**FISHERIES (MISCELLANEOUS) AMENDMENT BILL 1991**

**Legislative Assembly, 20 August 1991, pages 283-94**

Second reading

**The Hon. LYNN ARNOLD (Minister of Fisheries**) obtained leave and introduced a Bill for an Act to amend the Fisheries Act 1982. Read a first time.

he Hon. LYNN ARNOLD: I move: That this Bill be now read a second time.

I seek leave to have the second reading explanation inserted in Hansard without my reading it. Leave granted.

This Bill provides for a number of amendments to the Fisheries Act 1982 to enable both the Government and the Department of Fisheries to more effectively meet the objectives of the Act as set out in section 20. Specifically, the amendments recognise the dynamic nature of fisheries management and the need to provide measures for the proper management and conservation of South Australia’s aquatic resources. Details of the various amendments are as follows:

1. Definition of ‘take’.

The Fisheries Act 1982 provides a mechanism for the management of South Australia’s fisheries resources. Fishing activities are regulated through various restrictions or limitations aimed at ensuring the resources are not endangered or overexploited.

The definitions outlined in the Act do not differentiate between the taking of live fish or dead fish. In particular, the definitions of ‘fishing activity’ and ‘take’ give no indication of whether or not it is an offence to take dead fish. The Department of Fisheries has always administered the Act on the basis that it applies to all fish, regardless of whether the fish is dead or alive when it is taken. The rationale for this is because some fishing activities will kill fish in the process—for example, gill netting. In order to ensure the legislation is upheld, fishers removing dead fish from the water should observe management controls such as size limits and bag limits arid return to the water all fish (including dead fish) which exceed the prescribed limits. By not including dead fish within the scope of the Act, the Department of Fisheries will not be able to apply effective management controls to the fisheries.

The Crown Solicitor’s Office has advised that whilst there are provisions in the Act which are clearly intended to relate to dead fish or parts of fish, a dead fish is not taken in the sense in which the Act defines the word ‘take’. The definition presupposes that the fish are alive and in the water to start with. In a recent case, the Department initiated prosecution against a person who took a considerable quantity of undersize fish. The defendant claimed that the fish were returned to the water by another person who observed the legal minimum length requirements of the Act. During the hearing, argument was put forward that it is not an offence to pick up dead fish . The Stipendiary Magistrate upheld the argument, ruling that the provisions of the Fisheries Act and regulations must refer to live fish only. As such, there was no case for the defendant to answer. Such a defence could be mounted in all similar cases where a person is found in possession of undersize or over the bag limit fish but where the prosecution cannot prove that the fish were alive when taken.

It is proposed to amend the interpretation provisions of section 5 of the Act so that the definition of ‘take’ involves the taking of fish, irrespective of whether it is alive or dead.

2. Sale of fish taken from inland waters surrounded by land.

The intent of the Fisheries Act 1982 is to provide for the conservation, enhancement and management of marine and freshwater fisheries resources. However, section 5 (5) states that where inland waters are surrounded by land in the ownership, possession or control of the same person, the Act does not apply except where those waters are used for fish fanning activities.

In some situations, this definition limits the ability of the Department to discharge its statutory obligations to properly manage the State’s fishery resources. For example, during periods of high water flow in the River Murray, fish are carried into many backwaters and lagoons. When the river level drops, stocks of fish are left in these lagoons etc, many of which become surrounded by private property. Advice from the Crown Solicitor indicates that such a situation is not considered to be a fish farming activity on the part of the land owner and therefore the land owner may take and sell those fish without a licence because of the exclusion provision in section 5 (5). Size and bag limit controls also would not apply.

Similar situations occur elsewhere such as in the Cooper Creek system and to some degree the Leigh Creek retention dam. The Electricity Trust of South Australia has requested the Department of Fisheries to police the retention dam which was cleared of carp and restocked with native fish at public expense. However, such matters are outside the scope of the Fisheries Act 1982 as it stands.

There is a means of avoiding the current legislation which would enable a person to sell fish taken illegally and claim that they were taken from ‘private’ waters. This matter is becoming more widely known. The Fisheries Act makes a clear distinction between commercial and recreational fishing whereby it is unlawful for a person to sell fish not taken pursuant to a licence. The distinction between commercial and recreational fishing cannot be maintained if unlicensed persons sell fish taken from private waters or are able to claim that they did.

To allow such situations to occur would provide for increased fishing effort as well as conflict between licensed and unlicensed persons. Enforcement officers who receive complaints relating to such activities are powerless to act and public confidence in the integrity of the Act is eroded.

The purpose of the amendment would not be to prevent persons from taking fish from private waters (that is, waters surrounded by private land) for their own use. However, persons taking fish from private waters for the purpose of business or trade would have to do so under either approved licensing arrangements or as registered fish farmers.

It is proposed that section 5 (5) be amended such that fish cannot be taken for the purpose of trade or business from inland bodies of water surrounded by land in the ownership, possession or control of the same person, unless the fish are taken pursuant to an authority.

3. Waters surrounded by Crown land and private land.

Section 5 (5) of the Act excludes application of the Act in waters surrounded by land in the control of one person— that is ‘private’ waters except where they are used for fish farming. However, there is a need for the Act to apply in situations where ‘private’ waters are surrounded by Crown land and in relation to the introduction of exotic fish and fish diseases in ‘private’ waters.

The first instance arises primarily in the case of waters surrounded by land under the jurisdiction of the National Parks and Wildlife Service—for example, a conservation park. Similar instances could apply to dams or reservoirs under the jurisdiction of the Engineering and Water Supply Department. In these instances, the Department of Fisheries is not able to prevent illegal fishing activities such as netting in inland waters, taking undersize fish, exceeding bag limits or using non-permitted gear. Under the existing legislative arrangements it would appear that recreational and commercial fishers can take fish from ‘private’ waters and sell those fish without regard to the Fisheries Act. Such activities would compromise established fisheries management arrangements. It is evident that more people are becoming aware of this means of avoiding the legislation.

With regard to the placement of exotic fish in ‘private’ waters, the existing legislative provisions cover situations where the fish are introduced for fish farming purposes. Commercial and non-commercial fish farmers are required to observe certain standards aimed at preventing and controlling disease outbreaks and, importantly, possible translocation of diseased or exotic fish to areas that do not have such a problem. The placement of exotic fish in ‘private’ waters is not covered by the Act if the individual does not engage in fish farming—that is, simply introduces exotic fish (without regard to disease control) and takes no action to nurture or cultivate those fish. As such, the Department is currently unable to address its management responsibilities relating to exotic fish and fish disease matters.

Without adequate control over the release of introduced (exotic) fish species, many of which have adverse environmental and disease characteristics further damaging changes to the local ecosystem will occur. A particular example is the damage caused by the introduction of European carp into the fresh water system. Exotic fish species of this nature inflict the same kinds of damage on the aquatic systems of South Australia as the rabbit and other introduced pests have done to the land.

It is believed that when section 5 (5) of the Act was originally proposed and implemented, it was not intended to remove jurisdiction over important inland fisheries nor to create means of avoiding the legislation now becoming more widely known. The amendments as proposed still maintain the spirit of allowing private individuals to keep fish forpersonal use on their property (in farm dams etc) providing they do not introduce exotic fish or fish diseases. In short, section 5 (5) of the Fisheries Act should be amended to ensure that the Fisheries Act would apply to waters surrounded by Crown land, and that people would not be permitted to introduce exotic fish into private waters without a permit from the Director of Fisheries. The proposed amendments would not change the status of ‘private’ waters such as farm dams, or other impoundments surrounded by land owned by a single private person, other than to control the use of exotic fish (and possible introduction of fish diseases) into such waters.

It is proposed that section 5 (5) be amended so that the Act applies:

• in waters surrounded by Crown land;

• in waters surrounded by land in the ownership, possession or control of the same person, in respect of the introduction of exotic fish and fish diseases into those waters.

4. State/Commonwealth arrangements.

The Fisheries Act provides for arrangements to be made with the Commonwealth whereby the management of a fishery can be implemented in accordance with state legislation or Commonwealth legislation or both.

In June 1987, arrangements were implemented for the marine scalefish, abalone, rock lobster and west coast prawn fisheries to be managed according to South Australian fisheries legislation. In addition, arrangements were implemented for the tuna fishery to be managed according to Commonwealth fisheries legislation.

Since these arrangements were promulgated, the Crown Solicitor has advised that there is some uncertainty as to the Commonwealth’s authority to manage fisheries in waters within the limits of South Australia. The Commonwealth Fisheries Act provides for arrangements in respect of fisheries in waters adjacent to a state being a fishery wholly or partly in waters on the seaward side of the coastal waters of the state. Coastal waters are defined in terms which exclude waters which are within the limits of a state.

It is generally accepted that waters within the limits of South Australia (coastal waters) are waters within three nautical miles of:

• low water mark of the mainland coast;

• low water mark of any island adjacent to the coast;

• baselines proclaimed under section 7 (1) of the Seas and Submerged Lands Act 1973 and published in Commonwealth of Australia Special Gazette No. S29, 9/2/83 and No. S57, 31/3/87.

Waters within the limits of the State are waters within baselines and include bays, estuaries, river mouths etc.

Baselines include the waters of Fowlers Bay, Denial Bay, Streaky Bay, Anxious Bay, Spencer Gulf, Gulf St Vincent, Investigator Strait, Encounter Bay, Lacepede Bay and Rivoli Bay.

It is also accepted that the limits of the state apply from low water mark to the closing lines of Sceale Bay, Coffin Bay, Avoid Bay, Vivonne Bay and Guichen Bay, or three nautical miles of low water mark (whichever is the greater). In these instances the limits do not extend for a further three nautical miles from each closing line.

With regard to the tuna fishery, licensees often operate in waters within the limits of South Australia, usually to take bait for subsequent tuna fishing activities in Commonwealth waters. However, all operations are conducted pursuant to a Commonwealth licence, subject to the management arrangement between South Australia and the Commonwealth.

An amendment to the Act would clarify the existing arrangement which applies to the tuna fishery, and simplify any future considerations for state managed fisheries to be managed by the Commonwealth.

It is proposed that Part II of the South Australian Fisheries Act be amended to provide that where an arrangement is in force whereby a fishery is to be managed in accordance with the laws of the Commonwealth, then in waters within the limits of the state, Commonwealth law is to apply as state law.

5. Appointment of fisheries officers.

The Department of Fisheries has established a system of co-operation and information exchange with its counterparts in other states. Such action enhances the enforcement capabilities of the respective agencies.

At present, fifteen South Australian fisheries officers are authorised as fisheries officers in Victoria, and eight in New South Wales. It is proposed that South Australia reciprocate and appoint Victorian and New South Wales fisheries officers as fisheries officers in this State. Officers from other states would be considered for appointment as South Australian fisheries officers if and when the need arises.

Such appointments would effectively increase the number of officers who could assist with surveillance and enforcement operations. For example, South Australian officers would be able to call upon their interstate counterparts to assist with investigations into illegal fishing operations where fish taken from one state are sent to another state for sale.

South Australian fisheries officers’ operational capabilities would be enhanced by having additional expertise readily available as well as knowledge of local fish catching areas and methods, particularly around the South Australia/Victoria border area.

A co-operative approach such as this would assist in the successful apprehension and prosecution of offenders. However, any enforcement activities the interstate officers may conduct in South Australia would be in conjunction with and under the instruction of South Australian officers.

Section 25 of the Fisheries Act 1982, empowers the Governor to appoint an officer of the South Australian Public Service as a fisheries (enforcement) officer. However, this provision cannot be used to appoint an officer of an interstate public service to the position of a South Australian fisheries officer.

It is proposed that this provision be amended so that fisheries officers from other States or Territories may be appointed as South Australian fisheries officers.

It is also proposed that this provision be amended so that an appointment be made by the Minister of Fisheries instead of the Governor. This would be consistent with section 68 of the Constitution Act 1934 which provides for a minor appointment to a public office to be vested, by statute, in ‘Heads of Departments, or other officers or persons within the State’. Such a provision would facilitate the appointment process and eliminate the need to submit each proposal to Executive Council.

The appointment of interstate fisheries officers would be subject to the following conditions (which were formulated on the advice of the Crown Solicitor):

• they would not receive or be entitled to receive any remuneration from the South Australian Government in respect of their office;

• they would hold the office only whilst accredited as a fisheries officer in their respective state;

• they would be subject to the directions of the Director of Fisheries with regard to their exercise of power pursuant to the Fisheries Act 1982;

• they would not be entitled to the rights and privileges of employees granted by the Government Management and Employment Act 1985.

It is proposed that section 25 be amended to empower the Minister of Fisheries to appoint South Australian public servants as well as fisheries officers from other States or Territories of the Commonwealth as fisheries officers in South Australia.

6. Assistance to enforcement officers.

Section 28 enables fisheries officers to exercise various powers in their role of fisheries enforcement. Provision is made for a fisheries officer, while exercising his/her powers, to request voluntary assistance from any person andto request the person in charge of any boat to voluntarily make the boat available for his/her use. Where a boat is used by a fisheries officer in such circumstances, compensation may be paid to the person who had charge of the boat at the time.

Enforcement operations are also conducted on land, requiring the use of four wheel drive as well as two wheel drive vehicles. In the majority of situations, fisheries officers have an appropriate vehicle available with back-up facilities. However, some enforcement operations may require the use of additional vehicles when and if the situation arises. Calling for departmental support vehicles to attend may not be a viable consideration when immediate action is required. Provisions which enable a fisheries officer to request voluntary assistance from a person in charge of any vehicle would enhance the department’s operational capabilities. It should be noted that a request does not translate to commandeer in these circumstances, the boat (and vehicle) owner has the right to refuse.

It is proposed that section 28 be expanded to allow a fisheries officer to request—and pay compensation for—the use of any vehicle voluntarily offered to assist with enforcement operations.

7. Licence conditions.

Section 37 enables the Director to impose conditions on licences. Conditions must be directed towards conserving, enhancing or managing fishery resources, or related to matters prescribed in the scheme of management regulations for the fishery.

In order to reduce total fishing effort on some species, conditions may need to be imposed on some licences that would effectively stop a licensee or class of licensees from having access to that species of fish. Also, a species of fish may be selectively targeted by using one type of fishing device. Reductions in fishing effort may require a limitation on where the device could be used (area exclusion) or a limitation on the dimensions of the device. It could be argued that such action, by effectively denying the licensee from taking a species of fish that is permitted to be taken pursuant to the licence, be construed as derogation of the grant of a licence and therefore not legally tenable. The Crown Solicitor has advised that in order to overcome such a situation, it is necessary to amend the legislation.

It is proposed that section 37 be amended to empower the Director to impose a condition on a licence notwithstanding that the condition would prevent a licensee from taking one or more species of fish or from using devices that could otherwise lawfully be used pursuant to the licence, providing that condition is directed towards conserving, enhancing or managing the living resources so that they are not endangered or over exploited.

8. Fisheries licences as security for loans.

The South Australian fishing industry and financial lending institutions have expressed interest in having procedures established for commercial fishery licences and endorsements to be used as collateral for loans.

In response to this interest, the Department of Fisheries, with Cabinet approval, issued two green papers on the topic. The first paper was released in May 1988, followed by a supplementary paper in July 1989. Both papers attracted wide ranging comments from the fishing industry and lending institutions. A number of responses suggested schemes which would involve considerable departmental involvement andpossible compromises to effective management of the various fisheries.

The Government proposes to implement an arrangement which recognises that licences and endorsements can be used as security for loans, but at the same time maintaining management prerogative to vary legislative, policy, administrative or procedural matters to meet the responsibilities of properly managing the fisheries resources of South Australia. This could be achieved as follows:

• the licence holder to advise the Director of Fisheries that a lender has a financial interest in a licence;

• the Director of Fisheries be required to withhold his consent for the transfer of a licence/endorsement/ quota without the written consent of the lender who has put the director on notice;

• the maintenance of a public register which identifies licences subject to a financial arrangement;

• the collection of a fee for providing such a service.

Also, the Director of Fisheries would undertake to provide the lender with information relating to prosecution action initiated against the licence holder under the Fisheries Act bearing in mind that such prosecutions may affect the status of the licence. Such an obligation could be incorporated into the proposed legislation.

The Department of Fisheries will implement procedures to minimise administrative errors, but the fact remains that persons wishing to utilise the scheme would do so at their own risk. Unforeseen circumstances or events over which the Department of Fisheries has no control may occur. In this regard it is proposed that no liability lie against the Crown.

It is proposed that sections 30, 38, 61 and 65 of the Fisheries Act be amended to: require the Director of Fisheries to withhold his consent for the transfer of a licence, endorsement or quota without the written consent of a lender who has previously informed the Director that a licence is subject to a financial arrangement; and require the Director to advise a lender of any legal action undertaken against the holder of a licence in which the lender has an interest; provide that no liability lie against the Crown for any loss arising from the Director of Fisheries not meeting his responsibility; require the Director to maintain a public register identifying licences subject to a financial arrangement; provide for the collection of a fee for such a service.

9. Fishery closure notices.

Section 43 empowers the Minister of Fisheries, by notice in the Government Gazette, to impose a temporary prohibition on certain fishing activities. In the majority of cases, these prohibitions are applied in response to an agreed need to vary harvesting strategies in the prawn fisheries, or in response to chemical/toxic spills or outbreaks of algal blooms.

The requirement to gazette such notices severely limits the Minister’s obligation to properly administer the requirements of the Fisheries Act. In the case of the prawn fisheries, a strict harvesting regime is imposed on licensees so that the prawn stocks are not endangered or over exploited. In practice, management decisions are made on a daily basis, requiring immediate action to prohibit fishing in certain waters. In the case of chemical/toxic spills and algal blooms, the government has an overriding responsibility to safeguard public health. This also requires immediate action to prohibit the taking of fish from contaminated waters.

The obligation to urgently respond in these situations is limited by the requirement to publish notices in the Government Gazette. It is extremely difficult to arrange gazettal at short notice, particularly at night, during weekends or public holidays.

In the interest of proper management of the state’s prawn fisheries and in view of the urgency associated with safeguarding public health, it is proposed that the Act be amended such that a section 43 notice, issued by the Minister (or his delegate) in respect of the commercial prawn fishery or in response to chemical/toxic spills and algal blooms, take effect immediately. An appropriate media release would be issued where public health/safety could be at risk. The Department of Fisheries would advise prawn fishery licensees of the issue of a closure notice. Gazettal of these notices would still be made at the earliest opportunity. Other temporary prohibitions on fishing activities would continue to be gazetted, and appropriate information disseminated to those affected by such notices.

It is proposed that section 43 be amended so that a fishery closure notice issued in respect of protecting the living resources of the State, or in the interest of safeguarding public health, take effect immediately.

10. Possession of Protected Fish.

Under existing provisions of the Act, it is an offence for a person to take protected fish. Examples of protected fish include seals, dolphins, whales and leafy sea dragons.

Under the evidentiary provisions of the Act, if it is proved that a protected fish was in the possession or control of a person in proximity to waters, it shall be presumed, in the absence of proof to the contrary, that the fish was taken by that person. The evidentiary provisions do not assist in situations where a person is not in proximity to any waters. In such circumstances, the department’s ability to successfully prosecute offenders could be compromised by not having a specific provision which makes it an offence to be in possession of protected fish. Given the serious nature of taking protected fish, the legislation should make it quite clear that not only is the taking of protected fish an offence, but also being in possession of such fish would be an offence.

It is recognised that in some instances, persons would be in possession of fish that were not taken unlawfully at the time, for example, a leafy sea dragon taken prior to such fish being declared as a protected species. Defence provisions have been included to cover such situations. It is proposed that section 44 be varied to make the possession of declared protected fish an offence.

11. Possession of Undersize Fish.

Section 44 has provisions which make it an offence to be in possession of undersize fish where those fish were taken from waters within the limits of the state.

Fisheries officers actively monitor size limits on fish whilst conducting their enforcement operations. This involves checking fish at the point of landing and at wholesale and retail premises. Being in possession of undersize fish at a point of landing or where those fish were obtained from a registered fish farm is not a contentious issue as it usually can be established where the fish were taken.

The main problem arises where undersize fish in a person’s possession in South Australia may be claimed to have originated interstate or where the Department cannot prove that they were taken in contravention of the Act. The Department has had experience in more recent years where prosecution has been jeopardised or unsuccessful because of the onus of proof which the department must comply with to satisfy the court that undersize fish in possession were taken illegally in waters under the jurisdiction of the Fisheries Act 1982. Such proof may be difficult to provide where undersize fish are located in trading premises away from the water.

The existing provisions which prohibit the possession of undersize fish are limited because of the scope of the Act. In order to overcome this problem without undue interference upon established marketing arrangements, it is proposed that the Act be amended to prohibit the sale, purchase or possession of undersize fish irrespective of the origins of the fish. This would not deny fish wholesalers or retailers the right to purchase fish from whatever source they choose provided those fish comply with the legal minimum length in South Australia. Such variations to the legislation would ensure that fisheries management arrangements are not undermined.

The enabling legislation would require the making of regulations to give effect to the proposal. It is intended that initially, such regulations apply to commercial operators only, that is, licence holders and fish processors.

It should be noted that section 47 of the repealed Fisheries Act 1971 prohibited the sale of any undersize fish. Advice from the Crown Solicitor in 1983 confirmed that any importation of undersize fish for sale would be an offence under that provision of the Act. Unfortunately that provision was not carried over from the 1971 Act to the current Act.

Such a prohibition can be sustained by virtue of the High Court decision in Cole v Whitfield (1988) which enables a state to impose a legal minimum length on fish irrespective of where the fish was taken. Other states already have implemented such controls in their fisheries management arrangements.

It is proposed that section 44 be amended to prohibit the sale, purchase or possession of undersize fish.

12. Marine parks.

The Fisheries Act places an obligation on the Minister and Director of Fisheries to ensure proper conservation measures are applied to the living aquatic resources of South Australia—that is, protect the aquatic habitat.

To date, fourteen aquatic reserves have been proclaimed pursuant to the Act. The reasons for their establishment encompass factors such as:

• conservation/protection/preservation

 • fisheries management

• scientific research/education

• recreation.

As well as managing renewable resources, the Department must also ensure that endangered species and unique habitats are afforded adequate protection.

The existing fisheries legislative mechanism allows a flexible approach towards the management of aquatic reserves. Once proclaimed, activities may be permitted within the reserve by making regulations or by a permit issued by the Director of Fisheries.

Since the current legislation was formulated, it has become apparent that there is a need to have a legislative framework within the Fisheries Act which is compatible with the requirements of other government managers of (terrestrial) parks and wildlife. This is particularly so where an area of water has considerable conservation and preservation significance, both within the Australian context and internationally (for example, world heritage listing) such as the proposed Great Australian Bight marine park. Other areas may also be identified for such recognition. It is a basic tenet of conservation management that conservation reserves have a legislative framework which provides security of tenure. In the case of a conservation reserve, the government is the manager of the public land and water and is therefore publicly accountable. Security of tenure and public accountability may both be maintained such that proclamation and revocation of reserve status can be achieved only through the parliamentary process as is provided for under the National Parks and Wildlife Act 1972. Under the Fisheries Act, an aquatic reserve may be proclaimed by the Governor and regulations made (or a Director’s permit issued) to manage activities within the reserve.

Ongoing management of an area such as the Great Australian Bight marine park would need to be subject to an approved management plan, identifying matters such as:

• objectives of management

• provision for recreational and commercial use

• management of visitor activities

• provision for research

• policing/protecting the reserve.

Legislation which addresses such matters exists in the National Parks and Wildlife Act 1972. Whilst this legislation was formulated mainly to manage terrestrial reserves, the amendments proposed for the Fisheries Act would be similar to the National Parks and Wildlife Act, but aimed at managing, protecting, conserving and preserving the aquatic flora and fauna resources of South Australia.

In order to afford a higher degree of security of tenure (than at present) to significant aquatic reserves (marine parks), an amendment to section 48 of the Fisheries Act would be required. Such an amendment should be additional to the provisions that are already in place, so that a marine park could be proclaimed and be managed by regulations if additional status such as world heritage listing is required.

Under existing provisions contained in the Fisheries Act, otherwise prohibited fishing activities or activities which interfere with the aquatic habitat within an aquatic reserve can be approved by regulation or by a permit issued by the Director of Fisheries. Section 48 (3) enables the Director to:

 ‘. .. issue a permit to any person authorising that person to engage in any activity, or do any act, specified in the permit during such period and subject to such conditions as may be specified . . . ’.

In the case of a marine park which the government recognises as having significance such as world heritage listing, such powers should be vested only in the Minister of Fisheries. This would reflect the provisions of the National Parks and Wildlife Act when implementing a management regime to a reserve such as that proposed for the Great Australian Bight.

With regard to joint management, where a constituted marine park is adjacent to a reserve constituted under the National Parks and Wildlife Act, 1972, it is envisaged that management of the marine park be undertaken by the Minister of Fisheries in consultation with the Minister of Environment and Planning. Similarly, where a marine park is adjacent to a marine park administered by the Commonwealth, it is envisaged that management of the South Australian marine park be undertaken by the Minister of Fisheries in consultation with the relevant Commonwealth minister.

In addition, it is proposed that the objectives of the Fisheries Act as set out in section 20 require an amendment to reflect the concept of ‘preservation’ of the living aquatic resources of South Australia. This would be consistent with the intent of the Act.

It is proposed that section 20 be amended to incorporate reference to ‘preservation’ in the administration of the Act; and section 48 be amended so that a marine park can be proclaimed and be managed by regulation.

13. Fish farming regulations.

Section 51 empowers the making of regulations relating to exotic fish, fish farming and disease in fish. Such regulations have been made, but there are limitations as to how fish farming can be regulated because section 51 is not as comprehensive as section 46 (which includes general management regulation making powers). Also, the exotic fish, fish farming and fish diseases regulations are complex because the provisions contain a large amount of information on fish species permitted to be introduced into South Australia and subsequently farmed, as well as detailed information on disease identification and control; and disposal of diseased fish and contaminated water.

In order to simplify the combined exotic fish, fish farming and fish disease regulations, it is proposed that section 51 be amended to provide for the making of fish farm regulations which would provide a specific legislative category for the regulation and monitoring of fish farming activities; including a provision clarifying licensing requirements for conducting fish farming operations. Such action would enhance public understanding of the regulations.

Existing provisions enable the Director of Fisheries to grant registration of a fish farm. However, registration cannot be refused if inspection shows a site to be inadequate in respect of matters such as water quality or good farming practice. In addition, a registration cannot be revoked if the operator fails to observe required standards relating to exotic fish, fish diseases or the proper disposal of water used for fish farming.

Also, there is no provision for the Department of Fisheries to charge a fee for the registration of a fish farm. As the Department provides an administrative, enforcement and research function associated with aquaculture/fish farming, the Government may wish to recover some of the cost of providing the service. This would be in line with the principle of collecting fees from commercial licensees.

It is proposed that section 51 be amended to make it an offence to conduct a fish farming operation without an appropriate authority and to empower the making of regulations:

• that regulate fish farming;

• prescribe matters of which the Director must be satisfied before granting a licence;

• prescribe matters that may be the subject of conditions on a licence;

• prescribe the term of licences and provide for renewal of such licences;

• prescribe matters of which the Director must be satisfied before renewing a licence;

• authorise the transfer of licences;

• prescribe matters of which the Director must be satisfied before consenting to the transfer of a licence;

• prescribe fees for the granting, renewal or transfer of a licence;

• provide for the payment, refund and recovery of fees or parts of fees payable;

• restrict or regulate the treatment, handling, storage, movement or dealing in farmed fish;

• require licensees to furnish the Director with returns (in a form fixed by the Director) outlining production and value details.

14. Fish processors/shark certification.

Most of the shark taken by South Australian licensees is processed and sent in fillet form to the Victorian market.

The Victorian Government has implemented controls which limit the species of shark that may be brought into the State.

Following extensive negotiations, it was agreed South Australia would implement controls which would satisfy the Victorian requirements. Since then, Victoria has decided not to continue with its most restrictive measure (prohibition on shark fillets entering Victoria), subject to South Australian shark processors voluntarily complying with a code of practice such that:

• only approved species of shark may enter Victoria;

• packages of shark to be accompanied with certification that the shark is an approved species;

• fillets to be consigned in sealed containers.

Notwithstanding Victoria’s decision not to activate its controls at the present time, it is proposed to proceed with enabling legislation in the South Australian Fisheries Act in the event Victoria reintroduces more restrictive measures or there is a problem with the voluntary arrangements. A change to the South Australian Act would enable this State to implement regulations, at short notice, to satisfy Victorian requirements

In order to provide the means of addressing Victorian requirements (when and if necessary), a number of regulatory provisions for certifying processed shark have been identified. However, such regulations are not within the scope of the Fisheries Act provisions which deal with fish processing. The introduction of a formal South Australian based shark certification program would require legislative provisions as follows:

• a registered processor would not be permitted to process shark unless he was the holder of an appropriate endorsement issued by the Director of Fisheries;

• the endorsement may, upon application to the Director of Fisheries be issued subject to conditions which limit the species of shark that may be processed;

• the Director of Fisheries may refuse to issue such an endorsement if the processor has been convicted in South Australia or elsewhere in Australia of a fisheries-related offence within the preceding three years;

• the Minister of Fisheries may suspend or cancel a shark endorsement if the processor has been convicted in South Australia or elsewhere in Australia of a fisheries-related offence;

• such an endorsement be subject to an annual fee;

• shark processed pursuant to the endorsement only to be consigned in a sealed container/package appropriately identified;

• the container/package to have attached to it a seal or other mark identifying it as having been issued by the Department of Fisheries;

• the issue of sealed or marked packages be subject to a fee;

• officers of the Department of Fisheries may take and retain shark product for the purpose of sampling and analysis (without compensation).

The fish processor regulations have provisions which outline the documentation that must be completed by a registered fish processor. The proposed amendments, together with the existing provisions, would assist industry in processing and selling fillets of shark taken from approved species by ensuring their continued access to traditional markets.

It is proposed that sections 54 and 55 be amended to provide for a shark processing and certification program as outlined above.

15. Suspension of Licence.

Section 56 of the Act provides for a court, following a conviction for an offence, to suspend the offender’s licence for a specified period. In addition, section 56 provides for the mandatory suspension of a licence for a period of not less than three months where a person is convicted of a prescribed offence within a three year period.

In the managed fisheries such as the rock lobster and prawn fisheries, there are seasonal limitations on fishing operations. In particular, the rock lobster seasons are fixed at seven months in the northern and southern zones whilst the prawn seasons vary according to management strategies. It is not uncommon for prawn fishing to be limited to 3-4 nights of trawling followed by an extended period (for example, from 10 days to 3 months) of no permitted activity.

Following a recent prosecution of a prawn fishery licence holder, the court imposed a 10 day licence suspension. The Department of Fisheries sought to split the suspension into two periods which were within predetermined fishing days because the next fishing period was expected to be no more than 8 days. However, the magistrate was of the view that section 56 does not authorise a non-consecutive suspension period because the word ‘period’ as used in section 56 means a time that runs continuously. As a result, the full 10 day suspension of the offender’s licence could not be realised because the last 2 days of the suspension period were not predetermined fishing days.

In order to restore the intent of the provision to serve as a deterrent to those persons who contemplate fishing incontravention of the Act an appropriate amendment should be made to the legislation.

It is proposed that section 56 be varied to provide for a licence to be suspended for a period or periods of time over non-consecutive days.

16. Additional penalty—undersize fish.

Section 66 states that where a person is convicted of an offence against the Act involving the taking of fish, the court shall, in addition to imposing any other penalty, impose an additional penalty equal to—

‘(a) Five times the amount determined by the convicting court to be the wholesale value of the fish at the time of which they were taken;

or (b) $30 000, whichever is the lesser amount’.

During prosecution action initiated by the Department against fishery offenders, argument has arisen as to whether undersize fish have a value. It has been intimated that because it is illegal to take undersize fish (except where taken from a jetty, pier, wharf or breakwater abutting land), there can be no market for them and consequently they have no value. This argument would erode the deterrent and actual effect of section 66 because if undersize fish had no value, no additional penalty could be applied.

In one recent instance (Crown v Ferraro), the Department attempted to secure an additional penalty against the defendant, who was able to argue that as undersize fish did not have a value, the additional penalty should not be applied. Although this judgement was upheld by the court at the time, the department successfully appealed the judgement in this particular case. The Crown Solicitor has advised that the relevant section be amended to avoid any misunderstanding in this regard.

It is proposed that section 66 be amended to remove any uncertainty in this matter to recognise the fact that undersize fish have a monetary value.

17. Catch and effort data.

An essential component of fisheries management is the collection of data from licensees. This information is submitted on a monthly basis, and includes details such as:

• species of fish caught;

• total weight of catch for each species;

• type of fishing gear/method used;

• number of days fished;

• areas fished.

Once this information is assembled, collated and analysed, research staff (biologists) use it to monitor the state of the fisheries resources. This is supplemented with information obtained first hand from sampling conducted in the field.

The results of research activities indicate trends in fish mortality and fishing effort, which are two of the important factors which must be addressed by fisheries managers. It is of paramount importance that over exploitation of any fish species not occur, and management decisions must be based on reliable and accurate data.

Individual licensees, and the fishing industry in general, have been adamant that the catch and effort information they provide monthly be treated confidentially by the Department of Fisheries. As business persons operating in a highly competitive commercial arena, individuals do not want their personal business details made public. Such action would obviously be to the detriment of their established fishing practices. The Department of Fisheries has always recognised the need to maintain confidentiality, and always resisted attempts from courts, government departments, businesses or individuals to make personal details available for whatever reason. The Department has on numerous occasions given an undertaking to the fishing industry that it would uphold the confidentiality of licensees’ catch and effort details. Statistical details are only ever released when the information is of a general or aggregate nature or an average for a particular fishery, without identifying individual licensees. By maintaining this approach, licensees have confidence in the Department and are more likely to submit reliable data. However, if personal details were made public, then licensees would tend to under-report their catches in an effort to conceal their true levels of fishing activity. Such action would undermine the integrity of research data and erode the ability of the department to make sound management decisions.

On a number of occasions, the Department has been requested to supply personal details to the Taxation Commissioner and to courts as a result of actions between the department and licensees or licensees and third parties. All requests have been strenuously resisted, notwithstanding that the Taxation Commissioner has wide ranging powers.

Whilst an amendment to the Act to maintain confidentiality would not overrule the Commonwealth taxation legislation, it would enable the Director of Fisheries to refuse requests for access to catch and effort data from others claiming an interest.

It is proposed that the Fisheries Act contain a provision such that the Minister or Director of Fisheries not be required by subpoena or otherwise to produce catch and effort information which identifies an individual licensee to any court, or to any other person; unless that information is made available with the prior consent in writing of the person to whose activities the information relates.

In providing the above explanation of proposed amendments to the Fisheries Act 1982,1 would inform the House that the South Australian Fishing Industry Council, representing the interests of commercial fishers, and the South Australian Recreational Fishing Advisory Council, representing the interests of amateur fishers, have been consulted and support the proposed amendments to the Act.

In addition, other interest groups have been consulted and their responses indicate agreement in principle to the proposals.

In preparing the draft Bill, the Parliamentary Counsel has taken the opportunity to incorporate statute law revision amendments.

I commend the measures to the House.

Clause 1 is formal. Clause 2 provides for commencement of the measure on a day to be fixed by proclamation. Clause 3 amends section 5 of the principal Act. The amendment—

(a) inserts definitions of ‘fish farming licence’ and ‘marine park’ (two new terms used in provisions inserted into the principal Act by this Bill);

(b) amends the definition of ‘take’ to include the taking of dead fish; and

(c) substitutes a new subsection (5) which sets out in which cases the principal Act does not apply.

The effect of new subsection (5) is to extend the application of the Act—

(a) to the taking of fish for the purpose of trade or business and to the introduction of exotic fish or fish disease in inland waters that are surrounded by land that is in the ownership, possession or control of the same person; and

(b) to activities engaged in in relation to inland waters that are surrounded by land in the ownership, possession or control of the Crown or an instrumentality of the Crown.

Clause 4 inserts new section 14a into the principal Act. The section provides that where there is in force an arrangement that provides that a particular fishery is to be managed in accordance with the law of the Commonwealth, that law applies within the limits of the State as a law of the State. Clause 5 amends section 20 of the principal Act which sets out the principal objectives that the Director and the Minister must have regard to in the administration of the Act to include a requirement that the objective of ensuring that the living resources of the waters to which the Act applies are not endangered or overexploited is achieved through proper ‘conservation, preservation and fisheries’ management measures rather than through proper ‘conservation and management’ measures. Clause 6 repeals section 25 of the principal Act and substitutes a new provision. At present the Governor is empowered to appoint officers of the State Public Service to be fisheries officers for the purposes of the Act.

New subsection (1) empowers the Minister to appoint any of the following persons to be fisheries officers for the purposes of the Act: Public Service employees, officers under the Commonwealth Fisheries Act and interstate and territory fisheries officers.

New subsection (2) provides that the Director and each member of the Police Force are fisheries officers for the purposes of the Act.

New subsection (3) provides than an appointment under subsection (1) may be made subject to conditions limiting the area within which, or the purposes for which, the appointee may exercise the powers of a fisheries officer.

New subsection (4) empowers the Minister, by notice in writing served on a fisheries officer, to vary or revoke conditions imposed under subsection (3) or to revoke the appointment.

Clause 7 amends section 26 of the principal Act to require an identity card that is issued to a fisheries officer whose appointment has been made subject to conditions under section 25 (3) limiting the officer’s powers to contain a statement of those limitations.

Clause 8 amends section 28 of the principal Act to empower a fisheries officer to request a person in charge of a vehicle to make the vehicle available for the officer’s use for the purpose of enforcing the Act and to empower the Minister, where a fisheries officer makes use of such a vehicle, to compensate the person who would otherwise have been entitled to the use of the vehicle at that time for any loss incurred as a result of the vehicle being made available for use by the fisheries officer.

Clause 9 repeals section 30 of the principal Act and substitutes a new provision.

New subsection (1) provides that a person engaged in the administration of the Act incurs no liability for an honest act or omission in the exercise or discharge, or purported exercise or discharge, of a power, function or duty under the Act.

New subsection (2) provides that subject to subsection (3), a liability that would, but for subsection (1) lie against the person lies instead against the Crown.

New subsection (3) provides that no liability lies against the Crown for any loss arising from—

 (a) the granting of consent by the Director to the transfer of a fishery licence without the consent of a person nominated as having an interest in the licence (where that interest is recorded on the register pursuant to section 65);

(b) the acceptance by the Director of the surrender of a fishery licence without the consent of that person having been obtained; or

(c) a failure on the part of the Director to record an interest in a licence pursuant to section 65, to notify the person recorded on the register as having an interest in a fishery licence of any proceedings for an offence against the holder of the licence or to remove a notation of an interest from the register.

Clause 10 amends section 34 of the principal Act to make it clear that only a natural person may be registered as the master of a boat. Clause 11 amends section 36 of the principal Act to prevent a person other than the person nominated as the proposed master of a boat from being registered as the master. Clause 12 amends section 37 of the principal Act to make it clear that the Director has power to impose a condition of a licence even though the effect of the condition is to prevent— (a) the taking of one or more species of fish that could otherwise be lawfully taken pursuant to the licence; or (b) the use of any device or equipment that could otherwise be lawfully used to take fish pursuant to the licence. Clause 13 amends section 38 of the principal Act to provide that the Director cannot consent to the transfer of a fishery licence which is subject to an interest recorded in the register of authorities pursuant to section 65 unless the person specified in the register as having that interest has consented to the transfer.

Clause 14 amends section 43 of the principal Act by inserting several new provisions.

New subsection (2) empowers the Minister or a fisheries officer authorised by the Minister to direct any person or any persons of a specified class to not engage in a fishing activity of a specified class during a specified period where, in the opinion of the Minister, it is necessary to take urgent action to safeguard public health or protect living resources of the waters to which the Act applies.

New subsection (3) requires such a direction or authorisation to be given in written form unless the Minister or the fisheries officer considers that impracticable by reason of the urgency of the situation, in which case it may be given orally.

New subsection (4) provides that where an authorisation is given orally, written notice must be given as soon as practicable.

New subsection (5) provides that where a direction is given under subsection (2), notice of it must be published in the Gazette as soon as practicable.

New subsection (6) (which incorporates the existing subsection (3)) provides that a person must not engage in a fishing activity in contravention of a declaration or direction under the section. The maximum penalty is, for a first offence—a division 7 fine ($2 000), for a second offence— a division 6 fine ($4 000) and for a subsequent offence—a division 5 fine ($8 000).

Clause 15 amends section 44 of the principal Act to—

(a) make it an offence to sell, purchase or have possession or control of fish of a class declared to be protected for the purposes of section 42;

(b) to ensure that regulations made for the purposes of subsection (2) (b) (that is, to prescribe classes of fish) may prescribe a class of fish comprised of or including fish taken elsewhere than in waters to which the Act applies (this will make it possible to make it an offence to sell, have possession of, etc., undersize fish taken anywhere); and

(c) to provide an additional defence to a charge of an offence against the section if the defendant proves— (i) that he or she did not take the fish in contravention of the Act; and (ii) that he or she did not know, and had no reason to believe, that the fish were, as the case may be, fish taken in waters to which the Act applies but not pursuant to a licence, fish taken in contravention of the Act, fish of a class declared protected for the purposes of section 42 or fish of a prescribed class.

Clause 16 amends section 46 of the principal Act to extend the regulation-making power—

(a) in respect of fisheries subject to a scheme of management—to the making of regulations that provide that no further licences may be granted in respect of the fishery, and, in respect of a miscellaneous fishery—to provide for licences of different kinds by empowering the Director to impose licence conditions limiting the class of fishing activities that may be engaged in pursuant to the licence, limiting the term for which a licence may remain in force or imposing any other limitation or restriction; and

(b) to the making of regulations that provide for returns to be furnished to the Director by licensees to contain such information as the Director may, with the approval of the Minister, require (rather than information prescribed by regulation).

Clause 17 repeals section 48 of the principal Act and substitutes new sections dealing with marine parks and the protection of the aquatic habitat.

New section 48 deals with the constitution of marine parks.

Subsection (1) empowers the Governor, by proclamation, to constitute as a marine park any waters, or land and waters, specified in the proclamation, that the Governor considers to be of national significance by reason of the aquatic flora or fauna of those waters or the aquatic habitat and to assign a name to a marine park so constituted.

Subsection (2) empowers the Governor, by subsequent proclamation, to abolish, alter the boundaries or alter the name of, a marine park.

Subsection (3) requires the Minister to submit any proposal to constitute, or alter the boundaries of, a marine park to the Minister who has jurisdiction over any land that is to be included in a marine park for that Minister’s approval and to submit any such proposal to the Minister of Mines and Energy and consider the views of that Minister in relation to the proposal.

Subsection (4) provides that a proclamation constituting, abolishing or altering the boundaries of, a marine park must not be made without the approval or approvals required by the section.

Subsection (5) provides that a proclamation abolishing, or altering the boundaries of, a marine park must not be made except in pursuance of a resolution passed by both Houses of Parliament.

Subsection (6) requires notice of a motion for such a resolution to be given at least 14 sitting days before the motion is passed.

Section 48a deals with the control and administration of marine parks.

Subsection (1) places marine parks under the control and administration of the Minister.

Subsection (2) empowers the Minister to grant on appropriate terms and conditions a lease or licence entitling a person to rights of entry, use or occupation in respect of a marine park.

Subsection (3) provides that any lease or licence granted in respect of waters or land and waters constituted as a marine park under the Act and in force immediately before the constitution of the marine park continues, subject to its terms and conditions, in force for the remainder of the term for which it was granted as if it had been granted by the Minister under this section.

Section 48b deals with plans of management for marine parks.

Subsection (1) requires the Minister to propose a plan of management for a marine park within two years after constitution of the park.

Subsection (2) empowers the Minister to prepare, at any time, an amendment to a plan of management or a plan to be substituted for a previous plan.

Subsection (3) requires the Minister— (a) to invite (by public advertisement) members of the public to make representations as to matters that should be addressed by the plan of management; and (b) in the case of a marine park that is adjacent to, or contiguous with, a reserve constituted under the National Parks and Wildlife Act 1972 or land that the Minister administering that Act has informed the Minister is proposed to be constituted as a reserve under that Act, consult with that Minister as to the matters that should be addressed by the plan of management, and to consider all representations made by members of the public and the views of the Minister administering the National Parks and Wildlife Act 1972 when preparing the plan of management.

Subsection (4) requires a plan of management to set out the proposals of the Minister in relation to the marine park and any other proposals by which the Minister proposes to accomplish the objectives of the Act in relation to the marine park.

Subsection (5) requires the Minister to incorporate in the plan of management for a marine park such measures as the Minister considers necessary or appropriate for— (a) the protection, conservation and preservation of the flora and fauna of the waters included in the marine park and their habitat; (b) regulation of fishing, mining and research activities in, public access to, and other use of, the marine park to prevent or minimise adverse effect on the flora and fauna and their habitat; (c) coordination of the management of the marine park with the management of any adjacent reserve, park or conservation zone or area established under the law of this or any other State or of the Commonwealth; (d) the promotion of public understanding of the purposes and significance of the marine park.

Subsection (6) requires the Minister to give notice by public advertisement of the fact that a plan of management has been prepared.

Subsection (7) provides that such notice must specify an address at which copies of the plan of management may be inspected and an address to which representations in connection with the plan may be forwarded.

Subsection (8) permits a person to make representations to the Minister in connection with a plan of management.

Subsection (9) requires the Minister to make copies of all representations made by members of the public under the section available for public inspection and purchase (other than those made in confidence) and to give notice of the place where those copies are available.

Subsection (10) empowers the Minister to adopt a plan of management either without alteration or with such alterations as the Minister thinks reasonable in view of the representations made by members of the public.

Subsection (11) requires the Minister to give public notice of the fact that he or she has adopted a plan of management.

Subsection (12) requires the Director to furnish a person who applies for a copy of a plan of management adopted under the section and pays the prescribed fee with a copy of the plan.

Subsection (13) defines certain terms used in the section. Section 48c provides that the Planning Act 1982 does not apply to development undertaken in, or in relation to, a marine park pursuant to a plan of management adopted by the Minister in relation to that marine park.

Section 48d deals with the implementation of plans of management.

Subsection (1) provides that subject to subsection (2), where the Minister adopts a plan of management, the provisions of the plan must be carried out in relation to the marine park and activities must not be undertaken in relation to the marine park unless those activities are in accordance with the plan of management.

Subsection (2) provides that where a mining tenement has been granted in relation to land that forms part of, or has, since the tenement was granted, become part of, a marine park, the management of the marine park is subject to the exercise by the holder of the tenement of rights under the tenement.

Section 48e deals with agreements as to conditions.

Subsection (1) provides that the Minister and the Minister of Mines and Energy may enter into an agreement with the holder of a mining tenement in relation to land that forms part of a marine park imposing conditions limiting or restricting the exercise of rights under the tenement by the holder and his or her successors in title.

Subsection (2) requires the Minister of Mines and Energy, at the request of the Minister, to serve notice on the holder of a mining tenement in respect of which conditions imposed by agreement under subsection (1) have been contravened or not complied with, requiring the holder to rectify the contravention or failure in the manner and period set out in the notice.

Subsection (3) empowers the Minister of Mines and Energy to cancel a mining tenement held by a person who fails to comply with a notice under subsection (2).

Section 48f deals with rights of prospecting and mining in marine parks.

Subsection (1) provides that subject to subsection (2), rights of entry, prospecting, exploration or mining cannot be acquired or exercised pursuant to the Mining Act 1971, the Petroleum Act 1940 or the Petroleum (Submerged Lands) Act 1982 in respect of land forming part of a marine park.

Subsection (2) empowers the Governor, by proclamation, to declare that, subject to any conditions specified in the proclamation, rights of entry, prospecting, exploration or mining may be acquired and exercised in respect of land forming part of a marine park.

Subsection (3) provides that a person must not contravene or fail to comply with a condition of a proclamation under subsection (2). The maximum penalty is a division 5 fine ($8 000).

Subsection (4) provides that a proclamation under subsection (2) has effect according to its terms.

Subsection (5) empowers the Governor, by proclamation, to vary or revoke a proclamation under subsection (2).

Subsection (6) provides that rights of entry, prospecting, exploration or mining acquired by virtue of a proclamation under subsection (2) must be exercised subject to the plan of management for the marine park except where those rights were vested in the person seeking to exercise them before the commencement of the section or where those rights are exercised pursuant to an agreement with the Minister (or with the Minister and the Minister of Mines and Energy), in which case implementation of the plan is subject to the agreement.

Section 48g deals with the protection of the aquatic habitat.

Subsection (1) provides that except as provided by the regulations or pursuant to permit under the section, a person must not enter or remain in an aquatic reserve or marine park or engage in any fishing activity in an aquatic reserve or marine park.

Subsection (2) provides that except as provided by the regulations or pursuant to a permit under the section, a person must not engage in an operation involving or resulting in disturbance of the bed of any waters or removal of or interference with aquatic or benthic flora or fauna of any waters. The maximum penalty for contravention of subsection (1) or (2) is, for a first offence—a division 7 fine ($2 000), for a second offence—a division 6 fine ($4 000) and for a subsequent offence—a division 5 fine ($8 000).

Subsection (3) empowers the Director— (a) to issue a permit to any person authorising that person to engage in activity, or do any act specified in the permit, in an aquatic reserve, during such period and subject to such conditions as may be specified in the permit; and (b) to vary or revoke a condition of such a permit or impose a further condition.

Subsection (4) empowers the Director to revoke a permit under subsection (3) if a condition of the permit is contravened or not complied with.

Subsection (5) empowers the Minister, if satisfied that the carrying out of a particular activity or the doing of a particular act in a marine park is in accordance with the plan of management for the park, issue a permit to any person authorising the person to engage in that activity or do that act in the marine park during such period and subject to such conditions as may be specified in the permit.

Subsection (6) empowers the Minister to vary or revoke a condition of a permit under subsection (5) or impose a further condition.

Subsection (7) empowers the Minister to revoke a permit under subsection (5) if a condition of the permit has been contravened or not complied with.

Subsection (8) provides that a holder of a permit under the section must not contravene or fail to comply with a condition of the permit. The maximum penalty is, for a first offence—a division 7 fine ($2 000), for a second offence—a division 6 fine ($4 000) and for a subsequent offence—a division 5 fine ($8 000). Subsection (9) defines ‘aquatic or benthic flora or fauna’.

Section 48h empowers the Governor to make regulations prescribing and providing for the recovery of fees and charges payable for entry to a marine park or for the use of facilities provided in a marine park.

Clause 18 repeals section 51 of the principal Act and substitutes new provisions. Section 51 provides that a person must not engage in fish farming unless the person holds a licence issued by the Director in accordance with the regulations or the person is acting as an agent of a person holding such a licence. The maximum penalty is a division 6 fine ($4 000).

Section 51a sets out the regulation-making powers with respect to the regulation of fish farming and the control of exotic fish and disease in fish.

Clause 19 amends section 54 of the principal Act which deals with the registration of fish processors by inserting several new provisions.

New subsection (7) provides that, subject to the regulations, a registered fish processor must not process fish of a prescribed class unless authorised to do so by the Director.

New subsection (8) requires such an authorisation to be endorsed on the certificate of registration.

New subsection (9) provides that an authorisation remains in force for such period as may be specified in the certificate of registration.

New subsection (10) empowers the Director to limit the species of fish that may be processed pursuant to an authorisation and to vary or revoke any such limitation.

New subsection (11) empowers the Director to refuse to grant an authorisation unless satisfied as to the matters prescribed in the regulations.

New subsection (12) provides that if the Minister is satisfied that the holder of an authorisation has been convicted of an offence against the Act or against any other Act relating to fishing (whether it be an Act of the Commonwealth or of another State or a Territory of the Commonwealth), the Minister may by notice in writing to the holder revoke the authorisation and require the holder to return the certificate of registration at a place and within a period specified in the notice.

Subsection (13) provides that a person must not fail to comply with a requirement imposed by notice under subsection (12). The maximum penalty is a division 8 fine ($1 000).

Clause 20 amends section 55 of the principal Act which sets out the regulation-making powers with respect to fish processing to extend those powers and to require fish processors to furnish to the Director returns containing such information as the Director may, with the approval of the Minister, require (rather than information prescribed by regulation).

Clause 21 amends section 56 of the principal Act to make it clear that a court has power to suspend fishery licences and other authorities for non-consecutive periods. Clause 22 amends section 58 of the principal Act to give a person aggrieved by a decision of the Minister to revoke an authorisation under section 54 the right to a review by the District Court of the decision.

Clause 23 repeals section 61 of the principal Act which deals with the surrender of authorities and substitutes a new provision.

New subsection (1) provides that the holder of an authority may, subject to subsection (2), at any time surrender the authority to the Director.

New subsection (2) provides that where the register of fishery licences includes a notation made pursuant to section 65 that a specified person has an interest in the licence, the licence cannot be surrendered without the consent of the person specified in that notation.

New subsection (3) provides that where an authority is surrendered to the Director the authority ceases to have any force or effect.

Clause 24 amends section 65 of the principal Act by inserting several new provisions.

New subsection (3) requires the Director, on application by the holder of a fishery licence and payment of the prescribed fee, to make a notation on the register of authorities kept under the section that a specified person nominated by the holder of the licence has an interest in the licence.

New subsection (4) provides that where the register includes a notation made pursuant to subsection (3) and proceedings for an offence against the Act have been commenced against the holder of the licence, the Director must give or cause to be given to the person specified in the notation written notice of the particulars of the alleged offence.

New subsection (5) provides that where the register includes a notation made pursuant to subsection (3) that a specified person has an interest in a fishery licence, the Director must, on application by that person, remove that notation from the register.

Clause 25 amends section 66 of the principal Act to provide that a fish taken in contravention of the Act is to be taken to have a wholesale value equivalent to a fish of the same species taken not in contravention of the Act.

Clause 26 inserts new section 66a into the principal Act.

Subsection (1) provides that a person must not divulge information obtained (whether by that person or some other person) in the administration of the Act except as authorised by or under the Act, with the consent of the person from whom the information was obtained or to whom the information relates, in connection with the administration of the Act or for the purposes of any legal proceedings arising out of the administration of the Act. The maximum penalty is a division 6 fine ($4,000).

Subsection (2) provides that notwithstanding any other law to the contrary, the Minister or Director cannot be . required by subpoena or otherwise to produce to a court any information contained in a return furnished by a licensee to the Director under the Act. The schedule further amends the principal Act to bring it into conformity with modern standards of drafting (to substitute old ‘legalese’ language with modem expressions and to substitute ‘shall’ with the now preferred plain English words ‘must’, ‘is’ and ‘will’, as appropriate), to remove obsolete and spent provisions (such as commencement provisions and references to repealed Acts) and to convert all provisions into gender neutral language.

Mr MEIER secured the adjournment of the debate.