

Fish Resources Management Amendment Bill 2011

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Western Australia

LEGISLATIVE COUNCIL

(As amended in Committee)

**Fish Resources Management Amendment
Bill 2011**

A Bill for

An Act to amend the *Fish Resources Management Act 1994*.

The Parliament of Western Australia enacts as follows:

s. 1

1 **1. Short title**

2 This is the *Fish Resources Management Amendment Act 2011*.

3 **2. Commencement**

4 This Act comes into operation as follows —

- 5 (a) sections 1 and 2 — on the day on which this Act
6 receives the Royal Assent;
- 7 (b) the rest of the Act — on a day fixed by proclamation,
8 and different days may be fixed for different provisions.

9 **3. Act amended**

10 This Act amends the *Fish Resources Management Act 1994*.

11 **4. Long title replaced**

12 Delete the long title and insert:

13

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

18

19 **5. Section 3 replaced**

20 Delete section 3 and insert:

21

22 **3. Objects**

23 (1) The objects of this Act are —

- 24 (a) to develop and manage fisheries and
25 aquaculture in a sustainable way; and
- 26 (b) to share and conserve the State's fish and other
27 aquatic resources and their habitats for the
28 benefit of present and future generations.

- 1 (2) Those objects will be achieved by these means in
2 particular —
- 3 (a) conserving fish and protecting their
4 environment;
- 5 (b) ensuring that the impact of fishing and
6 aquaculture on aquatic fauna and their habitats
7 is ecologically sustainable and that the use of
8 all aquatic resources is carried out in a
9 sustainable manner;
- 10 (c) enabling the management of fishing,
11 aquaculture, tourism that is reliant on fishing,
12 aquatic eco-tourism and associated
13 non-extractive activities that are reliant on fish
14 and the aquatic environment;
- 15 (d) fostering the sustainable development of
16 commercial and recreational fishing and
17 aquaculture, including the establishment and
18 management of aquaculture facilities for
19 community or commercial purposes;
- 20 (e) achieving the optimum economic, social and
21 other benefits from the use of fish resources;
- 22 (f) enabling the allocation of fish resources
23 between users of those resources, their
24 reallocation between users from time to time
25 and the management of users in relation to their
26 respective allocations;
- 27 (g) providing for the control of foreign interests in
28 fishing, aquaculture and associated industries;
- 29 (h) enabling the management of fish habitat
30 protection areas and the Abrolhos Islands
31 reserve.

1 **4A. Application of precautionary principle**

2 In the performance or exercise of a function or power
3 under this Act, lack of full scientific certainty must not
4 be used as a reason for postponing cost-effective
5 measures to ensure the sustainability of fish stocks or
6 the aquatic environment.
7

8 **6. Section 4 amended**

9 (1) In section 4(1) delete the definitions of:

- 10 ***AFMA***
11 ***Aquaculture Development Council***
12 ***Fisheries Research and Development Corporation***
13 ***interim managed fishery permit***
14 ***managed fishery licence***
15 ***protected fish***
16 ***purchase***
17 ***recreational fishing***
18 ***Recreational Fishing Advisory Committee***
19 ***recreational fishing licence***
20 ***Rock Lobster Industry Advisory Committee***
21 ***sell***

22 (2) In section 4(1) insert in alphabetical order:

23
24 ***Aboriginal body corporate*** means —

- 25 (a) a corporation registered under the *Corporations*
26 *(Aboriginal and Torres Strait Islander)*
27 *Act 2006* (Commonwealth); or
28 (b) an incorporated association under the
29 *Associations Incorporation Act 1987* the

1 membership of which is wholly or principally
2 composed of Aboriginal persons;

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

- 6 (a) whether the gear contains fish or not; and
7 (b) whether the gear is used for aquaculture or for
8 navigational lighting or marking as a part of
9 aquaculture safety,

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

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

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

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

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

- 23 (a) is in accordance with the Aboriginal customary
24 law and tradition of the area being fished; and
25 (b) is for the purpose of satisfying personal,
26 domestic, ceremonial, educational or
27 non-commercial communal needs;

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

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

- 32 (a) whether interstate or overseas; and
33 (b) whether for a commercial or other purpose;

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

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

- 7 (a) a permit granted under section 66 in respect of
8 that fishery; or
9 (b) a permit that is taken under section 78A(3) to
10 have been granted under section 66 in respect
11 of that fishery;

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

- 14 (a) a licence granted under section 66 in respect of
15 that fishery; or
16 (b) a licence that is taken under section 78A(3) to
17 have been granted under section 66 in respect
18 of that fishery;

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

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

25 **protected fish** means —

- 26 (a) totally protected fish; or
27 (b) commercially protected fish; or
28 (c) recreationally protected fish;

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

- 30 (a) to take in exchange;
31 (b) to agree or offer to take in exchange;

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

3 (d) to attempt to purchase,

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

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

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

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

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

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

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

21 (a) to auction;

22 (b) to put out to tender;

23 (c) to barter or exchange;

24 (d) to supply for profit;

25 (e) to offer for sale;

26 (f) to receive or possess for sale;

27 (g) to expose for sale;

28 (h) to consign or deliver for sale;

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

31 but does not include to conduct a prescribed
32 transaction, or a transaction in a prescribed class of

s. 6

- 1 transactions, if the transaction is conducted by an
2 Aboriginal person;
- 3 ***temporary aquaculture permit*** means a temporary
4 aquaculture permit granted under section 97B(1);
5
- 6 (3) In section 4(1) in the definition of ***aquaculture*** delete “hatching
7 or culturing” and insert:
8
- 9 hatching, culturing or harvesting
10
- 11 (4) In section 4(1) in the definition of ***commercial fishing licence***
12 delete “a person” and insert:
13
- 14 an individual
15
- 16 (5) In section 4(1) in the definition of ***fish***:
17 (a) in paragraph (b) delete “tail,” and insert:
18
19 tail); and
20
- 21 (b) after paragraph (b) insert:
22
- 23 (c) live rock and live sand,
24
- 25 (6) In section 4(1) in the definition of ***fishing*** or ***fishing activity***:
26 (a) delete “means —” and insert:
27
28 means any of the following —
29

1 (b) in paragraph (c) delete “fish; or” and insert:

2

3 fish;

4

5 (7) In section 4(1) in the definition of *licence*:

6 (a) delete “means —” and insert:

7

8 means any of the following —

9

10 (b) in paragraph (f) delete “licence; or” and insert:

11

12 licence;

13

14 (8) In section 4(1) in the definition of *noxious fish* delete “any fish”
15 and insert:

16

17 any live fish

18

19 **7. Section 7 amended**

20 (1) Delete section 7(1), (2) and (3) and insert:

21

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

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

27 (a) research;

28 (b) environmental protection;

29 (c) public safety;

30 (d) public health;

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- 1 (e) commercial purposes;
2 (f) community education about and compliance
3 with this Act;
4 (g) enforcement of this Act.
5
- 6 (2) Delete section 7(4)(a) and insert:
7
8 (a) may be made to the Minister; and
9
- 10 (3) In section 7(5) and (6) delete “Minister or the CEO (as the case
11 may be)” and insert:
12
13 Minister
14
- 15 **8. Section 12 amended**
16 In section 12(1)(b) delete “7, 43.”
- 17 **9. Section 15 amended**
18 (1) In section 15 delete the definition of *fishery*.
19 (2) In section 15 insert in alphabetical order:
20
21 *fishery* means a class of fishing activities identified in
22 an arrangement as a fishery to which the arrangement
23 applies;
24 *fishing activities* includes aquaculture;
25 *State* includes a Territory.
26
- 27 (3) In section 15 in the definition of *corresponding law* delete “or
28 Territory of the Commonwealth”.

1 (4) In section 15 in the definition of *Joint Authority fishery* delete
2 “Authority.” and insert:

3

4 Authority;

5

6 Note: The heading to amended section 15 is to read:

7

Terms used

8 **10. Section 19 amended**

9 In section 19(3) delete “the Commonwealth, another State or a
10 Territory.” and insert:

11

12 the Commonwealth or another State.

13

14 **11. Section 45 amended**

15 In section 45(1):

16 (a) in paragraph (b) delete “fish,” and insert:

17

18 fish; or

19

20 (b) after paragraph (b) insert:

21

22 (c) recreationally protected fish,

23

24 **12. Section 48A inserted**

25 After section 47 insert:

26

27 **48A. Recreationally protected fish**

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

30

Penalty: as provided in sections 52 and 222.

s. 13

- 1 (2) A person must not —
2 (a) have in the person’s possession; or
3 (b) sell or purchase; or
4 (c) consign; or
5 (d) bring into the State or into WA waters,
6 any recreationally protected fish.
7 Penalty for an offence under subsection (2): as
8 provided in sections 52 and 222.
9

10 **13. Section 48 amended**

- 11 (1) In section 48:
12 (a) delete “It is a defence” and insert:
13
14 (1) It is a defence
15
16 (b) in paragraph (a) delete “protected”;
17 (c) after paragraph (a) insert:
18
19 (ba) that the fish were collected for broodstock or
20 other aquaculture purposes in accordance with
21 an authorisation; or
22
23 (d) in paragraph (b) delete “cultured or hatched” and insert:
24
25 hatched, cultured or harvested
26
27 (e) after paragraph (a) insert:
28
29 or

- 1 (2) At the end of section 48 insert:
2
- 3 (2) It is a defence in proceedings for an offence against
4 section 48A for the person charged to prove —
- 5 (a) in the case of an offence relating to the taking
6 of fish, that, on becoming aware of the taking
7 of the fish, the person took immediate steps to
8 return the fish to its natural environment with
9 the least possible injury; or
- 10 (b) that the fish were taken for a commercial
11 purpose in accordance with an authorisation; or
- 12 (c) that the fish were collected for broodstock or
13 other aquaculture purposes in accordance with
14 an authorisation; or
- 15 (d) that the fish were kept, bred, hatched, cultured
16 or harvested in accordance with an aquaculture
17 licence; or
- 18 (e) that the person has any other defence prescribed
19 in the regulations.
20

21 **14. Section 50 amended**

- 22 (1) In section 50(4):
- 23 (a) in paragraph (a) delete “by a person”;
- 24 (b) in paragraph (b) delete “hatched or cultured by the
25 person” and insert:
26
- 27 hatched, cultured or harvested
28

s. 15

1 (2) Delete section 50(5) and insert:

2

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

5 (a) different areas of the State; or

6 (b) different classes of persons; or

7 (c) different circumstances.

8

9 **15. Section 51 amended**

10 (1) In section 51(4):

11 (a) in paragraph (a) delete “by a person”;

12 (b) in paragraph (b) delete “hatched or cultured by the
13 person” and insert:

14

15 hatched, cultured or harvested

16

17 (2) Delete section 51(5) and insert:

18

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

21 (a) different areas of the State; or

22 (b) different classes of persons; or

23 (c) different circumstances.

24

25 **16. Section 52 amended**

26 In section 52(1) after “47,” insert:

27

28 48A,

29

1 **17. Section 56 amended**

2 Delete section 56(3) and insert:

3

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

6

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

8

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

11

12 **18. Section 58 amended**

13 In section 58(2)(k) after “transfer” insert:

14

15 under section 140

16

17 **19. Section 60 amended**

18 In section 60(2):

19

(a) after paragraph (a) insert:

20

21

(ba) provide for minimum entitlements;

22

23

(b) after paragraph (g) insert:

24

25

(ha) provide for the expiation of an offence under
26 section 74(2) of contravening a provision of a
27 management plan that prohibits a person from
28 taking fish in excess of an entitlement by the
29 payment within a specified time of an amount
30 equal to the value of the excess fish determined
31 in accordance with the method described in

31

s. 20

- 1 section 222(4)(a) or (b) and for the crediting of
2 any amount so paid to the Fisheries Research
3 and Development Account;
- 4 (hb) provide that the authority conferred by an
5 authorisation is of no effect if the entitlement
6 under the authorisation is below a specified
7 minimum entitlement;
8

9 **20. Section 62 amended**

10 In section 62:

- 11 (a) delete paragraph (a) and insert:
12
13 (a) prohibit or regulate fishing in the fishery;
14 (ba) prohibit or regulate the possession of fish taken
15 in the fishery;
16
- 17 (b) in paragraph (b) delete “use” and insert:
18
19 possession or use
20
- 21 (c) in paragraph (b) delete “aircraft, used” and insert:
22
23 aircraft used
24
- 25 (d) in paragraph (e) delete “fishery;” and insert:
26
27 fishery, including equipment used for the
28 purposes of research, monitoring or compliance
29 programmes;
30

- 1 (e) delete paragraphs (k) to (n) and insert:
2
- 3 (k) regulate the handling, release, disposal or
4 possession of any bycatch in the fishery,
5 including by requiring the use of bycatch
6 reduction devices;
7
- 8 (f) delete paragraph (p) and insert:
9
- 10 (p) impose obligations on —
11 (i) the holders of authorisations or persons
12 acting on their behalf; or
13 (ii) masters of boats;
14
- 15 (g) in paragraph (q) after “submitted” insert:
16
17 or lodged
18
- 19 (h) delete paragraph (q)(i) and insert:
20
- 21 (i) the holders of authorisations or persons
22 acting on their behalf; or
23
- 24 (i) in paragraph (q)(ii) delete “other”;
25 (j) in paragraph (r) after “submitted” insert:
26
27 or lodged
28
- 29 (k) delete paragraph (u) and insert:
30
- 31 (u) prohibit or regulate the handling, transfer,
32 landing, unloading, storage, possession,
33 packaging, labelling, transport, delivery,

s. 21

- 1 consigning, receipt, processing, sale or
2 purchase of fish (whether taken in the fishery or
3 otherwise);
- 4 (v) prohibit or regulate the disposal of fish
5 (whether taken in the fishery or otherwise);
- 6 (w) require a person who is proposing to engage in
7 any activities referred to in paragraphs (a) to
8 (k), (u) or (v) or any other activities connected
9 with the fishery to make a nomination in
10 respect of any matter relating to that proposed
11 engagement, including any of these matters —
- 12 (i) the area or place where the activities
13 will be engaged in;
- 14 (ii) the period within which or during which
15 the activities will be engaged in;
- 16 (iii) the specific activities that will be
17 engaged in;
- 18 (iv) the specific types of gear or equipment
19 that will be used;
- 20 (x) prohibit a person from contravening a
21 nomination.
22

23 **21. Sections 74 and 75 replaced**

24 Delete sections 74 and 75 and insert:

25

26 **74. Contravention of management plan**

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

31 Penalty:

- 32 (a) for an individual —
- 33 (i) for a first offence, a fine of \$40 000;

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

4 (b) for a body corporate —

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

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

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

11 Penalty:

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

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

14 (3) A person charged with an offence under subsection (1)
15 may be convicted of an offence under subsection (2) if
16 that offence is established by the evidence.
17

18 **22. Section 76 amended**

19 In section 76(2) delete “an offence against section 74” and
20 insert:

21
22 an offence under section 74(1) or 77(1)
23

1 **23. Section 77 replaced**

2 Delete section 77 and insert:

3

4 **77. Contravention of condition of managed fishery**
5 **licence or managed fishery permit**

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

- 8 (a) a managed fishery licence; or
9 (b) a managed fishery permit.

10

11 Penalty:

- 12 (a) for an individual —
13 (i) for a first offence, a fine of \$40 000;
14 (ii) for a second or subsequent offence, a
15 fine of \$80 000 and imprisonment for
16 3 years;
17 (b) for a body corporate —
18 (i) for a first offence, a fine of \$80 000;
19 (ii) for a second or subsequent offence, a
20 fine of \$150 000.

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

- 22 (a) a managed fishery licence; or
23 (b) a managed fishery permit.

24 Penalty:

- 25 (a) for an individual, a fine of \$15 000;
26 (b) for a body corporate, a fine of \$30 000.

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

1

2 **24. Section 78A amended**

3 After section 78A(2) insert:

4

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

8

9 **25. Section 78 deleted**

10 Delete section 78.

11 **26. Section 79 amended**

12 In section 79(2)(b) delete “hatched or cultured” and insert:

13

14 hatched, cultured or harvested

15

16 **27. Section 82 amended**

17 In section 82(2)(c) delete “hatched or cultured” and insert:

18

19 hatched, cultured or harvested

20

21 **28. Section 89 amended**

22 In section 89(1)(c)(ii) after “submit” insert:

23

24 or lodge

25

1 **29. Part 8 Division 1 heading inserted**

2 At the beginning of Part 8 insert:

3

4 **Division 1 — Aquaculture licences**

5

6 **30. Section 91 amended**

7 In section 91(a) delete “culturing” and insert:

8

9 culturing, harvesting

10

11 **31. Section 92A inserted**

12 After section 91 insert:

13

14 **92A. Management and environmental monitoring plans**
15 **(MEMPs)**

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

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

27 (a) the species of fish to be farmed;

28 (b) the quantity of fish to be farmed;

- 1 (c) the area of land or waters on or in which the
2 fish are to be farmed;
- 3 (d) the class of land or waters on or in which the
4 fish are to be farmed;
- 5 (e) the method of farming the fish;
- 6 (f) the aquaculture gear to be used;
- 7 (g) proposed stocking densities;
- 8 (h) the carrying capacity of the area to be used for
9 farming the fish;
- 10 (i) water quality (including discharged water
11 quality) and relevant response protocols;
- 12 (j) sediment quality and relevant response
13 protocols;
- 14 (k) disease testing and relevant response protocols;
- 15 (l) maximum nutrient loads and response
16 thresholds;
- 17 (m) environmental monitoring and relevant
18 response protocols;
- 19 (n) translocation;
- 20 (o) biosecurity and quarantine;
- 21 (p) the impact on protected species and other
22 aquatic fauna;
- 23 (q) the impact on benthic communities;
- 24 (r) the audit mechanisms for the MEMP.
- 25 (3) Unless the licence holder is exempt under
26 subsection (4), an aquaculture licence that was in force
27 immediately before the day on which the *Fish*
28 *Resources Management Amendment Act 2011*
29 section 31 commenced is subject to the condition that
30 the licence holder must, within 2 years after that day,
31 prepare a MEMP for the licence and lodge it with the
32 CEO.

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- 1 (4) The CEO may exempt —
2 (a) a particular applicant from the requirements of
3 subsection (1); or
4 (b) a particular licence holder from the
5 requirements of subsection (3),
6 if the application or licence relates to the aquaculture of
7 prescribed fish on private land.
8

9 **32. Section 92 amended**

10 In section 92(1):

- 11 (a) delete “satisfied that —” and insert:
12 satisfied of all of the following —
13 —
14 —
15 (b) after paragraph (a) insert:
16 —
17 (ba) the person has, or will have, appropriate tenure
18 over the land or waters on or in which the
19 activities under the licence are to be conducted;
20 —
21 (c) in paragraph (b) delete “aquaculture industry” and
22 insert:
23 —
24 State and the community
25 —
26 (d) in paragraph (c) delete “environment; and” and insert:
27 —
28 environment;
29

- 1 (e) in paragraph (d) delete “authorities,” and insert:
2
3 authorities;
4
5 (f) after paragraph (d) insert:
6
7 (e) any other matters prescribed for the purposes of
8 this subsection,
9

10 **33. Section 95 amended**

11 After section 95(1)(a) insert:
12

- 13 (ba) the provisions of any MEMP for the licence;
14 and
15

16 **34. Sections 97A and 97B, Part 8 Division 2 heading and**
17 **section 97C inserted**

18 After section 96 insert:
19

20 **97A. Offence for contravention of MEMP**

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

23 Penalty:

- 24 (a) for an individual —
25 (i) for a first offence, a fine of \$5 000;
26 (ii) for a second or subsequent offence,
27 a fine of \$10 000;
28 (b) for a body corporate —
29 (i) for a first offence, a fine of \$10 000;

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

3 **97B. Temporary aquaculture permits**

- 4 (1) The CEO may grant a temporary aquaculture permit to
5 the holder of an aquaculture licence authorising the
6 licence holder to carry on, for the period specified, the
7 activities authorised under the licence in an area (an
8 *alternative area*) other than the area (the *original area*)
9 in respect of which the licence is in force.
- 10 (2) A temporary aquaculture permit can be granted only in
11 circumstances prescribed for the purposes of this
12 section.
- 13 (3) A temporary aquaculture permit cannot be granted for
14 more than 12 months.
- 15 (4) A temporary aquaculture permit has the effect, for the
16 period specified, of —
- 17 (a) suspending the licence holder's authority to
18 carry on the activities authorised under the
19 licence in the original area; and
- 20 (b) authorising the licence holder to carry on those
21 activities in accordance with the permit in the
22 alternative area.

23 **Division 2 — Aquaculture leases**

24 **97C. Methods by which Minister may offer areas for**
25 **lease**

26 The Minister may offer areas of land or WA waters for
27 aquaculture leases by means of public auction, public
28 tender, ballot or private treaty.
29

1 **35. Section 97 amended**

2 (1) In section 97(3):

3 (a) delete “Act and the lease, a lease vests in the lessee —”
4 and insert:

5

6 Act, an aquaculture licence in respect of the leased area
7 vests in the licence holder —

8

9 (b) in paragraph (a) delete “lease to keep, breed, hatch and
10 culture” and insert:

11

12 licence to keep, breed, hatch, culture and harvest

13

14 (c) in paragraph (b) delete “hatched or cultured under the
15 lease.” and insert:

16

17 hatched, cultured or harvested under the licence.

18

19 (2) After section 97(4) insert:

20

21 (5A) Before granting or renewing a lease, the Minister must
22 be satisfied of all of the following —

23 (a) the person is a fit and proper person to hold the
24 lease;

25 (b) it is in the better interests of the State and the
26 community to grant or renew the lease;

27 (c) the applicant will make, or has made, effective
28 use of the area of land or water the subject of
29 the lease for aquaculture purposes;

30 (d) the activities to be, or that are being, conducted
31 under the lease are unlikely to adversely affect
32 other fish or the aquatic environment;

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- 1 (e) any other matters prescribed for the purposes of
2 this subsection.
3
- 4 (3) Delete section 97(7) and insert:
5
- 6 (7A) Without limiting subsection (5) or (6), the lease may be
7 subject to a condition requiring payment of an amount
8 to secure payment of any amount that becomes due
9 under section 101(2)(b).
- 10 (7) A lease may be varied —
11 (a) in the manner provided in the lease; or
12 (b) by the Minister in the manner prescribed under
13 section 102(c).
14
- 15 **36. Section 100A inserted**
16 After section 99 insert:
17
- 18 **100A. Offences for contravention of lease**
- 19 (1) The holder of an aquaculture lease commits an offence
20 if the lease holder contravenes a condition of the lease.
- 21 (2) The holder of an aquaculture licence in respect of the
22 leased area under an aquaculture lease commits an
23 offence if the licence holder does an act or makes an
24 omission that would have constituted a contravention
25 of a condition of the lease if the act or omission had
26 been done or made by the lease holder.
- 27 (3) If an aquaculture licence is held by 2 or more persons
28 and any of those persons commits an offence under
29 subsection (2), each of those persons is taken to have
30 committed the offence.

- 1 (4) If the holder of an aquaculture licence in respect of the
2 leased area under an aquaculture lease commits or is
3 taken to have committed an offence under
4 subsection (2) or (3), the lease holder is taken to have
5 also committed the offence.
- 6 (5) If —
7 (a) an aquaculture lease is held by 2 or more
8 persons; and
9 (b) an offence is committed or is taken to have
10 been committed under subsection (1), (2), (3) or
11 (4) in respect of the lease,
12 each of the persons referred to in paragraph (a) is taken
13 to have committed the offence.
- 14 (6) The penalty for an offence committed under
15 subsection (1) or (2) or arising under subsection (3), (4)
16 or (5) is —
17 (a) if the offender is an individual —
18 (i) for a first offence, a fine of \$5 000; and
19 (ii) for a second or subsequent offence, a
20 fine of \$10 000;
21 or
22 (b) if the offender is a body corporate —
23 (i) for a first offence, a fine of \$10 000; and
24 (ii) for a second or subsequent offence, a
25 fine of \$20 000.
- 26 (7) If a person is charged with an offence arising under
27 subsection (3), (4) or (5), it is a defence to prove
28 that —
29 (a) the act or omission that was or would have been
30 a contravention of a condition of the
31 aquaculture lease was done or made without the
32 consent or connivance of the person; and

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- 1 (b) the person took all reasonable measures to
2 prevent the act or omission being done or made.
- 3 (8) A person may be charged with and convicted of an
4 offence arising under subsection (3), (4) or (5) whether
5 or not another person has been charged with or
6 convicted of an offence under subsection (1) or (2) or
7 arising under subsection (3), (4) or (5).
8

9 **37. Section 101 inserted**

10 After section 100 insert:
11

12 **101. Clean-up and rehabilitation of former leased area**

- 13 (1) If an aquaculture lease is terminated or expires, the
14 CEO may direct the former lease holder to clean up
15 and rehabilitate the former leased area.
- 16 (2) If the former lease holder contravenes the direction —
17 (a) the CEO may clean up and rehabilitate the area;
18 and
19 (b) the reasonable cost of any action taken under
20 paragraph (a) is recoverable as a debt due to the
21 State from the former lease holder.
22

23 **38. Part 8 Division 3 heading inserted**

24 Before section 101A insert:
25

26 **Division 3 — Miscellaneous matters**
27

28 **39. Section 101A amended**

- 29 (1) After section 101A(1) insert:

1
2
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29

(2A) Subject to subsection (2B), the Minister may declare an area of WA waters (other than inland waters) to be an aquaculture development zone.

(2B) The Minister can only make a declaration under subsection (2A) in respect of waters within the limits of the State or coastal waters —

- (a) with the concurrence of the Minister to whom the administration of the *Land Administration Act 1997* is committed; and
- (b) after consulting with the Minister to whom the administration of the *Conservation and Land Management Act 1984* is committed.

(2) In section 101A(2) delete “subsection (1)” and insert:

subsections (1) and (2A)

(3) In section 101A(4) in the definition of *aquaculture* delete “hatching or culturing” and insert:

hatching, culturing or harvesting

40. Section 102 amended

In section 102:

(a) delete paragraph (c) and insert:

- (ca) prohibit or regulate the collection of fish for broodstock and other aquaculture purposes;

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- 1 (cb) provide for matters relating to temporary
2 aquaculture permits, including any of these
3 matters —
4 (i) the imposition and variation by the CEO
5 of conditions to which permits are
6 subject;
7 (ii) the suspension and cancellation by the
8 CEO of permits;
9 (iii) review by the State Administrative
10 Tribunal of decisions of the CEO in
11 relation to permits;
12 (c) provide for matters relating to aquaculture
13 leases, including the subdivision, subletting,
14 amalgamation and transfer of leases by the
15 Minister;

17 (b) in paragraph (d)(ii) after “submit” insert:

19 or lodge

21 **41. Part 9A inserted**

22 After section 102 insert:

24 **Part 9A — Exotic fish**

25 **103A. Accidental introduction of exotic fish into WA**
26 **waters**

- 27 (1) In this section —
28 *intervene*, in relation to fish, includes to inspect, seize
29 and destroy fish.
30 (2) This section applies in relation to any fish that are
31 being kept for aquaculture purposes in respect of which

- 1 an aquaculture licence is not required because of
2 section 91(a).
- 3 (3) The CEO may direct a fisheries officer to intervene in
4 relation to that fish if, in the circumstances,
5 intervention will or could minimise the risk of the
6 accidental introduction of exotic fish into WA waters.
7

8 **42. Section 120 amended**

9 In section 120(2):

- 10 (a) delete “may prohibit or regulate —” and insert:
11
12 may —
13
- 14 (b) in paragraph (a) before “entry” insert:
15
16 prohibit or regulate
17
- 18 (c) in paragraph (b) delete “fishing or” and insert:
19
20 prohibit or regulate
21
- 22 (d) delete paragraph (c) and insert:
23
- 24 (ca) prohibit or regulate fishing in a fish habitat
25 protection area;
- 26 (c) prohibit or regulate moorings, jetties, rafts and
27 other constructions in a fish habitat protection
28 area;
- 29 (d) prescribe fees or charges for admission to a fish
30 habitat protection area or any part of a fish
31 habitat protection area and for the use of any
32 land or facilities in a fish habitat protection

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1 area, and provide for the payment and method
2 of collection of the fees or charges.
3

4 **43. Section 125 amended**

5 In section 125(1) after “authorisations,” insert:
6

7 temporary aquaculture permits,
8

9 **44. Section 126 amended**

10 In section 126:

11 (a) after “authorisation,” (first occurrence) insert:
12

13 temporary aquaculture permit,
14

15 (b) in paragraphs (a) and (b) after “authorisation,” insert:
16

17 temporary aquaculture permit,
18

19 **45. Section 130 amended**

20 In section 130(b) delete “any part” and insert:
21

22 the whole or part
23

24 **46. Section 135 amended**

25 In section 135(1) delete “part” and insert:
26

27 the whole or part
28

1 **47. Section 139 amended**

2 In section 139(3) delete “an authorisation is renewed as
3 provided” and insert:

4
5 an application is made or authorisation renewed
6

7 **48. Section 140 amended**

8 Delete section 140(1) and insert:

9
10 (1) This section applies if —

- 11 (a) the holder of an authorisation (other than a
12 commercial or recreational fishing licence)
13 applies to the CEO for the transfer of the
14 authorisation to another person; or
15 (b) the holder of an authorisation applies to the
16 CEO for the transfer of part of the entitlement
17 under the authorisation to another authorisation.

18 (2A) Subject to subsection (2), the CEO must transfer the
19 authorisation or the part of the entitlement.
20

21 **49. Section 141 amended**

22 (1) In section 141(1):

23 (a) in paragraph (a) delete “part” and insert:

24
25 the whole or part
26

27 (b) delete “the part” and insert:

28
29 the whole or part
30

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1 0. In section 141(2) delete “part” and insert:

2

3 the whole or part

4

5 **50. Section 143 amended**

6 In section 143(1):

7 (a) in paragraph (a)(ii) delete “fishing” and insert:

8

9 fishing, aquaculture, fishing tour or aquatic eco-tourism

10

11 (b) in paragraph (b) after “has been” insert:

12

13 or is being

14

15 (c) after paragraph (b) insert:

16

17 (ca) if the authorisation is an aquaculture licence
18 and, in the CEO’s opinion —

19 (i) a requirement of any MEMP for the
20 authorisation has been or is being
21 contravened; and

22 (ii) as a consequence of the
23 contravention —

24 (I) pollution or environmental
25 harm, as those terms are
26 defined in the *Environmental*
27 *Protection Act 1986*
28 section 3A, has been or is being
29 caused; or

30 (II) there is a risk that such
31 pollution or environmental
32 harm will be caused;

33 or

- 1 (cb) if the authorisation is an aquaculture licence
2 and the holder no longer has appropriate tenure
3 over the area of the licence; or
4 (cc) if the CEO is satisfied that the holder is no
5 longer a fit and proper person to hold the
6 authorisation; or
7
8 (d) in paragraph (e)(i) delete “submit” and insert:
9
10 to submit or lodge
11
12 (e) in paragraph (e)(i) after “submitted” insert:
13
14 or lodged
15
16 (f) in paragraph (g) delete “authorisation” and insert:
17
18 authorisation, or any other amount payable
19 under this Act by the holder,
20
21 (g) after each of paragraphs (a), (b) and (c) to (f) insert:
22
23 or
24

25 **51. Section 146A inserted**

26 At the end of Part 13 insert:
27

28 **146A. Death of individual who holds authorisation**

- 29 (1) This section applies in relation to an authorisation other
30 than a commercial or recreational fishing licence.

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- 1 (2) On the death of an individual who, immediately before
2 death, held an authorisation exclusively or as a tenant
3 in common, the authorisation or the deceased's share in
4 the authorisation (as the case requires) is taken to be
5 held by the deceased's personal representative.
- 6 (3) On the death of an individual who, immediately before
7 death, held an authorisation as a joint tenant, the
8 authorisation is taken to be held by the surviving joint
9 tenants.
- 10 (4) A transfer made or purportedly made under section 140
11 in respect of an authorisation, or a share in an
12 authorisation, held by an individual who died before
13 the commencement of the *Fish Resources Management*
14 *Amendment Act 2011* section 51 is, and is taken always
15 to have been, as valid as it would have been if the
16 amendments effected by that section had been in effect
17 at the time of the individual's death.
18

19 **52. Section 147 amended**

20 In section 147(1)(e) delete "part" and insert:

21

22 the whole or part
23

24 **53. Section 150 amended**

25 In section 150 delete "determined." and insert:

26

27 determined unless the State Administrative Tribunal
28 orders otherwise.
29

1 **54. Part 15A inserted**

2 After section 152 insert:

3

4 **Part 15A — Fish trafficking**

5 **153. Terms used**

6 In this Part —

7 *commercial quantity*, of fish, means —

- 8 (a) a quantity of fish that exceeds the quantity
9 prescribed by or determined under the
10 regulations; or
11 (b) a quantity of fish the value of which exceeds
12 the value prescribed by or determined under the
13 regulations;

14 *priority fish* means —

- 15 (a) fish of a species that is declared by the
16 regulations to be a priority species; or
17 (b) fish belonging to a group of 2 or more species
18 that is declared by the regulations to be a
19 priority group of species;

20 *traffic*, in fish, has the meaning given in section 154.

21 **154. Trafficking in fish**

22 (1) A person traffics in fish if the person deals with fish in
23 any of these ways —

- 24 (a) takes fish;
25 (b) is in possession or control of fish;
26 (c) sells or purchases fish;
27 (d) delivers fish to, or receives fish from, another
28 person;
29 (e) processes fish;

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- 1 (f) transports fish;
- 2 (g) conceals fish or any dealing with fish referred
3 to in paragraphs (a) to (f);
- 4 (h) engages in conduct preparatory to any dealing
5 with fish referred to in paragraphs (a) to (g).
- 6 (2) A person traffics in fish if the person does any of these
7 things in relation to any dealing with fish referred to in
8 subsection (1) —
- 9 (a) controls, directs or supervises the dealing;
- 10 (b) provides facilities, finance or any other thing
11 for the purpose of enabling or facilitating the
12 dealing;
- 13 (c) enters into an agreement in relation to the
14 dealing;
- 15 (d) is knowingly concerned otherwise in the
16 dealing.

17 **155. Unauthorised trafficking in fish**

- 18 (1) A person must not traffic in a commercial quantity of
19 priority fish unless the person is authorised under this
20 Act to do so.
- 21 (2) A person who contravenes subsection (1) commits a
22 crime.
- 23 Penalty for an offence under subsection (2):
- 24 (a) for an individual —
- 25 (i) for a first offence, a fine of \$400 000
26 and imprisonment for 4 years;
- 27 (ii) for a second or subsequent offence,
28 imprisonment for 10 years;

- 1 (b) for a body corporate, a fine of \$800 000.
2 Summary conviction penalty for an offence under
3 subsection (2):
4 (a) for an individual —
5 (i) for a first offence, a fine of \$200 000
6 and imprisonment for 2 years;
7 (ii) for a second or subsequent offence,
8 imprisonment for 4 years;
9 (b) for a body corporate, a fine of \$400 000.

10 **156. Regulations relating to trafficking in fish**

- 11 The regulations may make provision in relation to —
12 (a) methods for determining commercial quantities
13 of priority fish; or
14 (b) the exemption of persons from the application
15 of section 155.
16

17 **55. Section 172 amended**

- 18 In section 172:
19 (a) delete paragraphs (a) and (b) and insert:
20
21 (a) remove fish from any fishing or aquaculture
22 gear; or
23 (b) interfere with any fishing or aquaculture gear,
24
25 (b) delete “the net, trap or gear” and insert:
26
27 the gear
28

29 Note: The heading to amended section 172 is to read:

30 **Unlawful interference with fish or gear**

1 **56. Part 16A inserted**

2 After section 176 insert:

3

4 **Part 16A — Emergency powers to deal with**
5 **biological threats**

6 **177A. Application**

7 This Part applies despite the *Biosecurity and*
8 *Agriculture Management Act 2007*.

9 **177B. Terms used**

10 In this Part —

11 *biological threat* means a serious and imminent threat
12 posed by an organism;

13 *organism* has the meaning given in the *Biosecurity and*
14 *Agriculture Management Act 2007* section 6.

15 **177C. Dealing with biological threats**

16 (1) This section applies if the CEO considers that it is
17 necessary to exercise powers under this section because
18 of a biological threat to fish or other aquatic resources
19 or to their habitats.

20 (2) The CEO may take, or may direct the person whom the
21 CEO considers responsible for causing the biological
22 threat to take, the steps that the CEO considers
23 appropriate —

24 (a) to prevent the organism from entering an area
25 of WA waters; or

26 (b) to prevent or control the spread of the organism
27 in an area of WA waters; or

28 (c) to eradicate or remove the organism from an
29 area of WA waters.

- 1 (3) If a person contravenes a direction given under
2 subsection (2) —
3 (a) the CEO may take the steps specified in the
4 direction; and
5 (b) the reasonable cost of any action taken under
6 paragraph (a) is recoverable as a debt due to the
7 State from the person.
8

9 **57. Section 182 amended**

10 In section 182:

- 11 (a) delete paragraph (c) and insert:
12
13 (c) enter any land or premises ordinarily used for
14 the purpose of manufacturing, repairing or
15 selling boats or fishing or aquaculture gear and
16 inspect the boats or gear; or
17
18 (b) after each of paragraphs (a) and (b) insert:
19
20 or
21

22 **58. Section 191 amended**

23 In section 191(1):

- 24 (a) in paragraph (p) delete “fishing gear or any gear or
25 equipment used for aquaculture or” and insert:
26
27 fishing or aquaculture gear or gear or
28 equipment used for
29

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- 1 0. in paragraph (r)(i) after “fishing” insert:
2
3 or aquaculture
4
5 (b) in paragraph (r)(ii) delete “aquaculture,”;
6 (c) in paragraph (u) delete “fish or fishing gear or any gear
7 or equipment used for aquaculture” and insert:
8
9 fish, fishing or aquaculture gear or gear or
10 equipment used for fishing tours
11
- 12 **59. Section 191A amended**
13 In section 191A delete “258(va) or (vb),” and insert:
14
15 258(1)(va) or (vb),
16
- 17 **60. Section 193 amended**
18 In section 193(1):
19 (a) after paragraph (f) insert:
20
21 (ga) any exotic fish, any receptacle or container
22 containing exotic fish, and any medium in
23 which the exotic fish are being held, in
24 compliance with a direction under
25 section 103A(3) to intervene in relation to that
26 fish; or
27

- 1 (b) in paragraph (h) delete “totally protected fish —” and
2 insert:
3
4 protected fish —
5

6 **61. Section 202B inserted**

7 After section 202A insert:
8

9 **202B. Liability of authorisation holder for offences by**
10 **other holders**

- 11 (1) If an authorisation is held by 2 or more persons and any
12 of those persons commits an offence under this Act
13 while acting or purporting to act as a holder of the
14 authorisation, each of those persons is taken to have
15 committed the offence.
- 16 (2) If a person is charged with an offence under this Act
17 because of subsection (1), it is a defence to prove
18 that —
- 19 (a) the act or omission that constituted the offence
20 was done or made without the consent or
21 connivance of the person; and
- 22 (b) the person took all reasonable measures to
23 prevent the act or omission being done or made.
- 24 (3) A person may be charged with and convicted of an
25 offence under this Act because of subsection (1)
26 whether or not another person has been charged with or
27 convicted of the offence.
28

1 **62. Section 212 amended**

2 In section 212(1):

3 (a) in paragraphs (a) and (b) delete “authorisation” and
4 insert:

5

6 authorisation, temporary aquaculture permit

7

8 (b) in paragraph (c) after “authorisation” insert:

9

10 or temporary aquaculture permit

11

12 (c) in paragraph (d) after “authorisation,” insert:

13

14 temporary aquaculture permit,

15

16 **63. Section 215 amended**

17 In section 215 delete “any scales, callipers, rule, compass or
18 other navigational equipment or measuring equipment” and
19 insert:

20

21 any communications, navigational, measuring or
22 recording equipment (including electronic equipment)

23

24 Note: The heading to amended section 215 is to read:

25 **Accuracy of equipment**

26 **64. Section 216 amended**

27 In section 216(2)(a) and (b) after “authorisations,” insert:

28

29 temporary aquaculture permits,

30

1 **65. Section 220 amended**

2 In section 220:

3 (a) after paragraph (a) insert:

4

5 (ba) any fish in excess of a bag or possession limit is
6 seized under section 193(1)(a); or

7 (bb) any fish in excess of a quantity or value that is
8 prescribed for the purposes of the definition of
9 *commercial quantity* in section 153 is seized
10 under section 193(1)(a); or

11 (bc) any exotic fish is seized under
12 section 193(1)(ga); or

13

14 (b) delete paragraph (d) and insert:

15

16 (d) any receptacle, container or medium containing
17 fish referred to in this section is seized under
18 this Act,

19

20 (c) after paragraph (a) insert:

21

22 or

23

24 **66. Section 222 amended**

25 (1) In section 222(1):

26 (a) after “47,” insert:

27

28 48A,

29

30 (b) delete “88” and insert:

31

32 88, 155(2)

33

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- 1 0. Delete section 222(2) and insert:
2
- 3 (2) If a court convicts a person of an offence under a
4 provision referred to in subsection (1), in addition to
5 any penalty imposed under that provision, the court
6 must impose on the person an additional penalty
7 that —
- 8 (a) is equal to 10 times the prescribed value of any
9 fish the subject of the offence; or
- 10 (b) if subsection (3A) applies — is less than
11 10 times that value but is at least equal to that
12 value.
- 13 (3A) The court can only impose an additional penalty under
14 subsection (2)(b) —
- 15 (a) on the application of the CEO or a person
16 acting for or on behalf of the CEO; and
- 17 (b) if the court is satisfied that the imposition of the
18 additional penalty under subsection (2)(a)
19 would be harsh, oppressive or not otherwise in
20 the interests of justice.
21
- 22 (2) In section 222(5) delete “subsection (2)” and insert:
23
- 24 subsection (2)(a) or (b)
25
- 26 **67. Section 225 amended**
- 27 (1) Delete section 225(1) and insert:
28
- 29 (1) If a court convicts a person of an offence under this
30 Act, in addition to any other penalty that may be
31 imposed for the offence, the court may by order

- 1 prohibit the person from doing all or any of the
2 following —
- 3 (a) being on board boats, any specified boat or any
4 boat in a specified class of boats;
- 5 (b) being at —
- 6 (i) places used for aquaculture or the
7 processing or sale of fish, any specified
8 place used for aquaculture or the
9 processing or sale of fish, any place in a
10 specified class of places used for
11 aquaculture or the processing or sale of
12 fish; or
- 13 (ii) any other specified place or any place in
14 any other specified class of places;
- 15 (c) engaging in any activity related to fishing or
16 aquaculture, including —
- 17 (i) being employed in, or managing,
18 operating or holding an interest in, a
19 business; and
- 20 (ii) being in control or possession of fish or
21 fishing or aquaculture gear;
- 22 (d) being in possession of any fish or fishing or
23 aquaculture gear, any specified fish or fishing
24 or aquaculture gear or any fish or gear in a
25 specified class of fish or fishing or aquaculture
26 gear;
- 27 (e) being on or near specified waters.
- 28

29 (2) In section 225(4) delete the Penalty and insert:

30

31 Penalty:

- 32 (a) for a first offence, a fine of \$40 000;

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1 (b) for a second or subsequent offence, a fine of
2 \$80 000 and imprisonment for 3 years.
3

4 (3) Delete section 225(5) and insert:
5

6 (5) A person must not knowingly allow or permit another
7 person to contravene an order made under this section.

8 Penalty for an offence under subsection (5):

9 (a) for an individual —

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

11 (ii) for a second or subsequent offence, a
12 fine of \$80 000 and imprisonment for
13 3 years;

14 (b) for a body corporate —

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

16 (ii) for a second or subsequent offence, a
17 fine of \$150 000.
18

19 Note: The heading to amended section 225 is to read:

20 **Court may impose certain prohibitions on offender**

21 **68. Section 228 amended**

22 In section 228(1) delete “21 days” and insert:
23

24 45 days
25

1 **69. Section 238 amended**

2 (1) In section 238(4)(a)(i) delete “licences)” and insert:

3

4 licences), temporary aquaculture permits

5

6 (2) In section 238(5):

7 (a) after paragraph (d) insert:

8

9 (eaa) to defray the costs of the administration and
10 management of customary fishing;

11

12 (b) in paragraph (e) delete “fishing gear” and insert:

13

14 fishing or aquaculture gear

15

16 (c) after paragraph (j) insert:

17

18 (kaa) to maintain the marking and lighting of areas
19 subject to aquaculture licences, temporary
20 aquaculture permits and aquaculture leases;

21 (kab) to clean up and rehabilitate areas that have been
22 but are no longer being used for aquaculture
23 purposes;

24 (kac) to repay any amount paid under section 97(7A)
25 that is not required to satisfy a debt due under
26 section 101(2)(b);

27

28 **70. Sections 241 and 242 deleted**

29 Delete sections 241 and 242.

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- 1 **71. Section 246 amended**
- 2 (1) Delete section 246(1) and insert:
- 3
- 4 (1) For the assistance of the CEO, fisheries officers and the
- 5 staff of the Department (*fisheries personnel*) and for
- 6 the information of industry and the community, the
- 7 Minister may issue guidelines for the administration or
- 8 enforcement of this Act or any other Act the
- 9 administration of which is committed to the Minister.
- 10
- 11 (2) Delete section 246(4) and insert:
- 12
- 13 (4) In performing a function under an Act referred to in
- 14 subsection (1), fisheries personnel must take into
- 15 account any guidelines that are relevant to the
- 16 performance of the function.
- 17
- 18 (3) In section 246(5):
- 19 (a) delete paragraph (a) and insert:
- 20
- 21 (a) derogates from the duty of fisheries personnel
- 22 to exercise a discretion in a particular case; or
- 23
- 24 (b) in paragraphs (b) and (c) delete “the CEO” and insert:
- 25
- 26 fisheries personnel
- 27

1 **72. Section 250 amended**

2 (1) Delete section 250(1) and insert:

3

4 (1) In this section —

5 *confidential information* means information contained
6 in any of the following —

7 (a) a record that is required to be kept under this

8 Act;

9 (b) a return that has been submitted or lodged as
10 required under this Act;

11 (c) a record that has been voluntarily provided to
12 the Department for the purposes of research;

13 (d) a MEMP that has been lodged as required
14 under this Act.

15

16 (2) In section 250(2) delete “subsection (3) or (4),” and insert:

17

18 this section,

19

20 (3) Delete section 250(3)(d) and insert:

21

22 (d) that relates to the person or persons required to
23 keep, submit or lodge the information, or who
24 voluntarily provided the information, with the
25 consent of that person or each of them.

26

27 (4) After section 250(3) insert:

28

29 (4A) Subsection (2) does not apply to the divulging of
30 information in aggregated form relating to fishing
31 carried out under the authorisations in respect of a

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- 1 fishery, even though it could reasonably be expected to
2 lead to the identification of a participant in the fishery
3 because of the small number of participants.
- 4 (4B) Subsection (2) does not apply to the divulging of
5 information relating to fishing carried out under an
6 authorisation to its holder —
- 7 (a) in respect of the period during which the holder
8 has held the authorisation (the *current period*);
9 or
- 10 (b) in respect of any period before the current
11 period (a *previous period*) with the consent
12 of —
- 13 (i) the person who held the authorisation
14 during that previous period; or
- 15 (ii) if that person has since died — the
16 deceased’s personal representative.
- 17 (4C) Subsection (2) does not apply to the divulging of
18 information relating to fishing carried out under an
19 authorisation to the master of a boat who is acting on
20 behalf of the holder of the authorisation.
- 21 (4D) Subsection (2) does not apply to the divulging of
22 information for law enforcement purposes to a
23 department or other agency of the State with the
24 approval of the Minister.
- 25 (4E) Subsection (2) does not apply to the divulging of
26 information for law enforcement purposes to a
27 department or other agency of the Commonwealth,
28 another State or a Territory (an *interstate jurisdiction*)
29 in accordance with —
- 30 (a) an agreement between the Minister and a
31 Minister of the interstate jurisdiction; and
- 32 (b) the requirements (if any) under the regulations.
33

1 (5) After each of section 250(3)(a) and (b) insert:

2

3 or

4

5 **73. Section 257 amended**

6 (1) In section 257(1):

7 (a) delete “licensing of —” and insert:

8

9 licensing of any of the following —

10

11 (b) delete paragraph (b) and insert:

12

13 (ba) Aboriginal bodies corporate engaged in
14 commercial fishing, but a licence granted or
15 renewed under this provision cannot be
16 transferred despite any other provision of this
17 Act;

18 (bb) masters of boats used for purposes relating to
19 commercial fishing;

20 (bc) persons engaged in diving for purposes relating
21 to commercial fishing, aquaculture or aquatic
22 eco-tourism;

23 (bd) persons collecting fish (including protected
24 fish) for broodstock and other aquaculture
25 purposes;

26 (b) individuals engaged in recreational fishing;

27 (ca) boats (including foreign boats) used for
28 purposes relating to recreational fishing;

29 (cb) persons engaged in specified activities in a fish
30 habitat protection area;

31

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- 1 (c) delete paragraph (f) and insert:
2
3 (f) charter boats;
4
5 (d) in paragraph (g) delete “purpose; and” and insert:
6
7 purpose;
8
9 (e) in paragraph (h) delete “aquaculture.” and insert:
10
11 aquaculture;
12
13 (f) after paragraph (h) insert:
14
15 (i) persons engaged in the possession, unloading,
16 transport, consignment, handling, labelling,
17 delivery, receipt, storage, packaging, purchase
18 or sale of fish.
19
20 (2) In section 257(2):
21 (a) delete “may —” and insert:
22
23 may do any of the following —
24
25 (b) in paragraph (f) delete “licence; and” and insert:
26
27 licence;
28
29 (c) in paragraph (g) delete “licences.” and insert:
30
31 licences;
32

- 1 (d) after paragraph (g) insert:
2
3 (h) prohibit a person who has been convicted of a
4 prescribed offence from being on any boat in a
5 prescribed class of boats for a prescribed period
6 after the conviction unless the person holds a
7 prescribed authorisation and the authority
8 conferred by the authorisation is in effect.
9

10 **74. Section 258 amended**

11 In section 258(1):

- 12 (a) delete “may —” and insert:
13
14 may do any of the following —
15
16 (b) in paragraph (a) delete “regulate the” and insert:
17
18 prohibit or regulate the possession,
19
20 (c) after paragraph (a) insert:
21
22 (ba) regulate customary fishing;
23
24 (d) after paragraph (d) insert:
25
26 (ea) provide for methods of deciding to whom
27 authorisations will be granted if the number of
28 available authorisations is less than the number
29 of appropriate applicants for those
30 authorisations, including by way of public
31 auction, public tender, ballot and lottery;

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- 1 (eb) provide for the reseedling of fish stocks or the
2 release of fish for the purpose of restoring or
3 improving fish stocks;
- 4 (ec) provide for the labelling or other identification
5 of fish that is the product of aquaculture;
- 6 (ed) prohibit or regulate aquaculture that has, or is
7 likely to have, an incidental impact on aquatic
8 fauna or flora;
- 9 (ee) apply, adopt or incorporate a provision of any
10 code of practice, standard or other document
11 relating to aquaculture —
- 12 (i) with or without modifications; or
13 (ii) as in force at a particular time or from
14 time to time;
- 15
- 16 (e) after paragraph (h)(ii) insert:
- 17
- 18 (iii) require persons in specified
19 circumstances to notify the CEO of the
20 occurrence of such fish;
- 21
- 22 (f) after paragraph (h) insert:
- 23
- 24 (ia) prescribe measures for the control, recapture
25 and eradication of exotic fish;
- 26 (ib) prohibit or regulate the entry into or movement
27 or use within, or direct the removal from, WA
28 waters or an area of WA waters of boats or
29 equipment on or attached to boats for the
30 purpose of —
- 31 (i) preventing organisms, as defined in
32 section 177B, that pose or are likely to
33 pose a threat to fish or other aquatic
34 resources or to their habitats from

- 1 entering WA waters or an area of WA
2 waters; or
- 3 (ii) preventing or controlling the spread of
4 such organisms in WA waters or an area
5 of WA waters; or
- 6 (iii) eradicating or removing such organisms
7 from WA waters or an area of WA
8 waters;
- 9
- 10 (g) in paragraph (k) delete “fish,” and insert:
11
12 fish or pearl oysters,
13
- 14 (h) in paragraph (k)(i) and (ii) delete “fish;” and insert:
15
16 fish or pearl oysters;
17
- 18 (i) in paragraph (k)(iii) delete “fish” and insert:
19
20 fish or pearl oysters
21
- 22 (j) in paragraph (k)(iv) and (v) delete “fish;” and insert:
23
24 fish or pearl oysters;
25
- 26 (k) after paragraph (k) insert:
27
- 28 (la) provide for the protection from, or the
29 minimisation of incidental harm from, fishing
30 activities of aquatic fauna or aquatic habitats,
31 including by prohibiting or regulating specified
32 fishing activities;
33

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- 1 (l) in paragraphs (o) and (p) delete “gear or equipment used
2 in connection with fishing, aquaculture,” and insert:
3
4 fishing or aquaculture gear or gear or
5 equipment used in connection with
6
7 (m) delete paragraph (u) and insert:
8
9 (u) prohibit the deposit of any refuse or waste in
10 any waters;
11 (ua) prohibit or regulate any other activity that
12 might pollute any waters;
13
14 (n) after paragraph (wa) insert:
15
16 (wb) prohibit or regulate the possession of fish in,
17 and the removal of fish from, designated areas
18 (whether the fish was taken or otherwise
19 obtained in those areas or elsewhere) and
20 provide for the management of fishing and
21 related activities in those areas;
22
23 (o) after paragraph (z) insert:
24
25 (zaa) regulate the exchange of information for law
26 enforcement purposes between departments or
27 other agencies of the State and departments or
28 other agencies of the Commonwealth, other
29 States or Territories;
30
31 (p) in paragraph (za) delete “who engage” and insert:
32
33 who are authorised to engage
34

1 (q) in paragraph (za)(ii) after “submit” insert:

2

3 or lodge

4

5 (r) in paragraph (zb) after “submitted” insert:

6

7 or lodged

8

9 (s) after paragraph (zc) delete “and”.

10 **75. Section 261 amended**

11 In section 261(1) delete “authorisation” and insert:

12

13 authorisation, temporary aquaculture licence

14

15 **76. Part 20 heading and Part 20 Division 1 heading inserted**

16 Before section 266 insert:

17

18 **Part 20 — Transitional matters**

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

21

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1 **77. Part 20 Division 2 inserted**

2 After section 266 insert:

3

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

6 **267. Term used: amending Act**

7 In this Division —

8 ***amending Act*** means the *Fish Resources Management*
9 *Amendment Act 2011*.

10 **268. Exemptions under section 7**

11 An exemption that was in force under section 7
12 immediately before the commencement of the
13 amending Act section 7 is taken to have been granted
14 under section 7 as amended by the amending Act
15 section 7.

16 **269. Application of extended period for service of**
17 **infringement notices under section 228**

18 The amendment effected by the amending Act
19 section 68 does not apply in relation to the service by
20 an authorised person of an infringement notice in
21 respect an offence that the authorised person believes
22 to have been committed before the commencement of
23 that section.

24 **270. Transfer of money in accounts under repealed**
25 **sections 241 and 242**

26 (1) Any money in the AFMA Account immediately before
27 the commencement of the amending Act section 70
28 must be paid into the Fisheries Research and
29 Development Account.

1 (2) Any money in the Fisheries Research and Development
2 Corporation Account immediately before the
3 commencement of the amending Act section 70 must
4 be paid into the Fisheries Research and Development
5 Account.
6

7 **78. Schedule 3 heading amended**

8 In the heading to Schedule 3 after “**provisions**” insert:

9
10 **for *Fish Resources Management Act 1994***
11

12 Note: The headings to the sections listed in the Table are to read as set out
13 in the Table.

14

Table

Section	Section heading
s. 96	Offence for contravention of licence
s. 203	Liability of authorisation holder for offences by persons acting for or on behalf of holder
s. 224	Automatic suspension if 3 offences committed in 10-year period
s. 266	Savings and transitional provisions for <i>Fish Resources Management Act 1994</i>

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