



# **Fisheries Management Act 1991**

**No. 162, 1991**

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## About this compilation

### This compilation

This is a compilation of the *Fisheries Management Act 1991* that shows the text of the law as amended and in force on 6 July 2024 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

### Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Register ([www.legislation.gov.au](http://www.legislation.gov.au)). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the Register for the compiled law.

### Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

### Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

### Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the Register for the compiled law.

### Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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# **An Act relating to fisheries**

## **Part 1—Preliminary**

### **1 Short title**

This Act may be cited as the *Fisheries Management Act 1991*.

### **2 Commencement**

- (1) Sections 1 and 2 commence on the day on which this Act receives the Royal Assent.
- (2) Part 5 commences upon the repeal or the ceasing to have effect (as the case may be) of Part IVA of the *Fisheries Act 1952*.
- (3) Subject to subsection (4), the remaining provisions of this Act commence on a day or days to be fixed by Proclamation.
- (4) If a provision mentioned in subsection (3) does not commence under that subsection within the period of 6 months commencing on the day on which this Act receives the Royal Assent, it commences on the first day after the end of that period.

### **3 Objectives**

- (1) The following objectives must be pursued by the Minister in the administration of this Act and by AFMA in the performance of its functions:
  - (a) implementing efficient and cost-effective fisheries management on behalf of the Commonwealth; and
  - (b) ensuring that the exploitation of fisheries resources and the carrying on of any related activities are conducted in a manner consistent with the principles of ecologically sustainable development (which include the exercise of the precautionary principle), in particular the need to have regard

### Section 3

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- to the impact of fishing activities on non-target species and the long term sustainability of the marine environment; and
- (c) maximising the net economic returns to the Australian community from the management of Australian fisheries; and
  - (d) ensuring accountability to the fishing industry and to the Australian community in AFMA's management of fisheries resources; and
  - (e) achieving government targets in relation to the recovery of the costs of AFMA.
- (2) In addition to the objectives mentioned in subsection (1), or in section 78 of this Act, the Minister, AFMA and Joint Authorities are to have regard to the objectives of:
- (a) ensuring, through proper conservation and management measures, that the living resources of the AFZ are not endangered by over-exploitation; and
  - (b) achieving the optimum utilisation of the living resources of the AFZ; and
  - (c) ensuring that conservation and management measures in the AFZ and the high seas implement Australia's obligations under international agreements that deal with fish stocks; and
  - (d) to the extent that Australia has obligations:
    - (i) under international law; or
    - (ii) under the Compliance Agreement or any other international agreement;in relation to fishing activities by Australian-flagged boats on the high seas that are additional to the obligations referred to in paragraph (c)—ensuring that Australia implements those first-mentioned obligations; and
  - (e) ensuring that the interests of commercial, recreational and Indigenous fishers are taken into account;
- but must ensure, as far as practicable, that measures adopted in pursuit of those objectives must not be inconsistent with the preservation, conservation and protection of all species of whales.

**3A Principles of ecologically sustainable development**

The following principles are *principles of ecologically sustainable development*:

- (a) decision-making processes should effectively integrate both long-term and short-term economic, environmental, social and equity considerations;
- (b) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation;
- (c) the principle of inter-generational equity—that the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations;
- (d) the conservation of biological diversity and ecological integrity should be a fundamental consideration in decision-making;
- (e) improved valuation, pricing and incentive mechanisms should be promoted.

**4 Interpretation**

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

***Administrator*** means the person or organisation that is the Administrator within the meaning of the Treaty.

***AFMA*** means the Australian Fisheries Management Authority.

***AFMA staff member*** has the same meaning as in the *Fisheries Administration Act 1991*.

***AFZ*** means the Australian fishing zone.

***approved*** means approved by AFMA or, in relation to a Joint Authority fishery, by the Joint Authority.

***Australian boat*** means:

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- (a) a boat:
  - (i) the operations of which are based on a place in Australia or an external Territory; and
  - (ii) that is wholly-owned by a natural person who is a resident of, or by a company incorporated in, Australia or an external Territory; and
  - (iii) that was built in Australia or an external Territory; or
- (b) a boat, not being a boat mentioned in paragraph (a) or a boat owned by a foreign resident that is under a demise charter, that is registered under the *Shipping Registration Act 1981*; or
- (c) a boat the subject of a declaration under subsection (2).

***Australian continental shelf*** means the continental shelf adjacent to the coast of Australia and the continental shelf adjacent to each of the external Territories.

***Australian fishing zone*** means:

- (a) the waters adjacent to Australia within the outer limits of the exclusive economic zone adjacent to the coast of Australia; and
- (b) the waters adjacent to each external territory within the outer limits of the exclusive economic zone adjacent to the coast of the external Territory;

but does not include:

- (c) coastal waters of, or waters within the limits of, a State or internal Territory; or
- (d) waters that are excepted waters.

***Australian-flagged boat*** means a boat that:

- (a) is an Australian ship as defined in the *Shipping Registration Act 1981*; or
- (b) would be an Australian ship as defined in the *Shipping Registration Act 1981* if it were a ship as defined in that Act.

***Australian national*** means:

- (a) an Australian citizen; or

- (b) a resident of Australia; or
- (c) a body corporate incorporated by or under a law of the Commonwealth or of a State or Territory; or
- (d) any other body corporate that carries on its activities principally in Australia.

***Australian resident*** means:

- (a) a person who holds a permanent visa (as defined in the *Migration Act 1958*) that is in effect; or
- (b) a New Zealand citizen who is usually resident in Australia or a Territory and who holds a special category visa (as defined in the *Migration Act 1958*) that is in effect; or
- (c) any other person who is usually resident in Australia or a Territory and whose continued presence in Australia or a Territory is not subject to a limitation as to time imposed by law.

***being investigated for a fisheries offence***, in relation to the holder of a fishing concession, means:

- (a) AFMA is investigating whether the holder has committed a fisheries offence; or
- (b) a law enforcement agency has notified AFMA that the agency is investigating whether the holder has committed a fisheries offence; or
- (c) the holder is charged with a fisheries offence.

***boat*** means launch, vessel or floating craft of any description.

***CEO*** has the same meaning as in the *Fisheries Administration Act 1991*.

***charter boat*** means a boat that is being used exclusively for recreational fishing in the course of an arrangement under which money or some other consideration is, or is required to be, paid or given by or on behalf of a person or persons for the right to fish from that boat.

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

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**Commission** has the same meaning as in the *Fisheries Administration Act 1991*.

**Compliance Agreement** means the Agreement to promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas done at Rome on 24 November 1993, a copy of the English text of which is set out in Schedule 3.

**computer function notice** has the meaning given by section 163D.

**conservation area**, for a conserved fish stock, means the area to which the international fisheries management measure that covers the fish stock relates.

**conserved fish stock** means a fish stock covered by an international fisheries management measure.

**conveyance** includes an aircraft, vehicle or vessel.

**cooperative enforcement** has the meaning given by section 84B.

**Cooperative Enforcement Agreement** has the meaning given by section 84B.

**dealing** includes a transmission by operation of law.

**defensive equipment** has the meaning given by section 89A.

**electronic decision** has the meaning given by section 163B.

**e-monitoring** means electronic monitoring.

**e-monitoring data** means any data (whether or not that data is also personal information, within the meaning of the *Privacy Act 1988*) that is, or was:

- (a) generated by; or
- (b) transmitted by; or
- (c) stored by;

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e-monitoring equipment installed, carried or used in compliance with a condition imposed under section 40C of this Act on a fishing concession or scientific permit.

***e-monitoring equipment*** means:

- (a) a thing used for, intended to be used for, or capable of being used for, generating, transmitting or storing data; or
- (b) a thing that makes, is intended to make, or is capable of making, a thing covered by paragraph (a) operational.

***evidential material*** means a thing relevant to an indictable offence, or a thing relevant to a summary offence, against this Act or the regulations, including such a thing in electronic form.

***excepted waters*** means waters specified by Proclamation under section 11.

***executing officer***, in relation to a warrant, means:

- (a) the officer named in the warrant by the magistrate who issued the warrant as being responsible for executing the warrant; or
- (b) if the officer so named does not intend to be present at the execution of the warrant—another officer whose name has been written in the warrant by the officer so named; or
- (c) another officer whose name has been written in the warrant by the officer last named in the warrant.

***FAO*** means the Food and Agriculture Organization of the United Nations.

***fish*** includes all species of bony fish, sharks, rays, crustaceans, molluscs and other marine organisms, but does not include marine mammals or marine reptiles.

***fisheries legislation*** means:

- (a) this Act or the regulations; or
- (b) another Act or regulations that are:
  - (i) administered by the Minister; and
  - (ii) prescribed under the regulations.

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***fisheries offence*** means:

- (a) an offence against this Act or the regulations; or
- (b) an offence against another Act that relates to a fishing concession (including an offence for unlawfully obtaining a fishing concession, for example).

***fishery*** means a class of activities by way of fishing, including activities identified 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 or any other characteristic;
- (c) an area of waters or of seabed;
- (d) a method of fishing;
- (e) a class of boats;
- (f) a class of persons;
- (g) a purpose of activities.

***fishing*** means:

- (a) searching for, or taking, fish; or
- (b) attempting to search for, or take, fish; or
- (c) engaging in any other activities that can reasonably be expected to result in the locating, or taking, of fish; or
- (d) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons; or
- (e) any operations at sea directly in support of, or in preparation for, any activity described in this definition; or
- (f) aircraft use relating to any activity described in this definition except flights in emergencies involving the health or safety of crew members or the safety of a boat; or
- (g) the processing, carrying or transshipping of fish that have been taken.

***fishing concession*** means:

- (a) a statutory fishing right; or
- (b) a fishing permit; or
- (c) a foreign fishing licence.

***fishing concession certificate*** has the meaning given by section 163E.

***fishing permit*** means a fishing permit granted under section 32.

***fishing-related activity*** means any of the following:

- (a) searching for, or taking, fish;
- (b) attempting to search for, or take, fish;
- (c) engaging in any other activities that can reasonably be expected to result in the locating, or taking, of fish;
- (d) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;
- (e) the processing, carrying or transshipping of fish that have been taken;
- (f) the discarding from a boat of fish, marine mammals, marine reptiles or seabirds;
- (g) any other activity prescribed by the regulations for the purposes of this definition;
- (h) any operations on a boat directly in support of, or in preparation for, any activity covered by another paragraph of this definition;
- (i) any other encounters with fish, marine mammals, marine reptiles or seabirds while engaging in any activity or operation covered by another paragraph of this definition;
- (j) any other encounters with the marine environment while engaging in any activity or operation covered by another paragraph of this definition.

Note: If an activity is prescribed by the regulations under paragraph (g) it is an activity covered by paragraph (g) for the purposes of paragraphs (h), (i) and (j). So, for example, an encounter with the marine environment while engaging in an activity prescribed under paragraph (g) is also a fishing-related activity.

***fishing right*** means a statutory fishing right.

***fishing vessel of the United States*** has the same meaning as in the Treaty.

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***fish receiver permit*** means a fish receiver permit granted under section 91.

***Fish Stocks Agreement*** means the Agreement for the Implementation of the Provisions of the United Nations Convention on the Law of the Sea of 10 December 1982 relating to the Conservation and Management of Straddling Fish Stocks and Highly Migratory Fish Stocks, a copy of the English text of which is set out in Schedule 2.

***foreign boat*** means a boat other than an Australian boat.

***foreign fishing licence*** means a foreign fishing licence granted under section 34.

***foreign master fishing licence*** means a foreign master fishing licence granted under section 40.

***highly migratory fish stock*** has the same meaning as in the Fish Stocks Agreement.

***high seas*** means the waters that are:

- (a) outside the outer limits of the exclusive economic zones of all countries, including Australia and its external Territories; or
- (b) inside the outer limits of the exclusive economic zone adjacent to the coast of the Australian Antarctic Territory.

***holder*** of a licence, permit or right:

- (a) means:
  - (i) the person to whom the licence, permit or right was granted; or
  - (ii) if the permit or right has been transferred—the person to whom the permit or right was last transferred; and
- (b) in the case of a statutory fishing right that is leased to another person by a lease registered under section 46—includes the lessee of the statutory fishing right.

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***international conservation and management measure*** means a measure to conserve and manage one or more species of living marine resources that is adopted and applied, in accordance with the relevant rules of international law as reflected in the 1982 United Nations Convention on the Law of the Sea:

- (a) by a global, regional or subregional fisheries organisation; or
- (b) by treaty or other international agreement.

Note: The English text of the United Nations Convention on the Law of the Sea is set out in Australian Treaty Series 1994 No. 31.

***international fisheries management measure*** means a measure prescribed by the regulations to give effect to a measure established by an international fisheries management organisation.

***international fisheries management organisation*** means a global, regional or subregional fisheries organisation or arrangement prescribed by the regulations.

***international officer*** has the meaning given by section 84B.

***Joint Authority*** means an authority established by or under section 61.

***law enforcement agency*** means a government body that has responsibility for the enforcement of the laws of:

- (a) the Commonwealth; or
- (b) a State or Territory.

***lease***, of a fishing right, means a temporary assignment of the fishing right.

***magistrate*** includes a justice of the peace or other person employed in a court of a State or Territory who is authorised to issue search warrants.

***managed fishery*** means a fishery to which a plan of management relates.

***master***, in relation to a boat, means the master or other person in charge of the boat.

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**member**, in relation to the Panel, means a member of the Panel.

**Ministerial Council** means a body (however described) that consists of the Minister of the Commonwealth, and the Minister of each State and Territory, who is responsible, or principally responsible, for matters relating to fisheries.

**modification** includes addition, omission and substitution.

**offence against this Act** includes an offence against section 136.1, 137.1, 137.2, 148.1, 148.2, 147.1 or 149.1 of the *Criminal Code* that relates to this Act.

**officer** means:

- (a) a person appointed under section 83 to be an officer for the purposes of this Act; or
- (b) a member or special member of the Australian Federal Police or a member of the police force of a State or Territory; or
- (c) a member of the Defence Force; or
- (d) an officer of Customs (as defined in the *Customs Act 1901*).

**Pacific Island party**, in relation to the Treaty, has the same meaning as in the Treaty.

**Pacific Island party officer** means a person (other than a person mentioned in paragraph (a), (b) or (c) of the definition of **officer**) who is authorised by or under the law of a Pacific Island party to perform the functions and duties of an observer on Treaty boats.

**Panel** means the Statutory Fishing Rights Allocation Review Panel.

**party**, in relation to the Treaty, has the same meaning as in the Treaty.

**plan of management** means a plan of management determined under section 17.

**port permit** means a port permit granted under section 94.

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**PPSA security interest** (short for Personal Property Securities Act security interest) means a security interest within the meaning of the *Personal Property Securities Act 2009* and to which that Act applies, other than a transitional security interest within the meaning of that Act.

Note 1: The *Personal Property Securities Act 2009* applies to certain security interests in personal property. See the following provisions of that Act:

- (a) section 8 (interests to which the Act does not apply);
- (b) section 12 (meaning of **security interest**);
- (c) Chapter 9 (transitional provisions).

Note 2: For the meaning of **transitional security interest**, see section 308 of the *Personal Property Securities Act 2009*.

**precautionary principle** has the same meaning as in clause 3.5.1 of the Intergovernmental Agreement on the Environment, a copy of which is set out in the Schedule to the *National Environment Protection Council Act 1994*.

**premises** includes a place and a conveyance.

**Presiding Member** means the Presiding Member of Australian Fisheries Management Authority Selection Committees appointed under section 139.

**primary stakeholder** has the meaning given in the *Fisheries Administration Act 1991*.

**principles of ecologically sustainable development** has the meaning given by section 3A.

**processing**, in relation to fish, includes the work of cutting up, dismembering, cleaning, sorting, packing or freezing.

**receive**, in relation to fish, means receive fish for any purpose other than:

- (a) personal or domestic consumption; or
- (b) solely for transportation.

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**Register** means the Register of Statutory Fishing Rights kept by AFMA under section 44.

**Regulatory Powers Act** means the *Regulatory Powers (Standard Provisions) Act 2014*.

**relevant Treaty purpose** has the meaning given by subsection (6).

**scientific permit** means a scientific permit granted under section 33.

**sedentary organism** means an organism of a kind declared by Proclamation under section 12 to be a sedentary organism to which this Act applies.

**Selection Committee** means an Australian Fisheries Management Authority Selection Committee established under section 141A.

**statutory fishing right** has the meaning given by section 21.

**statutory fishing rights option** has the meaning given by section 31A.

**straddling fish stock** has the same meaning as in the Fish Stocks Agreement.

**take**, in relation to fish, means catch, capture, take or harvest.

**temporary order** means an order made under section 43.

**Treaty** means the Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America that was signed at Port Moresby on 2 April 1987, a copy of which is set out in Schedule 1, and, subject to subsection (7), includes that Treaty as amended from time to time.

**Treaty area** has the same meaning as in the Treaty.

**Treaty boat** means a foreign boat that is a fishing vessel of the United States.

***Treaty licence*** means a licence issued, for the purposes of the Treaty, by the Administrator in respect of a Treaty boat.

***warrant*** means a warrant under section 85 or 86.

***warrant premises*** means premises in relation to which a warrant is in force.

***whale*** means any member of the sub-order *Mysticeti* or *Odontoceti* of the order *Cetacea*.

(2) Where:

- (a) a boat has been lawfully imported into Australia for a limited period; and
- (b) AFMA is satisfied that the extent of participation of citizens or residents of Australia, either directly or indirectly (whether through the holding of shares in a company or otherwise), in the control of the operations of the boat in the AFZ during that period, and the nature of those operations, will be such as to justify it in so doing;

AFMA may, by instrument published in the *Gazette*, declare that, during that period, the boat is taken to be an Australian boat for the purposes of this Act.

(3) AFMA may:

- (a) because of a change in circumstances, by instrument published in the *Gazette*, at any time revoke an instrument under subsection (2); or
- (b) by instrument published in the *Gazette*, extend the period for which an instrument under subsection (2) is to remain in force.

(4) For the purposes of this Act:

- (a) in relation to a fishery or a managed fishery that is identified by reference to an area, a reference to activities in the fishery or in the managed fishery includes activities in that area; and
- (b) in relation to a fishery or a managed fishery that is identified by reference to any matter other than an area, a reference to

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activities in the fishery or in the managed fishery includes activities in relation to the fishery.

- (5) For the purposes of this Act, a charter boat, the person in charge of the boat and any other person fishing from the boat are taken to be engaged in recreational fishing.
- (6) A reference in this Act to a relevant Treaty purpose is a reference to the purpose of:
  - (a) performing the functions and duties of an observer in accordance with Part 6 of Annex 1 to the Treaty or an observer program conducted in accordance with the Treaty; or
  - (b) ascertaining whether the provisions of this Act have been or are being complied with on, or in relation to the use of, a Treaty boat while it is in the AFZ.
- (7) An amendment of the Treaty that alters the Treaty area that is within the AFZ or that alters a condition of a Treaty licence in a way that affects fishing by Treaty boats within the AFZ under a Treaty licence:
  - (a) does not have effect for the purposes of this Act unless the amendment is declared by the regulations to have effect for the purposes of this Act; and
  - (b) takes effect for the purposes of this Act on the day on which regulations mentioned in paragraph (a) take effect or on such later day as is specified in those regulations.
- (8) If an arrangement under Division 3 of Part 5 is varied, a reference in this Act to the arrangement is a reference to the arrangement as varied.

## 5 Coastal waters

- (1) For the purposes of this Act, the coastal waters of a State or internal Territory are:
  - (a) the part or parts of the territorial sea of Australia that are:

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- (i) within 3 nautical miles of the baseline by reference to which the territorial limits of Australia are defined for the purposes of international law; and
    - (ii) adjacent to that State or Territory; and
  - (b) any marine or tidal waters that are on the landward side of that baseline and are adjacent to that State or Territory but are not within the limits of a State or Territory.
- (2) Any part of the territorial sea of Australia that is adjacent to the Jervis Bay Territory is, for the purposes of subsection (1), taken to be adjacent to New South Wales.

**6 Act binds the Crown**

- (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory and of the Northern Territory.
- (2) Nothing in this Act makes the Crown liable to be prosecuted for an offence.

**6A Application of the *Criminal Code***

Chapter 2 (other than Part 2.5) of the *Criminal Code* applies to all offences against this Act.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

**7 Application**

- (1) This Act extends to all of the Territories and has extra-territorial operation.
- (2) In relation to the AFZ and to fishing for sedentary organisms outside the AFZ, this Act applies to all persons, including foreigners, and to all boats, including foreign boats.

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- (3) In relation to fishing activities on waters outside the AFZ, this Act applies:

- (a) to Australian boats and to Australian-flagged boats that are not Australian boats; and
- (b) to all persons (including foreigners) on boats to which paragraph (a) applies.

This subsection does not limit subsection (2) or express provisions that extend the application of this Act.

- (4) Subsections (2) and (3) do not limit the extra-territorial operation of this Act.

### **8 Application of Act to areas outside the AFZ**

- (1) The regulations may provide that, in respect of specified areas outside the AFZ, or in respect of the high seas generally, this Act applies to:

- (a) Australian citizens; and
- (b) bodies corporate that are incorporated in Australia or carry on activities mainly in Australia; and
- (c) Australian boats and Australian-flagged boats that are not Australian boats; and
- (d) persons on board boats to which paragraph (c) applies.

- (2) The Act so applies subject to any exceptions or modifications specified in the regulations.

- (3) When a provision of this Act applies in relation to such an area, then, subject to the regulations, references in that provision to the AFZ are to be read as references to that area.

- (4) This section does not limit the extra-territorial operation of this Act.

**8A Regulations may provide for placement of observers on foreign fishing boats operating outside the AFZ**

- (1) The regulations may:
  - (a) provide for the placement of persons as observers on board foreign fishing boats that will be, or are, operating outside the AFZ; and
  - (b) set out the functions, powers and duties of persons so placed.
- (2) Without otherwise limiting the generality of subsection (1):
  - (a) a person may be so placed only if the placement is authorised under a regional arrangement, or a bilateral or multilateral treaty, to which Australia, or a body acting on behalf of Australia, is a party; and
  - (b) the functions, powers and duties conferred or imposed on persons so placed must be consistent with the terms of that arrangement or treaty.
- (3) In this section:

*foreign fishing boat* means a foreign boat that is equipped for fishing.

**9 Application of Act to Protected Zone**

- (1) This Act, other than this section and sections 84 and 108, does not apply to or in relation to the Protected Zone.
- (2) Where there is in force a Proclamation under subsection 15(1) or (2) of the *Torres Strait Fisheries Act 1984* in relation to an area adjacent to the Protected Zone, this Act, other than this section and sections 84 and 108, does not, except as provided by subsection (3), apply in relation to any activities within that area to which the *Torres Strait Fisheries Act 1984* applies by virtue of the Proclamation.
- (3) If the Proclamation came into force after the commencement of this section, this Act applies, in relation to matters that occurred after that commencement but before the Proclamation came into

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force, in relation to any activities within the area to which the Proclamation relates.

(4) In this section:

*Protected Zone* has the same meaning as in the *Torres Strait Fisheries Act 1984*.

### 9A Act not to apply so as to exceed Commonwealth power

- (1) Unless the contrary intention appears, if a provision of this Act:
- (a) would, apart from this section, have an invalid application; but
  - (b) also has at least one valid application;
- it is the Parliament's intention that the provision is not to have the invalid application, but is to have every valid application.
- (2) Despite subsection (1), the provision is not to have a particular valid application if:
- (a) apart from this section, it is clear, taking into account the provision's context and the purpose or object underlying this Act, that the provision was intended to have that valid application only if every invalid application, or a particular invalid application, of the provision had also been within the Commonwealth's legislative power; or
  - (b) the provision's operation in relation to that valid application would be different in a substantial respect from what would have been its operation in relation to that valid application if every invalid application of the provision had been within the Commonwealth's legislative power.
- (3) Subsection (2) does not limit the cases where a contrary intention may be taken to appear for the purposes of subsection (1).
- (4) This section applies to a provision of this Act, whether enacted before, at or after the commencement of this section.
- (5) In this section:

***application*** means an application in relation to:

- (a) one or more particular persons, things, matters, places, circumstances or cases; or
- (b) one or more classes (however defined or determined) of persons, things, matters, places, circumstances or cases.

***invalid application***, in relation to a provision, means an application because of which the provision exceeds the Commonwealth's legislative power.

***valid application***, in relation to a provision, means an application that, if it were the provision's only application, would be within the Commonwealth's legislative power.

## **10 Operation of certain State and Territory laws**

- (1) Except as provided by subsections (2) and (3), this Act is not intended to exclude or limit the concurrent operation of any law of a State or Territory.
- (2) Subject to subsection (3), the Parliament intends that this Act is to apply to the exclusion of any law of a State or Territory relating to fish or fishing so far as that law would, but for this Act, apply to:
  - (a) activities in the AFZ; or
  - (b) activities in the coastal waters of a State or Territory in respect of which a fishery to which an arrangement mentioned in section 12K of the *Fisheries Act 1952*, or section 76 of this Act, relates; or
  - (c) the landing in the State or Territory of fish taken under a statutory fishing right or fishing permit by prohibiting such landing or by requiring such landing to be done under a licence, permit or similar instrument or upon payment of a fee or charge.
- (3) This Act does not apply to:
  - (a) recreational fishing (whether from a charter boat or otherwise) that is carried on in the AFZ or outside the AFZ by the use of an Australian boat, other than recreational

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- fishing that is prohibited or regulated by a plan of management or temporary order; or
- (b) recreational fishing (whether from a charter boat or otherwise) that is carried on by the use of an Australian boat in the coastal waters of a State or Territory, being coastal waters in respect of which an arrangement mentioned in section 12K of the *Fisheries Act 1952*, or section 76 of this Act, relates, other than recreational fishing that is prohibited or regulated by a plan of management or temporary order; or
  - (c) activities in the AFZ to which, because of section 77, this Act does not apply.
- (4) The reference in paragraph 10(2)(c) to prohibiting the landing in a State or Territory of fish taken under a statutory fishing right or fishing permit includes a reference to:
- (a) directly prohibiting the landing of such fish in the State or Territory; or
  - (b) directly prohibiting or regulating the possession or processing of, or other dealing with, such fish in the State or Territory in any respect that would be likely to substantially discourage the landing of such fish in the State or Territory.
- (5) For the avoidance of doubt, the reference in subsection (2) to a law of a State or Territory relating to fish or fishing does not include such a law that is for the protection of public health, for ensuring safety or for any similar objective.

## 11 Excepted waters

The Governor-General may, by Proclamation, declare any waters to be excepted waters for the purposes of this Act.

## 12 Sedentary organisms—Australian continental shelf

- (1) If the Governor-General is satisfied that a marine organism of any kind is, for the purposes of international law, part of the living natural resources of the Australian continental shelf because it is, for the purposes of international law, an organism belonging to a

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sedentary species, the Governor-General may, by Proclamation, declare the organism to be a sedentary organism to which this Act applies.

- (2) Where by this Act (other than Part 5), or the regulations, provision is made in relation to fishing in the AFZ or a fishery, such provision, to the extent that it is capable of doing so, extends by force of this section to fishing for sedentary organisms, in or on any part of the Australian continental shelf not within the AFZ or the fishery as if they were within the AFZ or the fishery.
- (3) Without limiting the operation of subsection (2), a reference in that subsection to making provision in relation to fishing includes a reference to making provision in respect of:
  - (a) the granting of fishing concessions, scientific permits and foreign master fishing licences; and
  - (b) the prohibition or regulation of fishing; and
  - (c) the powers of officers.
- (4) A reference in this section to the Australian continental shelf includes a reference to the waters above the Australian continental shelf.

## Part 2—Fishing and the marine environment

### 13 Driftnet fishing

- (1) A person must not engage in driftnet fishing activities in the AFZ.

Penalty: 500 penalty units.

- (1A) In subsection (1), strict liability applies to the physical element of circumstance, that the relevant conduct is engaged in within the AFZ.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (2) An Australian citizen must not engage in driftnet fishing activities outside the AFZ.

Penalty: 500 penalty units.

- (3) A body corporate that is incorporated in Australia or carries on activities mainly in Australia must not engage in driftnet fishing activities outside the AFZ.

Penalty: 2,500 penalty units.

- (4) A person must not, outside the AFZ, engage in driftnet fishing activities from an Australian boat.

Penalty: 500 penalty units.

- (4A) In subsections (2), (3) and (4), strict liability applies to the physical element of circumstance, that the relevant conduct is engaged in outside the AFZ.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (5) In subsection (1):

***driftnet*** means a gillnet or other net or a combination of nets that is more than 2.5 kilometres in length, or such shorter length as is

prescribed, the purpose of which is to enmesh, entrap or entangle fish by drifting on the surface of or in the water.

***driftnet fishing activities*** means:

- (a) taking fish with the use of a driftnet; or
- (b) engaging in any other activity that can reasonably be expected to result in the taking of fish with the use of a driftnet, including searching for and locating fish to be taken by that method; or
- (c) any operations at sea in support of, or in preparation for any activity described in this definition, including operations of placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons; or
- (d) aircraft use relating to the activities described in this definition except for flights in emergencies involving the health or safety of crew members or the safety of a boat; or
- (e) transporting, transhipping and processing any driftnet catch, and co-operation in the provision of food, fuel and other supplies for boats equipped for or engaged in driftnet fishing.

## **14 Regulation etc. of certain practices**

- (1) For the purpose of conserving the marine environment, the regulations may prohibit, or make provision for the regulation of, the engaging in specified activities, or the use of specified practices, by:
  - (a) persons engaged in fishing in the AFZ; and
  - (b) Australian boats, and persons on Australian boats, engaged in fishing outside the AFZ.
- (2) Without limiting the generality of subsection (1), regulations may be made in relation to:
  - (a) the employment of specified fishing practices or methods; and
  - (b) the use of specified fishing equipment; and
  - (c) the taking, and treatment of, by-catches, and the making of returns in relation to by-catches taken; and

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- (d) littering at sea.

### 15 Prohibition against certain fishing

- (1) A person must not (otherwise than in accordance with the terms of a scientific permit):
- (a) in the AFZ, take black cod (*Epinephelus daemeli*); or
  - (b) in the AFZ, or in a part of the AFZ specified in the regulations, take prescribed fish.

Penalty: 125 penalty units.

- (2) A person on an Australian boat must not, outside the AFZ, take a prescribed fish.

Penalty: 125 penalty units.

- (3) It is a defence to a prosecution for an offence against this section if the person charged satisfies the court that, upon becoming aware of the taking of the fish, he or she took steps immediately to return the fish to its natural environment.

- (4) An offence under this section is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### 15A Prohibition against taking marlin

- (1) A person must not, in the AFZ, take blue marlin (*Makaira mazara*) or black marlin (*Makaira indica*) unless the person:
- (a) is the holder of a scientific permit that authorises the taking of the fish; or
  - (b) takes the fish in the course of recreational fishing (whether from a charter boat or otherwise).

Penalty: 125 penalty units.

- (2) It is a defence to a prosecution for an offence against this section if the person charged satisfies the court that, upon becoming aware of

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the taking of the fish, he or she took steps immediately to return the fish to its natural environment.

- (3) An offence under this section is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**15B Report on analysis of marlin stocks**

- (1) Not later than 12 months after the commencement of the *Fisheries Legislation Amendment Act (No. 1) 1998*, the Minister must cause an analysis to be undertaken in the AFZ of the estimated numbers of blue marlin (*Makaira mazara*) and black marlin (*Makaira indica*) and the impact on the species of such fishing as is permitted under section 15A.
- (2) The Minister must cause a report of an analysis under subsection (1) to be laid before each House of the Parliament as soon as practicable after the analysis is completed and, in any case, not later than 2 years after the commencement of the *Fisheries Legislation Amendment Act (No. 1) 1998*.

## **Part 3—Regulation of fishing**

### **Division 1—Preliminary**

#### **16 AFMA to pursue objectives**

- (1) In performing its functions under this Part, AFMA must pursue its objectives and, in addition, act in accordance with its corporate plan and its current annual operational plan.
- (2) Nothing in subsection (1) is taken to limit the operation of subsection 17(10).

#### **16A AFMA to meet international fisheries management organisation and Fish Stocks Agreement obligations**

*Boat involved in contravening international fisheries management measure*

- (1) AFMA must not authorise under this Part the use of an Australian-flagged boat for fishing on the high seas for a conserved fish stock during the period specified in subsection (2), if:
  - (a) a court has convicted a person of an offence described in subsection (3) involving the use of the boat; and
  - (b) the court has ordered the person to pay a fine for the offence (whether or not the person has also been sentenced to imprisonment for the offence); and
  - (c) the court has not ordered the forfeiture of the boat.

*Period for which AFMA must not authorise use of boat*

- (2) The period starts when the person is ordered to pay the fine and ends when one of the following events occurs:
  - (a) the person pays the fine;
  - (b) a penalty is imposed on the person for failure to pay the fine;

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- (c) the court orders the forfeiture of the boat (for the offence or another offence);
- (d) the conviction of the person for the offence for which the person was ordered to pay the fine is quashed.

*Offences that prevent AFMA authorising use of boat*

- (3) Subsection (1) limits authorisation of the use of a boat involved in any of the following offences:
  - (a) an offence against subsection 95(5) constituted by one of the following acts or omissions that contravenes a condition of a fishing concession or scientific permit that authorises fishing for a conserved fish stock on the high seas or contravenes a provision of a temporary order relating to fishing for a conserved fish stock on the high seas:
    - (i) fishing for the conserved fish stock at a particular time, in a particular place or with particular equipment;
    - (ii) failing to maintain accurate records of catch;
    - (iii) failing to provide an accurate return of fish taken, carried, transhipped or processed;
    - (iv) taking, carrying, transshipping or processing more fish than authorised by the concession, permit or order;
    - (v) changing or hiding the markings of the boat;
  - (b) an offence against section 105A involving a fish from a conserved fish stock and a boat;
  - (ba) an offence against section 105AA or 105AB;
  - (c) an offence against section 105B involving a boat equipped for fishing for a conserved fish stock;
  - (d) an offence against section 107 relating to a document, statement, return or information about catch of a conserved fish stock;
  - (e) an offence against a prescribed provision of this Act or the regulations that is constituted by a prescribed act or omission relating to a conserved fish stock.

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**16B Australian-flagged boats that have previously undermined conservation and management measures**

- (1) Subject to subsection (5), AFMA must not, under this Part, grant a fishing concession authorising the use for fishing activities on the high seas of an Australian-flagged boat that was previously registered in a foreign country and authorised by that country for such fishing activities if:
  - (a) AFMA believes, on reasonable grounds, that the boat is a boat to which subsection (2) or (3) applies; and
  - (b) subsection (4) does not apply.
- (2) This subsection applies to an Australian-flagged boat that was previously registered in a foreign country that is a party to the Compliance Agreement if:
  - (a) that foreign country has, because the owner or operator of that boat has undermined international conservation and management measures, suspended the authority to use that boat on the high seas for a period and that period has not expired; or
  - (b) that foreign country has, because the owner or operator of that boat has undermined international conservation and management measures, cancelled the authority to use that boat on the high seas and a period of 3 years has not elapsed since that cancellation.
- (3) This subsection applies to an Australian-flagged boat that was previously registered in a foreign country that is not a party to the Compliance Agreement if, on the basis of information available to it, AFMA is satisfied that:
  - (a) the foreign country has, because the owner or operator of that boat has undermined international conservation and management measures, suspended the authority to use that boat on the high seas for a period and that period has not expired; or
  - (b) the foreign country has, because the owner or operator of that boat has undermined international conservation and management measures, cancelled the authority for use of that

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boat on the high seas and a period of 3 years has not elapsed since that cancellation.

- (4) If the person seeking the grant of a fishing concession authorising the use of a boat to which subsection (2) or (3) applies for fishing activities on the high seas satisfies AFMA that the owner or operator of the boat at the time the authority to use it was suspended or cancelled has no present legal, beneficial or financial interest in, or control of, the boat, AFMA may grant such a fishing concession authorising the use of the boat despite the application of subsection (2) or (3).
- (5) Despite subsection (1), AFMA may grant a fishing concession authorising the use of an Australian-flagged boat to which subsection (2) or (3) applies for fishing activities on the high seas if, having regard to the circumstances in which a foreign country's authorisation for the use of that boat for fishing activities on the high seas was suspended or cancelled, AFMA is satisfied that the grant of that fishing concession will not be likely to undermine international conservation and management measures.
- (6) Nothing in this section implies that AFMA may not take other matters into consideration when deciding whether or not to grant a fishing concession authorising the use of an Australian-flagged boat for fishing activities on the high seas.

## Division 2—Plans of management

### 17 Plans of management

- (1) Subject to subsection (1A), AFMA must, in writing, after consultation with such persons engaged in fishing as appear to AFMA to be appropriate and after giving due consideration to any representations mentioned in subsection (3), determine plans of management for all fisheries.
- (1A) If, in all the circumstances, AFMA is of the view that a plan of management is not warranted for a particular fishery, AFMA may make a determination accordingly, including in the determination its reasons for making the determination. While a determination under this subsection is in force, AFMA is not required to determine a plan of management for a fishery.
- (1AB) If, at any time after making a determination under subsection (1A) that a plan of management is not warranted for a particular fishery, AFMA ceases to be of the view, AFMA may make a further determination revoking the determination under subsection (1A).
- (1B) A determination under subsection (1A) must be notified:
  - (a) in the *Gazette*; and
  - (b) to all persons and organisations listed in the register established under section 17A, at their addresses as shown on the register.
- (2) Before determining a plan of management for a fishery, AFMA must prepare a draft of the plan and, by public notice:
  - (a) state that it intends to determine a plan of management in respect of the fishery; and
  - (b) invite interested persons to make representations in connection with the draft plan by a date specified in the notice, not being less than one month after the date of publication of the notice in the *Gazette*; and

- (c) specify:
  - (i) an address from which copies of the draft plan may be obtained; and
  - (ii) an address to which representations may be forwarded.
- (2A) In addition to issuing a public notice under subsection (2) and before determining a plan of management for a fishery, AFMA must notify the persons and organisations listed in the register established under section 17A, at their addresses as shown on the register, of the terms of the public notice.
- (3) A person may, not later than the date specified in the notice, make representations to AFMA in connection with the draft plan.
- (4) In this section, a reference to public notice is a reference to notice published:
  - (a) in the *Gazette*; and
  - (b) in each State and Territory, in a newspaper circulating throughout that State or Territory; and
  - (c) in such other newspaper or publication (if any) that appears to AFMA to be appropriate in the circumstances.
- (5) A plan of management for a fishery may set out:
  - (a) the objectives of the plan of management; and
  - (b) measures by which the objectives are to be attained; and
  - (c) performance criteria against which, and time frames within which, the measures taken under the plan of management may be assessed.
- (5AA) The objectives to be set out under paragraph (5)(a) must be consistent with, but are not limited to, the objectives set out in section 3.
- (5C) A plan of management for a fishery affecting straddling fish stocks, highly migratory fish stocks or ecologically related fish stocks (within the meaning of the Fish Stocks Agreement) must set out stock-specific reference points (within the meaning of that Agreement) for the stocks.

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- (6) Without limiting the operation of subsection (5), a plan of management for a fishery may:
- (a) determine the method or methods by which the fishing capacity of the fishery or a part of the fishery is to be measured, which may be or include, but are not limited to, a method based on a particular area, a particular species or type or a particular quantity of fish, a particular kind, size or quantity of fishing equipment, a particular number of boats, a particular period of fishing, or any combination of the above; and
  - (aa) determine, or provide for AFMA to determine, the fishing capacity, measured by that method or those methods, permitted for the fishery or a part of the fishery in respect of a particular period or periods; and
  - (b) provide for the management of the fishery by means of a system of statutory fishing rights, and other fishing concessions; and
  - (c) contain a description of the fishery by reference to area, fish species, fishing methods to be employed or any other matter; and
  - (d) subject to section 28, formulate procedures to be followed for selecting persons to whom fishing concessions are to be granted including, in the case of fishing rights:
    - (i) the holding of an auction; or
    - (ii) the calling of tenders; and
  - (e) specify the kind and quantity of equipment that may be used in the fishery; and
  - (f) specify the circumstances in which a statutory fishing right may authorise fishing by or from a foreign boat; and
  - (g) impose obligations on the holders of fishing concessions; and
  - (h) prohibit or regulate recreational fishing in the fishery; and
  - (i) prohibit or regulate fishing for scientific research purposes in the fishery.
- (6A) Paragraph (6)(aa) authorises the making of a determination in respect of the fishing capacity of a fishery or a part of a fishery that

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has the effect that no fishing capacity is permitted for the fishery or that part of the fishery in respect of a particular period or periods.

- (6B) A determination made by AFMA under paragraph (6)(aa) is a legislative instrument.
- (6C) If a plan of management for a fishery provides for the management of the fishery by means of a system that consists of or includes statutory fishing rights, the plan:
- (a) may oblige a person who holds, in respect of the fishery, a fishing concession of a particular kind or fishing concessions of particular kinds also to hold, in respect of the fishery, a fishing concession of another kind or fishing concessions of other kinds, as stated in the plan; and
  - (b) without limiting the generality of paragraph (a), may oblige a person who holds, in respect of the fishery, a fishing right of a particular kind or fishing rights of particular kinds also to hold, in respect of the fishery, a fishing right of another kind or fishing rights of other kinds, as stated in the plan; and
  - (c) in respect of each kind of fishing right that a person holds in respect of the fishery—may do either or both of the following:
    - (i) oblige the person to hold not fewer than such number of fishing rights of that kind as is stated in the plan or worked out using a formula so stated;
    - (ii) oblige the person not to hold more than such number of fishing rights of that kind as is stated in the plan or worked out using a formula so stated.
- (6D) A plan of management for a fishery must contain measures directed at reducing to a minimum:
- (a) the incidental catch of fish not taken under and in accordance with that plan; and
  - (b) the incidental catch of other species.
- (7) A plan of management for a fishery must:
- (a) if the plan makes provision in relation to the management of the fishery by means of a system of statutory fishing rights—

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- provide for registration of persons who are to be eligible for the grant of fishing rights and specify the conditions relevant to such registration; and
- (b) contain a statement of any right of review that a person has in relation to such registration or the grant, or refusal to make a grant, of a fishing concession.
- (8) A plan of management may make provision in relation to a matter by applying, adopting or incorporating, with or without modification:
- (a) a provision of any Act or any regulation made under an Act, or of any other determination, as in force at a particular time or as in force from time to time; or
- (b) any matter contained in any other instrument or writing as in force or existing at the time when the determination takes effect.
- (9) A plan of management has no effect to the extent that it is inconsistent with a provision of this Act.
- (10) While a plan of management is in force for a fishery, AFMA must perform its functions, and exercise its powers, under this Act in relation to the fishery in accordance with the plan of management.
- (11) AFMA may, by writing under its common seal, delegate any powers conferred on it under a plan of management for a fishery in accordance with paragraph (6)(aa) to:
- (a) the CEO; or
- (b) a primary stakeholder who is to assist AFMA to manage the fishery under a co-management arrangement (within the meaning of the *Fisheries Administration Act 1991*).

### **17A Register of persons concerned about plans of management**

- (1) AFMA must maintain a register containing a list of the names and postal addresses of persons and organisations who are to be notified of, or of determinations affecting the preparation of, draft plans of management.

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- (2) As soon as is practicable after the commencement of this section and on each anniversary of that commencement, AFMA must give public notice:
  - (a) inviting persons and organisations to have their names and postal addresses entered on the register; and
  - (b) in the case of the second or a later notice—inviting persons and organisations on the register (if any) to have their names and postal addresses left on the register.
- (3) A notice must state that the acceptance of an invitation:
  - (a) is to be in writing, sent to AFMA at a place specified in the notice and accompanied by particulars of the name and postal address of the acceptor; and
  - (b) is to be given:
    - (i) in the case of a person, or organisation, in existence on the publication of the notice—within one month after that publication; and
    - (ii) in any other case—within 12 months after that publication.
- (4) Where a person or organisation accepts an invitation in the way required by the notice, AFMA is to enter, or retain, the name and postal address of the person or organisation on the register.
- (5) AFMA may vary the address on the register of a person or organisation at the written request of the person or organisation.
- (6) AFMA must remove the name and address of a person or organisation from the register if:
  - (a) in the case of a name and address that was on the register before the most recent notice under subsection (2)—the invitation to keep that name and address on the register was not accepted within one month after the publication of that notice; or
  - (b) the person or organisation makes a written request for the removal; or
  - (c) AFMA becomes satisfied that:
    - (i) in the case of a natural person—the person has died; or

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- (ii) in any other case—the person or organisation has ceased to exist.
- (7) In subsection (2), a reference to public notice is a reference to a notice published:
  - (a) in the *Gazette*; and
  - (b) in each State and internal Territory in a newspaper circulating generally in that State or Territory; and
  - (c) in each external Territory that the Minister considers appropriate (if any) in a newspaper circulating generally in that external Territory.

### **18 Action after determining a plan of management**

- (1) When AFMA has determined a plan of management for a fishery, it must:
  - (a) submit the plan to the Minister; and
  - (b) inform the Minister of the nature of any representations it received, and the consultations it conducted, before determining the plan.
- (2) The Minister must accept the plan if it appears to the Minister that:
  - (a) AFMA gave due consideration to any representations it received, and conducted adequate consultations, before determining the plan; and
  - (b) the plan is consistent with AFMA's corporate plan and current annual operational plan.
- (3) If the Minister does not accept the plan, the Minister must refer it to AFMA and inform AFMA why it was not accepted.
- (4) When the plan has been so referred to AFMA, AFMA must, as soon as practicable after receipt of the plan, take such steps as appear to it to be necessary to ensure acceptance of the plan by the Minister and again submit the plan to the Minister.
- (5) If the Minister again does not accept the plan, the procedures mentioned in subsections (3) and (4) continue to apply in relation

to the plan until it is accepted by the Minister or withdrawn by AFMA.

## **19 Tabling, disallowance etc. of determinations**

- (1) AFMA must cause to be published in the *Gazette*, in respect of each determination made under section 17 and accepted by the Minister, notice of:
  - (a) the fact that the determination has been made; and
  - (b) the place or places where copies of the determination can be obtained.
- (5) A determination is taken to be an enactment for the purposes of the *Administrative Appeals Tribunal Act 1975*.

## **20 Amendment or revocation of plan of management**

- (1) AFMA may at any time amend a plan of management.
- (2) If AFMA amends a plan of management, it must:
  - (a) give written notification of that fact to each person who is the holder of a statutory fishing right granted in accordance with the plan; and
  - (b) inform the person where copies of the amended plan may be obtained.
- (3) AFMA may revoke a plan of management.
- (4) Where a plan of management for a fishery is revoked under subsection (3), statutory fishing rights, fishing permits, foreign fishing licences, scientific permits, foreign master fishing licences and fish receiver permits granted by AFMA that relate to the fishery cease to have effect in relation to the fishery.
- (5) Sections 17, 18 and 19 apply in relation to an amendment of a plan of management and the revocation of a plan of management in the same way as they apply to a plan of management prepared under section 17.

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- (6) However, subsection (2) of this section, subsections 17(1B) to (4), and sections 18 and 19 do not apply to an amendment of a plan of management that merely:
  - (a) corrects an error in the plan (including a factual, grammatical, mapping or typographical error, for example); or
  - (b) changes the format or presentation of the plan; or
  - (c) changes a matter in the plan to make the plan consistent with:
    - (i) this or another Act; or
    - (ii) the regulations; or
  - (d) removes conditions from the plan if conditions for the plan's fishery about the same subject matter have been prescribed in the regulations, whether or not the conditions are in the same terms.
- (7) Also, subsections 17(1B) to (4) and section 19 do not apply to an amendment of a plan of management to remove a provision from the plan if, within 1 year before the proposed amendment is to take effect, the following entities have been given at least 28 days written notice of the proposed amendment:
  - (a) if there is a management advisory committee for the plan's fishery—the management advisory committee;
  - (b) if a peak body represents the holders of statutory fishing rights under the plan—the peak body;
  - (c) if there is no management advisory committee or peak body—the holders of the licences, permits or rights for the fishery.
- (8) However, section 18 applies to an amendment mentioned in subsection (7) in the same way as section 18 applies to a plan of management.

## **Division 3—Statutory fishing rights**

### **21 Nature of a statutory fishing right**

- (1) For the purposes of this Act, each of the following rights is a separate statutory fishing right:
- (a) a right to take a particular quantity of fish, or to take a particular quantity of fish of a particular species or type, from, or from a particular area in, a managed fishery;
  - (b) a right to a particular proportion of the fishing capacity that is permitted, by or under a plan of management, for, or for a part of, a managed fishery;
  - (c) a right to engage in fishing in a managed fishery at a particular time or times, on a particular number of days, during a particular number of weeks or months, or in accordance with any combination of the above, during a particular period or periods;
  - (d) a right to use a boat in a managed fishery for purposes stated in a plan of management;
  - (e) a right to use particular fishing equipment in a managed fishery;
  - (f) a right to use, in a managed fishery, fishing equipment that is of a particular kind, of a particular size or of a particular quantity or is a combination of any of the above;
  - (g) a right to use a particular type of boat in a managed fishery;
  - (h) a right to use a boat of a particular size or having a particular engine power, or of a particular size and having a particular engine power, in a managed fishery;
  - (i) any other right in respect of fishing in a managed fishery.
- (1A) A plan of management for a fishery may do any one or more of the following:
- (a) provide for a statutory fishing right of a kind mentioned in paragraph (1)(a) even though, in a particular period, the quantity of fish to which the fishing right relates is nil or negligible;

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- (b) provide for a statutory fishing right of a kind mentioned in paragraph (1)(b) even though the proportion of fishing capacity to which the fishing right relates would result in a nil or negligible quantity of fish;
  - (c) provide for a statutory fishing right of a kind mentioned in paragraph (1)(f) even though it may be impracticable to make or use fishing equipment of the size or quantity, or size and quantity, to which the fishing right relates;
  - (d) provide for a statutory fishing right of a kind mentioned in paragraph (1)(h) even though it may be impracticable to build or use a boat of the size or having the engine power, or of the size and having the engine power, to which the fishing right relates.
- (1B) For the purposes of subsection (1C), the fishing rights in respect of a particular fishery that are referred to in any one of the following paragraphs together constitute a class of fishing rights:
  - (a) 2 or more identical fishing rights of a kind mentioned in paragraph (1)(a);
  - (b) 2 or more identical fishing rights of a kind mentioned in paragraph (1)(b);
  - (c) 2 or more identical fishing rights of a kind mentioned in paragraph (1)(c);
  - (d) 2 or more identical fishing rights of a kind mentioned in paragraph (1)(f);
  - (e) 2 or more identical fishing rights of a kind mentioned in paragraph (1)(h).
- (1C) If a person holds a class of fishing rights in respect of a managed fishery, the fishing rights in the class together confer fishing rights in respect of:
  - (a) if the fishing rights in the class are fishing rights of a kind mentioned in paragraph (1)(a)—a quantity of fish, or of fish of the relevant species or type, equal to the sum of the quantities of fish, or of fish of that species or type, in relation to, or in relation to the area in, the fishery, stated in the fishing rights in the class; or

- (b) if the fishing rights in the class are fishing rights of a kind mentioned in paragraph (1)(b)—a proportion of fishing capacity equal to the sum of the proportions of the fishing capacity stated in the fishing rights in the class; or
  - (c) if the fishing rights in the class are fishing rights of a kind mentioned in paragraph (1)(c) and each fishing right relates to a particular number of days, weeks or months during a particular period or periods—a number of days, weeks or months equal to the sum of the numbers of days, weeks or months, as the case may be, during that period or those periods, stated in the fishing rights in the class; or
  - (d) if the fishing rights in the class are fishing rights of a kind mentioned in paragraph (1)(f)—fishing equipment the total size or quantity of which is not greater than the sum of the sizes or quantities, or the total size and total quantity of which are not greater than the sum of the sizes and the sum of the quantities, as the case may be, stated in the fishing rights in the class;
  - (e) if the fishing rights in the class are fishing rights of a kind mentioned in paragraph (1)(h)—a boat of a size not greater than the sum of the sizes, having an engine power not greater than the sum of the engine powers, or of a size not greater than the sum of the sizes and having an engine power not greater than the sum of the engine powers, as the case may be, stated in the fishing rights in the class.
- (2) A fishing right may authorise fishing:
- (a) by or from an Australian boat; and
  - (b) if the relevant plan of management so provides—by or from a foreign boat.

## **22 AFMA to establish system of statutory fishing rights**

- (1) Where a plan of management provides for the management by AFMA of a fishery by means of a system of statutory fishing rights, AFMA is to establish and administer such a system in accordance with the plan.

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- (2) AFMA is to give to a person to whom it grants a fishing right a certificate evidencing the grant of the fishing right.
- (3) A fishing right is granted subject to the following conditions:
  - (a) the holder of the fishing right must comply with any obligations imposed by, or imposed by AFMA under, the relevant plan of management on the holder of such a fishing right;
  - (b) the fishing right will cease to have effect if the plan of management for the fishery to which the fishing right relates is revoked under subsection 20(3);
  - (c) the fishing right may, under subsection 75(7), cease to have effect;
  - (d) the fishing right may be cancelled under section 39;
  - (e) no compensation is payable because the fishing right is cancelled, ceases to have effect or ceases to apply to a fishery.

Note: For further provisions relating to conditions imposed on fishing rights see subsections (4), (4A), (5) and (5A) and sections 40C, 42, 42A and 42B.

- (4) A fishing right:
  - (a) is subject to such other conditions as are specified in the certificate, including conditions relating to the suspension or cancellation of the fishing right and the transferability or otherwise of the fishing right; and
  - (b) comes into force on the day specified for the purpose in the certificate, or, if no day is so specified, on the day on which it is granted; and
  - (c) subject to this Act, remains in force:
    - (i) until the day specified for the purpose in the certificate; or
    - (ii) if no such day is specified, until cancelled or surrendered or it otherwise ceases to have effect, under this Act.

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- (4A) It is also a condition of a fishing right relating to a fishery that the holder of the right comply with a direction under section 41A that relates to the fishery.
- (5) AFMA may, by written notice given to the holder of a fishing right, whether or not at the request of the holder, vary or revoke a condition of the fishing right (not being a condition mentioned in subsection (3) or (4A)) or specify a condition or a further condition to which the fishing right is to be subject.
- (5A) After the commencement of this subsection and without limiting the generality of subsection (5), if a statutory fishing right authorises an Australian-flagged boat to fish on the high seas, AFMA may attach a further condition to that right to the effect that another boat may not be substituted for the first-mentioned boat without AFMA's prior written agreement to the substitution.
- (6) A fishing right ceases to be in force if the holder of the fishing right surrenders it by written notice given to AFMA.

## **23 Certain decisions to be provisional**

- (1) Where AFMA or a Joint Authority makes a decision as to the person or persons to whom the grant of a fishing right in a managed fishery is to be made, not being a grant or grants to be made after:
  - (a) the holding of an auction in respect of the grant; or
  - (b) the calling of tenders in respect of the grant;the following provisions of this section apply.
- (2) AFMA or the Joint Authority, as the case may be, by notice published in the *Gazette*, must set out the name of the person or persons to whom the fishing rights are to be granted and a summary of the fishing rights to be granted to each such person.
- (3) A grant of a fishing right must not be made to such a person:
  - (a) before the end of the period within which, under section 143, applications to the Panel may be made for review of the decision in relation to the grant; or

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- (b) if an application in relation to the decision is made to the Panel under section 143—before the application is dealt with by the Panel or otherwise disposed of.

## **Division 4—Ways of granting statutory fishing rights**

### **24 Notice of intention to grant fishing rights**

- (1) AFMA may, by public notice, declare that it intends to grant a fishing right or fishing rights specified in the notice in relation to fishing in a specified managed fishery.
- (2) A reference in subsection (1) to public notice is a reference to notice published:
  - (a) in the *Gazette*; and
  - (b) in each State and Territory, in a newspaper circulating throughout that State or Territory; and
  - (c) in such other newspaper or publication (if any) that appears to AFMA to be appropriate in the circumstances.

### **25 Contents of notice**

AFMA must, in a notice under section 24:

- (a) describe the fishing activities that will be authorised by the fishing right or fishing rights; and
- (b) specify the way in which the grant is to be made and, if the grant is to be made otherwise than by auction or tender, give full particulars of the procedures to be followed for selecting a person to whom the grant will be made available under section 29; and
- (c) set out the conditions (if any) that are to be satisfied by persons applying under section 26 for registration as eligible persons for the grant before they may be so registered; and
- (d) if an auction is to be held, specify the lowest bid that will be a qualifying bid for the purposes of subsection 29(1); and
- (e) specify:
  - (i) the fees (if any) payable by persons applying for registration; and

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- (ii) the period (if any) for which the fishing right will be in force unless it is sooner cancelled or otherwise ceases to apply or have effect; and
  - (iii) if the grant is to be made otherwise than by auction or by calling tenders—the amount (if any) that is the amount of charge on the grant for the purposes of the *Statutory Fishing Rights Charge Act 1991*; and
  - (iv) whether any charge imposed on the grant under the *Statutory Fishing Rights Charge Act 1991* is to be paid in one lump sum or by instalments and, if the charge is to be paid by instalments, the number and frequency of those instalments; and
  - (v) the right of review available to persons in relation to the grant of, or the refusal to grant, a fishing right; and
  - (vi) an address from which copies of the plan of management may be obtained; and
  - (vii) any other matter in respect of the grant that, in the opinion of AFMA, should be notified to prospective applicants; and
- (f) invite interested persons to apply to AFMA, in the approved form, within the period specified in the notice, to be registered as eligible persons for the grant.

### 26 Registration of applicants

- (1) A person may apply to AFMA, in the approved form, for registration as an eligible person for a grant of a fishing right.
- (2) Subject to section 31K, AFMA must register as an eligible person for a grant of a fishing right each applicant who:
  - (a) satisfies the conditions (if any) for registration specified in the plan of management in relation to the grant; and
  - (b) has paid the prescribed fee; and
  - (c) in the case of an applicant tendering for the grant—has complied with subsections 27(2) and (3).

- (3) AFMA must, as soon as practicable, notify the applicant in writing of its decision to register or not to register the applicant as an eligible person for a grant of a fishing right and of the right of review that the person has in relation to that decision.

## **27 Tenders for fishing rights**

- (1) This section applies where, under a plan of management, tenders are to be called in respect of the grant of a fishing right or fishing rights.
- (2) An application for registration must be accompanied by a tender made in accordance with subsection (3).
- (3) The tender must:
  - (a) specify the amount that the applicant is willing to pay to the Commonwealth for the grant; and
  - (b) be enclosed in a sealed, opaque envelope on which is written only:
    - (i) the name and address of the applicant; and
    - (ii) words identifying the grant to which the tender relates.
- (4) AFMA must take reasonable steps to ensure that the envelope containing the tender is kept in such a way as to prevent premature disclosure of the amount specified in the tender and, in particular, must take reasonable steps to ensure that the envelope is not interfered with until it is opened in accordance with the regulations.

## **28 Prescribed procedures for grant of fishing rights**

- (1) Where a grant of a fishing right is required to be made by auction or tender, the regulations must prescribe the procedures to be followed for selecting the person to whom the grant will be made available under section 29.
- (2) Without limiting the generality of subsection (1), those procedures must include:
  - (a) in the case of an auction—the procedures to be followed for:

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- (i) holding the auction; and
  - (ii) where a grant of a fishing right, being a grant that was available to a person under section 29 as a result of an auction, has ceased to be so available, holding another auction in respect of the grant; and
- (b) in the case of tenders—the procedures to be followed for:
  - (i) opening the envelopes containing the tenders lodged by the persons registered under subsection 26(2) as eligible persons for the grant; and
  - (ii) recording the amount specified in each of those tenders; and
  - (iii) ranking those persons by reference to the amounts so recorded; and
- (d) the preparation, where tenders have been called, of a list (in this Division called the ***precedence list***) of all the persons who have been registered under section 26 as eligible persons for the grant in the order in which they have, in accordance with the procedures prescribed by the regulations, been ranked for the purposes of the grant.

**29 Grant made available to highest bidder etc.**

- (1) Where an auction has been held in respect of the grant of a fishing right, the grant is available to the person who made the highest qualifying bid for the grant at the auction.
- (2) Where tenders have been called in respect of the grant of a fishing right, the grant is available to the person ranked highest on the precedence list prepared for the purposes of the grant.
- (3) Where subsections (1) and (2) do not apply in relation to a grant of a fishing right, the grant is available to the person selected in accordance with the procedures specified for that purpose in the plan of management relating to the grant.

- (4) Where a grant of a fishing right is available to a person under this section, AFMA must, as soon as practicable:
- (a) notify that fact in writing to that person and to each other person who was registered under section 26 as an eligible person for the grant of that fishing right; and
  - (b) give to each such person a statement in writing of the reasons for making the grant so available and of any right of review that the person has in relation to the decision to make the grant so available.

### **30 Amount of charge to be tendered**

- (1) If a person to whom a grant becomes available under subsection 29(1) does not, immediately after having been notified of that fact, tender the amount of charge due and payable at that time under the *Statutory Fishing Rights Charge Act 1991* in respect of the grant, the grant ceases to be available to the person.
- (2) If, within 30 days after a grant of fishing rights has become available to a person, either because of subsection 29(2) or (3) or because of a previous application of this subsection, the person does not tender the amount of any charge due and payable under the *Statutory Fishing Rights Charge Act 1991* in respect of the grant:
- (a) the grant ceases to be available to the person; and
  - (b) if a precedence list has been prepared for the purposes of the grant:
    - (i) the name of the person is, by force of this subsection, deleted from the list; and
    - (ii) the grant is available to the person who then becomes the highest ranking person on that list.

### **31 AFMA to grant fishing right**

Upon the request of a person to whom the grant of a fishing right is available, AFMA must grant the fishing right to that person.

## Division 4A—Statutory fishing rights options

### 31A Options arising when plan of management for fishery is revoked

- (1) Subject to subsection (2), if a plan of management for a fishery (the **former plan**) is revoked, each person (a **former holder of fishing rights**) who held statutory fishing rights of a particular class of fishing rights (the **relevant class**) in respect of the fishery under the former plan immediately before it was revoked holds a **statutory fishing rights option** in respect of fishing rights of the relevant class.
- (2) Subsection (1) does not apply if:
  - (a) a new plan of management is determined for the fishery immediately after the revocation of the former plan; and
  - (b) the new plan is in all substantial respects identical to the former plan; and
  - (c) the persons who held statutory fishing rights under the former plan are granted equivalent statutory fishing rights under the new plan.
- (3) Subsection 21(1B) applies in determining the kinds of statutory fishing rights that together constitute a class of fishing rights in respect of a fishery for the purposes of this Division, except that fishing rights that, in AFMA's opinion, are substantially the same are taken to be identical for the purposes of that subsection.
- (4) A statutory fishing rights option entitles the holder of the option to be granted statutory fishing rights of the relevant class under any plan of management (the **new plan**) determined for a fishery after the revocation of the former plan if section 31B or 31C applies to the new plan. The nature and extent of the entitlements are set out in subsection 31B(2) or 31C(2), as the case may be.

**31B Rights of option holder where the new plan of management is the same or substantially the same as the former plan of management**

- (1) This section applies to the new plan if:
- (a) the new plan applies to a geographical area that consists of or includes the whole or a part of the geographical area to which the former plan applied; and
  - (b) the description (other than the description of the geographical area) of the fishery to which the new plan applies is, in AFMA's opinion, the same, or substantially the same, as the description of the fishery to which the former plan applied; and
  - (c) the new plan provides for the granting of classes of statutory fishing rights that are the same, or substantially the same, as the classes of statutory fishing rights provided for in the former plan; and
  - (d) under the new plan the only persons who are entitled to be granted statutory fishing rights are persons who hold statutory fishing rights options in respect of statutory fishing rights under the new plan.
- (2) If a person holds a statutory fishing rights option in respect of statutory fishing rights under the new plan, the option entitles the person, subject to subsections (3) and (4), to be granted under the new plan, to the extent to which the person exercises the option in accordance with subsection 31D(1), the number of statutory fishing rights of the relevant class worked out in accordance with the formula:

$$\frac{\text{Person's previous rights}}{\text{Total previous rights}} \times \text{Total new rights}$$

where:

***person's previous rights*** means the number of statutory fishing rights of the relevant class held by:

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- (a) if the person was a former holder of fishing rights—the person; or
- (b) otherwise—the former holder of fishing rights from whose statutory fishing rights under the former plan the person directly or indirectly became entitled to the option; under the former plan immediately before it was revoked.

***total previous rights*** means the total number of statutory fishing rights of the relevant class held by all persons under the former plan immediately before it was revoked.

***total new rights*** means the total number of statutory fishing rights of the relevant class that are available to be granted under the new plan.

- (3) If the number of statutory fishing rights worked out under subsection (2) includes a fraction, the number is to be rounded off to the next highest or lowest whole number, as AFMA determines to be reasonable in the circumstances.
- (4) In making a determination under subsection (3), AFMA may have regard to any matters that it considers appropriate, including the total number of statutory fishing rights of the relevant class that are available to be granted under the new plan.

### **31C Rights of option holder where new plan of management has some features in common with the former plan of management**

- (1) This section applies to the new plan if:
  - (a) in AFMA's opinion section 31B does not apply to the new plan; and
  - (b) the new plan applies to a geographical area that consists of or includes the whole or a part of the geographical area to which the former plan applied; and
  - (c) at least one of the species of fish in respect of which statutory fishing rights are available to be granted under the new plan (except any species that is a by-catch) was also a species of

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fish in respect of which statutory fishing rights were granted under the former plan immediately before it was revoked.

- (2) If a person holds a statutory fishing rights option in respect of statutory fishing rights under the new plan, the option entitles the person to be granted such number of such classes of statutory fishing rights under the new plan as AFMA determines to be fair and equitable having particular regard to the number and classes of statutory fishing rights:
- (a) if the person was a former holder of fishing rights—held by the person; or
  - (b) otherwise—held by the former holder of fishing rights from whose fishing rights under the former plan the person directly or indirectly became entitled to the option;
- under the former plan immediately before it was revoked.
- (3) In determining the number of a class of statutory fishing rights to be granted to a person under the new plan in accordance with subsection (2), AFMA must take into account:
- (a) the extent to which the new plan applies to the fishery to which the former plan applied; and
  - (b) the number and classes of statutory fishing rights:
    - (i) if the person was a former holder of fishing rights—held by the person; or
    - (ii) otherwise—held by the former holder of fishing rights from whose fishing rights under the former plan the person directly or indirectly became entitled to the option;under the former plan immediately before it was revoked; and
  - (c) the procedures to be followed under the new plan for the granting of fishing rights; and
  - (d) the conditions relevant to the registration under the new plan of persons who are to be eligible for the grant of statutory fishing rights.

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**31D Exercise and lapsing of option**

- (1) A person who holds a statutory fishing rights option is taken to exercise the option if the person has received a notice under paragraph 31K(1)(a) and, within the period stated in the notice, notifies AFMA, by writing signed by the person, that the person exercises the option in respect of all, or a stated number, of the statutory fishing rights to which the option relates.
- (2) If a person does not exercise a statutory fishing rights option in respect of all or some of the statutory fishing rights to which the option relates, the option lapses in respect of the statutory fishing rights in respect of which the option is not exercised.

**31E The Register of Statutory Fishing Rights Options**

- (1) AFMA is to keep a Register of Statutory Fishing Rights Options (the *Register*).
- (2) The Register may be kept wholly or partly by use of a computer.
- (3) If the Register is kept wholly or partly by use of a computer:
  - (a) references in this Act to an entry in the Register include references to a record of particulars kept by use of a computer and comprising the Register or part of the Register; and
  - (b) references in this Act to particulars being registered, or entered in the Register, include references to the keeping of a record of those particulars as part of the Register by use of the computer.
- (4) The Register must, in relation to each statutory fishing rights option:
  - (a) set out the name and address of the person who for the time being holds the option; and
  - (b) contain such particulars as are necessary to identify the former plan whose revocation gave rise to the option; and
  - (c) set out the number and class of statutory fishing rights to which the option relates; and

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- (d) if the option has been exercised in respect of any statutory fishing rights—state the date of the exercise and the number and class of rights in respect of which the option has been exercised; and
- (e) if the option has lapsed in respect of any statutory fishing rights—state the date of the lapse and the number and class of rights in respect of which the option has lapsed.

**31F Registration of dealings in statutory fishing rights options**

*Scope*

- (1) This section applies to a dealing that would, apart from subsection (2), have the effect of creating, assigning, transmitting or extinguishing an interest in a statutory fishing rights option, other than an interest that is a PPSA security interest.

*Registration of dealings*

- (2) The dealing has no effect of a kind mentioned in subsection (1) until it is registered under this section.
- (3) A party to the dealing may lodge with AFMA:
  - (a) an application, in the form approved by AFMA, for registration of the dealing; and
  - (b) the instrument evidencing the dealing; and
  - (c) an instrument setting out such particulars (if any) as are prescribed for the purposes of an application for registration of the dealing; and
  - (d) one copy each of the application and of the instruments mentioned in paragraphs (b) and (c).
- (4) A party to the dealing may, instead of lodging the instrument evidencing the dealing, lodge with AFMA a summary of that instrument containing the particulars required by AFMA for the purposes of this subsection.
- (5) Subject to subsections (6) and (7), if an application for registration of the dealing, either the instrument evidencing the dealing or a

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summary of that instrument that complies with subsection (4), and the other documents referred to in paragraphs (3)(c) and (d), are lodged with AFMA, AFMA must:

- (a) register the dealing by entering in the Register the following particulars:
  - (i) the name and address of the person acquiring the interest in the option;
  - (ii) the number and class of statutory fishing rights to which the dealing relates; and
- (b) endorse on the instrument evidencing the dealing and the copy of that instrument the fact of the entry having been made together with the date and time of the making of the entry.

*Partial assignment of statutory fishing rights options*

- (6) For the purposes of this Division, if a statutory fishing rights option is assigned to a person in respect of some only of the statutory fishing rights to which the option relates:
  - (a) the assignee is taken to hold a new statutory fishing rights option in respect of the statutory fishing rights assigned to the assignee; and
  - (b) the assignor continues to hold the first-mentioned option in respect of such of the statutory fishing rights as have not been assigned.

*Refusal to register dealings*

- (7) AFMA may only refuse to register a dealing if the registration of the dealing would be contrary to the requirements of the new plan or a condition of statutory fishing rights in respect of which the option is held.

*Documentation of registration of dealings*

- (8) If a dealing is registered:

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- (a) the copies referred to in paragraph (3)(d) and the summary (if any) lodged under subsection (4) are to be kept by AFMA; and
  - (b) if a summary is not lodged under subsection (4), the copy of the instrument evidencing the dealing is to be made available for inspection in accordance with this Division; and
  - (c) if a summary is lodged under subsection (4), the summary is to be made available for inspection in accordance with this Division; and
  - (d) the original instrument is to be returned to the person who made the application for registration.
- (10) AFMA is not concerned with the effect in law of any instrument lodged under this section.

**31FA Interests in statutory fishing rights options—priority between section 31F interests and PPSA security interests**

*Scope*

- (1) This section sets out the priority between the following interests in a statutory fishing rights option:
- (a) an interest (the **section 31F interest**) that is the subject of a dealing (the **section 31F dealing**), if the dealing has effect under section 31F (by registration);
  - (b) a PPSA security interest.

*Priority rules*

- (2) The priority is as set out in the following table:

Priority between PPSA security interests and section 31F interests		
Item	If ...	then ...
1	the PPSA security interest is not perfected (whether by registration or otherwise) within the meaning of the <i>Personal Property Securities Act</i>	the section 31F interest has priority.

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<b>Priority between PPSA security interests and section 31F interests</b>		
<b>Item</b>	<b>If ...</b>	<b>then ...</b>
	<i>2009</i>	
2	(a) the PPSA security interest is perfected (whether by registration or otherwise) within the meaning of the <i>Personal Property Securities Act 2009</i> ; and (b) the section 31F dealing is registered under section 31F of this Act before the priority time for the PPSA security interest under section 55 of the <i>Personal Property Securities Act 2009</i>	the section 31F interest has priority.
3	(a) the PPSA security interest is perfected (whether by registration or otherwise) within the meaning of the <i>Personal Property Securities Act 2009</i> ; and (b) the section 31F dealing is registered under section 31F of this Act at or after the priority time for the PPSA security interest under section 55 of the <i>Personal Property Securities Act 2009</i>	the PPSA security interest has priority.
(3) Subsection 73(2) of the <i>Personal Property Securities Act 2009</i> applies to the section 31F interest.		
Note 1: The effect of subsection (3) is that the priority between a section 31F interest and a PPSA security interest in a statutory fishing rights option is to be determined in accordance with this Act rather than the <i>Personal Property Securities Act 2009</i> .		
Note 2: Subsection 73(2) of the <i>Personal Property Securities Act 2009</i> applies to section 31F interests that arise after the commencement of subsection (3) of this section (which commences at the registration commencement time within the meaning of the <i>Personal Property Securities Act 2009</i> ).		

### **31G Claims of interests in statutory fishing rights options**

- (1) If a person lodges with AFMA a notice, in the form approved by AFMA:
- (a) stating that a dealing of a kind referred to in subsection 31F(1) that is described in the statement has taken place; and
  - (b) claiming that, if the dealing were registered, the person would have an interest in a statutory fishing rights option; and
  - (c) setting out particulars of the interest; and
  - (d) requesting AFMA to register the claim;
- AFMA must register the claim by entering in the register the person's name and particulars of the interest claimed.
- (2) If, after the registration of a claim to an interest in a statutory fishing rights option, the claimant, by notice lodged with AFMA in the form approved by AFMA, withdraws the claim, AFMA must cancel the registration by omitting from the register the entry relating to the claim.
- (3) If:
- (a) a claim to an interest in a statutory fishing rights option is registered; and
  - (b) an application is made to AFMA for registration of a dealing in respect of the option;
- AFMA must not register the dealing unless:
- (c) AFMA has given written notice of the application to the person whose name appears in the register in relation to the claim; and
  - (d) either:
    - (i) the person has withdrawn the claim under subsection (2); or
    - (ii) 21 days have elapsed since the notice was given to the person.

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**31H Trusts not registrable**

Notice of any kind of trust relating to a statutory fishing rights option is not receivable by AFMA and must not be entered in the Register.

**31J Power of holder of statutory fishing rights option to deal with option**

- (1) The holder of a statutory fishing rights option may, subject to this section, deal with the option, in respect of all or any of the statutory fishing rights to which the option relates, as absolute owner and give good discharges for any consideration for any such dealing.
- (1A) A dealing mentioned in subsection (1) is subject to:
  - (a) any rights appearing in the Register to be vested in another person, other than any such rights that are PPSA security interests; and
  - (b) any rights or interests in the statutory fishing rights option that are PPSA security interests, to the extent provided by the *Personal Property Securities Act 2009*.
- (2) Subsection (1) only protects a person who deals with a holder of a statutory fishing rights option as a purchaser in good faith for value and without notice of any fraud on the part of the holder.
- (3) Equities in relation to a statutory fishing rights option may be enforced against the holder of the option except to the prejudice of a person protected by subsection (2).

**31K Obligations of AFMA in respect of granting statutory fishing rights under the new plan**

- (1) AFMA must not grant any statutory fishing rights under the new plan unless:
  - (a) it has given written notice to each person who holds a statutory fishing rights option in relation to the plan asking the person to tell AFMA in writing within the period of 30

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days after a date stated in the notice (being a date not earlier than 2 days after the day on which the notice is sent):

- (i) whether the person wishes to exercise the option; and
  - (ii) if so, the number of fishing rights in respect of which the person exercises the option; and
- (b) that period has elapsed.
- (2) AFMA must develop procedures that will ensure that the holders of options that are exercised are granted the statutory fishing rights under the new plan to which they are entitled.
- (3) AFMA may remove particulars of an option from the Register when all the statutory fishing rights to which the option relates have been granted or the option has lapsed.

**31L Administrative provisions**

Sections 52 to 57 apply to the Register of Statutory Fishing Rights Options and documents subject to inspection under this Division in the same way as those sections apply to the Register of Statutory Fishing Rights and documents subject to inspection under Part 4.

## Division 5—Fishing permits

### 32 Grant of fishing permits

- (1) AFMA may, upon application made in the approved form, grant to a person a fishing permit authorising, subject to subsections (1A), (1B), (1C) and (1D), the use by that person, or by a person acting on that person's behalf, of an Australian boat for fishing in a specified area of the AFZ or a specified fishery.
- (1A) Subject to subsections (1C) and (1D), if an Australian boat is specified in the permit, the permit authorises the use as mentioned in subsection (1) of:
- (a) subject to paragraph (b)—that boat; or
  - (b) if the person to whom the permit is granted, from time to time, by written notice given to AFMA, nominates for the purposes of the permit another Australian boat in lieu of that boat—the boat so nominated.
- (1B) Subject to subsections (1C) and (1D), if no Australian boat is specified in the permit, the permit authorises the use as mentioned in subsection (1) of such Australian boat (if any) as the person to whom the permit is granted, from time to time, by written notice given to AFMA, nominates for the purposes of the permit.
- (1BA) After the commencement of this subsection, a boat may be nominated under subsection (1A) or (1B) only if:
- (a) either:
    - (i) the boat's particulars are already registered on the Fishing Permits Register; or
    - (ii) the boat is an Australian boat; and
  - (b) the acceptance of the nomination would not be contrary to:
    - (i) a condition of the permit; or
    - (ii) the regulations; and
  - (c) for the purposes of a permit to fish in a specified fishery on the high seas—the boat is an Australian-flagged boat.

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(1C) The permit does not authorise the use of an Australian boat unless the boat complies with any conditions to which the permit is subject.

(1D) If subsection 16A(1) prohibits AFMA from authorising a use of a boat for a period described in subsection 16A(2), the permit does not authorise the use of the boat during the period.

Note: Subsection 16A(1) prohibits AFMA from authorising the use of a boat to fish on the high seas for a conserved fish stock if the boat has been used in the commission of certain offences and the penalties for those offences have not been complied with.

(2) An application made for the grant of a fishing permit must provide AFMA with such information as it reasonably requires for a proper consideration of the application.

(3) Without limiting the operation of subsection (1), AFMA may refuse to grant a fishing permit if it has reason to believe that a requirement of a law of the Commonwealth, or of a State or Territory, has not been complied with in relation to the boat.

(4) A fishing permit may authorise the use of a boat:

- (a) for commercial fishing generally; or
- (b) for recreational fishing generally (whether from a charter boat or otherwise); or
- (d) for specified fishing activities, including:
  - (i) the carrying of fish; or
  - (ii) the processing of fish; or
  - (iii) the testing of fishing equipment.

(5) A fishing permit is granted subject to the following conditions:

- (a) if the fishing permit authorises fishing in a specified managed fishery—the holder of the permit must comply with any obligations imposed by, or imposed by AFMA under, the relevant plan of management on the holder of such a fishing permit;
- (b) if the fishing permit authorises fishing in a specified managed fishery—the permit will cease to have effect if the

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plan of management for the fishery is revoked under subsection 20(3);

- (c) the fishing permit may, under subsection 75(7), cease to have effect;
- (d) the fishing permit may be cancelled under section 39;
- (e) no compensation is payable because the fishing permit is cancelled, ceases to have effect or ceases to apply to a fishery.

Note: For further provisions relating to conditions imposed on fishing permits see subsections (6), (7A) and sections 40C, 42, 42A and 42B.

(6) A fishing permit:

- (a) is subject to such other conditions as are:
  - (i) specified in the permit; or
  - (ii) prescribed in relation to permits granted under this section; and
- (b) comes into force on the day specified for the purpose in the permit or, if no day is so specified, on the day on which it is granted; and
- (c) subject to this Act, remains in force until the day specified for the purpose in the permit, being a day not later than 5 years after the day on which it came into force.

(7) Without limiting the operation of paragraph (6)(a), the conditions that may be specified in a permit include conditions relating to:

- (a) the fish that may be taken; or
- (b) the quantity of fish that may be taken; or
- (c) the rate at which fish may be taken; or
- (d) the methods or equipment that may be used to take fish; or
- (e) the methods or equipment that may be used to process or carry fish.

(7A) It is also a condition of a fishing permit relating to a fishery that the holder of the permit comply with a direction under section 41A that relates to the fishery.

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- (8) AFMA may, by written notice given to the holder of a permit, whether or not at the request of the holder, vary or revoke a condition of the permit (not being a condition mentioned in subsection (5) or (7A)) or specify a condition or a further condition to which the permit is to be subject.
- (9) A permit ceases to be in force if the holder of the permit surrenders the permit by written notice given to AFMA.
- (11) A fishing permit is to be in the approved form.

**32A Transfer of fishing permits**

- (1) This section is about the holder of a fishing permit transferring the permit to another person.
- (2) The holder of the fishing permit must apply to AFMA, in the approved form, to register the transfer.
- (3) The transfer takes effect when AFMA registers the transfer.
- (4) AFMA must register the transfer unless:
  - (a) the fishing permit is suspended under section 38; or
  - (b) the holder of the fishing permit:
    - (i) is being investigated for a fisheries offence; or
    - (ii) has been convicted of a fisheries offence; or
  - (c) a levy on the fishing permit that is due has not been paid; or
  - (d) other circumstances that are prescribed under the regulations exist.
- (5) Subsection (4) applies despite the fact that a requirement in a plan of management relating to the transfer has not been satisfied.
- (6) This section does not apply to a fishing permit that is stated to be non-transferable.

## **Division 6—Scientific permits**

### **33 Grant of scientific permits**

- (1) AFMA may, upon application made in the approved form, grant to a person a scientific permit in respect of a specified boat (including a foreign boat) authorising the use of the boat by that person, or a person acting on that person's behalf, for scientific research purposes in a specified area of the AFZ or a specified fishery.
- (2) An application made for the grant of a scientific permit must provide AFMA with such information as it reasonably requires for a proper consideration of the application.
- (3) A scientific permit is granted subject to the following conditions:
  - (a) if the permit authorises the use of a boat for scientific research purposes in a specified managed fishery—the permit will cease to have effect in relation to that fishery if the plan of management for the fishery is revoked under subsection 20(3);
  - (b) the permit may, under subsection 75(7), cease to have effect;
  - (c) the permit may be revoked under subsection (6);
  - (d) no compensation is payable because the permit is revoked, ceases to have effect or ceases to apply to a fishery.

Note: For further provisions relating to conditions imposed on scientific permits see subsections (4), (5A) and sections 40C and 42A.

- (4) A scientific permit:
  - (a) is subject to such other conditions as are specified in the permit; and
  - (b) comes into force on the day specified for the purpose in the permit or, if no day is so specified, on the day on which it is granted; and
  - (c) subject to this Act, remains in force until the day specified for the purpose in the permit, being a day not later than 6 months after the day on which it came into force.

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- (5) Without limiting the operation of subsection (4), the conditions that may be specified in a scientific permit include conditions relating to:
  - (a) the carriage on board the boat concerned of persons nominated by AFMA to make scientific observations; or
  - (b) the sale or disposal of fish taken during the course of activities carried out under the permit.
- (5A) It is also a condition of a scientific permit relating to a fishery that the holder of the permit comply with a direction under section 41A that relates to the fishery.
- (6) AFMA may, by written notice given to the holder of a scientific permit, whether or not at the request of the holder:
  - (a) revoke the permit; or
  - (b) vary or revoke a condition to which the permit is subject (not being a condition mentioned in subsection (5A)) or specify a condition or further condition to which the permit is to be subject.
- (7) A scientific permit ceases to be in force if the holder of the permit surrenders the permit by written notice given to AFMA.
- (8) A scientific permit is to be in the approved form.

## **Division 7—Foreign fishing licences and Treaty licences**

### **34 Grant of foreign fishing licences**

- (1) AFMA may, upon application made in the approved form, grant to a person a foreign fishing licence authorising the use of a specified foreign boat by that person, or a person acting on that person's behalf, for commercial fishing in a specified area of the AFZ or a specified fishery.
- (2) An application made for the grant of a foreign fishing licence must provide AFMA with such information as it reasonably requires for a proper consideration of the application.
- (3) In considering whether to grant a foreign fishing licence, AFMA must give effect to any obligation undertaken by the Commonwealth contained in an agreement entered into by the Commonwealth that is relevant in the particular case.
- (4) A foreign fishing licence is granted subject to the following conditions:
  - (a) if the licence authorises commercial fishing in a specified managed fishery—the holder of the licence must comply with any obligations imposed by, or imposed by AFMA under, the relevant plan of management on the holder of such a licence;
  - (b) if the licence authorises commercial fishing in a specified managed fishery—the licence will cease to have effect in relation to the fishery if the plan of management for the fishery is revoked under subsection 20(3);
  - (c) the licence may be cancelled under section 39;
  - (d) no compensation is payable because the licence is cancelled.

Note: For further provisions relating to conditions imposed on foreign fishing licences see subsections (5), (6A) and sections 40C, 42, 42A and 42B.

- (5) A licence granted under this section:

- (a) is subject to the condition that, while the boat to which the licence relates is in the AFZ, the person in charge of the boat is the holder of a foreign master fishing licence; and
  - (b) is subject to such other conditions as are specified in the licence; and
  - (c) comes into force on the day specified for the purpose in the licence or, if no day is so specified, on the day on which it is granted; and
  - (d) subject to this Act, remains in force until the day specified for the purpose in the licence, being a day not later than 12 months after the day on which it came into force.
- (6) Without limiting the operation of subsection (5), the conditions that may be specified in a licence include conditions relating to any matter that may be included in a fishing permit granted under section 32.
- (6A) It is also a condition of a foreign fishing licence relating to a fishery that the holder of the licence comply with a direction under section 41A that relates to the fishery.
- (7) AFMA may, at any time, subject to such conditions (if any) as are specified in the endorsement, endorse a licence so as to extend it to authorise the boat to be brought into a specified port in Australia or in an external Territory at such time as is, or at such times as are, specified in the endorsement.
- (8) AFMA may, by written notice given to the holder of a licence in respect of which an endorsement under subsection (7) is in force, revoke the endorsement.
- (9) AFMA may, by written notice given to the holder of a licence, whether or not at the request of the holder, vary or revoke a condition of the licence (not being a condition mentioned in subsection (4) or (6A)) or specify a condition or further condition to which the licence is to be subject.
- (10) A licence ceases to be in force if the holder of the licence surrenders the licence by written notice given to AFMA.
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- (11) A licence is to be in the approved form.

**35 Agreements to grant foreign fishing licences**

- (1) AFMA, with the approval of the Minister, may enter into an agreement with a person that contains a provision under which AFMA agrees to grant a foreign fishing licence or 2 or more such licences (whether to that person or to any other person or persons) in respect of a foreign boat or 2 or more foreign boats.
- (2) Where AFMA has entered into an agreement with a person that contains a provision of a kind mentioned in subsection (1), AFMA may, with the approval of the Minister, enter into a further agreement with the person varying the terms of the provision or varying the terms of the provision as varied under this subsection.
- (3) The Minister is to cause a copy of such an agreement or further agreement, as the case may be, to be laid before each House of the Parliament within 15 sitting days of that House after the agreement, or the further agreement, as the case may be, is entered into.
- (4) Where:
  - (a) AFMA has entered into an agreement under subsection (1); or
  - (b) there is in force an agreement between the Commonwealth and the government of another country that contains a provision under which foreign fishing licences are agreed to be granted in respect of foreign boats (whether or not the provision also provides for the payment of an amount or amounts to the Commonwealth);AFMA must, in deciding whether or not to grant the licence or any of the licences to which the agreement relates, have regard only to the terms of the agreement.
- (5) Subsection (4) has effect only so far as that subsection is not a law imposing taxation within the meaning of section 55 of the Constitution.

### **36 Fisheries agreements**

- (1) If the Commonwealth enters into an agreement with the government of another country that contains a provision under which foreign fishing licences are agreed to be granted in respect of foreign boats (whether or not the provision also provides for the payment of an amount or amounts to the Commonwealth), the Minister is to cause a copy of the agreement to be laid before each House of the Parliament within 15 sitting days of that House after the agreement is entered into.
- (2) Where:
  - (a) an agreement that contains a provision of a kind mentioned in subsection (1) is in force; and
  - (b) the provision provides for the payment of an amount or amounts to the Commonwealth; and
  - (c) a foreign fishing licence or licences to which the provision relates has or have been granted in respect of a foreign fishing boat or foreign fishing boats; and
  - (d) the whole or any part of an amount specified in the provision is not paid to the Commonwealth in accordance with the terms of the provision;AFMA may suspend each licence by written notice given to the holder of the licence.
- (3) Where AFMA has suspended a licence under subsection (2) and the amount concerned is fully paid, AFMA must revoke the suspension by written notice given to the holder of the licence.
- (4) Subsections (2) and (3) have effect only so far as those subsections are not laws imposing taxation within the meaning of section 55 of the Constitution.

### **37 Treaty licences**

- (1) For the purposes of this Act, a Treaty licence is taken to be in force in respect of a boat at all times during the period of validity of the

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Treaty licence as stated in the licence, except when the Treaty licence is suspended within the meaning of this section.

- (2) A Treaty licence issued in respect of a Treaty boat is suspended when:
- (a) each party to the Treaty has been notified in writing by the Minister that an investigation is being conducted in relation to an alleged contravention of a provision of the Treaty with the use of, or in relation to, the boat; or
  - (b) the Minister is notified in writing by the Administrator that the Treaty licence has been suspended in accordance with paragraph 8 of Article 5 of the Treaty.
- (3) A notice under paragraph (2)(a) must give particulars of the alleged contravention.
- (4) A Treaty licence ceases to be suspended:
- (a) where paragraph (2)(a) applies—when the Minister has, in writing, notified the Administrator that the investigation has been completed; or
  - (b) where paragraph (2)(b) applies—when the Minister is notified in writing by the Administrator that the Treaty licence is no longer suspended.

## **Division 8—Suspension and cancellation of fishing concessions**

### **38 Suspension of fishing concessions**

- (1) AFMA may, by written notice given to the holder of a fishing concession, suspend the operation of the concession if:
  - (a) any fee, levy, charge or other money relating to the concession is not paid as it becomes due; or
  - (b) it has reasonable grounds to believe that:
    - (i) there has been a contravention of a condition of the concession; or
    - (ii) in an application under this Act, the holder of the concession made a statement or furnished information that was, to the holder's knowledge, false or misleading in a material particular, not being an act or omission in relation to which AFMA has previously exercised powers under this subsection; or
  - (c) to do so would be in accordance with a condition of the fishing concession relating to suspension of the concession.
- (2) Subject to subsections (3) and (3A), where a fishing concession is so suspended (otherwise than for the reason mentioned in paragraph (1)(a)), the suspension, unless it is sooner revoked, ceases:
  - (a) if proceedings for an offence against this Act in relation to the alleged act or omission because of which the concession was suspended are instituted against the holder of the concession, or a person who acted on behalf of the holder of the concession, within one month after the suspension—on completion of the proceedings; or
  - (b) in any other case—at the end of one month after the suspension.

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- (3) AFMA may, by written notice given to the holder of a fishing concession, suspend the fishing concession for such period as is specified in the notice, if the holder of the fishing concession is convicted of an offence against this Act, the regulations or any other law of the Commonwealth relating to fishing or against a law of New Zealand, Papua New Guinea or a State or Territory relating to fishing.

(3A) If:

- (a) a contravention of an international fisheries management measure has led to the imposition on the holder of a fishing concession of sanctions by Australia or a foreign country; and

- (b) those sanctions have not been complied with;

AFMA may, by written notice given to the holder of the concession, suspend the fishing concession until the sanctions are fully complied with.

- (4) AFMA, by written notice given to the holder of a fishing concession suspended under this section:

- (a) may revoke the suspension; and

- (b) if the concession was suspended for the reason mentioned in paragraph (1)(a), must revoke the suspension:

- (i) if the money is paid; or

- (ii) if the holder enters into an arrangement mentioned in paragraph 39(c) in relation to the money; or

- (iii) there is a remission or refund made under the regulations of the whole of the money.

Note: Section 98 authorises a court in certain circumstances to suspend a fishing concession.

**39 Cancellation of fishing concessions**

- (1) AFMA may, by notice in writing given to the holder of a fishing concession, whether or not it has previously suspended the fishing concession, cancel the concession if:

- (a) the holder of the concession is convicted of an offence against this Act, the regulations or any other law of the Commonwealth relating to fishing or against a law of New Zealand, Papua New Guinea or a State or Territory relating to fishing; or
- (b) to do so would be in accordance with a condition of the concession relating to cancellation of the concession; or
- (c) any fee, levy, charge or other money relating to the concession is not paid or the holder does not enter into an arrangement satisfactory to AFMA in relation to the money within such period as is prescribed after the time at which such fee, levy, charge or other money became due; or
- (d) both of the following conditions are met:
  - (i) the concession authorises the use of a boat for fishing for a fish stock covered by a global, regional or subregional fisheries organisation or arrangement;
  - (ii) Australia is not involved in the organisation or arrangement and has not agreed to apply measures established by the organisation or arrangement.

Note: Section 98 authorises a court in certain circumstances to cancel a fishing concession.

- (2) If a fishing concession authorises the use of an Australian-flagged boat for fishing activities in waters wholly or partly beyond the AFZ—the concession is taken, by force of this subsection, to have been cancelled if the boat ceases to be an Australian-flagged boat.

## **Division 9—Foreign master fishing licences**

### **40 Grant of foreign master fishing licences**

- (1) AFMA may, upon application made in the approved form, grant to a person a foreign master fishing licence authorising the person to be in charge of a foreign boat that is being used for commercial fishing in a specified area of the AFZ or a specified fishery.
- (2) An application made for the grant of a foreign master fishing licence must provide AFMA with such information as it reasonably requires for a proper consideration of the application.
- (3) A foreign master fishing licence is granted subject to the following conditions:
  - (a) if the licence authorises a person to be in charge of a foreign boat that is being used for commercial fishing in a specified managed fishery—the holder of the licence must comply with any obligations imposed on the holder by the relevant plan of management;
  - (b) if the licence authorises a person to be in charge of a foreign boat that is being used for commercial fishing in a specified managed fishery—the licence will cease to have effect in relation to that fishery if the plan of management for the fishery is revoked under subsection 20(3);
  - (c) the licence may be cancelled under subsection (8);
  - (d) no compensation is payable because the fishing permit is cancelled or ceases to have effect.

**Note:** For further provisions relating to conditions imposed on foreign master fishing licences see subsections (4), (4A) and section 42B.

- (4) A licence granted under this section:
  - (a) is subject to such other conditions as are:
    - (i) specified in the licence; or
    - (ii) prescribed in relation to licences granted under this section; and

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- (b) comes into force on the day specified for the purpose in the licence or, if no day is so specified, on the day on which it is granted; and
  - (c) subject to this section, remains in force until the day specified for the purpose in the licence, being a day not later than the end of the period of 12 months after the day on which the licence came into force.
- (4A) It is also a condition of a foreign master fishing licence relating to a fishery that the holder of the licence comply with a direction under section 41A that relates to the fishery.
- (5) AFMA may, by written notice given to the holder of a licence, whether or not at the request of the holder, vary or revoke a condition of the licence (not being a condition mentioned in subsection (3) or (4A)) or specify a condition or further condition to which the licence is to be subject.
- (6) A licence ceases to be in force if the holder of the licence surrenders the licence by written notice given to AFMA.
- (7) A licence under this section is to be in the approved form.
- (8) AFMA may, by written notice given to the holder of a licence, cancel the licence if the holder of the licence is convicted of an offence against this Act, the regulations or any other law of the Commonwealth relating to fishing or against a law of New Zealand, Papua New Guinea or a State or Territory relating to fishing.

## **Division 9A—E-monitoring of fishing-related activity**

### **40A Directions to classes of concession and permit holders**

#### *Directions power*

- (1) AFMA may make a written direction requiring any person who holds a fishing concession, or a scientific permit, of a class prescribed in the direction, to comply with:
  - (a) obligations that are prescribed in the direction relating to the e-monitoring of fishing-related activity; or
  - (b) prescribed restrictions on engaging in fishing if any obligation prescribed under paragraph (a) in the direction has not been, or is not being, complied with.

**Note:** See section 97A for offences relating to e-monitoring equipment and e-monitoring data.

- (2) Without limiting the operation of paragraph (1)(a), examples of obligations that may be prescribed in a direction made under subsection (1) include obligations relating to:
  - (a) installing, carrying, using, handling, maintaining or monitoring the use of, prescribed e-monitoring equipment; and
  - (b) the circumstances, times, places or methods for giving AFMA e-monitoring data; and
  - (c) the circumstances, times, places or methods for giving AFMA e-monitoring equipment on which e-monitoring data is stored; and
  - (d) the circumstances, times, places or methods for giving AFMA statements relating to e-monitoring data (including statements about its circumstance, time, place or manner of generation, transmission or storage); and
  - (e) the circumstances, times, places or methods for giving AFMA statements relating to e-monitoring equipment (including statements about its circumstance, time, place or

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manner of installation, carriage, use, handling, maintenance or monitoring of use).

- (3) A direction made under subsection (1) must prescribe, in respect of each prescribed obligation or restriction, a day, which is a reasonable period after the direction is made, by which compliance with the obligation or restriction must occur or commence.

*Consultation and notification requirements for making directions*

- (4) Before making a direction under subsection (1) in relation to fishing concessions or scientific permits that relate to a particular fishery, AFMA must consult with:
- (a) the management advisory committee for the fishery; or
  - (b) if there is no management advisory committee for the fishery—the holders of fishing concessions or scientific permits for the fishery.
- (5) At least 7 days before a direction made under subsection (1) takes effect, AFMA must ensure that a copy of the direction is sent to each holder of a fishing concession or scientific permit to which the direction relates.
- (6) However, in an emergency:
- (a) a direction may be made under subsection (1) without any consultation; and
  - (b) subsection (5) does not apply in respect of the direction; and
  - (c) AFMA must ensure that a copy of the direction is sent to each holder of a fishing concession or scientific permit to which the direction relates as soon as possible.

*Variation and revocation*

- (7) AFMA may, at any time, by a further direction in writing, vary or revoke a direction made under subsection (1).

Note: Requirements like those in subsections (4) and (5) do not apply in relation to directions made under this subsection.

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- (8) If AFMA varies or revokes a direction made under subsection (1) it must ensure that a copy of the direction made under subsection (7) is sent to each holder of a fishing concession or scientific permit to which the direction as varied or revoked, relates or related, as soon as possible.

*Directions are legislative instruments*

- (9) A direction made under subsection (1), or a variation or revocation of such a direction, is a legislative instrument.

**40B Directions to specific concession and permit holders**

*Directions power*

- (1) AFMA may, by written notice given to the holder of a fishing concession or a scientific permit, direct the holder of the fishing concession or scientific permit to comply with:
- (a) obligations that relate to the e-monitoring of fishing-related activity and that:
    - (i) are prescribed in the direction; and
    - (ii) are not inconsistent with an obligation prescribed in a direction made under section 40A that the holder is required to comply with; and
  - (b) prescribed restrictions on engaging in fishing if any obligations prescribed under paragraph (a) in the direction have not been, or are not being, complied with.

Note 1: See section 97A for offences relating to e-monitoring equipment and e-monitoring data.

Note 2: For variation and revocation, see subsection 33(3) of the *Acts Interpretation Act 1901*.

- (2) Without limiting the operation of paragraph (1)(a), examples of obligations that may be prescribed in a direction under subsection (1) include obligations relating to:
- (a) installing, carrying, using, handling, maintaining or monitoring the use of, prescribed e-monitoring equipment; and

- (b) the circumstances, times, places or methods for giving AFMA e-monitoring data; and
  - (c) the circumstances, times, places or methods for giving AFMA e-monitoring equipment on which e-monitoring data is stored; and
  - (d) the circumstances, times, places or methods for giving AFMA statements relating to e-monitoring data (including statements about its circumstance, time, place or manner of generation, transmission or storage); and
  - (e) the circumstances, times, places or methods for giving AFMA statements relating to e-monitoring equipment (including statements about its circumstance, time, place or manner of installation, carriage, use, handling, maintenance or monitoring of use).
- (3) A direction made under subsection (1) must prescribe, in respect of each prescribed obligation or restriction, a day, which is a reasonable period after the direction is made, by which compliance with the obligation or restriction must occur or commence.

*Directions are not legislative instruments*

- (4) A direction made under subsection (1) is not a legislative instrument.

#### **40C Conditions of fishing concessions and scientific permits**

It is a condition of a fishing concession or scientific permit that the holder of the concession or permit will comply with each obligation and restriction that is validly prescribed in a direction in force under this Division in relation to the concession or permit by the day prescribed in the direction for compliance with that obligation or restriction.

Note: For offences relating to contravention of licence conditions, see section 95.

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## Division 10—Miscellaneous

### 41 Authority to extend to tender boats

Where the use by a person of a specified boat is authorised by a fishing concession or scientific permit, the authority to use that boat extends to the use of any tender boat carried by the first-mentioned boat.

#### 41A AFMA may give directions in relation to closure or partial closure of fishery

- (1) This section applies to a fishery in respect of which fishing concessions, scientific permits or foreign master fishing licences are in force.

- (2) After consultation with:

- (a) the management advisory committee for the fishery; or
- (b) if there is no management advisory committee for the fishery—the holders of fishing concessions, scientific permits or foreign master fishing licences for the fishery;

AFMA may direct that fishing not be engaged in in the fishery, or in a particular part of the fishery, during a period or periods specified in the direction.

- (2AA) To avoid doubt, a direction given under subsection (2) in relation to a part of a fishery may identify the part concerned in any way or ways.

- (2A) At least 7 days before a direction given under subsection (2) takes effect, AFMA must ensure that a copy of the direction is sent to each holder of a fishing concession, scientific permit or foreign master fishing licence in respect of the fishery, or part of the fishery, to which the direction relates.

- (2B) However, in an emergency:

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- (a) a direction may be given under subsection (2) without any consultation; and
  - (b) subsection (2A) does not apply in respect of the direction; and;
  - (c) AFMA must ensure that a copy of the direction is sent to each holder of a fishing concession, scientific permit or foreign master fishing licence in respect of the fishery, or part of the fishery, to which the direction relates as soon as possible.
- (2C) AFMA may, by writing under its common seal, delegate the power to give a direction under subsection (2) to:
  - (a) the CEO; or
  - (b) a primary stakeholder who is to assist AFMA to manage the fishery under a co-management arrangement (within the meaning of the *Fisheries Administration Act 1991*).
- (3) AFMA may, at any time, by a further direction in writing, vary or revoke a direction given under subsection (2).

Note: Requirements like those in subsections (2) and (2A) do not apply in relation to directions given under this subsection.
- (4) If AFMA varies or revokes a direction given under subsection (2) it must ensure that a copy of the direction given under subsection (3) is sent to each holder of a fishing concession, scientific permit or foreign master fishing licence, in respect of the fishery, or part of the fishery, to which the direction as varied or revoked, relates or related, as soon as possible.
- (5) A direction under subsection (2), or a variation or revocation of such a direction, is a legislative instrument.

**42 Determinations relating to logbooks and the furnishing of returns**

- (1) AFMA may, by a written determination, in relation to a particular fishery, provide for holders of fishing concessions in respect of that fishery to keep and maintain logbooks containing information in respect of their activities in that fishery.

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- (1A) Without limiting the generality of subsection (1), a determination by AFMA in respect of a particular fishery may cover matters including:
- (a) the form and content of logbooks for that fishery to be kept by the concession holder; and
  - (b) the secure storage of such logbooks; and
  - (c) the period for which retention of such logbooks is required; and
  - (d) the furnishing to AFMA of such logbooks or of returns of information contained in them.
- (1B) The content of the logbook kept by the holder of a fishing concession in respect of a particular fishery, and of any return of information from such a logbook, may extend to information in relation to:
- (a) the taking of fish under that fishing concession and the sale or disposal of such fish; or
  - (b) the carrying, landing, transshipping or transporting of fish taken under that fishing concession; or
  - (c) the receipt or processing of fish taken under that fishing concession and the sale or disposal of fish so received or processed; or
  - (d) the course, or position at regular intervals, inside or outside the outer limits of the AFZ, of boats to which the fishing concession relates; or
  - (e) any other matter relevant to the fishing concession in that fishery that is specified in the determination.
- (1C) The obligations arising under this section from a determination made under subsection (1) in relation to a particular fishery override any provision to the contrary, in force immediately before the making of the determination:
- (a) in a plan of management for that fishery; or
  - (b) in a condition to which a fishing concession in respect of that fishery is subject.

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- (2) It is a condition of a fishing concession that the holder of the fishing concession will comply with the requirements of any determination made under subsection (1).
- (3) A determination made under subsection (1) is a legislative instrument.

**42A Fishing concession condition to facilitate boarding**

It is a condition of a fishing concession, or scientific permit, authorising the use of an Australian-flagged boat outside the AFZ that the master of the boat:

- (a) facilitate boarding of the boat; and
  - (b) co-operate with inspection of the boat;
- by officials of a foreign country acting in accordance with the Fish Stocks Agreement or a measure established by an international fisheries management organisation.

**42B Regulation-making power for conditions**

- (1) The regulations may prescribe conditions that apply to fishing concessions or foreign master fishing licences.
- (2) A provision of a plan of management has no effect to the extent that it is inconsistent with regulations made for the purposes of this section.

**43 Temporary orders**

- (1) The purpose of this section is to enable quick action to be taken:
  - (a) to deal with:
    - (i) emergencies; or
    - (ii) other circumstances where urgent action is required for purposes related to the management of a fishery; or
    - (iii) the maintenance of straddling fish stocks, highly migratory fish stocks or ecologically related fish stocks (within the meaning of the Fish Stocks Agreement)

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before a plan of management is determined, amended or revoked; or

(b) to correct errors or anomalies in a plan of management.

(2) If AFMA is satisfied that:

(a) it is necessary to take action for the purpose of this section; and

(b) the action contemplated is consistent with AFMA's objectives; and

(c) no other action is appropriate;

AFMA may make an order, consistent with this Act and the regulations, with respect to:

(d) any matter directly or indirectly connected with fishing:

(i) in a managed fishery; or

(ii) in the AFZ but not in a managed fishery; or

(iii) that is the subject of an international agreement and occurs outside the AFZ; or

(e) any other matter relating to a managed fishery, being a matter that may be provided for by a plan of management; or

(f) any incidental matter.

(3) AFMA may at any time make an order cancelling a previous order.

(4) An order ceases to have effect:

(a) on a day specified in the order; or

(b) on being cancelled by another order; or

(c) at the end of 6 months after the order is made;

whichever is soonest.

(5) Subject to subsections (6) and (7), AFMA must not make an order the same in substance as a previous order within 6 months after the previous order has ceased to have effect.

(6) While an order is in force, AFMA may make one, and only one, further order the same in substance as the first-mentioned order.

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- (7) Nothing in subsections (5) and (6) prevents AFMA from making a further order the same in substance as a previous order to deal with a different emergency.
- (8) AFMA may, by writing under its common seal, delegate its powers under this section to the CEO, but to no other person.
- (9) If an order is inconsistent with a provision of:
  - (a) a plan of management; or
  - (b) a fishing concession, scientific permit, foreign master fishing licence or fish receiver permit;the order overrides the provision and, to that extent, the provision has no effect.
- (10) When an order ceases to have effect, any provision overridden by the order revives, subject to this Act, unless the regulations provide otherwise.
- (11) An order is a legislative instrument.

## Part 4—Register of Statutory Fishing Rights

### 44 The Register

- (1) AFMA is to keep a Register of Statutory Fishing Rights.
- (2) The Register may be kept wholly or partly by use of a computer.
- (3) If the Register is kept wholly or partly by use of a computer:
  - (a) references in this Act to an entry in the Register are to be read as including references to a record of particulars kept by use of the computer and comprising the Register or part of the Register; and
  - (b) references in this Act to particulars being registered, or entered in the Register, are to be read as including references to the keeping of a record of those particulars as part of the Register by use of the computer; and
  - (c) references in this Act to the rectification of the Register are to be read as including references to the rectification of the record of particulars kept by use of the computer and comprising the Register or part of the Register.

### 45 Information to be included in Register

- (1) AFMA must register each fishing right that it, or a Joint Authority managing a fishery that is (or part of which is) managed in accordance with the law of the Commonwealth, grants by entering in the Register the following particulars:
  - (a) the name of the person to whom the fishing right is granted;
  - (b) a description of the fishing right;
  - (c) the period (if any) for which the fishing right is granted;
  - (d) the managed fishery in relation to which the fishing right is granted;
  - (e) the conditions of the fishing right;
  - (f) such other particulars (if any) as are prescribed.

- (2) Where a Joint Authority grants a fishing right, it must give to AFMA such information in relation to the grant as will enable AFMA to comply with subsection (1).

## **46 Registration of dealings in fishing rights**

### *Scope*

- (1) This section applies to a dealing that would, but for subsection (2), have the effect of creating, assigning, transferring, transmitting or extinguishing an interest in a fishing right, other than an interest that is a PPSA security interest.

### *Registration of dealing*

- (2) The dealing has no effect of a kind mentioned in subsection (1) until it is registered under this section.
- (3) A party to the dealing may lodge with AFMA:
- (a) an application in the form approved by AFMA for registration of the dealing; and
  - (b) the instrument evidencing the dealing; and
  - (c) an instrument setting out such particulars (if any) as are prescribed for the purposes of an application for registration; and
  - (d) one copy each of the application and of the instruments mentioned in paragraphs (b) and (c).
- (3A) A party to the dealing may, instead of lodging the instrument evidencing the dealing, lodge with AFMA a summary of that instrument containing the particulars required by AFMA for the purposes of this subsection.
- (4) Subject to subsections (4C) and (4D), if an application for registration of the dealing, either the instrument evidencing the dealing or a summary of that instrument that complies with subsection (3A), and the other documents referred to in paragraphs (3)(c) and (d), are lodged with AFMA, AFMA must:

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- (a) register the dealing by entering in the Register the following particulars:
    - (i) the name of the person acquiring the interest in the fishing right;
    - (ii) a description of the dealing; and
  - (b) endorse on the instrument evidencing the dealing and the copy of that instrument the fact of the entry having been made together with the date and time of the making of the entry.
- (4A) If a person lodges with AFMA a notice, in the form approved by AFMA:
  - (a) stating that a dealing of a kind referred to in subsection (1) that is described in the statement has taken place; and
  - (b) claiming that, if the dealing were registered, the person would have an interest in a fishing right; and
  - (c) setting out particulars of the interest; and
  - (d) requesting AFMA to register the claim;AFMA must register the claim by entering in the register the person's name and particulars of the interest claimed.
- (4B) If, after the registration of a claim to an interest in a fishing right, the claimant, by notice lodged with AFMA in the form approved by AFMA, withdraws the claim, AFMA must cancel the registration by omitting from the register the entry relating to the claim.
- (4C) If:
  - (a) a claim to an interest in a fishing right is registered; and
  - (b) an application is made to AFMA for registration of a dealing in respect of the fishing right;AFMA must not register the dealing unless:
  - (c) AFMA has given written notice of the application to the person whose name appears in the register in relation to the claim; and
  - (d) either:

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- (i) the person has withdrawn the claim under subsection (4B); or
  - (ii) 21 days have elapsed since the notice was given to the person.
- (4D) AFMA must register a lease, or transfer of ownership, of a fishing right unless:
  - (a) the fishing right is suspended under section 38; or
  - (b) the holder of the fishing right:
    - (i) is being investigated for a fisheries offence; or
    - (ii) has been convicted of a fisheries offence; or
  - (c) a levy on the fishing right that is due has not been paid; or
  - (d) other circumstances that are prescribed under the regulations exist.
- (4E) Subsection (4D) applies despite the fact that any requirement in a plan of management relating to the lease, or transfer, has not been satisfied.

*Documentation of registration of dealings*

- (5) If a dealing is registered:
  - (a) the copies referred to in paragraph (3)(d) and the summary (if any) lodged under subsection (3A) are to be kept by AFMA; and
  - (b) if a summary is not lodged under subsection (3A), the copy of the instrument evidencing the dealing is to be made available for inspection in accordance with this Part; and
  - (c) if a summary is lodged under subsection (3A), the summary is to be made available for inspection in accordance with this Part; and
  - (d) the original instrument is to be returned to the person who made the application for registration.

Section 46A

46A Interests in fishing rights—priority between section 46 interests and PPSA security interests

Scope

- (1) This section sets out the priority between the following interests in a fishing right:
- (a) an interest (the **section 46 interest**) that is the subject of a dealing (the **section 46 dealing**), if the dealing has effect under section 46 (by registration);
  - (b) a PPSA security interest.

Priority rules

- (2) The priority is as set out in the following table:

Priority between PPSA security interests and section 46 interests		
Item	If ...	then ...
1	the PPSA security interest is not perfected (whether by registration or otherwise) within the meaning of the <i>Personal Property Securities Act 2009</i>	the section 46 interest has priority.
2	(a) the PPSA security interest is perfected (whether by registration or otherwise) within the meaning of the <i>Personal Property Securities Act 2009</i> ; and (b) the section 46 dealing is registered under section 46 of this Act before the priority time for the PPSA security interest under section 55 of the <i>Personal Property Securities Act 2009</i>	the section 46 interest has priority.

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**Priority between PPSA security interests and section 46 interests**

<b>Item</b>	<b>If ...</b>	<b>then ...</b>
3	(a) the PPSA security interest is perfected (whether by registration or otherwise) within the meaning of the <i>Personal Property Securities Act 2009</i> ; and (b) the section 46 dealing is registered under section 46 of this Act at or after the priority time for the PPSA security interest under section 55 of the <i>Personal Property Securities Act 2009</i>	the PPSA security interest has priority.

- (3) Subsection 73(2) of the *Personal Property Securities Act 2009* applies to the section 46 interest.

Note 1: The effect of subsection (3) is that the priority between a section 46 interest and a PPSA security interest in a fishing right is to be determined in accordance with this Act rather than the *Personal Property Securities Act 2009*.

Note 2: Subsection 73(2) of the *Personal Property Securities Act 2009* applies to section 46 interests that arise after the commencement of subsection (3) of this section (which commences at the registration commencement time within the meaning of the *Personal Property Securities Act 2009*).

**47 Trusts not registrable**

Notice of any kind of trust relating to a fishing right is not receivable by AFMA and must not be registered.

**48 Power of holder of fishing right to deal with fishing right**

- (1) Except where a condition of a fishing right provides otherwise, a holder of a fishing right may, subject to this section, deal with the fishing right as its absolute owner and give good discharges for any consideration for any such dealing.

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- (1A) A dealing mentioned in subsection (1) is subject to:
- (b) any rights appearing in the Register to be vested in another person, other than any such rights that are PPSA security interests; and
  - (c) any rights or interests in the fishing right that are PPSA security interests, to the extent provided by the *Personal Property Securities Act 2009*.
- (2) Subsection (1) only protects a person who deals with such a holder as a purchaser in good faith for value and without notice of any fraud on the part of the holder.
- (3) Equities in relation to a fishing right may be enforced against the holder of the fishing right except to the prejudice of a person protected by subsection (2).

**50 Suspension, cancellation etc. of fishing right to be noted in Register**

- (1) Where a fishing right registered under this Part is suspended, cancelled or ceases to have effect (other than because of subsection 43(9)), or a suspension of a fishing right is revoked, then:
- (a) if the fishing right is suspended or a suspension is revoked—AFMA must make a notation in the Register to that effect; and
  - (b) if the fishing right is cancelled or ceases to have effect—AFMA must make a notation in the Register to that effect and cancel the registration of the fishing right.
- (2) Where, because of a decision made by AFMA, a Joint Authority, the Administrative Appeals Tribunal or a court, a notation made by AFMA under subsection (1) is no longer correct, AFMA must rectify the Register accordingly.
- (4) Where, because of subsection 43(9), a provision of a fishing right registered under this Part has no effect, AFMA must make a notation in the Register to that effect.

- (5) Where AFMA has made a notation in the Register under subsection (4) and the relevant provision of the fishing right revives, AFMA must make a notation in the Register to that effect.

## **51 AFMA not concerned with certain matters**

AFMA is not concerned with the effect in law of any instrument lodged under section 46 and the registration of the dealing does not give to the instrument any effect that it would not have if this Part had not been enacted.

## **52 Inspection of Register and documents**

- (1) The Register and all instruments and documents subject to inspection under this Part must be available for inspection, in accordance with the regulations and upon payment of the prescribed fee, by any person during the hours that AFMA is open for business.
- (2) If the Register is kept wholly or partly by use of a computer, subsection (1) is taken to be complied with, to the extent that the Register is so kept, by giving members of the public access to a computer terminal that they can use to inspect the Register, either on a screen or in the form of a computer print-out.

## **53 Evidentiary provisions**

- (1) The Register is prima facie evidence of any particulars registered in it.
- (2) If the Register is wholly or partly kept by use of a computer, a document issued by AFMA producing in writing all or any of the particulars comprising the Register, or that part of it, as the case may be, is admissible in any proceedings as prima facie evidence of those particulars.
- (3) A signed copy of, or signed extract from, the Register is admissible in any proceedings as if it were the original.

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- (4) A signed copy of, or signed extract from, an instrument evidencing a dealing registered under this Part is admissible in any proceedings as if it were the original.
- (5) AFMA, upon application made in the form approved by AFMA, must supply a person with a document mentioned in subsection (2) or a signed copy of, or a signed extract from, an entry in the Register or an instrument evidencing a dealing registered under this Part.
- (6) In this section:

*signed* means signed by a person on behalf of AFMA.

### 54 Orders for rectification of Register

- (1) A person aggrieved by:
  - (a) the omission of an entry from the Register; or
  - (b) an entry made in the Register without sufficient cause; or
  - (c) an entry wrongly existing in the Register; or
  - (d) an error or defect in an entry in the Register;may apply to a prescribed court for an order to rectify the Register.
- (2) On hearing an application, the court may:
  - (a) decide any question that it is necessary or expedient to decide in connection with the rectification of the Register; and
  - (b) make any order it thinks fit for the rectification of the Register.
- (3) AFMA:
  - (a) must be given notice of an application; and
  - (b) may appear and be heard in the proceedings; and
  - (c) an AFMA staff member must appear if directed to do so by the court.
- (4) A copy of an order must be served on AFMA by the Registrar or other appropriate officer of the court.

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- (5) On receiving the copy of an order, AFMA must rectify the Register accordingly.
- (5A) This section, so far as it relates to the Supreme Court of Norfolk Island, has effect subject to section 60AA of the *Norfolk Island Act 1979*.
- (6) In this section:  
  
*prescribed court* means the Federal Court of Australia, the Supreme Court of a State, the Supreme Court of the Australian Capital Territory, the Supreme Court of the Northern Territory or the Supreme Court of Norfolk Island.

**55 Correction of clerical errors etc. in Register**

AFMA may correct, or cause to be corrected, any clerical error or obvious mistake in the Register.

**56 AFMA etc. not liable in certain circumstances**

Neither AFMA nor a person acting for or on behalf of AFMA is liable to an action, suit or proceeding for or in respect of an act or matter in good faith done or omitted to be done in the exercise or purported exercise of any power conferred by this Part.

**57 Offences**

A person commits an offence if:

- (a) the person produces or tenders a document in evidence; and
- (b) that document falsely purports to be:
  - (i) an instrument, or a copy of or extract from an instrument, lodged with AFMA under this Part; or
  - (ii) a copy of or extract from an entry in the Register.

Penalty: Imprisonment for 2 years.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

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Note 2: Subsections 137.1(1) and 137.2(1) of the *Criminal Code* create offences for the provision of false or misleading documents or information in purported compliance with Commonwealth legislation.

## **Part 4A—Register of vessels authorised to fish on high seas**

### **57A The High Seas Register**

- (1) AFMA must establish and must maintain a separate register, to be called the High Seas Register, containing particulars of all Australian-flagged boats that are authorised from time to time to engage in fishing activities on the high seas.
- (2) The Register may be kept wholly or partly by use of a computer.
- (3) If the Register is kept wholly or partly by use of a computer:
  - (a) references in this Act to an entry in the Register are to be read as including references to a record of particulars kept by use of the computer and comprising the Register or a part of the Register; and
  - (b) references in this Act to particulars being entered in the Register are to be read as including references to the keeping of a record of those particulars as part of the Register by use of the computer; and
  - (c) references in this Act to the rectification of the Register are to be read as including references to the rectification of the record of particulars kept by use of the computer and comprising the Register or part of the Register.

### **57B Information to be included in the High Seas Register**

- (1) AFMA must include in the Register:
  - (a) the identifying particulars of each Australian-flagged boat that is authorised by a fishing concession to be used for fishing activities on the high seas; and
  - (b) the name and address of the owner or owners of the boat; and

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- (c) the nature of the fishing concession, how it covers fishing activities on the high seas and the period for which it is granted.
- (2) For the purposes of paragraph (1)(a), the identifying particulars of an Australian-flagged boat are:
  - (a) its name and any previous name or names (if known to AFMA); and
  - (b) its registration number; and
  - (c) its port of registry; and
  - (d) any previous flag under which it has sailed; and
  - (e) its international radio call sign (if any); and
  - (f) the place where, and the period when, it was built; and
  - (g) its type; and
  - (h) its length; and
  - (i) such other particulars (if any) as are prescribed.
- (3) Subject to subsections (4) and (5), if any of the particulars required to be recorded under subsection (1) or (2) in relation to an Australian-flagged boat changes, AFMA must, as soon as it becomes aware of that change, alter the Register to record that change.
- (4) If, in relation to an Australian-flagged boat that is included in the Register:
  - (a) the fishing concession covering that boat is suspended or the suspension is revoked; or
  - (b) the fishing concession covering that boat is cancelled or ceases to have effect;AFMA must record in the Register the fact of that suspension, revocation, cancellation or cessation and also the reason for it.
- (5) If, because of a decision made by AFMA, a Joint Authority, the Administrative Appeals Tribunal or a court, a record made by AFMA under subsection (4) is no longer correct, AFMA must rectify the Register accordingly.
- (6) If an Australian-flagged boat that is included in the Register:

- (a) ceases to be an Australian-flagged boat; or
  - (b) is decommissioned or lost;
- AFMA must record that fact in the Register.

**57C Notification obligations**

- (1) AFMA must:
  - (a) on the establishment of the High Seas Register—notify the FAO of its contents; and
  - (b) whenever there is:
    - (i) an addition to, or a change in the particulars on, the Register; or
    - (ii) a record placed on the Register as required under subsection 57B(4) or (6); or
    - (iii) a rectification of the Register as required under subsection 57B(5);notify the FAO of that addition, change, record or rectification and of the reason for it.
- (2) If the reason for suspending or cancelling a fishing concession authorising the use of an Australian-flagged boat for fishing activities on the high seas is that AFMA is satisfied that the boat has been used in any activities that undermine international conservation and management measures—the notification to the FAO must specify particulars of the activities giving rise to AFMA's action.
- (3) If AFMA grants a fishing concession authorising the use of an Australian-flagged boat to fish on the high seas in the circumstances set out in subsection 16B(5), AFMA must notify the FAO:
  - (a) of the fact that the concession has been granted, despite the prior suspension or cancellation of an authority granted by a foreign country; and
  - (b) of all data known to AFMA that is relevant to the identification of the boat and of its current owners and operators; and

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- (c) of all matters relevant to AFMA's decision to grant the concession.
- (4) If AFMA believes, on reasonable grounds, that a boat flying the flag of a foreign country has been used in any activities that undermine international conservation and management measures:
  - (a) AFMA must notify the foreign country of its belief and provide the foreign country with the evidence that supports its belief; and
  - (b) AFMA may notify the FAO of its belief and give it a summary of the supporting evidence.

### **57D Inspection of the High Seas Register**

- (1) The High Seas Register must be available for inspection in accordance with the regulations and on payment of the prescribed fee by any person during the hours that AFMA is open for business.
- (2) If the High Seas Register is kept wholly or partly by use of a computer, subsection (1) is taken to have been complied with, to the extent that the Register is so kept, by giving members of the public access to a computer terminal so that they can inspect the Register, either on a screen or in the form of a computer print-out.

### **57E Application of sections 53 to 56**

Sections 53, 54, 55 and 56 apply to the High Seas Register in like manner as they apply to the Register established and maintained under Part 4.

### **57F Offence**

A person commits an offence if:

- (a) the person produces or tenders a document in evidence; and
- (b) that document falsely purports to be:
  - (i) an instrument, or a copy of or extract from an instrument, lodged with AFMA under this Part; or

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- (ii) a copy of or extract from an entry in the High Seas Register.

**Penalty:** Imprisonment for 2 years.

**Note 1:** Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

**Note 2:** Subsections 137.1(1) and 137.2(1) of the *Criminal Code* create offences for the provision of false or misleading documents or information in purported compliance with Commonwealth legislation.

## Part 4B—Fishing Permits Register

### 57G The Fishing Permits Register

- (1) AFMA must establish and maintain a Register relating to fishing permits granted under section 32 to be called the Fishing Permits Register.
- (2) The Fishing Permits Register may be kept wholly or partly by use of a computer.
- (3) If the Fishing Permits Register is kept wholly or partly by use of a computer:
  - (a) references in this Act to an entry in the Fishing Permits Register are to be read as including references to a record of particulars kept by use of the computer and comprising the Fishing Permits Register or a part of the Register; and
  - (b) references in this Act to particulars being entered in the Fishing Permits Register are to be read as including references to the keeping of a record of those particulars as part of the Fishing Permits Register by use of the computer; and
  - (c) references in this Act to the rectification of the Fishing Permits Register are to be read as including references to the rectification of the record of particulars kept by use of the computer and comprising the Fishing Permits Register or part of the Register.

### 57H Information to be included in the Fishing Permits Register

- (1) AFMA must register each fishing permit that it grants under section 32 by entering in the Fishing Permits Register:
  - (a) the name of the holder of the permit; and
  - (b) the area of the AFZ, or the fishery, that is specified in the permit; and
  - (c) the period for which the permit remains in force; and

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- (d) if the permit is granted in respect of a nominated boat or if, after the grant of the permit, a boat is nominated—the name and distinguishing symbols for the nominated boat; and
  - (e) such other particulars (if any) as are prescribed.
- (2) Subject to subsections (3) and (4), if any of the particulars required to be recorded under subsection (1) changes, AFMA must, as soon as it becomes aware of that change, alter the Fishing Permits Register to record that change.
- (3) If, in relation to a boat particulars of which are included in the Fishing Permits Register:
  - (a) the fishing permit covering that boat is suspended or the suspension is revoked; or
  - (b) the fishing permit covering that boat is cancelled or ceases to have effect;AFMA must record in the Fishing Permits Register the fact of that suspension, revocation, cancellation or cessation and also the reason for it.
- (4) Where, because of a decision made by AFMA, a Joint Authority, the Administrative Appeals Tribunal or a court, a record made by AFMA under subsection (3) is no longer correct, AFMA must rectify the Fishing Permits Register accordingly.

**57J Inspection of the Fishing Permits Register**

- (1) The Fishing Permits Register must be available for inspection in accordance with the regulations and on payment of the prescribed fee by any person during the hours that AFMA is open for business.
- (2) If the Fishing Permits Register is kept wholly or partly by use of a computer, subsection (1) is taken to have been complied with, to the extent that the Register is so kept, by giving members of the public access to a computer terminal so that they can inspect the Register, either on a screen or in the form of a computer print-out.

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**57K Application of sections 53 to 56**

Sections 53, 54, 55 and 56 apply to the Fishing Permits Register in like manner as they apply to the Register established and maintained under Part 4.

**57L Offence**

A person commits an offence if:

- (a) the person produces or tenders a document in evidence; and
- (b) the document falsely purports to be:
  - (i) an instrument, or a copy of or extract from an instrument, lodged with AFMA under this Part; or
  - (ii) a copy of or extract from an entry in the Fishing Permits Register.

Penalty: Imprisonment for 2 years.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Subsections 137.1(1) and 137.2(1) of the *Criminal Code* create offences for the provision of false or misleading documents or information in purported compliance with Commonwealth legislation.

## **Part 5—Co-operation with States and Northern Territory in management of fisheries**

### **Division 1—Preliminary**

#### **58 Interpretation**

- (1) In this Part, unless the contrary intention appears:

*appropriate Minister*, in relation to a State, means the Minister of the State for the time being administering the laws of the State relating to marine fishing.

*Commonwealth Minister* means the Minister.

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

- (2) For the purposes of this Part, waters relevant to a State are the coastal waters of the State and the AFZ.

#### **59 Application of Part in relation to Northern Territory**

- (1) This Part has effect as if the Northern Territory were a State.
- (2) A reference in this Part to the Governor of a State is to be read, in relation to the Northern Territory, as a reference to the Administrator of the Territory.

#### **60 Acting Ministers**

- (1) The functions and powers of the Commonwealth Minister under this Part, including the Minister's functions and powers as a member of a Joint Authority, may be performed and exercised by another Minister of the Commonwealth acting for and on behalf of the Commonwealth Minister, and references in this Part to the

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Commonwealth Minister are to be read as including references to a Minister so acting.

- (2) The functions and powers of the appropriate Minister of a State under this Part, including the Minister's functions and powers as a member of a Joint Authority, may be performed and exercised by a Minister of the State acting for and on behalf of the appropriate Minister, and references in this Part to the appropriate Minister of a State are to be read as including references to a Minister so acting.

## **Division 2—Joint Authorities**

### **61 Establishment of Joint Authorities**

- (1) The Commonwealth may make an arrangement with a State or States for the establishment of a Joint Authority consisting of the Commonwealth Minister together with the appropriate Minister or Ministers of that State or those States.
- (2) Each arrangement is to be made by instrument approved by the Governor-General and the Governor or Governors of the State or States represented on the Joint Authority.
- (3) A Joint Authority may be abolished by a further such instrument, but such an instrument does not take effect while there is in operation an arrangement under Division 3 providing that the Joint Authority is to have the management of a particular fishery.
- (4) The Commonwealth Minister is to cause a copy of every instrument so approved to be published in the *Gazette* and, subject to subsection (3), the instrument takes effect on the day of publication.

### **62 Functions of Joint Authority**

A Joint Authority has such functions in relation to fisheries in respect of which arrangements are made under Division 3 as are conferred on it by this Part or a law of a State that is represented on the Joint Authority.

### **63 Deputies of members**

- (1) A member of a Joint Authority may, in writing, appoint a person or persons to be his or her deputy or deputies.
- (2) A deputy of a member is entitled, in the absence from a meeting of the Joint Authority of the member and of the other deputy or

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deputies (if any) of the member, to attend that meeting and, when so attending, is taken to be a member.

### **64 Representation on Joint Authority**

For the purposes of this Part, a State is taken to be represented on a Joint Authority if the appropriate Minister of the State is a member of the Joint Authority.

### **65 Delegation**

- (1) Subject to this section, a Joint Authority may, by writing, delegate to an officer or employee of a State or of an authority of a State any of its powers under this Act, other than its powers under sections 18 and 20.
- (2) Without limiting the operation of subsection (1), a delegation may be expressed as a delegation to the person from time to time holding, or performing the duties of, a specified position or office in the service of a State or an authority of a State or under the law of a State.
- (3) A delegate of a Joint Authority is, in the exercise of his or her delegated powers, subject to the directions of the Joint Authority.
- (4) A delegation of a power under this section:
  - (a) may be revoked, by instrument, by the Joint Authority (whether or not constituted by the persons constituting the Joint Authority at the time the power was delegated); and
  - (b) continues in force despite any change in the membership of the Joint Authority.
- (5) A certificate signed by a member of a Joint Authority stating any matter with respect to a delegation of a power under this section by the Joint Authority is prima facie evidence of that matter.
- (6) Nothing in this Part is intended to prevent the delegation by a Joint Authority, in accordance with the law of a State, of powers conferred on the Joint Authority by the law of that State.

## **66 Procedure of Joint Authorities**

- (1) At a meeting of a Joint Authority:
  - (a) if the Commonwealth Minister is present—that Minister is to preside; and
  - (b) if deputies of members only are present—the deputy of the Commonwealth Minister is to preside; and
  - (c) if neither paragraph (a) nor paragraph (b) is applicable—the members present are to select one of their number, being a Minister, to preside.
- (2) Meetings of a Joint Authority are to be convened by the Commonwealth Minister, and that Minister must convene such a meeting at the request of any other member.
- (3) The quorum for a meeting of a Joint Authority is:
  - (a) if there are 2 members—2 members; or
  - (b) if there are more than 2 members—the Commonwealth Minister or that Minister's deputy and other members not fewer in number than 2 and not fewer in number than half the number of States represented on the Joint Authority.
- (4) If, at a meeting of a Joint Authority, the members present are not agreed as to the decision to be made on a matter, the Commonwealth Minister may, subject to subsection (6), decide that matter.
- (5) A decision of the Commonwealth Minister made under subsection (4) has effect as the decision of the Joint Authority.
- (6) Before deciding in accordance with subsection (4), the Commonwealth Minister must:
  - (a) submit the matter for consideration by the members of the Australian Fisheries Council, being the body known by that name constituted by the Commonwealth Minister and Ministers of the States and certain of the Territories; and

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- (b) for that purpose, if so requested by a member of that Council, convene a meeting of that Council;
- but a decision of the Commonwealth Minister may not be called into question in any legal proceedings on a ground arising out of this subsection.
- (7) Subject to this Division, a Joint Authority may adopt its own rules of procedure.

### **67 Decisions taken without meeting**

- (1) A member of a Joint Authority may, by written or other communication, submit a matter within the functions of the Joint Authority for consideration by the other member, or each of the other members, of the Joint Authority.
- (2) If all the members of the Joint Authority are agreed as to the decision to be made on the matter, the Joint Authority is taken to have made a decision accordingly.
- (3) The Commonwealth Minister, upon being satisfied that the members are so agreed, must record the decision as a decision of the Joint Authority.

### **68 Advisory committees**

A Joint Authority may establish advisory committees, consisting of such persons as it thinks fit, to provide information and advice to the Joint Authority on matters related to any fishery.

### **69 Administration**

- (1) The Commonwealth Minister must, in respect of each Joint Authority:
  - (a) appoint a person to be the secretary of the Joint Authority;
  - and
  - (b) make arrangements for the provision of appropriate services in respect of the Authority.

- (2) A person appointed under subsection (1) to be the secretary of a Joint Authority must be an AFMA staff member if the Joint Authority is to manage, or is managing, a fishery in accordance with the law of the Commonwealth.
- (3) The Commonwealth Minister must cause written records to be kept of the decisions of a Joint Authority.
- (4) Such a record, if signed by the Commonwealth Minister, or deputy of the Commonwealth Minister, who took part in or made the decision, is prima facie evidence that the decision, as recorded, was duly made.
- (5) In proceedings in any court, an instrument or other document signed, on behalf of a Joint Authority, by a member of that Joint Authority, is taken to be duly executed by the Joint Authority and, unless the contrary is proved, is taken to be in accordance with a decision of the Joint Authority.

## **70 Annual reports**

- (1) A Joint Authority must, as soon as practicable after 30 June in each year, prepare a report on:
  - (a) the activities of the Joint Authority in the immediately preceding financial year; and
  - (b) the condition during that year of the fisheries to which the functions of the Joint Authority apply.
- (2) The Commonwealth Minister is to cause a copy of every report under this section to be laid before each House of the Parliament as soon as practicable after the preparation of the report.
- (3) A report for a financial year may, subject to agreement between the Joint Authority and AFMA, be included, as a separate part, in the annual report of AFMA for that financial year.

## **Division 3—Arrangements with respect to management of particular fisheries**

### **71 Arrangements with States—Joint Authority to manage**

- (1) The Commonwealth may make an arrangement with the State or States represented on a Joint Authority that the Joint Authority is to have the management of a particular fishery in waters relevant to that State or to any of those States.
- (2) An arrangement with only one State must provide that:
  - (a) the fishery is to be managed in accordance with the law of the Commonwealth; or
  - (b) the fishery is to be managed in accordance with the law of the State; or
  - (c) the fishery is to be managed in accordance with the law of the Commonwealth and the law of the State.
- (3) An arrangement with 2 or more States must provide that:
  - (a) the fishery is to be managed in accordance with the law of the Commonwealth; or
  - (b) the fishery is to be managed in accordance with the law of one or more of the States concerned; or
  - (c) the fishery is to be managed in accordance with the law of the Commonwealth and the law of one or more of the States concerned.
- (4) An arrangement that provides that a fishery is to be managed in accordance with the law of more than one jurisdiction must identify, by reference to areas that do not overlap, the parts of the fishery that are to be managed in accordance with each law.
- (5) If, under an arrangement:
  - (a) a fishery is to be managed in accordance with the law of a State; or
  - (b) a part of a fishery is to be managed in accordance with the law of a State;

the arrangement may, if required by the Commonwealth, provide for giving effect to Australia's obligations under international law (including international agreements) in relation to the fishery or part of the fishery.

## **72 Other arrangements with States**

- (1) The Commonwealth may make an arrangement with a State with respect to a particular fishery in waters relevant to the State, not being a fishery to which an arrangement under section 71 applies:
  - (a) that the fishery (being a fishery wholly or partly in the coastal waters of the State) is to be managed in accordance with the law of the Commonwealth; or
  - (b) that the fishery (being a fishery wholly or partly in waters on the seaward side of the coastal waters of the State) is to be managed in accordance with the law of the State.
- (2) If, under an arrangement, a fishery is to be managed in accordance with the law of a State, the arrangement may, if required by the Commonwealth, provide for giving effect to Australia's obligations under international law (including international agreements) in relation to the fishery.

## **73 Arrangements with States—general provisions**

- (1) An arrangement under this Division does not have any effect in relation to:
  - (a) any area within the Protected Zone; or
  - (b) if there is in force a Proclamation under subsection 15(1) or (2) of the *Torres Strait Fisheries Act 1984* in relation to an area adjacent to the Protected Zone—any activities within that area to which that Act applies by virtue of the Proclamation.
- (2) In this section:

***Protected Zone*** has the same meaning as in the *Torres Strait Fisheries Act 1984*.

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**74 Arrangements—how made etc.**

- (1) An arrangement under this Division is to be made by instrument approved by:
  - (a) the Commonwealth Minister on behalf of the Commonwealth; and
  - (b) the appropriate Minister or Ministers of the State or States concerned.
- (2) The Commonwealth Minister must cause a copy of every instrument so approved to be published in the *Gazette*, and the instrument takes effect on the date of publication or on a later date specified in the instrument.
- (3) Subject to the requirements of section 23, after an arrangement under this Division has been made but before the arrangement takes effect, the following things may be done for the purposes of the operation of this Act as affected by the arrangement as if the arrangement had taken effect:
  - (a) plans of management, permits or other instruments may be determined, granted or executed;
  - (b) fishing rights may be granted;but such a plan, instrument or right does not have effect before the arrangement takes effect.
- (4) An instrument approved under subsection (1) is not a legislative instrument.

**74A Arrangements—how varied etc.**

- (1) An arrangement under this Division is to be varied by instrument approved by:
  - (a) the Commonwealth Minister on behalf of the Commonwealth; and
  - (b) the appropriate Minister or Ministers of the State or States concerned.

- (2) The Commonwealth Minister must cause a copy of every instrument so approved to be published in the *Gazette*, and the instrument takes effect on the date of publication or on a later date specified in the instrument.
- (3) Subject to the requirements of section 23, after an arrangement under this Division has been varied but before the variation takes effect, the following things may be done for the purposes of the operation of this Act as affected by the variation as if the variation had taken effect:
  - (a) plans of management, permits or other instruments may be determined, granted or executed;
  - (b) fishing rights may be granted;but such a plan, instrument or right does not have effect before the variation takes effect.
- (4) Upon the variation of an arrangement under this Division:
  - (a) plans of management, fishing permits, scientific permits and other instruments determined, granted, executed or published; and
  - (b) statutory fishing rights granted;for the purposes of the operation of this Act as affected by the variation cease to have effect to the extent (if any) they are inconsistent with the arrangement as varied.
- (5) An instrument approved under subsection (1) is not a legislative instrument.

## **75 Arrangements—how terminated etc.**

- (1) An arrangement under this Division may be terminated by instrument approved by:
  - (a) the Commonwealth Minister on behalf of the Commonwealth; and
  - (b) the appropriate Minister or Ministers of the State or States concerned.

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- (2) The Commonwealth Minister must cause a copy of such an instrument to be published in the *Gazette*, and the instrument takes effect on the date of publication or on a later date specified in the instrument.
- (3) A party to an arrangement may:
  - (a) in the case of the Commonwealth—with the approval of the Commonwealth Minister; or
  - (b) in the case of a State—with the approval of the appropriate Minister of the State;give written notice to the other party or parties that the party giving the notice desires the arrangement to terminate upon a date specified in the notice or notices, not being earlier than 6 months after the day on which the notice, or the last of the notices, is given.
- (4) Where a party has duly given such a notice, the Commonwealth Minister must, not less than 3 months before the date specified in the notice or notices, cause to be published in the *Gazette* a notice stating that, because of notice of termination given by that party, the arrangement will cease to have effect on the date specified in the notice or notices.
- (5) Where the Commonwealth Minister has caused a notice to be so published, the arrangement ceases to have effect on the specified date.
- (6) An arrangement under this Division may provide:
  - (a) that, for the purposes of the application of subsection (3) in respect of the arrangement, a longer or shorter period is to be substituted for the period of 6 months mentioned in that subsection; and
  - (b) that, for the purposes of the application of subsection (4) in respect of the arrangement, a longer or shorter period is to be substituted for the period of 3 months mentioned in that subsection.

- (7) Upon the termination of an arrangement under this Division, plans of management, fishing permits, scientific permits and other instruments determined, granted, executed or published, and statutory fishing rights granted, for the purposes of the operation of this Act as affected by the arrangement cease to have effect.
- (8) Subject to the requirements of section 23, after action for the purpose of the termination of an arrangement under this Division has been taken, but before the termination takes effect, the following things may be done for the purposes of the operation of this Act as affected by the termination of the arrangement, as if the arrangement had been terminated:
  - (a) plans of management, permits or other instruments may be determined, granted or executed;
  - (b) fishing rights may be granted;but such a plan, instrument or fishing right does not have effect before the termination of the arrangement takes effect.
- (9) An instrument approved under subsection (1) is not a legislative instrument.

## **76 Extension of operation of this Act**

- (1) Where an arrangement under this Division provides that a particular fishery, being a fishery that is so defined that it is or may be carried on partly within the coastal waters of a State, is to be managed in accordance with the law of the Commonwealth, the coastal waters of that State are taken to be in the AFZ, for the purposes of the application of this Act in relation to that fishery.
- (2) If an arrangement under this Division provides that:
  - (a) a part of a fishery is to be managed in accordance with the law of the Commonwealth; and
  - (b) that part of the fishery is so identified that it is, or may be, carried on partly within the coastal waters of a State;the coastal waters of that State are taken to be in the AFZ for the purposes of the application of this Act in relation to that part of the fishery.

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**77 Exclusion of this Act (except this Division)**

If an arrangement under this Division provides that:

- (a) a particular fishery is to be managed in accordance with the law of a State; or
- (b) a part of a particular fishery is to be managed in accordance with the law of a State;

this Act, other than this Division, does not apply in relation to that fishery, or that part of the fishery, except in relation to:

- (c) foreign boats; and
- (d) operations on and from foreign boats; and
- (e) persons on foreign boats; and
- (ea) e-monitoring by AFMA of fishing-related activity; and
- (f) matters that occurred before the arrangement took effect.

**78 Effect of arrangement**

- (1) If, in respect of a fishery, there is in force an arrangement under this Division 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 Commonwealth:
  - (a) AFMA has the same powers in relation to the fishery as it would have if the fishery were under the management of AFMA; and
  - (b) references in sections 18 and 20 to the Minister are taken, in relation to the fishery, to be references to the Joint Authority.
- (2) If:
  - (a) an arrangement is in force under this Division under which a Joint Authority has the management of a fishery; and
  - (b) a part of the fishery is to be managed in accordance with the law of the Commonwealth;then:
  - (c) AFMA has the same powers in relation to the part of the fishery as it would have if the part of the fishery were under the management of AFMA; and

- (d) references in sections 18 and 20 to the Minister are taken, in relation to the part of the fishery, to be references to the Joint Authority.

### **81 Evidentiary provision**

A statement in an arrangement made under this Division that specified waters:

- (a) in the case of an arrangement between the Commonwealth and one State—are waters relevant to that State; or
- (b) in the case of any other arrangement—are waters relevant to the States that are parties to the arrangement or are waters relevant to a specified State or States;

must, for all purposes of this Act, be conclusively presumed to be correct.

## **Part 6—Surveillance and enforcement**

### **Division 1—Officers**

#### **83 Appointment of officers**

- (1) AFMA may, by instrument, appoint:
  - (a) an officer or employee of the Commonwealth, of the Administration of a Territory (other than a Territory mentioned in paragraph (b)) or of an authority of the Commonwealth; or
  - (b) an officer or employee of a State, the Northern Territory or the Australian Capital Territory, or of an authority of a State or one of those Territories, in relation to whom there is in force an arrangement between the Commonwealth and the State or Territory, as the case may be;to be an officer for the purposes of this Act.
- (2) An officer appointed by AFMA is, in the exercise of his or her powers and performance of his or her functions, subject to the directions of AFMA.

#### **84 Powers of officers**

- (1) An officer may:
  - (d) where the officer has reasonable grounds to believe that there is on any land or in any premises anything that may afford evidence as to the commission of an offence against this Act, with the consent of the owner or occupier of the land or premises or under a warrant issued under section 85:
    - (i) enter the land or premises; and
    - (ii) search the land or premises and break open and search any cupboard, drawer, chest, trunk, box, package or other receptacle, whether a fixture or not, in which the officer has reasonable grounds to believe that there is any such thing; and

- (iii) examine and take possession of, or secure against interference, any such thing that the officer has reasonable grounds to believe may afford evidence as to the commission of an offence against this Act; and
- (e) where the officer has reasonable grounds to believe that there is in any vehicle or aircraft anything that may afford evidence as to the commission of an offence against this Act, and subject to subsections (1AA) and (1AB):
  - (i) stop and detain the vehicle or detain the aircraft, as the case may be; and
  - (ii) enter and search the vehicle or aircraft; and
  - (iii) break open and search any compartment, container or other receptacle in which the officer has reasonable grounds to believe there is any such thing; and
  - (iv) examine and take possession of, or secure against interference, any such thing that the officer has reasonable grounds to believe may afford evidence as to the commission of an offence against this Act; and
- (f) examine any equipment found in any place, being equipment that the officer has reasonable grounds to believe has been used, is being used, or is intended to be used, for fishing in the AFZ; and
- (fa) if a fishing concession provides for the use of equipment of a particular type—require the holder of the concession to give the officer such help as the officer reasonably requires for the purpose of measuring the equipment; and
- (g) subject to subsection (1A), seize, detain, remove or secure:
  - (i) any fish that the officer has reasonable grounds to believe has been taken, processed, carried or landed in contravention of this Act; or
  - (ii) any boat, net, trap or other equipment that the officer has reasonable grounds to believe has been used, is being used or is intended to be used in contravention of this Act; or

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- (iii) any document or other thing that the officer has reasonable grounds to believe may afford evidence as to the commission of an offence against this Act; and
- (ga) seize all or any of the following that are forfeited to the Commonwealth under section 106A or that the officer has reasonable grounds to believe are forfeited under that section:
  - (i) a boat;
  - (ii) a net, trap or other equipment;
  - (iii) fish; and
- (gb) seize all or any of the following that are forfeited to the Commonwealth under section 106AA or that the officer has reasonable grounds to believe are forfeited under that section:
  - (i) a net, trap or other equipment;
  - (ii) fish; and
- (gc) seize any fish that are the property of the Commonwealth because of the operation of section 106AC or that the officer has reasonable grounds to believe are the property of the Commonwealth because of the operation of that section; and
- (gd) seize anything:
  - (i) that is on, in or attached to a boat and that forms part of the boat; and
  - (ii) that is the property of the Commonwealth because of the operation of section 106AD or that the officer has reasonable grounds to believe is the property of the Commonwealth because of the operation of that section; and
- (h) enter on land or premises specified in a fish receiver permit for the purpose of finding out whether a condition of the permit is being, or has been, complied with or whether a person is contravening or has contravened a provision of this Act and, in furtherance of that purpose:
  - (i) search the land or premises for, and examine, fish; and
  - (ii) search the land or premises for, inspect, take extracts from, and make copies of, any documents relating to the receiving of fish; and

- (iii) if the officer finds, during the course of the search, any thing that he or she believes, on reasonable grounds, may provide evidence of a contravention of a provision of this Act, secure the thing pending the obtaining of a warrant to seize it; and
- (i) with the consent of the holder of a fish receiver permit or under a warrant issued under section 85, seize any thing found during the course of a search that the officer believes, on reasonable grounds, may provide evidence of a contravention of this Act; and
- (j) without warrant, arrest a person whom the officer has reasonable grounds to believe has committed an offence against this Act; and
- (n) require the master of a boat to produce any fishing concession or Treaty licence, or evidence of the grant of any such concession or licence, for or in respect of the boat; and
- (o) take copies of, or extracts from, a fishing concession, Treaty licence or any other document produced in accordance with a requirement under paragraph (n); and
- (p) require the master of a boat in relation to which a fishing concession is in force under this Act or a Treaty boat in respect of which a Treaty licence is in force to give information concerning the boat and its crew and any person on board the boat; and
- (s) require a person found on any land or premises entered under paragraph (d) or in any vehicle or aircraft detained or searched under paragraph (e):
  - (i) to state the person's name and address; or
  - (ii) to produce any documents in the person's possession or under the person's control relating to any fish found on the land or in the premises, vehicle or aircraft; or
  - (iii) to give information concerning any such fish; and
- (t) sell or otherwise dispose of any fish seized by him or her under this Act.

Note: Schedule 1A gives officers powers relating to detention of suspected illegal foreign fishers.

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- (1AA) Subject to subsection (1AB), the powers of an officer under paragraph (1)(e) in respect of any vehicle or aircraft must not be exercised without either:
- (a) the consent of the owner or person in charge of the vehicle or aircraft to the exercise of those powers; or
  - (b) the obtaining of a warrant under section 85 or 86 authorising the exercise of those powers.

(1AB) If:

- (a) the owner or person in charge of a vehicle or aircraft referred to in subsection (1AA) refuses to consent to the exercise by an officer of powers under paragraph (1)(e); and
- (b) an officer seeking to exercise those powers believes, on reasonable grounds:
  - (i) that there is in the vehicle or aircraft anything that may afford evidence of an offence against this Act; and
  - (ii) that the delay that would occur if an application for a warrant were made (either in person or under section 86) would frustrate the effective execution of the warrant;

those powers may be exercised without a warrant but, if that is done, the officer must:

- (c) if it is practicable to do so, notify the owner or person in charge of a vehicle or aircraft that the officer will be exercising powers under paragraph (1)(e) without a warrant and that the reasons for the exercise of those powers may be requested; and
- (d) as soon as reasonably practicable, record the reasons for the exercise of those powers without a warrant; and
- (e) upon request by the owner or person in charge of the vehicle or aircraft—provide the record of those reasons to the person affected by the exercise of those powers.

- (1A) If an officer takes any action under subparagraph (1)(g)(i) or (ii), the officer must, within 7 days after the action is taken, give written notice of the grounds for the taking of the action to the person believed by the officer:

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- (a) if the action is taken in relation to any fish—to have taken, processed, carried or landed the fish, as the case may be; or
- (b) if the action is taken in relation to any boat—to be the owner of the boat; or
- (c) if the action is taken in relation to any net, trap or other equipment—to have used, to be using or to be intending to use the net, trap or other equipment, as the case may be.

Note: Subdivision C of Division 6 deals with notice of seizure of things under paragraph 84(1)(ga), (gb), (gc) or (gd).

- (1B) To avoid doubt, the validity of the seizure of a boat by an officer under paragraph (1)(g) is not affected merely because:
  - (a) the boat is brought or taken under escort to a place; and
  - (b) the boat had to travel on the high seas to reach the place.
- (1BA) If there is a restraint on the liberty of a person on a boat resulting from an officer's exercise of a power under paragraph (1)(g) in relation to a boat:
  - (a) the restraint is not unlawful; and
  - (b) civil or criminal proceedings in respect of the restraint may not be instituted or continued in any court against:
    - (i) the officer; or
    - (ii) any person assisting the officer in the exercise of the power; or
    - (iii) AFMA; or
    - (iv) the Commonwealth.

This subsection is not intended to affect the jurisdiction of the High Court under section 75 of the Constitution.

- (5) Where an officer (other than a member of the Defence Force who is in uniform) proposes to enter and search, or to detain, a vehicle or aircraft, the officer must, if there is a person in charge of the vehicle or aircraft:
  - (a) where the officer is a prescribed person—produce, for inspection by the person in charge of the vehicle or aircraft, written evidence of the fact that the officer is a prescribed person; or

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(b) in any other case—produce, for inspection by the person in charge of the vehicle or aircraft, the officer's identity card; and, if the officer fails to do so, the officer is not authorised to enter and search, or to detain, the vehicle or aircraft.

(6) Where an officer (other than a member of the Defence Force who is in uniform) makes a requirement of a person (in this subsection called the **relevant person**) under subsection (1) the officer must make all reasonable efforts to identify himself or herself and must, unless subsection (6A) applies:

(a) in the case of a prescribed person—produce, for inspection by the relevant person, written evidence of the fact that the officer is a prescribed person; or

(b) in any other case—produce, for inspection by the relevant person, the officer's identity card;

and, if the officer fails to do so, the relevant person is not obliged to comply with the requirement.

(6A) If the requirement under subsection (1) is made in such circumstances that it is impossible to produce the written evidence referred to in paragraph (6)(a) or the identity card referred to in paragraph (6)(b), as the case requires, at the time of making the requirement, that evidence or identity card must be produced for inspection by the relevant person at the first available opportunity after the making of the requirement.

(7) A reference in this section to an offence against, or a contravention of, this Act or a particular provision of this Act includes a reference to an offence against, or a contravention of:

(a) section 6 of the *Crimes Act 1914*; or

(b) section 11.1, 11.4 or 11.5 of the *Criminal Code*;

that relates to this Act or that provision.

(8) In this section:

**examine** includes count, measure, weigh, grade or gauge.

**prescribed person** means a member or special member of the Australian Federal Police or a member of the police force of a State

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or Territory or an officer of Customs (as defined in the *Customs Act 1901*).

*this Act* includes the regulations.

## **84B Cooperative Enforcement Agreement**

### *Purpose*

- (1) The purpose of this section is to implement the Agreement on Cooperative Enforcement of Fisheries Laws between the Government of Australia and the Government of the French Republic in the Maritime Areas Adjacent to the French Southern and Antarctic Territories, Heard Island and the McDonald Islands that was done at Paris on 8 January 2007 (the *Cooperative Enforcement Agreement*).

Note 1: In 2010, the text of the Agreement was accessible through the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

Note 2: The Agreement should be read together with the Treaty between the Government of Australia and the Government of the French Republic on cooperation in the Maritime Areas Adjacent to the French Southern and Antarctic Territories (TAAF), Heard Island and the McDonald Islands, that was done at Canberra on 24 November 2003. The text of the Treaty is set out in Australian Treaty Series 2005 No. 6 ([2005] ATS 6). In 2010, the text of a treaty in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website ([www.austlii.edu.au](http://www.austlii.edu.au)).

### *International officers*

- (2) An international officer may, for the purposes of conducting cooperative enforcement, exercise any of the powers of an officer in this Division. In doing so, the international officer is taken for the purposes of this Act to have exercised the power as an officer.
- (3) The regulations may prescribe conditions for the exercise of a power by an international officer.

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- (4) Subsection 84(6) applies in relation to the exercise of a power by an international officer as if the reference in that subsection to the officer's identity card were a reference to a document:
  - (a) issued by an officer; and
  - (b) identifying the international officer as an international officer authorised to conduct cooperative enforcement.
- (5) An international officer is not liable to any civil or criminal proceedings in respect of anything done or omitted to be done in good faith in the exercise or purported exercise of a power conferred on an international officer by subsection (3).

*Officers*

- (6) An officer may, for the purposes of conducting cooperative enforcement, exercise any powers conferred by the Government of the French Republic on officers in order to give effect to the Cooperative Enforcement Agreement.
- (7) An officer is not liable to any civil or criminal proceedings in respect of anything done or omitted to be done in good faith in the exercise or purported exercise of a power referred to in subsection (6).

*Definitions*

- (8) In this Act:

***cooperative enforcement*** means cooperative enforcement, as defined in the Cooperative Enforcement Agreement, that is conducted in accordance with that Agreement.

***international officer*** means a person who is authorised to conduct cooperative enforcement by a competent authority of the Government of the French Republic.

**84C Customs officers may carry arms in exercise of powers under this Act**

- (1) Subject to any directions from the Comptroller-General of Customs, the commander of an Australian Border Force vessel:
  - (a) may issue approved firearms and other approved items of personal defence equipment to officers of Customs under his or her command for the purpose of enabling the safe exercise, by such officers, of powers conferred on them as officers within the meaning of section 4; and
  - (b) must take all reasonable steps to ensure that approved firearms, and other approved items of personal defence equipment, that are available for issue under paragraph (1)(a), are kept in secure storage at all times when not required for use.
- (2) Directions given by the Comptroller-General of Customs for the purposes of subsection 189A(2) of the *Customs Act 1901* relating to the deployment of approved firearms and other approved items of personal defence equipment may extend to the deployment of such firearms and other items of equipment under this section.
- (3) If:
  - (a) approved firearms and other approved items of personal defence equipment are issued to officers of Customs in accordance with subsection 189A(1) of the *Customs Act 1901*; and
  - (b) those officers are subsequently required, while carrying such firearms or other items of equipment, to exercise powers conferred on them under this Act;then:
  - (c) the deployment of such firearms or other items of equipment has effect as if the firearms or other items of equipment had been issued under this section; and
  - (d) any directions given by the Comptroller-General of Customs that relate to any aspect of that deployment have effect accordingly.

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- (4) An officer of Customs is not required under, or by reason of, a law of a State or Territory:
- (a) to obtain a licence or permission for the possession or use of an approved firearm or approved item of personal defence equipment in the circumstances set out in this section; or
  - (b) to register such a firearm or other item of equipment.
- (5) In this section:

***approved firearm*** means a firearm that is an approved firearm for the purposes of section 189A of the *Customs Act 1901*.

***approved item of personal defence equipment*** means an item that is an approved item of personal defence equipment for the purposes of section 189A of the *Customs Act 1901*.

***Australian Border Force vessel*** means a Commonwealth ship (within the meaning of the *Customs Act 1901*) that is under the command of an officer of Customs (including an officer of Customs exercising powers as an officer within the meaning of this Act) and flying the flag mentioned in section 14 of the *Customs Act 1901*.

***Comptroller-General of Customs*** means the person who is the Comptroller-General of Customs in accordance with subsection 11(3) or 14(2) of the *Australian Border Force Act 2015*.

### 85 When search warrants can be issued

- (1) A magistrate may, upon application by an officer, issue a warrant to search premises if the magistrate is satisfied by information on oath that there are reasonable grounds for suspecting that there is, or there will be within the next 72 hours, any evidential material at the premises.
- (2) If the person applying for the warrant suspects that, in executing the warrant, it will be necessary to use firearms, the person must state the suspicion, and the grounds for the suspicion, in the information.

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- (3) If a magistrate issues a warrant, the magistrate is to set out in the warrant:
- (a) the offence to which the warrant relates; and
  - (b) a description of the premises to which the warrant relates; and
  - (c) the kinds of evidential material that are to be searched for under the warrant; and
  - (d) the name of the officer who, unless he or she inserts the name of another officer in the warrant, is to be responsible for executing the warrant; and
  - (e) the period for which the warrant remains in force, which must not be more than 7 days; and
  - (f) whether the warrant may be executed at any time or only during particular hours.
- (4) The magistrate is also to state that the warrant authorises the seizure of a thing (other than evidential material of the kind referred to in paragraph (3)(c)) found at the premises in the course of the search that the executing officer or a person helping believes on reasonable grounds to be:
- (a) evidential material in relation to an offence to which the warrant relates; or
  - (b) a thing relevant to another offence against this Act or the regulations that is an indictable offence;
- if the executing officer or a person helping believes on reasonable grounds that seizure of the thing is necessary to prevent its concealment, loss or destruction or its use in committing an offence against this Act or the regulations.
- (5) Paragraph (3)(e) does not prevent the issue of successive warrants in relation to the same premises.
- (6) If the application for the warrant is made under section 86, this section applies as if:
- (a) subsection (1) referred to 48 hours rather than 72 hours; and
  - (b) paragraph (3)(e) referred to 48 hours rather than 7 days.

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- (7) A magistrate in New South Wales or the Australian Capital Territory may issue a warrant in relation to premises in the Jervis Bay Territory.
- (8) A magistrate in a State or internal Territory may:
  - (a) issue a warrant in relation to premises in that State or Territory; or
  - (b) issue a warrant in relation to premises in an external Territory; or
  - (c) issue a warrant in relation to premises in another State or internal Territory (including the Jervis Bay Territory) if he or she is satisfied that there are special circumstances that make the issue of the warrant appropriate.

**85A The things that are authorised by a search warrant**

- (1) A warrant authorises the executing officer or a person helping:
  - (a) to enter the warrant premises and, if the premises are a conveyance, to enter the conveyance, wherever it is; and
  - (b) to search for and record fingerprints found at the premises and to take samples of things found at the premises for forensic purposes; and
  - (c) to search the premises for the kinds of evidential material specified in the warrant, and to seize things of that kind found at the premises; and
  - (d) to seize other things found at the premises in the course of the search that the executing officer or a person helping believes on reasonable grounds to be:
    - (i) evidential material in relation to an offence to which the warrant relates; or
    - (ii) evidential material in relation to another offence against this Act or the regulations that is an indictable offence;if the executing officer or a person helping believes on reasonable grounds that seizure of the things is necessary to prevent their concealment, loss or destruction or their use in committing an offence against this Act or the regulations.

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- (2) If the warrant states that it may be executed only during particular hours, the warrant must not be executed outside those hours.
- (3) If things are seized under a warrant, the warrant authorises the executing officer to make the things available to officers of other agencies if it is necessary to do so for the purpose of investigating or prosecuting an offence to which the things relate.

**85B Availability of assistance and use of force in executing a warrant**

In executing a warrant:

- (a) the executing officer may obtain such help; and
- (b) the executing officer, or a person who is an officer and is helping in executing the warrant may use such force against persons and things; and
- (c) a person who is not an officer and has been authorised to help in executing the warrant may use such force against things; as is necessary and reasonable in the circumstances.

**85C Copy of warrant to be given to occupier etc.**

- (1) If a warrant is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the executing officer or a person helping must make available to that person a copy of the warrant.
- (2) The executing officer must produce his or her identity card to the person at the premises.
- (3) The copy of the warrant referred to in subsection (1) need not include the signature of the magistrate or the seal of the relevant court.

**85D Specific powers available to officer executing warrant**

- (1) In executing a warrant, the executing officer or a person helping may:

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- (a) for a purpose incidental to the execution of the warrant; or
  - (b) if the occupier of the premises consents in writing;take photographs (including video recordings) of the premises or of things at the premises.
- (2) If a warrant is being executed, the executing officer or a person helping may, if the warrant is still in force, complete the execution of the warrant after the officer and all persons helping temporarily cease its execution and leave the premises:
  - (a) for not more than one hour; or
  - (b) for a longer period if the occupier of the premises consents in writing.
- (3) If:
  - (a) the execution of a warrant is stopped by an order of a court; and
  - (b) the order is later revoked or reversed on appeal; and
  - (c) the warrant is still in force;the execution of the warrant may be completed.

**85E Use of equipment to examine or process things**

- (1) The executing officer or a person helping may bring to the warrant premises any equipment reasonably necessary for the examination or processing of things found at the premises in order to determine whether they are things that may be seized under the warrant.
- (2) If:
  - (a) it is not practicable to examine or process the things at the warrant premises; or
  - (b) the occupier of the premises consents in writing;the things may be moved to another place so that the examination or processing can be carried out in order to determine whether they are things that may be seized under the warrant.
- (3) If things are moved to another place for the purpose of examination or processing under subsection (2), the executing officer must, if it is practicable to do so:

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- (a) inform the occupier of the address of the place, and the time, at which the examination or processing will be carried out; and
  - (b) allow the occupier or his or her representative to be present during the examination or processing.
- (4) The executing officer or a person helping may operate equipment already at the warrant premises to carry out the examination or processing of a thing found at the premises in order to determine whether it is a thing that may be seized under the warrant if the executing officer or person believes on reasonable grounds that:
  - (a) the equipment is suitable for the examination or processing; and
  - (b) the examination or processing can be carried out without damage to the equipment or the thing.

**85F Use of electronic equipment at premises**

- (1) The executing officer or a person helping may operate electronic equipment at the premises to see whether evidential material is accessible by doing so if he or she believes on reasonable grounds that the operation of the equipment can be carried out without damage to the equipment.
- (2) If the executing officer or a person helping, after operating the equipment, finds that evidential material is accessible by doing so, he or she may:
  - (a) seize the equipment and any disk, tape or other associated device; or
  - (b) if the material can, by using facilities at the premises, be put in documentary form—operate the facilities to put the material in that form and seize the documentation so produced; or
  - (c) if the material can be transferred to a disk, tape or other storage device that:
    - (i) is brought to the premises; or

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- (ii) is at the premises and the use of which for the purpose has been agreed to in writing by the occupier of the premises;  
operate the equipment or other facilities to copy the material to the storage device and take the storage device from the premises.
- (3) A person may seize equipment under paragraph (2)(a) only if:
  - (a) it is not practicable to put the material in documentary form as mentioned in paragraph (2)(b) or to copy the material as mentioned in paragraph (2)(c); or
  - (b) possession by the occupier of the equipment could constitute an offence against this Act or the regulations.
- (4) If the executing officer or a person helping believes on reasonable grounds that:
  - (a) evidential material may be accessible by operating electronic equipment at the premises; and
  - (b) expert assistance is required to operate the equipment; and
  - (c) if he or she does not take action under this subsection, the material may be destroyed, altered or otherwise interfered with;he or she may do whatever is necessary to secure the equipment, whether by locking it up, placing a guard or otherwise.
- (5) The executing officer or a person helping must give notice to the occupier of the premises of his or her intention to secure equipment and of the fact that the equipment may be secured for up to 24 hours.
- (6) The equipment may be secured until:
  - (a) the end of a period of not more than 24 hours; or
  - (b) the equipment has been operated by the expert;whichever happens first.
- (7) If the executing officer or a person helping believes on reasonable grounds that the expert assistance will not be available within 24

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hours, he or she may apply to the magistrate for an extension of that period.

- (8) The executing officer or a person helping must give notice to the occupier of the premises of his or her intention to apply for an extension, and the occupier is entitled to be heard in relation to the application.
- (9) The provisions of this Division relating to the issue of warrants apply, with any modifications that are necessary, to the issuing of an extension.

### **85G Compensation for damage to electronic equipment**

- (1) If:
  - (a) damage is caused to equipment as a result of being operated as mentioned in section 85E or 85F; and
  - (b) the damage was caused as a result of:
    - (i) insufficient care being exercised in selecting the person who was to operate the equipment; or
    - (ii) insufficient care being exercised by the person operating the equipment;compensation for the damage is payable to the owner of the equipment.
- (2) Compensation is payable out of money appropriated by the Parliament for the purpose.
- (3) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises and his or her employees and agents, if they were available at the time, had provided any warning or guidance as to the operation of the equipment that was appropriate in the circumstances.

### **85H Copies of seized things to be provided**

- (1) Subject to subsection (2), if a person seizes, under a warrant:

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- (a) a document, film, computer file or other thing that can be readily copied; or
  - (b) a storage device the information in which can be readily copied;
- the person must, if requested to do so by the occupier of the premises or by another person who apparently represents the occupier and is present when the warrant is executed, give a copy of the thing or the information to the person who made the request as soon as practicable after the seizure.
- (2) Subsection (1) does not apply if:
  - (a) the thing that has been seized was seized under paragraph 85F(2)(b) or (c); or
  - (b) possession by the occupier of the document, film, computer file, thing or information could constitute an offence.

**85J Occupier entitled to be present during search**

- (1) If a warrant is being executed and the occupier of the premises or another person who apparently represents the occupier is present at the premises, the person is, subject to Part IC of the *Crimes Act 1914*, entitled to observe the search being conducted.
- (2) The right to observe the search being conducted ceases if the person impedes the search.
- (3) This section does not prevent 2 or more areas of the premises being searched at the same time.

**85K Receipts for things seized under warrant**

- (1) If a thing is seized under a warrant or moved under subsection 85E(2), the executing officer or a person helping must provide a receipt for the thing.
- (2) If 2 or more things are seized or moved, they may be covered in the one receipt.

## **86 Warrants by telephone or other electronic means**

- (1) An officer may make an application to a magistrate for a warrant by telephone, telex, fax or other electronic means:
  - (a) in an urgent case; or
  - (b) if the delay that would occur if an application were made in person would frustrate the effective execution of the warrant.
- (2) The magistrate may require communication by voice to the extent that is practicable in the circumstances.
- (3) An application under this section must include all information required to be provided in an ordinary application for a warrant, but the application may, if necessary, be made before the information is sworn.
- (4) If an application is made to a magistrate under this section and the magistrate, after considering the information and having received and considered such further information (if any) as the magistrate required, is satisfied that:
  - (a) a warrant in the terms of the application should be issued urgently; or
  - (b) the delay that would occur if an application were made in person would frustrate the effective execution of the warrant;the magistrate may complete and sign the same form of warrant as would be issued under section 85.
- (5) If the magistrate decides to issue the warrant, the magistrate is to tell the applicant, by telephone, fax or other electronic means, of the terms of the warrant and the day on which and the time at which it was signed.
- (6) The applicant must then complete a form of warrant in terms substantially corresponding to those given to the magistrate, stating on the form the magistrate's name and the day on which and the time at which the warrant was signed.
- (7) The applicant must, not later than the day after the day of expiry of the warrant or the day after the day on which the warrant was

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executed, whichever is the earlier, give or send to the magistrate the form of warrant completed by the applicant and, if the information referred to in subsection (3) was not sworn, that information duly sworn.

- (8) The magistrate is to attach to the documents provided under subsection (7) the form of warrant completed by the magistrate.
- (9) If:
  - (a) it is material, in any proceedings, for a court to be satisfied that the exercise of a power under a warrant issued under this section was duly authorised; and
  - (b) the form of warrant signed by the magistrate is not produced in evidence;the court is to assume, unless the contrary is proved, that the exercise of the power was not duly authorised.

### **87J Use of force to exercise powers**

*Force to be used only in limited circumstances*

- (1) An officer must not use force in the exercise of the officer's powers under a provision of section 84 unless it is necessary to do so:
  - (a) to ensure the safety of an officer; or
  - (b) to overcome obstruction of an officer in the exercise of that officer's powers.

*Force used must be reasonable*

- (2) The force used must not be more than is reasonably required for the relevant purpose described in paragraph (1)(a) or (b).

### **88 Release of seized property**

- (1) Where any property is under the control of an officer because of the exercise by an officer of powers under section 84, AFMA may direct that the property be released:

- (a) in the case of a boat—to the owner or the master of the boat; and
  - (b) in any other case—to the owner of the property or to the person from whose possession the property was seized, or from whose control the property was removed;
- on such conditions (if any) as AFMA thinks fit, including conditions as to the giving of security:
- (c) for payment of the value of the property if it is forfeited; and
  - (d) for the payment of any fines that may be imposed under this Act in respect of offences that AFMA has reason to believe have been committed with the use of, or in relation to, that property; and
  - (e) if the property is a boat and there is a liability under section 112 of the *Maritime Powers Act 2013* for costs incurred in chasing the boat—for those costs.
- (1A) If:
- (a) any property referred to in subsection (1):
    - (i) is also property referred to in section 106; and
    - (ii) was under the control of an officer because an offence referred to in that section is alleged to have been committed in respect of the property; and
  - (b) were the person to be convicted of the offence an order could be made by the court directing the person to pay the costs of the prosecution;
- the conditions on which the property may be released under subsection (1) include a condition as to the giving of security for payment of those costs if the person is convicted of the offence.
- (2) For the purposes of this section:
- (a) a reference to property includes a reference to fish; and
  - (b) property is taken to be under the control of an officer if any person is, in relation to that property, subject to the directions of the officer.

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**88A Seizure and forfeiture of foreign boats etc.**

- (1) The regulations may provide that some or all of the provisions of this Act that relate to seizure and forfeiture of property do not apply in relation to:
  - (a) foreign boats (including nets, traps, equipment or fish on such boats) covered by a specified:
    - (i) international fisheries management organisation; or
    - (ii) international fisheries management measure; or
  - (b) foreign boats covered by the Fish Stocks Agreement; or
  - (c) foreign boats mentioned in paragraph (a) or (b) in specified circumstances.
- (2) The regulations may prescribe procedures to be followed in dealing with property:
  - (a) under the control of an officer; and
  - (b) covered by regulations made under subsection (1).

**89 Identity cards**

- (1) The CEO must cause an identity card to be issued to an officer appointed under section 83 and may cause such a card to be issued to any other officer.
- (2) An identity card must:
  - (a) contain a recent photograph of the officer to whom it is issued; and
  - (b) be in the approved form.
- (3) A person who stops being an officer must, as soon as practicable, return his or her identity card to the CEO.
- (4) A person who contravenes subsection (3) commits an offence punishable upon conviction by a fine not exceeding 2 penalty units.
- (5) Subsection (4) does not apply if the person has a reasonable excuse.

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Note: The defendant bears an evidential burden in relation to the matter in subsection (5). See subsection 13.3(3) of the *Criminal Code*.

- (6) An offence under subsection (4) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### 89A Defensive equipment

- (1) This section is about defensive equipment.
- (2) **Defensive equipment** is:
  - (a) a bulletproof vest; or
  - (b) an extendible baton; or
  - (c) handcuffs; or
  - (d) other equipment prescribed under the regulations.
- (3) The CEO may authorise an officer to be issued with, carry, use and store defensive equipment if the CEO considers:
  - (a) it is reasonably necessary for the officer to use the equipment in order to perform functions or exercise powers under this Act; and
  - (b) the officer has received adequate training in the effective, lawful and safe carriage, use and storage of defensive equipment.
- (4) The CEO may make the authorisation subject to conditions.
- (5) The officer may use the defensive equipment if the officer considers it is reasonably necessary to do so in order to perform functions or exercise powers under this Act or the regulations, subject to:
  - (a) any conditions in the CEO's authorisation; and
  - (b) section 87J.
- (6) A person commits an offence if:
  - (a) the person has been issued with defensive equipment; and
  - (b) the person stops being an officer; and

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- (c) the person does not, as soon as practicable, return the defensive equipment to the CEO.

Penalty: 2 penalty units.

- (7) Subsection (6) does not apply if the person has a reasonable excuse for not returning the defensive equipment to the CEO as soon as practicable.

Note: A defendant bears an evidential burden in relation to the matter in subsection (7): see subsection 13.3(3) of the *Criminal Code*.

- (8) An offence against subsection (6) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**90 Officer etc. not liable to certain actions**

An officer or a person assisting an officer in the exercise of powers under this Act or the regulations, is not liable to an action, suit or proceeding for or in respect of anything done in good faith or omitted to be done in good faith in the exercise or purported exercise of any power conferred by this Act or the regulations.

## Division 2—Fish receiver permits

### 91 Grant of fish receiver permits

- (1) AFMA may, by notice published in the *Gazette*, declare a specified fishery to be a fishery to which this Division applies.
- (2) AFMA may, upon application made in the approved form, grant to a person a fish receiver permit authorising the person to receive fish from a person engaged in commercial fishing in a specified fishery declared under subsection (1).
- (3) An application made for the grant of a fish receiver permit must provide AFMA with such information as it reasonably requires for a proper consideration of the application.
- (4) A fish receiver permit is granted subject to the following conditions:
  - (a) if the permit relates to a managed fishery—the permit will cease to have effect if the plan of management for the fishery is revoked under subsection 20(3);
  - (b) the permit may, under subsection 75(7), cease to have effect;
  - (c) the permit may be cancelled under Division 8 of Part 3;
  - (d) no compensation is payable because the permit is cancelled, ceases to have effect or ceases to apply to a fishery.
- (5) A permit under this section:
  - (a) is subject to such other conditions as are specified in the permit; and
  - (b) may specify premises at which fish received under the permit by the holder of the permit are to be kept while in possession of the holder; and
  - (c) comes into force on the day specified for the purpose in the permit, or if no day is so specified, on the day on which it is granted; and

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- (d) subject to this Act, remains in force until the day specified for the purpose in the permit not being a day later than 12 months after the day on which it came into force.
- (6) AFMA may, by written notice given to the holder of the permit, whether or not at the request of the holder, vary or revoke a condition of the permit (not being a condition mentioned in subsection (4)) or specify a condition or a further condition to which the permit is to be subject.
- (7) A permit ceases to be in force if the holder of the permit surrenders the permit by written notice given to AFMA.
- (8) A permit is to be in the approved form.
- (9) Division 8 of Part 3 applies in relation to a permit as if the permit were a fishing concession.
- (10) AFMA may, upon application made by the holder of a permit, renew the permit from time to time for a period that is not greater than 12 months.

### **92 Holder of fish receiver permit to give information etc.**

- (1) An officer may, by written notice given to a person who is the holder of a fish receiver permit, require the person:
  - (a) to give the officer, within such reasonable time as is specified in the notice, such return or information in relation to fish received by the person as is specified in the notice; and
  - (b) to verify any such return or information by statutory declaration.
- (2) The regulations may make provision:
  - (a) requiring holders of fish receiver permits to make and keep accounts and other records in respect of fish received by them; and
  - (b) requiring such persons to give returns or information in relation to fish received by them, not being returns or information mentioned in subsection (1).

**93 Offences in relation to returns etc.**

- (1) A holder of a fish receiver permit must not refuse or fail to give a return or information that the person is required to give under section 92 or under regulations made for the purposes of that section.

Penalty: 30 penalty units.

- (2) Subsection (1) is an offence of strict liability.

## **Division 3—Foreign fishing boats—port permits**

### **94 Grant of port permits**

- (1) AFMA may, upon application made in the approved form, if it appears to AFMA to be appropriate to do so for the purpose of monitoring movements of foreign fishing boats, grant to a person a port permit authorising the person, or a person acting on that person's behalf to bring a specified foreign fishing boat in respect of which a foreign fishing licence is not in force:
  - (a) from a point outside the AFZ to a specified port in Australia or in an external Territory; and
  - (b) from that port to a point outside the AFZ.
- (2) An application made for the grant of a port permit must provide AFMA with such information as it reasonably requires for a proper consideration of the application.
- (3) A port permit is granted subject to the following conditions:
  - (a) the permit may be revoked under subsection (5);
  - (b) no compensation is payable because the permit is so revoked.
- (4) A permit granted under this section:
  - (a) is subject to such other conditions as are specified in the permit; and
  - (b) comes into force on the day specified for the purpose in the permit or, if no day is so specified, on the day on which it is granted; and
  - (c) subject to this Act, remains in force until the day specified for the purpose in the permit; and
  - (d) is authority for entry to the specified port on such number of occasions as is specified in the permit.
- (5) AFMA may, by written notice given to the holder of a permit:
  - (a) revoke the permit; or

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- (b) whether or not at the request of the holder, vary or revoke the conditions to which the permit is subject (not being a condition mentioned in subsection (3)) or specify a condition or a further condition to which the permit is to be subject.
- (6) A permit ceases to be in force if the holder of the permit surrenders the permit by written notice given to AFMA.
- (7) A permit is to be in the approved form.
- (8) In this section:

***foreign fishing boat*** means a foreign boat:

- (a) that is equipped for fishing; or
- (b) that AFMA has reasonable grounds to believe is being used, or is intended to be used, in activities in support of fishing by foreign boats.

## Division 4—Enforcement generally

### 95 Offences

- (1) A person must not:
  - (a) at a place in the AFZ, engage in commercial fishing unless:
    - (i) the person is, or is acting on behalf of, the holder of a fishing concession, or a scientific permit, that is in force authorising commercial fishing at that place; or
    - (ii) if a Treaty boat is used—a Treaty licence is in force in respect of the boat authorising commercial fishing at that place; or
  - (b) in the AFZ, be in charge of a Treaty boat that is being used for commercial fishing unless a Treaty licence is in force in respect of the boat; or
  - (c) in the AFZ, have a fish in the person's possession or under his or her control in a boat at a time when the taking of the fish was not authorised by a fishing concession or a scientific permit; or
  - (d) being the holder of a fishing concession, scientific permit, fish receiver permit, port permit or foreign master fishing licence that is in force, contravene a condition of the fishing concession, permit or licence or a provision of a temporary order; or
  - (e) being the holder of a fishing concession, scientific permit, fish receiver permit or port permit that is in force, cause or permit a person acting on his or her behalf to contravene a condition of the fishing concession or permit or a provision of a temporary order, as the case may be; or
  - (f) being a person acting on behalf of the holder of a fishing concession, scientific permit, fish receiver permit or port permit that is in force, contravene a condition of the fishing concession or permit or a provision of a temporary order, as the case may be; or

- (g) keep or purport to keep a logbook, or furnish or purport to furnish a logbook or return, relating to a matter specified in subsection 42(1B) knowing that the logbook so kept or the logbook or return so furnished contains a statement in respect of that matter that is false or misleading in a material particular.
- (1AA) Paragraphs (1)(d), (e) and (f) (and the rest of this section so far as it relates to those paragraphs) apply whether the contravention occurs inside or outside the outer limits of the AFZ.
- (1A) A person does not contravene subsection (1) because of an act or omission that the person is authorised to do, or not to do, as the case may be:
  - (a) under the management plan for the relevant fishery; or
  - (b) under regulations made for the relevant fishery; or
  - (c) in relation to a by-catch under regulations made for the purposes of paragraph 14(2)(c).
- (2) A person who contravenes paragraph (1)(a) or (b) with the use of, or in relation to, a foreign boat or in relation to a foreign fishing licence commits an offence punishable on conviction by a fine not exceeding 500 penalty units.
- (3) An offence mentioned in subsection (2) is an indictable offence but may be heard and determined, with the consent of the prosecutor and the defendant, by a court of summary jurisdiction.
- (4) If an offence mentioned in subsection (2) is dealt with by a court of summary jurisdiction, the penalty that the court may impose is a fine not exceeding 250 penalty units.
- (5) A person who contravenes subsection (1) in circumstances in which the person does not commit an offence against subsection (2) commits an offence punishable, on conviction, by a fine not exceeding 250 penalty units.
- (5A) Strict liability applies to subsections (2) and (5).

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- (6) It is a defence to a prosecution for an offence arising under paragraph (1)(c) if the person charged satisfies the court that the fish was not taken in the AFZ.
- (7) A prosecution for an offence against subsection (2) or (5) may be commenced within 2 years after the commission of the offence.

**96 Removing fish from traps etc.**

A person must not, in the AFZ, remove a fish from a net, trap or other equipment for the taking of fish unless the person is the owner of the net, trap or other equipment or is acting with the authority of the owner.

Penalty: 125 penalty units.

**97 Persons not to receive fish in certain circumstances**

- (1) A person who is not the holder of a fish receiver permit that is in force must not, otherwise than for the person's private or domestic use, receive fish from a person whom the first-mentioned person knows, or has reason to suspect, to be engaged in fishing in a fishery in relation to which a declaration under subsection 91(1) is in force.

Penalty: 125 penalty units.

- (2) Subsection (1) does not apply to a person who receives fish as the employee or agent of the holder of a fish receiver permit.

**97A E-monitoring equipment and e-monitoring data offences**

*E-monitoring equipment*

- (1) A person commits an offence if:
  - (a) the person engages in conduct; and
  - (b) the person does not have written authority from AFMA to engage in the conduct; and

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- (c) the conduct directly or indirectly prevents or hinders the operation of e-monitoring equipment installed, carried or used in compliance with a condition of a fishing concession or scientific permit.

Penalty: Imprisonment for 2 years or 250 penalty units, or both.

*E-monitoring data*

- (2) A person commits an offence if:
  - (a) the person engages in conduct; and
  - (b) the person does not have written authority from AFMA to engage in the conduct; and
  - (c) the conduct directly or indirectly results in modification of, damage to, or destruction of, e-monitoring data.

Penalty: Imprisonment for 2 years or 250 penalty units, or both.

## **98 Court may make certain orders**

- (1) Where a court convicts a person of an offence arising out of a contravention of paragraph 95(1)(d), (e) or (f), the court may, in addition to imposing a penalty in respect of that offence, order that the person must not, during such period as the court determines, be on a boat in the AFZ with the intention of engaging in commercial fishing.
- (1A) A court may order a person (including a foreigner) not to be on any Australian-flagged boat outside the AFZ for the purposes of commercial fishing during a period specified by the court if the court convicted the person of an offence:
  - (a) involving an Australian-flagged boat and a contravention of paragraph 95(1)(d), (e) or (f); or
  - (b) against section 105A, 105AA, 105AB, 105B or 105C (which deal with an Australian-flagged boat beyond the AFZ); or
  - (c) against section 105E, 105EA, 105F, 105FA, 105H or 105I.

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- (2) A person who contravenes an order made under subsection (1) or (1A) commits an offence punishable, on conviction, imprisonment for 12 months.
- (3) If:
  - (a) a court convicts a person of an offence against this Act or any other Act; and
  - (b) the offence was committed while the person was doing something authorised by a fishing concession held by the person;the court may, in addition to imposing a penalty in respect of the offence or making any other order, make an order:
  - (c) cancelling the fishing concession; or
  - (d) suspending the operation of the fishing concession for a period stated in the order.
- (4) A period determined under subsection (1) or stated in an order suspending the operation of a fishing concession made under subsection (3):
  - (a) may commence at the time of the making of the determination or order, or at a later time, as specified by the court; and
  - (b) may exclude any period that the court identifies as not counting towards the period so determined or ordered.

**98A Infringement notices**

*Provisions subject to an infringement notice*

- (1) The following provisions of this Act are subject to an infringement notice under Part 5 of the Regulatory Powers Act:
  - (a) subsection 93(1);
  - (b) subsection 95(5).

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

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*Infringement officer*

- (2) For the purposes of Part 5 of the Regulatory Powers Act, an AFMA staff member appointed under section 83 of this Act to be an officer for the purposes of this Act is an infringement officer in relation to the provisions mentioned in subsection (1).

*Relevant chief executive*

- (3) For the purposes of Part 5 of the Regulatory Powers Act, the CEO is the relevant chief executive in relation to the provisions mentioned in subsection (1).
- (4) The CEO may, in writing, delegate to an AFMA staff member who is an SES employee or acting SES employee the CEO's powers and functions under Part 5 of the Regulatory Powers Act as the relevant chief executive in relation to the provisions mentioned in subsection (1).
- (5) A person exercising powers or performing functions under a delegation under subsection (4) must comply with any directions of the CEO.

*Extra-territorial operation*

- (6) Part 5 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1), extends to every external Territory, and each other area, to which those provisions extend under section 7 or 8 of this Act.

**Division 5—Foreign boats—additional enforcement provisions**

**99 Using foreign boat for recreational fishing—strict liability offence**

- (1) A person must not, in the AFZ:
  - (a) use a foreign boat for recreational fishing; or
  - (b) use a foreign boat for processing or carrying fish that have been taken in the course of recreational fishing with the use of that boat or another boat.

Penalty: 250 penalty units.

- (2) Strict liability applies to subsection (1).

**100 Using foreign boat for fishing in AFZ—strict liability offence**

- (1) A person must not, at a place in the AFZ, use a foreign boat for commercial fishing unless:
  - (a) there is in force a foreign fishing licence authorising the use of the boat at that place; or
  - (b) if the boat is a Treaty boat—a Treaty licence is in force in respect of the boat authorising the use of the boat at that place.

- (2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 2,500 penalty units.

- (2A) Strict liability applies to subsection (2).

- (3) An offence against this section is an indictable offence but may be heard and determined, with the consent of the prosecutor and the defendant, by a court of summary jurisdiction.

- (4) If an offence is dealt with by a court of summary jurisdiction, the penalty that the court may impose is a fine not exceeding 250 penalty units.

### **100A Offence of using foreign boat for fishing in AFZ**

- (1) A person commits an offence if:
  - (a) the person intentionally uses a boat; and
  - (b) the boat is a foreign boat and the person is reckless as to that fact; and
  - (c) the use of the boat is for commercial fishing and the person is reckless as to that fact; and
  - (d) the boat is at a place in the AFZ at the time of the use and the person is reckless as to that fact.
- (2) The offence is punishable on conviction:
  - (a) if the boat involved in the offence has a length of, or exceeding, 24 metres—by a fine of not more than 7,500 penalty units; and
  - (b) if the boat involved in the offence has a length of less than 24 metres—by a fine of not more than 5,000 penalty units.
- (2A) For the purposes of subsection (2), the length of a boat is the overall length of the boat determined in accordance with section 10 of the *Shipping Registration Act 1981*.
- (3) The offence is an indictable offence.
- (4) Subsection (1) does not apply if:
  - (a) a foreign fishing licence is in force authorising the use of the boat at the place; or
  - (b) the boat is a Treaty boat and a Treaty licence is in force in respect of the boat authorising the use of the boat at the place.

Note: The defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

### **100B Using foreign boat for fishing in territorial sea within AFZ**

- (1) A person commits an offence if:
  - (a) the person intentionally uses a boat; and
  - (b) the boat is a foreign boat and the person is reckless as to that fact; and

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- (c) the use of the boat is for commercial fishing and the person is reckless as to that fact; and
- (d) the boat is at a place that is, at the time of the use, in a part of the territorial sea of Australia that is in the AFZ.

**Penalty:**

- (a) if the boat involved in the offence has a length of, or exceeding, 24 metres—7,500 penalty units or 3 years imprisonment, or both; or
- (b) if the boat involved in the offence has a length of less than 24 metres—5,000 penalty units or 2 years imprisonment, or both.

**(1A) Strict liability applies to paragraph (1)(d).**

**Note:** For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2) The reference to the AFZ in paragraph (1)(d) does not include a reference to coastal waters taken to be in the AFZ because of section 76.
- (3) For the purposes of the penalty at the end of subsection (1), the length of a boat is the overall length of the boat determined in accordance with section 10 of the *Shipping Registration Act 1981*.
- (4) Subsection (1) does not apply if:
  - (a) a foreign fishing licence is in force authorising the use of the boat at the place; or
  - (b) the boat is a Treaty boat and a Treaty licence is in force in respect of the boat authorising the use of the boat at the place.

**Note:** The defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3) of the *Criminal Code*.

## **101 Having foreign boat equipped for fishing—strict liability offence**

- (1) A person must not, at a place in the AFZ, have in his or her possession or in his or her charge a foreign boat equipped for fishing unless:
- (a) the use, or presence, of the boat at that place is authorised by a foreign fishing licence, or a port permit; or
  - (b) a Treaty licence is in force in respect of the boat; or
  - (c) the boat's fishing equipment is stowed and the boat is at that location in accordance with the approval of AFMA given under, and in accordance with, the regulations; or
  - (d) the boat's fishing equipment is stowed and the boat is travelling, by the shortest practicable route, through the AFZ from a point beyond the outer limits of the AFZ to another such point; or
  - (e) the use of the boat for scientific research purposes in that area is authorised under a scientific permit.
- (1A) For the purposes of paragraphs (1)(c) and (d), a boat's fishing equipment is not stowed unless all of the boat's:
- (a) nets, traps and other fishing equipment; and
  - (b) associated equipment, including buoys and beacons;
- are disengaged and secured, and where practicable stored inside the boat, in such a manner as not to be readily available for fishing.
- (2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 2,500 penalty units.
- (2A) Strict liability applies to subsection (2).
- (3) An offence against this section is an indictable offence but may be heard and determined, with the consent of the prosecutor and the defendant, by a court of summary jurisdiction.
- (4) If an offence is dealt with by a court of summary jurisdiction, the penalty that the court may impose is a fine not exceeding 250 penalty units.

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**101A Offence of having foreign boat equipped for fishing**

- (1) A person commits an offence if:
    - (a) the person intentionally has in his or her possession or charge a boat; and
    - (b) the boat is a foreign boat and the person is reckless as to that fact; and
    - (c) the boat is equipped for fishing and the person is reckless as to that fact; and
    - (d) the boat is at a place in the AFZ and the person is reckless as to that fact.
  - (2) The offence is punishable on conviction by a fine not more than 5,000 penalty units.
  - (3) The offence is an indictable offence.
  - (4) Subsection (1) does not apply if:
    - (a) the use or presence of the boat at the place is authorised by a foreign fishing licence or port permit; or
    - (b) a Treaty licence is in force in respect of the boat; or
    - (c) the boat's fishing equipment is stowed and the boat is at the place in accordance with the approval of AFMA given under, and in accordance with, the regulations made for the purposes of paragraph 101(1)(c); or
    - (d) the boat's fishing equipment is stowed and the boat is travelling, by the shortest practicable route, through the AFZ from a point beyond the outer limits of the AFZ to another such point; or
    - (e) the use of the boat for scientific research purposes in the place is authorised under a scientific permit.
- Note: The defendant bears an evidential burden in relation to the matters in subsection (4). See subsection 13.3(3) of the *Criminal Code*.
- (5) For the purposes of paragraphs (4)(c) and (d), a boat's fishing equipment is not stowed unless all of the boat's:
    - (a) nets, traps and other fishing equipment; and
    - (b) associated equipment, including buoys and beacons;

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are disengaged and secured, and where practicable stored inside the boat, in such a manner as not to be readily available for fishing.

**101AA Having foreign boat equipped for fishing in territorial sea within AFZ**

- (1) A person commits an offence if:
- (a) the person intentionally has in his or her possession or charge a boat; and
  - (b) the boat is a foreign boat and the person is reckless as to that fact; and
  - (c) the boat is equipped for fishing and the person is reckless as to that fact; and
  - (d) the boat is at a place that is in a part of the territorial sea of Australia that is in the AFZ.

Penalty: 5,000 penalty units or 2 years imprisonment, or both.

- (1A) Strict liability applies to paragraph (1)(d).

Note: For *strict liability*, see section 6.1 of the *Criminal Code*.

- (2) Subsection (1) does not apply if:
- (a) the use or presence of the boat at the place is authorised by a foreign fishing licence or port permit; or
  - (b) a Treaty licence is in force in respect of the boat; or
  - (c) the boat's fishing equipment is stowed and the boat is at the place in accordance with the approval of AFMA given under, and in accordance with, the regulations made for the purposes of paragraph 101(1)(c); or
  - (d) the boat's fishing equipment is stowed and the boat is travelling, by the shortest practicable route, through the AFZ from a point beyond the outer limits of the AFZ to another such point; or
  - (e) the use of the boat for scientific research purposes in the place is authorised under a scientific permit.

Note: The defendant bears an evidential burden in relation to the matters in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

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- (2A) For the purposes of paragraphs (2)(c) and (d), a boat's fishing equipment is not stowed unless all of the boat's:
- (a) nets, traps and other fishing equipment; and
  - (b) associated equipment, including buoys and beacons;
- are disengaged and secured, and where practicable stored inside the boat, in such a manner as not to be readily available for fishing.
- (3) A reference to the AFZ in this section does not include a reference to coastal waters taken to be in the AFZ because of section 76.

**101B Using boat outside AFZ to support illegal foreign fishing in AFZ**

- (1) A person (the *supporter*) commits an offence if:
- (a) the supporter intentionally uses a boat (the *support boat*); and
  - (b) the support boat is outside the AFZ but not in the territorial sea of a foreign country, and the supporter is reckless as to that fact; and
  - (c) the use of the support boat is directly in support of, or in preparation for:
    - (i) the use of a foreign boat (other than the support boat) by a person in the AFZ in contravention of section 100 or 100A; or
    - (ii) a person having possession or charge of a foreign boat (other than the support boat) in the AFZ in contravention of section 101 or 101A;and the supporter is reckless as to that fact.
- (2) The offence is punishable on conviction by a fine not more than 5,000 penalty units.
- (6) This section applies to all persons (including foreigners) and all boats (including foreign boats).

**102 Certain foreign boats not to enter Australian ports**

- (1) A person, being the master of a foreign fishing boat who, otherwise than in accordance with:
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- (a) a foreign fishing licence or a port permit; or
  - (b) the provisions of a prescribed agreement between the Commonwealth and another country; or
  - (c) the direction of a person exercising powers under a law of the Commonwealth or a law of a State or Territory;
- brings the boat into a port in Australia or in an external Territory commits an offence punishable on conviction by a fine not exceeding 500 penalty units.
- (2) Where:
- (a) a foreign fishing boat is brought into a port in Australia or in an external Territory under a port permit; and
  - (b) the permit is subject to a condition limiting the period during which the boat may remain in that port; and
  - (c) the boat remains in the port in contravention of that condition;
- then, except where the master of the foreign fishing boat ought in the circumstances to be excused, the master commits an offence punishable on conviction by a fine not exceeding 500 penalty units.
- (3) It is a defence to a prosecution for an offence against subsection (1) if the person charged satisfies the court that:
- (a) the boat was brought into the port at a time when the boat was engaged in operations that included the carrying of cargo, in the ordinary course of trade, between Australia and a foreign country, between Australia and an external Territory or between an external Territory and a country other than Australia; or
  - (b) the boat was being lawfully imported into Australia or the external Territory, as the case may be, by or on behalf of a person who was, or by or on behalf of persons each of whom was, at the time when the boat was brought into the port:
    - (i) a resident of Australia or of an external Territory; or
    - (ii) a company incorporated in Australia or in an external Territory; or

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- (c) an unforeseen emergency rendered it necessary to bring the boat into a port in Australia or in an external Territory in order to secure the safety of human life or of the boat.
- (4) An offence against this section is an indictable offence but may be heard and determined, with the consent of the prosecutor and the defendant, by a court of summary jurisdiction.
- (5) If an offence is dealt with by a court of summary jurisdiction, the penalty that the court may impose is a fine not exceeding 250 penalty units.
- (5A) An offence under this section is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.
- (6) In this section:

***foreign fishing boat*** means a foreign boat:

  - (a) that is equipped for fishing; or
  - (b) that AFMA has reasonable grounds to believe is being used, or is intended to be used, in activities in support of fishing by foreign boats.

**103 Foreign boats not to land fish in Australia**

- (1) A person commits an offence if:
  - (a) the person is the master of a foreign boat; and
  - (b) the person intentionally lands or tranships (or causes to be landed or transhipped) fish from the boat at a place; and
  - (c) the place is in Australia or an external Territory and the person is reckless as to that fact.
- (1A) The offence is punishable on conviction by a fine not more than 500 penalty units.
- (1B) Subsection (1) does not apply if:
  - (a) the fish were landed or transhipped in accordance with:
    - (i) the terms of a foreign fishing licence; or

- (ii) an entry under paragraph 21(2)(b) of the *Torres Strait Fisheries Act 1984*; or
- (iii) the terms of an approval given by the Minister; or
- (b) the person has a reasonable excuse for causing the fish to be landed or transhipped.

Note: The defendant bears an evidential burden in relation to the matter in subsection (1B). See subsection 13.3(3) of the *Criminal Code*.

(1C) The Minister may give a person written approval of the landing or transhipment of fish. The approval may be expressed to be subject to conditions.

(1D) The conditions to which an approval may be expressed to be subject include:

- (a) a condition that the person (the **approved person**) to whom the approval relates notify a specified person of the landing or transhipment; and
- (b) a condition that the approved person give a specified person a return of the species and quantity of fish landed or transhipped; and
- (c) a condition that the landing or transhipment occur under the supervision of a specified person.

This does not limit subsection (1C).

- (2) An offence against this section is an indictable offence but may be heard and determined, with the consent of the prosecutor and the defendant, by a court of summary jurisdiction.
- (3) If an offence is dealt with by a court of summary jurisdiction, the penalty that the court may impose is a fine not exceeding 250 penalty units.
- (4) An offence under subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

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**104 Foreign boats not to contravene condition of Treaty licence**

- (1) A person must not, in an area of the AFZ that is within the Treaty area:
  - (a) use a Treaty boat; or
  - (b) do an act or omit to do an act on, or in relation to, a Treaty boat;in respect of which a Treaty licence is in force, in contravention of a requirement that is, under the Treaty, a condition of the Treaty licence.
- (2) A person who contravenes subsection (1) commits an offence punishable on conviction by a fine not exceeding 500 penalty units.
- (3) An offence mentioned in subsection (1) is an indictable offence but may be heard and determined, with the consent of the prosecutor and the defendant, by a court of summary jurisdiction.
- (4) If an offence mentioned in subsection (1) is dealt with by a court of summary jurisdiction, the penalty that the court may impose is a fine not exceeding 250 penalty units.
- (4A) An offence mentioned in subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.
- (5) For the purposes of subsection (1), the use of an aircraft in association with the fishing activities of a Treaty boat is taken to be an act done or omitted to be done in relation to the Treaty boat.
- (6) Where a court convicts a person of an offence arising out of a contravention of subsection (1), the court may, in addition to imposing a penalty in respect of that offence, order that the person must not, during such period as the court determines, be on a boat in the AFZ with the intention of engaging in fishing.
- (7) A person who contravenes such an order commits an offence punishable, on conviction, by a fine not exceeding 50 penalty units.

### **105 Certain prosecutions to require consent of Minister**

A prosecution for an offence against this Act or the regulations that is alleged to have been committed on, with the use of, or in relation to, a Treaty boat, must not be instituted except with the Minister's written consent.

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**Division 5A—Offences in places beyond the AFZ**

**Subdivision A—Australian-flagged boats beyond the AFZ**

**105A Australian-flagged boat with fish on high seas**

- (1) A person commits an offence if:
  - (a) the person intentionally has a fish in his or her possession or control; and
  - (b) the fish is on an Australian-flagged boat on the high seas and the person is reckless as to that fact; and
  - (c) the taking of the fish is not authorised by a fishing concession or scientific permit and the person is reckless as to that fact.
- (2) The offence is punishable on conviction by a fine not more than 500 penalty units.

**105AA Person fishing for conserved fish stock on high seas without a concession—strict liability**

- (1) A person commits an offence if:
  - (a) the person uses a boat for fishing; and
  - (b) the fishing is for a conserved fish stock; and
  - (c) the boat is an Australian-flagged boat; and
  - (d) the boat is on the high seas in a part of the conservation area for the fish stock; and
  - (e) the fishing is not authorised by a fishing concession.
- (2) The offence is punishable on conviction by a fine of not more than 60 penalty units.
- (3) An offence under this section is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**105AB Person fishing for conserved fish stock on high seas without a concession**

- (1) A person commits an offence if:
  - (a) the person uses a boat for fishing; and
  - (b) the fishing is for a conserved fish stock; and
  - (c) the boat is an Australian-flagged boat; and
  - (d) the boat is on the high seas in a part of the conservation area for the fish stock; and
  - (e) the fishing is not authorised by a fishing concession.
- (2) The offence is punishable on conviction by a fine of not more than 500 penalty units.

**105B Australian-flagged boat on high seas equipped for fishing**

- (1) A person commits an offence if:
  - (a) a person intentionally has in his or her possession or charge an Australian-flagged boat; and
  - (b) the boat is equipped with nets, traps or other equipment for fishing and the person is reckless as to that fact; and
  - (c) the boat is at a place on the high seas and the person is reckless as to that fact.
- (2) The offence is punishable on conviction by a fine not more than 500 penalty units.
- (3) Subsection (1) does not apply if:
  - (a) the person holds a fishing concession or scientific permit authorising the boat to be at that location equipped with nets, traps or other equipment for fishing; or
  - (b) the person is acting on behalf of the holder of such a concession or permit; or
  - (c) the boat is engaged solely in the ordinary course of trade of carrying cargo between:
    - (i) Australia and a foreign country; or
    - (ii) Australia and an external Territory; or

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- (iii) an external Territory and a foreign country; or
- (iv) 2 external Territories; or
- (d) the person has a reasonable excuse.

**Note:** Even if subsection (1) does not apply because the person holds, or acts for the holder of, a fishing concession or scientific permit, the person will commit an offence under section 95 if the person contravenes a condition of the concession or permit.

- (4) The only burden of proof that a defendant bears in respect of subsection (3) is the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter in question existed.

**105C Australian-flagged boat fishing in foreign waters**

- (1) A person commits an offence if:
  - (a) the person intentionally uses an Australian-flagged boat for fishing; and
  - (b) the boat is in the exclusive economic zone, territorial sea, archipelagic waters (as defined in the United Nations Convention on the Law of the Sea) or internal waters of a foreign country and the person is reckless as to that fact; and
  - (c) the law of the country requires the person to have an authorisation (however described) given under the law of the country for the fishing and the person is reckless as to that fact.
- (2) The offence is punishable on conviction by a fine not more than 500 penalty units.
- (3) Subsection (1) does not apply if the person has an authorisation (however described) issued under the law of the country for the fishing.
- (4) The only burden of proof that a defendant bears in respect of subsection (3) is the burden of adducing or pointing to evidence that suggests a reasonable possibility that the matter in question existed.

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- (5) If the person has been convicted or acquitted in the foreign country of an offence involving the fishing, the person cannot be convicted of an offence under this section involving the fishing.

**105D Authorising foreign officials' action affecting  
Australian-flagged boats**

*Boarding boats suspected of illegal fishing in foreign waters*

- (1) On behalf of Australia, AFMA may authorise officials of a foreign country that is party to the Fish Stocks Agreement or that participates in an international fisheries management organisation to board and inspect an Australian-flagged boat on the high seas if:
- (a) AFMA or Australia has received a request from the appropriate authority of the foreign country for that country's officials to board and inspect the boat; and
  - (b) AFMA has reasonable grounds to believe that the boat has been used for fishing in the exclusive economic zone, territorial sea, archipelagic waters (as defined in the United Nations Convention on the Law of the Sea) or internal waters of the foreign country without an authorisation (however described) given under the law of that country; and
  - (c) AFMA is satisfied that the boarding and inspection will be carried out in accordance with the Fish Stocks Agreement or measures established by the international fisheries management organisation.

*Investigating breach of international fisheries management measures*

- (2) On behalf of Australia, AFMA may authorise an authority of a foreign country that is party to the Fish Stocks Agreement or that participates in an international fisheries management organisation to investigate an alleged contravention of an international fisheries management measure involving an Australian-flagged boat if:
- (a) an official of the foreign country has boarded the boat on the high seas in an area covered by the international fisheries management organisation; and

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- (b) the appropriate authority of the foreign country has notified AFMA or Australia that the official has reasonable grounds for believing that the boat has been used in contravention of the international fisheries management measure; and
- (c) AFMA is satisfied that the investigation will be carried out in accordance with the Fish Stocks Agreement or measures established by the international fisheries management organisation.

*Revocation of authorisation by AFMA*

- (3) AFMA may revoke an authorisation AFMA has given under this section.

*Form of authorisation or revocation by AFMA*

- (4) An authorisation, or revocation of an authorisation, by AFMA must be in writing or by electronic transmission. However, an authorisation or revocation cannot be made by electronic transmission of an oral message.

*Enforcement action for breach of international fisheries management measures*

- (5) On behalf of Australia, the Attorney-General may authorise in writing an authority of a foreign country to take specified action to enforce a law of the foreign country against a contravention of an international fisheries management measure on the high seas involving an Australian-flagged boat if:
  - (a) AFMA has authorised an authority of the foreign country under subsection (2) to investigate the alleged contravention; and
  - (b) the appropriate authority of the foreign country has communicated the results of the investigation to Australia; and
  - (c) the Attorney-General is satisfied that the action will be taken in accordance with the Fish Stocks Agreement or measures

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established by the international fisheries management organisation.

*Revocation of authorisation by Attorney-General*

- (6) The Attorney-General may revoke in writing an authorisation he or she has given under this section.

**Subdivision B—Using foreign boat to contravene international fisheries management measure**

**105E Contravention on high seas—strict liability**

- (1) A person commits an offence if:
- (a) the person uses a boat for fishing; and
  - (b) the person contravenes an international fisheries management measure in relation to the fishing; and
  - (c) the boat is on the high seas; and
  - (d) the boat is a foreign boat.

Penalty: 60 penalty units.

- (2) Strict liability applies to subsection (1).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) Subsection (1) does not apply if the act that contravenes the international fisheries management measure is fishing that is authorised by an authorisation (however described) issued under the law of the country of nationality of the boat.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

**105EA Contravention on high seas**

- (1) A person commits an offence if:
- (a) the person uses a boat for fishing; and
  - (b) the person contravenes an international fisheries management measure in relation to the fishing; and

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- (c) the boat is on the high seas; and
- (d) the boat is a foreign boat.

Penalty: 500 penalty units.

- (2) Strict liability applies to paragraphs (1)(c) and (d).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) Subsection (1) does not apply if the act that contravenes the international fisheries management measure is fishing that is authorised by an authorisation (however described) issued under the law of the country of nationality of the boat.

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

**105EB Attorney-General's consent required for prosecution**

- (1) The Attorney-General's written consent is required before a charge of an offence against section 105E or 105EA, alleged to have been committed by a person other than an Australian national, can proceed to hearing or determination.
- (2) Before granting such a consent, the Attorney-General must take into account any views expressed by the government of the country of nationality of the boat alleged to be involved in the offence.
- (3) Even though the Attorney-General has not granted such a consent, the absence of consent is not to prevent or delay:
- (a) the arrest of the suspected offender or proceedings related to arrest (such as proceedings for the issue and execution of a warrant); or
  - (b) the laying of a charge against the suspected offender; or
  - (c) proceedings for the extradition to Australia of the suspected offender; or
  - (d) proceedings for remanding the suspected offender in custody or on bail.

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- (4) If the Attorney-General declines to grant consent, the court in which the suspected offender has been charged with the offence must permanently stay proceedings on the charge.
- (5) In any proceedings, an apparently genuine document purporting to be a copy of a written consent granted by the Attorney-General in accordance with this section will be accepted, in the absence of proof to the contrary, as proof of such consent.

**105F Australian national on foreign boat in foreign waters—strict liability**

- (1) A person commits an offence if:
  - (a) the person uses a boat for fishing; and
  - (b) the person is an Australian national; and
  - (c) the person contravenes an international fisheries management measure in relation to the fishing; and
  - (d) the boat is in the exclusive economic zone, territorial sea, archipelagic waters (as defined in the United Nations Convention on the Law of the Sea) or internal waters of a foreign country; and
  - (e) the boat is a foreign boat.

Penalty: 60 penalty units.

- (2) Strict liability applies to subsection (1).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) Subsection (1) does not apply if the act that contravenes the international fisheries management measure is fishing that is authorised by an authorisation (however described) issued under the law of the country covered by paragraph (1)(d).

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

**105FA Australian national on foreign boat in foreign waters**

- (1) A person commits an offence if:
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- (a) the person uses a boat for fishing; and
- (b) the person is an Australian national; and
- (c) the person contravenes an international fisheries management measure in relation to the fishing; and
- (d) the boat is in the exclusive economic zone, territorial sea, archipelagic waters (as defined in the United Nations Convention on the Law of the Sea) or internal waters of a foreign country; and
- (e) the boat is a foreign boat.

Penalty: 500 penalty units.

- (2) Strict liability applies to paragraphs (1)(d) and (e).

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) Subsection (1) does not apply if the act that contravenes the international fisheries management measure is fishing that is authorised by an authorisation (however described) issued under the law of the country covered by paragraph (1)(d).

Note: A defendant bears an evidential burden in relation to the matter in subsection (3) (see subsection 13.3(3) of the *Criminal Code*).

## Subdivision C—Unauthorised foreign boat on high seas

### 105H Unauthorised fishing—strict liability

- (1) A person commits an offence if:
- (a) the person uses a boat for fishing; and
  - (b) the boat is a foreign boat; and
  - (c) the boat is on the high seas; and
  - (d) a law of the country of nationality of the boat requires the fishing to be authorised (however described); and
  - (e) the fishing is not so authorised.

Penalty: 60 penalty units.

- (2) Strict liability applies to subsection (1).

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Note: For strict liability, see section 6.1 of the *Criminal Code*.

**105I Unauthorised fishing**

- (1) A person commits an offence if:
  - (a) the person uses a boat for fishing; and
  - (b) the boat is a foreign boat; and
  - (c) the boat is on the high seas; and
  - (d) a law of the country of nationality of the boat requires the fishing to be authorised (however described); and
  - (e) the fishing is not so authorised.

Penalty: 500 penalty units.

**105J Attorney-General's consent required for prosecution**

- (1) The Attorney-General's written consent is required before a charge of an offence against this Subdivision, alleged to have been committed by a person other than an Australian national, can proceed to hearing or determination.
- (2) Before granting such a consent, the Attorney-General must take into account any views expressed by the government of the country of nationality of the boat alleged to be involved in the offence.
- (3) Even though the Attorney-General has not granted such a consent, the absence of consent is not to prevent or delay:
  - (a) the arrest of the suspected offender or proceedings related to arrest (such as proceedings for the issue and execution of a warrant); or
  - (b) the laying of a charge against the suspected offender; or
  - (c) proceedings for the extradition to Australia of the suspected offender; or
  - (d) proceedings for remanding the suspected offender in custody or on bail.

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- (4) If the Attorney-General declines to grant consent, the court in which the suspected offender has been charged with the offence must permanently stay proceedings on the charge.
- (5) In any proceedings, an apparently genuine document purporting to be a copy of a written consent granted by the Attorney-General in accordance with this section will be accepted, in the absence of proof to the contrary, as proof of such consent.

**Division 5B—Provisions relating to detention of suspected  
illegal foreign fishers**

**105Q Provisions relating to detention of suspected illegal foreign  
fishers**

Schedule 1A has effect.

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## Division 6—General

### Subdivision A—Forfeiture by court order

#### 106 Forfeiture of things used in certain offences

- (1) Where a court convicts a person of an offence against section 13 or subsection 95(5) the court may order the forfeiture of all or any of the following:
  - (a) if a boat was used in the commission of the offence—that boat; or
  - (b) a net, trap or equipment that was on board that boat at the time of the commission of the offence, or that was used in the commission of the offence; or
  - (c) fish on board that boat at that time or in relation to which the offence was committed; or
  - (d) the proceeds of the sale of fish of the kind referred to in paragraph (c).
- (2) Where a court convicts a person of an offence against section 102, 103 or 104 or Division 5A of Part 6 the court may order the forfeiture of all or any of the following:
  - (a) the boat in relation to which the offence is committed;
  - (b) a net, trap or equipment on board that boat at the time of the offence;
  - (c) fish on board that boat at that time or in relation to which the offence is committed;
  - (d) fish landed in contravention of section 103;
  - (e) the proceeds of the sale of any such fish.
- (2A) If a court convicts a person:
  - (a) of an offence against paragraph 95(1)(g) of this Act; or
  - (b) of an offence against section 136.1, 137.1 or 137.2 of the *Criminal Code* that relates to this Act;in respect of a logbook kept or purported to be kept, or a logbook or return furnished or purported to be furnished, under section 42

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of this Act, the court may order the forfeiture of all or any of the following:

- (c) if the logbook or return related, in whole or in part, to the taking, carrying, landing, transshipping, transporting or processing of fish—any boat employed in that activity;
- (d) if the logbook or return related, in whole or in part, to the taking or processing of fish—any net, trap or equipment on board a boat employed in that taking or processing for purposes related to that taking or processing;
- (e) if the logbook or return related, in whole or in part, to the taking, carrying, landing, transshipping, transporting or processing of fish—any fish on board a boat employed in that activity that were, or should have been, covered by the logbook or return;
- (f) if the logbook or return related, in whole or in part, to the taking, carrying, landing, transshipping, transporting, receipt or processing of fish—the proceeds of the sale of the fish that were, or should have been, covered by the logbook or return.

**106AAA Forfeiture of additional things on forfeited boats**

(1) This section applies if:

- (a) a court orders a boat to be forfeited under section 106 because:
  - (i) it was used in the commission of an offence (the **relevant offence**) against section 13 or subsection 95(5); or
  - (ii) it is a boat in relation to which an offence (also referred to as the **relevant offence**) against section 102, 103 or 104 or Division 5A of Part 6 was committed; and
- (b) at the time the court makes the order, there are nets, traps, equipment or fish (the **additional things**) on the boat that the court cannot order to be forfeited under section 106.

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*Forfeiture within 2 years*

- (2) If the order for the boat to be forfeited is made within 2 years after the commission of the relevant offence, the court may order the forfeiture of the additional things.

*Things owned by the person who owned the boat*

- (3) If the additional things are owned by the person who owned the boat immediately before the relevant offence was committed, the court may order the forfeiture of the additional things.
- (4) For the purposes of subsection (3), the additional things are taken, unless the contrary is proved, to be owned by the person who owned the boat immediately before the relevant offence was committed.

*Things owned by persons who commit offences*

- (5) If the additional things are owned:
- (a) by the person who committed the relevant offence; or
  - (b) by a person who committed an offence against:
    - (i) section 6 of the *Crimes Act 1914*; or
    - (ii) an ancillary offence (within the meaning of the *Criminal Code*);that relates to the relevant offence;
- the court may order the forfeiture of the additional things.
- (6) For the purposes of subsection (5), the additional things are taken, unless the contrary is proved, to be owned:
- (a) for the purposes of paragraph (5)(a)—by the person who committed the relevant offence; and
  - (b) for the purposes of paragraph (5)(b)—by a person who committed an offence against:
    - (i) section 6 of the *Crimes Act 1914*; or
    - (ii) an ancillary offence (within the meaning of the *Criminal Code*);that relates to the relevant offence.

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- (7) To avoid doubt, nothing in subsection (2), (3) or (5) limits the operation of another subsection of this section.

**106AAB Forfeited things become the property of the Commonwealth**

Any boat or other property (including fish) ordered by a court to be forfeited under this Subdivision becomes the property of the Commonwealth and must be dealt with or disposed of in accordance with the directions of the Minister.

**106AAC Rights and interests of the Commonwealth not limited**

To avoid doubt, a provision of this Subdivision giving the Commonwealth rights or interests in relation to property does not limit any other right or interest the Commonwealth has or acquires otherwise than under this Subdivision.

**Subdivision B—Automatic forfeiture of things**

**106A Forfeiture of things used in certain offences**

- (1) The following things are forfeited to the Commonwealth:
- (a) a foreign boat used in an offence against:
    - (i) subsection 95(2); or
    - (ii) section 99; or
    - (iii) section 100; or
    - (iv) section 100A; or
    - (v) section 100B; or
    - (vi) section 101; or
    - (vii) section 101A; or
    - (viii) section 101AA;
  - (b) a boat used in an offence against section 101B as a support boat (as defined in that section);
  - (c) a net or trap, or equipment, that:

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- (i) was on a boat described in paragraph (a) or (b) at the time of the offence mentioned in that paragraph; or
- (ii) was used in the commission of an offence against subsection 95(2) or section 99, 100, 100A, 100B, 101, 101A, 101AA or 101B;
- (d) fish:
  - (i) on a boat described in paragraph (a) or (b) at the time of the offence mentioned in that paragraph; or
  - (ii) involved in the commission of an offence against subsection 95(2) or section 99, 100, 100A, 100B, 101, 101A, 101AA or 101B.

Note: Paragraph 84(1)(ga) allows an officer to seize a thing that is forfeited under this section or that the officer has reasonable grounds to believe is forfeited.

(2) If:

- (a) a boat is forfeited to the Commonwealth under subsection (1) because it was used in the commission of an offence; and
- (b) the boat is seized under paragraph 84(1)(ga) or under section 67 of the *Maritime Powers Act 2013*;

any nets, traps or equipment on the boat at the time it is seized are taken, unless the contrary is proved:

- (c) for the purposes of subparagraph (1)(c)(i)—to have been on the boat at the time of the offence; and
- (d) for the purposes of subparagraph (1)(c)(ii)—to have been used in the commission of an offence against subsection 95(2) or section 99, 100, 100A, 100B, 101, 101A, 101AA or 101B.

(3) If:

- (a) a boat is forfeited to the Commonwealth under subsection (1) because it was used in the commission of an offence; and
- (b) the boat is seized under paragraph 84(1)(ga) or under section 67 of the *Maritime Powers Act 2013*;

any fish on the boat at the time it is seized are taken, unless the contrary is proved:

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- (c) for the purposes of subparagraph (1)(d)(i)—to have been on the boat at the time of the offence; and
- (d) for the purposes of subparagraph (1)(d)(ii)—to have been involved in the commission of an offence against subsection 95(2) or section 99, 100, 100A, 100B, 101, 101A, 101AA or 101B.

**106AA Forfeiture of additional things on seized boats**

- (1) This section applies if:
  - (a) a boat is forfeited to the Commonwealth under section 106A because it was used in the commission of an offence (the *relevant offence*); and
  - (b) the boat is seized under paragraph 84(1)(ga) or under section 67 of the *Maritime Powers Act 2013*; and
  - (c) at the time the boat is seized, there are nets, traps, equipment or fish (the *additional things*) on the boat that have not been forfeited under section 106A.

*Seizure within 2 years*

- (2) If the boat is seized within 2 years after it is forfeited, the additional things are forfeited to the Commonwealth at the time the boat is seized.

*Things owned by the person who owned the boat*

- (3) If the additional things are owned by the person who owned the boat immediately before the relevant offence was committed, the additional things are forfeited to the Commonwealth at the time the boat is seized.
- (4) For the purposes of subsection (3), the additional things are taken, unless the contrary is proved, to be owned by the person who owned the boat immediately before the relevant offence was committed.

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*Things owned by persons who commit offences*

- (5) If the additional things are owned:
- (a) by the person who committed the relevant offence; or
  - (b) by a person who committed an offence against:
    - (i) section 6 of the *Crimes Act 1914*; or
    - (ii) an ancillary offence (within the meaning of the *Criminal Code*);that relates to the relevant offence;
- the additional things are forfeited to the Commonwealth at the time the boat is seized.
- (6) For the purposes of subsection (5), the additional things are taken, unless the contrary is proved, to be owned:
- (a) for the purposes of paragraph (5)(a)—by the person who committed the relevant offence; and
  - (b) for the purposes of paragraph (5)(b)—by a person who committed an offence against:
    - (i) section 6 of the *Crimes Act 1914*; or
    - (ii) an ancillary offence (within the meaning of the *Criminal Code*);that relates to the relevant offence.
- (7) To avoid doubt, nothing in subsection (2), (3) or (5) limits the operation of another subsection of this section.

**106AB Rights and interests of the Commonwealth not limited**

To avoid doubt, a provision of this Subdivision giving the Commonwealth rights or interests in relation to property does not limit any other right or interest the Commonwealth has or acquires otherwise than under this Subdivision.

## **Subdivision BA—Automatic ownership of things**

### **106AC Fish taken with Commonwealth property**

If:

- (a) a thing is forfeited to the Commonwealth under section 106 or 106A; and
- (b) the thing is used for, or in the taking of, fish:
  - (i) after it is forfeited; and
  - (ii) without the written permission of the Minister for such use;

the fish are the property of the Commonwealth.

### **106AD Things on, in or attached to boats**

At any time during which a boat is the property of the Commonwealth because:

- (a) the court has ordered the forfeiture of the boat under section 106; or
- (b) the boat is forfeited under section 106A;

anything on, in or attached to the boat that forms part of the boat is also the property of the Commonwealth.

### **106AE Rights and interests of the Commonwealth not limited**

To avoid doubt, a provision of this Subdivision giving the Commonwealth rights or interests in relation to property does not limit any other right or interest the Commonwealth has or acquires otherwise than under this Subdivision.

## **Subdivision C—Dealing with things seized**

### **106B Application of this Subdivision**

This Subdivision sets out rules about the following:

- (a) a thing that an officer seizes under paragraph 84(1)(ga) or (gb):

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- (i) because the thing is forfeited under Subdivision B; or
  - (ii) because the officer has reasonable grounds to believe the thing is forfeited under Subdivision B;
- (b) a thing that an officer seizes under paragraph 84(1)(gc) or (gd):
  - (i) because the thing is the property of the Commonwealth because of the operation of Subdivision BA; or
  - (ii) because the officer has reasonable grounds to believe the thing is the property of the Commonwealth because of the operation of Subdivision BA.

**106C Notice of seizure**

*Giving notice*

- (1) The officer must give written notice of the seizure of the thing:
  - (a) if the thing is, or was on, a boat, or was used in connection with a boat:
    - (i) to the person who was the master of the boat immediately before the seizure; or
    - (ii) to the person whom the officer has reasonable grounds to believe was the master of the boat immediately before the seizure; or
  - (b) in a case not covered by paragraph (a):
    - (i) to the owner of the thing; or
    - (ii) to the person who had possession, custody or control of the thing immediately before it was seized.
- (1A) However, if the officer cannot conveniently give the notice to the person in person, the officer may give written notice of the seizure of the thing by fixing the notice to a prominent part of the thing, unless the thing is a fish.

*Content of notice*

- (2) The notice must:
  - (a) identify the thing; and

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- (b) state that the thing has been seized; and
- (c) state that the thing will be condemned as forfeited unless the owner of the thing or the person who had possession, custody or control of the thing immediately before it was seized gives the CEO within 30 days a written claim in English for the thing; and
- (d) specify the address of the CEO.

Note:       Section 106E condemns the thing if it is not claimed within 30 days.  
              Section 106G condemns the thing if it is claimed but the claimant does not get a court order supporting the claim.

**106D Dealing with thing before it is condemned**

- (1) On behalf of the Commonwealth, AFMA may cause the thing to be disposed of or destroyed if it is a boat and AFMA is satisfied that:
  - (a) the boat is unseaworthy; or
  - (b) the boat poses a serious risk to safety or public health; or
  - (ba) the boat poses an unacceptable level of biosecurity risk (within the meaning of the *Biosecurity Act 2015*); or
  - (c) the boat poses a serious risk of damage to other property or the environment; or
  - (d) the expenses of custody and maintenance of the boat between its seizure and condemnation are likely to be greater than its value.
- (2) If AFMA causes the boat to be disposed of, it may cause the disposal to be made subject to specified conditions.
- (3) The table lists some other provisions relevant to dealing with things before they are condemned as forfeited to the Commonwealth:

Provisions about dealing with things before they are condemned		
Item	Provision	Subject of provision
1	Paragraph 84(1)(t)	Officer's power to dispose of seized fish
2	Section 88	Release of seized property

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**106E Thing condemned if not claimed in time**

- (1) By force of this subsection, the thing is condemned as forfeited to the Commonwealth 30 days after notice of seizure of the thing has been given under section 106C, unless:
- (a) within the 30 days the owner of the thing or the person who had possession, custody or control of it immediately before it was seized gives the CEO a written claim for the thing; and
  - (b) the claim is in English; and
  - (c) the claim sets out an address for service on the person making the claim.
- Note: Section 106H requires things condemned as forfeited to be dealt with in accordance with the Minister's directions.
- (2) A person may claim the thing even if it is disposed of or destroyed before or after the claim.

**106F Dealing with claim for thing**

- (1) If the thing is claimed as described in section 106E:
- (a) an officer may retain possession of the thing without starting any proceedings for the condemnation of the goods; and
  - (b) the CEO may give the claimant a written notice stating that the thing will be condemned if the claimant does not institute proceedings against the Commonwealth within 2 months:
    - (i) to recover the thing; or
    - (ii) for a declaration that the thing is not forfeited.
- Note 1: An officer may retain possession even if the CEO does not give notice. If so, the claimant will be able to recover the thing only if it is released under section 88 or a court orders its release to the claimant.
- Note 2: If the CEO does give the notice and the claimant institutes proceedings, whether the claimant recovers the thing will depend on the outcome of the proceedings.
- (2) The CEO may give the notice to the claimant by posting it prepaid as a letter to the last address of the claimant that is known to the CEO. If the CEO does so, the letter is taken to be properly

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addressed for the purposes of section 29 of the *Acts Interpretation Act 1901*.

- (3) Subsection (2) does not limit the ways in which the notice may be given.

Note: Sections 28A and 29 of the *Acts Interpretation Act 1901* explain how a notice can be given, and when it is taken to be given.

- (4) To avoid doubt, the CEO may give the notice even if the thing has been released under section 88.

### **106G Condemnation of thing if it is claimed**

#### *Application*

- (1) This section applies if the CEO gives the claimant a notice under section 106F about instituting proceedings:
- (a) to recover the thing; or
  - (b) for a declaration that the thing is not forfeited.

#### *Condemnation if proceedings not started within 2 months*

- (2) By force of this subsection, the thing is condemned as forfeited to the Commonwealth 2 months after the notice is given if the claimant does not institute the proceedings within that period.

#### *Condemnation at end of proceedings started within 2 months*

- (3) By force of this subsection, the thing is condemned as forfeited to the Commonwealth at the end of the proceedings that are instituted by the claimant against the Commonwealth within 2 months of the claimant being given the notice if, at the end of the proceedings, there is not:
- (a) an order for the claimant to recover the thing; or
  - (b) an order for the Commonwealth to pay the claimant the proceeds of the sale of the thing if it has been sold before the end of the proceedings; or
  - (c) an order for the Commonwealth to pay the claimant the market value of the thing at the time it was disposed of

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(except by sale) or destroyed, if it has been disposed of  
(except by sale) or destroyed before the end of the  
proceedings; or

(d) a declaration that the thing is not forfeited.

*End of proceedings that go to judgment*

- (4) For the purposes of subsection (3), if the proceedings go to judgment, they end:
- (a) at the end of the period for lodging an appeal against the judgment, if no appeal is lodged within that period; or
  - (b) when the appeal lapses or is finally determined, if an appeal is lodged against the judgment within that period.

*Proceedings relating to thing that has been disposed of*

- (5) Proceedings relating to the thing may be instituted or continued even if it is disposed of or destroyed.

*Order for payment if thing has been disposed of or destroyed*

- (6) If the court hearing the proceedings decides that it would have ordered that the thing be delivered to a person apart from the fact that the thing had been disposed of or destroyed, the court must order the Commonwealth to pay the person an amount equal to:
- (a) the proceeds of the sale of the thing, if it has been sold before the end of the proceedings; or
  - (b) the market value of the thing at the time it was disposed of (except by sale) or destroyed, if it has been disposed of (except by sale) or destroyed before the end of the proceedings.

**106H Dealing with thing after it is condemned**

If the thing is condemned as forfeited to the Commonwealth, the thing must be dealt with or disposed of in accordance with the directions of the Minister.

## **106HA Evidence**

- (1) For the purposes of proceedings taken:
- (a) to recover a thing forfeited under Subdivision B; or
  - (b) for a declaration that a thing seized under paragraph 84(1)(ga) or (gb) is not forfeited under Subdivision B;
- if a person has been convicted of an offence mentioned in paragraph 106A(1)(a) or (b), the person is taken, unless the contrary is proved, to have committed the offence.
- (2) Subsection (1) does not apply in relation to a conviction:
- (a) in respect of which a review or appeal (however described) has been instituted but not finally determined; or
  - (b) that has been quashed or set aside; or
  - (c) in respect of which a pardon has been given.

## **Subdivision E—Obstruction of officers**

### **108 Obstruction of officers etc.**

- (1) A person must not:
- (a) fail to facilitate by all reasonable means the boarding of a boat by an officer; or
  - (b) refuse to allow a search to be made that is authorised by or under this Act; or
  - (c) refuse or neglect to comply with a requirement made by an officer under section 84; or
  - (d) when lawfully required to state the person's name and address to an officer, state a false name or address to the officer; or
  - (e) use abusive or threatening language to an officer or other person exercising a power or performing a function under this Act; or
  - (f) assault, resist or obstruct an officer or other person exercising a power or performing a function under this Act in the exercise of the power or performance of the function; or

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(g) impersonate an officer.

Penalty: Imprisonment for 12 months.

- (2) Paragraphs (1)(b) and (c) do not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) In paragraph (1)(c), strict liability applies to the physical element of circumstance, that the requirement is under section 84.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

**Subdivision F—Enforcement action under this Act prevails over other action**

**108A Seizure or forfeiture has effect despite other proceedings**

- (1) The seizure, detention or forfeiture of a boat or any other property (including fish) under this Act has effect despite:
- (a) any or all of the following events (each of which is an ***admiralty event***):
    - (i) the arrest of the boat under the *Admiralty Act 1988*;
    - (ii) the making of an order for the sale of the boat by a court in proceedings brought under the *Admiralty Act 1988*;
    - (iii) the sale of the boat under an order made by a court in proceedings brought under the *Admiralty Act 1988*; or
  - (b) any action (a ***PPSA event***) taken in relation to the enforcement under Part 4.3 of the *Personal Property Securities Act 2009* of a PPSA security interest in the boat or other property.
- (2) Subsection (1) has effect regardless of whether the seizure, detention or forfeiture, or the event that was the basis for the seizure, detention or forfeiture, occurred before or after the admiralty event or the PPSA event.

## **Subdivision G—Disclosures relating to illegal fishing activities**

### **108B Minister may disclose information relating to illegal fishing activities**

- (1) The Minister may disclose, or authorise a prescribed agency within the meaning of subsection (3) to disclose on the Minister's behalf, information relating to fishing activities that may involve a breach of the laws of Australia or of a foreign country, including personal information relating to the fishing activities of individuals that may involve such a breach, to:
  - (a) the government of a foreign country; or
  - (b) an instrumentality of such a government; or
  - (c) an international intergovernmental body.
- (2) In disclosing the information, or in authorising its disclosure, the Minister may require that it:
  - (a) not be disclosed by the government, instrumentality or body to which it is provided; or
  - (b) be disclosed only for such purposes, and on such conditions, as the Minister specifies.
- (3) An agency is a prescribed agency for the purposes of subsection (1) if:
  - (a) it is an agency within the meaning of section 7 of the *Public Service Act 1999*; and
  - (b) it is declared by the regulations to be a prescribed agency for the purposes of that subsection.

## **Part 7—Collection of levy and charge**

### **Division 1—Collection of levy imposed by the Fishing Levy Act 1991**

#### **109 Interpretation**

In this Division:

*levy* means levy imposed by the *Fishing Levy Act 1991*.

#### **110 When is levy due?**

Levy is due and payable at a time or times ascertained in accordance with the regulations.

#### **111 Payment by instalments**

- (1) The regulations may provide for the payment of an amount of 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 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 levy unpaid becomes due and payable at that time.

#### **112 Penalty for non-payment**

If an amount of levy remains unpaid after the day on which it becomes due for payment, there is payable to the Commonwealth by way of penalty, in addition to that amount of levy, an amount

calculated at the rate of 20% per annum upon the amount of levy from time to time remaining unpaid, to be calculated from the time when the amount of levy became payable.

### **113 Recovery of levy and other amounts**

- (1) The following amounts may be recovered by the Commonwealth as debts due to the Commonwealth:

- (a) levy that is due and payable;
- (b) an amount payable under section 112.

(1A) If:

- (a) levy is due and payable in respect of a statutory fishing right in respect of a period; and
- (b) that statutory fishing right is surrendered before any fishing activities are undertaken under the statutory fishing right during that period;

AFMA may, on behalf of the Commonwealth, by written notice given to the holder of the statutory fishing right, waive:

- (c) the levy payable in respect of that statutory fishing right in respect of the period; and
- (d) if any amount is payable under section 112 in respect of that levy—the amount so payable.

(2) If:

- (a) levy is due and payable in respect of a fishing permit granted under section 32; and
- (b) that permit is surrendered before any fishing activities are undertaken under the permit;

AFMA may, on behalf of the Commonwealth, by written notice given to the holder of the permit, waive:

- (c) the levy payable in respect of that permit; and
- (d) if any amount is payable under section 112 in respect of that levy—the amount so payable.

## **Division 2—Collection of levy imposed by the Foreign Fishing Licences Levy Act 1991**

### **114 Interpretation**

In this Division:

*levy* means levy imposed by the *Foreign Fishing Licences Levy Act 1991*.

### **115 Arrangements between AFMA and person by whom levy payable**

AFMA may make arrangements with a person by whom an amount of levy is, or will become, payable in relation to:

- (a) the time for payment; or
  - (b) the manner of payment;
- of the amount of levy or any part of that amount.

### **116 When is levy due?**

An amount of levy on the grant of a licence becomes due and payable:

- (a) where AFMA has, under section 115, made arrangements with a person by whom the amount of levy is or will become payable in relation to the time for payment of the amount of levy or any part of that amount—in accordance with the arrangements; and
- (b) in any other case—at the end of the period of 30 days after the grant of the licence.

### **117 Penalty for non-payment**

Where a person who is liable to pay an amount of levy fails to pay that amount or any part of that amount to the Commonwealth at or before the time when that amount becomes due and payable, the

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person is liable to pay to the Commonwealth, by way of penalty, in addition to that amount of levy, an amount calculated at the rate of 10% per month upon the amount of levy from time to time remaining unpaid, computed for the period commencing on the day on which that amount of levy became due and payable and ending on the day specified in the licence as being the day until which the licence is to remain in force.

### **118 Recovery of levy and other amounts**

The following amounts may be recovered by the Commonwealth as debts due to the Commonwealth:

- (a) levy that is due and payable;
- (b) an amount payable under section 117.

## **Division 3—Collection of charge imposed by the Statutory Fishing Rights Charge Act 1991**

### **119 Interpretation**

In this Division:

***charge*** means charge imposed by the *Statutory Fishing Rights Charge Act 1991*.

### **120 When is charge due?**

Subject to section 121, charge is due and payable:

- (a) at a time or times ascertained in accordance with the regulations; or
- (b) if the regulations do not make such provision—at the time of the grant of the statutory fishing right.

### **121 Payment by instalments**

- (1) The regulations may provide for the payment of an amount of charge 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 charge 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 charge unpaid becomes due and payable at that time.

## **122 Penalty for non-payment**

If an amount of charge remains unpaid after the day on which it becomes due for payment, there is payable to the Commonwealth, by way of penalty, in addition to that amount of charge, an amount calculated at the rate of 20% per annum upon the amount of charge from time to time remaining unpaid, to be calculated from the time when the amount of charge became payable.

## **123 Recovery of charge and other amounts**

The following amounts may be recovered by the Commonwealth as debts due to the Commonwealth:

- (a) charge that is due and payable; and
- (b) an amount payable under section 122.

## **Part 8—Review by the Statutory Fishing Rights Allocation Review Panel**

### **Division 1—Establishment etc. of Panel**

#### **124 Establishment of Panel**

A Statutory Fishing Rights Allocation Review Panel is established.

#### **125 Constitution**

The Panel is to consist of the following members:

- (a) a Principal Member;
- (b) such other members as are appointed in accordance with this Act, not exceeding the number (if any) specified in the regulations.

#### **126 Appointment of members**

- (1) The members of the Panel are to be appointed by the Minister.
- (2) A person may not be appointed as a member for more than 3 consecutive terms.
- (3) Members of the Panel, other than the Principal Member, are to be appointed from persons nominated under Division 2.
- (4) Subject to this Part, a member holds office for such term (not exceeding 4 years) as is specified in the instrument of appointment, but is eligible for re-appointment in accordance with this Part.
- (5) A member is to be appointed as a part-time member.
- (6) The appointment of a person as a member is not invalid because of a defect or irregularity in connection with the person's nomination or appointment.

### **127 Qualifications etc. of Principal Member**

The Minister is to appoint a person to be the Principal Member of the Panel only if the Minister is satisfied that the person has had experience at a high level in industry, commerce or public administration or in the practice of a profession.

### **128 Acting Principal Member**

The Minister may appoint a person to act in the office of Principal Member:

- (a) during a vacancy in that office, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Principal Member is absent from duty or from Australia or is, for any other reason, unable to perform the duties of the office of Principal Member.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

### **129 Constitution of Panel for exercise of powers**

For the purpose of a particular review, the Panel is to be constituted by:

- (a) the Principal Member; and
- (b) 2 members selected by the Principal Member.

### **130 Member unable to complete review**

If the Panel has commenced or completed a review of a decision but has not finally determined the matter and one of the members (other than the Principal Member) constituting the Panel for the purposes of the review has:

- (a) ceased to be a member; or
- (b) ceased to be available for the purposes of the review, whether because of the operation of section 134 or otherwise;

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the hearing and determination, or the determination, of the review is to be completed by the Panel constituted by the remaining members.

### **131 Remuneration and allowances of members**

- (1) A member is to be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination is in operation, the member is to be paid such remuneration as is prescribed.
- (2) A member is to be paid such allowances as are prescribed.
- (3) Where:
  - (a) a person who is a member of, or a candidate for election to, the Parliament of a State; and
  - (b) under the law of the State, the person would not be eligible to remain, or to be elected, as a member of that Parliament if the person were entitled to remuneration or allowances under this Act;the person must not be paid remuneration or allowances under this Act, but is to be reimbursed the expenses that the person reasonably incurs in performing duties under this Act.
- (4) Where a member:
  - (a) is a member of the Parliament of a State, but subsection (3) does not apply in relation to the person; or
  - (b) is in the service or employment of a State, or an authority of a State, on a full-time basis; or
  - (c) holds or performs the duties of an office or position established by or under a law of a State on a full-time basis;it is a condition of the person's holding office under this Act that the person pay to the State, within one month of receiving an amount of remuneration under this Act, an amount equal to the amount of the remuneration.
- (5) An amount payable under subsection (4) may be recovered by the State as a debt due to the State.

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- (6) This section has effect subject to the *Remuneration Tribunal Act 1973*.
- (7) In this section:

***Parliament*** means:

- (a) in relation to the Australian Capital Territory—the Legislative Assembly for the Australian Capital Territory; and
- (b) in relation to the Northern Territory—the Legislative Assembly of the Northern Territory.

***State*** includes the Australian Capital Territory and the Northern Territory.

### **132 Other terms and conditions**

A member holds office on such terms and conditions (if any) in respect of matters not provided for by this Act as are determined by the Minister in writing.

### **133 Resignation**

A member of the Panel may resign by giving to the Minister a signed notice of resignation.

### **134 Disclosure of interests**

- (1) Where a member is, or is to be, a member of the Panel constituted for the purposes of a review and has a conflict of interest in relation to the review, the member:
- (a) must disclose the matters giving rise to that conflict to the parties to the proceeding; and
  - (b) except with the consent of all the parties to the proceeding, must not take part in the review or exercise any powers in relation to the review.
- (2) Where the Principal Member becomes aware that a member is, or is to be, a member of the Panel as constituted for the purposes of a

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review and that the member has a conflict of interest in relation to the review:

- (a) if the Principal Member considers that the member should not take part, or should not continue to take part, in the review—the Principal Member must direct the member accordingly; or
  - (b) in any other case—the Principal Member must disclose the member's interest to all the parties to the proceedings.
- (3) Where the Principal Member discloses the member's interest to all the parties to the proceedings, the member must not, except with the consent of all the parties, take part in the review or exercise any powers in relation to the review.
- (4) For the purposes of this section, a member has a conflict of interest in relation to a review by the Panel if the member has any interest, pecuniary or otherwise, that could conflict with the proper performance of the member's functions in relation to that review.

## 135 Termination of appointment

- (1) The Minister may terminate the appointment of a member of the Panel for:
  - (a) misbehaviour or physical or mental incapacity; or
  - (b) inefficiency or incompetence.
- (2) If a member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, the Minister may terminate the appointment of the member.

## 136 Registries

The Minister is to arrange for the establishment of such Registries of the Panel as the Minister thinks fit.

### **137 Officers of Panel**

- (1) There are to be a Registrar of the Panel and such Deputy Registrars and other officers of the Panel as are required.
- (2) The Registrar, Deputy Registrars and other officers of the Panel are to be appointed by the Minister.
- (3) The officers of the Panel have:
  - (a) such duties, powers and functions as are provided by this Act and the regulations; and
  - (b) such other duties and functions as the Principal Member directs.
- (4) The Registrar, Deputy Registrars and other officers of the Panel are to be persons engaged under the *Public Service Act 1999*.

### **138 Acting appointments**

- (1) The Minister may appoint a person engaged under the *Public Service Act 1999* to act in a Panel office:
  - (a) during a vacancy in the office; or
  - (b) during a period when the holder of the office is absent from duty.

- (2) In this section:

***Panel office*** means:

- (a) the office of the Registrar of the Panel; or
- (b) an office of Deputy Registrar of the Panel; or
- (c) the office of any other officer of the Panel appointed under section 137.

## **Division 2—Nomination and selection process for members of the Panel**

### **139 Presiding Member**

- (1) The Minister is to appoint a person to be the Presiding Member of Australian Fisheries Management Authority Selection Committees.
- (2) The Presiding Member is to be appointed on a part-time basis.
- (3) Subject to this Division, the Presiding Member holds office for such period, not exceeding 3 years, as is specified in the instrument of appointment, but is eligible to be re-appointed once in accordance with this Act.

### **140 Acting Presiding Member**

The Minister may appoint a person to act as Presiding Member:

- (a) during a vacancy in the office of Presiding Member (whether or not an appointment has previously been made to the office); or
- (b) during any period, or during all periods, when the Presiding Member is absent from Australia or is, for any other reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

### **141 Request for nominations**

- (1) The Minister may, by written notice given to the Presiding Member, request the Presiding Member to establish a Selection Committee for the purpose of:
  - (a) nominating a person or persons for appointment (otherwise than as the Principal Member) as a member or members of the Panel; or

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- (b) if there is a vacancy caused by the resignation of, or the ending of the appointment of, any member (other than the Principal Member)—nominating a person for appointment.
- (2) The Minister is to specify in the notice a period within which the Selection Committee is to comply with the notice.

**141A Selection Committee**

- (1) Where the Presiding Member receives a request under section 141, he or she must:
  - (a) establish a Selection Committee for the purpose of nominating a person or persons for appointment to the Panel; and
  - (b) give to the body that is the peak industry body within the meaning of the *Fisheries Administration Act 1991* a written notice requesting the body to nominate to the Minister persons for appointment to the Selection Committee; and
  - (c) give to the Ministerial Council a written notice requesting the Council to nominate to the Minister a person for appointment to the Selection Committee; and
  - (d) take reasonable steps to inform members of the public (which may consist of advertising in a newspaper circulating generally throughout the Commonwealth), and members of such groups of persons (if any) as the Presiding Member thinks appropriate, of the following matters:
    - (i) that nominations are being sought for appointment of a person or persons to the Panel;
    - (ii) the qualifications for nomination required by a person.
- (2) The function of the Selection Committee is, in accordance with the request of the Minister, to nominate a person or persons for appointment to the Panel.
- (3) The Selection Committee has power to do all things that are necessary or convenient to be done for, or in connection with, the performance of its function.

## Section 141B

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### **141B Membership of Selection Committee**

- (1) A Selection Committee is to consist of the following members:
  - (a) the Presiding Member;
  - (b) 2 members determined by the Minister, one of whom has knowledge of environmental conservation issues;
  - (c) 2 members nominated by the peak industry body referred to in paragraph 141A(1)(b);
  - (d) a member nominated by the Ministerial Council.
- (2) A Selection Committee member referred to in paragraph (1)(b), (c) or (d) is to be appointed by the Minister in writing and holds office on a part-time basis.

### **141C Selection of nominees**

- (1) A Selection Committee must only nominate for appointment as members of the Panel persons who have expertise in one or more of the following fields:
  - (a) commercial fishing;
  - (b) fishing industry operations other than commercial fishing;
  - (c) fisheries science;
  - (d) natural resource management;
  - (e) marine ecology;
  - (f) economics;
  - (g) business management;
  - (h) such other fields (if any) as are prescribed.
- (2) In selecting persons for nomination, a Selection Committee must try to choose such persons as will ensure, as far as practicable, that the members of the Panel collectively possess expertise in all of the fields referred to in subsection (1).
- (3) A Selection Committee must not nominate a person who is:
  - (a) a member of the Selection Committee; or
  - (b) a commissioner of the Commission; or
  - (c) under subsection 126(2), ineligible for appointment.

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**141D Nomination**

- (1) Within the period specified in a notice under section 141:
  - (a) the Selection Committee must select a person or persons for nomination according to the request; and
  - (b) the Presiding Member must, on behalf of the Committee, nominate the person or persons selected by the Committee.
- (2) A nomination must:
  - (a) be in writing; and
  - (b) be given to the Minister.
- (3) A Selection Committee must select only one person in respect of each appointment to be made by the Minister.
- (4) Where a person is nominated for appointment, the Presiding Member must attach to the nomination a statement setting out:
  - (a) details of the person's qualifications and experience; and
  - (b) any other information regarding the person that the Committee considers will assist the Minister in deciding whether to appoint the person.

**141E Rejection of nominations**

- (1) If the Minister is not satisfied that a person nominated by a Selection Committee is suitable for appointment, the Minister may give the Presiding Member written notice that he or she rejects the nomination of the person.
- (2) The Minister may include in a notice of rejection a further request under section 141 for a nomination of a person for appointment to the position concerned.

**141F Meetings of a Selection Committee**

- (1) Meetings of a Selection Committee are to be held at such times and places as the Committee determines.
- (2) The Presiding Member may convene a meeting of a Committee.

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- (3) At a meeting, the following persons constitute a quorum:
  - (a) the Presiding Member;
  - (b) a member referred to in paragraph 141B(1)(b);
  - (c) a member referred to in paragraph 141B(1)(c);
  - (d) one other member who may also be a member referred to in one of those paragraphs.
- (4) The Presiding Member is to preside at all meetings of a Committee.
- (5) A question arising at a meeting of a Committee is to be decided by a majority of the votes of the members present and voting.
- (6) At a meeting of a Committee, the Presiding Member has a deliberative vote and, if there is an equality of votes, also has a casting vote.
- (7) A Committee must keep a record of its proceedings.
- (8) The procedure of a Committee is to be as determined by the Committee.

### **141G Remuneration and allowances**

- (1) The Presiding Member of a Selection Committee is to be paid such remuneration as is determined by the Remuneration Tribunal but, if no determination is in operation, the Presiding Member is to be paid such remuneration as is prescribed.
- (2) The Presiding Member is to be paid such allowances as are prescribed.
- (3) A member (other than the Presiding Member) is to be paid such travelling allowance as is prescribed.
- (4) This section has effect subject to the *Remuneration Tribunal Act 1973*.

### **141H Leave of absence**

- (1) The Minister may grant to the Presiding Member leave of absence from a meeting of a Selection Committee.
- (2) The Presiding Member may grant to another member of a Committee leave of absence from a meeting of the Committee.

### **141J Resignation**

A member of a Selection Committee may resign by giving to the Minister a signed notice of resignation.

### **141K Termination of appointment of member of Selection Committee**

- (1) The Minister may terminate the appointment of a member of a Selection Committee for:
  - (a) misbehaviour or physical or mental incapacity; or
  - (b) inefficiency or incompetence.
- (2) If a member of a Committee:
  - (a) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of remuneration for their benefit; or
  - (b) fails, without reasonable excuse, to comply with his or her obligations under section 141L; or
  - (c) is absent, without leave of absence, from 3 consecutive meetings of the Committee;the Minister may terminate the appointment of the member.

### **141L Disclosure of interests by members of Selection Committees**

- (1) Where:
  - (a) a member of a Selection Committee has a direct or indirect interest in a matter being considered, or about to be considered, by the Committee; and

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- (b) the interest could conflict with the proper performance of the member's duties in relation to the consideration of the matter;
- the member must, as soon as practicable after the relevant facts have come to the member's knowledge, disclose the nature of the interest at a meeting of the Committee.
- (2) A disclosure under subsection (1) must be recorded in the minutes of the meeting.

### **141M Resolutions without meetings**

- (1) Where:
  - (a) copies of a document setting out a proposed resolution of a Selection Committee are received by at least 4 members of the Committee, of whom one is the Presiding Member; and
  - (b) at least 4 such members, being members who would constitute a quorum at a meeting of the Committee, sign a copy of the document;the Committee is taken to have passed a resolution in the terms set out in the document at a meeting of the Committee.
- (2) The resolution is taken to have been passed:
  - (a) on the day on which copies of the document were signed by members; or
  - (b) if the copies were signed on different days—on the latest of those days.

### **141N Consultants etc.**

- (1) The Presiding Member may, on behalf of a Selection Committee, engage persons as consultants to assist the Committee in the performance of its functions.
- (2) The Presiding Member may only engage persons who have suitable qualifications and experience.

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- (3) The Presiding Member may, on behalf of a Selection Committee, engage persons to perform clerical or administrative services in connection with the performance of the Committee's functions.
- (4) The terms and conditions of engagement of persons under subsection (1) or (3) are to be determined by the Committee.

**141P Presiding Member to abolish Selection Committee**

Where:

- (a) the Minister has appointed to the Panel a person or persons nominated by a Selection Committee; and
- (b) the Committee has not made any nominations for appointment that have yet to be accepted or rejected by the Minister; and
- (c) there are no matters in a request by the Minister under section 141 or 141E that are still to be dealt with by the Committee;

the Presiding Member must abolish the Committee.

**141Q Annual reports of Selection Committees**

- (1) The Presiding Member must, as soon as practicable after 30 June in each year, prepare and give to the Minister a report on the operations, during the immediately preceding financial year, of Selection Committees (if any) established by the Presiding Member or any other Presiding Member.
- (2) Where the first appointment of a Presiding Member does not begin on 1 July, subsection (1) has effect in relation to the period beginning on the day the appointment begins and ending on the next 30 June as if:
  - (a) if the period is less than 3 months—the period were included in the next financial year; or
  - (b) in any other case—the period were a financial year.
- (3) A report for a financial year may, subject to agreement between the Presiding Member and the Secretary of the Department, be

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included, as a discrete part, in the annual report of the Department for that financial year.

- (4) If subsection (3) does not apply to a report under this section, the Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives the report.

## **Division 3—Review by Panel**

### **142 Function**

- (1) The Panel has the function of reviewing decisions mentioned in subsection 23(1) made by AFMA or a Joint Authority as to the person or persons to whom the grant of a fishing right in a managed fishery is to be made.
- (2) It is not a function of the Panel to review the first decision to grant fishing rights made by AFMA under the first plan of management determined by AFMA for the fishery known as the Northern Prawn Fishery or for the fishery known as the Southern Bluefin Tuna Fishery.

### **143 Application to Panel for review**

- (1) A person who:
  - (a) is dissatisfied with a decision that is reviewable under section 142; and
  - (b) was registered under section 26 in relation to the grant of a fishing right to which the decision relates;may, within 14 days after being notified by AFMA or by the Joint Authority of the decision, by written notice, apply to the Panel for review of the decision.
- (2) An application for review must:
  - (a) include details of the decision in respect of which review is sought; and
  - (b) include details of the reasons why the review is sought.

### **144 AFMA or Joint Authority to be notified of application for review**

- (1) Where an application for a review of a decision is made under section 143, the Principal Member must, as soon as practicable, give written notice of the making of the application:

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- (a) to AFMA or the Joint Authority, whichever made the decision; and
  - (b) to each other person who was registered under section 26 in relation to the grant of a fishing right to which the decision related.
- (2) Where AFMA or a Joint Authority is notified of an application for review, it must, within 14 days of being so notified, give to the Principal Member a copy of:
  - (a) the reasons for the decision; and
  - (b) each other document or part of a document that is in the possession or control of AFMA or the Joint Authority and is considered by it to be relevant to the review of the decision, including, if required by the Panel, documents relating to the general state of the fishery to which the decision under review relates.
- (3) A person (including AFMA), or a Joint Authority, to whom a notice is given under subsection (1) is a party to the proceeding before the Panel.

## 145 Arrangements for hearing of application

- (1) If an application is made to the Panel for review of a decision, the Principal Member must fix the date, time and place for the hearing of the application.
- (2) The Principal Member must give to each party to a proceeding before the Panel written notice of the date, time and place fixed for the hearing of the application.

## 146 Powers of the Panel etc.

- (1) For the purposes of the review of a decision, the Panel may:
  - (a) take evidence on oath or affirmation; and
  - (b) adjourn the review from time to time.

- (2) The Principal Member may, in relation to a review:
  - (a) summon a person to appear before the Panel to give evidence; and
  - (b) summon a person to produce to the Panel such documents as are referred to in the summons; and
  - (c) require a person appearing before the Panel to give evidence to take an oath or to make an affirmation; and
  - (d) administer an oath or affirmation to a person so appearing.
- (3) The oath or affirmation to be taken or made by a person for the purposes of this section is an oath or affirmation that the evidence that the person will give will be true.
- (4) A person appearing before the Panel to give evidence is not entitled:
  - (a) to be represented before the Panel by any other person; or
  - (b) to examine or cross-examine any other person appearing before the Panel to give evidence.
- (5) Despite anything else contained in this section, the Panel may accept from a person, instead of oral evidence, a written statement verified by statutory declaration.

## **147 Procedure of Panel**

- (1) In a proceeding before the Panel:
  - (a) the procedure of the Panel is, subject to this Act and the regulations, within the discretion of the Panel; and
  - (b) the proceeding is to be conducted with as little formality and technicality, and as quickly, as the requirements of this Act and a proper consideration of the matter before the Panel permit; and
  - (c) the Panel is not bound by rules of evidence but may inform itself on any matter in any way it thinks appropriate.
- (2) For the purposes of subsection (1), directions as to the procedure to be followed at or in connection with the hearing of an application may be given:

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- (a) where the hearing has not commenced—by the Principal Member or by a member authorised by the Principal Member to give directions for the purposes of this paragraph; and
  - (b) where the hearing of the application has commenced—by the Principal Member or by any other member authorised by the Principal Member to give such directions.
- (3) A direction may be varied or revoked at any time by any member empowered to give such a direction.
- (4) The Principal Member may at any time vary or revoke an authorisation under this section.

### **148 Representation before Panel**

At the hearing of an application, a party to the proceeding may appear in person or may be represented by some other person.

### **149 Oral evidence usually given in public**

- (1) Subject to this section, the Panel is to take oral evidence in public.
- (2) Where the Panel is satisfied that it is in the public interest to do so, the Panel may direct that particular oral evidence, or oral evidence for the purposes of a particular review, is to be taken in private.
- (3) Where the Panel gives a direction under subsection (2), it may give directions as to the persons who may be present when the oral evidence is given.

### **150 Powers in relation to decisions under review**

- (1) The Panel may, for the purposes of reviewing a decision, exercise all the powers and discretions that are conferred by this Act on the person or persons who made the decision.
- (2) The Panel may:
  - (a) affirm the decision; or
  - (b) vary the decision; or

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- (c) set the decision aside and substitute a new decision.
- (3) If the Panel:
  - (a) varies the decision; or
  - (b) sets aside the decision and substitutes a new decision;the decision as varied or substituted is (except for the purposes of applications to the Panel for review or of appeals from decisions of the Panel) taken to be a decision of AFMA or the Joint Authority, as the case may be.
- (4) A decision made by the Panel takes effect when the applicant is notified of the decision under subsection 160(2).

### **151 Withdrawal of application for review**

- (1) An applicant for review of a decision may withdraw the application at any time.
- (2) A withdrawal may be made by sending or delivering written notice of withdrawal to the Panel.

### **152 Power to dismiss application**

- (1) If:
  - (a) a person makes an application to the Panel for review of a decision; and
  - (b) the Principal Member is satisfied, either after having communicated with the person or having made reasonable attempts to contact the person and having failed to do so, that the person does not intend to proceed with the application;the Principal Member may dismiss the application.
- (2) If the Principal Member dismisses an application under subsection (1) the application is taken to have been withdrawn at the time when the application is dismissed.

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### **153 Refusal to be sworn or to answer questions etc.**

- (1) A person appearing before the Panel to give evidence must not:
- (a) when required under section 146 either to take an oath or to make an affirmation—refuse or fail to comply with the requirement; or
  - (b) refuse or fail to answer a question that the person is required to answer by the Panel.

Penalty: 30 penalty units.

- (1A) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (1A). See subsection 13.3(3) of the *Criminal Code*.

- (1B) In paragraph (1)(a), strict liability applies to the physical element of circumstance, that the requirement is under section 146.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (2) A person must not refuse or fail to produce a document that a person is required to produce by a summons under section 146 served on the person as prescribed.

Penalty: 30 penalty units.

- (2A) Subsection (2) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2A). See subsection 13.3(3) of the *Criminal Code*.

- (2B) In subsection (2), strict liability applies to the physical element of circumstance, that the requirement is under section 146.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

- (3) A person appearing before the Panel to give evidence must not intentionally give evidence, knowing that it is false or misleading in a material particular.

Penalty: Imprisonment for 6 months.

## **154 Majority decision**

Any question relating to the review of a decision before the Panel is to be decided:

- (a) according to the opinion of a majority of the members constituting the Panel for the purposes of the review; or
- (b) if the Panel, for a reason mentioned in section 130, is constituted by the Principal Member and another member—according to the opinion of the Principal Member.

## **155 Panel may restrict publication of certain matters**

- (1) Where the Panel is satisfied, in relation to a review, that it is in the public interest that:
  - (a) any evidence given before the Panel; or
  - (b) any information given to the Panel; or
  - (c) the contents of any document produced to the Panel;should not be published, or should not be published except in a particular manner and to particular persons, the Panel may give a written direction accordingly.
- (2) A person must not contravene a direction given by the Panel under subsection (1).

Penalty: Imprisonment for 6 months.

- (3) Where the Panel has given a direction under subsection (1) in relation to the publication of any evidence or information or of the contents of a document, the direction does not:
  - (a) excuse the Panel from its obligations under section 160; or
  - (b) prevent a person from communicating to another person a matter contained in the evidence, information or document if the first-mentioned person has knowledge of the matter otherwise than because of the evidence or information having been given or the document having been produced to the Panel.

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### **156 Failure of witness to attend**

- (1) A person who has been served, as prescribed, with a summons to appear before the Panel to give evidence and tendered reasonable expenses must not:
- (a) fail to attend as required by the summons; or
  - (b) fail to appear and report from day to day unless excused, or released from further attendance, by a member.

Penalty: 30 penalty units.

- (2) Subsection (1) does not apply if the person has a reasonable excuse.

Note: The defendant bears an evidential burden in relation to the matter in subsection (2). See subsection 13.3(3) of the *Criminal Code*.

- (3) An offence under subsection (1) is an offence of strict liability.

Note: For strict liability, see section 6.1 of the *Criminal Code*.

### **157 Protection of members and persons giving evidence**

- (1) A member has, in the performance of his or her duties as a member, the same protection and immunity as a member of the Administrative Appeals Tribunal.
- (2) Subject to this Part, a person summoned to attend, or appearing, before the Panel to give evidence has the same protection, and is, in addition to the penalties provided by this Part, subject to the same liabilities, as a witness in a proceeding before the Administrative Appeals Tribunal.

### **158 Fees for persons giving evidence**

- (1) A person, other than a party to a proceeding, summoned to appear before the Panel to give evidence is entitled to be paid, in respect of his or her attendance, fees and allowances for expenses, fixed by or in accordance with the regulations.

- (2) The fees and allowances are to be paid:
  - (a) where a party to a proceeding notifies the Panel that he or she wants the Panel to obtain evidence from the person—by the party; and
  - (b) in any other case—by AFMA.

### **159 Person must not obstruct etc.**

A person must not:

- (a) obstruct or hinder the Panel or a member in the performance of the functions of the Panel; or
- (b) disrupt the taking of evidence by the Panel.

Penalty: Imprisonment for 6 months.

### **160 Procedure following Panel decision**

- (1) Where the Panel makes its decision on a review, the panel is to prepare a written statement:
  - (a) setting out the decision of the Panel on the review; and
  - (b) setting out the reasons for the decision.
- (2) The Panel must give each party to the proceeding a copy of the statement as soon as practicable after the decision concerned is made.

## **Division 4—Appeals**

### **161 Appeal to Federal Court of Australia on question of law**

- (1) An appeal lies to the Federal Court of Australia, on a question of law, from any decision of the Panel made under this Part.
- (2) An appeal may be instituted by a party to a proceeding before the Panel.
- (3) An appeal must be instituted within 28 days after the appellant is notified under subsection 160(2) of the decision concerned.
- (4) The Federal Court of Australia is to hear and determine the appeal and may make such order as it thinks appropriate.
- (5) Without limiting the generality of subsection (4), the orders that may be made by the Federal Court of Australia on an appeal include:
  - (a) an order affirming or setting aside the Panel's decision; and
  - (b) an order remitting the matter to be reviewed and decided again, either with or without the taking of further evidence, by the Panel in accordance with the directions of that court.

### **162 Operation etc. of decision subject to appeal**

- (1) Subject to this section, the institution of an appeal to the Federal Court of Australia from a decision of the Panel does not:
  - (a) affect the operation of the decision; or
  - (b) prevent the taking of action to implement the decision; or
  - (c) prevent the taking of action in reliance on the making of the decision.
- (2) Where an appeal is instituted in the Federal Court of Australia from a decision of the Panel, that court or a Judge of that court may make such orders of the kind mentioned in subsection (3) as that court or Judge considers appropriate for the purpose of securing the effectiveness of the hearing and the determination of the appeal.

- (3) The orders that may be made under subsection (2) are orders staying, or otherwise affecting the operation or implementation of, either or both of the following:
  - (a) the decision of the Panel or a part of the decision;
  - (b) the decision to which the proceeding before the Panel related or a part of the decision.
- (4) The Federal Court of Australia or a Judge of that court may, by order, vary or revoke an order in force under subsection (2) (including an order that has previously been varied under this subsection).
- (5) An order in force under subsection (2):
  - (a) is subject to such conditions as are specified in the order; and
  - (b) has effect until:
    - (i) where a period for the operation of the order is specified in the order—the end of that period or, if a decision is given on the appeal before the end of that period, the giving of the decision; or
    - (ii) where no period is so specified—the giving of a decision on the appeal.

## Part 9—Miscellaneous

### Division 1—Electronic decision-making

#### 163A What this Division is about

This Division is about AFMA using a computer program to make certain decisions.

#### 163B Electronic decision-making

- (1) AFMA may approve a computer program, which is under AFMA's control, to be used to make a decision under:
  - (a) section 32; or
  - (b) section 32A; or
  - (c) section 46; or
  - (d) section 91; or
  - (e) a plan of management; or
  - (f) another provision of the fisheries legislation that is prescribed under the regulations.
- (2) While the approval is in force, the outcome of the use of the computer program (an *electronic decision*) is taken to be:
  - (a) a decision; and
  - (b) a decision made by AFMA.
- (3) AFMA's approval must be made in writing.
- (4) An approval made under this section is not a legislative instrument.

#### 163C Replacing an electronic decision

- (1) This section applies if AFMA is satisfied that an electronic decision that was made by a computer program was made at a time when the computer program was not functioning correctly.

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- (2) A computer program is not functioning correctly if the electronic decision that was made by the computer program is not the same as the decision that AFMA would have made if an employee of AFMA had made the decision.

Example: A computer program may not be functioning correctly because of a computer virus or because of a typographical error that was made when data was entered into the computer.

- (3) AFMA may revoke the electronic decision and replace it with the decision that AFMA would have made if an employee of AFMA had made the decision.
- (4) AFMA may do so:
- (a) on its own initiative; or
  - (b) on the written application of the applicant who had sought the electronic decision.
- (5) If AFMA revokes an electronic decision after AFMA has notified the applicant about the electronic decision, AFMA must, as soon as practicable after revoking the electronic decision, give to the applicant a written notice that states:
- (a) that the electronic decision has been revoked; and
  - (b) the reasons for revoking the electronic decision; and
  - (c) the new decision.

**163D Evidence of whether computer is functioning correctly**

- (1) In any proceedings, a computer function notice is prima facie evidence of the matters that are stated in the notice.
- (2) A **computer function notice** is a document that:
- (a) is, or is purported to be, signed by the CEO; and
  - (b) states whether or not a specified computer program was functioning correctly:
    - (i) in relation to a specified electronic decision; and
    - (ii) at a specified time or during a specified period.

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- (3) A computer program is functioning correctly if an electronic decision that the computer program makes is the same as the decision that AFMA would have made if an employee of AFMA had made the decision.

**163E Return of fishing concession certificate not necessary**

- (1) This section applies if a plan of management requires the holder of a fishing concession to return the fishing concession certificate to AFMA.
- (2) The ***fishing concession certificate*** is the certificate that AFMA issued to the holder of the fishing concession as evidence of the grant of the fishing concession.
- (3) The holder of the fishing concession is no longer required to return the fishing concession certificate to AFMA.

## **Division 2—Other miscellaneous provisions**

### **163 Delegation by Minister**

The Minister may, by signed instrument, delegate to:

- (a) the Commission; or
- (b) the CEO; or
- (ba) an AFMA staff member; or
- (c) an officer of the Department;

any of the Minister's powers and functions under this Act other than powers and functions under sections 18, 20, 74, 74A and 75.

### **164 Conduct of directors, employees and agents**

- (1) Where, in proceedings for an offence against this Act it is necessary to establish the state of mind of a body corporate in relation to particular conduct, it is sufficient to show:
  - (a) that the conduct was engaged in by a director, employee or agent of the body corporate; and
  - (b) that the director, employee or agent had the state of mind.
- (2) Any conduct engaged in by a director, employee or agent of a body corporate is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the body corporate unless the body corporate establishes that the body corporate took reasonable precautions and exercised due diligence to prevent the conduct.
- (2A) For the purposes of subsection (2), in determining whether a body corporate took reasonable precautions and exercised due diligence to prevent conduct engaged in by a director, employee or agent of the body corporate, the matters to which regard is to be had include:
  - (a) any action the body corporate took to inform the director, employee or agent of the legal obligations of the body

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- corporate, director, employee or agent, in relation to the conduct; and
- (b) any action the body corporate took to ensure that those obligations were understood and complied with by the director, employee or agent; and
  - (c) when any such action was taken; and
  - (d) whether there were any other actions that the body corporate could reasonably have taken that may have prevented the conduct.
- (3) Where, in proceedings for an offence against this Act, it is necessary to establish the state of mind of a person other than a body corporate in relation to particular conduct, it is sufficient to show:
- (a) that the conduct was engaged in by an employee or agent of the person; and
  - (b) that the employee or agent had the state of mind.
- (4) Any conduct engaged in by an employee or agent of a person other than a body corporate is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the person unless the person establishes that the person took reasonable precautions and exercised due diligence to prevent the conduct.
- (4A) For the purposes of subsection (4), in determining whether a person took reasonable precautions and exercised due diligence to prevent conduct engaged in by an employee or agent of the person, the matters to which regard is to be had include:
- (a) any action the person took to inform the employee or agent of the legal obligations of the person, employee or agent, in relation to the conduct; and
  - (b) any action the person took to ensure that those obligations were understood and complied with by the employee or agent; and
  - (c) when any such action was taken; and

- (d) whether there were any other actions that the person could reasonably have taken that may have prevented the conduct.
- (5) Where:
- (a) a person other than a body corporate is convicted of an offence; and
  - (b) the person would not have been convicted of the offence if subsections (3) and (4) had not been enacted;
- the person is not liable to be punished by imprisonment for that offence.
- (6) A reference in subsection (1) or (3) to the state of mind of a person includes a reference to:
- (a) the knowledge, intention, opinion, belief or purpose of the person; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.
- (7) A reference in this section to a director of a body corporate includes a reference to a constituent member of a body corporate incorporated for a public purpose by a law of the Commonwealth, of a State or of a Territory.
- (8) A reference in this section to engaging in conduct includes a reference to failing or refusing to engage in conduct.
- (9) A reference in this section to an offence against this Act includes a reference to:
- (a) an offence created by the regulations; and
  - (b) an offence against section 6 of the *Crimes Act 1914*, or section 11.1, 11.4 or 11.5 of the *Criminal Code*, that relates to an offence against this Act or the regulations.
- (10) Part 2.5 of the *Criminal Code* does not apply to an offence against this Act.

Note: Part 2.5 of the *Criminal Code* deals with corporate criminal responsibility.

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**165 Reconsideration by AFMA and right to review by  
Administrative Appeals Tribunal**

- (1) In this section, unless the contrary intention appears:

**decision** has the same meaning as in the *Administrative Appeals Tribunal Act 1975*.

**relevant decision** means a decision of AFMA under subsection 4(2), 4(3), 22(5) or 26(2), section 31 (other than a decision following an auction or tender), paragraph 31B(1)(b), section 31C, subsection 31F(7), section 32 or 33, subsection 34(9), 38(1), (2) or (3), section 39, subsection 40(5) or (8) or section 91.

**reviewable decision** means a decision of AFMA under subsection (5).

- (1A) The first decision made by AFMA to register persons under subsection 26(2) in connection with the first plan of management determined by AFMA for the fishery known as the Northern Prawn Fishery or for the fishery known as the Southern Bluefin Tuna Fishery is not a relevant decision for the purposes of this section.
- (2) A person affected by a relevant decision who is dissatisfied with the decision may:
- (a) within 21 days after being notified of the decision; or
  - (b) within such further period (if any) as AFMA, upon application made under subsection (3), by written notice to the person allows;
- request AFMA, in writing, to reconsider the decision.
- (3) A person, before the end of the period mentioned in paragraph (2)(a), may apply to AFMA for an extension of time within which to request a reconsideration of the decision.
- (4) The request must set out the reasons for making the request.
- (5) AFMA must, within 45 days after receiving the request, reconsider the relevant decision and may make a decision:

- (a) in substitution for the relevant decision whether in the same terms as the relevant decision or not; or
  - (b) revoking the relevant decision.
- (6) Where, as a result of a reconsideration under subsection (5), AFMA makes a decision in substitution for or revoking the relevant decision, AFMA must, by written notice given to the person who made the request under subsection (2) for the reconsideration:
  - (a) inform the person of the result of the reconsideration; and
  - (b) give the reasons for the decision.
- (7) An application may be made to the Administrative Appeals Tribunal for a review of a reviewable decision.
- (8) An application made by a person to the Administrative Appeals Tribunal for a review of a reviewable decision where the primary decision was under subsection 26(2) must be lodged with that Tribunal within 14 days of giving the notice mentioned in subsection (6).
- (9) Section 37 of the *Administrative Appeals Tribunal Act 1975* applies in respect of an application mentioned in subsection (8) as if references in that section to 28 days were references to 14 days.
- (10) The Administrative Appeals Tribunal must, as soon as practicable after the lodging of documents with that Tribunal under section 37 of the *Administrative Appeals Tribunal Act 1975*, in relation to an application mentioned in subsection (8) convene a directions hearing to determine a timetable for disposing of the matter.
- (11) Where a relevant decision is made and the person who made the relevant decision gives to a person whose interests are affected by the decision written notice of the making of the decision, that notice must include a statement to the effect that a person affected by the decision:
  - (a) may, if the person is dissatisfied with the decision, seek a reconsideration of the decision by AFMA under subsection (2); and

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- (b) may, subject to the *Administrative Appeals Tribunal Act 1975*, if the person is dissatisfied with a decision of AFMA upon that reconsideration, make application to the Administrative Appeals Tribunal for review of that decision.
- (12) Where AFMA makes a reviewable decision and gives to a person whose interests are affected by the decision written notice of the making of the decision, that notice must include a statement to the effect that, subject to the *Administrative Appeals Tribunal Act 1975*, application may be made to the Administrative Appeals Tribunal for review of the decision to which the notice relates by or on behalf of a person whose interests are affected by the decision.
- (13) Any failure to comply with the requirements of subsection (11) or (12) in relation to a decision does not affect the validity of the decision.

**166 Evidence**

- (1) In any proceedings for an offence against this Act, an averment of the prosecutor, contained in the information or complaint, that:
  - (a) the defendant was at a particular place at the time of the alleged offence; or
  - (b) the boat, aircraft or other thing referred to in the information or complaint was at a particular place at the time of the alleged offence; or
  - (c) fishing engaged in by or from a boat, not being a charter boat, in relation to which a fishing concession was in force at the time of the alleged offence was commercial fishing;is prima facie evidence of the matter averred.
- (2) AFMA may give a certificate:
  - (a) that, at a time or during a period specified in the certificate, a boat specified in the certificate was, or was not, an Australian boat; or
  - (b) that, at a time or during a period specified in the certificate, an area of waters specified in the certificate was part of the AFZ; or

- (ba) that, at a time or during a period specified in the certificate, an area of waters specified in the certificate:
  - (i) was part of the territorial sea of Australia that was, at the time or during the period, in the AFZ; and
  - (ii) was not part of coastal waters taken to be in the AFZ because of section 76; or
- (c) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, the holder of a statutory fishing right that was in force in relation to a managed fishery specified in the certificate; or
- (d) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, or no person was, the holder of a fishing permit that was in force authorising the use of a boat specified in the certificate for commercial fishing in an area of the AFZ, or a specified fishery, specified in the certificate; or
- (e) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, or no person was, the holder of a scientific permit that was in force authorising the use of a boat specified in the certificate for scientific research purposes in an area of the AFZ, or a fishery, specified in the certificate; or
- (f) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, or no person was, the holder of a foreign fishing licence that was in force authorising the use of a foreign boat specified in the certificate for commercial fishing in an area of the AFZ, or a fishery, specified in the certificate; or
- (g) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, the holder of a foreign master fishing licence that was in force authorising the person to be in charge of a foreign fishing boat being used for commercial fishing in an area of the AFZ, or a fishery, specified in the certificate; or
- (h) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, the holder of a fish receiver permit that was in force authorising the

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person to receive fish from a person engaged in fishing in a fishery specified in the certificate; or

- (i) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, or no person was, the holder of a fish receiver permit that was in force specifying premises specified in the certificate as premises at which fish received under the permit by the holder of the permit are to be kept while in the possession of the holder; or
  - (j) that, at a time or during a period specified in the certificate, a person specified in the certificate was, or was not, or no person was, the holder of a port permit authorising the bringing of a foreign boat specified in the certificate into a port in Australia, or in an external Territory, specified in the certificate; or
  - (k) that, at a time or during a period specified in the certificate, notice of a temporary order was given in the manner specified in the certificate; or
  - (l) that, at a time or during a period specified in the certificate, a person specified in the certificate was subject to a direction under section 40A or 40B and that a document attached to the certificate is a copy of the direction; or
  - (m) that, at a time or during a period specified in the certificate, AFMA received e-monitoring data specified in the certificate; or
  - (n) that, at a time or during a period specified in the certificate, AFMA received e-monitoring equipment specified in the certificate, on which e-monitoring data was stored; or
  - (o) that, at a time specified in the certificate, AFMA received a statement provided in compliance with a condition of a fishing concession or scientific permit and that a document attached to the certificate is a copy of the statement.
- (3) The Minister may give a certificate:
- (a) that at a particular time specified in the certificate the Minister had notified all the parties to the Treaty that an investigation of an alleged contravention of the kind

mentioned in paragraph 37(2)(a) was being conducted in relation to a Treaty boat specified in the certificate in respect of which a Treaty licence was in force and that the Minister had not, at or before a particular time specified in the certificate, notified the Administrator that the investigation had been completed; or

- (b) that at a particular time specified in the certificate, the Minister was notified in writing by the Administrator of the suspension, in accordance with the Treaty, of a Treaty licence issued in respect of a Treaty boat specified in the certificate and either:
  - (i) at a particular time specified in the certificate the Minister was notified in writing by the Administrator that the Treaty licence was no longer suspended; or
  - (ii) at a particular time specified in the certificate no such notification had been received by the Minister; or
- (c) that a document attached to the certificate and stating:
  - (i) the date on which a Treaty licence was issued by the Administrator, or if more than one such Treaty licence has been issued by the Administrator, the date on which the most recent Treaty licence was so issued, in respect of the boat specified in the document and the date on which that Treaty licence expires; or
  - (ii) that there has been no Treaty licence issued by the Administrator in respect of the boat specified in the document;

is a copy of a letter, fax, telex or cablegram received by an officer or AFMA staff member or the Commonwealth from the Administrator; or

- (d) that a document that:
  - (i) is attached to the certificate; and
  - (ii) states that the person named in the document was, at the time or during the period specified in the document, authorised by or under the law of the Pacific Island party specified in the document to perform the functions and duties of an observer on Treaty boats;

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is a copy of a letter, fax, telex or cablegram received by an officer or employee of AFMA or the Commonwealth from an authority of that Pacific Island party.

- (5) The Minister may give a certificate certifying as to any matter relating to the making of decisions by a Joint Authority or relating to instruments executed by a Joint Authority.
- (6) A person giving a certificate under this section that a person was the holder of a statutory fishing right or of a licence or permit granted under this Act may, in the certificate, certify that conditions specified in the certificate were the conditions to which the fishing right, licence or permit, as the case may be, was subject.
- (7) In proceedings for an offence against this Act or the regulations, a certificate given under this section is:
  - (a) in all cases—prima facie evidence of the matters stated in the certificate; and
  - (b) in the case of a certificate of the kind mentioned in paragraph (3)(c) or (d) given in respect of a particular document—prima facie evidence of the matters stated in that document.
- (8) A document purporting to have been signed, issued or given under this Act is, on mere production, admissible in any proceedings as prima facie evidence of the fact that it was duly signed, issued or given.

**167 AFMA to compile statistics**

- (1) AFMA must cause to be compiled, from logbooks or returns furnished under section 42 or from other sources, statistics in relation to matters mentioned in subsection 42(1B).
- (1A) AFMA may publish or make available, in any way it thinks fit, any of the statistics compiled under subsection (1).
- (2) AFMA, if directed in writing by the Minister to do so, must make available to a person specified by the Minister such statistics mentioned in subsection (1) as are specified by the Minister.

**167A Compensation for acquisition of property**

- (1) If, apart from this section, the operation of this Act would result in the acquisition of property from a person otherwise than on just terms, the Commonwealth is liable to pay reasonable compensation to the person.
- (2) If the Commonwealth and the person do not agree on the amount of the compensation, the person may apply to the Federal Court to determine a reasonable amount of compensation.
- (3) The jurisdiction of the Federal Court is exclusive of the jurisdiction of all other courts except that of the High Court.
- (4) Any damages or compensation recovered, or other remedy given, in a proceeding begun otherwise than under this section must be taken into account in assessing compensation payable in a proceeding begun under this section and arising out of the same event or transaction.
- (5) In this section:

*acquisition of property* and *just terms* have the same meaning as in paragraph 51(xxxi) of the Constitution.

**167B AFMA may give information about boats to officers of Customs**

- (1) This section applies if AFMA has any information relating to boats that AFMA got by means of a vessel monitoring system (see subsection (4)).
- (2) AFMA may give information of that kind to an officer of Customs if AFMA, having had regard to any advice received from an officer of Customs, considers that giving an officer of Customs the information would help an officer of Customs to perform a function or activity that relates to civil surveillance.
- (3) This section does not, by implication, affect any other power of AFMA to give information.

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(4) In this section:

***officer of Customs*** has the meaning given by subsection 4(1) of the *Customs Act 1901*.

***vessel monitoring system*** means a system in which boats are fitted with an electronic device that can give information about the boats' course or position, or other such information.

**168 Regulations**

- (1) The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters:
  - (a) required or permitted by this Act to be prescribed; or
  - (b) necessary or convenient to be prescribed in carrying out or giving effect to this Act.
- (2) Without limiting the generality of subsection (1), regulations may be made:
  - (a) prescribing penalties not exceeding 25 penalty units for offences against the regulations; and
  - (b) providing for the remission or refund of levy under the *Fishing Levy Act 1991* or the *Foreign Fishing Licences Levy Act 1991* or of charge under the *Statutory Fishing Rights Charge Act 1991* or of penalty payable under Part 7 in relation to such levy or charge; and
  - (c) providing for giving effect to, and enforcing the observance of, plans of management; and
  - (d) providing for the replacement of certificates, licences, permits and other instruments granted or executed under this Act or the regulations and prescribing fees for such replacement; and
  - (e) providing for the imposition and recovery of fees in respect of:
    - (i) draft plans of management being made available; and
    - (ii) the making of applications under this Act; and
    - (iii) the lodging and registration of documents; and

- (iiia) the giving of a notice to AFMA nominating an Australian boat under paragraph 32(1A)(b) or subsection 32(1B); and
- (iv) the issue of a document mentioned in subsection 53(2); and
- (v) the supplying of signed copies of, or extracts from, entries in the Register or instruments evidencing dealings registered in the Register; and
- (f) providing for the return to a person ascertained in accordance with the regulations or a plan of management of:
  - (i) certificates, licences, permits and other instruments granted or executed under this Act or the regulations; or
  - (ii) certificates and other documents issued to a person under a plan of management; that have been cancelled; and
- (g) prescribing signals and rules of navigation to be observed in the AFZ by masters of boats in respect of which a fishing rights, or any licences or permits, are in force under this Act or under the Treaty; and
- (h) providing for the marking of boats engaged in commercial fishing in the AFZ and of nets, traps and other equipment used for taking fish; and
- (ha) providing for the marking of Australian-flagged boats in relation to which fishing concessions or scientific permits allowing fishing outside the AFZ are in force; and
- (hb) subject to section 8A, providing for the placement of persons as observers on board boats used for commercial fishing; and
- (j) providing for the sale or disposal of unclaimed nets, traps or other fishing equipment found in the AFZ; and
- (k) regulating the rights of priority as between masters of boats in respect of which a fishing concession is in force under this Act in the AFZ and for prescribing the rules of fishing in the AFZ; and
- (l) facilitating the exercise by officers of their powers under section 84; and

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- (m) providing for the inspection of foreign boats the use of which is authorised by a foreign fishing licence or a Treaty licence and of nets, traps and other equipment belonging to such boats and of fish taken with the use of such boats; and
- (n) providing for the reporting of the positions of boats:
  - (i) the use of which is authorised by a fishing concession at times when such boats are in the AFZ; or
  - (ii) in relation to which an approval is in force under regulations made for the purposes of paragraph 101(1)(c); and
- (na) providing for the use of systems for reporting the position of Australian-flagged boats when on the high seas in an area covered by an international fisheries management organisation; and
- (o) providing procedures to be followed to facilitate the recognition of foreign boats the use of which is authorised by a foreign fishing licence; and
- (p) prescribing short methods of reference to areas of the AFZ specified in the regulations and the purposes for which those methods of reference may be used; and
- (q) providing for the furnishing of information relating to persons on board:
  - (i) a boat that is in the AFZ, being a boat the use of which is authorised by a fishing concession; and
  - (ii) an Australian boat engaged in fishing outside the AFZ; and
- (r) providing for the carrying of persons on board boats the use of which is authorised by a fishing concession; and
- (s) providing for the furnishing of information relating to the use in the AFZ of foreign boats the use of which is authorised by a foreign fishing licence; and
- (t) providing for the giving by AFMA of certificates as to the giving, or not giving, of approvals under regulations made for the purposes of paragraph 101(1)(c); and
- (u) providing (in addition to the collection of information in the exercise or performance of its other powers and functions

under this Act) for the collection by AFMA of information relating to:

- (i) possible breaches of the laws of Australia or of a foreign country; or
  - (ii) the control and protection of Australia's borders; or
  - (iii) the administration and management of fisheries or marine environments; or
  - (iv) research or monitoring conducted, or proposed to be conducted, into fisheries or marine environments; and
  - (v) providing for the disclosure by AFMA of information, including e-monitoring data and personal information, relating to:
    - (i) possible breaches of the laws of Australia or of a foreign country; or
    - (ii) the control and protection of Australia's borders; or
    - (iii) the administration and management of fisheries or marine environments; or
    - (iv) research or monitoring conducted, or proposed to be conducted, into fisheries or marine environments.
- (3) Notwithstanding section 14 of the *Legislation Act 2003*, the regulations may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in a plan of management, being a plan of management as in force at a particular time or as in force from time to time.

## Schedule 1A—Provisions relating to detention of suspected illegal foreign fishers

Note: See section 105Q.

### Part 1—Preliminary

#### Division 1—Objects of this Schedule

##### 1 Main objects of this Schedule

- (1) This Schedule has 3 main objects.
- (2) The first main object is to provide for the detention (*fisheries detention*) in Australia or a Territory of persons who:
  - (a) are reasonably suspected by an officer of having committed an offence involving the use of a foreign boat; and
  - (b) are not Australian citizens or Australian residents;for a limited period for the purposes of determining whether to charge them with the offence.
- (3) The second main object is to provide for persons in fisheries detention to be searched, screened, given access to facilities for obtaining legal advice, and identified.
- (4) The third main object is to facilitate the transition of persons from fisheries detention to immigration detention under the *Migration Act 1958*:
  - (a) by providing for the things mentioned in subclause (3) to be done in a way corresponding to the way that Act provides for those things to be done to persons in immigration detention; and
  - (b) by authorising the disclosure of personal information about individuals who are or have been in fisheries detention to persons, agencies and organisations responsible for holding the individuals in immigration detention, for the purpose of the immigration detention and welfare of the individuals.

Clause 1

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Note:       The enforcement visa of a person who is neither an Australian citizen nor an Australian resident ceases to have effect under the *Migration Act 1958* when the person ceases to be in fisheries detention, so that Act requires the person to be taken into immigration detention.

## Division 2—Definitions

### 2 Definitions

In this Schedule, unless the contrary intention appears:

***authorised officer*** means an officer, or detention officer, who is authorised under Division 4 for the purposes of the provision in which the expression occurs.

***detainee*** means a person detained under Part 2.

***detention*** means detention under Part 2.

***detention officer*** means a person appointed under clause 3 to be a detention officer.

## **Division 3—Appointment etc. of detention officers**

### **3 Minister may appoint persons to be detention officers**

- (1) The Minister may, by instrument, appoint one or more persons (except persons who are officers) to be detention officers.

Note: Officers have the same powers as detention officers, as well as other powers, so there is no reason for officers to be appointed as detention officers.

- (2) An instrument appointing persons to be detention officers:
- (a) may identify the persons by reference to a class; and
  - (b) may provide for persons to be appointed when they become members of the class at or after a time specified in the instrument.

### **4 Detention officers subject to directions**

A detention officer is, in the exercise of his or her powers, and the performance of his or her duties, under this Schedule, subject to the directions given by the Minister or AFMA.

### **5 Detention officer etc. not liable to certain actions**

- (1) A detention officer, or a person assisting a detention officer in the exercise of powers under this Act or the regulations, is not liable to an action, suit or proceeding for or in respect of anything done in good faith or omitted to be done in good faith in the exercise or purported exercise of any power conferred by this Act or the regulations.

Note: Section 90 makes similar provision for officers and their assistants.

- (2) However, subsection (1) does not affect a contractual liability of a detention officer or person assisting a detention officer.

Clause 6

Division 4—Authorisation of officers and detention officers

6 AFMA may authorise officers and detention officers

- (1) AFMA may, by instrument, authorise one or more officers and/or detention officers for the purposes of a specified provision of this Schedule, from among officers and/or detention officers who have successfully completed minimum training prescribed by a legislative instrument.
- (2) An instrument authorising officers and/or detention officers:
- (a) may identify them by reference to a class; and
  - (b) may provide for them to be authorised when they become members of the class at or after a time specified in the instrument.

7 Persons who are authorised officers for purposes of *Migration Act 1958* are taken to be authorised for this Schedule

- (1) A person who:
- (a) is an officer or detention officer; and
  - (b) is an authorised officer (as defined in the *Migration Act 1958*) for a provision of that Act listed in column 2 of an item of the table;
- is, while he or she meets the conditions in paragraphs (a) and (b), taken to be authorised under clause 6 for the purposes of the provision of this Schedule listed in column 3 of the item.

Corresponding provisions of the <i>Migration Act 1958</i> and this Schedule		
Column 1 Item	Column 2 Provision of <i>Migration Act 1958</i>	Column 3 Provision of this Schedule
1	Subsection 252(4)	Subclause 15(3)
2	Paragraph 252(6)(a)	Paragraph 15(5)(a)
3	Subparagraph 252(6)(b)(i)	Subparagraph 15(5)(b)(i)
4	Subsection 252AA(1)	Subclause 16(1)

**Corresponding provisions of the *Migration Act 1958* and this Schedule**

<b>Column 1 Item</b>	<b>Column 2 Provision of <i>Migration Act 1958</i></b>	<b>Column 3 Provision of this Schedule</b>
5	Subsection 252A(1)	Subclause 17(1)
6	Subsection 252C(1)	Subclause 19(1)
7	Subsection 252D(2)	Subclause 20(2)
8	Subsection 252G(3)	Subclause 23(3)
9	Section 261AA	Clause 28
10	Subsection 261AE(1)	Subclause 32(1)
11	Subsection 261AE(3)	Subclause 32(3)
12	Section 261AG	Clause 34
13	Section 261AJ	Clause 37
14	Subsection 261AK(1) (except paragraph (a))	Subclause 38(1) (except paragraph (a))
15	Subsection 261AK(3)	Subclause 38(3)

*Limits on authorisation*

- (2) However, the person is not taken to be authorised to carry out an identification test in relation to which section 5D of the *Migration Act 1958* provides that the person is not an authorised officer (for the purposes of that Act).

Note: This is relevant to items 9 to 15 of the table in subclause (1).

*Persons specified by AFMA not authorised*

- (3) AFMA may, by instrument, specify that the person is not taken to be authorised:
- (a) for the purposes of the provision of this Schedule; or
  - (b) for the purposes of carrying out under this Schedule identification tests of a type specified under section 5D of the *Migration Act 1958* in relation to the person.

The instrument has effect according to its terms, despite subclause (1).

**Schedule 1A** Provisions relating to detention of suspected illegal foreign fishers

**Part 1** Preliminary

**Division 4** Authorisation of officers and detention officers

Clause 7

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- (4) An instrument under subclause (3) may specify one or more persons by reference to their being members of a specified class at or after a time specified in the instrument.
- (5) An instrument made under subclause (3) is not a legislative instrument.

## **Part 2—Detaining suspected illegal foreign fishers**

### **Division 1—Initial detention by an officer**

#### **8 Power to detain**

- (1) An officer may detain a person in Australia or a Territory for the purposes of determining during the period of detention whether or not to charge the person with an offence against section 99, 100, 100A, 100B, 101, 101A, 101AA, 101B, 105E, 105EA, 105H or 105I or an offence against section 6 of the *Crimes Act 1914* relating to such an offence, if the officer has reasonable grounds to believe that the person:
  - (a) is not an Australian citizen or an Australian resident; and
  - (b) was on a foreign boat when it was used in the commission of such an offence.
- (2) Subclause (1) does not authorise an officer to use more force in detaining a person than is reasonably necessary.
- (3) Subclause (1) has effect, in relation to an offence against section 105E, 105EA, 105H or 105I, subject to any limitations set out in the regulations.

#### **9 Relationship with Part IC of the *Crimes Act 1914***

- (1) Part IC of the *Crimes Act 1914* applies in relation to the detainee while detained under this Part as if:
  - (a) he or she were a protected suspect for a Commonwealth offence for the purposes of that Part; and
  - (b) an officer were an investigating official for the purposes of that Part.
- (2) Subclause (1) does not affect the operation of Division 2 of Part IC of the *Crimes Act 1914* as it applies of its own force in relation to a person who is lawfully arrested.

## **Division 2—Continued detention by a detention officer**

### **10 Detention officer may detain person already detained by officer**

- (1) For the purposes of facilitating an officer determining whether or not to charge a person with an offence against section 99, 100, 100A, 100B, 101, 101A, 101AA, 101B, 105E, 105EA, 105H or 105I or an offence against section 6 of the *Crimes Act 1914* relating to such an offence, a detention officer may detain the person in Australia or a Territory if the detention officer has reasonable grounds to believe that the person:
  - (a) has been detained by an officer under Division 1; and
  - (b) has been presented, while detained by that officer, to a detention officer for detention by a detention officer.
- (2) However, the detention officer may not detain the person if the detention officer has reasonable grounds to believe that the person has ceased to be in detention since the last time the person was detained by an officer under Division 1.
- (3) Subclause (1) does not authorise a detention officer to use more force in detaining a person than is reasonably necessary.

## **Division 3—Detention on behalf of an officer or detention officer**

### **11 Detention on behalf of an officer or detention officer**

- (1) A person is taken to be detained by an officer or detention officer under this Part while the person is held, on behalf of the officer or detention officer, in any of the following:
  - (a) a prison or remand centre of the Commonwealth, a State or a Territory;
  - (b) a police station or watch house;
  - (c) a hospital or other place where the person is receiving medical treatment;
  - (d) another place approved by the Minister in writing;
  - (e) a boat.
- (2) This clause has effect even while the officer or detention officer is not present where the person is held on behalf of the officer or detention officer.
- (3) An approval of a place by the Minister is not a legislative instrument.

## **Division 4—Moving detainees**

### **12 Power to move detainees**

- (1) An officer or a detention officer may:
  - (a) take a detainee in Australia to another place in Australia or to a place in an external Territory; and
  - (b) take a detainee in an external Territory to another place in the Territory or to a place in Australia or another Territory.
- (2) Subclause (1) does not authorise an officer or detention officer to use more force than is reasonably necessary to take the detainee to the place.
- (3) In exercising the power under subclause (1), the officer or detention officer must have regard to all matters that he or she considers relevant, including:
  - (a) the administration of justice; and
  - (b) the welfare of the detainee.
- (4) So far as it relates to an officer, subclause (1) has effect, in relation to a person detained in relation to an offence against section 105E, 105EA, 105H or 105I, subject to any limitations set out in the regulations.

## **Division 5—End of detention**

### **13 End of detention**

A detainee must be released from detention:

- (a) as soon as an officer or detention officer knows or reasonably believes that the detainee is an Australian citizen or an Australian resident; or
  - (b) at the time the detainee is brought before a magistrate following a decision to charge the detainee with an offence referred to in subclause 8(1); or
  - (c) at the time a decision is made not to charge the detainee with an offence referred to in that subclause; or
  - (d) at the end of 168 hours after the detention began;
- whichever occurs first.

## **Division 6—Offence of escaping from detention**

### **14 Escape from detention**

- (1) A person commits an offence if:
  - (a) the person is in detention; and
  - (b) the person escapes from that detention.
- (2) The offence is punishable on conviction by imprisonment for up to 2 years.

## **Part 3—Searching and screening detainees and screening their visitors**

### **Division 1—Searches of detainees**

#### **15 Searches of detainees**

- (1) For the purposes set out in subclause (2), a detainee, and the detainee's clothing and any property under the immediate control of the detainee, may, without warrant, be searched.
- (2) The purposes for which a detainee, and the detainee's clothing and any property under the immediate control of the detainee, may be searched under this clause are as follows:
  - (a) to find out whether there is hidden on the detainee's person, in the clothing or in the property, a weapon or other thing capable of being used to inflict bodily injury or to help the detainee to escape from detention;
  - (b) to find out whether there is hidden on the detainee's person, in the clothing or in the property, a document or other thing that is, or may be, evidence of:
    - (i) an offence against section 99, 100, 100A, 100B, 101, 101A, 101AA, 101B, 105E, 105EA, 105H or 105I; or
    - (ii) an offence against section 6 of the *Crimes Act 1914* relating to an offence described in subparagraph (i).
- (3) If, in the course of a search under this clause, a weapon or other thing referred to in paragraph (2)(a), or a document or other thing referred to in paragraph (2)(b), is found, an authorised officer:
  - (a) may take possession of the weapon, document or other thing; and
  - (b) may retain the weapon, document or other thing for such time as he or she thinks necessary for the purposes of this Act or the *Migration Act 1958*.

Clause 15

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- (4) This clause does not authorise an authorised officer, or another person conducting a search pursuant to subclause (5), to remove any of the detainee's clothing, or to require a detainee to remove any of his or her clothing.
- (5) A search under this clause of a detainee, and the detainee's clothing, must be conducted by:
  - (a) an authorised officer of the same sex as the detainee; or
  - (b) in a case where an authorised officer of the same sex as the detainee is not available to conduct the search—any other person who is of the same sex and:
    - (i) is requested by an authorised officer; and
    - (ii) agrees;to conduct the search.
- (6) An action or proceeding, whether civil or criminal, does not lie against a person who, at the request of an authorised officer, conducts a search under this clause if the person acts in good faith and does not contravene subclause (7).
- (7) An authorised officer or other person who conducts a search under this clause must not use more force, or subject a detainee to greater indignity, than is reasonably necessary in order to conduct the search.
- (8) To avoid doubt, a search of a detainee may be conducted under this clause irrespective of whether a screening procedure is conducted in relation to the detainee under clause 16 or a strip search of the detainee is conducted under clause 17.

Note: This clause corresponds closely to section 252 of the *Migration Act 1958*.

## Division 2—Screening of detainees

### 16 Power to conduct a screening procedure

- (1) A screening procedure in relation to a detainee, other than a detainee to whom clause 22 applies, may be conducted by an authorised officer, without warrant, to find out whether there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon, or other thing, capable of being used:
  - (a) to inflict bodily injury; or
  - (b) to help the detainee, or any other detainee, to escape from detention.
- (2) An authorised officer who conducts a screening procedure under this clause must not use greater force, or subject the detainee to greater indignity, than is reasonably necessary in order to conduct the screening procedure.
- (3) This clause does not authorise an authorised officer to remove any of the detainee's clothing, or to require a detainee to remove any of his or her clothing.
- (4) To avoid doubt, a screening procedure may be conducted in relation to a detainee under this clause irrespective of whether a search of the detainee is conducted under clause 15 or 17.
- (5) In this clause:

***conducting a screening procedure***, in relation to a detainee, means:

  - (a) causing the detainee to walk, or to be moved, through screening equipment; or
  - (b) passing hand-held screening equipment over or around the detainee or around things in the detainee's possession; or

Clause 16

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- (c) passing things in the detainee's possession through screening equipment or examining such things by X-ray.

***screening equipment*** means a metal detector or similar device for detecting objects or particular substances.

Note: This clause corresponds closely to section 252AA of the *Migration Act 1958*.

## Division 3—Strip searches of detainees

### 17 Power to conduct a strip search

- (1) A strip search of a detainee, other than a detainee to whom clause 22 applies, may be conducted by an authorised officer, without warrant, to find out whether there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon, or other thing, capable of being used:
- (a) to inflict bodily injury; or
  - (b) to help the detainee, or any other detainee, to escape from detention.

Note: Clause 18 sets out rules for conducting a strip search under this clause.

- (2) A **strip search** of a detainee means a search of the detainee, of his or her clothing or of a thing in his or her possession. It may include:
- (a) requiring the detainee to remove some or all of his or her clothing; and
  - (b) an examination of that clothing and of the detainee's body (but not of the detainee's body cavities).
- (3) A strip search of a detainee may be conducted by an authorised officer only if:
- (a) an officer or detention officer suspects on reasonable grounds that there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon or other thing described in subclause (1); and
  - (b) the officer, or detention officer, referred to in paragraph (a) suspects on reasonable grounds that it is necessary to conduct a strip search of the detainee to recover that weapon or other thing; and
  - (c) the strip search is authorised as follows:
    - (i) if the detainee is at least 18—the CEO, the Secretary of the Department, or an SES Band 3 employee in the Department (who is not the officer referred to in

Clause 17

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- paragraphs (a) and (b) nor the authorised officer conducting the strip search), authorises the strip search because he or she is satisfied that there are reasonable grounds for those suspicions;
- (ii) if the detainee is at least 10 but under 18—a magistrate orders the strip search because he or she is satisfied that there are reasonable grounds for those suspicions.
- (4) An officer or detention officer may form a suspicion on reasonable grounds for the purposes of paragraph (3)(a) on the basis of:
- (a) a search conducted under clause 15 (whether by that officer or detention officer or by another officer or detention officer); or
  - (b) a screening procedure conducted under clause 16 (whether by that officer or detention officer or by another officer or detention officer); or
  - (c) any other information that is available to the officer or detention officer.
- (5) An authorisation of a strip search given for the purposes of paragraph (3)(c):
- (a) may be given by telephone, fax or other electronic means; and
  - (b) must be recorded in writing, and signed by the person giving the authorisation, within one business day after it is given.
- (6) A record made under paragraph (5)(b) is not a legislative instrument.
- (7) A failure to comply with paragraph (5)(b) does not affect the validity of a strip search conducted on the basis of that authorisation.
- (8) The power to authorise a strip search under paragraph (3)(c) cannot be delegated to any other person.
- (9) A power conferred on a magistrate by this clause is conferred on the magistrate in a personal capacity and not as a court or a member of a court.
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- (10) The magistrate need not accept the power conferred.
- (11) A magistrate exercising a power under this clause has the same protection and immunity as if he or she were exercising that power as, or as a member of, the court of which the magistrate is a member.
- (12) To avoid doubt, a strip search of a detainee may be conducted under this clause irrespective of whether a search of the detainee is conducted under clause 15 or a screening procedure is conducted in relation to the detainee under clause 16.
- (13) In this clause:

***business day*** means a day that is not a Saturday, Sunday or public holiday in the place where the authorisation is given.

***SES Band 3 employee*** means an SES employee with a classification of Senior Executive Band 3, and includes an SES employee who has been temporarily assigned duties that have been allocated a classification of Senior Executive Band 3.

Note: This clause corresponds closely to section 252A of the *Migration Act 1958*.

## 18 Rules for conducting a strip search

- (1) A strip search of a detainee under clause 17:
  - (a) must not subject the detainee to greater indignity than is reasonably necessary to conduct the strip search; and
  - (b) must be conducted in a private area; and
  - (c) must be conducted by an authorised officer of the same sex as the detainee; and
  - (d) subject to subclauses (2), (3) and (5), must not be conducted in the presence or view of a person who is of the opposite sex to the detainee; and
  - (e) subject to subclauses (2), (3) and (5), must not be conducted in the presence or view of a person whose presence is not necessary for the purposes of the strip search; and

Clause 18

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- (f) must not be conducted on a detainee who is under 10; and
  - (g) if the detainee is at least 10 but under 18, or is incapable of managing his or her affairs—must be conducted in the presence of:
    - (i) the detainee’s parent or guardian if that person is in detention with the detainee and is readily available at the same place; or
    - (ii) if that is not acceptable to the detainee or subparagraph (i) does not apply—another person (other than an authorised officer) who is capable of representing the detainee’s interests and who, as far as is practicable in the circumstances, is acceptable to the detainee; and
  - (h) subject to subclause (4), if the detainee is at least 18, and is not incapable of managing his or her affairs—must be conducted in the presence of another person (if any) nominated by the detainee, if that other person is readily available at the same place as the detainee, and willing to attend the strip search within a reasonable time; and
  - (i) must not involve a search of the detainee’s body cavities; and
  - (j) must not involve the removal of more items of clothing, or more visual inspection, than the authorised officer conducting the search believes on reasonable grounds to be necessary to determine whether there is hidden on the detainee, in his or her clothing or in a thing in his or her possession a weapon or other thing described in subclause 17(1); and
  - (k) must not be conducted with greater force than is reasonably necessary to conduct the strip search.
- (2) Paragraphs (1)(d) and (e) do not apply to a parent or guardian, or person present because of subparagraph (1)(g)(ii), if the detainee has no objection to that person being present.
- (3) Paragraphs (1)(d) and (e) do not apply to a person nominated by the detainee under paragraph (1)(h) to attend the strip search.
- (4) Neither:
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- (a) a detainee's refusal or failure to nominate a person under paragraph (1)(h) within a reasonable time; nor
  - (b) a detainee's inability to nominate a person under that paragraph who is readily available at the same place as the detainee and willing to attend the strip search within a reasonable time;
- prevents a strip search being conducted.
- (5) A strip search of a detainee may be conducted with the assistance of another person if the authorised officer conducting the strip search considers that to be necessary for the purposes of conducting it. That person must not be of the opposite sex to the detainee unless:
  - (a) the person is a medical practitioner; and
  - (b) a medical practitioner of the same sex as the detainee is not available within a reasonable time.
- (6) An action or proceeding, whether civil or criminal, does not lie against a person who, at the request of an authorised officer, assists in conducting a strip search if the person acts in good faith and does not contravene this clause.
- (7) A detainee must be provided with adequate clothing if during or as a result of a strip search any of his or her clothing is:
  - (a) damaged or destroyed; or
  - (b) retained under clause 19.

Note: This clause corresponds closely to section 252B of the *Migration Act 1958*.

Clause 19

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## **Division 4—Keeping of things found by screening or strip search of detainees**

### **19 Possession and retention of certain things obtained during a screening procedure or strip search**

- (1) An authorised officer may take possession of and retain a thing found in the course of conducting a screening procedure under clause 16 or conducting a strip search under clause 17 if the thing:
  - (a) might provide evidence of the commission of an offence against this Act; or
  - (b) is forfeited or forfeitable to the Commonwealth.
- (2) A weapon or other thing described in subclause 16(1) or 17(1) that is found in the course of conducting a screening procedure under clause 16 or a strip search under clause 17 is forfeited to the Commonwealth.
- (3) An authorised officer must not return a thing that is forfeited or forfeitable to the Commonwealth. Instead, the authorised officer must, as soon as practicable, give a thing that is forfeited under subclause (2) to a constable (within the meaning of the *Crimes Act 1914*).

Note: Subdivision C of Division 6 of Part 6 of this Act sets out the procedure for dealing with things seized as being forfeited under section 106A.
- (4) An authorised officer must take reasonable steps to return anything that is not forfeited or forfeitable but is retained under subclause (1) to the person from whom it was taken, or to the owner if that person is not entitled to possess it, if one of the following happens:
  - (a) it is decided that the thing is not to be used in evidence;
  - (b) the period of 60 days after the authorised officer takes possession of the thing ends.

- (5) However, the authorised officer does not have to take those steps if:
- (a) in a paragraph (4)(b) case:
    - (i) proceedings in respect of which the thing might provide evidence have been instituted before the end of the 60 day period and have not been completed (including an appeal to a court in relation to those proceedings); or
    - (ii) the authorised officer may retain the thing because of an order under clause 21; or
  - (b) in any case—the authorised officer is otherwise authorised (by a law, or an order of a court or a tribunal, of the Commonwealth or a State or Territory) to retain, destroy or dispose of the thing.

Note: This clause corresponds closely to section 252C of the *Migration Act 1958*.

## **20 Authorised officer may apply for a thing to be retained for a further period**

- (1) This clause applies if an authorised officer has taken possession of a thing referred to in subclause 19(4) and proceedings in respect of which the thing might provide evidence have not commenced before the end of:
  - (a) 60 days after the authorised officer takes possession of the thing; or
  - (b) a period previously specified in an order of a magistrate under clause 21.
- (2) The authorised officer may apply to a magistrate for an order that the officer may retain the thing for a further period.
- (3) Before making the application, the authorised officer must:
  - (a) take reasonable steps to discover which persons' interests would be affected by the retention of the thing; and
  - (b) if it is practicable to do so, notify each person who the authorised officer believes to be such a person of the proposed application.

Clause 21

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Note: This clause corresponds closely to section 252D of the *Migration Act 1958*.

- (4) A notice under paragraph (3)(b) is not a legislative instrument.

**21 Magistrate may order that thing be retained**

- (1) The magistrate may order that the authorised officer who made an application under clause 20 may retain the thing if the magistrate is satisfied that it is necessary for the authorised officer to do so:
- (a) for the purposes of an investigation as to whether an offence has been committed; or
  - (b) to enable evidence of an offence to be secured for the purposes of a prosecution.
- (2) The order must specify the period for which the authorised officer may retain the thing.
- (3) A power conferred on a magistrate by this clause is conferred on the magistrate in a personal capacity and not as a court or a member of a court.
- (4) The magistrate need not accept the power conferred.
- (5) A magistrate exercising a power under this clause has the same protection and immunity as if he or she were exercising that power as, or as a member of, the court of which the magistrate is a member.

Note: This clause corresponds closely to section 252E of the *Migration Act 1958*.

## **Division 5—Law applying to detainee in State or Territory prison etc.**

### **22 Detainees held in State or Territory prisons or remand centres**

- (1) This clause applies to a detainee if:
  - (a) he or she is held in detention in a prison or remand centre of a State or Territory; and
  - (b) a law of that State or Territory confers a power to search persons, or things in the possession of persons, serving sentences or being held in the prison or remand centre.
- (2) To the extent that the State or Territory law confers that power, or affects the exercise of that power, it applies to the detainee as though it were a law of the Commonwealth.
- (3) Clauses 16 and 17 do not apply to a detainee to whom this clause applies.

Note: This clause corresponds closely to section 252F of the *Migration Act 1958*.

## Division 6—Screening detainees' visitors

### 23 Powers concerning entry to premises where detainee is detained

- (1) An officer or detention officer may request that a person about to enter premises where a detainee is in detention do one or more of the following:
  - (a) walk through screening equipment;
  - (b) allow an officer or detention officer to pass hand-held screening equipment over or around the person or around things in the person's possession;
  - (c) allow things in the person's possession to pass through screening equipment or to be examined by X-ray.
- (2) **Screening equipment** means a metal detector or similar device for detecting objects or particular substances.
- (3) If an authorised officer suspects on reasonable grounds that a person about to enter premises where a detainee is in detention has in the person's possession a thing that might:
  - (a) endanger the safety of the detainees, staff or other persons on the premises; or
  - (b) disrupt the order or security arrangements on the premises;the authorised officer may request that the person do some or all of the things in subclause (4) for the purpose of finding out whether the person has such a thing. A request may be made whether or not a request is also made to the person under subclause (1).
- (4) An authorised officer may request that the person do one or more of the following:
  - (a) allow the authorised officer to inspect the things in the person's possession;
  - (b) remove some or all of the person's outer clothing such as a coat, jacket or similar item;
  - (c) remove items from the pockets of the person's clothing;

- (d) open a thing in the person's possession, or remove the thing's contents, to allow the authorised officer to inspect the thing or its contents;
- (e) leave a thing in the person's possession, or some or all of its contents, in a place specified by the authorised officer if he or she suspects on reasonable grounds that the thing or its contents are capable of concealing something that might:
  - (i) endanger the safety of the detainees, staff or other persons on the premises; or
  - (ii) disrupt the order or security arrangements on the premises.
- (5) A person who leaves a thing (including any of its contents) in a place specified by an authorised officer is entitled to its return when the person leaves the premises.
- (6) However, if possession of the thing, or any of those contents, by the person is unlawful under a Commonwealth, State or Territory law applying to the premises:
  - (a) the thing or the contents must not be returned to the person; and
  - (b) an authorised officer must, as soon as practicable, give the thing or the contents to a constable (within the meaning of the *Crimes Act 1914*).
- (7) A person who is about to enter premises where a detainee is detained may be refused entry if the person does not comply with a request under this clause.

Note: This clause corresponds closely to section 252G of the *Migration Act 1958*.

Clause 24

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**Part 4—Detainees' rights to facilities for obtaining  
legal advice etc.**

**24 Detainee may have access to certain advice, facilities etc.**

The person responsible for detention of a detainee must afford to him or her all reasonable facilities for obtaining legal advice or taking legal proceedings in relation to his or her detention.

Note: This clause corresponds to section 256 of the *Migration Act 1958*.

## Part 5—Identifying detainees

### Division 1—Preliminary

#### 25 Definitions

In this Part, unless the contrary intention appears:

**identification test** means a test carried out in order to obtain a personal identifier.

**incapable person** means a person who is incapable of understanding the general nature and effect of, and purposes of, a requirement to provide a personal identifier.

**independent person** means a person (other than an officer, detention officer or authorised officer) who:

- (a) is capable of representing the interests of a non-citizen who is providing, or is to provide, a personal identifier; and
- (b) as far as practicable, is acceptable to the non-citizen who is providing, or is to provide, the personal identifier; and
- (c) if the non-citizen is a minor—is capable of representing the minor's best interests.

**minor** means a person who is less than 18 years old.

**non-citizen** means a person who is not an Australian citizen.

**personal identifier** has the meaning given by clause 26.

Note: The definitions of expressions in this clause correspond closely to definitions of those expressions in section 5 of the *Migration Act 1958*.

#### 26 Meaning of *personal identifier*

- (1) In this Part:

Clause 26

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***personal identifier*** means any of the following (including any of the following in digital form):

- (a) fingerprints or handprints of a person (including those taken using paper and ink or digital livenesscanning technologies);
  - (b) a measurement of a person's height and weight;
  - (c) a photograph or other image of a person's face and shoulders;
  - (d) an audio or a video recording of a person (other than a video recording under clause 37);
  - (e) an iris scan;
  - (f) a person's signature;
  - (g) any other identifier prescribed by the regulations, other than an identifier the obtaining of which would involve the carrying out of an intimate forensic procedure within the meaning of section 23WA of the *Crimes Act 1914*.
- (2) Before the Governor-General makes regulations for the purposes of paragraph (1)(g) prescribing an identifier, the Minister must be satisfied that:
- (a) obtaining the identifier would not involve the carrying out of an intimate forensic procedure within the meaning of section 23WA of the *Crimes Act 1914*; and
  - (b) the identifier is an image of, or a measurement or recording of, an external part of the body; and
  - (c) obtaining the identifier will promote one or more of the purposes referred to in subclause (3).
- (3) The purposes are:
- (a) to assist in the identification of, and to authenticate the identity of, any person who can be required under this Act to provide a personal identifier; and
  - (b) to assist in identifying, in the future, any such person; and
  - (c) to enhance AFMA's ability to identify non-citizens who have a criminal history relating to fisheries; and
  - (d) to combat document and identity fraud in fisheries matters; and
  - (e) to complement anti-people smuggling measures; and

- (f) to inform the governments of foreign countries of the identity of non-citizens who have been detained under, or charged with offences against, this Act; and
- (g) to facilitate international cooperation to combat fishing activities that involve a breach of the laws of Australia or of a foreign country.

Note: This clause corresponds closely to section 5A of the *Migration Act 1958*.

## **27 Limiting the types of identification tests that authorised officers may carry out**

- (1) AFMA may, in an instrument authorising an officer or detention officer as an authorised officer for the purposes of carrying out identification tests under this Part, specify the types of identification tests that the authorised officer may carry out.
- (2) Such an authorised officer is not an authorised officer in relation to carrying out an identification test that is not of a type so specified.

Note: This clause corresponds closely to section 5D of the *Migration Act 1958*.

## Division 2—Identification of detainees

### Subdivision A—Provision of personal identifiers

#### 28 Detainees must provide personal identifiers

- (1) A non-citizen in detention must (other than in the prescribed circumstances) provide to an authorised officer one or more personal identifiers.

Note: A person who is an Australian citizen, or is a non-citizen but an Australian resident, may be in detention but must be released as soon as an officer or detention officer knows or reasonably believes the person is an Australian citizen or resident.

- (2) An authorised officer must not require, for the purposes of subclause (1), a detainee to provide a personal identifier other than any of the following (including any of the following in digital form):

- (a) fingerprints or handprints of the detainee (including those taken using paper and ink or digital liveness technologies);
- (b) a measurement of the detainee's height and weight;
- (c) a photograph or other image of the detainee's face and shoulders;
- (d) the detainee's signature;
- (e) any other personal identifier of a type prescribed for the purposes of this paragraph.

Note: Division 3 sets out further restrictions on the personal identifiers that minors and incapable persons can be required to provide.

- (3) The one or more personal identifiers are to be provided by way of one or more identification tests carried out by the authorised officer in accordance with this Division.

Note 1: Subject to certain restrictions, clause 32 allows reasonable force to be used to carry out identification tests under this Division.

Note 2: This clause corresponds closely to section 261AA of the *Migration Act 1958*.

**29 Authorised officers must require and carry out identification tests**

- (1) The authorised officer must, other than in the circumstances prescribed for the purposes of subclause 28(1):
- (a) require the non-citizen to provide one or more personal identifiers, of the type or types prescribed, by way of one or more identification tests carried out by the authorised officer; and
  - (b) carry out the one or more identification tests on the non-citizen.
- (2) However:
- (a) if the types of identification tests that the authorised officer may carry out is specified under clause 27—each identification test must be of a type so specified; and
  - (b) each identification test must be carried out in accordance with Subdivision B; and
  - (c) unless the authorised officer has reasonable grounds to believe that the non-citizen is not a minor or an incapable person—each identification test must be carried out in accordance with the additional requirements of Division 3.
- Note: Subclauses (1) and (2) correspond closely to section 261AB of the *Migration Act 1958*.
- (3) If:
- (a) the authorised officer is authorised because of clause 7 (which effectively treats as authorised officers for the purposes of certain provisions of this Schedule certain persons who are authorised officers for the purposes of certain provisions of the *Migration Act 1958*); and
  - (b) an instrument under section 5D of that Act specifies the types of identification test the authorised officer may carry out;
- paragraph (2)(a) of this clause has effect as if the specified types (except any specified under subclause 7(3) in relation to the authorised officer) had been specified under clause 27.

Clause 30

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**30 Information to be provided before carrying out identification tests**

- (1) Before carrying out an identification test, the authorised officer must:
  - (a) inform the non-citizen that the non-citizen may ask that an independent person be present while the identification test is carried out and that the test be carried out by a person of the same sex as the non-citizen; and
  - (b) inform the non-citizen of such other matters as are specified in the regulations.
- (2) For the purposes of subclause (1), the authorised officer *informs* the non-citizen of a matter if the authorised officer informs the non-citizen of the matter, through an interpreter if necessary, in a language (including sign language or braille) in which the non-citizen is able to communicate with reasonable fluency.
- (3) The authorised officer may comply with this clause by giving to the non-citizen, in accordance with the regulations, a form setting out the information specified in the regulations. However, the information must be in a language (including braille) in which the non-citizen is able to communicate with reasonable fluency.

Note: This clause corresponds closely to section 261AC of the *Migration Act 1958*.

- (4) A form mentioned in subclause (3) is not a legislative instrument.

**Subdivision B—How identification tests are carried out**

**31 General rules for carrying out identification tests**

An identification test under this Division:

- (a) must be carried out in circumstances affording reasonable privacy to the non-citizen; and
- (b) if the non-citizen so requests and it is practicable to comply with the request—must not be carried out in the presence or

view of a person who is of the opposite sex to the non-citizen; and

- (c) must not be carried out in the presence or view of a person whose presence is not necessary for the purposes of the identification test or is not required or permitted by another provision of this Act; and
- (d) must not involve the removal of more clothing than is necessary for carrying out the test; and
- (e) must not involve more visual inspection than is necessary for carrying out the test; and
- (f) if the test is one of 2 or more identification tests to be carried out on the non-citizen—must be carried out at the same time as the other identification tests, if it is practicable to do so.

Note: This clause corresponds closely to section 261AD of the *Migration Act 1958*.

## **32 Use of force in carrying out identification tests**

### *When use of force is permitted*

- (1) Subject to subclause (2) and clause 33, an authorised officer, or a person authorised under clause 34 to help the authorised officer, may use reasonable force:
    - (a) to enable the identification test to be carried out; or
    - (b) to prevent the loss, destruction or contamination of any personal identifier or any meaningful identifier derived from the personal identifier.
- However, this clause does not authorise the use of force against a minor or an incapable person, or if the personal identifier in question is a person's signature.
- (2) The authorised officer or person must not use force unless:
    - (a) the non-citizen required to provide the personal identifier in question has refused to allow the identification test to be carried out; and
    - (b) all reasonable measures to carry out the identification test without the use of force have been exhausted; and

Clause 32

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- (c) use of force in carrying out the identification test is authorised under subclause (4).

*Applications for authorisation to use force*

- (3) An authorised officer may apply to a senior authorising officer (who is not an authorised officer referred to in subclause (1)) for an authorisation to use force in carrying out the identification test.

*Authorisation to use force*

- (4) The senior authorising officer may authorise the use of force in carrying out the identification test if he or she is reasonably satisfied that:
- (a) the non-citizen required to provide the personal identifier in question has refused to allow the identification test to be carried out; and
  - (b) all reasonable measures to carry out the identification test without the use of force have been exhausted.
- (5) An authorisation under subclause (4):
- (a) may be given by telephone, fax or other electronic means; and
  - (b) must be recorded in writing, and signed by the person giving the authorisation, within one business day after it is given.
- (6) A record made under paragraph (5)(b) is not a legislative instrument.
- (7) A failure to comply with paragraph (5)(b) does not affect the validity of an identification test carried out on the basis of that authorisation.
- (8) The power to give an authorisation under subclause (4) cannot be delegated to any other person.

*Definition*

- (9) In this clause:

**senior authorising officer** means an officer, or detention officer, whom AFMA has authorised, or who is included in a class of officers or detention officers whom AFMA has authorised, to perform the functions of a senior authorising officer under this clause.

Note: This clause corresponds closely to section 261AE of the *Migration Act 1958*.

### **33 Identification tests not to be carried out in cruel, inhuman or degrading manner etc.**

For the purposes of this Act, the carrying out of the identification test is not of itself taken:

- (a) to be cruel, inhuman or degrading; or
- (b) to be a failure to treat a person with humanity and with respect for human dignity.

However, nothing in this Act authorises the carrying out of the identification test in a cruel, inhuman or degrading manner, or in a manner that fails to treat a person with humanity and with respect for human dignity.

Note: This clause corresponds closely to section 261AF of the *Migration Act 1958*.

### **34 Authorised officer may get help to carry out identification tests**

An authorised officer may ask another authorised officer or an officer or detention officer to help him or her to carry out the identification test, and the other person may give that help.

Note: This clause corresponds closely to section 261AG of the *Migration Act 1958*.

### **35 Identification tests to be carried out by authorised officer of same sex as non-citizen**

If the non-citizen requests that the identification test be carried out by an authorised officer of the same sex as the non-citizen, the test

**Clause 36**

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must only be carried out by an authorised officer of the same sex as the non-citizen.

Note: This clause corresponds closely to section 261AH of the *Migration Act 1958*.

**36 Independent person to be present**

The identification test must be carried out in the presence of an independent person if:

- (a) force is used in carrying out the identification test; or
- (b) both of the following apply:
  - (i) the non-citizen requests that an independent person be present while the identification test is being carried out;
  - (ii) an independent person is readily available at the same place as the non-citizen and is willing to attend the test within a reasonable time.

Note: This clause corresponds closely to section 261AI of the *Migration Act 1958*.

**37 Recording of identification tests**

- (1) An authorised officer may video record the carrying out of the identification test.
- (2) If the carrying out of the identification test is not video recorded, the authorised officer may decide that the identification test must be carried out in the presence of an independent person.

Note: This clause corresponds closely to section 261AJ of the *Migration Act 1958*.

**38 Retesting**

*When retesting is permitted*

- (1) If:

- (a) an authorised officer has carried out an identification test (the ***earlier test***) on a non-citizen in accordance with this Division (including a test authorised under subclause (4)); and
  - (b) either:
    - (i) a personal identifier that is provided as a result of the earlier test being carried out is unusable; or
    - (ii) an authorised officer, officer or detention officer is not satisfied about the integrity of that personal identifier;
- the authorised officer who carried out the earlier test or another authorised officer may require the non-citizen to provide the personal identifier again, and may carry out the test again in accordance with this Division, if:
- (c) the requirement is made while the earlier test is being carried out or immediately after it was carried out; or
  - (d) carrying out the test again is authorised under subclause (4).
- (2) If the non-citizen is required under subclause (1) to provide the personal identifier again, the non-citizen is taken, for the purposes of this Division, not to have provided the personal identifier as a result of the earlier test being carried out.

*Applications for authorisation to retest*

- (3) An authorised officer may apply for an authorisation to carry out the test again. The application is to be made to:
- (a) if the earlier test was not a test authorised under subclause (4)—a senior authorising officer (who is not an authorised officer, officer or detention officer referred to in subclause (1)); or
  - (b) if the earlier test was a test authorised under subclause (4) by a senior authorising officer—the CEO, the Secretary of the Department or an SES Band 3 employee in the Department (who is not an authorised officer, officer or detention officer referred to in subclause (1)).

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*Authorisation to retest*

- (4) The senior authorising officer, CEO, Secretary or SES Band 3 employee (as the case requires) may authorise the test to be carried out again if:
  - (a) he or she is reasonably satisfied that the personal identifier that is provided as a result of the earlier test being carried out is unusable; or
  - (b) he or she is not reasonably satisfied about the integrity of that personal identifier.
- (5) An authorisation under subclause (4):
  - (a) may be given by telephone, fax or other electronic means; and
  - (b) must be recorded in writing, and signed by the person giving the authorisation, within one business day after it is given.
- (6) A record made under paragraph (5)(b) is not a legislative instrument.
- (7) A failure to comply with paragraph (5)(b) does not affect the validity of an identification test carried out on the basis of that authorisation.
- (8) The power to give an authorisation under subclause (4) cannot be delegated to any other person.

*Use of force*

- (9) An authorisation under subclause (4) does not authorise the use of force in carrying out an identification test.

Note: See clause 32 on the use of force in carrying out identification tests.

*Effect of refusing to authorise retesting*

- (10) If an application for an authorisation to carry out an identification test again on a non-citizen is refused, the non-citizen is taken, for the purposes of this Act, to have complied with any requirement under this Act to provide the personal identifier in question.

*Definitions*

(11) In this clause:

**senior authorising officer** means an officer, or detention officer, who:

- (a) has been authorised, or is included in a class of officers or detention officers who have been authorised, by AFMA to perform the functions of a senior authorising officer under this clause; and
- (b) is not the CEO, the Secretary of the Department or an SES Band 3 employee in the Department.

**SES Band 3 employee** means an SES employee with a classification of Senior Executive Band 3, and includes an SES employee who has been temporarily assigned duties that have been allocated a classification of Senior Executive Band 3.

Note: This clause corresponds closely to section 261AK of the *Migration Act 1958*.

**Subdivision C—Obligations relating to video recordings of identification tests**

**39 Definitions**

In this Subdivision, unless the contrary intention appears:

**permitted provision**, of a video recording, has the meaning given by subclause 42(2).

**provide**, in relation to a video recording, includes provide access to the recording.

**related document** means a document that contains information, derived from a video recording made under clause 37 or from a copy of such a recording, from which the identity of the individual on whom the identification test in question was carried out is apparent or can reasonably be ascertained.

Clause 40

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**video recording** means a video recording made under clause 37 or a copy of such a recording, and includes a related document.

Note: This clause corresponds closely to section 261AKA of the *Migration Act 1958*.

**40 Accessing video recordings**

- (1) A person commits an offence if:
- (a) the person accesses a video recording; and
  - (b) the person is not authorised under clause 41 to access the video recording for the purpose for which the person accessed it.

Penalty: Imprisonment for 2 years.

- (2) This clause does not apply if the access is through the provision of a video recording that is a permitted provision.

Note 1: A defendant bears an evidential burden in relation to the matter in subclause (2) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: This clause corresponds closely to section 261AKB of the *Migration Act 1958*.

**41 Authorising access to video recordings**

- (1) AFMA may, in writing, authorise a specified person, or any person included in a specified class of persons, to access:
- (a) all video recordings; or
  - (b) a specified video recording, or video recordings of a specified kind.
- (2) AFMA must specify in an authorisation under this clause, as the purpose or purposes for which access is authorised, one or more of the following purposes:
- (a) providing a video recording to another person in accordance with this Subdivision;
  - (b) administering or managing the storage of video recordings;
  - (c) making a video recording available to the person to whom it relates;

- (d) modifying related documents in order to correct errors or ensure compliance with appropriate standards;
  - (e) any purpose connected with determining whether a civil or criminal liability has arisen from a person carrying out or helping to carry out an identification test under this Act;
  - (f) complying with laws of the Commonwealth or the States or Territories;
  - (g) disclosing personal information under clause 59 (about disclosure of information about a person who has been in detention, for the purposes of the immigration detention or removal of the person).
- (3) However, AFMA must not specify as a purpose for which access is authorised a purpose that will include or involve the purpose of:
- (a) investigating an offence against a law of the Commonwealth or a State or Territory (other than an offence involving whether an identification test was carried out lawfully); or
  - (b) prosecuting a person for such an offence;
- if the identifying information in question relates to a personal identifier of a prescribed type.

Note: This clause corresponds closely to section 261AKC of the *Migration Act 1958*.

## 42 Providing video recordings

- (1) A person commits an offence if:
- (a) the person's conduct causes a video recording to be provided to another person; and
  - (b) the provision of the recording is not a permitted provision of the recording.
- Penalty: Imprisonment for 2 years.
- (2) A ***permitted provision*** of a video recording is a provision of the recording that:
- (a) is for the purpose of administering or managing the storage of video recordings; or

Clause 42

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- (b) is for the purpose of making the video recording in question available to the non-citizen to whom it relates; or
  - (c) is for the purpose of a proceeding, before a court or tribunal, relating to the non-citizen to whom the video recording in question relates; or
  - (d) is for any purpose connected with determining whether a civil or criminal liability has arisen from a person carrying out or helping to carry out an identification test under this Act; or
  - (e) is for the purpose of an investigation by the Information Commissioner under the *Privacy Act 1988* or the Ombudsman relating to carrying out an identification test; or
  - (f) is made to a prescribed body or agency for the purpose of the body or agency inquiring into the operation of provisions of this Act relating to carrying out an identification test; or
  - (g) takes place with the written consent of the non-citizen to whom the video recording in question relates; or
  - (h) is a disclosure authorised by clause 59 (about disclosure of information about a person who has been in detention, for the purposes of the immigration detention or removal of the person).
- (3) However, a provision of a video recording is not a permitted provision of the recording if:
- (a) it constitutes a disclosure of identifying information relating to a personal identifier of a prescribed type; and
  - (b) it is for the purpose of:
    - (i) investigating an offence against a law of the Commonwealth or a State or Territory (other than an offence involving whether an identification test was carried out lawfully); or
    - (ii) prosecuting a person for such an offence.

Note: This clause corresponds closely to section 261AKD of the *Migration Act 1958*.

#### **43 Unauthorised modification of video recordings**

A person commits an offence if:

- (a) the person causes any unauthorised modification of a video recording; and
- (b) the person intends to cause the modification; and
- (c) the person knows that the modification is unauthorised.

Penalty: Imprisonment for 2 years.

#### **44 Unauthorised impairment of video recordings**

A person commits an offence if:

- (a) the person causes any unauthorised impairment of:
  - (i) the reliability of a video recording; or
  - (ii) the security of the storage of a video recording; or
  - (iii) the operation of a system by which a video recording is stored; and
- (b) the person intends to cause the impairment; and
- (c) the person knows that the impairment is unauthorised.

Penalty: Imprisonment for 2 years.

#### **45 Meanings of *unauthorised modification* and *unauthorised impairment* etc.**

(1) In this Subdivision:

- (a) modification of a video recording; or
- (b) impairment of the reliability of a video recording; or
- (c) impairment of the security of the storage of a video recording; or
- (d) impairment of the operation of a system by which a video recording is stored;

by a person is unauthorised if the person is not entitled to cause that modification or impairment.

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- (2) Any such modification or impairment caused by the person is not unauthorised merely because he or she has an ulterior purpose for causing it.
- (3) For the purposes of an offence under this Subdivision, a person causes any such unauthorised modification or impairment if the person's conduct substantially contributes to it.
- (4) For the purposes of subclause (1), if:
  - (a) a person causes any modification or impairment of a kind mentioned in that subclause; and
  - (b) the person does so under a warrant issued under the law of the Commonwealth, a State or a Territory;the person is entitled to cause that modification or impairment.

Note: This clause corresponds closely to section 261AKG of the *Migration Act 1958*.

**46 Destroying video recordings**

A person commits an offence if:

- (a) the person is the person who has day-to-day responsibility for the system under which a video recording is stored; and
- (b) the person fails physically to destroy the recording, and all copies of the recording, within 10 years after it was made.

Penalty: Imprisonment for 2 years.

## **Division 3—Identification of minors and incapable persons**

### **47 Minors**

#### *Minors less than 15 years old*

- (1) A non-citizen who is less than 15 years old must not be required under this Act to provide a personal identifier other than a personal identifier consisting of:
  - (a) a measurement of the non-citizen's height and weight; or
  - (b) the non-citizen's photograph or other image of the non-citizen's face and shoulders.

#### *Persons present while identification test is carried out*

- (2) If a non-citizen who is a minor provides a personal identifier, in accordance with a requirement under this Act, by way of an identification test carried out by an authorised officer, the test must be carried out in the presence of:
  - (a) a parent or guardian of the minor; or
  - (b) an independent person.
- (3) However, if the Minister administering the *Immigration (Guardianship of Children) Act 1946* is the guardian of the minor, the test must be carried out in the presence of an independent person other than that Minister.

Note: This clause corresponds closely to subsections 261AL(1), (5) and (6) of the *Migration Act 1958*.

### **48 Incapable persons**

#### *Incapable persons*

- (1) A non-citizen who is an incapable person must not be required under this Act to provide a personal identifier other than a personal identifier consisting of:
  - (a) a measurement of the non-citizen's height and weight; or

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- (b) the non-citizen's photograph or other image of the non-citizen's face and shoulders.

*Persons present while identification test is carried out*

- (2) If a non-citizen who is an incapable person provides a personal identifier, in accordance with a requirement under this Act, by way of an identification test carried out by an authorised officer, the test must be carried out in the presence of:
  - (a) a parent or guardian of the incapable person; or
  - (b) an independent person.

Note: This clause corresponds closely to subsections 261AM(1) and (4) of the *Migration Act 1958*.

## **Division 4—Obligations relating to detainees' identifying information**

### **Subdivision A—Preliminary**

#### **49 Definitions**

In this Division:

***disclose***, in relation to identifying information that is a personal identifier provided under clause 28, includes provide unauthorised access to the personal identifier.

Note: Clause 52 deals with authorised access to identifying information.

***identifying information*** means the following:

- (a) any personal identifier provided under clause 28;
- (b) any meaningful identifier derived from any such personal identifier;
- (c) any record of a result of analysing any such personal identifier or any meaningful identifier derived from any such personal identifier;
- (d) any other information, derived from any such personal identifier, from any meaningful identifier derived from any such personal identifier or from any record of a kind referred to in paragraph (c), that could be used to discover a particular person's identity or to get information about a particular person.

***permitted disclosure*** has the meaning given by subclauses 53(2) and (3).

***unauthorised impairment*** has the meaning given by clause 57.

***unauthorised modification*** has the meaning given by clause 57.

Note: This clause corresponds closely to section 336A of the *Migration Act 1958*.

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**50 Application**

Section 15.4 of the *Criminal Code* (extended geographical jurisdiction—category D) applies to all offences against this Division.

Note: This clause corresponds closely to section 336B of the *Migration Act 1958*.

**Subdivision B—Accessing identifying information**

**51 Accessing identifying information**

- (1) A person commits an offence if:
- (a) the person accesses identifying information; and
  - (b) the person is not authorised under clause 52 to access the identifying information for the purpose for which the person accessed it.

Penalty: Imprisonment for 2 years.

- (1A) This clause does not apply if the person believes on reasonable grounds that the access is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or of any other person.

Note: A defendant bears an evidential burden in relation to the matter in subclause (1A) (see subsection 13.3(3) of the *Criminal Code*).

- (2) This clause does not apply if the access is through a disclosure that is a permitted disclosure.

Note 1: A defendant bears an evidential burden in relation to the matter in subclause (2) (see subsection 13.3(3) of the *Criminal Code*).

Note 2: This clause corresponds closely to section 336C of the *Migration Act 1958*.

## **52 Authorising access to identifying information**

- (1) AFMA may, in writing, authorise a specified person, or any person included in a specified class of persons, to access identifying information of the kind specified in the authorisation.
- (2) AFMA must specify in an authorisation under this clause, as the purpose or purposes for which access is authorised, one or more of the following purposes:
  - (a) one or more of the purposes set out in subclause 26(3);
  - (b) disclosing identifying information in accordance with this Division;
  - (c) administering or managing the storage of identifying information;
  - (d) making identifying information available to the person to whom it relates;
  - (e) modifying identifying information to enable it to be matched with other identifying information;
  - (f) modifying identifying information in order to correct errors or ensure compliance with appropriate standards;
  - (g) the purposes of this Act;
  - (h) complying with laws of the Commonwealth or the States or Territories;
  - (i) disclosing personal information under clause 59 (about disclosure of information about a person who has been in detention, for the purposes of the immigration detention or removal of the person).
- (3) However, AFMA must not specify as a purpose for which access is authorised a purpose that will include or involve the purpose of:
  - (a) investigating an offence against a law of the Commonwealth or a State or Territory; or
  - (b) prosecuting a person for such an offence;if the identifying information in question relates to a personal identifier of a prescribed type.

Note: This clause corresponds closely to section 336D of the *Migration Act 1958*.

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**Subdivision C—Disclosing identifying information**

**53 Disclosing identifying information**

- (1) A person commits an offence if:
- (a) the person's conduct causes disclosure of identifying information; and
  - (b) the disclosure is not a permitted disclosure.

Penalty: Imprisonment for 2 years.

- (1A) This clause does not apply if the person believes on reasonable grounds that the disclosure is necessary to prevent or lessen a serious and imminent threat to the life or health of the person or of any other person.

Note: A defendant bears an evidential burden in relation to the matter in subclause (1A) (see subsection 13.3(3) of the *Criminal Code*).

- (2) A ***permitted disclosure*** is a disclosure that:
- (a) is for the purpose of data-matching in order to:
    - (i) identify, or authenticate the identity of, a person; or
    - (ii) facilitate the processing of persons entering or departing from Australia; or
    - (iii) identify non-citizens who have a criminal history, who are of character concern (as defined in the *Migration Act 1958*) or who are of national security concern; or
    - (iv) combat document and identity fraud in immigration matters; or
    - (v) ascertain whether an applicant for a protection visa had sufficient opportunity to avail himself or herself of protection before arriving in Australia; or
    - (vi) inform the governments of foreign countries of the identity of non-citizens who are, or are to be, removed from Australia; or
  - (b) is for the purpose of administering or managing the storage of identifying information; or

- (c) is authorised under clause 54 and is for the purpose, or one or more of the purposes, for which the disclosure is authorised; or
- (d) is for the purpose of making the identifying information in question available to the person to whom it relates; or
- (da) is to an agency of the Commonwealth or of a State or Territory in order to verify that a person is an Australian citizen or holds a visa of a particular class; or
- (e) takes place under an arrangement entered into with an agency of the Commonwealth, or with a State or Territory or an agency of a State or Territory, for the exchange of identifying information; or
- (ea) is reasonably necessary for the enforcement of the criminal law of the Commonwealth or of a State or Territory; or
- (eb) is required by or under a law of the Commonwealth or of a State or Territory; or
- (f) is for the purpose of a proceeding, before a court or tribunal, relating to the person to whom the identifying information in question relates; or
- (g) is for the purpose of an investigation by the Information Commissioner or the Ombudsman relating to action taken by the Department; or
- (h) is made to a prescribed body or agency for the purpose of the body or agency inquiring into the operation of provisions of this Act relating to:
  - (i) carrying out an identification test; or
  - (ii) requiring the provision of a personal identifier; or
- (ha) is a disclosure of an audio or a video recording for the purposes of:
  - (i) this Act or the regulations; and
  - (ii) transcribing or translating the recording, or conducting language analysis or accent analysis of the recording; or
- (i) takes place with the written consent of the person to whom the identifying information in question relates; or
- (j) is a disclosure authorised by clause 59 (about disclosure of information about a person who has been in detention, for the

Clause 54

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purposes of the immigration detention or removal of the person).

- (3) However, a disclosure is not a permitted disclosure if:
- (a) it is a disclosure of identifying information relating to a personal identifier of a prescribed type; and
  - (b) it is for the purpose of:
    - (i) investigating an offence against a law of the Commonwealth or a State or Territory; or
    - (ii) prosecuting a person for such an offence.

Note: This clause corresponds closely to section 336E of the *Migration Act 1958*.

**54 Authorising disclosure of identifying information to foreign countries etc.**

- (1) AFMA may, in writing, authorise a specified officer or detention officer, any officer or detention officer included in a specified class of officers or detention officers, or an Agency (as defined in the *Public Service Act 1999*) prescribed by the regulations, to disclose identifying information of the kind specified in the authorisation to one or more of the following:
- (a) one or more specified foreign countries;
  - (b) one or more specified bodies each of which is:
    - (i) a police force or police service of a foreign country; or
    - (ii) a law enforcement body of a foreign country; or
    - (iii) a border control body of a foreign country;
  - (c) one or more specified international organisations, or specified organisations of foreign countries, that are responsible for fisheries matters;
  - (d) one or more prescribed bodies of a foreign country, of the Commonwealth or of a State or Territory;
  - (e) one or more prescribed international organisations.
- (2) AFMA must specify in the authorisation, as the purpose or purposes for which disclosure is authorised, one or more of the purposes set out in subclause 26(3).

Note: This clause corresponds closely to subsections 336F(1) and (2) of the *Migration Act 1958*.

## **Subdivision D—Modifying and impairing identifying information**

### **55 Unauthorised modification of identifying information**

A person commits an offence if:

- (a) the person causes any unauthorised modification of identifying information; and
- (b) the person intends to cause the modification; and
- (c) the person knows that the modification is unauthorised.

Penalty: Imprisonment for 2 years.

### **56 Unauthorised impairment of identifying information**

A person commits an offence if:

- (a) the person causes any unauthorised impairment of:
  - (i) the reliability of identifying information; or
  - (ii) the security of the storage of identifying information; or
  - (iii) the operation of a system by which identifying information is stored; and
- (b) the person intends to cause the impairment; and
- (c) the person knows that the impairment is unauthorised.

Penalty: Imprisonment for 2 years.

### **57 Meanings of *unauthorised modification* and *unauthorised impairment* etc.**

(1) In this Division:

- (a) modification of identifying information; or
- (b) impairment of the reliability of identifying information; or
- (c) impairment of the security of the storage of identifying information; or

Clause 58

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- (d) impairment of the operation of a system by which identifying information is stored;  
by a person is unauthorised if the person is not entitled to cause that modification or impairment.
- (2) Any such modification or impairment caused by the person is not unauthorised merely because he or she has an ulterior purpose for causing it.
- (3) For the purposes of an offence under this Division, a person causes any such unauthorised modification or impairment if the person's conduct substantially contributes to it.
- (4) For the purposes of subclause (1), if:
- (a) a person causes any modification or impairment of a kind mentioned in that subclause; and
  - (b) the person does so under a warrant issued under the law of the Commonwealth, a State or a Territory;
- the person is entitled to cause that modification or impairment.

Note: This clause corresponds closely to section 336J of the *Migration Act 1958*.

**Subdivision E—Retaining identifying information**

**58 Identifying information may be indefinitely retained**

Identifying information may be indefinitely retained.

Note: This clause corresponds closely to paragraph 336L(1)(a) of the *Migration Act 1958*, because under this Schedule identifying information will always be about someone who is or has been in detention.

## **Part 6—Disclosure of detainees' personal information**

### **59 Disclosure of detainees' personal information**

- (1) For the purposes described in subclause (2), an agency or organisation that is or has been responsible for the detention of an individual may disclose personal information about the individual to an agency, or organisation, that is or will be responsible for:
  - (a) taking the individual into immigration detention; or
  - (b) keeping the individual in immigration detention; or
  - (c) causing the individual to be kept in immigration detention; or
  - (d) the removal of the individual.
- (2) The purposes are:
  - (a) the immigration detention of the individual; and
  - (b) the removal of the individual; and
  - (c) the welfare of the individual while in immigration detention or being removed.
- (3) In this clause:

**agency** has the same meaning as in the *Privacy Act 1988*.

**immigration detention** has the same meaning as in the *Migration Act 1958*.

**organisation** has the same meaning as in the *Privacy Act 1988*.

**personal information** has the same meaning as in the *Privacy Act 1988*.

**removal** has the same meaning as in the *Migration Act 1958*.

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**Schedule 1—Treaty on fisheries between the  
Governments of certain Pacific Island  
States and the United States of  
America**

Section 4

The Governments of the Pacific Island States party to this Treaty and the Government of the United States of America:

ACKNOWLEDGING that in accordance with international law, coastal States have sovereign rights for the purposes of exploring and exploiting, conserving and managing the fisheries resources of their exclusive economic zones or fisheries zones;

RECOGNISING the strong dependence of the Pacific Island parties on fisheries resources and the importance of the continued abundance of those resources;

BEARING IN MIND that some species of fish are found within and beyond the jurisdiction of any of the parties and range throughout a broad region; and

DESIRING to maximise benefits flowing from the development of the fisheries resources within the exclusive economic zones or fisheries zones of the Pacific Island parties;

HAVE AGREED AS FOLLOWS:

ARTICLE 1

DEFINITIONS AND INTERPRETATION

1.1 In this Treaty:

- (a) “Administrator” means that person or organisation designated by the Pacific Island parties to act as such on their behalf pursuant to this Treaty and notified to the Government of the United States;
- (b) “final judgment” means a judgment from which no appeal proceedings have been initiated within sixty days;

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- (c) “fishing” means:
- (i) searching for, catching, taking or harvesting fish;
  - (ii) attempting to search for, catch, take or harvest fish;
  - (iii) engaging in any other activity which can reasonably be expected to result in the locating, catching, taking or harvesting of fish;
  - (iv) placing, searching for or recovering fish aggregating devices or associated electronic equipment such as radio beacons;
  - (v) any operations at sea directly in support of, or in preparation for any activity described in this paragraph; or
  - (vi) aircraft use, relating to the activities described in this paragraph except for flights in emergencies involving the health or safety of crew members or the safety of a vessel;
- (d) “fishing vessel of the United States” or “vessel” means any boat, ship or other craft which is used for, equipped to be used for, or of a type normally used for commercial fishing, which is documented under the laws of the United States;
- (e) “Licensing Area” means all waters in the Treaty Area except for:
- (i) waters subject to the jurisdiction of the United States in accordance with international law; and
  - (ii) waters closed to fishing by fishing vessels of the United States in accordance with Annex I;
- (f) “operator” means any person who is in charge of, directs or controls a vessel, including the owner, charterer and master;
- (g) “Pacific Island party” means a Pacific Island State party to this Treaty and “Pacific Island parties” means all such States from time to time;
- (h) “Pacific Island State” means a party to the South Pacific Forum Fisheries Agency Convention, 1979;
- (i) “party” means a State party to this Treaty, and “parties” means all such States, from time to time;
- (j) “this Treaty” means this Treaty, its Annexes and Schedules; and
- (k) “Treaty Area” means all waters north of 60 degrees South latitude and east of 90 degrees East longitude, subject to the fisheries jurisdiction of Pacific Island parties, and all other waters within rhumb lines connecting the following geographic co-ordinates, designated for the purposes of this Treaty, except for waters subject to the jurisdiction in
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**Schedule 1** Treaty on fisheries between the Governments of certain Pacific Island States and the United States of America

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accordance with international law of a State which is not a party to this Treaty:

2°35'39''S	141°00'00''E
1°01'35''N	140°48'35''E
1°01'35''N	129°30'00''E
10°00'00''N	129°30'00''E
14°00'00''N	140°00'00''E
14°00'00''N	142°00'00''E
12°30'00''N	142°00'00''E
12°30'00''N	158°00'00''E
15°00'00''N	158°00'00''E
15°00'00''N	165°00'00''E
18°00'00''N	165°00'00''E
18°00'00''N	174°00'00''E
12°00'00''N	174°00'00''E
12°00'00''N	176°00'00''E
5°00'00''N	176°00'00''E
1°00'00''N	180°00'00''
1°00'00''N	164°00'00''W
8°00'00''N	164°00'00''W
8°00'00''N	158°00'00''W
0°00'00''	150°00'00''W
6°00'00''S	150°00'00''W
6°00'00''S	146°00'00''W
12°00'00''S	146°00'00''W
26°00'00''S	157°00'00''W
26°00'00''S	174°00'00''W
40°00'00''S	174°00'00''W
40°00'00''S	171°00'00''W
46°00'00''S	171°00'00''W
55°00'00''S	180°00'00''
59°00'00''S	160°00'00''E
59°00'00''S	152°00'00''E

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and north along the 152 degrees of East longitude until intersecting the Australian 200 nautical mile limit.

1.2 Nothing in this Treaty shall be deemed to affect the applicability of any provision of a Pacific Island party's law which is not identified or otherwise described in this Treaty.

## ARTICLE 2

### BROADER CO-OPERATION

2.1 The Government of the United States shall, as appropriate, co-operate with the Pacific Island parties through the provision of technical and economic support to assist the Pacific Island parties to achieve the objective of maximizing benefits from the development of their fisheries resources.

2.2 The Government of the United States shall, as appropriate, promote the maximization of benefits generated for the Pacific Island parties from the operations of fishing vessels of the United States licensed pursuant to this Treaty, including:

- (a) the use of canning, transshipment, slipping and repair facilities located in the Pacific Island parties;
- (b) the purchase of equipment and supplies, including fuel supplies, from suppliers located in the Pacific Island parties; and
- (c) the employment of nationals of the Pacific Island parties on board licensed fishing vessels of the United States.

## ARTICLE 3

### ACCESS TO THE TREATY AREA

3.1 Fishing vessels of the United States shall be permitted to engage in fishing in the Licensing Area in accordance with the terms and conditions referred to in Annex I and licences issued in accordance with the procedures set out in Annex II.

3.2 It shall be a condition of any licence issued pursuant to this Treaty that the vessel in respect of which the licence is issued is operated in accordance with the requirements of Annex I. No fishing vessel of the United States shall be used for fishing in the Licensing Area without a licence issued in accordance with Annex II or in waters closed to fishing pursuant to Annex I, except in

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accordance with paragraph 3 of this Article, or unless the vessel is used for fishing albacore tuna by the trolling method in high seas areas of the Treaty Area.

3.3 A Pacific Island party may permit fishing vessels of the United States to engage in fishing in waters under the jurisdiction of that party which are:

- (a) within the Treaty Area but outside the Licensing Area; or
- (b) except for purse seine vessels, within the Licensing Area but otherwise than in accordance with the terms and conditions referred to in Annex I,

in accordance with such terms and conditions as may be agreed from time to time with the owners of the said vessels or their representatives. In such a case, if the Pacific Island party gives notice to the Government of the United States of such arrangements, and if the Government of the United States concurs, the procedures of Articles 4 and 5.6 shall be applicable to such arrangements.

#### ARTICLE 4

##### FLAG STATE RESPONSIBILITY

4.1 The Government of the United States shall enforce the provisions of this Treaty and licences issued thereunder. The Government of the United States shall take the necessary steps to ensure that nationals and fishing vessels of the United States refrain from fishing in the Licensing Area and in waters closed to fishing pursuant to Annex I, except as authorised in accordance with Article 3.

4.2 The Government of the United States shall, at the request of the Government of a Pacific Island party, take all reasonable measures to assist that party in the investigation of an alleged breach of this Treaty by a fishing vessel of the United States and promptly communicate all the requested information to that party.

4.3 The Government of the United States shall ensure that:

- (a) each fishing vessel of the United States licensed pursuant to this Treaty is fully insured against all risks and liabilities;
- (b) all measures are taken to facilitate:
  - (i) any claim arising out of the activities of a fishing vessel of the United States, including a claim for the total market value of any fish taken from the Licensing Area without

authorisation pursuant to this Treaty, and the prompt settlement of that claim;

- (ii) the service of legal process by or on behalf of a national or the Government of a Pacific Island party in any action arising out of the activities of a fishing vessel of the United States;
  - (iii) the prompt and full adjudication in the United States of any claim made pursuant to this Treaty;
  - (iv) the prompt and full satisfaction of any final judgment or other final determination made pursuant to this Treaty; and
  - (v) the provision of a reasonable level of financial assurances, if, after consultation with the Government of the United States, all Pacific Island parties agree that the collection of any civil or criminal judgment or judgments or determination or determinations made pursuant to this Treaty has become a serious enforcement problem;
- (c) an amount equivalent to the total value of any forfeiture, fine, penalty or other amount collected by the Government of the United States incurred as a result of any actions, judicial or otherwise, taken pursuant to this Article is paid to the Administrator as soon as possible following the date that the amount is collected.

4.4 The Government of the United States shall, at the request of the Government of a Pacific Island party, fully investigate any alleged infringement of this Treaty involving a vessel of the United States, and report as soon as practicable and in any case within two months to that Government on that investigation and on any action taken or proposed to be taken by the Government of the United States in relation to the alleged infringement.

4.5 In the event that a report provided pursuant to paragraph 4 of this Article shows that a fishing vessel of the United States:

- (a) while fishing in the Licensing Area did not have a licence to fish in the Licensing Area, except in accordance with paragraph 2 of Article 3; or
- (b) was involved in any incident in which an authorised officer or observer was allegedly assaulted with resultant bodily harm, physically threatened, forcefully resisted, refused boarding or subjected to physical intimidation or physical interference in the

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performance of his or her duties as authorised pursuant to this Treaty;  
or

that there was probable cause to believe that a fishing vessel of the United States:

- (c) was used for fishing in waters closed to fishing pursuant to Annex I, except as authorised in accordance with paragraph 3 of Article 3;
- (d) was used for fishing in any Limited Area as described in Annex I, except as authorised in accordance with that Annex I;
- (e) was used for fishing by any method other than the purse seine method, except in accordance with paragraph 2 of Article 3;
- (f) was used for directed fishing for Southern Bluefin Tuna or for fishing for any kinds of fish other than tunas, except that other kinds of fish may be caught as an incidental by-catch;
- (g) used an aircraft for fishing which was not identified on a form provided pursuant to Schedule 1 of Annex II in relation to that vessel;  
or
- (h) was involved in an incident in which evidence which otherwise could have been used in proceedings concerning the vessel has been intentionally destroyed;

and that such vessel has not submitted to the jurisdiction of the Pacific Island party concerned, the Government of the United States shall, at the request of that party, take all necessary measures to ensure that the vessel concerned leaves the Licensing Area and waters closed to fishing pursuant to Annex I immediately and does not return except for the purpose of submitting to the jurisdiction of the party, or after action has been taken by the Government of the United States to the satisfaction of that party.

4.6 In the event that a report provided pursuant to paragraph 4 of this Article shows that a fishing vessel of the United States has been involved in a probable infringement of this Treaty, including an infringement of an applicable national law as identified in Schedule 1 of Annex I, other than an infringement of the kind described in paragraph 5 of this Article, and that the vessel has not submitted to the jurisdiction of the Pacific Island party concerned, the Government of the United States shall, at the request of that party, take all necessary measures to ensure that the vessel concerned:

- (a) submits to the jurisdiction of that party; or
- (b) is penalised by the Government of the United States at such level as may be provided for like violations in United States law relating to

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foreign fishing vessels licensed to fish in the exclusive economic zone of the United States but not to exceed the sum of US\$250,000.

4.7 Financial assurances provided pursuant to this Treaty may be drawn against by any Pacific Island party to satisfy any civil or criminal judgment or other determination in favour of a national or the Government of a Pacific Island party.

4.8 Prior to instituting any legal proceedings pursuant to this Article concerning an alleged infringement of this Treaty in waters within the jurisdiction, for any purpose, as recognised by international law, of a Pacific Island party, the Government of the United States shall notify the Government of that Pacific Island party that such proceedings shall be instituted. Such notice shall include a statement of the facts believed to show an infringement of this Treaty and the nature of the proposed proceedings, including the proposed charges and the proposed penalties to be sought. The Government of the United States shall not institute such proceedings if the Government of that Pacific Island party objects within 30 days of the effective date of such notice.

4.9 The Government of the United States shall ensure that an agent is appointed and maintained in accordance with the requirements of subparagraphs (a) and (b) of this paragraph, with authority to receive and respond to any legal process issued by a Pacific Island party in respect of an operator of any fishing vessel of the United States (identified in the form set out in Schedule 1 of Annex II) and shall notify the Administrator of the name and address of such agent, who:

- (a) shall be located in Port Moresby for the purpose of receiving and responding to any legal process issued in accordance with this Article; and
- (b) shall, within 21 days of notification that legal process has been issued in accordance with this Article, travel to any Pacific Island party, at no expense to that party, for the purpose of receiving and responding to that process.

## ARTICLE 5

### COMPLIANCE POWERS

5.1 It is recognised that the respective Pacific Island parties may enforce the provisions of this Treaty and licences issued thereunder, including arrangements

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made pursuant to Article 3.3 and licences issued thereunder, in waters under their respective jurisdictions.

5.2 The Governments of the Pacific Island parties shall promptly notify the Government of the United States of any arrest of a fishing vessel of the United States or any of its crew and of any charges filed or proceedings instituted following the arrest, in accordance with this Article.

5.3 Fishing vessels of the United States and their crews arrested for breach of this Treaty shall be promptly released upon the posting of a reasonable bond or other security. Penalties applied in accordance with this Treaty for fishing violations shall not be unreasonable in relation to the offence and shall not include imprisonment or corporal punishment.

5.4 The Government of the United States shall not apply sanctions of any kind including deductions, however effected, from any amounts which might otherwise have been paid to any Pacific Island party, and restrictions on trade with any Pacific Island party, as a result of any enforcement measure taken by a Pacific Island party in accordance with this Article.

5.5 The Governments of the parties shall adopt and inform the other parties of such provisions in their national laws as may be necessary to give effect to this Treaty.

5.6 Where legal proceedings have been instituted by the Government of the United States pursuant to Article 4, no Pacific Island party shall proceed with any legal action in respect of the same alleged infringement as long as such proceedings are maintained. Where penalties are levied or proceedings are otherwise concluded by the Government of the United States pursuant to Article 4, the Pacific Island party which has received notice of such final determination shall withdraw any legal charges or proceedings in respect of the same alleged infringement.

5.7 During any period in which a party is investigating any infringement of this Treaty involving a fishing vessel of the United States, being an infringement which is alleged to have taken place in waters within the jurisdiction, for any purpose, as recognised by international law, of a Pacific Island party, and if that Pacific Island party so notifies the other parties, any licence issued in respect of that vessel shall, for the purposes of Article 3, be deemed not to authorise fishing in the waters of that Pacific Island party.

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5.8 If full payment of any amount due as a result of a final judgment or other final determination deriving from an occurrence in waters within the jurisdiction, for any purpose, of a Pacific Island party, is not made to that party within sixty (60) days, the licence for the vessel involved shall be suspended at the request of that party and that vessel shall not be authorised to fish in the Licensing Area until that amount is paid to that party.

## ARTICLE 6

### CONSULTATIONS AND DISPUTE SETTLEMENT

6.1 At the request of any party, consultations shall be held with any other party within sixty (60) days of the date of receipt of the request. All other parties shall be notified of the request for consultations and any party shall be permitted to participate in such consultations.

6.2 Any dispute between the Government of the United States and the Government of one or more Pacific Island parties in relation to or arising out of this Treaty may be submitted by any such party to an arbitral tribunal for settlement by arbitration no earlier than one hundred and twenty (120) days following a request for consultations under Article 6.1. Unless the parties to the dispute agree otherwise, the Arbitration Rules of the United Nations Commission on International Trade Law as at present in force, shall be used.

6.3 The Government or Governments of the Pacific Island party or parties to the dispute shall appoint one arbitrator and the Government of the United States shall appoint one arbitrator. The third arbitrator, who shall act as presiding arbitrator of the tribunal, shall be appointed by agreement of the parties to the dispute. In the event of a failure to appoint any arbitrator within the time period provided in the Rules, the arbitrator shall be appointed by the Secretary-General of the Permanent Court of Arbitration at The Hague.

6.4 Unless the parties to the dispute agree otherwise, the place of arbitration shall be Port Moresby. The tribunal may hold meetings at such other place or places within the territory of a Pacific Island party or elsewhere within the Pacific Islands region as it may determine. An award or other decision shall be final and binding on the parties to the arbitration, and, unless the parties agree otherwise, shall be made public. The parties shall promptly carry out any award or other decision of the tribunal.

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6.5 The fees and expenses of the tribunal shall be paid half by the Government or Governments of the Pacific Island party or parties to the arbitration and half by the Government of the United States, unless the parties to the arbitration agree otherwise.

#### ARTICLE 7

##### REVIEW OF THE TREATY

7. The parties shall meet once each year for the purpose of reviewing the operation of this Treaty.

#### ARTICLE 8

##### AMENDMENT OF THE TREATY

8. The following procedures shall apply to the adoption and entry into force of any amendment to this Treaty.

- (a) Any party may propose amendments to this Treaty.
- (b) A proposed amendment shall be notified to the depositary not less than forty five (45) days before the meeting at which the proposed amendment will be considered.
- (c) The depositary shall promptly notify all parties of such proposal.
- (d) The parties shall consider proposed amendments to this Treaty at the annual meeting described in Article 7, or at any other time that may be agreed by all parties.
- (e) Any amendment to this Treaty shall be adopted by the approval of all the parties, and shall enter into force upon receipt by the depositary of instruments of ratification, acceptance or approval by the parties.
- (f) The depositary shall promptly notify all parties of the entry into force of the amendment.

#### ARTICLE 9

##### AMENDMENT OF ANNEXES

9. The following procedures may apply to the adoption and entry into force of any amendment to an Annex of this Treaty, at the request of the party proposing the amendment, in lieu of the procedure set out in Article 8, unless otherwise provided in the Annex.

- (a) Any party may propose amendment to an Annex of this Treaty at any time by notifying such proposal to the depositary, which shall promptly notify all parties of the proposed amendment.
- (b) A party approving a proposed amendment to an Annex shall notify its acceptance to the depositary, which shall promptly notify all the parties of each acceptance. Upon receipt by the depositary of notices of acceptance from all parties, such amendment shall be incorporated in the appropriate Annex and shall have effect from that date, or from such other date as may be specified in such amendment. The depositary shall promptly notify all parties of the adoption of the amendment and its effective date.

## ARTICLE 10

### NOTIFICATION

10.1 The Administrator and each party shall notify the depositary of their current addresses for the receipt of notices given pursuant to this Treaty, and the depositary shall notify the Administrator and each of the parties of such addresses or any changes thereof. Unless otherwise specified in this Treaty, any notice given in accordance with this Treaty shall be in writing and may be served by hand or sent by telex or, where either method cannot readily be effected, by registered airmail to the address of the party or the Administrator as currently listed with the depositary.

10.2 Delivery by hand shall be effective when made. Delivery by telex shall be deemed to be effective on the business day following the day when the “answer back” appears on the sender’s telex machine. Delivery by registered airmail shall be deemed to be effective twenty-one (21) days after posting.

## ARTICLE 11

### DEPOSITARY

11. The depositary for this Treaty shall be the Government of Papua New Guinea.

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ARTICLE 12

FINAL CLAUSES

12.1 This Treaty shall be open for signature by the Governments of all the Pacific Island States and the Government of the United States of America.

12.2 This Treaty is subject to ratification by the States referred to in paragraph 1 of this Article. The instruments of ratification shall be deposited with the depositary.

12.3 This Treaty shall remain open for accession by States referred to in paragraph 1 of this Article. The instruments of accession shall be deposited with the depositary.

12.4 This Treaty shall enter into force upon receipt by the depositary of instruments of ratification by the Government of the United States and by the Governments of ten Pacific Island States which shall include the Federated States of Micronesia, the Republic of Kiribati and Papua New Guinea.

12.5 This Treaty shall enter into force for any State ratifying or acceding after the entry into force of this Treaty on the thirtieth day after the date on which its instrument of ratification or accession is received by the depositary.

12.6 This Treaty shall cease to have effect at the expiry of one year following the receipt by the depositary of an instrument signifying withdrawal or denunciation by the United States, any of the Pacific Island States named in Article 12.4, or such number of Pacific Island States as would leave fewer than ten such States as parties.

12.7 This Treaty shall cease to have effect for a party at the expiry of the sixth month following the receipt by the depositary of an instrument signifying withdrawal or denunciation by that party, except that where this Treaty would cease to have effect under the last preceding paragraph as the result of the receipt of the said instrument, it shall cease to have effect for that party in the manner provided in the last preceding paragraph.

12.8 Any licence in force pursuant to this Treaty shall not cease to have effect as a result of this Treaty ceasing to have effect either generally or for any party, and Articles 1, 3, 4 and 5 shall be regarded as continuing in force between the United States and the Pacific Island State party in respect of such licence until such licence expires in accordance with its terms.

12.9 No reservations may be made to this Treaty.

12.10 Paragraph 9 of this Article does not preclude a State, when signing, ratifying or acceding to this Treaty, from making declarations or statements, provided that such declarations or statements do not purport to exclude or modify the legal effect of the provisions of this Treaty in their application to that State.

DONE at Port Moresby on the second day of April, 1987.

**Schedule 1** Treaty on fisheries between the Governments of certain Pacific Island States and the United States of America

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REPRESENTATIVES OF THE GOVERNMENTS OF:

John Kerin  
AUSTRALIA

Edward Wolfe  
John Negroponte  
UNITED STATES OF AMERICA

Pupuke Ropati  
COOK ISLANDS

Andon Amaraich  
FEDERATED STATES OF MICRONESIA

Robin Yarrow  
FIJI

Teewe Arobati  
REPUBLIC OF KIRIBATI

Charles Dominick  
REPUBLIC OF THE MARSHALL ISLANDS

Hammer De Roburt  
REPUBLIC OF NAURU

Gerald McGhie  
NEW ZEALAND

NIUE

REPUBLIC OF PALAU

Edward Diro  
PAPUA NEW GUINEA

Sir Peter Kenilorea  
SOLOMON ISLANDS

KINGDOM OF TONGA

Lale Seluka  
TUVALU

REPUBLIC OF VANUATU

Fuimaono Mimio  
WESTERN SAMOA

ANNEX I

PART 1

INTRODUCTORY

1. In this Annex:
  - (a) “applicable national law” means any provision of a law, however described, of a Pacific Island party which governs the fishing activities of foreign fishing vessels, being a law identified in Schedule 1, and which is not inconsistent with the requirements of this Treaty and shall be taken to exclude any provision which imposes a requirement which is also imposed by this Treaty;
  - (b) “Closed Area” means an area of a Pacific Island party as described in Schedule 2;
  - (c) “Limited Area” means an area described in Schedule 3; and
  - (d) “the vessel” means the vessel in respect of which a licence is issued.
2. Schedule 1 may be amended from time to time by the inclusion by any Pacific Island party of any applicable national law and, for the purposes of this Treaty, except as provided in this paragraph, the amendment shall take effect from the date that the amended Schedule has been notified to the Government of the United States. For the purposes of any obligation on the United States pursuant to paragraphs 4 and 5 of Article 4, the amendment shall take effect sixty (60) days from the date that the amended Schedule has been notified to the Government of the United States. The Government of the Pacific Island party shall use its best endeavours to provide advance notice to the Government of the United States of the amendment.
3. Nothing in this Annex and its Schedules, nor acts or activities taking place thereunder, shall constitute recognition of the claims or the positions of any of the parties concerning the legal status and extent of waters and zones claimed by any party. In the claimed waters and zones, the freedoms of navigation and overflight and other uses of the sea related to such freedoms are to be exercised in accordance with international law.

## PART 2

### COMPLIANCE WITH APPLICABLE NATIONAL LAWS

4. The operator of the vessel shall comply with each of the applicable national laws, and shall be responsible for the compliance by the vessel and its crew with each of the applicable national laws, and the vessel shall be operated in accordance with those laws.

## PART 3

### PROHIBITIONS

5. The vessel shall not be used for directed fishing for Southern Bluefin Tuna, or for fishing for any kinds of fish other than tunas, except that other kinds of fish may be caught as an incidental by-catch.

6. The vessel shall not be used for fishing by any method, except the purse seine method.

7. The vessel shall not be used for fishing in any Closed Area.

8. Except for circumstances involving force majeure and other emergencies involving the health or safety of crew members or the safety of the vessel, no aircraft may be used in association with the fishing activities of the vessel unless it is identified in item 6 or 7 of Schedule 1 of Annex II.

9. The vessel shall not be used for fishing in any Limited Area except in accordance with the requirements set out in Schedule 3, which are applicable to that Limited Area.

## PART 4

### REPORTING

10. Information relating to the position of and catch on board the vessel, as described in Part 1 of Schedule 4, shall be provided by telex to the Administrator at the following times:

- (a) before departure from port for the purpose of beginning a fishing trip in the Licensing Area;
- (b) each Wednesday while within the Licensing Area or a Closed Area; and

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- (c) before entry into port for the purpose of unloading fish from any trip involving fishing in the Licensing Area.

11. Information relating to the position of and catch on board the vessel, as described in Part 2 of Schedule 4, shall be provided to each Pacific Island party in the manner notified to the Government of the United States by that party as follows:

- (a) at the time of entry into and of departure from waters which are, for any purpose, subject to the jurisdiction of the Pacific Island party;
- (b) at least 24 hours prior to the estimated time of entry into any port of that party; and
- (c) as otherwise set out in Part 3 of Schedule 4.

12. At the end of each day that the vessel is in the Licensing Area, an entry or entries for that day shall be completed on the catch report form as set out in Schedule 5, in accordance with the requirements of that form, and such forms shall be posted by registered airmail to the Administrator within fourteen (14) days following the date of the next entry into a port for the purpose of unloading its fish catch.

13. Immediately following the unloading of any fish from the vessel, a report shall be completed in the form set out in Schedule 6 and shall be posted by registered airmail to the Administrator within fourteen (14) days following the date of the completion of that unloading operation, or, in the case of unloading by transshipment, within fourteen (14) days following unloading of that transshipment at the processing site.

## PART 5

### ENFORCEMENT

14. The master and each member of the crew of the vessel shall immediately comply with every instruction and direction given by an authorised and identified officer of a Pacific Island party, including to stop, to move to a specified location, and to facilitate safe boarding and inspection of the vessel, gear, equipment, records, fish and fish products. Such boarding and inspection shall be conducted as much as possible in a manner so as not to interfere unduly with the lawful operation of the vessel. The operator and each member of the crew shall facilitate and assist in any action by an authorised officer of a Pacific Island party and shall not assault, obstruct, resist, delay, refuse boarding to,

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intimidate or interfere with an authorised officer in the performance of his or her duties.

15. The international distress frequency, 2.182 MHz, and 156.8 MHz (Channel 16, VHF) shall be monitored continuously from the vessel for the purpose of facilitating communication with the surveillance and enforcement authorities of the parties.

16. The international radio call sign of the vessel shall be painted in white on a black background, or in black on a white background, in the following manner:

- (a) amidships on both sides immediately below the gunwale, and on a horizontal plane on the superstructure, in letters and figures 20 centimetres apart, with each letter and figure being at least one metre high and 50 centimetres wide and with each line at least 12.5 centimetres wide;
- (b) if a helicopter is being carried, on the body of the helicopter in a place clearly visible from sea level, in letters and figures five centimetres apart, with each letter and figure being at least 25 centimetres high, 10 centimetres wide and with each line being at least 2.5 centimetres wide; and
- (c) on any other equipment being carried by and intended to be separated from the vessel during normal fishing operations, in letters and figures clearly legible to the naked eye;

and at all times while the vessel is within the Licensing Area or a Closed Area, all parts of these markings shall be clear, distinct and uncovered.

17. The licence shall be carried on board the vessel and produced at the request of an authorised enforcement official of any of the parties. Prior to receipt of the licence, the correct citation of the licence number shall satisfy this requirement.

## PART 6

### OBSERVERS

18. The operator and each member of the crew of the vessel shall allow and assist any person identified as an observer by the Pacific Island parties to:

- (a) board the vessel for scientific, compliance, monitoring and other functions at the point and time notified by the Pacific Island parties to the Government of the United States;

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- (b) have full access to and the use of facilities and equipment on board the vessel which the observer may determine is necessary to carry out his or her duties; have full access to the bridge, fish on board and areas which may be used to hold, process, weigh and store fish; remove samples; have full access to the vessel's records, including its log and documentation for the purpose of inspection and copying; and gather any other information relating to fisheries in the Licensing Area; without interfering unduly with the lawful operation of the vessel;
  - (c) disembark at the point and time notified by the Pacific Island parties to the Government of the United States; and
  - (d) carry out his or her duties safely;

and no operator or crew member of the vessel shall assault, obstruct, resist, delay, refuse boarding to, intimidate or interfere with an observer in the performance of his or her duties.

19. The operator shall provide the observer, while on board the vessel, at no expense to the Pacific Island parties, with food, accommodation and medical facilities of such reasonable standard as may be acceptable to the Pacific Island party whose representative is serving as the observer.

20. Any operator of the vessel from which any fish taken in the Licensing Area is unloaded shall allow, or arrange for, and assist any person authorised for this purpose by the Pacific Island parties to have full access to any place where such fish is unloaded, to remove samples and to gather any other information relating to fisheries in the Licensing Area.

21. An observer programme shall be conducted in accordance with this Treaty and provisions that may be agreed from time to time.

## PART 7

### MISCELLANEOUS REQUIREMENTS

22. At all times while the vessel is in a Closed Area, the fishing gear of the vessel shall be stowed in such a manner as not to be readily available for fishing. In particular, the boom shall be lowered as far as possible so that the vessel cannot be used for fishing but so that the skiff is accessible for use in emergency situations; the helicopter, if any, shall be tied down; and launches shall be secured.

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23. The vessel shall be operated in such a way that the activities of traditional and locally based fishermen and fishing vessels are not disrupted or in any other way adversely affected.

24. Any information required to be recorded, or to be notified, communicated or reported pursuant to a requirement of this Treaty shall be true, complete and correct. Any change in circumstances which has the effect of rendering any such information false, incomplete or misleading shall be notified to the Administrator immediately.

## SCHEDULE 1

### APPLICABLE NATIONAL LAWS

The following laws and any regulations or other instruments having the force of law which have been implemented pursuant to those laws, as amended at the time this Treaty enters into force, shall be considered as applicable national laws for the purposes of this Treaty.

#### Australia

Antarctic Marine Living Resources Conservation Act, 1981  
Continental Shelf (Living Natural Resources) Act, 1968  
Continental Shelf (Living Natural Resources) Regulations  
Fisheries Act, 1952  
Fisheries Regulations  
Torres Strait Fisheries Act, 1984  
Whale Protection Act, 1980

#### Cook Islands

Cook Islands Commercial Fishing Regulations, 1951  
Exclusive Economic Zone (Foreign Fishing Craft) Regulations, 1979  
Fisheries Protection Act, 1976  
Fishing Ordinance, 1950  
Territorial Sea and Exclusive Economic Zone Act, 1977

#### Federated States of Micronesia

Titles 18 and 24 of the Code of the Federated States of Micronesia, as amended by Public Law Nos. 2-28, 2-31, 3-9, 3-10, 3-34, and 3-80

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Fiji

Fisheries Act, 1942

Fisheries Ordinance (Cap 135)

Fisheries Regulations (Cap 135)

Marine Spaces Act, 1978

Marine Spaces (Foreign Fishing Vessels) Regulations, 1979

Kiribati

Fisheries Ordinance, 1979

Fisheries (Amendment) Act, 1984

Marine Zones (Declaration) Act, 1983

Marshall Islands

Marine Resources Jurisdiction Act, 1978

Marine Zones (Declaration) Act, 1984

Nauru

Interpretation Act, 1971

Interpretation Act, 1975

Marine Resources Act, 1978

New Zealand

Antarctic Marine Living Resources Act, 1981

Continental Shelf Act, 1964

Exclusive Economic Zone (Foreign Fishing Craft) Regulations, 1978

Fisheries Act, 1983

Marine Mammals Protection Act, 1978

Territorial Sea and Exclusive Economic Zone Act, 1977

Tokelau (Territorial Sea and Exclusive Economic Zone Act), 1977

Niue

Territorial Sea and Exclusive Economic Zone Act, 1978

Palau

Palau National Code, Title 27

Papua New Guinea

Fisheries Act (Cap 214)

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Fisheries Regulations (Cap 214)  
Fisheries (Torres Strait Protected Zone) Act, 1984  
Tuna Resources Management (National Seas) Act (Cap 224)  
Whaling Act (Cap 225)

Solomon Islands

Delimitation of Marine Waters Act, 1978  
Fisheries Act, 1972  
Fisheries Limits Act, 1977  
Fisheries Regulations, 1972  
Fisheries (Foreign Fishing Vessels) Regulations, 1981

Tonga

Fisheries Protection Act, 1973  
Fisheries Regulation Act, 1923  
Whaling Industry (Amendment) Act, 1979

Tuvalu

Fisheries Act (Cap 45)  
Foreign Fishing Vessel Regulations, 1982  
Fisheries (Foreign Fishing Vessel) (Amendment) Regulations, 1984  
Marine Zones (Declaration) Act, 1983

Vanuatu

Fisheries Act, 1982  
Fisheries Regulations, 1983  
Maritime Zones Act, 1981

Western Samoa

Exclusive Economic Zone Act, 1977  
Fisheries Protection Act, 1972  
Territorial Sea Act, 1971

**SCHEDULE 2**

**CLOSED AREAS**

Australia. All waters within the seaward boundary of the Australian Fishing Zone (AFZ) west of a line connecting the point of intersection of the outer limit of the AFZ by the parallel of latitude 25°30' South with the point of intersection

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of the meridian of longitude 151° East of the outer limit of the AFZ and all waters south of the parallel of latitude 25°30' South.

Cook Islands. Territorial Sea.

Federated States of Micronesia. Three nautical mile territorial sea and nine nautical mile exclusive fishery zone and on all named banks and reefs as depicted on the following charts:

- |                 |   |
|-----------------|---|
| DMAHTC NO 81019 | (2nd. ed., Mar. 1945; revised 7/17/72. corrected through NM 3/78 of June 21, 1978). |
| DMAHTC NO 81023 | (3rd. ed., Aug. 7, 1976).   |
| DMAHTC NO 81002 | (4th. ed., Jan. 26, 1980; corrected through NM 4/80).                               |

Fiji. Internal waters, archipelagic waters and territorial seas of Fiji and Rotuma and its Dependencies.

Kiribati. Within archipelagic waters as established in accordance with Marine Zones Declaration Act 1983; within 12 nautical miles drawn from the baselines from which the territorial sea is measured; within 2 nautical miles of any anchored fish aggregating device for which notification of its location shall be given by geographical coordinates.

Marshall Islands. 12 nautical mile territorial sea and area within two nautical miles of any anchored fish aggregating device for which notification of its location shall be given by geographical coordinates.

Nauru. The territorial waters as defined by Nauru Interpretation Act, 1971, Section 2.

New Zealand. Territorial waters; waters within 6 nautical miles of outer boundary of territorial waters; all waters to west of New Zealand main islands and south of 39° South latitude; all waters to east of New Zealand main islands south of 40° South latitude; and in respect of Tokelau: areas within 12 nautical miles of all island and reef baselines; twelve and one half nautical miles either side of a line joining Atafu and Nukunonu and Faka'ofu; and coordinates as follows:

- Atafu: 8°35'10''S, 172°29'30''W  
Nukunonu: 9°06'25''S, 171°52'10''W  
            9°11'30''S, 171°47'00''W  
Faka'ofu: 9°22'30''S, 171°16'30''W

Niue. Territorial sea and within 3 nautical miles of Beveridge Reef, Antiope Reef and Haran Reef as depicted by appropriate symbols on NZ 225F (chart

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showing the territorial sea and exclusive economic zone of Niue pursuant to the Niue Territorial Sea and Exclusive Economic Zone Act of 1978).

Palau. Within 12 nautical miles of all island baselines in the Palau Islands; within a 50 nautical mile arc measured from the entrance to Malakal Harbour (7°16'44' N, 134°28'18' E) and extending from where the arc intersects the territorial sea limit to the northeast of Babelthuap Island to the 134° East meridian of longitude, southwest of Angaur Island then due north along the 134° East meridian of longitude to the intersection with the territorial sea limit.

Papua New Guinea. In addition to its territorial sea and internal waters, within the area bounded by the following parallels and meridians—from latitude 0°30' South to latitude 3°30' South, and from longitude 149° East to longitude 153° East.

Solomon Islands. All waters within the fishery limits of the Solomon Islands (including internal waters, territorial sea and archipelagic waters) except that part of the fishery limits east and north of the following lines: commencing at a point 161° East, 4°20' South, then extending due south along 161° to a point 6°30' South, then by a line extending due east to a point 165° East, then by a line due south to a point 8° South, then by a line due east to a point 169°55' East.

Tonga. All waters with depths of not more than 1,000 metres, within the area bounded by the fifteenth and twenty third and one half degrees of south latitudes and the one hundred and seventy third and the one hundred and seventy seventh degrees of west longitudes; also within a radius of twelve nautical miles from the islands of Teleki Tonga and Teleki Tokelau.

Tuvalu. Territorial sea and waters within two nautical miles of all named banks, i.e. Macaw, Kosciusko, Rose, Bayonnaise and Hera, in Tuvalu EEZ, as depicted on the chart entitled “Tuvalu Fishery Limits” prepared by the United Kingdom Hydrographic Department, Taunton, January 11, 1981.

Vanuatu. Archipelagic waters and the territorial sea, and internal waters.

Western Samoa. Territorial sea; reefs, banks and areas bounded/enclosed by the following parallels and meridians to the extent such areas are within Western Samoa fisheries jurisdiction:

1. From latitude 12°58' South to latitude 13°11.5' South and longitude 174° 5.5' West to longitude 174° 26' West.
2. From latitude 12° 12' South to latitude 12° 38.5' South and longitude 173° 47' West to longitude 174° 25' West.

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3. From latitude 13° 7' South to latitude 13° 19' South and longitude 172° 59' West to longitude 173° 38.5' West.
  4. From latitude 14° 51' South to latitude 15° 3.4' South and longitude 172° 10.7' West to longitude 172° 19.1' West.
  5. From latitude 14° 20.5' South to latitude 14° 28' South and longitude 171° 8' West to longitude 171° 17' West.

and within 2 nautical miles of any anchored fish aggregating device within the EEZ for which notification of its location shall be given by geographical coordinates.

Only the Closed Areas, as described above, of Pacific Island States which are parties to this Treaty shall be applicable under the terms of this Treaty.

### SCHEDULE 3

#### LIMITED AREAS

##### Solomon Islands

1. The Solomon Islands Limited Area is all of the Licensing Area within the fishery limits of Solomon Islands as described in the Fishery Limits Act 1977 of Solomon Islands.
2. “Fishing day” means any day or part of a day of the week in which a vessel is used for fishing in the Solomon Islands Limited Area.
3. There shall be no fishing in the Solomon Islands Limited Area after the expiry of the five hundredth fishing day from the earliest date on which any Licensing Period takes effect in any given year.

### SCHEDULE 4

#### REPORTING DETAILS

##### PART 1

##### LICENSING AREA REPORTS TO THE ADMINISTRATOR

- (a) Port departure and entry into port for unloading
  - (1) report type (LBEG for port departure to begin fishing and LFIN for port entry for unloading)

- (2) date
- (3) call sign
- (4) port name
- (5) catch on board by species (in short tons)  
as: LBEG (or LFIN)/ddmmy/CALL SIGN/PORT/SJ xxx YF yyy OTH  
    zzz

- (b) Weekly reports
  - (1) report type (WEEK)
  - (2) date
  - (3) call sign
  - (4) position (to one minute of arc)
  - (5) catch on board by species  
as: WEEK/ddmmy/CALL SIGN/LA 1111/LO 1111/SJ xxx YF yyy  
    OTH zzz

## PART 2

### REPORTS TO NATIONAL AUTHORITIES

- (a) Zone entry and exit
  - (1) report type (ZENT for entry and ZEXT for exit)
  - (2) date
  - (3) call sign
  - (4) position (to one minute of arc)
  - (5) catch on board by species  
as: ZENT (or ZEXT)/ddmmy/CALL SIGN/TIME/LA 1111/LO 1111/SJ  
    xxx YF yyy OTH zzz
- (b) Port entry reports
  - (1) report type (PENT)
  - (2) date
  - (3) call sign
  - (4) estimated time of entry into port (GMT)
  - (5) port name  
as: PENT/ddmmy/CALL SIGN/TIME/PORT NAME

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PART 3

OTHER NATIONAL REPORTING REQUIREMENTS

1. Australia
  - (a) Report of position each two days while within the Australian Fishing Zone;
  - (b) 24 hours notice of intention to enter the Australian Fishing Zone; and
  - (c) Report of catch by species every six days while within the Australian Fishing Zone.
2. Fiji
  - (a) While in Fiji fisheries waters, daily position reporting of the name, call sign, and country of registration of the craft, and its position at that specified time; and
  - (b) While in Fiji fisheries waters, weekly report of catch by species.
3. Kiribati

While in the Kiribati exclusive economic zone, report on entry into or exit from Closed Areas.
4. New Zealand
  - (a) While in the New Zealand exclusive economic zone, notification of daily noon positions, to be received no later than noon on the following day;
  - (b) Notice of catch on board the vessel at the time of entry into the New Zealand exclusive economic zone;
  - (c) A weekly report of catch taken in the New Zealand exclusive economic zone to cover the period 0001 hours on a Monday to 2400 hours on the following Sunday and to be received by noon on the following Tuesday; and
  - (d) 24 hours notice of intention to enter the New Zealand exclusive economic zone.
5. Solomon Islands

Report on:

  - (a) Expected vessel position, date and time of entry at least 24 hours before entry into the Solomon Islands Fishery Limits;

- (b) Entry to or exit from Solomon Islands Limited Area together with the catch on board by weight and volume; and
- (c) A weekly report of catch taken and fishing days in the Solomon Islands exclusive economic zone to cover the period 0001 hours on a Monday to 2400 hours on the following Sunday and to be received by noon on the following Tuesday.

6. Tonga

While in the Tonga exclusive economic zone, daily position report by radio or telex.

7. Tuvalu

- (a) Report not less than 24 hours before entry into the Tuvalu fishery limits on:
  - (i) the name, call sign and country of registration of the vessel;
  - (ii) the licence number;
  - (iii) position on entry; and
  - (iv) catch by species.

**SCHEDULE 5**  
**PURSE SEINE VESSEL CATCH REPORT FORM**

VESSEL NAME _____	LICENSE/PERMIT NUMBER _____	DEPARTURE FROM PORT	NAME	DATE	YYMMDD
COUNTRY OF REGISTRATION _____	NAME OF CAPTAIN _____				
REGISTRATION NUMBER _____	LICENSE/PERMIT _____	ARRIVAL AT PORT		DATE	
GROSS REGISTERED TONNAGE _____	HOLDER'S SIGNATURE _____				
NAMES(S) OF FISH CARRIER(S) _____					
FOR GROUP PURSE-SEINER _____	YEAR _____ MONTH _____	NUMBER OF CREW _____			

DAY	NOON OR SET POSITION				SCHOOL TYPE	TIME SET	SKIPJACK		YELLOWFIN		OTHER SPECIES			COMMENTS	DISCARDS		
	LAT		LONG				CATCH Short Tons	AV. SIZE (lb)	CATCH Short Tons	AV. SIZE (lb)	SPECIES NAME	CATCH Short Tons	AV. SIZE (lb)		TUNA Short Tons	OTHERS (lb)	REASON FOR DISCARD
	DDMM	N S	DDMM	E W													
					( )								( )			( )	
					( )								( )			( )	
					( )								( )			( )	
					( )								( )			( )	
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					( )								( )			( )	
					( )								( )			( )	
					( )								( )			( )	
					( )								( )			( )	
					( )								( )			( )	
TOTAL																	

Numerical expression of school type, comments, and reason for discard

**SCHOOL TYPE**  
1 Log  
2 Surface  
3 Whale  
4 Porpoise  
5 Raft  
6 Other

**COMMENTS**  
1 A full day in transit between fishing grounds or to or from fishing grounds.  
2 A full day not fishing due to breakdown.  
3 A full day not fishing due to bad weather.  
4 A full day searching for fish but no sets made.  
5 Part of day searching for fish but no sets made.  
6 Set unsuccessful for any reason, e.g. fish dive, roll up.

**REASON FOR DISCARD**  
1 Undesirable species  
2 Fish too small  
3 Vessel completely loaded  
4 Other reason—please specify

SCHEDULE 6

PURSE SEINE UNLOADING LOGSHEET

Vessel Name .....	Radio Call Sign or Regional Register No. ....
(1) Port .....	
or, If at sea, position: Lat .....	Long .....
(2) Dates	
(a) At unloading point	
Arrival .....	Departure .....
(b) At unloading	
Commencement .....	Completion .....
(3) Partial or complete unloading .....	
(4) Unloading to .....	
(5) (a) Carrier Vessel Name .....	
and Radio call sign or regional Register No. ....	
or	
(b) Name and address of company accepting fish .....	
.....	
(6) Destination of fish .....	
.....	
(7) Quantity unloaded	
	Unit of Measurement
Accepted      Yellowfin      Skipjack      Bigeye      Marlin      Other	
.....	.....
Rejected      .....	.....
.....	.....
Signatures	
.....	.....
Vessel Master	Receiving Agent

## ANNEX II

1. For the purposes of this Annex:
  - (a) “Licensing Period” means the period of validity of licences issued in accordance with this Treaty.
2. The Government of the United States shall make application for a licence in respect of any fishing vessel of the United States intended by the operator to be used for purse seine fishing in the Licensing Area at any time in the Licensing Period by providing to the Administrator a complete application form as set out in Schedule 1.
3. Licences issued pursuant to this Treaty shall not take effect until the Administrator has received payment, free of any charges whatsoever, of the amounts set out in Part 1 of Schedule 2 for that Licensing Period in the manner described in that Schedule. Other financial commitments shall be provided during the Licensing Period pursuant to Part 2 of Schedule 2.
4. Subject to paragraph 5, a licence may be denied:
  - (a) where the application is not in accordance with the requirements of paragraph 2;
  - (b) where the owner or charterer is the subject of proceedings under the bankruptcy laws of the United States, unless reasonable financial assurances have been provided to the Administrator;
  - (c) where the vessel in respect of which application for a licence has been made does not have good standing on the Regional Register of Foreign Fishing Vessels, maintained by the South Pacific Forum Fisheries Agency, provided that:
    - (i) good standing is withdrawn only as a result of:
      - (A) the commission of a serious offence against fisheries laws or regulations of a Pacific Island State and the operator has not fully complied with any civil or criminal judgment rendered with respect to such an offence;
      - (B) evidence existing that gives reasonable cause to believe that the operator has committed a serious offence against the fisheries laws or regulations of any Pacific Island State and that it has not been possible to bring the vessel operator to trial; or

- (C) the vessel operator has failed to comply with information requirements for registration as notified by the Administrator to the Government of the United States;
- (ii) the Pacific Island party requesting withdrawal of good standing has first consulted the Government of the United States and has made all reasonable efforts to resolve the dispute in question before utilizing the procedures for withdrawal of good standing;
- (iii) in the event of a request for withdrawal of good standing from the Regional Register of Foreign Fishing Vessels of a vessel licensed pursuant to this Treaty, the Pacific Island parties agree to take into consideration that vessel's compliance with the terms of this Treaty in determining whether to approve such a request; and
- (iv) following a withdrawal of good standing the Pacific Island party involved promptly advises the Government of the United States in writing of the reason for the withdrawal and the requirements which must be fulfilled to reinstate good standing;
- (d) where there has been a failure to satisfy a final judgment or other final determination for a breach of this Treaty by the owner, charterer or master of the vessel in respect of which application for a licence has been made, until such time as the final judgment or other final determination is satisfied, and subsequent change in ownership of a vessel shall not affect the application of this provision; or
- (e) where an operator has committed, or the vessel has been used for:
  - (i) a violation of this Treaty, providing that the Pacific Island parties, following consultation with the Government of the United States, determine that the violation is of a serious nature; or
  - (ii) any violation of this Treaty on more than one occasion, providing that the Pacific Island parties, following consultation with the Government of the United States, determine that such multiple violations constitute a serious disregard of this Treaty.

5. A maximum number of licences may be issued for any Licensing Period as set out in Schedule 2, and, upon request by the Government of the United States, the Pacific Island parties may agree to vary such number.
6. On receipt of an application for a licence in accordance with this Annex, the Administrator shall take the necessary steps to ensure that:
- (a) a licence in the form set out in Schedule 3 in respect of the vessel identified in the application; or
  - (b) a statement setting out the reasons that a licence in respect of the vessel identified in the application is denied together with a refund of the amount or amounts provided with the application;
- is promptly provided to the Government of the United States.

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SCHEDULE 1

TREATY ON FISHERIES BETWEEN THE GOVERNMENTS OF CERTAIN  
PACIFIC ISLAND STATES AND THE GOVERNMENT OF THE UNITED  
STATES OF AMERICA

APPLICATION FORM

Application is hereby made for a licence authorising the use of the vessel named in this application for fishing in the Licensing Area.

1. FULL NAME OF VESSEL: .....
2. RADIO CALL SIGN OF VESSEL: .....
3. REGIONAL REGISTER NUMBER OF VESSEL: .....
4. FULL NAME AND ADDRESS OF EACH PERSON WHO IS AN  
OPERATOR OF THE VESSEL, AND STATE WHETHER OWNER,  
CHARTERER, MASTER OR OTHER. IF OTHER, SPECIFY  
DETAILS: .....  
.....  
.....
5. FULL NAME AND ADDRESS OF INSURER FOR PURPOSES OF  
ARTICLE 4.3 (a) OF THE TREATY: .....
6. REGISTRATION NUMBER AND MAKE OF HELICOPTER, IF  
ANY, TO BE CARRIED ON VESSEL: .....
7. REGISTRATION NUMBER AND MAKE OF ANY AIRCRAFT TO  
BE USED IN ASSOCIATION WITH FISHING ACTIVITIES AND  
NAME AND ADDRESS OF OPERATOR: .....
8. STATE WHETHER OWNER OR CHARTERER IS THE SUBJECT  
OF PROCEEDINGS UNDER THE BANKRUPTCY LAWS OF THE  
UNITED STATES: .....
9. STATE WHETHER OPERATOR OR VESSEL HAS BEEN  
INVOLVED IN A VIOLATION OF THIS TREATY. IF YES,  
SPECIFY DETAILS: .....  
.....  
.....

Date of application

Director of the Southwest Region  
National Marine Fisheries  
Service National Oceanic and  
Atmospheric Administration

## SCHEDULE 2

### PAYMENTS

The following amounts are payable annually for a period of five (5) years pursuant to paragraph 3 of Annex II.

#### PART 1

1. The amounts payable as set forth in this paragraph.
  - (a) Annual industry payments shall be made as follows:
    - (i) for the first annual Licensing Period, a lump sum of US\$1.75 million for 35 vessels, with the next five licences to be made available for the same pro-rata payment as the first 35 licences, and an additional 10 licences to be made available at US\$60,000 per vessel;
    - (ii) for subsequent annual Licensing Periods, 40 vessel licences calculated on the same basis as the first 40 vessel licences in sub-paragraph (i) and indexed to the price of fish as set forth below, with 10 additional licences to be made available at US\$60,000 per vessel and indexed to the price of fish as set forth below.
  - (b) The indexation shall be applied as follows:
    - (i) DEFINITIONS
      - A. Base Vessel Payment: The Base Vessel Payment is US\$50,000 for the first 40 vessels to be licensed and US\$60,000 for vessels to be licensed in excess of 40 vessels.
      - B. Adjusted Individual Vessel Payment: The Adjusted Individual Vessel Payment is the individual vessel payment of each annual Licensing Period after the first annual Licensing Period. The Adjusted Individual Vessel Payment will always apply to the Licensing Period immediately following its calculation.

- C. Landed Price: The Landed Price is the published standard price per ton (American Tuna Sales Association) for fish delivered to American Samoa prevailing at the time a United States purse seine vessel arrives in port for the purpose of offloading its catch.
  - D. Average Landed Price: The Average Landed Price is calculated by averaging the established landed price categories for yellowfin and skipjack tuna in American Samoa. The landed price categories to be used are: over 7.5 pounds, 4 to 7.5 pounds and 3 to 4 pounds for skipjack; over 20 pounds, 7.5 to 20 pounds and 4 to 7.5 pounds for yellowfin.
  - E. Base Price: The Base Price is the Average Landed Price for the three months prior to the Treaty entering into force.
  - F. Estimated Landed Value: The Estimated Landed Value is the Average Landed Price in effect at the time of a vessel's landing weighted by the yellowfin/skipjack mix ratio to be calculated from information on Schedule 6 for that vessel.
  - G. Average Estimated Landed Value: The Average Estimated Landed Value is the Estimated Landed Value for all landings by United States purse seine vessels in American Samoa in the four quarters preceding the final quarter of the applicable Licensing Period divided by the total number of those landings for the same period.
- (ii) CALCULATION AND APPLICATION OF INDEXING FACTOR
- A. To obtain the indexing factor by which the Adjusted Individual Vessel Payment shall be calculated, divide the Average Estimated Landed Value for the preceding four quarters by the Base Price.
  - B. To obtain the Adjusted Individual Vessel Payment, multiply the Base Vessel Payment by the indexing factor obtained in Paragraph (ii) A.

C. In no case shall the Adjusted Individual Vessel Payment be less than the Base Vessel Payment.

(iii) NOTIFICATIONS

The established prices and any changes shall be supplied to the Administrator by the Government of the United States within ten (10) days of their publication. The Administrator shall notify the Government of the United States sixty (60) days before the start of each Licensing Period of the Adjusted Individual Vessel Payment along with the computation used to arrive at the Adjusted Individual Vessel Payment. The Adjusted Individual Vessel Payment shall become final thirty (30) days after receipt by the Government of the United States, unless the Government of the United States advises the Administrator otherwise, in which case consultations shall be held.

(iv) CONSULTATIONS

If the established price categories are revised, or if there is a change in the tuna industry structure which makes the price calculations as set forth above inappropriate, the Administrator may consult with representatives of the Government of the United States as necessary to revise the formula.

- (c) There shall be no pro-ration of the Base Vessel Payment or the Adjusted Individual Vessel Payment. There shall be no refunds of the Base Vessel Payment or the Adjusted Individual Vessel Payment following licence issuance pursuant to Annex II.

2. Sums payable pursuant to the related Agreement between the South Pacific Forum Fisheries Agency and the Government of the United States.

## PART 2

3. Technical assistance, including provision of assistance by technicians, by the United States tuna industry valued at US\$250,000 annually in response to requests co-ordinated through the Administrator.

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SCHEDULE 3

TREATY ON FISHERIES BETWEEN THE GOVERNMENTS OF CERTAIN  
PACIFIC ISLAND STATES AND THE GOVERNMENT OF THE UNITED  
STATES OF AMERICA

LICENCE FORM

The vessel described in this licence is hereby authorised to engage in fishing in the Licensing Area for the period described in this licence, in accordance with the terms and conditions referred to in Annex I.

Full name of vessel: .....

Radio call sign of vessel: .....

Regional register number of vessel: .....

Helicopter or other aircraft which may be used in association with the fishing activities of the vessel: .....

Period of validity:

The period of validity of this licence shall be no longer than one year:

From ....., 19 .....

To ....., 19 .....

.....  
For and on behalf of the Pacific  
Island parties

Date of issue: .....

Licence number: .....

Warning: It is an offence against the laws of many nations, including the United States of America, to violate the requirements of Annex I. Penalties may include substantial fines and vessel forfeiture.

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## Schedule 2—Fish Stocks Agreement

Note: See subsection 4(1) (definition of *Fish Stocks Agreement*).

AGREEMENT FOR THE IMPLEMENTATION OF THE PROVISIONS OF  
THE UNITED NATIONS CONVENTION ON THE LAW OF THE SEA OF  
10 DECEMBER 1982 RELATING TO THE CONSERVATION AND  
MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY  
MIGRATORY FISH STOCKS

The States Parties to this Agreement,

Recalling the relevant provisions of the United Nations Convention on  
the Law of the Sea of 10 December 1982,

Determined to ensure the long-term conservation and sustainable use of  
straddling fish stocks and highly migratory fish stocks,

Resolved to improve cooperation between States to that end,

Calling for more effective enforcement by flag States, port States and  
coastal States of the conservation and management measures adopted for such  
stocks,

Seeking to address in particular the problems identified in chapter 17,  
programme area C, of Agenda 21 adopted by the United Nations Conference on  
Environment and Development, namely, that the management of high seas  
fisheries is inadequate in many areas and that some resources are overutilized;  
noting that there are problems of unregulated fishing, over-capitalization,  
excessive fleet size, vessel reflagging to escape controls, insufficiently selective  
gear, unreliable databases and lack of sufficient cooperation between States,

Committing themselves to responsible fisheries,

Conscious of the need to avoid adverse impacts on the marine  
environment, preserve biodiversity, maintain the integrity of marine ecosystems  
and minimize the risk of long-term or irreversible effects of fishing operations,

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Recognizing the need for specific assistance, including financial, scientific and technological assistance, in order that developing States can participate effectively in the conservation, management and sustainable use of straddling fish stocks and highly migratory fish stocks,

Convinced that an agreement for the implementation of the relevant provisions of the Convention would best serve these purposes and contribute to the maintenance of international peace and security,

Affirming that matters not regulated by the Convention or by this Agreement continue to be governed by the rules and principles of general international law,

Have agreed as follows:

## PART I

### GENERAL PROVISIONS

#### Article 1

##### Use of terms and scope

1. For the purposes of this Agreement:

(a) “Convention” means the United Nations Convention on the Law of the Sea of 10 December 1982;

(b) “conservation and management measures” means measures to conserve and manage one or more species of living marine resources that are adopted and applied consistent with the relevant rules of international law as reflected in the Convention and this Agreement;

(c) “fish” includes molluscs and crustaceans except those belonging to sedentary species as defined in article 77 of the Convention; and

(d) “arrangement” means a cooperative mechanism established in accordance with the Convention and this Agreement by two or more States for the purpose, inter alia, of establishing conservation and management measures

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in a subregion or region for one or more straddling fish stocks or highly migratory fish stocks.

2. (a) “States Parties” means States which have consented to be bound by this Agreement and for which the Agreement is in force.

(b) This Agreement applies mutatis mutandis:

- (i) to any entity referred to in article 305, paragraph 1(c), (d) and (e), of the Convention and
- (ii) subject to article 47, to any entity referred to as an “international organization” in Annex IX, article 1, of the Convention

which becomes a Party to this Agreement, and to that extent “States Parties” refers to those entities.

3. This Agreement applies mutatis mutandis to other fishing entities whose vessels fish on the high seas.

## Article 2

### Objective

The objective of this Agreement is to ensure the long-term conservation and sustainable use of straddling fish stocks and highly migratory fish stocks through effective implementation of the relevant provisions of the Convention.

## Article 3

### Application

1. Unless otherwise provided, this Agreement applies to the conservation and management of straddling fish stocks and highly migratory fish stocks beyond areas under national jurisdiction, except that articles 6 and 7 apply also to the conservation and management of such stocks within areas under national jurisdiction, subject to the different legal regimes that apply within areas under national jurisdiction and in areas beyond national jurisdiction as provided for in the Convention.

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2. In the exercise of its sovereign rights for the purpose of exploring and exploiting, conserving and managing straddling fish stocks and highly migratory fish stocks within areas under national jurisdiction, the coastal State shall apply mutatis mutandis the general principles enumerated in article 5.

3. States shall give due consideration to the respective capacities of developing States to apply articles 5, 6 and 7 within areas under national jurisdiction and their need for assistance as provided for in this Agreement. To this end, Part VII applies mutatis mutandis in respect of areas under national jurisdiction.

#### Article 4

#### Relationship between this Agreement and the Convention

Nothing in this Agreement shall prejudice the rights, jurisdiction and duties of States under the Convention. This Agreement shall be interpreted and applied in the context of and in a manner consistent with the Convention.

### PART II

### CONSERVATION AND MANAGEMENT OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY FISH STOCKS

#### Article 5

#### General principles

In order to conserve and manage straddling fish stocks and highly migratory fish stocks, coastal States and States fishing on the high seas shall, in giving effect to their duty to cooperate in accordance with the Convention:

(a) adopt measures to ensure long-term sustainability of straddling fish stocks and highly migratory fish stocks and promote the objective of their optimum utilization;

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(b) ensure that such measures are based on the best scientific evidence available and are designed to maintain or restore stocks at levels capable of producing maximum sustainable yield, as qualified by relevant environmental and economic factors, including the special requirements of developing States, and taking into account fishing patterns, the interdependence of stocks and any generally recommended international minimum standards, whether subregional, regional or global;

(c) apply the precautionary approach in accordance with article 6;

(d) assess the impacts of fishing, other human activities and environmental factors on target stocks and species belonging to the same ecosystem or associated with or dependent upon the target stocks;

(e) adopt, where necessary, conservation and management measures for species belonging to the same ecosystem or associated with or dependent upon the target stocks, with a view to maintaining or restoring populations of such species above levels at which their reproduction may become seriously threatened;

(f) minimize pollution, waste, discards, catch by lost or abandoned gear, catch of non-target species, both fish and non-fish species, (hereinafter referred to as non-target species) and impacts on associated or dependent species, in particular endangered species, through measures including, to the extent practicable, the development and use of selective, environmentally safe and cost-effective fishing gear and techniques;

(g) protect biodiversity in the marine environment;

(h) take measures to prevent or eliminate overfishing and excess fishing capacity and to ensure that levels of fishing effort do not exceed those commensurate with the sustainable use of fishery resources;

(i) take into account the interests of artisanal and subsistence fishers;

(j) collect and share, in a timely manner, complete and accurate data concerning fishing activities on, *inter alia*, vessel position, catch of target and non-target species and fishing effort, as set out in Annex I, as well as information from national and international research programmes;

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(k) promote and conduct scientific research and develop appropriate technologies in support of fishery conservation and management; and

(l) implement and enforce conservation and management measures through effective monitoring, control and surveillance.

## Article 6

### Application of the precautionary approach

1. States shall apply the precautionary approach widely to conservation, management and exploitation of straddling fish stocks and highly migratory fish stocks in order to protect the living marine resources and preserve the marine environment.

2. States shall be more cautious when information is uncertain, unreliable or inadequate. The absence of adequate scientific information shall not be used as a reason for postponing or failing to take conservation and management measures.

3. In implementing the precautionary approach, States shall:

(a) improve decision-making for fishery resource conservation and management by obtaining and sharing the best scientific information available and implementing improved techniques for dealing with risk and uncertainty;

(b) apply the guidelines set out in Annex II and determine, on the basis of the best scientific information available, stock-specific reference points and the action to be taken if they are exceeded;

(c) take into account, *inter alia*, uncertainties relating to the size and productivity of the stocks, reference points, stock condition in relation to such reference points, levels and distribution of fishing mortality and the impact of fishing activities on non-target and associated or dependent species, as well as existing and predicted oceanic, environmental and socio-economic conditions; and

(d) develop data collection and research programs to assess the impact of fishing on non-target and associated or dependent species and their

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environment, and adopt plans which are necessary to ensure the conservation of such species and to protect habitats of special concern.

4. States shall take measures to ensure that, when reference points are approached, they will not be exceeded. In the event that they are exceeded, States shall, without delay, take the action determined under paragraph 3(b) to restore the stocks.

5. Where the status of target stocks or non-target or associated or dependent species is of concern, States shall subject such stocks and species to enhanced monitoring in order to review their status and the efficacy of conservation and management measures. They shall revise those measures regularly in the light of new information.

6. For new or exploratory fisheries, States shall adopt as soon as possible cautious conservation and management measures, including, *inter alia*, catch limits and effort limits. Such measures shall remain in force until there are sufficient data to allow assessment of the impact of the fisheries on the long-term sustainability of the stocks, whereupon conservation and management measures based on that assessment shall be implemented. The latter measures shall, if appropriate, allow for the gradual development of the fisheries.

7. If a natural phenomenon has a significant adverse impact on the status of straddling fish stocks or highly migratory fish stocks, States shall adopt conservation and management measures on an emergency basis to ensure that fishing activity does not exacerbate such adverse impact. States shall also adopt such measures on an emergency basis where fishing activity presents a serious threat to the sustainability of such stocks. Measures taken on an emergency basis shall be temporary and shall be based on the best scientific evidence available.

### Article 7

#### Compatibility of conservation and management measures

1. Without prejudice to the sovereign rights of coastal States for the purpose of exploring and exploiting, conserving and managing the living marine resources within areas under national jurisdiction as provided for in the

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Convention, and the right of all States for their nationals to engage in fishing on the high seas in accordance with the Convention:

(a) with respect to straddling fish stocks, the relevant coastal States and the States whose nationals fish for such stocks in the adjacent high seas area shall seek, either directly or through the appropriate mechanisms for cooperation provided for in Part III, to agree upon the measures necessary for the conservation of these stocks in the adjacent high seas area;

(b) with respect to highly migratory fish stocks, the relevant coastal States and other States whose nationals fish for such stocks in the region shall cooperate, either directly or through the appropriate mechanisms for cooperation provided for in Part III, with a view to ensuring conservation and promoting the objective of optimum utilization of such stocks throughout the region, both within and beyond the areas under national jurisdiction.

2. Conservation and management measures established for the high seas and those adopted for areas under national jurisdiction shall be compatible in order to ensure conservation and management of the straddling fish stocks and highly migratory fish stocks in their entirety. To this end, coastal States and States fishing on the high seas have a duty to cooperate for the purpose of achieving compatible measures in respect of such stocks. In determining compatible conservation and management measures, States shall:

(a) take into account the conservation and management measures adopted and applied in accordance with article 61 of the Convention in respect of the same stocks by coastal States within areas under national jurisdiction and ensure that measures established in respect of such stocks for the high seas do not undermine the effectiveness of such measures;

(b) take into account previously agreed measures established and applied for the high seas in accordance with the Convention in respect of the same stocks by relevant coastal States and States fishing on the high seas;

(c) take into account previously agreed measures established and applied in accordance with the Convention in respect of the same stocks by a subregional or regional fisheries management organization or arrangement;

(d) take into account the biological unity and other biological characteristics of the stocks and the relationships between the distribution of the

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stocks, the fisheries and the geographical particularities of the region concerned, including the extent to which the stocks occur and are fished in areas under national jurisdiction;

(e) take into account the respective dependence of the coastal States and the States fishing on the high seas on the stocks concerned; and

(f) ensure that such measures do not result in harmful impact on the living marine resources as a whole.

3. In giving effect to their duty to cooperate, States shall make every effort to agree on compatible conservation and management measures within a reasonable period of time.

4. If no agreement can be reached within a reasonable period of time, any of the States concerned may invoke the procedures for the settlement of disputes provided for in Part VIII.

5. Pending agreement on compatible conservation and management measures, the States concerned, in a spirit of understanding and cooperation, shall make every effort to enter into provisional arrangements of a practical nature. In the event that they are unable to agree on such arrangements, any of the States concerned may, for the purpose of obtaining provisional measures, submit the dispute to a court or tribunal in accordance with the procedures for the settlement of disputes provided for in Part VIII.

6. Provisional arrangements or measures entered into or prescribed pursuant to paragraph 5 shall take into account the provisions of this Part, shall have due regard to the rights and obligations of all States concerned, shall not jeopardize or hamper the reaching of final agreement on compatible conservation and management measures and shall be without prejudice to the final outcome of any dispute settlement procedure.

7. Coastal States shall regularly inform States fishing on the high seas in the subregion or region, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for straddling fish stocks and highly migratory fish stocks within areas under their national jurisdiction.

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8. States fishing on the high seas shall regularly inform other interested States, either directly or through appropriate subregional or regional fisheries management organizations or arrangements, or through other appropriate means, of the measures they have adopted for regulating the activities of vessels flying their flag which fish for such stocks on the high seas.

PART III

MECHANISMS FOR INTERNATIONAL COOPERATION  
CONCERNING STRADDLING FISH STOCKS AND  
HIGHLY MIGRATORY FISH STOCKS

Article 8

Cooperation for conservation and management

1. Coastal States and States fishing on the high seas shall, in accordance with the Convention, pursue cooperation in relation to straddling fish stocks and highly migratory fish stocks either directly or through appropriate subregional or regional fisheries management organizations or arrangements, taking into account the specific characteristics of the subregion or region, to ensure effective conservation and management of such stocks.

2. States shall enter into consultations in good faith and without delay, particularly where there is evidence that the straddling fish stocks and highly migratory fish stocks concerned may be under threat of over-exploitation or where a new fishery is being developed for such stocks. To this end, consultations may be initiated at the request of any interested State with a view to establishing appropriate arrangements to ensure conservation and management of the stocks. Pending agreement on such arrangements, States shall observe the provisions of this Agreement and shall act in good faith and with due regard to the rights, interests and duties of other States.

3. Where a subregional or regional fisheries management organization or arrangement has the competence to establish conservation and management measures for particular straddling fish stocks or highly migratory fish stocks, States fishing for the stocks on the high seas and relevant coastal States shall give effect to their duty to cooperate by becoming members of such organization or participants in such arrangement, or by agreeing to apply the conservation and management measures established by such organization or

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arrangement. States having a real interest in the fisheries concerned may become members of such organization or participants in such arrangement. The terms of participation in such organization or arrangement shall not preclude such States from membership or participation; nor shall they be applied in a manner which discriminates against any State or group of States having a real interest in the fisheries concerned.

4. Only those States which are members of such an organization or participants in such an arrangement, or which agree to apply the conservation and management measures established by such organization or arrangement, shall have access to the fishery resources to which those measures apply.

5. Where there is no subregional or regional fisheries management organization or arrangement to establish conservation and management measures for a particular straddling fish stock or highly migratory fish stock, relevant coastal States and States fishing on the high seas for such stock in the subregion or region shall cooperate to establish such an organization or enter into other appropriate arrangements to ensure conservation and management of such stock and shall participate in the work of the organization or arrangement.

6. Any State intending to propose that action be taken by an intergovernmental organization having competence with respect to living resources should, where such action would have a significant effect on conservation and management measures already established by a competent subregional or regional fisheries management organization or arrangement, consult through that organization or arrangement with its members or participants. To the extent practicable, such consultation should take place prior to the submission of the proposal to the intergovernmental organization.

### Article 9

#### Subregional and regional fisheries management organizations and arrangements

1. In establishing subregional or regional fisheries management organizations or in entering into subregional or regional fisheries management arrangements for straddling fish stocks and highly migratory fish stocks, States shall agree, *inter alia*, on:

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(a) the stocks to which conservation and management measures apply, taking into account the biological characteristics of the stocks concerned and the nature of the fisheries involved;

(b) the area of application, taking into account article 7, paragraph 1, and the characteristics of the subregion or region, including socio-economic, geographical and environmental factors;

(c) the relationship between the work of the new organization or arrangement and the role, objectives and operations of any relevant existing fisheries management organizations or arrangements; and

(d) the mechanisms by which the organization or arrangement will obtain scientific advice and review the status of the stocks, including, where appropriate, the establishment of a scientific advisory body.

2. States cooperating in the formation of a subregional or regional fisheries management organization or arrangement shall inform other States which they are aware have a real interest in the work of the proposed organization or arrangement of such cooperation.

#### Article 10

##### Functions of subregional and regional fisheries management organizations and arrangements

In fulfilling their obligation to cooperate through subregional or regional fisheries management organizations or arrangements, States shall:

(a) agree on and comply with conservation and management measures to ensure the long-term sustainability of straddling fish stocks and highly migratory fish stocks;

(b) agree, as appropriate, on participatory rights such as allocations of allowable catch or levels of fishing effort;

(c) adopt and apply any generally recommended international minimum standards for the responsible conduct of fishing operations;

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- (d) obtain and evaluate scientific advice, review the status of the stocks and assess the impact of fishing on non-target and associated or dependent species;
  - (e) agree on standards for collection, reporting, verification and exchange of data on fisheries for the stocks;
  - (f) compile and disseminate accurate and complete statistical data, as described in Annex I, to ensure that the best scientific evidence is available, while maintaining confidentiality where appropriate;
  - (g) promote and conduct scientific assessments of the stocks and relevant research and disseminate the results thereof;
  - (h) establish appropriate cooperative mechanisms for effective monitoring, control, surveillance and enforcement;
  - (i) agree on means by which the fishing interests of new members of the organization or new participants in the arrangement will be accommodated;
  - (j) agree on decision-making procedures which facilitate the adoption of conservation and management measures in a timely and effective manner;
  - (k) promote the peaceful settlement of disputes in accordance with Part VIII;
  - (l) ensure the full cooperation of their relevant national agencies and industries in implementing the recommendations and decisions of the organization or arrangement; and
  - (m) give due publicity to the conservation and management measures established by the organization or arrangement.

### Article 11

#### New members or participants

In determining the nature and extent of participatory rights for new members of a subregional or regional fisheries management organization, or for

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new participants in a subregional or regional fisheries management arrangement, States shall take into account, inter alia:

- (a) the status of the straddling fish stocks and highly migratory fish stocks and the existing level of fishing effort in the fishery;
- (b) the respective interests, fishing patterns and fishing practices of new and existing members or participants;
- (c) the respective contributions of new and existing members or participants to conservation and management of the stocks, to the collection and provision of accurate data and to the conduct of scientific research on the stocks;
- (d) the needs of coastal fishing communities which are dependent mainly on fishing for the stocks;
- (e) the needs of coastal States whose economies are overwhelmingly dependent on the exploitation of living marine resources; and
- (f) the interests of developing States from the subregion or region in whose areas of national jurisdiction the stocks also occur.

## Article 12

### Transparency in activities of subregional and regional fisheries management organizations and arrangements

1. States shall provide for transparency in the decision-making process and other activities of subregional and regional fisheries management organizations and arrangements.
2. Representatives from other intergovernmental organizations and representatives from non-governmental organizations concerned with straddling fish stocks and highly migratory fish stocks shall be afforded the opportunity to take part in meetings of subregional and regional fisheries management organizations and arrangements as observers or otherwise, as appropriate, in accordance with the procedures of the organization or arrangement concerned. Such procedures shall not be unduly restrictive in this respect. Such intergovernmental organizations and non-governmental organizations shall have

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timely access to the records and reports of such organizations and arrangements, subject to the procedural rules on access to them.

### Article 13

#### Strengthening of existing organizations and arrangements

States shall cooperate to strengthen existing subregional and regional fisheries management organizations and arrangements in order to improve their effectiveness in establishing and implementing conservation and management measures for straddling fish stocks and highly migratory fish stocks.

### Article 14

#### Collection and provision of information and cooperation in scientific research

1. States shall ensure that fishing vessels flying their flag provide such information as may be necessary in order to fulfil their obligations under this Agreement. To this end, States shall in accordance with Annex I:

(a) collect and exchange scientific, technical and statistical data with respect to fisheries for straddling fish stocks and highly migratory fish stocks;

(b) ensure that data are collected in sufficient detail to facilitate effective stock assessment and are provided in a timely manner to fulfil the requirements of subregional or regional fisheries management organizations or arrangements; and

(c) take appropriate measures to verify the accuracy of such data.

2. States shall cooperate, either directly or through subregional or regional fisheries management organizations or arrangements:

(a) to agree on the specification of data and the format in which they are to be provided to such organizations or arrangements, taking into account the nature of the stocks and the fisheries for those stocks; and

(b) to develop and share analytical techniques and stock assessment methodologies to improve measures for the conservation and management of straddling fish stocks and highly migratory fish stocks.

3. Consistent with Part XIII of the Convention, States shall cooperate, either directly or through competent international organizations, to strengthen scientific research capacity in the field of fisheries and promote scientific research related to the conservation and management of straddling fish stocks and highly migratory fish stocks for the benefit of all. To this end, a State or the competent international organization conducting such research beyond areas under national jurisdiction shall actively promote the publication and dissemination to any interested States of the results of that research and information relating to its objectives and methods and, to the extent practicable, shall facilitate the participation of scientists from those States in such research.

#### Article 15

##### Enclosed and semi-enclosed seas

In implementing this Agreement in an enclosed or semi-enclosed sea, States shall take into account the natural characteristics of that sea and shall also act in a manner consistent with Part IX of the Convention and other relevant provisions thereof.

#### Article 16

##### Areas of high seas surrounded entirely by an area under the national jurisdiction of a single State

1. States fishing for straddling fish stocks and highly migratory fish stocks in an area of the high seas surrounded entirely by an area under the national jurisdiction of a single State and the latter State shall cooperate to establish conservation and management measures in respect of those stocks in the high seas area. Having regard to the natural characteristics of the area, States shall pay special attention to the establishment of compatible conservation and management measures for such stocks pursuant to article 7. Measures taken in respect of the high seas shall take into account the rights, duties and interests of the coastal State under the Convention, shall be based on the best scientific evidence available and shall also take into account any conservation and

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management measures adopted and applied in respect of the same stocks in accordance with article 61 of the Convention by the coastal State in the area under national jurisdiction. States shall also agree on measures for monitoring, control, surveillance and enforcement to ensure compliance with the conservation and management measures in respect of the high seas.

2. Pursuant to article 8, States shall act in good faith and make every effort to agree without delay on conservation and management measures to be applied in the carrying out of fishing operations in the area referred to in paragraph 1. If, within a reasonable period of time, the fishing States concerned and the coastal State are unable to agree on such measures, they shall, having regard to paragraph 1, apply article 7, paragraphs 4, 5 and 6, relating to provisional arrangements or measures. Pending the establishment of such provisional arrangements or measures, the States concerned shall take measures in respect of vessels flying their flag in order that they not engage in fisheries which could undermine the stocks concerned.

#### PART IV

#### NON-MEMBERS AND NON-PARTICIPANTS

##### Article 17

##### Non-members of organizations and non-participants in arrangements

1. A State which is not a member of a subregional or regional fisheries management organization or is not a participant in a subregional or regional fisheries management arrangement, and which does not otherwise agree to apply the conservation and management measures established by such organization or arrangement, is not discharged from the obligation to cooperate, in accordance with the Convention and this Agreement, in the conservation and management of the relevant straddling fish stocks and highly migratory fish stocks.

2. Such State shall not authorize vessels flying its flag to engage in fishing operations for the straddling fish stocks or highly migratory fish stocks which are subject to the conservation and management measures established by such organization or arrangement.

3. States which are members of a subregional or regional fisheries management organization or participants in a subregional or regional fisheries management arrangement shall, individually or jointly, request the fishing entities referred to in article 1, paragraph 3, which have fishing vessels in the relevant area to cooperate fully with such organization or arrangement in implementing the conservation and management measures it has established, with a view to having such measures applied de facto as extensively as possible to fishing activities in the relevant area. Such fishing entities shall enjoy benefits from participation in the fishery commensurate with their commitment to comply with conservation and management measures in respect of the stocks.

4. States which are members of such organization or participants in such arrangement shall exchange information with respect to the activities of fishing vessels flying the flags of States which are neither members of the organization nor participants in the arrangement and which are engaged in fishing operations for the relevant stocks. They shall take measures consistent with this Agreement and international law to deter activities of such vessels which undermine the effectiveness of subregional or regional conservation and management measures.

## PART V

### DUTIES OF THE FLAG STATE

#### Article 18

##### Duties of the flag State

1. A State whose vessels fish on the high seas shall take such measures as may be necessary to ensure that vessels flying its flag comply with subregional and regional conservation and management measures and that such vessels do not engage in any activity which undermines the effectiveness of such measures.

2. A State shall authorize the use of vessels flying its flag for fishing on the high seas only where it is able to exercise effectively its responsibilities in respect of such vessels under the Convention and this Agreement.

3. Measures to be taken by a State in respect of vessels flying its flag shall include:

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- (a) control of such vessels on the high seas by means of fishing licences, authorizations or permits, in accordance with any applicable procedures agreed at the subregional, regional or global level;
  - (b) establishment of regulations:
    - (i) to apply terms and conditions to the licence, authorization or permit sufficient to fulfil any subregional, regional or global obligations of the flag State;
    - (ii) to prohibit fishing on the high seas by vessels which are not duly licensed or authorized to fish, or fishing on the high seas by vessels otherwise than in accordance with the terms and conditions of a licence, authorization or permit;
    - (iii) to require vessels fishing on the high seas to carry the licence, authorization or permit on board at all times and to produce it on demand for inspection by a duly authorized person; and
    - (iv) to ensure that vessels flying its flag do not conduct unauthorized fishing within areas under the national jurisdiction of other States;
  - (c) establishment of a national record of fishing vessels authorized to fish on the high seas and provision of access to the information contained in that record on request by directly interested States, taking into account any national laws of the flag State regarding release of such information;
  - (d) requirements for marking of fishing vessels and fishing gear for identification in accordance with uniform and internationally recognizable vessel and gear marking systems, such as the Food and Agriculture Organization of the United Nations Standard Specifications for the Marking and Identification of Fishing Vessels;
  - (e) requirements for recording and timely reporting of vessel position, catch of target and non-target species, fishing effort and other relevant fisheries data in accordance with subregional, regional and global standards for collection of such data;
  - (f) requirements for verifying the catch of target and non-target species through such means as observer programs, inspection schemes,
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unloading reports, supervision of transshipment and monitoring of landed catches and market statistics;

(g) monitoring, control and surveillance of such vessels, their fishing operations and related activities by, inter alia:

- (i) the implementation of national inspection schemes and subregional and regional schemes for cooperation in enforcement pursuant to articles 21 and 22, including requirements for such vessels to permit access by duly authorized inspectors from other States;
- (ii) the implementation of national observer programs and subregional and regional observer programmes in which the flag State is a participant, including requirements for such vessels to permit access by observers from other States to carry out the functions agreed under the programmes; and
- (iii) the development and implementation of vessel monitoring systems, including, as appropriate, satellite transmitter systems, in accordance with any national programmes and those which have been subregionally, regionally or globally agreed among the States concerned;

(h) regulation of transshipment on the high seas to ensure that the effectiveness of conservation and management measures is not undermined; and

(i) regulation of fishing activities to ensure compliance with subregional, regional or global measures, including those aimed at minimizing catches of non-target species.

4. Where there is a subregionally, regionally or globally agreed system of monitoring, control and surveillance in effect, States shall ensure that the measures they impose on vessels flying their flag are compatible with that system.

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**PART VI****COMPLIANCE AND ENFORCEMENT****Article 19****Compliance and enforcement  
by the flag State**

1. A State shall ensure compliance by vessels flying its flag with subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks. To this end, that State shall:

- (a) enforce such measures irrespective of where violations occur;
- (b) investigate immediately and fully any alleged violation of subregional or regional conservation and management measures, which may include the physical inspection of the vessels concerned, and report promptly to the State alleging the violation and the relevant subregional or regional organization or arrangement on the progress and outcome of the investigation;
- (c) require any vessel flying its flag to give information to the investigating authority regarding vessel position, catches, fishing gear, fishing operations and related activities in the area of an alleged violation;
- (d) if satisfied that sufficient evidence is available in respect of an alleged violation, refer the case to its authorities with a view to instituting proceedings without delay in accordance with its laws and, where appropriate, detain the vessel concerned; and
- (e) ensure that, where it has been established, in accordance with its laws, a vessel has been involved in the commission of a serious violation of such measures, the vessel does not engage in fishing operations on the high seas until such time as all outstanding sanctions imposed by the flag State in respect of the violation have been complied with.

2. All investigations and judicial proceedings shall be carried out expeditiously. Sanctions applicable in respect of violations shall be adequate in severity to be effective in securing compliance and to discourage violations wherever they occur and shall deprive offenders of the benefits accruing from their illegal activities. Measures applicable in respect of masters and other officers of fishing vessels shall include provisions which may permit, inter alia, refusal, withdrawal or suspension of authorizations to serve as masters or officers on such vessels.

#### Article 20

##### International cooperation in enforcement

1. States shall cooperate, either directly or through subregional or regional fisheries management organizations or arrangements, to ensure compliance with and enforcement of subregional and regional conservation and management measures for straddling fish stocks and highly migratory fish stocks.
2. A flag State conducting an investigation of an alleged violation of conservation and management measures for straddling fish stocks or highly migratory fish stocks may request the assistance of any other State whose cooperation may be useful in the conduct of that investigation. All States shall endeavour to meet reasonable requests made by a flag State in connection with such investigations.
3. A flag State may undertake such investigations directly, in cooperation with other interested States or through the relevant subregional or regional fisheries management organization or arrangement. Information on the progress and outcome of the investigations shall be provided to all States having an interest in, or affected by, the alleged violation.
4. States shall assist each other in identifying vessels reported to have engaged in activities undermining the effectiveness of subregional, regional or global conservation and management measures.
5. States shall, to the extent permitted by national laws and regulations, establish arrangements for making available to prosecuting authorities in other States evidence relating to alleged violations of such measures.

6. Where there are reasonable grounds for believing that a vessel on the high seas has been engaged in unauthorized fishing within an area under the jurisdiction of a coastal State, the flag State of that vessel, at the request of the coastal State concerned, shall immediately and fully investigate the matter. The flag State shall cooperate with the coastal State in taking appropriate enforcement action in such cases and may authorize the relevant authorities of the coastal State to board and inspect the vessel on the high seas. This paragraph is without prejudice to article 111 of the Convention.

7. States Parties which are members of a subregional or regional fisheries management organization or participants in a subregional or regional fisheries management arrangement may take action in accordance with international law, including through recourse to subregional or regional procedures established for this purpose, to deter vessels which have engaged in activities which undermine the effectiveness of or otherwise violate the conservation and management measures established by that organization or arrangement from fishing on the high seas in the subregion or region until such time as appropriate action is taken by the flag State.

### Article 21

#### Subregional and regional cooperation in enforcement

1. In any high seas area covered by a subregional or regional fisheries management organization or arrangement, a State Party which is a member of such organization or a participant in such arrangement may, through its duly authorized inspectors, board and inspect, in accordance with paragraph 2, fishing vessels flying the flag of another State Party to this Agreement, whether or not such State Party is also a member of the organization or a participant in the arrangement, for the purpose of ensuring compliance with conservation and management measures for straddling fish stocks and highly migratory fish stocks established by that organization or arrangement.

2. States shall establish, through subregional or regional fisheries management organizations or arrangements, procedures for boarding and inspection pursuant to paragraph 1, as well as procedures to implement other provisions of this article. Such procedures shall be consistent with this article and the basic procedures set out in article 22 and shall not discriminate against

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non-members of the organization or non-participants in the arrangement. Boarding and inspection as well as any subsequent enforcement action shall be conducted in accordance with such procedures. States shall give due publicity to procedures established pursuant to this paragraph.

3. If, within two years of the adoption of this Agreement, any organization or arrangement has not established such procedures, boarding and inspection pursuant to paragraph 1, as well as any subsequent enforcement action, shall, pending the establishment of such procedures, be conducted in accordance with this article and the basic procedures set out in article 22.

4. Prior to taking action under this article, inspecting States shall, either directly or through the relevant subregional or regional fisheries management organization or arrangement, inform all States whose vessels fish on the high seas in the subregion or region of the form of identification issued to their duly authorized inspectors. The vessels used for boarding and inspection shall be clearly marked and identifiable as being on government service. At the time of becoming a Party to this Agreement, States shall designate an appropriate authority to receive notifications pursuant to this article and shall give due publicity of such designation through the relevant subregional or regional fisheries management organization or arrangement.

5. Where, following a boarding and inspection, there are clear grounds for believing that a vessel has engaged in any activity contrary to the conservation and management measures referred to in paragraph 1, the inspecting State shall, where appropriate, secure evidence and shall promptly notify the flag State of the alleged violation.

6. The flag State shall respond to the notification referred to in paragraph 5 within three working days of its receipt, or such other period as may be prescribed in procedures established in accordance with paragraph 2, and shall either:

(a) fulfil, without delay, its obligations under article 19 to investigate and, if evidence so warrants, take enforcement action with respect to the vessel, in which case it shall promptly inform the inspecting State of the results of the investigation and of any enforcement action taken; or

(b) authorize the inspecting State to investigate.

7. Where the flag State authorizes the inspecting State to investigate an alleged violation, the inspecting State shall, without delay, communicate the results of that investigation to the flag State. The flag State shall, if evidence so warrants, fulfil its obligations to take enforcement action with respect to the vessel. Alternatively, the flag State may authorize the inspecting State to take such enforcement action as the flag State may specify with respect to the vessel, consistent with the rights and obligations of the flag State under this Agreement.

8. Where, following boarding and inspection, there are clear grounds for believing that a vessel has committed a serious violation, and the flag State has either failed to respond or failed to take action as required under paragraphs 6 or 7, the inspectors may remain on board and secure evidence and may require the master to assist in further investigation including, where appropriate, by bringing the vessel without delay to the nearest appropriate port, or to such other port as may be specified in procedures established in accordance with paragraph 2. The inspecting State shall immediately inform the flag State of the name of the port to which the vessel is to proceed. The inspecting State and the flag State and, as appropriate, the port State shall take all necessary steps to ensure the well-being of the crew regardless of their nationality.

9. The inspecting State shall inform the flag State and the relevant organization or the participants in the relevant arrangement of the results of any further investigation.

10. The inspecting State shall require its inspectors to observe generally accepted international regulations, procedures and practices relating to the safety of the vessel and the crew, minimize interference with fishing operations and, to the extent practicable, avoid action which would adversely affect the quality of the catch on board. The inspecting State shall ensure that boarding and inspection is not conducted in a manner that would constitute harassment of any fishing vessel.

11. For the purposes of this article, a serious violation means:

(a) fishing without a valid licence, authorization or permit issued by the flag State in accordance with article 18, paragraph 3(a);

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(b) failing to maintain accurate records of catch and catch-related data, as required by the relevant subregional or regional fisheries management organization or arrangement, or serious misreporting of catch, contrary to the catch reporting requirements of such organization or arrangement;

(c) fishing in a closed area, fishing during a closed season or fishing without, or after attainment of, a quota established by the relevant subregional or regional fisheries management organization or arrangement;

(d) directed fishing for a stock which is subject to a moratorium or for which fishing is prohibited;

(e) using prohibited fishing gear;

(f) falsifying or concealing the markings, identity or registration of a fishing vessel;

(g) concealing, tampering with or disposing of evidence relating to an investigation;

(h) multiple violations which together constitute a serious disregard of conservation and management measures; or

(i) such other violations as may be specified in procedures established by the relevant subregional or regional fisheries management organization or arrangement.

12. Notwithstanding the other provisions of this article, the flag State may, at any time, take action to fulfil its obligations under article 19 with respect to an alleged violation. Where the vessel is under the direction of the inspecting State, the inspecting State shall, at the request of the flag State, release the vessel to the flag State along with full information on the progress and outcome of its investigation.

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13. This article is without prejudice to the right of the flag State to take any measures, including proceedings to impose penalties, according to its laws.

14. This article applies *mutatis mutandis* to boarding and inspection by a State Party which is a member of a subregional or regional fisheries management organization or a participant in a subregional or regional fisheries management arrangement and which has clear grounds for believing that a fishing vessel flying the flag of another State Party has engaged in any activity contrary to relevant conservation and management measures referred to in paragraph 1 in the high seas area covered by such organization or arrangement, and such vessel has subsequently, during the same fishing trip, entered into an area under the national jurisdiction of the inspecting State.

15. Where a subregional or regional fisheries management organization or arrangement has established an alternative mechanism which effectively discharges the obligation under this Agreement of its members or participants to ensure compliance with the conservation and management measures established by the organization or arrangement, members of such organization or participants in such arrangement may agree to limit the application of paragraph 1 as between themselves in respect of the conservation and management measures which have been established in the relevant high seas area.

16. Action taken by States other than the flag State in respect of vessels having engaged in activities contrary to subregional or regional conservation and management measures shall be proportionate to the seriousness of the violation.

17. Where there are reasonable grounds for suspecting that a fishing vessel on the high seas is without nationality, a State may board and inspect the vessel. Where evidence so warrants, the State may take such action as may be appropriate in accordance with international law.

18. States shall be liable for damage or loss attributable to them arising from action taken pursuant to this article when such action is unlawful or exceeds that reasonably required in the light of available information to implement the provisions of this article.

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Article 22

Basic procedures for boarding and  
inspection pursuant to article 21

1. The inspecting State shall ensure that its duly authorized inspectors:
  - (a) present credentials to the master of the vessel and produce a copy of the text of the relevant conservation and management measures or rules and regulations in force in the high seas area in question pursuant to those measures;
  - (b) initiate notice to the flag State at the time of the boarding and inspection;
  - (c) do not interfere with the master's ability to communicate with the authorities of the flag State during the boarding and inspection;
  - (d) provide a copy of a report on the boarding and inspection to the master and to the authorities of the flag State, noting therein any objection or statement which the master wishes to have included in the report;
  - (e) promptly leave the vessel following completion of the inspection if they find no evidence of a serious violation; and
  - (f) avoid the use of force except when and to the degree necessary to ensure the safety of the inspectors and where the inspectors are obstructed in the execution of their duties. The degree of force used shall not exceed that reasonably required in the circumstances.
2. The duly authorized inspectors of an inspecting State shall have the authority to inspect the vessel, its licence, gear, equipment, records, facilities, fish and fish products and any relevant documents necessary to verify compliance with the relevant conservation and management measures.
3. The flag State shall ensure that vessel masters:
  - (a) accept and facilitate prompt and safe boarding by the inspectors;
  - (b) cooperate with and assist in the inspection of the vessel conducted pursuant to these procedures;

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- (c) do not obstruct, intimidate or interfere with the inspectors in the performance of their duties;
  - (d) allow the inspectors to communicate with the authorities of the flag State and the inspecting State during the boarding and inspection;
  - (e) provide reasonable facilities, including, where appropriate, food and accommodation, to the inspectors; and
  - (f) facilitate safe disembarkation by the inspectors.

4. In the event that the master of a vessel refuses to accept boarding and inspection in accordance with this article and article 21, the flag State shall, except in circumstances where, in accordance with generally accepted international regulations, procedures and practices relating to safety at sea, it is necessary to delay the boarding and inspection, direct the master of the vessel to submit immediately to boarding and inspection and, if the master does not comply with such direction, shall suspend the vessel's authorization to fish and order the vessel to return immediately to port. The flag State shall advise the inspecting State of the action it has taken when the circumstances referred to in this paragraph arise.

### Article 23

#### Measures taken by a port State

1. A port State has the right and the duty to take measures, in accordance with international law, to promote the effectiveness of subregional, regional and global conservation and management measures. When taking such measures a port State shall not discriminate in form or in fact against the vessels of any State.
2. A port State may, inter alia, inspect documents, fishing gear and catch on board fishing vessels, when such vessels are voluntarily in its ports or at its offshore terminals.
3. States may adopt regulations empowering the relevant national authorities to prohibit landings and transshipments where it has been established that the catch has been taken in a manner which undermines the effectiveness of

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subregional, regional or global conservation and management measures on the high seas.

4. Nothing in this article affects the exercise by States of their sovereignty over ports in their territory in accordance with international law.

## PART VII

### REQUIREMENTS OF DEVELOPING STATES

#### Article 24

##### Recognition of the special requirements of developing States

1. States shall give full recognition to the special requirements of developing States in relation to conservation and management of straddling fish stocks and highly migratory fish stocks and development of fisheries for such stocks. To this end, States shall, either directly or through the United Nations Development Programme, the Food and Agriculture Organization of the United Nations and other specialized agencies, the Global Environment Facility, the Commission on Sustainable Development and other appropriate international and regional organizations and bodies, provide assistance to developing States.

2. In giving effect to the duty to cooperate in the establishment of conservation and management measures for straddling fish stocks and highly migratory fish stocks, States shall take into account the special requirements of developing States, in particular:

(a) the vulnerability of developing States which are dependent on the exploitation of living marine resources, including for meeting the nutritional requirements of their populations or parts thereof;

(b) the need to avoid adverse impacts on, and ensure access to fisheries by, subsistence, small-scale and artisanal fishers and women fishworkers, as well as indigenous people in developing States, particularly small island developing States; and

(c) the need to ensure that such measures do not result in transferring, directly or indirectly, a disproportionate burden of conservation action onto developing States.

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Article 25

Forms of cooperation with  
developing States

1. States shall cooperate, either directly or through subregional, regional or global organizations:

(a) to enhance the ability of developing States, in particular the least-developed among them and small island developing States, to conserve and manage straddling fish stocks and highly migratory fish stocks and to develop their own fisheries for such stocks;

(b) to assist developing States, in particular the least-developed among them and small island developing States, to enable them to participate in high seas fisheries for such stocks, including facilitating access to such fisheries subject to articles 5 and 11; and

(c) to facilitate the participation of developing States in subregional and regional fisheries management organizations and arrangements.

2. Cooperation with developing States for the purposes set out in this article shall include the provision of financial assistance, assistance relating to human resources development, technical assistance, transfer of technology, including through joint venture arrangements, and advisory and consultative services.

3. Such assistance shall, inter alia, be directed specifically towards:

(a) improved conservation and management of straddling fish stocks and highly migratory fish stocks through collection, reporting, verification, exchange and analysis of fisheries data and related information;

(b) stock assessment and scientific research; and

(c) monitoring, control, surveillance, compliance and enforcement, including training and capacity-building at the local level, development and funding of national and regional observer programmes and access to technology and equipment.

Article 26

Special assistance in the implementation  
of this Agreement

1. States shall cooperate to establish special funds to assist developing States in the implementation of this Agreement, including assisting developing States to meet the costs involved in any proceedings for the settlement of disputes to which they may be parties.
2. States and international organizations should assist developing States in establishing new subregional or regional fisheries management organizations or arrangements, or in strengthening existing organizations or arrangements, for the conservation and management of straddling fish stocks and highly migratory fish stocks.

PART VIII

PEACEFUL SETTLEMENT OF DISPUTES

Article 27

Obligation to settle disputes  
by peaceful means

States have the obligation to settle their disputes by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement, resort to regional agencies or arrangements, or other peaceful means of their own choice.

Article 28

Prevention of disputes

States shall cooperate in order to prevent disputes. To this end, States shall agree on efficient and expeditious decision-making procedures within subregional and regional fisheries management organizations and arrangements and shall strengthen existing decision-making procedures as necessary.

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Article 29Disputes of a technical nature

Where a dispute concerns a matter of a technical nature, the States concerned may refer the dispute to an ad hoc expert panel established by them. The panel shall confer with the States concerned and shall endeavour to resolve the dispute expeditiously without recourse to binding procedures for the settlement of disputes.

Article 30Procedures for the settlement  
of disputes

1. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply mutatis mutandis to any dispute between States Parties to this Agreement concerning the interpretation or application of this Agreement, whether or not they are also Parties to the Convention.
2. The provisions relating to the settlement of disputes set out in Part XV of the Convention apply mutatis mutandis to any dispute between States Parties to this Agreement concerning the interpretation or application of a subregional, regional or global fisheries agreement relating to straddling fish stocks or highly migratory fish stocks to which they are parties, including any dispute concerning the conservation and management of such stocks, whether or not they are also Parties to the Convention.
3. Any procedure accepted by a State Party to this Agreement and the Convention pursuant to article 287 of the Convention shall apply to the settlement of disputes under this Part, unless that State Party, when signing, ratifying or acceding to this Agreement, or at any time thereafter, has accepted another procedure pursuant to article 287 for the settlement of disputes under this Part.
4. A State Party to this Agreement which is not a Party to the Convention, when signing, ratifying or acceding to this Agreement, or at any time thereafter, shall be free to choose, by means of a written declaration, one or more of the means set out in article 287, paragraph 1, of the Convention for the settlement of disputes under this Part. Article 287 shall apply to such a declaration, as well

as to any dispute to which such State is a party which is not covered by a declaration in force. For the purposes of conciliation and arbitration in accordance with Annexes V, VII and VIII to the Convention, such State shall be entitled to nominate conciliators, arbitrators and experts to be included in the lists referred to in Annex V, article 2, Annex VII, article 2, and Annex VIII, article 2, for the settlement of disputes under this Part.

5. Any court or tribunal to which a dispute has been submitted under this Part shall apply the relevant provisions of the Convention, of this Agreement and of any relevant subregional, regional or global fisheries agreement, as well as generally accepted standards for the conservation and management of living marine resources and other rules of international law not incompatible with the Convention, with a view to ensuring the conservation of the straddling fish stocks and highly migratory fish stocks concerned.

### Article 31

#### Provisional measures

1. Pending the settlement of a dispute in accordance with this Part, the parties to the dispute shall make every effort to enter into provisional arrangements of a practical nature.

2. Without prejudice to article 290 of the Convention, the court or tribunal to which the dispute has been submitted under this Part may prescribe any provisional measures which it considers appropriate under the circumstances to preserve the respective rights of the parties to the dispute or to prevent damage to the stocks in question, as well as in the circumstances referred to in article 7, paragraph 5, and article 16, paragraph 2.

3. A State Party to this Agreement which is not a Party to the Convention may declare that, notwithstanding article 290, paragraph 5, of the Convention, the International Tribunal for the Law of the Sea shall not be entitled to prescribe, modify or revoke provisional measures without the agreement of such State.

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Article 32

Limitations on applicability of procedures  
for the settlement of disputes

Article 297, paragraph 3, of the Convention applies also to this Agreement.

PART IX

NON-PARTIES TO THIS AGREEMENT

Article 33

Non-parties to this Agreement

1. States Parties shall encourage non-parties to this Agreement to become parties thereto and to adopt laws and regulations consistent with its provisions.
2. States Parties shall take measures consistent with this Agreement and international law to deter the activities of vessels flying the flag of non-parties which undermine the effective implementation of this Agreement.

PART X

GOOD FAITH AND ABUSE OF RIGHTS

Article 34

Good faith and abuse of rights

States Parties shall fulfil in good faith the obligations assumed under this Agreement and shall exercise the rights recognized in this Agreement in a manner which would not constitute an abuse of right.

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PART XI

RESPONSIBILITY AND LIABILITY

Article 35

Responsibility and liability

States Parties are liable in accordance with international law for damage or loss attributable to them in regard to this Agreement.

PART XII

REVIEW CONFERENCE

Article 36

Review conference

1. Four years after the date of entry into force of this Agreement, the Secretary-General of the United Nations shall convene a conference with a view to assessing the effectiveness of this Agreement in securing the conservation and management of straddling fish stocks and highly migratory fish stocks. The Secretary-General shall invite to the conference all States Parties and those States and entities which are entitled to become parties to this Agreement as well as those intergovernmental and non-governmental organizations entitled to participate as observers.

2. The conference shall review and assess the adequacy of the provisions of this Agreement and, if necessary, propose means of strengthening the substance and methods of implementation of those provisions in order better to address any continuing problems in the conservation and management of straddling fish stocks and highly migratory fish stocks.

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PART XIII

FINAL PROVISIONS

Article 37

Signature

This Agreement shall be open for signature by all States and the other entities referred to in article 1, paragraph 2(b), and shall remain open for signature at United Nations Headquarters for twelve months from the fourth of December 1995.

Article 38

Ratification

This Agreement is subject to ratification by States and the other entities referred to in article 1, paragraph 2(b). The instruments of ratification shall be deposited with the Secretary-General of the United Nations.

Article 39

Accession

This Agreement shall remain open for accession by States and the other entities referred to in article 1, paragraph 2(b). The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 40

Entry into force

1. This Agreement shall enter into force 30 days after the date of deposit of the thirtieth instrument of ratification or accession.
2. For each State or entity which ratifies the Agreement or accedes thereto after the deposit of the thirtieth instrument of ratification or accession, this Agreement shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.

Article 41

Provisional application

1. This Agreement shall be applied provisionally by a State or entity which consents to its provisional application by so notifying the depositary in writing. Such provisional application shall become effective from the date of receipt of the notification.
2. Provisional application by a State or entity shall terminate upon the entry into force of this Agreement for that State or entity or upon notification by that State or entity to the depositary in writing of its intention to terminate provisional application.

Article 42

Reservations and exceptions

No reservations or exceptions may be made to this Agreement.

Article 43

Declarations and statements

Article 42 does not preclude a State or entity, when signing, ratifying or acceding to this Agreement, from making declarations or statements, however phrased or named, with a view, *inter alia*, to the harmonization of its laws and regulations with the provisions of this Agreement, provided that such declarations or statements do not purport to exclude or to modify the legal effect of the provisions of this Agreement in their application to that State or entity.

Article 44

Relation to other agreements

1. This Agreement shall not alter the rights and obligations of States Parties which arise from other agreements compatible with this Agreement and which do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Agreement.

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2. Two or more States Parties may conclude agreements modifying or suspending the operation of provisions of this Agreement, applicable solely to the relations between them, provided that such agreements do not relate to a provision derogation from which is incompatible with the effective execution of the object and purpose of this Agreement, and provided further that such agreements shall not affect the application of the basic principles embodied herein, and that the provisions of such agreements do not affect the enjoyment by other States Parties of their rights or the performance of their obligations under this Agreement.

3. States Parties intending to conclude an agreement referred to in paragraph 2 shall notify the other States Parties through the depositary of this Agreement of their intention to conclude the agreement and of the modification or suspension for which it provides.

#### Article 45

#### Amendment

1. A State Party may, by written communication addressed to the Secretary-General of the United Nations, propose amendments to this Agreement and request the convening of a conference to consider such proposed amendments. The Secretary-General shall circulate such communication to all States Parties. If, within six months from the date of the circulation of the communication, not less than one half of the States Parties reply favourably to the request, the Secretary-General shall convene the conference.

2. The decision-making procedure applicable at the amendment conference convened pursuant to paragraph 1 shall be the same as that applicable at the United Nations Conference on Straddling Fish Stocks and Highly Migratory Fish Stocks, unless otherwise decided by the conference. The conference should make every effort to reach agreement on any amendments by way of consensus and there should be no voting on them until all efforts at consensus have been exhausted.

3. Once adopted, amendments to this Agreement shall be open for signature at United Nations Headquarters by States Parties for twelve months from the date of adoption, unless otherwise provided in the amendment itself.

4. Articles 38, 39, 47 and 50 apply to all amendments to this Agreement.

5. Amendments to this Agreement shall enter into force for the States Parties ratifying or acceding to them on the thirtieth day following the deposit of instruments of ratification or accession by two thirds of the States Parties. Thereafter, for each State Party ratifying or acceding to an amendment after the deposit of the required number of such instruments, the amendment shall enter into force on the thirtieth day following the deposit of its instrument of ratification or accession.

6. An amendment may provide that a smaller or a larger number of ratifications or accessions shall be required for its entry into force than are required by this article.

7. A State which becomes a Party to this Agreement after the entry into force of amendments in accordance with paragraph 5 shall, failing an expression of a different intention by that State:

(a) be considered as a Party to this Agreement as so amended; and

(b) be considered as a Party to the unamended Agreement in relation to any State Party not bound by the amendment.

#### Article 46

#### Denunciation

1. A State Party may, by written notification addressed to the Secretary-General of the United Nations, denounce this Agreement and may indicate its reasons. Failure to indicate reasons shall not affect the validity of the denunciation. The denunciation shall take effect one year after the date of receipt of the notification, unless the notification specifies a later date.

2. The denunciation shall not in any way affect the duty of any State Party to fulfil any obligation embodied in this Agreement to which it would be subject under international law independently of this Agreement.

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Article 47Participation in international  
organizations

1. In cases where an international organization referred to in Annex IX, article 1, of the Convention does not have competence over all the matters governed by this Agreement, Annex IX to the Convention shall apply mutatis mutandis to participation by such international organization in this Agreement, except that the following provisions of that Annex shall not apply:

- (a) article 2, first sentence; and
- (b) article 3, paragraph 1.

2. In cases where an international organization referred to in Annex IX, article 1, of the Convention has competence over all the matters governed by this Agreement, the following provisions shall apply to participation by such international organization in this Agreement:

(a) at the time of signature or accession, such international organization shall make a declaration stating:

- (i) that it has competence over all the matters governed by this Agreement;
- (ii) that, for this reason, its member States shall not become States Parties, except in respect of their territories for which the international organization has no responsibility; and
- (iii) that it accepts the rights and obligations of States under this Agreement;

(b) participation of such an international organization shall in no case confer any rights under this Agreement on member States of the international organization;

(c) in the event of a conflict between the obligations of an international organization under this Agreement and its obligations under the

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agreement establishing the international organization or any acts relating to it, the obligations under this Agreement shall prevail.

Article 48

Annexes

1. The Annexes form an integral part of this Agreement and, unless expressly provided otherwise, a reference to this Agreement or to one of its Parts includes a reference to the Annexes relating thereto.
2. The Annexes may be revised from time to time by States Parties. Such revisions shall be based on scientific and technical considerations. Notwithstanding the provisions of article 45, if a revision to an Annex is adopted by consensus at a meeting of States Parties, it shall be incorporated in this Agreement and shall take effect from the date of its adoption or from such other date as may be specified in the revision. If a revision to an Annex is not adopted by consensus at such a meeting, the amendment procedures set out in article 45 shall apply.

Article 49

Depositary

The Secretary-General of the United Nations shall be the depositary of this Agreement and any amendments or revisions thereto.

Article 50

Authentic texts

The Arabic, Chinese, English, French, Russian and Spanish texts of this Agreement are equally authentic.

IN WITNESS WHEREOF, the undersigned Plenipotentiaries, being duly authorized thereto, have signed this Agreement.

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OPENED FOR SIGNATURE at New York, this fourth day of December, one thousand nine hundred and ninety-five, in a single original, in the Arabic, Chinese, English, French, Russian and Spanish languages.

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ANNEX I

STANDARD REQUIREMENTS FOR THE  
COLLECTION AND SHARING OF DATA

Article 1

General principles

1. The timely collection, compilation and analysis of data are fundamental to the effective conservation and management of straddling fish stocks and highly migratory fish stocks. To this end, data from fisheries for these stocks on the high seas and those in areas under national jurisdiction are required and should be collected and compiled in such a way as to enable statistically meaningful analysis for the purposes of fishery resource conservation and management. These data include catch and fishing effort statistics and other fishery-related information, such as vessel-related and other data for standardizing fishing effort. Data collected should also include information on non-target and associated or dependent species. All data should be verified to ensure accuracy. Confidentiality of non-aggregated data shall be maintained. The dissemination of such data shall be subject to the terms on which they have been provided.

2. Assistance, including training as well as financial and technical assistance, shall be provided to developing States in order to build capacity in the field of conservation and management of living marine resources. Assistance should focus on enhancing capacity to implement data collection and verification, observer programs, data analysis and research projects supporting stock assessments. The fullest possible involvement of developing State scientists and managers in conservation and management of straddling fish stocks and highly migratory fish stocks should be promoted.

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Article 2Principles of data collection,  
compilation and exchange

The following general principles should be considered in defining the parameters for collection, compilation and exchange of data from fishing operations for straddling fish stocks and highly migratory fish stocks:

- (a) States should ensure that data are collected from vessels flying their flag on fishing activities according to the operational characteristics of each fishing method (e.g., each individual tow for trawl, each set for long-line and purse-seine, each school fished for pole-and-line and each day fished for troll) and in sufficient detail to facilitate effective stock assessment;
- (b) States should ensure that fishery data are verified through an appropriate system;
- (c) States should compile fishery-related and other supporting scientific data and provide them in an agreed format and in a timely manner to the relevant subregional or regional fisheries management organization or arrangement where one exists. Otherwise, States should cooperate to exchange data either directly or through such other cooperative mechanisms as may be agreed among them;
- (d) States should agree, within the framework of subregional or regional fisheries management organizations or arrangements, or otherwise, on the specification of data and the format in which they are to be provided, in accordance with this Annex and taking into account the nature of the stocks and the fisheries for those stocks in the region. Such organizations or arrangements should request non-members or non-participants to provide data concerning relevant fishing activities by vessels flying their flag;
- (e) such organizations or arrangements shall compile data and make them available in a timely manner and in an agreed format to all interested States under the terms and conditions established by the organization or arrangement; and

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(f) scientists of the flag State and from the relevant subregional or regional fisheries management organization or arrangement should analyse the data separately or jointly, as appropriate.

### Article 3

#### Basic fishery data

1. States shall collect and make available to the relevant subregional or regional fisheries management organization or arrangement the following types of data in sufficient detail to facilitate effective stock assessment in accordance with agreed procedures:

- (a) time series of catch and effort statistics by fishery and fleet;
- (b) total catch in number, nominal weight, or both, by species (both target and non-target) as is appropriate to each fishery. [Nominal weight is defined by the Food and Agriculture Organization of the United Nations as the live-weight equivalent of the landings];
- (c) discard statistics, including estimates where necessary, reported as number or nominal weight by species, as is appropriate to each fishery;
- (d) effort statistics appropriate to each fishing method; and
- (e) fishing location, date and time fished and other statistics on fishing operations as appropriate.

2. States shall also collect where appropriate and provide to the relevant subregional or regional fisheries management organization or arrangement information to support stock assessment, including:

- (a) composition of the catch according to length, weight and sex;
- (b) other biological information supporting stock assessments such as information on age, growth, recruitment, distribution and stock identity; and
- (c) other relevant research, including surveys of abundance, biomass surveys, hydro-acoustic surveys, research on environmental factors affecting stock abundance, and oceanographic and ecological studies.

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## Article 4

### Vessel data and information

1. States should collect the following types of vessel-related data for standardizing fleet composition and vessel fishing power and for converting between different measures of effort in the analysis of catch and effort data:

- (a) vessel identification, flag and port of registry;
- (b) vessel type;
- (c) vessel specifications (e.g., material of construction, date built, registered length, gross registered tonnage, power of main engines, hold capacity and catch storage methods); and
- (d) fishing gear description (e.g., types, gear specifications and quantity).

2. The flag State will collect the following information:

- (a) navigation and position fixing aids;
- (b) communication equipment and international radio call sign; and
- (c) crew size.

## Article 5

### Reporting

A State shall ensure that vessels flying its flag send to its national fisheries administration and, where agreed, to the relevant subregional or regional fisheries management organization or arrangement, logbook data on catch and effort, including data on fishing operations on the high seas, at sufficiently frequent intervals to meet national requirements and regional and international obligations. Such data shall be transmitted, where necessary, by radio, telex, facsimile or satellite transmission or by other means.

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Article 6

Data verification

States or, as appropriate, subregional or regional fisheries management organizations or arrangements should establish mechanisms for verifying fishery data, such as:

- (a) position verification through vessel monitoring systems;
- (b) scientific observer programs to monitor catch, effort, catch composition (target and non-target) and other details of fishing operations;
- (c) vessel trip, landing and transshipment reports; and
- (d) port sampling.

Article 7

Data exchange

1. Data collected by flag States must be shared with other flag States and relevant coastal States through appropriate subregional or regional fisheries management organizations or arrangements. Such organizations or arrangements shall compile data and make them available in a timely manner and in an agreed format to all interested States under the terms and conditions established by the organization or arrangement, while maintaining confidentiality of non-aggregated data, and should, to the extent feasible, develop database systems which provide efficient access to data.
2. At the global level, collection and dissemination of data should be effected through the Food and Agriculture Organization of the United Nations. Where a subregional or regional fisheries management organization or arrangement does not exist, that organization may also do the same at the subregional or regional level by arrangement with the States concerned.

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ANNEX IIGUIDELINES FOR THE APPLICATION OF PRECAUTIONARY  
REFERENCE POINTS IN CONSERVATION AND MANAGEMENT  
OF STRADDLING FISH STOCKS AND HIGHLY MIGRATORY  
FISH STOCKS

1. A precautionary reference point is an estimated value derived through an agreed scientific procedure, which corresponds to the state of the resource and of the fishery, and which can be used as a guide for fisheries management.
2. Two types of precautionary reference points should be used: conservation, or limit, reference points and management, or target, reference points. Limit reference points set boundaries which are intended to constrain harvesting within safe biological limits within which the stocks can produce maximum sustainable yield. Target reference points are intended to meet management objectives.
3. Precautionary reference points should be stock-specific to account, inter alia, for the reproductive capacity, the resilience of each stock and the characteristics of fisheries exploiting the stock, as well as other sources of mortality and major sources of uncertainty.
4. Management strategies shall seek to maintain or restore populations of harvested stocks, and where necessary associated or dependent species, at levels consistent with previously agreed precautionary reference points. Such reference points shall be used to trigger pre-agreed conservation and management action. Management strategies shall include measures which can be implemented when precautionary reference points are approached.
5. Fishery management strategies shall ensure that the risk of exceeding limit reference points is very low. If a stock falls below a limit reference point or is at risk of falling below such a reference point, conservation and management action should be initiated to facilitate stock recovery. Fishery management strategies shall ensure that target reference points are not exceeded on average.
6. When information for determining reference points for a fishery is poor or absent, provisional reference points shall be set. Provisional reference points

may be established by analogy to similar and better-known stocks. In such situations, the fishery shall be subject to enhanced monitoring so as to enable revision of provisional reference points as improved information becomes available.

7. The fishing mortality rate which generates maximum sustainable yield should be regarded as a minimum standard for limit reference points. For stocks which are not overfished, fishery management strategies shall ensure that fishing mortality does not exceed that which corresponds to maximum sustainable yield, and that the biomass does not fall below a predefined threshold. For overfished stocks, the biomass which would produce maximum sustainable yield can serve as a rebuilding target.

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# Schedule 3—Compliance Agreement

Note: See subsection 4(1) (definition of *Compliance Agreement*).

**AGREEMENT TO PROMOTE COMPLIANCE  
WITH INTERNATIONAL CONSERVATION AND MANAGEMENT  
MEASURES BY FISHING VESSELS ON THE HIGH SEAS**

**PREAMBLE**

**The Parties to this Agreement,**

Recognizing that all States have the right for their nationals to engage in fishing on the high seas, subject to the relevant rules of international law, as reflected in the United Nations Convention on the Law of the Sea,

Further recognizing that, under international law as reflected in the United Nations Convention on the Law of the Sea, all States have the duty to take, or to cooperate with other States in taking, such measures for their respective nationals as may be necessary for the conservation of the living resources of the high seas,

Acknowledging the right and interest of all States to develop their fishing sectors in accordance with their national policies, and the need to promote cooperation with developing countries to enhance their capabilities to fulfil their obligations under this Agreement,

Recalling that Agenda 21, adopted by the United Nations Conference on Environment and Development, calls upon States to take effective action, consistent with international law, to deter reflagging of vessels by their nationals as a means of avoiding compliance with applicable conservation and management rules for fishing activities on the high seas,

Further recalling that the Declaration of Cancun, adopted by the International Conference on Responsible Fishing, also calls on States to take action in this respect,

Bearing in mind that under Agenda 21, States commit themselves to the conservation and sustainable use of marine living resources on the high seas,

Calling upon States which do not participate in global, regional or subregional fisheries organizations or arrangements to join or, as appropriate, to enter into understandings with such organizations or with parties to such organizations or arrangements with a view to achieving compliance with international conservation and management measures,

Conscious of the duties of every State to exercise effectively its jurisdiction and control over vessels flying its flag, including fishing vessels and vessels engaged in the transshipment of fish,

Mindful that the practice of flagging or reflagging fishing vessels as a means of avoiding compliance with international conservation and management measures for living marine resources, and the failure of flag States to fulfil their responsibilities with respect to fishing vessels entitled to fly their flag, are among the factors that seriously undermine the effectiveness of such measures,

Realizing that the objective of this Agreement can be achieved through specifying flag States' responsibility in respect of fishing vessels entitled to fly their flags and operating on the high seas, including the authorization by the flag State of such operations, as well as through strengthened international cooperation and increased transparency through the exchange of information on high seas fishing,

Noting that this Agreement will form an integral part of the International Code of Conduct for Responsible Fishing called for in the Declaration of Cancun,

Desiring to conclude an international agreement within the framework of the Food and Agriculture Organization of the United Nations, hereinafter referred to as FAO, under Article XIV of the FAO Constitution,

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**Have agreed as follows:**

**Article I**

**DEFINITIONS**

For the purposes of this Agreement:

- (a) “fishing vessel” means any vessel used or intended for use for the purposes of the commercial exploitation of living marine resources, including mother ships and any other vessels directly engaged in such fishing operations;
- (b) “international conservation and management measures” means measures to conserve or manage one or more species of living marine resources that are adopted and applied in accordance with the relevant rules of international law as reflected in the 1982 United Nations Convention on the Law of the Sea. Such measures may be adopted either by global, regional or subregional fisheries organizations, subject to the rights and obligations of their members, or by treaties or other international agreements;
- (c) “length” means
  - (i) for any fishing vessel built after 18 July 1982, 96 percent of the total length on a waterline at 85 percent of the least moulded depth measured from the top of the keel, or the length from the foreside of the stem to the axis of the rudder stock on that waterline, if that be greater. In ships designed with a rake of keel the waterline on which this length is measured shall be parallel to the designed waterline;
  - (ii) for any fishing vessel built before 18 July 1982, registered length as entered on the national register or other record of vessels;

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- (d) “record of fishing vessels” means a record of fishing vessels in which are recorded pertinent details of the fishing vessel. It may constitute a separate record for fishing vessels or form part of a general record of vessels;
  - (e) “regional economic integration organization” means a regional economic integration organization to which its member States have transferred competence over matters covered by this Agreement, including the authority to make decisions binding on its member States in respect of those matters;
  - (f) “vessels entitled to fly its flag” and “vessels entitled to fly the flag of a State”, includes vessels entitled to fly the flag of a member State of a regional economic integration organization.

## Article II

### APPLICATION

1. Subject to the following paragraphs of this Article, this Agreement shall apply to all fishing vessels that are used or intended for fishing on the high seas.

2. A Party may exempt fishing vessels of less than 24 metres in length entitled to fly its flag from the application of this Agreement unless the Party determines that such an exemption would undermine the object and purpose of this Agreement, provided that such exemptions:

- (a) shall not be granted in respect of fishing vessels operating in fishing regions referred to in paragraph 3 below, other than fishing vessels that are entitled to fly the flag of a coastal State of that fishing region; and
- (b) shall not apply to the obligations undertaken by a Party under paragraph 1 of Article III, or paragraph 7 of Article VI of this Agreement.

3. Without prejudice to the provisions of paragraph 2 above, in any fishing region where bordering coastal States have not yet declared exclusive economic zones, or equivalent zones of national jurisdiction over fisheries, such coastal States as are Parties to this Agreement may agree, either directly or through

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appropriate regional fisheries organizations, to establish a minimum length of fishing vessels below which this Agreement shall not apply in respect of fishing vessels flying the flag of any such coastal State and operating exclusively in such fishing region.

### **Article III**

#### **FLAG STATE RESPONSIBILITY**

1. (a) Each Party shall take such measures as may be necessary to ensure that fishing vessels entitled to fly its flag do not engage in any activity that undermines the effectiveness of international conservation and management measures.
- (b) In the event that a Party has, pursuant to paragraph 2 of Article II, granted an exemption for fishing vessels of less than 24 metres in length entitled to fly its flag from the application of other provisions of this Agreement, such Party shall nevertheless take effective measures in respect of any such fishing vessel that undermines the effectiveness of international conservation and management measures. These measures shall be such as to ensure that the fishing vessel ceases to engage in activities that undermine the effectiveness of the international conservation and management measures.
2. In particular, no Party shall allow any fishing vessel entitled to fly its flag to be used for fishing on the high seas unless it has been authorized to be so used by the appropriate authority or authorities of that Party. A fishing vessel so authorized shall fish in accordance with the conditions of the authorization.
3. No Party shall authorize any fishing vessel entitled to fly its flag to be used for fishing on the high seas unless the Party is satisfied that it is able, taking into account the links that exist between it and the fishing vessel concerned, to exercise effectively its responsibilities under this Agreement in respect of that fishing vessel.
4. Where a fishing vessel that has been authorized to be used for fishing on the high seas by a Party ceases to be entitled to fly the flag of that Party, the authorization to fish on the high seas shall be deemed to have been cancelled.

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5. (a) No Party shall authorize any fishing vessel previously registered in the territory of another Party that has undermined the effectiveness of international conservation and management measures to be used for fishing on the high seas, unless it is satisfied that
- (i) any period of suspension by another Party of an authorization for such fishing vessel to be used for fishing on the high seas has expired; and
- (ii) no authorization for such fishing vessel to be used for fishing on the high seas has been withdrawn by another Party within the last three years.
- (b) The provisions of subparagraph (a) above shall also apply in respect of fishing vessels previously registered in the territory of a State which is not a Party to this Agreement, provided that sufficient information is available to the Party concerned on the circumstances in which the authorization to fish was suspended or withdrawn.
- (c) The provisions of subparagraphs (a) and (b) shall not apply where the ownership of the fishing vessel has subsequently changed, and the new owner has provided sufficient evidence demonstrating that the previous owner or operator has no further legal, beneficial or financial interest in, or control of, the fishing vessel.
- (d) Notwithstanding the provisions of subparagraphs (a) and (b) above, a Party may authorize a fishing vessel, to which those subparagraphs would otherwise apply, to be used for fishing on the high seas, where the Party concerned, after having taken into account all relevant facts, including the circumstances in which the fishing authorization has been withdrawn by the other Party or State, has determined that to grant an authorization to use the vessel for fishing on the high seas would not undermine the object and purpose of this Agreement.
6. Each party shall ensure that all fishing vessels entitled to fly its flag that it has entered in the record maintained under Article IV are marked in such a way that they can be readily identified in accordance with generally accepted
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standards, such as the FAO Standard Specifications for the Marking and Identification of Fishing Vessels.

7. Each Party shall ensure that each fishing vessel entitled to fly its flag shall provide it with such information on its operations as may be necessary to enable the Party to fulfil its obligations under this Agreement, including in particular information pertaining to the area of its fishing operations and to its catches and landings.

8. Each Party shall take enforcement measures in respect of fishing vessels entitled to fly its flag which act in contravention of the provisions of this Agreement, including, where appropriate, making the contravention of such provisions an offence under national legislation. Sanctions applicable in respect of such contraventions shall be of sufficient gravity as to be effective in securing compliance with the requirements of this Agreement and to deprive offenders of the benefits accruing from their illegal activities. Such sanctions shall, for serious offences, include refusal, suspension or withdrawal of the authorization to fish on the high seas.

#### **Article IV**

### **RECORDS OF FISHING VESSELS**

Each Party shall, for the purposes of this Agreement, maintain a record of fishing vessels entitled to fly its flag and authorized to be used for fishing on the high seas, and shall take such measures as may be necessary to ensure that all such fishing vessels are entered in that record.

#### **Article V**

### **INTERNATIONAL COOPERATION**

1. The Parties shall cooperate as appropriate in the implementation of this Agreement, and shall, in particular, exchange information, including evidentiary material, relating to activities of fishing vessels in order to assist the flag State in identifying those fishing vessels flying its flag reported to have engaged in activities undermining international conservation and management measures, so as to fulfil its obligations under Article III.

2. When a fishing vessel is voluntarily in the port of a Party other than its flag State, that Party, where it has reasonable grounds for believing that the

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fishing vessel has been used for an activity that undermines the effectiveness of international conservation and management measures, shall promptly notify the flag State accordingly. Parties may make arrangements regarding the undertaking by port States of such investigatory measures as may be considered necessary to establish whether the fishing vessel has indeed been used contrary to the provisions of this Agreement.

3. The Parties shall, when and as appropriate, enter into cooperative agreements or arrangements of mutual assistance on a global, regional, subregional or bilateral basis so as to promote the achievement of the objectives of this Agreement.

## **Article VI**

### **EXCHANGE OF INFORMATION**

1. Each Party shall make readily available to FAO the following information with respect to each fishing vessel entered in the record required to be maintained under Article IV:

- (a) name of fishing vessel, registration number, previous names (if known), and port of registry;
- (b) previous flag (if any);
- (c) International Radio Call Sign (if any);
- (d) name and address of owner or owners;
- (e) where and when built;
- (f) type of vessel;
- (g) length.

2. Each Party shall, to the extent practicable, make available to FAO the following additional information with respect to each fishing vessel entered in the record required to be maintained under Article IV:

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- (a) name and address of operator (manager) or operators (managers) (if any);
  - (b) type of fishing method or methods;
  - (c) moulded depth;
  - (d) beam;
  - (e) gross register tonnage;
  - (f) power of main engine or engines.

3. Each Party shall promptly notify to FAO any modifications to the information listed in paragraphs 1 and 2 of this Article.

4. FAO shall circulate periodically the information provided under paragraphs 1, 2, and 3 of this Article to all Parties, and, on request, individually to any Party. FAO shall also, subject to any restrictions imposed by the Party concerned regarding the distribution of information, provide such information on request individually to any global, regional or subregional fisheries organization.

5. Each Party shall also promptly inform FAO of-

- (a) any additions to the record;
- (b) any deletions from the record by reason of-
  - (i) the voluntary relinquishment or non-renewal of the fishing authorization by the fishing vessel owner or operator;
  - (ii) the withdrawal of the fishing authorization issued in respect of the fishing vessel under paragraph 8 of Article III;
  - (iii) the fact that the fishing vessel concerned is no longer entitled to fly its flag;

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- (iv) the scrapping, decommissioning or loss of the fishing vessel concerned; or
  - (v) any other reason.

6. Where information is given to FAO under paragraph 5 (b) above, the Party concerned shall specify which of the reasons listed in that paragraph is applicable.

7. Each Party shall inform FAO of

- (a) any exemption it has granted under paragraph 2 of Article II, the number and type of fishing vessel involved and the geographical areas in which such fishing vessels operate; and
- (b) any agreement reached under paragraph 3 of Article II.

8. (a) Each Party shall report promptly to FAO all relevant information regarding any activities of fishing vessels flying its flag that undermine the effectiveness of international conservation and management measures, including the identity of the fishing vessel or vessels involved and measures imposed by the Party in respect of such activities. Reports on measures imposed by a Party may be subject to such limitations as may be required by national legislation with respect to confidentiality, including, in particular, confidentiality regarding measures that are not yet final.

- (b) Each Party, where it has reasonable grounds to believe that a fishing vessel not entitled to fly its flag has engaged in any activity that undermines the effectiveness of international conservation and management measures, shall draw this to the attention of the flag State concerned and may, as appropriate, draw it to the attention of FAO. It shall provide the flag State with full supporting evidence and may provide FAO with a summary of such evidence. FAO shall not circulate such information until such time as the flag State has had an opportunity to comment on the allegation and evidence submitted, or to object as the case may be.

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9. Each Party shall inform FAO of any cases where the Party, pursuant to paragraph 5 (d) of Article III, has granted an authorization notwithstanding the provisions of paragraph 5 (a) or 5 (b) of Article III. The information shall include pertinent data permitting the identification of the fishing vessel and the owner or operator and, as appropriate, any other information relevant to the Party's decision.

10. FAO shall circulate promptly the information provided under paragraphs 5, 6, 7, 8 and 9 of this Article to all Parties, and, on request, individually to any Party. FAO shall also, subject to any restrictions imposed by the Party concerned regarding the distribution of information, provide such information promptly on request individually to any global, regional or subregional fisheries organization.

11. The Parties shall exchange information relating to the implementation of this Agreement, including through FAO and other appropriate global, regional and subregional fisheries organizations.

## **Article VII**

### **COOPERATION WITH DEVELOPING COUNTRIES**

The Parties shall cooperate, at a global, regional, subregional or bilateral level, and, as appropriate, with the support of FAO and other international or regional organizations, to provide assistance, including technical assistance, to Parties that are developing countries in order to assist them in fulfilling their obligations under this Agreement.

## **Article VIII**

### **NON-PARTIES**

1. The Parties shall encourage any State not party to this Agreement to accept this Agreement and shall encourage any non-Party to adopt laws and regulations consistent with the provisions of this Agreement.

2. The Parties shall cooperate in a manner consistent with this Agreement and with international law to the end that fishing vessels entitled to fly the flags of non-Parties do not engage in activities that undermine the effectiveness of international conservation and management measures.

3. The Parties shall exchange information amongst themselves, either directly or through FAO, with respect to activities of fishing vessels flying the flags of non-Parties that undermine the effectiveness of international conservation and management measures.

## **Article IX**

### **SETTLEMENT OF DISPUTES**

1. Any Party may seek consultations with any other Party or Parties on any dispute with regard to the interpretation or application of the provisions of this Agreement with a view to reaching a mutually satisfactory solution as soon as possible.

2. In the event that the dispute is not resolved through these consultations within a reasonable period of time, the Parties in question shall consult among themselves as soon as possible with a view to having the dispute settled by negotiation, inquiry, mediation, conciliation, arbitration, judicial settlement or other peaceful means of their own choice.

3. Any dispute of this character not so resolved shall, with the consent of all Parties to the dispute, be referred for settlement to the International Court of Justice, to the International Tribunal for the Law of the Sea upon entry into force of the 1982 United Nations Convention on the Law of the Sea or to arbitration. In the case of failure to reach agreement on referral to the International Court of Justice, to the International Tribunal for the Law of the Sea or to arbitration, the Parties shall continue to consult and cooperate with a view to reaching settlement of the dispute in accordance with the rules of international law relating to the conservation of living marine resources.

## **Article X**

### **ACCEPTANCE**

1. This Agreement shall be open to acceptance by any Member or Associate Member of FAO, and to any non-member State that is a member of the United Nations, or of any of the specialized agencies of the United Nations or of the International Atomic Energy Agency.

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2. Acceptance of this Agreement shall be effected by the deposit of an instrument of acceptance with the Director-General of FAO, hereinafter referred to as the Director-General.

3. The Director-General shall inform all Parties, all Members and Associate Members of FAO and the Secretary-General of the United Nations of all instruments of acceptance received.

4. When a regional economic integration organization becomes a Party to this Agreement, such regional economic integration organization shall, in accordance with the provisions of Article II.7 of the FAO Constitution, as appropriate, notify such modifications or clarifications to its declaration of competence submitted under Article II.5 of the FAO Constitution as may be necessary in light of its acceptance of this Agreement. Any Party to this Agreement may, at any time, request a regional economic integration organization that is a Party to this Agreement to provide information as to which, as between the regional economic integration organization and its Member States, is responsible for the implementation of any particular matter covered by this Agreement. The regional economic integration organization shall provide this information within a reasonable time.

## **Article XI**

### **ENTRY INTO FORCE**

1. This Agreement shall enter into force as from the date of receipt by the Director-General of the twenty-fifth instrument of acceptance.

2. For the purpose of this Article, an instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such an organization.

## **Article XII**

### **RESERVATIONS**

Acceptance of this Agreement may be made subject to reservations which shall become effective only upon unanimous acceptance by all Parties to this Agreement. The Director-General shall notify forthwith all Parties of any reservation. Parties not having replied within three months from the date of the notification shall be deemed to have accepted the reservation. Failing such

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acceptance, the State or regional economic integration organization making the reservation shall not become a Party to this Agreement.

### **Article XIII**

#### **AMENDMENTS**

1. Any proposal by a Party for the amendment of this Agreement shall be communicated to the Director-General.
2. Any proposed amendment of this Agreement received by the Director-General from a Party shall be presented to a regular or special session of the Conference for approval and, if the amendment involves important technical changes or imposes additional obligations on the Parties, it shall be considered by an advisory committee of specialists convened by FAO prior to the Conference.
3. Notice of any proposed amendment of this Agreement shall be transmitted to the Parties by the Director-General not later than the time when the agenda of the session of the Conference at which the matter is to be considered is dispatched.
4. Any such proposed amendment of this Agreement shall require the approval of the Conference and shall come into force as from the thirtieth day after acceptance by two-thirds of the Parties. Amendments involving new obligations for Parties, however, shall come into force in respect of each Party only on acceptance by it and as from the thirtieth day after such acceptance. Any amendment shall be deemed to involve new obligations for Parties unless the Conference, in approving the amendment, decides otherwise by consensus.
5. The instruments of acceptance of amendments involving new obligations shall be deposited with the Director-General, who shall inform all Parties of the receipt of acceptance and the entry into force of amendments.
6. For the purpose of this Article, an instrument deposited by a regional economic integration organization shall not be counted as additional to those deposited by member States of such an organization.

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**Article XIV****WITHDRAWAL**

Any Party may withdraw from this Agreement at any time after the expiry of two years from the date upon which the Agreement entered into force with respect to that Party, by giving written notice of such withdrawal to the Director-General who shall immediately inform all the Parties and the Members and Associate Members of FAO of such withdrawal. Withdrawal shall become effective at the end of the calendar year following that in which the notice of withdrawal has been received by the Director-General.

**Article XV****DUTIES OF THE DEPOSITARY**

The Director-General shall be the Depositary of this Agreement. The Depositary shall:

- (a) send certified copies of this Agreement to each Member and Associate Member of FAO and to such non-member States as may become party to this Agreement;
- (b) arrange for the registration of this Agreement, upon its entry into force, with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations;
- (c) inform each Member and Associate Member of FAO and any non-member States as may become Party to this Agreement of:
  - (i) instruments of acceptance deposited in accordance with Article X;
  - (ii) the date of entry into force of this Agreement in accordance with Article XI;
  - (iii) proposals for and the entry into force of amendments to this Agreement in accordance with Article XIII;

- (iv) withdrawals from this Agreement pursuant to Article XIV.

**Article XVI**

**AUTHENTIC TEXTS**

The Arabic, Chinese, English, French, and Spanish texts of this Agreement are equally authentic.

## Endnotes

### Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

### Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

### Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

### Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

### Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

## Endnotes

### Endnote 1—About the endnotes

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can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and “(md not incorp)” is added to the amendment history.

## Endnote 2—Abbreviation key

**Endnote 2—Abbreviation key**

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

## Endnotes

### Endnote 3—Legislation history

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### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Fisheries Management Act 1991	162, 1991	10 Nov 1991	s 1 and 2: 10 Nov 1991 (s 2(1)) s 58–82: 3 Feb 1995 (s 2(2)) Remainder: 3 Feb 1992 (s 2(3) and gaz 1992, No GN1)	
Primary Industries and Energy Legislation Amendment Act 1993	94, 1993	16 Dec 1993	Parts 11 and 12 (ss. 47–65): 1 Jan 1994 s. 69(1)(b): 1 July 1989 Remainder: Royal Assent	—
Maritime Legislation Amendment Act 1994	20, 1994	15 Feb 1994	1 Aug 1994 ( <i>see Gazette</i> 1994, No. S289)	—
Primary Industries and Energy Legislation Amendment Act (No. 2) 1994	129, 1994	21 Oct 1994	Sch: 21 Oct 1994 (s 2(1))	—
Evidence (Transitional Provisions and Consequential Amendments) Act 1995	3, 1995	23 Feb 1995	s 14: 23 Feb 1995 (s 2(1)) Sch: 18 Apr 1995 (s 2(13))	s 14
Primary Industries and Energy Legislation Amendment Act (No. 2) 1996	59, 1996	20 Nov 1996	Sch 4: 20 Nov 1996 (s 2(1))	—
Fisheries Legislation Amendment Act 1997	120, 1997	7 July 1997	7 July 1997	Sch 2 (item 29)

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Fisheries Legislation Amendment Act (No. 1) 1998	75, 1998	30 June 1998	Sch 1: 28 July 1998 (s 2(1))	—
Fisheries Legislation Amendment Act (No. 1) 1999	143, 1999	3 Nov 1999	Schedule 1: 16 Dec 1999 ( <i>see Gazette</i> 1999, No. S623) Schedule 2: 11 Dec 2001 ( <i>see Gazette</i> 2001, No. S485) Remainder: Royal Assent	Sch 1 (items 16, 25, 27) and Sch. 2 (items 23, 36)
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (items 489, 490): 5 Dec 1999 (s 2(1), (2))	—
Border Protection Legislation Amendment Act 1999	160, 1999	8 Dec 1999	Sch 3 (items 1–8, 14): 16 Dec 1999 (s 2(4), (6) and gaz 1999, No S624) Sch 3 (items 9–13): 11 Dec 2001 (s 2(5))	—
Fisheries Legislation Amendment Act (No. 1) 2000	50, 2000	3 May 2000	Schedules 1 and 2: 1 Aug 2000 ( <i>see Gazette</i> 2000, No. S415) Remainder: Royal Assent	Sch 2 (item 17)
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	Sch 2 (items 206–209, 418, 419): 24 May 2001 (s 2(3))	Sch 2 (items 418, 419)
Corporations (Repeals, Consequentials and Transitionals) Act 2001	55, 2001	28 June 2001	s 4–14 and Sch 3 (items 199, 200): 15 July 2001 (s 2(1), (3))	s 4–14

*Fisheries Management Act 1991*

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Compilation No. 63

Compilation date: 06/07/2024

Registered: 15/07/2024

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Agriculture, Fisheries and Forestry Legislation Amendment (Application of Criminal Code) Act 2001	115, 2001	18 Sept 2001	16 Oct 2001	s 4
Measures to Combat Serious and Organised Crime Act 2001	136, 2001	1 Oct 2001	Sch 4 (item 70): 29 Oct 2001 (s 2(5))	—
Border Security Legislation Amendment Act 2002	64, 2002	5 July 2002	Schedule 8: 5 Jan 2003	—
Fisheries Legislation Amendment (Compliance and Deterrence Measures and Other Matters) Act 2004	28, 2004	1 Apr 2004	Schedule 1: 6 Aug 2004 ( <i>see Gazette</i> 2004, No. S321) Remainder: Royal Assent	—
Fisheries Legislation Amendment (High Seas Fishing Activities and Other Matters) Act 2004	29, 2004	2 Apr 2004	Schedules 1 and 2: 20 Aug 2004 ( <i>see Gazette</i> 2004, No. S343) Remainder: Royal Assent	Sch 2 (item 8)
<b>as amended by</b> Statute Law Revision Act 2005	100, 2005	6 July 2005	Sch 2 (items 17, 18): 20 Aug 2004 (s 2(1) item 36)	—

## Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Fisheries Legislation Amendment (International Obligations and Other Matters) Act 2005	99, 2005	6 July 2005	Sch 1 (items 3, 4, 6–23, 34–36, 42–47): 7 July 2005 (s 2(1) items 2, 4, 6, 8) Sch 1 (item 5): repealed before commencing (s 2(1) item 3) Sch 1 (items 24–33, 37–41, 48–58): never commenced (s 2(1) items 5, 7, 9)	Sch 1 (item 41)
Statute Law Revision Act 2005	100, 2005	6 July 2005	Sch 1 (item 21): 1 Aug 2000 (s 2(1) item 11) Sch 1 (item 22): 24 May 2001 (s 2(1) item 12) Sch 1 (items 23, 24): 3 Feb 1992 (s 2(1) items 13, 14) Sch 1 (item 25): 20 Aug 2004 (s 2(1) item 15)	—
Border Protection Legislation Amendment (Deterrence of Illegal Foreign Fishing) Act 2005	103, 2005	23 Aug 2005	Schedule 1 (items 1, 42, 43): 24 Aug 2005 Schedule 1 (items 3–14, 21–26): 30 Nov 2005 (see F2005L03632)	Sch 1 (item 14)
Fisheries Legislation Amendment (Cooperative Fisheries Arrangements and Other Matters) Act 2006	8, 2006	23 Mar 2006	23 Mar 2006	Sch 2 (item 22)
Fisheries Legislation Amendment (Foreign Fishing Offences) Act 2006	61, 2006	22 June 2006	Schedules 1 and 2: 23 June 2006 Remainder: Royal Assent	—

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Migration Legislation Amendment (Information and Other Measures) Act 2007	63, 2007	15 Apr 2007	Schedule 1 (items 16–30, 60, 61): 1 May 2007 ( <i>see</i> F2007L01135)	Sch 1 (items 60, 61)
Fisheries Legislation Amendment Act 2007	104, 2007	28 June 2007	Schedule 2: 26 July 2007	—
<b>as amended by</b>				
Statute Law Revision Act 2008	73, 2008	3 July 2008	Sch 2 (item 21): 26 July 2007 (s 2(1) item 56)	—
Fisheries Legislation Amendment (New Governance Arrangements for the Australian Fisheries Management Authority and Other Matters) Act 2008	36, 2008	24 June 2008	Schedule 1 (items 83–117, 135–156): 1 July 2008 Schedule 2 (items 1–12) and Schedule 4 (items 1–6): 22 July 2008 Schedule 3 (items 1–66): 24 June 2009	Sch 1 (items 135–156)
Customs Legislation Amendment (Name Change) Act 2009	33, 2009	22 May 2009	Schedule 2 (item 34): 23 May 2009	—
Personal Property Securities (Consequential Amendments) Act 2009	131, 2009	14 Dec 2009	Schedule 1 (items 1–18): 30 Jan 2012 ( <i>see</i> F2011L02397)	Sch 1 (item 18) Sch 1 (item 17) (rep by 96, 2010, Sch 3 [item 17])
<b>as amended by</b>				
Personal Property Securities (Corporations and Other Amendments) Act 2010	96, 2010	6 July 2010	Schedule 3 (item 17): ( <i>see</i> 96, 2010 below)	—
Fisheries Legislation Amendment Act 2010	39, 2010	13 Apr 2010	Schedule 1: 11 May 2010	—

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Freedom of Information Amendment (Reform) Act 2010	51, 2010	31 May 2010	Sch 5 (items 35, 36) and Sch 7: 1 Nov 2010 (s 2(1) item 7)	Sch 7
Personal Property Securities (Corporations and Other Amendments) Act 2010	96, 2010	6 July 2010	Sch 3 (items 2, 17): 30 Jan 2012 (s 2(1) items 9, 14)	—
Fisheries Legislation Amendment Act (No. 2) 2010	137, 2010	7 Dec 2010	Schedule 3 (items 1–14): 4 Jan 2011 Schedule 3 (items 15–20): 7 Jan 2011	—
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Schedule 2 (items 619– 627) and Schedule 3 (items 10, 11): 27 Dec 2011	Sch 3 (items 10, 11)
Maritime Powers (Consequential Amendments) Act 2013	16, 2013	27 Mar 2013	Schedule 3: 27 Mar 2014 (see s 2(1))	—
Agriculture, Fisheries and Forestry Legislation Amendment Act (No. 1) 2013	17, 2013	27 Mar 2013	Schedule 3: 24 Apr 2013 Schedule 6 (items 52– 56): 28 Mar 2013	Sch 3 (item 13)
Fisheries Legislation Amendment Act (No. 1) 2013	27, 2013	28 Mar 2013	Schedule 1 (items 1–9, 12–15), Schedule 2, Schedule 3 and Schedule 4 (items 1–10): 25 Apr 2013 Schedule 4 (items 11, 12): 29 Mar 2013	Sch 2 (item 6), Sch 3 (item 2) and Sch 4 (item 12)
Statute Law Revision Act 2013	103, 2013	29 June 2013	Schedule 1 (items 50, 51) and Schedule 3 (item 12): Royal Assent	—

## Endnotes

### Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law Revision Act (No. 1) 2014	31, 2014	27 May 2014	Sch 4 (items 85–87): 24 June 2014	Sch 4 (item 87)
Acts and Instruments (Framework Reform) Act 2015	10, 2015	5 Mar 2015	Sch 3 (items 139, 140, 348 and 349): 5 Mar 2016 (s 2(1) item 2)	Sch 3 (items 348, 349)
Customs and Other Legislation Amendment (Australian Border Force) Act 2015	41, 2015	20 May 2015	Sch 5 (items 70–79), Sch 6 (items 77–81) and Sch 9: 1 July 2015 (s 2(1) items 2 and 7)	Sch 6 (item 81) and Sch 9
<b>as amended by</b>				
Australian Border Force Amendment (Protected Information) Act 2017	115, 2017	30 Oct 2017	Sch 1 (item 26): 1 July 2015 (s 2(1) item 2)	—
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 2 (item 161): 1 July 2016 (s 2(1) item 5) Sch 2 (items 356–396): 18 June 2015 (s 2(1) item 6)	Sch 2 (items 356–396)
<b>as amended by</b>				
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—
Biosecurity (Consequential Amendments and Transitional Provisions) Act 2015	62, 2015	16 June 2015	Sch 2 (items 22, 23) and Sch 4: 16 June 2016 (s 2(1) items 2, 4) Sch 3: 16 June 2015 (s 2(1) item 3)	Sch 3 and Sch 4
<b>as amended by</b>				
Statute Update (Winter 2017) Act 2017	93, 2017	23 Aug 2017	Sch 2 (item 9): 20 Sept 2017 (s 2(1) item 4)	—

## Endnote 3—Legislation history

<b>Act</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>	<b>Application, saving and transitional provisions</b>
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 230): 5 Mar 2016 (s 2(1) item 2)	—
Statute Law Revision Act (No. 1) 2016	4, 2016	11 Feb 2016	Sch 4 (items 1, 174, 175, 389): 10 Mar 2016 (s 2(1) item 6)	—
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 2 (item 45): 21 Oct 2016 (s 2(1) item 1)	—
Fisheries Legislation Amendment (Representation) Act 2017	123, 2017	6 Nov 2017	Sch 1 (items 11, 12): 7 Nov 2017 (s 2(1) item 1)	—
Territories Legislation Amendment Act 2020	154, 2020	17 Dec 2020	Sch 1 (items 89, 93–96, 99): 18 Dec 2020 (s 2(1) item 2)	Sch 1 (items 93– 96, 99)
Regulatory Powers (Standardisation Reform) Act 2021	32, 2021	26 Mar 2021	Sch 4: 26 Sept 2021 (s 2(1) item 8)	Sch 4 (item 6)
Administrative Review Tribunal (Consequential and Transitional Provisions No. 2) Act 2024	39, 2024	31 May 2024	Sch 1 (items 11–21): <u>awaiting commencement</u> (s 2(1) item 2)	—
COAG Legislation Amendment Act 2024	54, 2024	5 July 2024	Sch 2 (items 14, 94–98): 6 July 2024 (s 2(1) item 3)	Sch 2 (items 94– 98)

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s. 3.....	am. No. 120, 1997; No. 143, 1999; No. 29, 2004; No. 8, 2006; No 123, 2017
s. 3A.....	ad. No. 8, 2006
s. 4.....	am No 20, 1994; No 120, 1997; No 143, 1999; No 160, 1999; No 137, 2000; No 29, 2004; No 99, 2005; No 8, 2006; No 104, 2007; No 36, 2008; No 131, 2009; No 39, 2010; No 96, 2010; No 137, 2010; No 46, 2011; No 27, 2013; No 103, 2013; No 32, 2021; No 54, 2024
s. 6.....	am No 59, 2015
s. 6A.....	ad. No. 115, 2001
s. 7.....	am. No. 143, 1999; No. 29, 2004; No. 36, 2008
Note to s. 7(1) .....	ad. No. 143, 1999
	rep. No. 36, 2008
s. 8.....	am. No. 143, 1999; No. 29, 2004
s. 8A.....	ad. No. 50, 2000
s. 9.....	am. No. 137, 2000
s. 9A.....	ad. No. 94, 1993
s. 10.....	am. No. 143, 1999; No. 29, 2004; No. 99, 2005
Part 2	
s. 13.....	am. No. 120, 1997; No. 115, 2001
s. 14.....	am. No. 50, 2000
s. 15.....	am. No. 120, 1997; No. 50, 2000; No. 115, 2001
s. 15A.....	ad. No. 75, 1998
	am. No. 115, 2001; No. 29, 2004
s. 15B.....	ad. No. 75, 1998
Part 3	
Division 1	
Heading to s. 16A .....	am. No. 36, 2008

## Endnote 4—Amendment history

Provision affected	How affected
Subhead. to s. 16A(1) .....	am. No. 36, 2008
s. 16A.....	ad. No. 143, 1999
	am. No. 36, 2008
s. 16B.....	ad. No. 29, 2004
<b>Division 2</b>	
s. 17.....	am. No. 94, 1993; No. 120, 1997; No. 143, 1999; No. 50, 2000; No. 99, 2005; No. 36, 2008; No. 137, 2010
s. 17A.....	ad. No. 120, 1997
	am. No. 50, 2000
s. 19.....	am. No. 3, 1995; No. 137, 2010; <u>No. 39, 2024</u>
s. 20.....	am. No. 137, 2010
<b>Division 3</b>	
s. 21.....	am. No. 94, 1993
s. 22.....	am. No. 94, 1993; Nos. 28 and 29, 2004; No. 39, 2010; No. 17, 2013
Note to s. 22(3).....	ad. No. 143, 1999
	rs. No. 17, 2013
	am. No. 27, 2013
s. 23.....	am. No. 99, 2005
<b>Division 4</b>	
s. 25.....	am. No. 99, 2005
s. 26.....	am. No. 120, 1997
ss. 28, 29 .....	am. No. 99, 2005
<b>Division 4A</b>	
Div. 4A of Part 3.....	ad. No. 120, 1997
s. 31A.....	ad. No. 120, 1997
	am. No. 131, 2009
ss. 31B–31E.....	ad. No. 120, 1997
Heading to s. 31F.....	am. No. 131, 2009
Subheads. to s. 31F(1), (2).....	ad. No. 131, 2009
Subheads. to s. 31F(6)–(8).....	ad. No. 131, 2009

## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
s. 31F .....	ad. No. 120, 1997 am. No. 55, 2001; No. 131, 2009
s. 31FA.....	ad. No. 131, 2009
s. 31G.....	ad. No. 120, 1997
s. 31H.....	ad. No. 120, 1997
s. 31J .....	ad. No. 120, 1997 am. No. 131, 2009
s. 31K.....	ad. No. 120, 1997
s. 31L .....	ad. No. 120, 1997
<b>Division 5</b>	
s. 32.....	am. No. 94, 1993; No. 129, 1994; No. 143, 1999; Nos. 28 and 29, 2004; No. 39, 2010; No. 17, 2013
Note to s. 32(1D).....	am. No. 36, 2008
Note to s. 32(5).....	ad. No. 143, 1999 rs. No. 17, 2013 am. No. 27, 2013
s. 32A.....	ad. No. 39, 2010
<b>Division 6</b>	
s. 33.....	am. No. 28, 2004; No. 39, 2010; No. 17, 2013
Note to s. 33(3).....	ad. No. 143, 1999 rs. No. 17, 2013 am. No. 27, 2013
<b>Division 7</b>	
s. 34.....	am. No. 94, 1993; No. 28, 2004; No. 39, 2010; No. 17, 2013
Note to s. 34(4).....	ad. No. 17, 2013 am. No. 27, 2013
<b>Division 8</b>	
s. 38.....	am. No. 120, 1997; No. 99, 2005; No. 36, 2008
s. 39.....	am. No. 120, 1997; No. 143, 1999; No. 29, 2004; No. 36, 2008
<b>Division 9</b>	
s. 40.....	am. No. 28, 2004; No. 39, 2010; No. 17, 2013

## Endnote 4—Amendment history

Provision affected	How affected
Note to s. 40(3) .....	ad. No. 17, 2013
<b>Division 9A</b>	
Div. 9A of Part 3.....	ad. No. 27, 2013
s. 40A.....	ad. No. 27, 2013
s. 40B.....	ad. No. 27, 2013
s. 40C.....	ad. No. 27, 2013
<b>Division 10</b>	
s. 41A.....	ad. No. 28, 2004
	am. No. 137, 2010; Nos. 17 and 27, 2013
s. 42.....	am No 143, 1999; No 29, 2004; No 10, 2015
s. 42A.....	ad. No. 143, 1999
	am. No. 36, 2008
s. 42B.....	ad. No. 137, 2010
s. 43.....	am No 129, 1994; No 143, 1999; No 36, 2008; No 10, 2015
<b>Part 4</b>	
s. 45.....	am. No. 8, 2006
Heading to s. 46.....	am. No. 131, 2009
Subheads. to s. 46(1), (2).....	ad. No. 131, 2009
Subhead. to s. 46(5).....	ad. No. 131, 2009
s. 46.....	am. No. 120, 1997; No. 55, 2001; No. 131, 2009; No. 39, 2010
s. 46A.....	ad. No. 131, 2009
s. 48.....	am. No. 131, 2009; No. 103, 2013
s. 49.....	am. No. 120, 1997
	rep. No. 39, 2010
s. 50.....	am No 131, 2009; <u>No 39, 2024</u>
s. 54.....	am No 36, 2008; No 154, 2020
s. 56.....	am. No. 36, 2008
s. 57.....	am. No. 115, 2001
	rs. No. 29, 2004
	am No 4, 2016; No 61, 2016

## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
<b>Part 4A</b>	
Part 4A .....	ad. No. 29, 2004
s 57A .....	ad No 29, 2004
s 57B .....	ad No 29, 2004
	am <u>No 39, 2024</u>
s 57C .....	ad No 29, 2004
s 57D .....	ad No 29, 2004
s 57E .....	ad No 29, 2004
s 57F .....	ad No 29, 2004
	am No 4, 2016; No 61, 2016
<b>Part 4B</b>	
Part 4B .....	ad. No. 28, 2004
s. 57G .....	ad. No. 28, 2004
s 57H .....	ad No 28, 2004
	am No 137, 2010; <u>No 39, 2024</u>
s 57J .....	ad No 28, 2004
s 57K .....	ad No 28, 2004
s 57L .....	ad No 28, 2004
	am No 4, 2016; No 61, 2016
<b>Part 5</b>	
<b>Division 1</b>	
s. 60 .....	am. No. 8, 2006
<b>Division 2</b>	
s. 65 .....	am. No. 120, 1997
s. 69 .....	am. No. 36, 2008
<b>Division 3</b>	
s 71 .....	am No 8, 2006
s 72 .....	am No 8, 2006
s. 74 .....	am. No. 8, 2006
s. 74A .....	ad. No. 8, 2006
ss. 75, 76 .....	am. No. 8, 2006

## Endnote 4—Amendment history

Provision affected	How affected
s. 77.....	rs. No. 8, 2006 am. No. 27, 2013
s. 78.....	rs. No. 120, 1997 am. No. 8, 2006
ss. 79, 80 .....	rep. No. 120, 1997
s. 82.....	rep. No. 120, 1997
<b>Part 6</b>	
<b>Division 1</b>	
s. 83.....	am. No. 36, 2008
s. 84.....	am. No. 129, 1994; No. 120, 1997; Nos. 143 and 160, 1999; No. 115, 2001; No. 28, 2004; No. 29, 2004 (as am. by No. 100, 2005); No. 103, 2005; No. 61, 2006; No. 104, 2007; No 16, 2013
Note to s. 84(1).....	ad. No. 103, 2005
Note to s. 84(1A).....	ad. No. 143, 1999 am. No. 104, 2007
s. 84AA.....	ad. No. 103, 2005 rep No 16, 2013
s. 84A.....	ad. No. 160, 1999 am. No. 136, 2001 rep. No. 103, 2005
s. 84B.....	ad. No. 160, 1999 rep. No. 103, 2005 ad. No. 137, 2010 am No 16, 2013
s 84C.....	ad No 160, 1999 am No 41, 2015
s. 85.....	rs. No. 120, 1997
ss. 85A–85H .....	ad. No. 120, 1997
s 85J .....	ad No 120, 1997
s 85K.....	ad No 120, 1997
s. 86.....	rs. No. 120, 1997

## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
	am No 31, 2014
Heading to s. 87 .....	rs. No. 36, 2008
s. 87.....	am. No. 36, 2008; No. 137, 2010
	rep No 16, 2013
ss. 87A, 87B.....	ad. No. 143, 1999
	am. No. 103, 2005
	rep. No. 36, 2008
ss. 87C, 87D.....	ad. No. 143, 1999
	rep. No. 36, 2008
s. 87E .....	ad. No. 143, 1999
	am. No. 160, 1999; No. 103, 2005
	rep. No. 36, 2008
Note to s. 87E(5).....	rep. No. 103, 2005
s. 87F .....	ad. No. 143, 1999
	rep. No. 36, 2008
s. 87G.....	ad. No. 143, 1999
	rep No 16, 2013
s. 87H.....	ad. No. 143, 1999
	am. No. 103, 2005; No. 36, 2008
	rep No 16, 2013
Note to s. 87H(1).....	rep. No. 36, 2008
Note to s. 87H(5).....	rep. No. 36, 2008
s. 87HA.....	ad. No. 36, 2008
	rep No 16, 2013
s. 87J .....	ad. No. 143, 1999
	am. No. 36, 2008; No 16, 2013
s. 88.....	am. No. 120, 1997; No. 143, 1999; No. 28, 2004; No. 36, 2008; No 16, 2013
s. 88A.....	ad. No. 143, 1999
	rs. No. 36, 2008
s. 89.....	am. No. 120, 1997; No. 115, 2001; No. 36, 2008; No 4, 2016

## Endnote 4—Amendment history

Provision affected	How affected
s. 89A.....	ad. No. 39, 2010
<b>Division 2</b>	
s. 91.....	am. No. 129, 1994; No. 17, 2013
s. 93.....	am. No. 115, 2001; No. 32, 2021
<b>Division 3</b>	
s. 94.....	am. No. 50, 2000
<b>Division 4</b>	
s. 95.....	am. No. 120, 1997; No. 143, 1999; No. 50, 2000; No. 29, 2004; No. 100, 2005; No. 4, 2016
s. 96.....	am. No. 120, 1997
s. 97.....	am. No. 120, 1997; No. 27, 2013
s. 97A.....	ad. No. 27, 2013
s. 98.....	am. No. 120, 1997; No. 143, 1999; No. 50, 2000; No. 115, 2001; No. 36, 2008; No. 4, 2016
s. 98A.....	ad. No. 160, 1999 rep. No. 103, 2005 ad. No. 32, 2021
<b>Division 5</b>	
Heading to s. 99.....	am. No. 143, 1999
s. 99.....	am. No. 120, 1997; No. 143, 1999
Heading to s. 100.....	am. No. 143, 1999
s. 100.....	am. No. 120, 1997; No. 143, 1999; No. 4, 2016
s. 100A.....	ad. No. 143, 1999 am. No. 28, 2004; No. 61, 2006; No. 4, 2016
Note to s. 100A(4).....	ad. No. 61, 2006
s. 100B.....	ad. No. 61, 2006 am. No. 104, 2007
Heading to s. 101.....	am. No. 143, 1999; No. 36, 2008
s. 101.....	am. No. 120, 1997; No. 143, 1999; No. 50, 2000; No. 36, 2008; No. 137, 2010; No. 4, 2016
s. 101A.....	ad. No. 143, 1999

## Endnotes

### Endnote 4—Amendment history

Provision affected	How affected
	am. No. 50, 2000; No. 61, 2006; No. 36, 2008; No. 137, 2010; No 4, 2016
Note to s. 101A(4) .....	ad. No. 61, 2006
s. 101AA .....	ad. No. 61, 2006
	am. No. 104, 2007; No. 36, 2008; No. 137, 2010
s. 101B .....	ad. No. 143, 1999
	am. No. 143, 1999; No. 61, 2006; No. 36, 2008; No 4, 2016
s. 102 .....	am. No. 120, 1997; No. 143, 1999; No. 50, 2000; No. 115, 2001; No. 36, 2008; No 16, 2013; No 4, 2016
s. 103 .....	am. No. 120, 1997; No. 143, 1999; No. 115, 2001; No. 99, 2005; No. 61, 2006; No 4, 2016
Note to s. 103(1B) .....	ad. No. 99, 2005
s. 104 .....	am. No. 120, 1997; No. 115, 2001; No 4, 2016
<b>Division 5A</b>	
Div. 5A of Part 6 .....	ad. No. 143, 1999
<b>Subdivision A</b>	
s. 105A .....	ad. No. 143, 1999
	am No 4, 2016
Heading to s. 105AA .....	am. No. 36, 2008
s. 105AA .....	ad. No. 99, 2005
	am. No. 36, 2008; No 4, 2016
s. 105AB .....	ad. No. 99, 2005
	am. No. 36, 2008; No 4, 2016
s 105B .....	ad No 143, 1999
	am No 4, 2016
s 105C .....	ad No 143, 1999
	am No 4, 2016
s. 105D .....	ad. No. 143, 1999
	am. No. 36, 2008
Subdiv. AA of Div. 5A .....	ad. No. 99, 2005
of Part 6	rep. No. 36, 2008
ss. 105DA–105DD .....	ad. No. 99, 2005

## Endnote 4—Amendment history

Provision affected	How affected
	rep. No. 36, 2008
<b>Subdivision B</b>	
Subdiv. B of Div. 5A.....	rs. No. 36, 2008
of Part 6	
s. 105E .....	ad. No. 143, 1999
	rs. No. 36, 2008
s. 105EA .....	ad No 36, 2008
s. 105EB.....	ad No 36, 2008
s. 105F .....	ad. No. 143, 1999
	rs. No. 36, 2008
s. 105FA.....	ad. No. 36, 2008
s. 105G.....	ad. No. 143, 1999
	rep. No. 36, 2008
<b>Subdivision C</b>	
Subdiv. C of Div. 5A.....	ad. No. 99, 2005
of Part 6	rs. No. 36, 2008
ss. 105H–105J.....	ad. No. 99, 2005
	rs. No. 36, 2008
<b>Division 5B</b>	
Div. 5B of Part 6.....	ad. No. 103, 2005
s. 105Q.....	ad. No. 103, 2005
<b>Division 6</b>	
<b>Subdivision A</b>	
Heading to Subdiv. A .....	ad. No. 143, 1999
of Div. 6 of Part 6	
s. 106.....	am. No. 129, 1994; No. 120, 1997; No. 143, 1999; No. 50, 2000; No. 29, 2004; No. 104, 2007; No. 36, 2008
s. 106AAA .....	ad. No. 104, 2007
	am. No. 36, 2008
s. 106AAB .....	ad No 104, 2007
s. 106AAC .....	ad No 104, 2007

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### Endnote 4—Amendment history

Provision affected	How affected
<b>Subdivision B</b>	
Heading to Subdiv. B..... of Div. 6 of Part 6	rs. No. 104, 2007
Subdiv. B of Div. 6..... of Part 6	ad. No. 143, 1999
s. 106A.....	ad. No. 143, 1999 am. No. 61, 2006; No. 104, 2007; No 16, 2013
s 106AA.....	ad. No. 104, 2007 am No 16, 2013
s 106AB.....	ad No 104, 2007
<b>Subdivision BA</b>	
Subdiv. BA of Div. 6 of..... Part 6	ad. No. 104, 2007
ss. 106AC–106AE.....	ad. No. 104, 2007
<b>Subdivision C</b>	
Heading to Subdiv. C..... of Div. 6 of Part 6	rs. No. 104, 2007
Subdiv. C of Div. 6..... of Part 6	ad. No. 143, 1999
s. 106B.....	ad. No. 143, 1999 rs. No. 104, 2007
s. 106C.....	ad. No. 143, 1999 am. No. 104, 2007; No. 36, 2008
s. 106D.....	ad. No. 143, 1999 am No 62, 2015
ss. 106E, 106F.....	ad. No. 143, 1999 am. No. 36, 2008
Note 1 to s. 106F(1).....	am. No. 36, 2008
Note 2 to s. 106F(1).....	am. No. 36, 2008
s. 106G.....	ad. No. 143, 1999 am. No. 36, 2008
s. 106H.....	ad. No. 143, 1999

## Endnote 4—Amendment history

Provision affected	How affected
s. 106HA .....	ad. No. 104, 2007
Subdiv. CA of Div. 6 of Part 6	ad. No. 28, 2004 rep No 16, 2013
s 106J .....	ad. No. 28, 2004 rep No 16, 2013
s 106K .....	ad. No. 28, 2004 rep No 16, 2013
s 106L .....	ad. No. 28, 2004 rep No 16, 2013
s 106M .....	ad. No. 28, 2004 am. No. 36, 2008 rep No 16, 2013
s 106N .....	ad. No. 28, 2004 am. No. 36, 2008 rep No 16, 2013
s 106P .....	ad. No. 28, 2004 am. No. 36, 2008 rep No 16, 2013
s 106R .....	ad. No. 28, 2004 am. No. 36, 2008 rep No 16, 2013
s. 106S .....	ad. No. 28, 2004 rep No. 16, 2013
Heading to Subdiv. D of Div. 6 of Part 6	ad. No. 143, 1999 rep. No. 100, 2005
s. 107 .....	rep. No. 137, 2000
<b>Subdivision E</b>	
Heading to Subdiv. E of Div. 6 of Part 6	ad. No. 143, 1999
s. 108 .....	am. No. 143, 1999; No. 115, 2001; No. 103, 2005; No. 36, 2008; No 16, 2013

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### Endnote 4—Amendment history

Provision affected	How affected
<b>Subdivision F</b>	
Subdiv. F of Div. 6 .....	ad. No. 143, 1999
of Part 6 .....	rs. No. 131, 2009
s. 108A.....	ad. No. 143, 1999
	rs. No. 131, 2009
<b>Subdivision G</b>	
Subdiv. G of Div. 6.....	ad. No. 99, 2005
of Part 6 .....	
s. 108B .....	ad. No. 99, 2005
<b>Part 7</b>	
<b>Division 1</b>	
s. 113.....	am. No. 28, 2004; No. 100, 2005; No. 27, 2013
<b>Part 8</b>	
<b>Division 1</b>	
s. 128.....	am. No. 46, 2011
Note to s. 128.....	ad. No. 46, 2011
ss. 137, 138.....	am. No. 146, 1999
<b>Division 2</b>	
Div. 2 of Part 8 .....	rs. No. 36, 2008
s. 139.....	rs. No. 36, 2008
s. 140.....	rs. No. 36, 2008
	am. No. 46, 2011
Note to s. 140.....	ad. No. 46, 2011
s. 141.....	rs. No. 36, 2008
ss. 141A–141H .....	ad. No. 36, 2008
ss. 141J–141N.....	ad. No. 36, 2008
ss. 141P, 141Q.....	ad. No. 36, 2008
<b>Division 3</b>	
s. 142.....	am. No. 94, 1993
s. 153.....	am. No. 120, 1997; No. 115, 2001
s. 156.....	am. No. 120, 1997; No. 115, 2001

## Endnote 4—Amendment history

Provision affected	How affected
s 157.....	am <u>No 39, 2024</u>
<b>Part 9</b>	
<b>Division 1</b>	
Div. 1 of Part 9 .....	ad. No. 39, 2010
ss. 163A–163E.....	ad. No. 39, 2010
<b>Division 2</b>	
Heading to Div. 2 of .....	ad. No. 39, 2010
Part 9	
s. 163.....	am. No. 8, 2006; No. 36, 2008
Heading to s. 164.....	rs. No. 27, 2013
s. 164.....	am. No. 120, 1997; No. 137, 2000; No. 115, 2001; No. 27, 2013
s 165.....	am No 94, 1993; No 120, 1997; No 99, 2005; No 39, 2010; <u>No 39, 2024</u>
s. 166.....	am. No. 120, 1997; No. 100, 2005; No. 61, 2006; No. 36, 2008; No. 27, 2013; No 31, 2014
s. 167.....	am. No. 29, 2004; No. 100, 2005
s. 167A.....	ad. No. 59, 1996
s 167B .....	ad No 64, 2002
	am. No. 33, 2009; No 41, 2015
s. 168.....	am. No. 129, 1994; No. 120, 1997; No. 143, 1999; No. 50, 2000; No. 29, 2004; No. 99, 2005; No. 104, 2007; No. 36, 2008; Nos. 16, 27 and 103, 2013; No 126, 2015; No 32, 2021
<b>Schedules</b>	
<b>Schedule 1A</b>	
Schedule 1A.....	ad. No. 103, 2005
<b>Part 1</b>	
<b>Division 1</b>	
c. 1 .....	ad. No. 103, 2005
<b>Division 2</b>	
c. 2 .....	ad. No. 103, 2005
<b>Division 3</b>	
cc. 3–5.....	ad. No. 103, 2005

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Provision affected	How affected
<b>Division 4</b>	
cc. 6, 7 .....	ad. No. 103, 2005
<b>Part 2</b>	
<b>Division 1</b>	
c. 8 .....	ad. No. 103, 2005
	am. No. 61, 2006; No. 36, 2008
Note to c. 8(3) .....	rep. No. 36, 2008
c. 9 .....	ad. No. 103, 2005
<b>Division 2</b>	
c. 10 .....	ad. No. 103, 2005
	am. No. 61, 2006; No. 36, 2008
<b>Division 3</b>	
c. 11 .....	ad. No. 103, 2005
<b>Division 4</b>	
c. 12 .....	ad. No. 103, 2005
	am. No. 36, 2008
Note to c. 12(4) .....	rep. No. 36, 2008
<b>Division 5</b>	
c. 13 .....	ad. No. 103, 2005
<b>Division 6</b>	
c. 14 .....	ad. No. 103, 2005
<b>Part 3</b>	
<b>Division 1</b>	
c. 15 .....	ad. No. 103, 2005
	am. No. 61, 2006; No. 36, 2008
<b>Division 2</b>	
c. 16 .....	ad. No. 103, 2005
<b>Division 3</b>	
c. 17 .....	ad. No. 103, 2005
	am. No. 36, 2008
c. 18 .....	ad. No. 103, 2005

## Endnote 4—Amendment history

Provision affected	How affected
<b>Division 4</b>	
cc. 19–21 .....	ad. No. 103, 2005
<b>Division 5</b>	
c. 22 .....	ad. No. 103, 2005
<b>Division 6</b>	
c. 23 .....	ad. No. 103, 2005
<b>Part 4</b>	
c. 24 .....	ad. No. 103, 2005
<b>Part 5</b>	
<b>Division 1</b>	
c. 25 .....	ad. No. 103, 2005
c. 26 .....	ad. No. 103, 2005
	am. No. 63, 2007
c. 27 .....	ad. No. 103, 2005
<b>Division 2</b>	
<b>Subdivision A</b>	
cc. 28–30.....	ad. No. 103, 2005
<b>Subdivision B</b>	
cc. 31–37.....	ad. No. 103, 2005
c. 38 .....	ad. No. 103, 2005
	am. No. 36, 2008
<b>Subdivision C</b>	
cc. 39–41.....	ad. No. 103, 2005
c. 42 .....	ad. No. 103, 2005
	am. No. 51, 2010
cc. 43–46.....	ad. No. 103, 2005
<b>Division 3</b>	
c 47 .....	ad No 103, 2005
c 48 .....	ad No 103, 2005

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### Endnote 4—Amendment history

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Provision affected	How affected
<b>Division 4</b>	
<b>Subdivision A</b>	
c. 49 .....	ad. No. 103, 2005 am. No. 63, 2007
c. 50 .....	ad. No. 103, 2005
<b>Subdivision B</b>	
cc. 51, 52.....	ad. No. 103, 2005 am. No. 63, 2007
<b>Subdivision C</b>	
c. 53 .....	ad. No. 103, 2005 am. No. 63, 2007; No. 51, 2010
c. 54 .....	ad. No. 103, 2005
<b>Subdivision D</b>	
cc. 55–57.....	ad. No. 103, 2005
<b>Subdivision E</b>	
c. 58 .....	ad. No. 103, 2005
<b>Part 6</b>	
c. 59 .....	ad. No. 103, 2005
<b>Schedule 1</b>	
Heading to Schedule.....	rep. No. 143, 1999
Heading to Schedule 1 .....	ad. No. 143, 1999
<b>Schedule 2</b>	
Schedule 2.....	ad. No. 143, 1999
<b>Schedule 3</b>	
Schedule 3.....	ad. No. 29, 2004