

EXPLANATORY STATEMENT

Issued by the authority of the Minister for the Department of Agriculture, Fisheries and Forestry

Export Control Act 1982

Export Control (Fish and Fish Products) Orders 2005

Section 3 of the *Export Control Act 1982* (the Act) defines “prescribed goods” to mean goods, or goods included in a class of goods, that are declared by the regulations to be prescribed goods for the purposes of the Act. Section 7 of the Act provides that the regulations may prohibit the export of prescribed goods from Australia absolutely; to a specified place; unless specified conditions or restrictions are complied with; or to a specified place unless conditions or restrictions are complied with.

Subsection 14(1) of the Act provides that a person shall not, in contravention of the regulations, manufacture, possess or take certain other action in relation to official marks and official marking devices. Subsection 14 (2) of the Act specifies that a maximum penalty of 5 years imprisonment applies to a contravention of subsection 14(1).

Sub-section 25(1) of the Act provides that the Governor-General may make regulations, not inconsistent with the Act, prescribing matters required or permitted by the Act to be prescribed; or necessary or convenient to be prescribed for carrying out or for giving effect to the Act. The matters that the regulations may make provision for include:

- under paragraph 25(2)(f) of the Act, the prescribing of penalties not exceeding 50 penalty units for offences against the regulations; and
- under paragraph 25(2)(g) of the Act, subject to subsection 25(3) of the Act, empowering the Minister to make orders, not inconsistent with the regulations, with respect to any matter for or in relation to which provision may be made by the regulations.

Subsection 25(3) of the Act states that an order shall not be made prescribing any penalty for an offence.

Regulation 3 of the *Export Control (Orders) Regulations 1982* (the Regulations) provides that the Minister may, by instrument in writing, make orders, not inconsistent with regulations made under the Act, with respect to any matter for or in relation to which provision may be made by regulations made under the Act.

The *Export Control (Dairy, Eggs and Fish) Orders 2005* (“the old Orders”) together with the *Export Control (Prescribed Goods—General) Order 2005* (“the PGGO 2005”) provided the legislative basis for the imposition of conditions and restrictions on the export of the dairy, eggs and fish.

These Orders give effect to an agreement reached with the dairy, fish and egg industries and state dairy authorities during the extensive consultation phase for the development of the old Orders in 2003 and 2004. During this consultation phase, it was agreed with the representatives of the dairy, fish and egg industries and the state dairy authorities that the old Orders would be replaced by three separate sets of Orders to facilitate the adoption in the Orders of the proposed separate National Standards for fish, eggs and for milk provided these standards constituted the appropriate benchmark for export purposes.

In July 2005 the first of these National Standards, the National Standard for Primary Production and Processing of Seafood, was adopted at the national level for incorporation as a standard within in the Australia New Zealand Food Standards Code (the “Food Standards Code”). This standard will become mandatory for domestic seafood in July 2007. Food Standards Australia New Zealand are currently working with stakeholders to develop national standards for the poultry meat and dairy products. In addition it is expected that Primary Production and Processing Standards will be developed for other industry sectors such as grains, horticultural, honey and eggs.

The *Export Control (Fish and Fish Products) Orders 2005* (the “new Orders”) remove from the old Orders the provisions regulating the export of fish and fish products and locate them in their own set of Orders. The new Orders do not change existing policy applied to fish and fish products under the old Orders. However some technical changes have been required to clarify matters, for example where the expression “processed food” in the old Orders may have only covered fish or where it could have covered fish and/or fish products.

The Office of Regulation Review has advised that a Regulation Impact Statement is not required. The proposed amendments are of a minor or machinery nature and do not substantially alter existing arrangements. No consultation has occurred on the new Orders because appropriate consultation was undertaken during the development of the old Orders.

The new Orders incorporate by reference four documents. Details of the documents and how they may be obtained are set out below:

- an official standard of Codex Alimentarius Commission (“Codex”) entitled ‘*Recommended International Code of Practice for Low-Acid and Acidified Low-Acid Canned Foods*’ CAC/RCP 23-1979, Rev 2 (1993). This standard can be accessed on the Codex website at http://www.codexalimentarius.net/web/index_en.jsp.
- The *Australian Seafood Handbook Domestic Species*. This document is available from CSIRO publishing (Marine Research and Fisheries Research and Development Corporation Australia) 2001. CSIRO Publishing can be contacted on telephone number (03) 9662 7500.
- The *Australian Shellfish Quality Assurance Program—Export Standards* published by AQIS and dated 2004. This document can be accessed on the AQIS website at <http://www.aqis.gov.au/fish>.

- *AS4467:1998 Australian Standard for Hygienic Production of Crocodile Meat for Human Consumption* . This document is available from CSIRO Publishing. CSIRO Publishing can be contacted on telephone number (03) 9662 7500.

Details of the *Export Control (Fish and Fish Products) Orders 2005* are set out below:

PART 1 – Preliminary

Order 1

1. This order provides that the name of the new Orders is the *Export Control (Fish and Fish Products) Orders 2005*.

Order 2

2. This order provides that the new Orders commence on 1 October 2005.

Order 3

3. This order provides that the objectives of the new Orders relate to food safety in terms of human consumption, complete and accurate trade descriptions, integrity, importing country requirements, and traceability. It is also an objective that an assessment can be made of whether these objectives, the requirements of the Act and the new Orders are met and that the accuracy of any statement made in their regard can be ascertained. This is consistent with recommendation 2 of the NCP Review.

4. A further objective is to make provision for a range of matters that may be necessary to ensure the requirements of the Act are met including inspections, audit, approval of arrangements, issue of certificates, approval of auditors and official marks.

Order 4

5. This order provides the outline and establishes the scope of the new Orders.

Order 5

6. This order provides that specific provisions of the PGGO 2005 apply to fish and fish products for export as food. The purpose of this provision is to limit the application of the PGGO 2005 to those matters that are specifically incorporated.

Order 6

7. This order provides that where the words “penal provision” appear in relation to a provision of an order or clause in the new Orders, the provision is taken to provide a penal provision for the purposes of subregulation 4(1) of the Regulations. Subregulation 4(1) of the Regulations provides that a person who fails to comply with a provision is

guilty of an offence against the Regulations. Subregulation 4(2) of the Regulations provides that the offence under subregulation 4(1) is an offence of strict liability.

Order 7

8. This order provides that the operation of other Commonwealth, State or Territory laws with respect to the taking of fish is not excluded by the new Orders.

Order 8

9. This order provides a number of definitions for purposes of the new Orders.

Order 9

10. This order provides that fish and fish products that are for export as food are declared to be prescribed goods for the purposes of the Act and the new Orders. Order 8 of the new Orders defines “fish” as aquatic vertebrates and aquatic invertebrates including shellfish, aquatic amphibians and reptiles. Order 8 of the new Orders defines “fish product” as a product containing fish. (Section 3 of the Act defines “food” and “prescribed goods”.)

11. This order also provides that fish and fish products for export as food are only declared to be prescribed goods if the new Orders apply to the fish and fish products concerned. Part 2 of the new Orders sets out when the new Orders apply to fish and fish products. The purpose of this provision is to prevent fish and fish products to which the new Orders do not apply (for example ships’ stores) from becoming prescribed goods.

Order 10

12. This order provides the definition of “unsafe” based on the Food Standards Code definition. The definition of unsafe means the fish or fish products are likely to cause physical harm to a person who may consume them assuming that they are prepared and consumed according to their reasonable intended use.

13. This order also provides that fish and fish products are not unsafe where their inherent nutritional or chemical properties or their inherent nature causes an adverse reaction in persons with allergies or sensitivities not common to the majority of persons.

Order 11

14. This order provides the definition of “unsuitable” fish and fish products based on the Food Standards Code definition. The Food Standards Code definition has been expanded to include the use of gene technology and irradiation in preparing fish and fish products.

Order 12

15. This order provides that reference to “these Orders” in the new Orders is a reference to the *Export Control (Fish and Fish Products) Orders 2005* and its Schedules.

Order 13

16. This order provides that notes in the new Orders are intended as guidance only.

PART 2—Application of the new Orders

Division I—These Orders apply to fish and fish products

Order 14

17. This order limits the scope of the application of the new Orders to fish other than aquatic mammals and to fish products for which fish (other than aquatic mammals) is the major component.

Order 15

18. This order provides that subject to the expanded operation provisions in Part 2 the new Orders do not apply to fish and fish products exported in small quantities. There is a recognition that people travelling overseas may opt to take a small quantity of fish or fish products and that the regulation of these small quantities would be inappropriate.

Order 16

19. This order provides that subject to the expanded operation provisions in Part 2 of the new Orders do not apply to fish and fish products exported to New Zealand. This order reflects the special arrangements for New Zealand under the Trans Tasman Mutual Recognition Agreement (TTMRA). The intention of this order is to facilitate trade between Australia and New Zealand under the TTMRA.

Division II—Expanded operation of the new Orders

Order 17

20. This order provides an explanation of Division II of Part 2. Division II provides the mechanism for bringing within the operation of the new Orders, fish and fish products that fall outside the application of the new orders thereby facilitating the issue of government certificates by the Secretary for those fish and fish products.

Order 18

21. This order provides that the expanded operation provisions of Division II apply to fish that are aquatic mammals and to fish products for which fish (including aquatic mammals) is not the major component. This order also provides that Division II applies to the small consignments and to exports to New Zealand.

Order 19

22. This order provides that a person intending to apply for government certification for fish and fish products to which order 18 applies must make a written application to the Secretary for a notice declaring that the new Orders apply to the fish and fish products. The application must set out the fish and fish products, the name of the exporter and processing establishment, the importing country to which the fish and fish products are to be exported. This order provides the application is to be signed by the exporter and the occupier of each establishment preparing the fish and fish products concerned.

Order 20

23. This order provides that if an application is made that satisfies suborder 19.2, the Secretary must give a notice that specifies the orders that apply to the fish and fish products. A notice need not be given if information given in the application is inaccurate, incomplete or has no sound basis or if the application refers to fish and fish products of a kind that are currently not regulated under the new Orders or Act and the issue of a government certificate could adversely affect export trade.

24. This order also provides that if the notice has effect (this is defined in this order) then those orders specifying in the notice as applying will apply to the export of the fish and fish products concerned by the exporter and will also apply to the preparation of the fish and fish products by occupiers who sign the application. This is intended to allow for specific declarations to be made on the government certificate, depending on the needs of the importing country, as well as to provide the Secretary with the necessary assurances to issue government certificates.

25. This order provides that if the Secretary decides not to give a notice the Secretary must give the exporter and the occupiers who sign the application written notice of the decision. This order also provides for the amendment or revocation of the notice by the Secretary and specifies when any amendment or revocation takes effect.

26. This order provides that if there is a refusal to give a notice or if revocation applies, the Secretary must give the persons concerned written notification of the reasons

and advise them of the right to seek reconsideration of the decision. This right of reconsideration is provided for in Part 16 of the PGGO 2005.

Division III—Application to fish and fish products for export as food

Order 21

27. This order provides for clarification on the application of the new Orders. The new Orders are to apply to fish and fish products intended for export from Australia as food.

Division IV—Orders do not apply to certain establishments

Order 22

28. This order provides an explanation of this Division which sets out when the new Orders do not apply to certain establishments. These are establishments where limited processing that is not considered to have a significant impact on the fitness for human consumption of the fish and fish products takes place. Other orders prohibit the export of fish from these establishments unless before export they have undergone preparation in a registered establishment or an approved unregistered establishment.

Order 23

29. This order provides that the new Orders do not apply to establishments that:

- grow fish; or
- relay shellfish; or
- harvest, hold, kill, bleed, gill, head, gut, sort, grade, and ice for transport of fish at the premises used to grow the fish; or
- wash fish where water is either sourced from a specified area or clean sea water is used;

provided no part of the establishment is used for any other preparation of the fish.

Order 24

30. This order provides that the new Orders do not apply to establishments that kill or bleed crocodiles provided that no part of the establishment is used for any other preparation of the crocodiles.

Division V—Ships' stores, imported fish and fish products held under bond, etc

Order 25

31. This order provides that the new Orders do not apply to certain exports. These exceptions relate to circumstances where the fish and fish products are exported from

Australia but where it is not appropriate that the conditions and restrictions on export should apply or that government certificates be issued.

32. The new Orders do not apply to the following.

- Ships' stores and aircraft stores. Ships and aircraft may carry fish and fish products supplies for crew and passengers. The intention is that these foods will be consumed by the crew or passengers, and not offered for sale in another market;
- Fish and fish products that are imported into Australia and then either held in bond and exported without any preparation being undertaken in Australia or exported in the same covering and under the same trade description in and under which they were imported.
- Fish and fish products sent to an external Territory or a resource industry structure installed within the Joint Petroleum Development Area, with the intent that these foods will be consumed within the Territory or on the structure.

Division VI—Exemptions

Order 26

33. This order sets out the requirements for applying for an exemption from provisions in the new Orders. This order provides that an exporter or occupier of an establishment where fish and fish products for export as food are prepared may apply to the Secretary for an exemption from the application of the new Orders, where the consignment is a commercial sample or for experimental purposes or in special circumstances. The intent of this order is to facilitate trade by enabling the development of new markets and to allow for exports for humanitarian purposes.

34. This order provides that the Secretary may give the applicant an exemption and requires that the instrument of exemption issued by the Secretary must specify the provisions of the new Orders that do not apply.

Order 27

35. This order enables the Secretary to impose condition on the exemption and to vary or revoke the conditions. The purpose of the conditions must be to ensure compliance with one or more of the objectives specified in suborders 3.1 and 3.2.

Order 28

36. This order provides that the provision of the new Orders specified in the exemption do not apply to fish and fish products of the kind specified in the exemption prepared for export or exported in the circumstances specified in the exemption.

Order 29

37. This order described when the exemption ceases to have effect.

Order 30

38. This order provides that if the exemption ceases to have effect, then at that time, the orders that were specified in the exemption as not applying apply.

PART 3—The preparation of fish and fish products for export as food

Division I—Registration

Order 31

39. This order provides fish and fish products for export as food must be prepared at an establishment registered for that purpose and, if not prepared at a registered establishment, the occupier is guilty of an offence.

40. This order is a penal provision with a level 5 penalty. This means that a person who is guilty of this offence is punishable by a fine of 50 penalty units – see subregulation 4(1) of the *Export Control (Orders) Regulations 1982*. This is the highest penalty that can be applied under the new Orders. The purpose of this offence is to ensure that the preparation of fish and fish products for export as food can be properly inspected, monitored and audited by authorized officers. This level of penalty is within the limits considered appropriate by Commonwealth policy in relation to strict liability offences. Strict liability is necessary to ensure the integrity of the regulatory system relating to persons who prepare fish and fish products for export as food. Failure to prepare fish and fish products for export as food at a registered establishment is a serious offence.

Order 32

41. This order provides that fish and fish products need not be prepared in a registered establishment if an approval to do so is given by the Secretary in accordance with clause 7 of Schedule 1 has effect.

Order 33

42. This order provides that registration is not required for catcher boats. The limited preparation of fish that may occur on a catcher boat is not considered to have a significant impact on the fitness for human consumption of fish and fish products.

Division II—Management practices

Order 34

43. This order stipulates that the occupier of a registered establishment (and the occupier of an unregistered establishment in relation to which an approval referred to in order 32 has effect) must have an approved arrangement for the preparation of fish and fish products undertaken. An approved arrangement is defined in order 8 to mean an arrangement approved under clause 14 of Schedule 2 and includes variation of such an arrangement in the circumstances specified in suborder 84.5 and clause 20 of Schedule 2. Paragraph 7(3A)(a) of the Act enables regulations to be made for and in relation to approved arrangements. The purpose of approved arrangements is to require the occupier to identify the controls used to ensure compliance with the new Orders and any importing country requirements that are in addition to or more restrictive than the requirements of the new Orders. The approved arrangements must also address food safety hazards.

44. This order is a penal provision with a level 5 penalty. This means that a person who is guilty of this offence is punishable by a fine of 50 penalty units – see subregulation 4(1) of the Regulations. The purpose of this offence is to ensure that the preparation of fish and fish products for export as food is undertaken in accordance with an arrangement approved by the Secretary.

45. The level of penalty applying to this offence is within the limits considered appropriate by Commonwealth policy in relation to strict liability offences. Strict liability is necessary to ensure the integrity of the regulatory system relating to persons who prepare fish and fish products for export as food. Failure to have an approved arrangement for the preparation of fish and fish products for export as food is a serious offence.

Order 35

46. This order provides that the occupier of registered establishment (and the occupier of an unregistered establishment for which an approval referred to in order 32 has effect) must comply with the requirements of Schedule 2 providing for the management of food safety and suitability.

47. This order also provides that the requirements to have an approved arrangement and to comply with Schedule 2 do not apply to the occupier of an unregistered establishment that is a catcher boat provided there is a system of controls in place to ensure that the fitness for human consumption of the fish caught by the catcher boat. The limited preparation of fish and fish products that may be conducted aboard a catcher boat are not considered to have a significant impact on the fitness for human consumption of fish and fish products.

Order 36

48. This order provides for the restriction of food operations taking place at an export establishment that prepares fish and fish product for export as food without having appropriate controls in place to ensure that the fitness for human consumption of fish and fish products for export is not put at risk and their separate identity is maintained. The maintenance of separate identity is not required if the other food operations are for fish and fish products for a purpose other than as export for food and the fish and fish products meet the requirements of the new Orders that apply to fish and fish products for export as food.

49. This order is a penal provision with a level 5 penalty. This means that a person who is guilty of this offence is punishable by a fine of 50 penalty units – see subregulation 4(1) of the Regulations.

50. The purpose of this offence is to ensure that fitness for human consumption and integrity of fish and fish products for export as food is not adversely affected by the other food operations. The level of penalty applying to this offence is within the limits considered appropriate by Commonwealth policy in relation to strict liability offences. Strict liability is necessary to ensure the integrity of the regulatory system relating to persons who prepare fish and fish products for export as food. Failure to ensure fitness for human consumption and integrity for the preparation of fish and fish products for export as food is a serious offence.

Division III—Export Standards

Order 37

51. This order provides that the occupier must ensure specified structural, operational hygiene, preparation and transport, product standards, trade description and identification requirements are met. These requirements are provided for under Schedules 3, 4, 5, 6, 7 and 8. This order is a penal provision with a level 5 penalty. This means that a person who is guilty of this offence is punishable by a fine of 50 penalty units – see subregulation 4(1) of the Regulations.

52. The purpose of this offence is to ensure compliance with the fundamental requirements for and in relation to the preparation of fish and fish products for export as food. These include requirements for food safety, integrity and traceability.

53. The level of penalty applying to this offence is within the limits considered appropriate by Commonwealth policy in relation to strict liability offences. Strict liability is necessary to ensure the food safety and integrity of the regulatory system relating to the preparation of fish and fish products for export as food. Failure to comply with these fundamental requirements is a serious offence.

54. This order also clarifies that the requirements for product standards in Schedule 6 of the new Orders do not apply to fish and fish products that are manufacturing grade and identified as such. Manufacturing grade fish and fish products are not required to meet product standards as they will be subject to further processing in order to make them fit for human consumption at a later point in time.

PART 4—Conditions and restrictions on export of fish and fish products

Division I—General requirement

Order 38

55. This order provides for the prohibition on the export of fish and fish products unless the specified conditions and restrictions under this Part of the new Orders are met.

Order 39

56. This order provides that for the purposes of section 7 of the Act, the requirements specified in this Part are conditions or restrictions on the export for fish and fish products exported as food. Failure to comply with a condition or restriction attracts the penal provisions of subsection 8(3) of the Act which provides that a person who exports or intends to export prescribed goods in contravention of the conditions and restrictions is guilty of an offence. Failure to comply with the conditions and restrictions precludes the giving of an export permit and can lead to the revocation of an export permit, see Division IV of Part 1 of Schedule 9. Failure to comply with these conditions and restrictions also precludes the issue of a government certificate, see Part 2 of Schedule 9.

Division II—Registration and approved arrangement

Order 40

57. This order provides that fish and fish products for export as food must be prepared either in a registered establishment or in an unregistered establishment which has approval by the Secretary to prepare fish and fish products for export referred to in order 32.

Order 41

58. This order provides that fish and fish products for export as food must be prepared in an establishment where the occupier has an approved arrangement in place for the preparation undertaken. Paragraph 7(3A)(a) of the Act enables regulations to be made for and in relation to approved arrangements. The purpose of approved arrangements is to require the occupier to identify the controls used to ensure compliance with the new Orders and any importing country requirements that are in addition to or more restrictive than the requirements of the new Orders. The approved arrangements must also address food safety hazards.

Order 42

59. This order provides that the occupier of a unregistered establishment that is a catcher boat need not have an approved arrangement, provided that a system of controls are in place to ensure the fitness for human consumption of the fish caught by the catcher boat.

Order 43

60. This order provides that fish prepared at an unregistered establishment that is a catcher boat must not be exported as food unless they are further prepared at a registered establishment or an unregistered establishment which has approval given by the Secretary referred to in order 32.

Order 44

61. This order provides that fish and fish products prepared at an establishment to which the new Orders do not apply must not be exported as food unless they are further prepared at a registered establishment or an unregistered establishment which has approval given by the Secretary referred to in order 32.

Division III—Export standards

Order 45

62. This order provides that fish and fish products for export as food must be prepared in establishments where the requirements for premises and equipment in Schedule 3 are met. This order also provides that the fish and fish products must be transported to and from establishments engaged in their preparation using vehicles and equipment that comply with the requirements of Schedule 3.

Order 46

63. This order provides that fish and fish products for export as food must be prepared in establishments where the operational hygiene procedures of Schedule 4 are in place. Likewise, fish and fish products for export as food must be transported to and from establishments engaged in their preparation in accordance with the operational hygiene procedures of Schedule 4.

Order 47

64. This order provides that fish and fish products for export as food must be prepared and transported to and from establishments engaged in the preparation in accordance with Schedule 5.

Order 48

65. This order provides that fish and fish products for export as food and ingredients, are to comply with the requirements of Schedule 6. Schedule 6 provides for product standards that are based on the domestic standards set out in the Food Standards Code. This order does not apply to fish and fish products that are manufacturing grade and identified as manufacturing grade. Manufacturing grade fish and fish products are not required to meet product standards as they will be subject to further processing in order to make them fit for human consumption at a later point in time.

Order 49

66. This order provides that trade descriptions must be applied to fish and fish products for export as food in accordance with Schedule 7 of the new Orders.

Order 50

67. This order provides fish and fish products for export as food must be prepared in an establishment that meets the identification, tracing systems, integrity and transfer requirements of Schedule 8.

Order 51

68. This order provides that before fish and fish products for export as food are exported an export permit must be issued and at the time the fish and fish products are exported the permit must have effect.

PART 5 —Exporters and other issuers of export documentation

Division I—General requirement

Order 52

69. This order provides that unless the contrary intention appears, this Part of the new Orders applies to an occupier of an establishment where export permits are issued under the occupier's approved arrangement, a person approved to issue export permits under Schedule 9, and a person identified as exporter in an application for an export permit.

Division II—Information and documentary requirements

Order 53

70. This order provides that a person to whom this Part applies must ensure that export certificates and permits are held in a secure environment.

71. This order is a penal provision with a level 5 penalty. This means that a person who is guilty of this offence is punishable by a fine of 50 penalty units – see subregulation 4(1) of the Regulations.

72. The level 5 penalty is necessary to protect the integrity of the regulatory system relating to export permits and government certificates. Export permits and government certificates are only issued for prescribed goods that have been prepared in accordance with the conditions and restrictions specified in the legislation. Export permits and government certificates are official documents that must be held under conditions of security to ensure that they cannot be lost, defaced or stolen – and to limit the opportunity for substitution.

73. The level of penalty applying to this offence is within the limits considered appropriate by Commonwealth policy in relation to strict liability offences. Strict liability is necessary for the offence because of the serious implications for trade in cases of non-compliance.

Order 54

74. This order provides that the person to whom this Part applies must within 3 working days return any export permit and government certificate to the Secretary if the permit is revoked, government certificate is cancelled, or the intention to export is abandoned.

75. This order is a penal provision with a level 2 penalty. This means that a person who is guilty of the offence is punishable by a fine of 20 penalty units – see subregulation 4(1) of the Regulations. This offence is less serious than the preceding offences. However, it is necessary to ensure that persons do not use export permits and government certificates that have been revoked or cancelled.

76. The level of penalty applying to this offence is within the limits considered appropriate by Commonwealth policy in relation to strict liability offences. Strict liability is necessary for the offence because of the serious implications for trade in cases of non-compliance.

Order 55

77. This order imposes an obligation on a person to whom this Part applies to notify an authorized officer immediately on forming a suspicion that the fitness for human consumption of fish or fish products is jeopardised or the security of integrity is compromised, or that an importing country requirement has not been met.

Order 56

78. This order provides that a person to whom this Part applies must have effective measures in place to ensure that information given to the Secretary relating to an export permit or government certificate is accurate and complete and has a sound basis.

79. Criminal penalties under the *Criminal Code Act 1995* apply to persons who make false or misleading statement to the Secretary or authorized officers.

Order 57

80. This order provides that a person to whom this Part applies must document measures they will take to comply with the requirements of this Part, as well as requirements of Schedule 9 which relate to the issue of an export permit.

Order 58

81. This order sets out the requirements for persons to whom this Part applies to retain copies of export permits, applications for export permits and declarations of compliance, applications for government certificates, government certificates and other documents that are relevant to whether the applicable requirement of the Act and the new Orders are met. The documents must be kept for a minimum period of 3 years from the day the document is made by the person or comes into their possession.

82. This order is a penal provision with a level 5 penalty. This means that a person who is guilty of this offence is punishable by a fine of 50 penalty units – see subregulation 4(1) of the *Export Control (Orders) Regulations 1982*.

83. The level 5 penalty is necessary to protect the integrity of the regulatory system. Exporters and persons who may issue export permits must retain appropriate documentation for the purposes of audits. Audits are conducted to ensure that the objectives of the new Orders are met. Failure to keep records is a serious offence because it prevents the Secretary, authorized officers or approved auditors from being satisfied that the exporter has prepared fish and fish products in accordance with the conditions and restrictions specified in the new Orders.

84. The level of penalty applying to this offence is within the limits considered appropriate by Commonwealth policy in relation to strict liability offences. Strict liability is necessary for the offence because of the serious implications for trade in cases of non-compliance.

PART 6 — Audit

Division I—Performance of the audit

Order 59

85. This order provides that the Secretary may require the audit of operations for the preparation or export of fish and fish products for food and operation for the issue of export permits for fish and fish products exported as food. The audit may be an audit of compliance with all requirements of the Act and the new Orders relevant to the operations, an audit of aspects of the operations or an audit of compliance with just some of the requirements.

Order 60

86. This order provides that the audit may be performed by an authorized officer or, if so specified by the Secretary, by an auditor approved by the Secretary under clause 5 of Schedule 10.

Order 61

87. This order provides that the purpose of the audit is to establish whether there is compliance with the requirements of the Act, the new Orders, any applicable approvals (including approved arrangements) and any applicable importing country requirements.

Order 62

88. This order provides that the Secretary may, at the occupier's request provide additional audits by an authorized officer but that the Secretary may at any time withdraw the provision for additional audits at any time. This provision is to meet industry needs where the occupier of an establishment may require additional audits to meet other regulatory requirements.

Order 63

89. This order provides that an audit may be unannounced.

Order 64

90. This order provides that the Secretary may by giving a written notice to the occupier, exporter or approved export permit issuer specify the frequency and intensity of audits. This notice may be varied. This order does not preclude the Secretary from specifying the frequency and intensity of audits required in the conditions of any applicable approved arrangement. The purpose of this order is to give clarity to establishments regarding AQIS' expectations on the number of audits conducted annually, and the intensity of operations covered in each audit.

Order 65

91. This order provides that the occupier, the exporter and the approved permit issuer have responsibilities in terms of providing assistance to an authorized officer or an approved auditor including providing information, allowing employees to be observed or interviewed, allowing the auditor to use equipment or bring onto the premises where the audit is being conducted equipment for audit purposes.

Order 66

92. This order provides that audits of catcher boats or registered fishing vessels may take place whilst the vessels are at sea, subject to operational constraints. This is to ensure that if necessary, the audit can be conducted whilst the vessels are handling fish and fish products for export as food, to enable an accurate assessment of whether there is compliance.

Division II—Failures to comply and audit reports

Order 67

93. This order provides the administrative procedures that apply when an auditor is of the opinion there is a failure to comply. The procedures include notifying the occupier, exporter or approved export permit issuer and assessing whether the failure is a critical non-compliance (as defined in suborder 67.3). If in the auditor's opinion the failure amounts to a critical non-compliance, the auditor must notify the Secretary immediately. This is an administrative provision to ensure that AQIS has sufficient information to meet the objectives of the new Orders.

Order 68

94. This order provides that the auditor must prepare an audit report and stipulates some minimum reporting criteria, including whether the requirements of the Act, the new Orders or any applicable approval (including the approved arrangement) and importing country requirements have been complied with. Importantly, this order provides that the audit report must describe each failure to comply, and state if the failure is a critical non-compliance.

Order 69

95. This order provides that an approved auditor must provide the audit report to the Secretary within fourteen working days after the conclusion of the audit. In addition an auditor (including an approved auditor) must provide a copy of the audit report to the occupier of the establishment, the exporter or the approved permit issuer within fourteen working days after the conclusion of the audit.

PART 7 — Official marks

Division I—General

Order 70

96. This order provides that despite subsection 13.18(2) of the PGGO 2005 a person may manufacture an official marking device if the person is an authorized officer or is acting in accordance with direction of an authorized officer. This order also provides that despite subsection 13.18(2) of the *Export Control (Prescribed Goods—General) Order 2005* a person may manufacture an official mark or have in their possession an official marking device if the person is an authorized officer or is acting in accordance with direction of an authorized officer, or if the person is designated as a person who may do the relevant act and the relevant act is done in accordance with the approved arrangement. Paragraph 5.1(c) as amended provides the requirements for the manufacture, possession etc of official marks and official marking devices that are set out in section 13.18 of the PGGO 2005 will apply. Contravention of a requirement of section 13.18 is an offence under section 14 of the Act.

97. This order also prohibits the alteration or interference with an official mark applied to fish and fish products for export as food, their packaging, to anything containing fish and fish products for export as food or to anything that is attached to fish and fish products for export as food, their packaging or anything containing fish and fish products for export as food. The prohibition applies unless the alteration or interference is undertaken by an authorized officer, a person acting under the direction of an authorized officer or is permitted under an approved arrangement. Contravention of this requirement is an offence under section 14 of the Act.

Order 71

98. This order provides that a person must not apply a mark that resembles or apparently intends to resemble or pass for an official mark unless the person is designated in the applicable arrangement as a person who may do so and the relevant act is done in accordance with the approved arrangement. The order also defines the term “a resemblance of an official mark”. Section 14 of the Act creates an offence if this order is not complied with.

Order 72

99. This order provides that if the occupier suspects that a container, vehicle, ship aircraft or anything else containing fish and fish products for export is located at the establishment and has an official mark applied to it and the mark is altered or interfered with, the occupier must notify an authorized officer without delay and must not deal with the food unless there is written approval to do so from an authorized officer. An official mark is applied to fish and fish products if it is applied to the fish and fish products, their

packaging, to anything containing fish and fish products or to anything that is attached to fish and fish products, their packaging or anything containing fish and fish products.

Order 73

100. This order provides that the occupier must give an authorized officer any official marking device that is damaged, worn or otherwise not fit for applying an official mark.

Order 74

101. This order provides the occupier must keep official marks and marking devices under condition of security when not in use and must make a record of the receipt, use and return of official marking devices and the receipt, manufacture, use and defacement of official marks.

PART 8 — Directions to take action

Division I—When a direction may be given

Order 75

102. This order sets out when an authorized officer may direct an occupier to take action. The authorized officer must first have reasonable grounds to believe that the occupier of an establishment has not, or is not likely to comply with the Act, the new Orders, the approved arrangement or a condition of the approved arrangement, or the fitness for human consumption of the fish and fish products for export as food is, or is likely to be, compromised or their integrity is, or is likely to be, compromised, or they do not, or are not likely to, comply with the importing country requirements. This provision is limited to directions in relation to fish and fish products that are either prepared by the occupier, or is physically located at the occupier's establishment.

Order 76

103. This order sets out when an authorized officer may direct an exporter to take action. The authorized officer must first have reasonable grounds to believe that the exporter has not, or is not likely to comply with the Act, the new Orders, or the fitness for human consumption of the fish and fish products is, or is likely to be, compromised; or their integrity is, or is likely to be, compromised, or they do not, or are not likely to, comply with the importing country requirements. The direction cannot be given if the fish and fish products are located at an establishment engaged in the preparation of fish and fish products for export as food.

Order 77

104. This order provides that the direction must be a direction to take action that is necessary to ensure compliance with the objectives set out in suborders 3.1 and 3.2 and

may also be a direction to take corrective action. The order also details the range of actions that may be taken in relation to fish and fish products. Such actions include the movement of fish and fish products, retention, securing, treatment, inspection, examination, sampling, destruction, cessation of the preparation of fish and fish products the action to be taken in relation to premises equipment and vehicles used for fish and fish products.

Order 78

105. This order provides that an authorized officer may not give a direction requiring the preparation of fish and fish products is to cease unless the authorized officer has reasonable grounds to believe the purposes specified in order 77 cannot be achieved without the cessation of the preparation. If a direction to cease preparation is given, this is limited to a maximum of five days.

Division II—Compliance with a direction

Order 79

106. This order provides that a direction given to an occupier or exporter by written notice under this Division must be complied with by the occupier or exporter concerned within the period specified in the notice. The notice must specify the action that must be taken and state that failure to take action is an offence. The notice may be amended or revoked by the issuing of a further notice by an authorized officer.

107. This order is a penal provision with a level 5 penalty. This means that a person who is guilty of this offence is punishable by a fine of 50 penalty units – see subregulation 4(1) of the Regulations.

108. The seriousness of this offence is necessary to protect the integrity of the regulatory system. Occupiers and exporters must comply with directions given by authorized officers under this section, as failure to do so compromises the regulatory system.

109. The level of penalty applying to this offence is within the limits considered appropriate by Commonwealth policy in relation to strict liability offences. Strict liability is necessary for the offence, as a failure to comply with a direction of an authorized officer could have serious implications for trade.

PART 9 — Miscellaneous

Division I—General

Order 80

110. This order provides the Secretary may, in accordance with the requirements of Part 2 of Schedule 9, issue a government certificate for fish and fish products for export. The issue of the government certificate facilitates importation into another country.

Order 81

111. This order provides that records made under the new Orders must be accurate, legible, auditable, dated, in English, and be signed by the maker of the record.

Order 82

112. This order provides when an authorized officer may request an occupier or exporter of fish and fish products to provide a translation of a trade description applied to fish and fish products that appears in a language other than English. The translation must be prepared by a person who has appropriate qualifications and is independent of the occupier or exporter concerned.

Order 83

113. This order provides that an occupier is required on request to provide reasonable assistance to an authorized officer for the purpose of the exercise of a function by the officer.

Division II—Regulatory arrangements

Order 84

114. This order provides for an occupier to apply to the Secretary for notice stating that an alternative procedure, standard or other requirement specified in the application achieves the purpose of a requirement of the new Orders. If the notice has effect then compliance with the alternative procedure, standard or requirement is taken to be compliance with the clause or requirement specified in the notice. This only applies if a variation is made to the occupier's approved arrangement to include the alternative procedure, standard or requirement. The Secretary may amend or revoke the notice by giving the occupier further written notice. The intent of this order is to recognise differences in this legislation and the legislation of trade partners, and allow industry to manufacture to a different standard than that prescribed by the Orders.

Order 85

115. This order provides for the occupier to apply to the Secretary for a notice stating that a requirement of the new Orders does not apply in relation to fish and fish products prepared at the occupier's establishment and for export to a specified country. The Secretary may give the notice if satisfied that the importing country authority does not require the requirement of the new Orders to be met or has a different requirement that is provided for in the occupier's approved arrangement. If the notice has effect then the requirement specified in the notice as not applying does not apply. The intent of this order is to recognise differences in this legislation and the legislation of trade partners, and allow industry to reduce the regulatory burden, if this is satisfactory to trade partners.

Division III—Reconsideration of decisions of authorized officers

Order 86

116. This order provides the right for a person whose interests are affected by a direction given by an authorized officer in relation to Part 8 of the new Orders to apply for consideration by a senior authorized officer at the office of the Department in the State or Territory where the direction was given.

Order 87

117. This order provides that an application must set out the reasons for seeking a reconsideration of decision and must be given to the senior authorized officer within seven days of the direction being made or within such further period as allowed by the senior authorized officer.

Order 88

118. This order requires that the senior authorized officer must on receiving the application reconsider the decision and may make any decision that the authorized officer could have made in the first instance.

Order 89

119. This order provides that where a senior authorized officer makes a decision under order 88 the initial decision to give the direction that is reconsidered ceases to have effect.

Order 90

120. This order provides that a senior authorized officer must within fourteen days of receiving the application give the applicant written notice of the senior authorized officer's decision and the reasons for the senior authorized officer's decision.

Order 91

121. This order provides that a person whose interests are affected by the decision made by senior authorized officer may apply to the Secretary for a review of the reconsideration of the decision made by a senior authorized officer.

Order 92

122. This order provides that the application must set out the reasons for the application and be given to the Secretary within 7 days after the senior authorized officer's decision came to the applicant notice or within such further period as agreed by the Secretary.

Order 93

123. This order provides that the Secretary must on receiving the application reconsider the senior authorized officer's decision and may make any decision that may have been made in the first instance.

Order 94

124. This order provides that when the Secretary reconsiders the senior authorized officer's decision, that decision ceases to have effect.

Order 95

125. This order provides that within 28 days after receiving the application the Secretary must give the applicant written notice of the Secretary's decision and the reasons for the decision.

Division IV—Review of decisions made by the Secretary

Order 96

126. This order provides that, subject to order 97, Part 16 of the PGGO 2005 applies to an initial decision made under these Order. Part 16 of the PGGO 2005 provides for reconsideration of decisions made in the first instance by the Secretary.

Order 97

127. This order sets out the limited initial decisions made by the Secretary to which the process of reconsideration provided for under Part 16 of the PGGO 2005 does not apply. These are decisions made under Division VI of Part 2, orders 84, 85 and 93, Part 2 of Schedule 1, clauses 13, 14, 17 and 19 of Schedule 9 and Part 2 of Schedule 9. The rationale is that these particular decisions are preliminary or procedural in nature and the

benefits of access to a merits review are outweighed by the cost of potentially frustrating the making of the final decision.

128. Division VI of Part 2 provides for exemptions. When a decision is made by the Secretary under Division VI of Part 2 of the new Orders to not grant an exemption, the applicant will be required to comply with the general requirements along with all other exporters of fish and fish products. The decision is not an “initial decision” as the exporter or occupier is otherwise required to comply with the requirements of the new Orders.

129. A decision made under orders 84 and 85 deals with regulatory arrangements for alternative compliance. Where a decision has been made by the Secretary to not grant an approval under orders 84 or 85 the applicant will, along with other occupiers, be required to comply with the general requirements for exporting fish and fish products that are set out in the new Orders. For this reasons the decision is not an “initial decision” as the exporter or occupier is otherwise required to comply with the requirements of the new Orders.

130. Order 93 provides for the reconsideration decision of the Secretary of decisions made in the first instance by an authorized officer to give a notice requiring action to be taken. These decisions are not reviewable when made under the PGGO 2005.

131. A decision under Part 2 of Schedule 1 deals with exemptions from the requirement for registration. This Part of the Schedule facilitates the export of small volumes of fish and fish products from unregistered establishments for the purpose of testing the markets for new products. Where the Secretary does not grant approval for such an exemption it would mean that the applicant would be required to operate under the new Orders along with all other exporters of fish and fish products of the same kind.

132. Clauses 13, 14, 17 and 19 of Schedule 9 deal with export permits. These decisions are not reviewable when made under the PGGO 2005 and for the purposes of efficient regulation, should not be made reviewable by the Secretary under the new Orders.

133. Part 2 of Schedule 9 deals with the issue of government certificates for the purpose of facilitating the import of fish and fish products for export. These decisions are not reviewable when made under the PGGO 2005. Again for the purposes of efficient regulation, should not be made reviewable by the Secretary under the new Orders.

Division V—Sampling and analysis

Order 98

134. This order provides that an occupier of an establishment or an exporter must provide at their own expense, a certificate of analysis if requested in writing by the Secretary.

Order 99

135. This order provides that where a statement as to a particular condition is made on a government certificate, then a NATA or IANZ accredited laboratory must conduct the analysis, inspection or examination.

Division VI—Giving notices

Order 100

136. This order provides that a notice is taken to be given if it is given to the exporter or the occupier of the establishment, or a person who is in charge or apparently in charge.

PART 10—Transitional

Division I—General

Order 101

137. This order provides that the *Export Control (Dairy, Eggs and Fish) Orders 2005* made under the *Export Control (Orders) Regulations* are repealed.

Order 102

138. This order provides that an administrative action taken or an instrument in writing made given or issued under the *Export Control (Dairy, Eggs and Fish) Orders 2005*, that has effect prior to the commencement of the new Orders and that may be made under the new Orders continues to have effect as if it was made under the new Orders. This provision also allows for amendment, variation, suspension or revocation of the administrative action or instrument in writing.

139. An administrative action or instrument for the following situations cease to have effect on the earlier of 1 July 2007 or the day it ceases to have effect under the new Orders:

- (a) approval to prepare fish and fish products in an unregistered establishment;
- (b) approval of a Food Processing Accreditation (FPA) system;
- (c) approval of a thermal process;
- (d) approval of an alternative export clearance procedure;
- (e) approval of an authorised signatory; and
- (f) suspension of the approvals (b) to (e) above.

140. The purpose of this order is to allow industry sufficient time to amend their practices from what was required under both under the *Export Control (Dairy, Eggs and Fish) Orders 2005* and the orders for processed food that were repealed by the *Export*

Control (Dairy, Eggs and Fish) Orders 2005 and become compliant with the new Orders, without disruption to trade fish and fish products.

Schedule 1 Registration

141. The intent of this Schedule is:

- to set out the requirements for plans and specifications for establishments engaged in the preparation of fish and fish products for export as food; and
- to set out the requirements for approval to prepare fish and fish products for export as food in an unregistered establishment so as to facilitate the export of small volumes of fish and fish products from an unregistered establishment for the purpose of testing the market while ensuring that the fitness for human consumption is maintained.

The detailed requirements for the registration by the Secretary of establishments are contained in the PGGO 2005.

PART 1 — PLANS AND SPECIFICATIONS

Division I— Application for registration

Clause 1

142. This clause provides that plans and specifications of an establishment and equipment for use in preparing fish and fish products at the establishment must either be included in the application for registration or be made available to the Secretary upon request. The plans and specifications must be in sufficient detail to show whether the establishment and equipment would be suitable for use for preparing fish and fish products.

Clause 2

143. This clause provides that plans for land-based establishments must include a locality map, site plan, floor plan and description of all equipment. For fishing vessels, the plans must include above and below deck layout and a description of all equipment.

Clause 3

144. This clause provides that specifications must include details of construction materials for premises and equipment, surface finishes, surfaces in contact with fish and fish products or ingredients, and essential services.

Division II—Alterations and additions

Clause 4

145. This clause provides that plans and specification for alterations or additions to establishments must either be included in the proposal for the alteration or addition or be made available upon request. The plans and specifications must be in sufficient detail to show whether the establishment and equipment if altered or extended would be suitable for use for preparing the fish and fish products.

Clause 5

146. This clause provides that the plans and specifications for alterations and additions must contain such information that is specified clauses 2 and 3 of this Schedule as is relevant to the alteration or addition.

PART 2—APPROVAL TO PREPARE FISH AND FISH PRODUCTS IN AN UNREGISTERED ESTABLISHMENT

Clause 6

147. This clause provides that an occupier of may apply for approval to prepare fish and fish products for export as food in an unregistered establishment. The application must include a description of each process that will be used in preparing the fish and fish products and the identity of the country to which they are intended to be exported.

Clause 7

148. This clause sets out that the Secretary may give the applicant a notice approving the preparation in an unregistered establishment if the Secretary is satisfied that the applicant will comply with the requirements of the new Orders and with importing country requirements. This clause sets out when the approval takes effect and sets out the information that must be contained in the notice of approval. For example the approval must specify the time frame in which the fish and fish products must be exported, the number of consignments that may be prepared for export and the identification number for the establishment.

149. This clause stipulates that no more than one approval may be given for fish and fish products prepared in the unregistered establishment of the kind specified in the application that are for the export to the country specified in the application. The clause requires the Secretary to give the applicant written notice of a decision not to approve the application and the reasons for the decision.

Clause 8

150. This clause provides that further to the exemption from registration provided for under in this Schedule, the Secretary may also specify that all or some of the provisions of Schedule 2 of the new Orders do not apply to the occupier. Schedule 2 provides for the management of food safety and suitability.

Clause 9

151. This clause provides that the Secretary may give the approval subject to conditions and may vary these, impose new conditions or revoke them. The conditions must be for the purpose of ensuring there is compliance with one or more of the relevant objectives of the new Orders.

Clause 10

152. This clause provides the grounds under which the Secretary may revoke an approval to prepare fish and fish products in an unregistered establishment. These grounds include: failure to comply with a requirement of the new Orders or the approved arrangement; where the occupier refuses consent to enter the premises; or where a false, misleading or incomplete statement is made in a document or application, or where there is no sound basis for making the statement; or the person to whom the approval is given ceases to be the occupier. This clause also explains when revocation takes effect.

Clause 11

153. This clause provides for termination of the approval by the occupier and explains when termination takes effect.

Clause 12

154. This clause provides that on revocation or termination, the approval ceases to have effect and that the provisions of Schedule 2 specified as not applying under clause 8 of this Schedule, will again apply.

Schedule 2 Management of food safety and suitability

155. The purpose of this Schedule is to ensure that establishments have in place management practices that ensure as far as possible the preparation of fish and fish products for export as food takes place in accordance with the requirements of the new Orders. To a large extent this is achieved by the requirement for an approved arrangement which must demonstrate how the occupier will comply with the new Orders and which must also contain a HACCP (Hazard Analysis Critical Control Point) plan.

PART 1—MANAGEMENT OF FOOD SAFETY AND SUITABILITY

Division I—General requirements

Clause 1

156. This clause provides that the occupier's commitment to the objectives of the new Orders and to compliance with the new Orders and applicable importing country requirements must be documented. This will assist the occupier to focus on his or her responsibilities in meeting the requirement of the legislation.

Division II—Approved arrangement

Clause 2

157. This clause describes what an approved arrangement must contain in order to satisfy order 34. The approved arrangement must cover each step in the preparation of the fish and fish products for export as food. The arrangement must:

- include a HACCP plan; and
- document the controls used to ensure that the requirements of the new Orders will be complied with; and
- identify those importing country requirements where compliance with the new Orders would not be sufficient to result in compliance with the importing country requirements (ie those that are additional or more restrictive than those already required under the new Orders); and
- document the controls used to ensure that these importing country requirements will be complied with; and
- document any other measure necessary to ensure there is a sound basis for issuing export permits or government certificates.

Clause 3

158. This clause sets out the minimum requirement for the HACCP plan. These requirements broadly follow the relevant Codex requirements and include the identification of the potential hazards and their means of control. It is not however

necessary to identify those hazards controlled by meeting the operation hygiene requirements of the new Orders (see the requirements of Schedule 4). Other minimum requirements include for each significant hazard the identification of the critical control points, the critical limits, the monitoring procedures, corrective action, verification and record keeping.

Division III—Management practices

Clause 4

159. This clause provides that the management practices, organisational structure, provision of resources and provision of personnel and their competence (such as knowledge, training, skills and experience) must be documented, and must be appropriate to ensure that the requirements of the new Orders and any applicable importing country requirements can be met.

Clause 5

160. This clause provides that whether the requirements of the new Orders and any importing country requirements identified in the approved arrangement are complied with must be verified. A written record must be made of the verification undertaken and the results.

Clause 6

162. This clause provides that if a requirement of the new Orders or an importing country requirement is not being met, corrective and preventative action must be taken to address the non-compliance and to ensure that it does not recur. The effectiveness of the action taken must be assessed and written records made of the actions and effectiveness.

Clause 7

163. This clause provides that internal audits and management reviews of management practices must occur at least once every twelve months. A written record of the audits and reviews conducted and the results must be made. Where an establishment employs less than 3 people, a management review only is necessary as an internal audit cannot be effectively undertaken.

Clause 8

164. This clause provides that sampling and analysis must be in accordance with methods specified in the new Orders and if no methods are specified a method specified in the Food Standards Code, in an Australian Standard or any other validated, science based method that is appropriate and accurate may be used.

Clause 9

165. This clause provides that the occupier must notify an authorized officer without delay if fish and fish products at the establishment are affected by or suspected of being affected by a notifiable disease, or suspected of being affected by a notifiable disease.

Clause 10

166. This clause provides that documents made by or that come into in the possession of the occupier and that are relevant to compliance with the Act or Orders, must be kept for at least three years.

167. This clause is a penal provision with a Level 5 penalty. This means an occupier who is guilty of this offence is punishable by a fine of 50 penalty units – see subregulation 4(1) of the Regulations.

168. This is the highest penalty that can be applied under the new Orders. The purpose of this offence is to ensure that authorized officers can verify the information provided by occupiers by inspecting documents retained by them and that the necessary documents are retained so as to enable audits of the establishment to be effective. The level of the penalty applying to this offence is within the limits considered appropriate by Commonwealth policy in relation to strict liability offences. Strict liability is necessary to ensure the integrity of the regulatory system relating to persons who prepare fish and fish products for export as food. Failure to keep documents is a serious offence.

PART 2—APPROVED ARRANGEMENTS

Division I—Approval of arrangements

Clause 11

169. This clause provides that a person who is or is to be the occupier may apply to the Secretary for approval of the arrangement. The arrangement for which approval is sought must accompany the application or be made available for evaluation by the Secretary.

Clause 12

170. This clause provides that for the purposes of assessing the application the Secretary must evaluate the arrangement and conduct an inspection of the establishment, facilities, equipment and services. The Secretary may request further information, demonstrations and the applicant's consent to the use of qualified person in any inspection evaluation or demonstration.

Clause 13

171. This clause provides that if the Secretary has not made a decision within 60 days of receiving the application, the application is taken to be refused. However this period does not include any period between the Secretary giving the applicant a written request for further information, a demonstration or consent to use a qualified person and the applicant meeting the request.

Clause 14

172. This clause provides that the Secretary may approve the arrangement if the Secretary is satisfied that the arrangement complies with the requirements of clause 2 of this Schedule and that compliance with the arrangement will ensure the requirements of the new Orders and importing country requirements are met and will ensure there is a sound basis on which to issue export permits and government certificates. The Secretary must also be satisfied that the persons designated in the approved arrangement as persons who may make a declaration referred to in paragraph 7.1(g) or 7.1(h) of Schedule 8 or paragraph 3.1(a) of Schedule 9 are fit and proper persons as specified in section 4.05 of the *Export Control (Prescribed Goods—General) Order 2005*.

Clause 15

173. This clause provides that if the Secretary decides not to approve an arrangement the Secretary must give the applicant written notice setting out the reasons for the decision and advising the applicant of the right to apply for reconsideration of the decision. This right of reconsideration is provided for in Part 16 of the PGGO 2005.

Clause 16

174. This clause provides that the Secretary may approve an arrangement subject to conditions specified in the notice of approval and by written notice impose new conditions or vary or revoke existing conditions. The condition must be for the purpose of ensuring that the arrangement complies with the requirements of clause 2 of this Schedule and compliance with the arrangement will ensure the requirements of the new Orders and importing country requirements are met and that there is a sound basis on which to issue export permits and government certificates.

Division II—Variation of approved arrangement

Clause 17

175. This clause provides that the occupier must record each variation of an approved arrangement.

176. This clause is a penal provision with a Level 2 penalty. This means an occupier who is guilty of this offence is punishable by a fine of 20 penalty units – see subregulation 4(1) of the Regulations.

177. This offence is less serious than other offences in the new Orders. However, it is necessary to ensure that the requirement is complied with because failure to keep records of variations to arrangements may jeopardise compliance with that arrangement and the new Orders and prohibits proper auditing. The level of the penalty applying to this offence is within the limits considered appropriate by Commonwealth policy in relation to strict liability offences.

Clause 18

178. This clause provides that a proposed variation of an approved arrangement that:

- has the potential to adversely affect compliance with the new Orders or the fitness for human consumption of fish and fish products prepared at the establishment; or
- prevents an accurate assessment being made of these matters;

must not be implemented unless the occupier has applied to the Secretary to make the variation and the Secretary has given the occupier written notice approving the variation.

179. This clause provides that the occupier must not implement a proposed variation that identifies persons who may make a declaration referred to in paragraph 7.1(g) or 7.1(h) of Schedule 8 or paragraph 3.1(a) of Schedule 9, issues an export permit, manufacture or possess an official marking device or manufacture, possess, apply, alter or interfere with an official mark or resemblance unless the occupier has applied to the Secretary in writing and the Secretary has given the occupier written notice approving the variation.

180. This clause also provides that the occupier must not implement a proposed variation that relates to an alternative procedure or standard or importing country control unless the occupier has applied to the Secretary in writing and the Secretary has given the occupier written notice approving the variation.

181. This clause provides that an occupier who must under order 35 ensure the requirements of Schedule 2 are complied with, fails to comply they are guilty of an offence.

182. This clause is a penal provisions with a level 5 penalty. This means an occupier who is guilty of this offence is punishable by a fine of 50 penalty units – see subregulation 4(1) of the Regulations.

183. This is the highest penalty that can be applied under the new Orders. The purpose of this offence is to ensure that the arrangement continues to underpin compliance with the new Orders and importing country requirements and that this can be effectively assessed including during audit.

184. The level of the penalty applying to this offence is within the limits considered appropriate by Commonwealth policy in relation to strict liability offences. Each of the

circumstances in which prior approval is required is fundamental to the integrity of the regulatory system relating to persons who prepare fish and fish products for export as food. Strict liability is necessary to ensure the integrity of this regulatory system. Failure to receive prior approval for these fundamental variations to the arrangement is a serious offence and could have serious implications for trade.

Clause 19

185. This clause provides that the Secretary may give the occupier of an establishment a written notice requiring the occupier to submit a variation of an approved arrangement if changes are made to the circumstances relating to the preparation of the food at the establishment change, including controls specified in the approved arrangement change, or an applicable importing country authority requirement changes.

186. The notice must specify the variation required and the period within which the variation must be submitted to the Secretary. The Secretary may give the occupier of an establishment a notice approving the variation submitted. The holder is obliged to comply with the notice.

Clause 20

187. This clause provides that an approved arrangement includes a variation of the kind referred to in clauses 18 or 19 only when the Secretary gives the occupier a notice approving the variation.

Division III—Suspension and revocation

Clause 21

188. This clause provides that the Secretary may suspend or revoke the approval of an arrangement. The grounds for suspension or revocation include a failure to comply with a requirement of the new Orders or the approved arrangement; or the approved arrangement is no longer effective. Other grounds include: a false, misleading or incomplete statement made by the occupier; the occupier's failure to provide assistance or to make certain documents available; or a change in the identity of the persons who manage or control or their functions.

189. The clause provides that the suspension or revocation may be for the whole of the arrangement or in part in respect of one or more of the fish and fish products prepared at the establishment or one or more of the stages of their preparation.

190. The clause also provides when the suspension or revocation takes effect.

Clause 22

191. This clause provides that the Secretary must give the occupier written notice of the reasons for the suspension or revocation, the period of any suspension and of the occupier's right to apply for reconsideration of the decision. This right of reconsideration is provided for in Part 16 of the PGGO 2005.

192. This clause also provides that the period of suspension of an approved arrangement may not be longer than 12 months and can be extended provided the total period of suspensions does not exceed 12 months.

Clause 23

193. This clause provides that the Secretary may revoke an approval of an arrangement that is suspended despite the fact that the period of suspension has not expired. It also provides that revocation of an arrangement can be on the grounds that are the same as or similar to the grounds for the suspension.

Clause 24

194. This clause provides for an occupier of an establishment to terminate the arrangement in full or in part by giving the Secretary a written notice of the termination. The termination takes effect 7 days after the notice is given to the Secretary or on a later day specified in the notice.

Clause 25

195. This clause provides that on suspension, revocation or termination of an approved arrangement, the Secretary may in a notice given to the occupier require the occupier to take action within a specified period in respect of any official marks held by the occupier, or export permits or government certificates issued by the Secretary under the new Orders, and any fish or fish products at the establishment. The action must be action to ensure that one or more of the objectives in suborder 3.1 or 3.2 are met.

196. This clause provides that the notice must state that failure to take the specified action within the specified time is an offence. This clause also provides for amendment and revocation of the notice.

Clause 26

197. This clause provides that an occupier given a notice under clause 25 must take the action specified within the period specified.

198. This clause is penal provisions with a level 5 penalty. This means an occupier who is guilty of this offence is punishable by a fine of 50 penalty units – see subregulation 4(1) of the Regulations.

199. This is the highest penalty that can be applied under the new Orders. The purpose of this offence is to ensure that occupiers comply with notices given by the Secretary under this provision. The notices relate to the return of official marks and export permits and fish and fish products at the establishment – and are designed to remove any opportunity for substitution.

200. The level of the penalty applying to this offence is within the limits considered appropriate by Commonwealth policy in relation to strict liability offences. Strict liability is necessary to ensure the integrity of the regulatory system relating to persons who prepare fish and fish products for export as food and in particular to prevent opportunity for substitution. Failure to comply with the notice is a serious offence and could have serious implications for trade.

Clause 27

201. This clause provides when the approval of an approved arrangement (or part of an arrangement) ceases to have effect if the approval is revoked, terminated or suspended. The approval also ceases to have effect if the person to whom the Secretary gives the approval of the approved arrangement ceases to be occupier.

Schedule 3 Structural requirements

202. The intent of this Schedule is to ensure that the design and construction of establishments will facilitate the production of fish and fish products that are fit for human consumption and that will meet importing country requirements, consistent with the objectives of the Act and the new Orders. Part 2 sets out the more limited requirements that apply to catcher boats, registered fishing vessels and live fish packing establishments to reflect the differences between the comparative risk to the fitness for human consumption of the fish and fish products prepared in these establishments.

PART 1—REQUIREMENTS FOR ESTABLISHMENTS

Division I—Premises, equipment and vehicles

Clause 1

203. This clause provides that establishments have the premises, facilities, equipment and vehicles necessary to ensure that the preparation of fish and fish products for export as food is conducted in accordance with the requirements of the new Orders.

Clause 2

204. This clause provides specific requirements for premises and their construction. Premises and their construction must facilitate the hygienic preparation of fish and fish products, be fit for purpose and have adequate capacity. The premises must be able to be

effectively cleaned, accessed, inspected and monitored, there must not be harbourage of pests and to the extent practicable, contaminants such as dirt, dust, fumes and smoke must be excluded. Also, the premises and their construction must not permit, to the extent that is practicable, the entry of pests and minimise the accumulation of contaminating substances.

Clause 3

205. This clause provides that the construction of premises and equipment, including any alterations and additions, must comply with the plans and specifications in relation to which the establishment was registered.

Clause 4

206. This clause provides that the areas around buildings, roads and other areas serving buildings must be paved, graded, landscaped or otherwise treated to minimise the risk of dust, pests or contaminants entering food handling and storage areas. These areas must also be adequately drained.

Clause 5

207. This clause provides specific requirements for floors. Floors must be constructed in a way that is appropriate for the preparation of fish and fish products at the premises. Further detail is provided to indicate what is appropriate in food handling areas. An exemption is provided for floors in areas of ships that are not enclosed and to areas used for cleaning vehicles. Floors for vehicle-cleaning areas have to be able to be effectively cleaned, drained and have impervious surfaces.

Clause 6

208. This clause provides that walls and ceilings be provided where they are necessary to protect fish and fish products from contamination and their construction must be appropriate for the activities conducted at the establishment. Further detail is provided to indicate what is appropriate in food handling areas. An exemption is provided for walls and ceilings in areas for cleaning vehicles. These areas must have walls and ceilings that can be effectively cleaned and have impervious surfaces.

Clause 7

209. This clause provides that the fixtures, fittings and equipment (including refrigeration units and storage facilities) must facilitate the preparation of fish and fish products that are fit for human consumption. They must be fit for purpose and have sufficient capacity for the maximum quantity of fish and fish products prepared at the establishment at any one time. For example, refrigerators need to have adequate capacity.

Clause 8

210. This clause provides construction requirements for fixtures, fittings and equipment. For example they must be constructed so that they do not cause contamination of fish and fish products, be able to be easily and effectively cleaned, and if necessary, sanitised if there is a risk they will cause contamination of fish and fish products. Special requirements apply to food contact surfaces.

Clause 9

211. This clause provides requirements for container system units and food carrying compartments of vehicles used for transporting fish and fish products. For example the container system units and food carrying compartments of vehicles must protect fish and fish products if there is a likelihood of it being contaminated during transport, and be able to be easily and effectively cleaned and, if necessary, sanitised. Special requirements apply to food contact surfaces of container system units and food carrying compartments.

Clause 10

212. This clause provides that measuring instruments that are relevant to whether the requirements of the new Orders are complied with must enable measurements to be accurately calculated using standard units of measurement, meet appropriate tolerances levels and are easily read. All temperature measuring devices must be accurate to +/- 1°C. Refrigeration chambers and other equipment used for controlling food temperature must have a temperature measuring device that is readily accessible.

Clause 11

213. This clause provides that there are adequate storage facilities for items that could contaminate fish and fish products, for example, chemicals, clothing and personal belongings and that these facilities are located where there is no risk of the stored items contaminating fish and fish products.

Division II—Cleaning and sanitising facilities

Clause 12

214. This clause provides that the premises must have appropriate facilities for cleaning and sanitising premises and equipment. Facilities for cleaning and sanitising equipment that come into contact with fish and fish products must be located where they are readily accessible by food handlers.

Clause 13

215. This clause provides that premises must have hand-washing facilities that meet specified criteria, such as an adequate supply of warm or hot and cold potable water over

a sink. Hand-washing facilities must be located near or adjacent to areas where food handlers work if there is a risk that their hands could be a source of contamination.

Division III—Amenities

Clause 14

216. This clause provides that premises must have adequate, conveniently located amenities for use by food handlers. The amenities must be separate from and not open directly into food handling areas and must be well lit and ventilated. They must not be a source of contamination. Hand washing facilities must be provided in or adjacent to toilets. The clause sets out some specific requirements for hand washing facilities including suitable hand sanitising preparation.

Division IV—Essential services

Clause 15

217. This clause provides that premises must have the essential services necessary to produce fish and fish products that are fit for human consumption.

Clause 16

218. This clause provides that premises must have a system for disposing of, or treating if necessary, sewage and other waste for example, storm water. It must have sufficient capacity to treat peak loads, prevent the sewage and waste polluting the establishment's water supply or fish and fish products and ensure that discharge for example, condensate from refrigeration equipment, is contained and directed to the drainage system.

Clause 17

219. This clause provides that premises have facilities for separation and storage of waste and inedible material prior to its removal. The facilities must adequately contain the volume and type of waste and inedible material. The facilities and containers used for the waste and inedible material must prevent access by pests, prevent leakages that could pollute the water supply or fish and fish products, and must be clearly identified as for use for waste/inedible material storage.

Clause 18

220. This clause provides that premises have sufficient natural or artificial light for the activities conducted at the establishment. The lighting system must be constructed so that it is not a source of contamination of fish and fish products. For example, light bulbs suspended over food handling areas should be protected.

Clause 19

221. This clause provides that premises have adequate ventilation (either natural or mechanical) to effectively minimise the risk of airborne contamination of fish and fish products (and where appropriate to control ambient temperature).

Clause 20

222. This clause provides that premises must have a supply of potable water at a volume, pressure and temperature that is adequate for the purposes for which water is used. Potable and non potable water must be supplied in separate lines. Recirculated water must have a separate distribution system that can be readily identified.

PART 2— APPLICATION OF SCHEDULE: CATCHER BOATS, REGISTERED FISHING VESSELS AND LIVE FISH PACKING ESTABLISHMENTS

Clause 21

223. This clause provides that Part 1 of this Schedule does not apply to catcher boats – that is, that the requirements relating to structure, cleaning and sanitising, amenities and essential services are not applicable. The clause specifies that catcher boats and their construction must be appropriate for use, able to effectively cleaned, to the extent practicable not permit entry or harbourage of pests, have facilities and equipment to prevent fish contamination and ensure requirements for placing fish under temperature controls are met.

Clause 22

224. This clause enables the Secretary to give the occupier of a registered fishing vessel a notice specifying that one or more specific requirements for hand washing facilities, for amenities, for sewage and waste system discharge to the drainage system do not apply to the occupier. The notice may only be given if the Secretary is satisfied that it is impractical to comply with the requirement and non-compliance will not jeopardise the fitness for human consumption of fish prepared on the registered fishing vessel.

Clause 23

225. This clause enable the Secretary to give the occupier of a live fish packing establishment a notice specifying that one or more specific requirements for hand washing facilities, for amenities, for sewage and waste system discharge to the drainage system do not apply to the occupier. The notice may only be given if the Secretary is satisfied that it is impractical to comply with the requirement and non-compliance will not jeopardise the fitness for human consumption of fish prepared at the establishment.

Schedule 4 Operational hygiene

226. This Schedule specifies hygiene requirements that must be complied with in establishments and during transport to ensure that fish and fish products for export as food are fit for human consumption. Hygiene controls for premises, equipment and processing inputs and personal hygiene and health requirements must be addressed, with the intent of ensuring that fish and fish products are not contaminated. Part 2 sets out when the requirements of Part 1 apply to catcher boats to reflect the differences between catcher boats and other establishments, and the comparative risk to the fitness for human consumption of the fish and fish products.

PART 1—GENERAL REQUIREMENTS

Division I—Hygiene controls for processing

Clause 1

227. This clause provides that there must be operational controls in place that to ensure the hygienic production of fish and fish products for export as food. While under clause 2 of Schedule 2 these controls must be documented in the approved arrangement, under clause 3 of Schedule 2 they do not necessarily form part of the HACCP Plan.

Clause 2

228. This clause provides for a standard of cleanliness for establishments and equipment.

Clause 3

229. This clause provides that floors, walls, ceilings, other fixtures, fittings and equipment in food handling areas, areas used for cleaning and sanitising equipment, vehicles and protective clothing, and personal hygiene amenities are cleaned and sanitised whenever it is necessary to prevent contamination of fish and fish products. Equipment and food contact surfaces must also be cleaned and sanitised whenever it is necessary to prevent contamination. Surrounds of establishments must be cleaned to ensure they are not a source of contamination. Premises and equipment must be maintained in a good state of repair and working order to the extent necessary to facilitate the hygienic preparation of fish and fish products.

Clause 4

230. This clause provides that container system units, food carrying compartments and vehicles used to transport fish and fish products, as well as equipment used to handle fish and fish products during loading and transport must be cleaned and sanitised whenever it

is necessary to prevent contamination. They must also be maintained in a good state or repair and working order to the extent necessary to ensure fitness for human consumption is not adversely affected during transport.

Clause 5

231. This clause provides that effective measures must be taken to ensure that fish and fish products are not contaminated by environmental contamination for example, airborne or waterborne contamination.

Clause 6

232. This clause provides that live animals are prohibited from entering establishments. Fish intended for processing are of course excluded, as are guard dogs and assistance animals in specified areas of the establishment.

Clause 7

233. This clause provides that there must be controls in place to prevent, to the extent practicable, the access and harbourage of pests in premises and equipment.

Clause 8

234. This clause provides that hazardous substances must not contaminate fish and fish products, and must be stored in containers that are labelled (including a warning statement about their toxicity and use), and not used for any purpose other than the storage of hazardous substances.

Clause 9

235. This clause provides that substances that could contaminate fish and fish products must not be stored or used in food handling areas unless they are needed for hygiene or preparation purposes.

Division II—Hygiene controls for processing

Clause 10

236. This clause provides that effective measures must be taken to prevent contamination of fish and fish products, to minimise the growth of pathogens that could adversely affect the fitness for human consumption of fish and fish products given the conditions under which they are to be stored, handled and transported and ensure that the fitness for human consumption of the fish and fish products is otherwise not adversely affected. For example, fish and fish products that are not ready for human consumption must not be allowed to contaminate fish and fish products that are ready for human consumption.

Clause 11

237. This clause provides that measuring instruments must be accurately calibrated. This only applies to measuring instruments that are relevant to whether the requirements of the new Orders are complied with.

Clause 12

238. This clause provides that the approved arrangement must validate the effectiveness of refrigeration chambers.

Clause 13

239. This clause provides that ingredients must be fit for the purpose for which they are used and labelled, stored and handled in such a way that ensures their identity can be ascertained.

Clause 14

240. This clause provides that all water used to prepare fish and fish products must be potable, including reused water, recirculated water, and ice. However, if the water is only used in circumstances where there is no risk of contamination of fish and fish products and the approved arrangement expressly provides for the use of non-potable water, then the requirement to use potable water does not apply.

Clause 15

241. This clause provides the microbial limits for water required to be potable.

Clause 16

242. This clause enables the use of clean seawater at premises used to prepare fish (other than crocodiles) instead of potable water, as long as the approved arrangement expressly provides for the use of the seawater. The sea water must not adversely affect the fitness for human consumption of the fish.

Clause 17

243. This clause provides that the reticulation system must prevent the back siphonage of used or contaminated water. Non-potable water reticulation systems must not contaminate potable and water reticulation systems.

Clause 18

244. This clause provides that steam used in contact with fish or fish products or food contact surfaces must be free from substances which may be hazardous to health, or contaminate the fish or fish products.

Clause 19

245. This clause provides that compressed air and other processing gases that come into contact with fish or fish products or food contact surfaces must be free from substances which may be hazardous to health, or contaminate the fish or fish products.

Division III—Personal hygiene and health requirements

Clause 20

246. This clause provides a definition of food handling area for the purposes of the Division. It is narrower than the definition in the interpretation provision in Part 1 of the new Orders as it is limited to areas used for exposed fish, fish products or ingredients.

Clause 21

247. This clause provides that persons must not work in a food handling area if there is any risk of them directly or indirectly contaminating fish and fish products with pathogens. The clause applies to persons that are known or are suspected to be suffering from, or a carrier of, a disease that could be transmitted through food. Any person who knows, or suspects, that they are suffering from such a disease must report this to a person in charge of operations at the establishment.

Clause 22

248. This clause provides that a person who has a condition and who handles fish and fish products must take all practical measures to prevent the condition resulting in contamination of fish and fish products. A condition is defined in the new Orders to mean a condition that could affect the fitness for human consumption of fish and fish products and includes infected skin lesions and the like. Coverings used for conditions must be effective in preventing contamination of fish and fish products, and must be waterproof, firmly secured and conspicuous in colour.

Clause 23

249. This clause provides that persons in food handling areas must take all practicable measures to ensure that their body, or anything from their body, or anything they are wearing does not contaminate fish and fish products or food contact surfaces. Person in

food handling areas must take all practical measures to prevent unnecessary contact with fish and fish products and must ensure that outer clothing is of an appropriate level of cleanliness for the tasks being conducted.

250. This clause also specifies requirements in respect of a person's behaviour where it could result in contamination (such as eating, sneezing or coughing over unprotected fish and fish products or food contact surfaces) or could otherwise adversely affect fitness for consumption of the fish or fish products. Persons handling fish and fish products must wash, dry and sanitise their hands on entering food handling areas, immediately after using the toilet, after touching the nose or mouth, after handling contaminated material and whenever necessary to avoid contamination of fish and fish products.

Clause 24

251. This clause provides that personal effects and clothing must not be stored in food handling areas.

Clause 25

252. This clause provides that persons in food handling areas must wear protective clothing (including hair covering) and footwear. The protective clothing and footwear must be suitable (including appropriately designed) to prevent anything from the person's body contaminating fish or fish products and be maintained in a clean and sanitary condition so as not to present a risk of contaminating fish or fish products or food contact surfaces.

PART 2—APPLICATION OF SCHEDULE: CATCHER BOATS

Clause 26

253. This clause provides that Part 1 of this Schedule does not apply to catcher boats – that is, hygiene controls for premises and equipment, hygiene requirements for processing and personal hygiene and health requirements are not applicable. Catcher boats and the equipment on board must be maintained to the extent necessary to ensure that the fitness for human consumption of fish is not adversely affected, procedures must be in place to ensure that the fitness for human consumption of fish is not adversely affected, persons on the boat must not engage in any behaviour which could result in the contamination of the fish, measures must be taken to prevent entry and harbourage of pests and live animals (other than fish) must not be permitted on board.

Schedule 5 Preparation and transport

254. The intent of this Schedule is to set standards to ensure fish and fish products are prepared and transported in a manner that ensures they are fit for human consumption.

PART 1—HARVESTING, SOURCING, DEPURATION, WET STORAGE AND KILLING

Division I—Harvesting and sourcing fish

Clause 1

255. This clause provides that fish for export as food must not be sourced from areas where there are reasonable grounds to believe that unacceptable levels of potentially harmful pathogens or harmful substances such as pesticides, heavy metals and other chemicals are present.

Clause 2

256. This clause provides that fish that are dead at the time of harvest or are diseased must not be prepared for export. Additionally, all practical measures for the harvesting fish of a species that can be affected by ciguatoxin, that are necessary to minimise the risk of fish being affected by ciguatoxin, must be taken.

Clause 3

257. This clause provides that shellfish for export must only be harvested in accordance with the Australian Shellfish Quality Assurance Program – Export Standards, which places restrictions on harvesting of shellfish (such as oysters) based on water quality. This restriction does not apply to scallops where the final product is only the adductor muscle or for shellfish from offshore locations.

Clause 4

258. This clause provides that shellfish must be identified by lot and kept separate from other lots of shellfish. Lot means a single species of shellfish harvested from a particular harvesting area and designed by a single harvest record. Shellfish must not be held in the same storage tank as other fish.

Clause 5

259. This clause provides that fish and fish products for export as food must be sourced from either a registered establishment, or an approved unregistered establishment, or an establishment to which the new Orders do not apply under orders 23 or 24. These latter establishments are those that only grow, relay, harvest, hold, kill, bleed, gill, gut, head, sort, grade, wash or ice for transport fish or that only kill and bleed crocodiles.

Clause 6

260. This clause provides that fish (other than crocodiles) for export as food sourced from establishments to which the new Orders do not apply and from catcher boats must

only be sourced from establishments with disease management controls in place and effective measures in place to ensure that: fish are not fed or treated with substances that could affect the fitness for human consumption of the fish, that the operations are conducted under conditions that do not adversely affect the fitness for human consumption of the fish; and that fish are placed under temperature controls as soon as practicable after harvest. In the case of shellfish, the harvester must have also been given approval by the relevant State or Territory authority.

Clause 7

261. This clause provides that fish harvested at an establishment to which the new Orders apply must be healthy at the time of harvest, and not fed or treated with substances that could affect the fitness for human consumption of the fish and the operations are conducted under hygienic conditions. In the case of shellfish, the harvester must have also been given approval by the relevant State or Territory authority.

Division II—Depuration of shellfish

Clause 8

262. This clause requires shellfish to be depurated unless they are sourced from particular harvest areas, as defined by the Australian Shellfish Quality Assurance Program – Export Standards.

Clause 9

263. This clause requires shellfish for depuration to be clean and practically free of mud. Depurated shellfish must be kept separated from undepurated shellfish.

Clause 10

264. This clause provides standards for water used for depuration including microbiological criteria.

Clause 11

265. This clause contains requirements designed to ensure the effectiveness of depuration.

Division III—Wet storage of shellfish

Clause 12

266. This clause provides requirements for shellfish held in wet storage. The shellfish must be clean and handled and stored in a manner that ensures that their physiological activity is not adversely affected. Unless water is sourced from certain areas classified

under the Australian Shellfish Quality Assurance Program - Export Standard it must meet specified microbiological criteria. If a multiple tank system with a common water supply is used for the wet storage, it is necessary to disinfect the water before used for shellfish.

Division IV—Sourcing, killing and initial processing of crocodiles

Clause 13

267. This clause provides when crocodiles and crocodile meat must only be sourced from an establishment with disease management controls in place and effective measures in place to ensure that crocodiles are not fed or treated with substances that could affect the fitness for human consumption of the meat, that the operations are conducted under hygienic conditions and that the crocodile meat is placed under temperature controls as soon as practical after killing.

Clause 14

268. This clause provides standards for killing, bleeding, skinning, eviscerating and removal of meat from crocodiles to minimise or eliminate the risk of contamination of the crocodile meat. Moribund or diseased crocodiles and crocodiles that have been fed with certain substances or rejected for slaughter for human consumption must not be killed for meat for export as food. Killing, bleeding and the like must be done in a way that minimises contamination. Contact between carcasses and carcasses parts of different crocodiles during skinning, evisceration and removal of meat must not occur, and crocodile meat must not be contaminated during processing through contact with defined parts of the carcase and carcase parts or other foreign matter.

Clause 15

269. This clause provides standards for post mortem controls for crocodiles. Effective measures must ensure that an accurate post mortem disposition can be applied and only disease free meat and meat that is fit for human consumption is processed for human consumption. The criteria for the post mortem dispositions referred to in the national standard for crocodile meat for human consumption must be followed.

Clause 16

270. This clause provides for the condemnation or downgrading to animal food of diseased crocodile carcasses or carcase parts. Condemned carcasses or carcase parts must be identified as such, and denatured or destroyed to prevent their use for either human consumption or animal food.

PART 2 – TEMPERATURE CONTROLS

Clause 17

271. This clause provides that fish must be placed under temperature controls as soon as practicable after harvest (or, for crocodiles, as soon as practicable after killing).

Clause 18

272. This clause provides temperature requirements for chilling fish and fish products. If alternative temperature controls are used the approved arrangement must validate that these controls minimise the growth of pathogens that could adversely affect the fitness for human consumption of the fish and fish products.

Clause 19

273. This clause provides that the chilling must be performed with sufficient rapidity to minimise the growth of pathogens that could adversely affect the fitness for human consumption of the fish and fish products. The rate of chilling must be validated in the approved arrangement.

Clause 20

274. This clause provides specific temperature controls for crocodile meat that is exposed to, or suspected of being infested with *Spirometra erinacei* (a parasite). The meat must be held at minus 12°C for a minimum of 5 days, or subjected to an equivalent process that can be shown to achieve the same outcome – namely a destruction of viable *Spirometra erinacei*.

Clause 21

275. This clause provides temperature requirements for freezing as well as providing for alternative temperatures to be used, where the alternative temperature can be shown to minimise the growth of pathogens that could adversely affect the fitness for human consumption of the fish and fish products. In addition, the freezing must be done in a timeframe that minimises the growth of pathogens. The rate of freezing must be validated in the approved arrangement.

Clause 22

276. This clause provides the temperature requirements for maintaining fish and fish products during storage, handling, loading and transport. Again where temperature controls other than those that are prescribed are used the approved arrangement must validate these controls minimise the growth of pathogens that could adversely affect the fitness for human consumption of the fish or fish products.

Clause 23

277. This clause provides that fish and fish products for export as food must be thawed and tempered under temperature controls that ensure that the growth of pathogens that could adversely affect the fitness for human consumption of the fish or fish products is minimised. Again the approved arrangement must validate the ability of the tempering or thawing process to achieve this outcome.

PART 3—PRESERVING FISH AND FISH PRODUCTS

Division I—General

Clause 24

278. This clause provides that any process applied to fish or fish products for the purpose of extending their shelf life must either destroy or prevent the growth of pathogens, or reduce their growth to an acceptable level. The approved arrangement must validate the ability of the process to achieve this outcome.

Division II—Thermal processing of canned fish products

Clause 25

279. This clause provides that canning must result in commercially sterile fish and fish products and the approved arrangement must validate the ability of the thermal process to achieve this outcome.

Clause 26

280. This clause provides that if the thermal process is designed from simulated manufacturing conditions, the results must first be verified in the actual equipment and under the conditions of the commercial operations to be used.

Clause 27

281. This clause provides that the canning process and the material used for canning must prevent contamination affecting the contents of the can and requires inspection and evaluation of cans in accordance with specified requirements of the relevant Codex standard.

Clause 28

282. This clause provides that cans must be cooled and handled after thermal processing in a manner that prevents the introduction of pathogens that could affect the commercial sterility of the contents of the can.

Clause 29

283. This clause sets out the requirements for water used for cooling canned product. Although the can is sealed at this stage, there is sufficient evidence to suggest that water can still enter the can whilst it is hot. Therefore, water used for cooling must be potable and the method used for ensuring it is potable must be specified in the approved arrangement. If chlorination is used there must be free residual chlorine in the water after contact with the can. In addition, there are microbial limits for potable water in Schedule 3.

Clause 30

284. This clause provides for identification and segregation of cans that have been thermally processed from cans that have not been processed to ensure that unprocessed cans are not exported.

PART 4—PACKAGING AND IDENTIFICATION

Clause 31

285. This clause provides that packaging, tags and labels and other material for use for fish and fish products for export as food must be fit for their intended use. The clause also provides that the manner in which the fish and fish products are packaged, tagged, labelled and identified must not contaminate the fish and fish products and must effectively protect them from contamination and deterioration during subsequent storage, handling, loading and transport.

PART 5—STORAGE HANDLING AND LOADING

Clause 32

286. This clause provides that fish and fish products for export as food must be protected from the likelihood of contamination during storage, handling and loading. Also, they must be stored, handled and loaded under environmental conditions that will not adversely affect their fitness for human consumption. An example of an environmental condition is humidity.

Clause 33

287. This clause provides that fish and fish products for export as food must not be loaded onto vehicles unless the vehicles and equipment comply with the applicable requirements of the new Orders.

PART 6—TRANSPORT

Clause 34

288. This clause provides that fish and fish products must be transported under temperature controls. Provision is made for alternative temperature controls. Additionally, fish and fish products for export as food must be transported under conditions that are necessary to ensure that their fitness for human consumption is not adversely affected during transport. There is also a specific requirement for live fish to be maintained alive and in a healthy condition during transport.

Clause 35

289. This clause provides that any official mark that has been applied to fish and fish products, their packaging or anything containing fish and fish products for export as food must be retained intact.

PART 7—FITNESS FOR HUMAN CONSUMPTION

Clause 36

290. This clause provides that establishments must have procedures in place for evaluating the fitness for human consumption of all fish and fish products and ingredients received into and processed at the establishment. A note is included to clarify that these procedures apply to fish and fish products and ingredients sourced from registered and unregistered establishments and also to imported fish and fish products.

Clause 37

291. This clause provides that fish and fish products that are not fit for human consumption must be clearly identified as not for export as food, be segregated and prevented from contaminating fish and fish products for export as food and must not be loaded for export. Fish and fish products that are not fit for human consumption need to be either disposed of, or treated so that they become fit for human consumption. This clause does not apply to manufacturing grade fish and fish product or animal food.

Clause 38

292. This clause provides that manufacturing grade fish and fish products must be clearly identified as manufacturing grade and not fit for human consumption. They must be kept separate from and not allowed to contaminate other fish and fish products for export as food.

Clause 39

293. This clause provides that fish and fish products that are required by the new Orders to be dealt with as not for export as food must be clearly identified as not for export as food and segregated and prevented from contaminating fish and fish products for export as food and must not be loaded for export. The clause also provides that the same requirements also apply to fish and fish products if their export permit is revoked or if the Secretary gives the occupier a written notice rejecting them for export.

Clause 40

294. This clause provides that fish and fish products that are not for export as food must be clearly identified as not for export as food and be kept separate from and not contaminate fish and fish products for export for human consumption.

Clause 41

295. This clause provides that animal food must be clearly identified as animal food and not for human consumption and be kept separate from and not contaminate food for export as food.

Clause 42

296. This clause provides that if fish or fish products are not eligible for all markets, the countries to which the fish or fish products are intended for export must be readily ascertainable. Whether the relevant importing country requirements specified in the applicable approved arrangement are met must also be readily ascertainable.

Schedule 6 Product standards

297. The intent of this Schedule is to set product standards for fish and fish products and ingredients to ensure their safety, and to identify appropriate methods of sampling and examination.

PART 1—PRODUCT STANDARDS FOR FISH, FISH PRODUCTS AND INGREDIENTS

Clause 1

298. This clause provides that fish and fish products for export as food (and their ingredients) must meet the standards for metal and non-metal contaminants, natural toxicants, agricultural and veterinary chemicals, food additives, processing aids, vitamins, minerals, added nutrients and other matters or substances set under the domestic standards of the Food Standards Code. This is achieved by direct reference to the Food

Standards Code. This clause also provides that fish and fish products and ingredients need not meet the domestic standards if the importing country authority specifies different standards, and these standards are met. In this case the applicable approved arrangement must document the importing country requirements and the controls used to ensure compliance with those requirements.

Clause 2

299. This clause provides that fish and fish products for export as food (and their ingredients) must meet the microbiological standards of the domestic standards of the Food Standards Code. This is achieved by direct reference to the Food Standards Code. This clause also provides that fish and fish products and ingredients need not meet the domestic standards if the importing country authority specifies different standards, and these standards are met. In this case the applicable approved arrangement must document the importing country microbiological limit standard and the controls used to ensure compliance with that microbiological limit.

Clause 3

300. This clause provides that that fish and fish products for export as food (and their ingredients) must meet the domestic standards of the Food Standards Code for foods produced using gene technology, irradiated or produced using any other process. This is achieved by direct reference to the Food Standards Code. This clause also provides that fish and fish products and ingredients need not meet the domestic standards if the importing country authority permits the use of gene technology, irradiation or other process and the requirements will be complied with. In this case the applicable approved arrangement must document the importing country requirements and the controls used to ensure compliance with those requirements.

PART 2—METHODS OF SAMPLING AND EXAMINATION

Clause 4

301. This clause provides that the sampling and examination of fish and fish products and ingredients for purposes of demonstrating compliance with the domestic microbiological standards must comply with the domestic standards. This is done by referencing the relevant Australian Standards and the Food Standards Code. This clause also provides that sampling and examination need not meet the domestic standards if the importing country authority specifies different requirements for sampling and examination and these requirements are met. In this case the applicable approved arrangement must document the importing country requirements and the controls used to ensure compliance with those requirements.

Schedule 7 Trade description

302. The intent of this Schedule is to set minimum requirements for trade descriptions, and to align with domestic requirements where possible.

PART 1—REQUIREMENT TO HAVE A TRADE DESCRIPTION

Clause 1

303. This clause provides that fish and fish products for export as food must have a trade description applied to their immediate container before they leave the establishment at which they are packed. The trade description must include the information listed in clause 4 of this Schedule.

Clause 2

304. This clause provides that unlabelled canned fish and fish products and unwrapped fish and fish products bulk loaded into container unit systems need not have a trade description applied at the time of leaving the establishment.

Clause 3

305. This clause provides that fish and fish products identified as not for retail sale need not have a trade description containing all the information required in clause 4, provided that all information required by clause 4 of this Schedule is applied to their outer container. The reason for this distinction is that fish and fish products for retail sale need to have the information required in clause 4 on the immediate container so that consumers have direct access to the information. However fish and fish products not for retail sale do not need to provide this information on each individual pack, rather it is appropriate to include it on only the outer carton.

PART 2—CONTENTS OF THE TRADE DESCRIPTION

Division I—Information requirements

Clause 4

306. This clause sets out the information that must be included in the trade description, namely a description of the fish or fish products, net contents, registration number, country of origin, list of ingredients, name and address of the exporter, occupier or consignee, lot identity and directions for use and storage.

Clause 5

307. This clause provides that cans of fish and fish products that do not contain a full trade description, as provided for in clause 2 of this Schedule, must be embossed or otherwise permanently marked with the letters “EX” followed by the registration number of the establishment. In addition a product cypher used to identify the product, the country of origin and lot identity must be embossed or otherwise permanently marked on the cans.

Division II—Description of fish

Clause 6

308. This clause provides that the scientific name and/or Australian fish name and the cut (whole, head on gilled and gutted, fillet etc.) or preservation type (eg. chilled, frozen, smoked etc.) must be included in the trade description for fish and fish products (other than crocodiles).

Division III—Ingredients

Clause 7

309. This clause provides that trade description must meet the labelling and naming of ingredient requirements of the relevant standard of the Food Standards Code. This ensures that the export standard for ingredient labelling is consistent with the domestic standard.

Clause 8

310. This clause provides that where a claim regarding the composition of fish or fish products is made or implied, a declaration needs to be made supporting this claim, and that declaration must be quantitative.

Division IV—Identifying the establishment

Clause 9

311. This clause provides that the registration number of the establishment must be clearly distinguishable as being the registration number (i.e. not included in a product cypher or lot identification).

Division V—Identifying the producer, exporter etc

Clause 10

312. This clause provides that if the name and address of the exporter or consignee is used and the exporter or consignee did not prepare the fish and fish products, then the words “packed for” or a statement of similar meaning must be included on the label.

Clause 11

313. This clause provides that where imported fish or fish products are repacked in Australia without being altered, in addition to all other trade description requirements in the new Orders, the words “packed by” must be included in the trade description, followed by the name and number of the registered establishment where the repacking takes place.

PART 3—MISCELLANEOUS

Clause 12

314. This clause provides that trade descriptions must be accurate, legible, prominent, conspicuous, not obscured, and securely applied.

Clause 13

315. This clause provides that additional information or pictures applied to fish and fish products for export as food must not be inconsistent with the information required under the new Orders to be contained in the trade description.

Clause 14

316. This clause provides that the trade description applied to packaging material or the outer container must not be inconsistent with the information required under the new Orders to be contained in the trade description.

Clause 15

317. This clause provides that where parts of the trade description are not in English, the non-English trade description (or parts thereof) must not be inconsistent with any part of the trade description that is in English.

Clause 16

318. This clause provides that a trade description cannot be altered or interfered with unless this is done by an authorized officer, or if an authorized officer gives approval in

writing for the alteration or interference, or if the applicable approved arrangements makes allowance for the alteration or interference.

Schedule 8 Identification, tracing systems, integrity and transfer

319. The intent of this Schedule is to require fish and fish products for export as food to be adequately identified, effectively traced, and if necessary, recalled. In addition, the intent is to ensure the integrity of the fish and fish products is maintained.

PART 1—GENERAL REQUIREMENTS

Clause 1

320. This clause provides that all establishments must have a system for tracing, identifying and if necessary, recalling fish and fish products prepared at the establishment.

Clause 2

321. This clause provides that the integrity of fish and fish products must be maintained. Integrity is defined in order 8 to mean that the identity of the fish and fish products in regard to any condition or restriction of Part 4 that may apply to them is readily ascertainable, and not lost or confused with that of any other fish or fish products.

Clause 3

322. This clause stipulates that fish and fish products for export as food must be derived from the species it is purported to be derived from. This requirement will not be met if fish from one species is substituted wholly or partly for fish of another species.

PART 2—SUPPLY AND PREPARATION

Clause 4

323. This clause provides that fish and fish products and ingredients must only be sourced from a supplier with a traceability system in place. A record must be made of the supplier of all fish and fish products and ingredients received at the establishment.

Clause 5

324. This clause provides that written records must be kept to ensure trace-back to individual lots of fish and fish products, and traceback to the supplier of the ingredients for each lot and the date of supply of the ingredients. These records should include a description of the fish and fish products, the quantity for each lot, the lot identity, the date of preparation and the date and place of harvest.

Clause 6

325. This clause provides that the outer container of fish and fish products for export as food must contain a description of the fish and fish products, the registration number of the establishment at which the outer container is packed, the quantity, the country of origin, and the lot identity.

PART 3—TRANSFER

Clause 7

326. This clause sets out the specific information that needs to be given to the consignee of fish and fish products for export that is despatched from establishments engaged in the preparation of fish and fish products.

327. The information must include the name, address and registration number of the despatching and receiving establishments, a full description of the fish and fish products sufficient to identify them, an indication of temperature controls under which the fish and fish products must be transported, the quantity and number of packages, and if the fish and fish products have been prepared to meet importing country requirements – the name of that country. The information must also include a declaration stating that the conditions and restrictions specified in orders 40 to 50 of these Orders and the importing country requirements identified in the approved arrangement are complied with for the fish and fish products, and a declaration stating that all information provided is true and complete.

328. This clause also specifies which of the above requirements are required to be given to the consignee when the fish and fish products are for export as animal food – with an indication of the temperature controls and the names of the importing countries not being necessary.

Clause 8

329. This clause provides additional requirements for shellfish. In this case the information given to the consignee must also include the name of the harvester and the harvesting area and the lease number and date of harvest.

Clause 9

330. This clause provides that for unlabelled cans of fish and fish products and unwrapped bulk loaded fish and fish products, any outstanding information required to comply with clause 4 of Schedule 7 with respect to the trade description must also be given to the consignee.

Clause 10

331. This clause provides that the information required to be given to the consignee does not apply to intra-company transfers (that is, where the occupier of the despatching and receiving establishment is the same person) provided the approved arrangement documents controls necessary to ensure that clause 1 of this Schedule (requirement to identify, trace and if necessary recall) will be complied with.

Clause 11

332. This clause provides that the declaration referred to in paragraph 7.1(g) and 7.1(h) of Schedule 8 must be signed and dated by the maker of the declaration and must be made by the occupier or a person who is designated in the approved arrangement as a person who may make such a declaration on behalf of the occupier. The declaration cannot be false, misleading or deceptive, and there must be a sound basis for making the declaration.

Clause 12

333. This clause provides that the information is taken to be given to the consignee if it is in writing and given to the consignee at the time of despatch or accompanies the fish and fish products during despatch.

Clause 13

334. This clause provides that if fish and fish products are received without the required information or if the information is incomplete or inaccurate, the occupier must notify an authorized officer and must hold the fish and fish products under conditions of security and not dealt with further unless an authorized officer gives written approval. The fish and fish products must be dealt with as not for export as food.

Clause 14

335. This clause provides that the identification of fish and fish products must not be lost during transportation.

Schedule 9 Export documentation

336. The intent of this Schedule is to set requirements for applying for and issuing export permits and government certificates, and to provide for the systems used to issue permits and certificates. Export permits are required to export fish and fish products from Australia, whereas a government certificate is required by an importing country authority to import goods. Not all importing country authorities require government certificates for all fish and fish products.

PART 1—EXPORT PERMITS

Division I—Application for an export permit

Clause 1

337. This clause provides that an application for an export permit must be in the form approved by the Secretary, and given to the Secretary.

Clause 2

338. This clause provides for the information required in an application for an export permit. The application must include details of the exporter, establishment registration number, preparation dates, country of origin, details of consignee, port or airport of loading, departure date, flight number or ship details, port or airport of loading, date of departure, airline flight or name of the ship and voyage number, country of final destination, net contents, number and type of packages, description of fish or fish products and other information required.

Clause 3

339. This clause provides that an exporter must make a declaration in the export permit application that they are in possession of a declaration of compliance from the occupier of the establishment that prepared (other than merely stores, handles or loads) the fish or fish products, or have written verification from an authorized officer. This clause provides an important link between the processing of the fish and fish products and the information contained on the application for an export permit.

Clause 4

340. This clause provides that the application for an export permit must contain a statement that all information given in the application is true and complete.

Division II—Declaration of compliance made under an approved arrangement

Clause 5

341. This clause provides that a declaration of compliance referred to in clause 3 of this Schedule must only be made if the approved arrangement provides for the making of declarations of compliance for the fish and fish products concerned. The declaration must only be made by the occupier or by a person who is designated in the approved arrangement as a person who may make such a declaration on behalf of the occupier.

Clause 6

342. This clause provides that a declaration of compliance must identify the fish and fish products, indicate that they comply with the appropriate conditions and restrictions (see orders 40 to 50 of the new Orders), state that the information is true and correct, and be signed and dated.

Clause 7

343. This clause provides that a declaration of compliance must not be false, misleading or incomplete, or be made if there is no sound basis for making it.

Division III—Verification and inspection by an authorized officer

Clause 8

344. This clause provides that where an application is made and there has been an opportunity to inspect the fish and fish products and an authorized officer has reasonable grounds to believe that the conditions and restrictions on export have been met, they may give a written verification to this effect.

Clause 9

345. This clause provides that an authorized officer may conduct inspections, examinations and take samples as necessary for the purpose of making the verification.

Division IV—Permission to export

Clause 10

346. This clause provides an explanation of this Division. The Division contemplates the issue of export permits by:

- a person who is designated in an establishment's approved arrangement as a person who may issue export permits for fish and fish products that are last prepared (other than merely stored, handled or loaded) by the establishment; or
- a person who is approved by the Secretary as an approved export permit issuer; or
- the Secretary.

The Division distinguishes the different rules that apply when export permits are generated using EXDOC or are issued without using EXDOC.

Clause 11

347. The clause does not apply to an export permit generated as a result of the operation of the AQIS export computer operating system EXDOC or to an export permit that is given by the Secretary under clause 14 of this Schedule.

348. This clause provides for the issue of export permits under an approved arrangement where the occupier of the establishment is also the exporter of fish and fish products that are last prepared (other than merely stored, handled or loaded) at the establishment. The occupier's approved arrangement must also allow for the issue of an export permit by the occupier and designate each person who has management responsibilities for export inspection procedures as a person who may make declarations of compliance and issue export permits on behalf of the occupier. The approved arrangement must also contain export inspection procedures that include the making of declarations of compliance.

349. This clause specifies that Division 1 does not apply to export permits issued under this clause and requires that the export permit must contain:

- all of the information required by clause 2 of this Schedule; and
- a declaration of compliance; and
- a statement that all information in the export permit is true and complete.

350. This clause provides that the occupier must give a copy of each permit issued to the Secretary within 3 working days after the export of the fish and fish products concerned.

Clause 12

351. The clause does not apply to an export permit generated as a result of the operation of the AQIS export computer operating system EXDOC or to an export permit that is given by the Secretary under clause 14 of this Schedule.

352. This clause provides that an approved export permit issuer may issue export permits. This clause also specifies that Division 1 does not apply to export permits issued under this clause and sets out the requirements that the export permit must contain:

- all of the information required by clause 2 of this Schedule; and
- a declaration that the approved export permit issuer is in possession of a declaration of compliance; and
- a statement that all information in the export permit is true and complete.

353. This clause provides that the approved export permit issuer must give a copy of each permit issued to the Secretary within 3 working days after the export of the fish and fish products concerned.

Clause 13

354. This clause applies where the export permit is generated using EXDOC and enables the issue of permits under an approved arrangement or by an approved export permits issuer to occur using EXDOC.

355. The clause requires the Secretary to take all reasonable steps to ensure that the computer system does not result in the issue of an export permit unless there are reasonable grounds to believe that:

- the application for an export permit has been given to the Secretary and an authorized officer has had an opportunity to inspect the fish and fish products; and
- the application is complete; and
- a declaration for compliance has been made; and
- the conditions and restriction on export have complied with; and
- the information in or in connection with the application is accurate and complete and has a sound basis.

Clause 14

356. This clause applies to export permits issued by the Secretary that are not generated using EXDOC. The clause provides that the Secretary may give an export permit if:

- an application is given to the Secretary and an authorized officer has had an opportunity to inspect the goods; and
- the application is complete; and
- a declaration of compliance has been made; and
- the Secretary is satisfied that the conditions and restrictions on export have been complied with and that the information given in or in connection with the application is true and complete and there is a sound basis for the information.

Clause 15

357. This clause provides the grounds for the Secretary approving an arrangement as it relates to the issuance of export permits. This clause also allows the Secretary to require a variation to an arrangement if the Secretary is not satisfied that the controls are adequate. It also sets out the grounds on which the Secretary may suspend or revoke an arrangement as it relates to the issuance of export permits.

Clause 16

358. This clause provides the administrative process for applying for approval to issue export permits as contemplated in clause 12 of this Schedule.

359. The clause sets out what the application must contain and specifies that the Secretary may, in order to determine the application, require the applicant provide further information. If the Secretary does not decide the application within 60 days of receiving it (not including any period between requesting further information and the applicant meeting the request) the Secretary is taken to have refused the application.

360. The clause sets out the matters on which the Secretary must be satisfied before giving the applicant approval to issue export permits. If the Secretary decides not to give approval the Secretary must give written notice of the reasons for the decision and advise

the applicant of the right to apply for reconsideration. This right of reconsideration is provided for in Part 16 of the PGGO 2005.

361. The clause enables the Secretary to impose conditions and to vary and revoke the conditions. The clause sets out the purposes for which the conditions can be imposed.

362. The clause sets out the grounds on which the Secretary can revoke the approval of a person as an approved export permit issuer. This clause sets out when the revocation takes effect. This clause also requires the Secretary to give written notice to the applicant of the reasons for the decision to revoke and to advise the applicant of the right to apply for reconsideration. This right of reconsideration is provided for in Part 16 of the PGGO 2005.

Clause 17

363. This clause provides that an export permit must not be given if the Secretary has reasonable grounds to believe that a condition or disease is present that could affect the acceptability of the product to the importing country or that the export of the fish and fish products could result in trade being adversely affected.

364. This clause also provides that an export permit need not be given if the Secretary has reasonable grounds to believe an importing country requirement has not been met or the exporter has failed to provide assistance during audit or has failed to comply with a requirement of the new Orders applying to the exporter.

Clause 18

365. This clause provides that the Secretary must take reasonable steps to ensure that each export permit is given a unique identifying number.

Clause 19

366. This clause provides that the Secretary may at the written request of the exporter vary an export permit to correct any error or update any information on the face of the permit.

367. The Secretary may by giving notice to the exporter revoke a permit, if the Secretary has reasonable grounds to believe that:

- a condition or restriction on export has not been complied with; or
- an importing country requirement has not been met; or
- there is a risk the fish or fish products have deteriorated or are likely to deteriorate, or are likely to be unfit for human consumption; or
- the intent to export is abandoned; or
- information given is inaccurate or incomplete or does not have a sound basis; or
- a condition or disease could affect the acceptability of the product to the importing country; or

- the export could result in trade being adversely affected; or
- the exporter has failed to provide assistance during audit or has failed to comply with a requirement of the new Orders applying to the exporter.

Clause 20

368. This clause provides that an export permit takes effect when issued or given and that an export permit ceases to have effect when it is revoked, or in any other case, after 28 days after the day it is issued.

Clause 21

369. This clause provides that if an export permit is inconsistent with a written notice of a direction given by an authorized officer, then the permit is of no effect, to the extent of the inconsistency.

PART 2—GOVERNMENT CERTIFICATES

Clause 22

370. This clause provides that application may be made for a government certificate in respect of fish or fish products to be imported into the country. The Secretary may accept information given in an application for an export permit as satisfying any requirement to give the same information in relation to the government certificate.

Clause 23

371. This clause provides that the Secretary may issue a government certificate if satisfied that the specified conditions and restrictions, importing country requirements and any matters specified on the certificate have been met.

Clause 24

372. This clause provides for restrictions on issuing government certificates. A certificate must not be issued if the Secretary is satisfied that an export permit has not been given or ceases to have effect, or the information given in relation to the application is inaccurate, incomplete or has no sound basis. A certificate must not be issued if the Secretary is satisfied that a condition or disease is present that may make the fish or fish products unacceptable to the importing country or that the export could result in trade being adversely affected.

373. This clause provides that a government certificate need not be issued if the Secretary is satisfied that the exporter has failed to provide assistance during audit or has failed to comply with a requirement of the new Orders applying to the exporter.

374. This clause provides that a government certificate must not be issued stating that manufacturing grade fish and fish products comply with the requirements of Schedule 6 of the new Orders.

375. This clause provides that a government certificate must not be issued stating that animal food complies with the requirements of the new Orders. However, a government certificate may be issued for animal food that describes the nature or condition of the goods.

PART 3—GIVING INFORMATION OR DOCUMENTS ABOUT EXPORTS

Clause 25

376. This clause provides that, for the purposes of section 24A of the Act, the EXDOC Operating System and the EXDOC Exporter Software Interface System and any other specified software operating system is the system for giving documents or information in relation to the export of fish and fish products. This clause sets out when export permits and government certificates must be applied for or issued using EXDOC.

377. In exercising the requirements under this clause, the Secretary must in respect of the giving or issuing of documents take into account any special needs of a person with a disability.

Clause 26

378. This clause provides that, if the EXDOC system is not in operation, the Secretary will prescribe in writing the manner in which the information must be given.

Clause 27

379. This clause provides that electronic transmissions made to a person other than the Secretary must be transmitted using the approved identifying code for that person.

Clause 28

380. This clause provides that electronic transmissions made to the Secretary must be transmitted using the approved identifying code for the person carrying out the transmission.

Clause 29

381. This clause provides that the requirements of clauses 25 to 28 of this Schedule are specifications for the purpose of section 24A of the Act. Section 24 A relates to the electronic transmission of information and documents.

Clause 30

382. This clause provides that, to satisfy the requirements of this Schedule, the Secretary must take all reasonable steps to ensure that a person is given an identifying code for use in electronic transmissions.

Schedule 10 Approved auditors

383. The intent of this Schedule is to provide for the approval of auditors.

PART 1—APPROVED AUDITORS

Division I—Register of approved auditors

Clause 1

384. This clause provides that a register of approved auditors must be kept by the Secretary and must be readily accessible to members of the public. The clause lists the information that must be contained in the register.

Division II—Approval of auditors

Clause 2

385. This clause provides that an individual may apply for approval as an approved auditor. The written application must include evidence of the applicant's qualifications, details of auditor work experience, and documented procedures for the conduct of audits. The application must specify the kinds of audits in relation to which approval is being sought.

Clause 3

386. This clause provides that the Secretary may request that the applicant provide additional information or documents, or that the applicant submit to an assessment by interview, audit or written examination.

Clause 4

387. This clause provides that if within 30 days of receiving the application the Secretary has not decided the application it is taken to be refused. However, if the Secretary makes a request under clause 3 the time taken for the request to be met is not included in the 30 days.

Clause 5

388. This clause provides that the Secretary may approve an applicant as an auditor, provided that the Secretary is satisfied that: the applicant has the necessary knowledge, training, skills and experience; that the audits will be objective, fair and accurate; that the applicant will comply with requirements in the new Orders which relate the conduct of audits and audit reporting; and that the applicant is a fit and proper person. The Secretary may take into account any perceived or real conflict of interest. The approval may be limited to a particular kind of audit.

Clause 6

389. This clause provides that the Secretary need not approve an applicant where an amount payable to the Department is owed to the Commonwealth, or a false, misleading or incomplete statement has been made, or where there is no sound basis for making a statement.

Clause 7

390. This clause provides that where the Secretary decides not to approve an applicant, the applicant must be given a notice in writing that explains the reasons for the decision, and the right to apply for reconsideration of the decision. This right of reconsideration is provided for in Part 16 of the PGGO 2005.

Clause 8

391. This clause provides that the approval may be subject to conditions. These conditions can be imposed at the time of approval, or imposed at a later point in time. The conditions must be for the purpose of ensuring that matters in subclauses 5.1(a) to (d) of this Schedule are met. These matters are: the applicant has the necessary knowledge, training, skills and experience; that the audits will be objective, fair and accurate; and that the applicant will comply with requirements in the new Orders which relate the conduct of audits and audit reporting.

Clause 9

392. This clause provides that the approval has a timeframe. The approval lasts for 12 months from the day the approval is given, or in the case where fees apply, from the day the fee is paid.

Clause 10

393. This clause provides that the competence of an approved auditor may be assessed by the Secretary. This assessment may occur as often as the Secretary deems necessary. The assessment may include an examination of audit reports prepared by the auditor, or an audit of an establishment where an audit has been conducted by the approved auditor in the last six months, or by observing the auditor during an audit.

Division III—Revocation of approval of auditors

Clause 11

394. This clause provides that the Secretary may revoke the approval of an auditor. The revocation may occur if the Secretary is satisfied that the applicant is not a fit and proper person. It may also occur if the Secretary has reasonable grounds to believe that:

- the auditor does not possess the necessary knowledge, training, skills or experience or has failed to show reasonable competence in audit work; or
- an audit conducted or an audit report prepared by the auditor is not objective, independent, fair or the like; or
- the auditor has failed to comply with the requirements of the new Orders that apply to audits and audit reports; or
- the auditor has in specified instances made a statement which is false, misleading or incomplete, or where there is no sound basis for making the statement.

The Secretary may also take into account perceived or real conflicts of interest.

395. When revoking the approval of an auditor, the Secretary must give the person a notice in writing, explaining the reasons for revocation and the right to apply for reconsideration of the decision. This right of reconsideration is provided for in Part 16 of the PGGO 2005.