Western Australia

# Fish Resources Management Act 1994

**Reprint 4: The Act as at 13 January 2012**

## Guide for using this reprint

### *What the reprint includes*

| Act as first enacted | + | legislative amendments | + | changes under the *Reprints Act 1984* | → | this reprint |
|---|---|---|---|---|---|---|

### *Endnotes, Compilation table, and Table of provisions that have not come into operation*

1. Details about the original Act and legislation that has amended its text are shown in the Compilation table in endnote 1, at the back of the reprint. The table also shows any previous reprint.
2. Validation, transitional, savings, modifying or other provisions identified in the Compilation table may be important. The table may refer to another endnote setting out the text of these provisions in full.
3. A table of provisions that have not come into operation, to be found in endnote 1a if it is needed, lists any provisions of the Act being reprinted that have not come into operation and any amendments that have not come into operation. The full text is set out in another endnote that is referred to in the table.

### *Notes amongst text (italicised and within square brackets)*

1. If the reprint includes a section that was inserted, or has been amended, since the Act being reprinted was passed, editorial notes at the foot of the section give some history of how the section came to be as it is. If the section replaced an earlier section, no history of the earlier section is given (the full history of the Act is in the Compilation table).

   Notes of this kind may also be at the foot of Schedules or headings.
2. The other kind of editorial note shows something has been —
   - removed (because it was repealed or deleted from the law); or
   - omitted under the *Reprints Act 1984* s. 7(4) (because, although still technically part of the text, it no longer has any effect).

   The text of anything removed or omitted can be found in an earlier reprint (if there is one) or one of the written laws identified in the Compilation table.

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2. The information in the reprint is current on the date shown as the date as at which the Act is reprinted. That date is not the date when the reprint was published by the State Law Publisher and it is probably not the date when the most recent amendment had effect.

**Reprinted under the *Reprints Act 1984* as at 13 January 2012**

Western Australia

# Fish Resources Management Act 1994

CONTENTS


## Part 1 — Preliminary

| | | |
|---|---|---|
| 1. | Short title | 2 |
| 2. | Commencement | 2 |
| 3. | Objects | 2 |
| 4A. | Precautionary principle, effect of | 3 |
| 4. | Terms used | 3 |
| 5. | Term used: WA waters | 13 |
| 6. | Aboriginal persons, application of Act to | 14 |
| 7. | Exemptions from Act, grant of by Minister | 14 |
| 8. | Crown bound | 15 |

## Part 2 — Administration

| | | |
|---|---|---|
| 9. | "Minister for Fisheries", body corporate | 16 |
| 11. | Fisheries officers and other staff, appointment of | 16 |
| 12. | Delegation by Minister | 16 |
| 13. | Delegation by CEO | 17 |
| 14. | Minister may carry out research etc. | 17 |

## Part 3 — Commonwealth-State management of fisheries

### Division 1 — Preliminary

| | | |
|---|---|---|
| 15. | Terms used | 18 |

**Division 2 — Joint Authorities**

16. Minister's powers and functions under Commonwealth Act 19
17. Judicial notice of signature etc. of Joint Authority member 19
18. Functions of Joint Authority 19
19. Delegation by Joint Authority 19
20. Procedure of Joint Authorities 21
21. Report of Joint Authority 21

**Division 3 — Arrangements for management of particular fisheries**

22. Arrangement for management under Commonwealth Act 21
23. Application of this Act to fisheries under arrangements 22
24A. Application of Commonwealth law to fisheries under arrangements 23
24. Joint Authority, functions of 23
25. Joint Authority, exercise of powers by 24
26. Provisions in this Act about offences etc., application of to Joint Authority fishery 25
27. Certain statements in arrangements, presumptions as to 26
28. Regulations etc. for fisheries under arrangements 26

**Division 4 — Arrangements with other States and Territories**

29A. Minister may enter into arrangements 28
29B. Minister's functions for this Division 28

## Part 4 — Advisory Committees

**Division 4 — Fishery Management Advisory Committees**

41. Committees, establishment and functions of 29

**Division 5 — Other committees**

42. Other committees, establishment and functions of 30

**Division 6 — Operation of committees**

43A. Regulations about operation of committees 30

## Part 5 — General regulation of fishing

**Division 1 — Prohibited fishing**

43. Minister may prohibit fishing 31
44. Minister's orders subject to disallowance by Parliament 31

**Division 2 — Protected fish**

45. Protected fish, prescription of 32
46. Totally protected fish, offences as to 32
47. Commercially protected fish, offences as to 32
48A. Recreationally protected fish, offences as to 33
48. Defences to charges under s. 46, 47 or 48A 33
49. Mutilation of fish to prevent determination, offence 34

**Division 3 — Bag and possession limits**

50. Bag limits for taking fish, regulations and offences as to 35
51. Possession limits for fish, regulations and offences as to 36

**Division 4 — General penalty**

52. General penalty for s. 43, 46, 47, 48A, 50 and 51 37

## Part 6 — Management of fisheries

**Division 1 — Interpretation**

53. Term used: authorisation 39

**Division 2 — Management plans**

54. Determination etc. of management plan 39
55. Instruments under s. 54 subject to disallowance by Parliament 39
56. Contents of management plans, general provisions 39
57. Expiry date for plan for interim managed fishery 40
58. Management plan may provide for authorisations etc. 40
59. Management plan may specify capacity of fishery 42
60. Management plan may provide for entitlements under authorisations 42
61. Management plan may prohibit fishing etc. 44
62. Management plan, miscellaneous provisions in 44

63. How an interim managed fishery becomes a managed fishery 47

**Division 3 — Procedure before determining or amending management plans**

64. Procedure before determining management plan 47
65. Procedure before amending management plan 48

**Division 4 — Managed fishery licences and interim managed fishery permits**

66. Authorisations, grant of 48
67. Duration of authorisations 49
68. Renewal of authorisations 50
69. Conditions in authorisations 50
70. Authorisation ceases to have effect if management plan ceases to have effect 50
71. Prior fishing confers no right to authorisation 51
72. Grant of authorisation confers no right to subsequent authorisation 51
73. Other licences do not authorise fishing in fishery 51
73A. Authorisation is subject to restrictions in relation to certain marine reserves 51

**Division 5 — Offences**

74. Contravening management plan 52
76. Offence under s. 74(1) or 77(1), court to order reduction of entitlement in certain cases of 53
77. Contravening condition of managed fishery licence or managed fishery permit, offence 54
78A. Regulations relating to cancellations under s. 224 55

## Part 7 — Fish processing

79. When permit to construct place to process fish required 56
80. Permit for processing fish, grant of 56
81. Conditions on s. 80 permits 57
82. When fish processor's licence required 58
83. Fish processor's licence, grant of 58
84. Duration of licence 59
85. Renewal of licence 59
86. Licensee not to process or store fish except at place specified in licence 59
87. Conditions on fish processor's licence 60

88. Contravening condition of permit or licence, offence 60
89. Regulations about processing etc. fish 61

## Part 8 — Aquaculture

**Division 1 — Aquaculture licences**

90. When licence required 62
91. Exceptions to s. 90 62
92A. Applicant for licence to have management and environmental monitoring plan (MEMP) 63
92. Licence, grant of 65
93. Duration of licence 66
94. Renewal of licence 66
95. Conditions of licences 68
96. Contravening licence, offence 68
97A. Contravening MEMP, offence 69
97B. Temporary aquaculture permits, grant of 69

**Division 2 — Aquaculture leases**

97C. Methods by which Minister may offer areas for lease 70
97. Leases, grant of 70
98. Certain marine reserves, grant of leases in 72
98A. Certain marine reserves, renewal of leases in 73
99. Aquaculture licence and aquaculture lease, relationship of 74
100A. Contravening lease, offences 74
100. Termination of lease 76
101. Clean-up and rehabilitation of former leased area 76

**Division 3 — Miscellaneous matters**

101A. Minister's powers as to aquaculture 77
102. Regulations about aquaculture 79

## Part 9A — Exotic fish

103A. Accidental introduction of exotic fish into WA waters, CEO's powers to reduce risk of 80

## Part 9 — Noxious fish

103. Noxious fish, prescription of 81
104. Noxious fish, offences as to 81
105. Noxious fish not to be brought into the State etc. 81

106. Fisheries officers' powers as to people with noxious fish 82
107. Destroying noxious fish, recovering costs of 82
108. No compensation payable for incidental damage 83

## Part 10 — Designated fishing zones

109. Designated fishing zones, prescription of 84
110. Marine reserve, no designated fishing zone in 84
111. Signs indicating zones to be erected 84
112. Fisheries officers' powers as to people in designated fishing zones 85
113. Regulations about designated fishing zones 85

## Part 11 — Fish habitat protection areas and Abrolhos Islands reserve

**Division 1 — Fish habitat protection areas**

114. Application of Division to other Acts 86
115. Fish habitat protection areas, creating 86
116. Marine reserve, no fish habitat protection area in 87
117. Draft plan for fish habitat protection area, Minister to determine 87
118. Notice of proposal to create fish habitat protection area 87
119. Control and management of fish habitat protection areas 88
120. Regulations about fish habitat protection areas 89

**Division 2 — Abrolhos Islands reserve**

121. Regulations about reserve 90
122. Control and management of reserve 91
123. *Parks and Reserves Act 1895*, application of to reserve 92

## Part 12 — Register

124. Registrar 94
125. Register of authorisations etc. 94
126. Information to be included in register 94
127. Application to have security interest in authorisation etc. noted 95

128. Notation of security interest 95
129. Irrelevant matters for purpose of s. 128 96
130. Security holder noted in register to be notified of certain events affecting security 96
131. Removing or varying notation of security interest 97
132. Register may be amended 98
133. No compensation payable because of Registrar's acts 98
134. Regulations about register 98

**Part 13 — General provisions relating to authorisations**

135. Applications for grant etc. of authorisation 99
136. Grant of authorisations not as of right 99
136A. Marine reserves, grant and renewal of authorisations for areas in 100
137. Effect of authorisations 101
138. Form of authorisations 101
139. Renewal after expiry 101
140. Transfer of authorisations 102
141. Temporary transfer of entitlements under authorisations 103
142. Varying authorisations 104
143. Cancelling, suspending and non-renewal of authorisations 105
144. Voluntary surrender of authorisations 106
145. Return of authorisations, CEO may require 107
146A. Death of individual who holds authorisation 107

**Part 14 — Right to object or apply for review**

146. Term used: affected person 109
147. CEO to notify persons of certain decisions 109
148. CEO to publish notice of certain decisions 110
149. Review by SAT of certain decisions 111
150. Authorisation continues pending review decision about renewal 111
151. CEO to give notice of when decision listed in s. 147(1) has effect 112
152. SAT to give notice of decision on review 112

## Part 15A — Fish trafficking

153. Terms used 113
154. Trafficking in fish defined 113
155. Trafficking in commercial quantity of priority fish, offence 114
156. Regulations about trafficking in fish 115

## Part 15 — Miscellaneous offences

170. Explosives and noxious substances not to be used for fishing 116
171. Preventing etc. lawful fishing activities, offence 116
172. Removing fish from etc. fishing gear etc. without authority, offence 117
173. Purchase or sale of fish taken unlawfully, offence 117
174. Foreign boat not to be used for fishing etc., offence 118
175. Foreign boat equipped with fishing gear, possession of is offence 118
175A. Mandatory maximum sentences for individuals convicted of third or subsequent offences under s. 174 or 175 119
176. False statements in applications 120

## Part 16A — Emergency powers to deal with biological threats

177A. Application of Part 121
177B. Terms used 121
177C. Biological threats, CEO's powers to deal with 121

## Part 16 — Fisheries officers

177. Certificate of appointment, issue of etc. 123
178. Certificate of appointment, production of 123
179. Honorary fisheries officers, appointment of etc. 123
180. Police officers to have powers of fisheries officers 124
181. Naval officers to have powers of fisheries officers in dealing with foreign boats 124
182. Powers to enter certain places to inspect certain matters 125
183. Powers to enter and search land to investigate offences 125

184. Powers to enter and search non-residential premises 126
185. Powers to enter and search residential premises 126
186. Powers to enter and search tents etc. where fish or gear is suspected to be 127
187. Warrants to enter and search places 127
188. Warrants may be granted by telephone etc. 128
189. Powers to obtain certain information 129
190. Powers to inspect etc. authorisations etc. 130
191. Other powers 131
191A. Powers under *Animal Welfare Act 2002* to prevent cruelty to fish 134
192. Powers to arrest without warrant 135
193. Powers to seize things 135
194. Powers to deal with seized fish 137
195. Powers to seize abandoned etc. fishing gear 138
196. Interfering with seized property, offence 138
197. Power to require assistance from people 139
198. Duty to try to minimize damage 139
199. False or misleading information to fisheries officer, offence 139
200. Obstructing etc. fisheries officers 140

## Part 17 — Legal proceedings

**Division 1 — Proceedings**

201. Prosecutions, institution of etc. 141

**Division 2 — Responsibility of certain persons**

202. Masters' liability 141
202A. Person in charge of a fishing tour, liability of 142
202B. Authorisation holder, liability of for offences by co-holders 143
203. Authorisation holder, liability of for offences by agents of 144
204. Officers of body corporate, liability of for offence by body 144

**Division 3 — Evidentiary provisions**

205. Exemptions etc., onus of proving 145
206. Place of offence, proof of 145
207. Foreign boat, proof as to 146
208. Contents etc. of package etc., proof of 146

209. Fish taken for sale, proof as to 147
210. Fish on fishing boats and commercial premises etc. presumed to be for sale 147
211. Purpose or intent, proof of 148
212. Authorisations etc., evidence as to 148
213. Species of fish etc., evidence as to 149
214. Size etc. of fish, determining 150
215. Accuracy of fisheries officers' equipment, presumption as to 150
216. Positions on Earth, determining 151

**Division 4 — Forfeiture**

217. Seized things, return of and security for 151
218. Forfeiture of fish, gear etc., court orders for 152
219. Unclaimed seized things, forfeiture of 153
220. Certain fish forfeited when seized 153
221. Forfeited things, disposal of 154

**Division 5 — Additional penalties**

222. Additional penalty based on value of fish for certain offences 154
223. Cancelling or suspending authorisation, court's powers for 156
224. Automatic suspension if 3 offences committed in 10 year period 156
225. Prohibitions on offender, court's powers to impose etc. 157

**Division 6 — Infringement notices**

226. Term used: authorised person 159
227. Authorised persons, appointment of 159
228. Infringement notices, service of 160
229. Infringement notices, form of 160
230. Extending time to pay modified penalty 161
231. Withdrawal of infringement notice 161
232. Payment of modified penalty, consequences of 161

## Part 18 — Financial provisions

**Division 1 — Collection of levy imposed under *Fishing Industry Promotion Training and Management Levy Act 1994***

233. When and to whom levy is payable 162

234. Payment by instalments 162
235. Exemption from levy 162
236. Penalty for non-payment 163
237. Recovery of levy 163

**Division 2 — Accounts**

238. Fisheries Research and Development Account 163
239. Recreational Fishing Account 167
240. Fishing Industry Promotion Training and Management Levy Account 169
243. *Financial Management Act 2006* and *Auditor General Act 2006*, application of 171

## Part 19 — Miscellaneous

244. Protection from personal liability 172
246. Administrative guidelines, issue and effect of 172
247. Guidelines about foreign interests, issue of 173
248. Consultation before issue etc. of guidelines under s. 246 or 247 173
249. Inquiry into holder etc. of authorisation, commencement and conduct of 173
250. Confidential information, divulging 175
251. Exclusive licences to take fish, grant of 177
252. Marine reserve, no exclusive licence to be granted in 179
254. Waterway works, public authority to notify Minister of 179
255. Activities that pollute waters, Minister may prohibit 179
256. Regulations, general power to make 180
257. Regulations about licensing 180
258. Regulations, miscellaneous subjects for 182
259. Categories of fish, prescription of 188
261. Notices etc., service of 188
262. Orders, regulations etc., CEO to make publicly available 189
263. Annual report of Department, content of 189

## Part 20 — Transitional matters

**Division 1 — Transitional matters for *Fish Resources Management Act 1994***

266. *Fish Resources Management Act 1994*, provisions for (Sch. 3) 190

**Division 2 — Transitional matters for *Fish Resources Management Amendment Act 2011***

267. Term used: amending Act 190
268. Exemptions under s. 7 190
269. Application of extended period for service of infringement notices under s. 228 190
270. Transfer of money in accounts under repealed s. 241 and 242 191

## Schedule 3 — Savings and transitional provisions for *Fish Resources Management Act 1994*

1. *Interpretation Act 1984* not affected 192
2. Director of Fisheries 192
3. Inspectors 192
4. Honorary inspectors 192
5. Fisheries Research and Development Fund 192
7. Arrangements 193
8. Limited entry fishery taken to be managed fishery 193
9. Limited entry fishery notice taken to be management plan 193
10. Limited entry fishery licence continued in force 193
11. Permit to establish processing establishment continued in force 194
12. Processor's licence continued in force 194
13. Fish farm licence continued in force 194
14. Proclaimed fishing zones continued in force 195
15. Fishing boat licence continued in force 195
16. Carrier boat licence continued in force 195
17. Professional fisherman's licence continued in force 195
18. Recreational fishing licence continued in force 195
19. Transitional regulations 196

## Notes

Compilation table 197
Provisions that have not come into operation 200

## Defined Terms

Western Australia

**Reprinted under the *Reprints Act 1984* as at 13 January 2012**

# Fish Resources Management Act 1994

**An Act relating to the management of fish resources, including the development and management of fisheries and aquaculture and the conservation of fish and other aquatic resources and their habitats, and for related purposes.**

*[Long title inserted by No. 43 of 2011 s. 4.]*

# Part 1 — Preliminary

## 1. Short title

This Act may be cited as the *Fish Resources Management Act 1994* [1].

## 2. Commencement

This Act comes into operation on such day as is fixed by proclamation [1].

## 3. Objects

(1) The objects of this Act are —

(a) to develop and manage fisheries and aquaculture in a sustainable way; and

(b) to share and conserve the State's fish and other aquatic resources and their habitats for the benefit of present and future generations.

(2) Those objects will be achieved by these means in particular —

(a) conserving fish and protecting their environment;

(b) ensuring that the impact of fishing and aquaculture on aquatic fauna and their habitats is ecologically sustainable and that the use of all aquatic resources is carried out in a sustainable manner;

(c) enabling the management of fishing, aquaculture, tourism that is reliant on fishing, aquatic eco-tourism and associated non-extractive activities that are reliant on fish and the aquatic environment;

(d) fostering the sustainable development of commercial and recreational fishing and aquaculture, including the establishment and management of aquaculture facilities for community or commercial purposes;

(e) achieving the optimum economic, social and other benefits from the use of fish resources;

(f) enabling the allocation of fish resources between users of those resources, their reallocation between users from time to time and the management of users in relation to their respective allocations;

(g) providing for the control of foreign interests in fishing, aquaculture and associated industries;

(h) enabling the management of fish habitat protection areas and the Abrolhos Islands reserve.

*[Section 3 inserted by No. 43 of 2011 s. 5.]*

## 4A. Precautionary principle, effect of

In the performance or exercise of a function or power under this Act, lack of full scientific certainty must not be used as a reason for postponing cost-effective measures to ensure the sustainability of fish stocks or the aquatic environment.

*[Section 4A inserted by No. 43 of 2011 s. 5.]*

## 4. Terms used

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

***Aboriginal body corporate*** means —

(a) a corporation registered under the *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (Commonwealth); or

(b) an incorporated association under the *Associations Incorporation Act 1987* the membership of which is wholly or principally composed of Aboriginal persons;

***Aboriginal person*** means a member of the Aboriginal race of Australia;

***Abrolhos Islands reserve*** means Reserve No. 20253 classified as of Class “A”;

***aquaculture*** means the keeping, breeding, hatching, culturing or harvesting of fish;

***aquaculture gear*** means any equipment, implement, device, apparatus or other thing used or designed for use for, or in connection with, aquaculture —

(a) whether the gear contains fish or not; and

(b) whether the gear is used for aquaculture or for navigational lighting or marking as a part of aquaculture safety,

and includes gear used to delineate the area of an aquaculture licence, temporary aquaculture permit or aquaculture lease;

***aquaculture lease*** means a lease granted under section 97;

***aquaculture licence*** means an aquaculture licence granted under section 92;

***aquatic eco-tourism*** means tourism relating to fish in their natural environment and includes the viewing or feeding of fish but does not include the taking of fish;

***aquatic resources*** includes biochemicals, genetic resources, organisms, populations and other biotic components of an aquatic ecosystem that are of actual or potential use, or of actual or potential value, to humanity;

***Australian fishing zone*** has the same meaning as in the Commonwealth Act;

***authorisation*** means a licence or permit;

***bed***, in relation to any waters, means the land permanently or intermittently covered by the waters or the land over which the waters permanently or intermittently flow;

***boat*** means a vessel, craft or floating platform of any description that is capable of use in or on water, whether floating or submersible;

***broodstock*** means fish taken or kept for breeding;

***bycatch reduction device*** means fishing gear designed or intended to reduce the capture of bycatch;

***category 1 fish*** means any fish of a species prescribed under section 259 to be category 1 fish;

***category 2 fish*** means any fish of a species prescribed under section 259 to be category 2 fish;

***category 3 fish*** means any fish of a species prescribed under section 259 to be category 3 fish;

***category 4 fish*** means any fish of a species prescribed under section 259 to be category 4 fish;

***CEO*** means the chief executive officer of the Department;

***coastal waters***, in relation to the State, has the same meaning as in the Commonwealth Act;

***commercial fishing*** means fishing for a commercial purpose;

***commercial fishing licence*** means a licence granted under the regulations authorising an individual to engage in commercial fishing;

***commercial purpose*** means the purpose of sale or any other purpose that is directed to gain or reward;

***commercially protected fish*** means any fish of a class prescribed under section 45 to be commercially protected fish;

***Commonwealth Act*** means the *Fisheries Management Act 1991* of the Commonwealth;

***customary fishing*** means fishing by an Aboriginal person that —

(a) is in accordance with the Aboriginal customary law and tradition of the area being fished; and

(b) is for the purpose of satisfying personal, domestic, ceremonial, educational or non-commercial communal needs;

***Department*** means the department of the Public Service principally assisting the Minister in the administration of this Act;

***designated fishing zone*** means an area prescribed under section 109 to be a designated fishing zone;

***document*** includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

***entitlement*** means an entitlement that a person has from time to time under a managed fishery licence or an interim managed fishery permit;

***exclusive licence*** means an exclusive licence granted under section 251;

***exemption*** means an exemption granted under section 7;

***exotic fish*** means fish of a species that is not native to WA waters;

***export***, from the State, means to export from the State —

(a) whether interstate or overseas; and

(b) whether for a commercial or other purpose;

***fish*** means an aquatic organism of any species (whether alive or dead) and includes —

(a) the eggs, spat, spawn, seeds, spores, fry, larva or other source of reproduction or offspring of an aquatic organism; and

(b) a part only of an aquatic organism (including the shell or tail); and

(c) live rock and live sand,

but does not include aquatic mammals, aquatic reptiles, aquatic birds, amphibians or (except in relation to Part 3 and Division 1 of Part 11) pearl oysters;

***fish aggregating device*** includes an artificial reef or other man-made structure that is used or intended to be used for, or is made or adapted for use for, attracting fish or increasing fish production;

***fish habitat protection area*** means an area set aside under section 115 as a fish habitat protection area;

***fish processor's licence*** means a fish processor's licence granted under section 83;

***fisheries officer*** means a fisheries officer referred to in section 11;

***fishery*** means —

(a) one or more stocks or parts of stocks of fish that can be treated as a unit for the purposes of conservation or management; and

(b) a class of fishing activities in respect of those stocks or parts of stocks of fish;

***fishing*** or ***fishing activity*** means any of the following —

(a) searching for fish;

(b) attempting to take fish;

(c) taking fish;

(d) engaging in any other activity that can reasonably be expected to result in the taking of fish;

***fishing boat*** means a boat that is used for commercial fishing;

***fishing boat licence*** means a licence granted under the regulations authorising a person to use a boat for commercial fishing;

***fishing gear*** means any equipment, implement, device, apparatus or other thing used or designed for use for, or in connection with, fishing;

***fishing tour*** means a tour a central purpose of which is to provide an opportunity for recreational fishing and may include the provision of fishing guidance, fishing gear, accommodation or transport;

***foreign boat*** has the same meaning as in the Commonwealth Act;

***forfeited entitlement*** means the amount by which an entitlement is reduced under section 76;

***honorary fisheries officer*** means an honorary fisheries officer appointed under section 179;

***interim managed fishery*** means a fishery declared by a management plan to be an interim managed fishery;

***interim managed fishery permit***, in relation to an interim managed fishery, means —

(a) a permit granted under section 66 in respect of that fishery; or

(b) a permit that is taken under section 78A(3) to have been granted under section 66 in respect of that fishery;

***levy*** means a levy imposed under the *Fishing Industry Promotion Training and Management Levy Act 1994*;

***licence*** means any of the following —

(a) an aquaculture licence;

(b) a commercial fishing licence;

(c) a fishing boat licence;

(d) a fish processor's licence;

(e) a managed fishery licence;

(f) a recreational fishing licence;

(g) any other licence provided for in the regulations;

***managed fishery*** means a fishery declared by a management plan to be a managed fishery;

***managed fishery licence***, in relation to a managed fishery, means —

(a) a licence granted under section 66 in respect of that fishery; or

(b) a licence that is taken under section 78A(3) to have been granted under section 66 in respect of that fishery;

***management plan***, in relation to a fishery, means a management plan determined for that fishery under section 54;

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

***marine nature reserve*** has the same meaning as in the *Conservation and Land Management Act 1984*;

***marine park*** has the same meaning as in the *Conservation and Land Management Act 1984*;

***master***, in relation to a boat, means the person for the time being having the command, charge or management of the boat;

***MEMP***, for an aquaculture licence, means a management and environmental monitoring plan prepared under section 92A in relation to the activity authorised under the licence;

***noxious fish*** means any live fish of a species prescribed under section 103 to be noxious fish;

***noxious substance*** means any substance that may be harmful to fish;

***peak industry body*** means such body (whether incorporated or not) as is prescribed for the purposes of this definition;

***pearl oyster*** has the same meaning as in section 3(1) of the *Pearling Act 1990*;

***permit*** means —

(a) an interim managed fishery permit; or

(b) a permit granted under section 80;

***place*** means any land, building, structure (whether permanent or temporary), tent, boat, aircraft or vehicle or any part of any land, building, structure, tent, boat, aircraft or vehicle;

***possession*** includes having under control in any place, whether for the use or benefit of the person in relation to whom the term is used or another person, and whether or not another person has the actual possession or custody of the thing in question;

***precautionary principle*** means the principle set out in section 4A;

***premises*** includes part of any premises but does not include —

(a) an unauthorised structure; or

(b) a caravan that is not in an area registered as a caravan park by a local government or regional local government;

***private land*** means any land that —

(a) is alienated from the Crown for any estate of freehold; or

(b) is the subject of a conditional purchase agreement, or of any lease or concession with or without a right of acquiring the fee simple in that land;

***process*** means cut up, break up, shell, skin, shuck, fillet, cook, void, purge, pack, chill, freeze, can, preserve, or otherwise treat any fish and, in relation to fish of a prescribed class, includes hold or consign the fish live for export;

***protected fish*** means —

(a) totally protected fish; or

(b) commercially protected fish; or

(c) recreationally protected fish;

***purchase*** includes each of the following —

(a) to take in exchange;

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

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

(d) to attempt to purchase,

but does not include to conduct a prescribed transaction, or a transaction in a prescribed class of transactions, if the transaction is conducted by an Aboriginal person;

***record*** includes any document, whether or not it has been completed;

***recreational fishing*** means fishing other than commercial fishing or customary fishing;

***recreational fishing licence*** means a licence granted under the regulations authorising an individual to engage in recreational fishing;

***recreationally protected fish*** means any fish of a class prescribed under section 45 to be recreationally protected fish;

***register*** means the register kept under section 125;

***Registrar*** means the Registrar referred to in section 124;

***repealed Act*** means the *Fisheries Act 1905*;

***return*** means a return that is required under this Act to be submitted to or lodged with the CEO;

***security holder***, in relation to an authorisation or aquaculture lease, means a person noted on the register as having a security interest in the authorisation or aquaculture lease;

***security interest***, in relation to an authorisation or aquaculture lease, means an interest in the authorisation or aquaculture lease (however arising) which secures payment of a debt or other pecuniary obligation or the performance of any other obligation;

***sell*** includes each of the following —

(a) to auction;

(b) to put out to tender;

(c) to barter or exchange;

(d) to supply for profit;

(e) to offer for sale;

(f) to receive or possess for sale;

(g) to expose for sale;

(h) to consign or deliver for sale;

(i) to dispose of by way of raffle, lottery or other game of chance,

but does not include to conduct a prescribed transaction, or a transaction in a prescribed class of transactions, if the transaction is conducted by an Aboriginal person;

***species*** includes subspecies, hybrid or variant;

***specified***, in relation to a regulation, management plan, order, notice or other instrument, means specified in the regulation, management plan, order, notice or other instrument (as the case may be);

***take***, in relation to fish, includes catch, capture, entrap, enclose, gather, remove, poison, stun, kill or destroy fish by any means;

***temporary aquaculture permit*** means a temporary aquaculture permit granted under section 97B(1);

***this Act*** includes regulations, orders and management plans made or determined under this Act;

***totally protected fish*** means any fish of a class prescribed under section 45 to be totally protected fish;

***unauthorised structure*** means any hut, shack or other structure on land other than private land the erection of which has not been authorised under a written law;

***unit***, in relation to an entitlement, means a unit as defined from time to time in the relevant management plan;

***vary***, in relation to an authorisation, means to vary anything in the authorisation and includes to substitute any boat, place or other thing in respect of which the authorisation is granted;

***vehicle*** has the same meaning as in the *Road Traffic Act 1974*;

***waters*** includes —

(a) the bed or subsoil, if any, under any waters; and

(b) the airspace above any waters;

***WA waters*** has the meaning given by section 5.

(2) A class of fishing activities or a fishery may be defined in an order, management plan, regulation, arrangement, notice, authorisation or other instrument by reference to all or any of the following —

(a) a species or type of fish;

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

(c) an area of land or waters;

(d) a method of fishing;

(e) a type of fishing gear;

(f) a class of boats, vehicles or aircraft;

(g) a class of persons;

(h) a purpose of activities.

*[Section 4 amended by No. 14 of 1996 s. 4; No. 5 of 1997 s. 46; No. 41 of 2000 s. 5; No. 2 of 2002 s. 5; No. 74 of 2003 s. 56(2); No. 55 of 2004 s. 381; No. 28 of 2006 s. 232; No. 43 of 2011 s. 6.]*

## 5. Term used: WA waters

In this Act, a reference to WA waters —

(a) is a reference to all waters within the limits of the State; and

(b) except for purposes relating to a fishery that is to be managed in accordance with the law of the Commonwealth under an arrangement under Part 3 and except for purposes specified in paragraph (d), is a reference to any waters not within the limits of the State that are on the landward side of waters adjacent to the State that are within the Australian fishing zone; and

(c) for purposes relating to a fishery that is to be managed in accordance with the law of the State under an arrangement under Part 3, is a reference to any waters to which the legislative powers of the State extend, with respect to that fishery, whether under section 5 of the *Coastal Waters (State Powers) Act 1980* of the Commonwealth or otherwise; and

(d) for purposes relating to recreational fishing, within the meaning of the Commonwealth Act, other than recreational fishing —

(i) carried on by the use of a foreign boat; or

(ii) prohibited or regulated by a plan of management determined under section 17 of the Commonwealth Act,

is a reference to any waters to which the legislative powers of the State extend with respect to such fishing.

## 6. Aboriginal persons, application of Act to

An Aboriginal person is not required to hold a recreational fishing licence to the extent that the person takes fish from any waters in accordance with continuing Aboriginal tradition if the fish are taken for the purposes of the person or his or her family and not for a commercial purpose.

## 7. Exemptions from Act, grant of by Minister

(1) The Minister may, by instrument in writing, exempt a specified person or specified class of persons from all or any of the provisions of this Act.

(2) The Minister may only grant an exemption under subsection (1) for one or more of these purposes —

(a) research;

(b) environmental protection;

(c) public safety;

(d) public health;

(e) commercial purposes;

(f) community education about and compliance with this Act;

(g) enforcement of this Act.

*[(3) deleted]*

(4) An application for an exemption —

(a) may be made to the Minister; and

(b) must be in a form approved for that purpose by the CEO; and

(c) must be accompanied by the prescribed fee (if any).

(5) An exemption may be granted subject to such conditions as the Minister thinks fit and specifies in the instrument.

(6) The Minister may, if he or she thinks fit, by further instrument in writing —

(a) vary or revoke an exemption; or

(b) delete, vary or add to any conditions imposed in relation to that exemption.

(7) A person must not contravene a condition of an exemption.

Penalty: In the case of an individual, $10 000 or, in the case of a body corporate, $20 000.

*[Section 7 amended by No. 28 of 2006 s. 236(1); No. 43 of 2011 s. 7.]*

## 8. Crown bound

(1) This Act binds the Crown in right of the State and, subject to the limits of the legislative power of the State, the Crown in all its other capacities.

(2) Nothing in this Act makes the Crown in any of its capacities liable to be prosecuted for an offence.

# Part 2 — Administration

## 9. "Minister for Fisheries", body corporate

(1) The body corporate constituted by the Minister and referred to in section 4A of the repealed Act under the name "Minister for Fisheries" is preserved and continued in existence.

(2) The corporate identity and the rights, obligations and assets of the body corporate are not affected by the repeal of the repealed Act.

(3) The body corporate —

(a) has perpetual succession and a common seal; and

(b) may sue and be sued in its corporate name; and

(c) is capable of doing and suffering all that bodies corporate may do and suffer.

(4) If a document is produced bearing a seal purporting to be the common seal of the Minister for Fisheries, it is to be presumed that the common seal is the common seal of the Minister for Fisheries, unless the contrary is proved.

*[**10.** Deleted by No. 28 of 2006 s. 233.]*

## 11. Fisheries officers and other staff, appointment of

There are to be appointed under Part 3 of the *Public Sector Management Act 1994* such fisheries officers and other staff as are required for the purposes of the administration of this Act.

## 12. Delegation by Minister

(1) The Minister may, by instrument in writing, delegate to a person, either generally or as otherwise provided in the instrument, any power or duty under this Act, other than —

(a) this power of delegation; and

(b) the powers conferred under sections 54, 97, 115, 119, 122, 246, 247, 251 and 255.

(2) Anything done by a delegate under a delegation under this section has the same force and effect as if it had been done by the Minister.

*[Section 12 amended by No. 43 of 2011 s. 8.]*

**13. Delegation by CEO**

(1) The CEO may, by instrument in writing, delegate to a person, either generally or as otherwise provided in the instrument, any power or duty under this Act, other than this power of delegation.

(2) Anything done by a delegate under a delegation under this section has the same force and effect as if it had been done by the CEO.

*[Section 13 amended by No. 28 of 2006 s. 236(1).]*

**14. Minister may carry out research etc.**

The Minister may cause to be carried out any research, exploration, experiments, works or operations of any kind for the purposes of this Act.

# Part 3 — Commonwealth-State management of fisheries

## Division 1 — Preliminary

### 15. Terms used

In this Part, unless the contrary intention appears —

***arrangement*** means an arrangement made by the State with the Commonwealth under this Part, whether or not it is also made with another State or other States;

***Commonwealth Minister*** means the Minister for the time being administering the Commonwealth Act and any other Minister exercising powers and performing functions under section 60 of the Commonwealth Act;

***corresponding law*** means a law of the Commonwealth or another State declared by the regulations to be a law corresponding to this Act;

***fishery*** means a class of fishing activities identified in an arrangement as a fishery to which the arrangement applies;

***fishing activities*** includes aquaculture;

***Joint Authority*** means —

(a) the Western Australian Fisheries Joint Authority continued in existence under the *Fisheries Legislation (Consequential Provisions) Act 1991* of the Commonwealth; and

(b) any other Joint Authority established under the Commonwealth Act of which the Minister is a member;

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

***State*** includes a Territory.

*[Section 15 amended by No. 37 of 2009 s. 4; No. 43 of 2011 s. 9.]*

## Division 2 — Joint Authorities

### 16. Minister's powers and functions under Commonwealth Act

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

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

### 17. Judicial notice of signature etc. of Joint Authority member

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

### 18. Functions of Joint Authority

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

### 19. Delegation by Joint Authority

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

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

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

(a) in the service of; or

(b) in the service of an authority of; or

(c) under the law of,

the Commonwealth or another State.

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

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

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

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

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

(6) A certificate signed by a member of a Joint Authority stating any matter with respect to a delegation under this section by the Joint Authority is evidence of that matter.

(7) A document purporting to be a certificate referred to in subsection (6) must, unless the contrary is established, be taken to be such a certificate and to have been duly given.

(8) Nothing in this section —

(a) limits the operation of sections 58 and 59 of the *Interpretation Act 1984*; or

(b) is intended to prevent the delegation by a Joint Authority, in accordance with the law of the

Commonwealth, of powers conferred on the Joint Authority by that law.

*[Section 19 amended by No. 43 of 2011 s. 10.]*

### 20. Procedure of Joint Authorities

(1) Sections 66 to 68 (inclusive) of the Commonwealth Act apply to and in relation to the performance by a Joint Authority of its functions under a written law of the State.

(2) A written record of a decision of a Joint Authority, if signed by the Commonwealth Minister, or a deputy of that Minister, who took part in or made the decision, is evidence that the decision, as recorded, was duly made.

(3) In any legal proceedings, an instrument or other document signed, on behalf of a Joint Authority, by a member of that Joint Authority —

(a) must be taken to have been duly executed by the Joint Authority; and

(b) unless the contrary is proved, must be taken to be in accordance with a decision of the Joint Authority.

### 21. Report of Joint Authority

The Minister must cause a copy of a report of a Joint Authority prepared under section 70 of the Commonwealth Act to be laid before each House of Parliament as soon as practicable after the preparation of the report.

## Division 3 — Arrangements for management of particular fisheries

### 22. Arrangement for management under Commonwealth Act

(1) The State may, in accordance with section 74 of the Commonwealth Act, make an arrangement referred to in

section 71 or 72 of that Act for the management of a particular fishery.

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

(3) After an arrangement has been made but before the arrangement takes effect authorisations, regulations, orders and instruments may be granted, renewed, made or determined for the purposes of the operation of this Act as affected by the arrangement as if the arrangement had taken effect.

(4) An authorisation, regulation, order or instrument referred to in subsection (3) does not have effect before the arrangement takes effect.

(5) On the termination of an arrangement, authorisations, regulations, orders and instruments granted, renewed, made or determined, for the purposes of the operation of this Act as affected by the arrangement cease to have effect.

(6) After action for the purpose of the termination of an arrangement has been taken, but before the termination takes effect authorisations, regulations, orders and instruments may be granted, renewed, made or determined for the purposes of the operation of this Act as affected by the termination of the arrangement, as if the arrangement had been terminated.

(7) An authorisation, regulation, order or instrument referred to in subsection (6) does not have effect before the termination of the arrangement takes effect.

## 23. Application of this Act to fisheries under arrangements

(1) Subject to subsection (2), if an arrangement is in force that provides that a particular fishery is to be managed in accordance with the law of the State (whether or not also in accordance with some other law), the provisions of this Act apply to and in relation to the fishery.

(2) The provisions of this Act do not apply to or in relation to the fishery in respect of —

*[(a) deleted]*

(b) matters that occurred in the Australian fishing zone before the arrangement took effect.

*[Section 23 amended by No. 37 of 2009 s. 5.]*

**24A. Application of Commonwealth law to fisheries under arrangements**

If there is in force an arrangement that provides that a particular fishery is to be managed in accordance with the law of the Commonwealth (whether or not also in accordance with some other law), the law of the Commonwealth applies to the limits of the State as a law of the State.

*[Section 24A inserted by No. 37 of 2009 s. 6.]*

**24. Joint Authority, functions of**

(1) If, in respect of a fishery, an arrangement is in force under which a Joint Authority has the management of the fishery and the fishery is to be managed in accordance with the law of the State (whether or not also in accordance with some other law), the Joint Authority has the functions of —

(a) keeping constantly under consideration the condition of the fishery; and

(b) formulating policies and plans for the good management of the fishery; and

(c) for the purposes of the management of the fishery —

(i) exercising the powers conferred on it by this Act; and

(ii) co-operating and consulting with other authorities (including other Joint Authorities within the meaning of the Commonwealth Act) in matters of common concern.

(2) A Joint Authority is to pursue the following objectives in the performance of its functions under subsection (1) —

(a) ensuring, through proper conservation, preservation and fisheries management measures, that fish resources are not endangered by over-exploitation; and

(b) achieving the optimum utilization of those resources; and

(c) generally acting consistently with, and in furtherance of, the objects of this Act.

*[Section 24 amended by No. 37 of 2009 s. 7.]*

## 25. Joint Authority, exercise of powers by

(1) Except as provided in this section, an authorisation granted or renewed under this Act otherwise than by virtue of this section does not authorise the doing of any act or thing in or in relation to a Joint Authority fishery.

(2) If a Joint Authority fishery is to be managed in accordance with the law of the State (whether or not also in accordance with some other law) —

(a) the powers (including powers with respect to authorisations) conferred on the Minister or another person under this Act (this Part excepted) are exercisable by the Joint Authority instead of the Minister or other person; and

(b) references in the relevant provisions to the Minister and to another person authorised to exercise a power, are taken to be references to the Joint Authority.

(3) An authorisation granted by a Joint Authority must be limited (whether by conditions or otherwise) to apply only in relation to a Joint Authority fishery, or Joint Authority fisheries, managed by the Joint Authority.

(4) A Joint Authority may endorse an authorisation (including an authorisation granted by the Joint Authority or another Joint

Authority) to extend the operation of the authorisation to matters to which the licensing powers of the Joint Authority under this Act are applicable.

(5) If an endorsement referred to in subsection (4) is made —

(a) the endorsement ceases to have effect if the authorisation ceases to have effect; and

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

(6) Subject to section 28, if at a time a fishery becomes a Joint Authority fishery, a regulation, order or instrument made or determined under this Act would, but for this subsection, apply to the fishery, the regulation, order or instrument, as the case may be, ceases so to apply.

(7) This section does not empower a Joint Authority to grant, or to take other action in respect of, an authorisation in respect of a foreign boat or to endorse such an authorisation.

*[Section 25 amended by No. 37 of 2009 s. 8.]*

**26. Provisions in this Act about offences etc., application of to Joint Authority fishery**

Provisions of this Act that relate to offences, enforcement and legal proceedings —

(a) apply in respect of anything done to, or in relation to, fish to which a Joint Authority fishery relates or otherwise in relation to a Joint Authority fishery; and

(b) for the purpose of paragraph (a) are to be read —

(i) as if any reference in the provisions to an authorisation were a reference to an authorisation or an endorsement of an authorisation, as the case may be, granted, renewed or made by the relevant Joint Authority, in relation to the person alleged to have committed the offence or the boat

alleged to have been used in the commission of the offence; and

(ii) as if any reference in the provisions to fish were a reference to fish to which the Joint Authority fishery relates.

**27. Certain statements in arrangements, presumptions as to**

A statement in an arrangement must be conclusively presumed to be correct if it is to the effect that specified waters —

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

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

**28. Regulations etc. for fisheries under arrangements**

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

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

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

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

(2) If a Joint Authority is to manage a fishery in accordance with the law of the State, the Minister may, for the purpose of giving effect to a decision of the Joint Authority —

(a) make an order that applies to the fishery; or

(b) by order published in the *Gazette* apply to the fishery an order under this Act made otherwise than under this section; or

(c) by order published in the *Gazette* amend an order under this Act made otherwise than under this section so that it is expressed to apply to the fishery, whether or not it also applies to another fishery.

(3) If a Joint Authority is to manage a fishery in accordance with the law of the State, the Minister may, for the purpose of giving effect to a decision of the Joint Authority —

(a) by instrument in writing published in the *Gazette*, determine a management plan for the fishery; or

(b) by instrument in writing published in the *Gazette* apply to the fishery a management plan under this Act made otherwise than under this section; or

(c) by instrument in writing published in the *Gazette* amend a management plan under this Act made otherwise than under this section so that it is expressed to apply to the fishery, whether or not it also applies to another fishery.

(4) The power conferred —

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

(b) on the Minister to make orders otherwise than under subsection (2) does not extend to the making of an order of a kind referred to in subsection (2)(a) or (b) or the amendment of an order in the manner referred to in subsection (2)(c);

(c) on the Minister to make or determine instruments otherwise than under subsection (3) does not extend to the making or determination of an instrument of a kind referred to in subsection (3)(a) or (b) or the amendment of a management plan in the manner referred to in subsection (3)(c).

(5) If a regulation, order or instrument affecting a fishery that is to be managed by a Joint Authority is expressed to be made under this section, it must be conclusively presumed that it was made for the purpose of giving effect to a decision of the Joint Authority.

## Division 4 — Arrangements with other States and Territories

*[Heading inserted by No. 37 of 2009 s. 9.]*

### 29A. Minister may enter into arrangements

The Minister may enter into an agreement with a Minister administering a corresponding law, or with an authority of another State or Territory concerned in the administration of that law, for the purpose of cooperation in furthering the objects of this Act (whether in this State or in that other State or Territory).

*[Section 29A inserted by No. 37 of 2009 s. 9.]*

### 29B. Minister's functions for this Division

(1) For the purposes of this Division, the Minister may exercise any power and perform any function conferred on the Minister under Division 2 or 3 as if the Commonwealth Act applied under this Division.

(2) Divisions 2 and 3 apply in respect of agreements under this Division, with such modifications as are necessary.

*[Section 29B inserted by No. 37 of 2009 s. 9.]*

# Part 4 — Advisory Committees

*[Divisions 1-3 (s. 29-40) deleted by No. 37 of 2009 s. 10.]*

## Division 4 — Fishery Management Advisory Committees

### 41. Committees, establishment and functions of

(1) The Minister may, by instrument in writing, establish an advisory committee for a fishery consisting of such persons as the Minister thinks fit.

(2) The function of an advisory committee established by the Minister is to provide information and advice to the Minister or the CEO on matters related to the protection and management of the fishery.

(3A) The CEO may, by instrument in writing, establish an advisory committee for a fishery consisting of such persons as the CEO thinks fit.

(3B) The function of an advisory committee established by the CEO is to provide information and advice to the CEO on matters related to the protection and management of the fishery.

(3) The instrument establishing an advisory committee —

(a) must identify the fishery for which the committee is established and the members of the committee;

(b) may provide for any other matter that, in the opinion of the person establishing the committee, is necessary for the operation of the committee.

(4) The person establishing the committee may, by further instrument in writing, amend or revoke an instrument made under this section.

(5) An advisory committee may be established under this section for a fishery whether or not a management plan is in force in respect of that fishery.

*[Section 41 amended by No. 37 of 2009 s. 11.]*

## Division 5 — Other committees

### 42. Other committees, establishment and functions of

(1) The Minister may, by instrument in writing, establish other advisory committees, consisting of such person's as the Minister thinks fit, to provide information and advice to the Minister or the CEO on matters related to the administration of this Act.

(2A) The CEO may, by instrument in writing, establish other advisory committees, consisting of such persons as the CEO thinks fit, to provide information and advice to the CEO on matters related to the administration of this Act.

(2) The instrument establishing an advisory committee —

(a) must specify the functions, and identify the members, of the committee;

(b) may provide for any other matter that, in the opinion of the person establishing the committee, is necessary for the operation of the committee.

(3) The person establishing the committee may, by further instrument in writing, amend or revoke an instrument made under this section.

*[Section 42 amended by No. 37 of 2009 s. 12.]*

## Division 6 — Operation of committees

*[Heading inserted by No. 37 of 2009 s. 13.]*

### 43A. Regulations about operation of committees

The regulations may provide for any matter necessary for the operation of —

(a) a Fishery Management Advisory Committee established under Division 4; or

(b) another committee established under Division 5.

*[Section 43A inserted by No. 37 of 2009 s. 13.]*

# Part 5 — General regulation of fishing

## Division 1 — Prohibited fishing

### 43. Minister may prohibit fishing

(1) The Minister may, by order published in the *Gazette*, prohibit persons or any specified class of persons from engaging in any fishing activity of a specified class.

(2) An order may prohibit a fishing activity at all times or during any specified period.

(3) A person must not —

(a) contravene a provision of an order; or

(b) have in the person's possession any fish taken in contravention of an order; or

(c) have in the person's possession any fishing gear intended to be used to engage in an activity that the person is prohibited from engaging in by an order.

Penalty: As provided in sections 52 and 222.

(4) It is a defence in proceedings for an offence against subsection (3)(b) for the person charged to prove that the person did not know, and could not reasonably be expected to have known, that the fish had been taken in contravention of an order.

(5) The Minister may, by further order published in the *Gazette*, amend or revoke an order made under this section.

### 44. Minister's orders subject to disallowance by Parliament

(1) An order made under this Division is subsidiary legislation for the purposes of the *Interpretation Act 1984*.

(2) Section 42 of the *Interpretation Act 1984* applies to and in relation to an order made under this Division as if the order were a regulation.

## Division 2 — Protected fish

### 45. Protected fish, prescription of

(1) A class of fish may be prescribed to be —

(a) totally protected fish; or

(b) commercially protected fish; or

(c) recreationally protected fish,

for the purposes of this Act.

(2) A class of fish may be defined for the purposes of subsection (1) by reference to all or any of the following —

(a) a species or type of fish;

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

(c) an area of land or waters from which the fish are taken;

(d) a period of time during which the fish is taken;

(e) any other factor.

*[Section 45 amended by No. 43 of 2011 s. 11.]*

### 46. Totally protected fish, offences as to

A person must not —

(a) take; or

(b) have in the person's possession; or

(c) sell or purchase; or

(d) consign; or

(e) bring into the State or into WA waters,

any totally protected fish.

Penalty: As provided in sections 52 and 222.

### 47. Commercially protected fish, offences as to

A person must not —

(a) take for the purpose of sale; or

(b) have in the person's possession for the purpose of sale; or

(c) process for the purpose of sale; or

(d) consign; or

(e) sell or purchase,

any commercially protected fish.

Penalty: As provided in sections 52 and 222.

**48A. Recreationally protected fish, offences as to**

(1) A person must not take any recreationally protected fish while engaging in recreational fishing.

Penalty: as provided in sections 52 and 222.

(2) A person must not —

(a) have in the person's possession; or

(b) sell or purchase; or

(c) consign; or

(d) bring into the State or into WA waters,

any recreationally protected fish.

Penalty for an offence under subsection (2): as provided in sections 52 and 222.

*[Section 48A inserted by No. 43 of 2011 s. 12.]*

**48. Defences to charges under s. 46, 47 or 48A**

(1) It is a defence in proceedings for an offence against section 46 or 47 for the person charged to prove —

(a) in the case of an offence relating to the taking of fish, that on becoming aware of the taking of the fish, the person took immediate steps to return the fish to its natural environment with the least possible injury; or

(ba) that the fish were collected for broodstock or other aquaculture purposes in accordance with an authorisation; or

(b) that the fish were of a prescribed class and were being, or had been, kept, bred, hatched, cultured or harvested in accordance with an aquaculture licence; or

(c) that the person has any other defence prescribed in the regulations.

(2) It is a defence in proceedings for an offence against section 48A for the person charged to prove —

(a) in the case of an offence relating to the taking of fish, that, on becoming aware of the taking of the fish, the person took immediate steps to return the fish to its natural environment with the least possible injury; or

(b) that the fish were taken for a commercial purpose in accordance with an authorisation; or

(c) that the fish were collected for broodstock or other aquaculture purposes in accordance with an authorisation; or

(d) that the fish were kept, bred, hatched, cultured or harvested in accordance with an aquaculture licence; or

(e) that the person has any other defence prescribed in the regulations.

*[Section 48 amended by No. 43 of 2011 s. 13.]*

## 49. Mutilation of fish to prevent determination, offence

A person must not alter, mutilate or disfigure any fish with the intention of preventing the determination of whether or not that fish is a protected fish.

Penalty: In the case of an individual, $25 000.

In the case of a body corporate, $50 000.

*[Section 49 amended by No. 50 of 2003 s. 63(2).]*

## Division 3 — Bag and possession limits

### 50. Bag limits for taking fish, regulations and offences as to

(1) In this section, ***one day*** means a period of 24 hours commencing at midnight or, in relation to a bag limit for which a different period is provided by the regulations under subsection (6), such period as is provided.

(2) The regulations may specify the maximum quantity of fish of a specified class that a person may take, or bring onto land or into WA waters, in one day (the ***bag limit***).

(3) A person must not take, or bring onto land or into WA waters, on any one day more fish than the bag limit of those fish.

Penalty: As provided in sections 52 and 222.

(4) It is a defence in proceedings for an offence against subsection (3) for the person charged to prove that —

(a) the fish were taken for a commercial purpose in accordance with an authorisation; or

(b) the fish were kept, bred, hatched, cultured or harvested in accordance with an aquaculture licence; or

(c) the person has any other defence prescribed in the regulations.

(5) The regulations may specify different bag limits in relation to —

(a) different areas of the State; or

(b) different classes of persons; or

(c) different circumstances.

(6) The regulations may provide that a bag limit applies to a period of 24 hours commencing at a time other than midnight.

(7) This section does not authorise the taking of fish or the bringing of fish onto land or into WA waters in contravention of any other provision of this Act.

*[Section 50 amended by No. 43 of 2011 s. 14.]*

## 51. Possession limits for fish, regulations and offences as to

(1) The regulations may specify the maximum quantity of fish of a specified class that a person may have in possession in specified circumstances (the ***possession limit***).

(2) A person must not have in the person's possession in any such circumstances more than the possession limit of those fish.

Penalty: As provided in sections 52 and 222.

(3) Subsection (2) applies irrespective of the period over which the fish were taken.

(4) It is a defence in proceedings for an offence against subsection (2) for the person charged to prove that —

(a) the fish were taken for a commercial purpose in accordance with an authorisation; or

(b) the fish were kept, bred, hatched, cultured or harvested in accordance with an aquaculture licence; or

(c) the person has any other defence prescribed in the regulations.

(5) The regulations may specify different possession limits in relation to —

(a) different areas of the State; or

(b) different classes of persons; or

(c) different circumstances.

(6) This section does not authorise the possession of fish in contravention of any other provision of this Act.

*[Section 51 amended by No. 43 of 2011 s. 15.]*

## Division 4 — General penalty

### 52. General penalty for s. 43, 46, 47, 48A, 50 and 51

(1) The general penalty for contravention of section 43(3), 46, 47, 48A, 50(3) or 51(2) is —

(a) for a first offence against that section —

(i) if the offence relates to category 1 fish, in the case of an individual, to a fine not exceeding $5 000 or, in the case of a body corporate, to a fine not exceeding $10 000; or

(ii) if the offence relates to category 2 fish, in the case of an individual, to a fine not exceeding $3 000 or, in the case of a body corporate, to a fine not exceeding $6 000; or

(iii) if the offence relates to category 3 fish, in the case of an individual, to a fine not exceeding $2 000 or, in the case of a body corporate, to a fine not exceeding $4 000; or

(iv) in any other case, in the case of an individual, to a fine not exceeding $1 000 or, in the case of a body corporate, to a fine not exceeding $2 000;

and

(b) for a second or subsequent offence against that section —

(i) if the offence relates to category 1 fish, in the case of an individual, to a fine not exceeding $10 000 or, in the case of a body corporate, to a fine not exceeding $20 000; or

(ii) if the offence relates to category 2 fish, in the case of an individual, to a fine not exceeding $6 000 or, in the case of a body corporate, to a fine not exceeding $12 000; or

(iii) if the offence relates to category 3 fish, in the case of an individual, to a fine not exceeding $4 000 or, in the case of a body corporate, to a fine not exceeding $8 000; or

(iv) in any other case, in the case of an individual, to a fine not exceeding $2 000 or, in the case of a body corporate, to a fine not exceeding $4 000.

(2) For the purposes of subsection (1) —

(a) if an offence relates to more than one category of fish, then the relevant subparagraph that applies under subsection (1)(a) or (1)(b) is the subparagraph with the higher penalty;

(b) if it is not possible to determine the fish to which an offence relates, then subsection (1)(a)(iv) or (1)(b)(iv) (as the case requires) applies.

*[Section 52 amended by No. 43 of 2011 s. 16.]*

# Part 6 — Management of fisheries

## Division 1 — Interpretation

### 53. Term used: authorisation

In this Part, ***authorisation*** means —

(a) in relation to a managed fishery, a managed fishery licence; or

(b) in relation to an interim managed fishery, an interim managed fishery permit.

## Division 2 — Management plans

### 54. Determination etc. of management plan

(1) The Minister may, by instrument in writing published in the *Gazette*, determine a management plan for a fishery.

(2) The Minister may, by further instrument in writing published in the *Gazette*, amend or revoke a management plan.

### 55. Instruments under s. 54 subject to disallowance by Parliament

(1) An instrument under section 54 that determines, amends or revokes a management plan is "subsidiary legislation" for the purposes of the *Interpretation Act 1984*.

(2) Section 42 of the *Interpretation Act 1984* applies to and in relation to an instrument referred to in subsection (1) as if the instrument were a regulation.

### 56. Contents of management plans, general provisions

(1) A management plan must —

(a) identify the fishery to which it relates; and

(b) declare the fishery to be either —

(i) a managed fishery; or

(ii) an interim managed fishery.

(2) A management plan declaring a fishery to be an interim managed fishery may further classify the fishery as a developmental fishery.

(3) A management plan may include any provision that, in the Minister's opinion, is necessary for —

(a) the protection or management of the fishery or any part of the fishery; or

(b) the protection of aquatic mammals, aquatic reptiles, aquatic birds, amphibians or pearl oysters from fishing activity in the fishery.

*[Section 56 amended by No. 43 of 2011 s. 17.]*

**57. Expiry date for plan for interim managed fishery**

(1) A management plan for an interim managed fishery may provide that the plan only has effect for a specified period.

(2) Subsection (1) does not limit the Minister's power to revoke a management plan.

**58. Management plan may provide for authorisations etc.**

(1) Without limiting section 56(3), a management plan may prohibit a person from engaging in fishing or any fishing activity of a specified class in the fishery or any part of the fishery otherwise than in accordance with an authorisation.

(2) The management plan may —

(a) provide for different classes of authorisations;

(b) restrict the number of authorisations that can be granted or provide that no further authorisations can be granted;

(c) specify criteria to be satisfied before the CEO can grant an authorisation;

(d) specify a procedure for determining which persons are to be granted authorisations if the number of eligible persons seeking an authorisation exceeds the number of authorisations that can be granted;

(e) provide for the submission and consideration of objections to the grant of authorisations;

(f) provide for specified things to be endorsed on authorisations;

(g) specify conditions to which authorisations are subject;

(h) specify grounds on which the CEO may cancel, suspend or refuse to renew an authorisation (in addition to those already specified in section 143(1)(a) to (g));

(i) specify a period for which an authorisation remains in force after it has been granted or renewed;

(j) specify criteria to be satisfied before the CEO can vary an authorisation on the application of the holder of the authorisation;

(k) specify grounds on which the CEO may refuse to transfer under section 140 an authorisation or any part of an entitlement under an authorisation;

(l) prescribe fees payable in respect of applications for —

(i) the grant, renewal and variation of authorisations; or

(ii) the transfer of authorisations or entitlements under authorisations;

(m) prescribe fees payable for the issue of authorisations.

(3) A fee prescribed under subsection (2)(m) may include one or more of the following —

(a) an amount in respect of the extent or value of any authority conferred by an authorisation;

(b) an amount in connection with any purpose referred to in section 238(5) that is relevant to an authorisation;

(c) an amount in respect of the costs of administering this Act.

(4) To the extent that a management plan prescribes under subsection (2)(m) a fee that includes an amount referred to in subsection (3) that is a tax, the management plan may impose the tax.

*[Section 58 amended by No. 28 of 2006 s. 236(1); No. 21 of 2011 s. 4; No. 22 of 2011 s. 4; No. 43 of 2011 s. 18.]*

## 59. Management plan may specify capacity of fishery

(1) Without limiting section 56(3), a management plan may specify the capacity of the fishery or any part of the fishery.

(2) The capacity may be specified by reference to —

(a) a quantity of fish that may be taken; or

(b) a quantity of fishing gear that may be used; or

(c) a number of boats that may be used; or

(d) a number of persons who may engage in fishing; or

(e) any other thing.

(3) The capacity is to be determined in accordance with the method specified in the management plan or prescribed in the regulations.

## 60. Management plan may provide for entitlements under authorisations

(1) Without limiting section 56(3), a management plan may provide for a scheme relating to the extent of the entitlements conferred by authorisations in respect of the fishery or any part of the fishery.

(2) The management plan may —

(a) specify the way in which entitlements are to be fixed and allocated;

(ba) provide for minimum entitlements;

(b) provide for all or any of the entitlement to be specified in an authorisation;

(c) provide for entitlements to be expressed in terms of units (however described) and from time to time specify the extent of the entitlement arising from such units;

(d) suspend entitlements during a specified period;

(e) provide for entitlements to be increased or reduced;

(f) provide for the conversion of one kind of entitlement into another kind of entitlement;

(g) prohibit a person from doing any thing in excess of an entitlement;

(ha) provide for the expiation of an offence under section 74(2) of contravening a provision of a management plan that prohibits a person from taking fish in excess of an entitlement by the payment within a specified time of an amount equal to the value of the excess fish determined in accordance with the method described in section 222(4)(a) or (b) and for the crediting of any amount so paid to the Fisheries Research and Development Account;

(hb) provide that the authority conferred by an authorisation is of no effect if the entitlement under the authorisation is below a specified minimum entitlement;

(h) authorise the temporary transfer of entitlements (either generally or only in specified circumstances);

(i) specify —

(i) the criteria that a person must satisfy before the person can buy any forfeited entitlement under section 76(4); and

(ii) the way in which any forfeited entitlement may be sold under that section.

*[Section 60 amended by No. 43 of 2011 s. 19.]*

## 61. Management plan may prohibit fishing etc.

(1) Without limiting section 56(3), a management plan may —

(a) prohibit all fishing activities in the fishery or in any part of the fishery during any specified period;

(b) prohibit any fishing activity of a specified class in the fishery or in any part of the fishery (either at all times or during any specified period);

(c) authorise the CEO by a specified method and in specified circumstances —

(i) to prohibit all fishing activities or any fishing activity of a specified class in the fishery or in any part of the fishery; or

(ii) to permit in the fishery or in any part of the fishery, until the CEO directs otherwise, fishing or any fishing activity of a specified class that is otherwise prohibited.

(2) Nothing in this section derogates from the power to prohibit any fishing activity of a specified class under section 43.

*[Section 61 amended by No. 28 of 2006 s. 236(1).]*

## 62. Management plan, miscellaneous provisions in

Without limiting section 56(3), a management plan may —

(a) prohibit or regulate fishing in the fishery;

(ba) prohibit or regulate the possession of fish taken in the fishery;

(b) prohibit or regulate the possession or use of any boat, vehicle or aircraft in the fishery or require the registration, marking or identification of boats, vehicles or aircraft used in the fishery;

(c) prohibit or regulate the carrying or use of specified fishing gear in the fishery;

(d) provide for the registration or identification of fishing gear used in the fishery;

(e) require specified gear or equipment to be installed in or carried or used on boats used in the fishery, including equipment used for the purposes of research, monitoring or compliance programmes;

(f) require persons engaged in fishing in the fishery to participate in research programmes and to carry scientific equipment;

(g) require persons engaged in fishing in the fishery to carry observers or research personnel for the purposes of research, monitoring or compliance programmes;

(h) provide for and regulate the identification of fish (whether taken in the fishery or otherwise) by tagging, marking or other specified means;

(i) regulate the checking, measuring, grading, counting or weighing of fish taken in the fishery;

(j) prohibit the purchase or sale of fish taken or dealt with in contravention of the management plan;

(k) regulate the handling, release, disposal or possession of any bycatch in the fishery, including by requiring the use of bycatch reduction devices;

*[(l)-(n) deleted]*

(o) prohibit more than a specified number of persons from operating under an authorisation and specifying the respective functions that may be performed by each person;

(p) impose obligations on —

(i) the holders of authorisations or persons acting on their behalf; or

(ii) masters of boats;

(q) require specified records to be kept, and specified returns to be submitted or lodged at specified times, by —

(i) the holders of authorisations or persons acting on their behalf; or

(ii) persons who handle, unload, land, store, pack, consign, transport, process, sell or purchase fish (whether taken in the fishery or otherwise);

(r) prohibit a person from making an entry or statement that is false or misleading in a material particular in a record or return required to be kept or submitted or lodged under a management plan;

(s) require persons to report to the CEO or to a fisheries officer (whether by radio or otherwise) the position of any boat, the landing of any fish or any other matter;

(t) require each fishing operation in the fishery to be under the control of an individual, who is the holder of the authorisation or a person nominated by the holder;

(u) prohibit or regulate the handling, transfer, landing, unloading, storage, possession, packaging, labelling, transport, delivery, consigning, receival, processing, sale or purchase of fish (whether taken in the fishery or otherwise);

(v) prohibit or regulate the disposal of fish (whether taken in the fishery or otherwise);

(w) require a person who is proposing to engage in any activities referred to in paragraphs (a) to (k), (u) or (v) or any other activities connected with the fishery to make a nomination in respect of any matter relating to that proposed engagement, including any of these matters —

(i) the area or place where the activities will be engaged in;

(ii) the period within which or during which the activities will be engaged in;

(iii) the specific activities that will be engaged in;

(iv) the specific types of gear or equipment that will be used;

(x) prohibit a person from contravening a nomination.

*[Section 62 amended by No. 28 of 2006 s. 236(1); No. 37 of 2009 s. 14; No. 43 of 2011 s. 20.]*

### 63. How an interim managed fishery becomes a managed fishery

An interim managed fishery can only become a managed fishery by a new management plan being determined for the fishery and the fishery being declared by that plan to be a managed fishery.

## Division 3 — Procedure before determining or amending management plans

### 64. Procedure before determining management plan

(1) Before determining a management plan for a managed fishery under section 54(1) the Minister must —

(a) consult with —

(i) any advisory committee established in respect of the fishery; and

(ii) such other advisory committees or persons, if any, as the Minister thinks appropriate;

and

(b) consider any representations made under subsection (3).

(2) The Minister must, not less than 2 months before determining a management plan for a managed fishery under section 54(1), prepare a draft of the plan and by notice in the *Gazette* —

(a) state that the Minister intends to determine a management plan for the fishery; and

(b) invite interested persons who wish to comment on the draft plan to make representations to the Minister by a date specified in the notice; and

(c) specify an address from which copies of the draft plan may be obtained and an address to which representations may be forwarded.

(3) A person may, not later than the date specified in the notice, make representations to the Minister in connection with the draft plan.

### 65. Procedure before amending management plan

(1) A management plan must specify an advisory committee or advisory committees or a person or persons who are to be consulted before the plan is amended or revoked.

(2) Before amending or revoking a management plan the Minister must consult with the advisory committee or advisory committees or the person or persons specified for that purpose in the plan.

(3) Despite subsection (2), the Minister may amend a management plan without consulting in accordance with that subsection if, in the Minister's opinion, the amendment is —

(a) required urgently; or

(b) of a minor nature.

(4) If —

(a) the Minister amends a management plan; and

(b) the amendment is made without consultation because it is, in the Minister's opinion, required urgently,

the Minister must consult with the advisory committee or advisory committees or the person or persons specified for that purpose in the plan as soon as practicable after the plan has been amended.

## Division 4 — Managed fishery licences and interim managed fishery permits

### 66. Authorisations, grant of

(1) If a person applies to the CEO for the grant of an authorisation and —

(a) the CEO is satisfied that the criteria specified in the relevant management plan for the grant of the authorisation have been satisfied; and

(b) if a procedure is specified in the plan for determining which persons are to be granted authorisations, the person is selected in accordance with that procedure,

the CEO may grant to the person an authorisation.

(2) An authorisation may authorise a person, or persons acting on that person's behalf, to engage in fishing or any fishing activity of a specified class in a managed fishery or an interim managed fishery (as the case requires).

(3) The entitlement a person has under an authorisation may be limited by reference to all or any of the following —

(a) a quantity of fish that may be taken;

(b) a quantity of fishing gear that may be used or carried;

(c) a boat, vehicle or aircraft, or a number of boats, vehicles or aircraft, or a class or length of boat, vehicle or aircraft, that may be used;

(d) a number of persons that may operate;

(e) an area of land or waters;

(f) a period of time;

(g) any other factor.

(4) For the purposes of subsection (3), the extent of an entitlement under an authorisation may be expressed in terms of units of entitlement defined in the management plan.

*[Section 66 amended by No. 28 of 2006 s. 236(1).]*

## 67. Duration of authorisations

Except as otherwise provided in this Act or in the authorisation, an authorisation remains in force for 12 months, or such other period as is specified in the relevant management plan, from the day on which it is granted or renewed.

### 68. Renewal of authorisations

If a person applies to the CEO for the renewal of an authorisation, the CEO is, subject to sections 136A and 143, to renew the authorisation.

*[Section 68 amended by No. 5 of 1997 s. 47; No. 28 of 2006 s. 236(1).]*

### 69. Conditions in authorisations

(1) An authorisation is subject to —

(a) any conditions specified in the relevant management plan; and

(b) any conditions imposed by the CEO under this section.

(2) An authorisation may be granted, renewed or transferred subject to such conditions as the CEO thinks fit and specifies in the authorisation.

(3) The CEO may, at any time, by notice in writing given to the holder of an authorisation, delete or vary conditions of the authorisation or add new conditions to the authorisation.

(4) Subsection (3) does not apply to conditions specified in the management plan.

*[Section 69 amended by No. 28 of 2006 s. 236(1).]*

### 70. Authorisation ceases to have effect if management plan ceases to have effect

If —

(a) a management plan for a managed fishery is revoked; or

(b) a management plan for an interim managed fishery is revoked or expires,

any authorisation in force in respect of the fishery ceases to have effect.

### 71. Prior fishing confers no right to authorisation

(1) The fact that a person engaged in fishing, or used any boat for fishing, in a fishery before a management plan was determined for the fishery is not to be taken as conferring upon that person any right to the grant of an authorisation if a management plan is determined for that fishery.

(2) Despite subsection (1), the CEO is to take into account a person's past history of fishing in a fishery when determining whether or not to grant the person an authorisation.

*[Section 71 amended by No. 28 of 2006 s. 236(1).]*

### 72. Grant of authorisation confers no right to subsequent authorisation

(1) The grant of an authorisation to any person is not to be taken as conferring on that person any right to the grant of another authorisation if a subsequent management plan is determined for the fishery.

(2) Despite subsection (1), the CEO is to take into account the fact that a person held an authorisation when determining whether or not to grant the person another authorisation.

*[Section 72 amended by No. 28 of 2006 s. 236(1).]*

### 73. Other licences do not authorise fishing in fishery

A commercial fishing licence, fishing boat licence or any other licence granted under the regulations does not authorise a person to use a boat for fishing or engage in a fishing activity in a managed fishery or an interim managed fishery.

### 73A. Authorisation is subject to restrictions in relation to certain marine reserves

(1) An authorisation 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 authorisation issued or renewed before the commencement of section 48 of the *Acts Amendment (Marine Reserves) Act 1997* [1]; or

(b) an authorisation issued or renewed in relation to an area which is affected, after the issue or renewal of the authorisation, 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 73A inserted by No. 5 of 1997 s. 48.]*

## Division 5 — Offences

### 74. Contravening management plan

(1) A person must not intentionally or recklessly contravene a provision of a management plan the contravention of which is specified in the plan to be an offence.

Penalty:

(a) for an individual —

(i) for a first offence, a fine of $40 000;

(ii) for a second or subsequent offence, a fine of $80 000 and imprisonment for 3 years;

(b) for a body corporate —

(i) for a first offence, a fine of $80 000;

(ii) for a second or subsequent offence, a fine of $150 000.

(2) A person must not contravene a provision of a management plan the contravention of which is specified in the plan to be an offence.

Penalty:

(a) for an individual, a fine of $15 000;

(b) for a body corporate, a fine of $30 000.

(3) A person charged with an offence under subsection (1) may be convicted of an offence under subsection (2) if that offence is established by the evidence.

*[Section 74 inserted by No. 43 of 2011 s. 21.]*

*[**75.** Deleted by No. 43 of 2011 s. 21.]*

**76. Offence under s. 74(1) or 77(1), court to order reduction of entitlement in certain cases of**

(1) This section applies to an entitlement limited by reference to —

(a) a quantity of fish that may be taken; or

(b) a quantity of fishing gear that may be used or carried; or

(c) a period of time that a person may engage in fishing.

(2) If a court convicts a person of an offence under section 74(1) or 77(1) and the court is satisfied that —

(a) the person —

(i) has exceeded an entitlement; or

(ii) has done anything in order to exceed an entitlement or in order to conceal the fact that an entitlement had been exceeded;

and

(b) the amount by which the entitlement was exceeded or was to be exceeded can be ascertained by the court,

the court must order that the entitlement be reduced by that amount.

(3) For the purposes of subsection (2), if —

(a) the entitlement was defined by reference to a number of units; and

(b) the amount by which the entitlement was exceeded or was to be exceeded is not an exact unit,

the court is to round the amount up or down (as the case may be) to the nearest unit.

(4) If the court orders the reduction of an entitlement under subsection (2) —

(a) the CEO must reduce the entitlement accordingly; and

(b) the CEO may sell the forfeited entitlement —

(i) to any person who satisfies the criteria specified in the relevant management plan; and

(ii) in the way specified in the management plan.

*[Section 76 amended by No. 28 of 2006 s. 236(1); No. 43 of 2011 s. 22.]*

**77. Contravening condition of managed fishery licence or managed fishery permit, offence**

(1) A person must not intentionally or recklessly contravene a condition of —

(a) a managed fishery licence; or

(b) a managed fishery permit.

Penalty:

(a) for an individual —

(i) for a first offence, a fine of $40 000;

(ii) for a second or subsequent offence, a fine of $80 000 and imprisonment for 3 years;

(b) for a body corporate —

(i) for a first offence, a fine of $80 000;

(ii) for a second or subsequent offence, a fine of $150 000.

(2) A person must not contravene a condition of —

(a) a managed fishery licence; or

(b) a managed fishery permit.

Penalty:

(a) for an individual, a fine of $15 000;

(b) for a body corporate, a fine of $30 000.

(3) A person charged with an offence under subsection (1) may be convicted of an offence under subsection (2) if that offence is established by the evidence.

*[Section 77 inserted by No. 43 of 2011 s. 23.]*

**78A. Regulations relating to cancellations under s. 224**

(1) In this section —

***section 224*** means section 224 as it was immediately before the commencement of this section.

(2) The regulations may —

(a) provide for the granting of an authorisation to replace an authorisation that has been cancelled by the operation of section 224;

(b) prescribe fees and charges payable in respect of the issue of replacement authorisations, including the payment of a fee equal to that which would have been payable if the authorisation had not been cancelled under section 224 and had been kept in force;

(c) provide for an amendment to a management plan that is, in the Minister's opinion, necessary in connection with the granting of a replacement authorisation.

(3) For the purposes of this Act, a replacement authorisation is taken to be an authorisation granted under section 66.

*[Section 78A inserted by No. 37 of 2009 s. 15; amended by No. 43 of 2011 s. 24.]*

*[**78.** Deleted by No. 43 of 2011 s. 25.]*

# Part 7 — Fish processing

## 79. When permit to construct place to process fish required

(1) Except as provided in subsection (2), a person must not —

(a) construct any place for the purpose of using the place to process fish for a commercial purpose; or

(b) establish any plant or facilities in or on any place for the purpose of enabling the use of the place to process fish for a commercial purpose,

unless the person is authorised to do so by a permit granted by the CEO under section 80.

Penalty: In the case of an individual, $20 000 and a daily penalty of $750 or, in the case of a body corporate, $40 000 and a daily penalty of $1 500.

(2) Subsection (1) does not apply to a place that is to be used —

(a) to process fish that are to be sold by retail to the public, or served as meals to the public, in, on or from the place; or

(b) to process fish that have been kept, bred, hatched, cultured or harvested in or on the place in accordance with an aquaculture licence.

(3) The regulations may limit the circumstances in which subsection (2) applies.

*[Section 79 amended by No. 28 of 2006 s. 236(1); No. 43 of 2011 s. 26.]*

## 80. Permit for processing fish, grant of

(1) If a person applies to the CEO for a permit and the CEO is satisfied that —

(a) the person is a fit and proper person to hold such a permit; and

(b) the person intends to process fish for a commercial purpose in or on the place; and

(c) the person appears likely to satisfy the criteria for the grant of a fish processor's licence; and

(d) it is in the better interests of the fishing industry to grant the permit having regard to —

(i) the number of establishments in respect of which permits or fish processor's licences have already been granted or sought; and

(ii) the size and nature of those establishments; and

(iii) such other matters as the CEO thinks fit;

and

(e) the construction or modification (as the case may be) and the use of the place has been approved by other relevant authorities,

the CEO may grant to the person a permit.

(2) The permit may authorise the person, or persons acting on that person's behalf, to construct the place or to modify the place for the purpose of enabling the use of the place to process fish for a commercial purpose.

*[Section 80 amended by No. 28 of 2006 s. 236(1).]*

**81. Conditions on s. 80 permits**

(1) A permit under section 80 is subject to —

(a) any prescribed conditions; and

(b) any conditions imposed by the CEO under this section.

(2) A permit may be granted or transferred subject to such conditions as the CEO thinks fit and specifies in the permit.

(3) The CEO may, at any time, by notice in writing given to a permit holder, delete or vary conditions of the permit or add new conditions to the permit.

(4) Subsection (3) does not apply to prescribed conditions.

*[Section 81 amended by No. 28 of 2006 s. 236(1).]*

## 82. When fish processor's licence required

(1) Except as provided in subsection (2), a person must not process fish for a commercial purpose unless the person is authorised to do so by a fish processor's licence.

Penalty: In the case of an individual, $20 000, a daily penalty of $750 and the penalty provided in section 222 or, in the case of a body corporate, $40 000, a daily penalty of $1 500 and the penalty provided in section 222.

(2) Subsection (1) does not apply to the processing of fish, other than fish of a prescribed class —

(a) on any boat if the fish have been taken by the use of that boat; or

(b) at any place for the purpose of the fish being sold by retail to the public, or served as meals to the public, in, on or from the place; or

(c) in or on any land or premises if the fish have been kept, bred, hatched, cultured or harvested in or on the land or premises in accordance with an aquaculture licence.

*[Section 82 amended by No. 43 of 2011 s. 27.]*

## 83. Fish processor's licence, grant of

(1) If a person applies to the CEO for the grant of a fish processor's licence and the CEO is satisfied that —

(a) the person is a fit and proper person to hold such a licence; and

(b) the person has been granted a permit under section 80 and has complied with the conditions of the permit; and

(c) it is in the better interests of the fishing industry to grant the licence,

the CEO may grant to the person a fish processor's licence authorising that person, or persons acting on that person's behalf, to process fish for a commercial purpose.

(2) The CEO must specify in the licence the place at which fish may be processed under the licence.

(3) If —

(a) fish of a prescribed class are to be stored by or on behalf of the licence holder before processing; and

(b) the fish are to be stored at a place other than the place referred to in subsection (2),

the CEO may specify in the licence the place or places at which such fish may be stored before processing.

*[Section 83 amended by No. 28 of 2006 s. 236(1).]*

**84. Duration of licence**

Except as otherwise provided in this Act or in the licence, a fish processor's licence remains in force for a period of 12 months from the day on which it is granted or renewed.

**85. Renewal of licence**

If a person applies to the CEO for the renewal of a fish processor's licence, the CEO is, subject to sections 136A and 143, to renew the licence.

*[Section 85 amended by No. 5 of 1997 s. 49; No. 28 of 2006 s. 236(1).]*

**86. Licensee not to process or store fish except at place specified in licence**

The holder of a fish processor's licence must not —

(a) process fish for a commercial purpose at a place other than the place specified for that purpose in the licence; or

(b) store fish of a prescribed class that are to be processed under the licence at a place other than —

(i) the place at which the fish are to be processed under the licence; or

(ii) any place specified for that purpose in the licence under section 83(3).

Penalty: In the case of an individual, $20 000 and the penalty provided in section 222 or, in the case of a body corporate, $40 000 and the penalty provided in section 222.

**87. Conditions on fish processor's licence**

(1) It is a condition of a fish processor's licence that the place specified in the licence under section 83(2) must not be modified or altered without the prior written approval of the CEO.

(2) In addition to the condition referred to in subsection (1), a licence is subject to —

(a) any prescribed conditions; and

(b) any conditions imposed by the CEO under this section.

(3) A licence may be granted, renewed or transferred subject to such conditions as the CEO thinks fit and specifies in the licence.

(4) The CEO may, at any time, by notice in writing given to a licence holder, delete or vary conditions of the licence or add new conditions to the licence.

(5) Subsection (4) does not apply to the condition referred to in subsection (1) or prescribed conditions.

*[Section 87 amended by No. 28 of 2006 s. 236(1).]*

**88. Contravening condition of permit or licence, offence**

A person must not contravene a condition of —

(a) a permit under section 80; or

(b) a fish processor's licence.

Penalty: In the case of an individual, $20 000 and the penalty provided in section 222 or, in the case of a body corporate, $40 000 and the penalty provided in section 222.

## 89. Regulations about processing etc. fish

(1) The regulations may —

(a) regulate the processing of fish;

(b) regulate the storage of fish for the purposes of processing;

(c) require persons who process fish or store fish for the purposes of processing to —

(i) keep specified records; and

(ii) submit or lodge specified returns at specified times.

(2) Subsection (1) applies to the processing of fish whether the processing is for a commercial purpose or otherwise.

*[Section 89 amended by No. 43 of 2011 s. 28.]*

# Part 8 — Aquaculture

## Division 1 — Aquaculture licences

*[Heading inserted by No. 43 of 2011 s. 29.]*

### 90. When licence required

Except as provided in section 91, a person must not —

(a) engage in aquaculture; or

(b) if the person is the owner or occupier of private land, sell fish in, or taken from, waters on that land; or

(c) receive or purchase, for the purpose of sale or resale, from the owner or occupier of private land, fish in, or taken from, waters on that land; or

(d) if the person is not the owner or occupier of private land, take fish from waters on that land for the purpose of sale,

unless the person is authorised to do so by an aquaculture licence.

Penalty: In the case of an individual, for a first offence $5 000 and for any subsequent offence $10 000 or, in the case of a body corporate, for a first offence $10 000 and for any subsequent offence $20 000.

### 91. Exceptions to s. 90

Section 90 does not apply to or in relation to any person by reason only of the person —

(a) keeping, breeding, hatching, culturing, harvesting or selling any fish of a prescribed class, for a prescribed purpose or in a prescribed area; or

(b) keeping any fish at a place specified in a fish processor's licence under section 83(2) for the purpose of processing the fish in accordance with the licence; or

(c) keeping any fish in or on any premises for the purpose of serving the fish as meals to the public, or otherwise for the purpose of consumption, in or on those premises; or

(d) selling any fish of a prescribed class in, or taken from, a dam or lake on private land in a prescribed area if —

(i) the person is the owner or occupier of the land; and

(ii) the fish are sold to a person who is authorised by an aquaculture licence to purchase the fish.

*[Section 91 amended by No. 43 of 2011 s. 30.]*

**92A. Applicant for licence to have management and environmental monitoring plan (MEMP)**

(1) Unless the applicant is exempt under subsection (4), an application for an aquaculture licence must be accompanied by a management and environmental monitoring plan (a ***MEMP***) identifying how the applicant will manage any risks to the environment and public safety in relation to the proposed activity for which the licence is sought.

(2) The CEO may require a MEMP to be prepared with reference to the matters that the CEO considers relevant, which may include all or any of these matters —

(a) the species of fish to be farmed;

(b) the quantity of fish to be farmed;

(c) the area of land or waters on or in which the fish are to be farmed;

(d) the class of land or waters on or in which the fish are to be farmed;

(e) the method of farming the fish;

(f) the aquaculture gear to be used;

(g) proposed stocking densities;

(h) the carrying capacity of the area to be used for farming the fish;

(i) water quality (including discharged water quality) and relevant response protocols;

(j) sediment quality and relevant response protocols;

(k) disease testing and relevant response protocols;

(l) maximum nutrient loads and response thresholds;

(m) environmental monitoring and relevant response protocols;

(n) translocation;

(o) biosecurity and quarantine;

(p) the impact on protected species and other aquatic fauna;

(q) the impact on benthic communities;

(r) the audit mechanisms for the MEMP.

(3) Unless the licence holder is exempt under subsection (4), an aquaculture licence that was in force immediately before the day on which the *Fish Resources Management Amendment Act 2011* section 31 commenced is subject to the condition that the licence holder must, within 2 years after that day, prepare a MEMP for the licence and lodge it with the CEO.

(4) The CEO may exempt —

(a) a particular applicant from the requirements of subsection (1); or

(b) a particular licence holder from the requirements of subsection (3),

if the application or licence relates to the aquaculture of prescribed fish on private land.

*[Section 92A inserted by No. 43 of 2011 s. 31.]*

## 92. Licence, grant of

(1) If a person applies to the CEO for the grant of an aquaculture licence and the CEO is satisfied of all of the following —

(a) the person is a fit and proper person to hold such a licence;

(ba) the person has, or will have, appropriate tenure over the land or waters on or in which the activities under the licence are to be conducted;

(b) it is in the better interests of the State and the community to grant the licence;

(c) the activities to be conducted under the licence are unlikely to adversely affect other fish or the aquatic environment;

(d) the activities to be conducted under the licence have been approved by other relevant authorities;

(e) any other matters prescribed for the purposes of this subsection,

the CEO may grant to the person an aquaculture licence.

(2) The licence may authorise the person, or persons acting on that person's behalf, to engage in an activity referred to in section 90.

(3) The CEO may seek the advice of such authority or authorities as the CEO thinks fit in order to determine whether or not subsection (1)(c) is satisfied.

(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* [1]; 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 92 amended by No. 5 of 1997 s. 50; No. 28 of 2006 s. 236(1); No. 43 of 2011 s. 32.]*

## 93. Duration of licence

Except as otherwise provided in this Act or in the licence, an aquaculture licence remains in force for a period of 12 months from the day on which it is granted or renewed.

## 94. Renewal of licence

(1) If a person applies to the CEO for the renewal of an aquaculture licence, the CEO, 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* [1]; 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 94 inserted by No. 5 of 1997 s. 51; amended by No. 28 of 2006 s. 236(1).]*

## 95. Conditions of licences

(1) An aquaculture licence is subject to —

(a) any prescribed conditions; and

(ba) the provisions of any MEMP for the licence; and

(b) any conditions imposed by the CEO under this section.

(2) A licence may be granted, renewed or transferred subject to such conditions as the CEO thinks fit and specifies in the licence.

(3) The CEO may, at any time, by notice in writing given to a licence holder, delete or vary any conditions of the licence or add new conditions to the licence.

(4) Subsection (3) does not apply to prescribed conditions.

*[Section 95 amended by No. 28 of 2006 s. 236(1); No. 43 of 2011 s. 33.]*

## 96. Contravening licence, offence

A person must not contravene a condition of an aquaculture licence.

Penalty: In the case of an individual, for a first offence $5 000 and for any subsequent offence $10 000 or, in the case of a body corporate, for a first offence $10 000 and for any subsequent offence $20 000.

### 97A. Contravening MEMP, offence

A person must not contravene a requirement of a MEMP for an aquaculture licence.

Penalty:

(a) for an individual —

(i) for a first offence, a fine of $5 000;

(ii) for a second or subsequent offence, a fine of $10 000;

(b) for a body corporate —

(i) for a first offence, a fine of $10 000;

(ii) for a second or subsequent offence, a fine of $20 000.

*[Section 97A inserted by No. 43 of 2011 s. 34.]*

### 97B. Temporary aquaculture permits, grant of

(1) The CEO may grant a temporary aquaculture permit to the holder of an aquaculture licence authorising the licence holder to carry on, for the period specified, the activities authorised under the licence in an area (an ***alternative area***) other than the area (the ***original area***) in respect of which the licence is in force.

(2) A temporary aquaculture permit can be granted only in circumstances prescribed for the purposes of this section.

(3) A temporary aquaculture permit cannot be granted for more than 12 months.

(4) A temporary aquaculture permit has the effect, for the period specified, of —

(a) suspending the licence holder's authority to carry on the activities authorised under the licence in the original area; and

(b) authorising the licence holder to carry on those activities in accordance with the permit in the alternative area.

*[Section 97B inserted by No. 43 of 2011 s. 34.]*

## Division 2 — Aquaculture leases

*[Heading inserted by No. 43 of 2011 s. 34.]*

### 97C. Methods by which Minister may offer areas for lease

The Minister may offer areas of land or WA waters for aquaculture leases by means of public auction, public tender, ballot or private treaty.

*[Section 97C inserted by No. 43 of 2011 s. 34.]*

### 97. Leases, grant of

(1) The Minister may grant to any person a lease authorising that person, or persons acting on that person's behalf, to occupy or use an area of land or waters for the purposes of aquaculture.

(2) A lease must specify the species of fish authorised to be kept, bred, hatched or cultured under the lease.

(3) Subject to the provisions of this Act, an aquaculture licence in respect of the leased area vests in the licence holder —

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

(b) the ownership of all fish within the leased area that are kept, bred, hatched, cultured or harvested under the licence.

(4) A lease may be —

(a) granted for an initial term not exceeding 21 years; and

(b) renewed by the Minister, subject to section 98A, from time to time for any further period or periods not exceeding 21 years in each case.

(5A) Before granting or renewing a lease, the Minister must be satisfied of all of the following —

(a) the person is a fit and proper person to hold the lease;

(b) it is in the better interests of the State and the community to grant or renew the lease;

(c) the applicant will make, or has made, effective use of the area of land or water the subject of the lease for aquaculture purposes;

(d) the activities to be, or that are being, conducted under the lease are unlikely to adversely affect other fish or the aquatic environment;

(e) any other matters prescribed for the purposes of this subsection.

(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.

(7A) Without limiting subsection (5) or (6), the lease may be subject to a condition requiring payment of an amount to secure payment of any amount that becomes due under section 101(2)(b).

(7) A lease may be varied —

(a) in the manner provided in the lease; or

(b) by the Minister in the manner prescribed under section 102(c).

(8) The Minister may only grant a lease under this section in respect of an area of land and waters vested in the Minister for that purpose or an area of coastal waters.

(9) If the Minister grants a lease under this section, the Minister is to cause notice of the grant to be published in the *Gazette*.

*[Section 97 amended by No. 5 of 1997 s. 52; No. 2 of 2002 s. 6; No. 43 of 2011 s. 35.]*

## 98. Certain marine reserves, grant of leases in

(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* [1]; 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.

*[Section 98 inserted by No. 5 of 1997 s. 53.]*

**98A. Certain marine reserves, renewal of leases in**

(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* [1]; 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 98A inserted by No. 5 of 1997 s. 53.]*

**99. Aquaculture licence and aquaculture lease, relationship of**

(1) An aquaculture lease does not authorise the use of the leased area without an aquaculture licence.

(2) If an aquaculture licence authorising the activity being carried out in the leased area is cancelled or not renewed the lease is, by virtue of this subsection, terminated.

(3) If an aquaculture lease is terminated or expires an aquaculture licence authorising the activity being carried out in the leased area is, by virtue of this subsection, cancelled.

*[Section 99 amended by No. 2 of 2002 s. 7.]*

**100A. Contravening lease, offences**

(1) The holder of an aquaculture lease commits an offence if the lease holder contravenes a condition of the lease.

(2) The holder of an aquaculture licence in respect of the leased area under an aquaculture lease commits an offence if the licence holder does an act or makes an omission that would have constituted a contravention of a condition of the lease if the act or omission had been done or made by the lease holder.

(3) If an aquaculture licence is held by 2 or more persons and any of those persons commits an offence under subsection (2), each of those persons is taken to have committed the offence.

(4) If the holder of an aquaculture licence in respect of the leased area under an aquaculture lease commits or is taken to have committed an offence under subsection (2) or (3), the lease holder is taken to have also committed the offence.

(5) If —

(a) an aquaculture lease is held by 2 or more persons; and

(b) an offence is committed or is taken to have been committed under subsection (1), (2), (3) or (4) in respect of the lease,

each of the persons referred to in paragraph (a) is taken to have committed the offence.

(6) The penalty for an offence committed under subsection (1) or (2) or arising under subsection (3), (4) or (5) is —

(a) if the offender is an individual —

(i) for a first offence, a fine of $5 000; and

(ii) for a second or subsequent offence, a fine of $10 000;

or

(b) if the offender is a body corporate —

(i) for a first offence, a fine of $10 000; and

(ii) for a second or subsequent offence, a fine of $20 000.

(7) If a person is charged with an offence arising under subsection (3), (4) or (5), it is a defence to prove that —

(a) the act or omission that was or would have been a contravention of a condition of the aquaculture lease was done or made without the consent or connivance of the person; and

(b) the person took all reasonable measures to prevent the act or omission being done or made.

(8) A person may be charged with and convicted of an offence arising under subsection (3), (4) or (5) whether or not another person has been charged with or convicted of an offence under subsection (1) or (2) or arising under subsection (3), (4) or (5).

*[Section 100A inserted by No. 43 of 2011 s. 36.]*

## 100. Termination of lease

(1) The Minister may, by notice in writing given to the lessee, terminate the lease if, in the Minister's opinion, the leased area —

(a) is no longer being used for the purposes for which the lease was granted; or

(b) is being used for purposes other than the purposes for which the lease was granted.

(2) A lease may be terminated on any other grounds provided in the lease and in the manner provided in the lease.

(3) If —

(a) a lease is terminated or expires; and

(b) any structure, equipment or fish has not been removed from the leased area within 3 months from the day on which the lease was terminated or expired,

the structure, equipment or fish is, by virtue of this section, forfeited to the Crown.

## 101. Clean-up and rehabilitation of former leased area

(1) If an aquaculture lease is terminated or expires, the CEO may direct the former lease holder to clean up and rehabilitate the former leased area.

(2) If the former lease holder contravenes the direction —

(a) the CEO may clean up and rehabilitate the area; and

(b) the reasonable cost of any action taken under paragraph (a) is recoverable as a debt due to the State from the former lease holder.

*[Section 101 inserted by No. 43 of 2011 s. 37.]*

## Division 3 — Miscellaneous matters

*[Heading inserted by No. 43 of 2011 s. 38.]*

### 101A. Minister's powers as to aquaculture

(1) The Minister may —

(a) establish or manage aquaculture facilities to be used by other persons for community or commercial purposes; or

(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.

(2A) Subject to subsection (2B), the Minister may declare an area of WA waters (other than inland waters) to be an aquaculture development zone.

(2B) The Minister can only make a declaration under subsection (2A) in respect of waters within the limits of the State or coastal waters —

(a) with the concurrence of the Minister to whom the administration of the *Land Administration Act 1997* is committed; and

(b) after consulting with the Minister to whom the administration of the *Conservation and Land Management Act 1984* is committed.

(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 subsections (1) and (2A) including the power —

(a) to acquire, hold, take on lease, let, sublet, issue licences in respect of and exchange real or personal property; or

(b) to construct or erect buildings or other works and to improve, develop or alter property; or

(c) to make land, buildings and other facilities available for the use of persons engaged in the aquaculture industry; or

(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, culturing or harvesting of pearl oysters.

*[Section 101A inserted by No. 2 of 2002 s. 8(1); amended by No. 43 of 2011 s. 39.]*

## 102. Regulations about aquaculture

The regulations may —

(a) regulate aquaculture;

(b) regulate any activity involving fish that have been produced by means of aquaculture or species of fish that are used for aquaculture;

(ca) prohibit or regulate the collection of fish for broodstock and other aquaculture purposes;

(cb) provide for matters relating to temporary aquaculture permits, including any of these matters —

(i) the imposition and variation by the CEO of conditions to which permits are subject;

(ii) the suspension and cancellation by the CEO of permits;

(iii) review by the State Administrative Tribunal of decisions of the CEO in relation to permits;

(c) provide for matters relating to aquaculture leases, including the subdivision, subletting, amalgamation and transfer of leases by the Minister;

(d) require persons who engage in aquaculture or the purchase or sale of fish that have been produced by means of aquaculture or species of fish that are used for aquaculture to —

(i) keep specified records; and

(ii) submit or lodge specified returns at specified times.

*[Section 102 amended by No. 2 of 2002 s. 9; No. 43 of 2011 s. 40.]*

# Part 9A — Exotic fish

*[Heading inserted by No. 43 of 2011 s. 41.]*

## 103A. Accidental introduction of exotic fish into WA waters, CEO's powers to reduce risk of

(1) In this section —

***intervene***, in relation to fish, includes to inspect, seize and destroy fish.

(2) This section applies in relation to any fish that are being kept for aquaculture purposes in respect of which an aquaculture licence is not required because of section 91(a).

(3) The CEO may direct a fisheries officer to intervene in relation to that fish if, in the circumstances, intervention will or could minimise the risk of the accidental introduction of exotic fish into WA waters.

*[Section 103A inserted by No. 43 of 2011 s. 41.]*

# Part 9 — Noxious fish

## 103. Noxious fish, prescription of

(1) A species of fish may be prescribed to be noxious fish for the purposes of this Act.

(2) A species of fish may be prescribed to be noxious fish under subsection (1) either generally or only in any specified area or areas.

## 104. Noxious fish, offences as to

A person must not, in an area where the fish is prescribed to be a noxious fish —

(a) keep, breed, hatch or culture any noxious fish; or

(b) have in the person's possession any noxious fish; or

(c) consign or convey any noxious fish; or

(d) release any noxious fish into any waters; or

(e) put any noxious fish into a container or receptacle in which it might remain alive.

Penalty: In the case of an individual, for a first offence $10 000 and for any subsequent offence $20 000 or, in the case of a body corporate, for a first offence $20 000 and for any subsequent offence $40 000.

## 105. Noxious fish not to be brought into the State etc.

A person must not bring any fish —

(a) into the State if the fish is prescribed to be a noxious fish in the State or in any area of the State; or

(b) into an area of the State from another area of the State if the fish is prescribed to be a noxious fish in the first-mentioned area.

Penalty: In the case of an individual, for a first offence $10 000 and for any subsequent offence $20 000 or, in the case of a

body corporate, for a first offence $20 000 and for any subsequent offence $40 000.

**106. Fisheries officers' powers as to people with noxious fish**

(1) A fisheries officer may, by notice in writing served on a person, require the person —

(a) to deliver all or any specified noxious fish (whether alive or dead) in the person's possession to the fisheries officer at a specified time and place; or

(b) to destroy all or any specified noxious fish in the person's possession within a specified period and by specified means; or

(c) to produce evidence that a requirement under paragraph (b) has been complied with.

(2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made under subsection (1).

Penalty: In the case of an individual, $10 000 or, in the case of a body corporate, $20 000.

**107. Destroying noxious fish, recovering costs of**

(1) If —

(a) a person refuses or fails to comply with a requirement made under section 106(1); and

(b) as a result of that refusal or failure it is necessary for a fisheries officer to seize and destroy or otherwise dispose of any noxious fish that are the subject of the requirement,

any costs or expenses reasonably incurred by the fisheries officer in seizing and destroying or otherwise disposing of the fish may be recovered from that person as a debt due to the CEO in any court of competent jurisdiction.

(2) Subsection (1) applies whether or not the person liable to pay the costs or expenses has been proceeded against and convicted of an offence under section 106(2).

*[Section 107 amended by No. 28 of 2006 s. 236(1).]*

**108. No compensation payable for incidental damage**

If a fisheries officer destroys any noxious fish no compensation is payable to any person in respect of any loss or damage to other fish or other property arising from the destruction of the noxious fish.

# Part 10 — Designated fishing zones

## 109. Designated fishing zones, prescription of

(1) An area of waters or an area of the seashore up to high water mark and any waters adjacent to that area may be prescribed to be a designated fishing zone for the purposes of this Act if in the opinion of the Governor —

(a) the area contains a fishery of particular social or economic importance; and

(b) the fishery is particularly susceptible to disturbance by human activity.

(2) An area may be prescribed to be a designated fishing zone under subsection (1) at all times or only during any specified period or periods.

## 110. Marine reserve, no designated fishing zone in

(1) An area in a marine nature reserve, a marine park or a marine management area must not be prescribed to be a designated fishing zone.

(2) If a marine nature reserve, a marine park or a marine management area is established in respect of an area that is, or is part of, a designated fishing zone, the area, by virtue of this subsection, ceases to be a designated fishing zone.

*[Section 110 amended by No. 5 of 1997 s. 54.]*

## 111. Signs indicating zones to be erected

The CEO must cause signs to be erected in, or adjacent to, the landward boundary, if any, of a designated fishing zone indicating that the area is a designated fishing zone.

*[Section 111 amended by No. 28 of 2006 s. 236(1).]*

**112. Fisheries officers' powers as to people in designated fishing zones**

(1) A fisheries officer may direct a person to —

(a) immediately leave a designated fishing zone; or

(b) cease any activity in a designated fishing zone; or

(c) remove anything from a designated fishing zone;

if in the fisheries officer's opinion —

(d) the person, activity or thing is hindering, obstructing or interfering with fishing or any other activity, or is disturbing fish, in the zone; or

(e) the activity or thing is likely to hinder, obstruct or interfere with fishing in the zone.

(2) A person must not, without reasonable excuse, refuse or fail to comply with a direction given under subsection (1).

Penalty: In the case of an individual, $10 000 or, in the case of a body corporate, $20 000.

**113. Regulations about designated fishing zones**

The regulations may prohibit or regulate —

(a) entry to a designated fishing zone; or

(b) the taking of fish in a designated fishing zone; or

(c) any other activity in a designated fishing zone.

# Part 11 — Fish habitat protection areas and Abrolhos Islands reserve

## Division 1 — Fish habitat protection areas

### 114. Application of Division to other Acts

Nothing in this Division affects, or is to be taken to derogate from, the operation of the *Mining Act 1978*, the *Offshore Minerals Act 2003*, the *Petroleum and Geothermal Energy Resources Act 1967*, the *Petroleum (Submerged Lands) Act 1982*, any other Act relating to minerals or petroleum, or any government agreement as defined in the *Government Agreements Act 1979*.

*[Section 114 amended by No. 12 of 2003 s. 16; No. 35 of 2007 s. 94.]*

### 115. Fish habitat protection areas, creating

(1) The Minister may, by order published in the *Gazette*, set aside an area of WA waters as a fish habitat protection area.

(2) An area may be set aside as a fish habitat protection area for the following purposes —

(a) the conservation and protection of fish, fish breeding areas, fish fossils or the aquatic eco-system; or

(b) the culture and propagation of fish and experimental purposes related to that culture and propagation; or

(c) the management of fish and activities relating to the appreciation or observation of fish.

(3) An order must —

(a) identify the area of waters that constitutes the fish habitat protection area; and

(b) specify the purpose or purposes for which the area is set aside.

(4) The Minister may, by further order published in the *Gazette*, amend or revoke an order made under this section.

**116. Marine reserve, no fish habitat protection area in**

(1) An area in a marine nature reserve, a marine park or a marine management area must not be set aside under section 115 as a fish habitat protection area.

(2) If —

(a) a marine nature reserve, marine park or marine management area is established in respect of an area that is a fish habitat protection area or part of a fish habitat protection area; and

(b) a management plan for the reserve, park or management area (as the case may be) comes into operation,

the area, by virtue of this subsection, ceases to be a fish habitat protection area or part of a fish habitat protection area.

*[Section 116 amended by No. 5 of 1997 s. 55.]*

**117. Draft plan for fish habitat protection area, Minister to determine**

Before setting aside an area as a fish habitat protection area under section 115 the Minister is to approve a draft plan for the management of the area.

**118. Notice of proposal to create fish habitat protection area**

(1) Not less than 2 months before making an order under section 115 the Minister must cause a notice to be prepared and published in —

(a) a newspaper circulating generally in the State; and

(b) a newspaper circulating, as far as practicable, near the area of the proposed fish habitat protection area.

(2) The notice referred to in subsection (1) must —

(a) state that it is proposed that an area be set aside under section 115 as a fish habitat protection area; and

(b) identify the area; and

(c) specify the purpose or purposes for which the area is to be set aside; and

(d) advise that a draft plan for the area has been approved and specify the places at which a copy of the plan may be obtained; and

(e) invite persons who wish to comment on the proposal to make representations in writing to the Minister.

(3) A person may within 30 days after notice is published under subsection (1) make representations in writing to the Minister concerning the proposal.

(4) The Minister is to consider any representations made under subsection (3).

**119. Control and management of fish habitat protection areas**

(1) The Minister may, by notice published in the *Gazette*, vest the control and management of a fish habitat protection area in a body corporate which is to control and manage the area subject to this Act.

(2) When vesting the control and management of a fish habitat protection area in a body corporate under subsection (1), the Minister may impose conditions relating to the control and management of the area.

(3) A notice referred to in subsection (1) must specify —

(a) the fish habitat protection area to which the notice relates; and

(b) the body corporate in whom the control and management of the fish habitat protection area is vested; and

(c) the date on which the vesting takes effect and the period (if any) for which the control and management of the fish habitat protection area is vested; and

(d) the purpose for which the control and management of the fish habitat protection area is vested; and

(e) any conditions imposed in relation to the vesting.

(4) The Minister may, by further notice published in the *Gazette*, amend or revoke a notice made under this section.

(5) The Minister may by notice in writing given to a body corporate in whom the control and management of a fish habitat protection area is vested, require that body —

(a) to do, or cause to be done, anything that the Minister considers essential; or

(b) to cease to do, or to cause the cessation of, anything that the Minister considers to be prejudicial,

to the purpose or purposes for which the fish habitat protection area was set aside.

(6) A body corporate must comply with a notice given under subsection (5).

**120. Regulations about fish habitat protection areas**

(1) The regulations may provide for any matter necessary for the protection or management of a fish habitat protection area.

(2) Without limiting subsection (1), the regulations may —

(a) prohibit or regulate entry to a fish habitat protection area by persons, boats, aircraft or other things;

(b) prohibit or regulate aquatic eco-tourism in a fish habitat protection area or any other activity that may affect the fish habitat protection area;

(ca) prohibit or regulate fishing in a fish habitat protection area;

(c) prohibit or regulate moorings, jetties, rafts and other constructions in a fish habitat protection area;

(d) prescribe fees or charges for admission to a fish habitat protection area or any part of a fish habitat protection area and for the use of any land or facilities in a fish habitat protection area, and provide for the payment and method of collection of the fees or charges.

*[Section 120 amended by No. 43 of 2011 s. 42.]*

## Division 2 — Abrolhos Islands reserve

### 121. Regulations about reserve

(1) The regulations may provide for any matter necessary for the protection or management of the Abrolhos Islands reserve.

(2) Without limiting subsection (1), the regulations may —

(a) provide for the use and the manner of use of land and facilities in the reserve;

(b) provide for the protection and conservation of fauna and flora (whether aquatic or otherwise) in the reserve;

(c) prohibit or regulate entry to the reserve by persons, vehicles, aircraft and boats and the bringing into the reserve of animals, plants or other things;

(d) regulate the conduct of persons in or on the reserve;

(e) regulate the use of vehicles on the reserve, including provisions relating to speed, manner of driving, routes, entrances and exits, one-way traffic, noise, parking or standing;

(f) regulate the use of boats in waters adjacent to, or in, the reserve and the use of the foreshore in the reserve, including provisions as to moorings and safety procedures;

(g) regulate activities in waters adjacent to, or in, the reserve;

(h) regulate camping and the use of caravans in the reserve;

(i) regulate the use of aircraft in the reserve;

(j) prohibit or regulate the use of firearms and devices or means used for the taking of fauna or flora;

(k) provide for the use, safety and preservation of buildings, structures, fixtures, fittings and chattels;

(l) prohibit or regulate the deposit or incineration of rubbish and litter;

(m) prohibit or regulate the lighting of fires in the reserve;

(n) prohibit or regulate the erection of buildings on the land;

(o) provide for the collection and use of potable water and the disposal of waste water;

(p) provide for the collection, removal, disposal or incineration of any rubbish, sewage, litter, building or structure in the reserve and for the recovery of the cost of that collection, removal, disposal or incineration;

(q) provide for the removal from the reserve of any person who has contravened any regulation or of any vehicle or animal;

(r) prescribe fees or charges for admission to the reserve or any part of the reserve and for the use of any land or facilities on the reserve, and provide for the payment and method of collection of the fees or charges.

## 122. Control and management of reserve

(1) The Minister may, by notice published in the *Gazette*, vest the control and management of the Abrolhos Islands reserve in a body corporate which is to control and manage the reserve subject to this Act.

(2) When vesting the control and management of the reserve in a body corporate under subsection (1), the Minister may impose conditions relating to the control and management of the reserve.

(3) A notice referred to in subsection (1) must specify —

(a) the body corporate in whom the control and management of the reserve is vested; and

(b) the date on which the vesting takes effect and the period (if any) for which the control and management of the reserve is vested; and

(c) the purpose for which the control and management of the reserve is vested; and

(d) any conditions imposed in relation to the vesting.

(4) The Minister may, by further notice published in the *Gazette*, amend or revoke a notice made under this section.

(5) The Minister may by notice in writing given to a body corporate in whom the control and management of the reserve is vested, require that body —

(a) to do, or cause to be done, anything that the Minister considers essential; or

(b) to cease to do, or to cause the cessation of, anything that the Minister considers to be prejudicial,

to the purpose or purposes for which the reserve was constituted.

(6) A body corporate must comply with a notice given under subsection (5).

### 123. *Parks and Reserves Act 1895*, application of to reserve

For the purposes of this Act, sections 7A(2) and (3), 7C, 12A and 12B of the *Parks and Reserves Act 1895* apply to and in relation to the Abrolhos Islands reserve as if a reference in those sections to —

(a) an authorised person were a reference to a fisheries officer; and

(b) a by-law were a reference to a regulation referred to in section 121; and

(c) a Board were a reference to the Governor, the Minister, the CEO or a fisheries officer (as the context requires); and

(d) a park or reserve were a reference to the Abrolhos Islands reserve.

*[Section 123 amended by No. 28 of 2006 s. 236(1).]*

# Part 12 — Register

## 124. Registrar

A person is to be appointed under Part 3 of the *Public Sector Management Act 1994* to be the Registrar.

## 125. Register of authorisations etc.

(1) The Registrar is to keep a register of authorisations, temporary aquaculture permits, aquaculture leases and exemptions.

(2) The register may be kept in such form or forms as the Registrar thinks fit.

(3) The register must be available for public inspection, subject to payment of the prescribed fee, if any, during prescribed hours and at a prescribed place.

(4) A person may, upon application to the Registrar and payment of the prescribed fee, if any, obtain a copy of an entry in, or an extract from, the register.

(5) The Registrar may, subject to payment of the prescribed fee, if any, allow a person access to the register in electronic form.

(6) Despite subsections (3), (4) and (5), details of recreational fishing licences must not be made available to the public.

*[Section 125 amended by No. 2 of 2002 s. 10; No. 43 of 2011 s. 43.]*

## 126. Information to be included in register

The register must set out the following details in respect of each authorisation, temporary aquaculture permit, aquaculture lease or exemption —

(a) the nature of the authorisation, temporary aquaculture permit, aquaculture lease or exemption; and

(b) the name and business address of the person who holds the authorisation, temporary aquaculture permit, aquaculture lease or exemption; and

(c) details relating to any security interest in the authorisation or aquaculture lease that the Registrar is required to note on the register under section 128; and

(d) details of any conviction required to be recorded on the register in respect of the authorisation under section 224; and

(e) such other details, if any, as are prescribed.

*[Section 126 amended by No. 2 of 2002 s. 11; No. 8 of 2009 s. 60; No. 43 of 2011 s. 44.]*

**127. Application to have security interest in authorisation etc. noted**

The holder of an authorisation or aquaculture lease may apply to the Registrar in a form approved by the Registrar to have noted on the register that a specified person has a security interest in the authorisation or aquaculture lease.

*[Section 127 amended by No. 2 of 2002 s. 12.]*

**128. Notation of security interest**

(1) The Registrar must, on application being made under section 127 and payment of the prescribed fee, if any, make a notation on the register that the person specified in the application has a security interest in the relevant authorisation or aquaculture lease.

(2) The notation must set out the following details in respect of the security interest —

(a) a general description of the nature of the security interest;

(b) the name and business address of the person who has the security interest;

(c) such other details, if any, as are prescribed.

*[Section 128 amended by No. 2 of 2002 s. 13.]*

## 129. Irrelevant matters for purpose of s. 128

(1) The Registrar is not to be concerned with —

(a) the nature of any security interest that is the subject of an application under section 127; or

(b) whether or not the person specified in the application as having the security interest actually has that interest.

(2) A notation on the register that a person has a security interest in an authorisation or aquaculture lease does not give the interest any force that it would not have had if this Part had not been enacted.

*[Section 129 amended by No. 2 of 2002 s. 14.]*

## 130. Security holder noted in register to be notified of certain events affecting security

If the register contains a notation made under section 128 that a person has a security interest in an authorisation or aquaculture lease and —

(a) the holder of the authorisation or aquaculture lease, or a person acting for or on behalf of the holder, is convicted of a prescribed offence against this Act; or

(b) application is made to the CEO to vary the authorisation or to transfer the authorisation or the whole or part of an entitlement under the authorisation; or

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

(c) a fisheries adjustment scheme, as defined in the *Fisheries Adjustment Schemes Act 1987*, is established in respect of authorisations of the class to which the authorisation belongs; or

(d) the CEO proposes to cancel or suspend, or not to renew, the authorisation or the Minister proposes to terminate the aquaculture lease; or

(e) the holder of the authorisation or aquaculture lease gives notice of the holder's intention to surrender the

authorisation or terminate the aquaculture lease, as is relevant to the case,

the Registrar must as soon as practicable give or cause to be given to the person specified in the notation written details of that fact.

*[Section 130 amended by No. 2 of 2002 s. 15; No. 28 of 2006 s. 236(1); No. 43 of 2011 s. 45.]*

**131. Removing or varying notation of security interest**

(1) If the register contains a notation that a person has a security interest in an authorisation or aquaculture lease, the holder of the authorisation or aquaculture lease may apply to the Registrar in a form approved by the Registrar to —

(a) remove the notation from the register; or

(b) vary any details relating to the security interest.

(2) If application is made under subsection (1), the Registrar is to give notice of the application to the security holder.

(3) The Registrar must not remove the notation of the security interest from the register or vary the details in the register (as the case requires) before the expiration of 21 days from the day on which notice is given under subsection (2).

(4) The Registrar may remove the notation of the security interest from the register or vary the details in the register before the period referred to in subsection (3) if the Registrar has the written consent of the holder of the authorisation or aquaculture lease and the security holder to do so.

(5) The Registrar is not to be concerned with the reasons for the application.

*[Section 131 amended by No. 2 of 2002 s. 16.]*

### 132. Register may be amended

The Registrar may amend, add to and correct the register in such manner as is necessary to make the register an accurate record of the details it contains.

### 133. No compensation payable because of Registrar's acts

No compensation is payable in respect of anything done or omitted to be done in good faith by the Registrar or an officer of the Department in the performance or purported performance of any duty, or the exercise or purported exercise of any power, under this Part.

### 134. Regulations about register

The regulations may —

(a) prescribe fees and charges payable in respect of anything done under this Part;

(b) provide for any other matter relating to the register.

# Part 13 — General provisions relating to authorisations

## 135. Applications for grant etc. of authorisation

(1) An application for the grant, renewal or variation of an authorisation or for the transfer of an authorisation or the whole or part of an entitlement under an authorisation (an ***application***) must be —

(a) made to the CEO in a form approved for that purpose by the CEO; and

(b) accompanied by the fee (if any) prescribed, or specified in the relevant management plan, for such an application; and

(c) accompanied by any information that the CEO reasonably requires for a proper consideration of the application.

(2) An applicant must provide the CEO with any further information that the CEO by notice in writing requires the applicant to provide in respect of an application.

(3) An applicant must, if required to do so by the CEO, verify by statutory declaration any information contained in, or given in connection with, an application.

(4) The CEO may refuse to consider an application if the application does not conform to a provision of this section or if the applicant has failed to comply with a provision of this section.

*[Section 135 amended by No. 28 of 2006 s. 236(1); No. 43 of 2011 s. 46.]*

## 136. Grant of authorisations not as of right

A person is not entitled to the grant of an authorisation as of right.

## 136A. Marine reserves, grant and renewal of authorisations for areas in

(1) An authorisation must not be issued or renewed if it would authorise 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 authorisation must not be issued or renewed if it would authorise 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* [1]; 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 authorisation relates to a particular area (the ***authorised area***) and a part of the authorised 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 authorisation from being renewed in respect of the remainder of the authorised area.

*[Section 136A inserted by No. 5 of 1997 s. 56.]*

### 137. Effect of authorisations

(1) An authorisation is granted and has effect subject to the provisions of this Act and does not authorise the doing of anything in contravention of any provision of this Act.

(2) The authority conferred by an authorisation is of no effect at any time when any of its conditions are being contravened or it is suspended.

### 138. Form of authorisations

(1) An authorisation is to be in a form approved by the CEO.

(2) Without limiting subsection (1), an authorisation may be issued as a discrete instrument or may be endorsed on another authorisation held by the person to whom the authorisation is granted.

*[Section 138 amended by No. 28 of 2006 s. 236(1).]*

### 139. Renewal after expiry

(1) If a person applies to the CEO for the renewal of an authorisation within 60 days after the day on which it has expired, the authorisation may be renewed despite the fact that it has expired.

(2) If an authorisation is renewed as provided under subsection (1), the authorisation must be taken —

(a) to have been renewed from the day on which the renewal was effected; and

(b) to have been of no effect during the period from the day on which it expired until the day on which it was renewed; and

(c) to be renewed for a period ending on the day on which the authorisation would otherwise have expired if it had been renewed from the previous day of expiry.

(3) The regulations may prescribe, or a management plan may specify, an additional fee payable by way of penalty if an application is made or authorisation renewed under subsection (1).

*[Section 139 amended by No. 28 of 2006 s. 236(1); No. 43 of 2011 s. 47.]*

## 140. Transfer of authorisations

(1) This section applies if —

(a) the holder of an authorisation (other than a commercial or recreational fishing licence) applies to the CEO for the transfer of the authorisation to another person; or

(b) the holder of an authorisation applies to the CEO for the transfer of part of the entitlement under the authorisation to another authorisation.

(2A) Subject to subsection (2), the CEO must transfer the authorisation or the part of the entitlement.

(2) The CEO may refuse to transfer an authorisation or a part of an entitlement —

(a) if in the CEO's opinion the proposed transferee —

(i) is not a fit and proper person to hold the authorisation; or

(ii) does not satisfy guidelines under section 247 relating to foreign persons holding, controlling or having an interest in authorisations;

or

(ba) if, in the CEO's opinion, the applicant, or a person acting for or on behalf of the applicant, may be liable to prosecution for an offence that is prescribed for the purposes of section 224; or

(bb) if the authorisation is suspended under section 224; or

(b) on any other ground specified in a relevant management plan or prescribed in the regulations.

(3) If the CEO receives an application referred to in subsection (1), the CEO must, as soon as practicable after receiving the application, notify the Registrar of the application.

(4) If the Registrar gives written details of the application under section 130 to a security holder —

(a) the Registrar must notify the CEO of that fact; and

(b) the CEO must not transfer the authorisation or the part of the entitlement before the expiration of 21 days from the day on which the details were given.

(5) Despite subsection (4), the CEO may transfer the authorisation or the part of the entitlement before the expiration of the period specified in that subsection if the CEO has the written consent of the holder of the authorisation and the security holder to do so.

*[Section 140 amended by No. 28 of 2006 s. 236; No. 37 of 2009 s. 16; No. 43 of 2011 s. 48.]*

**141. Temporary transfer of entitlements under authorisations**

(1) If —

(a) the holder of an authorisation applies to the CEO for the transfer of the whole or part of an entitlement under the authorisation for a limited period; and

(b) the relevant management plan or the regulations authorise the transfer,

the CEO may transfer the whole or part of the entitlement to another authorisation for a specified period.

(2) Sections 140(3), (4) and (5) apply with appropriate changes to the transfer of the whole or part of an entitlement referred to in subsection (1).

*[Section 141 amended by No. 28 of 2006 s. 236(1); No. 43 of 2011 s. 49.]*

## 142. Varying authorisations

(1) The CEO may vary an authorisation if —

(a) the holder of the authorisation applies to the CEO for the variation; or

(b) it is necessary to correct any error in the authorisation; or

(c) it is necessary to give effect to the provisions of this Act.

(2) Subject to subsection (3), if a person applies to the CEO for the variation of an authorisation the person is not entitled to the variation as of right.

(3) If —

(a) a management plan specifies criteria for the variation of an authorisation; and

(b) a person applies to the CEO for the variation of such an authorisation; and

(c) the CEO is satisfied that the criteria have been satisfied,

the CEO is to vary the authorisation.

(4) If the CEO receives an application to vary an authorisation, the CEO must, as soon as practicable after receiving the application, notify the Registrar of the application.

(5) If the Registrar gives written details under section 130 to a security holder of an application to vary an authorisation —

(a) the Registrar must notify the CEO of that fact; and

(b) the CEO must not vary the authorisation before the expiration of 21 days from the day on which the details were given.

(6) Despite subsection (5), the CEO may vary the authorisation before the expiration of the period specified in that subsection if the CEO has the written consent of the holder of the authorisation and the security holder to do so.

*[Section 142 amended by No. 28 of 2006 s. 236(1).]*

## 143. Cancelling, suspending and non-renewal of authorisations

(1) The CEO may, by notice in writing given to the holder of an authorisation, cancel, suspend for any period, or refuse to renew the authorisation —

(a) if the holder has been convicted of an offence against —

(i) this Act; or

(ii) a written law other than this Act if the offence relates to the fishing, aquaculture, fishing tour or aquatic eco-tourism industry; or

(iii) a law of the Commonwealth, or of another State or Territory, relating to the management or regulation of fish resources;

or

(b) if a condition of the authorisation has been or is being contravened; or

(ca) if the authorisation is an aquaculture licence and, in the CEO's opinion —

(i) a requirement of any MEMP for the authorisation has been or is being contravened; and

(ii) as a consequence of the contravention —

(I) pollution or environmental harm, as those terms are defined in the *Environmental Protection Act 1986* section 3A, has been or is being caused; or

(II) there is a risk that such pollution or environmental harm will be caused;

or

(cb) if the authorisation is an aquaculture licence and the holder no longer has appropriate tenure over the area of the licence; or

(cc) if the CEO is satisfied that the holder is no longer a fit and proper person to hold the authorisation; or

(c) if the authorisation was obtained by fraud or misrepresentation; or

(d) if the holder has not used the authorisation in the previous 2 years; or

(e) if the holder has —

(i) failed to keep any record, or to submit or lodge any return, that is required to be kept or submitted or lodged under this Act; or

(ii) made an entry or statement in such a record or return that is false or misleading in a material particular;

or

(f) if the holder does not satisfy guidelines under section 247 relating to foreign persons holding, controlling or having an interest in an authorisation; or

(g) if any fee, charge or levy payable in respect of the authorisation, or any other amount payable under this Act by the holder, has not been paid when it becomes due; or

(h) on any other ground specified in a relevant management plan.

(2) The fact that an authorisation has not been cancelled or suspended under section 223 or 224 is not to be taken as preventing the CEO from cancelling, suspending or refusing to renew the authorisation under this section.

*[Section 143 amended by No. 28 of 2006 s. 236(1); No. 43 of 2011 s. 50.]*

## 144. Voluntary surrender of authorisations

(1) The holder of an authorisation may at any time by notice in writing given to the CEO give notice of the holder's intention to surrender the authorisation.

(2) The authorisation ceases to have effect 28 days after the day on which notice is given to the CEO under subsection (1).

(3) Subsection (2) does not apply if, within the period referred to in that subsection, the holder by further notice in writing given to the CEO withdraws the notice referred to in subsection (1).

*[Section 144 amended by No. 28 of 2006 s. 236(1).]*

**145. Return of authorisations, CEO may require**

(1) The CEO may, by notice in writing given to the holder of an authorisation, require the person to return the authorisation to the CEO within a specified period if —

(a) the authorisation has been cancelled or suspended or has not been renewed; or

(b) the person has surrendered the authorisation; or

(c) it is necessary to record or endorse anything on the authorisation or to vary the authorisation.

(2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made under subsection (1).

Penalty: In the case of an individual, $5 000 or, in the case of a body corporate, $10 000.

*[Section 145 amended by No. 28 of 2006 s. 236(1).]*

**146A. Death of individual who holds authorisation**

(1) This section applies in relation to an authorisation other than a commercial or recreational fishing licence.

(2) On the death of an individual who, immediately before death, held an authorisation exclusively or as a tenant in common, the authorisation or the deceased's share in the authorisation (as the case requires) is taken to be held by the deceased's personal representative.

(3) On the death of an individual who, immediately before death, held an authorisation as a joint tenant, the authorisation is taken to be held by the surviving joint tenants.

(4) A transfer made or purportedly made under section 140 in respect of an authorisation, or a share in an authorisation, held by an individual who died before the commencement of the *Fish Resources Management Amendment Act 2011* section 51 is, and is taken always to have been, as valid as it would have been if the amendments effected by that section had been in effect at the time of the individual's death.

*[Section 146A inserted by No. 43 of 2011 s. 51.]*

# Part 14 — Right to object or apply for review

*[Heading inserted by No. 55 of 2004 s. 382.]*

*[Division heading deleted by No. 74 of 2003 s. 56(5).]*

## 146. Term used: affected person

In this Part —

***affected person*** means —

(a) in relation to a decision referred to in section 147(1)(a), the person who applied for the authorisation; and

(b) in relation to a decision referred to in section 147(1)(e), the holder of the authorisation and the proposed transferee; and

(c) in relation to a decision referred to in section 147(1)(b), (c) or (d), the holder of the authorisation; and

(d) in relation to a decision referred to in section 148(1)(a) or (b), any person who —

(i) holds a fish processor's licence; and

(ii) is likely to be significantly affected by the decision;

and

(e) in relation to a decision referred to in section 148(1)(c), any person who —

(i) holds an aquaculture licence; and

(ii) is likely to be significantly affected by the decision.

*[Section 146 amended by No. 74 of 2003 s. 56(6); No. 55 of 2004 s. 383.]*

## 147. CEO to notify persons of certain decisions

(1) Before giving effect to a decision to —

(a) refuse to grant an authorisation; or

(b) give a notice varying any conditions of, or adding new conditions to, an authorisation; or

(c) cancel, suspend or refuse to renew, an authorisation under section 143; or

(d) refuse to vary an authorisation after a person has applied for the variation; or

(e) refuse to transfer an authorisation, or the whole or part of an entitlement under an authorisation, after a person has applied for the transfer,

the CEO must —

(f) give to each affected person notice in writing, or in such other manner as is prescribed, of the decision; and

(g) allow sufficient time for the person to make an application under this Division for a review of the decision and the application to be determined.

(2) A notice under subsection (1)(f) must —

(a) give details of the decision and the reasons for it; and

(b) state that the affected person may, under section 149, apply for a review of the decision.

*[Section 147 amended by No. 74 of 2003 s. 56(6); No. 55 of 2004 s. 384; No. 28 of 2006 s. 236(1); No. 43 of 2011 s. 52.]*

## 148. CEO to publish notice of certain decisions

(1) Before giving effect to a decision to grant, vary or transfer —

(a) a permit referred to in section 80; or

(b) a fish processor's licence; or

(c) an aquaculture licence,

the CEO must —

(d) cause notice of the decision to be published in a newspaper, or in a fishing magazine, circulating generally in the State or in such other manner as is prescribed; and

(e) allow sufficient time for any affected person to make an application under this Division for a review of the decision and the application to be determined.

(2) A notice under subsection (1)(d) must —

(a) give details of the decision; and

(b) state that an affected person may, under section 149, apply for a review of the decision.

*[Section 148 amended by No. 74 of 2003 s. 56(6); No. 55 of 2004 s. 385; No. 28 of 2006 s. 236(1).]*

**149. Review by SAT of certain decisions**

(1) An affected person may apply to the State Administrative Tribunal for a review of a decision referred to in section 147(1) or section 148(1).

(2) An affected person applying under subsection (1) for a review is required to give the CEO a copy of the application on the day on which it is lodged with the State Administrative Tribunal.

*[Section 149 inserted by No. 55 of 2004 s. 386; amended by No. 28 of 2006 s. 236(1).]*

**150. Authorisation continues pending review decision about renewal**

If —

(a) a person has applied for the renewal of an authorisation; and

(b) the CEO has decided not to renew the authorisation; and

(c) the person has applied under section 149 for a review of the decision,

the authorisation is taken to continue in force until the application is determined unless the State Administrative Tribunal orders otherwise.

*[Section 150 amended by No. 55 of 2004 s. 387; No. 28 of 2006 s. 236(1); No. 43 of 2011 s. 53.]*

### 151. CEO to give notice of when decision listed in s. 147(1) has effect

(1) Upon giving effect to a decision referred to in section 147(1), the CEO is to give each person who was given notice under section 147(1) of the decision notice that effect has been given to the decision.

(2) The notice is to be given in writing or in such other manner as is prescribed.

(3) Upon giving effect to a decision notice of which was published under section 148(1), the CEO is to cause notice to be published, in the same manner, that effect has been given to the decision, specifying when it was given effect.

*[Section 151 inserted by No. 55 of 2004 s. 388; amended by No. 28 of 2006 s. 236(1).]*

### 152. SAT to give notice of decision on review

(1) Upon determining an application under section 149 for a review of a decision referred to in section 147(1) (the ***original decision***), the State Administrative Tribunal is to give notice of its decision, and of the reasons for its decision, in writing or in such other manner as is prescribed, to each person who was given notice under section 147(1) of the original decision.

(2) Upon determining an application under section 149 for a review of a decision referred to in section 148(1) (the ***original decision***), the State Administrative Tribunal is to cause notice of its decision, and of the reasons for its decision, to be published in the manner in which notice of the original decision was published under section 148(1)(d).

*[Section 152 inserted by No. 55 of 2004 s. 388.]*

# Part 15A — Fish trafficking

*[Heading inserted by No. 43 of 2011 s. 54.]*

## 153. Terms used

In this Part —

***commercial quantity***, of fish, means —

(a) a quantity of fish that exceeds the quantity prescribed by or determined under the regulations; or

(b) a quantity of fish the value of which exceeds the value prescribed by or determined under the regulations;

***priority fish*** means —

(a) fish of a species that is declared by the regulations to be a priority species; or

(b) fish belonging to a group of 2 or more species that is declared by the regulations to be a priority group of species;

***traffic***, in fish, has the meaning given in section 154.

*[Section 153 inserted by No. 43 of 2011 s. 54.]*

## 154. Trafficking in fish defined

(1) A person traffics in fish if the person deals with fish in any of these ways —

(a) takes fish;

(b) is in possession or control of fish;

(c) sells or purchases fish;

(d) delivers fish to, or receives fish from, another person;

(e) processes fish;

(f) transports fish;

(g) conceals fish or any dealing with fish referred to in paragraphs (a) to (f);

(h) engages in conduct preparatory to any dealing with fish referred to in paragraphs (a) to (g).

(2) A person traffics in fish if the person does any of these things in relation to any dealing with fish referred to in subsection (1) —

(a) controls, directs or supervises the dealing;

(b) provides facilities, finance or any other thing for the purpose of enabling or facilitating the dealing;

(c) enters into an agreement in relation to the dealing;

(d) is knowingly concerned otherwise in the dealing.

*[Section 154 inserted by No. 43 of 2011 s. 54.]*

**155. Trafficking in commercial quantity of priority fish, offence**

(1) A person must not traffic in a commercial quantity of priority fish unless the person is authorised under this Act to do so.

(2) A person who contravenes subsection (1) commits a crime.

Penalty for an offence under subsection (2):

(a) for an individual —

(i) for a first offence, a fine of $400 000 and imprisonment for 4 years;

(ii) for a second or subsequent offence, imprisonment for 10 years;

(b) for a body corporate, a fine of $800 000.

Summary conviction penalty for an offence under subsection (2):

(a) for an individual —

(i) for a first offence, a fine of $200 000 and imprisonment for 2 years;

(ii) for a second or subsequent offence, imprisonment for 4 years;

(b) for a body corporate, a fine of $400 000.

*[Section 155 inserted by No. 43 of 2011 s. 54.]*

## 156. Regulations about trafficking in fish

The regulations may make provision in relation to —

(a) methods for determining commercial quantities of priority fish; or

(b) the exemption of persons from the application of section 155.

*[Section 156 inserted by No. 43 of 2011 s. 54.]*

*[**157-162.** Deleted by No. 55 of 2004 s. 389.]*

*[Division 2 (s. 163-169) deleted by No. 74 of 2003 s. 56(7).]*

# Part 15 — Miscellaneous offences

## 170. Explosives and noxious substances not to be used for fishing

(1) A person must not, without lawful excuse, use or attempt to use, any explosive or noxious substance in WA waters if the use of the explosive or noxious substance can reasonably be expected to result in the taking of any fish.

Penalty: In the case of an individual, $25 000 and imprisonment for 12 months.
In the case of a body corporate, $50 000.

(2) If a court convicts a person of an offence against subsection (1), the court may, in addition to any penalty imposed under that subsection, order the person to pay compensation for any damage or loss caused by the offence to any person.

*[Section 170 amended by No. 50 of 2003 s. 63(3).]*

## 171. Preventing etc. lawful fishing activities, offence

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

(a) prevent a person from lawfully fishing or from lawfully engaging in aquaculture; or

(b) hinder a person who is lawfully fishing or lawfully engaging in aquaculture; or

(c) place or leave anything in a recognized net fishing area that obstructs the use of fishing nets.

Penalty: In the case of an individual, $10 000.
In the case of a body corporate, $20 000.

(2) If a court convicts a person of an offence against subsection (1), the court may, in addition to any penalty imposed under that subsection, order the person to pay compensation for any damage or loss caused by the offence to any person.

(3) In this section, ***recognized net fishing area*** means an area of waters that is used regularly or intermittently for net fishing.

*[Section 171 amended by No. 2 of 2002 s. 17; No. 50 of 2003 s. 63(4).]*

**172. Removing fish from etc. fishing gear etc. without authority, offence**

A person must not —

(a) remove fish from any fishing or aquaculture gear; or

(b) interfere with any fishing or aquaculture gear,

unless the person is the owner of the gear or is acting with the authority of the owner or has some other lawful excuse.

Penalty: In the case of an individual, $25 000 and imprisonment for 12 months.

In the case of a body corporate, $50 000.

*[Section 172 amended by No. 2 of 2002 s. 18; No. 50 of 2003 s. 63(5); No. 43 of 2011 s. 55.]*

**173. Purchase or sale of fish taken unlawfully, offence**

(1) A person must not purchase or sell any fish taken in contravention of this Act.

Penalty: In the case of an individual, $20 000 and imprisonment for 12 months and the penalty provided in section 222 or, in the case of a body corporate, $40 000 and the penalty provided in section 222.

(2) It is a defence in proceedings for an offence against subsection (1) for the person charged to prove —

(a) that at the time of the alleged offence the person did not know, and could not reasonably be expected to have known, that the fish had been taken in contravention of this Act; and

(b) if the fish were purchased for a commercial purpose, that the fish were purchased —

(i) from a person whose usual business was the selling of such fish; and

(ii) in the ordinary course of that business.

### 174. Foreign boat not to be used for fishing etc., offence

(1) A person must not, in WA waters —

(a) use a foreign boat for fishing; or

(b) use a foreign boat for processing, storing or carrying fish that have been taken by the use of that boat or another boat.

Penalty: In the case of an individual, $150 000 and imprisonment for 4 years or, in the case of a body corporate, $300 000.

(2) It is a defence in proceedings for an offence against subsection (1) for the person charged to prove that, at the time of the alleged offence, there was in force an authorisation authorising the use of the boat for the relevant purpose in the area where the offence is alleged to have been committed.

*[Section 174 amended by No. 28 of 2007 s. 4.]*

### 175. Foreign boat equipped with fishing gear, possession of is offence

(1) A person must not, in WA waters, have in the person's possession or in the person's charge a foreign boat equipped with fishing gear.

Penalty: In the case of an individual, $150 000 and imprisonment for 4 years or, in the case of a body corporate, $300 000.

(2) It is a defence in proceedings for an offence against subsection (1) for the person charged to prove that, at the time of the alleged offence —

(a) there was in force an authorisation authorising the use of the boat for fishing in the area where the offence is alleged to have been committed; or

(b) the boat's fishing gear was stored and secured and the boat was travelling by the shortest practicable route —

(i) to or from a port in the State; or

(ii) from a point outside WA waters to another point outside those waters.

*[Section 175 amended by No. 28 of 2007 s. 5.]*

**175A. Mandatory maximum sentences for individuals convicted of third or subsequent offences under s. 174 or 175**

(1) If an individual is convicted of —

(a) a third or subsequent offence against section 174(1); or

(b) a third or subsequent offence against section 175(1),

the court sentencing the offender must, despite any other written law but subject to the *Young Offenders Act 1994* section 46(5a), impose both —

(c) the maximum fine; and

(d) the maximum term of imprisonment,

that may be imposed by a court under section 174(1) or 175(1), as the case requires.

(2) For the purpose of determining whether an individual has been convicted of —

(a) a third or subsequent offence against section 174(1), a conviction of an offence against section 175(1) is taken to be a conviction of an offence against section 174(1); or

(b) a third or subsequent offence against section 175(1), a conviction of an offence against section 174(1) is taken to be a conviction of an offence against section 175(1).

*[Section 175A inserted by No. 28 of 2007 s. 6.]*

## 176. False statements in applications

A person must not make any statement or provide any information in, or in connection with, an application under this Act that —

(a) the person knows is false or misleading in a material particular; or

(b) omits anything without which the statement or information is, to the person's knowledge, misleading in a material particular.

Penalty: In the case of an individual, $25 000 and imprisonment for 12 months.

In the case of a body corporate, $50 000.

*[Section 176 amended by No. 50 of 2003 s. 63(5).]*

# Part 16A — Emergency powers to deal with biological threats

*[Heading inserted by No. 43 of 2011 s. 56.]*

## 177A. Application of Part

This Part applies despite the *Biosecurity and Agriculture Management Act 2007*.

*[Section 177A inserted by No. 43 of 2011 s. 56.]*

## 177B. Terms used

In this Part —

***biological threat*** means a serious and imminent threat posed by an organism;

***organism*** has the meaning given in the *Biosecurity and Agriculture Management Act 2007* section 6.

*[Section 177B inserted by No. 43 of 2011 s. 56.]*

## 177C. Biological threats, CEO's powers to deal with

(1) This section applies if the CEO considers that it is necessary to exercise powers under this section because of a biological threat to fish or other aquatic resources or to their habitats.

(2) The CEO may take, or may direct the person whom the CEO considers responsible for causing the biological threat to take, the steps that the CEO considers appropriate —

(a) to prevent the organism from entering an area of WA waters; or

(b) to prevent or control the spread of the organism in an area of WA waters; or

(c) to eradicate or remove the organism from an area of WA waters.

(3) If a person contravenes a direction given under subsection (2) —

(a) the CEO may take the steps specified in the direction; and

(b) the reasonable cost of any action taken under paragraph (a) is recoverable as a debt due to the State from the person.

*[Section 177C inserted by No. 43 of 2011 s. 56.]*

# Part 16 — Fisheries officers

**177. Certificate of appointment, issue of etc.**

(1) The CEO is to issue a certificate of appointment to each fisheries officer.

(2) A certificate of appointment is to be in a form approved by the CEO and is to certify that the person has been appointed as a fisheries officer.

(3) A certificate purporting to have been issued under this section is, without proof of the CEO's signature, evidence in any court of the appointment to which the certificate purports to relate.

(4) A person who ceases to be a fisheries officer must, as soon as practicable, return his or her certificate of appointment to the CEO or to any other person authorised by the CEO to receive the certificate.

Penalty: $1 000.

*[Section 177 amended by No. 28 of 2006 s. 236.]*

**178. Certificate of appointment, production of**

A fisheries officer must produce his or her certificate of appointment if requested to do so by any person in respect of whom the fisheries officer has exercised, or is about to exercise, any power under this Act.

**179. Honorary fisheries officers, appointment of etc.**

(1) The CEO may, by instrument in writing, appoint any person to be an honorary fisheries officer for the whole or any specified area of the State.

(2) An honorary fisheries officer has, in respect of the State, or the area of the State for which he or she is appointed, such of the powers conferred by or under this Act on a fisheries officer as are specified in the instrument of appointment and to that extent is taken to be such an officer.

(3) The CEO must provide each honorary fisheries officer with a copy of his or her instrument of appointment.

(4) An honorary fisheries officer must produce a copy of his or her instrument of appointment if requested to do so by any person in respect of whom the honorary fisheries officer has exercised, or is about to exercise, any power under this Act.

(5) A copy of an instrument purporting to have been made under this section is, without proof of the CEO's signature, evidence in any court of the appointment to which the instrument purports to relate and of any other matter specified therein.

(6) A person ceases to be an honorary fisheries officer if —

(a) the period, if any, of his or her appointment expires; or

(b) his or her appointment is revoked by the CEO; or

(c) the person resigns his or her office by letter delivered to the CEO.

(7) A person who ceases to be an honorary fisheries officer must, as soon as practicable, return the copy of his or her instrument of appointment to the CEO or to any other person authorised by the CEO to receive the copy.

Penalty: $1 000.

*[Section 179 amended by No. 28 of 2006 s. 236.]*

### 180. Police officers to have powers of fisheries officers

For the purposes of this Act, a police officer has the powers of a fisheries officer under this Act and is taken to be such an officer.

### 181. Naval officers to have powers of fisheries officers in dealing with foreign boats

(1) For the purposes of this Act, an officer in command of any boat of the naval force of the Commonwealth has the powers of a

fisheries officer under this Act and is taken to be such an officer in respect of —

(a) foreign boats; and

(b) operations on or from foreign boats; and

(c) persons on foreign boats.

(2) An officer may delegate to a person under the officer's command any of the powers of a fisheries officer conferred on the officer under subsection (1) and that person has, and may exercise, those powers.

**182. Powers to enter certain places to inspect certain matters**

A fisheries officer may, for the purposes of this Act, at any reasonable time —

(a) enter and inspect any land or premises or any waters in respect of which there is an authorisation in force under this Act to check whether this Act or the conditions of the authorisation are being complied with; or

(b) enter and inspect any land or premises that are being used for the purpose of selling fish, or storing fish for a commercial purpose, to check whether this Act is being complied with; or

(c) enter any land or premises ordinarily used for the purpose of manufacturing, repairing or selling boats or fishing or aquaculture gear and inspect the boats or gear; or

(d) enter any land or premises where records are required to be kept for the purposes of this Act and inspect those records.

*[Section 182 amended by No. 43 of 2011 s. 57.]*

**183. Powers to enter and search land to investigate offences**

A fisheries officer may, for the purposes of this Act —

(a) enter any land (other than land appurtenant to any premises) for the purpose of passing through the land; or

(b) enter and search any land (other than land appurtenant to any premises) if the fisheries officer has reasonable grounds to suspect that —

(i) an offence against this Act has been, is being or is about to be committed on the land; or

(ii) there is on the land anything that may afford evidence of the commission of an offence against this Act.

**184. Powers to enter and search non-residential premises**

A fisheries officer may, for the purposes of this Act, enter and search any premises, other than premises used as a residence —

(a) if the fisheries officer has reasonable grounds to suspect that an offence against this Act has been, is being or is about to be committed in or on the premises; or

(b) under a warrant issued under section 187; or

(c) with the consent of the occupier of the premises.

**185. Powers to enter and search residential premises**

A fisheries officer may, for the purposes of this Act, enter and search any premises used as a residence —

(a) under a warrant issued under section 187; or

(b) with the consent of the occupier of the premises; or

(c) if the fisheries officer —

(i) suspects on reasonable grounds that a person has committed an offence against this Act; and

(ii) has pursued the person without interruption from the place, or near the place, where the offence was suspected to have been committed to the premises.

**186. Powers to enter and search tents etc. where fish or gear is suspected to be**

A fisheries officer may, for the purposes of this Act, enter and search any tent, camp or unauthorised structure if the fisheries officer has reasonable grounds to suspect that it contains any fish or fishing gear.

**187. Warrants to enter and search places**

(1) If a justice is satisfied on an application supported by evidence on oath —

(a) that there are reasonable grounds for suspecting that there is on or in any place anything that may afford evidence of the commission of an offence against this Act; or

(b) that the issue of the warrant is reasonably required for the purpose of ascertaining whether a person has contravened or is contravening a provision of this Act,

the justice may issue a warrant in the prescribed form authorising a fisheries officer to enter and search the place —

(c) with such assistance, and by such force, as is reasonably necessary; and

(d) during such hours as the warrant specifies, or, if the warrant so specifies, at any time.

(2) A warrant must specify —

(a) the place that may be entered and searched; and

(b) the time and date at which the warrant ceases to have effect.

*[Section 187 amended by No. 84 of 2004 s. 80.]*

**188. Warrants may be granted by telephone etc.**

(1) A fisheries officer may apply for a warrant by telephone, fax, radio or another form of communication if the fisheries officer considers it necessary because of —

(a) urgent circumstances; or

(b) the officer's remote location.

(2) Before applying for the warrant, the fisheries officer must prepare an application that sets out the grounds on which the warrant is sought.

(3) The fisheries officer may apply for the warrant before the evidence on oath in support is given.

(4) If the justice issues the warrant and it is reasonably practicable to fax a copy of it to the fisheries officer, the justice must immediately fax the copy to the fisheries officer.

(5) If the justice issues the warrant but it is not reasonably practicable to fax a copy of it to the fisheries officer —

(a) the justice must —

(i) tell the fisheries officer what the terms of the warrant are; and

(ii) tell the fisheries officer the date and time the warrant was signed; and

(iii) record the reasons for issuing the warrant on the warrant;

and

(b) the fisheries officer must —

(i) complete a form of warrant in the same terms as the warrant issued by the justice; and

(ii) write on the warrant form the name of the justice and the date and time the justice signed the warrant.

(6) The facsimile warrant, or the warrant form properly completed by the fisheries officer, is authority for the entry and search and the exercise of any other powers authorised by the warrant issued by the justice.

(7) The fisheries officer must, as soon as practicable, send to the justice —

(a) the evidence on oath in support; and

(b) if a warrant form was completed by the fisheries officer — the completed warrant form.

(8) When the justice receives the evidence on oath in support and any warrant form, the justice must attach them to the warrant issued by the justice.

*[Section 188 amended by No. 84 of 2004 s. 80.]*

**189. Powers to obtain certain information**

(1) A fisheries officer may, for the purposes of this Act —

(a) require any person whom the fisheries officer suspects, on reasonable grounds, of having committed an offence against this Act —

(i) to state the person's name, principal place of residence and date of birth; and

(ii) to produce for inspection evidence that the details given are correct;

(b) require any person engaged in fishing to state whether or not the person holds an authorisation or exemption;

(c) require the master of any boat to state whether or not an authorisation is in force in respect of the boat;

(d) require each person on board a fishing boat to state the person's name and principal place of residence;

(e) require the master of any fishing boat to —

(i) state the name and principal place of residence of each member of the boat's crew and of any other person on board the boat; or

(ii) state the respective functions of each person referred to in subparagraph (i); or

(iii) give details of any fishing gear that is on the boat or that is being used from the boat; or

(iv) give details of any fish that are on the boat.

(2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made under subsection (1).

Penalty: $10 000.

(3) For the purposes of subsection (2), it is a reasonable excuse for a person to refuse or fail to comply with a requirement made under subsection (1)(a)(ii) if the person does not have any evidence within reasonable proximity.

**190. Powers to inspect etc. authorisations etc.**

(1) A fisheries officer may, for the purposes of this Act —

(a) require any person to produce for inspection any authorisation or exemption which —

(i) the person states that he or she holds; or

(ii) in the fisheries officer's opinion, should be held by that person;

(b) require the master of a boat that, in the fisheries officer's opinion, should be the subject of an authorisation under this Act, to produce for inspection the authorisation for the boat;

(c) examine, remove and take photographs or make copies of, or take extracts from, an authorisation or exemption.

(2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made under subsection (1)(a) or (b).

Penalty: In the case of an individual, $10 000 or, in the case of a body corporate, $20 000.

## 191. Other powers

(1) A fisheries officer may, for the purposes of this Act —

(a) signal or direct the person in control of a boat or vehicle —

(i) to stop the boat or vehicle; or

(ii) not to move the boat or vehicle;

(b) board a boat and enter and search a boat or vehicle;

(c) signal or direct the person in control of a train or an aircraft not to move the train or aircraft;

(d) enter and search a train or an aircraft;

(e) at any time enter into and pass along (whether by boat or otherwise) any waters or the banks or borders of any waters;

(f) require any person to open or unlock any vehicle, boat, door, gate, hold, compartment, cupboard, drawer, chest, trunk, box, package or other receptacle or container;

(g) break open and search any hold, compartment, cupboard, chest, trunk, box, package or other receptacle or container —

(i) in connection with the search or inspection of any place under this Part; or

(ii) in any other case, if the fisheries officer has reasonable grounds to suspect that it contains fish or anything that may afford evidence of the commission of an offence against this Act;

(h) require a person to produce to the fisheries officer for inspection all things in the person's actual possession if the fisheries officer has reasonable grounds to suspect that any of the things may afford evidence of the commission of an offence against this Act;

(i) require a person to produce to the fisheries officer for inspection —

(i) any record that is required to be kept by the person under this Act; or

(ii) any document held by the person that relates to the sale or purchase of fish;

(j) examine any record or document, and remove the record or document for the purpose of taking extracts from, or making copies of, that record or document;

(k) take extracts from, or make copies of, any record or document;

(l) take photographs and measurements, and make sketches and recordings;

(m) examine any fish and any container in which fish are kept;

(n) count, measure, weigh or grade any fish;

(o) take samples of any fish and any medium in which fish are kept;

(p) require a person to haul, pull, draw, or reel in, or otherwise recover or bring onto land, any fishing or aquaculture gear or gear or equipment used for aquatic eco-tourism;

(q) direct any person who has any fish, or any fishing gear, in the person's possession to wait at a place indicated by the fisheries officer until the fisheries officer is able to inspect the fish or the fishing gear;

(r) inspect any —

(i) fishing or aquaculture gear; or

(ii) gear or equipment used for or in connection with fish processing, fishing tours or aquatic eco-tourism;

(s) by notice in writing served on the master of a boat or the owner or person in apparent control of a vehicle or aircraft or the owner or occupier of any land or premises, require the boat, vehicle, aircraft, land or premises to be secured against interference for a specified period;

(t) require the master of any boat which the fisheries officer has reasonable grounds to suspect has been used, is being used, or is intended to be used in contravention of this Act —

(i) to bring the boat to a specified place; and

(ii) not to remove the boat from that place until further directed by a fisheries officer;

(u) by notice in writing require the master of any boat or the person in control of any vehicle to deliver any fish, fishing or aquaculture gear or gear or equipment used for fishing tours or aquatic eco-tourism to a specified place;

(v) by notice in writing served on the master of any boat require a fisheries officer to be carried on the boat and direct that the boat not proceed to sea unless a fisheries officer is on board the boat;

(w) conduct such examination and inquiry as the fisheries officer considers necessary to ascertain whether or not this Act or any condition imposed under this Act has been complied with.

(2) A fisheries officer may only exercise a power referred to in subsection (1)(c) or (d) in respect of a train or aircraft if the fisheries officer has reasonable grounds to suspect that —

(a) an offence against this Act has been, is being or is about to be committed in or on the train or aircraft; or

(b) there is in or on the train or aircraft anything that may afford evidence of the commission of an offence against this Act.

(3) A boat, vehicle, train or aircraft may only be detained under subsection (1)(a)(ii), (1)(c) or (1)(t) for such period as is reasonably necessary for the purposes of this Act.

(4) A person may only be detained under subsection (1)(q) for such period as is reasonably necessary for the purposes of this Act.

(5) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made, or a signal or direction given, under subsection (1).

Penalty: In the case of an individual, $10 000 or, in the case of a body corporate, $20 000.

(6) For the purposes of subsection (5), it is a reasonable excuse for a person to refuse or fail to comply with a signal or direction given under subsection (1)(a) if —

(a) the person reasonably believes that to obey the signal or direction immediately would endanger the person, another person or the boat or vehicle; and

(b) the person complies with the signal or direction as soon as it is practicable to obey it.

*[Section 191 amended by No. 41 of 2000 s. 7; No. 43 of 2011 s. 58.]*

**191A. Powers under *Animal Welfare Act 2002* to prevent cruelty to fish**

A fisheries officer may, for the purpose of enforcing regulations made under section 258(1)(va) or (vb), exercise the powers conferred by the *Animal Welfare Act 2002* on general inspectors under that Act as if —

(a) the fisheries officer was such an inspector; and

(b) fish were animals for all purposes under that Act; and

(c) an offence under those regulations was an offence under Part 3 of that Act.

*[Section 191A inserted by No. 33 of 2002 s. 96(2); amended by No. 43 of 2011 s. 59.]*

### 192. Powers to arrest without warrant

(1) A fisheries officer may arrest without warrant a person if —

(a) the person does not state his or her name or principal place of residence to the fisheries officer when required to do so under section 189(1)(a); or

(b) the fisheries officer suspects, on reasonable grounds, that the person has given a false name, principal place of residence or date of birth to the fisheries officer; or

(c) the person assaults a fisheries officer when the fisheries officer is performing any duty, or exercising any power, under this Act; or

(d) the fisheries officer suspects, on reasonable grounds, that the person has committed an offence against this Act and that the offence is likely to continue or recur if the person is not arrested; or

(e) the fisheries officer suspects, on reasonable grounds, that the person has committed an offence against this Act and that any other procedure for dealing with that offence would not be effective.

(2) A person who has been arrested by a fisheries officer under subsection (1) must not escape, or attempt to escape, from the custody of the fisheries officer.

Penalty: $5 000.

### 193. Powers to seize things

(1) A fisheries officer may seize —

(a) any fish that the fisheries officer has reasonable grounds to suspect has been the subject of an offence against this Act; or

(b) any fishing gear that the fisheries officer has reasonable grounds to suspect has been used, or is intended to be used, in the commission of an offence against this Act; or

(c) any boat, vehicle, aircraft or other thing that the fisheries officer has reasonable grounds to suspect has been used in the commission of an offence against this Act; or

(d) any trailer used to transport a boat referred to in paragraph (c); or

(e) any money, cheque or other thing that the fisheries officer suspects, on reasonable grounds, is the proceeds of the sale of any fish in contravention of this Act; or

(f) any thing that the fisheries officer suspects, on reasonable grounds, may afford evidence of the commission of an offence against this Act; or

(ga) any exotic fish, any receptacle or container containing exotic fish, and any medium in which the exotic fish are being held, in compliance with a direction under section 103A(3) to intervene in relation to that fish; or

(g) any noxious fish, any receptacle or container containing noxious fish and any medium in which the noxious fish are being held; or

(h) if more than 1/20th of the total number of fish contained in a boat, vehicle, aircraft, receptacle or container are protected fish —

(i) all fish contained in the boat, vehicle, aircraft, receptacle or container; and

(ii) any receptacle or container containing the fish.

(2) Without limiting subsection (1), a fisheries officer who has reasonable grounds to suspect that an offence against section 174(1) or 175(1) has been committed may seize any boat, fish or other animal, fishing gear, money, cheque or other thing that the fisheries officer believes may become liable to forfeiture under section 218(1a) as a result of the offence.

*[Section 193 amended by No. 28 of 2007 s. 7(1); No. 43 of 2011 s. 60.]*

## 194. Powers to deal with seized fish

(1) If any fish is seized under this Act and, in the opinion of a fisheries officer, it is practicable to return the fish to its natural environment, the fisheries officer may return the fish to its natural environment.

(2) If any fish is seized under this Act and, in the opinion of a fisheries officer, the fish is likely to perish if no action is taken to protect it, the fisheries officer may sell, preserve or otherwise dispose of the fish in the prescribed way.

(3) Except as provided in subsection (4), proceeds of the sale of any fish under subsection (2) are to be paid to the credit of such account or accounts under this Act as are prescribed or, if no account is prescribed, then into the Consolidated Account.

(4) If —

(a) any fish is seized by a fisheries officer in connection with a suspected offence; and

(b) the fish is sold in accordance with subsection (2); and

(c) a decision is subsequently made not to commence proceedings in respect of the offence or after proceedings for the offence have been completed no person is convicted of the offence,

the proceeds of the sale of the fish (less any costs incurred by the fisheries officer in selling the fish) are to be paid to the person from whom the fish were seized.

(5) No compensation is payable to any person in respect of any action taken under this section in respect of any fish.

*[Section 194 amended by No. 77 of 2006 s. 4 and Sch. 1 cl. 68(1).]*

### 195. Powers to seize abandoned etc. fishing gear

If a fisheries officer finds —

(a) any fishing gear unattended in, or adjacent to, any waters and —

(i) fishing in those waters, or the use of that type of fishing gear in those waters, is prohibited under this Act; or

(ii) the fishing gear does not comply with the requirements of this Act; or

(iii) the fishing gear appears to have been lost or abandoned;

or

(b) any fish in, or adjacent to, any waters and the fish appears to have been abandoned,

the fisheries officer may seize the fishing gear or fish or, if in the fisheries officer's opinion it is not practicable to seize the fishing gear, may destroy or render inoperative the fishing gear.

### 196. Interfering with seized property, offence

(1) A person must not remove, damage or interfere with any fish, boat, trailer, vehicle, fishing gear or other thing seized under this Act unless the person is authorised to do so by the CEO or a fisheries officer.

Penalty: In the case of an individual, $10 000.

In the case of a body corporate, $20 000.

(2) If a court convicts a person of an offence against subsection (1), the court may, in addition to any penalty imposed under that subsection, order the person to pay compensation for any damage or loss caused by the offence to the CEO or to any other person.

*[Section 196 amended by No. 50 of 2003 s. 63(6); No. 28 of 2006 s. 236(1).]*

**197. Power to require assistance from people**

(1) A fisheries officer may, if in the fisheries officer's opinion it is reasonably necessary in the circumstances to enable the fisheries officer to perform any duty or exercise any power under this Act, require —

(a) the master of a boat or the person in charge of any vehicle to make the boat or vehicle available for the use of the fisheries officer; or

(b) any person to provide such assistance to the fisheries officer as the fisheries officer considers necessary.

(2) A person must not, without reasonable excuse, refuse or fail to comply with a requirement made under subsection (1).

Penalty: $10 000.

(3) If a fisheries officer uses a boat or vehicle under subsection (1), the person who would otherwise have been entitled to the use of the boat or vehicle at that time may apply to the CEO for compensation for loss of use of the boat or vehicle.

(4) If a person applies to the CEO for compensation under subsection (3), the CEO is to pay to the person such amount of compensation as the CEO thinks fit.

(5) A person is not personally liable for anything done or omitted to be done in good faith by that person in the course of giving any assistance to a fisheries officer in accordance with a requirement under subsection (1)(b).

*[Section 197 amended by No. 28 of 2006 s. 236(1).]*

**198. Duty to try to minimize damage**

In exercising any power under this Part, a fisheries officer must try, as far as is practicable, to minimize damage to any property.

**199. False or misleading information to fisheries officer, offence**

A person must not —

(a) state anything to a fisheries officer that the person knows is false or misleading in a material particular; or

(b) omit from a statement made to a fisheries officer anything without which the statement is, to the person's knowledge, misleading in a material particular; or

(c) give or produce any document to a fisheries officer that —

(i) the person knows is false or misleading in a material particular; or

(ii) omits anything without which the document is, to the person's knowledge, misleading in a material particular.

Penalty: In the case of an individual, $10 000 and imprisonment for one year or, in the case of a body corporate, $20 000.

## 200. Obstructing etc. fisheries officers

A person must not —

(a) fail to facilitate by all reasonable means the boarding of a boat by a fisheries officer;

(b) abuse, threaten or insult a fisheries officer when the fisheries officer is performing any duty, or exercising any power, under this Act;

(c) assault, hinder or obstruct a fisheries officer when the fisheries officer is performing any duty, or exercising any power, under this Act;

(d) incite or encourage another person to do anything referred to in paragraph (b) or (c);

(e) impersonate a fisheries officer;

(f) without reasonable excuse, refuse to allow a search to be made that is authorised under this Act.

Penalty: In the case of an individual, $10 000 and imprisonment for one year or, in the case of a body corporate, $20 000.

# Part 17 — Legal proceedings

## Division 1 — Proceedings

### 201. Prosecutions, institution of etc.

(1) Proceedings for an offence against this Act may be instituted by the CEO, a police officer, a fisheries officer or any other person authorised in writing to do so by the CEO.

(2) Proceedings for an offence against this Act must be commenced —

(a) if the offence is against a provision in Part 6, within 5 years after the offence was committed; or

(b) in any other case, within 2 years after the offence was committed.

(3) In any proceedings for an offence against this Act, unless evidence is given to the contrary, proof is not required —

(a) of the authority of a person to institute proceedings for an offence against this Act; or

(b) that a signature on a prosecution notice is the signature of a person authorised to institute proceedings for an offence against this Act.

(4) A fisheries officer authorised for the purpose by the CEO may appear on behalf of the CEO or any other officer of the Department in any proceedings under this Act in a court of summary jurisdiction.

*[Section 201 amended by No. 59 of 2004 s. 141; No. 84 of 2004 s. 80; No. 28 of 2006 s. 236(1).]*

## Division 2 — Responsibility of certain persons

### 202. Masters' liability

(1) If a person (in this section referred to as the ***principal offender***) commits an offence against this Act, the master of a boat on

which, or by the use of which, the offence was committed is taken to have committed the same offence.

(2) It is a defence in proceedings against the master of a boat for an offence against this Act (by the application of subsection (1)) for the master to prove that —

(a) the master issued proper instructions and took reasonable precautions to ensure compliance with this Act; and

(b) the offence was committed by the principal offender without the master's knowledge; and

(c) the master could not by the exercise of reasonable diligence have prevented the commission of the offence.

(3) A master may be proceeded against and convicted of an offence against this Act by virtue of subsection (1) whether or not the principal offender has been proceeded against and convicted of the offence.

### 202A. Person in charge of a fishing tour, liability of

(1) If a person (in this section referred to as the ***principal offender***) commits an offence against this Act while taking part in a fishing tour, the person in charge of the fishing tour is taken to have committed the same offence.

(2) It is a defence in proceedings against a person in charge of a fishing tour for an offence against this Act (by the application of subsection (1)) for that person to prove that —

(a) he or she issued proper instructions and took reasonable precautions to ensure compliance with this Act; and

(b) the offence was committed by the principal offender without the knowledge of the person in charge of the fishing tour; and

(c) he or she could not by the exercise of reasonable diligence have prevented the commission of the offence.

(3) A person in charge of a fishing tour may be proceeded against and convicted of an offence against this Act by virtue of subsection (1) whether or not the principal offender has been proceeded against and convicted of the offence.

(4) In this section —

***fishing tour*** means a fishing tour provided by a person who holds a licence under section 257(1)(g);

***person in charge of a fishing tour*** means the individual in charge of the day to day operation of the tour, who is not necessarily the person who holds the relevant licence under section 257(1)(g).

*[Section 202A inserted by No. 41 of 2000 s. 8; amended by No. 37 of 2009 s. 17.]*

**202B. Authorisation holder, liability of for offences by co-holders**

(1) If an authorisation is held by 2 or more persons and any of those persons commits an offence under this Act while acting or purporting to act as a holder of the authorisation, each of those persons is taken to have committed the offence.

(2) If a person is charged with an offence under this Act because of subsection (1), it is a defence to prove that —

(a) the act or omission that constituted the offence was done or made without the consent or connivance of the person; and

(b) the person took all reasonable measures to prevent the act or omission being done or made.

(3) A person may be charged with and convicted of an offence under this Act because of subsection (1) whether or not another person has been charged with or convicted of the offence.

*[Section 202B inserted by No. 43 of 2011 s. 61.]*

### 203. Authorisation holder, liability of for offences by agents of

(1) If a person (in this section referred to as the ***agent***) acting for or on behalf of the holder of an authorisation commits an offence against this Act, the holder is taken to have committed the same offence.

(2) It is a defence in proceedings against the holder of an authorisation for an offence against this Act (by the application of subsection (1)) for the holder to prove that —

(a) the holder issued proper written instructions and took reasonable precautions to ensure compliance with this Act; and

(b) the offence was committed by the agent without the holder's knowledge; and

(c) the holder could not by the exercise of reasonable diligence have prevented the commission of the offence.

(3) The holder of an authorisation may be proceeded against and convicted of an offence against this Act by virtue of subsection (1) whether or not the agent has been proceeded against and convicted of the offence.

### 204. Officers of body corporate, liability of for offence by body

(1) If a body corporate commits an offence against this Act and it is proved that —

(a) the offence was committed with the consent or connivance of an officer of the body corporate; or

(b) an officer of the body corporate failed to exercise such due diligence to prevent the commission of the offence as ought to have been exercised having regard to the nature of the officer's functions and to all the circumstances,

the officer commits the same offence.

(2) An officer may be proceeded against and convicted of an offence against this Act by virtue of subsection (1) whether or not the body corporate has been proceeded against and convicted of the offence.

(3) In this section, ***officer*** has the same meaning as in the *Corporations Act 2001* of the Commonwealth but does not include an employee of the body corporate unless he or she was concerned in the management of the body corporate.

*[Section 204 amended by No. 10 of 2001 s. 220.]*

## Division 3 — Evidentiary provisions

### 205. Exemptions etc., onus of proving

In any proceedings for an offence against this Act, the onus of proving that —

(a) at the time of the alleged offence a person was exempted under section 6 or 7 from a provision of the Act; or

(b) anything was done or omitted to be done with lawful excuse or reasonable excuse; or

(c) a person, boat or thing referred to in the charge was not in WA waters; or

(d) a fish was taken from waters other than WA waters; or

(e) an act occurred in waters other than WA waters,

lies upon the person making that assertion.

*[Section 205 amended by No. 84 of 2004 s. 80.]*

### 206. Place of offence, proof of

In any proceedings for an offence against this Act an averment in the charge that —

(a) a person, boat, vehicle or other thing referred to in the charge was in a particular area of land or waters; or

(b) fish were taken from a particular area of land or waters; or

(c) an act occurred in a particular area of land or waters,

is proof that the person, boat, vehicle or thing was in, the fish were taken from, or the act occurred in (as the case may be), the particular area, unless the contrary is proved.

*[Section 206 amended by No. 84 of 2004 s. 80.]*

## 207. Foreign boat, proof as to

In any proceedings for an offence against this Act, an averment in the charge that a boat was, at the time of the alleged offence, a foreign boat must be taken to be proved, unless the contrary is proved.

*[Section 207 amended by No. 84 of 2004 s. 80.]*

## 208. Contents etc. of package etc., proof of

In any proceedings for an offence against this Act, proof that a package, receptacle or container had a mark or label (whether inside or outside the package, receptacle or container) indicating that the package, receptacle or container —

(a) contained fish or a particular class of fish is proof that the package, receptacle or container contained fish or the class of fish (as the case may be), unless the contrary is proved; or

(b) contained a specified quantity of fish is proof that the package, receptacle or container contained that quantity of fish, unless the contrary is proved; or

(c) was packed or consigned by or for a particular person is proof that the package, receptacle or container was packed or consigned by or for (as the case may be) that person, unless the contrary is proved.

**209. Fish taken for sale, proof as to**

(1) In any proceedings for an offence against this Act, proof that any fish taken by a person was subsequently sold by or on behalf of the person is conclusive evidence that the fish was taken by the person for the purpose of sale.

(2) In any proceedings for an offence against this Act, proof that any fish in a person's possession was subsequently sold by or on behalf of the person is conclusive evidence that the person had the fish in the person's possession for the purpose of sale.

**210. Fish on fishing boats and commercial premises etc. presumed to be for sale**

(1) In any proceedings for an offence against this Act, if it is proved that —

(a) any fish were on a fishing boat; and

(b) the fish were taken by, or in the possession of, any person on that boat,

it must be presumed that the fish were taken by, or in the possession of, the person for the purpose of sale unless the contrary is proved.

(2) In any proceedings for an offence against this Act, if it is proved that —

(a) any fish were at a place in, on or from which fish were ordinarily sold (whether as meals or otherwise); and

(b) the fish were in the possession of any person (other than a customer),

it must be presumed that the fish were in the person's possession for the purpose of sale unless the contrary is proved.

(3) In any proceedings for an offence against this Act, if it is proved that —

(a) any fish were at a place specified in a fish processor's licence as the place at which fish may be processed under the licence; and

(b) the fish were in the possession of any person,

it must be presumed that the fish were in the person's possession for the purpose of sale unless the contrary is proved.

## 211. Purpose or intent, proof of

In any proceedings for an offence against this Act, an averment in the charge that an act occurred for a particular purpose or that anything was done with a particular intent must, on proof of the act occurring or the thing being done, be taken to be proved, unless the contrary is proved.

*[Section 211 amended by No. 84 of 2004 s. 80.]*

## 212. Authorisations etc., evidence as to

(1) In any proceedings for an offence against this Act, production of a certificate purporting to be signed by the Registrar and stating that —

(a) on any date or during any period a person was or was not authorised to do any thing under an authorisation, temporary aquaculture permit or aquaculture lease or was or was not exempted from this Act or specified provisions of this Act by an exemption; or

(b) on any date or during any period any boat, premises or other thing was or was not the subject of an authorisation, temporary aquaculture permit or exemption; or

(c) on any date or during any period an authorisation or temporary aquaculture permit was cancelled, suspended or for any other reason of no effect or an aquaculture lease was terminated or for any other reason of no effect; or

(d) on any date or during any period an authorisation, temporary aquaculture permit, aquaculture lease or

exemption was subject to any specified condition or conditions,

is, without proof of the Registrar's signature, evidence of the facts stated in the certificate.

(2) Subsection (1) only applies if —

(a) at least 28 days before the hearing, notice in writing has been given to the accused of the prosecutor's intention to produce the certificate; and

(b) the accused has not within 14 days of receipt of the notice delivered to the prosecutor a notice requiring that the Registrar's evidence be given in person.

(3) The court before which proceedings are held may, in addition to making any other order as to costs, make such order as it thinks fit as to the expenses and remuneration to be paid for the services of the Registrar.

*[Section 212 amended by No. 2 of 2002 s. 19; No. 84 of 2004 s. 80 and 82; No. 43 of 2011 s. 62.]*

**213. Species of fish etc., evidence as to**

(1) In this section —

***authorised person*** means a person declared under subsection (2) to be an authorised person.

(2) The Minister may by notice published in the *Gazette* declare a person to be an authorised person for the purposes of this section.

(3) In any proceedings for an offence against this Act, production of a certificate purporting to be signed by an authorised person and stating that —

(a) a fish was of a particular species or type or had a particular characteristic;

(b) a species or type of fish are or are not found in a particular area;

(c) any fishing gear is of a particular type or is designed, used or capable of being used for a particular purpose or for taking a particular species of fish,

is, without proof of the authorised person's signature, evidence of the facts stated in the certificate.

(4) Subsection (3) only applies if —

(a) at least 28 days before the hearing, notice in writing has been given to the accused of the prosecutor's intention to produce the certificate; and

(b) the accused has not within 14 days of receipt of the notice delivered to the prosecutor a notice requiring that the authorised person's evidence be given in person.

(5) The court before which proceedings are held may, in addition to making any other order as to costs, make such order as it thinks fit as to the expenses and remuneration to be paid for the services of the authorised person.

*[Section 213 amended by No. 84 of 2004 s. 80 and 82.]*

## 214. Size etc. of fish, determining

If, for the purposes of this Act, it is necessary to determine the size, weight or any other characteristic of fish, that determination is to be made using the method that is prescribed.

## 215. Accuracy of fisheries officers' equipment, presumption as to

In any proceedings for an offence against this Act, proof is not required of the accuracy of any communications, navigational, measuring or recording equipment (including electronic equipment) used by a fisheries officer, unless evidence is given to the contrary.

*[Section 215 amended by No. 43 of 2011 s. 63.]*

### 216. Positions on Earth, determining

(1) If, for the purposes of this Act, it is necessary to determine the position on the surface of the Earth of a point, line or area, that reference is to be determined by reference to the prescribed Australian datum.

(2) Regulations that prescribe a datum for the purposes referred to in subsection (1), or amend that datum or prescribe another datum to replace that datum, may make any transitional or savings provisions that are necessary or convenient to be made —

(a) in relation to authorisations, temporary aquaculture permits, aquaculture leases or exclusive licences granted before the regulations take effect; or

(b) in relation to applications for authorisations, temporary aquaculture permits, aquaculture leases or exclusive licences pending when the regulations take effect; or

(c) in relation to management plans, orders, notices or other instruments made under this Act and in force when the regulations take effect; or

(d) for any other purpose.

(3) Regulations referred to in subsection (2) may modify or otherwise affect the operation of this Act.

*[Section 216 amended by No. 54 of 2000 s. 3; No. 43 of 2011 s. 64.]*

## Division 4 — Forfeiture

### 217. Seized things, return of and security for

(1) The CEO may authorise the return of anything seized under this Act to the owner or person entitled to the possession of the thing or the person from whom the thing was seized.

(2) The CEO may authorise the return of the thing on such conditions as the CEO thinks fit, including a condition that the person give security to the CEO for payment of the value of the thing if it is forfeited.

(3) If the thing is forfeited to the Crown any security given to the CEO in lieu of the thing is taken to be forfeited to the Crown.

(4) A person must not contravene a condition imposed under subsection (2).

Penalty: In the case of an individual, $5 000 or, in the case of a body corporate, $10 000.

(5) If a court convicts a person of an offence against subsection (4), the court may, in addition to any penalty imposed under that subsection, order the person to pay compensation for any damage or loss caused by the offence to any person.

*[Section 217 amended by No. 28 of 2006 s. 236(1).]*

**218. Forfeiture of fish, gear etc., court orders for**

(1) Subject to subsection (1a), if a court convicts a person of an offence against this Act, the court may, in addition to any other penalty imposed under this Act, order the forfeiture to the Crown of any —

(a) fish the subject of the offence; and

(b) fishing gear used, or intended to be used, in the commission of the offence; and

(c) boat, vehicle, aircraft or other thing used in the commission of the offence; and

(d) trailer used to transport a boat referred to in paragraph (c); and

(e) money, cheque or other thing that is the proceeds of the sale of any fish in contravention of this Act.

(1a) If a court convicts a person of an offence against section 174(1) or 175(1) in relation to a foreign boat, the court must, in

addition to any other penalty imposed under this Act, order the forfeiture to the Crown of —

(a) the foreign boat and any fish, fishing gear or other thing that, if subsection (1) applied to the offence, could be forfeited to the Crown under that subsection; and

(b) any fish or other animal or any fishing gear, money, cheque or other thing that, at the time of the offence, was on or attached to the foreign boat; and

(c) any fish, fishing gear, money or cheque that, at the time of the offence, was in the possession of any person on board the foreign boat; and

(d) any fish or other animal on or attached to any fishing gear used, or intended to be used, in the commission of the offence.

(2) A court must not make an order for the forfeiture of anything under subsection (1) unless the prosecutor, or a person acting for or on behalf of the prosecutor, applies for the order.

*[Section 218 amended by No. 84 of 2004 s. 80; No. 28 of 2007 s. 8.]*

## 219. Unclaimed seized things, forfeiture of

(1) If anything is seized under this Act and its owner cannot be found the CEO is to give notice in the prescribed way that the thing is being held by the Department and may be claimed by its owner.

(2) If after the expiration of 3 months from the day on which notice has been given under subsection (1) the thing has not been claimed by its owner the thing is forfeited to the Crown.

*[Section 219 amended by No. 28 of 2006 s. 236(1).]*

## 220. Certain fish forfeited when seized

If —

(a) any protected fish is seized under this Act; or

(ba) any fish in excess of a bag or possession limit is seized under section 193(1)(a); or

(bb) any fish in excess of a quantity or value that is prescribed for the purposes of the definition of ***commercial quantity*** in section 153 is seized under section 193(1)(a); or

(bc) any exotic fish is seized under section 193(1)(ga); or

(b) any fish other than a protected fish is seized under section 193(1)(h); or

(c) any noxious fish is seized under section 193(1)(g); or

(d) any receptacle, container or medium containing fish referred to in this section is seized under this Act,

the fish, receptacle, container or medium is, on seizure, taken to have been forfeited to the Crown.

*[Section 220 amended by No. 28 of 2007 s. 7(2); No. 43 of 2011 s. 65.]*

### 221. Forfeited things, disposal of

(1) Any thing forfeited to the Crown under this Act may be sold, destroyed or otherwise disposed of in the prescribed way.

(2) Proceeds of the sale of any thing forfeited to the Crown under this Act are to be paid to the credit of such account or accounts under this Act as are prescribed or, if no account is prescribed, then into the Consolidated Account.

*[Section 221 amended by No. 77 of 2006 s. 4 and Sch. 1 cl. 68(2).]*

## Division 5 — Additional penalties

### 222. Additional penalty based on value of fish for certain offences

(1) This section applies to an offence against section 43, 46, 47, 48A, 50, 51, 74, 77, 82, 86, 88, 155(2) or 173 or any prescribed provision of the regulations.

(2) If a court convicts a person of an offence under a provision referred to in subsection (1), in addition to any penalty imposed under that provision, the court must impose on the person an additional penalty that —

(a) is equal to 10 times the prescribed value of any fish the subject of the offence; or

(b) if subsection (3A) applies — is less than 10 times that value but is at least equal to that value.

(3A) The court can only impose an additional penalty under subsection (2)(b) —

(a) on the application of the CEO or a person acting for or on behalf of the CEO; and

(b) if the court is satisfied that the imposition of the additional penalty under subsection (2)(a) would be harsh, oppressive or not otherwise in the interests of justice.

(3) A court may determine the prescribed value of any fish the subject of the offence by reference to either the weight of the fish or the number of fish.

(4) A court is to determine the prescribed value of any fish the subject of the offence —

(a) if the court is determining the value of the fish by reference to the weight of the fish, by multiplying the weight by the value per unit of weight prescribed in respect of fish of that class; and

(b) if the court is determining the value of the fish by reference to the number of fish, by multiplying the number by the value per fish prescribed in respect of fish of that class.

(5) The additional penalty referred to in subsection (2)(a) or (b) is irreducible in mitigation despite the provisions of any other Act.

(6) A provision of the regulations may be prescribed for the purposes of subsection (1) by reference to the circumstances in which the offence is committed.

*[Section 222 amended by No. 43 of 2011 s. 66.]*

**223. Cancelling or suspending authorisation, court's powers for**

(1) If a court convicts a person of an offence against this Act the court may, in addition to any other penalty imposed under this Act, cancel, or suspend for any period, any authorisation held by the person.

(2) A court must not cancel or suspend an authorisation under subsection (1) unless the prosecutor, or a person acting for or on behalf of the prosecutor, applies for the cancellation or suspension.

*[Section 223 amended by No. 84 of 2004 s. 80.]*

**224. Automatic suspension if 3 offences committed in 10 year period**

(1) If —

(a) the holder of an authorisation, or a person acting for or on behalf of the holder, is convicted of a prescribed offence against this Act; and

(b) in the CEO's opinion the offence relates to an activity being carried out, or purporting to be carried out, under the authorisation,

the CEO must, as soon as practicable, notify the Registrar of that fact and the Registrar must record the conviction on the register in respect of the authorisation.

(2) If the Registrar records 3 or more convictions in respect of an authorisation in any 10 year period the Registrar must notify the CEO of that fact and the CEO must, by notice in writing given to the holder of the authorisation, suspend the authorisation for one year.

(3) For the purposes of this section —

(a) it is irrelevant that, at the time the authorisation is suspended under subsection (2), the authorisation is held by a person other than the person who has been convicted of all or any of the offences;

(b) if 2 or more offences arose out of one set of facts those offences are to be regarded as one offence;

(c) a conviction may be recorded in respect of more than one authorisation.

(4) Where an authorisation has been suspended under subsection (2), the authorisation remains suspended until the CEO is satisfied that all outstanding fines have been paid in respect of —

(a) the convictions recorded with respect to the authorisation under this section; and

(b) any other convictions of the authorisation holder under this Act,

and the time period imposed under subsection (2) has elapsed.

*[Section 224 amended by No. 28 of 2006 s. 236; No. 37 of 2009 s. 18.]*

**225. Prohibitions on offender, court's powers to impose etc.**

(1) If a court convicts a person of an offence under this Act, in addition to any other penalty that may be imposed for the offence, the court may by order prohibit the person from doing all or any of the following —

(a) being on board boats, any specified boat or any boat in a specified class of boats;

(b) being at —

(i) places used for aquaculture or the processing or sale of fish, any specified place used for aquaculture or the processing or sale of fish, any

place in a specified class of places used for aquaculture or the processing or sale of fish; or

(ii) any other specified place or any place in any other specified class of places;

(c) engaging in any activity related to fishing or aquaculture, including —

(i) being employed in, or managing, operating or holding an interest in, a business; and

(ii) being in control or possession of fish or fishing or aquaculture gear;

(d) being in possession of any fish or fishing or aquaculture gear, any specified fish or fishing or aquaculture gear or any fish or gear in a specified class of fish or fishing or aquaculture gear;

(e) being on or near specified waters.

(2) A court must not make an order under subsection (1) unless —

(a) the prosecutor, or a person acting for or on behalf of the prosecutor, applies for the order; and

(b) the court is satisfied that —

(i) the relevant offence is of a serious nature; and

(ii) the person is likely to commit further offences against this Act if the order is not made.

(3) An order —

(a) may apply generally or at specified times or in specified circumstances; and

(b) has effect for such period as is specified in the order or, if no period is specified, until the order is rescinded; and

(c) may be rescinded or varied at any time.

(4) A person must not contravene an order made under this section.

Penalty:

(a) for a first offence, a fine of $40 000;

(b) for a second or subsequent offence, a fine of $80 000 and imprisonment for 3 years.

(5) A person must not knowingly allow or permit another person to contravene an order made under this section.

Penalty for an offence under subsection (5):

(a) for an individual —

(i) for a first offence, a fine of $40 000;

(ii) for a second or subsequent offence, a fine of $80 000 and imprisonment for 3 years;

(b) for a body corporate —

(i) for a first offence, a fine of $80 000;

(ii) for a second or subsequent offence, a fine of $150 000.

*[Section 225 amended by No. 50 of 2003 s. 63(7); No. 84 of 2004 s. 80; No. 43 of 2011 s. 67.]*

## Division 6 — Infringement notices

### 226. Term used: authorised person

In this Division, ***authorised person*** in sections 228, 229, 230 and 231 means a person appointed under section 227 to be an authorised person for the purposes of the section in which the term is used.

### 227. Authorised persons, appointment of

(1) The CEO may, in writing, appoint persons or classes of persons to be authorised persons for the purposes of section 228, 229, 230 or 231 or for the purposes of 2 or more of those sections.

(2) A person who is authorised to serve infringement notices under section 228 is not eligible to be an authorised person for the purposes of any of the other sections.

*[Section 227 amended by No. 28 of 2006 s. 236(1).]*

## 228. Infringement notices, service of

(1) An authorised person who has reason to believe that a person has committed a prescribed offence against this Act may, within 45 days after the day on which the alleged offence is believed to have been committed, serve an infringement notice on the alleged offender.

(2) An infringement notice may be served personally or by certified post.

*[Section 228 amended by No. 43 of 2011 s. 68.]*

## 229. Infringement notices, form of

(1) An infringement notice is to be in the prescribed form and must —

(a) contain a description of the alleged offence; and

(b) advise that if the alleged offender does not wish to be prosecuted for the alleged offence in a court, the amount of money specified in the notice as being the modified penalty for the offence may be paid to an authorised person within a period of 28 days after the service of the notice; and

(c) inform the alleged offender as to who are authorised persons for the purposes of receiving payment of modified penalties.

(2) In an infringement notice the amount specified as the modified penalty for the offence referred to in the notice is to be the amount that was the prescribed modified penalty at the time the alleged offence is believed to have been committed.

(3) The modified penalty prescribed in respect of an offence against this Act for the purposes of this section —

(a) must not include any additional penalty; and

(b) must not exceed 1/5th of the maximum penalty specified in this Act for that offence.

*[Section 229 amended by No. 84 of 2004 s. 80.]*

### 230. Extending time to pay modified penalty

An authorised person may, in a particular case, extend the period of 28 days within which the modified penalty may be paid and the extension may be allowed whether or not the period of 28 days has elapsed.

### 231. Withdrawal of infringement notice

(1) An authorised person may, whether or not the modified penalty has been paid, withdraw an infringement notice within 56 days after the day on which it was served by serving on the alleged offender a notice in the prescribed form stating that the infringement notice has been withdrawn.

(2) If an infringement notice is withdrawn after the modified penalty has been paid, the amount of the penalty is to be refunded.

(3) A notice under this section may be served personally or by certified post.

### 232. Payment of modified penalty, consequences of

(1) If the modified penalty specified in an infringement notice has been paid within 28 days or such further time as is allowed and the notice has not been withdrawn, the alleged offender is not liable to any further proceedings for the alleged offence.

(2) An amount paid as a modified penalty is, subject to section 231(2), to be dealt with as if it were a fine imposed by a court as a penalty for an offence.

(3) Payment of a modified penalty is not to be regarded as an admission for the purposes of any proceedings, whether civil or criminal.

*[Section 232 amended by No. 78 of 1995 s. 47.]*

# Part 18 — Financial provisions

## Division 1 — Collection of levy imposed under *Fishing Industry Promotion Training and Management Levy Act 1994*

### 233. When and to whom levy is payable

(1) A levy is due and payable at a time or times ascertained in accordance with the regulations.

(2) A levy is payable to the Minister.

### 234. Payment by instalments

(1) The regulations may provide for the payment of an amount of a levy to be made by instalments, and, subject to subsection (2), each instalment is due and payable at a time ascertained in accordance with the regulations.

(2) If —

(a) the regulations provide for the payment of an amount of a levy to be made by instalments; and

(b) an instalment is not paid at or before the time due for payment of the instalment,

the whole of the amount of the levy unpaid becomes due and payable at that time.

### 235. Exemption from levy

(1) If in a particular case the Minister is satisfied that to require a person to pay a levy would cause the person undue hardship, the Minister may, in writing, exempt the person wholly or in part from payment of the levy.

(2) The Minister may, in writing given to a person exempted under subsection (1), vary or revoke the exemption.

### 236. Penalty for non-payment

(1) If an amount of a levy remains unpaid after the day on which it becomes due for payment, there is payable to the Minister by way of penalty, in addition to the amount of the levy, an amount calculated at the rate of 20% per annum upon the amount of the levy from time to time remaining unpaid.

(2) The amount by way of penalty referred to in subsection (1) is to be calculated from the time when the amount of the levy became payable.

### 237. Recovery of levy

The following amounts may be recovered by the Minister in a court of competent jurisdiction as debts due to the Minister —

(a) a levy that is due and payable; and

(b) an amount payable under section 236.

## Division 2 — Accounts

*[Heading amended by No. 77 of 2006 Sch. 1 cl. 68(3).]*

### 238. Fisheries Research and Development Account

(1) An agency special purpose account called the Fisheries Research and Development Account (the ***Account***) is established under section 16 of the *Financial Management Act 2006*.

*[(2) deleted]*

(3) The Account is to be administered by the Minister.

(4) The Account is to be credited with —

(a) fees and charges paid in respect of —

(i) authorisations (other than recreational fishing licences), temporary aquaculture permits and exemptions;

(ii) the register;

(iii) services relating to commercial fishing, aquaculture and the processing of fish;

(iv) the management of fish habitat protection areas or the Abrolhos Islands reserve;

(v) anything done under Part 14, except the making of an application to the State Administrative Tribunal for a review;

and

(b) fees, royalties or other money paid in respect of aquaculture leases, aquaculture facilities or exclusive licences; and

(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; and

(bb) payments received under section 101A(2)(e); and

(c) costs recouped from prosecutions relating to commercial fishing; and

(d) costs paid to the CEO in accordance with an order of the State Administrative Tribunal; and

(e) proceeds of the sale of any —

(i) forfeited property prescribed as being payable to the credit of the Account under section 221(2);

(ii) capital assets purchased using moneys from the Account;

(iii) publication, advertising rights or intellectual property by the Department;

(iv) entitlement by the Department;

(v) fish bred by the Department;

and

(f) moneys provided for the purposes of the Account —

(i) by any statutory authority or government (whether Commonwealth, State or otherwise); or

(ii) otherwise by way of donations or bequests;

and

(g) moneys payable to the credit of the Account under sections 27(7)(b), 31(2), 54(2) and 55(2) and (3) of the *Pearling Act 1990*; and

(h) income derived from the investment of moneys forming part of the Account, as determined by the Treasurer; and

(i) any other moneys lawfully payable to the credit of the Account.

(5) The Account may be applied by the Minister for all or any of the following purposes —

(a) the purposes set out in sections 37(3), 41 and 55(4) and (5) of the *Pearling Act 1990*;

(b) scientific, technological or economic research;

(c) the exploration and development of commercial fisheries;

(d) to defray the costs of the administration and management of commercial fisheries;

(eaa) to defray the costs of the administration and management of customary fishing;

(e) to purchase any authorisation, entitlement, boat or fishing or aquaculture gear for the benefit of the fishing industry, the fish processing industry or the aquaculture industry;

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

(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;

(g) the development of aquaculture;

(h) to conduct programmes and provide extension services relating to fisheries, fish processing or aquaculture, including publicity programmes;

(i) to conduct enforcement, operations and compliance programmes;

(j) to purchase capital assets required for the management or administration of fisheries, fish processing or aquaculture;

(kaa) to maintain the marking and lighting of areas subject to aquaculture licences, temporary aquaculture permits and aquaculture leases;

(kab) to clean up and rehabilitate areas that have been but are no longer being used for aquaculture purposes;

(kac) to repay any amount paid under section 97(7A) that is not required to satisfy a debt due under section 101(2)(b);

(k) to the credit of the Fisheries Adjustment Schemes Trust Account under the *Fisheries Adjustment Schemes Act 1987* for the benefit of the fishing industry or the aquaculture industry;

(ka) in payment of compensation under section 12 of the *Fishing and Related Industries Compensation (Marine Reserves) Act 1997* and of the costs of administering that Act;

(l) to assist the fishing industry or any body (whether incorporated or not) whose objects include the provision of assistance to, or the promotion of, the fishing industry;

(m) in payment of any administrative costs under Part 14;

(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 authorisation under this Act or the *Pearling Act 1990* of aquaculture or pearling activity in the park or management area;

(n) in payment of the costs of administering the Account;

(o) any other purpose for which moneys may be lawfully paid from the Account.

(6) In subsection (5), ***fisheries*** and ***fishing industry*** include, respectively, pearl oyster fisheries and the pearl oyster fishing industry.

*[Section 238 amended by No. 5 of 1997 s. 57; No. 39 of 1997 s. 14; No. 2 of 2002 s. 20; No. 74 of 2003 s. 56(8); No. 55 of 2004 s. 390; No. 28 of 2006 s. 234 and 236(1); No. 77 of 2006 Sch. 1 cl. 68(4) and (5); No. 43 of 2011 s. 69.]*

## 239. Recreational Fishing Account

(1) An agency special purpose account called the Recreational Fishing Account (the ***Account***) is established under section 16 of the *Financial Management Act 2006*.

(2) The Account is to be administered by the Minister.

(3) The Account is to be credited with —

(a) fees and charges paid in respect of —

(i) recreational fishing licences; and

(ii) services relating to recreational fishing; and

(iii) the management of fish habitat protection areas or the Abrolhos Islands reserve relating to recreational fishing; and

(iv) licences for charter boats used for recreational fishing; and

(v) licences for persons engaged in aquatic eco-tourism, or the provision of fishing tours;

and

(b) costs recouped from prosecutions relating to recreational fishing; and

(c) moneys provided for the purposes of the Account —

(i) by any statutory authority or government (whether Commonwealth, State or otherwise); or

(ii) otherwise by way of donations or bequests;

and

(d) proceeds of the sale of any —

(i) forfeited property prescribed as being payable to the credit of the Account under section 221(2);

(ii) capital assets purchased using moneys from the Account;

and

(e) income derived from programmes, extension services, publications, research or other services provided using moneys from the Account; and

(f) income derived from the investment of moneys forming part of the Account, as determined by the Treasurer; and

(g) any other moneys lawfully payable to the credit of the Account.

(4) The Account may be applied by the Minister for all or any of the following purposes —

(a) defray the costs of recreational fishing administration and management;

(b) the credit of the Fisheries Adjustment Schemes Trust Account under the *Fisheries Adjustment Schemes Act 1987*;

(c) the enhancement and development of recreational fishing, including research, publicity and educational programmes;

(d) to conduct enforcement, operations and compliance programmes;

(e) to purchase capital assets required in connection with the administration or management of recreational fishing;

(f) to purchase any authorisation, entitlement, boat or fishing gear for the benefit of recreational fishing;

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

(g) to assist any body (whether incorporated or not) whose objects include the promotion of recreational fishing;

(h) in payment of the costs of administering the Account;

(i) any other purpose for which moneys may be lawfully paid from the Account.

*[Section 239 amended by No. 41 of 2000 s. 9; No. 2 of 2002 s. 21; No. 28 of 2006 s. 235; No. 77 of 2006 Sch. 1 cl. 68(6) and (7).]*

**240. Fishing Industry Promotion Training and Management Levy Account**

(1) An agency special purpose account called the Fishing Industry Promotion Training and Management Levy Account (the ***Account***) is established under section 16 of the *Financial Management Act 2006*.

(2) The Account is to be administered by the Minister.

(3) The Account is to be credited with —

(a) any levy paid; and

(b) any amount paid by way of penalty under section 236; and

(c) moneys provided for the purposes of the Account by way of donations or bequests; and

(d) income derived from the investment of moneys forming part of the Account, as determined by the Treasurer; and

(e) any other moneys lawfully payable to the credit of the Account.

(4) The Account may be applied by the Minister —

(a) to Account programmes promoted by industry bodies and approved by the Minister (after consultation with such persons as the Minister thinks fit), including programmes relating to —

(i) seafood promotion;

(ii) promotion of the fishing or aquaculture industry;

(iii) fishing or aquaculture industry training;

(iv) fishing or aquaculture industry management;

(b) in payment of the costs of administering the Account (including the costs of collecting levies and penalties).

(5) Moneys in the Account may be paid by the Minister to an industry body to conduct a programme promoted by that body.

(6) A body to whom moneys are paid under subsection (5) must ensure that —

(a) the moneys are only expended for the purposes of the programme and in accordance with any terms imposed by the Minister; and

(b) at such time or times as are prescribed, a special purpose audit is carried out by a registered company auditor of allocation and expenditure of the moneys; and

(c) a report on the audit is prepared by the auditor and a copy of the report is provided to the Minister as soon as practicable after it is prepared.

Penalty: $5 000.

*[Section 240 amended by No. 77 of 2006 Sch. 1 cl. 68(8) and (9).]*

*[**241, 242.** Deleted by No. 43 of 2011 s. 70.]*

**243. *Financial Management Act 2006* and *Auditor General Act 2006*, application of**

(1) The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of departments apply to and in relation to each Account referred to in this Division.

(2) The administration of each Account referred to in this Division is for the purposes of section 52 of the *Financial Management Act 2006* to be regarded as a service of the Department.

*[Section 243 amended by No. 77 of 2006 Sch. 1 cl. 68(14) and (15).]*

# Part 19 — Miscellaneous

## 244. Protection from personal liability

(1) This section applies to —

(a) the Minister; and

(b) the CEO; and

(c) the Registrar; and

(d) a fisheries officer and an honorary fisheries officer; and

(e) an officer of the Department; and

(f) a police officer and a member of the naval force of the Commonwealth; and

*[(g) deleted]*

(h) a member of an advisory committee established or continued in existence under this Act.

(2) A person to whom this section applies is not personally liable for anything done or omitted to be done in good faith by that person in the performance or purported performance of any duty, or the exercise or purported exercise of any power, under this Act.

*[Section 244 amended by No. 55 of 2004 s. 391; No. 28 of 2006 s. 236(1).]*

*[**245.** Deleted by No. 37 of 2009 s. 19.]*

## 246. Administrative guidelines, issue and effect of

(1) For the assistance of the CEO, fisheries officers and the staff of the Department (***fisheries personnel***) and for the information of industry and the community, the Minister may issue guidelines for the administration or enforcement of this Act or any other Act the administration of which is committed to the Minister.

(2) The Minister may at any time amend or revoke guidelines.

(3) Guidelines must be published in the prescribed way.

(4) In performing a function under an Act referred to in subsection (1), fisheries personnel must take into account any guidelines that are relevant to the performance of the function.

(5) Nothing in subsection (4) —

(a) derogates from the duty of fisheries personnel to exercise a discretion in a particular case; or

(b) precludes fisheries personnel from taking into account matters not set out in the guidelines; or

(c) requires fisheries personnel to take into account a guideline if the guideline is inconsistent with a provision of the Act under which the function is conferred.

*[Section 246 amended by No. 39 of 1997 s. 14; No. 2 of 2002 s. 22; No. 28 of 2006 s. 236; No. 43 of 2011 s. 71.]*

**247. Guidelines about foreign interests, issue of**

(1) The Minister may issue guidelines relating to foreign persons holding, controlling or having an interest in authorisations.

(2) The Minister may at any time amend or revoke guidelines.

(3) Guidelines must be published in the prescribed way.

**248. Consultation before issue etc. of guidelines under s. 246 or 247**

Before determining, amending or revoking a guideline referred to in section 246 or 247 the Minister is to consult with such industry body as the Minister thinks fit and may consult with any other persons the Minister thinks appropriate.

**249. Inquiry into holder etc. of authorisation, commencement and conduct of**

(1) In this section, ***appointed person*** means a person appointed by the CEO under subsection (2) to conduct an inquiry.

(2) The CEO may appoint a person or persons to conduct an inquiry to determine who holds, controls or has an interest in an

authorisation and to report to the CEO the findings of the inquiry.

(3) For the purposes of subsection (2), an appointed person may —

(a) by notice in writing require any person —

(i) to attend before the appointed person at a specified time and place;

(ii) to produce any document to the appointed person for inspection;

(b) inspect any document produced to the appointed person, and retain it for such reasonable period as is required, and make copies of the document or any of its contents;

(c) require any person to swear to answer truly any relevant question put to that person by the appointed person (and for that purpose may administer any oath or affirmation);

(d) require any person attending before the appointed person to answer any relevant question put to that person by the appointed person.

(4) A person who —

(a) having been served with a notice to attend before an appointed person, fails without reasonable excuse to attend as required by the notice;

(b) having been served with a notice to produce to an appointed person any document, fails without reasonable excuse to comply with the notice;

(c) refuses or fails without reasonable excuse to swear, or to answer any question, when required to do so by an appointed person; or

(d) makes, when attending before an appointed person, a statement that —

(i) the person knows to be false or misleading in a material particular; or

(ii) omits anything without which the statement is, to the person's knowledge, misleading in a material particular,

commits an offence and is liable to a fine not exceeding $5 000.

(5) For the purposes of subsection (4)(c), it is not a reasonable excuse for a person to refuse or fail to answer any question, on the ground that the answer to the question might incriminate the person or render the person liable to a penalty.

(6) Despite subsection (5), an answer given by a person pursuant to a requirement under subsection (3) is not admissible in evidence against the person in any criminal proceedings other than proceedings for perjury or for an offence against this section.

*[Section 249 amended by No. 28 of 2006 s. 236(1).]*

## 250. Confidential information, divulging

(1) In this section —

***confidential information*** means information contained in any of the following —

(a) a record that is required to be kept under this Act;

(b) a return that has been submitted or lodged as required under this Act;

(c) a record that has been voluntarily provided to the Department for the purposes of research;

(d) a MEMP that has been lodged as required under this Act.

(2) Except as provided in this section, a person who directly or indirectly divulges any confidential information obtained by reason of any duty or power that person has, or at any time had, in the administration of this Act commits an offence.

Penalty: $10 000.

(3) Subsection (2) does not apply to the divulging of information —

(a) in the course of the performance of any duty or the exercise of any power under this Act; or

(b) as required or allowed under this Act; or

(c) for the purposes of the investigation of any suspected offence against this Act or the conduct of proceedings against any person for an offence against this Act; or

(d) that relates to the person or persons required to keep, submit or lodge the information, or who voluntarily provided the information, with the consent of that person or each of them.

(4A) Subsection (2) does not apply to the divulging of information in aggregated form relating to fishing carried out under the authorisations in respect of a fishery, even though it could reasonably be expected to lead to the identification of a participant in the fishery because of the small number of participants.

(4B) Subsection (2) does not apply to the divulging of information relating to fishing carried out under an authorisation to its holder —

(a) in respect of the period during which the holder has held the authorisation (the ***current period***); or

(b) in respect of any period before the current period (a ***previous period***) with the consent of —

(i) the person who held the authorisation during that previous period; or

(ii) if that person has since died — the deceased's personal representative.

(4C) Subsection (2) does not apply to the divulging of information relating to fishing carried out under an authorisation to the master of a boat who is acting on behalf of the holder of the authorisation.

(4D) Subsection (2) does not apply to the divulging of information for law enforcement purposes to a department or other agency of the State with the approval of the Minister.

(4E) Subsection (2) does not apply to the divulging of information for law enforcement purposes to a department or other agency of the Commonwealth, another State or a Territory (an ***interstate jurisdiction***) in accordance with —

(a) an agreement between the Minister and a Minister of the interstate jurisdiction; and

(b) the requirements (if any) under the regulations.

(4) Subsection (2) does not apply to the divulging of statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates.

(5) A person who has any confidential information obtained by reason of any duty or power that person has, or at any time had in the administration of this Act is, despite any law to the contrary, not to be required by subpoena or otherwise to produce or divulge that information to any court or tribunal.

(6) This section has effect despite any provision of the *Freedom of Information Act 1992*.

*[Section 250 amended by No. 43 of 2011 s. 72.]*

## 251. Exclusive licences to take fish, grant of

(1) The Minister may grant an exclusive licence to any person to take fish from a specified area of coastal waters and the foreshore above high water-mark.

(2) An exclusive licence may be —

(a) granted for an initial term not exceeding 14 years; and

(b) renewed by the Minister from time to time for any further period or periods not exceeding 7 years in each case.

(3) An exclusive licence may be granted or renewed subject to such terms and conditions as the Minister thinks fit.

(4) Without limiting subsection (3), an exclusive licence may be granted subject to terms and conditions —

(a) relating to the period or periods during which fish may be taken under the licence;

(b) relating to the type and quantity of fish that may be taken under the licence;

(c) relating to the method, or type of fishing gear, that may be used to take fish under the licence;

(d) requiring the licence holder to protect the aquatic environment in the area of the licence;

(e) requiring the licence holder to pay fees or royalties to the Minister (whether the amount of the fee or royalty is specified in the licence or fixed from time to time);

(f) requiring the licence holder to provide security for the payment of fees and royalties and the observance of terms and conditions of the licence.

(5) The Minister may vary or revoke an exclusive licence in the manner provided in the licence.

(6) If the Minister grants or renews an exclusive licence under this section the Minister is to cause notice of the grant or renewal to be published in the *Gazette*.

(7) The regulations may —

(a) prohibit persons, other than persons authorised to do so by an exclusive licence, from engaging in fishing or any fishing activity of a specified class in an area that is the subject of an exclusive licence; and

(b) provide for any other matter relating to exclusive licences.

**252. Marine reserve, no exclusive licence to be granted in**

An exclusive licence must not be granted in respect of an area in a marine nature reserve, a marine park or a marine management area.

*[Section 252 amended by No. 5 of 1997 s. 58.]*

*[**253.** Deleted by No. 74 of 2003 s. 56(9).]*

**254. Waterway works, public authority to notify Minister of**

(1) In this section —

***fish way*** means a structure or device that enables fish to pass through, by or over a dam, weir or reservoir;

***waterway*** means a river, creek or other naturally flowing stream of water.

(2) If a public authority proposes to construct, alter or modify a dam, weir or reservoir on a waterway, the public authority must —

(a) notify the Minister of the proposal; and

(b) if the Minister so requests, include as part of the works for the dam, weir or reservoir, or for its alteration or modification, a suitable fish way or fish by-pass.

**255. Activities that pollute waters, Minister may prohibit**

(1) The Minister may, by notice in writing served on any person, prohibit the person from engaging in any activity if in the Minister's opinion the activity is polluting, or is likely to pollute, the aquatic environment.

(2) A notice under this section —

(a) may apply generally or at specified times or in specified circumstances; and

(b) remains in force for such period as is specified or, if no period is specified, until revoked; and

(c) may be varied or revoked at any time by the Minister by notice in writing served on the person.

(3) A person must not contravene a notice served on the person under this section.

Penalty: In the case of an individual, $25 000 or, in the case of a body corporate, $50 000.

(4) If a court convicts a person of an offence against subsection (3), the court may, in addition to any penalty imposed under that subsection, order the person to pay compensation for any damage or loss caused by the offence to any person.

(5) A person aggrieved by a notice given to the person under this section may apply to the State Administrative Tribunal for a review of the giving of that notice.

*[Section 255 amended by No. 55 of 2004 s. 392.]*

## 256. Regulations, general power to make

(1) The Governor may make regulations prescribing all matters that are required or permitted by this Act to be prescribed, or are necessary or convenient to be prescribed for giving effect to the purposes of this Act.

(2) The regulations may create offences and may provide for a penalty not exceeding $10 000 and a daily penalty not exceeding $100.

## 257. Regulations about licensing

(1) The regulations may provide for the licensing of any of the following —

(a) persons engaged in commercial fishing;

(ba) Aboriginal bodies corporate engaged in commercial fishing, but a licence granted or renewed under this provision cannot be transferred despite any other provision of this Act;

(bb) masters of boats used for purposes relating to commercial fishing;

(bc) persons engaged in diving for purposes relating to commercial fishing, aquaculture or aquatic eco-tourism;

(bd) persons collecting fish (including protected fish) for broodstock and other aquaculture purposes;

(b) individuals engaged in recreational fishing;

(ca) boats (including foreign boats) used for purposes relating to recreational fishing;

(cb) persons engaged in specified activities in a fish habitat protection area;

(c) fishing boats;

(d) boats used for transporting or trans-shipping fish for a commercial purpose;

(e) boats used in connection with aquaculture;

(f) charter boats;

(g) persons engaged in aquatic eco-tourism or the provision of fishing tours for a commercial purpose;

(h) persons engaged in selling specified classes of fish that have been produced by means of aquaculture;

(i) persons engaged in the possession, unloading, transport, consignment, handling, labelling, delivery, receival, storage, packaging, purchase or sale of fish.

(2) For the purpose of giving effect to subsection (1), the regulations may do any of the following —

(a) prohibit a person from operating or using a boat, or engaging in an activity, referred to in subsection (1) unless the person is authorised to do so by a specified licence;

(b) authorise the CEO to grant licences authorising persons to operate or use boats, or to engage in activities, referred to in subsection (1);

(c) specify the criteria to be applied by the CEO in determining whether or not to grant such licences;

(d) provide, subject to sections 136A and 143, for the renewal of such licences;

(e) authorise conditions to be specified on licences by the CEO or prescribed by the regulations and provide for conditions specified on a licence to be deleted, varied or added to;

(f) prohibit a person from contravening a condition of a licence;

(g) specify the duration of licences and any other matter relating to the licences;

(h) prohibit a person who has been convicted of a prescribed offence from being on any boat in a prescribed class of boats for a prescribed period after the conviction unless the person holds a prescribed authorisation and the authority conferred by the authorisation is in effect.

*[Section 257 amended by No. 5 of 1997 s. 59; No. 41 of 2000 s. 10; No. 28 of 2006 s. 236(1); No. 43 of 2011 s. 73.]*

## 258. Regulations, miscellaneous subjects for

(1) The regulations may do any of the following —

(a) prohibit or regulate the possession, unloading, transport, consignment, handling, labelling, delivery, receival, storage, packaging, purchase or sale of fish;

(ba) regulate customary fishing;

(b) regulate recreational fishing;

(c) prohibit or regulate recreational fishing on or from fishing boats, boats used for aquaculture or boats used for aquatic eco-tourism or fishing tours;

(d) determine the priority between persons engaged in fishing in the same area;

(ea) provide for methods of deciding to whom authorisations will be granted if the number of available authorisations is less than the number of appropriate applicants for those authorisations, including by way of public auction, public tender, ballot and lottery;

(eb) provide for the reseeding of fish stocks or the release of fish for the purpose of restoring or improving fish stocks;

(ec) provide for the labelling or other identification of fish that is the product of aquaculture;

(ed) prohibit or regulate aquaculture that has, or is likely to have, an incidental impact on aquatic fauna or flora;

(ee) apply, adopt or incorporate a provision of any code of practice, standard or other document relating to aquaculture —

(i) with or without modifications; or

(ii) as in force at a particular time or from time to time;

(e) prohibit or regulate the possession or consignment of —

(i) flesh or parts only of any fish of a specified class; or

(ii) any fish of a specified class if the fish has been mutilated or disfigured;

(f) provide for and regulate the identification of fish by tagging, marking or other specified means;

(g) prescribe measures to prevent the unnecessary destruction and wastage of fish;

(h) provide for the control of any species of fish not endemic to the State, or a particular area of the State, and in particular may —

(i) prohibit or regulate the breeding, keeping or release of such fish;

(ii) prohibit or regulate the bringing of such fish into the State or into a particular area of the State;

(iii) require persons in specified circumstances to notify the CEO of the occurrence of such fish;

(ia) prescribe measures for the control, recapture and eradication of exotic fish;

(ib) prohibit or regulate the entry into or movement or use within, or direct the removal from, WA waters or an area of WA waters of boats or equipment on or attached to boats for the purpose of —

(i) preventing organisms, as defined in section 177B, that pose or are likely to pose a threat to fish or other aquatic resources or to their habitats from entering WA waters or an area of WA waters; or

(ii) preventing or controlling the spread of such organisms in WA waters or an area of WA waters; or

(iii) eradicating or removing such organisms from WA waters or an area of WA waters;

(i) prescribe measures for the control, recapture and eradication of noxious fish;

(j) prohibit or regulate the bringing into the State, or the export from the State, of any fish (whether processed or unprocessed);

(k) provide for the control of disease in fish or pearl oysters, and for that purpose may —

(i) prescribe measures for the prevention or control of disease in fish or pearl oysters;

(ii) require persons in specified circumstances to notify the CEO of the occurrence of any disease, or symptoms of disease, in fish or pearl oysters;

(iii) prohibit or regulate the possession of fish or pearl oysters that may be affected by disease;

(iv) require the destruction of fish affected by disease and any receptacle or container containing such fish or pearl oysters;

(v) provide for the recovery of the cost of any measure for the prevention or control of disease in fish or pearl oysters;

(la) provide for the protection from, or the minimisation of incidental harm from, fishing activities of aquatic fauna or aquatic habitats, including by prohibiting or regulating specified fishing activities;

(l) regulate the use of any type of fishing gear or the use of any method of fishing;

(m) provide for the registration or identification of fishing gear;

(n) require specified gear or equipment to be installed in or carried on boats used for fishing, aquaculture, fishing tours or aquatic eco-tourism and require the gear or equipment to be used in a specified way;

(o) prohibit or regulate the possession or carriage on any boat of any specified type of fishing or aquaculture gear or gear or equipment used in connection with fishing tours or aquatic eco-tourism;

(p) prohibit or regulate the possession by any person in or on any waters or land adjacent to any waters of any specified type of fishing or aquaculture gear or gear or equipment used in connection with fishing tours or aquatic eco-tourism;

(q) prohibit or regulate the carrying of any firearm, explosive or noxious substance on any boat;

(r) prohibit or regulate the use of fish aggregating devices;

(s) require or regulate the marking and labelling of packages, receptacles or containers containing or used for holding fish (whether for storage, transport or

otherwise) and regulate the dimensions of such packages, receptacles or containers;

(t) prohibit or regulate activities that interfere with, or obstruct, fishing or aquaculture;

(u) prohibit the deposit of any refuse or waste in any waters;

(ua) prohibit or regulate any other activity that might pollute any waters;

(v) prohibit the use of any type of packaging, container or receptacle on a boat or regulate the disposal of any rubbish or material from a boat;

(va) prescribe measures to —

(i) prevent cruelty to fish; and

(ii) provide for the welfare, safety and health of fish;

(vb) provide for the adoption of codes of practice relating to the use, care, welfare, safety or health of fish either —

(i) as modified by the regulations; or

(ii) as they exist at a particular date; or

(iii) as they are amended from time to time;

(w) regulate aquatic eco-tourism and other activities that might disturb fish;

(wa) regulate fishing tours provided for a commercial purpose, and the persons engaged or employed in providing such tours;

(wb) prohibit or regulate the possession of fish in, and the removal of fish from, designated areas (whether the fish was taken or otherwise obtained in those areas or elsewhere) and provide for the management of fishing and related activities in those areas;

(x) regulate the taking of fish for scientific purposes;

(y) prohibit the taking of fish for genetic or chemical extraction or analysis unless a permit is obtained from the CEO;

(z) provide for the naming of fish and prohibit the sale of fish except under specified names;

(zaa) regulate the exchange of information for law enforcement purposes between departments or other agencies of the State and departments or other agencies of the Commonwealth, other States or Territories;

(za) require persons who are authorised to engage in fishing or the storage, transport, sale or purchase of fish to —

(i) keep specified records; and

(ii) submit or lodge specified returns at specified times;

(zb) prohibit a person from making an entry or statement that is false or misleading in a material particular in a record or return required to be kept or submitted or lodged under the regulations;

(zc) prescribe fees and charges for the purposes of this Act, including fees and charges payable in respect of —

(i) applications, other than an application to the State Administrative Tribunal for a review; and

(ii) the issue of authorisations; and

(iii) the provision of any service or information;

(zd) allow the payment of any fee or charge to be made by instalments, and provide for the payment of a surcharge if the payment of any fee or charge is made by instalments.

(2) A fee prescribed under subsection (1)(zc)(ii) may include one or more of the following —

(a) an amount in respect of the extent or value of any authority conferred by an authorisation;

(b) an amount in connection with any purpose referred to in section 238(5) or 239(4) that is relevant to an authorisation;

(c) if the fee is for the issue of an aquaculture licence — an amount in respect of the area to which the licence relates;

(d) an amount in respect of the costs of administering this Act.

(3) To the extent that the regulations prescribe under subsection (1)(zc)(ii) a fee that includes an amount referred to in subsection (2) that is a tax, the regulations may impose the tax.

*[Section 258 amended by No. 41 of 2000 s. 11; No. 2 of 2002 s. 23; No. 33 of 2002 s. 96(3); No. 55 of 2004 s. 393; No. 28 of 2006 s. 236(1); No. 21 of 2011 s. 5; No. 22 of 2011 s. 5; No. 43 of 2011 s. 74.]*

## 259. Categories of fish, prescription of

(1) For the purposes of this Act, species of fish are to be prescribed as being either category 1 fish, category 2 fish, category 3 fish or category 4 fish.

(2) For the purposes of subsection (1), category 4 fish may be prescribed to be any species of fish not prescribed to be category 1 fish, category 2 fish or category 3 fish.

*[**260.** Deleted by No. 49 of 1997 s. 5.]*

## 261. Notices etc., service of

(1) If any notice or other instrument is required under this Act to be given to, or served on, the holder of an authorisation, temporary aquaculture licence or aquaculture lease, the notice or other instrument may be given or served by posting it duly stamped and addressed to the address of the holder specified in the register.

(2) Nothing in subsection (1) limits the operation of section 76 of the *Interpretation Act 1984*.

*[Section 261 amended by No. 2 of 2002 s. 24; No. 43 of 2011 s. 75.]*

**262. Orders, regulations etc., CEO to make publicly available**

The CEO is to cause a copy of every order, regulation and management plan in force under this Act —

(a) to be kept at the head office of the Department; and

(b) to be available for inspection free of charge by members of the public at that office during normal office hours.

*[Section 262 amended by No. 28 of 2006 s. 236(1).]*

**263. Annual report of Department, content of**

The annual report of the Department prepared for the purposes of Part 5 of the *Financial Management Act 2006* is to include —

(a) a report on the state of fisheries managed under this Act; and

(b) details of exemptions granted during the financial year to which the report relates.

*[Section 263 amended by No. 77 of 2006 Sch. 1 cl. 68(16).]*

*[**264, 265.** Omitted under the Reprints Act 1984 s. 7(4)(e) and (f).]*

# Part 20 — Transitional matters

*[Heading inserted by No. 43 of 2011 s. 76.]*

## Division 1 — Transitional matters for *Fish Resources Management Act 1994*

*[Heading inserted by No. 43 of 2011 s. 76.]*

### 266. *Fish Resources Management Act 1994*, provisions for (Sch. 3)

The savings and transitional provisions in Schedule 3 have effect.

## Division 2 — Transitional matters for *Fish Resources Management Amendment Act 2011*

*[Heading inserted by No. 43 of 2011 s. 77.]*

### 267. Term used: amending Act

In this Division —

***amending Act*** means the *Fish Resources Management Amendment Act 2011*.

*[Section 267 inserted by No. 43 of 2011 s. 77.]*

### 268. Exemptions under s. 7

An exemption that was in force under section 7 immediately before the commencement of the amending Act section 7 is taken to have been granted under section 7 as amended by the amending Act section 7.

*[Section 268 inserted by No. 43 of 2011 s. 77.]*

### 269. Application of extended period for service of infringement notices under s. 228

The amendment effected by the amending Act section 68 does not apply in relation to the service by an authorised person of an infringement notice in respect an offence that the authorised

person believes to have been committed before the commencement of that section.

*[Section 269 inserted by No. 43 of 2011 s. 77.]*

### 270. Transfer of money in accounts under repealed s. 241 and 242

(1) Any money in the AFMA Account immediately before the commencement of the amending Act section 70 must be paid into the Fisheries Research and Development Account.

(2) Any money in the Fisheries Research and Development Corporation Account immediately before the commencement of the amending Act section 70 must be paid into the Fisheries Research and Development Account.

*[Section 270 inserted by No. 43 of 2011 s. 77.]*

*[Schedule 1 deleted by No. 37 of 2009 s. 20.]*

*[Schedule 2 omitted under the Reprints Act 1984 s. 7(4)(e).]*

# Schedule 3 — Savings and transitional provisions for *Fish Resources Management Act 1994*

[s. 266]

*[Heading amended by No. 19 of 2010 s. 4; No. 43 of 2011 s. 78.]*

**1. *Interpretation Act 1984* not affected**

Nothing in this Schedule limits the operation of the *Interpretation Act 1984*.

**2. Director of Fisheries**

The person holding office as Director of Fisheries immediately before the commencement of this Act is, on the commencement of this Act, to be taken to have been appointed as the Executive Director on the same terms and conditions as those on which he or she was appointed before the commencement.

**3. Inspectors**

A person who immediately before the commencement of this Act was an inspector of fisheries is, on the commencement of this Act, to be taken to have been appointed as a fisheries officer on the same terms and conditions as those on which he or she was appointed before the commencement.

**4. Honorary inspectors**

A person who immediately before the commencement of this Act was an honorary inspector of fisheries appointed under the repealed Act ceases, on the commencement of this Act, to hold that office, but is eligible for appointment as an honorary fisheries officer under this Act.

**5. Fisheries Research and Development Fund**

Any moneys credited to the Fisheries Research and Development Fund immediately before the commencement of this Act continue, on the commencement of this Act, to be credited to that Fund.

*[**6.** Deleted by No. 37 of 2009 s. 21.]*

**7. Arrangements**

An arrangement made under Part IIA of the repealed Act and in force immediately before the commencement of this Act continues in force, on the commencement of this Act, as if the arrangement had been made under Part 3 of this Act.

**8. Limited entry fishery taken to be managed fishery**

A fishery that was, immediately before the commencement of this Act, a limited entry fishery under section 32 of the repealed Act is, on the commencement of this Act, taken to be a managed fishery.

**9. Limited entry fishery notice taken to be management plan**

(1) A notice under section 32 of the repealed Act in force immediately before the commencement of this Act continues to have effect, on the commencement of this Act, and may be amended or repealed, as if the notice were a management plan determined under section 54 and as if a reference in the notice —

(a) to a limited entry fishery were a reference to a managed fishery;

(b) to a licence, or an endorsement on a licence, in respect of the limited entry fishery were a reference to a managed fishery licence;

(c) to the repealed Act or a provision of the repealed Act were a reference to this Act or to the corresponding provision of this Act;

(d) to the Director were a reference to the Executive Director.

(2) Until an advisory committee or a person is specified in the management plan as required under section 65 the Minister is to consult with such advisory committee or person as the Minister thinks fit before amending the plan and the procedure in that section is to be taken to have been satisfied by the consultation.

(3) The consultation referred to in clause (2) may take place before the commencement of this Act.

**10. Limited entry fishery licence continued in force**

(1) A licence or endorsement in force under the repealed Act immediately before the commencement of this Act authorising a person to engage

in any fishing activity, or to operate or use any boat, in a limited entry fishery continues in force on the commencement of this Act as if it were a managed fishery licence granted under section 66 and as if a reference in the licence or endorsement —

(a) to the repealed Act or a provision of that Act were a reference to this Act or the corresponding provision of this Act; and

(b) to a limited entry fishery were a reference to a managed fishery.

(2) An entitlement under any licence or endorsement referred to in subclause (1) continues in force on the commencement of this Act as if it were an entitlement under a managed fishery licence.

**11. Permit to establish processing establishment continued in force**

A permit granted under section 35C of the repealed Act and in force immediately before the commencement of this Act continues in force on the commencement of this Act as if it were a permit granted under section 80 and as if a reference in that permit to the repealed Act or a provision of that Act were a reference to this Act or the corresponding provision of this Act.

**12. Processor's licence continued in force**

A processor's licence granted under section 35CA of the repealed Act and in force immediately before the commencement of this Act continues in force on the commencement of this Act as if it were a fish processor's licence granted under section 83 and as if a reference in that licence to the repealed Act or a provision of that Act were a reference to this Act or the corresponding provision of this Act.

**13. Fish farm licence continued in force**

A licence granted under section 39C of the repealed Act and in force immediately before the commencement of this Act continues in force on the commencement of this Act as if it were an aquaculture licence granted under section 92 and as if a reference in that licence —

(a) to the repealed Act or a provision of that Act were a reference to this Act or the corresponding provision of this Act;

(b) to the Director were a reference to the Executive Director.

**14. Proclaimed fishing zones continued in force**

(1) A portion of the State that was immediately before the commencement of this Act declared to be a proclaimed fishing zone under section 12A of the repealed Act is, on the commencement of this Act, taken to be a designated fishing zone as if it had been prescribed to be a designated fishing zone under the regulations.

(2) If the portion of the State referred to in subclause (1) was declared to be a proclaimed fishing zone only during a specified period it must taken, on the commencement of this Act, to have been prescribed to be a designated fishing zone during the same period.

(3) Subclauses (1) and (2) do not apply to a portion of the State if the portion of the State is, on the commencement of this Act, already prescribed under the regulations to be a designated fishing zone.

**15. Fishing boat licence continued in force**

A fishing boat licence in force under the repealed Act immediately before the commencement of this Act authorising a person to use a boat for or in connection with the taking of fish for sale or otherwise for gain or reward, continues in force on the commencement of this Act as if it were a fishing boat licence granted under the regulations.

**16. Carrier boat licence continued in force**

A carrier boat licence in force under the repealed Act immediately before the commencement of this Act authorising a person to use a carrier boat, continues in force on the commencement of this Act as if it were the corresponding licence granted under the regulations.

**17. Professional fisherman's licence continued in force**

A professional fisherman's licence in force under the repealed Act immediately before the commencement of this Act, continues in force on the commencement of this Act as if it were a commercial fishing licence granted under the regulations.

**18. Recreational fishing licence continued in force**

A recreational fishing licence in force under the repealed Act immediately before the commencement of this Act, continues in force

on the commencement of this Act as if it were a recreational fishing licence granted under the regulations.

**19. Transitional regulations**

The regulations may provide for any matter if —

(a) this Schedule does not make provision or sufficient provision in respect of the matter; and

(b) it is necessary or convenient to do so to facilitate the transition from the provisions of the repealed Act to the provisions of this Act.

# Notes

[1] This reprint is a compilation as at 13 January 2012 of the *Fish Resources Management Act 1994* and includes the amendments made by the other written laws referred to in the following table [1a, 2]. The table also contains information about any reprint.

## Compilation table

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| *Fish Resources Management Act 1994* | 53 of 1994 | 2 Nov 1994 | s. 1 and 2: 2 Nov 1994; Act other than s. 1 and 2: 1 Oct 1995 (see s. 2 and *Gazette* 29 Sep 1995 p. 4649) |
| *Sentencing (Consequential Provisions) Act 1995* Pt. 34 | 78 of 1995 | 16 Jan 1996 | 4 Nov 1996 (see s. 2 and *Gazette* 25 Oct 1996 p. 5632) |
| *Local Government (Consequential Amendments) Act 1996* s. 4 | 14 of 1996 | 28 Jun 1996 | 1 Jul 1996 (see s. 2) |
| *Acts Amendment (Marine Reserves) Act 1997* Pt. 6 | 5 of 1997 | 10 Jun 1997 | 29 Aug 1997 (see s. 2 and *Gazette* 29 Aug 1997 p. 4867) |
| *Fishing and Related Industries Compensation (Marine Reserves) Act 1997* s. 14 | 39 of 1997 | 2 Dec 1997 | 2 Dec 1997 (see s. 2) |
| *Sunday Observance Laws Amendment and Repeal Act 1997* s. 5 | 49 of 1997 | 10 Dec 1997 | 10 Dec 1997 (see s. 2) |
| **Reprint of the *Fish Resources Management Act 1994* as at 28 Apr 2000** (includes amendments listed above) | | | |
| *Fish Resources Management Amendment Act 2000* | 41 of 2000 | 2 Nov 2000 | s. 1 and 2: 2 Nov 2000; Act other than s. 1 and 2: 8 May 2001 (see s. 2 and *Gazette* 8 May 2001 p. 2269) |
| *Acts Amendment (Australian Datum) Act 2000* s. 3 | 54 of 2000 | 28 Nov 2000 | 8 Nov 2003 (see s. 2 and *Gazette* 2 Sep 2003 p. 3923) |

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| *Corporations (Consequential Amendments) Act 2001* s. 220 | 10 of 2001 | 28 Jun 2001 | 15 Jul 2001 (see s. 2 and *Gazette* 29 Jun 2001 p. 3257 and Cwlth *Gazette* 13 Jul 2001 No. S285) |
| *Fish Resources Management Amendment Act 2002* [3] | 2 of 2002 | 9 Apr 2002 | 9 Apr 2002 (see s. 2) |
| *Animal Welfare Act 2002* s. 96 | 33 of 2002 | 15 Nov 2002 | 4 Apr 2003 (see s. 2 and *Gazette* 4 Apr 2003 p. 1023) |
| *Offshore Minerals (Consequential Amendments) Act 2003* Pt. 4 | 12 of 2003 | 17 Apr 2003 | 1 Jan 2011 (see s. 2 and *Gazette* 17 Dec 2010 p. 6350) |
| *Sentencing Legislation Amendment and Repeal Act 2003* s. 63 | 50 of 2003 | 9 Jul 2003 | 15 May 2004 (see s. 2 and *Gazette* 14 May 2004 p. 1445) |
| *Acts Amendment and Repeal (Courts and Legal Practice) Act 2003* s. 36 | 65 of 2003 | 4 Dec 2003 | 1 Jan 2004 (see s. 2 and *Gazette* 30 Dec 2003 p. 5722) |
| *Statutes (Repeals and Minor Amendments) Act 2003* s. 56 | 74 of 2003 | 15 Dec 2003 | 15 Dec 2003 (see s. 2) |
| *Courts Legislation Amendment and Repeal Act 2004* s. 141 (Sch. 1 cl. 65) | 59 of 2004 | 23 Nov 2004 | 1 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7128) |
| *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 2 Div. 51 [4, 5] | 55 of 2004 | 24 Nov 2004 | 1 Jan 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7130) |
| *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004* s. 80 and 82 | 84 of 2004 | 16 Dec 2004 | 2 May 2005 (see s. 2 and *Gazette* 31 Dec 2004 p. 7129 (correction in *Gazette* 7 Jan 2005 p. 53)) |

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| **Reprint 2: The *Fish Resources Management Act 1994* as at 11 Mar 2005** (includes amendments listed above except those in the *Offshore Minerals (Consequential Amendments) Act 2003*, the *Courts Legislation Amendment and Repeal Act 2004* and the *Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004*) | | | |
| *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 8 Div. 3 [6, 7] | 28 of 2006 | 26 Jun 2006 | 1 Jul 2006 (see s. 2 and *Gazette* 27 Jun 2006 p. 2347) |
| *Financial Legislation Amendment and Repeal Act 2006* s. 4 and Sch. 1 cl. 68 | 77 of 2006 | 21 Dec 2006 | 1 Feb 2007 (see s. 2(1) and *Gazette* 19 Jan 2007 p. 137) |
| *Fish Resources Management Amendment Act 2007* | 28 of 2007 | 26 Oct 2007 | 26 Oct 2007 (see s. 2) |
| *Petroleum Amendment Act 2007* s. 94 | 35 of 2007 | 21 Dec 2007 | 19 Jan 2008 (see s. 2(b) and *Gazette* 18 Jan 2008 p. 147) |
| **Reprint 3: The *Fish Resources Management Act 1994* as at 16 May 2008** (includes amendments listed above except those in the *Offshore Minerals (Consequential Amendments) Act 2003*) | | | |
| *Statutes (Repeals and Miscellaneous Amendments) Act 2009* s. 60 | 8 of 2009 | 21 May 2009 | 22 May 2009 (see s. 2(b)) |
| *Fish Resources Management Amendment Act 2009* | 37 of 2009 | 3 Dec 2009 | s. 1 and 2: 3 Dec 2009 (see s. 2(a)); Act other than s. 1 and 2: 31 Jul 2010 (see s. 2(b) and *Gazette* 30 Jul 2010 p. 3493) |
| *Standardisation of Formatting Act 2010* s. 4 | 19 of 2010 | 28 Jun 2010 | 11 Sep 2010 (see s. 2(b) and *Gazette* 10 Sep 2010 p. 4341) |
| *Fish Resources Management Amendment (Fees) Act 2011* | 21 of 2011 | 11 Jul 2011 | s. 1 and 2: 11 Jul 2011 (see s. 2(a)); Act other than s. 1 and 2: 30 Jul 2011 (see s. 2(b) and *Gazette* 29 Jul 2011 p. 3127) |

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| *Fish Resources Management Amendment (Fees) Act (No. 2) 2011* | 22 of 2011 | 11 Jul 2011 | s. 1 and 2: 11 Jul 2011 (see s. 2(a));<br>s. 3: 30 Jul 2011 (see s. 2(b) and *Gazette* 29 Jul 2011 p. 3127);<br>s. 4: 30 Jul 2011 (see s. 2(c) and *Gazette* 29 Jul 2011 p. 3127);<br>s. 5: 30 Jul 2011 (see s. 2(d) and *Gazette* 29 Jul 2011 p. 3127) |
| *Fish Resources Management Amendment Act 2011* | 43 of 2011 | 12 Oct 2011 | s. 1 and 2: 12 Oct 2011 (see s. 2(a));<br>Act other than s. 1 and 2: 5 Nov 2011 (see s. 2(b) and *Gazette* 4 Nov 2011 p. 4629) |
| **Reprint 4: The *Fish Resources Management Act 1994* as at 13 Jan 2012** (includes amendments listed above) | | | |

[1a] On the date as at which this reprint was prepared, provisions referred to in the following table had not come into operation and were therefore not included in compiling the reprint. For the text of the provisions see the endnotes referred to in the table.

## Provisions that have not come into operation

| Short title | Number and year | Assent | Commencement |
|---|---|---|---|
| *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007* s. 89 [8] | 24 of 2007 | 12 Oct 2007 | To be proclaimed (see s. 2(1)) |
| *Standardisation of Formatting Act 2010* s. 4 [9] | 19 of 2010 | 28 Jun 2010 | To be proclaimed (see s. 2(b)) |
| *Personal Property Securities (Consequential Repeals and Amendments) Act 2011* Pt. 7 Div. 1 [10] | 42 of 2011 | 4 Oct 2011 | Operative immediately before the registration commencement time as defined in the *Personal Property Securities Act 2009* (Cwlth) s. 306(2) (see s. 2(c)) |

[2] The amendment to s. 245(1) in the *Public Sector Reform Act 2010* s. 89 is not included because the section it sought to amend was deleted by the *Fish Resources Management Amendment Act 2009* s. 19.

[3] The *Fish Resources Management Amendment Act 2002* s. 8(2)-(4) read as follows:

> (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*.

[4] The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

5 The *State Administrative Tribunal Regulations 2004* r. 32 and 50 contain transitional provisions of no further effect.

6 The *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 8 Div. 5 reads as follows:

## Division 5 — Transitional provisions

**242. References to the Executive Director**

(1) After commencement, a reference in a written law that is, or is to be taken to be, to the Executive Director (as defined in the *Fish Resources Management Act 1994* as in force before commencement) is to have effect as if it had been amended to be a reference to the CEO (as defined in the *Fish Resources Management Act 1994* as in force after commencement).

(2) Subsection (1) does not apply if a contrary intention appears or the context otherwise requires.

(3) In this section —

***commencement*** means the time at which section 232 comes into operation.

7 The requirement to appoint an Executive Director was removed from the Act and references to the Executive Director were replaced by references to the CEO, see the *Machinery of Government (Miscellaneous Amendments) Act 2006* Pt. 8 Div. 3. Section 454 of that Act is a general transitional provision that applies to references to the Executive Director in written laws.

8 On the date as at which this reprint was prepared, the *Biosecurity and Agriculture Management (Repeal and Consequential Provisions) Act 2007* s. 89 had not come into operation. It reads as follows:

**89. *Fish Resources Management Act 1994* amended**

(1) The amendments in this section are to the *Fish Resources Management Act 1994*.

(2) Section 4(1) is amended by deleting the definition of "noxious fish".

(3) Part 9 is repealed.

(4) Section 193 is amended as follows:

(a) by inserting "or" after paragraph (f);

(b) by deleting paragraph (g) and "or" after it.

(5) Section 220 is amended as follows:

(a) by inserting "or" after paragraph (b);

(b) by deleting paragraph (c) and "or" after it;

(c) in paragraph (d) by deleting ", (b) or (c)" and inserting instead —

" or (b) ".

(6) Section 222(1) is amended by inserting after "regulations" —

" or the *Biosecurity and Agriculture Management Act 2007* ".

(7) Section 224(1)(a) is amended by inserting after "Act" —

" or the *Biosecurity and Agriculture Management Act 2007* ".

(8) Section 258(i) is deleted.

9 On the date as at which this reprint was prepared, the *Standardisation of Formatting Act 2010* s. 4 the amendment to Schedule 1 had not come into operation. It proposes to amend the heading to Schedule 1. Schedule 1 was deleted by the *Fish Resources Management Amendment Act 2009* s. 20.

10 On the date as at which this reprint was prepared, the *Personal Property Securities (Consequential Repeals and Amendments) Act 2011* Pt. 7 Div. 1 had not come into operation. It reads as follows:

## Division 1 — *Fish Resources Management Act 1994* amended

**73. Act amended**

This Division amends the *Fish Resources Management Act 1994*.

**74. Section 66 amended**

After section 66(4) insert:

(5) In accordance with the *Personal Property Securities Act 2009* (Commonwealth) section 10 the definition of ***licence*** paragraph (d), an authorisation granted under subsection (1) is declared not to be personal property for the purposes of that Act.

**75. Section 83 amended**

After section 83(3) insert:

(4) In accordance with the *Personal Property Securities Act 2009* (Commonwealth) section 10 the definition of ***licence*** paragraph (d), a fish processor's licence granted under subsection (1) is declared not to be personal property for the purposes of that Act.

**76. Section 92 amended**

After section 92(6) insert:

(7) In accordance with the *Personal Property Securities Act 2009* (Commonwealth) section 10 the definition of ***licence*** paragraph (d), an aquaculture licence granted under subsection (1) is declared not to be personal property for the purposes of that Act.

# Defined Terms

*[This is a list of terms defined and the provisions where they are defined. The list is not part of the law.]*


| Defined Term | Provision(s) |
|---|---|
| Aboriginal body corporate | 4(1) |
| Aboriginal person | 4(1) |
| Abrolhos Islands reserve | 4(1) |
| Account | 238(1), 239(1), 240(1) |
| affected person | 146 |
| agent | 203(1) |
| alternative area | 97B(1) |
| amending Act | 267 |
| application | 135(1) |
| appointed person | 249(1) |
| aquaculture | 4(1), 101A(4) |
| aquaculture gear | 4(1) |
| aquaculture lease | 4(1) |
| aquaculture licence | 4(1) |
| aquatic eco-tourism | 4(1) |
| aquatic resources | 4(1) |
| arrangement | 15 |
| Australian fishing zone | 4(1) |
| authorisation | 4(1), 53 |
| authorised area | 136A(4) |
| authorised person | 213(1), 226 |
| bag limit | 50(2) |
| bed | 4(1) |
| biological threat | 177B |
| boat | 4(1) |
| broodstock | 4(1) |
| bycatch reduction device | 4(1) |
| category 1 fish | 4(1) |
| category 2 fish | 4(1) |
| category 3 fish | 4(1) |
| category 4 fish | 4(1) |
| CEO | 4(1) |
| coastal waters | 4(1) |
| commercial fishing | 4(1) |
| commercial fishing licence | 4(1) |
| commercial purpose | 4(1) |
| commercial quantity | 153 |
| commercially protected fish | 4(1) |

## Defined Terms

Commonwealth Act ..... 4(1)
Commonwealth Minister ..... 15
confidential information ..... 250(1)
corresponding law ..... 15
current period ..... 250(4B)(a)
customary fishing ..... 4(1)
Department ..... 4(1)
designated fishing zone ..... 4(1)
document ..... 4(1)
entitlement ..... 4(1)
exclusive licence ..... 4(1)
exemption ..... 4(1)
exotic fish ..... 4(1)
export ..... 4(1)
fish ..... 4(1)
fish aggregating device ..... 4(1)
fish habitat protection area ..... 4(1)
fish processor's licence ..... 4(1)
fish way ..... 254(1)
fisheries ..... 238(6)
fisheries officer ..... 4(1)
fisheries personnel ..... 246(1)
fishery ..... 4(1), 15
fishing ..... 4(1)
fishing activities ..... 15
fishing activity ..... 4(1)
fishing boat ..... 4(1)
fishing boat licence ..... 4(1)
fishing gear ..... 4(1)
fishing industry ..... 238(6)
fishing tour ..... 4(1), 202A(4)
foreign boat ..... 4(1)
forfeited entitlement ..... 4(1)
honorary fisheries officer ..... 4(1)
interim managed fishery ..... 4(1)
interim managed fishery permit ..... 4(1)
interstate jurisdiction ..... 250(4E)
intervene ..... 103A(1)
Joint Authority ..... 15
Joint Authority fishery ..... 15
levy ..... 4(1)
licence ..... 4(1)
managed fishery ..... 4(1)
managed fishery licence ..... 4(1)
management plan ..... 4(1)

marine management area ..... 4(1)
marine nature reserve ..... 4(1)
marine park ..... 4(1)
master ..... 4(1)
MEMP ..... 4(1), 92A(1)
noxious fish ..... 4(1)
noxious substance ..... 4(1)
officer ..... 204(3)
one day ..... 50(1)
organism ..... 177B
original area ..... 97B(1)
original decision ..... 152(1), 152(2)
peak industry body ..... 4(1)
pearl oyster ..... 4(1)
permit ..... 4(1)
person in charge of a fishing tour ..... 202A(4)
place ..... 4(1)
possession ..... 4(1)
possession limit ..... 51(1)
precautionary principle ..... 4(1)
premises ..... 4(1)
previous period ..... 250(4B)(b)
principal offender ..... 202(1), 202A(1)
priority fish ..... 153
private land ..... 4(1)
process ..... 4(1)
protected fish ..... 4(1)
purchase ..... 4(1)
recognized net fishing area ..... 171(3)
record ..... 4(1)
recreational fishing ..... 4(1)
recreational fishing licence ..... 4(1)
recreationally protected fish ..... 4(1)
register ..... 4(1)
Registrar ..... 4(1)
repealed Act ..... 4(1)
return ..... 4(1)
section 224 ..... 78A(1)
security holder ..... 4(1)
security interest ..... 4(1)
sell ..... 4(1)
species ..... 4(1)
specified ..... 4(1)
State ..... 15
take ..... 4(1)

## Defined Terms

temporary aquaculture permit ..... 4(1)
this Act ..... 4(1)
totally protected fish ..... 4(1)
traffic ..... 153
unattached ..... 94(5)
unauthorised structure ..... 4(1)
unit ..... 4(1)
vary ..... 4(1)
vehicle ..... 4(1)
WA waters ..... 4(1)
waters ..... 4(1)
waterway ..... 254(1)

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