

WESTERN AUSTRALIA

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# ACTS AMENDMENT (MARINE RESERVES) ACT 1997

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No. 5 of 1997

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AN ACT to amend the —

- *Conservation and Land Management Act 1984;*
- *Mining Act 1978;*
- *Petroleum Act 1967;*
- *Petroleum (Submerged Lands) Act 1982;*
- *Fish Resources Management Act 1994;* and
- *Pearling Act 1990,*

and for related purposes.

[Assented to 10 June 1997.]

The Parliament of Western Australia enacts as follows:

s. 1 No. 5] *Acts Amendment (Marine Reserves)*  
*Act 1997*

## **PART 1 — PRELIMINARY**

### **Short title**

1. This Act may be cited as the *Acts Amendment (Marine Reserves) Act 1997*.

### **Commencement**

2. The provisions of this Act come into operation on such day as is, or days as are respectively, fixed by proclamation.

**PART 2 — AMENDMENTS TO *CONSERVATION AND  
LAND MANAGEMENT ACT 1984***

**Principal Act**

3. In this Part the *Conservation and Land Management Act 1984*\* is referred to as the principal Act.

[\* Reprinted as at 20 January 1997.]

**Section 3 amended**

4. Section 3 of the principal Act is amended —

(a) in the definition of “appointed member”, by deleting “or the Council” and substituting the following —

“  
    , the Council, the Marine Authority or the  
    Marine Committee  
”;

(b) in the definition of “management plan” by inserting after “60” the following —

“  
    or an indicative management plan approved  
    under section 14  
”;

(c) in the definition of “member”, by deleting “or the Council” and substituting the following —

“  
    , the Council, the Marine Authority or the  
    Marine Committee  
”;

and

- (d) by inserting in the appropriate alphabetical positions the following definitions —

“

“**aquaculture**” has the same meaning as in the *Fish Resources Management Act 1994*;

“**commercial fishing**” has the same meaning as in the *Fish Resources Management Act 1994*;

“**Fisheries Department**” means the Department for the purposes of the *Fish Resources Management Act 1994*;

“**Marine Authority**” means the Marine Parks and Reserves Authority established by section 26A;

“**Marine Committee**” means the Marine Parks and Reserves Scientific Advisory Committee established by section 26F;

“**marine management area**” has the meaning assigned to it by sections 6 (6) and 16B (3);

“**marine reserve**” means a marine nature reserve, a marine park or a marine management area;

“**Minister for Fisheries**” means the Minister to whom the administration of the *Fish Resources Management Act 1994* and the *Pearling Act 1990* is committed, or each of the Ministers to whom their administration is committed;

**“Minister for Mines”** means the Minister to whom the administration of the *Mining Act 1978*, the *Petroleum Act 1967*, the *Petroleum (Submerged Lands) Act 1982* and the *Petroleum Pipelines Act 1969* is committed, or each of the Ministers to whom their administration is committed;

**“pearling activity”** means pearling or hatchery activity within the meaning of the *Pearling Act 1990*;

**“recreational fishing”** has the same meaning as in the *Fish Resources Management Act 1994*;

”.

#### **Section 4 amended**

5. Section 4 (1) of the principal Act is amended by deleting “Without” and substituting the following —

“ Subject to section 13A (3) and 13B (9) and without ”.

#### **Section 5 amended**

6. Section 5 of the principal Act is amended —

(a) by deleting paragraphs (e) and (f) and the “and” after paragraph (f) and substituting the following —

“

(e) marine nature reserves;

(f) marine parks;

(fa) marine management areas; and

”;

and

- (b) in paragraph (g), by deleting “or the Authority” and substituting the following —

“ , the Authority or the Marine Authority ”.

**Section 6 amended and transitional provision**

7. (1) Section 6 (6) of the principal Act is amended —

- (a) by deleting “and marine parks” and substituting the following —

“ , marine parks and marine management areas ”;

- (b) in paragraphs (a) and (b) by deleting “and a marine park” and substituting in each case the following —

“ , a marine park or a marine management area ”;

- (c) in paragraph (c) by deleting “and a marine park.” and substituting the following —

“ , a marine park or a marine management area, ”;

and

- (d) by inserting after paragraph (c) the following —

“  
and includes —

- (d) the airspace above such waters or land;

- (e) in the case of waters, the sea-bed or other land beneath such waters and the subsoil below that sea-bed or other land to a depth of 200 metres; and

- (f) in the case of land other than waters, the subsoil below such land to a depth of 200 metres.

”.

(2) The application of section 6 (6) of the principal Act as amended by subsection (1) (d) extends to any waters or land reserved as or for the purpose of a marine nature reserve or marine park before the commencement of this section.

### **Section 7 amended and transitional provision**

**8.** (1) Section 7 (5) of the principal Act is repealed and the following subsection is substituted —

“

(5) A marine nature reserve, marine park or marine management area is by this subsection vested in the Marine Authority.

”.

(2) Section 7 (6) of the principal Act is amended by deleting “and 22 (2) and (3)” and substituting the following —

“ 22 (2) and (3) and 26B (2) ”.

(3) To avoid doubt it is declared that section 7 (5) of the principal Act, as inserted by subsection (1), applies to marine nature reserves and marine parks which, immediately before the commencement of this Act, were vested in the National Parks and Nature Conservation Authority, whether so vested under the principal Act or under the *Land Act 1933*.

### **Section 13 amended**

**9.** (1) Section 13 (1) of the principal Act is amended by deleting “or a marine park” and substituting the following —

“ , a marine park or a marine management area ”.

(2) Section 13 (2) and (3) of the principal Act are repealed.

(3) Section 13 (3a) of the principal Act is amended by deleting “or marine park” and substituting the following —

“ , marine park or marine management area ”.

(4) Section 13 (4) of the principal Act is amended —

(a) by deleting “The” and substituting the following —

“ Subject to subsection (4a), the ”;

(b) by deleting “or a marine park” and substituting the following —

“ , a marine park or a marine management area ”;

and

(c) by deleting “reserve or park” in the 2 places where it occurs and substituting in each case the following —

“ reserve, park or management area ”.

(5) After section 13 (4) of the principal Act the following subsection is inserted —

“

(4a) A marine nature reserve, a marine park or marine management area shall not be classified as of Class A unless the Minister for Mines has agreed to a proposal by the Minister that it be so classified or, where the Minister for Mines does not agree, the Governor determines that it shall be so classified.

”.

(6) Section 13 (5) of the principal Act is amended by inserting after “(1)” the following —

“ or (4) ”.

(7) Section 13 (8) of the principal Act is amended —

- (a) by deleting the comma after paragraph (b) and substituting a full stop; and
- (b) by deleting “and includes the sea-bed and subsoil beneath and the airspace above such waters.”.

(8) After section 13 (8) of the principal Act the following subsections are inserted —

“ (9) Without limiting section 6 (6), the reservation of waters under this section as a marine nature reserve, marine park or marine management area extends to the airspace, sea-bed, land and subsoil referred to in section 6 (6) (a) and (b).

(10) A reference in this Act to the reservation of, or the reservation of waters as, a marine nature reserve, marine park or marine management area includes a reference to the alteration of any boundary of the reserve, park or management area to include additional waters.

”.

**Sections 13A, 13B, 13C, 13D, 13E and 13F inserted**

**10.** After section 13 of the principal Act the following sections are inserted —

“ **Purpose of marine nature reserves**

**13A.** (1) The reservation of a marine nature reserve shall be for —

- (a) the conservation and restoration of the natural environment;
- (b) the protection, care and study of indigenous flora and fauna; and
- (c) the preservation of any feature of archaeological, historic or scientific interest.

(2) Subject to section 13D, aquaculture, commercial fishing, recreational fishing and pearling activity shall not be carried out in a marine nature reserve.

(3) Despite section 4 (1) but subject to section 13E, exploratory drilling for, or production of, petroleum under the *Petroleum Act 1967* or the *Petroleum (Submerged Lands) Act 1982* shall not be carried out in a marine nature reserve.

### **Purpose of marine parks**

**13B.** (1) The reservation of a marine park shall be for the purpose of allowing only that level of recreational and commercial activity which is consistent with the proper conservation and restoration of the natural environment, the protection of indigenous flora and fauna and the preservation of any feature of archaeological, historic or scientific interest.

(2) As soon as practicable after the reservation of a marine park the Minister shall classify the park under section 62, or divide the park into areas and classify each area under section 62, as —

- (a) a general use area;
- (b) a sanctuary area;
- (c) a recreation area; or
- (d) a special purpose area,

in accordance with a proposal for the classification publicly notified in accordance with section 14, modified as the Minister thinks fit to give effect to submissions made under section 14.

(3) Subsections (5), (6) and (7) have effect despite anything in the *Fish Resources Management Act 1994*, but in the event of any other conflict or inconsistency between the purpose referred to in subsection (1) and a provision of, or an activity authorized by, the *Fish Resources Management Act 1994* that relates to aquaculture or to commercial or recreational fishing, the latter prevails.

(4) Subsection (8) has effect despite anything in the *Pearling Act 1990*, but in the event of any other conflict or inconsistency between the purpose referred to in subsection (1) and a provision of, or an activity authorized by, the *Pearling Act 1990* that relates to pearling activity, the latter prevails.

(5) Subject to section 13D, aquaculture shall not be carried out in any area of a marine park which is classified under section 62 as —

- (a) a sanctuary area;
- (b) a recreation area; or
- (c) a special purpose area which, or that part of such an area which, the Minister has declared in the classification notice to be an area where aquaculture would be incompatible with a conservation purpose specified in the classification notice,

but aquaculture may be carried out, in accordance with an authorization issued under the *Fish Resources Management Act 1994*, in any other area of the marine park.

(6) Subject to section 13D, commercial fishing shall not be carried out in any area of a marine park which is classified under section 62 as —

- (a) a sanctuary area;
- (b) a recreation area; or

- (c) a special purpose area which, or that part of such an area which, the Minister has declared in the classification notice to be an area where commercial fishing would be incompatible with a conservation purpose specified in the classification notice,

but commercial fishing may be carried out, in accordance with an authorization issued under the *Fish Resources Management Act 1994*, in any other area of the marine park.

(7) Subject to section 13D, recreational fishing shall not be carried out in any area of a marine park which is classified under section 62 as —

- (a) a sanctuary area;
- (b) a recreation area which, or that part of such an area which, the Minister has declared in the classification notice to be an area where recreational fishing would be incompatible with another recreational purpose specified in the classification notice; or
- (c) a special purpose area which, or that part of such an area which, the Minister has declared in the classification notice to be an area where recreational fishing would be incompatible with a conservation purpose specified in the classification notice,

but recreational fishing may be carried out, in accordance with the requirements of the *Fish Resources Management Act 1994*, in any other area of the marine park.

(8) Subject to section 13D, pearling activity shall not be carried out in any area of a marine park which is classified under section 62 as —

- (a) a sanctuary area;

- (b) a recreation area; or
- (c) a special purpose area which, or that part of such an area which, the Minister has declared in the classification notice to be an area where pearling activity would be incompatible with a conservation purpose specified in the classification notice,

but pearling activity may be carried out, in accordance with a licence or permit issued under the *Pearling Act 1990*, in any other area of the marine park.

(9) Despite section 4 (1) but subject to section 13E, exploratory drilling for, or production of, petroleum under the *Petroleum Act 1967* or the *Petroleum (Submerged Lands) Act 1982* shall not be carried out in any area of a marine park which is classified under section 62 as —

- (a) a sanctuary area;
- (b) a recreation area; or
- (c) a special purpose area which, or that part of such an area which, the Minister has declared in the classification notice to be an area where those activities would be incompatible with a conservation purpose specified in the classification notice,

but those activities may be carried out, in accordance with those Acts, in any other area of the marine park.

(10) The term “**classification notice**” used in this section refers to the relevant notice under section 62 (1a).

**Purpose of marine management areas**

**13C.** (1) The reservation of a marine management area shall be for the purpose of managing and protecting the marine environment so that it may be used for conservation, recreational, scientific and commercial purposes.

(2) In subsection (1) —

**“commercial purposes”** includes —

- (a) aquaculture, commercial fishing and pearling activity;
- (b) mining, within the meaning of the *Mining Act 1978*;
- (c) seismic surveys and exploratory drilling for petroleum; and
- (d) production of petroleum,

and associated activities.

(3) Aquaculture, commercial fishing and recreational fishing may be carried out, in accordance with the *Fish Resources Management Act 1994*, in a marine management area.

(4) In the event of any conflict or inconsistency between the management and protection purpose referred to in subsection (1) and a provision of, or an activity authorized by, the *Fish Resources Management Act 1994* that relates to aquaculture, commercial fishing or recreational fishing, the latter prevails.

(5) Pearling activity may be carried out, in accordance with the *Pearling Act 1990*, in a marine management area.

(6) In the event of any conflict or inconsistency between the management and protection purpose referred to in subsection (1) and a provision of, or an activity authorized by, the *Pearling Act 1990* that relates to pearling activity, the latter prevails.

(7) Nothing in this section limits the operation of section 4 (1) and, in particular —

- (a) exploratory drilling for petroleum and production of petroleum under the *Petroleum Act 1967* or the *Petroleum (Submerged Lands) Act 1982*; and
- (b) other activities authorized by those Acts,

may be carried out, in accordance with those Acts, in a marine management area.

**Preservation of certain licences and other instruments relating to fishing and pearling**

**13D.** (1) Sections 13A and 13B do not affect the validity of an authorization under the *Fish Resources Management Act 1994* or a licence or permit under the *Pearling Act 1990* —

- (a) which was issued or renewed before the commencement of section 10 of the *Acts Amendment (Marine Reserves) Act 1997*; or
- (b) which authorizes activity in relation to an area affected, after the issue or renewal of the authorization, by a reservation under section 13 or by a notice under section 62.

(2) Sections 13A and 13B do not prohibit activities authorized in an area by an authorization, licence or permit to which subsection (1) applies.

(3) Sections 13A and 13B do not affect the validity of an aquaculture lease under the *Fish Resources Management Act 1994* or a farm lease under the *Pearling Act 1990* —

- (a) granted or renewed before the commencement of section 10 of the *Acts Amendment (Marine Reserves) Act 1997*; or
- (b) granted or renewed in relation to an area which is affected, after the grant or renewal, by a reservation under section 13 or by a notice under section 62.

(4) Sections 13A and 13B do not prevent the annual renewal under section 27 of the *Pearling Act 1990* of a farm lease to which subsection (3) applies, where the term specified in the lease has not expired.

(5) Sections 13A and 13B do not prevent —

- (a) the renewal of an aquaculture licence under the *Fish Resources Management Act 1994*, held by the holder of an aquaculture lease referred to in subsection (3), which authorizes aquaculture activity in the area under the lease; or
- (b) the renewal of —
  - (i) a hatchery licence under the *Pearling Act 1990*; or
  - (ii) a pearling licence under that Act, authorizing the holder to carry out pearl culture techniques,

held by the holder of a farm lease referred to in subsection (3), which authorizes pearling activity in the area under the lease,

and do not prohibit activities authorized by such a renewed licence in the area under the lease concerned.

(6) Sections 13A, 13B and 13C do not affect a management plan made under section 54 of the *Fish Resources Management Act 1994* —

- (a) which was made before the commencement of section 10 of the *Acts Amendment (Marine Reserves) Act 1997*; or
- (b) which was made in relation to an area affected, after the making of the plan, by a reservation under section 13 or by a notice under section 62,

except as they affect an authorization issued in relation to the area under the management plan.

(7) Where a notice under section 19 of the *Pearling Act 1990*, for the purposes of a holding site or dump site —

- (a) was made before the commencement of section 10 of the *Acts Amendment (Marine Reserves) Act 1997*; or
- (b) was made in relation to an area which is affected, after the making of the notice, by a reservation under section 13 or by a notice under section 62,

the notice continues in force until repealed under section 19 of the *Pearling Act 1990*, and sections 13A and 13B do not prohibit pearling activities in the area to which the notice applies that are not prohibited by the terms of the notice.

**Preservation of licences and other instruments relating to petroleum and provision for further rights**

**13E.** (1) In this section —

“**drilling reservation**” means a drilling reservation within the meaning of the *Petroleum Act 1967*;

**“lease”** means a lease within the meaning of a petroleum law;

**“licence”** means a licence within the meaning of a petroleum law;

**“permit”** means a permit within the meaning of a petroleum law;

**“petroleum authorization”** means a permit, drilling reservation, lease, licence or pipeline licence;

**“petroleum law”** means the *Petroleum Act 1967*, the *Petroleum (Submerged Lands) Act 1982* or the *Petroleum Pipelines Act 1969*;

**“pipeline licence”** means a pipeline licence within the meaning of the *Petroleum (Submerged Lands) Act 1982* or the *Petroleum Pipelines Act 1969*;

**“renewal”**, in relation to a petroleum authorization, has the same meaning as it has in the relevant petroleum law.

(2) Sections 13A and 13B do not affect the validity of a petroleum authorization —

(a) granted, renewed or extended before the commencement of section 10 of the *Acts Amendment (Marine Reserves) Act 1997*; or

(b) granted, renewed or extended in relation to an area which is affected, after the grant, renewal or extension, by a reservation under section 13 or by a notice under section 62.

(3) Sections 13A and 13B do not prevent the renewal or extension under the relevant petroleum law of —

- (a) a petroleum authorization to which subsection (2) applies; or
- (b) a licence granted as referred to in subsection (4).

(4) Sections 13A and 13B do not prevent the grant of a licence under the relevant petroleum law in respect of an area in respect of which —

- (a) a permit, drilling reservation or lease to which subsection (2) applies; or
- (b) a permit, drilling reservation or lease renewed or extended as referred to in subsection (3) (a),

has been in force.

(5) Sections 13A and 13B do not prohibit activities authorized in an area by —

- (a) a petroleum authorization to which subsection (2) applies;
- (b) a petroleum authorization renewed or extended as referred in subsection (3) (a); or
- (c) a licence granted as referred to in subsection (4) or renewed as referred to in subsection (3) (b).

### **Operation of Environmental Protection Act**

**13F.** Nothing in section 13A, 13B, 13C, 13D or 13E limits the operation of the *Environmental Protection Act 1986*.

”.

**Section 14 amended**

**11.** (1) Section 14 (1) of the principal Act is amended by deleting “, unless the Minister otherwise directs”.

(2) After section 14 (1) of the principal Act the following subsection is inserted —

“

(1a) Public notification of a proposal shall not be given unless —

- (a) the Minister has received a report from the Marine Authority in relation to the proposal; and
- (b) the Minister for Fisheries and the Minister for Mines have approved the notification of the proposal.

”.

(3) Section 14 (2) of the principal Act is amended —

- (a) by deleting “The proposal shall be publicly notified by the publication — ” and substituting the following —

“

Unless the Minister otherwise directs, the way in which public notification of a proposal is to be given is by the Executive Director causing the publication —

”;

- (b) in paragraphs (c) and (d) by deleting “or park” and substituting in each case the following —

“ , park or management area ”; and

- (c) by deleting paragraphs (e) to (g) and substituting the following —

“

- (e) specifying the boundaries of the waters of the proposed reserve, park or management area;
- (f) specifying the purpose for which the reserve, park or management area is proposed to be constituted;
- (g) specifying whether or not the proposed order under section 13 (1) will classify the reserve, park or management area as Class A;
- (h) specifying the places at which —
  - (i) a copy of a map of the proposed reserve, park or management area may be inspected;
  - (ii) a copy of any indicative management plan for the proposed reserve, park or management area issued under subsection (2b) may be inspected; and
  - (iii) copies of the map, and of any such indicative management plan, may be obtained;
- (i) setting out, for the purpose of assisting persons who may wish to make submissions under subsection (4), such other information as the Minister considers relevant to the proposal; and

- (j) stating the effect of subsection (4) and specifying the period and the address or addresses referred to in that subsection.

”.

(4) After section 14 (2) of the principal Act the following subsections are inserted —

“

(2a) Where a notice for the purposes of subsection (2) deals with a proposal to establish a marine park, the notice shall also specify the proposed classification under section 62 of the park, or of the areas of the park, for the purposes of section 13B (2) and —

- (a) the purpose or purposes of any proposed recreation area, together with any declaration proposed to be made as to activities which are considered incompatible with the purpose or any of the purposes; and
- (b) the purpose or purposes of any proposed special purpose area, together with any declaration proposed to be made as to activities which are considered incompatible with the purpose or any of the purposes.

(2b) Where a notice for the purposes of subsection (2) deals with a proposal to establish a marine nature reserve or marine management area, the notice shall also specify any classification of the reserve or management area, or of areas of the reserve or management area, that is proposed to be made under section 62 (1b) as soon as practicable after the reservation of the reserve or management area.

(2c) Before public notification of a proposal to make an order under section 13 (1) is given, the Minister shall cause an indicative management plan for the proposed reserve, park or management area to be prepared and issued.

(2d) Sections 55 (1) and (3) and 56 (1) (da) and (db) apply to the preparation of an indicative management plan. ”.

(5) Section 14 (3) of the principal Act is amended by deleting “or park” and substituting the following —

“ , park or management area ”.

(6) Section 14 (4) of the principal Act is amended by deleting “2 months” and substituting the following —

“ 3 months ”.

(7) Section 14 (6) of the principal Act is repealed and the following subsections are substituted —

“

(6) The Minister shall not make a submission to the Governor under subsection (5) unless —

- (a) the Minister has received a report from the Marine Authority in relation to any submissions received under this section; and
- (b) the Minister for Fisheries and the Minister for Mines concur with the submission to the Governor.

(7) If the Governor makes an order under section 13 in respect of a reserve, park or management area for which an indicative management plan was issued under subsection (2c), the Minister may approve the plan or approve it with such modifications as the Minister thinks fit to give effect to submissions made under this section.

(8) Subsections (2a) and (2b) of section 60 apply to the approval of an indicative management plan as if the references in those subsections to the controlling body were references to the Minister.

(9) Notice that an indicative management plan has been approved by the Minister shall be published in the *Gazette*, together with a note showing —

- (a) whether any modifications were made by the Minister under subsection (7); and
- (b) where a copy of the plan may be inspected or obtained.

(10) An indicative management plan comes into operation on the day of publication in the *Gazette* of a notice under subsection (9) or on such later day as is specified in the plan.

(11) In the case of a proposal to alter a boundary of a reserve, park or management area as referred to in section 13 (10), the provisions of this section, other than subsection (2) (f) and (g), apply to the proposed new boundaries of the reserve, park or management area and the additional waters proposed to be included in it —

- (a) as if references to an indicative management plan were references to an amendment of the indicative or other management plan for the reserve, park or management area; and
- (b) with any other necessary modifications.

”.

### **Section 15 amended**

**12.** Section 15 (1) of the principal Act is amended by deleting “, marine nature reserve or marine park” and substituting the following —

“ or marine reserve ”.

**Section 16 amended**

**13.** Section 16 (1) of the principal Act is amended by deleting “nature reserve or marine park” and substituting the following —

“ reserve ”.

**Section 17 amended**

**14.** (1) Section 17 (3) of the principal Act is amended by deleting “or Authority” and substituting the following —

“ , Authority or Marine Authority ”.

(2) Section 17 (4) of the principal Act is amended by deleting “or Authority” in the 2 places where it occurs and substituting in each case the following —

“ , the Authority or the Marine Authority ”.

(3) Section 17 (4a) of the principal Act is amended by deleting “or the Authority” and substituting the following —

“ , the Authority or the Marine Authority ”.

(4) Section 17 (5) of the principal Act is amended by deleting “park or marine nature reserve” and substituting the following —

“ reserve ”.

(5) Section 17 (6) of the principal Act is amended by deleting “park or marine nature reserve, the Minister” and substituting the following —

“ reserve, the Minister, with the concurrence of the Minister for Fisheries and the Minister for Mines,  
”.

(6) Section 17 (8) of the principal Act is amended by deleting “park or a marine nature reserve” and substituting the following —

“ reserve ”.

**Section 17A amended**

15. Section 17A (1) of the principal Act is amended —

- (a) by deleting “and” after paragraph (e);
- (b) by deleting the comma at the end of paragraph (f) and substituting the following —  
“ ; and ”; and
- (c) by inserting after paragraph (f) the following paragraph —  
“ (g) marine management area, ”.

**Section 22 amended**

16. (1) Section 22 (1) of the principal Act is amended —

- (a) in paragraph (a), by deleting “, marine nature reserves, marine parks”; and
- (b) in paragraph (b) (iii), by deleting “, (da)”.

(2) Section 22 (2) of the principal Act is amended by deleting “, nature reserves, marine nature reserves and marine parks” and substituting the following —

“ and nature reserves ”.

(3) Section 22 (5) (a) of the principal Act is amended by inserting after “national park” in the 2 places where it occurs the following —

“ , conservation park ”.

(4) Section 22 (6) of the principal Act is repealed and the following subsection is substituted —

“  
(6) Where a matter before the Authority is relevant to the management of land or waters vested in the Marine Authority, or otherwise relevant to the functions of the Marine Authority, the Authority shall refer that matter to the Marine Authority for its comments and advice.  
”.

### **Divisions 3A and 3B inserted in Part III**

17. After section 26 of the principal Act the following Divisions are inserted —

“  
***Division 3A — Marine Parks and Reserves Authority***

#### **Marine Parks and Reserves Authority**

**26A.** There is established by this section an authority by the name of the Marine Parks and Reserves Authority.

#### **Functions of Marine Authority**

**26B.** (1) The functions of the Marine Authority are —

- (a) to have vested in it marine nature reserves, marine parks and marine management areas and relevant land referred to in section 5 (g);

- (b) to develop policies —
  - (i) to preserve the natural marine and estuarine environments of the State;
  - (ii) to provide facilities for the enjoyment of those environments by the community;
  - (iii) to promote appreciation of marine and estuarine flora and fauna and natural marine and estuarine environments; and
  - (iv) to achieve or promote the objectives referred to in section 56 (1) (da), (db) and (e);
- (c) to consider, in accordance with section 17, any cancellation, change of purpose or boundary alteration in respect of land and waters vested in it;
- (d) to advise the Minister in relation to proposals for reservations for the purposes of section 14;
- (e) to submit proposed management plans to the Minister as provided in Part V for land and waters vested in it; and
- (f) in relation to management plans for land and waters vested in the Marine Authority —
  - (i) to develop guidelines for monitoring the implementation of the management plans by the Department;
  - (ii) to set performance criteria for evaluating the carrying out of the management plans; and

- (iii) to conduct periodic assessments of the implementation of the management plans;
- (g) to provide advice, upon request, on matters relating to land and waters vested in it to any body or person, if the provision of advice is in the public interest and it is practicable for the Marine Authority to provide it;
- (h) with the approval of the Minister, to cause study or research to be undertaken for the purposes of paragraph (b);
- (i) to inquire into and to advise the Minister on any matter on which the Minister requests advice; and
- (j) to advise the Minister on any other matter relevant to its functions which it thinks calls for advice.

(2) It is declared that the vesting in the Marine Authority of marine reserves is only for the purpose of subsection (1) (b), (c), (d), (e), (f), (g) and (h) and does not otherwise limit the functions of the Department under section 33.

(3) Despite the *Land Act 1933*, land to which section 5 (g) applies and which is vested in the Marine Authority is only vested within the meaning in subsection (2).

(4) The Marine Authority shall not advise the Minister on any matter to which this subsection applies unless before the advice is tendered it has informed the council of each local government under the *Local Government Act 1995* in whose district land or waters directly affected by the advice is situated of the general nature of its proposed advice and afforded any such council a reasonable opportunity to make submissions thereon.

(5) Subsection (4) applies to the following matters —

- (a) any proposal to enter into an agreement under section 16 for the management of land as a marine reserve;
- (b) any matter to which the Minister, by written direction to the Marine Authority, applies that subsection.

(6) The Marine Authority shall not advise the Minister on any matter which relates to marine archaeology unless before the advice is tendered it has informed the Western Australian Museum of the general nature of its proposed advice and afforded it a reasonable opportunity to make submissions thereon.

(7) Where a matter before the Marine Authority is relevant to the management of land vested in the Authority or is otherwise relevant to the functions of the Authority, the Marine Authority shall refer that matter to the Authority for its comment and advice.

(8) Where —

- (a) the Marine Authority has provided advice to the Minister which the Minister has sought under subsection (1) (i), or is required by this Act to consider or take into account;
- (b) the advice recommends that the Minister take or refrain from taking specified action; and
- (c) the Minister decides to act otherwise than in accordance with the recommendation,

the Minister shall cause a copy of the advice and the decision to be laid before each House of Parliament within 14 sitting days of that House after the making of the decision.

**Minister may give directions**

**26C.** (1) The Minister may give directions in writing to the Marine Authority with respect to the exercise or performance of its functions, either generally or in relation to a particular matter, and the Marine Authority shall give effect to any such direction.

(2) The text of any direction given under subsection (1) shall be included in the annual report of the Marine Authority under section 31.

**Membership of Marine Authority**

**26D.** (1) The Marine Authority comprises 7 members, appointed by the Governor on the nomination of the Minister.

(2) The members are to be persons who, in the opinion of the Minister, have knowledge and experience or a particular function or vocational interest which is relevant to the functions of the Marine Authority.

(3) One of the members shall, on the nomination of the Minister, be appointed by the Governor as chairman of the Marine Authority and another as deputy chairman.

(4) Reasonable notice of meetings of the Marine Authority shall be given to the Department and to the chief executive officer of any other agency which, in the view of the chairman, is concerned with a matter to be considered at the meeting, and no resolution purportedly passed at a meeting shall be valid unless such notice of the meeting was duly given.

(5) Subject to subsection (6) —

- (a) the Executive Director, or the Executive Director's representative, is entitled to attend any meeting and to take part in the consideration and discussion of any matter before a meeting, but shall not vote on any matter; and
- (b) a chief executive officer of another agency who receives notice under subsection (4), or that chief executive officer's representative, is entitled to attend any meeting and to take part in the consideration and discussion of any matter before a meeting that concerns that agency, but shall not vote on any matter.

(6) The Marine Authority may decide to exclude the persons referred to in subsection (5) (but not some of them only) from a meeting while it is considering a matter that relates to the functions or actions of any agency in relation to management plans for lands and waters vested in the Marine Authority.

(7) In this section —

“**agency**” has the meaning given to it by the *Public Sector Management Act 1994*;

“**chief executive officer**” includes chief employee within the meaning of the *Public Sector Management Act 1994*.

### **Review of Marine Authority**

**26E.** (1) The Minister shall carry out a review of the operations and effectiveness of the Marine Authority as soon as is practicable after the expiration of 5 years from the commencement of section 17 of the *Acts Amendment*

*(Marine Reserves) Act 1997* and in the course of that review shall have regard to —

- (a) the need for continuation of the Marine Authority; and
- (b) such other matters as appear to the Minister to be relevant.

(2) The Minister shall prepare a report based on the review under subsection (1) and shall, as soon as is practicable after the preparation, cause the report to be laid before each House of Parliament.

***Division 3B — Marine Parks and Reserves Scientific Advisory Committee***

**Marine Parks and Reserves Scientific Advisory Committee**

**26F.** There is established by this section a committee to be known as the Marine Parks and Reserves Scientific Advisory Committee.

**Functions of Marine Committee**

- 26G.** (1) The functions of the Marine Committee are —
- (a) to provide scientific advice to the Minister, where the Minister has sought that advice, on issues relevant to the conservation of —
    - (i) marine and estuarine fauna, flora and environments; and
    - (ii) marine reserves,both generally, and as those issues relate to the functions of the Marine Authority; and

- (b) to provide scientific advice to the Marine Authority —
  - (i) where the functions of the Marine Authority may be affected by a matter being considered by the Marine Committee;
  - (ii) on matters referred to the Marine Committee by the Marine Authority; and
  - (iii) on matters which, in the opinion of the Marine Committee, should be brought to the attention of the Marine Authority.

(2) The Marine Committee shall provide the Marine Authority with a copy of any advice it provides to the Minister under subsection (1) (a).

(3) Where the Minister seeks advice from the Marine Committee the Minister shall —

- (a) advise the Marine Authority of the precise nature of the advice sought; and
- (b) give the Marine Authority reasonable opportunity to comment on the advice provided by the Marine Committee.

### **Membership of Marine Committee**

**26H.** (1) The Marine Committee shall comprise not more than 7 members appointed by the Minister of whom —

- (a) one shall be a senior scientific officer of the Department;
- (b) one shall be a senior scientific officer of the Fisheries Department;

- (c) one shall be a senior scientific officer employed and nominated by the Trustees of the Western Australian Museum under the *Museum Act 1969*;
- (d) one shall be a person employed by or affiliated with a tertiary educational institution or research institution in the State who has special knowledge and experience in a discipline relevant to the functions of the Marine Committee;
- (e) one shall be a scientist, not employed by the State or Commonwealth Government or a State or Commonwealth Government instrumentality, who has special knowledge and experience in a discipline relevant to the functions of the Marine Committee; and
- (f) one or 2 shall be scientists who, in the opinion of the Minister have knowledge and experience which is relevant to the functions of the Marine Committee.

(2) One of the members, other than a member appointed under subsection (1) (f), shall be appointed as chairman of the Marine Committee and another as deputy chairman.

(3) In subsection (1) (a), (b) and (c) —

“**scientific officer**” means an officer qualified to provide scientific advice applicable to the functions of the Marine Committee.

”.

**Heading to Division 4 of Part III amended**

**18.** The heading to Division 4 of Part III of the principal Act is amended by deleting “*and the Council*” and substituting the following —

“  
    , *the Council, the Marine Authority and the Marine Committee*  
”.

**Section 27 amended**

**19.** Section 27 of the principal Act is amended by deleting “or the council” and substituting the following —

“  
    , the Council, the Marine Authority or the Marine Committee  
”.

**Section 30 amended**

**20.** Section 30 of the principal Act is amended by inserting after “controlling body” the following —

“  
    , other than an employee within the meaning of the *Public Sector Management Act 1994*,  
”.

**Section 33 amended**

**21.** (1) Section 33 (1) (b) of the principal Act is amended by deleting “and the Council” and substituting the following —

“  
    , the Council, the Marine Authority and the Marine Committee  
”.

(2) Section 33 (3) (b) (ii) of the principal Act is amended by deleting “and marine parks” and substituting the following —

“ , marine parks and marine management areas ”.

(3) Section 33 (5) of the principal Act is amended by deleting “and the Authority under sections 19 and 22 respectively” and substituting the following —

“ , the Authority or the Marine Authority under sections 19, 22 and 26B respectively ”.

### **Section 33A amended**

**22.** (1) Section 33A (1) of the principal Act is amended by inserting after “land,” the following —

“ waters, ”.

(2) Section 33A (2) (b) of the principal Act is amended by inserting after “park” the following —

“ or management area ”.

### **Section 53 amended**

**23.** Section 53 of the principal Act is amended —

(a) in the definition of “controlling body” by deleting “or the Authority” and substituting the following —

“ , the Authority or the Marine Authority ”;

(b) in the definition of “land” by deleting “nature reserve or a marine park; and” and substituting the following —

“ reserve. ”; and

(c) by deleting the definition of “Minister for Fisheries”.

**Section 56 amended**

**24.** Section 56 (1) of the principal Act is amended by deleting paragraph (da) and the “and” after that paragraph and substituting the following —

“

(da) in the case of marine nature reserves, marine parks and marine management areas reserved under section 13, to achieve the purposes set out in sections 13A (1), 13B (1) and 13C (1) respectively;

(db) in the case of marine nature reserves, marine parks and marine management areas reserved under the Acts referred to in section 6 (6) (b) and (c), to achieve, or to promote as far as possible, the purposes set out in sections 13A (1), 13B (1) and 13C (1) respectively; and

”.

**Section 59 amended**

**25.** Section 59 (5) of the principal Act is amended by deleting “to the Minister for Fisheries” and substituting the following —

“

or a marine management area to the Minister for Fisheries and the Minister for Mines

”.

**Section 60 amended**

**26.** (1) Section 60 (2) of the principal Act is amended by deleting “subsection (2a)” and substituting the following —

“ subsections (2a) and (2b) ”.

(2) Section 60 (2a) of the principal Act is repealed and the following subsections are substituted —

“

(2a) If the Minister for Fisheries has made submissions to the controlling body on a proposed management plan for a marine park or a marine management area, the Minister shall not approve the proposed plan unless —

(a) the Minister —

- (i) is satisfied that the proposed plan gives effect to those submissions; or
- (ii) having referred the proposed plan to the Governor, is satisfied that it gives effect to the decision of the Governor,

so far as those submissions or the Governor's decision relate to aquaculture, commercial or recreational fishing or pearling activity in the park or management area; and

(b) the Minister is satisfied that consideration has been given to those submissions so far as they are about other matters relating to the administration of the *Fish Resources Management Act 1994* or the *Pearling Act 1990*.

(2b) If the Minister for Mines has made submissions to the controlling body on a proposed management plan for a marine park or a marine management area, the Minister shall not approve the proposed plan unless the Minister —

- (a) is satisfied that the proposed plan gives effect to those submissions; or
- (b) having referred the proposed plan to the Governor, is satisfied that it gives effect to the decision of the Governor,

so far as those submissions or the Governor's decision relate to mining or petroleum related exploration or production

activities or the administration of the *Mining Act 1978*, the *Petroleum Act 1967*, the *Petroleum (Submerged Lands) Act 1982* or the *Petroleum Pipelines Act 1969*.

”.

**Section 62 amended**

**27.** (1) Section 62 (1) and (2) of the principal Act are amended by deleting “or waters”.

(2) After section 62 (1) of the principal Act the following subsections are inserted —

“

(1a) Subject to this section, the Minister may, by notice published in the *Gazette*, classify the whole or any part of land or waters in a marine park vested in the Marine Authority as —

- (a) a recreation area for a purpose or purposes specified in the notice;
- (b) a general use area;
- (c) a sanctuary area; or
- (d) a special purpose area for a purpose or purposes specified in the notice,

and may in like manner amend or cancel a notice previously so published.

(1b) Subject to this section, the Minister may, by notice published in the *Gazette*, classify the whole or any part of the land or waters in a marine nature reserve or marine management area or land mentioned in section 5 (g) as such class of area as the Minister thinks necessary to give effect to the objects of this Act, and may in like manner amend or cancel a notice previously so published.

(1c) Before making a notice under subsection (1a) or (1b), the Minister shall, unless satisfied that the urgency of the case requires this subsection to be dispensed with, give the Marine Authority an opportunity to make a submission on the matter, and shall take that submission into account.

(1d) For the purposes of section 26B (8), a decision under subsection (1c) that the urgency of the case requires the provision of advice by the Marine Authority to be dispensed with shall be treated as a decision to act otherwise than in accordance with a recommendation.

(1e) Before making a notice under subsection (1a) or (1b) the Minister shall, unless satisfied that the urgency of the case requires this subsection to be dispensed with, give members of the public an opportunity to make written submissions on the matter, and shall consider those submissions.

(1f) Written submissions under subsection (1e) may be made by any person —

- (a) within a period determined by the Minister, which period shall be not less than 2 months after the day on which an advertisement calling for submissions is published by the Minister in the *Gazette*; and
- (b) by delivering or posting them, so that they are received within that period at an address designated by the Minister.

(1g) Subsection (1e) does not apply in relation to a notice which gives effect to a management plan.

”.

(3) Section 62 (3) of the principal Act is amended —

- (a) by deleting “and” after paragraph (a); and



**Section 99 amended**

**30.** (1) Section 99 (1) (a) of the principal Act is deleted and the following paragraph is substituted —

“ (a) subject to subsection (2), with the approval of —  
    (i) the Minister;  
    (ii) the Authority or the Commission, as the case requires, where the land is vested in one or other of those bodies; and  
    (iii) where applicable, an associated body;  
”.

(2) After section 99 (1) of the principal Act the following subsection is inserted —

“ (2) Paragraph (a) of subsection (1) does not apply to the grant or renewal of a licence or lease under this Division where the appropriate approvals have been given under that paragraph for —  
    (a) the grant under this Division of certain kinds of licences or leases or certain numbers of licences or leases;  
    (b) the renewal, transfer, cancellation or suspension of, or the imposition or variation of conditions attached to, a licence granted under this Division; or  
    (c) for the renewal of a lease granted under this Division,  
and the licence or lease granted or renewed is covered by the terms of those approvals.  
”.

**Section 99A amended**

**31.** (1) Section 99A (1) of the principal Act is amended by deleting “to which this Division applies” and substituting the following —

“ which is vested in the Authority ”.

(2) Section 99A (6) of the principal Act is amended by deleting “to which this Division applies” and substituting the following —

“ which is vested in the Authority ”.

**Section 101 amended**

**32.** (1) After section 101 (1) of the principal Act the following subsections are inserted —

“

(1a) The Minister, on the recommendation of the Authority, the Commission or the Executive Director, as the case requires, may, by notice published in the *Gazette*, declare that a permit is required for the carrying on of any activity specified in the notice on land to which this Division applies.

(1b) The Executive Director may grant to a person a permit of the kind required by a declaration made under subsection (1a).

(1c) A person shall not, on any land to which this Division applies, carry on any activity for which a permit is required by a declaration made under subsection (1a) unless the person is —

- (a) the holder of a permit of the kind required by the declaration; or

- (b) authorized to carry on that activity on the land under this Act or another written law.

Penalty: \$4 000.

(1d) Subsections (1a) to (1c) do not affect the operation of section 130 or regulations made under that section.

”.

(2) Section 101 (2) to (5) of the principal Act are amended by inserting after “licence”, wherever it occurs, the following —

“ or permit ”.

(3) Section 101 (4) of the principal Act is amended by deleting “\$1 000” and substituting the following —

“ \$4 000 ”.

#### **Heading to Division 3 of Part VIII amended**

**33.** The heading to Division 3 of Part VIII of the principal Act is amended by deleting “*Marine nature reserves and marine parks*” and substituting the following —

“ *Marine reserves* ”.

#### **Section 101A amended**

**34.** Section 101A of the principal Act is amended by deleting the definition of “fish”.

#### **Section 101B amended**

**35.** (1) Section 101B (1) of the principal Act is amended —

- (a) by deleting “subsections (2) and (2a)” and substituting the following —

“ subsection (2a) ”; and

- (b) by deleting “or marine park” and substituting the following —

“ , marine park or marine management area ”.

- (2) Section 101B (2) of the principal Act is repealed.

- (3) Section 101B (2a) of the principal Act is amended —

- (a) by inserting after “(including fish” the following —

“ and pearl oyster ”;

- (b) by deleting “or marine park” and substituting the following —

“ , marine park or marine management area ”; and

- (c) by inserting after “section 130” the following —

“  
or by the Minister to whom the administration of  
the *Wildlife Conservation Act 1950* is committed,  
under regulations made under that Act.  
”.

- (4) Section 101B (3) of the principal Act is repealed and the following subsection is substituted —

“(3) In the event of any conflict or inconsistency between a provision of —

- (a) the *Fish Resources Management Act 1994*; or

- (b) the *Pearling Act 1990*,

on the one hand and a provision of —

- (c) regulations made under section 130 in respect of a marine nature reserve; or

- (d) notices issued or regulations made under the *Wildlife Conservation Act 1950* in respect of a marine nature reserve,

on the other hand, the latter shall prevail.

”.

**Section 101C amended**

**36.** Section 101C of the principal Act is amended —

- (a) by deleting “or marine park” and substituting the following —

“ , marine park or marine management area ”; and

- (b) by deleting “\$1 000” and substituting the following —

“ \$10 000 ”.

**Section 130 amended**

**37.** (1) Section 130 (1) of the principal Act is amended by inserting after “marine parks” the following —

“ , marine management areas ”.

(2) Section 130 (2a) of the principal Act is amended by deleting “of fish in a marine park.” and substituting the following —

“

, in a marine park or marine management area —

- (a) of fish within the meaning of the *Fish Resources Management Act 1994*, in accordance with the provisions of that Act relating to aquaculture or commercial or recreational fishing; or

(b) of pearl oyster within the meaning of the *Pearling Act 1990*, in accordance with that Act. ”.

(3) Section 130 (3) of the principal Act is amended by deleting “6 (4) and 16 (7)” and substituting the following —

“ 6 (5) and 16B (3) ”.

#### **Schedule amended**

**38.** (1) The heading to the Schedule to the principal Act is amended by deleting “AND THE COUNCIL” and substituting the following —

“ **THE COUNCIL, THE MARINE AUTHORITY AND THE MARINE COMMITTEE** ”.

(2) Clause 3 (3) of the Schedule to the principal Act is amended by inserting after “members” the following —

“ of the Commission, the Authority and the Council ”.

(3) Clause 4 (2) (c) of the Schedule to the principal Act is amended by deleting “or the Council” and substituting the following —

“ , the Council or the Marine Authority ”.

(4) Clause 4 (3) of the Schedule to the principal Act is amended by deleting “or the Council” and substituting the following —

“ , the Council or the Marine Authority ”.

(5) Clause 4 (4) (a) of the Schedule to the principal Act is amended by inserting after “*ex officio* member” the following —

“ , in the case of a body with *ex officio* members ”.

(6) After clause 5 of the Schedule to the principal Act the following clause is inserted —

“

**5A.** (1) The Marine Authority may from time to time, by resolution, appoint temporary advisory committees of such persons as it thinks fit to advise it on matters relevant to its functions, other than matters which fall within the functions of the Marine Committee.

(2) A resolution appointing such a committee shall set the terms of reference, membership, reporting requirements and term of operation of the committee.

(3) Subject to the directions of the Marine Authority, such a committee may determine its own procedures.

”.

**PART 3 — AMENDMENTS TO *MINING ACT 1978***

**Principal Act**

**39.** In this Part the *Mining Act 1978*\* is referred to as the principal Act.

[\* *Reprinted as at 27 February 1996.*  
*For subsequent amendments see 1995 Index to Legislation of Western Australia, Table 1, pp. 146-7 and Acts Nos. 78 of 1995 and 14 and 54 of 1996.]*

**Section 8 amended**

**40.** Section 8 (1) of the principal Act is amended by inserting before the definition of “mine” the following —

“  
    “**marine management area**”, “**marine nature reserve**”  
        and “**marine park**” have the meanings given to them  
        by the *Conservation and Land Management Act 1984*;  
”.

**Section 24A inserted and consequential amendments**

**41.** (1) After section 24 of the principal Act the following section is inserted —

“  
    **Mining in marine reserves**

**24A.** (1) Without limiting section 23, nothing in section 13A, 13B or 13C of the *Conservation and Land Management Act 1984* —

- (a) prevents a mining tenement from being —
  - (i) held and renewed; or

(ii) applied for, granted, held and renewed in a marine nature reserve, marine park or marine management area;

or

(b) affects the validity or effect of a mining tenement in a marine nature reserve, marine park or marine management area.

(2) Subject to subsection (4) mining may be carried out in a marine nature reserve or marine park with the written consent of the Minister who may refuse consent or who may give consent subject to such terms and conditions as the Minister specifies in the consent.

(3) Before giving consent under subsection (2), whether conditionally or unconditionally, the Minister shall first —

(a) consult, and obtain the concurrence of, the conservation Minister; and

(b) consult and obtain the recommendations of the fisheries Minister and the marine Minister.

(4) No mining lease or general purpose lease shall be granted in respect of any marine nature reserve or marine park unless both Houses of Parliament by resolution consent to the grant, and then only on such terms and conditions as are specified in the resolution.

(5) Mining in any marine management area may be carried out with the written consent of the Minister who may refuse consent or who may give consent subject to such terms and conditions as the Minister specifies in the consent.

(6) Before giving consent under subsection (5), whether conditionally or unconditionally, the Minister shall first

consult and obtain the recommendations of the conservation Minister, the fisheries Minister and the marine Minister.

(7) Despite any consent given under subsection (2) or (4), nothing in this Act authorizes the disturbance of —

- (a) the sea bed or other land beneath waters in any restricted area in a mining tenement;
- (b) land in any restricted area in a mining tenement; or
- (c) the subsoil below any sea bed or land referred to in paragraph (a) or (b), to a depth of 200 metres.

(8) Subsection (7) applies only if the restricted area was a restricted area when the mining tenement was granted.

(9) In this section —

“**conservation Minister**” means the Minister for the time being charged with the administration of the *Conservation and Land Management Act 1984*;

“**fisheries Minister**” means the Minister for the time being charged with the administration of the *Fish Resources Management Act 1994*;

“**marine Minister**” means the Minister for the time being charged with the administration of the *Marine and Harbours Act 1981*;

“**restricted area**” means —

- (a) any area of a marine nature reserve; or

- (b) any area of a marine park which is classified by notice under section 62 of the *Conservation and Land Management Act 1984* as —
- (i) a sanctuary area;
  - (ii) a recreation area; or
  - (iii) a special purpose area which, or that part of such an area which, the conservation Minister has declared in the classification notice to be an area where disturbance of the land, sea bed or subsoil would be incompatible with a conservation purpose specified in the classification notice.

”.

(2) The principal Act is amended as set out in the following Table —

TABLE

Provision amended	Amendment
s. 19 (8)	Delete “or section” and substitute — “ , 24A or ”.
s. 23	Delete “or section” (in 3 places) and substitute (in each case) — “ , 24A or ”.
s. 26 (1)	After “24” insert — “ , 24A ”.

- s. 26 (2) Delete “or section” and substitute —  
“ , 24A or ”.
- s. 26 (2) After paragraph (a) delete “and” and insert —  
“ (aa) a marine nature reserve or marine park may be marked out only with the consent of the Minister and the conservation Minister as defined in section 24A (9); and ”.
- s. 40 (1) After “24” insert —  
“ , 24A ”.
- s. 48 (b) Delete “sections 24 and” and substitute —  
“ section 24, 24A or ”.
- s. 48 (c) After “24” insert —  
“ , 24A ”.
- s. 66 (b) and (c) After “24” insert —  
“ , 24A ”.
- s. 70J (b) and (c) After “24” insert —  
“ , 24A ”.

- s. 75 (9) After “24 (1)” insert —  
“ or is in a marine nature  
reserve, marine park or  
marine management area ”.
- s. 104 (4) After “25” insert —  
“ or a marine nature reserve or  
marine park ”.
- s. 161 After “24,” insert —  
“ 24A, ”.

**Section 25 amended**

- 42.** (1) Section 25 (1) of the principal Act is amended —
- (a) by deleting the full stop at the end of paragraph (d) and substituting a comma; and
  - (b) by inserting after paragraph (d) the following —  
“  
but this section does not apply to land that is  
part of a marine nature reserve, marine park or  
marine management area,  
”.
- (2) Section 25 (2) (b) of the principal Act is amended by deleting “*Fisheries Act 1905*” and substituting the following —  
“ *Fish Resources Management Act 1994* ”.

**PART 4 — AMENDMENTS TO *PETROLEUM ACT 1967***

**Section 28A inserted**

**43.** After section 28 of the *Petroleum Act 1967*\* the following section is inserted in Part III, Division 1 —

“

**Issue of permits etc. in marine reserves**

**28A.** (1) Before granting, renewing or extending a permit, drilling reservation, access authority, special prospecting authority, lease or licence in respect of any marine reserve, the Minister shall first notify the Minister for the time being charged with the administration of the *Conservation and Land Management Act 1984*.

(2) This section does not limit the operation of section 152.

(3) In this section —

“**marine reserve**” means a marine nature reserve, marine park or marine management area within the meaning of the *Conservation and Land Management Act 1984*.

”.

[\* *Reprinted as at 17 December 1992.*

*For subsequent amendments see 1995 Index to Legislation of Western Australia, Table 1, p. 168 and Act No. 14 of 1996.]*

**PART 5 — AMENDMENTS TO *PETROLEUM (SUBMERGED LANDS) ACT 1982***

**Section 18A inserted**

**44.** After section 18 of the *Petroleum (Submerged Lands) Act 1982*\* the following section is inserted in Part III, Division 1 —

“

**Issue of permits etc. in marine reserves**

**18A.** (1) Before granting or renewing a permit, access authority, special prospecting authority, lease or licence in respect of any marine reserve, the Minister shall first notify the Minister for the time being charged with the administration of the *Conservation and Land Management Act 1984*.

(2) In this section —

“**marine reserve**” means a marine nature reserve, marine park or marine management area within the meaning of the *Conservation and Land Management Act 1984*.

”.

[\* Reprinted as at 24 March 1992.  
For subsequent amendments see 1995 Index to  
Legislation of Western Australia, Table 1, p. 169.]

**PART 6 — AMENDMENTS TO *FISH RESOURCES*  
*MANAGEMENT ACT 1994***

**Principal Act**

**45.** In this Part the *Fish Resources Management Act 1994*\* is referred to as the principal Act.

[\* *Act No. 53 of 1994.*

*For subsequent amendments see Acts Nos. 78 of 1995  
and 14 of 1996.]*

**Section 4 amended**

**46.** Section 4 (1) of the principal Act is amended by inserting after the definition of “management plan” the following definition —

“

“**marine management area**” has the same meaning as in  
the *Conservation and Land Management Act 1984*;

”.

**Section 68 amended**

**47.** Section 68 of the principal Act is amended by deleting “section 143” and substituting the following —

“ sections 136A and 143 ”.

**Section 73A inserted**

**48.** After section 73 of the principal Act the following section is inserted in Division 4 of Part 6 —

“

**Authorization is subject to restrictions in relation to certain marine reserves**

**73A.** (1) An authorization under this Part is subject to sections 13A and 13B of the *Conservation and Land Management Act 1984*.

(2) Subsection (1) does not apply to —

- (a) an authorization issued or renewed before the commencement of section 48 of the *Acts Amendment (Marine Reserves) Act 1997*; or
- (b) an authorization issued or renewed in relation to an area which is affected, after the issue or renewal of the authorization, by a reservation under section 13 of the *Conservation and Land Management Act 1984*, or by a notice under section 62 of that Act.

”.

**Section 85 amended**

**49.** Section 85 of the principal Act is amended by deleting “section 143” and substituting the following —

“ sections 136A and 143 ”.

**Section 92 amended**

**50.** Section 92 (4) of the principal Act is repealed and the following subsections are substituted —

“ (4) An aquaculture licence must not be issued in relation to —

- (a) an area of a marine nature reserve; or
- (b) an area of a marine park from which aquaculture is excluded under section 13B of the *Conservation and Land Management Act 1984*.

(5) An aquaculture licence must not be issued in relation to —

- (a) an area of a marine park other than one from which aquaculture is excluded under section 13B of the *Conservation and Land Management Act 1984*; or
- (b) an area of a marine management area,

unless the Minister to whom the administration of the *Conservation and Land Management Act 1984* is for the time being committed by the Governor approves the granting of the licence.

(6) Subsections (4) and (5) do not affect the validity of —

- (a) a licence issued before the commencement of section 50 of the *Acts Amendment (Marine Reserves) Act 1997*; or
- (b) a licence issued in relation to an area which is affected, after the issue of the licence, by a reservation under section 13 of the *Conservation and Land Management Act 1984*, or by a notice under section 62 of that Act.

”.

**Section 94 repealed and a section substituted**

**51.** Section 94 of the principal Act is repealed and the following section is substituted —

“

**Renewal of licence**

**94.** (1) If a person applies to the Executive Director for the renewal of an aquaculture licence, the Executive Director, subject to this section and section 143, must renew the licence.

(2) If the licence is unattached and relates to —

- (a) part of a marine nature reserve; or
- (b) an area of a marine park from which aquaculture is excluded under section 13B of the *Conservation and Land Management Act 1984*,

the licence is to be renewed as a licence which does not apply to those areas.

(3) If the licence is unattached and relates to —

- (a) an area of a marine park other than one from which aquaculture is excluded under section 13B of the *Conservation and Land Management Act 1984*; or
- (b) an area of a marine management area,

the licence is to be renewed as a licence which does not apply to those areas unless either —

- (c) a management plan applies to the area under the *Conservation and Land Management Act 1984* and the renewal is consistent with a management plan; or

- (d) the Minister has consulted the Minister to whom the administration of the *Conservation and Land Management Act 1984* is for the time being committed by the Governor on the renewal and has taken into account any recommendation of that Minister.
- (4) This section does not affect the validity of a licence —
- (a) renewed before the commencement of section 51 of the *Acts Amendment (Marine Reserves) Act 1997*; or
  - (b) renewed in relation to an area which is affected, after the renewal of the licence, by a reservation under section 13 of the *Conservation and Land Management Act 1984*, or by a notice under section 62 of that Act.
- (5) For the purposes of this section —
- (a) an aquaculture licence is **“unattached”** if it does not relate to any area under an aquaculture lease; and
  - (b) where an aquaculture licence relates in part to areas under an aquaculture lease or leases and in part to areas not under such a lease, the licence is to be treated as 2 separate licences, being —
    - (i) an aquaculture licence in relation to the areas under the lease or leases; and
    - (ii) an aquaculture licence in relation to the areas not under any lease.

”.

**Section 97 amended**

**52.** Section 97 (4) (b) of the principal Act is amended by inserting after “Minister” the following —

“ , subject to section 98A, ”.

**Section 98 repealed and sections 98 and 98A substituted**

**53.** Section 98 of the principal Act is repealed and the following sections are substituted —

“

**Limitation on granting of leases in certain marine reserves**

**98.** (1) An aquaculture lease must not be granted in relation to —

- (a) an area of a marine nature reserve; or
- (b) an area of a marine park from which aquaculture is excluded under section 13B of the *Conservation and Land Management Act 1984*.

(2) An aquaculture lease must not be granted in relation to —

- (a) an area of a marine park other than one from which aquaculture is excluded under section 13B of the *Conservation and Land Management Act 1984*; or
- (b) an area of a marine management area,

unless the Minister to whom the administration of the *Conservation and Land Management Act 1984* is for the time being committed by the Governor approves the granting of the lease.

(3) This section does not affect the validity of —

- (a) an aquaculture lease granted or renewed before the commencement of section 53 of the *Acts Amendment (Marine Reserves) Act 1997*; or
- (b) an aquaculture lease granted or renewed in relation to an area which is affected, after the grant or renewal of the lease, by a reservation under section 13 of the *Conservation and Land Management Act 1984*, or by a notice under section 62 of that Act.

(4) Subsection (2) does not apply to the granting of an aquaculture lease in relation to an area as to which an aquaculture licence —

- (a) could have been renewed under section 94 (3) (c); or
- (b) has been renewed under section 94 (3) (c) or (d),

as long as —

- (c) a management plan applies to the area under the *Conservation and Land Management Act 1984* and the granting of the lease is consistent with a management plan; or
- (d) the Minister has consulted the Minister to whom the administration of the *Conservation and Land Management Act 1984* is for the time being committed by the Governor on the granting of the lease and has taken into account any recommendation of that Minister.

**Limitation on renewal of leases in certain marine reserves**

**98A.** (1) If it is proposed to renew an aquaculture lease which relates to an area which is —

- (a) part of a marine nature reserve; or
- (b) an area of a marine park from which aquaculture is excluded under section 13B of the *Conservation and Land Management Act 1984*,

the lease may be renewed only as a lease which does not apply to those areas.

(2) If it is proposed to renew an aquaculture lease which relates to an area which is —

- (a) an area of a marine park other than one from which aquaculture is excluded under section 13B of the *Conservation and Land Management Act 1984*; or
- (b) an area of a marine management area,

the lease may be renewed only as a lease which does not apply to those areas, unless either —

- (c) a management plan applies to the area under the *Conservation and Land Management Act 1984* and the renewal is consistent with a management plan; or
- (d) the Minister has consulted the Minister to whom the administration of the *Conservation and Land Management Act 1984* is for the time being committed by the Governor on the renewal and has taken into account any recommendation of that Minister.

(3) This section does not affect the validity of a lease —

- (a) renewed before the commencement of section 53 of the *Acts Amendment (Marine Reserves) Act 1997*; or
- (b) renewed in relation to an area which is affected, after the renewal of the lease, by a reservation under section 13 of the *Conservation and Land Management Act 1984*, or by a notice under section 62 of that Act.

”.

#### **Section 110 amended**

54. Section 110 (1) and (2) of the principal Act are amended by deleting “or a marine park” in each place and substituting, in each case, the following —

“ , a marine park or a marine management area ”.

#### **Section 116 amended**

55. (1) Section 116 (1) of the principal Act is amended by deleting “or a marine park” and substituting the following —

“ , a marine park or a marine management area ”.

(2) Section 116 (2) of the principal Act is amended —

- (a) in paragraph (a), by deleting “or a marine park” and substituting the following —

“ , marine park or marine management area ”; and

- (b) in paragraph (b), by deleting “or park” and substituting the following —

“ , park or management area ”.

**Section 136A inserted**

**56.** After section 136 of the principal Act the following section is inserted —

“  
**Grant or renewal of authorizations over areas in marine reserves**

**136A.** (1) An authorization must not be issued or renewed if it would authorize a person to engage in commercial fishing in —

- (a) an area of a marine nature reserve; or
- (b) an area of a marine park from which commercial fishing is excluded under section 13B of the *Conservation and Land Management Act 1984*.

(2) An authorization must not be issued or renewed if it would authorize a person to engage in recreational fishing in —

- (a) an area of a marine nature reserve; or
- (b) an area of a marine park from which recreational fishing is excluded under section 13B of the *Conservation and Land Management Act 1984*.

(3) This section does not affect the validity of —

- (a) a licence issued or renewed before the commencement of section 56 of the *Acts Amendment (Marine Reserves) Act 1997*; or
- (b) a licence issued or renewed in relation to an area which is affected, after the issue or renewal of the licence, by a reservation under section 13 of the *Conservation and Land Management Act 1984*, or by a notice under section 62 of that Act.

(4) If an authorization relates to a particular area (the “**authorized area**”) and a part of the authorized area becomes —

- (a) an area of a marine nature reserve; or
- (b) an area of a marine park from which commercial fishing is excluded under section 13B of the *Conservation and Land Management Act 1984*,

nothing in this section prevents the authorization from being renewed in respect of the remainder of the authorized area.

”.

#### **Section 238 amended**

**57.** Section 238 (5) of the principal Act is amended by inserting after paragraph (m) the following paragraph —

“

- (ma) to defray any costs, incurred in the management of a marine park or marine management area under the *Conservation and Land Management Act 1984*, which are attributable to the authorization under this Act or the *Pearling Act 1990* of aquaculture or pearling activity in the park or management area;

”.

#### **Section 252 amended**

**58.** Section 252 of the principal Act is amended by deleting “or a marine park” and substituting the following —

“ , a marine park or a marine management area ”.

**Section 257 amended**

**59.** Section 257 (2) (d) of the principal Act is amended by deleting “section 143” and substituting the following —

“ sections 136A and 143 ”.

**PART 7 — AMENDMENTS TO *PEARLING ACT 1990***

**Principal Act**

**60.** In this Part the *Pearling Act 1990*\* is referred to as the principal Act.

[\* *Act No. 88 of 1990.*

*For subsequent amendments see 1995 Index to Legislation of Western Australia, Table 1, p. 165 and Acts Nos. 78 of 1995 and 49 of 1996. ]*

**Section 23A inserted**

**61.** After section 23 of the principal Act, the following section is inserted —

“

**Limitations on issue of farm leases, licences and permits in marine reserves**

**23A.** (1) A farm lease, licence or permit shall not be issued under section 23 in relation to —

- (a) an area of a marine nature reserve; or
- (b) an area of a marine park from which pearling activity is excluded under section 13B of the *Conservation and Land Management Act 1984*.

(2) A farm lease, licence or permit shall not be issued under section 23 in relation to —

- (a) an area of a marine park other than one from which pearling activity is excluded under section 13B of the *Conservation and Land Management Act 1984*; or

- (b) an area of a marine management area,

unless the Minister to whom the administration of the *Conservation and Land Management Act 1984* is committed approves the granting of the lease, licence or permit.

(3) This section does not affect the validity of a farm lease, licence or permit —

- (a) issued before the commencement of section 61 of the *Acts Amendment (Marine Reserves) Act 1997*; or
- (b) issued in relation to an area which is affected, after the issue of the lease, licence or permit, by a reservation under section 13 of the *Conservation and Land Management Act 1984*, or by a notice under section 62 of that Act.

(4) Subsection (2) does not apply to the issuing of a farm lease in relation to an area as to which a licence or permit —

- (a) could have been renewed under section 27B (2) (c); or
- (b) has been renewed under section 27B (2) (c) or (d),

as long as —

- (c) a management plan applies to the area under the *Conservation and Land Management Act 1984* and the issuing of the lease is consistent with a management plan; or
- (d) the Minister has consulted the Minister to whom the administration of the *Conservation and Land Management Act 1984* is for the time being committed by the Governor on the issuing of the

lease and has taken into account any recommendation of that Minister.

(5) In this section —

“**marine management area**”, “**marine nature reserve**”, and “**marine park**” have the meanings given to them by the *Conservation and Land Management Act 1984*.

”.

### **Sections 27A and 27B inserted**

**62.** After section 27 of the principal Act the following sections are inserted —

“

#### **Limitations on renewal of farm leases in certain marine reserves**

**27A.** (1) If it is proposed to renew for a term a farm lease which relates to an area which is —

- (a) part of a marine nature reserve; or
- (b) an area of a marine park from which pearling activity is excluded under section 13B of the *Conservation and Land Management Act 1984*,

the farm lease may be renewed only as a lease which does not apply to those areas.

(2) If it is proposed to renew for a term a farm lease which relates to an area which is —

- (a) an area of a marine park other than one from which pearling activity is excluded under section 13B of the *Conservation and Land Management Act 1984*; or

- (b) an area of a marine management area,

the farm lease may be renewed only as a lease which does not apply to those areas, unless either —

- (c) a management plan applies to the area under the *Conservation and Land Management Act 1984* and the renewal is consistent with a management plan; or
- (d) the Minister has consulted the Minister to whom the administration of the *Conservation and Land Management Act 1984* is for the time being committed by the Governor on the renewal and has taken into account any recommendation of that Minister.

(3) This section does not affect the validity of a farm lease whose term was —

- (a) renewed before the commencement of section 62 of the *Acts Amendment (Marine Reserves) Act 1997*; or
- (b) renewed in relation to an area which is affected, after the renewal of the lease, by a reservation under section 13 of the *Conservation and Land Management Act 1984*, or by a notice under section 62 of that Act.

(4) This section does not prevent the annual renewal of a farm lease under section 27, where the term of the lease has not expired.

(5) In this section and section 27B —

**“marine management area”**, **“marine nature reserve”**, and **“marine park”** have the meanings given to them by the *Conservation and Land Management Act 1984*.

**Limitations on renewal of licences and permits in certain marine reserves**

**27B.** (1) If a licence or permit is unattached and relates to an area which is —

- (a) part of a marine nature reserve; or
- (b) an area of a marine park from which pearling activity is excluded under section 13B of the *Conservation and Land Management Act 1984*,

the licence or permit may be renewed only as a licence or permit which does not relate to those areas.

(2) If a licence or permit is unattached and relates to an area which is —

- (a) an area of a marine park other than one from which pearling activity is excluded under section 13B of the *Conservation and Land Management Act 1984*; or
- (b) an area of a marine management area,

the licence or permit may be renewed only as a licence or permit which does not apply to those areas, unless either —

- (c) a management plan applies to the area under the *Conservation and Land Management Act 1984* and the renewal is consistent with a management plan; or
- (d) the Minister has consulted the Minister to whom the administration of the *Conservation and Land Management Act 1984* is for the time being committed by the Governor on the renewal and has taken into account any recommendation of that Minister.

(3) This section does not affect the validity of a licence or permit —

- (a) renewed before the commencement of section 62 of the *Acts Amendment (Marine Reserves) Act 1997*; or
- (b) renewed in relation to an area which is affected, after the renewal of the lease, by a reservation under section 13 of the *Conservation and Land Management Act 1984*, or by a notice under section 62 of that Act.

(4) For the purposes of this section —

- (a) a licence or permit is “**unattached**” unless it is —
    - (i) a hatchery licence which relates to an area under a farm lease; or
    - (ii) a pearling licence authorizing the holder to carry out pearl culture techniques in the area under a farm lease;
- and
- (b) where a licence referred to in paragraph (a) (i) or (ii) relates in part to areas under a farm lease or leases and in part to areas not under such a lease, the licence is to be treated as 2 separate licences, being —
    - (i) a licence in relation to the areas under the lease or leases; and
    - (ii) a licence in relation to the areas not under any lease.

”.