

Western Australia

**Fish Resources Management Amendment Act  
2002**

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As at 09 Apr 2002

No. 2 of 2002

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Western Australia

# Fish Resources Management Amendment Act 2002

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Western Australia

# **Fish Resources Management Amendment Act 2002**

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**No. 2 of 2002**

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**An Act to amend the *Fish Resources Management Act 1994* and for related purposes.**

[Assented to 9 April 2002]

The Parliament of Western Australia enacts as follows:

**1. Short title**

This Act may be cited as the *Fish Resources Management Amendment Act 2002*.

**2. Commencement**

This Act comes into operation on the day on which it receives the Royal Assent.

**3. The Act amended**

The amendments in this Act are to the *Fish Resources Management Act 1994*\*.

[\* *Reprinted as at 28 April 2000.*

*For subsequent amendments see 2000 Index to Legislation of Western Australia, Table 1, p. 167, and Acts Nos. 41 of 2000 and 10 of 2001.]*

**4. Section 3 amended**

Section 3(2)(d) is amended by deleting “aquaculture;” and inserting instead —

“

aquaculture including the establishment and management of aquaculture facilities for community or commercial purposes;

”.

**5. Section 4 amended**

(1) Section 4(1) is amended in the definition of “security holder” by inserting after “authorization” in both places where it occurs —

“ or aquaculture lease ”.

(2) Section 4(1) is amended in the definition of “security interest” by inserting after “authorization” in both places where it occurs —

“ or aquaculture lease ”.

**6. Section 97 amended**

- (1) Section 97(3)(a) is deleted and the following paragraph is inserted instead —

“

- (a) the exclusive right during the currency of the lease to keep, breed, hatch and culture within the leased area the species of fish that are specified in the lease;

”.

- (2) Section 97(3)(b) is amended by deleting “specified in the lease that are within the leased area.” and inserting instead —

“

within the leased area that are kept, bred, hatched or cultured under the lease.

”.

- (3) Section 97(5) and (6) are repealed and the following subsections are inserted instead —

“

- (5) A lease may be granted or renewed subject to such terms, covenants, restrictions and conditions as the Minister thinks fit including the requirement for payment of money to the Minister.
- (6) Without limiting subsection (5), a lease may be subject to a condition requiring security to be given for the observance of any terms, covenants, restrictions or conditions of the lease.

”.

**7. Section 99 amended**

Section 99(1) is amended by deleting “the lease” and inserting instead —

“ the leased area ”.

**8. Section 101A inserted and validation of certain aquaculture park arrangements**

(1) After section 101 the following section is inserted —

“

**101A. Minister's powers in relation to aquaculture**

- (1) The Minister may —
- (a) establish or manage aquaculture facilities to be used by other persons for community or commercial purposes;
  - (b) arrange for aquaculture facilities established by the Minister to be managed or used by other persons for community or commercial purposes; or
  - (c) arrange for other persons to establish and manage aquaculture facilities on —
    - (i) land owned by the Minister, including in fee simple; or
    - (ii) any reserve the care, control and management of which have been placed under section 46 of the *Land Administration Act 1997* with the Minister for the purposes of aquaculture.
- (2) The Minister may do all things necessary or convenient to be done for or in connection with the exercise of the Minister's powers under subsection (1) including the power —
- (a) to acquire, hold, take on lease, let, sublet, issue licences in respect of and exchange real or personal property;
  - (b) to construct or erect buildings or other works and to improve, develop or alter property;

- (c) to make land, buildings and other facilities available for the use of persons engaged in the aquaculture industry;
  - (d) to provide advisory or administrative services for or in connection with establishing, conducting or developing any activity associated with the aquaculture industry; or
  - (e) to demand and receive payment with respect to the provision of services or the performance of any work by or on behalf of the Minister.
- (3) Subsection (2) does not operate to give the Minister any power in relation to property that would be inconsistent with the terms of any reserve or management order under the *Land Administration Act 1997*, any lease or any other document or a provision of a written law by which the Minister holds that property.
- (4) In this section —  
“**aquaculture**” includes the keeping, breeding, hatching or culturing of pearl oysters.
- ”.
- (2) The arrangements of 15 April 1995 by which the Minister for Fisheries purported to lease from the Minister for Transport that portion of land known as “Aquaculture Park Area”, being a total area of 7.8152 hectares situated in the Broome Port area, for the purposes of establishing an aquaculture park are to be taken to be, and always to have been, as valid as they would have been if the amendments made to the *Fish Resources Management Act 1994* by this Act were in effect at the time the arrangements were made.
- (3) Any of the following arrangements that were in effect immediately before the commencement of this Act are to be taken to be, and always to have been, as valid as they would

have been if the amendments made to the *Fish Resources Management Act 1994* by this Act were in effect at the time the arrangements were made —

- (a) arrangements for the establishment or management by the Minister of aquaculture facilities to be used by other persons for community or commercial purposes;
  - (b) arrangements for aquaculture facilities established by the Minister to be managed or used by other persons for community or commercial purposes;
  - (c) arrangements for other persons to establish and manage aquaculture facilities on land owned by the Minister.
- (4) In subsection (3) —
- “aquaculture”** means the keeping, breeding, hatching or culturing of —
- (a) fish as defined in the *Fish Resources Management Act 1994*; or
  - (b) pearl oysters as defined in that Act;
- “commercial purpose”** has the same meaning as in the *Fish Resources Management Act 1994*.

**9. Section 102 amended**

Section 102(c) is amended by inserting after “aquaculture” —

“ leases, including the transfer of aquaculture ”.

**10. Section 125 amended**

- (1) Section 125(1) is amended by inserting after “authorizations” —
- “ , aquaculture leases ”.
- (2) Section 125(2) is amended by inserting after “form” —
- “ or forms ”.

**11. Section 126 amended**

Section 126 is amended by inserting after “authorization” in the first 4 places where it occurs —

“ , aquaculture lease ”.

**12. Section 127 amended**

Section 127 is amended by inserting after “authorization” in both places where it occurs —

“ or aquaculture lease ”.

**13. Section 128 amended**

Section 128(1) is amended by deleting “authorization.” and inserting instead —

“ authorization or aquaculture lease. ”.

**14. Section 129 amended**

Section 129(2) is amended by inserting after “authorization” —

“ or aquaculture lease ”.

**15. Section 130 amended**

(1) Section 130 is amended by deleting “an authorization” and inserting instead —

“ an authorization or aquaculture lease ”.

(2) Section 130(a) is amended by inserting after “authorization” —

“ or aquaculture lease ”.

(3) After section 130(b) the following paragraph is inserted —

“

(ba) an aquaculture lease is to be varied or transferred;

”.

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- (4) Section 130(d) is amended by deleting “authorization;” and inserting instead —

“  
authorization or the Minister proposes to  
terminate the aquaculture lease;  
”.

- (5) Section 130(e) is amended as follows:

- (a) by inserting after “authorization” in the first place where it occurs —

“ or aquaculture lease ”;

- (b) by deleting “authorization;” and inserting instead —

“  
authorization or terminate the aquaculture  
lease, as is relevant to the case,  
”.

**16. Section 131 amended**

- (1) Section 131(1) is amended by inserting after “authorization” in both places where it occurs —

“ or aquaculture lease ”.

- (2) Section 131(4) is amended by inserting after “authorization” —

“ or aquaculture lease ”.

**17. Section 171 amended**

- (1) Section 171(1)(a) is amended by inserting after “fishing” —

“ or from lawfully engaging in aquaculture ”.

- (2) Section 171(1)(b) is amended by inserting after “fishing” —

“ or lawfully engaging in aquaculture ”.

**18. Section 172 amended**

- (1) Section 172(a) is amended by deleting “or other gear that is being used for fishing;” and inserting instead —

“  
    , fishing gear or gear that is being used for  
    aquaculture;  
”.

- (2) Section 172(b) is amended by deleting “or other gear that is being used for fishing;” and inserting instead —

“  
    , fishing gear or gear that is being used for  
    aquaculture,  
”.

**19. Section 212 amended**

- (1) Section 212(1)(a) is amended by inserting after “authorization” —

“ or aquaculture lease ”.

- (2) Section 212(1)(c) is amended by deleting “effect;” and inserting instead —

“  
    effect or an aquaculture lease was terminated or  
    for any other reason of no effect;  
”.

- (3) Section 212(1)(d) is amended by inserting after “authorization” —

“ , aquaculture lease ”.

**20. Section 238 amended**

- (1) Section 238(4)(b) is deleted and the following paragraphs are inserted instead —

“

- (b) fees, royalties or other money paid in respect of aquaculture leases, aquaculture facilities or exclusive licences;
- (ba) rent or other money paid to the Minister under leases or licences issued under management orders as defined in the *Land Administration Act 1997* in respect of fish habitat protection areas, the Abrolhos Islands reserve or any other reserve the care, control and management of which have been placed under section 46 of that Act with the Minister;
- (bb) payments received under section 101A(2)(e);

”.

- (2) After section 238(5)(e) the following paragraph is inserted —

“

- (ea) to provide payment in consideration for the surrender of an aquaculture lease;

”.

- (3) Section 238(5)(f) is deleted and the following paragraphs are inserted instead —

“

- (f) the purposes set out in section 115(2) for which an area may be set aside as a fish habitat protection area;
- (fa) the care, control and management of the Abrolhos Islands reserve;

”.

**21. Section 239 amended**

After section 239(4)(f) the following paragraph is inserted —

“

- (fa) to provide payment in consideration for the surrender of an aquaculture lease;

”.

**22. Section 246 amended**

- (1) Section 246(1) is amended by inserting after “fishing industry” in the first place where it occurs —

“

, the aquaculture industry, the aquatic eco-tourism industry, the fishing tour industry, the pearling industry

”.

- (2) Section 246(1) is amended by inserting after “fishing industry” in the second place where it occurs —

“

, the aquaculture industry, the aquatic eco-tourism industry, the fishing tour industry

”.

**23. Section 258 amended**

Section 258(t) is amended by deleting “fishing;” and inserting instead —

“ fishing or aquaculture; ”.

**24. Section 261 amended**

Section 261(1) is amended by deleting “authorization,” and inserting instead —

“ authorization or aquaculture lease, ”.

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