act to be expiable offences and prescribe expiation fees which may be of different amounts according to the persons alleged to have committed the offences, or the times or places at which the offences are alleged to have been committed, or the circumstances of such offences;

and

(b) make provision facilitating proof of the commission of an offence against the regulations.

APPENDIX 1

Legislative History

The *Fisheries Act 1982* repealed the *Fibre and Sponges Act 1909* and the *Fisheries Act 1971*.

Long title:	amended by 76, 1991, Sched.
Section 2:	repealed by 76, 1991, Sched.
Section 3:	repealed by 92, 1988, s. 3
Section 4:	repealed by 76, 1991, Sched.
Section 5(1):	definition of "expiable offence" inserted by 92, 1988, s. 4(a) definition of "farm fish" amended by 92, 1988, s. 4(b) definition of "fish farming" amended by 92, 1988, s. 4(c) definition of "fish farming licence" inserted by 76, 1991, s. 3(a) definition of "fish processor" substituted by 92, 1988, s. 4(d) definition of "marine park" inserted by 76, 1991, s. 3(b) definition of "processing" substituted by 92, 1988, s. 4(e) definition of "take" amended by 76, 1991, s. 3(c)
Section 5(3) and (4):	amended by 76, 1991, Sched.
Section 5(5):	substituted by 76, 1991, s. 3(d)
Section 5(6):	amended by 76, 1991, Sched.
Section 7(2):	amended by 76, 1991, Sched.
Section 8:	amended by 76, 1991, Sched.
Section 10(2), (4), (6) and (7):	amended by 76, 1991, Sched.
Section 11(2) and (3):	amended by 76, 1991, Sched.
Section 12:	amended by 76, 1991, Sched.
Section 14a:	inserted by 76, 1991, s. 4
Section 16(3):	amended by 76, 1991, Sched.
Section 17:	amended by 76, 1991, Sched.
Section 18:	amended by 76, 1991, Sched.
Section 19(3):	amended by 76, 1991, Sched.
Section 20:	amended by 76, 1991, s. 5, Sched.
Sections 21 and 22:	substituted by 76, 1991, Sched.
Section 23(1):	amended by 76, 1991, Sched.
Section 23(2):	amended by 20, 1984, s. 3; 76, 1991, Sched.
Section 23(3) - (6), (8) and (9):	amended by 76, 1991, Sched.
Section 24:	amended by 76, 1991, Sched.
Section 25:	substituted by 76, 1991, s. 6
Section 26(1):	amended by 76, 1991, Sched.
Section 26(1a):	inserted by 76, 1991, s. 7
Section 26(3):	amended by 76, 1991, Sched.
Section 27(1):	amended by 92, 1988, Sched.; 76, 1991, Sched.
Section 27(2):	amended by 76, 1991, Sched.
Section 27(3):	amended by 92, 1988, Sched.; 76, 1991, Sched.
Section 28(1) and (2):	amended by 76, 1991, Sched.
Section 28(4) and (5):	amended by 92, 1988, Sched.; 76, 1991, Sched.
Section 28(6) and (7):	amended by 76, 1991, Sched.
Section 28(8):	amended by 92, 1988, Sched.; substituted by 76, 1991, Sched.
Section 28(9):	amended by 122, 1986, s. 3; 92, 1988, s. 5; 76, 1991, Sched.
Section 28(10) - (12):	amended by 76, 1991, Sched.
Section 28(13):	amended by 76, 1991, s. 8(a), Sched.
Section 28(14):	amended by 76, 1991, s. 8(b), Sched.
Section 29:	amended by 92, 1988, Sched.; 76, 1991, Sched.
Section 32(1):	substituted by 76, 1991, Sched.
Section 32(1a):	inserted by 76, 1991, Sched.
Section 32(2):	amended by 7, 1987, Sched.; 76, 1991, Sched.
Section 32(3):	amended by 7, 1987, Sched.
Section 32(4):	amended by 76, 1991, Sched.
Section 34(1):	amended by 92, 1988, Sched.; 76, 1991, Sched.
Section 34(2):	amended by 92, 1988, s. 6(a), Sched.; 76, 1991, s. 10, Sched.
Section 34(3):	repealed by 92, 1988, s. 6(b)
Section 35(2):	amended by 76, 1991, Sched.
Section 36(1):	amended by 76, 1991, s. 11, Sched.
Section 36(3) and (4):	amended by 76, 1991, Sched.
Section 37(1):	amended by 76, 1991, s. 12(a)
Section 37(1a):	inserted by 76, 1991, s. 12(b)
Section 37(2):	amended by 76, 1991, s. 12(c)
Section 37(2a) - (2c):	inserted by 76, 1991, s. 12(d)
Section 37(3):	amended by 76, 1991, Sched.
Section 37(4):	amended by 92, 1988, Sched.; 76, 1991, Sched.
Section 38(1):	amended by 76, 1991, Sched.
Section 38(5) - (7):	inserted by 20, 1984, s. 4; amended by 76, 1991, Sched.
Section 38(8):	inserted by 20, 1984, s. 4
Section 39:	amended by 76, 1991, Sched.
Sections 40 - 42:	amended by 92, 1988, Sched.; 76, 1991, Sched.
Section 43(1):	substituted by 20, 1984, s. 5(a); 122, 1986, s. 4
Section 43(2):	substituted by 20, 1984, s. 5(a); repealed by 122, 1986, s. 4; inserted by 76, 1991, s. 14
Section 43(2a):	inserted by 20, 1984, s. 5(a); repealed by 122, 1986, s. 4
Section 43(3):	amended by 20, 1984, s. 5(b); 92, 1988, Sched.; substituted by 76, 1991, s. 14
Section 43(4) - (6):	inserted by 76, 1991, s. 14
Section 44:	substituted by 92, 1988, s. 7
Section 44(2):	amended by 76, 1991, s. 15(a)
Section 44(2a):	inserted by 76, 1991, s. 15(b)

Section 44(3):	substituted by 76, 1991, s. 15(c)
Section 44(4):	amended by 76, 1991, s. 15(d)
Section 45(1) and (2):	amended by 92, 1988, Sched.; 76, 1991, Sched.
Section 46:	amended by 92, 1988, Sched.; 76, 1991, s. 16(a), (b), Sched.
Section 47(2) and (3):	amended by 76, 1991, Sched.
Section 48:	amended by 33, 1984, s. 3; 122, 1986, s. 5; 92, 1988, s. 8, Sched.; substituted by 76, 1991, s. 17
Sections 48a - 48h	inserted by 76, 1991, s. 17
Section 49(1):	substituted by 122, 1986, s. 6(a); amended by 92, 1988, Sched.; 76, 1991, Sched.
Section 49(1a):	inserted by 122, 1986, s. 6(a)
Section 49(2) and (3):	repealed by 122, 1986, s. 6(a)
Section 49(4) and (5):	amended by 76, 1991, Sched.
Section 49(6):	amended by 122, 1986, s. 6(b); 92, 1988, Sched.; 76, 1991, Sched.
Section 50(1):	amended by 92, 1988, Sched.; 76, 1991, Sched.
Section 50(3):	amended by 76, 1991, Sched.
Section 50(4):	amended by 92, 1988, Sched.; 76, 1991, Sched.
Section 51:	amended by 92, 1988, Sched.;
Section 53:	amended by 76, 1991, Sched.
Section 54(1):	amended by 92, 1988, s. 9(a), Sched.; 76, 1991, Sched.
Section 54(2):	amended by 92, 1988, s. 9(b), Sched.; 76, 1991, Sched.
Section 54(3):	amended by 92, 1988, s. 9(c)
Section 54(4):	amended by 76, 1991, Sched.
Section 54(5):	amended by 92, 1988, s. 9(d)
Section 54(6):	amended by 92, 1988, s. 9(e), Sched.; 76, 1991, Sched.
Section 54(7) - (13):	inserted by 76, 1991, s. 19
Section 55:	amended by 92, 1988, s. 10, Sched.; 76, 1991, s. 20(b)
Section 56(1):	amended by 76, 1991, s. 21(a)
Section 56(2):	amended by 76, 1991, Sched.
Section 56(3):	amended by 76, 1991, s. 21(b), Sched.
Section 56(4) - (9):	amended by 76, 1991, Sched.
Section 56(10):	amended by 92, 1988, s. 11
Section 57(1) and (3):	amended by 76, 1991, Sched.
Section 58(1):	amended by 76, 1991, s. 22
Section 58(5), (6) and (9):	amended by 76, 1991, Sched.
	Division VIII of Part IV comprising ss. 58a - 58d and heading inserted by 92, 1988, s. 12
Section 59(3):	amended by 76, 1991, Sched.
Section 59(4):	amended by 92, 1988, Sched.; 76, 1991, Sched.
Section 60(1):	amended by 76, 1991, Sched.
Section 60(2):	amended by 92, 1988, Sched.; 76, 1991, Sched.
Section 60(3):	amended by 76, 1991, Sched.
Section 62:	amended by 76, 1991, Sched.
Section 63:	amended by 92, 1988, Sched.; 76, 1991, Sched.
Section 64(2) and (3):	amended by 76, 1991, Sched.
Section 65:	amended by 76, 1991, Sched.
Section 66:	amended by 92, 1988, Sched.; amended and redesignated as s. 66(1) by 76, 1991, s. 25, Sched.
Section 66(2):	inserted by 76, 1991, s. 25
Section 66a:	inserted by 76, 1991, s. 26
Section 67:	amended by 76, 1991, Sched.
Section 68:	amended by 92, 1988, Sched.; 76, 1991, Sched.
Section 69:	amended by 76, 1991, Sched.
Section 70(1):	substituted by 76, 1991, Sched.
Section 71(1):	amended by 76, 1991, Sched.
Section 72(2):	amended by 92, 1988, s. 13