



Fisheries Management Act 1991

No. 162 of 1991

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SCHEDULE

TREATY ON FISHERIES BETWEEN THE GOVERNMENTS OF CERTAIN PACIFIC ISLAND STATES AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA



Fisheries Management Act 1991

No. 162 of 1991

An Act relating to fisheries

[Assented to 10 November 1991]

The Parliament of Australia enacts:

PART 1—PRELIMINARY

Short title

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

Commencement

2. (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.

Objectives

3. (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, in particular the need to have regard to the impact of fishing activities on non-target species and the marine environment; and
- (c) maximising economic efficiency in the exploitation of fisheries resources; 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;

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.

Interpretation

4. (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;

“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:

- (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 and having as their inner limits the baselines by reference to which the territorial limits of Australia are defined for the purposes of international law and as their outer limits lines seaward from those inner limits every point on each of which is 200 nautical miles from the point on one of those baselines that is nearest to the first-mentioned point; and
- (b) the waters adjacent to each external Territory and having as their inner limits the baselines by reference to which the territorial limits of that Territory are defined for the purposes of international law and as their outer limits lines seaward from those inner limits every point on each of which is 200 nautical miles from the point on one of those baselines that is nearest to the first-mentioned point;

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; or
- (e) waters, that under an agreement in force between Australia and another country, are within the fisheries jurisdiction of that other country;

“boat” means launch, vessel or floating craft of any description;

“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;

“continental shelf” has the same meaning as in the *Seas and Submerged Lands Act 1973*;

“dealing” includes a transmission by operation of law;

“excepted waters” means waters specified by Proclamation under section 11;

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

“fish receiver permit” means a fish receiver permit granted under section 91;

“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 permit” means a fishing permit granted under section 32;

“fishing right” means a statutory fishing right;

“fishing vessel of the United States” has the same meaning as in the Treaty;

“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;

“Joint Authority” means an authority established by or under section 61;

“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;

“member”, in relation to the Panel, means a member of the Panel;

“modification” includes addition, omission and substitution;

“observer” means a person who is an observer within the meaning of Part 6 of Annex 1 to the Treaty;

“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;

“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;

“processing”, in relation to fish, includes the work of cutting up, dismembering, cleaning, sorting, packing or freezing;

“Register” means the Register of Statutory Fishing Rights kept by AFMA under section 44;

“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;

“statutory fishing right” has the meaning given by section 21;

“take”, in relation to fish, means catch, 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 the Schedule, 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;

“Treaty licensing area” means the waters that are within both:

- (a) the AFZ; and
- (b) the Treaty area;

other than waters within a closed area in relation to Australia within the meaning of Annex 1 to the Treaty;

“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 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 and the person in charge of the boat are taken to be engaged in commercial 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:

- (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.

Coastal waters

5. (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:
 - (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.

Act binds the Crown

6. (1) This Act binds the Crown in right of the Commonwealth, of each of the States, of the Australian Capital Territory, of the Northern Territory and of Norfolk Island.

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

Application

7. (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.

(3) In relation to so much of a managed fishery as is outside the AFZ, this Act:

- (a) applies to Australian boats and all persons, including foreigners, on Australian boats; and
- (b) subject to subsection (2), does not apply to foreign boats.

Application of Act to areas outside the AFZ

8. (1) The regulations may provide that, in relation to specified areas outside the AFZ, 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
- (d) persons on board Australian boats.

(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.

Application of Act to Protected Zone

9. (1) This Act, other than this section and sections 84, 107 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, 107 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 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*.

Operation of certain State and Territory laws

10. (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 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 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 carried on in the AFZ or outside the AFZ by the use of an Australian boat, other than recreational fishing that is prohibited or regulated by a plan of management; or
- (b) recreational fishing 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
- (c) activities in the AFZ to which, because of section 77, this Act does not apply.

Excepted waters

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

Sedentary organisms—Australian continental shelf

12. (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 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

Driftnet fishing

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

Penalty: \$50,000.

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

Penalty: \$50,000.

(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: \$250,000

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

Penalty: \$50,000.

(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, transshipping 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.

Regulation etc. of certain practices

14. (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
- (d) littering at sea.

Prohibition against certain fishing

15. (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: \$5,000.

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

Penalty: \$5,000.

(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 or to its natural environment.

PART 3—REGULATION OF FISHING

Division 1—Preliminary

AFMA to pursue objectives

16. (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).

Division 2—Plans of management

Plans of management

17. (1) AFMA may, 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 a plan of management for a fishery.

(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.

(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 is to 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 the measures taken may be assessed.

(6) Without limiting the operation of subsection (5), a plan of management for a fishery may:

- (a)** determine:
 - (i)** the manner in which the fishing capacity of the fishery is to be measured; and
 - (ii)** the fishing capacity, measured in that manner, permitted for the fishery; 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; or
 - (iii) the conducting of a ballot; 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.

(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—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.

Action after determining a plan of management

18. (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.

Tabling, disallowance etc. of determinations

19. (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.

(2) Sections 48 (other than paragraph (1) (a)), 48A, 48B, 49 and 50 of the *Acts Interpretation Act 1901* apply to determinations as if, in those sections, references to regulations were references to determinations and references to a regulation were references to a provision of a determination.

(3) Determinations are not statutory rules within the meaning of the *Statutory Rules Publication Act 1903*.

(4) For the purposes of section 5 of the *Evidence Act 1905*, a determination is taken to be an order made by a Minister.

(5) A determination is taken to be an enactment for the purposes of the *Administrative Appeals Tribunal Act 1975*.

Amendment or revocation of plan of management

20. (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.

Division 3—Statutory fishing rights

Nature of a statutory fishing right

21. (1) For the purposes of this Act, a statutory fishing right is:

- (a)** a right to a specified quantity of fish in, or a specified proportion of the fish in, a managed fishery; or
- (b)** a right to use a boat in a managed fishery for purposes specified in a plan of management; or
- (c)** a right entitling a person to use:
 - (i)** specified fishing equipment; or
 - (ii)** a specified quantity of fishing equipment; or
 - (iii)** a specified type of boat; or
 - (iv)** a boat of a specified size;in a managed fishery; or
- (d)** any other right in respect of fishing in a managed fishery.

(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.

AFMA to establish system of statutory fishing rights

22. (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.

(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 on the holder by the relevant plan of management;
- (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 or, under subsection 79 (3), cease to apply to a fishery;
- (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.

(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.

(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 specify a condition or a further condition to which the fishing right is to be subject.

(6) A fishing right ceases to be in force if the holder of the fishing right surrenders it by written notice given to AFMA.

Certain decisions to be provisional

23. (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; or
 - (c) the conducting of a ballot 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
 - (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

Notice of intention to grant fishing rights

24. (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.

Contents of notice

25. 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, tender or ballot, 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
- (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.

Registration of applicants

26. (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) 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.

Tenders for fishing rights

27. (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.

Prescribed procedures for grant of fishing rights

28. (1) Where a grant of a fishing right is required to be made by auction, tender or ballot 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:
 - (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
- (c) in the case of a ballot—the procedures to be followed for:
 - (i) conducting the ballot; and
 - (ii) ranking the participants in the ballot in accordance with the order of precedence allotted to them by the ballot; and
- (d) the preparation, where tenders have been called or a ballot conducted, 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.

Grant made available to highest bidder etc.

29. (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, or a ballot conducted, 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.

Amount of charge to be tendered

30. (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.

AFMA to grant fishing right

31. 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 5—Fishing permits

Grant of fishing permits

32. (1) AFMA may, upon application made in the approved form, grant to a person a fishing permit authorising the use of a specified Australian boat by that person, or a person acting on that person's behalf, for fishing in a specified area of the AFZ or a specified fishery.

(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; or
- (c) as a charter boat; 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 on the holder by the relevant plan of management;
- (b) if the fishing permit authorises fishing in a specified managed fishery—the permit will cease to have effect if the 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 or, under subsection 79 (3), cease to apply to a fishery;
- (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.

(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.
- (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 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.
- (10) Except where a fishing permit is stated to be non-transferable, AFMA may, on the application of the holder of the permit and of another person as proposed transferee, transfer the permit to that other person.
- (11) A fishing permit is to be in the approved form.

Division 6—Scientific permits

Grant of scientific permits

33. (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 or, under subsection 79 (3), cease to apply to a fishery;
 - (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.
- (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.
- (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.
- (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 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

Grant of foreign fishing licences

34. (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 on the holder by the relevant plan of management;
- (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.

(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.

(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 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.

(11) A licence is to be in the approved form.

Agreements to grant foreign fishing licences

35. (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.

Fisheries agreements

36. (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.

Treaty licences

37. (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 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

Suspension of fishing concessions

38. (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 subsection (3), 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.

(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.

(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.

Cancellation of fishing concessions

39. 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.

Division 9—Foreign master fishing licences

Grant of foreign master fishing licences

40. (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.
- (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
 - (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.
- (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 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 10—Miscellaneous

Authority to extend to tender boats

41. 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.

Holders of fishing concessions to furnish returns etc.

42. (1) The regulations may provide for the holders of fishing concessions to record, and furnish returns containing, information in relation to:

- (a) the taking of fish under fishing concessions and the sale or disposal of such fish; or
- (b) the carrying and transshipping of fish taken under fishing concessions; or

- (c) the processing of fish taken under fishing concessions and the sale or disposal of fish so processed.

(2) It is a condition of a fishing concession that the holder of the fishing concession will comply with the requirements of any regulations made by virtue of subsection (1).

Temporary orders

43. (1) The purpose of this section is to enable quick action to be taken:

- (a) to deal with emergencies; 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
- (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 3 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.

(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 Managing Director of AFMA, 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 disallowable instrument for the purposes of section 46A of the *Acts Interpretation Act 1901*.

PART 4—REGISTER OF STATUTORY FISHING RIGHTS

The Register

44. (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.

Information to be included in Register

45. (1) AFMA must register each fishing right that it or a Joint Authority managing a fishery 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).

Creation etc. of interests in fishing rights

46. (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.

(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).

(4) Where an application to AFMA is so made, AFMA must:

- (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.

(5) Where an entry is so made in the Register:

- (a) one copy of an instrument evidencing the dealing is to be kept by AFMA and made available for inspection in accordance with this Part; and
- (b) the original instrument is to be returned to the person who made the application for registration.

Trusts not registrable

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

Power of holder of fishing right to deal with fishing right

48. (1) Except where a condition of a fishing right provides otherwise, a holder of a fishing right may, subject only to any rights appearing in the Register to be vested in another person and to section 49, deal with the fishing right as its absolute owner and give good discharges for any consideration for any such dealing.

(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).

Approval of AFMA etc. to dealing required in certain circumstances

49. (1) A person must not transfer the ownership of a fishing right unless AFMA or, if the fishing right was granted by a Joint Authority, the Joint Authority has, in writing, given its approval to the transfer.

(2) AFMA or the Joint Authority may only refuse to give an approval for the purposes of subsection (1) if the transfer would be contrary to the requirements of the relevant plan of management or a condition of the fishing right.

(3) A purported dealing in contravention of subsection (1) has no effect.

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

50. (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.

(3) Where:

- (a) AFMA does anything under subsection (1) or (2) in relation to a fishing right; and
- (b) a person other than the holder of the fishing right has an interest in the fishing right, being an interest in relation to which a dealing has been registered under section 46;

AFMA must give the person written notification of what it has done.

(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.

AFMA not concerned with certain matters

51. 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.

Inspection of Register and documents

52. (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.

Evidentiary provisions

53. (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.

(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.

Orders for rectification of Register

54. (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 employee of AFMA 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.

(5) On receiving the copy of an order, AFMA must rectify the Register accordingly.

(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.

Correction of clerical errors etc. in Register

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

AFMA etc. not liable in certain circumstances

56. AFMA or an employee of AFMA is not 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.

Offences

57. A person must not wilfully:

- (a) make, cause to be made or concur in making a false entry in the Register; or

- (b) produce or tender in evidence a document falsely purporting 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.

PART 5—CO-OPERATION WITH STATES AND NORTHERN TERRITORY IN MANAGEMENT OF FISHERIES

Division 1—Preliminary

Interpretation

58. (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.

Application of Part in relation to Northern Territory

59. (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.

Acting Ministers

60. (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 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 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

Establishment of Joint Authorities

61. (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.

Functions of Joint Authority

62. 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.

Deputies of members

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

Representation on Joint Authority

64. 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.

Delegation

65. (1) Subject to this section, a Joint Authority may, by instrument, delegate to AFMA or an officer or employee of the Commonwealth or an authority of the Commonwealth, or of a State or authority of a State any of its powers under this Act, other than this power of delegation and its powers to make, amend and revoke determinations under Division 2 of Part 3.

(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 AFMA or the Department or 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.

Procedure of Joint Authorities

66. (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
- (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.

Decisions taken without meeting

67. (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.

Advisory committees

68. 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.

Administration

69. (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 employee of AFMA 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.

Annual reports

70. (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

Arrangements with States—Joint Authority to manage

71. (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 either 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 that State.

(3) An arrangement with 2 or more States must provide that the fishery is to be managed in accordance with the law of the Commonwealth.

Other arrangements with States

72. 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.

Arrangements with States—general provisions

73. (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*.

Arrangements—how made etc.

74. (1) An arrangement under this Division is to be made by instrument approved by the Governor-General and the Governor or Governors 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.

Arrangements—how terminated etc.

75. (1) An arrangement under this Division may be terminated by instrument approved by the Governor-General and the Governor or Governors of the State or States concerned.

(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 Governor-General; or

(b) in the case of a State—with the approval of the Governor 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.

Extension of operation of this Act

76. 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.

Exclusion of this Act

77. Where an arrangement under this Division provides that 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 except in relation to:

- (a) foreign boats; and
- (b) operations on and from foreign boats; and
- (c) persons on foreign boats; and
- (d) matters that occurred before the arrangement took effect.

Functions of Joint Authorities under this Act

78. (1) Where, in respect of a fishery, there is in force an arrangement under this Division under which a Joint Authority has the management of a fishery and the fishery is to be managed in accordance with the law of the Commonwealth, the Joint Authority has the functions set out in subsection (2).

- (2) The functions mentioned in subsection (1) are:
 - (a) to keep constantly under consideration the condition of the fishery; and
 - (b) to formulate policies and plans for the management of the fishery; and
 - (c) for the purposes of the management of the fishery:
 - (i) to exercise the powers conferred on it by this Division; and
 - (ii) to co-operate and consult with other authorities (including other Joint Authorities) in matters of common concern.

(3) In the performance of those functions, the Joint Authority must pursue the objectives of:

- (a) implementing efficient and cost-effective fisheries management; 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, in particular the need to have regard to the impact of fishing activities on non-target species and the marine environment; and
- (c) maximising economic efficiency in the exploitation of fisheries resources; and
- (d) ensuring accountability to the fishing industry and to the community generally in its management of fisheries resources.

Powers of Joint Authority etc.

79. (1) Subject to this section, in respect of a Joint Authority fishery managed in accordance with the law of the Commonwealth, the powers of AFMA under the provisions of Part 3 and Division 2 of Part 6 are exercisable under those provisions by the Joint Authority.

(2) For the purposes of the exercise of a power by a Joint Authority under Part 3 or Division 2 of Part 6, that Part or Division (as the case may be) applies in relation to the exercise of that power and the performance of functions related to the exercise of that power as if references to AFMA in that Part or Division were references to the Joint Authority.

(3) Where a fishery becomes a Joint Authority fishery managed in accordance with the law of the Commonwealth:

- (a) plans of management determined by AFMA in relation to the fishery; and
- (b) statutory fishing rights, fishing permits, scientific permits and fish receiver permits granted by AFMA in relation to the fishery or that apply to the fishery;

cease to apply to the fishery.

(4) A fishing permit and a scientific permit granted under this Act by a Joint Authority must be limited to apply only in relation to a Joint Authority fishery or fisheries managed by that Joint Authority.

(5) This section does not:

- (a) empower a Joint Authority to grant a foreign fishing licence or a foreign master fishing licence; or
- (b) affect the operation of such a licence or the power of AFMA to grant, or to take other action in respect of, such a licence.

Application of provisions relating to offences

80. For the purposes of the prosecution of a person for an offence against a provision of this Act in respect of anything done in relation to a Joint Authority fishery managed in accordance with the law of the Commonwealth:

- (a) any reference in that provision to a fishing concession, fishing permit, scientific permit or fish receiver permit is a reference to a fishing concession, fishing permit, scientific permit or fish receiver permit, as the case may be, granted by the Joint Authority;
- (b) any reference in that provision to a temporary order is a reference to a temporary order made by the Joint Authority; and
- (c) any reference in that provision to fish is a reference to fish to which the Joint Authority fishery relates.

Evidentiary provision

81. 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.

Reconsideration by Joint Authority and right to review by Administrative Appeals Tribunal

82. (1) In this section, unless the contrary intention appears: “**decision**” has the same meaning as in the *Administrative Appeals Tribunal Act 1975*;

“**primary decision**” means a decision of a delegate of the Joint Authority under subsection 22 (5) or 26 (2), section 31 (other than a decision following an auction, tender or ballot), section 32 or 33, subsection 38 (1), (2) or (3) or section 39, 49 or 91;

“**reviewable decision**” means a decision of a delegate of the Joint Authority under subsection (5).

(2) A person affected by a primary 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 the Joint Authority, upon application made under subsection (3), by written notice to the person allows;

request the Joint Authority, in writing, to reconsider the decision.

(3) A person may apply to the Joint Authority before the end of the period mentioned in paragraph (2) (a) 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) The Joint Authority must, within 45 days after receiving the request, reconsider the primary decision and may make a decision:

- (a) in substitution for the primary decision, whether in the same terms as the primary decision or not; or
- (b) revoking the primary decision.

(6) Where, as a result of a reconsideration under subsection (5), the Joint Authority makes a decision in substitution for or revoking the primary decision, it 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 primary decision is made and the person who made the 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 the Joint Authority under subsection (2); and
- (b) may, subject to the *Administrative Appeals Tribunal Act 1975*, if the person is dissatisfied with the decision of the delegate upon that reconsideration, make application to the Administrative Appeals Tribunal for review of the decision of the delegate.

(12) Where a Joint Authority 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.

PART 6—SURVEILLANCE AND ENFORCEMENT

Division 1—Officers

Appointment of officers

83. (1) AFMA may, by instrument, appoint:

- (a) an officer or employee of AFMA or 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.

Powers of officers

84. (1) An officer may:

- (a) board a boat in the AFZ or in Australia or an external Territory or a boat 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 may:
 - (i) search the boat for fish, for equipment that has been used, is being used, is intended to be used or is capable of being used for fishing or for any document or record relating to the fishing operations of the boat; and
 - (ii) break open any hold, compartment, container or other receptacle on the boat that the officer has reasonable grounds to believe contains anything that may afford evidence as to the commission of an offence against this Act; and
- (b) board a boat in relation to which a fishing concession is in force for the purpose of ascertaining whether a condition of the fishing concession or a provision of a temporary order is being, or has been, complied with and, in furtherance of that purpose,

may search the boat and break open any hold, compartment, container or other receptacle on the boat; and

- (c) examine anything found by action taken under paragraph (a) or (b); and
- (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, with the consent of the owner or the person in charge of the vehicle or aircraft or under a warrant issued under section 85:
 - (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
- (g) 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

- (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
- (h) with the consent of the holder of a fish receiver permit or under a warrant issued under section 85, enter on land or premises specified in the permit or warrant for the purpose of ascertaining whether a person has contravened or is contravening a provision of this Act and may:
 - (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) seize anything found during the course of the search that he or she believes, on reasonable grounds, may afford evidence of the contravention of this Act; and
- (i) enter on land or premises specified in a fish receiver permit for the purpose of ascertaining whether a condition of the fishing permit is being, or has been, complied with and, in furtherance of that purpose, may exercise a power mentioned in subparagraph (h) (i), (ii) or (iii); and
- (j) without warrant, arrest a person whom the officer has reasonable grounds to believe has committed an offence against this Act; and
- (k) require the master of a boat 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 to bring the boat to a place in Australia or a Territory, or to a place at sea, specified by the officer and to remain in control of the boat at that place until an officer permits the master to depart from that place; and
- (l) require the master of a boat who, because of a requirement under paragraph (k) or a previous requirement under this paragraph, is in control of the boat at a place to take the boat to another place in Australia or in a Territory, or to a place at sea, specified by the officer and to remain in control of the boat at that place until an officer permits the master to depart from that place; and
- (m) bring a boat 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 to a place in Australia or in a Territory (whether or not the boat has previously been brought to another place or other places) and may remain in control of that boat pending the taking and determination of proceedings in respect of that contravention; 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
- (q) require the master of a boat to cause to be lifted from the sea any equipment that the officer has reasonable grounds to believe is being, or has been, used by a person on board the boat in contravention of this Act; and
- (r) require a person who is on board a boat in relation to which a fishing concession under this Act is in force, or a Treaty boat in respect of which a Treaty licence is in force, or who is engaged in fishing in the AFZ, or whom he or she reasonably suspects of having committed an offence against this Act, to state the person's name and address; 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.

(2) Subject to subsection (3), a Pacific Island party officer may, for a relevant Treaty purpose, exercise any of the powers described in paragraphs (1) (a), (c), (g), (k), (l), (n), (o), (p), (q) and (r) and, where a Pacific Island party officer exercises such a power, he or she is taken, for the purposes of this Act, to have exercised the power as an officer.

(3) Subsections (4) and (6) apply in relation to the exercise of powers under this section by Pacific Island party officers as if:

- (a) references in those subsections to an officer were references to a Pacific Island party officer; and
- (b) references in those subsections to an officer's identity card were references to a document:
 - (i) issued to a person by a Pacific Island party; and
 - (ii) identifying the person as a Pacific Island party officer

authorised to perform the functions and duties of an observer on a Treaty boat.

(4) Where an officer (other than a member of the Defence Force who is in uniform) boards a boat, the officer must:

- (a) in the case of a prescribed person—produce, for inspection by the master of the boat, written evidence of the fact that the officer is a prescribed person; or
- (b) in any other case—produce, for inspection by the master of the boat, the officer's identity card;

and, if the officer fails to do so, the officer is not authorised to remain on board the boat.

(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
- (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:

- (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.

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

- (a) section 5, 6, 7 or 7A of the *Crimes Act 1914*; or
- (b) subsection 86 (1) of that Act;

that relates to this Act.

(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 or Territory;

“this Act” includes the regulations.

Warrants

85. (1) If a magistrate, on application by an officer, is satisfied, by information on oath:

- (a) that there are reasonable grounds for suspecting that there is, on any land or premises, or in any boat, vehicle or aircraft, anything that may afford evidence as to the commission of an offence against this Act or the regulations; and
- (b) that the issue of the warrant is reasonably required for the purpose of ascertaining whether a person has contravened or is contravening a provision of this Act or the regulations;

the magistrate may issue a warrant authorising the officer to enter the land, premises, boat, vehicle or aircraft, as the case may be:

- (c) with such assistance, and by such force, as is necessary and reasonable; and
- (d) during such hours as the warrant specifies, or, if the warrant so specifies, at any time.

(2) A warrant must specify:

- (a) the powers exercisable under subsection 84 (1) by the officer to whom the warrant is issued; and
- (b) the day (not more than 7 days after the issue of the warrant) on which the warrant ceases to have effect.

(3) A reference in this section to an offence against, or a contravention of, this Act or the regulations includes a reference to an offence against, or a contravention of:

- (a) section 5, 6, 7 or 7A of the *Crimes Act 1914*; or
- (b) subsection 86 (1) of that Act;

that relates to this Act or the regulations.

Warrants may be granted by telephone

86. (1) If, in an urgent case, an officer considers it necessary to do so, the officer may apply to a magistrate by telephone for a warrant under section 85 in accordance with this section.

(2) Before applying for the warrant, the officer must prepare an information of the kind mentioned in subsection 85 (1) that sets out the grounds on which the issue of the warrant is being sought.

(3) If it is necessary to do so, the officer may apply for the warrant before the information is sworn.

(4) If the magistrate is satisfied:

- (a) after having considered the terms of the information; and
- (b) after having received such further information (if any) as the

magistrate requires concerning the grounds on which the issue of the warrant is being sought;
that there are reasonable grounds for issuing the warrant, the magistrate may complete and sign the same warrant that the magistrate would issue under section 85 if the application had been made under that section.

(5) If the magistrate completes and signs the warrant:

(a) the magistrate must:

- (i) tell the officer what the terms of the warrant are; and
- (ii) tell the officer the day on which and the time at which the warrant was signed; and
- (iii) tell the officer the day (not more than 7 days after the magistrate completes and signs the warrant) on which the warrant ceases to have effect; and
- (iv) record on the warrant the reasons for granting the warrant; and

(b) the officer must:

- (i) complete a form of warrant in the same terms as the warrant completed and signed by the magistrate; and
- (ii) write on the form the name of the magistrate and the day on which and the time at which the warrant was signed.

(6) The officer must also, not later than the day after the day of expiry or execution of the warrant, whichever is the earlier, send to the magistrate:

- (a) the form of warrant completed by the officer; and
- (b) the information mentioned in subsection (2), which must have been duly sworn.

(7) When the magistrate receives those documents, the magistrate must:

- (a) attach them to the warrant that the magistrate completed and signed; and
- (b) deal with them in the way in which the magistrate would have dealt with the information if the application had been made under section 85.

(8) A form of warrant duly completed under subsection (5) is authority for anything that the warrant signed by the magistrate authorises.

(9) If:

- (a) it is material, in any proceedings, for a court to be satisfied that an exercise of a power was authorised by this section; and
- (b) the warrant signed by the magistrate authorising the exercise of the power is not produced in evidence;

the court must assume, unless the contrary is proved, that the exercise of the power was not authorised by such a warrant.

Power to pursue persons and boats

87. (1) An officer may exercise, with respect to boats (including foreign boats) and persons (including foreign nationals) at a place at sea outside the AFZ but not within the territorial sea of another country, a power conferred on the officer under section 84 if:

- (a) one or more officers (whether or not including the officer exercising the power) have pursued the person or boat from a place within the AFZ to such place; and
- (b) the pursuit was not terminated or interrupted at any time before the officer concerned arrived at such a place with a view to exercising that power.

(2) For the purposes of subsection (1), a pursuit of a person or boat is not taken to be terminated or substantially interrupted only because the officer or officers concerned lose sight of the person or boat.

(3) A reference in subsection (2) to losing sight of a person or boat includes a reference to losing output from a radar or other sensing device.

Release of seized property

88. (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 for payment of the value of the property if it is forfeited and 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.

(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.

Identity cards

89. (1) The Managing Director of AFMA 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 Managing Director of AFMA.

(4) A person who, without reasonable excuse, contravenes subsection (3) is guilty of an offence punishable upon conviction by a fine not exceeding \$100.

Officer etc. not liable to certain actions

90. 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

Grant of fish receiver permits

91. (1) AFMA may, by notice published in the *Gazette*, declare a specified managed fishery to be a managed 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) the permit will cease to have effect if the plan of management for the fishery to which the permit relates is revoked under subsection 20 (3);
- (b) the permit may, under subsection 75 (7), cease to have effect or, under subsection 79 (3), cease to apply to a fishery;
- (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
 - (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.

Holder of fish receiver permit to give information etc.

92. (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).

Offences in relation to returns etc.

93. A holder of a fish receiver permit must not, without reasonable excuse, 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: Imprisonment for 6 months.

Division 3—Foreign fishing boats—port permits

Grant of port permits

94. (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 one occasion only.

(5) AFMA may, by written notice given to the holder of a permit:

- (a) revoke the permit; or
- (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 that is designed and equipped for fishing.

Division 4—Enforcement generally

Offences

95. (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 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 or scientific 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 scientific 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 or scientific permit that is in force, contravene a condition of the fishing concession or scientific permit or a provision of a temporary order, as the case may be.

(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 is guilty of an offence punishable on conviction by a fine not exceeding \$50,000.

(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 \$10,000.

(5) A person who contravenes subsection (1) in circumstances in which the person is not guilty of an offence against subsection (2) is

guilty of an offence punishable, on conviction, by a fine not exceeding \$10,000.

(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.

Removing fish from traps etc.

96. 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: \$5,000.

Persons not to receive fish in certain circumstances

97. (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: \$5,000.

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

Court may make certain orders

98. (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 for the purposes of engaging in commercial fishing.

(2) A person who contravenes such an order is guilty of an offence punishable, on conviction, imprisonment for 12 months.

Division 5—Foreign boats—additional enforcement provisions

Using foreign boat for recreational fishing

99. 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: \$5,000.

Using foreign boat for fishing in AFZ

100. (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) is guilty of an offence punishable on conviction by a fine not exceeding \$250,000.

(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 \$25,000.

Having foreign boat equipped with nets etc.

101. (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 with nets, traps or other equipment 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 nets, traps or other equipment for fishing are stored and secured 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 nets, traps or other equipment are stored and secured and the boat was travelling through the AFZ from a point outside the AFZ to another point outside the AFZ by the shortest practicable route.

(2) A person who contravenes subsection (1) is guilty of an offence punishable on conviction by a fine not exceeding \$250,000.

(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 \$25,000.

Certain foreign boats not to enter Australian ports

102. (1) A person, being the master of a foreign fishing boat who, otherwise than in accordance with:

- (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 an officer exercising powers under section 84 or a person exercising powers under another 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 is guilty of an offence punishable on conviction by a fine not exceeding \$50,000.

(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 is guilty of an offence punishable on conviction by a fine not exceeding \$50,000.

(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
- (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 \$10,000.

(6) In this section:

“foreign fishing boat” means a foreign boat that is designed and equipped for fishing.

Foreign boats not to land fish in Australia

103. (1) A person, being the master of a foreign boat, who, otherwise than in accordance with the terms of a foreign fishing licence or in accordance with an entry under paragraph 21 (2) (b) of the *Torres Strait Fisheries Act 1984*, without reasonable excuse, causes to be landed at any place in Australia any fish that were brought to the place by the boat is guilty of an offence punishable on conviction by a fine not exceeding \$50,000.

(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 \$10,000.

Foreign boats not to contravene condition of Treaty licence

104. (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) is guilty of an offence punishable on conviction by a fine not exceeding \$50,000.

(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 \$10,000.

(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 for the purposes of engaging in fishing.

(7) A person who contravenes such an order is guilty of an offence punishable, on conviction, by a fine not exceeding \$2,000.

Certain prosecutions to require consent of Minister

105. 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.

Division 6—General

Forfeiture

106. (1) Where a court convicts a person of an offence against section 95 (not being an offence against that section mentioned in subsection (2)), 99 or 100 the court may order the forfeiture of:

- (a) a boat, net, trap or equipment used in the commission of the offence; or
- (b) fish on board such a boat at the time of the offence; or
- (c) the proceeds of the sale of any such fish.

(2) Where a court convicts a person of an offence against section 95, being an offence arising out of the person having in his or her possession or in his or her charge a boat for taking fish, or of an offence against section 101, 102, 103 or 104, 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.

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

False or misleading information etc.

107. A person must not knowingly present a document, make a statement or give a return or information, that is false or misleading in a material particular, to AFMA or another person performing duties under this Act or the regulations.

Penalty: Imprisonment for 12 months.

Obstruction of officers etc.

108. A person must not:

- (a) fail to facilitate by all reasonable means the boarding of a boat by an officer; or

- (b) without reasonable excuse, refuse to allow a search to be made that is authorised by or under this Act; or
- (c) without reasonable excuse, 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
- (f) assault, resist or obstruct an officer in the exercise of the officer's powers under this Act; or
- (g) impersonate an officer.

Penalty: Imprisonment for 12 months.

PART 7 — COLLECTION OF LEVY AND CHARGE

Division 1—Collection of levy imposed by the Fishing Levy Act 1991

Interpretation

109. In this Division:

“levy” means levy imposed by the *Fishing Levy Act 1991*.

When is levy due?

110. Levy is due and payable at a time or times ascertained in accordance with the regulations.

Payment by instalments

111. (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.

Penalty for non-payment

112. 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.

Recovery of levy and other amounts

113. 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.

Division 2—Collection of levy imposed by the Foreign Fishing Licences Levy Act 1991

Interpretation

114. In this Division:

“levy” means levy imposed by the *Foreign Fishing Licences Levy Act 1991*.

Arrangements between AFMA and person by whom levy payable

115. 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.

When is levy due?

116. 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.

Penalty for non-payment

117. 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 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.

Recovery of levy and other amounts

118. 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

Interpretation

119. In this Division:

“**charge**” means charge imposed by the *Statutory Fishing Rights Charge Act 1991*.

When is charge due?

120. 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.

Payment by instalments

121. (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.

Penalty for non-payment

122. 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.

Recovery of charge and other amounts

123. 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

Establishment of Panel

124. A Statutory Fishing Rights Allocation Review Panel is established.

Constitution

125. 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.

Appointment of members

126. (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.

Qualifications etc. of Principal Member

127. 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.

Acting Principal Member

128. (1) 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.

(2) Anything done by or in relation to a person purporting to act under subsection (1) is not invalid merely because: .

- (a) the occasion for the person's appointment had not arisen; or
- (b) there is a defect or irregularity in connection with the person's appointment; or
- (c) the person's appointment had ceased to have effect; or
- (d) the occasion for the person to act had not arisen or had ceased.

Constitution of Panel for exercise of powers

129. 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.

Member unable to complete review

130. 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;

the hearing and determination, or the determination, of the review is to be completed by the Panel constituted by the remaining members.

Remuneration and allowances of members

131. (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.

(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.

Other terms and conditions

132. 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.

Resignation

133. A member of the Panel may resign by giving to the Minister a signed notice of resignation.

Disclosure of interests

134. (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

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.

Termination of appointment

135. (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.

Registries

136. The Minister is to arrange for the establishment of such Registries of the Panel as the Minister thinks fit.

Officers of Panel

137. (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 appointed or employed under the *Public Service Act 1922*.

Acting appointments

138. (1) The Minister may appoint a person appointed or employed under the *Public Service Act 1922* 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—Selection and nomination process for members of the Panel

Request for nominations

139. (1) The Minister may, by written notice given to the person holding the office of Presiding Member of Australian Fisheries Management Authority Selection Committees under section 25 of the *Fisheries Administration Act 1991*, 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
- (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.

Selection committee

140. (1) Where the Presiding Member receives a request under section 139, he or she must:

- (a) establish a 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 Australian Fisheries Council, being the body known by that name constituted by the Minister and Ministers of the States and certain of the Territories, 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 otherwise than as the Principal Member.

(3) The selection committee has the power to do all things that are necessary or convenient to be done for, or in connection with, the performance of its function.

Selection committee—applied provisions

141. (1) Sections 29 to 41 (inclusive) (other than subsection 30 (3)) of the *Fisheries Administration Act 1991*, and any regulations made for the purposes of those sections, apply in relation to the selection of persons for nomination to the Minister for appointment as members of the Panel as if:

- (a) references in those provisions to the Selection Committee were references to a selection committee established under subsection 140 (1); and
- (b) references in those provisions to section 27 of the *Fisheries Administration Act 1991* were references to section 139 of this Act; and
- (c) references in those provisions to the Authority were references to the Panel; and
- (d) references in those provisions to directors were references to members of the Panel.

(2) A selection committee must not nominate for appointment to the Panel a person who is:

- (a) a member of the selection committee; or
- (b) a director of AFMA; or
- (c) under subsection 126 (2) ineligible for appointment.

Division 3—Review by Panel

Function

142. 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.

Application to Panel for review

143. (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.

AFMA or Joint Authority to be notified of application for review

144. (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:

- (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.

Arrangements for hearing of application

145. (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.

Powers of the Panel etc.

146. (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.

Procedure of Panel

147. (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:

- (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.

Representation before Panel

148. At the hearing of an application, a party to the proceeding may appear in person or may be represented by some other person.

Oral evidence usually given in public

149. (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.

Powers in relation to decisions under review

150. (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
- (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).

Withdrawal of application for review

151. (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.

Power to dismiss application

152. (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.

Refusal to be sworn or to answer questions etc.

153. (1) A person appearing before the Panel to give evidence must not, without reasonable excuse:

- (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: \$3,000.

(2) A person must not, without reasonable excuse, 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: \$3,000.

(3) A person appearing before the Panel to give evidence must not knowingly give evidence that is false or misleading in a material particular.

Penalty: Imprisonment for 6 months.

Majority decision

154. 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.

Panel may restrict publication of certain matters

155. (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.

Failure of witness to attend

156. 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, without reasonable excuse:

- (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: \$3,000.

Protection of members and persons giving evidence

157. (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.

Fees for persons giving evidence

158. (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.

Person must not obstruct etc.

159. 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.

Procedure following Panel decision

160. (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

Appeal to Federal Court of Australia on question of law

161. (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.

Operation etc. of decision subject to appeal

162. (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

Delegation by Minister

163. The Minister may, by signed instrument, delegate to:

- (a) AFMA; or
- (b) an employee of AFMA; 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 and 20.

Conduct of directors, servants and agents

164. (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, servant or agent of the body corporate within the scope of his or her actual or apparent authority; and
- (b) that the director, servant or agent had the state of mind.

(2) Any conduct engaged in on behalf of a body corporate by a director, servant or agent of the body corporate within the scope of his or her actual or apparent authority 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 avoid 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 a servant or agent of the person within the scope of his or her actual or apparent authority; and
- (b) that the servant or agent had the state of mind.

(4) Any conduct engaged in on behalf of a person other than a body corporate by a servant or agent of the person within the scope of his or her actual or apparent authority is taken, for the purposes of a prosecution for an offence against this Act, to have been engaged in also by the first-mentioned person unless the first-mentioned person establishes that the first-mentioned person took reasonable precautions and exercised due diligence to avoid 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 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 created by section 5, 6, 7 or 7A, or subsection 86 (1), of the *Crimes Act 1914*, being an offence that relates to the regulations.

Reconsideration by AFMA and right to review by Administrative Appeals Tribunal

165. (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, tender or ballot), section 32 or 33, subsection 34 (9), 38 (1), (2) or (3), section 39, subsection 40 (5) or (8) or section 49 or 91;

“reviewable decision” means a decision of AFMA under subsection (5).

(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
- (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.

Evidence

166. (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
- (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 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.

(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, facsimile transmission, telex or cablegram

received by an officer or employee of AFMA 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;

is a copy of a letter, facsimile transmission, telex or cablegram received by an officer or employee of AFMA or the Commonwealth from an authority of that Pacific Island party.

(4) In respect of a Joint Authority fishery managed in accordance with the law of the Commonwealth, the powers otherwise exercisable by AFMA under paragraph (2) (c), (d), (e), (h) or (i) are exercisable under that subsection by the Minister.

(5) Without limiting the operation of subsection (4), 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.

AFMA to compile statistics

167. (1) AFMA must cause to be compiled, from returns furnished under section 42 and from other sources, statistics in relation to the matters mentioned in subsection 42 (1) and must publish or make available, in any way it thinks fit, such of those statistics as it thinks fit.

(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.

Regulations

168. (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 \$1,000 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
 - (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
 - (i) enabling a person who is alleged to have contravened section 93 or regulations made for the purposes of section 42 to pay to AFMA, as an alternative to prosecution, a specified penalty, not exceeding the maximum penalty by which a contravention of that provision is otherwise punishable; 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
 - (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
 - (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 officers 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).

(3) Notwithstanding section 49A of the *Acts Interpretation Act 1901*, 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

Section 4

TREATY ON FISHERIES

BETWEEN THE GOVERNMENTS OF CERTAIN PACIFIC ISLAND STATES AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA

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;

SCHEDULE—continued

- (b) “final judgment” means a judgment from which no appeal proceedings have been initiated within sixty days;
- (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

SCHEDULE—continued

co-ordinates, designated for the purposes of this Treaty, except for waters subject to the jurisdiction in 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

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:

SCHEDULE—continued

- (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 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.

SCHEDULE—continued

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.

SCHEDULE—continued

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 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 I 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 I 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

SCHEDULE—continued

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 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 made pursuant to Article 3.3 and licences issued thereunder, in waters under their respective jurisdictions.

SCHEDULE—continued

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.

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

SCHEDULE—continued

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.

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.

SCHEDULE—continued

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

SCHEDULE—continued

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.

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.

SCHEDULE—continued

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.

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

SCHEDULE—continued

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

SCHEDULE—continued

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
- (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

SCHEDULE—continued

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, 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:

SCHEDULE—continued

- (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;
- (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.

SCHEDULE—continued

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.

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

SCHEDULE—continued

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

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

SCHEDULE—continued

Palau

Palau National Code, Title 27

Papua New Guinea

Fisheries Act (Cap 214)

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 of the meridian of longitude 151° East by the outer limit of the AFZ and all waters south of the parallel of latitude 25°30' South.

SCHEDULE—continued

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 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

SCHEDULE—continued

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.
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.

SCHEDULE—continued

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)/ddmmyy/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 speciesas: WEEK/ddmmyy/CALL SIGN/LA 1111/LO 11111/SJ xxx YF
yyy OTH zzz

SCHEDULE—continued

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 speciesas: ZENT (or ZEXT)/ddmmyy/CALL SIGN/TIME/LA 1111/LO
11111/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 nameas: PENT/ddmmyy/CALL SIGN/TIME/PORT NAME

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;

SCHEDULE—continued

- (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.
-

PURSE SEINE VESSEL CATCH REPORT FORM

	NAME	YMMDD
DEPARTURE FROM PORT	DATE	
ARRIVAL AT PORT	DATE	

VESSEL NAME _____
COUNTRY OF REGISTRATION _____
REGISTRATION NUMBER _____
GROSS REGISTERED TONNAGE _____
NAME(S) OF FISH CARRIER(S) _____
FOR GROUP PURSE-SSEINER _____
YEAR _____ MONTH _____
LICENSE/PERMIT NUMBER _____
NAME OF CAPTAIN _____
LICENSE/PERMIT _____
HOLDER'S SIGNATURE _____

NUMBER OF CREW[illegible]

SCHEDULE—continued

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	

	Yellowfin	Skipjack	Bigeye	Marlin	Other	Unit of Measurement
Accepted
Rejected
Signatures						

.....
Vessel Master

.....
Receiving Agent

ANNEX II

- For the purposes of this Annex:
 - “Licensing Period” means the period of validity of licences issued in accordance with this Treaty.
- 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.
- 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.

SCHEDULE—continued

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

SCHEDULE—continued

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.

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:

SCHEDULE—continued

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.

SCHEDULE—continued

(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.

SCHEDULE—continued

(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.

SCHEDULE—continued

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.

*[Minister's second reading speech made in—
House of Representatives on 31 May 1991 a.m.
Senate on 6 June 1991]*